



CITY OF DANBURY
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ZONING COMMISSION
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MINUTES
MARCH 9, 2021

The web based meeting (hosted on Zoom) was called to order by Chairman Theodore Haddad Jr. at 7:33 PM.

Present were Sidney Almeida, Candace Fay, Chairman Theodore Haddad Jr., Ryan Hawley, Angela Hylenski, Rick P. Jowdy, James Kelly, Michael Masi, Robert Melillo, and Alternate Nelson Merchan Jr. Also present was Planning Director Sharon Calitro.

Absent was Alternate Thomas Nejame. Chairman Haddad said they do not need to seat anyone because all of regular members are present. He then noted that they still have a vacancy because they are waiting for a replacement for Alternate member Michael Henry who resigned to take a seat on the City Council.

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

Mr. Kelly made a motion to accept the February 23, 2021 minutes. Mr. Melillo seconded the motion and it was passed unanimously by voice vote.

Chairman Haddad asked for a motion to deviate from the order of the agenda. He said he would like them to take care of the other items on the agenda before they get into the Continuation of Public Hearing. Mr. Melillo made a motion to deviate from the order of tonight's agenda and take care of the New Business before they start the Public Hearing. Mr. Kelly seconded the motion and it was passed unanimously by voice vote.

NEW BUSINESS:

Petition of SC Ridge Owner LLC to Amend Sections 4.H.2.b.(2)(a) & 4.H.2.b.(3)(b) of the Zoning Regulations. *Public hearing scheduled for May 11, 2021. THIS DATE IS SUBJECT TO CHANGE DEPENDING ON CIRCUMSTANCES RELATED TO COVID-19.*

Mr. Melillo made a motion to accept this petition, refer it to the Planning Commission for a recommendation, put on file in the Town Clerk's office, and forward to any other agencies as may be required. Mr. Masi seconded the motion and it was passed unanimously by voice vote.

Petition of SC Ridge Owner LLC to Amend the Master Plan for The Summit (approved June 23, 2020). Public hearing scheduled for May 11, 2021. THIS DATE IS SUBJECT TO CHANGE DEPENDING ON CIRCUMSTANCES RELATED TO COVID-19.

Mr. Melillo made a motion to accept this petition, refer it to the Planning Commission for a recommendation, put on file in the Town Clerk's office, and forward to any other agencies as may be required. Mr. Kelly seconded the motion and it was passed unanimously by voice vote.

Chairman Haddad also read the For Reference Only listing the public hearings scheduled for April 27, 2021.

PUBLIC HEARING:

Application of E.W. Batista Family LP/Collector Car Services LLC, 39 Miry Brook Road (F19009) for a Certificate of Location Approval for a Motor Vehicle General Repairer's License in the IL-40 Zone.

Chairman Haddad read the legal notice regarding this application and also the Waiver to Site Plan approval. Matt Corfo spoke in favor of this application. He said his business is not typical auto repairs, it is strictly repair of high end vehicles. He said it will only be him working in the building and he will not be a nuisance to anyone in the area. Mr. Melillo asked him if his business has anything to do with Mr. Batista's businesses. Mr. Corfo said Mr. Batista owns the building but his LLC is a completely separate from Mr. Batista's business operations. Mr. Melillo then asked how many cars he would be working on at any time. Mr. Corfo said it would be between 3-5 cars, because some of the restoration projects take longer than others, so he could be working on the same car for several weeks. He said there is enough space in the building to store the vehicles inside and he would need to do that because these vehicles are too valuable to be stored outside. Mr. Melillo then said he understands the type of business that Mr. Corfo operates but he intends to propose a stipulation that all vehicle storage be inside of the building. The reason is because Mr. Corfo could eventually move his business and the next tenant might want to store vehicles outside of the building. Mrs. Hylenski then asked since he has two bays, will he be working in both of them at the same time. Mr. Corfo said that often does happen, as the type of work he does is not a rushed operation and he often is working on two or more cars at one time. There were no other questions.

