

Zoning Commission

MINUTES

Public Hearings - Regular Meeting  
November 28, 2016

7:30 p.m.

Main Level Meeting Room

MEMBERS PRESENT: Mr. Averill, Mr. Solley, Mr. Solomon,  
Mr. Werkhoven  
MEMBER ABSENT: Mr. Reich  
ALTERNATES PRESENT: Mr. Burnham, Mr. Sivick  
STAFF PRESENT: Mrs. Hill  
ALSO PRESENT: Mrs. Jacques, Mr. Ciarlone, Atty. Fisher,  
Mr. Tierney, Mr. Smith

PUBLIC HEARINGS

Dobson-Jacques/219 Litchfield Turnpike/Special Permit: Section  
10.4.1.B/ Personal Services/Exercise Classes

Mr. Solley called the hearing to order at 7:30 p.m. and seated Members Averill, Solley, Solomon, and Werkhoven and Alternate Burnham for Mr. Reich.

Mr. Solley noted the hearing had been continued because all of the adjoining property owners had not been notified. He read Mrs. Hill's 11/28/16 administrative report, which noted all adjoining property owners had now been notified as required.

The map, "Site Plan Prepared for Mr. James Ross," by Altermatt Engineering, LLC., revised to 11/22/04 and with handwritten revisions, unsigned and undated, was reviewed.

Mr. Solley asked if there was a floor plan. Mrs. Jacques stated the first floor was totally open and the second floor was empty storage space.

Mrs. Jacques explained she planned to conduct small classes of ten or less, six times a week, before work, during lunch, and after work.

There were no questions or comments from the public or from the commissioners.

MOTION: To close the public hearing to consider the Special Permit application: Section 10.4.1.B submitted by Mr. Dobson for personal services/exercise classes at 219 Litchfield Turnpike. By Mr. Werkhoven, seconded By Mr. Averill, and passed 5-0.

Mr. Solley closed the public hearing at 7:38 p.m.

Harker/248 West Shore Road/Special Permit: Section 6.4.6/Fence on the Lake Waramaug Side of West Shore Road

Mr. Solley called the public hearing to order at 7:39 p.m. and seated Members Averill, Solley, Solomon, and Werkhoven and Alternate Sivick for Mr. Reich.

Mr. Solley noted the original application had been denied and a second, revised application for a 36 inch tall fence had been submitted. He said when he had inspected the site, he found sections of the fence were 4 inches off the ground, bringing the total height to 40 inches. He suggested that if the application was approved, a maximum height, which would include the space between the fence and the ground, should be a condition of that approval. He asked if the 36 inch height was proposed for the entire length of fence. Mr. Ciarlone said it was.

Mr. Solley asked for comments from the public and read the 11/28/16 letter from Mrs. Sutter opposing the application. To clarify some of what Mrs. Sutter had written, Mr. Ciarlone said the total length of the proposed fence was 208 feet and that no hedge was proposed; he thought the hedge she wrote about was on the adjoining property.

Mr. Solomon and Mr. Burnham commented that when driving by, part of the view of the lake was obscured by the 36 inch tall fence, so they thought it was too tall. Mr. Solomon said that when he walked by, the view had not been obscured. Mr. Burnham said he thought an acceptable height was the section of fence by the garage, which was 2 feet above the crown of the road.

Mr. Ciarlone noted a 44 inch tall fence had been proposed first, but when that had been denied, he had lowered it to 36 inches, which he came up with after viewing the lake from his car.

Mr. Burnham asked if the entire fence could be lowered. Mr. Ciarlone said that would bring the fence down to 24 inches at the 244 West Shore Road end of the property and that would be aesthetically unpleasing. He added he would remove the fence rather than lower it to 23 or 24 inches.

Mr. Werkhoven said the fence should comply with the regulation, or the regulation should be revised.

Mr. Ciarlone asked if the fence could be lowered another 6 inches.

Mr. Solley again stated he thought 36 inches was too high and that the fence must be kept as close to grade as possible.

Mr. Burnham asked if the owner had an objection to planting a hedge rather than installing a fence. Mr. Solomon thought this would not solve the issue of maintaining the view of the lake. Mr. Burnham said trimming the hedge would be required,

but noted continual enforcement of the height requirement would be necessary and that neighbors had recently complained that the fence regulations were not enforced. Mr. Ciarlone stated a fence would require less maintenance than a hedge.

MOTION: To close the public hearing to consider the Special Permit application: Section 6.4.6 submitted by Mr. Harker/248 West Shore Road for a fence on the Lake Waramaug side of West Shore Road. By Mr. Averill, seconded by Mr. Werkhoven, and passed 5-0.

Mr. Solley closed the hearing at 7:55 p.m.

Tierney/6 Green Hill Road (11 Titus Road)/Special Permit: Section 8.5/Increase Maximum Permitted Lot Coverage for Expansion of Parking Area

Mr. Solley opened the public hearing at 7:57 p.m. and seated Members Averill, Solley, Solomon, and Werkhoven and Alternate Sivick for Mr. Reich.

