

**WOLCOTT PLANNING & ZONING
PUBLIC HEARING AND REGULAR MEETING
WEDNESDAY, DECEMBER 19, 2012
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 then attendance was taken.

Roll Call Attendance

MEMBERS PRESENT: Cathe Sherman, Chris Edquist, Rich Delpier, Ray Mahoney

MEMBERS ABSENT: Pete Carmody

ALTERNATES PRESENT: Mike Bokon, Virginia McHugh, Sean Cleary

ALTERNATES ABSENT: None

ALSO PRESENT: David Kalinowski, ZEO

PERMIT APPLICATIONS

- 1. #12-479 John Cummings – Special Use Permit for a Bakery at 450 Wolcott Rd. (C-1a & C-4)**

ZEO said the proposed application is for a bakery at 450 Wolcott Rd. and we have approval from Sewer and Water and Inland Wetlands. He said once this special use permit is approved then the applicant would need a zoning permit and then Chesprocott would need to sign off. Mr. Cummings said everything here would be baked goods (cupcakes, cookies, cakes, éclairs) and he will not be using a fryolator. He will be doing a retail store front in which people can come in and pick up. He said there would be no seating right now but possibly in the future if business is busy he may want to expand to a vacant unit next to him. Rich Delpier asked about truck deliveries and Mr. Cummings said he is not doing any breads or any wholesale it will be retail customers only (and deliveries would be just small box trucks).

At this time there were no more comments from the public or the Commission and the public hearing was closed on application #12-479.

- 2. #12-481 Dave Fitzpatrick – Special Use Permit for C-14 Fitness Gym at 1078 Wolcott Rd. and other uses as permitted in accordance with Schedule A.**

Chairman Mahoney said there were correspondences from Chesprocott stating there is an adequate area on the lot for a code compliant septic system for the proposed uses, a letter from Dorothy and Tom Smith stating their concerns pertaining to noise, vibration, fumes, safety and health and a letter from the building official stating there is no apartment on said site as there is no water, heat, insulation or sheetrock on second floor. ZEO said he spoke with Jeff Rizzo from D.O.T. and he

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was happy with the site improvements and did not see any issues with the proposal and his only recommendation was that the site line, exiting from Bound Line Rd. onto Wolcott Rd., remain the same (a clear view). Dave Fitzpatrick handed in pictures showing improvements to date, etc. He said his main goal is to get the gym back up in operation and will be moving the gym from 2 (North St.) to 1078 Wolcott Rd. He said the rest of the property will be to get renters in for office space or retail space in other building. Rich Delpier said he noticed that the parking lot previously always had water in it and in the plans there was a storm drain so he wanted to know where it was going to drain. Mr. Fitzpatrick said the drain has been removed and he had Jeff Rizzo from the State there to go over water distribution. Mr. Fitzpatrick said the elevation was totally off and they brought the grade up 6" to the building. He said if you had come over today you would see there was no water buildup even after the rain. He said at this time he is just proposing the stock bins but not sure if he is even going to put them in and it would be just to supply his own trucks and maybe a pickup load or so for retail. His deliveries would be by a tri-axle. ZEO asked the applicant what his plans are for paving and Mr. Fitzpatrick said hopefully by end of next year or two years from now. He said right now he wants to see how things go with getting this building up and running. ZEO said it is really up to the Commission but we would certainly like to see asphalt on the entrance way up and parking spaces identified (as He said we have tried it with millings and process and it doesn't stand up. ZEO asked if they planned to change the stockade fence in back of property along a residential area as with cars coming in and out the lights could reflect against the residential house. Mr. Fitzpatrick said the fence is in bad shape and he would like to replace it with a maintenance free one and maybe some kind of pine in front of fence but it is going to take time. Cathe Sherman said we have seen an improvement (on the building) already but she would like to see some architectural plans. Mr. Fitzpatrick said he knows you have to have something aesthetically nice if you are looking to rent space and is still batting around the ideas for the front of the building. Chairman Mahoney said there are requirements for the Route 69 Corridor so you should make sure of what is okay before spending more money. ZEO said it could be a condition that the architectural be submitted and approved prior to certificate of occupancy. ZEO said that even though the plans show for 2 apartments upstairs the applicant is aware that the regulations do not allow for apartments in a general commercial zone.

