

## Zoning Commission

## MINUTES

Public Hearings - Special Meeting  
October 21, 2015

7:00 p.m. main level meeting room

MEMBERS PRESENT: Mr. Averill, Mr. Reich (7:20 P.M.),  
Mr. Solley, Mr. Sorce, Mr. Werkhoven

ALTERNATES ABSENT: Mr. Sivick, Mr. Wyant

## PUBLIC HEARING

Harris/254 New Milford Turnpike/Special Permit: Section 13.13/  
Housing in the Business District/Commercial Use in Residential  
Building

Mr. Solley called the public hearing to order at 7:15 p.m. and seated Members Averill, Solley, Sorce, and Werkhoven.

Mr. Solley noted that while the Inland Wetlands Commission had received plans revised to 10/6/15 and had approved the revisions on those plans, the Zoning Commission had not received them. He noted, too, that the Zoning Commission's consultant, Land Tech, had in its letters dealt mainly with the proposed restaurant addition, parking lots, and septic system and the existing bridge. He read the 10/21/15 email from Mr. Bartos, which stated that Land Tech had not yet completed a final review of the plans. Mr. Solley noted that the final review was needed more for 258 New Milford Turnpike where construction was proposed, rather than for this property, where the proposed work would be done in the interior of the existing building.

Mr. Reich arrived and was seated.

Mrs. Hill noted that the Health Department had approved this application since the last session of the hearing.

Mr. Sorce asked about compliance with Land Tech's requirements and Mr. Solley responded that the Commission could close the hearing and condition approval upon compliance. He explained that if the hearing was closed and the Commission waited to act until all of Land Tech's final comments were satisfactorily addressed by the applicant, (note: The applicant was not present to grant an extension of the hearing and so it had to be closed this evening.) subsequent information could be submitted by staff, but it would not be possible for the applicant to make any further revisions because no new information or revisions may be submitted by an applicant after the close of a hearing. Mr. Solley stated that if the

application was approved with this condition of approval, the Special Permit would not be issued until Land Tech was satisfied that all of its concerns had been properly addressed.

It was noted that the applicant was not present and so it was the consensus to continue the hearing to later in the evening in case Mr. Harris arrived late.

MOTION: To continue the public hearing to consider the Special Permit application: Section 13.13 submitted by Mr. Harris for Housing in the Business District/commercial uses in a residential building at 254 New Milford Turnpike to a later time this evening when the applicant and his team might be present. By Mr. Solley, seconded by Mr. Sorce, and passed 5-0.

At 7:37 p.m. Mr. Solley continued the hearing until later in the evening.

Harris/258 New Milford Turnpike/Special Permit: Section 9.4.1.D/ Addition to Existing Eating and Drinking Establishment, Construction of Two Parking Lots, Etc.

Mr. Solley reconvened the public hearing at 7:27 p.m. and seated Members Averill, Reich, Solley, Sorce, and Werkhoven.

Mr. Solley stated he was not comfortable with the "etc." Mrs. Hill had used to describe the items being applied for. Mrs. Hill noted the application included items such as rain gardens and a river walk.

Mr. Solley stated that most of Land Tech's comments concerned this application and so this application, more than any of the others, required final approval by Land Tech that all issues had been satisfactorily addressed.

The order in which all of Mr. Harris's pending applications should be acted on was discussed. Mr. Solley noted that the Commission's decisions regarding whether to grant the waiver and modification requests would not be impacted by Land Tech's final report.

Regarding potential conditions of approval for this application, compliance with Land Tech's requirements would be required. Also, the commissioners noted that due to the addition of new seating, the proposed new parking on the Harris properties would not be sufficient to accommodate all of the restaurant seating. Therefore, they thought it would be necessary to continue the parking on the properties located across Rt. 202 and agreed a condition of approval would be to require that a copy of any parking agreement with the owners of those properties be

submitted for the file. Mr. Solley noted this was required for shared parking per Section 15 of the Regulations.

MOTION: To continue the public hearing to consider the Special Permit application: Section 9.4.1.D submitted by Mr. Harris for an addition to his eating and drinking establishment, the construction of two parking lots, etc. at 258 New Milford Turnpike to a time later this evening. By Mr. Solley, seconded by Mr. Sorce, and passed 5-0.

At 7:40 p.m. Mr. Solley continued the hearing to later in the meeting.

#### SPECIAL MEETING

Mr. Solley stated the Commission would now deliberate on the applications for which the public hearings had been closed. The five members present were seated.

