

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

WILTON PLANNING & ZONING COMMISSION MINUTES JULY 22, 2013 REGULAR MEETING

PRESENT: Chairman John Wilson, Secretary John Gardiner, Commissioners Marilyn Gould, Chris Hulse, Bill McCalpin, Bas Nabulsi, and Peter Shiue

ABSENT: L. Michael Rudolph and Lori Bufano (notified intended absences)

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#384, Canary, 110 Belden Hill Road, Accessory Apartment**

Mr. Wilson called the Public Hearing to order at 7:25 P.M., seated members Gardiner, Gould, Hulse, McCalpin, Nabulsi, Shiue, and Wilson, and referred to Connecticut General Statutes Section 8-11, Conflict of Interest.

Present were Paul Potter, builder/contractor; and Maureen Canary, owner/applicant.

Mr. Potter briefly reviewed details of the application, referring to a posted vicinity map and site plan. He explained that the proposed accessory apartment would be located in an existing 3-car garage that was built approximately 20 years ago and is located just over 50' from the property line, in conformance with the required minimum 50' front yard setback. He referenced building elevations (existing and proposed), noting that there would not be any footprint change other than adding dormers to the second level.

In response to a question from Ms. Gould, Ms. Canary explained that the apartment (with kitchenette, bath, shower and bedroom) would not be rented but rather would function as an au pair or in-law/guest suite, although Ms. White noted later for the record that it could also be legally rented if it is approved by the Commission as an accessory apartment.

Mr. Gardiner read the legal notice dated July 9, 2013 and referred for the record to a 2-

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page Planning and Zoning Staff Report dated July 11, 2013; emails dated July 13, 2013 and July 11, 2013 between Daphne White and Christopher Gardner (Wilton Ambulance Corps President); a Letter of Authorization signed by Maureen Canary, received July 17, 2013, with attached Affidavit of ownership dated July 15, 2013, signed by Maureen and David Canary, and attached elevation drawings EC-1 and A-1, dated July 15, 2013; and Notice of Exception from the State of Connecticut Department of Public Health dated July 16, 2013.

Ms. Canary distributed Owners' Follow Up Response to Planning and Zoning Staff Report, dated July 22, 2013, addressing all issues/questions raised by staff.

Ms. White noted for the record that the afore-referenced email from Ambulance Corps President Christopher Gardner was more of an informational/general awareness response, as opposed to a specific response to the floor plans proposed.

In response to a question from Mr. Nabulsi regarding current site coverage for the property, Mr. Potter confirmed that although no building or site coverage increase is proposed, the applicants will need to replace a portion of the driveway with pervious materials since the property is currently over the allowed site coverage percentage for the zone. Ms. Canary noted for the record that a CO had been properly issued for the existing pool on the site, but she speculated that a coverage glitch may have occurred at that time in connection with the associated mechanicals for the pool and whether they were properly counted towards impervious coverage. Ms. Canary confirmed again that the proposed plan would not add any impervious coverage to the property.

Mr. Potter indicated that the accessory apartment would comprise 865 square feet of space, per submitted Form B.

Ms. White noted for the record that the Notice of Exception (previously referenced) is the document that the Health Department was awaiting, which confirmed the adequacy of the property's septic system for both the main residence and the proposed accessory apartment.

Mr. Nabulsi questioned the need for a formal public hearing process in connection with Special Permits for accessory apartments, noting that in his experience such applications have generally been straight-forward and non-controversial, and have always resulted in Commission approval. He felt that the Commission might want to re-think the public hearing requirement for accessory apartments and possibly consider an administrative review process as an alternative going forward.

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 7:46 P.M. the Public Hearing was closed.

REGULAR MEETING

A. Mr. Wilson called the Regular Meeting to order at 7:46 P.M., seated members Gardiner, Gould, Hulse, McCalpin, Nabulsi, Shiue, and Wilson, and referred to Connecticut General Statutes Section 8-11, Conflict of Interest.

B. APPROVAL OF MINUTES

1. July 8, 2013 – Regular Meeting

MOTION was made by Mr. Hulse, seconded by Mr. Gardiner, and carried (6-0-1) to approve the minutes of July 8, 2013 as drafted. Mr. McCalpin abstained.

