

NEWINGTON TOWN PLAN AND ZONING COMMISSION

Public Hearing and Regular Meeting

November 13, 2013

Vice-Chairman Carol Anest called the regular meeting of the Newington Town Plan and Zoning Commission to order at 7:00 p.m. in Conference Room L101 at the Newington Town Hall, 131 Cedar Street, Newington, Connecticut.

I. ROLL CALL AND SEATING OF ALTERNATES

Commissioners Present

Commissioner Frank Aieta
Vice-Chairman Carol Anest
Commissioner Michael Camillo
Commissioner Cathleen Hall
Commissioner Stanley Sobieski
Commissioner Audra Ekstrom-A
Commissioner Kenneth Leggo-A

Commissioners Absent

Chairman Michele Camerota

Staff Present

Craig Minor, Town Planner

Commissioner Leggo was seated for the open position, and Commissioner Ekstrom was seated for Chairman Camerota.

II. APPROVAL OF AGENDA

Vice-Chairman Anest: Craig, do we have any changes to the agenda?

Craig Minor: Yes Madam Vice-Chairman, we received a new item at the last minute which was physically in your agenda package, but was not inserted into the agenda. I recommend that you add, under IX, Petitions for Public Hearing Scheduling, add, Item C, Petition 61-13 Special Exception, Section 6.6 Liquor store at 256 Hartford Avenue, Country Store Liquor, Wethersfield Colonial LLC owner, Rushabh LLC, applicant, Bhadresh Shad, 109 Coronado Drive, Newington, CT, contact.

Vice-Chairman Anest: Thank you. Anything else?

Craig Minor: No.

Vice-Chairman Anest: Can I have a motion to accept the changes to the agenda?

Commissioner Sobieski moved to accept the changes to the agenda. The motion was seconded by Commissioner Camillo. The vote was unanimously in favor of the motion, with six voting YES.

III. PUBLIC HEARING

A. Petition 58-13: Special Exception (Section 3.15.6 Health Club at 150-206 Kitts Lane (Plant Fitness) TLG Newington LLC, owner/applicant, Brendan Kolnick, 10 New King Street, White Plains, NY, contact.

Vice-Chairman Anest: Is the petitioner or his representative here?

Attorney Sabatini: Good evening, my name is Vincent Sabatini, I'm an attorney, One Market Square in Newington and I'm here tonight representing the applicant. With me is Ron Pepe, he's here on behalf of Planet Fitness. This Plant Fitness is already in Newington, has been on the Berlin Turnpike for a number of years, over near Joanne Fabrics and they are moving out of there and going over to the location where this location is for, the Office Depot spot, basically running the same operation. Nothing is going to change, and I see from the package that you received from the Planner that there is nothing but good things to say about it. The parking is there, all the structures are there, hours of operation are the same, so I think it's pretty much a simple application. If you have any questions, I'll be happy to answer them, or Ron will be able to answer them for you.

Vice-Chairman Anest: Craig, do you have anything?

Craig Minor: No, nothing to add to my memo.

Vice-Chairman Anest: Any comments from the Commissioners? Seeing that this is a public hearing, please take a seat and we'll see if there is anyone from the public.....

Attorney Sabatini: The only thing that I request is that if you could see your way to approve it tonight, it would be a help because they are trying to get in there as quickly as possible. Thank you very much.

Vice-Chairman Anest: Is there anyone here who would like to speak in favor of the application? Anyone one here who is opposed to it? Seeing none, are there any comments from any of the Commissioners? What's the pleasure?

Commissioner Aieta: Madam Chairman, I think that under consideration we should probably move this to Old Business and take it up tonight. We don't have that much on it, and there are no comments from the Town Planner, and I'm sure the Town Engineer reviewed it. They are a good tenant in town, and I'm glad they are not moving out of town and going some where else, and I think we should accommodate them and vote on it tonight.

Vice-Chairman Anest: Anyone else?

