

**CITY OF NORWALK
ZONING COMMISSION
December 14, 2016**

PRESENT: Nate Sumpter, Chair; Michael Witherspoon; Louis Schulman; Richard Roina; Adam Blank; Doug Stern; Galen Wells

STAFF: Steve Kleppin; Mike Wrinn; Dori Wilson

OTHERS: Lyle Fishell; Atty. Liz Suchy; Peter Baralla; Peter Romano; Mike Galante; Atty. Dwight Merriam; State Representative Gail Lavielle; State Representative Fred Wilms; Tony D'Andrea; Rick Tavella; Marie Gay; JoAnn Horvath

I. CALL TO ORDER

Mr. Sumpter called the meeting to order at 7 p.m.

II. ROLL CALL

Mr. Kleppin called the roll.

III. PUBLIC HEARINGS

Before the public hearings began, Mr. Sumpter announced that both alternates, Mr. Roina and Ms. Wells, would be voting members of the commission that evening. He then went over the rules of the public hearings.

a. #14-16SP/#32-16CAM – L. Fishell – 75 East Av - Conversion of funeral home to 4 units

Mr. Sumpter opened the public hearing. Mr. Fishell, the architect for the project, was representing the applicant in this matter and began the presentation. He explained how his client purchased the property. He explained how the siding would be removed and showed the commissioners the new materials that would be used. It would be restored to an 1800s look. A second floor would be added where there was none. He showed them the plans for the basement as well. The goal of the design was to keep its historical value. The project would also reduce traffic. Mr. Fishell also noted that there would be 8 parking spaces.

No one spoke for or against the project so Mr. Sumpter closed the public hearing.

b. #1-16M – F. DiMeglio - 56 County St/Strawberry Hill Ave - Proposed Change to the Building Zone Map from A Residence in part & B Residence in part to entirely B Residence

Mr. Sumpter opened the public hearing. Atty. Suchy handed in the certified mail, return receipt cards evidencing notice of the public hearing to the neighbors. She then oriented the commissioners as to the location of the property on the site plan map. She showed them photos of the property as well as on an aerial map. She described the property and showed them the two different zones that it was located in, part of which was in the A zone and part that was in the B zone. She explained that the Zone change would then place the property in the B zone.

The public hearing was opened to the public.

Mr. Baralla, of Carruthers Lane, who had lived in the neighborhood for 50 years, had concerns about the amount of traffic on Strawberry Hill Avenue as well as the safety of the kids.

Mr. Witherspoon read the referrals into the record. Atty. Suchy then addressed Mr. Baralla's concerns and completed her presentation. Mr. Sumpter closed the public hearing.

c. #8-16R – V. Penna Sr. – Proposed amendments to Section 118-100 to revise the definition for Public utility supply or storage facility and to amend special permit criteria for such uses when located in AAA Residence zones and d. #12-16SP – V. Penna Sr. – 284 New Canaan Avenue – Special permit to reuse former Armory Building for a public utility storage facility owned by an independent entity

Mr. Sumpter opened the public hearing for these two applications so that it would be used for both.

Mr. Romano began the presentation by giving a background of the current property. He then explained Mr. Penna's business which consisted of mostly utility work for companies such as Eversource. He described the property which included a cell tower. Since the State of Connecticut owns it, they could currently use it however they saw fit without review by the Commission. Under the proposed application to amend the zoning regulations to allow use by a private entity, the city would have more control of it under the Special Permit regulations. He discussed the proposed landscape screening and plantings as well as the location of Mr. Penna's vehicles that would be on the site.

Mr. Galante, the traffic engineer, continued the presentation by showing them an aerial view of the morning peak hour. He then went over the analysis of the traffic report which included the morning and afternoon peak as well as accident reports.

Atty. Dwight Merriam, attorney for the applicant, addressed a memorandum that he had provided to the commissioners as part of this application. The memo discussed the issue of spot zoning in connection with this application. He began by discussing a treatise on land use that he wrote which includes a chapter on spot zoning. He then discussed how he completed the research. He explained why he did not believe that this application was spot zoning. The applicant's business played an essential role in providing services such as water, electricity which are not merely conveniences. He said that he understood that neighbors may have concerns but that the applicant was prepared to address them. Since this was a text change (not a zoning map change), Atty. Merriam did not believe it was spot zoning. If this was a map change, then he said that might support an argument for spot zoning.

