

**TOWN OF EAST WINDSOR
PLANNING AND ZONING COMMISSION
Special Meeting #1664 – November 12, 2014
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Donna Cramer, 15 East Road, and Mary Velazquez, 19 East Road: spoke of the problem with speeding vehicles on East Road. They cited concerns that children are waiting for buses while vehicles speed by. They are requesting that signage to encourage slower travel be placed near the bus stop.

Commissioner Devanney and Town Planner Whitten noted traffic signs fall under the Police Commission's purview. They directed Ms. Cramer and Ms. Velazquez to the Police Commission Meeting being held at the Town Hall at 7:30 p.m.

No one else requested to speak at this time.

APPROVAL OF MINUTES/October 28, 2014:

MOTION: To ACCEPT the Minutes of Regular Meeting #1663 dated October 28, 2014 as written.

Devanney moved/Slate seconded/

DISCUSSION: None.

VOTE: In Favor: Unanimous (Devanney/Slate/Sullivan/Thurz/Zhigailo)

RECEIPT OF APPLICATIONS:

No new applications were presented this evening.

PERFORMANCE BONDS – ACTIONS; PERMIT EXTENSIONS; ROAD ACCEPTANCE :

Town Planner Whitten updated the Commission on the status of Saxton Lane. She noted the Commission approved sending Saxton Lane to a Town Meeting for acceptance in 2009. Some problems were found with completion of the road; repairs needed to be done. The Erosion and Sedimentation Bond was pulled to initiate those repairs. All the paperwork is now in place to send Saxton Lane to Town Meeting.

CONTINUED PUBLIC HEARINGS: None.

NEW PUBLIC HEARINGS –Thomas Scherbon – Special Use Permit to allow live bands with PA systems at J. R.'s Cafe', 16 Bridge Street. [B-1 Zone, Map 111, Block 1, Lot 47]. (*Deadline to close hearing 12/17/2014*):

Vice Chairman Thurz read the Hearing description. Appearing to discuss the Application was Thomas Scherbon, owner of J.R.'s Café'.

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Mr. Scherbon advised the Commission he would like to bring in live bands with electric guitars, organs, and PA systems to add to the entertainment at the café. He already has karaoke and singers; he would like to make it a more fun place and increase his income as business is slow now because of the economy. Mr. Scherbon reported he would keep down the occupancy to maybe 30 if he was lucky; the building currently has an occupancy limit of 48. Mr. Scherbon suggested the bands wouldn't be louder than the jukebox.

The Commissioner's raised the following questions:

Commissioner Zhigailo:

- **Entertainment/hours and days of operation:** Commissioner Zhigailo questioned what hours and days Mr. Scherbon proposed for the bands? Mr. Scherbon suggested he may bring in a single guitarist during the week; entertainment would probably start at 7:30 or 8:00 or 9:00 p.m. and stop around 12:30.
- **Location of bands/inside the building or outside:** Mr. Scherbon reported the bands would be inside the building; he felt he would need to do something else if he wanted to have the bands outside. Mr. Scherbon suggested the noise from the cars is louder than the music. He noted he has had complaints but the Police said they didn't know why they were called. Mr. Scherbon reported he had one DJ who liked to play hiphop and bass a lot.
- **Increased income:** Commissioner Zhigailo questioned the increase in income with the limited capacity for the building; she noted the building is small and there is limited availability for parking. Mr. Scherbon felt he wouldn't have more than 100 people coming in for the music.

Commissioner Devanney:

- **Breach of Peace Complaints:** Commissioner Devanney noted the numerous complaints for Breach of Peace; she questioned how Mr. Scherbon planned to keep the complaints down? Mr. Scherbon indicated he has told the DJ to keep it down. The guy next door calls every day; he was kicked out and calls.

Commissioner Sullivan:

- **Why now?** Commissioner Sullivan questioned why Mr. Scherbon was coming in now for a permit if he's had bands before this? Mr. Scherbon replied that he thought he could have bands, and he had partners who booked the bands and didn't tell him. There was miscommunication. Mr. Scherbon reported he hasn't had any (bands) in a while.
- **Date of recent band performance:** Commissioner Sullivan questioned when was the last time Mr. Scherbon had bands at the café? Mr. Scherbon reported he had a DJ on Saturday. A resident from the audience questioned – what about last Thursday?

