

From: Rick Bazzano January 29, 2009 1:36:50 PM
Subject: Zoning Commission Minutes 01/26/2009
To: SimsburyCT_ZoningMin
Cc:

ZONING COMMISSION MINUTES
JANUARY 26, 2009
SPECIAL MEETING

DRAFT COPY

I. CALL TO ORDER

Garrett Delehanty called the Special Meeting of the Zoning Commission to order at 7:30 p.m. in the Program Room at the Simsbury Public Library.~The following members were present:~Bruce Elliott, James Gallagher, John Vaughn, Scott Barnett and Madeline Gilkey. Also in attendance were Director of Planning Hiram Peck, Town Attorney Robert DeCrescenzo, Commission Clerk Alison Sturgeon and other interested parties.

Mr. Elliott made a motion to appoint Mr. Delehanty to serve as Chairman for this meeting. Ms. Gilkey seconded the motion, which was unanimously approved.

Mr. Barnett made a motion to appoint Mr. Gallagher to serve as Secretary for this meeting. Mr. Vaughn seconded the motion, which was unanimously approved.

II. APPOINTMENT OF ALTERNATES

Mr. Delehanty appointed Ms. Gilkey to serve in the absence of Mr. Barney.

III. APPROVAL OF MINUTES of January 5, 2009

Ms. Gilkey made one edit to the January 5, 2009 minutes.

Mr. Elliott made a motion to approve the January 5, 2009 minutes as amended. Mr. Delehanty seconded the motion, which was unanimously approved.

Mr. Delehanty stated that the application of Brian Hall has been withdrawn. He stated that they do not need the Special Exception that they were applying for.

Mr. Gallagher read the call.

Mr. Delehanty stated that if the public wanted to speak regarding any application tonight, that they please stated their name and address for the record.

IV. PUBLIC HEARING(s)

a. Application of David & Susan Johnson, Owners, Dominick Visciotti, Agent, for a Special Exception, pursuant to Article Seven, Section E.6.e of the Simsbury Zoning Regulations for an organic and natural foods store (Healthy Choice Market) on property located at 141 West Street. B-2 Zone Rich Correia, Real Estate Broker, stated that Mr. Visciotti is looking to open a Convenient Store. He stated that the property is located on the corner of Bushy Hill and West Street. The entranceway is in the same plaza as the package store and the Asian restaurant, which years ago, used to be a convenient store. Mr. Correia stated that there will be no changes made to the outside of the building; the same signage that was previously approved will be used. The only difference will be the use inside of the building.

Mr. Visciotti stated that he would like to open an organic and natural grocery store. He stated that he has found that Simsbury is 16 miles to Trader Joe's and 9 miles over the mountain to Whole Foods. He feels that Simsbury needs a store like this. They will be selling organic vegetables that are all prepackaged foods and meat. It will be a small convenience grocery store where people who eat organic and natural foods can stop on their way home and people in Town will be able to shop organically locally.

Mr. Delehanty questioned how big the store was. Mr. Visciotti stated that the usable space for the store is 3,750 square feet; the upstairs is another 250 square feet, although this area will be for offices and a break room. He stated that he will be hiring between 5-10 employees. The hours of operation will be from 8 a.m. to 8 p.m., seven days a week.

Mr. Gallagher questioned if the applicant would be using the office space in the front. Mr. Visciotti stated that this is where the refrigerator sections will be with produce and meats. The barn area is where all of the dry goods will be; there will be approximately 4-5 aisles. The little room off to the front of the store will hold the frozen goods.

Mr. Delehanty opened the public hearing up to public comments. There were no comments from the public.

b. Application of Brian Hall, Owner, for a special Exception for a

package store, pursuant to Article Ten, Section H of the Simsbury Zoning Regulations on property located at 30 Winthrop Street. B-1 Zone

This application was withdrawn.

c. Application of the Town of Simsbury for Zoning Amendments to the Town's Zoning Regulations, pursuant to Article Four (B), Definitions, Article Seven, Section N, Permitted Uses, and Article Ten, Section K and Section A, Special Regulations for the purposes of a Continuing Care Retirement Community (CCRC) and the incorporation of a Conceptual Master Plan (CMP) into the regulatory process.

