



**Town of Cromwell
Zoning Board of Appeals**

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TOWN CLERK'S OFFICE
CROMWELL, CONN.

Joan Chelgoin
TOWN CLERK

**PUBLIC HEARING AND MEETING
6:30 P.M. TUESDAY, APRIL 12, 2016
ROOM 224 CROMWELL TOWN HALL, 41 WEST STREET
AGENDA**

Present: Chairman Joseph Morin, Dan Delisle, John Keithan, John Whitney, Mark Fitzgerald (alternate)

Also Present: Town Planner Stuart Popper, Zoning Enforcement Officer Fred Curtin

1. Call to Order

The meeting was called to order by Chairman Morin at 6:32pm.

2. Roll Call

The presence of the above members was noted.

3. Seating of Alternates

A **motion** was made by John Whitney and **seconded** by John Keithan to seat Mark Zampino as an alternate. *All were in favor; the motion passed.*

4. Approval of Agenda

A **motion** was made by John Keithan and **seconded** by John Whitney to approve the agenda. *All were in favor; the motion passed.*

5. Public Comments – none

Chairman Morin asked Mark Zampino if he had heard the tape and read the minutes of the last meeting and Mr. Zampino said yes, he did both.

6. Public Hearing:

- a. Application #16-02: Appeal to the Order of the Zoning Enforcement Officer regarding Zoning Violations at 16 Pond View Drive. Theodore L. Faraci and Catherine Foley are the Applicant and Owners.

Chairman Morin read application 16-02.

Theodore Faraci, 1657 Main Street, Glastonbury, handed out his speaking points and read them. Mr. Faraci said he they never made a formal appeal to the Cease and Desist order dated March 1, 2016 and they assumed the matter had been resolved with their tenant paying a \$150 fine.

Fred Curtin, Zoning Enforcement Officer said he received a complaint about Commercial Vehicles being kept there and I issued a notice of violation on 2/10/16. Mr. Curtin said that he revised the order to come in compliance by 3/1/16 and they did not so I issued a cease and desist order since there has been a commercial trailer parked there on several occasions including March 22, April 7, April 11 and April 12, 2016. I had email correspondence with Mr. Faraci and I asked him if he wanted to appeal the Cease and Desist order and he said yes. Mr. Curtin said your consideration this evening is to whether or not I issued the Cease and Desist order correctly.

Ryan Anderson of 16 Pond View Drive said he owns his business called Built Right. He said I bring commercial vehicles back to my home since I can't legally park them at my business location and I have employees that pick up their pay in my company vehicles. I have also done work at this property so they are also working here. Mr. Anderson said that he is not sure if the trucks are an eyesore but I've passed 6 or 7 properties with commercial vehicles and I want to know why I am being singled out. He said I've had an issue with a dog barking at a neighbor and ever since then she is not easy to deal with. Mr. Anderson showed pictures of other properties with commercial vehicles. Chairman Morin said he can't apply those pictures to this property so they can't be entered into the record. Mr. Anderson said all of these vehicles all have street legal plates.

Mr. Whitney asked why he couldn't legally leave his vehicles at the other location and Mr. Anderson said it's legal but I run the risk of theft there. He said the address is 639 Meriden Waterbury Turnpike in Meriden.

Mr. Curtin said the vehicle exceeds the cubic feet in a residential zone. Mr. Popper said the regulations allow one commercial vehicle not exceeding the maximum cubic feet. He said a special permit is needed for a second vehicle not exceeding the maximum cubic feet. There was a discussion on the dimensions of the box truck. Mr. Anderson said the trailer is 7 x 12 and he said that is the only one there over night. He said it won't stay for there any length of time and he isn't asking for a special permit. Mr. Popper said the trailer is 504 cubic feet but you can't exceed 200 cubic feet. Chairman Morin said you can get a special permit for that. Mr. Anderson said but it won't ever stay overnight. Mr. Whitney asked if his business property was a garage or just an office. Mr. Anderson said it was just an office and parking lot. Mr. Anderson said he couldn't guarantee that it won't ever be there overnight. Mr. Popper said you would have to go to Planning and Zoning for a special permit not this board.

Ted Faraci said he wants to understand that the pick-up truck is ok but not the trailer. Mr. Curtin said correct and the box truck is not ok either. Mr. Faraci said that is a moot point since it has been removed. Mr. Faraci asked isn't it often that trailers are parked in the same spot for a while. Mr. Curtin said he can only speak to this property.

