

ZONING COMMISSION REGULAR MEETING MINUTES
January 24, 2012
7:00 PM MULVEY MUNICIPAL CENTER, MULTI-MEDIA ROOM

Members Present: Chairman Tony Marino, Regular Member Harry Ruppenicker Jr., Regular Member Tom Belval, Regular Member Dwayne Xenelis, Alternate Member Mike Engels, Alternate Member Linda Nolf and ZEO Nancy Rudek.

CALL TO ORDER: The meeting was called to order by Chairman Tony Marino at 7:00 p.m.

ESTABLISHMENT OF QUORUM: Chairman Marino stated that all Regular Members present represent a quorum.

AGENDA ADDITIONS: None.

PUBLIC HEARING(s):

Upon a motion by Harry Ruppenicker Jr., seconded by Tom Belval, it was:

VOTED: Unanimously to recess the Regular Meeting at 7:02 p.m. and open the Public Hearing portion of the Meeting. At this time, Regular Member Tom Belval recused himself.

1. **Z2011-14 – 2 Pettipaug Road – Public Hearing on the Special Permit Application to construct Building 9 (73,626 sf), two-story addition to building 3 (9,637 sf footprint), a 599 sf pumphouse, a 9,960 sf garage/storage building and associated site improvements. Property owned by The Lee Company. LI Zone district, 85.9 acres (Property ID #149/Lot #s 017,018,019 / Property ID #150/Lot #s 006,038) (35-day public hearing period ends 2/28/12) [possible deliberation & vote]**

Engineer Matthew White was present as well as applicants Leighton Lee, Bill Lee and Robert Lee. Architect Tom Gribbin and Traffic Planner Neil Olinski were also present. Matthew White submitted Plans revised to 12/27/11, preliminary lighting specifications, and a Planting Plan with a revised date of 01-20-2012. Mr. White stated that the parcel is 85.9 acres and went on to describe all of the proposed improvements along with the types and locations of the Stormwater Management Systems. Matt White then turned the floor over to the Architect on the project, Tom Gribbin. Mr. Gribbin explained the uses and designs of the following buildings: Building 9 will be an addition to the south side of building 3. 80% of the space will be used for manufacturing and 20% will be used for office space. The roof will be a saw-tooth design to take advantage of the north light. The total height of the building will be at 34 feet. The pumphouse will be used to supply water to the sprinkler system in building 9 in the event of a fire. It is designed to replicate the look of a barn with Board & Batten siding. Building 3H will be a two-story design with approximately 8,500 sf per floor and used as a sales room and office space. It will be constructed of insulated metal panels just as the other buildings and will have a flat roof. The new garage building will be south of building 1, also built of insulated metal panels

with a standing seam metal roof. Matt White explained the proposed lighting plan and Planting Plan. Along the edges of building 9, closest to Cold Spring Drive, there will be a screen of White Pines tied into the existing pines. The floor was turned over to Neil Olinski, Traffic Planner for Milone & MacBroom. Mr. Olinski explained the relocation of the entrance on Pettipaug Road. Traffic Counts in the morning and afternoon were explained. The study concluded that there would be an additional 100 cars per day entering and exiting the Lee Company property. Widening Essex Road or Pettipaug Road was not warranted and would only be minimally beneficial. Matthew White spoke about the realignment of the entrance to the site and described how the existing two driveways straddle a high point on Pettipaug Road. They would be combined and the area would be revegetated. Mr. White is in receipt of a *Request for Information Letter* with recommendations from Woodard & Curran, dated 01-23-2012 and addressed two of the recommendations in that letter. The first was regarding the access to a small parking area to the left of the Pettipaug Road entrance. Woodard & Curran suggests not accessing that area from the current driveway. Matt White claims it functions fine as is. The second recommendation Mr. White addressed was regarding the suggestion of having an emergency accessway to the property. Mr. White proposes maintaining an emergency accessway closed off by a metal gate. Mr. Kreite asked Chairman Marino if he could open a door to get some fresh air.

Chairman Marino read into record a letter from Meg Parulis, Town Planner, on behalf of the Planning Commission. The Commission feels the proposal is consistent with the Plan of Conservation and Development and future Land Use Plan but did not feel that the style of the building was compatible with the residential character of the neighborhood. It was suggested that the building materials be revised to blend into the natural surroundings or that the pump be installed below grade. Matt White believes that the current design does blend in. It is designed with the look of board & batten siding.

