

## Regular Meeting

The 1421<sup>st</sup> meeting of the Town of Stonington's Planning and Zoning Commission was held on Tuesday, May 18, 2010 at Mystic Middle School, 204 Mistuxet Ave., Mystic. The meeting was called to order at 7:00 p.m. by Chairman John Swenarton. Present were Commissioners Lynda Trebisacci, Ben Tamsky, Paul Holland, and Bob Mercer; Alternate Gardner Young, Town Planner Keith Brynes, and Director of Planning Bill Haase. Alternates Chris Regan and Rob Marseglia were absent.

Seated for the meeting were John Swenarton, Lynda Trebisacci, Ben Tamsky, Bob Mercer and Paul Holland.

### Minutes:

Mr. Mercer made a motion to approve the minutes of May 4, 2010. Mr. Tamsky seconded. The minutes were approved, 3-0-2.

Roll Call: Mercer - approve, Swenarton - approve, Tamsky – approve, Trebisacci – abstain, Holland - abstain

### Administrative Review:

**PZ1006SUP & GPP Keith L. Main (NERP)** - Special Use & Groundwater Protection Permits for construction of a 19,097 square foot retail building, adjacent 15,000 SF outdoor display & sales area, loading dock, and associated parking, utilities, landscaping & lighting. Property located at 335 Liberty Street, Pawcatuck, CT. Assessor's Map 17, Block 3, Lots 3, 4 & 4A. Request approval to change construction material to block rather than metal, as previously approved.

Mr. Brynes gave an overview of the applicant's request.

Mark D'Addabbo from New England Retail Properties (NERP) discussed the change concrete block on the back side of the building, stating a savings in construction costs. The remaining three sides would remain hardiplank as approved.

Public Comment: Dora Hill asked if the Architectural Review board had seen the requested change and whether it complied with Section 4.9.10.4 of the Highway Interchange zone regarding predominant building material. Don Sadowski thought the rear side of the building would be visible to the public during the seasons when there are no leaves on the trees after future development of the site or construction of a riverwalk. He was of the opinion that the structure should have hardiplank entirely around and the request should be considered by the Architectural Review Board. Mr. Tamsky asked if the block could be veneered with stucco. Mr. D'Addabbo said he would prefer not to. Mr. Holland stated that use of the concrete block in such a location conforms to the HI-60 regulations. Mr. Mercer stated that the concrete block is more attractive than the approval metal siding and that even if the riverwalk is constructed, it will not be very visible.

Mr. Holland made a motion to approve the request to change construction material to block rather than metal. Mrs. Trebisacci seconded. The motion was unanimously approved, 5-0.

**PZ0667CNU & CAM Masons Island Landing, LLC** - Applications for Change of Non-Conforming Use & Coastal Area Management Review for the redevelopment of an existing 4.2+/- acre parcel into five (5) residential duplexes & three (3) single family residences. Property located at 29-30 Dubois Dr., Mystic, CT. Assessor's Map 175, Block 4, Lot 10. Zones RM-15 & RC-120. Request approval to add retractable latticework to front of structure parking area.

Robert Ferrara spoke on behalf of the request to add retractable latticework to front of the parking area underneath the buildings in response to a customer's concern about security and distributed several exhibits to the Commission. Mr. Ferrara listed several instances where the ZEO did not count enclosed ground floor parking areas in the floodplain as gross floor area..

Paul Holland reminded the applicants that they had attained maximum gross floor area based on the building designs approved under the original Change of Non-conforming use application, and should not be back before the Commission because they are out of gross floor area. Mr. Swenarton stated that the Commission's previous unanimous denial of the applicant's request for garage doors should have prevented the issue from being brought up before the PZC again. Mr. Mercer thought there were inconsistencies regarding interpretation of the

regulations and that the issue should be discussed in the presence of the Town Attorney and Zoning Official. Chairman Swenarton felt that the overall issue required more attention than the Administrative Review process provides.

Mr. Gennaro Martorelli, an owner of the property, stated that there is a long precedent in not counting the spaces under houses in the flood zone as gross floor area. Mr. Ferrara and Mr. Martorelli gave testimonies as to the history of the project, the current request, and examples of other decisions concerning gross floor area which contradicted the ZEO's current decision. Mr. Ferrara stated that rather than the garage doors being denied by the Commission in 2008, that alternative was withdrawn by the applicants prior to the Commission's decision. He stated that the ZEO's current interpretation discourages homeowners from elevating their houses to comply with FEMA regulations. Mr. Martorelli stated that the definitions of "floor" and "lowest floor" exempt such areas from gross floor area. Mr. Mercer stated that ground level parking areas in flood zones are prohibited from ever being converted into residential areas.

**Staff comment:** Mr. Haase reviewed his report on the issues. He stated that such big picture zoning issues should not be determined under a consent agenda item but rather should be decided after a public hearing. He brought up Section 2.6 regarding Change of Non-conforming Use applications which prohibit expansions of non conforming uses. He expressed concern with this application's repeatedly being in front of the Commission and numerous appeals to various parties. He believed that granting the applicant this relief would lead to Staff changing its policy to allow FAR leniency and would affect development in many areas of town.

Mr. Tamsky thought that the Commission's previous approval was very generous and that now they were back to extort more from the Commission. Mr. Mercer thought the lattice which could cover automobiles would visually improve the project. Mrs. Trebisacci thought if the top row of the lattice were removed a compromise could be reached.