C. SITE DEVELOPMENT PLAN REVIEW

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

Present were Tracy Becker, National Sign Corp.; and Mark Blitzer, owner.

The discussion was continued from the previous meeting.

Mr. Blitzer referenced the proposed signage for the subject site, noting that he has opted for the smallest possible signage options available from General Motors. He felt that the existing monument sign is completely buried and is not easily seen from the road. He stated that most dealerships have pylon signs, which have better sight lines, and he noted that such signs are not uncommon in Town, nor inconsistent with other Town signage. He explained that the proposed pylon sign would be 16 feet high, approximately 18 square feet in total, and would not be illuminated at night.

Mr. Wilson noted that the blue logo is also part of the signage consideration. Mr. Blitzer stated that the blue color is not specific to GM, noting that the same color is utilized for Honda and Chevron. He noted further that the blue color which is part of the facade design (referred to as the blue “element” during the ensuing discussion), was not his choice, but rather is one of a number of prototypes dictated by GM.

Ms. Becker distributed color packages to the Commission, referring in particular to the Chevrolet Facility Image Design Verification Report detailing all elements of design, construction and signage over which the owner has no control or flexibility.

Commissioners Wilson, Gould and Nabulsi all expressed concern with the blue

color/“element” of the entryway, which they felt was clearly a GM icon and, to the extent that it constitutes signage per zoning regulations, needs to be factored into the Commission’s consideration of the applicant’s proposed signage for the site.

It was also the consensus of the Commission that a monument sign would be more tasteful, attractive and eye-catching than the proposed pylon sign, particularly if the monument sign was raised a few feet over its current level, as was suggested by Ms. Gould.

Mr. Blitzer referenced other pylon signs in Town, citing the Naked Greens across from Town Hall, the old BP station, and signage at the Gateway Center. He explained that Chevrolet is offering an upgrade program which he has elected to implement for his facility since the building was quite old and dilapidated, but as a result, he is required to comply with all aspects of the program or else risk losing some of the funding that Chevrolet is providing.

When asked whether he would be willing to substitute the monument sign in place of the proposed pylon sign, Mr. Blitzer explained that he would then be required to comply with the GM-issued monument sign design. Ms. Becker distributed a color copy of the prototype monument sign that would be required by GM in that instance. Mr. Blitzer noted that it would be quite large (36 square feet and 8 feet tall), would include the Chevy bow-tie icon, and would be primarily blue in color, with a large white base. He felt that the proposed pylon sign would actually be a less intrusive option since its overall square footage would be less and it would be black and white as opposed to blue.

Mr. Nabulsi felt that GM’s dictates with respect to signage and design specifications were backing the Commission into a corner. He questioned how many square feet of blue are included in the blue element of the building entry design.

Ms. White noted for the record Mr. Nerney’s recent observation that the subject application is different from the storage facility application of several years ago (which also involved a brightly colored facade) since that application was for a special permit and fell under different regulation standards by definition than the subject application.

Ms. Gould felt that it is difficult to apply the Commission’s aesthetic judgment to these types of applications, since that is not its role. She acknowledged that the applicant is tied down by GM’s requirements, noting that it is difficult for the business owner in these types of circumstances. Ultimately, she felt that if the choice is between the monument sign as required by GM and the pylon sign as currently proposed, she would choose the pylon sign since she found GM’s monument design to be uglier.

Ms. Becker noted that the pylon sign could be lowered to 12 feet in height from the originally proposed 16 feet.

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It was the consensus of the Commission that the proposed wall signage presented no issues.

Mr. Gardiner questioned whether this type of business correctly falls under the auspices of the “Alternative Signage Program for Large Developments”. Ms. White noted that the business does meet the requirement for a minimum 10,000 square feet of gross floor area, and Ms. Becker noted that Mr. Nerney had recommended that the applicant apply under this section of the regulations.

Mr. Shiue stated that he did not like the pylon sign, although he acknowledged that the proposed pylon sign is rather tame as compared to the monument sign that would be required by GM.

