

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

**WILTON PLANNING & ZONING COMMISSION
PUBLIC HEARING/REGULAR MEETING
MINUTES – OCTOBER 14, 2008**

PRESENT: Chairwoman Sally Poundstone, Commissioners Alice Ayers, Doug Bayer, Marilyn Gould, Bas Nabulsi, Dona Pratt, Michael Rudolph, and John Wilson.

ABSENT: Eric Osterberg (excused absence).

ALSO

PRESENT: Daphne White, Assistant Town Planner; Karen Pacchiana, Recording Secretary; members of the press; and interested residents.

PUBLIC HEARINGS

1. SUB#899, DeSola, 21 Edith Lane, 2-lot subdivision

Ms. Poundstone called the Public Hearing to order at approximately 7:17 P.M., seated members Ayers, Bayer, Gould, Nabulsi, Pratt, Poundstone, Rudolph, and Wilson, and referred to Connecticut General Statutes Section 8-11, Conflict of Interest. Ms. Poundstone noted that the legal notice and documents had been read for the record at the last meeting.

Present for the applicant was J. Casey Healy of Gregory & Adams. He said the plan is to subdivide the property into two 1-acre lots, to raze the existing residence and to construct two new residences. He said a memo received from the Health Department dated September 18 indicated that the subdivision had been approved for septic feasibility. Engineering plans will be submitted to the Health Department in connection with pulling the building permit.

He said the Field Engineer reviewed the proposed drainage plan and detention system, and, by memo dated August 1st, requested that the engineer of record inspect the

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installation of the drainage facilities and submit a certified As-Built in order to confirm that the work was done in accordance with the plan. In addition, a maintenance schedule is to be submitted to the Town and given to subsequent homeowners. Mr. Healy said a Declaration to maintain the drainage facilities is attached as an exhibit to the maintenance schedule prepared by Doug Divesta, and, if the Commission approves the subdivision, the Declaration will be executed and recorded on the Wilton Land Records.

Mr. Healy said the applicant filed an application for a wetlands permit with the Inland Wetlands Commission, and while it was heard and approved by the Commission, he has not yet received a copy of the resolution.

He said they went over the staff report with staff and have agreed to certain changes, which will be added to the plan, including the provision that there be a clerk of the works who will file biweekly reports with the Commission.

Doug Divesta, Professional Engineer, said soil tests have been performed and suitable septic areas found, which were reviewed by the Health Department and approved feasible for subdivision purposes.

He noted that the property is located on a knoll with a ridge line draining off to the east, south and west. He said, looking at the site as a whole, they took the runoff from the roof areas and driveway and drained those waters into a collection system and down to Coltech chambers where the water will be metered out through a pipe to two Level Spreaders on Lots 1 and 2, where it will infiltrate into the ground. He said if the water does overflow saturation, the runoff will go as a sheet flow towards the south and continue on down its normal pathway.

Mr. Divesta said each of the systems was designed for a 25-year storm, although they looked at the 2-year and 100-year storms and were able to show a reduction in flow from the site based on their drainage calculations in all the storms.

He said a screen of shrubbery and trees will be planted between the two houses, which will provide more evaporation than having all lawn area, but that his calculations did not take into consideration that the area is going to be a meadow and a planting berm, so the numbers are conservative.

In response to several questions by Mr. Bayer, Mr. Divesta explained that, in designing a drainage system, they look at a design point to see how much water is leaving the site both pre and post development, and since a majority of the water in this case flows to the south, they utilized the southern property line as their design point.

He said the water first flows into a detention system, and when that is filled up, it then goes through a perforated pipe into the Level Spreaders, which are trenches filled with

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stone. As the water settles down into the trenches, it infiltrates into the ground, and when the ground is saturated, the water comes up and flows out evenly over a wide area. He said the Level Spreaders are 70' from the property line, which provides a buffer area and allows for more infiltration into the ground as well. He said the drainage system was fully vetted with the Town Sanitarian, who has given his approval of it.

Mr. Rudolph noted that the site plan is one of the busiest he has ever seen, and thinks it would be easier to understand if it were broken down. Ms. Poundstone said she agrees, but thinks they do need to have the elevations shown.

