

## Planning and Zoning Commission Public Hearing

The East Haven Planning and Zoning Commission held the continuation of a Public Hearing Wednesday, August 2, 2017 to commence at 7:00 PM at the East Haven Community Center, 91 Taylor Avenue in order to transact the following:

Staff Present Christopher Soto, Zoning Official, Alfred Zullo, Town Attorney, Kevin White, PE, Town Engineer, Sal Brancati, Director, and Roberta DeLuca, Clerk.

### Public Hearing #1

Clerk read the first public hearing notice aloud, 75, 83, and 93 Hemingway Avenue application for special exception for a non-assisted living facility 55 and older.

Roll call. 5 Present (Colangelo, Carbo, DeMayo, Gravino, and Cianelli) quorum present.

Chairman Cianelli recognized Attorney Tim Lee. Mr. Lee address the commission, stating that he's here on behalf of the applicants he made his presentation last month. This is a mixed-use development consisting of 2 commercial buildings one will be retail and one will be medical offices, along with 71 age-restricted residential units. We were here before the commission last month and the commission and the staff had some concerns, we have addressed those concerns. Just yesterday we received comments from Marcy Balint of the DEEP because this application requires a CAM application. Just today we returned answers to her comment letter and we have submitted it to the zoning staff and we have copies to submit to the commission. Attorney Lee will address some of the issues in Marcy's letter and Jim Galligan the engineer will address the more technical questions and concerns. Ms. Balint raised three legal issues which he will address the first one was the zone change by this board which she believed would increase the residential density, but last year we did a zone change from RA to CB-2, which allowed us to place the two commercial buildings as a result it decreases the residential density. Secondly, she raised some concerns with regard to easements, which remain on the property. One easement was granted to allow passage over the property to the salt marsh that particular easement was created by deed in 1922 there are no metes and bounds of that particular right of way. We are showing it on our maps because it's referenced in the 1922 deed. She then referenced a storm water drainage easement in favor of the Connecticut Department of Transportation that also is depicted on the map and on the Trolley Square property. That allows the state to take storm water drainage down Hemingway Avenue and direct it to a underground pipe to the wetlands it's all underground piping and we are not proposing any structures within that 25 ft. area but we are proposing some parking in that easement area and parking is not prohibited. Trolley Square has the same easement over their property and they have their parking over the easement. Finally, she referenced 100 sq. ft. easement at the entrance of Trolley Square it curves over our property we are not doing anything to interfere with that easement and it is referenced on the plans, also. We have looked at the previous deeds and there is no such easement depicted on those deeds. I have prepared a letter for the record with regard to those relevant deeds for the commission so that it becomes part of the record. I have summarized that easement in this letter. Marcy Balint had some concerns if this is FEMA compliant and our architect Robert Mangino addressed those

issues with Planning and Zoning. Mr. Mangino submitted a letter stating that this project is compliant with FEMA regulations and the flood plain that it is in and to complete the record he submitted those documents to the record.

Mr. Jim Galligan, PE engineer for the project stated he is going address the bullet items in Marcy Balint's letter. Bullet item number 2 is a question related to the test pits, the test pits do represent seasonal high groundwater that she wanted to have addressed and test pits are the best way to do that. Bullet item number 3 is with regard to the perk test on the site, which are variable. Where the detention system is proposed the perk test is 1 inch in 5 seconds and in the worst area it was 1 inch in 13 minutes and we use an analysis of 1 inch in 20 minutes which leaves us with 150% safety factor in the worst-case condition. We have built in plenty of safety factors we have gone above and beyond the worst case with regard to the groundwater. Since, we did realize the variables we used a very conservative number in our analysis and design. Bullet number four addresses the retaining wall and the concentrated flow. The retaining wall does not concentrate flow on or our property or especially any adjacent properties. The grade near the outlet on the adjacent property is at elevation 8 the elevation and rises even higher, our low point on the property below the swale is at 4.4 elevation. The channel within that particular area is 75 ft., at the other end of the property the east end of the property it is also elevation 8 and our low point is at 4.3 elevation, again we're tracking almost to 4 ft. change in grade before you leave our property. The channel within that area is almost 80 ft. wide, that area is 400 ft. away from the channel outlet there is a full width swale that runs away from the adjacent property and does not allow for drainage to go onto those adjacent properties. It stays on our property and then goes out to the wetlands. Marcy also mentioned about the road drainage coming down onto our property, there is an easement there but there is no drainage onto that easement. Therefore, she is incorrect in that assumption. Bullet item number 5 refers to the DOT drainage easement with regard to obstruction parking, which is allowed in this area and the adjacent property has parking and a driveway along that same easement. Item number 6 was related to her observation of the wall if it is possibly a drainage obstruction. The reason for the wall which is as far away as possible from the wetlands we could eliminate but then we would have to slope out into the wetlands. The purpose of the wall is to keep all the activity as far away from the wetlands as possible. The last bullet to address is with regard to the MS4 regulations, Naïfs and Young are experts in these regulations and we manage those regulations for about 15 towns within the state of Connecticut. I will state for the record that this project has no impact on the MS4 regulation, the town has no exposure related to the MS4 regulations as it relates to this site.

