

**WOLCOTT PLANNING & ZONING
PUBLIC HEARING AND REGULAR MEETING
WEDNESDAY, MARCH 3, 2010
TOWN COUNCIL CHAMBERS, 6:30 P.M.
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MINUTES

PUBLIC HEARING

Note: These are summary minutes. A tape recording of this meeting is on file in Wolcott Town Hall, Commission Secretary's Office.

Chairman Ray Mahoney called the Public Hearing to order at 6:30 p.m. with the Pledge of Allegiance and attendance was taken.

Roll Call Attendance

MEMBERS PRESENT: Pete Carmody, Bill Olmstead, Ray Mahoney

MEMBERS ABSENT: Cathe Sherman, Sam Zotto

ALTERNATES PRESENT: Chris Edquist, Vanessa Malena, Rich Delpier

ALTERNATES ABSENT: None

ALSO PRESENT: Dave Kalinowski, ZEO

PERMIT APPLICATIONS

1. #10-432 John Jensen – Special Use Permit for a 40' x 60' garage at 671 Spindle Hill Rd.

Attorney Bruno, representing the applicant, said this is an application for an oversized garage and this property has a long history that starts in the year 2000. He said they have gone through a number of issues over the years and as you may all know the garage has been built. He said when the application was first filed in October 2000 it was as a barn and the application stated for storage, parking and "garage". It should have been for a garage and nothing else. He said there was a lot of miscommunication between the applicant, the different members of the commissions and the Building Officials. He said a building permit was issued for a 40' x 60' garage, a zoning permit was applied for and approved, however it was crossed out and denied and not sure of that date. Attorney Bruno said a denial letter was sent to the ZBA on 10/24/00 without sending denial notification to Mr. Jensen and in November 2002 he applied for a building permit for a 60' x 40' barn. He said Mr. Jensen was not aware there was a problem at this point and he gets a permit and starts to build in Spring 2003. He said in April there was a footing inspection, everything was fine and he finishes the barn then in October the Z.E.O. sends a letter that he is in violation and he was advised that he could appeal to the Z.B.A. He said the applicant filed for a variance and the Z.B.A. granted the variance even though they did not find a lot of evidence of a hardship. He said this went to court and the judge sustained the appeal and said that the variance is no good. He said the judge, in his decision, said he could not find substantial evidence for a variance. He said Mr. Jensen said, what do I do now, tear this building down, it doesn't make sense. Attorney Bruno said as a barn he can't have it but as a garage he needs a special permit that's why we are here. He said the garage is 1,200 feet off front of road, 60 feet from the side yards, 200 feet from the back side.

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He said this is a 5-1/4 acre parcel. Dave Kalinowski, ZEO, said this transpired before his time but when he did come aboard that Atty. Bruno is right that the court asked him to comply and that a 1200 square foot barn is allowed in our regulations but a 2400 square foot barn is not. ZEO said the hardship was not granted, it was taken away. He said they asked Mr. Jensen to remove half of the barn, but Mr. Jensen chose to build another 1200 square foot barn onto the property. He did take out the proper permits and did build said barn. ZEO said oversized garages are a permitted use but you have certain setbacks and coverage that you have to follow. He said as far as zoning and the setbacks, site plan, Chesprocott and Wetlands it meets our regulations for this structure. He said as far as what Mr. Jensen is going to put in it, it is up to the Commission to determine what is going to be stored in it, what he is going to put in the yard, etc. Atty. Bruno said the court just sustained the appeal and it doesn't say the Jensen's have to do anything that it was up to the Town to enforce the regulations. Atty. Bruno said the ZEO has the ability to say take the barn down, then of course go back to ZBA and maybe back to court, which they are trying to avoid. ZEO said to comply would be to make a 2400 square foot barn and a 1200 square foot barn and what they are asking us to do now is to make the (2400 sq. ft.) barn into a garage. At this time Mrs. Jensen provided pictures of what the barn, garage and property looks like.

