

ZONING BOARD
OF
APPEALS
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TOWN HALL ANNEX
238 Danbury Road
Wilton, Connecticut 06897

**ZONING BOARD OF APPEALS
REGULAR MEETING
APRIL 16, 2012
7:15 P.M.
TOWN HALL ANNEX - MEETING ROOM A**

PRESENT: Sally Poundstone, Chairwoman; Brian Lilly; Steven Davidson, Alternate; Joe Fiteni, Alternate; Peter Shiue, Alternate

ABSENT: John Comiskey and Timothy Meyer (both notified intended absences)

A. CALL TO ORDER

Chairwoman Poundstone called the meeting to order at 7:25 P.M. She spoke briefly about the recent passing of Board member Barbara Frees and her many accomplishments and years of service to the Town. A moment of silence was observed in her memory.

B. PUBLIC HEARINGS

1. #12-04-06 WILTON AUTO PARK 380 DANBURY ROAD

Ms. Poundstone called the Hearing to order at 7:27 P.M., seated members Davidson, Fiteni, Lilly, Poundstone and Shiue, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest. Mr. Shiue, in the absence of Secretary Comiskey, read the legal notice dated April 3, 2012 and details of the application and the hardship as described on the application.

Town Planner Nerney, also present at the meeting, referenced the uniqueness of the subject application. He explained that Section 14-54 of the Connecticut General Statutes (a section dating back to the 1940s) requires a permit review by both the Chief of Police and the Zoning Board of Appeals for anyone seeking an auto dealer or repairer's license from the Department of Motor Vehicles (DMV). He noted that no guidance is given nor standards established within the Statutes for such review. However, in that regard, he noted that the Wilton Auto Park use at 380 Danbury Road was previously approved by the Planning and Zoning Commission via the Special Permit process and the subject

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application involves merely the license to sell automobiles at the subject site.

Mr. Canale, the applicant, explained that site renovations for both the interior and exterior of the building began approximately 6 months ago and in order to now conduct the approved business on the site, he requires a dealer's license from the DMV per CT General Statutes.

In response to inquiry from Board members, Mr. Nerney explained further that this application does not require demonstration of hardship and only requires a simple majority to approve.

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

There being no further comments, the public hearing was closed at 7:34 P.M.

2. #12-04-07 VONELLA 35 ERDMANN LANE

Ms. Poundstone called the Hearing to order at 7:34 P.M., seated members Davidson, Fiteni, Lilly, Poundstone and Shiue, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest. Mr. Shiue read the legal notice dated April 3, 2012 and details of the application and the hardship as described on the application, as well as a letter dated March 18, 2012 from James R. Abbott in support of the application.

Present was Salvatore Vonella, applicant.

Mr. Vonella distributed photos of the residence for Board review. He briefly reviewed details of the application, noting that the applicants are proposing a second floor addition to the residence, which was constructed in 1958 and which was compliant at that time. He noted that the proposed addition would be above the original footprint, with no extension beyond the existing footprint. He explained that the lot is narrower (less than the minimum 150-foot width required today) and also smaller (0.918-acre lot versus typically 1-acre lots in the vicinity).

He confirmed that the soffit would extend 1 foot beyond the walls of the second floor and thus the request for a 23-foot side yard setback as opposed to 24 feet. He noted that the proposed 1-foot soffit is perhaps 6 inches larger than existing.

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

There being no further comments, the public hearing was closed at 7:42 P.M.

**3. #12-04-08 MDW I, LLC & 300 DANBURY ROAD
JFM PROPS II, LLC**

Ms. Poundstone called the Hearing to order at 7:42 P.M., seated members Davidson, Fiteni, Lilly, Poundstone and Shiue, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest. Mr. Shiue read the legal notice dated April 3, 2012 and details of the application and the hardship as described on the application.

Present were Kevin O'Brien, Wilton Country Homes, on behalf of the applicant; and Tim Donahue, applicant.

Mr. O'Brien distributed a proposed site plan for review by the Board. He explained that tan-colored portions would be removed, pink areas represent proposed new construction, green areas represent areas of pavement to be removed/converted to green space, and gray areas would be paved. He reviewed requested variances for the site, noting in particular that building #100, which is in a state of total disrepair, needs to be rebuilt and brought up to current code; building #300 would be renovated; a new building #500 would be added for a proposed restaurant use; and the existing 2-foot parking setback to the south would be maintained.