Tom and Dorothy Smith came forward to voice their concerns. Mrs. Smith said she submitted a letter stating her concerns and that she had 13 concerns. She went on to discuss her concerns being toxic fumes, parking spaces (5 spots near her house) as it causes a nuisance to her living space by vibrations (from idling vehicles), honking horns, etc. Chairman Mahoney asked if she was referring to traffic from Bound Line Rd. and she said no it is from just the 5 (parking spots) in front. She said the diesel vehicles have poor exhaust systems, there are blasting stereos and slamming doors. She said she is unable to sleep, sit on the couch, watch TV or have a conversation due to the constant noise or vibrations. She is concerned about intruders entering her property day and night and a stockade fence is not sufficient enough (to stop intruders). Tom Smith said there was a drainage pipe coming onto their property but the applicant said (earlier) that he removed it. She was concerned with overnight stays or tenants on the property and was told it is not allowed. She had an issue with the hours of operation and wanted them to be cut back. She said she was concerned with loitering along with the mischief, noise, etc. ZEO said this would be a police issue and they would have to address it. She also opposes the mulch bins for some of the same reasons listed above. She also asked that if they have illuminated signs they be directed away from her

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property. She said she had no problem when Wolcott Tire was there, she only had a problem when the nephew (Jay) took over, which was for like a 5 year period.

Florence Fitzpatrick came forward and said years ago she bought a home and it is surrounded by businesses and if anyone thought through what they were going to buy in the first place and they wanted peace and quiet then they should never choose an area where there is commercial property. She said she is at the gym (North St.) as the grandmother and she said there has never been a problem in the 3 years they have been there (from gym members or neighbors). She feels the town would be happy to have a business that is growing to help the taxes and to beautify the area.

At this time there were no more comments from the public or the Commission and the public hearing was closed on application #12-481.

3. #12-476 Beach Building LLC – Special Use Permit for a 140 Unit Assisted Living Facility at 50 Beach Rd.

Chairman Mahoney said there were correspondences received from the Consulting Engineer regarding his comments on the revised plans and stormwater management report and stated his concerns have been adequately addressed. He said there was a letter from the Fire Marshal stating he and the Fire Chief have reviewed the revised plans and approve of the corrections made. He said there was a letter from Chief Stephens stating he has reviewed the traffic impact study, performed a site visit and said he has no concerns going forward. He also said there was a letter from Chesprocott that said any wells that need to be abandoned must be done by a Connecticut Licensed well driller and prior to new construction the location of wells should be verified. Attorney Roberts said they have the market study that was requested at last meeting. He said that the study shows that based on census data for the general area the expectation is that over the next 20 years the population 65 and over will increase roughly by 65% and the population 85 and over will increase by 70% and assisted living facilities already have an existing demand and the demographic changes that are anticipated will only increase that demand. Attorney Roberts said if there are any lingering concerns about the wells on the property they certainly welcome abandonment in accordance with the regulations as one of the conditions. He also said they intend to comply with all the requirements of (regulation) #32.2.7 including the age restrictions, the amenities will be provided including private transportation for doctor's visits, etc. He said he wanted to touch briefly on the reference at last meeting that the plans did not show wetlands that were shown on two other plans that had previously been filed. He said the two other plans previously filed don't include this (particular) property which is why (the plans) don't match. He said the wetlands as they exist on the property that is the subject of this application are properly shown. He said there are wetlands on other pieces of property nearby that are not shown because they are not part of the application. He said the other thing mentioned at the last meeting was an allegation that Evas Terrace was an illegal re-subdivision and the definition of such under Title 8 – Section 8-18 which states because the changes between the approved map and final map did not involve either a change to public rights-of-way or result in the increase in the number of lots in a subdivision it doesn't fall within the statutory definition of a re-subdivision. He said whatever was done was probably an administrative lot line revision that doesn't require a public hearing before the Commission or their approval. ZEO said what happened years ago with the lot line revision is when the developer put in Evas

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Terrace he constructed a house and when the house was completed he did an as-built which showed the house was only 3 feet from the property line and did not meet the side yard setbacks. He said in order for him to meet the setbacks he had to remove the house completely or go to Z.B.A. He didn't do either and chose to negotiate with the property owner (which is where the assisted living facility is). He said at that time the developer did lot line revisions which did not create an additional lot and it did not change the public access way and did not change anything reserved for public use. ZEO said this access way is for emergency apparatus only. Cathe Sherman said there was a letter received from Mark Possidento where he seems to be satisfied with all the concerns but he does have some slight concern with stormwater drainage onto Beach Road. Attorney Roberts said that the new proposal would reduce the amount that goes into the system and they are not taking any obligation to rebuild the town's drainage system.

