

MIDDLEFIELD PLANNING & ZONING COMMISSION
405 Main Street
Middlefield, Connecticut 06455

Minutes of the March 19, 2018 Regular Meeting

Erin Howard called the meeting to order at 6:37 pm.

Attendance:

Members		Alternates	
X	Boyle, Kevin	X	Wojas, Jan
A	Brown, Jay		
X	Ekblade, Eric	Others	
X	Howard, Erin	X	Colegrove, Geoff
X	Wheeler, Scott	A	Curtis, Brian
		X	Russ, Jerry

A=Absent

X=Present

Jan Wojas was seated on the Commission.

Public Comment

None.

Chuck Sheehan, Update on Xenelis Properties at 11, 30 and 34 Old Indian Trail

Chuck Sheehan was present to update the Commission with regard to their compliance. He reviewed the drawing and explained that the lots are over by varying degrees. The first lot is over by about 6 percent and another is over by about 12 percent. Mr. Sheehan has been working with Ed Bailey on leasing enough area from the town to fill the open space requirements. He assured the Commission that they have no intention of using any of that land for anything other than that. They are proposing to lease about 18,000 square feet for one lot and 34,000 square feet for the other. A financial proposal has been submitted to the First Selectman and he is actively reviewing it. Mr. Sheehan explained that if that is favorably received by the Board of Selectmen, that would take care of the overages but they would still have to apply for a building permit for the modular block structure. Mr. Sheehan stated that the town's

attorneys have looked at the proposal and feel that it meets the requirements of the regulations. He hopes to have feedback from the Board of Selectmen shortly and stated that he intends to be at every meeting from now until the issues are resolved.

Mr. Sheehan introduced Nick Xenelis to the Commission and explained that he owns all five of the tracts of land under different LLCs. Mr. Sheehan did report that the Selectmen have had the proposal for over two months now, but he does realize that it is a sensitive issue. He reiterated that this would be pure revenue for the Town and that they will not use the property. If they do not get a favorable answer, the options would be either detention or reducing the amount of square footage being used (which would be very difficult).

Erin Howard asked if Mr. Sheehan had gotten any time line from Ed Bailey and he had not. Geoff Colegrove stated that he has spoken to Ed Bailey and he has asked the Assessor to do an analysis as to what the value of the property might be. Mr. Sheehan acknowledged that it is a tough comp because it is either open space or industrial and they made an offer in between the two.

The coverage on the lot situated west of the cul-de-sac is 67 percent. Mr. Xenelis had the property surveyed when he purchased it and sought site plan approval at that time. The footprint that he currently occupies is not that much different than the site plan that was approved. The site plan does show an area that was going to be restored to open space and Mr. Sheehan is proposing to restore that area. They do feel it makes more sense to seek a detention solution on this property and Mr. Xenelis would like to re-engage the discussions about a detention system for the larger area. They will explore both options and hopefully come back to the Commission with a report. Geoff Colegrove pointed out that the property where they are proposing the detention system is owned by the Town of Durham and the Town of Middlefield (transfer station property). Mr. Sheehan felt there would be tremendous advantage to everyone involved if the detention system could be built off-site though they could do it on-site as well. Mr. Xenelis commented that the off-site detention system would help several of the properties in the area.

Kevin Boyle arrived at the meeting at 6:54 pm.

Geoff Colegrove felt that these options are viable and they need to work through the details. He also felt that a properly-designed detention system would be a great enhancement to the industrial park because the regulations could then be changed to allow the extra coverage.

Chuck Sheehan asked if they could access the property to take some survey measurements and Mr. Colegrove stated that he couldn't answer for either party, but that could probably be solved by a phone call. Mr. Sheehan also commented about how cooperative the staff is in town.

Erin Howard thanked Nick Xenelis for coming to the meeting and expressed her appreciation for his addressing the concerns of the Commission. She believes that the drainage system makes sense and hopes to hear more next month.

Scott Wheeler asked if the property lines were identified behind Mr. Xenelis' property and Geoff Colegrove explained that if Mr. Xenelis and the Selectmen come to an agreement, he will construct a

fence along that property line. Mr. Sheehan stated that it would be easy to set posts along the property line or construct a fence, if necessary.

