

ZONING BOARD OF APPEALS
October 17, 2012 Special Meeting Minutes

Board Members Present: Curtis Ruckey, Peter Lambert, Howard Aspinwall,
Douglas Glazier, and Daniel Merrigan

Town Staff Present: Jennifer Rodriguez,
Town Planner, Assistant Zoning Enforcement Officer and Acting
Wetlands Agent

Curtis Ruckey called the meeting to order at 6:58 pm.

Board roll call was taken.

MINUTES:

Chairman Ruckey referred to the September 4, 2012 meeting minutes and asked the Board members and staff for any comments or corrections. There were none. Mr. Ruckey then asked for a motion. Mr. Glazier moved to approve the September 4, 2012 meeting minutes, as published. Mr. Aspinwall seconded the motion. All were in favor. The vote was 5 – 0, the motion was approved.

BILLS & CORRESPONDENCE:

There were none.

OLD BUSINESS:

There was none.

NEW BUSINESS:

Chairman Ruckey commented that he knew both parties for the two items on the evening's agenda. He noted that in the past he had recused himself in such situations, but that for that evening's meeting would not be recusing himself. He went on to say that he had spoken with the Town Attorney and the First Selectman and all of them agreed that there was no conflict of interest and nothing for Mr. Ruckey to gain. Mr. Ruckey then asked the Board members if they had any issues with him continuing to chair the meeting and participate in the two public hearings that evening. The Board members had no issues.

- a. Public hearing on Application #FY12-13-03, Owner/Applicant: Brian and Margaret Engelmann for a variance for the property located at 60 North Main Street to reduce the front yard setback to 14 feet, where 40 feet is required, in order to locate a pool; to reduce the required front yard to 8 feet, where 40 feet is required, in order to locate a**

deck associated with the pool; and to permit a picket fence that is 5 feet high in the required front yard, where only a 4 foot high picket fence is permitted.

Brian and Margaret Engelmann were both present. Mr. Engelmann stated that they wanted to install a pool on their property. Mrs. Engelmann noted that neither the pool nor the deck would obstruct traffic.

Mr. Lambert noted that the property in question was a corner lot.

Mr. Glazier referred to the sketch that had been submitted with the application and noted that he had previously stopped by the property to look around. A discussion then took place with regard to where the pool, deck and fence would be located on the property. Mr. and Mrs. Engelmann explained that the deck would be located between the pool and the existing garage and the fence from go from the garage back.

Mr. Ruckey clarified that the variance was needed from the Ahern side of the property to the pool, deck and fence. Mr. Engelmann stated that that was correct.

A brief discussion took place regarding where the fence was going to go and Mr. Ruckey noted that the height of the fence was the matter before the Board that evening, it was not the Board's concern as to whether the fence went all the way around the pool or not. Mrs. Engelmann explained that the required fence height for the pool access exceeded the fence height allowed in a front yard.

Chairman Ruckey reiterated that the three variances that were before the Board that evening were:

- to reduce the front yard setback to 14 feet, where 40 feet is required, in order to locate the pool;
- to reduce the front yard setback to 8 feet, where 40 feet is required, in order to locate a deck associated with the pool; and
- to permit a picket fence that is 5 feet high in the front yard, where only a 4 foot high picket fence is permitted.

Chairman Ruckey asked for any questions or comments from the Board members. They had none.

Chairman Ruckey asked for any public comments in favor of the application. There were none.

Chairman Ruckey asked for any public comments in opposition to the application. There were none.

Chairman Ruckey asked for any final comments from the Board members. There were none.