ZEO said during this application process he looked at the regulations as far as coverage and in an R-30 zone you are allowed 15% coverage for first floor and 20% for total coverage. He said when he checked the numbers on the map he came up with less than what was on the plans. He said it was because the (applicant) included the basements areas in the coverage and we have never included basement areas before.

Dennis Cleary and Attorney Pilicy came forward and said he had an email from Chesprocott that there have been no permits pulled to abandon the wells on the site or a copy on file. Mr. Cleary said he does not concur with the last comments from the ZEO (regarding coverage). He said when he reviewed the maps dated 12/4/12 on file it has a number of reductions from the total square footage of the current project, calling them out as basements. He believes that under the zoning codes and regulations they are not basements. He said the entire project has approximately 3,000 square feet of basement and (the applicants) calculations come up with some 15,000 square feet of basement that they are reducing off of the footprint (according to map SP-2). Mr. Cleary then went on a lengthy discussion about the basement areas and the grades, the number of stories, the parking spaces, etc. and handed in pictures to back up his comments. He said he is hoping the Commission might ask the Town Engineer to go up and review the stories and what the compliance is. He then went on to discuss his exhibits (pictures he handed in). ZEO said he based his assumption on what (was on) the map presented to him and asked Mr. Cleary was his square footage on the map or is your assumption on the square footage by what, (pictures?). Mr. Cleary said his square footage is based on when the building was built, what the photographs show as what is above and what is below grade and what the regulations show as to what a story is. Mr. Cleary said that map (SP-2?) is inaccurate and believes if the Town Engineer was to investigate that it would show that it is inaccurate. ZEO said so you don't have a map you are basing it on that you think it is inaccurate because of the pictures. Again Mr. Cleary went on to discuss, one by one, the pictures he handed in as exhibits. (His pictures and his discussion mostly referred to the grading, basements and the parking spaces and what he feels does not meet the regulations). He said there is some credibility issues with the maps and maybe (the Commission) should do an on-site visit. ZEO asked if he was talking about the existing facility and is that because the existing facility is non-conforming. Mr. Cleary said yes and he believes the existing facility is non-conforming and the maps are wrong. Mr. Cleary spoke about the Ambulance letter and that it was said that night that it is the building departments issue with the size of the elevator and the generator but in his opinion the only leverage the Town of Wolcott has to get these things done is to make it a requirement under the special use

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permit. He said the zoning board can put whatever reasonable conditions on this project that they see fit for the protection of the town and he asks that (the Commission) do that when they make their decision. He said he is not opposed to this assisted living (facility) on that site as it is an appropriate site, connected with the facility, in a location that can work but he doesn't think it works as three stories in a residential neighborhood or at 140,000 square feet or at 140 units. He said if it was a two story building, 90 or 100 units with some buffer improvements then it maybe fits on that site. Mr. Cleary asked that the Commission look at what is reasonable to fit on this site and to get the non-conforming issues straightened out before anything happens.

Attorney Pilicy said one of his remaining concerns is the proposed roadway through Evas (Terrace). He said a lot line revision map is when you take a previously approved subdivision and make some lots bigger and some lots smaller. He said once you leave a roadway on the map that does not become a part of one of the approved lots it becomes a re-subdivision which can only be accomplished if there is a mandatory application and a mandatory public hearing. He said his research of the land records and zoning records indicates that this has not been done. He said it needs to be done or the roadway for access to this (proposed) site has to be taken from it. He said the map numbers are on record but clearly it meets the definition of a re-subdivision if you leave a roadway behind, it cannot be a lot line revision if you are leaving and creating a new roadway or potential future roadway. He said the next point is that a special permit must at a minimum meet the objective standards contained in the regulations and that brings us back to the debate and the opinion, both ways, on the coverage issue. He said this needs to be resolved taking into account the information submitted by Mr. Cleary. He said he thinks the pictures are credible and convincing evidence that the basement compared with the story, which is a definition in part of the regulations, has to be taken into account. He said the heart and soul of a special permit is that it must also not adversely affect the character and property values of the neighborhood. He said before the Commission goes any further they should get an opinion from the Town Attorney on the Evas (Terrace) re-subdivision issue and also to take into account the other comments that maybe this application ought to be scaled down and what conditions may be attached to this application. He said maybe the best thing that could happen would be to deny this application and then have some dialogue between the parties and staff and come back with something that would make more sense for everybody.

