

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

WILTON PLANNING & ZONING COMMISSION MINUTES JUNE 25, 2012 REGULAR MEETING

PRESENT: Chairman John Wilson, Vice Chairman L. Michael Rudolph, Secretary John Gardiner, Commissioners Lori Bufano, Marilyn Gould, Chris Hulse, Bill McCalpin, Peter Shiue, and John Weiss

ABSENT:

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. SP#377, Rolling Hills Country Club, Inc., 333 Hurlbutt Street, Amend Special Permit to allow employee housing in existing residence on Club's property**

Mr. Wilson called the Public Hearing to order at 7:15 P.M., seated members Bufano, Gardiner, Gould, Hulse, McCalpin, Rudolph, Shiue, Weiss, and Wilson and referred to Connecticut General Statutes Section 8-11, Conflict of Interest. He noted that the hearing was continued from a previous date.

Mr. Wilson recused himself from the hearing and left the meeting room. Vice-Chairman Rudolph acted as Chairman in Mr. Wilson's absence.

Mr. Gardiner referred for the record to a 2-page response letter dated June 20, 2012 from J. Casey Healy to Planning and Zoning Commission, with attachments; and an emailed letter of opposition dated June 25, 2012 from Ann Ferguson to Lorraine Russo.

Present were J. Casey Healy, attorney; David Schiff, professional planner; Earl Goven, landscape architect; and Mike Catanzano, Manager, Rolling Hills Country Club.

Mr. Healy referred to his response package dated June 20 2012, including a Vision

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Appraisal field card and proposed cottage floor plan. He reviewed square footage of the residence, noting that the first floor, the unfinished basement and the enclosed porch consist of 1416, 1400 and 256 square feet, respectively, and the three existing bedrooms are proposed to house 12 residents via 2 bunk beds per bedroom.

Addressing an issue raised by Ms. Gould at the last hearing regarding a living space guideline of 120 square feet per person, Mr. Healy explained that the first floor alone would provide approximately 118 square feet per person, and adding the enclosed porch would result in 139 square feet per person.

Mr. Healy distributed copies of an email exchange between Mr. Goven, the applicant's landscape architect, and Robert Root, Wilton Building Inspector, dated June 25, 2012, noting that Mr. Root did not see any issues in the application as proposed that would require any exterior changes to the existing residence.

Addressing another issue raised at the last hearing regarding monitoring of the house residents during late evening/early morning hours, Mr. Healy noted the Club's decision to appoint one of the 12 residents to enforce house rules.

Ms. Gould expressed concern with the applicant's proposed density for the residence, questioning whether 12 persons could be properly housed in that amount of space.

Mr. Healy questioned the source, within Wilton's zoning regulations, of Ms. Gould's reference to a minimum requirement of 120 square feet of living space per person. Ms. Gould was not able to provide the reference at this time, but she felt strongly that 4 people per bedroom is quite dense.

There was a short discussion regarding the possibility of obtaining an opinion of Town Counsel on the matter. Town Planner Nerney explained that applicant's Counsel is probably taking the position that the subject residence is not subject to regulations for a single family residence. He felt that Town Counsel would probably take the position that it is up to the Commission to determine if the proposed use of the residence can be considered a customarily accepted use under the umbrella of a Country Club.

Addressing the issue of Building Code requirements, Mr. Nerney explained that there are standards of compliance in terms of individual rooms and sizes of window openings for emergency egress, etc., all of which would be reviewed by the Building Department as part of the normal permitting process to determine if there is something physically unique about the structure necessitating that some modifications/alterations be made.

Mr. Healy cited the aforementioned email exchange between the Building Inspector and Mr. Goven, noting that the Building Inspector is aware of the proposed housing of 12 people in the subject residence. It was Mr. Healy's opinion that if there were any red

flags pertaining to the proposed use, the Building Inspector would have indicated such in his emails. However, notwithstanding any approval on the part of the Planning and Zoning Commission, Mr. Healy noted that they would still have to meet Building and Fire codes/standards in order for a building permit to be issued.

Addressing a question from Mr. Hulse, Mr. Catanzano indicated that summer time occupancy of the residence would likely be at the maximum of 12, but would probably decrease at other times of the year.

In response to an email of opposition sent by Ann Ferguson at 328 Hurlbutt Street and cited by Mr. Gardiner, Mr. Healy disagreed with respect to the issue of property maintenance raised in the letter, noting that the home has been maintained very well in the past and will continue to be well maintained in the future. He noted in particular that the home was recently occupied by, and will continue to be overseen by, the very same person that Ms. Ferguson acknowledges in her letter as a “very well respected Greens Keeper in the state of Connecticut”. Addressing Ms. Ferguson’s allegation that the Club’s well drilling has impacted surrounding properties, Mr. Healy stated that the Club was not aware of any such problems and he speculated that the Town must not be aware either or else the Club would have been so advised by the Town. Mr. Catanzano confirmed that he has had no conversation in that regard with Ms. Ferguson.

