

Zoning Commission

MINUTES

Public Hearings – Regular Meeting
March 26, 2018

7:30 p.m.

Main Level Meeting Room

MEMBERS PRESENT: Mr. Solley, Mr. Reich, Mr. Werkhoven, Mr. Averill, Mr. Armstrong
ALTERNATES ABSENT: Ms. Lodsin, Mr. Sivick, Ms. Radosevich
STAFF PRESENT: Ms. Hill, Ms. White
ALSO PRESENT: Atty. Kelly, Mr. Bedini, Ms. Audet, Mr. & Ms. Solomon, Mr. Ebner, Mr. K. Ebner, Ms. Osowiecki, Mr. Barnet, Mr. Kubovy, Members of the Public

Call to Order:

Mr. Solley called the meeting to order at 7:30 p.m.

Public Hearing(s):

Seated: Mr. Solley, Mr. Reich, Mr. Werkhoven, Mr. Averill, Mr. Armstrong

Mr. Solley announced that the petition to revise the Zoning Regulations to add Section 4.4.20 re: events and facilities for the visual and performing arts was withdrawn.

Shepaug Valley Properties/27 Mt. Tom Road/Special Permit: Sections 13.1.B.3 and 17.9/Construct New Pavillion and Kitchen on Existing Building:

Mr. Kevin Ebner, President of Ebner Camps, stated that the proposed building is more like the metal building that was erected at their sister camp. The proposed building would be used for the day campers on rainy days. He explained that the propose 60' x 100' steel building will be set on a concrete slab, 16' tall to the peak, used as a storage barn in the winter months, no restrooms, and maybe powered by solar.

He noted that this is only being proposed to provide a large enough area for rainy day activities and not to increase the number of campers.

The Commissioners and Mr. Ebner looked at a picture of the proposed steel building.

Mr. Armstrong asked how many kids would be in the building when in use.

Mr. Ebner responded approximately 100 kids.

Mr. Werkhoven asked what they have been doing during rainy days.

Mr. Ebner responded that they usually hike with the campers down to the sister camp which has one of these buildings and some campers stay behind and participate in activities under the pavilion.

There was a brief discussion regarding doors and windows.

Mr. Solley read Ms. Hill's administrative report for this application dated 3/26/18.

There was a brief discussion regarding buffering. Mr. Ebner stated that the buffering has been planted as required from the previously obtained permit.

Mr. Osowiecki, explained how the roof runoff will be directed from the building on one side of the building with three 4" pipes directed into a ravine. He said the runoff from the other side of the building will seep into the ground and sheet flow in to a heavily wooded area.

The Commissioners looked at the site plan provided with the application. Mr. Ebner stated that they will have an updated survey done of the property that will include all the structures and they will submit that survey to the Land Use Office upon completion.

Mr. Osowiecki informed the Commissioners that there will be 3 man doors and 1 garage door for the proposed building.

Mr. Ebner stated the building would be used from 9 am to 4 pm on rainy days but they like to keep the kids outdoors as much as possible.

There were no further questions from the public.

MOTION: To close the public hearing for Shepaug Valley Properties, 27 Mt. Tom Road for a Special Permit: Section(s) 13.1.B.3 and 17.9 to construct a new pavilion for existing day camp, by Mr. Averill, seconded by Mr. Werkhoven, passed by 5-0 vote.

5 Whittlesey Road, LLC/5 Whittlesey Road/Revision of Special Permit: Section 13.11.3/Detached Accessory Apartment/Change Location:

Atty. Kelly and Ms. Audet were present to represent 5 Whittlesey Road, LLC for this application. Atty. Kelly stated that his clients were granted a special permit for a detached accessory apartment and it was never constructed. The property owners would like to relocate the detached accessory apartment to another location on the property and build it new.

Atty. Kelly discussed how this proposed structure meets the requirements of Section 13.11.3 and stated that the proposed structure is subordinate to the main dwelling, will be using the same driveway and additional parking will not be necessary.

