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Cc:

ADOPTED

ZONING COMMISSION MINUTES
DECEMBER 14, 2009
SPECIAL MEETING

I. CALL TO ORDER

Mr. Barnett called the Special Meeting of the Zoning Commission to order at 7:00 p.m. in the Program Room at the Simsbury Public Library. The following members were present: Bruce Elliott, James Gallagher, Ed Pabich, Dave Ryan, John Vaughn, Amy Salls, and Robert Pomeroy. Also in attendance were Director of Planning Hiram Peck, Zoning Enforcement Officer Howard Beach, Town Attorney Robert DeCrescenzo, Commission Clerk Alison Sturgeon and other interested parties.

II. APPOINTMENT OF TEMPORARY ZONING CHAIRMAN

Mr. Pabich made a motion to nominate Mr. Barnett as temporary Zoning Chairman. Mr. Gallagher seconded the motion, which was unanimously approved.

III. APPOINTMENT OF TEMPORARY ZONING SECRETARY

Mr. Barnett made a motion to nominate Mr. Pabich as temporary Zoning Secretary. Mr. Gallagher seconded the motion, which was unanimously approved.

Mr. Barnett stated that he would like to select the new Chairman and Secretary at the same time; they will be a team. Attorney DeCrescenzo stated that this would be fine.

Mr. Barnett made a motion to merge Items IV. and V. together. Mr. Vaughn seconded the motion.

Mr. Elliott stated that he believes their procedures state that this needs to be done separately.

The motion was approved. Mr. Elliott voted in opposition.

IV. ELECTION OF ZONING CHAIRMAN

V. ELECTION OF ZONING SECRETARY

Mr. Barnett made a motion to nominate Mr. Gallagher as permanent Chairman of the Zoning Commission and Mr. Pabich as permanent Secretary of the Zoning Commission. The motion was seconded and was unanimously approved.

VI. APPOINTMENT OF ALTERNATES

None were needed.

VII. APPROVAL OF MINUTES of November 16, 2009

Mr. Pabich made a motion to approve the November 16, 2009 minutes as written. Mr. Vaughn seconded the motion, which was unanimously approved.

Mr. Pabich read the call.

VIII. PUBLIC HEARING(s)

a. Application of the Town of Simsbury for a Text Amendment to the Town of Simsbury's Zoning Regulations, pursuant to Article Ten, Special Regulations, Section H, Regulations Governing Uses Which Sell Alcoholic Beverages for a proposal to amend the wording of the existing zoning regulation. (continued from meeting of 11/16/2009)

Mr. Peck stated that there was discussion at the last meeting regarding the need for this amendment. This is a clarification of the wording "sell or serve alcohol" that is in the current regulation. He distributed the revised regulation to the Commission members.

Mr. Peck stated that there are two essential differences in the amendment from the current regulation. One is for clarification with regard to sell or serve alcohol. The revised regulation states that the selling, serving, giving away, distribution or consumption of alcohol is an activity that may be permitted by the Zoning Commission. Mr. Peck stated that the other major change significantly affects the location of facilities that sell alcohol. In the current regulations, it states that someone can move a package store within 1,000 feet of its current location and not seek a new permit. The change in this regulation now seeks to correct this by stating that any new permit needs to come before the Zoning Commission for approval.

Mr. Peck stated that there has been a great deal of discussion regarding if these changes will significantly impact uses on Town properties, specifically the Performing Arts Center. He stated that the revisions to the Public Gathering Permit make clearer the process that someone has to go through in order to get this permit. When an applicant needs permission from this Commission to have alcohol in conjunction with a public gathering, this is when the Commission gets involved. He stated that there is no real difference in the Public Gathering Permit process, nor will there be a real difference in the fact that someone serving alcohol has to come to the Commission. Mr. Peck stated that there is also confusion regarding BYOB because it is not clear what this actually means. This also needs to be clarified. He stated that there will not be a substantial difference regarding how the process works, although there will be a substantial difference because the regulation will now be clearer.

Mr. Elliott stated his concern regarding if the Hartford Symphony Orchestra was aware of these proposed changes and, if so, had they given their input. Mr. Peck stated that he has not received any comments from the HSO.

