

LITCHFIELD PLANNING AND ZONING COMMISSION
Town Hall Annex Gymnasium– 80 Doyle Road, Bantam, CT
7:00 p.m.
Minutes of July 15, 2013

- 1. Chairman, Dr. Susan Lowenthal, called the meeting to order (7:03)**
 - a. Present were Commissioners Curt Barrows, Susan Lowenthal, Tom Waterhouse, Carol Bramley, Sky Post, Peter Losee, Dave Pavlick, and Alternate Commissioners, Ralph White, Ed Doyle
 - b. Absent: Alternate Commissioner Erin Kennedy
 - c. Land Use Administrator, Dr. Dennis Tobin, was present
 - d. Appointment of Alternates: None
 - e. Appointment of Acting Secretary; Mr. White was appointed
 - f. Adoption of Minutes of June 17, 2013: Motion to approve, with edits, by Ms. Bramley, second by Mr. Post, affirmative vote unanimous. Edits as follows:
 - i. Angeline Barreau did not question traffic safety matters; rather she questioned the logic of Stop and Shop's traffic experts. (Next to last paragraph under the "Stop and Shop" caption.)
 - ii. Mists of Avalon presented drawings to "the Commission," not to "Dr. Tobin."
 - iii. Substitute "Dr. Tobin" for "Mr. McGowan" in the first line of page 2.
- 2. Public Comment: (7:16)**
 - a. Mark Herren read a letter and presented it to the Commission. He expressed his discontent with the Commission's treatment of the Mists of Avalon application.
- 3. Commissioners' Requests: (7:25) None**
- 4. Application Receptions (7:13)**
 - a. **184 Fern Avenue, Mark and Linda Greenberg**
 - i. Bert Audy was present representing the applicant.
 - ii. Receive and set public hearing, 8-19-13, for special exception. Accessory apartment above new garage.
- 5. Bond Review (7:25)**
 - a. Indian Knolls Road, Preveneau
 - i. Bill Zampaglione of PAC Group was present
 - ii. Proposal to substitute a \$112,336 performance bond for the existing "letter of credit."
 - iii. Presented letter from Jack Healy endorsing the proposal. The dollar figure is also endorsed by Dr. Tobin.
 - iv. Motion to approve by Mr. Barrows, second by Mr. Pavlick, carried unanimously
- 6. Public Hearing (7:45)**

LITCHFIELD PLANNING AND ZONING COMMISSION
Town Hall Annex Gymnasium– 80 Doyle Road, Bantam, CT
7:00 p.m.

- a. **Forman School, 54 Norfolk Road (7:45)** Modification to Special Exception, Educational Institution, to acquire contiguous real property comprising 21.4 acres with one single family residence.
- i. Mr. Pavlick recused himself and Dr. Lowenthal seated Alternate Commissioner Mr. White for this hearing.
 - ii. The application is for Forman School to acquire the property of Jay Youngling and to use it as the Headmaster's residence and to host student functions.
 - iii. Atty. D'Andrea was present with green cards and submitted two letters explaining the transaction. There are no sewer issues; the Fire Marshal has approved.
 - iv. Helen Waldren, Associate Head of School, was present and discussed the history and mission of the school.
 - v. Scott McCarty, Athletic Director, was present to discuss the school's community involvement.
 - vi. Michael Kowalchic, Assistant Head of School, was present to discuss the school's mission.
 - vii. Dennis McMorrow, engineer, was present to discuss environmental impacts.
 - viii. Arthur Oles, appraiser, was present to discuss valuation impacts.
 - ix. Atty. D'Andrea read and entered into the file ten letters from supporters of the application.
 - x. Public Comment
 1. Seven neighbors spoke in favor of the application, some submitting letters. Supporters cited the school's mission and the school's community involvement.
 2. Six neighbors spoke in opposition to the application, some submitting letters. Opposition leader, Lauren Crook, asked members of the audience who opposed the application to stand and some 15 persons stood. Many speaking in opposition appeared to think that the application involved "rezoning" the property.
 3. Atty. D'Andrea made closing comments and two neighbors, James Nadler and Matthew Philips, spoke in rebuttal
 - xi. The Public Hearing was continued to August 19.
 - xii. Commissioner Pavlick was re-seated, relieving Alternate, Mr. White.
- b. **Stop and Shop, Village Green Drive** Site Plan, demolition of three existing buildings and construction of one new 38,000 sq. ft. building, and construction of a 2,500 square foot addition to one building, and associated site improvements. Received 5-6-13, Public Hearings 6-3-13, 6-17-13. Must be considered by 9-13-13 (130 days to complete).
- i. Chairman Lowenthal noted that the previous continuation had interrupted the Public Comment and called on the representatives of PLAN Litchfield to resume their presentation.

