

MINUTES  
GROTON ZONING COMMISSION  
DECEMBER 5, 2007 - 7:00 P.M.  
TOWN HALL ANNEX – COMMUNITY ROOM 2

I. ROLL CALL

Present: Brandt, Cady, French, Haviland, Hudecek, Marquardt, O’Neill,  
Sutherland  
Staff: Murphy, Davis, Cullen, Silsby

Chairman Hudecek opened the meeting at 7:00 p.m.

II. PUBLIC HEARINGS

1. Special Permit #299, 0 Welles Rd, Mystic (Elm Grove Cemetery Association, Applicant)

French recused herself due to family burials at Elm Grove Cemetery.

The Chairman appointed Marquardt to sit for French during this public hearing.

The Chairman opened the public hearing at 7:01 p.m. and read the Call of the Hearing in its entirety.

Clint Brown of Dicesare-Bentley, Agent for the applicant Elm Grove Cemetery, introduced Mark Turner, and James Davis, staff members of Elm Grove. He presented an aerial photograph showing the north side of Welles Road and referred to the facilities in the surrounding areas. He noted that this is a 50-acre parcel and spoke about the boundaries on all sides of the property. He referred to inland wetland areas, sloped areas, and elevations. He stated that approximately 5 acres of the 50 acres are presently in active use as an earth processing facility, noting that the rest of the property is mature woodlands. He noted that in September 2007, the Inland Wetland Agency approved a wetland permit. He gave some background about the permit history related to this property, and stated that a special permit had been issued in 1982 to allow an earth processing facility. He referred to a letter submitted to the Town explaining the permit history and explained that there is no area available on the cemetery site to perform this material storage and processing operation. It was important to note that Elm Grove maintains two other smaller cemeteries that don't have resources of their own. He explained that Pettini Construction will soon cease operating on this site. (See letter submitted to the Town of Groton in the application.) He noted that Elm Grove's objective is to operate this facility in a manner that supports cemetery operations and storage requirements. As identified on the site plan, the activity is limited to 5 acres. The applicant would like to maintain the ability to remove up to 50,000 cubic yards of material and expects to process 100,000 to 150,000 cubic yards of material total.

Mr. Brown explained the type of equipment that would be on site and noted that the activity would be limited to cleared areas in the center portion of the site. He explained

that site slope are quite stable, there is no large scale erosion, and no excavation has been taken down to the ground water table.

The applicant stated that no rock crushing would take place.

Discussion followed about the term of the permit. Mr. Brown noted that Elm Grove expects to need a facility like this for a long period of time, possibly 50 years or more.

The issue was raised as to whether the operation would encroach on the balance of the property for excavation purposes. Mr. Brown noted that Elm Grove has no desire to expand beyond the central area.

In regards to removing the materials offsite, it was noted that that occurs presently and would increase somewhat as time goes by.

Staff stated that because this parcel is separate from the cemetery parcel, it is not combined and has to be considered as a main use. Staff explained what the cemetery does with the top soil and other materials that need to be stockpiled, and spoke about wetland constraints. Staff explained what will take place on site and referred to special permit objectives for this RU80 zoned property. Staff noted that they had received calls from neighbors with complaints about the property, relating to noise, and explained that the applicant has stated that that noise would be reduced when Pettini Construction ceases its on site operation. Staff explained that this application is being tied to the cemetery.

It was noted that after the 5 year period, the applicant would have to request the Zoning Commission to re-new its special permit before the end of the current term expiration date.

The Commission decided that 5 years would be the length of the term of the special permit.

Hudecek asked for public comment in favor or against.

Robert Comrie, 22 Pons Road, Mystic, spoke in favor of the application. He stated that he has owned his property for 20 years but has only lived there for 4-5 years.

Keith Rowley, 2750 Gold Star Highway, lives very close to this site. He has had issues with noise from the site, especially on the weekends with trucks backing up and hopes that would cease. He would not want Elm Grove to expand too close to his property, which he feels would devalue his property.

The Public Hearing closed at 7:42 p.m.

III. APPROVAL OF THE MINUTES OF October 3, 2007, October 15, 2007 Special Meeting at 6 p.m., October 15, 2007 Special Meeting at 7 p.m., and November 7, 2007

MOTION: To approve the minutes of October 3, 2007, amended.

Sutherland requested to change the minutes at the bottom of page 4 to reflect that it was her initiative to recuse herself.

Motion made by Hudecek, seconded by O'Neill, so voted unanimously.

For the record, the Chairman stated that French has returned and is now a seated member.

