

**APPROVED MINUTES
BROOKFIELD ZONING COMMISSION
Thursday, February 23, 2012 – 7:00 p.m.
MEETING ROOM #133 – TOWN HALL, 100 POCONO ROAD**

1. Convene Meeting

Present: Chairman W. Mercer, Vice Chairman Blessey, M. Grimes, C. Lynch, Alternate and Voting Member R. Ziembicki, Alternate and Voting Member where indicated J. Varda

Absent: Secretary F. Lollie, Alternate J. Cordisco

Also Present: Zoning Enforcement Officer A. Dew

a. Review Minutes of Previous Meetings: 02/09/12

Commissioner Grimes moved to approve the Minutes of the February 9, 2012 meeting. Commissioner Varda seconded the motion. The following changes were noted: 1) by Commissioner Grimes, on Page 8, in the last sentence of the first motion on the page, to change the word, “change” to “denial”. 2) to correct the spelling of Commissioner Ziembicki’s throughout the document; and 3) to correct the spelling of Mr. Venezia’s name, also throughout the document. Motion to approve with the aforementioned changes carried unanimously.

2. Land Use Enforcement

a. Enforcement Officer’s Report:

Requests for Voluntary Compliance

213 Candlewood Lake Road, #201101044 - Mr. O’Hara has not moved the remaining boats but he was given until March 15, 2012 to comply.

143 Federal Road, #201200040 – ZEO Dew contacted Panera Bread. It is awaiting a response from the Department of Transportation to see if a smaller sign is allowed.

41 Woodview Drive, #201200100 – Upon inspection today, ZEO Dew discovered that the dumpster has been removed. She will take this item off of the Enforcement Report.

32 Mist Hill Drive, #201200119 – ZEO Dew reported that a tree service truck had been present on South Mountain Road, and is now being stored on the owner’s parents’ property at 32 Mist Hill Road. The truck owner has advised ZEO Dew that he will find a place to store the truck by March 5, 2012.

154 Pocono Road, #201200138 – ZEO Dew reported that up to seven vehicles have been sighted at this house, two without registration plates. A Request for Voluntary Compliance was sent.

273 Whisconier Road – There are two one-sided unpermitted signs on this property, put up in place of one two-sided sign. A Request for Voluntary Compliance, along with a request to come in and talk to the Commission about signs, was sent to the property owner. Chairman Mercer noted that the two signs are on the “railroad station” side of the road, and direct customers to the Craft Center Sales Center across the street.

Cease and Desist Orders

7 Cross Road, #201200016 – ZEO Dew reported that this property has been cleaned up.

(no number listed) Huckleberry Hill Road – Chairman Mercer noted a complaint regarding excess chickens. There was discussion regarding the number of chickens that have been sighted on the property, and it is not believed that there are 24 or more.

7 Cross Road (continued) – The property owner has applied for a building permit. ZEO Dew was advised by the Commission that she can remove this item from the report

632-640 Federal Road, #201200036 – Prior to the requested citation being issued, ZEO Dew received a complaint regarding the potholes. She was advised by the business owner that the work could not be done due to finances and weather. ZEO Dew will advise the business owner that the Commission requested that the Citation be sent prior to them responding and Commission is of opinion that potholes have been there for quite some time, and that the Citation is an appropriate enforcement action.

10 Whisconier Road, #201200023 – This matter is on the Zoning Board of Appeals agenda for March 5, 2012.

51 Junction Road, #201200129 – ZEO Dew reported that on February 16, 2012, there was household garbage in the dumpster and a truck. The Health Department has also inspected the site. The violation relates to waste disposal business in an aquifer protection zone. The property lacks a Certificate of Zoning Compliance.

Citations

54 Ironworks Hill Road, #201100755 – Upon the property owner contacting the Tax Assessor’s Office regarding vehicle taxes, his location and current phone number were determined. The taxes have been paid, and the house is not in foreclosure. Chairman Mercer advised that if the Town Attorney feels that Connecticut’s long-arm statute will allow service of papers in Georgia, where the property owner is, that it be arranged for him to be served.

Town Counsel Action

20 Station Road, #200101116 – ZEO Dew reported that a portion of the building has been demolished. Asbestos abatement must occur prior to removing remainder. She is unsure if there are any zoning violations. Chairman Mercer requested that she reinspect the site for any possible violations.

