

PLANNING & ZONING COMMISSION
June 10, 2013 Meeting Minutes

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

Commission Members Present: Vincent Zimnoch, Alan Gannuscio, Jim Szepanski, and Peter Juszczynski

Commission Members Absent: Anthony Scarfo, Paul Harrington (Alternate), and Alexa Brengi (Alternate)

Town Staff Present: Patrice Carson (Interim Town Planner), and Dana Steele (Town Engineer)

I. Call to Order

Chairman Zimnoch called the meeting to order at 7:05 pm.

II. Roll Call

Commission roll call was taken.

III. Approval of Minutes from the May 13, 2013 Regular Meeting

It was **MOVED** (Zimnoch) and **SECONDED** (Szepanski) and **PASSED** (Unanimous, 4-0) that the Planning & Zoning Commission approve the May 13, 2013 minutes.

It was **MOVED** (Zimnoch) and **SECONDED** (Szepanski) and **PASSED** (Unanimous, 4-0) that the Planning & Zoning Commission move Item VIII C, Informal Discussion of Proposed Sexually Oriented Businesses Ordinance, as the next item to be discussed.

VIII. New Business

C. Informal Discussions

i. Proposed Sexually Oriented Businesses Ordinance

Mr. Gannuscio pointed out that this was to be an informal discussion and not a public hearing.

Attorney Paul Smith and Steve Wawruck, First Selectman, addressed the commission. Attorney Smith stated that this ordinance was proposed and endorsed by the Board of Selectmen. They worked closely with Town Counsel on drafting this. It is not a zoning ordinance but a health and safety ordinance. This ordinance when in place will apply to all existing or proposed sexually oriented businesses. Because it is not a zoning ordinance it does not need a vote of approval from the Planning & Zoning Commission, but the Board of Selectmen would like the commission to look at the ordinance and give them feedback as soon as possible so that a town meeting can be set. Attorney Smith commented

that the commission should be aware of what is in this ordinance as it moves forward in drafting its own zoning regulation with regard to sexually oriented businesses. Mr. Wawruck stated that currently there are two ordinances on the books that came about in the late 80's or early 90's. This ordinance addresses the secondary effects of these types of establishments and that's why it is considered a health and safety ordinance. Attorney Smith said this ordinance has been put before the police commission, and they provided helpful input. They wanted surveillance both inside and outside, and those changes have been incorporated into the ordinance. Chairman Zimnoch noted that in this ordinance distances from zones and other locations have been set but asked if that would preclude this commission from setting other limitations as to where these businesses could be located. Attorney Smith replied that it does not. This ordinance is strictly a health and safety viewpoint, not a zoning viewpoint. Zoning can do a lot of different things that this ordinance does not address. He stated that they define sexually oriented businesses and how that was done and suggested that the commission might want to look at this also. Mr. Gannuscio asked Mr. Wawruck if the Board of Selectmen thought about sending this to outside counsel to be looked at. Mr. Wawruck replied that Attorney Smith and the Town Attorney are outside counsel. Attorney Smith stated that they tried to mirror the East Hartford ordinance because it has been challenged in court and survived. It's not a perfect ordinance, but they have a good level of comfort with it.

It was **MOVED** (Gannuscio) and **SECONDED** (Zimnoch) and **PASSED** (Unanimous, 4-0) that the Planning & Zoning Commission place this item on the agenda for the July 8, 2013 meeting for discussion and input.

IV. Public Hearings

A. **Public hearing on the site plan review for the Internet/Home Based Fire Arms Retail Business of Kyle Bates at 25 Whiton Street**

The applicant, Kyle Bates, was not present. Ms. Carson stated, for the record, that she contacted Mr. Bates more than once and left voice messages asking if he was planning to attend tonight's meeting, but received no response from him. She noted that he has not come back into the office to leave a check and wondered at this point if he plans to continue with his application. She suggested that the commission deny the permit without prejudice so if he decided to come back he could be heard again by the commission, although he would have to pay the fee. Mr. Gannuscio suggested going through the formality of reading the rules and legal notice.

