



CITY OF DANBURY
155 DEER HILL AVENUE
DANBURY, CONNECTICUT 06810

ZONING COMMISSION
(203) 797-4525
(203) 797-4586 (FAX)

MINUTES
FEBRUARY 9, 2010

~~~~~

The meeting was called to order by Chairman Robert Melillo at 7:35 PM.

Present were Anthony DiCaprio, Theodore Haddad Jr., Richard P. Jowdy, Alan Kovacs, Robert Melillo, Gary Renz, Terry Tierney, Ted Farah and Alternates Elmer Palma and Patrick Venuti. Also present was Planning Director Dennis Elpern.

Absent were Walter Hoo and Alternate Thomas Spegnolo.

Chairman Melillo asked Mr. Palma to take Mr. Hoo's place for the items on tonight's agenda.

Mr. Tierney led the Commission in the Pledge of Allegiance.

Mr. Haddad made a motion to accept the minutes of January 12, 2010 & January 26, 2010. Mr. Palma seconded the motion and it was passed unanimously.

Chairman Melillo said he felt he needed more time to review all of the information that was submitted for the Windmere Zone Change petition, so he would like to table that petition. Mr. Renz made a motion to table item one under the Old Business listed on tonight's agenda. Mr. Kovacs seconded the motion and it was passed unanimously. Chairman Melillo then announced that if anyone was in the audience for the Windmere Zone Change petition, they would not be taking any action on it this evening.

~~~~~

PUBLIC HEARING:

7:30 PM – Court Mandated re-hearing of the 2007 Petition of Cioffoletti Construction Co, Inc., Shelter Rock Rd./Parcels A & B a/k/a 18 Plumtrees Rd. (#L13121 & #L13122) for Change of Zone from IG-80 to RMF-10.

Chairman Melillo announced that all of commission members had received copies of the minutes from the 2007 petition. Mr. Renz read the legal notice. Chairman Melillo read the Planning Dept. Staff Report which was the 2007 report reissued for tonight's hearing. Mr. Kovacs read the Planning Commission recommendation which was negative.

Attorney Neil Marcus said some of the Commission members were here in 2007 and some are new to this matter. He said he is disappointed because the remanding of this back to the Commission didn't mean they should have the same exact reports and recommendations that were done in 2007. He suggested that they should look at the RMF zone regulations. The purpose and intent says nothing about incompatibility with the industrial uses that about this

property. He added that they should look at the site to determine if keeping this IG-80 makes any sense. He suggested that the Planning Commission did not even read the regulations when making their recommendation. He said what they are proposing will be a transition zone between the other multi-family and the IG-80. This parcel meets the definition of the section of the regulations describing the RMF zones. He suggested they look at the regulations instead of listening to the staff report and the Planning Commission recommendation. He said when looking the section of the staff report that discusses the steep slopes; you can read it two different ways. If you refer to the map, it suggests that the line that cuts the lot would be the line of demarcation. And if you follow the contours between the 380 and 400 lines into the site, it seems to prove that this is a simple site to develop. He said they are trying to narrow the area of conflict between the two zones. He then said that the portion of site being used for construction yard is not included in this petition; the real issue is the five acres shown on the plan. He said if you look at the purpose and intent of IG-80, you will see that to say the comprehensive plan allows for balance of uses proves that the Plan of Conservation & Development is out of touch with reality. The character of Shelter Rock Rd. has changed to a high-end multi-family development. The road has been upgraded and can handle the 138 trips that this project would generate. The surrounding roads are terrible for industrial uses; they are only adequate for residential vehicles. He said the Plan of Conservation & Development is only one part of the comprehensive plan. The Zoning Regulations and Map are the other parts. What the Commission has before them tonight is a new application and they are asking that the Commission focus on the site and what they are requesting to do with it. He suggested that they go out to look at it and they will see that it is not that difficult to develop. He added that their architect is here but does not have a presentation because they know the Commission is not supposed to look at specifics.

Mr. Haddad pointed out that this re-hearing is based on a technicality; not on the actual record. He said for that reason, there is nothing wrong with staff using the same report. Mr. DiCaprio asked what the flaw was and Mr. Haddad said it was an error in the legal notice. The secretary clarified that the judge said the legal notice listed the address as Plumtrees Rd. and the Assessor's records have it as Shelter Rock Rd. Mr. DiCaprio asked what was on the petition that the applicant submitted. The secretary said she copied the info for the legal notice from the petition. Mr. Palma asked why this was denied in 2007. Chairman Melillo read the section of the minutes where the motion was made and voted on.

