

ORANGE ZONING COMMISSION
MINUTES OF THE MARCH 2, 2021 MEETING

Unapproved Minutes

The Town Plan and Zoning Commission held a meeting on Tuesday, March 2, 2021, at 7:00 p.m., a Zoom Internet meeting. The following members were in attendance:

Oscar Parente, Esq., Chairman
Judy Smith, Vice-Chairman
Paul Kaplan, Esq., Secretary
Kevin Cornell, Esq., PE
Thomas Torrenti, PE

Jack Demirjian, Zoning Enforcement Officer
Tamara Trantales, Administrative Assistant
Barbara Schellenberg, Town Counsel
Bonnie Syat, Recording Secretary

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Chairman Parente welcomed everyone to the meeting. He introduced the staff who was in attendance.

Review of the Minutes from the January 5, 2021 meeting.

A motion was made by Paul Kaplan and seconded by Judy Smith to accept and approve the Minutes from the January 5, 2021 meeting, as amended. The motion carried with the vote recorded as follows: Kaplan, aye; Smith, aye; Cornell, aye; Torrenti, aye; Parente, aye. The vote was recorded as 5-0 to accept and approve the motion.

Old Business – There was no Old Business to discuss.

New Business – There was no New Business to discuss.

Report of the Zoning Enforcement Officer

Zoning Enforcement Officer Jack Demirjian stated that the Assisted Living facility on 197 Indian River Road has resumed work on the property.

Chairman Parente inquired about the Cease and Desist order on Peck Lane. ZEO Demirjian stated that they are working on it with lawyers. There is nothing requiring the Commission's comment.

There were no further comments on this matter.

PUBLIC HEARINGS:

Chairman Parente stated that his plan for this evening is to open all four public hearings tonight. He stated that the reason for the delay is because the Zoning Department has not received comments from the Regional Planning authorities yet. The public hearings are scheduled to take place at the March 16, 2021 meeting. The Commission will only proceed on the Site Plan for Turkey Hill Crossings this evening.

Commissioner Kaplan read the two legal notices into the record.

PETITION TO AMEND THE ORANGE ZONING REGULATIONS- *Application for property located on Turkey Hill Road and Cranberry Lane, Property Owner: Midland, LLC; 179 NB, LLC; & Genvest, LLC. Assessor's Map 60-5-1; 60-5-1A; 60-5-2; 60-5-13.* To amend Article XIV Section 383-27 Special Uses in the Residential District to include standards for an Active Adult community (AAC)

PETITION TO AMEND THE ORANGE ZONING REGULATIONS –
Submitted Upon the Initiative of the Orange Town Plan & Zoning Commission.
To amend the Orange Zoning Regulations by DELETING Article XXIV Transit Oriented Development District.

PETITION TO AMEND THE ORANGE ZONING MAP –
-Submitted Upon the Initiative of the Orange Town Plan & Zoning Commission. To amend the Orange Zoning Map. To change property known as 28 Salem Lane (a.k.a. Assessor's Map 3-1-1 (Owned by Yale University). To change this parcel from Transit Oriented Development District TODD to Light Industrial LI-2 OR Light Industrial LI-4.

SITE PLAN APPLICATION - Application for property located on Turkey Hill Road and Cranberry Lane, Property Owner: Midland, LLC; 179 NB, LLC; & Genvest, LLC. Assessor's Map 60-5-1; 60-5-1A; 60-5-2; 60-5-13. The proposed residential development is for the construction of 10 multi-family residential buildings and a single community building on a compilation of parcels developed under a partnership agreement. The compiled properties encompass a total of 22.5 +/- Acres adjoining the Wilbur Cross Parkway, fronting on Turkey Hill Road and the unimproved Cranberry Lane. The proposed development intends to qualify as a "set-aside development" defined in C.G.S Section 8-30g.

Chairman Parente stated that the applicant does not plan to attend tonight's hearing. He is not participating because he believes he has an approval since the commission did not act on his application in a timely fashion. Chairman Parente stated that Town Counsel recommended that he read the applicants' letter, dated February 24, 2021, into the record. (Attached.)

Chairman Parente noted that the date of receipt for the Site Plan was October 6, 2020. He stated that the gist of the situation is that the applicant alleges that the commission did not hear their application in a timely fashion. The commission usually has 65 days to hear an application. Sometimes the applicant grants an extension when asked. However, the application was not complete. Chairman Parente read Zoning Enforcement Officer Jack Demirjian's memo into the record. (Attached.)

Chairman Parente stated that the Governor's Executive Order gives commissions an automatic 90-day extension. Sixty-five days plus the 90-day extension amounts to 155 days from October 6, 2020. Chairman Parente stated that the commission has met that deadline by including it on tonight's agenda.

