

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

WILTON PLANNING & ZONING COMMISSION MINUTES NOVEMBER 22, 2010 REGULAR MEETING

PRESENT: Chairwoman Sally Poundstone, Vice Chairman John Wilson, Secretary Doug Bayer, Commissioners Alice Ayers, Marilyn Gould, Chris Hulse, Bas Nabulsi, Dona Pratt, and Michael Rudolph

ABSENT:

ALSO

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

PUBLIC HEARINGS

- 1. SP#353, Polito/ROPO, LLC, 490 Danbury Road, To allow professional offices for non-resident occupants and residential apartments in Building #1 and to allow for adaptive use in Building #2**

Ms. Poundstone called the Public Hearing to order at 7:15 P.M., seated members Ayers, Bayer, Gould, Hulse, Nabulsi, Poundstone, Pratt, Rudolph, and Wilson, and referred to Connecticut General Statutes Section 8-11, Conflict of Interest. She noted that the hearing was continued from a previous date.

Present was J. Casey Healy, attorney on behalf of the applicant.

Mr. Healy referenced a list of properties (submitted into the record on October 25, 2010) with more than one principal building, and which principal building or buildings also house apartments, noting that the Commission had requested additional information on whether the listed properties had gone through a formal process of approval through the Planning and Zoning Commission. Pursuant to that request, he submitted into the record a table listing the referenced properties on Danbury Road and Olmstead Hill Road, along with the number of principal buildings, apartments and resolutions of approval for each. He briefly reviewed the submitted table.

Mr. Wilson felt that the hardship was self-created, referring to the fact that the parcel already had a house on it when the applicant built a large new structure on the site for which relief is now being sought. He stated that the properties cited in the chart as supporting examples all existed prior to zoning regulations.

Mr. Healy noted that since the Commission had a problem with the previous application, the applicant reapplied under Sections 29-5.C.6 and 29-5.C.5 of zoning regulations. He stated that there is nothing in the regulations indicating that an applicant cannot apply for two separate Special Permits on one property.

Mr. Bayer asked if there is any other parcel in Town that is directly analogous to the subject situation, i.e. where a new residence was subsequently created on a property. Mr. Healy cited Marvin Tavern (located on the Wilton H.S. site) as a similar example, noting that it was first approved for offices but then came back to the Commission for approval of an apartment. Referencing the Wilton H.S. site, Ms. Gould noted that the small yellow house on the northern portion of the site was originally a separate parcel which the Town subsequently took over when the owner died. She stated that Marvin Tavern and the small yellow house were never dealt with as two principal structures on the same property. Referencing 414 Olmstead Hill Road, Ms. Gould noted that while there is currently an apartment in the blacksmith's shop, the two apartments listed as part of the 1850s house no longer exist and never co-existed with the blacksmith's apartment (as the 1850s house was subsequently torn down). She concluded by noting that all of the houses referenced on the submitted table were historic to begin with, whereas the subject structure is only 5-6 years old.

Mr. Healy noted that the applicant is not trying to qualify for adaptive use of the new structure. He stated that the only issue is whether the small historic structure may continue to house apartments and thus be saved. He noted for the record that the concept of hardship does not apply to Planning and Zoning Commission applications but is in fact a Zoning Board of Appeals concept. In response to a request from Mr. Rudolph for clarification of the applicant's position, Mr. Healy confirmed his belief that the age/newness of the second structure is not relevant to the subject application, noting that the applicant must only confirm that it was used residentially for at least the past 3 years to qualify under Section 29-5.C.6 of zoning regulations as cited in the application.

Mr. Bayer noted that the applicant is essentially applying for two Special Permits under two separate sections of zoning regulations, where each section requires that the referenced structure is considered a principal building on the site. In light of the examples submitted by the applicant of sites with more than one principal building on one parcel, Mr. Bayer asked if it was the applicant's position that such a situation is permitted because these submitted examples evidence how the Commission has interpreted its regulations in that regard in the past. Mr. Healy confirmed that position, noting further

that the applicant could not find anything in the zoning regulations prohibiting multiple principal buildings on one parcel. Although Mr. Bayer indicated that he had not yet formed an opinion on the matter, he differentiated between an existing residence which continued to exist over a period of time as other buildings/structures were brought to the site, as opposed to a structure that was approved as a residence after there were building(s) already on a site and therefore would have had to have been found to be a principal residence. Mr. Healy felt that the examples submitted by the applicant prove that multiple principal buildings are permitted to exist on one parcel and, once that is established/agreed upon, two separate sections in the regulations (one pertaining to adaptive use and the other to professional offices for non-resident occupants) permit apartments in such principal buildings.

