

PLANNING AND ZONING COMMISSION REGULAR MEETING MARCH 12, 2003, 7:00 P.M. PAGE 1 OF

Chw. Barbara Plum, Comm. Stephen Gadowski, Comm. MEMBERS
James Fortuna, Comm. Andrew Rak, Comm. George PRESENT
Lapadula, Comm. John Pieper, Comm. William Wilson,
Comm. Carl Bolz, Comm. Stephen Shapiro (7:48 p.m.)

Comm. John Voli, Mayor Domenique Thornton, Ex-Officio, MEMBERS
Dir. P.W. Salvatore Fazzino, Ex-Officio ABSENT

William Warner, Director, Thomas Nigosanti, Chief Engineer STAFF

There were approximately one hundred (100) members of the PUBLIC
public present. There is a word for word tape recording of the
meeting on file and available in the Planning Office.

Comm. James Fortuna
located on Sand Hill Road. Applicant/agent Carl

Atty. Michael Dowley

Carl Haftel. This is an application. What's shown before you on the board is a large parcel of land (inaudible). In this case it's a 5.48 acre parcel of land. Four point six five acres is protected by the conservation easement and the location of the house is, I have a site plan on the other side which I'll, Carl's just turned around and you can see the exact location of the house. Can you turn that back around now, Carl? The issue before you is an issue because we are seeking to get a rear lot approval. I've taken the time to pull out your rear lot regulations and what I need you to understand is, first of all, that this will satisfy your rear lot regulations but, then, in addition to that, I want to go into a little bit of history so you understand why this is a unique situation. I don't think it will happen again and I also think it's a situation that will work for you and is totally different from the first lot that you'd had before you tonight. Your rear lot regulations state that the property must be in a residential zone, which it is, that the property can only be used for a single family residence, which it is only going to be used for single family residence. This is a special permit and you have the ability to add conditions. My client has no problem if your conditions indicate that a house with 3,000 square feet or more would have to be built on it so the neighbors at one time thought and said to me that something other than a single family residence is going to be there. We have no problem with that. The access strip has to be in the same ownership as the rear lot, which it is. It can't be separated from a city street by more than the depth of the front one, front lot, which it's not, which it satisfies. The shape shall be that a rectangle can fit within the property, which it certainly can because it's a huge in excess of five acre property. For building yard requirements the property line closest to the city street from which access is obtained, not including the access strip, shall be designated as the front line. There's no problem with that. The setback requirements shall be twice those required in the zone for standard lots. All of these things are easily satisfied because this is a huge huge huge lot. It's five acres, plus five acres. There shall be no more than two access strips adjacent to each other. There's only one. No non-conforming lot shall be created as a result of a proposed rear lot, which it is not. In fact, when you listen to my history which I'm talking about here, what we actually do is we really solve what has turned out to be, I think, both legally and factually a difficult thing for the city and I'm going to hold you in suspense until I get to the. The dwelling shall be connected to city water and sewer. The grade of the access strip shall not be greater than four percent for a distance of fifty feet from the city street. Electric and other utility service lines shall be placed underground if they are underground along the city street. All of these requirements in your

