

From: Lois Laczko September 19, 2008 11:28:10 AM
Subject: Zoning Commission Minutes 08/11/2008 ADOPTED Special Meeting
To: SimsburyCT_ZoningMin
Cc:

ADOPTED
ZONING COMMISSION MINUTES
AUGUST 11, 2008
SPECIAL MEETING

I. CALL TO ORDER

Austin Barney, Chairman, called the Special Meeting of the Zoning Commission to order at 7:00 p.m. in the Apple Barn, 60A Old Farms Road, West Simsbury, CT. The following members were present: Garrett Delehanty, Jr., Scott Barnett, Bruce Elliott, James Gallagher, and John Vaughn. Also in attendance were Director of Planning Hiram Peck, Town Attorney Robert DeCrescenzo, Commission Clerk Debra Sweeney and other interested parties.

II. APPOINTMENT OF ALTERNATES

None.

Chairman Barney read a letter from Alternate Joseph Grace, who was regretfully submitting his resignation from the Zoning Commission due to time constraint conflicts with his job. Chairman Barney indicated that the process will begin to appoint a replacement for Mr. Grace. Mr. Gallagher made a motion to send a Certificate of Appreciation to Mr. Grace for his prior service. Mr. Delehanty seconded the motion and it passed unanimously.

Mr. Peck will follow up on the issuance of the Certificate.

III. APPROVAL OF MINUTES

Approval of the minutes of the July 21, 2008 was tabled until the next meeting.

IV. PUBLIC HEARING (continued)

a. Application of P. Anthony Giorgio, Member, Dorset Crossing LLC, c/o The Keystone Companies, LLC, Thomas W. Fahey, Jr., Attorney, Agent, for a

Text Amendment to Article Seven, Section G, Article Ten, Section A.4 and Article Ten, Section E.5 of the Simsbury Zoning Regulations on property located at 1507 and 1515 Hopmeadow Street. I-3 and B-2 Zone (continued from meeting of July 21, 2008).

b. Application of P. Anthony Giorgio, Member, Dorset Crossing LLC, c/o The Keystone Companies, LLC, Thomas W. Fahey, Jr., Attorney, Agent, for a Zone Change from I-3 and B-2 to B-3 on property located at 1507 and 1515 Hopmeadow Street. I-3 and B-2 Zone (continued from meeting of July 21, 2008).

Anthony Giorgio stated that they have been working with Town staff in order to respond to the questions and issues that were raised at the July 21st meeting and hoped to demonstrate an attempt to find a common ground with the Commission. He noted that the original application was a request to change the zone from B-2 to B-3 and I-3 to B-3. After considerable discussion with the Commission and working with Town staff in specific response to the possibility to achieve this goal in two steps, they have determined that there is a way that would allow for maximum flexibility and continued dialogue going forward with the Town relative to the back portion of the property.

Mr. Giorgio asked that the Commission consider changing only approximately 20 acres of the 47 acres to B-3 and leaving the remaining 25+ acres in its current I-3 zone. In so doing, it would allow them to move forward with a parcel of land that would permit the development of a good deal of their commercial retail and an apartment complex, which they believe to be an essential component of a master plan consistent with a B-3 community. Mr. Giorgio explained that, in the new plan, they were able to incorporate the retail, the medical office and surgical center as well as two Class A office buildings and three apartment buildings that were scattered about in the previous plan so that they are now opposite those buildings, thus allowing for a shared parking concept. The reason that they are suggesting that this area be considered as a B-3 with those various components still within it is that part of the requirements within the regulation suggest that the uses that are permitted (residential, retail and commercial office) have to be part of a master plan concept where there is an integration of architecture, parking and traffic.

The items that were taken out of the proposal include the area that was proposed to include a Billingsgate-type development, townhouses and high-end condos. In moving the key components to the front 20 acres, Mr. Giorgio said that they are in a position to move forward on some of the leases that are very real and time sensitive, while at the same time being sensitive to the Commission's concerns that the entire parcel is too large an area for an overall zone change. He asked the Commission to consider

the new proposal as a modified application.

Relative to the request for text amendment, Mr. Giorgio stated that they were comfortable with the staff recommendation that the only component that needs to be modified within the existing B-3 regulation is to add the phrase "or adjacent to" when referring to residential uses in Article Seven, Section E.3.a., so that where it currently reads "residential uses must be located above the principal use" would now read "residential uses must be located above or adjacent to the principal use".

Mr. Giorgio stated that they are also comfortable with the suggestion that they continue to look for shared parking opportunities as stressed by the Planning Commission. Mr. Giorgio stated that they were ambivalent to any limitations being set on a footprint and left it to the discretion of the Commission as to how it wished to proceed. He noted that the Plan of Conservation and Development (POCD) suggests a 20,000 sq. ft., two-story (40,000 sq. ft total) and that would be fine with them and added that the current regulation allows for three stories.

Attorney Thomas Fahey addressed the concept of text amendments and cited several text amendments that have been made in the past several years, noting that it is very consistent with how the community has acted in the past. He noted that there have been approximately 30 other text amendments that have been enacted, having been generated by both developers and the community, some of which were more extensive than what is being asked for in this application.

Chairman Barney asked about what sort of building uses were anticipated. Mr. Giorgio responded that the 40,000 sq. ft. gross structure would be a medical office building, feasibly housing radiology services, primary care, lab, and perhaps even a day surgery facility similar to the one located at the end of Route 10 in Avon. He noted that the medical field is moving more towards outpatient and day services and that there has been a tremendous amount of interest in these buildings. He stated that he has been approached by banks, although is not as interested in a bank use. Relative to the larger retail piece (14,000 sq. ft.), he had gotten some past interest from a national company specializing in candles and fragrances, but that was some time ago and he also has had some interest shown in a sit-down family restaurant development. He stated that he envisioned the location as being an area that is ripe to be developed regionally in the pharmaceutical, financial services and aerospace areas. The apartment buildings would be two-story and consist of 12 residential units per building (one-bedroom and studio).