Chairman Haddad asked if there was anyone to speak in opposition and two people responded.

Benjamin Chianese, 5 Briar Ridge Rd., said he is a Councilman representing the sixth ward which includes this roadway. He said he is concerned about Miry Brook Rd. because in the last five years, the character of the area has changes from airport based businesses to high end automotive restoration. He added that he is especially

concerned about the long term impact of this on the area and for that reason he agrees with Mr. Melillo's suggestion about the inside storage stipulation.

Paul Rotello, 13 Linden Place, said he is the other Councilman for the sixth ward and he echoes Mr. Chianese's comments as they are completely on point. He said Miry Brook Rd. is becoming the high end auto alley and he thinks they should concentrate on the airport businesses versus the automotive businesses. He asked Mrs. Calitro if this is permitted in the IL-40 zone. Mrs. Calitro said automotive repair is a permitted use in the IL-40 zone. Mr. Rotello then said he is not against this but wanted to know if a change of zone is necessary for this use.

Chairman Haddad offered Mr. Corfo the chance to speak in rebuttal. Mr. Corfo said he understands what has been said and when he was looking for space, the realtor suggested this area, especially because he is a one-man operation that would have a minimal impact on the area. There was some brief discussion among the Commission members regarding the remaining residential use on this road. There were no other questions.

Mrs. Hylenski made a motion to close the public hearing. Mr. Kelly seconded the motion and it was passed unanimously by voice vote. Mr. Melillo made a motion to move this application to item number one under the Old Business on tonight's agenda. Mr. Jowdy seconded the motion and it was passed unanimously by voice vote.

Mr. Melillo then made a motion to deviate from the order of the agenda and act on the Old Business as the next item before opening the public hearing. Mr. Kelly seconded the motion and it was passed unanimously by voice vote.

OLD BUSINESS:

Application of E.W. Batista Family LP/Collector Car Services LLC, 39 Miry Brook Road t(F19009) for a Certificate of Location Approval for a Motor Vehicle General Repairer's License in the IL-40 Zone.

Mr. Melillo made a motion to approve this application with the following stipulations: (1) No Outdoor storage of repair vehicles is allowed; (2) All repair work must be performed inside the facility; (3) Any vehicles parked outside must be in full repair and full operational quality; and (4) No repair test drives can be done through any residential neighborhoods adjacent to Miry Brook Road. Mrs. Hylenski seconded the motion and it was passed unanimously with nine ayes from Mr. Almeida, Mrs. Fay, Mr. Hawley, Mrs. Hylenski, Mr. Jowdy, Mr. Kelly, Mr. Masi, Mr. Melillo, and Chairman Haddad.

CONTINUATION OF PUBLIC HEARING:

Petition of BRT Sconset LLC to Amend Section 4.A.6. of the Zoning Regulations. (Add Cluster Active Adult Development to the RA-20 & RA-40 Zones.)

Attorney Neil Marcus said they had asked that this be continued so their traffic engineer could speak. Joseph Balskus from VHB said he has been a traffic engineer for 32 years and has done a great deal of work in Danbury, especially on the west side of the City. He summarized his memo regarding the trip generation for the applicant's property off of Clapboard Ridge Rd. He said the impact for twelve single family homes versus five single family and twenty-three active adult homes is 148 trips per day versus 133 trips per day. He said he also looked at the properties at 11 Pembroke Rd. and off of Great Plain Rd. and if they were developed as single family dwellings, they would definitely generate more traffic than if they were developed as active adult units. He said all of the traffic counts are based on numbers from the ITE (Institute of Traffic Engineers) manual which is the standard in the industry for calculating trip generation. Chairman Haddad asked if the tables consider all types of traffic, such as the caregivers who come into the home to take care of seniors. Mr. Balskus said they do include them.

