



TOWN OF HAMDEN

PLANNING and ZONING DEPARTMENT

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MINUTES: THE ZONING BOARD OF APPEALS, Town of Hamden, held a Public Hearing and Regular Meeting on Thursday, May 21, 2009 at 7:00 p.m. in the 3rd Floor Conference Room, Hamden Government Center, 2750 Dixwell Avenue, Hamden, CT. and the following was reviewed:

Commissioners in attendance:

Jeff Vita, Chair
Wayne Chorney
Elaine Dove
Fran Nelson
Bill Reynolds
Steve Walsh, Alternate

Staff in attendance:

Leslie Creane, Town Planner
Dan Kops, Assistant Town Planner
Holly Masi, Zoning Enforcement Officer
Tim Lee, Assistant Town Attorney
Peggy Craft, Acting Commission Clerk
Lisa Raccio, Stenographer

Mr. Vita called the meeting to order at 7:05 p.m., reviewed the agenda and meeting procedures and the panel introduced themselves.

A. Public Hearing

- 1) **08-6317** 2895 State Street, Requesting action under Section 861.1, Appeal of Cease and Desist Order (dated 12/28/07), CDD-1 Zone, Modern Materials, Applicant.
- 2) **08-6318** 2895 State Street, Requesting action under Section 861.1, Appeal of Cease and Desist Order (dated 12/28/07), CDD-1 Zone, Empire Paving, Applicant.

Attorney Michael Brandi of the Law Firm Cohen and Acampora spoke on behalf of the applicant. He requested that he be allowed to combine Item 1 (08-6317) and Item 2 (08-6318) since they were for the same address and the same request. Chairman Vita agreed to his request. Mr. Brandi said there is a long history regarding this parcel. He said this case has been going on for a year and a half. They are seeking a global resolution to this problem that involves the owners of the tire pond, the State, Hamden and his client. This request has been tabled a number of times due to the pending global settlement. Mr. Brandi said that the 23 violations and orders that were issued and are stipulated in the document in chapter heads and sub paragraphs, are not actual violations. Mr. Brandi said his client is willing to enter into a stipulated agreement immediately, regarding the use of the building and area around the service area. They will agree to work with the landlord to vacate the former Recycling Services site in 90 days and will sign an agreement with the Town that the barriers that were stored will be moved to parcel A from parcel C in order to rectify violations alleged by the Town. Mr. Brandi stated that they are willing to stipulate that within 90 days of recording this stipulation everything will be moved out of the two buildings. They would also agree to fines being imposed if this agreement is not met within the 90 days. He added that this could be tabled for three months or they could be allowed the 90 days in which time he believes they can get everything out and comply with the agreement. It was noted that Modern Materials would remain until they can purchase the

landfill and move to Parcel A. This has been held up for 18 months. They have had ongoing negotiations regarding this agreement with the State. Mr. Brandi was asked if these parcels are in Hamden. He said parcels A and C are both in Hamden. He was also asked if the stipulation he is proposing is in writing and on file with the Town. He said he has submitted it in an e-mail, but can formalize it. Mr. Lee said that upholding the Cease & Desist order is appropriate in this case. He said the question is, do they need time to remedy and they can talk to the Town regarding this. He said the terms of the stipulation are not relevant to the Commission at this time. The issue is should the Cease & Desist order be upheld; then how does the Town go about enforcing the Cease & Desist. Mr. Brandi said he would prefer tabling this for one month and then have the stipulation in writing. Mr. Vita said the Commission should uphold the Cease & Desist order and allow time for the Town to review the stipulation. Commissioner Dove asked why this should be tabled. Mr. Brandi said because it is taking time for a global settlement involving all the parties. Mr. Brandi added that his client should not be confused with the landlord, they are the tenant. There was further discussion regarding the use of the buildings and conversations between the Zoning Enforcement Officer and the Assistant Zoning Enforcement Officer with people working inside the building. Ms. Creane noted conversations with the tenant where the tenant stated that he had moved his employees into the Upscale Welding building.

Chairman Vita asked if there was anyone present who wished to speak in favor of this request. There were none.

Chairman Vita asked if there was anyone present who wished to speak against this request. There were none.

