

PLANNING & ZONING
COMMISSION
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TOWN HALL ANNEX
238 Danbury Road
Wilton, Connecticut 06897

WILTON PLANNING & ZONING COMMISSION MINUTES MARCH 24, 2014 REGULAR MEETING

PRESENT: Chairman Christopher Hulse, Vice-Chair Sally Poundstone, Secretary Doris Knapp, Commissioners Lori Bufano, Joe Fiteni, Bas Nabulsi, Peter Shiue, and Franklin Wong

ABSENT: Marilyn Gould

ALSO

PRESENT: Robert Nerney, Town Planner; Daphne White, Assistant Town Planner; Lorraine Russo, Recording Secretary; members of the press; and interested residents.

PUBLIC HEARINGS

- 1. REG#14344, Amend Section 29-5.A.3 of zoning regulations to permit charitable organizations as a Special Permit use in Single-Family Residential Districts**

Mr. Hulse called the Public Hearing to order at 7:15 P.M., seated members Bufano, Fiteni, Hulse, Knapp, Nabulsi, Poundstone, and Shiue, and referred to Connecticut General Statutes Section 8-11, Conflict of Interest. Ms. Knapp read the legal notice dated March 11, 2014.

Present were J. Casey Healy, applicant/attorney; Dave Schiff, Planner, VHB; and Eliot D. Russman, CEO & Executive Director, Fidelco.

Mr. Healy reviewed details of the proposed regulation change to allow charitable organizations as a Special Permit use in single-family residential districts. He stated that such uses are currently permitted as a Special Permit use in Design Retail Business (DRB), General Business (GB), and Wilton Center (WC) districts, with one exception that they are not permitted on street level in the WC district.

He explained that he was representing the interests of Fidelco Seeing Eye Dog organization, which is headquartered outside of Hartford, noting that the organization has a strong preference to open a Fairfield County office in Wilton. He explained that most of the potential sites are located on Danbury Road and are residentially zoned.

He stated that any anticipated site would undertake general office type operations for the organization, including marketing efforts, volunteer opportunities, community engagement, educational outreach, and fundraising, and would accommodate a staff of 3-5 people average on a weekday. He noted further that the site would also be used for puppy socialization classes, consisting of 4-6 puppies per class, 4-5 classes per week, but would not be used for breeding or kenneling purposes, noting that the company has a facility specifically dedicated to that use in Bloomfield, CT.

Dave Schiff, Planner, VHB, reviewed details of his planning memorandum to the Commission dated March 19, 2014. He explained that while Wilton zoning regulations do not specifically permit charitable uses in single family zones, such uses appear to be permissible at 27 Cannon Road (a site that the company is seriously considering), as a result of past Special Permits and past variances, but issues would arise in the case of other residentially zoned sites in Town or if the applicant wished to expand on the Cannondale site.

He stated that single family zones currently accommodate certain non-residential uses that are compatible with residential uses while still preserving neighborhood character and property values, noting that the challenge would be to provide for charitable uses in a way that gives the Commission control so that such uses don't negatively impact single family residential areas. He explained that there are currently a number of Special Permit uses permitted in single family residential districts that are comparable in some ways to the use proposed, e.g. churches, schools, libraries, museums, child daycare centers, private membership recreational clubs, etc. He noted that the DRB and GB zones do permit charitable uses, but such uses are referenced as "civic, social, professional" organizations and no definitions of such are provided in the regulations.

Mr. Schiff cited the applicant's proposed definition of charitable use as follows: "A use that is operated by a non-profit organization that qualifies for exemption under Internal Revenue Code 501.c (3). A charitable use may provide educational, health, recreational, social, civic, religious or similar services to members of the community which it serves but shall not contain dwelling units, sleeping accommodations or public merchandising facilities, other than where the proceeds accrue to the organization."