Ms. Gould commented that the map shows that the property is one of the most physically challenged sites she has ever looked at, and wondered, while the applicant indicates they can handle the 25-year storm quite easily, how they are going to handle the runoff for the 50 and 100-year storms. Mr. Healy pointed out that the Field Engineer has signed off on the drainage plan.

Mr. Divesta said, in terms of sedimentation and erosion control, there will be a double row silt fence with hay bales along the critical fill or cut section along the bottom of the septic systems and along the easterly portion of the site. The upper portion will also be ringed with a silt fence, and the temporary construction access to get to the septic and drainage for lot 2 will have a silt fence along that area. Anti tracking pads will be installed at the two drive-in locations and stockpile areas for construction purposes of the two residences.

He said, as requested by staff, the retaining wall has been reduced to 6' and the grading on lot 1 and lot 2 has been revised.

Mr. Bayer asked for clarification of the hydrology report. He said the neighbors on the southeastern side of the property have expressed significant concerns regarding the drainage, and he wants to make sure that the situation is not going to get worse as a result of the subdivision.

Mr. Divesta said the water flows are coming in from offsite down and across the southwesterly portion of the site towards Kent Hill Road. He said the coefficient of runoff for a lawn area versus a meadow area is higher, but he didn't take that into consideration when he did the calculations. He reiterated that his method of calculation is very conservative.

He said it is a very large watershed above the site, so water flows coming through won't change from pre to post development conditions. He said the site is at the top of the watershed, so it is not having any water influencing it to the north. It is also not taking any water in from the east or northwest, and nothing below them is coming into the site, but there is a low spot in the southwest. He said the wetlands area there is a natural

depressed area, which is a natural detention basin with a controlled outlet, being the 12” pipe. He said while the detention system may not have been purposely constructed, it will help the area control the flows coming into the site, along with the proposed detention system and the plantings.

Mr. Divesta said the flows going toward the east have been reduced due to the driveway curbing for the catch basins, and flows going to the southeast have been reduced because water is being collected from the roof areas of the houses that naturally would have drained down that way. He said while the design point for the site is the southern property line, the design point for the neighbor’s property is the culvert on Kent Hill Road, but there will be very little effect, if any, there because the watershed is so large relative to the development.

In response to a question by Mr. Rudolph, Mr. Divesta said the hydrological report was based on Technical Release 20 and Technical Release 55 models, which are governmental programs created in the late 50s/early 60s, and are the standard trade practice used in the field of civil engineering. He said by using a device called a preliminar, they measure the area of the wooded site, the existing pavement and the existing house, and using the coefficient of runoff from the chart, they figure out how much runoff is produced.

Ms. Poundstone inquired whether the Commission was replicating the work that had been done by Inland Wetlands or Conservation or Sanitation. Mr. Divesta said the drainage was discussed at some length by the Inland Wetlands Commission, and the Chairman, who is an engineer, also reviewed the proposal, and since he didn’t ask any questions at the meeting, he assumes he had no problem with it.

Mr. Healy said the IWC has drafted a resolution of approval, but Ms. Sesto had not yet had an opportunity to review it. He said he will submit it to the Commission as soon as it is received.

Mr. Nabulsi noted that the water is being funneled to one particular location based upon the two spreaders, and asked what analysis had been done to determine the ability of the soil to absorb the water.

Mr. Divesta said they have done probably 10 to 15 test holes for septic and drainage purposes and determined that the soils are a silty, sandy loam, which would have a good percolation rate and able to handle the flows.

Mr. Wilson commented that he has the same concern regarding the rate of discharge in that one area and whether it will adversely affect the neighbor directly below the Level Spreaders. He said he knows there is a lot of ledge in that area, and if the 70’ buffer doesn’t perk well, then it is not going to have enough absorption. Mr. Divesta pointed

out that the ledge rock is located more up in the central portion of the site, which is why the septic system is located where it is.

Ms. Poundstone said it is clear that the Commission has many questions about drainage, and that they will want to see the report from the Inland Wetlands Commission.

Mr. Nabulsi said his recollection is that three residences is the maximum permitted off a single driveway, and noted that there are four homes proposed off this driveway. Mr. Healy said four are permitted, and he will find the section and submit it.

Mr. Nabulsi read for the record a letter dated October 10, 2008 from Gregory & Adams.

There being no further questions or comments from the Commissioners or the public, at 8:10 P.M. the Hearing on SUB#899, DeSola, 21 Edith Lane, 2-lot subdivision, was continued until October 27th.

