



CITY OF DANBURY
155 DEER HILL AVENUE
DANBURY, CONNECTICUT 06810

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

MINUTES
DECEMBER 11, 2012

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

Present were Theodore Haddad Jr., Rick P. Jowdy, James Kelly, Robert Melillo, Terry Tierney and Alternates Kevin Haas and Robert Oravetz. Also present was Planning Director Dennis Elpern.

Absent were Sally Estefan, Walter Hoo Jr., Alan Kovacs, Marina Loyola and Alternate Elmer Palma.

Chairman Melillo noted that they will be using the new sound system so it is extremely important that the members use their microphones.

He then asked Mr. Haas to take Mrs. Loyola's place and Mr. Oravetz to take Mr. Kovacs's place for the items on tonight's agenda.

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

Mr. Haas made a motion to accept the November 13, 2012 minutes. Mr. Haddad seconded the motion and it was passed unanimously.

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7:30 PM - Application for a Certificate of Location Approval to re-approve the previously approved Used Car Dealer's License for Dantas Auto Sales LLC, 64 Federal Rd. (#K12271). Original State of CT approval for this location dates back to 1948.

Chairman Melillo read the legal notice. He explained that usually if someone wants to take over an existing site for automotive sales or repairs, he can waive the hearing and just sign the paperwork. He said also in some cases, he will waive the hearing if they want a lesser license. In this case, the site had a Used Car Dealer's license dating back to 1948, but last year someone came in wanting only to get a general repair license. They were told if they gave up the Dealer's license, they would have to have a hearing if they decided they wanted it again. Now this year, someone else comes in wanting to get a Used Car Dealer's license for this site. Since they gave up the

Dealer's license, we told them they had to have a hearing, which is why this is before the Commission now.

Chairman Melillo asked if there was anyone present to speak in favor of this and there was no one. He then asked if there was anyone to speak in opposition and there was no one.

Mr. Haddad made a motion to continue this until later in the meeting to see if someone shows up to speak in favor of it. Mr. Kelly seconded the motion and it was passed unanimously.



7:45 PM - Petition of Danbury Peachwave, LLC, c/o Robert Gleason to Amend Sections 2.B., 5.A.2.a., 5.B.2.a. & 5.F.2.a. of the Zoning Regulations. (Add Ice Cream/Frozen Yogurt Store as permitted use to CG-20, CA-80 & C-CBD Zones.)

Chairman Melillo read the legal notice. Mr. Haddad read Planning Commission recommendation, which was positive. Chairman Melillo then read the Planning Dept. staff report, which was dated December 3, 2012.

Attorney Paul Jaber spoke in favor of this. He said the applicant has stores in Bethel, Ridgefield and Newtown. He said the petition includes a definition as well as adding this as a permitted use to three commercial zones. He said the reason they are breaking this out as a separate use is because they are not really fast food restaurants. The typical frozen yogurt/ice cream store does not have the qualities that most fast food restaurants do. Fast food restaurants generally have stoves, ovens and dishwashers. They also have drive-thru windows and a much higher trip generation than a frozen yogurt/ice cream store. The fast food restaurants often are about 2,500 sq.ft. in area, which is much more space than a frozen yogurt/ice cream store. He said he had surveyed the surrounding towns and listed how they treat the frozen yogurt/ice cream use in his petition and Mr. Elpern had included that information in his Staff Report.

He said they decided to ask to make this a permitted use because it is a low impact use and should not be subjected to the expense and rigor of the special exception procedure. He then described what is involved in applying for approval of a special exception use: someone needs to attend meetings; usually the applicant must hire attorney or civil engineer. He said in some cases a traffic engineer must be brought in, there is a 710 dollar fee, and it could take at least ninety days with the necessary legal notice, public hearing and consideration period. He added that all of this is really cost prohibitive for a small business compared to a permitted use, which requires a simple revised site plan application which is reviewed administratively. In closing he

said that if this is approved, it will simply be changing this from a special exception use to a permitted use. And the cost, time and effort of the special exception process would be left to uses that need the more substantive review such as high traffic generators and adult business uses.

