

From: Lois Laczko December 8, 2008 9:27:48 AM
Subject: Zoning Commission Minutes 11/17/2008 ADOPTED
To: SimsburyCT_ZoningMin
Cc:

ADOPTED

ZONING COMMISSION MINUTES
NOVEMBER 17, 2008
REGULAR MEETING

I. CALL TO ORDER

Austin Barney, Chairman, called the Regular Meeting of the Zoning Commission to order at 7:00 p.m. in the Main Meeting Room of the Simsbury Town Offices. The following members were present: Garrett Delehanty, Jr., Bruce Elliott, James Gallagher, Scott Barnett, Madeline Gilkey, John Vaughn and Ed Pabich. Also in attendance were Director of Planning Hiram Peck, Zoning Enforcement Officer Howard Beach and Commission Clerk Alison Sturgeon and other interested parties.

II. APPOINTMENT OF ALTERNATES

None were needed.

III. APPROVAL OF MINUTES of October 20, 2008

Mr. Elliott made a motion to approve the October 20, 2008 minutes as written. Mr. Delehanty seconded the motion, which was unanimously approved.

IV. APPROVAL OF 2009 REGULAR MEETING SCHEDULE

Mr. Delehanty made a motion to approve the 2009 Regular Meeting Schedule. Ms. Gilkey seconded the motion, which was unanimously approved.

V. DISCUSSION TO SET A PUBLIC HEARING DATE OF DECEMBER 15, 2008 FOR AN APPLICATION RECEIVED FROM STEVEN MITCHELL FOR A ZONE CHANGE FROM R-15 TO B-2 ON PROPERTIES LOCATED AT 432, 434-436, 438, 442 & 446 HOPMEADOW STREET.

Chairman Barney stated that this application has been withdrawn. He read the letter into the record that was written by the applicant's attorney stating that they would like to withdraw this application without

prejudice.

Chairman Barney stated that he would like the agenda amended to include an item on setting a public hearing date regarding adult entertainment.

Mr. Barnett made a motion to amend the agenda to include setting a public hearing date regarding adult entertainment. Mr. Elliott seconded the motion, which was unanimously approved.

Mr. Elliott made a motion to move Item XI. on the agenda to follow Item VII. Ms. Gilkey seconded the motion, which was unanimously approved.

VI. DISCUSSION OF BYLAW DRAFT

Mr. Delehanty stated that he had several minor proofreading comments to correct, including: Article VIII, Section 4., "time" is misspelled and Section 5., a space is needed between shall and notify. Article IX, Section 3., this section seems that it was not completed; and Section 5., refers to Planning and Zoning Commission, which should refer just to the Zoning Commission. He stated that as he read the bylaw draft, he feels that it memorializes the procedures that the Zoning Commission has been following; they have been consistent with regard to how they conduct their business.

Ms. Gilkey stated, in Article XI regarding conducting the public hearing, she does not see that there is a time limit for speakers. She feels that something should be stated in this section regarding this issue, even if it states that a reasonable limit would be set by the Chairman. Mr. Elliott stated that this is addressed in Robert's Rules of Order. Mr. Peck stated that he has talked with the Town Attorney who has suggested that Robert's Rules be referenced as a guideline only, rather than an absolute.

In Article XII regarding public relations, Ms. Gilkey questioned what this section was for. Mr. Peck stated that he believes this is regarding Freedom of Information, although he will look into this.

Mr. Elliott stated that he feels no action should be taken on this agenda item tonight. These bylaws have been in the works for many years and he would like to take more time to review them.

Chairman Barney stated that the Zoning Commission would discuss the bylaws again at their next meeting.

VII. DISCUSSION OF SIGN ISSUES AND SIGN REGULATION UPDATES

Mr. Peck stated that several issues were discussed at the last meeting regarding signs for profit and non-profit businesses and where temporary

sings could be located. He stated that Town staff has received an electronic copy of the right-of-way from the State DOT. He will be looking at the Zoning Regulations to see if this will address the questions of where signs can be located.

Mr. Peck stated that the Town is in the process of revising their Regulations. If there are specific things that are of interest to the Commission with regard to changing the standards that are in the Regulations regarding signs, Town staff would like their input. Chairman Barney stated when these changes are ready to be made the public will make comments regarding changes to the Regulations; a public meeting will be held prior to the adoption of the revised Regulations.

Mr. Barnett suggested that the Commission draft some language to get things going in the right direction. Mr. Delehanty stated that the Town cannot give permission to put signs in the State right-of-way. Mr. Peck stated that other Towns have areas set aside in their Town for temporary signs in certain right-of-ways; there is not a problem as long as the site lines are not obstructed. If the Commission would like to recommend specific areas in Simsbury that might be of interest, they could look into this and draft language into the Regulations.

Chairman Barney stated that he likes the idea, which was discussed at the last meeting, regarding putting stickers on the signs in order to tell if signs are in violation or not at a quick glance. He would like this to start immediately. Mr. Peck stated that the Town staff is looking into this and what costs would be incurred.

