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ZONING COMMISSION
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MINUTES
APRIL 26, 2011

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

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

Absent were Ted Farah, Walter Hoo, Terry Tierney and Alternate Thomas Spegnolo.

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

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

PUBLIC HEARINGS

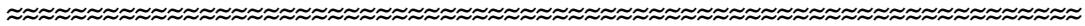
Mr. Renz read the legal notice for all three hearings.

7:30 PM – Petition of The Cheesecake Factory Inc. for a Special Permit for Restaurant Liquor License at Danbury Fair Mall, 7 Backus Ave. (#F17002).

Attorney Matt Yeomans spoke in favor of this petition. He distributed copies of the menu to the Commission members. He explained that these restaurants are corporately owned, there are no franchises. This means the individual locations must adhere to the Cheesecake Factory's strict code of operations. He explained that the people who developed this business still own it and actively participate in the operations. He said this restaurant is a destination not a side or convenience trip. Their priority is good food, only about 15% of their sales are generated by the sale of alcohol. They do have a full service bar, but even with that, 63% of their sales take place in the dining room, the remainder takes place at the bar, but it is a mixture of food and liquor. He said they have complied with all aspects of the Zoning Regulations and offered to answer questions. The only question from the Commission was why he didn't bring samples.

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

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



Chairman Melillo then said the next two special permit petitions are for package stores, both proposed to be located on Mill Plain Rd. He said they are closer to each other than what the Regulations allow, so the Commission is instructed to listen to both presentations and ask whatever questions they may deem necessary.

7:45 PM – Petition of GTR, LLC for a Special Permit for Package Store at 24 Mill Plain Rd. (#E15102).

Attorney Fran Collins spoke in favor of this petition. He said this is the site of the Taj Palace restaurant. The restaurant is located in the front portion of the building and the area proposed for the package store is located in the rear. He explained that in 2010, Mr. Randhawa received approval of a revised site plan application for an addition to the rear of this building. At that time they intended to expand the restaurant and have storage space. Since submitting this petition for the special permit, he has submitted a Waiver to Site Plan requirements to allow for the change of use from what was approved to a package store. Dainius Virbickas, PE from Artel Engineering, spoke briefly about the previous plan and this latest plan which will accommodate the change to package store. Mr. Haddad asked if the package store would be located behind the restaurant. Mr. Virbickas said it would be around the back of the building, but there would be no access between the two businesses. Chairman Melillo asked if there is designated parking. Mr. Virbickas said the parking is not designated but they do have adequate parking for all of the uses on the property. Attorney Collins then said they have submitted documentation from a land surveyor to prove they would meet the 2,000 foot distance requirement from any other package store. He then said he wanted to point out that his client filed his petition for the special permit first.

Chairman Melillo asked if there was anyone to speak in opposition to this and several people came forward.

Attorney Dom Chieffalo said he is representing Tony Ramadani who owns 40 Mill Plain Rd and was granted a Special Exception by the Planning Commission earlier this year for uses including a package store for his site. He said that is the subject of the next public hearing, right now he is here to speak in opposition to this petition.

This lot is undersized and already non-conforming. An addition to the existing structure (for storage and restaurant expansion) was approved in May 2010. Since submitting this petition, they have submitted a revised site plan to change the use of the space that was approved last year. Attorney Chieffalo questioned the legality of expanding a non-conforming undersized lot that already has non-conforming uses on it. He pointed out that although the restaurant and the proposed package store are permitted in the CA-80 zone, they also have four apartments on this site. And CA-80 does not allow residential use. He then stated that the parking spaces in the front of the property require you to back out onto Mill Plain Rd. into the State right-of-way. He said this is a safety issue and also what will happen if the State decides to widen the road. Those spaces would be gone and then they would not be able to meet the parking requirement for the uses on the site. He said that getting in and out of this site is not easy because you have to cross traffic right before a very busy signalized intersection. There is a tremendous amount of congestion in this immediate area and that doesn't help the situation. He said approval of this location will add more trips to an already overloaded roadway. And adding another use to this site will adversely affect the health, safety and welfare of this area.

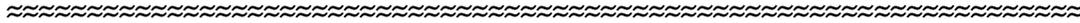
Diane Sanders, 15A Weindorf La., said she uses Mill Plain Rd. every day and traffic is already beyond bad. She said even though this is near a traffic signal, it does not benefit from it and turning into or getting out of this property is very difficult. So this property may not be able to handle the traffic that will come with this use.

