

TOWN OF WASHINGTON
Bryan Memorial Town Hall
Post Office Box 383
Washington Depot, Connecticut 06794
Zoning Commission Regular Meeting

MINUTES

July 26, 2021

7:30 P.M. – Meeting Via Zoom and In Person

MEMBERS PRESENT: Chairman Solley, Mr. Reich, Ms. Hill, Ms. Radosevich, Mr. Werkhoven

ALTERNATES PRESENT: Ms. Smith

ALTERNATES ABSENT: Mr. Sivick

STAFF PRESENT: Ms. White, Ms. Rill, Attorney Zizka

PUBLIC PRESENT: J. Kassis, R. Solomon, P. Talbot, G. Scheer, R. Parker, H. Barnet, S. Branson, J. Halsey, W. Hileman, M. Purnell, P. Szymanski, S. Tracy, B. Neff, R. Rebillard, E. Klauer, M. Giampietro, D. Tagley

The meeting was called to Order at 7:40pm.

Chairman Solley, Ms. Hill, Mr. Reich, Mr. Werkhoven and Ms. Radosevich were seated for the Regular Meeting.

PUBLIC HEARING(S):

Request of Kassis, 16 West Mountain Rd., for a Special Permit from Section(s): 4.4.8 and 13.11.3 – Accessory Apartment – Detached – to convert a garage into a guest house (1min. 23sec.):

Mr. Kassis, owner of 16 West Mountain Road, stated that he was proposing to convert an existing 30' x 40' garage into a guest home with two bedrooms, a bathroom, a kitchen and living room.

Ms. White reviewed her Completion Report to the Commission. All of the standards were met. Mr. Werkhoven questioned if there was another building associated with the current pool and tennis court on the property. Mr. Kassis stated that there were no other structures on the property.

MOTION: To close the Public Hearing for the Request of Kassis, 16 West Mountain Rd., for a Special Permit from Section(s): 4.4.8 and 13.11.3 – Accessory Apartment – Detached – to convert a garage into a guest house, by Mr. Reich, seconded by Mr. Werkhoven, passed 5-0 vote.

CONSIDERATION OF THE MINUTES (16min. 48sec.):

Ms. Radosevich stated that on page 3 of the June 28, 2021 Meeting Minutes, paragraph one stated, "The current height of the roof is 22 feet and 6 inches at the ridgeline.....", while the second paragraph stated that the "current maximum height is 22 feet and four inches.....".

The first paragraph should read, “The current height of the roof is 22 feet 4 inches at the ridgeline....”, and the second paragraph should read, “the current maximum height is 22 feet 4 inches”.

MOTION: To approve the June 28, 2021 Meeting Minutes as corrected, by Ms. Hill, seconded by Ms. Radosevich, passed 5-0 vote.

PENDING APPLICATIONS (20min. 04sec.):

MOTION: To approve the Request of Kassis, 16 West Mountain Rd., for a Special Permit from Section(s): 4.4.8 and 13.11.3 – Accessory Apartment – Detached – to convert a garage into a guest house, as shown in the Special Permit Application with supporting documents that was received on June 2, 2021 in the Washington Land Use Office. Motion made by Chairman Solley, seconded by Mr. Werkhoven, passed 5-0 vote.

NEW APPLICATIONS (21min. 55sec.):

Request of Durrett, 7-11 Worcester Rd., for a Special Permit from Section 17.9 – Replacement of a Non-Conforming Structure – to demolish an existing barn and rebuild within footprint. Application complete – Schedule Public Hearing:

Ms. White explained that the site plans were revised, removing the full bathroom, kitchen and decreased the height of the building. Mr. Halsey, representing the property owners, stated that volumetrically, the proposed barn is larger than the existing barn. He stated that they were proposing to demolish an existing non-conforming shed that was located adjacent on the property as well as an older, non-conforming addition to the barn. Neither one of these structures would be replaced.

Chairman Solley stated that he did not fully understand how or why the Applicant felt that they would be allowed to increase the structure volumetrically, when the regulations do not allow this. Mr. Halsey stated that he felt that he had been respecting the intent of the regulation while trying to replace the existing barn with what it was originally.

Chairman Solley stated that the applicant could rebuild the barn within the setback, however they could not volumetrically increase the existing barn within the setback of 50 feet of the right-of-way.

Ms. Hill stated that if the height of the barn would be within the 50-foot front yard setback and if it would be increased, she would not be in support of the proposed, explaining that you cannot increase the non-conformity of a non-conforming building.

Mr. Halsey explained that he misunderstood the regulations and thought that demolishing the other shed and barn addition would be considered somewhat of a “trade-off” to allow the volume of the barn to increase. The Commissioner’s all agreed and stated that this was not allowed.

Chairman Solley explained the proposed barn’s ridgeline needed to meet the exact height of the current barn’s ridgeline.