MOTION: To approve the minutes of October 15, 2007 at 6:00 p.m.

Motion made by Hudecek, seconded by O'Neill, so voted unanimously.

MOTION: To approve the minutes of October 15, 2007 at 7:00 p.m.

Motion made by Hudecek, seconded by O'Neill, so voted unanimously.

MOTION: To approve the minutes of November 7, 2007, as amended.

It was noted that there was a typo at the top of page 5.

Motion made by O'Neill, seconded by French, so voted unanimously.

IV. PUBLIC COMMUNICATIONS – None.

V. CONSIDERATION OF PUBLIC HEARINGS

MOTION: To Suspend the Rules to act on Permit #299 before Permit #298.

Motion made by Haviland, seconded by O'Neill, so voted unanimously.

French recused herself for this application for reasons noted earlier.

The Chairman appointed Marquardt to sit for French.

1. Special Permit #299, 0 Welles Rd, Mystic (Elm Grove Cemetery Association, Applicant)

MOTION: To approve Special Permit #299, Elm Grove Cemetery Association, PIN #271013241498, for an earth products processing facility with the following conditions:

1. This permit is for the exclusive use of the Elm Grove Cemetery Association and all activities are associated with the care and maintenance of the cemetery itself.
2. This permit is for processing a maximum of 150,000 cubic yards and the disturbance will be concentrated to the center of the property as depicted on the plan.

3. Hours of Operation will be from 7:30 am to 4:00 pm from Monday through Friday.
4. Stockpiles will contain only items utilized in conjunction with cemetery operations.
5. No rock crushing shall occur on the site.
6. This permit shall expire in a five year time period. The Zoning Commission may renew the permit at its discretion.

The Motion was read in it's entirety by Haviland.

Motion was made by Haviland, seconded by O'Neill.

The Commission discussed and agreed that the two other cemeteries that Elm Grove helps out should be included in the permit as ancillary uses. They also agreed that the five-year term was suitable.

**MOTION:** To Amend the Main Motion to include in the conditions, the two other cemeteries that Elm Grove helps out with.

Motion made by Haviland, seconded by O'Neill, so voted unanimously.

**MOTION:** To Adopt the Main Motion as Amended

Motion made by Haviland, seconded by O'Neill, so voted unanimously.

Main Motion as Amended is as follows:

**MOTION:** To approve Special Permit #299, Elm Grove Cemetery Association, PIN #271013241498, for an earth products processing facility with the following conditions:

1. This permit is for the exclusive use of the Elm Grove Cemetery Association and all activities are associated with the care and maintenance of the cemetery itself.
2. This permit is for processing a maximum of 150,000 cubic yards and the disturbance will be concentrated to the center of the property as depicted on the plan.
3. Hours of Operation will be from 7:30 am to 4:00 pm from Monday through Friday.
4. Stockpiles will contain only items utilized in conjunction with cemetery operations.
5. No rock crushing shall occur on the site.
6. This permit shall expire in a five year time period. The Zoning Commission may renew the permit at its discretion.
7. The scope of this permit shall also include as an incidental and ancillary subordinate use, and subject to all other limitations imposed herein on the principal use, earth processing and storage of materials related to and for the exclusive use of Lower Mystic Cemetery Association and Whitehall Burial Ground. Said subordinate uses shall be clearly distinguishable from those of the Permittee, shall only be undertaken by

the Permittee, and shall be exclusively related to the principle operations of the above two identified businesses in their present locations and scope of operations.

2. Special Permit #298, Fort Hill Road/Flanders Road, (Hawthorne Development Partners, LLC/applicant)

For the record, the Chairman stated that French has returned and is now a seated member.

Sutherland recused herself for this application because she is an Intervener with the Inland Wetland permit.

For the record, the Chairman stated that all regular members, (Brandt, French, Haviland, Hudecek, and O'Neill) are now seated.

He opened the public hearing at 7:53 p.m.

The Chairman explained his concerns with this application.

Staff referred to their memo to the Zoning Commission dated 11/30/07. Staff prepared a draft motion for the Commission's consideration, which was distributed to members. The Commission took time to read the draft motion before discussing.

For the purposes of discussion only, Haviland moved the main motion (below).