Mr. Tierney circulated copies of a smaller scale site plan and submitted certificate of mailing receipts to prove he had notified adjoining property owners of the hearing. He also presented three color photos of the area where additional parking is proposed and a sample of the 3 inch processed gravel proposed for the surface of the parking area. He read his 11/28/16 statement, which detailed his proposal for an additional 287 sq. ft. parking area that would accommodate one or two cars. He said the additional parking area was needed due to congestion and lack of parking in the Depot.

The map, "Zoning Location Survey," by Mr. Alex, dated November 2016 was reviewed and Mr. Tierney pointed out his western boundary line, to which the parking area would extend.

Mr. Solley asked if the proposed parking spaces would be used only by Mr. Tierney's tenants. Mr. Tierney responded, no, that they were needed due to the general lack of parking in the Depot.

Mr. Solley read Section 8.5 of the Zoning Regulations and noted coverage on the property would increase from 61% to 66% if the application was approved. There was a brief discussion regarding lot coverage and the surface material proposed. Mrs. Hill noted per Section 12 of the Regulations, paved surfaces may not be located within 200 feet of the Shepaug River. Mr. Solley recommended a processed gravel surface rather than millings because he said millings compact and would become impervious like pavement.

Mr. Solley asked for public comments.

Mr. Smith, Director of the Highway Department, said 1) a driveway permit would be required and 2) that the Town would require a 10 ft. paved apron. Mr. Solley noted that conflicted with Section 12. It was noted that the First Selectman had OK'd the application. Mrs. Hill said she assumed he had reviewed the plans, which included the gravel surface, and had approved them. She added that if pavement was required, a variance would be needed.

Mr. Averill recommended the hearing be continued in order to get clarification from the First Selectman on exactly what plans he had approved. Mr. Werkhoven said he would bring this up at the next Board of Selectmen's meeting. Mr. Averill then made a motion to close the hearing, which was seconded by Mr. Werkhoven. When reminded that the hearing would be continued, he withdrew the motion and Mr. Werkhoven withdrew his second.

MOTION: To continue the public hearing to consider the Special Permit application: Section 8.5 submitted by Mr. Tierney to increase the maximum lot coverage permitted to install a parking area at 6 Green Hill Road (11 Titus Road) to Tuesday, December 27, 2016. By Mr. Solley, seconded by Mr. Averill, passed 5-0.

At 8:20 p.m. Mr. Solley continued the hearing to 7:30 p.m. Tuesday, December 27, 2016 in the main level meeting room.

#### REGULAR MEETING

Mr. Solley called the meeting to order at 8:23 p.m. and seated Members Averill, Solley, Solomon, and Werkhoven and Alternate Burnham for Mr. Reich.

#### Consideration of the Minutes

MOTION: To accept the 10/24/16 Regular Meeting and 11/1/16 Special Meeting minutes as written. By Mr. Werkhoven, seconded by Mr. Burnham, and passed 5-0.

#### Pending Applications

Dobson-Jacques/219 Litchfield Turnpike/Special Permit: Section 10.4.1.B/Personal Services/Exercise Classes: There was no further discussion.

MOTION: To approve the Special Permit application: Section 10.4.1.B submitted by Mr. Dobson for personal Services/exercise classes at 219 Litchfield Turnpike.

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

Harker/248 West Shore Road/Special Permit: Section 6.4.6/Fence on the Lake Waramaug Side of West Shore Road: Mr. Solley seated Alternate Sivick because he had been seated during the public hearing. He then asked each commissioner to state his opinion about whether the proposed fence complied with the Regulations.

Mr. Averill stated that when he had driven by in a sports car, the fence height was above the direct line of view of the lake, although it could be seen through the slats. He found the fence would unduly obscure the view of the lake and that it would be more than two feet higher than the elevation at the center of the road.

Mr. Sivick stated his view of the lake had not been obscured when he drove by in an SUV, but thought the Regulations should be adhered to.

Mr. Werkhoven thought the Commission should go by the letter of the law.

Mr. Solomon said at least half the view of the lake was unduly obscured when he drove by in his car and so agreed the Regulations should be followed.

Mr. Solley said that even with the proposed decrease in height to 36 inches, there was still space between grade and the bottom of the fence, which brought the total height to 40 inches, which he thought was too high.

Mr. Averill noted he is bothered by some of the existing 7 ft. tall stockade fences along West Shore Road, but understood they were grandfathered. It was also noted that they were one of the reasons why the current regulations had been adopted.

MOTION: To deny the Special Permit application: Section 6.4.6 submitted by Mr. Harker/248 West Shore Road for a fence on the Lake Waramaug side of West Shore Road. By Mr. Solley, seconded by Mr. Sivick, and passed 5-0.

(Motion approved, Application denied)

New Application

Mr. Burnham was reseated.

Town of Washington/185 New Milford Turnpike/Special Permit: Section 9.4.3/Training Facility for Fire Dept.:

MOTION: To schedule a public hearing on Tuesday, December 27, 2016 to consider the Special Permit application,

Section 9.4.3 submitted by the Town of Washington to construct a training facility building at 185 New Milford Turnpike. By Mr. Solley, seconded by Mr. Solomon, and passed 5-0.