The Public Hearing was closed at 7:23PM

- 3) 09-6357** 1970 Whitney Avenue, Requesting variances of the following: Section 753.4.d to allow a freestanding sign with a height of 22 feet where 20 feet is permitted. Section 753.4.e to allow a free standing sign with a bottom edge at 111 inches above ground level where at least 10 feet above ground level is required. Section 753.4.g to allow a free standing sign with a total surface area of 78 square feet where 32 square feet are permitted. Section 756.b.1 to allow 376 square feet of aggregate surface area of signage where approximately 78 square feet is permitted. Zone CDD-2, Nickabam, LLC, Applicant

Public Hearing continued from 3/19/09 meeting

Ken Ginsberg of Nickabam, LLC spoke to the Commission. Mr. Ginsberg is seeking a variance to allow a freestanding sign with a total surface area of 78 square feet where 32 square feet is permitted. Mr. Ginsberg stated that the new sign regulations that will be coming out, would allow for this sign. Mr. Ginsberg said the last issue was the pylon sign. He said he expects to have 14 tenants and is requesting a 78 square foot sign where 32 square feet is permitted so the tenant's signs can be seen from Whitney Avenue. He explained that this property is long and narrow and runs perpendicular to Whitney Avenue. Mr. Kops said that Mr. Ginsberg created the hardship because he didn't bring the building forward. The applicant said a building housing Omnivision and the Glen Terrace building are currently occupied. The new building will match the design of the Glen Terrace building. He said the only way to preserve that building is to work around these two buildings. They will then build behind Omnivision. When the new building is completed they can knock down the Omnivision building. He added that this is the only way it can be done other than kicking out the present tenants, Glen Terrace, Loughlin-Fitzgerald Law Firm and Omnivision. He said the building has to be located where it is. Zoning Enforcement Officer Masi stated that the total surface area of 78 square feet where 32 square feet is permitted does not include calculations of the area that includes the address – the total square footage needed when the address is included is 144 square feet. She added that the applicant needs to decide whether the request will be scaled down to meet the 78 square feet or if the application will

be revised to include the additional square footage needed. If the application is revised, he will have to come back before this Commission. Mr. Ginsberg shared an example of one sign that would be for Omnivision. He added that all the signs would be the same. Commissioner Chorney said that each unit should have the signage area laid out, and this was left off the original application. Mr. Ginsberg said he went to Planning & Zoning to present the site plan and it was suggested that he come to the Zoning Board of Appeals to get approval for the sign. Commissioner Chorney said he has created the hardship he is claiming. He added that Mr. Ginsberg should have shown the sign locations with the site plan. Mr. Kops said Planning & Zoning does not consider signs. Mr. Ginsberg again said he is making this request because the way the property is configured it needs bigger signage so that it can be seen from the street. There was a discussion of the type and size of the signs. Commissioner Chorney said it would be better to just have the name of the office building and street number on the sign. It was also noted by Commissioner Dove that this would create a traffic hazard for that area. Mr. Ginsberg again cited the new regulations that he said will be coming out. Mr. Chorney said we cannot consider new regulations until they come out. Mr. Kops said that the new regulations would not increase the size of the pylon sign. Mr. Vita asked if, other than size of the sign, would the height of the sign be a safety issue by blocking the sight lines. Mr. Ginsberg said there would not be an obstructed view. Mr. Chorney asked Mr. Kops if the site plan showed the location of the sign. Mr. Kops said the location is the same as last time. Mr. Kops said he is concerned that the sign Mr. Ginsberg is requesting could cause traffic problems. He added that he feels that Mr. Ginsberg could make do with a sign showing the name of the building and the address.

Chairman Vita asked if there was anyone present who wished to speak in favor of this request. There were none.

Chairman Vita asked if there was anyone present who wished to speak against this request. There were none.

Ms. Masi read letters from the Regional Water Authority, Marsha Walsh, and David Hennigan.

The Public Hearing was closed at 7:43 PM

- 4) **09-6358** 123 Haverford Street, Requesting variances of the following: Section 314.4 to allow 25 percent of rear yard coverage where no more than 20 percents is allowed for an accessory structure. Section 434c to allow rear yard of 16 feet for deck where 25 feet is required. Section 434b to allow a side yard of 5 feet for a deck where 12 feet is required. Zone R-4, Alvin Tiongco, Applicant

This request was withdrawn prior to the meeting.

