

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

## WILTON PLANNING & ZONING COMMISSION MINUTES FEBRUARY 25, 2013 REGULAR MEETING

**PRESENT:** Chairman John Wilson, Vice Chairman L. Michael Rudolph, Commissioners Lori Bufano, Marilyn Gould, Chris Hulse, Bill McCalpin, Bas Nabulsi, and Peter Shiue

**ABSENT:** John Gardiner (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. SP#382, Breitling USA, Inc. 206 Danbury Rd and 20 Sharp Hill Rd,  
proposed second floor addition and additional parking**

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

Present were J. Casey Healy, attorney; Sebastian Amstutz, Breitling; Richard Kent, landscape architect; and Mickey Mallardi, architect.

Mr. Healy distributed comments dated February 25, 2013 addressing issues raised at the last meeting. Addressing issue #1, he noted that the Aulenbach residence will be used to house Breitling's President for approximately 2 weeks per year, a technical instructor from Switzerland for 6 months to a year at a time, or 3-4 watchmakers for several weeks at a time, for which no lodging fees would be charged. He cited the definition of "family" in the zoning regulations, noting the applicant's opinion that use of the terms "boarders or roomers" contemplates short-term stays by paying patrons, which he noted

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would not be consistent with the applicant's anticipated use of the residence.

Addressing issue #2, Mr. Healy confirmed that the occupancy rate at 195 Danbury Road on December 20, 2012 was actually 92% (although the response letter of February 25, 2013 indicated 90%).

Addressing issue #3, Mr. Healy referenced a memorandum dated February 22, 2013 from Fire Marshal David Kohn to Daphne White, which recommended increasing the width of the accessway at the rear of the structure and corresponding turning radiuses at the corners to ensure adequate emergency vehicle access or, alternatively, possibly leaving the north side access from Danbury Road available for unimpeded emergency access. Mr. Healy indicated the applicant's preference to retain the northern driveway and have it available for emergency vehicle access when necessary, as opposed to the first option which would involve significant earth moving and construction of retaining walls.

Mr. Healy responded to a question from Ms. Gould, noting that the Aulenbach residence consists of 4 bedrooms and 3 bathrooms.

A question regarding coverage calculations was raised. Referencing the proposed raised structure, Mr. Nerney explained that initially the applicant was counting towards building coverage just the square footage of the portion of pylons actually touching the ground. He explained that staff later asked the applicant to recalculate coverage based on the perimeter formed by drawing an imaginary line around the outermost columns and, by doing so, coverage still complies. He did note, however, that if the residentially zoned Aulenbach acreage is not included in total acreage for the site, then floor area ratio (FAR) will be over by 1%, or approximately 100 square feet, where a 35% maximum FAR is permitted.

Mr. Nerney noted that there is precedent for allowing the residential acreage to be included in the overall coverage calculations for the site. He recalled the Davis-Marcus property on Route 7 and an adjoining residential property on Lennon Lane that was purchased by the company and whose acreage was permitted to be included in coverage calculations for the site.

Mr. Healy noted for the record that he did not agree with staff's interpretation of building coverage in a situation where the first floor is elevated on pylons, noting that in the past they have done such calculations using just the footprint of the portion of pylons touching the ground. In support of his interpretation, he cited the zoning regulations' definition of "building coverage" as "the percentage of the total area of the lot covered by the ground floor area of all buildings and structures thereon . . ." He also confirmed Mr. Nerney's recollection that the Lennon Lane residential property's acreage was permitted to be counted in coverage calculations for the Davis Marcus property on Route 7.

Ms. Gould stated that she was adamantly opposed to using a residential property's acreage for the purpose of increasing density on a commercial lot, noting that such an approach sets a bad precedent for the Town.

Mr. Healy stated that the regulations do not prohibit this, noting in particular that the applicant is not requesting any variance or waiver. Mr. Nerney concurred.

