

MINUTES
ZONING BOARD OF APPEALS
JUNE 24, 2009 – 7:00 P.M.
TOWN HALL ANNEX – COMMUNITY ROOM 1

Present: Stebbins, Kravits, Grady, Russotto, Manning
Staff: Galetta, Cullen
Excused: Alternate Mencer

Chairman Stebbins temporarily seated Russotto for Secretary Manning.
Manning arrived at 7:08 p.m.

I. PUBLIC HEARINGS

ZBA#09-07 – 200 Clift Street, Lester Olin, Jr. Trust/Owner; Lester Olin, Jr./Applicant for a variance to Section 5.2 for 12 feet in lieu of 20 feet for a side yard setback for an addition. PIN 261914228966, RS-20 zone

Chairman Stebbins opened the public hearing at 7:00 p.m. Russotto read the legal ad for the record and stated that the mailings are in order. Les Olin, of 200 Clift Street, Trustee of the Lester D. Olin Trust, owner of the property, stated that the variance he is requesting is for 13.2 feet in lieu of 20 feet. The application requests a variance of 12 feet because his original calculations were incorrect. Mr. Olin originally purchased the house and the lot and subsequently purchased the lot next door to increase his property. He is trying to come up with a way to remodel the house to make it wheelchair accessible. He is proposing an addition onto back of the house with a bay window which will require a variance. The footprint of the addition will be 15 feet from the property line and the bay window will protrude an additional 2.2 feet. The proposed renovations will allow for a senior-level, walk-in bathroom.

The Commission asked Staff to clarify the hearing call for the variance request. The Commission asked the applicant to clarify the hardship. The house pre-dates zoning regulations and is situated too close to the abutter on one side of the property. The purchase of the adjoining lot alleviated the issue on one side.

Chairman Stebbins asked for comments in favor or against and there were none. The Planning Commission had no comment. Staff stated that lot coverage is not a problem as it is over one acre which is sizable for that area. The house pre-dates zoning by 67 years. The applicant has already appeared before the HDC and received an approval from that Commission

The public hearing ended at 7:23 p.m.

ZBA#09-04 – 927 Poquonnock Road, Groton Shoppers Mart LLP/Owner; Judy McDougall-Blair, Liberty Tax Service/Applicant for an appeal to the Cease and Desist Order issued February 24, 2009 by the Code Enforcement Officer regarding the activities under Sections 7.3, 7.3-1, 7.3-3, 7.3-3 B, 7.3-3 F, 7.3-7, and 8.1-1. PIN#169809271391, DDD zone

Chairman Stebbins re-opened the public hearing at 7:24 p.m. Manning read the legal ad for the record and stated that the mailings are in order. Attorney Thomas Collier, of O'Brien Stuart Eppinger and Collier, 9 Mason's Island Road, Mystic, represented Judy McDougall-Blair of Liberty Tax Service located at 927 Poquonnock Road. He is disputing the Town of Groton's sign

regulations by using the argument that they cannot and do not apply to a live person wearing a costume. He stated that the Town's enforcement actions are damaging to his client's business. She has gone through two tax seasons at this business location. Upon receiving the citation she voluntarily stopped using the costumed waver holding a sign. His position is that a person in costume is not a sign. Attorney Collier stated that the regulations cited in the Cease and Desist Order apply to a sign not a person wearing a costume. He read the definition of a sign from the Town's zoning regulations. His position is that a costumed person doesn't meet the definition of a graphic representation. He also stated that a sign is defined as something painted, printed or constructed. He said that a live person wearing a costume and waving doesn't meet that definition.

In researching case law, Attorney Collier could not find any case for or against a live person wearing a costume constituting a sign. He cited a Connecticut Supreme Court case 208 Conn. 146, 543 A.2d 1339 regarding the Town of Hamden and a developer where the court held that a structure was not a "sign" within the meaning of that town's zoning regulation. He feels this case makes the argument that the Commission can only apply to this matter what the definition of a sign is in the zoning regulations. The Board cannot extrapolate or interpret what it means but can only apply what it actually says. Attorney Collier also cited an unpublished opinion 2004 WL 1050753 (Conn.Super.) regarding the Town of Guilford generally referred to as the Irish Bar Case. The town attempted to apply sign regulations toward the flying of an Irish Flag outside of an Irish Bar. The Court found that the flag was a national symbol. The application to the matter before the Commission is that "Uncle Sam" and "Lady Liberty" are national symbols.

Attorney Collier stated that in his opinion a live person wearing a costume is not a sign. He stated that his client Judy McDougall-Blair has tried to comply with the Town's sign regulations. He feels that they are within the letter of the law. Attorney Collier requested that the Commission consider reversing the Cease and Desist Order because the zoning regulations do not apply in this case.

