

**TOWN OF CROMWELL
ZONING BOARD OF APPEALS**

**PUBLIC HEARING AND REGULAR MEETING
7:30 P.M. TUESDAY, NOVEMBER 27, 2007
ROOM 224
CROMWELL TOWN HALL, 41 WEST STREET**

Minutes

1. **Call to Order:** Acting Chairman Thomas Tokarz called the meeting to order at 7:35 p.m.
2. **Roll Call:** Acting Chairman Thomas Tokarz, Dave Libby, Christie Carpino, Kimberly Enowitch, and Joanne Massey (arrived at 7:42 p.m.).
3. **Seating of Alternates:** None.
4. **Approval of Agenda:** Christie Carpino made a motion to approve the agenda, seconded by Dave Libby. All were in favor.

5. Public Comments:

Minnie Libera – 10 Sunset Drive stated that her late husband Hugo was the founder of Cromwell Concrete back in 1953. There was no attempt to come onto Sunset Drive. After zoning came into effect it was then subdivided. The business was mostly masonry and construction. The development of block machines were used since the early 60's and there were no problems back then. Farmland was separated due to the concrete business. Damage has been done due to the oil barrels. No applications or permits were taken out to come behind Sunset Drive. Dave Martin, Town Planner at the time issued a Cease and Desist Order for the bulldozer and there was no attempt to ever come behind the houses on Sunset Drive.

Jason Libera- Vice President of Cromwell Concrete stated that the oil barrels were empty and to be recycled. The Health Director came by they took care of the complaint and it was dismissed. The zone initially was residential then partial industrial.

Ray Libera- The property has not been used for agricultural for the past 30 years.

6. Public Hearings and Possible Decision:

a. Application # 07-19: Appeal from Decision of the Zoning Enforcement Officer dated September 28, 2007 regarding commercial activity in the rear of the property located at 665 Main Street (Raymond Libera, owner). John Leal Libera, appellant.

Town Planner Craig Minor explained the background to this appeal. Back in September the owners of Cromwell Concrete requested permission to stockpile pre-cast concrete products on their vacant property which is in a residential zone. The request was denied. The Town Attorney then issued an opinion that this is a "lawful extension of a non-conforming use".

The Zoning Enforcement Officer then granted Cromwell Concrete permission to conduct the open air storage of these pre-cast concrete products.

Attorney Salvatore Petrella spoke as an advocate to this application. This appeal is simply a land use issue based on land use laws and principles. This concrete business was much smaller back in the 1950's and was used for agricultural use production as well. The Libera's used this property for growing and had a greenbelt buffer. Cromwell Concrete gained a parcel on Geer Street in which this business has grown and due to the growth the buffer was moved. A major expansion to move the storage down results in the excavation of the green belt buffer. This is a definite impact on the neighborhood based on the facts. Attorney Petrella cited several case laws for understanding and presented photographs.

A petition was signed and presented before the board to deny the application of the expansion of Cromwell Concrete Products.

The following parties oppose of this application:

Minnie Libera – 10 Sunset Drive
Roseanne Gumkowski – 14 Sunset Drive
David Friend – 2 Sunset Drive
Lori Mangene – 12 Sunset Drive
Tony Pantano -4 Sunset Drive
John Lael Libeta – 16 Sunset Drive

The Zoning Enforcement Officer concluded that the open air storage was an intensification that predeceases zoning. Since 1984 to current the open air storage intensified.

Attorney Kenneth Slater of Halloran and Sage in Hartford represents John Lael Libera. He presented case law and discussed that an increase in the amount of business pursuant to a non-conforming use is not an illegal expansion of a non-conforming use but a change in character of a use however does constitute an unlawful extension of the prior use. In deciding if the existing non-conforming use is a legal intensification or an illegal expansion 3 factors are considered: (1) the extent to which the use reflects the nature and purpose of the original use (2) any difference in character and (3) any substantial difference in the effect upon the neighborhood.

Attorney Slater concluded that the 3 factors are met: (1) The property is a manufacturing of concrete products. That the property has been continuously used for the manufacture and storage of concrete products since the 1920's and continues to be used for that purpose. (2) Additional storage does not include any change in the nature of the business and simply is a continuation of the existing use (3) Their will not be any substantial difference in the effect upon the neighborhood, no increase in traffic, no change in equipment and no change in the hours of operation. This will not change the character of the neighborhood and they will maintain the buffer areas.

Attorney Slater is requesting that the board sustain the ZEO's decision.

November 27, 2007

ZBA

David Libby made a motion to close the public hearing, seconded by Christie Carpino. All were in favor.

David Libby made a motion to return on Monday December 10th, 2007 to deliberate this matter, Special Meeting will be held at 6:30 p.m., seconded by Joanne Massey. All were in favor.

7. **Old Business: None**

8. **New Business: None.**

9. **Approval of Minutes:**

a. October 23, 2007 –Joanne Massey made a motion to approve the minutes.
Motion Failed for lack of second.

10. **Adjourn:** David Libby made a motion to adjourn, seconded by Joanne Massey. All were in favor. Meeting adjourned at 9:25p.m.

Respectfully Submitted,

**Michelle Milardo
Clerk**