

Planning & Zoning Commission – February 20, 2018

PLANNING AND ZONING COMMISSION
TOWN OF SOUTHTON

FEBRUARY 20, 2018

The Planning & Zoning Commission of the Town of Southington held a regular meeting on Tuesday, February 20, 2018 at the John Weichsel Municipal Center Assembly Room, 196 North Main Street, Southington, CT. Michael DelSanto, Chair, called the meeting to order at 7:00 pm.

The following Commissioners were in attendance:

Paul Chaplinsky	Dagmara Scalise
Robert Hammersley	Jennifer Clock
Susan Locks	James Morelli
Michael DelSanto, Chair	

Alternates: Ted Cabata, Ross Hart, Joe Coviello & Peter Santago

Ex-Officio: Robert Phillips, Director of Planning &
Community Development
James Grappone, Assistant Town Engineer

A quorum was determined.

The Pledge of Allegiance to the American Flag was recited by everyone in attendance.

The Chair asked student Jonah Zombick to come forward. He's a student at the Academy of Aerospace and Engineering and is in the 11th grade. He is here to fulfill a requirement for his communications merit badge.

4. APPROVAL OF MINUTES

A. Regular Meeting of February 6, 2018

Mr. Chaplinsky made a motion to approve which Ms. Locks seconded. Motion passed on a majority voice vote with Mr. Morelli abstaining.

5. BUSINESS MEETING

A. Lovley Development Inc., 6 lot subdivision application, property owned by William Curtiss, located at 792 South End Road, in zones R-20/25 and R-40 (S#1319)

Sev Bovino, Planner with Kratzert, Jones & Associates represented the applicant. About eight acres of land served by public water and sewer. There are two zones on this property. Along the Meriden

Waterbury Road is an R-20/25 zone and off of South End Road (three lots) are zoned R-40. We're proposing six lot. Three in the half acre range and three in the one-acre range. Served by a 320-foot cul de sac. The land slopes from east to west, so we are following that pattern and installing drainage systems to take it into the road via underground for ZIRO and taking it into the existing system.

We received staff comments and we are working on them. We don't see any major problems with them.

I'll answer any questions.

Mr. Chaplinsky noted it is a non-typical design.

The permanent cul de sac was discussed. Mr. Chaplinsky asked if it could be a private driveway all the way in and Mr. Bovino responded there is no provision for private roads in the regulations at this time. The lots are facing Meriden Waterbury Turnpike, but we felt that curb cuts at this location (indicating) would not be as good as this driveway here (indicating). This is a private drive serving these three homes (indicating).

Discussion.

Mr. Chaplinsky wondered why the whole road, the private cul de sac, why couldn't that be a private driveway with the houses coming off of it? Mr. Bovino responded the regulation does not allow us to create that driveway and still have six lots.

Discussion.

Mr. Chaplinsky asked if there were a limit to the number of lots on a private driveway. Mr. Bovino said on rear lots there is a limit but the regular frontage lots, there is no limit. On a private driveway, I would probably still have these two lots on the Meriden Waterbury Road and then lose these two lots (indicating) and have one driveway to one or two lots here.

Discussion.

Frontage requirements were discussed in the different zones.

Mark Lovley, President of Lovley Development, 710 Main Street advised the did reach out to Mr. Sciota to talk about the private driveways as I was thinking about that. He opted away from it because of problems they've had with other private driveways before. Staff and I reached out to him and that wasn't his desire.

Mr. Grappone interjected it is something that the staff is looking at because it is not in the regulation. This particular lot is funny with the zone cutting about the middle of it. We met with the applicant to try and come up with some value engineering on reducing some of the maintenance for the town. Also, there is an opportunity to extend the sewers easterly and eliminate a pump station. We saw it as an opportunity to work with the developer and

we thank Mr. Lovley and Kratzert, Jones for working with us in redesigning it. We are not in favor of maintaining short cul de sac streets so it is something still will look at. But this one we're looking for a win/win situation for both the applicant and the town.

