

From: Lois Laczko October 26, 2009 11:11:12 AM
Subject: Zoning Commission Minutes 09/21/2009 ADOPTED
To: SimsburyCT_ZoningMin
Cc:

ADOPTED

ZONING COMMISSION MINUTES
SEPTEMBER 21, 2009
REGULAR MEETING

I. CALL TO ORDER

Chairman Barney 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: Bruce Elliott, Alan Needham, James Gallagher, John Vaughn, Madeline Gilkey and Garrett Delehanty. Also in attendance were Director of Planning Hiram Peck, Town Attorney Robert DeCrescenzo, Commission Clerk Alison Sturgeon and other interested parties.

II. APPOINTMENT OF ALTERNATES

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

III. APPROVAL OF MINUTES of the July 27, 2009 special meeting

Mr. Elliott made a suggestion to have the Committee Report and the Minority Report be added to the July 27th minutes.

Mr. Elliott made a motion to approve the July 27, 2009 minutes as amended. The motion was seconded, which was unanimously approved.

Mr. Delehanty read the call.

IV. PUBLIC HEARING

a. Application of David Pelletier, Owner, for a Special Exception pursuant to Article Seven, Section F.2.b of the Simsbury Zoning Regulations to obtain a Used Car Dealer's License for his business, Simsbury Tire & Auto Center, Inc., located on property at 1260 Hopmeadow Street. B-2 Zone

Mr. Pelletier stated that he has been in business for 22 years at this

location. Over the past several years, his customers have wanted to buy used cars from him. He has not pursued this idea before because he did not want to create a conflict with Wagner Ford.

Mr. Pelletier stated that he would like to display six cars for sale at this location. He has never had an issue with vandalism on his property. He stated that he feels this is the right time to proceed in order to obtain a Used Car Dealer's License.

Chairman Barney questioned if there would ever be more than six cars for sale in Mr. Pelletier's inventory. Mr. Pelletier stated that he would not have more than six at any time on his lot for sale. He stated that customers that bring their cars in for repair work park in the back of the building. He stated that he will be purchasing cars at auction. He will do a safety check on them and will sell them.

Mr. Delehanty stated that this business is in a zone where this is appropriate, although the applicant is here because of the existing Special Exception. Mr. Peck stated that this was not part of the original Special Exception. In order to be clear, this has been brought back before the Commission.

Mr. Elliott questioned what kind of volume Mr. Pelletier expected regarding the selling of used cars. Mr. Pelletier stated that he is hoping to sell 3-4 cars per month. He is not expecting heavy volume.

Mr. Needham questioned if there would be any change in signage on the property. Mr. Pelletier stated that there is no change in the signage, although there may be signage in the cars, which would be limited to writing in the windows. Mr. Pelletier stated that there is currently a need for used cars. Chairman Barney stated that sale signage is signage; it is regulated in the Zoning Regulations. It is a clear intent of the Regulations not to have gaudy signage. Mr. Pelletier stated that he may have colorful writing in the car windows; it will not be gaudy.

Chairman Barney questioned if Tim's Automotive sells used cars. Mr. Pelletier stated that he does not.

Ms. Gilkey questioned if any additional lighting would be needed and if the business would be open in the evening. Mr. Pelletier stated that no additional lighting is required. There is existing lighting on the lot. He stated that his business would not be open in the evening.

Mr. Elliott questioned if all 26 parking spaces on the property were actively in use. Mr. Pelletier stated that they were used for customer parking, for people who needed to leave their car there for repairs

overnight.

Mr. Vaughn stated that he is a customer of Mr. Pelletier's. He stated that he runs a good operation.

Chairman Barney asked for any public comments or questions.

Ann Nelson, 34 Simsbury Landing, questioned if Mr. Pelletier would be open for business on Saturday. Mr. Pelletier stated that he would only be open by appointment on Saturday for the selling of used cars. He would not be open for car repairs.

Chairman Barney closed the public hearing.

V. PRESENTATION(s)

a. Application of Andrew Yakemore, Simsmore Square – Owner, Terri-Ann Hahn, LADA P.C. – Agent, for a Site Plan Amendment for an addition to Simsmore Tennis located on property at Simsmore Square, 530 Hopmeadow Street. B-2 Zone

Terri-Ann Hahn, LADA, stated that Simsmore Square is a multi-building complex. In the past, they have always used the Master Plan. An updated survey and an updated parking calculation are being used for this application. She stated that the impervious surface calculations have also been recalculated.

