

LITCHFIELD PLANNING AND ZONING COMMISSION

Litchfield Firehouse, 258 West Street, Litchfield, CT

REGULAR MEETING MINUTES

August 5, 2013 7:04 p.m.

Chairman Susan Lowenthal called the meeting to order at 7:04 p.m.

Present: Commissioners Susan Pitman Lowenthal, Curt Barrows, Carol Bramley, Peter Losee, David Pavlick, Sky Post and Tom Waterhouse. Alternate Commissioner Ralph White and Land Use Administrator Dr. Dennis Tobin

Absent: Erin Kennedy, Ed Doyle and Tom Waterhouse.

Public Comment: There was no public comment.

Appointment of Alternates: In the absence of Tom Waterhouse, Chairman Lowenthal appointed Ralph White as a full member.

Appointment of Temporary Secretary: Jo Ann Jaacks was present as recording secretary.

Approval of Minutes for July 17, 2013

Motion: Sky Post moved to accept the 7-15-13 minutes (taken by Temporary Secretary Ralph White) with a few minor edits. Carol Bramley seconded the motion. All voted aye with David Pavlick abstaining and the motion carried. (Edits: Page 1, ¶1, Line 11 and Page 4, ¶2, Line 6 the name should be Angeline Goreau; Page 3, ¶2, the name should be Vince McDermott; Page 4, ¶7, Line 28 should be changed to "approvals that **do not use** . . .)

Commissioners' requests: Sky Post requested the public hearing be sufficiently short that the Commission has enough time to properly consider the Stop & Shop application. Chairman Lowenthal said this hearing will be completed tonight and the application considered for the next 8-19-13 meeting. She requested only new material not previously presented and only one hour in length.

PUBLIC HEARING

Stop & Shop Supermarket Company, LLC – Village Green Drive

8-5-13

Site plan for demolition of 3 existing buildings C, D & E to construct 1 new building (38,000sf), a 2500sf addition to building B and associated site improvements.

Attorney Perley Grimes said he was representing Attorney Tom Cody who is on vacation, and is prepared to address issues raised since the 7-15-13 hearing. He said Attorney Steve Byrne's letter was received and Attorney Cody responded to it. Chairman Lowenthal asked that Mr. Byrne's letter be read aloud and Mr. Grimes declined. He said Consulting Engineer John Hessions and Traffic Consultant Patrick Dunford were present to discuss traffic, storm water management, parking and business hour issues. Highlights of that discussion are as follows:

1. Fifteen parking spaces have been eliminated on Commons Drive, thus eliminating the remodeling of Building B, and providing additional parking spaces.
1. Large tractor trailer traffic on Commons Drive will not be allowed.
2. Chairman Lowenthal requested a revised site plan and Attorney Grimes said those 4 pages were given to the Land Use office today. She read aloud a letter from Attorney Steve Byrnes to Attorney Tom Cody.
3. Mr. Dunford said traffic signal coordination and #202 re-striping will be discussed with CT-DOT. The left turn lane has been expanded as a solution to traffic back-up.
4. Mr. Hession responded to a 7-29-13 letter from Milone & MacBroom regarding parking and circulation for both internal vehicles and pedestrians. They had been told that storage area in the building did not require parking spaces (Building A has 10,000sf of storage in the lower level) and they believe they now have the required number of 337 parking spaces, including the requisite handicapped spaces.
5. Pedestrian improvements have been made by extending the sidewalk and adding a new pedestrian path between Buildings A & B and the Litchfield Commons.

6. EBI Consulting said the project has addressed storm water management concerns through the use of filters on catch basins, hydrodynamic separators and other measures and the plan was approved by Inland Wetlands.
7. Soil testing as recommending by Milone & MacBroom will be performed and the issue of underground storage tanks on the site will be addressed by CT-DEEP (Connecticut Department of Energy & Environmental Protection). The Planning & Zoning Commission will be kept informed of all environmental activities on the project.
8. Attorney Grimes will give a copy of the slide set to Dennis Tobin; he gave Mr. Tobin and Chairman Lowenthal a copy of a letter from Mark Greenberg concerning parking spaces; he gave 8 copies of storm water management plans to Mr. Tobin for approval. He said pedestrian connections plans were given to Mr. Tobin earlier in the day for approval. He said the \$14,660 in additional application fees requested by Mr. Tobin will be paid.

Chairman Lowenthal began the discussion by asking if the 7-15-13 binder submitted to Planning & Zoning was still valid. Mr. Dunford explained there will be two truck delivery sizes to the site: SUV-30 (such as a FedEx truck) and WB-62 (tractor trailer which is measured axle to axle and could have an overall length up to 68ft.) Trucks will be entering and exiting via Village Green Drive. The only other tractor trailer delivering on-site would be for Dunkin Donuts.

