

APPROVED / REVISED
MINUTES
PLANNING AND ZONING COMMISSION MEETING

SPECIAL MEETING

November 29, 2011

Present: Michael Autuori
Peter Chipouras
Joseph Fossi
Nelson Gelfman
John Katz
Phil Mische
Rebecca Mucchetti, Chairman
Patrick Walsh, Vice Chairman

Absent: George Hanlon

Also Present: Betty Brosius, Wetland Agent
Lise Read, Recording Secretary

At 7:30 PM Chairman Mucchetti called the meeting to order.

PENDING ITEMS

- #2011-065-SR-AH:** Application for multi-family development under Sec. 8-30g of the Connecticut General Statutes (Affordable Housing) for construction of sixteen (16) dwelling units of which 30% shall be affordable, on property located at **7-9 North Salem Road** (Assessor lots E14-101 and E14-102) in the R-20 zone. Owner/Applicant: Eppoliti Realty Co., Inc. *Received 6/21/2011. Public hearing commenced 7/19/2011. 35 days to close public hearing ends 8/23/2011. Extension granted to continue public hearing on 9/20/2011 2011 and to October 26, 2011. Public hearing closed 10/26/2011. 65-day action period ends 12/30/2011. Discussion held and tabled 11/15/2011. Discussion held and tabled 11/22/2011 For discussion/action.*

For the record, George Hanlon has previously recused himself from discussion and votes on this Item.

Chairman Mucchetti began the discussion by stating that through the concluded Public Hearing and two discussions the discussion has been narrowed down to four points; Sightlines, drainage, parking and insufficient test data to determine the location of the infiltration systems. The Commissioners agreed.

Dr. Gelfman suggested they approve a fewer number of units to be built on the site which alleviates the parking problem, leave the drainage and infiltration system issues to be worked out by the Consultants and leave the sightline issue to the State.

Dr. Autuori agreed but noted that inadequate testing has lead to insufficient data to condition or redesign the project. Therefore, a denial of the project should be issued with the applicant having the right to come back with another more complete resubmission.

Mr. Katz agrees with Dr. Gelfman and Dr. Autuori and feels there is not enough at the table to redesign. He feels sightline safety will still be an issue even if the project is redesigned to address parking, drainage and the location of the infiltration system. He noted that the file contains conflicting Engineer statements regarding the sightlines and refers to the Arthur H. Howland & Assoc. letter of October 24, 2011 by Paul Szymanski, P.E. which states “ ... there is a high probability of an adverse impact on public safety that cannot be addressed by revisions to the plan” and “...they are endangering the safety of motorists and pedestrians as the applicant is not providing enough reaction time for a vehicle leaving the site to safely exit”. Further, Mr. Katz notes that the only CTDOT permit on this project was revoked, the standards have not been met by a little or a lot as regards to sightlines, there is testimony on record that the private property owners will not permit work on their property to improve the sightlines and there is no proof in the file that CTDOT will make an exception. Therefore, a denial of the project is warranted.

Mr. Chipouras offered his opinion that Ridgefield needs affordable housing to bring the next generation back to live in their home town. He feels the density of the site is a safety and fire hazard. He commented that the sidewalks are too narrow, the emergency vehicle maneuverability is minimal and with a bad snow storm close to impossible and therefore dangerous. He asked Planner Brosius to read the letter from the Fire Marshal which she did, but noted the Fire Marshal’s comments were the review of prior drawings and not of Sheet C1A, the present approved drawing by Inland Wetlands.

Mr. Fossi felt that both the Fire Marshal approval and the CTDOT approval are beyond the purview of this Commission. We are Zoning, he states and we are required to have affordable housing in Ridgefield and at the moment we are falling short. His concern is also the density of the site. He offered that if the Commission lowered the number of units, the parking issue will be addressed and with requiring sufficient test data to address drainage and the location of the infiltration system, the Commission could then find a way to approve the project. He feels that with a denial, the Commission will find themselves in court for something they cannot win.

Mr. Katz reiterated his concern with the sightlines and stated that as a Zoning Commission, he feels they are charged with approving a safe project using submitted data.

Dr. Autuori asked, “How do you redesign a project with insufficient data”? He feels that the Commission is playing Russian roulette with the safety of the citizens and that with fuzzy data and facts that prove a lack of safety requires a denial and outweighs the need for affordable housing.

Mr. Mische agreed with Dr. Autuori and added that in reviewing his records, the submitted data was incomplete and that when the applicant was asked to submit further soil testing and test holes, the applicant did not comply. He noted that the drawings submitted were not accurate, identified test holes were different on different drawings and the same with the infiltration system. He noted there is also the discrepancy by the different professionals as to what the soils on the site are. He states he has no confidence in redesigning the project. Finally, he offers that he has no objection to approving any application including an 8-30g so long as the application is complete and any requests made to the applicant are complied with.

