

Zoning Commission Minutes 10/02/2017



TOWN OF OLD SAYBROOK Zoning Commission

302 Main Street • Old Saybrook, Connecticut 06475-1741
Telephone (860) 395-3131 • FAX (860) 395-1216
www.oldsaybrookct.org

Robert C. Friedmann, Chairman
Mark Caldarella, Vice Chairman
Geraldine M. Lewis, Secretary

Madeline B. Fish
J. Colin Heffernan

Alternate Members
Michael Cianfaglione
Joanne Gadon
David Papandrea

REGULAR MEETING MINUTES

Monday, October 02, 2017 – 7:00 P.M.
Town Hall, 302 Main Street
1st Floor Conference Room

I. CALL TO ORDER

Chairman Robert Friedmann called the meeting to order at 7:00 p.m.

II. ROLL CALL

Attendant Members

Robert Friedmann
Mark Caldarella
Geraldine Lewis
Madeline Fish
Joanne Gadon seated for J Colin Heffernan
Michael Cianfaglione arrived at 7:23 p.m.

Absent Members

J. Colin Heffernan
David Papandrea

Attendant Staff

Chris Costa, Zoning Enforcement Officer
Marc Branse, Consulting Attorney
Stella Beaudoin, Clerk

Audience: There were three audience members.

Seated for the meeting were R Friedmann, G Lewis, M Fish, M Caldarella, J Gadon for J Colin Heffernan.

III. REGULAR BUSINESS

A. MINUTES

MOTION to approve the Regular meeting Minutes of September 28, 2017 as presented; **MADE:** G Lewis; **SECONDED:** M Fish; **VOTING IN FAVOR:** R Friedmann, M. Fish, M Caldarella, G Lewis, J Gadon; **ABSTAINING:** None. **OPPOSED:** None. **APPROVED:** 5-0-0.

B. CORRESPONDENCE

MOTION to approve Invoice #11243727 dated September 14, 2017 in the amount of \$1054.50 from Halloran and Sage, LLP; **MADE:** R Friedmann; **SECONDED:** G Lewis; **VOTING IN FAVOR:** R

Friedmann, M. Fish, M. Caldarella, G. Lewis, J. Gadon; **ABSTAINING:** None. **OPPOSED:** None. **APPROVED:** 5-0-0.

MOTION to adopt as proposed the 2018 meeting calendar dated November 1, 2017 for submission to Sarah Becker, Town Clerk, as presented; **MADE:** R. Friedmann; **SECONDED:** G. Lewis; **VOTING IN FAVOR:** R. Friedmann, M. Fish, M. Caldarella, G. Lewis, J. Gadon; **ABSTAINING:** None. **OPPOSED:** None. **APPROVED:** 5-0-0.

IV. PUBLIC HEARINGS

- A. **Petition to Amend the Old Saybrook Zoning Regulations** to amend Section 32.2 and Section 53, Special Standards to permit drive through windows for indoor restaurants and food and beverage establishments in Shopping Center business B-2 District.

Attorney David Royston presented on behalf of the applicant, 923 Boston Post Road, LLC limited liability company, Anthony Izzo, owner and principal of a national, regional and local development company.

D. Royston stated that A. Izzo is the applicant for a text change and his interest in making a text change in the Central Business B2 District is the fact that the property situated at 92 Boston Post Road is located within that district. The applicant wishes to redevelop the subject property and the plan is to demolish the existing bowling alley building and redevelop with at least two new buildings. One new building will be constructed in the area of the old bowling alley building.

D. Royston stated that the new building will be a general retail building capable of having multiple tenants, permitted by special exception under the existing zoning regulations. The applicant proposes to maintain the site of the building based on infrastructure, however on a reduced size. D. Royston stated that A. Izzo is in-process of advertising for tenants to occupy the renovated site and he would like to be able to have a restaurant/food service establishment, a free-standing, drive through window, but to be a use that is connected to a synergy with the other retail, which is to be redeveloped onsite.

D. Royston stated that drive-through windows are permitted in the B3 District, however are not permissible within the B2 District. Attorney Royston noted that drive-through windows are allowed for financial institutions and pharmacies within the B2 District.