Chairman Lowenthal entered into the record and passed around several photos she had taken at 9a.m. on 8-2-13 at the Unionville Stop & Shop, which depicted a Stop & Shop tractor trailer unloading at the dock as well as several other non-Stop & Shop trucks unloading in the same area. The store manager told her they had more than one daily delivery.

David Pavlick mentioned Milone & MacBroom's concern about storm drainage velocity being affected by a slope. Mr. Hession said this was addressed and attached as an exhibit to Attorney Cody's letter. In reply to Peter Losee's question about tanks under Building B, Mr. Hession said there are no underground tanks there, although possibly contaminated soil; if that becomes a problem, they will remediate it. Attorney Grimes noted that page 9 of Attorney Cody's 8-1-13 letter addresses the RSR's (remediation standards regulation) for DEEP.

In reply to Sky Post's concern about storm water management, Mr. Hession said Stop & Shop would now be responsible for monitoring that storm water management is in compliance.

In reply to Chairman Lowenthal's concern about traffic egress, Mr. Dunford said the WB-62 trucks could safely turn into and egress the property without going over the center traffic line. He said there would be approximately 5-6 cars could fit behind a WB-62 truck waiting at the light.

In reply to Mr. Pavlick's question about number of parking spaces on the existing development, Mr. Dunford replied there are 282 spaces on the Village Green site plan #S-1.

In reply to Ralph White's question about modification of the existing easement, Attorney Grimes said Milone & MacBroom are satisfied with this and Mr. McDermott said he thought Steve Trinkaus, PE addressed this at the prior hearing.

Vince McDermott of Milone & MacBroom said the fact that the current Senor Pancho's restaurant and the vacant Verizon space will now be used as office space should be listed on the Stop & Shop site plan as "pending approval."

In reply to Chairman Lowenthal's assertion that Stop & Shop has not submitted a completely updated and corrected site plan, Attorney Grimes said they will submit a complete and revised set of plans following Planning & Zoning approval.

In reply to various concerns about multiple delivery truck maneuverability, Mr. Dunford said there are 3 loading docks and sufficient room for multiple trucks to simultaneously unload. He has been assured by the Stop & Shop manager that he can control delivery times if necessary but that he is confident the new site can adequately handle their deliveries. Attorney Grimes noted that the Commission could place restrictions on approval based on multiple truck deliveries and times.

Tom McGowan, town planner consultant, said if Stop & Shop planned to include an onsite bakery or greenhouse, that would require a special exception. Mr. Hession said there would not be a bakery and only a florist space, but if that qualifies as a greenhouse, they will apply for the special exception.

At 9:07p.m., public comment began.

William Spear identified himself as an environmental consultant and published author. He said he was previously in Building D and frequently walked to Stop & Shop, where he often witnessed 2-4 different trucks offloading. He said a larger storage space would not alleviate the problem since fresh produce and dairy items could not be stored that long.

Franklin Pilicy, Attorney representing PLAN (Protect Litchfield Action Network), spoke in opposition to the applicant's site plan. He submitted to Chairman Lowenthal a statement regarding regulations of minimum requirements for health, safety and welfare and discussed parking space required size, authority of the Planning & Zoning Commission, and his own experience driving a tractor trailer. In reply to Mr. Pavlick's query about whether every existing town parking space should be re-measured and reconfigured, Mr. Pilicy said the 300sf requirement should be included in all future applications.

Steve Trinkaus, PE in discussing the required 30% green space for the parking area, said the onsite wetlands would fit into a marsh category and would be removed from the total site area calculation, but the applicant was also then counting the wetland areas as part of the 30% requirement which is incorrect. Only storm water management systems that provide absorption and treatment of runoff could be counted under the zoning regulations. A retrofit would mean leaving the developed portion of the site alone, but modifying the storm water management systems to address water quality improvement of the runoff, but this project is a redevelopment since it involves demolition and construction. To comply with the Channel Protection flow requirement found in the CT-DEEP 2004 Storm Water Quality Manual, the peak rate of runoff for the 2-year storm event must be determined for the site prior to any development, such as when it was woods or meadow. This analysis has not been done by the applicant. By using the current developed conditions as pre-development, the applicant is ignoring the fact that adverse impacts to the watercourse, such as channel erosion and sediment deposition, are occurring and will continue to occur with the storm water management system as proposed. Stop and Shop should present a plan that eliminates adverse impacts to the aquatic resources. Pollution from a project of this size must be subject to primary treatment systems, not the lesser standard of secondary treatment systems. Those pollutants (including hydrocarbons, zinc and other metals) could potentially discharge to nearby surface waters, groundwater and, ultimately, the aquifer.

