

Zoning Commission

MINUTES

Public Hearings - Regular Meeting
September 28, 2015

7:30 p.m. main level meeting room

MEMBERS PRESENT: Mr. Averill, Mr. Reich, Mr. Solley,
Mr. Sorce, Mr. Werkhoven
ALTERNATES ABSENT: Mr. Sivick, Mr. Wyant
STAFF PRESENT: Mrs. Hill, Ms. Pennell
ALSO PRESENT: Mr. Talbot, Mr. Harris, Mr. Studer,
Mr. Charles, Mr. Bedini

PUBLIC HEARINGS

Atkins/159 West Shore Road/Special Permit: Sections 6.4.9/
Construct Boathouse and 6.5/Construction Within 50 to 75 Feet of
Lake Waramaug

Mr. Solley called the public hearing to order at 7:35 p.m. and seated Members Averill, Reich, Solley, Sorce, and Werkhoven. Mr. Talbot, architect, explained there had been a significant reduction in the scope of the proposal since the application had been submitted because the original plans had been denied by the Zoning Board of Appeals. He presented his revised plan, "Site Plan," Sheet SD.SP.1, revised to 9/24/15. He noted that at the request of the Lake Waramaug Assoc. the proposed boathouse had been pushed back so that it would be 25 feet from the lake and it had been rotated so that the narrow end faced the lake. On the opposite side of the road, the plan to relocate the driveway had been abandoned and so there was no longer any construction proposed within 50 to 75 feet of the lake and Mr. Talbot so amended the application form. Mr. Talbot said he had received Inland Wetlands approval for the 10' X 14' boathouse and he presented elevations on Sheet BH.101 revised to 9/24/15 and a rendering dated 7/20/15. He added it would be constructed on six piers on the highest section of the site and tucked into a cluster of pines, have wood shingles and a double door on one side, might be a prefab building, and would be used for the storage of paddleboards, kayaks, life vests, etc. The proposed improvements to the existing dwelling and associated elevations were briefly reviewed, but it was noted they were not included in the Special Permit application. Mr. Talbot noted a Special Exception was needed for lot coverage, which would exceed the maximum permitted by 140 sq. ft. and for the front yard setback for the boathouse.

Mrs. Hill reported the Health Department had approved the application and other than the ZBA issues, there were no outstanding issues.

Mr. Sorce was concerned that the proposed location for the boathouse was right next to the easement line. A discussion concerning the easement followed. Mrs. Hill noted the ZBA had received legal advice that setbacks are required from public ways, but not from private ways like this easement.

There were no questions or comments from the public.

MOTION: To close the public hearing to consider the Special Permit application: Sections 6.4.9 and 6.5 submitted by Mr. Atkins to construct a boathouse and for construction within 50 to 75 feet of Lake Waramaug at 159 West Shore Road. By Mr. Averill, seconded by Mr. Reich.

Mr. Sorce asked if approval of this application would mean the Commission would be required to approve all other boathouse applications submitted. Mr. Solley noted that boathouses are permitted by Special Permit, not by right, and so the Commission has discretion when considering these applications. Mr. Talbot pointed out that there is the 25 ft. side yard setback requirement so any two boathouses on adjoining properties would be at least 50 feet apart.

Vote: 5-0.

Mr. Solley closed the public hearing.

Stone Hill Orchard, LLC./88 Kielwasser Road/Special Permit:
Section 13.11.3/Detached Accessory Apartment

Mr. Solley called the public hearing to order and seated Members Averill, Reich, Solley, Sorce, and Werkhoven.

Mr. Talbot, architect, presented an aerial photo of the property. The owners proposed to convert the studio over the existing garage to a one bedroom accessory apartment. Mr. Talbot presented a photo of the existing garage and elevations on the plan, "Floor Plan and Elevations," Sheet G.101.C, by Peter Talbot AIA Architects, revised to 9/4/15. He noted a mechanical room would be added to the first floor of the garage and an outdoor terrace to the second floor. The site plan, Sheet SP.101, dated 7/24/15 was also reviewed.

Mrs. Hill reported that the Health Dept. had approved the application, but that the property owner had not yet submitted a written statement per Section 13.11.3.B that he will reside on

the premises for the duration of the permit. The reason for this statement was briefly discussed. Mr. Talbot stated the owners intend to use the apartment as a guest house and not rent it out.

Mr. Solley noted the proposed apartment is 403 sq. ft.

There were no questions or comments from the public.

MOTION: To close the public hearing to consider the Special Permit application: Section 13.11.3 submitted by Stone Hill Orchard, LLC. for a detached accessory apartment at 88 Kielwasser Road. By Mr. Sorce, seconded by Mr. Averill, passed 5-0.

Mr. Solley closed the public hearing.

