

From: Lois Laczko March 22, 2010 9:46:32 AM
Subject: Zoning Commission Minutes 03/01/2010 ADOPTED
To: SimsburyCT_ZoningMin
Cc:

ADOPTED

ZONING COMMISSION MINUTES
MARCH 1, 2010
REGULAR MEETING

I. CALL TO ORDER

Chairman Gallagher called the Regular Meeting of the Zoning Commission to order at 7:00 p.m. in the Main Meeting Room at the Simsbury Town Offices. The following members were present: Ed Pabich, Bruce Elliott, Dave Ryan, Amy Salls, Madeleine Gilkey, John Vaughn and Robert Pomeroy, Jr. Also in attendance were Director of Planning Hiram Peck, Commission Clerk Alison Sturgeon and other interested parties.

II. APPOINTMENT OF ALTERNATES

Chairman Gallagher appointed Ms. Gilkey to serve in the absence of Mr. Barnett.

III. APPROVAL OF MINUTES of February 1, 2010

Several edits were made to the minutes.

Mr. Elliott made a motion to approve the February 1, 2010 as amended. Mr. Pabich seconded the motion, which was unanimously approved.

Mr. Pabich read the call.

IV. PUBLIC HEARING(s)

a. Application of Gordon L. Howes, Owner, for a Special Exception, pursuant to Article Seven, Section C.9 of the Simsbury Zoning Regulations for an accessory apartment on property located at 52 Canal Street. R-15 Zone

Mr. Howes stated that he lives at 52 Canal Street. This house was four rooms when he purchased it. In 2002, he stated that he got a permit for a

two story addition; he added 928 square feet on the first level. There was also another 824 feet of addition, which included the upstairs unfinished attic space, a stairway and an additional room up to the second floor level.

Mr. Howes stated that he would like to take the footprint of the original house and isolate it from the remaining structure so his son can live there independently. The accessory apartment would be the original structure.

Ms. Gilkey questioned if the floor plan for the accessory structure was submitted. Mr. Howes stated that he was not aware that this was needed.

Mr. Pomeroy questioned if there will be two kitchens in this house. Mr. Howes stated that there are currently two kitchens in the house. This is the way that the house has functioned for 6 years; the kitchens are already in existence. He would now like to make this legal. He stated that the certificate of occupancy was issued five years ago. The second story of the addition is on record as unfinished attic space.

Mr. Elliott stated that the accessory dwelling unit that Mr. Howes is applying for is not in the depiction that was submitted. Mr. Howes asked that he be excused to get the drawings of the floor plans of both levels of the addition and existing house. He stated that he would bring the plans back to the Commission within a matter of a few minutes.

Chairman Gallagher extended the public hearing at 7:20 p.m.
The public hearing continued at 7:30.

Mr. Howes brought back the floor plan of the existing house, including the addition. He stated that he has outlined the first floor of the house. The dimension of 26' x 28' is the unit in question. The accessory apartment was also shown on the plan.

Mr. Pomeroy questioned if the accessory apartment was less than 1,000 feet and less than one-third of the square footage. Mr. Howes stated that this was correct.

Chairman Gallagher closed the public hearing.

b. Application of Robert E. Patricelli, Owner, Barbara A. Foley, Agent, for a Special Exception, pursuant to Article Ten, Section H of the Simsbury Zoning Regulations for a temporary liquor permit for a fund raiser to be held by the Ron Foley Pancreatic Cancer Foundation, Inc. on Saturday, May 1, 2010 on property located at 75 Hartford Road (Folly Farm). R-40 and FP Zones

Ms. Foley stated that she would like a liquor permit for a special event. The event is a fundraiser in memory of her late husband who died of Pancreatic Cancer. The event will be held at Folly Farm.

Chairman questioned if a professional bartender would be used at this event. Ms. Foley stated that a professional bartender, as well as a caterer, would be helping at this event.

Mr. Elliott questioned if there would be someone else at this event that could assist the bartender with the process of checking identifications. He stated that this Commission's concern is to make sure the event is well planned. He also questioned how many people are expected to attend this event. Ms. Foley stated that she is hopeful that 175 people will be in attendance.