Michele Crow and Joan Spear, representing PLAN (Protect Litchfield Action Network), distributed copies of a 24-page document to Commission members and took turns reading the entire document aloud, which was in opposition to the Stop & Shop application. They detailed specific features of the plan that they believe fail to comply with local and state regulations and the broad categories included the following listing. Ms. Crow also noted that PLAN has filed an appeal against the Inland Wetlands approval of this application.

1. The development will pollute Litchfield's surface water, groundwater and drinking water.
2. Parking spaces are too few, too small and unsafe.
3. Traffic circulation on the lot is unsafe for vehicles and pedestrians.
4. Truck traffic leaving the site is unsafe for vehicles and pedestrians, and is improperly directed to nearby residential streets.
5. There is not enough green space.
6. The green space is improperly designed and improperly situated on the lot.
7. The applicant ignores feasible and prudent alternatives that would protect the wetlands.

Peter Herbst identified himself as an attorney representing Litchfield Commons. He said since the last public hearing, all of their concerns have been addressed and they ask that the Stop & Shop application be approved. In reply to Mr. White's question if there are new agreements that would be a change to the existing easements, Mr. Herbst said no, there are not. In reply to Chairman Lowenthal's question about the egress on Commons Drive being limited to cars,

Mr. Herbst said that SUB-30 vehicles could access it also and there will be directional signage on the property. Mr. McDermott noted those signs are on the new site plan.

Michael Galok noted that smaller trucks only could safely use Commons Drive during construction.

H. Sean Mathis spoke about his experience driving tractor trailers and expressed concern about the turning radius for large trucks heading east out of the Stop & Shop site. He recommended that an actual demonstration be performed and suggested requiring Stop & Shop to provide a bond to ensure they comply with safety and environmental requirements.

Litchfield resident Angeline Goreau expressed the belief that the current owner of the site is in violation of promises made concerning water management. She read aloud a letter from Litchfield attorney Steven Landers outlining a possible conflict of interest since Milone & MacBroom once represented Stop & Shop as a client.

Kimberly Fischer identified herself as a Litchfield school crossing guard and expressed concerns about increased large truck traffic to the center of town. Since she also works at CVS and knows that distributors to the store come at their convenience, she doesn't believe that Stop & Shop could control multiple truck delivery times. She noted that if regionalization of Wamogo and Litchfield schools goes through, there would be even more parents dropping off children at school to avoid a 45-minute bus ride. The school safety factor could be enhanced by a blinking or independently controllable traffic signal by the school.

David Brenner identified himself as owner of the Bantam Market and said he is not concerned about possible competition from a super Stop & Shop in Litchfield, but does believe it will have a negative impact on other local small businesses, is not necessitated by the amount of local customers, and the town would be better served by Stop & Shop expanding within their current space.

Litchfield resident Rosemary Ripley expressed environmental and traffic concerns from multiple truck deliveries and Peter Grubstein, who identified himself as an "impact investor" who invests millions of pension funds in responsible ways using BACT (Best Available Control Technology), encouraged the Commission to consider how to make the Litchfield community as a whole, better.

Attorney Grimes requested time for rebuttal to the public comment and was allowed 10 minutes. He noted that the P&Z consultants including Milone & MacBroom, Tom McGowan and Steve Byrne have not agreed with any of the issues raised by speakers from the public tonight, and the Commission should not treat Stop & Shop any differently than they have treated any other applicants during the past 25 years. The critical component of their application is the wetlands and they certainly have that approval.

Mr. Dunford clarified that there may be some confusion about the loading dock pad having sufficient turnaround space but they are confident there is ample maneuverability. They will make changes to the Village Green Drive egress area if that is required by the Commission.

Attorney Grimes said they have tried to bring all issues to the fore and deal with them, but business impact is not within the purview of this Commission and if their application meets all requirements and regulations, Planning & Zoning should approve it.

Chairman Lowenthal noted that it was now 11 p.m. and the Commission has received a lot of new material to consider. A poll of Commission members indicated none were prepared to vote on the application tonight. Mr. McDermott said he has seen all paperwork except the documents PLAN presented tonight, and they are prepared to discuss large and small issues. Mr. Byrne said he can't go through the new PLAN submission; because there were interveners, CT statutes require P&Z to go where Wetlands went to decide how the public is best served. If P&Z varies from the Wetlands approval, the Commission would have to explain that decision.

Mr. Pavlick noted that jurisdictionally, P&Z members are also Aquifer Protection members, and that complicates the issue. Mr. McDermott said groundwater protection requirements are Article 6, Section 3.