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

The Recording Secretary read the legal notice that was published in the *Journal Inquirer* on May 28, 2013 and June 4, 2013.

Chairman Zimnoch asked if anyone was present representing Kyle Bates. There was no one representing the applicant.

It was **MOVED** (Gannuscio) and **SECONDED** (Zimnoch) and **PASSED** (Unanimous, 4-0) that the Planning & Zoning Commission deny without prejudice the site plan review scheduled this evening for the internet/home based fire arms retail business for Kyle Bates at 25 Whiton Street, as there was no applicant or representative of the applicant present at tonight's meeting, and no fee has been submitted for this application.

It was **MOVED** (Gannuscio) and **SECONDED** (Zimnoch) and **PASSED** (Unanimous, 4-0) that the Planning & Zoning Commission *amend* the previous motion made by adding, "At this point, Mr. Bates still owes the \$260 fee, and if he comes back before the commission he will owe another \$260 fee to apply again."

B. Public hearing on the site plan modification and special use permit application for Mike's Blue Collar Bar for the property located at 482 Spring Street

Mr. Szepanski requested that the documents being considered tonight which the applicant has provided be noted for the record. They are: application dated January 28, 2013 (received in Planning Office March 1, 2013); new floor layout dated May 16, 2013 (received the week after the last public hearing); 8-page mini-overview of 20 slides, or response to the questions that came out of the May 13, 2013 public hearing (received via email to Planning Office on May 28, 2013); power point presentation made on May 13, 2013; power point presentation of tonight, dated June 10, 2013; and menu. These are the documents the commission has before them. Chairman Zimnoch would also like to receive a copy of whatever is presented tonight. Mr. Szepanski asked about staff memos. Ms. Carson stated there are memos from the Chief of Police (dated May 14, 2013); WPCA (dated May 14, 2013); Fire Marshall (dated April 25, 2013 and March 6, 2013); Dana Steele, Town Engineer (dated May 13, 2013); Interim Town Planner, Ms. Carson (dated May 13, 2013); and Town Planner, Ms. Rodriguez (dated February 5, 2013).

Mr. Szepanski commented that the power point presentation that the applicant's representatives are showing tonight is using voice transcripts, and he recommended that when staff or commission members speak tonight (and possibly at all future public hearings) they identify themselves by name so it is part of the record.

Angelo D'Aleo, Anthony Taricani, Regina Graziani, and an unidentified gentleman addressed the commission on behalf of the applicant, Neal Kwort. A lengthy power point presentation was presented with the following objectives: to answer lingering questions and address lingering issues from last month's meeting; to provide a counterpoint to certain points that were made; to prove that certain statements that were made at the last meeting were false statements; to display that Mike's Blue Collar Bar conforms to all rules and regulations set forth by the Town of Windsor Locks and the State of Connecticut. Immediately following the power point presentation, the unidentified gentleman read an addendum that Mr. Kwort asked him to read. A copy of this was given to the recording secretary for the record. Ms. Carson stated that the presentation tonight was different from what was received in the mail and via email and the commission will need to receive an exact copy.

Mr. Szepanski asked what specifically changed since the May 13, 2013 meeting. Mr. D'Aleo responded, "The only thing that has changed are the corrections we made on the side of the bar area." Mr. Szepanski stated, "And that's depicted in the new drawing that was dated May 16, 2013...and you changed the configuration of the bar area which in essence reduced the square footage." Mr. D'Aleo added, "...of the bar area, that's correct, which meets far and above the requirements." Also, the advertising on the sign was changed to add the word "grill." Regarding the parking requirements, Mr. D'Aleo commented that he is the owner of The Gathering Ground restaurant, and he assured the commission it would not be opening later in the afternoon. He also pointed out that the only time the business hours would overlap would be on Sunday's from 12:00 to 2:00, and there is more than enough parking. Mr. D'Aleo stated that there would be specials added to the menu on a daily, weekly, and weekend basis. He wanted to emphasize to the commission that there would be no noise and no loitering in the parking lot of his plaza, and that everyone would follow the rules.

