

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

WILTON PLANNING & ZONING COMMISSION MINUTES APRIL 25, 2011 REGULAR MEETING

PRESENT: Chairwoman Sally Poundstone, Secretary Doug Bayer, Commissioners John Gardiner, Marilyn Gould, Chris Hulse, Bas Nabulsi, Dona Pratt, and Michael Rudolph

ABSENT: John Wilson (notified intended absence)

ALSO

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

PUBLIC HEARINGS

Ms. Poundstone advised Commissioners and members of the audience that a request was received late in the day from Attorney Healy on behalf of Marc Gueron to continue applications CHZ#11329 and REG#11330 until May 23, 2011.

1. SP#360, Plan B Retail design, 920 Danbury Road, Expand existing shopping center

Ms. Poundstone called the Public Hearing to order at 7:16 P.M., seated members Bayer, Gardiner, Gould, Hulse, Nabulsi, Poundstone, Pratt, and Rudolph, and referred to Connecticut General Statutes Section 8-11, Conflict of Interest. She noted that the hearing had been continued from a previous date. Mr. Bayer referred for the record to a memorandum dated April 18, 2010 [sic] from Michael Ahern to Daphne White; and an amended Special Permit application and Form B, received April 20, 2011, with attached documents, renderings and plans.

Present was Chuck Bomely, Plan B Retail Design, on behalf of the applicant.

Mr. Bomely explained that the recently submitted Special Permit application and Form B documents were submitted to address the issue of the 30,000 square-foot cap on the supermarket entity itself. In response to questions from Mr. Bayer regarding the amended square footage numbers on Form B, Mr. Bomely confirmed that the numbers reflected just the Caraluzzi's structure and not the entire shopping complex. He also confirmed that the proposed building addition size had not changed since the last meeting. He explained that he had just modified Form B numbers to reflect the supermarket alone since he was under the impression that this was what the Commission had requested he provide.

In response to concerns raised by Mr. Bayer regarding the aforementioned submission, Mr. Nerney acknowledged that calculations on Form B should reflect the entire building for purposes of the record, but he felt that this was a technicality that could be amended later by the applicant. He suggested that Form B reflect the entire building with an asterisked notation indicating that no tenant shall occupy greater than 30,000 square feet.

The issue of mezzanine space was raised since the applicant indicated it was not counting mezzanine square footage toward Caraluzzi's 30,000 square foot maximum. Mr. Nerney explained that originally the area currently defined as mezzanine space was proposed as a separate floor; however, it was later modified/re-characterized by the applicant as mezzanine space which, according to Section 505.1 of the International Building Code, does not count as a floor but rather is considered as a portion of the floor below. In response to a question from Mr. Rudolph, Mr. Nerney confirmed that this is a recognized Building Code standard that applies not only to Wilton but throughout the country. He added that a logical argument could be made that it is not considered floor space.

Ms. Pratt referenced Section 505.1 of the International Building Code (submitted into the record by the applicant) which states that "mezzanines shall not contribute to either the building area or number of stories". She felt that an argument could be made that building area, as referenced in the Code, is not necessarily the same as floor area. Mr. Nerney read the definition of "Gross Floor Area (GFA)" in Section 29-2.B of Wilton zoning regulations noting that GFA includes "the sum of the gross horizontal areas of every floor of a building . . ." He felt that since the definition mentions every floor of a building, then in order to be counted as floor area it has to constitute a floor, which the mezzanine space does not. In response to a further question from Ms. Pratt, Mr. Nerney stated that while mezzanine space shall be considered (per the Building Code) to be a portion of the floor below, it has always been his understanding/interpretation that mezzanine space is not added to the gross floor area of the floor below.

In response to a question from Mr. Bayer as to whether there is any limitation on the amount of space that can qualify under the definition of "mezzanine", Mr. Bomely explained that the aggregate area of all mezzanine spaces cannot exceed one-third of the

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area of the room or space in which they are located, and he added that “accessory use” is key to the definition of mezzanines, noting that it cannot be space into which the public is invited. As a result, selling Hallmark cards (a hypothetical example posed by Mr. Nabulsi) would not be a permitted use for mezzanine space.

