

PLANNING AND ZONING COMMISSION

April 9, 2018 Meeting Minutes

These minutes are not official until approved at a subsequent meeting.

Commission Members Present: Alan Gannuscio, Vincent Zimnoch, Jim Szepanski, Alexa Brengi, and Cindy Cooper

Commission Members Absent: Kayleigh Royston (Alternate)

Town Staff Absent: Jennifer Rodriguez (Town Planner), and Dana Steele (Town Engineer)

I. Call to Order

Chairman Gannuscio called the meeting to order at 7:08 pm.

II. Roll Call

Commission roll call was taken.

III. Approval of Minutes from the February 12, 2018 Regular Meeting

It was **MOVED** (Cooper) and **SECONDED** (Szepanski) and **PASSED** (Unanimous, 4-0; Brengi Abstaining) that the Planning and Zoning Commission approves the minutes of the February 12, 2018 regular meeting as published.

IV. Public Hearings

Mr. Szepanski read the rules for conducting a public hearing.

A. **Special use permit for a Federal Firearms License for marketing purposes at 30 Acorn Drive**

The Recording Secretary read the legal notice that was published in the *Journal Inquirer* on March 28, 2018 and April 4, 2018.

Steve McGough, 30 Acorn Drive, addressed the commission. He explained that he works from home as a self-employed consultant. His primary focus is internet marketing support. This includes implementing and maintaining websites and creating marketing emails. He also designs print brochures and provides digital photography and video services and supports his clients in any way he can. Most of his clients are micro businesses with fewer than 20 employees. Some are small businesses, and he also works for some medium sized corporations. Although he provides services to a variety of industries, his clients primarily fall into four marketing niches: scuba diving, pet sitters, firearms, and firearms training. Clients have asked if he has an FFL so they can send him firearms to be photographed or videotaped. Photos and videos are used for marketing promotion including print brochures and websites. He reached out to the ATF to inquire about a license for

media and marketing purposes, but they do not offer a specific license for this. The license he would need to get is the standard Type 1 FFL license for firearms dealers. He is here to apply for a special use permit, as the ATF suggested he first check with the town Planning and Zoning Commission, and this commission determined that he needed to apply for a special use permit.

Mr. Szepanski noted that the applicant has been before the commission on October 10, 2018 and November 13, 2018, where he outlined what he intends to do.

Chairman Gannuscio asked if the sign for the public hearing had been posted on the applicant's property. Mr. McGough replied affirmatively, and Mr. Szepanski confirmed this.

Chairman Gannuscio asked the applicant what portion of his business was for FFL. Mr. McGough replied that he does media and marketing for other industries, and about 30 to 35, maybe 40 percent is the firearms industry.

Mr. Szepanski asked the applicant if he was applying under the assumption he is an artist. Mr. McGough replied yes because that was the closest category it falls under. Mr. Zimnoch asked if these are actual firearms that can be fired that would be sent to him. Mr. McGough responded that it depends on what they send him. Some of them may or may not have firing pins. Mr. Szepanski pointed out that with the application dated June 30 but received by Ms. Rodriguez the end of January (Mr. McGough said it must have been a typo), there was a four-page memo attached dated January 26 which stated, "Do I intend on offering firearm transfer services to the public? No. I *may* consider offering firearm transfer services to local law enforcement and personal friends." Mr. McGough stated, "Probably not." Mr. Szepanski: "You stated in your application that you're going to possibly sell firearms." Mr. McGough: "No, I did not. Selling is definitely different than a transfer. As an example, if a law enforcement officer wanted to buy his own gun, he could purchase it via another dealer out of state. In that case, that dealer would send it to an FFL and then go through the background check system and get transferred so it's not a sale. The sale happens with the dealer himself." Mr. Szepanski: "So you're going to do all the paperwork?" Mr. McGough: "I don't plan to do any of that, actually." Mr. Szepanski: "So what's involved with the transfer?" Mr. McGough: "Basically it's paperwork and calling up the state police for...." Mr. Szepanski: "So you're going to do that paperwork?" Mr. McGough: "If I was to do this." Mr. Szepanski: "If you were to do that. And you would do that at no charge for your personal friends and law enforcement?" Mr. McGough: "Law enforcement, yes. Personal friends, I have no interest in doing because there's really no money in it and nobody's asking to do it."

At this time Chairman Gannuscio opened up the public hearing for comments from the public in support of this special use permit application. There were none. The floor was then opened up for comments in opposition. Dan Rothbart, 6 Acorn Drive, spoke in opposition to this application, stating this was not appropriate in a residential area.

