

MINUTES OF THE CHESHIRE PLANNING AND ZONING COMMISSION PUBLIC HEARING HELD ON MONDAY, MARCH 23, 2015, AT 7:30 P.M. IN COUNCIL CHAMBERS, TOWN HALL, 84 SOUTH MAIN STREET, CHESHIRE CT 06410.

Present

Earl J. Kurtz, Chairman; Sean Stollo, Vice Chairman; Members John Kardaras, Vincent Lentini, Louis Todisco, David Veleber. Alternates Leslie Marinaro and Diane Visconti. Absent: S. Woody Dawson, Edward Gaudio, Gil Linder; Alternate Jon Fischer. Staff: William Voelker, Town Planner.

I. CALL TO ORDER

Chairman Kurtz called the public hearing to order at 7:32 p.m.

Ms. Marinaro and Ms. Visconti were the alternate members for the meeting.

II. ROLL CALL

The clerk 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.

V. BUSINESS

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

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| 1. | Special Permit Application | PH 1/12/15 |
| | <u>220 Realty Drive</u> | PH 1/26/15 |
| | 220 Realty Drive | PH 2/23/15 |
| | To develop a cemetery | PH 3/23/15 |
| | | MAD 5/27/15 |
| 2. | Waiver Request: 220 Realty LLC | PH 2/23/15 |
| | <u>220 Realty LLC</u> | PH 3/23/15 |
| | 220 Realty Drive | MAD 5/27/15 |
| | Requesting waiver of subsections (3) and (9) | |
| | of Section 25.5 Earth Removal, Fill | |
| | or Regrading Permit | |
| 3. | Earth Removal, Filling/Regrading Permit | PH 2/23/15 |
| | <u>220 Realty Drive</u> | PH 3/23/15 |
| | 220 Realty Drive/Highland Avenue | MAD 5/27/15 |

Attorney Anthony represented the applicant, 220 Realty LLC for development of a cemetery off Realty Drive on an industrial parcel of land. Before the Commission there

are three items - Special Permit, Regrading Permit for approximately 7.5 acres of the 30 acre site to be regraded, and Waiver Request of Section 25.5. The plan does not involve importing or exporting of material off site. Under Section 25.5 the regulation states that only 5 acres of one site can be opened up at a time. The regulation was recently modified whereby regrading in combination with a site plan and special permit approval can be done on more than 5 acres. Another issue is the 50 foot requirement of the abutting property, with no earth removal within 50 feet of the property line. Section 25.5.9 provision states the Commission can approve regrading within 50 feet of a boundary line without harm to the situation. There is a right-of-way through the property and regrading will make this more beneficial and provide improved access to abutters coming within 60 feet.

No IWW approval is required for the subject applications, and no permit is required.

RWA submitted a letter after conferring with the Dept. of Health and DEEP and other agencies with no objection to the cemetery in the cited location. It is indicated that the cemetery is not a prohibited activity above the aquifer. Attorney Fazzone pointed out the Commission is also the Aquifer Protection Agency, and on February 23, 2015 voted that a cemetery is not a regulated activity and not prohibited above an aquifer.

The DEEP Bureau of Natural Resources, Wildlife Division, Natural History Survey-Natural Diversity Data Base letter indicated hits with respect to turtles has been found. The Honey Pot Brook runs through the site, with no turtle activity at the Brook, but DEEP recommends sweeping the property before construction begins. Mr. Fazzone said the applicant is prepared to meet all the recommendations cited by DEEP and RWA.

Town Planner Voelker read the DEEP and RWA letters into the record.

Attorney Fazzone stated the applicant is prepared to meet and go along with all the recommendations cited.

THE PUBLIC HEARING WAS CLOSED.

4. **Special Permit Application**
Fifteen North Plains Industrial Road LLC
1430 Highland Avenue
Children's Day Care Center

PH 3/9/15
PH 2/23/15
PH 3/23/15
MAD 5/27/15

Attorney Ryan Corey represented the applicant, and informed the Commission that WPCA granted feasibility approval for the subject application.

