

**TOWN OF LIBERTY
ZONING BOARD MINUTES
JULY 20, 2010**

MEMBERS PRESENT:

Thomas Sprague
Don Nichols
Peter Belgard
Gene Burns, Alternate

ABSENT:

Tracy Merklin

ALSO PRESENT:

Walter Garigliano, Town Attorney AND Mark Van Etten, CEO

CHAIRMAN SPRAGUE CALLED THE MEETING TO ORDER AT 7:05 PM.

Shelley Realty Corp/ County Petroleum Products

Area/Use Variance

Ferndale Road / Station Hill Road

SBL: 36.-1-115

Zone: IC Z-2010-0001

Mitchell Blank appeared for this project.

Mitchell Blank: I went to see Mark originally about putting a sign up there, I wasn't clear as to what the rules were and he indicated that the setback, there were two issues, he indicated first of all that the setback for a sign I believe was 75 feet. Is that what it was Mark? From the center of the road?

Mark Van Etten: Yes, center.

Mitchell Blank: So I went out there with my tape measure and the landscape to go 75 feet back is impossible because we reached the cliff where the old railroad trestle ran. We can't do that. Additionally, I don't own all of the land on Ferndale Road, if I put up a little sign, there would be no visibility because of the neighbor, whoever it is, I don't even know who owns some of the land. I don't want to cut down anyone's trees and start a war over something like this. So it's impractical to go back 75 feet. The other issue is my property is triangle shaped. We do have a sign on Old Route 17 in front of our business that indicates it is County Petroleum. We do have a sign there. I guess this would be a second sign. It's unusual that a company would have, we wouldn't need a second sign, but my business is on two road frontages, so we're getting a lot more traffic coming into our building. We get a lot of people that come in. Based on what's going on with the economic situation and business we really feel we need a sign to help draw attention to where we are. TAPE UNCLEAR

Walter Garigliano: I went through the application and I'm struggling to find any part of the application that's a use variance. I believe the application is only an area variance.

Mark Van Etten: Well what we thought a use was if you go to the 84-17 B. 4. "Freestanding business signs shall be permitted as long as they comply with all yard and height requirements for the zone, and no more than one (1) shall be permitted on each lot."

So he has one.

Walter Garigliano: You know, anytime you can put a number on something it's two instead of one it's an area variance. A use variance would be that you have something that has absolutely no signs, not something that says I want to have more signs. So I understand your confusion. It's not a problem, it's not a fault issue, it's one of those things that's actually a close call, but the way to
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remember is that if you can put a number on it, in other words it's not zoned for pizza shops and the guy wants to put up a pizza shop, you can't put a number on it. But two signs instead of one sign you can put a number on. So I view this as an application for two area variances which will make it much easier for Mitchell to prove his prima facie case because in order to get a use variance he's got to prove that the property can't be commercially used for anything, which would be hard since he has a business there. And I think that I should disclose on the record that I'm a customer of County Petroleum but I don't think they'd give you any special breaks or deals.

LAUGHTER

Walter Garigliano: I said that once when the phone company was here too, but nobody laughed then, how come it's better now?

LAUGHTER

Walter Garigliano: I think it's an application for two area variances. I struggled with picturing what it's going to be like. I see that now, but I think to make it easier for the Board, Mitch should go up there and flag it off because whatever the road, what are the public right of way ends and where the property lines are, you can't tell.

Mitchell Blank: One of the issues is it's all overgrown and there are two railroad trestles there and I want to put it in between the two railroad trestles and landscape it because it's a mess. I don't know if that helps at all. I can go up there and put ribbons on trees. Perhaps you guys have seen the railroad trestles, such as they are somewhat well known.

Chairman Sprague: I stopped by there tonight, I couldn't find them.

Walter Garigliano: I do this all the time, you'll make it much easier for the Board if you go down there with some orange flagging tape and hang it, this is one end of the sign and this is the other end of the sign even though its overgrown.

Peter Belgard: I think it would be good if he could expose the old trestle.

Walter Garigliano: I do too.

Peter Belgard: I mean it's an historical place so it would look nicely landscaped.

Mitchell Blank: That's another one of the things I had in mind, put up the sign nicely landscaped between the two trestles.

