

**TOWN OF COLUMBIA**  
**PLANNING AND ZONING COMMISSION**  
Adella G. Urban Administrative Offices Conference Room  
323 Route 87, Columbia, CT  
Monday, August 13, 2018 7:00 pm  
**Regular Meeting Minutes**

**Members Present:** Chairman Rick Nassiff, Don Schofield, Thomas Currier, Richard Napolitano, Robert Powell, E.J. Starkel, Larry Preston (Alternate)

**Members Excused:** Vice Chair Vera Englert, Walt Tabor (Alternate)

**Staff Present:** Town Planner Paula Stahl, Board Clerk Terri Lasota

**Others Present:** Ed Pelletier, Mary Roickle, and 4 others

1. **CALL TO ORDER:** R. Nassiff called the meeting to order at 7:00pm
2. **ROLL CALL AND SEATING OF ALTERNATES:** L. Preston was seated for V. Englert
3. **ADDITIONS/CHANGES TO AGENDA:** None
4. **APPROVAL OF PZC REGULAR MEETING MINUTES OF July 23, 2018:**  
EJ Starkel **MOVED** to **APPROVE** the minutes of July 23, 2018. R. Nassiff **SECONDED**.  
**MOTION CARRIED 6:0:1** L. Preston **ABSTAINED**
5. **AUDIENCE OF CITIZENS:** None
6. **PUBLIC HEARINGS**

**CONTINUE PUBLIC HEARING:** R. Nassiff **CONTINUED** the PUBLIC HEARING at 7:01pm

- 6.1. **PZC-1718-10:** Heritage Farms application for subdivision and waiver of section 6.2(m) of the subdivision regulations, Heritage Road, Columbia CT; Assessor's Map 004-092

R. Nassiff read the application into record and provided a summary of the initial public hearing opened July 23, 2018.

P. Stahl said she contacted the Town Attorney for land use issues, Rich Roberts, for clarifications and interpretations on Columbia's Subdivision regulations Section 12.5 waiver, and read his response emailed letter into record:

" I would take the position that the introductory paragraph that requires ALL of the criteria to be met in order to support a waiver, regardless of whether it says "and" or "or" in . That interpretation offends my reading of the plain wording and the grammatical construct and I'm guessing you have the same unease. My thought is that waivers should be sparingly granted, that the bar was purposely set high to qualify for a waiver, and that meeting only one or two of the five is not sufficient and renders the introductory phrase meaningless and undermines the intent of the section. It's true that some of them may not apply to every situation but I still don't think that converts the word "all" to "any". "

R. Nassiff noted that in the Columbia Subdivision regulations Section 12.5 Waiver, there are 5 conditions that must be met and read the conditions into record. Mr. Nassiff continued, addressing the word "or" at the end of each condition whereas the regulations do state that all conditions must be met. He also added that though the applicant interpreted the regulations as only one condition need be met, the town's attorney disagreed.

P. Stahl read into record a letter from the Fire Marshal which stated that the lot in itself does not present a public safety hazard. The members and P. Stahl also reviewed a letter from Datum Engineering / applicant which addressed the 5 waiver conditions and the language of the covenant brought up at the previous meeting. P. Stahl noted that the covenants applied to how each individual house could be constructed aesthetically, and did not apply to land or open space. Storm water runoff was another concern and there has been a

recommendation from a soil scientist and engineer to have a berm and filter berm drain to prevent water from running off onto Heritage Road.

R. Nassiff asked for comments from the public. Robert Kelly of 14 Heritage Road asked about the septic system, R. Nassiff said that at the time this parcel was created it was probably not feasible at that time to put a septic system on that lot. He added that technology has changed since the original subdivision, and he could not comment on the technology because it is controlled by the State Dept. of Health. R. Powell commented that the septic design proposed is only a conceptual design and the final plan would need approval by EHHD.

P. Stahl said that the history of previous Heritage Farm applications met the regulations that were current at that time.