In response to a question from Ms. Pratt, Mr. Bomely stated that the mezzanine area is approximately 680 square feet, of which approximately two-thirds is enclosed.

Ms. Poundstone referenced the applicant’s recently submitted Form B document, noting that the proposed additional GFA and building footprint is listed as 4544 square feet, whereas the originally submitted Form B had indicated only 3350 square feet. Mr. Bomely addressed the 4,544 square-foot number, noting that it is comprised of 2,340 square feet related to the acquired stove shop space, plus 2,204 square feet related to the proposed building addition. He explained again that the new Form B numbers were calculated based solely on the representation of the supermarket space alone. He also confirmed that the number of stories had been reduced from two to one since the mezzanine space is not counted as a floor.

In response to questions from Mr. Rudolph regarding the calculation of the refrigeration unit square footage, Mr. Bomely explained that the 736 square feet of refrigeration space comply with Sections 29-6.B.4.b and 29-6.B.5.b of zoning regulations for outside storage (i.e. that it be limited to a maximum of 25% of the lot area and to 10% of the building area). He explained that the applicant considers such storage space as accessory and not subject to the 30,000 square foot maximum for the supermarket entity itself.

Mr. Rudolph questioned the applicant’s categorization of such space as outside storage, given that it is enclosed by four walls and a roof, and is accessed via the interior of the supermarket. Ms. Gould noted that such units were not included in square footage calculations for the Village Market and for Stop and Shop in Wilton Center.

Mr. Nerney explained the applicant’s contention that this is essentially a mechanical/equipment feature, citing the example of Zeytinia’s Market which was required to construct an enclosure around its condenser units to muffle noise emanating from the equipment.

In response to a question from Mr. Bayer, Mr. Bomely confirmed that in order for the supermarket to come in at less than 30,000 square feet, the Commission must accept the applicant’s determination that space associated with the refrigeration unit storage, mezzanine and outdoor display areas can be excluded from the total square footage number.

Ms. Pratt referenced Section 505.4 (Exception 3) of the 2003 International Building Code, noting that “mezzanines or portions thereof are not required to be open to the room

in which the mezzanines are located, provided that the aggregate floor area of the enclosed space does not exceed 10 percent of the mezzanine area.” She questioned how the proposed mezzanine space in the subject application can be considered compliant with this requirement given the applicant’s representation that it would be approximately two-thirds (or approximately 66 percent) enclosed.

A discussion ensued and there was not a consensus among Commissioners regarding interpretation of that section of the code. However, the applicant indicated that some additional areas of the mezzanine could be opened up, if necessary, and also that a condition restricting the mezzanine space only to staff (and not to the general public) would be agreeable. The applicant also indicated that an exit via a direct outside stairway from the mezzanine could be constructed to comply with Section 505.4 of the Building Code.

Mr. Bomely addressed other outstanding site issues, noting in particular that the site would be compliant with respect to all truck turning radii; the applicant would consider additional landscaping on the School Street edge of the property to provide a landscape buffer; and a drainage issue noted in Field Engineer Michael Ahern’s memorandum dated April 18, 2011 would be addressed. Mr. Nerney noted that it would also be prudent to add a plan note indicating “subject to the approval of the D.O.T.” in connection with the modification of the School Street accessway.

Mr. Nabulsi asked if the applicant would be agreeable to a condition requiring that the mezzanine be made compliant with the International Building Code, whether that might require adding a second egress or increasing the percent of openness, or whatever such compliance might require. Mr. Bomely stated that he would commit to complying with the requirements of the Building Code.

With respect to storage areas that the applicant is not including toward the 30,000 square foot maximum, Mr. Nabulsi felt that it would be helpful for Commission deliberations if Commissioners knew how such areas were treated in the Village Market and Stop and Shop supermarkets in Wilton Center.

With respect to the aforementioned three areas of excluded square footage, Mr. Rudolph questioned whether these issues might have been better handled by the Zoning Board of Appeals. Mr. Nerney stated that the applicant’s interpretation of the regulations is that these items are legitimately excludable from the square footage totals and thus no waivers/variances are required from the ZBA.

Addressing the issue of grandfathering of certain aspects of the site plan, Mr. Bayer stated that it is a struggle for him to justify such an interpretation. He felt that since the applicant is coming before the Commission with a new application, any pre-existing non-compliant site conditions cannot just be ignored. Ms. Gould was of the opinion that the

floral display area in front could be considered as grandfathered.