Harris/254 and 258 New Milford Turnpike/Special Permit: Sections 9.5.2/Request for Waiver of Section 3.2 and 9.5.3/Request to Relax Section 11.6.1 Re: Minimum Setback Requirements

At the previous meeting, the commissioners had been asked how they were leaning regarding action on the Harris applications and Mrs. Hill had drafted an approval motion based on this poll. Mr. Solley read the draft motion and discussion followed. The site plan on which Mrs. Hill had indicated with colored circles which items applied for in the various applications were dependent on approval of the waivers and modifications, was reviewed.

Mr. Solley explained that the granting of the first waiver, 9.5.2, would allow the commercial use of both properties and that without this waiver the other Special Permit applications could not be approved. He recommended a condition of approval that only the portion of each lot that is located in the Marbledale Business District be allowed to be used commercially. He said it would be possible to amend this in the future if the applicant explicitly applied for another specific commercial use on the remaining portion of the lots.

Mr. Solley said again that he did not think Land Tech's concerns pertained to this application.

MOTION: Having determined that the applicant has demonstrated compliance with the criteria listed in Section 9.6 of the Washington Zoning Regulations;

To Approve the Special Permit Application: Sections 9.5.2/Request for Waivers of Sections 3.2 and 9.5.3/ Request to Relax Section 11.6.1 regarding minimum setback requirements submitted by Mr. Harris to allow 254 and 258 New Milford Turnpike, where the zoning district boundary line splits both properties, both to be governed by the less restrictive regulations of the Marbledale Business District and to decrease the front yard setback for the proposed addition to the White Horse Country Pub at 258 New Milford Turnpike to 27.5 feet and to decrease the side yard setback for Building B at 254 New Milford Turnpike to 15 feet per the plan, "Zoning and Proposed Development Plan," Sheet SD-2, by Studer Design Associates, Inc., dated 6/24/15 and revised to 10/6/15; subject to the following condition:

that the sections of 254 and 258 New Milford Turnpike to be governed by the Marbledale Business District regulations shall be limited to that portion of each lot that is actually located in that district; and noting that the Special Permit will not be issued until proof has been submitted to the Land Use Office that this Special Permit has been filed on the Town Land Records for both 254 and 258 New Milford Turnpike. By Mr. Solley, seconded by Mr. Werkhoven, passed 5-0.

Harris/254 and 258 New Milford Turnpike/Modification of Section 9.7.A.2/Paved Parking and Buffering Requirements and Section 15: Parking Requirements

(note: A separate application was not required for these requested modifications, but the Commission decided to formally act on the request in order to provide a clear record for the files.)

Mr. Solley read the draft motion of approval, which included a condition that the applicant notify the ZEO and chairman at the time the buffers were planted so that they could determine whether the proposed plantings were adequate. This condition was discussed in detail. Several commissioners voiced their concern that no time limit was specified in which the ZEO and chairman could impose additional planting requirements.

Mr. Werkhoven asked why the proposed buffering was being treated differently in these applications than for most applications acted on by the Commission. Mr. Solley responded that was because the Commission was considering a request to modify its Regulations, an action that is not usual for the Commission and because it was important to protect the adjacent

residential units from the commercial restaurant use. He again stated the circumstances were unusual and that the Commission had the right to impose whatever restrictions it felt were necessary.

MOTION: To approve the granting of the following modifications of Section 9.7.A.2 and Section 15 of the Washington Zoning Regulations for Harris/254 and 258 New Milford Turnpike per the plan, "Inland Wetland, Proposed Development, Site and Biofilter Planting and Erosion Control Plan," Sheet SD-1, revised to 10/6/15, by Studer Design Associates, Inc.:

1. Paved parking areas may exist within 50 feet of the property lines of the adjoining residentially used properties,
2. Three permanent landscape buffers to screen the residentially used buildings on adjoining properties are approved per the above referenced plan, and
3. Per Section 15.3.2, parking spaces in excess of the maximum number required are approved;

subject to the following condition:

the Zoning Enforcement Officer and Commission chairman shall be notified when the landscape buffer plantings will be sited and planted and they will then review the buffering and may require additional plantings within 30 days if they find those proposed are not adequate.

By Mr. Averill, seconded by Mr. Sorce, passed 5-0.

#### Harris/254 and 258 New Milford Turnpike/Lot Line Revision

Mr. Solley read the draft motion of approval. He explained the comments made by Town Counsel in his 10/7/15 email; that the easement area on the survey map must be better delineated and the easement language must be more specific. He also stated that any condition of approval regarding the easement would have to be complied with before the zoning permit was issued.

