

**MINUTES OF THE CHESHIRE PLANNING AND ZONING COMMISSION
PUBLIC HEARING HELD ON MONDAY, DECEMBER 10, 2012 AT 7:30 P.M.
IN COUNCIL CHAMBERS, TOWN HALL, 84 SOUTH MAIN STREET,
CHESHIRE CT 06410**

Present

Earl Kurtz, Chairman; Sean Strollo, Vice Chairman; Lelah Campo, Martin Cobern, John Kardaras, Gil Linder, Louis Todisco.

Alternates: Jim Bulger, Edward Gaudio, Leslie Marinaro

Absent: S. Woody Dawson and Tali Maidelis

Staff: William Voelker, Town Planner

I. CALL TO ORDER

Mr. Kurtz called the public hearing to order at 7:31 p.m.

Mr. Strollo read the fire safety announcement.

II. ROLL CALL

Mr. Strollo called the roll.

III. DETERMINATION OF QUORUM

Following roll call a quorum was determined to be present.

IV. PLEDGE OF ALLEGIANCE

The group Pledged Allegiance to the Flag.

Town Planner Voelker read the call of public hearing for each application.

V. BUSINESS

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| 1. Zone Text Change Petition | PH 11/14/12 |
| <u>Marbridge LLC</u> | PH 11/26/12 |
| To amend Section 30, Schedule A | PH 12/10/12 |
| Permitted Uses, Para. 7 Assisted | MAD 2/13/13 |
| Living, convalescent homes and the like. | |

Mr. Voelker stated that the zone text changes are "red" colored in the copy of the regulation being discussed.

Attorney Jeffrey Cugno represented the applicant.

Attorney Cugno advised that the applicant has received the minor changes to the text and they are consistent with what the applicant expected in submitting this application. The applicant wishes to preserve the character of the neighborhood and the community, and has been operating the Marbridge facility for over 40 years in Cheshire. If the zone text change is approved the applicant will come

before the Commission for a special permit, and will meet with neighbors about the plans for the expansion to insure they will enhance the character of this area of Town.

On behalf of the applicant, Attorney Cugno expressed his appreciation to the Commission for its consideration of the application.

Mr. Voelker read comments from the Central Connecticut Regional Planning Agency, dated 11/6/12, and from the South Central Connecticut Regional Planning Agency, dated 11/9/12 into the record.

For the record, Ms. Campo stated that she has familiarized herself with the record of the 11/14/12 meeting regarding this application.

A question was raised by Mr. Strollo about other assisted living properties in Cheshire affected by the zone text change, and if things would be reviewed on a case by case basis.

In response, Mr. Voelker said that this applicant discovered the issue overlooked with the regulations. The change enables any facility to bring forward a plan for expansion and improvements. If approved, the subject applicant will come before the Commission with a special permit application.

With the improvements in the commercial area of West Main Street, Mr. Strollo asked what happens to a facility such as Marbridge.

Mr. Voelker said that a significant map rearrangement would be required, with inventory of every use, and review of how any proposed regulation would affect these uses.

THE PUBLIC HEARING WAS CLOSED.

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| 2. Special Permit Application | PH 11/14/12 |
| <u>PT Real Estate Investment LLC</u> | PH 11/26/12 |
| 156 North Brooksvale Road | PH 12/10/12 |
| To create (3) lots, two of which are | MAD 2/13/13 |
| Rear lots; one existing dwelling | |
| Tabled to 1/14/13. | |
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| 3. Resubdivision Application | PH 11/14/12 |
| <u>PT Real Estate Investments LLC</u> | PH 11/26/12 |
| 156 North Brooksvale Road | PH 12/10/12 |
| 3-lots | MAD 2/13/13 |
| Tabled to 1/14/13. | |

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| 4. Request Pursuant to Section 11.1
Variances or Waiver of
Regulations –
<u>PABCO Inc.</u>
Huckins Road
Requesting waiver of Section 5.5 Rear
Lots Subsection B12. | PH 11/14/12
PH 11/26/12
PH 12/10/12
MAD 2/13/13 |
| 5. Special Permit Application
<u>PABCO Inc.</u>
Huckins Road
To create two (2) rear residential lots
Where one (1) now exists. | PH 11/14/12
PH 11/26/12
PH 12/10/12
MAD 2/13/13 |
| 6. Resubdivision Application
<u>PABCO, Inc.</u>
Huckins Road
2-lots | PH 11/14/12
PH 11/26/12
PH 12/10/12
MAD 2/13/13 |

Attorney Anthony Fazzone represented the applicant for the three applications before the Commission.

