

PLANNING & ZONING
COMMISSION
Telephone (203) 563-0185
Fax (203) 563-0284



TOWN HALL ANNEX
238 Danbury Road
Wilton, Connecticut 06897

WILTON PLANNING & ZONING COMMISSION MINUTES JULY 13, 2009 REGULAR MEETING

PRESENT: Vice Chairman John Wilson, Secretary Bas Nabulsi, Commissioners Alice Ayers, Doug Bayer, Marilyn Gould, Eric Osterberg, Dona Pratt, and Michael Rudolph

ABSENT: Sally Poundstone (notified intended absence)

ALSO

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

PUBLIC HEARINGS

Vice Chairman John Wilson acted as Chairman in the absence of Commissioner Poundstone.

The Agenda was scrambled to hear SUB#900 prior to SP#347.

2. SUB#900, Polito, 248 Sturges Ridge Road, 2-lot subdivision

Mr. Wilson called the Public Hearing to order at 7:17 P.M., seated members Ayers, Bayer, Nabulsi, Osterberg, Pratt, Rudolph, and Wilson, and referred to Connecticut General Statutes Section 8-11, Conflict of Interest. Mr. Nabulsi read the legal notice dated June 29, 2009.

Present on behalf of the applicant was Kevin O'Brien. He requested that the application be continued until the next meeting. He submitted into the record a letter requesting same.

Mr. Nabulsi referred for the record to a memorandum dated June 26, 2009 from the Conservation Commission to Planning and Zoning Commission; a 3-page Planning and Zoning Staff Report dated July 8, 2009; and a memorandum dated July 10, 2009 from Jennifer M. Zbell to Daphne White.

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 7:21 P.M. the Public Hearing was continued until July 27, 2009.

1. SP#347, Mincey, 500 Ridgefield Road, Addition/renovations to historically significant residence per Section 29-5.C.8 of zoning regulations

Mr. Wilson called the Public Hearing to order at 7:21 P.M., seated members Ayers, Bayer, Gould, Nabulsi, Osterberg, Pratt, Rudolph, and Wilson, and referred to Connecticut General Statutes Section 8-11, Conflict of Interest.

Ms. Ayers recused herself due to a conflict of interest.

Mr. Nabulsi read the legal notice dated June 29, 2009. He referred for the record to a letter dated June 24, 2009 from H. Casey Cordes (South Norwalk Electric and Water) to Planning and Zoning Board; a 2-page letter dated July 8, 2009 from Sarah S. and Jack Hasted to Planning and Zoning Commission; and a 2-page planning and Zoning Staff Report dated July 29, 2009.

Present were Rob Sanders and Rob White, architects on behalf of the applicant.

Mr. Sanders referred to posted renderings of existing and proposed conditions. He noted in particular that the old farm house, dating back to 1867, was added onto numerous times over the years and the front yard setback is now approximately 3-4 feet from the existing house. He explained that the applicant intends to expand the residence in two separate phases – Phase A which will consist of additional living and kitchen space and whose encroachment into the front setback is as a result of providing a necessary connection to the main structure; and Phase B which will add second floor space onto an already existing footprint and which will fall almost entirely within the setback.

Mr. White elaborated further on the details of both expansions, noting in particular that the proposed design preserves the old front as a recognizable portion. He also noted that the portion of the building that is currently closest to Ridgefield Road would be removed as part of Phase B modifications.

In response to questions from Mr. Rudolph about the size of additions over the years, Messrs. Sanders and White explained that the original 1867 portion of the residence consisted of 800 square feet, and subsequent additions (the most recent of which likely dates back to the late 1940s) expanded the residence by an additional 2200+ square feet, bringing the existing structure up to approximately 3070 square feet.

Mr. Bayer expressed two major concerns with the application as presented: 1) whether the applicant has adequately shown that the structure is historically significant and thereby qualifies under Section 29-5.C.8 of zoning regulations, and 2) the fact that the aforementioned regulation permits a one-time only provision of relief; he felt that the two proposed Phases of modifications represented two separate and distinct applications.

Mr. Sanders explained that budgetary considerations were the primary motivation behind the proposed two-stage construction process. He noted that the applicant had considered applying for a zoning variance through the Zoning Board of Appeals but decided that the Special Permit process would allow the consideration of historic/architectural elements of the proposed construction which is not permitted under the variance process.

Mr. Bayer asked if Town Counsel had been consulted regarding the question of whether the application is actually one or two applications.

Mr. Nerney stated that it is only one application. He explained that an applicant has up to five years to complete any proposed work, and then additional extensions may be applied for and obtained beyond the five-year period.