Right now, we're working out the details on the drainage and sanitary sewer easements. We are not ready to approve our checklist at this point in time. We'll probably get a new set of plans before the next meeting and hopefully everything will be ready to go for the next meeting.

Mr. Chaplinsky questioned the concern about getting fire apparatus in there. Is that being addressed? Is there a separate access point off Meriden Waterbury Turnpike that might be needed? Emergency access in the event it's needed.

Mr. Bovino we are going to provide the template on this driveway to show we can make it here. I spoke with the fire department on that.

Mr. Phillips added we've had that conversation fire and we may be coming forward at some near future date with a zoning amendment to add language to help in situations like these. I don't have an update on this plan other than what the applicant has right now.

Mr. Chaplinsky noted with the smaller inventory of large parcels we'll probably be seeing more of these in the future. I think that's a good idea.

Mr. Bovino advised the driveway is going to be 15' wide and the easement is 25' wide, so there will be plenty of room on either side to maneuver.

Mr. Phillips advised it is not ready for action at this time.

Mr. Chaplinsky made a motion to table which Mr. Hammersley seconded. Motion passed unanimously on a voice vote.

B. Request to modify previously approved agreement between abutting property owners regarding vegetated buffer at 865 West Queen Street.

Attorney Bryan Meccariello, 200 Executive Boulevard, Southington, CT presented representing the property owner which is FRAL, LLC. The property is 865 West Queen Street, on the south side of the road and just before you get to the end.

I'm here to provide background and answer questions, Mr. Bovino is here because he was involved with the site plan for which there was

a Temporary CO issued on the addition pending the discussion I had with staff and my client regarding the trees. Steve Giudice is here because he was involved in 2012 with the tree issue and he can provide background on that.

I do have some exhibits to offer. The first one is my email to Mr. Phillips with the photos in response the meeting we had. It is dated February 15th, 2018. I provided a timeline of photos which show this property, aerial photos and then a Google image photo. It memorialized the meeting.

Although my client is saying we are not responsible for anything with these trees, but the fact these trees are now down, I provided the 2015 aerial from the GIS, the 2016 and the September, 2017 Google view which shows the area. I explain in the email --- there is a netting down and my clients are not involved in that netting. I can only suspect it was done by the property owner of Highland Golf or someone at their behest to remove it and consequently, they removed the vegetation and buffer from that area.

Also, Highland Golf Range is being commercially listed and this has additional information on that where it shows vegetation but I don't know when that was taken. (Passed in)

Lastly, information which is included with my initial email. The aerial photos of 2015, 2016. You can tell when you look at the photos the timeframe. This addition was not built, although the application was in, the construction took a little longer for a lot of reasons. The 2015 flyover does not show parking. They show five parking spaces to the east. And, then the 2016 the development occurred. It does show the parking spaces. When the aerials were taken, the sun gives you a chance to see the images, the shows of the trees that were there.

The trees and the vegetation that is no longer there occurred between the 2016 flyover photo and the Google image in 2017. September. You can see the netting and fencing that was down. That was not done by my client or by anybody on his behalf during the construction period.

I'm here to answer questions.

Mr. Bovino has been involved with this property since 1999 as we've done various additions, the last one was approved in 2015. The common boundary with the driving range is this area here (indicating).

On the plan that was approved there is a note on it that says: where possible either retain or transplant trees/shrubs along the easterly property line. (The applicant's property.) It was placed on the plan as part of the conversation with staff. There was no proposed buffer, no requirement for a buffer there.

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Reference date on plan: June 18th, 2015, town comments.

Mr. Bovino said as to the trees they are talking about, he doesn't know where they are located in relation to our boundary.

Attorney Meccariello explained the background going back to when Mary Savage was the Town Planner. My client removed trees that were affecting his property. We met with Ms. Savage as it was brought to her attention. We said we cut them down, we'll replant them. Some of those trees died and others are gone. I don't know how.

