

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

WILTON PLANNING & ZONING COMMISSION MINUTES OCTOBER 26, 2015 REGULAR MEETING

PRESENT: Vice Chair Sally Poundstone, Secretary Doris Knapp, Commissioners Lori Bufano, John Comiskey, Joe Fiteni, Bas Nabulsi, Peter Shiue, and Franklin Wong

ABSENT: Christopher Hulse (notified intended absence)

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. SUB#914, 3 Hubbard Road, LLC/O'Brien, 434 Hurlbutt Street, 2-lot subdivision

Ms. Poundstone, acting as Chairman in the absence of Commissioner Hulse, called the Public Hearing to order at 7:15 P.M., seated members Bufano, Comiskey, Fiteni, Knapp, Nabulsi, and Poundstone, and referred to Connecticut General Statutes Section 8-11, Conflict of Interest. Ms. Knapp read the legal notice dated October 14, 2015; and referenced into the record a 2-page Planning and Zoning Staff Report dated October 22, 2015 and a memorandum dated October 26, 2015 from Jennifer M. Zbell to Bob Nerney and Daphne White.

Present were Kevin O'Brien, realtor; and Steve McAllister, engineer; representing the applicant.

Mr. Wong arrived and was seated at approximately 7:16 P.M.

Mr. O'Brien stated that he was representing 3 Hubbard Road, LLC, noting that his client, Mr. Kleiber, was a large developer in Wilton during the 1970s and 1980s.

Mr. Shiue arrived and was seated at approximately 7:17 P.M.

Mr. O'Brien reviewed details of the 7.2+ acre site, noting that existing conditions include a main residence, two cottages and a barn in the back. He explained that the application requests approval for a 2-lot subdivision, with approximately 2.5 acres of land donated as open space to the Town, which can be annexed to already existing open space to the south.

He distributed a one-page response to the Planning and Zoning Staff Report dated October 22, 2015. He noted that Inland Wetlands approval for the proposed subdivision/site development was granted during the summer. He explained that a 5-bedroom residence (comprising a 2800 square-foot footprint) and pool are proposed for lot 2, noting that both are just hypothetical/conceptual representations which will not necessarily be built by his client. He noted that all building/site coverages will be compliant with zoning regulations.

Mr. O'Brien explained that one of the two cottages on lot 1 will be decommissioned as a residence because lot 1 would be nonconforming if it contained more than 2 dwelling units. He also noted that a new septic would be installed for the existing residence and one of the cottages on lot 1, and another septic would be installed for the proposed 5-bedroom residence on lot 2. However, since Health Department approval of same is still outstanding, he noted that the application would need to be continued.

He stated that sight distances in connection with the driveway access/egress will be shown on the plans, noting that some shrubbery may have to be cleared in order to satisfy distance requirements. Addressing the issue of stone walls, he stated that the applicant himself has no plans to remove any of the walls but would be hesitant to add a note to that effect on the plans.

Mr. Nerney noted that any offers of open space to the Town need to be accepted by the Board of Selectmen (BOS). Mr. O'Brien stated that the applicant had not yet entered into any discussions on the matter with the BOS but given the size/location of the proposed open space, he felt that if the Town didn't want it, the Land Trust likely would. He pointed out that there would not be any maintenance costs connected with the proposed open space land.

An issue was raised by several Commissioners relating to the cottage that would continue to function as an accessory dwelling unit on lot 1 after the parcel is subdivided. Questions were raised as to whether the Commission would have to make a specific finding that said dwelling unit would be allowed to remain on lot 1 and, if so, the issues of dwelling unit size and whether the owner would be residing in one of the two dwelling units were also raised, per the requirements of Section 29-4.D.1 of zoning regulations for

Accessory Dwelling Units. To that point, if it were determined to not satisfy the requirements of Section 29-4.D.1, Commissioners questioned whether the accessory dwelling unit could, in fact, be allowed to remain on lot 1.

With respect to the size of the accessory dwelling unit, Mr. O'Brien thought that it might be a little larger than 750 square feet, but might still comply under the alternative allowable size, i.e. 25% of gross floor area of the main structure. He stated that he would provide additional information in response to that question at the next hearing.

Addressing the issue of owner-occupancy of one of the units, Mr. O'Brien stated that Mr. Kleiber would eventually move into the house but he was not sure of an exact occupancy date. He noted that the site has never been owner-occupied and thus has never been compliant in that regard. He noted for the record that an earlier subdivision from years ago did not trigger a requirement at that time to remove any of the existing dwelling units.

