

PLANNING AND ZONING COMMISSION
TOWN OF SOUTHTON

MAY 1, 2018

The Planning & Zoning Commission of the Town of Southington held a public hearing and regular meeting on Tuesday, MAY 1, 2018 at the John Weichsel Municipal Center Assembly Room, 196 North Main Street, Southington, CT. Michael DeSanto, Chair, called the meeting to order at 7:05 pm.

The following Commissioners were in attendance:

Jennifer Clocks	Paul Chaplinsky
Dagmara Scalise	Susan Locks
Michael DeSanto, Chair	

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

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

Absent: James Morelli & Robert Hammersley, Commissioners

The Chair seated Peter Santago for Robert Hammersley & Joe Coviello for James Morelli. A quorum was determined.

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

MICHAEL DELSANTO, Chair, presiding:

4. APPROVAL OF MINUES

A. Regular Meeting of April 17, 2018

Mr. Chaplinsky made a motion to approve. Ms. Locks seconded. Motion passed 6 to 1 with Mr. Coviello abstaining.

5. PUBLIC HEARING ITEMS

Mr. Phillips read the legal notice into the record.

A. Beth Scarpati, Special Permit application to increase children allowed in daycare from 72 to 88, 1721 Meriden Waterbury Road, in a B zone (SPU #599).

Beth Scarpati, 65 Hidden Hills Drive, Southington, CT, applicant presented. I have been a home daycare provider for 24 years, the last 19 in Southington. I am in the process of opening a daycare

center. I have secured a property located 1721 Meriden Waterbury Turnpike. This property was an existing state-approved day care. I am here tonight seeking approval to increase the approved amount of children from 72 to 88.

Mr. Phillips advised the regulations require a super majority vote by the commission for any number of children over 25. The site was subject to a previous approval up to 72. But that was the limit of the special permit, so to increase the 72 there needs to be a vote. Less than 72, you may be looking at a zoning permit, only.

Ms. Scalise asked about the regulations related to how big the facility has to be to accommodate a specific number of children. It is a pre-existing building and I'd like to understand if it is within state regulations. Ms. Scarpati explained the size of the building is 4,560 sf. The state regulations require us to have at least 35 sf of open space per child. I have plenty of room for the 88. They do not count bathrooms, changing tables in the square footage.

(Those speaking in favor of this application)

Lou Perillo, Economic Development Coordinator, advised this site was previously the home of a daycare center. Daycare centers are extremely regulated not only by the town but the state health department.

We would respectfully request action tonight if possible because the applicant still has to go to the state and can't move forward with the local health department until the state approval. It has to come back and go through the approvals for the town. (Building code, health code)

Local resident. Local business trying to grow. The location is perfect. It's ready to go. She's doing her due diligence. We respectfully request a vote this evening, if possible.

Stephen Giudice, 876 South Main Street, Plantsville. I was involved in Penny's Playground when it went for the original special permit. This facility worked very well at that time. I support the application. I think the increase is minor for what is there.

Kristin Keska, 149 Wonx Spring Road. I have a three, almost four-year-old. It's lovely to hear there is the potential for having another daycare in town. Daycare space is tight. Daycare space is getting more expensive, so I'm hoping it is on the cheaper end.

I know that on daycare policies, you have to follow the rules. Why not support a business that's going to have to jump through hoops anyway? I see no problem in adding another business and increasing the size by 16 kids as it has to follow state rules.

Win/win.

(Anyone speaking against this application.)

None.

(Rebuttal)

Ms. Scarpati noted she had a diagram of the property. (On the screen.)

She noted the building with the parking area on the left-hand side. When Penny's Playground was here, this section she had a full kitchen and this whole section was used for storage. We have taken this out. I am not going to be using a kitchen area. We will not provide any meal prep. Parents will be bringing in all of their own food. That right there and getting rid of the storage area provides us the extra square footage we need to bring this building up to 88 children. It'd be a shame not to utilize what is there. There is a definite need in town for more daycare. Last year there was about 353 births and only 250 infant openings. That means they are available to the town, not that they're open. A definite need for it. That's why I am doing this.

