



CITY OF DANBURY
155 DEER HILL AVENUE
DANBURY, CONNECTICUT 06810

PLANNING COMMISSION
www.ci.danbury.ct.us

(203) 797-4525
(203) 797-4586 (FAX)

MINUTES
MAY 7, 2014

The meeting was called to order by Chairman Arnold Finaldi Jr. at 7:35 PM.

Present were Fil Cerminara, Arnold Finaldi Jr., Helen Hoffstaetter and Alternate Robert Chiochio. Also present was Deputy Planning Director Sharon Calitro.

Absent was Joel Urice.

Ms. Hoffstaetter made a motion to accept the February 19, 2014 minutes. Mr. Chiochio seconded the motion and it was passed unanimously.

PUBLIC HEARING

Lwis H. & Jing H. Fong -- Application for Special Exception to allow Accessory Apartment in the CN-20 Zone - 17 Padanaram Rd. (## H10154) -- SE #736.

Chairman Finaldi read the legal notice regarding this application. Melvin Euven spoke in favor of this application. He explained that the Fongs and the wife's elderly parents live in this house building. They want to put up two walls but before they can get a building permit, they need to get this approved. Mrs. Calitro said there are two outstanding issues; the first is that the area marked as a garage does not look like a garage. She referred to two photos of the house downloaded from Google Earth asking where the garage door is. Mr. Euven said it is a garage with a brand new Mercedes Benz parked in there and a standard garage door. Mrs. Calitro said the second question is about access, a door is shown on the side of the house but there is no walkway to get to it from the front of the house. Mr. Euven said other than photos; he does not have any plans showing the walkway. The surveyor wants \$900.00 to add the walkway to the survey map and the Zoning Officer has already said they can use the survey as it is. Mrs. Calitro said they need something for the file showing the location of the walkway from the driveway to the side entrance and also something documenting the existence of the garage door.

Chairman Finaldi asked if there was anyone to speak in opposition to this application and there was no one.

Mrs. Calitro asked that they keep the hearing open but give her direction so they will be able to vote on this at the next meeting. Ms. Hoffstaetter made a motion to

continue the public hearing. Mr. Cerminara seconded the motion and it was passed unanimously.

CONTINUATION OF PUBLIC HEARING

A & J Construction -- Application for Special Exception/Site Plan Approval to permit "Outdoor Storage, Sale, Rental or Repair of Construction Equipment & Building Materials; and Screening of Earth Materials" in the IG-80 Zone -- 50-56 Payne Rd. (#M12009) -- SE #731.

Before they got started, Chairman Finaldi asked that all of the speakers not repeat what has already been said as the meetings are videotaped so it is all on the record already.

Attorney Neil Marcus and Civil Engineer Nancy Levesque from Carroccio-Covill spoke in favor of this application. Attorney Marcus said he wanted to report on traffic and safety conditions, since both staff and the public have brought this issue up. He said he contacted the Danbury Police Dept. and asked for accident count. There were three police calls in three years for accidents that involved property damage and evading responsibility. He said he also asked the Bethel Police but they could not provide him the specific information. They gave him a list of accidents that occurred in the Payne Rd. area, but the quantity of collisions was too broad to determine if they were related to the subject property. He then said based on the Danbury Police report, there were not a lot of accidents.

He said regarding the noise issue, they had submitted a report which Mrs. Calitro forwarded to the Commission members. He said this report included information from the manufacturer regarding the decibel level. It said that when you are standing next to the screening machine, it is very loud, like riding a lawnmower or cutting wood. Once you move about 150 ft. away from it, the noise changes to more like an electric shaver or normal street noise. You would hear the same noise as if you were standing on Payne Rd. listening to traffic passing by. He said the temporary screening plant is approximately 220 ft. from the road; the final location is 500 ft. and about 26 ft. lower. He added that the noise ordinance is a police enforced standard and they will comply with it as there will be no problem staying within the permitted levels. Mr. Urice asked if there is a different noise level when the machine is running, not screening or crushing; is there a distinction between the sounds of regular revolutions versus the screening. Attorney Marcus said the report just addresses the screening operation, not the crushing and it is measured at full capacity. Ms. Hoffstaetter said the report says it is for the machine running empty, note added that seems to say it is quieter when running full than empty. Ms. Levesque said the report is based on using a larger motor than they intend to use, so their motor will be quieter. She added that the noise they are talking about is at the two year temporary site. Since they are not permitted to screen on this site, they had to take the readings at another site. She said when it is moved farther back on the lot, it will be much less noticeable. Ms. Hoffstaetter asked what will happen if they bring in equipment that is louder. Attorney Marcus said that would be a violation of the noise ordinance and they would be cited by the Police Dept. Ms. Hoffstaetter said the Planning Dept. staff report says 70 dbas but all their numbers are over that. Attorney Marcus said the problem is that

