

ZONING BOARD OF APPEALS

REGULAR MEETING

Final Minutes

April 10, 2018

Stonington Police Station, 173 South Broad St., Pawcatuck, CT

Present for the April 10, 2018 meeting were Matthew Berger, Virginia McCormack, Bill Lyman, Russ McDonough, Jeff Walker, James Kading. Zoning Enforcement Officer Candace Palmer and Director of Planning Jason Vincent was also present.

Seated for the meeting were Matthew Berger, Virginia McCormack, Bill Lyman, James Kading, and Russ McDonough. Meeting called to order at 7:00 p.m.

AAP #18-03 St. Edmund of Connecticut Inc. (owner), Hugh & Pamela McGee and Penelope Townsend (Appellants), Diane W. Whitney (Agent) – Seeking to appeal the Enders Island Zoning Compliance Report dated 1/11/18. Property located on Enders Island, Mystic. Assessor's Map 178 Block 1 Lot 1-1 thru 9; Zone RC-120.

Mr. Vincent spoke about the report by the planning department and the appeal. Mr. Vincent is the author of the report. The board must decide whether it is in their authority to hear the appeal. Town Attorney Jeff Londregan stated that it is their professional opinion that the Zoning Board of Appeals does not have the authority to hear the appeal. The document in reference is a report, not a decision made that is appealable. The ZEO investigated the complaints and did not take any enforcement action. Attorney Londregan stated that a lack of enforcement action is not grounds for an appeal. Nearby property owners may bring enforcement directly by bringing a case to superior court. Enforcement is a discretionary matter and the outlet for further complaints is the superior court. The document is considering an interdepartmental report, not a decision.

Attorney Diane Whitney, Pullman & Conley, spoke on behalf of the applicant. Ms. Whitney stated that there were numerous complaints made and believes it is a decision not to take action on the complaints. Ms. Whitney stated that there are three cases in which the Zoning Board of Appeals is the best agency to represent the interpretation of the regulations, which is an important step prior to going to superior court. They fear that by taking the case straight to Superior Court they will be told they have not exhausted all remedies. The applicant feels the appeal is appropriate for this board.

Mr. Berger questioned what the next steps were if they decided to not move forward a public hearing in order to not cause an appealable decision. Mr. Londregan stated they can direct staff to notify the applicant that a public hearing will not move forward.

Mr. Berger directed staff to notify the applicant a hearing will not be scheduled.

ZBA #18-01 Peter Fleming & Scott Nye (Dennis A. Ceneviva, Esq. Agent) – Seeking a variance from ZR 7.12.3.1 Internal Illumination and ZR 7.12.3.4 Sign Motion for a proposed two-sided

digital billboard. Property located on 786 Stonington Road, Stonington. Assessor's Map 75 Block 2 Lot 2; Zone GC-60/RC-120. **Continued from 2-13-2018 (3-13-18 meeting cancelled).**

Ms. Palmer summarized the application. The applicant is requesting a two-sided digital billboard in place of three static billboards. The application would remove three existing non-conformities.

Dennis Ceneviva presented on behalf of the applicant. The site is at Fleming's Feed in Stonington. Existing currently are three static billboards close to the road. The applicant is proposing to remove these and replace them with one double sided digital billboard. The applicant was previously denied 3-2 and they believe the issue was lack of a clarification of the hardship and the illumination. The applicant has agreed to turn off the sign from midnight to six AM. Mr. Ceneviva presented a report from the US Department of Transportation that stated there is no difference in distraction from a static and digital billboard. The existing boards are currently in the state right of way and the required setbacks. The new location would be in the property boundary and would create better sightlines for entering and exiting the property. The new sign would also reduce the total square footage by eighty percent. Lastly, the board would be elevated to comply with FEMA flood standards. All changes to the content could be made remotely. They have also discussed with police using the board for safety messages and amber alerts. The elimination and reduction of non-conformities are grounds for granting a variance. The application reduces one non-conformities and eliminates two, with the approval of two variances.

Mr. Walker stated he struggles to see the hardship. Mr. Berger stated the reduction of a non-conformity gives basis for a hardship. Mr. McDonough stated he is appreciative of their offer to shut it off at night. Mr. Lyman asked how the property owner is related to the boards.

