

ZONING BOARD OF REVIEW
Minutes
March 4, 2015
Coventry Town Hall
1670 Flat River Road
Work Session & Regular Meeting
6:00 p.m.

Members in Attendance: Robert Crowe, Denise DeGraide, Jeanne Kostyla, John D’Onofrio, Russell Lacaillade and John Studley

Mr. Crowe: At this time here I would like to call the Coventry Zoning Board of Review to order. Due to the confusion tonight, our regular Zoning Board will begin at 7:00 p.m. Old Business we have is Cascade Spa which I believe and I will turn over to Jake will not be heard tonight.

Mr. Peabody: Their attorney was going to be here to request a continuance til April at 7:00 p.m.

Ms. Assalone: That will be at the Board’s discretion as to whether or not grant that continuance til April.

Mr. Crowe: For new business for March 4 we have:

Re: Appeal of Decision of Zoning Enforcement Official
Location of Property: AP 27 Lot 108; 21 Reservoir Road
Zone: I1

Appellant is appealing the Zoning Enforcement Officer’s Notice of Violation dated November 24, 2014 regarding certain activity occurring on said premises.

Re: Appeal of Decision of Zoning Enforcement Official
Location of Property: AP 35 Lot 36; 31 Reservoir Road
Zone: I1

Appellant is appealing the Zoning Enforcement Officer’s Notice of Violation dated November 24, 2014 regarding certain activity occurring on said premises.

Mr. Crowe: Those two cases will be heard tonight at 7:00. At this time the Zoning Board will go into Executive Session. I will turn this over to the Solicitor.

Ms. Assalone: Before we go into Executive Session, we could discuss what is on the Agenda which is protocols that have come to light given some re-wording of certain mandates in terms of how decisions have to be rendered. The new law enacted in June 2014 suggests that they be within reasonable time no later than 15 days after the public meeting therefore, we have to talk about the logistics of how do we get the Decision to the applicant in time. We also want to discuss adopting those decisions within thirty days of the decision made at the next session so it can be recorded in the Land Evidence Records. We want to bring that to the Board’s attention and have a discussion about that.

Mr. Crowe: We can have a work session about that right now. I am going to call the Work Session to order on that. We have a solicitor from....

Ms. Izzo: Dianne Izzo, Assistant Solicitor, Gorham & Gorham I am here for the Appeal this evening to represent Jacob.

Ms. Assalone: Dianne works with Nick. She is going to be acting as Jake's attorney on behalf of the Zoning Official's Attorney tonight and there will be a special solicitor handling that portion of the meeting, that will be William Bernstein, who has a lot of experience as Solicitor of Burrillville. That was done to negate any suggestion of conflict given certain histories.

Ms. Izzo: You understand that the Town has been active in Superior Court with Gorham representing them...Purposes of this meeting we have engaged additional counsel to represent you the Zoning Board because we have basically become a party to litigation in Court. That is the litigation we will be discussing in Executive Session. There does need to be an independent counsel to advise you this evening.

Mr. Crowe: We will have you...we will have two attorneys?

Ms. Izzo: There is sort of a trial on the decision. You will be the deciders.

Mr. Crowe: At this time I would like to discuss the protocol we are to be advised of.

Mr. Peabody: You are expected to render a decision within 15 days of the public hearing and because we only have meetings once a month the most logical way to do it is render the decision the night you hear it.

Ms. Assalone: You said that you wanted to hear it. I want to read it to you

“45-24-61 Administration – Decisions and records of zoning board of review. – (a) Following a public hearing, the zoning board of review shall render a decision within fifteen (15) days. The zoning board of review shall include in its decision all findings of fact and conditions, showing the vote of each participating member, and the absence of a member or his or her failure to vote. Decisions shall be recorded and filed in the office of the city or town clerk within thirty (30) working days from the date when the decision was rendered, and is a public record. The zoning board of review shall keep written minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating that fact, and shall keep records of its examinations, findings of fact, and other official actions, all of which shall be recorded and filed in the office of the zoning board of review in an expeditious manner upon completion of the proceeding. For any proceeding in which the right of appeal lies to the superior or supreme court, the zoning board of review shall have the minutes taken either by a competent stenographer or recorded by a sound-recording device.

(b) Any decision by the zoning board of review, including any special conditions attached to the decision, shall be mailed to the applicant and to the zoning enforcement officer of the city or town. Any decision evidencing the granting of a variance, modification, or special use shall also be recorded in the land evidence records of the city or town.”

Ms. Assalone: It's no longer within a reasonable amount of time, it's within 15 days.

Mr. D'Onofrio: Its 15 days of....