Chairman Gallagher closed the public hearing.

c. Application of Paul P. Douglas, Owner, Linn Taylor, Agent, for a Special Exception, pursuant to Article Seven, Section C.9 of the Simsbury Zoning Regulations for an accessory apartment on property located at 9 Rocklyn Drive. R-40 OS Zone

Mr. Taylor stated that they are proposing a 2-story addition with a full foundation; each story will be 192 square feet. The first floor of the addition will be for the current owner; the second floor will be the accessory dwelling. He stated that there will be another exit out to the existing deck. There is an existing 10 x 10 bump out on the existing house; the accessory dwelling will be built as second story to this. The accessory unit will only be the second floor.

Mr. Elliott questioned if there would be any additional parking because of this accessory apartment. Mr. Taylor stated that there would not.

Chairman Gallagher questioned if there were any comments or questions from the public. There were none.

Chairman Gallagher closed the public hearing.

Mr. Pabich made a motion to move the presentation of Mr. Ritson after Item VI. Ms. Gilkey seconded the motion, which was unanimously approved.

V. PRESENTATION(s)

a. Application of E&A/I&G Simsbury Commons LG, Owner, Bill Corrigan, Stop & Shop, Agent, requesting permission to place a temporary, portable greenhouse on its location for approximately three months (April –

July of 2010) at the Super Stop & Shop, 498 Bushy Hill Road. B-3 Zone

Sandy Cheverier, Assistant Manager of Stop & Shop in Simsbury, stated that in previous years, they have relocated their greenhouse to the north side of the building. This will be their third year for renewal; this is for a three year renewal. The Fire Marshal was on the site in the past to make sure that they were in compliance regarding the distance away from the building.

b. Application of James Craig, Macmen Enterprises, Inc., Owner, Rigoberto Felipe, Agent, for a Site Plan Amendment for proposed exterior renovations at the Valero Gas Station, 1340 Hopmeadow Street. B-2 Zone

Mr. Felipe stated that he would like to remove the garage doors on the building; install new windows; and install three planters in front of the building. This location is currently a gas station, which also has a small convenient area.

Ms. Gilkey questioned if this would still be a gas station. Mr. Felipe stated that the servicing of cars would not continue; the gas station will remain.

Ms. Gilkey stated that this is close to another food store. Mr. Felipe stated that he will offer the same things he currently offers, although he will be offering a bigger variety. The convenient store will be expanded to all three bays.

Chairman Gallagher questioned if the parking requirements were met for this site. Mr. Peck stated that requirements for this proposed use and the current use are identical.

Ms. Gilkey questioned what the hours of operation would be. Mr. Felipe stated that he would be open from 6 a.m. to 9 p.m.

Chairman Gallagher questioned if another entrance or exit is needed in the building. Mr. Felipe stated that the Fire Marshall stated that this would not be necessary.

Mr. Elliott questioned if the Design Review Board discussed lighting with the applicant. Mr. Felipe stated that no lighting will be added on the site. He stated that Mr. Beach went out and read the light levels; he has some of the lowest lighting levels of all of the stations in Town.

Carol Wagner, a property owner across the street, questioned if Mr. Felipe would be applying for a beer permit. Mr. Felipe stated that it is illegal to sell beer and gas at the same location. Mr. Peck stated that if the

applicant proposed to sell beer in the future, he would need to go through the public hearing process and State approval.

Mr. Pabich questioned if the abutters of this property were notified. Mr. Peck stated that they were not notified because this is not a public hearing.

VI. DISCUSSION AND POSSIBLE VOTE ON ANY AGENDA ITEM

Regarding the application of Mr. Howes, Mr. Pabich questioned when this family member no longer lives in the accessory dwelling, would this revert back. Mr. Peck stated that if someone else were to move into this house, the accessory apartment would be usable. It could be then become a rental apartment, although the Town asks that new owners notify the Town of that fact to make sure that the apartment is still in compliance with the Regulations.

Mr. Elliott made a motion to approve the application of Gordon L. Howes, Owner, for a Special Exception, pursuant to Article Seven, Section C.9 of the Simsbury Zoning Regulations for an accessory apartment on property located at 52 Canal Street as submitted. Ms. Salls seconded the motion, which was unanimously approved.

