

APPROVED MINUTES
BROOKFIELD ZONING COMMISSION
Thursday, May 24, 2012 – 7:00 p.m.
MEETING ROOM #133 – TOWN HALL, 100 POCONO ROAD

1. Convene Meeting

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

Absent: None

Also Present: Zoning Enforcement Officer A. Dew, Recording Secretary D. Cioffi

- a. **Review Minutes of Previous Meetings:** Commissioner Grimes moved to table the Review of the Minutes of the May 17, 2012 until the June 14, 2012 meeting. Chairman Mercer seconded the motion, and it carried unanimously.

2. Show Cause Hearing

a. **213 Candlewood Lake Road #201101044:** - M. O'Hara, Jr., *Candlewood East Marina*, was present. Chairman Mercer advised that the Cease and Desist Order was issued due to boats being parked in the fire lane. Mr. O'Hara indicated that all of the boats were cleared out by the April 25, 2012 deadline, however, an employee of the marina inadvertently returned one boat to the fire lane, and some of the employees cars were parked improperly. Vice Chairman Blessey explained the fire lane is located where it is per the site plan application that was approved. He suggested that if Mr. O'Hara would like to allow the parking of the boats there, he could propose to modify the site plan and request approval from the Water Source Committee. Mr. O'Hara stated that he may do that when the boating season is over. The one violating boat has been moved.

ZEO Dew advised that she has not had an opportunity to verify by inspection that the boat has been removed. She will do that, and if the site is in compliance, the Commission indicated she could clear the Cease and Desist Order. The Commission urged Mr. O'Hara to come in with a new site plan to allow more parking and maintain the ability for fire protection.

3. Land Use Enforcement

a. **Enforcement Officer's Report:**

Requests for Voluntary Compliance

273 Whisconier Rd. #201200123 - ZEO Dew reported that the ZBA application was withdrawn due to the cost. The applicant had been seeking a fee waiver. The Craft Center is under new management. ZEO Dew advised that she felt it was reasonable to allow the applicant until the next meeting. Vice Chairman Blessey indicated that the management position is not going to be filled until the end of the month. ZEO Dew will get in touch with the new management after June 1, 2012.

11 Nicole's Court #201200331 – ZEO Dew inspected the site today and observed a van, box truck (in the driveway easement) and 2 boats (in the front yard). She did get a letter from the property owner that she responded to. Vice Chairman Blessey observed the same conditions upon his inspection today. **Vice Chairman Blessey moved to issue a Cease and Desist to 11 Nicole's Court, #201200331, for a commercial vehicle in a residential zone (large box truck), boats stored in front yard, and vehicle parked in the easement. Commissioner Grimes seconded the motion, and it carried unanimously.**

28 Del Mar Drive #201200421 – ZEO Dew reviewed the location of this site. She explained that there was a complaint in 2008 regarding parking on the lot, which was resolved by an application and approval to do landscaping. That approval expressly stated that it did not involve parking. The property owner has until June 5, 2012, to respond and/or comply. If ZEO Dew does not hear from him/her by then, she will issue a Cease and Desist Order.

Cease and Desist Orders

10 Whisconier Rd., #201200023 – This should be removed from the report.

213 Candlewood Lake Rd., #201101044 – This matter has been resolved.

37 Vale Rd., #201200303 – Mr. Canfield applied for a site plan modification; on tonight's agenda.

Citations

213 Candlewood Lake Rd., #2011001044 – Error.

Town Counsel Action

20 Station Road (#20010116); 533 Federal Road (#2012000122); 45 Riverford Road (#200900768); 1 High Ridge Road (#201000315); 9 Stoney Farm Lane (#201100095); 54

Ironworks Hill Road (#201100755) – ZEO Dew advised that there has been no new action since last week. Vice Chairman Blessey has not had an opportunity to speak with Attorney Buchsbaum regarding 54 Ironworks Hill Road. He will try to speak with him before the next meeting.

b. 1 High Ridge Road: Files #201200369-#201200374: - Vice Chairman Blessey reviewed the memo of A. Dew dated May 1, 2012 regarding complaints made against the property owner of 1 High Ridge Road.

