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

DRAFT
WILTON PLANNING & ZONING COMMISSION MINUTES
JUNE 10, 2013 REGULAR MEETING

PRESENT: Vice Chairman L. Michael Rudolph, Secretary John Gardiner, Commissioners Lori Bufano, Marilyn Gould, Bill McCalpin, Bas Nabulsi, and Peter Shiue

ABSENT: Chris Hulse, John Wilson (notified intended absence)

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

PUBLIC HEARINGS

1. SUB#910, DeRose, 5 Wilton Acres and Wilton Acres (0.32 acres), 2-lot subdivision

Mr. Rudolph, acting as Chairman in the absence of Commissioner Wilson, called the Public Hearing to order at 7:16 P.M., seated members Bufano, Gardiner, McCalpin, Nabulsi, Rudolph, and Shiue, and referred to Connecticut General Statutes Section 8-11, Conflict of Interest. He noted that the hearing was continued from a previous date.

Ms. Gould arrived and was seated at 7:17 P.M.

Mr. Gardiner referred for the record to a memorandum dated June 10, 2013 from Michael Ahern to Daphne White with attached drawings; and a letter dated June 10, 2013 from J. Casey Healy to Planning and Zoning Commission with attached plans.

Mr. Gardiner recused himself from the hearing and left the meeting room.

Mr. Nabulsi noted for the record that he had missed a meeting but subsequently listened to the tape of the meeting in its entirety. He noted that he not received a copy of a petition and a set of photos referenced during the meeting, both of which were then copied and provided to him by Assistant Town Planner White.

Present were J. Casey Healy, attorney; and Brian P. McMahon, Redniss and Mead,

engineer.

Mr. Healy briefly reviewed a history of the application, noting that it was first presented on April 22, 2013; responses to staff, Commission and neighbor comments/issues were submitted May 9, 2013 and May 28, 2013; a property survey of existing conditions was subsequently submitted, per Mr. Rudolph's request, as well as confirmation of acreage; and documentation requested by Field Engineer Ahern was submitted today in satisfaction of engineering/drainage issues previously raised.

Mr. McMahon reviewed the originally submitted plan, noting site modifications that were subsequently incorporated in response to Commission review/comments, including relocating the proposed drainage system approximately 70 feet further east and the proposed septic system approximately 27 feet further east, away from the western boundary; reducing the proposed residence size from 5 bedrooms to 4 bedrooms; and shifting the driveway over approximately 10 feet. He noted that the plan is fully compliant with the Health code and shows no net increase in rates of runoff, up to and including the 25-year storm, per Engineer Ahern's request.

Mr. Nerney referenced a small discrepancy that had previously been noted between the survey and the site plan, which called into question the compliance of one of the lots. Mr. McMahon explained that it was a drafting error, resulting in an unintended slight reduction in the 150-foot width required for compliance. He confirmed that the lot is, in fact, compliant with zoning regulations, as required.

Referencing the unusual shape of Lot 1, Ms. Gould asked what the applicant felt should be the minimum tail permitted for attaching non-contiguous portions of properties. She also asked for examples of other such lot configurations in Town, noting that she could not remember any other properties such as this in Town.

Mr. Healy cited properties on Thayer Pond Road, noting that these types of lots have been approved before as long as the appendage portion of the lot is not included in the calculations toward minimum lot area. In response to a request from Ms. Gould to provide a couple of specific examples of such lots, Mr. Healy stated that he could, although he did not understand the necessity of providing such information. Ms. Gould responded by noting that the proposed lot configuration is highly unusual.

Mr. Nerney briefly reviewed minimum lot requirements for the R-1A zoning district, including the minimum 150' x 150' box requirement; 40' front and rear yard, and 30' side yard setback requirements; and the required discounting toward minimum lot area of portions of lots that are less in width than the 150' required.

Mr. Nabulsi noted that it is critical that these measurements be correct to ensure zoning compliance, particularly since there is very little leeway in some of the measurements.

