

**MINUTES OF PUBLIC HEARING
HELD BY THE ZONING BOARD OF APPEALS
LINCOLN CENTER HEARING ROOM
MARCH 28, 2012**

MEMBERS PRESENT: James Stevenson, Chair
Robert Haley, Secretary
Edward Slegeski

ALTERNATES PRESENT: Armando Darna
Sandra Stough (sitting)
Michael Stebe (sitting)

ABSENT: Albert Gionet, Vice Chair
Donna Roberto

ALSO PRESENT: James Davis, Zoning Enforcement Officer
Renata Bertotti, Senior Planner
Ginger MacHattie, Recording Secretary

The Chair opened the Public Hearing at 7:00 p.m. The Secretary read the legal notice for the application when the call was made.

BRUCE ACETO – application #2012-006 – request a special exception approval under Art. II Sec. 9.14.02 and Art. IV Sec. 5.01.02 to allow an existing storage container to remain on site at 630 and 634 Center Street, Neighborhood Business zones.

Mr. Bruce Aceto, 986 Flanders Road, Coventry, CT explained there is a small storage container on the subject property that has been there for at least 25 years. It is used by Silk City Trading Post and on the property of 630 Center Street. Mr. Aceto submitted a letter to the Board from Silk City Trading Post explaining that it would be a hardship for them not to have the extra storage container. He also submitted a letter from Mr. Jose Lopez, tenant at 634 Center Street, stating he never thought the storage container was his property. Mr. Aceto said he has never had any complaints about the storage container. It is painted the same color as the building and blends in well.

In response to a question from Mr. Haley, Mr. Aceto said the trailer was part of the rental agreement when he leased the space to the pawn shop. On top of the trailer is a rolling gate. Mr. Aceto said he can remove the gate if the Board would prefer.

In response to a question from Mr. Stevenson, Mr. Aceto said no other items will be stored alongside the trailer; it will look like it does now.

In response to a question from Mr. Stebe, Mr. Aceto explained the ladders and tools inside the storage unit are pawned items; not items used for maintenance. The storage unit is used for inventory storage.

Mr. Stevenson asked if any member of the public would like to comment in favor of or in opposition to this application. No member of the public wished to comment at this time.

Ms. Bertotti explained that this applicant is requesting two special exceptions. One is for outdoor storage. Part of the trailer is on the property of Silk City Traders and the other part crosses the property line onto the site with an auto related use. A special exception is required any time an application affects an auto related use. This particular use will not increase or impact the auto related use. Mr. Aceto did provide a lease line agreement just in case one of the two parcels is sold. One of the special exceptions pertains to the retail use; the other to the auto related use.

In response to a question from Mr. Stevenson, Ms. Bertotti said the five staff comments detailed in a March 16, 2012 memorandum have been satisfied. Ms. Bertotti said there are no remaining staff comments, but Town staff does recommend five conditions, which she reviewed.

In response to a question from Mr. Stebe, Mr. Davis explained that parking space number six will be available to both properties.

The public hearing on this application was closed.

LIGHT OF THE GOSPEL CHURCH – application #2012-010 – request a special exception approval under Art. II Sec. 9.14.02(e) to allow the outdoor serving of food twice a month on site at 46 West Center Street, Business II zone.

Ms. Joanne Seaward, 96 Silver Lane, East Hartford, explained that the applicant is requesting a special exception in order to open a food wagon. The owner of the property has given permission to use the grounds for this purpose. The proposal is to serve food two times per month, on the first and third Fridays, from 11:00 a.m. to 6:00 p.m.

In response to a series of questions from Mr. Stebe, Ms. Seaward said the sales will be seasonal and will be from April through October. Grills will be used for cooking and will be stored in a shed located on the property when not in use.

In response to a series of questions from Mr. Slegeski, Ms. Seaward said all parking will be on the property of 46 West Center Street. The grills will be set up on the west side with four tables for food preparation near the hedges. There will be no parking on McDonald's lot. Ms. Seaward explained that the property has two entrances. A sign will be placed at the center of the hedges facing West Center Street. There is also an entrance on Cooper Street. The oil drum is actually the grill, known as a smoker. She referred to the plan and explained there will be two small grills and the smoker used for cooking. People will not be staying to eat; this is not a restaurant, she said.

