

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

## **WILTON PLANNING & ZONING COMMISSION MINUTES JUNE 13, 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; Lorraine Russo, Recording Secretary; members of the press; and interested residents.

### **PUBLIC HEARINGS**

1. **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**
2. **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**

Ms. Poundstone advised Commissioners and members of the audience that both applications were withdrawn at the request of the applicant. Mr. Bayer referenced a letter dated June 13, 2011 from J. Casey Healy to Planning and Zoning Commission requesting said withdrawal.

3. **REG#11331, Greyrock of Wilton, Amendments to Section 29-5.B.10 of zoning regulations pertaining to affordable housing**

Ms. Poundstone called the Public Hearing to order at 7:17 P.M., seated members Bayer, Gardiner, Gould, Hulse, Poundstone, Pratt, and Rudolph, and referred to Connecticut General Statutes Section 8-11, Conflict of Interest. She noted that the hearing was continued from the previous meeting. Mr. Bayer referred for the record to an email sent June 7, 2011 from Floyd Lapp to Robert Nerney; and a memorandum dated June 7, 2011

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from Robert Nerney to Planning and Zoning Commission with a 55-page attachment.

Present were Steve Rushkin, attorney; and Jerry Effren, Greyrock of Wilton.

Mr. Nabulsi arrived and was seated at 7:20 P.M.

Mr. Rushkin stated that he had reviewed the packet of affordable housing regulations for various communities throughout the country, which was compiled by Town Planner Nerney and distributed to the Commission and the applicant on June 7, 2011. He explained that the various sets of regulations include a number of different options, including on-site and off-site affordable housing locations, although he noted that when the off-site alternative was permitted there was always an option to allow for “a fee in lieu of” which was to go into a fund for use by the respective community. However, he felt that the Town does not seem to look favorably on the “fee in lieu of” option.

Mr. Rushkin focused on the definition of affordable housing, noting the significant difference between housing of a trailer park nature and \$1-2 million single family homes which he felt are subsidized by both the developer and the Town through the loss of potential tax revenues. He stated that multi-family type dwelling units are far less expensive to develop than single family homes, noting that if the applicant had instead proposed attached dwellings on the River Road site, somewhere in the vicinity of 30+ units could have been built versus the 20 single-family units that were approved.

Mr. Bayer reminded the applicant that had the R-1A residentially-zoned River Road parcel not been approved by the Commission for a zone change, the applicant could only have built 9-10 houses at most on the site.

Mr. Rushkin felt that the Town’s affordable housing regulations were never meant to be applied to homes valued at greater than \$1 million. He stated that the existing regulations are just not compatible with the applicant’s development as proposed on River Road.

Ms. Poundstone noted for the record that the applicant could have made such a statement at the time of the original application, but he did not. Mr. Rushkin stated that he did not dispute that statement, although he maintained that there are certain times/circumstances when these regulations just don’t fit the situation.

Mr. Rudolph asked for further clarification from the applicant as to a fair way to measure the consideration paid for the substitute off-premises housing being proposed and, in particular, how the Town assures that it ends up with an arm’s length, fair-value transaction. He felt that the Commission should take charge of drafting affordable housing regulations that apply to the entire Town as opposed to just this one parcel.

Mr. Rushkin stated that he wished to discuss the concept in a more general manner and

not from the perspective of this one site. He explained that there is a somewhat narrow pool of people who will qualify for affordable housing, taking into account income and down payment requirements as well as ongoing costs for common charges, utilities, taxes, etc. He felt that while a developer could buy a pre-determined/agreed upon number of 2, 3, and 4-bedroom homes and/or condominium units, it would ultimately be the prospective purchaser who would determine the worth/value of the housing unit.

When Mr. Rudolph asked whether there would be some formula to determine what the developer would pay for the off-site affordable housing units, Mr. Rushkin stated that there would not be a formula but that the market would determine it.

