



CITY OF DANBURY
155 DEER HILL AVENUE
DANBURY, CONNECTICUT 06810

ZONING COMMISSION
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MINUTES
FEBRUARY 24, 2009

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

Present were Anthony DiCaprio, Theodore Haddad Jr., Patrick Johnston, Richard P. Jowdy, Dave Manacek, 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 and Alternate Victoria Hickey.

Mr. Melillo explained that the Chairman was out of town on business. He then asked Mr. Spegnolo to take Mr. Farah's place for the items on tonight's agenda.

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

Mr. Johnston made a motion to accept the minutes of the January 27, 2009 meeting. Mr. Manacek seconded the motion and it was passed unanimously.

Mr. Manacek then announced that he had listened to the tapes of the January 27<sup>th</sup> meeting so he is now eligible to vote on items 2 & 3 under the Old Business on this agenda.

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PUBLIC HEARINGS:

7:30 PM - Petition of Casa Do Benfica Inc., 331 Main St. (#I13036) for Special Permit for Private Club Liquor License. Rescheduled from February 10, 2009 meeting which was cancelled.

Mr. Wetmore read the legal notice. Attorney Larry Pereira spoke in favor of this, explaining that Benfica is an award winning Portuguese soccer team. They do a lot with children to train them to play soccer. He showed the Commission the team jersey and said they were founded in 1904 and have consistently been one of the most popular teams in Portugal. He then listed some famous soccer players who have been on this team. He said they have clubs all over the country where members only can come and watch the televised games. They use the profits from these adult clubs to fund the training programs for the children. He said this club organized in 2006 and prior to that they were chaired by a parents' organization. They have been looking for a site for a while now and have finally settled on this one. At the present time, they cannot cook onsite because they need to replace a ventilation hood to get Health Dept. approval, but they can use chafing dishes and bring in catered food from off site like the Cultural Center. This location will be used as a meeting club and a hall for parties and possible banquets. They intend to make it card access, so that only members can get in. The sale of liquor to the members will be used right now to finish the renovation of this building and once they get the kitchen approved, they will be able to cook meals on site also for the members. The intent is for the hall to support

athletic training programs for young athletes, but first they have to get it open and operating. Attorney Pereira said that they have applied for IRS status as a private club which really means they can only serve to members and their guests. He said they are working with the Portuguese Cultural Center and the City's Park & Recreation Dept. to find suitable locations for games. He submitted an e-mail message from the Nolan's' (who are their landlords). He then listed many of the other private clubs located in the downtown that have liquor licenses.

Mr. Haddad said everything he is saying about this being for the kids runs contrary to service of alcohol. Attorney Pereira said this facility is for adults, not kids. Mr. Haddad asked how they are different than other clubs that are supposed to be restricted to members only and if he is saying they can not run it without a liquor permit. Attorney Pereira said they are not saying they are different from any of the other private clubs that exist in the City. He added that without the liquor license they will never be able to finish the building. Mr. Haddad then asked if there is any ratio of food to beverage that has to be served on the premises. Mr. Elpern said there is not with this type of license.

Mr. Jowdy asked if it will be a sit down bar. Attorney Pereira said it will. Mr. Haddad asked if the members could bring their own liquor in. Attorney LP said if they don't have a liquor license they can, but once they have a liquor license they cannot bring any alcohol in from outside. Mr. Wetmore asked if the members have to be over 21 since that is the legal drinking age in CT. Attorney Pereira said that has not been determined yet but if they are serving liquor they will have to restrict it. Mr. Johnston asked if the downtown prohibition affects this petition. Mr. Elpern said that only restricts taverns and bars. Mr. Stramiello asked if they will allow smoking. Attorney Pereira said they have already determined that there will be NO smoking on the premises.

Mr. Wetmore then said since they will prohibit people under 21 does that mean the club is not for anyone who loves soccer. Attorney Pereira said he should have said that in the bar area they will not be able to allow people under 21; but the meeting hall area is separate and when the Benfica games are on there will be people in the hall too. He submitted a floor plan showing that the bar is only a small area of the facility (designated Exhibit B). Mr. Johnston asked the capacity and if there is adequate parking available. Attorney Pereira said the meeting hall will hold approximately 80 people and the bar area seats 43. Also there is plenty of parking in the rear of the building as well as in the adjacent garage that the Nolan's own. He continued saying that in order to be licensed as a club, they must have been in existence for at least three years which they have. Mr. Haddad asked where they meet now. Attorney Pereira said the Old Oak and other facilities around town. Mr. Haddad asked how many members they are looking to have. Attorney Pereira said there are around 200 members and they are not actively seeking any others at this time.

