

**MINUTES OF THE CHESHIRE PLANNING AND ZONING COMMISSION PUBLIC HEARING HELD ON MONDAY, MAY 12, 2014, AT 7:30 P.M. IN COUNCIL CHAMBERS, TOWN HALL, 84 SOUTH MAIN STREET, CHESHIRE CT 06410**

Present

Earl Kurtz, Chairman; Sean Strollo, Vice Chairman; Edward Gaudio, Gil Linder, Vincent Lentini, John Kardaras, Louis Todisco.

Absent: Lelah Campo and S. Woody Dawson.

Alternates: Jon Fischer, Leslie Marinaro, Diane Visconti

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**

Ms. Campo 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**

- |  |                    |
|--|--------------------|
| <b>1. Zone Text Change Amendment</b>               | <b>PH 2/24/14</b>  |
| <b><u>Town of Cheshire</u></b>                     | <b>PH 3/10/14</b>  |
| <b>To amend Section 23, Definitions</b>            | <b>PH 3/24/14</b>  |
| <b>Add: Recreation Active and Recreation,</b>      | <b>PH 4/14/14</b>  |
| <b>Passive</b>                                     | <b>PH 4/28/14</b>  |
| <b>To amend Section 30 Schedule A, Permitted</b>   | <b>PH 5/12/14</b>  |
| <b>Uses, Item 29A</b>                              |                    |
| <b>To amend and add to Section 32, Schedule B,</b> |                    |
| <b>Item 7.</b>                                     |                    |
| <b>No change; no action taken</b>                  |                    |
| <br>   |                    |
| <b>2. Resubdivision Application</b>                | <b>PH 5/12/14</b>  |
| <b><u>Kathie A. Welch</u></b>                      | <b>MAD 7/16/14</b> |
| <b>Reservoir Road</b>                              |                    |
| <b>3 (2 new) lots</b>                              |                    |

**(Ms. Marinaro was recused from application #2)**

Ryan McEvoy, P.E. Milone and MacBroom, represented the applicant. The Commission was informed by Mr. McEvoy that this is a 3-lot subdivision at 650

Reservoir Road. The property is 10.5 acres in size, in an R-80 zone. Mr. McEvoy displayed a rendering of the plans. The property is bordered by existing residential properties to the north; to the east is residential; to the south is residential and Reservoir Road. Mr. McEvoy pointed out Broad Brook Reservoir on the map. There is a gas easement with Meriden CT on the north side of the property. The lot contains one existing home, which will be contained in lot #1, and the house is located close to Reservoir Road and there are horse pasture areas in the corner of the lot, which the applicant will take access for the two proposed lots. The lots 2 and 3 are +3 acres in size; have 50 foot frontage on Reservoir Road; will be served by driveways from Reservoir Road; lot #2 is 650 long and lot #3 950 feet long with grades not exceeding 10% average slope. The application is before the IWW with no decision rendered yet. The lots are served by private well and septic systems and have received Chesprocott feasibility approval.

Runoff – it is proposed to have rain gardens for runoff. There have been discussions with the Cheshire Engineering Dept. and the City of Meriden regarding the property having an up-slope of the reservoir, and not having an increase of the 100 year storm. It was decided for no increase from the development. The applicant is working on revised plans to achieve this goal.

There is a wetland crossing under review by IWW. The proposal is to have a 36 inch pipe to convey the flow across the driveway on lot #3, and plans are being revised for an arched culvert.

Comments were received from the Fire Department on the available sight lines for the driveways. Looking to the right you can see in excess of 500 feet; to the left the curve decreases to 300 feet; the speed limit on the road is 25 mph; and the applicant is working with the Police Department on this information and their responses.

Mr. Voelker stated the application is undergoing specific review by IWW. He asked about the arched culvert and what it means.

In response, Mr. McEvoy characterized the arched culvert has an open bottom, a natural bottom is the preferred alternate than a closed pipe conduit, has more capacity, and limits the chance of debris clogging the inlet with a more free flowing situation.

Mr. Todisco commented on having read the report, and read an excerpt from the last paragraph into the record. It mentions total storage volume required to mitigate increase in runoff from a 100 year storm as 430 cubic feet. The rain gardens provide 531 feet of storage; this means 430 feet is not covered by the rain garden and empties into the reservoir. Mr. Todisco asked if the revised plans will address this issue.

This issue will be addressed in the revised plans and Mr. McEvoy said there is potential for excess water. This has been discussed with Cheshire and Meriden staff, and there is agreement to continue containment of conditions on the subject property.