VIII. STATUS OF ZONING REGULATION REVISION FROM CONSULTANT

Mr. Peck distributed copies of the revised Zoning Regulations and a memo from Chris Woods to the Zoning Commission for their review. He stated that in the regulation revisions, Mr. Woods has addressed the Commission's comments, Mr. Beach's memo and discussions he has had with Mr. Peck. Mr. Peck stated that they are currently approaching the end of the funding for the Zoning Regulations and what was originally funded for.

Referring to a memo from Mr. Peck to the Zoning Commission dated November 4, 2008, Mr. Peck stated that he believes the definition of mixed use development and mixed land use covers all the items that the Zoning Commission would want. The definition for a mixed use building states that it is a building with at least one floor of residential use and one floor of nonresidential use.

Regarding the continuing care retirement community (CCRC), Mr. Peck stated that it is very important to put together a complete definition of what constitutes a CCRC, which they have done. Mr. Peck stated that one firm

has come in who would like to develop a CCRC-type facility in Town. If they are to go forward, Simsbury needs to have a definition in place regarding CCRC.

Regarding the conceptual master plan, Mr. Peck stated that the intent of this proposed change is to describe what the conceptual master plan is; it will also allow a developer to go forward to pursue funding. Mr. Peck stated that he is suggesting, under Article X, Section A, Paragraph 2a, that all applications shall include a site plan prepared in accordance with this section. Alternatively, though, that the Commission, for large projects, may accept a Conceptual Master Plan at the Special Exception stage. Mr. Peck feels that this change clarifies that the Commission has the authority to do this.

Mr. Vaughn questioned what the definition of a large project was. Mr. Peck stated that if the project has the potential for significant drainage offsite, significant design considerations or significant traffic considerations, he feels these criteria may make a project eligible for one of the conceptual plans.

Mr. Delehanty questioned that if the Zoning Commission provided an approval of a conceptual plan, when the site plan was submitted, would the Commission have the discretion to disapprove it or would they be limited if the site plan was inconsistent with the already approved conceptual plan. Mr. Peck stated that the decision that the Commission makes at the Special Exception stage, specifically, the written decisions, are very important.

Chairman Barney questioned the definition regarding the CCRC. He stated that because of how the definition is worded, people with disabilities under the age of 55 would not qualify to live in the CCRC. Mr. Peck stated that disabled people would fall under the Federal definition for qualifying. He stated that he would add the Federal definition to this definition.

The Commission discussed bankruptcy law if a CCRC were to go bankrupt. Mr. Peck stated that he understands that under the bankruptcy law, all restrictions would disappear if the CCRC went bankrupt. Mr. Delehanty stated that he was not sure this was true. He stated that there are use restrictions of record against the property. Mr. Peck stated that he would clarify this with the Town Attorney.

Regarding the proposed regulation revisions, Mr. Peck stated that the definitions for mixed use development and mixed use buildings tie into the proposal for Article VII, Section G, which states that residential uses may be permitted in a mixed use development to comprise up to 60% of the floor area of all uses on the site. He stated that this is a change from the

current 40%. He stated that this also allows apartments for people with disabilities.

Mr. Elliott stated that allowing 60% in a Designed Business Development District does not seem to be in the spirit of what was intended for this zone. He stated that in looking at the POCD, the guidelines for the northern and southern gateways are 40%-50% in residential. He feels that 60% seems excessive.

Chairman Barney stated his concerns with editing some of the Regulations on behalf of certain property owners who have needs that the current Regulations do not fulfill. He also stated his concerns regarding revising the Regulations in increments. Mr. Vaughn agreed with Chairman Barney.

Mr. Peck stated that these changes to the Regulations are relatively minor, in his opinion, and are aimed at projects that a number of people have found worthwhile to pursue. Time is very important. Chairman Barney stated that he does not want to write Regulations for specific applicants. He feels that this would almost be like spot zoning. Mr. Peck disagreed; that is not what is happening.

Chairman Barney stated that they would look at these changes and continue their discussion at the next meeting.

IX. ZONING VIOLATIONS DISCUSSION:

Dr. Toscano & Cheryl Vincent

Mr. Gallagher recused himself from the Commission.

Mr. Beach stated that there was an initial complaint against Cheryl Vincent's office. The complaint was that there was a business in a residential zone. Although the property owner had a permit for a home occupation, the individual living in the home moved out. Mr. Beach stated that this same situation applies to Dr. Toscano's residence. A special exception was granted for a home occupation; the doctor has since moved out of that home, although it still continues to be a doctor's office. These properties are currently in violation.

Regarding Dr. Toscano's property, Mr. Beach stated that the first violation on this property was in 1976; there has been a continual effort to expand this medical office. Dr. Toscano has, in the past, asked for a zone change for this property; the Zoning Commission and the Zoning Board of Appeals have both denied this request. The owner has tried to rectify this situation to no avail. He is now asking that the Zoning Commission give him guidance.

Regarding Cheryl Vincent's property, Mr. Beach stated that this is the same type of violation, although she is currently trying to relocate her business to a more appropriate location in Town.

