

From: Lois Laczko January 8, 2009 4:32:39 PM
Subject: Zoning Commission Minutes 01/05/2009
To: SimsburyCT_ZoningMin
Cc:

ZONING COMMISSION MINUTES
JANUARY 5, 2009
REGULAR MEETING

I. CALL TO ORDER

Garrett Delehanty called the Regular Meeting of the Zoning Commission to order at 7:30 p.m. in the Main Meeting Room of the Simsbury Town Offices. The following members were present: Bruce Elliott, James Gallagher, John Vaughn, Scott Barnett, Madeline Gilkey and Ed Pabich. Also in attendance were Director of Planning Hiram Peck, Town Attorney Robert DeCrescenzo, Commission Clerk Alison Sturgeon and other interested parties.

Mr. Gallagher made a motion to appoint Mr. Delehanty as Chairman for this meeting. Mr. Barnett seconded the motion, which was unanimously approved.

Ms. Gilkey made a motion to appoint Mr. Gallagher as Secretary for this meeting. Mr. Delehanty seconded the motion, which was unanimously approved.

II. APPOINTMENT OF ALTERNATES

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

III. APPROVAL OF MINUTES of December 15, 2008

Mr. Pabich questioned if the Gozzo's home business should be referred to as a furniture refurbishing business and not a refinishing business. Town Attorney, Robert DeCrescenzo stated that the past application stated that it was a furniture refinishing business.

Mr. Elliott made a motion to approve the December 15, 2008 minutes as written. Mr. Vaughn seconded the motion, which was unanimously approved.

IV. PUBLIC HEARING

a. Application of the Town of Simsbury for a Text Amendment to the

Town of Simsbury's Zoning Regulations, pursuant to Article Four (B), Definitions, and Article Seven, Uses, for the purposes of a moratorium (not to exceed eight (8) months) on Adult Oriented Uses.

Mr. Gallagher read the call.

Mr. Peck stated that the Zoning Commission received the adopted resolution from the Planning Commission. He stated that the Planning Commission recommended the adoption of the moratorium. He read that resolution into the record.

Attorney DeCrescenzo stated that the Zoning Commission will be doing two things if they adopt this moratorium: they will be adopting a text amendment to establish adult orientated uses as a special use within the Zoning Regulations; and they will be imposing a moratorium on permitting those uses of eight months. He stated that a moratorium needs to be limited in time and scope, which this is. Attorney DeCrescenzo stated that a moratorium is also constitutionally protected; it is very scrutinized by the Supreme Court.

Mr. Delehanty questioned if an 8 month moratorium was a safe amount of time. Attorney DeCrescenzo stated that a 6-9 moratorium is good; 12 months would be too long.

Mr. Delehanty asked if there was any discussion by the Commission members. There was none. Mr. Delehanty asked if there was any public comment. There was none.

Mr. Delehanty closed the Public Hearing.

Mr. Peck suggested that the Commission deal with the definitions and the moratorium separately in their motion, although they will both be incorporated into the Regulations.

Mr. Elliott made a motion to move Item VIII, as it pertains to Item IV, next on the agenda. Mr. Vaughn seconded the motion, which was unanimously approved.

V. DISCUSSION AND POSSIBLE VOTE

Mr. Barnett made a motion to approve the insertion of the seven definitions as written, known as Section One, into Article 4(B). Mr. Gallagher seconded the motion, which was unanimously approved.

Mr. Barnett made a motion to adopt Section Two, which amends Article 7 of the existing Regulations by establishing a moratorium. Mr. Gallagher seconded the motion, which was unanimously approved.

VI. DISCUSSION AND POSSIBLE VOTE ON REVISED SPECIAL PERMIT for application of James and Allison Gozzo, owners, for a Special Exception for operation of a furniture refinishing business conducted as a home occupation in accordance with Article Seven, Section C.1. of the Simsbury Zoning Regulations, said uses to be conducted on .69 acres of property located at 22 Bushy Hill Road in the R-15 Residential Zone (Map F11 Block 103 Lot 004).

Attorney DeCrescenzo stated that this was discussed at the last meeting. He and Mr. Peck have put together a resolution which memorializes and accomplishes the approval of the Special Permit subject to conditions that would be acceptable to the Court. Attorney DeCrescenzo discussed the latest draft of this resolution, dated December 31, 2008.

Attorney DeCrescenzo also reviewed the six specific standards that apply to this Regulation and the changes that were recently made to several of them. He stated that one change was made to condition # 2 regarding the box truck that is used for this business. It now states that the truck shall be parked as to not offend the neighbors. The homeowner has parked this truck on the site for many years, which has never generated any complaints. Attorney DeCrescenzo stated that the other change, in condition #6, is to change the 48 hours to 5 business days.

Attorney DeCrescenzo stated that these are the conditions. If the Commission approves this tonight, they would not have to go back to court and the file would be closed. If it were to go back to court, these are the conditions that the court has sanctioned as allowable under the Regulations.

