

**MINUTES OF THE CHESHIRE PLANNING AND ZONING COMMISSION
PUBLIC HEARING HELD ON WEDNESDAY, NOVEMBER 14, 2012 AT 7:30
P.M. IN COUNCIL CHAMBERS, TOWN HALL, 84 SOUTH MAIN STREET,
CHESHIRE CT 06410**

Present

Earl Kurtz, Chairman; Martin Cobern, John Kardaras, Louis Todisco. Alternates Jim Bulger, Ed Gaudio and Leslie Marinaro
Absent: Lelah Campo, S. Woody Dawson, Gil Linder, Tali Maidelis, Sean Strollo
Staff: William Voelker, Town Planner

I. CALL TO ORDER

Mr. Kurtz called the public hearing to order at 7:31 p.m.

Mr. Kurtz read the fire safety announcement.

II. ROLL CALL

Mr. Marinaro called the roll.

III. DETERMINATION OF QUORUM

Following roll call a quorum was determined to be present.

IV. PLEDGE OF ALLEGIANCE

The group Pledged Allegiance to the Flag.

V. BUSINESS

Mr. Voelker read the call of public hearing for each application.

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| 1. Special Permit Modification Application | PH 10/22/12 |
| <u>Elim Park Baptist Home Inc.</u> | PH 11/14/12 |
| 140 Cook Hill Road | MAD 01/18/13 |
| Two Bldg. Additions to improve | |
| Business operations & resident | |
| Activities and replace & expand existing | |
| Storage building | |
| Section 43.6 | |

John Wagenblatt, LRC Group, represented the applicant along with Ronald Dischinger, CEO of Elim Park Baptist Home Inc.

Town Planner Voelker stated that there was an outstanding issue brought about by an abutting neighbor of Elim Park. He informed the Commission that the applicant's engineer met with this neighbor, and modifications were made to the plans which have been reviewed and approved by the Town Engineer.

Mr. Wagenblatt explained that the application is for three small additions to the campus of Elim Park...an addition for an accounting office, expansion of a garage, and improvements for a storage unit in the rear of the compound. Mr. Wagenblatt pointed out these areas on the plans. He advised that there was a meeting with the abutting resident to discuss concerns about overflow of water from the building to the north onto his property. There was also a meeting with the Town Engineer, and it was agreed that Elim Park would put a lit along the north side of the improved areas, with 4 inches of gravel, and with water from the back half of the roof of the garage going into the infiltration system which will be calculated to hold a 100 year storm. In the front of the garage, any roof water will go down the spouts, travel across the driveway into the pond.

A meeting was also held with the Environmental Coordinator, Ms. Simone, and the applicant is proposing to clear a small area where water could go from the pavement into the pond. If the area is graded and seeded it will help the flow of water. Another concern of the abutting neighbor was in the back area, and the applicant will find the pipe outlet, clean it, and expose it.

Mr. Voelker informed the Commission that there are wetlands on the site. Ms. Simone and staff wanted to insure there was no activity which would require an amendment to the IWW permit...and they do not. Mr. Voelker, Town Engineer Disbrow, and the applicant to review the plan modifications.

Mr. Voelker read the letter from LRC Group, dated November 13,2012, which detailed the plan modifications...and he read this letter into the record.

Mr. Voelker read the comments from Town Engineer Disbrow into the record, dated November 14, 2012.

All concerns have been satisfactorily addressed.

THE PUBLIC HEARING WAS CLOSED.

**2. Zone Text Change Petition
Marbridge LLC
To amend Section 30, Schedule A
Permitted Uses, Para. 7 Assisted
Living, Convalescent Homes and
The Like...**

**PH 11/14/12
MAD 01/18/13**

Jeffrey Cugno, Esq. 34 Chatham Road, Kensington, CT represented the applicant.

Mr. Voelker stated that it is expected that his public hearing will be continued pending opinion from the Town Attorney and regional planning agency comments.