- 5) **09-6359** 2259 State Street, Requesting action under Section 861.1, Appeal of Zoning Enforcement Officer's decision dated March 18, 2009, CDD-1, VID LIQ LLC, Applicant

Attorney Dan Silver of the New Britain law firm of Silver and Silver spoke on behalf of the applicant. Applicant Dave Moon, owner of Video Liquidators, a pre-existing adult video store distributed an exhibit (marked Exhibit 1) to the Commissioners. Mr. Silver said that he is appearing before the Commission to appeal the Cease and Desist order relating to the installation of nine preview booths in the store. He said this is a business that exclusively sells sexually explicit videos. He said the store has been in existence since 1992. The store is 1,000 square feet and is currently a lawful non-conforming use of the premises. In January 2009 the Applicant installed nine preview booths. Mr. Silver said due to the lack of traditional advertising this business relies on preview booths so customers can have a small preview of what they will

be purchasing. He said their position is that this particular use is not an expansion of non-conforming use, it is an intensification of non-conforming use. He added that their contention is that use of preview booth is a customary and regular part of this type of business, and they are not attempting to expand the footprint of building. As far as this having an impact on the neighborhood, Mr. Silver said that when the issue first arose the Hamden Police Department investigated and found no illegal activity. Mr. Moon said the preview booths installed have increased patronage by about ten more customers a day. Mr. Silver said there is a list of conditions in the exhibit the Commissioners were given that they would be willing to agree to. Next, Mr. Silver discussed a similar situation in North Haven – the Loring case. Mr. Silver said that based on the same argument, the Connecticut Supreme Court found the booths were accessory uses. He said this a very customary use of businesses in this industry. He said these booths are used principally to assist in the marketing and rental of DVDs. He added that this is not an expansion but an intensification. Mr. Silver next introduced Michael Delacrea (phonetic spelling), a consultant from Gotham Video Sales. Mr. Delacrea has set up similar stores across the country. He said he consults in many stores and explained how stores are set up. He said that 80% of DVDs previewed in booths are purchased. Mr. Vita asked if the booths are coin operated. Mr. Silver said they are not, a customer must use a credit card. He added that there is a charge for the preview booths to discourage people from sitting in the booths all day. He was asked if there is a limitation on time in booth. Mr. Silver said there is not, and added that no time frame has been established. Mr. Moon said that sales have increased since the booths were installed. There was further discussion regarding the hours of operation (10:00 AM to Midnight), the amount of videos stocked in the store (approximately 6,000) and the charge to use the preview booths (\$1.00 per minute).

Next, Ms. Masi said she has responded to several complaints, and has made the determination that this is an expansion, not an intensification. Mr. Lee recommended that the Commissioners not make a decision at this meeting. He will look at Loring case in North Haven and report to the Commission at the next meeting.

Mr. Vita asked Mr. Silver if he is willing to continue the public hearing to the next meeting. Mr. Silver agreed

Chairman Vita asked if there was anyone present who wished to speak in favor of this request. There were none.

Chairman Vita asked if there was anyone present who wished to speak against this request. There were none.

The Public Hearing will be kept open until the next meeting that is scheduled for June 18, 2009.

The Public Hearing was closed at 8:40 PM

- 6) 09-6360** 32-34 Stevens Street, Requesting variances of the following: Section 701 to allow an accessory apartment in a 2-family dwelling where one is only permitted in a single-family dwelling. Section 701.a to allow a lot with a front line length of 56 feet where 80 feet is required for an accessory apartment. Section 701.b to allow an accessory apartment in a principal dwelling on the Assessor's list prior to October 1, 1976 (house was built in 1950). Section 701.d to allow an accessory apartment with a floor area of 880 square feet where no more than 600 square feet is permitted. Section 701e to allow a non-owner occupied accessory apartment. Section 701.l to allow a non-owner occupied accessory apartment and waive the requirement for a notarized affidavit to verify that the owner is one of the occupants of the subject dwelling. Zone R-4 Robert Marinko, Applicant.

