



CITY OF DANBURY
155 DEER HILL AVENUE
DANBURY, CONNECTICUT 06810

ZONING BOARD OF APPEALS
www.danbury-ct.gov

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

MINUTES
JUNE 14, 2018
Council Chambers – 3rd Floor
7:00 PM

ROLL CALL:

Richard S. Jowdy, Chairman, called the meeting to order at 7:06 p.m. Present were Commissioners Joseph Hanna, Rodney Moore, Michael Sibbitt, and Alternate Peter DeLucia. Staff present were Zoning Enforcement Officer Sean Hearty and Secretary Mary Larkin.

Absent were Herbert Krate, Anthony Rebeiro, and Richard Roos.

Motion to hear Applications #18-16 and 18-19 was made by Rodney Moore. Motion was seconded by Joseph Hanna. Motion carried unanimously.

Mr. Jowdy explained the Zoning Board of Appeals process and read the legal advertisement.

Zoning Enforcement Officer Sean Hearty suggested that Attorney Daniel Casagrande, outside Assistant Corporation Counsel, could offer some background. Mr. Casagrande approached the Commission and gave a brief procedural background of Application No. 18-16, stating in 2016 Mr. Hearty issued a Cease and Desist to the Dorothy Day Shelter as it was operating without the required permits, and it was determined that the use did not qualify as a prior non-conforming use. Mr. Casagrande reminded the Board that they affirmed Mr. Hearty's order, and there is still an appeal pending in Superior Court.

Mr. Jowdy thanked Mr. Casagrande and reiterated that the decision will be a legal one and has nothing to do with the merits of Dorothy Day itself.

NEW BUSINESS:

Spring St., (H14288 & H14312), RH-3 Zone, for grocery market, office space, emergency homeless shelter, & soup kitchen:

Sec. 4.D.3.a: Reduce front yard setback from 20' to 0.6', reduce side yard setback from 20' to 1.8', reduce rear yard setback from 25' to 1.8';

Sec. 4.D.5.e.(1): Reduce minimum sq. ft. from 20,000 sq. ft. to 13,118 sq. ft.;

Sec. 8.B.1.b.(4): Reduce driveway width from 24' to 8';

Secs. 8.C.4.c.(10) & (11), 8.C.4.f.(4), and 8.C.4.f.(6): Reduce total parking spaces to 16 and waive Sections 4.D.5.e.(2) corner lot requirement; Sec. 4.G.4.a.(1) lot screening; 4.G.4.a.(2) landscaping; 8.C.1.a parking on same lot; and 8.C.2.b. parking space dimensions.

Mr. Jowdy announced the application, read the sections of the variances, and Attorney Neil Marcus approached the Commission. Mr. Jowdy spoke about the parking lot and asked Mr. Marcus if he has a map of the parking lot. Mr. Jowdy said they would need a copy before making a decision and that they would consider tabling the matter due to the lack of information. Commissioner Rodney Moore said any decision would take place at another time, but they would hear what Mr. Marcus has to say this evening. Mr. Moore said he doesn't see enough, personally, to make a decision tonight.

Mr. Marcus said Dorothy Day Shelter is a tenant on the Roy estate property. As a compromise, they agreed, without prejudice, to file a site plan for special exception but found that this property, which is a consolidation of two or three properties, some of which were built in the 19th century, has nothing related at all to our zoning requirements. The judge hearing the appeal from the earlier Zoning Board decision asked if the matter could be solved without him deciding. Mr. Marcus stated that when we were here in a controversial zoning appeal over the order Sean Hearty issued, either Richard Jowdy or Herb Krate questioned why we didn't take it in for a site plan approval. The site is so non-conforming we couldn't do that. We are here because it is a first step to go to the Planning Commission.

Mr. Marcus proceeded to explain each of the variances and then the claimed hardships. He said he was asking the Board to agree that all the buildings can stay exactly where they are. His original suggestion was to file for special exception to all for use of concrete building as a homeless shelter. Site plan cannot be produced. They are not here for you to judge the variance in the normal course. Not asking for uses not already being used.