In response to a question from Mr. Nabulsi regarding the last clause of the proposed definition, Mr. Schiff referenced the definition of "community facility" under Section 29-2.B of zoning regulations, noting that it only refers to "recreational, social or civic

purposes” and it includes public facilities, whereas the subject application refers to private, not-for-profits. He felt that if the Commission was happy with this existing definition, the applicant would try to utilize some of its wording. He noted further that the proposed use is not meant to be a housing use and thus the prohibition of dwelling units.

Mr. Schiff referenced the proposed siting of such charitable uses in locations relative to a major roadway, noting that the applicant’s wording in that regard is similar to wording that currently exists for a child day care center. He emphasized that the proposed use would be subject to all Special Permit restrictions as listed in Section 29-10.A of zoning regulations, including the Commission’s ability to impose conditions, safeguards, limitations on hours, number of employees, etc.

Mr. Schiff also referenced the Planning and Zoning Staff Report of March 19, 2014, noting staff’s proposed text change that charitable organizations on residentially-zoned properties must be either on or within 750 feet of Danbury Road. He stated that the applicant had no issue with the proposed text modification. He also confirmed the applicant’s willingness to not exceed 10,000 square feet of gross floor area, as was proposed.

Mr. Russman responded to a question from Mr. Hulse, noting that Fidelity’s hours of operation would be normal business hours, generally 9-5 P.M.

Mr. Wong arrived and was seated at 7:28 P.M.

Ms. Poundstone expressed concern that the proposed use may not be suitable on some of the Town’s secondary roads or the numerous state roads that course through Town.

Mr. Nerney felt that limiting the proposed use to certain residentially zoned sections of Route 7 or to major/secondary roads within 750 feet of Danbury Road would geographically restrict such a use from outlying areas of Town where there could be some potential for adverse impact. He noted that the site that the applicant has in mind is 27 Cannon Road, which is located behind the Grange.

Ms. Poundstone expressed concern that although the focus is on this specific site, the Commission is being asked to broaden its permitted locations for such uses and she questioned why. Mr. Schiff explained that the Town already allows as Special Permit uses in single family residential zones adult daycare centers, schools, congregate housing, nursing homes, etc., all without the aforementioned location restriction proposed by the applicant. He noted that only child daycare centers currently have a location restriction.

Mr. Healy again referenced Section 29-10.A.9 of zoning regulations (“Standards for Approval”). He cited a number of existing standards that the Commission may consider

prior to granting a Special Permit use, including location and size of the proposed use, nature and intensity of the operations, impacts on traffic safety , compatibility of the use with the neighborhood, etc.

Mr. Nabulsi addressed the applicant's proposed definition of "charitable uses", noting that he wanted to clarify the intent of the language pertaining to the proceeds accruing to the organization. He speculated that the applicant wants to accommodate an ancillary use that could generate additional revenues for the organization, but he expressed concern that, as written, it could also encompass a situation where the only use at the site is perhaps a gift shop or flea market or some other commercial activity that somehow fits within the 501.c(3) classification. He referenced a prior application before the Commission involving health clubs where the Commission stipulated that fund-generating activity would have to be a use ancillary to the core use. Mr. Schiff felt that such a condition should be fine with the applicant.

Mr. Nabulsi noted further that the 27 Cannon Road site is located partially within a residential zone and partially within a commercial zone, where such a use would potentially be treated differently per regulations of each zone. He asked how the respective regulations would be applied in such a circumstance.

Mr. Healy noted that the building itself is located in a residential zone. He briefly reviewed a history of the site, noting that it was approved in 1961 by Special Permit for the Girl Scouts to use for purposes of a social, cultural and recreational organization. He noted that in 1987 the Zoning Board of Appeals varied the Special Permit to allow general office use without limiting same to a particular type of owner or tenant, and then in 1988 and again in 2003, the Commission approved site development plan applications to allow the building to be expanded. Addressing Mr. Nabulsi's question more specifically, Mr. Healy explained that the site development plan review of 2003 was based on bulk and area requirements for the residential two-acre district, noting that at the time it was only an upward expansion which had to comply with two-acre residential setbacks, but if it had been expanded outward, all coverage requirements for the two-acre zone would have had to have been satisfied as well. In summary, he stated that bulk and area requirements for the two-acre residential zone would have to be satisfied.