He also asked for confirmation that driveways are permitted within the required setbacks of a lot. Mr. Healy and Mr. Nerney confirmed same.

Mr. McCalpin asked whether the proposed Lot 1 configuration is consistent with the definition of "yard" as defined in zoning regulations. Mr. Healy explained that a yard in the R-1A zone is shown with 40' front/rear yard setbacks and 30' side yard setbacks, and since yard is an area where structures are not permitted to be located, he felt that the area behind Lot 2 (belonging to Lot 1) does count as "yard" per zoning definitions.

Mr. Nabulsi referenced Section 29-4.B.3 of zoning regulations ("Odd Shaped Lots"), which allows Commission interpretation in cases of uncertainty due to "peculiar or irregular" shaped lots. Noting that lot requirements as written appear to be satisfied by the proposed lots as configured, he questioned whether Section 29-4.B.3 of the regulations would apply in this instance. Mr. Healy was of the opinion that the lots would not qualify under the "Odd Shaped Lots" provision in the regulations. He noted further that the applicant has also moved the proposed septic in order to relocate development activity away from the abutting neighbor.

Mr. Nerney questioned how the Commission could assure that the drainage infrastructure as proposed would be implemented.

Mr. Healy stated that he assumed the Commission would require submission of an engineer-certified drainage system as-built after development. In that regard, Mr. Nerney expressed concern as to whether the Commission could legally require more of the applicant than what is actually required by subdivision regulations. Notwithstanding Mr. Nerney's concerns and recognizing the jurisdictional issue raised by him, Mr. Healy stated that the applicant would nonetheless agree to a condition within the resolution of approval requiring submission of an as-built of the drainage plan and if the applicant does not file an appeal within the statutory two-week appeals period, the condition would stand.

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

Katherine Zalantis, 31 Ridge Lane, stated that approval of the lots proposed would create a dangerous precedent for the Town since it is contrary to both the intent and the letter of the zoning regulations. Referencing Attorney Healy's May 28, 2013 response to her letter of May 9, 2013, she stated that it did not respond to the arguments/concerns raised. She repeated her contention that the proposed lot does not comply with the definition of "yard", as defined by zoning regulations, which requires measurement at right angles from the line of the building to the nearest lot line. She noted that there is no possible way to extend a perpendicular line from the main portion of Lot 1 to any portion of the rear area of the lot that is located behind Lot 2. She also referenced Section 29-4.B.7.b, c of zoning regulations which regulate the amount of area permitted to be under water, in a

100-year floodplain, or designated as inland wetland. She referred in particular to the use of the word "contiguous" in part c. of said regulation, which she felt was a significant addition to the phraseology as compared to part b. Since "contiguous" is not specifically defined within the zoning regulations, she felt that the customary definition/usage of the word must be applied and, in so doing, the two portions of Lot 1 would not, in her opinion, satisfy the customary usage of the word.

Referencing the panhandle (connecting) portion of the lot and the fact that zoning regulations provide for discounting of that area with respect to total lot square footage, Mr. Rudolph questioned whether everything else would therefore, by default, be considered approvable.

Ms. Zalantis felt that all relevant regulations must be considered when determining the legality of a lot, referring again to the definition of "yard" and what she perceived as the deficiency of this lot with respect to the right-angle requirement. She felt that any portion of land that doesn't satisfy that requirement should not be counted towards total lot area since doing so would set a dangerous precedent that would result in density issues in the Town going forward.

In response to a question from Mr. Rudolph, Ms. Zalantis stated that she did not feel there is a requirement for a minimum amount of "yard", but she did feel that the lot, as proposed, is odd-shaped and therefore the Commission should determine how the regulations are applied. She noted further that the property is also burdened by an easement which could affect site coverage in the future if Avalon ever decides to exercise its right to develop that portion of the lot with pavers, and therefore she felt that that portion should not be counted towards total lot area.

Mr. Nabulsi referenced the table at the end of Section 29-5.D of zoning regulations. He felt that the right angle reference is included in the definition of "yard" in order to utilize the table properly and to assure that all of the required setbacks (i.e. front, side and rear) are correctly calculated and satisfied.