Mr. Nabulsi noted for the record that Town Planner Nerney had previously encouraged Commissioners to give consideration to Section 29-10.A.9 of zoning regulations (Special Permit Standards for Approval) in connection with the subject application. He advised the applicant that, in light of that recommendation, he would be focusing on that section of the regulations as part of his application review process for the next meeting.

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 7:35 P.M. the Public Hearing was continued until December 13, 2010. Mr. Healy agreed to provide the Commission with a letter granting an extension of the time required to close the hearing.

2. CHZ#10325, TBS Partners, LLC, 251, 255, 257, 259 Danbury Road, Request to change zone from R-1A and GB to DRB

Ms. Poundstone called the Public Hearing to order at approximately 7:35 P.M., seated members Ayers, Bayer, Gould, Hulse, Nabulsi, Poundstone, Pratt, Rudolph, and Wilson, and referred to Connecticut General Statutes Section 8-11, Conflict of Interest. Mr. Bayer read the legal notice dated November 9, 2010; and he referenced a memorandum dated November 1, 2010 from Michael Ahern to Daphne White, and a 2-page Planning and Zoning Staff Report dated November 16, 2010, with two attached maps.

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

Mr. O'Brien reviewed details of the application. He explained that the subject site encompasses four parcels, of which the three front parcels are owned by the State of Connecticut and the remaining rear ½-acre parcel was recently purchased by the applicant, TBS Partners, LLC. He stated that the applicant is seeking to change the zone

of the properties (which are currently split between Residential (R-1A) and General Business) to the Design Retail Business zone. He explained further that the proposed rezoning would allow the subject site to be compatible with DRB properties located to the north and south. He reminded the Commission that Mr. Sadegi (owner of the parcel to the north) had originally applied for a change of zone for his property from R-1A to GB several years ago, which was denied, but then subsequently approved by the Commission for a zone change to DRB which the Commission felt was more appropriate, given the location of the site and the zoning of neighboring parcels.

In response to questions from the Commission, Mr. O'Brien stated that TBS Partners is the same group that owns the former Lynch property at 84 Danbury Road, and he indicated that they might possibly put some offices in a small building on the subject site.

Mr. Rudolph asked whether the applicant has the authority to request a zone change on the State-owned portion of the subject site. Mr. O'Brien stated that he had consulted with Town Planner Nerney prior to submitting the subject application and had confirmed that the applicant does have such authority by State statute. He explained that the State has been notified and has requested \$500 from the applicant to conduct an appraisal in order to determine an appropriate value for the land in question.

Ms. Poundstone requested some documentation from the applicant to confirm the applicant's authority to bring such an application before the Commission.

A question arose about the historic value of the house on the subject site and although the building dates back to the 1920s, Ms. Gould noted that it was never designated an historic structure.

Mr. Nabulsi questioned the appropriateness of the zone change request, noting that the acreage of the four subject lots is .964 acres in total, whereas the minimum lot size currently required for the DRB zone is one acre. Mr. O'Brien noted for the record that Mr. Sadegi's property to the north, which is less than one acre, was approved by the Commission several years ago for rezoning to DRB zone. He stated that the Commission has the discretion/authority to approve such a zone change.

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

John O'Byrne, 18 Crown Pond Lane, stated that he is President of the Crown Pond Homeowners' Association. He indicated that he wished to postpone comments on the application until the next meeting.

There being no further comments from the Commission or the public, at 7:55 P.M. the Public Hearing was continued until December 13, 2010.

3. SUB#904, Vollmer, 137 Olmstead Hill Road, 4-lot subdivision

Ms. Poundstone called the Public Hearing to order at 7:55 P.M., seated members Ayers, Bayer, Gould, Hulse, Nabulsi, Poundstone, Pratt, Rudolph, and Wilson, and referred to Connecticut General Statutes Section 8-11, Conflict of Interest. Mr. Bayer read the legal notice dated November 9, 2010 and he referenced a memorandum dated October 13, 2010 from Michael Ahern to Pat Sesto; an emailed memorandum dated November 1, 2010 from Fire Marshal David Kohn to Daphne White; a memorandum dated November 12, 2010 from Jennifer M. Zbell to Bob Nerney/Daphne White; a 3-page Planning and Zoning Staff Report dated November 15, 2010; a letter dated November 22, 2010 from Conservation Commission to Planning and Zoning Commission; and a letter dated November 22, 2010 from Inland Wetlands Commission to Planning and Zoning Commission.