Mr. Nerney noted that the 27 Cannon Road site has a history of uses that are similar in nature to charitable uses. He felt that the applicant could technically occupy the site now without the necessity of approvals, assuming it is just strictly for occupancy, but they would have difficulties doing any expansion on the site in the future.

Mr. Healy noted for the record that several sites on Route 7 have been looked at by Fidelco and are still in play, although 27 Cannon Road has received more attention and due diligence on Fidelco's part. He noted that, in speaking to Town Planner Nerney, although Fidelco might be able to occupy 27 Cannon Road as is, it is not as clear as to

whether they could expand at that site, and thus the reason for the proposed regulation which would allow for that eventuality and would also allow Special Permit applications to be filed for other sites that Fidelco has considered on Route 7.

Mr. Nabulsi raised the question of parking guidelines that might apply for such a use. Mr. Healy felt that parking would be up to the Commission to determine, noting that it would not likely fall under any existing parking requirement in the regulations.

Mr. Schiff pointed out that a charitable use is sort of an undefined use, noting that it could be something that is an office or something with a different kind of function, perhaps more like a place of public assembly, in which case parking based on square footage might not be the best approach.

Mr. Nerney felt that having some flexibility in that regard may not be a bad thing since it would give the Commission an opportunity to ask questions and analyze how the site is going to be used, which would give the Commission a better handle on establishing correct parking requirements.

Mr. Hulse expressed concern that a 10,000 square-foot use could possibly require 30 parking spaces in a residentially zoned area, with all the associated traffic generated by such vehicles. Mr. Nerney noted that a 10,000 square foot house is not unheard of in Town, but he acknowledged that 30 vehicles a day would not be typical for such a structure, noting that an average house generates 10 vehicle trips per day.

Referencing the proposed regulation text pertaining to location on a secondary road, Mr. Shiue asked what constitutes a secondary road in Town. Mr. Schiff stated that it would roads as referenced in the Town Plan of Conservation and Development.

Ms. Poundstone raised the prospect that a 10,000 square-foot approved charitable use could be split up into two 5,000 square-foot charitable uses. Mr. Healy felt that would be possible, but he noted that each would have to apply for a Special Permit under the proposed regulation.

Mr. Hulse again referenced concerns with potential parking in connection with such uses, noting that if 30 vehicles were to enter onto the site at 8 A.M., with people working all day, going out to lunch, coming back from lunch, then leaving at 6 P.M., that would generate a great deal of traffic within a residential neighborhood. Mr. Healy reminded the Commission that it would have the ability to deny such a use in certain residential neighborhoods if it anticipated that such a situation might develop on the site.

Mr. Nabulsi referenced an application that had previously come before the Board some years ago, questioning how the 750-foot distance would be calculated, whether it be from the property line or from the structure itself. Mr. Nerney stated that he envisioned the

measurement to be from the property line closest to Route 7.

Mr. Hulse asked if anyone wished to speak for or against the application.

Toni Boucher, 5 Wicks End Lane, spoke on behalf of Fidelco, noting that she had personally visited the organization when she was in Hartford, adding that it is one of only ten such facilities in the country. She referenced a “blind walk” in which she participated which she noted was an amazing experience. She cited the tremendous good that is done by the company, referring in particular to the many veterans with traumatic eye injuries that have been helped by Fidelco. She explained that clients and dogs are trained in the communities in which the clients reside, noting in particular that the service is free of charge and Fidelco takes no government funding at all. She urged the Commission to try to find a solution that will allow Fidelco to have a presence in the community and continue to serve many more people throughout Connecticut and the country, while still meeting the needs and protecting the character of our community.

Mr. Nerney explained that the hearing needs to be kept open to satisfy statutory requirements/deadlines.

Ms. Knapp referred for the record to a Planning and Zoning Staff Report dated March 19, 2014; a letter dated March 20, 2014 from J. Casey Healy to Planning and Zoning Commission, with attached Memorandum dated March 19, 2014 from David Schiff to Planning and Zoning Commission.