Mr. Kovacs asked if anything about the site has changed since it was remanded back to them. Attorney Marcus said the economy has tanked but nothing else has changed in regard to their development purposes. The existing land uses are still the same and none of this is going to change for a while. Mr. Kovacs asked what has changed that would make them reconsider their decision. Attorney Marcus said the only thing that has changed is that they are asking the Commission to focus in on the regulations and look at this site. He said that is why he is upset that both the Planning Commission and the Planning Dept. staff seemed to ignore the regulations. He said since there are new members on the Commission it seemed like a good idea to present it this way.

Chairman Melillo said he does not want this to be confrontational but since Attorney Marcus did cite the regulations, would it be possible to suggest changing this to IL-40 instead. Attorney Marcus said he can't answer that without looking at the zoning map and doing a study. You can't just plug a use into this site. He continued saying that moving a different zone in would not work unless it was compatible with the zoning map. He said there is one more thing that has

changed that he had not mentioned. And that is the City is embroiled in a lawsuit regarding the denial of a proposed transfer station. Chairman Melillo said it did mention that in the minutes from the 2007 decision. Mr. Palma asked what kind of housing this would be if it was approved. Attorney Marcus said the benefit for the City is that the top of this site does not lend itself to industrial use. The City would benefit from the tax revenue while this development would not produce any significant increase in the number of schoolchildren. He said with this land zoned IG-80, it is dormant and not making any money for the City. He added that if they try to develop this as industrial they will face the same issues that the transfer station did. If this upper part is rezoned then the lower portion will probably follow. Mr. Kovacs said on same token, they could put industrial uses on both parcels. Attorney Marcus said the Arlington Woods residents would complain. He added that a screen would be required by Planning Commission as there is not one there now. He added that people don't pay attention to vacant land until something is proposed for it.

Chairman Melillo asked if there was anyone to speak in opposition to this and there was no one.

Planning Director Dennis Elpern said he wondered why it was considered inappropriate to mention the 2009 petition when it is okay to mention the transfer station lawsuit. This was sent back to the Commission because the address was wrong on legal notice but the address that was used was the one on the petition prepared by Attorney Marcus. This is steep land, a difficult site; you can see that if you look at it. But the applicant is going to run down every possible problem that staff mentions. He said very rarely is land perfect for the development proposed on it. He asked that they disregard any site plan as the applicant is not obliged to use a plan just because he showed it to the Commission. They say it is not a site plan but this is how we would do it if you approve the change.

Attorney Marcus thanked Mr. Elpern for his balanced report. He said he was merely suggesting the deficiencies mentioned in the staff report can be addressed by the proposed development. They are aware that it is not a perfect site; it has slope. Most towns are looking at development on land that is not easy to develop because that is what is left. He suggested they could take a look at the site and come to a different conclusion than the previous one. He said he hopes they visit the site and offered to set up a formal site walk. He said the site plan was shown merely to address the issue of difficulty of development. Any use allowed in the zone would be permitted on the site pending site plan approval. He asked that they consider this with an open mind as the previous decision may have been an error.

Herman Cortes-Barrio said he wanted to make a point of clarification. If the Commission members are going to walk the site, they need to be aware that there are two different sites. The difference in slope is different than what is shown on the plan. He said he is warning them to be careful because the lower portion of the site has changed.