Mark Giboff 23 Red Oak Drive asked if someone is paying someone to do work at their house

and they bring a trailer for 6 or 10 hours does that constitute a violation of town ordinance. Chairman Morin said he himself admitted it does stay overnight and not just day light hours. Mr. Giboff asked if the only stipulation was parking overnight. Chairman Morin said the special permit would indicate hours of operation and other conditions.

Mr. Giboff said but if he is doing work to his own property than he is ok. Chairman Morin said I won't stipulate conditions, which are up to the Planning and Zoning Board. He said this Board doesn't create the regulations.

Mr. Popper said the regulations don't state what you are saying. If someone is doing construction than there is no regulation that says it can't be there. Mr. Giboff said but going forward we need an idea as to what we can do and when. Chairman Morin said that is not up to us and Mr. Popper said normal business use is not in question.

Jennifer Slifer, 2 Pond View Drive said that the box truck has been there on weekends and she never anticipated commercial trucks to be going up and down a cul-de-sac on off hours.

Mr. Popper reads a petition signed by a number of residents. The petition states that they are running a construction business out of the home and storing materials there. They said it's a fatal risk since there are not sidewalks on the street. There are 8 signatures with photos and this was submitted to my office today. Mr. Delisle asked if we know when the pictures were taken. Mr. Popper said these are not dated but Mr. Curtin's are.

Ted Faraci said the traffic is being exaggerated and the people who signed the petition are the relatives of neighbors that live on the street.

Jennifer Slifer said that only neighbors signed the petition not any of the people you mentioned.

Mr. Curtin said I issued the order so you should vote on whether I issued the order correctly. If you find fault, than you would deny the Cease and Desist order. If affirmed then I would continue with the Cease and Desist order.

A **motion** was made by John Keithan and **seconded** by John Whitney to close the public hearing for application 16-02. *All were in favor; the motion passed.*

Mr. Whitney said my issue is that if he is truly doing work than he needs to abide by the regulations. Mr. Keithan said he even admitted they could be for a while and that isn't up to us. Chairman Morin said he agrees and it up to the Zoning Board to set stipulations and to issue a special permit.

A **motion** was made by John Keithan and seconded by Dan Delisle to affirm Mr. Curtin's decision for the Cease and Desist order at 16 Pond View Drive. *Mark Zampino abstained; the rest were in favor; the motion passed.*

- b. Application #16-06: Appeal to the Order of the Zoning Enforcement Officer regarding

Zoning Violations at 33 Shadow Lane. Stanley and Elizabeth Jasiocki are the Applicant and the Owners.

John Whitney reads application 16-06.

Stan Jasiocki, 33 Shadow Lane said that Mr. Curtin previously visited him before February 4, 2016 and asked him to hide the lull and move the trucks back further since his neighbors were trying to sell their home. On February 4, 2016 I received a notice that I have to remove all the equipment. I complied and let him know and Mr. Curtin said thanks. Mr. Jasiocki said he has a permit to build a shed and needs a lull to complete that project. On February 23, 2016 Mr. Curtin came back and said I need to hide the lull. I guess it wasn't satisfactory to the Marino's. He said the truck and trailer are moved but the lull and backhoe are needed for the other projects. He said I have plans to finish the bank and other landscaping around the shed.

Mr. Curtin said that on February 4, 2016 I sent a letter. I had to issue a Cease and Desist order for a lull and a backhoe. He has 90 days for the lull but the non-working lull has to go and so does the backhoe.

Mr. Jasiocki said I have a 2.5 acre rear lot and I help all the neighbors. I've been improving the area for 25 years. He said the Marino's are the only ones complaining. Chairman Morin asked if you are appealing the March 18, 2016 Cease and Desist and you are asking us to ignore Mr. Curtin's decision to have the lull for 90 days. Mr. Jasiocki said that the new lull is just borrowed and I will return it. The old lull is down below and I am trying to fix it. He said I hope to get it running one day.

Michael Marino, 19 Vincy Drive said I have lived there for 43 years. He said we don't have a feud going on, we have a violation of zoning regulations. It's simple; you can't maintain these in a residential zone. It's a violation of your regulations. I am the immediate adjacent property owner. I've asked for this to be fixed. I will be gone on the 30th but the new owners will be faced with this and it shouldn't be allowed. He said I understand he had this equipment at an old house in an industrial zone and he moved it here.

Mr. Jasiocki said the truck and trailer are gone and will get rid of the lull somehow but I need the backhoe there while I am working on the shed. I need to landscape for the next 3 months. Mr. Curtin said I only agreed to the white lull if he kept it behind the storage shed covered.

Mr. Popper said you need to decide to affirm or reverse Mr. Curtin's Cease and Desist order.