D. Royston stated that in 2014 an application came before the Zoning Commission by Cantina, Inc. and that application was made upon a potential purchaser of the Pizza Hut property, and the building was situated on the Boston Post Road. That property is located in the B1 District, immediately adjacent to the B2 District. This was a dual application to change the zone to extend the B2 district to include that B1 parcel and to amend the regulation to allow drive-through windows for fast food restaurants, and to modify the parking requirements to reduce the number of required parking spaces. D. Royston noted that at the time of the 2014 submission, the Planning Commission found that application consistent with the Plan of Conservation and Development.

D. Royston stated that the original text filed went to the Planning Commission for review with recommendations. The text was also referred to Attorney Marc Branse. A revised text was forwarded to M. Branse taking into account the recommendations made by the Planning Commission.

D. Royston stated that this petition establishes an indoor restaurant or other food or beverage service as per section 32.2.4 of the zoning regulations. The definition section of the regulations has three separate definitions of restaurant; fast food, full service and take out, as defined in Section 9 of the regulations. Upon the behest of the Planning Commission it was to be clear that the text include all three types of restaurant. A. Royston stated that the primary use is that people take food out of the restaurant.

M Branse stated that the new text was emailed to him on September 19, 2017 and extended apologies for the time lapse in review and comment.

Anthony Izzo who presented stated that it is important to have a strong operation and in doing so, it provides the other tenants with longevity and success to see the energy between free-standing building and the remainder of the site. A Izzo stated that there is a big connection between the operation of a small building and that of a larger building and he noted that trends in business have grown bigger with online sales.

D Royston distributed a preliminary site plan as a demonstration as to how the proposed regulation would work. D Royston stated that under the regulation there is a requirement to have an 80,000 s.f. lot and that there must be at least a 10,000 s.f. of retail on the same lot, and the drive through would be situated at the rear of the building.

R Friedmann noted for the record that the reports have been received for referral from the Planning Commission and the Gateway Commission.

M Branse stated that the technical items previously noted have been incorporated in D Royston's final proposal.

R Friedmann commented on Section 53K of the regulations as related to drive-through windows located on the south side of the Boston Post Road in the pedestrian node. M Branse stated that this is consistent with the Uniformity Statute related to uniformity throughout the district.

D Royston pointed out that the pedestrian node is not in the entire B-2 District.

The ZEO reported that she sent out referrals on August 22, 2017 and she has not heard back from the adjacent municipalities. The ZEO reported that a referral was sent to the Architectural Review Board however there was a miscommunication and the ARB has not yet reviewed this proposal.

R Friedmann asked if anyone wished to speak in favor or in opposition to this proposal.

There was no public response.

MOTION to close the public hearing for a **Petition to Amend the Old Saybrook Zoning Regulations** to amend Section 32.2 and Section 53, Special Standards to permit drive through windows for indoor restaurants and food and beverage establishments in Shopping Center business B-2 District; **MADE:** G Lewis; **SECONDED:** M. Fish; **VOTING IN FAVOR:** R Friedmann, M. Fish, M Caldarella, G Lewis, J Gadon; **ABSTAINING:** None. **OPPOSED:** None. **APPROVED:** 5-0-0.

R Friedmann stated that Attorney Royston has made a persuasive presentation related to the B2 Shopping Center District and to what is in existence in Old Saybrook including the lot adjacent to the sketch presented this evening. R Friedmann stated that the shopping center B2 District is not what the comprehensive plan would include as appropriate for drive-through windows for food service.

M Fish stated that the shopping center concept has aged-out. Retail is evolving and she suggested that the Commission must evolve too.

J Gadon stated that this amendment helps to supplement business, and noted that she did not anticipate that there would not be significant traffic.

R Friedmann noted that this is a pedestrian note and it is the objective to improve pedestrian safety on the road.

M Branse stated that this involves a restaurant with a drive-through window for which pedestrians can walk to the restaurant as well as facilitating a vehicle that would potentially utilize the drive-through and then may also opt to visit one of the stores in the plaza. M Branse noted that the concept of retail is no longer the reality that we have known it to be. M Branse stated that this proposal will provide a positive mix that would work in Old Saybrook.

F Friedman asked if anyone wished to speak in favor or in opposition to this proposal.

There was no public comment.

MOTION to close the public hearing for a **Petition to Amend the Old Saybrook Zoning Regulations** to amend Section 32.2 and Section 53, Special Standards to permit drive through windows for indoor restaurants and food and beverage establishments in Shopping Center business B-2 District; **MADE:** G Lewis; **SECONDED:** M. Fish; **VOTING IN FAVOR:** R Friedmann, M. Fish, M Caldarella, G Lewis, J Gadon; **ABSTAINING:** None. **OPPOSED:** None. **APPROVED:** 5-0-0.

