

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

WILTON PLANNING & ZONING COMMISSION MINUTES SEPTEMBER 9, 2013 REGULAR MEETING

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

ABSENT: Bill McCalpin (notified intended absence and intent to withdraw from Commission)

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

Mr. Wilson called the Public Hearing to order at 7:16 P.M., seated members Bufano, Gardiner, Gould, Hulse, Nabulsi, Rudolph, Shiue, and Wilson, and referred to Connecticut General Statutes Section 8-11, Conflict of Interest.

Mr. Nerney distributed copies of the proposed Adaptive Use regulations. He highlighted several modifications incorporated into the proposed text at the request of the Commission during its last meeting, including a minor modification of Section 29-5.C.5.e.(3) and removal of Section 29-5.C.5.e.(4) from the draft. He stated that notification of the proposed regulations was sent to HVCEO (Housatonic Valley Council of Elected Officials) in Brookfield and to the Town of Ridgefield, both of which indicated no issues with the proposed modifications. He explained that a copy was not sent to SWRPA (South Western Regional Planning Agency) because such notification was not required per statute.

Mr. Gardiner read into the record the legal notice dated August 20, 2013.

Mr. Nabulsi questioned whether any additional changes to the proposed regulation would necessitate submission of a new application, including publication of a new legal notice. Mr. Nerney explained that while minor modifications would not require submission of a new application, any substantial changes to the proposed amendment would. He explained further that the Commission has more discretion to impose conditions/modify submitted plans when reviewing applications for Special Permits, Site Development Plans, etc., as compared to applications for regulation changes where it is acting in more of a legislative capacity.

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

Peter Gaboriault, Chairman, Economic Development Commission (EDC), stated that the EDC would appreciate the opportunity to be involved in such applications earlier on in the process going forward. On behalf of the EDC, he questioned why new, historic-looking construction could not be allowed on adaptive use properties, as opposed to just permitting additions onto existing structures. He felt that allowing new construction would result in the creation of even more commercial space for the Town.

Mr. Gaboriault next addressed the issue of the Cannondale area of Town. He stated that the EDC recommended to the Board of Selectmen that an overall Plan of Development be created specifically for the Cannondale area, noting that the proposed extension of these adaptive use regulations into Cannondale seems to represent more of a haphazard approach versus an overall plan of development for the area.

Mr. Gaboriault noted further that some properties, especially south of the Town Center, should be rezoned General Business. He did not feel that the same recommendation would necessarily apply to similar properties north of the Center.

Ms. Gould addressed the issue of rezoning. She briefly reviewed the history of the adoption of adaptive use regulations in Town, noting that Wilton was in the forefront of this historical preservation effort. She specifically noted that the Town was wary of allowing Danbury Road to develop in a similar manner to Route 7 in Norwalk, Westport, etc., with many in Town not terribly pleased with the uses that are allowed in the General Business zone. She noted further that residents have been very pleased overall with this effort to preserve Wilton's character.

Addressing the issue of extending these regulations into Cannon Road, she noted that historic Cannondale really represents the heart of Wilton and it has maintained a semblance of the nineteenth century better than anywhere else in Town. She explained that the proposed regulations attempt to add both square footage and commercial uses

without destroying the character of the area.

Mr. Nerney noted for the record that adoption of these regulations would not in any way preclude future changes to the zoning map.

Bob Faesy, an architect who has been active in the Town's historical preservation effort, asked whether the proposed adaptive use regulations would prohibit new construction, i.e. whether new construction could be considered historically appropriate in the context of the proposed regulations.

Mr. Nerney noted that some adaptive use properties in Town have multiple buildings and the question becomes whether the proposed allowable 50% expansion would apply to each individual building or whether those amounts could be aggregated and a new structure consisting of that total gross floor area could be constructed on the property. He felt that the proposed regulation would not necessarily rule out either option, but that each proposal would be reviewed on an individual basis for compliance within the context of the new regulations. He stated that the new regulations would allow for growth via both free-standing structures and additions onto existing structures.

In support of that interpretation, Mr. Nabulsi referenced proposed Section 29-5.C.5.d.(1) which states that "new construction may, at the Commission's discretion, consist of either attached or detached additions".