Commissioner Hall: I only have one question. I have been past there several times in the past couple of days even, and I can't remember seeing the sign. Did anyone else see the sign?

Attorney Sabatini: I can say that I personally picked up the sign, paid the deposit, I was going to Italy, so I wanted to make sure I did it, so I wouldn't forget or have somebody else forget to do it. I personally went there and stuck the sign in the ground at the main entrance.

Commissioner Aieta: Yes, I did see it. It's not up near the store.....

Commissioner Hall: Well no, there would be no place to put it up there.

Attorney Sabatini: It's further down near the main entrance, so the sign is there, believe me.

Commissioner Leggo: At that main intersection, right there.

Craig Minor: I had the same concern, so I contacted Attorney Sabatini last week, and he told me what he just told you and so I have a statement from him, on the record, that he installed the sign, so I take him at his word. It was probably removed by some kid or.....

Commissioner Hall: Or knocked down by the wind, because we're had some wind lately.

Attorney Sabatini: There goes my twenty bucks!

Craig Minor: Afraid so.

Commissioner Sobieski moved to second the motion to move Petition 58-13 to Old Business. The vote was unanimously in favor of the motion, with six voting YES.

IV. **PUBLIC PARTICIPATION** (for items not listed on the Agenda, speakers limited to two minutes.)

None

V. **REMARKS BY COMMISSIONERS**

None

VI. **MINUTES**

A. October 23, 2013

Commissioner Leggo moved to accept the minutes of the October 23, 2013 regular meeting. The motion was seconded by Commissioner Sobieski. The vote was unanimously in favor of the motion, with six voting YES.

VII. **NEW BUSINESS**

A. Performance Bond Reduction Request #5 for "Victory Gardens" on Veterans Drive.

Commissioner Sobieski moved to approve the release of \$85,732.00 of the performance Bond of Victory Gardens on Veterans Drive.

FINDINGS:

1. The original performance bond of \$600,000 has been reduced by three previous bond reductions to \$90,173.00.
2. The Engineering Department has inspected the site and confirmed that all site work has been completed in accordance with the approved site plan with the exception of one missing handicapped parking sign (\$100.00) and an area of insufficient grading, (\$100.00).

3. The as-built survey and site has not been received in accordance with Section 7.2.3, (\$500.00)
4. The Town Planner recommends retaining five percent of the landscaping line item to ensure that the seeded area germinates and specimen trees and shrubs survive the twelve months to comply with Section 6.10.1 of the Zoning Regulations, \$3, 741.00.

The motion was seconded by Commissioner Leggo.

Craig Minor: There has been a flurry of last minute activity on this one as usual. They, today submitted the Certification from their Engineer that the drainage was installed correctly. It was not in the proper format, so our engineer worked with their engineer to get it in the proper format, which is why it's not an outstanding item, it's been addressed, today at the last minute. They sent us by e-mail a survey of the property but not only did we have a problem opening the document, it turns out when we did open it, it's not even an as-built, it's just a survey of the property as of a year ago. The whole point of an as-built is to show what is, how it's actually built, not just dust off the original survey, slap a new word on it, so the as-built has not been received, as I mentioned in item number three, and then finally I still recommend, as I have from the beginning, that we retain some amount of money in case the grass seed that has been put down doesn't germinate, or it washes away in some late fall storm, or if the trees that are planted don't survive. The applicants argued with me about that because they have a contract with the landscaper which guarantees that trees that don't survive are replaced, and I told the applicant, well, that's fine. That's your relationship with your contractor, but our relationship is with you as the applicant, and you are the only entity that we have a relationship with, we can't make your landscaper make good on something that was wrong, because we don't have a relationship with them. Ours is with you which is why I will always recommend that we retain some amount of bond for landscaping, because it is a zoning requirement. I guess when I phrased it that way he heard me finally, because I didn't get any push back at that point. So I recommend that we release all but, well, release \$85,732 which then keeps \$4,441.00 which again is five percent of the landscaping plan, plus \$100 for the missing handicapped sign, \$100.00 for them to do a little more grading in the area where there is a trip hazard, and \$500.00 for the as-built that they have not submitted yet, then this will be done.