Mr. Vaughn made a motion to approve the application of Robert E. Patricelli, Owner, Barbara A. Foley, Agent, for a Special Exception, pursuant to Article Ten, Section H of the Simsbury Zoning Regulations for a temporary liquor permit for a fund raiser to be held by the Ron Foley Pancreatic Cancer Foundation, Inc. on Saturday, May 1, 2010 on property located at 75 Hartford Road (Folly Farm) as submitted. Mr. Elliott seconded the motion, which was unanimously approved.

Ms. Gilkey made a motion to approve the application of Paul P. Douglas, Owner, Linn Taylor, Agent, for a Special Exception, pursuant to Article Seven, Section C.9 of the Simsbury Zoning Regulations for an accessory apartment on property located at 9 Rocklyn Drive as submitted. Mr. Pabich seconded the motion, which was unanimously approved.

Mr. Elliot made a motion to approve the application of E&A/I&G Simsbury Commons LG, Owner, Bill Corrigan, Stop & Shop, Agent, requesting permission to place a temporary, portable greenhouse on its location for approximately three months (April – July of 2010) at the Super Stop & Shop, 498 Bushy Hill Road as submitted. Mr. Pabich seconded the motion, which was unanimously approved.

Regarding the application of James Craig, Mr. Pabich stated that he feels that the abutting property owners should know that these changes are being

proposed to this Valero Gas station. These changes may impact other businesses. Mr. Elliott stated that he does not disagree with Mr. Pabich. He stated that this is an issue that should be looked at when revising the Zoning Regulations.

Mr. Ryan questioned if a Special Exception would be required for this application. Mr. Peck stated that a Special Exception is not required for this application. This is not a change in the type of business or in the parking requirements.

Mr. Elliott made a motion to approve the application of James Craig, Macmen Enterprises, Inc., Owner, Rigoberto Felipe, Agent, for a Site Plan Amendment for proposed exterior renovations at the Valero Gas Station, 1340 Hopmeadow Street as submitted. Ms. Salls seconded the motion, which was approved. Mr. Pabich voted in opposition.

c. Application of John D. Ritson, Member, R. C. Connectors, LLC, Owner, for a Site Plan Approval for construction of a three (3) story apartment complex on property located at 144-150 Hopmeadow Street. B-1 Zone

Attorney Sherwood stated that this property is in a B-1 Zone. There is an existing office building located at the front of this site. He stated that the applicant is looking for a Site Plan approval. He is proposing to construct a 3 story apartment complex with 24 apartments; there will be 8 units per floor. There will be one and two bedroom units. Public utilities will be underground.

Mr. Whitney, Professional Engineer, stated that this property is on the southeast side of Hopmeadow Street. The property is in the B-1 Zone. There is an existing office building in front of the site with an existing parking lot. The remainder of the site is wooded. There is an area of wetlands on the property, which has been delineated. He stated that wetlands are 29% of this site.

Mr. Whitney showed the Commission members plans of the site with the proposed building and parking; the existing building and parking; and the wetlands. He stated that the proposed building is located 51 feet from the rear property line. The required parking for the existing office building in the front of the site is 14 spaces; the required parking for the 24 proposed units is 48 parking spaces. This is a minimum of 62 required parking spaces; the Site Plan shows 66 spaces. He stated that public water and sewer will be brought in from Hopmeadow Street.

Regarding drainage, Mr. Whitney stated that all of the water on the site flows to the wetlands. After the site is developed, the same drainage pattern will be continued. The wetlands area, which is a little less than

one acre, is a natural retention basin. Mr. Whitney stated that they did propose a storm water management plan that consists of rain gardens and grass swales to treat the storm water runoff. He stated that the applicant has received approval from the Wetlands Commission. As part of this approval, there was a condition that the applicant clean up the site and maintain plantings in and around the wetlands. Another condition of approval was to remove invasive species around the wetlands.