Mr. Melillo asked if there was anyone to speak in opposition to this petition and there was no one.

Mr. Elpern reviewed the criteria for the approval of a Special Permit from the Zoning Regulations and said the Commission can impose conditions if they choose to. He added that the closest charitable institution is ARC which is located in the same building as Subway.

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

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7:40 PM - Petition of B & L Holdings LLC, 2 Glen Hill Rd, 33, 35, 37 & 39 Tamarack Ave. a/k/a Rd. (#I10045, #I10044, #I10046, #I10047 & #I10048) for Change of Zone from RA-20 & RMF-6 to RH-3.

Mr. Wetmore read the legal notice. Mr. Melillo read the Planning Dept. Staff Report dated February 11, 2009. Mr. Johnston read the Planning Commission recommendation which was positive. Mr. Haddad pointed out that the agenda is missing part of the information and asked if the legal notice was correct. Mr. Melillo assured him that the legal notice is correct.

Attorney Neil Marcus described how this petition evolved from the previous one for a rezoning to CG-20. He said the RH-3 zone actually makes this area consistent with the uses on the properties. He said they had only gone with the CG-20 on the previous petition because the property on the other side of Glen Hill Rd. is zoned CG-20. He added that looking at the map you will see that this will create a buffer between buffer on the south side of Glen Hill and the residential neighborhood. He added that this takes away a lot of the concerns that were raised by the Commission and the residents from Apple Blossom condos. He pointed out that the Planning Commission had reversed their original opinion and said the map submitted with the petition really demonstrates the zigzag pattern of the existing zoning line. There were no questions from Commission.

Mr. Melillo asked if there was anyone to speak in opposition to this petition and there was no one.

Mr. Johnston made a motion to close the public hearing. Mr. Manacek seconded the motion and it was passed unanimously. Mr. Johnston then made a motion to move this matter to number four under the Old Business on tonight's agenda. Mr. Manacek seconded the motion and it was passed unanimously.

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7:50 PM - Petition of Intertech Assoc., c/o Danbury Orthopedic Assoc. Inc. to Amend Sec. 5.D.4.c.(1) of the Zoning Regulations (to permit expansion of existing medical offices, not to exceed 3,000 sq.ft., on lots of one acre or larger in the CL-10 Zone).

Mr. Wetmore read the legal notice. Mr. Melillo read the Planning Dept. Staff Report dated February 11, 2009. Mr. Johnston read the Planning Commission recommendation which was positive including the language suggested by the Planning Director.

Attorney Paul Jaber said Intertech Assoc. is owned by Danbury Orthopedics and was formed to hold title to the property where their medical offices are located. The existing building contains 24,000 sq.ft. If this additional language is approved, it would allow the expansion of existing medical offices provided they meet all of the Zoning Regulations. He said they have no problem with the additional language suggested by the Planning Director. He added that Danbury Orthopedic is the oldest and largest medical practice in the City that has been in continuous operation since 1953. They currently have twelve physicians on staff. Twenty-five years ago they purchased this site and have continuously operated their practice from there. The purchase of this site was a deliberate decision, it was chosen because it allowed them

the potential to expand. It is an expensive proposition for medical offices to move to another location, especially because most land that is zoned for medical offices is owned by private developers who want to rent the space out rather than sell it and they wanted to own their site. Attorney Jaber continued saying that medical offices were always permitted in the CL-10 zone until the June 2007 commercial amendment package was approved. He said when medical offices were eliminated from this zone in 2007, most doctors were not aware of this change. In May 2008, he came before this commission to add a provision to modify the CL-10 regulations to include medical offices with a 3,000 sq.ft. size limitation on them. Since then the doctors at Danbury Orthopedics became aware of this change and realized that it eliminated any possible expansion on their site; so they filed a petition to rezone the site to CG-20. That petition faced opposition from both the Planning Commission and the Planning Director, so they withdrew it and came back with this amendment which will allow them to expand but not to change to a more intensive use like permitted in CG-20. He said because they have more than one office, this site is staffed with three physicians on and 65 full time staff Monday through Friday. They see approximately 75 medical patients and 25 physical therapy patients. The physicians and the staff stay in the building all day; they have a cafeteria on site so there is no reason to leave. They see patients from 8 AM to 5 PM which helps to disperse the traffic throughout the day. This is important in determining if this expansion will cause more traffic. The majority of patients are seen between 9-4 which is not peak for traffic. This results in about 300 trips going and coming spread throughout the day. He said he does not believe that the elimination of this use from CL-10 was done deliberately, but this long time Danbury business should not be penalized; comparing it to eliminating legal offices from Deer Hill Ave. He said there are no plans right now for any expansion or additions, but they wanted to preserve their right to do so when it becomes necessary. Mr. Elpern asked that if they approve this, they include the modified language as recommended in the staff report.