Niki White, 11 Hilton Avenue, East Haven, stated that she has not seen the last communications with the state and will not address it. She wanted to point out some items that were not addressed in Attorney Lee and Mr. Galligan's presentation. There are some items she wanted to bring to the attention of the commission the first thing is a couple baseline matters. I believe that we look at this in relation to the approval that Mr. Sorvillo received in the early 2000's, and we must look at what has changed since that approval and that is Hurricane Irene and Superstorm Sandy. What this speaks to is a concentration in a flood zone. I think that there is a reluctance especially on the part of the DEEP, on the town as well not to put elderly and disabled in harm's way. So it is important to put the Sorvillo approvals behind us and to look at today's situation. Not only Irene and Sandy giving us a wakeup call with regard to the storm surge. I think this is important because this property is fast up against the wetlands and the estuaries and you have the effect of the freshwater meeting the saltwater. She knows you're aware of how quickly it

fills up into the tidal marshes. We must address sea level rise and I'm not sure what you think about the climate changes and all the warning bells that it sets off but sea level rise is measureable in Connecticut. So we are already seeing the effects of that with these low-lying properties. It is a relatively small piece of property that is going to be compromised and I believe that this is too dense. I want to share a few facts with you because when you're deciding a special exception it is a fact based decision. You are looking at a particular application for particular location as to what you can do. You can approve what is explicit in your regulations or so you'll have regulations to be created by this special exception. There is a fact about the process as well and I just want you to be sure you go through this and that you're thinking the same way I am what your latitude is within a special exception regulation. There is a difference with regard to that and we should figure that out first. You also can't vary the regulations in the course of approving a special exception. You can't vary from the regulations if it does not meet specific regulations or the underlying zone regulations. You can't vary from the regulations to accommodate the special exception.

Attorney Zullo stated yes you can.

Ms. Whitehead said okay! So my understanding is that you need a variance if you're going to deviate from the regulations and this board is not going to be able to accomplish that and I'd be happy to share a particular case with attorney Zullo later. The other baseline thing is that although the DEEP comments have been coming and coming that doesn't mean they're redundant some of them have been answered satisfactorily and some still have questions. The main question is the concentration of people in harm's way. When it comes to the special exception there is a lot size requirement for quality housing which would normally allow for this type of housing particularly in the case of a commercial zone because in all other respects a commercial zone is not hospitable to residential developments. If you read our regs you'll see what a CB Zone says, it says it's inconsistent with residential development. So there is a lot size requirement and you are plunking down residential housing in a commercial zone. I read that as a dedicated lot and I know that the people will have a different opinion potentially because this project is interesting in many ways but I read the regulation and I'm giving you my view now. This is a dedicated lot for the purpose of a special exception and a special exception covers very explicitly elderly residential housing. So it doesn't include any additional use. So right off the bat she has a problem with this application because you do not have 4 dedicated acres as a residential development that's coming through as a special exception. The commission, when it has adjusted its regs in the past for smaller lot sizes still have residential components as in 33.1.91. It very deliberately spelled out the circumstances in which you could decrease the lot size. So the commission knew what it was doing and it made it explicit and it limited it to certain sections of town. If you look at the overall plan you will see that the 4 acres is dedicated residential use and commercial in the front. It's probably not more than half of the required lot size.

