

APPROVED MINUTES
BROOKFIELD ZONING COMMISSION
Thursday, March 22, 2012 – 7:00 p.m.
MEETING ROOM #133 – TOWN HALL, 100 POCONO ROAD

1. Convene Meeting

Chairman Mercer convened the meeting at 7:00 PM and established a quorum of members:

Present: Chairman W. Mercer, Vice Chair R. Blessey, Secretary F. Lollie, C. Lynch, M. Grimes, Alternate Members J. Varda, J. Cordisco, R. Ziembicki

Absent: No one was absent. (*J. Varda and C. Lynch entered the meeting room at 7:01 PM and 7:03 PM, respectively.*) **J. Cordisco was a voting member in C. Lynch's absence.*

Also Present: Zoning Enforcement Officer A. Dew, Recording Secretary E. Cole

a. Review Minutes of Previous Meetings: 03/08/12

Vice Chairman Blessey made a motion to approve the minutes of the March 8, 2012 meeting as submitted with the following amendment: note that R. Blessey recused himself from the Executive Session. Secretary Lollie seconded the motion, and it carried unanimously.

J. Varda arrived at 7:01 PM.

2. Land Use Enforcement

a. Enforcement Officer's Report:

C. Lynch entered the meeting room at 7:03 PM.

213 Candlewood Lake Road – Chairman Mercer stated that there are three separate properties: one zoned RS40, and behind that there are two R-40 lots. One of the two R-40 lots is owned by the same corporation that owns the RS40 lot and the two lots were joined by the same owner. The lot that abuts the houses on Conrad Road is still owned by a separate corporation owned by the O'Haras. Chairman Mercer stated that he believes that these other two R-40 lots are non-conforming lots because they are smaller lots.

Vice Chairman Blessey asked what outstanding compliance issue is remaining on the property, and ZEO Dew clarified that there is parking of three boats near the fire lane. Chairman Mercer stated that they suggested to the property owner that in order to legally park boats on the side of the building, the owner would need to submit a site plan modification; Chairman Mercer noted that there is enough space to park boats in that area.

Chairman Mercer stated that there are not many options with respect to the back properties. Chairman Mercer stated that presumably the back lot could be changed to RS40 if the applicant would like to consider applying for the change to make the back lot also RS40. Chairman Mercer also noted that as it stands, the owner cannot park boats on the back property. Chairman Mercer stated that currently the owner is parking some personal boats on the back residential lot that is a single, separate lot.

Chairman Mercer noted that this issue is a winter problem, and not a summer problem because the boats are moved back to the water during the warmer months.

ZEO Dew stated that she will write a letter to the property owner stating that he needs to either move the boats or submit a site plan modification by April 1, 2012. M. Grimes noted that ZEO Dew should issue a cease and desist if the issue is not resolved by April 1, 2012.

154 Pocono Road – ZEO Dew noted that there were six vehicles parked on the property on either the yard or the designated drive. ZEO Dew stated that all of the vehicles had been moved to the designated drive, but there still remained two unregistered vehicles on the property. One of the unregistered vehicles has currently been moved, so the site is now in compliance.

273 Whisconier Road – Signs – ZEO Dew noted that there are two signs which are twenty five feet from the center line, and that the Brookfield Craft Center needs one sign that is thirty-five feet away from the center line of the road. Since the center line of the road places the sign behind a tree, ZEO Dew noted that the applicant will apply for a variance.

10 Whisconier Road – Shed in the setback – ZEO Dew noted that there is a shed in the setback, and that a variance application has been filed with the Zoning Board of Appeals. ZEO Dew noted that the variance application has been continued to the next Zoning Board of Appeals meeting.

51 Junction – Contractor’s equipment – ZEO Dew noted that the applicant applied for a Certificate of Zoning Compliance for services-contractor’s equipment, and noted that the property is currently in compliance.

Chairman Mercer noted that it looks like there is another business on the same side of the street on **Commerce Drive** that is processing mulch. ZEO Dew noted that she will take a look at the property.

La Pietra – ZEO Dew stated that the owner stated that he would clean up and cover the materials, but over the last two weeks, the material has been out again. ZEO Dew noted that the business owner had created a berm and silt fence on the property. ZEO Dew showed the Commission recent photographs of the property. **M. Grimes made a motion to issue a citation if not completed by April 1st. C. Lynch seconded the motion, and it carried unanimously.**

54 Ironworks Hill Road – ZEO Dew noted that Cohen and Wolf have sent a letter to the property owners’ address in Georgia.