The Commission reviewed the definition of a sign and questioned how one defines figure. Attorney Collier feels that the words "graphic representation" limit what a figure can be. A human being wearing a costume does not meet the definition. The Commission asked the purpose of having the person out on the sidewalk and why the owner is not satisfied with the existing signage. There are other vendors with multiple signage and Liberty Tax Service has this same opportunity. Attorney Collier's position is that they are not violating any rule so they need not have a reason for using costumed wavers.

Lee Treadway, Code Enforcement Officer for the Town of Groton, appeared before the Commission to explain the Town's position. He was hired two years ago to uniformly and fairly enforce all the zoning regulations. Prior to his tenure there was a program in place but no way to enforce it. He put the program back in place by removing all illegal signs and contacting local business owners to let them know the regulations and ask for their help in enforcing them. He first cited Liberty Tax Service in 2008 for using a person costumed as "Uncle Sam" holding a Liberty Tax Service sign. They were cited again in 2009 for using a person costumed as "Lady Liberty" and when he talked with Judy McDougall-Blair she stated that the corporate office had encouraged her to use the costumed individual again. The Town's position is

that “Uncle Sam” and “Lady Liberty” are signs as they represent Liberty Tax Service. Treadway provided the Commission with examples of promotional coupons and post cards, advertising Liberty Tax Service, which show a logo of the Statue of Liberty. The people hired by Liberty Tax Service are wearing suits that are constructed which is within the definition of a sign. A person in an “Uncle Sam” suit or in a “Lady Liberty” costume who is holding trademark visors and wearing a belt or cummerbund with the words Liberty Tax Service are trademarks. Mr. Treadway showed the Commission pictures of the costumed wavers he described. After Ms. McDougall-Blair agreed to stop using the costumed wavers they were still observed on a Saturday waiving to traffic entering and exiting the plaza and distracting motorists. Zoning regulations do not allow flashing or rotating signs as they are a distraction to motor vehicle drivers.

The Town’s position is that the wavers are an attraction away from other businesses with legitimate signs as well as a distraction for motorists. With regard to Attorney Collier’s argument that the Town is damaging the business interests of Liberty Tax Service, if the Town does not pursue this matter they are damaging the business interests of other legal businesses. Additionally, Liberty Tax Service has not taken full advantage of other legal sign options. A banner is one type of legal, temporary signage allowable for up to 90-days per year. There are other signs that can be used and the Town of Groton has taken every opportunity to help them find other legal ways to promote their business.

The Commission asked whether there are regulations that prohibit waving signs. Treadway cited the zoning regulations regarding Section 7.3. He also stated that symbols and trademarks are signs and “Uncle Sam” and “Lady Liberty” are trademarks. The Commission asked how the Town determines when it’s just a person wearing a cap or costume of their own making and when it’s representative of a business. Treadway stated that he would make no assumptions but would investigate each incident individually to see if the person was hired by a business for its promotion. The Commission asked whether there have been any incidences or history of motor vehicle accidents caused by distractions from flashing or waving signs. Treadway could cite no specifics but felt that there is a reason why these regulations were written in such a way to protect the health, safety and welfare of the drivers. He felt sure that there must have been a reason in mind when the regulations were formulated. The Commission asked how vehicles that have a business name and are parked in parking lots are handled. Mr. Treadway said that if they are parked on the curb for extended periods of time then the business is contacted and told to move the vehicle to another area of the parking lot.

In his rebuttal, Attorney Collier clarified that the sash with wording was in place on “Lady Liberty” initially but was removed in an effort to comply with the Town’s sign regulations. He also argued that since the Town is saying that “Lady Liberty” is a trademark then using the “Uncle Sam” costume should be allowable because “Uncle Sam” is not the trademark of Liberty Tax Service. The applicant’s position is that a person in costume does not rise to the level of a sign. A person holding up a sign is another matter. Attorney Collier stated there is no evidence that the costumed person has caused any traffic safety problems. He used as an example the fact that a costumed waver is allowed at the entrance to the Crystal Mall in Waterford and has not been found to be a traffic or safety violation by the Town of Waterford. Attorney Collier also called as a witness, Neal Smith of 13 Lathrop Lane, Noank. Mr. Smith acted as a waver for Liberty

Tax Service a number of times wearing several different costumes. Mr. Smith stated that he volunteered to do this and did not get paid by Liberty Tax Service. Mr. Smith is a friend of the applicant. Questioned by Attorney Collier about his experience as a waver for Liberty Tax Service, Smith stated that he observed no traffic problems. He said that people smiled and waved to him or honked their horns. Additionally, police and fire fighters who passed him waved and honked. Smith stated that he never stood under the Liberty Tax Service sign at the entrance to the plaza but he didn't understand why it would matter because it is just another sign. In closing, Attorney Collier asked the Commission to overturn the Cease and Desist Order under the argument that the costumed waver is not a sign under the zoning regulations in the way in which they are written.