#201200369 – Vice Chairman Blessey moved to send this matter involving **1 High Ridge Road, #201200369**, to the Town Attorney for an opinion on the legality of the Zoning Commission's regulation. Commissioner Lynch seconded the motion, and it carried unanimously.

#201200370 – Vice Chairman Blessey moved to send a Cease and Desist Order to **1 High Ridge Road, #201200370**, for debris (pool stairs, pool ladder, pallets and miscellaneous wood and construction materials). Commissioner Grimes seconded the motion, and it carried unanimously.

#201200371 – Commissioner Grimes moved to dismiss the complaint, **#201200371, 1 High Ridge Road**, and refer it to the Inland Wetlands Commission. Vice Chairman Blessey seconded the motion, and it carried unanimously.

#201200372 – Vice Chairman Blessey moved to send a Cease and Desist Order to **1 High Ridge Road, #201200372**, for a tent, garage, in disrepair, in violation of Section 242-401D(2)(a)(3). Commissioner Grimes seconded the motion, and it carried unanimously.

#201200373 – ZEO Dew reported that the car is parked on pavement. Commissioner Grimes moved to dismiss the complaint against **1 High Ridge Road, #201200373**. Chairman Mercer seconded the motion, and it carried unanimously.

#201200374 – Vice Chairman Blessey moved to issue a Cease and Desist to **1 High Ridge Road, #201200374**, for a violation of Section 242-602B(f) of the regulations. Chairman Mercer seconded the motion, and it carried unanimously.

c. 22 Beech Tree Road: Files #201200375 - #201200381:

#201200375 – Vice Chairman Blessey moved to issue a Cease and Desist to **22 Beech Tree Road, #201200375**, for occupation of trailer coaches and campers. Chairman Mercer seconded the motion. He noted that today, the Commission is in receipt of a copy of a letter dated May 24, 2012, to ZEO Dew, from Gregory Cava, The Cava Law Firm, on behalf of the property owners (the Marciniaks) and the previous property owner (the Harrisons) objecting to the complaints. Chairman Mercer and Vice Chairman Blessey disagree with the attorney's assessment, and believe that the regulations prohibit the occupation of vehicle/camper, parked on 22 Beech Tree. Chairman Mercer advised the property owner and his representatives, who were present, that they may make their comments at a Show Cause Hearing. Motion carried unanimously.

#201200376 – Vice Chairman Blessey moved to issue a Cease and Desist Order to 22 Beech Tree Road, #201200376 for violation of Section 242-305E(2), which has been verified by ZEO Dew. Secretary Lollie seconded the motion, and it carried unanimously.

#201200377 – Vice Chairman Blessey moved to issue a Cease and Desist Order to 22 Beech Tree Road, #201200377, for violation of Section 242-401D(2)(b) . Commissioner Grimes inquired if ZEO Dew inspected the site for a potential clean up. ZEO Dew advised that she has not inspected this site in one week. Vice Chairman Blessey withdrew his motion.

ZEO Dew will inspect the site, and if it is not cleaned up, she will issue a Cease and Desist.

#201200378 – ZEO Dew is unsure of the nature of this complaint. She will inspect the site and make the Commission aware of the outcome.

#201200379 – Vice Chairman Blessey moved to issue a Cease and Desist Order to 22 Beech Tree Road, #201200379, for vehicles not in a designated drive. Secretary Lollie seconded the motion, and it carried unanimously.

#201200380 – ZEO Dew will inspect the site to determine if there are parking, storage and accumulation of trailers not usable for their original purpose. No motion.

#201200381 – Commissioner Grimes stated he did not believe that this was a zoning issue. Commissioner Grimes moved to dismiss the complaint against 22 Beech Tree Road, #201200380. Vice Chairman Blessey seconded the motion, and it carried unanimously.

4. Review Correspondence

a. Minutes of other Boards and Commissions: Inland Wetlands Commission; Zoning Board of Appeals; Planning Commission; Zoning Sub-Committee

b. Building Inspectors: May 2012 issue

No discussion/no motions.

5. Continued Public Hearing:

a. Proposed Regulation Change #201200258: Section 242-305F – Commercial Vehicles in Residential Zones

Commissioners Grimes and Lynch recused themselves from this matter, and Chairman Mercer noted that Commissioners Cordisco, Varda and Ziembicki would be voting members based on attendance at the public hearing.