Mr. Halsey stated that he understood what the Commission wanted now and felt that he could correct the plans and have them ready prior to the Public Hearing for the August meeting. The Commission, Administrator, Clerk and Attorney Zizka discussed the timing as well as the legalities of scheduling the Public Hearing. Attorney Zizka explained that allowing the applicant to revise the application when the Public Hearing has already been scheduled could potentially put the Commission in jeopardy as far as allowing enough time for the application to be viewed by the public. Mr. Halsey questioned if he were to get the revised drawings submitted to the Land

Use Office as soon as possible if the Commission would consider scheduling the Public Hearing this evening. Ms. Rill stated that overall, this did not give her enough time to legally file and notice the application, therefore she did not advise him to do so.

Attorney Zizka explained to Mr. Halsey that his options were to either withdraw the Application, or if he insists to go forward with the current Application, he could do so. However, the Commission has advised him that in with accordance to the Zoning Regulations, they could not legally approve this application.

Mr. Halsey questioned if requesting a Special Exception under Section 17.5 – Special Exceptions for Nonconforming Structures could be a viable option for his clients. Attorney Zizka explained that Mr. Halsey had every right to apply for this with the Zoning Board of Appeals, however, there was a list of specific criteria that the applicant must meet to do so.

After much discussion, Mr. Halsey stated that he would be withdrawing this Application.

OTHER BUSINESS (53min. 58sec.):

Request of Tracs, Inc., 47 Rabbit Hill Road, for the Renewal of a Special Permit, Section 13.16 – Shop and Storage Use by Contractors and Building Tradesmen:

Mr. Tracy, owner of Tracs Inc., stated that he had been receiving a Special Permit for his Business since the 1990's. The Land Use Office confirmed that Mr. Tracy has not received any complaints. The Commission thanked Mr. Tracy for his due diligence on renewing the Special Permit.

MOTION: To approve the Request of Tracs, Inc., 47 Rabbit Hill Road, for the Renewal of a Special Permit, Section 13.16 – Shop and Storage Use by Contractors and Building Tradesmen, by Chairman Solley, seconded by Mr. Werkhoven, passed 5-0 vote.

Discussion Regarding J. Hill's 5/20/21 Draft of Revisions to the Business Districts and to schedule possible Public Hearing (56min. 53sec.):

Ms. Hill clarified that this is the third draft of revisions to date.

She added that she had revised areas that Attorney Zizka believed to be a conflict, including the addition of stating that the Commission could not approve any reduction to any setbacks required in 7.7, which are the setbacks between commercially used property and an adjoining residential property. This language was added to each Business District.

Chairman Solley asked Attorney Zizka if he thought the current revisions brought the Commission any closer to a Public Hearing. Attorney Zizka stated that he had a few concerns that he wanted to address.

Attorney Zizka stated that he had felt there were a few ambiguities in Section 3.2. He explained that using the term "commercial lot" was confusing to him because the Regulations refer to "Business Districts" not "Commercial Districts". He suggested that the language is edited to say, "unless otherwise specified in the Regulations, where the boundary between two districts divides a lot that is either partly located in a Business District or used principally for Commercial Uses."

Attorney Zizka pointed out that not all of the Sections for the Business Districts were the same, and questioned the inconsistency for each district.

He questioned if B-3 should have Sections on Lot Coverage and Minimum Setbacks like the other Districts.

He questioned if B-2 and B-4 should have special conditions like B-1 and B-3 have.

And, he questioned if the Commission wanted to have a Section on Permitted Accessory Uses for any of the zones (B-1, B-2 and B-3).

Ms. Hill stated that the original goal was to make the Woodville Business District more consistent with the other Business Districts.

Attorney Zizka stated that he could draft another version of the revisions that the Commission could vote to send to Public Hearing and if they later decide that they want to remove items from the revisions, they could do so. When sending revisions to Public Hearing, language can be removed but not added.

The Commission discussed whether they should have a Special Meeting regarding the proposed changes Attorney Zizka suggested, so that they can move forward with a Public Hearing.

Attorney Zizka stated that he could make the Revisions and have them ready for the Commissions review by Wednesday, July 28, 2021.

Chairman Solley then asked Planning Commission Chairman, Wayne Hileman, to add his thoughts to this evening discussion. Mr. Hileman stated that the Planning Commission had never intended for the Zoning Commission to go this far with revision. They simply wanted to extend the waiver of Section 3.2 to all of the Business Districts, on a case-by-case basis, for consistency and to promote Economic Development to each district. He explained that when the Revisions come to Planning for a referral, that the Commission can only state if the revisions are consistent with the Plan of Conservation and Development or if they are not.

Mr. Werkhoven asked for clarification regarding the third draft language regarding "Split Lots". In Section 8.5.1 of the third draft it states that only the commercial zoned portion of the property could be used commercially, and this would be done via the Special Permit process. Chairman Solley stated he did not feel comfortable expanding the waiver in these areas as suggested by the Planning Commission, because he felt that it would be unfair to neighboring properties.