Mr. Melillo asked if there was anyone to speak in opposition to this petition and there was no one.

Mr. Johnston made a motion to close public hearing. Mr. Manacek seconded the motion and it was passed unanimously.

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8:00 PM - Petition of Robert Botelho/Victorian Assoc. LLC, 126-130 Osborne St. (#I12093) for Change of Zone from R-3 to RMF-4.

Mr. Wetmore read the legal notice. Mr. Melillo read the Planning Dept. Staff Report dated February 16, 2009. Mr. Johnston read the Planning Commission recommendation which was positive. Mr. Elpern then pointed out that when the secretary prepared the map on the computer, she neglected to include two additional properties that the applicant also owns which are directly behind the subject area on the left side.

Robert Botelho passed out packets of information to each of the commission members (designated exhibit A). He described the location of this parcel as across the street from the Interfaith Day Care Center and the new hospital building. He said that in 1988, he came before this commission and received approval to move the zone line back to where it is today. He said he is not looking to put any buildings in this area but he needs to be able to use it to meet the open space requirement. He described the type of building he would put

there and mentioned a possible tenant. He added that over the last thirty years, he has built his business by restoring and maintaining affordable housing. He said he has worked extensively with City depts. such as Planning and Health & Housing on most of these projects. He said this new building will be used by a non-profit group and read a letter into the record from the Director of this group which requested that this be approved (designated exhibit B). He then described what is on each of the abutting lots including the ones that he owns. Mr. Haddad asked if this was an affordable housing petition and Mr. Botelho said it was not. There were no other questions.

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

Carmen Romero, 23 Cleveland St. asked for more information on what Mr. Botelho is planning to build and would the rezoning affect the value of the area. Mr. Melillo suggested she speak directly to Mr. Botelho and said this change is from one multi-family zone to another multi-family zone. Mr. Haddad pointed out that Mr. Botelho had presented a lot more information than he had to, so he obviously would be willing to speak to her. Mr. Botelho then came forward and said he would be happy to go over his plans with her after this meeting. He added that the portion of the property that is adjacent to her property is not really developable; it would probably just be included as open space. Mr. Elpern then verified the setback requirements would prevent Mr. Botelho from building in the area that abuts Ms. Romero's property.

Mr. Johnston made a motion to close public hearing. Mr. Manacek seconded the motion and it was passed unanimously.

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Mr. Haddad suggested they move the Intertech amendment and this matter to items five and six under the Old Business on tonight's agenda. Mr. DiCaprio seconded the motion and it was passed unanimously. Mr. DiCaprio then made a motion to move the first petition on this evening's agenda to item seven under Old Business. Mr. Manacek seconded that motion. Mr. Johnston then said he would like to do an on-site inspection before voting on this matter. Mr. DiCaprio withdrew his motion and Mr. Manacek withdrew his second.

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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 3/18/09.*

Mr. Melillo announced that eligible to vote on this matter were Mr. DiCaprio, Mr. Haddad, Mr. Johnston, Mr. Jowdy, Mr. Manacek, Mr. Stramiello, Mr. Wetmore, Chairman Farah and himself, Mr. Melillo. Since there were only eight members present who are eligible, he asked Attorney Marcus if he wanted them to vote. Attorney Marcus asked that they table this matter and see if they could get the members who are not eligible to listen to the tapes before the next meeting. He then said he would submit a letter tomorrow to the Planning & Zoning Office consenting to an extension of the time to make the decision to the second meeting in March. Mr. Jowdy said he would not be present at the next meeting on March 10, 2009. Mr.

DiCaprio then made a motion to table this. Mr. Wetmore seconded the motion and it was passed unanimously.