Addressing the issue of hardship, he explained that the applicants are trying to preserve the style and character of the site and to maintain it within the Village spirit. He noted the narrowness and resulting safety issue of one area of the driveway and explained that site circulation would be improved as a result of the proposed modifications. He noted that the parcel was previously zoned General Business but was recently changed to Wilton Center District, which provides more parking flexibility but still constrains the site with setbacks that are required from adjacent residential properties. In that regard, Mr. O'Brien addressed questions regarding the residential properties located east and south of the parcel. He referenced three residences located on Whitewood Lane (east of the subject parcel) and two lots, both of which he noted are vacant.

In response to further questions from the Board, Mr. O'Brien explained that there are currently 10 apartments on the site and the applicants intend to add 4 more, although he noted that recent Planning and Zoning Commission (PZC) approvals do allow for a maximum of 23 apartments on the site. He stated that the location and proximity of the parcel to the railroad station made the site attractive for PZC approval of such multi uses of the property, and he felt that having residents there at night, in addition to the proposed restaurant use, would add to the overall Village atmosphere.

Responding again to questions of hardship, Mr. O'Brien again cited safety issues associated with the current traffic flow and the improved site circulation that will result from the proposed site modifications, which include removal of an existing driveway dead-end; the need for ZBA involvement/approval since greater than 50% of existing

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nonconforming building #100 will have to be taken down due to its current state of disrepair; an additional safety issue that will be addressed by the proposed stair tower location on building #400, which he confirmed could not be located elsewhere; and the overall need to make the site more viable;

Mr. Donahue explained further the applicants' desire to preserve the scale, character and Village image of the site, noting that the subject parcel is a critical component for the backdrop of Wilton. He noted that a possible alternative use of the parcel would involve construction of a large, single building on the site which he felt would not be compatible with the Village environment nor would it embrace the history of the community. He felt that it is their civic duty to try to hold onto the Village concept, while still meeting current-day handicapped and grading codes for the site.

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

In response to a question from Mr. Nerney regarding wetland areas east of the subject site and the likelihood of future development in that location, Mr. O'Brien doubted that development would ever be approved there since the only access is via Whitewood Lane and thus a wetlands-crossing permit would be required. He also noted a steep sloped area east of the wetlands going up to Powder Horn Hill Road.

There being no further comments, the public hearing was closed at 8:11 P.M.

4. #12-04-09 TOWN OF WILTON 131 SCHOOL ROAD

Ms. Poundstone called the Hearing to order at 8:11 P.M., seated members Davidson, Fiteni, Lilly, Poundstone and Shiue, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest. Mr. Shiue read the legal notice dated April 3, 2012 and details of the application and the hardship as described on the application.

Present were Kevin O'Brien, Chairman of Parks and Recreation; Eric Dean, President of Youth Football; and Andrew Dyjak, Musco Lighting.

Mr. O'Brien briefly reviewed details of the subject application, noting that he was representing Wilton Youth Football in its desire to increase the height of four existing light poles on the subject property from 30 feet to 70 feet. He noted that the field is currently used exclusively in the fall for Youth Football (1st through 8th graders).

Mr. Dyjak reviewed technical aspects of the proposed lighting, noting that an increase in height results in more downward focused angling and thus reduces light spillage and glare on surrounding properties. From the perspective of the football players, he noted that the proposed modifications will also provide a more playable field.

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Mr. Dean explained that football practice occurs on Tuesdays through Fridays during football season, ending at 8:30 P.M., with games played at the High School on Saturdays and Sundays. Currently there are no timers on existing lights but proposed lighting will be equipped with a timer that will be able to be controlled remotely from off site.

In response to questions from the Board, Mr. O'Brien explained that the only other use of the field is for Middlebrook School gym classes. Mr. Dean noted that 165 cheerleaders can utilize the area as well.

In response to questions about safety, the applicant stated that the players would be safer on field because of the reduced glare that the new lighting will provide. It was also noted that existing lights cannot all be turned on at once, but must be activated in stages due to their age/older technology.

Mr. Dyjak indicated that the new light poles would be moved back a bit from their current locations for safety reasons. He also noted the recognition by the International Dark Sky Association of the excellent glare control provided by this lighting design.

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

Greg King, 138 Ridgefield Road, questioned the need for new lighting and the resulting expenditure of funds involved. He stated that his son has played on the field for the last three years, noting that most of the practices occur during daylight hours in September/October timeframe and most of the play involves running and sprinting, not passing.

Mr. O'Brien noted that no taxpayer dollars would be involved since it is a gift to the Town. Mr. Davidson further noted that such issues are not the concern of this Board.

Mr. King indicated that the field is built to drain into wetlands to Comstock Brook and in that regard he questioned what the applicant's next step would be.