Mr. Nabulsi asked if the applicant could perhaps propose some language for the next meeting that would address the issue of possible ancillary uses, and also clarify the 750-foot measurement calculation methodology. Mr. Hulse also asked for a better idea of what type of parking requirements the applicant feels would be needed.

In response to a question from Ms. Knapp, Mr. Healy confirmed that the 27 Cannon Road site currently has 27 parking spaces, including handicapped spaces. He noted that the parking lot is essentially the zone line, with the parking lot located in the Retail Business Zone and the building itself located in the residential zone.

In response to a question from Mr. Nabulsi, Mr. Healy explained that Fidelco would not have to appear before the Commission with a site development plan in order to occupy 27 Cannon Road, unless it wanted to do an addition on the site. He explained further that the Special Permit as varied from 1961 to 1987 would support the proposed charitable use, but any future expansion which might be required for puppy socialization classes would not be possible without the proposed regulation change. He confirmed, however, that other sites that are still under consideration by Fidelco would require a Special Permit and an associated site development plan, per the proposed regulation.

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Mr. Nabulsi asked for clarification from Mr. Healy as to whether an entirely different use such as a soup kitchen, for example, would be permitted at the 27 Cannon Road site without any Commission oversight by virtue of the 1961 and 1987 approvals previously granted, as long as there is no expansion on the existing square footage. Mr. Healy felt that would be a correct interpretation.

Ms. White expressed concern with what she perceived as a potential gray area in the proposed regulation whereby an applicant could perhaps submit an application under the guise of a charitable organization/use but, in reality, the use might be more like a museum, library, school, church, etc. She questioned whether such a strategy could essentially allow the proposed use to fall under the lesser setbacks that would be required for a charitable use in a residential zone (as defined herein) as opposed to the setbacks currently required for schools, museums, and the like in residential zones.

Mr. Healy felt that a school, or library use, for example, would be clearly defined as such, although he acknowledged that perhaps one could get into a gray area as raised by Ms. White. He noted, however, that the regulations state that if a use is not listed as permitted, then it is prohibited. Further, he noted that if the proposed use were not clearly permitted or prohibited, then it would be totally within the Commission's discretion to make that determination.

There being no further comments from the Commission or the public, at 8:08 P.M. the Public Hearing was continued until Tuesday, April 15, 2014.

REGULAR MEETING

A. Mr. Hulse called the Regular Meeting to order at 8:08 P.M., seated members Bufano, Fiteni, Hulse, Knapp, Nabulsi, Poundstone, Shiue, and Wong, and referred to Connecticut General Statutes Section 8-11, Conflict of Interest.

B. APPROVAL OF MINUTES

1. March 10, 2014 – Regular Meeting

MOTION was made by Ms. Knapp, seconded by Ms. Poundstone, and carried (7-0-1) to approve the minutes of March 10, 2014 as amended. Mr. Fiteni abstained.

C. SITE DEVELOPMENT PLAN REVIEW

D. ACCEPTANCE OF NEW APPLICATIONS

E. PENDING APPLICATIONS

- 1. SP#386, Hoffman Landscapes, Inc., 647-651 and 631-643 Danbury Road, To amend SP#267 with respect to operation of a contracting business at the premises**

The Commission reviewed draft Resolution #0314-3P. A minor modification was made to condition #5 regarding permitted height of pallet-stored materials near the southeastern property line.

MOTION was made by Mr. Nabulsi, seconded by Ms. Poundstone, and carried unanimously (8-0) to adopt as amended Resolution #0314-3P for SP#386, effective April 10, 2014.