Mr. Nerney referenced PZC minutes from the 1990s when “big box” regulations for the Town were being discussed. He felt that the regulations that were finally adopted for outdoor display areas were an attempt on the part of the Commission to restrict large fenced-in display areas with tall shelving units, etc., that one typically sees outside stores such as Home Depots or Lowe’s, for example, whereas Caraluzzi’s outside storage is more of a seasonal-type of product display and on a much smaller scale.

Mr. Bomely stated that the applicant could agree to limit the outside storage space to the 30,000 square foot maximum so as to take that particular item off the table. He noted that Caraluzzi’s is trying to compete with much larger supermarkets (e.g. Stop and Shop stores) and cannot remain competitive in the market place without the additional space requested. He noted further that the proposed site modifications will involve a major investment for the property owner and will provide a benefit/enhancement to the Town as well.

In light of the Commission’s request for additional information regarding methodology of square footage calculations for other supermarkets in Town, it was determined that it would be advisable to continue the application so that such information could be submitted into the record and discussed if necessary.

Mr. Nabulsi summarized the remaining open issues. He noted that since the applicant had agreed to count the outdoor display space toward the 30,000 square foot total, there remained only two open issues as follows: 1) mezzanine space and 2) outdoor refrigeration/storage unit space. He stated that the open question, with respect to both items, is whether the Commission views the applicant’s argument that both areas need not be included toward the GFA as persuasive. He noted further that the applicant has committed to comply with Building Code requirements for mezzanine space if the Commission agrees with the applicant’s argument that such space need not be counted toward the 30,000 square foot total.

Ms. Gould stated that the issue of mezzanine square footage was raised during the Stop and Shop application process, although several other Commissioners could not recall such a discussion.

After consultation with his clients, Mr. Bomely stated that the applicant agrees to extend the public hearing until the next Planning and Zoning meeting on May 9, 2011. He asked for guidance regarding the additional information requested by the Commission pertaining to calculation of square footages for the other supermarkets in Town.

Mr. Nerney explained that it is not the function of P&Z staff to conduct research for an applicant since staff represents the Commission, although he noted that the applicant is

welcome to come into the office to review minutes from past meetings that might be helpful in determining if any precedent has been set regarding the calculation of outdoor storage and mezzanine spaces for other supermarkets in Town. He stated that he was not personally aware of mezzanines having been discussed as an issue in the past, although he concurred with the applicant's interpretation that mezzanines are not counted as floor area under the Building Code.

Ms. Pratt stated that it would be helpful if the applicant could submit a copy of Section 503.1 of the International Building Code regarding heights and area, since it is referenced several times in Section 505 of the Code. Mr. Bomely stated that he would submit a copy as requested.

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 8:26 P.M. the Public Hearing was continued until May 9, 2011.

2. **CHZ#11329, Gueron, Extend Cannon Crossing Overlay District (CXD) on underlying R-2A Zone for property known as Assessor's Map 34, Lot 42**
And
3. **REG#11330, Gueron, Amendments to Sections 29-2.B.13 and portions of Section 29-6 to establish additional regulatory criteria for the Cannon Crossing (CXD) District**

Both hearings continued at the request of the applicant until May 23, 2011.

REGULAR MEETING

- A. Ms. Poundstone called the Regular Meeting to order at 8:29 P.M., seated members Bayer, Gardiner, Gould, Hulse, Nabulsi, Poundstone, Pratt, and Rudolph, and referred to Connecticut General Statutes Section 8-11, Conflict of Interest.

Ms. Poundstone scrambled the agenda to next hear Communications Item #1.

F. COMMUNICATIONS

1. CHA, Route 7 Transportation and Land Use Study, Presentation of Access Management Plan

Present was Jeff Parker, Transportation Engineer for Clough Harbour and Associates (CLA).

Mr. Parker presented an overview of the “Route 7 Access Management Study – Wilton, CT” that was prepared for South Western Regional Planning Agency (SWRPA) and Housatonic Valley Council of Elected Officials (HVCEO), and that was developed to offer tools to help preserve and enhance the character, capacity and safety of travel along the Route 7 corridor.

