MONDAY, AUGUST 1, 2022
Council Chambers, City Hall & Virtual on WebEx
5:00 P.M.

The meeting was held both virtually and in-person. Members of the public had access via https://webex.com, the WebEx application, and via telephone.

Start: 5:03 PM
End: 5:23 PM

Commissioner Johnson volunteered to act as secretary for the meeting.

1. Pledge of Allegiance

The Pledge of Allegiance was made.

2. Roll Call

Present: Commissioner Thomas Pattavina
Commissioner Shanay Fulton
Commissioner Richard Pelletier
Commissioner Hillary Thompkins
Commissioner Sebastian Giuliano
Commissioner Kelly Sweeney (Alternate) (Seated for Commissioner Marcus Fazzino)
Commissioner Kellin Atherton (Alternate) (Seated for Commissioner Catherine Johnson)

Absent: Commissioner Marcus Fazzino
Commissioner Catherine Johnson

Staff: Marek Kozikowski, Director of Land Use

Public: Three members of the public attended.

3. New Business

3.1. Approval of proposed C.G.S. § 8-8(n) Motion for approval of settlement and entry of judgment in accordance with stipulation, for Root Center for Advanced Recovery v. City of Middletown Planning and Zoning Commission, Docket No.: SC 20698, MMX-CV20-6029705-S for the reasons set forth in the stipulation.

Assistant General Counsel Christopher Forte presented the proposed stipulated judgment to the
Commission. Attorney Forte reviewed the history of the case stating that in 2020, the Root Center applied to the Planning and Zoning Commission for a zone change from an MX to an SMH zone, for a Special Exception approval to operate a methadone clinic, and a Site Plan Approval for their property located at 392 Washington Street. After three days of public hearings, the Commission denied the zone change by a vote of 4 in favor to 3 against. Due to the provisions of the City of Middletown’s Charter and the Commission’s Bylaws, the vote was a denial because 5 affirmative votes were not received. The Root Center appealed the Commission’s decision to the Superior Court in which they prevailed at trial. The trial court’s decision held that the 5 vote requirement was in conflict with C.G.S. § 8-3b and was preempted by such statute. In December 2021, the Commission filed a petition of certification with the appellate court, which was approved. On April 5, 2022, the Supreme Court then transferred this case to the appellate court pursuant to Practice Book Section 65-1, where the case is currently pending. During the appeal process, the Root Center requested that the Commission provide a reasonable accommodation for their property, to allow zoning permission to operate a methadone clinic on the site, and for the Commission to grant site plan approval. Attorney Forte explained that a reasonable accommodation under the ADA supersedes zoning in certain instances, and allows modifications to local laws, ordinances, and regulations that adversely impact people with disabilities. Attorney Forte explained that this is one of those instances, to allow individuals in recovery to receive treatment. Attorney Forte stated that the Commission is not approving a zone change or a special exception, and consequently, this permission will only apply to the Root Center and will not run with the land. Attorney Forte then reviewed the proposed stipulated judgment and its contents with the Commission. Attorney Forte stated that the proposed stipulation takes the Commission’s prior concerns about the health, safety, and welfare of its residents into consideration, and it allows both parties to work with the State in regards to the Commission’s traffic concerns since the property is located on a state road. Additionally, the stipulated judgment contains twelve conditions of approval on the site that have been authorized by the Commission.

Attorney Forte asked the Commission to consider approval of this settlement. If it is approved, Attorney Forte stated that he will file this document with the court for approval. Attorney Forte also stated that this settlement will be conditioned on the court approving the stipulated judgment in accordance with the Connecticut Rules of Practice, and on the Court agreeing to vacate its November 2021 decision that overturned the provision of the City of Middletown’s charter requiring 5 affirmative votes for the Commission to act.

Attorney Forte went on to explain that in accordance with the Connecticut Rules of Practice, when the Commission renders its decision, they must include their reasons why they are approving or denying the settlement.

Commissioner Giuliano wanted to clarify that approving this settlement is approving just the Root Center to operate under this particular use as if there was a zoning change and were granted a special exception. This accommodation will only apply for this particular use for this particular applicant. Atty. Forte replied in the affirmative.

Commissioner Pelletier agreed that a reasonable accommodation is the correct way to deal with this situation and will be supporting it.

Chairman Pattavina commented that he supports the reasonable accommodations, and that he will be supporting the settlement because it will reinstate the 5-vote requirement in the City of Middletown’s Charter.

Commissioner Thompkins reiterated the concerns that the public expressed during the public hearings for the Root Center in 2020. She brought up concerns of potential increased drug dealing in the area. She also stated that the location is not ideal. Commissioner Thompkins stated that she does not know how effective this clinic will be to its patients. She hopes that the Root Center will be mindful of the community they may soon be a part of. She stated that she will be abstaining from the vote.
Commissioner Sweeney stated that she agrees with what Commissioner Pelletier stated earlier and thanked Commissioner Thompkins for her comments.

Commissioner Atherton stated that he will be supporting this proposal for the reasons set forth in the stipulation and the reasonable accommodations. He also thanked Commissioner Thompkins for her comments and research. He stated that he believes that the Root Center will be a benefit to our community.

Commissioner Fulton stated that she agrees with what Commissioner Atherton said. It’s important to act in the best interest in our community and will be supporting this settlement.

Commissioner Giuliano will support this because it addresses a need in this area. He stated that the concerns that Commissioner Thompkins addressed would have been brought up regardless of where the Root Center would have proposed to be located. He stated that those concerns have been addressed by the Commission. Commissioner Giuliano continued to state his reasons for supporting this settlement by stating that it takes into account the concerns of the community, the issues of traffic and pending litigation and it keeps the zoning code intact.

Motion to approve the settlement.
Moved by Commissioner Fulton, seconded by Commissioner Atherton
Voting in Favor: Pattavina, Fulton, Pelletier, Giuliano, Atherton, Sweeney
Abstained: Thompkins
Motion Passed: 6-0-1

4. Commission Affairs

5. Adjournment

Motion to adjourn.
Moved by Commissioner Giuliano, seconded by Commissioner Fulton.
The motion passed.

Submitted,

Marek Kozikowski, AICP
Director of Land Use