In response to a question from Mr. Nabulsi regarding the future feasibility of separating the two properties again once they are combined, Mr. Healy stated that such a separation would require setback and FAR variances, as well as a variance to create a less than one-acre lot in an R-1A zone (since the Aulenbach property is currently grandfathered with respect to counting its accessway towards total acreage). He felt that it would be virtually impossible for any applicant to acquire such variances in the future.

Ms. Gould suggested that the applicant reduce its proposed addition by 6 inches all around in order to decrease overall coverage by 100 square feet and thus bring the site into total compliance without reliance upon the adjoining residential acreage. Mr. Mallardi estimated that it would require a reduction of approximately 14-18 inches all around in order to achieve the 100 square foot decrease in overall coverage.

Addressing a question from Mr. Nerney, Mr. Mallardi stated that the applicant would be amenable to screening/shielding of roof-top equipment on the existing building, as is currently required by regulations for the new building.

Mr. Nabulsi asked what the implications would be to the applicant if the Commission were to determine that the proposed use of the residence does not fit within the spirit of the regulations. In particular, he questioned whether the applicant would be likely to still move ahead with the application if such a determination were made or if a denial would then be required. Mr. Healy stated that the applicant would of course like to use the residence as proposed, although he indicated that there is probably not a high likelihood of an appeal if such a position were to be taken by the Commission. However, he emphasized that the applicant is proposing longer-term types of uses for the residence as opposed to short-term stays.

A discussion ensued regarding the possibility of requiring longer-term rentals/leases of the property as opposed to the uses anticipated by the applicant, although Mr. Nerney pointed out that the proposed uses might actually result in better oversight of the property.

Mr. Nabulsi asked whether another curb cut would be required in order to accommodate the Fire Marshal's suggestion that the northern driveway be kept accessible for emergency vehicles. Mr. Healy stated that, after construction is completed, the applicant would install a curb that would allow Fire trucks access over it, and would also reinforce the soil area to accommodate the trucks.

Mr. Kent indicated that the proposed gate across the northern driveway would likely be a hinge style since there is not enough room for a sliding gate.

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

Mr. Rudolph referred for the record to a memorandum dated February 22, 2013 from Fire Marshal David Kohn to Daphne White.

There being no further comments from the Commission or the public, at 7:45 P.M. the Public Hearing was closed.

## **REGULAR MEETING**

- A. Mr. Wilson called the Regular Meeting to order at 7:45 P.M., seated members Bufano, Gould, Hulse, McCalpin, Nabulsi, Rudolph, Shiue, and Wilson, and referred to Connecticut General Statutes Section 8-11, Conflict of Interest.

### **B. APPROVAL OF MINUTES**

#### **1. February 11, 2013 – Regular Meeting**

MOTION was made by Ms. Gould, seconded by Ms. Bufano, and carried (7-0-1) to approve the minutes of February 11, 2013 as drafted. Mr. Hulse abstained.

### **C. SITE DEVELOPMENT PLAN REVIEW**

### **D. ACCEPTANCE OF NEW APPLICATIONS**

E. PENDING APPLICATIONS

1. **SP#381, ASML US, Inc., 77 Danbury Road, proposed addition to existing manufacturing facility**

The Commission briefly reviewed draft Resolution #0213-1P.

Referencing noise concerns expressed by a resident at the last meeting, Mr. Nerney stated that ASML has contacted its waste hauler and they have been advised of the Town's ordinance limiting hours of waste pick-up. He noted that staff visited the site today and measured noise levels as close to the property line as possible with both analog and digital equipment, and results came in at less than the maximum decibel levels permitted by zoning regulations. He noted that the testing was done in the morning with all co-generation fans running and with ambient traffic in the background.

A short discussion ensued regarding the neighbor's noise complaint at the last meeting that certain equipment runs for 20+ minutes on Sundays during the summer months. The Commission discussed adding a condition specifying the maximum decibel levels permitted on the site, but it was noted that a condition requiring conformance with Section 29-9.H.7 of zoning regulations pertaining to emanation of noise was already included in the draft Resolution.

