

**TOWN OF KILLINGLY, CT
ZONING BOARD OF APPEALS**

7:00 PM REGULAR MEETING
May 11, 2017

**KILLINGLY TOWN HALL
TOWN OF KILLINGLY
172 MAIN STREET, DANIELSON, CT**

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Elizabeth M. Wilson

MINUTES

- I. CALL TO ORDER – Patrick Garrity, Chair, called the meeting to order at 7:00 pm
- II. ROLL CALL – David Izzo, Andrew Farner, William Menghi and Patrick Garrity. Paul Gazzola and Jaymie Cellucci absent with notification.
- Others Present – Eric Rumsey - Staff, William St. Onge – Town Attorney, Lynn LaBerge – Council Liaison.
- III. CITIZEN PARTICIPATION -- Brief citizen comments regarding items not subject to public hearings may be made at this time.

John Olenick of 58 Hartford Pike Killingly asked if the Board could explain the ZBA meeting procedure as far as when the Board can speak, Citizens can speak etc.

Mr. Garrity stated that a hand out is being passed around known as Article 7 and reviewed the guidelines of a typical application, however this hearing tonight is not typical and Attorney St. Onge will explain the procedure of this hearing.

Mr. Garrity next asked Attorney St. Onge to review the procedure for this hearing.

Attorney St Onge stated that they will be following the normal procedure as stated in Article 7 however they will not be asking the applicant to show a hardship as this hearing is regarding a cease and desist order and the Board will need to ascertain if the ZEO followed the proper procedures in order to serve the cease and desist order. The Board will need to decide whether this order will be modified, approved or reversal of the order. In order to reverse the order of the ZEO there will need to be four affirmative votes by the Board.

The hearing tonight will consist of two components. The first is the factual component to decide whether there are facts to sustain the decision and the second is the legal component, does the order, as issued, comply with the Town's regulations.

The criteria that are reviewed is that the court can give great deference to the factual findings of the Board of Appeals but the court's reserve to themselves legal interpretation.

Basically, the case law suggests and if you state reasons for your decision, you should state all of your reasons then the court will only look to the reasons that the Board has stated. There is a court case that states that if the Board decides to uphold the ZEO's cease and desist order, no reasons need to be stated from the Board.

Attorney St Onge suggested that they can decide to not state the reasons for their decision, however if they decide to state the reasons for their decision then they should make sure to state all of their reasons.

He further stated that the applicant is allowed to put on their case and answer or rebut statements made after his presentation. The Board can ask questions of the applicant. If there are people who wish to speak to the application they have the right to do so. However, all persons speaking shall pose their questions or statements through the Chair of the Board.

When the hearing is concluded, the Board will be allowed to have discussion and make their decision.

Patrick Garrity stated that in order for this application to approved there will need to be a unanimous decision by the Board as there are only four members present this evening. The applicant has the option to continue this hearing to be heard next month and take the chance that there will be five board members present at that hearing and four votes will be required in order to approve this hearing.

Clarification regarding the notification of members who could not be present at the hearing was discussed.

Mr. Olenick asked for a few minutes to decide whether he would like to continue the hearing or present his case this evening.

Motion by Garrity to take a five-minute recess at 7:13 pm. Motion second by Menghi. Motion carried. (Returned to session at 7:22 pm)

IV. PUBLIC HEARINGS

Patrick Garrity opened up the public hearing of Application #17-816

1. Application #17-816 of John Olenick to Appeal Zoning Enforcement Officers Notice of Violation/Cease and Desist order dated March 20, 2017. Property located at 58 Hartford Pike; GIS Map 109 Lot 21; Village Commercial Zone.

Applicant John Olenick asked for the hearing to be continued and would request that if any of the board members cannot make it he would like to be notified prior to the meeting. He would also like written notice of the statutes.

Motion by David Izzo to continue Application #17-816 of John Olenick to Appeal Zoning Enforcement Notice of Violation/Cease and Desist order dated March 20, 2017. To the next regularly schedule Zoning Board of Appeals meeting on June 8, 2017. Second by Andrew Farnier. Motion passes unanimously.

V. PUBLIC HEARINGS CLOSURE OR CONTINUANCE

VI. UNFINISHED BUSINESS

2. 1. Application #17-816 of John Olenick to Appeal Zoning Enforcement Officers Notice of Violation/Cease and Desist order dated March 20, 2017. Property located at 58 Hartford Pike; GIS Map 109 Lot 21; Village Commercial Zone - ***Continued***

VII. NEW BUSINESS - None

VIII. ADOPTION OF MINUTES

1. November 11, 2016 Regular Meeting Minutes (Revised)
2. March 9, 2017 Regular Meeting Minutes

Motion by Patrick Garrity to accept the meeting minutes of November 11, 2016 and March 9, 2017 with the following corrections: November 11, 2016 minutes, any reference to Patrick Farner should be Andrew Farner. Motion second by David Izzo. Motion carried unanimously.

IX. CORRESPONDENCE TO THE BOARD - None

X. COUNCIL LIAISON – Lynn LaBerge reviewed the most recent meetings of the Town Council.

XI. ADJOURNMENT - Motion by David Izzo to adjourn at 7:32 pm. Motion second by William Menghi. Motion carried unanimously.

Respectfully Submitted,

Karen M. Desrosier
Clerk