Mr. Katz stated that in addition to his concerns regarding sightlines and before he makes a motion to deny, he would like to offer for the record his concerns brought up by the Commission's Consultant, Milone & MacBroom. In his own words, Mr. Katz reiterated Milone & MacBroom's 11/4/11 letter regarding drainage, insufficient test data to determine the location of the infiltration systems and the lack of use of the Connecticut Stormwater Quality Manual by the applicant's Engineer which is the current standard of engineering practice in the State of Connecticut.

Vice Chairman Walsh felt it was difficult to disagree with any of the opinions of the Commissioners but he wanted to offer his opinion. He went on by stating that the 8-30g Statutes is the road map to determine this application. That the Commission can not get around it and it has often been referred to as a sledge hammer. But, we need to support our decision whether we approve, modify or deny based on the record presented at the Public Hearings and Commission discussions. He then cited 8-30g Statutes Item 8g.1A) which states that the Commission shall prove "health, safety or other matters which the Commission may legally consider". May legally consider, Vice Chairman Walsh feels rings true as respects to the CTDOT sightline issue. He feels that this issue is not necessarily the purview of the Commission. If the DOT is going to issue a permit, there is nothing legally the Commission can do.

The other issues addressed by Vice Chairman Walsh concern parking, drainage and location of the infiltration system. Here he referred to the 8-30g Statutes Item 8g.1B & 1C where it states "B) such public interests clearly outweigh the need for affordable housing and C) such public interests cannot be protected by reasonable changes .." Our Consultant provides us with a road map as to how our concerns might be reasonably satisfied when it comes to public health and safety. Vice Chairman Walsh referred to the Milone & MacBroom letter of 11/4/2011 which states "If the Commission were inclined to approve this application, then we suggest that the following conditions of approval be included: (See Milone & MacBroom, Pg. 5)

- Ground water ...
- Deep test holes ...
- Detailed design plans ..."

Mr. Mische disagreed with the Commissioners who feel that the CTDOT sightline safety issue is not the responsibility of the Commission. He cited Frederick P. Clark's letter of 10/25/11 which states "CCA, the Site Engineer, will prepare a plan ..." and "... this location indicates a preliminary intersection sight distance of up to approximately 325 feet is available when measured with the State rights-of-way". He questioned why the Commission considers submitted information if they are not allowed to make a decision based on the information. Further, he offered that the site is a challenging, heavily sloped site that the Commission has been presented with insufficient data and asked if more testing changes the project dramatically, how could the Commission possibly redesign? He asked Attorney Beecher if the application does not provide enough information, can the Commission make a decision?

Attorney Beecher responded that if the application is incomplete and reasonable conditions or modifications can not be made based on data submitted, then the Commission can deny. But he stated, that the Commission's Consultant, Milone & MacBroom did give some suggestions as to conditioning but if the Commission goes this route, they need to make sure the standards are met and the conditions of approval are met by having the results come back to the table after the review by the Office and the Consultant.

Dr. Autuori stated that reasonable changes need to be based on evidence submitted to draw reasonable conclusions. Unknown facts are not evidence.

Mr. Katz asked Attorney Beecher who has purview over a CTDOT permit and Attorney Beecher responded that the Commission can consider that the permit was revoked and that safety over ingress and egress is the purview of the Commission.

Dr. Autuori motioned, Mr. Katz seconded to draft a Denial Resolution citing health and safety issues as regards to traffic, ingress/egress and incomplete data to assess the Stormwater Management System.

Vice Chairman Walsh continued the discussion by noting that the Commission had the opportunity to modify the project which satisfies the Commission's burden under 8-30g.

Dr. Gelfman feared that the Commission could lose a court case with a denial and the Commission could lose control over the project by issuing a denial.

Chairman Mucchetti commented that she will not support the motion. She felt that because it is an 8-30g application, the Commission is compelled to try to approve the project with conditions and/or modifications. She feels the CTDOT permit is outside of the Commission's purview and is not sure why this issue has been a point of discussion when in other applications the issue was not raised. Further, she agrees that the site is too dense, sloped and difficult to get a handle on but feels with the aid

of the Consultant this project can be approved with modifications. And finally, she offers that DOT standards are not Zoning standards.

Dr. Autuori stressed that lack of data for the effect of the infiltration system on Building 3 is of great concern and questions how one would condition or modify an unknown. He feels it is the applicant's responsibility to resubmit the application with all pertinent complete information at the disposal of the Commission to make an informed decision. Further, to redesign on unknown data is pure speculation, and is not a rational or reasonable decision.

