

ENFIELD ZONING BOARD OF APPEALS  
**REGULAR MEETING**  
**DRAFT MINUTES FOR COMMISSION CONSIDERATION**  
MONDAY, FEBRUARY 25, 2019 7:00 PM  
Enfield Town Hall – Enfield Room – 1<sup>st</sup> Floor  
820 Enfield Street - Enfield, CT

**Call to Order & Pledge of Allegiance**

Chairman Maurice LaRosa called the meeting to order at 7:03 PM.

**Roll Call**

Secretary Turner took the roll and present were Commissioners Charles Mastroberti, Mary Ann Turner, Maurice LaRosa, Robert Kwasnicki, Kelly Davis and Alternate Commissioner Catherine Plopper. Absent was Commissioner Andrew Urbanowicz. Chairman LaRosa seated Alternate Commissioner Catherine Plopper.

Also present were Laurie Whitten, Director of Development Services; Raquel Ocasio, Assistant Town Planner and Elizabeth Bouley, Recording Secretary.

**Legal Notice**

Commissioner Turner read the legal notice.

**Motion:** Commissioner Turner made a motion, seconded by Commissioner Mastroberti, to suspend the rules and move Item #6 to below the Approval of Minutes section.

The motion passed with a 5-0-0 vote.

**Votes: 5-0-0**

**New Business**

**Automotive Location Approval(s)**

- a. **ZBA# 2019-01-31** – 2 Mill Street (aka 425 Hazard Avenue) – Automotive Location Approval for the transfer of a Used Car Dealership license from the existing Mercier’s Kustom Auto Body, LLC., to Sumer Auto Sales, LLC.; Hazardville Trade Village, LLC. (Patrick Malloy), owner; Map 92/Lot 67; HVBL Zone; Hazardville Design Overlay District.

Chairman LaRosa seated Commissioner Plopper.

Patrick Malloy, Hazardville Trade Village, property owner at 2 Mill Street, addressed the Commission to assist the applicant, Alaa Almaliki, 1 Craigwood Terrace, Wilbraham, Massachusetts. Mr. Malloy explained that the applicant was originally going to meet with Tim Coon of J.R. Russo & Associates, but that Mr. Coon had met with Ms. Whitten and was told there is no need for a meeting, but rather someone would just sign off on it. Mr. Malloy stated that the applicant is trying to open a used car dealership where they would be exporting cars and not doing any local business.

Commissioner Turner asked for clarification on what is meant by transferring cars out, to which Mr. Malloy replied that the applicant is just here to get the K7 form signed so they can go on to dealer repairs for the dealer license.

Commissioner Turner asked what it means to export cars, to which Mr. Malloy replied that they sell cars and ship them outside of the country.

Ms. Whitten stated that some sort of shop to do minor repairs is a state requirement when selling used cars. She asked if the repair shop is open to the public, to which Mr. Malloy replied that it is not. Mr. Malloy stated that the applicant needs the K7 form signed in order to be able to apply to the Connecticut DMV Dealer Repair Department.

Commissioner Turner stated that the parking lot was not marked and is filled with a bunch of hodgepodge vehicles. She stated that the plans in front of her do not appear to be the plans for the current site. Mr. Malloy stated that no one told him that needed to be done. Commissioner Turner cited additional issues with the application paperwork.

Chairman LaRosa stated that Connecticut requires them to have a limited repair license if they have a used car dealership.

Ms. Whitten stated that the Commission and the DMV are looking for the leased area to be delineated on the site plans as to where the parking spaces are for this business.

Chairman LaRosa stated that he visited the property and there are cars everywhere with no indication clearly stating where the parking is for this business. He asked how the parking is going to be delineated in the parking lot for this business.

Commissioner Turner asked why twelve parking spaces are needed if cars are being shipped rather than sold locally. She stated that she cannot sign plans as they specifically say there is an autobody shop when there is not. Commissioner Turner cited the fire marshal report and asked what type of work will be done in the building. Mr. Malloy stated that it would be minor repairs with no repairs for the public.