2. SP#343. Sale/Craven-Griffiths, 310 Chestnut Hill Road, Accessory apartment (pool cabana)

Ms. Poundstone called the Public Hearing to order at approximately 8:10 P.M., seated members Ayers, Bayer, Gould, Nabulsi, Pratt, Poundstone, Rudolph, and Wilson, and referred to Connecticut General Statutes Section 8-11, Conflict of Interest. Mr. Nabulsi read the legal notice. He read for the record a Planning & Zoning staff report dated October 1, 2008, and a memo from the Department of Health dated October 9, 2008.

Present for the applicant was Matthew Schoenherr, Professional Architect with Z Architects in Branford, Connecticut. He said the project was designed to be a detached garage for the applicant's custom car collection, and during construction they decided to add the cabana/bathroom, which puts it in the category of an accessory unit. He said there is a stairway along the wall leading up to the upper floor, or the attic space, which is going to be made into a recreation and hobby room, and a convenience half bath is to be installed there, but will not require a special permit as a half bath does not place the area in the definition of an accessory unit. He noted that the proposed cabana/bathroom cannot be accessed from anywhere else within the building, that the only way in and out is through a rear door in the back of the building and is for a future pool access only.

Mr. Schoenherr said sewage disposal for the proposed cabana/bathroom and the attic half bath will be accommodated by the existing septic system, and approval for connection to the existing system was granted by the State of Connecticut Department of Public Health.

He pointed to the existing residence and the newly constructed garage/barn on the site plan and said the site slopes away and exposes the lower level of the garage. On the lower level is a very large unfinished basement with a single door at the corner of the

building, and that is the proposed cabana changing room and full bathroom for which the applicant is seeking the special permit. The pool is a future add-on, and the applicant is simply looking for a changing room and bathroom for his future pool. He said no one is intending to live there.

Mr. Bayer said they have to look at not only what the current owner's proposed use is, but what the potential for future use is, and that is why the full bath becomes important. He said the Commission has been very consistent in their interpretation of the regulations, that if someone wants a full bath in essentially a separate structure other than the main residence, it is considered an accessory dwelling unit and has to meet the requirements of Section 29-4.d.1. He asked how the applicant meets the requirements of the regulation.

Ms. White said while it wasn't spelled out specifically in the language of the regulation, Mr. Nerney and she looked at the calculations based on the information provided in Form B, and looking at the existing square footage and the proposed square footage, they sort of backed into it. She said the applicant is not proposing to use it to its full potential of an accessory dwelling unit, and the thought was that perhaps the Commission would consider a condition that if a kitchen were added later, that the applicant would be required to come back to the Commission for approval.

Mr. Bayer said it seems to him that if a bathroom is being put in, then the entire structure becomes an accessory dwelling unit, whether or not the remainder of the structure is developed.

Mr. Schoenherr noted that, while he understands Mr. Bayer's point, he does not think it is relevant in this case as their application is for the one area alone. He said putting a bathroom in the upper floor would not make that area an accessory dwelling unit, because it wouldn't be code compliant as a residence. He said there would have to be two means of egress, one leading directly outside and not down into a garage space, so by its very nature, it cannot be used as an accessory dwelling unit.

Mr. Bayer said he would like the applicant to show that the application meets the requirements of an accessory dwelling unit, and if he is excluding certain areas, he would like an explanation as to why he thinks they should be excluded.

In response to a question by Mr. Wilson, Mr. Schoenherr said that the walls of the bathroom area are shown as 5/8th inch thick and was just overkill to make it a one hour rated wall for fire protection. He noted that from the basement area you can go up to the garage floor, and from the garage floor you can go upstairs to the recreation room, so there is a way to circulate up and down throughout the building, and they thought it important to have the solid wall and not have a passageway or an extra doorway, but only one exit in and out for this little area in order to completely separate it from the rest of the structure.

Ms. Pratt asked if a permit would be required to cut a doorway in that wall, and Ms. White said it would, because that would change the nature of the entire structure.

There being no further questions or comments from the Commissioners or the public, at 8:37 P.M. the Hearing on SP#343. Sale/Craven-Griffiths, 310 Chestnut Hill Road, Accessory apartment (pool cabana) was continued until October 27th.