Walter Garigliano: If the Board agrees that this is not a use variance, first of all if the Board thinks this is a use variance, my answer is go home because you ain't gonna get a variance. Because in order to get a use variance you gotta prove the property can't be economically used for any of the uses allowed in that zone.

TAPE UNCLEAR SEVERAL SPEAKING AT ONCE

Mark Van Etten: It's not a use, it's an extension to what's there.

Walter Garigliano: If it's two signs instead of one sign I think the Board can treat it as an area variance and I think that then your proof becomes practical as opposed to almost impossible.

Peter Belgard: Just to be clear, because it is confusing, we're talking about the area between the existing gas station and Station Hill Road?

Mitchell Blank: Well, it's close to Station Hill Road.

Peter Belgard: But you don't own that corner?

Mitchell Blank: I don't own the gas station. That was sold.

Peter Belgard: But I mean the corner, you don't own the corner do you? That's part of the property across the street.

Mitchell Blank: No

Walter Garigliano: I think this map is tough too because this map shows you only the gas station.

Mitchell Blank: We don't.

Walter Garigliano: You're going to have to get us good info, Mitch. The Planning Board, there's a map somewhere, there was a map approved cutting off the gas station. This map looks like it pre-dates the existing. Isn't this piece the gas station and this piece...

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Walter Garigliano: Is this the line that goes through?

Mitchell Blank: Yes.

Walter Garigliano: Okay that's what I thought, so the piece that's the subject parcel is this, right, not this.

Mitchell Blank: Yes.

Walter Garigliano: That's certainly not clear from this map with your application.

Mitchell Blank: Ok.

Walter Garigliano: Wasn't this George Fulton that did this?

Mark Van Etten: I don't remember.

Mitchell Blank: The gas station going towards Station Hill Road, there's the gas station and then there's some house.

Walter Garigliano: That's the Soresi Realty parcel.

Mitchell Blank: They have a little bit of frontage.

TAPE NOT CLEAR

Walter Garigliano: I mean I figured it out after a while, but it's not easy to figure out.

Chairman Sprague: That's after 10 minutes because I'm looking for trestles and I can't see trestles, I've been trying to figure out footage all over the place and I don't know how far it is from here to Station Hill Road.

Walter Garigliano: We definitely need a map so when the public comes in, should they come in, to look in the file, they'll have something that makes sense because this doesn't make sense. You need a map. Wasn't this lot line taken out too over here?

Mitchell Blank: What lot line?

Walter Garigliano: When this division was approved, because this was divided off and sold I think. Wasn't this line also taken out so this is all one parcel now? Isn't this yours too?

Mitchell Blank: No, this is our also.

Walter Garigliano: You've got to get us maps that make sense, because I remember this being done at the Planning Board as two lot improvements, creating this and taking this out.

Mitchell Blank: Yeah because there was an error in the filing back when – in the beginning.

Walter Garigliano: When the Bernsteins had it for a gas station. There was an error in the map filing and then when they went to resell it to whoever the Bernsteins resold it to there was a whole process at the Planning Board to correct it.

Mitchell Blank: Yes.

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Walter Garigliano: And that's the map you're going to have in the file by the time we publish notice of public hearing. Somebody has that map. We'll have to dig it out.

Mark Van Etten: We'll look and see if we have it in the file.

Walter Garigliano: I definitely have it if nobody else does.

Mark Van Etten: Nancy will be back on Thursday. I'll put it right on top of her agenda. Walter

Garigliano: Other than that what I'd like to see you do since you have an application where you probably should be able to prove the prima facie requirements for an area variance is somebody should put in an affidavit and it certainly could be you, Mitchell, that makes the prima facie case.

Mark can give you a list of what you need to prove to get an area variance. Just create an affidavit or some form of written testimony that the Board can rely on to make a decision. There are five elements; you can read them off to him right now, to getting an area variance.

Mitchell Blank: All five of them or one of the five?

Walter Garigliano: All five of them, but you won't have any trouble with any of them. The one you could never meet the threshold on is for a use variance to prove that the property is worthless.

Mitchell Blank: Right.

Peter Belgard: I have a couple of questions that I'd like to ask while he's looking for that. Am I correct to assume that this will be advertising County Petroleum and only County Petroleum?