Mr. Post said internal traffic issues are a big concern. Mr. McDermott said the main traffic entry will be on Village Green Drive off #202 and all delivery trucks will proceed through the parking areas to the truck-only circle. He is comfortable that 3 WB-62s can fit there. Smaller trucks can enter through Commons Drive. There are 23 parking spaces that could be in the path of incoming trucks.

Mr. Pavlick asked if trucks queuing here could impede cars from getting out; Mr. McDermott said that could happen. Carol Bramley asked about Dunkin Donut trucks coming in and out; Mr. McDermott said the DD area would now enter only from the south.

Mr. White asked Steve Byrne if P&Z has to believe there is a reasonable feasibility of pollution to act on the statute governing this; Mr. Byrne said P&Z would go by the findings and approval of the Wetlands Commission. Mr. White asked if P&Z would have a vote on whether they thought there was a “reasonable likelihood of an unreasonable pollution;” Mr. Byrne said yes, and he can provide a similar case to compare.

Mr. McDermott noted that PLAN has put forth through Steve Trinkaus a host of new issues for P&Z to consider and Mr. Byrne said P&Z needs to respect the findings and opinions of professionals in their field such as Mr. Trinkaus. Nicole Burnham of Milone & MacBroom said P&Z should make an effort to meet guidelines for storm water management and believes that S&S has done what needs to be done to address that situation. She is satisfied with reports on pollutant presence S&S provided her. As a benefit of this project, the poor quality wetlands bordering White Memorial will be improved. She said the soil contaminants could best be removed during construction.

Mr. McGowan asked if P&Z should be operating under the 2004 DEEP manual of water quality and Mr. Byrne replied that P&Z is acting as an arm of DEEP to follow the 2004 manual. Ms. Burnham said the goal is to remove 80% of sediment pollutants pre-construction, and the manual says we can use secondary treatment practices if the 80% is met. She explained redevelopment (which presents a higher standard) vs. retrofit and P&Z must consider that. She said the current S&S application is only meeting 50% of the water quality volume and that is a secondary practice.

Chairman Lowenthal asked about holding S&S to pre-development conditions; Ms. Burnham said it's in question as to what is the existing condition. There should be a pre-development responsibility upon S&S and that is a slippery slope with future applicants. Chairman Lowenthal said it is known there were underground tanks and there is contaminated soil here – how does this application fit in with any responsibility for remediation? Ms. Burnham said DEEP would not require S&S to demolish Building C to remediate the soil.

In reply to Mr. Post's questions about parking space size, Mr. Byrne said the 300sf could include a traveling space as well as a vehicle space. Mr. McGowan noted the parking space regulation dates back to 1970 and he thinks the parking “aisle” should be separate from the 300sf.

Mr. Pavlick asked about a spill on the property; Ms. Burnham said there is a trench drain in the loading area to contain a gas/oil spill from going into the storm water. S&S will also need a storm water management plan, requiring regular DEEP inspections. Mr. McDermott said copies of those inspections could be given to P&Z. He said the threshold decisions on this application involve the environmental and parking issues.

Mr. McGowan asked if any of that property is a bog or marsh (Article 6, Section II, last sentence); Mr. McDermott will investigate that.

Mr. White asked if the shared driveway will be a problem; Mr. Byrne said the easement used to be very broad but now they are barring large trucks. Mr. McGowan said the original purpose of the shared road as a safe entry through a stoplight might now be impacted. Mr. Byrne said this is an important aspect of the plan and P&Z can make this a condition of approval.

Mr. White said P&Z members should use their own observations and experience to overrule an expert. Storm water protocols are not really good, but good enough, and our expert is advising us to accept it. Mr. Byrne advised that a court would not be very accepting of a layman's input and in this case P&Z should rely on its experts. He said P&Z should be consistent with best practices and treat the next applicant the same as this one. The burden of proof is on the interveners.

Mr. McDermott said it is possible that however this application turns out, there might be a legal action, especially due to the wetlands. Curt Barrows noted that concerning the 80% of the runoff, this is a significant piece of property and perhaps a bond should be required. Ms. Burnham said the applicant will have the responsibility of maintaining this property. Mr. McDermott said reports on monitoring and fixing the problems should go to Dennis Tobin and P&Z Commission for review and incorporation into P&Z meeting minutes. P&Z can approve, deny or approve with modifications or restrictions and S&S would have to file a new site map.

Motion: Sky Post moved to adjourn at 12:37 a.m. Mr. Pavlick seconded the motion. All voted aye and the motion carried.

Respectfully submitted,

Jo Ann Jaacks
Recording Secretary

Date: August 7, 2013