

DRAFT MINUTES

Regular Meeting
Canton Zoning Commission
Wednesday, April 17, 2013 7:30 p.m.
Library Community Center, Room F
40 Dyer Avenue, Canton, CT

CALL TO ORDER: Acting Chairman William Sarmuk called the meeting to order at 7:30 pm.

ROLL CALL: Present: William Sarmuk, Jonathan Thiesse, Phil Pane and John Huyghebaert. Not Present: David Bondanza, Keith August and Daniel Barnhart. Also Present: Roland Klee, Assistant Town Planner and Sue Brodeur, Recording Clerk.

Remarks by Chair/ Meeting Conduct

Mr. Sarmuk explained the rules of conduct to the public. He asked that comments from the public be asked to the commission and not to the applicant and reminded everyone that once the public hearing is closed no further testimony can be taken.

READING OF THE LEGAL NOTICE

Mr. Pane read the two legal notices.

PUBLIC HEARING

1. F#364; Apln. # 1398; 115 Albany Turnpike; Assessor's Map 32; Parcel: 1010115; Zone: ATG-2; Zoning Regulation Amendment to add Section 34.10.3.1.d to include medical and other professional office uses; Section 34.10.5.9.c to modify total maximum building coverage from 7,000 to 10,000 sq. ft in Development area "B" and Section 34.10.6.4 to modify Buffer to Buildings to add language which allows for reduction of buffer to accommodate architectural detail; and Sections 34.9.8.6.d.1 and 34.10.7.6.g to correct Scriveners errors in numbering; Canton 44, LLC and Konover Development Corporation, applicant; Canton 44, LLC, owner.

Prior to hearing from the applicant Mr. Sarmuk noted that this application was referred to the Planning Commission for a review of the proposed amendment in consideration of the Town of Canton Plan of Conservation and Development. He read the Planning Commission report, and vote as required by CGS 8-3(b). He also stated that the applicant appeared before the Design Review Team for initial comments and direction on March 26, 2013 and that the Town Planner prepared a thorough staff review of the application.

Attorney Robin Pearson, Alter & Pearson, LLC and Greg Konover, Konover Development Corporation ("Konover"), represented the application. Ms. Pearson began the presentation by going over the Master Plan of development and the history of various applications on the site. She stated that Konover has been approached by UConn Health Center to construct a two story building that would house an urgent care facility and three other medical practices. She went over the limitations for the total development area of the site and the individual development areas. Ms. Pearson reminded the members that Konover will return to the commission for site plan approvals for actual building. She stated that the addition of the possible reduction in the amount of buffering required from 10 feet to whatever the commission deems acceptable is due

to allowing the ability to accommodate a building with a higher level of architectural detail. Ms. Pearson noted that a traffic report was submitted and that the maximum traffic generations did not show any implications. She asked the members for their questions.

Mr. Thiesse asked if Konover had read through the prepared draft motion and whether they had any concerns. Ms. Pearson stated that they had seen it and the only item that was problematic was the language that concerned replacement of trees. The use of the term "maximum size commercially available" seems too vague and they would like a more concrete "size". Members discussed and agreed that the language could be changed to a minimum of 5" caliper.

Mr. Pane noted that the traffic report was not critical to this application but that it will need to be reviewed further when the actual site plan is presented.

Mr. Sarmuk asked if any members of the public wished to speak in favor or not in favor of the application.

Kevin Jackson, Atwater Road spoke. Mr. Jackson is the Chairman of the Economic Development Agency. He stated that at the April 11th meeting, this project was discussed and unanimously supported by the Agency. He noted that Konover has worked diligently to accommodate the wishes of the community.

There were no further comments by the commission or public. Mr. Sarmuk asked members if they were comfortable closing the public hearing.

Motion: by Mr. Thiesse to close the public hearing for File #76, Application #1404.
Second by Mr. Pane.

Vote: Sarmuk-yes; Thiesse-yes; Pane-yes; Huyghebaert-yes.