State Representative Gail Lavielle, 109 Hickory Hill, Wilton, spoke in support of the application because she believed that the applicant's company performed essential emergency services to the area. There was no other company that does that in the area. She said that she knew that their location in Westport where the company was a vital part of the community. The neighbors only knew they were there in times of an emergency which was when one would expect to see them.

State Representative Fred Wilms, 50 Aiken Street, spoke in support of the application and discussed the importance of the Walk Bridge project which is the reason that the applicant has to move his business. He also did a tour of the applicant's proposed property on New Canaan Ave and thought it was a good location for the use.

Tony D'Andrea spoke in support of the application. He noted that he had spoken against the applicant's application for their current property but is now speaking in support of the

applicant.

Rick Tavella spoke in support of the application. He said that he was personal friends with the applicant.

Marie Gay, from the Connecticut Department of Transportation, spoke in support of the application as well as the applicant using the former armory site for its business.

JoAnn Horvath, 1 College Lane, spoke against the application since she had concerns that it did not fit in the zone. She believed it was spot zoning.

Vincent Penna spoke in support of the application and handed the commissioners a letter from the Town of Westport in support of the application. They had tried to find properties that would allow them to get to sites quickly. This was the only site that qualified. He asked the commissioners to approve the application so that he could stay in business.

Adolf Niedermyer spoke in opposition to the application because he believed that there was not enough due diligence in finding this location.

Peter Wilson, 178 Pocconock Trail, New Canaan, one of the abutting neighbors, had concerns about the use. He asked the commissioners to put conditions on the approval so that it would not increase in size. They had a discussion with him about screening. He had submitted a letter to the commissioners.

Diane Cece, 37 Olmstead Place, noted that this location would not have been her first choice for the applicant's operation. She was concerned about how the conditions would be enforced and read a list of conditions that she had prepared into the record, if the Zoning Commission approved the application. She wanted to speak to the "spot zoning" aspect of the application, but deferred to Atty. Merriam's conclusion to the contrary.

Mr. Witherspoon read the referrals from the Planning Commission into the record.

Atty. Merriam began the rebuttal by discussing the concerns about spot zoning. He reminded everyone that if the property was not regulated by the city under a special permit use, the current owner, the State of Connecticut, could do whatever they wanted with it. He then addressed the concerns in Mr. Wilson's letter with a letter of his own which he submitted for the record as well as delivering a copy to Mr. Wilson. He discussed the penalties if the applicant violated the special permit use. He then discussed the future sale of the property if Mr. Penna was no longer in need of it. He mentioned that the applicant had spent a lot of time and money to find this spot which was ideal for them to continue to do their business. He then went through Ms. Cece's conditions to acknowledge which ones the applicant could agree to. There were then questions from Commissioner Roina. There was a discussion as to whether they could limit the size of the applicant's business. Atty. Merriam said it was unusual and noted that the applicant had no plans at the moment to expand because part of their business is to arrive at an emergency site within 1 ½ hrs.

Mr. Sumpter closed the public hearing.

IV. REPORT OF PLAN REVIEW COMMITTEE

a. Action on Item III. a. #14-16SP/#32-16CAM – L. Fishell – 75 East Av - Conversion of funeral home to 4 units

**** MR. ROINA MOVED: BE IT RESOLVED** that application #14-16SP/#32-16CAM – L. Fishell – 75 East Av - Conversion of funeral home to 4 units, and as shown on zoning location map dated 7/17/2015 and revised to 11/8/2016 by Dennis A. Delius, (Norwalk, CT), CT. LIC. 6396 and on the engineering plans by HKA Associates (Trumbull, CT), dated 4/3/2016 and the architectural plans by Fishell Architecture, LLC, Norwalk, CT dated 10/20/2016 be **APPROVED** with the following conditions:

1. That **all** required CEAC signoffs are submitted; and
2. That a surety, in an amount to be determined by staff, be submitted to guarantee the installation of the required erosion and sediment controls; and
3. That a surety, in an amount to be determined by staff, be submitted to guarantee the installation of the required improvements; and
4. That all soil and erosion controls be in place and verified by an inspection by Staff prior to the start of any work on the site; and
5. That any additional needed soil and sedimentation controls be installed at the direction of the staff; and
6. That **all** recommendations by the zoning commission's consultant in its report be followed; and
7. That an updated drainage plan be submitted showing proposed drainage; and
8. That if there is a proposed dumpster outside that it be locked and properly screened; and
9. That the hours of garbage pick-up be no earlier than 7 a.m. and no later than 7 p.m. and that any deliveries be no earlier than 8 a.m. and no later than 6 p.m.; and
10. That all signage, existing and proposed, comply with the zoning regulations; and
11. That an engineer's certification be submitted prior to a certificate of occupancy; and
12. That a stormwater system maintenance plan be submitted and that any proposed system be properly maintained; and
13. That any changes to the plan be reviewed and approved prior to those changes being implemented; and
14. That any graffiti on the site, now or in the future, be removed immediately; and
15. That all HVAC units shall be located in conformance with the applicable zoning setbacks; and
16. That any sidewalks in poor condition be replaced and that there be a full 5' clearance from any obstruction; and

BE IT FURTHER RESOLVED that the proposal complies with the applicable sections of the Norwalk Building Zone Regulations, specifically Sections 118-500, "East Avenue Village District" and 118-1450 Special Permit and 118-1110 Coastal Zone ; and

BE IT FURTHER RESOLVED that a Certificate of Special Permit **AND** map be placed on the Norwalk Land Records; and

BE IT FURTHER RESOLVED that this proposal complies with all applicable coastal resource and use policies; and

BE IT FURTHER RESOLVED that the effective date of this approval shall be December 23, 2016.

Mr. Witherspoon seconded.

Nate Sumpter, Chair; Michael Witherspoon; Louis Schulman; Richard Roina; Adam Blank; Doug Stern; Galen Wells voted in favor.

No one opposed.

No one abstained.

b. #31-16CAM – Fletcher Land Development – 38 Shorefront Park – New single family residence – Report & recommended action

**** MR. WITHERSPOON MOVED: BE IT RESOLVED** that application #31-16CAM, construction of a new single-family residence for the property 38 Shorefront Park and as shown on the zoning location survey dated 8/6/2014 and revised to 10/18/2016 by Arcamone Land Surveyors, Norwalk, CT, and on the engineering site plan by St. Germain and Aupperle Consulting Engineers, LLP, Camillus NY dated 9/13/2016 and revised to 11/9/2016 and on the architectural drawings dated 9/13/2016 and revised to 11/9/2016 by Holmes, King, Kallquist and Associates, Architects, LLP, Syracuse, NY be **APPROVED** subject to the following conditions:

1. That all CEAC sign-offs be submitted; and
2. That all required soil sedimentation and erosion controls are in place prior to the start of any construction; and
3. That any additional needed soil sedimentation and erosion controls be installed at the direction of the Staff; and

BE IT FURTHER RESOLVED that this proposal complies with all applicable coastal resource and use policies; and

BE IT FURTHER RESOLVED that the effective date of this approval shall be December 23 2016.

Mr. Roina seconded.

Nate Sumpter, Chair; Michael Witherspoon; Louis Schulman; Richard Roina; Adam Blank; Doug Stern; Galen Wells voted in favor.

No one opposed.

No one abstained.

c. #3-96SPR/#1-97SPR – Hewitt Assoc/Merritt River Partners - 45 Glover Av – Request to modify parking and lease agreements between various properties and related changes – Report & recommended action

**** MR. BLANK MOVED: BE IT RESOLVED** that the proposed changes to off-site parking lease agreements for site plan #3-96SPR and #8-97SPR - 45 Glover Partners, LLC (Hewitt) for a 250,000 square foot office building and conditions of approval regarding parking leases be **APPROVED**, subject to the following conditions:

1. That a revised parking lease agreement and an Improvement Location Survey showing the updated parking calculations and the location of any off-site parking be submitted to update the special permit file and filed on the Norwalk Land Records; and
2. That all other conditions of the original approval remain in effect; and

BE IT FURTHER RESOLVED that the effective date of this action be December 23, 2016.

