

**TOWN OF SOUTHBURY
ZONING BOARD OF APPEALS
REGULAR MEETING
JUNE 2, 2009
(summary of meeting)
(subject to approval)**

MEMBERS PRESENT: Lemuel Johnson, Jr. – Chairman; Peter Peterson - Vice Chairman; Paul Sullivan; Geoffrey Ice; Robert Greene; John Bucciarelli - Alternate; Robert Lieber - Alternate

MEMBERS ABSENT: Douglas Breakstone - Alternate

OTHER'S PRESENT: Applicant, member of the press and other interested parties

** At this time Chairman Johnson announced to the applicant and audience that due to a medical procedure he had recently experienced he would at this time turnover the position of Chairman to the Vice Chairman Pete Peterson and would remain seated as a full voting member.

CALL TO ORDER: Vice Chairman Peterson called the meeting to order at 7:30 p.m.

PLEDGE OF ALLEGIANCE

SEATING OF ALTERNATES:

John Bucciarelli was seated

OUTSTANDING APPLICATIONS:

There were no outstanding applications

PUBLIC HEARING:

Application #7470 Melvin & Mary Tomlinson/owners, Attorney Robert J. Uskevich/applicant – applying for a Variance to Section 8.8.4 (Processing) of the Zoning Regulations, relating to setback requirements so as to permit the use of processing equipment during the site development of the property. Property located on Southford Road at the Intersection of Routes 67 and 188, Zone B-1A.

All return receipts were previously submitted for the record.

Attorney Robert Uskevich representing the applicant gave a brief overview of the application request and distributed copies of the Planning Commissions recent resolutions approving both a Temporary Soil Extraction and Special Exception & Site Development Plan.

Attorney Uskevich also reviewed for the board the eleven separate variances as so stated in the addendum to the application of which the applicant is seeking.

He continued a hardship exists for the applicant as due to the configuration of the land the processing equipment must be located on the site.

If the variances are approved Attorney Uskevich noted the applicant will then need to return to the Planning Commission

Submitted for the record was correspondence received from Stone Construction Co. dated June 2, 2009 providing information on the removal of the ledge rock from the proposed site and noise levels that may emanate from the processing equipment.

It was noted in the letter the application proposes for the blasting of an estimated 36,000 CY of mass rock of which the rock crushing machine could process about 300 tons of rock per hour taking about 40 days to complete. Any dust created during the crushing of the rock would be controlled by a water misting system.

Ted Crawford an engineer with Milone & MacBroom reviewed with the board measures to minimize dust from the site including anti-tracking pads and the watering of the roadway.

Among the items questioned by board members was the number of truck trips needed to remove unprocessed material from the site and the time frame for completion.

Mr. Uskevich responding to the questions stated approximately 2,100 truck trips would leave the site. An approximate time frame could not be determined as currently the applicant has not located an off site user for the materials.

No correspondence was received.

The Zoning Officials report was submitted for the record.

Zoning Official, Mark Massoud summarized his report noting as the applicant did provide specific set back distance information there is the lack of supportive material to justify the granting of the waiver.

Mr. Massoud noted that the applicant had not provided material supporting justification for the variance request, but a telephone conversation with the applicant indicated such information would become available at this meeting.

The Vice Chairman opened the floor to the public.

William Griffin, GSG Enterprises, property owner of 1450 Southford Road spoke in favor of the application providing his expertise as a developer to the previous discussion with regard to the differences between on site processing and the removal of blasted material from the site.

Mr. Griffin expressed concerns that if processing on the site is not approved, the blasting and hammering of the rock material would become a hardship for his tenants.

In response to Commissioner Bucciarelli's question, Attorney Uskevich answered at present an off site location to receive the rock materials has not yet been identified.

The following people spoke in opposition to the application:

John Banks of 149 Burma Road expressed his concerns with dust created from the site and stated that processed material would still need to be jack-hammered. Noise from blasting was also a concern for Mr. Banks as he owns large animals (oxen) sensitive to loud noises.

