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ZONING COMMISSION
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MINUTES
MAY 22, 2012

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

Present were Sally Estefan, Theodore Haddad Jr., Walter Hoo Jr., Richard P. Jowdy, James Kelly, Alan Kovacs, Marina Loyola, Robert Melillo and Alternates Kevin Haas and Robert Oravetz. Also present was Planning Director Dennis Elpern.

Absent were Terry Tierney and Alternate Elmer Palma. Chairman Melillo asked Mr. Oravetz to take Mr. Tierney's place for the items on tonight's agenda.

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

Chairman Melillo explained that that had been a minor error in the March 13, 2012 minutes but it has been corrected. Mr. Haddad then made a motion to accept the minutes of March 13, 2012 (as corrected), March 27, 2012 and April 10, 2012 Mrs. Estefan seconded the motion and it was unanimously.

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PUBLIC HEARING

7:30 PM – Petition of Taryn A. Aiello, 9 Whitlock St. (#115234) for Change of Zone from RA-8 to R-3.

Mrs. Estefan read the legal notice. Mr. Haddad read the Planning Commission recommendation, which was negative. Chairman Melillo read the Planning Dept. Staff Report dated May 15, 2012.

Attorney Dave Grogins spoke in favor of this petition. He said first of all, he has some issues with the Planning Dept. staff report which says this parcel abuts four lots zoned RA-8 and one lot zoned R-3. He said this is a single RA-8 zoned lot with R-3 around it. He said also there was a building permit to repair the garage at the time the Court order was issued. He said the garage was damaged in an unfortunate incident where a tenant's boyfriend tried to commit suicide by driving into the garage. The applicant has been trying to collect on the insurance claim so he can make the repairs to the garage but has been unsuccessful. He then said he has some comments on the statement in the staff

report regarding the failure of this property to comply with the Plan of Conservation & Development. He said they are not required to comply with the recommendations for future development in the Plan of Conservation & Development. He said that according to Robert Fuller's "Land Use Law & Practices" the significance of the Plan of Conservation & Development is that it is prepared by the Planning Commission to give their recommendations for future development and recommended land use within the municipality. It also says the Plan of Development is not the same as the Comprehensive Plan and should only be considered advisory by the Zoning Commission. He continued saying that the Comprehensive plan consists of the Zoning Regulations and the Zoning Map and a zone change must be in accordance with the Comprehensive Plan. He said for those reasons he believes they should use the Comprehensive Plan as their guide instead of the Plan of Conservation & Development. He said for these reasons, not complying with the Plan of Conservation is not a reason to deny this petition.

Attorney Grogins then said that rezoning this parcel would bring the non-conforming house into conformity as a two family and reducing the non-conformity is the goal of this petition. He quickly added that the applicant has no intention of making this a three family dwelling. He compared the permitted uses in the two zones and said out of all of the uses permitted in R-3, most of them except one, two and three family dwelling are highly unlikely on this 13,000 sq.ft. lot. He said the staff report also says that this does not meet the criteria for multi-family zoning because Whitlock St. is not a collector street, but Deer Hill Ave., which is less than 100 ft. from this property, is a collector street. He said this property cries out to be zoned R-3; to keep it zoned RA-8 is spot zoning. If the use of the property is the essence of zoning, changing it will bring this parcel into conformity.

Mr. Hoo asked what the purpose of the changing the zone is. Attorney Grogins said once you have a non-conforming use, you can't make any changes without getting a variance from the ZBA. He added that even though the two-family is grandfathered, the lot width/setback issue will always exist. Mr. Haddad said the applicant knew what he was buying and even if it was re-zoned to R-3, it would still be non-conforming in lot width and side yard setback. Chairman Melillo said he does not agree with Attorney Grogins claim that this is spot zoning, because this lot is not an island of RA-8 surrounded by multi-family zoning. It is an RA-8 lot that is surrounded on three sides by RA-8 and one side by R-3. Mr. Haddad said that is true, to say this is spot zoning is a stretch. Attorney Grogins said physically it appears as spot zoning.