Commissioner Turner reiterated that she will not sign the plans and stated that they are unclear. Mr. Malloy stated that he was told these plans would be fine. Ms. Whitten stated that this is the way it has been done here and elsewhere for fourteen years. She stated that the building and the parking area should be highlighted, so that is what she advised them to do.

Commissioner Turner suggested that the Commission table the issue until the changes are made. Ms. Whitten suggested that they make the changes right now, explaining that there is some confusion surrounding this issue as to the proper process and procedure. She read Connecticut Statute 1455 as well as the memo from Town Attorney Maria Elsdon dated June 25, 2018 which stated that the only thing the Commission should be looking at is proximity to schools, churches, theaters, traffic conditions, width of highway and effect on public travel.

She stated that if there are issues such as an illegal use, that is a zoning issue and therefore not under the purview of the ZBA.

Commissioner Turner reiterated that the plans do not match the request. Ms. Whitten stated that the parking and other issues can be made a condition of approval.

Chairman LaRosa stated that there is a body shop in town now that was never approved, which is why the Commission is on edge regarding applications like this.

Chairman LaRosa stated that the Commission is looking at whether this is a viable location; however, he is not comfortable using these plans as this could end up becoming a dealership and becoming out of control. Ms. Whitten stated that this is a compliance issue and the use has been given approval in the past.

Chairman LaRosa stated that 2 Mill Street is being used as an address; however, the cars are not going to be at that location as across the street is a different address. Chairman LaRosa stated that if the K7 gets signed for 2 Mill Street, there is nowhere on the property at 2 Mill Street where he can sell cars.

Mr. Malloy stated that the parking lot across the street is the parking area for 2 Mill Street, to which Chairman LaRosa replied that the parking lot has a different address. Ms. Whitten stated that the parking lot does not have a different address. The Commission discussed which addresses are associated with the application and the parking areas. Ms. Whitten stated that the original application is for 2 Mill Street, aka 425 Hazard Avenue. Commissioner Turner stated that all of the buildings onsite have different addresses. Discussion took place regarding whether the parking lot across the street is considered part of 2 Mill Street or has a different address.

Ms. Whitten read an excerpt from Town Attorney Maria Elsdon's memo stating that if the Commission had previously issued an approval for the same use at the same location, it cannot change positions when reviewing a license renewal request. Ms. Whitten stated that this is a transfer, to which Commissioner Turner replied that it is not a transfer but a new application.

Commissioner Turner stated that she is not signing the plans until they are correct, and she will not be the one to edit the plans as that would be inappropriate.

Ms. Whitten read an excerpt from the March 30, 1992 approval for a used car dealership at 2 Mill Street, aka 425 Hazard Ave.

Commissioner Turner suggested they table the application until the plans are marked correctly.

Ms. Whitten stated that the parking lot is difficult to decipher; however, that is not under the purview of the ZBA.

Mr. Malloy stated that he had read through some minutes and noticed that other applicants have not been put through this type of scrutiny for transferring a used car license.

**Motion:** Commissioner Turner made a motion, seconded by Commissioner Davis, to table the application for **ZBA# 2019-01-31** in order to give the applicant time to correct the issues and make the materials accurate prior to the Commission moving forward on this issue.

The motion passed with a 6-0-0 vote.

**Votes: 6-0-0**

The applicants left with Ms. Whitten to revise their materials.

**Variance(s)**

- a. **ZBA# 2019-02-14** – 294 George Washington Road – Variance application to Section 10.10.7A vi to allow a 5-foot landscaped setback from the south property line (adjacent to 1 Pearson Way) where a 10-foot setback is required, and to allow a 6-foot landscaped setback from the south side of the building where a 10-foot setback is required; Allied Rehabilitation Centers, Inc., owner/applicant; Map 64/Lot 103; I-1 Zone.

Chairman LaRosa read the definition of a variance.

Kiran Majmudar, PE, owner of L.P. Consultants, LLC addressed the Commission along with applicant Deborah Arietti of Allied Rehabilitation Centers, Inc.

Mr. Majmudar explained that Allied Rehabilitation Centers owns two parcels, one on George Washington Road and the other which is 3 Pearson Way, with one common property line. He stated that the applicant would like to add additional paving, parking and access between these two different parcels in order to transport the physically and intellectually people that they serve. Mr. Majmudar explained that this issue is before the ZBA because the addition of the parking and access would result in a 6-foot setback from the building rather than the 10 feet required by the zoning regulations, and also that the parking lot on the southern property line is 5.2 feet from the property line rather than the required 10 feet.