Mr. Whitney stated that impervious coverage is .97 acres or 29% of the site. There is a detailed landscape plan and site lighting plan for this site as well. He stated that the Site Plans comply with all of the Zoning Regulations. The site also complies with the 2004 DEP Storm Water Management.

Mr. Elliott stated that the Inland Wetlands Commission completed their process in 2007. He questioned if this drawing was reviewed by that Commission. Mr. Whitney stated that this is virtually the same drawing that was approved by the Inland Wetlands Commission. The changes to this plan includes: utilities from Hopmeadow Street; the addition of the concrete pads for the HVAC units; and the wetlands approval letters were also added to the plans. He stated that there has also been a zone change to this property since that time. Attorney Sherwood stated that if this Site Plan is approved, the approved Site Plan would normally be reviewed by the Zoning Enforcement Officer for consistency with the Inland Wetlands permit approval. It is his understanding that, although the concept has changed somewhat, the footprint and the parking on this site remain the same.

Mr. Elliott questioned where the snow from parking lots would be piled in the winter months. Mr. Whitney stated that he did not designate specific snow disposal areas. He stated that they would be probably go along the property line and adjacent to the rain gardens.

Mr. Gosselin, Architect, stated that the materials on the exterior of the building on the first floor are a cultured stone material. The material on the upper two stories is a cementitious siding. The trim will be a composite material, painted an accent color. Mr. Gosselin stated that he feel this is a traditional and appropriate design. Regarding the roof, there will be copper roof and copulas. All materials have been approved by the Design Review Board.

Mr. Gosselin stated that, regarding the floor plans, there is an elevator in the building; all three floors are handicapped accessible. He stated that there are two entrances and exits. The applicant is proposing 8 units on first floor, which will be 1 and 2 bedroom units. These first floor units will have exterior patios. Mr. Gosselin stated that the floor plan

for this building is stacked, except that the second floor has all 2 bedroom units. Regarding HVAC, these units will be screened by landscaping.

Mr. Pomeroy stated that the stairwells in the submitted drawings are different than what Mr. Gosselin is showing to the Commission. Mr. Gosselin explained that the stairs are to the front of the building so they can be more easily accessed from the parking lot.

Mr. Elliott stated that the minutes of the Zoning Board of Appeals meeting, referring to Mr. Ritson's property, state that there will be special accommodations for handicapped accessibility. He questioned if the architect could address the issues of counter height, swing of doors, etc.

Mr. Gosselin stated that 10% of the units will be identified as handicapped designated units. The rest of the building will allow for future adaptability. He stated that the handicapped units will include: the doors to be 3' clear, kitchen counter heights will be 34"; and 30" work surface will be built next to the sink with space for a wheelchair to roll under the kitchen sink. Mr. Gosselin stated that, in the units that will allow for future adaptability, cabinets will have a removable front in order for this unit to be easily converted. He stated that all of this is required by ADA. Any new construction for apartments would require this.

Chairman Gallagher questioned where the handicapped designated units would be located within the building. Mr. Gosselin stated that they could be located anywhere throughout the building. These units do not have to be on the first floor; they cannot discriminate either way.

Mr. Elliott stated that he does not believe that this meets the expectations of what the Zoning Board of Appeals minutes state.

Ms. Gilkey questioned if Mr. Ritson would still be working with the Aging and Disability Commission. She stated that, if so, this would need to be done early on in the process. She asked that Mr. Ritson give the Commission some indication of the maximum number of units that would be designated as handicapped accessible.

Mr. Ritson stated that he intends to work with the Aging and Disability Commission. He stated that it was clear from the variance that was granted, that if there was not a list of people that needed handicapped units, the units would all be built to ADA standards. He stated that there is no requirement for him to rent to people who have disabilities, although he has made it clear that he will make an attempt during preconstruction to accommodate people with specific needs. He stated that he will be working with people with disabilities that are independent.

Mr. Elliott questioned how this application complies with Article 3, Paragraph Five of the Zoning Regulations.