REGULAR MEETING

**A. CALL TO ORDER
SEATING OF MEMBERS**

Ms. Poundstone called the Regular Meeting to order at approximately 8:38 P.M., and seated members Ayers, Bayer, Gould, Nabulsi, Poundstone, Pratt, Rudolph and Wilson, and referred to Connecticut General Statutes Section 8-11, Conflict of Interest.

B. APPROVAL OF MINUTES

1. September 22, 2008 – Regular Meeting

Mr. Wilson noted that he is listed as being present for the opening of the hearing for Foster, yet he was seated partway through.

MOTION was made by Mr. Bayer, seconded by Mr. Wilson, and carried (7-1 with Ms. Pratt abstaining) to approve the minutes of September 22, 2008 as amended.

C. SITE DEVELOPMENT PLAN REVIEW

D. ACCEPTANCE OF NEW APPLICATIONS

1. SP#178G, Old Post Office Square, LLC, 10 Center S, Retail Photo Shop.

MOTION was made by Mr. Nabulsi , seconded by Mr. Wilson , and passed (8-0) to schedule the hearing for November 10.

E. PENDING APPLICATIONS

1. SP#341, Foster, 141 Nod Hill Road, To vary front setbacks for architecturally/historically significant structure pursuant to Section 29.5.C.8 of zoning regulations

Paragraph 9 will be amended to read “Any *substantial* deviation”, etc.

Paragraph 5 will be amended to read “proposed building additions *and existing structure* cannot be expanded”, etc.

MOTION was made by Ms. Gould, seconded by Mr. Nabulsi , and passed (6-0-2, with Ms. Ayers and Ms. Pratt abstaining) to adopt Resolution #1008-16P dated October 14, 2008 as amended.

2. SUB#899, DeSola, 21 Edith Lane, 2-lot subdivision

(Continued to October 27th)

3. SP#343, Sale/Craven-Griffiths, 310 Chestnut Hill Road, Accessory apartment (pool cabana)

(Continued to October 27th)

F. COMMUNICATIONS

1. Discussion pertaining to the appointment of a Village District consultant

Ms. Poundstone reported that Commissioner Ayers, Commissioner Gould and she have put together virtually a complete board and should be able to report on it at the next meeting.

2. Wilton Historic Commission, Recommendations/comments regarding proposed formation of Historic District #8 (Cannondale Neighborhood)

Ms. Poundstone said she found the report fascinating. Mr. Wilson commented that it is an excellent report, and the Commission is indebted to the people that put it together.

Mr. Bayer asked about the cutout on the map. Carol Russell, Chairman of the Historic District Commission, said one of the requirements for acceptance by the State is that the properties within the District boundaries be contiguous, and they tried to include just what they would call historic homes, and there were several homes in the cutout part that didn't have much to do with the history of the District and the consultant at the State suggested they draw the boundaries. Mr. Wilson suggested that it might be helpful to draw in Route 7 on the map.

In response to a question by Mr. Bayer, Ms. Russell pointed out properties 1 and 2 on either side of Cannon Road, and 21, 22, 23, 24 and 25, which she said all border Route 7. She noted that their statutes require them to present the plan to the local Planning and Zoning Board for comment, and if that Board has any corrections or differences with the

report, then they are to take that into consideration.

MOTION was made by Ms. Gould, seconded by Mr. Wilson, and passed (8-0) that the P&Z Commission commend the Wilton Historic Commission and add its voice of approval when the report goes before the Board of Selectmen for further action and to the neighborhoods for a vote.

3. Wilton Plaza Condominium, 11 Danbury Road, Communication concerning proposed building repairs.

Joe Cugno, Architect, said Wilton Plaza is a series of 7 buildings that are in condominium ownership, and that Mr. Hashemi owns 4 out of the 7 buildings. He said when one of his buildings burned down at 19 Danbury Road a few years ago, it was reconstructed and made to look much different. The floor height was changed from 7 ½ ‘ to 10’, and the second floor from 6’ to 8’. He said the building at 11 Danbury Road will be rebuilt exactly the same in terms of length, width and height.

Mr. Cugno explained that the façade of the building is nearly collapsing, and the ridge has separated so that there is about a 6” gap where the rafters are actually pulling apart. The south wall is completely deteriorated and is leaning in on the building, and there is significant water damage. He said the building has been unoccupied for approximately two years.

