



**CITY OF DANBURY**  
155 DEER HILL AVENUE  
DANBURY, CONNECTICUT 06810

**ZONING COMMISSION**  
www.danbury-ct.gov

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

**MINUTES (REVISED)**  
**NOVEMBER 26, 2019**

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

Present were Milan David, Sally Estefan, Candace Fay, Rick P. Jowdy, James Kelly, Robert Melillo and Alternates Sidney Almeida and Thomas Nejame. Also present was Planning Director Sharon Calitro.

Absent were Luis Batista, Andrea Gartner, Angela Hylenski and Alternate Michael Masi.

Chairman Melillo asked Mr. Almeida to be seated for Mr. Bautista and Mr. Nejame to be seated for Mrs. Hylenski for the items on tonight's agenda.

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

Chairman Melillo said the minutes are not ready so they will have to be tabled. Mrs. Estefan made a motion to table the acceptance of the October 22, 2019 minutes. Mr. Almeida seconded the motion and it was passed unanimously.

Chairman Melillo said the next regular meeting is scheduled for December 10, 2019 and that will be the first meeting of the newly elected Commission.

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**PUBLIC HEARINGS:**

**Petition of DP110, LLC to Amend Sections 2.B. and 5.F.2.a. of the Zoning Regulations. (Add "Skating Rink" definition, Amend "Amusement Enterprise, Indoor" definition, and Add "Amusement Enterprise, Indoor" to C-CBD zone.)**

Mrs. Estefan read the legal notice for both public hearings scheduled for this evening. Chairman Melillo read the Planning Commission recommendation which was positive, and also the Planning Department Staff Report dated November 18, 2019.

Attorney Hillel Goldman spoke in favor of this petition. He said in response to the Planning Commission's comments, he reviewed the proposed language and discovered that there is a duplication of the phrase "spectator seating for ice skating". To correct this he submitted a corrected copy of the language which was designated Exhibit A. He said the rink is under new ownership and they would like to upgrade the use and appearance of the facility. One of the proposed upgrades is to add a family entertainment center which will include games such as laser tag. He added that this proposal is consistent with the C-CBD zone, the DRZ overlay and the Transit Oriented

Development Study. The new owner also intends to upgrade the rinks and also expand the food and beverage options including offering the sale of alcohol. He said they are aware that sale of alcohol still requires approval of a special permit by this Commission. He said this does comply with the Plan of Conservation & Development by expanding the entertainment options in the downtown district. He offered to answer questions from the Commission.

Jim Diamond, Diamond Properties, who is the new owner of the rink said he is available to answer any questions the Commission might have but there were none.

Attorney Tom Beecher from Collins-Hannafin, said he represents Danbury Mall LLC and they are strongly in support of petition particularly the change to definition. He said they are in favor of this because an indoor amusement enterprise could be a potential tenant at the mall.

Chairman Melillo asked if there was anyone else to speak in favor of this and there was no one. He then asked if there was anyone to speak in opposition to this petition and there was no one. He asked Mrs. Calitro for any additional staff comments.

Mrs. Calitro reviewed the change to the proposed language that Attorney Goldman had submitted. She said the initial definition of skating rink read as “a facility which provides as its principal use, an ice skating rink or rinks and spectator seating for ice skating and spectator seating for ice skating and hockey related activities...”. The revised language removes the first phrase “and spectator seating for ice skating”. It appears it was duplicated and it is not necessary. She said this is a ministerial change and if they act on this tonight, they should mention the revised language that was submitted tonight. She said the Planning Commission had noticed the redundancy and found it confusing, which is why their recommendation contained a suggestion that the definition of spectator seating be reviewed. In closing, Mrs. Calitro said spectator seating in the facility is intended to cover whatever activity is going on in the rink.

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

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Application of Fast Lane Auto Repair LLC/Payne Road Investments LLC, 60 Payne Rd. (N12001), for a Certificate of Location Approval for a Motor Vehicle General Repairer’s License in the IG-80 Zone.

Chairman Melillo said the legal notice was already read into the record. He said the applicant’s attorney and our Corporation Counsel have requested that the public hearing be opened tonight and continued due to outstanding issues.

Mr. Kelly made a motion to continue the public hearing to the December 10, 2019 meeting. Mr. Almeida seconded the motion and it was passed unanimously.

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OLD BUSINESS FOR DISCUSSION & POSSIBLE ACTION:

Petition of DP110, LLC to Amend Sections 2.B. and 5.F.2.a. of the Zoning Regulations. (Add "Skating Rink" definition, Amend "Amusement Enterprise, Indoor" definition, and Add "Amusement Enterprise, Indoor" to C-CBD zone.)

Chairman Melillo reminded the Commission of the findings they must make in order to approve this petition. He also mentioned that they must include the amended definition in the motion.