He explained that zoning approaches to access management can include the establishment of a specific Access Management Overlay Zone for the Route 7 corridor or the addition of language for access management applicable to all proposed development on all roads in the community and integrated throughout the regulations. He referenced page 4 of the submission that specifically cited existing sections of Wilton’s zoning regulations relevant to the subject Study and which provided comments/recommendations for improvement where applicable. In this regard, it was noted that many of the Town’s existing regulations were considered “beneficial policy language”.

In response to questions raised by the Commission, Mr. Parker explained that the Study does not attempt to impose restrictions on property owners or restrict anyone’s ability to conduct business, but rather it just recognizes existing access management issues and tries to determine where there might be opportunities for improvement. Mr. Nerney noted that it could also be helpful as a tool whereby applicants could be referred to the document as a means of backing up decisions made by the PZC.

Mr. Parker briefly referenced/briefly reviewed other sections of the Study. Ms. Poundstone thanked him for his presentation and asked if it would be possible to invite him back again sometime in the future. Mr. Parker stated that he would be happy to come before the Commission again. He also indicated that the Study is available in electronic form on their website, although he noted that it may not be in its finalized version just yet on the website.

B. APPROVAL OF MINUTES

1. April 11, 2011 – Regular Meeting

MOTION was made by Rudolph, seconded by Mr. Gardiner, and carried (7-0-1) to approve the minutes of April 11, 2011 as amended. Mr. Hulse abstained.

C. SITE DEVELOPMENT PLAN REVIEW

D. ACCEPTANCE OF NEW APPLICATIONS

1. **SDP, Lupinski, 53 Sugar Loaf Drive, Import 1000 yards of fill material to level yard area and build 5' stone wall**
2. **SP#367, Wilton Auto Park, LLC, 380 Danbury Road, Automotive sales and service facility**

MOTION was made by Ms. Poundstone, seconded by Mr. Bayer, and carried unanimously (8-0) to accept the applications and set a discussion date of June 13, 2011 for the Site Development Plan (Lupinski), and a public hearing date of June 13, 2011 for SP#367.

E. PENDING APPLICATIONS

1. **SP#360, Plan B Retail Design, 920 Danbury Road, Expand existing shopping center**

Tabled.

2. **CHZ#11329, Gueron, Extend Cannon Crossing Overlay District (CXD) on underlying R-2A Zone for property known as Assessor's Map 34, Lot 42**

Tabled.

3. **REG#11330, Gueron, Amendments to Sections 29-2.B.13 and portions of Section 29-6 to establish additional regulatory criteria for the Cannon Crossing (CXD) District**

Tabled.

Mr. Nerney advised Commissioners that pending applications **SP#361** and **SP#362** for Ropo, LLC at 490 Danbury Road, were inadvertently omitted from the agenda this evening and will therefore be discussed at the meeting on May 9, 2011.

F. COMMUNICATIONS

- 2. Meeting with PZC's SWRPA representative, Richard M. Murphy
[Scheduled for May 9, 2011]**

Ms. Poundstone noted that Mr. Murphy is eager to meet with the Commission on May 9th.

G. REPORT FROM CHAIRMAN

- 1. Reports from Committee Chairmen**

H. REPORT FROM PLANNER

I. FUTURE AGENDA ITEMS

- 1. SP#364, ECS Transportation, 390-392 Danbury Road, Restaurant use (coffee shop) [P.H. May 9, 2011]**
- 2. SP#365, Building Blocks Early Learning Center, LLC, 59 Danbury Road, Refitting of portion of interior for child day care center [P.H. May 9, 2011]**
- 3. REG#11331, Greyrock of Wilton, Amendments to Section 29-5.B.10 of zoning regulations pertaining to affordable housing [P.H. May 23, 2011]**
- 4. SP#366, Teachers Insurance and Annuity Association of America, 10 Westport Road, Construction of 202 surface parking spaces [P.H. May 23, 2011]**

J. ADJOURNMENT

MOTION was made by Ms. Gould, seconded by Mr. Hulse, and carried unanimously (8-0) to adjourn at 9:03 P.M.

Respectfully submitted,

Lorraine Russo
Recording Secretary