#### Other Business

Revision of the Zoning Regulations: Mr. Solley suggested a subcommittee be set up to facilitate work to revise the Regulations. He asked for a general consensus on how the Commission should proceed on the following possible revisions that had been discussed at previous meetings:

1. Woodville Business District Boundaries: All but the land located between Wilbur Road and Litchfield Turnpike had been eliminated from this district in 2000. The commissioners considered whether to restore the district to its pre 2000 boundaries, which included a 600 ft. wide strip of land from the intersection of Wilbur Road and Litchfield Turnpike to the intersection of Romford Road and Litchfield Turnpike and the triangle of land bordered by Litchfield Turnpike, Rt. 341, and Christian Street. An enlargement of the Assessor's map with this area colored in was reviewed. Mr. Sivick asked if restoring the pre 2000 boundaries would raise the property taxes of those properties impacted by the change. Mr. Solley explained those property taxes would not change because properties are taxed according to their use, not their zoning district. It was the consensus proceed with efforts to restore the Woodville Business District to its pre 2000 boundaries.
2. Off the Premises Signs for Approved Town Landmark Sites: Possible language to permit off the premises signs under specific circumstances for approved Town Landmark Sites was circulated. Mr. Solley explained this language was not necessarily final, but a consensus was needed to continue to work on this revision. It was the consensus to go forward with work to add a section to the Regulations to permit such signs throughout Town.
3. Expansion of the Depot Business District: The commissioners considered whether the three properties along River Road between Canoe Brook and Cook Street should be included in the Depot Business District. It was noted that although all three are now located in the Farming-Residential District, none are used for residential purposes and two have been used commercially for years. The third property was the Legion Hall/Senior Center. The Assessor's map of the area was circulated. Mr. Solley noted the current commercial uses on these properties are non conforming, but if the properties were included in the Depot Business District, they would then

conform to the Regulations. He also noted there is an existing legal right of way through the Town property, which would not be impacted by a zone change. Mr. Werkhoven said the change being considered for the business district would be in keeping with the Plan of Conservation and Development. Mr. Sivick asked if a zone change could be made without the property owners' permission. Mr. Solley said all of the property owners would be notified. Mr. Burnham asked why lots #39, #40, and #43 on the Assessor's map were not also being considered for inclusion in the business district. Mr. Solley said they are being used residentially and do not border River Road where business parking is available. It was the consensus to include the three lots located on River Road between Canoe Brook and Cook Street in the Depot Business District.

4. Reconstruction of Non Conforming Buildings: Mr. Solley explained that the current Zoning Regulations do not permit the rebuilding of a non conforming building when it is removed, but that in practice this has been allowed in Town for many years as long as the owner's intent to rebuild was clear and the new building would not be larger or more non conforming in any way than the one it would replace. He said, in other words, the Town's practice was inconsistent with its Regulations. A possible draft revision by Atty. Fisher to allow the reconstruction of non conforming buildings under specific circumstances was circulated. Mr. Averill brought up examples of non conforming buildings near the lake, which had recently been allowed to be taken down and rebuilt. Mr. Solomon thought it was reasonable to let non conforming buildings be rebuilt as long as they weren't enlarged or the non conformity increased, but said owners get around this limitation by going to ZBA. Mr. Averill noted that the ZBA must find a hardship in order to grant a variance, and he did not see what hardship speculators could have. Mr. Sivick agreed and said it was not a hardship if you want to increase the square footage of your house. Mr. Solley asked if it was the consensus to continue to work on language to reverse the current restriction in the Regulations and to permit the Commission's current practice. It was the consensus to make such revisions to Section 17.

#### Administrative Business

The draft 2017 calendar of meeting dates was reviewed and approved.

## Enforcement

Fences were discussed. Mr. Werkhoven asked, and the other commissioners agreed, that Mr. Ajello make an inventory of fences, when they were installed, whether they have permits, and whether they comply with the Regulations. Mr. Solley noted that for fences on the Lake Waramaug side of West Shore Road, Section 6.4.6 was adopted in 2006. He said he thought many fences were erected without zoning permits. Mr. Werkhoven asked if these could be ordered to be taken down. Mrs. Hill referred to a state statute, which she said made illegal structures non conforming if enforcement proceedings had not begun within three years. (Note: After checking the statute, it was found it pertains to buildings, not structures.) Mr. Sivick asked for a record of which fences Mr. Ajello has enforced or had corrections made and which are in violation and have not been enforced.

## Correspondence

The state DOT's plans to replace the bridge over Mallory Brook on Rt. 109 were noted.

MOTION: To adjourn the meeting. By Mr. Averill, seconded by Mr. Solomon, and passed 5-0.

Mr. Solley adjourned the meeting at 9:25 p.m.

FILED SUBJECT TO APPROVAL

Respectfully submitted,

By \_\_\_\_\_

Janet M. Hill  
Land Use Administrator