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See additional comments/questions from the Commissioners during narrative of Public Comments.

Vice Chairman Thurz took comments from the public:

Jim Guzie, 24 Bridge Street: Mr. Guzie reported he's the problem. He suggested that over the last 8 months JR's Café has been the site of over 72 complaints, not just from him. He felt Mr. Scherbon has demonstrated he can't do what he is supposed to do. The people carry debris outside with them and leave it around the property/parking lot. It is a B-1 Zone but there are primarily residences all around it. Mr. Guzie reported he went down to Dean Avenue and he could hear the band; he also walked to the fire department and heard the band from there. Mr. Guzie suggested Mr. Scherbon shouldn't be here for a hearing to have the bands, he should be here for a hearing because of these issues. The bar has been through 3 owners and Mr. Scherbon is the worst.

Commissioner Zhigailo questioned Mr. Scherbon how long he's owned the building? Mr. Scherbon reported since April, 2012. Commissioner Zhigailo questioned that that's when you got the Liquor License which said what you'll have? Mr. Scherbon reported he did that, and now he's doing this with the town. Commissioner Zhigailo questioned that Mr. Scherbon had a permit for entertainment? Mr. Scherbon responded – yes.

Nella Chartier, 14 Bridge Street: Ms. Chartier reported she's lived in the neighborhood for over 20 years. She has beer bottles in her driveway, people are screeching their tires.

Elizabeth Burns, 2 Bridge Street: Ms. Burns reported she is the next door neighbor on the other side of the garage. Since Mr. Scherbon has purchased that bar it's been a disaster. The music goes on, she has seen people take in guitars and drum sets, the woman that manages the bar – the vulgarity that comes out of her mouth. When the police arrest people they are drunk. In the Summer it's 3 in the morning, people leaving on motorcycles rev up their engines leaving the property and while they wait for the (signal) light to change. She has personally witnessed this. When the former owner owned the bar you seldom saw a cruiser there. It's become a joke in her household – the bands Ms. Burns reported she doesn't know the capacity of the property but she he talks about 30 people she doesn't know how he can set up for a band with the number of people already in the bar. This owner is never even there. She has never met Mr. Scherbon; she has never complained. She had been in the music business for 10 years in the past, and she knows about decibel levels. This isn't something that should be in the neighborhood. For the last 2 years they have not had a good neighborhood relationship from him,

Town Planner Whitten requested to clarify a couple of statements:

- **Police complaints/Notice of Violation:** based on Police logs they had experienced complaints since May, 2013. Mr. Scherbon was sent a Notice of

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- Municipal Violation in March, 2014 citing the police activity related to noise, breach of peace violations, etc.
- **Liquor Permit/Permitted Activities:** Town Planner Whitten indicated she signed the Liquor Permit but it specifically did not include live bands as entertainment because the property is surrounded by residential properties and there are residential properties across the street. She noted she has received a complaint today from the residents of 70 Main Street, who are not in favor of approving this application.

Commissioner Zhigailo questioned Mr. Scherbon that as the Permittee was he aware of what was going on at 3 in the morning? Mr. Scherbon indicated he had the woman who ran the bar removed from the bar because they didn't have the same ideas. He understands he must close by 2 or he gets fined. Mr. Scherbon reported there are motorcycles going by all the time. Ahlstrom makes a lot of noise across the river. Most people leave the parking lot by 2:15 (a.m.). Mr. Scherbon reported he is there every Friday and Saturday. Mr. Scherbon reiterated the noise won't be any louder than the jukebox; the traffic is louder than the sound coming out of the building. Mr. Scherbon reported he tells people not to swearHe had a disagreement with the woman who ran the bar; there is a No Trespass Order" against her now; she is gone.