Mr. Nabulsi felt that the blue element is part of the signage of the subject property. He stated that, given the totality of the presentation, he was prepared to accept the blue element as part of the overall signage, but it should not set a precedent going forward. He noted again that it would be helpful to know the square footage of the blue portion. For future reference, he felt that building permits should not be issued per the usual permitting process when elements that can be considered signage or a form of branding are present.

Ms. White noted that the subject plans were probably submitted in black and white and therefore the Zoning Enforcement Officer would not have been able to make that differentiation when he was reviewing the plans.

Mr. Wilson concurred that this issue should be clarified going forward, although Mr. Shiue was not sure he agreed, questioning how the Commission would view the same situation if the color was beige rather than blue. Mr. Wilson felt that the Commission should at least be given the opportunity to comment if any such element is present on plans going forward.

Mr. Nabulsi referenced the definition of “sign” in Section 29-2.B of zoning regulations, suggesting that perhaps the definition might need to be reviewed/refined.

It was the general consensus of the Commission to approve all signage as proposed for the subject property, with the understanding that the height of the pylon sign should not exceed 12 feet and with the further directive that the blue element of the design could be considered signage under certain circumstances. The Commission determined that a resolution of approval should be prepared by staff and handled administratively.

D. ACCEPTANCE OF NEW APPLICATIONS

1. REG #13340, To amend Sections 29-5.C.5 & 29-8.B.5.a pertaining to Adaptive Use Regulations

The Commission briefly reviewed the draft regulation. Two minor modifications were incorporated at the request of Ms. Gould, with requested input from Attorney J. Casey Healy, who was present in the audience.

A discussion ensued between Commissioners Nabulsi and Gould regarding proposed Section 29-5.C.5.e.(4).(c) which addresses ineligibility of historic structures where 50% or more of the building was demolished or significantly altered. Mr. Nabulsi felt that the Commission should be given discretion to take into consideration the degree to which a structure has been modified. Ms. Gould felt that additions over the course of years are often part of the ongoing historical significance of a property.

Mr. Gardiner questioned the need for any of the language of Section 29-5.C.5.e.(4). Ultimately, the Commission decided to remove Section 29-5.C.5.e.(4) entirely from the proposed regulation since the language was determined to be unnecessary/redundant.

It was the consensus of the Commission to schedule the Public Hearing on September 9, 2013.

2. SUB#911, Ruddy and Michaels-Ruddy, 95 Old Boston Road, 2-lot resubdivision of previously approved application SUB#905

It was the consensus of the Commission to schedule the Public Hearing for September 9, 2013.

3. REG#13341, To amend Section 29-5.C of zoning regulations to add new Section 9 to be entitled “Lighting for Outdoor Athletic Facilities”

It was the consensus of the Commission to schedule the Public Hearing for September 23, 2013.

4. SDP, Lee, 385 Danbury Road, proposed new daycare facility involving new building, parking and other improvements

It was the consensus of the Commission to schedule a discussion of the application on September 23, 2013.

E. PENDING APPLICATIONS

1. SP#384, Canary, 110 Belden Hill Road, Accessory Apartment

The Commission reviewed draft Resolution #0713-9P.

MOTION was made by Ms. Gould, seconded by Mr. Hulse, and carried unanimously (7-0) to adopt as drafted Resolution #0713-9P for SP#384, effective July 25, 2013.

WHEREAS, the Wilton Planning and Zoning Commission has received a Special Permit **SP#384** application from L. Paul Potter of PotterBuilt Construction for approval of the establishment of an 865 square-foot accessory dwelling unit above an existing garage, property located at 110 Belden Hill Road; in a Residential “R-2A” District, Assessor’s Map #87, Lot #23-3, consisting of 2.576 acres (with 0.209 acre accessway), owned by David and Maureen Canary and shown on the plans entitled:

Zoning Location Survey- Prepared for David and Maureen Canary, Prepared by Douglas R. Faulds, surveyor, dated June 18, 2013, drawn at a scale of 1” = 30’.

Existing Garage Elevations- Prepared for Canary Residence, Prepared by Kevin Quinlan Architecture, LLC, architect, dated July 15, 2013, drawn at a scale of 1/4” = 1’.

Proposed Garage Elevations- Prepared for Canary Residence, Prepared by Kevin Quinlan Architecture, LLC, architect, dated July 15, 2013, drawn at a scale of 1/4” = 1’.

