



CITY OF DANBURY
155 DEER HILL AVENUE
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ZONING COMMISSION
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MINUTES
MAY 25, 2010

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The meeting was called to order by Chairman Robert Melillo at 7:30 PM.

Present were Anthony DiCaprio, Theodore Haddad Jr., Richard P. Jowdy, Gary Renz, Walter Hoo, Robert Melillo and Alternates Elmer Palma and Thomas Spegnolo. Also present was Planning Director Dennis Elpern.

Absent were Ted Farah, Alan Kovacs, Terry Tierney and Alternate Patrick Venuti.

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

Chairman Melillo announced that there is a correction to the May 11, 2010 minutes. Mr. Jowdy is listed as being absent, but he was not. The secretary will send out the corrected copy to the members. Mr. Haddad made a motion to accept the minutes of March 23, 2010, April 13, 2010 and May 11, 2010 as corrected. Mr. DiCaprio seconded the motion and it was passed unanimously.

Chairman Melillo then asked Mr. Palma to take Mr. Kovacs place and Mr. Spegnolo to take Mr. Farah's place for the times on tonight's agenda. He added that because the other Alternate member is absent, they will have to leave Mr. Tierney's seat vacant.

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PUBLIC HEARING:

7:30 PM – Petition of E.W. Batista, Family Limited Partnership, 155 South St. (#J15048) for Change of Zone from RMF-4 to C-CBD.

Mr. Renz read the legal notice. Chairman Melillo read the Planning Dept. Staff Report dated May 16, 2010. He also read the Planning Commission recommendation which was negative.

Attorney Neil Marcus said he was here once before with this. It was approved 5-4 but because of the negative recommendation from the Planning Commission, it needed a 6-3 vote for approval. He said they didn't want to bring this back, because the City does not seem to be concerned about this corner of South St.; they are more concerned with the Plan of Conservation & Development. The lines are so finely drawn and cut that this lot was not included in the C-CBD zone. He described the structures that compile this corner ending with the subject property, which is currently a two family house. He said they cannot do logical development on this corner without adding this piece to the larger one. He showed the Commission a color rendering of the building the applicant

wants to put on this corner. They are here because they want to develop a first class building in downtown Danbury. Part of the property is currently approved for a Dunkin Donuts with a drive thru. In order to build that they would have to knock down the former Triple A building, now being used as a bakery. This would allow Dunkin Donuts to be the gateway at both the North and South ends of Main St. He added that the other option is a mixed use office/retail bldg with a Dunkin Donuts in it, which is shown on the rendering. He continued saying that the Planning Dept. staff report contains no new information that didn't exist in 2008. He said the concern about limiting congestion in the streets came up with he represented the CVS on the other corner. He added that we don't have enough traffic in downtown Danbury anymore, so additional traffic would be a positive thing. He said additional commercial development on this site will not exacerbate traffic. If that is the case then they should leave it as it is. But that is not the message he and Mr. Batista are getting from the people that are concerned about economic development in downtown Danbury. So the result was that before committing this property to remain the same, they were encouraged to try this one more time. He said this opportunity is limited because of the time constraints on the approval, so his client will have to go ahead and build the Dunkin Donuts as approved by the court stipulation. He said although they are now looking toward a brighter economic picture, the time is running out on that approval. Time is running out to decide how this corner should look for the next 25 years. He then described how during the review process for the Dunkin Donuts on the corner of Osborne St. and Springside Ave., the neighbors on Springside were vehemently against it. Well they finally got a plan approved and built the Dunkin Donuts there. He then passed out a copy of a letter from one of the neighbors who was most strongly in opposition. It was a letter to the editor that was published in the News-Times, saying how great the property looks and what good care Mr. Batista takes of the site. And that it is much better as a Dunkin Donuts than it was as a vacant lot with trucks parked on it.