The Commissioners looked at the plan titled "Subsurface Sewage Disposal System – Detached Accessory Apartment," by Brian E. Neff, with a revision date of 9-1-2017.

Atty. Kelly pointed out that the garage is used for farm vehicles and to house farm equipment. The original plan was to use the fourth bay as an accessory apartment but the entire garage is needed for storage as well as vehicles and equipment.

Atty. Kelly stated that the floor plans show a one-bedroom apartment with a living space, kitchen and bathroom but the Health Department treats the living space as a potential 2nd bedroom. This structure has a two-bedroom capacity septic system.

Mr. Solley discussed the history and intent of this zoning regulation. He stated that normally a detached accessory apartment is in an existing garage or barn. He explained that this is not a requirement but believes that was the intent of the regulation.

Atty. Kelly stated that the proposed apartment it is located in an area that would not be visible from the road. He said it is shorter than the garage and is in an unobtrusive area.

Mr. Solley read Ms. Hill's administrative report for this application.

Atty. Kelly stated the person that is in charge of the horses will be living in this building.

Mr. Solley asked if there were any questions or comments from the public.

Mr. Averill pointed out that if the applicant had built the apartment in the garage and came to Zoning to request approval for a storage building it would be signed off administratively.

It was noted that one detached accessory apartment is allowed per lot.

Mr. Werkhoven asked if the structure would be visible from Bee Brook.

Atty. Kelly responded that it would not.

There was a brief discussion regarding the exterior materials that will be used for the structure.

It was confirmed that the existing well will serve the detached accessory apartment.

Atty. Kelly confirmed that the existing driveway would serve the proposed structure and it is wide enough for emergency vehicles.

There were no further questions.

MOTION: To close the public hearing for 5 Whittlesey Road, LLC., 5 Whittlesey Road for a Revision to a Special Permit: Section 13.11.3 for a detached accessory apartment – change in location, by Mr. Werkhoven, seconded by Mr. Averill, passed by 5-0 vote.

PA 17-155 Re: Temporary Health Care Structures to consider whether to "opt out" of this state statute:

Ms. Hill gave a brief explanation of what the Public Act 17-155 is and how it relates to the Town of Washington. The Act is to allow portable, temporary housing, under 500sf for impaired people who need caregivers. these structures would have to be dismantled within a certain

amount of time when not in use and no one can live in it other than the person in need. Ms. Hill stated that there is a provision that the Town can impose a \$50,000 bond to make sure it's dismantled when it is not in use. The permit is required to be issued within 15 days of receipt of application and the structure cannot be on a permanent foundation.

Mr. Armstrong stated that this does not seem to be for anyone that has a chronic condition.

Ms. Hill responded that the physician would determine whether it is medically necessary, and it could be years.

Ms. Hill noted that the property must be owned by either the caregiver or the person in need and the caregiver is a person that provides care without receiving payment.

Mr. Solley read some of the language from PA 17-155. He stated that the Commissioners feel the Town should opt out, but they have not voted. The Commission would like to address this themselves. They are required to go through the process which includes this public hearing. He noted that if we don't opt out it will be automatic.

Ms. Hill confirmed that the Town is opted in right now.

Mr. Armstrong asked about water and septic.

Ms. Hill stated that they would probably have to get an exemption from the State to hook up to the existing.

Mr. Averill noted that there seems to be a contradiction in that it is required to meet the State Building Code but does not have a permanent foundation.

Mr. Solley asked if there were any public comments.

Ms. Audet stated that she agrees with the Commission's inclination to opt out.

Atty. Kelly stated that the law, as he understands it, is intended to allow affordable solutions for people to care for dependents that are in need of regular care. He said that the dependent must be determined mentally or physically incapable. Atty. Kelly informed the Commission that the structures are prefabricated and meet their own set of standards and are made to be placed, removed, and placed in another location. He hopes that the Town can show some sensitivity as to why this act was passed.

There was a brief discussion regarding the process of opting out.

