

CITY OF NORWICH
ZONING BOARD OF APPEALS
February 14, 2017
Meeting Minutes

The regular meeting of the City of Norwich Zoning Board of Appeals was called to order at 7:05 p.m. Roll call was taken.

PRESENT: Marc Benjamin, Chairman
 Henry Olender, Vice Chairman
 Mark Kulos
 Dorothy Travers
 Robert Phoenix, Alternate
 David Martin, Alternate
 Peter Curprak, Alternate

ABSENT: None

OTHERS: Deanna Rhodes, City Planner, and Linda Lee Smith, Recording Secretary,
and Kim McGee, Corporation Counsel

Seated were Marc Benjamin, Henry Olender, Dorothy Travers, David Martin, and Robert Phoenix (seated for Mark Kulos).

D. COMMUNICATIONS - Marc Benjamin noted that the board had received a communication. Deanna Rhodes stated the public information session for the Regional Plan of Conservation and Development would be at the Otis Library on Wednesday, February 22, 2017 at 6:30 p.m. to solicit input from the different communities in the SECCOG region.

E. ACCEPTANCE OF MINUTES

A motion was made by Robert Phoenix to **APPROVE** the minutes of the January 10, 2017. Second by David Martin. The motion passed unanimously.

F. OLD BUSINESS: Continuation of Public Hearing from December 13, 2016

1. **A#16-02: 684 West Main Street.** Appeal of Decision of Zoning Enforcement Officer for not applying ZR Section 4.8.8 in the denial of a proposed gas station use. Application of Jon B. Chase on behalf of Savin Gasoline Properties, LLC. Zone GC.

The Chairman was alerted that there was a parking issue that needed to be immediately addressed. A Motion was made by Robert Phoenix, second by David Martin to take a short recess, at 7:08 p.m., to move a car blocking the parking area adjacent to the building. All were in favor.

Board member Mark Kulos arrived for the meeting. Chairman Benjamin resumed the meeting at 7:11 p.m. Marc Benjamin then stated that because regular member Mark Kulos was present, the members to be seated for this application are Marc Benjamin, Henry Olender, Dorothy Travers, Mark Kulos, and Robert Phoenix.

Robert Phoenix stated he was considering relinquishing his seat because he wasn't present and seated at the previous meeting. Marc Benjamin stated that the application was opened on December 13, 2016, but no testimony was taken and the hearing was continued. Robert Phoenix then decided to remain seated for the application.

Ms. Rhodes then read the list of exhibit items (A - M) into the record at the Chairman's request.

Attorney Rich Cody came forward to speak on behalf of the appeal. He stated his law office is located at 34 Church Street, Mystic, CT. He represents Savin Gasoline Properties. He noted that his associate Jon Chase, John MacNeil with Savin, John Hendel and, Mark Temple were all seated in the audience.

Attorney Cody then discussed the reason for the public hearing continuance was to send out timely notification to abutters which he stated was previously done too late. He then gave a synopsis of CT General Statute 8-6 regarding duties of the ZBA and the reasons he felt notice to abutters is required for appeals to the ZBA. He then entered into the record (Exhibit O) a copy of the legal notice of the regular public hearing published October 6, 2016 for Application A#16-01, known as Exhibit "A". He stated that this was the first moment that constructive notice was given to the public and that their appeal was filed on November 4, 2016, within 30 days.

Attorney Cody then briefly discussed a case in Montville regarding abandonment. A written copy of the case was then entered into the record (Exhibit P). He then discussed the purchase and sales agreement for the subject property to demonstrate that the owner had no intention to reopen a gas station at this location (Exhibit Q). He also provided the Board with the closing documents with excerpts from the purchase (Exhibit R). He then provided testimony about closure regulations (Exhibit S) and underground storage facility notification (Exhibit T).

Attorney Cody then asked Mark R. Temple, L.E.P., Principal Hydrologist and President of Lenard Engineering, Inc. located at 2210 Main Street, Glastonbury, CT, to speak about the condition of the site and the removal of the underground tanks. He also provided Mr. Temple's resume for the record (Exhibit U). Mr. Temple went on to explain, using site plans (Exhibit V) to show the location of monitoring test holes and the location of the tanks that were removed. He stated that the tanks had been in good condition and there was very little environmental contamination on site to have them removed. He stated that the contamination on the property is actually under the building and not in the location of the tanks. He stated that due to the condition of the tanks and any owner that intended to ever reopen a gas station there would not have removed them.

John MacNeil, Alden Associates, Savin Gasoline stations, introduced himself and stated that he worked for the company for over 30 years. He gave general information on removal and installation of underground tanks. He then also reiterated that the removal of tanks in such good condition at this property indicated that the owner abandoned the non-conforming gas station use. He indicated that the costs of new tanks is prohibitive and a person intending to reuse the site for a gas station would have kept the existing tanks.

Jon Hendel, 35 Great Neck Road, Waterford, CT spoke. Mr. Hendel was the property owner before selling it to PJC. He gave a brief history back to 2003. His final mortgage payment was 11/2003. The tanks were to be abandoned to discontinue the use and the documents were signed.

To finish up his presentation. Attorney Cody provided a list of some facts to support the abandonment (Exhibit W).

The Chairman then asked the public if there was any public present to speak in support of the appeal. No one spoke. The Chairman then asked if anyone wanted to speak against the appeal application. Attorney Diane Whitney of Pullman & Comley, LLC, 90 State House Square, Hartford, CT. came forward to speak with the board. She presented a copy of CT General Statute Sec. 8-2 (page 562) (Exhibit X) to show that there is no time frame for abandonment. She disagreed with Attorney Cody that the removal of the tanks constituted abandonment and said that a permit to install new tanks could be obtained from the DEEP. A few questions were then directed by Mark Kulos and David Martin regarding the procedure to get permits to install underground tanks.

Attorney Cody then wrapped up his presentation and stated this use could have continued. There was no environmental conditions that would have prevented it from reopening and staying active.

A motion was made by Robert Phoenix to close the public hearing. Peter Cuprak seconded the motion. The motion carried unanimously.

G. NEW BUSINESS: None

H. DISCUSSION/DECISION ON APPLICATIONS

1. A#16-02: 684 West Main Street. Appeal of Decision of Zoning Enforcement Officer for not applying ZR Section 4.8.8 in the denial of a proposed gas station use. Application of Jon B. Chase on behalf of Savin Gasoline Properties, LLC. Zone GC. Continued from December 13, 2016

After a brief dialogue amongst the members about the application and whether to make a motion in the affirmative, a motion was made by Robert Phoenix to APPROVE Appeal for discussion only. Second by Marc Benjamin. A discussion then ensued where each member gave their own reasons for supporting or opposing the appeal. A vote was then taken.

In Favor: Henry Olender.

Against: Marc Benjamin, Mark Kulos, Dorothy Travers, and Robert Phoenix. Motion failed. Appeal was **DENIED**

I. OTHER MATTERS: Ms. Rhodes informed members about a Connecticut Bar Association Land Use training to be held in March. The cost is \$55 to attend. Henry Olender asked Ms. Rhodes to email him the information.

J. ADJOURNMENT

A motion was made by Robert Phoenix to adjourn at 8:48 p.m. It was second by David Martin. The motion carried unanimously.

Respectfully submitted,

Linda Lee Smith
Recording Secretary