

From: Lois Laczko January 8, 2009 4:38:48 PM
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To: SimsburyCT_ZoningMin
Cc:

ADOPTED

ZONING COMMISSION MINUTES
DECEMBER 15, 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 and Ed Pabich. Also in attendance were Director of Planning Hiram Peck, Town Attorney DeCresenzo and other interested parties.

II. APPOINTMENT OF ALTERNATES

None were needed.

III. APPROVAL OF MINUTES of December 1, 2008

Mr. Elliott made a motion to approve the December 1, 2008 minutes as written. Mr. Delehanty seconded the motion, which was unanimously approved.

IV. PRESENTATION(s)

a. Application of Richard Mercer, Owner, Traci Slot, Affordable Signs & Design, Agent, for a Sign Permit for Bikram Yoga located on property at 7 Deer Park Road in I-1 Zone.

Mr. Mercer asked that the Zoning Commission reconsider one portion of the Design Review Board's recommendation. The DRB recommended that the wording, "Bringing Wellness to Our Bodies, Minds and Spirits" be eliminated from the sign. Mr. Mercer stated that he would like this wording to remain; this resembles what is on his business card. He also feels that this is an important part of his logo and his business.

Mr. Mercer stated that he is proposing a sign that is 6 feet wide by 4 feet high, which is based upon the square footage of the building. This is

within the Guidelines for Simsbury. The lettering on the sign is 3 inches. Mr. Gallagher questioned how big the wording would be that Mr. Mercer would like to add to the sign. Mr. Mercer stated that it would be proportional to the rest of the sign; it will be smaller than 3 inches. Chairman Barney stated that if the words were that small people would not be able to read them. Mr. Mercer stated that people walking into the building would see the wording, not the people driving by.

Mr. Delehanty questioned what the DRB's reasons were for not wanting the wording on the sign. Mr. Mercer stated that they did not want any inappropriate wording and they did not want marketing on the sign.

Chairman Barney stated that the DRB also recommended that the #7 be added to the sign, the posts be changed to a white color and that the landscaping design should be consistent with the Zoning Regulations. He asked Mr. Mercer if he had a planting plan. Mr. Mercer stated that the DRB suggested planting Junipers and Lilies. He would be also be agreeable to their suggestion of 24" tall plantings.

Regarding lighting, Mr. Mercer stated that the DRB did not approve any lighting, although they did give him suggestions regarding what would be acceptable. He was not prepared to present a lighting plan at that time. He has since gone and talked to several lighting companies. Mr. Mercer stated that he is now proposing low level lights that would hide in the shrubs and would shine on the sign without any spillage. The lighting is about 4 feet wide and 6 feet high. Although he did not present the lighting to the DRB, he asked that the Zoning Commission approve the lighting. He would like this to be part of his application.

Mr. Delehanty questioned when the lights would be shining on the sign. Mr. Mercer stated that the lights would be on throughout the night, during the dark hours.

Regarding the revised special permit for home occupation for the furniture refinishing business, Attorney DeCrescenzo stated that this could be a matter of Executive Session by a 2/3 vote. The sole purpose of going into Executive Session would be discussing a matter of pending litigation, although a vote cannot be taken while in Executive Session.

Mr. Barnett made a motion to take the agenda items out of order. Mr. Gallagher seconded the motion, which was unanimously approved.

V. DISCUSSION AND POSSIBLE VOTE ON ANY AGENDA ITEM

Mr. Gallagher made a motion to approve the application of Richard Mercer, Owner, Traci Slot, Affordable Signs & Design, Agent for a sign Permit for Bikram Yoga located on property at 7 Deer Park Road as submitted,

including: adding the wording, "Bringing Wellness to Our Bodies, Minds and Spirits"; the lighting as shown; adding the #7 in front of Deer Park; the sign posts changed to a white color; and the plantings around the base of the sign as described by the applicant. Mr. Barnett seconded the motion, which was unanimously approved.

VI. DISCUSSION AND POSSIBLE VOTE ON REVISED SPECIAL PERMIT FOR HOME OCCUPATION FOR FURNITURE REFINISHING BUSINESS IN ACCORDANCE WITH APPLICABLE SIMSBURY ZONING REGULATIONS.

Mr. Delehanty made a motion to go into Executive Session, which was unanimously approved.