Attorney Harbanuk, representing abutting neighbor Mr. and Mrs. Santos, came forward and said this did not come before the board initially as a special permit because it would have never made it. He said when looking at the Plan of Development in this Town, residential areas should be residential, you try and preserve some open space. He said what this has become is a commercial site. He said almost any day you can drive by Mr. Jensen's driveway and see vehicles for sale and there are vehicles being worked on, on the premises. He said the question he has to ask is you have a 3 car garage attached to the house, a 1200 square foot barn currently for storage and now you are going to have a 2400 square foot garage. He said could it be allowable, yes, but we are here for a special permit, it is not a permitted use per say. He said detached garages in the Town of Wolcott are limited to 650 square feet and in this case you have twice that with the barn and four times that with the garage and if it was in your neighborhood you would not like it. He said there is a noise factor, there is work going on in the garage, there is dust from vehicles being moved in and out. He is questioning the use and what a neighbor has to put up with and also the value of the properties. Mrs. Santos said it seems like it is an auto repair shop, there are flatbeds going in and out, noise, etc. and as a taxpayer she feels she is entitled to peace and quiet and enjoy her property. Mrs. Santos said how many garages can one person have and it seems like the Town of Wolcott doesn't go by the rules and regulations. She said in the summer there are quads racing up and down and the dust that is in the air and the noise is incredible. She doesn't think it is fair to have to live like this because she cannot even sit outside. She said someone should go up and investigate what is really going on there. Attorney Harbanuk asked if the Commission waived any of the provisions in Section 31 and Ray Mahoney said we didn't waive any. Attorney Harbanuk said you have accepted the application and when accepted you need a complete application. ZEO said we accept it for review, we have to accept an application given to us, and this is the process now with the public hearing. ZEO said we are reviewing this application, listening to all comments and then the Commission will make a determination on the application that is before us now. Attorney Harbanuk asked if any of the documentation or mapping was

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waived. ZEO said the plot plan has been submitted and the stamp from Chesprocott has been submitted. Ray Mahoney said we have received the statement of use, the site plan, we did not receive any architectural plans, the application fee was paid and a paid tax statement was received.

Attorney Harbanuk said you did not receive topo maps so the application is not complete. He said the normal size garage allowed under zoning, as of right, is 650 square feet and you are looking at 4 times that. He said when looking at the overall Town Plan of Development he does not feel that this follows that for a residential zone. Bill Olmstead asked Atty. Harbanuk to show him where in the Plan of Development this garage does not apply. Atty. Harbanuk said he does not have the Plan of Development with him but in terms of what the Town is looking for as far as not disturbing the topography, keeping premises open, treed, open space in a rural setting he does not think you get that when you are loading premises up with garages. Atty. Harbanuk said he is not saying it doesn't comply with the Zoning Regulations but there is a separate document called the Plan of Development that he doesn't think it complies to. Bill Olmstead said that what is before us is not an issue of unruly neighbors or what he is doing is wrong or right, what is before us is an approval for a garage. Vanessa Malena said the applicant meets all setback requirements from the property edge, etc. Attorney Harbanuk said it is an application for a Special Use Permit, which is not an as of right matter and if you look through it (Section 31) there are all sorts of conditions you can place on it. He said the reason you come in for a Special Use Permit is to demonstrate that it fits with the character of where it is going, not just I can do it because I am within the setbacks. Atty. Harbanuk said the court ruled against this applicant (read the decision from the papers Atty. Bruno provided) and indicated that it had to come into compliance. He said on April 3, 2008, after many calls from himself to the Town of Wolcott, Mr. Kalinowski sent out a letter indicating that he (applicant) had to come into compliance and we are here two years later and it hasn't been done. Mrs. Santos said at the time this was all going on the applicant said it was a hardship for him to take down the building but in her opinion if it was such a hardship why did the Town of Wolcott give him a permit to build another structure if he did not have the money to take down the existing structure.

Armenia DePinho came forward and said the applicant is not asking to build, it is already built and he is going about it backwards. She said you do not put up a building that is not correct and then try to get a permit for it. She said the setbacks that the attorney stated that it is 60 feet off the side properties, it is not. She said it is only 20 feet off her property. She said she has all windows in the back of her house and you can see the whole structure and what looks like a junkyard. There are garages and cars everywhere. She said she has well water and is worried about what is being done in the garage and she is afraid that the oil will get into the soil and come into her well. She gave the Commission permission to go on her property to view the structure from her side. She said at the time this was being built she called the Town and asked what was being put there because at the time she did not believe it was in the specs of the Town. She said she was ignored and she came to the Town and wanted to speak to Mr. Smoil and nothing was done. She agreed with Mrs. Santos as far as the noise issues. She said this is not a barn it is a steel commercial structure. She said there are tractor trailers bringing cars in and out. Vanessa Malena asked if she ever called Mr. Kalinowski to report this activity and she said no the few times she saw it was on a Saturday. Mrs. DePinho said it does affect her quality of life. She said he does have a quad track on the