Ms. Arietti stated that Allied's Attic Thrift store is located at 294 Washington Road and provides employment for individuals with disabilities as well as transportation. Ms. Arietti stated that currently the employees walk out the south exit into the parking lot at Pearson Way to get onto the buses for transportation home, which is dangerous. She stated that the north side exit, which employees used to use to exit, is also dangerous as people dropping off donations drive through there. Ms. Arietti concluded that the business is successful and there is no longer enough parking, so one issue is this shortage of parking while the other issue is the safety of consumer employees.

Mr. Majmudar stated that they did look at a couple of other alternatives, including whether the fire marshal could accept a slightly smaller fire lane; however, the fire marshal was not ok with that.

Mr. Majmudar stated that the transport of these individuals from one building to another is also a safety hazard.

Commissioner Turner pointed out the dirt road on the plans, to which Mr. Majmudar replied that the plans call for it to be blocked off and seeded. Commissioner Turner asked why the bus cannot be pulled up at the end of the sidewalk to pick people up, to which Ms. Arietti replied that is where they are currently being picked up. She explained that there are cars parked where the buses pull up, so the employees have to walk into the parking lot between parked cars to board the bus.

Commissioner Turner pointed out that the applicant can remove those parking spaces themselves. Chairman LaRosa stated that there are no parking spots there, to which Ms. Arietti replied that there actually are three or four parking spaces there. Ms. Arietti explained that there is paved parking to the north of the marked-off spot at the end of the sidewalk.

Chairman LaRosa asked if the van could pull up to the area; Ms. Arietti stated that it can pull up to the area but not right to the sidewalk as there are cars parked on each side.

Commissioner Turner asked what the hardship is, to which Ms. Arietti replied that the lack of parking is a hardship as well as the safety of consumers.

Mr. Majmudar stated that the hardship is to be able to serve and safely transport the physically and intellectually challenged people. He stated that these plans allow for much safer access for these individuals. Ms. Arietti clarified that many of the individuals also have physical disabilities in addition to developmental disabilities.

Commissioner Turner stated that there is enough room to put in the driveway without the parking, so the safety issues can be fixed without a variance. Ms. Arietti stated that there is still a lack of parking for George Washington Road, to which Commissioner Turner replied that the property is not causing the problem. Commissioner Turner explained the need for the 10-foot buffer, stating that the safety issues can be fixed but she does not see how they can fix the parking problem.

Mr. Majmudar asked exactly where on the plans the drop-off would be, to which Commissioner Turner replied it would not change from the plan as they could eliminate the parking spots and just have a driveway. Commissioner Turner stated that there is no hardship. Chairman LaRosa stated that in order to grant a variance, the Commission has to look at what the property is doing to cause a hardship. He stated that the property being too small is not a hardship. Chairman LaRosa pointed out that some of the employees could use the parking spots that are currently being used for snow.

Ms. Arietti stated that the Commissioners would see there is not enough parking if they came out to the property at a time when all of the transportation vehicles are parked. Commissioner Turner stated that the land is not causing any issue and the safety problem can be fixed without a variance. Chairman LaRosa stated that perhaps the applicant can add parking without needing a variance. Commissioner Turner offered some suggestions to alter the curbing or driveway in order to achieve more parking without a variance.

Chairman LaRosa asked three times if anyone in the audience would like to speak in favor or against the application; no one came forward.

Commissioner Turner reiterated that there is no hardship and the regulations are very clear about setback requirements.

**Motion:** Commissioner Turner made a motion, seconded by Commissioner Mastroberti, to approve **ZBA# 2019-02-14.**

Commissioner Turner stated that there is no hardship from the property to encroach on the property next door. She stated that there are zoning rules for a reason and the safety issue can be fixed without the parking. Commissioner Mastroberti asked if there is a way to remove some of these parking spots, to which Commissioner Turner replied that they cannot and the applicant would have to come back with a new plan.