Rob Sanders, a resident and architect who has been active in the Town's historical preservation effort, noted that there are fewer adaptive use properties remaining now than in 1972, and so he felt that it is imperative to keep and strengthen adaptive use regulations. He stated that adaptive use property owners in the past have often been penalized with respect to allowable square footage when compared to building/site coverages that would actually be permitted in the underlying residential zone, often resulting in small houses on large parcels of land. He expressed general concern that such a situation will incentivize owners to knock down existing historical structures going forward and to rebuild/replace with larger structures on these sites.

Mr. Sanders proposed minor modifications to Section 29-5.C.5.d.(1) to permit coverages consistent with those currently allowable on the underlying zone.

Mr. Nabulsi expressed concern that the historical portion of a structure could become a relatively minimal component of the overall construction. Mr. Sanders felt that the Commission would have to stand its ground with respect to its architectural review of such applications, noting that if architectural protections are right/adequate, then the construction can be done well. He noted further that houses that are divided into rooms are becoming more and more difficult to rent in the current environment.

Ms. Gould acknowledged that the proposed 50% maximum expansion was somewhat arbitrary, but she also noted that while she was in favor of some flexibility in that regard, maintaining the character and architectural integrity was of paramount importance.

It was the consensus of the Commission to leave the hearing open until its next meeting to allow some time for further input.

There being no further comments from the Commission or the public, at 7:54 P.M. the Public Hearing was continued until September 23, 2013.

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

Mr. Wilson called the Public Hearing to order at 7:54 P.M., seated members Bufano, Gardiner, Gould, Hulse, Nabulsi, Rudolph, Shiue, and Wilson, and referred to Connecticut General Statutes Section 8-11, Conflict of Interest. Mr. Gardiner read the legal notice dated August 20, 2013.

Present were J. Casey Healy, attorney; and Holt McChord, engineer; on behalf of the applicant.

Mr. Healy briefly reviewed the application, noting that it is essentially a re-do from the 2011 subdivision application for the same property. He explained that although the 2011 application was approved by both Inland Wetlands and Planning and Zoning Commissions, Mr. Ruddy elected at that time not to file the subdivision Mylar within the allowable filing period; thus the need for this second application. He confirmed that no changes whatsoever have been made to the 2011 plans, and he noted that the applicant has provided a letter dated August 29, 2013 responding to the Planning and Zoning Staff Report dated August 5, 2013. He also acknowledged receipt of Assistant Sanitarian Zbell's memo today indicating approval of the application for feasibility.

Mr. McChord reviewed existing conditions of the 4.2+/- acre parcel, noting that the house that was on lot 1 has since been removed along with a shed that was located behind the house. Mr. McChord also briefly reviewed the proposed plan for the site, noting in particular the common driveway, the on-site septic system, drainage/runoff details, and the fact that the site is on Town water. He confirmed that no changes were made to the plans since 2011.

In response to a question from Mr. Rudolph regarding the Declaration of Driveway, Utilities and Drainage Easements, Mr. Healy stated that the Declaration will be executed/filed. He noted that some minor revisions previously requested by Town Counsel Pat Sullivan have been incorporated into the document.

Mr. Healy noted further that 1) all conditions of approval are acceptable to the applicant; 2) Mr. McChord has verified the validity of the 2011 drainage calculations and; 3) SNEW has confirmed that public water is still available.

Mr. Nabulsi asked whether any data/feedback has since been collected by the Commission as to whether rain gardens (one of which is proposed for the subject site), are in fact operating as presented back in 2011. Mr. Nerney noted that several rain gardens have since been installed throughout the Town and no complaints have been received. He stated that they seem to be working pretty well overall and have in fact been gaining in popularity throughout the world. Addressing the issue of maintenance raised by Mr. Rudolph, Mr. Nerney explained that maintenance is built into the Declarations that are filed, noting further that most people in Town seem to be cognizant of the fact that wetlands should not be filled in.

Mr. McChord noted for the record that the drainage plan proposed for the subject site is a bit of a hybrid. He explained that the plan utilizes standard means of drainage in addition to a rain garden, noting in particular that the rain garden is not being used for peak storm water control.