In response to a series of questions from Mr. Haley, Ms. Seaward said hamburgers, chicken, ribs, fish, and hot dogs will be sold. Food will be stored in a refrigerator with a freezer compartment. The women of the church will be responsible for cooking. Ms. Seaward said she has not been trained by the State Health Department.

In response to several questions from Mr. Stevenson, Ms. Seaward said the property has 25 parking spaces. The cooking and serving area will take up no more than five parking spaces.

Mr. Davis added there is no parking in the back of the building, but on the east side there are seven angled spaces along with two regular spaces and one handicap space in the front of the building. In addition, there are two parallel spaces along the right side of the building.

Ms. Bertotti noted the church hours are different than those of the proposed food sales.

Mr. Stevenson asked if any member of the public would like to comment in favor of or in opposition to this application.

Mr. Alfred Ray, Sr., Associate Minister, explained the purpose of this application is for fundraising for the church.

Ms. Marcia Gouch, member, explained that in addition to a fundraiser, this will give members a chance to interact with people in the community. She has been cooking for over 40 years; the food will be good, she said.

Ms. Muriel Glenn spoke in favor of this application. She said it will be good for the community and the church. The operation will be grab-and-go and someone will direct traffic. She said the number of parking spaces will not be a problem.

Mr. Damon Smith, member, explained this is one of the church's strategies to help out the church and get in contact with the community.

Deacon Glenn will be the cook and the food will be good. He invited the Board to come down and see him.

Ms. Bertotti said there are no outstanding staff comments. If this application is approved, the applicant will still need to meet the building and fire code requirements.

In response to a question from Mr. Slegeski, Ms. Bertotti said an inspection will be done before the start of the project.

Mr. Davis added that the Health Department has a process it goes through for approval. He said he would present for the initial setup and inspection. Some adjustments may be needed at that time.

In response to a question from Mr. Stebe, Ms. Bertotti said the Board could add a time limit as a condition of approval.

Mr. Stevenson said the applicant testified that the food service would be open from April through October.

Ms. Seaward added that it would take place on the first and third Friday of each month, depending on the weather.

The public hearing on this application was closed.

LETRISA MILLER – application #2012-017 – request a variance to Art. IV Sec. 9.03.24 to reduce the required parking to 15 spaces (17 req.) and to Art. I Sec. 2.01S to reduce the side yard setback to 7' (10' req.) to place an A/C condenser unit in the side yard at 95 Avery Street, Special Design Commercial zone.

Mr. Peter Henry, Holmes and Henry, spoke on behalf of Dr. Letrisa Miller who has submitted an application for variances at 95 Avery Street. Mr. Henry requested an amendment to the application to correct the original reference to the Zoning Regulations for the side yard setback from Article I Section 2.01S to Article II Section 22.06. The Town Attorney has ruled this is a minor clerical matter and does not require an additional public hearing.

Mr. Henry explained this is a unique property in that the lot is small for a Special Design Commercial zone. The property has been vacant for four years but saw various uses in the past. The property is located at the corner of Avery and Deming Streets and was constructed in 1984. Parking was constructed in 1985 and there are presently fourteen spaces and one handicap van access space. On the plan displayed, he pointed out the building outlined in yellow and the parking outlined in blue. When the property was originally approved, it was used as a day care. At the time, parking requirements were one space for every 250 square feet. Now, the property will be used as medical office space, which changes the requirements to one space for every 150 square feet, which computes to seventeen required spaces.

Mr. Henry stated this is a unique site for the zone which creates a hardship. It is a small cramped lot with little extra space. The location of the existing building does not allow for a shift in parking. He said the State has a drainage easement so parking cannot be shifted toward that. Deming Street is four to five feet higher than the property.

Mr. Henry explained that Dr. Miller has been in business for ten years and said there are plenty of spaces for her, one employee, and two patients. There will be more parking than she needs.

Mr. Henry said the applicant is also requesting a variance to place an air conditioning unit within the ten foot side yard at about seven feet from the property line. The hardship here is the sidewalk is behind the building as required by the Fire Marshal and there is a steep slope to the east, making it difficult to place the unit there. He said there is not enough room between the building and the parking lot. The HVAC contractor advised not placing it in the front of the building due to the direct sunlight. Therefore, the most logical spot is the side yard.