Attorney Cugno gave a brief history of the Marbridge Facility and two other facilities owned by the Bower Family in Berlin CT and West Haven CT. He has been representing the Bower family for over 20 years. A few months ago, the owners decided that to keep the Marbridge facility operating under standards to continue customary and necessary care, they want to do physical renovations and additions and plan for capital investment on the facility.

Under the application before the Commission the applicant and his representatives are requesting some zoning relief for the property, and inquired in the Planning Office about how to go about this. Planning Department staff was very helpful in assisting the applicant with what could be done and requested.

The proposed new language was read into the record by Mr. Cugno.

Schedule 30, Schedule A, Permitted Uses Item 7 (f) – *In the case where an existing use that was legally established prior to April of 1996 which is located on a lot that no longer conforms to the area, setback, landscaping or open space, and coverage requirements set forth in the above regulations, the Commission may, in its discretion, grant a waiver or modification of these requirements where it finds that:*

1. *A planned renovation and/or expansion of said existing use cannot be reasonably developed without such waiver (s) or modification (s).*

However, in no case shall the dimensional requirements set forth within Section 32 of these regulations be waived or modified.

For the record, Mr. Cugno stated that the report from the Planning Dept. staff was well done, and the applicant appreciates the help of Mr. Voelker in evaluating this application. Mr. Cugno requested that this staff report dated October 9, 2012, be included as part of the record.

Mr. Cugno informed the Commission that there were three zone changes in 1959, 1970 and 1996 which affect these type of facilities, and all have affected Marbridge, putting them in a position that they cannot do much to improve their facilities. This is why the text change is requested.

Louis Bower, one of the owners of Marbridge LLC, thanked the Commission for hearing the application and Mr. Voelker for his assistance. He informed the Commission that in 1971 his family acquired Marbridge as a convalescent home, and his family continues to operate this facility, and his Mother continues to work at the facility. The goal of the facility is to provide an age in place model of care,

where people can come in and the average age of a resident is 86 to 87 years old, and people of this age are more declined and need more services. Through the consideration of this text amendment, Mr. Bower hopes that the owners can improve and modernize the facility so it can be a state of the art facility.

Mr. Bower commented on the company's Seacrest Retirement Center on Long Island Sound, and Worthington Manor in Berlin CT, both of which are magnificent facilities. In total the family company operates 150 beds, has never had licensure issues, and Marbridge is privileged to be in Cheshire and be good community members. 70% of the Marbridge residents are from Cheshire; the facility receives good community support; and many of its employees and volunteers live in Cheshire.

According to Mr. Bower the square footage of the facility is slight and compliance with current building code regulations in operating a health care facility are nowhere near where the standard is. He is hopeful that with this zone text change request, and subsequent application, that the Bower Family can make the Marbridge Facility a state of the art facility. In the modification and improvement of the facility, Mr. Bower said that with approve of the text change, the Town architecture and aesthetic standards will be respected with good finishes, magnificent landscaping, wonderful maintenance and a good clientele.

Regarding the plans, Mr. Kurtz said that the Commission is considering the zone text change at this meeting, and if it passes the plans will be heard at a later time.

In closing, Mr. Cugno respectfully asked that the Commission consider this zone text change which will be beneficial to the Town of Cheshire and is very important to the applicant.

Mr. Cobern stated that in reading the staff report, it seems that the Marbridge Facility has been whip sawed by changes to the zoning laws made without any reference to the facility or those similar. From an argument of equity, Mr. Cobern said the Commission should be given the freedom to allow such a text change. It makes no sense that a facility that was in compliance, and is in compliance and in conformity, would be nonconforming use with the planned changes and additions. He believes there is a strong equity argument to allow this zone text change by the PZC.

In tracing back to 1969, Mr. Voelker said the use was permitted as a right until the 1970 regulations when it became a special permit. In 1996, along comes a large operator, and Marbridge's ability to function was compromised. The use is a conforming use, and the problem is that the bulk requirements, dimension and square footage requirements, are all different. He cannot find anything in the record where any consideration was given to the smaller operator which would be affected by new regulations.