Mitchell Blank: Right.

Peter Belgard: You're not going to advertise any other business?

Mitchell Blank: No.

Walter Garigliano: We can make that a condition of approval should you get there.

Mitchell Blank: I'm not interested in going in the billboard business.

Peter Belgard: Do you plan on this sign being eliminated? Do you have a height in mind? And if so, what is it?

Mitchell Blank: I believe on the application it was 4 x 8 which was the...

Peter Belgard: That's the size of the sign. I'm asking about the height because there's a cliff there, you know you get into mean grids and things like that.

Mitchell Blank: Ok.

Walter Garigliano: He's asking how high is it above the road.

Peter Belgard: Right.

Mitchell Blank: I don't have an answer.

Peter Belgard: Alright, I guess what I'm getting at is do you intend the sign to be visible from Route 17 or is it ...

Mitchell Blank: No, it's a small sign that's visible to whoever is driving on Ferndale Road. It's not intended to be seen from miles away and it's not going to be blinking.

Peter Belgard: Do you anticipate an entrance to your business from that road or is it simply a sign.

Mitchell Blank: Well I had requested that Station be closed and that was shot down, so there is an entrance on Station Hill Road to my property.

Peter Belgard: Yeah but the sign isn't on Station Hill Road.

Mitchell Blank: Well it's right next to Station Hill Road. And someone who's driving by would be, would have a hard time. I mean we're probably 15 – 20 feet from the entrance to Station Hill Road. I don't think there will be too much confusion if there's an arrow.

Peter Belgard: I don't mind, I just wanted clarification because if somebody, it's another safety factor if somebody's going to be driving by there and pass the entrance and then they're going to slam on the brakes. I don't have to tell you what goes on on those roads during the summer. People stopping in the middle of the road for no reason.

Mitchell Blank: I understand. You know one of the things I had printed out to show, it's going to be, I mean I'm here, I want to do it right, be professional and I want to meet and resolve any concerns you guys have. I'm not looking for trouble.

Walter Garigliano: Stop in Mitch, or ask Mark to fax you pages 111 and 112 and there's a list here for the criteria you need to prove.

Mitchell Blank: 111 and 112?

Walter Garigliano: Yes. *"...the ZBA shall take into consideration the benefit to the applicant if the variance is granted, as weighted against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the ZBA shall also consider:"* and there's an (a), (b), (c), (d) and (e). The last one isn't dispositive and you can't prove it, the last one, whether you've created the problem yourself, obviously, you're putting up the sign, but the code says *"...which consideration shall be relevant but not necessarily preclude the granting of the area variance."* You've got to prove the other four and you know that it seems to me you could make a very good argument that the other four are all in your favor. Okay. But putting something in writing that Nancy could circulate to the Board before the meeting at which this is going to be heard at so that we don't end up having to go through testimony that day. Mark's going to do it right now.

Chairman Sprague: Marking out the sign will also help. I want the highway department, is that County or Town road there?

Peter Belgard: County.

Walter Garigliano: County.

Chairman Sprague: I want to the County to look at it to make sure that we have no visibility problems with either Station Hill Road or residents getting in or out with that sign there. It would be a concern of mine on this side.

Peter Belgard: Now that residence is in a commercial zone, I don't know specifically the person that bought it, but I know they bought it with the intent of somehow making it a business in the future, so again that comes into play. If he's got a billboard and there's another billboard, not a billboard but a sign. But you know all these questions are simply questions; I don't personally see any reason not to have this happen.

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Walter Garigliano: Now this is an area variance on a County road. It's got to go to the County under 239. I don't know, it's... you're going to have to straighten the map out before we send it.

Mitchell Blank: Yeah. Is there an updated map?

Walter Garigliano: It probably exists right in this building someplace. I can't remember who was in here on behalf of the Bernsteins and they had some writing from your family concurring in the application, because it was an application to put in a lot line and take out a lot line.

Mitchell Blank: I know we went through a lot of anguish to get it resolved. I don't, I've got a, and I'm not sure this is even the right one. I've got something from the title insurance company with all the verbiage for it, but I'm not just knowledgeable enough.