Mr. Voelker read Cheshire Police Department comments dated 3/18/15 and RWA letter dated 2/13/15 into the record.

A question was raised by Mr. Veleber about parts of the building being rented out if they are not used for a day care.

Mr. Voelker informed the Commission that this proposal is 100% for a day care facility, and any changes made on the property require the applicant to return to the PZC for modification of the special permit.

PUBLIC

Marion Tufano, 1422 Highland Avenue, asked about a fence around the property.

Manny Silver, P.E. displayed the plans, and stated there will be a stockade fence along the property line, and a 2 foot high berm along the front of the fence. Water flows down the berm into the storm water control area.

Stating she is not opposed to the project, Ms. Tufano explained that the prior stockade fence was in need of repair and had holes, and she does not want to see another fence in this condition.

Mr. Silver stated the fence will be on the applicant's property; there will be no maintenance issues as the fence will be properly maintained; and the fence will be part of the special permit and treated well. Without a fence the applicant would be in violation of the special permit.

According to Attorney Corey his client knows and understands the concerns. There is money in the project for a beautiful building and he assured everyone that the fence will be installed and properly maintained.

Mr. Voelker advised the fence must be around the building area for the children and it must be maintained.

If there are problems with the fence, Ms. Visconti noted the neighbors can visit the Planning Department and voice their concerns.

When the application gets through the PZC approvals, Mr. Corey reported that application must go through State approvals.

Mr. Voelker read a letter from Chesprocott dated 2/13/15 into the record.

THE PUBLIC HEARING WAS CLOSED.

**5. Special Permit Application
138 Highland Avenue LLC
Construction of two buildings, 11 residential
dwelling units with parking and utilities as per
Section 43.8**

**PH 2/23/15
PH 3/23/15
MAD 5/27/15**

Attorney Anthony Fazzino represented the applicant. The public hearing was left open to get further information regarding parking requirements and parking provided on the site. This application provides 2 buildings with 11 houses. Revised plans submitted to the Planning Department on March 18th show additional parking.

Darin Overton, P.E. Milone and MacBroom, reported that more opportunities for parking were looked at and there was space for 2 compact car spaces along the entrance drive; along the access drive is one more full sized space; near the fire department turn around on the north property line the island can be shrunk for one more space. This is an option for 4 more parking spaces which are labeled as "future potential spaces". The plan has more than adequate parking and future parking with these 4 spaces.

It was clarified by Attorney Fazzino that the applicant is requesting that these 4 spaces be considered "delayed construction" if parking becomes an issue. PZC is aware of the issue as part of the special permit approval, and can require these spaces to be built. The applicant proposes 28 parking spaces for 11 units; the minimum is 22 spaces, 2 per unit; and there are +6 spaces.

Regarding the additional 4 spaces, Ms. Marinaro asked about the applicant's resistance to putting them in with the other spaces.

This site has a detailed landscaping plan and Mr. Fazzino said the issue is creation of more macadam than is necessary. He distributed information comparing New Canaan and Cheshire for 1/2/3 bedroom units, parking spaces provided, spaces used at peak occupancy per unit and per bedroom. The applicant is providing 28 spaces, which is 6 over the requirement in the regulations, but the applicant is not dead set against building additional spaces, if they are necessary.

A question was raised about these apartment units being used by families, single people, and rental to Cheshire Academy students.

Mr. Fazzino reported that the Academy has shown interest in the property due to difficulty in finding rentals for faculty. Academy students are housed on campus or other school controlled property.

The Commission was told by Mr. Voelker that student housing would be in violation of the proposal. The applicant has rental units; student housing is a different application and evaluation; and student rental cannot happen due to a different set of rules for health, safety and welfare.

With the 4 additional "delayed" spaces, Mr. Fazzino said there would be 3 spaces per unit.

Ms. Marinaro reiterated her support of the +4 spaces which will benefit tenants and guests, and noted there is always a reason for more parking.

Of the 4 additional spaces, Mr. Voelker said one does not meet size...it is 9' x18'. The two spaces on the north side of the driveway will be 9' x 16', and is less than a good area for parking spaces.