Mr. Voelker read two recommendations into the record from Central Connecticut Regional Planning, dated 11/6/12; and South Central Connecticut Regional Planning Agency, dated 11/9/12.

For the record, Mr. Cobern stated that the Central Connecticut Regional Agency has applications like the subject application handled by staff.

Mr. Voelker did submit a copy of his staff report to the South Central Agency, and their questions were all answered.

The Planning Department is awaiting a response from the Town Attorney's office on the zone text change language. The public hearing will be continued until either November 26th or December 10th, pending receipt of information.

THE PUBLIC HEARING WAS CONTINUED.

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| <p>3. Special Permit Application
<u>PT Real Estate Investment LLC</u>
156 North Brooksvale Road
To create (3) lots, two of which are
Rear lots; one existing dwelling</p> | <p>PH 11/14/12
MAD 01/18/13</p> |
| <p>4. Resubdivision Application
<u>PT Real Estate Investments LLC</u>
156 North Brooksvale Road
3-lots</p> | <p>PH 11/14/12
MAD 01/18/13</p> |

Town Planner Voelker informed the Commission and the public that the PT Real Estate applications will not be opened at this hearing, and will be opened at the November 26th public hearing.

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| <p>5. Request Pursuant to Section 11.1
Variances or Waiver of
Regulations –
<u>PABCO Inc.</u>
Huckins Road
Requesting waiver of Section 5.5 Rear
Lots Subsection B12.</p> | <p>PH 11/14/12
MAD 01/18/13</p> |
| <p>6. Special Permit Application
<u>PABCO Inc.</u>
Huckins Road
To create two (2) rear residential lots
Where one (1) now exists.</p> | <p>PH 11/14/12
MAD 01/18/13</p> |

7. Resubdivision Application
PABCO, Inc.
Huckins Road
2-lots

PH 11/14/12
MAD 01/18/13

Anthony J. Fazzone, Esq. represented the applicant, and distributed copies of the time line of this resubdivision for the record.

Attorney Fazzone explained that this subdivision was originally approved in August 2009 as a 5-lot subdivision at Marion and Huckins Roads. Some of the sitting Commissioners have seen parts of this application over the past few years. At that time it was presented as a 5-lot subdivision. The FEMA flood plain boundary is shown (red line on the map), and cuts through lot #5 at that time, and presented little area within this lot to build a home. At the time of the original subdivision approval, the applicant (through Milone and MacBroom) made a presentation in a separate application to FEMA to check the existing flood boundary and to verify its exact location. The thinking of Milone and MacBroom was that the boundary line was listed as too high an elevation.

Subsequently, in February 2010, FEMA changes the flood plain boundary was incorrect. This is now highlighted in yellow on the map.

In June 2010 the applicant came back before the Commission to subdivide lot #5. At that time, one of the Commissioners recognized that Section 5.5 (b) 12 of the Subdivision Regulations stated that no rear lot may be further subdivided.

In July 2010, the application was withdrawn.

In October 2010, pursuant to Schedule A, para. 1A of the Zoning Regulations, the applicant returned and was granted approval to build 2 houses on lot #5.

Mr. Voelker said this is the special permit that the applicant received to build the 2 houses, and this is documented in the staff report.

Attorney Fazzone said all of those applications are part of the public record, and he requested that the Commission take official notice of them, and make them a part of this record.

Lot #5, as approved right now, has a special permit approval to build 2 houses on it. Attorney Fazzone said that in trying to develop the lot within today's financial approval situation, i.e. bank loan and the scrutiny put on them, the applicant has found it impossible to secure bank financing for an individual homeowner. Basically, a two unit condominium must be developed to create ownership and financing.

At this public hearing the applicant is requesting approval of subdivision of lot #5 into 2 lots, which would be lots #5 and #6. It will look no different after the 2 homes are built than if there were 2 homes built on one lot. There will be a line drawn, meeting the front of the already approved rear lot access way, which will be built to Town specifications.