Mrs. Estefan made a motion to approve this petition as amended for the following reasons: The proposed amendments are consistent with the Plan of Conservation & Development because they define an existing use and provide for a diversity of activities and entertainment options in the C-CBD zone. Also, they will not negatively impact the health, safety and welfare of the general public. And this does meet the purpose and intent and is compatible with other uses permitted in the C-CBD zone. Mr. Nejame seconded the motion. Chairman Melillo took a roll call vote and the amended petition was approved with an 8-0 vote and one member not voting.

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NEW BUSINESS:

ZBA Referral: Zoning Board of Appeals Application #19-16 for 10 Downs Street, (H12166), Paul Valeri as Agent for MSPD Downs Street LLC (owner), Use Variance to Sec. 5.A.2., to allow a two-family dwelling in a CG-20 Zoning District; Sec. 9.C.1.a., to change non-conforming single-family dwelling into non-conforming two-family dwelling; and Sec. 9.C.2.a., to extend or expand a non-conforming single-family dwelling to add second floor/second dwelling unit.

Chairman Melillo said the ZBA public hearing is scheduled for December 12, 2019. He said based on when this application was received and the fact that this is the last meeting of this Commission, they would discuss this as a committee of the whole. He then read the staff report on this application prepared by the Planning Director dated November 19, 2019.

Mr. David said based on the fact that this property abuts other residential properties, and its historical use as residential, they should give it a positive recommendation. Chairman Melillo reminded Mr. David that the residential use is non-conforming since the property is zoned CG-20. Mr. David said the applicant wants to improve the property by adding a second dwelling unit to it. Mr. Jowdy said due to the size of the structure and that it backs up to other residential properties on Smith St., he does not think this request is unreasonable. Mr. Nejame then said this residence was used as a two-family dwelling until the Fire Marshal determined it was not safe and made them stop using the basement unit. He added that if this is approved, he thinks the driveway and apron should be moved to the Smith St. side because of the traffic flow on Downs St. He continued saying that there is more than enough parking on the site for two dwelling units.

Mrs. Fay said she appreciates the personal thoughts on this but they are not as valuable as the facts because the ZBA needs to consider the law when granting variances, and unfortunately the law prohibits this. The people who have spoken so far said even though it was used illegally, we should let that use continue. If someone came in who had several families living in a dwelling unit, we would not give them a multi-family approval just because it exists. Mr. David said it was used as a two-family and no one stopped them. Mrs. Fay pointed out the Fire Marshal stopped them because it was unsafe and did not meet either Fire or Building codes. Also the illegal two-family use developed because someone used it that way without ever getting permits to make it legal, so when the house was sold, the illegal use was continued. Mrs. Fay said the staff report points out all of the things that must be satisfied in order for this to be approved. Mr. David said he disagrees with the staff report. Mrs. Fay said this Commission and the ZBA are creatures of statute so they cannot just willy-nilly make a decision. She said when a change fits within the letter of the law, it is appropriate. It is fine to consider the thoughts and opinions, but they should respect the staff opinion that has been presented to them. Chairman Melillo added that between 2003 and 2014 this single family home was zoned R-3 and could have been changed to a two-family, but no permits were taken out and it was not done. In 2014, the property owner applied for and was granted a zone change from R-3 (multi-family residential) to CG-20 (general commercial), the single family use was allowed to continue as a non-conforming use, so this seems like a self-created hardship.

Chairman Melillo asked that they steer their conversation toward the impact that this variance would have on the community and neighborhood rather than whether it is or was a one or two-family dwelling. Mrs. Fay said this is the third time they are discussing this property so they all should be very familiar with it. Mr. David said if they don't approve this, it could be used as any of the uses permitted in the CG-20 zone, like a coffee shop with a drive-thru window. Chairman Melillo asked Mrs. Calitro if a drive-thru coffee shop could be put on this site. Mrs. Calitro said the lot is very small, only 7,000 sq.ft. in area, so that would limit the development that could occur on it. This led to a discussion of intensifying the use and more debate about what is the right use for this property. Mrs. Calitro said an additional dwelling unit would mean more cars and more people living in the house, so a two family dwelling is more intensive than a single family dwelling. She also clarified that the agent for this application is no longer the owner of the property as it was sold this fall. She said they were allowed to continue the non-conforming single family use even after the Fire Marshal determined that the second unit was not safe, so they have not been denied the use of the property. She then said even if you don't consider a specific site, why should we allow a use that is not permitted in the zone.

