

From: Carrie Vibert April 3, 2012 1:39:05 PM  
Subject: Zoning Commission Minutes 03/19/2012 ADOPTED  
To: SimsburyCT\_ZoningMin  
Cc:

ZONING COMMISSION REGULAR MEETING  
ADOPTED MINUTES - 3/19/12

I. CALL TO ORDER

Edward Pabich, Secretary, called the regular meeting for the Zoning Commission to order at 7:00PM on Monday, March 13, 2012 in the Main Meeting Room of the Simsbury Town Offices. The following members and alternates were present: Amy Salls, Gerald Post, Derek Peterson, Will Fiske, Ed Cosgrove and Vaughn Marecki. Others in attendance included Hiram Peck, Director of Planning, Leslie Faraci, Clerk and other interested parties.

II. APPOINTMENT OF ALTERNATES

Commissioner Pabich appointed Commissioner Peterson for Commissioner Pomeroy and Commissioner Marecki for Commissioner Ryan.

III. APPROVAL OF MINUTES - March 5, 2012

The minutes from the March 5, 2012 Regular Meeting were accepted with a change presented.

IV. PUBLIC HEARING(s):

Commissioner Pabich read into record the legal notice for the Public Hearing.

Commissioner Peterson made a motion to amend the Agenda in order to address each Public Hearing item for possible vote immediately following each presentation. The motion, which was seconded by Commissioner Fiske, was unanimously passed.

(A) David Mathewson, Owner, 39 Evans Drive, Simsbury, addressed the Commission, explaining he wants to add a small in-law apartment for his mother, age 87, onto his home. Mr. Mathewson continued by saying he would like a kitchenette in the apartment. He told the Commission that he has notified all of his neighbors and has not heard any negative feedback. Commissioner Fiske commented that there was a question with regards to building, fire and health code regulations and asked for clarification from Mr. Mathewson. In response, Mr. Mathewson said he contacted sewer department, fire department and health department, and no one gave him any pushback. Mr. Peck said staff would follow up on those items to make sure

everything is in order before permits are distributed. Commissioner Pabich asked what is currently in that back corner of his house. Mr. Mathewson said it is a three-season porch which will be torn down. Commissioner Pabich asked if he was on well or public water, to which Mr. Mathewson replied, he is on a well. There were no further questions from the Commission.

(A) Commissioner Post moved to approve Application #12-02 of David F. Mathewson, Owner, for a Special Exception pursuant to Article Seven, Section C8, for an in-law apartment on the property located at 39 Evans Drive (Map C20, Block 510, Lot 015E). Zone R-40. The motion, which was seconded by Commissioner Fiske, was unanimously passed.

(B) Barbara Foley, Agent, explained to the Commission that she is present tonight in order to apply for a temporary liquor permit for a one-day event (fundraiser for pancreatic cancer) on the property located at Folly Farm Stables, 75 Hartford Road, Simsbury. Ms. Foley explained this was their fourth (4th) annual fund raiser, for which they have had no issues and they have been extremely successful in raising money.

Commissioner Post moved to approve Application #12-04 of Robert E. Patricelli, Owner, and Barbara A. Foley, Agent, for a Special Exception pursuant to Article Ten, Section H, for a temporary liquor permit for a one day event on the property located at Folly Farm Stables, 75 Hartford Road (Map G15, Block 110, Lot 012). Zones R-40/FP. The motion, which was seconded by Commissioner Fiske, was unanimously passed.

(C) Mr. Knierim, Agent for Sand Hill Simsbury LLC, addressed the Commission explaining they are here before the Commission in order to obtain a zone change for the property at 16 Sand Hill Road, Simsbury. He showed a map and explained the current zoning configuration of the property. Mr. Knierim reviewed the postings and notifications for this public hearing. He also wanted to let the Commission know there had been a presentation to the Planning Commission and they gave a positive referral on the application for their proposed plan. Mr. Knierim wanted to be clear that the application tonight is to have the zoning map amended to change the two (2) lots to an R-15 zone, but it is not intended to waive the non-conforming use. He then continued by providing an ownership and use history of the property. He said, as the zoning stands now, there is not a legal use for the property that the abutting neighbors would like. Mr. Knierim again stated that they are concerned that if the zone does get changed, they will lose their non-conforming use rights. He stated that ultimately they intend to use it for a residential use, which will then automatically dissolve the non-conforming use rights, but if that non-conforming use is taken away prior to the full-approval of a residential project, it puts the Owner at great risk. Mr. Knierim said that time is of the essence, as they

would like to start construction on this proposed residential project in May of this year.

At this point, Commissioner Pabich commented on the fact that the Commission is not making a judgment based on the proposed subdivision, and that their purview is solely the zoning of the property at this point. Commissioner Fiske asked when they would propose to end the non-conforming use. Mr. Knierim replied that it would end as soon as the subdivision project is fully approved.

Mr. Michael Girard, Sand Hill Simsbury LLC, addressed the Commission and began by giving further background of the property and how they ultimately came to propose a residential subdivision for the property. Mr. Girard then described the physical attributes, specifically topography, of the property and distributed recent photos. He spoke about the slopes on the south side of the property, vegetation and the utilities servicing/available to the property.