Mr. Fazzone pointed out Section 11.1.1 of the Subdivision Regulations, which allow, where conditions are unique, for the Commission to waive sections of the subdivision regulations. Accordingly, one of the applications is to ask for a waiver of a Section of 5.5 (b)12 to allow for the resubdivision of lot #5. It is submitted to the Commission that the conditions of this property are unique. Cuff Brook runs to the rear of the lot, so it is not a situation where the applicant can come back in the future and ask for rear lot access way or road to be constructed through, and be allowed to further develop the rear land of lot #5.

In going through Section 11, Waiver Section Mr. Fazzone said there is no adverse affect on adjacent property. The Commission has already approved the special permit to allow construction of 2 dwellings on lot #5, and the only difference would be the property line between the two portions of lot #5. This has no detrimental effect on public health or safety. Mr. Fazzone said there is clean ownership between the two dwellings on the property.

Since only 7 Commission members are present at this public hearing and subsequent meeting, Mr. Fazzone asked that if any member would be recusing themselves from voting on this application-- that the public hearing be kept open. Under the State statute there is a requirement of $\frac{3}{4}$ vote of the 9 Commission members, or 7 affirmative votes in favor of this application. If there was a recusal or abstaining from voting by any member at this hearing, Mr. Fazzone reiterated that the applicant would request a continuance.

Mr. Cobern asked for clarification on the time line, and his understanding that had it not been for the FEMA flood plain line, the applicant could have applied for a 6-lot subdivision, and the other regulations for a rear lot subdivision would have been met.

Stating this is correct, Mr. Fazzone said the applicant could have applied at that time, and there would have been no reason for denial of the application.

For clarification in the record, Mr. Cobern asked if each of the 2 homes on this lot #5 would have the same rear lot access as a single lot.

Mr. Fazzone said the rear lot does not change. He checked with IWW, and when this application came before them to get resubdivided, the waiver was not requested, and the applicant received IWW approval. No further IWW approval is needed. Each of the 2 houses will have to go back to IWW for specific site plan approval.

It was stated by Mr. Voelker that there is a frontage lot; there is a total of 3 driveways; and the regulation does provide for this.

Mr. Todisco said there are 7 members present tonight and the applicant must have everyone to vote in favor, and commented on it making sense to keep the hearing open until the next meeting where there will be 9 members present.

Stating he is unsure if this is his choice, Mr. Fazzone said it would be appropriate to have 9 members present, and this would be his preference.

Mr. Todisco noted that the applicant originally sought to subdivide lot #5, and this was later withdrawn. At this point, if the regulation is waived, he said this is doing the same thing as in 2010, but the application was withdrawn. Now the applicant is coming back and wanting to do the same thing as in 2010.

In response, Mr. Fazzone said the applicant did not think of the waiver process. The regulations require that the waiver application be filed at the same time as the application itself, and this was not done, with the waiver process being overlooked. The applicant could have come back and made it part of the application, asking for the waiver. Once it got to that point, Mr. Fazzone said it was recognized that, based on the applications before the Commission, it could not grant the waiver as it was not filed at the same time. Had it been filed, there was nothing that prohibited the Commission from granting the waiver.

This is done under unique circumstances at the time, and Mr. Todisco said that now the Commission would be making the same decision as in 2010 had the waiver application been filed at the same time..

Mr. Fazzone said that was correct. Because the whole situation is a special permit modification, and the waiver regulation requires uniqueness, he further submitted there is no adverse precedent being set. There is a significant brook running behind the property, and waivers are determined on a one on one situation.

Given the unique history, Mr. Cobern asked about a condition placed on the approval that no additional waivers can be requested for the entire subdivision.

After consulting with his client, Mr. Fazzone said this stipulation would be acceptable for the subdivision.

Stating he is not sure how he will vote on this waiver application, Mr. Todisco said it should be held open, as a precedent should be looked at, and it requires more thought on his part.

Chairman Kurtz agreed with Mr. Todisco's comments, and advised the application would be held open to November 26th.

