



CITY OF DANBURY
155 DEER HILL AVENUE
DANBURY, CONNECTICUT 06810

ZONING COMMISSION
www.danbury-ct.gov

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

MEETING
JUNE 11, 2019

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

Present were Sally Estefan, Candace Fay, Andrea Gartner, Rick P. Jowdy, Angela Hylenski, James Kelly, Robert Melillo and Alternates Sidney Almeida, Michael Masi and Thomas Nejame. Also present was Director of Planning Sharon Calitro.

Absent were Luis Bautista, and Milan David.

Chairman Melillo asked Mr. Masi to be seated for Mr. David and Mr. Nejame to be seated for Mr. Bautista for the items on tonight's agenda.

Chairman Melillo led the Commission in the Pledge of Allegiance. He said there are no minutes to accept and noted that the next meeting is scheduled for January 8, 2019.

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

Mrs. Hylenski made a motion to accept the May 14, 2019 minutes. Ms. Gartner seconded the motion and it was passed unanimously.

PUBLIC HEARINGS:

Petition of Dona Maria Mexican Restaurant & Bakery, 219 Main St. (114230) for Special Permit for Restaurant Beer and Wine License. Rescheduled from May 28, 2019.

Mrs. Estefan read the legal notice. Chairman Melillo said this also has received an administrative site approval for this specific use from the Planning Department.

Julio Lopez spoke in favor of this petition. He explained that he is helping Mr. Ortega out by speaking for him. He distributed menus and showed the Commission photographs of the interior of the restaurant. He said they will be open from 11 AM to 10 PM daily. Ms. Gartner asked exactly where this is and when it will be opening. Mrs. Fay said it already is open and the food is great. Mr. Lopez said it was previously open as Dixon's pizza, it is on the same side of Main St. as the Galleria building. He said they do not plan to have a sit-down bar, all they want is a service bar, so they can deliver the wine and/or beer to the tables. Ms. Gartner asked if they plan to have live entertainment. Mr. Lopez said the only entertainment planned is on Sunday afternoon, when they will have three mariachi players. Chairman Melillo asked how many people work there. Mr. Lopez said two in the kitchen and three wait staff.

Chairman Melillo asked if there was anyone to speak in opposition and there was no one. He then asked Mrs. Calitro if there were additional staff comments. Mrs. Calitro said they must comply with the site plan waiver as approved including the floor plan, and also must meet the criteria in Sec. 3.F.2. of the Zoning Regulations.

Mrs. Estefan made a motion to close the public hearing. Ms. Gartner seconded the motion and it was passed unanimously. Mrs. Estefan made a motion to move this to item #1 under the Old Business on tonight's agenda. Mrs. Fay seconded the motion and it was passed unanimously.

Petition of Eliazar Fernandez/Trellis Restaurant, 49 North St. (I12004) for Reapproval of Restaurant Liquor License. Rescheduled from May 28, 2019.

Mrs. Estefan read the legal notice regarding this application. Chairman Melillo said this also has received an administrative site approval for this specific use from the Planning Department.

Eric Fernandez spoke in favor of this petition. He explained that he is now the owner of the former Trellis restaurant. In September 2011, the previous owners were granted a special permit for a restaurant liquor license, but they let it expire. So he is here requesting that the Commission re-approve this site. He said he has six employees and is open from 7 AM to 11 PM, serving breakfast, lunch, and dinner. He said many of his customers request wine or beer with their dinner, so he decided to apply for this approval. Mr. Kelly asked if there were any changes to the site. Mr. Fernandez said there were none. Ms. Gartner asked why they are asking for full liquor, when their customers are asking for wine and beer. Mr. Fernandez said he is anticipating that once they start serving wine and beer, people will ask for mixed drinks, so he decided to go for the full liquor license. Chairman Melillo noted that the previous approval was limited to service bar only and asked Mr. Fernandez if he was okay with that. Mr. Fernandez said that was fine.

Chairman Melillo asked if there was anyone to speak in opposition and there was no one. He then asked Mrs. Calitro if there were additional staff comments. Mrs. Calitro said they must comply with the site plan waiver as approved including the floor plan, and also must meet the criteria in Sec. 3.F.2. of the Zoning Regulations.

