



Town of Hamden Planning and Zoning Department

**Hamden Government
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December 29, 2009

MINUTES: THE ZONING SECTION, PLANNING & ZONING COMMISSION, Town of Hamden, held a Regular Meeting on Tuesday, December 22, 2009 at 7:00 p.m. in the Thornton Wilder Hall, Miller Memorial Library Complex, 2901 Dixwell Avenue, Hamden, CT and the following items were reviewed:

Commissioners in Attendance:

Joe McDonagh, Planning and Zoning Chair
Ed Grant, Zoning Section Chair
Don Moses, arrived at 7:08 p.m.
Greg Tignor, alternate sitting for Bob Roscow

Staff in attendance:

Dan Kops Jr., Assistant Town Planner
Tim Lee, Assistant Town Attorney, arrived at
7:04 p.m.
Stacy Shellard, Commission Clerk

Mr. Grant called the meeting to order at 7:00p.m., reviewed the agenda and meeting procedures and introduced the panel.

A. Regular Meeting:

1) Site Plan 09-1452

400 Goodrich Street, B-2 zone
Office Building
Tri-Con Construction Managers, Applicant

Postponed until the January 21, 2010 meeting at the request of the applicant.

2) Site Plan 09-1453/WS

44 Guenevere Court, R-2 zone
Accessory apartment
Alan Faticone, Applicant

Mr. Stephen Rolnick, Attorney, representing the applicant, addressed the Commission and reviewed the previous meeting. Mr. Rolnick explained that previously they had received ZBA approval to have an accessory apartment, but had neglected to file an application for site plan approval. At the time of the application Mr. Rolnick's clients were occupying the main dwelling on the premise. Prior to his clients learning of the condition at the last zoning meeting, they had rented the main dwelling. The accessory apartment which has two bedrooms was being occupied by two tenants who were sharing one of the bedrooms. Subsequent to the original approval, his clients rented out the main dwelling to four Quinnipiac Students and applied for a student housing permit. As a result it was discovered that they had not filed a site plan application. Since renting to the Quinnipiac students, his clients moved into the accessory apartment and occupy the second bedroom. Mr. Rolnick stated that his clients were given a copy of Mr. Kops' recommendations and condition of approval at the last meeting. Mr. Rolnick submitted a signed and notarized affidavit which states who owns the property and that the owners currently live in the premises. It also states there are four students living at the address and that the only other persons living at the

property are those occupying the permitted accessory apartment. Mr. Rolnick stated that there is nothing in the zoning regulations that restricts the number of people allowed to live in the accessory apartment and to his knowledge nothing that states a minimum square footage to a dwelling unit. Mr. Rolnick, also submitted to the Commission was a copy of his clients' Homeowners and Automobile Policy, Hamden Motor Vehicle Tax Bill, Voters Registration, copy of motor vehicle licenses and registration. Mr. Rolnick said his clients would like the application for the site plan approved so that they can apply for a student housing permit.

Mr. McDonagh asked Mr. Rolnick if it was correct that were four students in the primary home, and the owners live in the accessory apartment and there are additional renters in the accessory apartment. Mr. Rolnick advised Mr. McDonagh that he was correct. Mr. McDonagh feels this makes the dwelling a multi-family house and is no longer a single family dwelling with an accessory apartment. Mr. Rolnick referred to the zoning regulations and that it does not state the maximum amount of people allowed in an accessory apartment.

Mr. Tim Lee, Assistant Town Attorney, said that the affidavit that has been submitted as part of the application states that Mr. Faticone and Mr. Lindsay live at this address and asked how many nights they stay at this address. Mr. Rolnick stated that he did not know how many nights they stayed at this address, but they do live and are registered to vote at this address. Mr. Rolnick was unsure how many nights a week they stay at this address, because they have other properties that they stay at and they live in Florida four months a year. Mr. Lee noted that both Mr. Faticone and Mr. Lindsey were in attendance at the meeting. Mr. Lee asked Attorney Rolnick if his clients could inform the Commission how many nights they reside at the property. Mr. Rolnick declined to ask his clients to answer the question.

Mr. Moses asked Mr. Rolnick if this address is the applicants' primary residence or a second home. Mr. Rolnick stated that it is the applicants' primary residence. Mr. McDonagh asked Mr. Rolnick why this would not be considered a two family house, and that he is suggesting that the definition of an accessory apartment could include four people if which two are unrelated and tenants of the owners. Mr. Rolnick referred to the zoning regulations and stated there are no limitations on the number of people allowed in the regulations. Mr. McDonagh stated that if the application is approved Mr. Rolnick is stating that there would be no limit to the amount of people allowed to live in an accessory apartment. Mr. Rolnick stated there are no limitations in the regulations and if the requirements are met it must be allowed. Mr. Moses asked Mr. Rolnick how many bedrooms were in the entire structure. He was unsure and referred to his clients who advised him there were a total of seven. The Commission reviewed the square footage of livable space with the applicant and Mr. Rolnick and it was stated that there is 6,000 square feet of livable space. Mr. Moses asked how many people were living on the premises. Mr. Rolnick stated that there are four students in the main dwelling and four people living in the accessory apartment. Mr. Rolnick said that there are families with eight people that could live in a dwelling of this size. Mr. McDonagh advised Mr. Rolnick that the people living on these premises do not make a family and he objects to Mr. Rolnick's misuse of the English language. Mr. McDonagh said that the applicants own the building, and have subverted the process in order to create an accessory apartment, putting students on the first floor and renting part of their own space to other tenants, which would make this a multi-family home.