In response to a question from Mr. Shiue regarding the issue of whether the land is contiguous, Ms. Zalantis again referenced Section 29-4.B.7.c, noting that the rear portion of Lot 1 is not contiguous, in the customary sense of the word, with the main portion of the Lot.

Addressing the language of Section 29-4.B.7.b and c., Mr. Nerney noted that the discounting of lot area discussed in that Section has to do with inland wetland land or areas that are under water, i.e. driven entirely by a requirement for at least .8 acres of contiguous land area in the R-1A zone that does not consist of wetland soils.

Addressing the heretofore noted issue of an easement on the property, Mr. Nerney

explained that the easement was purchased by Avalon in 2007 for the purpose of emergency access. He noted that although the private easement is in place, he did not believe that Avalon could utilize the easement without coming back before the Commission for additional review.

Bruce Reznik, 7 Wilton Acres, referred to photos that were taken in May of this year, noting in particular the level of illumination created by the Avalon development on the 0.32 acre parcel in question, and also the "parking lot" effect that is impacting one of the homes in the area. He felt that their neighborhood, as a result of Avalon and the now proposed subdivision, is becoming more of a multi-family residential area as opposed to the single-family residential area for which it is zoned.

Citing her sensitivity to the issue of light pollution, Ms. Gould asked whether the Commission could apply a required lighting shut-off time to multi-family developments as it does for commercial properties. Mr. Nerney explained that the Avalon development was finally approved via Court order, after a 10-year battle, under the Connecticut Affordable Housing Statute 8-30g. As a result, the Town was limited to considering issues of safety only and therefore Avalon would have to agree to any lighting limitations on a voluntary basis.

Mr. Reznik noted for the record that there are connections between lighting and sleep deprivation and thus he felt that lighting can be considered a health and safety concern.

Mr. Healy addressed the issue of "yard" definition, noting that it has nothing to do with a minimum acreage requirement. In particular, he noted that a right-angle measurement can be taken for all setbacks on the subject lot, as required by the definition. With respect to the issue of contiguousness, he felt that the parcel satisfies the common-sense definition of the word. Regarding the easement issue, Mr. Healy confirmed that if Avalon wishes to exercise its easement rights, it would have to come back before the Commission for review/approval.

Addressing a question from Mr. Nabulsi as to the significance of Section 29-4.B.7. (b and c) with respect to the subject application, Mr. Healy noted that none of the lot area on either lot is under water, in a flood plain or is considered an inland wetland, thus satisfying Section 29-4.B.7.b. With respect to Section 29-4.B.7.c, he felt that the lots satisfy the contiguous requirement, and since no portion of either lot consists of wetland soils, 100% of both lots comply.

Mr. McMahon noted for the record that all DPW issues have been addressed to the satisfaction of Town Engineer Ahern.

There being no further comments from the Commission or the public, at 8:40 P.M. the Public Hearing was closed.

The Commission took a short recess at 8:40 P.M.
The Commission returned from recess at 8:46 P.M.

2. Remand of SP#191E, Montessori Association, Inc., 34 Whipple Road, pursuant to directive of the CT Superior Court

Mr. Gardiner returned to the meeting room. Commissioners McCalpin and Nabulsi recused themselves and left the meeting.

Mr. Rudolph called the Public Hearing to order at 8:46 P.M., seated members Bufano, Gardiner, Gould, Rudolph, and Shiue, and referred to Connecticut General Statutes Section 8-11, Conflict of Interest. Mr. Rudolph noted that the hearing was continued from a previous date. Mr. Gardiner referred for the record to a letter dated June 7, 2013 from Joseph P. Williams to John Wilson, with attached email communications dated June 7, 2013 among Town Counsel Patricia Sullivan, Joseph P. Williams, and Bob Nerney.

Present were Joseph P. Williams, Shipman & Goodwin, attorney; Holt McChord, engineer; Kate Throckmorton, landscape engineer; and Steve Kranzlin, Board of Trustees, Montessori School.