MOTION: To approve the application submitted by Mr. Harris for a lot line revision at 254 and 258 New Milford Turnpike per the map, "Map Showing New Lot Lines 258 and 254 New Milford Turnpike," 2 sheets, by Mr. Osborne, dated 9/10/15, the 8/17/15 letter from Mr. Ruspini, consulting engineer, the 9/21/15 letter from Mr. Macri, consulting engineer, the 9/28/15 letter to the Commission from Mr. Harris, and the proposed Easement Agreement; subject to the following conditions:

1. that the applicant address Town Counsel's 10/7/15

requirements regarding the proposed easement language to the satisfaction of Town Counsel and

2. that the above referenced approved map and Easement Agreement be filed on the Land Records in the Town Clerk's Office and that proof that this has been done be submitted to the Land Use Office.

By Mr. Solley, seconded by Mr. Averill, passed 5-0.

Mr. Solley noted that the deliberations could not progress until the remaining two public hearings were closed.

MOTION: To reopen the public hearing to consider the Special Permit Application: Section 13.13 submitted by Mr. Harris for Housing in the Business District at 254 New Milford Turnpike. By Mr. Werkhoven, seconded by Mr. Averill, and passed 5-0.

PUBLIC HEARING

Harris/254 New Milford Turnpike/Special Permit: Section 13.13/  
Housing in the Business District

Mr. Solley reconvened the public hearing at 8:17 p.m. and noted the application had been reviewed at the session of the hearing held previously that evening. Mrs. Hill noted that she had prepared a draft motion of approval in which she included all of the Regulation references that Mr. Studer, the applicant's agent, had requested.

MOTION: To close the public hearing to consider the Special Permit Application: Section 13.13 submitted by Mr. Harris for Housing in the Business District at 254 New Milford Turnpike. By Mr. Averill, seconded by Mr. Sorce, and passed 5-0.

Mr. Solley closed the public hearing at 8:18 p.m.

SPECIAL MEETING

Harris/254 New Milford Turnpike/Special Permit: Section 13.13/  
Housing in the Business District

Mr. Solley made a motion to approve the application with one condition and Mr. Werkhoven seconded it. Mr. Sorce recommended that a second condition be added that the applicant address all of Land Tech's requirements to Land Tech's satisfaction. It was the consensus to add this condition. Mr. Solley and Mr. Werkhoven agreed to the revision of the motion and the following action was taken.

MOTION: To approve the Special Permit application: Sections 13.13/Housing in the Business District, 9.4.1.F/Business Office, and 9.4.1.I/Business Storage submitted by Mr. Harris for 254 New Milford Turnpike per the plan, "Proposed Cellar Plan and Existing Upper Levels," Sheet A-1, by John Clements, Architect, dated 8/2/15 and Sewage Disposal System Plans, 3 Sheets, by Mr. Fowler, dated 8/7/15, the 8/17/15 letter from Mr. Ruspini, consulting engineer, the 9/21/15 letter from Mr. Macri, consulting engineer, and the 9/28/15 letter to the Commission from Mr. Harris; subject to the following conditions:

1. that any change to the approved plans must be submitted to the Commission for reapproval and
2. that the applicant address all concerns and requirements listed in Land Tech's 9/1/15, 9/28/15, and any subsequent letters to Land Tech's satisfaction.

By Mr. Solley, seconded by Mr. Werkhoven, passed 5-0.

MOTION: To reopen the public hearing to consider the Special Permit Application: Section 9.4.1.D submitted by Mr. Harris for an addition to his existing eating and drinking establishment, the construction of two parking lots, etc. at 258 New Milford Turnpike.

By Mr. Averill, seconded by Mr. Werkhoven, passed 5-0.

#### PUBLIC HEARING

Harris/258 New Milford Turnpike/Special Permit: Section 9.4.1.D/ Addition to Eating and Drinking Establishment, Construction of Two Parking Lots, Etc.

Mr. Solley reconvened the public hearing at 8:24 p.m.

Mrs. Hill noted that several documents had been submitted to the Inland Wetlands Commission, but not to the Zoning Commission, and that these should be included in the Zoning files. They were 1) the plans, "Inland Wetland, Proposed Development, Site and Biofilter Planting, and Erosion Control Plan," sheets SD-1 - SD-4, by Studer Design Assoc., revised to 10/6/16, "Site Plan for Stormwater Management," by Mr. Fowler, dated 10/5/15, and "The Engineer's Report for Stormwater Management," by Mr. Fowler, revised to 10/3/15. Mr. Solley agreed that these had been submitted to the Land Use Office and were to be included in the Zoning files.

Mr. Solley read again the 10/21/15 email from Mr. Bartos of Land Tech. It was the consensus that compliance with Land Tech's recommendations to the satisfaction of Land Tech should be

a condition of approval. And it was noted that the Special Permit would not be issued until Land Tech reported to the Commission that all of its requirements had been met.