Town Attorney Barbara Schellenberg clarified the status of the application. She stated that the applicant appears to be taking the position that for the 65-day extension period to occur, under statute, the commission must ask for the extension. She explained that the Executive Order is clear. There is an automatic 90-day extension. Attorney Schellenberg stated that Chairman Parente is correct that under the Executive Order, this application is timely. She noted that we are now on day 148; 65 days plus the additional 90-days equals 155 days. She stated that she does not believe the applicant's attorney is interpreting it correctly. They believe they have an automatic approval.

ZEO Demirjian stated that he was clear cut in the memo. The plan was reduced to fit on a smaller size format. The scale was skewed during the reduction making it difficult to accurately view distances. ZEO Demirjian has written confirmation that the applicant did not appear before the Fire Marshal or the Police Chief, as required. A lighting plan was not submitted, nor was a traffic impact plan.

Commissioner Cornell inquired if after the initial filing of the documents and the determination of omissions in the application, was there communication? ZEO Demirjian stated that he sent an email to the applicant's attorney as a general reminder that it is their responsibility to obtain signoffs from the Fire Marshal and the Police Chief. They also must appear before the Traffic Commission. ZEO Demirjian did not receive a response. He stated that he sent it out in November or December; he did not have it in front of him.

Chairman Parente stated that lawyers work with applicants all the time. They work with municipal department heads to bring it up to compliance so that all comments have been considered. Discussion ensued. Chairman Parente stated that the commission is going to act on it. It needs to be acted on in a timely fashion. Chairman Parente stated that ZEO Demirjian was in the process of allowing the applicant to obtain the necessary signoffs and comments.

Attorney Schellenberg stated that the application is incomplete. An incomplete application is reason for denial. Attorney Schellenberg further stated that the commission wants to be certain this is taken care of in a timely fashion. She stated that this is a highly unusual situation. Health, Safety and Welfare is very important and must be considered.

Chairman Parente stated that the commission will proceed as in a regular public hearing. The applicant chooses not to appear to answer the commission's questions, which will factor into the commission's decision. The applicant is not here to explain site drainage, parking requirements, traffic impact, etc.

Chairman Parente stated that the letters submitted from the public are directed towards the project, perhaps not directly towards the site plan or text. Attorney Schellenberg advised Chairman Parente to err on the side of caution and to read them into the record. She stated that it is appropriate to hear the letters. After a brief discussion, Chairman Parente read the letters from the public into the record.

Chairman Parente asked the public who has joined this zoom meeting if they wish to comment.

Robert Sanderson, a resident, stated that he opposes this project. He wants a development that does not require a text amendment. Mr. Sanderson stated that he loves this town. He moved here, during the pandemic, from California. He expressed his concern that the chances of a traffic accident seem to be drastically increased if this project is allowed to move forward.

Anthony Vitti, a resident, inquired that since this application is incomplete, why not deny it and have them resubmit? Attorney Schellenberg stated that the applicant has been clear that they will not resubmit. They believe it has been approved. A brief discussion ensued.

Chairman Parente stated that the public hearing is being held within the time limit. Commissioner Smith inquired that if the commission had heard this proposal in December or January, would it have the same status as today? Attorney Schellenberg stated that this is an unusual situation. The incompleteness of the application is a factor. She further stated that it is significant that the applicant did not appear. Chairman Parente asked, rhetorically, "What is one thing we would have asked for on this application?" He stated that it would be a traffic study, without question. Chairman Parente stated that there is nobody here who is associated with this project to ask. Commissioner Smith stated that the commission cannot evaluate the Health, Safety and Welfare without a traffic study. Chairman Parente stated that this application is incomplete because there is no traffic study.

Chairman Parente asked if anyone else from the public would like to speak. Nobody "raised their hand" in the Zoom meeting or otherwise indicated that they would like to speak. ZEO Demirjian stated that he feels comfortable moving forward at this time.

Commissioner Kaplan stated that the commission does not have enough information to make a full decision. Chairman Parente agreed, stating that the commission needs information from the municipal department heads and from the applicant.

Commissioner Cornell referred to comments from the Chief Sanitarian, Brian Slugoski, and the Town Engineer, Bob Brinton, in their memos. (Attached.) Commissioner Cornell stated that Mr. Slugoski's comments were part of the Wetlands application. Commissioner Cornell noted that Mr. Slugoski has very significant health and safety concerns. ZEO Demirjian read Mr. Slugoski's letter, dated 8/20/19, into the record. Commissioner Cornell stated that the proposal has an incomplete septic system design, which was never approved by the sanitarian. The public health concern has not demonstrated that it would not affect the Wetlands. Chairman Parente stated that they never received a signoff from the sanitarian.

Commissioner Cornell stated that this is a legitimate public health concern. Chairman Parente stated that they would incorporate that finding of the Wetlands decision as part of the record in these proceedings. Discussion ensued.