Mr. Alan Faticone, owner, addressed the Commission and stated that his attorney did not know that the girls living in the accessory apartment do not pay to live in his house, and does not feel it is anyone's business what his relationship is with the girls, and if they share expenses it is their business what they do amongst themselves. Mr. McDonagh said that they are unrelated adults in the accessory apartment and not part of the family. Mr. Faticone said that Mr. McDonagh's definition is not the same as his as to what constitutes a family. Mr. McDonagh said that the applicants are the only owners. Mr. Rolnick said that there is no regulation that states that the people living in dwelling unit be a family member. The zoning regulations do not specify a number of people, and the only requirement is that the owners of the property live at the address. He said there are many cases where parents own a house and they live in the accessory apartment and the child and his/her family live in the main dwelling. Mr. McDonagh said that this is not the case because there are four unrelated people who share the residents, and the cost, which makes them tenants, plus there are four students living in the main dwelling.

Mr. Lee asked Mr. Rolnick what the living arrangements are, how many days, weeks or months do the owners live at the address? Mr. Rolnick was unsure and referred the question to Mr. Faticone. Mr. Faticone stated that he grew

up and has lived in Hamden his entire life. He owns approximately 40-50 homes, of which 15 are in Hamden. He has stayed in many different places and has done so since he was 17 years old. He travels and sleeps where he chooses to lay his body at night. Mr. Lee asked how many nights in a month does Mr. Faticone sleep at this address in Hamden. Mr. Faticone stated that he did not know and was unable to answer. Mr. Lee asked that the record reflect that Mr. Faticone was unable to answer his question. Mr. Faticone says it may be 50 percent of the time, and depends on his work schedule. Mr. Faticone stated he is currently doing a project with Hospice and a project in Vermont. Mr. Lee asked Mr. Faticone if there is any relationship between his accessory apartment and the main house, or are they separate living entities. Mr. Lee clarified his question to ask if they co-exist and share meals. Mr. Faticone said that the four students are in the main house. Mr. Rolnick said they are separate dwelling units with separate baths. Mr. Faticone said that the main house has 5 baths and the accessory apartment has a bath and a half. Mr. Lee asked if they share living arrangements with the main dwelling or they are separate entities. Mr. Faticone stated that he purchased the house with separate entities. Mr. Rolnick said that it is not a situation where it is a big house with seven bedrooms and they share a kitchen. It is two separate dwelling units and complies with the zoning regulations. There is nothing in the regulations stating they must be related, no maximum number of people, and no minimum number of square footage per person residing in a dwelling unit. The owner is required to live at the residence and his client has provided sufficient evidence that shows his client lives on the premises.

Mr. Moses asked Mr. Lee if the applicant meets the technical perspective of the regulation. Mr. Lee said that the applicants meet Section 701 from a technical perspective. Mr. Lee does not feel the applicant meets the spirit of the regulation and he is not sure they meet the definition of an accessory apartment as defined by the zoning regulations. The accessory apartment is an in-law apartment that is meant to house 1 or 2 people that are family members. It not designed to act as a two family house which is how the applicant is using the apartment. Mr. Lee said the evidence shows it being used as a two family house and not being used as an accessory apartment. Mr. Lee reviewed the definition of accessory apartment in the Hamden Zoning Regulations with the Commission and explained that the accessory apartment is not an integral part of the one family dwelling unit and is separately maintained. Mr. Lee does not feel it meets the definition of an accessory apartment even though it may meet the technical requirements of Section 701. Mr. Rolnick said that the definition of an accessory apartment hinges on the fact that if the two women did not live in the apartment and just the two owners did it would be considered an accessory apartment. Mr. Lee advised Mr. Rolnick that the property meets the requirements of Section of 701, because the variances were approved, but feels it is being used as a two family dwelling, which is not allowed in the zoning district. Mr. Rolnick stated that there is no limit with regard to the number of people allowed in an accessory apartment and it should not be considered a factor.

Mr. McDonagh made the motion to deny Application 09-1453 because it does not meet the definition of an accessory apartment and is being used as a 2-3 family home, and is not being used in compliance with the regulations' intent.

