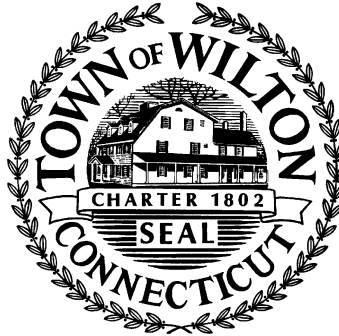


PLANNING & ZONING  
COMMISSION  
Telephone (203) 563-0185  
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TOWN HALL ANNEX  
238 Danbury Road  
Wilton, Connecticut 06897

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

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

**ABSENT:** Alice Ayers (notified intended absence).

**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., and seated members Bayer, Gould, Nabulsi, Osterberg, Poundstone, Pratt, Rudolph and Wilson. Mr. Nabulsi read into the record a letter dated October 22, 2009 from Gregory and Adams.

Present for the applicant was J. Casey Healy, Esq. of Gregory & Adams.

Mr. Healy posted a copy of the resubdivision map, and noted that the property is 2.158 acres. It is currently improved with a storage building that houses offices. He pointed out the stream channel encroachment line, the 500 year flood hazard line, and some wetlands at the back of the property. The property used to also include what is shown on the 2003 map as an office building. The property was subdivided and later a special permit application was filed for the ABC House to allow it to be a residential educational facility, which the Commission granted in October 2005.

The Hansens, who have owned the property since 1983, are seeking a zone change to Design Residential Business with an Overlay to the Cannon Crossing District. The property is surrounded by the Department of Transportation Railroad, the Aquarion Water Company property, the ABC House, and a nursery school across the street. A planning evaluation was prepared by Saccardi and Schiff in support of the zone change request and request for the Overlay District, which has been submitted.

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Dave Schiff from Saccardi and Schiff, Planning Consultants, referred to an aerial map, and explained that the application was looked at both from a planning viewpoint in the field as well as a review of Wilton's planning policies as expressed in its zoning regulations and its Plan of Conservation and Development. On the east side of the tracks is DRB zone in two locations and GB zone in the middle. The area surrounding the site remains R2A, but none of it is developed residentially any longer.

The current Plan of Conservation and Development provides that the Town consider "protecting Cannondale and allowing additional compatible development." The May 2009 draft of the POCD addresses Cannondale in more detail and talks about coming up with development options that reflect the historic setting and scale and indicates that some level of change is likely to occur. Mr. Schiff said he thinks that indicates a desire for some kind of additional development to enhance the vitality of the Village area and build upon what is there, but at the same time respect the unique and special character of the area.

He pointed out that the request is not just for DRB, it is for DRB with the Village Overlay. The Overlay District provides for a review to determine that the plan is in harmony with the design guidelines, and, quoting from the ordinance, it has to reinforce the historic scale, massing, proportion, spacing, setbacks and orientation. If the property were to be rezoned to DRB with the Village Overlay, a number of important controls would be in place, as well as some restrictions due to the presence of the wetlands.

Mr. Schiff opined that DRB is an appropriate kind of zoning for the site and would be consistent with the objectives of the Town Plan going forward and also contribute to the objectives for the Cannondale Village area.

Mr. Healy noted that a response to the Staff Report has been submitted. The one question that had not been addressed pertained to the existing building coverages for nearby properties, and he submitted a letter listing the coverages at the ABC House, the nursery school, the properties at 24-30 Cannon Road, and the Titus property.

In response to a question by Ms. Gould, Mr. Healy said while the DRB regulation allows 80% site coverage, it also imposes other restrictions that work to significantly reduce actual developable area, and when you combine the underlying regulations, wetlands, the Department of Environmental Protection with respect to stream channel encroachment, the flood hazard areas, the FEMA, and the Overlay District regulations, there are protections that address that issue.

Mr. Bayer pointed out that the current Plan of Conservation and Development contemplates taking some action with regard to Cannondale, and he asked, from a planning perspective, why would the Commission agree to a zone change now when it is something that they are going to be looking at in the very short term. He also questioned whether permitted uses in the DRB, such as retail dry cleaning and laundry outlets, printing, photography or photo copy service facilities are appropriate for the site.