Walter Garigliano: Well Mark can look in the file or Nancy can look in the file and tell you who the surveyor was if nothing else.

Mark Van Etten: Thursday I'll have Nancy do it.

Mitchell Blank: Okay, I'll come up and see you or call you.

Walter Garigliano: If you don't figure it out on Thursday, call me on Friday and I'll pull my file. I'm going to be out of town tomorrow and Thursday in meetings but I'll be back Friday.

Mitchell Blank: Are there any other concerns that I need to address with you guys.

Chairman Sprague: Should we wait another month before we get everything correct?

Walter Garigliano: I think you can schedule it. I think if Nancy or Mark received a map and the map is logical, you can schedule a public hearing for next month. You won't be able to decide it at the next meeting. You'll have to then send it to the County and the County will have to make their 239 recommendation. It's clearly subject to a 239 referral; it's right on the County road. And they will look at it. When it gets to the County they circulate it internally. You're concern about the DPW is right. One of the things they do internally when something is on a County road, is they send the application down the hall to the DPW for them to take a look. TAPE UNCLEAR

Mitchell Blank: Now I was just thinking, Peter, the house that's over there, if the sign would obstruct their view, I guess presently it's all wooded anyway, so if anything it's not going to change their view other than removing some trees.

Walter Garigliano: Anytime that we're talking about a view, we're probably talking about a view when you pull into oncoming traffic.

Mitchell Blank: I'm thinking about when they come out of their driveway, I don't want anyone getting run over. So I'm thinking if they're putting out of their driveway onto Ferndale Road, the sign, I mean it's not going to be sticking out further than the shrubs are right now.

Walter Garigliano: That won't be our major. We'll look at where the sign's located to determine if the sign blocks the driveway.

Peter Belgard: I'm also thinking if there's a public hearing, you notice them by certified mail and they show up and they say this sign's, you know, I'm in a commercial zone too, I want the ability to do something. How do we as a Board address their concern? You know they might have a legitimate concern, so I'm asking you to take that into consideration when you do that.

Mitchell Blank: Okay.

Walter Garigliano: We're good.

Mark Van Etten: There is one other thing I was going to ask the Board.

Chairman Sprague: Just so we get done with Mitchell, our meeting is what, the third Tuesday?

A short discussion was held and it was determined that this could be brought back for a public hearing on August 17, 2010, provided rational maps are submitted in a timely manner so that the hearing notices can be sent out to be received at least 10 days in advance.

Mark Van Etten: I'm looking for an interpretation of 84-31 and it deals with non-conforming uses and structures. Basically what I'm looking at is dealing with sheds. Dealing with moveable sheds that are over the 140 square feet which require a permit and they would be in the non-conforming use area such as the SC district, where single as an addition to and attach it to a single family dwelling and accessory structure. Anything over 140 square feet I'm required to issue a building permit for even though the building is fully moveable and not having a concrete slab or anything about that. Basically let me read the Code that I'm looking at and see where it falls. Under (84-31) – *Normal Maintenance and Repair Activities*. “Normal maintenance and repair, such as painting, replacing a roof, etc., is allowed, as well as minor additions, alterations and interior renovations that do not structurally alter the building or area or result in increased use of the building or area, or a different nature of use than that existing at the present time, or otherwise create more incompatibility with the surrounding permitted uses.” So the SC single family dwellings are a special use. I have been asked for a permit application for a 12 x 16 shed, which is over the 140 square feet, and I really didn't know how to take this one. Because if someone went and put up a shed on there, I'm not saying it's right that they did that because I really haven't reviewed it. Under 140 square feet they would not need a building permit of any kind.

Walter Garigliano: Is the house in question one that pre-dates the zoning?

Mark Van Etten: I didn't look at that, but I will look at that. I believe it does, yes.

Walter Garigliano: To me that would be completely determinable. If the house did not require Planning Board review and the house is there legally, then the accessory uses to the legally permitted home would be permitted.

Mark Van Etten: Okay.

Walter Garigliano: If the house was built there after zoning so that the house went through special use review, then the accessory use as associated with the house would have to go through the same review.

Don Nichols: Yeah, but except that what we're talking about here is a shed that's bigger than the 140 square feet.

Walter Garigliano: I don't think that would have anything to do with it.