Mr. Melillo questioned the statement that more units would result in less trips. Mr. Balskus said there are less trips because active adult communities do not have the multiple trips that single family communities do. Mr. Melillo asked how often traffic engineers test how good their analysis is versus the ITE studies. Mr. Balskus said they do not do it often except for new developments (such as Shake Shack) or if the municipality asks them to follow up. Mr. Almeida also questioned how more units can equal less trips. Mr. Balskus said it is not always a straight line comparison, they use the industry accepted methodology which is statistically based on dozens of studies. Mr. Melillo asked how often the tables are updated. Mr. Balskus said they follow development trends and the tables were updated in 2020. Mr. Melillo asked if the COVID pandemic had an impact on the traffic counts. Mr. Balskus said if it did, it would affect all counts as everyone was getting staying in and getting everything delivered to their homes. There were no other questions at this time.

Attorney Marcus said the point is that land use trends change and that is what this application is about. He referred to a News-Times editorial dated March 1, 2021, titled "*Zoning Reform: A Step Forward For Connecticut*", saying this article points out the need for flexibility in residential developments. He then referred to another article from the New York Times dated February 28, 2021 titled "*A Push For Zoning Reform In Connecticut*". He said the new thinking is to consider mixing single family and multi-family developments, as the trend is moving away from single family development. He said he is submitting both of these articles to enlighten them and to help them think about change. He added that some of the problems with the previous public hearing were that the opposition was looking at the old plans for a large building that is not part of this proposal. Another problem was that everyone focused on the traffic issues on Clapboard Ridge Rd. He said it is not a cheap or easy fix to correct those traffic problems because the majority of them are caused by Danbury High School being located on it.

Dan Bertram from BRT spoke next. He said age restricted housing has been around since at least 2005, just not in Danbury. He said he had tried to address some of the opposition's concerns by responding to the emails they had sent to Mrs. Calitro. He spoke about the revenue analysis and the potential economic impact that finishing this development would have on the area. He said this proposal is timely but not really innovative as other towns are doing it. Lastly he said he believes if the homes were built as originally proposed, they would not sell and additionally they could potentially add more school age children which would increase the traffic.

Attorney Marcus then said this is not about amending the Regulations to bail out this project. He referred to LakePlace Condos and Crow's Nest Condos saying that the developer of both projects recognized that the market was changing and built these multi-family units in areas that had been traditionally single family areas. He said this type of development is the trend that zoning is heading toward. Lastly he said the existing traffic problems on Clapboard Ridge Rd. are not going to be negatively impacted by this proposal. Mr. Bertram invited the Commission members to visit this site to see the difference between a layout of 12 single family dwellings versus the mixture of 28 dwelling units Attorney Marcus said if the Commission were to do a site visit they could see how this could work. He asked that the hearing be continued so they can arrange this.

Mr. Almeida noted that there was nothing in this proposal requiring this type of development be located off of an arterial or collector road. Attorney Marcus and Mr. Bertram both said it was intended to be included in this petition. Mr. Almeida then asked about the requirement for municipal sewer and water service. Attorney Marcus said they included that because the cluster development regulations require it. Mr. Almeida said he is bringing these items up because he is trying to think on a larger scale since this petition is not supposed to be site specific. Mr. Melillo then said they had continued this hearing for two reasons, the first being to hear from the traffic engineer. The second reason is so the applicant could look to see if there are other locations in the City that could be considered for this type of development, more specifically, the Cotswold site. Attorney Marcus asked their engineer to address this. Steve Sullivan, PE from Carroccio-Covill Associates (CCA) said they looked at this site at the very beginning and felt it was not really feasible for several reasons. There were no other questions at this time.

Chairman Haddad asked Mrs. Calitro if they had received any new letters in favor of this petition. She said we had not received any new letters in favor. Chairman Haddad then said before he asks if anyone wants to speak in opposition, Mrs. Calitro will read the letters in opposition that have been received since that last meeting.

Mrs. Calitro said she would read the letters that had been received since the February 23, 2021 meeting; some are attached to the agenda and some came in after the agenda was posted.