Mr. Gardiner referred for the record to a Planning and Zoning Staff Report dated August 5, 2013; a memorandum dated September 6, 2013 from Jennifer M. Zbell to Bob Nerney and Daphne White; and a letter dated August 23, 2013 from Holt W. McChord to Daphne White.

Mr. Healy also referenced the applicant's letter dated August 29, 2013, with attachments, responding to the Planning and Zoning Staff Report dated August 5, 2013. He respectfully requested that the Commission approve the application this evening if possible.

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 8:07 P.M. the Public Hearing was closed.

REGULAR MEETING

- A. Mr. Wilson called the Regular Meeting to order at 8:07 P.M., seated members Bufano, Gardiner, Gould, Hulse, Nabulsi, Rudolph, Shiue, and Wilson, and referred to Connecticut General Statutes Section 8-11, Conflict of Interest.

B. APPROVAL OF MINUTES

1. July 22, 2013 – Regular Meeting

MOTION was made by Ms. Gould, seconded by Mr. Gardiner, and carried (6-0-2) to approve the minutes of July 22, 2013 as drafted. Commissioners Bufano and Rudolph abstained.

C. SITE DEVELOPMENT PLAN REVIEW

D. ACCEPTANCE OF NEW APPLICATIONS

- 1. SDP, ASML US, Inc., 77 Danbury Road, Alternative Signage Program**
- 2. SP#385, MCL Piersall, LLC, 44 Old Ridgefield Road, Establishment of outdoor dining terrace and repaving/reconfiguration of parking lot**

It was the consensus of the Commission to schedule both a discussion for ASML and a public hearing for SP#385 on October 14, 2013.

E. PENDING APPLICATIONS

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

Tabled.

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

The Commission briefly reviewed draft Resolution #0913-4S.

MOTION was made by Mr. Nabulsi, seconded by Mr. Hulse, and carried unanimously (8-0) to adopt as drafted Resolution #0913-4S for SUB#911, effective September 12, 2013.

WHEREAS, the Wilton Planning and Zoning Commission has received a **Subdivision** application **SUB#911** from J. Casey Healy, Esq. of Gregory and Adams, P.C., for a two-lot subdivision located on 95 Old Boston Road, in an R-2A District, Assessor's Map #123, Lot #18, 4.2332 acres, owned by Michael John Ruddy and Christiane Michaels-Ruddy and shown on the plans entitled:

Vicinity Sketch prepared for Christiane Michaels-Ruddy, prepared by Roger A. Stalker, land surveyor, dated April 8, 2011, at a scale of 1"=100', sheet # 1 of 3.

Topographic Map prepared for Christiane Michaels-Ruddy, prepared by Roger A. Stalker, land surveyor, dated April 9, 2011, revised June 27, 2011, at a scale of 1"=50', sheet # 2 of 3.

Subdivision Map prepared for Christiane Michaels-Ruddy, prepared by Roger A. Stalker, land surveyor, dated April 9, 2011, last revised September 9, 2011, at a scale of 1"=50', sheet # 3 of 3.

Site Development Plan prepared for Christiane Michaels-Ruddy, prepared by Holt W. McChord, engineer, dated May 4, 2011, last revised July 12, 2011, at a scale of 1"=30', sheet # SE1.

Construction Notes and Details prepared for Christiane Michaels-Ruddy, prepared by Holt W. McChord, engineer, dated May 4, 2011, last revised June 27, 2011, scale as noted, sheet # SE2.