Hardships: Pre-existing, non-conforming lots way below the minimum zoning requirements. Eight Spring Street: shape & grade is hardship. We can't comply with any of the regulations so we have to apply for a variance to all the regulations. Mr. Marcus quoted from the hardship portion of the application as follows:

“The purpose of the application is to allow a submission of an application to the Planning Commission of the City of Danbury for a special exception solely as it pertains to a concrete block building located in the rear (north side) of the lot. The hardship emanates from the enactment of zoning regulations and the application of the zoning regulations to all of the pre-existing, non-conforming structures and uses located on the lot.”

Mr. Marcus stated the applicant is just asking to take an application to the Planning Commission. They are not doing anything, merely asking to get a "hall pass" to the Planning Commission.

Mr. Jowdy said when they approve something, they have to approve “as submitted” and they have to consider the health, safety, and welfare of the neighborhood. Mr. Jowdy said they might have to table just to get more information.

Mr. Marcus said he had never heard of screening and landscaping hurting the health, safety, and welfare of the community. Neil Marcus is asking them to agree with the surveyor that what's there is there.

As to Eight Spring Street, the applicant is asking for a variance to allow the parking spaces to be counted as part of the 16 spaces without meeting the dimensioned requirements of the zoning regulations.

He said if you really want us to take this to the Planning Commission, you need to grant these variances so they can file this as a site plan.

Joseph Hanna asked how they can approve 16 parking spaces without a plan showing how many spaces. Peter DeLucia said they normally need a parking lot survey. Joseph Hanna said they cannot approve the spaces.

Neil Marcus offered to sketch in the spaces and said this a prudent process and that Berger, J. said it might make sense for the parties to talk.

Neil Marcus said they are not going to approve anything that doesn't already exist. Rodney Moore said that it is not simple as Attorney Marcus indicates, basically, just by the number of attorneys in attendance. He also said if the ZBA tees this up for the Planning Commission aren't they going ask for the same things? Mr. Marcus said they would be granting a variance for the existing market. Rodney Moore said that there are use variances imbedded in this application. Michael Sibbitt said that because the parking does not meet the requirements, then why not make the lot "to code"? Neil Marcus thinks it will be an expensive blasting job to create essentially the same number of parking spaces. Mr. Marcus said it would be a very risky project. Mr. Sibbitt disagreed.

Richard Jowdy asked how they could do this without infringing on the neighbors' properties. Mr. Jowdy said if the ZBA approved this, the City could be sued.

Neil Marcus said they are approving a variance to what is already there and not creating anything new. This is a very technical request, but very simple too to give them the right that they can meet their special exception requirements; they know they can't meet their site plan requirements.

Rodney Moore said part of the information that he would like to see to help make a decision is how does this differ from a very difficult decision to uphold the Zoning Enforcement Officer's Cease & Desist order? What's changed really?

Neil Marcus said the only thing that is changed is that this is a step to try to rectify, to address the reasons in the Cease and Desist order. Neil Marcus said he can't go to the Planning Commission

without the recognition of the ZBA of what's there today and will be there for a long time. Mr. Marcus said, "The existing buildings have to be recognized as existing buildings."

Sean Hearty said the existing uses, ie. the apartments, ie. the market, are all pre-existing non-conforming and would not be required to meet the requirements. They are permitted. The addition of what Mr. Marcus calls the restaurant and homeless shelter that's what kicks it because you are adding uses. Previous uses that are there are pre-existing, non-conforming, market and apartments are not in jeopardy. Mr. Marcus: "We are actually talking about the homeless shelter. The kitchen has never been an issue." Mr. Jowdy stated the merit of Dorothy Day is not in question.

Mr. Jowdy asked if there was anyone in favor?

In favor: Ken Gucker, 89 Padanaram Rd., Danbury. Mr. Gucker said that Dorothy Day has been there for 35 years, and said it is disheartening that 35 years ago this was okay. He understands that things could slip through the cracks, but how could Dorothy Day that has been operating in the open for so long possibly comply with the regulations today when nothing is changing there? He encourages a positive recommendation to let them apply to the Planning Commission.