WHEREAS, the Wilton Planning and Zoning Commission has received Special Permit application **SP#386** from Hoffman Landscapes, Inc. for consideration of an amendment to a previously approved application (SP#267) for expansion of a contracting business involving two parcels; including construction of additional parking spaces, storage tool sheds, material storage bins, oil tanks and a new office area, for property located at 647 Danbury Road (647-651) Danbury Road; in a GB (General Business Zoning District), Assessor's Map #23, Lot #4 and Assessor's Map#23, Lot#26A, and consisting of 2.24 acres and .91 acres respectively; both lots owned by the State of Connecticut and shown on the plans entitled:

Site Improvements- Prepared for Hoffman Landscapes, Prepared by Brian S. Cossari, landscape architect, dated July 26, 2013, last revised March 6, 2014, at a scale of 1"=20', Sheet #SP-2.0.

Site Improvements with Ex. Fence- Prepared for Hoffman Landscapes, Prepared by Brian S. Cossari, landscape architect, dated July 26, 2013, last revised December 26, 2013, at a scale of 1"=20', Sheet #SP-2.0.

Property and Topographic Survey- Prepared for Hoffman Landscapes, Inc., Prepared by Richard A. Bunnell, land surveyor, dated September 25, 2013, at a scale of 1"=30', Sheet #1 of 1.

Septic System Expansion Plan- Prepared for Hoffman Landscapes, Inc., Prepared by Steven C. Sullivan, engineer, dated January 23, 2014, at a scale of 1"=20', Sheet #SE1.

Stormwater Management Plan- Prepared for Hoffman Landscapes, Inc., Prepared by Steven C. Sullivan, engineer, dated September 25, 2013, at a scale of 1"=20', Sheet #SP1.

Stormwater Management Plan & Grading Plan- Prepared for Hoffman Landscapes, Inc., Prepared by Steven C. Sullivan, engineer, dated October 30, 2013, at a scale of 1"=20', Sheet #SP1.

Site Lighting- Point Calculations- Prepared for Hoffman Landscapes, Prepared by Apex Lighting Solutions, lighting designers, dated October 16, 2013, revised January 7, 2014, at a scale of 1"=20', Sheet #SL-1B.

WHEREAS, the Wilton Planning and Zoning Commission has conducted a public hearing on January 27, 2014 and March 10, 2014, to receive comment from the public and has fully considered all evidence submitted at said hearing; and

WHEREAS, the Wilton Planning and Zoning Commission finds the Zoning Board of Appeals has granted the requisite setback variance relating to the proposed location of tool storage sheds; and

WHEREAS, the Wilton Planning and Zoning Commission has determined the application is in substantial compliance with the Wilton Zoning Regulations;

NOW THEREFORE BE IT RESOLVED that the Wilton Planning and Zoning Commission **APPROVES** Special Permit #386 for expansion of a contracting business involving two parcels; including construction of additional parking spaces, storage tool sheds, material storage bins, oil tanks and a new office area, miscellaneous improvements; effective April 10, 2014 subject to the following conditions:

1. This Resolution does not replace requirements for the applicant to obtain any other permits or licenses required by law or regulation by the Town of Wilton, such as, but not limited to: Zoning Permit, Sign Permit, Building Permit, Certificate of Zoning Compliance; or from the State of Connecticut or the Government of the United States. Obtaining such permits or licenses is the responsibility of the applicant.
2. In accordance with Section 8-3.(i) of the Connecticut General Statutes, all work or physical improvements required and/or authorized by the approved Site Plan shall be completed within five years of the effective date of this resolution. This five-year period shall expire on March 24, 2019.
3. The submitted engineering plan shall be revised to delineate the location of all tool storage sheds. Such structures shall be located in a manner so as to comply with variance approvals granted by the Zoning Board of Appeals. The amended plan shall be subject to Planning and Zoning Department staff review and approval.
4. Outdoor storage bins and the storage of earth materials shall be limited to those areas shown on the approved site development plan.

