

Planning and Zoning Commission
MINUTES
September 13, 2016

The West Haven Planning & Zoning Commission held a Public Hearing and Regular Meeting on Tuesday, September 13, 2016, in the Harriet North room, 2nd Floor, City Hall, 355 Main Street, West Haven, CT at 7:00 P.M.

PRESENT: Commissioners Hendricks, Mullins, Posey, Suggs, Standish, ZEO Conniff, Asst City Planner Killeen, Commissioner of Planning and Development Riccio, City Council liaison Eberle, Attorney Jean Phillips, Pullman & Comley, Corporation Counsel Amendola and Mayor O'Brien. Commissioners Biancur and Cohen were absent.

Chairwoman Hendricks announced that Alternate Commissioner Standish would be seated and acting on all agenda items this evening in place of Commissioner Biancur.

PLEDGE OF ALLEGIANCE

APPROVAL OF MINUTES: Commissioner Mullins made a motion to approve the meeting minutes of August 23, 2016, seconded by Commissioner Suggs and passed unanimously (Alternate Standish not voting since he was not present for the August 23, 2016 meeting).

Commissioner Mullins made a motion to move Regular Meeting Item #2. 300 Burwell St. to first on the agenda, seconded by Commissioner Suggs and passed.

Regular Meeting

1. **300 Burwell Road** – Application for approval of a Site Plan Review and an Erosion and Sediment Control Plan to permit the demolition of an existing 1 million gallon water storage tank and the construction of a new, replacement 1 million gallon water storage tank on property located in an R-2 (Residential) District, pursuant to Tables 11.1 and 39.1, and Sections 74 and 75 of the West Haven Zoning Regulations. Applicant/Owner: South Central Connecticut Regional Water Authority. File # SR 16-221.

Tiffany Lufkin, Engineer, RWA, and Brian Messner, consultant, stated this application is for construction of a new water tank and demolition of an existing water storage. The tanks will be connected to existing piping. Mr. Messner explained that silt fencing will be installed to control erosion and sedimentation. There is no special construction activity, and the new water tank will be located close to the existing footprint. Project notifications will be sent out and temporary license agreement has been executed with the Promise Land Church. A temporary site for construction for concrete delivery will be located 25 North Ave. to minimize traffic through the residential area. Mr. Killeen read into the record comments made by the city building official.

Commissioner Mullins made a motion to approve File #SR 16-221, seconded by Commissioner Posey and passed unanimously.

Public Hearing

- 1. Proposed Amendments to Article 2, Table 39.2 (Section E) and Article 7, Section 71.7 of the Zoning Regulations** – Application for approval of proposed text changes to the Zoning Regulations as follows: 1) Change the designation of “Regional Shopping Center” on Table 39.2 (Section E) under the WD District, from the letter “R” to the letters “SP”. This change would result in changing a Regional Shopping Center from being an As-of-Right use to a Special Permit use in the WD District; and 2) Modify Article 7, section 71.7 to require the Planning and Zoning Commission to hold a public hearing on any Coastal Site Plan application involving a proposed development consisting of an aggregate of ten (10) or more acres located fully or partially within the coastal boundary and landward of the mean high water mark. Applicant: SZS Enterprises, LLC and Robert McGinnity. File # ZR 16-212.

Attorney Seeman, Robinson & Cole, on behalf of the applicants. Affidavit of legal notice was presented to staff. He explained the first part of the text amendment application is asking the commission to have greater authority over regional shopping districts located in the coastal boundary area. The Regional Shopping use is currently in the WD district. Currently it is allowed as of right. With this text amendment, it is asking that it be allowed by special permit instead. Mr. Killeen distributed a series of question and excerpts from the zoning regulations. This application was referred out to all the required agencies. Comments were received from Regional Planning Commission, Harbor Commission and DEEP, which were summarized by Mr. Killeen. Mr. Killeen explained the proposal before the commission tonight as opposed to what is