2. File#76; Apln. #1404; 146 Powder Mill Road; Assessor's Map 25; Parcel: 12; Zone: LI; Special Exception for Section 31.2.24 Athletic facility or health & fitness club and Section 31.2.2k personal fitness training; Sack Properties, LLC, applicant/owner.

Mr. Stephen Sack, Sack Properties, LLC, represented the application. Mr. Sack stated that he wants to add a personal training/fitness facility use to the property. He noted that the tenant will inhabit a 2,400 square foot unit of the property. There are 5 units within the property. Parking is existing and adequate. He explained that the facility will be mostly personal training with some small group classes in exercise and nutrition.

The proposed tenant, Mr. Rob English, was present and explained that he does not intend to run a "health club" and that his preferred methods are one on one training and small groups.

Mr. Huyghebaert asked to see the existing parking on the site plan, to which Mr. Sack showed the parking area. Mr. Sarmuk asked if any remodeling would be done to which Mr. Sack answered that there would be no changes to the outside of the building and only minor changes to the space. Mr. English stated that he does not use a lot of equipment in his training.

Mr. Sarmuk asked if any members of the public wished to speak in favor or not in favor of the application.

Mr. Kevin Jackson, Atwater Road spoke. Mr. Jackson stated that he was speaking as a citizen (not EDA Chairman) that is acquainted with the proposed tenant and holds him in high esteem for his business sense and good character.

Mr. David Rhodes, Atwater Road spoke. Mr. Rhodes noted that he is well acquainted with the proposed tenant and feels that he has the highest moral character and would like to see his business move forward.

Mr. Sarmuk asked the members if they were comfortable closing the public hearing.

Motion: by Mr. Thiesse to close the public hearing for File #76; Application #1404. Second by Mr. Pane.

Vote: Sarmuk-yes; Thiesse-yes; Pane-yes; Huyghebaert-yes.

REGULAR MEETING

PUBLIC HEARING ACTIONS:

1. F#364; Apln. # 1398; 115 Albany Turnpike; Assessor's Map 32; Parcel: 1010115; Zone: ATG-2; Zoning Regulation Amendment to add Section 34.10.3.1.d to include medical and other professional office uses; Section 34.10.5.9.c to modify total maximum building coverage from 7,000 to 10,000 sq. ft in Development area "B" and Section 34.10.6.4 to modify Buffer to Buildings to add language which allows for reduction of buffer to accommodate architectural detail; and Sections 34.9.8.6.d.1 and 34.10.7.6.g to correct Scriveners errors in numbering; Canton 44, LLC and Konover Development Corporation, applicant; Canton 44, LLC, owner.

Mr. Sarmuk opened up the deliberation on the application. Mr. Thiesse stated that the increase in the square footage will allow the applicant to build the type of structure that will enhance the site. Mr. Sarmuk noted that the applicant is being very liberal with landscaping and tree replacement. Mr. Huyghebaert noted that if there are any issues regarding the building or the landscaping, they can be address during site plan review.

Motion: by Mr. Thiesse, that the Canton Zoning Commission does hereby APPROVE, WITH CONDITIONS AND MODIFICATIONS AS SET FORTH HEREIN, File #364; Apln. #1398 of Canton 44, LLC and Konover Development Corporation ("Applicant") for the following regulation amendments to the ATG-2 District regulation and Master Plan; Canton 44, LLC, owner.

This approval is made, in part, on the basis of the application submitted on February 19, 2013, and amended on April 3, 2013, and upon the Commission's review of and reliance upon the following plans submitted by the Applicant for the Commission's approval:

List of Drawings - Submitted by Konover Development Corp.

1. MP-1; Illustrative Master Layout Plan; Proposed Development Albany Turnpike and Lawton Road, Canton, CT; Revised development areas for "A" and "B"; Revision dated February 18, 2013.