In favor: Mr. Bob Taborsak thinks this is a different situation. As a resident he thinks it would be better to have this decided in Danbury rather than by some judge in Hartford. He thinks that nothing that is being asked is really new. He thinks it is to the benefit to what exists and go to the Planning Commission.

In favor: Tom Ins? (illegible & inaudible) Concerned about the emphasis on parking. He is a volunteer at Dorothy Day, and the passion he has for the service is such that if there is no parking, he doesn't mind parking at the garage and walking. He doesn't understand why parking is such an issue.

In Opposition. We received two letters in opposition. The first was a letter from Joseph Heyman. Commissioner Rodney Moore read the Mr. Heyman's letter (Exhibit A) into the record. Mr. Jowdy then read the second letter, which was from Mr. Mark Nolan, (Exhibit B) into the record.

In Opposition: Mr. Peter Damia, Danbury resident, and part owner of a building on Main Street in City Center, addressed the Commission. He presented his letter (Exhibit C) to the Commission. A summarization is as follows:

Hardship is the necessary criteria for granting a variance. Unless the hardship claimed by the applicant rises to the level established by the Connecticut Courts necessary to support the granting of the variances requested, the ZBA should not grant said variances.

In Opposition: Dr. James Nolan of Southern Boulevard with offices on Main Street, stated that he believes there is no hardship here nor any shown.

In Opposition: Robert Steinberg, taxpayer, voter, and owner of property in City Center addressed the Commission. Mr. Steinberg stated there never was any legal approval for the operation of Dorothy Day on Spring Street. The property was sold in 2004. Current owner was aware of the use of the property and should not have allowed any unapproved use to continue.

In opposition: Ms. Julia Wilkins, lived on Spring Street, and addressed the Commission in opposition to the application. She stated she received a Cease & Desist order for her property and was given 30 days to correct the problems with her property. She stated she complied with the City's regulations. Please deny this application.

In opposition: John Chen, 6 Spring Street. Mr. Chen said that Eight Spring Street was not a pre-existing parking lot and was purchased a couple of years ago. They turned it into a parking lot, "not even a parking lot".

In opposition: Ernesto Rodrigues, 23 George St. property owner, appeared on behalf of his parents who own the property next to and across the street from the Dorothy Day Shelter. He stated, "Reality is, it has overgrown its site." On-street parking causes congestion even though the City installed 15-minute parking restrictions. He lived on Spring St. for 20 years, and his father-in-law established the grocery store. Please reject this application and "stick to the letter of the law".

There being no other opposition, Attorney Marcus mentioned that we are not here about whether they like the shelter or not. Neil Marcus said the City of Danbury originally established the shelter and it's there because the City put it there a long time ago. He said the hardship stems from the zoning regulations themselves and applying the site plan requirements to a site that was built a century ago is the hardship. Neil Marcus suggested the Board rely on its counsel. He's not talking about the use, just talking about the site plan requirements.

Mr. Marcus reiterated Bob Taborsak's comments about having the decision made in Danbury rather than in Hartford. Hartford judge will decide on a legal technicality. Rely on advice of your counsel on the hardship.

Chairman Richard Jowdy wants to table the application to obtain all the legal input they need. Attorney Marcus has no objection; however, he would like to resolve this locally in a reasonable time period. Commissioner Rod Moore agrees and asked if our counsel has anything to add to this.

Attorney Dan Casagrande approached the Commissioners: Attorney Marcus is absolutely right that the judge (Berger) has encouraged the City to try to resolve this, but he does not want to imply that the judge is encouraging this Board to do something. There is nothing that Judge Berger said to feel that they are remiss that they are not entitled to their variance. The Judge simply said to do your best to try to agree. ZBA is not a rubber stamp; it is not a "hall pass".

Judge Berger did not suggest you give a "hall pass". There is no pressure on this Commission or the Planning Commission.

Attorney Dornfeld said in response to your earlier question. She is happy to give them some advice and meet.