Mr. Ryan stated that he is also the Chairman of the Performing Arts Center Board. That Board feels that this requirement is a big change and will not be lightly dealt with by the HSO. He stated that liability may be an issue with them. Mr. Ryan stated that although an applicant did not follow the rules this summer, he does not feel that these changes to the regulation for everyone are necessary.

Regarding liability, Attorney DeCrescenzo stated that in the case of a Special Exception for a Public Gathering Permit on the Performing Arts Center property, the liability issues are largely covered by the license agreement between the Town and the event sponsor. He stated that he does not feel that the Special Exception permit is different from other permits that are issued by the Town for conduct on public property, other than it involves alcohol. Currently, this is handled without involvement by the zoning Commission through the license agreement or the rental agreement. He feels that this amendment would bring the event sponsor before the Zoning Commission that would otherwise not be before them. It also requires the issuance of an additional Special Exception permit. He suggested that, although it would not need to be written into the regulation, a standard condition of approval be that proper insurances are presented.

Chairman Gallagher questioned how the BYOB policy is currently handled if an incident occurs. Attorney DeCrescenzo stated that the Town would follow the typical negligence rule that the event sponsor knew or should have known that someone came to their event and consumed too much alcohol.

Mr. Barnett suggested that they get more information regarding what the dollar amount would be for the applicant to get insurance for these additional elements. He stated that the Commission should know what might be added to their burden.

Attorney DeCrescenzo recommended that these amendments be reviewed by the HSO. They can then give this Commission their comments regarding these changes.

Mr. Pomeroy stated that if there is a specific action or behavior that this Commission is trying to fix, this Commission may be able to do this through prohibiting that action through the licensing agreement rather than making these new rules. Attorney DeCrescenzo stated that the licensee has only those rights given to it under the license agreement.

Mr. Peck stated that there is a specific mechanism in the revised Public Gathering Permit that makes the penalty regarding non-compliance very severe.

Mr. Elliott questioned if the surrounding Towns are having these same issues. Mr. Peck stated that he will research this to find out if they are and how they are handling these issues. Attorney DeCrescenzo stated that most Towns have a prohibition of sales and distribution, etc. on Town owned property.

Mr. Pabich made a motion to continue the application of the Town of Simsbury for a Text Amendment to the Town of Simsbury's Zoning Regulations, pursuant to Article Ten, Special Regulations, Section H, Regulations Governing Uses Which Sell Alcoholic Beverages for a proposal to amend the wording of the existing zoning regulation. Mr. Elliott seconded the motion, which was unanimously approved.

b. Application of Rose Marie DiTucci, Owner, Maria Preiser, Agent, for a Special Exception, pursuant to Article Seven, Section C.9 of the Simsbury Zoning Regulations for an accessory apartment on property located at 16 August Road. R-25 Zone

Ms. Preiser stated that they would like to build an in-law apartment. Her family would be moving into this addition to help care for her father and mentally and physically disabled sister. She stated that they did look at houses for sale that did have in-law apartments, although nothing seemed like it would work for their situation. She stated that during this time, her father's health declined. Moving him at this point in his remission would be very difficult for his quality of life. Ms. Preiser stated that having her family live when her parents would help to keep her father in this home.

Chairman Gallagher questioned how many square feet the addition would be. The contractor stated that the addition of gross living space would be 954 s.f. With this addition, the total square footage of the house will be just over 3,000 s.f.

Mr. Elliott stated that the Regulations stated that the in-law space cannot be greater than the lesser of a third of the existing or 1,000 s.f. He stated that he believes that this would be more than one-third of the existing house.

Mr. Beach stated that the area that is being converted into the in-law apartment already exists. The addition that the applicant would like to build is for their family to move into. The space that is being made into the in-law apartment is part of the original house.

Chairman Gallagher stated that he has received 11 letters from abutting neighbors stating that they do not oppose this addition.

Chairman Gallagher asked if there were any comments or questions from the public. There were none. He closed the public hearing.

Mr. Pabich made a motion to amend the agenda in order to vote on this application. The motion was seconded, and unanimously approved.

IX. DISCUSSION AND POSSIBLE VOTE ON ANY AGENDA ITEM

Mr. Elliott stated that he feels this application is inconsistent with the Regulations. Mr. Beach stated that the Regulation states that the gross floor area of the accessory dwelling unit may not exceed one-third of the gross area of the single family home. He stated that the gross area that is being converted is going to be the in-law apartment, which is 900 s.f. He stated that part of the existing home is being used as the in-law apartment. There is nothing in the Regulation that prohibits an addition to be built at the same time as an in-law addition. Attorney DeCrescenzo stated that this is a reasonable interpretation of the Regulations.