This approval is also based, in part, upon testimony received at a public hearing commenced on April 17, 2013 and closed on that date, and the following documentation

submitted by the Applicant or others during the course of the proceedings on the application:

Exhibits #

1. Town of Canton Zoning Application for File #364, Application #1398; Canton 44, LLC and Konover Development Corp, applicant; Canton 44, LLC, owner; submitted on February 19, 2013.
2. Letter from Attorney Pearson to Zoning Commission re ATG-2 Regulation and Master Plan; dated February 19, 2013.
3. Attachment A; Section 34.9 (ATG-1); Section 34.10 (ATG-2).
4. Attachment B; Section 34.10 (ATG-2)
5. Referral to Planning Commission dated February 22, 2013.
6. Memo to Town Clerk to file application
7. Letters to abutting towns of Granby, Simsbury, Barkhamsted, New Hartford, Burlington and Avon.
8. Referral to CT Regional Council of Governments
9. Referral to Litchfield Hills Elected Officials
10. Certification of Filing for Canton Town Clerk dated March 19, 2013
11. Memo Planning from Zoning Section 8-3a(b) review dated February 22, 2013.
12. Memo to Zoning and Design Review from Planning dated March 18, 2013.
13. Certification of Notice dated April 2, 2013.
14. Legal Notice dated April 3, 2013.
15. Certification of Filing with Canton Town Clerk dated April 3, 2013.
16. Letter from the Canton Economic Development Agency dated February 22, 2011.
17. Memorandum from Neil S. Pade dated April 9, 2013.
18. Letter from Jane Latus, Canton Advocates for Responsible Expansion (CARE) dated April 16, 2013.
19. Memo from Vahid Karimi, VHB, Transportation to Greg Konover, re: Trip Generation Analysis; dated April 16, 2013.

This approval is granted because the Zoning Commission finds that the application, as conditioned and modified by and inclusive of the stipulations of this approval, would comply with the following:

1. The standards of the underlying district, Albany Turnpike Gateway District, Section 34.4.3, as follows:
 - a. The proposed changes to the ATG District are consistent with the Plan of Development for the Town of Canton as documented by the Planning Commission in their March 4, 2013 report (Exhibit #12).
 - b. The Master Plan Standards for development in the ATG District are appropriate to its location and fulfill the stated purpose of the District, specifically in that the Commission finds the proposed amendments:
 - i. will increase the potential for more design flexibility, and would increase the potential for more creativity, including more interesting architecture/ more articulated building design;
 - ii. will continue to encourage significant economic investment along a portion of Albany Turnpike. More specifically, the Town of Canton Economic Development Agency has previously demonstrated that the proposed Illustrative Master Plan, if approved and constructed, would result in a substantial overall investment into the area (Exhibit #16) and the Commission finds

that these proposed changes further the realization of such economic potential;

- iii. encourage comprehensive planning of unified parcels. More specifically, the proposed amendments improve upon the Applicants and the Commission's ability to re-allocate appropriate building square footage between the remaining Development Areas not yet built out;
 - iv. further reduce or eliminate the negative impacts associated with large-scale commercial development. More specifically, the current ATG-2 was found to reduce the negative impacts associated with large-scale commercial development, and now precludes the development of large scale (big-box) commercial development through specified limitations on allowable development area. The current proposal, although it increases the potential building size of the smallest development area, furthers the reduction of the size and scale of buildings that could potentially be built on the site; and,
 - v. provides additional flexibility in protecting adjoining non-commercial areas. More specifically the amendments to the approved Development Areas provides opportunity for additional space to be created on the north side of the site (through the potential to transfer building area from Development Area A to Development Area B) that could be used for additional buffering of the adjoining church property and Fiddlehead Farms neighborhood, and further allows greater flexibility in which buildings maybe sited.
- c. The Connecticut Water Company and the Water Pollution Control Authority have previously certified that water and sewer service can be provided to and adequately serve the proposed land uses, and the proposed changes do not increase or intensify such demands. The Canton WPCA will further require capacity and plan review approvals prior to the commencing of any site development activities.
 - d. A comprehensive review of site traffic conditions was reviewed and found acceptable during the review of Application # 1309. Additional submitted testimony indicates, and the Commission finds, that the proposed changes are not anticipated to result in substantial changes to traffic conditions internal or external to the site.
 - e. The Commission finds that the foregoing changes comply with Section 52.6 for the following reasons:
 - i. When reviewed against the approved conditions presently allowed on the site the proposed changes, as conditioned by this approval, will not result in conditions that are hazardous, inconvenient, or detrimental to the character of the neighborhood, nor impair its value;
 - ii. The applicant has demonstrated, and the Commission has verified, that the proposed changes will not result in any increase in traffic above and beyond what would occur under the current approved conditions. That any increase in traffic associated with the proposed development would not result in a significant

