

**PLANNING AND ZONING COMMISSION
REGULAR MEETING MINUTES
WEDNESDAY, DECEMBER 10, 2014 – 7:00PM
NEW HARTFORD TOWN HALL – 530 MAIN STREET**

PRESENT: Chairman James Steadman, Ted Stoutenberg, Dan LaPlante, Bob Moore; Alternate Martin Post; Zoning Enforcement Officer Steven Sadlowski, Attorney Mark Branse.

ABSENT: David Krimmel, Alternate Peter Ventre.

Chairman Jim Steadman called the meeting to order at 7:00PM. All regular members present were seated as well as Mr. Martin Post for Mr. David Krimmel. The proceedings were recorded digitally and copies are available in the Land Use Office.

1. PUBLIC HEARINGS:

A. Town of New Hartford – Zone Change From R2 Zone to PS-UD Zone – Town of New Hartford Property (RR Line Right-of-Way) Behind 417, 425, 431, 433, 437, 443, and 455 Main Street.

The legal notice for the public hearing was read into the record and was indicated as having run two times in the local paper within the required statutory time. Proof of notice to abutting neighbors was submitted.

Mr. Steve Sadlowski briefed the commission on this application. He described the parcel as located on the south side of Route 44 as the railroad right of way that sits behind these properties. Currently, the area is zoned as R2 and unbuildable and only fifty to one hundred feet deep, according to Mr. Sadlowski. He further opined that changing it to a Public Service Utility District is fitting as the sewer line runs directly through this area. The half dozen commercially zoned properties that abut the parcel are currently restricted by an R2 zone status because the regulations require a fifty (50') foot buffer between any commercial and non-commercial/residential property, Mr. Sadlowski explained. If any of these were going to be rebuilt or reconfigured in any way, they would have to leave a fifty (50') foot buffer behind their property which would take up, in a lot of these, $\frac{1}{3}$ to $\frac{1}{2}$ of the property, he noted.

Mr. Marty Post asked whether anyone had done a title search on this piece. Mr. Sadlowski replied that the town clerk had provided him with an old map and indicated that her records reflect the town as the owner. Mr. Post explained that the reason for the question is because through past experience surveying a few properties, he believes that some of these had received half of the row. Further, he stated that he prefers not relying on a survey map as determination of ownership. Mr. Post indicated that he would prefer a title search, where the deeds are examined to ascertain ownership.

Mr. Steadman inquired of Attorney Mark Branse whether the commission may rely upon the map for the zone change or whether the commission needs a title search completed. Attorney Branse responded that this is a commission initiated change of zone and therefore it does not matter who owns it. Whether a piece of property is privately owned or publicly owned, the commission has the authority to rezone property, or the option not to, but in either case does not need the owner's consent, according to Attorney Branse. Mr. Post confirmed that all the abutting owners had been notified. Mr. Sadlowski confirmed that they had and noted a correspondence endorsing the change of zone from the owner of Time Was Garage, of 417 Main Street.

Referring to the Mobil Station, Mr. Post inquired as to whether a site plan has been presented yet. Mr. Sadlowski reported that the commission has seen a conceptual one, and reminded him that it was the one that Mr. Post had remarked was unsigned. Mr. Sadlowski noted the new owners have hired or are in the process of hiring a civil engineer as a person had been there surveying the property, and had also visited the Land Use Office inquiring about the sewers.

Mr. Post requested to make a point that he believes the board is setting a bad precedent by going ahead with zone changes without ever seeing anything on paper. He noted that it was done on the other side of the bridge, did it for Borghesi and now again for the Mobil Station without having anything on paper. He noted the commission has new zoning regulations. He also stated that it seems that so far whenever someone is in violation of them or does not want to conform to them, the commission changes the zones for them. Mr. Post stated that in his opinion, it's a bad precedent. He explained that he is concerned that in the event the commission is faced with something they don't like in the future, they will have no ground to deny it.

MOTION: Mr. Stoutenberg, Mr. Moore second, **to close the public hearing in the matter of Town of New Hartford – Zone Change From R2 Zone to PS-UD Zone – Town of New Hartford Property (RR Line Right-of-Way) Behind 417, 425, 431, 433, 437, 443, and 455 Main Street; motion carries as Mr. Stoutenberg, Mr. Moore, Mr. LaPlante voted in favor, while Mr. Post abstained.**

B. New Hartford Industrial Park Inc. – 37 Greenwoods Road – Special Exception – To Allow a Dance/Martial Arts Studio.

The legal notice for the public hearing was noted into the record and was indicated as having run only one time in the local paper while it should have ran twice. Proof of notice to abutting neighbors was submitted.