Ms. Hahn stated that they are proposing an addition to Simsmore Tennis. The building is currently 28,000 s.f. They are proposing a new addition, to reconfigure the entrance, to add some parking spaces and to add a sidewalk. She stated that, currently, there are no handicapped parking spaces at Simsmore Tennis. They are proposing to add handicapped spaces and handicapped access to the building. They are also proposing to change the elevation of the parking spaces, restripe, and also take trees and plantings out and re-plant them

Ms. Hahn stated that they are proposing to eliminate several parking spaces, but also add parking in a different location. She stated that they are still within the parking configurations. She feels that this design of parking spaces works better than what is currently there.

Michael Bezrudczyk, Archimage Group, stated that Simsmore Square has an existing Field house and Club house. One half of the Club house is occupied with Simsmore Tennis; the other half is occupied with an insurance company. He stated that both the tennis and insurance aspects would like to expand. Mr. Bezrudczyk stated that, structurally, they could not add a

second story onto the Club house. They focused on an addition to the front of the building.

Mr. Bezrudczyk stated that they are proposing that the tennis facility take the entire area of the Club house. They are also proposing an entrance on the corner of the building. The first floor of the addition will be for tenants. The insurance company will be using the whole second floor of the addition. This addition will double the current space.

Mr. Bezrudczyk stated that they are proposing a common entrance, which will serve the new addition and the tennis building behind it. This entrance will be down lit and there will also be lighting on the building, which will spill onto the sidewalk in front of the building.

Ms. Gilkey questioned if this new addition would have an elevator. Mr. Bezrudczyk stated that the addition does not have an elevator. The first floor of the addition will be handicapped accessible, not the second floor.

Mr. Gallagher questioned why there were 13 windows on the second floor of the addition. Mr. Bezrudczyk stated that there will be 11 private offices across the front of the building. The building is long and narrow.

Chairman Barney stated that this new office building has nothing to do with Simsmore Tennis; they are unrelated. He feels that this addition is a 2-story office building. Ms. Hahn stated that the first floor of the addition is for commercial recreation space. The second floor is for new office space.

Chairman Barney questioned if the addition will be physically in contact with the tennis building and if there would be a shared wall. Ms. Bezrudczyk stated that there are two shared wall. Both of these walls are fire walls.

Chairman Barney questioned who the owner of this lot was. Ms. Hahn stated that Mr. Yakemore owns this lot.

Mr. Gallagher questioned if there would be sufficient parking. Ms. Hahn stated that parking for Simsmore Square is not lot specific. It is based on the overall parking plan.

Chairman Barney stated that there are many different owners with pooled parking. If this building was ever sold, he feels that the new owner would not have enough parking. Ms. Hahn stated that if this occurred, she believes they would have to grant cross easements.

Mr. Peck stated that this is the way this site has historically been

developed. The Zoning Regulations talk about this Commission looking at the entire site. He stated that the Commission should not change how they have handled this property in the past. It is still legal under the currently Regulations.

Ms. Hahn stated that she made an error. The actual square footage is not 11,000 s.f., it is 6,930 s.f. She stated that she must have double counted the lower floor of the existing building. She stated that the proposed addition is 3,700 s.f. on the first floor and 3,230 on the second floor.

Ms. Gilkey stated her concerns regarding not enough parking during peak hours. Ms. Hahn stated that with the reconfiguration of the side parking, this will provide access where there was previously none. Mr. Bezrudczyk stated that the peak hours for the recreational uses are different than the office hours.

Mr. Ruark stated that parking was a problem last year because of the building construction at the front of the property. Construction is now done. There is more parking available there now. This was a temporary shutdown of some parking spaces for construction; all spaces are currently open.

Mr. Elliott stated that the total parking, based on the analysis, is 37 excess spaces. Ms. Hahn stated that this is correct.

Mr. Correia, 14 Lovely Street, Canton, stated that Simsmore Tennis is owned by Mr. Ruark, although the land is owned by someone else.

Chairman Barney questioned if Mr. Ruark has seen the deed for this lot. Mr. Ruark stated that the transaction between him and Mr. Yakemore took place several years ago. Chairman Barney stated that he would like definite knowledge of who the owner is. He would like to see a copy of the deed.

The Commission continued to discuss the different entities of this property, how the property is configured and pooled parking. Mr. Ruark stated that there are parking easements in place.

Attorney DeCrescenzo asked Ms. Hahn several questions concerning the property. He stated that typically these issues are dealt with through cross easements that run through the individual uses for parking, drainage, access, etc. The Town and the Commission need to be satisfied that, regardless of change in ownership, each individual use has the required parking, egress and ingress, etc. He stated that the form of ownership is not necessarily a land use issue.