increase in traffic in consideration of the existing traffic volumes that already occur within the site and on the local road network in the vicinity.

- iii. That the character of the neighborhood is comprised of intense commercial, rural residential and transitional areas and that the proposed design of the site allows for a mix of non-residential uses smaller in scale and size that is appropriate for this area;
 - iv. The location and nature of buildings, and the nature and extent of landscaping (as demonstrated through the Illustrative Master Plan) will neither hinder nor discourage the appropriate development and use of the adjacent land and buildings, nor impair their value. The proposed amendments allow for site changes that have the potential to enhance surrounding commercial properties and support the future development of the adjoining commercial property to the east. The adjacent site to the north has been developed with a transitional use (church) and a substantial buffer has been conditioned on the northern property line to protect residents and properties to the north and northeast; and,
 - v. The proposed changes allow flexibility and creativity in building design, and location, that would be used in the site plan process. The amendments further reduce the total bulk of buildings located in three existing development areas and more evenly distribute this square footage across the site.
2. The Commission finds that for the reasons documented above that there will be no increase in traffic, or other change, that results in an impact to public health and safety (CGS § 8-2);
 3. That the proposed regulation amendments are in the public interest and good for the community as a whole. The proposed changes result in: smaller building sizes across the site; additional economic development; and, potential for more interesting building architecture;
 4. That the Commission through the Design Review process and future application of the regulations (more specifically, but not limited to Section 34.10) retain substantial control over the design to protect the character of the neighborhood (Section 52.6);
 5. That the potential loss of the two significant mature trees will be offset by the potential economic benefits that will be stimulated by the proposed change, and such potential loss of mature trees will be further offset by additional/ intensive landscaping requirements agreed to by the applicant; and,
 6. That the proposed regulation amendments are in the public interest and good for the community as a whole.

This approval is effective May 7th, 2013 (20 days from approval date) and UPON THE RECORDING OF AN APPROVAL LETTER AND A CERTIFICATE OF ACTION WITH THE TOWN CLERK.

The Commission hereby grants this approval subject to the following conditions, modifications, restrictions, and safeguards:

1. The above-referenced plans, as modified by these conditions, shall be placed on Mylar, bear all conditions placed upon the proposal by all Town land use commissions (copy of approval letter), and stamped "APPROVED" and signed by the Commission on a Town approved signature block. Said plans shall be filed by the Applicant with the Town Planner and Town Clerk within 12 months of the date of Commission action, which is April 17, 2014; The Applicant/ developer must provide one (1) fixed line Mylar, two (2) paper copies of each approved plan for signature by the Chairman and /or Secretary. Maps to be filed on the land records of the Town Clerk must meet the following standards:
Must be produced by 1) wash-off photographic polyester film, 2) fixed line photographic polyester film, 3) original ink drawing on polyester film or linen; the process used must be certified by a stamp in red indelible ink, 1"x 2", and include name of producer and process used. Polyester films ("Mylar") must be matte on at least one side. Maps shall be 24" x 36";
2. The conditions of approval of the May 18, 2011 approval shall be incorporated by reference to the extent that they remain unchanged by this approval;
3. The applicant shall work with the Design Review Team in the site design process to develop: architectural elevations and landscape plans that take into consideration the existing and historical character of the neighborhood; and a site lighting plan that will ensure adequate protection of nearby residences;
4. The applicant shall replace the 2 significant mature trees, if removed as a result of this approval or through a subsequent application, with trees of a similar or harder species, of a size with minimum caliper of 5 inches, and of a greater number. The final location and number of such trees shall be decided upon through a subsequent site plan/ special exception application subject to the Design Review Team review and Commission approval.
5. The applicant shall submit as part of the site plan application updated capacity reviews from the Canton WPCA and Connecticut Water Company;
6. This approval shall be binding upon the Applicant / developer, heirs, assigns, and grantees;
7. A copy of the approved regulations shall be filed with the Town Clerk on or before the effective date (May 7, 2013).
8. Copies of the approved regulations shall be made available to the public no later than May 7, 2013.

