



CITY OF DANBURY
155 DEER HILL AVENUE
DANBURY, CONNECTICUT 06810

ZONING COMMISSION
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MINUTES
JANUARY 27, 2009

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The meeting was called to order by Chairman Ted Farah at 7:35 PM.

Present were Anthony DiCaprio, Theodore Haddad Jr., Patrick Johnston, Richard P. Jowdy, Robert Melillo, Larry Stramiello, Andrew Wetmore, Ted Farah and Alternate Thomas Spagnolo. Also present was Planning Director Dennis Elpern.

Absent were David Manacek and Alternates Victoria Hickey and Jacqueline Perez-Ares. Mr. Manacek is out of town on business and both Ms. Hickey and Ms. Perez-Ares had to work late.

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

Mr. Johnston made a motion to accept the minutes of the December 9, 2008 & January 13, 2009. Mr. Melillo seconded the motion and it was passed unanimously.

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PUBLIC HEARINGS:

7:30 PM - Petition of Nancy & David Lahoud, 116 Coalpit Hill Rd. (#K17014) for Change of Zone from IL-40 to RMF-10.

Mr. Wetmore read the legal notice. Mr. Melillo read the Planning Dept. staff report dated January 21, 2009. Chairman Farah read the Planning Commission recommendation which was negative but did not cite any reason for the motion. Mr. Melillo made reference to the minutes of the Planning Commission meeting, saying that

Chairman Farah also noted that the Town of Bethel was notified by Certified Mail. He added that HVCEO had sent their standard response "of local interest but without intermunicipal impact".

Nancy & David Lahoud explained what had happened to bring them here tonight. Mrs. Lahoud said she had lived in this house for her entire life and her parents had built it. In 2001 they did an addition for her parents to live in. At that time they could not put a kitchen in because an apartment was not allowed as their property was zoned IL-40. About two years ago, her parents passed away and they wanted to use the space as an apartment so they applied for a zone change to RMF-10. The zone change was granted and they put the kitchen in and rented out the apartment. Unfortunately they did not realize they needed to get a permit to put the kitchen in. They thought they had done everything correctly. Then last year they were notified by the Planning Department that their neighbor (Perch LLC) had applied to reverse the zone change. Also Perch was claiming that they had

misrepresented them. Mrs. Lahoud said she had sent letters to both of her neighbors and Karyn Reynolds had received hers but Perch was claiming that they had not gotten one. The attorney they had hired was very accusatory and said they had no right to include his clients in the original petition. Mrs. Lahoud said she did not know that Perch had not received their notice until now. At that public hearing, both Mr. and Mrs. Lahoud spoke in opposition to their property being rezoned. They asked that the Commission leave their property zoned residential, but Perch's attorney said if the Commission did that they would file a lawsuit. The Commission had explained to them that they had no choice but to reverse it, so they suggested the Lahoud's come back which is why they are here tonight. So they are now asking that the Commission just give them back what they had when the first zone change was granted. Unfortunately since they filed this petition, the Zoning Enforcement Officer had contacted them and told them they were in violation because they had not gotten permits for the kitchen. He came out and did an inspection and told them that since the apartment was illegal, they had to evict their tenant. And if this zone change is not granted they have to remove the kitchen. Mr. Lahoud said they had made their tenant move out and if this is granted they will get permits and make everything legal this time. Mr. Stramiello asked why the Zoning Officer had done the inspection. Mrs. Lahoud said that there had been a written complaint filed and he was doing his job.

Chairman Farah asked if there was anyone to speak in opposition to this.

Matthew Reynolds, one of the owners of Perch LLC, read a prepared statement into the record. He said that if the Lahoud's property is rezoned, any change to their property would require a 30 ft. setback on the common property line on the north instead of 20 ft. and also they would be required to install landscape buffers. He said there were no permits taken out for kitchen so it appears that this petition is an attempt to back into the necessary approvals. He said he does not feel that they should be rewarded by getting a rezoning. Mr. Haddad asked for the setback differences. Mr. Reynolds said in IL-40 the side yard setback is 20 ft., but if the Lahoud's property is changed to a residential zone, then the setback becomes 30 ft. with a required landscape buffer. He added that the closest point of the building is within the required setback. Mr. Haddad asked if they could add more units to the building. Mr. Reynolds said they can if they can create more parking, but a change of use would require a revised site plan which would trigger the additional requirements. Mr. Elpern said they currently have 11 parking spaces and any addition would require more parking which would be difficult due to the grade in the rear of the building. He added that no matter what, providing more parking would be a problem. Mr. Johnston asked if there was any way to put in additional parking easily. Mr. Elpern said the only place they could put it would be in the rear and that will require engineering. Mr. Melillo asked if they have plans for an addition. Mr. Reynolds said not at this time. Mr. Melillo suggested they could apply for a variance for the setbacks. Mr. Haddad asked how long this building has been under condominium ownership. Mr. Reynolds said it was built around 1985 or 1986. Mr. Haddad asked if the condominium declaration allows for the building to be expanded. Mr. Reynolds said he was not sure.