It was noted by Mr. Todisco that the City of Meriden raised many issues, and he asked if they would be addressed in the revised plans.

They will be addressed and Mr. McEvoy said they are part of the IWW application, and Meriden representatives have been present at these meetings.

According to Mr. Voelker, the City of Meriden will respond to any revisions to the IWW plans, with copies to the Commission. This water cross is a feeder stream and Meriden values it highly.

Regarding "rain gardens" Ms. Visconti asked what they were.

Mr. McEvoy explained that rain gardens are some depressions on land to handle runoff, and the goal is to have low impact design features to handle increases in impervious surface and low infiltration. They are not as formal as in large developments. This property will have 2 small rain gardens, 2 feet deep, and they will incorporate a few more features on the revised plans to handle runoff from the driveways.

Regarding the sight lines, Mr. Gaudio asked about the 500 feet one way and 300 feet the other way, and if the police are aware of this.

This has not yet been presented to the police department, and Mr. McEvoy said it will be reviewed with the police officials.

Mr. Voelker advised that the applicant will schedule a meeting with the Police Department in the field, and there will be a more formal communication to the Commission following this meeting.

#### PUBLIC COMMENTS AND QUESTIONS

John Egan, 720 Reservoir Road, addressed the Commission stating he has major concerns. He has owned his property since 1999, and it had been owned by a relative since 1942. Regarding the boundary line he is unsure how the prior owner pushed this line, and stated these proposed driveways go down his lawn. There have been 3 different owners of the subject property over 41 years, and no one ever told him to stop treating an area as his property. The property was surveyed awhile ago; the stakes/markers are gone; and he needs to see a clear picture of where the property line is in relationship to the first driveway. He wants to see stakes in line for the property line, and noted there is about 30 feet of brush and other stuff.

In response, Town Planner Voelker explained to Mr. Egan that if there is a dispute about a boundary line, the Commission cannot resolve this and make a determination. The PZC does not have this authority. This issue must be challenged in a court of law.

Mr. Egan has hopes for a compromise and not a legal fight, and wants a visual of where the driveways will be located.

The driveways will be staked out, and Mr. Voelker said the Police Department will be on site when this is done.

According to Mr. Egan his sight line is about 300 feet at the 25 mph speed which is not enforced, and the road is a cut-through at high speed.

THE PUBLIC HEARING WAS CONTINUED TO MAY 27, 2014.

**3. Special Permit Application**  
**Richard A. Field**  
**758 Peck Lane**  
**In-Law Apartment**  
**Sec. 30, Sch. A. Para. 5**

**PH 5/12/14**  
**MAD 7/16/14**

Richard A. Field, property owner 758 Peck Lane, presented his application to build an in-law apartment, 684 sq. ft. in size in the basement of his house. He has an approved 3-lot subdivision for future plans. The house has a walk-out basement, plumbing, regressed windows, oil tank will be removed, and the apartment will have access to the upstairs and outside. The apartment is for his father-in-law. Mr. Field advised that all work will be interior with no plans to change the exterior of the house.

THE PUBLIC HEARING WAS CLOSED.

**4. Zone Map Change Petition**  
**BeMore Investments Inc.**  
**314 West Main Street**  
**From R-20 to R-20A**

**PH 5/12/14**  
**MAD 7/16/14**

Attorney Ryan B. Corey, 314 West Main Street, Cheshire CT represented the applicant for a zone map change to R20-A zone for operation of a dental practice. This use will be consistent with the nature of the area and surrounding buildings. The site is an R-20 residential zone, and has been a flower shop since 1928, and the building has been vacant for over one year.

Attorney Corey read an excerpt from a staff report dated April 22<sup>nd</sup> regarding this being "spot zoning". He cited case laws, entered them into the record, and read excerpts from the cases into the record. Mr. Corey will provide copies of the court cases cited to the Commission.

Stating that a zone change is not spot zoning, Attorney Corey showed a rendering of the proposed dental practice building, which he believes will improve the appearance of the street and add value to surrounding properties. For the proposed new use of the building there will be the same parking, entrance in the rear, and change to R20-A will be a better fit for the property. It was noted by Mr. Corey that this property has never been used as a residential property, and he believes it was classified incorrectly. Since 1928 it has been a flower shop. The new building will remain in harmony with the

neighborhood and will be residential in character, and it fits into the Plan of Conservation and Development.

Town Planner Voelker explained that the Commission cannot consider the proposed building in the context of the zone change. The Town Attorney has advised that the Commission consider this application comprehensively, and the court cases mentioned be made part of the record for review by the Town Attorney who will provide legal advice to the Commission.