MOTION to approve the proposed text change to **Petition to Amend the Old Saybrook Zoning Regulations** to amend Section 32.2 and Section 53, Special Standards to permit drive through windows for indoor restaurants and food and beverage establishments in Shopping Center business B-2 District with the modification to delete the first portion of subsection K and to modify subsection E to require plantings in accordance with Section 63 Landscaping, with an effective date of November 1, 2017; **MADE:** R Friedmann; **SECONDED:** M. Fish; **VOTING IN FAVOR:** M. Fish, M Caldarella, J Gadon; **ABSTAINING:** None. **OPPOSED:** R Friedmann, G Lewis. **APPROVED:** 3-0-2.

Resolution to "Opt Out" of Public Act 17-155 An Act concerning Temporary Health Care Structures.

Applicant: Old Saybrook Zoning Commission

ACTION: Open public hearing; continue or close by 10/16/2017 act on resolution and forward to Board of Selectmen for further action.

The Commission stated that they have concerns related to temporary health care structures negatively impacting residential district over-crowding, smaller lots and over-burdening septic systems. The Commission has further concerns about enforcement of the temporary housing and the possibility of unintended housing, and the burden of administration and enforcement.

MOTION to adopt the **October 2, 2017 Resolution to "Opt Out" of Public Act 17-155 An Act concerning Temporary Health Care Structures** with the following additions: 1) The Zoning Commission has concerns related to temporary health care structures negatively impacting residential district over-crowding smaller lots and over-burdening septic systems; 2) The Commission has further concerns about the administration and enforcement of the temporary housing and the possibility of unintended housing; 3) The Commission is concerned that the CT General State Statutes as written, as to enforcement and guidelines are subject to liability and additional legal expenses; **The Modified Resolution to approve is attached to these Minutes; MADE:** R Friedmann; **SECONDED:** G Lewis; **VOTING IN FAVOR:** R Friedmann, M. Fish, M Caldarella, G Lewis, J Gadon; **ABSTAINING:** None. **OPPOSED:** None. **APPROVED:** 5-0-0.

WORKSHOP: Discuss the adequacy of existing Zoning Regulations relating to residential development and the protection of marine commercial industry and if amendments are necessary.

The proposed text amendment to the Old Saybrook Zoning Regulations is for the purposes of qualifying for eligibility for State DOH funding for Post & Main Apartments, 7 North Main Street. State funding will not be available until the entire Ferry Road Incentive Housing (IHZ) Mixed Use (MU) subzone is

built out with incentive housing. The Proposal is to reduce the Ferry Road IHZ to State recognized Phase 1a-45 Ferry Road Parcel.

R Friedmann stated that as per Section 8-30g, the application on behalf of Between the Bridges, and said application to replace marine commercial water dependent uses. F Friedmann noted that in order to prevent that from happening the Marine Commercial regulation might be altered so that it would take out the possibility of a single residence as permitted in Marine Commercial District and with non-permitted uses, 8-30g cannot be used in that district again.

M Branse stated that Section 830-G does not apply to Industrial zones in which residential uses are not permitted.

R Friedmann stated that the extent of the change would be to remove the regulation that allows for residential commercial and change marine commercial to marine industrial.

R Friedmann stated that it is in the best interest of the Zoning Commission to make the proposed changes as described in the draft regulations. The Commission agreed to conduct a workshop and subsequent to the workshop to schedule a public hearing for the purpose of discussion on the adequacy of existing Zoning Regulations relating to residential development and the protection of marine commercial industry and to further determine if the amendments are necessary.

VI. COMMITTEE, REPRESENTATIVE & STAFF REPORTS

Oceanside Auto – The ZEO reported that a Cease and Desist order was issued to the owner related to construction of a new building without permits. The automotive use is a pre-existing, non-conforming use and the property is located in the B-3 and AA-2 Zoning Districts which do not allow for automotive uses. The Commission discussed the history of violations. The Zoning Commission requested that the ZEO forward the Cease and Desist to M. Branse and he will send a letter to the owner.

Walmart - The ZEO reported that Walmart wishes to re-arrange their bollards which are situated in front of the propane tanks. The Commission determined the activity to be minor and authorized the ZEO to handle the changes administratively.