Attorney Sherwood stated that Mr. Ritson was at the Zoning Board of Appeals with this plan; they voted to grant him the variance with the intention of allowing him to do this plan. Under the Law of the State of Connecticut, this variance excuses him from complying with those sections of the Regulations. Regarding the location and composition and use of the building, this has been decided by the Zoning Board of Appeals. Attorney Sherwood stated that there has been no appeal of this variance. He asked that this application be approved on the basis that the variance was granted and the provisions of the Regulation, which has nothing to do with the residential use and location of the building. Every other aspect of this plan conforms to the Zoning Regulations.

Mr. Vaughn stated that Mr. Elliott has written a letter and has made the Town Attorney aware of this issue. He questioned if Attorney DeCrescenzo has responded to this letter. Mr. Elliott stated that he has not received a response. Mr. Peck stated that the Town Attorney indicated that he has had a discussion with Attorney Sherwood. He also sent a letter to Chairman Gallagher.

Mr. Vaughn stated that he would like an interpretation on this matter by the Town Attorney prior to voting.

Mr. Elliott stated that his concern is regarding the process. Unless there is an appeal of the variance, he understands that the variance stands. He stated that there is no language in the variance regarding the provision of the Zoning Regulations that state a dwelling cannot be built at the rear of the lot that already has another building on it. Because the variance is in conflict with a section of the Zoning Regulations, he would like to hear an opinion from the Town Attorney.

Chairman Gallagher questioned if office buildings were approved on this site in the past. Mr. Peck stated that this is correct.

Regarding Article Three, Section Five of the Zoning Regulations, Mr. Peck stated that there are a number of situations in the current Regulations that conflict. He gave several examples. He stated that it is up to this Commission to make a determination as to what the Regulations mean the way that they are currently worded. In his opinion, he does not believe that this section of the Regulations state that no building that contains dwelling units can be constructed on this type of lot. He does not feel that Article Three prohibits this application based upon the configuration that is shown on the Site Plan.

Regarding Article Three, Section Six, Mr. Peck stated that this section specifically calls out apartments. The interpretation, taking it into context with the first regulation, is that apartments were called out as a specific and separate entity other than a dwelling unit. He stated that there is a difference between the two. In planning terms, a dwelling unit means a single family dwelling unit; apartments means apartments. Mr. Peck stated that he believes that this application does meet the Regulations.

Mr. Elliott read the definition for "dwelling" in the Zoning Regulations.

Mr. Elliott made a motion to defer a decision on this matter until a written opinion is received by the Town Attorney regarding how Article Three applies to this application. Mr. Vaughn seconded the motion. Mr. Elliott and Mr. Vaughn voted in favor of this motion. Ms. Salls, Ms. Gilkey, Mr. Pabich and Mr. Gallagher voted in opposition to this motion.

Chairman Gallagher asked if there were any comments from the public audience.

Ms. Robinowitz, 126 Hopmeadow Street, stated that in all of the information that she has heard and read, this is referred to as a three story building. However, she feels that the plans clearly show that this is a four story building; the attic space could eventually be used as loft space in certain units. Ms. Robinowitz stated that another concern is that this proposed building is much taller than Talcott Acres.

Attorney Sherwood stated that the proposed building is a 3 story building. Any additional expansion would require a new site plan approval before this Commission.

Pat Carbone, Talcott Acres, Unit 1B. questioned how much money would be needed in order to purchase one of these apartments. Mr. Ritson stated that all of the units are apartments; they are not for sale. He stated that he has not yet thought about the marketing aspect.

Chairman Gallagher closed the hearing.

Ms. Gilkey made a motion to approve the application of John D. Ritson, Member, R. C. Connectors, LLC, Owner, for a Site Plan Approval for construction of a three (3) story apartment complex on property located at 144-150 Hopmeadow Street with the following conditions: 1) if future development on the site is proposed, such as garages for the residential units that such a proposal will need additional site plan review; 2) prior to the actual onset of construction, a bond will be submitted to the Town to insure that all of the proposed screening at the rear of the property is

installed. This bond should be held for one year after the installation of the screening so that a determination can be made as to whether it has survived and is in good growing condition. If not, any dead or dying materials should be replaced. The proposed/estimated bond amount shall be submitted by the applicant's landscape architect and verified by Town staff. The bond form shall be as approved by the Town Attorney; 3) an as-built plan should be submitted to the ZEO for review upcoming completion of the construction of the building and installation of the screening prior to the release of the required bond. This as-built plan shall show all zoning requirements including lot coverage (28.8% proposed), setbacks (51 feet proposed) as approved and placement of screening materials as shown on the approved plans; and 4) any related permits for any utilities required to serve the site must be obtained by the applicant prior to the onset of construction. Mr. Pabich seconded the motion. Ms. Salls, Mr. Elliott, Mr. Gallagher and Ms. Gilkey voted in favor of this motion. Mr. Elliott and Mr. Vaughn voted in opposition of this motion. The motion passed 4-2.

