

**PLANNING AND ZONING COMMISSION  
MINUTES OF A PUBLIC HEARING & REGULAR MEETING  
MAY 20, 2010  
PORTLAND PUBLIC LIBRARY  
20 FREESTONE AVENUE**

Members Present: Bette Jenak, Carl Fitzgibbons, Bruce Tyler, Mike Woronoff, Peder Samuelson (Alternate)

Members Absent: Alan Kenney

Staff: Deanna Rhodes

1. Call Meeting to Order

Bette Jenak, Chairman, called the meeting to order at 7:03 p.m.

2. Introduction of Members and Seating of Alternates

Members introduced themselves.

3. Accept Agenda

- There was a request from Don Bascom to be added to the agenda to ask questions regarding procedures relative to the Home Occupation text amendment application (#09-26). Ms. Jenak denied this request as the public hearing is closed. Ms. Jenak then read the request into the record.
- Add item 7a to the agenda (Water Plan Report - Update from meeting with Ms. Jenak, Mr. Woronoff and Ms. Bransfield).
- Request to postpone Item #6 (Application # 09-27).

**MOTION** by Mr. Tyler, **SECONDED** by Mr. Fitzgibbons to accept the agenda as amended. **VOTE UNANIMOUS. MOTION CARRIED.**

4. Discuss and consider calling bond posted for The Atrium: 1 Brush Pasture Lane, Portland, CT. Expected Guests include the Town Attorney, Public Works Director, and Applicant/Applicant's Representative.

Mr. Fitzgibbons recused himself from this item on the agenda and left the room.

- Attorney, Jean D'Aquila spoke. She provided an overview about the current situation regarding the Atrium project and the possibility of calling the bond to address unfinished work there. She explained that the original bond was posted at the time the application was approved and was reduced several times. The amount remaining is \$29,860. She stated that there are some incomplete items that include landscaping, a catch basin and retaining

wall/guard rail problems that were not corrected. The Town engineer was asked to review the original approval to verify the all items had been completed to the satisfaction of the Town and to then provide an estimate of probable cost for the items that remained outstanding. The estimate was handed out to Ms. Rhodes and the Commission and was just over \$33,000.

- The memo includes information relative to a large number of plantings that weren't installed as compared to the original proposal. The engineer also came up with a cost for repairing the retaining wall. Mr. Kelsey submitted 2 pictures into the record of the retaining wall/guard rail. He stated that the developer and his attorney were notified of this problem in 2006, but it has yet to be repaired.
- Attorney Tom Londergan representing Anthony Silvestri, the developer, spoke. He stated that they feel equally frustrated with this process and have been going back and forth for a number of years. He then gave a brief overview of the project. He stated that there have been a number of agreements on what was needed to finally complete the project and they attempted to comply. Some were successful, but there were others that they weren't able to satisfy the town and town staff. They felt they were dealing with a moving target. They felt additional items were added on. In 2006, the bond was reduced at the Town Engineer's recommendation to \$29,860. At that time, they felt that everything was done and that the 10% bond was a warranty for the work and it would only be held for a year. The position of the Town is that his client is not yet at the warranty period because he didn't finish everything. He stated that most contractors only give a one-year warranty and feels his client has become an insurer.
- Attorney Londregan offered that they would fix the guardrail/slope issue that they were aware of, but there are now 3 items that the Town is concerned about: the guardrail, the landscaping and the catch basin. He stated that they weren't notified of these items until a number of years after completion of the project. He stated that Mr. Jacobson's memorandum was the first time that they heard of the additional 432 plantings. They thought there was a revised landscaping plan that reflected major changes to the site plan. He stated that the site plan was changed for garages and for a lower parking lot and acknowledged deviations from the plan. They feel that they were requested to put "some" plantings in the walkways and bridge areas and heavy plantings above the riprap. He stated that they did put in the plantings, but apparently it wasn't heavy enough. They feel the bank at the rear of the building has adequate plantings and it's stable. He stated that they will repair the guardrail and catch basin, but they feel the landscaping is adequate.
- Anthony Silvestri then spoke regarding the plantings. He said he had several meetings with town staff regarding the landscaping. He feels that the site plan is a moving target.
- Ms. Rhodes then spoke and read from a letter she sent to Mr. Silvestri, dated January 3, 2007. This letter provided a chronology back to August 9, 2004, that addressed several unresolved issues including the 432 plantings that were not installed as required by the approved landscaping plan. She explained that

this number was already reduced by 36 Dappled Willows to accommodate the construction of the garage buildings. She also detailed the many items that were modified, including the parking layout, picnic area, and location of the handi-capped ramp that should have been included on an as-built site plan that was never submitted to the Town. She stated that these changes, especially the reduction in plantings, require approval by the Commission and that a formal modification request is necessary. She stated that an application was provided to Mr. Silvestri with the letter for this purpose. To date, no application has been submitted.