Commissioner Sobieski: Craig, is this enough money for the as-built. I'm just wondering, I don't know.

Craig Minor: Yes, \$500.00, that's the standard amount that we bond for an as-built. That's standard.

Commissioner Aieta: It doesn't seem that much, from the conditions that I saw when I went, when I was out there last. I mean, you know some of the problems that we have had with bonds in the past has been that we don't hold enough money and then the, you can tell by the list that we get every month, that we don't hold enough money and what happens is that people, for \$3,000, they don't even try to correct the work. We want this thing done. I would suggest that we hold more money until we see that the planting and all of the landscaping survives the winter. I mean, they planted it late, it was, the seeding was done late. I would suggest that we hold more than \$4,000. I'd say at least \$10,000.00 so we can get them to, enough money so if something doesn't go right, that they fix it really quick and we get to release the bond. \$4,000 is not enough money, I mean, we see on our list that people for even \$10,000, they let it go for twenty years. It's not enough money for them to do the work.

Vice-Chairman Anest: Any other comments?

Commissioner Hall: It looks as if around the living units, they put sod, and the seeded part looks to be around the perimeter in the back. There's also a very large building in the back, is that going to be living area, or is that even administrative or what? It looks as if they took a couple of the old homes, the brick homes and then put a new roof on it, whatever, it's a pretty large building in the back.

Craig Minor: I know the building that you mean because I noticed it today when I walked around also. I don't know, as you know the project received approval before I got here, so I don't know what the intent of that building is. I can tell you, it's not residential because I am familiar with all of the residential units and where they are, so it must be some kind of, maybe a club house or

Commissioner Hall: It's three stories, and that's where.....

Craig Minor: It's three stories, it didn't look that high.

Commissioner Hall: It is yes, maybe with the attic part. It's building 75 or number 75, whatever.....

Craig Minor: Well, you mean in line with the rest of them?

Commissioner Hall: No, it's the one at the back if you stand.....

Craig Minor: It's not across the street from them?

Commissioner Hall: If you stand in front of it, you are looking at the high school and the greenhouse and the parking in the back of the high school. It's the one way in the back. That's where all of the unplanted area is, and that building doesn't even look finished yet.

Craig Minor: It may not be actually be part of this project because there were some existing buildings that were not folded into this project, and there are some that were. So the one that you are thinking of might not technically even be part of this project.

Commissioner Hall: All right, because it doesn't look like living, unless it was going to be studio apartments.

Vice-Chairman Anest: It's not the one that is near the pathway?

Commissioner Hall: You drive around it, but anyway, that's where it seems to be, and that was seeded, that wasn't sodded at all.

Craig Minor: Well, a lot of them were just seeded.

Commissioner Hall: The living units look to be, the grass is about that high right now on some of them, so it is actually quite lush.

Craig Minor: Well, there is a variety of maturity of grass because it was applied over the past several months, so some of it is more mature and some of it hasn't even germinated yet, but the building that you are talking about, if it is the one that I think it is, it's not part of this project, it's other VA land.

Commissioner Hall: That whole section looks very unfinished, so if that is not part of what we are talking about, then I'd say it's pretty well finished, but do we have any control over that, because that is going to look pretty bad if they do not finish it.

Vice-Chairman Anest: That's right.

Commissioner Aieta: Did they give you an idea of how, what they were going to put up for a bond?

Craig Minor: Well, they wanted a hundred percent release, completely, and I told them no, we would retain these amounts that I suggested tonight.

Vice-Chairman Anest: What is the average that we retain for landscaping?

Craig Minor: Well, since I have been here, we've required five percent for Bonefish, it hasn't come up other than with Bonefish, and now this one.

Vice-Chairman Anest: Any thoughts, suggestions?