Chairman Cianelli interrupted Miss Whitehead stating that she is dictating the regulations that we are aware of; the special exception is a leeway of what we can and can't do.

Miss Whitehead indicated she was just pointing out some things that she would like you to review while making a decision or otherwise we could just stop right now because this is regulation driven. It strikes me that there are some things that are problematic with this project and with regard to our regulations. So I believe I made my point it's a dedicated 4 acre lot size requirement. Clearly, you're saying that if you have a 4 acre lot you can put additional buildings and uses on that same lot. So you'll probably see pop

up elderly housing all over town in commercial areas that are already developed but have excess acreage. What is to prevent that from happening? It is her opinion that if you do not have a regulation to guide you are going into uncharted territory this is going to lead to consequences and not hypothetical ones. The next significant question on an even higher level is the notion of mixed-use. It is a good concept in this day and age however we have not addressed this in our regulations, we have no mix use. I think one of the ways that the applicant has tried to soften that a little bit is by saying that the commercial portion is an amenity to the residential housing. This is a street facing open to the public commercial use it is not an amenity to the residential portion. There are no means to decide whether this is appropriate or not without mixed-use regulations and I think it's high time that the town creates them.

Commissioner DeMayo interrupted to say that we as a commission have been sitting here for months listening to the concerns whether they come from the town or from DEEP and forward those concerns to the appropriate staff members. You are very well-versed in the zoning regulations but as a volunteer board here we probably don't know exactly as much as you do. You have not brought any of these concerns before this commission prior. But what I'm hearing is that you don't have a problem with where this project is but with the regulations. The regulations are not for you to tell us we have counsel to advise us. So you're telling the commission a litany of what the commission can and cannot do.

Ms. Whitehead stated that she didn't realize that your high-priced lawyer went through all these regs with regard to this project.

Commissioner DeMayo stated that you have not objected to 1 condition that has come from DEEP.

They seem to have satisfied any of the objections that you might have had prior. There are things about the right of ways and the easements that have all been satisfied. I don't think there's anything that could go there that you would be agreeable to. So please just tell us what your objections are and so we can move on.

Ms. Whitehead stated that she gave two very good reasons why this should not go forward. I will give you the particulars one of the things that really stands out now is the amount of fill that is going on to the property, and as I read the plans we are raising the elevation to 10 at the lowest portion probably a bit higher in the front. The regulations are very clear that in a Floodplain you have to have an 11 elevation in the roadways and 10 feet from the building. That is an old regulation that's been in effect for a very long time. That regulation is in effect so that you have dry access during an evacuation. This project does not meet that regulation, which is important because it's a safety issue this needs to be addressed or you will need a variance for that. She also has concerns with regard to parking.

Commissioner DeMayo stated he believes that two or three meetings prior parking was addressed by adding more parking and decreasing the size of the building.

Ms. Whitehead stated this is a new layout with a different number of parking spaces, a different number of units, and square footage of the buildings. So it is not 189 parking spaces anymore and it is not 76 units anymore either but with regards to parking the biggest error that I see is that the building that is designed to be a medical office and there is a formula for parking for all medical buildings and if you calculate it that way you should it will need 50 and they have 30. There is shared parking to accommodate some of the parking spaces one space per living unit is insufficient, Chairman Cianelli interjected 1 and 1/2 spaces. There is no concept for shared parking because you have to be assured that the uses are not going to run into one another, so I don't think shared parking is a solution here. The calculations for parking are significantly low because it leaves the site jammed for parking. There is a regulation with regard to unrelieved parking just long runs of parking spaces and that regulation is being violated in several places. The next issue is the height of the building.

Chairman Cianelli stated that the variance for the height of the building was grant by another commission and stays with the land, it is not our issue.