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5. Pallet storage of materials situated near the southeasterly property line (adjacent to the Calico Corners building), shall be restricted to non-combustible materials only. Stored materials in this area shall not exceed 6' in height.
6. The installation of proposed oil tanks shall be consistent with representations made by the applicant with regard to model, quantity of tanks, size, design and provisions for leak monitoring and spillage containment.
7. All proposed exterior lighting shall include shielding, so as to contain the off-site spillage of light. With the exception of safety lighting, exterior lighting shall be extinguished during non-business hours.
8. The storage of any herbicides, fertilizer and pesticides shall be conducted in accordance with State of Connecticut Department of Energy and Environmental Protection regulations and stored in those areas shown on the approved site development plan.
9. An itemized bond estimate and bond for erosion control shall be submitted to the Commission's staff for review. The applicant shall furnish to the Town, a bond with proper surety, in the form and amount satisfactory to the Commission's staff, prior to the issuance of a zoning permit.
10. Three (3) completed revised sets, (collated and bound) shall be submitted to the Commission's office for endorsement as "Final Approved Plan" by the Town Planner prior to receiving a zoning permit. Said plans shall include all revisions noted above and shall bear an ORIGINAL signature, seal and license number of the professional responsible for preparing each plan or portion of it. Said plans shall include the following notes:
 - a. "According to Section 8-3.(i) of the Connecticut General Statutes, all work in connection with this Site Development Plan shall be completed within five years after the approval of the plan. Said five-year period shall expire on April 10, 2019."
 - b. "For conditions of approval for Special Permit #386, see Resolution #0314-3P."

PRIOR TO THE ISSUANCE OF A CERTIFICATE OF ZONING COMPLIANCE

11. Prior to the issuance of zoning compliance, the applicant shall provide an as-built drainage plan and supporting documentation demonstrating conformance with the approved site development plan and drainage report.
12. Prior to the issuance of zoning compliance, the applicant shall provide an "as-built

survey”, prepared, signed and sealed by a Connecticut-licensed surveyor. Said plan shall provide information confirming compliance with building and site coverage requirements and provisions governing the allowable location of all buildings, structures and permissible storage areas.

13. The applicant’s engineer shall certify in writing, that the proposed oil tanks have been installed in accordance with the approved plans and documents submitted to the Commission.
14. The applicant shall submit an “as-built” lighting plan confirming compliance with the lighting plan approved by the Planning and Zoning Commission.

- END RESOLUTION -

2. **REG#14344, Amend Section 29-5.A.3 of zoning regulations to permit charitable organizations as a Special Permit use in Single-Family Residential Districts**

Tabled.

F. COMMUNICATIONS

G. REPORT FROM CHAIRMAN

H. REPORT FROM PLANNER

Mr. Nerney referenced his memorandum to Commissioners dated March 19, 2014 relating to Medical Marijuana, with attachments including copies of the CT General Statutes which serve as the state enabling legislation, Consumer Protection licensing regulations, and a definition of “drug paraphernalia” as found in CT General Statutes.

Addressing the issue of drug paraphernalia, in particular, Mr. Nerney explained his understanding of the rationale behind the allowance of such items, i.e. that marijuana dispensing facilities might not be economically viable without ancillary sales of such materials. He also confirmed that marijuana sales would be limited to people with prescriptions.

In response to a question from Mr. Wong, Mr. Nerney confirmed that, procedurally, marijuana facilities would be somewhat analogous to package stores/liquor regulations in

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the State, whereby an applicant must first apply for a permit from the State but, as part of the permitting process, is required to demonstrate that approvals are in place from local zoning and the Chief of Police.

In response to a question from Ms. Knapp, Mr. Nerney confirmed that both growing and dispensing of marijuana would be allowed and he recommended developing Town regulations for both.

Mr. Nabulsi confirmed that 1000-foot separation distances from schools, churches, etc., for both production and dispensing facilities, are incorporated into the State guidelines.

It was the consensus of the Commission to allow Mr. Nerney to develop some draft language for medical marijuana regulations that will be reviewed by the Commission, perhaps at the April 15th meeting.

Mr. Hulse felt it would be productive to see a sample of other Town(s)' regulations if possible.

I. FUTURE AGENDA ITEMS

J. ADJOURNMENT

MOTION was made by Ms. Poundstone, seconded by Ms. Knapp, and carried unanimously (8-0) to adjourn at approximately 8:35 P.M.

Respectfully submitted,

Lorraine Russo
Recording Secretary