

From: Lois Laczko June 29, 2009 9:18:41 AM
Subject: Zoning Board of Appeals Minutes 04/22/2009 SPECIAL WORKSHOP
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To: SimsburyCT_ZBAMin
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ZONING BOARD OF APPEALS MINUTES
SPECIAL WORKSHOP
APRIL 22, 2009

I. CALL TO ORDER

Peter Stempien, Chairman, called the Special Workshop of the Zoning Board of Appeals to order at 6:30 p.m. in the Main Meeting Room of the Simsbury Town Offices. The following members and alternates were present: John McCann, Tegan Blackburn and Sharon Lawson. Thomas Horan arrived at 7:20 p.m. Also in attendance were Hiram Peck, Director of Planning, Lynn Charest, Zoning Enforcement Officer, Robert DeCrescenzo, Town Attorney and other interested parties.

II. DISCUSSION OF PLANNED AREA DEVELOPMENT (PAD) REGULATION WITH HIRAM PECK, DIRECTOR OF PLANNING AND ROBERT DECRESCENZO, TOWN ATTORNEY.

Hiram Peck, Director of Planning, showing a power point presentation, explained to this Board that the PAD draft regulation started with a member of the Board of Selectman requesting that a mixed use regulation be put together. He said that his task is to create a mixed use zoning regulation. There are similar types such as; Planned Unit Development (PUD) regulation, Planned Development District (PDD) regulation, Special Development District (SDD) regulation, Special Design District regulation (oriented towards design), Formed Based Codes (FBC), Smart Code, etc. These all could be used for what are termed "mixed uses".

Mr. Peck said that the intent and purpose for this PAD regulation is to either allow, or encourage, a specific type of development. One of the elements that he wants to encourage is to add in housing. Mr. Peck said that one of the things that applicants complain about is that the process is unclear. They do not understand the regulations. The idea for the PAD is to put a clear process in the regulation that allows for working all things out in a sensible, reasonable fashion. He wants to provide a process that is efficient and cost effective. Mr. Peck said that there are several items

that are pending. The Zoning Commission recently approved a medical building for the north end that will be going forward with the year. There are proposed additions to the Drake Hill Mall, and the possibility of a Continuing Care Retirement Community being built. Mr. Pecks said that this regulation needs to get in place shortly so that we will have the proper way to deal with developments that is quick and cost effective. The applicant needs to get a yes or no answer to their application within a reasonable period of time.

Chairman Stempien questioned the Zoning Board of Appeals role in the PAD process. Mr. Peck said that the Zoning Board of Appeals is a really important cog in the whole process. If this board and its members have an idea of what went into and what was intended by this regulation, you will certainly have a better idea on how to handle an application when someone comes to you asking for variances or relief from something.

Mr. Peck said that they will probably end up with a model (or template) of the regulation. As an example, the Town Center and possibly the Village Centers will probably be treated differently than the rest of town. He said that generally one regulation does not really satisfy all interests. Things that may differ from zone to zone may not be easily addressed in only one regulation. He said that there has to be a balance in terms of our development overall town wide.

Mr. Peck said that he would like to get the regulation on the road towards adoption within the June time frame. The process has to be clear and fair and take into account as many interests as possible. There will be a public hearing before any zoning regulation is adopted.

Some techniques used in establishing a new zone are: floating zones (zones that are created in the regulation that can float anywhere in town), overlay zones (lay over the existing zone where the underlying zone retains some of their characteristics), and as of right zones (example: Incentive Housing Zone for high density housing). The regulation format will have purpose clauses, definitions, different types of PAD's that are authorized, specific zoning procedures, and basic standards.

Mr. Peck stressed that the pre-application process is very important. The applicant should come in with a decent idea of what they want to do and show the commission (or combination of commissions) what they want to do. They should submit a sketch plan to indicate what the proposal is. They could then prepare a preliminary development plan if the sketch plan is approved. After that they can go back and do the final details. Mr. Peck said that when the applicant gets to the final detail stage it gets expensive very quickly.