Ms. Pratt noted that the Town's existing regulations require affordable housing units to be of an equivalent construction quality and size to market-rate units within the development and she questioned whether that was a negotiable matter or if it was required under state statutes. Mr. Nerney explained that there are currently two approaches to affordable housing. The first operates under the Town's affordable housing regulations which require units to be of a similar quality/type of construction. The second operates via Connecticut enabling legislation, under the Land Use Appeals Act, which requires that 30% of a developed site be set aside for affordable housing which is then restricted for a period of 30 years. He noted that under the Connecticut enabling legislation there are very limited reasons that a Commission may cite for denial of an application, and those must be of a health and safety nature. He referenced the Avalon development on Danbury Road in South Wilton as a recent example of such a housing development.

Mr. Hulse expressed concern with how the Town would go about managing off-site units and developer credits. He felt that the developer would not be the optimal party to manage such matters and therefore the responsibility would fall upon the Town.

Mr. Nabulsi noted his previously expressed concern that sprinkling affordable housing units throughout the Town could potentially result in a lowering of property values in those areas of the Town. He felt that there should be some way to establish proximity of the off-site affordable housing to the development itself, referencing various requirements cited in other communities' regulations including that such units be within a ½-mile radius; or within the same neighborhood; or in proximity to the infrastructure that supports such type of housing. He asked the applicant's opinion as to whether such an approach might make sense in Wilton.

Mr. Rushkin felt that the general concept was fine as long as a developer could find such housing within the required parameters. He also felt that an idea mentioned by one of the Commissioners at the previous meeting could work whereby a developer would be required to provide affordable housing units in some pre-determined ratios as follows: 50% three-bedroom units, 25% two-bedroom units and 25% one-bedroom units (for a 20-home development where 4 affordable units would be required). He submitted into the

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record an example of the number and types of affordable housing units that would be required under the foregoing methodology in the case of 15-home, 10-home and 5-home developments, and requested that the handout be incorporated into the applicant's proposal.

Mr. Effren explained that he had many years of experience building cluster development and multi-family type housing with flexible floor plans/features to address the ever-evolving needs of families as economic conditions vary over time. He stated that he preferred not to build an Avalon style development, noting that people generally prefer to live in single-family detached type of housing.

Ms. Gould felt that there is a need for the Town to address the issue of affordable housing in a broader manner, but she felt that any such regulation changes need to be developed/written by the Commission, not the applicant, noting that it is the responsibility of the Commission to determine what is appropriate for the community at large.

Mr. Bayer noted that since the applicant had indicated a desire to develop 20 units, all market-rate, on the River Road site, then he felt that the applicant should be required under those circumstances to provide an additional 5 affordable housing units in order to comply with the 20% requirement (i.e. 20% of 25 units = 5). The applicant indicated a willingness to consider such a proposal.

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

Jim Sabino, 25 Oak Ledge Lane, stated that he represented the interests of a number of neighbors in the area, all of whom were comfortable with what was previously approved. He stated that everyone in the neighborhood would like to see this project start to make progress again and be built as it was approved. He entered into the record a letter dated June 13, 2011 from James M. Sabino to Planning and Zoning Commission expressing support for the applicant's proposed regulation changes.

Zubin Sinor, 20 Oak Ledge Lane, agreed with Mr. Sabino's sentiments. He expressed concern that if the project does not progress as planned and/or the property is transferred, the area will experience denser housing and neighborhood property values may be negatively impacted.

Peter Hubbard, 34 Oak Ledge Lane, stated that his main concern is that the project gets moving again. He stated that he would like to see the debris/dirt piles and drainage pipes, etc. removed from the area.

MOTION        was made by Mr. Bayer, seconded by Ms. Pratt, and carried (8-0) to close the hearing.

There being no further comments from the Commission or the public, at 8:00 P.M. the Public Hearing was closed.

**4. SP#366, Teachers Insurance and Annuity Association of America, 10 Westport Road, Construction of 202 surface parking spaces**

Ms. Poundstone called the Public Hearing to order at 8:00 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 was continued from the previous meeting and she noted that the applicant had requested another continuance until June 27, 2011. Mr. Bayer referred for the record to a letter dated June 13, 2011 from J. Casey Healy to Planning and Zoning Commission; and a response letter dated June 13, 2011 from J. Casey Healy to Planning and Zoning Commission, with attachments.