VII. OTHER MATTERS AS MAY PROPERLY COME BEFORE THE COMMISSION

Other Business

Regarding the Incentive Housing Zone Regulations, Mr. Peck showed a map to the Commission members. He stated that there are 6 properties that are still interested in moving forward through this process. Mr. Peck distributed a copy of the draft Proposed Amendments for Incentive Housing Zones to the Commission members. He stated that the design guidelines are a part of this document as well. He asked that any comments be submit by the next meeting.

Mr. Pabich questioned if this could be enacted with or without the State's involvement. Mr. Peck stated that the Town will look at the Regulation. If it has any benefits for the Town, they will consider adopting it. The Town does not expect any money to come from the State. He stated that the OPM approval is important because if there ever were any money from the State, the Regulation would have to be in keeping with the OPM approval.

Mr. Peck stated that there have been several complaints because of the lights at the Gulf Station at 125 West Street. The Town has purchased a light meter and has gone out and compared this station with other stations in Town. The first reading on September 3rd at the Gulf Station was 126.8 foot candles. Another reading was taken on February 4th which read 69 foot candles closer to the store and 52 foot candles closer to the street. Although this is still a lot of light, it is not nearly as bright as it was. This is also after some of the bulbs have been removed. Mr. Peck stated that the Gulf Station is not as bright as it was, although it is still bright. It is also not as bright as the brightest station in Town.

He suggested that the Commission not take any action. He recommended that as they revise their Regulations, the new regulations state 20 foot candles are appropriate for these sites.

Ms. Salls questioned why the owner feels that the gas station needs to be so bright. Mr. Peck stated that the owners feel that customers will stop at the station with the brightest lights.

Mr. Peck stated that there is an issue regarding the signs that are on the pumps at the Gulf Station as well. He questioned if the Commission would consider this as signage. He stated that the owner at 125 West Street would like to get a Certificate of Occupancy.

Mr. Vaughn stated that most gas stations have the brand of gas stickers on their pumps. Regarding the lights, this station is not the brightest in Town; he feels that their lighting is appropriate.

Mr. Pabich stated that he would be recusing himself from this discussion because he is an abutting property owner.

Ms. Salls stated that eight lights have been removed from the Gulf Station, which is what was approved. She feels that the lighting is fine.

Mr. Elliott stated that there needs to be discussions regarding signs. He feels that the Commission needs to take a more serious thought regarding signage.

Chairman Gallagher stated that Mr. Peck can tell the owner that the lighting is approved, although the Commission is still reviewing the signage.

Mr. Peck stated that Code Studio will be coming back to Town for the Town Center Code Regulation. He asked the Commission members for their input and comments so he could submit these comments to the consultant. He has also asked the other Boards and Commissions to do the same. He stated that Code Studio will be back in March to have workshops with various Commissions. The consultant will then be back in April with the finished draft code; this will be a public presentation. The Board of Selectmen did vote to retain Attorney Sitkowski in order to make sure the final product meets Connecticut Law.

Mr. Peck showed the Commission members a plan of the Town Center depicting three parking lots adjacent to Iron Horse Boulevard. He stated that he is requesting that the State give these parking lots to the Town. This is a very complicated process; there are a number of easements on these lots. Mr. Peck stated that the Town needs to either renew the lease with the

State for these parking lots or try to get the State to give them to the Town.

VIII. ADJOURNMENT

Ms. Gilkey made a motion to adjourn the meeting at 9:20 p.m. Mr. Pabich seconded the motion, which was unanimously approved.

Ed Pabich, Secretary