Ms. Gartner made a motion to close the public hearing. Mrs. Hylenski seconded the motion and it was passed unanimously. Mrs. Hylenski then made a motion to move this to item #2 under the Old Business on tonight's agenda. Mrs. Estefan seconded the motion and it was passed unanimously.

Chairman Melillo said they would deviate from the order of the agenda and discuss the two petitions that had just been heard.

OLD BUSINESS FOR DISCUSSION & POSSIBLE ACTION:

Petition of Dona Maria Mexican Restaurant & Bakery, 219 Main St. (I14230) for Special Permit for Restaurant Beer and Wine License.

Mrs. Fay made a motion to approve this petition with the following conditions: (1) there is to be a service bar only, no sit-down bar is permitted and (2) the seating must comply with the floor plan submitted with this application. The following reasons were given for this motion: the proximity of such premises will not have a detrimental effect upon any adjacent school, church or other place of worship; with consideration given to the compatibility and impact of the use on the surrounding area, including traffic congestion and safety. Mrs. Estefan seconded the motion and it was passed unanimously.

Petition of Eliazar Fernandez/Trellis Restaurant, 49 North St. (I12004) for Reapproval of Restaurant Liquor License.

Mrs. Estefan made a motion to approve this petition with the following conditions: (1) there is to be a service bar only, no sit-down bar is permitted and (2) the seating must comply with the floor plan submitted with this application. The following reasons were given for this motion: the proximity of such premises will not have a detrimental effect upon any adjacent school, church or other place of worship; with consideration given to the compatibility and impact of the use on the surrounding area, including traffic congestion and safety. Mrs. Fay seconded the motion and it was passed unanimously.

PUBLIC HEARING:

Petition of Paul Valeri, 10 & 12 Downs St. (H12166 & H12155), for Change of Zone from CG-20 to R-3 Zone.

Mrs. Estefan read the legal notice. Mrs. Hylenski read the Planning Commission recommendation, which was positive. At 7:57 PM Mr. Jowdy excused himself and left the meeting due to a family commitment. Chairman Melillo asked Mr. Almeida to take his place for this petition. Chairman Melillo then read the Planning Dept. staff report dated May 30, 2019.

Attorney Martin Rader, Pinney Payne, spoke in favor of this petition. He submitted a letter he wrote in response to staff report and asked that it be read into the record (designated Exhibit A). Chairman Melillo read the letter into the record. Attorney Rader said he had hoped to present the letter to the Planning Commission but since no public or applicant input is permitted for 8-3a referrals, it was not given to the Planning Commission before they made their recommendation. He said although there are over fifty uses permitted in CG-20, many or most of them would not be appropriate for these two parcels. He said the tattoo parlor and the barber shop are both recent additions to the neighborhood. He said the applicant was a tenant since 1975 and a property owner since 1977 or 1978. He said the Plan of Conservation & Development (POCD) map indicates these parcels should be used as limited commercial use, so many of the uses in CG-20 are just too intense for these sites. He referred to a GIS map he had highlighted to show that the subject properties are surrounded by two and three family homes, with the exception of the tattoo parlor

and barber shop. He referred photos of the subject properties and several multi-family homes in the neighborhood. He said it is their position that the stone house, #10 Downs St., has always contained two dwelling units and the house at #12 Downs St. has always contained residential as well as the office use permitted by the 1974 variance. He said they also believe the R-3 Zone is more compatible with the existing uses and the neighborhood in general than the CG-20 zone. He added that the entrance to both #10 & #12 Downs St. is from Smith St. He continued saying the Planning Commission gave a positive recommendation because they wanted to eliminate commercial traffic from Smith St.

He said this property is in the Opportunity Zone, which runs two blocks west of Main St. to just north of Downs St. all the way down to Rogers Park. Opportunity Zone is a federal program designed to encourage investment in urban areas of older cities. The program provides a federal tax incentive for investors to re-invest unrealized capital gains into these special zones by pooling money with other investors through Opportunity Funds. In exchange for their investments, opportunity fund investors are able to decrease their federal tax burden through the preferential treatment of capital gains. He said this is important because the applicant has an offer from a motivated buyer. He added that they believe the residential use is more compatible than the continued mixed use. He said they have a proposed parking plan and there is more than sufficient parking. He then said these are small lots but they were laid out in early 1900, and many of the multi-family dwellings on the street are located on even smaller lots than these. He added that the times have changed and office space is not in demand, but if these are zoned R-3, it would be consistent with the market demand for residential. He then submitted a newspaper article from the CT Post dated April 2018 regarding the demand for apartments (designated Exhibit B). Chairman Melillo noted that the GIS map and photos of the various houses would be Exhibit C.