R. Napolitano asked if there was any evidence of what the covenant entailed, or if there was any information of their content discovered. R. Nassiff and P. Stahl explained that the covenants governed what should be built on the properties, but no generalized covenant stating what should be built in the subdivision

Teresa Cooper of 15 Heritage Road commented that the covenants had more to do with a specific piece of property, and various house design plans noted the lot in question as "other land of". Future play areas on this site was verbal between the land owners and the developer.

R. Nassiff **MOVED** to **CLOSE** public hearing; EJ Starkel **SECONDED**.  
**MOTION CARRIED 7:0:0**; The PUBLIC HEARING was **CLOSED** at 7:19pm

R. Nassiff **MOVED** to move item 7.1 to before item 6.2; EJ Starkel **SECONDED**. **MOTION CARRIED 7:0:0**

**7.1 Unfinished Business - PZC-1718-10** Heritage Farms application for subdivision and waiver of section 6.2(m) of the subdivision regulations, Heritage Road, Columbia CT; Assessor's Map 004-09

R. Nassiff asked for the town planners thoughts; P. Stahl said this was a complicated issue, first it must be determined if the waiver request will be granted and it is not clear cut as to whether all five waiver conditions are met or not. P. Stahl and the members discussed the waiver requirements and the applicants letter commenting on these conditions:

a) Conditions exist on the subject property that are not generally applicable to other land in the Town or;

P. Stahl felt that it was very similar to other undeveloped land in town. She read the applicant's response that it was unique in that it was shown as a parcel labeled as "other land" on the approved subdivision plan it was not depicted as a building lot, therefore not generally applicable to other land in town. P. Stahl said she agreed with the distinction of "other land of" but felt the 2+ acre parcel is similar to other land in town. R. Nassiff said that in regard to evaluating a waiver provision, if there were unique conditions that existed on this parcel that were not found on other parcels in town, it would exempt this parcel from the subdivision waiver. R. Powell added that because years ago the applicant labeled it as "other land" the applicant believes it to be unique, however just by labeling it as "other land" does not make it unique.

b) Said conditions are such that, if these regulations were strictly applied, natural and historic features could not be preserved, as required by these regulations

P. Stahl read the applicants response was that the subject site contains no natural or historic features and requires no waiver from the regulations restricting use of the property. Her comment was that if the regulations were strictly applied the wooded area would be preserved. Members felt that because the parcel was small, little would be preserved.

c) Said conditions were not created by the property owner by his/her predecessor(s) in title

P. Stahl's comment was that the lack of outlet to Route 87 was not created by the applicant. She felt it was clear that this meets the criteria. R. Powell asked who created the inability of access to Route 87, P. Stahl said the parcel was

sold by the property owner on Route 87. R. Nassiff noted that the developer never owned the parcel and had no control, he added that access could have theoretically happened if that additional land has been acquired and a road was put in. D. Schofield added that it is not known if there was any good faith effort to acquire any of those properties. R. Nassiff offered the perspective that it had to be more than theoretically in the most abstract sense that a through road could be put in, and subsequently since a subdivision to put in several lots at the end of this road was denied, it was decided that the comfort limit of the number of houses on a cul-de-sac was reached. Also that it had been a long time since the regulation was interpreted in a manner that would allow for going beyond 15 lots. Now that there is no theoretical possibility of a second outlet, it is now a different consideration. R. Nassiff also added that another consideration is the conditions were clearly created by the applicant since this was one piece of land in the past and they made the subdivision. P. Stahl said that she felt they were meeting the then current subdivision regulations. R. Nassiff said his personal perspective was that he didn't agree they didn't create the current conditions. It was approved without this lot as a building lot.

d) The granting or the modification of the waiver would be in harmony with the purpose and intent of these regulations

R. Nassiff said the intent when the subdivision was created was to allow more than 15 lots when there was a possibility of a through road, but that is no longer the case, and this lot was not intended as a building lot when the original subdivision was approved. R. Powell confirmed with the members that it was marked as "other land of". D. Scofield asked if at the time the 15 lots were allowed because theoretically there was still a possibility of a through road. R. Nassiff said yes it was very theoretical. He added that it was a condition in which the approval of the subdivision was based on. P. Stahl said even with the last phase (phase 4), the Park Place Estates on the same cul-de-sac, there was still a possibility of extending at the time, that property was acquired after the subdivision was approved. Afterwards when subdivision for the other lots to divide each into two came forward it was denied because the other connecting lot to Route 87 had been sold.

