

Edward J. Kalita, Chairman; Eric G. Lowry, Vice-Chairman; Cos Giuffrida, Secretary; Commissioners: Dr. Christie E. McLeod, Paul P. Parisi, Ralph Shaw, George Augustine, Robert Chamberlain, Thomas Lineberry and Conrad Tyaack. Mayor Anthony Marino.

COMMISSION  
MEMBERS  
PRESENT

Comm. Seb Passanesi

MEMBER  
ABSENT  
STAFF  
PRESENT

George A. Rief, Director; Althea Rinaldi, Recording Secretary, Eileen Rogers, Transcribing Secretary

Phil Bauer, Engineer, Public Works Department; Kim Smith, Reporter, Middletown Press; 15 members of the public

OTHERS

CHAIRMAN KALITA

I want to call this meeting to order. In the absence of Commissioner Passanesi, I would ask alternate commissioner Robert Chamberlain to sit in. This being the first meeting in the month of March, it is a public hearing. We have an agenda with an item. Following the rules of the commission, we'll have the secretary read the legal call. We will ask the proponent or his representative to present their application. We will then call on the director of Planning and Zoning for comments - then we will ask the people that are in favor to speak first and those that are opposed to speak following. I will now call on the secretary to read the call.

SECRETARY GIUFFRIDA

THE MIDDLETOWN PLANNING AND ZONING COMMISSION WILL HOLD A PUBLIC HEARING MARCH 9, 1977, STARTING AT 7:30 P.M. IN THE COUNCIL CHAMBER, MUNICIPAL BUILDING, DE KOVEN DRIVE, MIDDLETOWN, CONNECTICUT, to consider the following:

1. NOTE: The application by John R. Knox for a subdivision has been withdrawn. The subdivision was proposed to be located south of Country Club Road between Higby and Ballfall Roads and to involve approximately 120 lots.

JOHN KNOX  
SUBDIVISION  
WITHDRAWN

2. Application for proposed amendment to Zoning Map to change rear portions of land at 21 Mill Street from R-1 to I-1. Applicants: 21 Mill Street Corporation and S.G. Marino Crane Service Corporation.

PROPOSED MA  
AMENDMENT  
21 MILL ST.  
R-1 to I-1

CHAIRMAN KALITA

This legal notice appeared in the Middletown Press on Saturday, February 26, 1977, and on Saturday, March 6, 1977, as read by the Secretary. I'll ask the proponent now to present his application.

MR. LESLIE TWIBLE

Mr. Chairman, may I use an area generally in here?

MR. REIF

Why don't you use the easel?

MR. TWIBLE

OK. Fine. Thank you.

MR. TWIBLE

Mr. Chairman - I'm Les Twyborn with Development Resources Corporation located on Airport Road in Hartford and I am representing the S.G. Marino Crane Service Corporation and the 21 Mill Street Corporation regarding a proposed amendment to the Zoning Map which would change the existing zone from R-1 to I-1 on the subject's property and to just kind of go over the vicinity map to let us know where we are, this would be Mill St. here and Main St. Ext. here and Ridge Road crossing this way.

AUDIENCE PERSON

Would you please show us too? We're interested.

MR. TWIBLE

OK. Fine. Let's do that once again. This is Mill St. here running up and down on the map and Ridge Road running this way and then the Main Street Ext. running off on one corner here. This is a vicinity map that was submitted.

Could you point out where Warner Ave. is?

MR. TWIBLE

OK. Fine. To orient you concerning Warner Avenue, this is Ridge Road here, Harris Street and then Warner Avenue, and these are lots on Warner Avenue that abut the proposed zone change. This is a vicinity map that shows generally the existing zoning in the area - then we've outlined in red the area proposed to be changed. This is a boundary line for the TD zone here with all property to the left generally in the TD zone.

MAYOR MARINO

Could you explain TD?

MR. TWIBLE

Well, that's a Transitional Development zone, in terms of the Middletown Zoning Regulations. I guess, generally, that zone is outlined to allow that this area is under some sort of transitional phase in terms of future growth and development in the town. This area generally to the left and, of course, currently now is an R-1 zone and then a second residential zone would be generally off in the right hand corner - R-3. The remaining portion on this map is zoned I-1 with industrial uses generally in that vicinity. The proposed change would involve two parcels of land under separate ownership. One is identified exactly like this (pointing to map) and that's the property currently belonging to the 21 Mill Street Corporation and is the site of the J. William Foley Company. The second piece is a rear portion of land to the rear of the S.G. Marino Crane Service Corporation. We find that a major portion of the Marino Crane property is located in the I-1 zone and this rear portion is located in the R-1 zone at the present time. As far as the precise zoning on the Foley or 21 Mill St. piece is concerned, virtually all of it is in an R-1 zone. However, there is a small triangle of land at the northwest corner of the property that is currently zoned I-1. The proposal would change the