WHEREAS, the Wilton Planning and Zoning Commission has conducted a public hearing on July 22, 2013 to receive comment from the public and has fully considered all evidence submitted at said hearing; 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 #384 to allow for the establishment an 865 square-foot accessory dwelling unit above a garage, for property located at 110 Belden Hill Road, effective July 25, 2013 subject to the following conditions:

1. 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.

2. In accordance with Section 8-3.(i) of the Connecticut General Statutes, all work or physical improvements required and/or authorized by the approved plan shall be completed within five years of the effective date of this resolution. This five-year period shall expire on July 25, 2018.
3. The applicant shall file a Land Record Information Form with the Town Clerk (form to be provided by the Planning and Zoning Department) prior to the issuance of a zoning permit.
4. Prior to issuance of a Zoning Permit, the applicant shall submit documentation of approval from the Wilton Health Department regarding the adequacy of the existing septic system to accommodate both the principal residence and the proposed accessory dwelling unit.
5. An as-built survey shall be submitted prior to the issuance of a zoning certificate of compliance, verifying that the driveway imperious pavement has been altered so as to meet the 12% maximum allowable site coverage. In addition, the as-built survey shall indicate the front-yard setback dimension from the accessory dwelling unit to the front property line. Said dimension shall be in compliance with the regulated 50 foot setback requirement.
6. The owners of the property have submitted to the Planning and Zoning staff in the form of an affidavit that the owners are in residence in one of the dwelling units on the property. Certification of owner occupancy shall subsequently be made to the Planning and Zoning Department on an annual basis.

Submittal of revised plans and application:

7. 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 July 25, 2018."

b. "For conditions of approval for Special Permit #384, see **Resolution #0713-9P.**"

-END RESOLUTION-

F. COMMUNICATIONS

1. Frank P. Bordonaro, Lighting issue at 1 Mail Coach Court

Ms. White reviewed details of a letter sent by Frank P. Bordonaro dated July 16, 2013 complaining about bright lights at 1 Mail Coach Court that impacts neighboring properties and visitors to the Silvermine section of Connecticut.

Ms. White noted that she and Mr. Nerney visited the property but were unable to determine the lighting impacts due to the area's heavy forestation, the lot's rear location, and the presence of "no trespassing" signs. She stated that staff's plan is to visit the site at night to determine the type of fixtures being utilized and the resulting lighting impacts, noting that the matter will then be discussed at the next meeting in September.

2. Cute Associates, LLC, 991 Danbury Road, Request for opinion regarding proposed fan vents location

Ms. White briefly reviewed details of J. Casey Healy's letter to the Commission dated July 17, 2013 requesting an opinion from the Commission as to whether fan vents connected with a subsurface sewage disposal system at 991 Danbury Road are considered "structure"(s) (as that term is defined in Section 29-2.B.151 of Zoning Regulations) and thus would require the applicant to apply for a zoning setback variance.

Mr. Healy, attorney for the applicant, explained that the current septic system serving the establishments at the site failed and a repair was ordered by Director of Health Steve Schole. He stated that a new system involving the installation of four air-intake fans has been proposed and reviewed/signed off by the State Department of Health and Mr. Schole, but the Zoning Enforcement Officer felt that the fans (each measuring 18" long x 14" wide x 20" high) would be considered structures and thus are subject to setback regulations.

Mr. Healy stated that, historically, well casings, caps, pipes from underground tanks, etc. have never been subject to zoning setback regulations. He noted that local surveyors Faulds, Stalker and Gardiner were surprised by the ZEO's ruling since they have never treated such underground facilities as structures. He explained that if the Commission were to rule that the proposed fans are subject to setback regulations, the applicant would have to wait until the September ZBA meeting, at which time he felt that a setback variance would likely be granted anyway since there is no available, alternative location on the lot where the fans could be compliantly located.

Ms. White noted for the record that Mr. Nerney consulted with Assistant Town Counsel Pat Sullivan, who agreed with the ZEO that the fans would be considered structures. Since there are no provisions excluding septic systems, Ms. Sullivan felt that the fans

would have to meet zoning setback regulations.

