

From: Lois Laczko September 24, 2010 4:06:43 PM  
Subject: Zoning Commission Minutes 09/13/2010 ADOPTED  
To: SimsburyCT\_ZoningMin  
Cc:

ADOPTED

ZONING COMMISSION MINUTES  
September 13, 2010  
REGULAR MEETING

I. CALL TO ORDER

Chairman Gallagher called the Regular Meeting of the Zoning Commission to order at 7:02 p.m. in the Board of Education Conference Room at the Simsbury Town Offices. The following members were present: Bruce Elliott, Edward Pabich, Amy Salls, Madeleine Gilkey, and Robert Pomeroy. 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. Vaughn.

III. APPROVAL OF MINUTES of March 15, 2010, April 5, 2010 and July 19, 2010

Mr. Elliott made a motion to approve the March 15, 2010 minutes as written. Mr. Pomeroy seconded the motion, which was unanimously approved.

An edit was made to the April 5, 2010 minutes by Mr. Elliott.

Mr. Elliott made a motion to approve the April 5, 2010 minutes as amended. Ms. Salls seconded the motion, which was passed. Ms. Gilkey abstained.

Several edits were made to the July 19, 2010 minutes.

Mr. Pabich made a motion to approve the July 19, 2010 minutes as amended. Ms. Gilkey seconded the motion, which was approved. Mr. Pomeroy abstained.

Mr. Pabich read the call.

#### IV. PUBLIC HEARING(s)

a. Application of Wladyslaw Kaczowka, Owner, Katherine Kaczowka, Agent, for a Special Exception, pursuant to Article Seven, Section C.9 of the Simsbury Zoning Regulations for an accessory dwelling unit on property located at 3 Arrowhead Drive. R-40 Zone

Ms. Kaczowka stated that she is representing her parents in this matter. In the late 1980's, her parents had an addition built to their existing house. This addition was for the purpose of another family member living there. As the family grew, they outgrew the addition. Since then, her parents have tried to rent out this apartment. Ms. Kaczowka stated that throughout this process, they became aware that renting in this zone is not allowed. They have also learned that since the addition has plumbing in the kitchen and hookups for a range, they would benefit if they applied for an in-law apartment permit. She stated that if they receive approval from this Commission, the accessory dwelling would become legal.

Ms. Kaczowka stated that her parents are currently wishing to sell their house. They would like to sell the house as a residential house with an in-law apartment. She stated that if the Zoning Commission does not approve this request, they will have to pull out all of the plumbing and hookups for the stove. She believes that in doing this it will then only be considered an addition to the existing house. She stated that she is applying for this Special Exception to make this accessory dwelling legal.

Chairman Gallagher stated that there was a site inspection done in 1990. He questioned when the apartment was rented out. Ms. Kaczowka stated that her parents tried to rent the apartment approximately five years ago. They did have a paying renter for approximately one year to a non-family member. Once informed of the regulations in Town, her parents had no further renters and are now taking the proper steps to make this legal.

Ms. Gilkey stated that the size of the dwelling is considerably more than allowed. She questioned if there is a garage attached to the house. Ms. Kaczowka stated that there is a two car garage under the raised ranch, which is the main house. She stated that the garage existed prior to the addition.

Mr. Elliott stated that this regulation was adopted in 2002. Accessory apartments cannot be larger than one third of the size of the existing house. He questioned if the intention was to comply with this regulation from the beginning and how this got out of hand. Ms. Kaczowka stated that her sister was in charge of the addition at the time it was being built; she was the one who hired the contractor to do the project. This contractor did not do good research at the time; the contractor was not

above board. Ms. Kaczowka stated that her parents did take the contractor to small claims court. She stated that also, she is unsure of the details of the original design of the addition.

Mr. Pabich stated that he suspects that this is not the only apartment of this type in Town. He suggested that this Commission come up with guidelines and policies regarding accessory dwellings. He stated that the Commission may want to look into this prior to making a motion regarding this application.

