



TOWN OF OXFORD
S.B. Church Memorial Town Hall
486 Oxford Road, Oxford, Connecticut 06478-1298
www.Oxford-CT.gov

Planning & Zoning Commission

Regular Meeting Minutes

Tuesday, April 2, 2019

7:30 P.M Main Meeting Room

S.B. Church St. Memorial Town Hall

CALL TO ORDER

Chairman Jeff Luff called the meeting to order at 7:30 PM.

PLEDGE OF ALLEGIANCE

ROLL CALL

Present: Joshua Dykstra, John Kerwin, Pete Zbras, Arnie Jensen, Jeff Luff, Pat Cocchiarella, Tanya Carver and Dan Wall (arrived at 7:32 PM).

Also Present: Steve Macary, ZEO, Jessica Pennell and Peter Olson, Land Use Counsel.

Absent: Greg Wanamaker and Dave Sauter.

SEATING OF ALTERNATES

RECESSED PUBLIC HEARINGS:

Z-18-302 [IND] – 10 Robinson Lane

Owner: McNamee Construction, 154 Route 202, Lincolndale, NY

Applicant: Daniel McNamee

(Special Exception – Contractor's Yard)

(Site Plan for Construction of a Garage, Canopy, and Building)

Commissioner Tanya Carver and **Commissioner Dan Wall** stated for the record that they did not attend the first public hearing on this application and they have not listened to the recording.

Chairman Jeff Luff seated Alternate Joshua Dykstra for Commissioner Dan Wall.

Chairman Jeff Luff asked if the Commission had any further questions for the applicant.

The Commission had no further questions.

Dominick Thomas, 315 Main Street, Derby, CT, Attorney for the applicant stated that he believes the applicant has addressed all the Commission's comments. He reiterated that at the last meeting he went over the Commission's concerns with Jim Galligan, P&Z Engineer. Mr. Galligan acknowledged that the buffer was not necessary because of the topography, the lighting, the distance from the bridal trail and the landscaping plan were also addressed.

Chairman Jeff Luff asked the public if they had any further comments on this application.

Commissioner Tanya Carver stated for the record that she was not in attendance for the public hearing on this application and she did not listen to that portion of the recording.

Commissioner Dan Wall stated that he was also not present and did not listen to the recording.

MOTION BY Commission Secretary Pat Cocchiarella to close the Public Hearing on Z-18-302.
Second by Vice Chairman Arnie Jensen.

All (7) Ayes.

Motion passed unanimously.

Z-18-299 [RESA] – 229 Oxford Road – (Residential to Commercial)

Owner: Gary Morgatto, 231 Oxford Road, Oxford, CT

Applicant's Representative: Attorney Robert Uskevich.

Commission Secretary Pat Cocchiarella read correspondence from Attorney Robert Uskevich informing the Commission that he is withdrawing the application at his client's request.

AMENDMENTS TO THE AGENDA

AUDIENCE OF CITIZENS

Karen and George Fogerty of 5 Charter Oak Drive expressed concerns regarding property at 3 Charter Oak Drive. The couple explained that they are interested in finding out the regulations for in-law apartments; they stated that the number of people living in the home is excessive and that they are concerned about the pool and the septic system.

Chairman Jeff Luff asked that they fill out a formal Zoning Complaint form and give it to the ZEO.

CORRESPONDENCE

OLD BUSINESS

Chairman Jeff Luff requested that all the Commissioners state that they were either present, or listened to the recordings of the public hearings held on Z-18-270 and Z-18-271.

All Commissioners stated that they were up to date on the applications.

Commissioner John Kerwin questioned if the Commission has to approve both applications.

Peter Olson, Land Use Counsel stated that both applications are subject to appeal under 8-30g but there is no requirement in the statute that the Commission has to approve a text amendment to match a

site plan. He noted that the text amendment does not need approval for the Commission to approve the site plan.

Commissioner John Kerwin asked Attorney Olson to explain specifically what the Commission would be approving with the text amendment and the site plan.

Peter Olson, Land Use Counsel explained that the text amendment would apply to all the property currently in the Residential Golf Community District (RGCD), and it would specifically allow apartments throughout the district. He also explained that the amendment would also put age limitations on units and that could be problematic for the Commission because if the applicant fails to live up to the standards it is nearly impossible for the Commission to enforce because if they did, they would become violators of federal law.

Commissioner John Kerwin questioned which application (text amendment or site plan) would approve the 8-30g.

Peter Olson, Land Use Counsel stated that site plan approves the development under 8-30g.

Commissioner John Kerwin asked if that would be the development of 197 units, if they approve the text amendment, would that approve the 8-30g in the entire development?

Attorney Olson stated that it is a problem because it affects the entire district. He commented that the Commission could modify the amendment to only apply to this one property.

Commissioner John Kerwin questioned if the Commission could approve the application as an 8-30g to the entire development.

Attorney Olson stated that the Commission wouldn't apply 8-30g to the entire development by approving this text amendment, they would instead be allowing apartments in the zone and the regulations is not written in the way that would limit 8-30g applications so it could potentially cause many problems.