Mr. Delehanty questioned that if the Commission were to approve the Site Plan, could they add a condition that it needs to be demonstrated that sufficient easements are in place regarding ingress, egress, utilities, etc. Mr. Peck stated that would be fine. This would be good for the owner as well.

b. Application of Mirza M. Akhtar, A.N.D. Management, Owner, for a Site Plan Amendment for Signage and Lighting at the Gulf Express on property located at 125 West Street. B-2 Zone

Chairman Barney stated that this application has been temporarily withdrawn.

VI. DISCUSSION AND POSSIBLE VOTE ON ANY AGENDA ITEM

Mr. Delehanty made a motion to approve the application of David Pelletier, Owner, for a Special Exception pursuant to Article Seven, Section F.2.b of the Simsbury Zoning Regulations to obtain a Used Car Dealer's License for his business, Simsbury Tire & Auto Center, Inc., located on property at 1260 Hopmeadow Street. B-2 Zone, as submitted. Mr. Elliott seconded the motion, which was unanimously approved.

Chairman Barney made a motion to approve the application of Andrew Yakemore, Simsmore Square – Owner, Terri-Ann Hahn, LADA P.C. – Agent, for a Site Plan Amendment for an addition to Simsmore Tennis located on property at Simsmore Square, 530 Hopmeadow Street. B-2 Zone, as submitted with the following conditions: 1) proof of legal ownership of the lots is needed; and 2) evidence of cross easements are sufficient to warrant the expanded use. Mr. Delehanty seconded the motion, which was unanimously approved.

VI. OTHER MATTERS AS MAY PROPERLY COME BEFORE THE COMMISSION

Status of Charrette Process

Mr. Peck stated that Phase I of the Charrette process has come to an end. Soon, the consultant will get back to the Town with a draft regulation. Mr. Peck stated that there are several other important aspects to the Charrette process. The Incentive Housing Zone needs to be included into this process to see if it is a possibility. Mr. Peck stated that legal work needs to be done to be sure that what the consultant submits gets proper legal review.

Chairman Barney stated that he could not attend the last Charrette meeting on Wednesday night. He stated that he has not been able to find the broadcast of that meeting on SCTV. Chairman Barney suggested Mr. Peck having a thorough review of the final plans with the Commission members at

an upcoming meeting. Mr. Peck suggested having this meeting in place of the workshop prior to the next regularly scheduled meeting.

Mr. Vaughn stated that the consultant will be back to make a presentation to the Zoning Commission. Mr. Peck stated that the consultant may not come back as many times as thought because of the reduced budget.

PAD Regulation status

Chairman Barney stated that the Commission members wanted time to review the PAD Regulation. He suggested scheduling a workshop when the Commission could discuss this issue. He stated that he would like to see what the Charrette output is in terms of process and opportunity and what has been learned throughout the process that may help understand the PAD and its role better. Attorney DeCrescenzo stated that the Commission could have informational workshops related to this also.

Discussion and possible set public hearing date for zoning regulation amendment for uses regarding alcoholic beverages

Mr. Peck stated that he had a number of discussions with the applicant for the REACH concert, which took place several weeks ago, regarding getting a public gathering permit. The public gathering permit involves five different departments. It clearly asks the applicant what the event involves and if any alcohol is involved. If alcohol is involved, a hearing before the Zoning Commission is necessary. This information is needed approximately 4 weeks prior to the date of the event. Mr. Peck stated that there were many discussions with the application regarding what would be involved with the event.

Mr. Peck stated that he talked with the applicant several days prior to the event and stated that if alcohol would be either sold or served, it would need to meet the requirements of the Zoning Regulations and that a hearing before the Zoning Commission would be needed. At that time, the applicant decided to give closed bottles of alcohol away to certain people at the event; the applicant would not be selling or serving alcohol. Mr. Peck stated that there was a discussion regarding the definitions of sell and serve.

Mr. Peck stated that there were many problems with the application. The applicant did not turn the application into the Town in a timely fashion and it was not complete.

Attorney DeCrescenzo stated that there have not been any problems in the past with Performing Arts Center events. He stated that the REACH Organization does great things, although they decided not to follow the

process. He stated that he was involved in several conversations with the applicant regarding selling and serving alcoholic beverages. He stated that the applicant was permitted, in the VIP tent only, to distribute sealed bottles of wine. The recipients of the wine followed the BYOB policy.

Attorney DeCrescenzo stated that Mr. Peck has been tasked with the responsibility of closing the loophole between selling, serving, distributing and consuming. He stated that the Ordinance does cover this loophole in Town owned buildings.