Present was J. Casey Healy, attorney; and Holt McChord, engineer.

Mr. Healy reviewed details of the application, noting that the applicant is proposing to subdivide 11+ acres in an R-2A residential zone into four building lots, with a fifth parcel consisting of 1.516+/- acres dedicated to open space. He referenced a former residence, which has been removed, and an existing barn/garage on the site, noting that the existing driveway will form a common driveway for the four proposed parcels. He also noted that Inland Wetlands Commission has approved the application.

Mr. McChord reviewed existing conditions, noting that there will be two front parcels and two rear parcels and the proposed driveway will follow the existing driveway as closely as possible. He explained that a fire cistern is proposed at the front portion of the driveway, but if sprinklers are installed in the residences then a cistern will not be installed. He reviewed proposed drainage for the site, including the use of rain gardens, noting that site runoff will be controlled to pre-development peak flow levels, and as much vegetation as possible will be maintained on the site.

Mr. Healy submitted a 7-page letter dated November 22, 2010 in response to the Planning and Zoning Commission Staff Report, with attached subdivision plan, existing conditions plan, site development plan, construction notes and details, septic system notes and details, draft declaration of driveway and utility easements and maintenance agreement, draft grant of fire cistern easement, draft declaration of open space restrictions and draft form of rain garden landscape maintenance agreement.

In response to questions from the Commission, Mr. Healy explained that the proposed open space area is contiguous to a parcel on Middlebrook Farm Road owned by the Land Trust. He explained further that the owner of lot 3 would own the open space parcel and would be responsible for maintenance of the pond. He referenced letters submitted by the

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Conservation and Inland Wetlands Commissions which expressed concerns regarding the open space configuration and its intended ownership, noting that the applicant had just received the letters today and had not yet had an opportunity to respond to the issues raised.

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

Dave Hapke, 121 Whipstick Road, Conservation Commission Liaison, expressed the views of the Conservation Commission that the subject site might be the perfect location for a conservation subdivision with closer clustered homes and a greater amount of open space. He urged reconsideration of the intended open space ownership by lot #3, as well as reconfiguration of the open space parcel so as to provide a contiguous run of open space connecting easterly to Wren Thicket.

Referencing the proposed use of rain gardens, Mr. Nabulsi recalled that they were approved in connection with another development in Town and at that time the Commission had discussed collecting information on how well they actually perform. To the extent that it is possible to obtain such data, he felt that it would be valuable towards determining how effective the concept has been. Ms. Poundstone concurred, noting that it would also be helpful to obtain information regarding ongoing maintenance of same. Mr. Healy noted that there will be a maintenance agreement requiring maintenance by the home owner. Ms. White indicated that it might be too early to have received such data from the Sturges Ridge subdivision where rain gardens were approved and are currently being utilized.

There being no further comments from the Commission or the public, at 8:12 P.M. the Public Hearing was continued until December 13, 2010.

REGULAR MEETING

A. Ms. Poundstone called the Regular Meeting to order at 8:12 P.M., seated members Ayers, Bayer, Gould, Hulse, Nabulsi, Poundstone, Pratt, Rudolph, and Wilson, and referred to Connecticut General Statutes Section 8-11, Conflict of Interest.

B. APPROVAL OF MINUTES

1. November 8, 2010 – Regular Meeting

MOTION was made by Mr. Wilson, seconded by Mr. Bayer, and carried (7-0-2) to approve the minutes of November 8, 2010 as drafted. Commissioners Ayers and Pratt abstained.

C. SITE DEVELOPMENT PLAN REVIEW

D. ACCEPTANCE OF NEW APPLICATIONS

1. REG#10326, Amendments to Sections 29-8.A.2.b & 29-8.A.7.c pertaining to temporary signage regulations

MOTION was made by Ms. Poundstone, seconded by Mr. Wilson, and carried unanimously (9-0) to accept the application and set a public hearing date for December 13, 2010.

Ms. Poundstone scrambled the agenda to hear Communications Item #1 prior to Pending Applications.

F. COMMUNICATIONS

1. Georgetown Community Association (Pat Hegnauer), Winter indoor farmers' market at the Gilbert and Bennett School

Present were Pat Hegnauer and Gail Brookover on behalf of the Georgetown Community Association.