James Fasano, Discussion about Property at 375 Baileyville Road

James Fasano explained that his fiancée, Blaire Michael, is a doctor at Powder Ridge Veterinary Hospital and they are interested in purchasing the property. They understand that the property has a special permit as an owner-occupied facility because it is in a residential area. There is presently a tenant living in the house. The special permit also states that there would be no more than three people working in the facility at a time, but there is generally seven or eight now. They do not want to live there and would not be looking to increase the size of the business.

Geoff Colegrove stated that in 1987, Larry Brooks proposed an amendment to the Commission and it was approved as submitted. Mr. Colegrove doesn't believe there are any other veterinary hospitals where they are owner-occupied in the area. He believes three sections of the regulation need to be addressed: one is that the building does not change the residential character of the property, the second is the area inside the dwelling which is residential vs. the clinic; and the third is number of employees. Mr. Colegrove did not think that boarding would be appropriate as the property is only two acres.

Blaire Michael stated that she would not want to do any boarding or have animals stay overnight, but would like to keep the second story of the building as a residence in case she ever needed to stay overnight. She stated that they would be agreeable to the 75 percent of the dwelling. James Fasano stated that they would like the Commission to agree to not having a residence in the building and felt it would help with the septic system and sewage. They would also not be doing any grooming.

Mr. Fasano summarized that they would not change the use at all, would possibly make it a little nicer on the outside and would like to continue the same veterinary care that has been provided for 30 years. Dr. Brooks is also planning on staying. They may do some renovations on the inside, adding a couple of exam rooms. Dr. Michael also added that it would become handicapped accessible by using the front door to the home.

Erin Howard asked if they intend to grow the business when they add the additional exam rooms and Dr. Michael stated that she did not. She does not want to have more than two doctors working at any time and would like to be the hometown doctor who does a really good job. She has no desire to increase the client base; she'd just like to make it more efficient and safer. Ms. Howard felt that there was already a bit of a parking mess over there. Dr. Michael stated that she would actually like to see less patients per hour in order to provide one-on-one care. At some point, she would like to improve the parking situation but have no more clients per hour.

Erin Howard feels that the Commission needs to support business in general, but wants to keep the character of the neighborhood in mind. Mr. Fasano explained that their goal would be to remove the residential component and make the facility safer. They would also like to keep the employees at seven or eight, not three. Dr. Michael thought that might possibly go to 10 to include a practice manager or bookkeeper.

Jan Wojas asked how many cars can fit presently and Dr. Michael explained that 14 cars can fit and there are also two garages. There are no striped parking spaces. Mr. Wojas felt that access to the road was more of a problem than parking. Mr. Fasano commented that there are adequate sight lines.

Geoff Colegrove explained that the regulations for a residential zone don't address total coverage of the site, but just building coverage. He felt that the Commission might want to add maximum coverage of the site to the regulations. Mr. Colegrove suggested that Mr. Fasano take that into consideration with his application.

Ms. Howard spoke about how the regulations would impact other areas of town and Mr. Fasano asked if she strongly suggested that the coverage be included in the site plan. Geoff Colegrove felt it needed to be part of the regulations in order to affect the site plan. Ms. Howard did state that the special permit would need to be amended to allow for more employees, but the regulations would need to be amended first. Mr. Colegrove felt that the proposed zoning text change and the special permit could be done at the same time. Ms. Howard also explained that the change to the special permit would, in effect, make this property commercial and the Commission would need to consider various factors.

Geoff Colegrove suggested Mr. Fasano draft some language for a text change, keeping the coverage in mind, the Commission will review it and provide additional input. The Commission cannot modify the application once it has been submitted. They can then file the petition to change the regulation and a special permit application at the same time. Mr. Fasano stated that wanted to move on this in the summer or early fall.

Scott Wheeler suggested they make a list of possible employees, differentiating who is an employee and who is volunteering, etc. Ms. Howard would like to balance the number of employees vs. the number of clients and assure there is enough parking. She recommended that the verbiage for the text shouldn't necessarily limit the number of employees.

Kevin Boyle asked whether it might be better to remove the owner-occupied portion of the regulation, but not the residential part. They would need two parking spots in front to accommodate ADA which would be minimal. Geoff Colegrove felt that the residential component is pretty discriminatory. He commented that it is very common in most towns to have this type of use as a special permit.