Elizabeth Burns, 2 Main Street: reported there are a lot of domestic arguments that go on in the parking lot, she has witnessed them herself. Her nephew lives with her because of her health and he's asked if she wants him to call the police but she doesn't do that. She has personally witnessed the motorcycles coming out of the parking lot. Commissioner Slate requested that Ms. Burns keep her comments relevant to the bands.

Jim Guzie, 24 Main Street: Mr. Scherbon has already admitted to having bands, and the Commission knows the problems associated with the bands; there was an assault there last week.

Town Planner noted Zoning Enforcement Officer Newton's report of a Consumer Complaint to the Liquor Control Division of the Department of Consumer Protection dated 3/27/2014, which noted ".....as the local authority we have not granted permission for live bands.". Town Planner Whitten read excerpts of the Complaint letter for the record. Included with the report were:

- Local sign-off, didn't check permission for live bands
- Police logs indicating calls every Friday and Saturday for Breach of Peace/Public Disturbance – specifically related to the noise levels of bands playing at the café
- Notice of Violation to property owner 6/2013 reminding him he can't have live bands
- Complaint forms from abutting neighbors
- Citation issued to property owners for continued non-compliance

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Town Planner Whitten reported the Planning Office has been addressing these complaints for some time. Vice Chairman Thurz questioned why Mr. Scherbon was appearing before the Commission tonight if he doesn't have permission to have the live bands?

Town Planner Whitten noted Mr. Scherbon has the right to apply; as Staff she didn't feel the bands were a good mix in a residential neighborhood. In response to a Commissioner's question if Mr. Scherbon had been fined, Town Planner Whitten indicated fines are part of the Municipal Violation Citation.

Vice Chairman Thurz queried the Commission and the audience for additional comments; no one requested to speak.

MOTION: To CLOSE the Public Hearing on the Application of Thomas Scherbon for a Special Use Permit to allow live bands with PA systems at J. R.'s Cafe', 16 Bridge Street. [B-1 Zone, Map 111, Block 1, Lot 47].

Devanney moved/Sullivan seconded/

DISCUSSION: Commissioner Slate questioned if the café was in a Business Zone? Town Planner Whitten replied affirmatively but clarified that the residences have been there for some time and are grandfathered. Commissioner Slate questioned if food was served? Mr. Scherbon indicated they served chips, etc.

VOTE: In Favor (of closing the Public Hearing) - Unanimous

MOTION TO APPROVE Application of owner Thomas Scherbon requesting to have live music per Ch 805.g at JRs café located at 16 Bridge Street. Zoned B-1, Assessors Map 111 Block 1, Lot 47. Said permit is subject to the following conditions:

Conditions of Approval:

Conditions that must be met prior to the issuance of any permits:

1. North Central Health District and the East Windsor Water Pollution control Authority shall review and approve the plans.
2. The Fire Marshall shall review and approve the plans. The total occupancy for the restaurant shall be established by the Fire Marshall

Conditions that must be met prior to certificates of compliance:

3. A zoning and Building Permit shall be obtained prior to the commencement of any work.

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4. All public Health, safety and building code compliance components of the project must be satisfactorily completed prior to occupancy

General Conditions:

5. No live entertainment or public address system shall be used outside. The door (s) leading out to the patio shall remain closed at all times.
6. No exotic dancing or adult entertainment shall be allowed on the premises.
7. Applicant shall be responsible to maintain adequate security on the premises at their own expense.
8. All fire lanes shall be posted as such and no parking shall be permitted in those designated areas.
9. The permit and premises shall be operated in conformance with all applicable State and Local Laws.
10. By acceptance of this approval and conditions, the applicant, owner, and/or their successors and assigns acknowledge the right of Town Staff to periodically enter upon the subject property for the purpose of determining compliance with the terms of this approval.
11. This permit shall not become effective until a copy is filed on the land records for the subject property.
12. This project shall be constructed and maintained in accordance with the referenced plan. Minor modifications to the approved plans that result in lesser impacts may be allowed subject to staff review and approval. The Full Liquor License is permitted as accessory and incidental to the restaurant use.
13. The condition of this approval shall be binding upon the applicant, land owners, and their successors and assigns
14. A copy of the final approved motion shall be filed, by the applicant on the land records.