Concern was raised by several Commissioners regarding the issue of noise and other potential impacts on the surrounding neighborhood from the proposed housing of 12 in the 3-bedroom residence. Mr. Rudolph asked if perhaps someone other than one of the 12 residents could be placed in the position of house monitor. Mr. Catanzano indicated that it would be rather difficult to find an employee to take on that job. Mr. Rudolph suggested a possible condition of approval whereby two house rule infractions on the property would result in the applicant’s loss of its approval for the residence. Mr. Healy felt that such a condition would not be necessary since non-compliance with any zoning regulations (noise limitations included) could result in revocation of the Special Permit. Mr. Nerney disagreed, noting that only an enforcement action could be brought under such circumstances.

Mr. Schiff noted that the residents’ incentive for good behavior on the premises is the fact that they could be sent back to their country of origin in the event of house rule infractions. In response to Commissioners’ concerns regarding the possibility/likelihood of unacceptable behavior under such living conditions, Mr. Healy pointed out that the residence would not be occupied by college students alone, but would also include tennis/golf pros in training.

In response to a question from Mr. Weiss, Mr. Catanzano explained that the Club did not have any externs last year since housing was not available. He noted that 10-12 externs were housed in prior years in a single-family home in Wilton, and 2 persons were let go

by the Club on 2 different occasions due to behavior issues at the home.

In response to questions about parking impacts and the use of the porch or basement for living space, the applicant indicated that parking is more than adequate on the site with 218 spaces available, and there are no current plans to utilize the porch or basement for living space.

Ms. Gould raised the issue of Fire and Building Codes, given the number of people proposed to be living in the residence. She requested a full explanation from both Departments' perspectives regarding the proposed occupancy of the dwelling unit. Mr. Healy noted for the record that the application was submitted as far back as early April and, to date, the Fire Marshall has not commented on the proposed use. He further questioned why the Commission would wait until tonight to begin raising such issues. Ms. Gould felt that responses should have been submitted into the record and she also felt that Commissioners, as regulators of land use, must know the answers to these questions.

Assistant Planner White explained that copies of the applicant's recent response package were forwarded to Town Health, Fire and Building Departments. She also noted that she tried to contact the Fire Department but was advised that the Fire Marshall is currently on vacation. She indicated that the person filling in for the Fire Marshall felt that it might be necessary to install sprinklers in the home. Mr. Healy indicated that the applicant would comply if such a modification is required.

Mr. Nerney noted that various Departments' responses are purely in the context of Planning and Zoning and do not pertain to an applicant's ability to comply with those Departments' various codes, which are very specific to each Department. Mr. Goven noted further that these other Departments would all have another opportunity to review the application and look at it more closely with respect to their particular codes of compliance during the permitting process.

In that regard, Mr. Healy read into the record the standard language customarily included in a Planning and Zoning resolution of approval, as follows: "This resolution does not replace requirements for the applicant to obtain any other permits or licenses required by law or regulation by the Town of Wilton, such as, but not limited to: Zoning Permit, Sign Permit, Building permit, Certificate of Zoning Compliance; or from the State of Connecticut or the United States Government. Obtaining such permits or licenses is the responsibility of the applicant."

Mr. Rudolph asked about the applicant's plans should the Commission deny the application. Mr. Catanzaro indicated that the Club might not go through with the extern program under those circumstances.

Mr. Rudolph also questioned whether the 12-employee number is an absolute need for the

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applicant, or whether they could possibly do with 6 or 8 or some other number of employees/residents. Mr. Healy stated that 12 is what the Club needs. Mr. Catanzano noted further that the Club employed/housed 10-12 employees in the past under this extern program.

Mr. Rudolph asked if anyone in the audience wished to speak for or against the application.

Ms. Gould felt strongly that additional information regarding Building and Fire code requirements for multiple people living in single family dwelling units is necessary in order for the Commission to make a decision, and she indicated a willingness to research the matter herself.

Mr. Rudolph felt that if the Commission were to pursue such an approach, then it should obtain an opinion from Counsel as opposed to having one of its Commissioners research the matter independently.

Mr. Nerney cautioned the Commission, referencing Section 29-10 of zoning regulations for Special Permit requirements. He felt that the Commission should adhere to the basic tests for approval of a Special Permit, as outlined in the zoning regulations, and not use other jurisdictions as a rationale for turning down the subject application. In response to Ms. Gould's assertion that what the applicant is proposing is not allowed in Wilton's zoning regulations, Mr. Nerney explained that the Commission should determine whether the proposed use could be considered an acceptable incidental use for a private membership Club. Ms. Gould explained that it is more the density that concerns her as opposed to the use itself.