Mr. Nejame asked if the stone house has a driveway on Smith St. Attorney Rader said he has a parking plan to show them. Chairman Melillo said he would prefer they not look at it because they should not discuss the specifics of proposed uses. Mr. Almeida asked why they did the 2014 rezoning to CG-20. Attorney Rader said that was a mistake because CG-20 does not conform to the neighborhood when you look at the existing uses. Mrs. Fay asked if the property was for sale when that change was done and Attorney Rader said it was not.

Chairman Melillo said he, Mrs. Estefan, and Mr. Kelly were here in 2014 and all voted in favor of the change to CG-20. He asked if the motivated buyer is the reason for this proposal. Attorney Rader said it is a factor but the most important fact is that the R-3 fits the site better, so whether or not he has a buyer, it still makes more sense for these parcels to be residential. Chairman Melillo referred to the minutes of the 2014 meeting in which the applicant stated that it would be better for these parcels to be zoned CG-20. Attorney Rader said the tattoo parlor was not there in 2014, that property contained a real estate office. Chairman Melillo said when coming down the street from the I-84 ramp, Downs St. seems like an extension of the exit ramp; but when you are traveling up Downs St., it seems more like a local street. He continued saying that it seems like one side of the street is commercial and the other is residential, so are they implying that these two parcels should be a part of the Smith St. residential neighborhood. He asked if they are looking for this change knowing that the parcels cannot be used the way they intend without getting variances.

Attorney Rader said they can be used as they are, but this is about compatibility and the CG-20 zone is not feasible considering the neighborhood.

Paul Valeri then spoke in favor of this proposal. He said he purchased #12 in 1977 and the stone house (#10) in 1978. He said he is selling these properties to pay for a log house that he built in Bridgewater, CT. He said he ran #10 as a two-family dwelling until there was a flood in the basement and the fire marshal came out and said the ceilings were too low. After that determination was made, the house reverted back to a single family dwelling. He said there is much more residential on the street; and reiterated most of the information Attorney Rader had presented about the surrounding multi-family homes. He also said there are very few single family homes in the opportunity zone. He explained how the opportunity zone works and said he is having difficulty selling these properties as commercial. He said putting the second story on #10 will make it a legal two-family and get rid of the basement apartment violation; and he is willing to let the variance go on #12 and allow it to be used as all residential. He offered to answer questions but there were none.

Chairman Melillo asked if there was anyone to speak in opposition to this petition and there was no one. He asked Mrs. Calitro for staff comments.

Mrs. Calitro said the staff report was pretty detailed but there are a few things she wanted to respond to. She said a three family dwelling in #12 would be adding to the traffic on an arterial street. Also the rezoning will not eliminate the fact that #12 can be used as an office no matter how many units they put in there. She said even if this change is granted, they will still need a myriad of variances to do what they are proposing. In response to the applicant's comments, the stone house is not the only single family dwelling existing in the Opportunity Zone. She said the Commission needs to take into consideration what has been said tonight, the Planning Commission recommendation, the criteria for a zone changes as detailed in the staff report. She too said they cannot look at what the proposed parking might look like. They need to review all of the information to determine what the appropriate zone for these parcels is.

Chairman Melillo said before anyone makes a motion to close the hearing, they should consider if they feel the need to visit the site. If anyone feels that way, they should continue the public hearing versus closing it tonight.

Mrs. Fay made a motion to close the hearing. Mr. Kelly seconded the motion and it was passed unanimously. Mrs. Fay then made a motion to move this to item #3 under the Old Business on tonight's agenda. Ms. Gartner seconded the motion and it was passed unanimously.

OLD BUSINESS FOR DISCUSSION & POSSIBLE ACTION:

Petition of Paul Valeri, 10 & 12 Downs St. (H12166 & H12155), for Change of Zone from CG-20 to R-3 Zone.