the street is as loud as the machine, so the street itself violates the ordinance. Ms. Hoffstaetter said she is not talking about the street; she is talking about the site. Attorney Marcus said if they erect things between the street and the site, it will block the sound. He said there will be things that will block the sound, screening, and fencing and in the back it will be dropped below street level or they won't operate. He said they will have to buffer Mr. Turner's property because it is non-conforming residential. The problem will be that since he does auto repair on that site which also causes noise; they will need to figure out what noise they need to buffer. Mrs. Calitro asked the distance from the temporary screening machine to the northern property line. Ms. Levesque said it approximately 75 ft. Attorney Marcus said the ordinance spells out the permitted dbas based on the zones; it is 70 dbas at the property line but both sides are bounded by more industrial zoned land. He said they gave them the worst case scenario; they would position the machine to create the least noise. Ms. Levesque said the person who did the readings parked in the proposed location of the screener and turned up his radio to create noise. Ms. Hoffstaetter asked if the decibel level is affected by higher or lower tones. Ms. Levesque said it reads the actual loudness. Attorney Marcus said a decibel reading is a decibel reading. Ms. Hoffstaetter said a three-cylinder engine would not necessarily be equivalent to a radio turned up all the way.

Attorney Marcus said other issues that they needed to address were contained in the staff report. It is interesting that screening is defined in the Regulations but they don't define earth materials are. He said he had to go to construction industry to get a definition and that is what Mr. Boa has described. He is going to screen the truckload of material and end up with stone, dirt and bituminous, which are all earth materials. He added that they presume this is allowed because otherwise the Regs. would have to say sifting of stone sand and gravel. He said Mr. Boa does not screen construction debris and he is not sure how to resolve this. Maybe he would have to agree to no processing of materials, only talking about screening and storage. He said the Regs. seem to call out the storage of bituminous, but in reality this material has been stored onsite for the fifteen years Mr. Boa has been on this property. He added that if it is not aggregate, then it would be considered clean fill. And that is clearly allowed because you can store building materials and that has been done for fifteen years. He said there was a mention of stump grinding; but that is not done and they are not asking to do it.

He then asked Ms. Levesque to define the gate location. She said it is 55 ft. to the sidewalk and 75 ft. to the Payne Rd. property line. He said the question was how many vehicles can queue; when a truck is parked at the gate, can a second truck can fit in the driveway. Ms. Levesque said there is enough room for two vehicles to queue. Attorney Marcus then said the Commission will have to determine if conditions adverse to traffic safety will be created on the site. He does not want confusion; the only new use being proposed is screening. This site has always been used for storage of earth materials; they are just making it more formal by the site plan. He said if this plan is not approved; then what will remain on the site is a lesser quality than if they are allowed to make improvements. Trip generation is based on the square footage of floor area but they have no floor area, so he suggested they will get some actual traffic numbers. He said since the site has been used for fifteen years, their counts will address the concern about site being able to handle the traffic. He said another issue was whether they should they consider Old Sherman Turnpike as a feasible

access to the property. Ms. Levesque distributed a Google earth photo and said an old logging type of road goes through there. The EIC was concerned about the wetlands in the rear of this site and she is not sure if they would have to cross them. She added that if it was improved, they would need at least four wetland crossings as well as the fact that about quarter mile of road does not yet exist. Attorney Marcus then asked that they change the condition regarding removal and relocation of telephone pole to pay the cost of removal and relocation of the telephone pole. He said it has worked for fifteen years and maybe they should consider it being used only as an access to the detention pond. He then said the real question here is what they are really allowed to screen on this site. He said they have no issues with improving the proposed screening and landscaping.