John McCoy, engineer for the applicant, explained details of the “Soil-Air System” (the proposed septic design for the site) which has been used throughout the state, particularly for restaurants, noting that it is an aerobic system which eats the effluent and bacteria much quicker than the typical anaerobic septic system.

Mr. McCoy explained that the proposed system is flexible and efficient, noting that the existing leaching fields would remain and the fans would only run when the system is dormant. He stated that plantings could be located around the fans and he confirmed that the area would have to be kept snow-free during winter months.

In response to questions from the Commission, Mr. McCoy stated that the system would require very little maintenance, although he acknowledged that bollards (not shown on the submitted plan) would likely have to be installed to provide protection from snow plows and vehicles parking in the area. He stated that the house across the road would not see, hear or smell it, noting that any noise emanating from the fans would not be heard from about 10 feet away.

In response to a question from Mr. Gardiner addressing the zoning definition of “structure” and whether the fans would be considered principally above or principally underground, Mr. McCoy estimated that approximately 50% +/- would be underground from a bulk perspective; a lesser amount would be considered underground from a height perspective only.

Mr. Shiue pointed out that the fans are larger than a typical well head or well casing and are further distinguished by the fact that they house a mechanical apparatus above ground as well.

In response to a question from Mr. Hulse, Ms. White confirmed that A/C condenser units and above-ground propane tanks are regarded as “structures” and thus require variances when installed within regulated zoning setback areas.

Ms. Gould stated that this is a very challenged property and she was in favor of treating the fans as non-structures from a zoning perspective.

Mr. Nabulsi concurred, noting that the fans should not be viewed as something separate from the septic system and therefore can be analogized to something that is predominantly underground.

It was the general consensus of the Commission that the fans were not “structures” and therefore should not be constrained by zoning setback regulations. The Commission further determined that it would be necessary and permissible to install bollards or something similar to protect the fans from cars, plows, etc. in the area.

3. **SUB#909, Warren/Smith, 1030 and 1042 Ridgefield Road, Request for second 90-day extension to file subdivision map**

and

4. **SUB#908, Kennedy, 66 Warncke Road, Request for second 90-day extension to file subdivision map**

The Commission very briefly discussed both applicants' request for a 90-day extension. Ms. White noted for the record that there is an allowance for such extensions per Connecticut Statutes.

MOTION was made by Ms. Gould, seconded by Mr. Hulse, and carried unanimously (7-0) to grant the request for second 90-day extensions to file subdivision maps for both applications SUB#909 and SUB#908, referenced above.

G. REPORT FROM CHAIRMAN

1. **Reports from Committee Chairmen**

H. REPORT FROM PLANNER

1. **ASML, 77 Danbury Road, proposed facade improvements and walkway cover**

Ms. White referred to a memorandum from Bob Nerney, with attachments, dated July 17, 2013 concerning facade upgrades to ASML at 77 Danbury Road. She stated that Mr. Nerney wanted the Commission to be aware of site improvements that have been requested by the applicant. She explained further that the applicant has been informed that while the facade improvements and walkway cover will not require Commission approval, any signage changes will require Commission approval.

In response to a question from Mr. McCalpin, Ms. White stated that it is her understanding that the applicant is not planning to cut down a lot of trees, if any.

Ms. Gould felt that the proposed modifications would improve the site.

It was the general consensus of the Commission that the proposed facade improvements and walkway cover did not pose any problems.

There was a brief discussion among Commissioners regarding the issue of what exactly constitutes signage, with references made to the foregoing discussion of the blue “element” in connection with the Chevrolet/Buick signage at 190 Danbury Road. It was the consensus of Commissioners that such elements, particularly when color is involved, could be considered signage/branding under certain circumstances. Mr. Wilson felt that if such elements are part of improvements proposed for a given site, then the Planning and Zoning Commission should rule on the matter before such improvements are approved via the normal permitting process. He stated that he would pursue the matter further with staff.

I. FUTURE AGENDA ITEMS

J. ADJOURNMENT

MOTION was made by Mr. Hulse, seconded by Mr. Wilson, and carried unanimously (7-0) to adjourn at 9:48 P.M.

Respectfully submitted,

Lorraine Russo
Recording Secretary