Devanney moved/Slate seconded/

DISCUSSION: See comments made during Public Hearing.

VOTE: **In Favor: Slate**
 Opposed: Devanney/Sullivan/Thurz/Zhigailo
 Abstained: No one

Mr. Scherbon questioned if he could appeal the decision? Town Planner Whitten requested Mr. Scherbon come in to the Planning Office during business hours to discuss the process.

NEW BUSINESS OLD BUSINESS: Mercury Fuel Service, Inc. and owner Nick Tartsinis = Modification of Approved Site Plan for the development of a gas station and convenience store located at South Main Street and Thompson Road – to allow changes

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to ingress and egress. [B-2 Zone; Map 81, Block 19, Lot 102]. (*Deadline for decision 1/1/2015*):

Vice Chairman Thurz read the description of this Item of Business. Appearing to participate in this presentation was Attorney Joe Capossela and Paralegal Lorraine Hicks, of Kahan, Kerensky & Capossela; Mike Devino, of Mercury Fuel; Ron Fortune, of Consulting and Design, engineer; and Scott Hesketh, of F. A. Hesketh & Associates, Inc., traffic studies.

Town Planner Whitten provided the Commission with new/revised plans updating the revisions requested at the previous meeting.

Attorney Capossela summarized that the Applicant received approval for the site in October, 2013. They are back before the Commission tonight because DOT doesn't want a left turn lane into the site from Route 5. They are here for Site Plan Modification.

Attorney Capossela felt they have responded to Town Engineer Norton's and Town Planner Whitten's comments; Town Engineer Norton is satisfied while Town Planner Whitten is more verbose. Revisions include a Photometric Plan and adjustments to what Town Planner Whitten has referenced as the western property line. Attorney Capossela suggested Route 5 is actually the eastern property line; Town Planner Whitten concurred, noting appropriate identification references can be changed in the approval motion. Attorney Capossela also referenced proposed Condition #8, which indicates "In accordance with Section 900.3 of the Zoning Regulations, any approval of a site plan application shall commence the construction of buildings within one year from the date of approval and complete all improvements within five years of the date of approval,.....". Attorney Capossela felt that condition should further clarify that construction shall commence within one year from THIS approval rather than the original approval date of October, 2013. Town Planner Whitten agreed; when queried by Vice Chairman Thurz the Commission was also in agreement with that requested change.

Attorney Capossela then suggested they were then left with the question regarding the traffic. He recalled Chairman Ouellette suggested the timing on the traffic light on Route 5 should be changed, but what about the effect on Thompson Road? Attorney Capossela introduced Scott Hesketh to address the traffic issues.

Mr. Hesketh reported they contacted DOT and obtained the latest copy of the signal plan for the Route 5 corridor; he noted the previous report was based on the report submitted for the construction of the Walmart facility. The light is one of six signals in the system. He has reviewed the analysis based on the questions/concerns raised by Chairman Ouellette; see analysis submitted to the Commission tonight under "Table 3R2, Level of Service Summary referenced under letter dated November 7, 2014 to ConnDOT District 1 by Mr. Hesketh. He suggested that the queue distance at Thompson "Street" at Dunkin Donuts Site Drive heading southbound is 190' vs 320' so the queue distance is 120' less.

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Mr. Hesketh suggested the queue is reduced by one third so there should be more than enough queuing distance. A similar condition occurs at Thompson Road; the queue/stacking distance has been reduced from 210' to 150'; Mr. Hesketh felt there is enough distance to accommodate the 95% queue. Mr. Hesketh suggested they feel there is no reason to ask for the timing change; he has submitted the new analysis to DOT. If they want to retime the Applicant will be happy to do that; they/the applicant doesn't feel it's needed but if someone else thinks it should be they will be happy to do so.

Attorney Capossela reported that based on the current information they don't plan to retime anything.