Mark Dixon, also one of the owners of Perch LLC, said he is opposed because this property was purchased as IL-40 and any change of use to their building would force them to meet current requirements. Mr. Johnston asked if they have any plans to change the use. Mr. Dixon said they do not. Mr. Haddad asked Mr. Elpern if this gets approved will it only affect the setbacks for the building not the use. Mr. Elpern said if the use of the building is changed, that does not trigger the additional requirements. He added that it is only if the building is changed that they will have the additional setback on the common side. He

reiterated that the parking is the issue with any expansion of this property, because no matter what if they can't provide additional parking they cannot expand. He said the side that borders the Lahoud property is presently at 20 ft., there is more room on the other side but the steps to enter the building and a retaining wall are located there.

Robert Bennison said he is the other owner of Perch LLC. He said he is opposed because if the Commission changes the zone in order for them to make the apartment legal, he and his partners will be the ones who are negatively affected. He then said Karyn Reynold's property on the other side of theirs is for sale and they could buy it and expand their building. He said they bought this site with the knowledge that they could expand, since there is property in the rear. He said they will suffer if this is changed. Mr. Stramiello asked if they have any plans to purchase the property next door. Mr. Haddad said they have a legitimate argument here, it is a tough call. Whether the other parcel is available or not, it will affect them. Chairman Farah asked why he said this will hurt their property. Mr. Bennison said the changes to the setbacks and the addition of the buffers. He then said the reason this petition is out of line is because they did not pull the proper permits to put the apartment in. He added that he filed the complaint with the Zoning Officer because everyone should have to comply with the Regulations. He said they knew they needed a permit when they did the work.

Mr. Elpern said they cannot go straight back with an addition because the big issue is parking. Of course if they buy the property next door it will increase their options to expand. He said that behind the existing building is very steep and heavily wooded so there is not much flexibility now due to topography of lot. Mr. DiCaprio asked if this would be spot zoning. Mr. Elpern said no because it would be RMF zones abutting each other with the only difference being the permitted density. He said spot zoning is not just about size but also about inconsistency with surrounding uses.

Mr. and Mrs. Lahoud spoke in rebuttal. Mrs. Lahoud said that they did change the apartment after the zone change was granted, but they had no idea they had done anything illegal until the ZEO notified them. She added that they never intended to be fraudulent or illegal, they honestly did not know. Once they found out they were in violation, they immediately vacated the apartment. She said the residential houses were there first before this office building was put up and there is a big hill behind her house also. She said they are saying they will be penalized but what about them; all they want is what they originally asked for and were granted. She apologized for making the mistakes. Mr. Jowdy asked about the notice requirement. Mr. Elpern clarified that the notices are sent out by regular mail, not by certified mail. Mr. Haddad asked if Corporation Counsel could review the condominium declaration for Perch's building to see if it limits expansion.

Mr. Melillo made a motion to close the public hearing contingent on receipt of the information about the condominium declaration. Mr. DiCaprio seconded the motion. Mr. Elpern said they do not need a legal opinion because it is a factual statement, either it says it or not. Chairman Farah reiterated that the motion was to close the hearing pending the receipt of this information. He called a roll call vote and the motion to close was passed unanimously.

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7:45 PM - Petition of Berkshire Village LLC/Jeffrey Bruno, 162, 170, 172, 174 & 176 Shelter Rock Rd. (#M14003, #M14004, #M14009, #M14010 & #M14005) for Change of Zone from RA-40 to RMF-10.

Mr. Wetmore read the legal notice. Mr. Melillo read the Planning Dept. staff report dated January 19, 2009. Chairman Farah read the Planning Commission recommendation which was negative. He also noted that the Town of Bethel was notified by Certified Mail. He added that HVCEO had sent their standard response "of local interest but without intermunicipal impact".