Ms. Hegnauer clarified some issues outstanding from the last meeting. She explained that winter produce would all be Connecticut-grown in an effort to support Connecticut farmers. Market items would include not only greenhouse-grown produce, but also baked goods, jams, honeys, meat products, and other similar type items. She stated that the Wilton Health Department would be provided with all necessary licenses/certifications in that regard. She felt that the subject site would be a great location for a winter farmers' market, with plenty of parking available, and she noted again that all neighbors in the area support the proposal.

In response to questions from the Commission, Ms. Brookover emphasized that this would not be a flea market, but might include hand-made or farm-made goods such as soaps, wools, etc. Addressing traffic/parking concerns, she explained that patrons typically do not remain at the site a long time (they tend to move in and out rather quickly) and she noted that the market would only be open for a period of four hours. Ms. Hegnauer felt that there would never be greater than 20-30 people at the market at any given time. Ms. Brookover confirmed that nothing pertaining to the farmers' market would be stored at the site.

Mr. Bayer referred to Section 29-4.D.7 of zoning regulations (Special Events), citing in particular that “a temporary permit shall be valid for a specified period not to exceed ten consecutive days”. He questioned how the subject application could be addressed in light of the aforementioned zoning regulations pertaining to Special Event permits. Ms. White stated that this was also the concern of Town Planner Nerney when he was first approached by the applicants.

Ms. Poundstone noted for the record that Ambler Farm’s annual Christmas tree/wreath sale qualifies under the Special Event regulations since the Farm is actually issued two such 10 consecutive-day permits for the event, which the regulations allow within any twelve-month period.

The example of the Summer farmers’ market at Wilton Library was raised. Mr. Nabulsi stated that it was his understanding that if such an activity is ancillary to a commercial sort of enterprise then a special event permit is not required.

Ms. Gould felt that approval of the subject application would likely require a change to Special Event regulations or, alternatively, perhaps the Georgetown Community Association would need to acquire permission to manage the Gilbert and Bennett School, similar to the Garden Club’s affiliation with Old Town Hall, whereby certain types of activities could then be planned to help fund the building as part of the Association’s management function. Ms. Hegnauer explained that the Association currently has permission to use the building but not to manage it, although it is their understanding from First Selectman Brennan that a management agreement has been written, which the Association has not yet seen. Ms. Hegnauer explained further that the Association carries its own insurance and maintains the building with no cost to the Town, and the Fire Marshal periodically inspects the building.

It was the consensus of the Commission that the matter should be referred to Town Counsel for further guidance/recommendations.

E. PENDING APPLICATIONS

1. SP#190I, Teachers Insurance and Annuity Association of America, 10 Westport Road, To allow for the construction of 197 additional parking spaces

Ms. Poundstone advised Commissioners that the Inland Wetlands Commission will be rendering a final decision on the subject application on December 9th and she noted that they appear to be leaning towards an approval of the second phase parking only. She noted further that the Planning and Zoning Commission has 35 days from the Inland Wetlands Commission approval date to render its decision on the application.

2. **SP#353, Polito/ROPO, LLC, 490 Danbury Road, To allow professional offices for non-resident occupants and residential apartments in Building #1 and to allow for adaptive use in Building #2**

Tabled.

3. **REG#10323, Gregory & Adams, To amend Section 29-4.D.1.g, regarding minimum lot size and yard requirements in connection with accessory dwelling units in R-2A single family residential districts for lots that were created by way of approved subdivisions in which undersized lots were created due to lot averaging**

The Commission reviewed draft resolution #1110-5REG.

Mr. Bayer expressed concerns with the application, noting that while he could agree in theory with the proposed amendment, he felt that there were other situations that could arise which are not adequately addressed in the proposed text, citing the example of an undersized 1.88-acre lot that was not created by way of lot averaging.

Mr. Wilson stated that he would like to bracket the parameters somewhat more specifically if the Commission did, in fact, decide to approve the resolution.

Mr. Rudolph concurred, noting that an undersized lot could have been created for some other reason at a time when lot averaging happened to be in effect. Mr. Rudolph suggested some text modifications to the amendment to specifically stipulate that the lot in question shall have been created by way of lot averaging and must also be at least 1.8 acres in size.

MOTION was made by Mr. Wilson, seconded by Mr. Hulse, and carried (7-2-0) to adopt as amended Resolution **#1110-5REG** for application **REG#10323**, effective December 14, 2010. Commissioners Bayer and Nabulsi opposed. Mr. Nabulsi stated that he felt ill-equipped to vote on the application this evening, noting that he was not sure that the application, as amended, achieves what he believes is the desired outcome. Ms. Ayers noted for the record that she had listened to the recording of the meeting and had read the minutes.