The motion failed with a 0-6-0 vote.

**Votes: 0-6-0**

Mo explained that the variance was denied and the applicant would get a letter from the town.

Chairman LaRosa asked the applicant for 2 Mill Street to return to the table.

**Motion:** Commissioner Turner made a motion, seconded by Commissioner Davis, to continue **ZBA# 2019-01-31**.

The motion passed with a 6-0-0 vote.

**Votes: 6-0-0**

Ms. Whitten submitted copies of the newly revised plan to the Commission, pointing out exactly where the twelve parking spaces will be located. The Commission discussed the parking spots on the revised plans.

Chairman LaRosa stated that all of the parking on the plans is for 2 Mill Street and asked if the other buildings have parking. Ms. Whitten explained that the plan is not a detailed site plan of the entire site, but rather it is just showing the area for this proposal.

Mr. Malloy addressed the Commission and pointed out other areas of parking on the plans.

Ms. Whitten stated that for location approval the applicant does not have to show the rest of the parking, just the lease area. The Commission examined the site plans and an aerial photograph of the site. Chairman LaRosa stated that just because something is blacktop does not mean it is parking, and that parking spaces have to be striped.

Mr. Malloy asked whether the Commission had done this for another application; Chairman LaRosa stated that the Commission does not compare applications or take into consideration what was done incorrectly in the past.

Chairman LaRosa stated that if this is all one property, the Commission has to look at the entire property to make sure it is a viable location. He stated that there are only 24 parking spots on the entire property, to which Mr. Malloy replied that there are hundreds of parking spots. Ms. Whitten stated that the map shows which parking stalls are appropriated for the applicant's use.

Ms. Whitten stated that this has already been previously approved as a location approval. Commissioner Turner stated that was 25 years ago and perhaps 25 years ago there were not as many things going on at this property.

Chairman LaRosa reiterated that he is not going to compare 25 years ago to the present and he is not going to compare this application to another.

Ms. Whitten stated that ZBA purview is only to look at proximity to schools, theaters, churches, width of highways, impact to public travel and whether this had been a previous location approval. Commissioner Turner stated that there is a safety issue with public travel, to which Ms. Whitten pointed out that Mill Street is a private road and not a town road. Commissioner Turner asked who plows the road, to which Mr. Malloy replied that he plows it and also paved it.

Chairman LaRosa asked three times if anyone in the audience would like to speak in favor or against the application; no one came forward.

Chairman LaRosa closed the Public Hearing.

**Motion:** Commissioner Mastroberti made a motion, seconded by Commissioner Davis, to approve the application for **ZBA# 2019-01-31**.

Commissioner Mastroberti asked who makes the conditions for approval or if they have already been made, to which Ms. Ocasio replied that according to the Town Attorney report, there is no statutory authority for the ZBA to impose or enforce conditions.

Commissioner Turner stated that she does not know how they can move forward until the property is properly marked.

Commissioner Davis stated that there are conditions, which Chairman LaRosa explained had been set by the Planning & Zoning Commission back in 1992 when the first business was allowed in. Commissioner Davis stated that they would still have to follow these conditions, which is where the parking lot stripes are listed.

Commissioner Turner asked how the applicant is going to differentiate their twelve spots from the other parking spots. Ms. Ocasio stated that they can get a revised map if that is what is being requested. Commissioner Turner stated that she is requesting a revised map prior to signing off on the plans so the plan matches the property.

Commissioner Turner stated that she is also concerned about the repair part, to which Ms. Whitten replied that repairs are allowed as an incidental use for used car dealers. Discussion took place as to whether the application in question involves a repair facility.

Commissioner Turner stated that the Planning & Zoning Commission wrote the four conditions in 1992 and that #4 is very ambiguous. Ms. Whitten clarified that this condition means that the public cannot come in to have their cars repaired and only the cars being sold by this company can be repaired at this facility.

Commissioner Turner asked if auctions will take place since the cars are to be sold overseas, to which Ms. Whitten replied that they will not.

Commissioner Turner asked how the Commission can move forward if they do not have an accurate map to sign. Ms. Whitten stated that it is her understanding that the Chairman or Secretary will come in and sign the plans after the meeting. Commissioner Turner stated that she wants every bullet and mark on the map signed by the owner before they leave the room.