Mr. Nabulsi felt that including such a condition in the resolution was relatively dramatic since it effectively raises the issue of noise to another level, as opposed to it being an issue of enforcement only.

MOTION was made by Mr. Nabulsi, seconded by Ms. Bufano, and carried unanimously (8-0) to adopt as drafted Resolution #0213-1P for SP#381, effective February 28, 2013.

**WHEREAS**, the Wilton Planning and Zoning Commission has received a Special Permit application (**SP#381**) from ASML US, Incorporated to allow the installation of a 4,543 square foot addition for property located at 77 Danbury Road, in a Design Enterprise "DE-10" District, Assessor's Map #69, Lot #18, consisting of 29.23 acres owned by ASML US, Incorporated and shown on the plans entitled:

Location Map, Vicinity Sketch & Watershed Map - Prepared for ASML US, Inc., Prepared by Paul Syzmanski Jr. for Arthur H. Howland & Associates, engineer, dated October 29, 2012, scale: as noted, sheet #A.1.

Existing Conditions Map - Prepared for ASML US, Inc., Prepared by Paul Syzmanski Jr. for Arthur H. Howland & Associates, engineer, dated October 29, 2012, revised January 11, 2013, scale 1"=50', sheet #EC.1.

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Overall Site Development Plan - Prepared for ASML US, Inc., Prepared by Paul Syzmanski Jr. for Arthur H. Howland & Associates, engineer, dated October 29, 2012, revised January 11, 2013, scale 1"=50', sheet #SD.1.

Enlarged Site Development and Sedimentation & Erosion Control Plan - Prepared for ASML US, Inc., Prepared by Paul Syzmanski Jr. for Arthur H. Howland & Associates, engineer, dated October 29, 2012, revised January 11, 2013, scale 1"=20', sheet #SD.2.

Landscaping Plan - Prepared for ASML US, Inc., Prepared by Paul Syzmanski Jr. for Arthur H. Howland & Associates, engineer, dated January 2, 2013, scale 1"=20', sheet #L.1.

Standard Details - Prepared for ASML US, Inc., Prepared by Paul Syzmanski Jr. for Arthur H. Howland & Associates, engineer, dated October 29, 2012, revised January 11, 2013, scale: as noted, sheet #D.1.

Zoning Location Survey - Prepared for ASML US, Inc., Prepared by Robert L. Liddel Jr. for Rocco V. D'Andrea, Inc., surveyor, dated August 24, 2012, scale 1"=60', no sheet #.

Topographic Survey - Prepared for ASML US, Inc., Prepared by Robert L. Liddel Jr. for Rocco V. D'Andrea, Inc., surveyor, dated September 4, 2012, scale 1"=40', no sheet #.

First Floor Construction Plan - Prepared for ASML, Prepared by H & R Design, facilities planners, dated November 13, 2012, scale: 1/4"=1', sheet #A101.

Roof Plan – New EUV Test Addition - Prepared for ASML, Prepared by H & R Design, facilities planners, dated January 15, 2013, scale: 1/4"=1', sheet #A102A.

Exterior Elevations - Prepared for ASML, Prepared by H & R Design, facilities planners, dated January 15, 2013, scale: as noted, sheet #A201.

Cross Section - Prepared for ASML, Prepared by H & R Design, facilities planners, dated November 13, 2012, scale: as noted, sheet #A302.

**WHEREAS**, the Wilton Planning and Zoning Commission has conducted a public hearing on February 11, 2013 to receive comment from the applicant and the public and has fully considered all evidence submitted at the hearing; and

**WHEREAS**, the Inland Wetlands Commission has rendered a favorable report to the Planning and Zoning Commission and has given due consideration to the consensus of the Inland Wetlands Commission; and

**WHEREAS**, the Wilton Planning and Zoning Commission has determined that the application is in substantial compliance with the Wilton Zoning Regulations;

**NOW THEREFORE BE IT RESOLVED** that the Wilton Planning and Zoning Commission **APPROVES** Special Permit #381 to allow the installation of a 4,543 square foot addition at 77 Danbury Road, effective February 28, 2013 subject to the following conditions:

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 Government of the United States. Obtaining such permits or licenses is the responsibility of the applicant.