533 Federal Road, #2012000122 – An updated Cease and Desist was sent, as the bankruptcy was terminated and L. Pastor and Wellsville LLC are now the owners. ZEO Dew is not sure if the two parties are related. The Cease and Desist was sent to both parties at 148 South Lakeshore Drive. Vice Chairman Blessey asked ZEO Dew to get in touch with Town Counsel to discuss further enforcement. ZEO Dew will also look at the date that marshal served it and establish the bankruptcy status of the parties.

45 Riverford Road, #200900768 – ZEO Dew advised that it is difficult to inspect this property for violations from the road. She will investigate the origin of the complaints, to determine if any complaining neighboring property owners will allow her to go on their property to look at 45 Riverford Road. This property is in bankruptcy.

1 High Ridge Road, #201000315 – Pending litigation.

9 Stoney Farm Lane, #201100095 – Pending litigation.

3. Review Correspondence

- a. **Minutes of other Boards and Commissions: 02/06/12 Inland Wetlands Commission; 02/06/12 Zoning Board of Appeals; 02/02/12, 02/16/12 Planning Commission; Zoning Sub-Committee**
- b. **Letter from R. Papenfuss to the Zoning Commission and the Planning Commission dated 02/15/12 Re: BJ’s Wholesale Club, 84-140 Federal Road Application #201100083**

No discussion/no motions.

Commissioner Grimes moved to go to Agenda Item 8.a. Commissioner Ziembicki seconded the motion, and it carried unanimously.

8. Informal Discussion:

a. **20-28 Old Gray’s Bridge Road** – *Seth Fox, 31 Homestead Lane, Sandy Lane Village Condominiums, was present.* He inquired if the regulations under which the 20-28 Old Gray’s Bridge Road project was approved were local or state regulations; and was advised that they are local. Mr. Fox reviewed how a canopy of trees between the site and the condominiums was torn down. The notice requirement for the 20-28 Old Gray’s Bridge Road project was reviewed. Mr. Fox expressed

his concern regarding the ecological and environmental impact of taking away the trees, as well as the devaluation of property and loss of “beauty”. He indicated that none of the 106 residents of the condominium units were aware of the work being proposed at 20-28 Old Gray’s Bridge Road.

Vice Chairman Blessey advised that there are established zones, with requisite regulations; that that the condominium development is allowed in the industrial zone, and notification for applications in that zone is done per Connecticut General Statutes, on the Town website and in the local newspaper. The project at 20-28 Old Gray’s Bridge Road was approved because it complied with the regulations. Commissioner Grimes advised Mr. Fox that if he feels there is a zoning violation, he could advise the Commission and it would be investigated.

Mr. Fox reiterated that he believes that the construction has impacted the value of the property.

No motions.

4. Public Hearing 7:30 p.m.

- a. **227-235 Federal Road #201200060: Design Review for a new retail / commercial 24,899 sq. ft. building (ph close date 3/29/12)**
- 1. Letter from M. Lillis of CCA, LLC dated 02/14/12 Re: 227-235 Federal Road, Site Plan for Design Review Approval Application for Two Two Seven LLC**
 - 2. Page 1 of 1 – Luminaire Plan/Schedule prepared by Reflexlighting dated 02/10/12**
 - 3. Sheet S2 – Layout Plan prepared by CCA, LLC dated 11/02/11; revised 02/14/12**
 - 4. Traffic Analysis Proposed Site Redevelopment prepared by BL Companies dated February 2012**
 - 5. Memo from Alice Dew (ZEO) dated 2/21/12 Re: Site Plan Modification Observations after initial review of 227-235 Federal Rd**

Chairman Mercer opened the Public Hearing and introduced the Commission members. It was reiterated that Commissioner Ziembicki is a Voting Alternate tonight. In Secretary Lollie’s absence, Vice Chairman Blessey read the legal notice, which was published in the Danbury News Times on February 10, 2012 and February 20, 2012. Chairman Mercer noted that the application was received on January 6, 2012. He then reviewed the policies and procedures that govern public hearings.

Receipt of the following correspondence was noted: from the Water Source Committee dated 2/1/12 to the Planning and Zoning Commissions.