The ratio of 1.6 spaces per unit is typical peak use and Mr. Overton said Cheshire requires 2 spaces per unit which is good parking. People with 3 or 4 kids do not rent these types of units, and the parking proposed will operate well at this level. There is a push for low impact development in Town where people can walk, on sidewalks, to many amenities in the area. The study shows the numbers make sense. And, there is parking available across the street in the shopping plaza.

Mr. Veleber asked about leasing and sub-leasing of the units, and cited a Cheshire Academy parent renting a unit, and allowing their student to live in the unit.

There can be no sub-leasing without the owner's consent, and Mr. Voelker said the Academy students are high school age. People under 18 cannot live alone.

With regard to the survey, Mr. Veleber cited concerns about the entrance, and it being where Route 10 comes back down to one lane, people driving in and out of the subject driveway with a dangerous intersection.

According to Mr. Fazzone the layout of the road was factored into the study. The primary factors were two traffic lanes within a short distance of the driveway which will provide for gaps in the traffic to exit the property. The study stated the corridor between the site and Maple Avenue coming on Route 10 is the least traveled from the south to Hamden.

Mr. Voelker read an excerpt from the traffic study dated 2/19/15 into the record.

Ms. Visconti visited the site, saw the gap in the traffic with opportunities to exit the subject property.

Mr. Voelker read Cheshire Fire Department comments dates 2/23/15 into the record.
THE PUBLIC HEARING WAS CLOSED.

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| <p>6. Planned Residential Resubdivision Development
Application
<u>Apex Developers LLC</u>
Jarvis Street
15 Lots</p> | <p>PH 2/23/15
PH 3/23/15
MAD 5/27/15</p> |
| <p>7. Special Permit Application
<u>Apex Developers LLC</u>
920 Jarvis Street
A 15 lot PRRD with 3 affordable units
Sections 44 and 40</p> | <p>PH 2/23/15
PH 3/23/15
MAD 5/27/15</p> |

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| <p>8. Waiver Request: 920 Jarvis Street
<u>Apex Developers LLC</u>
920 Jarvis Street
Requesting waiver of subsections (3) and (9)
of Section 25.5 Earth Removal, Fill or
Regrading Permit</p> | <p>PH 2/23/15
MAD 4/29/15</p> |
| <p>9. Earth Removal, Filling/Regrading Permit
<u>Apex Developers LLC</u>
Jarvis Street</p> | <p>PH 2/23/15
PH 3/23/15
MAD 5/27/15</p> |

Mr. Voelker read letters into the record from Scott Blois dated 3/20/15 and from Paul Gleason dated 3/23/15.

Attorney Anthony Fazzone represented the applicant. Under Section 44 of the Zoning Regulations the intent is to get away from larger parcels, allow smaller parcels and lots, and the subject application is applied under the same regulations as the Moss Farms Subdivision development.

Attorney Fazzone read an excerpt from Section 44 into the record, and stated the regulation allows 5% to 20% of units for affordable housing.

The applicant has an earth removal and regrading application and 2 waiver requests, for grading within 50- feet of abutting property lines and for more than 5 acres. Attorney Fazzone read an excerpt from Section 25.5.9 into the record.

The plans have been modified since the February public hearing, and the applicant has been going through the IWW process, concluded the public hearing and IWW has not yet rendered its decision.

Ryan McEvoy, P.E. Milone and MacBroom, informed the Commission that during the IWW procedures a revised set of plans were submitted to the IWW and PZC. These plans outline how open space is broken down - 12 acre total of land dedicated to open space (Town) with the Ten Mile River, flood plain and wetlands associated with hit; and 4 acres to the HOA. The grading plan is revised on the east side of the site; excavation will result in 25,000 yards of material exported; there is a 2-1 grade and slope, soil erosion controls, protection measures are incorporated into the plans. Excavation is 25 feet from the east property line; 10 feet of clearing; and there will be some damage to the root structure of trees; proposed grades and vegetation will remain in place.