MOTION: To close the public hearing RE: PA 17-155 – Temporary Health Care Structures to consider whether to opt out of this state statute, by Mr. Averill, seconded by Mr. Reich, passed by 5-0 vote.

Regular Meeting:

Mr. Solley called the Regular Meeting to order.

Seated: Mr. Solley, Mr. Reich, Mr. Werkhoven, Mr. Averill, Mr. Armstrong

Consideration of the Minutes:

The Commissioners considered the Meeting Minutes of the February 26, 2018 meeting.

MOTION: To approve the Regular Meeting Minutes of February 26, 2018, by Mr. Averill, seconded by Mr. Reich, passed by 5-0 vote.

Pending Applications:

Shepaug Valley Properties/27 Mt. Tom Road/Special Permit: Sections 13.1.B.3 and 17.9/Construct New Pavillion and Kitchen on Existing Building:

Mr. Solley stated that seems to be a reasonable addition to the day camp. Mr. Averill and Mr. Werkhoven stated that they are in favor and are ready to vote on this application. Mr. Reich and Mr. Armstrong are in favor of this application.

MOTION: To approve the request by Shepaug Valley Properties, 27 Mt. Tom Road for a Special Permit: Section(s) 13.1.B.3 and 17.9 to construct a new pavilion at existing day camp as indicated in back up documentation filed with the application, by Mr. Averill, seconded by Mr. Reich, passed unanimously.

5 Whittlesey Road, LLC/5 Whittlesey Road/Revision of Special Permit: Section 13.11.3/Detached Accessory Apartment/Change Location:

The Commissioner's stated that all their questions have been answered and they are ready to vote.

MOTION: To approve the request by 5 Whittlesey Road, LLC, 5 Whittlesey Road for a Revision to Special Permit: Section 13.11.3 to change location of detached accessory apartment per plan titled "Subsurface Sewage Disposal System – Detached Accessory Apartment," by Brian E. Neff, with a revision date of 9-1-2017 and other backup documentation submitted with application, by Mr. Averill, seconded by Mr. Reich, passed 5-0.

New Applications:

Shepaug Valley Regional School District #12/159 South Street/Special Permit: Section 4.4.10/Addition to Existing School-AgSTEM Plans:

The Commission scheduled the public hearing to consider the request of Shepaug Valley Regional School District #12.

MOTION: To schedule a public hearing at the Regularly Scheduled Zoning Meeting on April 23, 2018, Bryan Memorial Town Hall at 7:30 pm for the request of Shepaug Valley Regional School District #12/159 South Street/Special Permit: Section 4.4.10/Addition to Existing School – AgSTEM Plans, by Mr. Solley and seconded by Mr. Werkhoven, passed by 5-0 vote.

101 Wykeham Road, LLC/101 Wykeham Road/Revision of Special Permit for an Inn:

Mr. Solley entertained a discussion the schedule a special meeting for this public hearing.

MOTION: To schedule a public hearing for a Special Zoning Meeting on April 17, 2018, at Bryan Memorial Town Hall at 6:30 pm for purposes of Executive Session with the Public Hearing for 101 Wykeham Road, LLC/101 Wykeham Road/Revision of Special Permit for an Inn starting at 7:00 pm, by Mr. Solley, seconded by Mr. Reich, passed 5-0 vote.

Other Business:

Petition to Revise Section 12.8.1 of the Zoning Regulations to allow Arts Festivals:

Mr. Solley discussed the timeline for notifying the towns in the surrounding COGs.

Ms. Hill stated that she already sent the proposed language when it first came in so it would meet the 35 days for April 23, 2018. She stated that the Planning Commission will meet April 4, 2018. She stated that the COGs usually respond quickly. She noted that only major changes need to be sent out for referral. Small changes do not.