In accordance with Section 8-3.(i) of the Connecticut General Statutes, all work or physical improvements required and/or authorized by the approved Site Plan shall be completed within

five years of the effective date of this resolution. This five-year period shall expire on February 28, 2018.

The applicant shall file a Land Record Information Form for this Special Permit approval with the Town Clerk (form to be provided by the Planning and Zoning Department) prior to the issuance of a zoning permit.

All proposed light fixtures shall be reviewed and approved by the Planning and Zoning staff prior to the issuance of a zoning permit. The light fixtures shall comply with specifications and requirements outlined in Section 29-9.E of the Zoning Regulations.

Hours of construction shall be permitted Monday through Friday between the hours of 7:00 a.m. and 5:00 p.m. and Saturday between the hours of 8:00 a.m. and 5:00 p.m. No construction shall be permitted on Sunday or legal holidays. Said condition shall not apply to any construction activity occurring within the fully-enclosed interior of the building.

### **Submittal of revised plans and application:**

Two (2) completed revised sets, (collated and bound) shall be submitted to the Commission's office for endorsement as "Final Approved Plan" by the Town Planner. Said plans shall include all revisions noted above and shall bear an ORIGINAL signature, seal and license number of the professional responsible for preparing each plan or portion of it.

Said plans shall include the following notes:

a. "Pursuant to Section 8-3.(i) of the Connecticut General Statutes, all work in connection with this Special Permit shall be completed within five years after the approval of the plan. Said five-year period shall expire on February 28, 2018."

b. "For conditions of approval for Special Permit #381, see Resolution #0213-2P

### **Prior to the issuance of a certificate of zoning compliance:**

Prior to the issuance of a Zoning Certificate of Compliance, the applicant shall furnish the

Planning and Zoning Department with an as-built survey of the property. Said survey shall depict the location of all buildings/structures and parking areas and shall include building and site coverage calculations.

The applicant shall comply with Section 29-9.H.7. of the Zoning Regulations as it pertains to the emanation of noise. Prior to the issuance of a Zoning Certificate of Compliance, the Planning and Zoning Department staff shall conduct noise testing to verify that operations are compliant with this regulation.

-END RESOLUTION-

**2. SP#382, Breitling USA, Inc. 206 Danbury Rd and 20 Sharp Hill Rd, proposed second floor addition and additional parking**

The Commission discussed details of the application.

Referencing the issue of including the residential acreage in coverage calculations, Mr. Nerney stated that he called David Fiore at Davis Marcus Companies to confirm that the Lennon Lane residential parcel was, in fact, included in coverage calculations for the site, and he noted that Mr. Fiore did verify that fact.

Ms. Gould felt strongly that the applicant should reduce its proposed gross floor area by approximately 100 square feet to bring it into compliance with maximum FAR permitted for the site, without inclusion of the residential property acreage in the calculation. She felt that such a small reduction would not harm the overall usage of the building, and it would prevent an undesirable precedent from being set for the Commission going forward.

Mr. Rudolph noted that the only option, in order to have them cut their gross floor area, would be to deny the application, which he did not feel was appropriate in this situation. He noted that the applicant has been a good neighbor over the years.

Ms. Gould suggested that they could withdraw the application and come back with a slight modification to the footprint.

Mr. Nerney also suggested that the Commission might want to consider possible revisions to its current “building coverage” definition, which references area of a lot that is “covered by the ground floor area of all buildings and structures thereon”. Several Commissioners indicated a willingness to review/consider revisions to the current definition.

Mr. Nabulsi focused on one aspect of the definition of “family” in the zoning regulations (“ . . . or a group of not more than four unrelated persons, living and cooking together as a single housekeeping unit, including domestic help but excluding boarders or roomers”).