Chairman Mercer indicated that at the last hearing, there was a suggestion that a means to propose acceptable screening be provided for applicants for special permits. After a review of similar regulations within the State, he was unable to find an example. He believes the matter is best dealt with on a case-by-case basis. Chairman Mercer recommended that the Commission vote on the regulation as presented, with the stipulation that the reference to Appendix II in the proposed regulation be changed to a reference to the Zoning Commission fee schedule.

Vice Chairman Blessey added that there are too many factors to consider setting criteria for review of these applications. He believes this is a decision that should be at the discretion of the Commission. He agreed that a number should be set on the fee schedule.

Commissioner Ziembicki noted that no one spoke at last week's meeting, either strongly in favor or opposed to the change, and questioned why a new regulation is being proposed. Chairman Mercer advised that the current regulations are "sometimes problematic in enforcement". He added that there

are many tradesmen in town, and currently most of their vehicles are parked illegally. Further, Town Counsel has recommended that the commercial vehicle regulations be rewritten.

Commissioner Ziembicki inquired if changing the regulation would expose the Commission to further litigation. Vice Chairman Blessey advised that he feels there are enough protections within the proposed change to reduce that risk. Commissioner Ziembicki inquired what would be involved in returning to the current regulation. Vice Chairman Blessey indicated it would be the normal application and public hearing process.

Chairman Mercer noted that there were modifications in June 2010, and November/December 2011 that were well-attended, and the Commission withdrew the application to make further changes.

Vice Chairman Blessey moved to close the Public Hearing re: Proposed Regulation Change #201200258: Section 242-305F – Commercial Vehicles in Residential Zones. Chairman Mercer seconded the motion, and it carried unanimously.

Vice Chairman Blessey moved to approve #201200258, Proposed Regulation Change to Section 242-305F commercial vehicles in residential zones with the stipulation that all references to Appendix II in the proposed regulation be amended to refer to the Zoning Commission fee schedule, that the regulation be effective on May 25, 2012, and that the fee amount will be \$50.00. Commissioner Cordisco seconded the motion. There was discussion regarding hazardous materials in the trucks, and Vice Chairman Blessey noted that this is specifically addressed in the regulations. Under this regulation, applicants will be advised that he/she cannot store hazardous materials in their trucks. Chairman Mercer read subsection (3)(d) of the regulation. Commissioner Varda discussed his experience with this contentious issue of “personal economy” versus “quiet enjoyment”. He noted that the only limitation relates to size, and the proposal puts the burden on the neighbor to come to the application hearing and speak his/her objection. Commissioner Varda also pointed out that this is the fourth change to this regulation in the last twelve years. He then discussed the legal defensibility of the regulation. The various classes of vehicles were reviewed. Lastly, Commissioner Varda questioned the enforceability of subsections (e) – (h) of the regulation. Vice Chairman Blessey pointed out that the hours are in line with the noise ordinances that are enforced by the police. Commissioner Varda added that he is in support of home businesses and small businesses. Commissioner Cordisco agreed that this may cause conflict between neighbors, especially in neighborhoods with smaller and numerous lots. Vice Chairman Blessey noted that the proposed change was attempting to afford opportunities for the small business owner. Commissioner Ziembicki stated that he did not believe that there was enough public sentiment to warrant the change. The vote on the motion was 2 (Mercer and Blessey) in favor, and 3 (Cordisco, Varda and Ziembicki) opposed. Motion failed.

b. Proposed Regulation Change #201200259: Section 242-401A(2)(g) – Customary Home Occupation

Vice Chairman Blessey moved to close the Public Hearing re: Proposed Regulation Change, #201200259: Section 242-401A(2)(g) – Customary Home Occupation. Commissioner Cordisco seconded the motion, and it carried unanimously.

Vice Chairman Blessey moved to approve Proposed Regulation Change, #201200259, Customary Home Occupation, Section 242-401A(2)(g). Chairman Mercer seconded the motion. Motion failed, 0-5.

6. Old Business:

a. **Proposed Regulation Change #201200261: Section 242-405 – Apartment Units within Single Family Dwellings** – Last week’s discussion regarding the definition of family was recalled.