Mr. Roina seconded.

Nate Sumpter, Chair; Michael Witherspoon; Louis Schulman; Richard Roina; Adam Blank; Doug Stern; Galen Wells voted in favor.

No one opposed.

No one abstained.

d. #4-00SP – Hewitt Assoc/Merritt River Partners - 399 Main Ave – Request to modify parking and lease agreements between various properties and related changes – Report & recommended action

**** MR. WITHERSPOON MOVED: BE IT RESOLVED** that the proposed changes to off-site parking lease agreements for special permit application #4-00SP; Merritt River Partners, LLC for

229 unit Commercial Planned Residential Development and related site improvements as shown on a certain set of plans by EDI Architecture, dated March 29, 2000, by Redniss & Mead, dated revised to March 22, 2000 and conditions of approval regarding parking leases be **APPROVED**, subject to the following conditions:

1. That a revised parking lease agreement and an Improvement Location Survey showing the updated parking calculations and the location of any off-site parking be submitted to update the special permit file and filed on the Norwalk Land Records; and
2. That all other conditions of the original approval remain in effect.

BE IT FURTHER RESOLVED that the effective date of this action be December 23, 2016.

Ms. Wells seconded.

Nate Sumpster, Chair; Michael Witherspoon; Louis Schulman; Richard Roina; Adam Blank; Doug Stern; Galen Wells voted in favor.

No one opposed.

No one abstained.

e. #17-13SP – Merritt River Partners - 1 Glover Ave – Request to modify parking and lease agreements between various properties and related changes – Report & recommended action

**** MR. WITHERSPOON MOVED: BE IT RESOLVED** that the proposed changes to off-site parking lease agreements for special permit application #17-13SP; Merritt River Partners, LLC - 132 unit Commercial Planned Residential Development and related site improvements to modify the plans by EDI International Architects, Environmental Land Solutions and Civil One Engineers, dated January 28, 2014 and conditions of approval regarding parking leases be **APPROVED**, subject to the following conditions:

1. That a revised parking lease agreement and an Improvement Location Survey showing the updated parking calculations and the location of any off-site parking be submitted to update the special permit file and filed on the Norwalk Land Records; and
2. That all other conditions of the original approval remain in effect.

BE IT FURTHER RESOLVED that the effective date of this action be December 23, 2016.

Mr. Schulman seconded.

Nate Sumpster, Chair; Michael Witherspoon; Louis Schulman; Richard Roina; Adam Blank; Doug Stern; Galen Wells voted in favor.

No one opposed.

No one abstained.

V. REPORT OF ZONING COMMITTEE

a. Action on Items III. b., c. and d. Note: Action on zoning amendment must precede action on related special permit application.

i. #1-16M – F. DiMeglio - 56 County St/Strawberry Hill Ave - Proposed Change to the Building Zone Map from A Residence in part & B Residence in part to entirely B Residence

**** MR. BLANK MOVED: BE IT RESOLVED** that the proposed changes to the Building Zone Map as shown on a certain document entitled "#1-16M – F. DiMeglio - 56 County St/Strawberry Hill Ave - Proposed Change to the Building Zone Map from A Residence in part & B Residence in part to entirely B Residence" and dated November 1, 2016 affecting property located in the Fifth Taxing District, Block 8, Lot 43 including property now part of the County Street ROW and Strawberry Hill Avenue ROW, all of which is now zoned A Residence in part and B Residence in part and is proposed for change to entirely B Residence, be **APPROVED**.