WHEREAS, the Planning and Zoning Commission has conducted a public hearing on September 9, 2013 to receive comment from the public and has fully considered all evidence submitted at said hearing; and

WHEREAS, the Inland Wetlands Commission issued an inland wetland permit (WET #2029) in June of 2011 for the subject subdivision request and such approval remains valid through June of 2016; and

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

NOW THEREFORE BE IT RESOLVED effective September 12, 2013 the Wilton Planning and Zoning Commission **APPROVES** the two-lot subdivision subject to the endorsement and filing of the record Subdivision Map, and subject to the following conditions:

A. GENERAL CONSIDERATIONS

1. It is the responsibility of the applicant to obtain any other permits or licenses required by law or regulation. Governing bodies which may have jurisdiction include the Town of Wilton; the State of Connecticut or the United States Government.
2. No equipment or material shall be deposited, placed or stored in any wetland or water

- course, on or off site unless specifically authorized by an Inland Wetlands Permit.
3. Housing numbers shall be as follows:

Lot 1 shall become 93 Old Boston Road, (Map#123, Lot#18-1)

Lot 2 shall remain 95 Old Boston Road, (Map#123, Lot#18)

B. PERTAINING TO BOTH LOTS

4. Development shall not alter the existing natural site grading and drainage patterns of adjoining properties. Runoff caused by new development, during and after construction, shall be minimized and diverted to natural drainage patterns.
5. Driveways shall be clearly marked to facilitate rapid identification by emergency vehicles.
6. Fuel oil tanks shall only be located above ground or within a basement.
7. The parking of construction equipment shall be limited to on-site parking only. No vehicles shall be parked or stored in the public right-of-way at anytime or in a manner so as to block the common driveway.
8. Any significant change in the build-out of each lot or location and design of infrastructure improvements associated with this application shall be subject to Commission review and approval.
9. There shall be no construction activities on the site on Sundays or holidays. The hours of construction shall be between the hours of 7:00 a.m. and 5:00 p.m. Monday through Friday and 8:00 a.m. and 5:00 p.m. on Saturdays, except for interior work within the individual houses.
10. A copy of this resolution shall be given to the project manager of each lot and shall be available on site during construction.

C. PRIOR TO FILING OF FINAL SUBDIVISION MAP

11. The Final Subdivision Plan shall be revised to include the following:
 - a. The address designation within each approved lot as specified herein.
 - b. The note: “Subdivision #911 for conditions of approval see Resolution #0913-4S
 - c. The subdivision map shall be filed within 90 days following expiration of the appeal period, unless the applicant obtains an extension from the Planning and Zoning Commission.
 - d. The applicant shall provide the Planning and Zoning Department with an electronic copy of the subdivision plan prior to the recording of said plan with the Town Clerk.

D. SUBSEQUENT TO FILING OF THE FINAL SUBDIVISION MAP

12. The applicant shall, within thirty (30) day of the filing of the Final Subdivision Plan, submit the following:
 - a. Eight (8) paper prints of the filed subdivision plan with the Town Clerk's notations. Said prints shall be signed and embossed by all the appropriate consultants/engineers.
 - b. The record subdivision map shall indicate all watercourses and wetlands on the three lots and shall delineate the limit of disturbance on each lot.
 - c. A Mylar reduction of the approved Subdivision Plan at a scale of 1"=800'.
 - d. Four (4) copies of all other plans and documents as specified herein. Said plans and documents shall bear the seal, signature and license number of the registered professional(s) responsible for preparing appropriate sections of the plans and documents.

E. PRIOR TO THE ISSUANCE OF A ZONING PERMIT

13. A site plan shall be submitted for review by the Commission's staff prior to obtaining a zoning permit for each lot. Each site plan shall include a tree and stone wall preservation plan. Such plan shall locate each tree with a diameter (caliper) over 16" within the buildable area and 10" diameter (caliper) within the setback areas, and each stone wall, and shall explain why any such tree or stone wall is not being preserved, and shall explain alternate plans that have been considered. All trees and stone walls included in the tree and stone wall preservation plan must be protected during the construction phase and thereafter.
14. Prior to obtaining a zoning permit for the re-development of any lot, the applicant shall submit a site plan for review by the Commission's staff. Each site plan shall include a tree and stone wall preservation plan. Such plan shall locate trees with a diameter (caliper) over 16" within the buildable area and 10" diameter (caliper) within the setback areas and the location of stone walls. The plan shall explain why any such tree or stone wall is not being preserved, and shall explain alternate plans that have been considered. All trees and stone walls included in the tree and stone wall preservation plan must be protected during the construction phase and thereafter.
15. *The Declaration of Driveway, Utility and Drainage Easements* shall all be subject to review and approval by the Town's Counsel and staff and the documents shall all be filed with the Town Clerk prior to the issuance of a zoning permit.
16. The proposed storm drainage for both lots shall be in accordance with the applicant's approved site development plans referenced in the condition above, the storm water analysis and the site plan entitled: Site Development Plan prepared for Christiane

