

MINUTES
ZONING COMMISSION
SEPTEMBER 3, 2008 - 7:00 P.M.
TOWN HALL ANNEX – COMMUNITY ROOM 2

I. ROLL CALL

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

II. PUBLIC HEARINGS

1. Special Permit #306, 0 Winding Hollow Road, (Rhodes, Applicant)

The Chairman opened the hearing at 7:02 and read the legal ad. Attorney Tim Bates from Robinson and Cole stated that he is representing Mr. Rhodes, the applicant. He stated that Mr. Rhodes had received an administrative site plan approval for 1000 CY of fill for the property. In June 2005 Mr. Rhodes excavated and filled to try and create a building pad. A Cease and Desist order was sent by the Town to Mr. Rhodes stating that he needed a wetlands permit and a special permit for the amount of fill he was putting on the property. Attorney Bates stated that if the special permit is granted the lot can currently only be used for a single family home. Abutters will be notified if there is a proposal for a change. One of the reasons the first special permit application was denied was because there was no wetlands permit. Mr. Rhodes then hired a team of professionals to determine what the best course of action would be to obtain the necessary permits. The applicant recently received his wetlands permit approval. A legal agreement has been submitted to the Town allowing for a sewer connection to Winding Hollow Condominiums private system. Attorney Bates stated that he believes this meets the two principal concerns the Commission had in the first special permit application.

Ed Wenke, Engineer stated that his job was to determine how to get a permit for the work that was done. The parcel is 3.45 acres, in the RU-20 and WRPD zones. It is not in a CAM area and is in flood hazard C zone. Mr. Wenke stated that Jim Bernardo did a full topographic survey of the entire site and the applicant has based his request on the difference between the original topography and the current topography which was a difference of 15,000 CY. The fill came from the Hilton Hotel site. The average depth of the fill is 2 – 7 feet. The applicant excavated the active soils, and then filed to make a buildable area. Mr. Wenke stated that for the most part the fill is stable. The Town regulations allow for 1.5 to 1 slopes; the fill and graded slopes average .7 to 1. The vegetation on the slopes may destabilize. Under this permit all slopes 2 to 1 or steeper will have boulders removed and be filled. Five hundred yards of top soil will be brought in to stabilize the area. This is all part of the wetlands permit which was recently approved. There are no other outstanding wetlands violations. The site is part of a 1995 subdivision which included a waiver for sewer tie in. The closest sewer pipes are privately owned by the Winding Hollow condos. This has resulted in an agreement that Mr. Rhodes can hook up to the private sewer system. He explained how an alternative tie in directly to the municipal sewer system would run. Mr. Wenke stated that the area is now

graded according to the Town regulations. There will be future testing of the soil for any pavement that may be added. He stated that site access was over an existing sidewalk of which 30' has been damaged. As part of this application, the applicant is agreeing to fix the sidewalk damage. There will also be a curb cut and driveway apron to access the property. The site plan approval will lay out the time of operations. If the material was taken off the site there would be possible sedimentation and encroachment on wetland areas. The soil scientist agreed this would create more damage. Approximately 60% of the property was filled.

Attorney Tim Bates stated that Ledge Light has approved the sewer hook up as well as public works. He stated that this proposal is in harmony with development because the parcel and surrounding area is residentially zoned. This lot was created as a residential subdivision lot. The excavation and fill permit allows the development of the lot as a residential lot by reducing the slope of the lot from east to west and providing an appropriate building area for a residential use. The original subdivision lot had one exit onto Winding Hollow Road, and the resulting lot, after the excavation and filling activity, will have one such exit. The pre-existing lot sloped severely toward the wetlands, which would have been negatively affected by any future construction activity. The reconfigured lot provides a flatter building area with stable slopes above the wetlands. This configuration should allow future residential development with less environmental impact on the wetlands resources. Completion of the excavation and filling of the site, with erosion and sediment control protections will further enhance the protection of the wetlands. The Inland Wetlands Commission has already approved these activities.

Staff stated there was an Administrative Site plan issued for 1,000 CY of fill. This lot was created pursuant to a waiver to be served by onsite septic. The owner's activities of excavating and filling rendered the site unsuitable for septic. The applicant would like to take the shortest route to the sewer connection. The Town Attorney will review the sewer connection agreement.