Mr. Shiue was comfortable with letting other Town Departments do their respective jobs after the fact, but he was uncomfortable with allowing 12 unrelated young people to live together as proposed, and with appointing one of them as house monitor. Mr. Hulse felt similarly, particularly after confirming with the applicant that no one else would be living on the premises after hours. He referenced a drowning accident of a young adult at the Aspetuck Country Club in Weston, which occurred as a result of excessive drinking on the premises after hours.

Mr. Healy assured Commissioners that the house monitor would report to both the General Manager and Assistant General Manager of the Club, noting in particular that any person breaking house rules could be terminated. He also noted that if noise were excessive and if the house monitor were ineffective in that regard for any reason, neighbors would likely call the police anyway to address the situation.

There being no further comments from the Commission or the public, at 7:51 P.M. the Public Hearing was closed.

Mr. Wilson returned to the meeting room and resumed his duties as Chairman.

2. SP#378, Wilton Shopping Center LP, 5 River Road, Outdoor seating for Bon Appetit

Mr. Wilson called the Public Hearing to order at 7:55 P.M., seated members Bufano, Gardiner, Gould, Hulse, McCalpin, Rudolph, Shiue, Weiss, and Wilson, and referred to Connecticut General Statutes Section 8-11, Conflict of Interest. Mr. Gardiner read the legal notice dated June 12, 2012.

Mr. Rudolph noted for the record that one of his closest friends has written a letter in support of the application, but he did not feel that this would in any affect his ability to act fairly on the matter.

Present were J. Casey Healy, attorney; and Dominique Arrighi, owner.

Mr. Healy reviewed details of the application, noting that the applicant is seeking to establish 273 square feet of outdoor seating space in front of Bon Appetit Restaurant and in front of the former Karate Studio next door, in anticipation of Bon Appetit's future expansion into that space. He explained that the outdoor seating would encompass 8 tables with 2 seats each, as well as an overhead canopy. He noted that a copy of the application was submitted to the Village District Design Advisory Committee (VDDC), and some comments have already been received, all of which the applicant would address.

Mr. Healy provided a brief overview of all questions/comments raised in the Planning and Zoning Staff Report dated June 20, 2012, noting that a formal written response to both the P&Z Staff Report and to VDDC comments would be provided for the next meeting. In particular, he noted that: 1) additional signage is not proposed; 2) the only additional lighting will be at corners of the canopy, for which cut sheets will be submitted; 3) a vinyl-type material is proposed for the canopy that will be fire-retardant and water resistant; 4) a total of 357 parking spaces are available on the site where only 347 spaces will be required; 5) vertical rebar will be installed in the proposed wall for safety; 6) the remaining sidewalk will measure 10'3" in width after installation of the stone wall; 7) ceramic medium beige tile flooring is proposed and a sample will be provided; 8) the trash can has already been relocated by the applicant so as not to impact sidewalk width; 9) the Health Department will be contacted prior to the next meeting in connection with the proposed outdoor seating and the additional indoor seating.

In response to a question from the Commission, Mr. Arrighi indicated that no plastic sheeting is currently proposed for the sides of the canopy, but may be considered in the future.

In response to questions regarding the proposed stone knee wall, Mr. Healy indicated that it would be similar to the existing stone wall at the Cactus Rose restaurant on the corner, and he stated that he would advise regarding its proposed exact height.

For the record, Mr. Weiss noted that he is on the VDDC, although he indicated that he has not been involved in these particular discussions.

Mr. Arrighi responded to questions about anticipated hours of operation, noting that they would remain as they are currently: Monday – Saturday 11 AM – 9 PM and closed on Sundays. He also noted his intention to upgrade from his current wine/beer license to a full liquor license when the restaurant expands into the new space.

In response to further questions from the Commission, Mr. Healy indicated that he would provide the exact number of existing versus expanded (indoor/outdoor) numbers of seats, as well as square footage numbers, for the next meeting.

Mr. Gardiner referred for the record to a 3-page Planning and Zoning Staff Report dated June 20, 2012; a letter of support dated June 19, 2012 from Kathy Leeds (Wilton Library) to Robert Nerney; a positive response from Jeanne Erskane, a resident within 500 feet of the property; an emailed letter of support sent June 22, 2012 from Andrew Bohjalian to Robert Nerney; an emailed letter of support sent June 24, 2012 from Michael Crystal to Robert Nerney; a letter dated June 24, 2012 from Nicki Brown to Robert Nerney; and 36 identically-worded letters of support, signed and dated June 19 through June 23, 2012 (Mr. Healy waived the reading of each letter/signature separately into the record).