Commissioner Grimes returned to the table.

There was discussion regarding adding the following language, “civil unions, dissolved civil unions and dissolved marriages”

Vice Chairman Blessey moved to approve the Proposed Regulation Change #201200261: Section 242-405 – Apartment Units within Single Family Dwellings, with the addition of the language, “or members of dissolved civil unions or dissolved marriages.” Commissioner Cordisco seconded the motion, and it carried unanimously.

Vice Chairman Blessey moved to make the changes to Section 242-405 – Apartment Units within Single Family Dwellings, effective May 25, 2012. Commissioner Varda seconded the motion, and it carried unanimously.

Commissioner Lynch left the meeting at 8:35 p.m., and Commissioner Cordisco became a Voting Alternate in his absence.

b. **388, 398, 414 Federal Road (Barnbeck Place) #201200274: Design Review Modification to change footprint of south building, changed from PARC development to Incentive Housing (dec date 6/30/12)**

S. Sullivan, P.E., CCA 40 Old New Milford Rd., D. Bertram, BRT Development, Danbury, CT, and Attorney J. Morris were present.

Mr. Sullivan pointed out that a letter and map outlining the designation of units as incentive housing units was submitted for the record. Additionally, pursuant to Section 242-303a, the applicant submitted a slope plan that shows that all of the slopes on the lot are in compliance with the regulation.

Mr. Bertram requested an extension of the permit to January 19, 2017. He indicated that a similar extension has been obtained from the Inland Wetlands Commission.

Vice Chairman Blessey moved to approve #201200274, 388, 398, 414 Federal Road (Barnbeck Place) #201200274, with the stipulation that a geotechnical engineer certify that the stability of the slope is safe. Additionally, the permit will be extended to January 19, 2017. Secretary Lollie seconded the motion, and it carried unanimously.

c. **540 Federal Road (Oak Meadows) #201200364: Site Plan Modification to eliminate four 50,000 gallon fire tanks in lieu of upgraded municipal water system which includes the new Oak Meadows 607,000 +/- gallon tank (dec date 7/21/12)**

S. Sullivan, P.E., CCA, 40 Old New Milford Rd., and M. Handshy, Consultant to the Board of Selectmen, were present.

Mr. Sullivan indicated that the applicant submitted its responses from its meetings with the Water Source Committee on May 24, 2012. Vice Chairman Blessey read the WSC memo dated 5/24/12, from W. Gravius to Planning and Zoning Commissions.

Mr. Handshy advised that after meeting with the WSC, he believes that the requirement of 5,700 gallons is achievable, based on the model, but noted the building type and the two-hour firewall

between each unit; the requirement is 1,500 gallons per minute (gpm), total. Mr. Sullivan stated he does not feel the WSC took that firewall into account when it requested the 6000 gpm total.

Mr. Handshy reiterated the importance of having standards that are not arbitrary. Mr. Handshy advised that Aquarian does not generally draw the system down to 20 pounds, as it will affect service and is not standard practice. Mr. Sullivan added that most water companies utilize flow tests and calculations to verify the numbers. Mr. Handshy indicated the Mr. Sullivan performed three different scenarios, and 5,700 gpm was the lowest. He added that there is presently 296,000 available, which will allow 33 minutes of flow from 1,500 gpm pumper. The municipal system has three tanks, plus New Milford, and can provide 1.5 million gallons of water.

Commissioner Cordisco inquired what the furthest distance from hydrant to occupied building, and Mr. Sullivan indicated that all of the hydrants are spaced less than one hundred feet between hydrants. He added that what is on the revised plans submitted tonight came after the discussion with the WSC.

Chairman Mercer moved to approve 540 Federal Road, #201200364: Site Plan Modification to eliminate four 50,000-gallon fire tanks in lieu of an upgraded municipal water system which includes the new Oak Meadows 607,000 +/- gallon tank, with the stipulation that the hydrant at the intersection of Short Oak Branch Drive and Oak Meadows Drive be relocated to the north side corner; that a hydrant be added to the intersection of Oak Branch Drive on the western corner of the island (near the word Branch), that the hydrant located on the emergency access road be deleted, that the three hydrants will flow water with a combined flow rate of approximately 5,700 gallons per minute, that the drafting connection be supported for the fire pond, all of which are shown on maps submitted by CCA on May 24, 2012 by Mr. Sullivan, and providing that as final acceptance, an actual flow test is run on the completed municipal system which allows calculation of flow rate at 20 PSI residual. Vice Chairman Blessey seconded the motion, and it carried unanimously.