Mr. Sadlowski explained that the application is to allow a dance and martial arts studio in the Hurley building which requires a Special Exception because this would be a new use for that building pursuant to the regulations. Mr. Steadman inquired the applicant their preference with the direction of proceeding with the application. The applicant, through his attorney, opted to continue. Discussion followed resulting in a consensus to continue the public hearing, and run a legal notice for an additional special meeting

wherein the public hearing will resume. Mr. Steadman solicited comments from the public and there were none.

MOTION: Mr. Stoutenberg, Mr. Post second, **to continue the public hearing in the matter New Hartford Industrial Park Inc. – 37 Greenwoods Road – Special Exception – To Allow a Dance/Martial Arts Studio to December 17, 2014 at 7:00PM at New Hartford Town Hall, 530 Main Street, David Sessions Conference Room; unanimously approved.**

2. PENDING APPLICATIONS:

A. Town of New Hartford – Zone Change From R2 Zone to PS-UD Zone – Town of New Hartford Property (RR Line Right-of-Way) Behind 417, 425, 431, 433, 437, 443, and 455 Main Street.

MOTION: Mr. Stoutenberg, Mr. Moore second, **to approve the zone change encompassing the land under the old railroad right-of-way currently owned by the town behind 417, 425, 431, 433, 437, 443, and 455 Main Street and shown on the maps submitted with the application entitled, “Proposed Zone Change Highlighting Area R2 to PS-UD Zone Town of New Hartford Planning and Zoning Commission”. Said zone change is from R2 to PS-UD. This change will be effective on January 1, 2015; motion carried with Mr. Stoutenberg, Mr. Moore, Mr. LaPlante, Mr. Steadman voting in favor; Mr. Post abstained.**

B. New Hartford Industrial Park Inc. – 37 Greenwoods Road – Special Exception – To Allow a Dance/Martial Arts Studio.

No action taken.

3. NEW APPLICATIONS:

None.

4. APPROVAL OF MINUTES: November 12, 2014.

MOTION: Mr. Stoutenberg, Mr. Post second, **to approve the November 12, 2014 Minutes; unanimously approved.**

5. ZONING ENFORCEMENT OFFICER’S REPORT:

No business was discussed.

6. CORRESPONDENCE.

None.

7. OTHER BUSINESS PROPER TO COME BEFORE THE COMMISSION:

A. Discussion of option to allow new multi-family housing in New Hartford Center Zone.

Mr. Sadlowski reminded the commission that they previously approved an Adaptive Reuse Provision that fits within the Center District Regulations which basically allows certain industrial uses specifically warehousing, self storage, manufacturing, research

and contractor's shop inside the building. Those five uses are allowed in an existing historic building, that existed prior to these regulation back in 1957, was at least 100,000 square feet and historically had these industrial uses, Mr. Sadlowski explained. The idea was to allow the industrial uses to continue in the mill without becoming legal non-conforming uses which opens up a bunch of issues in the future as they wanted to rezone the mill as part of the center district which doesn't allow industrial uses, according to Mr. Sadlowski. He explained that this provision allows them to continue with the industrial uses within that building even though it is in the Center District. The owners of the property are also looking to at some point to build some new multi-family dwellings or condominiums on the property, according to Mr. Sadlowski. Currently, new multi-family residential is not allowed in the center district.

In response to a question by Attorney Branse as to whether an adaptive reuse has already been approved for this area, Mr. Sadlowski confirmed and explained that the commission wanted to add an affordable housing component to this if they were to allow it as well as what the density would look like. Mr. Sadlowski provided the commission with a proposed draft that would allow housing as part of this adaptive reuse provision. The new residential dwellings must be part of a larger master plan that would involve that whole property, Mr. Sadlowski explained. It would include not only the mill property but the property that they want to put this housing on and if they ever want to do anything with the town garage property. According to the draft, at least 30% of the whole development by gross floor area in the whole project, including the mill, would have to be non-residential. Density as proposed in the draft allows for up to eight (8) units per acre. In an effort to bring in the affordable housing piece, Mr. Sadlowski included bonus units incentives for certain features such Low Impact Development (LID) and extensive facilities for public use.