Susan & Richard Cesareo, 6 Coach Rd (email chain between them and Dan Bertram)
Marilynn Gillotti, 3 Overlook Terr.
Lynne Hamilton & James Lukasik, 22 Eastwood Rd.

Kimberly & Mark Abramski, 9 South Meadow Dr.
John Neumuller, 8 Coach Rd. (two letters)
James Lukasik, 22 Eastwood Rd.
Donna Scalzo, 1 Coach Rd.
Mary Comstock, 25 Ledgemere Dr. (two letters)
Dennis Perkins, 22 Main St.

Also speaking in opposition was Paul Rotello, 13 Linden Place, said most of what has been presented tonight and at the February 23rd meeting is inappropriate because it is site specific. He said Attorney Marcus had said elderly people want to be isolated when they get older, but his elderly parents want to be located where other people are. He also disagreed that elderly make less trips per day than younger people with families do. He said all of the elderly people he knows are in and out several trips per day. He said Danbury is the poster child for northern Fairfield County with over ten percent of the housing being deeded as affordable. He suggested that there is probably a better means for this applicant to get what he wants for this location that would not affect all of the single family residential properties in the City. Lastly he again said this whole presentation has been too site specific and that is inappropriate. Chairman Haddad interjected that the Commission members all know that this is not a site specific application and it could impact anywhere in the City that is zoned single family residential.

Benjamin Chianese, 5 Briar Ridge Rd., said that he echoed everything that Mr. Rotello said. He added that sometimes during a hearing the focus is lost, especially that this amendment would impact the entire city. He said there are plenty of parcels that they chose to ignore and possibly some properties could be rezoned. He said this issue really needs to be looked at as part of the revised Plan of Conservation & Development (POCD). He mentioned the unexpected increase in student population and how much extra that will cost the City. He said that in today's non-traditional society, many grandparents are raising their grandchildren, so even in an age restricted community, we could end up with an increase in school age children. In closing he said this is a piecemeal approach to an issue which should be addressed in the revision to the POCD.

Ken Gucker, 89 Padanaram Rd., said Mr. Almeida had brought up many of the points he was going to speak about. He said this also comes back to why they are discussing a specific site when looking at an amendment to the Regulations. He said Mr. Sullivan had said the Cotswold site was not included because it was deemed undevelopable. He said he has sat through many public hearings and there is no such thing as a piece of property not being developable. He also said not everyone retires at age sixty-five and many retired people work, so that would affect the trip generation. He suggested the applicant use a more appropriate method of getting approval for what he wants to do with this site, rather than creating something that could negatively impact the entire city.

Duane Perkins, 22 Main St., said he is a Councilman for the fifth ward, and he agrees with what had been said by the three previous speakers. He asked that the Commission proceed with extreme caution on this petition as it will have unintended

consequences on education, public services, and other governmental issues. He expressed concern about the population growth in the City and pointed out that we have not begun to see the negative impact of the PND (Planned Neighborhood Development) on the City.

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

Attorney Marcus then spoke in rebuttal to the opposition's comments. He said he is concerned that the traffic issue is not completely understood. The ITE does not look at exceptions, they look at the statistical norms. He said the newspaper articles point out that zoning needs to look at the less traditional side in order to create housing that will serve the needs of all residents. He said this is not about affordability, it is about increasing the density for upscale age-restricted housing. He said they should have included language limiting this to being accessible from arterial or collector roads but they will amend the petition to include this. He said that the opposition mentioned the dwindling supply of open space, but this proposal requires a large amount of open space. He added that this type of development will not generate a lot of schoolchildren and that information can be confirmed by the Board of Education who tracks this information by the bus routes. He also pointed out that they did not assume that any properties would be rezoned to accommodate this proposal. He said he would not expect that any commercial or industrial properties would be rezoned because the City diligently protects the commercial/industrial base. Lastly he said they have more information to submit so he would like for the hearing to be continued. Mr. Bertram then said he also is asking that this hearing be continued because he agrees with much of what has been said, but there are some specific things they need to add. He thanked the Commission for their patience.

