

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

WILTON PLANNING & ZONING COMMISSION MINUTES SEPTEMBER 26, 2011 REGULAR MEETING

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

ABSENT: Marilyn Gould (notified intended absence)

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

PUBLIC HEARINGS

1. REG#11332, Gregory and Adams, P.C., Amend Section 29-7.C.2.k of zoning regulations pertaining to health and fitness clubs in the DE-5 zone

Ms. Poundstone called the Public Hearing to order at 7:15 P.M., seated members Bayer, Gardiner, Hulse, Nabulsi, Poundstone, Pratt, Rudolph, and Wilson, and referred to Connecticut General Statutes Section 8-11, Conflict of Interest. Ms. Poundstone noted that the hearing was continued from a previous date. Mr. Bayer read into the record the legal notice for REG#11333 dated September 13, 2011, under the assumption that both applications (#11332 and #11333) would be heard concurrently.

Present were Jim Murphy, attorney; and David Schiff, certified planner.

Mr. Murphy distributed two hand-outs dated September 26, 2011. He reviewed details of the application, noting that the applicant wishes to amend Section 29-7.C.2.k of zoning regulations to permit Health and Fitness Clubs on multi-building properties in the DE-5 zone as long as the Club's gross floor area is no greater than 25% of the gross floor area of all buildings located on the property. He explained that such Clubs are already permitted in single multi-tenanted buildings in the DE-5 zone as long as the Club's gross floor area does not exceed 50% of the area of the building in which the Club is located.

He referenced the current I.Park development in South Wilton which straddles the

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Norwalk/Wilton line, noting that all of the proposed site modifications located in Norwalk have been fully approved by Norwalk. He explained further that the total Wilton footprint, including the Wilton portion of the proposed LA Fitness addition, would total 59,538 square feet.

In response to a comment from Ms. Poundstone, Mr. Murphy confirmed that the proposed regulation amendment is not intended to be site specific but rather would be applicable to all DE-5 zone properties. He noted further that Health and Fitness Clubs would still be required to satisfy all Special Permit Use requirements of zoning regulations.

Mr. Schiff cited the advantages of mixed use developments. He noted in particular that Health and Fitness Clubs are attractive to other companies within such developments since they provide potential for shared parking with their different hours of peak usage, and they provide a synergy with doctors' and medical office uses on sites such as I.Park. He explained that limiting the amount of Health and Fitness Club square footage permitted on such sites is appropriate in order to balance out revenue and job-producing businesses as well.

Mr. Schiff explained that the subject application addresses the multi-building situation, whereas the existing regulation addresses only a multi-tenanted single building site. He noted that all Special Permit requirements would still have to be satisfied and reviewed by the Commission.

Mr. Nerney noted a staff recommendation that the Commission be required to make a finding that any proposed Health and Fitness Club use would be compatible with other uses on the property and would not create undue congestion or result in unsafe traffic conditions on the site.

In response to questions from Mr. Rudolph, Mr. Murphy explained that the existing LA Fitness Club (which lies entirely in Norwalk) consists of approximately 48,000 square feet; total Norwalk gross floor area (GFA), including the proposed addition, will be 262,911 square feet and total Wilton GFA would be 95,837 square feet; and none of the foregoing square footage numbers takes into account a possible hotel on the I.Park property in the future.

Referencing the proposed LA Fitness addition, Mr. Schiff noted that the Wilton GFA portion of the Health and Fitness Club (4,358 square feet) would actually represent a little over 4% of total Wilton GFA on the site (i.e. 4,358/95,837).

Mr. Rudolph questioned the applicant's proposed 25% gross floor area number, expressing concern that it appears to be an arbitrary choice. He noted that the applicant does not appear to need such a large percentage to satisfy the needs of the I.Park

development, expressing further concern that the Town would have to live with the ramifications of such a large percentage in the future. Mr. Murphy noted that the Commission would always retain its discretion to deny any such application under the considerations of the Special Permit review process. Mr. Rudolph stated that he would be more comfortable with cutting the proposed percentage to 10% from 25%.

Mr. Nabulsi asked for clarification as to the applicant's intended meaning of the term "Health and Fitness *Facility*" and what types of uses it would include since he noted that "Health and Fitness *Club*" is used throughout the rest of the regulations. He questioned whether outdoor batting cages, driving ranges and/or a Lake Club type use might qualify under the term as proposed. The applicant noted that the proposed definition clearly states "indoor sports activities", but agreed to use of the word "Club" instead of "Facility" for purposes of clarity/consistency throughout the regulations.