Chairman Melillo asked about the building permit to repair the garage. Attorney Grogins said to the best of his knowledge, it has been extended. Chairman Melillo said the secretary checked on the status of that permit today and it has been put on hold by Building Inspector Leo Null. Attorney Grogins said since the tenant's boyfriend ran into it, the applicant has had a hard time collecting from the insurance company. Mr. Haas said how it got that way really doesn't matter, the Commission is just asking why it has

not been fixed and why the permit was put on hold. Chairman Melillo said there is one more thing, he noticed on the deed there is a reference to an Affordable Land Use Restriction Agreement (ALURA) and he would like to see a copy of it. Attorney Grogins said he does not have it with him tonight, but he will get a copy and deliver it to the Planning & Zoning Office.

Chairman Melillo asked three times if there was anyone else to speak in favor of this petition. He then asked if there was anyone to speak in opposition to this petition. He said before they hear from the people in the audience, he would read a letter in opposition from the owners of 97 Deer Hill Ave. He added this parcel is one of three parcels located on Deer Hill Ave. whose back yards abut the subject parcel.

The first person to speak in opposition was Jehad Sabbagh of 98 Deer Hill Ave. Mr. Sabbagh said from the minute the applicant purchased this property, work was done without permits. He got a great deal on the property because it was purchased from the Housing Authority. The dilapidated garage was converted into a third apartment with a total disregard for the Regulations. The applicant created his own problem by doing work without permits and getting caught by both the Building and Zoning Departments. The applicant knew what he was doing. Mr. Sabbagh then said he has worked in real estate for many years in Danbury and there are many parcels in the City that are non-conforming. He said after many beautiful single family homes were getting converted into three and four family dwellings, the Planning Dept. changed the Regulations so this could no longer happen. This applicant knew what he was buying and also what the rules were. It is obvious that if this is granted, he will go to the Zoning Board of Appeals to get a variance to add the third unit. Mr. Sabbagh then said since the Regulations were changed there are still sound ways to rehab these older structures, but there are rules that must be followed. The people who live on Deer Hill Ave. want to maintain their properties and the character of the neighborhood. And changing this property will have a detrimental effect on that neighborhood. Mr. Haddad asked Mr. Sabbagh if he knew anything about the Affordable Land Use Restriction Agreement (ALURA) or if there was a deed restriction requiring that this property be owner occupied. Mr. Sabbagh said he was not familiar with that document but he had heard that the Danbury Housing Authority had put an owner occupancy restriction on it as part of the sale.

Charles Volpe, 99 Deer Hill Ave., said his back yard overlooks the subject property. He said he grew up on McDermott St., which is its day was beautiful and often referred to as "little Deer Hill". In the late 1970's/early 1980's, things started to change. Beautiful old single family homes were converted to multi-family dwellings and every piece of available land on the street was developed. The increase in traffic combined with the increased number of residents changed the character of the neighborhood and it became just another multi-family area. He said that several of the Deer Hill residents had considered buying the subject property before the applicant purchased it, but they were under the impression that it had a deed restriction requiring owner occupancy. He said

he was thrilled when he was able to buy a home on Deer Hill Ave. and the character of the neighborhood is important to him and the other residents. He understands that the applicant wants to get the most out of his rental property, but that should not come at a cost to the residents of Deer Hill Ave.

Chairman Melillo asked Mr. Elpern if he had additional staff comments. Mr. Elpern said he had a few things to add starting with the fact that Mr. Sabbagh is wrong, because there are plenty of conforming properties in Danbury. Next he said regarding the staff report, he has brought up the garage because he wanted to advise the applicant of the limitations of the zone and that even if this was granted, we do not allow apartments in detached garages. Secondly, four out of five properties that abut the subject property are zoned RA-8s, so the subject property is not an island. The Deer Hill Overlay zone is restricted to parcels that have frontage on Deer Hill Ave. and that is why the subject parcel was not included. And there are many other parcels surrounding Deer Hill Ave. that are zoned RA-8, such as Garfield Ave. Actually because the subject property is not in the Overlay zone, it is allowed more uses than the properties that are within the Overlay, which is quite restrictive. He said in response to Attorney Grogin's comment about the Commission not being required to comply with the Plan of Conservation & Development, it is true that is a guide. It is what they have to guide them in development proposals. It is true that the Comprehensive plan is just the Zoning Regulations and Zoning Map, which says this should be RA-8. If they do not use the Plan, then everyone would just do whatever they wanted. So as he said in the staff report, this proposal does not comply with the Plan of Conservation & Development. Mr. Elpern said non-conformities should NOT be reduced by rezoning them. If they did that there would be spot zoning all over the City. Rezoning is not the way to cure non-conformities -- the way to cure this one is to get rid of the second dwelling unit, but we are not asking that. We cannot ask that because this structure is protected as a non-conforming two family dwelling. The non-conformity is not a burden, it is a protection. He added that he never said Deer Hill Ave was or was not a collector street; he was talking about Whitlock St.