It was noted that both Parks and Recreation and Inland Wetlands Departments would be involved going forward.

Eliot Patty, 174 Ridgefield Road, stated that her property is directly behind the subject site and she noted that the existing lights shine directly into their living room. She also expressed concern regarding the potential for increased playing time on the field as a result of the proposed new lighting.

Anthony LoFrisco, 33 Cider Mill Road, questioned the number of injuries that have been recorded because of poor lighting in the past 15 years, and whether there were any claims to insurance companies due to injuries resulting from poor lighting in the past 15 years.

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He stated that he was told there were no such injuries/claims. He asked who the contractor was who cited an inherent safety issue with existing lighting, questioning in particular whether it was the company representative who would be selling the new lighting to the applicant. He also questioned the authority of the Town to regulate such lighting, noting that the regulations refer to “lamp posts” and not “light poles”.

Mr. Nerney stated that there is no inherent difference between the two terms, noting that it is just a matter of semantics. He felt that the probable genesis of the 30-foot maximum height restriction was because these regulations were drafted with commercial lots generally in mind (as opposed to sports uses), and he noted that more and lower lighting is normally desirable for such lots.

Mr. LoFrisco passed out copies of Section 29-9.E of Wilton Zoning Regulations. He referenced Section 29-9.E.2.e and 29-9.E.2.a, in particular, noting that the applicant is not seeking a variance for brightness above the 2.5 average foot-candles permitted or for the visibility of light beyond the boundaries of the lot on which the lights are located.

He distributed photos of one of the existing light poles and the house located behind it, noting that lights will be visible to that residence. He also showed a photo of a lamp post and compared it to a light pole. He noted further that if there is a doubt with respect to the regulations and their interpretation, then clarification must be sought from the Planning and Zoning Commission. He stated that the site plan doesn't reflect the proposed poles' locations correctly, noting that they should be 20 feet back and behind fencing for safety reasons. He expressed concern with the ongoing deteriorating of School Road and the likelihood that approval of this application will lead to further such requests in the future. He felt that the “safety” issue is a solution in search of a problem.

Mr. Dyjak noted that the proposed poles would be 28 feet off the field of play which is further than required per U.S. soccer standards. He noted further that the minimum 30 foot-candle standard of lighting is not achieved by the existing 30-foot poles but will be achieved (and with less light spillage on abutters) with the proposed 70-foot poles. Addressing the concerns expressed by Ms. Patty, Mr. Dyjak stated that there would be zero light spillage onto her property and no glare at all from the proposed fixtures. He referenced a large photo of a baseball field with a 50 foot-candle level of illumination, which he noted exhibited no light spillage onto the surrounding area, and he emphasized that the applicant is only proposing 30 foot-candle illumination as part of the subject application.

Responding to a question of hardship, Mr. O'Brien referenced the current need for safety on the playing field and the fact that presently there is light spillage from the existing 30-foot poles that will be eliminated by the proposed 70-foot poles.

There being no further comments, the public hearing was closed at 8:57 P.M.

C. APPLICATIONS READY FOR REVIEW AND ACTION

Ms. Poundstone called the Regular Meeting to order at 8:57 P.M., seated members Davidson, Fiteni, Lilly, Poundstone and Shiue, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest.

1. #12-04-06 WILTON AUTO PARK 380 DANBURY ROAD

The Board briefly discussed the application. It was the consensus of the Board to approve the application.

MOTION was made by Mr. Shiue, seconded by Mr. Lilly, and carried unanimously (5-0) to **grant** a Certificate of Location pursuant to CT General Statutes 14-54 to permit issuance of a dealer's license through the CT Department of Motor Vehicles. The Board's finding was that it is permitted by way of regulations and by action of the Planning and Zoning Commission.

2. #12-04-07 VONELLA 35 ERDMANN LANE

The Board reviewed the application. The general consensus was favorable since the applicant's proposal is to go straight up and not to increase the existing footprint.

MOTION was made by Mr. Lilly, seconded by Mr. Davidson, and carried unanimously (5-0) to **grant** the variance of Section 29-5.D to allow a second story addition with a 23-foot side yard setback in lieu of the required 30 feet, as per submitted plans prepared by Dennis A. Deilus, dated March 2, 2012 and received March 22, 2012, on grounds that sufficient hardship was demonstrated given the pre-existing nonconforming nature of the property.

3. #12-04-08 MDW I, LLC & 300 DANBURY ROAD
JFM PROPS II, LLC

The Board discussed the application. It was the general consensus of the Board that most of the requested variances were a reasonable solution to a difficult site problem, but the Board expressed concerns regarding a requested rear yard setback of 57 feet in connection with building #500 for a proposed restaurant use.