20 Station Road – *Vice Chairman Blessey recused himself from this matter.* ZEO Dew noted that there has been some activity on the site, and looks like there may possibly be a landscaping business on the property. ZEO Dew noted that she has been inspecting the site and has pictures of the property. ZEO Dew noted that she will contact the property owner.

M. Grimes stated that **533 Federal Road** should be noted in the Enforcement Action Town Counsel section of the Enforcement Report because a fresh citation was issued at the last meeting.

45 Riverford Road – ZEO Dew noted that there have not been any new complaints about the property recently.

1 High Ridge Road – ZEO Dew noted that there is still allegedly some blight on the property. Chairman Mercer stated that the Inland Wetlands Commission has walked the property within the last month; Chairman Mercer stated that to the extent that the blight is in the wetlands, the blight will need to be removed.

Stoney Farm Lane – ZEO Dew stated that she is waiting to hear from Attorney Olsen about the status.

360 Federal Road – Vice Chairman Blessey asked ZEO Dew to send the property owner a letter to repair the erosion and sediment controls. ZEO Dew noted that she had spoken earlier with the construction manager about the issue.

3. Review Correspondence

- a. **Minutes of Other Boards & Commissions: Inland Wetlands Commission** 03/03/12 special, 03/12/12; **Zoning Board of Appeals** 03/05/12; **Planning Commission** 03/01/12; **Zoning Sub-Committee**
- b. Letter from Rebekah White (Friends of the Lake) to Zoning Commission dated 03/06/12 Re: Educational Presentation 04/12/12 at 7PM at WCSU

No discussion/no motions.

Vice Chairman Blessey made a motion to go to item 5.a. M. Grimes seconded the motion, and it carried unanimously.

5. Old Business:

- a. **227-235 Federal Road #201200060: Bond Set**
 - 1. Site Plan Bonding Estimate for 227-235 Federal Road dated 03/14/12 prepared by CCA, LLC for the amount of \$172,554.00

Vice Chairman Blessey made a motion to approve the bond for 227-235 Federal Road Application #20120060 for \$172,554.00. Chairman Mercer seconded the motion, and it carried unanimously.

The Commission moved to item 6a, New Business.

6. New Business:

- a. **360 Federal Road #201200206: Site Plan Modification** to construct Dental/Medical office building w/parking, drainage, landscaping, etc. (DR #200900068 and Design Review Mod. #201100171) to add approximately 95 square feet of usable building area within currently-approved building footprint (*dec date 05/26/12*)
 - 1. Letter from Michael Lillis, P.E. to Zoning Commission dated 03/14/12 Re: 360 Fed. Rd, proposed Medical Office Building for ABP Realty; Design Review Approval #200900068
 - 2. “Site Plan” map prepared by CCA, LLC dated 12/12/08 revised 03/12/12 – sheet S1
 - 3. “Upper Level Floor Plan” prepared by Architecture Design Alliance (ADA) dated 02/13/09 revised 03/12/12 – Sheet PZ-1
 - “Lower Level Floor Plan” dated 02/13/09 revised 03/12/12 – sheet PZ-2
 - “Elevations” dated 02/13/09 revised 03/12/12 – sheet PZ-3

- “Elevations” dated 02/13/09 revised 03/12/12 – sheet PZ-4

M. Lillis of CCA, LLC, 40 Old New Milford Road, was present to discuss the application. David Bass, the construction manager, and Dr. Mascia, property owner, were present to discuss the application.

M. Lillis stated that this is a site plan that the applicant submitted for approval, but two walls are being added to make the space that was originally planned as a deck to be used as interior space instead. M. Lillis stated that he is requesting approval for the position of the walls, and that the total square footage affected is 96 square feet. M. Lillis noted that this additional square footage does not change the parking ratio on the property. M. Lillis also noted that the elevations remain similar in appearance, and that there is no significant change to the lower level.

Vice Chairman Blessey made a motion to approve the site plan modification for #201200206 for 360 Federal Road. M. Grimes seconded the motion.

Chairman Mercer asked M. Lillis to review the parking count with the Commission to clarify the amount of spaces. M. Lillis stated that there are twenty parking spaces total, including the two handicapped spaces. M. Lillis edited the final plan to reflect the corrected amount of parking spaces.

The motion carried unanimously.