Commissioner Grimes left the meeting at 8:58 p.m. Commissioner Ziembicki became a Voting Alternate in his absence.

7. New Business:

a. 37 Vale Road (CW Canfield) #201200415: Site Plan Modification to add a storage garage (dec date 7/28/12)

1. Hand drawn "Property Map" received in Land use 5/15/12 –

C. Canfield, Property Owner, was present. Commissioner Ziembicki was appointed a Voting Member in place of Commissioner Grimes, and Commissioner Varda was appointed a Voting Member in place of Vice Chairman Blessey, who left the meeting at 9:01 p.m.

Mr. Canfield noted that since he last discussed this property with the Commission, there have been changes in the wetlands buffer. He advised he is proposing to get the property in compliance by installing a small structure. Mr. Canfield indicated that the Wetlands Enforcement Officer has talked with ZEO Dew. He further stated that he does not have the financial resources to apply for the buffer permit at this time. Mr. Canfield stated that he has spoken with the Building Department about what is currently on the site, (two 40-foot containers for the tent), and the Building Official would like an engineer's review. Chairman Mercer advised that the current arrangement is not in compliance with the regulations.

Photographs in the enforcement file were reviewed. Mr. Canfield advised that he has observed "over 60" similar storage containers around the town. He further indicated that he will be selling the lot in the future, and contends it is worth more with something that could be "easily dismantled". He

advised he is attempting to determine if the Commission would approve a structure. Chairman Mercer advised Mr. Canfield that it would consider what could be approved at the site, and that **this matter will be discussed at the next meeting.**

- b. **270 Federal Road (Bassett Furniture) #201200420: Site Plan Modification to change gable end at existing fascia overhang to a flat roof and change color of fascia at tenant space (dec date 7/28/12)**
1. Map titled "Bassetts Entry Renovation" prepared by Borghesi Building & Engineering Co. dated 5/14/12 – sheet A1
 - "Elevations" dated 8/30/01 revised 11/26/02 – sheet A2
 2. "Existing Site Plan" prepared by CCA, LLC dated 6/29/00 revised 8/15/01 – sheet 1 of 3

R. Blanchette, Borghesi Building, and G. Palmer, were present, on behalf of the property owner.

Mr. Borghesi explained what is being proposed on the site, indicating that it relates to an overhang on the current retail operation present at the site. He advised that the Bassett Furniture Company would like to "square off" the top of the center gable. They will not be increasing the footprint. The colors will be beige, white and brown.

Secretary Lollie moved to approve **270b Federal Road, #201200420, Site Plan Modification to change gable end at existing fascia overhang to a flat roof and change color of fascia at tenant space. Commissioner Varda seconded the motion, and it carried unanimously.**

- c. **58 Riverford Road #200700761: Request for Final Bond Release of \$1,800 – No one present. Tabled.**

- d. **7 Del Mar Drive (Target Flavors) #201200430: Design Review for construction of a single story 5,650 sq. ft. building addition (dec date 7/28/12)**
1. Map Cover Sheet titled "Jaymack Properties, LLC. 7 Delmar Drive – Index of Sheets" prepared by Artel Engineering Group, LLC dated 10/10/11 – sheet 1
 - "Boundary & Topographical Map showing Lots 1F & 2F – File 9 Map 120 – B.L.R." prepared by New England Land Surveying, P.C. dated 6/13/11 – Job No. 1230sv1
 - "Site Plan" prepared by Artel Engineering Group dated 10/10/11 – sheet 3
 - "Grading And Utility Plan" dated 10/10/11 – sheet 4
 - "Landscape Plan" dated 10/10/11 – sheet 5
 - "Sediment And Erosion Control Plan" dated 10/10/11 – sheet 6
 - "Details" dated 10/10/11 – sheet 7
 - "Proposed Future Parking Plan" dated 10/3/11 – sheet 1
 2. "**Proposed Addition to Existing Building for Target Flavors, Inc. – Partition Plan**" prepared by Lancaster Associates Architecture & Planning dated 7/26/11, for review 9/8/11 – drawing # A-2
 - "Exterior Elevations" dated 7/26/11, for review 9/8/11 – drawing # A-4