He said they are hoping to get a waiver from Section 29-4F.b and do a standard zoning application and building application as they did with the previous building. He said they are not looking to add any additional square footage, that the only change will be to add a handicap ramp to the front of the building.

In response to a question by Mr. Bayer, Mr. Cugno said they submitted a DEP application for 19 Danbury Road, and he is assuming they will have to do the same for this building because it is within 100’ of a watercourse.

Ms. Gould asked if they are proposing any improvements of the parking lot and the curb cuts. Mr. Cugno said his client doesn’t own the property where the curb cuts are, he only owns the building, so they are limited to what they can actually do.

He said he has had many conversations with the Town over the last two years, and Mr. Nerney felt the most appropriate way to handle the application was by waiving the site plan review process. He said they are dealing with it as an urgent repair, and noted that there seems to be an inconsistency in the way the Commission is viewing this application versus the previous one where waiving the site plan review wasn’t an issue. He said the previous project was much more extensive, because they razed the building, moved the geometry around, and added ramps. Ms. White said it was Mr. Nerney’s feeling that

because the building is not being enlarged in any way, that it might be exempt from having to go before the Commission, but he wanted the Commission to make that decision.

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Mr. Nabulsi said he doesn't think the proposal meets many of the regulations, and noted that once the project is approved and built, it is going to be there for a long while, and the Commission would not be performing the role it should be performing if it didn't go through site review.

Mr. Bayer said, while it may be an emergency situation, there has been a chronic deterioration of the building and the applicant has had two years to do something. Mr. Cugno said, unfortunately, it has reached its boiling point, and there is a very good chance the building could collapse in the snow if not repaired.

Ms. Gould noted that it is a highly unusual property in ownership system, and thinks the Commission needs to get some legal advice on how to deal with the site plan issues under the ownership as it exists before it proceeds. Ms. Poundstone suggested that they get the legal opinion and talk more about the application on October 27th.

Mr. Nabulsi said he is personally in favor of calling the question as he is on the side of not waiving site plan review and the opinion is not going to influence his view. Ms. Ayers said she is in agreement. Mr. Wilson said he would prefer holding off on a vote until they get some comment from counsel.

Mr. Bayer said he thinks it is a bad idea to waive site plan reviews on properties along Route 7. He said if the majority of the Commissioners also feel that way, they should vote on it and let the applicant get on with whatever he needs to do rather than waste another month waiting for a legal opinion.

Mr. Wilson commented that if the building is going to be repaired, it should be good for another 80 years, and he would feel a lot better if they had some site review so they can put their two cents in.

Mr. Cugno said there are three other owners who are very much against ever doing anything with their buildings, whereas Mr. Hashemi's goal is to repair his buildings one at a time, but not at the cost of updating the entire property at the same time. He said he is very curious on what the legal interpretation will be and would like to know that first before the Commission votes.

Mr. Bayer said there are two questions; one, does the Commission have the power to require site plan review, which he thinks unquestionably they do have, and, second, what do they have the right to require as part of the approval.

Ms. Poundstone said they hope to have the opinion by the 27th.

There being no further comments, at 9:17 P.M. the matter was continued to October 27.

4. Approval of 2009 PZC Meeting Schedule.

Ms. Poundstone noted they have a draft of their regular meeting schedule for 2009, which does not include Special Meetings in relation to the Plan of Conservation and Development, etc. At the suggestion of Mr. Nabulsi, the starting time of the meetings was changed to 7:15 P.M.

MOTION was made by Mr. Wilson, seconded by Mr. Nabulsi, and passed (8-0) that the schedule as presented be adopted.

G. REPORT FROM CHAIRMAN

Ms. Poundstone noted that the Commission received a communication from Clarissa Cannavino regarding the undersized lots, etc, and that she wanted to make sure it was called to the Commissioners' attention and that the minutes reflect that, although no action is required at this time.

H. REPORT FROM PLANNER

I. FUTURE AGENDA ITEMS

- 1. SDP, AvalonBay Communities, Inc., 116 Danbury Road, Modification to approved SDP to relocate emergency accessway [Discussion Oct. 27, 2008]**

J. ADJOURNMENT

MOTION was made by Mr. Wilson, seconded by r. Bayer, and carried unanimously (8-0) to adjourn at 9:20 P.M.

Respectfully submitted,

Karen Pacchiana

Recording Secretary