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

Mr. Payne, 4 Arrowhead Drive, stated that he is concerned regarding any variance that the applicant may receive. This apartment exceeds the guidelines. In the past, it has been rented. If approved, he feels that this apartment may become a two family dwelling. This would negatively impact the property values and character of his street. He asked that the Commission not approve this application.

Mr. Pomeroy stated that there was significant corresponded between the Town and the applicant. The homeowner was alerted to the fact that this apartment was not supposed to be rented.

Ms. Centrella, 26 Arrowhead, stated that there are many kids that play in this area; it is clearly a family neighborhood. There are also special needs children on this road. She urged the Commission members to keep this street a single family neighborhood. She stated her concerns for the safety of their children if different renters are in and out.

Chairman Gallagher closed the public hearing.

b. Application of George Magkatos, Owner, Marc Lubetkin, Agent, for a Special Exception, pursuant to Article Ten, Section H of the Simsbury zoning Regulations for an on-premises liquor permit-restaurant liquor permit (beer, wine, alcohol) on property located at 10 Mall Way (Red Stone Pub). SCZA Zone

Chairman Gallagher stated that his office has been at 10 Mall Way for many years. He would recuse himself if the Commission felt he should. The Commission members agreed that Chairman Gallagher should participate in this discussion.

Mr. Lubetkin stated that he would like to open up a pub at 10 Mall Way. The building is a great Redstone structure. He is hopeful that he and his partner can maintain a higher level to the building than what is currently

there. They both have experience in restaurants.

Mr. Lubetkin stated that the pub will be approximately 1,000 square feet and there will be approximately 45-50 seats. They will be in operation in the evenings from 5pm to 11pm on the weeknights and open until midnight on the weekends. He would like to be closed on Sundays and Monday. He stated that beer and liquor will be served at the pub, although beer will be their focus. Mr. Lubetkin stated that his goal is to get this approval through and then get the liquor license. He is hopeful that they can open the pub before the holidays. He stated that there is also plenty of parking at the site.

Mr. Peck stated that this application is for a Special Permit for liquor. The applicant will be back before this Commission regarding the Site Plan.

Chairman Gallagher asked if there were any public comments or questions.

David Richmond, 730 Hopmeadow Street, stated that he does not have any concerns regarding this Special Permit, although he does have some concerns regarding the Site Plan phase.

Chairman Gallagher closed the public hearing.

c. Application of the Town of Simsbury, Owner, Maryellen Shuckerow, Director of Development & Community Relations of the Chrysalis Center of Hartford, Agent, for a Special Exception, pursuant to Article Ten, Section H of the Simsbury Zoning Regulations for a temporary liquor permit (beer and wine) for a one day fundraising event to be held on Saturday, October 23, 2010 on property located at the Community Farm of Simsbury, 73 Wolcott Road. I-1 Zone

Ms. Shuckerow distributed a pamphlet of this project to the Commission members. She stated that this fundraiser is to support an initiative in Hartford, which is a fresh food, food pantry in Hartford. This project does have a research component to it; this is a three year study project. In order to receive the fresh food as a client, they must be willing to be a part of the research. Ms. Shuckerow stated that this project opened about 8 weeks ago. They are currently serving approximately 100 individuals in the north end of Hartford.

Ms. Shuckerow stated that this project has already been funded for this year, although they will need to continue to do fundraising on a regular basis. She stated that they have been working with Community Farm of Simsbury as well as the Planning Commission.

Ms. Shuckerow stated that this fundraising event will be held on October

23, 2010. They will be having beer tasting only; there will be no hard liquor. She stated that they will also be hiring police. A bluegrass band has also been hired for this event. She stated that no children will be allowed to attend. They also have four microbreweries coming; they will be supplying their bartenders for the beer tasting. Ms. Shuckerow stated that they have rented a tent and the breweries will be located under the tent only. There will be no beer sales and they will be using a local caterer in Town that will be serving food. Ms. Shuckerow stated that the Chrysalis Center staff will also be attending this event. This event has been well planned and will be done properly. If successful, they would like to make this an annual event.

