

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

MINUTES

May 23, 2022

7:30 P.M. – Zoom Meeting

MEMBERS PRESENT: Chairman Solley, Ms. Hill, Mr. Werkhoven, Ms. Radosevich, Mr. Farrell
(arrived at 7:45pm)

MEMBERS ABSENT: None

ALTERNATES PRESENT: Ms. Smith, Ms. Andersen

ALTERNATES ABSENT: Mr. Mongar

STAFF PRESENT: Ms. White, Ms. Haverstock, Ms. Rill

PUBLIC PRESENT: R. Hackney, E. Johnson, B. Achilles, R. Owens, A. Patel, S. Branson, P. Szymanski, C. Matteo, R. Solomon, M. Solomon, T. Thacher, M. Gorra, J. Gillen, W. Ryder, H. Barnet, L. Frank, R. Reich, P. Tagley, Other Members of the Public

Chairman Solley called the Meeting to Order at 7:31pm, and seated himself, Ms. Hill, Ms. Radosevich and Mr. Werkhoven.

The Commission agreed to change the order of the meeting and schedule the Special Meeting/Workshop regarding 101 Wykeham Road, LLC – Compliance.

MOTION: To schedule a Special Meeting regarding 101 Wykeham Road, LLC – Compliance, for Wednesday, June 29, 2022 at 5:30pm, in the Main Meeting Room of Bryan Memorial Town Hall as well as via Zoom Video Conference, by Chairman Solley, seconded by Mr. Werkhoven, approved. unanimously

Ms. Radosevich expressed concern regarding the amount of Special Meeting's that are scheduled around the representatives for 101 Wykeham LLC's schedule and completed, accurate plans to present. The Commission agreed.

PUBLIC HEARING(S):

Request of SMF Universal, LLC – 124 New Milford Turnpike – for a Special Permit – Section(s): 7.4.9 – Housing in Business Districts – and Section 7.6 – Minimum Setback and Yard Dimensions – for retail, office and apartment use and to reconstruct a handicap ramp:

With no one in the attendance to represent the Applicant, the Commission discussed continuing the Public Hearing for the June meeting. However, due to the 65-day time restraint on an application, the Applicant will need to request an extension from the Commission prior to the next meeting.

MOTION: To continue the Public Hearing contingent upon the Applicants request for an extension for the Request of SMF Universal, LLC – 124 New Milford Turnpike – for a Special Permit – Section(s): 7.4.9 – Housing in Business Districts – and Section 7.6 – Minimum Setback and Yard Dimensions – for retail, office and apartment use and to reconstruct a handicap ramp. Motion made by Chairman Solley, seconded by Ms. Radosevich, approved unanimously.

Request of Ryder, 57 Flirtation Avenue, for a Special Permit – Section(s): 13.11.3: Accessory Apartments, Detached:

Chairman Solley, Ms. Hill, Mr. Werkhoven, Ms. Radosevich and Mr. Farrell are seated for this Public Hearing.

Bill Achilles of Achilles Architects, representing the property owners, stated that the proposed was an upper level detached accessory apartment with a garage on the main floor. There is currently a garage with apartment on the premises that will be demolished.

The proposed will be a one-bedroom, one full bath apartment with kitchen that will not exceed 1,200 square feet of floor space with a three-car garage on the ground level. The Health Department has approved the project.

The Commission discussed possible conditions to be included if approved, including the need of a completed as-built of re-calculated lot coverage as well as the height of the building which shall not exceed 26 feet.

Ms. White noted that there was a fence on the property that was not shown on the survey that needed to be addressed at some point in the near future.

MOTION: To close the Public Hearing for the Request of Ryder, 57 Flirtation Avenue, for a Special Permit – Section(s): 13.11.3: Accessory Apartments, Detached, by Chairman Solley, seconded by Ms. Radosevich, approved unanimously.

REGULAR MEETING:

Chairman Solley called the Regular Meeting to Order at 8:08pm.

