

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

**WILTON PLANNING & ZONING COMMISSION
PUBLIC HEARING/REGULAR MEETING
MINUTES – JANUARY 26, 2009**

PRESENT: Chairwoman Sally Poundstone, Secretary Bas Nabulsi, Commissioners Doug Bayer, Marilyn Gould, Dona Pratt and Michael Rudolph.

ABSENT: Commissioners Alice Ayers, Eric Osterberg and John Wilson (excused absences)

ALSO

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

PUBLIC HEARINGS

Mr. Nerney noted that an individual was present for the Anspach application, and it was agreed to scramble the agenda.

2. SP#345, Anspach, 526 Danbury Road, Special Permit for adaptive use

Mr. Nabulsi read the legal notice for the record, a letter date stamped January 26, 2009 from Barry L. Hammons, a Planning and Zoning staff report dated January 20, 2009, and a memorandum from the Wilton Building Department dated January 23, 2009.

Ms. Poundstone said they have been asked by the applicant to continue the hearing to February 9, 2009.

Mr. Richard Creeth said he was there to listen to the Hearing, but since they have deferred it, he will return on February 9th.

1. SP#344, Consumers Petroleum of CT, Inc., 386 Danbury Road, Addition/modifications of existing convenience store/gas station (continuation)

Ms. Poundstone called the Public Hearing to order at approximately 7:16 P.M., seated members Bayer, Nabulsi, Poundstone, Pratt and Rudolph, and referred to Connecticut General Statutes Section 8-11, Conflict of Interest.

Present for the applicant was John Knuff, attorney, Bill Carbone of Spath-Bjorklund & Associates, engineer, and Roger Snelling, applicant.

Mr. Knuff said, since a new use is not being proposed in the aquifer zone, he originally asked for a waiver of the aquifer assessment. Nevertheless, they engaged Russ Slayback from Leggett, Brashears and Graham to complete an aquifer assessment, and he is submitting it for the record.

Mr. Knuff said there is a discussion on page 3 of how the removal of the tanks will have to comply with CT DEP regulations for tank removal, which has very rigorous requirements. He submitted a copy of the DEP regulations that govern underground storage tanks for gasoline uses, and said it covers the gamut of the operation of a gasoline station and sets forth a protocol for when tanks have to be removed. He said, although their tanks are not due to be removed, if the application is approved, they would do so immediately.

Mr. Nabulsi said this is the first application he has been involved in where the aquifer impact assessment is relevant, and asked what is the question that an aquifer impact assessment report is intended to answer.

Mr. Knuff said the requirement for an aquifer impact assessment contemplates a new use, and, obviously, in this case the tanks are already in place. In addition, the use doesn't propose any discharge to the ground water, which, again, the aquifer regulations contemplate.

Mr. Nabulsi asked what happens if one of the discharge protection modalities fails at the gas station. Mr. Knuff said in that event, the CT DEP regulations come into play. For instance, if an existing gasoline station within the aquifer protection zone has a catastrophic leak of an underground tank, there is an extensive protocol under 24-A-449.D.106 that sets out what the corrective action must be, the initial response and public notice.

Mr. Nabulsi noted that even though the DEP might have all kinds of remedial steps that would take place in the event of a failure, if the P&Z Commission felt that the risk to the aquifer would be catastrophic, it would have jurisdiction and could potentially deny the application.

Mr. Rudolph asked, regarding the assessment report, is there some way to know where the inset will fit in in relation to the 50 year plan. Mr. Knuff said Mr. Slayback marked it with a square in the middle of the aquifer.

Mr. Knuff said there was a question at the last hearing regarding the ability of their customers to circulate on the site, and he has prepared a proposed easement. He would recommend that,

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as a condition of approval, they supply a certified copy of a fully executed and recorded easement before getting a CO.

Commissioner Gould arrived and was seated.

Bill Carbone submitted a revised set of plans.

Mr. Knuff said there was a discrepancy between their plans and the Form B with regard to site coverage, and he is submitting a revised Form B. The form, in terms of site coverage, has the exact same calculations as found on the plans.