Chairman Marino asked whether the staggered shifts were taken into consideration when the traffic study was done and Harry Ruppenicker asked what the estimate was for new cars entering and exiting the Lee Company property. Neil Olinski stated that the staggered shifts were taken into account and their estimate is conservative. Matt White stated that the count was based on a staggered system that was always in place.

Chairman Marino asked Matt White to describe the topography of the site as it pertains to Cold Spring Drive. Matt White explained the topography, landscape buffers, existing woods and the wetlands.

Chairman Marino asked if the proposed lighting was going to be pole lights or side of building lights. Matt White stated there would be some of each. Harry Ruppenicker asked if the lights were on all night or on a timer. Leighton Lee explained that most of the lights were on timers with photocells. The lights come on at 5:45 a.m. and go off when the photocell detects daylight. The photocell turns the lights on at dusk and the timer turns them off at 9 p.m. There are some CL& P lights and emergency lights that are on 24

hours a day. Leighton Lee will look into the 24 hour lights and see if they can install lights that would better serve the Cold Spring Drive area. Chairman Marino asked if there are any overtime shifts that would keep the lights on longer. Leighton Lee responded “not at this time”.

ZEO Nancy Rudek asked what the overall height would be for buildings 9 and 3H. Tom Gribbin stated the height of building 9 would be 34 feet and building 3H would be approximately 28 feet.

At this time, Chairman Marino opened the floor to the members of the public to speak. The following members of the public spoke in favor of the application:

1. Bill Lee, of The Lee Company, explained that when the property had previously been rezoned, their intention was to only build a maintenance garage. As the business has grown, there is a need for more space. The project is proposed for the middle of the site; trying to keep it neighborhood friendly.
2. Joe Dattilo of Water’s Edge, on behalf of the Chamber, stated they support the expansion of The Lee Company. This proposal will create another 100 jobs.
3. Jeff Kriete stated that The Lee Company has been good to the town, is a good employer and the intrusion to Cold Spring Drive, is visually minimal.
4. Ed Binder, 593 Essex Road, stated that The Lee Company has been one of the greatest assets to the town, the Town is fortunate to have them and the project seems pretty far away from Cold Spring Drive.
5. Darlene Briggs, 1340 Old Clinton Road, stated she is in favor of the expansion of The Lee Company for many of the same reasons but especially for the amount of jobs that will be created.
6. David Chapman, an employee of The Lee Company and Westbrook Resident, spoke in favor of the project.
7. Susan Bennett, 305 Cold Spring Drive, has lived in her home for 37 years and has never had a problem with The Lee Company. They have been a good neighbor and keep the property looking like a campus.

The following members of the public spoke in opposition of the application:

1. Lou Guerrera, 802 Essex Road, is concerned about drainage, the detention basin and that his property is downhill from the proposed maintenance garage.
2. Dan Coan, 103 Plymouth Road, is downhill from the project and currently his neighbors have to use sump pumps to keep up with the water problems now. He is concerned with the traffic and feels that the zone change was a mistake. Mr. Coan asked if the Commission would consider an independent traffic study. Chairman Marino stated that the State Traffic Commission has jurisdiction over Rt. 153 and Pettipaug Road.