- Michaels-Ruddy, prepared by Holt W. McChord, engineer, dated May 4, 2011, last revised July 12, 2011, at a scale of 1"=30', sheet # SE1.
17. Any change or alteration to planned drainage improvements to either lot shall be subject to the review and approval of Planning and Zoning Commission and/or Planning and Zoning Department staff. Said plan shall be prepared and stamped by a professional engineer and submitted and approved by the Planning and Zoning Department prior to the issuance of a Zoning Permit. All drainage designs shall conform to standards set forth in the town's zoning regulations and subdivision regulations.
 18. A bond estimate for all site work shall be provided by the applicant to the Commission's staff, which shall include, but not be limited to sedimentation and erosion controls, tree protection, storm water drainage, common driveway, grading, seeding and a 10% contingency. Such amount shall be approved by the Commission's staff. The bond shall be in a form and amount with proper surety satisfactory to the Commission's Land Use Counsel, and shall be submitted prior to any site disturbance.
 19. Zoning permits involving new construction for each individual lot shall be accompanied by a hydrology report prepared and stamped by a Connecticut-licensed engineer if the proposed site development plan differs from the submitted stamped engineering plans reviewed by the Planning and Zoning Commission. The peak rate of runoff shall be attenuated to a pre-development (undeveloped) condition and individual drainage galleries shall be sized and constructed to such standard.
 20. The applicant shall submit revised grading plans for each lot if the site plans and layouts of each lot are modified at time of development.
 21. Final plans shall be updated to include the Health Department certification block pursuant to Section 3.315 of the Subdivision Regulations.

F. PRIOR TO THE ISSUANCE OF A CERTIFICATE OF ZONING COMPLIANCE

22. All utilities for each lot (2) shall be installed underground prior to the issuance of a certificate of zoning compliance.
23. All lot corners shall be pinned and verification from the applicant's Land Surveyor of such lots shall be submitted prior to obtaining zoning compliance for such lot.
24. An as-built plan showing the location of the underground detention system depicted on the Site Development Plan shall be submitted prior to zoning compliance for each lot.
25. An engineer's as-built hydrology report, plan and certification shall be submitted prior to zoning compliance for each lot.
26. The applicant's land surveyor shall submit an as-built survey indicating post-construction building coverage and site coverage.

F. COMMUNICATIONS

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

Mr. Nerney stated that he visited the site last week and he felt that lighting on the site was somewhat excessive. He stated that he intends to send a letter to the property owner asking him to contact the Planning and Zoning Department to further discuss the matter.

Commissioners Nabulsi and Rudolph both expressed concerns that the Commission should not become an enforcer of every issue in Town. It was their position that the Commission can legislate issues that arise, via drafting/modifying zoning regulations, if it sees a developing pattern of complaints with respect to a particular issue, but should not be in a position of dealing with homeowner complaints on a routine basis.

Ms. Gould disagreed, noting that issues such as lighting, noise, runoff, etc. are quality of life issues and she felt that the Commission is obligated to involve itself, given its role as a representative for the community.

Mr. Nerney explained further that since the Planning and Zoning Commission was copied in on the letter of complaint, he felt an obligation on the part of the Commission to respond. He noted that oftentimes just a well-crafted letter can resolve such an issue and he indicated that staff would work on it.

2. SP#191E, Montessori School, Discussion concerning conditions of approval

Mr. Wilson scrambled the agenda to hear this matter last.

3. Joseph Cugno, Architect, 11 Danbury Road, Discussion pertaining to alteration of building

Present were Joe Cugno, architect; and Cameron Hashemi, owner/applicant.

Mr. Cugno briefly reviewed a history of the property, noting that he and the owner, Mr. Hashemi, appeared before the Commission back in 2008 in connection with proposed alterations for what was the original Palace Carpet facility. He explained that at that time a structural engineering report was submitted detailing the deteriorated condition of the building and due to what was then perceived to be an urgent matter of safety, the applicant received permission from the Commission to commence the renovations proposed.