Chairman Ruckey asked for a motion regarding Application #FY12-13-03. Mr. Lambert moved to approve Application #FY12-13-03, Owner/Applicant: Brian and Margaret Engelmann for a variance for the property located at 60 North Main Street to reduce the front yard setback to 14 feet, where 40 feet is required, in order to locate a pool; to reduce the required front yard to 8 feet, where 40 feet is required, in order to locate a deck associated with the pool; and to permit a picket fence that is 5 feet high in the required front yard, where only a 4 foot high picket fence is required. He went on to say that he had no problem with granting the variances, since there was already an outbuilding there, there would be no obstruction to views and it would not cause any problems for neighbors or anyone travelling down the street. Mr. Merrigan seconded the motion. All were in favor. The vote was 5 – 0, the motion was approved. Mr. Ruckey noted that the approval was not a permit to build. The applicants should see the Building Department for further needed permits. He then stated that the approval was based solely on the plan that was submitted and that any additional site improvements within required yards would require a return to the Board.

b. Public hearing on the appeal of Mr. Hussein regarding the property located at 478 Spring Street.

Chairman Ruckey asked Board members to take a few minutes to review the packet of information that had been distributed to them that evening in order to be brought up to speed on the history behind the appeal before the Board that evening. The Board members then did so.

Attorney Seymour Rothenberg from Windsor addressed the Board on behalf of Mr. Hussein and stated that he was greatly disturbed by the methods that had been used by the Town with regard to him being present that evening. He then explained that he had received a voicemail on September 28, 2012 from a Jennifer stating that the Zoning Board of Appeals meeting date had been changed to October 16, 2012 at 7:00 pm. Attorney Rothenberg stated that he had never heard anything more after that, therefore he and his client were at the Town Hall the previous night (October 16, 2012 at 7:00 pm). He then commented that he found it ironic that they were given the wrong meeting date, yet others were notified of the correct date.

Chairman Ruckey apologized to Attorney Rothenberg and his client and stated that, unfortunately, mistakes sometimes get made.

Attorney Rothenberg stated that he was scheduled to attend a religious service that evening for a friend's father who had passed away; therefore he had called the Building Office and was told that it was a special meeting, etc., etc. He went on to say that he was led to believe that if he did not appear it would be to the detriment of his client.

Attorney Rothenberg referred to the materials that Chairman Ruckey had asked the Board members to review and asked what those were and why he had not receive a copy of them. Chairman Ruckey explained that the materials that had been distributed were the emails and documents that had been forwarded to Mr. Hussein over the years regarding the property in question.

Attorney Rothenberg stated that on August 6, 2012 Mr. Hussein had received a letter from the Chief of Police regarding motor vehicles and the violation of the Town's Blight Ordinance. He went on to say that on August 22, 2012 he had written back to the Chief of Police stating that there were two motor vehicles on the premises and that both were registered. Attorney Rothenberg pointed out that he had never heard anything back from the Chief of Police after he sent that letter. The next time he was notified was by the Building Officials.

Chairman Ruckey clarified that the issue before the Board that evening was not about Blight; it was a Zoning issue. Attorney Rothenberg asked in what way was it was a zoning issue. Mr. Ruckey replied that the "use" of the property was being inappropriately used initially to store vehicles and then to store storage facilities on the property. He went on to say that according to the Zoning Office the trailer located on the property was a storage facility and went against the Zoning Regulations.

Attorney Rothenberg referred to Section 7 of the Regulations and stated that the complaint needed to be made through the First Selectman or his designee. He then referred to Section 7b and stated that it clearly was under the jurisdiction of the Chief of Police and not the Building Department.

Ms. Rodriguez asked Chairman Ruckey to clarify with Attorney Rothenberg whether he was looking at the Zoning Regulations or the Ordinance. Chairman Ruckey then asked Attorney Rothenberg which document he was referring to. Attorney Rothenberg replied that he was looking at the Blight Ordinance. Both Chairman Ruckey and Ms. Rodriguez stated that the issue before the Board that evening was not enforcement of Blight. Chairman Ruckey reiterated that it was a Zoning issue.

The discussion continued and Attorney Rothenberg asked what the definition of "inappropriate use" was and where in the Regulations it stated that a trailer was an inappropriate use. He then noted that there were a number of similar trailers around town.