Ms. Abigail Adams, Landscape Architect, CCA, 40 Old New Milford Rd., was present on behalf of the applicant. N. Buzaid, M. Palmer, G. Palmer, F. Greensburg, BL Companies, and R. Blanchette, Architect from Borghesi, were also present. Ms. Adams reviewed the location of the site in the IRC80 zone, the lot size and the current configuration of three buildings. She advised that there are four curb cuts to Federal Road; and reviewed the topography, noting that there are no wetlands on the site. Ms. Adams indicated that the three buildings will be demolished to construct a new retail building, and the four existing curb cuts will be closed. Traffic improvements were described. The proposed use is retail, and sixty-two parking spaces will be required. Ms. Adams noted a loading area and a dumpster location, and advised that the water will be supplied via municipal water along Federal Road by the end of the year, and the building will be sprinklered. Additionally, the site is within the sewer district, and an application will be made to the Water Pollution Control Authority. The lighting plan and landscaping were reviewed. Ms. Adams read from a drainage report completed by M. Lillis, PE, CCA. She gave details about the two detention systems, and advised that the peak discharge rates will be reduced with the developed proposal.

Ms. Adams noted that ZEO Dew has submitted a memo with her comments.

R. Blanchette, Borghesi Building, was present on behalf of the property owner. The elevations and colors of the proposed building were reviewed, and samples of materials were submitted. Mr. Blanchette also discussed the grading, elevations and masonry in the rear of the building. It was clarified that the most recent set of plans is dated February 14, 2012. He submitted the original with him tonight, and will submit a copy to the Land Use Office.

Chairman Mercer inquired where the loading zone is located. Mr. Blanchette showed where the doors will be in proximity to the parking. It was noted that the loading area does not access the doors and is not for deliveries. Upon inquiry from Chairman Mercer and Vice Chairman Blessey, Mr. Blanchette stated that the product will come in through the front door. He also advised that the building is not a full two-story building, and that the two floors do not connect.

Commissioner Lynch advised he does not have an issue with loading through the front door as long as there is not a public safety issue. Commissioner Varda noted that the displays will likely be changed during non-business hours.

F. Greensburg, Registered Professional Engineer, BL Companies, Meriden, CT, was present to discuss the traffic study. He indicated it was conducted based on the Costco expansion. The redevelopment of the site allows the undesirable traffic situation there to be improved and made safer with one main curb cut.

Chairman Mercer inquired regarding the peak hours and Mr. Greensburg reviewed how the peak calculations are done. Chairman Mercer also inquired regarding discrepancies in Figure 6, which do not match Table 1. Mr. Greensburg advised that an acceptable “round off error” of ten percent is acceptable for this number. He further noted that the traffic was generated on general retail use, and overestimates for the planned use of a furniture store. Commissioner Ziembicki inquired if the general retail use would include food, and Mr. Greensburg advised it would not.

Ms. Adams responded to the Memo of A. Dew dated 2/21/12 by advising that the discrepancy in the square footage and the parking schedule relates to the calculations being based on the gross area, measured from the inside of the perimeter wall. With regard to the commercial vehicles being parked in the rear, Ms. Adams indicated that there is no parking in the rear shown, except for loading. She also pointed out another possible area for parking. The Commission pointed out that there is at least one development on Federal Road that has commercial vehicles parked on its site per its approval. The Commission requested that the applicant be aware of a potential problem with insufficient parking. With regard to Section 242-305C(5), the right turn lane being 11 feet wide is likely a drafting error and will be changed. Additionally, Ms. Adams stated that the applicant recognizes that a Certificate of Zoning Compliance for each use will have to be obtained. She also clarified that the loading area is a painted area, not a structure. Ms. Adams also offered to extend the hatching farther towards the doors. With regard to the location of the dumpster, Ms. Adams indicated that the applicant will look into relocating it to the southeast corner of the site, and providing the necessary grading and retaining wall.