1381 Boston Post Road -Tea Kettle – The ZEO reported that the Tea Kettle has requested that the Zoning Commission allow a commercial kitchen in the 1680 s.f. retail space formerly occupied by a chiropractor. The kitchen is proposed in the same building but would not be adjacent to the restaurant or retail to-go business currently under construction. The Zoning Commission advised the ZEO that a standard alone kitchen is not a principal use and in order to have the kitchen, it must be attached or immediately adjacent to the retail or to the to-go business in the same building. If space is to be reallocated in that manner, the tenant space is to be reallocated so that the kitchen is adjacent to the restaurant or business to go.

116 Spencer Plains Road - Property and house owned by Leigh Bette Maynard. There was a one acre parcel of land on which there is a barn situated - the property and house owned by Leigh Bette Maynard has one acre of land. Ms. Maynard has acquired another acre of the property. When Ms. Maynard purchased the 1st one-acre parcel there were chickens and horses on the property which have been there for many years. She continued to keep the chickens on the property. The ZEO previously asked if the Commission would like to see this as a Special Exception Permit or could it be considered a pre-existing non-conformity if the property owner could provide sufficient evidence that the animals have been on the property for the past 20 years and it must be granted or allowable by a grandfather clause. L Maynard stated that in 1987 there were twelve chickens and a horse on the property and the Commission stated that the applicant would need to demonstrate that there were previously farm animals on the property. The ZEO reported that an affidavit was received from a neighbor and a photo which substantiated there were horses on the property was

submitted by L. Maynard. The ZEO was asked to research the adoption of the animal regulations and determine if the animals were located on the property prior to the Special Exception requirement.

VII. ADJOURNMENT

MOTION to adjourn the meeting at 9:45 pm. to the next regularly scheduled Zoning Commission meeting on Monday, October 16, 2017 at 7:00 p.m. at Town Hall, 302 Main Street, 1st Floor Conference Room, Old Saybrook. **MADE:** R. Friedmann; **SECONDED:** R. Friedmann; **VOTING IN FAVOR:** R. Friedmann, M. Caldarella, G. Lewis, M. Fish, J. Gadon; **ABSTAINING:** None; **OPPOSED:** None. **APPROVED:** 5-0-0.

Respectfully Submitted

Stella Beaudoin
Recording Clerk

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Zoning Commission

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RESOLUTION

WHEREAS, Public Act 17-155 allows municipalities to "opt out" of the requirements of that Act; and

WHEREAS, the Commission believes that it is appropriate for Connecticut municipalities to provide for caregivers for persons requiring such assistance due to age, disability, or illness, however;

WHEREAS, the Town of Old Saybrook is too rural, and lacks sufficient volunteers or staff, to comply with many of the procedural requirements of the Act; an example is the 15-day period for Commission action on any application under the Act when the Commission does not meet every 15 days; and

WHEREAS, the Act itself contains inconsistencies, such as the notice requirements (certified mail) which conflict with Connecticut General Statutes Section 8-7d(a), and the Act fails to specify the procedure by which approvals are to be granted, thereby creating ambiguities and potential appeals; and

WHEREAS, the Commission feels that if such uses are appropriate for Old Saybrook, a locally adopted regulation can resolve those procedural problems while still addressing the legitimate need which spawned the Act;

WHEREAS, the Commission believes that temporary health care structures may negatively impact our residential zoning districts by overcrowding smaller lots and overburdening septic systems; and

WHEREAS, the Commission is concerned that temporary health care structures will not be removed in one hundred and twenty days and will be used as rental units. Even with a bond in place, the municipality does not have the right to remove the structures from private property without taking

legal action including an injunction. It is unclear who in the municipality will be responsible for enforcement and the extent of legal costs that taxpayers may incur;


NOW, THEREFORE, BE IT RESOLVED, that the Old Saybrook Zoning Commission does hereby affirmatively opt out of the provisions of Public Act 17-155; and hereby recommends that the Old Saybrook Board of Selectmen adopt an opt-out resolution similar to this one adopted by the Commission.

ADOPTED, at a Regular Meeting of the Old Saybrook Zoning Commission on October 2, 2017, by a unanimous vote to approve.

OLD SAYBROOK ZONING COMMISSION



Robert C. Friedmann, Chairman



Geraldine Lewis, Secretary



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