Mr. Peck stated that this text amendment is for a Continuing Care Retirement Community (CCRC). They are proposing to add this use and definition to the Regulations. The amendment, dated December 2, 2008, has several parts to it. The first is the definition for a CCRC. This definition is very clear; it has been pulled from a number of different Regulations around the State as well as National guidelines. The second part of the proposed definitions is what is called the Conceptual Master Plan (CMP), which the Planning Commission has commented on.

Mr. Peck stated that the proposed amendment to Article Seven, Section N, is to add the term Continuing Care Retirement Community with Accessory uses; the rest of the wording remains as is contained in the current Regulations. The next proposed amendment is to add to Article Ten, Section K, the term Continuing Care Retirement Community; this is the same paragraph that contains Assisted Living Facility, Congregate Senior Housing Facility. The last portion of the proposed amendment is the final paragraph in Article Ten, Section A, which talks about how the CMP would be integrated into the Regulations.

Mr. Peck stated that CRCOG has made comments for these amendments; their comments are part of the record. They found that these amendments have no regional impact.

Attorney DeCrescenzo stated that he has reviewed the proposed language regarding the amendments. He recommended to the Commission that, regarding the definition of the CCRC, if it meets the Commission's criteria, it be added to the current Zoning Regulations. Regarding the CMP, he stated that he would not suggest adding this language into the Regulations at this point in time.

Regarding Article Seven, Section N and Section K, Attorney DeCrescenzo stated that these sections would be fine for the Commission's consideration to add the additional classification of use. He feels that these additions would fit in the context of the Regulations. He stated that the Commission

could act on this, although he urged the Commission not to act on Article Ten, Section A because the revision to Article Seven and Article Ten would be adding a new classification for a Special Exception Use under the Regulations. In every other instance where it allows a Special Exception to be considered, it must be accompanied by a Site Plan that conforms with Article Five, Section J. Although this proposal is to give some relief to an applicant coming in with a CCRC and fitting it into the existing language of the existing Regulations, it is not a complete comprehensive pre-application process. Although the CMP is not intended to be an approved Site Plan, it could be interpreted that way.

Commissioner Barnett stated that the Planning Commission has drafted language regarding the CMP. Attorney DeCrescenzo stated that he disapproves because it takes it further down the path of making it a defective Site Plan.

Commissioner Vaughn questioned what the differences were between the CMP and a preliminary development. Attorney DeCrescenzo stated that there is no difference; it is a type of preliminary development. He stated that where it would be inserted into the Regulations, there is no pre-development process. He stated that they would need to amend the Regulations on a parallel path so they would meet together.

Attorney DeCrescenzo stated that he and Mr. Peck will continue to discuss and develop language regarding the CMP.

Commissioner Delehanty stated that it appears that the recommendation from the Planning Commission is a positive referral regarding the matters that the Town Attorney suggests that they continue to consider. Attorney DeCrescenzo agreed.

Regarding the CMP, Commissioner Elliott stated that he does not think the proposed language fits into the existing Regulations, although he may be supportive of this in the future. Regarding the CCRC, he stated that this should also be inserted into the sub-heading on page 94 of the Zoning Regulations in paragraphs 1, 2, and 9. When referring to assisted living facility and congregate senior housing facility, there needs to be an insertion of the CCRC. Attorney DeCrescenzo agreed that this should be inserted.

Commissioner Elliott stated that another concern was for Article Seven, Section N, which is on page 45 of the Zoning Regulations; the insertion of CCRC is needed here also.

Commissioner Elliott questioned why these facilities would be suggested to be put into a residential zone. Commissioner Gilkey stated that McLean is in a residential zone. Mr. Delehanty stated that this Commission would use

its judgment regarding if it would fit in a particular zone because it is a Special Exception. It is discretionary.