Chairman Gallagher questioned if the applicant had insurance. Ms. Shuckerow stated that they do have insurance through the Chrysalis Center. She stated that this will insure the liquor piece of the event, although she is unsure if it insures the farm.

Chairman Gallagher asked if there were any comments or questions from the public. There were none. Chairman Gallagher read a letter from Joan Coe into the record and then closed the public hearing.

d. Application of the Town of Simsbury, Owner, Tim Goodwin, Executive Director, Community Farm of Simsbury, Agent, for a Special Exception, pursuant to Article Ten, Section H of the Simsbury Zoning Regulations for a temporary liquor permit (beer and wine) for a business networking event to be held on Thursday, September 16, 2010 on property located at the Community Farm of Simsbury, 73 Wolcott Road. I-1 Zone

Mr. Goodwin stated that they are working with the Chrysalis Center. He stated that this year, Community Farm of Simsbury has donated approximately 2,500 pounds of produce. They donate to many area charities. He stated that they were approached by Gifts of Love and the Simsbury Chamber of Commerce to hold this event. The beer and wine have been donated. This event is primarily for networking.

Mr. Goodwin stated that 70 people have signed up already to attend. The event will be held from 5p.m. to 7p.m. He stated that they did not hire a police officer for this event because they did not feel it was necessary, although they did hire a TIPPS Certified bartender. The parking will be on-site, at the Autobon or on the adjacent property. Mr. Goodwin stated that the beer and wine will be served in small glasses. He stated that this is a Simsbury Chamber of Commerce event, although the purpose behind it is a fundraiser for Community Farm of Simsbury. This event is a great way to get people out to the farm. There is no charge for the event.

Chairman Gallagher questioned if the applicant had insurance. Mr. Goodwin

stated that Community Farm of Simsbury has a full set of insurance. Gifts of Love has insurance as well.

Mr. Peck questioned if the public would be invited to this event. Mr. Goodwin stated that only Simsbury Chamber of Commerce members would be invited.

Chairman Gallagher asked 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 amend the agenda to move Discussion and Possible Vote on Any Agenda Item next on the agenda. Ms. Salls seconded the motion, which was unanimously approved.

#### V. DISCUSSION AND POSSIBLE VOTE ON ANY AGENDA ITEM

The Commission discussed the application of 3 Arrowhead Drive. Mr. Elliott stated that the Commission cannot ignore the regulation. He stated that the Zoning Board of Appeals may see cause for some accommodation, but this Commission does not have the latitude to approve this application.

Ms. Gilkey stated that there have been a lot of mistakes along the way regarding this property. It is not a typical in-law apartment; it has been used for other purposes. She stated that she would be in favor that any cooking facilities be taken out and be turned into an addition with a pass through from the main house. She stated that if someone who purchases the house wishes to turn a portion of that addition into an in-law apartment, this may be done with the proper permits if it conforms to the regulations.

Mr. Pabich stated that he agrees with Ms. Gilkey. He feels that there is still a misunderstanding of what the existing regulation prescribes. He stated that if the applicant is willing to take out the utilities, he would be in favor of that, although this Commission still needs to have a discussion regarding how to handle these kinds of applications in the future.

Mr. Peck stated that if this were an addition without a kitchen that would be fine. The Commission needs to ask themselves if an accessory apartment is acceptable or not. He stated that the applicant does have the option of discussing possible options to correct the current situation with Town staff.

Mr. Pomeroy made a motion to deny the application of Wladyslaw Kaczowka, Owner, Katherine Kaczowka, Agent, for a Special Exception, pursuant to

Article Seven, Section C.9 of the Simsbury Zoning Regulations for an accessory dwelling unit on property located at 3 Arrowhead Drive as submitted because the size does not comply with the Zoning Regulations. Ms. Gilkey seconded the motion, which was unanimously approved.