Town Engineering Department Letter, March 19, 2015 - the applicant has not had an opportunity to address these comments; will meet, discuss and address concerns with the Town Engineer.

Cheshire Police Department - e mail letter; no issues on proposed sight lines which are 500 feet.

Traffic Study - required under Section 44; level of service operation is "A"; site is a low traffic generator; and there is no impact on the roadway system.

IWW - the applicant awaits the report.

Mr. Voelker read letters of concern from abutting property owners into the record.

According to Mr. Ryan the proposed development mirrors what happened on the opposite side of the property lines, and most of the property on the adjacent sites have been cleared to the property line. The applicant will leave 25 feet of ungraded area and 15 feet where trees are located. What is proposed is less intrusive to the common property line of the adjacent subdivision. There is a ridge line between this site and adjacent properties, and drainage is to the Ten Mile River and not to properties to the east.

Town Planner Voelker stated the applications must remain open. His recommendation is for the applicant to look at the two abutting properties with concerns raised in the owner's letters, and offer specific commentary at the next public hearing.

Commissioners can individually visit the site; Planning Department will provide reference points and maps. On a site walk, Mr. Voelker warned that the Commissioners cannot engage in conversation or discussion about the application with the applicant. Mr. Fazzone suggested Commissioners make arrangements with Milone and MacBroom for a site visit with an engineer.

Regarding disruption from the proposed grading Mr. McEvoy said it is further back than what was done on the property to the east.

Mr. Todisco pointed out the importance of what was said in the letters with respect to damage to trees on adjacent properties, and asked about the accuracy of the statements.

With limited grading, Mr. McEvoy finds it hard to believe any trees on neighboring properties will be affected. The limit of grading will stop no closer than 25 feet to the property line. Excavation close to a tree could damage the tree, and trees at the top of the slope will be cleared, with more trees left than on the adjacent property. Neighboring trees are on the opposite side of the ridge line.

According to Mr. Todisco the neighbors cannot complain about trees on the applicant's property, and the question is the effect on trees on neighbor's property.

There will be no digging within 25 feet of the neighboring property, and Mr. Fazzone said it will start there and slope back to the subject property, with a 2-1 slope going away from the neighboring property.

Mr. Veleber talked about the 2 specific neighboring properties, and expects information about these properties and trees, and whether there is potential damage.

The vegetation of the adjacent properties will be reviewed and Mr. McEvoy said the impact by excavation will be reviewed. There is no clearing proposed on the existing lot on the subject property. The clearing will be about 50 feet away from the property line in the back. Without this grading the lots would not have a back yard, or the development would be shifted closed to the flood plain. With the 2-1 slope a retaining wall would not be advisable for safety reasons and maintenance issues.

Excavation - with 25,000 cubic yards of material removed it will take about 60 days to complete...which is less than the 88 days originally stated.

Affordable Housing in the Development - there will be two (2) affordable housing units in this development; this is reduced from three (3) due to economic and financial reasons; and these houses will be undistinguishable from the other houses.

Open Space - Mr. McEvoy displayed a map of the proposed site; dark green area is dedicated to the Town or HOA as open space; light green areas are owned by the Town or Cheshire Land Trust.

Mr. Voelker stated there is no recommendation for the Town to assume responsibility for the east and north sides, or the west side where there are detention basins to be maintained by the HOA. The north and east sides serve as buffers; the Town does not want responsibility for maintenance of these areas; and there is a detention area which should not be incorporated into the Town's open space.

A comment was made by Mr. Veleber about issues with the detention basins, and whether the HOA maintains them.

Mr. McEvoy explained the undisturbed areas will be dedicated to the Town, and the light green area to the HOA.

Sidewalks - a question was posed by Mr. Veleber about the part of the road from the applicant's house down to Jarvis and if sidewalks will be on both sides. Mr. McEvoy stated sidewalks will be on both sides; 986 and 966 Jarvis Street will have maintenance responsibility for these sidewalks; and HOA has responsibility for the other sidewalks.

With regard to Engineering comments about maintenance of the detention basins, Mr. Fazzone said this issue will require a meeting with the Town Engineer to map out maintenance schedule and requirements.