Hearing no further questions, the Chair closed the public hearing.

B. About Wellness, LLC, special permit application for a medical marijuana dispensary, 30 Knotter Drive, owned by Napoli Associates, LLC, in a B zone (SPU # 596) continued from April 17

Raj Patel, 6 Greenview, Middlefield, CT. I am representing About Wellness, LLC.

The Chair noted this is a continuation of a public hearing last time and all of that information provided at the meeting is part of the record and there is no reason to reiterate. At the last meeting we had asked you to dig a little deeper with regards to property values.

(Handout passed around.)

Rebecca Augur from Milone & MacBroom, Principle Planner and Associate Planner from Cheshire, CT. She explained she is an AICP certified planner and not a real estate agent or broker. We were asked by our client to dig a little bit deeper into the impacts on property values of medical marijuana dispensaries particularly in Milford around their current facility and South Windsor. She reviewed the handout which is on file in the Planning Office.)

She concluded that using the data available, we could not find a negative impact from those two specific facilities.

Mr. Hart questioned whether or not for the Milford location that was a good sample size. Ms. Augur responded for the total number of sales, it may be a decent sample size. Again, to try to isolate what is the cause and the relationship there, I would say that is an insignificant sample size for that.

Mr. Chaplinsky referred to Page 6, for East Hartford the median is chosen and Milford is the average. Ms. Augur explained it was a data limitation. She couldn't obtain the average and could only obtain the median for that site.

Mr. Santago queried there is no way to draw a direct correlation, one way or another, to housing prices partially because it just got here. If there would be something it would have been negative or shown already. And, that in terms of trending, sales are going to be sales no matter what. If there would be an impact, people would be selling to not be there. But that's not there either from the data you are showing us. It's a normal distribution and you cannot have a direct or indirect correlation between what is being asked and what the data shows.

Ms. Augur said we saw no unusual trend line in either the number of sales or the sales prices. That is on a very limited amount of data.

Discussion.

Mr. Chaplinsky pointed out the analysis looks at single family and condos. Did you do anything with respect to business or commercial use? Ms. Augur explained no. Lease rates would be highly subjective to the property itself.

Discussion.

(Those speaking in favor of this application.)

Kristin Keska, Wonx Spring Road, spoke in favor. (Read a prepared statement.) Please refer to the video on line to hear the presentation.

(Those speaking against the application.)

Chris Palmieri, 186 Highridge Road. I already entered my own testimony. Tonight, I'd like to read John Myer's testimony as he is not able to make it tonight. (On file in the Planning Office.)

He asked for denial of the application talking about health, safety and welfare of the children in the community.

(Rebuttal)

Raj Patel concluded by saying he understood all the concerns for drug abuse. I am a parent of teenagers. Because I'm a pharmacist I've been talking with them about the misuse of prescription medication and other drugs since I can remember. I have always emphasized the prescription medication have benefit and risks and should be used responsibly.

As a pharmacist at the facility, I continue educating my patients on both drug abuse and diversion. I understand drug abuse prevention is important in communities and it is good to see the youth of Southington has the STEPs Coalition for support and education.

There was a concern about lack of oversight by the Department of Consumer Protection on the state's marijuana dispensaries. From my own experience, Southern Connecticut Wellness & Healing has had four inspections since opening in 2016 from the same drug control agents that inspect Connecticut pharmacies. I can tell you that's more frequent than the inspections conducted at the chain pharmacies I used to work for.

From both of these experiences, I can tell you that DCP's oversight is strong.

Thank you.

The Chair closed the public hearing.

6. BUSINESS MEETING

A. Beth Scarpati, Special Permit application to increase children allowed in daycare from 72 to 88, 1721 Meriden Waterbury Road, in a B zone (SPU #599)

Mr. Phillips advised the supermajority action is needed.

Mr. Chaplinsky made a motion to approve. Ms. Locks seconded. Motion passed 7 to 0 on a roll call vote.