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property and they were going around the track till 10:30 at night. Pete Carmody said listening to both parties concerns it is not the structure that is the actual issue it is the use of the land. Mrs. DePinho said he was absolutely right, the structure, the size of it and what it is used for. Pete Carmody said we are here to determine whether we are going to allow the building. He said the uses of the property and what is being conducted there would be turned over to the Zoning Enforcement Officer to enforce the regulations. There was a brief discussion as to whether there would be a problem if they had horses in the barn and Mrs. DePinho said she would not have a problem with that but she does with the size. Bill Olmstead said maybe there can be some compromise as to the uses and conditions can be put on this. ZEO said we are here to ask these questions as to what do you plan on putting in this garage, what do you have there already, etc. He said as far as the quads go there is a noise ordinance in Town and the Police Department has a machine to check the decibel levels of noise. He said there are regulations for the protection of the people in this town but it needs to be brought to our attention so it can be investigated. Atty. Harbanuk said the size of the structure certainly facilitates his ability to continue to carry on with the (current) activities and that bothers him. He said the bigger the structure, the more cars and so on. Atty. Bruno said obviously there is no commercial work going on there as Mr. Jensen has a business in Waterbury where he does his work. He said the quads and cars can be in the garage, they are registered. He said there is nowhere in the regulations that limit the number of buildings you can have on your property (as long as you do not go over lot coverage allowed). Vanessa Malena asked what was being stored in the garage and Atty. Bruno said his cars, quads, tractor for mowing lawn. ZEO said he has forwarded this information to the Town Attorney and we should have a response by next meeting.

There were no more comments from the public or the commission and the public hearing was kept open to receive Town Attorney's information.

REGULAR MEETING

At 7:30 p.m. Chairperson Ray Mahoney called the Regular Meeting to order and roll call attendance was taken. (Same as public hearing attendance listed above).

At this time Chris Edquist and Vanessa Malena were seated as a regular member.

PUBLIC REQUESTS

Norbert Przybyl came forward and said he bought the property at 25 Nutmeg Valley Rd. in 2007. He said there were two tenants in there at that time, an auto repair shop and some type of machine distribution center. He said the auto repair shop moved out in January 2010 and he has 2500 square feet available for rent. He has someone that is showing interest in renting but the application he filed with the Town was rejected. He believes the Town of Wolcott Industrial Park is designed to help move small businesses into town. He said any restrictions or regulations by the Town which prevent small business owners from activity growing not only has a negative impact on business but also prevents other businesses from relocating knowing that the Town does not

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create a business friendly environment. ZEO said what they came in for was a repair license and it requires 40,000 square feet of property designated solely for that use along with frontage and direct access to Route 69. Vanessa asked if he could rent the space without applying for license and ZEO said he wanted a repair license so he could sell vehicles too. Mr. Przybyl said that the industrial park is made for small business owners. He said you have Maaco and other repair shops surrounding his company (grandfathered in). ZEO said he explained why he could not have a repair shop there. Mr. Przybyl asked what he can do to make some kind of adjustment to make use of his space. ZEO said there are multiple uses listed under Schedule A of the regulations that the property can be used for. Vanessa Malena said if she understands it right the applicant can go in that space for automotive repair only, no repair license.

APPROVAL OF MINUTES

Upon **MOTION** by Pete Carmody, seconded by Vanessa Malena, it was unanimously voted to **APPROVE** the minutes from the 2/17/10 Regular Meeting.

APPROVAL OF BILL

There were no bills at this time.

CORRESPONDENCES

Pete Carmody said we received a correspondence dated 2/25/10 that is a civil summons from the State of Connecticut Superior Court that addresses the Musco Propane issue at 585 Wolcott Rd. He said there was another correspondence dated 3/3/10 from Anderson Alden Hayes and Ziogas regarding the Cedar Ridge Subdivision (1732 Wolcott Rd.)