Mr. Mische offered that he can not get around the DOT sightline issue because the Commission is charged with protecting public safety.

Chairman Mucchetti commented that she would much rather defend an approval with conditions/modifications than defend a denial in the courts.

Planner Brosius commented that conditions to the approval must be carefully written and she asked that the Commission not pass their responsibility onto the Fire Marshal, the Building Department etc. There must be a clear understanding as to who reviews and who approves each aspect of a condition. Multiple conditions might be approved by Town Officials and the Consultant before they come back to the Commission.

Dr. Autuori again expressed his concern that if all testing was completed and a grand redesign might need to take place, then what?

Mr. Mische reiterated that the drawings and data submitted are not correct and even though corrections and further data had been requested, the applicant has not complied.

The Commission voted on the motion to deny. The motion tied 4-4 and therefore the motion failed.

Mr. Fossi motioned, Mr. Chipouras seconded to draft a Resolution of Approval with standard conditions and additional conditions/modifications noted below:

- DOT Permit must be issued
- Maximum of 12 units on the property
- Minimum 2 parking spaces per unit
- Sheet C1A is the controlling plan
- Ground water monitoring shall be performed at the location of each infiltration system through one wet season (February 15 through June 30) prior to the start of construction. Results should be submitted for approval to the Town Engineer and the Commission's Consulting Engineer.
- Deep tests holes shall be excavated to elevation 234.4 in the upper infiltration system and elevation 228 in the lower system to verify the absence of ledge to a depth of four feet below the elevation of the system. Proof of compliance

shall be submitted for approval to the Town Engineer and the Commission's Consulting Engineer.

- Detailed design plans for the slab and footings of Building 3, certified by a licensed geotechnical Engineer, Civil Engineer and/or Structural Engineer shall be submitted for approval to the Town Engineer and the Commission's Consulting Engineer and prior to issuance of a building permit. Such design shall be based on site-specific soil and bearing capacity calculations and shall take into account anticipated fluctuations in water level that are expected to occur in association with the adjacent infiltration system.

All conditions above will be submitted to the Planning and Zoning Commission for review of standards being met and conditions of approval being met before a building permit will be issued.

Mr. Fossi continued by stating that the above conditions should address the concerns of the Commission as regards to the drainage issue, the infiltration issue and the following:

- Parking – Because of fewer units
- Lower impervious area – Because of fewer units
- Water to the neighbors – Because the infiltration system, once more testing has born out the assumptions, should reduce the amount of water running down to the neighbors for up to a 50 year storm event.

Mr. Chipouras tried to add a condition of lower the building height to make it compatible with the surrounding area and to protect the health and safety of the surrounding neighbors. Commission consensus was that the zoning regulations permitted buildings at the height proposed, and there was little justification to change that.

Through questions, Attorney Beecher confirmed that by this motion, the applicant will be meeting standards and meeting the conditions of approval in front of P&Z and not the Town Departments. That there is no time limit for meeting the conditions by Statutes and the Commission should not time limit the condition.

Mr. Katz asked if by this motion the application will have another Public Hearing. Attorney Beecher replied “no” whereby Mr. Katz felt this was not a good idea.

The Commission then voted on the motion to draft an approval resolution with conditions. The motion carried 6-2.

Mr. Katz noted for the record that he is in favor of the concept but is not in favor of the vehicle used (approval with conditions but no Public Hearing). Dr. Autuori noted for the record that he is voting against for the same reasons he motioned to deny.

The draft will be back at the table for review in 2 weeks on 12/13. Planner Brosius stated that it would probably take more than 1 draft to approve and if more time is needed a Special Meeting can be called for December 20th.

To reiterate the above motions:

Dr. Autuori motioned, Mr. Katz seconded to draft a Resolution of Denial citing health and safety issues as regards to traffic, ingress and egress and incomplete data as respects to the drainage system and infiltration system.

Motion tied 4-4 and therefore failed. Commissioners Katz, Autuori, Mische and Gelfman were in favor of the motion to draft a denial resolution, and Commissioners Chipouras, Fossi, Mucchetti and Walsh were against.

Mr. Fossi motioned, Mr. Chipouras seconded to draft a Resolution of Approval with standard conditions and added conditions and/or modifications. Motion carried 6-2. Commissioners Katz and Autuori voted against, and Commissioners Chipouras, Gelfman, Mische, Fossi, Walsh and Mucchetti were in favor.

Hearing no further discussion, the Chairman adjourned the meeting at 9:25 PM.

Respectfully Submitted,

Lise B. Read
Recording Secretary