Town Attorney, Tom Londregan, stated that most towns in Connecticut don't use a floor area ratio regulation but rather govern maximum footprints, setbacks and height. He asked the Commission to consider whether it is clear in the regulations that ground floor parking areas in the floodplain should be exempt from being counted as gross floor area. He stated that the Commission has the ability to interpret their regulations and that the definitions could be revised in the future to prevent further confusion.

Town Zoning Official, Joe Larkin, discussed many inconsistencies with this application and the difficulty in interpreting the regulations regarding floor area ratio. Discounting garages only in flood hazard areas would not be fair to other homeowners. He believed that if it were enclosed with lattice it would have to count as gross floor area. Mr. Larkin stated that while there may be some inconsistencies in past applications, his review of the regulations does not allow exemption of the parking area.

**Public Comment:** Architect and Engineer Bill Bertsche spoke in favor of the applicant's interpretation of the regulation which would be consistent with other local zoning and FEMA regulations.

**Rebuttal:** Mr. Ferrara suggested it would be more energy efficient and convenient for the owners to get out of their car. Mr. Martorelli stated that he did not know adding garage doors would be an issue at the time of the original approval. He stated that the ZEO's decision is an unacceptable change of policy and that he has been biased against the development. He put forth two alternatives for the Commission's consideration – 1) latticed garage doors and 2) fully enclosed garage doors.

Mr. Holland made a motion to deny the request. Mr. Tamsky seconded. The motion to deny was approved, 3-2. Roll Call: Trebisacci – deny, Mercer - deny, Tamsky – approve, Swenarton – approve, Holland - approve

**Reason for Denial:**

Enclosure of the space with lattice work would be an intensification and/or expansion of a non-conforming use.

**Discussion of Zone Change Land Record Filing Requirements.**

Mr. Brynes reviewed the Department of Planning's policy of requiring A-2 surveys for approved zone changes to be recorded in the Town Clerk's office.

Gail Shea reviewed the process of being granted a recent approval for a zone change application, stating that there is no basis in the Zoning Regulations or state statutes for recording of the survey or Certificate of Zone Change. Her original survey is already recorded. She asked that her approval letter be rescinded and replaced with one eliminating those requirements.

Attorney Londregan stated that upon the Commission's approval and effective date the zoning boundary was deemed changed and that there is no need to require recording of any plans.

Mr. Holland made a motion to rescind the letter to Gail Shea and Tom Haggerty, Mrs. Trebisacci seconded. Mr. Holland withdrew his motion. Instead the Commission gave the staff guidance to discontinue the policy and resend the approval letter.

**Public Hearings:**

**PZ1003RA Town of Stonington (PZC)** - - Zoning Regulations Text Amendments to Article I (1.2 Definitions), Article II (2.4 Required Permits; 2.6 Non-Conforming Use & Bulk; 2.11 Gasoline Sale Places; 2.13 Performance Standards), Article II (2.4 Required Permits; 2.6 Non-Conforming Use & Bulk; 2.11 Gasoline Sale Places; 2.13 Performance Standards), Article III (3.1.2.4, 3.2.2.4, 3.3.2.4 & 3.4.2.3 Accessory Apartments; 3.2.4 & 3.3.4 Buffer Requirements; 3.1.3.3, 3.2.3.26, 3.3.3.6 & 3.4.3.3 Communications Towers), Article V (5.1.1, 5.1.2 & 5.2.1 Bulk & Use Tables), Article VI (6.1 Special Use Permits; 6.3 Conceptual Review for Projects over 30 Units; 6.6.9 Marinas - Yacht Clubs), Article VII (7.8 Residential Use Growth Management; 7.10.5.2 Off-Street Loading Berths; 7.10.6 Off-street Parking Lot Design Requirements; 7.17 Telecommunications Antennas & Towers), Article VIII (8.2.2.6 Zoning Permits; 8.3 Site Plan Submissions - Review and Approval; 8.4.2 Type 2 Site Plans; 8.4.3 Master Plans; 8.8.1 Impact Statement; 8.8.3 Zoning Text Amendments; 8.9 Public Hearings; 8.10 Zoning Board of Appeals), Article IX (9.4.5 Reapplication), Article X (10.1 US Route 1 Temporary Moratorium), Appendix (Acronyms).  
*Continued from 5/4/10*

Mr. Holland made a motion to continue the application to the 6/1/10 meeting. Mrs. Trebisacci seconded. The motion was unanimously approved, 5-0.

**PZ1011SD Pequot Development Associates, LLC** - Re-subdivision Application to facilitate lot line adjustment of previously approved lots 10-14, 16-19, and designated open space. Properties located at Grandview Farm Drive and Cedar Grove Lane, Pawcatuck, CT. Assessor's Map 17, Block 1, Lots 6P, 6Q, 6R, 6S, 6T, 6V, 6W, 6X, 6Y & 37. Zone RM-20. *Applicant requests rescheduling to 6/1/10*

Mr. Holland made a motion to reschedule the public hearing to the 6/1/10 meeting. Mr. Tamsky seconded. The motion was unanimously approved, 5-0.

Mr. Tamsky made a motion to adjourn. Mrs. Trebisacci seconded. The motion was unanimously approved, 5-0. The meeting was adjourned at 10:43 p.m.

  
Lynda Trebisacci, Secretary