MOTION:

To approve Special Permit Application #298 of Hawthorne Development, for an Active Senior Housing development ("Mystic Woods"), pursuant to sections 8.3, 7.1-45 F and 7.1-45 M of the Town of Groton Zoning Regulations, with the following findings and conditions:

Findings:

1. The Commission notes and has considered the issuance of Inland Wetland permit #07-07 by the Town of Groton Inland Wetland Agency on 9/12/07 for the regulated activities associated with the "Mystic Woods" project, including elimination of the sidewalk proposed along Flanders Road, and permit conditions relating to environmental bonds, sedimentation and erosion control plan certification, certification of wetland plantings and stormwater basin construction, limits on activities in proximity to wetlands #10 and #11, and stormwater quality monitoring.
2. The Commission also notes and has considered the deliberations of the Inland Wetland Agency contained in its 9/12/07 meeting minutes, including its analysis

of prudent and feasible alternatives and its finding with respect to intervention under CGS 22a-19.

3. The Commission has limited authority to regulate directly under the provisions of section 7.1-45 of the regulations with respect to Site Plan applications for conditional uses. The Commission finds that no setback reductions were requested by the applicant pursuant to section 7.1-45 F and that all setbacks meet or exceed applicable requirements. The Commission also notes that the applicant has complied with the requirements of section 7.1-45 M(3) with respect to providing a list of universal design features and amenities to be incorporated into the final site and building designs with the site plan application.
4. The Commission finds that it has sufficient information in the record to determine compliance with both the special permit criteria under sections 8.3-8 A, B and C, as well as with respect to findings necessary pursuant to the GOSA intervention petition dated 10/9/07, the "supplemental" GOSA petition dated 11/7/07 and the Sullivan petition dated 11/7/07. The Commission also notes that the Sullivan petition is, in most respects, essentially identical to GOSA's 11/7/07 supplemental petition. The Commission also notes that with respect to the assertions raised, all three petitions quote language from section 8.3-8C of the regulations ("Impact on Environment") and otherwise reference section 8.3-8C, to the exclusion of sections 8.3-8 A ("Orderly Development") and 8.3-8 B ("Traffic").
5. The Zoning Commission has considered the alleged unreasonable pollution, impairment or destruction of the public trust in the air, water or other natural resources of the State and finds, based upon all relevant surrounding circumstances and factors, that in approving the special permit as conditioned herein, no conduct will be authorized or approved which does have, or is reasonably likely to have the effects alleged in the intervention petitions.
6. The Commission finds that the application, including the applicant's proposal to make traffic operation improvements at Route 1 and Flanders Road, complies with the special permit objectives of section 8.3-8 B.
7. The application, as conditioned herein, complies with the Special Permit objectives of section 8.3 of the regulations.

Conditions of Approval:

1. The special permit will be expressly limited to no more than 201 active senior housing dwelling units, with occupancy restricted per the draft common interest declaration of record and including ancillary uses and structures as proposed.
2. The conservation area shall be protected through a conservation easement in favor of the Town of Groton.
3. The sewer line shall be sized with additional capacity sufficient to serve other areas within the approved and/or planned sewer service area. The owner(s) shall provide an easement to the Town for ownership, use and maintenance of the sewer main.
4. Buildings 62, 62a, 68, 72 and 73 shall be relocated and/or eliminated in accordance with the applicant's proposal of 11/7/07.

5. OPTION

The access drive to Route 1 shall be limited for purposes of general public access to the periods between March 1 and December 1 of each year. At all other times, said drive shall be for the use of emergency vehicles and pedestrians only.

OPTION

The access drive to Route 1 shall be limited to use by emergency vehicles and pedestrians at all times.

OPTION

The access drive to Route 1 shall be approved as proposed (i.e. no condition required).

MOTION was made by Haviland, seconded by O'Neill, to move the main motion for the purposes of discussion only.

Some Commission members felt that even though the Commission has many concerns, it is important to realize that the property owners are entitled to develop their land though consideration should be given towards abutting neighbors.

(At this point in the meeting, it was discovered that the audio tape had been compromised (Tape 1B) by technical difficulties and a new tape (Tape 2A) was inserted into the tape recorder.)

One Commission member stated that he took a site walk on the property. He noted that the proposal is to tie into the Town's sewer system, which would not cause environmental impacts, but which could be the case if other types of development were built there and septic systems were installed.

Some members felt that 201 units were too many for the site particularly because of the close proximity of neighboring houses and back yards. The definition in law of what a neighborhood is was referred to, and it was noted that no such definition in law exists. A suggestion was made to reduce the number of units to 160 and expanding the buffer.

The site plan was reviewed and discussion ensued about the north end of Hemlock Road and the lots off of the northeast corner of Stonecrest Road. Concerns with traffic issues on Fort Hill Road were raised.

