

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

## WILTON PLANNING & ZONING COMMISSION MINUTES MARCH 28, 2016 REGULAR MEETING

**PRESENT:** Chairwoman Sally Poundstone, Vice Chairman Joe Fiteni, Secretary Doris Knapp, Commissioners Scott Lawrence, Andrea Preston (7:36 p.m.), Keith Rodgerson (7:21 p.m.), Peter Shiue, Rick Tomasetti, and Franklin Wong (7:21 p.m.).

**ABSENT:** None.

### ALSO

**PRESENT:** Robert Nerney, Town Planner; Daphne White, Assistant Town Planner; members of the press; and interested residents.

Prior to the start of the Public Hearings, Ms. Poundstone made a couple of brief announcements. She stated the School Board Budget meeting was being held this night at 7:30 PM at Middlebrook School in case anyone wanted to participate. She also noted that a review of the Town Budget would be held the following evening at 7:30 PM, also at Middlebrook School. She then announced that the Minutes of the Planning and Zoning meetings, as well as the Zoning Board of Appeals meetings, could now be found and/or downloaded on the Town of Wilton website.

### PUBLIC HEARINGS

- 1. SP#410, O'Brien/Townsend-Adams Props, LLC, 23 Hubbard Road, To allow two dwelling units over office space, pursuant to Section 29-6.C.4.b of zoning regulations.**

Ms. Poundstone called the Public Hearing to order at 7:15 P.M., seated members Fiteni, Knapp, Lawrence, Poundstone, Shiue, and Tomasetti, and referred to Connecticut General Statutes Section 8-11, Conflict of Interest. Ms. Knapp read the legal notice dated March 15, 2016.

Present were Mr. Kevin O'Brien and Mr. Ray Tobiasson on behalf of the applicant. Mr. O'Brien stated the applicant would have been present but was currently at the Board of

Education budget meeting.

*Mr. Tomasetti recused himself from the proceedings and left the meeting room.*

Mr. O'Brien gave a brief overview of the application. He stated the building was built in 1988 as an office building and is located just south of the post office. He believed at some point there had been some sort of approval for apartments on the third floor but those approvals had long expired. He explained that he is before the Commission because the applicant is looking to build two apartments on the third floor. Both apartments would be two bedroom units with a kitchen and living room. He had included floor plans as part of the application in the Commissioners' packets. Mr. O'Brien said he had been given Staff comments early, so he had brought additional information to address those comments to the meeting.

*Mr. Wong and Mr. Rodgeron entered the meeting at 7:21 p.m.*

Mr. O'Brien stated the building is a 2½ story office building that has about 3,000 square feet of attic space. He described the two bedroom apartments and said each would be about 1,500/1,600 square feet and would be mirror images of each other. He said there are some proposed exterior improvements but they're staying within the footprint and would only be adding a couple of new dormers and new windows. He then pointed out to the Commissioners where these alterations would take place.

Mr. O'Brien explained the residents would come up through the building's main floor to the third floor foyer and an apartment would be on each side. He said they are proposing to turn an existing dormer into a door where the fire escape could be put out the back. He explained the back of the building is only 1½ stories because the building is on a hill. He stated due to the fire escape, there would be a slight change in site coverage. He continued that the parking is more than adequate and he believes there will actually be extra spaces, so they are not proposing any change to the parking lot or the site coverage other than the fire escape.

Mr. O'Brien stated as a real estate broker, he believes there's a need in Wilton Center for apartments. He said he manages the Wilton Arms, which is 24 units located on the other side of the post office, and they are rented constantly by young professionals. He believes there's a need for more activity in Wilton Center to help bring more traffic flow and having more housing would help. Mr. O'Brien then stated he was there to answer any questions the Commissioners had.

Mr. Nerney stated he concurred with what Mr. O'Brien had said about trying to encourage people downtown as it helps businesses. He also suggested the hearing be kept open so the Commission could receive the recommendation from the Village District Consultant Committee. He asked if Mr. O'Brien could send him electronic copies of the

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plans and he could forward it to the Village District Consultants and then he should have their comments, if any, to pass along to the Commission at the next meeting.

A Commissioner asked if there would be emergency access through the back since they would be occupying the very top level. Mr. O'Brien said there would. The Commissioner questioned the layout and its accessibility. Mr. O'Brien told him there is an existing walkway along a stone retaining wall at the back of the building that leads to the parking lot where the residents could turn either way. Mr. O'Brien conceded for emergency access, however, it's probably not the best.