zone from R-1 to I-1 for the entire property and for the Marino property also. Currently, of course, we're in a situation—where this property is being used. As I understand it, generally in uses in accordance with an I-1 zone, so they - both pieces would amount to a non-conforming use at this time and the change in zone would make the uses conforming with that zone. In terms of area for the two properties, we also have a map that's a different scale that was also submitted to the Commission. This is our identification map - identifies on a slightly smaller scale the two properties in question. The Foley or 21 Mill Street piece is 2.97 acres and the Marino piece is 1.5 acres. The balance of the Marino property, of course, would be out this way and is currently zoned I-1. This dotted line on the outside is the 200 foot perimeter around the property that's required as far as notification and so forth is concerned. All I have to say, other than that, is that the zone change would tie in with other industrial zoning in the area and would also allow for the current uses that are there to conform to the I-1 zone. Any questions?

CHAIRMAN KALITA

Are there any questions on the presentation? I would like to ask the director now - any comments?

MR. REIF

Yes. I would like to touch first on why the zoning line does not follow the boundary. That caught my eye immediately and, of course, they got their information from our Zoning Map so we dug out the map - the zoning map that was adopted in 1969 - and indeed it does for some reason unknown to me, but it does not follow the property lines but cuts across diagonally as it is shown so, in case that was a question in your mind, you might know that that's correctly shown. There are some other documents you may want to look at as you discuss this. One that seems logical to me to bring out was the drainage system that this parcel is part of. I am going to point to a red spot on this map which shows the site that's in question. It's actually one of the outlets for the Sumner Creek watershed and I want to read the comment from the Inland-Wetlands compliance officer and he says "This site is not listed in the Inland-Wetlands per sés official Wetland and Watercourse Map." He says "We would suggest that erosion and sediment control be adhered to during construction or site preparation due to the normal water runoff from the surrounding hills." You can see what he's talking about more on an aerial photograph we also happen to have of this area. This is the downtown section - you immediately recognize it and this is the site that we're talking about. Remember this aerial photograph was taken before 1969. You can clearly see a draw or a valley or what-have-you that exists all the way from the Woodrow Wilson High School all the way down through the - this section through Mill Street right up to the ramps that are Route 17, so it's possible to see almost - this is similar to what's there now but the stream that used to run through here is more clearly identifiable here than it is now. We also have another sheet that shows the drainage system for the entire city and, of course, that shows the same basic information as you say on the Sumner Brook Watershed drainage system. The bottom map is the Plan of Development. This site is right here. The area has traditionally

been shown on this Plan of Development and previously as either open space or environmentally sensitive areas. Even though it has been used, as has been announced, for industrial purposes. The only other report we have is from the Health Department and they say that "This department has no comment regarding the zone change in that City sewer is not available. Future usage of this parcel would require Health Department involvement and, of course, right now the land is being used without any need for sewerage because it's just trucks being stored in the area." That's basically all I have to say at this time.

CHAIRMAN KALITA

Do you have any questions of the director?

COMM. CHAMBERLAIN

Yes. George, there's no elevation shown on that map, is there?

MR. REIF

Elevations in terms of grades? No.

COMM. CHAMBERLAIN

Isn't the grade behind there quite steep?

MR. REIF

The grade on either side is steep. The grade immediately in back of it going south is not necessarily steep because it's part of a valley.

COMM. CHAMBERLAIN

Right.

MR. REIF

But on either side is tremendously steep. There are cliffs.

COMM. CHAMBERLAIN

And do they go back all the way to the end of this property or are they in the middle of this property?

MR. REIF

The cliffs?

COMM. CHAMBERLAIN

Yes.

MR. REIF

The cliffs go all the way back to the vicinity of Woodrow Wilson High School. It's a valley. It's a natural division between the growth on either side - on the east and the west.

MAYOR MARINO

(Inaudible few words) to say that a good deal of the property shown is shown as planned is cliff.

MR. REIF

It may be cliff. On the other hand, the area they want to rezone is level. It's in the valley.

COMM. LOWRY

I have a question on that. The 200 foot line you show - the broken line on your map - does it include the cliffs or is it 200 feet below on the level?