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special exception concerning rear property lines can be satisfied. Then, of course, you have the normal special permit requirements. What I did was I took the time to take an assessor's map and my client's property is the yellowish property that I've, I don't know if you can see this, my client's property is the yellowish property. All the red that is on this map, those are all rear lots in the area, within this very area. The property across the street, never mind the rear lots, I mean if you were to look at the property across the street from my neighbor, all of them, very few of them have a hundred feet of frontage. There's seventy-five, eighty. This is an old section of the city and this is the last piece of property that my client owns and what he's attempting to do is to build a quality item for the city, a three thousand square foot single family house on a five acre piece of property, which I think will improve the neighborhood and satisfy the requirements of the special permit sections. I have three letters, which I will read into the record from some of the neighbors. I know there's a whole bunch of neighbors who are going to get up and speak speak against this. This is a letter from Andrew Wood gentlemen, this is to advise you that we are the owners of a new home built on Mr. Haftel's lot 12E at 300 Sand Hill Road, Middletown. We are very happy with our new home and are abutting property owners to Lot 11C. Lot 11C is the lot we are talking about tonight for which a public hearing is to be held on March 12, 2003. We're in full support in granting Mr. Haftel's application, that's signed by Andrew Wood. The next letter is from Steven and Nina Stevenson. I am not well enough to attend the Planning and Zoning Commission public hearing on March 12, 2003 legal matter to be proposed one lot resubdivision with a special exception for a new lot 11C of the property of Carl Haftel located on Sand Hill Road applicant agent Carl Haftel. We have seen what a good job you have done so far and know you have improved the neighborhood and will be a great improvement when completed. We are abutting property owners and are in favor of your new application. The Stevensons. This is a letter from Ed and Nancy Scofield. We have no objection to Carl Haftel's construction of a fourth house on property located on Sand Hill Road. They have done a good job with the new homes they have been constructed, which has improved the neighborhood and have increased the market value of the homes in our neighborhood. (Inaudible) I don't know that we have a legal contraction, which was to purchase the house situated on lot 12A and 288 Sand Hill Road, Middletown. We'll be taking title to the new home and lot on Friday, March 21, and we are thrilled with our new home and wish to state we are fully in favor of your granting Mr. Haftel's application for 11C, which is to be heard on March 12th. Thank you and then their names are Sunil Temkar and Sheftal Khamitrar. I probably killed those names. Going back to Bill's memo, just so for the record so everybody knows, all the departments that have approved the application, Public Works this application meets all of our requirements, Traffic Bureau has reviewed the proposal and we have no objection, Health Department city water and sewer are proposed, plans are approved as presented, South Fire District has no objections to the proposal providing it complies with all applicable codes, standards, ordinances and there is adequate access for fire department. We have no problem with any of those conditions. Let me tell you what I think. We're here really because I had a disagreement with Mr. Warner and I guess Bill (inaudible) legally and so I've taken an appeal into court. This gets a little bit legal so I have to act like an attorney a little bit, alright.

Chw. Barbara Plum
You're out.

Atty. Michael Dowley

The, what happened initially is Mr. Haftel purchased the lot 11C. 11C is a legal lot in the sense that it existed before zoning, alright. It also existed well before wetlands, okay. If you look at lot 11C, it has sixty-three feet of frontage and, before zoning, whether we had a front lot or a rear lot,