Mr. Haddad said this information was very interesting and asked how they surveyed frozen yogurt places to determine they do not generate traffic. Attorney Jaber said they used the info from frozen yogurt store located at the Stop & Shop on Newtown Rd. Also they asked the franchisor to provide the info from their existing stores. Chairman Melillo expressed the concern that if fountain service is prohibited, that would not preclude them from serving soda. Attorney Jaber said the small amount of beverages they would sell fall within the percentage that the Zoning Enforcement Officer considers accessory or incidental to the main use.

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

Mr. Haddad made a motion to close the public hearing. Mr. Jowdy seconded the motion and it was passed unanimously. Mr. Haddad then made a motion to move this to item one under Old Business. Mr. Haas seconded the motion and it was passed unanimously.

Since there were only a seven members present, Chairman Melillo offered Attorney Jaber the option of them waiting to vote until they had a full nine member board. Attorney Jaber said he would rather they vote tonight.



OLD BUSINESS FOR DISCUSSION AND POSSIBLE ACTION

Petition of Danbury Peachwave, LLC, c/o Robert Gleason to Amend Sections 2.B., 5.A.2.a., 5.B.2.a. & 5.F.2.a. of the Zoning Regulations. (Add Ice Cream/Frozen Yogurt Store as permitted use to CG-20, CA-80 & C-CBD Zones.)

Mr. Kelly made a motion to approve this petition for the following reasons: Ice cream/frozen yogurt stores are different from fast food restaurants and should be a separate use because (1) there is no drive thru window in ice cream/frozen yogurt store. (2) The traffic generation is considerably less, (3) There are no stoves, ovens or dishwashers in an ice cream/yogurt store, typically only a 2 or 3 bay sink in the back room.(4) A fast food restaurant's principal business is the sale of food and beverage, whereas ice cream/frozen yogurt stores do not have fountain service.

Mr. Haddad seconded the motion. Mr. Elpern reminded them that they were going to amend the proposed definition to remove the phrase "or beverage" from the first

sentence. Mr. Kelly and Mr. Haddad both agreed to amend the motion to include this change. Mr. Haddad read the revised definition into the record: "An establishment whose primary business is the sale of ice cream/frozen yogurt and where no drive through use is provided". Chairman Melillo took a roll call vote and the motion was passed with **seven AYES** (Mr. Haddad, Mr. Jowdy, Mr. Kelly, Chairman Melillo, Mr. Tierney, Mr. Haas and Mr. Oravetz) and **two not voting** (Absent members Estefan and Hoo).

NEW BUSINESS:

Petition of Ervie Hawley Jr. for Change of Zone from R-3 to RH-3 at 39-41 Hospital Ave. (#J12009, #J12010 & #J12011). Public hearing scheduled for January 22, 2013.

Mr. Haddad made a motion to refer this petition to the Planning Commission. Mr. Oravetz seconded the motion and it was passed unanimously.

PUBLIC HEARING:

Application for a Certificate of Location Approval to re-approve the previously approved Used Car Dealer's License for Dantas Auto Sales LLC, 64 Federal Rd. (#K12271). Original State of CT approval for this location dates back to 1948.

Chairman Melillo asked if there was anyone present to speak in favor of this. He asked the Commission what they wanted to do with this. Mr. Elpern said they should vote on it one way or another. The Commission members agreed that since they know the history of this location and this hearing was held in order to give the neighbors a chance to speak and no one is present, they should vote on it anyway.

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

Mr. Haddad made a motion to close the hearing. Mr. Kelly seconded the motion and it was passed unanimously. Mr. Kelly made a motion to move this matter to item two under the Old Business on tonight's agenda. Mr. Oravetz seconded the motion and it was passed unanimously.

OLD BUSINESS FOR DISCUSSION AND POSSIBLE ACTION

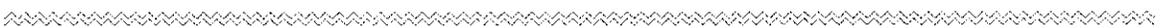
Application for a Certificate of Location Approval to re-approve the previously approved Used Car Dealer's License for Dantas Auto Sales LLC, 64 Federal Rd. (#K12271). Original State of CT approval for this location dates back to 1948.