already in the regulations and its processes. Attorney Seeman stated under the special permit application, the commission can impose reasonable conditions but cannot do that under an “as of right” application. A regional shopping district can have nuisances such as lighting and noise pollution as well as several thousand sq. feet of use. Additionally a public hearing is required under special permit which would allow public comment. However, a site plan only looks at physical requirements where a special permit looks at the use. Currently, the regional shopping use is allowed “as of right” by site plan review. DEEP submitted a letter that it supports this application, which is also a part of the coastal resiliency plan and is consistent with the Plan of Conservation and Development. Attorney Seeman distributed an informational packet of other towns that require special permits for regional shopping centers. The second part of the proposed text amendment is in regards to the coastal site plan application. Currently the commission has the discretion on whether to hold a public hearing. This application will require a public hearing for properties of 10 acres or more. Frank Fish, planning consultant, explained the different levels of zoning approval that are usually looked at by other towns, from building permit to site plan review and then, special permit approval. The special permit requires a public hearing and makes the use a discretionary use, subject to approval by the Planning and Zoning Commission. He feels that the Plan of Conservation and Development supports this application. This gives the commission greater flexibility in reviewing an application using these text changes.

Mr. Killeen asked why just this use for Special Permit approval in the WD District and why not other uses in the WD District under this text change? Also, why was the size of the property at 10 acres selected as the primary factor in requiring a public hearing in the CAM boundary? Attorney Seeman stated his firm was retained by their client who owns property in the WD district and this was the only use they looked at. However, staff may want to look at other uses. Mr. Seeman said it is not just about coastal issues but normal health and safety issues. He also explained that this is not just for tracts of land 10+ acres. It can include several parcels under the same ownership.

Three calls were made to speak in favor and three calls were made to speak in opposition to this application.

Pat Bollettieri, 215 West Walk, is in support of this change requiring a special permit which will require a public hearing.

Attorney Ray Bershtein, Bershtein, Volpe, & McKeon, are present tonight on behalf of their clients, The Haven Group, LLC, and are in opposition to this application. Maps were submitted showing the property that The Haven Group owns, which is approximately 24% of the area of the entire WD District. He explained the process that The Haven Group has gone through to acquire properties to construct this development. He questions what the motive is for this application. He submitted a protest petition to the commission that will require a 2/3's vote for approval of this application. Adam Kessler, civil engineer, outlined what applications will be submitted in the near future such as site plan, traffic study, erosion and sediment control plan and special permit for the removal of earth. A flood plain permit and coastal site plan permit will also be applied for. Currently, it is up to the commission's discretion if they want to hold a public hearing for the coastal site plan application. They will also apply for necessary permits from the state and DOT. As it stands now, without these text changes, several permits need to be acquired. Attorney Chris McKeon stated the regulations were put there because it is the type of development that the city wanted. Additionally, he questions why this particular site. It is only because the clients are property owners within this district that want to hold this development up. Section 8-3 states that before text changes are considered the commission needs to consider the Plan of Conservation and Development. Section 5d of the Plan mentions this specific development. It shows the intention of the city by this development being documented in the Plan going back to 2003.

Hannah Schwartz, 116 Main St., is in favor so it would protect the area and would like the public to be able to give their comments.

Michael Hickey, 32 Bungalow Lane, is in favor and feels the people should be able to control their city. The developer owns the property and could change anything at any time. He wants to see his city enhanced with this development.

Francis Withington, 255 West Walk, is opposed to the application.

Attorney Seeman rebutted that he has not referenced The Haven during his presentation. This is for the entire waterfront district. If the city and the Haven developers are for this development, the commission and the city should want it reviewed to make sure it is consistent with the health, safety and public welfare. He feels that this application for text amendments is for the betterment of the city and asks that it be approved.

Commissioner Suggs stated he was on the commission when the previous text amendment making a Regional Shopping Center a permitted use in the WD District was passed. He would like to see the minutes from that meeting .

2. **Proposed Amendment to Article 3, Section 49.2 of the Zoning Regulations** – Application for approval of a moratorium on Adult-Oriented Businesses for a period of one year (12 months) to allow the City to study these uses and determine appropriate land use regulations related to the study’s findings. Applicant: West Haven Planning and Zoning Commission. File # ZR 16-219.