The following amendments to the zoning regulations are hereby approved:

PROPOSED AMENDMENT TO SECTION 34.10 OF THE CANTON
ZONING REGULATIONS ALBANY TURNPIKE LAWTON ROAD
GATEWAY DISTRICT (ATG-2).

Amendment #4.

List of Proposed Changes and Statement of Intent

Revised: April 3, 2013

Amend Sections 34.10.3.1.d, 34.10.5.9.c, 34.9.8.6.d.1, and 34.10.7.6.g, all as noted below. Only two changes are substantive. Deletions are struck through, additions are underlined.

- 34.10.3.1.d Offices including medical and other professional office uses.
- 34.10.5.9.c Development Area "B" shall contain one (1) building having a total minimum building coverage of 2,500 square feet and a total maximum building coverage of 7,000 10,000 square feet.
- 34.910.8.6.d.1 Three (3) canopy trees per each 100 linear feet of streetscape.
- 34.10.78.6.g Proposed landscape material to be used to satisfy the requirements of this Section shall be chosen to provide for seasonal interest throughout the year.
- 34.10.6.4 Buffer to Buildings: Except at loading docks, building entrances and along pedestrian arcades, parking lots and driveways shall be separated from all buildings by a landscaped buffer strip having a minimum width of ten (10) feet. This buffer strip shall contain pedestrian walkways and a combination of at least three (3) of the following: trees, shrubs, grass or other landscape material. The Commission may reduce the buffer to accommodate a building with a higher level of architectural detail in keeping with the design considerations in Section 34.10.11.

Statement of Intent: The proposed substantive amendments to the ATG-2 District regulation last amended by the Canton Zoning Commission on May 18, 2011, are intended to do the following:

1. Clarify that medical and other professional office uses are included within the classification of permitted office uses, to confirm that a potential medical office user within the ATG-2 District can be accommodated;
2. Further facilitate the opportunity for a village-like development layout within the ATG-2 District by allowing for a slightly larger building in Development Area B thereby potentially reducing the maximum coverage available for development in Development Area A; and
3. Add flexibility to the regulation to allow a reduction in the width of the buffer required between buildings and parking lots/driveways to accommodate desirable architectural details.

Two clerical corrections are also proposed to properly identify the subsection numbering sequence for Section 34.10.

Second by Mr. Pane.

Vote: Sarmuk-yes; Thiesse-yes; Pane-yes; Huyghebaert-yes.

2. File#76; Apln. #1404; 146 Powder Mill Road; Assessor's Map 25; Parcel: 12; Zone: LI; Special Exception for Section 31.2.24 Athletic facility or health & fitness club and Section 31.2.2k personal fitness training; Sack Properties, LLC, applicant/owner.

Mr. Sarmuk opened deliberation on this application, hearing none, he asked for a motion to approve.

Motion: by Mr. Thiesse to APPROVE File#76; Apln. #1404; 146 Powder Mill Road; Assessor's Map 25; Parcel: 12; Zone: LI; Special Exception for Section 31.2.24 Athletic facility or health & fitness club and Section 31.2.2k personal fitness training; Sack Properties, LLC, applicant/owner.