Mr. Barnett questioned if this Special Exception runs with the owner or the land. Attorney DeCrescenzo stated that the Special Exception is on the land. The Special Exception is also limited to this use. The only thing that runs with the land is the ability to run a furniture refinishing business within the existing footprint and the existing building. Mr. Barnett stated that this was an exception that was granted in large part, because of health issues of the homeowner's daughter, which is why it was attached to the owners. Now, as it will be redrafted, he stated that another owner could move in and operate this same type of business. Attorney DeCrescenzo stated that this was correct. He stated that this is because of the variance that was granted by the Zoning Board of Appeals and because the Court has stated that the variance trumps the ability of the Zoning Commission to undo the variance.

Mr. Barnett questioned if they would be establishing a reconnection of the property and not the individuals on subsequent applications. He questioned

if this Commission was setting a precedent for future home occupations. Attorney DeCrescenzo stated that the variance runs with the land, as does the Special Permit. This has always been the case; a Special Permit by its nature does go with the land.

Mr. Gallagher questioned how many people, other than outside of the family, could be hired for this furniture refinishing business. Attorney DeCrescenzo stated that the definition of family is very hard to define. He stated that for future home occupations, the Zoning Commission could limit the uses eligible for a home occupation permit and they could also have a better definition of the family.

Mr. Elliott made a motion to approve the revised special permit for application of James and Allison Gozzo, owners, for a Special Exception for operation of a furniture refinishing business conducted as a home occupation in accordance with Article Seven, Section C.1. of the Simsbury Zoning Regulations, said uses to be conducted on .69 acres of property located at 22 Bushy Hill Road in the R-15 Residential Zone, with the changes made regarding the box truck location and the change of allowing five (5) business days for on-site inspections by the Zoning Enforcement Officer. Mr. Vaughn seconded the motion, which was unanimously approved.

VII. DISCUSSION OF REVISED ZONING COMMISSION BYLAW DRAFT

Mr. Delehanty stated that he has reviewed this and it looks like all of the corrections and changes have been made. Mr. Peck stated that he believes all of the changes have been made, including Mr. Elliott's changes that he had previously e-mailed.

Mr. Peck stated that in Article XII, Section 1, this was an FOIA reference.

Regarding the signing of mylars if the Chairman is not available, Mr. Peck stated that when someone comes in with a mylar and would like to file it immediately with the Town Clerk, it needs to be signed. He stated that the map is reviewed to make sure that it is the correct map and the Chairman is called to see when he can come down to sign it. If the Chairman cannot come down for several days, he would then be asked for permission for his/her signature to be affixed to the map with the stamp. Mr. Peck recommended that the Commission proceed with this procedure.

Regarding Article VIII, Section 9, Mr. Peck stated that the Town Attorney has recommended that, unless otherwise specified, the Commission shall use Robert's Rules of Order as a general non-binding procedural guide to govern the proceedings at the meetings of the Commission.

Mr. Delehanty stated that the Commission would not be taking any action

tonight. The Commission would like more time to review this and would also like Chairman Barney to be present.

VIII. OTHER MATTERS AS MAY PROPERLY COME BEFORE THE COMMISSION

Mr. Peck distributed a copy of the Code of the Town of Simsbury, Connecticut, v27 Updated 02-15-2008 / Part II General Legislation / Chapter 158, Zoning Violations. He stated that the proposed changes were in bold. Although the adoption of this is under the jurisdiction of the Board of Selectmen, the First Selectman has asked that the Zoning Commission make some comments or recommendations regarding this issue. He stated that this specifically calls out that each day of a violation would be a separate offense. This will allow the Town to issue a citation for fines on a daily basis as necessary.

Mr. Barnett made a motion that the Zoning Commission recommends adoption of the two modifications in the Code of the Town of Simsbury, Connecticut, v27 Updated 02-15-2008 / Part II General Legislation / Chapter 158, Zoning Violations and also recommends that the Board of Selectmen approve these changes. Mr. Gallagher seconded the motion, which was unanimously approved.

Status of Charrette Process

Mr. Peck stated that the Town is still waiting to hear back from the consultant regarding if they are willing to do a scaled down Charrette in the Town Center with the available money. The Town has \$40,000 allocated for this Charrette. Mr. Peck stated that the Town is also looking at a number of different sources to try to see if the \$40,000 can be supplemented in order to come up with the original amount of money that was needed for the Charrette, which was approximately \$150,000. He stated that they are continuing to look into this and hope to have some answers within the next few weeks.

Currently, Mr. Peck stated that the plan is to move forward with some kind of Charrette for the Town Center; this is still on track. He stated that at the end of this Charrette process, they will get more detail that will be specific enough to allow the Town to put a regulation together for the Town Center.

Report from Zoning Enforcement Officer, Howard Beach

There was no report.

IX. ADJOURNMENT

Mr. Barnett made a motion to adjourn the meeting at 8:23 p.m. Ms. Gilkey

seconded the motion, which was unanimously approved.

Garrett Delehanty, Jr., Secretary