SUBCOMMITTEE REPORTS

There were no Subcommittee Reports at this time.

OLD BUSINESS

- 1. #10-430 Musco Propane – Site Plan Application (and Zoning Permit) for (4) 10,000 gallon above ground propane storage tanks at 585 Wolcott Rd.**

Ray Mahoney said we are waiting for an Inland Wetland decision on this. ZEO said he has been in contact with the applicant's engineer and they are modifying the plans to meet our setbacks. He said once that is done they need to file with Inland Wetlands. ZEO said we have a time frame to meet in scheduling the public hearing and can do so at the next meeting. Bill Olmstead said it was brought to our attention, by the Attorney, that Mr. Petroniro wants to expand his wholesale of propane. Bill Olmstead said when Mr. Petroniro first applied for his building permit (existing 30,000 gallon tank), he stated it would be for loading his own tanks, retail only. He said after the

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last meeting some of the citizens in attendance said he is wholesaling at his location and they want to know what the Commission is going to do about it. ZEO said the application before us is to install 4 tanks and we are saying “are the 4 tanks for wholesale or retail and if wholesale is going on there now”. Attorney Salvatore said the letter Mr. Olmstead is referring to is from 2006. He said at that time the intent was to load his own delivery trucks but since that time business has progressed and there is wholesale distribution consideration with this (new) application. He said he does not believe there were any conditions placed on the granting of the prior permit. ZEO said it is his understanding that he is wholesaling right now and Atty. Salvatore said no, the intent is with the new proposal to wholesale. Chris Edquist said he is wholesaling there and Atty. Salvatore said he knows they have made these comments in the past but he cannot confirm or deny that. Ray Mahoney said that Atty. Salvatore was the one that told the Commission at a meeting that he was wholesaling. Atty. Salvatore said he (Ray Mahoney) was the one who said there were trucks going in and out of there and Ray said but you confirmed it. Atty. Salvatore said yes but his point is that with the prior permit (in 2006) there were no conditions attached that said no wholesale. Pete Carmody said the 2006 letter is very misleading and it lead the board at that time to believe that this was going to be a retail business not wholesale. He said when the owner is stating that it is retail and then when the business gets established to go ahead and take it upon himself to create a wholesale business, (is not right). Vanessa Malena said she thought you are not supposed to talk about the past and Ray Mahoney said right now we are talking about the wholesale. Vanessa asked if that has to do with the 4 (10,000) tanks. ZEO said certainly with the installation of more tanks, this Commission has to asked themselves are the tanks there for retail or for wholesale, which is not a permitted use. ZEO said if wholesaling is going on now certainly we have a problem. Atty. Salvatore said taking a letter that was written in 2006 and applying those factors to the current application is contrary to any regulation or claiming that the applicant was misleading. Bill Olmstead said we owe it the people of the Town to talk about someone who is breaking the zoning rules. Vanessa Malena said that is up to Mr. Kalinowski to address if he is not in compliance and she is still confused about C16 and C17, (permitted uses), but as a Commission we have to look at what is he asking for now and is he going to comply. Ray Mahoney said that if he is just doing retail, like the letter claims he is, he does not need any more tanks. Ray said he can see the trucks there loading up on his way to work and they do not say Musco on them. ZEO said to clarify this, certainly if he is installing these tanks for a use for wholesale this Commission has the right to say you have plenty of propane there now and do not need the additional tanks. Atty. Salvatore said the wholesale distribution of propane could be considered under C16 and C16a. Ray Mahoney said not according to the letter from Tony Panico, (previous Town Planner). Atty. Salvatore said that is up to the Commission to decide what the intent of the regulation is and if they decide to take Mr. Panico’s word that is the Commission’s authority to do so. Atty. Salvatore said their position is if the wholesaling of propane is prohibited, why didn’t the regulations say it and their position is that the regulations are ambiguous. Pete Carmody said their (Musco) statement of use dated 1/28/10 does not say what their intent is, whether to sell wholesale or retail. ZEO said this can all be clarified at the time of the Public Hearing.

2. #10-432 John Jensen – Special Use Permit for a 40’ x 60’ garage at 671 Spindle Hill Rd.

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Ray Mahoney said the public hearing was held on this tonight and this was tabled until the next meeting when we should have a letter from the Town Attorney.