Chairman Ruckey explained that the property in question was a vacant, unused property. He then asked Attorney Rothenberg if there was a business on the property. Attorney Rothenberg replied that it was a business property. Mr. Ruckey commented that it was a property that was not in current use. Attorney Rothenberg stated that Mr. Hussein was attempting to lease the property out; however in view of the economic climate it was difficult to find a suitable tenant. Mr. Ruckey stated that the issue before the Board had nothing to do with the economic situation of the town; it had to do with the property and the current use of the property. He went on to say that there was an item on the property that was inappropriately there according to the Town Regulations. Attorney Rothenberg then asked where it stated that a trailer was inappropriate.

Mr. Glazier read the following from Section 705G of the Zoning Regulations:

“Location. All parking spaces required to serve buildings or uses erected or established after the effective date of this regulation shall be located on the same lot as the building or use served.”

He then referred to Section 402A of the Zoning Regulations and stated that parking was listed as an accessory use; parking was not permitted as a sole use of a lot. Mr. Glazier noted that the property in question was currently not being used for any business, therefore any vehicles or trailers there were illegally parked.

The discussion continued further and Attorney Rothenberg stated that he had a different interpretation of the Regulations. He went on to say that Mr. Hussein had attempted to move his business to the property in question, but was thwarted by the Town.

Chairman Ruckey pointed out that the situation started in 2006. He went on to say that the Town had been more than lenient and had allowed Mr. Hussein more than enough time to move the material off the property. Mr. Ruckey reiterated that the situation had gone on and one and that it had to stop.

Chairman Ruckey read the following from Section 705 of the Zoning Regulations:

“Use. Accessory off-street parking facilities required for uses listed herein, shall be solely for the parking of vehicles of patrons, occupants or employees. If bus transportation necessitates bus parking, then such parking spaces for each bus to be parked on the premises shall be provided.”

Mr. Ruckey pointed out that the property was not currently in use, therefore there should be nothing on the property. Attorney Rothenberg stated that the trailer was not a vehicle. Mr. Ruckey reiterated that it was on a property where the building was not in use; therefore there should be nothing on the property. Attorney Rothenberg commented that it had said “vehicles” and he maintained that the trailer was not a vehicle. Chairman Ruckey asked Attorney Rothenberg if the trailer was a piece of movable transportation equipment. Attorney Rothenberg replied that it was not. Mr. Ruckey stated that it absolutely was; it had

wheels. Attorney Rothenberg pointed out that the trailer could not move on its own; it needed to be pulled by a tractor. He then stated that the trailer was not a vehicle. Mr. Ruckey then asked Attorney Rothenberg if the trailer was registered. Attorney Rothenberg replied that it was not. Mr. Ruckey then stated that Mr. Hussein had a piece of transportation equipment that was not registered sitting on a vacant lot. He then read the definition of a trailer as follows:

“Any rubber-tired vehicle without motive, power-drawn or propelled by a motor vehicle and including a utility trailer.”

Mr. Glazier pointed out that the definition referred to a trailer as a “vehicle”.

Attorney Rothenberg stated that the trailer would be gone the following week. Mr. Ruckey then asked Attorney Rothenberg if he was withdrawing his appeal. Attorney Rothenberg replied that he did not want to withdraw his appeal; if he did so he would face certain penalties, etc. He then suggested that the Board give Mr. Hussein a week or two in order to move the trailer.

Chairman Ruckey asked the Board members for any questions. Mr. Lambert asked what would happen if they were to give Mr. Hussein two weeks to move the trailer and then in two weeks it was still on the property. Attorney Rothenberg replied that the Board would then do what they had to do. He then confirmed with Mr. Hussein that the trailer would be gone within two weeks.

Mr. Glazier pointed out that according to the Enforcement Order that had been issued, failure to comply within ten days would result in prompt legal action and fines up to \$50.00 per each offense per day. He then noted that the time to move the trailer was up back on August 30, 2012. Attorney Rothenberg noted that that was not the case when he took an appeal. Chairman Ruckey stated that any legal action and/or fines were put on hold once an appeal was filed. He went on to say that the Board’s goal was not to collect fines; Town Officials simply wanted compliance.