Vice Chairman Thurz reiterated he is at this intersection five times a day, it usually backs up in the morning going south; mid-day is ok; afternoon is ok. Commissioner Devaney questioned if they changed the width of the driveway so trucks can't go in? It was noted that the access width had been reduced. Vice Chairman Thurz questioned that the Applicant/design team will leave as it is and not ask DOT to change the timing? Attorney Capossela replied – correct, based on Scott Hesketh's analysis. It's a Level of Service E and would go to a Level of Service F when it's built out; they now feel it would still be at a Level of Service E, so they feel it should work ok as it is. Vice Chairman Thurz queried the Commissioners for their comments on the proposal as presented; Commissioners Zhigailo, Slate and Sullivan were ok with the information presented; Commissioner Devaney questioned if the lighting plan has been changed? Attorney Capossela suggested there will be some splash to the street.

Vice Chairman Thurz questioned the addition of the “do not turn, cars only” signage? Mr. Hesketh indicated they have NOT added that signage to the plans but suggested the Commission add that request as a condition of approval.

Mr. Devine reported his brother is present this evening also; they concur with the “cars only” signage. Attorney Capossela clarified the location of the signage preventing cars from entering is at the driveway TO Thompson Road going out to Route 5. Town Planner Whitten noted the addition of Condition #18 regarding this signage.

**MOTION TO APPROVE the application of Consulting & Design LLC, Lessee
Mercury Fuel and owner Nick Tartsinas requesting modified site plan
approval for the development of a gas station and convenience store
located at South Main Street and Thompson Road in the B-2 zone
(Map 81, Blk 19, Lot 102)**

This approval is granted subject to conformance with the referenced plans (as may be modified by the Conditions) and the following conditions (subject to change at meeting per PZC discretion):

Referenced Plans (as amended):

Site Plan Approval Package prepared for Mercury Fuel to be located at South Main Street and Thompson Road, East Windsor CT prepared by Consulting and Design LLC, 33 Park Plaza, PO Box 258, Lee MA 01258, 413/243-4083, dated 5/9/13

- T-1 Title Index Sheet dated 9/12/13,10/15/14
- 1/1 Survey dated 5/31/13 scale 1"=30'
- C-1 Exist Grading Plan dated 9/12/13 scale 1"=30' ;10/22/14
- Ts-43 Demolition Plan 10/22/14
- S-1 Site Plan 1" = 30' dated 9/12/13 – **RESUBMITTED DATED 10-15-14 rev 10/29/14**
- S-2 Grading Plan dated 9/12/13 **RESUBMITTED DATED 10-15-14 rev 10/29/14**
- S-3 Landscaping Plan dated 9/12/13 rev 10/29/14
- S-4 Sediment Control Plan dated 9/12/13 rev 10/29/14
- S-4A Sedimentation and Erosion Control Details dated 9/12/13 rev 10/22/14
- S-6 Utility Plan dated 9/13/13 **RESUBMITTED DATED 10-15-14 rev 10/29/14**
- TS-22 Tanker Travel Plan dated 9/12/13 **RESUBMITTED 10-15-14 rev 10/29/14**
- TS-5 Site Plan Details dated 9/12/13 rev 10/22/14
- TS-37 Island Tank & Piping 9/12/13 revd 10/29/14
- A1, A1A, A2, F-1, E1, E1A, E2, P1 ,P1A,TS-28,TS-28A,TS-29, TS-29A } Building Plans 9/12/13
- L-1 Lighting Plan 9/12/13 rev
- L-1A Site Lighting Plan 9/12/13 , rev 10/10/14
- R-1 Exist Runoff Plan 7/9/13
- PRO B Proposed Runoff Areas 9/12/13
- L2 Canopy Elevations 9/12/13 **RESUBMITTED DATED 10-15-14; 10/22/14**
- 3-D 3D Site Plan
- SD-1 REVISED SITE DRIVEWAY LAYOUT DATED 1-14-14; 10/29/14**
- Topographic Map dated 5/31/13**

Conditions which must be met prior to signing of mylars:

1. All final plans submitted for signature shall require the live seal and live signature of the appropriate professional(s) responsible for preparation of the plans.
2. The conditions of this approval shall be binding upon the applicant, land owners, and their successors and assigns. A copy of this approval motion shall be filed in the land records prior to the signing of the final plans.