Wenke stated there are erosion control measures on the site at present. A septic system cannot be put in a fully filled area of land. There is ledge under the whole site which the applicant stripped the land down to. The Commission asked why they should act favorably, given the history and the client's actions. Attorney Bates stated that the applicant would be restoring and stabilizing the fill if this application is granted and that the violation is a separate procedure. Attorney Bates stated that Mr. Rhodes understands the severity of the situation, and he has tried to bring an application that creates a building pad that the Commission would have approved back then.

Staff stated that if this were a request for permission to fill the lot, they would not have agreed to an application that would have negated the ability to have a septic. There is a zoning order that is outstanding that the applicant has appealed. The order would require removal of the fill. Approval of the special permit would not end the zoning order. Attorney Tim Bates has told staff that he is planning on withdrawing the appeal if the special permit is approved. The Planning Commission agreed to and forwarded staff's comments which were included as part of the record. Staff will be suggesting conditions to the special

permit such as a modification of the 1995 subdivision to waive the septic so the site would have to be served by sewer.

The Chairman asked for public comments.

Nancie Keenan, 2 Spyglass Circle, former president of the association, read a letter describing the conditions of the site. Fill was observed being taken from the Hilton at night and brought to the site. She submitted photos taken Sept. 2, 2008 of the surrounding area.

Jeff Nelson, 23 Chase Oaks Court stated his property abuts the subject property. He expressed concerns about how the future work would be done. He feels the violations are pretty extreme and should not be set aside. He would recommend that the application be disapproved.

Benjamin Peters, 59 Leafwood Lane would like Mr. Rhodes to stay within the limits of the law. He stated that staff should be complimented on the self storage facility and the shrubbery surrounding it. He would like to see this site fixed.

Tim Bates stated that he was not referring to this Commission setting aside the violations. The ZBA will be dealing with the violations. He feels that this application would fix the property to be a building lot and deal with the present conditions. The Commission asked for information about what the fill actually is before this can be addressed.

Don Fortunato, Soil Scientist stated that almost all of the fill came from the Hilton Hotel site. He never saw any kind of construction debris, drums or oil. The material is all fill and rock. The current soil is of a permeable nature.

Jeff Nelson, 23 Chase Oaks Court stated there is an area of water that does not go away and fill was added to the area.

Wenke stated that there is a seepage area on the property and some fill was added to it. He also noted that nothing happened within 25' of the property lines.

The Commission continued the public hearing until October 1, 2008.

2. Special Permit #307, 0 Sandy Hollow Road, PIN 261909261582, (Precious Memories Preschool of Mystic, Applicant) (CAM)

Commissioners Marquardt and O'Neill recused themselves from this hearing and left the meeting. The Chairman opened the hearing at 8:10 and read the legal ad. Chairman Hudecek appointed Sutherland to sit for O'Neill. Haviland stated that he received a letter from Attorney Cody asking him to recuse himself. Haviland noted that he feels he can make a fair decision on this application and he will not recuse himself. Attorney Richard Cody representing the applicant stated that the earlier application has been withdrawn and the new application has been revised based on previous comments. Attorney Cody stated that notice had been properly served.

Ed Wenke, Engineer stated that this application is for the same site as the previous application. The property is zoned RS-20 and consists of 7.7 acres. There is an area of wetlands associated with Bindloss Brook. The site drains down to Bindloss

Brook, is in flood zone C and the CAM zone. The site has two frontages, 209' on High Street and 432' along Sandy Hollow Road opposite Pequot Road. There will be on site septic and well water. Public water is available further down the street but would require extensive work and digging up a scenic road which Public Works will not allow. There is an existing drainage easement on the site. This new application is for a day care use. The proposed single story building is 6000 s.f. There will be 96 children, 14 teachers and 4 administrative for a total of 114 people. There are 36 parking spaces proposed. The recreation area is now only 5000 s.f. The clearing area is now 95,000 s.f. and impervious surface has been reduced. There will be on site septic and well. The storm drainage will run down the parking lot into the basin and an extreme storm spill over will go into the drainage course. They will need a modification to the previously approved wetland permit but the regulated activity is less than what was already approved. The recreation area has been moved to the opposite side of the building. Parking will be along I-95 behind the building. The original driveway was across from Pequot Avenue; it has been moved to 150' west of the intersection of Pequot Avenue. There will be a loop driveway like the existing day care centers. Fire access has been improved with a gravel packed driveway for emergency use only and allows for a loop system for emergency access. The applicant has determined that 90% of the children in the day care center are from the Mystic/Groton area. The balance of the property would only allow one single family house based on the sales agreement. The Town Council may have to review the driveway on the Scenic Road.