Atty. Kelly stated that the goal is to try to find a way to present something that is allowed by the regulations that he believes there is strong support from the community. He informed the Commission that he is preparing language that would revise the temporary permit section of the regulations. He submitted a draft to Ms. Hill and asked for her feedback. He asked if he could address the points in Ms. Hill's letter. Atty. Kelly stated that he prepared another form of an amendment that he shared with Ms. Hill informally. He asked the Commissioners to provide direction so that he can make the language as effective as it can be before going into the public hearing. He was hoping that he would have this language to provide the Planning Commission, scheduled for a public hearing and possibly decided on in April.

There was a brief discussion regarding how this change would affect the existing regulations and if it could be experimental or not.

Mr. Solley stated that he did not want the public to think that this discussion will lead to an eventual change without the public being notified.

Ms. Hill acknowledged that she sent the review to Atty. Kelly and there were many questions, but these questions do not mean that she is for it or against it. She stated that she was trying to bring up questions that avoid any "unintended consequences."

There was a brief discussion of the timeline and how the Planning Commission cancelled two meetings this year due to the weather.

The Commission granted Atty. Kelly time to discuss this matter.

Mr. Kelly distributed a synopsis of the changes that he was requesting feedback from the Commission (on file in the Land Use Office). He read through the changes that he was considering under Section 12.8 - Temporary Uses.

Ms. Hill noted that even if the Planning Commission voted against this proposed language, the Zoning Commission could still proceed with the Public Hearing, but it would require a 2/3 vote.

Atty. Kelly read his changes and explained the reasoning behind them. He referred to Ms. Hill's comments.

Mr. Solley consulted with Town Counsel to ask if the Zoning Commission has the right to call a public hearing that the Commission feels that the public should weigh in on.

Atty. Kelly responded that he is proposing that a public hearing not be required. Atty. Kelly stated that the Zoning Commission determines whether a public hearing is required but he would prefer that a temporary permit not require it. He is hoping that they will be able to demonstrate that it will not be necessary.

Mr. Werkhoven observed that this would be a temporary permit, but it could be every month or every year.

Atty Kelly stated that the Town allows 7-day circuses now with a ZEO signoff and there is not statement on how many circuses can occur within a year, but it has never happened. He explained that the Commission has the discretion to deny a second proposed event on the same property within a year. He thinks that by requiring the Zoning Commission to consider Section 13 of the Zoning Regulations, gives them broad discretion to make sure it doesn't get abused.

Atty. Kelly addressed the set up/take down time for the event. He wanted it to be understood that the time requested for the event does not include the set up/ take down time.

It was acknowledged that the event would have to meet the Zoning Regulations regarding outdoor lighting.

Atty. Kelly addressed parking. He thinks by requiring the 15 acres it would be clear that there is sufficient parking. He stated that one of the Section 13 considerations is parking. He informed the Commissioners that the reason he uses the word "access" to a State Highway is because he doesn't want using a town road as a way in and a way out.

Mr. Solley suggested using both access and frontage because a property owner could have access to a State Highway but a very long right of way.

Mr. Armstrong asked if the cars would be going through an open field or a private gravel road to get to a parking area.

Atty. Kelly stated that the access will be the private driveway that has access to the State Highway. He informed the Commissioners that he would include both access and frontage on a State Highway in the language and it would have to be determined by the Commission that there is sufficient on-site parking.

Mr. Armstrong stated that emergency access needs to be considered.

Atty. Kelly stated that these requirements are enumerated in Section 13.1.C. He informed the Commissioners that any tents that get erected for a temporary event require a Building Permit and a Fire Marshall's Permit. He feels that these concerns can be addressed in the application that is brought before the Zoning Commission.

Atty. Kelly asked the Commission for feedback regarding his second rendition of a revision. He stated that they have defined what "art festival" means.

Mr. Solley stated that he would check with Counsel again as to whether the Commission has the authority to request a public hearing whether it is administrative or a special permit.

There was a brief discussion regarding attendance during the festival period. It was noted that during the week attendance would range from 20-30 people, maybe 50-70 at night and 250 on weekends. This information would be included in the application.

Mr. Werkhoven stated that he appreciates the provision of numbers and believes that is important for the Zoning Commission's consideration. Mr. Werkhoven feels it would be important for the Zoning Commission to make a site visit to the proposed property.