Mr. Nabulsi asked whether there was any precedent where the reduction of an existing nonconformity was the rationale for granting an approval. Mr. Nerney stated that such precedent does exist with respect to dimensional criteria (e.g. reducing a setback intrusion), but not in the realm of use, although Mr. O'Brien cited the old Rimer property in Town as an example that he felt was similar to the subject situation.

Mr. Nabulsi expressed concern that the Commission would have no subsequent occasion to revisit lot 1 if/when the subdivision was approved, referring in particular to the issue of accessory dwelling unit compliance (i.e. size of unit, owner-occupancy of one of the units, etc.), and he was concerned that an undesirable precedent could be set for the Town as a whole if this issue is not properly resolved.

Mr. Nabulsi questioned whether a possible method of resolving the accessory dwelling unit issue might be to simply state within a resolution of approval that both lots were determined by the Commission to be in compliance with subdivision regulations, thereby avoiding affirmation of compliance with the accessory dwelling units section of the zoning regulations. Mr. Nerney noted that the two sets of regulations (subdivision and zoning) generally work hand-in-hand; thus the nonconformity is either allowed to continue, albeit reduced in its degree of nonconformity by virtue of the reduction from three to two dwelling units on the site, or it would have to be extinguished. He did not feel the Commission could skirt the explicit requirements of the zoning regulations with respect to this matter.

In that regard, Ms. Knapp asked whether the Commission is obligated to cure an existing nonconformity or whether a nonconformity that has been in existence on a site for so many years could be ignored. Mr. Nerney clarified, noting that the question is whether the splitting of the existing nonconforming (by use) parcel triggers some requirement on the part of the Commission to cure/remove any existing nonconformity on the site.

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Reference was made to Section 29-4.F.3 of zoning regulations (Non-Conforming Uses of Land), which explains when nonconforming uses are allowed to continue on a specific parcel of land. The Commission briefly reviewed the Section.

Mr. O'Brien stated that the size of the property is not the issue, noting that whether the parcel consists of a half-acre or 10 acres is not relevant; rather the issue is the number of dwelling units on the site, i.e. the use of the site. He noted that the applicant could possibly come before the Commission with a Special Permit application for an accessory dwelling unit on lot 1 once the subdivision was approved, although he again reminded the Commission that the owner currently holds a lease on the house.

It was the consensus of the Commission that staff should consult Assistant Town Counsel Pat Sullivan for guidance, and to determine if there is any existing case law on the matter.

Ms. Poundstone asked if anyone in the audience wished to speak for or against the application.

There being no further comments from the Commission or the public, at approximately 8 P.M. the Public Hearing was continued until November 9, 2015.

REGULAR MEETING

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

B. APPROVAL OF MINUTES

1. October 13, 2015 – Regular Meeting

MOTION was made by Ms. Knapp, seconded by Mr. Nabulsi, and carried (8-0) to approve the minutes of October 13, 2015 as amended.

C. SITE DEVELOPMENT PLAN REVIEW

D. ACCEPTANCE OF NEW APPLICATIONS

1. SUB#915, 183 Ridgefield Road, LLC, 183 Ridgefield Road, 4-lot subdivision

It was the consensus of the Commission to accept SUB#915 and set a public hearing for December 14, 2015.

E. PENDING APPLICATIONS

- 1. SUB#914, 3 Hubbard Road, LLC/O'Brien, 434 Hurlbutt Street, 2-lot subdivision**

Tabled.

F. COMMUNICATIONS

A concern was raised regarding an oak tree at 31 Old Danbury Road, which seemed to be in peril of being lost. Commissioners were under the impression that the tree was going to be saved per testimony at the hearings. Ms. White's recollection was that the developer would salvage the tree if possible, but that it was dependent upon site conditions, including existing ledge. It was agreed that Mr. Nerney and Ms. White would visit the site and assess the situation, and there were additional comments about clearing Town land as well as clearing land and ledge that was part of the application.

G. REPORT FROM CHAIRMAN

- 1. Reports from Committee Chairmen**

H. REPORT FROM PLANNER

I. FUTURE AGENDA ITEMS

- 1. REG#15350, Thomas T. Adams, William L. Sachs, David F. Clune, Trustees of the Elizabeth Raymond Ambler Trust, Richard Christopher Montanaro and Richard S. Gibbons, by J. Casey Healy (Attorney for applicants); Amend Sections 29-2.B.60 and 29-4.B.5 of Zoning Regulations pertaining to frontage**

J. ADJOURNMENT

MOTION was made by Ms. Poundstone, seconded by Ms. Knapp, and carried unanimously (8-0) to adjourn at approximately 8:09 P.M.

Respectfully submitted,

Lorraine Russo
Recording Secretary