MR. TWIBLE

I would like to say that, first of all, the two parcels in question are level. The cliffs are generally very close to the property lines or on abutting properties. This 200 foot perimeter that you see is a requirement as far as mapping this map is concerned to show which property owners should be notified concerning the proposed hearing. That's the only reason we put the 200 foot -- it's not a buffering line or anything else. It's just notifying people for the public hearing.

MR. REIF

You're going to lead us into a problem if you keep saying - you're right - there's a requirement in the Zoning Code to show it but there's no requirement now under State law to identify - notify them any more than by that Public Hearing notice. You've done what you're supposed to in terms of the Zoning Code. The notice was put in the paper according to the State requirements.

CHAIRMAN KALITA

Commissioner Augustine?

COMM. AUGUSTINE

No.

CHAIRMAN KALITA

I would like now to call on anybody that wants to speak in favor of the application. Come forward, identify yourself by name and address. Being none, anybody want to speak against the application? Please come forward. State your name and address. We need it on the mike to pick it up on the tape.

MS. THELMA BELFIORD

My name is Thelma Belfiord. I am not sure I'm really against it, but I know what he showed on the map is directly contiguous to all the property on Warner Avenue. We've had problems there in the past. About six years ago we had a landslide and we came to the City for recourse and what we're concerned with is the fact that your residential section that they want to have industrialized meets our property - property lines and, you know, our property is up on the cliff and then goes down and meets what's residential and that's the reason it's residential, I think, so that nobody can start digging up more than they already have and so on. I think it was to protect the residential property on the hill. Now, we don't - I don't have any direct objection except that we don't want a condition where this is going to be dug up and we're going to start losing our property again - having landslides and drainage problems and all that sort of thing - which we're still having - by the way, but not to the extent that we had it six years ago. I don't know how many of you remember Warner Avenue but - oh! I didn't see you, Mr. Bauer (laughter) I pestered the life out of him. You can understand what I'm talking about - why I'm here. As I said, I'm not trying to make problems for

your clients, but we're looking out for our interests because we're not in a position to spend thousands and thousands of dollars to try to rectify something that might be done down below so just take that into consideration. That's all. All my neighbors are sitting here, but they didn't choose me for a spokesman but they might want to say something themselves.

MR. CHARLES STETSON

Mr. Charles Stetson, 15 Warner Avenue. The one thing that concerns me is - Is there any guideline in the City zoning or development or whatever you call it in regards to grading and stuff like that - finished gradings on pits, anything like that?

MR. REIF

Grading on pits?

MR. STETSON

Well, if you're excavating land and you pull out, when you finish pulling your --

MR. REIF

Which side of this --

MR. STETSON

On Warner Avenue.

MR. REIF

On Warner Avenue.

MR. STETSON

Right. I'm up at the end.

MR. REIF

You're up there. Now, it's the other side that - someone over the years has been -

MR. STETSON

I was wondering if there's any guidelines that could be set forth where there could not be excavation done.

MR. REIF

Well, in answer to that outright is that there are no simple guidelines in the Zoning Code. It basically deals with --

MR. STETSON

In other words, there's nothing in the City's policies that restricts.

MR. REIF

There is. There's a Natural Resource Removal section that would allow a certain amount of earth to be removed. Having observed --

MR. STETSON

Right.

MR. REIF

Having observed the situation out there, it appears to me that

they're filling rather than removing any more. Obviously, building up and levelling off. Going back into the valley.

MR. STETSON

And they did put in drainage and all that (inaudible few words) changes there. We were wondering if there was going to be any rerouting of the runoff in that area.

MR. REIF

That's one of the things that I think ought to be discussed and determined during this procedure.

MR. TWIBLE

May I say something? We are not proposing any development or anything. It's just simply a change of zone. We are not proposing any paving or grading or building.

CHAIRMAN KALITA

At this time.

MR. TWIBLE

At this time.

COMM. PARISI

George, may I ask a question. What is the difference in grade from from the propertyowner on Warner Avenue, let's say, to this flat piece. What are we talking? 20 feet? 50 feet?

General mumbling.

MR. REIF

Obviously, it's at least more than 40. Do you have any figures on it?

MR. TWIBLE

It's about 40 feet. I don't have a precise figure on it.

MR. REIF

The section through that area would be most valuable. One gets the impression of a rather high cliff there and these houses are up on a rather secluded location, amazingly secluded. When I drove out there, I was - I thought "my goodness, nobody ever comes out here" and then when I was on my way out, two cars came in. There's really a lot of traffic but it is basically secluded location in town that you wouldn't know was there unless you were out looking for it.