Ms. Assalone: Public Hearing.

Mr. D'Onofrio: So if we never close the public hearing, we can render a decision next month?

Ms. Assalone: Conceivably. I would have to defer to Dianne but I think the answer is yes.

Mr. D'Onofrio: Part of the hearing process is due diligence and gather the facts.

Mr. Crowe: We make sure everybody is allowed to speak. We appreciate that. If that information we obtain from the public changes or gives us another perspective to the application. We are reviewing everybody's most prized possession, their home. This is very important. To make this decision very quickly without reviewing all the facts I don't think is fair to the public or the applicant.

Ms. Assalone: In order to take more time on some of these more complicated matters logistically you would have to keep the public hearing open.

Mr. Crowe: We may be able to decide in the future, if it's a shed, we have all gone by, we can say yes, we can render a decision that night, we have been doing this more and more. A lot of these, the difficult ones, I like to digest it, see it, go through it, have it staked out, how close to a boundary line, I don't feel all the time, if you don't investigate it strongly, that you are...I like to talk to the neighbors and the individual. I don't think it's fair to the applicant. I don't think it should be a rushed decision.

Mr. D'Onofrio: If you think of when we had the windmills, if we were forced to make a decision that night of the meeting, it would have been rejected. You learn things in the meeting that gives you information for your site review. I think if we can hold the meetings open the following month that's part of the solution.

Ms. Assalone: Maybe we should take that under advisement and pose that to Mr. Gorham, Solicitor so we can find a happy medium between expeditious decision rendering. The other side of the argument is that sometimes it's less fair to the applicant to have to wait for several meetings before a decision is rendered. I think this legislation was enacted was to speed it up.

Ms. Izzo: We didn't intend to give you an ultimatum. I think what you are saying makes a lot of sense. The law is designed that you are encouraged if not a complex situation, that does not require multiple meetings; you have protocol to make a decision the same night. You have your open hearing where testimony is collected then you close that and you deliberate amongst yourselves. If you plan to carry it over you won't close it and you won't deliberate you will continue to do the fact finding. If it's a simple dimensional variance, you have your packet, you have your questions, if you have any questions ready prior to the hearing so that they can all

be answered then, in those type of cases it wouldn't be reason why you wouldn't be comfortable willing to close the hearing, shutting off commentary, discussing it, put important information on record, you have your Findings of Fact and conclusions of law that the standards have been met.

Mr. Crowe: A lot of times you go over and people don't like to come to a public meeting, and you go look at it and a neighbor comes by with a different story.

Ms. Izzo: If someone feels strongly enough they should come and be heard.

Mr. Crowe: We all know those are two different things.

Ms. Izzo: Do your research prior to the meeting.

Mr. Crowe: We try.

Mr. D'Onofrio: That's the point; you hear testimony then look for certain things when you get there. I don't like to speak to anyone when I go to the site. If I hear a conflict and without seeing it I don't know what the answer is. I know what you are saying, if we have the ability to hold it over for another month, that's great, my question is then does that eliminate the work session?

Ms. Assalone: You can definitely do that on a more complicated application, you hold over the public hearing, close the hearing, have your work session, then render your decision. Her caveat is that yes you will have to do precisely that. Keep the public hearing open. Case in point, the airport that could go for months. The longer you keep the public hearing open the more opportunity the public has to be heard until you get to your work shop you can close it. After you close it you have to make a decision within 15 days. You can't hold it off to the next meeting.

Ms. Izzo: If you had to have a special meeting within that 15 days to meet again to make your decision....

Mr. Crowe: That is something to review with the Board. Maybe have a night to come in and vote.

Mr. D'Onofrio: The ones that are cut and dry we prefer to vote that night.

Mr. Crowe: I would like the public to know that.

Ms. Izzo: The purpose of publishing the agenda in advance is put everyone on notice that it's coming up on a particular night.

Mr. Peabody: What can I do to help you make decisions? Do you want me to start having any shed or addition staked out ahead of time so you can go and look at it before the meeting?

Mr. Crowe: Yes. Structure in red and any addition in green. We will have to get the packets in earlier.

Mr. Peabody: That will be difficult.

Mr. D'Onofrio: If we don't get the time to do a site walk we will have to hold the hearing over.

Mr. Peabody: Right now we have just enough time to put it in the newspaper.

Mr. Crowe: The cutoff date for the advertisement will have to be earlier so you will have more time to work with it.

Ms. Assalone: After rendering the decision after 15 days it has to be recorded within 30 days. There has been some discussion with the Solicitor that especially with decisions that foresee have more litigation ahead of it, that those decisions be adopted on the record. That would mean we would get them on for the next meeting.