A **motion** was made by John Whitney and **seconded** by John Keithan to close the public hearing for application 16-06. *All were in favor; the motion passed.*

A **motion** was made by John Whitney and **seconded** by Joseph Morin to affirm Mr. Curtin's decision per his modification to allow one lull for 90 days. *All were in favor; the motion passed.*

Chairman Morin told Mr. Jasiocki that he feels for him but his is a different situation. He said

you can ask the Zoning Board for a special permit for the backhoe.

Mr. Whitney said he understands the need for the lull but you should be able to get it done within the 90 days.

- c. Application #16-03: Request for a Variance from Section 2.2.B Bulk Requirements of the Zoning Regulations to allow the construction of parking spaces in the front yard along West Street at 41 West Street. The Town of Cromwell is the Applicant and the Owner.

Jon Harriman, Town Engineer said that he had the certificate of mailings and handed them to Mr. Popper. Mr. Harriman said town hall gets over parked on occasion and it becomes a safety issue. He said this was a project he started working on with the former Town Manager and is now working with the current Town Manager Anthony Salvatore. He said there really isn't anywhere else on site to fit more spaces in. He said they are proposing 16 new spots for employees during business hours. He said since the street line comes up to the building they need a variance to park in the front yard setback. Mr. Harriman explained the proposed flow around the building and why it would be better to limit the new spaces to employees and not the public during business hours.

Chairman Morin said the current "pool" parking is non-conforming now. Mr. Popper said the hardship is there is nowhere else to put the spots.

Chairman Morin asked if there were any members of the public who wanted to speak regarding application 16-03.

Chairman Morin asked Mr. Harriman to turn the map around so the public had a better view of it. Mr. Harriman explained the map again to the public. He said the hardship is the street line comes right up to the building.

Lawrence Anderson, 12 Allen Road said that this should be turned down. He said we need to be assured every option is explored and he hopes it comes to a town vote.

A recess was called at 7:52pm to change the tape and Chairman Morin called the meeting back to order at 7:57pm.

Mr. Harriman explained the project again and said they have explored all other options. He said the need is clear and Town Hall gets over parked at least once a month and it is worse in the winter with the snow. He said if we receive the variance the next step would be to go to the Planning and Zoning Commission for a site plan application. He said renderings would go to them.

Bob Byrne, 10 Allen Road said he is a frequent user of the town hall senior center and said the spots look like they are going in the opposite direction. He said there are many green spots in the parking lot that they can utilize. He said he would like to see an elevation.

Larry Anderson, 12 Allen Road said he loves this building and cars in front would be a sin. He said he would like to see a committee to look into other alternatives. He said there are many town cars that aren't being used and they could keep the vans in the back to pick up spots up front.

Mark LaBarge, 37 West Street said he echoes what Mr. Anderson said.

Robert Jahn, 31 Woodside Road said he doesn't live near town hall but I urge you reject until such time when the town is ready to make a presentation at a public hearing. He said there was no news release.

Arnold Sciucco, 49 West Street said his concern is this parking borders his property and town vehicles already cut across our property. He said we deal with it but are concerned it will get worse. He said we need a clear line of delineation so I reject this until I can see a plan.

Frank Czech, 25 Oakwood Manor said that if the lot fills up then events should be scheduled differently.

Mr. Popper said that this exploration was under the direction of the former Town Manager. He said that many times a variance is approved but the project still doesn't go forward. He said the project will need a referral from the Town Council then a positive 8-24 referral from Planning and Zoning and then a site plan approval by Planning and Zoning. He said this is simply the first step. Mr. Popper said we have looked very hard at existing landscape and the town hall gets used a lot. He said tonight there are 3 meetings on this floor alone. He said we like to use it and we are lucky it does get used. He said it would be hard to schedule meetings so there aren't conflicts. He said the hardship is we don't have any other space to use.

Robert Byrne, 10 Allen Road asked what the cost is.

Mr. Harriman said the cost doesn't apply to the variance but the new parking spots and to repave the entire parking lot would be about \$370,000.

Chairman Morin said there will be several public meetings before it goes anywhere. Mr. Harriman said it has to go before the state as well. He said they could possible deed some land to us.

Mr. Popper clarified that an 8-24 referral and site plan modification are not public hearings it would just be up to the Town Council to send to Planning and Zoning for an 8-24 referral.

Chairman Morin said but comments are always allowed at these meetings.