Ms. Visconti has concerns about the extent of the excavation, which is 5 times what is allowed, and many people being affected.

It was explained by Mr. Fazzino that the grading is designed to create lots which are beneficial to the homeowner, with retaining walls, etc. and can be done in a safe and orderly manner over a short period of time.

The homeowners on each side of the entrance are aware of maintenance for the sidewalks and accept this responsibility. The Town owns open space on the other side of the river along the entire length of the subject property. The Town accepts this open space, and gives it total access and control of the river, flood plain, wetlands, which are on the subdivision side. This land will be used for conservation purposes. With IWW approval there may be clear marking of the Town owned open space.

PUBLIC

Lisa Grande, 75 Orelton Road, asked about the north side elevations, noting there is a slope down hill towards her house. She encouraged Commissioners to visit the site.

Mr. McEvoy said there is a small portion that drains to the north, which drains into the Ten Mile River, and the northeast corner drains to the wetland water course to the north. Everything proposed will be reduced as part of the regrading efforts; there is no grading within 100 feet of this property line; and the applicant is not seeking waivers for activity in this area. There will be a reduced ridge line to the back of the house; final elevation remains the same; and nothing changes.

Sigrun Gadwa, Carrier Ecology Services, 183 Guinevere Ridge, commented attempting to reduce the water shed, conservation resources, water being reduced, soils having a silt mix. She asked if testing had been done, the density of the soil borings, and results (logs) being on the table along with earth removal excavation. She has submitted a report to the Planning Department.

In response, Mr. McEvoy said excavation was done for the storm water management basins; high ground water was found; bottom basins will be located 2 to 3 feet below existing grade. No infiltration is expected; basins are sized under ground within Town standards; pit tests were done with sandy gravel found; design of the basins does not rely on any infiltration. Logs will be provided to the Commission.

Ms. Gadwa commented on species of turtles with many hits along the Ten Mile River. Monitoring has been done since 1995; in the last few years the numbers have dropped; this population needs care. She said pesticides have been used with a long term effect on the eco system. Going into the 50 foot boundary of the property lines is too much, and it should be 5 acres of excavation rather than 7 acres at one time. There is an effect of diesel trucks on the eco system, and Ms. Gadwa asked the Commission to state only dump trucks can be used for excavation.

Chairman Kurtz informed Ms. Gadwa that as long as trucks are permitted to drive on the roads, PZC cannot state only certain trucks can be used for excavation and on the roads.

The applicant proposes a Town road as part of the application; there are specific standards for drainage and how storm water must be handled; and there will be compliance with all the regulations. There must be catch basins, drainage, piping to the storm water management basins. Mr. McEvoy said all the items which have been raised are IWW concerns.

THE PUBLIC HEARING WAS CONTINUED TO APRIL 13, 2015

10. Waiver Request of PABCO, Inc. Lot 6 Saddlebrook Pursuant to Section XI of the Town of Cheshire Subdivision Regulations to waiver the sixty (60) feet Setback requirement set forth in Section 5.5B-16.

Attorney Anthony Fazzone represented the applicant for a waiver of the 60 feet setback requirement. The application is for lot #6, Saddlebrook Subdivision. Mr. Fazzone distributed information and photographs to the Commission. He pointed out that the closest point of the lot 6 house to the front lot of the subdivision is 45 feet away. The waiver is to permit the house to be built within 45 feet of the front line.

Photographs of the stone wall were reviewed by the Commission. Mr. Fazzone said the applicant wishes to preserve what remains of the foundation from the cider mill/distributor which goes back to the late 1800's. He referred the Commission to the exhibit of an "ad" for the cider mill/distributor which was in the packet. The plan was to save this structure but the building collapsed in a winter snow storm several years ago. Section 11.1.1 allows a waiver of the regulations, with language similar to an ordinance involving the ZBA.

Mr. Fazzone read an excerpt from Section 11.1.1 into the record.