Chairman Barney asked for questions from the Commissioners. Mr. Gallagher asked how many parking spaces would be required for the medical office building. Mr. Giorgio responded that 268 would be required and that, with shared parking, 505 spaces overall would be sufficient. Mr. Elliott asked

about the ratio of impervious coverage and Mr. Giorgio stated that the conceptual plan is for approximately 60%. Chairman Barney asked if a two-story, 25,000 sq. ft. building would satisfy his needs for the medical building and Mr. Giorgio replied that he only needs 40,000 sq. ft.

Mr. Vaughn asked about the long-term plans for the undeveloped parcel. Mr. Giorgio replied that it would be some type of residential development, but that it would have to be consistent with the front parcel and that only 10-15 acres could feasibly be developed due to wetlands and topography limitations. He stated that he is willing to pursue various options and uses and perhaps integrate with suggestions made via the Charrette process. Chairman Barney asked about the two curb cuts shown on the conceptual plan in the field to the south and asked if there were any agreements in place. Mr. Giorgio replied that they are only illustrations of options as to how to accommodate future opportunities off the road for any future development so as to relieve traffic pressure in the two lanes of Hopmeadow Street, but that there are no agreements currently in place.

Mr. Elliott asked if there had been consideration of other plan formats that could be accomplished within the existing zoning regulations. Mr. Giorgio stated that, after conversations with staff, it has been determined that this is the best use that fits within the B-3 zone and that there is nothing in the existing regulations to accommodate, nor is there enough time to develop, a proposal relative to the back area. He stated that the various uses make a tremendous amount of sense and are consistent with the B-3 regulation in that there is a fully integrated master plan relative to traffic, architecture and land use in the same application and that the residential portion is within the spirit of being accessory to the business use. The only problematic area of the existing B-3 regulation is the insistence that the only place that one could live is above a retail or office spot.

Chairman Barney asked for comments from the public.

John Loomis, 500 Firetown Town, Chairman of the Planning Commission, clarified that, relative to any footprint limitation, the POCD actually calls for a ratio of 2.5 times a 25-foot height for a smaller building and 5 times a 35-foot height for a larger building, which equates to 5 x 35 squared, or a 30,600 maximum footprint as a policy recommendation and that an allowance for roof treatment should be included.

Mr. Vaughn asked if an addendum could be added to the text amendment such that it would be limited to just this site. Attorney DeCrescenzo stated that this could not be done and that any text amendment would apply to any future B-3 areas. Mr. Delehanty noted that another potential unintended consequence would be to also render some existing B-3 structures as now

being "legally non-conforming", but that no existing property owners have expressed any protest in these proceedings. Mr. Vaughn stated that he remained concerned as to how the back parcel would eventually become integrated with this parcel.

John Lucker, 88 Blue Ridge Drive, stated that it appeared that there have been voluminous changes made and that he has not personally had an opportunity as a member of the public to see all the submissions or a record of staff discussions. He felt that this evening's proposal is a substantive change and is not the same proposal that was submitted and requires a different hearing process.

Chairman Barney noted that the modified proposal is considerably less in scope than the original application and that it is actually the same, just less intense. Attorney DeCrescenzo commented that there are actually two applications, one for a map change and one for a text amendment. If the project had been expanded, then a new notice and new public hearing would be indicated. However, if the applicant is asking for less and not more and the same site is involved, then it is considered to be within the notice. He noted that the application has been reduced by almost 50% and that most of the text amendment, as originally applied for, has been withdrawn and is, therefore, consistent with the notice. Determining the public's ability to digest the modified proposal is up to the Commission's discretion.

Attorney Fahey addressed the concern over the potential for creating nonconformities. He stated that, if the Commission was concerned about not creating any nonconformity within existing decrees, then they could omit any change to building footprint limitations. He stated that it is up to the Commission as to what limitations they wish to impose. He also noted that the current regulation provides for a designed development district in which variance from the specific requirements of the regulations is permitted under strict control in which detailed site plan approval is required. Therefore, in essence, it is site specific because the Commission has detailed site plan control, although it would not be spot zoning by definition.

Mr. Vaughn asked if there would be any way to protect the undeveloped parcel at the rear. Chairman Barney stated that, as a property owner, they would have the right to come before the Commission at any time. Mr. Giorgio added that, if the property remains I-3, it has no economic value or use, but that it might be advantageous to all if more time is allowed for various ideas for its use to evolve.

Chairman Barney closed the hearing at this time.

V. PUBLIC HEARING (new)

a. Application of Andrew M. Yakemore, Simsmore Square - Owner, for a Special Exception, pursuant to Article Eight, Section a.9 of the Simsbury Zoning Regulations, to allow for an increase in coverage for proposed additional parking on property located at Simsmore Square, 524 Hopmeadow Street. B-2 Zone

Mr. Delehanty read the call.

Rich Correia, representing the Yakemore family, and Chris Ferraro, of Ferraro-Hixon, spoke for the application. Mr. Correia stated that an existing tenant, A Touch of Class, has outgrown its space and the plan is to demolish the existing building and construct a new, larger building in its place and, thereby provide more square footage. Additionally, the building at 548 Hopmeadow Street, which is also owned by the Yakemore family, is being added into the total of Simsmore Square. Simsmore Square has a coverage ratio of approximately 59.5%. With the additional property added in, the coverage ratio is lowered to 52.6% under its current footprint. The construction of the new building would raise the ratio back up to 53.3%, with a net reduction overall of 6.2%.