Chairman Haddad asked if the Commission had any other comments. Mr. Almeida said he would like them to address other sites in the City which fit their criteria. Attorney Marcus said they did not consider some of those sites because they focused on sites which are accessible through arterial or collector streets. Mr. Melillo then said he mentioned this at the previous public hearing and is still wondering if adding the access criteria as well as requiring sewer and water, would be considered a significant change to the petition. Attorney Marcus said he is aware that if they change the application beyond the original scope, they will have to withdraw and start over.

Chairman Haddad asked Mrs. Calitro if she had staff comments. She said if they intend to continue the hearing, she will wait; if they are closing the hearing, then she will make her comments now. Chairman Haddad said if the members want to visit the site, they should not close the hearing. Mrs. Calitro said that is correct, if they are going to do a site visit, they need to keep the hearing open so they can discuss it at the next meeting. Mr. Melillo said despite all the site specific discussion, they need to consider the impact of this petition on the entire city. Chairman Haddad said unless any of the Commission members feel strongly about making a site visit, he would like to have Mrs. Calitro make her comments. Mr. Bertram said if that means closing the hearing, they will not be able to address the issues that came up this evening. He added that he will withdraw the petition as he does not want the Commission to vote on this as is.

Chairman Haddad said they will need to check with Corporation Counsel if Attorney Marcus intends to make changes to the petition, because there is a limit to how much can be changed before it requires a new petition be submitted. Mr. Bertram reiterated that if they are going to close the hearing, he wants to withdraw the petition. Mr. Melillo then suggested they have Mrs. Calitro make her comments so they can be part of the record and if afterwards, Mr. Bertram wants to withdraw the petition he still can. Chairman Haddad said there are some flaws in the petition and there will be a problem with making major changes, but he also would like to get Mrs. Calitro's comments on the record. Mr. Bertram said he understands but he wants to give them the best piece of work they can.

Mrs. Calitro said Attorney Marcus has incorrectly said this petition is more creative and contemporary and offers housing options that are not located in the urban core. There already are provisions in the Zoning Regulations that permit a variety of development options including age restricted housing. Attorney Marcus also said that including the previous petition's staff report is what caused much of the confusion among people speaking in opposition. Mrs. Calitro said it was included as an attachment for information purposes, but it seems that Attorney Marcus underestimated the public's ability to understand that. He also said that the Planning Commission recommendation might have been different if he had been allowed to speak at that meeting. He is aware that we do not open the referral process outside of the public hearing as it raises all kinds of due process issues. Attorney Marcus said this petition does not add new uses to the RA zones but that is incorrect because two and three-family dwellings are currently not permitted in the RA zones. He then said he has done a great deal of work to bring affordable housing to the City. She then said the Commission must remember that he gets paid by clients to get what they need approved. Also when the Regulations don't allow what his clients want, he claims they do not work. She said there was nothing presented justifying the need for this specific type of housing. Also the Regulations require affordable units to be constructed in the same manner as the regular units are, but this proposal includes language that says they don't have to do this. She continued saying that the City is currently working on a revision to the POCD and also an Affordable Housing Plan as mandated by the State Statutes. So this is the time to look at the demographics and needs of the community to determine what changes are needed in order to make all kinds of housing available in Danbury. She then pointed out that the fifty page study of other towns they provided shows that most communities that permitted active adult developments restricted them to single family dwellings only, not multi-family. He also made a comment that because the Planning Staff is young, they do not have the benefit of knowing the history of the City. She said that is not correct because cumulatively the Planning Department staff has over sixty years of experience and are constantly undergoing professional training. She said both LakePlace and Crow's Nest were built at a different time and much has changed in the Regulations since then. We now have different zones that allow various types of multi-family development. This includes mixtures of age restricted, affordable housing, and mixed developments consisting of one and two family dwellings. There also are density bonuses and incentives for specific types of development. She said Attorney Marcus had misconstrued many of the things she had said and just because she does not agree with their opinion does not make her opinion bad or wrong. She said she did say this proposal is different than anything that is

