



## ***Land Use-Urban Redevelopment Committee – Board of Representatives***

Virgil de la Cruz, Co-Chair

Charles Pia, Jr., Co-Chair

# **Committee Report**

**Date:** Thursday, July 19, 2018 (Continued from Wednesday, July 18, 2018)

**Time:** 7:00 p.m.

**Place:** Legislative Chambers, 4<sup>th</sup> Floor, Government Center

The Land Use-Urban Redevelopment Committee met as indicated above. In attendance were Co-Chairs de la Cruz and Pia and Committee Member Reps. Cottrell, Graziosi, Lee, Lion, Michelson, Sherwood and Summerville. Also present were Reps. Di Costanzo, McMullen, Nabel and Patterson; Ralph Blessing, Land Use Bureau Chief, Jim Minor, Law Department; Kathryn Emmett, Corporation Counsel; Steve Grushkin and Leonard Braman, Wofsey, Rosen, Kweskin & Kuriansky, LLP; Edward McCreery, Pullman & Comley; William Hennessey and Lisa Feinberg, Carmody Torrance Sandak & Hennessey LLP; and approximately 60 members of the public. (see the [attached public sign-in sheet](#) for both evenings)

Co-Chair de la Cruz called the meeting to order at 7:09 p.m. Rep. de la Cruz explained the process the committee would be following. The Committee would first continue the public hearing from the previous night, then City staff would have 15 minutes to respond to the comments, the attorneys for the petitioners would have 15 minutes to respond to the comments and then the attorneys for the applicants would have 15 minutes to respond. After each presentation, Board members would have an opportunity to ask questions.

<b>Item No.</b>	<b>Description</b>	<b>Committee Action</b>
1. <u>LU30.015</u>	REJECTION and <u>Public Hearing</u> ; Appeal of Amendments to Article II, Section III, Definition 45, Gymnasium or Physical Culture Establishment, and Article III, Section 9, BBB. C-D Designed Commercial District of the Zoning Regulations. 06/06/18 – Submitted by Zoning Board	<b>Report Made</b>

Chris K. of St. Charles Avenue read the [attached statement](#) into the record in favor of the text change.

Vicky Papsen of Ravonah Circle read the [attached statement](#) into the record in favor of the text change.

Scott Hutchason of Mill Valley Lane read the [attached power point](#) into the record opposed to the text change

Jackie Kaiko of Mill Road read the [attached statement](#) into the record opposed to the text change

Amy Temple of Talmadge Lane read the [attached statement](#) into the record opposed to the text change

Bob Martino of Turn of River Road read the [attached statement](#) into the record opposed to the text change (and provided an mp3 audio file which is available in the Board office)

Jill Smyth of Wampanaw Road representing the Historic Neighborhood Preservation spoke about the architectural significance of High Ridge Park and in opposition to the demolition of buildings in the High Ridge Office Park.

Marian Freed, a resident of Sterling Lake, read the [attached statement](#) into the record opposed to the text change.

Jeff Salvatore, a board member of the Italian Culture Center spoke in opposition to the text change, describing the services provided to the community by the Italian Center and that the text change would end the Italian Center.

Patricia Liotta stated that Chelsea Piers has destroyed her neighborhood; health clubs are not an answer to problems.

Deborah Billington read the [attached statement](#) into the record opposed to the text change

Cynthia Reeder spoke in opposition to the text change as not consistent with the Master Plan; this changes the rules on people who have invested in their properties.

Howard Malis of Talmage Lane read the [attached statement](#) into the record in opposition to the text change.

Mary Buonsante-Henckock of Talmage Lane read the [attached statement](#) into the record in opposition to the text change.

Peter Callahan of Turn of River Road read the [attached statement](#) into the record in opposition to the text change.

Mike Papa of Bouton Street East spoke about the importance of water use and teaching people to care for their properties.

Stephanie Mark of Turn of River Road spoke in opposition to the text change as a butchering of the City and a catastrophe for office parks

Frank Macchio stated text changes are ruining neighborhoods and should not be allowed.

Heather Cavanagh read the [attached letter](#) from the Chamber of Commerce in favor of the text change and noted that the Chamber is still in favor of the text change.