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Petition of Nancy & David Lahoud, 116 Coalpit Hill Rd. (#K17014) for Change of Zone from IL-40 to RMF-10. Hearing closed 1/27/09 - 65 days to make decision will be up 4/1/09.

Mr. Melillo announced that eligible to vote on this matter were Mr. DiCaprio, Mr. Haddad, Mr. Johnston, Mr. Jowdy, Mr. Manacek, Mr. Stramiello, Mr. Wetmore, Chairman Farah and himself, Mr. Melillo. He asked Mr. Spagnolo to take Chairman Farah's place for this matter. Mr. Haddad said they had been waiting to hear what the condominium declaration for the neighbor's property said about expanding. Mr. Melillo then read a report from the staff, which described the "no expansion" clause in this declaration. It also contained a provision that the collective ownership could amend this declaration but any amendments need to be filed on the land records. These records were checked in February and again today and no amendments have been filed. When staff was researching this parcel, they found that a variance was granted at the time of construction to reduce the side yard setback on the side that abuts the subject property. Once the Zoning Board of Appeals finds there is a hardship on a property by the granting of a variance, a precedent is set, and they would have a difficult time denying another variance especially for an expansion on the same side. Mr. Elpern added that is not to say approval is guaranteed but in order to grant the variance a finding of hardship must be made and in the case of this 1985 variance, the approval was based on the finding of a hardship. Mr. Melillo asked if anyone had any questions. Mr. DiCaprio made a motion to approve this petition for the following reason:

- Approval of this petition would not be detrimental to the neighboring property.

Mr. Haddad seconded the motion. He then said that based on the evidence which has been presented; it appears that approval of this petition would not stop the neighbors from expanding. Mr. Melillo then took a roll call vote and the motion to approve was passed with eight AYES and one NAY (from Mr. Jowdy).

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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. Hearing closed 1/27/09 - Tabled for on-site inspection. 65 days to make decision will be up 4/1/09.

Mr. Melillo announced that eligible to vote on this matter were Mr. DiCaprio, Mr. Haddad, Mr. Johnston, Mr. Jowdy, Mr. Manacek, Mr. Stramiello, Mr. Wetmore, Chairman Farah and himself, Mr. Melillo. He asked Mr. Spagnolo to take Chairman Farah's place for this matter. Mr. Wetmore made a motion to deny this petition for the following reasons:

- The Planning Commission gave this a negative recommendation as it does not comply with the Plan of Conservation & Development, and the staff report points out that this has the potential to cause increased traffic on Shelter Rock Rd..

Mr. Stramiello seconded the motion. Mr. Jowdy said there were letters from the neighbors in favor of this request. Mr. Melillo clarified that the letters Mr. Jowdy is referring to were letters from the owners of 170, 172 & 174 Shelter Rock Rd. giving Mr. Bruno the authority to include their properties in this petition and to represent them. Since there was no other discussion, Mr. Melillo called the vote and the motion to deny failed with five NAYS (from Mr. DiCaprio, Mr. Haddad, Mr. Jowdy, Mr. Manacek, and Mr. Spegnolo) and four AYES (from Mr. Johnston, Mr. Stramiello, Mr. Wetmore and Mr. Melillo). Since this motion failed, Mr. Melillo said they could either make a motion to approve or to table this. There was no response so he asked again for either a motion to approve or a motion to table. Mr. Johnston said he would make a motion to approve strictly for the purposes of discussion. Mr. Elpern said he should give a motion. Mr. Johnston added that it would create a more consistent zoning pattern. Mr. Jowdy seconded the motion. Mr. Melillo asked for discussion on this motion. Mr. Wetmore said he would encourage the Commission members to deny this because despite it resulting in a more consistent zoning pattern. The sixty-plus units that would be permitted would increase the amount of traffic on an already busy road. Mr. Johnston pointed out that if nobody changes their vote then this motion will fail also and the petition will be denied.