Commissioner Aieta: It's up to you, I just don't want to get to the spring, and then something doesn't go right and there isn't enough money.....

Craig Minor: Well we do have one other recourse, the final building, the one that is going to have some sixteen apartments in it or so, that has not has it's c.o. issued, and the applicant's know that they need to sign off with the Zoning Enforcement Officer before they will get a c.o. for that building. If there is anything else that the Commission feels is not addressed to its satisfaction, the ZEO will simply not allow them to have a c.o. for that final building. So you still have that final recourse.

Vice-Chairman Anest: And you will stay on top of this, you won't let this bond sit there for years and years and years.

Craig Minor: No, but let me at this point mention, talk about that, as I was having this conversation with the contractor today, he asked if, whatever amount it is that TPZ retains, if it could be rolled into the road bond that they are going to be posting with the Town Engineer. I think it makes sense for the Town to have one bond, and not two separate ones for basically the same project so I told him that I would recommend that we do it that way. It's the same amount of money, but it would be physically, virtually rolled in with the Town Engineers road bone for Veterans Drive.

Vice-Chairman Anest: But the \$4441.00 would be earmarked for.....

Craig Minor: Absolutely.

Commissioner Hall: They usually don't reduce the bond by.....

Vice-Chairman Anest: And it won't be used for road or anything else?

Craig Minor: Exactly.

The vote was unanimously in favor of the motion, with six voting YES.

VIII. OLD BUSINESS

A. Petition 47-13: Zoning Text Amendment (New Section 6.15 Medical Marijuana) Town Planning and Zoning Commission, applicant.

Craig Minor: I included this on the agenda just in, just to make sure that you all had a copy of the final version, no action is needed tonight. It's on track to have this hearing at the next meeting of November 26th. I received some feedback from the planner in New Britain, he liked the regulation, he mentioned that in his comments. I've gotten comments back from the Regional Planning Agency for New Britain stating that it has no regional impact, which is what I expect to get from CCROG also.

Vice-Chairman Anest: Any Commissioner comments?

**Petition 58-13
Special Exception (Section 3.15.6 Health Club
150-206 Kitts Lane**

Commissioner Leggo moved to approve Petition 58-13 Special Exception Section 3.15.6 Health Club at 150-206 Kitts Lane Plant Fitness, TLG Newington LLC, owner/applicant, Brendan Kolnick, 10 New King Street, White Plains NY contact.

CONDITIONS:

None.

The motion was seconded by Commissioner Sobieski. The vote was unanimously in favor of the motion, with six voting YES.

IX. PETITIONS FOR PUBLIC HEARING SCHEDULING

- A. Petition 59-13: Special Exception (Section 6.2.4; Free Standing Business Sign at 665 New Britain Avenue (C&C Janitorial Supplies) 665 CC Associates LLC, owner C&C Janitorial Supplies, applicant, Grace Café, 665 New Britain Avenue, Newington, CT, contact.

Craig Minor: As the Commissioners I imagine saw in the agenda package, literally all they are doing is adding a board to the existing sign. It's not going to go any higher, or wider, they are just kind of filling in the space between the two uprights, so I recommend that the hearing be scheduled for your next meeting, November 26th.

Commissioner Aieta: I have a question for the Planner. On the sign they have snow mobiles, snow blowers, whatever, lawn mowers, ice melt, generators, fire wood, pressure washers, I hope that are not displaying their fire wood out on New Britain Avenue. I know that they have at times displayed their snow blowers out in front of their building, I'm just concerned about the fire wood. I don't want to see like stacks of firewood out on New Britain Avenue, and that is a concern of mine. The only good thing about it is the building is set back quite a ways from New Britain Avenue, but we should try to find out where they are going to stack all this firewood that they are supposed to sell. I'm sure the ice melt is probably inside, and I'm sure they take in the snow blowers and lawn mowers and pressure washers and generators, but the firewood, I would try to find out where they are putting it on the site.

Craig Minor: I'll talk to them before the meeting.