Mr. Nerney explained some differences between the variance and Special Permit processes, noting in particular that with a variance design considerations may not be considered, whereas a Special Permit under Section 29-5.C.8 of zoning regulations allows old historic residences to grow under the theory that the Planning and Zoning Commission would have more oversight.

Mr. Sanders explained that Wilton's historical structures are mostly of local historical significance, with most of the structures located close to roadways. He stated that the subject residence has not changed for at least 50 years, noting that the only zoning record that could be found in Town land records related to an electrical upgrade.

Ms. Gould stated that the subject residence is typical of 18th and 19th century homes (generally very simple structures). She explained that Ridgefield Road was dotted with very small spec homes during that period because that was what people were able to afford and as years passed, additions were constructed onto the original structures. She felt that the application was consistent with Wilton's desire to maintain/preserve its earlier character and heritage.

In response to a question from Ms. Gould regarding usability of the lower level space, Mr. Sanders acknowledged that it is living space, but it is not code-compliant. He noted that the ceiling is only about 6 feet high and, as a result, the space is currently used as a child's playroom.

Mr. Nabulsi expressed concern with establishing precedent in connection with interpretation/enforcement of Section 29-5.C.8 of zoning regulations since he pointed out that the regulation is still relatively new. Citing the aforementioned regulation, he noted that buildings eligible for consideration are those that were erected prior to 1920 (which are per se eligible), and those that were built between 1920 and 1946 which, “in the opinion of the Commission, are deemed to be of merit in terms of the structure’s design and architectural vernacular.” Referring to point #3 of the Planning and Zoning Staff Report dated July 9, 2009, he questioned staff’s implied interpretation that as long as the core structure qualifies under the aforementioned regulation, then subsequent additions can be swept in and also considered eligible as long as they are in keeping with the architectural style of the original core structure.

Mr. Sanders felt that each situation must be considered on a case-by-case basis, noting that not all post World War I structures are historically significant and some post-1946 structures are becoming architecturally significant as time goes by. He noted that not all additions built onto an historic structure are worthy of preservation and thus each case must be considered and evaluated on its own merit.

Mr. Bayer noted that the burden of proof is on the applicant to show that the structure has some overwhelming redeeming quality that merits special consideration under the regulations as compared to the neighbor’s property. He questioned why the Commission should give this structure special consideration under Section 29-5.C.8 of zoning regulations over another property.

Mr. Rudolph expressed concern that these historically-significant applications can become an abuse of what the Commission was attempting to create when it passed Section 29-5.C.8 of zoning regulations. He noted that an 800 square-foot home evolving into an 8000 square-foot home would constitute a clear abuse, but he felt that going from 800 square feet to 3000 square feet also comes pretty close to an abuse of the regulation’s intent. He noted that while all application materials refer to the subject residence as an 1867 structure, it is not a correct representation. He stated that the structure is actually a conglomeration of parts, most of which date to periods later than 1867.

Ms. Gould stated that the regulation should help maintain the existing older homes of Wilton by helping homeowners to make them livable for today. She noted that because most of these homes were built close to the road, homeowners who have invested in these properties are unable to make them livable because they are stymied, in most cases, by setback restrictions. She asked hypothetically whether the Commission should tell such homeowners to tear everything down back to the permitted setback line.

Mr. Sanders explained that it took over 100 years for the subject residence to evolve into

a 3000 square-foot home. He noted that all of the additions seem to have occurred prior to zoning regulations and most of them are, in fact, conforming.

Messrs. Sanders and White confirmed, in response to questions from the Commission, that the proposed Phase A addition would consist of 750 square feet and the proposed Phase B addition, net of the 157 square feet to be removed, would consist of 393 square feet. Mr. Sanders also confirmed that none of the original 800 square feet would be altered, changed or removed.

In response to a question from Mr. Rudolph as to why the proposed renovations could not be completed in conformance with setbacks, Mr. Sanders explained that, architecturally, this is the better solution. He acknowledged that such a response would not be acceptable if the application had to comply with state-mandated reasons for granting a variance through the Zoning Board of Appeals, but he noted that such a response is perfectly acceptable and consistent with the intent of Section 29-5.C.8 of zoning regulations.

Ms. Gould asked how the applicant justifies proposed stone facing which she suggested would not be historically appropriate. Mr. Sanders indicated that he was open to that type of suggestion. He noted that they are trying to pull the entire structure together, referring in particular to the employment of similar materials, scale and style.