He said this corner is not as bad as that corner was, but it does contain several functionally obsolete buildings that are in great need of redevelopment and rehabilitation. This is the third reason to grant this appl. Mr. Batista has a proven track record and wants to develop this corner. He said the Planning Commission is being very shortsighted about this issue. The subject property is a small chunk of land that has minimal commercial value unless it is attached to the larger parcel. It will become the buffer between the abutting condo project and this proposed development. He said the Plan of Conservation & Development does not look at site specific requests; it was adopted as a general principle. But this is an exception to that concept. He said across the street is commercial development. He suggested they take a hard look and try to envision something similar to the rendering; a well-designed office/retail building with a Dunkin Donuts in the ground floor. That would be keeping with the statement that the City of Danbury wants to make at this gateway.

Mr. Jowdy asked if the rendering includes the subject parcel. Attorney Marcus said it does; the house and garage get torn down and most of the lot becomes part of the parking area.

Mr. DiCaprio asked for a compelling reason to approve this. Attorney Marcus said anyone who is investing in this kind of structure is crazy. He continued saying that because the Dunkin Donuts is already approved, they are already committed to a plan; so they have a use for part of the proposed retail area. It is good that Mr. Batista did not try this two years ago, the timing is better now. This new building would not exist for at least two years from now. Once the Dunkin Donuts as approved is built, it will be too late to use this corner for a substantial structure like the applicant is willing to build. If the economy does not come back and the applicant just builds the Dunkin Donuts as approved, then the subject property has little value on its own. It needs to be attached to the larger parcel to have any commercial value. So in this situation, it would remain a two-family house. He added that if this is not approved, Danbury is destined to have the same corner for a very long time.

Mr. Haddad said the Dunkin Donuts in this building will not cause more traffic because the site is already approved for it. The people next to this parcel cannot seek a zone change because they are condos. It would become an exceedingly difficult legal matter to undo the declaration. He then pointed out that there is City easement so the subject parcel is technically smaller than Attorney Marcus has been referring to it. Attorney Marcus suggested that the traffic flow has improved because of the improvements that CVS had to make as part of their approval. He said the traffic at this corner is most intense during the AM and PM rush hours, but Dunkin Donuts does the majority of their business in the AM. He said the remaining retail area would be a mix small offices or retail that would not generate traffic early in the morning. He added that traffic may be an issue but not for this Commission.

Mr. Palma asked about the existing bakery. Attorney Marcus said they are a tenant who pays by the month and they have always been aware of Mr. Batista's plans. Mr. Palma asked if they would be thrown out. Attorney Marcus said no, he has been more worried about them leaving because they have always been looking for a better site. He added that they have no lease and it has always been a month to month agreement. He said they will have notice and they might even end up moving into the new building.

Chairman Melillo said the tenants of the bakery know that it is supposed to be torn down as part of the approved Dunkin Donuts plan. The new building will offer them the opportunity to stay in the neighborhood. He added that the condo association was notified of this proposal. Finally he said that if this is approved, they will have to go back to the Planning Commission and the Courts. When it is before the Planning Commission, they will address the traffic issues.

Mr. Elpern asked how they determined that they would need this additional lot for parking. Attorney Marcus said it is based on the square footage and the proposed uses in the bldg. Mr. Elpern asked how big a building they can build without this lot. Attorney Marcus said that is consistent with what is the stand alone value of this lot. If they build the building they want and the tenant mix does not require as much parking, they would have to consider asking the Planning Commission to leave the two family intact, but it is more likely it would just remain a landscaped area as part of this. Mr. Elpern again asked the size of the building that they could build without this parcel.

Ed Batista said they need the lot in order to position the driveway correctly. If they include this lot, it allows for the driveway to be moved back further on South St. The approved plan for the Dunkin Donuts has the driveway much closer to the South St. intersection. He said he bought this parcel so they could move the driveway farther from intersection. Mr. Elpern asked what the parking allocation was and what numbers they used to determine the required parking. Attorney Marcus said they calculated the first floor as retail and the second floor as office. Mr. Elpern said the C-CBD requirement is different. Attorney Marcus said these calculations were done by a Professional Engineer using the C-CBD numbers. Mr. Elpern said his logic is that if they need this parcel to build a structure of this size, how big a building could they put if they didn't have this parcel. Attorney Marcus said this is a big building for this corner and the length along South St. requires the driveway to be moved back further from the intersection. Mr. Batista said the City wants the building in the front of the lot, he would have preferred to put it in the back of the lot with the parking in front. He said that is why the drive-thru is underneath the building instead of on the end. He added that the big issue here is to do the right thing for this corner. This layout was designed by an engineer who did it to comply with the Zoning Regulations. The whole idea of them coming back to this Commission was to consider the streetscape. The City wants the design this way so it will be a gateway to the City.