Commissioners and Attorney Olson discussed the possible actions that could be taken by the Commission on the applications. They discussed items such as health, safety and welfare, hardships that current homeowners may experience, and, the idea that the public may feel that they were misrepresented when purchasing their homes.

Commissioners and Attorney Olson discussed whether or not there is any case law regarding misrepresentations made about developments advertised and targeted at certain demographics.

Attorney Olson stated that the Commission should consider the federal law regarding age discrimination, which is illegal. He stated that there are two exemptions to the law; a community that is 100% of people 62 and older exemption; and, 80% of the units have to be owned by at least one person that is 55 and older exemption. He further explained that there are ambiguities; 20% of the units can be occupied by anybody, 40 units can be rented by anyone what wants to live there. He stated that most developers market their community as 55+ because that is the demographic they want to attract. He commented that each unit that is occupied by one person that is 55+ could also be occupied by other people that are not 55. He reiterated that these are the two cases where a 55+ community is not just for persons aged 55 and older.

Attorney Olson discussed that the applicant represents this as a “type” of community and they will presumably have restrictions on the land records and in the condominium documents to implement this type of community. He stated that the Commission should not be enforcing those restrictions and the reason is, if you have a community with those restrictions and the restrictions are not complied with, the restriction can be declared void because we go back to the default of “discrimination is illegal”. He stated that once the restriction is declared void, it cannot be enforced by the Commission. He noted that the applicant could not be sued by the Commission because they would be suing to enforce age discrimination. He explained that is why he doesn’t like to put these requirements in the regulations. **Attorney Olson** also briefly explained the question of whether or not people had an expectation or received representation of the future of the community. He noted that in his research he did not find any representations made by the applicant during the original application that the development would be only single homes forever. He stated that the Commission expanded that concept itself by allowing multiple units in a single structure, an approval that allowed more density in the community.

The Commission and Attorney Olson further discussed items regarding the condominium documents and associations within the community and whether or not these items would apply to the proposed 197 rental units. Commissioners and Attorney Olson also discussed possibly taking this parcel out of the RGCD and putting it back in the residential zone, possibly eliminating the need for a text amendment.

Attorney Olson further stated that if the individuals who purchased property had some expectations or received representations, it would be a private matter and the Commission could not get involved.

Commission members discussed concerns regarding how the proposed applications would affect the traffic and safety Riggs Street.

TIMBERLAKE APARTMENTS APPLICATIONS: *(Commission action on or before 4/16/19)*

1. **Z-18-270 [RGCD] - Riggs Street, “Timberlake Apartments at Oxford Greens - Owner & Applicant:** Timberlake Investment Partners V, LLC (Proposed Text Amendment to Article 5A Residential Golf Community District, pursuant to CGS §8-30 g) *(Commission action on or before 4/16/19)*
2. **Z-18-271 [RGCD] – Riggs Street “Timberlake Apartments at Oxford Greens - Owner & Applicant:** Timberlake Investment Partners V, LLC (Site Plan for 197 multi-family housing units pursuant to CGS §8-30 g)

MOTION BY Commission Secretary Pat Cocchiarella to have Peter Olson, Land Use Counsel draft a Motion of Approval for Z-18-270 and a Motion of Approval for Z-18-271.

Second by Vice Chairman Arnie Jensen.

All (7) Ayes.

Motion passed unanimously.

NEW BUSINESS

1. **Z-19-028 [IND] – 89 Prokop Road – Phase 1 - Building – Applicant & Owner: Matthew Zaloumis, 315 Riggs Street** (Construct a 7,500 sq. ft. building) (Offices & Inside storage)

MOTION BY Commission Secretary Pat Cocchiarella to schedule a Public Hearing for Tuesday, May 7, 2019. **Second by Vice Chairman Arnie Jensen.**

All (7) Ayes.

Motion passed unanimously.

ZONING ENFORCEMENT

Steve Macary, ZEO discussed the following items:

Fox Pest Control – Representative of the company will be attending the next meeting to give an update on the parking and clean up situation at 55 Old State Road.

Sandwich signs – Letters are being sent to the business owners requesting that the signs be removed.

Charter Oak Drive – Cottage business exists there with no permit; he will follow up at a later date.

Pies & Pints – They have a new name and changed the location of the dumpster, they need to update the use permit.

Community Chapel (formerly Colonial Tavern) – Attending the next meeting to discuss the sign they would like to replace.

The Commission and ZEO discussed that items regarding properties that need to be cleaned up are hard to enforce because the Town does not have a Blight Ordinance.

MINUTES

1. 3/19/19 Meeting Minutes (No action taken)

INVOICES

OTHER BUSINESS

1. Any other business the Commission deems necessary for discussion.

ADJOURNMENT

MOTION BY Commission Secretary Pat Cocchiarella to adjourn the meeting at 8:52 PM.


Second by Vice Chairman Arnie Jensen.

All (7) Ayes.

Motion passed unanimously.

Respectfully Submitted,


Jessica Pennell, Coordinator
Planning & Zoning Commission

19 MAY 16 PM 1:57
TOWN OF OXFORD, CT

TOWN CLERK