Mr. Healy said retail dry cleaning would not be permitted as of right because the property is in

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an aquifer protection zone, so it falls under special permit under 29-9 of the aquifer protection regulations. He pointed out that the property is not on Route 7, so the area is not going to attract the type of commercial uses that require high traffic volume. The businesses there are in attractive buildings, but they could use a little more enhancement and perhaps more services for the people who come there and who live in the area.

He said, in terms of timing, obviously they would love to have the application decided favorably at the earliest possible date, but the hearing has just opened. It can stay open. The Commission has a certain period in which it can withhold its decision. The applicant has the ability to extend that period. If the Commission would like to reach further decisions on its Town Plan before it reaches a decision on the application, he thinks they may be within a period that they could do that without withdrawing the application and having to start all over.

Mr. Healy observed that the Town Plan itself is an advisory document only, and although they have found it very helpful in the process, he did not read anything within the Plan to indicate that the Town was going to be doing something different in the area which would require them to bring in an application different than what they submitted, which is to try to mirror abutting properties.

Mr. Nabulsi asked Mr. Schiff, in looking at some of the R2A zones that are to the west and to the north of the site, does he have an opinion based upon his review of the application as to the degree to which those sites should also be considered for DRB zoning.

Mr. Schiff said the thing that makes this site a little different is its location immediately across from the parking lot and from the other businesses. As you get further away, you are into slightly different areas that face and front on Route 7. One of the things he did not find in the Plan is what the Town thinks is an appropriate scale for the overall Village. There were general discussions that there might be additional development, but it was not quantified, and that obviously would influence how many other areas should be included.

Mr. Nabulsi agreed it is a very important policy decision for the Commission, but he is concerned that if the Commission rezones this property, they have created a bit of momentum in a direction that would be difficult to turn back from.

Mr. Healy said as to the momentum, he is not a Planner and he could not disagree with that, but the only thing that has changed over the last four years is the continuity of adaptive use has been broken to the extent that the property to the west is now an educational residential facility. Not that that precludes DRB coming all the way out to Route 7 with the Overlay if that is what the Commission thinks is appropriate, but each application for a zone change is generally considered on a property by property basis. The Hansens would have no objection or negative opinion towards others requesting that it move out further to Route 7. And again, he thinks the timing may work when they get the Public Hearing closed as the Commission has 65 days to decide the application and the applicant has 65 days worth of extension. He thinks the Town is at a point where it is going to wrap up the Public Hearings on the Town Plan.

Mr. Wilson said it appears that the building rectangle will be approximately 50' by 60', but he

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would like to see the calculations for what the maximum build area is. Mr. Healy said it is a two story limitation, and he will work with the surveyor and come up with some numbers for retail or office with parking requirements. He will also talk to the Hansens and show what might be built, and show that it would fit under the DRB zone with all of the underlying restrictions.

Ms. Gould said, in view of the limitations of this particular lot and the very small buildable area, she has a difficult time understanding why DRB is an appropriate zone and wondered if the applicant had looked at other options. She said perhaps a new zone or changes within the historic designations would be more appropriate.

Ms. Pratt asked if adaptive use was extended or changed in some way, would that be acceptable for the property.

Mr. Healy said in the mid 90s the Hansens had wanted to rebuild a barn structure, but the existing adaptive use regulations are very restrictive as to any sort of expansion, and the Commission felt that while there were parts of the former barn, it was not sufficient enough that they were building a replica. The adaptive use regulation provides very little ability to expand. It might be nice for the Town to have an “adaptive use 2” regulation that allowed for a second generation.

Ms. Poundstone asked if anyone in the audience wished to speak for or against the application.

Mr. John Paul said he has owned the property at 436 Danbury Road on the corner of Cannon Road for approximately 30 years, and he would take exception to what Mr. Healy said that “the only change that has happened in the area within the past four years is the introduction of the ABC House.” Unfortunately, that is not entirely the case. When he purchased the property 30 years ago, it had beautiful old oak trees on a beautiful front lawn, and while it is nice to try to maintain this museum property for the benefit of the community, it is hard to continue to do it with the super highway right in front. Route 7 has expanded to the point of ridiculousness. The house is now right on Danbury Road, which is now a four, and in some cases, a five lane highway. There are stop lights there, and while it is not necessarily part of this immediate application, that certainly must be considered by the Commission as it looks at its Plan and what is going to happen in the area. The beauty of his property is virtually gone, and he presumes that that filters down to Cannon Road as well.