A question also arose as to whether outdoor tennis courts as part of a hotel use, or a health and fitness floor for the use of a building's employees, would fall under the definition as proposed. It was the general consensus that such uses (i.e. anything ancillary to an existing tenant and not a distinct for-profit entity) would not fall under the definition as proposed and therefore would not be included in the square footage calculation for Health and Fitness Centers as proposed.

Mr. Murphy noted further that the Commission could exclude from the proposed definition any use that it feels should specifically be excluded.

Mr. Bayer concurred with Mr. Rudolph's concerns regarding the magnitude of the proposed 25% GFA number, noting that a lower number would be more palatable. Although the applicant noted that the Commission would still retain other controls on total development of such sites, it was ultimately agreed that the percentage of gross floor area devoted to Health and Fitness Clubs on multi-building sites in the DE-5 zone should be reduced from the proposed 25% to 10% of the gross floor area of all the buildings on the site that are located in Wilton, or 20,000 square feet, whichever is less.

It was also agreed that in addition to the findings suggested by staff in its Planning and Zoning Staff Report of July 7, 2011, the Commission should also make a finding that the proposed use would be compatible with uses in the immediate neighborhood vicinity and should not result in an inadequacy of parking on the site nor be inconsistent with the Plan of Conservation and Development.

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 8:14 P.M. the Public Hearing was closed.

The Commission scrambled the agenda to hear application REG#11333 next.

4. REG#11333, Gregory and Adams, Modifications to Sections 29-7.D and 29-2.B of zoning regulations pertaining to Setback modifications for Design Enterprise Districts, and establishment of definition of Health and Fitness Facility

Ms. Poundstone called the Public Hearing to order at 8:14 P.M., seated members Bayer, Gardiner, Hulse, Nabulsi, Poundstone, Pratt, Rudolph, and Wilson, and referred to Connecticut General Statutes Section 8-11, Conflict of Interest. The legal notice was previously read at the beginning of the public hearing for application REG#11332. Mr. Bayer referred to an email dated August 2, 2011 from Donna Stone (SWRPA) to Robert Nerney; and a 2-page- Planning and Zoning Staff Report dated September 22, 2011.

Present were Jim Murphy, attorney; and David Schiff, certified planner.

Mr. Murphy distributed a hand-out dated September 26, 2011. He briefly summarized details of the proposed amendment pertaining to Design Enterprise District properties that would allow the Commission to grant a waiver for side or rear yard setbacks to be reduced to no less than 10 feet where side or rear adjoining properties lie within a railroad right-of-way, and that also proposes the addition of a Health and Fitness Facility definition to the regulations.

Mr. Murphy referenced the earlier discussion pertaining to Health and Fitness Clubs/Facilities in the DE-5 district, noting that the applicant took note of Commission concerns that the proposed definition might be too broad, referring in particular to use of the term “facility”. The applicant indicated a willingness to modify the word “facility” to “club” for purposes of consistency with all current references in the zoning regulations document. Mr. Rudolph also suggested that the phrase “duly licensed by the State of Connecticut” be added to the proposed definition.

Mr. Schiff referenced Section 29-7.D.7 of zoning regulations, noting that the regulations already allow for a waiver to reduce the side or rear yard setback to 50 feet (where 100 feet are required in the DE-5 zone and 150 feet are required in the DE-10 zone) when property adjoining in a residence district to the side or rear lies within a railroad right-of-way. Referencing the I.Park site and its long expanse of property running along the railroad tracks, he noted that there would not be any negative impacts on surrounding properties in connection with the proposed reduced setback given the topography of the site and its location along the Route 7 corridor. He noted that the existing LA Fitness building is already situated very close to the property line, with a 10-foot setback in Norwalk and a 14.9-foot side yard setback in Wilton that was just approved by the Zoning Board of Appeals.

Mr. Murphy referenced the hand-out document, noting that the proposed setback waiver would provide significant benefits, including improved site design, and would not negatively impact surrounding properties, especially in light of the de facto separation/protection provided by the adjoining railroad. He noted that any waiver request would be reviewed by the Commission on a case-by-case basis and in conjunction with existing Special Permit and Site Plan criteria.

In response to a question from Mr. Bayer as to why the proposed setback waiver is even necessary since the I.Park development was recently granted a side-yard setback, Mr. Murphy explained that the variance is currently still subject to an appeal by a disgruntled neighbor and he felt that the proposed amendment represents good planning criteria for the Town under any circumstances. He stated that a waiver is a good planning tool whereas a variance is a good hardship tool.