Chairman Solley, Ms. Hill, Mr. Werkhoven, Ms. Radosevich and Mr. Farrell are seated.

Consideration of the Minutes:

MOTION: To approve the April 25, 2022 Washington Zoning Commission Meeting Minutes as submitted, by Ms. Hill, seconded by Mr. Werkhoven, passed unanimously.

PENDING APPLICATIONS:

MOTION: To approve the Request of Ryder, 57 Flirtation Avenue, for a Special Permit – Section(s): 13.11.3: Accessory Apartments, Detached, based on the site plan dated April 16, 2022, sheet S1 by Achilles Architects of Bridgeport, CT with the following condition(s): that an as-built is submitted providing re-calculated lot coverage and height total at the peak of the rafters, by Chairman Solley, seconded by Ms. Radosevich, approved unanimously.

NEW APPLICATIONS:

MOTION: To schedule a Public Hearing for the Request of Patel, 16 Warren Road, for a Special Permit – Section(s): 13.11.3: Accessory Apartment, Detached, for June 27, 2022 at 7:30pm in the Main Meeting Room of Bryan Memorial Town Hall as well as via Zoom Video Conference. Motion made by Chairman Solley, seconded by Mr. Werkhoven, approved unanimously.

MOTION: To schedule a Public Hearing for the Request of Feldman-Frater, 87 Whittlesey Road, for a Special Permit – Section(s): 13.11.3 – Accessory Apartment, Detached, for June 27, 2022 at 7:30pm in the Main Meeting Room of Bryan Memorial Town Hall as well as via Zoom Video Conference, by Mr. Chairman Solley seconded by Ms. Hill, approved unanimously

MOTION: To schedule a Public Hearing for the Request of Unwin, 16 Old Litchfield Road, for a Special Permit – Section(s): 13.11.3: Accessory Apartment, Detached, for June 27, 2022 at 7:30pm in the Main Meeting Room of Bryan Memorial Town Hall as well as via Zoom Video Conference, by Mr. Chairman Solley, seconded by Ms. Hill, approved unanimously.

OTHER BUSINESS:

Short Term Rentals:

Chairman Solley read the following into the record:

From: "Michael A. Zizka"

Date: May 20, 2022 at 3:32:00 PM EDT

To: Nick Solley

Subject: Short-term rentals

Nick,

As we discussed, I have reviewed the information provided by the neighbors and their legal counsel regarding the short-term rental of 121 West Shore Road. These are my current thoughts:

1. When interpreting an ambiguous provision of zoning regulations, Connecticut courts tend to favor landowners. The courts often hold that, because zoning regulations are in derogation of private property rights, and because landowners should be able to have a clear understanding of what is allowed and what is not allowed by such regulations, any ambiguities in whether a use is or is not allowed should generally not be interpreted to favor prohibition of the use. This is especially true where (as I understand is the case in Washington) the type of use at issue is widespread and long-standing. In other words, if short-term rentals are prohibited by the zoning regulations, why have so many homeowners been allowed to do it for so many years?
2. Washington's zoning regulations define "family" as "Any number of individuals related by blood, marriage, or adoption, or not more than 7 persons not so related, living and cooking together as a single non-profit housekeeping unit." The neighbors and their attorney are correct in noting that the reference to "a single non-profit housekeeping unit" distinguishes this case from the case of "Wihbey v. Pine Orchard Association Zoning Board of Appeals," in which a Connecticut Superior Court judge ruled that short-term rentals had been allowed by the relevant zoning

regulations. The regulations in that case did not include that phrase. The neighbors and their attorney also correctly point out that the use of that same phrase in regulations reviewed by a Pennsylvania court were among the factors that caused that court to rule that short-term rentals were not permitted. However, the Pennsylvania case would not be binding on any court in Connecticut and the meaning of the phrase, again, is not unambiguous. If my understanding is correct that short-term rentals have been widespread and unchallenged for many years in Washington, I believe that history would tend to sway a Connecticut court in the opposite direction.