MAYOR MARINO

How much buffer is there, George, between -- if this road had changed from residential to industrial? What would the buffer (inaudible few words)?

MR. REIF

There is a buffer requirement.

MAYOR MARINO

10 feet?

MR. REIF

I think it's more than that. For any use. Of course, if it's not being used, there's no buffer.

MAYOR MARINO

For there to be any use.

MR. REIF

Let's see what it says.

MAYOR MARINO

It should be 50.

MR. REIF

He's got it. The Buffer Area. Whenever a lot in this zone adjoins a residential zone, there shall be five foot buffer strip or area.

MAYOR MARINO

We better get that Code (inaudible few words).

General mumbling again.

MR. HARVEY CLIFF

My name is Harvey Cliff. I live at 37 Warner Avenue. Now, when I moved there, that creek that they're talking about ran between Chadwick and Marino. I know this is -- I got to start back there. He decided he didn't want it over there, so he moved it right under my bank and what happened to me? (sounds like "I lost it too"). Now, if the builder or the owner suddenly decides that he wants to move a building up there, I'm about 45 or 50 feet up in the air. I don't have no back yard. I mean - from the bank down. If he decides to take that, how much of my dirt is going to go down in the hole? Not only me, he's going to go all the way up to the end of the street provided - I mean, if he decides to dig it out. Now, what's to stop him from digging it? If he owns it, he can come within five feet of mine and then I'd be about another - it would be about a 30 foot drop down there. So, comes the rain, what's going to happen to me - I mean, if he decides to dig. Now, that water runs under the bank. I can see it from when I stand on the edge of my lot. I can look down and I can see that stream. I think the last time we were up here, there was a big hoodo about this - you can't divert the natural flow of water. Well, they did it. He's going to do it again because if he digs there he's going to have to move it and I won't be the only one that's going to get -- the further back he goes, the more of an angle, the more that these other people's property is going to be missing. Now, suddenly the builder decides he needs 20,000 yards of dirt, where's he going to get it? Right there! And he gets it. Who'se to stop him? He starts digging. Down goes the bank. I run down to the fuzz - oh, what the hell can we do - we can't stop him. He owns it up to five feet. I can't help it if you got a 30 foot drop back there now. That's what I want to know. Now, so there! And where does that leave me?

CHAIRMAN KALITA

Thank you, sir.

CHAIRMAN KALITA

Is there anyone else that wants to speak against the application?

MR. FRANK WINICKI

My name is Frank Winicki. I live at 59 Warner Avenue. I think pretty much in agreement with everybody over here as far as concerns with the bank falling in and that's pretty much my opinion on it. Does anybody else have any questions as far as the bank?

CHAIRMAN KALITA

OK. Thank you. Is there anyone else? Any of the Commissioners have any comments?

COMM. SHAW

Phil, when you worked on that a few years ago, what did you do along there?

MR. BAUER

We hauled in excavating material from the infamous creek site - Feldspar Rock they blasted down in - we utilized that to try to stabilize. We used some demolition materials to try to help try to stabilize the bank. We created a new ditch. We pined a certain portion of the ditch and then we created an aberrant which - at the top of the slope - which would permit everything to go through the pipe and block the pipe. It ran off to a culvert near Mill St. and we covered some of the demolition materials. We still have some rivulets and certain things down there that we intend to try to restore if we had - as soon as we could find money to do this type of thing. Have any money left over we could go back down there. That's all we really did. We stabilized it with demolition material and with the tailings or blasted material from creek excavation on Old Saybrook Road.

COMM. SHAW

To what extent would you protect those properties if there were some work done back there with what you've done before?

MR. BAUER

Well, I think I did - although it wasn't said - I think we did write a comment to the Planning Director to the effect of something like any future action or anything - any work done on the site, we would like - we don't want them to ask the City to extend the pipe system that's in there now farther south. We feel that anything that they do on that property, they got to take the necessary precautions to contain that stream within a pipe so it doesn't erode at the bottom of the bank like we did at the --

COMM. SHAW

How far south are you?

MR. BAUER

We're only - we're probably with the pipe maybe - I'd say somewhere around 100 - maybe 125 feet south of the Foley building and it's open. Marino has put a cross drain over to this ditch we created from his property because there was runoff from Marino onto the Foley property and so they made some sort of an arrangement to come

across and put a pipe system laterally from the west to the east but, over the years, that whole drainage area (inaudible few words) and all we did was offer a word of admonition that they had to do something with the land when anything was ever done in the way of filling or grading or parking or paving or whatever.