Mr. Moore made a motion to continue, not close, the hearing to July 12, 2018. Attorney Marcus was in agreement with July 12, 2018. Motion was seconded by Joseph Hanna. Motion carried unanimously.

#18-19 Haddad, Theodore J., Sr., Executor of the Estate of Jeanette Haddad and The Reserve Realty, LLC, The Reserve, Phase 11 (Parcel 15), Woodland Road, (B16003) RE: Site Plan PND SP01-03/11

To appeal for correction of an alleged error in a decision of the Planning Department/Planning Director, who on 3/23/18 or thereabouts, did grant Toll Brothers and/or Toll CT III Limited Partnership for site plan approval of an application pertaining to the above-described property in the Reserve.

Chairman Richard Jowdy introduced Application No. 18-19. Commissioner Rodney Moore asked if Zoning Enforcement Officer Sean Hearty would give a little background. Sean Hearty said usually a permit issued by him or an order issued by him can be appealed. This is not common that an appeal against the Planning Director is brought before the ZBA.

Atty. Gregory Cava of Roxbury, CT appeared, representing Theodore J. Haddad, Sr., Executor of the Jeanette Haddad Estate and The Reserve Realty, LLC. Attorney Cava began by stating that this is a PND, Planned Neighborhood Development, the only one in the City of Danbury. Once a zone and Master Plan is approved, all of the site plans are handled "over the counter" by the Department of Planning, Planning Director approves the site plans.

Attorney Cava acknowledged this is unusual and probably the first heard by this Board. Attorney Cava distributed a handout/supplementary materials to the Board, entitled, Appeal of Planning Department Approval of Site Plan Application. Marked as Exhibit A. Mr. Cava said the basis for this appeal is that legal notice was not filed in the Town Clerk's office ten days prior to the hearing on the 2016 revision to the Master Plan by the Zoning Commission.

According to Attorney Sharon Dornfeld, who is representing the City of Danbury Planning Commission and Planning Director, Attorney Cava claims the 2016 revision to the original plan of development Master Plan was an amendment to the zoning regulations. An amendment is a change to the text or a change to the boundaries. Once you have a Master Plan there are a number of things already set in place.

Commissioner Peter DeLucia asked if there was a hardship. Attorney Cava said no because a hardship is not required in an appeal.

Chairman Richard Jowdy asked if anything has been built? Mr. Cava said it has not been built. Commissioner Rodney Moore would want to see the following: 1. wants to see the lien and the decision they are being asked to correct. How is the lien interest injured? Mr. Cava said the parties hold a broker's lien on Phase 5. Removing the office buildings from that zone reduces the number of tenants. Rodney Moore requested the market research supporting this. Cava said he doesn't have to; that isn't part of the appeal. He offered a copy of the lien at a future time. His clients have a right to appeal the decision as abutters. They do not have to demonstrate the extent their lien is damaged. 2. Mr. Moore said a hardship is many things, but not economic. Mr. Cava said hardship does not have to be shown in an appeal. They are asking that a wrongly-made decision be overturned.

Zoning Enforcement Officer Sean Hearty, through the Chair, reminded them that the appeal could be against him but this is unusual. Mr. Jowdy said that he would like advice from counsel for clarification. Attorney Cava requests the opportunity to rebut this.

Mr. Jowdy asked if anyone was in favor or opposed.

In opposition: Planning Director Sharon Calitro said the department followed all the zoning regulations in the approval of the site plan. The department did not issue a permit and questioned whether the appeal even belongs before the Board. Applicants have filed an appeal of our decision at the Superior Court level. Ms. Calitro said, "In our opinion this appeal has no merit, and the ZBA has no jurisdiction. We request that the appeal be denied."

Attorney Dornfeld spoke and stressed this appeal is premature. First of all there is a pending lawsuit on whether it was necessary to have a filing with the town clerk before the change to the Master Plan was introduced to the Planning Commission in 2016. It is Mr. Haddad's allegation that the 2016 application is void.

