

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



TOWN HALL ANNEX
238 Danbury Road
Wilton, Connecticut 06897

**WILTON PLANNING & ZONING COMMISSION
PUBLIC HEARING/REGULAR MEETING
MINUTES – OCTOBER 12, 2009**

PRESENT: Chairwoman Sally Poundstone, Commissioners Alice Ayers, Doug Bayer, Marilyn Gould, Bas Nabulsi, Eric Osterberg, Dona Pratt, Michael Rudolph and John Wilson.

ABSENT: None.

ALSO

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

PUBLIC HEARINGS

1. CHZ#09317, Trygve Hansen and Muriel T. Hansen, 19 Cannon Road, Zone change from R-2A to DRB and the Cannon Crossing Overlay District

Ms. Poundstone called the Public Hearing to order at approximately 7:15 P.M., seated members Bayer, Gould, Nabulsi, Osterberg, Poundstone, Pratt, Rudolph and Wilson. Mr. Nabulsi read the legal notice for the record, a memo dated October 7, 2009 from the Conservation Commission, a memo dated October 2, 2009 from Michael Ahern, Field Engineer, a letter dated October 1, 2009 from John D. Paul, Esq., a Planning and Zoning Staff Report dated October 7, 2009, and a letter dated October 12, 2009 from Casey Healy of Gregory and Adams.

Ms. Poundstone noted that the letter from Gregory and Adams requested that the application be continued to October 26th. There being no further comments from the Commission or the public, at 7:18 P.M. the Public Hearing was continued until October 26, 2009.

2. SUB#901, Polito, 248 Sturges Ridge Road, 2-lot Subdivision

Ms. Poundstone called the Public Hearing to order at approximately 7:18 P.M., seated members Bayer, Gould, Nabulsi, Osterberg, Poundstone, Pratt, Rudolph and Wilson.

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Mr. Nabulsi read the legal notice for the record, a letter dated October 12, 2009 from Gregory and Adams, a Planning and Zoning Department staff report with cover memo dated October 7, 2009, a multi page document from Peak Engineers dated September 19, 2009, and a memo dated October 2, 2009 from Michael Ahern, Field Engineer,

Present for the applicant was Kevin E. O'Brien of Wilton Country Homes. He said the application is for a conservation development of two lots on a five-acre parcel on the southeast corner of Orchard Drive and Sturges Ridge Road. The property was purchased this year from the estate of Anthony Carvuto, who originally purchased a 19-acre parcel in 1948. One-acre lots were developed on Orchard Drive in the late '40s and early '50s, which was prior to zoning.

Mr. O'Brien pointed to a plan, which he said depicted a conventional subdivision, which would have a front lot and a rear lot with an accessway from Sturges Ridge. The front lot would be two acres and the rear lot would be two plus acres, plus the accessway going back. The driveway would cross over a brook and a wetland corridor for about 150', which would entail a substantial disturbance of the wetlands. It was decided, therefore, to apply for a conservation development, for which the zoning regulations require a minimum of five acres. A conservation subdivision requires seven acres.

He said Attorney Casey Healy has been talking to Town Counsel, as they believe they are entitled to an initial division since the property was purchased in 1948 and never subdivided. They cannot initial cut two one-acre lots in a two-acre zone without going through the subdivision process.

Mr. Nerney said it is actually three lots if you were to count the conservation land, but the statute deems that conservation land, if it is going to be used for conservation land, does not count toward the third lot.

Mr. O'Brien said they are proposing two single family homes, each with a footprint of approximately 4,000 square feet, which is the maximum that can be built and still be within site coverage and building coverage requirements. Each house will have a driveway. Septic systems were tested for in the back of the houses. They are not proposing at this point to put in pools, but wanted approval in the event the homeowner decided to have a pool, so they went to the Inland Wetlands with the largest footprint they could with the pool area designated, and then got their approvals.

Lot #1 is 1.17 acres and lot #2 is 1.3 acres. Each would own 50% of the conservation area, which is 2.5 acres. The area would be restricted through a conservation easement.

Mr. O'Brien distributed a written response to the staff comments.

Commissioner Ayers arrived and was seated.

Mr. O'Brien said there are wetlands on the south of the front two parcels. A drainage corridor

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comes down from the other side of Sturges Ridge Road, and a drainage corridor comes off of Orchard Drive where there are wetlands. Because they are excavating more than the cubic yards permitted within 100' of the wetlands and/or brook, they had to apply for a Significant Activities Permit, which was approved by Inland Wetlands in June. One of the purposes of the conservation development is to keep from disturbing land so as to keep the environment as close as possible to what it is now. With the conservation development they are developing less than two acres, so over 50% of the property will be preserved with no disturbance whatsoever. A major portion of the front parcel will also be undisturbed as per the wetland application, whereas with the conventional subdivision they would be developing far more because of the length of the driveway going back to the second parcel and the development of that parcel. With the conservation development, the septic systems will be located along the ridge, where in the case of the conventional development there would be a septic up front and a septic in the back. In the conservation development the entire rear 2.506 acres will be forever wild as a conservation easement. It will be used strictly for passive recreation, and will be so restricted. They will be submitting easements as part of the application.