Mr. Williams provided a brief background/history of the application, noting that it was remanded back to the Commission with one substantive issue outstanding, i.e. whether the Commission wishes to grant a 50-foot landscape buffer waiver, per Section 29-8.C.2 of zoning regulations. If not, he explained that the School must then modify its plan to comply with the buffer requirement. He noted that the School has offered to construct a 6-foot stockade fence, in addition to plantings for screening, to minimize the proposed buffer intrusion.

Mr. Rudolph read into the record the next to last paragraph of the "Memorandum of Decision" dated May 4, 2012 summarizing the Court decision to grant the Plaintiff's application, and to permit the Commission to impose "additional reasonable conditions and modifications it deems appropriate including but not limited to signage and pavement markers, blockage of the thirteen parking space site on Whipple Road, waiver and/or reduction of the three landscaped buffer requirements, relocation of the new parking lot and modification and/or relocation of the new parking lot curb cut." He asked whether the applicant agreed with the language of the aforementioned paragraph. Mr. Williams replied in the affirmative.

Mr. Rudolph stated that it was his intention that everyone understands how limited the scope of the subject hearing is.

Mr. Williams stated that it is the applicant's belief that the submitted plan is the best plan possible, noting that it was signed off by the Town Engineer; makes the best use of the property; and will remove approximately 74 vehicle trips per day on Whipple Road. He stated that if the Commission insists upon the 50-foot landscape buffer requirement, the applicant can provide an alternate plan to satisfy that requirement. However, he noted that such a plan would involve greater disturbance to the land, increased loss of trees, and a more visible driveway.

Addressing an alternate plan proposed by Philip Goiran and presented at the last meeting, Mr. Williams noted that the Goiran plan was brought before the School's Board of Trustees but was ultimately rejected in favor of the original plan. The reasons cited by the Board were that the original plan was safer for pedestrians; resulted in fewer vehicle trips; alleviated potential traffic back-up during special events; involved less tree loss; and would not require a redesign of the School's septic system, as would be required with the Goiran plan. He felt that the original plan (Plan A) would be the best plan for the subject site.

Mr. McChord distributed copies of an alternate plan (Plan B) which would be compliant with the landscape buffer requirement. He also posted a copy of the original configuration of the northern portion of the site at the time it was purchased by the School (when it was a single-family parcel). He noted that the School's original plan utilized the same curb cut and essentially the same disturbed area as the original configuration of the residential lot. He emphasized the School's primary concern for safety of pedestrian circulation, which it felt was a drawback with the Goiran plan. He also explained that the School's plans keep the proposed septic reserve area in the central area of the site intact, which the Goiran plan does not, and which he noted could be a significant expense issue, particularly in light of the topography of other areas of the site and the required 150-foot radius of non-disturbance around the existing well.

Mr. McChord noted further that the alternate plan (B), although compliant with the 50-foot buffer requirement, would result in the loss of an additional 11 trees, would pinch into the reserve septic area and, overall, would not be as nice a plan in the applicant's opinion.

Referencing the Goiran plan again, Mr. McChord noted additional concerns (i.e. it would result in the loss of some of the existing tree buffer; the perpendicular parking in combination with the proposed one-way traffic configuration could more easily result in traffic circulation problems; and it would present a conflict involving the locations of the septic and drainage systems**).**

In response to further questions, Mr. McChord indicated that a sign could be installed at the pedestrian crossing as an additional safety enhancement, and bushes could be planted to discourage future parking in the area along Whipple Road where parking spaces will be

removed. Addressing the latter situation, Mr. Nerney suggested a condition requiring the applicant to install "No Parking" signs, subject to Police Commission review/approval.

A question of ownership was raised regarding a lamp post on the property and whether it is owned by the electric company or by the School. Mr. Kranzlin stated that the School would have no problem turning the light off if it is owned by the School, and if it is determined to no longer be needed. Barbara Valk, a neighbor present in the audience, indicated that she had called CL&P a couple of years ago and was informed that the light is not owned by the electric company. Mr. Williams indicated that he would follow up to confirm ownership.