He felt that the definition represented an effort to recognize that in today's world unrelated people live together in residential zones, but he felt that a distinction could be drawn between the intent of the regulations and what is being proposed by the applicant.

Ms. Gould felt that the issue of the shorter time period is the more important aspect that needs to be considered here, as opposed to the number of unrelated persons living together.

Mr. Nabulsi felt that the Commission was placing a lot of weight on the fact that it respects Breitling as a company and is thus drawing a conclusion on the caliber of the guests that will be housed by Breitling in the residence, but he felt that it might not be fair to extrapolate that to any and all uses that might appear before the Commission in the future who wish to define "family" in this way. He compared the definition of "family" with Section 29-5.A.4.g of zoning regulations which expressly excludes as a permitted accessory use "tourist homes, hotels, inns or similar types of transient facilities" in single-family residential districts. He felt that the Commission needs to understand exactly how the proposed use is acceptable within the parameters of the Town's zoning regulations if it is going to approve the use as proposed. He expressed further concern that persons using the residence in this way will have no vested interest in the property, which could negatively impact the surrounding residential neighborhood.

Mr. Rudolph questioned whether imposing a condition that no charge or fee shall be levied for use of the house (unless it is leased for some pre-determined and agreed upon longer time period) might adequately address the exclusions noted in Section 29-5.A.4.g.

It was the general consensus of the Commission that staff should work on preparing a draft resolution that addresses some of the aforementioned concerns and, further, that staff should consult with the applicant regarding the possible reduction in gross floor area of 100 square feet, as discussed during the public hearing.

## **F. COMMUNICATIONS**

### **1. Wilton Executive Campus LLP, 11, 15 and 21 River Road, SP#142, Request for release of conditional agreement from 1985**

Mr. Nerney referenced his letter to the Commission dated December 3, 2012 regarding an agreement between the Town and Nabisco Brands, Inc., recorded back in 1985, requiring Nabisco to construct a perimeter road, remove an old access road and construct a new access driveway to the perimeter road. He explained that the agreement indicated that the Commission will record a release of the agreement upon completion of the required work. He stated that the current, new owner has provided a recommended release document which Mr. Nerney suggested forwarding to Town Counsel for review prior to issuance of

any release.

Ms. Gould expressed some concerns about the applicant's request. She felt that more information would be necessary before the Commission issues the requested release.

In light of Ms. Gould's concerns, Mr. Wilson requested that Ms. Gould work with Town Planner Nerney and staff to review the matter further.

It was the consensus of the Commission, by an (8-0) vote, that staff should handle the release request, with input from Ms. Gould, and refer the matter/documents to Town Counsel for final review.

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Mr. Nabulsi raised the issue of television coverage, noting that Planning and Zoning Commission meetings are not televised whereas most other Commission meetings are covered by public access TV.

Mr. Nerney explained that there are costs associated with televising such meetings and, given the recent fiscal constraints, the Planning and Zoning Department has been unable to include these costs in its budget.

Except for the fact that funding is needed, Mr. Wilson noted for the record that Planning and Zoning has no major issue with the concept.

**G. REPORT FROM CHAIRMAN**

**1. Reports from Committee Chairmen**

**H. REPORT FROM PLANNER**

**I. FUTURE AGENDA ITEMS**

- 1. SP#383, Redding Railroad Frozen Yogurt, LLC, 142 Old Ridgefield Road, fast food establishment without drive-in facility [P.H. – March 11, 2013]**
- 2. SDP, Stop & Shop Supermarket Company, 5 River Road, proposed alternative signage program [Discussion – March 11, 2013]**

**J. ADJOURNMENT**

MOTION was made by Mr. Hulse, seconded by Mr. McCalpin, and carried unanimously (8-0) to adjourn at approximately 8:30 P.M.

Respectfully submitted,

Lorraine Russo  
Recording Secretary