Members expressed their concerns with the dangerous traffic situation that exists today on Fort Hill Road, especially with winter precipitation, and as such, spoke against using Fort Hill Road/Route 1 as an exit from the development. They clarified that access should be limited to emergency vehicles only. Most members could not accept the Route 1 access as proposed.

Some members expressed their concerns with environmental issues and concerns with the traffic study that was presented.

The three criteria that the Zoning Commission is required to follow were raised, relating to traffic, environment, and harmony. Some Commission members expressed concerns with the traffic near Affeldt Drive and Lemont Drive. Local amenities near the proposed development were referred to and it was noted that this project is compatible with the Town's Plan of Conservation and Development (POCD). Some members felt that they would rather see this development in another part of town.

Many members liked the project but felt that it was too big. Concerns were also raised about water issues, cutting trees, disturbing soil, and water going into Long Island Sound. Some members explained why they felt the engineering study was flawed. Traffic, the environment, and harmony were questionable in some members' minds.

Concerns about the duration of the construction phase were expressed. Assurances would be needed that the construction does not destroy surrounding wetlands and the brook. Issues were also raised with both potential entrances/exists.

Referring to the Inland Wetland Agency, some members explained why they felt there were no environmental issues to worry about other than the normal unavoidable ones.

A suggestion was made to divert all traffic going out of Flanders Road, instead of using Fort Hill Road. In regards to harmony, the number of units could be reduced to 160, with regard to abutters.

**MOTION:** To Amend the Main Motion to reduce the maximum number of units to 160.

Motion made by Haviland. (This Motion was not seconded)

Staff advised the Commission with various options relating to a reduction of units. They stated that the Commission can modify the submitted draft motion and can establish conditions but only as they relate to the regulations, criteria, and record.

Staff explained that density standards have been set in the POCD. It was noted that any reduction in units should be tied to impacts. Staff noted that a better approach for the Commission in reducing the number of units was not to set a specific number but to change the buffer requirements, taking into consideration the orderly development criteria.

The Chairman was very concerned about re-engineering the proposed plan. Staff explained that the Commission has a right to make modifications.

Noting that most Commission members had concerns about the intensity of the project, particularly the proximity to the neighboring properties, it was suggested that the Commission could either modify the project or the developer could withdraw the application and come back with a new proposal.

Staff defined the role of the Zoning Commission and explained that this is not a site plan. They felt the buffer measurements could be adjusted and that a withdrawal was not within the Commission's authority.

Referring to harmony issues with the neighboring properties, it was suggested that it might be more palatable to have a larger setback.

Haviland spoke about the site plan, listed as Exhibit A, and referred to the two sections on the property where the proposed development comes too close to existing homes. He suggested that there be no structures or buildings within 100 feet from specific property lines. Commissioner Haviland marked up in red marker the specific property line sections which would apply to this potential condition.

**MOTION:** To Amend the Main Motion:

1. That no buildings be located within 100 feet of the property lines identified in red marker, as reflected on the plan of record modified by the Commission for that purpose on December 5, 2007.
2. That the Route 1 access drive be limited at all times to emergency vehicle and pedestrian use.

A Motion to Amend was made by Haviland.

Staff stated that if the motion carries, the Planning Commission would look at the Fort Hill Road exit as an emergency entrance, and maybe a bike path.

Members were concerned about accidents on Fort Hill Road because of the slope of the hill.

For the record, Hudecek could not support the modifications because he felt the project does not comply with environment, traffic, and harmony criteria.

Concerns were raised about making changes to the plan that would require a full reconfiguration of the project design, and the different impacts that might arise.

Staff explained that with modifications, the design might be affected but that this is a special permit, not a site plan. They noted that the Commission should remember that there are multiple authorities in the planning process.

Discussion ensued about the traffic concerns on Fort Hill Road and Route 1 and it was noted that the traffic flow would be lower if units were reduced.

Staff referred to the traffic analysis and advised the Commission that the analysis demonstrated that the project complied with applicable standards.

Some members expressed their concerns with the traffic analysis submitted.

Staff spoke about the review process that was followed for the traffic analysis, and stated that a substantial amount of work had gone into that analysis.

Haviland stated that he previously made a motion to amend to set a 100 foot setback from certain delineated property lines to any structure, and noted that these changes were made visible with a red marker on the site plan (Exhibit A). He added that changing the buffer would move some of the proposed buildings away from the existing property lines.

The Motion to Amend was now seconded by Brandt.

Discussion ensued about the distances from property lines to buildings.

VOTE on the Amendment was 3 in favor (Brandt, Haviland, O'Neill), 2 opposed (French, Hudecek). MOTION CARRIED 3-2.