Steve Mitchell, FA Hesketh Associates is a traffic engineer and stated that a completely revised report has been submitted with this application. The new facility accommodates 96 children. There would be a total of 78 trips in the morning and 84 trips in the afternoon peak hour. Counts were done at the existing facility and neighboring areas and focused on morning and afternoon peak hours which are 7:30 - 8:30 a.m. and 4:30 - 5:30 p.m. The traffic level is presently at A or B except for the southbound ramp to I-95 which is C and the other side of Sandy Hollow Road is level D. With the proposed day care, none of the traffic levels of service change. The previous report used the software program's default values. Because of the number of questions that came out of that they did field measurements of the actual gaps and used those in the new report. The new driveway would be level of service A.

Steve Cardell, Cardell Design Associates is responsible for the design of the building. The building has been reduced by a third which addresses the fire marshals water concerns. The building's longest dimensions would be 104' and 36'.

Ed Wenke stated that a child day care use is an allowed use which will benefit the community. The use is consistent with community established businesses. There is a buffer from the area properties. The recreation area will be buffered from I-95 by the building, fenced, and 180 feet from nearest single family lot line. The building blends in with residential properties. This is not detrimental to any adjacent properties because there are no properties left to be developed. Traffic circulation does not have any adverse impacts. Environmental impacts have been addressed by the Inland Wetlands Agency and will be reduced further with this revised proposal. Construction activities will be held in strict compliance with applicable requirements. There will be no hazardous materials, and no adverse lighting or noise. Mr. Wenke explained the anticipated water flow and the design criteria of the Health Code. He feels this proposal meets all of the requirements of the regulations. The recreation area will have a 6ft high solid fence with vegetated buffer surrounding it and the existing vegetation. Mr. Wenke stated that no studies have been done on the noise levels from I-95.

Chris Eckersley, owner stated that the parents take blankets home so they are not washed at the center. They do have a dishwasher but most of the containers are plastic. The new building will not have a commercial grade kitchen. There would not be any special events held on weekends or evenings.

Staff received additional letters this evening that will be copied for the Commission. The Commission members were each given a packet of letters that had been received by the end of the work day on September 3, 2008. Staff noted that Attorney Cody offered a letter dated August 28, 2008 which Commissioner Haviland responded to earlier. Attorney Carey has responded to this letter and those responses were provided to Attorney Cody this evening. The Planning Commission deferred its referral to its next meeting because Attorney Cody sent a separate letter to them which is being reviewed by the Town Attorney. The third party review of the previous traffic report remains valid for this report with respect to the methodology data and conclusions being acceptable from a technical view. Staff indicated that they are continuing to process their review in coordination with other applicable agencies. Staff asked the applicants if they would conceptually agree to various permit conditions and Attorney Cody and the applicant did not voice any objections.

The Chairman asked for public comments.

Carla Henschel, 253 Pequot Avenue is opposed to the project and would like to know the percentage of scholarship children. She is also concerned with school busses picking up the children.

Elizabeth Conlon, 341 Pequot Avenue read a letter against the project because it is an expanding commercial use in a residential neighborhood. The current traffic flow has been created by the current daycare facility. The clearing of land would have a negative impact on the environment.

Sharon Verzier, 84 Sandy Hollow Road is opposed to this application because of the traffic generated. She is concerned with the well pulling on the water table and the smell of the sewage.

Elizabeth Williams, 221 Pequot Avenue is opposed to the application because it is not in keeping with a residential area.

Chuck Nado, 380 High Street, Mystic voiced concerns with the amount of traffic on a scenic road. He feels that tie into municipal water and sewer should be mandatory. He feels that three day care centers would adversely affect the area.

Nancy Wellersdieck, 482 Pequot Avenue read a letter opposing the project because it detracts from the residential character of the neighborhood.

Nancy Steenburg, 493 Pequot Avenue submitted a two page letter for the record. She stated that the traffic count was done in January 2008 and the area is much busier in the warmer months. She is concerned that the proposed water use will affect the wells in the area.

Chuck Stevens, 12 Stony Hill Drive does not feel community service is part of the criteria for a special permit. He is concerned with the area becoming a community

service area for commercial businesses. The Town zoning regulations do not refer to levels of service but in his opinion the traffic is “inconvenient”, which is in the regulations.