Commissioner Fiske asked about a monitoring well and Mr. Girard said it is a domestic well that was discontinued. Commissioner Fiske then asked about fuel pumps at the property and Mr. Girard said the fuel pumps are gone, taken out last week, with the DEP involved with testing after. Commissioner Vaughn asked about further soil testing around the property and Mr. Girard told the Commission yes, they are working with Terracon, Inc. and the DEP with testing and any remediation needed. Mr. Girard said they are currently doing the Phase I, although the Phase II has already been completed.

Mr. Willet, 32 Sand Hill, Simsbury, adjacent property owner, addressed the Commission saying there is in fact soil erosion at the property, which needs to be stabilized. Mr. Willet showed on the map where his property, and his neighbors', lies in comparison to the subject property. He said the soil is migrating up towards their yards. Mr. Willet then described some of the events in the subject property's history which contributed to changing the topography of his land (settling, erosion, etc).

Commissioner Pabich asked for the engineer, speaking on behalf of the Owner, to make his comments. Kevin Clarke of Clarke Engineering, Granby, spoke about a slope stabilization and replanting plan. He said this plan has been approved by the Conservation Commission. Mr. Clarke then gave the Commission some details about the proposed subdivision (a 12-lot single family subdivision). Mr. Clarke said the restoration plan will come before any construction of the subdivision. When Commissioner Salls asked if this plan has been presented to the abutting neighbors, Mr. Clarke said no, not to his knowledge. Mr. Clarke then described the proposed conservation easement included in the plan. Commissioner Vaughn asked if there was any way to restore the eroded land to its previous state, for the sake of the

surrounding property Owners. Mr. Clarke said they will be making the slopes less steep, lessening any further erosion. Commissioner Peterson asked if there will be further tests conducted, after they complete their slope stabilization plan, to ensure the stability of the slope. Mr. Clarke said there should be no issue and no need to have any significant amount of time elapse before they can start construction.

Yelena Malakhov, 52 Sand Hill Road, said there is a small fence between her property and the Sand Hill property that needs to be restored/stabilized because she often finds beer bottles and other debris at that location, indicating kids are hanging out there, which is dangerous. When asked, Ms. Malakhov said the fence is on the Sand Hill property lot.

Thomas Brown, 30 Sand Hill Road, addressed the Commission and spoke about the research on the property he has completed. He presented the Commission members with a binder of information on the subject property. Mr. Brown said he supports the zone change to Residential, but they do not believe the non-conforming use should be allowed. Commissioner Pabich said the issue in front of the board is really the zoning and that Mr. Brown need not to go into too much of the property history. Mr. Brown said that if the Owner's representatives were able to speak with regards to the history, he should also be allowed. Mr. Brown spoke about previous issues with the property in terms of not being in compliance with codes. Mr. Brown wanted to be on record saying the building currently on the property is not conforming. Commissioner Pabich reminded Mr. Brown that the issue before them today is solely regarding the zone change. Mr. Brown replied that it is relevant because the Owner is looking to keep the non-conforming use on the property, even with the zone change.

Ms. Deborah Willet, 32 Sand Hill, wanted to put on the record that 29 years ago, when they built their home, the yard was flat, sloped to the back and tree-lined. She described their history with the previous Owners of Sand Hill property and the rules that were not followed, which contributed to erosion on her land. She also spoke of the change in the make-up of the soil and asked the Commission members to come and walk the property. Ms. Willet said it would be wonderful to have a residential neighborhood there, but the erosion issues need to be addressed first.

Jim Salomon, 40 Sand Hill Road, addressed the Commission and said they are welcoming the residential subdivision and support the zone change but not the non-conforming use. He also said he agrees there should be some type of work done to restore the damage due to past erosion.

Sue Bednarczyk, 119 East Weatogue Street, said she did not hear an answer to the question if the neighbors would be made whole in terms of the loss due to erosion on their properties.

Commissioner Pabich again said that is not the purpose of tonight's meeting, the function of the Commission tonight is to purely look at the existing zoning and to see if going to residential zone is appropriate. The Commission members agreed and Ms. Salls asked for further clarification on going to an R-15 and also on the pre-existing non-conforming use.

Mr. Knierim explained the requested map amendment and how they do not intend to give up the current rights they have with regards to the non-conforming use. Mr. Knierim said his prediction is that the non-conforming use will be abandoned by the land owner when they go to the other use (residential). The zones and uses within those zones were discussed further.

Commissioner Pabich asked about Town Staff's position on this matter. Mr. Peck said the applicant is willing to try and make the use more conforming, and they have to do it one step at a time. He continued by saying that Town Staff absolutely recommends the Commission proceed favorably with this application.