Chairman Barney stated that both of these properties are zoned residential. Dr. Toscano has asked for a special exception, which the change of use has been denied. Although these are difficult situations for the property owners, businesses belong on appropriate sites that are zoned for business.

Mr. Barnett stated that he agrees with Chairman Barney. He stated that the Zoning Commission would be happy to look at rezoning these properties, although it will need to be separate from the situations that the property owners are facing today. There is no obligation on the part of the Town to change the zone just because the owner's circumstances have changed.

Chairman Barney stated that the Commission should consider putting in their Regulations revisions that an applicant for a Special Exception has the obligation to notify the Town at the time if any use in a building or a property changes.

The Commission discussed the signage at the old Petibone's Tavern. Chairman Barney stated that it was understood that the applicant would come back before this Commission regarding their signage. Mr. Beach stated that because they used the same sign in the same location they would not need to come back in because they were not proposing new signage. That same sign has been there since 1966.

X. STATUS OF CHARRETTE PROCESS

Mr. Peck stated that the Charrette Sub-Committee has asked him to go back to the consultants to get more information regarding their pricing and if costs could be lowered, and if the principle would be directly involved in the process. Mr. Peck stated that all of this information has been received and the Sub-Committee will be meeting tomorrow at 4:00 p.m. to discuss the alternatives available and if they want to move the process forward.

Mr. Gallagher questioned if funding was still an issue. Mr. Peck stated that there has been no change regarding the funding. There has not been a request by the Board of Selectmen to the Board of Finance regarding transfer of funds.

Chairman Barney asked that the agenda be amended to include Diane Nash of the Tree Committee.

Mr. Delehanty made a motion to amend the agenda to include Diane Nash of the Tree Committee. Mr. Vaughn seconded the motion, which was unanimously approved.

XI. SET A PUBLIC HEARING DATE REGARDING ADULT ENTERTAINMENT

Chairman Barney stated that there was a sign put in the window at the Wagner building stating that an adult entertainment store would be opening soon. Chairman Barney stated that although this was a hoax, it did alert the Town that they do not have suitable protections for an adult entertainment business to move into Town. After many discussions involving many people, there have been 2 options offered. One is to have an Ordinance passed by the Board of Selectmen; the other is to have a moratorium issued by the Zoning Commission on adult businesses for a time period no to exceed eight months in order to research this issue.

Chairman Barney read a letter that he received from Mary Glassman into the record.

Mr. Peck distributed language for an amendment to Article Four (B), Definitions, and Article Seven, Permitted Uses for the purposes of a moratorium and language for an application for a Text Amendment for the purposes of a moratorium. He stated that there are two options: this could be put into the Regulations or treated on a piecemeal basis. If they were to enact a moratorium, a definition will be needed. A moratorium would extend for 8 months in order to allow the Commission to consider this matter and possibly make this a part of their revised Regulations as worded. If the Commission decides to go forward and enact this change to the current Regulations, a hearing could be set this evening for that; the earliest that a hearing could be set is for December 29, 2008.

Mr. Barnett made a motion to set the public hearing on the moratorium as stated by the Town Attorney for January 5, 2009. Mr. Delehanty seconded the motion, which was unanimously approved.

XII. TREE COMMITTEE - DIANE NASH

Ms. Nash stated that the Open Space Committee has structured the Tree Committee as a Sub-committee of the Open Space Committee. She stated that, although she has not yet met all of the Tree Committee members, they are all bringing different degrees of expertise with them.

Ms. Nash stated that the Open Space Committee feels that the trees in Town are a very important resource in Simsbury. The trees in Town are an asset that we are taking for granted.

Ms. Nash stated that the first meeting of the Tree Committee will be

Wednesday, November 19th at 4:00 p.m. For their first task, they will be identifying trees from the Simsbury Bank to the church, which is a 1.1 mile stretch. They will also be looking to see what the needs are regarding the health and condition of these trees. She stated that this 1.1 mile is only their starting point. The Tree Committee will also be looking into the Maple trees near the high school that were damaged during construction. Ms. Nash stated that they will also be discussing the Elm trees.

Ms. Nash stated that the Tree Committee is still in its infancy; there is a fair amount of enthusiasm within the group. The Rotary Club and others are willing to adopt some of the signature trees in Town. She is hopeful that there will be no direct cost to the Town for this. Ms. Nash stated that they will also be helping people who would like to dedicate trees to lost loved ones; these would be new plantings.

Mr. Gallagher questioned how the Tree Committee would be handling the trees in the right-of-way. Ms. Nash stated that on the west side of Hopmeadow, there is a significant amount of plantings in the right-of-way. She stated that the State does not care if the Town trims and feeds these trees. Other Towns have had success dealing with the State regarding this issue.

Ms. Nash stated that the Tree Committee will also be looking for grants to help get them started.

XIII. ADJOURNMENT

Mr. Delehanty made a motion to adjourn the meeting at 8:54 p.m. Mr. Vaughn seconded the motion and it passed unanimously.

Garrett Delehanty, Jr., Secretary