

RECEIVED
ENFIELD TOWN CLERK

ENFIELD ZONING BOARD OF APPEALS
SPECIAL MEETING
MINUTES

2023 JAN 30 PM 3:47
MONDAY January 23, 2023, 7:00 PM
ENFIELD TOWN HALL – SCITICO ROOM
820 ENFIELD STREET – ENFIELD, CT

Sheila M Bailey

1. Call to Order

Chairman Urbanowicz called the meeting to order at 7:00 PM

3.. Roll Call

Commissioner Turner took the roll and present were, Chairman Urbanowicz, Commissioners, Mary Ann Turner, Timothy Neville, Richard Stroiney, and Charles Mastroberti

Also present, Lauren Whitten, Director of Planning and Property Inspector Rick Rachele

5. Town Attorney Report- None

6. Old Business-

Chairman Urbanowicz excused himself from the meeting. Commissioner Neville took over as Chairman.

Chairman Neville stated with Chairman Urbanowicz excusing himself, they still have a quorum with 4 Commissioners but they usually have 5. Attorney Donnelly and his client agreed to proceed with the meeting.

a. Docket No. LND-CV-21-6143003-S -128 Moody Road- Remand back to ZBA to determine status of nonconforming use-trucking terminal.

Town Attorney Maria Elsdén explained to the Commission the purpose of being at the meeting as it is a unique situation.

In May 2021, the applicant received a cease-and-desist order for operating a truck/transportation business in an industrial 1 where it is not allowed. The applicant filed an appeal and the board ruled in a manner that was not in favor of the applicant. The applicant brought the case to court and the judge ruled only on the issue of whether or not there was a truck terminal. The judge upheld the board and remanded the matter back to the Commission to determine whether or not there is a nonconforming use. Attorney Elsdén explained to the Commission that they are only looking at the nonconforming use.

In terms of nonconforming use it means the use had to be legal at the time it was made illegal. The Commission should be looking at when the use begun, was it legal when it begun, and when was it made illegal. This property is on an I-1 Zone, truck terminals are not allowed in an I-1 zone, when were they allowed and when was it illegal.

She also stated that if they have questions, they do not have to decide at this meeting. Attorney Elsdén also asked if anyone had procedural questions based on what she explained.

Commissioner Turner asked if they would vote on it the same way as an appeal case. Attorney Elsdén stated yes, the Commission would vote as if it were May 2021.

Attorney Donnelly presented to the Commission a few bullet points on the case.

128 Moody Road LLC is a division of Jarmoc Farms, the property is immediately behind Fermi.

It's been a farm for over 100 years.

A couple of years ago it was purchased from Jarmoc Entities and 128 Moody Road LLC was created

Shortly after they created CT Valley Transportation- which is a trucking entity that transports Jarmoc products.

Attorney Donnelly summarized in March of 2021 the Zoning Enforcement Officer issued a cease-and desist order on the alleged violation of section 16.2 prohibition of truck terminals. This was ultimately upheld by the Superior Court. The Judge stated that the ZBA at the hearing in May 2021 did not address the question of whether or not this was a preexisting nonconforming use.

Attorney Donnelly spoke about the regulations. He stated that the regulations do allow in article 3.40.4 for nonconforming use prior to the regulations going into effect. The regulation specifically states that "any use of a building or lot which was legally in existence prior to the adoption of these regulations (January 31, 2002) or amendments there to and is not permitted in the zoning district in which it is located shall be designated a nonconforming use." The nonconforming use is not only in your regulations but also in CT statutes.

Attorney Donnelly obtained affidavits from previous owners of this property that were included in the packet back in May 2021. He handed out to the Commission copies of the affidavits. Based on these affidavits, they believe that the truck use on this property predates the zoning regulations in Enfield.

The Commission asked for an overview from Rick Rachele.

Mr. Rachele checked the regulations going back to 1966-75 and during this time there was no listing for truck terminals. Truck terminals were first noted in the regulations from 1975-84 as a use permitted under an industrial 2 zone. In his finding through reviewing the regulations, the only indication of a truck terminal allowed was under a special permit in an I-2 zone.

Commissioner Turner asked:

When and why did this property become an I-1 zone and what is the criteria for it becoming an I-1 vs. I-2 zone? At that time in 1966 it would have been the planning and zoning to determine the reason for becoming an I-1 and not an I-2. The difference between I-1 and I-2 is that I-2 is more intensive. Table 6.2.0 gives a listing of what is allowed in an I-1 zone.