Commissioner Smith stated that normally if we need more information from the applicant, we keep the public hearing open. She asked if the commission should err on the side of caution to allow them to complete their application. Commissioner Kaplan stated that they had the opportunity to appear tonight, and in writing. They said no.

Attorney Schellenberg stated that we were bumping up against the deadline to open the public hearing. We now have 35 days to close the public hearing. Attorney Schellenberg explained that the 90-day extension is under the Governor's Executive Orders. The commission has 65 days to open the public hearing, plus the 90 days granted through the Executive Orders. The applicant has made it clear that they will not respond.

Chairman Parente expressed his belief that he does not see a reason to keep the public hearing open. The applicant has clearly indicated that they do not intend on participating. They believe they have an approval.

A motion was made by Kevin Cornell and seconded by Paul Kaplan to close the public hearing. The motion carried with the vote recorded as follows: Cornell, aye; Kaplan, aye; Torrenti, aye; Smith, aye; Parente, aye. The vote was recorded as 5-0 to accept and approve the motion.

Commissioner Torrenti stated that he does not see that there is anything we can do but to deny this application. Chairman Parente stated that the letters raise serious potential Health, Safety and Welfare issues. The issues would need to be resolved, yet we do not have the applicant's cooperation. Commissioner Kaplan expressed concerns for the Wetlands.

Chairman Parente stated that this proposal was denied by Wetlands. Attorney Schellenberg stated that the applicant has appealed the Wetlands denial. She stated that they have the right to file the site plan. The commission should take the Wetlands finding into consideration. Attorney Schellenberg added that the applicant is ok from a procedural perspective. However, she does not agree with their position. Discussion ensued.

Commissioner Cornell stated that there has been no input from the police. There has also been no input from the Fire Marshal about whether their department can service this project. The commission does not have any input from the police or fire department regarding adjoining neighbors' traffic problems, bus stops, the elementary school, and the fact that the applicant is proposing one way into the project and one way out. The commission has no idea what traffic will be generated because the applicant has refused to meet with the police and the Fire Marshal.

Discussion ensued concerning possible "piggybacking" of the septic system, which was raised when the commission was considering the applicant's text change amendment years ago. Discussion continued regarding leaching fields, light pollution, and the fact that there are no sidewalks. Commissioner Smith stated that besides these specific issues, there are several deficiencies in the application. She stated that the commission cannot evaluate the Health, Safety and Welfare of this application. Chairman Parente then articulated concerns we have about this application. There are Health, Safety and Welfare issues.

Attorney Schellenberg stated that because this is an affordable housing application, the commission needs to cite specific reasons for denying the application. The commission should not just cite lack of information. The commission also needs to make a specific finding as to whether health and safety concerns outweigh the need for affordable housing.

Commissioner Cornell stated that the reasons to deny this application is based on the inability of the commission to exercise their appropriate review powers over health and safety issues, as required for an application under the 8-30g Affordable Housing application. He stated that this application is incomplete. It does not provide information whether the sanitary septic system will function as designed or if it will fail and be a cause of pollution to the Wetlands. Discussion ensued.

Commissioner Cornell further stated that lack of a traffic study, data of any kind, legitimate safety concerns, and the single ingress/egress across from an elementary school are reasons to deny this proposal, as well as the applicant's failure to meet with the police and Fire Marshal to ease concerns. Additionally, a large portion of the school-age children walk to school without sidewalks. Commissioner Cornell noted that there are many concerns of the neighbors regarding heavy traffic. The lack of a site lighting plan does not allow the commission to determine if there are any safety issues. Chairman Parente expressed his belief that these Health, Safety and Welfare concerns are significant. Commissioner Kaplan added that the need for elderly housing is great, however the Health, Safety and Welfare of the community must be prioritized. Chairman Parente noted that these Health, Safety and Welfare concerns are significant.

Commissioner Kaplan stated that these reasons to deny include the reasons listed but are not limited to them. Chairman Parente asked if the commissioners needed further discussion. Attorney Schellenberg advised Chairman Parente to canvass the commission members individually. Chairman Parente stated that he is voting to deny this application. Commissioner Smith voted to deny this application. Commissioner Kaplan voted to deny this application. Commissioner Torrenti voted to deny this application. Commissioner Cornell voted to deny this application. The vote was recorded as 5-0 to deny and reject this application.

There was no further discussion on this matter.

Chairman Parente stated that the public hearings on items #6, #7 and #8 on the agenda will remain open. They will be continued at the next TPZC meeting.

There were no additional items on the agenda. A motion was made by Paul Kaplan and seconded by Tom Torrenti to adjourn the meeting. The motion carried with the vote recorded as follows: Kaplan, aye; Torrenti, aye; Cornell, aye; Smith, aye; Parente, aye. The vote was recorded as 5-0 to accept and approve the motion.

The meeting was adjourned at 9:08 p.m.

Respectively submitted,

Tamara Trantales,
Administrative Assistant