

From: Lois Laczko June 27, 2011 11:09:06 AM
Subject: Zoning Board of Appeals Minutes 05/25/2011 ADOPTED
To: SimsburyCT_ZBAMin
Cc:

ADOPTED

ZONING BOARD OF APPEALS
REGULAR MEETING
May 25, 2011

I. CALL TO ORDER

Chairman Peter Stempien called the regular meeting of the Zoning Board of Appeals to order at 7:02 P. M. in the Main Meeting Room at Simsbury Town Hall. The following members were also present: Tegan Blackburn, Edward Cosgrove, Thomas Horan, Craig MacCormac, Katie Martin, and John McCann. Also present were Hiram Peck, Director of Planning; Howard Beach and Lynn Charest, Zoning Compliance Officers; Attorney Ken Slater; Lisa Gray, Commission Clerk; and other interested parties.

II. APPOINTMENT OF ALTERNATES

Chairman Stempien appointed Tegan Blackburn to serve for Carol Bingham, and Craig MacCormac to serve for Nancy Haase.

III. PUBLIC HEARING

A. 11-03 Appeal of Thomas E. Brown of 30 Sand Hill Road regarding a decision by the Zoning Enforcement Officer not to issue a Cease and Desist Order regarding activity on property at 16 Sand Hill Road. (Map F-15, Block 114, Lot 13 and 13A). (Continued from meeting of April 27, 2011)

Chairman Stempien read the procedural rules for conducting an appeal hearing and asked the members of the Board if they were biased in any way in their hearing of this case. All replied that they were not.

Attorney Ken Slater read a letter he wrote to the Board and reminded members that the only powers vested in the Zoning Board of Appeals are those expressly granted by the General Statutes, including the authority to hear and decide appeals where it is alleged that there is an "error in any order, requirement, or decision made by the official charged with the enforcement of zoning or any bylaw ordinance or regulation adopted under

the provisions of this chapter”.

Attorney Slater advised the Board to vote to determine whether they have jurisdiction to hear the appeal, and that they should request that the appellant specifically provide evidence of the order, requirement, or decision of the Zoning Enforcement Official that he asserts is in error. He further stated that Connecticut courts have ruled that inaction on the part of a Zoning Enforcement Official, despite a request or complaint by a citizen to take enforcement action is NOT an appealable decision. He then cited Connecticut court

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cases in which citizens filed appeals against officials' inactions and the courts ruled that the Zoning Board of Appeals did not have jurisdiction over the appeal because there was no zoning enforcement order or decision. Attorney Slater told the Board that, if a vote determines that the board HAS jurisdictional authority, the hearing may proceed. If the vote determines that the board does NOT have jurisdictional authority, the matter will be closed.

The appellant, Thomas Brown, addressed the Board and admitted that he may have misstated his complaint in his appeal, but that his opinion is that this appeal does not address what the ZEO, Howard Beach, DIDN'T do, but rather the fact that the ZEO DID allow materials to be brought in on a site where there was no approved site plan. His argument was that that is improper and the town should not have allowed that to occur. Mr. Brown also distributed copies of an e-mail exchange he had with Mr. Beach in which Mr. Beach expresses his finding that no improprieties are occurring on the site and that he will, therefore, not issue a cease and desist order, as Mr. Brown had requested.

Ms. Martin questioned whether Mr. Beach's "finding" and subsequent inaction constituted a "decision" on his part.

Chairman Stempien reminded Mr. Brown that his appeal does not state what Mr. Beach DID, but rather what he FAILED TO DO. Mr. Brown offered to re-state his appeal, but Mr. Slater stated that, if Mr. Brown were to file an appeal today, unless there is a new issue or decision that has arisen, it would be beyond the 30-day limitation for the Board to hear the appeal.

Mr. Beach noted that the e-mail, on which Mr. Brown is basing his appeal, was actually sent after Mr. Brown had already filed his appeal. Mr. Brown

argued that that is incorrect.

Mr. MacCormac noted that the board has still not received "evidence of the order, requirement, or decision of the Zoning Enforcement Official" that Mr. Brown asserts is in error, as Attorney Slater recommended.

Mr. Brown disagreed and said the evidence is in the e-mail he presented.

Kathy Brown stated that there were phone calls between Mr. Brown and Mr. Beach and visits to the First Selectman's office prior to the e-mail. Chairman Stempien responded that the board cannot take those facts into consideration because there is no proof or record that they occurred.

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Bob Duguay spoke from the audience and noted that it is possible to make a decision and for it to not necessarily be in print. He suggested that the board ask Mr. Beach if his inaction was based on a "decision" that he made, and asked Attorney Slater for the court's definition of a "decision". Attorney Slater responded that even some decisions in print are not decisions that are appealable under state statute. He further stated that this can be a "gray" area in the statutes, but the decision must be a tangible decision that's been made and that must be the subject of the appeal.

Walt Zalaski, 34 Sand Hill Road, asked where residents should go to have their complaint on this issue heard. Mr. McCann replied that residents can seek recourse by taking their case to the state Superior Court who can, if it so decides, compels the ZEO to act in the way that they seek. Attorney Slater concurred with Mr. McCann's response, but offered the caveat that anyone who feels they have a case such as this should seek their own legal counsel.

A motion was made by Mr. Horan that the Simsbury Zoning Board of Appeals has jurisdiction to hear this appeal. The motion was seconded by Ms. Blackburn. All members were opposed. Motion failed.

B. 11-04 Application of Joao F. Cruz, Owner, requesting both a rear yard and side yard variance, pursuant to Article Eight, Section A of the Simsbury Zoning Regulations for placement of a shed on property located at 90 Seminary Road. (Map F-08, Block 116, Lot 003). R-15 Zone

Mr. Cruz stated he is seeking a 7-foot side yard and 15-foot rear yard

variance to place a 10' x 12'shed. He further stated that placement of the home and septic system on the lot limit feasible placement of the shed. In addition, Mr. Cruz selected either the northwest or northeast corner of his lot for placement so as to be least offensive to neighboring properties.

Board members discussed at length opportunities for decreasing the variance required.

Chairman Stempien read letters in favor of granting the variance from residents at 16 Hearthstone Drive, James Henrich (88 Seminary Road), and Melissa Rubin (92 Seminary Road).

Chairman Stempien opened the hearing to public comment; hearing none, Chairman Stempien closed the public hearing.

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A motion was made by Mr. Martin to grant a 15-foot rear yard variance and 6-foot side yard variance, based on placement of the septic system and leach field on the property leaving limited space on which to place the shed. The motion was seconded by Mr. MacCormac, and unanimously approved.

IV. APPROVAL OF MINUTES

A. April 27, 2011 Regular Meeting

A motion was made by Mr. MacCormac to approve the minutes of the April 27, 2011 regular meeting, as presented. The motion was seconded by Ms. Martin, and unanimously carried.

V. ADJOURNMENT

A motion was made by Mr. McCann to adjourn the meeting at 9:10 P.
M.

Thomas Horan, Secretary