Ms. Adams indicated that she was not aware of the drainage issues related to the bordering condominium complexes. ZEO Dew advised that the back section of the site is filled with mud and water and water does run out from that area. Ms. Adams indicated that the drainage problem may relate to the current use, and the applicant is proposing to redirect the pipe. She also noted that the drainage plans do go to the Town Engineer for his review. ZEO Dew advised that she did speak with the Town Engineer. Ms. Adams pointed out that the first two pages of the drainage report by Mr. Lillis

provide a summary of the calculations that follow. She also indicated that the drainage plans have been sent to the Department of Transportation for an easement. It is still in review with that office.

Commissioner Ziembicki inquired regarding the current drainage versus what is being proposed. Ms. Adams indicated that the existing calculation is 27.3 cubic feet per second, and under the proposed development it will be 21.2 cubic feet per second. She explained the direction of the drainage, noting it is from the roof and the property, not from the road.

The grading at the site was discussed. Mr. Blanchette indicated that “a substantial amount” of fill will be brought in to the site, approximately 1,500 yards. He added that the highway drainage will not change, but the existing runoff from the parking and buildings will be reduced. Therefore, the overall impact is a reduction of what is being generated on the property. Commissioner Lynch suggested that this be verified.

There was discussion regarding the capacity of the rip rap area in a 100-year storm. Ms. Adams pointed to page 2 of the report of Mr. Lillis for those calculations.

Chairman Mercer inquired how much of the site is impervious; and Ms. Adams indicated that 32.1% of Lot 1; and 77.2% of Lot 2; is impervious. There was discussion regarding obtaining the percent of impervious surface if Lots 1 and 2 are combined. It was determined that it is currently 61%, but will be going to 74.9% under the proposal. Commissioner Lynch noted that there will be more controls in place.

Ms. Adams returned to her review of ZEO Dew’s memo. She indicated that with regard to the fire lane, the Water Source Committee has commented, and the lane can be accomplished by removing a back parking spot and realigning an island. There was discussion regarding the review of the technical standards by the Water Source Committee.

There was brief discussion regarding landscaping on the site and the extensiveness of the requirements of the regulations. The Commission advised Ms. Adams that the landscaping regulations are going to be reviewed.

Upon inquiry from Vice Chairman Blessey, Mr. Buzaid advised that there is no time frame for the work. The applicant is not proposing any changes to the traffic outside of what Costco is already doing.

The Commission wishes to leave the hearing open until Mr. Lillis can address drainage questions.

No members of the audience had questions. No one was present to speak in favor of the application, nor was anyone present to speak in opposition.

Commissioner Grimes moved to recess the Public Hearing re: 227-235 Federal Road, #201200060: Design Review for a new retail/commercial 24,899 square foot building to the March 8, 2012 meeting. Commissioner Lynch seconded the motion, and it carried unanimously.

Commissioner Grimes moved to go to Agenda Item 8.d. Commissioner Lynch seconded the motion, and it carried unanimously.

8. Informal Discussion:

d. 28 Old Route 7: Potential Site Plan Modification requested by Dave Cole

D. Cole, Whisconier Road, Contractor for 28 Old Route 7, was present on behalf of the applicant. He explained that there is a need to modify drainage. A pipe, which was originally going to be extended 16 feet, had to be piped throughout the property, affecting the wetlands. The applicant is also proposing to put a cleansing system into the area, which will involve removal of a retaining wall. Therefore, the entrance to the site and parking spaces will be moved. It is also being proposed to move the loading zone. The proposal also has to be approved by the Inland Wetlands Commission.

The plans were reviewed. The number of parking spaces (22) will remain, and the landscaping will not change. The location for commercial parking was noted. The Commission members indicated they had no objections to the new plans.

b. Mobil Vending: Requested by Inson Neglio – *No one present.*

c. 763 Federal Rd: Parking for a restaurant
Mr. S. Lal, 178 Carmen Hill Road and owner of India Kitchen, was present.

ZEO Dew left at 8:40 p.m.