The Commission asked Attorney Collier whether he was saying that there is no advertisement benefit for the business. Collier stated that Liberty Tax Service did hire and pay other individuals to wear the costume. The Commission also asked Collier to define the undue hardship caused by the Cease and Desist Order.

Town of Groton Attorney Michael Carey stated to the Commission that they are the fact finders in this case. Defining a hardship in the case is not what the Board should be looking at. The Commission assesses the facts in the case and determines if they agree with the interpretation of the Code Enforcement Officer or not.

Mr. Treadway reiterated that the position of the Town is that the costumed individual is a sign and represents a trademark of Liberty Tax Service. The purpose of zoning regulations is to have language that is easily understood by the average person. The costumed individual is a sign that was not authorized, there was no permit issued. It is causing a distraction and attracting attention for the business. The Town in pursuing the matter is trying to be proactive to avoid a motor vehicle accident.

Attorney Collier stated that Liberty Tax Service has used waivers costumed as "Uncle Sam" and "Lady Liberty". He stated that they are patriotic symbols not trademarks of Liberty Tax. Attorney Collier maintains that a human being is not a graphic representation. A human being is not painted, printed or constructed. Liberty Tax Service does not need a sign permit issued because the waver is not a sign.

The Commission asked if the Town Attorney's interpretation of sign is the same as Mr. Treadway's. Attorney Carey stated that the Commission has the right to determine if Mr. Treadway's interpretation of the definition of a sign is accurate. It's not the person inside the costume but the costume that is on the person. He stated that it does appear that between 2008 & 2009 Liberty Tax Service has taken measures to try to comply with sign regulations. The fact that the volunteer waver testified that he was waved at, honked at, and smiled at, shows that he was causing a distraction to motorists. The Commission had concerns about the cases cited by Attorney Collier in his presentation because they were not previously reviewed. Attorney Carey advised the Commission that he could give them an opinion letter after the hearing closes but only with regard to what was heard in the hearing testimony.

Attorney Collier stated that he would like the opportunity to submit a memorandum of law to the Commission in writing in response to Attorney Carey's memo.

Attorney Carey explained that the Commission could close the hearing tonight but could not receive anything else from the applicant after the hearing closes. The majority of the Commission was in favor of closing the hearing rather than leaving it open for two weeks.

Chairman Stebbins asked for comments in favor or against and there were none. In a memorandum dated May 27, 2009, the Planning Commission made a motion to support the Zoning Official's ruling regarding the Liberty Tax Service appeal.

The public hearing ended at 8:58 p.m.

II. MEETING FOLLOWING PUBLIC HEARINGS

1) Decision on Public Hearing Applications

#09-07 - 200 Clift Street, (Olin Residence)

The Commission felt this was a reasonable request given the pre-existing, non-conforming lot which creates a hardship.

MOTION: To grant #09-07 - 200 Clift Street, (Olin Residence), variance as requested.

Motion made by Russotto, seconded by Kravits, (5 in favor, 0 opposed).
MOTION PASSED UNANIMOUSLY

#09-04 - 927 Poquonnock Road, (Liberty Tax Service)

The Commission felt there was no compelling reason or argument that would cause them not to uphold the Code Enforcement Officer's Order. The Commission felt that the costumed live person does meet the definition of a sign. The Commission felt the Code Enforcement Officer did a good job in applying the regulations to the case and that a costumed live person does meet the definition of a sign.

MOTION: To uphold the decision of the Code Enforcement Officer to issue a Cease and Desist Order because the Board determined that the Code Enforcement Officer correctly interpreted the Town of Groton's Zoning Regulations definition of a sign.

Motion made by Russotto, seconded by Grady, (5 in favor, 0 opposed).
MOTION UNANIMOUSLY PASSED AND DECISION UPHELD

2) Correspondence

The Commission received a memorandum from Michael J. Murphy, Director of OPDS addressing questions raised by the Commission regarding the changes to the Record of Decision Form that is recorded in the Town Clerk's Office.

3) Minutes

MOTION: To approve the minutes of May 27, 2009 as written.

Motion made by Grady, seconded by Kravits, MOTION PASSED UNANIMOUSLY

4) Old Business – None

5) New Business

1. New Applications

Staff stated there are no new applications for the July 8, 2009 meeting. There will be one on the agenda for the July 22, 2009 meeting.

2. The Commission discussed the memorandum from Michael Murphy, Director of OPDS outlining the history of the changes to the Record of Decision Form. Staff stated that the wording of the Commission's decisions is incorporated into the form placed on record. If conditions or stipulations are placed on a variance then the wording is verbatim.

6) Report of Staff – None

7) Adjournment

Motion to adjourn at 9:38 p.m. made by Stebbins, seconded by Grady, so voted unanimously.

Tom Manning, Secretary
Zoning Board of Appeals

Prepared by Lynda Galetta,
Office Assistant II