A Commissioner asked if the commercial space is commercial condominium space. Mr. O'Brien stated it was originally built as a commercial condominium but now it's not. He stated there is a single ownership of the building and there are tenants within the building.

A Commissioner questioned the ADA requirements and whether they would figure into it because it is a mixed-use environment. Mr. O'Brien said he wasn't 100% sure but if he went with multiple units then he would have to have some compliance but he didn't think the two apartments needed to meet that criteria. Mr. O'Brien stated there is no elevator in the building, only stairs.

Ms. Poundstone asked if the Fire Department had to sign off on the safety aspect. Mr. O'Brien said yes, that for any building permit, the Fire Department would have to sign off. He explained the building has a sprinkler system throughout the building and all the utilities are up to date. Ms. White said they're still waiting to hear back from the Fire Department.

Mr. O'Brien explained he had been unaware he had to go to the Village District Consultants with modifications to a building in Wilton Center until Staff had brought it up. He stated that was when the elevation changes (dormers/windows/balconies) came into effect so they could show the Consultants what they were proposing.

Mr. Fiteni noted there were air conditioning units in the back and asked how the air conditioning would be provided for the upstairs units. Mr. O'Brien answered he wasn't sure and asked Mr. Tobiasson, who stated there would need to be two more pads unless they could fit on the existing pads.

Ms. White noted they would need to know the setbacks and location of those air conditioners. Mr. O'Brien confirmed he would show where they will be. Ms. White continued there would also be setbacks for the dormers. Mr. O'Brien stated the dormers are within the building itself so there are no setback. Ms. White explained that whenever there is a change to the roofline then setbacks are relevant. Mr. O'Brien said he didn't realize that. Ms. White continued that the coverage would need to be adjusted also for the fire escape. Mr. O'Brien stated he did, that the coverage was adjusted for the fire

escape on Form B and that was what the slight increase in the site coverage was. Ms. White said all of the changes should be shown on the survey. Mr. O'Brien concurred and clarified that the survey they used is the existing survey but they could add them. Ms. White said they would need to be added on by the surveyor.

Mr. Wong wondered about the impact of site lighting on people now that the use is changing somewhat and he asked if there would be any changes. Mr. O'Brien stated they hadn't proposed any and they hadn't looked into it but that they would before the next meeting. Mr. O'Brien pointed out that it is a pretty lit area with a lit parking lot.

Ms. White said ideally they should have a revised survey before the next meeting. Mr. O'Brien stated they would.

Ms. Poundstone asked if anyone in the audience wished to speak for or against the application. No one came forward to speak.

There being no further comments from the Commission or the public, at 7:36 P.M., the Public Hearing was continued until April 11, 2016.

**2. SP#411, Kevin O'Brien/3 Hubbard Road, LLC, 434 Hurlbutt Street, To allow a detached accessory dwelling unit**

Ms. Poundstone called the Public Hearing to order at 7:36 P.M., seated members Fiteni, Knapp, Lawrence, Poundstone, Preston, Rodgerson, Shiue, Tomasetti, and Wong, and referred to Connecticut General Statutes Section 8-11, Conflict of Interest. Ms. Knapp read the legal notice dated March 15, 2016.

Present was Mr. Kevin O'Brien, on behalf of the applicant.

Mr. O'Brien repeated his personal introduction as there were new members present and then gave an overview of the application. He said his client had purchased 7½ acres on the corner of Hurlbutt Street and Cannon Road and had come in for a subdivision application in the fall/early winter. The hope was to create a 2 acre lot south of the existing structure and 2½ acres of open space. He stated they were basically approved through the subdivision application subject to getting approval for the nonconformity, which were the guest cottages.

Mr. O'Brien explained the house was built in 1715 and the cottages were built in the 1920s and had always been rented. He said the renters of both cottages should be out by the end of April. The plan is to keep everything as is; they're not going to knock down any buildings or create any new buildings. What they are proposing is to eliminate the use of one, the smaller cottage, as a residence and instead make it an office space for his

client.

Mr. O'Brien said they came in with a special permit application to allow the larger cottage (in green on his presentation) to remain an accessory dwelling unit based on the current town regulations. He stated they would be adding two new septic systems; one for the main house and one for the larger guest cottage.