BE IT FURTHER RESOLVED that the reasons for this action are:

1. To implement the Plan of Conservation and Development to "Use streets, the railroad, natural features or property lines as boundaries between different land uses" (F.2.1.5, p. 42); and
2. To implement the Plan of Conservation and Development to "Encourage quality housing for a variety of tenures, family sizes, incomes, the senior population, and persons with special needs" (A.2.1.1, p. 11); and
- 3.

BE IT FURTHER RESOLVED that the effective date of this action be December 23, 2016.

Mr. Sumpter seconded.

Nate Sumpter, Chair; Michael Witherspoon; Louis Schulman; Richard Roina; Adam Blank; Doug Stern; Galen Wells voted in favor.

No one opposed.

No one abstained.

ii. #8-16R – V. Penna Sr. – Proposed amendments to Section 118-100 to revise the definition for Public utility supply or storage facility and to amend special permit criteria for such uses when located in AAA Residence zones and d. #12-16SP – V. Penna Sr. – 284 New Canaan Avenue – Special permit to reuse former Armory Building for a public utility storage facility owned by an independent entity

This item was tabled and moved back to the Zoning Committee.

b. #7-16R – NW MFP Norwalk Town Center II, LLC (Waypointe) – Adopt survey and revise conditions of approval in accordance with Section 118-504 to revise Design District Development Park (DDDP) criteria for developments in Central Business Design District Subarea B - Report & recommended action

**** MR. BLANK MOVED: BE IT RESOLVED** that request to revise the conditions of approval for each of the site plan and special permit applications for the Waypointe Design District Development Park as noted below and to adopt a new summary plan for the Waypointe Design District Development Park (DDDP) as shown on a plan entitled "Data Accumulation Plan depicting property surveys within Waypointe Design District Development Park Norwalk CT." dated December 9, 2016 and related plans by Redniss and Mead Engineers, Gooding Architecture and Didona Associates Landscape Architects, LLC for each Block within the DDDP, be approved, subject to the following revised conditions:

- 1) That the Data Accumulation Plan depicting the approved plans for the parcels revised development park agreements between the revised south block parcels and the midblock, north block and east block parcels in the Waypointe Design District Development Park allowing the transfer of development rights to permit and summarizing the shared parking between parcels and increases in permitted FAR, coverage and density be submitted for Corporation Counsel review and then filed on the Norwalk Land Records prior to the issuance of a final certificate of zoning compliance (CZC); and

2) That any modification to the approved applications for the blocks and/or parcels within the Waypointe Design District Development Park will require review and approval by the Commission; and

BE IT FURTHER RESOLVED that this application complies with Section 118-504 Central Business Design District, for a Design District Development Park in Subarea B and with applicable sections of the Building Zone Regulations for the City of Norwalk, as amended.

BE IT FURTHER RESOLVED that the effective date of this action be December 23, 2016.

Mr. Witherspoon seconded.

Nate Sumpter, Chair; Michael Witherspoon; Lou Schulman; Richard Roina; Adam Blank; Doug Stern; Galen Wells voted in favor.

No one opposed.

No one abstained.

VI. APPROVAL OF MINUTES: November 16, 2016

Mr. Sumpter moved to approve the minutes.

Mr. Witherspoon seconded.

Nate Sumpter, Chair; Michael Witherspoon; Louis Schulman; Richard Roina; Adam Blank; Doug Stern; Galen Wells voted in favor.

No one opposed.

No one abstained.

VII. COMMENTS OF DIRECTOR

Mr. Kleppin gave the commissioners a brief overview of the work being done on the Plan of Conservation and Development. The committee would begin work on the following Monday. They were hoping to find a consultant for it. There was also a discussion about the work being done by the Redevelopment Agency.

VIII. COMMENTS OF COMMISSIONERS

There were no comments from the commissioners.

IX. ADJOURNMENT

Mr. Sumpter made a Motion to Adjourn.

Mr. Schulman seconded.

Nate Sumpter, Chair; Michael Witherspoon; Louis Schulman; Richard Roina; Adam Blank; Doug Stern; Galen Wells voted in favor.

No one opposed.

No one abstained.

The meeting was adjourned at 9:01 p.m.

Respectfully submitted,

Diana Palmentiero