In response to a question from the Commission, Mr. McChord confirmed that a curvilinear driveway (as proposed in Plan A) is preferential to a more linear shaped driveway (as proposed in Plan B) from the perspective of screening headlight glare into facing properties. Mr. Kranzlin also confirmed that a safety monitor continues to be employed by the School for safety and to facilitate traffic circulation.

Ms. Throckmorton reviewed proposed landscaping for the site, noting that the applicant would install additional trees, including evergreens and shades as required, for additional screening. She reviewed details of the proposed 6-foot solid, stockade fence that would run along the entire length of the driveway/parking area for approximately 200 feet, along with additional shrubs/trees. She explained that Plan A, which follows the path/configuration of the original residential driveway on that portion of the site, also tries to utilize existing grading and save larger trees at the driveway entrance area, while alternate Plan B would result in the loss of 11 trees. In response to a question from Ms. Gould regarding the planting of additional landscaping/screening if the alternate plan was chosen, Ms. Throckmorton acknowledged that a row of trees could be installed along the northern boundary in that situation. She also noted that the existing underbrush is very dense on the north side.

Mr. Shiue asked if the applicant could locate the driveway somewhere in between the proposed 10-foot buffer and 50-foot buffer plans, perhaps in the 30-foot range, but still retain the majority of existing shrubbery/trees and not lose the curvilinear configuration. Mr. McChord thought that there might be some room available for an alternative layout.

Mr. Rudolph stated that he would love to see the applicant explore such an option.

Mr. Nerney referenced the applicant's proposed euonymus bushes on the site, which he noted are invasive and deciduous, and he asked if they might be replaced by some evergreens, columnar, tall-growing types of plantings. Ms. Throckmorton indicated that a row of evergreens could be planted in that location.

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

application.

Sari Weatherwax, 19 Whipple Road, demonstrated by reference to the meeting room wall the actual size of a 25-foot curb cut, noting that such a distance is huge, especially since her property is located immediately across the street from it. She also felt that the 10-foot tall lights are more like 22-foot tall lights due to the grade of the property, making them and car headlights more visible from her property. She stated that a real estate agent she consulted estimated a loss of $40,000 in property values as a result of the proposed site modifications. She indicated a preference for Mr. Goiran's plan, which she felt would result in less impact on the neighborhood as well as maintain a rural feeling within the community.

In response to a question from Ms. Gould, Mr. Kranzlin stated that lights would be turned off in the evenings except when there are evening events planned.

Philip Goiran, 23 Whipple Road, stated that he lives across the street from the school. He felt that the School's plan causes the maximum impact on the neighborhood whereas his alternate plan attempts to limit the impact on the neighborhood. He did not feel that the proposed driveway is merely a continuation of the residential driveway that was there previously, noting that it extends 240 feet into the property, is approximately 25 feet wide and rises 14 feet in elevation. He expressed disappointment that preservation of trees appears to be a more compelling argument with respect to development of the site than the property interests of the neighbors.

Mr. McChord noted for the record that proper development of the site involves more than just the preservation of trees. He explained that it is a puzzle involving many issues, including septic, drainage, and buffer requirements, all of which must be balanced to ensure the best possible use of the site.

Mr. Nerney asked if the driveway width could be throttled down a bit, noting that the regulations allow a minimum driveway width of 20 feet. Mr. McChord stated that the proposed driveway width is 22 feet with a 25-foot opening at the curb, but he indicated that the applicant could take another look at that.

Barbara Valk, 43 Whipple Road, expressed concern regarding the area along Whipple Road where parking spaces are being removed. She stated that physical barriers need to be installed, not just grass, to discourage parking there in the future. She felt that signage is also necessary since she has had trouble getting out of her driveway in the past. She stated that she does not see a traffic monitor on the site daily, noting that better traffic management is needed particularly during big events at the School. She noted again that the large pole light (discussed earlier in the evening) will no longer be needed in that location.