A **motion** was made by John Keithan and **seconded** by Dan Delisle to close the public hearing for application 16-03. *All were in favor; the motion passed.*

A motion was made by John Keithan and seconded by John Whitney to approve application 16-03. *Chairman Morin opposed; the rest approved, the motion passed.*

Chairman Morin said I oppose because I think there are alternatives such as the vans and town cars parking in the garage.

- d. Application #16-04: Request for Variances from Section 2.2.B Bulk Requirements of the Zoning Regulations (Side Yard Setback and Maximum Building Coverage) to allow for the construction of a shed at 22 Fairview Heights. Michael Francis Flanagan is the Applicant and the Owner.

John Keithan reads application 16-04.

Francis Michael Flanagan, 22 Fairview Heights said is looking to install a shed within 5 feet of his property line. He said he needs space for storage. He said the shed would measure 12 x 20 and have crushed stone between the house and shed. He said he lost 3 feet of frontage when the sewer went in. He showed where the shed would go on a map. He said it will be 10 inches off property line. Mr. Popper said 5 feet is the regulation and it also exceeds the building ratio too.

Chairman Morin asked if the abutters have been notified and the sign was up. Mr. Popper said yes and that he has letters from neighbors.

Mr. Popper read a letter from Roy Robbins, 3 George Street who supports the shed. He also read a letter from Marie Todaro, 18 Fairview Heights who also supported the shed. A third letter in support was from Elliot Infante, 2 George Street.

Chairman Morin asked for any members of the public who wanted to speak regarding application 16-04.

Nick Macri, 16 Fairview Heights said he is in support of the application.

Robert Carlson, 5 George Street said he is in support of the application

Julie Petrella, 24 Fairview Heights said it is a good addition and she is a direct abutter.

A **motion** was made by John Keithan and **seconded** by Dan Delisle to close the public hearing for application 16-04. *All were in favor; the motion passed.*

A **motion** was made by John Keithan and **seconded** by John Whitney to approve application 16-04. *All were in favor; the motion passed.*

Chairman Morin said the hardship is it's a small lot. He explained the 15 day waiting period.

- e. Application #16-05: Requests for Variances from the Requirements of the Zoning Regulations for Section 2.2.B Bulk Requirements for lot size, yard setbacks, building coverage and parking in the front and side yard setbacks. Sections 5.1.D.2 (1), 5.1.D.3 (2), 5.1.D.4 (2), 5.1.D.5 (3), 5.1.D.6 (1) for reduced landscaping and buffers. Sections

7.5.A.1 for sale of Alcoholic Beverages in a residential zone and 7.5.B.1 Minimum Distance requirement between retail liquor outlets at 573 Main Street in the Residence R-15 Zone District. Haresh Patel is the Applicant and 573 Building Association Inc. is the Owner.

- f. Application #16-01: Request for a Special Permit to Allow for the Change of a Non-Conforming Use at 573 Main Street in the Residence R-15 Zone District. Haresh Patel is the Applicant and 573 Building Association Inc. is the Owner.

Chairman Morin reads application 16-01.

A **motion** was made by John Whitney and **seconded** by John Keithan to re-open the public hearing for application 16-01. *All were in favor; the motion passed.*

Attorney Salvatore Petrella, 630 Main Street said he submitted an affidavit for application 16-05. He said he submitted an application for a change of use to move 574 Main Street across the street to 573 Main Street in the Knights of Columbus (KofC) building. He said several other issues would arise from the approval of a variance for use. Attorney Petrella said there have been many replies from customers for support of the move. He said one of the main reasons they want to move is so they can own a building instead of renting. He said door to door to the Sav-Mor plaza is 1600 feet away but the new requirement is lot to lot so that brings it to 1200 feet away. Attorney Petrella said the hardship is that KofC is a place of assembly and it doesn't fit in and this is a less intensive use that fits the bill. He said the use variance leads to other variances such as the building exceeds what is allowed on a lot that size. Attorney Petrella said that there was a notice in the 60's to increase the size of the building that was in violations of the building coverage. He said I don't want to rely on that and want it to be clear if it should be grandfathered in. He showed a D survey not an A2 survey. He said that if we don't get the variances any business that comes in would need one. He said the only variance that wouldn't be needed would be the distance requirement. He said that neighbors spoke in support of this although there was one concern with traffic. He said we would address this with the site plan process. He said the traffic would be reduced or lessened with the package store. He said the front parking lot is existing so we can't put 2 trees in the middle of the parking lot but this is all common sense. Attorney Petrella said that this building is of no use to anyone but the fraternal order. He said the Sav-Mor store went in after the package store at 574 Main Street. He said it is simply moving across the street and is it really any closer. He said you have granted variances in distance requirements.