Haviland explained that he withdrew his original amendment to reduce the units to 160 and instead suggested to amend by establishing setbacks from the property lines and limiting access on the west side of Fort Hill Road.

The Chairman expressed his concerns and disagreed with making modifications to the proposed plan.

Staff noted that the applicant would need to apply to the State Traffic Commission for an encroachment permit but that those permits are not issued until after local approvals have been granted. Additional details related to the process were given.

Haviland clarified the main motion and the amendments, which included his proposed setback changes and limiting access from Route 1.

VOTE on the Main Motion as Amended was 3 in favor (Brandt, Haviland, O'Neill), 2 opposed (French, Hudecek). MOTION CARRIED 3-2.

Main Motion as Amended is as follows:

MOTION:

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7.1-45 F and 7.1-45 M of the Town of Groton Zoning Regulations, with the following findings and conditions:

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2. The Commission also notes and has considered the deliberations of the Inland Wetland Agency contained in its 9/12/07 meeting minutes, including its analysis of prudent and feasible alternatives and its finding with respect to intervention under CGS 22a-19.
3. The Commission has limited authority to regulate directly under the provisions of section 7.1-45 of the regulations with respect to Site Plan applications for conditional uses. The Commission finds that no setback reductions were requested by the applicant pursuant to section 7.1-45 F and that all setbacks meet or exceed applicable requirements. The Commission also notes that the applicant has complied with the requirements of section 7.1-45 M(3) with respect to providing a list of universal design features and amenities to be incorporated into the final site and building designs with the site plan application.
4. The Commission finds that it has sufficient information in the record to determine compliance with both the special permit criteria under sections 8.3-8 A, B and C, as well as with respect to findings necessary pursuant to the GOSA intervention petition dated 10/9/07, the “supplemental” GOSA petition dated 11/7/07 and the Sullivan petition dated 11/7/07. The Commission also notes that the Sullivan petition is, in most respects, essentially identical to GOSA’s 11/7/07 supplemental petition. The Commission also notes that with respect to the assertions raised, all three petitions quote language from section 8.3-8C of the regulations (“Impact on Environment”) and otherwise reference section 8.3-8C, to the exclusion of sections 8.3-8 A (“Orderly Development”) and 8.3-8 B (“Traffic”).
5. The Zoning Commission has considered the alleged unreasonable pollution, impairment or destruction of the public trust in the air, water or other natural

resources of the State and finds, based upon all relevant surrounding circumstances and factors, that in approving the special permit as conditioned herein, no conduct will be authorized or approved which does have, or is reasonably likely to have the effects alleged in the intervention petitions.

6. The Commission finds that the application, including the applicant's proposal to make traffic operation improvements at Route 1 and Flanders Road, complies with the special permit objectives of section 8.3-8 B.
7. The application, as conditioned herein, complies with the Special Permit objectives of section 8.3 of the regulations.

Conditions of Approval:

1. The special permit will be expressly limited to no more than 201 active senior housing dwelling units, with occupancy restricted per the draft common interest declaration of record and including ancillary uses and structures as proposed.
2. The conservation area shall be protected through a conservation easement in favor of the Town of Groton.
3. The sewer line shall be sized with additional capacity sufficient to serve other areas within the approved and/or planned sewer service area. The owner(s) shall provide an easement to the Town for ownership, use and maintenance of the sewer main.
4. Buildings 62, 62a, 68, 72 and 73 shall be relocated and/or eliminated in accordance with the applicant's proposal of 11/7/07.
5. The access drive to Route 1 shall be limited to use by emergency vehicles and pedestrians at all times.
6. No building shall be located within 100 feet of the property lines identified in the attached exhibit.

VI. OLD BUSINESS - None

VII. NEW BUSINESS - None

VIII. REPORT OF CHAIRMAN

The Chairman expressed his concern with the Mystic Woods project and the amendments made.

IX. REPORT OF STAFF

Staff distributed an editorial from the Hartford Courant and was pleased that Groton was recognized for its work in the Mixed Use regulation.

The monthly zoning enforcement report was distributed to the Commission, including a letter from Zoning Enforcement Officer Lee Treadway. Staff explained the existing process and activities that are on-going with regard to enforcement.

How “active senior housing” came to be part of the zoning regulations was referred to.

Staff noted that the status of hiring a consultant for regulation changes is moving along steadily.

ADJOURNMENT

Motion to adjourn at 9:00 p.m. by Hudecek, seconded by Haviland, so voted unanimously.

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Richard Haviland, Secretary  
Zoning Commission

Prepared by Robin M. Silsby, Office Assistant II