There being no further comments from the Commission or the public, at 8:02 P.M. the Public Hearing was continued until November 9, 2009.

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

Ms. Poundstone called the Public Hearing to order at approximately 8:03 P.M., and seated members Bayer, Gould, Nabulsi, Osterberg, Poundstone, Pratt, Rudolph and Wilson. Mr. Nabulsi read for the record an email dated October 14, 2009 from David Kohn, Fire Marshal.

Present for the applicant was Kevin E. O’Brien of Wilton Country Homes.

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Mr. O'Brien said there were four items carried over from the last Public Hearing that needed to be addressed. One had to do with the possibility of a cistern for water protection, and he referred to the Fire Marshal's email in which he indicated it is not necessary.

In addition, while he had posted the traditional subdivision study on the wall and referred to it, Ms. White pointed out that he did not submit it as part of the package, and he will do so now. Ms. White said part of the request had to do with the discount provisions. They have the discount provisions and calculations for the conservation subdivision, but not for the traditional subdivision. Mr. O'Brien said he will provide that information.

He said the next item had to do with the Declaration and Conservation Development Restrictions, and he is submitting a draft of the Restrictions.

The last item was they were waiting to hear from Town Counsel as to whether they can close the Public Hearing, and he got a call that she had no objection. Mr. Nerney said he had a similar conversation with Assistant Town Counsel Pat Sullivan and she reiterated the same to him.

Mr. O'Brien said the original issue that came up was with regard to a 1954 map that showed parcels that were to be conveyed to the neighbors, but never were. There was a suggestion by Town Counsel that the applicant could not use the parcels as part of the subdivision application, that they had to be used as open land or deeded to the neighbors to make them more conforming. At that time there were three separate parcels that were owned by three separate people, that already had houses on them, and it was decided not to purchase the rear property.

Mr. Nerney confirmed that that action in 1954 did not rise to the level of a subdivision, it appears to have been a lot line adjustment.

Ms. White pointed out that Town Engineer, Michael Ahern, noted in his memo a concern about the footing drains discharging within close proximity of adjoining properties and had made a request about the rip-rap pad and the drainage infiltration. She said he has asked that approval be conditioned on his review prior to the zoning permit.

Mr. O'Brien said what is shown on the plan is the worst case scenario and is a hypothetical based on the large footprint of the house. If they scale down the footprint, they can scale down the infiltrators and deal with the Town Engineer's concern, although they may have to go back to Wetlands in order to do it.

Mr. Nerney noted that while the first drainage report was done by Environmental Land Solutions, they did receive a drainage analysis dated October 5, 2009 from Peak Engineering that was prepared by a professional civil engineer signed and stamped, in which he concludes that the drainage has been properly attenuated for the development that is being proposed.

In response to a question by Mr. Rudolph, Mr. Nerney said they looked at the application very carefully when it came in, and agreed that developing the back lot would not be in the public interest as it would entail a much longer driveway with a more impervious surface which

would have more impact on the wetlands. While it is in the midst of a 2-acre zone, several of the parcels in the area were created pre-zoning and are sized one acre, so visually it would not look out of character. The proposed plan benefits the developer as there is less cost in building a shorter driveway. At the same time the Town would benefit as it would not be saddled with the maintenance or responsibility, plus there would be a positive tax revenue.

Ms. White asked for clarification about the trees that are proposed to be cut down along the roadside. Mr. O'Brien said, while they show them on the plan to be removed, they are going to make every effort to preserve the trees, but if they take them down, they will be replaced.

MOTION was made by Mr. Wilson, seconded by Ms. Gould, and carried (8-0) to close the Public Hearing on SUB#901, Polito, 248 Sturges Ridge Road, 2-lot subdivision at 8:30 P.M.

### **3. SUB#902, Gaboriault, 1031 Ridgefield Road, 2-lot subdivision**

Ms. Poundstone called the Public Hearing to order at approximately 8:31 P.M., seated members Bayer, Gould, Nabulsi, Osterberg, Poundstone, Pratt, Rudolph and Wilson. Mr. Nabulsi read the legal notice for the record, a Planning and Zoning Staff Report dated October 22, 2009, a memo from Michael Ahern, Field Engineer, dated October 21, 2009, a memo from the Assistant Town Sanitarian dated October 23, 2009, and an email from David Kohn, Fire Marshal, dated October 26, 2009.

Present was Peter Gaboriault, applicant.

