

MINUTES  
ZONING COMMISSION  
JULY 2, 2008 - 7:00 P.M.  
TOWN HALL ANNEX – COMMUNITY ROOM 2

I. ROLL CALL

Present: Cady, French, Hudecek, Marquardt, Sutherland, Brandt  
Excused: Haviland, O'Neill  
Staff: Murphy, Davis, Cullen, Moulding

Chairman Hudecek appointed Marquardt to sit for O'Neill and Sutherland to sit for Haviland.

II. PUBLIC HEARINGS

1. Zoning Regulation Amendment to Sections 6.12 Water Resource Protection District, 6.12-3 Non-Permitted/Regulated Uses to allow Day Spas to be included in regulated uses. (Chad Wright, Applicant)

Staff stated that the applicant has withdrawn the application.

2. Special Permit #305, 90 Poheganut Drive, (Benchmark Assisted Living, LLC, Applicant)

The Chairman opened the hearing at 7:02 and read the legal ad. French disclosed that she had at one time worked for Benchmark but does not feel this would have any impact on her decision. Harry Heller, Attorney representing the applicant, Benchmark did not have any issues with French sitting for this hearing. Attorney Heller stated that this application is for a special permit for a residential life care community on 3.35 acre parcel off of I-95. The site is partially improved with a detention basin which accommodates the run off from Poheganut Drive and a 32 space parking lot with a drainage system. There are wetlands on the property. A prior application was approved by the Inland Wetland Agency and Planning Commission for an office building. This site is in the WRPD and IP-80 zone. The proposal is for a 48 unit assisted living facility targeted for the memory impaired population. The applicant will be seeking waivers from the Planning Commission for the requirement that there be 100 square feet of dead storage for each residential unit and that there be a deck or patio unit for each resident. Engineering comments contained a recommendation for sidewalks along Poheganut Drive which they will also be asking the Planning Commission to waive. Attorney Heller stated that the sidewalk requirement was waived for the office building site plan approval.

Attorney Heller stated that the proposed development is in harmony with the neighborhood, creates no adverse traffic impacts, and is environmentally compatible with the area. The proposal is for a residential use within a supervised context and is located in an IP-80 zone. This facility is within close vicinity to the Pequot Health Center. A Marriott Hotel and Quest Diagnostics are located within the industrial park. This proposal fits in well within this park and is in harmony with other uses in the district. This project will be a minimal traffic generator because the residents will not be driving. There will only be employees, deliveries, and visitors driving which would require 32 parking spaces. The maximum number of caregivers would be 12 to 14

people during the 7 a.m. to 3 p.m. shift. The facility would be designed to be environmentally compatible with its location. They will be adding additional systems to treat the storm water runoff. This is a use that is compatible with the WRPD and the design is also compatible with the regulations. There will be a kitchen and dining facility where the residents will eat their meals. Country kitchens will be available to residents on a supervised basis. There will be a courtyard, memory stations, and lounge areas for the residents. The use is consistent with the uses in the neighborhood, will provide a good tax base and will fit in well with the buildings in the industrial park.

Tom Gaston, Benchmark Assisted Living stated that there will be four, two bedroom units which could be used for couples but residents would not be allowed unless they have a memory impairment. The applicant has built two other properties, Academy Point in Mystic and Crescent Point in Niantic. There will be three shifts for staff and 18 parking spaces available for visitors.

Staff gave a history of the site plan approved for an office complex. Staff explained how the Planning Commission would review the waivers that the applicant plans on requesting during the site plan process. Staff reviewed Residential Life Care Communities and Assisted Living Facilities definitions.

Staff stated that the intensity of this proposed use is less than the previously approved office use on the site. Staff reviewed the similarity with prior approvals at the Odd Fellows facility and the outdoor courtyard enclosed by the building. There will be a secondary emergency fire access shown on the site plan when the Planning Commission reviews the project. Access for dumpsters and deliveries has been reviewed as well. Promoting diversity of housing types in Groton is mentioned in the 2002 Plan of Conservation and Development and there is a need for this type of residential stock. Staff sees no land use impacts from the proposal. Staff distributed a GIS map of the area around the site and explained the different business and uses in the area.

The Chairman asked for public comments.

Paul Paulson, 55 Paulson Road has no concerns with the building itself but asked how the proposal would affect the future road extension.

Staff stated the road reservation and possible extension would remain. Staff stated the mailings were done correctly. The Planning Commission at its June 24<sup>th</sup> meeting recommended approval of this application.

The public hearing was closed at 8:03 p.m.

### III. APPROVAL OF THE MINUTES OF June 4, 2008

MOTION: To approve the minutes of June 4, 2008 as written.

Motion made by French, seconded by Sutherland, (5 in favor, 0 opposed). Motion passed.

### IV. PUBLIC COMMUNICATIONS

Staff stated that Mr. Bolduc and Attorney Evans are here regarding the opinion of the Town Attorney on realtor signs. Staff feels that it would be beneficial to have discussion with the applicants.

MOTION: To add discussion regarding the Town Attorney's opinion on signage under new business.

Motion made by Hudecek, seconded by Sutherland, so voted unanimously.

#### V. CONSIDERATION OF PUBLIC HEARINGS

1. Special Permit #305, 90 Poheganut Drive, (Benchmark Assisted Living LLC)

The Commission felt this would be a great location for this type of project.