The discussion continued briefly and then Chairman Ruckey asked the Board members for any further questions. Mr. Glazier suggested that the Board give Mr. Hussein two weeks in order to move the trailer and that if at that time the trailer had not been moved then Mr. Hussein would be fined \$50.00 per day with no further extensions or appeals. Mr. Ruckey stated that that was not what was before the Board that evening; the Board could only accept or deny the appeal. Mr. Aspinwall commented that the only other option for the Board would be to continue the public hearing to the next Board meeting, but that at that time the Board could still only either accept or override the appeal.

Chairman Ruckey asked Ms. Rodriguez for any comments. Ms. Rodriguez explained that the appeal meant that the applicant and his representative did not agree with her order altogether;

it was not that they just wanted to avoid fines. She went on to say that if the Board were to overturn her decision then it would no longer be a violation for Mr. Hussein to keep the trailer and other vehicles on the property in question and there would be nothing to enforce. Chairman Ruckey clarified that if the Board were to uphold the appeal then there would no longer be a violation and Mr. Hussein would no longer have to move the trailer.

Ms. Rodriguez noted that the telephone call that Attorney Rothenberg referred to at the beginning of the hearing was from Jennifer Bourque in the Building Office; there were two Jennifer's in the Office. She explained that Ms. Bourque was helping Ms. Rodriguez attempt to reschedule the meeting for the third time. She then apologized for the mistake and noted that she was fair to everyone who applied. Ms. Rodriguez stated that she believed that she had sent something out to both of the applicants before the Board that evening, but if a mistake had been made she apologized for that.

Attorney Rothenberg commented that he could not figure out how he had made such a blunder with regard to the date of the meeting and how everyone else seemed to know exactly when the meeting was. The Recording Secretary clarified that part of her job was to send Abutter's Notifications to all abutting property owners notifying them of any public hearings regarding properties that they abutted and that that was how the members of the public that were present knew about the meeting date.

Ms. Rodriguez referred to the First Selectman's designee that Attorney Rothenberg had mentioned earlier in the hearing and stated that she was the First Selectman's designee. She went on to say that the office from which the letters were generated was exactly the office where they should have come from. Ms. Rodriguez then noted that the complaints had been coming since 2006. In addition, she stated that she had nothing in her office that showed that the Planning and Zoning Commission had approved the area on which the trailer sat to be a trailer parking space. She went on to say that trailers such as the one in question are usually driven onto a property in Business 1 zones for loading purposes only for an active business on site; not to be permanently parked.

Ms. Rodriguez stated, with regard to whether there were other trailers parked on other properties around town, that most certainly there probably were. She went on to say that there currently were over 50 active violations in her office.

Chairman Ruckey commented that any public comments should be directed to the Board only and that if comments became personal he would stop the comment portion of the hearing and ask the individual to refrain from such comments and if it were to persist would ask the individual to leave the premises. Chairman Ruckey then asked for any public comments in favor of the appeal.

Neal Narkon of Enfield addressed the Board and stated that he had worked in Windsor Locks for most of his life. He went on to say that he frequented Mr. Hussein's establishment and that Mr. Hussein had done his duty by taking over disabled properties and improving them. He then commented that the trailer issue was just aesthetics, and that it was unfair that Mr. Hussein had to go through this since there were a lot of trailers in town. Mr. Narkon stated that if laws affected one person more than others, then that seemed like harassment. He went on to say that it did not sound logical to decide whether the trailer was legal simply based upon whether the building was occupied or not.

Chairman Ruckey asked for public comments in opposition.

Angelo D'Aleo of 482 Spring Street addressed the Board and stated that he was the co-owner of the plaza on the property abutting the property in question. He went on to say that he was also the co-owner of the building that Mr. Hussein currently leased for H & M Grinders. Mr. D'Aleo stated that he physically had brought the meeting notification letter that he had received to Mr. Hussein a week or two prior, read it to Mr. Hussein and asked him what it was about.