What's troubling me is that there is insinuation that my client took down the trees he planted, for whatever reason. I just want you to know, it is not the case. In conversation with Rob and Dave when this was brought up, my client did agree to plant what is required by the regulations. This is now an industrial and business zone and there is not a requirement for a buffer. He will agree to put the 5' pines, stagger them as Dave laid out for that area. He is still willing to do that.

This probably could've been done administratively but Rob, Dave and I agreed we should bring it back before the commission.

The factory goes north/south. To the south (rear side) it butts up against residential. There is vegetation and trees which have not been disturbed there.

Mr. Phillips stated from staff's standpoint, an inquiry came into us about a buffer that was allegedly removed. By whom, I don't know. But with the most recent addition that came in, I went and tried to learn the history. I had a conflicting documents and approvals. I think it was the Minutes referencing the height of the specimens that were supposed to be planted. Some landscaping plan before the PZC that was endorsed by the PZC and handshake by the owners. They were supposed to be 16 specimens, 16' in height.

This evening, there is a file with the plan that was referenced indicating 6 to 8 feet in height, 28 eastern hemlocks and 5 sugar maples, 3-inch diameter.

I have no historical reference to this conversation continued Mr. Phillips other than the Minutes, but since it was an agreement at planning & zoning we felt it was appropriate to come back to planning & zoning and work it out one way or the other.

A representative from the other property owner is here, as well.

Mr. Phillips noted at the end of the day, it seems like the agreement was above and beyond the requirements at the time. There is an approved site plan and I would go with the most recent one which does say were possible either retain or transplant trees/shrubs along the easterly boundary line.

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We got a complaint the buffer was removed and not replaced. There were dead trees. We made a site visit and confirmed there was no trees there. Just said, make sure you re-establish the buffer before you get the final CO.

The Chair noted stumps indicating they were taken down and not transplanted.

Mr. Phillips said there is a missing buffer piece and you can clearly see between the two properties there.

Attorney Meccariello added between 2012 and 2017, the West Street Business Zone was enacted which now changes this and takes this site plan which originally was 1999 and modified in 2015, it changes the zones and the requirements for any buffers between a business zone and the golf range is a nonconforming use which was in a residential zone and they opted to put it into the West Street Business Zone. The regulations are the regulations. My client will abide by the regulations.

We are here because of the agreement to bring it before the commission but we can take care of that in short order.

Mr. Chaplinsky brought up the 2012 agreement wherein the property owner was going to plant planting there. Were those done? Attorney Meccariello said they were. To the tune of tens of thousands of dollars' worth of trees. I don't know what happened to the trees or the vegetation around the trees. This was netting and fencing that was actually over the boundary line. Vine and Ivy grew up there. In September on the picture submitted you see the vegetation and trees. This property right now is not bare.

Discussion.

When you are at the top of that property, you can see my client's building but you can also see the other buildings and Lake Compounce. We will agree to put screening up but not tens of thousands of dollars' worth of trees for the same thing to happen.

Discussion.

Discussion of the tree removal and how it would be done.

Ms. Scalise discussed the photo of 2012 for clarification.

Removal of the netting and fencing was discussed. Attorney Meccariello said his client did not. Someone clear-cut that area which is now the subject of this discussion. To get the permanent CO, my client will agree to put in what he needs to put in according to the regulation to get the CO. It's not going to be 16-foot trees.

Discussion.

Ms. Scalise asked for a clarification on what the current requirement is for a buffer. Mr. Phillips said it is industrial and West Street Business Zone.

Stephen Giudice, Harry Cole & Son, 876 South Main Street, Plantsville.

His interpretation and reading of the regulations is there is no requirement for a buffer between a West Street Business Zone and an I-1 property.

The Chair said this is not usually entertained at this capacity. It is usually administratively handled.