Mr. Peck stated that it was staff's opinion that the coverage being changed was very close to the maximum allowed, was being reduced and then brought back up again. Therefore, it was felt that it was important to clarify that the coverage was changing for the community and the application was being filed in order to be conservative so that the applicant would not have to return at a future date. Chairman Barney stated that he was not sure that a Special Exception was actually needed, since the existing coverage was over 40% to begin with. Mr. Delehanty concurred, noting that the existing Special Exception allows for over 59% coverage and did not think a Special Exception was necessary unless counsel so advised.

Attorney DeCrescenzo stated that, although he had not had an opportunity to review this application prior to the meeting, it was his understanding that they would have the pre-existing right, but given that the site plan is being amended, then it would be appropriate to issue the Special Exception due to the changes in the building so as to set a new restriction going forward. He advised that the Commission hear the request to modify the Special Exception, take testimony in the public hearing, close the public hearing and then take action on the Special Exception and site plan amendment in tandem.

Chairman Barney asked for public comment and there was none.

VI. PRESENTATIONS (new)

a. Application of Andrew M. Yakemore, Simsmore Square - Owner, for a Site Plan Amendment for a proposed new business/residential building on property located at Simsmore Square, 524 Hopmeadow Street. B-2 Zone.

Chris Ferraro stated that the proposed plan is to remove an existing 2-story building with a walk out basement and replace it with a similar 2-story building with a walk out basement with a slightly larger footprint, restriping some of the existing parking area from its less efficient diagonal configuration to a perpendicular configuration, and adding 5 spaces and connecting walkways. The retail component would be on the first floor and the second floor would consist of three one-bedroom residential apartments and one two-bedroom apartment all accessed by a common hallway with egress from front and back by a series of stairs and decks.

Mr. Ferraro stated that the Design Review Board comments have been addressed to extent that they must go back before them for final approval on a detailed landscape plan and details on the roof covering over the deck and egress stairways as a matter of code. He indicated that Lynn Charest had issued a memo indicating full compliance with any Planning issues as well. Mr. Gallagher noted that an area had been cut out of the Tennis House area for #524 Hopmeadow. Mr. Correia stated that a land lease allows for the use of the parking spaces by the tenants.

b. Application of Maryanne Strindberg, Valley Psychiatry, LLC - Owner, for a Site Plan Amendment to construct a driveway on property located at 558 Hopmeadow Street. B-1 Zone.

Maryanne Strindberg distributed a revised plan to the Commissioners and stated that the previous signage application had been withdrawn. She stated that the proposal is to add a driveway to the property, which houses their general business practice and storage with no patients present. She indicated that the parking is adjoining the pavement belonging to a deli and a liquor store. In response to Design Review Board recommendations, the pavement has been pushed back from the street as much as possible within the lines of their property and they have decreased the amount of asphalt.

She stated that they are looking for three spaces for one employee and the two doctors only. Chairman Barney asked how far the pavement would be from the right-of-way and Ms. Strindberg indicated that it would be 6'-7'.

c. Application of Tom Martin, President, Phonon Corporation- Owner, for a Site Plan Amendment for construction of an addition at the Phonon Corporation on property located at 90 Wolcott Road. I-1 Zone.

Bob Lohrmann, of Associated Architects in Farmington, stated that the application is for a three-story expansion at the back of the property as the business and testing facilities require a ground-based structure due to the sensitivity of the machinery and testing equipment. The proposal is to build a 7,500 sq. ft. three-story addition. Mr. Lohrmann indicated that all the necessary side and rear yard variances have been obtained from the ZBA and they have received approval from the Design Review Board.

Chairman Barney commended Tom Martin for continuing to base his business in Simsbury in spite of monumental site limitations.

VII. DISCUSSION AND POSSIBLE VOTE ON ANY AGENDA ITEM

a. Application of Jeffrey S. Hoffman, Hoffman Enterprises - Owner, Thomas J. Donohue, Jr., Attorney, Agent, for a Zone Change from R-40 to B-3 on property located at the Hoffman Auto Park, 395 West Mountain Road (Map A-19, Block 503, Lot 2E8). R-40 Zone (continued from meeting of July 7, 2008) including the Application of Jeffrey S. Hoffman, Hoffman Enterprises - Owner, Thomas J. Donohue, Jr., Attorney, Agent, for a Site Plan Approval for a proposed vehicle storage area on property located at the Hoffman Auto Park, 395 West Mountain Road (Map A-19, Block 503, Lot 2E8). R-40 Zone (public hearing closed at meeting of July 21, 2008).

Mr. Peck reviewed his memo dated August 7, 2008 with the Commissioners in which he addressed issues and questions that were raised at the last meeting:

Should the application be approved, a copy of the final site plan would need to be submitted to the STC, which would then make a decision as to whether a revised STC permit would be needed. Mr. Barnett asked if an approval could be conditioned upon STC's approval and Attorney DeCrescenzo advised that the Commission cannot condition their approval based on the action of an agency over which it has no authority.

Mr. Peck distributed a color-coded map delineating the various types of proposed parking space allocation projections into 2012-2015. He stated that there are 1,310 total spaces, but involve inventory spaces that are stacked 3-4 cars deep. He stated that all existing spaces have been field verified.