Mrs. Fay said this is not the correct way to zone property and it is frustrating to her that this is again being presented to this Commission as a back door attempt to get what they want. She continued saying that municipalities are not supposed to use variances to allow uses in zones where they are not permitted. Just because this was illegally used that way for thirty years does not make it okay. She said this is a back door method to get what they want but it is not the appropriate situation for a use variance. Mr. Nejame asked what the correct way to do this would be. Mrs. Calitro said a use variance is the last option that should be considered in this situation. It would allow something that does not fit in this zone and it would give this property

owner rights that the other properties zoned CG-20 do not have. She said the proper way to do this would be to come back before this Commission with another zone change petition. Mr. Nejame asked if this would have been solved if the zone change this past summer had been approved. Mrs. Calitro said they still would have needed variances to convert this to a two-family but at least they would have been in a zone that permitted multi-family development. She then listed the variances that they are requesting including to vary the regulation that says you cannot go from one non-conforming use to another non-conforming use. She said in situations like this, people do come back and try again for a zone change. Mr. Nejame said they should just come back and try again for a zone change. Chairman Melillo said they have to consider the facts, the optimal situation would be to try again for a rezoning. Their purview in this case, is to give the ZBA a recommendation based on the facts. They also have to consider the possibility that if this variance is granted, they could come in and say they want a commercial use on the first floor and residential use on the second floor. Mrs. Calitro pointed out that once a variance is granted and recorded on the land records, it goes with the land forever.

Mr. Jowdy asked why this was not referred to the ZBA subcommittee. Chairman Melillo explained that the purpose of the subcommittee is to review the application and report back to the full Commission. It is after that the Commission as a whole makes a recommendation which goes to the ZBA. Chairman Melillo continued saying that due to the timing of the receipt of this application, there was not adequate time for the subcommittee to meet and submit their report before the new Commission is sworn in. Mr. Jowdy said he believes it would be beneficial for the subcommittee to view the property. Chairman Melillo said he would expect that all of the Commission members are familiar with this site as they heard a petition for rezoning over this past summer. He said the bylaws state that there is to be a subcommittee to review use variances, but due to the timing, he made the decision to review this one as a committee of the whole. He added that there was no need for a subcommittee report as the Planning Director had already issued a report on this application.

Mr. David made a motion to give this a positive recommendation because it is not detrimental to the health, safety and welfare of the citizens of Danbury. Mr. Jowdy seconded the motion. Chairman Melillo took a roll call vote and it was a tie vote with four AYES (from Mr. David, Mr. Jowdy, Mr. Kelly and Mr. Nejame) and four NAYS (from Mrs. Estefan, Mrs. Fay, Mr. Almeida and Chairman Melillo).

Mrs. Fay then made a motion to give this a negative recommendation because this proposal would open a can of worms for all of the CG-20 zoned areas in the City. Mrs. Estefan seconded the motion. Chairman Melillo took a roll call vote on the motion to give this a negative recommendation and it again was a tie vote with four AYES (from Mrs. Estefan, Mrs. Fay, Mr. Almeida and Chairman Melillo) and four NAYS (from Mr. David, Mr. Jowdy, Mr. Kelly and Mr. Nejame).

Chairman Melillo said since they are deadlocked and cannot make a decision, he suggested they table this until the December 10<sup>th</sup> meeting. He then pointed out to Mr. Jowdy that the Commission could refer it to the ZBA subcommittee. Chairman Melillo said it must be done before the new Commission is sworn in and the subcommittee meeting would have to be noticed in the Town Clerk's office, which logistically could

not be done since the Thanksgiving holiday is this week. Mr. Jowdy asked if the subcommittee recommendation is the recommendation that goes to the ZBA. Chairman Melillo said no, the subcommittee does not make the recommendation; it presents a report on the application to the Commission as a whole and after the Commission discussion, a motion for a recommendation is made and voted on. It is the Commission recommendation that goes to the ZBA.

Chairman Melillo asked for a motion to table this matter. Mr. David made a motion to table this until the December 10<sup>th</sup> meeting. Mr. Kelly seconded the motion. Mrs. Fay said there have been numerous discussions about this site both at meetings and outside of them. She asked how they should handle it if anyone outside of the Commission attempts to discuss this application. Mrs. Calitro said at this point, if any of the Commission members are approached, they should treat this like any other open matter and not discuss it outside of a properly notice meeting. Chairman Melillo said when this was discussed in executive session, they were all instructed that what was discussed was not to be shared with anyone on the outside. Chairman Melillo called for a vote on the motion to table this and it was passed unanimously.

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Chairman Melillo said there was nothing listed under Correspondence or For Reference Only. He asked if anyone has anything to discuss under Other Matters and there was nothing. He then thanked all of the members of the Commission for their service over the past two years. He added that it was a pleasure working with all of them and he appreciated the fact that everyone was always respectful of each other. He asked if anyone else wanted to say anything.

Mr. Jowdy said he wanted to thank Mr. David, Mrs. Estefan, and Ms. Gartner for their participation and time they gave to the Commission. Mr. David said he appreciated working with all of them and wished the new Commission good luck. Mrs. Estefan said she enjoyed her time and definitely learned a lot. She also wished the new Commission a lot of luck in their endeavors. Mr. Almeida thanked the departing members and wished them well.

At 9:15 PM, with no further business to discuss, Mrs. Fay made a motion to adjourn. Mrs. Estefan seconded the motion and it was passed unanimously.