Chairman Finaldi asked if there was anyone to speak in opposition to this application and several people came forward. He once again requested that the speakers not repeat themselves as the previous meeting was videotaped so their comments are "on the record". Mr. Cerminara asked if they are just doing screening and no crushing on the site now. Mrs. Calitro said the application requested certain uses which are addressed in her memo to the Commission. She continued saying they did not apply for other uses such as bituminous products, although that is permitted by special exception in this zone. She said this is not supposed to be a crushing operation.

Lynn Waller, 83 Highland Ave., said she was here in 1995 and 1996 about this same site. She submitted a packet of information regarding the things that were agreed upon then. (Exhibit B) She said there were things that were supposed to be done before they had approval to use the site and they were never done but they are using the site anyway. She also referenced the agreement with the Town of Bethel, reading all the things they are prohibited from doing on this site. She repeated that this was all agreed upon in 1996 and asked that they incorporate those conditions into this file. She mentioned that this must satisfy Sec. 10.C.4. in order to be approved. In closing she said this site is located directly across the street from residences on Payne Rd. and those people are affected by this operation.

Bob Miller, 19 Fairchild Dr., Bethel, said he is a crane operator and the three-cylinder engine that they were talking about is a little engine. The type of engine that runs the screener is really loud. He has worked jobs that were closed down due to the vibration and noise. He said he worked on a demolition of a steel foundry in Derby that had enough vibration to make the building floor crack. The problem with screening is that if material is too wet or too dry, the machine will not function properly. He also worked on capping the Danbury landfill and this type of work is not a quiet operation. Chairman Finaldi asked him if he is saying that the bigger engine is quieter than a smaller engine. Mr. Miller said the manufacturer will tell you anything to sell their equipment; adding that most screeners run with big loud engines that are way over the noise limits. He said asphalt is not a nice thing once it is broken up because it releases all kinds of pollutants. He said if they start screening on the lower property, it will be like an amphitheater and everyone will hear it.

Joseph Tresca, 21 Partridge Dr., Bethel, asked that they go to a site and see the operation. He said a screener is designed to separate the rocks, not what they are saying it will do. He said they still have not defined that materials they will handle. It is nice for them to take noise levels now because they are not doing this on the site.

He suggested the Commission also go to this property and see what it is actually like because you need to see it to understand this. He said based on what they are saying, what they will be doing is crushing not screening and the Commission needs to hear what crushing sounds like. He added that he sees the potential for traffic back-ups especially with all the trucks waiting to get into this site. In closing, he said the Commission really needs to see the total operation to understand what is really going on.

Michael Patten, 23 Partridge Dr., Bethel, said the neighbors have filed written complaints about the Tinker and Nejame operations with the Zoning Officer. Both of these property owners had said they would comply with the Regulations, but they still do what ever they want. He said any traffic counts done right now will not be accurate because the Walnut Hill bridge is still closed. The noise from this site is already unbelievable and this will just add to it. He said the traffic on Payne Rd. gets backed up all the time because of businesses that are located on it.

Ruby Soto, 55 Payne Rd., said of the three accidents that Attorney Marcus spoke about; one was outside their house. Another was someone they know who told them that it happened because there was snow on the road, so she wanted to remind them that weather can affect the traffic too.

Ruben Soto, 55 Payne Rd., said you cannot measure the sound of a crusher by using music. Car radio volume can be controlled by a dial, but the sound of a crusher cannot be controlled. He brought pictures of the site showing trucks working on Saturday. He said these were taken after the last meeting, because Attorney Marcus claimed the previous pictures he had submitted were old. He added that he also has videotape of the noise and the hours of operation. He then said the people who have spoken combined have over fifty years of experience as motor vehicle mechanics and they know what noise is. He said it is a shame that the applicant is insulting his neighbor's intelligence with his claims. He questioned how a guy with no permits can keep working. He submitted the six photos (Exhibit C).

Skip Turner, 60 Payne Rd., came forward and submitted a video containing short clips with time stamps. He asked that the Commission review it (Exhibit D).