**W. Mercer noted for the record, that C. Lynch is present and therefore J. Cordisco is no longer a voting member.*

4. Public Hearing 7:30 p.m.

a. Proposed Zoning Regulation Change #201200130: Section 242-308F – Liquor Outlets: (ph close date 4/26/12)

1. Response letter from HVCEO dated 03/01/12
2. Copy of Danbury Regulations provided by F. Lollie received 03/12/12

Chairman Mercer opened the public hearing and introduced the Commission members present at this meeting for the public hearing. Chairman Mercer noted that J. Varda, R. Ziembicki, and J. Cordisco are alternate members and will not be voting for this application.

Secretary Lollie read the legal notice of the public hearing dated March 9 and March 19, 2012. Chairman Mercer noted that the application was formally received by the Commission on February 23, 2012.

Secretary Lollie read the correspondence from the Planning Commission to the Zoning Commission dated March 19, 2012. Secretary Lollie also noted the correspondence dated March 21, 2012 from Law Offices of J. Timothy Deakin to the Zoning Commission regarding Application #201200130 and #201200131. Secretary Lollie read the memo from the Planning Commission to the Zoning Commission dated 03/19/12. Secretary Lollie also noted the response from HVCEO dated 02/29/12.

Chairman Mercer presented the application because the Zoning Commission is the applicant for this application.

Chairman Mercer reviewed the current zoning regulation Section 242-308F. Chairman Mercer also reviewed the proposed text of the zoning regulation change application regarding the distance requirement between liquor stores. Chairman Mercer noted that this proposed regulation change is a clarification to the way in which the distance between package stores is measured. Chairman Mercer stated that currently the measurement definition is ambiguous, and it is not clear from what portion of the lots on which a package store is maintained the measurement is to begin and end. Chairman Mercer stated that this proposed regulation change clarifies that the measurement is from the front entrance of one package store to the front entrance of another package store. Chairman Mercer stated that in addition the current regulation does not equitably apply the separation distance to all package stores in the town because it fails to recognize the full separation distance between package stores that are set back far from the road and those that are set close to the road, as for instance in a shopping center. Also, Chairman Mercer noted that to the extent that a measurement is taken from a lot line, it requires that there is a larger separation on large lots like shopping centers but smaller separation for smaller lots. Chairman Mercer stated that the proposed regulation maintains the separation distance of the previous regulation but allows for clarity in measurement and equitably applies the separation distance to all package stores, regardless of setback or lot size.

Chairman Mercer asked for questions from the audience. Chairman Mercer asked for comments in favor of the application and in opposition to the application.

Attorney T. Deakin, 48 North Street, Danbury, CT, representing the owners of the Brookfield Country Wine and Spirits was present.

Lou Venezia, owner of Brookfield Country Wine and Spirits, was present.

Attorney Deakin stated that there are two components of the amendment, from door to door and also the radius measurement. Attorney Deakin stated that he believes that the new regulation does not treat stores or space on the same lot equitably, that the new regulation allows for some potential manipulation in the future, and that if passed, the new regulation will require an excessive amount of enforcement hours.

Attorney Deakin explained that some stores in the same shopping plaza on the same lot would not be allowed to have a liquor store and other units in the same plaza would be able to have a liquor store, and used the ShopRite plaza as an example. Attorney Deakin also noted that the distance requirement from the center of the road is not equitable for all of the units on the same lot in the same plaza. Attorney Deakin stated that if a business owner wished to expand his store into another store, he is not sure whether the expansion would be allowed because the portion that the liquor store is expanding into would be closer to the distance separation requirement than is allowed. The Commission members noted that if a business owner wished to expand a liquor store into another space, as long as the entrance is not moving, that expansion would be permitted. Attorney Deakin stated that he is pointing out the inequities of the proposed regulation to properties on the same lot. Attorney Deakin stated that another inequity was the fact that a business owner could create a door that would allow a different access way to meet the distance requirement if measured from entrance to entrance.

Attorney Deakin stated that his proposal uses lot lines for the measurement for the separation distance, and stated that using lot lines as a separation distance measurement does not allow for as much manipulation as does using the measurement from entrance to entrance. Attorney Deakin stated that he tried to make the most simplistic change as possible when writing his proposal to the proposed zoning regulation amendment. Attorney Deakin stated that his amendment to the proposed regulation change uses a measurement that is from the center line of the street drawn directly out from the lot line. The measurement is a straight line out to the center of the street, and that point is the line from where the calculation begins to another neighboring parcel from the corner of the lot to the center line of the street. Attorney Deakin defined that point on the street as the shortest distance from the corner of the lot to the center line of the street. Attorney Deakin stated that he also added a new measurement point in respect to the major shopping centers with the goal to bring the current situation in the Federal Road corridor into conformity. Attorney Deakin stated that his proposal states that for major shopping centers, use the distance to the entrances, which is a concession to the fact that the major shopping centers have a higher acreages.