COMM. LOHRY

The ditch is on the Foley property?

MR. BAUER

Yes. It was the former Chadwick property that they (inaudible word - someone coughing) reference to before. Chadwick put up the building - sold it to Foley. Foley did some extra work on the - in the - on the site - paving and what have you and so on, and he's - we've cleaned that so-called landslide up - probably we've had equipment on our property three times so far working on - you know - cleaning up - over the course of----. We did present an idea (inaudible few words) one, to put a very positive type of restrainer on that bank with sort of a metal binwall similar to what we have along Vine Street but the costs are prohibitive. We just couldn't get the funding for that type of thing. If - I might even stick my neck out a little further and say that in the day and age that we have today with environmental protection and so on and all of the people that are aware of these particular things as they are today, we thought it would have turned down the developer (inaudible word) decided to develop Warner Avenue. With the - the developer and what we use for fill material which is the people's back yards, it's the most unlikely fill material you ever wanted to see because there was evidence of it when it washed down and fell into the Foley property and we cleaned it up we found then what was there. It wasn't the best material for fill for that type of a slope - that steep a slope.

COMM. SHAW

To develop that property - the Foley property - which is really the property that's in question for these people, would they have to either excavate or fill or could it be done something in the way it is now?

MR. BAUER

What's existing there right now more. I wouldn't say that they would excavate any more on the Foley property at all.

COMM. SHAW

OK. But <sup>if</sup> they were going to excavate more, the claims or concerns that these residents are expressing are not too likely.

MR. BAUER

I think if we, in any site development they do - you do approve here with the site plan, you ought to insist that positive drainage system be a part of that site development and I think this would probably alleviate some of the - a lot of the conditions that the open stream causes in the (inaudible word).

COMM. SHAW

Well, I just wondered - following this same argument - what extent your client would be willing to accept a restriction of the kind of

development that is - in terms of change of terrain and what not with this.

MR. REIF

He may not want to answer that question now.

MR. TWIBLE

I honestly don't know of any plans for the property other than simply a - there's a matter of a mere conveyance of a portion of the property from Foley to Marino. Just a change of ownership for a portion of the property and there is no development plan. As far as any restrictions that the Commission would like to place on it, I assume that they would be in accordance with good design and engineering that you felt was necessary.

MR. REIF

I think part of the answer went by and may be worth repeating again. The truth is that I think some of the equipment out there is now sitting on areas that are zoned R-1 and it was only because of this interest in conveying land that this whole thing has come up as far as rezoning and I'm not saying they're using the R-1 land, you know, knowing it. They probably just didn't know.

MR. BAUER

Not only the equipment, but the building.

MR. REIF

Well, the building - the Foley building is a non-conforming use. No question about that, and this would legitimize a building that's already been there and wouldn't add any additional burden to anybody.

CHAIRMAN KALITA

Any further remarks? Commissioner Tyaack?

COMM. TYAACK

The questioning seems to have gone in one direction - on excavation and then the reviewing of site plans, but what's being asked here, I believe, is to change zoning. Now if that was a change of zoning, I-1, is there any prohibition from just filling in on that land without a site plan. In other words, they're not specifically building anything at the moment. They're placing fill there.

MR. REIF

There's no prohibition as long as it's not inland-wetland area. If it was determined to be an inland-wetland area, then there would have to be --

COMM. TYAACK

Which at the moment it's not.

MR. REIF

(inaudible word) for that agency. It seems strange since it is a drainage course that it may have been one of those areas that was inadvertently left off the Inland-Wetland map. I think you probably are on the right trail. It was filled in before the Inland-Wetland map was made - just ignored it, but filling itself may damage the

environment in terms of blocking the drainage, but it wouldn't hurt these houses. As a matter of fact, if they filled all the way up to their back yards --

COMM. TYAACK

It depends where it forced the drainage to go.

MR. REIF

Presumably, there would be some way for that water to get out.

COMM. TYAACK

Presumably, it could also be undermining for it to get out depending how the fill was put.

MR. REIF

It could.

CHAIRMAN KALITA

No further questions? Thank you for your presentation and we do not act this evening on the item on the agenda of a public hearing. This will be brought up at the next meeting and at that time will be discussed with the committee. There's no action tonight on this application.

MR. TWIBLE

Thank you, Mr. Chairman.

*Eileen Rogers*

Eileen Rogers  
Transcribing Secretary

Edward J. Kalita, Chairman  
Planning & Zoning Commission

Approved: \_\_\_\_\_