Mr. Giudice went through his recollection of the application. He referred to the agreement reached with Mary Savage at the time and his office's preparation of the plan for the buffer. It did propose 16, 16-foot trees. They were planted. Most of them didn't survive.

In 2015 Kratzert & Jones resubmitted a plan for this addition. At this point the buffer is not required because the property has been changed to a business zoned property. Has the supplementation been done is the question. Attorney Meccariello says they will do what they need to do to supplement but can't go back to the 16, 16-foot trees.

Rob wanted to get your take on it and our interpretation of the regulations and how we feel about what is required. That is why the most recent site plan says supplemental.

The regulations have no requirement for a buffer between these two zones. Even if there was a requirement for a buffer, there is no height requirement.

Mr. Phillips confirmed there is no requirement for a buffer between these two zones. (Industrial to Business)

The planting of the 16, 16-foot trees all occurred on my client's property, agreed Mr. Giudice. None on the other's property. The property line is pretty well distinguishable along that area.

Attorney Bridget Gallagher, representing the abutter, Hyland Golf Range, LLC, which fronts on West Street. My client has recently had this property on the market after being in the Merrill Family for many years.

I agree with many of the statements that were made on the history of this. Let me highlight the things that I think are most important from my client's perspective.

My client's property was in an R-40 zone. And, the original site plan that Mr. Bovino referenced in 1999 showed a 35' buffer as required for I-1 that abutted residential. It could be an existing

buffer or vegetation if adequate. So that was shown and approved on the site plan originally in 1999. (Submitted)

In 2002 they modified the site plan. They came before you to put an addition on. Again the 35' buffer is shown.

About ten years later Mr. Fragola unhappy that the leaves were coming on to his building from the trees, cuts down some trees. My client is very unhappy about that. This is important from my client's perspective because it is out on the range, but having the view now of the factory --- what was a very well-established tree line with mature hardwood trees 40 to 60 foot, all of a sudden having a view of the factory really changes the landscape. Before and after photos submitted from 2012 by my client were in conjunction with a notice of violation that Mary Savage issued.

After that, there was back and forth between the property owners with Mary Savage as the broker. It came before the PZC because finally the parties to agree 16, 16-foot trees. I understand there was trouble maintaining them but that is what was agreed to.

In 2012 with no application pending he was still under the 2002 site plan and he had no right to take down that buffer. He had to come back and modify if he wanted to do that. I have a recording of that hearing in 2012 and basically that agreement was on the record and it was a condition that the applicant tonight agree to plant those in order to take care of that notice of violation. That's a condition that in my opinion could still be enforced by the condition because in 2015 when they came before the PZC, there was the change of zone that had preceded that which changed the property to the West Street Business Zone which has a residential component to it.

My client originally was opposed to being in that zone but was convinced after lots of discussion with staff and Mark Sciota because of the fact there was this residential component they were accepting of that. They do thing this property, the highest and best use is for residential use. The expectation is that would be here and it would be developed as housing.

I do agree there is no express requirement for a buffer in the regulations. The regulation says for screening of residential zones for residential developments, developed industrial premises shall screen abutting residential zones or abutting residential development with a landscaped border of not more than 35 feet wide in an industrial zone.

I understand when you adopted the new zone you didn't go through and reconcile every single section of the regulations to indicate how things like buffers were going to be adjusted for a multiuse type zone like the West Street Business Zone.

I do think it is certainly within this commission's discretion to require some buffer. I don't think the intent was when you have a residential component in your newly created zone, that there can just be a warehouse building right next to your residential zone. There is noise, lights on all night for security and it doesn't make any sense.

I still maintain that as far as that original agreement is concerned, the condition that was agreed upon is still something that this commission can enforce. It was never brought to the attention of this PZC in 2015, I've gone through the Minutes, that that buffer had been removed and they were still operating under their prior site plan approval and just modifying the parts that they brought to the attention of the commission in their application. To me, that certainly is something that should've been brought to the attention of the PZC.