Ms. Whitehead stated that the roof will be less than 40 ft. in height anything above the 40 ft. are screens for the HVAC, the stair towers and the elevator towers, so there was screening. There is a regulation that says you can go above the 40 ft. with the mechanicals and screening but not if there is a certain square footage of the roof not utilized. I believe there is a good question whether that variance could still apply. We also do not know how high the building is because the measurements only go to the first floor elevation. So we don't have the facts and if you notice on the drawings there's a fourth story on these buildings. It's not a fourth story on the entirety of the building but there is a 4th story. This zone only allows for three stories not four. It's a competing regulation it's the number of stories or the height whichever is less. In her view she believes you are departing from the policy and terms of that lot size with mixed use. With regard to the fill and the wall has been addressed by DEEP comments. At one point they are going from 4 ft. to 10 ft. with the fill.

Chairman Cianelli asked Ms. Whitehead if she was a licensed engineer and she should have addressed these questions with the engineer. He stated you have a few more minutes you have taken enough of the public's time.

Ms. Whitehead indicated that she is not an engineer so the fill is over the limit and is not covered under the special exception. With regard to it being considered a Flood and Erosion structure she believes that is something that is discouraged under the Coastal Area Management Act and you are governed by that act. There are some other smaller issues that have played a part in some larger decisions that this commission has made. Such as where are you going to put the snow.

Chairman Cianelli stated that you have spoken for 30 minutes and you not telling us anything that we already didn't know.

Ms. Whitehead said I didn't see where anyone said that we are violating the 11 ft. regulation we are violating the particulars of parking where the calculations on the medical building are incorrect. If I had seen it or heard it I would not be commenting on it and I like to put a few things into the file along with some pictures. All copies in the record; the variance, which covers the screening of the mechanicals and the mixed-use and the plan of development, which dictates 5 to 8 units per acre and some sections of the regulations submitted into the record.

Attorney Lee and Mr. Galligan again address the commission and Chairman Cianelli stated he was looking at 3311.10 local and federal reports and I see that you have contacted almost everyone he stated the only problem I see is you going forward with the Department of Transportation. You can have a potential problem with the entrance and egress at the site.

Attorney Lee stated as you are we're planning and zoning is the first step in this process after we get through this commission we can go to DOT.

Chairman Cianelli stated that at prior meetings we had requested reports from the fire department and the police department and the assessor as well.

Attorney Zullo asked the chairman if he wanted to make those reports part of the record if so you have to make a motion.

Commissioner DeMayo moved to place all previous correspondence from fire and police departments and the Assessor's Office and any other department that gave us information pertaining to this project be placed in the file as part of the record.

Commissioner Carbo second the motion.

All in Favor. None opposed. No abstentions.

Chairman Cianelli stated that he has discussed this project with every staff member in town and it still remains where the State of Connecticut and all these people was 10 years ago when they approved 146 unit to go there. I have not seen anything in the past record that anyone opposed that project. The only problem that I foresee is with regard to our zone change.

Attorney Zullo asked Attorney Lee if he felt comfortable going forward with the DOT. Attorney stated he was because it is less residential and that's what the DEEP wants. The zone change that was approved resulted in less density.

Attorney Zullo again asked Attorney Lee if he was okay with going forward. Attorney Lee indicated that he was.

Chairman Cianelli asked the Zoning Official for his comments.

Mr. Soto indicated that when Mr. Galligan went through all the bullet points he addressed a lot of his concerns that Marcy had commented on.

Town Engineer, Kevin White indicated that another item needs to be added into the record from Jacobson engineering they do speak about not having information made available to them, that is not true this information has been in the file since July the 18th it has been in his office and in the zoning official's office as well, saying they didn't receive information is because they didn't seek it properly. They were hired by one of the neighbors in opposition to this project and it is address to you as the chairman of the commission. It has to be made part of this record and it will be addressed by my office in a positive or negative way.

Chairman closed the public hearing.

Commissioner DeMayo moved to close the public hearing.

Commissioner Gravino second the motion public hearing closed

All in favor. None opposed. No abstention.

Respectfully submitted,

Roberta A. DeLuca  
Commission Clerk