This approval is granted in part on the application submitted on April 2, 2013, testimony received at a public hearing commenced on April 17, 2013 and closed on that date; and upon the following documentation submitted by the Applicant or others during the course of the proceedings on the application:

Correspondence:

1. Town of Canton Zoning Application for File #76, Application #1404; Sack Properties, LLC applicant/owner; submitted on April 2, 2013.
2. Statement of Use
3. Certification of Notice dated April 2, 2013.
4. Legal Ad dated April 3, 2012.
5. Memorandum from Neil S. Pade, dated April 9, 2013

This approval with conditions and modifications is granted because the Zoning Commission finds that the application, as conditioned and modified by and inclusive of the stipulations of this approval, would comply with the following:

1. The special exception criteria of Section 52
2. The requirements of Section 61, Performance Standards; and
3. The standards of Section 62, Parking.

This approval is effective **May 7th, 2013** (20 Days from the date of approval) and UPON THE RECORDING OF AN APPROVAL LETTER AND A CERTIFICATE OF ACTION WITH THE TOWN CLERK.

The Commission hereby grants this approval subject to the following conditions, modifications, restrictions, and safeguards:

1. This approval is conditioned upon the receipt of any necessary permits or approvals by the Canton WPCA, Connecticut Water Company and Farmington Valley Health District.
2. This approval shall be binding upon the applicant / developer, heirs, assigns, and grantees.

Second by Mr. Huyghebaert.

Vote: Sarmuk-yes; Thiesse-yes; Pane-yes; Huyghebaert-yes.

OLD BUSINESS:

No old business.

NEW BUSINESS:

No new business.

OTHER BUSINESS:

1. Review Minutes of March 20 and April 3, 2013.

Minutes were accepted as written.

2. Potential Zoning Regulation Amendments for review
 - a. Section 7.6, Protective Provisions Concerning Front Yard Compatibility

b. Section 62.10 Access Management

Mr. Klee explained that proposed regulations for maintaining appropriate front yard setbacks (consistent with historic building lines) and access management were discussed with the Planning Commission on March 4th and found to have merit. At the March 6th rewrite meeting there was discussion and interest in improving the manner in which zoning regulates setbacks. Staff researched this with the specialized legal counsel that conducted the review of the rewrite, Attorney Branse. Staff strongly encourages the Commission to review the concepts raised in this email carefully and have discussion on the potential interest and value of incorporating such ideas into Canton's Zoning regulations.

This item was tabled to the May 15, 2013 regular meeting.

3. Set date for meeting with Design Review Team

Mr. Klee stated that at the March 23rd DRT meeting there was discussion pertaining to concerns raised about the DRT process. The meeting concluded with the following action steps:

1. Schedule a meeting with the Zoning Commission and build a positive relationship.
2. The need was identified to develop criteria to better flag applications that warrant DRT review versus those that do not.
3. Legal review comments indicate DRT regulations need to provide more guidance and direction.

Members agreed that it would be prudent to meet and tentatively set a May 1 meeting date.

4. Zoning Regulation Rewrite and Map Amendment

Next meeting scheduled for May 1, 2013. Anticipate revisiting bulk standards in Section 4.1 Business Districts and then heading into Section 4.2 Industrial Districts. .

5. Discussion of Plan of Conservation and Development

Special meetings scheduled for April 15 and 29.

6. Staff Reports:

a. ZEO Report

ZEO report was distributed. There was no discussion on the items.

b. Town Planner's Report:

The members were made aware of a proposed added zone in New Hartford that is similar to Canton's MCPF district, but less restrictive. Additional information can be provided if the Commission is interested.

This item was tabled to the May 15, 2013 regular meeting.

ADJOURNMENT:

Motion: by Mr. Pane to adjourn at 9:00 pm. Second by Mr. Thiesse.

Vote: Sarmuk-yes; Thiesse-yes; Pane-yes; Huyghebaert-yes.