B. Beth Scarpati, Site plan application to increase children allowed in daycare from 72 to 88, 1721 Meriden Waterbury Road in a B zone (SPR #1751)

Mr. Phillips advised staff has no concerns.

Mr. Chaplinsky made a motion to approve the site plan. Ms. Locks seconded. Motion passed 7 to 0 on a roll call vote.

C. About Wellness, LLC, special permit application for a medical marijuana dispensary, 30 Knotter Drive, Unit 1, owned by Napoli Associates, LLC, in a B zone (SPU #596), continued from April 17

Mr. Chaplinsky stated for him, the only outstanding issue is the property values. We heard about some of the data being inconclusive. This is a pretty heated issue in our state and community. One of the things that concerns me is the burden of proof to show property values are not adversely affected and with the inclusive data today.

We heard from a real estate analyst and I'm kind of wrangling a little bit on how good the data is here. Another concern is we did residential only and not commercial.

The presentation at the last meeting, Tammy, I felt like she made a predetermination or a bias. She commented: I hope the numbers come out of the right way. I was concerned. She said she had been involved with the client in the past. I felt there was a predetermination or bias. I don't have the positive feeling that the real estate data is where it needs to be to support this. Small sample sizes, residential only, inconclusive data, the bias. I cite Section 8.02.1 and make a motion to deny saying it is not consistent with the purpose and it could have a detrimental effect on property values and we just haven't seen the effect.

No second.

The Chair noted with no second, the motion to deny fails.

Mr. Hart said sometimes in statistics a non-result is a result in terms of correlation. If there is not a correlation, that's a result. To say this doesn't prove anything, I think is disingenuous to what it said. It said there was no affect, positive or negative. I would say a non-result is a result.

Discussion.

Mr. Chaplinsky stated the regulation reads they have the burden of proof to prove that it is not going to have a detrimental effect. I just don't feel as though the data was adequately presented.

Ms. Clock shared her findings. She feels like this has been the most detailed presentation I've ever received in my entire time on the commission. She kind of agrees with Ross. A non-result is actually a result. There is no clear evidence of loss of real estate values. There is also no clear evidence of any rising crime rate. We did not hear from any experts on the other end, I don't feel. There were no experts pointing out any facts that could clearly define how this would be a detriment. It is a very controversial issue and I see both sides.

I can't apply my opinion to that. I have to base it on the facts and experts. What I struggle with actually, and I want to ask Carolyn, can you explain why we aren't applying the federal law to this application. I'm very fuzzy on why we shouldn't. That would help me to make a decision.

Attorney Futtner responded: So, there is a letter I issued in February and I would refer back to that. It's a very convoluted issue. Basically, marijuana is illegal under federal law. Medical marijuana is legal under state law. There is an ongoing issue over supremacy under the federal law, whether it pre-empts state law. There's been a lot of waffling and no ultimate determination by the Supreme Court. Until that happens, I would say, you have to go with what the state says which is it is legal medically. And, then the town has its regulations that allow this sort of dispensary.

There is a lot of ambiguity between the federal and state law.

Ms. Clock asked, say this is approved tonight, and then recreational marijuana is legal in this state. What happens to this business? Does it remain the same wherein only medical marijuana is distributed with a certificate or is it just like free rein? Attorney Futtner said the state legislature can do what they're going to do. I don't know what they're going to do. A lot of open-endedness there. I wouldn't say it is outside the realm of possibility that you could convert a medical marijuana facility to a recreational facility if we in fact allow recreational marijuana. It is impossible to say without reading the final Bill on the state level. And, whether they approved it. Who knows?

Mr. Chaplinsky noted we have regulations on recreational marijuana that are different. I think they would have to come back.

Mr. Phillips commented our regulations for Southington that the PZC enacted in 2012, specifically references medical marijuana. There is no reference to recreational or any other item. Those facilities approved as medical marijuana facilities stay that way under the special permit, in his opinion. How the state approaches this if it approved and how it is regulated, we don't know. If that comes to pass, there will be a work in period.