The Commission was told that Attorney Corey will prepare a narrative of the specific cases to the Planning Department, and it will then be turned over to the Commissioners. It is the applicant's case to make as to whether or not this is spot zoning, and why R-20A designation is better for the property.

Attorney Corey stated that the site has never been a residential property; it has been vacant for one year; and R-20A will better serve the intent of this property. If the zone change is not approved the property will just sit there, deteriorate, waiting for someone to renovate it as a home on a very busy intersection.

The Commission was informed by Attorney Corey that there were meetings with the neighbors. 38 letters were sent to neighbors and immediate abutters and 8 people showed up for the meeting at the property. Mr. Corey stated that the applicants are Cheshire residents who want to operate their business in town.

Chairman Kurtz commented on the non-conforming use of the property.

Attorney Corey reported that his clients are under contract to purchase this property in June, are expending significant funds to renovate the property, and under a government loan the property cannot be a non-conforming site.

Mr. Todisco asked for clarity on this being a residential property but never used as residential.

In response, Mr. Corey stated that in the file there have never been residents living on this property. Changes have been made to the building since 1928; it has always been a flower shop; and with R-20A it can be residential or professional offices, eliminating future commercial or retail use of the property.

Mr. Todisco asked if the property could be maintained as a non-conforming use, as long as the non-conformity is not increased by the actions of the applicant.

Mr. Voelker said this is limited to a retail use unless the applicant came forward with request for a special permit to go from one non-conforming use to another. If nothing is done the only right is retail use, and office cannot just be put in there...it changes the use. If the PZC approves the zone change the right to retail disappears, and the site will not be a non-conforming use any longer and not permitted in the zone category.

Mr. Todisco noted that an R-20A use limits the use of the property more than a non-conforming use.

Right now the site has a retail use not in operating, and Mr. Voelker said it continues as a retail store as long as there is an intent to use it. Many discussions were held last year about options for use of this property, and retail use would maintain the non-conformity.

Mr. Ryan advised the site is .86 acres.

Ms. Marinaro commented on her recall that many years ago this site was considered a "flower shop site".

Chairman Kurtz said that was related to an application for an addition to the existing retail flower shop.

The Commission was told by Mr. Voelker that there is no specific category of retail/flower shop in the regulations.

With regard to prior instances where non-conforming property went to an R-20A zone, Ms. Visconti asked if this has occurred in the past.

Attorney Corey cited 3 properties changed to R-20A...Creamery Road/Highland Avenue, South Main Street (Bovano's) and North Brooksvale Road. If the zoning is not changed, Mr. Corey does not believe another operation will fit the site. He noted the West Main Street renovation project has been ongoing, and this zone change will fit with the plans for this area of town.

#### PUBLIC COMMENTS AND QUESTIONS

Kerry Chaconis, 60 George Avenue, stated that the flower shop was a great neighbor, and asked if there can be a dentist office without a zone change.

Mr. Voelker said "no" – a zone change would be required.

Ms. Chaconis is sorry the flower shop is gone, and said the improvement to the building is beautiful and will help the neighborhood. She has concerns about the height of the 2<sup>nd</sup> story of the building and the overall building size.

Chairman Kurtz explained that this is a zone map change hearing, and the applicant must meet all the regulations to receive the change. The Commission is not taking the building into consideration at this hearing.

Mr. Voelker advised that if the zone change is approved, the applicant will return with a special permit and all specifics of the building will be discussed and reviewed. That is another application and another public hearing.

At the meeting with the neighbors, Attorney Corey reported that there was a major concern...would the entire street have a zone change or just the subject property, and neighbors were relieved it would be just 314 West Main Street.

Dr. Greg Bemis, 1009 Summit Road, Cheshire CT, introduced himself and his wife to the Commission. He stated he has been a dentist for 10 years and recently moved to Cheshire to raise his family, and wants to operate his business in town as well. Dr. Bemis stated he has secured financing; everything is contingent on the zoning change; he will renovate the building and have the ability to maintain the property and contribute to the community. Dr. Bemis read his business mission statement into the record.

Mr. Voelker advised that the public hearing would be continued to May 27<sup>th</sup> pending response from the Town Attorney on the narrative submitted by Attorney Corey.

THE PUBLIC HEARING WAS CONTINUED TO MAY 27, 2014.

## **VI. ADJOURNMENT**

MOTION by Ms. Marinaro; seconded by Mr. Stollo

MOVED to adjourn the public hearing at 8:15 p.m.

VOTE The motion passed unanimously by those present.

Attest:

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Marilyn W. Milton, Clerk