With regards to the status of a maintenance bond, Mr. Peck stated that the applicant has indicated that they are willing to put that bond in place at any time. It was staff's recommendation that the bond be issued just prior to the issuance of a final CO so as to stretch out the compliance period as long as possible. Attorney DeCrescenzo concurred with this recommendation and added that a bond is not needed if a CO is not in place, as, if there is some site condition that does not satisfy a site plan requirement then

the CO does not get issued. The bond gives the Town enforcement powers over the site plan after the CO is issued.

Chairman Barney asked if the bond period could be extended out to four years. Attorney DeCrescenzo indicated that it could be done if the applicant consents, but noted that a two-year period is typical. Mr. Peck added that there is also a need to separate out what is legitimately bondable from items that are enforceable under zoning enforcement mechanisms. The estimated bond amounts that have been submitted by the applicant for construction items such as catch basins, drainage, grading, etc. is approximately \$252,000 and \$30,000 for landscape maintenance and other site activities that have been added.

Mr. Peck indicated that the Fire Marshall has reviewed the parking arrangement plan and is satisfied, but added that the Fire Marshall will have to continue to make visits to the site to make sure that the fire lanes are open and kept accessible so that fire vehicles could get to the various locations as he does periodically for all commercial sites.

Mr. Peck stated that the Chief of Police has reviewed the lighting plan for the proposed parking lot and, although the police prefer that sites be lit in areas in which vehicles will be stored on commercial sites overnight, in deference to neighbors' concerns with regards to excessive lighting in the residential area, he would not press the issue. However, he recommended that access to the sites be barred by locked gates. Mr. Peck stated that the applicant feels that security cameras would not work well or be very effective.

Mr. Peck stated that the applicant has submitted a revised conservation easement area map and a declaration of covenants and restrictions regarding the prohibition of lights and structures on the Markie property, as well as a release of the earlier 1942 easement from Crowley to Fiora. In addition, Attorney Sherwood for Ms. Fiora has also submitted a letter indicating that they would agree to minimize the impact on the future roadways through that area and also provided a release of the Fiora right-of-way over that property where it currently exists.

Attorney DeCrescenzo stated that he has reviewed the documents and reserves the right to review any further documents depending on any action taken this evening. He stated that the easement documents must refer to the specific map that is currently before the Commission tonight to be acted on.

Mr. Peck referred to a reduced scale map labeled "5" that indicated the conservation easement, which opens along West Mountain Road roughly, but not entirely, from the McDonald's property all the way up to the Fiora

right-of-way. Chairman Barney asked who owned the corner property. Mr. Peck stated that he did not know, but that the applicant's attorney has represented that it is not owned by the applicant, but rather a third-party. The property north of the Fiora right-of-way, which is darkened in, is all conservation easement area. The area below the Fiora right-of-way (and is less darkened in) is a different type of conservation easement area where there will be planting and landscaping. It is the area where the parking lots were pulled southward when the Commission requested that encroachment into the Markie property be reduced. The applicant has indicated that this area can be called the "interior conservation easement" or wording to that effect.

Mr. Peck suggested the following additions to the conservation easements:

1. Putting a conservation easement area with some different wording over the detention basin area with provisions for annual maintenance.
2. The property south of the Fiora right-of-way, along the Fiora property line down to the rear of the Best Buy store, as was previously put in place by the Commission, could have similar wording to that used for the detention basin.

Chairman Barney asked if a conservation easement could be issued with the stipulation that they can only be used for parking lots. Attorney DeCrescenzo said placing a restriction on what can be done with the land is exactly what conservation easements do, adding that the applicant had proposed a document entitled "Conservation Easement and Restrictions/Transfer of Development Rights" that addresses development restriction over all the parking areas with map references for identification prior to the close of the hearing. He said that the Commission can extend site restrictions to the detention basin as a condition of approval (leaving it up to counsel for review as consistent with that action), but they need to make specific map references. He suggested that a condition be that a mylar cannot be filed in the Town records before it is signed off on by the Commission Chairman.

Mr. Elliott asked how the existing easement would be replaced. Attorney DeCrescenzo stated that there would first have to be a release of the old easement and a substitution of the new one. The release, by its terms, would require the consent of the Zoning Commission and the Board of Selectmen. The acceptance of the new conservation restrictions and development rights would require the consent of the Zoning Commission, approval and acceptance by the Board of Selectmen, and acceptance by the Simsbury Land Trust or some other land trust or conservation group acceptable to the Commission, noting that the Simsbury Land Trust has not yet agreed to accept that property right, although currently has it under review.

Mr. Elliott asked about the proposal to add an R-40 lot. Attorney DeCrescenzo stated that the idea was that the property to the north would continue to abut the residential zone so that there could not be a future argument made to the Commission that, since that property abuts a business zone, they also should be zoned a business consistent with the adjacent zone. In essence, there is a "fire break" of a residential zone that wraps the northern boundary of the site such that the residents' property to the north continues to abut a residential parcel. Chairman Barney confirmed that there is a conservation easement on all the R-40 land.

sly 50', is now 75' wide so that the coverage on the Hoffman property is exactly at 60%. Further, should the future road ever be developed, then the closest that it could get to any residential property would be 100'.

Mr. Elliott wondered if ownership of the Markie parcel could be transferred to the Town as open space. Attorney DeCrescenzo stated that Hoffman would retain a very limited right of fee ownership with no right to develop the property. He also advises against the Town taking title to property due to insurance risk and potential liability issues.

Mr. Peck stated that access to the Jeep road would be restricted by a locked, residential-style gate and that emergency access to the Jeep road would be required by fire, police and emergency services and that all would have a key to this gate. Also, the applicant has agreed to eliminate a previously proposed residential lot fronting on West Mountain Road and the map reflects this change.