The Commission adjourned to Executive Session at 7:15 p.m. with Attorney DeCrescenzo and Mr. Peck.

Mr. Delehanty made a motion to come out of Executive Session. Mr. Barnett seconded the motion, which was unanimously approved.

VII. DISCUSSION OF BYLAW DRAFT

Attorney DeCrescenzo stated that he feels this draft is workable; the Zoning Commission's input will be added. The Commission can then set a deadline for adoption. Attorney DeCrescenzo stated that a big question is whether Robert's Rules should be a controlling authority or a persuasive authority. The only way they would be controlling is if the Commission adopts them into the bylaws. Attorney DeCrescenzo stated that another option that the Commission had is to extract certain issues from Robert's Rules and make them part of the bylaws; the whole book does not need to be adopted.

Mr. Delehanty stated that he would like to see Robert's Rules as only a persuasive authority.

Mr. Elliott questioned what the Board of Selectmen uses for rules.

Attorney DeCrescenzo stated that they do refer to Robert's Rules, although they have a set of bylaws although he is unsure if they are controlling or persuasive. Mr. Elliott feels that people are interested in knowing that there are rules and that there is a framework so everyone that comes forward gets treated the same way.

Chairman Barney stated that when something is sought in Robert's Rules, it usually takes up half of the meeting. The procedural aspects overbear on the common sense elements. He feels that the Zoning Commission has been operating on a fairly strict procedural basis; he feels that their hearings are consistent.

Mr. Barnett feels that adopting Robert's Rules as a controlling authority

does not eliminate the possibility of varying treatment.

Mr. Peck stated that Robert's Rules were created for bodies that are very different from a Land Use Commission. He stated that if they are cited as persuasive, they can solve procedural issues.

Chairman Barney stated that under Article IX, Order of Business, in Section 2 it states that a motion must be made and passed in order to dispense with any item on the agenda. He stated that Mr. Peck recommends that this be omitted. He stated that, in the past, they have dispensed with items on the agenda because the applicant withdrew the application or the applicant did not show up. This is not usually done by a vote. Attorney DeCrescenzo stated that he would like Section 2 to state that for every application submitted, the Commission must either approve, deny, deny without prejudice or have it be withdrawn so that there is finality. He stated that the action must be made clear.

Chairman Barney stated that there was an issue regarding public audience, where people can ask questions or make comments. Attorney DeCrescenzo stated that the case law is very clear. If the public comment delves into the area of a pending application, it can be and probably will be considered a public hearing, which would not have been properly noticed. He stated that he does not know of any rules that states the Zoning Commission cannot have public comment as long as it is not on pending applications; public comment on pending applications, by definition, is a public hearing. Attorney DeCrescenzo suggested that if the Zoning Commission were to have public comment, they should put it at the end of the agenda to avoid the potential for someone's comments to lead into pending applications. He stated that other Towns hold a workshop session every few months prior to the start of the regular meeting with a specific topic. People come to this workshop to receive information and to make comments.

Chairman Barney questioned if public comment should be addressed in the bylaws. Attorney DeCrescenzo stated that a court will never criticize if this was in the bylaws.

Ms. Gilkey questioned if public comment should be put in writing and given to the Commission for their review. Attorney DeCrescenzo stated that written comment would be helpful.

Mr. Peck stated that if someone wanted to get information to the Commission, they could e-mail him and he would distribute that information to the members. People can also call him or be asked to be listed on the agenda. He stated that if people just show up to a meeting with specific issues to discuss, this could cause problems.

There was a consensus among the Commission that they would like to try having a workshop. Mr. Barnett also suggested having a public hearing once or twice a year with an open agenda. Attorney DeCrescenzo stated that this could not be called a public hearing, although it could be called a public information session.

Chairman Barney stated that they would not put public comment into the bylaws and the Commission would try to have a workshop. Attorney DeCrescenzo stated that the Zoning Commission would have an opportunity to do this when the latest version of the mixed-use Regulation is submitted. He stated that the Commission could allow public comment on this regulation before it goes to public hearing. Chairman Barney stated that he would like this to happen for all of their regulation revisions.

Mr. Elliott stated that the original draft of the bylaws suggested that the Zoning Commission have an annual election of officers. He stated that the tradition has been that the officers have served at the pleasure of the Commission. Attorney DeCrescenzo stated that he believes the statutes have something to say regarding this issue, as well as the Town Charter.

