



CITY OF DANBURY
155 DEER HILL AVENUE
DANBURY, CONNECTICUT 06810

ZONING COMMISSION
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MINUTES
JUNE 10, 2008

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

Present were Anthony DiCaprio, Theodore Haddad Jr., Patrick Johnston, Robert Melillo, Larry Stramiello, Andrew Wetmore and Alternates Jacqueline Perez-Ares and Thomas Spegnolo. Also present was Planning Director Dennis Elpern.

Absent were Chairman Ted Farah, Richard P. Jowdy, David Manacek and Alternate Victoria Hickey.

Vice-Chairman Melillo asked Ms. Perez-Ares to take Mr. Jowdy's place and Mr. Spegnolo to take Mr. Manacek's place for the items on tonight's agenda.

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

Mr. Johnston made a motion to accept the minutes of the March 24, 2008 meeting. Mr. Stramiello seconded the motion and it was passed unanimously.

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PUBLIC HEARINGS

7:30 PM - Petition of Camillo M & Gloria Santomero, 14 Padanaram Rd. (#H10121) for Change of Zone from CN-20 to CL-10.

Mr. Wetmore read the legal notice. Vice-Chairman Melillo read the Planning Dept Staff Report dated May 6, 2008. Mr. Stramiello read the Planning Commission recommendation which was negative, meaning this will need a six-three majority vote for approval.

Peter Young spoke as agent for the applicants, who purchased this lot in 2006. It is one lot but the zone line crosses it rendering a portion of it unusable depending on which zone you try to develop it under. He said they had tried to put a retaining wall in and grade the lot but they need a site plan approval before they can pull the permit. He then said they would like to put a 3,000 sq.ft. retail building on the parcel but cannot do that unless this portion is re-zoned. He said there is good access/egress because the traffic light is right there. Ms. Perez-Ares asked what is presently on the lot. Mr. Young said it is now vacant; a dilapidated house was recently taken down. Mr. Haddad asked what they will do if they do not get this change. Mr. Young said it would be much harder to develop; they might be able to put a 2,000 sq. ft. building on it. Mr. Haddad pointed out that nothing has changed since the applicant purchased this property. Mr. Young said they cannot use the CN

portion of the parcel because it is too small to do anything with. He added that on the preliminary site plan, they were able to determine that they would probably lose about one-third of the parking if they can't use the portion of the lot that is zoned CN. Mr. Haddad said if this change is granted they could put anything that is allowed in the zone on the lot.

Vice-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 further comments and there were none.

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

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7:45 PM - Petition of Peter Phrathep, 130 Triangle St. (#K14007) for Change of Zone from RA-8 to RMF-4.

Mr. Wetmore read the legal notice. Since there was no one in audience, Vice-Chairman Melillo asked if there was anyone present to speak in favor of this. There was no response. Mr. Johnston made a motion to continue this hearing until the next meeting. Mr. Spegnolo seconded the motion and it was passed unanimously. Vice-Chairman Melillo asked the secretary to make every effort to contact the applicant so they are present at the next meeting.

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OLD BUSINESS FOR CONSIDERATION AND POSSIBLE ACTION:

ZBA Subcommittee/ZBA Application for Use Variance: #08-20 - His Vineyard d/b/a His Vineyard Christian Fellowship, 22 Shelter Rock Rd. (#L15006), Request to vary Sec. 6.A.2.a., to permit a church use in the IL-40 Zone. Zoning Board of Appeals public hearing opened April 24, 2008 and Continued until June 12, 2008

Mr. Elpern said all of the members had been given copies of the opinion letter received from Corporation Counsel at the May 13th meeting. Vice-Chairman Melillo then read the letter into the record. Mr. Johnston asked if we have to specifically prohibit churches in order to prevent this scenario from happening. He added that this Commission has been very diligent about trying to maintain land that is zoned IL-40, referring to the amendments to the industrial zones that were approved at the end of 2007. Mr. Elpern explained that there are two kinds of Zoning Regulations: permissive and prohibitive. He said Danbury's Regulations are permissive meaning they list only the uses that are allowed, not the ones that are prohibited. He added that the applicant is arguing that because we allow hotels or other places of assembly, we have to allow churches because they are places of assembly. He added that churches are allowed in most of the other zones within the City, but they could argue that we are discriminating against them by not allowing them in this zone. He said their argument is that under the "Religious Land Use and Institutionalized Persons Act (aka "RLUIPA"), they should be permitted. He said the difference is that these uses really are not comparable since their main intents are