Joe Bruno, 12 Ivy Lane, expressed concern with the curb cuts and level of traffic in the area, noting that cars travel 10 mph on the School property and 25 mph along Whipple Road. He complained about two lamp posts on the property recently acquired by the School, which are tall and were turned on 24/7, shining into neighboring homes. He noted that the School had agreed to turn them off, which they did for awhile, but he noted that they are now back on. He urged the Commission to be as stringent as possible, given the size of the School in such a small community, so as to make their neighborhood as livable and well-defined as it can be.

Susan Russell, 44 Erdmann Lane, expressed concern (albeit not a resident of the neighborhood) that all the possible plan variations are now pitting neighbor against neighbor, noting that not everyone can be appeased in the end. She stated that the overall impact needs to be controlled as well as possible, referring in particular to issues such as screening, lighting, the gate, signage, etc., noting further that the landscape buffer was never a huge issue for the group. She expressed hope that they will all continue to make progress going forward.

A short discussion ensued about the School's occasional use of mini-buses to alleviate some vehicle trips/traffic in the area. Ms. Russell noted that the neighbors were very appreciative when the School bused people in/out during a few large events in the past.

Mr. Nerney noted that, statutorily, the hearing must be closed this evening unless the applicant agrees to a continuance. Mr. Williams stated that the applicant would be willing to continue the hearing until June 24, 2013. Mr. Nerney indicated that it would be preferable to obtain the applicant's agreement in writing.

Mr. Williams expressed appreciation for all neighbor input and the spirit of their comments. He stated that the School would like to minimize the impact on the neighborhood as much as possible, noting in particular that the applicant will look at the possibility of a buffer in between the 10-foot and 50-foot proposed plans already submitted. It was agreed that the School would refine its proposed plans in light of comments/issues discussed this evening and, to facilitate the process, Planning and Zoning staff indicated that it would prepare a bullet-point list of comments and agreements reached this evening and forward same to the applicant. Mr. Williams indicated that any revised plans/proposals would be brought back to the Commission for its review at the next meeting.

There being no further comments from the Commission or the public, at approximately 10:18 P.M. the Public Hearing was continued until June 24, 2013.

REGULAR MEETING

A. Mr. Rudolph called the Regular Meeting to order at 10:18 P.M., seated members Bufano, Gardiner, Gould, Rudolph, and Shiue, and referred to Connecticut General Statutes Section 8-11, Conflict of Interest.

B. APPROVAL OF MINUTES

1. May 28, 2013 – Regular Meeting

MOTION was made by Ms. Bufano, seconded by Mr. Rudolph, and carried (2-0-3) to approve the minutes of May 28, 2013 as drafted. Commissioners Gardiner, Gould and Shiue abstained.

C. SITE DEVELOPMENT PLAN REVIEW

D. ACCEPTANCE OF NEW APPLICATIONS

1. SDP, National Sign Corp./Tracy Becker, 190 Danbury Road, Alternative Signage Program

It was the consensus of the Commission to schedule a discussion of the subject SDP on Monday, July 8, 2013.

E. PENDING APPLICATIONS

1. SUB#910, DeRose, 5 Wilton Acres and Wilton Acres (0.32 acres), 2-lot subdivision

Tabled.

2. Remand of SP#191E, Montessori Association, Inc., 34 Whipple Road, pursuant to directive of the CT Superior Court

Tabled.

F. COMMUNICATIONS

1. Adaptive Use properties – presentation by Commissioner Gould [Tabled until June 24, 2013]

G. REPORT FROM CHAIRMAN

1. Reports from Committee Chairmen

H. REPORT FROM PLANNER

I. FUTURE AGENDA ITEMS

J. ADJOURNMENT

MOTION was made by Ms. Bufano, seconded by Mr. Gardiner, and carried unanimously (5-0) to adjourn at 10:21 P.M.

Respectfully submitted,

Lorraine Russo
Recording Secretary