Mr. Killeen stated this is an application that the commission discussed a couple of months ago. The legal notice has gone out to the paper and an outline was distributed to the commission indicating the study that will be done over the duration of the moratorium. Comments were read into the record from the South Central Regional Council of Government, city building official and Long Island programs. Mr. Killeen read the language that would be included in the zoning regulations. The expiration date of moratorium would be Oct 3, 2017.

Three calls were made to speak in favor and three calls were made to speak in opposition to this application.

Mayor O’Brien asked about the background of this application. Mr. Killeen explained that the prior moratorium expired in May and the commission was interested in pursuing a study so an extension of the moratorium is needed.

Commissioner Suggs made a motion to close the public hearing on File #ZR 16-219, seconded by Commissioner Mullins and passed unanimously.

3. **Notice re: Settlement of Pending Lawsuit:** The Superior Court has scheduled a hearing to consider the stipulations settling the two appeals brought by Robert McGinnity, et al for September 19, 2016 at 10:00 am at Hartford Superior Court, 95 Washington Street, Hartford, CT. Any interested parties may appear and be heard on the matter. Parties attending the hearing should report to the Caseflow Office to be directed to the correct courtroom. (The Commission will not act on this Notice, but the public is invited to comment on it.)

Mr. Killeen stated the P & Z Commission in June 2016 proposed a change to the zoning regulations and the Zoning Map that were related to the implementation of the Municipal Development Plan. The text and zone changes were approved at that meeting. An appeal was filed by McGinnity and SZS Enterprises LLC.

The appeal was brought to court and the tape of the recording and transcripts were asked to be provided. Due to technical difficulties, the meeting was not taped. In conference with attorneys involved, it was discussed whether to pursue the appeal or to re-do the meetings. A proposed settlement was submitted to P & Z in August where the appeal would be dropped if the city vacated their rights to the approval of the text changes and zone changes. The stipulation makes it clear that the city preserve its right to file a new application.

Three calls were made to speak on this notice. There was no one from the public to speak on this notice.

Commissioner Mullins made a motion to close the public hearing, seconded by Commissioner Standish and passed unanimously.

Regular Meeting

2. Deliberation and Action on Public Hearing Items:

- i. Proposed Amendments to Article 2, Table 39.2 (Section E) and Article 7, Section 71.7 of the Zoning Regulations** – Application for approval of proposed text changes to the Zoning Regulations as follows: 1) Change the designation of “Regional Shopping Center” from being an As-of-Right use to a Special Permit use in the WD District; and 2) Modify Section 71.7 to require the Planning and Zoning Commission to hold a public hearing on any Coastal Site Plan application for a proposed development of ten (10) or more acres. Applicant: SZS Enterprises, LLC and Robert McGinnity. File # ZR 16-212.

Commissioner Mullins made a motion to continue the public hearing on File #ZR 16-212 to September 27, 2016 at 7:00 PM in the Harriet North Room, 2nd Floor of the West Haven City Hall, seconded by Commissioner Standish and passed unanimously.

- ii. Proposed Amendment to Article 3, Section 49.2 of the Zoning Regulations** – Application for approval of a moratorium on Adult-Oriented Businesses for one year (12 months). Applicant: West Haven Planning and Zoning Commission. File # ZR 16-219.

Mayor O’Brien made a motion to approve File #ZR 16-219 with an expiration date of October 3, 2017, seconded by Commissioner Standish

and passed unanimously. A committee will be appointed at the next meeting.

3. Staff Reports

1. Update to City Plan of Conservation and Development - Mr. Killeen stated a steering committee meeting will be held on September 29, 2016 instead of the public workshop that was originally planned for that date.
2. Discussion of Proposed Transit Oriented Development (TOD) Regulation Amendments – The final revisions to the regulations have been made, and in a couple of days, commissioners will be able to access these changes and plans. Mayor O’Brien will report back to the P & Z at the next meeting on a conference that he will be attending to provide feedback on design issues in the TOD area.

Commissioner Hendricks suggested that the November 8, 2016 meeting be cancelled due to the Presidential Election.

ADJOURNMENT: 9:30 p.m.

Commissioner Posey made a motion to adjourn, seconded by Commissioner Standish and passed unanimously.