different. Mr. Johnston said one could make the same argument for any other use not permitted in IL-40. Mr. Haddad said regarding the comparison to a hotel: gatherings are not a hotels primary use, whereas in a church their main function is assembly. He added that it would seem like there should be some land available where churches are permitted since according to our Regulations, they are allowed in 80% of the land in the City. Mr. Johnston made a motion to give this a negative recommendation for the following reason:

- The applicant's stated argument does not meet the criteria as stated in the RLUIPA text.

Mr. Stramiello seconded the motion and it was passed by roll call vote with five AYES (from Mr. Haddad, Mr. Johnston, Mr. Stramiello, Mr. Wetmore and Vice-Chairman Melillo) and three NAYS (from Mr. DiCaprio, Ms. Perez-Ares and Mr. Spegnolo).

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Petition of Sheridan Commons LLC, 12 Home Pl. (portion of #J14161) for Change of Zone from R-3 to RMF-4. Public hearing closed 4/22/08 - 65 day decision making period will be up 6/26/08.

Mr. Haddad excused himself as he is abstaining from this matter. There were no alternates left to take his place. Vice-Chairman Melillo said they could table this for one more meeting since they don't have nine members to vote on it. Mr. DiCaprio suggested they do a straw poll to determine if they should wait. Vice-Chairman Melillo asked for a motion so they could discuss this.

Mr. DiCaprio made a motion to approve the petition. Mr. Stramiello seconded the motion. Vice-Chairman Melillo asked for discussion and/or comment on this. Mr. Wetmore said he did not like it when the applicant stated that he needed to rezone this small parcel to add it to the larger parcel so he could put eight more units on this development. Mr. Johnston said he agreed with Mr. Wetmore because he recalled that the applicant had said with the existing extra land he has, he could only put seven units and he really needs the eighth unit to make it worthwhile to add the extra building. Vice-Chairman Melillo asked if anyone else had anything to say and there was no further discussion.

Vice-Chairman Melillo called a roll call vote on the motion to approve this petition and the motion was denied with four AYES (from Mr. DiCaprio, Mr. Stramiello, Ms. Perez-Ares and Mr. Spegnolo) and three NAYS (from Mr. Johnston, Vice-Chairman Melillo and Mr. Wetmore).

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NEW BUSINESS:

Petition of Nilo Jesús Espinal d/b/a Papi's Liquors LLC, 71 Lake Ave. (#G15070) for a Special Permit for Package Store. Public hearing scheduled for June 24, 2008.

Application of Berkshire Shopping Center, LLC for Town Fair Tire Centers of CT, LLC, 67 Newtown Rd./Space #14 (#L12033), Request for Certificate of Location Approval for Motor Vehicle General Repairer's License under the provisions of Sec. 14-54 of the CT General Statutes, as amended. *Public hearing scheduled for June 24, 2008.*

Petition of Sanik Beverages LLC to Amend Secs. 6.A.2. & 6.B.2. of the Zoning Regulations. (Add Processing & Bottling of Non-Alcoholic Beverages as Permitted Uses in IL-40 and IG-80 Zones) *Public hearing scheduled for July 8, 2008.*

Petition of A & S Properties Inc. to Amend Secs. 2.B. & 5.E. of the Zoning Regulations. (Add "Mixed Use Building" to the CN-5 Zone as a Special Exception Use) *Public hearing scheduled for July 8, 2008.*

Mr. Johnston made a motion to refer the two petitions to amend the Zoning Regulations to the Planning Commission. Mr. Wetmore seconded the motion and it was passed unanimously. It was noted that all of the petitions would be on file in the Planning & Zoning Office.

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There was nothing under Correspondence, Other Matters or For Reference Only.

At 8:40 PM, Mr. Wetmore made a motion to adjourn. Mr. Stramiello seconded the motion and it was passed unanimously.