Attorney Petrella handed Mr. Popper an additional 25 or so signed petitions by customers. He said if you do find a hardship you need to put it on the record.

Chairman Morin asked for any members of the public who wanted to speak.

Frank Czech, 25 Oakwood Manor said I oppose this since people are walking down the street and I'm concerned with kids walking by the liquor store and cars going back and forth. He said with the KofC this is only once in a while but with the package store it would be constant. He said delivery trucks would drive through the streets and jeopardizes safety. He said the lot across the

street now has one way to pull in and another to pull out. He said the new lot is one entrance and exit. He said the lot next door is for sale and maybe they can use that for additional parking.

Attorney Julie Petrella said that property is for sale but has nothing to do with this.

Tom Moriarty, Attorney represents Peter Place, owner of the Sav-Mor package store. He said this is less than 1500 feet away and according to section 10 in your regulations use variances are unfavorable. He said the ZBA regulations say no variances allowed for this use in a residential zone. He said the use can't be any more nonconforming than it is now. He said the store would be triple its size and more than double the size of my clients store. Attorney Moriarty cites a Supreme Court ruling in Meriden. He said there is no evidence of diminished value or that the property would be useless if this variance isn't approved. He said your regulations are more important and they strictly prohibit the variances being asked for. Attorney Moriarty handed out his comments and the Supreme Court case.

Attorney Petrella said that there is traffic now and cars pull into driveways on Main Street all day long. He said you have to watch for traffic and there is more than sufficient parking. He said that we have some evidence from the Realtor and there are Knights here to attest to the fact there are no offers. He said any business trying to buy this building will have the same requirements. You are just changing non-conforming use and this is less non-conforming and is no way more non-conforming. Attorney Petrella said the question seems to be if you can grant the variance and I believe that yes you can, you've done it before. He said if you don't allow this, there will not be any value to this building and that will amount to confiscation.

A recess was called at 9:13pm and the meeting was called back to order at 9:15pm by Chairman Morin.

Attorney Petrella said that Sav-Mor can buy more of a building and triple its size. He said this is just business competition.

Robert Vess, Knight, business owner and resident of 605 Main Street said the fraternal order can't support ourselves and we made a decision to sell. He said there are a number of non-conforming issues and we have a business looking to expand by moving across the street. He said you have two opportunities to keep the KofC performing and allow a business to expand.

Attorney Tom Moriarty said that the Mr. Place purchased the Sav-Mor package store in 1990 and he has a right to rely on the zoning regulations. He said he would have a hard time expanding since he will be within 1500 of the other package store and wouldn't Mr. Patel object. Attorney Moriarty said that it is right here in your zoning regulations that it is against the law to grant this variance. Mr. Patel can go to a business zone to expand his store. He also said that the Realtor wrote in his report that the building is maintained and in good condition.

Alan Schumann, 505 Main Street said there has been one offer since October and there have not been multiple offers.

Attorney Petrella said he has the previous variance granted and Chairman Morin said he would like to see it. Attorney Petrella hands his the variance for the rear yard addition granted in 1964. He said the variance allowed the increased size of the building.

Mr. Popper said he can see the points of both arguments and said that section 10, number 4 is specific as to if the property is rendered valueless. He said if the Commission would like the opinion of the Town Attorney than we can continue the public hearing or vote now if you are comfortable. Chairman Morin said the attorney should weigh in since Sav-Mor bought up a good point about if the property is valued useless. He said I'm not sure that has been demonstrated and this use doesn't have to be a package store.

Mr. Popper wanted clarification that the two questions to the Town Attorney are is the non-conforming use being increased and is the property going to rendered valueless. He said the parking issue is with people coming in and that would be an issue no matter what so do you want me to ask her about parking. Chairman Morin said not really, it is just a concern.

A **motion** was made by John Whitney and **seconded** by John Keithan to continue the public hearing for application 16-05 and 16-01 until May 10, 2016. *All were in favor; the motion passed.*

7. Commissioners Comments:

8. Approval of Minutes:

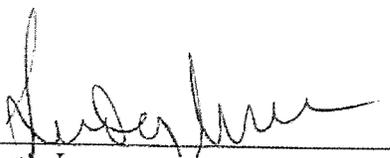
- a. March 8, 2016

A **motion** was made by John Whitney and **seconded** by John Keithan to approve the minutes of March 8, 2016. *All were in favor; the motion passed.*

8. Adjourn

A **motion** was made by John Keithan and **seconded** by John Whitney to adjourn at 9:39pm. *All were in favor; the motion passed.*

Respectfully Submitted,



Linda Imme
Recording Clerk