Mr. Tignor stated he is troubled by Section 701.g and asked Mr. Rolnick to address it. Mr. Rolnick read 701.g. and stated the accessory apartment has separate cooking, sanitary use and sleeping areas. He said if the term occupant means it only allows one occupant, then there are a large number of accessory apartments that would be illegal. Mr. Tignor stated that the regulation says "occupant" and if it were meant to be plural it would say "occupants". Mr. Rolnick feels the regulation is clear. Mr. Rolnick said it was clear to the ZBA Commission when they granted the variance that there were two people living in the accessory apartment. Mr. Lee asked if the ZBA granted the variance based on the representation that there would be two people living there. Mr. Rolnick stated it was the Commissions interpretation that 701.g states "occupant". Mr. Tignor stated if it was an inadvertent omission, it goes to the heart of multi-family vs. accessory apartment. Mr. Grant asked if when the accessory apartment was approved in 2007 if there were students living in the apartment. Mr. Rolnick advised that there were no students living in the apartment. Mr. Lee stated that when the accessory apartment was approved it was represented that the applicants were living in the main house and the two women were living in the accessory apartment, which was the basis for ZBA granting the variance.

Mr. Moses seconded the motion. The motion to deny the application passed unanimously.

3) Site Plan 09-1454/WS

835 Mix Avenue, R-5 Zone
 aka 865 Mix Avenue
 Telecommunication Antennas
 Clearless Wireless, LLC, Applicant

Mr. Dan Kops, Assistant Town Planner read his comments and recommended approval based on the following plans:

CT-NHN0058A, 865 Mix Avenue, Hamden, CT 06514, sheets C1, T-1, C-1, C-2, C-3, A-1, A-2, dated 12/12/08

With the following conditions:

1. Prior to the Issuance of a Zoning Permit the applicant must
 - a. Submit revised plans containing:
 - i. Sheet C.1 signed and sealed by a licensed surveyor and noting the zoning designations of all abutting properties.
 - ii. A note stating that the antennae will be colored or painted to match the material of the building.
 - iii. All conditions of approval.
 - b. Submit a demolition bond to cover the demolition and removal of the wireless communication facility in the event it is no longer in operation, in an amount approved by the Town Engineer and Town Planner.
2. Prior to commencing the work the applicant must obtain a Zoning Permit.
3. All work must be completed by December 22, 2014.

Mr. Thomas Flynn, Project Manager, Maxton Technology addressed the Commission and stated that the recommended conditions of approval are acceptable.

Mr. Tignor made the motion to approve the application for Site Plan 09-1454 as recommended by Mr. Kops, Assistant Town Planner and the following conditions:

1. Prior to the Issuance of a Zoning Permit the applicant must
 - a. Submit revised plans containing:
 - i. Sheet C.1 signed and sealed by a licensed surveyor and noting the zoning designations of all abutting properties.
 - ii. A note stating that the antennae will be colored or painted to match the material of the building.
 - iii. All conditions of approval.
 - b. Submit a demolition bond to cover the demolition and removal of the wireless communication facility in the event it is no longer in operation, in an amount approved by the Town Engineer and Town Planner.
2. Prior to commencing the work the applicant must obtain a Zoning Permit.
3. All work must be completed by December 22, 2014.

Mr. McDonagh seconded the motion. The motion passed unanimously.

4) Site Plan 09-1455/WS

2405 Whitney Avenue, B-2 Zone
 Telecommunication Antennas
 Clearless Wireless, LLC, Applicant

Mr. Dan Kops, Assistant Town Planner read his comments and recommended approval based on the following plans:

CT-NHN0057C, 2405 Whitney Avenue, Hamden, CT 06514, sheets C1, T-1, C-1, C-2, C-3, A-1, A-2, dated 12/12/08.

With the following conditions:

1. Prior to the Issuance of a Zoning Permit the applicant must
 - a. Submit a sworn statement identifying the equitable owners.
 - b. Submit revised plans containing:
 - i. Sheet C.1 signed and sealed by a licensed surveyor and noting the zoning designations of all abutting properties.
 - ii. A note stating that the antennae will be colored or painted to match the material of the building.
 - iii. All conditions of approval.
 - c. Submit a demolition bond to cover the demolition and removal of the wireless communication facility in the event it is no longer in operation, in an amount approved by the Town Engineer and Town Planner.
2. Prior to commencing the work the applicant must obtain a Zoning Permit.
3. All work must be completed by December 22, 2014.

Mr. Thomas Flynn, Project Manager, Maxton Technology addressed the Commission and stated that the recommended conditions of approval are acceptable.