Commissioner Elliott questioned if these issues could be separated and voted on separately by the Commission. Attorney DeCrescenzo stated that the Commission could raise separate motions or one motion. Commissioner Delehanty stated that it was his intention not to move forward with any vote on this tonight and that they would wait until Chairman Barney could be in attendance.

Commissioner Delehanty opened the public hearing for public comments or questions.

Janet Miller, 45 Blue Ridge Drive, stated that she is from the Simsbury Homeowners Advocating Responsible Expansion (SHARE). She stated that SHARE has hired a Land Use Attorney who reviewed these amendments to the Zoning Regulations. She read a letter from Attorney Marjorie Shansky, which stated that she has reviewed the proposed amendments. Attorney Shansky stated that although adding language for a CCRC is deemed appropriate, there was concern that the language is problematic both procedurally and substantively. She stated that the conventional areas of the Commission's review and discretion too early in the review process could lead to unintended land use consequences. Regarding the language for a CMP, the letter stated that the term, "large projects" is not defined leaving open the possibility that any or many of the Designed Development District uses could avoid the Site Plan requirements. Also, the phrase, "with accessory uses", is either superfluous or ambiguous. She feels that the primary problem with the legislation as proposed is that it conflates planned development concepts with special permit concepts without emerging as either a legislative act or a satisfactory administrative process. The letter ended by urging the Commission to reject these amendments and take the appropriate time to obtain a new proposal.

Ms. Miller, speaking for herself, stated that she feels a CCRC is a good use of space, although this wording is open to interpretation. She feels that the proposed language needs fine tuning.

Jay Addison from Redding, Connecticut, stated that he is employed by Senior Care Development, LLC. He stated that they have been in business for 20 years in the State of Connecticut; he is very familiar with CCRCs. Although he does not currently have an application pending in Simsbury, he would like to submit one under this new definition. He stated that under the current Regulations, the approval terminates after one year in Simsbury. Other Municipalities have approvals for 5 years, which is the default of the State. He stated that he would like to see Simsbury's approval be good for 5 years.

Bob Duguay, 11 Nod Brook Drive, stated that he is in favor of proposed development at the CL&P site, although he feels that the proposed language is very vague. He questioned what type of facility could be built under this wording. He stated his concerns with the way the building might look; he wants Simsbury to retain its character. He wants proportionality in the way residents live and the kind of Town people want in the future.

Mr. Duguay stated that, if the proposed wording is adopted, the Town would lose too much control. He stated that he is not in favor of a CMP. He feels that more detail is needed. He wants the Zoning Commission to look at plans that come before them and make their own judgment; he does not want to rely on third parties to tell them what Simsbury should look like.

Mr. Peck stated that his recommendation to the Zoning Commission would be to act on the definition for a CCRC. He stated that this would be acceptable for action if the Commission chose to. Regarding Article Seven, Section N, Mr. Peck recommended approval for this as written. Regarding Article Ten, Section K, he stated that this wording should be added to paragraphs 1, 2, and 9 starting on page 94 of the Zoning Regulations. He stated that the Town Attorney and he agree that the language regarding the CMP needs to be clearer before action should be taken. He recommended that no action be taken on the CMP or on Article Ten, Section A. He stated that he will work with the Town Attorney to make this language clearer. He stated that this would be done prior to the Zoning Commission's special meeting on February 9, 2009.

The Commission agreed to take no action tonight. Commissioner Delehanty stated that he would leave the public hearing open. He stated that no application can come forward unless all amendments were acted on.

Attorney DeCrescenzo stated that when Mr. Addison was speaking, he referred to Site Plan Requirements, Article Five, Section J, Subsection 6, which reads, "An approved plan shall be void if construction is not started within one year from the date of approval by the Zoning Commission provided that the Commission may grant an extension for an additional one year." He stated that State Statute allows Site Plans to be approved for a period of five years with one possible five year extension.