Mr. Szepanski discussed the "false statements" that were pointed out in the presentation. Other items discussed were the emphasis on entertainment, the display area, the restaurant versus bar aspect, and what percentage of gross sales would be from the sale of alcohol as opposed to the sale of food. Chairman Zimnoch asked, "What makes this a restaurant?" Mr. D'Aleo replied, "The state, and their statutes and their regulations, hot food, the way they explain it in the regulations." Mr. D'Aleo stated that Mr. Kwort feels he meets all the regulations set forth by the state. Ms. Carson stated for the record, "This is not—you meet the regulations and it's automatic, it's not like a subdivision, this is a special use permit, so there are other things to consider even if you do meet the letter. It's fine to make comparisons, but I don't know if you have anything else that the new law since February has been applied to, so whether the Skyline if they came in today would meet this regulation, it's difficult to say and compare." Chairman Zimnoch said, "You are coming in with a brand new application under the new rules, and we're trying to see how you fit." Mr. D'Aleo replied, "And that's what we're asking, what are we missing, so to speak, that may alter your perception?" Chairman Zimnoch said, "The regulation changed, and now only restaurants can have liquor permits. This application morphed from a bar to entertainment, and now it's trying to be a restaurant, and that's some of the questioning we're trying to get answers for." Mr. D'Aleo asked, "What's making it not a restaurant in your eyes, the food? We are asking so we can take care of these problems...If part of your 'no' vote is based on the food menu, we would like to correct that for your 'yes' vote to come more in line. We are asking for some guidance because it is a new law that the town wrote that has some grey areas, and we would like to know what they are. We felt we met all those guidelines."

Mr. Szepanski had more comments. Mr. D'Aleo responded. Parking--there is more than enough parking, according to the town regulations. Noise—we will provide insulation and buffers that will surround the stage and absorb the sound. Outside buffers—the building that is in back of the front building that is there will deflect any noise that will stray. Noise in the parking lot—the police will take care of that with a

simple phone call. There are three separate exits to exit the plaza for vehicles, front and rear, not like H&M. What makes a restaurant a restaurant? We are meeting those requirements. We shrunk down the size of the bar and the stage. We changed the name to include “grill.”

Mr. Juszczynski asked about comments from the Fire Chief. Ms. Carson said that no comments had been received yet from the Police Chief, but she did read for the record the comments from the Fire Marshall dated April 25, 2013 which were presented at the May 13, 2013 meeting. Mr. D’Aleo informed the commission that those building plans are stamped by an engineer and were just submitted to the Building Department and Fire Marshal last week and reviewed by them.

At this time Chairman Zimnoch opened up the public hearing for comments from the public in favor of this application. No one spoke in favor of this application.

At this time the floor was opened up for comments in opposition. Thomas Fahey, owner of 487 Spring Street, LLC, spoke in opposition to this application. He passed out a statement of opposition to commission members and recording secretary and asked to see a copy of the application that was filed. Mr. Fahey stated he would try to clarify comments that he made at the last meeting. This is an extremely important application because this is the first application to appear under the new regulations. References made by the applicant to other establishments in the area are not applicable because the rules were different then. What is applicable is what the regulation says now. This commission has to make the determination if this applicant has met the criteria for what a restaurant is. Mr. Fahey went on to discuss his statement of opposition.

At this time Curtis Ruckey, 11 Smalley Road, spoke in opposition to this application. He emphasized that the commission should consider the suitability of where this business will be located (in an area with residences).

Chairman Zimnoch asked if the applicant’s representatives would like to offer a rebuttal. Mr. D’Aleo stated he understands that because this is a new regulation there are grey areas that are open to interpretation. They went by what they read, whether state or local. The menus will have specials. The area with mannequins is a display area and is not part of the bar area. If there is something missing from the requirements, they will be happy to meet them if the commission could be more specific.