The color map shows Cuff Brook cutting the lot in half. Without disturbance to the brook and flood plain, any house on lot #6 must be built south of the brook. On the south side of the brook there is little land outside the 50 foot upland review area to build. The house cannot make 60 feet of the setback requirement. Mr. Fazzone said these conditions are not applicable to other lots in the area; the stone wall is historical and unique to lot #6.

Three Superior Court cases and decisions were submitted by Mr. Fazzone for Commission review. He read an excerpt from the Cody v. New Canaan ZBA into the record. In the subject case, he said the Cody case has the conditions for granting the applicant's waiver.

Mr. Fazzone stated other conditions. The construction will not affect lot #1 in a negative way; there is no public health or safety involved here; there is no violation of zoning regulations; and lots 1 and 6 are served by public water and sewers. With respect to Section 11.1.3 this will not affect development in the area because all the subdivision properties are developed. There is no conflict with the POCD. This application meets all the requirements of Section 22; a viable hardship exists based on the river, wetlands, and desire to maintain the historical stone wall.

The Commission was informed by Mr. Fazzone that the homeowner interested in lot #6 wants the stone wall maintained, and will incorporate it into the property landscape plan.

With regard to the POCD, Mr. Strollo said the Plan should incorporate something old with something new, and this does that. He wants to save the stone wall and is in support of the waiver.

Mr. Todisco noted that once the house is built only the homeowner will enjoy the free standing wall and foundation of the old building.

It was stated by Attorney Fazzone that the neighbors can also enjoy the wall which was part of the foundation of the cider mill building. This wall is visible from other sides, and is about 4 to 5 feet high.

There was a brief discussion about distances between lot 1 and lot 6. The corner from lot 6 to the corner of lot 1's garage is about 165 feet. Prints were sent out to the Commissioners; owner of lot 1 is aware of the public hearing and waiver request from lot 6; square footage of #6 is about 3,500; and lot #5 is a little smaller; lot 6 house has a side entry garage; actual living area of the two lots is comparable.

Mr. Veleber asked about the lot 6 owner keeping the stone wall, and if he could take it down in the future. He wants to keep the stone wall and this is a hardship consideration, and there is a benefit to retaining this wall.

In response, Mr. Fazzone said there is a provision in the regulations to attach a stipulation to the approval to this effect. The hardship in the subject application is the same as the hardship in the first case cited...historical structure and topography.

A question was raised by Mr. Lentini about the existing structure to be removed...and what is that structure. He also asked about the "authority" on the historical value of the wall, i.e. is it recorded at the Historical Society.

According to Mr. Fazzone that was a shed on the side which was removed. Regarding the authority about the historical value of the stone wall, Mr. Fazzone does not know about this. Land records show it was part of the mill building.

Stating he is not sure conditions should be applied to the approval, Mr. Todisco sees a problem with people, in perpetuity, keeping the wall.

A variance runs with the land as does a waiver and Mr. Fazzino said the wall can only be moved for reasons of public safety and health.

Mr. Voelker said we have good faith here that future property owners will incorporate the wall into the property. But there cannot be a stipulation on a waiver approval.

If a subsequent owner removes the wall, Mr. Fazzino said we still have the front yard setback greater than normal in an R-40 zone, and it will not adversely affect property in front. To remove the wall the applicant needs IWW permit as a regulated activity.

Mr. Voelker noted the Commission can have a condition to not remove the historical wall.

Attorney Fazzino stated the applicant has no objection to such a condition.

Should the wall be removed, Commissioners commented on the fact that a smaller house could be built and reconfigured and not be in the setback.

In one of the cases cited Mr. Fazzino said the property owner could build a smaller garage. The court upheld the variance, and the topography and historical nature of the wall gave rise to the hardship; and the applicant does not have to build something smaller than everyone else in the neighborhood.

THE PUBLIC HEARING WAS CLOSED.


VI. ADJOURNMENT

MOTION by Mr. Lentini; seconded by Mr. Kardaras.

MOVED to adjourn the public hearing at 10:23 p.m.

VOTE The motion passed unanimously by those present.

Attest:


Marilyn W. Milton, Clerk