Harris/254 New Milford Turnpike/Special Permit: Section 13.13/Housing in the Business District/Commercial Use in Residential Building/Con't.

Harris/258 New Milford Turnpike/Special Permit: Section 9.4.1.D/Addition to Eating and Drinking Establishment, Two Parking Lots, etc./Con't.

Harris/254 and 258 New Milford Turnpike/Special Permit: Sections 9.5.2: Request for Waivers of Section 3.2 and 9.5.3: Requests to Relax Section 11.6.1 re: Minimum Setback/Con't.

Mr. Solley called the first public hearing (13.13) to order and seated Members Averill, Reich, Solley, Sorce, and Werkhoven. He recommended this hearing be continued because the Health Dept. had not approved the application. Mr. Werkhoven asked why the hearing could not be closed and Mr. Solley explained that once a hearing is closed, no additional information may be submitted by the applicant.

Regarding the second public hearing (9.4.1.D,) Mr. Solley noted there were several unresolved matters including: 1) The DOT had not yet approved the application, 2) the Inland Wetlands Commission would have to approve revisions to its permit, 3) items listed in the 9/28/15 Land Tech report would have to be addressed, and 4) there was still a question re: the structural rating of the bridge.

Therefore, Mr. Solley said he would like to focus on the third application; the request for waivers per Sections 9.5.2 and 9.5.3. He asked the applicant to grant permission for the continuation of the first two hearings and said he planned to close the third hearing tonight.

Mr. Studer submitted copies of application summary sheets, which were not dated or signed, and asked why the waivers were not being addressed as the other applications were dependent on them. To show him that this matter was being addressed by the

Commission, Mrs. Hill gave him a copy of her report, "Waiver Requests," dated 9/25/15 and noted that it had been updated to 9/28/15 and that his written explanation of how Mr. Harris's applications comply with the requirements of Section 9.6 was attached.

Mr. Harris said he had not known that Health Department approval was required. Mrs. Hill said she had spoken earlier in the day with the Town Sanitarian, who told her she had not yet had time to review the Special Permit application: Section 13.13.

Mr. Studer asked why the applicant had to go back to the Inland Wetlands Commission, saying nothing in the plans had changed. Mr. Solley pointed out many items listed in the Land Tech report that would require revisions to the plans that Inland Wetlands had approved.

The condition of the bridge was discussed. Mr. Harris said it was "infuriating" that there was still a question regarding the safety of the bridge. He said he had paid two structural engineers to inspect it and reported that one said it had a 10 ton limit, and he submitted the 9/28/15 email from his propane delivery company stating that its 28,000 lb. delivery trucks have been using this bridge with no problems. Mr. Harris added that his second structural engineer, Mr. Macri, thought tests to confirm the load capacity of the bridge would be "ridiculous." Mr. Harris then submitted his 9/28/15 letter to the Commission, which stated that he would post a sign at the bridge, "Private Bridge, Weight Limit 10 Tons, Yield to Oncoming Traffic." He also stated that during construction he would limit the size of the equipment using the bridge to 7 tons. Mr. Solley read the letter for the record.

Mr. Solley reviewed the 9/28/15 letter from Mr. Bartos of Land Tech point by point. When Mr. Bartos's comments regarding the bridge were read, Mr. Studer stated that Mr. Harris had addressed these issues and that core samples would not be done. Otherwise, Mr. Studer stated the applicant would deal with Land Tech's comments.

Mr. Studer asked if the proposed easement language had been forwarded to the Town Attorney for review. Mrs. Hill said this had not yet been done.

Mr. Studer asked if the lot line revision application could be approved first. Mr. Solley stated there was an order in which the applications must be processed and the waivers had to be acted on first. Mrs. Hill stated that Inland Wetlands approval was not required for the Waiver application and asked if the Commission might consider acting tonight on the waivers and lot line revision. Mr. Solley noted that Mrs. Hill had drafted potential motions of approval for the waivers and modifications required, but he recommended that since the waivers are such a

complicated issue, the Commission not act until it would have time to review the applications to make sure the action taken would include all of the waivers necessary.

Mr. Studer complained that although the application had been submitted some time ago, the applicant was just learning now that Inland Wetlands approval was needed and had learned only recently that kitchen plans and plans for the office were required by the Health Dept. He stated that the engineering for the application had been done in excess of the requirements, yet he was now hearing about all of the issues Land Tech had with the plans. Mr. Solley noted that if the applicant had not submitted the engineering information within a week of the hearing, Land Tech would have had time to review it and to get its report in earlier. Mrs. Hill noted that the Inland Wetlands Commission had approved plans with a July or August date, but had not approved the current plans before Zoning, which had been revised to 9/18/15. Also, further revisions would be needed to address Land Tech's concerns.