Barry Michelson of Idelwild Drive read the [attached statement](#) into the record in opposition to the text change.

Joy Katz spoke in opposition to the text change.

Helene Devin spoke in opposition to the text change, saying that it will be inconsistent with the neighborhood and suggesting repurposing the building

Co-Chair de la Cruz closed the public hearing at 8:32 p.m.

Mr. Blessing stated that:

- There was significant discussion by the Zoning Board of the Planning Board letter, which said that the Planning Board approved the use and was OK with 3 of the 4 uses; there was also a clarifying email by the Planning Board
- The discretion of the Zoning Board in the special exception process was also discussed at length prior to voting on this application

Mr. Blessing responded to questions from Committee members and other Board members as follows:

- It is difficult to address traffic after the fact of the approval but that is the point of the traffic report that will need to be provided prior to the site plan approval. The applicant will have to show that there is no net increase in traffic over the prior use in order to get the site plan approved
- He does not know if having the Planning Board give a new opinion on the revised text change would compromise the process, but the Committee should review the tape of the Planning Board meeting prior to the clarifying email.
- Walls and berms do work to blow out sound; physical barriers have been around for a while and are used on highways; a business in the South end has been required to enclose its use to block sound; the Zoning Board can ask for structures as part of the special exception process (The business in the South End has immediate sanctions upon a violation)
- This would be proactive and the safeguards of physical barriers against noise or light would be in at the beginning rather than have to react as is done with the South End business, which is a manufacturing use in a manufacturing zone and the use is as of right

- The [May 18<sup>th</sup> memo](#) from Attorney Minor addresses the ability of the Zoning Board to require physical barriers and other procedures
- There can be a requirement for studies done by qualified personnel reviewed independently at the applicant's cost, with regard to noise, traffic, etc.
- Assuming that Lifetime Fitness would break the law is to assume that every neighbor is a lawbreaker, even if it is a use as of right
- No net increase focuses on peak periods (he is not a traffic engineer; the traffic study would include all forms of transportation; traffic analysis makes sure that the road system works
- Stamford routinely asks developers for mitigation and the Supreme Court has held that as long as there is a nexus between the off-site improvements and the development, the Zoning Board can ask for improvements; there might be an opportunity to improve the traffic
- Conditions can be put in that if the traffic needs to be mitigated, the developer will have to pay for it
- The Board of Representatives cannot impose conditions, it can only reject or accept the appeal
- The Zoning Board asked for another opinion from the Law Department that it could require conditions
- The Zoning Board could reject a swimming pool during the special exception process or could require that the swimming pool be moved somewhere else
- The site plan review requires the Zoning Board to look at site specific conditions and as part of the Special Exception process the Board has the right to treat different things differently (such as areas with residences and those without)
- The Zoning board could provide in the conditions of approval that the applicant would have to come back to the Land Use staff or the Zoning Board to add an outdoor use
- The traffic engineers would set the standards for the study

Mr. Minor responded to questions from the Committee as follows:

- There is no opportunity for the Planning Board to do an additional opinion on the changes to the text change
- The Planning Board did give a clarifying opinion on the text change continuing to object to the outdoor use (in the [4/26/18 email](#)), finding that this does not conflict with the Master Plan
- The appeal only relates to the text change
- The traffic study is only a conceptual study and does not relate to a specific site plan review; the special exception application will require a traffic study
- There is no way to know if an outdoor pool will be approved because there has not been an application
- Mr. Vitti is in a different zone and thought what he was doing was legal; the only costs were Mr. Minor's 3 days on trial and 5 days in court
- Under the Charter, the Board is supposed to consider the record – the written findings, recommendations and reasons of the Zoning Board
- Courts routinely uphold the Zoning Board's ability to impose restrictions and the Zoning Board can ask for offsite improvements even if they aren't in the regulations – this is routinely done and developers know that the special exception won't be approved if they don't perform the improvements (such as Home Depot)
- The Zoning Board has the discretion to determine if the use is appropriate and can go beyond the noise requirements of the text – that is the point of the special exception
- The noise requirements in the text change are 55 dba during the day and 45 dba at night; the Zoning Board would still have discretion to deny the application
- The Zoning Board spend time to make the noise issues as specific as possible
- The Board of Representatives can reject the amendment as long as it is done for zoning reasons
- There is nothing to preclude the applicant from coming back with a new application if this text change is rejected
- If an applicant goes before the Zoning Board for a special exception, the applicant will usually change the application to deal with objections or else have the application rejected