There was also a question regarding the violations that existed on the site, and while all of the garbage trucks, dumpsters and containers are gone, they will submit a plan of what is there that can be referenced so as not to in any way legitimize any of the violations.

Mr. Knuff said he has provided a table of 12 nonconformities that they are either reducing or eliminating in their entirety, which include the setback for the front canopy, the setback for the fuel pumps, the fuel tanks, the parking, the handicap parking, driveway width, landscaping, exterior lighting, dumpsters and the illumination of the sign, and there may be one more in terms of the existing signs on the canopy.

He pointed out that Wilton's regulations provide that light fixtures must be shielded with some opaque substance so that the light itself and its film are not visible from surrounding properties. As he drives up and down Route 7, he does not see any gas station that complies with the regulations, and noted that this will probably be the first gas station in Wilton that actually complies, because the LED lights will be recessed up into the canopy.

In addition to the 12 nonconformities they are either eliminating or reducing, they have dramatically improved the site by relocating the pumps, installing new concrete pads with limiting barriers, new pavement within the entire leased area, the addition of landscaping on the south side along Route 7, the replacement of the tanks and everything associated with the tanks, the new canopies, the LED lights, and the building signage is far less than what is permitted. The expansion of the store will be within the existing building itself, the exterior will be a substantial upgrade over what currently exists, and a dramatically improved elevation will make the station blend more with the other buildings along Route 7.

In summing up, Mr. Knuff said they have been straightforward in saying they cannot eliminate every nonconformity on the site. They have reduced or eliminated at least twelve, and have eliminated a lot of violations through his client working with the landlord. With the Commission's input, the plan has gotten better than originally proposed, and he thinks it is a dramatic improvement.

Ms. Poundstone said Attorney Knuff and his colleagues have worked with the Commission to

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make a number of improvements, and she would like to acknowledge their hard work.

Mr. Bayer said revised Form B indicates they are looking at the parking on the site only as it relates to the leased premises and not the site as a whole. He said it concerns him that they are setting a bad precedent by allowing that type of analysis, and asked if the Commission would run into problems if they allowed the parking to go forward and be approved. Mr. Nerney said he would agree if it were an application involving a change in use, but in this instance, the status quo is being maintained.

Mr. Knuff said they haven't expanded the footprint of the building by an inch and they have not changed the use of the building in any way whatsoever. That site is nonconforming as to parking, and they made it less nonconforming by adding parking spaces.

Mr. Rudolph suggested that, as part of the resolution, there be a condition that the dumpsters and other violations on the entire site be conformed so if at some future date they wanted to turn the garage into a restaurant, there would be no question that the application the Commission reviewed was for the entire premises. The resolution should also refer to what has been done to eliminate nonconformities by making the applicant's list an exhibit.

In response to a question by Mr. Rudolph, Mr. Snelling said the gas station will be open from 6:00 to midnight. Mr. Rudolph said he assumes that none of the spills are automatically triggered, that some human being has to trigger them.

Mr. Knuff said the tanks are double wall, and if there is a release, an alarm goes off. A spill underground will be from one tank to another and will always be contained.

Mr. Snelling said there are sensors that will let them know that there was a leak within the first wall, and that sensor goes off within the building. There is no technology that notifies a person; someone would have to notice that an alarm was tripped. If there is a leak at the dispenser, it goes into a containment system, through the double wall pipe, and back into another containment system which also has another sensor within it. From the dispensers to the tanks, there are three sensors that tell them there is a problem. The sensors are electronically monitored, not only by them but by the state of Connecticut, who does its own inspections. If there is a breach of a single wall tank, there is a protocol whereby you must notify the DEP and certain testing must be done.

Mr. Knuff said currently there is broken pavement around the pumps. If gasoline spills, it dribbles down on the ground and percolates through the cracks. The proposal is to use concrete so the gasoline doesn't get through. In addition, there will be canopies so if it is raining, the gasoline won't get washed away. It will collect in little rivulets and can be cleaned up.

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Mr. Nerney asked what volume could be contained without spilling off the site. Mr. Snelling said, while they have not done the calculations, they know it will hold at least 5 gallons without a problem. He said every pump has an automatic shutoff, and the nozzles are designed to break away. If they do break away, they pop and seal off the gasoline. The gasoline is contained within the hose, which holds about a pint.