Attorney Fran Collins said the applicant is the owner of 176 Shelter Rock Rd., Lexington Meadows Condominiums and the Town of Bethel each owns a parcel and the remaining property owners are a party to this request and their permission letters are attached to the petition. This is just an island of RA-40 in the middle of Woodland Hills and Lexington Meadows which is just over the Bethel town line. Because this property is surrounded by multi-family development, this is a reverse spot zoning situation. The development of the surrounding condos has left these property owners with a problem; they will not be able to sell their property as single family. Attorney Collins then said they need to draw a distinction between the Comprehensive Plan versus the Plan of Conservation & Development. He said the Plan of Conservation & Development recommends that isolated lots and small remnants of land be rezoned to comply with the surrounding zoning districts. He added that this language is there so these situations will be able to be remedied and this change is consistent with the zone change criteria listed in the Zoning Regulations. .

Chairman Farah asked if there was anyone to speak in opposition to this and one person came forward.

Alan Wolfe, a member of Lazy Creek Mills LLC, said they own the property directly across the street. He added that his property is zoned IG-80 which permits the manufacture of decorative plastic products. Other projects on this road have been recently denied because of the traffic on this road. He explained that they still have sixteen acres of land that they are not using. If they were to propose expansion, the residents of these new condos would probably be the first ones to speak in opposition. He added that his site had been used industrially since it was built in 1955, all of these condos were built around his property. He expressed concern that although they try to be a good neighbor, they are still running a manufacturing business, so there is some noise involved. He said they are within the permitted noise range and as of now, no one is complaining. He suggested that if this Commission does not like the RA zoning, maybe they could rezone these parcels to industrial.

Mr. Elpern said as a point of clarification, when someone refers to the Comprehensive Plan, they are talking about the Zoning Map. It is a different document than the Plan of Conservation & Development. He added that the Land Development Plan Map shows this area as single-family. Mr. DiCaprio then said but there is a conundrum because this Commission rezoned the parcel that became Berkshire Hills and when they did that, Mr. Elpern warned them that they might as well rezone all of these lots because at some point someone is going to do that. Mr. Melillo asked if a spot zone has to be of a specific size. Mr. Elpern said it does not.

Attorney Collins spoke in rebuttal to the opposition's comments.. Said reverse spot zoning is legal term and there is case law to support it. It occurs when rezonings leave an island in the

middle of other zones and this is not one of those situations. He said the density issue is not a valid objection, since there are somewhere between 500 and 1,000 condos in the immediate vicinity of these properties. Also there are residential uses located across from the manufacturing facility now and there are no problems.

Mr. Johnston said the zoning map has many islands and he is confused about where they draw the line. He said you could say that every zone is surrounded by other zones. He said he is confused as to where the plan dictates, about the reverse spot zoning and the claim that this land is surrounded by a multitude of other zones. Mr. Elpern said with regard to any claim of spot zoning, the issue is the size. For comparison, he said if Woodland Hills was zoned RA-40 and they rezoned everything except for these lots that would be reverse spot zoning. This also conflicts with the Plan of Conservation & Development because this proposed residential area is surrounded on three sides by condominiums and the fourth side by an industrial use.

Mr. DiCaprio made a motion to close the public hearing. Mr. Melillo seconded the motion and it was passed unanimously. Mr. Johnston then said he would like to visit the site so Chairman Farah said they would not be considering this matter tonight.

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OLD BUSINESS FOR CONSIDERATION AND POSSIBLE ACTION:

Petition of E.W. Batista Family LP, 155 South St. (#J15048) for Change of Zone from RMF-4 to C-CBD. Hearing closed 1/13/09 - 65 days to make decision will be up 3/28/09.

Mr. Melillo made a motion to table this at the request of the applicant's attorney. Mr. Johnston seconded the motion and it was passed unanimously.

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NEW BUSINESS:

Petition of A & S Properties Inc., 6 Division St. (#H15263) for Change of Zone from CN-5 to RMF-4. Public hearing scheduled for March 24, 2009.

Mr. Melillo made a motion to refer this matter to the Planning Commission. Mr. Wetmore seconded the motion and it was passed unanimously.

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Chairman Farah asked if anyone had anything to discuss under Other Matters and there was nothing. He then noted that nothing under Correspondence and the For Reference Only listed the public hearings scheduled for February 10, 2009 and February 24, 2009.

At 9:10 PM, Mr. Wetmore made a motion to adjourn. Mr. Stramiello seconded the motion and it was passed unanimously.