Mr. Gaboriault submitted a written response to Staff comments, copies of notification to the First Taxing District and the State, and a draft of the driveway deed.

He said there is an existing house on Ridgefield Road and they are going to subdivide the back two acres to create one new lot. It will have a deeded accessway with frontage onto Ridgefield Road. However, the actual access will be off of Fullin Lane with a common driveway serving the new house and two other properties. There are no wetlands on the property. It is relatively flat, and few drainage issues. Mr. Ahern was concerned that there be no water directed to 21 Fullin Lane, and they will make sure that that doesn't happen by relocating the infiltrator away from that property.

Mr. Wilson pointed out there is a stormwater management report from McChord Engineering.

The proposed house is a 5-bedroom residence. The Health Department has approved the proposed septic system as to feasibility. David Kohn, Fire Marshal, has indicated they do not need a cistern because they are only creating one new residence, and in fact there is a cistern at 1068 Ridgefield Road from a previous subdivision. They will have to remove a little bit of the driveway, but the new lot will conform to site coverage upon subdivision. The proposed house is about 3.5% coverage, the proposed site is about 10.2%, whereas 12% is the maximum.

Mr. Nerney said since it is necessary to cross another parcel in order to get to Fullin Lane, the applicant will need to submit an easement to memorialize the right to pass and repass, which

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will be forwarded to Town Counsel for review.

Mr. Gaboriault said everything in the Staff comments will be addressed and revised plans will be submitted.

Mr. Nerney said typically when new plans and information come in, they sit down with the applicant and review point by point each of the changes.

Ms. Gould asked if the parcel would have a Fullin Lane address. Mr. Gaboriault said he thinks it should, but that is something they need to work out with the Town.

There being no further comments from the Commission or the public, at 8:44 P.M. the Public Hearing was continued until November 9, 2009.

**4. REG#09318, Amend zoning regulations to establish zoning provisions pertaining to the location of retail package stores selling alcoholic beverages**

Mr. Nabulsi read into the record the legal notice, a letter from Mr. Nerney to Floyd Lapp, FAICP, Executive Director dated October 16, 2009, a letter from Mr. Nerney to Jonathan Chew, Executive Director, Housatonic Valley Council of Officials dated October 16, 2009, a response by HVCEO to Referral of Proposed Zone Change or Subdivision dated October 20, 2009, and an amended version of the proposed zoning regulations with appended maps.

Ms. Poundstone called the Public Hearing to order at approximately 8:45 P.M., and seated members Bayer, Gould, Nabulsi, Osterberg, Poundstone, Pratt, Rudolph and Wilson.

Mr. Rudolph, Chairman of the Regulation Subcommittee, said they are submitting for review and discussion the result of a meeting the Committee had in which they discussed a proposed amendment to the regulations in the event the Town approves package store permits at the election on November 3<sup>rd</sup>. He said, obviously, the Committee took no position as to whether package stores should be approved or disapproved by the voters, but merely wanted to be ready in the event package stores were approved.

Mr. Nerney noted that the Town is required to refer the matter to the regional agencies. They received word back from one, but not from the other, and they are obligated under State law to give them up to 35 days to consider the matter.

He said he had stated at the last meeting that if the issue is approved by the voters, it becomes effective the day after the election. In talking to the Town attorney, he has learned that it actually becomes effective on the first Monday of the month following such Town election, which would be Monday, December 7<sup>th</sup>. Therefore, they would be required to keep the Public Hearing open to November 23<sup>rd</sup>, when they would have to close it and vote on it.

Mr. Rudolph said he had been asked whether there was anything in the regulation amendment that controlled the size of the proposed package store, and his response was it would be

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discriminatory for the Commission to start determining the size of package stores when they do not do that with regard to any other kind of store.

Mr. Nerney said he had talked with Town Counsel and they agreed that so doing would be singling out a use and giving it more scrutiny than they would for other uses. He noted that all three commercial districts require a special permit, and the Commission can consider the character of the proposal as it relates to the neighborhood.