There was a lengthy discussion regarding whether or not to close the public hearing to consider the application for Section 13.13. Mr. Harris submitted a written request to continue the two hearings for 9.4.1.D and 13.13.

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 at 254 New Milford Turnpike to Wednesday, October 21, 2015 at 7:00 p.m. By Mr. Reich, seconded by Mr. Averill, and passed 4-0-1.
Mr. Werkhoven abstained and did not give a reason.

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, two parking lots, etc. at 258 New Milford Turnpike to Wednesday, October 21, 2015 at 7:00 p.m. By Mr. Averill, seconded by Mr. Sorce, and passed 4-0-1.
Mr. Werkhoven abstained and did not give a reason.

Regarding the Special Permit application for waivers per Sections 9.5.2 and 9.5.3, Mr. Solley read Mrs. Hill's report, "Waiver Requests," revised to 9/25/15 and the map, "Zoning and Proposed Development Plan," Sheet SD-2, by Studer Design Assoc., Inc., revised to 8/6/2015 on which Mrs. Hill had drawn in where waivers and modifications were required, was reviewed. Mr. Solley stated that in order to grant the requested waivers, the

Commission must determine that the requirements of Section 9.6 had been met. Mr. Studer noted he had submitted a document in July that illustrated how the proposed plans do comply with this section.

Discussion of Section 9.7.A.2 was included in Mrs. Hill's report, in which she advised the Commission that that it has the discretion to modify the requirements in this section and that no standards are provided in order to do so.

Mr. Solley then read Mrs. Hill's comments about Section 15.3.2, which gives the Commission the authority to require more parking spaces than the maximum required per Section 15. It was also noted that the applicant no longer proposed shared parking; that the proposed easement would address the parking spaces that straddle the boundary line.

Mr. Solley recommended that when the Commission votes, it make separate motions; one to address the waivers and the other for the modifications.

Mr. Sorce asked Mr. Studer if he thought Mrs. Hill's report covered all of the waivers and modifications required. Mr. Studer said it did. He said those motions should include references to Sections 9.4.1.F and 9.4.1.I for approval of the office and storage space at 254 New Milford Turnpike, but Mrs. Hill countered that these should instead be referenced in action taken on the Special Permit for Section 13.13.

Mr. Solley noted that if a waiver was granted for Section 3.2, the Commission would not be extending the commercial district to cover the entire parcels at 254 and 258 N. Milford Turnpike, but only the portion of those lots situated in the Marbledale Business District.

Mr. Studer urged the Commission to refer these applications to its counsel for review.

There was a brief discussion regarding whether to close the public hearing.

There were no questions or comments from the public.

Mr. Solley noted that both properties need waivers, that none of the waiver requests exceed the 50 percent maximum allowed and that the modifications needed are allowed by the Regulations.

There were no further questions from the commissioners.

MOTION: To close the public hearing to consider the Special Permit application: Sections 9.5.2: requests for waivers of Section 3.2 and 9.5.3: requests to relax Section 11.6.1 re: minimum setback requirements submitted by Mr. Harris for 254 and 258 New Milford Turnpike. By Mr. Averill, seconded by Mr. Werkhoven, and passed 5-0.

REGULAR MEETING

Mr. Solley called the meeting to order and seated Members Averill, Reich, Solley, Sorce, and Werkhoven.

Consideration of the Minutes

MOTION: To accept the 8/24/14 Regular Meeting minutes and the 8/31/15, 9/14/15, and 9/16/15 Special Meeting minutes as written. By Mr. Averill, seconded by Mr. Werkhoven, and passed 5-0.

Pending Applications

Atkins/159 West Shore Rd/Special Permit: Section 6.4.9/Boathouse: Mr. Solley noted the application had been revised and was for a boathouse only. It was the consensus to approve the application subject to ZBA approval.

MOTION: To approve the Special Permit application: Section 6.4.9 submitted by Mr. Atkins for a boathouse at 159 West Shore Road subject to ZBA approval. By Mr. Averill, seconded by Mr. Reich, and passed 5-0.

Stone Hill Orchard, LLC./88 Kielwasser Road/Special Permit: Section 13.11.3/Detached Accessory Apartment: Mr. Solley noted there were no outstanding issues and said detached accessory apartments serve a housing need in Town.

MOTION: To approve the Special Permit application: Section 13.11.3 submitted by Stone Hill Orchard, LLC. for a detached accessory apartment at 88 Kielwasser Road subject to the receipt of a written statement from the property owner per Section 13.11.3.B that he will reside on the premises for the duration of the permit. By Mr. Averill, seconded by Mr. Sorce, and passed 5-0.