Attorney Fazzone gave a brief overview of his presentation from the 11/14/12 public hearing, and resubmitted the time line exhibit to the Commissioners.

This is a subdivision off Huckins Road approved by the Commission and the applicant is requesting approval to resubdivide lot #5. There is an obstacle in that Section 5.5 B.12 of the Subdivision Regulations states that rear lots (i.e. lot #5) cannot be further subdivided. Section 11 allows the Commission to grant waivers of the regulations by a 3/4th vote, or 7 members.

The lot (#5) received prior approval and at that time the overall lot was affected significantly by a FEMA flood plain line. Mr. Fazzone displayed a map, and pointed out that the yellow line represents revisions to the FEMA map. Milone and MacBroom submitted elevations to FEMA showing the prior established lines, and FEMA agreed that the yellow line was the true flood plain line.

Attorney Fazzone submitted the applicant's map of lot #5 for the record.

On the map the color red represents the area of the flood plain before revisions. Based on setbacks from the flood plain line, the green area is what the building was at the time of the original subdivision. The hatched area, Cuff Brook, represents the new FEMA line.

When lot #5 was originally approved there was little building area and the applicant was only able to build one house on this lot. Subsequent to the FEMA

revisions, the applicant came back and applied to subdivide lot #5. It was recognized during the application process that the applicant had not asked for a waiver. There is a requirement that the waiver request be filed at the time of the application. The applicant came back, and under Section 30, Schedule A, Para. 1A, received a special permit approval to build two houses on lot #5. This lot would be under common ownership or some form of condominium ownership. The Commission approved building two houses on the lot.

This application has received IWW approval for subdivision of lot #5, prior to the point where it was recognized that IWW action was not in order. This IWW approval still stands as the proposed subdivision is the same as it was at the time it came before IWW.

In the timeline there are dates and sequence of everything occurring and the applicant believes the application meets all the requirements for a waiver, starting back to the establishment of the FEMA flood boundary. In looking at some of the criteria in Section 11, Mr. Fazzone said some things are unusual and not applicable to other parcels of land in the neighborhood. On either side of lots 5 and 6 there had been structures built before establishment of the flood plain and their use was not affected by the FEMA flood plain.

The regulations state the applicant must show unnecessary and undue hardship and it cannot be financial. Attorney Fazzone stated that, in this case, there are two homes approved on the lot, and with the subdivision there would still only be two homes. The applicant believes that this is the undue hardship, and does not believe there is anything necessary in the regulations to prohibit resubdivision of this lot. There is nothing necessary to the public health, safety and welfare. The subdivision, itself, does not create an opportunity to extend into the land behind it...there is the brook with different ownership on opposite sides.

Attorney Fazzone stated that the approval will not have a significant adverse effect on adjacent properties. There is already an approval for a 2nd home on that lot; traffic will not be increased due to another home; and the only change is approval to drive a line down the middle of lot #5 to create a separate lot.

The Commission was informed by Mr. Fazzone that one of the reasons the applicant is here is because of a buyer of one of the homes on the lot being unable to get financing. Two lending institutions indicated they did not want to lend on what would be a two unit condominium.

There is nothing in the application, if approved, that would violate the Plan of Development, and it will not violate any sections of the zoning regulations under the criteria of Section 11.

During the original process it appears that without the FEMA issue, lot #6 would have been approved at that time as both lots conformed to the regulations, could

meet all IWW regulations without the FEMA regulations. If approved, each lot will go back to IWW for actual site plan approval for the location of the house and other improvements.

Mr. Voelker stated that IWW reviewed this application in its subdivision approved and approved it with two units on separate lots, with the stipulation of individual permits because of grading and proximity to the water courses which are there.

According to Attorney Fazzone this IWW approval was just prior to the time the application to divide the lot was withdrawn from PZC.

Mr. Cobern stated that Attorney Fazzone has clearly stated the issues. There are six criteria, with #1 being the one that matters, and the other deal with changes. Apart from a line on the map there are no physical changes associated with granting this waiver. The variance was caused by an unusual circumstance, mis-mapping of the lot by FEMA, and this caused unnecessary hardships, particularly with financing. Beyond that, Mr. Cobern said there is just the general question of equity, that is, had FEMA not made this erroneous map, the Commission would have approved 6 lots from the beginning. He noted that this applicant has played by the rules along the way and has been affected by this set of events. If there was ever a textbook case of granting a waiver, this is the one.