Mr. Nabulsi stated that he was having a very difficult time fitting this application under Section 29-5.C.8 of zoning regulations. He felt that the structure's eligibility had not been demonstrated under either criteria of the regulation. He stated if the application were to be continued until the next meeting, it would be helpful for the applicant to address this issue.

Mr. Osterberg felt that the way to look at this application was to focus on the original nonconforming portion of the structure, noting that the goal should be to preserve that specific section. He asked that the applicant elaborate further on that portion of the residence, noting that additional details in that regard might help the Commission to better understand its historical/architectural significance.

Mr. Sanders stated that they had tried to document historicity of this house through the Wilton Historical Society. He requested that the hearing be kept open so that he could come back with documentation about the historical aspects of the structure, as well as address the question of the stone veneer.

Mr. Osterberg also asked, per P&Z Staff Report comments, that the applicant elaborate on proposed roofing, siding and molding materials. Mr. Sanders agreed to provide such information at the next meeting.

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Mr. Rudolph also suggested that the applicant investigate whether any of the subsequent additions have any historical significance. Mr. Sanders agreed.

Mr. Nabulsi stated that he was having difficulty coming to terms with the fact that on the one hand the applicant was asking the Commission to recognize the structure as historically significant and worthy of preservation under Section 29-5.C.8 of zoning regulations, yet on the other hand it was planning to remove a portion of the very same structure. He noted that approving this application could put the Commission in the position of being asked in the future to permit demolition of portions of presumably historically significant homes in connection with applications of this type.

Mr. Sanders felt that the regulation needs to be applied on a case-by-case basis. Ms. Gould noted that tearing down portions that detract from the whole is done all the time.

Mr. Nabulsi stated that he felt unqualified to determine whether the subject structure is historically/architecturally significant per Section 29-5.C.8 of zoning regulations. Mr. Bayer stated that it is incumbent upon the applicant to prove the historical/architectural significance of a given structure.

Ms. Pratt stated that it would be helpful to try to date some of the additions as well. Mr. Sanders stated that he would speculate to the best of his ability in that regard.

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

Sally Hasted, 5 DeForest Road, opposed the application, noting that it would negatively impact neighbors and significantly alter the area. She felt that the property will lose much of its inherent charm and she expressed concern that the new upper story would not be screened from view. She stated that the alterations are enormous, given the two proposed phases of construction.

Dick Hasted, 5 DeForest Road, also opposed the application, noting that the existing home with its rambling qualities will be transformed into a modern house and will negatively impact the overall feeling of North Wilton. He expressed further concern with the stone facing that is being proposed.

Mr. Bayer asked if the Hasteds would prefer that the existing home be torn down and a larger, conforming home be built in the rear of the property. They replied that it would be sad, but that the new home would probably not be visible if it were built in the rear. They indicated that they would really prefer to preserve the existing home, as is, without the modifications being proposed.

Florence Keiser Romanov, 26 DeForest Road, opposed the application, noting that she

enjoys seeing all of these older homes in Town. She felt that the proposed raised roof would be an eyesore and would not be “Wiltonian-like”.

There being no further comments from the Commission or the public, at 8:45 P.M. the Public Hearing was continued until July 27, 2009.

Ms. Ayers returned.

REGULAR MEETING

- A.** Mr. Wilson called the Regular Meeting to order at 8:47 P.M., seated members Ayers, Bayer, Gould, Nabulsi, Osterberg, Pratt, Rudolph, and Wilson, and referred to Connecticut General Statutes Section 8-11, Conflict of Interest.

B. APPROVAL OF MINUTES

1. June 22, 2009 – Regular Meeting

MOTION was made by Mr. Rudolph, seconded by Ms. Ayers, and carried (7-0-1) to approve the minutes of June 22, 2009 as drafted. Mr. Nabulsi abstained.

C. SITE DEVELOPMENT PLAN REVIEW

D. ACCEPTANCE OF NEW APPLICATIONS

E. PENDING APPLICATIONS

- 1. SP#347, Mincey, 500 Ridgefield Road, Addition/renovations to historically significant residence per Section 29-5.C.8 of zoning regulations**

Tabled.

- 2. SUB#900, Polito, 248 Sturges Ridge Road, 2-lot subdivision**

Tabled.

F. COMMUNICATIONS

1. Discussion concerning tree clearing

Mr. Osterberg discussed the idea of enacting regulations concerning tree cutting in Town. Referring to a recent discussion in connection with the Plan of Conservation and Development, he noted that Heidi Samokar of Planimetrics, Inc. seemed to feel that tree cutting regulations could not be enacted by the Town, yet the materials forwarded thereafter by Heidi to the Commission did not seem to support such a premise. He felt that the Town should seriously consider enactment of such regulations.