Attorney Branse explained that he had conferred with Mr. Sadlowski about different ways of addressing the affordable housing component, whether it just be a requirement which the commission is authorized to do or to try to move the town towards the state's minimum 10% requirement through the use of incentives. He noted that Mr. Sadlowski had approached, as reflected in this draft, to go from a bonus, incentive standpoint rather than a requirement. Attorney Branse explained that either approach was valid and legal. He further noted it's very much a policy decision or a matter of what the commission wants to achieve. Attorney Branse noted that Mr. Sadlowski was thinking of using the density as a bonus but whether the eight (8) per acre figure is the right number is tough to visualize. He agreed with Mr. Post's comments that it's nice to see a plan of what this would look like.

Mr. Post commented that clauses #2 and #3 of the draft, dealing with the incentives seemed arbitrary to him and that it gives the commission a tremendous amount of subjective judgment. He said he would prefer a more formulaic approach. Mr. Stoutenberg commented that he, too, had issue with #2 and #3 of the draft. He noted the subjectivity of determining "extensive facilities".

Attorney Branse suggested that one of the modifications that could be made is, "to the extent that LID is used over and above those that are required by the DEEP Storm Water Quality Manual". The Storm Water Quality Manual is supposed to be the base, or the minimum. He noted that the manual does provide primary, secondary, and tertiary levels and to the extent that the developer takes the upper levels would be one way to judge, Attorney Branse mentioned. However, it may still be very hard to quantify, he concluded.

Mr. Sadlowski commented that there really isn't a minimum for LID techniques as currently in New Hartford, they are just options. The commission's regulations say you're supposed to consider them but it doesn't say you have to use them as far as he could tell. He noted that with its proximity to the Farmington River, there are a lot of things that could be done over there. For instance they could use pervious pavers for the trails and all kinds of things that could happen around the mill such as the parking lot but was unsure how to define it. For example, would it be appropriate to use they get one house for every 300 square feet of pervious pavers, Mr. Sadlowski had asked.

Attorney David Markowitz, representing Mr. Dave Hurley, agreed it is very subjective. He indicated that his clients are willing to let it stand as is, allow the commission to determine what is low impact, and whether they are doing enough to bring the property to the public so they have access to the river. He mentioned that his clients have talked about giving the fire department access to the river for fire control because of the size of the water line and that these are the types of things that any developer, that his clients might be interested in selling the property to, would have to incorporate. The concern, Attorney Markowitz did express, had to do with the idea of master planning the seventeen (17) acres.

Attorney Markowitz reminded the commission that his client is not a developer. His client would like to get a developer interested, have that part develop and present a master plan, including a subdivision of the property. Attorney Markowitz explained that Mr. Hurley would likely be retaining the mill building, with the possibility of having some rental units on the upper floors. He commented that they could live with the 30% noncommercial in the mill building and still get enough square footage in the field area. He explained that what he and his clients would like to do, rather than phasing it, is allow New Hartford Industrial Park, by covenant, to require no less than 30% of the square footage of the mill building, plus the residential building, to be restricted to non-residential use.

Attorney Branse asked why that would be any different than having it in the regulations. Attorney Branse noted that the regulations say the uses could be shifted.

Attorney Markowitz explained that with the number of units that a prospective developer wants in the field area, they would have to determine the total square footage of that development, add that to the mill building and of the total, at least 30% has to be non residential. He continued that it is likely to be all in the mill building so would like to do it by covenant.

Attorney Branse asked a covenant with whom. Attorney Markowitz responded that it would be as a condition of the approval. Attorney Branse responded that it doesn't harm them to have that in the regulation then. Mr. Sadlowski clarified his meaning that the concern is if 75% of the building has to be non residential, and if it's not rented, it's not really non-residential and because he might not be able to rent it out all at once. Attorney Branse opined that the commission needs to tweak the language then because the concern was, that you build all the residential and then it ends up that there's no 30% non-residential. This is true especially if the field is being sold to another developer, he stated. If that developer has no intentions of building any non-residential, they go and build all their units, and the mill is still vacant, then you'll have received zero non-residential, Attorney Branse explained. Further, he opined that so long as the space is allocated to non-residential uses, the fact that it's vacant shouldn't be a problem

Attorney Markowitz reported to the commission that the building now has almost 60,000 square feet rented.