Mr. Jowdy then said he wanted to second the motion to approve and add the following reasons as to why this should be approved: "the neighborhood being what it is, in the RMF-10 zone; it's conducive to this neighborhood. There are two or three condo projects there already and it's not going to add that many condos to the area for what the applicant is requesting". Mr. Johnston accepted these additional reasons. Mr. Jowdy then said he believed that Mr. Wetmore had said this would allow sixty-three units. Mr. Melillo clarified that Mr. Wetmore was quoting the staff report which said the maximum development that a 14.61 ac. parcel would allow is sixty-three dwelling units. Mr. Jowdy said the applicant doesn't own enough property to build sixty-three units unless the other abutting parcels change their zone. Mr. Melillo reminded the Commission that they cannot consider a specific site plan, so they have to consider the maximum development a rezoning would permit. It was then clarified to Mr. Jowdy that all of these parcels are included in the zone change, the property owners of the other parcels authorized Mr. Bruno to act in their behalf for this petition. There are letters in the file to that effect. Mr. Jowdy asked if we were considering all of them as one parcel. Mr. Haddad said it does not matter whether everybody separately or individually gets their property rezoned, the point is that this petition includes all of these parcels so they have to consider what the maximum development would be if all the parcels were combined and developed together. Mr. Johnston said since they all applied together, the staff report calculates the maximum development that this change would allow. Since there was no further discussion, Mr. Melillo then took a roll call vote and the motion to approve was defeated with three AYES (from, Mr. Haddad, Mr. Jowdy, Mr. Manacek, and) and six NAYS (from Mr. DiCaprio, Mr. Johnston, Mr. Stramiello, Mr. Wetmore, Mr. Spegnolo and Mr. Melillo). Mr. Melillo said because this matter had a negative recommendation from the Planning Commission, it required a super majority (6-3) vote for approval, since it did not get that, the petition is denied.

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Petition of B & L Holdings LLC, 2 Glen Hill Rd, 33, 35, 37 & 39 Tamarack Ave. a/k/a Rd. (#I10045, #I10044, #I10046, #I10047 & #I10048) for Change of Zone from RA-20 & RH-3.

Mr. Johnston made a motion to approve this petition for the following reasons

- The RH-3 zoning district allows medical offices which would eliminate the non-conformities and allow the applicant to expand their parking onto an adjacent lot.

Mr. DiCaprio seconded the motion. Mr. Haddad asked that they add that this complies with the Plan of Conservation & Development since RH-3 is still a residential zone despite permitting medical offices. Mr. Johnston and Mr. DiCaprio accepted that additional reason. Mr. Melillo called the vote and the motion was passed unanimously with nine AYES.

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Petition of Intertech Assoc., c/o Danbury Orthopedic Assoc. Inc. to Amend Sec. 5.D.4.c(1) of the Zoning Regulations (to permit expansion of existing medical offices, not to exceed 3,000 sq.ft., on lots of one acre or larger in the CL-10 Zone).

Mr. Haddad made a motion to approve this with the additional language suggested in the Planning Dept. staff report for the following reasons:

- This complies with the Plan of Conservation & Development; it has limited application and will only cause a modest increase in traffic generation.

Mr. DiCaprio seconded the motion. Mr. Haddad then said he was on this Commission in 1985 and he remembers the previous petition that Attorney Jaber mentioned during his presentation. Mr. Melillo then called the vote and the motion to approve as amended was passed unanimously with nine AYES.

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Petition of Robert Botelho/Victorian Assoc. LLC, 126-130 Osborne St. (#J12093) for Change of Zone from R-3 to RMF-4.

Mr. Wetmore made a motion to approve this petition for the following reasons:

- It complies with the Plan of Conservation & Development and it will eliminate the zone boundary which divides this lot.

Mr. Johnston seconded the motion. Mr. Haddad then suggested the Commission members ignore the part of the presentation that described the development plans for this lot. Mr. Melillo called the vote and the motion to approve was passed unanimously with nine AYES.

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NEW BUSINESS:

Mr. Melillo asked that someone make a motion to add the following item to tonight's agenda for acceptance and referral to the Planning Commission:

Petition of Cioffoletti Construction Co., 18 Plumtrees Rd. (#L13121 & #L13122) for Change of Zone from IG-80 to RMF-10. *Public hearing scheduled for April 14, 2009.*

Mr. Johnston made a motion to add this matter to tonight's agenda. Mr. Wetmore seconded the motion and it was passed unanimously. Mr. Johnston then made a motion to refer this

to the Planning Commission. Mr. DiCaprio seconded the motion and it was passed unanimously.

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There was nothing under Correspondence and nothing to discuss under Other Matters. Mr. Melillo noted that Under For Reference Only, there was listed one public hearing which was scheduled for March 24, 2009.

At 9:45 PM, Mr. Johnston made a motion to adjourn. Mr. Stramiello seconded the motion and it was passed unanimously by voice vote.