It was **MOVED** (Gannuscio) and **SECONDED** (Zimnoch) and **PASSED** (Unanimous, 4-0) that the Planning & Zoning Commission close the public hearing on the site plan modification and special use permit application for Mike’s Blue Collar Bar for the property located at 482 Spring Street.

Mr. Gannuscio suggested that since there are two applications, one for a special use permit and the other for a site plan review, the commission deal with the special use permit first. Commission members agreed that made sense.

It was **MOVED** (Szepanski) and **SECONDED** (Gannuscio) and **PASSED** (Unanimous, 4-0) that the Planning & Zoning Commission deny the application for special use liquor permit for Mike's Blue Collar Bar, 482 Spring Street, based upon: 5/13/13 presentation content; 6/10/13 presentation content; 482 Spring Street, Windsor Locks First Floor Plan dated 5/16/13; 20-page mini-slide response with narrative dated 5/13/13; testimony by the applicant last month during the public hearing on 5/13/13; testimony by the applicant's representatives this evening, 6/10/13; testimony by the public on 5/13/13; testimony by the public tonight, 6/10/13; comments and questions from the commission and the staff on both 5/13/13 and 6/10/13; content of the Windsor Locks Regulations on Alcoholic Beverages, reference Chapter 5, 503 entitled "On Premise Consumption," Effective 2/1/13.

Mr. Gannuscio added for point of discussion: "If we look at our regulation 503A(iv), we make a determination regarding the appropriateness of the use, and we list some specific factors." He would like to state some of his reasons for seconding the motion. (1) Traffic safety. Mr. Gannuscio lives on Spring Street and has definite traffic concerns, given the number of excessive vehicles traveling on Spring Street in the evening. (2) Density of similar establishments. From Smalley Road heading west, for liquor permits we have a package store, the Blackboard Cafe, the car wash, a hotel, and the old Villa Rose property. There's quite a density there. (3) The proximity to the residences on Smalley Road and the surrounding residential areas. (4) The potential for complaints of noise levels. Mr. Gannuscio also noted, "The Ramada, Blackboard, Skyline, Ruby Tuesdays and Margarita's are a whole different animal compared to what we're dealing with because they were approved under a whole different set of regulations than what we are considering this application under this evening." Mr. Juszczynski added that the existing businesses that are there now close early, about 9:00 or 10:00. The new hours at Mike's would be until midnight, and there is a very close proximity to residences, which is a big difference. Chairman Zimnoch shares the same concerns. Looking at the floor plan, he feels this is really a club, not a restaurant. He feels there's going to be a crowd and a lot of noise in the wrong place in a residential area, which will generate a lot of nuisance.

Mr. Gannuscio asked at this point if the applicant would like to withdraw the site plan application. The applicant's representative did not wish to withdraw the site plan application at this time.

It was **MOVED** (Szepanski) and **SECONDED** (Gannuscio) and **PASSED** (Unanimous, 4-0) that the Planning & Zoning Commission deny the application for site plan modification for Mike's Blue Collar Bar, 482 Spring Street, based upon: 5/13/13 presentation content; 6/10/13 presentation content; 482 Spring Street, Windsor Locks First Floor Plan dated 5/16/13; 20-page mini-slide response with narrative dated 5/13/13; testimony by the applicant last month during the public hearing on 5/13/13; testimony by the applicant's representatives this evening, 6/10/13; testimony by the public on 5/13/13; testimony by the public tonight, 6/10/13; comments and questions from the commission and the staff on both 5/13/13 and 6/10/13; content of the Windsor Locks Regulations on Alcoholic Beverages, reference Chapter 5, 503 entitled "On Premise Consumption," Effective 2/1/13.

Chairman Zimnoch called a five minute break at 9:33 pm.

FIVE MINUTE BREAK

Chairman Zimnoch called the meeting back to order at 9:42 pm.