LITCHFIELD PLANNING AND ZONING COMMISSION
Town Hall Annex Gymnasium– 80 Doyle Road, Bantam, CT
7:00 p.m.

- ii. Engineer, Steve Trinkaus, was present to speak in opposition. He presented his credentials. He discussed the adverse environmental impact of the chlorides used in snow removal, the insufficient turning radiuses for trucks, the insufficient green space (objects to detention ponds inclusion as green space), objects to pre-development environment being used as a base line because of existing inadequacies. He questioned DEP compliance.
- iii. Town Engineer Vince McMahon, of Milone and McBroom, was present. He indicated his familiarity with Mr. Trinkaus's arguments, which were aired at Inland Wetlands' hearings, and will respond at the continued hearing.
- iv. Mr. Waterhouse questioned Mr. Trinkaus about chlorides and Mr. Post questioned Mr. Trinkaus about the retention basins.
- v. Atty. Franklin Pilicy, was present to speak in opposition. He cited the 7-3-13 opinion from Atty. Byrne regarding the 300 square foot parking space definition and the Commission's lack of discretion in the matter. Also cited were the need to assume uses for unoccupied space in the calculation of parking spaces, as well as the need for evidence in support of the 50% reduction of parking spaces for predominantly nocturnal uses. Calculated correctly the restaurants would require another 51 spaces and the unoccupied space another 26 spaces. The site plan as submitted is 77 spaces short.
- vi. Chairman Lowenthal indicated that Atty. Byrne was available to attend the continued hearing.
- vii. Mr. McMahon was critical of several aspects of the application, including the non compliant size of parking spaces and inadequate turning movements for trucks. Other shortcomings might be remedied, he opined, but these two flaws could render the plan "not viable."
- viii. Joan Spear was present, requesting clarification on the remediation status for underground storage tanks and the status of diagnostic wells which had been "paved over."
- ix. Suzie Funell was present and read a letter from designer and author, Annie Kelly, with numerous objections to the design of the proposed building.
- x. Sean Mathis was present and asked Commissioners to take particular note of Atty. Byrne's 7-3-13 letter, specifically the opinion that a Commission's prior negligence in enforcing a regulation does not constitute a de-facto waiver of such regulation. Specifically this Commission's prior approval of parking spaces less than the 300 square foot definition do not constitute a precedent which the Commission is permitted to follow in the case of Stop and Shop. Mr. Mathis supported Atty. Byrne's opinion that, while the Commission has the authority to change regulations, it has no discretion whatsoever in enforcing the regulations as they currently stand, irrespective of precedent.
- xi. Angeline Garreau was present to object to the application on the grounds of potential fill toxicity, contamination of the aquifer, and violation of public trust.

LITCHFIELD PLANNING AND ZONING COMMISSION
Town Hall Annex Gymnasium– 80 Doyle Road, Bantam, CT
7:00 p.m.