- The Commission discussed this and determined that that they should have asked for a modification to their site plan and must submit a revised site plan.
- Mr. Silvestri agreed to fix the retaining wall, the catch basin and submit a revised as-built site plan including landscaping plan. He said some things items noted by Ms. Rhodes were installed he left (i.e., an enclosure by the grill). Mr. Tyler asked Mr. Silvestri to submit a revised site plan as soon as possible.
- Attorney Jean D'Aquila spoke and objected to the statement that the Town has created a moving target. She stated that they've been very consistent on what needs to be done at the Atrium. She referred to the 11/16/06 memo, prepared by the Town Engineer, which was submitted at the time of the bond reduction. She read from this memo which emphasized the guardrail and retaining wall problems and what needed to be done. It was recommended that the applicant retain a geo-technical engineer to develop recommendations for a permanent solution to this problem so it wouldn't reoccur.
- There was discussion on how much time would be necessary for Mr. Silvestri to address and complete these items. The final decision was 120 days. Attorney D'Aquila stated that Geoff Jacobson and Town staff would need at least 21 – 30 to review any information submitted. This would include the formal site plan modification request and the proposal from a geotechnical engineer to address the retaining wall issue. It was clarified that no work was occur without the Town's approval of the proposal. It was decided that the Modification to the Site Plan shall be heard at the 1<sup>st</sup> regular meeting in October and that a formal application, including the required fee, must be submitted at least 21-30 days prior.

**MOTION** by Mr. Tyler on the matter of calling the bond for The Atrium. He moved that the discussion on this matter be continued to the first meeting in October, and at that time, we will have a revised site plan submitted and will also have conducted the technical work and repaired the retaining wall and the catch basin to the satisfaction of the Town.

SECONDED by Mr. Woronoff. **VOTE UNANIMOUS. MOTION CARRIED.**

5. **Decision for Application #09-26:** Proposed Text Amendment to Zoning Regulations relative to Professional Home Office and Home Occupation Use. (Affected sections include Table of Contents; Table 4.1 Superscript #2 and Table

5.1 to remove use home office in B1, B2, B3 zones; and 9.6). Application of the Planning & Zoning Commission. **(Public Hearing was closed on 5/6/10)**

- Mr. Fitzgibbons recused himself and left the room.
- The Commission read and discussed an email from Jean D'Aquila to Deanna Rhodes dated 5/20/10 which related to questions that arose about proceeding with a decision on the application when potential changes were suggested that would change the text. These changes related to reducing the square footage allowed for a home occupation and home based business and requiring a zoning permit where a registration only was going to be allowed. Attorney D'Aquila clarified that the Commission was within their authority to make these changes to the proposed text amendment and could proceed.
- Mr. Woronoff said that we are adding some uses to home occupations that aren't in the current regulations, but we are taking away what you can use. He doesn't feel there is lot of clarity in the regulations at this point. He would like to make a motion to withdraw this application at this time. He thinks we need to have some more informal meetings to talk about these regulations and get some more input. There are too many gray areas. He feels there are too many changes at this point in order to make a decision.
- Mr. Tyler's reaction said that this is a different style of writing. It's proscriptive rather than prescriptive. As a result, it's inherently vague from Mr. Woronoff's point of view. Prescriptive regulations list everything you can't do and it appears to more clear, but it's not because you can't think of everything. When you can't think of everything, there will be exceptions that come up and in many respects you're in a worse place.
- Ms. Jenak agrees with Mr. Tyler that you can't list every possible consideration that will come forward. It needs to be a little flexible.
- Mr. Samuelson agrees with Mr. Woronoff.
- Mr. Tyler said that part A of the proposed regulation is OK. Part B is the issue. B lists a number of things that you can't do. He went on to explain this section to Mr. Woronoff.
- Mr. Woronoff asked about listing specific occupations. Mr. Tyler said we don't list specific occupations because as long as a business can meet the requirements, then it's allowed. Mr. Woronoff feels that the problem is with an attached garage because it's not considered part of the dwelling. He feels that plumbers, electricians and carpenters would be eliminated. A basement garage could be used, but not an attached garage. Mr. Woronoff asked if you could use the attached garage, and Mr. Tyler said it doesn't say you can't. It just can't be considered in the calculations as part of the dwelling. Mr. Woronoff feels this is unclear.
- Mr. Woronoff asked about a split vote. Ms. Rhodes said the motion would not pass if there were a split.
- Mr. Samuelson was seated because Mr. Fitzgibbons recused himself from the meeting.