Mr. Peck added that any requirement of the previous 2007 approval that was granted by the Commission would remain in effect unless it is in conflict with those that are modified by the Commission. He stated that, should the application be approved, then the motion should include words to that effect.

Attorney DeCrescenzo reiterated the importance of all documents being reviewed by staff and the Commission Chairman prior to recording them. Chairman Barney stated that he was uncomfortable having a major map missing at the time of approval. Mr. Vaughn concurred. Chairman Barney asked if a vote could be deferred until a map and documents could be prepared. Attorney DeCrescenzo asked for the item to be passed on the agenda in order to do so.

Relative to the Dorset Crossing application, Mr. Delehanty asked the other Commissioners for their thoughts on imposing footprint limitations. Chairman Barney thought that such limitations would be appropriate and consistent with the POCD. Mr. Barnett agreed, noting that any future site applications requiring something larger could be addressed at the time of application. Mr. Elliott stated that the POCD provides a framework for

size limitations and was concerned about what the ramifications of imposing a 20,000-25,000 limitation would have when pushed out to other sites. He noted that there are other, very different areas in Town zoned B-3 that would be impacted and was not sure that the property owners are aware of this pending change and was concerned about unintended consequences and the fact that such a substantial change had been made in the application. Mr. Delehanty thought that there had not been a substantial change made, but rather a case of the parties working together to achieve a positive result.

The Commission discussed their capacities and boundaries for addressing changes within the scope of a public hearing as determined to be acceptable by counsel.

Mr. Delehanty made a motion to approve the application of P. Anthony Giorgio, Member, Dorset Crossing LLC, c/o The Keystone Companies, LLC, Thomas W. Fahey, Jr., Attorney, Agent, for a Text Amendment to Article Seven, E.3.a. of the Simsbury Zoning Regulations so as to add the words "or adjacent to" and to add to Article Ten, E.5.e to allow for a waiver of no more than 25% of the total parking requirements for development comprised of the mix of land uses which have peak parking demands at different times of the day or week so as to justify an assumption of multiple use of the same parking spaces. Mr. Elliott seconded the motion. The motion failed 2-4 (Mr. Gallagher and Mr. Delehanty voted "yes").

Mr. Delehanty made a motion to approve the application of P. Anthony Giorgio, Member, Dorset Crossing LLC, c/o The Keystone Companies, LLC, Thomas W. Fahey, Jr., Attorney, Agent, for a Text Amendment to Article Seven, E.3.a of the Simsbury Zoning Regulations so as to add the words "or adjacent to" and to add Article Ten, E.5.e to allow for a waiver of no more than 25% of the total parking requirements for development comprised of the mix of land uses which have peak parking demands at different times of the day or week so as to justify an assumption of multiple use of the same parking spaces and to add Article Ten, A.4.b whereby the maximum footprint for buildings containing individual shops, restaurants and other retail and service establishments shall be 25,000 square feet. Mr. Barnett seconded the motion. The motion failed 3-3 (Commissioners Gallagher, Vaughn and Elliott voted "no").

The Commissioners further discussed the implications of imposing a footprint limitation.

Mr. Barnett made a motion to reconsider the issue. Chairman Barney seconded the motion and it passed 5-1 (Mr. Elliott voting "no").

Mr. Delehanty made a motion to approve the application of P. Anthony Giorgio, Member, Dorset Crossing LLC, c/o The Keystone Companies, LLC,

Thomas W. Fahey, Jr., Attorney, Agent, for a Text Amendment to Article Seven, E.3.a. of the Simsbury Zoning Regulations so as to add the words "or adjacent to" and to add Article Ten, E.5.e to allow for a waiver of no more than 25% of the total parking requirements for development comprised of the mix of land uses which have peak parking demands at different times of the day or week so as to justify an assumption of multiple use of the same parking spaces and to add Article Ten, A.4.b. whereby the maximum footprint for buildings containing individual shops, restaurants and other retail and service establishments shall be 25,000 square feet. Mr. Barnett seconded the motion and it passed 5-1 (Mr. Elliott voted "no").

Mr. Barnett made a motion to approve the application of P. Anthony Giorgio, Member, Dorset Crossing LLC, c/o The Keystone Companies, LLC, Thomas W. Fahey, Jr., Attorney, Agent, for a Zone Change from I-3 and B-2 to B-3 on property located at 1507 and 1515 Hopmeadow Street as modified by the latest submittal dated 7/28/08 and a map prepared for Dorset Crossing, LLC, prepared by F.A. Hesketh & Associates, Inc. dated 4/18/08, last revised 7/28/08, sheet D-c-1. Mr. Delehanty seconded the motion and it passed unanimously.

Mr. Elliott made a motion to approve the application of Andrew M. Yakemore, Simsmore Square - Owner, for a Special Exception, pursuant to Article Eight, Section a.9 of the Simsbury Zoning Regulations, to allow for an increase in coverage to 53.3% for proposed additional parking on property located at Simsmore Square, 524 Hopmeadow Street. Mr. Delehanty seconded the motion and it passed unanimously.

Mr. Barnett made a motion to approve the application of Andrew M. Yakemore, Simsmore Square - Owner, for a Site Plan Amendment for a proposed new business/residential building on property located at Simsmore Square, 524 Hopmeadow Street with the condition that the recommendations of the Design Review Board be adopted. Mr. Elliott seconded the motion and it passed unanimously.

Mr. Gallagher made a motion to approve the application of Maryanne Strindberg, Valley Psychiatry, LLC - Owner, for a Site Plan Amendment to construct a driveway on property located at 558 Hopmeadow Street, including recommendations made by the Design Review Board. Mr. Delehanty seconded the motion and it passed unanimously.