Mr. O'Brien stated he had gotten Staff comments and had a sheet with responses to them but he had forgotten it. He promised he would get them to Staff.

Mr. O'Brien explained one of the major issues is that the size of the main house is a little over 3,600 square feet so the size of the accessory dwelling unit, according to the regulations, had to be either 750 square feet or a quarter of the size of that. Right now, the cottage is approximately 1,100 square feet, which is about 250/275 square feet too big.

Mr. O'Brien stated the proposal is to eliminate a section of the interior of that cottage. Because the current tenants would not allow him into the cottage to get measurements so he could come up with a plan to eliminate the 250 square feet, Mr. O'Brien said he would need the public hearing to stay open. He stated his intent is to take the square footage off an end of the building by adding an interior wall and possibly an exterior wall. That space would then be used as a shed or for storage and this would bring the square footage of the cottage into conformity with the regulations.

Ms. Poundstone asked if it would be a demising wall. Mr. O'Brien confirmed. He said it would most likely go from a two bedroom unit to a one bedroom unit.

Ms. Poundstone stated it seemed that this application is destined for possibly two more public hearings. Mr. O'Brien confirmed and said it should be a pretty simple application but the accessory dwelling unit application requires the special permit application, which necessitates additional paperwork. Mr. O'Brien said he would get the information to Staff so the Commission could make its decision.

Mr. Wong asked what would make these individual houses accessory dwelling units. Mr. O'Brien told him if he removed the kitchen and bathrooms, it would be decommissioned. He said he didn't think the Health Department had anything that establishes what is or isn't a dwelling unit. Mr. Wong asked what made these units accessory dwelling units instead of individual houses. He stated a property wasn't limited to the number of dwelling units except for their size. Ms. Poundstone asked Mr. Nerney if he would like to address that. Mr. Nerney said they are regulated by size and the regulations do say the inclusion of one additional unit.

Mr. Wong clarified his question and asked if someone would be prohibited from putting

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two houses on a property if they wanted to. Mr. Nerney said they were unless the land was subdivided to make two separate lots. Mr. Nerney stated that accessory units are also recognized and could be within the principal residence, such as with an in-law arrangement or elderly family member, or as freestanding units that're allowed by special permit. However, those freestanding units are limited to 750 square feet or 25% of the floor area, whichever is greater.

Mr. O'Brien said in this case, in lieu of eliminating 200 feet of the cottage, he could add 400 feet to the main house and then the cottage would conform. He stated he could have as many accessory buildings on the property as his site coverage and building coverage would allow but he could only have two that are dwelling units that are considered livable areas.

Mr. Wong said he didn't think the regulations were very explicit as to limiting one dwelling unit per property. He pointed out that in the original definitions, the regulations refer to 'dwelling units.' Another Commissioner stated the regulations also define 'dwelling unit' on page 25 and then he read the pertinent definition.

Mr. Lawrence and Ms. White discussed the definition of letter (c) on page 25 of the regulations. Mr. O'Brien said if he connected the cottage to the main house then he wouldn't need to be at the special permit meeting, he would just need a zoning permit because that use is allowed by zoning.

Mr. Wong stated he wasn't sure why they are called accessory buildings versus dwelling units.

Mr. Fiteni asked if the main structure needed to be owner-occupied. Mr O'Brien said not necessarily. He said the cottage or the main house could be owner-occupied, which was why the leases on the cottages were not renewed. He continued that there was an affidavit Ms. White had sent him for the owner to fill out when he went for the permit or before they filed any of the subdivision maps or special permit resolutions.

Mr. O'Brien then stated that he had also sent a letter asking for an extension of an additional 90 days because the new septic systems couldn't be installed while the tenants were still in the cottages and these systems were part of the subdivision application. The additional 90 days would give them time to replace the septic systems and get the final approval.

Ms. White mentioned one other thing that was part of the subdivision application was that the old well house would be removed. Mr. O'Brien said that was correct, that the one within the setback would be removed.

Mr. Wong asked if there was a cistern involved with this particular property and Mr.

O'Brien answered no. Discussion then ensued about requirements in the regulations that must be met prior to a lot being approved for occupancy.