3. Rich Annino, 375 Cold Spring Drive, can see The Lee Company buildings from his yard and deck. Mr. Annino asked if the buildings could be colors that would blend into the surrounding woods. Mr. Annino asked if the parking areas would be surrounded by trees and would the accessway on Cold Spring Drive ever be used. Chairman Marino stated the parking areas would be surrounded by trees and he would address the accessway shortly.
4. Tom Belval, 277 Cold Spring Drive, asked if there would be a retaining wall around the parking areas, is there a proposed tank farm, proposed generators, where they would be located and how the sprinkler system discharge of water would be handled. Matt White stated that there will be no retaining walls around the parking areas. There will be a wall between the two banks. Mr. White explained that the existing gas tanks behind building 5 need to be relocated behind building 9 and will be buffered with trees. Leighton Lee stated that those tanks are Hydrogen and Nitrogen. There will be four generators supplied by four, 200 gallon propane tanks each. There will be a transition to underground gas in the future. Matt White stated that the pump house will have a diesel pump supplied by and underground tank. Leighton Lee explained how the sprinkler system discharge will be handled. The systems are tested yearly.
5. Betsy Dean, 399 Cold Spring Drive, asked if the parking area location could be changed. Matt White stated that the parking is for the office space. It is well into the interior of the lot and works well for The Lee Company. Chairman Marino asked if the parking area could be moved. Watt White stated that it could be moved but would not work as well for The Lee Company.
6. Rich Annino asked if the proposed structures and parking areas could be staked in order for the neighbors to have a visual as to where it would be located and how big it would be. Bill Lee stated that could be done. Rich Annino asked if there were any future plans for more expansion. Bill Lee stated, "not at this time but maybe". Leighton Lee is concerned as to what is considered expansion. Sidewalks can be considered expansion. Chairman Marino stated that The Lee Company can reserve the right to expand.
7. Austin Chaffee, 342 Cold Spring Drive, asked the Commission to restrict the use of the woods road. Leighton Lee stated that would be acceptable if the Commission made it a condition.
8. Dan Coan stated that the property looks nice and has a campus atmosphere, however, companies are bought and sold all the time and no one can predict what will happen to The Lee Company in the future and the Town could be left with a business not as friendly as The Lee Company.
8. Jon Riggio, 691 Essex Road, stated that he has lived on Essex Road for 48 years and as a neighbor to The Lee Company. Mr. Riggio stated that The Lee Company has created jobs for the area and is the best thing that ever happened to the Town.

9. Chairman Marino asked about the colors, heights and exterior elevations of the buildings and suggested that there was possibly some agreement they could come to in order to make everyone happy regarding the colors and visibility of the buildings. Discussions went on between Leighton Lee, Bill Lee, Chairman Marino, Architect Tom Gribbin and Matt White about the landscaping and color choices. Bill Lee stated they could consider neutral colors for the concerned Cold Spring Drive neighbors.
10. Betsy Dean asked about blasting. Matt White stated that there would be some blasting and explained pre-blast surveys. The Lee Company has sensitive equipment to worry about and will take care with any blasting that has to occur.
11. Dwayne Xenelis asked when the project would be starting and would they phase the project or do it all at the same time. Robert Lee stated that they want to start as soon as possible; possibly in the summer. Leighton Lee stated he thought it would be in the fall and that summer was optimistic and at this time he did not know if the project would be done in phases or not.
At this time, Chairman Marino explained that it was pointed out to the Zoning Commission that conditions cannot be placed on a zone change. Therefore, the zone change is legal but the condition that The Lee Company never develops the access way off Cold Spring Drive is nullified. The Commission will seriously discuss putting that condition on this application. Leighton Lee stated he was agreeable to that. There was discussion about the access way being blocked off. Robert Lee does not want to block the access way in case of an emergency. Mr. Lee stated it would not be for development.
12. Art Paul, 434 Cold Spring Drive, stated his concerns about 4-wheeled vehicles and parties in the woods. Chairman Marino directed him to the police.

Upon a motion by Harry Ruppenicker, seconded by Dwayne Xenelis, it was:

VOTED: Unanimously to continue the Public Hearing to the next regular meeting on February 28, 2012.

Chairman Marino **recessed** the meeting at 8:37 p.m. and **reconvened** the Public Hearing portion of the meeting at 8:42 p.m.

- 2. Z2011-17 – 316 Essex Road –public Hearing for a proposed Zone Map Amendment to change a portion of a parcel that is an existing MDR Zone District to NCD Zone District, involving a 2.1 acre area out of a 6.1 acre parcel, located on the east side of Essex Road. (Rte. 153 & north of I-95)[Property Id#166, Lot027]** Attorney David Royston was present along with the Applicant, Eve Barakas. Attorney Royston cited and summarized a letter submitted by the Planning Commission stating that the proposed zone change was consistent with the POCD and the future expansion of the Town and that the portion of the property that was left as a

MDR zone was a conservative approach for a minimal effect on the adjoining properties. Comments from the DEEP, dated January 23, 2012, were distributed and summarized for the record by David Royston, which state that the proposed change is consistent with the CT Coastal Management Act. Along with the Application for a zone change, the Applicant submitted a Site Plan Application for the conversion of a 1700's house to a professional office to run a nutritional consulting business allowed under the NCD zone.