William Campbell from Evas Terrace came forward and said his concern was obviously on the market value and tapping into his water for this huge development. He said there should be some type of contingency if the market value of his house goes down. Kimberly Updegraff from Evas Terrace came forward and said to add to what (Mr. Campbell) was saying with contingency plans if they shut off the water to tap into their water pipes what do they do as homeowners to get water. She said the road was to be no wider than a normal driveway however on the plot plan it is marked as 60 feet, and asked if it was going to be gravel or paved.

Tim Bobroske came forward and said his property (Park of Wolcott) abuts this project and that he is not for or against this project but had three concerns. He said one is that what he read in the paper about the traffic survey in that it would only generate an additional 28 trips for that one big facility in his opinion is that seems kind of light. He said on the landscape plan where they abut he

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would like to see additional screening and buffering than what is presented. He said the third is the stormwater management. He said his property was raw land at the time he started his project and there was an issue because the water from the parking lot of the convalescent home channeled into the middle of his property and would discharge thru his property into the Mad River. He said after approaching the convalescent home because Inland Wetlands had an issue with this it was decided that an engineered filter system be drawn up on plans, etc. and the convalescent home would purchase the unit which did not happen. He said the market has turned and god willing he is hoping it turns around and he can continue (construction) with the Park of Wolcott.

Brian Plourde from Pustola & Associates said the access road on Evas Terrace keeps being brought up and during the land swap 60 feet of property was giving to the Cleary's but the access way is not going to be 60 feet wide, the maps call for 12 feet gravel. He said tapping into the water lines is coordinated with the water dept. and typically are done as a wet tap and there is no disruption to the service. Attorney Roberts said the other thing is the basement, first floor, second floor (issue). He said we counted the same number of floors that exists there, whether something was called a basement, a first floor or ground floor, its semantics, we counted it. Attorney Roberts also said in his opinion this is not a re-subdivision because it doesn't affect public roads and it doesn't create an additional lot. He said they would be willing to accept whatever reasonable conditions the Commission wishes to impose to protect the public.

ZEO said he would agree with the applicant that (the access way) is not a re-subdivision. He said with the coverage and the pictures that were presented by Mr. Cleary it would be impossible for him as the site inspector to determine the size of the building based on the pictures. However, it seems there is a conflict of measurements and square footage in coverage for the existing building. He said the regulations do allow for us to have an as-built submitted for the new facility and regulation #52.6.2 is measurement verification. He said regulation #52.9 allows the zoning officer to revoke any zoning permit that is based on a false statement on a map and he is going to base it on the engineered plan before him that is stamped, they are licensed and certified as he cannot go by pictures that were presented today for sizes and measurements.

Attorney Pilicy said again it is his opinion that it is a re-subdivision and was as soon as the map was filed and the recourse is to require a proper application before this Commission. Again he would request the Town Attorney review it and deal with it one way or another.

ZEO said that realize this is the second largest building in town, we have maps before us and a lot of testimony the last three meetings. He said we have received approval from Inland Wetlands, the Fire Marshal's recommendation and the plans have met them, we have received the Town Engineer's approval on drainage, the site and traffic and we have received Chesprocott's recommendation to abandon the wells properly. He said we also received the Police Chief's approval on traffic and the Ambulance's recommendation on the elevator shaft which can be part of the condition. ZEO reminded the Commission to review regulation #32.2.7 and to pay attention to all the information given to them the last two months and if any questions he will answer them and/or forward to the Town Attorney if they would like.

At this time there were no more comments from the public or the Commission and the public

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hearing was closed on application #12-476.

Upon **MOTION** by Cathe Sherman, seconded by Rich Delpier, it was unanimously voted to take a recess at 8:25 p.m. (The meeting was reconvened at 8:45 p.m.).