He explained that those proposed alterations were never completed due to the severe

economic downturn that ensued, but he noted that the building has continued to deteriorate further and Mr. Hashemi now wishes to move forward with essentially the same plans as were submitted in 2008. He noted that due to recently enacted FEMA mapping changes for the site, floodplain and floodway issues will also have to be addressed now.

Mr. Cugno requested that the project be permitted to move forward, per plans approved by the Commission in 2008, without having to go through a formal Planning and Zoning application process.

Mr. Nerney referenced zoning regulations, noting that a property owner is permitted to rebuild a failing nonconforming structure as long as the existing envelope of construction is respected, and the construction commences within 6 months after the damage/destruction occurs and is completed within 18 months after commencement. He noted for the record that part of the ruling issued by the Commission in 2008, and specifically per Commissioner Rudolph's recommendation at that time, was that any work approved in 2008 would need to commence within 6 months of the aforementioned engineering study because of the structural issues cited. Due to the floodplain/floodway issues referenced earlier, Mr. Nerney also recommended that any approval require certification from a Connecticut licensed engineer that the improvements as represented would not impact the base flood level.

Commissioners Rudolph and Nabulsi both expressed concern with allowing the owner to move forward on the proposed site improvements. They felt that the deteriorated condition of the property had played a significant role in the original decision/approval, which was based largely upon a concern for public safety and the resulting need for urgency. Given the fact that five years had passed and the structure was still standing, Mr. Rudolph stated that he was not so impressed by that same argument.

Mr. Nabulsi concurred. He felt that, given the current circumstances, the Commission should treat the proposed site modifications for the subject property the same as it would for other similar properties/property owners in Town, i.e. requiring submission of a formal application and resulting Commission review. He recalled that the Commission had a number of questions/concerns back in 2008 but had expedited the application at that time due to safety issues cited in the engineering report. He felt that the Commission, upon subsequent review of the same proposed site improvements, might wish to make changes to the plans as originally proposed.

Ms. Gould disagreed. She felt that there is no reason to require a formal application and hold another hearing/discussion because nothing is going to alter the need for this structure to be rebuilt. She cited the expense and time involved in requiring a formal application from the property owner, particularly since the plans have not changed since 2008. She also cited the fact that the existing structure is an eyesore and the Commission

wants to see improvements to this part of Route 7.

Mr. Hashemi noted the building's high profile location, referencing the fact that it is the fifth building as one enters the Town from the south. He also noted that he has been paying taxes over these past years even though the building is not usable. He explained that every winter he hires workers to remove snow from the roof to reduce the likelihood of roof/building collapse.

Mr. Nabulsi clarified that he did not for a moment question the legitimacy or accuracy of the applicant's current claims, but he felt that the urgency of the application is no longer as justified as it was five years ago when the structural engineering report was first submitted.

Mr. Cugno summarized for the record that the applicant is not proposing any changes at all, noting that the length, width and height of the building would not change, nor would parking or landscaping.

A straw vote was taken as to whether a full, formal application should be required of the applicant. Five Commissioners (Messrs. Gardiner, Nabulsi, Shiue, Rudolph and Wilson) felt that such an application should be required. Commissioners Gould and Bufano opposed, and Commissioner Hulse abstained.

It was therefore the consensus of the Commission that a full application should be submitted for Commission review via the standard application process.

Mr. Nerney stated that the upcoming planning process may provide an opportunity to also clean up the front area of the site, particularly with respect to a possible signage plan for the site, all of which could be incorporated into the one application. He noted for the record that the applicant was very helpful in the past in getting tenants to remove the many illegal signs that frequently populate the site.

4. Devon Chevrolet-Buick of Wilton, 190 Danbury Road, Signage modification in connection with dealership name change

The Commission very briefly discussed the proposed signage modifications resulting from a business name change. It was the consensus of the Commission to approve the signage changes as proposed.