Mr. Elliott made a motion to approve the application of George Magkatos, Owner, Marc Lubetkin, Agent, for a Special Exception, pursuant to Article Ten, Section H of the Simsbury zoning Regulations for an on-premises liquor permit-restaurant liquor permit (beer, wine, alcohol) on property located at 10 Mall Way (Red Stone Pub) as presented. Mr. Pabich seconded the motion, which was unanimously approved.

Mr. Elliott made a motion to approve the application of the Town of Simsbury, Owner, Maryellen Shuckerow, Director of Development & Community Relations of the Chrysalis Center of Hartford, Agent, for a Special Exception, pursuant to Article Ten, Section H of the Simsbury Zoning Regulations for a temporary liquor permit (beer and wine) for a one day fundraising event to be held on Saturday, October 23, 2010 on property located at the Community Farm of Simsbury, 73 Wolcott Road as presented. Ms. Gilkey seconded the motion, which was unanimously approved.

Mr. Pomeroy made a motion to approve the application of the Town of Simsbury, Owner, Tim Goodwin, Executive Director, Community Farm of Simsbury, Agent, for a Special Exception, pursuant to Article Ten, Section H of the Simsbury Zoning Regulations for a temporary liquor permit (beer and wine) for a business networking event to be held on Thursday, September 16, 2010 on property located at the Community Farm of Simsbury, 73 Wolcott Road as presented. Ms. Salls seconded the motion, which was unanimously approved.

## VI. PRESENTATION(s)

a. Application of Jeffrey Hoffman, Hoffman Enterprises, Owner, T. J. Donohue, Jr., Attorney, Agent, for a Site Plan Amendment for a screening fence and landscape plantings on property located at Hoffman Enterprises, Albany Turnpike and West Mountain Road. B-3 Zone

Attorney Donohue stated that this project is nearing completion. If the Commission approves this application tonight, they will go forward immediately with construction for this part of the plan.

Mr. Daly Engineer with Milone and MacBroom, stated that there have been several evolutions of this plan. The project was pushed down and out to create additional buffers to the neighbors to the north. He stated that there was limited ability to create buffering in another area near the Markie driveway, although there are open areas near the Markie driveway for

landscape enhancements. No vegetation needs to be cleared in these areas. He stated that they would like to install two landscaped berms with fencing on top. Mr. Daly showed the Commission members a photo simulation of what the additional berming would look like.

Mr. Daly stated that on the south side of the Fiora right-of-way, there is existing vegetation. This Commission has already approved this fencing, although the applicant would like to put a landscaped berm with fencing in front of what was already approved.

Mr. Daly stated that the applicant feels that these are overall enhancements to the landscaping plan. He stated that they will stay within the commitments that the Hoffman's made with the neighbors, although he is asking this Commission for a little flexibility if the berm needs to be moved or raised or lowered slightly near the Markie driveway.

In response to a question by Mr. Pomeroy, Mr. Daly stated that there is no modification to the other fencing that has already been approved.

Mr. Elliott questioned how tall the fencing would be. Mr. Daly stated that the fence is 8 feet. The approved plan shows 8 foot fencing; the new fencing would match what has already been approved.

Chairman Gallagher questioned how big the new plantings would be. Mr. Daly stated that the plantings vary from 7-8 feet, although some species are 9-10 feet. He stated that the intent is to make an impact from the time they are planted.

Mr. Elliott questioned if the 50-foot right-of-way would be shielded. Mr. Daly stated that there are no plantings in this area, although the current view shed is approximately three to four times greater now.

Chairman Gallagher questioned if Ms. Fiora had any concerns with this proposal. The Attorney for Ms. Fiora stated that they have no objection with plans that leave the easement intact.

Regarding the site lines, Mr. Peck questioned if any of the plantings were in the Town right-of-way. Mr. Daly stated that the plantings would not be in the Town right-of-way and they will not adversely impact any site lines now or in the future.

Mr. Elliott stated that he is surprised that no neighbors are at this meeting tonight. Mr. Peck stated that Town staff has had discussions with the neighbors. They are anxious to get this project finished. He stated that he is not aware of any outstanding issues with the neighbors.