Chairman Mercer asked if the Commission had any questions for Attorney Deakin.

Vice Chairman Blessey noted that if a shopping center is twenty-four acres, it is not considered a major shopping center. Vice Chairman Blessey noted that this is an inequity between the major shopping centers and the shopping centers. Vice Chairman Blessey stated that if the regulation is to be equitable, it must be equitable to all shopping centers as well, not just for the units in the major shopping centers. Vice Chairman stated that he believes that Attorney Deakin's proposal does not cause the regulation to be any more equal than the Commission's proposed regulation change. M. Grimes stated that he believed Attorney Deakin's proposal will not save any office hours.

L. Venezia stated that the current Zoning regulation pertains to drive times, and that is why the distance is measured from the center line of the street. L. Venezia stated that he believed the original intent of the regulation was to reduce the exposure in the drive times to liquor stores. L. Venezia also stated that under Attorney Deakin's proposal, every liquor store would be in compliance. L. Venezia respectfully requested that Attorney Deakin's proposal is reviewed by the Commission and that the minor changes to the Commission's proposed regulation change work only to clarify the regulation.

Chairman Mercer asked L. Venezia if there are any issues with package stores in the Town of New Milford. Attorney Deakin stated that he does not believe that New Milford has a separation distance. Chairman Mercer stated that that only towns in the area with separation distances are Danbury and Brookfield. Attorney Deakin stated that there is a separation distance requirement between gas stations in New Milford. L. Venezia stated that one third of the towns in Connecticut have separation distances, and of the two thirds of the towns that don't have separation distances, half of those have one, two, or zero [liquor] permits, and that the separation distance has always been fairly applied.

Vice Chairman Blessey made a motion to close the public hearing. C. Lynch seconded the motion, and it carried unanimously.

Vice Chairman Blessey made a motion to approve the Proposed Zoning Regulation Change #201200130. M. Grimes seconded the motion.

M. Grimes stated that the 2,000 foot distance requirement serves Brookfield well, and there was no compelling reason why it should be pulled from the book. M. Grimes stated he would support the proposal of the Commission the way it is. The Commission agreed that the Commission’s proposed regulation clears the ambiguity regarding the measurement requirement.

Chairman Mercer noted that anytime there is a regulation that sets a distance, there will always be a property that will not be able to meet the distance, and that the Commission needs to accept that fact.

The motion carried unanimously.

- b. Proposed Zoning Regulation Change #201200131: Section 242-504:
Major Shopping Centers: *(ph close date 4/26/12)*
Subsection C(5): Accessory uses permitted
Subsection N(1)&(4):Additional-requirements-for-support services
Subsection O: Project Limitation**

- 1. Response letter from HVCEO dated 03/01/12

Chairman Mercer opened the public hearing and noted that the Commission members had already been introduced above. Chairman Mercer stated that the application was formally received by the Commission on February 23, 2012.

Secretary Lollie read the memo from the Planning Commission to the Zoning Commission dated 03/19/12. Secretary Lollie also read the correspondence received from HVCEO dated 02/29/12. Secretary Lollie also noted correspondence received from the Law Offices of Attorney J. Timothy Deakin dated 03/21/12.

Chairman Mercer presented the application. Chairman Mercer reviewed the current regulation and stated that the proposed change of Section 242-504 Subsection C(5) is to delete two and replace it with one so that the accessory uses permitted shall read “. . . the sale of beer, wine, liquors and spirits for consumption off the premises . . . but no more than one package store shall be allowed in a major shopping center. The provisions of 242-308F shall not apply to these uses.”

R. Ziembicki left the meeting room at 8:33 PM.

R. Ziembicki re-entered the meeting room at 8:36 PM.

Chairman Mercer reviewed the current Zoning regulation Section 242-504 N(1) with the Commission. Chairman Mercer stated that the Commission proposes to eliminate the current 242-504N(1) in its entirety. Chairman Mercer briefly reviewed the purpose of 242-504N(4) and stated that the proposed change reflects the introduction of a Federal Road water supply along the major corridor of Federal Road, which is where the majority of the shopping centers are

located. The proposed regulation reads: “The shopping center shall be served by a water distribution system for fire protection purposes. The source for such system may be a storage tank of such capacity as determined adequate by the Fire Marshal or public water supply or both.” Chairman Mercer noted that the remainder of 242-504N(4) remains the same.