Chairman Melillo said that when considering a zone change, they must remember that a conceptual development of the site may not happen; and they must consider the uses permitted in the proposed zone. He then reminded the Commission of the

findings from the Zoning Regulations that must be made in order for this to be approved. (1) the suitability of the site for the particular uses allowed in the R-3 zone; (2) the compatibility of the R-3 uses with the surrounding area; (3) the present and future needs of the City for additional lands zoned R-3; and (4) the impact that may be caused by reducing the amount of land zoned CG-20. Lastly he pointed out the when these properties were rezoned to CG-20 in 2014, this Commission made the determination that the CG-20 zone was appropriate and compatible with POCD.

Mrs. Fay made a motion to deny this application for the following reasons: The current CG-20 zoning of these parcels seems more appropriate because, based on the flow of traffic coming off Exit 5 down the hill, the south side of Downs Street is seemingly more commercial as compared to traveling up the hill on the northern side of Downs Street. Additional residential density at these locations could result in unsafe conditions for residents. Just because there are other R-3 zoned parcels in the area is not a reason to rezone these parcels back to R-3. R-3 in this location does not comport with character of the area and may result in negative impacts. Reasons for denial were are summarized as concerns with health and safety impacts, incompatibility with neighborhood character, and negative impacts on community. The motion was seconded by Mrs. Hylenski. Chairman Melillo asked if any of the Commission members had comments or discussion regarding the motion.

Mr. Nejame said he disagrees with Mrs. Fay and the motion. He said taking advantage of the federal funding is essential because it gets rid of homes that are out of character and out of place. He added that after the buildings are remodeled, they will conform to the other homes on the street. Also access to these lots is from Smith Street which is a residential neighborhood. Lastly he said they need to take advantage of cleaning up a use and he thinks the R-3 zone is more compatible with Downs Street. Mr. Kelly said he agrees with Mr. Nejame. Although Downs Street is heavily traveled, parents should keep their children off the street. Mr. Nejame it does not make sense to not take advantage of the opportunity zone funding to fix these houses up. Mrs. Fay said the development does not need to be residential to take advantage of the opportunity zone. She added that these properties have been on the market for many years and the owner's intentions are not ill motivated. But if other properties on the street wanted to change to R-3 zoning now, it would not be appropriate. Mr. Nejame said he disagrees because the only reasonable access to these parcels is from Smith St. and leaving them zoned CG-20 would encourage commercial traffic on Smith Street.

Chairman Melillo then passed gavel to Vice-Chair Estefan so he can speak. He said he intends to vote in favor of motion to deny because there are health, safety, and compatibility concerns. He said Downs Street is not a residential neighborhood and encouraging residential development on these parcels would have a negative impact on Smith Street. He added that in 2014, the Plan of Conservation & Development (POCD) suggested these lots should be used for light commercial and there are lighter uses permitted in CG-20 that would be appropriate for these parcels. He asked that the other members consider voting to deny this petition. He then took the gavel back from Mrs. Estefan and asked if any of the other Commission members wanted to speak.

Ms. Gartner said she is in favor of the project proposed by the applicant. She said she was moved by the applicant's sentiments about how living in one of the properties for

the past two years gave him the opportunity to appreciate the residential character of the neighborhood.

Chairman Melillo said since there are no other comments, he would take a roll call vote. He reminded the Commission that since the motion is to deny, a yes vote is to deny the petition and a no vote is to not deny the petition. If the motion to deny does not carry, that does not mean the petition is approved, a new motion would have to be made and voted on to approve it. The motion to deny was approved with six AYES (from Mrs. Estefan, Mrs. Fay, Mrs. Hylenski, Mr. Almeida, Mr. Masi and Chairman Melillo), and three NAYS (from Ms. Gartner, Mr. Kelly and Mr. Nejame).

Chairman Melillo said there was nothing listed under New Business, Correspondence or For Reference Only. He asked if anyone has anything to discuss under Other Matters and there was nothing. He said the next meeting will be a short one probably only to accept and refer a petition.

At 9:29 PM, with no further business to discuss, Mrs. Estefan made a motion to adjourn. Mrs. Hylenski seconded the motion and it was passed unanimously.