In response to concerns expressed by Mr. Bayer that a 10-foot setback is well below anything permitted in this Town and that such a waiver would essentially erode the Town's zoning regulations, Mr. Schiff again noted the 50-foot waiver option that is currently permitted per Section 29-7.D.7 & 8 of zoning regulations, noting further that limiting development on these types of properties serves no purpose and renders them economically non-viable for both the property owner and the Town.

Further questions were raised by the Commission regarding various distances/measurements from the property line and from the base of the building at the I.Park development to the railroad right-of-way and to the actual metal of the track itself.

It was the consensus of the Commission that the applicant should provide more precise measurements of the various distances in question and perhaps request a continuation of the hearing to be able to provide such information to the Commission at the next meeting.

Mr. Bayer noted for the record that the Commission should not get bogged down on the details of one particular property since the subject application seeks to amend zoning regulations for all Design Enterprise properties in Town.

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 8:46 P.M. the Public Hearing was continued until Tuesday, October 11, 2011.

2. SUB#906, Hirsch/Josefsen, 2 Quiet Lake Lane & 144 Huckleberry Hill Rd, 3-lot subdivision

[Continued until October 24, 2011]

3. SP#372, Geitz, 9 School Road, Accessory dwelling unit

Ms. Poundstone called the Public Hearing to order at 8:46 P.M., seated members Bayer, Gardiner, 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 September 13, 2011. He also referenced a 2-page Planning and Zoning Staff Report dated September 21, 2011; an Affidavit of ownership/residency signed by James A. Smith and Gail M. Federici; and a memorandum dated July 26, 2011 from Jennifer M. Zbell to Bob Nerney/Daphne White.

Present was Tim Geitz, applicant.

Mr. Geitz reviewed details of the subject application, noting that the owners would like to add a shower and a cook-top to a pool house structure for which a building permit has already been issued. He explained that under the regulations such additions require a special permit application for an accessory dwelling unit.

Mr. Geitz submitted into the record his letter dated September 26, 2011 responding to the Planning and Zoning Staff Report of September 21, 2011. He reviewed on a point-by-point basis all response items in the aforementioned letter, noting in particular that all proposed site modifications will be in conformance with the requirements of Section 29-4.D.1 (Accessory Dwelling Units in Single-Family Residences) of zoning regulations. He confirmed that the current covered serving bar would be removed this Fall prior to the issuance of a Certificate of Occupancy for the primary residence, per a contingency in place on the existing primary residence permit.

He reviewed submitted plan #101 (First Floor Plan & Reflected Ceiling Plan) printed May 3, 2011 showing the first floor layout of the proposed accessory dwelling unit.

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 8:56 P.M. the Public Hearing was closed.

5. SP#373, Mutual Housing Association of Southwestern CT, Inc. (Wilton Commons), 21 Station Road, Modification of approved plan for 51 affordable housing units for Seniors

Ms. Poundstone called the Public Hearing to order at 8:56 P.M., seated members Bayer, Gardiner, 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 September 13, 2011. He also referenced a 3-page Planning and Zoning Staff Report dated September 19, 2011; a memorandum dated September 23, 2011 from Steven H. Schole to Daphne White; and a transmittal dated September 26, 2011 from James Evans Associates to Wilton P&Z, with attached plans.

Present were Larry Kleutsch, Executive Director of Mutual Housing Assn of SW CT, Inc; Joe Perugini, Weston and Sampson, engineer; Bill Flick, Leggette, Brashears & Graham, Inc., environmental analyst; and Jim Evans, architect.

Mr. Kleutsch briefly reviewed details of the subject application, noting that it is a modification of a plan that was approved by the Commission about one year ago. He explained that it was necessary to modify the previously approved plan since the applicant needs to address a great deal of soils on the site that were found to be contaminated with arsenic, which is believed to be naturally occurring. He noted that there are no proposed changes to the number of units (i.e. 51 affordable housing units), and he felt that the modified application actually represents a better site plan overall.

Mr. Perugini submitted into the record a signed engineer's letter dated September 26, 2011 addressing the on-site storm water detention system. He noted in particular that there would be no negative impacts or changes required to the underground detention system as a result of the modifications proposed.

Mr. Perugini explained that the applicant is proposing to raise the building approximately 3 feet and to remove/relocate approximately 3700 cubic yards of soil to the rear of the site to address the aforementioned soils that were found to have elevated levels of arsenic. He noted that the applicant has updated its sediment/erosion control plan to address slope stability issues, noting further that slopes will be at the maximum 2:1 levels permitted. He stated that the proposed changes will also result in a revised driveway slope of 7% (the maximum driveway slope permitted) and will require some parking spaces to be relocated to the rear, which he noted would actually improve site circulation over the original plan. He briefly reviewed some additional modifications to the site, including plans to extend fire, water, electrical and gas service to the rear in anticipation of the second phase of development.