currently permitted. The language in this proposal is contrary to how the cluster regulations are applied. The existing cluster regulations do not allow for an increase in density, they just regulate how the project is laid out. Access from an arterial or collector road is not required for a standard cluster. She said that age restricted development requires only 80% of the units to be age restricted, leaving 20% with no age restriction. Attorney Marcus wants to define and calculate things differently for age restricted units so they to get an increase in density, which is different than the existing cluster regulations. She said the reason age restricted units were removed from the Regulations is because of enforcement issues. There is no means to guarantee who will be living in these units. She said Attorney Marcus said they will submit revisions to address the things they did not include but that brings up the question of when do the changes become substantive. That is something that Corporation Counsel will have to determine. She said the economics only work for the applicant's site only when they are permitted the additional density. She said the POCD land use single-family designation for this area indicates that it is suited for a density of two-to-five single family detached dwelling units per acre. Regarding the City's 8-30g status, it is at 12% and we have a wide variety of units that are existing and under construction. She added that the timing is off for this proposal because we need to determine what the needs are before we start creating new types of housing. He also said people wouldn't assemble parcels to create the needed area for what he is proposing but the Commission cannot eliminate sites just because they are not zoned correctly. They have to consider any tracts of land that meet the area requirement. He said they wanted to offer a different type of housing in other areas besides the urban core; but the PND zone (on the west side) allows for all kinds of mixed single and multi-family dwellings. She said it is incorrect to say that the City is not progressive and unique as there are different kinds of creative projects proposed and currently being done. She said she had also read the newspaper articles that Attorney Marcus cited. And the staff does address the trends by revising the POCD every ten years. She mentioned the new Senate bill 804 which would limit a municipality's ability to promulgate and enforce their own zoning regulations. She said that "Desegregate CT" said Danbury doing a great job providing a variety of housing types at various price points and densities. She said the claim that there is not a market for high-end homes is not true as the market has changed and people are buying and building them now. Lastly she said that them not including the arterial or collector road provision leads to the question of is this the right proposal for their intended purpose. She said maybe the cluster regulations need to be amended but that will be determined as the mandated affordable housing plan is prepared and as they work together as a City to revise the POCD. Chairman Haddad asked if anyone had any questions for Mrs. Calitro.

Mr. Almeida asked what kind of impact adding the requirement for access from an arterial or collector road would have on the cluster regulations. Mrs. Calitro said the point of a cluster development is to preserve environmentally sensitive land, not to allow more density. She said the Regulations do not require that access because the density for a cluster development is same as the density for a standard subdivision. The benefit of clustering the development is that it permits the actual development to be located on a less sensitive part of the site. This proposal would change the density for a particular purpose (age restricted) and would complicate the application by

adding another layer that has to be taken into consideration before making a decision. She said we need to look at who we are a community and what our needs are, what people can afford, and what type of specific housing is needed. She said this raises the question of what is the appropriate mechanism for them to achieve what they are proposing. There were no other questions.

Mr. Melillo made a motion to close the public hearing. Mrs. Fay seconded the motion. Mr. Melillo then said they have had two lengthy public hearings on this petition and some good as well as some flaws have come out. He added that the fix needed to address the flaws is more detailed and he believes that ample material has been presented for them to review this as a citywide petition. Chairman Haddad took a roll call vote and the motion was passed unanimously with nine ayes from Mr. Almeida, Mrs. Fay, Mr. Hawley, Mrs. Hylenski, Mr. Jowdy, Mr. Kelly, Mr. Masi, Mr. Melillo, and Chairman Haddad.

At 11:41 PM, Mrs. Fay made a motion to adjourn. Mr. Almeida seconded the motion and it was passed unanimously by voice vote.

Respectfully submitted,

JoAnne V. Read
Planning Assistant