Attorney Marcus spoke in rebuttal to the opposition's comments. He said the third speaker suggested they should observe a screener; and he wants to find a site where they can do this. He said a lot of the speakers used both crushing and screening but crushing is significantly different and the proposal before them does not include crushing. He said the Planning Dept. staff report indicates a specific screener and if you go to the website, you can see this machine. He said the speakers are not incorrect when they say screening can be noisy but the today's equipment is much quieter than the ones made 20-30 years ago. He said they will stand by their information to be accurate. He said the fourth speaker said they should focus on traffic; they know the bridge is out. He also said they should not add another business on this road; but they are not adding this business. It already exists; they are adding screening in connection with this business. Congestion is already a problem on Payne Rd. and that is not their problem. They not asking to rezone this parcel, it already is zoned as heavy industrial. He said it is the duty of the City of Danbury to provide safe roads to service that zone and case law says this. Payne Rd. being congested is a

concept that does not apply to this application. He said he believes they created confusion by using the radio; the idea was that they were taking a measurement by creating a decibel level that they could record. They were not trying to compare the sound of a diesel engine versus a philharmonic orchestra; they were simply trying to create a standard of measurement. He said they are still working on a response to the Planning Dept. staff report.

Mrs. Calitro said we just got revised plans in last week so there are still some outstanding responses. The applicant has granted an extension to keep the public hearing open through the June 6 meeting. Mr. Chiochio said he is confused about what the changes may or may not be versus what is going on at this site. He said since they are asking to put a screening operation on this site, does that mean there is no screening going on today? Attorney Marcus said it is not allowed today. Mr. Chiochio said okay, so they are asking for permission to do screening but also to sell product. Attorney Marcus said yes because that has also been going on at the site but it is allowed so they want to be specific about what is going on there. Mr. Chiochio asked if there is sales going on there now. Attorney Marcus said his understanding is that they sell materials to other contractors. Mr. Chiochio asked if that would continue or will it change. Attorney Marcus said the site will just be organized and there will be an area dedicated to the sales. Mr. Chiochio asked if there is anything else being added? Attorney Marcus said there are no other things being added. Mr. Chiochio said if there currently is screening and selling of product (since Attorney Marcus said there would be no significant changes), and the same trucks bring the material in and out, why would there be increased traffic and what would that difference be. Attorney Marcus said people might choose to avail themselves of the screening operation on this site because of proximity. He said there has been screening on the site but there is not now, but the use of the screening device will have limited impact on the traffic. Ms. Hoffstaetter questioned the operations information saying it is rather vague and asked about site safety. Attorney Marcus said they have gone through most of that with EIC, showing how they would screen materials that they will be storing. He said because the applicant's business is related to paving, that is where the dates come from. They are not running a store in terms of selling materials; it is more likely based on requests for specific products. And the site is gated because they don't want a lot of people wandering around the site. Ms. Hoffstaetter said it would be helpful to have more information regarding the business operations. Attorney Marcus said Ray Boa testified at the previous meeting about his hours of operation and he sticks to the specified hours. Mrs. Calitro asked that Attorney Marcus review the 1997 site plan file which contains documentation about the expiration of that approval. She said it is detailed as to what uses are allowed and when the site plan approval expired.

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

REFERRALS

8-3a Referral -- Petition of Dev Patel to Amend Sec. 5.F.2.b. of the Zoning Regulations. (Add "Hookah Bars" as a Special Exception use in the C-CBD Zone). Zoning Commission public hearing scheduled for May 13, 2014.

Mrs. Calitro reviewed Mr. Elpern's staff report dated April 30, 2014. It suggests that since the Commission does not consist of medical doctors, all they can do is to be aware of the reported dangers of hookah smoking. At one time, hookah smoking was a cultural activity but now it has become much more popular among young people. If zoning is charged with protecting the public health that leads to the question of how far do we take that? Currently smoking is prohibited in most public places, but this petition would specifically allow and encourage smoking in a public place. This idea suggests that if the Commission is going to regulate this use, maybe specific restrictions should be imposed or a license should be required. The problem with restrictions is that enforcement can be difficult unless the use requires a license that can be removed for violations. All of these issues seem to encourage the idea that some additional criteria should be added to this use.