When medical marijuana came along, many towns instituted a moratorium and gave themselves time to figure out how to react to it. We don't know as towns how to react if and when that type of regulation comes along.

Ms. Clock further noted we did address this issue. And, we all discussed this and it was very well thought out. I wish all of the people that've come through the past meetings, came through when we were discussing this as I feel we would've had more clarity than we do tonight.

Mr. Phillips said the template of the regulation was something circulated from town to town. That's what you experience with a major change to state law and that's why the moratorium for time to think about it and share information.

The subcommittee working on this held discussions on separation distances, the production facilities and dispensaries and then that was approved. I know STEPs was involved. At the first hearing the Minutes were provided to the commission explained Mr. Phillips.

Mr. Santago echoed Jennifer's comments. The applicant has put forth a very, very professional application and has stuck to business which is very appreciated. The applicant argued that by virtue of Section 11-23C of our regulations, applicability being there, that medical marijuana dispensaries shall be permitted in a B, CB zone, et cetera. By virtue of that being in existence, this body has already approved it for use. Therefore, the point of whether it is an approved use is moot. The only thing that we have to judge on is it in a Business zone or not, and all the other things required such as traffic, et cetera. Is that a valid argument?

Attorney Futtner said you are absolutely right. You've cited it exactly. It is an approved use and now you refer back to the special permit regulations.

Mr. Chaplinsky said the "use" can be used in town but it doesn't mean it is automatically an approved use like one that is not a special permit. We say the use is allowed if the special permit criteria are met.

Discussion.

Ms. Scalise felt the application was very well put together and thought out. And, I looked at it in the context of the other conversations about other applications that we've had and really the level of evidence or support that we request other applicants to have. This is specific to the property values discussion brought up by Paul. I actually found it very compelling to think that it is a monumental task to tease out a single effect whether to the point made earlier whether there is a business going out of business and home sales are impacted. I feel like the level that the applicants have brought, to me, it doesn't feel like they've left a lot of questions unanswered, in my opinion.

Mr. Chaplinsky felt there were a few outstanding questions. Therefore, I'll make a motion to table and allow people to look at this longer.

Ms. Scalise asked why? This is the third hearing we've had. For me, I don't have any more questions.

Ms. Locks seconded the motion to table.

Motion passed 5to 2 with Ms. Scalise and Mr. Santago opposed.

D. About Wellness, LLC, site plan application for medical marijuana dispensary, 30 Knotter Drive, Unit 1, owned by Napoli Associates, LLC, in a B zone (SPR #1749), tabled from April 17

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

E. Wonk Road Partnership, site plan application to construct an age restricted multifamily development of forty (40) units, 37 and 43 Hunters Lane, in an R-12 zone, (SPR #1732), tabled from April 17

Stephen Giudice, 876 South Main Street, office of Harry Cole & Son. I wanted to give you a quick update. We received comments from staff and we have provided responses to those comments. I know during the special permit process I did show you the renderings of the proposed buildings and at the time carports that have been revised to garages. I want to go over the renderings with you to see if you had any additional questions for me.

(Rendering of the units themselves shown.)

The garages originally were going to be carports. Now they're going to be completely enclosed with individual wall spaces.

(Rendering of the standalone garages was shown.)

The lighting along the access road was discussed. Proposed are low lights, full cut off type. Just shining down and not out. Mostly for walking and directional for vehicles.

Mr. Phillips suggested it is ready for action with the stipulation that revised plans be revised subject to the response to comments from the applicant to the planning and engineering staff received 05/01/2018.

Mr. Chaplinsky made a motion to approve with the Planner's stipulation. Mr. Santago seconded. Motion passed 6 to 1 with Ms. Clock opposed.

F. Wayne Lukonis, special permit application for a garage in excess of three spaces, 23 Mount Vernon Road, in an R-20/25 zone (SPU #597) tabled April 17

Sev Bovino, Planner, with Kratzert, Jones & Associates represented the applicant. The subject property is located at 23 Mt. Vernon Road near the intersection with Marion Avenue. It is labeled on the Assessor's Map # 39, Parcel 43, in an R-20/25 zone. (Showed the Assessor's Map highlighting the property.)