Mr. Lal advised that his current business has been operating for approximately 10 years, and he is looking at the site at 763 Federal Road for possible purchase. There are only 25 parking spaces at that site. Vice Chairman Blessey advised Mr. Lal that the building does not have a Certificate of Occupancy. It was suggested that Mr. Lal have an attorney look into the numerous other issues at the site. Vice Chairman Blessey explained that the parking lot is an issue for certain uses. Per the Zoning Regulations, a restaurant use would need one parking space for every four seats at a table. The Commission also explained the variance application process to Mr. Lal.

e. Liquor Outlets: Requested by Lou Venezia
Attorney T. Deakin, Address, was present, with his client, L. Venezia, owner of Country Wine & Spirits. He reviewed the recent attempts to change the regulation regarding liquor outlets. Attorney Deakin also went over a diagram showing the 2000 foot distance between liquor stores, as the regulation stands now. He further went over various possible scenarios with alternating intersecting streets, parallel roads, and abutting properties. Attorney Deakin suggested that if the Commission wishes to propose a change to the regulation, it could add a component of the regulation that measures the radius from the door of a liquor store. He also noted the possibility of measuring the distance from the door, out to the road, and up the road to the other store, to calculate the distance to another store. He indicated that this type of measurement could be manipulated by virtue of where the doors are, which is “a moving target”. Attorney Deakin recommended that a property line measurement makes more sense because it is less likely to change. He added that stores farther away from roads do not have as much protection from other stores that are closer to the road.

Vice Chairman Blessey pointed out that the discussion might be more appropriate during an upcoming public hearing.

Attorney Deakin also recommended that the Major Shopping Center regulation exception be abolished.

A five-minute recess was taken from 9:04 p.m. to 9:08 p.m.

5. Old Business:

- a. 398 Federal Road – Proposed Zone Change #201200088: Current Zone is IRC 80/40 and Proposed Change is Incentive Housing Overlay Zone (Public Hearing scheduled for 03/08/12)**

No discussion/no motions.

6. New Business:

a. Proposed Zoning Regulation Change #201200130: Section 242-308F – Liquor Outlets

Commissioner Grimes moved to set a Public Hearing for Proposed Zoning Regulation Change #201200130: Section 242-308F – Liquor Outlets for March 22, 2012. Vice Chairman Blessey seconded the motion. It was noted that Secretary Lollie will be providing the Commission members a copy of the City of Danbury’s regulation. There was discussion regarding the distance between some of the existing liquor stores, and how that distance is currently measured. It was further noted that the way the current regulation reads, if you are a liquor store owner sitting on a big lot, you can force your competition to be farther away. Commissioner Grimes stated that he feels the current regulation is ambiguous. He suggested that measuring the distance between stores, from front door to front door, will remove the ambiguities. Commissioner Varda agreed that a solid measurement is needed. Commissioner Ziembicki advised that he does not feel the current regulation is ambiguous. He pointed out that it currently reads, “from the premises”. Vice Chairman Blessey indicated that the Town Attorney has requested that the regulation become clearer. Chairman Mercer showed how currently the measurement is at the center of the street, from “somewhere along the lot”. Commissioner Ziembicki stated that there is a difference between a public road and private property, and Chairman Mercer pointed out that it is within the Commission’s powers to regulate both. **Motion carried unanimously.**

b. Proposed Zoning Regulation Change #201200131: Section 242-504: Major Shopping Centers:

Subsection C(5): Accessory uses permitted

Subsection N(1) & (4): Additional-requirements-for-support-services

Subsection O: Project Limitation

Commissioner Grimes moved to set a Public Hearing for Proposed Regulation Change #201200131: Section 242-504: Major Shopping Centers for March 22, 2012. Vice Chairman Blessey seconded the motion, and it carried unanimously.

c. 200 Federal Road (Costco) #201100583: Bond Set

1. Opinion of Probable Site Construction Cost prepared by R. Gradwell dated 2/21/12

Vice Chairman Blessey and Commissioner Lynch recused themselves and left the room at 9:25 p.m. Alternate Varda became a Voting Member.

Commissioner Grimes moved to set a bond in the amount \$2,814,984.88 for 200 Federal Road (Costco), #201100583. Commissioner Ziembicki seconded the motion, and it carried unanimously.

7. Tabled Items:

a. 540 Federal Road #201101017: Design Review for a Municipal water storage tank, water main, electrical & driveway (dec date 04/14/12)

No discussion/no motions.

9. Comments of Commissioners: None.

10. Adjourn:

Commissioner Varda moved to adjourn the meeting at 9:28 p.m. Commissioner Grimes seconded the motion, and it carried unanimously.

****Next Regular Meeting Scheduled for March 8, 2012****