As far as the Temporary CO is concerned, the issue of the buffer was brought up to Attorney Meccariello last summer. That was before construction was completed. It was never addressed.

I think at this point they should be looking at doing something more than what they're proposing. (Introduced photos of the summer of 2016 when construction began.)

They show excavation right up to the property line. No protection of an area that have trees between my client's property and this one. My client feels it went over the line. Fresh cut stumps there. The idea that my client took these down is pretty ridiculous. He wants nothing more than to have a buffer there and he has gone to great lengths to try to maintain the buffer. He's come to these meetings and gone to staff and now hired counsel. He has no reason to remove trees out there. It's been stated on the record Mr. Fragola found the trees were interfering with his building.

I'll submit a copy of the transcript of that meeting.
(Submitted)

Discussion followed amongst the commissioners and Attorney Gallagher on clarification of what is disputed.

The change of zone on this property was discussed.

Mr. Chaplinsky asked: Once the zone is changed, we don't have in our regulation there is a buffer requirement between an industrial zone and a West Street Business zone. Forgetting all the other stuff going on here, is the party now responsible for maintaining that buffer after the zone is changed knowing there is no buffer requirements?

The reason for the buffer originally was because it was industrial abutting a residential zone. That's why they were

compelled to go back and do 16, 16-foot trees. After they put the trees in, the zone changed. After the zone changed, the trees died. The question is: If the applicant wanted to cut those trees after the zone was changed, could they? There is no more buffer requirement, right?

Mr. Phillips said that is what it comes down to. When the most recent addition came in, it didn't have that requirement.

Mr. Chaplinsky said this is Judge/Jury type of thing. I don't think this commission wants to get into these types of things. Staff is well equipped to make these recommendations. Mr. Phillips responded in a normal situation if we didn't have the previous history of the agreement, the first thing we would say is it is a private property issue. We don't get involved. But because they had an addition recently approved and there was a previous agreement, I wanted the PZC to have a say in this.

Mr. Chaplinsky noted the addition you are going a CO on, you are looking at today's regulations and not yesterday's. To me, I understand the complaint and the issue, had it still been residentially zoned I think they would have an issue, but in my opinion, I think staff has this under control. I think you have to go by today's regulations. I don't think it stands up any other way.

Staff's opinion is that it is the current regulations. If the property owner is willing to do something to try to re-establish some natural sort of tree line, I think that's a good resolution.

Mr. Chaplinsky again stated you have to look at our regulations as they are today. That's what you are bound by.

Discussion.

The Chair queried how the 16 trees were cut down and nobody knew.

Attorney Gallagher commented on today's regulation. One of the duties of this body is legislative in that you write and adopt the regulations. When you wrote and adopted the West Street Business zone regulation, you created a new section and you did not go through --- I understand why --- and consider how it impacts every other provision of your regulations that exist. One thing never considered legislatively is okay, it's not a straight residential zone, so does this screening still apply? We have a partial residential zone and that area could be developed for residential use.

Mr. Chaplinsky interjected: I think you are stretching. The West Street Business zone was intended to be a mixed-use zone. You are making more of the language than it is. We did consider the corridor and the impacts. It is residential with a business component. Your client does not have an approved site plan for that site, do they?

Attorney Gallagher clarified it is a nonconforming grandfathered use. Because there was never any kind of reconciliation on the buffer requirement, those matters now are at the discretion of the commission. It was never brought to your attention that that buffer was removed in 2015.

Discussion.

Mr. Chaplinsky felt we should go by today's requirements. Staff has that under control. The business owner is willing to put some sort of a buffer there that meets today's standard. My recommendation is to go with it.

Mr. Hammersley didn't feel comfortable resolving a dispute between two property owners.

Discussion.

Ms. Scalise addressed the grandfathering issue. It is not something for us to get involved in unless there is some sort of precedent on grandfathered properties in the past. The Chair advised this would not qualify as the property owner volunteered to allow this property to be West Street Business zoned. It wasn't forced upon him. Mr. Chaplinsky said here is no residential on this property that would be grandfathered.