Mrs. Hill noted that DOT approval was also required. Mr. Solley read the draft motion of approval.

MOTION: To close the public hearing to consider the Special Permit Application: Section 9.4.1.D submitted by Mr. Harris for an addition to his eating and drinking establishment, the construction of two parking lots, etc. at 258 New Milford Turnpike.  
By Mr. Solley, seconded by Mr. Sorce, passed 5-0.

Mr. Solley closed the public hearing at approximately 8:30 p.m.

#### SPECIAL MEETING

Harris/258 New Milford Turnpike/Special Permit: Section 9.4.1.D/ Addition to Eating and Drinking Establishment, Construction of Two Parking Lots, etc.

Mrs. Hill reviewed the list of documents that should be considered as part of this application; all of the documents submitted at the 9/28/15 session of the public hearing, the 10/14/15 Inland Wetlands approval of the revisions to Permit #IW-15-22, the 10/7/15 email from Atty. Miles regarding the language of the Easement Agreement, and the 10/21/15 emails between Mrs. Hill and Mr. Bartos as well as the revised plans by Studer Design and Mr. Fowler that were referenced at the public hearing.

Mr. Solley asked if there were any questions regarding the draft motion of approval with conditions and there were none. Mr. Solley asked if the commissioners were satisfied with the condition to limit construction to the hours of 7:00 a.m. to 6:00 p.m. Monday through Saturday. Mr. Sorce asked if these were normal working hours. Mr. Solley said that 7:00 to 5:00 is usual, but that since the property was located in the business district, he proposed that work be permitted to continue to 6:00 p.m.

MOTION: To approve the Special Permit application: Section 9.4.1.D submitted by Mr. Harris for an addition to the existing eating and drinking establishment, installation of two parking lots, etc. at 258 New Milford Turnpike per the plans, "Inland Wetland, Proposed Development, Site and Biofilter Planting, and Erosion Control Plan," Sheets SD-1,



SD-2, SD-3, and SD-4, by Studer Design Assoc., Inc. revised to 10/6/15, "Site Plan for Stormwater Management," and "Construction Detail Sheet for Stormwater Management," by Mr. Fowler, dated 10/5/15, "The Engineer's Report for Stormwater Management," by Mr. Fowler, revised to 10/3/15, "Map Showing New Lot Lines 258 and 254 New Milford Turnpike," by Mr. Osborne, dated 9/10/15, "Sketch Plans," Sheet A-101, by MacMillan Architects, revised to 8/6/15, the 9/28/15 letter from Mr. Harris to the Zoning Commission, lighting specifications by Minka-Lavery, received 9/14/15, the 8/17/15 letter from Mr. Ruspini, consulting engineer, and the 9/21/15 letter from Mr. Macri, consulting engineer; subject to the following conditions:

1. DOT approval is required,
2. that the applicant submit a copy of any parking agreement(s) signed by the owners of the parcels across the street, Connolly - 253 New Milford Turnpike and Dobson - 255 New Milford Turnpike,
3. the existing parking area in front of the restaurant shall be paved and parking spaces delineated,
4. construction hours shall be limited to Monday through Saturday from 7:00 a.m. to 6:00 p.m.,
5. that the applicant address Town Counsel's 10/7/15 requirements regarding the proposed easement language to the satisfaction of Town Counsel and that the approved Easement Agreement be filed on the Land Records in the Town Clerk's Office and proof that this was done be submitted to the Land Use Office,
6. that the applicant address all concerns and requirements listed in Land Tech's 9/1/15, 9/28/15, and any subsequent letters to Land Tech's satisfaction, and
7. any change to the approved plans must be submitted to the Zoning Commission for reapproval.

By Mr. Reich, seconded by Mr. Sorce, passed 5-0.

MOTION: To adjourn the Meeting. By Mr. Averill.

Mr. Solley adjourned the meeting at 8:40 p.m.

FILED SUBJECT TO APPROVAL  
Respectfully submitted,

Janet M. Hill

Land Use Administrator

**Documents to Add to the Record:**

1. Any and all documents submitted at the 9/28/15 meeting
2. 10/14/15 Inland Wetlands Commission approval of revision to Permit #IW-15-22
3. \_\_\_\_\_ email from Atty. Miles re: language for easement agreement
4. 10/21/15 emails between Mrs. Hill and Mr. Baros, Land Tech

**Documents Needed for Zoning Application Files:**

1. Studer Design plans, sheets SD-1 - SD-4, revised to 10/6/15
2. Fowler stormwater management plans, 2 sheets, 10/5/15
3. Fowler revised stormwater management report, revised to 10/3/15