Robert Marinko co-owner of the property spoke to the Commission. He said he and his son had just

bought the property as a foreclosure. Prior to the purchase he went to Assessor's Office and obtained a copy of the field card that showed that the property was a three family house. He had an electrician put in three meters, but the Electrical Inspector refused to approve it. Mr. Chorney asked if a title search had been done. Mr. Marinko said it had. There was a discussion regarding the chain of ownership. Ms. Masi explained that when the Assessor's Office does revaluations they report what they find.

There was a lengthy discussion regarding the illegal basement apartment from which the tenants were removed. After further discussion to determine if this was a two family house or if an application was approved for a third apartment, Ms. Masi presented the zoning permit that was approved for the addition. Mr. Kops said this was a botched application. He added that it clearly shows a bedroom, living area and kitchen. There was further discussion and review of the application by the Commissioners.

Chairman Vita asked if there was anyone present who wished to speak in favor of this request. There were none.

Chairman Vita asked if there was anyone present who wished to speak against this request. There were none.

The Public Hearing was closed at 9:02 PM

- 7) **09-6361** 132-134 Park Avenue, Requesting variances of the following: Section 434b to allow a side yard of 2.5 feet where 12 feet is required for a dormer. Section 326 to allow the expansion of a non-conforming use and structure (construction of a dormer on a legal non-conforming 2 family house). R-4 Zone, Kevin Sweeney, Applicant

Kevin Sweeney, the owner of 132-134 Park Avenue spoke to the Commission. Mr. Sweeney is requesting a variance to raise the roof on the back of his building. He will bring the building up to code and add two bedrooms. This is a rental property. There was a short discussion regarding this request.

Chairman Vita asked if there was anyone present who wished to speak in favor of this request. There were none.

Chairman Vita asked if there was anyone present who wished to speak against this request. There were none.

The Public Hearing was closed at 9:06 PM

B. Regular Meeting

a. Discussion and voting on Public Hearing items.

08-6317 and 08-6318

Commissioner Chorney motioned to uphold the Zoning Enforcement Officer's decision for applications 08-6317 and 08-6318, Commissioner Nelson seconded the motion. After a brief discussion, Chairman Vita called for a vote. The vote was unanimously in favor of the motion for both requests.

09-6357

Commissioner Chorney motioned to deny the application for 09-6357, Commissioner Dove seconded the motion.

Commissioner Chorney said the applicant had basically created his own hardship. Mr. Chorney also cited safety issues, the proximity of the proposed sign to the intersection and the school. Commissioner Nelson agreed with Mr. Chorney. Chairman Vita also cited safety issues regarding the underside of the sign blocking sight lines. Ms. Dove said that Mr. Ginsberg hasn't been forthcoming in what he is requesting, and has not been straight forward enough.

After this discussion, Chairman Vita called for a vote. The vote was unanimously in favor of the motion.

09-6358

This application was withdrawn prior to the meeting.

09-6359

This request was tabled to the June Public Hearing. Mr. Lee will send a summary of the North Haven Loring decision to the Commissioners.

09-6360

Commissioner Nelson motioned to approve 09-6360, Commissioner Chorney seconded the motion.

It was noted that an error had been made along the line and it was recommend that Ms. Masi review other portions of the structure including the front and rear decks and stairway. It was also noted that the applicant has shown a willingness to comply with all regulations.

After the discussion, Chairman Vita called for a vote. The vote was unanimously in favor of the motion.

09-6361

Commissioner Reynolds motioned to approve 09-6361, Commissioner Chorney seconded the motion. The vote was unanimously in favor of the motion.

b. Approve Minutes of April 16, 2009

Chairman Vita asked if there were any additions, deletions or corrections to the Minutes of April 16, 2009 Meeting. Hearing none he called for a motion to approve the Minutes as presented. **Commissioner Nelson motioned to approve the Minutes as presented. Commissioner Dove seconded the motion that passed unanimously.**

c. Old Business

There was no Old Business to come before the Commission.

d. New Business

There was no New Business to come before the Commission.

e. Adjournment

There was no further business to come before the Commission and Chairman Vita called for a motion to adjourn. **Commissioner Reynolds motioned to adjourn. Commissioner Chorney seconded the motion that passed with a unanimous vote.**

Submitted by: _____
Peggy Craft, Acting Clerk of the Commission