Mr. Nerney clarified that the property in the conservation area is not to be deeded to the town. It is to be held in deed by the two property owners.

Mr. O'Brien noted that the Field Engineer's report raised an issue of moving the infiltrators a little to the north, and while he has not yet gotten back to Inland Wetlands, it is a minor issue.

He said, in proposing the conservation development, they took into consideration that Orchard Drive is all one-acre lots in a two-acre zone, except for the last two houses on the right. Coley Road, which is just south of the proposed parcels, is a one-acre development in a two-acre zone, so the two one-acre parcels he is proposing would not look out of place because there are one-acre lots basically surrounding them.

Mr. Nerney pointed out that a conservation development provides mutual benefits to both the property owner and the town. The benefit to the property owner is that the cost of developing is less. The benefit to the Town is that it avoids a wetland crossing which would entail disturbance to the wetlands and substantial fill brought in. If a house were to be built in the back, the length of the driveway would be substantially longer with more impervious surfaces and more impact on the wetlands.

He recommended that the Commission keep the Public Hearing open, because they are talking with legal counsel as to whether the area had previously been subdivided. If there was a subdivision, then they could potentially be into what is called a resubdivision, which would put the applicant into the 7-acre requirement. In the 40s and 50s first cuts and lot line revisions were dealt with by the Planning Commission, because there was no administrator in place at the time. The interesting thing is that the plan called for the merging of the subject land with property owners on Orchard Drive who were not even a party to what was going on down the road. Attorney Healy has provided a letter giving a little more background, and they will continue to research and see what they can find.

Ms. Gould said she was always tough on conservation subdivisions, because she didn't like

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seeing a developer get more out of a lot than he could get with the limits of the topography by utilizing what she thought was subterfuge. In this case she thinks it is a very reasonable situation in which to use the conservation subdivision. It protects the wetlands in a way that cannot be done otherwise, and she is very glad that the homeowners are going to retain ownership of the conservation land and pay taxes on it.

Ms. Pratt said her concern is that the Commission has gotten feedback over the last year or so from people who are not happy with the effect of bigger houses. In this scenario the houses are fairly close to the street, and even though there is conservation land in the back, it doesn't help people that have to face the property or who are nearby. Ms. Gould pointed out that that is what their regulations allow and that is what someone can do.

Mr. O'Brien said marketing these days is concentrated on future smaller energy efficient homes. The homes will be smaller and more usable, as the basement and attic will be used. The footprint will be smaller, but they will still be substantial homes because of the price of the land.

Mr. Osterberg asked if they have any information about potential runoff in the back of either of the two plans. Mr. O'Brien said he has a report from Environment Land Solutions dated May 13, 2009, and there is a comparison of the two and the impacts of the runoff. The hydrology report was done on the proposal and not on the hypothetical of the rear lot.

Mr. Nerney said the report from May 13th was done by a landscape architect, and that is not the same as a hydrology report done by an engineer comparing a conventional subdivision to a conservation subdivision. He thinks that information, if the Commission would like to see it, is reasonable to request.

Mr. O'Brien observed that #2 of the staff comments is asking for the Commission to check with the Fire Department as to whether a cistern will be required. Mr. Nerney said they have sent the plans to the Fire Department. They have not heard back from them yet, but will push them for a response by October 26th.

Mr. Nabulsi pointed out that when he read the list of documents into the record, Ms. Throckmorton's report was not one of them, and before they close the application he thinks they should have a clearer identification of the documents that are part of the record.

There being no further comments from the Commission or the public, at 7:59 P.M. the Public Hearing was continued until October 26, 2009.

REGULAR MEETING

- A. CALL TO ORDER
SEATING OF MEMBERS**

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Ms. Poundstone called the Regular Meeting to order at approximately 8:00 P.M. and seated members Ayers, Bayer, Gould, Nabulsi, Poundstone, Pratt, Osterberg, Rudolph and Wilson, and referred to Connecticut General Statutes Section 8-11, Conflict of Interest.

B. APPROVAL OF MINUTES

1. September 14, 2009 – Regular Meeting

MOTION was made by Ms. Gould, seconded by Ms. Ayers, and carried (6-0-3, with Commissioners Bayer, Osterberg and Pratt abstaining) to approve the minutes of the September 14, 2009 Regular Meeting as drafted.

C. SITE DEVELOPMENT PLAN REVIEW

(None)

D. ACCEPTANCE OF NEW APPLICATIONS

1. SUB#902, Gaboriault, 1031 Ridgefield Road, 2-lot subdivision
Scheduled for October 26, 2009.
2. SUB#191E, Montessori Assn, Inc., 34 Whipple Road, To increase enrollment
and construct additional parking
Scheduled for November 9, 2009.
3. SUB#903, Keene, 388 Sturges Ridge Road, 4-lot Subdivision
Scheduled for November 23, 2009.

