



CITY OF DANBURY
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DANBURY, CONNECTICUT 06810

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

MINUTES
NOVEMBER 12, 2013

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The meeting was called to order by Chairman Robert Melillo at 7:35 PM.

Present were Sally Estefan, Theodore Haddad Jr., Rick P. Jowdy, James Kelly, Alan Kovacs, Marina Loyola, Robert Melillo, and Alternates Kevin Haas and Robert Oravetz. Also present was Planning Director Dennis Elpern.

Absent were Walter Hoo Jr. and Terry Tierney.

Chairman Melillo asked Mr. Haas to take Mr. Hoo's place and Mr. Oravetz to take Mr. Tierney's place for the items on tonight's agenda.

Logan Kovacs (son of Alan Kovacs) led the Commission in the Pledge of Allegiance.

Mr. Haddad made a motion that the minutes of June 25, 2013, August 27, 2013 & September 24, 2013 be accepted. Mr. Haas seconded the motion and it was passed unanimously.

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PUBLIC HEARINGS

Mrs. Estefan read the legal notice for all three petitions.

Request for Approval of Re-location of Package Store permit for Perez Wine & Spirits LLC from 61 Newtown Rd. (#12018) to 23 Federal Rd. (#K11123).

Chairman Melillo said the Newtown Rd. location was approved for this applicant in April 2009 and he has been there since that date. He has now requested to move his business to a new location which is permitted under the State of CT Liquor Control Commission regulations. The State generally does not require a hearing to relocate a liquor license but after discussing it with Zoning Enforcement Officer Sean Hearty, they decided that since the number of package store licenses are controlled, there should be a hearing. Chairman Melillo continued saying that relocating a license is a fairly common practice and an example would be that Fairgrounds Liquor bought someone's package store license and then moved it to the Sugar Hollow Rd. location. He continued saying that this Federal Rd. property was granted a variance to allow it to

be used as a package store. Although it is zoned IL-40, it has a long history of commercial use including a previous package store and Quinn B's deli which had a grocery beer permit. The site plan waiver has been received in the Planning Office and the Planner is expected to approve it tomorrow.

Debbie Rizzo, representing the property owner, described the history of this location. In 1976, it was Federal Wine & Liquor and since 1985, it has housed various neighborhood delis that all have had a grocery beer permit. She explained that Mr. Perez had been looking for a site and they had been looking for a good tenant. Mr. Haddad asked if this relocation affects the number of permits that are still left for new package stores. Chairman Melillo said it does not because this is an existing license being moved from one site to another. If someone wants to open a package store in the shopping center that Mr. Perez is moving from, that will be considered a new location and will deplete the number of licenses still available. Attorney Ingemar Heredia also spoke in favor of this request. He basically reiterated what had already been said by Chairman Melillo and Mrs. Rizzo.

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

Mr. Elpern pointed out the findings listed in Sec. 3.F.2 of the Zoning Regulations that must be made in order for the Commission to approve this application.

Mr. Haddad made a motion to close the public hearing. Mrs. Estefan seconded the motion and it was passed unanimously. Mr. Haddad then made a motion to move this matter to item one under the Old Business on tonight's agenda. Mr. Kovacs seconded the motion and it was passed unanimously.

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Petition of 85 Liberty St., LLC/Calixto Jimenez for Change of Zone from RMF-4 to C-CBD at 6 Nichols St. (#115339).

Mr. Haddad read the Planning Commission recommendation which was positive. Chairman Melillo read the Planning Department Staff Report dated November 5, 2013.

Michael Mazzucco PE spoke in favor of this. He said this is a 7,600 sq.ft. lot that abuts 85 Liberty St. The Nichols St. parcel is zoned RMF-4 and the Liberty St. parcel is zoned C-CBD. Both lots are owned by the same person. He said they hired him to figure out how to best use these lots. He added that the Staff Report was very thorough but he will try to add a few things. He said the Liberty St. parcel has a mixed use on it and does not have enough parking. The Nichols St. parcel is very small and cannot really

accommodate any thing except a small single family dwelling. He referred to photos of the neighborhood that he had mounted on a poster board. He continued saying that the applicant would like to demo the structure on Nichols St and convert it to a parking area for the uses on 85 Liberty St. They need to rezone the Nichols St. parcel because it is zoned RMF-4 which does not allow offsite parking. He said that is why they are here this evening. Chairman Melillo asked if this is located directly across the street from the Old Oak. Mr. Mazzucco said it is. There were no other questions.

Chairman Melillo asked if there was anyone to speak in opposition to this and there was no one. Mr. Elpern said his comments were in the Staff Report and he had nothing else to add.

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



Petition of Equity One, Inc. to Amend Sections 5.B.2.b. & 5.B.5.d. of the Zoning Regulations. (Add fast food restaurants per specific criteria to CA-80 Zone)

Mr. Haddad read the Planning Commission recommendation which was negative. Chairman Melillo noted that means that a two-thirds majority vote would be required to approve this petition. He then read the Planning Department Staff Report dated November 5, 2013 and announced that he also has the report from the previous petition if they need it.