**MOTION** by Mr. Woronoff to withdraw application #09-26. **SECONDED** by Mr. Samuelson. **TWO VOTE IN FAVOR. TWO IN OPPOSITION. MOTION DENIED.**

**A MOTION** was then made by Mr. Tyler To Approve PZC App. # 09-26: Text Amendments to the following Sections of the Zoning Regulations: Table of Contents: Rename Section 9.6: “Professional Home Office & Home Occupation”; Section 4.1 - (Table 4.1) Remove superscript #2, for use category: “Home Occupations & Home Offices” and Replace with superscript #2 as follows: A Professional Home Office requires a Special Permit. See Section 9.6.; Section 5.1 – (Table 5.1) - Remove the Permitted Use: “Home Office” from B-1, B-2 & B-3 Business Zones; Section 9.6 - Remove existing section and replace with the following: Section 9.6 Professional Home Office & Home Occupation, 9.6.1 Definitions as follows: Professional Home Office: The office of a doctor, dentist, architect, attorney, engineer or other recognized professional person who resides on the premises and whose office is clearly secondary to the use of the residence as a dwelling. An attached garage is not considered to be part of the dwelling for the purpose of this definition; Home Occupation: All occupations, other than a professional home office, which occur within a residential dwelling by a person who resides on the premises and whose occupation is clearly secondary to the use of the residence as a dwelling. An attached garage is not considered to be part of the dwelling for the purpose of this definition; 9.6.2 Application Process and Standards: Subsection A: A professional home office may be established in a residential dwelling only after a Special Permit has been granted by the Planning and Zoning Commission in accordance with ZR Section 10.4. A professional home office is prohibited from the following: 1. Employment of more than two full time non-resident employees, 2. Change in the external dwelling, except a sign in accordance with ZR Section 8.4.5, 3. Use of more than one-third of the total floor space of the dwelling for the profession, 4. Creation of interference with radio and television reception, 5. Provision for overnight housing, 6. Violation of noise, smell and other applicable ordinances; Subsection B: A home occupation may be established in a residential dwelling after registering the occupation with the Town of Portland Land use Department. A home occupation is allowed by right and does not require an application for a Zoning Permit. A home occupation is prohibited from the following: 1. Signage and any onsite advertising, 2. Lighting inconsistent with that normally found in a residential zone. Holiday lighting is an exception to this prohibition, 3. Operation of the occupation on the property outside the dwelling, 4. Storage of merchandise or materials associated with the occupation on the property outside the dwelling, 5. Frequent vehicular loading and unloading of materials associated with the occupation, 6. Customer parking spaces on the property, 7. Use of more than one-quarter of the total floor space of the dwelling for the occupation, 8. Employment of non-resident employees, 9. Violation of noise, smell and other applicable ordinances. **APPLICATION OF THE PORTLAND PLANNING AND ZONING COMMISSION.**

With the following additional modifications and/or clarifications: Under Section 9.6.2, Subsection A; Item #3 change from one-third to one-quarter of the total floor space; Under Section 9.6.2, Subsection A; add Item #7 prohibition as follows: Storage of merchandise or materials associated with the occupation on the property outside the dwelling,; Under Section 9.6.2, Subsection B, change the second sentence as follows: A home occupation requires an application for a zoning permit.; Under Section 9.6.2, Subsection B, Item #7, change from one-quarter to one-tenth of the total floor space.

Reasons: The text amendments are consistent with Chapter 4 of the Plan of Conservation & Development, which encourages support for home-based business. The floor area size reduction for both home office and home occupation supports the intention to allow these as incubators in residential zones. The requirement for a zoning permit to establish a home occupation coincides with the existing requirement of ZR Section 11.1.1.A.1. The changes to the proposal address comments received and discussion from the 04/08/10 & 05/06/10 public hearing.