Mr. Elliott made a motion to approve the application of Jeffrey Hoffman, Hoffman Enterprises, Owner, T. J. Donohue, Jr., Attorney, Agent, for a Site Plan Amendment for a screening fence and landscape plantings on property located at Hoffman Enterprises, Albany Turnpike and West Mountain Road as submitted on Drawing 1 of 1 entitled, "Landscape Improvements Along West Mountain Road", dated 9/7/2010, revised 9/13/10. Mr. Pomeroy seconded the motion, which was unanimously approved.

VII. CONSIDERATION OF AND POSSIBLE ACTION ON PLANNED AREA DEVELOPMENT (PAD) ZONING REGULATION AND SETTING OF EFFECTIVE DATE.

Mr. Peck stated that the Town Attorney has indicated that the Commission needs to set an effective date for the PAD Regulation to make sure it meets all of the criteria going forward. It will be effective the day after publication.

Mr. Elliott stated that he does not support a favorable vote on the PAD Regulation. He is disappointed that the Commission did not hear from Emil Dahlquist and John Loomis, who he believes had presentations for this Commission. He stated that this Commission had agreed that they would invite two experts to discuss the issues with them. He feels that they should still hear from those two experts.

Mr. Pomeroy stated that the makeup of the Commission is not the same tonight as it was at the May 3rd meeting. He questioned if the Commission can still vote on this tonight. Attorney DeCrescenzo stated that the Commission could vote on this issue tonight.

Ms. Salls stated that she recalls Mr. Elliott's concerns, although she feels that this Commission should move forward.

Ms. Gilkey made the following motion:

Whereas, on May 3, 2010 the Simsbury Zoning Commission concluded the Public Hearing on the proposed Planned Area Zoning Regulations amendment ("the PAD Regulation"); and

Whereas, General Statutes 8-3 (b) requires that amendments to zoning regulations shall be established by a majority vote of all the members of the Zoning Commission; and

Now, Therefore, Be it Resolved:

1. That the PAD Regulation as presented to the Zoning Commission at its May 3, 2010 meeting, specifically including the four staff recommended amendments, as attached hereto as Exhibit A and on file in the Simsbury

Town Clerk's office, is hereby approved and established; and

2. That the PAD Regulation shall become effective on September 18, 2010.

Mr. Pomeroy seconded the motion. Mr. Pabich, Pomeroy, Gallagher and Ms. Gilkey and Salls voted in favor. Mr. Elliott voted in opposition. Resolution is: adopted.

#### VIII. OTHER MATTERS AS MAY PROPERLY COME BEFORE THE COMMISSION

Discussion and possible determination of zone of property at 67 West Street per Article Two, Section B.1.f

Mr. Peck stated that the applicant has a question regarding the correct zone for 67 West Street. Town staff has done a great deal of research to determine what the zoning maps show. The rest of the property is zoned I-2 along this street. The applicant initially proceeded assuming the rest of the property was zoned I-2. Mr. Peck stated that the 1978 map, which was approved by the Commission, is very unclear of what the zone of that property is. The Assessor for years has assessed this property as I-2 because of the historical use of the property, although he understands that the Assessor does not guide this Commission.

Mr. Peck stated that the applicant is asking this Commission to clarify, on the record under its regulations, the zone of this property. He stated that the information that has been collected, including information from Landworks, Ensign Bickford, the Assessor and zoning maps, leads him to believe that there is a significant amount of uncertainty.

Mr. Pomeroy questioned what other zone this property could be. Mr. Peck stated that it could be zoned I-2 or R-15. Because of the way the regulations are written, the Commission needs to make the determination as to what the zone is.

Mr. Peck stated that when the house on this property was taken down several years ago, a survey was filed. He believes the surveyor assumed the lot was R-15 because of the house on it. This was put on file with the Town Clerk. This survey conflicted with the other information on file.

Mr. Pomeroy questioned what the benefits are to having this property zoned I-2 if the applicant will be asking to rezone this whole area as part of the PAD process. Mr. Peck stated that the PAD does not apply to residential property.