The Chair addressed Attorney Gallagher: They propose to plant some trees. Is that something your client would be amenable to? Attorney Gallagher answered a planting of trees and perhaps the installation of a berm and some maintenance obligations. Also, what is really important, there are a few existing trees and I do think there should be a stipulation those are not to be removed and there has to be some protection for them. They've got a variance and they're 12 ½ feet from our boundary. I know we can't have a 35 buffer. We think a berm with new plantings and a commitment to maintain those. Discussion.

The Chair said if we start requiring folks to do things they don't have to do, we'd be setting precedent which we don't want to do. This is something that you and Mr. Fragola and his agents should work out on your own. We've given you guidance here tonight. Sounds like they're willing to participate in what you are looking for. You may not get everything you ask for. I don't think at this time it would be prudent for this commission to make a decision. You can reach out to staff. If Mr. Fragola decides to plant the trees he said he would, he'd maintain them because they're costing him money.

Attorney Meccariello made clear his client did not take down the 16-foot-high trees he paid thousands of dollars for. Eight died and the others are not there.

Discussion.

If this property owner wants to build a residential component on their property, they have to put the buffer in. It's their requirement to put the buffer in and it is not my client's requirement. My client already agreed to put in staff's recommendation. They're 5 to 6 feet as called out.

Discussion of the berm suggestion. We would be creating a direct waterflow and then we'd be accused of causing drainage problems.

Mr. Phillips suggested since the PZC seems to be concluding the buffer was done. It's in the past and there is nothing required. But they are willing put trees in, it would be on their own volition. Don't leave it up to staff to be involved in a private property issue.

Attorney Meccariello said it was suggested we fill in the gap from where the addition was and the vegetation was removed by others. We'll talk to staff about the species to put in. Then we will be seeking a full CO for the property.

6. ADMINISTRATIVE ITEMS

Mr. Phillips updated the commission. You have medical cannabis regulations that were approved in the past due to the change in the state laws. Most of the language is a template going around. There are different procedures in different towns. The state originally approved up to nine licenses for dispensaries and four producers.

They limit the amount of licenses. State regulations are pretty comprehensive. The qualifiers for the use of medical cannabis has increased and they want to increase demand. They're looking at possibly approve another seven to ten dispensaries statewide.

We received an inquiry and quickly filed an application for a location which is subject to public hearing so we can't discuss it.

I received another inquiry a couple of days after that. I returned the call but they have not returned my call. Maybe they caught wind there is another application before the commission.

Maybe this is the only application you'll be getting. This is your first one.

The Chair advised between now and the next meeting we should all read the regulations. Pretty straight forward. Special permit.

There are very few places in town where you can have a producing situation because of residential and other restrictions. It's the dispensaries.

I received a phone call from the newspaper on that article and I responded: No comment. I did direct him to our regulations. It was after the article came out.

This is a marathon and not a sprint. The applicant has to jump through a hundred flaming hoops with the state to make this come to fruition. It's medical use, only.

Discussion.

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7. REGIONAL PLANNING COMMISSION UPDATE

Mr. Cabata will attend the next meeting at the end of March and will report in April. They have March and May and nothing in July.

8. ITEMS TO SCHEDULE FOR PUBLIC HEARING

Praveen Dhulipalla, Special Permit application for a medical marijuana dispensary, property owned by 995 Queen, LLC, located at 995 Queen Street, in a B zone (SPU#592), March 6.

Mr. Phillips advised another is a special permit for a garage in excess of three spaces at 15 Hawks Next.

9. RECEIPT OF NEW APPLICATIONS

Mr. Phillips reported just the two public hearing items.

10. ADJOURNMENT

Mr. Chaplinsky made a motion to approve which Ms. Clock seconded. Motion passed unanimously on a voice vote.

(Whereupon, the meeting was adjourned at 8:13 o'clock, p.m.)