It was the consensus of the Board that the additional encroachment into the setback in connection with that particular variance request was unnecessary and greater than what currently exists in that location. The Board also felt that other alternatives exist on the site for a restaurant use if desired.

MOTION was made by Ms. Poundstone, seconded by Mr. Fiteni, and carried unanimously (5-0) to **grant** a variance of Section 29-6.E.3 to allow a side yard setback of 48' in lieu of the 75' permitted, as per submitted plan prepared by Roger Stalker, LS, dated June 29[30], 2011 and received at public hearing April 16, 2012, on grounds that sufficient hardship was demonstrated given the pre-existing nonconforming nature of the property.

MOTION was made by Mr. Lilly, seconded by Ms. Poundstone, and carried unanimously (5-0) to **grant** a variance of Section 29-6.E.4 to allow a rear yard setback of 52' and 60' in lieu of the 75' permitted, for buildings #400 and #100, respectively, as per submitted plan prepared by Roger Stalker, LS, dated June 29[30], 2011 and received at public hearing April 16, 2012, on grounds that sufficient hardship was demonstrated given the pre-existing nonconforming nature of the property.

MOTION was made by Mr. Fiteni, seconded by Mr. Davidson, and carried unanimously (5-0) to **deny** a variance of Section 29-6.E.4 to allow a rear yard setback of 57' in lieu of the 75' permitted for buildings #500, as per submitted plan prepared by Roger Stalker, LS, dated June 29[30], 2011 and received at public hearing April 16, 2012, on grounds that sufficient hardship was not demonstrated.

MOTION was made by Mr. Lilly, seconded by Mr. Davidson, and carried unanimously (5-0) to **approve** a variance of Section 29-6.E.5 to allow a side yard setback for parking of 2' and a rear yard setback for parking of 4' in lieu of the 60' required, as per submitted plan prepared by Roger Stalker, LS, dated June 29[30], 2011 and received at public hearing April 16, 2012, on grounds that sufficient hardship was demonstrated given the pre-existing nonconforming nature of the property and safety concerns regarding traffic circulation and emergency vehicles.

4. #12-04-09 TOWN OF WILTON 131 SCHOOL ROAD

The Board discussed the application.

Board members Lilly and Poundstone were of the opinion that the proposed lights would improve the existing situation for surrounding property owners because of the anticipated reduction in light spillage and also because timers (which do not currently exist) would be installed with remote turn-off capability.

Mr. Fiteni was not convinced that the proposed lighting would be better for surrounding neighbors. He felt that the applicant did not demonstrate that the illumination would stay on the field. Both Mr. Fiteni and Mr. Davidson felt that they did not hear an adequate explanation of hardship.

Mr. Lilly stated that the hardship is that the 30-foot poles result in light spillage onto surrounding properties whereas the 70-foot poles would not result in such spillage, and thus that situation would be improved for neighbors.

Mr. Nerney noted for the record that there is a series of checks along the way with respect to other lighting regulations that were referenced this evening, noting in particular that the Planning and Zoning Commission will also need to go through all zoning regulations systematically to be sure all other requirements/restrictions are addressed on the site.

Mr. Shiue felt that the current situation, where existing lighting shines into neighboring homes, is unhealthy (i.e. light pollution) and he felt that the new technology will improve that situation for neighboring properties.

MOTION was made by Mr. Lilly, seconded by Ms. Poundstone, and carried (4-1) to **approve** a variance of Section 29-9.E.2.d to allow light poles of 70' maximum in lieu of the 30' maximum permitted, as per submitted site plan received March 26, 2012, on grounds that sufficient hardship was demonstrated since it would mitigate the light pollution that the existing 30-foot lights are currently emitting and, further, in consideration of the fact that a need of this type was not anticipated when zoning regulations were drafted with commercial uses in mind as opposed to sport venues.

Mr. Fiteni opposed. He felt that the Board was finding an excuse to approve the application and was creating a hardship for the applicant.

D. OTHER BUSINESS

1. Minutes – March 19, 2012

MOTION was made by Mr. Lilly, seconded by Ms. Poundstone, and carried (3-0-2) to approve the minutes of March 19, 2012 as drafted. Mr. Davidson and Mr. Fiteni abstained.

E. ADJOURNMENT

MOTION was made by Ms. Poundstone, seconded by Mr. Lilly, and carried unanimously (5-0) to adjourn at 9:40 P.M.

Respectfully submitted,

Lorraine Russo
Recording Secretary