Mr. Delehanty made a motion to approve the application of Tom Martin, President, Phonon Corporation- Owner, for a Site Plan Amendment for construction of an addition at the Phonon Corporation on property located at 90 Wolcott Road. Mr. Vaughn seconded the motion and it passed unanimously.

Attorney DeCrescenzo outlined for the Commission the plans and instruments of conveyance that are currently on file relative to the Hoffman application. He showed the Commission a map in which all areas depicted in grey represent documents which have been filed with the Commission to establish a conservation restriction. Everything on the north side of the Markie property line is covered by a transfer of development rights to the Town of Simsbury. The zone change line has been moved to the northerly boundary of the new Fiora road.

The only change being asked for this evening is that the Commission has asked that the conservation restriction be extended down to the Best Buy store and over the detention basin west and cover all the parking lots south of the Markie property. Everything on the Markie property is a transfer of development rights proposed by the applicant. There will be an extension of a new conservation area from the westerly border of the property down to the Best Buy parking. There also is the addition of a conservation restriction on West Mountain Road to include the detention basin and extended to include all of the newly constructed the parking lots.

Mr. Delehanty asked the other Commissioners to state whether they were ready to consider a motion. He said that he was in favor of making a motion. Although he was cognizant of the neighbors' concerns, he felt that the development would be essentially invisible to the neighborhood and that a resolution would establish a stop point for further development. He noted that Hoffman Enterprises is a significant business in Town and thought this project would significantly enhance their operation or business in Simsbury.

Mr. Elliott stated that the March 2007 approval noted that the rezoning of the Markie parcel at 395 West Mountain Road represents an unacceptable encroachment of the commercial zone into an established residential area. Although sympathetic to the Hoffmans' plight and recognizing that they are a major factor in the economic life of the Town, he felt a commitment to the neighbors, whose ownership predates that of the Hoffmans and who have made repeated efforts to contain development in this area. Therefore, he could not support any motion.

Mr. Vaughn noted that the previous approval used the words "in perpetuity" and a commitment was made to the neighbors. He stated that he would follow the lead of the Commissioners that made those commitments.

Chairman Barney stated that he felt abused as a public servant and that the Town has been abused by the applicant in that facts were not adequately divulged and, consequently, the neighbors have not been dealt with properly. He stated that he now realizes that "in perpetuity" is not a

two-party restriction and that it must be a three-party or more restriction and a new resolution would impose such a restriction. He felt that the new structure would provide better protection to the neighbors.

Re: Application of Jeffrey Hoffman, Hoffman Enterprises-Owner, Attorney Thomas J. Donahue, Jr.-authorized agent, for a zone change from R-40 to B-3 on property located at the Hoffman Auto Park, 395 West Mountain Road (Map A-19, Block 503, Lot 2E8) and on land of Fiora, West Mountain Road (Map A-20, Block 503, portion of Lot 2A, (the First Application); and the Application of Jeffrey Hoffman, Hoffman Enterprises-Owner, Attorney Thomas J. Donahue, Jr., authorized agent, for a site plan approval including improvements for a proposed vehicle storage area on property located at the Hoffman Auto Park, 395 West Mountain Road (Map A-19, Block 503, Lot 2E8) and on land of Fiora, West Mountain Road (Map A-20, Block 503, portion of Lot 2A, (the Second Application), as shown on submitted maps and plans as follows:

Maps and Plans specifically referenced in this decision include:

1. Final Site Plan, Proposed Vehicle Inventory Storage for Hoffman Enterprises, Simsbury Connecticut dated July 21, 2008.
2. Comprehensive Parking Plan, Hoffman Auto Park Redevelopment, Albany Turnpike (Route 44), West Simsbury, Connecticut July 28, 2008.
3. Map/diagram showing 11 points of revision/refinement for proposed vehicle storage area on property at 395 West Mountain Road, Simsbury, Connecticut, revised June 23 and June 27, 2008. Last revised July 21, 2008.
4. Comprehensive Site Plan for Proposed Vehicle Storage Area at 395 West Mountain Road and Albany Turnpike, Simsbury, Connecticut, Dated May 15, June 5, June 10, and June 27, 2008. Last Revised July 21, 2008.
5. Easement Map Prepared for Hoffman Enterprises, West Mountain Road and Albany Turnpike (Route 44), Simsbury, Connecticut, dated July 23, 2008 by Milone and MacBroom.
6. A map, as marked by the Commission, regarding conservation easement and development restrictions on August 11, 2008.

Documents submitted and specifically made part of this decision also include:

1. Conservation Easement and Restrictions and Transfer of Development Rights document.

2. Declaration of Covenants and Restrictions regarding no lights and structures on Markie property.
3. Letter from Attorney Sherwood dated August 4, 2008 regarding Ms. Fiora's intent to minimize clearing, grading and pavement and to minimize impervious surfaces when and if she ever proposes to construct a town standard roadway to her property.
4. Letter from Fuss & O'Neill regarding STC requirements after local approval.
5. Attorney Donohue regarding release of prior easement.
6. Hoffman letter of Access to inspect site as may be needed.
7. Bond Estimate for site improvements to be submitted to the Town Engineer for review and approval.
8. Parking projection documents from Honda, Toyota and Nissan through 2012-2015.
9. The remaining contents of the official file as modified by the Commission this evening with discussion.