Mark Van Etten: Okay, now let me just say that this shed if it had the same size and was a permanent structure and not a moveable structure, that would still ...

Walter Garigliano: If somebody has a house and they came to you and they wanted to build a two-car garage, they've got a 2 acre lot in an SC zone and they want to build a two-car garage. That's clearly an accessory structure to a single family house. If the house is there legally, how can you tell them they can't build a garage?

Mark Van Etten: Okay. I was under the impression that once the zone change, since zoning came in effect that.

Walter Garigliano: Then send them to the Planning Board.

Mark Van Etten: Okay, I don't know, if that's not necessary, then...

Walter Garigliano: No, send them to the Planning Board, it's one or the other, it can't be... the 140 has nothing to do with it by the way, because he shouldn't allow them to stick it there if it's illegal, whether it needs a building permit or not.

Don Nichols: If you can put one up that's 140 square feet and you don't need a permit.

Walter Garigliano: Well, you can put up a 140 square foot building without a permit.

Don Nichols: Yes

Mark Van Etten: Yes

Walter Garigliano: But if you wanted to put one up in a zone that said you can't put up that kind of building...

Peter Belgard: It's not really considered a building if it's under 140 square feet is it?

Walter Garigliano: Now we're getting off on a tangent. You know what, send them to the Planning Board or decide you don't need to. Really from the standpoint of the ZBA, I don't know, you certainly can make an application for an interpretation. I always advise all the building inspectors I represent to never do that. Make a decision and if people don't like it, the other party can appeal to the ZBA. In other words, you're exactly at the same place. You make the decision you think is right. It's really not fair to the other party if the Board tips their hand into how they feel about it because then if the other party appeals, they've already put themselves in a bad spot. If you make a decision and deny this permit, right?

Mark Van Etten: Uh hmm.

Walter Garigliano: What's the applicant's recourse? To appeal your denial to the Zoning Board of Appeals.

Mark Van Etten: Okay.

Walter Garigliano: So they shouldn't be telling you how they feel about this, without the applicant here.

Mark Van Etten: But I'm not giving the exact, I'm giving, a general. Code interpretation is what I'm looking for.

Walter Garigliano: I've got to tell you Mark, I've never seen a building inspector, including you, make the general Code interpretation. They're always precipitated by somebody asking you a question.

Mark Van Etten: But every one I get like this will follow the same one because of who and what it is. That's why I'm asking the questions. I never had one like this.

Walter Garigliano: How big is the lot? How far away from the boundary lines is the shed going to be?

Mark Van Etten: It's going to be far enough to meet, it's going to meet all the requirements, just the issue is it's an SC parcel.

Walter Garigliano: But does the house pre-date it?

Peter Belgard: I think that's the key, I think that's the common sense question.

Walter Garigliano: That's the usual analysis.

Mark Van Etten: Okay.

Walter Garigliano: If the house was put there before we had zoning.

Mark Van Etten: Okay.

Don Nichols: Then it's legal.

Peter Belgard: Right.

Walter Garigliano: Versus a house that was put there by somebody after they knew they were building a non-conforming use in an SC zone.

Mark Van Etten: Okay.

Walter Garigliano: In other words, the zone came to the house; the house didn't come to the zone.

Mark Van Etten: Okay.

Walter Garigliano: The zone came to the house, the house was already there, somebody dropped the zone over it. It isn't like there was a zone and somebody decided well, I'm going to go build a house. I mean that's how I've always interpreted that, but that doesn't mean that I'm right, and if you want to send them to the Planning Board, send them, if they don't like it they can appeal to the ZBA.

Mark Van Etten: Okay.

TAPPING HEARD ON TAPE

Mark Van Etten: Okay. Thank you.

Chairman Sprague: Anything else? That's it. Motion to adjourn.

ON A MOTION BY PETER BELGARD, SECONDED BY DON NICHOLS THE MEETING WAS ADJOURNED AT 8:00 PM.

Respectfully submitted,

Nancy Saucier, Planning Board Secretary

The foregoing represents unapproved minutes of the Town of Liberty's Zoning Board from a meeting held on July 20, 2010 are not to be construed as the final official minutes until so approved.

 X Approved as read