Mr. Tignor made the motion to approve the application for Site Plan 09-1455 as recommended by Mr. Kops, Assistant Town Planner and the following conditions:

1. Prior to the Issuance of a Zoning Permit the applicant must
 - a. Submit a sworn statement identifying the equitable owners.
 - b. Submit revised plans containing:
 - i. Sheet C.1 signed and sealed by a licensed surveyor and noting the zoning designations of all abutting properties.
 - ii. A note stating that the antennae will be colored or painted to match the material of the building.
 - iii. All conditions of approval.
 - c. Submit a demolition bond to cover the demolition and removal of the wireless communication facility in the event it is no longer in operation, in an amount approved by the Town Engineer and Town Planner.
2. Prior to commencing the work the applicant must obtain a Zoning Permit.
3. All work must be completed by December 22, 2014.

Mr. McDonagh seconded the motion. Mr. Tignor abstained. Mr. McDonagh, Mr. Tignor, Mr. Grant voted in favor of the motion. The motion passed 3-0-1.

5) Minor Amendment to Site Plan 00-1269

60 West Woods Road, R-3 zone
 Telecommunication Antennas
 Sprint-Nextel Corp., Applicant

Mr. Dan Kops, Assistant Town Planner read his comments and recommended approval with the following conditions:

1. Prior to the Issuance of a Zoning Permit the applicant must
 - a. If a bond was not provided with the initial site plan, submit a demolition bond to cover the demolition and removal of the wireless communication facility in the event it is no longer in operation, in an amount approved by the Town Engineer and Town Planner.
2. Prior to commencing the work the applicant must obtain a Zoning Permit.
3. All work must be completed by December 22, 2014.

Ms. Jennifer Herz, Attorney, addressed the Commission and stated that the recommended conditions of approval are acceptable.

Mr. McDonagh made the motion to approve the application for the minor amendment to Site Plan 00-1269 as recommended by Mr. Kops, Assistant Town Planner and the following conditions:

1. Prior to the Issuance of a Zoning Permit the applicant must
 - a. If a bond was not provided with the initial site plan, submit a demolition bond to cover the demolition and removal of the wireless communication facility in the event it is no longer in operation, in an amount approved by the Town Engineer and Town Planner.
2. Prior to commencing the work the applicant must obtain a Zoning Permit.
3. All work must be completed by December 22, 2014.

Mr. Tignor seconded the motion. The motion passed unanimously.

6) Minor Amendment to Site Plan 05-1381

1349 Dixwell Avenue, CDD1 zone
Telecommunication Antennas
Sprint-Nextel Corp., Applicant

Mr. Dan Kops, Assistant Town Planner read his comments and recommended approval with the following conditions:

1. Prior to the Issuance of a Zoning Permit the applicant must
 - a. If a bond was not provided with the initial site plan, submit a demolition bond to cover the demolition and removal of the wireless communication facility in the event it is no longer in operation, in an amount approved by the Town Engineer and Town Planner.
2. Prior to commencing the work the applicant must obtain a Zoning Permit.
3. All work must be completed by December 22, 2014.

Ms. Jennifer Herz, Attorney, addressed the Commission and stated that the recommended conditions of approval are acceptable.

Mr. Moses made the motion to approve the application for the minor amendment to Site Plan 05-1381 as recommended by Mr. Kops, Assistant Town Planner and the following conditions:

1. Prior to the Issuance of a Zoning Permit the applicant must
 - a. If a bond was not provided with the initial site plan, submit a demolition bond to cover the demolition and removal of the wireless communication facility in the event it is no longer in operation, in an amount approved by the Town Engineer and Town Planner.
2. Prior to commencing the work the applicant must obtain a Zoning Permit.
3. All work must be completed by December 22, 2014.

Mr. McDonagh seconded the motion. The motion passed unanimously.

7) Site Plan 06-1402

2335 State Street

Request for an extension of the deadline to complete

Billier, Sachs, Raio, & Zito, Applicant

Mr. Dan Kops, Assistant Town Planner read his comments and recommended granting a two year extension from May 23, 2008 to May 23, 2010.

Mr. McDonagh made the motion to grant a two year extension to obtain a Zoning Permit for Site Plan 06-1402 from May 23, 2008 to May 23, 2010 as recommended by Mr. Kops, Assistant Town Planner. Mr. Tignor seconded the motion. The motion passed unanimously.

B. Old Business/New Business

1. Review Minutes of November 24, 2009

Mr. McDonagh made the motion to accept the minutes as written. Mr. Grant seconded the motion. Mr. McDonagh and Mr. Grant voted in favor of the motion. The motion passed.

Mr. Kops reviewed the minor amendment to Site Plan 93-1059, and advised the Commission that Ms. Leslie Creane, Town Planner had signed off on it.

C. Adjournment

Mr. McDonagh made the motion to adjourn. Mr. Moses seconded the motion. The motion passed unanimously.

The meeting adjourned at 7:45 p.m.

Submitted by: _____
Stacy Shellard, Clerk of Commissions