Mr. Elpern said Attorney Grogins said the applicant has no intent to change this property to a three family. If that is true, then why are we all here? Attorney Grogins also said that all of the other uses in the zone require larger lots than this one, so what is the plan? If nothing except a one, two or three family dwelling is allowed on a lot this size, what is the intent here? Mr. Elpern said this property can continue to exist forever as a two-family dwelling. He added that this is not spot zoning. Spot zoning is when an isolated parcel sits amid other parcels that are zoned differently. This is not an isolated parcel, it abuts four other parcels zoned RA-8. And in response to Attorney Grogins suggestion that changing this will bring the use into conformity, this use already is protected. And reducing it to a single family dwelling would also bring it into conformity. Attorney Grogins also said if you make this property R-3, it will be easier to do things on it and it is easier to get a setback variance than a use variance. Mr. Elpern asked what kind of variance he is looking for, because it sounds like he wants to put in another unit. He

added that this Commission should try not to zone land that is going to require additional variances for development, so they should not do this. It is bad form to rezone the land on the presumption that the ZBA will grant variances. Although Attorney Grogins pointed out that they are not going to change anything, he also mentioned that it is easier to get lot width and setback variances. So if they are not going to change anything, why are we all here? Mr. Haddad then said even if you remove the speculation of a third dwelling unit, Mr. Elpern's argument still holds. Mr. Elpern added that if this is not about putting in the third unit, why are they here? He added that the only reason to rezone this is to allow the third unit to be added. Mr. Elpern then said this petition should be denied for the following reasons: (1) it does not comply with the Plan of Conservation and Development; (2) R-3 zoning to allow for a third dwelling unit is not compatible with four abutting lots zoned RA-8, and the existing lot size of 13,271 square feet fails to meet the minimums required for all other R-3 uses except dwellings; (3) the parcel is not located on a collector or arterial street; and, (4) the lot fails to meet the required minimum lot frontage or a minimum side yard setback for a three family dwelling in R-3. And lastly, the use of the garage as a separate dwelling unit is not permitted under R-3 zoning.

Chairman Melillo offered Attorney Grogins the chance to rebut the opposition's comments. Attorney Grogins asked that they look at Sec. 9.C.2., which says no non-conforming use shall be extended or expanded; that is the section he was referring to earlier. He said without the zone change, if the applicant wants to expand the apartments or upgrade the house, he has to get a use variance. He added that he does not disrespect the Plan of Conservation & Development, but in this case, it is not an appropriate reason to deny this petition. Mr. Kovacs asked the size of the house. Attorney Grogins said it is about 2,400 sq.ft. Mrs. Loyola asked how big the apartments are. Attorney Grogins said one is a three bedroom and the other is a four bedroom. Mr. Haddad said regarding Sec. 9.C.2., someone with a valid hardship could go to ZBA and ask to vary that section just like any other section. Attorney Grogins said he believes there are some concomitant restrictions on the ZBA. Mr. Elpern then pointed out Sec. 11.B.2.a., which says no use variances can be granted for any parcel located in any of the RA zone.

Mr. Haddad made a motion to continue the public hearing specifically and exclusively pending receipt of the Affordable Land Use Restriction Agreement from Attorney Grogins. Mrs. Estefan seconded the motion and it was passed unanimously.



Chairman Melillo said there was nothing under Old Business, Correspondence or For Reference Only. He asked if anyone had anything to discuss under Other Matters and there was nothing.

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At 8:50 PM, Mrs. Estefan made a motion to adjourn. Mr. Haas seconded the motion and it was passed unanimously.