Jon Tibbals, 29 Oxford Court is in support of the application because there is a demand for day care. The impact of more traffic would not affect the levels of service. The applicant is trying to be as unobtrusive as possible. The design is consistent with the neighborhood. There has been opposition to development of single family homes in the area by the neighborhood and he does not believe a subdivision would get any more support than the day care center.

Kathleen Brian, 260 Pequot Avenue is opposed to the application because she does not feel there is a need for more daycare in the neighborhood and is concerned with well water.

Janice Lootsma, 502 Pequot Avenue is concerned with the noise from the recreation area.

Frank Willowstick, 42 Pequot Avenue stated that this business is being pushed into their residential area. He is concerned with losing their buffer to the noise on I-95. He asked that the matter be defeated.

Susan Kiernan, 103 Pequot Avenue is against the expansion because it is a for profit business in a residential area. She is concerned with increased traffic and losing a buffer to I-95.

Brook Boyd, 224 Pequot Avenue has two children that attend Precious Memories Day Care. She feels the buildings fit into the residential area well, and supports the proposal.

Chairman Hudecek requested a copy of the traffic study. In response to the Chair’s question, Steve Mitchell explained that speed enters into sight line analysis, but level of service analysis is based on people stopping at intersections.

Paul Henschel, 253 Pequot Avenue asked if this is a case of “keep asking the question until the commission gives in?”

Attorney Cody stated he will wait until next month to respond to comments.

The Commission continued the public hearing to October 1, 2008. Commissioner Haviland left the meeting at 10:20 p.m.

III. APPROVAL OF THE MINUTES OF July 2, 2008

MOTION: To approve the minutes of July 2, 2008 as written.

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

IV. PUBLIC COMMUNICATIONS - None

V. CONSIDERATION OF PUBLIC HEARINGS - None

VI. OLD BUSINESS -None

VII. NEW BUSINESS

1. Receipt of New Applications – None
2. Land Use Regulation Update Project

As requested by the Chair, staff included information in the packet regarding the schedule for the regulation amendment. As discussed with the chair, staff included an email the Chair had sent to the Director indicating “several” inquiries to him from Commissioners regarding certain aspects of the regulation update project. Staff provided a detailed response which the Chair agreed to provide to all the Commission members. Staff’s response was provided to the Chair on August 7; on September 3 staff received a related email from Commissioner Sutherland raising various questions, and making certain claims about the regulation update program. Commissioner Sutherland shared this with the Commission for the public record.

Staff indicated that they would address some of the questions in her September 3rd communication at this time, but that other content would need to be reviewed with the Director and a detailed form of response would likely be provided.

Regarding the above, the Consultants will be here the week of September 22, 2008. Staff is asking the Zoning Commission to schedule a special meeting on September 24, 2008 to meet with the consultant. KKC will meet with the Inland Wetlands Agency for approximately 30 minutes and then with the Zoning Commission. The assessment report should be received by September 10, 2008, distributed and then discussed at the September 24th meeting. Staff reviewed some of the areas and types of items that the draft report may include. There will be a presentation of the assessment report to the public on October 29, 2008. We have completed the initial stage of the project, we are presently in the assessment stage and the presentation stage will occur over the next couple of months. Out of this process a framework for development of text amendments will be established. There will probably be packages of materials that will go before public hearings and there are many statutory referrals that will need to be made. The Director will likely respond to other issues in a detailed memorandum.

The Commission agreed to schedule a special meeting on September 24, 2008. Dr. Brandt will be on vacation and cannot attend but will review the assessment report if possible and forward comments to staff.

VIII. REPORT OF CHAIRMAN

Commissioners raised concerns about the Town Council’s concerns with the Zoning Commission. The Chairman asked about Councilor O’Beirne’s inquiry in this matter that appeared in the newspaper; of which staff had no knowledge.

Staff stated that this was a matter between the Council and the Commission. He encouraged them to contact the Manager with their concerns, as a Commission.

IX. REPORT OF STAFF

Staff distributed invitations to the 100th Anniversary of the dedication of the Groton Town Hall on September 17, 2008 along with May and June OPDS monthly reports. Staff also gave the Commission members a memo regarding the Eastern Connecticut Association of Realtors Sign Code Analysis along with the analysis.

X. ADJOURNMENT

Motion to adjourn at 10:46 p.m. by French, seconded by Brandt, so voted unanimously.

Richard Haviland, Secretary
Zoning Commission

Prepared by Robin Moulding
Office Assistant III