Mr. Flick explained that the proposed clean-up and investigation of the site was not State-mandated but rather was a requirement of the lender. He stated that approximately 50

soil samples were collected from the site and, of those, greater than 50% exceeded State criteria for sites governed by CT remediation standards/regulations. As a result, the condition was felt to be site-wide which led to an entire-site remediation plan approved by the CHFA (CT Housing and Finance Authority). He explained that the plan would essentially limit/restrict any access to the back part of the site through restrictive, non-climbable fencing with a minimum height of 4 feet. He also noted that one foot of clean topsoil for grassy/landscaped areas and a minimum 3-inch pavement thickness for paved areas is proposed to restrict direct contact with underlying soils.

Mr. Flick also noted that there is an area under the power lines with soil concentrations of lead that slightly exceed the guidance criteria and, as a result, the remedial consultants are suggesting either sending this soil off-site for disposal or possibly relocating it under the building so that it will be inaccessible. In response to a question from Mr. Wilson as to whether relocating contaminated soils into one location results in even higher concentrations of these minerals cumulatively, Mr. Flick explained that, statistically, relocated/piled soils have no different/higher mineral concentration levels than the soils that comprise the pile.

Addressing the issue of inherent risks associated with arsenic, Mr. Flick explained that an issue arises when soil concentrations exceed a risk-based criteria set by the State for a commercial or residential setting. He noted that the risk is calculated based on a particular dose over a period of time, where 10 parts/million is currently the maximum arsenic level set by the State and the average concentration of the subject site is 15 parts/million. He explained further that arsenic risk criteria are based on actual consumption/ingestion amounts, noting that it is not airborne nor is it absorbed through the skin.

Mr. Nerney noted that the Town-hired independent consultant, Fuss & O'Neill, had concluded that the proposed LB&G remediation plan was acceptable, except that Fuss & O'Neill added requirements for control of soil during windy conditions, including soil dampening and treatment with chloride.

A question was raised as to whether vegetation on the site would be negatively impacted by the presence of arsenic in the soil. Mr. Flick explained that concentrations of arsenic at the site are not high enough to prevent growth of vegetation.

In response to a question from Mr. Nabulsi as to the potential visual impact/perspective that the proposed three-foot increase in building height might have on the surrounding community, Mr. Evans noted that the site itself is set into a hillside and, as a result, the increased building height should not have any impact on surrounding areas. Mr. Kleutsch concurred, noting that there should not be much of a change visually. He also noted that the site is not surrounded by residential properties.

Mr. Kleutsch stated that the applicant has to close by the end of November and is therefore under a fairly stringent time constraint.

In that regard, Mr. Nerney explained that the Departments of Health and Public Works, as well as Police and Fire, have signed off on the proposed site modifications, but he noted that the Wilton Volunteer Ambulance Corps (WVAC) has expressed concerns regarding the elevator size and its ability to accommodate WVAC stretchers. He stated that there seems to be some movement on the part of the applicant to resolve this issue but discussion is still ongoing. He recommended that the Commission maintain the same condition of approval pertaining to the WVAC-recommended elevator measurements as was included in the prior resolution of approval for the site.

Mr. Nerney noted an additional issue pertaining to inland wetlands on the site. He explained that wetlands to the west will need to be located on the plans, particularly in light of the amount of grading now proposed. He also requested that the applicant demarcate the water course and wetlands in the field since there is the possibility that an overflow channel might be located on the site, and that finished grades around the perimeter of the building also be shown on the plans.

Mr. Nerney suggested leaving the hearing open until the Inland Wetlands Commission makes a finding on the aforementioned matter since statutorily the Inland Wetlands Commission must make a finding that the applicant meets its requirements either before or concurrently with the Planning and Zoning Commission. He noted that if wetlands are determined to be present in that location, the solution will likely be to adjust the fill limits in some way or transport some of the soils off-site.

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 9:41 P.M. the Public Hearing was continued until October 11, 2011.

REGULAR MEETING

- A. Ms. Poundstone called the Regular Meeting to order at 9:41 P.M., seated members Bayer, Gardiner, Hulse, Nabulsi, Poundstone, Pratt, Rudolph, and Wilson, and referred to Connecticut General Statutes Section 8-11, Conflict of Interest.

B. APPROVAL OF MINUTES

1. September 12, 2011 – Regular Meeting

MOTION was made by Mr. Bayer, seconded by Mr. Nabulsi, and carried (8-0) to approve the minutes of September 12, 2011 as drafted.