Mr. McGough reminded the commission there was a favorable email sent to Ms. Rodriguez from John Ferrari, a neighbor of Mr. McGough's. Chairman Gannuscio read this email, dated March 8, 2018, into the record.

Mr. Zimnoch commented that based on what they just heard and what Mr. Szepanski just read, this seems to be more than just marketing purposes involved in the FFL license here. As the applicant stated previously and just now confirmed, he could possibly be using this license to transfer firearms, and Mr. Zimnoch believes this application is mistitled. Mr. McGough responded, "If you'd like me to amend the application right now, I'll do that. I will not offer any transfer of services to anyone, including law enforcement officers." Mr. Szepanski: "We can't do that, because once the FFL is issued, that gives you full right to do anything with it. We can't stipulate a condition." Mr. Zimnoch added that the problem with this application is the licensing, because the application could be for marketing purposes but requires a license that provides the whole potential for firearm services, which is not a desirable situation in a residential neighborhood. Mr. Szepanski added that in the paperwork that was submitted with the application, Mr. McGough is a holder of a CT state permit to carry pistols and revolvers and possibly other states, an NRA pistol instructor, a training coordinator, an adjunct instructor for OpSpec Training, a competitive pistol shooter, and a member of the Windsor Marksman Association and Hartford Gun Club. The opportunity is there to develop friendships and be involved in selling firearms, just based upon this association with these people.

Chairman Gannuscio asked about the method of receiving deliveries. Mr. McGough replied that an adult's signature is required for receipt of packages. He will also know exactly when packages are arriving via a tracking system. He clarified that he is just trying to make a living. Quite a few people have expressed interest in additional services from him, and this is a way to make some extra money. Ms. Cooper commented that the issue is with the license. Mr. McGough said he talked to the ATF and asked if there were any plans to amend the license, but there just is not enough demand for it.

Chairman Gannuscio stated that this is similar to the application the commission had a few months ago with the restoration of motor vehicles and the state licensing/permit that exceeded what the applicant was looking for. Mr. Zimnoch pointed out that the difference was that particular application was in a business zone, and this application is in a residential zone. He went on to say that home occupations sabotage regulations, in a way, because it puts businesses in residential zones, so it is our responsibility to make sure that if a business is placed in a residential zone that the neighbors don't have a problem with it. We do have a valid objection here. In addition, we have here a business that an applicant is proposing that will not benefit the residents in any way, but in the contrary it brings in the potential of tragedy. Mr. McGough responded that he's sorry Mr. Zimnoch feels that way, but all he is trying to do is take some photographs. He is trying to be a good neighbor and reached out by email and postal mail to all of his abutters. Mr. Zimnoch said, "We're not trying to stop your business. You can and should consider other alternatives."

Mr. Szepanski stated that the applicant is applying under being an artist, but we haven't really established the fact whether he's an artist or not. Ms. Cooper replied that photography is an art and that is not the issue. The issue is more the fact that it is a residential area and the license does give full authority. Mr. Szepanski read an article called "Subjectively Biased Interpretation" that discussed the definition of "artist." Mr. Szepanski feels the jury is out on whether a photographer is an artist, and these are the things we need to consider. Ms. Brengi disagreed.

Mr. Szepanski quoted two places in the October 10, 2017 meeting minutes. On page 8, Mr. McGough stated that the public hearing sign "puts him in a precarious spot security-wise, as it puts a target on your house." On page 9, "Mr. McGough replied that if it involved an application with a sign in his front yard, his security plan does not allow for that, and it just puts him too much at risk." On page 11 of the November 13, 2017 minutes, "putting a street sign in front of his house with an FFL application is a [little bit of a] security concern for him." Mr. Szepanski stated that these statements tell him that Mr. McGough has concerns about security and safety. Mr. McGough replied that he always does. Ms. Brengi commented that she can understand his concern about the sign because it's a big flag in front of your house that you have weapons. Mr. McGough replied that at the time he didn't know what the sign entailed.

Mr. Szepanski continued. The special use goes with the property, so if you move out of town, someone else can come into town and get an FFL license and sell guns. There might be an impact on property values if a neighbor has an FFL. If you decide to sell, the ATF application says you can do internet sales, which are very difficult to monitor. There is some talk that there are insufficient federal and state inspections. They say they average every 17 years for people who have FFLs. It places a target on your home and probably on other homes in the neighborhood as well. You can go on the web and you can pull up 669 FFLs that are in the state of Connecticut, so if someone wanted to get to one of those home occupations, they could track you down, and this could impact the safety of other residents.