MOTION was made by Ms. Gould, seconded by Mr. Gardiner, and carried (7-0-1) to approve the signage modifications as proposed. Mr. Rudolph abstained.

G. REPORT FROM CHAIRMAN

Mr. Wilson advised the Commission that Commissioner Bill McCalpin has resigned effective immediately, and he stated that Mr. McCalpin will be sorely missed. He indicated that Doris Knapp, who was present in the audience, has agreed to fill the vacant position, noting that she is a locally practicing attorney who served for 10 years on the Commission in the past, and he felt that she would be a terrific addition to the group. He noted that there is a 30-day period in which to fill such a vacancy before the decision reverts to the Board of Selectmen.

Mr. Rudolph asked whether Ms. Knapp would have any conflicts of interest serving on the Commission. Ms. Knapp stated that she does no land use law at all in the course of her family/children's law practice.

MOTION was made by Ms. Gould, seconded by Mr. Hulse, and carried unanimously (8-0) to add the appointment of Ms. Knapp to the P&Z Communications Agenda for this evening.

F. COMMUNICATIONS

5. Appointment of New Commissioner to fill vacancy on Planning and Zoning Commission (New Agenda Item)

The Planning and Zoning Commission voted unanimously to approve Doris Knapp to fill the Commission vacancy created by the resignation of Bill McCalpin.

Referencing a recent lawsuit initiated by neighbors of Mrs. DeRose in connection with the Commission's approval of Subdivision #910 for 2 lots located on Wilton Acres, Mr. Rudolph felt that the Town is not obligated to, and should not, get involved in this matter. It was his opinion that the real defendant in this case is the property owner, Mrs. DeRose.

Mr. Nerney pointed out that the Town was a named party in the lawsuit, noting further that the decision to approve the subdivision was rendered by the Commission.

Mr. Nerney indicated that he would consult with Town Counsel on the matter.

**2. SP#191E, Montessori School, Discussion concerning conditions of approval
(Agenda previously scrambled)**

Mr. Nabulsi recused himself and left the meeting.

Mr. Nerney briefly reviewed details of the court-ordered remand of the Montessori School application, noting that the Commission was required by said order to approve the application, with the further understanding that reasonable conditions could be imposed upon the applicant as part of the approval process. In that regard, Mr. Nerney referenced a letter dated August 2, 2013 from Montessori School's attorney, Joseph P. Williams, expressing strong concerns with two of the conditions of approval imposed by the Commission. With respect to condition #7 in particular, Mr. Williams requested that the Commission reconsider it because, in the opinion of the applicant, it "imposes an unnecessary burden on the School which is not justified by the facts, applicable statutes and regulations, or the court's decision sustaining the School's appeal."

Mr. Nerney read condition #7 verbatim from the resolution of approval, requiring that the School install a security gate or visible chain supported by bollards across the driveway entrance. He indicated that Town Counsel Pat Sullivan believes that the proper process would have been for the applicant to have taken an appeal of the Commission's decision within the specified 15-day appeals period, which was not done. He noted further that while this was a remand from the Court, it was done within the sphere of a Public Hearing, with extensive neighbor input, legal notices, etc., and therefore it would be unwise to amend any conditions since certain expectations have already been set.

Mr. Nerney noted Attorney Sullivan's further belief that if the applicant has concerns with any conditions of the approval, then a new application to amend the Special Permit should be submitted by the applicant and discussed in an open forum.

It was the consensus of the Commission to uphold the resolution of approval as adopted on July 8, 2013.

H. REPORT FROM PLANNER

I. FUTURE AGENDA ITEMS

- 1. REG#13341, To amend Section 29-5.C of zoning regulations to add new section 9 to be entitled “Lighting for Outdoor Athletic Facilities”
[Public Hearing – Sept. 23, 2013]**
- 2. SDP, Lee, 385 Danbury Road, proposed new daycare facility involving new building, parking and other improvements
[Discussion – Sept. 23, 2013]**

J. ADJOURNMENT

MOTION was made by Mr. Hulse, seconded by Ms. Bufano, and carried unanimously (8-0) to adjourn at 9:03 P.M.

Respectfully submitted,

Lorraine Russo
Recording Secretary