Commissioner Mastroberti stated that he hopes the Commission can still move ahead and approve the application tonight. Commissioner Turner reiterated that if the map is not accurate when she goes in to sign it then she will not sign it.

**Motion:** Commissioner Mastroberti made a motion, seconded by Commissioner Davis, to approve the application.

The motion passed with a 4-1-0 vote, with Chairman LaRosa voting against the application.

**Votes:** 4-1-0

#### **Approval of Minutes** – November 7, 2018 Special Meeting

**Motion:** Commissioner Turner made a motion, seconded by Commissioner Mastroberti, to approve the minutes from November 7, 2018.

Commissioner Turner stated that none of the Commissioners were present at the Special Meeting. Ms. Ocasio explained that minutes were taken and there was an agenda so it is before the Commission.

The motion passed with a 0-0-5 vote with Commissioners Plopper, Mastroberti, Turner, LaRosa and Davis abstaining.

**Votes:** 0-0-5

#### **Approval of Minutes** – November 14, 2018 Special Meeting

**Motion:** Commissioner Turner made a motion, seconded by Commissioner Mastroberti, to approve the minutes from November 14, 2018.

The motion passed with a 4-0-1 vote with Commissioner Davis abstaining.

**Votes:** 4-0-1

#### **Old Business**

Chairman LaRosa stated that the Commissioners were all given a complete set of bylaws with all appendices included. Commissioner Turner stated that she is hoping to see some appendices removed as they are not current.

Commissioner Turner stated that the bylaws should not be voted upon until all changes are made, and asked if the Commission can still meet to do the bylaws even if there is not a meeting planned.

The Commission reviewed each of the revisions made to the Bylaws for the Enfield Zoning Board of Appeals and discussed whether they would like to adopt the revisions or make additional changes.

Discussion took place regarding when the Commission would like to have their packets prior to each meeting. It was decided that a minimum of seven days is acceptable.

The Commission discussed how best to word the definition of a quorum in the regulations and what would constitute a majority vote. Additional discussion took place regarding how best to order the agendas and other suggested revisions to the bylaws.

### **Correspondence / Staff Reports**

#### **a. Town Attorney Report- Site Walks- Land Use Agencies**

Ms. Ocasio explained that the Town Attorney's opinion on site walk was distributed to the Commission following an inquiry from the Inland Wetlands and Watercourses Commission. Chairman LaRosa stated that as long as there is not a quorum, the Commissioners are allowed to look at the properties that will be coming before them. Discussion took place regarding site walks and how Commissioners can stay safe and within the law while conducting them.

#### **b. Appointment Dates of ZBA Commissioners**

Chairman LaRosa stated that he wanted to make sure everyone knows when they were appointed.

Commissioner Turner asked who is going to the dinner, to which Ms. Whitten replied that there is no money left in the budget to fund the dinner. Ms. Ocasio stated that an email will go out tomorrow with all of the details. Discussion took place as to how the Commissioners paid for the event in the past.

Chairman LaRosa asked if there is funding for the upcoming law class, to which Ms. Ocasio replied that there is and they are just waiting on some additional information.

#### **c. Reference Binders**

Ms. Ocasio instructed the Commissioners to let staff know if they would like anything else added to their reference binders.

Chairman LaRosa stated that he is frustrated as the Commission has been told different things by different staff members. He stated that he will be at the Town Manager's Office tomorrow and would like the town to send someone from the state in to instruct the Commission as to how to do things as he does not want to end up in court.

Commissioner Turner stated that she wants consistency out of the office. Ms. Ocasio stated that this can be discussed in Executive Session and that Staff can provide the materials that is needed for them to make educated decisions.

### **Adjournment**

**Motion:** Commissioner Turner made a motion, seconded by Commissioner Davis, to adjourn for the night.

The motion passed with a 5-0-0 vote.

**Votes: 5-0-0**

**Note:** The next regular meeting of the Zoning Board of Appeals is March 25, 2019

Prepared by: Elizabeth Bouley, Recording Secretary

Respectfully Submitted,

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Mary Ann Turner, Secretary