Mr. Wilson suggested proposing that such a regulation be brought before the Regulations Committee for review.

Mr. Nerney suggested referring the issue to Town Counsel for review. He explained that Ms. Samokar felt tree clearing could probably be regulated through other channels (e.g. erosion, control, slope and special permit considerations, subdivisions, etc.). He noted, for example, that subdivision applicants are already required to plot out trees of a certain caliber and to replace certain trees that will be cut down. In a Special Permit application, the Commission may consider all aspects of the application in the context of the overall character of the neighborhood. He felt that the Town should try to obtain more information on various ways to legally enact such regulations either through zoning or ordinance adoption.

Mr. Bayer noted that a significant problem the Town has dealt with in the past is clear-cutting of trees that occurs prior to an application being submitted, referring in particular to a recent application on River Road.

Mr. Nerney stated that perhaps the Town could focus more on the issue of erosion than on clear-cutting per se, possibly focusing on areas of lots where the grade is in excess of 10%, for example.

Mr. Bayer asked whether the Town might have the ability to refuse to consider an application if a certain amount of clear-cutting was done during some pre-determined period of time prior to submission. He also suggested imposing a requirement to obtain a tree-cutting permit.

Mr. Osterberg questioned whether there is any law that prevents a Town from developing regulations that restrict property owners from cutting down trees.

Mr. Nerney stated that he would pursue the question with Town Counsel, in particular whether such a regulation might fall within the purview of Section 7 of Connecticut

General Statutes, which pertains to municipal powers, as opposed to Planning and Zoning enabling legislation, which is addressed in Section 8 of the Statutes. He felt that the Plan of Conservation and Development would probably be a good vehicle for recommending such Town-enacted legislation.

Ms. Pratt noted that the tree-cutting issue has impacts on drainage in many cases as well.

2. Vice-Chairman Report concerning LED lighting

Mr. Wilson stated that the Commission should be educated on the matter of LED lighting which has significant financial advantages and produces much less thermal pollution. He had planned to review the matter with the Commission at tonight's meeting but was unable to obtain a paper that was written on the subject. He hoped that he would be able to obtain a copy of the paper in time for the first PZC meeting after summer recess and therefore postponed the review until that time.

The Commission briefly discussed the issue of proof of historic/architectural significance in connection with applications such as the Mincey application reviewed earlier this evening. Mr. Wilson noted that the Commission can require the submission of an affidavit to that effect from an applicant. Mr. Bayer noted that the intent of the regulation is to preserve historic buildings and to be sure that proposed new construction is consistent with the original building. He felt that it might be useful to have an expert come in and explain the significance of a purported historically-significant residence. Mr. Nerney noted that the Commission can require that an applicant pay for an expert consultant.

Patrice Gillespie, Conservation Commission liaison, present in the audience, referred to the River Road tree-cutting situation alluded to previously in the meeting. She suggested looking into a "net loss" program for the Town, which was mentioned to her by a regional planner in Massachusetts, whereby expanded areas of restoration are considered as an offset to the loss of trees in a narrower locale. She also asked that the Commission consider the impact that tree-cutting has on global warming.

Mr. Nerney advised Commissioners that Ms. Samovar was extending the deadline until

Thursday, July 16, 2009 for their comments in connection with the Plan of Conservation and Development.

Ms. Ayers referred to a letter [received July 1, 2009] from Don Klotz to Planning & Zoning Commission regarding a proposed Memorial Wall of Honor for all Wilton war veterans. Mr. Nerney stated that it was his understanding that First Selectman Bill Brennan would be responding to Mr. Klotz's letter. Ms. Ayers stated that it was her understanding that Mr. Brennan plans to erect a flagpole to honor Wilton veterans. It was noted that once a proposal/plan is developed in that regard, it would then likely come before planning/zoning for any required approvals.

G. REPORT FROM CHAIRMAN

1. Reports from Committee Chairmen

H. REPORT FROM PLANNER

I. FUTURE AGENDA ITEMS

- 1. SP#288E, Ambler Farm, Town of Wilton, 257 Hurlbutt St, Restoration/Addition/Change to Public & Semi-Public Use of Raymond-Ambler House [P.H. July 27, 2009]**

J. ADJOURNMENT

MOTION was made by Mr. Osterberg, seconded by Mr. Wilson, and carried unanimously (8-0) to adjourn at 9:20 P.M.

Respectfully submitted,

Lorraine Russo
Recording Secretary