Benjamin Chianese, 5 Briar Ridge Rd., said this is the site of a dangerous intersection. He said traffic was a major issue when the gas station wanted to come into the site across the street. He added that there already are five liquor stores in this vicinity, which means with this one, there will be six liquor stores within a three mile area.

Attorney Collins spoke in rebuttal to the opposition's comments. He said this site is suitable for the multiple uses that it already has on it. He said when the CA-80 zone was created, the lots that were already in existence became legal non-conforming and were "grandfathered". Many of these lots were too small to meet the area requirement for the new zone. He said there is plenty of conforming parking available. He said no one can deny that Miry Brook Rd. is heavily traveled. Mr. Virbickas said the parking meets the requirements of the Regulations. He also said the drawings he has seen for widening this roadway do not affect this parcel. Mr. Haddad suggested that the question if this is an expansion of a non-conforming lot should be referred to Corporation Counsel.

Mr. Haddad made a motion to continue this public hearing. Mr. Kovacs seconded the motion and it was passed unanimously.

Chairman Melillo realized that they forgot to ask Mr. Elpern if he had any staff comments. Mr. Elpern reminded the Commission of the criteria in Sec. 3.F.2. of the Zoning Regulations that must be satisfied in order for this to be approved.



8:00 PM – Petition of 40-44 MPR, LLC for a Special Permit for Package Store at 40 Mill Plain Rd. (#E15110).

Attorney Dom Chieffalo spoke in favor of this petition. He said, his client, Tony Ramadani, has been working on this site for at least two years. He bought what was the former “FunStation” and renovated the exterior first, then started working on the interior. He reduced the size of the building by 600 sq.ft. and divided the building into five units. The first unit he finished was for his restaurant, Max 40, which is already open. He was granted a special exception from the Planning Commission for trip generation based on these uses: the restaurant, a billiards parlor, the package store, and two units as general retail. All of these uses are conforming in this zone, but when the trip generation for each use is added together, it becomes a special exception. As part of this special exception/site plan review, Mr. Ramadani has done extensive landscaping and repairs to the parking lot and entryway. He has worked very hard to improve the site and make it look attractive and inviting. This site consists of 2.3 acres and he has more than enough parking. The entrance to this building is not directly from Mill Plain Rd. There is a roadway that runs between this building and the building that houses Prespa, located next door. This roadway was a part of West Kenosia Ave. which was cut off when Exit 3 was revamped for the Mall. Mr. Ramadani has also made improvements to the access from Mill Plain Rd. including replacing the aprons. Attorney Chieffalo said because of this access, they feel this will have much less of an impact on the Mill Plain Rd. traffic and will not affect the area. In closing, he said this petition was received the same day as the previous one. The Planning office does not timestamp submittals, they just stamp them received with the date. Mr. DiCaprio asked if the restaurant on the end of this building serves alcohol. Attorney Chieffalo said it does. Mr. DiCaprio said he was just checking because he remembered when this Commission issued that special permit. Mr. Jowdy asked if the applicant owns the building. Attorney Chieffalo said he does.

Chairman Melillo asked if there was anyone to speak in opposition to this petition and several people came forward.

Benjamin Chianese, 5 Briar Ridge Rd., said if he has to take his pick, this site is a better fit. He said since this site has its own access road off Mill Plain Rd., it will not affect the existing congestion on Mill Plain Rd. quite as much. But in principle, he is still against the addition of another package store since there already are so many.

Armando Aarmnat, 12 Nichols St., said he works on Lake Ave and is aware of all the liquor stores in this area. He said there is a saturation of liquor stores and adding another one would devalue the existing liquor stores that are struggling to survive. Mr. Palma asked him if he owns a package store. He said yes on Lake Ave. Ext., and he has noticed a loss in his business because of all the new places that have opened.

Chairman Melillo offered Attorney Chieffalo the opportunity to rebut the opposition's comments, but he declined.

Chairman Melillo then asked Mr. Elpern if he had any staff comments. Mr. Elpern said nothing else, what he said about the previous petition is true for this petition also. Chairman Melillo then mentioned that he had sought an opinion from Corporation Counsel on how to handle this situation. Corporation Counsel had responded in a letter and advised the Commission to treat these two matters fairly. If there is reason to continue one of the public hearings, then both should be continued, so that neither has a time advantage over the other.