Attorney Neil Marcus spoke in favor of this. He said this site has a unique and convoluted history. The Starbucks, which has been there since the shopping center was built, is now designated as fast food instead of retail as it previously was. The ownership of this shopping center has changed and they would like to accommodate the Starbucks request to put in a drive-thru window. He said they met with the Zoning Enforcement Officer, who determined that the addition of a drive-thru would make this a fast food restaurant. He added that this would not be the case if this was a drugstore or a bank. The ZEO said if they want to do this, they would have to amend the Zoning Regulations because fast food restaurants are not allowed in the CA-80 zone. They had filed a previous application in June of this year to do this, but Mr. Elpern's Staff Report said that doing this would affect the roadway all the way back to Lake Ave. Ext., where it is only two lanes. Since this location is already one of the busiest stores in the chain, they were not looking to attract business from the other end of the road. They were only looking to alleviate their existing traffic by providing an alternative. That application was withdrawn and this one was submitted

proposing to restrict the traffic to the end of Mill Plain Rd. where they are located. He spoke about how sometimes a sign on the highway directs you to take the exit to get food, etc. and then when you take the exit, you have to drive miles to get to it. He added that most people who exit the highway are not looking to drive around; they are looking for a drive-thru window. He continued saying that is one of the things they considered when they developed this petition, so it would be a very limited area that would allow this use. He then said that the negative recommendation from the Planning Commission makes very little sense to him. He added that he does not like the reasons and there is nothing in the record to cause them to think that the traffic is bad in this area. He said the reason for this recommendation is because they do not let the applicant speak, they base it completely on the Staff Report. He then distributed copies an aerial map (designated Exhibit A) and a traffic report (designated Exhibit B) prepared by Hesketh Associates, a traffic engineering firm. He said both of these were prepared in response to the Staff Report. He identified the buildings that would be affected by this amendment and said they want to service the interchange at Exit 2. He said looking at this map and based on the criteria they are proposing, the only area that would allow fast food is from Prindle La. to the New York border. He added that this is a very developed area and there is little land available for new development. He said the information in the Hesketh report disputes what is in the Staff Report and concludes that approval of this amendment with its restrictions will not result in a significant traffic increase. He said looking at this is an interesting exercise because there is no logical argument to say that a business having a drive-thru changes the use. He continued saying that it is just a method of delivering a product. He asked that they Commission study the information he has provided and he believes they will conclude that this will benefit the people who shop in this area.

Mr. Kovacs said if this is one of the busiest Starbucks in the national chain; then based on the information in the Staff Report it will generate additional traffic as well as increase their business. But based on what Attorney Marcus is saying, it will not do anything to increase their business, so why would they want to generate additional traffic. Attorney Marcus said his point is that adding another point of sale will speed up transactions and enhance the customer's experience. Mr. Kovacs asked if it is simply for the convenience of the existing customers or if it is meant to attract new ones. Attorney Marcus said if they want to see how a drive-thru affects a business, they should go to the other end of the road, where it is still Lake Ave. Ext. and look at the Dunkin Donuts. They will see that people want to use a drive-thru. Mr. Oravetz asked if they would have to lose parking spaces in order to install a drive-thru lane. Attorney Marcus said they will, but the time of day that a drive-thru will attract the most traffic is before most of the stores in the shopping center are even open. Mr. Oravetz asked what will prevent other fast food from coming into this area. Attorney Marcus said the traffic analysis proves that there is no land available, so the most they could get would be one or two more of them. He said they only want to serve

the interchange and since the Kenosia Watershed district prevents any new gas stations and most of the time when they are this close to the highway, fast food wants to go hand in hand with gas stations.

Chairman Melillo asked if the introduction of a fast food venue would have a negative impact on the after-hours recreational activity that goes on in this parking lot. Attorney Marcus said when trying to decrease after-hours vandalism most shopping centers just dim the lights instead of shutting them off. He added that if there were a fast food venue, the hours of operation might be increased which would decrease the after-hours activities. Mr. Jowdy said he meets clients at this location during all hours and it is always busy, especially with foot traffic. He said he also has a problem with amending the Zoning Regulations to satisfy one property owner's needs. Attorney Marcus said Hesketh was hired to identify any prospective sites for fast food. He added that the CA-80 zone is very restrictive because it affects such a small area of the City. Mr. Haddad said it is restrictive by design because when this zone was implemented, the Zoning Commission said it would never allow fast food on Mill Plain Rd. He defended the Planning Commission recommendation because they don't need to know what is in the Hesketh report. They are basing their recommendation on their own experience with development on Mill Plain Rd. He added that this is not about a drive-thru; this is about fast food. Attorney Marcus said there is a proliferation of fast food that is not identified that way (e.g.: Food Bag), and he believes that the definition of fast food should be changed. He said that won't happen though because it would be City-wide and would allow fast food in some areas where we don't want it. He said that is why they tried to contain this to a section of Mill Plain Rd. where they feel it is appropriate. He added that this is an academic discussion that could go on forever.