Public Comment in Favor:

Robert Kapell, local business owner spoke in favor of the application. As a local businessman, he is always looking for new opportunities to advertise and states this would be a great opportunity for local businesses. The existing conditions are a distraction and more of a nuisance than the smaller digital boards. The applicant has shown a willingness to work with the town and make the display better. The ability to have safety messages is also a large benefit.

Scott Nye, owner of Fleming's Feed stated that the current signs diminish their property and look of the area. They are trying to update the boards and make it a better option for themselves and the town. The signs are necessary for their business so they will remain, they are just trying to give the town a better option.

Public Comment Against:

"Unlegible" stated she believes the sign would be obnoxious, bright, and far off the road. She is concerned that this will set a precedent to allow the signs in the town. She would also like to see an ability to change the illumination if it is harsher than anticipated. She believes that the transition between images is not as smooth as stated.

Carlene Donnarummo, believes the sign is distracting, and that this would constitute a use variance which was disbanded a long time ago.

Ben Tamsky, stated when approving something not allowed by the regulations, it creates a use variance. Zoning regulations specifically addressed this when rewritten in 2010, and it was commission's intention not allow digital signs.

Rebuttal:

Mr. Ceneviva stated that variance does not set precedence because it is based on a specific site and cannot be basis for other applications. They may also offer conditions of approval for the sign which would give control on this particular sign. There are existing non-conforming billboards in existence that are not allowed. This is the modern technology and meets the needs of modern businesses. The copy changes over in a way that moves over with no animation.

Mr. Lyman questioned whether they would be agreeable to the boards being turned off even earlier. Ms. McCormack questioned whether the car dealership turns their lots off at night. The applicant stated they do not.

Mr. Ceneviva stated that the more the sign is off, the less desirable for the advertiser. They have offered 12am-6am, the applicant may consider slightly more, but they are trying to do something better for the area.

Mr. Berger closed the public hearing.

Ms. McCormack asked Mr. Berger about the sign regulations he stated. Ms. McCormack stated the signs are not animated even though they are digital. Mr. Berger stated that he does not feel this is the proper venue for this application, and feels it is better to go through Planning & Zoning to adopt a regulation to allow digital signs. He does not believe they have the jurisdiction to allow a prohibited sign. Mr. Lyman stated that although there were many reasons given as to why it would be a better situation, the applicant did not exhibit a valid hardship. Ms. McCormack stated that although she is in favor of the signs, she stated unfortunately they are prohibited by the regulations. Mr. Kading stated he was in favor of the signs and believes they are existing. Mr. Berger stated that he believes variances do set a precedent, and that this is out of their hands.

Mr. McDonough moved to deny, seconded by Mr. Lyman, the vote was taken 4-1, the motion passed.

Roll Call:

Berger – favor, McCormack – favor, Lyman – favor, McDonough – favor, Kading – against.

The meeting recessed at 8:46pm and reconvened at 8:48pm

Mr. Berger recused himself and appointed Jeff Walker.

ZBA #18-04 Michael C. Barnes – Seeking a variance from ZR 5.1.1 to reduce the side yard setback from 15' to 7' for installation of a generator. Property located on 23 Pequotsepos Center Road, Mystic. Assessor's Map 150 Block 1 Lot 6; Zone RA-40. **Rescheduled from 3-13-18.**

Ms. Palmer summarized the application. The lot configuration prevents utility equipment in many parts of the lot as well as building codes regarding placement near window opening. The generator would power two sump pumps in the basement to prevent flooding.

Mr. Barnes stated the basement was finished but needed to be torn out due to power outages and the resulting flooding over the past few months. This is the ideal location for neighbors, accessibility and building code. Building code requires the generator be placed away from windows and three feet away from the house. The neighbor directly affected, planned to come but has given their approval. And another abutting neighbor has given their approval as well with a letter.

No Public Comment

Mr. Lyman closed the public hearing.

Mr. McDonough moved to approve the application, seconded by Mr. Kading, all in favor 5-0, motion approved.

Minutes:

Mr. McDonough moved to approve the minutes of the February 13, 2018 meeting, seconded by Mr. Walker, all in favor 2-0-3, motion approved.

Roll Call: Walker – approve, McDonough – approve, McCormack – abstain, Kading – abstain, Lyman – abstain.

Mr. Kading moved to adjourn, seconded by Mr. McDonough, all in favor 5-0, the meeting adjourned at 9:02 p.m.


Virginia McCormack, Secretary