Attorney Markowitz commented that although it may be a more appropriate topic for a different meeting, he respectfully would like the commission to consider whether any additional uses could be done as a right rather than with special exception applications. He noted that while the commission has been very kind with moving very quickly on them, if they might deem appropriate that certain additional uses could be used within the building without a special exception. He is hoping that the commission might find it appropriate to grant approval for such uses through a zoning permit rather than a special exception. Mr. Sadlowski responded that they can always add anything to that list of uses, tweak it to add more uses but that there was some concern in the past about possible exterior improvements to the building. Attorney Markowitz concluded by stating that all in all, his clients are very happy with the regulation as it is drafted and thanked Mr. Sadlowski and Attorney Branse for their efforts.

Attorney Branse commented on the notion of a formulaic approach with the bonus units. For example, using a benchmark of every \$10,000 in public benefit improvements would result in the question of \$10,000 according to whom. The same difficulty is seen with LID according to Attorney Branse. He further advised the commission that in the event the developer proposes building a pedestrian bridge, uses a ton of LID, the site carries eight (8) units per acre and they take one look at the site plan and say this is way too dense, too much, they still have the right to deny the application. The commission may determine it doesn't fit the character, doesn't have the right landscaping, or hasn't left enough along the Farmington River, according to Attorney Branse. He said what is constantly hampering them, is the continued lack of seeing a plan.

Mr. Karl Nielson, a consultant for Mr. Hurley, noted that the only problem with that is if there's not a regulation in place by the commission to get a developer interested, that property is much more difficult than if there is a regulation in place that gives them guidelines on what to do. Attorney Branse explained that the commission is trying to

draft a regulation in the abstract and while he's not saying it can't be done, that the commission shouldn't do it, but when talking about density bonuses it is difficult because it's tough to visualize.

Mr. Stoutenberg repeated what he characterized as a generic question, not aimed specifically at a development on Greenwoods Road: the question of affordable housing. He noted that any time that a major development takes place, whether it be this one or some other one, if the developer goes ahead, builds all his units and then has no affordable housing, it leaves the town with an obligation to provide affordable housing somewhere else in town. Mr. Stoutenberg asked Attorney Branse about what a reasonable size development to not require affordable housing is and whether there is such a thing. Mr. Stoutenberg pondered whether the commission should be saying in the regulations that any time a development has more than five (5) or ten (10) units, the commission expects them to provide affordable housing or some alternative, such as a contribution to some sort of a fund. He further opined that he does not think that any type of development that is one hundred units should be done without addressing the affordable housing question.

Attorney Branse first addressed the question of a minimum. He reported that because of the way percentages work, the lowest he has ever seen is 10% and that was in East Haddam and that they even considered that in their subdivision regulations. He explained that you can't get 10% of 5 units. So as a practical matter, he referenced Ellington which has a regulation with 20%. He noted that Glastonbury has used 10% for multifamily for as long as he could remember. Attorney Branse advised the commission that this is something they are allowed to do and if you don't provide it in one location, then you're still open to C.G.§ 8-30(g) somewhere else. He noted that the courts do consider the progress that a town has made so if a town is at 1% affordable and they can get to 2%, then while they are not exempt from C.G.§. 8-30(g), the courts do recognize progress and the effort. Attorney Branse explained that this is why it was a feature in his first work with Mr. Sadlowski.

Mr. Stoutenberg opined that this initial draft with eight (8) units per acre appears to give the green light to build 80-100 units with no mandate for affordable housing. Attorney Branse confirmed that this text would allow that. Mr. Stoutenberg responded that he did not think this was right and thinks there should be some address of the question of affordable housing any time you get over some minimum number of units. He noted that otherwise the town gets stuck sometime in the future. Attorney Branse agreed with Mr. Stoutenberg noting that to do it that way spreads it around.

Mr. Stoutenberg asked Attorney Branse about any inherent precedent that might be created by crafting a special regulation that can only apply to one specific property and whether this would be interpreted as exclusionary that would not withstand an appeal of some sort by someone who want to do something, somewhere else. Attorney Branse responded that he does think it would withstand appeal. He noted the case in Old Lyme that his firm was involved in, a zoning regulation that allowed the adaptive reuse of a building, any building over a certain age, and of at least a certain size. There was only

one in the town of Old Lyme that fit that description. A neighbor did appeal and said this was spot zoning but the courts said no, that by its terms, it applies to any building that was of at least that age, was of at least that size and that it was not spot zoning. Attorney Branse referenced another case in Suffield involving self park, where self park could only be allowed within so many feet of Route 75 and all these different parameters, and it ended up that there were only one or two pieces of land that fit all that. There was an appeal on that and the courts said on its face, it was site neutral.