Mr. Peck distributed a memo regarding a possible amendment to Article Ten, Section H of the Zoning Regulations and a letter to Mr. Wilson, the applicant. He stated that the letter outlines the Zoning concerns. He stated that the Commission now needs to revamp the public gathering permit. He proposed that the language be changed in the Zoning Regulation in order to clarify the term, "sell or serve".

Chairman Barney stated his concern regarding that the Zoning Commission's authority was questioned. He stated that this Commission was not included in any of the discussions that were held with the applicant prior to the event. He suggested that the applicant should be fined for breaching the Regulations. He stated that the Commission can then make changes to the Regulations.

Mr. Peck stated that the Commission needs to be clear regarding the term, "sell or serve". The term, "BYOB" also needs to be made clearer. Attorney DeCrescenzo read the language of the current Regulations.

Mr. Peck read the added, revised language, which states, "Permitted uses at which alcoholic beverages are sold, served, given away, distributed or consumed in any way in connection with an event not on private property are declared to possess such special characteristics that each must be considered an individual case and require the issuance of a Special Exception by the Zoning Commission as follows. Note: Any and all references to the sale of alcohol in the Zoning Regulations shall be replaced by the above wording if approved." Mr. Peck stated that he believes this needs to go hand in hand with the rewording of the Ordinance as well.

Mr. Delehanty stated that there was a willful violation and as a Commission, they have been disrespected. He stated that he is not comfortable with a fine because alcohol was not sold or served. He feels that the applicant used this loophole. He stated that the current Regulation is very vague and he feels that a public hearing should be held to change the language.

Chairman Barney stated his concerns regarding this organization not getting penalized. He stated that this Commission takes their Regulations seriously and they should fine the applicant.

Mr. Elliott made a motion to fine the REACH Foundation \$150 for a one-day violation. Mr. Vaughn seconded the motion. Mr. Barney, Mr. Vaughn and Mr. Elliott voted in favor of the motion. Mr. Delehanty, Ms. Gilkey and Mr. Gallagher voted in opposition to the motion. The motion did not pass.

Chairman Barney made a motion that the Town Planner send a letter stating that the Zoning Commission is not happy with the REACH Foundation's behavior regarding the Earth, Wind and Fire Concert and that they urge the REACH Foundation to follow the Town's Regulations, which are being amended to clarify any misunderstandings that may have occurred. Mr. Delehanty seconded the motion, which was unanimously approved.

Chairman Barney made a motion to hold a public hearing on November 16, 2009, to deal with possible amendment to Article Ten, Section H. Mr. Delehanty seconded the motion, which was unanimously approved.

Discussion and possible set public hearing date for zoning regulation regarding adult businesses

Attorney DeCrescenzo stated that the Zoning Commission imposed an 8 month moratorium to permit and to study adult orientated uses in the context of the Zoning Regulations. If the 8 months have not passed, it is nearly 8 months. He stated that this Commission has been extremely busy tending to other matters. Attorney DeCrescenzo recommended that the Zoning Commission set a public hearing date to have another 8 month moratorium because they have been busy with the Charrette process and the PAD Regulation. This second moratorium is also recommended so the Commission can be sure of where to fit it into the overall Zoning Regulations.

Attorney DeCrescenzo stated that he is also recommending the second moratorium because a judge granted VIP in Berlin an injunction in joining the Town of Berlin from enforcing its Ordinance. The reason the judge did this is because the definitions were unconstitutionally vague.

In response to a question by Ms. Gilkey, Attorney DeCrescenzo stated that Simsbury has to allow adult orientated businesses because it is free speech. These businesses are a constitutionally protect form of free speech. The Zoning Commission does not have to make it easy for this type of business to come to Simsbury. They could make this a separate use category and carefully chose the areas in Town. They could also define what is and is not an adult orientated business. Most Towns have a Zoning Regulation and an Ordinance. Attorney DeCrescenzo stated that Simsbury

should also have both an Ordinance and Regulation in place regarding this issue.

Mr. Peck stated that the Commission could hold a public hearing on this issue on November 16th.

Mr. Delehanty made a motion to set a public hearing on November 16, 2009, for Zoning Regulation regarding adult orientated businesses. Chairman Barney seconded the motion, which was unanimously approved.

VIII. ADJOURNMENT

Mr. Delehanty made a motion to adjourn the meeting at 9:15 p.m. Ms. Gilkey seconded the motion, which was unanimously approved.

Garrett Delehanty, Jr., Secretary