WHEREAS, the Wilton Planning and Zoning Commission accepted application #10323 for amendments to Sections 29-4.D.1.g. of the Zoning Regulations of the Town of Wilton pertaining accessory dwelling units in single family residences; and

WHEREAS, the Planning and Zoning Commission conducted a public hearing on October 12, 2010,

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November 8, 2010 and November 22, 2010 to receive comment from the public and has fully considered all evidence submitted at said hearing; and

WHEREAS, the Planning and Zoning Commission has determined that the amendments are consistent with the 2010 Plan of Conservation and Development and

WHEREAS, the proposed regulation is consistent with advancing initiatives to provide a wide array of housing options and opportunities for the residents of Wilton;

NOW THEREFORE BE IT RESOLVED that the Wilton Planning and Zoning Commission **APPROVES** application #10323 effective December 14, 2010 as follows:

“Minimum Lot Size and Yard Requirements: Accessory units shall be located only in structures on lots which are in conformance with minimum area and dimensional requirements of the zoning district within which they are located with the exception that accessory dwelling units may be located on any undersized lot within a 2-acre zone that was approved for subdivision or re-subdivision by the Planning and Zoning Commission at a time when lot averaging was permitted under the zoning regulations, and the lot was created as a result of lot averaging. Accessory units shall not be permitted by action of the Zoning Board of Appeals. The structure which contains the principal accessory unit shall meet all current applicable setback, coverage and bulk requirements. Said exception shall not apply to conservation subdivisions or undersized lots created by way of variance. The undersized lot must be at least 1.8 acres”.

- End Resolution -

4. CHZ#10325, TBS Partners, LLC, 251, 255, 257, 259 Danbury Road, Request to change zone from R-1A and GB to DRB

Tabled.

5. SUB#904, Vollmer, 137 Olmstead Hill Road, 4-lot subdivision

Tabled.

F. COMMUNICATIONS

2. Greyrock of Wilton LLC, 127 River Road, Proposed zoning amendment pertaining to affordable housing in DRD, THRD and CRA-10 multi-family districts

The Commission discussed a letter dated November 10, 2010 from Jerry Effren (Greyrock of Wilton, LLC) to Sally Poundstone, requesting Commission consideration of a possible amendment to zoning regulations pertaining to affordable housing requirements. In the aforementioned communication, Mr. Effren (developer of a 20-home detached cluster development at 127 River Road which was approved by the Commission but put on hold by the developer due to the current economic situation) requested an opinion from the Commission regarding the feasibility of eliminating the affordable housing component of the development plan so that work can be expedited and actual construction begun. In his letter he explained that the affordable housing component greatly inhibits his ability to “get this project started”.

The Commission briefly discussed the applicant’s request. It was the general consensus of the Commission that it is not in a position to issue advisory opinions or make recommendations in matters of this nature, although several Commissioners felt that the affordable housing component was a very integral part of the application/hearing process and figured significantly in the review/final approval of the plans.

G. REPORT FROM CHAIRMAN

Ms. Poundstone advised Commissioners about a pending proposal from Athlete’s Foot for tenant space in a portion of what was previously the Blue Tulip/Sweezy’s site at 5 River Road in Wilton Center. She explained that the application, which involves a new door in the façade and some signage issues, was referred to the Village District Consultant Committee. She noted that the Committee raised some issues with the proposed plans and will be meeting again with the applicant on December 9, 2010.

Mr. Bayer questioned whether such modifications could be implemented, particularly from a parking perspective, without requiring the applicant to come back before the Commission. Ms. Poundstone explained that the application was currently under review by the Village District Consultant Committee with oversight by staff, and she indicated that she would keep Commissioners advised as matters progressed.

H. REPORT FROM PLANNER

I. FUTURE AGENDA ITEMS

- 1. SP#355, Enterprises of Wilton, LLC, 5 River Road, Fast food store without drive-in facility [P.H. December 13, 2010]**
- 2. SP#356, Kent District Spirits, LLC, Units #11 and #12, 39 Danbury Road, Operation of a package store [P.H. December 13, 2010]**

J. ADJOURNMENT

MOTION was made by Ms. Gould, seconded by Mr. Wilson, and carried unanimously (9-0) to adjourn at 9:05 P.M.

Respectfully submitted,

Lorraine Russo
Recording Secretary