The Simsbury Zoning Commission, in accordance with all applicable statutes and Zoning Regulations considered the above referenced application at a Special Meeting held on August 11, 2008 and took the following action:

Upon a motion made by Chairman Barney and seconded by Mr. Gallagher, the following resolution was adopted. Voting on this item: Chairman Barney and Commissioners Delehanty, Gallagher, Barnett, Elliott and Vaughn.

WHEREAS, the Commission held public hearings on these applications on May 19, June 2, June 16, July 7 and closed the public hearing on July 21, 2008 after taking all testimony as required by law and resolves the following; With regard to the First Application:

WHEREAS, the applicants propose to rezone the subject property from R-40 to B-3, said property consisting of the fifty (50) foot wide strip of land consisting of .90 acres owned by Fiora and the former Markie (now Hoffman) parcel consisting of 5.97 acres of land; and

WHEREAS, the Commission takes note of the Planning Commission's review of this application and notes that its recommendation is found to be an approval based on the statutory requirements pertaining to such referrals;

and

WHEREAS, the applicants have made significant modifications to the originally submitted applications which make them acceptable in terms of fulfilling the Commission's duty to both increase and improve the economic development activity in the Simsbury while balancing its additional task of protecting existing residential neighborhoods; and

WHEREAS, the Commission finds the First Application to rezone the property to be acceptable in part but only with certain restrictions, modifications and other conditions as have been agreed to by the applicant which are contained in and made part of the site plan portion of this decision.

THEREFORE BE IT RESOLVED, that the Application of Jeffrey Hoffman, Hoffman Enterprises-Owner, Attorney Thomas J. Donahue, Jr.-authorized agent, for a zone change from R-40 to B-3 on property located at the Hoffman Auto Park, 395 West Mountain Road (Map A-19, Block 503, Lot 2E8) and on land of Fiora, West Mountain Road (Map A-20, Block 503, portion of Lot 2A, is approved in part and denied in part as follows:

1. The .90 acre, Fiora fifty (50) wide strip of property is hereby approved for rezoning from R-40 to B-3. (This refers specifically to the linear strip as shown on the 2007 site plan which runs directly from West Mountain Road to the remainder of the Fiora property which lies to the
2. west of the Hoffman property). The rezoning ends at the inside southern boundary of the new Fiora fifty foot right-of-way.
3. The 5.97 acre, former Markie parcel is approved for rezoning from R-40 to B-3 with the exception of a seventy five (75) foot wide strip of land at the northernmost end of the parcel running from east to west from West Mountain Road to other property of Fiora. This strip of land is intended to remain as a permanent, natural buffer to the residential use to the north and is to remain residentially zoned as R-40 land in perpetuity in accordance with the Conservation Easement agreement applicable to that property.
4. Other modifications to the originally submitted application were also made during the course of the public hearing and have been agreed to by the applicant. These changes are reflected in the accompanying site plan which is the subject of the next section of this resolution. Specifically, these changes include, but are not limited to leaving a 75 foot wide strip of land on the north side of the Markie parcel as R-40.
5. As part of this rezoning partial approval the applicant shall file an A-2 survey showing the proper demarcation of the R-40 and B-3 Zone

demarcation line. This survey shall show the entire Hoffman Auto Park property with an accurate calculation of site coverage which shall not exceed 60% site coverage. Actual site coverage on the ground as defined in the zoning regulations, shall not exceed 60%.

With regard to the Second Application:

Regarding the application of Jeffrey Hoffman, Hoffman Enterprises-Owner, Attorney Thomas J. Donahue, Jr., authorized agent, for a site plan approval including improvements for a proposed vehicle storage area on property located at the Hoffman Auto Park, 395 West Mountain Road (Map A-19, Block 503, Lot 2E8) and on land of Fiora, West Mountain Road (Map A-20, Block 503, portion of Lot 2A (the Second Application) as shown on submitted maps and plans:

WHEREAS, the latest site plan shows the proposed site improvements and layout as shown on the "Layout and Landscaping Plan" dated June 27, 2008 and retitled "Alternate Plan" and redated 7/9/08 by the applicant:

WHEREAS, the applicants propose to construct vehicle inventory storage parking areas on property to the rear (north) of the existing Hoffman Auto Park by constructing said parking areas as shown on the comprehensive parking plan dated July 28, 2008 which was discussed and requested on July 21, 2008; and

WHEREAS, the Commission finds the applicants also propose a fifty (50) foot right-of-way to run to Fiora for the purpose of a possible future road. However, at this time this right-of-way is to be used for the private use of Fiora only; and

WHEREAS, no commercial use shall be made of this roadway either now or in the future and no connection to the inventory parking storage area or any other part of the Hoffman Auto Park commercial operation is permitted; and

WHEREAS, the applicant has agreed to eliminate a previously proposed residential lot on the Markie property which fronted on West Mountain Road; and

WHEREAS, the applicant also proposes to designate and permanently protect, certain land areas as Conservation Easement areas as shown on the Conservation Easement Area map dated July 23, 2008, as revised by the Commission at its August 11, 2008 meeting and as described, restricted and conditioned in accordance with a Conservation Easement and Restrictions and Transfer of Development Rights document as reviewed and approved by the Town Attorney; and

WHEREAS, the Commission finds and the applicant agrees that the following changes have been made, are as shown on the latest revised site plans and are acceptable.