Harry Ruppenicker asked why the Applicant did not choose to apply for a Use Variance and was this considered spot zoning. Attorney Royston explained the criteria for spot zoning and his interpretation is that this is not spot zoning.

Chairman Marino read into record, the letter from the Planning Commission, dated January 24, 2012 and the letter from the Inland Wetlands Commission, dated January 11, 2012. The Planning Commission finds the application consistent with the POCD and the Future Land Use Plan. The IWWC reserves the right to future review when and activity is proposed. However at this time they do not require a permit.

The floor was turned over to Eve Barakas, applicant. Ms. Barakas addressed the use and zone of the property, traffic issues, and design elements, how the business is in harmony with the POCD and how the proposal for a NCD zone is a transitional change between the TIC-65 zone and the MDR/LDR zones.

Chairman Marino asked if any of the public would like to speak in favor. No one accepted. Chairman Marino asked if any of the public would like to speak in opposition. The following people spoke:

1. Ben Dirgins, 15 Orchard Path and elected member of the Hill Farm Owner's Association, read a letter on behalf to the Owner's Association. There are several reasons that they are asking for the application to be denied.
 - It will set a precedent for spot zoning.
 - The property card does not refer to the property as being historic.
 - It will devalue the area homes.
 - The POCD is advisory, not regulatory.

The Association feels the Applicant should ask for a use variance, not a zone change.

2. Rich Haversat, 359 Essex Road, asked why 2.1 acres is needed for the proposed business because it leaves an opening for expansion. Attorney Royston explained that the existing lot is a split zone and the same portion shown as a MDR zone is what is being proposed as a NCD zone. Attorney Royston also addressed subdividing the property, the rear portion still available for residential use and spot zoning.

3. Rich Lianos, 340 Essex Road, asked if there would be any trucks delivering to the property and what the hours of operation would be. Eve Barakas stated there would be no trucks and her intention is to continue her full time job and have after-school hours, one client or family at a time. Chairman Marino asked Mr. Lianos if he knew anything about the house. Mr. Lianos stated that the house was built by Joe Spencer on Rt. 153 and moved to its current location. Joe Spencer was part of a founding family in Westbrook in the 1700's.
4. Joan Cyr, 2 Barn Way, stated that most of Boston Post Road is zoned NCD including Water's Edge. Chairman Marino stated that Water's Edge zone was changed from a Commercial Zone to a NCD Zone in the 1980's and much of the work there has happened by variances.
5. Kathleen Katz, 13 Orchard Path, is concerned that this would set a precedent.
6. Rich Lianos asked if the applicant could live on the property. David Royston stated that the applicant could live there by use of right in a NCD Zone.
7. Rich Haversat asked about the parking area. Eve Barakas stated that it would be a gravel driveway located in the existing area.

Upon a motion by Dwayne Xenelis, seconded by Mike Engels, it was:

VOTED: Unanimously to close the Public Hearing on the application and table a decision to the February 28, 2012 meeting.

Upon a motion by Dwayne Xenelis, seconded by Tom Belval, at 9:36 p.m. it was:

VOTED: Unanimously to close the Public Hearing portion of the meeting and **reconvene** the Regular Meeting.

The Commission Members discussed the uses allowed in a NCD Zone, Spot Zoning, and Use Variances. Harry Ruppenicker would like clarification from the Planning Commission as to why they believe this application is consistent with the POCD. Harry Ruppenicker believes that saving the old house and the use is good for the area, but wants to look at the future and hear more from the Planning Commission. Harry Ruppenicker asked Nancy Rudek if the Planning Commission is looking to get rid of the TIC-65 Zone. Nancy Rudek stated that the Planning Commission is starting to plan a Transitional Zone in that general area.

NEW BUSINESS:

RECEIPT OF APPLICATIONS:

Z2011-16 – 1551 Boston Post Road – Site Plan Application for a proposed Tropical Smoothie Café in the Existing ‘Rich’ Building, on the site of Water’s Edge Resort and Spa. Applicant: Michael Pill / Property owner: 1551 Boston Post Road

Associates, Inc. (Property ID #182/012) –Michael Pill, Applicant, explained the Smoothie Café business. There will be a 5-7 minute wait for food. 60% of the business will be take-out. The applicant will submit a Site Plan including parking spaces and a floor plan including tables and seating.