He noted the main residence and the structure in question. Oriented the commissioners to the north, south, east & west.

Open land to the north was once owned by the Crispino Family. At one time this was owned by Ralph Crispino and his wife and it was part of a large horse farm with a racetrack. That is the reason why you see all of those structures on the property.

A portion of the old barn in this location was in disrepair so Mr. Lukonis removed it and would like to replace it with a larger structure which exceeds your required maximum which is 260 sf. It is to be used for his collection of old cars.

The minimum lot area in this zone is half acre and the subject property is 1.6 acres which is three times or more of the area.

The old structure had four doors and the new one will have the same number which will face east. There is a driveway here off of Pacer Lane. You come down the driveway and the doors are facing you.

The structure will be accessed from Pacer Lane by a ROW which is separate from the one driveway serving the residence facing Mt. Vernon Road. Explained.

This application is based on Section 2-01. A and Section 8 of the zoning regulations. An area map was provided with property owners and addresses. The appropriate notification was done. The ZBA granted a small rear yard variance to the 10' required distance. In this area here, the separation distance is supposed to 10'. It was 9.8' as an existing condition. When Mr. Lukonis extended the structure, it became 8.6'.

The applicant would like to apologize for starting the work however, he feels that if granted, the structure will be better than the old one, compliment the other structures on the property and keep the New England feel and look of the area.

The applicant also feels that the structure location will not have a detrimental effect on the public health, safety and welfare or property values of the neighborhood.

He showed additional maps and pictures: overall property map, schematic by the applicant of what he is proposing, view looking from the east at the four garage doors, photo of the concrete work that has been done there, kinds of cars Mr. Lukonis intends to store in the structure. He has a business in Meriden where he actually works on the cars. These are his personal cars.

Mr. Phillips advised this is ready for action. The ZBA approved a variance for rear yard on 04/24/2018. There is no affidavit on file for conducting no business, but that's something extra we've gotten over the last applications, so I would recommend if you desire to approve it, the stipulation be that it is not to be for business use.

Mr. Chaplinsky made a motion to approve with the Town Planner's stipulation that it is not to be used for business use. Ms. Locks seconded. Motion passed 7 to 0 on a roll call vote.

7. ADMINISTRATIVE ITEMS

* Art Rich, site plan modification application for mixed use – commercial/residential, 441 North Main Street in a B zone (SPR #1753

Mr. Phillips introduced the application. If you are supportive of it, it is not a complicated application but your regulations, under your general business zone regulations, Section 4-00.10 states that the mixed use of an existing residential structure for both residential and business purposes may be allowed in framed or non-framed structures designed to not be more than two stories in height with commercial use limited to the ground floor following site plan approval in accordance with the provisions of Section 9.

It doesn't allow us as staff to actually approve it, but we do it by administrative.

The intent is to have Psychic Services, a party in town, relocating and they want to live in the same structure on the same floor.

The Chair explained the property as the Old Elliott Household near Stop & Shop.

Consensus was given for the use.

8. ITEMS TO SCHEDULE FOR PUBLIC HEARING

None.

9. RECEIPT OF NEW APPLICATIONS

- Art Rich
- Volpe & Sons for almost a 5,000-sf building to house tow trucks in lower level and offices on the main level at 796 South Main Street.
- 2156 West Street, LLC for site plan for 23,000 sf retail office building at 2156 West Street.
- Robert Votilla, site plan application for construction of a 3,000 sf one story building to be used to store automobiles at 30 Industrial Drive.
- Midland Retail, site plan modification to allow a 40' high flagpole and associated up lighting at the AAA site.

Your regulations state that if the flagpole fall radius, if it can fall outside of the property line, you have to super majority vote it.

10. ADJOURNMENT

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

(Whereupon, the meeting was adjourned at 8:10 o'clock, p.m.)