Erin Howard felt that being less restrictive would be a win for the Town as well and would make the Town more welcoming. Ms. Howard asked whether Dr. Michael would be changing the services that are offered (requiring some animals to stay overnight after surgery) and Dr. Michael explained that the same services would be offered but the animals would be sent home and not be left alone overnight. There may be some exceptions to that. Ms. Howard recommended that they propose to remove the owner-occupied piece, keep it in character with the neighborhood, remove the 75 percent habitable and talk about the employee base. They should bring a draft back to the Commission next month and an application can be made in May, with a public hearing in June. Once the zone change has been approved, they can make an application for special permit and site plan (which can actually be done at the same time as the zone change application).

Jan Wojas recommended they start working on the site plan because coverage and ADA compliance is very important. Kevin Boyle was also concerned about the ADA compliance because it will no longer be

residential. There was also more discussion about impervious surface and lot coverage. Kevin Boyle would also want to know if the parking area was lit.

Erin Howard summarized that they will work on a draft regulation in the next month. A site plan will not be required until they actually apply for the special permit. She suggested that speak with Jerry Russ for help on that. Scott Wheeler asked about the August date and Blaire Michael explained that Larry Brooks would like this to happen sooner rather than later. Mr. Wheeler hoped that the Commission would work with the applicants to help them accelerate the process. Geoff Colegrove suggested the applicants look at the UCONN CLEAR website for some suggestions on coverage.

Discussion of Interpretation of Regulations regarding Convenience Store with Gasoline Sales as a Retail Use

Geoff Colegrove has done some research on the definition of convenience stores and gasoline is a major portion of the economic model. Most convenience stores sell gasoline, but do not have garage bays to offer service. Scott Wheeler stated that gasoline is a commodity and selling a commodity is retail sales. Jerry Russ checked Middletown's regulations and a service center is clearly defined as having a towing service, garage and impound area, but a convenience store can sell gasoline.

Jan Wojas felt that the Commission should always look at the building code and it lists motor fuel dispensing facility as part of that group. Mr. Wojas believes the straight answer is that it would be retail.

Erin Howard stated that it would be helpful if the Commission had something to look at. Scott Wheeler noted that the sale of gas is regulated by the State. Jerry Russ noted that he spoke with the new ZEO in Middletown and it is retail unless there is a service station which would have to be approved by the DMV.

Mr. Wheeler asked if the Commission was stuck on the issue of selling gasoline and Mr. Colegrove explained that the issue is that the regulations in that zone prohibit repair and sales of automobiles. Erin Howard explained that there is some time to get through this and asked Mr. Russ and Mr. Colegrove to provide something in writing about their research for the Commission to review. Ms. Howard commented that there are differences in the building code side of things and the zoning side of things and this Commission needs to be concerned about use.

Geoff Colegrove had received an email from Marianne Corona regarding the possible store on Higby Road and she stated that she had been an intervener on the Route 66 project. Mr. Colegrove read from that email and brought up a few incorrect statements. Mrs. Corona also referenced some state statutes and Mr. Colegrove stated that it could, in fact, be done with a permit.

Ms. Howard knows that this location will become a hot topic and there will be many challenges. She would like the Commission to be prepared for that and will put it on the agenda for next meeting. Ms. Howard would like this type of information to be included in the packets that the Commissioners receive.

John Corona, Discussion of Draft Agricultural Fencing Regulation

Attorney John Corona, from Lang & Corona, briefly recapped that there were farm regulations that did not speak specifically to fencing and some fencing regulations that didn't speak to agriculture. He has prepared a rewrite of section 08.14.04 to say that that enclosure that keeps animals inside could be a fence, a wall or another physical type of barrier and that that barrier would not exceed six feet in height, exclusive of any part of the pole. He also added a paragraph regarding farm land for cultivation where fencing may be used to resist animals or human entry. That fence would not exceed eight-and-a-half feet in height, exclusive of the pole. He added the half-foot for places where the fence may have to follow the grade or be uneven. That fencing would have to be constructed of open wire and couldn't be a stone wall or wood fence. There would gates in the fence with a pipe-frame type of gate. He also added a paragraph stating that no fence or wall should be located so as to interfere with highway sight lines, etc. On a suggestion from Geoff Colegrove, Attorney Corona also revised section 08.16, adding "Except as provided in Section 08.14.01."