REGULAR MEETING

At 8:45 p.m. Chairman Mahoney called the Regular Meeting to order. (Attendance was taken and it was the same as listed above under Public Hearing).

At this time Virginia McHugh was seated as a regular member.

PUBLIC REQUESTS

There were no Public Requests at this time.

APPROVAL OF MINUTES

Upon **MOTION** by Cathe Sherman, seconded by Chris Edquist, it was unanimously voted to **APPROVE** the minutes from the 12/5/2012 Public Hearing and Regular Meeting.

APPROVAL OF BILLS

There were no bills at this time.

CORRESPONDENCES

There were no additional Correspondences at this time.

SUBCOMMITTEE REPORTS

There were no Subcommittee Reports at this time.

OLD BUSINESS

- 1. #12-476 Beach Building LLC – Special Use Permit for a 140 Unit Assisted Living Facility at 50 Beach Rd.**

Chairman Mahoney said the public hearing on this application has been closed and for the Commission to take it's time and review the materials submitted tonight and tabled this to the January 2, 2013 meeting. Chairman Mahoney asked the Commission members that were not here for (all the meetings) to either get a copy of the tapes to listen to them, and to read your minutes and regulations as well.

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2. #12-478 Christine Nelson – Special Use Permit for B-3 a Non-Profit Donation Center at 36 Town Line Rd.

ZEO said that Wetlands issues have not been met yet but we have 65 days to schedule the public hearing and we will go through the motions even if conditions are not met.

3. Continental Scrap Metals – Request for Site Plan Modification

Chairman Mahoney said again they have not shown up (for meeting). Chairman Mahoney said that the applicants requested their bond be released and Chairman Mahoney said he spoke to Mr. Silas and told him in order to get his bond back he has to meet everything that was on his application. He requested a letter be sent to Continental stating what has to be met for their bond release.

4. #12-479 John Cummings – Special Use Permit for a Bakery at 450 Wolcott Rd. (C-1a & C-4).

A **Motion** was offered by Cathe Sherman, seconded by Chris Edquist and a brief discussion followed. Cathe Sherman said it will not have seating or be a restaurant but she does have concerns if he does expand as far as parking. Chairman Mahoney said he does meet the criteria and is in compliance everywhere however there is another spot open in the building and if someone was going to rent that there would only be 2 parking spots available. ZEO said that when approving a special use permit it would be wise to say why you approve it and the Chairman stated that it meets our criteria however, he is at his limit for parking and we are cautioning him if they come in for another use in the building he would have to be careful because of the parking requirement. Rich Delpier said the applicant did say if his business is good he would like to put some tables there so he would not be able to and ZEO said that would become a modification to his approval which would mean he has to come before the Commission again.

Upon **MOTION** by Cathe Sherman, seconded by Chris Edquist, it was unanimously voted to **APPROVE** #12-479 Special Use Permit for a Bakery at 450 Wolcott Rd. (C-1a & C-4).

5. #12-481 Dave Fitzpatrick – Special Use Permit for C-14 Fitness Gym at 1078 Wolcott Rd. and other uses as permitted in accordance with Schedule A.

Upon **MOTION** by Cathe Sherman, seconded by Rich Delpier, it was unanimously voted to **APPROVE** #12-481 Dave Fitzpatrick – Special Use Permit for C-14 Fitness Gym at 1078 Wolcott Rd. and other uses as permitted in accordance with Schedule A with the following conditions: 1) Parking lot be paved by June 1, 2013 and the proper bond, as assigned by the ZEO, be in place; 2) Architectural be submitted and approved prior to C/O; 3) Fence along rear of property be removed and new barrier approved by this Commission be installed prior to C/O; 4) The site line remain clear as recommended by the D.O.T.; and 5) No stockpiling.

NEW BUSINESS

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There was no New Business at this time.

ZONING ENFORCEMENT OFFICER'S REPORT

There was no Zoning Enforcement Officer's Report at this time.

EXECUTIVE SESSION

There was no Executive Session at this time.

ADJOURNMENT

Upon **MOTION** by Cathe Sherman, seconded by Virginia McHugh, it was unanimously voted to **ADJOURN** the Regular Meeting at 9:05 p.m.

APPROVED:

Ray Mahoney, Chairman
Planning & Zoning Commission

Edna Henderson, Recording Secretary
Planning & Zoning Commission