MOTION: To approve Special Permit #305, 90 Poheganut Drive, for a 48 unit residential life care community.

#### Findings and Reasons for Approval

The addition complies with Sections 8.3 (Special Permit) and 7.1-1 (Residential Life Care Communities) of the Zoning Regulations in that it meets all zoning requirements, is in general harmony with the character of the area, provides adequate utility and drainage systems, creates no serious parking or traffic circulation problems, and will not impair adjacent property values.

Motion made by Sutherland, seconded by Brandt, so voted unanimously.

#### VI. OLD BUSINESS

Staff stated that the consultant is doing an assessment of the information they have collected and will be providing a report to staff which the Commission will then review along with the public. Staff again described the process in detail, and noted that a detailed description of the project's status and next steps is provided in the project web link on the Town web page. This project is being undertaken exactly as all other projects involving consultants have been taken in the past. The Consultant will interact with the Commission and any references otherwise are inaccurate.

Chairman Hudecek asked if a copy of the scope of services could be sent to all members of the Commission. Staff stated that all of the Commissions involved would be receiving a copy at the same time.

#### VII. NEW BUSINESS

1. Receipt of New Applications – None
2. Request for an extension of Special Permit #284, (Ceravolo, Applicant), 1348 Baldwin Hill Road, Gales Ferry

Staff stated a letter was received requesting a four year extension of Special Permit #284. Due to the downturn in the economy the applicant has been delayed in finishing the work. There have been no complaints regarding his operation over the past four years. Staff is holding a \$10,000 surety bond.

Dick Ceravolo showed the Commission where the work has started but due to the economy slowing he has been unable to proceed as quickly as he expected to.

**MOTION:** To approve a 4 year extension to Special Permit #284 (Ceravolo), 130 Welles Road with the condition of continued monitoring by staff.

Motion made by Brandt, seconded by French, so voted unanimously.

3. Discussion of the Town Attorney legal opinion regarding “open house” signage

Staff thanked the Commission for adding the item to the agenda for discussion and provided an overview of the process to date, including some of the administrative, policy and legal issues raised during the public hearing for the Realtor’s regulation amendment application. As requested by the Commission, staff has met with the realtor’s representatives to discuss the potential options, and has provided them with a copy of Attorney Carey’s opinion. In light of the Town’s legal opinion with respect to equal treatment issues regarding signage and commercial speech, staff felt it would be helpful to discuss the matter with the Commission and the Realtors’ representatives. Mr. Bolduc and Attorney Evans were present as representatives of the Realtors.

Staff stated that the applicants would like to move forward with a new application, but that Attorney Carey makes it reasonably clear that the Town would need to proceed carefully. Staff felt that the Commission could continue the present policy of not allowing these signs, could try to differentiate these signs in some lawful manner, or could allow a wide variety of similar offsite commercial signs, and in so doing hopefully avoid the disparate treatment issues raised by Attorney Carey.

Staff stated that the Commission can only legally regulate height, size, and location of signs, and that any regulation must be content neutral. Staff also noted the success and compliments that have resulted from the Town’s extensive efforts to eliminate illegal offsite signs from local streets and that there did not appear to be specific policy support in adopted land use plans, or widespread community support to reverse this direction. Staff would like to work with the Realtors, but needs guidance and a consensus from the Commission in light of the legal and policy issues.

Mr. Bolduc said he agrees that offsite “directional signs” should not be allowed (as he defined that type of sign). However, he felt that temporary offsite “open house” signs should be allowed. He and Attorney Evans suggested that “anybody selling property” would be allowed to put up these signs, and that such a distinction would, in their opinion, be sufficient to overcome any potential disparate treatment challenges. They feel that real estate is different from other businesses because they are selling a product that is not “fixed” in one location. Conceptually, their signs would include an arrow, the words “open house” and a business logo and would only be allowed from one hour before, to one hour after the open house hours.

Staff noted the need for communications on this matter to be directed through staff. Staff noted that the Realtors to date have failed to provide any of their own

independent legal research or case law citations to support their position, and that it was not appropriate to continue to ask taxpayers to fund the legal or policy research necessary to support the Realtor's position without pending application(s).

Staff suggested that the proper way to proceed is for the Realtors to prepare their own materials in support of their position, and to submit those materials to OPDS staff. Staff will then discuss the materials with the Town Attorney and the Commission.

During discussion with the Commission it was suggested to staff that simple changes could be made to existing open house sign regulations. However, staff pointed out that the section in question concerned onsite signs, and that Constitutional rights to equal treatment cannot be taken lightly. To assist the Commission in understanding legal issues involved, staff reviewed the current sign code, more specifically the very limited current provisions for offsite signs. It was the overriding consensus of the Commission that they follow the approach suggested by staff and the Town Attorney, and accordingly the Commission asked the Realtors to provide their own materials in support of their proposal to OPDS staff. Staff will review them with the Town Attorney and then bring their findings before the Commission for further discussion at the appropriate time.

VIII. REPORT OF CHAIRMAN - None

IX. REPORT OF STAFF

Staff stated there are no new applications and if the Commission takes action on the special permit at the July 7<sup>th</sup> meeting the August 6<sup>th</sup> meeting can be cancelled.

X. ADJOURNMENT

Motion to adjourn at 9:15 p.m. by French, seconded by Brandt, so voted unanimously.

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Susan Sutherland, Acting Secretary  
Zoning Commission

Prepared by Robin Moulding  
Office Assistant III