Jan Wojas asked where the eight-and-a-half foot number comes from and Attorney Corona explained that the eight feet is to keep deer from entering the property. Mr. Wojas also asked about the 3" openings and Attorney Corona explained that it will help to keep smaller animals out. Attorney Corona also assured that if the public utility has an easement, it will be their responsibility to be sure they have access.

Kevin Boyle wondered if the Commission would want to include language that such a fence would have to be identified on a drawing and administratively approved. Mr. Boyle would want to make sure that someone is looking at this issue in the future. There was discussion about whether or not installing this type of fence would require a building permit and Jerry Russ thought it would require a zoning permit. Erin Howard felt that it needed to be within reason and they would not want to require a site plan. Mr. Boyle felt that it could just be flagged with stakes. Mr. Wojas cited the building code and explained that an eight-foot fence would need a building permit. Geoff Colegrove reminded everyone that a building permit cannot be issued if a zoning permit has not been obtained. Attorney Corona understood Mr. Boyle's concern, however he explained that that was why he included the last paragraph regarding placement of the fence.

Attorney Corona also explained that Lyman Farm does not have an A-2 survey of all of their property and no highway lines have been delineated on Powder Hill Road. Erin Howard asked if it could possibly be tied to the actual area and require it be so many feet from the perimeter. Kevin Boyle stated that they have to operate under the premise that the regulation will be abused by someone, though he did not believe Lyman Farm would do that. Under that premise, there needs to be a safeguard in place to help prevent that. Mr. Boyle did not believe it would be a financial hardship to ask the fencing company to walk the fence line with the ZEO or Building Official. Ms. Howard cautioned the Commission that they need to be careful with subjectivity and thought that there should be parameters in place.

Attorney Corona mentioned that there is no criteria like that existing for other fencing. He is not opposed to having some level of oversight, but it has to have some sort of objective criteria that the officer and the applicant could follow. Geoff Colegrove stated that the rule of thumb has been to go 25 feet from the middle of the road to either side and add a setback, if one is desired. If the highway is monumented, it could be five feet past the highway. Attorney Corona explained that it would not be in the property owner's interest to bring the fence as close to the road as possible.

Attorney Corona asked if this setback rule would apply only to agricultural fences or to all fences. Erin Howard asked if they can see pictures of what this type of fencing looks like at other orchards. Ms. Howard felt that the fencing would be a problem near the golf courses due to wetlands and the free flow of animals. Attorney Corona explained that agricultural fences are a matter of right and Inland Wetlands does not have the ability to permit them. Ms. Howard was not completely sold on the recreational side of that.

Jan Wojas commented on the amount of damage that geese do to the Apple Nine golf course and Attorney Corona also explained that there is a lot of deer traffic and other animals on the golf course as well. He also explained that the golf course would be the lowest priority for fencing. Erin Howard questioned the need for eight feet and Attorney Corona explained that eight feet is the standard for keeping deer out. Attorney Corona also mentioned that if the golf course is a major objection, that part could be removed from his proposed text change.

Ms. Howard also asked if Lyman Orchards is required to do this fencing and Attorney Corona explained that they have to meet very stringent food standards and they are judged about the cleanliness of that, including animal waste. Precluding animals from the areas where food is grown cuts down on the amount of animal waste. This is necessary to get approval from certain organizations, but is not a requirement by law. It is very difficult to control this now. Attorney Corona has an application before Inland Wetlands now regarding this and he knows it will not be well-received.

Kevin Boyle did not appreciate comments about having the ability to install fencing by right and explained that his only problem is with public safety.

Attorney Corona explained that the first area to be fenced would be the west side of Powder Hill Road, from Powder Ridge south. Scott Wheeler felt that 25 and 5 would not work everywhere and there would need to be some leeway. Erin Howard suggested that they take a look at Powder Hill Road to see what that would look like and that could make this whole conversation moot. Ms. Howard also asked about metal poles fitting in with the character of the town. Attorney Corona stated that Lyman Farm did not intend to use metal poles and that that was included only because it may be needed in the corners.

Mr. Wojas felt that this type of fencing is in character with the orchard, but not necessarily in character with a golf course. Kevin Boyle reiterated that Attorney Corona had stated that he would have no objection if the golf course was removed from the language and Mr. Boyle would like to do that.