V. Reviews

A. Site plan review for office and car storage for long term car rental business at 584 North Street

Attorney Thomas Fahey addressed the commission. He stated that this change of use site plan application was submitted, and staff met with Mr. Barberino. The site plan before the commission tonight incorporates almost all the things that were discussed at this meeting. Attorney Fahey hopes that the commission will refer this application to staff to handle administratively. He noted that the only issue Mr. Steele had in his letter of June 10, 2013 had to do with sidewalks (item number seven). Attorney Fahey stated it appears unlikely that sidewalks would ever be up that end of North Street, but he has no objection to building sidewalks if the commission would like to include that as a condition. Chairman Zimnoch noted that in past situations a notation has been made on plans “until such time as sidewalks are built.”

Mr. Steele summarized for the commission: The property on 584 North Street is only 12,000 square feet. There is an existing property line that runs through the existing building, running from the backs of the smaller residences. Along those properties is the existing property line, so the lot is non-conforming in regard to buildings over the property line and has no parking for the building itself. The applicant wants to move the property line so it encompasses the entire paved area and it becomes a part of that use, which makes it more conforming to lot area. This lot will now be getting bigger, whereas the lots on 345 Ella Grasso Turnpike would be getting smaller, but still over the requirements, so not creating any non-conformities on the Route 75 parcel. They are maintaining an access easement over the Route 75 parcel, 345 Ella Grasso Turnpike, so that they can access the site from Route 75. He stated that some things to note are the site is non-conforming with regard to buffers. We’ve got residential uses abutting this, which in the B-1 zone requires a 25-foot buffer. The applicant has installed vinyl fencing, so the applicant has taken some measures to provide a visual screen. Mr. Steele asked Mr. Barberino if the encroaching pavement on the residential property has been removed. Mr. Barberino replied, “The fencing segregates it, and there is now asphalt on that homeowner’s place. In other words, the asphalt was put wrong. Now the fence is moved so there is actually residual asphalt on hers but there is no more encroaching. We asked her if she wanted us to remove it, but she’s been good about it. We actually moved the fence line so it’s on our property line. The original paving went onto her property.” Mr. Steele said typically you would remove the pavement that is encroaching, not just put a fence up, so they have in a sense blocked it off from being able to use it by putting a fence up in it, and he asked the commission for input regarding this.

Another thing to note in case the commission has comments or feedback, is that the plan shows restriping of that whole parking area shown in red. Attorney Fahey said because of the way the loads come in and out, they would rather have the flexibility and not designate parking spaces. Ms. Carson suggested that instead of actually specifying maybe the parking table could be changed to be based on square footage. Mr. Steele said if the commission is okay with not specifying parking spaces, he would be okay with it also. Mr. Steele noted that he is taking the position the applicant is not required to cut out pavement and put in islands because of the nature of the storage use. Staff has concluded that providing visual screening is more of the intent of the commission rather than interior landscape islands in a storage lot. It's better to have it screened on the outside, and they've done something to address that with the vinyl fence. This is a lot line reconfiguration, so the applicant will have to file a mylar on the land records, and they will need revised deeds and an access easement. That would be a condition of the site plan that the access easement be maintained. Chairman Zimnoch asked if the access easement to Ella Grasso is for both of the parcels, 584 North Street and 345 Ella Grasso Turnpike. Ms. Carson asked if it belongs to 345 and 584 has access over it. Attorney Fahey said yes, when they do the deeding, they will have it run in favor of 584. To clarify, Mr. Steele stated that there are no line changes to the 355 EGT parcel, so when it says "original property line," that's not to mean that it is changing.

Mr. Gannuscio asked Ms. Carson if she had any comments. She said she and Mr. Steele have met with the applicant once or twice, and Mr. Steele's comments reflect their conversations. Her main concern is the access and the property line, and this will get straightened out.

It was **MOVED** (Gannuscio) and **SECONDED** (Zimnoch) and **PASSED** (Unanimous, 4-0) that the Planning & Zoning Commission approve the site plan submitted for office and car storage for the car rental business at 584 North Street, allowing for staff review and approval of items one through ten listed in the Town Engineer's letter dated June 10, 2013, as well as the easement access to Route 75.