Attorney DeCrescenzo read Article Two, Section B of the Zoning Regulations, (b) which states, "Boundaries indicated as approximately following plotted

lot lines shall be construed as following such lot lines; and (f), which states, "In cases of uncertainty, the Zoning Commission shall determine the location of the boundary". He stated that if this Commission finds uncertainty, they need to remedy this with the Zoning Regulations and go the way that the bulk of the evidence leads.

Chairman Gallagher questioned if this would impact the other houses abutting this property. Attorney DeCrescenzo stated that the abutting property owners would have a right to appeal this Commission's determination to the Superior Court if they choose.

Mr. Elliott questioned what the other houses are zoned in this area. Mr. Janeczko stated that the other houses are being taxed as R-15.

Mr. Elliott stated that he believes the Commission should take a more cautious approach and have the applicant come back for a zone change so that a public hearing can be held.

Mr. Peck questioned if the Commission feels that there is uncertainty with the zoning map. The Commission agreed that there was uncertainty. Mr. Peck stated that a public hearing would not tell the Commission anything other than uncertainty is present, which is already agreed upon. He stated that if the Commission is concerned about an appeal, when they act on the PAD, this would also be subject to an appeal. He is not sure that the Commission would hear anything other than what was stated tonight at a public hearing. Commissioner Pomeroy stated that the neighbors would have a chance to state their concerns at a public hearing

Ms. Salls suggested contacting the property owners prior to next week to give them the opportunity to review this information. The Commission could then take this application up at the next meeting. Mr. Janeczko stated that this is an open meeting with minutes as part of the public record. He suggested that the minutes be sent to the abutting property owners; they would still have appeal rights.

Mr. Elliott stated that he feels that still, the property owner should be given an opportunity to come before this Commission prior to any motions being made.

Mr. Pabich made a motion that the Zoning Commission has reconfirmed that 67 West Street is in an I-2 Zone as indicated on the Simsbury Zoning Map. Ms. Gilkey seconded the motion, which was approved. Mr. Elliott voted in opposition to the motion.

Discussion of accessory apartments policy/regulation

Chairman Gallagher stated that the original intent of this policy/ regulation was for in-law apartments.

Mr. Pabich stated that the Commission will start to see more of these accessory apartments as applications. He stated that the Zoning Commission needs a philosophy going forward.

Mr. Peck stated that some Towns are giving their residents an amnesty period. He stated that the important issues are safety and building code issues. He stated that the Commission needs to discuss and make a determination whether they can set up a policy regarding the square footage.

Mr. Peck stated that the other Towns that have this amnesty have had great success. If this Commission chooses to do this, resident would need to submit an application. Under the amnesty, residents would either receive a permit or not. He stated that the Commission would need to work with Town staff regarding this matter and how to proceed. He stated that the most important issues are safety and health.

Ms. Salls stated that the Town may need to offer an enticement and not just amnesty. Mr. Peck stated that most people come in prior to the sale of their house. This is how the Town often finds out about these apartments.

Mr. Pabich suggested that the Commission schedule a workshop to discuss this matter further. Mr. Peck stated that he would continue to research what other Towns are doing regarding this issue.

#### Status of Town Center Code Discussion/Mapping Discussion

There was no discussion.

#### IHZ discussion and possible action

There was no discussion.

#### Discussion and possible recommendation to Board of Selectmen regarding establishment of Special Revenue Fund for creation of Town Center Design Standards/Guidelines

There was no discussion.

#### a. Old Business

- Application of the Town of Simsbury for a Text Amendment to the Town of Simsbury's Zoning Regulations, pursuant to Article Ten, Special

Regulations, Section H, Regulations Governing Uses Which Sell Alcoholic Beverages for a proposal to amend the wording of the existing zoning regulation. (public hearing closed 1/4/2010)

There was no discussion.

IX. ADJOURNMENT

Mr. Elliott made a motion to adjourn the meeting at 9:40 p.m. Mr. Pabich seconded the motion, which was unanimously approved.

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Ed Pabich, Secretary