VIII. STATUS OF CHARRETTE PROCESS

Mr. Peck stated the Town is now looking at doing a scaled down version of the full Charrette; they would like to do a 3 day exercise that would focus on the center of Town. This Charrette would end up with a plan for the Center with specific steps that would tell the Town what the next steps in the process are moving forward. Mr. Peck stated that he will be sending out a new proposal to the consultant within the next few days. The Town should know a few days after that if this proposal will be accepted. The total amount of money to do this scaled down Charrette is \$40,000.

Mr. Peck stated that the Chairman of the Board of Finance has indicated that the full Charrette process should be rolled into the budget process. This will be done in the next budget cycle.

IX. STATUS OF ZONING REGULATION REVISIONS

Mr. Peck stated that the Commission had discussed at the last meeting to meet ½ hour prior to the start of the regularly scheduled meetings in order to discuss Zoning Regulation revisions. The Regular meeting will then start at 7:30 in order to give the Commission one full hour for discussions. He stated that he will send out a specific e-mail prior to that meeting that talks about the section of the Regulations that will be discuss.

Chairman Barney stated that he has written a letter to Mary Glassman requesting an additional \$25,000 to finish these revisions to the Regulations. He stated that there is no money left for this in the budget.

Mr. Elliott questioned if \$25,000 was an accurate dollar amount that was still needed; he feels that more money will be needed. Chairman Barney stated that they are on track from where the expenditures should be, although more money is needed. He is hoping that \$25,000 is enough. Mr. Delehanty stated that they could still have their discussions regarding the revisions so momentum is not lost. Chairman Barney stated that there are parts of the Regulations that are out of touch and there is a great deal of new things that are not discussed in the Regulations.

X. OTHER MATTERS AS MAY PROPERLY COME BEFORE THE COMMISSION

Attorney DeCrescenzo stated that planned area developments, special development districts, zoning development districts and others are all synonyms for the overlay zone process that lands on an eligible site or sites. He stated that when this overlay zone is applied for on a site, the benefit is that the applicant would have the ability to master plan the site without being constrained by the specific parameters of the underlying zone. In return, the Town would get the ability to master plan a 20-acre site, which will probably be developed over a long period of time in phases. Each phase of this master development plan has to be consistent with the approved master plan.

Attorney DeCrescenzo stated that procedurally, a preliminary design plan would come before the Planning and Zoning Commissions for their review. He stated that this is not an application, it is a pre-application. During this time, the Commissioners would give suggestions regarding what they like and dislike about the project. The applicant can then make a decision based on this input to go forward or not.

Mr. Elliott stated that he would like to see the issue of size addressed in the definition. He stated that they want to attract developers whose thinking is consistent with what the Town wants.

XI. STAFF REPORTS

Regarding the Incentive Housing Zone, Mr. Peck stated that several months ago, the Commission passed a motion to enter into a contract with regard to Home Connecticut Legislation. He stated that the Town has received a grant for \$49,900 from OPM to study incentive housing zones. He stated that under this legislation, the housing that would be created would be generally at a greater density than what the Town would typically allow. The density can range from 8 units -20 units an acre. Mr. Peck stated that the Town has interviewed several applicants to complete this study; the Town has selected one consultant, who is looking forward to getting started as soon as the Board of Selectmen signs the contract. Mr. Peck stated that, at the same time, they have asked property owners to supply the Town with letters of interest; 6-8 property owners are interested in having

their properties looked at for this concept.

Mr. Peck stated that 80% of the housing that gets produced would be market rate; 20% would be "work force" housing, which would be 80% of the area medium income. He stated that this is not low income housing.

Chairman Barney questioned what the consultant would be doing. Mr. Peck stated that they would be: looking at the sites; preparing and drafting the regulation, drafting the design standards for the different zones; and they will also be working with the DRB to make sure the Design Guidelines are in keeping with the current Guidelines. He stated that the consultant will be focusing on three general areas, which are the Town Center and the north and south ends of Town.

XII. ADJOURNMENT

Mr. Delehanty made a motion to adjourn the meeting at 8:22 p.m. Mr. Gallagher seconded the motion and it passed unanimously.

Garrett Delehanty, Jr., Secretary