Chairman Gannuscio asked the applicant if he wanted to respond. Mr. McGough stated security was a concern for him but more of a concern for his wife. They like to keep a low profile but they do have security in his home. All he is trying to do is take photos and make a living and increase his business. He has some clients who are interested in working with him, but if he doesn't have the FFL he probably won't get that business, which causes a hardship for him. He has no intention of selling firearms at all. He will receive a package once or twice a month, so there will be no additional impact to residents. He did tell his neighbors about the meeting. One neighbor sent in a letter saying they had no problem with the application, and he knows of two other neighbors who also did not have any problem with what he was doing.

Chairman Gannuscio cited a case that summarizes the problem, or root of where we're at with this FFL application. The case is *Cindy Watson vs the Zoning Board of Appeals of the Town of Glastonbury, et al*, and it's an appeal from the Zoning Enforcement officer in Glastonbury who determined that a particular occupation was not a home occupation at this Cindy Watson's address. On page 13 of the decision in that case is a summary (second paragraph), which Chairman Gannuscio read.

Mr. McGough asked the commission if the ATF offered a marketing FFL, would the same concerns exist. Chairman Gannuscio replied that in his mind there would certainly be fewer concerns. He commented that Mr. McGough is somewhat handicapped with this application in that there is a regulation with a definition that hasn't been amended or updated in a good number of years (about the home based business). He read from page 13 of the *Watson* case: "There is sometimes a fine line between the type of activity and the running of a service or similar business out of a residence which is generally prohibited." You can't stipulate to a limitation, but we can't impose a limitation, which is an issue here. Mr. McGough stated that if he signed an agreement with the town, the town attorney had said the town could not enforce it. Mr. Zimnoch added that the problem is the special use permit runs with the land. Mr. McGough replied that that was one of his suggestions-- not to get a special use permit so it doesn't run with the land. Mr. Zimnoch stated that the neighbors need to be given notice that this business is being considered in their residence. Mr. McGough said he had suggested that it fall under the traditional home based business under artistry, for photography, to take away the concern of it having to run with the land. You could still notify the neighbors.

Ms. Cooper stated this would be so much easier if there was a different type of license. Chairman Gannuscio remarked that again, it's a similar situation with the Spring Street application with the state having its classification. Here we have a federal license that the ATF deems fine for just about all circumstances except for this one. Mr. Zimnoch pointed out the similar situation with the recycling business of Babylon where the town no longer has any jurisdiction and the state can do what it wants. Mr. McGough said, "I'm not sure what the difference between what can be happening legally in a residential zone..." Mr. Zimnoch: "Well, it's a residential neighborhood. Why should you have a business in a residential neighborhood? This is an exception. Home occupation is an exception." Mr. McGough: "There's no impact on the neighborhood." Mr. Zimnoch: "There is impact, because once you have FFL for your property that might impact the value of other residences." Mr. McGough: "There's a lot of things that happen in my neighborhood that affect the value that have nothing to do with a lot of things."

Chairman Gannuscio asked the applicant if he got any input or feedback from the Police Chief. Mr. McGough replied that he had not, and the FFL contacts the Police Chief. Mr. Szepanski pointed out that if you look at the FFL license, under #20, there is no action on the applicant's part to the Police Chief unless he has information that would disqualify the person from updating the FFL.

It was **MOVED** (Gannuscio) and **SECONDED** (Zimnoch) and **PASSED** (Unanimous, 5-0) that the Planning and Zoning Commission closes the public hearing on the special use permit for a Federal Firearms License for marketing purposes at 30 Acorn Drive.

Chairman Gannuscio wondered if this was something the commission wanted to decide tonight. He stated the commission has had many opportunities in several different settings to hear the presentation and express concerns, so why extend this any further. He then asked if commission members wanted to offer any closing comments. Mr. Szepanski commented he wishes they could do something, but we have to look at what's presented to them, what the regulations say, and what the FFL license says, and make a determination based upon the testimony. Mr. Zimnoch stated he's glad they had a public hearing. One neighbor came in and spoke, and in his mind even if there is only one neighbor opposed, that's enough, because it is a residential neighborhood. Bringing in someone with an FFL license that runs with the land, for whatever purposes, is a bad thing to do. The opinion that Chairman Gannuscio read explains why there is such a thing as a Home Occupation provision. Those home occupations not only benefitted the applicant but also the residents (such as a doctor and seamstress). He finds absolutely no benefit of this business to the neighbors.

Ms. Cooper commented she wished it wasn't residential and that there was a more descriptive license for the purpose he wants it to be. Ms. Brengi stated she has no issue with this application. She believes Mr. McGough is just trying to grow his business. She sometimes feels this board cuts people off at the knees (e.g., little mechanics). We've put him through the ringer to do this--he has been to how many meetings, presented how much stuff? She believes what he wants to do and she is comfortable with it. Mr. Zimnoch commented that he can do that by just renting a space in a business area.