Gary Diamond of 128 Burma Road voiced his concerns with dust from the site and health issues that could arise.

Responding to Commissioner Bucciarelli's concern for extra precautions being taken to control as much dust as possible, Attorney Uskevich stated dust precautions above what have already been approved for the site would be issued by the Planning Commission if so desired. The Zoning Official is the person responsible for the enforcement of dust control measures at the site.

George DeVoid of 173 Burma Road expressed concerns with the potential for large amounts of dust created from the site as well as his experiences regarding the lack of non-enforcement issues relating to dust and the processing of the materials on weekends with the development of the adjacent lot at 1450 Southford Road.

John Freidman, 135 Burma Road gave concern with blasting noise which would emanate from the site and explained how it would affect his home enterprise as well as his small dog.

Mr. Diamond also voiced concerns with regard to the neighborhood wells and the quality of the water.

In response to the neighbors concerns Attorney Uskevich stated all provisions for dust control, blasting and soil erosion have been addressed with approvals from the Planning Commission.

A definitive time frame of six months could not be established for completion as Attorney Uskevich reiterated at present there has been no off site location identified to remove materials too.

The applicant was asked to address the establishment of the land based hardship as it affects this particular piece of property.

Attorney Uskevich answered the hardship effecting this property is the size and the fact that the property is not large enough to accommodate the requirements of the zoning regulations as they relate to the use of processing equipment on the site.

Mr. Massoud explained dust would be a challenge to control at the site needing a comprehensive and specific plan. Noise emanating from the site will be difficult to address as construction sites are currently exempt from noise regulations.

Mr. Crawford noted for the record that a full scale dust and erosion control plan has been submitted to the Planning Commission.

There being no further questions or concerns the public hearing was closed at 8:55 p.m.

DISCUSSION AND DECISION:

Application #7470 Melvin & Mary Tomlinson/owners, Attorney Robert J.

Uskevich/applicant -After some discussion it was determined noise pollution would be greater when associated with the processing of materials on the site; a definitive time frame was not established for completion of the processing on site; also only 170 more trucks would be needed to deliver off site processing materials (1,000 CY) for reuse back to the site.

Commissioner Bucciarelli spoke in favor of the application noting if the processing equipment is approved on site the amount of time needed to complete the process would be reduced.

On a motion by Commissioner Sullivan and seconded by Chairman Johnson with one abstention, Application #7470 (Melvin & Mary Tomlinson/owners, Attorney Robert J. Uskevich/applicant) was denied for variance to permit processing equipment during the site development of the property. The denial of the waiver was based on the following reasons: The granting of the waiver requested would be detrimental to the neighborhood and would not be in harmony with the general purpose and intent of the Zoning Regulations; No evidence was presented at the hearing or set forth in the application to substantiate any claims that literal enforcement of the Zoning Regulations would result in unusual hardship affecting the property.

NEW APPLICATION:

There were no new applications received.

MINUTES:

Approval of Minutes - May 5, 2009

On a motion by Commissioner Ice and seconded by Commissioner Sullivan the minutes of the May 5, 2009 meeting were unanimously approved.

CORRESPONDENCE:**Audubon Center at Bent of the River dated May 29, 2009**

Leslie Kane, Director of the Audubon Center asked for clarification from the board regarding specific activities and events at the Center (i.e. children's birthday parties and commercial events).

Board members reviewed with Ms. Kane currently approved activities.

After some discussion, it was the determination of the board that children's birthday parties would coincide with activities as conducted by Audubon staff, and that this type of event would be considered in keeping with the intention of the original special exception approval. Commercial events would not be allowed as the mission of the Audubon Society is to conduct educational, scientific, literary, philanthropic and charitable events.

BILLS:

There were no bills.

ANY OTHER BUSINESS THAT MAY PROPERLY COME BEFORE THE BOARD:

There was no other business noted.

ADJOURNMENT:

On a motion by Chairman Johnson and seconded by Commissioner Bucciarelli the meeting was adjourned at 9:35 p.m.

Respectfully submitted,

Deborah Zachariewicz
Secretary