Mr. Elliott made a motion to approve the application of Rose Marie DiTucci, Owner, Maria Preiser, Agent, for a Special Exception, pursuant to Article Seven, Section C.9 of the Simsbury Zoning Regulations for an accessory apartment on property located at 16 August Road as submitted. Mr. Pabich seconded the motion, which was unanimously approved.

X. PRESENTATION(s)

a. Application of John D. Ritson, Member, R. C. Connectors, LLC,

Owner, for a Site Plan Approval for the construction of a three-story apartment building on property located at 144 – 150 Hopmeadow Street. B-1 Zone (continued from meeting of 11/16/2009)

Mr. Ritson, RC Connectors, stated that he is seeking a Site Plan approval. He stated that he has already received a zone change for this site; approval from the Wetlands Commission; a variance from the Zoning Board of Appeals to allow increase residential use to 91%; and approval from the Design Review Board. He stated that he has also been working with the Aging and Disability Commission to accommodate the elderly and people with disabilities. This proposed 3-story building will have an elevator.

Mr. Elliott stated that the Commission did not receive the elevation plans or floor plans for this application. He also questioned that if no handicapped people apply for any of these apartments, would Mr. Ritson keep the first floor apartments conventional. Mr. Ritson stated that all of the units will adhere to ADA standards.

Mr. Elliott read a portion of the Zoning Board of Appeals minutes regarding Mr. Ritson describing the handicapped accessible units having 3' doors; a 6' radius in the bathrooms; lower counters in the kitchen and bathrooms; significant amounts of handrails for grasping; and open areas under the counters for wheelchairs. He stated that Mr. Ritson had also stated that the units would not be constructed in this way unless he received a pre-construction deposit. Mr. Ritson stated that he will be constructing the units this way if he gets specific requests to fill from Aging and Disability; he is giving them first benefit of these apartments.

Mr. Barnett questioned what Mr. Ritson's principle hardship was when he was before the Zoning Board of Appeals. Mr. Ritson stated that the principle hardship was the layout of this lot; the building has to be put on the back of the property. This makes the space harder to rent because there is no frontage. He stated that the land and the lot layout were the main hardships.

Mr. Vaughn questioned if there was anything different in Mr. Ritson's presentation from the last meeting. Mr. Ritson stated that there was not. Mr. Vaughn questioned if the Commission got clarity regarding the legality of the vote regarding this application at the last meeting. Attorney DeCrescenzo stated that if a motion to approve is made and it fails by a 3-3 vote, this would be a denial of the application. After reading a portion of the November 16, 2009 Zoning Commission minutes, he stated that a Court would find that it was the will of this Commission that this application come before the new Commission at this meeting. Attorney DeCrescenzo stated that he believes that Mr. Ritson's application is properly before this Commission tonight.

Mr. Elliott stated that his motion at the last meeting was meant to defer consideration until legal advice could be received regarding the validity of the 3-3 vote.

Attorney Sherwood, representing Mr. Ritson, stated that if the Commission decides that the motion Mr. Elliott made at the last meeting was not a motion for reconsideration, Mr. Ritson will reapply. There is no restriction for reapplying for a Site Plan approval after any such plan has been denied. He stated that there is no substance to the decision other than whether the Commission would like to hear this application tonight or next month.

The Zoning Commission members agreed that they have already heard and denied the application of Mr. Ritson. The applicant must reapply.

Chairman Gallagher questioned if the notice for denial of this application was published. Mr. Peck stated that it was not. Attorney DeCrescenzo stated that the denial will now be published; the fifteen day clock on the denial will start on the publication date. Attorney Sherwood stated that there is only one person who can appeal the decision, which is Mr. Ritson. He will not be appealing.

XI. DISCUSSION of Open Zoning Items:

Hoffman Auto Park (status of all site development items)

Attorney Donohue stated things are continuing to move forward. The parking lot has been paved and the surveyors will be doing the required As-built, A-2 survey. Unfortunately, the fence has not been put in place yet that will screen West Mountain Road; this should be installed within the next week or two. Attorney Donohue stated that they are also in the process of providing the specs and contracts so the bond can be established in order to do the landscaping.