M. Kornhaas, Artel Engineering, 304 Federal Rd. and J. McClean, Jaymack Properties, were present.

Mr. Kornhaas reviewed the history of Target Flavors, which produces flavors for food, beverage and pharmaceutical industries. He also discussed the lot and current structure information. The applicant is proposing to put an addition on Building One, which will be 5,650 square foot addition. The applicant obtained a variance to allow it to be closer than 50' from the lot line. The addition will be used for warehouse and there will be no increase in employees. Parking calculations were reviewed. Mr. Kornhaas noted that the lot is located in the aquifer protection zone. He advised that he has

prepared a plan to show that 63 parking spaces could be on site if needed. The design review checklist was reviewed, as well as a landscaping plan completed in agreement with abutting neighbor, Prince of Peace. Mr. Kornhaas advised that each of the buildings have individual sewage and wells. He is aware that sewer service has been expanded in the area, and extension of water service has been approved for Delmar Drive.

A letter from the Water Source Committee has not yet been received, but Mr. Kornhaas is expecting a “favorable review”.

There was additional discussion regarding the parking calculations, and it was noted that there are currently no issues with parking. Commissioner Cordisco inquired if the refuse area would have to be expanded based on increased square footage of the warehouse. Mr. McClean indicated that there is very little waste in the operation. The compound flavors operation was explained.

Mr. Kornhaas noted that there will be no change in the color or materials of the exterior, and a slight decrease in impervious coverage. He then reviewed the architectural plans, and a photograph was submitted.

Chairman Mercer moved to approve 7 Del Mar Drive, #201200430, Design Review for construction of a single story 5,650 square foot building. Commissioner Cordisco seconded the motion, and it carried unanimously.

8. Tabled Items:

a. **20 Orchard Street #200300195: Request for final bond release \$50,000** – It was noted that an opinion was received from Town Counsel that this bond does not fall within the purview of Public Act 11-79, and is therefore, not subject to release under this regulation.

Chairman Mercer moved to deny the Request for final bond release for 20 Orchard Street, #200300195. Secretary Lollie seconded the motion, and it carried unanimously.

Secretary Lollie moved to add to the agenda, #201200454, 30 Federal Road, as Item 7.e. Commissioner Cordisco seconded the motion, and it carried unanimously.

7. New Business (continued)

e. **30 Federal Rd., #201200454**

Matt Mitchell, Norbert E. Mitchell Company, was present. ZEO Dew has inspected the site. There was discussion regarding the proposed areas for shrubs and plantings. Additionally, Mr. Mitchell pointed out the propane tanks at the rear of property, which were not on the original plan. The concrete pad will be utilized as a dumpster location, and new pads were added near the road sign.

Chairman Mercer indicated he saw a notation regarding fire suppression, and Mr. Mitchell indicated that he has advised Mr. Handshy the water on the property will be sufficient.

Chairman Mercer advised that the additional plantings are acceptable, but not at the expense of the sight lines on the property. The structure is 1900 square feet. Mr. Mitchell was advised that he is no longer required to have two handicapped spots.

Commissioner Ziembicki moved to approve 30 Federal Road, #201200454. Secretary Lollie seconded the motion, and it carried unanimously.

9. Informal Discussion:

Chairman Mercer reviewed last week's discussion regarding JAR Associates at 107 Vale Road. He advised that the property owner cannot have an extension to its annual renewal because the contractor's yard is located in the aquifer protection zone. Chairman Mercer requested that ZEO Dew send the property owner a letter explaining this.

10. Comments of Commissioners: None.

11. Adjourn:

Commissioner Varda moved to adjourn the meeting at 9:50 p.m. Commissioner Cordisco seconded the motion, and it carried unanimously.

****Next Regular Meeting Scheduled for June 14, 2012****