C. SITE DEVELOPMENT PLAN REVIEW

D. ACCEPTANCE OF NEW APPLICATIONS

E. PENDING APPLICATIONS

1. REG#11332, Gregory and Adams, P.C., Amend section 29-7.C.2.k of zoning regulations pertaining to health and fitness clubs in the DE-5 zone

The Commission discussed draft Resolution #0911-3REG. Changes were incorporated into the resolution to address issues raised during the public hearing discussion.

MOTION was made by Mr. Nabulsi, seconded by Mr. Hulse, and carried unanimously (8-0) to adopt as amended Resolution #0911-3REG for REG#11332, effective October 14, 2011.

WHEREAS, the Wilton Planning and Zoning Commission accepted application #11332 for amendments to Sections 29-7.C.2.k of the Zoning Regulations of the Town of Wilton pertaining to health and fitness clubs in the Design Enterprise “DE-5” zone; and

WHEREAS, the Planning and Zoning Commission conducted a public hearing on July 11, 2011, July 25, 2011 and September 26, 2011 to receive comment from the public and has fully considered all evidence submitted at said hearing; and

WHEREAS, in accordance with C.G.S. §8-3b the Planning and Zoning Commission has notified the South Western Regional Planning Agency and the Housatonic Valley Council of Officials and has appropriately considered any and all commentary from such agencies; and

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

NOW THEREFORE BE IT RESOLVED that the Wilton Planning and Zoning Commission **APPROVES** application #10332 effective October 12, 2011 as follows:

PROPOSED CHANGES TO ZONING REGULATIONS

Section 29-7.C.2.k – Special Permit Use in the DE-5 Zone:

Health and Fitness Clubs, provided said Clubs are duly licensed by the State of Connecticut and further provided that the gross floor area does not exceed:

1. More than 50% of the area of any single multi-tenanted building in which said Health and Fitness Club is located, or
2. When located on sites containing multiple buildings, ten percent (10%) of the gross floor area of all buildings on the subject property that are located in the Town of Wilton, or 20,000 square feet, whichever is less.

The foregoing calculations shall be based on buildings located in the Town of Wilton only.

The Commission shall make a finding that the proposed use is compatible with other uses located on the property and within the immediate neighborhood vicinity and will not create undue congestion, result in unsafe traffic conditions or an inadequacy of parking nor be inconsistent with the Plan of Conservation and Development.

-END RESOLUTION-

2. **SUB#906, Hirsch/Josefsen, 2 Quiet Lake Lane & 144 Huckleberry Hill Rd, 3-lot subdivision**

[Tabled until October 24, 2011]

The Commission briefly discussed scheduling a site visit for the subject property prior to the October 24, 2011 public hearing. It was determined that a couple of dates/times would be made available to Commissioners for a site visit (one weekday and one weekend date) and Commissioners would select whichever date is most convenient.

3. **SP#372, Geitz, 9 School Road, accessory dwelling unit**

Staff was requested to prepare a draft resolution of approval for vote at the next meeting.

- 4. REG#11333, Gregory and Adams, Modifications to Sections 29-7.D and 29-2.B of zoning regulations pertaining to Setback modifications for Design Enterprise Districts, and establishment of definition of Health and Fitness Facility**

Tabled.

- 5. SP#373, Mutual Housing Association of Southwestern CT, Inc. (Wilton Commons), 21 Station Road, Modification of approved plan for 51 affordable housing units for Seniors**

Tabled.

F. COMMUNICATIONS

1. Review/Approval of 2012 Meeting Schedule

The 2012 Planning and Zoning Meeting Schedule was approved by consensus.

G. REPORT FROM CHAIRMAN

1. Reports from Committee Chairmen

Ms. White and Mr. Gardiner briefly updated the Commission on the recent SWRPA Housing Forum that was held in Norwalk City Hall on September 21, 2011.

Ms. Poundstone suggested two possible dates (Tuesday, November 29 or Thursday, December 1) for a Commissioner celebration/recognition dinner. She asked Commissioners to let her know which date will work best.

H. REPORT FROM PLANNER

Mr. Nerney stated that he would transmit to Commissioners an electrical copy of Fuss & O'Neill's report regarding soils on the Station Road site and the nearby Teen Center. He briefly reviewed some of the recommendations offered by the consultant.

I. FUTURE AGENDA ITEMS

J. ADJOURNMENT

MOTION was made by Mr. Wilson, seconded by Mr. Gardiner, and carried unanimously (8-0) to adjourn at 10:08 P.M.

Respectfully submitted,

Lorraine Russo
Recording Secretary