Mr. D'Aleo stated that the trailer in question had been on the property for a long time. He went on to say that it was a storage trailer and that it was an eyesore; kids were writing graffiti all over it. He then noted that the building was being used as a storage/hoarder house. Mr. D'Aleo stated that in the last several weeks Mr. Hussein had taken truck load after truck load of stuff from the H & M Grinders' basement and put that stuff into the building on the property in question.

Mr. D'Aleo commented that he did not see any reason to give Mr. Hussein any additional time. He then noted that there were a lot of other companies that could hook-up the trailer and take it away. He went on to say that Mr. Hussein had already had plenty of time to move the trailer. Mr. D'Aleo noted that there had been five vehicles on the property, not two, as Attorney Rothenberg had stated earlier. He then concluded by saying that the trailer should be moved and no additional time should be given to do so.

Regina Graciani of 42 Spring Street addressed the Board and stated that she was the other co-owner of the abutting property. She went on to say that the order that had been issued was consistent with Town Regulations and with how they had been interpreted over the years. Ms. Graciani stated that she was a former owner of 2 North Main Street where they had had the exact same situation with a trailer parked on the property. She went on to say that they had received the exact same notice as Mr. Hussein with the exact same interpretation of the regulations. Ms. Graciani noted that she was also an attorney and was well versed in reading

and interpreting Regulations. She agreed that the trailer was an inappropriate use for the property in question; there was no existing business run out of the building on the property, it was being used as a storage facility.

Chairman Ruckey asked for any further public comments. There were none.

Attorney Rothenberg commented that they had come to the meeting that evening regarding the trailer, yet they were being deluged with comments about how the building was being used, etc. by the gentleman who just spoke. He then pointed out that Ms. Graciani's father and Mr. Hussein had had no problems for 40 years, but that now that Mr. Hussein was moving to another property there was a problem.

Chairman Ruckey stated that the Board had the opportunity to grant an appeal, which would essentially set aside any violation or they could delay their decision which would allow Mr. Hussein to move the trailer prior to their next meeting in two weeks. He then pointed out that they would have to make a decision eventually if they did not do so that evening. Mr. Ruckey commented that he was not sure that he would want to suggest that they delay their decision to the next meeting. He went on to say that they needed to make a decision and set precedence for this type of matter that may come before the Board in the future; they receive it, deliberate on it and make a decision. Mr. Ruckey noted that it had been an existing condition for a long time.

Mr. Glazier commented that if the Board were to delay their decision until the following meeting and the trailer was moved off the property by then, then the issue would be closed. Ms. Rodriguez stated that if in two weeks the trailer was moved and the Board granted the appeal they would be saying that every time there was a trailer parked on a property she could not enforce it.

Chairman Ruckey reiterated that the Board needed to make a decision whether in two weeks at the next meeting or that evening. The Board's discussion continued briefly.

Mr. Aspinwall moved to deny the appeal of Mr. Hussein regarding the property located at 478 Spring Street and uphold the Building Official's decision. Mr. Glazier seconded the motion. A discussion then followed and Mr. Glazier clarified that if the Board were to deny the appeal the Building Official's decision would be binding. Chairman Ruckey stated that that was correct. Mr. Glazier asked when the fines would start. Mr. Aspinwall replied that that was not up to the Board. Mr. Ruckey stated that that would be between the Town and Mr. Hussein. Ms. Rodriguez commented that in her opinion she did not think that they would even get a court date in two weeks, although she would contact the Town Attorney to start the paperwork. She went on to say that if the trailer were truly removed within two weeks she did not believe that there would be a

fine. Mr. Ruckey reiterated that it was not the Town's objective to collect fines, they simply wanted compliance. All were in favor. The vote was 5 – 0, the motion was approved.

Mr. Lambert moved to adjourn the meeting. Mr. Glazier seconded the motion. All were in favor. The vote was 5 – 0, the meeting was adjourned at 8:10 pm.

Respectfully submitted,

Diane Ferrari
Recording Secretary

THIS IS A DRAFT

Please check the following month's meeting minutes for official approval of these minutes and any amendments or corrections that were made.