Mr. Hoo asked if this parcel is not re-zoned will the Dunkin Donuts be built on the South St. side. Attorney Marcus said no, it will be built as approved on Main St. and the corner building will remain as is. He added that the Dunkin Donuts as approved has no left turn onto Main St. so it will have an entrance/exit onto South St. Chairman Melillo asked if this is not approved, it the existing corner building the best we will see on that corner. Attorney Marcus said that is basically the biggest building that could be put on that lot.

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

He asked Mr. Elpern if he had any additional comments and there were none.

Mr. Haddad made a motion to close the public hearing. Mr. Palma seconded the motion. Mr. DiCaprio pointed out that there are only eight regular members present and suggested they might want to wait for the ninth member. Chairman Melillo said even if they close the hearing, one of the members who is not here can still listen to the tapes. Mr. Jowdy asked if they are waiting for anything and Mr. Elpern said they have everything. Chairman Melillo called the vote on the motion to close the hearing and it was passed unanimously by voice vote. He then asked Attorney Marcus if he wanted them to go ahead and vote this evening or wait until there are nine members eligible. Attorney Marcus said because of the negative Planning Commission recommendation, he would prefer to wait for a nine member board.

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OTHER MATTERS:

Chairman Melillo said we will definitely be cancelling the meeting that is scheduled for the second Tuesday in July, which is July 27, 2010. There already are some vacation conflicts, so it is better to cancel now.

He noted that the For Reference Only listed a public hearing scheduled for June 8, 2010. He then said that he and Vice-Chairman Haddad had set up a meeting with Assistant Corporation Counsel Robin Edwards to discuss the signage issue. They had also invited the Planning Director and the Zoning Enforcement Officer to attend.

Mr. Elpern then said he had received some complaints regarding the fact that there is no distance requirement between stores with grocery beer permits. He said after thinking about this, he decided to ask the Commission if they want him to look into adding something like this to our Regulations. He said one of the calls was from someone who runs a package store and we gave beer permit to the grocery store across the street. Mr. Renz asked if other towns have these kinds of regulations. Mr. DiCaprio said they cannot do this because it would be restraint of trade. Mr. Elpern said that the sale of alcohol has always been treated differently. Mr. DiCaprio suggested that the package store owner could lower his prices. Mr. Elpern said he is not concerned about the legal ramification of this kind of regulation.

Mr. Elpern explained that right now most of his time is spent writing a plan for the downtown. It includes some revisions to the restaurant liquor regulations; so he could put this language in at the same time. Mr. Palma said that sounds like a good idea because right now grocery stores are not limited. Mr. Haddad said the sale of liquor is regulated differently than the sale of milk and bread. Mr. DiCaprio said they really cannot limit this and they don't want to over-regulate. Chairman Melillo said, not speaking as Chair, he believed that they do look at these things on a case by case basis. Also the neighbors are noticed as part of the process. He added that he believes in the free market system but also understands the logistics of selling alcohol. Mr. Elpern said with respect to the downtown plan, he is looking at the liquor service permits in the Ives St. area, but if the Commission feels this is important, it would not be a lot more work. Mr. Haddad said he also agrees with the free market system but they are talking about alcohol. If stores that are right next to each other want grocery beer permits, the Commission has no teeth to deny these applications. Mr. DiCaprio pointed out that the Commission approval is just one facet of applying for a permit to sell liquor. The actual permit is issued and regulated by the State. He added that he thinks we should stay out of it. Mr. Haddad asked if we had a date for when the Dairytown on Padanaram Rd. closed. The secretary said she would find out. Mr. Elpern asked that the Commission let him know if this additional language is something they want him to work on.

At 9:00 PM, Mr. DiCaprio made a motion to adjourn. Mr. Jowdy seconded the motion and it was approved unanimously.