Specifically this site plan dated July 21, 2008, shows:

1. A total amount of impervious parking surface on the Markie property of .99 acres. This is reduced from the 2.1 acres as shown on the initial submission. This represents a 52.8% reduction in impervious area on this property. This coverage means that only 17% of the 5.97 acre parcel will ever be used for inventory storage.
2. The closest that any portion of the road pavement of relocated Fiora right-of-way shall come to the northern property line (n/f Ladetto) is 100 feet.
3. The northern extent of the inventory parking area has been relocated southward.
4. The total number of parking spaces including town standard single loaded and double loaded spaces as shown on the Comprehensive Parking Plan dated July 28, 2008 is 1,310. This number of spaces accommodates all projections for all uses of this site through 2015 according to the applicant. There are no additional spaces for additional parking on this site.
5. The applicant has agreed to remove all lighting fixtures from the former Markie parcel and not put in any new lighting on this parcel in order to minimize the lighting effects from a commercial operation upon any residential neighbors. While the Police Department as a rule favors security lighting in such areas, the Commission agrees that as a compromise in this area of commercial and residential interface the lighting should be eliminated.
6. The applicant has agreed to prohibit any structures on the former Markie property except for the necessary retaining walls as shown on the submitted plans.
7. The applicant proposes to install an eight (8) foot cedar fence along the eastern and northern portions of the property as is shown on the referenced map and submitted specifications.
8. The landscaping, planting and maintenance, including a two year maintenance bond, said two year period to run from the date of the issuance of the last permanent certificate of occupancy for buildings on the site.

The berm area and other landscaped areas and areas to be landscaped are as shown on the referenced map have been agreed to by the applicant.

9. The maintenance and enhancement of the existing mature trees has been agreed to by the applicant to insure the maximum amount of screening for the residential neighbors.

10. The Fiora right-of-way (future potential roadway) will be realigned as shown on the referenced plan so as to preserve as many significant, mature trees as possible and reduce site impacts when or if the right-of-way is used for a future roadway. This willingness to minimize site disturbance and especially if a roadway is proposed and constructed is verified by letter dated August 4, 2008 from Attorney Sherwood for Fiora.

11. The interior retaining wall on the north side of the inventory storage parking area will be modified to reduce its impact and provide landscaping in this area.

12. The conservation area has been reconfigured and protected as described above and as shown on the referenced site plan and as described in the Conservation Easement document to be approved by the Town Attorney.

13. The Simsbury Land Trust or other appropriate private land conservation organization has been added as an additional enforcement party with regard to protecting the residential neighbors. After acceptance, any proposed changes in the Conservation Easement areas will need to be approved as described in the Conservation Easement document.

14. The site plan shall be modified as per the August 11, 2008 meeting to include conservation easements or development restrictions over all new parking areas, the extension of ten foot conservation restriction around the lot owned by others in the southeast corner and the extension of the conservation restrictions in the northwest corner to the Best Buy parking lot. The above cited aspects of the site plan shall be conditions of approval.

WHEREAS, the Commission finds the submitted site plan, revised as above and in accordance with its suggestions and with the agreement of the applicant to be acceptable including the following:

a. Favorable review by the Town Attorney of all referenced and necessary documents, maps and plans including the proposed Conservation Easement and Restrictions and Transfer of Development Rights document based on the referenced site plan and comprehensive final parking plan as agreed to by the applicant.

b. Receipt, review and approval of a release from Fiora which is acceptable to the Town Attorney regarding any aspect of the claimed right of way on this property.

c. Acknowledgment of the letter from Attorney Sherwood regarding Fiora's willingness to minimize any tree cutting or cutting or filling of earth materials associated with a future road which may be proposed. The Commission makes no statement on any future road with regard to its acceptability at this time.

d. No additional tree cutting or clearing shall be done outside the 2-foot wide Jeep road travel way at this time. In the event that a future road is proposed, any tree cutting in this right-of-way shall only be done under the supervision of the Town Environmental Officer.

THEREFORE BE IT RESOLVED, that the application of Jeffrey Hoffman, Hoffman Enterprises-Owner, Attorney Thomas J. Donahue. Jr., authorized agent, for a site plan approval including improvements for a proposed vehicle storage area on property located at the Hoffman Auto Park, 395 West Mountain Road (Map A-19, Block 503, Lot 2E8) and on land of Fiora, West Mountain Road (Map A-20, Block 503, portion of Lot 2A (the Second Application) as shown on submitted maps and plans as referenced above is hereby approved with all the referenced revisions, conditions, modifications and limitations herein.

THEREFORE BE IT ALSO RESOLVED, that a final site plan showing all the above items shall be recorded on the Simsbury Land Records at the same time as the above referenced Conservation Easement documents and site A-2 survey showing the entire site, all conservation easement areas, and all items and areas which are subject of this decision. It shall be understood that the Simsbury Building Official shall not issue any building permits for this property until these documents are recorded on the Simsbury Land Records after they are reviewed and approved by the Town Attorney. This review, approval and filing shall be coordinated by the Director of Planning.

Voting in favor of the above motion: Chairman Barney, Commissioners Delehanty, Barnett, and Gallagher.

Voting in opposition to the above motion: Commissioners Elliott and Vaughn.

Dated August 11, 2008

Exhibits attached

Attorney DeCrescenzo suggested that, since there has been significant addition made to the bondable area, that it be left to be determined by Town staff. The Commissioners wanted the bond term to be extended to four years.

VIII. EXECUTIVE SESSION TO DISCUSS THE GOZZO LITIGATION

The Commission adjourned to Executive Session at 10:47 pm with Attorney DeCrescenzo and Mr. Peck.

IX. OTHER MATTERS AS MAY PROPERLY COME BEFORE THE COMMISSION

None.

X. STAFF REPORTS

None.

XI. ADJOURNMENT

Mr. Barnett made a motion to adjourn the meeting at 11:01 pm. Mr. Gallagher seconded the motion and it passed unanimously.

Garrett Delehanty, Jr., Secretary