Robert DeCrescenzo, Town Attorney, continued the power point presentation. He briefly discussed the history of modern zoning that began in 1926. Attorney DeCrescenzo explained that there is a geographic area of the town that is subject to the zoning authority of the Zoning Commission under Title Eight of the general statutes. Title Eight of the general statutes, under the current zoning scheme, are really organized around two things: regulation of land in two dimensions, and the separation of uses. Attorney DeCrescenzo explained that different zones are set up according to the zoning map, and within those zones there are permitted uses, uses as of right, special permit uses, etc. The thinking behind present day zoning, as expressed in the Simsbury Zoning Regulations and virtually every place else in Connecticut, is the residential uses should be separated from the commercial uses, and the commercial uses should be separated from the industrial uses. The reasons are because with pre-zoning there was congestion with all kinds of problems where uses were mashed together. The problem was solved in the 20th century model of zoning by separating uses and doing it in two dimensions. He said that we would look at the foot print of the structure and make sure that was an adequate side yard and front yard setback. Also, by making sure that there was enough on site parking and adequate access to road ways. This was successful in meeting the goals of 20th century zoning.

Attorney DeCrescenzo said that one of the major goals of a PAD is to allow the development proposal to become the zone. He explained that we have a zoning map with underlying zones. Within certain underlying zones we allow an applicant to take advantage of this zoning regulation (text) to create a new zone portion of the zoning map. If it is approved, it lands on a site (not a lot), and within that site the zoning regulation becomes the PAD application. This becomes the zone for that site and the zoning map is amended to say PAD1.

John McCann asked Attorney DeCrescenzo and Mr. Peck if they were going to address any of the concerns that the Board had from their March 2009 meeting. He said that this was all very interesting, but he felt that as there is a memo with their concerns attached to the agenda that the concerns would be part of their presentation. Attorney DeCrescenzo said that he had thought that they would go through the regulations, explain how it works and the purposes of it. He had not previously seen the memo, but would now go through the specific questions.

- How does ZBA figure into PAD process?

Attorney DeCrescenzo said that one of the purposes of the PAD process is to minimize the variances that would be needed to do a specific type of program. The PAD process allows an applicant to not need variances for things like set back requirements, parking requirements, off-street parking

and loading, sign regulations, etc. What is proposed in the plan becomes the regulation for the PAD; therefore you do not need a variance. Attorney DeCrescenzo said the Zoning Board of Appeals fits in with Section Three (eligible Zones and Minimum Tract Size) of the PAD.

Chairman Stempien gave an example saying that if the PAD applicant would like 60% site coverage and the PAD regulations only allow for 40%, the applicant would have to come to the Zoning Board of Appeals. Attorney DeCrescenzo gave an additional example with the maximum building height variance. Although the Zoning Commission may be able to grant waivers in some cases, depending on how the regulation is worded. Attorney DeCrescenzo stressed that the PAD is structured as a zone, text and map change. Nothing done in the PAD regulation will diminish the authority of the Zoning Board of Appeals.

Mr. McCann questioned the scenario if in five to ten years a PAD approval requires a change to their site plan. Attorney DeCrescenzo pointed out that a draft PAD allows for the planning staff to approve minor changes, but any major change to the site plan would be done with the Zoning Commission through an entire approval process (Section Nine, page 11 of the draft PAD).

Attorney DeCrescenzo reminded the Board of the hardship factor for establishing variances. It may be difficult for a PAD applicant to establish a hardship that is not self-imposed or economic in nature. Once the PAD is approved there still will be a role for the Zoning Board of Appeals, although there may be fewer applications, but it will not diminish the ZBA's function. If there is an appeal of a zoning enforcement action, the PAD will be appealed through the ZBA. Same enforcement actions are in place now, as the PAD is a zone. Attorney DeCrescenzo continued on to say that if the approval conditions for a PAD are not in compliance, zoning enforcement action will take place.

The PAD is a new section in the zoning regulations. The underlying zone regulations in an approved PAD will still be in effect as long as they have not been changed or conditioned during the application approval.

III. ADJOURNMENT

The workshop adjourned at 7:35 p.m.

Thomas F. Horan, Secretary