As part of the State regulations, the DEP does periodic inspections. In addition, the applicant does its own visual inspections at least once a week, if not everyday, which would include looking for dry rot. As plastic gets old and dries out it turns brittle. They are mandated to keep a log and record all findings.

Ms. Pratt asked does the fact that Route 7 is being widened affect the setbacks for the property. Mr. Nerney said they had that question initially and asked Assistant Town Counsel her opinion, and in looking at the Zoning Board of Appeals records from some years back, she felt that what was being proposed was not going beyond what had been granted in the scope of the variance itself.

Mr. Knuff noted that the expansion of Route 7 was within the existing right-of-way. The setback is to the property line, and the property line has not changed at all. At some point a variance was granted for the front canopy to be located 16.9' from the boundary, other plans showed that it was approved at 15', but somehow the canopy was located about 12' from the property line. The plan calls for it to be moved back to the position that was approved several years ago, and the pumps will also be moved back, so they will be less nonconforming than they currently are as well.

In response to a question from Mr. Nabulsi, Mr. Nerney said, in looking at the numbers for lighting for a gasoline service station, these appear to be lower than the average and what they have seen in the past.

Mr. Bayer observed that the handicap spot looks almost completely dark, and asked if it is appropriate to have more lighting there. Mr. Carbone referred to the architectural renderings for the front of the building and said there is a light over the door and another light on the side, which are both shielded downcast lights.

Mr. Knuff said the photometric plan focused on how the lighting is going to change versus what is there, because all the other lights are going to remain as is. There is no additional lighting proposed except for the lighting above the doorways and on the building itself. The old lighting is what is already located on the CL&P poles along Route 7. He said their concern in the photometric plan was what impact the lighting is going to have on the surrounding properties, and the surrounding properties are all commercial uses.

Mr. Nerney asked if the applicant would be amenable to an as-built lighting plan to confirm

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compliance with town code, and Mr. Knuff said that, while he doesn't know how difficult that would be, he is sure it is something they could do.

There being no further comments from the Commission or the public, at 8:19 P.M. the Public Hearing was closed.

REGULAR MEETING

**A. CALL TO ORDER
SEATING OF MEMBERS**

Ms. Poundstone called the Regular Meeting to order at approximately 8:19 P.M., and seated members, Bayer, Gould, Nabulsi, Poundstone, Pratt and Rudolph, and referred to Connecticut General Statutes Section 8-11, Conflict of Interest.

B. APPROVAL OF MINUTES – January 12, 2009 – Regular Meeting

MOTION was made by Ms. Gould, seconded by Ms. Pratt, and carried (6-0) to approve the minutes of January 12, 2009 as drafted.

C. SITE DEVELOPMENT PLAN REVIEW

D. ACCEPTANCE OF NEW APPLICATIONS

E. PENDING APPLICATIONS

1. SP#344. Consumers Petroleum of CT, Inc., 386 Danbury Road, Addition/modifications to existing convenience store/gas station

Mr. Nerney said they have been working on a resolution, but since other issues have come up, he doesn't think it is appropriate to present it at this time. The Commission agreed that they would like staff to continue working on a draft resolution for their review at the next meeting.

F. COMMUNICATIONS

G. REPORT FROM CHAIRMAN

Ms. Poundstone said she has appointed the Regulations Subcommittee, and she thanked all

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who agreed to serve. She announced that Mike Rudolph will be the Chair, and the members are Bas Nabulsi, Doug Bayer and Marilyn Gould.

H. REPORT FROM PLANNER

Mr. Nerney noted that a meeting of the Village District Design Committee is scheduled for Wednesday, January 28, 2009, weather permitting, to review the Wilton Library sign and the Ramadani site.

I. FUTURE AGENDA ITEMS

J. ADJOURNMENT

MOTION was made by Ms. Gould, seconded by Mr. Bayer, and carried (6-0) to adjourn at 8:23 P.M.

Respectfully submitted,

Karen Pacchiana
Recording Secretary