ZONING BOARD OF APPEALS
REGULAR MEETING
Final Minutes
October 13, 2015

Seated for the meeting were Matthew Berger, Bill Lyman, Virginia McCormack, Lynn Conway, and David Rezendes (seated for Russ McDonough). Zoning Enforcement Officer Candace Palmer was also present.

Chairman Matthew Berger read the call to order at 7:00pm.

New Business:
ZBA #15-17 Gennaro Modugo - Seeking a variance from ZR 7.7.8.3.1 to reduce the Coastal High Hazard Area from 100' to 10' for reconstruction of a single family residence. Property located at 35 East Shore Rd., Stonington. Assessor's Map 154 Block 6 Lot 4; Zone RM-20.

ZBA #15-18 Matthew Gutmann - Seeking a variance from ZR 5.1.1 bulk requirements to reduce the side yard setback from 75' to 25' for construction of an attached garage. Property located at 69 Wamphassuc Rd., Stonington. Assessor's Map 126 Block 4 Lot 3; Zone RC-120.

Public hearings scheduled for November 10, 2015.

Public Hearings:
ZBA #15-15AAP – Mercedeh Pourmoghadam & Massoud Kalkhoran – Seeking to overturn ZEO Cease & Desist Order #15-016 regarding an A-Frame temporary portable sign for the Lighthouse Bakery. Property located at 21 E. Main St., Mystic. Assessor's Map 174 Block 2 Lot 5, Zone DB-5.

Attorney Londregan spoke on behalf of Zoning Enforcement Officer Candace Palmer. Attorney Londregan presented two maps for the applicant regarding the site plan and multi-tenant signage plan. Attorney Londregan presented a picture of the sign for which the cease and desist order had been issued. Attorney Londregan read the sign regulations from the Planning and Zoning Regulations as well as the allowed exceptions. Outside of the exceptions for community event signs, seasonal agricultural signs and detached banners, temporary portable signs are illegal per the regulations. Attorney Londregan presented the regulations regarding directional signs as the applicant is claiming this sign is a directional sign. Directional signs cannot be larger than four square feet and cannot contain advertisements. The applicant has also stated the sign is an incidental sign, Attorney Londregan read the regulations for incidental signs. Incidental signs are less than three square feet and often posted right outside the door of the establishment. Attorney Londregan stated that the Town and ZEO does not discriminate against minority owned businesses and presented ZEO Palmer's sign enforcement activity over the past three years. Attorney Londregan spoke on the history of the site. Attorney Londregan explained that in the original special use permit application a multi-tenant signage plan was submitted and approved and no portable signs were requested. Attorney Londregan read ZEO Palmer's memorandum of a meeting she had with the applicants. Attorney Londregan read an affidavit by Larry Sullivan previous Town Engineer regarding the meeting and allegations that he portrayed himself as a police officer. Mr. Sullivan stated that he did not introduce himself as a police officer or a sheriff. The town issued them a permit to open with conditions to correct the three items out of compliance with their approved Special Use Permit. The permanent certificate was later issued after the items were corrected. In May 2013 the applicant requested 465 sq.ft. of the second floor to be used for professional office use. With this application the applicant did not request additional signage and the permit was granted. A year later the town received a complaint that there was an apartment over the bakery. After an inspection and finding a single family dwelling, ZEO issued a Notice of Violation, after failure to complying with the Notice, a Cease and Desist order was issued. The Planning & Zoning Commission filed a complaint in December that there was an illegal A-Frame sign on the premises. ZEO issued a notice of violation and at a following inspection revealed that the sign had been removed. While conducting the initial inspection ZEO Palmer saw two other establishments with A-Frame signs and issued notices of violation. One went out of business and the other came into compliance. In April, ZEO Palmer followed up on a complaint from Rob Rivers regarding Cozy Nail Spa which came into compliance after a notice of violation, after this the sign was moved across the street and another complaint was issued by the flag committee. While inspecting these complaints ZEO Palmer noticed Sha-bam Hair Salon had an illegal A-Frame sign and issued a notice of violation and also saw an A-Frame sign at Lighthouse Bakery and issued a notice of violation to which

there was no response. After non-compliance a cease and desist order was issued. Subsequently, the applicants came into the office stating their sign falls under the regulations. The applicants wrote a letter to the town claiming discrimination by the department and the Town replied that they may appeal the order. Attorney Londregan stated that Ms. Palmer followed up on all violations observed, not just select businesses.

Mr. Lyman clarified that the board will be deciding whether ZEO Palmer interpreted the regulations correctly. Atty. Londregan clarified that the applicants' statement regarding selective enforcement is being refuted.