A Commissioner again brought up the issue regarding dwelling units and stated he thinks the regulations are vague. He stated he understood what the regulations intend but asked if he's a property owner and owns a piece of property, what gives the Commission or the regulations the right to tell him he can't rent to whoever he wants to. He asked if the Commission really had the authority to do that and how it would be enforced. He stated he felt there needs to be better definitions in the regulations so property owners can better understand what is allowed and what they can do and cannot do.

Ms. Poundstone asked Mr. Nerney to give some attention to the issue and report back to the Commission in May if it fit into his schedule. Mr. Nerney said he would look at other communities and said he thought Wilton has one of the more permissive regulations. He said one thing he's always said, though, is that zoning is about looking at the what and not looking in the windows at who is occupying the building. Ms. Poundstone said they would take a look at it.

Ms. Poundstone asked if anyone in the audience wished to speak for or against the application. No one came forward to speak.

Ms. Poundstone asked Mr. O'Brien if April 11<sup>th</sup> would give him enough time for both applications and he said he believed so.

There being no further comments from the Commission or the public, at 8:08 P.M., the Public Hearing was continued until April 11, 2016.

## **REGULAR MEETING**

**A.** Ms. Poundstone called the Regular Meeting to order at 8:08 P.M., seated members Fiteni, Knapp, Lawrence, Poundstone, Preston, Rodgerson, Shiue, Tomasetti, and Wong, and referred to Connecticut General Statutes Section 8-11, Conflict of Interest.

## **B. APPROVAL OF MINUTES**

### **1. February 22, 2016 – Regular Meeting**

**MOTION** was made by Mr. Fiteni, seconded by Mr. Tomasetti, and carried (7-0-2) to approve the minutes of February 22, 2016 as drafted. Mr. Wong and Ms. Knapp abstained.

**C. SITE DEVELOPMENT PLAN REVIEW**

There were no site development plans to review at this time.

**D. ACCEPTANCE OF NEW APPLICATIONS**

There were no new applications to review at this time.

**E. PENDING APPLICATIONS**

- 1. SP#410, O'Brien/Townsend-Adams Props, LLC, 23 Hubbard Road, To allow two dwelling units over office space, pursuant to Section 29-6.C.4.b of zoning regulations.**

This item was continued to April 11, 2016 as requested by the applicant.

- 2. SP#411, Kevin O'Brien/3 Hubbard Road, LLC, 434 Hurlbutt Street, To allow a detached accessory dwelling unit.**

This item was continued to April 11, 2016 as requested by the applicant.

**F. COMMUNICATIONS**

- 1. Kevin E. O'Brien, SUB#914, 3 Hubbard Road, LLC, 434 Hurlbutt Street, Request for 90-day extension to file subdivision plan on Wilton Land Records.**

Mr. Nerney explained they had received subdivision approval almost 90 days ago and under state law they're required to file the plans in the land records within 90 days of Commission approval. He stated the statutes provide two 90 day extensions should the applicant request it. He stated Mr. O'Brien is seeking one of those extensions so they could correct some of the conditions required to file. Mr. Nerney said it didn't seem unreasonable. Ms. Poundstone agreed and said she didn't think it was unreasonable.

It was the general consensus of the Commission to grant the request for a 90-day extension to file the subdivision plan on the Wilton Land Records.

**2. SP#396, ASML, 77 Danbury Road, Request to waive condition #5 of Resolution #0715-13P regarding screening of rooftop equipment.**

Mr. Nerney stated that several months prior, ASML had received approval to build two small additions and a larger addition, which they planned to be a cafeteria, on the backside of the building. This new cafeteria would need some HVAC equipment on its roof, which would run perpendicular to the roofline. According to the regulations, this new equipment would need to be screened.

Mr. Nerney explained the proposed rooftop equipment could not be seen from Danbury Road, the north, or the south, but it could be seen from the railroad tracks, as well as some homes 800' feet away that are about 75 to 80 feet above the ASML facility. He said Staff felt the screening would not achieve what the regulation intended, given the only adjacent neighbors are the railroads and the residences up high. Mr. Nerney stated the regulations give the Commission the discretion to waive when it deems necessary.

Mr. Fiteni asked what's to the north and the south of the building. Mr. Nerney said to the north is about 50 feet of rock outcrop that ASML owns but cannot use. To the south is Westy's Storage. He said he didn't think it could be seen from Westy's. Mr. Fiteni asked if ASML is just asking for a waiver of the screen. Mr. Nerney confirmed.