Mr Braman stated that:

- The committee is not discussing a hypothetical Lifetime Fitness Center. The text change was designed to allow the Lifetime Fitness Center and an outdoor pool; if the committee wants to prevent negative impacts, it should reject the text change

- Courts have reversed Zoning Boards where they have denied site plans or imposed conditions in the special exception process. In [Procurement LLC](#), the text change permitted a day care center but the Zoning Board was concerned about traffic and other commercial uses and denied the day care center. The Court held that they couldn't deny the special exception when they had created permission for a day care center and needed to have done a traffic study. In Marland, the applicant needed a special permit to excavate a pond and the Zoning Board imposed a condition that a berm be restored to its original condition prior to the excavation. The Court rejected the condition, questioning the lack of data showing the need for the condition. Special exception protection is no protection
- The Master Plan is about the values of the community and what is important. There will be an increase in traffic and there are many good reasons to reject the text change.

Mr. McCreery stated that

- Highway walls don't work as sound barriers (see [attached article](#))
- The pool would have to be built in order to determine if the noise mitigation worked; it would be unconstitutional to close down the pool
- The Zoning Board has to list the conditions at the time it passes regulations; there will be parties around the pool
- There is no need to defer to the Zoning Board's decision; but do need a zoning basis for the decision
- Not supposed to save the office park on the backs of the residents

Mr. Braman, Mr. McCreery and Mr. Grushkin answered questions from the Committee members and the Board members as follows:

- None of the other 5 buildings have a pool
- Beckwith is a decision of the Connecticut Supreme Court that provides that when the Zoning Board attaches conditions to a special permit the conditions must be found in the regulations. A Zone change is required for road improvements. The test for offsite improvements is not a nexus to the project.
- If this zone change happens, it will be allowed by special permit
- Developers will usually cave to the conditions of the Zoning Board rather than go to court
- The Zoning Board could have put no outdoor use as a condition, no outdoor concerts, etc. in the text change
- In interpreting the Master Plan, the plain language of the words should be used; sports and entertainment complexes in the sentence "Principal large-format retail uses, shopping centers, sports and entertainment complexes and similar uses shall be prohibited" are not incompatible with other evils in sentence; it is a list; read it as a whole but don't forget to read individual words
- There is very little that could not be included in this text change, large complexes could be developed in other C-D zones
- The Planning Board could have left health clubs and spas in the Master Plan but specifically struck it out
- Accessory uses are permitted as shown in letter to Jim Lunney; those are Lifetime's business model; not all of those things will necessarily be in this facility

Mr. Hennessey stated

- His office has provided the Committee with memos regarding the scope of review by the Board of Representatives – the Board has a legislative function but constrained by the Charter
- There is also a memo on the Special Exception issue
- §19.3 of the [Zoning Regulations](#) creates the criteria for a special exception approval in Stamford. Before granting a special exception, the Zoning Board must make findings for example that "the location and nature of the proposed site including its size and configuration, the proposed size, scale and arrangement of structures, drives and parking areas and the proximity of existing dwellings and other structures" is in accord with the public health and welfare. This is one of 5 very broad findings the Zoning Board must make.
- If the Zoning Board is not satisfied that a special exception is appropriate for an area, or doesn't think that there is enough off-site mitigation, it can say that it is not making that finding. That is how the Zoning Board wields great power and it is cited in an exhibit included in the record. (See

last 2 pages of 3/22/18 Letter from Carmody Torrance to Vineeta Mathur [Pt 1. \(through Exhibit 3\)](#) & [Pt. 2 \(Exhibits 4 through 9\)](#)).