Mr. Voelker said that a legislative search has been done, looking at the time of amendments to the Subdivision Regulations, and why no further subdivision was inserted into the regulations. Nothing could be found.

For the record, Mr. Todisco said there is no change in the physical structure, setbacks, lot coverage, etc. if the Commission grants this waiver from what has been approved by the Commission. There is already approval of two houses in the same proximity, and this was done on one lot because of the existence of the waiver regulations. He said this was done because it is a good project, beneficial to the community, and met the requirements of the regulations.

Mr. Strollo and Mr. Linder stated that they have familiarized themselves with the record of the past public hearing on this application.

THE PUBLIC HEARING WAS CLOSED.

7. **Special Permit Application**
Jack Krudwig
1146 Waterbury Road
Expansion of existing Church
And Associated Driveway
Tabled to 1/14/13

PH 11/26/12
PH 12/10/12
MAD 2/13/13

8. Resubdivision Application
A.M. Napolitano LLC
575 Mountain Road
3-lots

PH 12/10/12
MAD 2/13/13

(Mr. Stollo was recused from this application)

Attorney Joan Molloy and Dennis McMorrow, P.E. represented the applicant.

Attorney Malloy stated that this is an application to allow the resubdivision to create three 2 acre lots out of a 110 acre parcel located along Mountain Road. The existing house will be removed; existing driveway and well will be removed. The project has received IWW approval, and the applicant and staff engineers have met, and addressed all staff comments. There is a letter from RWA with its usual standard comments on what the applicant is expected to do.

Dennis McMorrow, P.E. Berkshire Engineering and Surveying, presented the application to the Commission, stating that the project is at 575 Mountain Road. He displayed a map showing the existing conditions on the property (house, driveways and out buildings). The project is subdividing six acres into three 2-acre lots. The green line on the map is the wetlands line; soils are sandy and good for a septic system; and the proposal is to build three 4-bedroom lots. The applicant has received IWW approval and Chesprocott approval. The letter from RWA has been reviewed and the applicant is in agreement with the comments. The plan has been reviewed by the Town Engineering Department, and the largest change was full detention on the property. The applicant took advantage of the gravely soils on the site and added 4x4 galleries to infiltrate the roof water, and a rain garden on lot #3 to further the detention.

The Engineering Department requested waiver of claim because the site plan originally had footing drains going into the catch basin for lot #2. This footing drain has been moved to the rear of the property, discharging to the back and into the wetlands. Therefore, the waiver is no longer needed.

The Fire Department has no issues with the plan; driveways were laid out with minimum center line radius of 40 feet; there is no problem for fire access to the property.

Mr. Cobern asked about the lots being served by city water.

In response, Mr. McMorrow said the lots will have city water, and the existing well on lot #2 will be abandoned.

Mr. Todisco asked about what happens to the remainder of the acreage and if it is developable.

This has not been looked at, but Mr. McMorrow said a lot of it is significant wetland and flood plain behind the 6 acres to be developed, and to the west are mountains.

Mr. Voelker stated that there have been development scenarios looked at for the adjacent property. The Town is currently in negotiations with the property owner for open space area, and this would have to go before the Council for an 8-24 review.

Letters from Chesprocott dated 11/2/12 and Regional Water Authority dated 12/6/12 were read into the record by Mr. Voelker.

Mr. Linder asked about the pond on the property.

There is a pond on the property and Mr. Voelker said this is a regulated area and the applicant does not plan to do anything with the pond. If anything were to be done they would have to come to IWW first.

Mr. McMorrow noted that the pond is on lot #1, and is within the conservation restriction area, and nothing could be done in this area. He pointed this area out on the site plan. He said that the pond in the back of lot #2 property line was purposely moved around so this pond would for enjoyment of the homeowner of this lot. IWW wanted non-encroachment tags placed in this area so the new homeowner would understand they had rights to go to the pond, use it and maintain it, but could go no further and encroach into the wetlands.

THE PUBLIC HEARING WAS CLOSED.

VI. ADJOURNMENT

MOTION by Mr. Cobern; seconded by Ms. Marinaro

MOVED to adjourn the public hearing at 8:25 p.m.

VOTE The motion passed unanimously by those present.

Attest:

Marilyn W. Milton, Clerk