Ms. Poundstone noted that the Commission will meet on November 2nd for a POCD meeting.

E. PENDING APPLICATIONS

1. CHZ#09317, Trygve Hansen and Muriel T. Hansen, 19 Cannon Road, Zone
change from R-2A to DRB and the Cannon Crossing Overlay District

Continued to October 26, 2009

2. SUB#901, Polito, 248 Sturges Ridge Road, 2-lot Subdivision

Continued to October 26, 2009

F. COMMUNICATIONS

Ms. Poundstone said the Commission received a memo from Mr. Nerney regarding package retail stores, which she would like to refer to the Regulations Subcommittee chaired by Mr. Rudolph. After consultation with other members of the Committee, Mr. Rudolph announced that the Regulations Subcommittee will meet on October 20th at 7:00 P.M.

Mr. Nabulsi observed that putting a moratorium in place in Cannondale while the Commission evaluated how best to go about putting an overlay there was well thought out, and it strikes him that the potential for receiving a series of applications on packaged goods stores is a situation where the Commission would be well advised to put in place a moratorium on accepting applications until the Commission has an opportunity to review their regulations and put in place any they deem appropriate.

Mr. Nerney remarked that the bulk of the regulatory aspects governing package stores are through the State. He said normally when dealing with a moratorium, a bigger development issue is in question. In the instance of Cannondale, at the time the Commission felt the potential for what could happen there would be substantial in terms of how it would coincide with their Plan of Conservation and Development. Here they are talking about a single retail type use. Wilton has three commercial districts that allow retail services, and he doesn't think a liquor store is much different than a bakery or an ice cream shop. The traffic impacts are not much different, and so what you are left with is what are the appropriate districts and certain spatial standards. Seven would be the limit according to state statute, and he does not think the Commission could draft a zoning regulation that supersedes state statutes. He said he would be surprised if there was a mad rush of applications.

Ms. Pratt commented that the location of a liquor store in proximity to schools or churches might be objected to, and next to the library might not be a good idea.

Ms. Poundstone suggested that they get the input of Town Counsel prior to the subcommittee meeting on the 20th.

Mr. Nabulsi pointed out that a moratorium would be for a very limited time, and even if the Commission adopted no regulations, at least they will have given the people of Wilton the opportunity to have observed their consideration of the issues. He does not think they would be prejudging the nature of any potential regulations they adopt, but once the applications have been received and once people move into space without any regulations that govern their

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activity, the Commission will have missed whatever opportunity otherwise existed for them to speak on the topic.

Mr. Bayer suggested they simply say a liquor store is a special permitted use in DRB and GB and every application has to meet the criteria for that particular use. He said they do that for recreational facilities, gyms and club memberships, so it would not be discriminatory. He suggested they publish a legal notice of a moratorium and schedule a public hearing on it for October 26th. The legal notice can be worded to recognize that the Town is having an election on whether alcoholic beverages should be sold in Town and there is therefore going to be a vote on a moratorium of 60 days to allow the Commission the opportunity to react to the potential. If the vote is turned down, then there is no need to do anything, and if the vote goes forward they have 60 days to get their act together and have a public hearing and take care of it.

Mr. Wilson said he likes the idea of a special permit, which gives them full review of everything.

Ms. Ayers pointed out that if applications come in and then they decide to create regulations, that tends to be discriminatory.

Mr. Nerney said he thinks putting together a regulation pretty quickly can be done; he is just a little hesitant about the moratorium.

Mr. Wilson said they should probably notice that on October 26th there will be discussion regarding the sale of alcoholic beverages as a specially permitted use, which will become effective immediately if it is approved.

Mr. Nerney said there seems to be some initial objection to a liquor store in Wilton Center, but he can picture a wine and spirits shop there being quite nice. He could also see it working in a general business district. What he would suggest the subcommittee focus on is spatial separation standards between public schools, religious institutions and from one another. He said the concept of seven liquor stores in Wilton is highly unlikely. There are certain economic forces that come into play, and perhaps regulating them by special permit to evaluate the character in a broad sense is the way to go.

Ms. Ayers said she thinks they need to vote on a motion to add discussion regarding the retail sale of alcohol to the agenda.

MOTION was made by Ms. Gould, seconded by Ms. Ayers, and passed (9-0) that such discussion be added to the agenda.

MOTION was made by Mr. Bayer, seconded by Mr. Wilson, and passed (9-0) to schedule a public hearing for October 26, 2009 for the purpose of discussing the sale of alcoholic

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beverages as a specially permitted use in their commercial zones, i.e. Wilton Center, GB and DRB, in accordance with the state statutes.

G. REPORT FROM CHAIRMAN AND COMMISSION MEMBERS

H. REPORT FROM PLANNER

I. FUTURE AGENDA ITEMS

J. ADJOURNMENT

MOTION was made by Mr. Wilson, seconded by Ms. Ayers, and carried (9-0) to adjourn at 8:25 P.M.

Respectfully submitted,

Karen Pacchiana
Recording Secretary