Mr. Girard said once the slope is restored, it will be less steep and much safer (addressing Ms. Malakhov's previously stated concern). Mr. Girard then presented the Commission with, and read aloud, a letter from Dr. Clarence Welti, P.E., P.C. (Geotechnical Engineer) regarding Slope Development at Proposed Grading for Sub-Division at 16 Sand Hill Road. The letter, in summary, stated that "the proposed grading and slope development is well within well recognized procedures for achieving long term stable slopes". Mr. Girard said again, if for some reason, they do not receive approval for the subdivision, he cannot then have a property without that non-conforming use, as it would have no value and no allowable use in a residential zone. He said they would like to just keep the process moving at this point.

Mr Knierim said that most of the properties on Sand Hill Road are R-15, from a contiguity perspective, it makes sense to make this property zoned residentially. Mr. Knierim then reviewed the current zoning configuration for the Commission.

Commissioner Pabich closed the public hearing. Commissioner Salls said at this point, she feels comfortable moving forward because, as Mr. Peck said, this is a necessary step in moving this project forward. She said she does see it as an R-15 property. Commissioner Pabich said, to those who came tonight as public audience, he hopes their issues can be dealt with through the Planning Commission and he hope it works out.

(C) Commissioner Fiske moved to approve Application #12-05 of Glenn E.

Knierim, Jr., Agent for Sand Hill Simsbury, LLC, for a Zone Change to R-15 on the property located at 16 Sand Hill Road (Map F15, Block 114, Lot 013 & 013A). I-3 and R-40 Zones for the following reasons;

1. The proposal is in keeping with furthering the intent of the comprehensive plan (zoning regulations and map) of the Town.
2. The proposal is recommended for approval by the Planning Commission as indicated in its memo, dated March 15, 2012.
3. The proposal will further the goal of diminishing or eliminating the use of the property, after the residential construction is complete, for excavation and use as a contractor's yard.
4. The proposed rezoning will make the property more conforming to the surrounding residential neighborhood, as much of the property is similarly zoned with much of the remainder of the property abutting Town Open Space. The motion, which was seconded by Commissioner Post, was unanimously passed.  
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#### V. PRESENTATION(s)

Ron Jeneczko, Landworks, LLC, addressed the commission with regards to the Gristmill Commons Apartment project, specifically for the conversion of the pond side deck and grilling area into a club house structure. Mr. Jeneczko showed a piece of the brownstone that was excavated from the project site, which they plan to use for facing the apartment buildings and town homes. Mr. Jeneczko explained that as they further developed the plans for the mill building, they realized there was a bit of the conflict with the parking sharing portion. As they got far along in the process with the restaurant owners, they realized that it would be a conflict to have an exercise room/great room, which was originally planned to be within the old mill building, as it could create parking problems at the restaurant's dinner hours. Mr. Jeneczko said they wanted to replicate that exercise and great/living room somewhere else within the complex. They had originally planned, and received approval for, a grilling area and observation deck near the smaller pond, so they identified it as a perfect spot to place a combined amenity area. Mr. Jeneczko walked the Commission through the site plan to show the design and layout. He explained that this solves a lot of the complex issues between the properties, although there will always be a relationship between the apartment units and the old mill building because of the concierge service, which will be located in the old mill building. Mr. Jeneczko said he sees this as a minor modification, as this whole area was planned to be completely disturbed anyway.

Commissioner Salls asked if the number of total parking spaces would be change, which Mr. Jeneczko said they would not. Then Commissioner Salls asked for further clarification on where people using the exercise room would park. Mr. Jeneczko showed her on the site plan different parking

alternatives for people around the complex. The number of parking spots was discussed further. Chris Nelson, Landworks, LLC, when asked about the restaurant tenant, said they are hoping for a June occupancy, but they are currently working through quite a few hurdles. Commissioner Pabich asked about the overall construction timeline and Mr. Jeneczko said within 18 months, they should be fully completed.

Commissioner Pabich said he does agree this is a minor modification. Mr. Peck said he agrees and Town Staff does recommend this be accepted as a minor change.

Mr. Jeneczko expanded further on the aesthetics of the final product. He then showed where they plan to have the leasing office.

Commissioner Post moved to accept the site plan change proposed by Landworks, LLC for the Gristmill Commons Apartment conversion of the pond side deck and grilling area into a club house structure on the property located on Grist Mill Lane. The motion, which was seconded by Commissioner Fiske, was unanimously passed.

#### VII. UPDATES ON:

- a. Budget - Mr Peck said there are no further updates on the budget that he is aware of at this time.
- b. Design Guidelines - Mr. Peck said they are posted on the Town web site and he asks that people get comments back to him this week so the consultant can take them into consideration.
- c. Projects for 2012 - Mr. Peck said he has a copy of the draft of the Incentive Housing Zone (IHZ) regulation and he will make copies for the Commissioner members so they can have it for the next meeting. He said he will talk with them about the three (3) or four (4) sites that are being considered. Mr. Peck said he would like to make sure that gets onto the next meeting's Agenda.

#### VIII. ADJOURNMENT

Commissioner Post moved to adjourn the Regular Meeting of the Zoning Commission at 8:43PM. The motion was seconded by Commissioner Fiske and passed unanimously.

Respectfully submitted,

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Edward Pabich, Secretary