NEW BUSINESS

1. Discussion of 3/17/10 Regular Meeting

Ray Mahoney said he would like to reschedule the 3/17/10 Regular Meeting to Monday 3/22/10.

Upon **MOTION** by Pete Carmody, seconded by Vanessa Malena, it was unanimously voted to **RESCHEDULE** the 3/17/10 Regular Meeting to 3/22/10 at 6:30 p.m. in the Council Chambers.

Ray Mahoney said at that time (on 3/22/10) we will continue the public hearing for #10-432 John Jensen – Special Use Permit for a 40’ x 60’ garage at 671 Spindle Hill Rd.

2. #10-433 Robert and Christine Wright – Special Use Permit for a Daycare/Preschool Facility at 1790 Meriden Rd.

Upon **MOTION** by Bill Olmstead, seconded by Chris Edquist, it was unanimously voted to **ACCEPT FOR REVIEW** #10-433 Robert and Christine Wright - Special Use Permit for a Daycare/Preschool Facility at 1790 Meriden Rd. and **SCHEDULED** a Public Hearing for 3/22/10 at 6:30 p.m. in the Council Chambers.

3. #10-435 Amy Patterson – Site Plan Application for a Nail Salon and Spa at 1627 Meriden Rd.

ZEO said this is for a different use for this address but it meets the parking and it still has to go through the Zoning Office, Sewer and Water, Fire Marshal, Bldg. Official.

Upon **MOTION** by Chris Edquist, seconded by Pete Carmody, it was unanimously voted to **ACCEPT FOR REVIEW** #10-435 Amy Patterson – Site Plan Application for a Nail Salon and Spa at 1627 Meriden Rd.

Upon **MOTION** by Bill Olmstead, seconded by Vanessa Malena, it was unanimously voted to **APPROVE** #10-435 Amy Patterson – Site Plan Application for a Nail Salon and Spa at 1627 Meriden Rd.

ZONING ENFORCEMENT OFFICER’S REPORT

ZEO said we have a letter from Beachwood Estates (Eva’s Terrace) asking for an extension on their road bond and that it would be completed by July 1, 2010. His recommendation is to let the

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developer complete the road and July is a reasonable timeframe. He said that Bill Beausoleil has come in with a site plan to install a well only at this time on Red Fox Run.

ZEO said Mark Possidento is our Consulting Engineer and has been for approximately 3 years now. He said the Town is going to hire him to work on some inspections for state projects and he wanted the Commission to know he is who they should call if they have any questions. He said if they have any problem with using Mr. Possidento or if they have someone else in mind certainly we can discuss it. He said if they have no concerns he will continue to use Mr. Possidento. Bill Olmstead asked the ZEO if he was happy with him and he said yes. Vanessa Malena said then we use him.

ZEO said to address Bill Olmstead's issue on wholesale at Musco Propane if in fact they are conducting a wholesale business he would probably ask for a second opinion from the Town Attorney before addressing a letter to Musco. He said certainly when this application was filed in 2006 it was for retail and if there was a change of use to wholesale they should have come before us.

Rich Delpier asked the ZEO if the old barn, where the new youth center will be, is going to be torn down. ZEO said the barn itself is staying and the youth center will be going behind the barn. He believes the site plan for this will come before the Commission as soon as it is ready.

ZEO said we have received a grant for the Plan of Development review. He said we are looking at utilizing everyone in house along with Mark Possidento in reviewing this before bringing it to the Commission. He said he should have a rough draft for the Commission's review within the next couple of months. He said it should save a substantial amount of money by doing it in house. Vanessa Malena asked if they could get involved and ZEO said we have room for one more on the committee for this.

Rich Delpier asked if water from Route 69 going up to the High School is a rumor. ZEO said that is being looked into but to carry it from Pat's IGA to the High School you would need a pump station and they are looking at a grant for this.

EXECUTIVE SESSION

There was no Executive Session at this time.

ADJOURNMENT

Upon **MOTION** by Pete Carmody, seconded by Chris Edquist, it was unanimously voted to **ADJOURN** the Regular Meeting at 8:25 p.m.

APPROVED:

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Ray Mahoney, Chairperson
Planning & Zoning Commission

Edna Henderson, Recording Secretary
Planning & Zoning Commission

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