Mercedeh Pourmoghadam stated that they should never have received a notice of violation for the sign because they believe this sign falls under the regulations. The letter written to the town was an appeal explaining that their sign falls under these regulations. Ms. Pourmogohadam presented photos of several other establishments with A-Frame signs. Ms. Pourmoghadam presented a supreme case recently won, Reed vs. Town of Gilbert, Arizona, stating municipalities can no longer dictate content of portable signs. Ms. Pourmoghadam stated that there should have been a public hearing for a neighboring restaurant that operates seating outdoors on a public sidewalk and questioned why all cases aren't treated equally.

Mr. Lyman re-read the signage regulations stating the exceptions to temporary portable signs. Mr. Lyman stated that there is a need for the sign but it should be a fixed sign that a permit should be obtained for not a temporary sign. Mr. Kalkhoran stated that the town never explained this as clearly. The applicant stated that they did not receive respect from the town. Mr. Berger stated that all parties are entitled to fully present their case. Mr. Lyman asked the applicant if they considered coming into compliance and then using the proper channels to change the regulations. Ms. McCormack asked if the applicant had considered changing their permanent sign. The applicant responded that they have considered this and have found their customers see the portable sign better. Ms. Conway asked for the size of the sign, the applicant responded that the sign is around four feet tall and around two or three feet wide. Ms. Conway asked whether the applicant had submitted anything is writing following the notice of violation April 29th until the letter following the cease and desist order. Ms. Conway asked for clarification regarding their attempt to reconcile stated in the appeal letter. The applicant asked for clarification due to their belief the sign was compliant and stated they received no assistance.

Public Comment

Connie Szymonik, stated that the applicant is important to the community and provides a great service and requests that the board be fair. Other local establishments have signs that have not been removed specifically Lis Bakery and Argia Cruises and asked that the businesses are treated fairly. She also stated she hopes there is a way to resolve the signage issue for the business.

Stephen Capizzano, stated that the Reed vs. Gilbert, Arizona court case needs to be addressed and everyone should be treated fairly. Mr. Capazano stated that the signage regulations should be addressed and updated.

Susan Burfoot, stated that the sign does seem directional and shows that they are open.

Attorney Londregan stated that directional signs must be four square feet and have no advertisements, the sign does not comply. For incidental signs they must be three square feet and located at the entrance to the establishment.. Ms. Palmer spoke regarding the photographs submitted by the applicant. Cove Restaurant has a special use permit, the Fishery was issued a notice of violation and come into compliance, the farm stand sign is legal under seasonal agricultural sign regulations, Lis Bakery was issued a notice but seems to be out of compliance again and will be contacted, the sign at Brustolon is a state sign for emissions testing which the town does not have control over. Bravo Bravo is in compliance with the state for seating on the sidewalk.

The applicant stated that Attorney Londregan's interpretation of the court hearing is incorrect. The applicant stated that sign is directional and incidental and falls under the regulations. They have not experienced this treatment in other towns. The applicant asked if the sign were smaller would it be compliant. Mr. Berger stated that the interpretation is up to the Planning & Zoning Commission.

Chairman Berger closed the public hearing.

The meeting recessed at 9:00pm and reconvened at 9:11pm.

Chairman Berger reopened the public hearing to for the applicant to present an email sent by Blunt White to them that Mr. Brynes had informed him of the ruling by the Supreme Court.

Chairman Berger closed the public hearing.

Attorney Ed O'Connell spoke regarding the statues for the obligations of the Zoning Board of Appeals. Attorney O'Connell stated that it is the board's obligation to decide whether the ZEO's cease and desist or was correct or in error. Attorney O'Connell stated that the Reed vs. Gilbert, Arizona case was concerning first amendment speech and differs from commercial speech. This would not be the ZBA's authority to decide whether the case applies to this appeal. Attorney O'Connell recommended that the board affirm, modify or release the order. The ZBA is not the authority to determine whether the regulations meet the ruling.

Ms. Conway moved to affirm the cease and desist order, seconded by Ms. McCormack, Ms. Conway stated that the regulations are clear and the current sign does not meet the exceptions, Mr. Lyman stated that the board members support small businesses and are volunteers for the town and have regulations to follow, Mr. Lyman reiterated that the regulations only provide few exceptions for temporary portable signs and the applicant's signs do not apply and affirms that the ZEO interpreted the regulations correctly, Ms. McCormack stated that she sees no error and this sign is not directional or incidental, Mr. Rezendes stated that this is a temporary sign and does not comply with the regulations and although the applicant should have a sign this is not the correct sign under the regulations, Mr. Lyman stated that signage regulations should be looked at by the Planning & Zoning Commission and changes should be made through the proper channels, Mr. Berger stated that it is the board's duty to uphold the regulations as they currently stand and summarized the applicant's arguments, all in favor 5-0, motion approved.