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

This is a re-approval of a long existing location. This use will not have a detrimental effect on any use in the immediate vicinity as this is a commercial corridor between the City and the town of Brookfield.

Mr. Jowdy seconded the motion. Mr. Haddad how they determine how many display vehicles they can have on a site. Mr. Elpern said without an approved site plan for the use, they usually put as many as they can fit.

Chairman Melillo took a roll call vote and the motion was passed with **seven AYES** (Mr. Haddad, Mr. Jowdy, Mr. Kelly, Chairman Melillo, Mr. Tierney, Mr. Haas and Mr. Oravetz) and **two not voting** (Absent members Estefan and Hoo).



Chairman Melillo said they all should have received the regular meeting schedule for 2013. Under For Reference Only there was one public hearing scheduled for January 8, 2013. He asked if there was anything to discuss under Other Matters and one man came forward from the audience.

Richard Hunt, 5 Robinson Ave., said he wanted to address some important issues. One being that the Zoning Office should be able to enforce their laws, specifically people who own multi-family houses but do not live in the United States, so they are not available to address violations on these properties. The second matter is the property at 3 Robinson Ave. which has been in violation of zoning laws for at least ten years. He cited various violations on this location and submitted a file he has compiled with documentation regarding these violations.

Mr. Hunt said his third issue is that he is requesting that zoning change this dwelling at 3 Robinson Ave. from the current four units back to two units as it was originally intended. He asked that this Commission take some immediate action so the zoning laws can be enforced. He said the Zoning officials do a very good job enforcing the laws, but these kinds of property owners make a mockery of these laws. They clean up the property when the Zoning officers come out, but once they satisfy the zoning officer that the property is no longer in violation, all of the violations return. He added that this neighbor also has made his life very difficult. He allows his tenants to do things deliberately to annoy the neighborhood. He then read the mission statement for the Planning & Zoning Dept. from the City website. He said the zoning officers are doing a good job but the zoning laws don't have any teeth. He said his

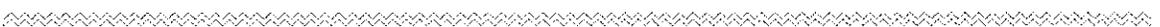
neighbor has made a mockery of the Zoning laws and asked that the Commission direct the Dept. make changes to their regulations that will give the Regulations some teeth.

After listening to everything Mr. Hunt had to say, Chairman Melillo said he and Mr. Haddad would arrange to meet with the Zoning Officers and Corporation Counsel to see what can be done. He added that the City Council has implemented some new ordinances that contain procedures that will allow violators to be fined.

Mr. Haddad said they are aware of the fact that some property owners make a mockery of the Zoning Regulations and no one should have to go through what he has endured with his neighbors. He said they will setup a meeting and want him to be involved in correcting this situation and others like it.

Mr. Hunt said there are multiple violations and citations against this property owner, but when dealing with unscrupulous individuals the zoning dept needs more tools to deal with this. He asked if the Commission could vote to change this property back to a two unit based on the multiple violations on it. Chairman Melillo said they cannot just vote to do that without following specific procedures. Mr. Haddad said they will check with the Health and Zoning Depts. to see what is the legal usage of this property. He added that anyone can petition to change the zone of a property. Mr. Hunt said this was originally a two family, but they are using it as a four family. Chairman Melillo said unfortunately there are many illegal apartments in the City, and there are also many situations where neighbors don't know what changes have been made to a property until it goes bad. Mr. Hunt said they need to give the Zoning Officers some teeth because there are so many problems. He then mentioned noise issues and said this situation has only gotten worse and his family's safety has been threatened.

Chairman Melillo thanked him for coming forward like this. He said it sounds like this property has many violations which could involve different City Depts. He said they are not pushing him under the rug, but they have to follow the proper procedures. For that reason he will arrange a meeting with the Zoning Officers, the Planning Director and Corporation Counsel to discuss the procedures used in handling chronic abusers of the Regulations. And then they will meet with him to let him know the outcome of the first meeting. He added that he will report back to the Commission as soon as these meetings happen.



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