Commissioner Aieta: They have to be conscious that we don't want it out on New Britain Avenue, stacks of wood.

Commissioner Sobieski: Have you looked at this sign at all?

Craig Minor: Yes.

Commissioner Sobieski: Wasn't there a sign up on the fence there?

Craig Minor: Yes, that's why I'm going to do my standard asking the ZEO to confirm that they have sufficient signage that they can even do this.

Commissioner Sobieski: I thought I had seen like a cloth sign or something mounted on top of the chain link fence that is in front of the building, or off to the side.

Craig Minor: I'll ask the ZEO if that counts toward their allowance. I'll have Art look into that.

Commissioner Sobieski: I seem to remember when I went by the other day, that there was a sign up there, a white sign that said some of this.....

Craig Minor: A white fabric sign attached to the chain link....

Commissioner Sobieski: Cloth or it might be vinyl.

Craig Minor: Okay, I'll look into that.

- B. Petition 60-13: Special Exception (Section 6.13: Accessory Apartment at 18 Homecrest Street, Miguel Braga, owner/applicant Jessica Dornelas, 350 Silas Deane Highway, Wethersfield, CT, contact.

Craig Minor: This is an accessory apartment, the wrinkle is, it's in I won't say the basement because that gives it a bad connotation, but the house is banked into the side of the hill, so the lowest level, the basement, you can walk out at the back, but part of this level is underground as you walk close to the street. But technically, by the way that the building code defines basement versus cellar, it is a habitable area. So I recommend that we schedule the hearing for the next meeting.

Commissioner Hall: Isn't it twenty-five percent of the living area, and this is almost as big as the upstairs, and that's a pretty big house.

Craig Minor: Yes, exactly, and that is one of the issues that I talked about to the applicant, I had about four problems with this, and the fourth was that, so what you are going to see when I make my presentation is, not all of the basement is going to be technically part of this apartment. For example, there is a laundry room that the upstairs residents and this resident will use, there's a stairway, if you don't get nit-picky perhaps could not count towards their twenty-five percent, so they're confident that they can get the number down to the twenty-five percent. But if the Commission feels that it is just too creative, and is not in keeping with the intent of that regulation, then the Commission will vote accordingly, but I think mathematically the applicant will be no more than twenty-five percent.

Commissioner Sobieski: I see they also have an office room down there too.

Commissioner Hall: And storage.

Commissioner Sobieski: Is that a regular office or storage, because I see an office room on one side and storage on the other.

Craig Minor: I don't know, but that's a good question so we'll ask them that during the hearing, but that does count as part of their apartment. That might be how they are planning on meeting the twenty-five percent requirement, by leaving that accessible to the upstairs resident. But, how they would get to it by not passing through, it's complicated, it's a house of cards, but if it works and the Commission is amenable, then we'll see. So that will be at the next meeting.

- c. Petition 61-13: Special Exception (Section 6.6: Liquor Store) at 256 Harford Avenue (Country Liquor Store) Wethersfield Colonial LLC, owner, Rushabh LLC, applicant, Bhadrash Shad, 109 Coronado Drive, Newington, CT, contact.

Craig Minor: According to Mr. Shad who is trying to sell the property, it's been a package store for many years, but as he tried to sell it, the prospective buyer's attorney did some research and found that there doesn't seem to be anything on file by the way of a TPZ approval. There must have been, otherwise they would never have gotten their state liquor license, but there is nothing on record. So the buyer's attorney is kind of insistent that this be reconciled, so what he Shad is doing is applying for a TPZ liquor license.

Commissioner Aieta: Wouldn't you think that the Zoning Enforcement Officer would have caught this for all these years? I mean, he has to sign off on these things, what is it, every year Cathy that they sign off on the liquor license.

Commissioner Hall: No, not necessarily, it depends on.....

Commissioner Aieta: But they do have to sign off periodically, and I would think that he would check the record, I mean, it's been a long time.