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this existed before zoning and was a legal lot. A building permit was sought, I don't know, I'll go back a step, what happened was in 1968 or 1969 wetlands (inaudible). All of 11C is wetlands, all wetlands. So you have a legal lot all of which is wetlands. In other words, prior to wetlands even coming into existence, this was a legal lot that existed before zoning. Zoning comes in around 1947 so this 11C existed before there was zoning, before there was wetlands, before there was anything. Then what happens in 1968 or 1969, wetlands comes along and all of 11C is in wetlands. So you can sit there and you can say well, what are we going to try to do, we're going to try to build in this wetland or what are we going to do? So, what Mr. Haftel does is he acquires the additional land, which is not wetland, alright, and then what he does is he adds it to what was a lot prior to zoning, alright. Now, an applicant decides he's going to build a house on that lot and so he attempts to get a building permit and Bill's theory is, since this, since we now have added land to a previously existing lot, it's no longer the same lot so therefore it's not previously existing anymore and so the building permit is denied and we take an appeal and that appeal is in court. Now, the basis of my appeal is a case and it's a Judge Tambora, whom I whom I know, and Judge Tambora in 1990 makes a ruling that says once you have an existing lot before zoning, and you add land to it, just because you add land to it you don't change the fact that it was an existing lot and he says that the creation of the zoning regulations in 1954, that's where they were in Waterford, where this was, although the subject property was increased in size, it does not lose its character as, in this particular case, a non-conforming lot. Well, I took that to the City Attorney and the City Attorney wrote a memo in which he said Attorney Dowley has brought the case to my attention and in fact that's exactly what the case does say and then, this is Attorney Lynch advises us, and then what he does is he closes with a paragraph that says "It should be noted, however, that this case is a Superior Court case and not an appellate court case and, as such, it doesn't set a precedent". Well, what I had given to Tim was the lower court case so he could read how close it was in point and, in fact, when it happened, was there had been an appeal from that lower court case and there is an appellate court case which is precedent and the appellate court case was decided in 1991 and was an opinion written by Judge Thody and the document states the subject lot was created as a distinct separate parcel in 1929, long before the enactment of zoning regulations. Therefore, it is entitled to protection as a legal, pre-existing, non-conforming lot under the local ordinance. The parcel's increase in size does not change its status as a pre-existing, non-conforming lot. Alright, now. It's my opinion that the pre-existence of the lot, it could even be considered a pre-existing, conforming lot because as you look at it if you don't know prior to zoning whether they were thinking of it as a rear lot or a front lot but, in any event, so now in the case that Judge Tambora had, they didn't add all of the property that we're adding. They added a small piece of land but what they did is they make two pieces of property and made it a corner lot. And so, they tried to argue well since you made it a corner lot, that's not a, the same as it was before and both Judge Tambora and the appellate court of Connecticut says no, once you have a pre-existing lot, if you're adding more property to it, you're actually pumping it out because you're making it bigger, alright. So what we are doing here is we're taking a lot, which everyone admits, Bill admits in his memo a pre-existent zoning and as that Bill calls it a pre-existing, non-conforming lot. And, so when I took an appeal and I went to the Zoning Board of Appeals, Bill indicated that he would prefer as part of the process that rather than go to an appeal and win an appeal, that what I'd do is that I'd, actually my client had done some of the earlier stuff, I hadn't been involved, that I properly take this through and get a special permit for a rear lot. I'm very arrogant and I think I'm going to win my appeal anyways but I think it's unnecessary for the city to spend money to defend an appeal and I also think it's really should be unnecessary for my client, who is a taxpayer in Middletown, to have to go through all that. So what we have done now just so that everyone understands is we have taken all of the land

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that is to the right of the dotted path mark line there and added it to the property, alright. In addition to that, although Lot 11C has sixty-two feet or whatever it is of frontage before, because of the wetland nature of it, we have made another access strip which satisfies your rear lot requirements of being twenty-five, we've got the proper width and we've satisfied all the regulations and then what we've done, we've placed a house suitably protected so that you have a conservation easement that I believe that if I lived in the neighborhood I would love the fact that it's dedicated forever as open space. In this area, which I have previously shown to you, I mean I believe that by taking all of that property that was 11C before and making it an open space, dedicating it as a conservation easement, I believe helps the neighborhood, helps the neighborhood in terms of the bird community, helps the neighborhood with wildlife. To me it is something that is a real benefit and what we are doing by doing this is we are solving the existence of a lot that existed before zoning that is now all wetlands. That could cause all sorts of issues in terms of having to condemn the property, money due, all sorts of issues like that and so, this is one of those rare times when I think all of you can really exceed to the fact that this is a rear lot that could really exist. In terms of the neighborhood I have given you the names of the abutters who have favored it. I appeared at the ZBA and I know there is, there is the animosity between my client and others so I would hope that we'd all talk, at least, on the point and then I think you have a right to hear what the opponents say. The, from my perspective I have an application that meets all of the department comments. I've got an application that's in excess of five acres in an area in a, I think Bill's memo says five point five eight, five point four eight acres and four point six five acres are protected by a conservation easement. So, to me it's something that I think will help the neighborhood. I am also willing, and my client is willing, to take as a condition that he build one single family not less than three thousand square foot house. It's not going to be a hospital. It's not going to be, I mean we're basically trying to have a nice single family house in this area. For those of you who don't know the area, Route 9 abuts it on, on the right. This says now or formerly State of Connecticut Route 9. So what you have is a piece of property that's

Comm. William Wilson
Read it again.

Comm. John Pieper
Mine says 91.

Atty. Michael Dowley
Well, this says Interstate 9. Do you think it was a misprint? It's Route 9.