Secondly, no permits have been issued to anybody. An administrative approval is all that has happened. Nothing has been built and no final determination if that site plan is going to be put in place. Attorney Dornfeld does not agree with Mr. Cava that the lien interest is injured. If this goes to Court he will have to prove that, and Ms. Dornfeld feels this is premature. The 2016 approval case has been briefed, and she expects to argue the issue in New Britain in approximately six weeks.

Mr. Hanna questioned office buildings on that site, and Attorney Dornfeld answered that the Master Plan which was approved in 2002 and amended in 2004 was because Toll Brothers came in and said residential market is more suitable, and they swapped around parcels resulting in less density. The 2016 Addendum to 2004 Master Plan did not change residential density at all but moved it from one phase to another. Sharon Calitro said the Zoning Commission's decision was that it would be residential. Commissioner Joseph Hanna asked if they could put offices back there. Planning Director Sharon Calitro explained they would have to go back to the Zoning Commission to change the Master Plan. Chairman Richard Jowdy asked if phases could be switched for example, Phase 11 with 15? Attorney Dornfeld answered that there are certain procedures which are spelled out for dealing with the Master Plan in a PND; there are specific regulations regarding that. There are different regulations on how to amend a zone. Mr. Cava is

saying on Page 3 of the application that this was “in effect” a zoning text amendment. There are different regulations for changing a Master Plan than there are for amending a zone or zoning regulations. Again, the City is waiting for judge to decide who is correct. If the City is correct, there are no grounds for this appeal. Again, this is a premature appeal.

Mr. Jowdy asked about the other lawsuits, who are they suing? They are suing the City Zoning Commission, Hotel Zero, Toll Bros., Planning Commission, and Planning Director.

Mr. Cava stated that the Master Plan amendment is a text amendment of the zoning regulations and a text amendment the reason is if you do a zone change to a PND you are required to simultaneously to present a Master Plan for approval. If you change zone to PND you cannot do a single thing on the property until the Master Plan is approved. When the Master Plan is done, the regulations require a public hearing and notice to municipalities within 500'. PND Zone means nothing without a Master Plan.

Discussion continued and Sean Hearty suggested to the Board that a legal opinion, in his opinion, would be required by the Board.

Motion to close the hearing was made by Joseph Hanna; seconded by Peter DeLucia. Motion carried unanimously.

Tabled for corporate counsel input by Mr. Jowdy.

ACCEPTANCE OF MINUTES:

Motion to accept of the minutes of May 24, 2018 was made by Joseph Hanna; seconded by Peter DeLucia. Motion carried unanimously.

OLD BUSINESS:

#18-13 Watras, Barbara, 4 Sage Rd., (H22103), RA-20 Zone, Sec. 4.A.3. Reduce front yard setback from 30' to 0.5', reduce side yard setback from 15' to 0.5' & reduce rear yard setback from 35' to 4.8' to allow temporary carport.

Request to continue until June 28, 2018 was received from Dom Chieffalo, Esq.

Motion to continue to June 28, 2018 Application Nos.: 18-22, 18-13, and 18-14 was made by Herb Krate. This motion was seconded by Joseph Hanna. Motion carried unanimously.

#18-14 Guallpa, Luis, 10 Hoyt St., (H13086), R-3 Zone, Sec. 4.C.3. Reduce minimum lot width from 75' to 55.06' & reduce minimum side yard setbacks from 15' to 9.7' & from 15' to 7.5' for existing residential dwelling. Variance requested to convert single-family dwelling to two-family dwelling.

Request for continuance to the meeting scheduled for June 28, 2018 was received from applicant's engineer, Michele Micoli of Artel Engineering. *Motion to continue to June 28, 2018 Application Nos.: 18-22, 18-13, and 18-14 was made by Herb Krate. This motion was seconded by Joseph Hanna. Motion carried unanimously.*

DECISIONS: None

CONTINUATION OF PUBLIC HEARING: None

OTHER MATTERS:

CORRESPONDENCE: None

ADJOURNMENT:

Rodney Moore made a motion to adjourn; Michael Sibbitt seconded. Motion carried unanimously at 9:58 p.m.

Respectfully submitted,

Mary S. Larkin
Secretary