L. Preston said there was a precedent since there was a possibility of a through street, and there no longer is that possibility; and two other subdivisions have already been denied because there was no possibility of a through street. D. Schofield said the waiver was being asked under the current regulations, which now add an open space requirement. If you apply that the the current subdivision there are 15 acres of land that should have been set aside as open space. He and R. Napolitano discussed the re-opening of the subdivision; R. Napolitano noted that they are not dividing it anymore, the lots will stay the same.

e) The granting of the modification or waiver would not have significant impact on adjacent properties value, the public health, safety, and welfare, and would not be in violation of the recommendations of the Plan of Conservation and Development, as the same may be amended from time to time.

R. Nassiff felt "item e" would not have an adverse effect or negative impact on property values.

R. Nassiff said there are several other provisions where this does not meet the standard of the subdivision regulations for granting a waiver. R. Nassiff asked the members for their input.

L. Preston said he felt "items c" and "e" were met, "items a" and "b" were arguable, but "item d" was clearly not met.

R. Napolitano felt that "item d" was the only item that was questionable.

R. Powell said he felt the application was taking advantage of a bad situation that was created years ago. He added that there were several waiver conditions that were not being met, and all 5 have to be met.

EJ Starkel agreed that all 5 conditions have to be met.

D. Schofield said a precedent was set because of the denying of 2 previous subdivisions after the original.

T. Currier said what he didn't like was the language adding "or", and he discussed with R. Powell and R. Nassiff who pointed out the sentence before the 5 items in the waiver section of the subdivision regulations (Section 12.5

Waiver). P. Stahl read the section for the record:

“The Commission recognizes that each parcel of property is unique in location, dimensions, orientation, topography and other parameters. And that the various factors in the design of subdivisions are variable with relation to each other and to the above characteristics of the property, therefore, in accordance with Connecticut General Statutes Section 8-26, the Commission may modify or waive, subject to appropriate conditions, such requirements as, in its judgment of the special circumstances and conditions, are not requisite to the interest of public health, safety and general welfare. In considering a modification or waiver under this Chapter, the Commission shall only approve such modification or waiver by a ¾ vote of the Commission upon a finding that all of the following conditions are met”

P. Stahl noted that the Town Attorney felt that waivers should be sparingly granted, which is the intent of the regulation. R. Nassiff said he would like to be specific on how the member’s felt regarding each of the provisions in the waiver request rather than having a generalized vote.

R. Nassiff said he felt the lot was very similar to others in town, and didn’t feel the lot was unique in the sense of qualifying it for a waiver, therefore “item a” doesn’t qualify it for a waiver. For “item b”, he felt there were no unique natural features that would be affected, so “item b” would be a yes. R. Nassiff felt that for “item c”, the applicant created the lot as it exists today, and therefore should not benefit from creating the problem. For “item d” he felt the intent of the regulations were clear and granting a waiver would not be in harmony with the regulations, and granting the waiver would not have a significant impact on adjacent properties value, the public health, safety, and welfare, and would not be in violation of the recommendations of the POCD. R. Nassiff felt “item e” wouldn’t be a potential issue; but 3 of the 5 conditions are clearly not meeting the standard, and agreed with the Town Attorney in the way the regulations language was interpreted. R. Nassiff said he would be inclined to deny the waiver request, based on the standards and regulations that must be followed, and there is nothing personal involved.

R. Nassiff **MOVED** to **DENY** the request to waive Section 6.2(m) limiting cul-de-sacs to 15 residences as the requirements of Section 12.5 cannot be met, and consequently **DENY** the request to amend the previous approval of Heritage Farms Section 1.