Mr. Stevenson asked if any member of the public would like to comment in favor of or in opposition to this application. No member of the public wished to comment at this time.

Ms. Bertotti explained the building was previously used as an adult day care and parking requirements for that type of use are different than for an office use. There are no technical comments outstanding.

The public hearing on this application was closed.

MARK & KATHRYN FAUSEL – application #2012-019 – request a variance to Art. II Sec. 4.01.01 to reduce the side yard setback to 2’ (10’ req.), and to Art. IV Sec. 7.01.01 to increase the nonconforming structure at 37 Strong Street, Residence A zone.

Mr. Mark Fausel, 37 Strong Street, explained that he would like to remove his existing side porch that has been on the house since 1955 and replace it with a new structure. The existing porch is closer than ten feet from the edge of the side yard. He would like the new structure to be somewhat larger, but no closer to the side property line. He said the structure is unusable as it is. He submitted photographs to Board members showing a four inch tilt. Mr. Fausel explained that he has done some test digging and there is nothing under the slab. He probably could not repair the current structure. He said his neighbors are in favor and some have written letters expressing their approval. The structure he is planning is more in keeping with the design of the house and the look of the neighborhood; it will be an overall improvement, he said.

In response to a question from Mr. Haley, Mr. Fausel said there will be no door on the replacement structure.

Mr. Stevenson asked if any member of the public would like to comment in favor of or in opposition to this application.

Ms. Bertotti had letters in favor of this application from Elaine K. DePenning, 38 Joseph Street; Carol and John Flynn, 31 Strong Street; Barbara Bolduc and Steve Cote; and Stratos Bonds and Steve Kidd, 38 Strong Street.

The public hearing on this application was closed.

AMERICAN GROUP, LLC – application #2012-023 – request a special exception under Art. II Sec. 24.02.02(a) and Art. IV Sec. 5.01.02 to allow used automobile sales at 266 West Middle Turnpike, General Business zone.

Attorney Stephen Penny spoke on behalf of the applicant, who is requesting a used auto sales location approval and used auto sales special exception approval. After consultation with Town staff, it was concluded that the applicant could return to the Board after a similar, but not the same, application had failed to gain approval at the Board’s February meeting.

Attorney Penny explained the applicant has modified the plans and will present additional evidence to address the dissenting members concerns voiced in February. He explained the rectangular shaped property is located at 266 Middle Turnpike West with 112.63 feet of frontage on Broad Street and 200 feet of frontage on West Middle Turnpike. The parcel is just over a half acre in size and bounded northerly by Middle Turnpike West, easterly by Broad Street, southerly

by another multi-use commercial property on Broad Street, and westerly by a commercial property on West Middle Turnpike. The property is zoned General Business and has one structure on the property, which has been operated as a gasoline service station and used for auto related uses since it was constructed in 1968. The present building replaced an earlier gasoline service station that dated from 1952. Public water and sewer serve the site. The gasoline services station and repair facility uses 1,184 square feet and the remaining 654 square feet are devoted to a convenience store. He said there are three employees at the site.

At the February meeting the Board granted variances for the building and canopy on the site as neither conforms to the current side yard requirements. The applicant is the commercial tenant of the property and has the consent of the property owner to file this application.

Attorney Penny said the regulations identify new and/or used automobile sales as a special exception use in the General Business zone. Factors the Zoning Board of Appeals (ZBA) are to consider include proximity of the site to schools, places of worship, libraries, theaters, or playhouses, or other places of public gathering. In this case, the closest such facility is Waddell School, located on the other side of Middle Turnpike West and Broad Street, with the school building being at least 600 feet away. Another consideration for the ZBA is intersecting streets, traffic conditions, width of highway, and effect on public travel such that the use will not imperil the safety of the public. In this regard, the subject site is located within a large commercial area and has been devoted to auto related uses for nearly six decades. Middle Turnpike West is a major arterial roadway. It was reported in 1995, traffic on Middle Turnpike West was 14,700 vehicles per day. The traffic report indicates the proposed use of four cars for sale will have minimal impact on the roadways or intersection. The proposed building for this use may not be located within 400 feet of a public park or playground, school, college, church, public library, or residentially zoned dwelling on the same side of the street. There are no such uses within 400 feet of the subject property on the same side of the street. Other general requirements for the location approval include adequate safeguards against leakage of gas and oil. The majority of the site is bituminous concrete; the drains within the building have been blocked in order to prevent any such leakage, and a 1993 canopy variance was conditioned in part upon the installation of an oil/grit chamber in the parking lot catch basin.