Mr. Elliott made a motion, regarding the application of the Town of Simsbury for Zoning Amendments to the Town's Zoning Regulations, pursuant to Article Four (B), Definitions, Article Seven, Section N, Permitted Uses, and Article Ten, Section K and Section A, Special Regulations for the purposes of a Continuing Care Retirement Community (CCRC) and the incorporation of a Conceptual Master Plan (CMP) into the regulatory process, to continue the public hearing at the Special Meeting to be held

on February 9, 2009. Mr. Gallagher seconded the motion, which was unanimously approved.

Mr. Barnett made a motion to amend the agenda and take Item VI next. Mr. Vaughn seconded the motion, which was unanimously approved.

V. DISCUSSION AND POSSIBLE VOTE ON ANY AGENDA ITEM

Mr. Gallagher made a motion to approve the application of David & Susan Johnson, Owners, Dominick Visciotti, Agent, for a Special Exception, pursuant to Article Seven, Section E.6.e of the Simsbury Zoning Regulations for an organic and natural foods store (Healthy Choice Market) on property located at 141 West Street as submitted. Mr. Vaughn seconded the motion, which was unanimously approved.

VI. DISCUSSION OF REVISED ZONING COMMISSION BYLAW DRAFT

Mr. Peck stated that, at the last meeting, the Commission noted additional changes to the Bylaws. He asked that the Commission members review the changes to make sure that all of them have been made. He stated that the Commission did not take a vote on this item at the last meeting because Chairman Barney was not in attendance. The Commission agreed to wait and vote on this issue at the next meeting when Chairman Barney could participate.

VII. OTHER MATTERS AS MAY PROPERLY COME BEFORE THE COMMISSION

Mr. Peck stated that the owner of a music shop in Avon has contacted him regarding purchasing One Massaco Drive. He would like to move a portion of his music shop to Simsbury. He has many clients in Simsbury already that he teaches music lessons to. He gives weekly lessons from 2:30p.m. – 7:30 p.m. and also gives lessons on Saturday.

Mr. Peck stated that this property is currently zoned Professional Office (PO). This music business consists of approximately 85% of lessons and the balance is rental, retail and consultation. This business owner would like to know the Commission's feelings regarding him bringing his business to Town.

Mr. Peck stated that this is a gray area as to whether this use can be carried on in the PO zone; clearly this is not an office. He stated that, in his opinion, this would not do substantial damage to the PO zone, however, if the Commission decides that this needs to be rezoned in order to be used for lessons, then the business owner would be required to submit for a rezone through the Center Zone.

Mr. Barnett questioned if all of this music business would be relocating to Simsbury or if this location would be in addition to the Avon location. Mr. Correia stated that the business owner would be willing to keep the Avon store open for the sales of instruments only if needed.

Mr. Delehanty stated that he does not want to stretch definitions and zones in order to accommodate businesses that are not intended for them. He questioned how significant a burden would the Commission be putting on the business owner if it needed to be rezoned. In terms of timing, Mr. Peck stated that it would take approximately 30-60 days.

Mr. Barnett stated that he does not believe there would be any issues regarding this; the outcome would probably be positive.

Mr. Beach stated that one use under the P0 zone is education. Part of this business is giving lessons, which may fall into this category. Mr. Barnett stated that it will be important to find out if the retail aspect of the business would also be coming to Town. Mr. Delehanty stated that if this property was rezoned, the retail aspect would be allowed.

Status of Charrette Process

Mr. Peck stated that the Town is going back to the three consultants to see if they will revise their proposals to give more substance for the \$40,000 that is available for the Town Center Charrette. He stated that he has also looked into and has applied for grants for the Charrette, although he has not heard back yet if Simsbury will be receiving any funding. Mr. Peck stated that the Town should hear back from the consultants and regarding the grants within the next few weeks.

Report from Zoning Enforcement Officer, Howard Beach

Mr. Beach stated that there were no outstanding violations.

VIII. ADJOURNMENT

Ms. Gilkey made a motion to adjourn the meeting at 8:41 p.m. Mr. Elliott seconded the motion, which was unanimously approved.

Garrett Delehanty, Jr., Secretary