Mr. Wilson 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 8:18 P.M. the Public Hearing was continued until July 9, 2012.

REGULAR MEETING

- A. Mr. Wilson called the Regular Meeting to order at 8:18 P.M., seated members Bufano, Gardiner, Gould, Hulse, McCalpin, Rudolph, Shiue, Weiss, and Wilson, and referred to Connecticut General Statutes Section 8-11, Conflict of Interest.

B. APPROVAL OF MINUTES

1. June 11, 2012 – Regular Meeting

MOTION was made by Ms. Gould, seconded by Mr. Gardiner, and carried (6-0-3) to approve the minutes of June 11, 2012 as modified. Commissioners Hulse, McCalpin and Weiss abstained.

C. SITE DEVELOPMENT PLAN REVIEW

D. ACCEPTANCE OF NEW APPLICATIONS

None.

It was the consensus of the Commission to scramble the agenda to address Communications items prior to Pending Applications.

F. COMMUNICATIONS

Mr. Wilson briefly spoke of his and Mr. Rudolph's recent meeting with the First Selectman, Bill Brennan, regarding a proposal to form a Town Economic Development Committee to support businesses in Town.

Ms. Gould stressed the importance of having someone with a planning/zoning background on such a Committee. Mr. Nerney concurred, noting that economic development is very much a part of the land use planning process. Mr. Wilson stressed that Mr. Brennan wants to work closely and have an open and communicative relationship with Planning and Zoning, and he therefore encouraged anyone interested to volunteer.

Mr. Wilson also noted that the First Selectman has expressed interest in developing a comprehensive signage plan for the Town and would like the Commission to look into this further. He invited anyone with ideas to bring them forward for consideration.

E. PENDING APPLICATIONS

- 1. SP#377, Rolling Hills Country Club, Inc., 333 Hurlbutt Street, Amend Special Permit to allow employee housing in existing residence on Club's property**

Mr. Wilson recused himself from the discussion and left the meeting. Vice Chairman Rudolph acted as Chairman in his absence.

The Commission discussed the application.

Ms. Gould expressed concern with whether the proposed use is allowed in the zoning regulations. She indicated that she was not opposed to the concept of seasonal employees on the property per se, but she was very concerned with the density proposed.

Mr. Hulse opposed the application because of the issue of supervision. He did not feel that the house monitor proposal or the threat of employment termination would work or be effective. He again cited the Aspetuck Country Club drowning case, noting his concern if something were to happen after the Town approved such an application.

Ms. Bufano felt that she would rather have such employees housed directly on the Club property rather than renting a house somewhere in Town. She noted that other Country Clubs do this without any issues.

Mr. McCalpin stated that he would be agreeable to some number of seasonal employees living on the premises, but he questioned how to justify a number between 4 unrelated persons (which is what is currently allowed in zoning regulations) and 12 (which is what the applicant is requesting). He thought that perhaps he could justify 6 (e.g. 2 per bedroom).

Mr. Gardiner also addressed the issue of numbers. He felt that perhaps 12 could work, but only if proper adult supervision were provided. Otherwise, he felt that a smaller group would be necessary. Ms. Bufano agreed.

Mr. Shiue also expressed concern with the lack of supervision. He questioned how self-policing could really be effective under such circumstances.

Mr. Weiss concurred. He did not object to some employee housing, but suggested a maximum of perhaps 6 without a manager on site.

Mr. Rudolph noted that he had asked the applicant if the Club really needed 12 and he felt that the applicant was clear that the Club wanted and needed 12. He therefore felt it was not incumbent on the Commission to offer less, noting that the Commission is not in a

position to negotiate deals with applicants.

It was the consensus of the Commission to deny the application.

After a brief discussion regarding the issue of denying with or without prejudice, it was the general consensus of the Commission to deny the application without prejudice. Commissioners Rudolph and Hulse favored denial with prejudice. Mr. Nerney noted that a denial with prejudice would still allow the applicant to come back with a new application as long as it is materially different from the current one.

Staff was requested to draft a resolution of denial without prejudice for discussion/vote at the next meeting.

2. SP#378, Wilton Shopping Center LP, 5 River Road, Outdoor seating for Bon Appetit

Tabled.

G. REPORT FROM CHAIRMAN

H. REPORT FROM PLANNER

I. FUTURE AGENDA ITEMS

J. ADJOURNMENT

MOTION was made by Mr. McCalpin, seconded by Mr. Hulse, and carried unanimously (8-0) to adjourn at 8:47 P.M.

Respectfully submitted,

Lorraine Russo
Recording Secretary