In 1966 was this type of business allowed before it was changed.

Mr. Rachele stated going back to a zoning map he found from 1966 shows the property was zoned a residential 33. (R-33 zone)

The Commission asked if there was any documentation or minutes that suggest why this property was changed from R-33 zone to I-1 zone. Mr. Rachele looked back and could not find anything. He further states that changes made by zoning could have been made without updating the zoning map.

Mr. Rachele stated that he checked public hearing 2433, which was an application of a landing and takeoff a helicopter on this property in 2004. This file had no indication of violation of trucks being on the property.

Attorney Donnelly stated that he doesn't understand what the file from 2004 about the helicopter has to do with their case on the truck issue and if the issue was a helicopter landing or taking off that it wouldn't necessarily go looking for other problems.

Mr. Rachele stated that for this file an investigation was conducted on the property and if there was a violation of truck use it would have been indicated.

Chairman Neville stated that the conversation is about truck terminal. The definition provided is trucks transporting goods interstate that may or may not come from a farm. He asked Attorney Donnelly if they had any data or evidence to support that they did transport goods other than crops to other states.

Attorney Donnelly stated that part of the confusion on this case is that truck terminals are not defined in the regulations.

Commissioner Turner asked what are we hear to argue about? Is it that the owner has tracker trailers parked on the property that are used to transport goods or does the owner have a truck terminal acting like a trucking company that is traveling all over the world.

Town Attorney Elsdon explained that the judge found there is a truck terminal and the Commission needs to determine if the trucking terminal is nonconforming and legal for this property owner because of past use and prior to regulations going into place.

Attorney Elsdon read the judge's decision on the truck terminal, citing regulations and definitions.

Commissioner Turner asked for more clarification on what are they breaking down and is it a product issue.

Attorney Donnelly said it's irrelevant on what is in the trucks, however all the trucking licenses are amended that say for agriculture use. These changes have been made after the May 2021 hearing. Ultimately is this grandfathered in or not.

The issue at hand is storing trucks on the property, not transporting farm products or other products.

Commissioner Mastroberti asked if at the time of the cease-and-desist order originally for all trucks?

Mr. Rachele stated it was for CT Valley Transportation. Per the owner CT Valley Transportation is still in existence.

Commissioner Stroiney stated for clarification, We're looking to determine if this was legally nonconforming as the result of the regulations coming into play. We know that it's zoned I-1 where trucking is not allowed. Did this trucking component exist prior to the regulations coming into play and being changed from R-33 to I-1 zone.

The Commission stated that if they were to state that this was nonconforming and legal, and the property owner sells in a few years then the decision that is made by the Commission stays with the land. If this owner ends up expanding with 20 bay truck terminal, that is not the intent. If they say no then the owner may not be able to operate their business. The Commission cannot make conditions on a decision, it's either a yes or no.

Commissioner Mastroberti made a motion to table the discussion, seconded by Commissioner Stroiney.

Motion passed by a show of hands, 4-0-0 vote.

Chairman Urbanowicz returned to the meeting.

8. New Business

a. ZBA #2023-01-09- 53 Manning Road- Appeal of Cease-and-Desist Order of Article 6 of the Zoning Regulations and Conditions of PH #2874 Approval; All Purpose Storage Enfield LLC, Applicant/Owner, Map 34/Lot 15; I-1 Zone

Appeal withdrawn by the applicant.

9. Approval of Minutes

a. November 28, 2022

Commissioner Stroiney made a motion to approve the minutes from November 28, 2022, seconded by Commissioner Neville.

Motion passed by a show of hands 5-0-0 vote.

10. Correspondence / Staff Reports-None

11. Other Business-

Commissioner Turner stated that last year they put before the Senate the K-7 letter that she sent to them and testified on. She forwarded that later again to Senator Kissel's office and will be brought up again for this next legislative session. There was an email that went out on taking Zoning classes. Commissioner Turner recommended that everyone should look into taking these classes.

Ms. Whitten stated that there is some money if the Commissioners want to attend the all-day training.

Commissioner Stroiney asked about the status of the barn. Mr. Rachele stated that he had gone out and measured the best he could and it was back to where it was originally staked.

12. Adjournment

Commissioner Stroiney made a motion, seconded by Commissioner Neville, to adjourn. The meeting was adjourned at 8:54 PM.

Next meeting, February 27, 2023.

Prepared by:

Sandie Barone, Recording Secretary

Respectfully Submitted,

Mary Ann Turner, Secretary