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

CONTINUATION OF PUBLIC HEARING

Petition of Crawford Holdings LLC, 62 Miry Brook Rd. (#E19018) for Change of Zone from RA-40 to R-O.

Chairman Melillo read the legal opinion received from Corporation Counsel Robin Edwards into the record. The opinion reminded the Commission that contract zoning is illegal and they should not base any decisions on the proposed restrictive covenant. It also states that these kinds of documents are very difficult to enforce.

Attorney Fran Collins said he is covering for Attorney Jaber this evening. He said he wanted assure the Commission that this restrictive covenant was never intended to be contract zoning. It was not to be a specific condition of approval. Based on the substantial neighborhood opposition, the applicant volunteered to file this within 15 days after the decision was rendered by the Commission. He offered to answer questions from the Commission.

Chairman Melillo asked if there was anyone else to speak in favor of this application. Since there was no one, he then asked if there was anyone to speak in opposition and several people came forward.

Diane Sanders, 15 Weindorf La., said she understood that Corporation Counsel gave this document a negative opinion, but she wanted to make some comments on it anyway. She said although she has no legal training, she cannot help but to wonder who enforces this covenant and how effective will that be? She said the onus will be on the adjacent property holder to sue if the covenant is violated. She said she read the case law on the West Terrace appeal that Attorney Jaber told them about. She said it reiterated her belief that legal

language can be crafted so as to benefit the property owner and do nothing for the neighbors. She said that is what this seems like, there is nothing in the covenant to exclude two-family homes or exceptions to the R-O zone, so that means those could be permitted, but may be exclusionary. She then said this document may not be legal enough to be enforced.

At this point, Chairman Melillo intervened and said this document was reviewed by Corporation Counsel and an opinion has been issued that this Commission will abide by.

Craig Borman, 7 Harwood Dr., said he finds it interesting that the community is out in full force opposed to this proposal yet at the previous meeting, the applicant's attorney said he had met with the neighbors and they were in favor of this.

Foster Crawford, 12 Marc Rd., also president of Tri-Community Homeowners Assoc., read a statement into the record. He said for the record, no agreement has been reached with the applicant. He said maybe he misunderstood; maybe they were just using the word agreement as in a document. He said word has traveled through the neighborhoods and the neighbors are here because they are opposed. He reminded everyone that deed restrictions are not law, they are simply legal documents which attempt to control some aspect of the use of a property.

Kurt Kleis, 13 Olympic Dr., also owns 1 Ole Musket, which is adjacent to the subject property. He said he has reviewed and considered the covenants and he is still opposed.

Pat Osowski, 25 Ole Musket La, said that El Morro and the other subdivisions all have deed restrictions that were put into place by the developers and they have never been enforced in 25 years. She said for over 350 families, this is the only entrance into their properties. The economy has made it difficult enough to sell their houses as is. She added that the applicant did a very nice job on the house they remodeled but to add any more houses to this site will be detrimental. There is just too much at stake for homeowners located behind this parcel.

Jim Moretti, 2 Caisson Dr., said he is located directly across from the subject property. He said we all know about the economy and decreasing property values. He said even after listening to their presentation, they still didn't say what they want to do. He received the covenant yesterday and now realizes that they want to construct multi-family homes for use as rental properties. He asked the Commission to put themselves in his place. Would they want to see multi-family dwellings on this property when the real estate appraisers have told them it would devalue the properties in the subdivision.

Kim Manzi, 4 Stable Dr., said she is located three houses up from this lot. She said she wanted to reiterate all that has been said by her neighbors, her property has already decreased in value significantly and this would only hurt it more. She asked if there is no intent to put office building, then why do they need the change.

Paul Rotello, 13 Linden Pl., said he will try not to repeat what he said at the previous hearing. He was hoping that an agreement could be reached, but to no avail. He said the City has never enforced a covenant, they might act as a referee but only in a moral sense, not in a sporting manner. He said he is speaking from his experience of the City moderating a dispute between a builder on Hospital Ave. and the neighbors. He said he is not implying that the applicant would not stick by the covenant but if it was sold, the next buyer might decide to ignore it. He suggested the Commission look at this on its own merits. He added that his opinion is that it fails on merits. He suggested the applicant withdraw this. Mr. Haddad then said this Commission does not do contract zoning. They knew what opinion Corporation Counsel would come back with on this matter, but they referred it to them anyway. They wanted the applicant to have every opportunity to make their best offer.