Mr. Beach stated that he has measured the pavement; it is correct. A slight discrepancy was found with the retaining walls. In terms of the coverage of the site, this is in compliance with what was approved. Regarding the plantings, it is too late to plant now; it is better to wait until the spring.

Attorney Donohue stated that he has met with the Southwest Homeowners Association. A contractor for Hoffman has put a red line up to indicate the proposed height of the fencing that will be installed. The Southwest Homeowners Association did review this and feel that this will be appropriate.

Mr. Elliott questioned if Hoffman had responded to the letter from Town staff. Attorney Donohue stated that the ultimate response will be when they file the A-2 survey. He stated that this letter continues to serve as their checklist as they complete this project.

Gulf Station at West Street

Attorney Donohue, representing the owner of the Gulf Station, stated that the current issues are that the owner was approved for 8 lights under the canopy and he has 12 lights. Also, the lights are too bright. Another issue is the Gulf decals on the dispensers. Attorney Donohue stated that the owner has disabled 4 of the lights in order to be in compliance. Regarding the illumination and brightness of the facility, Attorney Donohue stated that there was no specification in the plans about the lighting, although the business owner is sensitive to the lighting. After researching these lights, the bulbs were found to lose up to 50% of their brightness in the first year. He stated that there is no lighting standard in Town to measure against, although the owner would like to make sure that they are in compliance and in harmony with the neighborhood. Regarding the decals on the dispensers, Attorney Donohue stated that these are consistent with the Mobil dispensers; this is how they are made.

Chairman Gallagher stated that he would like the owner of the Gulf station to take the "open" sign down.

Zoning Enforcement Officers Report

Mr. Beach distributed the Zoning Officer's Report to the Commission members for their review. Regarding 69 Laurel Lane, Mr. Beach stated that this has been ongoing for several years. No building or zoning permits were taken out for the construction on this property. A cease and desist order was sent to the homeowner, although the zoning issues were dropped in order to expedite the delinquent tax issues. He stated that the Town now has to go back and revisit this situation. Under the Zoning Regulations, if there is a structure that is non-compliant, after three years under State law, it is deemed a legal non-conforming structure. After speaking with the Town Attorney, he found that the use is illegal and there is no sunset clause on the use of the building.

Regarding 9 Sand Hill Road, Mr. Beach stated that the attorney who lives at this address has bought the property next door for his law office. He has sent several notices of violation and a cease and desist order to the homeowner, although there has been no response. The next step will be to take this issue to the Town Attorney.

Regarding 33 Canal Street, Mr. Beach stated that this has been resolved. This was an issue regarding a doctor's office zoned residential.

Mr. Beach stated that the issue regarding 378 West Mountain Road has gone to court. The Town thought this house was going to be foreclosed, although the mortgage company was under investigation. The foreclosure did not go through. Attorney DeCrescenzo stated that the current status of the foreclosure should be checked again.

Regarding the REACH Foundation, Mr. Beach stated that this issue has been resolved. A \$150 fine was issued to the Foundation, which is the maximum fine. The Town has received payment.

A member of the audience stated his concerns regarding 378 West Mountain Road. He stated that the blight issue on this property should take precedence over Attorney Blumenthal's issues with the mortgage company.

Mr. Barnett left the meeting at 8:30 p.m. Chairman Gallagher appointed Mr. Pomeroy to serve in the absence of Mr. Barnett.

XII. DISCUSSION of Wagner property at 153 Great Pond Road regarding zone determination

Mr. Peck stated that this is a request for a zone determination, which is covered by the current Zoning Regulations, Article 2, Section B1 (f). This states that the Commission makes the determination of a zone of a property when there is a question.

Attorney DeCrescenzo stated that the Commission should properly notice this item. There may be other residents who are interested in this determination. He suggested that it be put on the next agenda.

Mr. Peck stated that if the Commission finds that this is an amendment to the map, this would require a public hearing.

Attorney DeCrescenzo stated that if there was never an effective zone change on this property, there may have been an error made on the map. A determination needs to be made whether a public hearing is needed or not prior to hearing this issue.

XIII. DISCUSSION of Incentive Housing Zoning Regulation and Adoption Process

Mr. Peck stated that the Town is working on the Incentive Housing Zone program with Concord Square. The consultant studied seven sites in Town. The final report from the consultant is available on the Town's website.