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

Mr. Elpern then said he tried to be measured in his Staff Report and still he got attacked. He did not get the Hesketh report until tonight's meeting, so Attorney Marcus did not think it was necessary for him to see it. He said when you make this kind of decision, you need to look ahead and consider what could happen. Mr. Haddad asked Mr. Elpern to elaborate on special interest zoning. Mr. Elpern said no amendment should ever benefit one specific applicant. He added that it is documented that people are willing to travel distances to get to specific fast food restaurants. Chairman Melillo said they had discussed this when they considered the Peachwave amendment and he wondered if there was an alternative name for the kind of business that Starbucks is. Mr. Elpern said the impact would be same, he pointed out that he used the numbers from the trip multiplier table in the Zoning Regulations instead of using the ITE manual. Attorney Marcus said he could agree with some of what Mr. Elpern had said. The definition of fast food in surrounding

towns is based on the method of sale, not the product that is being sold. He said at the end of the day, this Commission understands this section of Danbury and is familiar with the Starbucks that is already there, so this is an amendment that could allow a couple of more fast food restaurants in this area, which would be a judicious thing to do. In closing he said they need to balance logic with the law while reviewing the facts. He added that this makes sense the way it was presented, so they should vote for it.

Mr. Haddad made a motion to close the public hearing. Mrs. Estefan seconded the motion and it was passed unanimously. Mr. Haddad then made a motion to move this matter to item three under the Old Business on tonight's agenda. Mr. Kovacs seconded the motion and it was passed unanimously.

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OLD BUSINESS FOR DISCUSSION AND POSSIBLE ACTION

Request for Approval of Re-location of Package Store permit for Perez Wine & Spirits LLC from 61 Newtown Rd. (#12018) to 23 Federal Rd. (#K1123).

Mr. Haddad made a motion to approve the relocation of this Package Store license for the following reasons: The relocation to this site will not have a detrimental effect upon any adjacent church or other place of worship, school; and will not have a detrimental effect upon the immediate area with due consideration given to (1) the compatibility and impact of the use on the surrounding area, including adjacent residential neighborhoods, and (2) the impact of the use upon traffic congestion and safety. Mr. Jowdy seconded the motion. Chairman Melillo took a roll call vote and the motion was passed unanimously with nine AYES.

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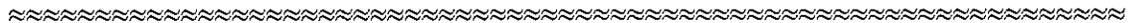
Petition of 85 Liberty St., LLC/Calixto Jimenez for Change of Zone from RMF-4 to C-CBD at 6 Nichols St. (#115339).

Mr. Haddad made a motion to approve this petition for the following reasons: The small size of the subject property limits the development that could occur on it, so using it to satisfy the required parking for 85 Liberty St. will allow for both lots to be more conforming. This rezoning is necessary in order to do this as the existing zone does not allow off-site parking. Mrs. Estefan seconded the motion. Chairman Melillo took a roll call vote and the motion was passed unanimously with nine AYES.

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Petition of Equity One, Inc. to Amend Sections 5.B.2.b. & 5.B.5.d. of the Zoning Regulations. (Add fast food restaurants per specific criteria to CA-80 Zone)

Mr. Jowdy made a motion to deny this petition for the following reason: approval of this petition raises the concern of it being a detriment to the entire area for the sake of satisfying one property owner. Mrs. Loyola seconded the motion and Mr. Haddad said he would like to offer some additional reasons: approval of this could be considered special interest zoning as well as the addition of fast food restaurants to this section of Danbury could be detrimental to population and traffic in this area. Both Mr. Jowdy and Mrs. Loyola accepted these additional reasons. Chairman Melillo said if this were a motion to approve, a six-three majority vote would be necessary; because the Planning Commission recommendation was negative. He then said since the motion is to deny, a simple majority will pass the motion. As further clarification, he said a yes vote will deny the petition. He took a roll call vote and the motion to deny was passed with eight AYES and one NAY (from Mr. Kelly).



Under Other Matters, Chairman Melillo commended everyone on the work they have done over the past two years. He congratulated those who won re-election and thanked Mr. Hoo and Mr. Kovacs for their service. He wished Mrs. Loyola good luck as she has been elected to the City Council. He then welcomed new members Jeffrey Barath, Christina Chieffalo, Robert Laber, and Annette Zatkovich, all of who are present in the audience this evening, and also Robert Arconti, who is not here this evening.

At 9:45 PM, Mrs. Loyola made a motion to adjourn. Mrs. Estefan seconded the motion and it was passed unanimously.