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 8:01 P.M. the Public Hearing was continued until June 27, 2011.

**5. SP#367, Wilton Auto Park, LLC, 380 Danbury Road, Automotive sales and service facility**

Ms. Poundstone called the Public Hearing to order at 8:01 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. Mr. Bayer read the legal notice dated May 27, 2011 and he referred for the record to a letter dated June 13, 2011 from J. Casey Healy to Planning and Zoning Commission; and a 2-page Planning and Zoning Staff Report dated June 7, 2011.

Ms. Poundstone noted that the applicant had requested a continuance of the public hearing until June 27, 2011. She 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 8:02 P.M. the Public Hearing was continued until June 27, 2011.

**REGULAR MEETING**

- A.** Ms. Poundstone called the Regular Meeting to order at 8:02 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.

**B. APPROVAL OF MINUTES**

**1. May 23, 2011 – Regular Meeting**

**MOTION** was made by Mr. Bayer, seconded by Mr. Hulse, and carried (8-0) to approve the minutes of June 13, 2011 as drafted.

**C. SITE DEVELOPMENT PLAN REVIEW**

**1. SDP, Lupinski, 53 Sugar Loaf Drive, Import 1000 yards of fill material to level yard area and build 5' stone wall**

Present was Robert Lupinski, applicant.

Mr. Nerney briefly reviewed zoning regulations regarding the importation of greater than 100 yards of material onto a site, which he explained triggers the need to file a Site Development Plan application with the Planning and Zoning Commission. He noted that the applicant has a topographically challenging lot which he wishes to regrade for the enjoyment of his family. He noted further that staff had issued a violation notice to the applicant in connection with the work that was already completed and since then the applicant has come in to speak with staff and has complied with the proceedings as required.

In response to questions from the Commission, Mr. Lupinski indicated that he had not addressed all of the items/issues noted in the Planning and Zoning Staff Report of May 25, 2011.

Mr. Nerney referenced the issue of potential off-site impacts, noting that the Town will require some form of statement from a licensed engineer that the site modifications will not adversely impact neighboring properties, particularly with respect to drainage issues. He explained that it is not so much the volume of runoff that needs to be addressed but rather the velocity and he noted that some form of diversion/attenuation (e.g. a swale) may need to be employed. He explained that such a professional certification also provides protection to the applicant should complaints be filed in the future by any of the

surrounding neighbors.

The Commission questioned whether the outstanding issues could be handled administratively by staff. Mr. Nerney stated that the application could be handled administratively as long as what is noted and required of the applicant in the Staff Report is agreed to by the Commission.

Ms. Gould felt that the applicant needs professional assistance on the site and also needs to work with staff to develop a workable plan.

Mr. Nerney noted that the applicant has engaged the services of Environmental Land Solutions and he recommended that the applicant call the Planning and Zoning office to schedule a meeting with staff to go over the punch list item by item.

Mr. Gardiner referred to Section 29-11.A.6.r pertaining to Storm Water Management, noting that the regulations appear to require a report from the Town Engineer as well.

Mr. Rudolph questioned whether the source of the materials brought on site needs to be considered. Mr. Nerney explained that the CT Department of Environmental Protection, not the Town, regulates such issues, noting that tree stumps, for example, are not permitted because they are susceptible to settling. He indicated that the material brought onto the property appears to be clean per their visits to the site.

It was the consensus of the Commission that the application should be handled administratively by staff, with the understanding that the Commission was fully supportive of the issues raised in the Staff Report, and should further issues arise, the application can be brought before the Commission again for its further review/guidance. The Commission asked the applicant to work with staff going forward.

**D. ACCEPTANCE OF NEW APPLICATIONS**

**E. PENDING APPLICATIONS**

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

Withdrawn.