Craig Minor: Right. Well, he wouldn't check the record unless the applicant applied for a, unless there was a new owner applying for a new license in the new owners name, which apparently has not happened in a long time, or else this red flag would have come up.

Commissioner Aieta: There is nothing on the record when it was approved as a liquor store?

Craig Minor: There is nothing in the records that Art has easy access to. I'm sure that somewhere up in cold storage in the file cabinet from 1946 is probably a TPZ approval, but I'm not going to go through the file cabinets looking for a needle in a haystack.

Commissioner Aieta: Okay.

Craig Minor: But I agree with you, I'm sure the Commission did approve it, or my predecessor, or his predecessor or his processor would have raised the issue, but again, the buyer's attorney is being hyper cautious on behalf of his client, appropriately, and is insisting that the seller obtain the appropriate permit, so everything on paper is on the up and up. So that will be November 26th, also.

X. TOWN PLANNER REPORT

A. Town Planner Report for November 13, 2013

Craig Minor: My report is getting smaller and smaller, in fact this month, I had no report on anything, I need to find other things to report on or else retire this item, so the only thing that I am going to talk about, and I forgot to write it up again, but I've done some more work on our bonds, and I found that the bond for the IHOP House of Pancakes, I did some research into that. Actually, there were a couple of trees that should have been planted that weren't, and this is now twelve years ago, they were never planted, I don't know if maybe the owner asked for relief from Ed because it turns out that two of the trees that should have been planted are exactly where the two street lights are going to be. Whoever the engineer was for this project didn't look at the landscaping, didn't put the landscaping plan on top of the lighting plan, or they would have seen that they had proposed a street tree right where a light is, and it certainly would make sense once they realized that would be to have gone to Ed, or to you and asked for relief, but I don't have any record of that, so I sent a letter to the developer who posted the bond, out of New York state, who of course is long gong from this project, in fact, the property doesn't even belong to the entity who owned it back in 2000, different entity now. So I sent a letter to the developer who posted the bond, explained the situation, and asked him what his thoughts were on how to address this situation, because I, and if the Commission wants to, since it has been twelve years, just let it go and return the money to him, because it is two trees that may or may not have been planted twelve years ago, I'm sorry, two trees, not just two trees, two that I can think of why they never got planted, but there are six other specimen trees that never got planted, for a total value of maybe \$2,000.00. So, depending on what the developer writes back to me, I may suggest that we contact the current owner, and ask him if he would be amenable to planting \$2,000.00 worth of trees, and then returned the balance to the developer.

Commissioner Aieta: Are there street trees on the adjacent property?

Craig Minor: Yes, the lindens, three lindens, they are actually on the Azteca property.

Commissioner Aieta: Why don't we take the \$2,000 and get trees that are similar so we get at least something that is consistent with what is next door.

Craig Minor: We could do that.

Commissioner Aieta: Take the \$2,000.00 and have the current, apparently the owner of the property that had the bond is no longer involved in it, so what happens to the bond, it goes to the new owner or.....

Craig Minor: I think it has to go back to the developer.....

Commissioner Aieta: He could release it to the current owner and then have it revert to the town, or just take the bond and have the Town do it. \$2,000 should be at least two good trees I would think.

Craig Minor: That's what I think I will end up recommending, so.....

Commissioner Aieta: It should be something that is consistent with what is next door.

Craig Minor: Right, so hopefully I will hear from the developer by the next meeting, and I will make a recommendation then.

XI. COMMUNICATIONS

None

XII. PUBLIC PARTICIPATION (for items not listed on the Agenda, speakers limited to two minutes.)

None

XIII. REMARKS BY COMMISSIONERS

None

XIV. CLOSING REMARKS BY THE CHAIRMAN

None

XV. ADJOURNMENT

Commissioner Sobieski moved to adjourn the meeting. The motion was seconded by Commissioner Aieta. The meeting was adjourned at 7:35 p.m.

Respectfully submitted,

Norine Addis,
Recording Secretary