Chairman Gannuscio stated that he would find photography to be an art, but the applicant is not doing wedding photos but firearms. This is not something that would customarily be considered a home occupation. "It is such a fine line, which is exactly what it says in this court decision, between the activity and the running of a service or similar business which is generally prohibited. I don't want to say it's prohibited, I just don't know if it's something that should be permitted." Mr. Zimnoch remarked that it has to be beneficial and harmonious to the neighborhood, and that's what their decision should be based on.

It was **MOVED** (Zimnoch) and **SECONDED** (Szepanski) and **PASSED** (FOR: 4; AGAINST: 1, Brengi) that the Planning and Zoning Commission *denies without prejudice* the special use permit for a Federal Firearms License for marketing purposes at 30 Acorn Drive.

Chairman Gannuscio explained that "deny" would mean the applicant would have to wait a year to come before the commission again, where "deny without prejudice" means there would be no time limitations for the applicant to go back to the commission.

B. Zone change from Business 1 to Business 2, 381 South Center Street (property owners E. Karson, A. Wiernasz, J. Reynolds)

The Recording Secretary read the legal notice that was published in the *Journal Inquirer* on March 28, 2018 and April 4, 2018.

Brian Denno of Denno Land Surveying & Consulting spoke on behalf of the applicant. Mr. Denno distributed additional handouts to commission members. He stated that this parcel is a 0.371 acre lot located on the west side of South Center Street, south side of Oak Ridge Drive, in front of the big hotel parcel, and across the street from Ad's Pizza. Right now it's zoned Business-1 with required minimums of a 50,000 square foot lot, a 200 by 200 foot size for the lot minimum, impervious area allowed is 66%, lot width is 200 feet, front yard is 60 feet, side yard 15 feet, rear yard 20 feet, and maximum building height is 30 feet. If the property is changed to B-2, they would come into conformity with a lot of the zoning issues. Business-2 would have required minimums of a 7,500 square foot lot, a 50 by 100 foot size for the lot minimum, impervious area allowed is 66%, lot width is 50 feet, there is no required front yard, side yard, or rear yard, and maximum building height is 50 feet. This lot does not fit any of the requirements for a Business 1. The concept for a Business 2 shows a maximum buildout of 65% impervious surface on the property with a 100 foot building by 28 feet deep with some parking in front and an access drive. There is access to safe area sewer, water, and power. This site is probably suited for a mixed use of commercial downstairs and maybe some residential apartments upstairs, but they have no idea until they find someone who is interested in the site. Right now they can't market the site because they can't really build anything on it in a B-1 zone, not with the setbacks. If the zone change is approved they will still have to come back for a site plan application review and approval.

Chairman Gannuscio asked how close the property is to the Windsor town line, wondering if Windsor needed to be notified. Mr. Denno replied that it is almost 800 feet to the highway. Chairman Gannuscio said this is something staff would have to answer. He asked if the public hearing sign had been posted on the property for the required amount of time. Mr. Denno replied that it had. Chairman Gannuscio asked what kind of potential use did he see for this site. Mr. Denno answered they are looking at probably doing a commercial use downstairs and a residential use upstairs, but until they have a zone change and have someone who is interested in the site, there are multiple things you can do in the B-1 and B-2 zones. You can do a restaurant, a hotel in B-1 but not B-2, a theater in B-1 but not B-2, a laundromat with a special use. There are multiple uses but it's hard to market the parcel because there's not much they can do with it right now.

Gary Merrigan, 560 Halfway House Road, stated that they have been trying to market the property for over a year for Mr. Lavitt and his partners. They envision it as being a service oriented business, maybe an office. The size of the lot is going to dictate what goes there. The uses have grown down there in that general neighborhood with an insurance agency and the land communications building with four or five tenants,

so there is a little business community in that area. A couple of small offices would fit in there, but it's limited. You don't have a lot of room for parking. They feel the B-2 would be appropriate. B-2 was used on Concorde Way where Quest and Colonial Printers are. He envisions something similar along that line.

At this time Chairman Gannuscio opened up the public hearing for comments from the public in support of this application. There were none. The floor was then opened up for comments in opposition. There were none.