Mr. Barberino asked about putting up a 4 x 8 foot For Sale sign on his property. There was some discussion. Chairman Zimnoch commented that for the size and the location of the property it would be okay. Ms. Carson suggested the commission may want to address this in the regulations at some point in time.

VI. Action on Closed Public Hearing Items (none)

VII. Old Business

A. Discussion with Commission and Staff regarding:

i. T&M and North Group, LLC request for acceptance of roads

Nothing new to report.

- ii. **Zoning regulations** (none)
- iii. **Subdivision regulations** (none)

VIII. New Business

A. **Public Input** (none)

B. **Receive New Applications**

i. **Special use permit for second floor residential apartment at 246-250 Main Street**

Michael Barile, the owner of 246-250 Main Street, addressed the commission. He would like to convert the second floor space at 246-250 Main Street into an apartment. It is 1,600 square feet. Chairman Zimnoch asked how the apartment is accessed. Mr. Barile replied, "Just to the left of the barber shop is the entrance to 246 Main Street." Mr. Gannuscio commented that this is the first application submitted under the new regulations, and because it is a special use permit, a public hearing will have to be scheduled. He went on to say that the commission should schedule a special meeting so this application could avoid being put on the agenda for the July 8, 2013 meeting.

It was **MOVED** (Gannuscio) and **SECONDED** (Zimnoch) and **PASSED** (Unanimous, 4-0) that the Planning & Zoning Commission schedule a special meeting on July 22, 2013 at 7:00 pm.

It was **MOVED** (Gannuscio) and **SECONDED** (Zimnoch) and **PASSED** (Unanimous, 4-0) that the Planning & Zoning Commission schedule a public hearing on the special use permit for a second floor residential apartment at 246-250 Main Street at the July 22, 2013 special meeting, to be held at 7:00 pm.

ii. **Site plan modification, special use permit, liquor permit for Sportech Venues, Inc. for the property located at 11 Schoephoester Road**

Ted Taylor, 39 Prospect Street, Milford, representing Sportech; Cormac Byrne, with the architectural firm of Jones Byrne Margeotes, 245 Mill Street, Greenwich, representing Sportech; and Barbara O'Brien, 83 South Elm Street, Windsor Locks, representing Sportech, addressed the commission. Mr. Byrne stated that they made a preliminary presentation to the commission a few months ago and have filed an interior demolition permit with the Building Department and an interior renovation permit for the restaurant. This is the third part of their application--the site plan modifications and the exterior modifications to the building. They would be more than happy to be on the same agenda for July 22.

It was **MOVED** (Gannuscio) and **SECONDED** (Zimnoch) and **PASSED** (Unanimous, 4-0) that the Planning & Zoning Commission schedule a public hearing on the site plan modification, special use permit, and liquor permit for Sportech Venues, Inc. for the property located at 11 Schoephoester Road at the July 22, 2013 special meeting.

Mr. Wawruck addressed the commission. He stated that over the last few years about twice a year Sam Sales holds an auction on King Spring Road. A complaint came into Mr. Wawruck's office that Mr. Sales is in violation of the zoning regulations when he puts up his 4 x 8 sign in May and October. He gets permission from the property owner, Mike Russo. Mr. Sales wants to be in compliance, so Mr. Wawruck is asking for insight and dialogue from the commission to see if there is any solution. There was some discussion regarding temporary off-premises signs for temporary events in an industrial zone. It was decided that this should be put on the agenda as an informal discussion item for the July 22, 2013 special meeting.

IX. Communications and Bills

Ms. Carson informed the commission that she received a referral from a neighboring town about an application that came before them--a special use application at 1530 Palisado Avenue in Windsor for an outdoor dining banquet private event facility.

X. Adjournment

It was **MOVED** (Gannuscio) and **SECONDED** (Zimnoch) and **PASSED** (Unanimous, 4-0) that the Planning & Zoning Commission adjourn the June 10, 2013 meeting at 10:39 pm.

Respectfully submitted,

Debbie Seymour
Recording Secretary