Mr. Nielson then requested that Attorney Branse explain to the commission what would happen if someone came in with an application under C.G. § 8-30(g), which Mr. Nielson noted they could certainly do on that site and what the density for something like that might be and explain why the density would be as high as it is.

Attorney Branse noted that if someone were to come in with an application under C.G. §8-30(g), it would be exempt from zoning and be whatever density the parcel could support. He noted that there would have to be 30% of the units affordable which would bring the town that many units closer to the 10% goal thus providing a better defense against another C.G. §8-30(g) application. Attorney Branse recollected that when this was first discussed months ago, he had said to the applicant he could go C.G. §8-30(g) tomorrow. Mr. Sadlowski commented that it is called a "friendly 8-30(g)". Attorney Branse noted that there has been three of them in Old Saybrook so far and one in North Stonington. Attorney Branse concluded with saying that the C.G. §8-30(g) is a vehicle, it provides the benefit of affordable housing and that yes, it can be very high density.

Mr. Nielson clarified that Attorney Branse noted it can get 30% affordable housing but the count may go up double or triple from what is being presently discussed. Attorney Branse agreed.

Mr. Steadman inquired as to who would decide the ultimate number of units in an application like that. Attorney Branse noted that the applicant would.

Attorney Branse then cautioned the commission against feeling coerced or frightened of a C.G. §8-30(g) application because they can be very beneficial. He pointed out that one of the objectives or reasons the commission has spent so much effort in ensuring the best possible outcome for that area is for "more feet on the street" for the center, i.e. more customers and that a C.G. §8-30(g) application would achieve that. He pointed out that a development under a C.G. §8-30(g) application is still subject to wetlands, still subject to environmental regulations and is still subject to flood control. He noted it is a perfectly legitimate application and that he has seen them done very, very well.

Mr. Post noted that there is an option of creating a real gem in the Greenwoods Road area and that the commission is trying to provide some kind of flexibility and incentives to do the right thing.

Attorney Branse commented that the commission could certainly have prevented an C.G. §8-30(g) by leaving this zoned as industrial because as an industrial zone, it was

exempt from C.G.§8-30(g) . However, he noted, the commission rezoned it to Town Center Zone to work with the owner and thereby opened it to C.G.§8-30(g) when it wasn't before and could just as easily zone it back to industrial. He noted though that this is not the thought process.

Mr. Sadlowski commented that he had changed the draft to incentive based because at the last meeting it was discussed, the commission didn't seem altogether concerned on requiring the affordable housing component.

Attorney Markowitz clarified again that his client will not be the developer. He explained that they would like to get a zone that will attract a qualified developer. He noted that this is a unique piece of property, abutting the Farmington River. Further, his client wants to make sure that it remains open to the town so the developer that is chosen may not necessarily be the first guy that says I'll give you x dollars for it. He further noted that Mr. Hurley will be active in the plan and the development of the master plan for the site but wants to be able to give the developer some flexibility in coming up with that plan. For this reason, his client supports Mr. Sadlowski's incentive rather than a mandate.

Mr. Stoutenberg addressed the issue of Marty Connors recommendation of defining what the master plan consists of. Mr. Sadlowski read a definition of master plan as, "a master plan for the total development must be included and such master plan must provide for integrated and consistent egress parking, landscaping signs and all other site and building elements at such cross easements and other documents as will require maintenance of common elements of the entire site in its perpetuity." Mr. Stoutenberg commented that he wasn't sure then what Mr. Connors is suggesting. Mr. Sadlowski opined that he is looking for master plan to be better defined. Mr. Stoutenberg commented that the term does not appear in the Zoning Regulations. Attorney Branse assured the commission that this issue can be worked out and it was not a big deal.

Attorney Branse noted that more guidance, or input from the commission, is needed in clauses #2-5 of the draft and realizes that the consensus seems to want to go more formulaic. He questioned whether the commission wants a minimum, for example, of 10% affordable housing. He also questioned the issue of density, too. After some discussion, consensus was to put in 10% thereby allowing everyone to share the burden as opposed to the first guy going into the sewer system. Mr. Sadlowski suggested that if the mandate was 10%, but went higher to 20% or 30%, there could be an incentive bonus. Attorney Branse commented that they would put it together.

B. Election of Officers for Planning and Zoning Commission.

No action taken.

MOTION: Mr. Stoutenberg, Mr. Post second, **to adjourn at 8:39PM; unanimously approved.**

Respectfully submitted,

**Pamela Colombie
Recording Secretary**