Mr. DiCaprio made a motion to close the public hearing. Mr. Palma seconded the motion and it was passed unanimously.

~~~~~

7:45 PM - Petition of All Granite & Marble Corp. to Amend Sec. 5.B.2.a. & 5.B.4. of the Zoning Regulations.

Mr. Renz read the legal notice. Chairman Melillo read the Planning Dept staff report dated February 1, 2010. Mr. Kovacs read the Planning Commission recommendation which was negative. Mr. Elpern said there is a Scribner's error in his staff report; where Planning & Zoning is crossed out and ZEO is substituted, it really should read the Dept. of Planning & Zoning.

Attorney Robin Kahn said the staff report pretty much addresses the application. She added that the language in the CG-20 zone was changed recently to allow this use, but since that same language is not in CA-80, they are here tonight. She said the retail portion of this is the same as other retail in CA-80. She pointed out that there are other similar pre-existing uses in CA-80. She said in the CG-20 zone, the fabrication is allowed on properties where there is only one business. She said she had met with Mr. Elpern, who was concerned about abutting business owners. They had explored different restriction options such as decibel levels, but that would be difficult to enforce. So they came up with the notice requirement; feeling this was most fair way to address these issues with the neighbors. She added that is assuming that the Planning & Zoning staff would not find this an enforcement nightmare. Since this use is allowed in CG-20, it does not seem like it should not be allowed in CA-80. She then said her client is here if there are any questions on marble fabrication.

Chairman Melillo asked if there was anyone to speak in opposition to this petition and there was no one.

Mr. Elpern then said he would recommend the following changes to the proposed language. Under (1) add the following language (shown in italics): all such processes *and display of materials* take place indoors. He said the reason for this is that seeing the big slabs outside is not attractive and that is something that people complain about. Attorney Kahn said that Sec. 3.E.4. allows for outdoor storage of building materials. Mr. Elpern said this is drawing a distinction between outdoor storage and display. He then reminded them of the error that he spoke of in the beginning of the meeting: in section (1)(b) of the staff report where Planning & Zoning is crossed out and ZEO is substituted, it really should read the Dept. of Planning & Zoning.

Chairman Melillo asked for further clarification on the Planning Commission's use of the term enforcement nightmare. Mr. Elpern said they meant that we do not need to add one more thing to the list of things that the ZEO has to enforce. Chairman Melillo asked if the ten day waiting period is enough; what if someone is out of town. Mr. Elpern said you can only do so much. He added that we are really extending them a considerable amount of authority by giving them veto powers. And we cannot cover every contingency and every circumstance. He said there is not much difference between CA-80 and CG-20 and the staff report points out that the language should be the same. They are similar zones except that CA-80 used to allow more industrial uses. He reminded the Commission that before the CA-80 zone was created, one side of Mill Plain Rd. was commercial and one side was industrial. And some of those industrial uses have hung on as non-conformities, while most have been eliminated. Mr. Haddad asked about the former Dent Electric site which is the CG-20 location of a similar business. Mr. Elpern said the biggest difference is that was not a strip center, so there was not the same concern about the noise.

Chairman Melillo asked if Attorney Kahn had anything else to say and she did not.

Mr. Haddad made a motion to close the public hearing. Mr. Renz seconded the motion and it was passed unanimously. Mr. Haddad then made a motion to move this to number two under the Old Business on tonight's agenda. Mr. Palma seconded the motion and it was passed unanimously

~~~~~  
OLD BUSINESS FOR CONSIDERATION AND POSSIBLE ACTION:

Petition of The Windmere LLC, 44 Old Ridgebury Rd. (#C16006) for Change of Zone from IL-40 to RMF-4. *Public hearing closed 1/26/10 – 65 day decision making period will be up 3/31/10.*

This matter was tabled at the beginning of tonight's meeting. It will be discussed at the next regular meeting.

~~~~~

Petition of All Granite & Marble Corp. to Amend Sec. 5.B.2.a. & 5.B.4. of the Zoning Regulations.

Chairman Melillo asked if anyone had any comments on this petition. Mr. Palma made a motion to approve this for the following reasons:

- It is compatible with other uses permitted in the CA80 zone.

Mr. Elpern suggested amending the motion to include the Planning Staff recommendations: Under sec. (1) add the following language (shown in italics): all such processes *and display of materials* take place indoors and in section (1)(b) of the staff report where Planning & Zoning is crossed out and ZEO is substituted, it really should read *the Dept. of Planning & Zoning*. Mr. Renz seconded the motion. Chairman Melillo reminded the Commission that because this got a negative recommendation from the Planning Commission, a super majority is needed for approval. He then called a roll call vote and the motion to approve was passed unanimously with nine AYES.

~~~~~

There was nothing under New Business, Correspondence or For Reference Only. Chairman Melillo asked if there was anything to discuss under Other Matters and there was nothing.

At 9:05 PM, Mr. Renz made a motion to adjourn. Mr. Jowdy seconded the motion and it was passed unanimously.