Each site was looked at in terms of its ability to provide space for higher density residential use under the Incentive Housing Zone Statutes. He stated that not all of the parcels were studied in detail.

Mr. Peck stated that the zoning amendments that the consultant has proposed are in draft form. One part of this regulation is not done, which has to do with the design guidelines. The Design Review Board is researching other design guidelines that might be adaptable with what Concord Square is drafting for Simsbury. He stated that the other part of this is the table of uses, which talks about each of the sites that remained in the study after the initial screening. This chart will go along with this regulation.

Mr. Peck stated that there is still a question as to whether the design guidelines will be incorporated in the regulation or whether they will become part of the design guidelines that the Town already has. He feels that there are pros and cons to both of these approaches. The consultant has not made a recommendation regarding this as of yet.

XIV. DISCUSSION of LID Town Center Possible Project Sites

Mr. Peck stated that he has talked with the Library Board regarding the possibility of creating a water feature on the other side of the parking lot near Boy Scout Hall. He stated that, as part of the Charrette process, the consultant was looking at having a water feature at the southern end of Town as well as where Iron Horse Boulevard joins Hopmeadow Street. Mr. Peck stated that he is currently looking for sponsors to fund the creation of those two water features. The water feature that he has been discussing with the Library Board would be a component of the Low Impact Development Stormwater Management System that the Town would have. The Library Board will be thinking about this project, although they will probably need more information as they discuss this.

Mr. Peck stated that the parcel at the north end is owned by Westminster School and is also part of the current storm drainage system that releases stormwater to the floodplain area. This would also figure into the stormwater management system.

XV. DISCUSSION of Town Center Code Regulation Process Timing

Mr. Peck stated that Code Studio will be back with the draft code in January. Main Street Partnership has been very helpful in getting additional funding to get the consultant back to Simsbury. They will now be able to bring Code Studio back two times because of this additional funding.

XVI. DISCUSSION of PAD Regulation status, reg. workshops and next steps

Mr. Peck stated that copies of the draft PAD Regulation are available. He suggested that the Commission consider moving forward with this regulation.

Chairman Gallagher stated that, possibly, the Commission should wait until Code Studio comes back in January. Mr. Peck stated that the Charrette pertains to the Town Center area; this will be a special code that will be set up. He stated that the consultant will not be doing any work regarding the PAD Regulation. Mr. Peck stated that the PAD Regulation will also apply to other areas in Town beside the Center.

Mr. Elliott stated that the new members do not have the minority report that was generated by the some of the members of the PAD Subcommittee. He stated that there is a fundamentally different approach to mixed-use regulation, embodied, in the Code Studio work versus what appears in the draft PAD Regulation that was approved by the Subcommittee. He stated that the Subcommittee ran into the difficulty at the beginning of the Subcommittee process because the document that they began with was very different from the concepts that are embodied in the Charrette result. He stated that they wanted the minority report to encourage people to take the time to look and consider the other format and other concept of how to regulate a mix use zone.

Mr. Elliott stated that he would like to see the draft from Code Studio prior to deciding what the PAD should look like. He stated that he would e-mail all of the new members the minority report.

Mr. Pabich stated that he feels this Commission should give the PAD Regulation a priority and keep it moving forward.

Mr. Vaughn suggested that the Commission get Code Studio's perspective on the impact of promoting mix use outside of the Center Zone and its related impacts. Mr. Peck stated that he does not believe that this would be in the consultant's scope.

XVII. OTHER MATTERS AS MAY PROPERLY COME BEFORE THE COMMISSION

Mr. Peck distributed a copy of the Public Gathering Permit revisions to the Commission members for their review. He stated that the wording that has a line through it will be omitted, although he wanted the members to be able to see what was being taken out. He stated that there is a required declaration in this document which states that if the applicant makes a false statement, it is a Class A misdemeanor. There is also a colored map that the applicant can indicate exactly where the permit is for.

Mr. Peck stated that many departments, including the Police Department, Parks and Recreation and the Fire Department, have all had input in this document.

XVIII. ADJOURNMENT

Mr. Pabich made a motion to adjourn the meeting at 9:20 p.m. Mr. Elliott seconded the motion, which was unanimously approved.

Ed Pabich, Secretary