Upon a motion by Tom Belval, seconded by Dwayne Xenelis, it was:

VOTED: Unanimously to accept receipt of the application and continue it at a Special Meeting on February 15, 2012.

Z2012-01 – 185 Horse Hill Road – Special Permit Application of the Town of Westbrook for a proposed municipal garage facility and two 10’ x 40’ storage containers (Property ID #185/006) Applicant: John Riggio / Property Owner: Town of Westbrook –

Upon a motion by Harry Ruppenicker, seconded by Tom Belval, it was:

VOTED: Unanimously to accept receipt of the application and continue the hearing to a Special Meeting on February 15, 2012.

Z2012-02 – 316 Essex Road – Site Plan Application for the proposed conversion of an existing dwelling to a Professional Business Office, and improvements to parking area. (Property ID #166, Lot #027) Applicant: Eve Barakas -

Upon a motion by Tom Belval, seconded by Tom Belval, it was:

VOTED: Unanimously to table the application and continue it to the next Regular Meeting on February 28, 2012.

MISCELLANEOUS:

Z0710E – 1594 Boston Post Road, Property ID #188/020 Request for 6-month Extension on Special Permit originally approved on 06/26/07 for a 4-unit age-restricted condominium development. Applicant/Owner: DGG Properties, Inc. (Valid through July 24, 2012)

Upon a motion by Harry Ruppenicker, seconded by Tom Belval, it was:

VOTED: Unanimously to Approve the 6-month extension, valid through July 24, 2012.

COMMISSION BUSINESS

1. **ZEO Report:** Distributed and discussed.

2. **Miscellaneous Correspondence:**

Board of Selectmen Meeting Agenda – Discussion of Budget for Zoning Commission, February 9, 2012, 4:00 p.m.

Zoning Commission Meeting Minutes, December 27, 2011

Recording Secretary Wage Rate Memo– New policy on Recording Secretary Wage Rates adopted by the Board of Selectmen.

Aerial photo upgrade – Request for appropriation for higher quality aerial data for on-line mapping system.

Zoning Member Commission list 2012 – Please make sure information is correct.

Letter from Noel Bishop to Linda Nolf - Regarding approval of Appointment to Commission as Alternate Member.

3. Bills: Zoning Budget Report: 2011/2012

The following bills were paid:

- Branse, Willis & Knapp: **\$511.50** (General Legal Invoice # 29366, 29367)
- Woodard & Curran: **\$540.00** (Misc. eng consult, Inv #88264)
- Recording Secretarial Services: **\$113.60** (K. Kelemen, 12/27/11 Minutes)
- Hartford Courant: **\$87.12** (Legal Notices – Inv. # 12/31/12)
- Ciel: **\$8.00** (Coastal resource map-2 copies, Inv #38598)
- CAZEO Annual 2012 Membership Dues **\$100.00** (N. Rudek, L. DeMaria)

- 150% Special Funds-Consulting Services**
- Woodard & Curran: **\$1,596.65** (Eng Review for Duck Island/Marina Way, Inv # 88395)
- Brewer's Pilots Point Marina, Inc. **\$185.35** (Refund of remainder of Engineering Review funds for Duck Island/Marina Way)

4. Enforcement:

1. 308 Pettipaug Road.
2. 122 Wesley Avenue.
3. Water's Edge Lights
4. 80 Flat Rock Place.
5. 846 East Pond Meadow Road.
6. 278 Pond Meadow Road.

APPROVAL OF MINUTES: December 27, 2011 Public Hearing, December 27, 2011

Regular Meeting:

Upon a motion by Dwayne Xenelis, seconded by Tom Belval, it was:

VOTED: Unanimously to approve the minutes of the Public Hearing of December 27, 2011, as submitted.

Upon a motion by Tom Belval, seconded by Harry Ruppenicker Jr., it was:

VOTED: Unanimously to approve the minutes of the Regular Meeting for December 27, 2011, as submitted.

ADJOURNMENT

Upon a motion by Tony Marino, seconded by Tom Belval, it was:

VOTED: Unanimously to adjourn this Regular Meeting at 10:14 p.m.

Respectfully submitted:

Lisa DeMaria