Benjamin Chianese, 5 Briar Ridge Rd., said not to repeat what has already been said but they all know this covenant is not going to make a difference. He said he wanted to remind everyone of something that Planning Director Dennis Elpern had said at the previous meeting: "good zoning requires good planning". He reminded them that the Planning Commission gave this a negative recommendation. He said while the intent of the R-O zone was good, it ended up being applied piecemeal, and no one has really benefited. He suggested that the applicant withdraw this and come back with better plan. He also suggested the Commission deny this because "good zoning requires good planning".

Craig Borman, 7 Harwood Dr., said it should be noted for the record that all of the people in the audience (probably at least forty neighbors) are all here in opposition to this application.

Mr. DiCaprio suggested that if there is no one else to speak in opposition, they should move on.

Dawn Goode, 1 Carriage House Dr., said if this is not legal then the Commission should not approve it.

Mike Cummings, 9 Carriage House Dr., said he didn't want to come up to speak, but wants it on record that all of the people in the audience are opposed to this proposal.

Attorney Collins spoke in rebuttal. He said he agreed somewhat with Mr. Rotello had to say. He added that his client had hoped his offering the restrictive covenant would make the neighbors happy. The house was in bad shape when he bought it, so he had been working on fixing it up. He added that the City is not intended to be a party to any of this. Any type of deed restriction would require someone to pursue an appeal if it is violated. These things run with the property and it would depend on what the violation is as to who is responsible for enforcement. He said he recently won a case in Danbury, where the neighbor wanted to split off his lot. He said they would wait for the appeal period to pass before filing the covenant, because they would want to be sure that the approval was not going to be appealed. Mr. Kovacs asked if a single family dwelling could be put on the lot without the re-zoning.

Attorney Collins said the minimum square requirement would probably prevent it. Chairman Melillo explained what the minimum square requirement was in case anyone did not know.

Mr. Elpern said this change does not comply with the land use specified for this site in the Plan of Conservation & Development. He added that Mrs. Sanders had made some good comments with regard to her critique of the restrictive covenant. He repeated that if they could not meet the minimum square requirements, they could drop the re-zoning and go to the Zoning Board of Appeals (ZBA). In closing, he said he thinks they are getting too involved in the language of the restrictive covenant.

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

OLD BUSINESS

Petition of The Cheesecake Factory Inc. for a Special Permit for Restaurant Liquor License at Danbury Fair Mall, 7 Backus Ave. (#F17002).

Mr. DiCaprio made a motion to approve this petition for the following reasons:

- The proximity of such premises will not have a detrimental effect on any church, school, or charitable institution. Nor will it have a detrimental effect on the immediate neighborhood concerned, due consideration having been given to the character of the surrounding neighborhood.

Mr. Kovacs seconded the motion and it was passed unanimously.



Petition of Crawford Holdings LLC, 62 Miry Brook Rd. (#E19018) for Change of Zone from RA-40 to R-O.

Mr. DiCaprio made a motion to deny this for the following reason:

- This does not comply with the Plan of Conservation & Development.

The motion was seconded by Mr. Palma. Mr. DiCaprio said he wanted to add that fifteen years ago, when they rezoned the four properties to R-O, he was against it then and still is now. Chairman Melillo did a roll call vote and the motion to deny was passed unanimously.

NEW BUSINESS

Petition of Sugar Hollow Associates LLC/Marcus Dairy Inc. to Amend Sec. 8.C.4.g. of the Zoning Regulations. (Amend “Handicapped Parking” language).

Chairman Melillo said they would hear this petition at the May 24, 2011 meeting. He asked for a motion to refer it to the Planning Commission. Mr. DiCaprio made a motion to refer this petition to the Planning Commission. Mr. Kovacs seconded the motion and it was passed unanimously.

Chairman Melillo asked if there was anything to discuss under Other Matters and there was nothing.

At 9:30 PM, Mr. Jowdy made a motion to adjourn. The motion was seconded by Mr. Renz and passed unanimously.