Harris/254 and 258 New Milford Turnpike/Special Permit: Sections 9.5.2: Request for Waivers of Section 3.2 and 9.5.3: Requests to Relax Section 11.6.1 re: Minimum Setback Requirements: Mr. Solley stated that due to the complexities of this application, he and Mrs. Hill would draft a motion before the October 21st meeting and said he hoped to vote at that time. He asked each commissioner to say what he thought about the waiver requests. Mr. Solley: He generally supported the request for waivers of up to 50 percent, noted the historic nature of the properties, supported the relocation of the septic systems from the river

valley, and said that even though that was a trade off because more development and parking lots would be located near the river, the proposal in general would increase the viability of the restaurant. He noted, too, that without the waivers, all of the applications were moot.

Mr. Averill: He noted the Commission's discretion and said the Commission should encourage business growth in a sane and proper manner. He supported the improvements to the septic system and in safety along Rt. 202. He did not think the proposals would create any problems in either zoning district.

Mr. Reich: He said the Town can be assured the Zoning Commission would not stand in the way of reasonable progress. He hoped word would get out to the business community that the Commission will work with it within reason and within the Regulations. He supported the application.

Mr. Werkhoven: He agreed with both Mr. Averill and Mr. Reich. He thought the proposal was "a plus all the way around" and said the Commission should do all it can to support it within the Regulations.

Mr. Sorce: He said that he had not heard any reason not to grant the waivers, that he appreciated the work by the applicant to address safety issues and to improve the septic systems, that the process had been thoughtful and time consuming, and that he had seen nothing that he could not approve.

New Applications

MOTION: To add the following subsequent business to the
 Agenda: IV. New Applications: D. Frater/129
 Litchfield Turnpike/Reconstruct Barn. By Mr.
 Solley, seconded by Mr. Averill, and passed 5-0.

Mackesey/233 West Shore Road/Demolish, Renovate, Rebuild Residence, Driveway, Parking, and Pool: Mr. Solley noted that Atty. Kelly, representing the applicant, had sent in a written request that consideration of this application be tabled to the October meeting.

Titus Park Properties/7 Titus Road/Special Permit: Sections 8.4.1: Canopy at Service Station and 8.6: Reduction in Minimum Setback Requirement: It was noted this application requires a public hearing. Mr. Talbot asked which side of the property should be used as the front yard. The map, "Property/Boundary Survey," by Mr. Cheney, dated February 2006 was reviewed and it was the consensus that that the southerly side of the property should be the front. Mr. Talbot submitted photos of the garage ranging from the 1960's to today.

MOTION: To schedule a public hearing to consider the Special Permit application: Sections 8.4.1 and 8.6 submitted by Titus Park Properties for a canopy at the service station and a reduction in the minimum setback requirement at 7 Titus Road on Monday, October 26, 2015 at 7:30 p.m. in the main level meeting room. By Mr. Solley, seconded by Mr. Sorce, and passed 5-0.

Berne/164 West Shore Road/Special Permit: Section 13.11.3/ Detached Accessory Apartment: It was noted, if approved, the current dwelling would become the accessory apartment and a new dwelling unit over a garage would be constructed. Mr. Solley noted that an accessory apartment must not only be smaller in size and scale, but must also appear secondary to the main dwelling.

MOTION: To schedule a public hearing to consider the Special Permit application: Section 13.11.3 submitted by Mr. Berne for a detached accessory apartment at 164 West Shore Road on Monday, October 26, 2015 at 7:30 p.m. in the main level meeting room. By Mr. Solley, seconded by Mr. Averill, and passed 5-0.

Frater/129 Litchfield Turnpike/Reconstruct Barn: Mr. Solley noted the Zoning Enforcement Officer had asked the Commission to act on this application. He explained that an old barn existed on the property, that a former owner had put an apartment in it, which had long been abandoned, and that the barn had recently collapsed. He had consulted area residents, who confirm the building had always been a barn. Mr. Merritt, agent, said the applicant proposed to rebuild the barn in the same location, approximately 60 feet from Rt. 202, without the apartment and without plumbing. He said the owner would store tractors there, which would be used to maintain the old wood roads and meadow on the property. A map of the property, "Improvement Location Survey," by Arthur H. Howland and Assoc., revised to 9/03/15 was reviewed and photos of the barn were presented. Mr. Merritt noted the propane tank would be removed.

MOTION: To approve the application submitted by Mr. Frater to rebuild the barn at 129 Litchfield Turnpike at its existing location. By Mr. Sorce, seconded by Mr. Reich, and passed 5-0.

Enforcement: The Enforcement Report was circulated.

MOTION: To adjourn the meeting. By Mr. Sorce.
Mr. Solley adjourned the Meeting at 10:05 p.m.

FILED SUBJECT TO APPROVAL

Janet M. Hill, Land Use Administrator