Ms. Howard suggested leaving the first paragraph as proposed. In the second paragraph, she would like to have “and/or agriculturally-related recreational outdoor activities, including golf or mazes” removed. She would like a zoning permit or some sort of review to be required for anything over six feet. There was discussion about keeping mazes in the regulation for safety purposes. Kevin Boyle felt a fence around the maze would be a fire hazard. Attorney Corona clarified that Lyman Farm would not want to fence a particular maze or event, but would fence the perimeter of the land. Ms. Howard stated that if zoning permits are required for residential fencing, then there should be a zoning permit for this fencing as well. She did not feel it would require a full site plan, but should require some sort of review.

Erin Howard also recommended that there would be no metal poles, but Jan Wojas felt they should be allowed for the stability of the fence. Kevin Boyle agreed that they should be allowed for stability issues

and gates, but the posts should be primarily wood. Attorney Corona suggested stating wooden posts with metal supports, except for gates. Ms. Howard also suggested some parameters be included in the last paragraph of section 08.14.04 to say five feet off of the monumented right-of-way or 25 plus 5 feet from the center of the road, when not monumented. It was also agreed that a zoning permit would be required for any fence over six feet high in an agricultural zone. There was then some discussion about maintaining vegetative growth on the fence and whether that would be enforceable. Geoff Colegrove reminded the Commission that zoning is set forth for public health, safety and welfare and that aesthetics are not included in that definition.

Attorney Corona will take this input into consideration and will forward a new draft proposal before the next meeting.

Report of the ZEO

Jerry Russ explained that the property on 22 Lake Road has been abandoned and is now being taken over by the bank. The property on Peters Lane is also being taken by the bank and the current property owners are being evicted. There was also a demo permit issued for the barn on Strickland Road and it was demolished in 2013. Mr. Russ also reported that there has been no further progress with the Cihocki property. Attorney Willis has sent them a certified letter.

Mr. Russ also reported that there a few fences in town that will be coming down and there has been an application for a fence at Eric Ness' old property. Erin Howard felt that if they can regulate the aesthetics of that type of fence, then they should be able to do that for agricultural. There was then discussion about the fence that Ms. Howard put on her property and that she does not have to turn her fence around if she finished the back side of the fence. Kevin Boyle agreed that the Commission can regulate aesthetics, but not maintenance.

Report of the Town Planner

Geoff Colegrove stated that he has emailed Mark Branse about doing a workshop, but Attorney Branse is on vacation until tomorrow.

Chairman's Report

Erin Howard reported that she will be presenting the Commission's budget to the Board of Finance tomorrow night. The budget was reduced a little bit, but hasn't changed much. They came in under budget this year, particularly on legal expenses.

Scott Wheeler asked if the new bike activities at Powder Ridge would trigger a new site plan and Kevin Boyle reminded him that the Commission had approved biking as an acceptable use. Jerry Russ felt that the site plan is pretty detailed right now. Ms. Howard asked Mr. Russ to keep on top of it.

Erin Howard continued with the budget and explained that she will be proposing a budget of \$38,000 this year which is \$5,000 less than last year. She will hope to manipulate some funds for rewriting the zoning regulations and Geoff Colegrove commented that there is a line item in capital-nonrecurring for that under Economic Development. Mr. Colegrove also stated that \$1,300 was included in capital for the next update of the POCD. A question was asked why that was included under Economic Development, but Mr. Colegrove did not know. If the budget gets approved, they will probably go further with rewriting the zoning regulations.

Ms. Howard also stated that information from applicants is not being received as per the regulations. She also commented that she felt that the Commissioners did not need to receive anything bigger than 11x17. She would like to get all of the information prior to the meeting days. Jan Wojas suggested that it be done electronically instead of with paper. Ms. Howard felt that that would help the Commission be more prepared and not have meetings be as lengthy. She also felt that the zoning rewrite will significantly reduce the amount of work that comes before the Commission.

Miscellaneous

None.

Approval of Minutes

Scott Wheeler made a motion, seconded by Kevin Boyle, to approve the minutes from the February 26, 2018 meeting, as submitted. Motion carried, with Scott Wheeler abstaining.

Adjournment

A motion was made by Scott Wheeler, seconded by Eric Ekblade, to adjourn the meeting. Motion carried unanimously. The meeting was adjourned at 9:29 pm.

Respectfully submitted,

Debi Waz

Debi Waz
Alwaz First