- 2. 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**

Withdrawn.

**3. REG#11331, Greyrock of Wilton, Amendments to Section 29-5.B.10 of zoning regulations pertaining to affordable housing**

Ms. Poundstone noted that there appeared to be a general consensus to deny the application and therefore to request that staff prepare a draft resolution of denial for review at the next meeting. However, Mr. Bayer was of the opinion that the Commission needed to discuss the application further and provide on the record, and for the applicant's benefit, specific reasons for denial. Ms. Poundstone felt that sufficient negative statements were already placed on the record to adequately support a Commission request for a draft resolution of denial.

Ms. Gould again expressed her opinion that the Commission should write its own regulations. She felt that the applicant's proposed changes to the affordable housing regulations were not suitable for Town-wide application.

Ms. Pratt stated that the applicant's logistical analysis seemed very incomplete; she did not know how the Commission could possibly approve the application as submitted.

Mr. Nabulsi felt that it would be fruitful for the Commission to chart out some kind of schedule to address various regulatory issues that have arisen. Mr. Rudolph noted that the Commission needs to address Cannondale as well.

Ms. Pratt concurred. She expressed concern that the Commission is not being proactive enough in this regard and as a result gets forced into a reactive mode. She suggested that the Commission schedule some time at the end of some of its regular meetings to address these regulatory matters. It was the consensus of the Commission to schedule some time at the end of the June 27<sup>th</sup> meeting for such a discussion, with the understanding that if the meeting runs too late the discussion could be deferred until a later date.

Mr. Nerney suggested that the Commission work towards developing standards as to when alternative affordable housing options might be appropriate, noting that perhaps such options (e.g. off-site, a fee in lieu of, etc.) might become the exception rather than the rule and/or could remain at the Commission's discretion. He noted that any modifications would require an amendment to the special permit process and an amended affordability plan.

From a procedural prospective, Mr. Nabulsi noted that past experience indicates that the Commission has greater success in such endeavors when it works off of an existing document, critiquing/modifying where appropriate. He indicated that his selection for such a working document would be Easton, Massachusetts's affordable housing regulations which were included in Town Planner Nerney's June 7<sup>th</sup> package to the Commission.



It was the consensus of the Commission to utilize Mr. Nabulsi's recommended approach on June 27<sup>th</sup>, focusing on the affordable housing regulations of Easton, Massachusetts.

- 4. SP#366, Teachers Insurance and Annuity Association of America, 10 Westport Road, Construction of 202 surface parking spaces**

Tabled.

- 5. SP#367, Wilton Auto Park, LLC, 380 Danbury Road, Automotive sales and service facility**

Tabled.

#### **F. COMMUNICATIONS**

#### **G. REPORT FROM CHAIRMAN**

Ms. Poundstone addressed the issue of possible changes to the current regional planning structure, noting that the Town of Weston is currently considering a change from the Regional Planning Agency (RPA) structure (of which Wilton is also a member) to a Council of Governments (COG) structure. She indicated her intention to speak with the First Selectman to obtain additional information on the matter. She also indicated that it was her intention to invite both SWRPA representatives (Messrs. Boucher and Murphy) to one of the Commission's July meetings to further explore the issue.

#### **H. REPORT FROM PLANNER**

#### **I. FUTURE AGENDA ITEMS**

- 1. SP#368, Standard Petroleum of CT, 287 Danbury Road, Modifications to existing service station and replacement of underground fuel storage tanks within an aquifer protection district [P.H. June 27, 2011]**
- 2. SP#369, JP Morgan Chase Bank, 920 Danbury Road, Bank with drive-through facilities [P.H. June 27, 2011]**
- 3. SUB#905, Ruddy, 95 Old Boston Road, 2-lot subdivision [P.H. June 27, 2011]**

**J. ADJOURNMENT**

MOTION was made by Ms. Gould, seconded by Mr. Gardiner, and carried unanimously (8-0) to adjourn at 8:32 P.M.

Respectfully submitted,

Lorraine Russo  
Recording Secretary