- xii. Betsy Glassman was present to speak in opposition.
- xiii. Barbara Putnam was present to object to the application on the grounds of an issue raised by Atty. Byrne concerning “feasible and prudent alternative.” Ms. Putnam noted that Stop and Shop could just as easily take over the lease for Rite Aid and expand in its existing location, obviating the need for this site plan. Ms. Garreau returned to note that Susan Schwartzberg had spoken to Rite Aid’s landlord who was willing to go along with the expansion-in-place idea. Mr. Mathis offered to pursue this initiative and Chairman Lowenthal encouraged him to do so. Ms. Spear said that she had spoken with the manager of Rite Aid and that he was willing to move to The Market.
- xiv. Atty. Peter Herbst, representing Litchfield Commons, was present and spoke to the issue of updating the easement for the shared driveway. There are numerous public health and safety matters to which Stop and Shop has not responded. Mr. White asked if the existing easement could be forced on the Commons or if the contemplated development would trigger its termination. Atty. Herbst spoke of his optimism about a resolution but failed to respond to Mr. White’s question about whether Stop and Shop had any legal obligation to respond at all.
- xv. John Lang, of Frederick P. Clark, a traffic consultancy, was present to discuss the opinion of his associate, Mike Gallante. Gallante, engaged by Litchfield Commons, is of the opinion that a recent letter from Atty. Cody fails to respond to his specific questions regarding public safety, leaving outstanding and unresolved issues.
- xvi. Atty. Tom Cody was present, representing Stop and Shop.
 - 1. He sharply disagrees with Atty. Byrne’s July 3 opinion about a Commission’s prior approvals not setting a precedent. Atty. Cody says this Commission must be consistent with prior approvals which disregard the 300 square foot definition of parking spaces.
 - 2. Atty. Cody also sharply disagrees with Atty. Byrne’s July 3 opinion that in order to enjoy the 50% reduction in parking spaces, evidence must be presented. Atty. Cody’s contention is that this Commission has already accepted the 50% reduction and must continue to accept it. Nonetheless, Atty. Cody presented a letter from owner, Mark Greenberg that the “major portion” of the four restaurants’ business did not conflict with Stop and Shop’s main business hours. At issue is the requirement for an additional 51 parking spaces.
 - 3. Atty. Cody spoke to the issue of the underground tanks and monitoring wells. No hazardous levels of soil contaminants were detected by the time the site was paved over with two exceptions.
 - a. The test results from two of the five monitoring wells are not on record.

LITCHFIELD PLANNING AND ZONING COMMISSION
Town Hall Annex Gymnasium– 80 Doyle Road, Bantam, CT
7:00 p.m.

- b. Contaminated soil was detected too close to Building C (The Market) for remediation to be safely performed. Remediation at that site is contemplated in the current construction plan. Sean Haden has been engaged to perform multiple inspections of this site during construction.
 - 4. Atty. Cody addressed the issue of potential fill toxicity by noting that “clean fill” is a defined DEP term and that the source of fill will be documented.
 - xvii. Patrick Dunford of VHB, a traffic consultancy, showed a graphic projecting traffic queues at the signaled entrance to the site.
 - 1. West on 202: 193 feet, an increase of 35 feet
 - 2. East on 202: 296 feet, an increase of 97 feet
 - 3. South on Commons Drive: 152 feet, an increase of 72 feetMr. Dunford also noted that there would be approximately 12 delivery trucks each week and presented a graphic showing permissible “encroachment” on adjacent and oncoming lanes for trucks making turns. When the intersection is “local to local” (ITE and ConnDot), encroachment is permitted at both the initiation of a turn (the adjacent lane) and at the completion of the turn (the oncoming lane).
 - xviii. Chairman Lowenthal asked why the site plan provided only one pedestrian spine. Mr. Dunford said it was typical and that, “People get used to it.”
 - xix. Atty. Cody addressed the matter of the shared driveway agreement saying that they too were experiencing frustrations. He also noted, “We already have an access agreement.”
 - xx. Mr. Dunford spoke to an issue raised by Frederic Clark, the traffic engineer engaged by Litchfield Commons. Without knowing Litchfield Commons’ future development plans it is not possible to forecast trips or capacity percentages on Commons Drive.
 - xxi. Chairman Lowenthal asked Atty. Cody why the Commission never received “elevations.” Atty. Cody responded that there are numerous elevations in the plans. Chairman Lowenthal clarified that she wants artists’ renditions of the proposed building as seen from Route 202. Atty. Cody found such a rendition and projected it. The rendition shows the new building with a façade about the same size as the existing building.
 - xxii. Public Hearing continued to August 5, at the Litchfield Fire House.
 - xxiii. Atty. Cody submitted a letter said to authorize an August 6 completion of the public hearing.

7. Old Business (1:14) None

8. New Business (1:14) None

LITCHFIELD PLANNING AND ZONING COMMISSION
Town Hall Annex Gymnasium– 80 Doyle Road, Bantam, CT
7:00 p.m.

9. **Correspondence** (1:14) None

10. **Adjournment** (1:14)
a. By acclimation

Respectfully Submitted,
Ralph White, Acting Secretary
July 16, 2013

Susan W. Pitman Lowenthal, MD
Chairman

Date

DRAFT