Attorney Fazzone restated, for the record, why this situation is unique under the waiver regulations. The process started out being unique because of the designation of the flood plain line that turned out to be significantly incorrect. In looking at the plans, the scale is 1 inch = 40 feet, and the FEMA line is at a minimum on the western side of the property, is at least 40 feet different than FEMA has now found it to be. In the center area it is 50 to 70 feet; and back to 50 feet in the eastern area. He doubts there are many properties of this nature to be found with FEMA flood boundary being that far off as to prevent finding locations on the property within which to find a second location to build a house.

If not for the FEMA lines, Mr. Todisco noted these two houses would not have to be where they are, and he asked if this is Mr. Fazzone's point.

That is correct, and Mr. Fazzone said lot #6 is on the opposite side of the major brook which would require IWW approval of a significant wetlands crossing.

THE PUBLIC HEARING WAS CONTINUED TO NOVEMBER 26th.

8. Special Permit Application
1437 Highland Avenue
1427 Highland Avenue
Conversion of an existing house to
Office space & construction a 4,950 S.F.
Warehouse facility.

PH 11/14/12
MAD 01/18/13

Mr. Voelker informed the Commission that WPCA approval is not required for this application.

Mr. Voelker read a letter from PW Director Noewatne dated 11/14/12 into the record, which states that no further WPCA approvals are required.

David Carson, OCC Design Consortium, stated that the application is for 1437 Highland Avenue, property located between Strollo's Automotive and Microtech Company. The property is 1.6 acres in size; has a single family house with a 2 car attached garage; and the intention is to remove the garage to gain driveway access into the interior part of the property. The house will be refurbished into office space for G. C. Electric's new facility. A 4,950 s.f. warehouse building is proposed to be built behind the house for equipment, supplies, etc. To the rear will be a parking area for the company's 8 trucks which are on the road; they will be parked outside at night; with employees parking during the day when they take the trucks out on the road. In the front are 5 or 6 parking spaces, including handicapped space, for 4 office employees and customer parking.

The house is presently connected to the sewer system, and the proposal is to install a new lateral to connect the new building and the house to the existing

sewer line in the road. Currently, the house is served by an on site well, and the intention is to continue the use of this well for water supply to the office building and one lavatory in the warehouse building. This has been approved by Chesprocott, and the well has been tested, and the water quality is fine.

For storm water management, Mr. Carson noted there is a underground detention system under the rear parking lot to collect surface water from the parking lot and all the roof drainage. The water will be routed through a water separator and discharged to the underground system...a ground water recharge system that is detailed on the 3rd page of the plans. Mr. Carson said that Planning Department has reviewed the plans. Engineering Department has reviewed the plans; they have been revised accordingly; and Fire Department has requested a key box with access keys and this has been noted on the plans.

There was a side yard variance previously granted for this property for a 15 foot side yard for this proposed warehouse building.

Sight Line – out of the existing and proposed driveways minimum sight line requirements for a State highway, in both directions, are met.

Mr. Cobern asked about any plans for vehicle maintenance in the warehouse building.

In reply, Mr. Carson said there are no such plans.

The handicapped ramp was cited by Ms. Marinaro who asked about it coming out to the area where the driveway is proposed.

Mr. Carson said it comes to the corner of where the handicapped space is located, and there is a curb there around the corner of the building.

Ms. Marinaro asked about lighting going into the back parking area.

The Commission was told by Mr. Carson that there would be security lighting on the building, and this is noted on the plans, and it will be in conformance with Town requirements.

Mr. Voelker read the Fire Department comments into the record dated 11/14/12.

Mr. Carson said this note has been added to the plans.

THE PUBLIC HEARING WAS CLOSED.

VI. ADJOURNMENT

MOTION by Mr. Cobern; seconded by Mr. Todisco.

MOVED to adjourn the public hearing at 8:40 p.m.

VOTE The motion passed unanimously by those present.

Attest:

Marilyn W. Milton, Clerk