Chairman Gannuscio stated that the emails with some of the clarified information that the Town Planner had asked for didn't come around until this morning or this afternoon, and Ms. Rodriguez didn't have a chance to prepare comments. He would like to have the Town Planner and Town Engineer have the opportunity to weigh in on this. Therefore, he would like to keep the public hearing open. Mr. Denno commented that they brought the plans to the town with the application on March 6, 2018. He made multiple calls to the planning department and never received any comments or any concerns until today after lunch. Ms. Rodriguez did look at them and prepared a letter which he got this afternoon, and that's why the commission didn't get the information that he handed out tonight because he didn't know until today that there were deficiencies or that she had comments. He believes everything he's turned in answers her questions. He does not have comments from her on the information that was handed out to the commission tonight, but he believes that it does cover all of her questions.

Chairman Gannuscio responded by saying that this was scheduled for a public hearing this evening, but looking at these comments now, this maybe should have been rejected as an incomplete application, and it's spelled out clearly in the regulations what is needed to do a zone change application. He went on to say, "I'm not going to point fingers either way, and I'm also not going to allow a vote on what I consider to be something that requires comment on what is now brought up to speed and is there for town staff to review and comment on. Is there anyone who disagrees with me on that issue?" All commission members expressed agreement with him.

It was **MOVED** (Gannuscio) and **SECONDED** (Szepanski) and **PASSED** (Unanimous, 5-0) that the Planning and Zoning Commission continues the public hearing on the zone change from Business 1 to Business 2, 381 South Center Street, to the May 14, 2018 meeting.

An unidentified man asked Chairman Gannuscio if he considers this application to be complete now or is he not able to decide. Chairman Gannuscio responded that with the material that is here now it would appear to be a complete presentation, but there may be additional items that the town professional staff may want to see. Mr. Zimnoch suggested that they check with staff before the next meeting to make sure that all of those comments have been addressed.

V. **Reviews** (none)

VI. **Action on Closed Public Hearing Items** (none)

VII. **Old Business**

A. **Discussion with Commission and Staff**

Mr. Szepanski commented that he saw an article in the *Journal Inquirer* that might be of interest to the commission: “Enfield PZC votes to allow backyard chickens.” He distributed a copy of this article to commission members.

B. **Action Items** (none)

VIII. **New Business**

A. **Public Input** (none)

B. **Receive New Applications** (none)

C. **Informal Discussions**

Chairman Gannuscio stated that he went to the Board of Finance to get money to defend the Columbian lawsuit and asked for a realistic figure that was given to him when outside counsel had to be hired because of a conflict of interest. The amount would probably have to be spread out over several years of budgeting. That initial figure just couldn't be done because of rollovers and with the fiscal year coming at the end of June. There was concern about keeping it under a certain amount because the charter requires a public hearing, so he asked for an amount under that threshold. The amount he got was \$7,500, which means that at the rate we're being billed, would be about 30 hours of work. There were also concerns expressed to him by three different board members about why we are bothering to defend against this. Chairman Gannuscio feels it's not a dollars and cents issue but a quality of life issue for the town. He went on to mention the instances of prostitution on Route 75 and the activity that has been going on at the different massage parlors that has brought in DCF and INS. We finally did get counsel to file an appearance on our behalf, and we will be defending the lawsuit. Mr. Szepanski asked whose decision it is to pursue this suit, the Planning and Zoning Commission, the Town Attorney, or the Finance Board. Chairman Gannuscio responded that as the named defendant, the Planning and Zoning Commission of the Town of Windsor Locks, it is this commission's decision. He went on to say that the line item in the PZC budget for Legal Acts is only about \$3,500 a year.

D. **Action Items** (none)

IX. Communications and Bills (none)

OTHER

Ms. Brengi stated that she had mentioned something to Ms. Rodriguez and wondered how commission members felt about it. She feels that anytime we have an applicant in an informal discussion or receiving an application involving a firearm that a police officer should be here. Chairman Gannuscio commented that it wouldn't hurt to have a police officer present. He asked Mr. Szepanski if the Police Commission would have a concern with this. Mr. Szepanski replied that he didn't think it would be a problem and that he would bring it up at the next meeting on May 9. He asked Ms. Brengi if she would recommend it only when firearms are being discussed or at other times as well. Ms. Brengi responded that her concern was firearms specifically. Mr. Szepanski asked who would make this request. Chairman Gannuscio suggested saying that this came up during the course of a specific hearing and the chairman thought it might be a good idea to bring to the Chief's attention on the evening of the hearing the possibility of heated issues being discussed.

X. Adjournment

It was **MOVED** (Gannuscio) and **SECONDED** (Zimnoch) and **PASSED** (Unanimous, 5-0) that the Planning and Zoning Commission adjourns the April 9, 2018 meeting at 8:39 pm.

Respectfully submitted,

*Debbie Seymour
Recording Secretary*