- The draft language of the Planning Board in creating the Master Plan was confusing and they asked Dr. Woods if the language meant to exclude a gymnasium. He provided a [letter](#), included in the record, confirming that the language is not meant to prohibit a fitness and recreational facility. This is confirmed by the decision of the Planning Board that this is an appropriate use in the C-D Zone
- The Master Plan language about preserving historic structures and about restoring office parks; there are inherent conflicts; page 4 of the [Master Plan](#) specifically discusses amending the zoning regulations to allow redevelopment of suburban office parks.
- The Master Plan is being followed: the office park is undergoing redevelopment for mixed use. This will strengthen the park and add to the vitality of the community.
- This is not the Harrison facility; this is a much smaller facility, with different uses and different programs. They are prepared to subject themselves to a number of conditions. The Zoning Board could easily say “no amplified sound” and does so regularly
- There are other facilities like this in Stamford with outdoor pools in residential areas, such as Stamford Yacht Club, the Italian Center, the JCC, the King School, the Newfield Swim & Tennis Club and the Trinity outdoor football field; these are community assets
- Community assets need to be near the community; they also need to be regulated and designed right; that’s why the Zoning Board worked so hard on this

Mr. Hennessey answered questions from the Committee members and Board members as follows:

- Prior to the 2014 application for a text change to allow a surgical center the Zoning Enforcement Officer wanted to ensure that medical office buildings were allowed in C-D ; the City had been working with Stamford Hospital to build a new health and wellness district; there were concerns about the creation of satellite hospitals in C-D districts and that it needed to be done with thought; it was rejected because there was no study of impacts
- For this application, they prepared a traffic study (reviewed and critiqued by the City and DOT which showed profound reduction in traffic), they also studies storm water impacts, light effects, and noise impacts. These studies are in the record. All of this was done without a site plan.
- The best way to mitigate sound is to put the barrier as close as possible to the source
- The staff also did a comprehensive study.
- The standards of this regulation would apply to any use in the 5 other C-D zones
- The impacts of the traffic in the other C-D zones is found in the record; lighting is site specific as is sound
- The Master Plan recognizes that C-D zones should be creatively thought of in order to thrive; the current uses office, day care centers and research centers by site plan do not have a market, therefore the master plan directs amendment of the regulations to develop mixed use; but the Zoning Board required the give back of development rights
- The proposed Lifetime Facility is about 10% bigger than the JCC
- This could not have been done as a variance because for a variance you need to prove a hardship unique to your property in your zone (other than economic hardship); they would not have been entitled to a variance; this is too sophisticated a project for the ZBA
- Comfort purchased the property in 2003
- The Master Plan wanted text changes to happen when it says “amend zoning”
- The pool was an important part of the program and Lifetime felt that the noise could be addressed (there is no site plan yet)
- The definition applies to the entire City, not just the C-D zone, many have outdoor uses; the definition had to be drafted to apply to all gymnasium and physical culture establishments and the definition should not make them non-conforming; the applicant pulled the definition
- There is no limit in the text for the size of the outside pool, but there is a Zoning Board requirement that it not be injurious to the public; there might not be any pool; there might be a tennis court
- There is no market study on this potential use; he represents the landlord, not Lifetime Fitness
- He is not aware of any lawsuits regarding noise from pools; those would be directed to the Zoning Enforcement Officer
- The Harrison facility is approximately 25% larger than the proposed facility

- The applicant was asked to come up with a definition since this was an undefined use; they tried to create a definition so that nobody was non-conforming, so it included salons, retail and PT; given that it was so broad, they withdrew the definition. As a result, they went to the ZEO.
- The letter sent to Jim Lunney regarding what is included in a gymnasium –physical cultural establishment is based upon a larger facility; the Zoning Board would determine what the definition is and the ZEO would have to follow that definition

Mr. Blessing explained that the ZEO is authorized by State statute to interpret zoning. Many uses in the regulations are not defined. Mr. Lunney would determine if a use is in the definition, but the Zoning Board could amend the definition through a text change. If an applicant does not like a ruling of the ZEO, they can appeal to the ZBA.

Co-chair de la Cruz adjourned the meeting at 11:28 pm until August 1, 2018 at 7:00 pm.

Respectfully submitted,  
Virgil de la Cruz, Co-Chair

This meeting is on [video](#).