Mr. Lawrence asked if the screen was already required as part of zoning as approved and the Commission was modifying that or was the Commission waiving it as they go? Mr. Nerney said it was a requirement according to the regulations. Mr. Lawrence said he wasn't concerned about protecting Metro North commuters' eyes but he was a little concerned about the neighbors who live in the houses in the back.

Mr. Nerney said he was considering requiring ASML to come back for an administrative change, which they could do under Sections 29-10 and 29-11 of the regulations. Mr. Lawrence said he didn't want to leave it open, that it was a requirement of the zoning regulations, and he wondered if the Commission had the authority to change the regulation. Mr. Nerney briefly read the regulation and said it was at the discretion of the Commission. He stated if the screening was not needed from a practical point of view, ASML could seek an administrative resolution.

Mr. Wong said he thought ASML should come back with a solution that is viable. Ms. Poundstone said she thought they were providing a viable solution.

Mr. Lawrence said if there were property owners behind the building then he thought there should be screening, but if there weren't, he was fine with not requiring the screening. Mr. Nerney said he had looked at the town GIS and there is quite a substantial rise for the houses behind the building, so they'd be looking down on the roof regardless of the screen.

Mr. Wong said he's seen a lot of special requests from this particular applicant and they have pushed the limit on a number of issues. Mr. Nerney said he thought the applicant was trying to do their best and have invested a lot of money into the building. Ms. Poundstone said they seem to be committed to staying in town, which was a big plus. Mr. Wong said he doesn't differentiate between applicants. Ms. Poundstone said they're dealing with a difficult site and they are willing to work with the Commission.

A Commissioner stated if they had a situation where they didn't have the authority to waive then they shouldn't but the regulation is discretionary so they could. Mr. Fiteni stated if they'd asked for this accommodation in their original application, the Commission may have given it to them. Ms. Knapp added they may not have thought they needed it in their original application.

**MOTION** was made by Mr. Fiteni, seconded by Ms. Knapp, and carried (8-1) to grant that condition #5 of Resolution #0715-13P for SP#396 regarding screening of rooftop equipment be waived. Mr. Wong opposed.

**3. CT Friends School and Wilton Monthly Meeting, 317 New Canaan Road, Request for administrative approval of site work.**

Mr. Nerney explained Friends School is no longer running as a school but they maintain the pre-school component of what they had had. He said there is a primary building called the Hastings Building and a second annex building, which is considered an accessory building, and the children walk between the two buildings. The school would like to add a covered walkway, which he showed the Commissioners on a set of plans. He stated the walkway would not be physically connected to the building but would be supported by columns like other schools in town. Mr. Nerney said the school is asking for this application to be handled administratively. It would still require an application but would just be reviewed by Staff.

Ms. Knapp asked Mr. Nerney if he thought this was something for the Commission or something that could be handled administratively. Mr. Nerney stated Ms. White had been the person communicating with the applicant. He stated if Staff felt there was some issue, they could require the applicant come before the Commission. He stated from what he did know about the application, he does not believe there is anything substantial that would require them to do so. Ms. Poundstone confirmed that Mr. Nerney would let the Commission know if there was some further consideration due. Mr. Nerney agreed he would.

It was the consensus of the Commission to approve the request from CT Friends School and Wilton Monthly Meeting for administrative approval of the aforementioned site work.

**G. REPORT FROM CHAIRMAN**

**1. Reports from Committee Chairmen**

Ms. Poundstone wanted to acknowledge that it was a suggestion of Commissioner Rodgers that the hearings be put on the air and she thanked him.

**H. REPORT FROM PLANNER**

Mr. Nerney stated the Commission had been handed a referral from the Town of Weston. Weston had received an application to establish an Active Adult Community District in their community, which is by Waterbury Street off of Newtown Turnpike across from the Bisceglie Park. Mr. Nerney stated it's not within 500 feet of the Wilton town line and he's not quite sure why he received the letter.

**I. FUTURE AGENDA ITEMS**

- 1. SP#412, Kevin O'Brien/Smith, 50 Grumman Ave, To allow a detached accessory dwelling unit. [Public Hearing – April 11, 2016]**

**J. ADJOURNMENT**

MOTION was made by Ms. Knapp, seconded by Ms. Poundstone, and carried unanimously (9-0) to adjourn at 8:29 P.M.

Respectfully submitted,

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