**SECONDED** by Ms. Jenak. **TWO VOTE IN FAVOR. TWO IN OPPOSITION. MOTION DENIED.**

### **REGULAR MEETING**

6. Application #09-27: 60 Cornwall Street. Request for Special Permit to create an interior lot. Application and property of The Regional Group LLC. Assessor's Map 76, Lot 6. Zone R25.

**MOTION** by Mr. Tyler, **SECONDED** by Mr. Woronoff to postpone Application #09-27 to 6/3/10. **VOTE UNANIMOUS. MOTION CARRIED.**

7. Review the Main Street Streetscape Improvements as shown on plans prepared by United International Corporation and Stephanie Fuss Associates, Landscape Architect.
  - The plans came in from the Town's Consultant (UIC) and were approved by the State of Connecticut today. Some changes from the original concept were discussed with the Commission.
  - The gateway monument will be brownstone. It says "Welcome to Historic Portland" on one side and "Leaving Historic Portland" on the other side.
  - The total grant money for this project is approximately \$1,000,000.
- 7a. Water Plan Report
  - Ms. Jenak reported that she met with Ms. Rhodes, Mr. Woronoff and Ms. Bransfield. Ms. Bransfield informed them that Dave Kuzminski isn't available to do the water study as suggested by the Commission.

- Ms. Bransfield and Mr. Kelsey are planning to come to the 2<sup>nd</sup> PZC meeting in June and speak about the topic.
- Mr. Woronoff said the \$8,000 offered by Ms. Bransfield to do an IP Study isn't sufficient and won't be beneficial at all.
- Ms. Rhodes clarified that the IP study money (\$8,000) will not be available to the Commission after this fiscal year, but they can discuss utilizing the money available for 2010/2011 budget for Planning Dept. consultant services towards this project. She wanted to clarify that the money could not be carried over and is not cumulative.

## 8. Staff Report

- TCVD Reviews –

Ms. Rhodes spoke about the modifications to the façade at 270 Main Street. Brian Michaud and Devon Leary are here to speak. The Commission needs to approve the façade changes because they are inconsistent with the Village District Design Consultant recommendations. Mr. Michaud said they have made a couple of changes to the front of the building. Mr. Leary spoke about the conceptual drawing. It appeared that the area above the doors and on the side of the doors was glass. This wasn't feasible to be glass and is actually concrete. The archway is 19 feet across and the foyer is only 10 feet across. In theory the glass wouldn't fit across this area.

Ms. Rhodes spoke about the plan being different than what actually was constructed. Ms. Rhodes can't sign off on the zoning compliance unless the Commission is comfortable with the changes.

The Commission is OK with the changes.

- Incentive Housing Zone Study Update – There's a special meeting set for 5/27/10. The agenda was passed out to the members this evening. It's been posted on the web site and advertised so the public is aware of the meeting.
- Public Notice Registry – No on new.
- Enforcement/Administrative Update – Ms. Rhodes received some paperwork from the State of Connecticut for the Aquifer Protection Agency. They have their yearly training and have a voucher for one member of the Commission to attend. It's scheduled for June 7 from 9:00 – 4:00. No one can attend from the PZC. Ms. Rhodes will pass it along to the Water Department. Ms. Rhodes met with Ms. Bransfield regarding the Commission's request to fine for zoning enforcement violations. Ms. Rhodes will prepare a memo for the Commission, which will discuss the pros and cons of zoning enforcement fining.
- Bond Reductions & Extension Requests – A letter was read into the record dated 5/20/10 from St. Clements requesting an extension.

**MOTION** by Mr. Tyler to approve request for 90-day extension to file required documents and mylars for Application #09-10: 1931 Portland Cobalt Road. Site Plan for a 40' X 100' storage/maintenance building. Application of Edward C. Doherty. Property of St. Clements Foundation, Inc. Map 8 Lot 2 Zone B-1.

SECONDED by Mr. Fitzgibbons. **VOTE UNANIMOUS. MOTION CARRIED.**

9. Approval of Minutes – 5/06/10

**MOTION** by Mr. Tyler, SECONDED by Mr. Jenak to approve the minutes as read. **VOTE UNANIMOUS. MOTION CARRIED.**

10. Adjourn

**MOTION** by Mr. Fitzgibbons, SECONDED by Mr. Tyler to adjourn the meeting at 8:28 p.m. **VOTE UNANIMOUS. MOTION CARRIED.**

Respectfully Submitted,

Debra D. Pozzetti, Board Clerk

TC, FS, BOS, PZC, Clerk, Planner, Book, Library, CC Chair, D. K (Website)