ZBA #15-16 & CAM David P. Madacsi – Seeking a variance from ZR 5.2.1 bulk requirements to increase the maximum height from 20' to 38.5'; and ZR 7.3.8.4 to reduce distance from the Coastal Jurisdiction Line from 100' to 50' and ZR 7.3.5 to increase Coastal Height Limitation from 24' to 37.2' for demolition and reconstruction of a single family residence. Property located at 53 Roseleah Dr., Mystic. Assessor's Map 175 Block 1 Lot 17; Zone MC-80.

Ms. Palmer summarized the application, they previously applied for five variances and were denied, the current application asks for three variances. The hardship stated is the location of the property in the flood plain and FEMA regulations that require them to build to 500 year storm regulations. Correspondence has been received in favor. The town engineer stated that building the home to 500 year storm standard is a positive. Ms. Palmer stated that several properties in town built homes to 2011 standards and in 2013 a new map was issued and the homes became out of compliance. The applicant is hoping to avoid this by building and extra 3.5 feet to 500 year storm standards.

Ed Wenke presented the site plan for the home. The new site plan conforms to the requirement for Floor Area Ratio and all setbacks. Mr. Wenke stated that the request for the variance of the maximum height restriction to allow for the raising up of the home to 500 year storm standards. All setbacks are being maintained with the exception of the rear setback which is being improved. Ms. McCormack questioned the increase of the square footage. Mr. Wenke explained that they are adding about 800 square feet and they are not asking for any variances in setbacks. Attorney Ladwig, speaking on behalf of the applicant, presented exhibit 2 which is a brief in support of the variance. Mr. Rezendes asked the applicant to further explain the need for variance in height. Attorney Ladwig reiterated the benefit of building to the higher elevation standard. Mr. Rezendes and Ms. Conway stated that the applicant could build a one story home without the large height variance. Mr. Wenke drew out the difference in the two height variances requested. Mr. Rezendes stated his concern with a large height on coast and feels that the applicant does not have a valid hardship to build two stories. Mr. Berger questioned why the home needs to be needs to be rebuilt if it is structurally sound and not condemned. Mr. Madasci stated that he received $64,000 for damages to the home sustained in the storm. Mr. Madacsi explained that if they do repairs greater than fifty percent of the home's value they must raise it to FEMA standards. Mr. Berger requested proof of estimates that verify the repairs will be over fifty percent. Ms. Conway asked for the hardship for building a two story home rather than a one story home. Attorney Ladwig stated that they are trying to build a comparable home to what they have now.

Chris Simmons, spoke regarding substantial improvement regulations and what that entails. He has constructed similar homes in the neighborhood and one that was elevated a received a height variance. Mr. Simmons stated that the applicant's plan is best for the neighborhood and the applicant. Mr. Lyman asked if other homes in the neighborhood have received variances, Mr. Simmons responded that they have. Attorney Ladwig submitted a neighbor's application for variance approved in May 2014. Attorney Ladwig reiterated their hardship.

Public Comment in Favor:

Tom Blumie, spoke in favor the application due to the storm damage and that Mr. Madasci should not have to change the space he has had in the home.

Chris Simmons, spoke in favor of the application complementing the design and need for elevation and applauded him going above the minimum standards and hopes to review the regulations.

Attorney Ladwig stated that this would be more compatible with the neighborhood than a one story home.

Chairman Berger closed the public hearing.

Ms. Conway stated that she is in favor of upholding the regulations concerning height but that it is rational to build to the 500 year storm level. Ms. Conway stated that she does not agree that the home needs to be two stories. Mr. Rezendes stated that he is in favor of the home rebuild and bringing it to the standards and has a concern with the owner needing to maximize the regulations. Mr. Lyman stated that if they were to raise the current home that is only a couple feet less than they are now requesting and questioned whether he would deny that. Mr. Berger stated that the applicant did not provide hard evidence that this is necessary. A similar case was brought to court and sided with the ZBA and Mr. Berger raised concern with testimony that the structure needs to be rebuilt without evidence of that need. Mr. Berger raised concern that multiple properties have brought forward this concern and this should be brought to planning and zoning for a regulation change, not the approval of several variances. Ms. McCormack stated that the applicant could build a one story home with the 500 year standards and that they should not waive their regulations for a bigger home.

Ms. Conway moved to deny the application, seconded by Mr. Rezendes, the commission stated that further documentation would be needed to show the need for rebuild, Ms. Conway stated that property owners do not have the right to build two stories and they must work with the regulations, all in favor 5-0, motion approved.

2016 ZBA Calendar Approval
Ms. Conway moved to approve the calendar, seconded by Mr. Rezendes, all in favor 5-0, motion approved.

Minutes
Ms. Conway moved to approve the minutes of the September 8, 2015, seconded by Ms. McCormack, Berger, Conway, McCormack and Lyman approve, Rezendes abstain.

Ms. Conway moved to adjourn, seconded by Mr. Rezendes, all in favor 5-0, the meeting adjourned at 10:56 pm.

Virginia R. McCormack

Secretary