Mr. Bob Messier, 288 Main Street, said the Board had two main concerns at the February meeting, which have been addressed. The first concern was the handicap parking space. He said the applicant has eliminated propane sales and the handicap parking space will remain in the originally designated location. The other concern was with unregistered vehicles. The applicant has changed the plan to include only one driveway on Broad Street and the driveway on Middle Turnpike West was modified. There are 32 parking spaces shown on the plan, which complies with the regulations. The applicant would like to use four spots for used car sales. They are shown on the plan in the northeast corner of the property in a fan shape. The lighter lines represent the existing parking spaces and the darker lines represent new parking spaces.

In response to a question from Mr. Haley, Mr. Messier said the tire storage area will remain.

Attorney Penny added that he does not understand how the tire storage racks are a regulatory violation. If they are, the applicant will continue to be cooperative with Mr. Davis and it will be remedied.

Mr. Davis said he has not historically issued violation notices for rolling racks of tires on display. The Town does require the owner of a business who wants to put products out for display have the display area approved by the Zoning Board of Appeals.

In response to a question from Mr. Haley, Attorney Penny said items put out front for sales display will be brought in at night and are not the same as more permanent storage of auto related equipment outside.

Attorney Penny said there is adequate parking on site with enough for four extra spaces. Minimum lot frontage is 150 feet and there is 200 feet provided. Minimum front yard requires 40 feet and 71 feet is provided. Minimum side yards of 25 feet are required. The building has a side yard of 2.4 feet and the canopy has a side yard of 24.3 feet. A minimum rear yard of 30 feet is required and 60 feet is provided. The general special exception criteria require a suitable location and neighborhood compatibility. This property has been used for an auto related use since 1952. The streets are adequate for this use and four additional spaces for car sales will not impact the roadways or the intersection. No access issues were raised by Town staff. The site has adequate public utilities and the structures are suitable for their uses. The four spaces devoted to used auto sales will not impact the significant roadways in the area or their intersection. The table on the site plan shows there is adequate on-site parking to support each of the uses on the site. The access points to the site have been redesigned to conform to the Town's own design for the Broad Street project.

Attorney Penny stated there are no outstanding staff comments which would preclude a favorable decision by the Board. In its denial of the special exception application last month, the Board noted a possible conflict between a proposed propane tank rack on the east, or Broad Street, side of the building and the handicap parking space alongside the building, which resulted in the applicant proposing to move the handicap space one spot away from the building. The handicap parking spaces has since been restored to its original location closest to the building.

Mr. Nej Saydam, 24 Hawthorne Street, said he owns a car dealership in Middletown and the applicant has authorization to purchase cars for him. In addition, the applicant does repairs for his dealership. The unregistered vehicles are cars that he has for sale and were purchased at auction. The applicant keeps them while he is fixing them. He said it is typical to have an unregistered vehicle for sale; a vehicle does not usually get registered until it is sold.

In response to a question from Mr. Haley, Mr. Saydam said the applicant purchases vehicles, brings them back to his shop for repair, then Mr. Saydam has one of his drivers take it back to his dealership in order to sell it. The unregistered vehicles on the site were vehicles that belong to Mr. Saydam that the applicant is repairing for him.

Attorney Penny stated that used vehicles that are available for sale are typically not registered. Vehicles are picked up at auctions and brought back to this site for repair. It is not unusual for an auto repair facility to have unregistered vehicles on site.

Mr. Stevenson asked if any member of the public would like to comment in favor of or in opposition to this application. No member of the public wished to comment at this time.

Ms. Bertotti said Town staff has no outstanding comments.

The public hearing portion of the meeting was closed at 8:21 p.m.

I certify these minutes were adopted on the following date:

Date April 25, 2012

James Stevenson, Chair

**NOTICE: A DIGITAL RECORDING OF THIS PUBLIC HEARING CAN
 BE HEARD IN THE PLANNING DEPARTMENT.**

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