It was noted that the application for a proposed event would include a site visit.

The Commissioners are welcome to make an appointment with Ms. Audet to visit the site.

Mr. Averill asked about for sale items.

Mr. Kubovy stated that there might be an auction of some artwork.

Atty. Kelly stated that at a carnival there are items for sale.

There was a brief discussion of there being a designate location in Town that would be used for these types of events instead of allowing them throughout the R-1 District.

They briefly discussed that this type of request only be made by a 501.C.3 group based within this Town.

Atty. Kelly and the Commission discussed when to plan the public hearing.

Mr. Reich asked why the Zoning Commission would not write the revision.

Mr. Solley stated that was a possibility.

There was a brief discussion regarding the process of petitioning regulation changes.

MOTION: To schedule a public hearing at the Regularly Scheduled Zoning Meeting on April 23, 2018, Bryan Memorial Town Hall at 7:30 pm for the request of Ingrassia and Kelly for a petition to amend Zoning Regulation Section 12.8.1: Provisions for Art Festivals, by Mr. Solley, seconded by Mr. Averill, passed by 5-0 vote.

PA 17-155: Decision of whether the Town should “opt out” of the state statute governing Temporary Health Care Structures:

Mr. Solley read the motion stating the reasons why the Town of Washington Zoning Commission advise the town to opt out of this public act.

It was noted that Ms. Hill authored the motion ahead of time for the Commissioners to consider.

MOTION: Resolved: 1) that the Washington Zoning Commission recommends the Town of Washington opt out of PA 17-155, an act concerning temporary healthcare structures, due to the following provisions of the act, which the Commission does not think are in the best interests of the residents of the Town of Washington:

- the mentally or physically impaired person would be permitted to live in the temporary housing structure and not that person’s spouse or caregiver,
- the housing is only permitted while “medically necessary” as determined by a physician and it would be difficult for the Town to determine when it was no longer “medically necessary” due to HIPPA requirements,
- the Town would not be capable of complying with the expedited permitting process that is required,
- the housing must be removed at the expense of the property owner when it is no longer “medically necessary” without providing the Town with realistic tools to require removal, and
- the \$50,000 bond allowed to require removal, when combined with the approximate \$60,000 to \$70,000 cost for the unit and its installation, would essentially place the cost of temporary healthcare structures out of financial reach for most potential applicants

And 2) that the Zoning Commission refers this matter to the Board of Selectmen and requests that it vote to “opt out” of PA 17-155,

By 4-0-1 Vote. Mr. Werkhoven abstained from the vote.

Discussion re: Display of Artwork/Proposed Mural at 30 Bee Brook Road:

Ms. Booth, property owner, stated that they are considering a temporary 40 ft x 12 ft mural at the property at 30 Bee Brook Road. She informed the Commissioners that it would be painted on 4 ft x 8 ft panels and centered in front of the rear retaining wall. She does not know the content, but the artist has been hired and they gave him the themes of nature, animals, American Indian, and trains. Ms. Booth said that it would be displayed for three months in the summer.

Ms. Booth stated that she will be meeting with the Economic Development Committee.

There was a brief discussion regarding "pop-up art" and "pop-up recreation"

Enforcement:

The Commissioners considered Mr. Ajello's enforcement report dated

Privilege of the Floor:

Mr. Barnet of Sabbaday Lane, requested to read his statement regarding what he feels is abuse of the permitting system by 101 Wykeham Road, LLC and their newly submitted application. (on file in the Land Use Office)

Administrative Business:

There was no Administrative Business to discuss.

Adjournment:

MOTION: To adjourn the meeting at 9:54 p.m., by Mr. Averill, seconded by Mr. Armstrong, passed by 5-0 vote.

Submitted subject to approval:

By: _____

Shelley White, Land Use Clerk

April 2, 2018

*All supporting documents mentioned are on file in the Land Use Office

**A recording of the meeting is available to the public in the Land Use Office.