Mr. Osterberg said he is uncomfortable with the definition of package store in the proposed amendment. He suggested that 107 say “package store shall be defined as it is in Chapter 545 of the Connecticut General Statutes”, instead of defining it as “fully enclosed building exclusively for the retail sale of alcoholic liquor,” because most liquor stores sell other items as well. Mr. Rudolph suggested making it a defined term, and every time it is repeated thereafter they just call it a package store without going into other language. Mr. Osterberg said they could put in the date, which would end concerns if they change it. Mr. Wilson suggested they restrict it as much as possible, to say exclusively for the sale of alcoholic beverages and permitted accessories. Mr. Rudolph said the Committee will take the suggestions under advisement.

Mr. Nerney said Chapter 545 lists a host of things that it permits, which he would describe as ancillary functions. It actually goes so far as to talk about openers and lotto tickets.

Mr. Rudolph said he would hope that the regulation would prohibit anything besides alcoholic beverages and whatever is permitted in 545 of the CGS. For example, they wouldn’t want a package store to be operated in Stop & Shop.

Mr. Nerney said Stop & Shop could physically divide its store with a separate entrance and sell alcoholic beverages. The Stop & Shop in Norwalk has a beer/grocery permit. For Stop & Shop to have a similar permit in Wilton the people would have to petition the Town and put it to a vote. He has had calls from Stop & Shop’s attorneys, and it has been explained to them that there is absolutely no way they would be covered by this vote, and they understand that.

Ms. Poundstone asked if someone could put a liquor store by the ABC House in Cannondale. Mr. Nerney said if you look at the maps in the back, the ABC house is outside of the 500’ buffer area. Ms. Pratt suggested they do a larger buffer between a residential home and a package store.

Mr. Bayer said there is a procedural issue they would have to face if they did that, which is they have the ability to make the proposed regulation less restrictive, but not more restrictive, and since it wasn’t in the application, they would have to renote the Public Hearing and wait another 35 days for the Public Hearing process.

Ms. Poundstone asked the Committee to give the proposed amendment more thought. She suggested they leave the matter on the agenda for November 9<sup>th</sup>. The election will be over then, and they might have a response from SWERPA, and the Committee can get together in the meantime and assimilate what they have heard.



Mr. Nabulsi said as a Committee member, he needs to read Chapter 545 among others, and he thinks all the reference materials need to be made available to the Committee in advance of the meeting. Mr. Nerney said in an earlier memo he did provide the link, and will send it out again.

Mr. Nabulsi said if Bob takes the first shot at capturing the tenor of their discussions and circulates a revised draft and the link, the Committee can get this done by email.

There being no further comments from the Commission or the public, at 9:12 P.M. the Public Hearing was continued until November 9, 2009.

## **REGULAR MEETING**

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

Ms. Poundstone called the Regular Meeting to order at approximately 9:13 P.M. and seated members Bayer, Gould, Nabulsi, Poundstone, Pratt, Osterberg, Rudolph and Wilson.

### **B. APPROVAL OF MINUTES**

#### **1. October 12, 2009 – Regular Meeting**

**MOTION** was made by Ms. Gould, seconded by Mr. Wilson, and carried (8-0) to approve the minutes of the October 12, 2009 Regular Meeting as drafted.

### **C. SITE DEVELOPMENT PLAN REVIEW (None)**

### **D. ACCEPTANCE OF NEW APPLICATIONS (None)**

### **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 November 9, 2009.)

**2. SUB#901, Polito, 248 Sturges Ridge Road, 2-lot Subdivision**  
(Resolution to be prepared for November 9, 2009)

**3. SUB#902, Gaboriault, 1031 Ridgefield Road, 2-lot subdivision**  
(Continued to November 9, 2009.)

**4. REG#09318, Amend zoning regulations to establish zoning provisions  
pertaining to the location of retail package stores selling alcoholic beverages**  
(Continued to November 9, 2009)

**F. COMMUNICATIONS**

**G. REPORT FROM CHAIRMAN AND COMMISSION MEMBERS**

Ms. Poundstone said she was informed that the Commission had a reserved seat on the Town's Tree Committee, and has asked Marilyn to add that to her portfolio of community activities.

**H. REPORT FROM PLANNER**

**I. FUTURE AGENDA ITEMS**

- 1. SP#191E, Montessori Assn, Inc., 34 Whipple Road, To increase enrollment  
and construct additional parking [P.H. November 9, 2009]**
- 2. SUB#903, Keene, 388 Sturges Ridge Road, 4-lot subdivision  
[P.H. Nov. 23, 2009]**

**J. ADJOURNMENT**

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

Respectfully submitted,

Karen Pacchiana  
Recording Secretary