3. Along the same line, if the Commission were to determine that its current regulations prohibit short-term rentals, would it be prepared to seek enforcement against all such uses?
4. Despite the foregoing points, the regulations are unambiguous about limiting any use of a single-family dwelling to 7 non-related persons, and the activities allowed on the property must be those that are customary for residential uses. So, if houses are being rented for special events (as opposed to residential-type uses) or to more than 7 unrelated persons, the Commission would certainly have grounds to start enforcement proceedings.
5. The neighbors and their attorneys have also pointed to certain representations on the building applications that the use of the property is limited to three bedrooms per the Health Code. However, the issue of whether the property is actually exceeding the “three-bedroom” limit is one for the health department, rather than the Zoning Commission. I suspect the seven-person limit is far more important in the zoning context.

Please let me know if you need additional feedback.

Best regards,
Mike

Michael A. Zizka, Esq.

Mr. Hackney of West Shore Road had submitted the following to the Commission prior to the meeting for their review. To view the document, please click here:

https://townofwashingtongcc-my.sharepoint.com/:w:/g/personal/trill_washingtonct_org/EYYL7HEMwMJJgu6AYncghYgBvxRS_h3kel6vr7tczh-yIQ?e=GilRLB

The Commission discussed Mr. Hackney’s communication at length. Mr. Hackney briefly presented the information to the Commission.

The communication has been forwarded to Attorney Zizka for review.

Discussion regarding J. Hill’s review of PA-21-29:

Ms. Hill’s review has been submitted to Attorney Zizka with no feedback as of yet.

Ms. Hill explained that PA-21-29 focused mainly on affordable housing issues within towns.

To view PA 21-29, please click here:

<https://cga.ct.gov/2021/act/pa/pdf/2021PA-00029-R00HB-06107-PA.pdf>

Reschedule September 26, 2022 Zoning Meeting – Rosh Hashanah:

The Commission agreed to reschedule the September 26, 2022 Regular Meeting for Tuesday, September 27, 2022 at 7:30pm.

ENFORCEMENT:

Ms. Haverstock, Zoning Enforcement Officer, stated that the Pre-Application meetings she and Land Use Coordinator, Ms. White, have been conducting are going really well and encouraged the Commission to continue spreading the word.

She added that the Land Use Office will no longer be issuing a Certificate of Zoning Compliance until the entire project is completed.

Lastly, as included in her May, 23, 2022 Enforcement Report, Ms. Haverstock stated that the concern regarding a possible auto repair business at 289 Litchfield Turnpike has been addressed with the property owners, who have insisted that there is not an auto repair business on their property, nor will there be.

COMMUNICATIONS:

Letter from G. Mack Regarding Proposed Revisions to the Washington Zoning Regulations – Section(s): 14.3; 14.7.13, 21.1.65 - Preservation of Trees, Natural Features:

The Commission has reviewed Mr. Mack's letter and are taking it into consideration. As stated at meeting's prior, the language of the proposed regulation is under review and will be addressed at a future date.

PRIVILEGE OF THE FLOOR:

None.

ADMINISTRATIVE BUSINESS:

Ms. Rill reminded the Commission that there will be an FOIA Workshop on June 14, 2022 at 7:00pm at Bryan Memorial Town Hall as well as via Zoom video conference. The Board of Selectmen are strongly encouraging Commission members to attend.

ADJOURNMENT:

MOTION: To adjourn the May 23, 2022 Washington Zoning Commission Meeting at 9:43pm, by Chairman Solley, seconded by Ms. Radosevich, passed unanimously.

To listen to this evening's meeting recording, please click here:

https://townofwashingtoncc-my.sharepoint.com/:u:/g/personal/trill_washingtonct_org/EelfzoypML9AqqvCYePjODoBr4z-icZLNhqA24ltM9xaOQ?e=2hggm8

Respectfully Submitted,

Tammy Rill

Tammy Rill

Land Use Clerk

May 25, 2022