Chairman Mercer reviewed the current Zoning regulation Section 242-504O with the Commission. The proposed regulation will state: “The applicant will disclose at the time of filing the entire scope of the project. Notwithstanding the above, the Commission may at its discretion consider an expansion of the project subsequent to the original approval.”

Chairman Mercer stated that with respect to 504C(5) the current regulation was in conflict with the separation distance requirement of 2000 feet. Chairman Mercer stated that the Commission may also want to consider removing from the proposal that “section 242-308F does not apply to these uses.” Vice Chairman Blessey stated that if the exclusion for major shopping centers is removed from the proposal, the current package stores will still be in compliance.

Chairman Mercer noted that in regard to 242-504N(1), there is no way for the Commission to determine where the entrances and exits will be placed on the highway. Vice Chairman Blessey noted that he had spoken with Attorney Beecher about this regulation, and at that time, Attorney Beecher stated that the current regulation is not legal because the Commission does not have the authority to regulate locations of entrances and exits onto the highway.

Chairman Mercer stated that in regard to 242-504 N(4), the Fire Department can still use the Still River if they wish. Vice Chairman Blessey asked that the location of the reference to the Fire Marshal be moved to the end of the sentence so that the proposal reads: “. . . the source for such a system may be a storage tank or public water supply or both of such capacity as determined adequate by the Fire Marshal.”

Chairman Mercer stated that 242-504O gives the Commission the discretion to consider changes to the original application.

Chairman Mercer asked the members of the public if there were questions, or if any members wished to comment pro or con in favor of the application. There were no members from the audience to speak.

Vice Chairman Blessey made a motion to close the public hearing. M. Grimes seconded the motion, and it carried unanimously.

Vice Chairman Blessey made a motion to approve Application #201200131 with the stipulation that 242-504 N(4) the second sentence of N(4) shall read “. . . the source for such a system may be a storage tank or public water supply or both of such capacity as determined adequate by the Fire Marshal.” Secretary Lollie seconded the motion, and it carried unanimously.

M. Grimes made a motion to move to item 8a. C. Lynch seconded the motion, and it carried unanimously.

8. Informal Discussion:

a. 398 Federal Road (Barnbeck Place):

Dan Bertram, BRT, 15 Newtown Road, was present for the informal discussion.

D. Bertram stated that he is preparing to modify the site plan for BRT Barnbeck Place and has some questions about the forms. D. Bertram noted that the Inland Wetlands Commission approvals had been extended. D. Bertram asked if he should submit a letter to extend the Zoning Commission approvals. D. Bertram noted that the new law allows for the permits to be extended to nine years.

Vice Chairman Blessey asked D. Bertram if this extension is only for the site plan modification, or for the natural resources removal permit as well. Chairman Mercer noted that the address should be added to the next agenda to extend the current Zoning Commission approvals.

D. Bertram noted that there will be 165 units, and that this number does not affect the traffic because the barn will not be used for retail use, as was originally planned. D. Bertram stated that there will be 36 studios, 81 one bedrooms, and 48 two bedrooms. D. Bertram stated that the original approval was for 120 units, and the majority of those units were two-bedrooms.

6. Old Business:

a. 84, 106, 112, 128 & 140 Federal Road (BJ’s Wholesale) #201100126: Request for Permit Transfer dated 02/29/12

C. Lynch recused himself from this matter.

Vice Chairman Blessey made a motion to approve the request for permit transfer for permit #201100126 for BJ’s Wholesale Club from Samuels and Associates Development, LLC to S&W Brookfield, LLC. Secretary Lollie seconded the motion, and it carried unanimously.

**Jeff Cordisco was a voting member for this application because C. Lynch recused himself.*

7. Tabled Items: No discussion/no motions.

9. Comments of Commissioners: No discussion/no motions.

10. Adjourn: M. Grimes made a motion to adjourn at 8:55 PM. Vice Chairman Blessey seconded the motion, and it carried unanimously.

****Next Regular Meeting Scheduled for April 12, 2012****

Items received after the Agenda was finalized:

1. Letter from the State Traffic Commission dated 3/15/12 Re: BJ’s Wholesale Club
2. Memo from Planning Commission to Zoning Commission Re: Regulation Changes Application #201200131 and Application #201200131
3. Letter from Timothy Deakin, ESQ dated 3/21/12 Re: Regulation Changes #201200130 and #201200131