Attorney Zizka explained that, theoretically, if someone were to own property in a Business District could buy another piece of adjoining property, merge the two, have a split lot and could develop the property. He believes that issues could arise from this, and the best way to handle this situation is to request a zone change.

The Commission agreed to hold a Special Meeting on Monday, August 2, 2021 at 7:30 via Zoom to review the final language and to schedule a Public Hearing.

COMMUNICATIONS (2hr.01min.58sec.):

- Discussion Regarding 101 Wykeham Road - Communication from Attorney Sherwood
- Discussion of Attorney McTaggart's 07-22-2021 Letter to Attorney Zizka
- Attorney Zizka's response to Attorney McTaggart's 07-22-2021 Letter

Attorney Zizka explained that when the Commission approved the Modification for the Special Permit, there were a number of conditions of approval that required modifications to the plans, Attorney Sherwood, representing the property owners of 101 Wykeham Road, sent Ms. White a memo regarding the conditions of approval that required changes to be made in order for the Special Permit to be issued vs. those that required as the use goes forward. Attorney Zizka stated that the Commission now needs

to go through the list of conditions that Attorney Sherwood believes to have been met and whether or not they agree or disagree with that. Attorney Zizka explained that this is normally a task that a Commission would hire an architect or engineer to do, and highly suggested doing so. Attorney Zizka then explained that Attorney McTaggart, representing the neighbors of 101 Wykeham Road, contacted him regarding this action and pointed out that there is still currently litigation pending and the Special Permit could ultimately be turned overturned by the Court. Attorney Zizka stated that this is a valid point, but as a matter of law, the person who has filed an appeal must ask the Court for either a temporary injunction or restraining order to halt the potential of the Special Permit from being issued. The Applicant, however, can still ask for the permit provided that they have met all of the conditions that are required to do so.

Ms. Radosevich stated that she was concerned over the water testing that was asked of the Applicant, and was unsure of the well's that needed to be drilled and their location.

Mr. Szymanski of Arthur H. Howland and Associates, the Engineer representing 101 Wykeham Road, stated that the wells had already been drilled for the property, and they were just awaiting approval from the State of Connecticut. This approval could take several months.

Ms. Hill stated that she believed an Engineer or Architect would need to review the plans, the Fire Marshall would also need to review the plans, and the issue of the bond would need to be addressed. Attorney Zizka stated that the Commission could not force the Applicant to bond for private improvements, unless stated so as a condition of approval.

Mr. Szymanski stated for clarification that the Applicant is only asking for the issuance of the Special Permit.

Ms. White stated that the next step would be to start looking into hiring the professionals needed to review the plans and the conditions of approval.

Ms. Hill stated that she would still like to contact the owner of 101 Wykeham Road regarding the use of a driveway that was to be abandoned per the 2013 Settlement Agreement.

Attorney Zizka explained that there is nothing in the Zoning Regulations that would force the property owner to abandon the driveway, but it was a condition of the Settlement Agreement, therefore, there cannot be a Cease and Desist order.

Ms. Hill questioned why a letter telling the property owners that the Commission is "advising" them that the Settlement Agreement states that the driveway needs to be abandoned. Attorney Zizka stated that he interpreted the Settlement Agreement differently explaining that, when the Inn is established, the driveway shall then be abandoned. After a brief discussion, the Commission could not agree on whether to send the letter or not.

PRIVILEGE OF THE FLOOR (2hr. 29min. 35sec.):

Ms. Tagley of Sabbaday Lane questioned if there had been any solution regarding helicopter landings in Washington. She stated that there had been another landing over the weekend.

Ms. Radosevich stated that she was working on the language for a possible Regulation and was advised that numerous towns had used the term “vertical lift machine”. The Commission questioned this, stating that they thought the issue was helicopters taking off and landing in town, and wondered if “vertical lift machine” was necessary.

Ms. Radosevich stated that she was surprised that this item was not on the Agenda for this meeting. Ms. Rill has requested that if a Commissioner would like to add something to the Agenda, that she needs to know a few days prior to the Agenda being posted for the Public.

ENFORCEMENT:

Ms. White stated that the only property of concern at the moment was 37 Old Litchfield Road, where it had been discovered that the garage that had been built and permitted was noticeably larger than the home on the property. The contractor for the property has been contacted and was working on a resolution with the property owner.

MOTION: To adjourn the July 26, 2021 Washington Zoning Commission Meeting at 10:07pm, by Ms. Radosevich, seconded by Ms. Hill, passed 5-0 vote.

To listen to this evenings meeting audio, you can do so here:

https://townofwashingtoncc-my.sharepoint.com/:u:/g/personal/trill_washingtonct_org/ER-TO3okgO1MmhccLhJ-5_YBRuVMFPkT68AKcuCEqj7FRg?e=ocJ6yZ

Respectfully Submitted,

Tammy Rill

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Land Use Clerk

August 2, 2021

*Minutes are subject to approval