Mr. Cerminara asked if this use is allowed anywhere else in the City and Mrs. Calitro said it is not. She then read the definition of hookah bar from the Zoning Regulations. Chairman Finaldi said they are charged with protecting the public health. He added that Mr. Urice had sent him a comment on this saying that this is like a cigar bar. Ms. Hoffstaetter asked if we have approved any cigar bars in Danbury. Mrs. Calitro said there are none that she is aware of. Mr. Chiochio said he does not feel strongly opposed but is concerned that there are no restrictions or site criteria with this. Ms. Hoffstaetter asked if this includes e-cigarettes. Mrs. Calitro said this petition is specifically for hookah bars. She then pointed out that many of the downtown buildings share common walls and have residential units located above them on the upper floors. She also mentioned that since this is being proposed as a special exception use, approval of it would need to satisfy the findings that must be made under Sec. 10.C.4. of the Zoning Regulations. Chairman Finaldi said this puts the Commission in a tough spot because this proposal is for the downtown location which might not be the ideal spot for this use. Ms. Hoffstaetter made a motion to give this a negative recommendation for the following reasons: approval of this petition would allow smoking in a public place without any specific restrictions or licenses being required. This Commission suggests that if this use is to be allowed, there should be some controls in place, including where it would be located. Mr. Cerminara seconded the motion adding that he is not totally opposed but he definitely believes that specific restrictions and/or limitations should be a part of this use. Chairman Finaldi called for a vote on the motion to give a negative recommendation and it was passed unanimously with four ayes.

8-3a Referral -- Petition of J.A.R. Associates, 1-7 South St. (#K16161, #K16159 & #K16158) for Change of Zone from IL-40 to RMF-4. Zoning Commission public hearing scheduled for May 13, 2014.

Mrs. Calitro reviewed Mr. Elpern's staff report dated April 28, 2014. It says this complies with some of the specific criteria for rezoning to multi-family, but it is inconsistent with the Plan of Conservation & Development. It suggests these parcels should be used for mixed light industrial/office and transportation uses. There also is a substantial amount of wetlands on the site, which will affect the density of the proposed development. The wetlands can be counted toward the acreage of the site when calculating the number of dwelling units that are permitted, but no development can be done on the wetlands. This could result in a development that looks much denser

as the units will be clustered on only the area designated as developable. The staff report suggests that one way to resolve this is to consider rezoning to RMF-6 instead of RMF-4.

Chairman Finaldi mentioned all of the condo developments in the vicinity of this site. He said it is a tough situation whenever there is residential development on one side of the road and industrial development on the other. Mr. Cerminara said the site does not look big enough to be used for industrial purposes. Chairman Finaldi added that he believes you cannot build right up to railroad tracks; there is some kind of setback distance that must be maintained. He added that this is a heavily multi-family residential area and this parcel would be better used as residential. He added that this is only a referral; the Zoning Commission will hold a full public hearing on this matter. Mr. Chiochio made a motion to give this a positive recommendation for the following reasons: this site is located on an arterial street, there is both public sewer and water service available, there are no steep slopes, and the proximity to several major multi-family developments makes multi-family development a better use for this site. Mr. Cerminara seconded the motion and it was passed unanimously with four AYES.

OTHER MATTERS FOR DISCUSSION & POSSIBLE ACTION

A, T & T Proposed Cell Tower on FCI (Federal Correctional Institution) property.

Mrs. Calitro said she had received more information from A.T. & T.'s attorney. They are asking for confirmation that this location is the City's preference rather than a new tower on a residential lot on Hollandale Rd. She said the existing tower on the FCI site will either be replaced or they will build a new one next to it. They have an application pending for the lot on Hollandale but the FCI site is really their preference. She then said that the Zoning Regulations say that towers should not be located near residential site and they need to make a motion so she can let them know the Commission's preference. Ms. Hoffstaetter made a motion to let A.T. & T's attorney know that the City's preference is that the tower be located on the FCI property. Mr. Cerminara seconded the motion and it was passed unanimously.

Chairman Finaldi said that listed under For Reference Only are public hearings scheduled for May 21 , 2014 and June 4, 2014 and two referrals from the Zoning Commission.

Ms. Hoffstaetter asked if there is a history of violations for the Payne Rd. site. Chairman Finaldi said it is his understanding that the ZEO has received complaints but once he goes out there, things are resolved before he can begin any legal action. So there is no formal history of violations.

At 9:45 PM, Mr. Cerminara made a motion to adjourn. Ms. Hoffstaetter seconded the motion and it was passed unanimously.