Conditions which must be met prior to the issuance of any permits:

3. One set of final plans and two sets of mylars, with any required revisions incorporated on the sheets shall be submitted for signature of the Commission. One signed mylar set shall be filed on the land records, One mylar and paper copy shall be filed in the Planning and Zoning Department.
4. An erosion and sedimentation bond shall be required for all site work. Applicants Engineer shall submit estimate to Town engineer for approval.

Conditions which must be met prior to certificates of compliance:

5. Final grading and seeding shall be in place or a bond for the unfinished work submitted.
6. Final as-built survey showing all structures, pins, driveways and final floor elevations, landscaped islands as well as spot grades shall be submitted.
7. All public health and safety components of the project must be satisfactorily completed prior to occupancy. In cases where all public health and safety components have not been completed, the Zoning Officer may issue a Certificate of Zoning Compliance provided a suitable bond is retained for any remaining site work.

General Conditions:

8. In accordance with Section 900.3 of the Zoning Regulations, any approval of a site plan application shall commence the construction of buildings within **one year from the date of *this* approval** and **complete all improvements within five years of the date of *this* approval**, otherwise the approval shall become null and void, unless an extension is granted by the Commission.
9. A Zoning Permit shall be obtained prior to the commencement of any site work.
10. This project shall be constructed and maintained in accordance with the filed plans. Minor modifications to the approved plans that result in lesser impacts may be allowed subject to staff review and approval.
11. Any modifications to the proposed drainage or grading for the site plan is subject to the approval of the town engineer.
12. Additional erosion control measures are to be installed as directed by town staff if field conditions necessitate.

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13. By acceptance of this approval and conditions, the applicant, owner and/or their successors and assigns acknowledge the right of Town staff to periodically enter upon the subject property for the purpose of determining compliance with the terms of this approval
14. Cars may not at any time be parked in landscaped areas, unless approved as such on the site plan.
15. All required landscaping shall be adequately maintained.
16. At no time shall vehicles be parked overnight on this site
17. *Final lighting will need to be adjusted per Town staff. Full cutoff fixtures are required and adjustments to the ~~western~~ eastern property boundary will need to be performed in order to have no light leakage on the adjacent property. Some light leakage along the roadways may be permitted provided there is no glare”*

Additional Condition:

18. **“Cars only” signage to be placed on first/western driveway off of Thompson Road.**

Devanney moved/Sullivan seconded/

DISCUSSION: See language revisions made above.

VOTE: In Favor: Unanimous (Devanney/Slate/Sullivan/Thurz/Zhigailo)

NEW BUSINESS: None.

OTHER BUSINESS: None.

CORRESPONDENCE: None.

BUSINESS MEETING/(1) POCD Update:

Town Planner Whitten reported she is cancelling the November 25th Meeting of the PZC and moving it back to THURSDAY, November 20th (Special Meeting) at 6:00 p.m. in the Town Hall Meeting Room. Discussion will include a presentation by Terri Hahn regarding Commercial Development, as well as discussion of Low Impact Development and Green Infrastructure.

BUSINESS MEETING/(2) Signing of Mylars/Plans, Motions:

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Motions ONLY:

- **Noble East Windsor, LLC** and owner Bernard H. Lavoie for property located at 7 Winkler Road for: a 1-lot re-subdivision; and a Special Use Permit for construction of a filling station and convenience store and addition to and conversion of, existing building for warehouse and office. [B-3 Zone; Map 113, Block 24, Lot 2].
- **Michael Gilchrest** – Modification of Site Plan Approval to allow auto repair business at 229 South Main Street, owned by John Galinski. [B-2 Zone; Map 12, Block 23, Lot 1-2]

ADJOURNMENT:

MOTION: To ADJOURN this Meeting at 7:58 p.m.

Devanney moved/Slate seconded/VOTE: In Favor: Unanimous

Respectfully submitted,

Peg Hoffman, Recording Secretary, East Windsor Planning and Zoning Commission
(4453)