D. Schofield **SECONDED**; **MOTION CARRIED 7:0:0**

**CONTINUE PUBLIC HEARING:** R. Nassiff **CONTINUED** the PUBLIC HEARING at 7:48pm

**6.2. PZC-1718-06:** Proposed Regulation Amendments: Section 10 Nonconformity

P. Stahl noted the copies of the proposed and draft highlighting the proposed regulations. R. Nassiff summarized the work that has been done to this point. He noted the need to refocus the discussion for the reasoning behind the regulation changes, being the attempt to simplify the process of the special permit process for residents, and the notification process and interaction with neighbors is important. He also added that the idea behind the start of the process was to prevent small cottage tear downs from becoming mansions, and how to simplify the process from the constant land redevelopment. Along the way valid concerns were brought to attention. R. Nassiff questioned if this should be pursued if the changes couldn’t be applied to most of the applications. He felt that if the intent was to make the process easier for those who simply wanted to make small changes to their houses it should be discussed in that context.

D. Scofield, R. Nassiff and R. Powell discussed cottages torn down for the purpose of building much larger homes and maximizing the building to property value.

R. Nassiff said the intent was to take one layer off of the application process, since almost every application is approved due to the ZBA process and legal interpretations of the set Regulations. There was a lot of good feedback regarding wells and septic systems and reasonable prior notice, but have ended up at square one. T. Currier noted that the idea was to save people money and several months of work.

The members discussed the placement of wells and septic systems determining the development of neighboring properties in the future, and the only notification process being the public hearing that is required by a special permit. R. Napolitano noted that if someone’s well goes bad, a neighbor could have already done something to

make your land useless. R. Nassiff explained that through his experiences a majority of his land is not useable for septic because of where a neighbor's well is located. It was not done on purpose, but because of the dimensions of his lot and the well radius, without modern technology they would have never been able to place a septic in there originally, and with newer technology he would not have been able to have a reserve system design capability to allow for the expansion. He added that the review process and knowing what a neighbor is doing enlightened him to knowing how important it is to have that process in place.

R. Powell suggested as a compromise the rules should be split so they can opt to use the route of a special permit or not, according to the rules. Members discussed.

R. Nassiff **MOVED** to **CLOSE** public hearing and vote on this application during the August 27<sup>th</sup> 2018 meeting. EJ Starkel **SECONDED**. **MOTION CARRIED 7:0:0**. The PUBLIC HEARING was **CLOSED** at 8:35pm

## 7. UNFINISHED BUSINESS (Discussion/Possible Action)

~~7.1. PZC-1718-10: — Heritage Farms application for subdivision and waiver of section 6.2(m) of the subdivision regulations, Heritage Road, Columbia CT; Assessor's Map 004-092~~

7.2. PZC-1718-06: Proposed Regulation Amendments: Section 10 Nonconformity  
**No discussion or vote until next meeting**

## 8. NEW BUSINESS

8.1. Fairview Farms South Subdivision – requesting an extension of filing deadline to November 15, 2018  
Members discussed, P. Stahl recommended allowance of a 90 day extension.

R. Nassiff **MOVED** to **APPROVE** Fairview Farm's request to **EXTEND** the filing deadline to Nov. 15<sup>th</sup> 2018  
EJ Starkel **SECONDED**; **MOTION CARRIED 7:0:0**

9. REGULATION REVISIONS: None

10. COMMUNICATIONS AND REPORTS: None

11. COMMISSION OPEN DISCUSSION: None

12. AUDIENCE OF CITIZENS: None

13. ADJOURNMENT:

R. Nassiff **MOVED** to **ADJOURN**; EJ Starkel **SECONDED**. **MOTION CARRIED 7:0:0**  
The meeting was **ADJOURNED** at 8:44pm

Respectfully submitted by Terri Lasota, Board Clerk

Please see the minutes of subsequent meetings for approval of these minutes and any corrections hereto.