Mr. Peabody: We can email it, you can review it, make your suggested changes, but to be adopted it has to be on the record at a public hearing.

Ms. Assalone: 30 working days. There will be an issue if there is no meeting.

Mr. D'Onofrio: To be recorded, we don't do that at a meeting right now...

Mr. Peabody: You adopt it at the meeting and I immediately record it.

Mr. Crowe: If we did this by email and myself and someone else showed up here on a particular date and announced it would that qualify us?

Ms. Assalone: It has to be recorded within 30 working days after you render your decision within 15 days of the public hearing. It's something you always have its just the Board has to be cognizance on. We can't close public hearings then render a decision within a reasonable time. When you make your decision on the record that night, you do so with your Findings of Fact, I usually within 48 hours, he has your decision that we then present to Bob for his signature. Once that is done, Jacob records them. Now there is discussion about adopting them on the record. The statute doesn't provide for that but its better business practice. If you close the public hearing than you have to make a decision.

Mr. Crowe: I would like to have a motion to go into to Executive Session to discuss pending litigation.

Ms. Kostyla: Yes.

Ms. Soucy: Yes.

Ms. DeGraide: Yes.

Mr. D'Onofrio: Yes.

Mr. Studley: Yes.

Mr. Crowe: Yes.

Mr. Crowe: I would like a motion to close the Executive Session.

Mr. D'Onofrio: I make a motion.

Ms. Kostyla: Yes.

Ms. Soucy: Yes.

Ms. DeGraide: Yes.

Mr. D'Onofrio: Yes.

Mr. Studley: Yes.

Mr. Crowe: Yes.

Mr. D'Onofrio: I make a motion that we seal the Minutes from the Executive Session.

Mr. Lacaillade: Second.

Mr. Crowe: Motion made and seconded all those in favor say aye.

Board: Aye.

Mr. Crowe: Nays? Ayes have it.

Mr. Crowe: Let the record reflect we have a full Board.

Mr. Crowe: I would like a motion to approve the Minutes from the February meeting.

Mr. DeGraide: So moved.

Mr. Lacaillade: Second.

Mr. Crowe: Motion made and seconded all those in favor say aye.

Board: Aye.

Mr. Crowe: Nays? Ayes have it.

OLD BUSINESS

Applicant:	Si Soleil, Inc., d/b/a Cascade Spa
Owner:	Samuel Shapiro
Location of Property:	AP 2 Lot 2; 2504 Nooseneck Hill Road
Zone:	GB-1
Existing Use:	Commercial Building
Proposed Use:	Same

Applicant is seeking a Special Use Permit to operate a spa that will conduct hot stone therapy, Reflexology, body scrubs and body wraps.

Mr. Peabody: The applicant's attorney is here but he is asking for a continuance til April.

Mr. Mulhearn: Christopher Mulhearn on behalf of Si Soleil, Inc., d/b/a Cascade Spa. As the Board probably recalls, at the January meeting, certain questions and concerns were made with regard to those therapies contemplated for administration for Cascade Spa and whether those therapies would require licensure from the Department of Health. Subsequent to the January 7th meeting, I inquired with the staff at the Department of Health and received a verbal opinion as to what would be an unregulated profession vs. regulated. Subsequent to that, I had spoke to Mr. Peabody and Ms. Assalone, apprised them of what I was advised of and indicated I would seek a written opinion of the Department of Health. Since that time I have received a written opinion from the Department of Health indicating some of the proposed would require licensure from the Department of Health, others would not. That opinion was received by my office last week. As a result obviously Cascade Spa will now need to engage appropriate licensed professionals to deal with certain of the disciplines that were contemplated when we met on January 7. For that reason, in order to be able to present a proposed business plan to the Board my client is seeking a continuance to the April 1 hearing. The zoning official doesn't have any objection to the request. Additionally, the landlord representative is here also and he doesn't have any objection and the landlord would also like to see a proposed business plan from the tenant insofar as one of the conditions of the lease is that the tenant has to operate in conformity with the law.

Mr. Crowe: Would he have to re-advertise?

Mr. Peabody: At this point he would not because we continued the public hearing. If you want to, it's up to you.

Mr. D'Onofrio: Can we ask questions?

SWORN IN

CHRISTOPHER MULHEARN

Mr. D'Onofrio: You met with us in January, the understanding was he was to cease and desist all operations. And in time since he has re-opened and shut down again.

Mr. Mulhearn: I was advised after the fact of that.

Mr. D'Onofrio: Do you have any explanation as to why that happened?

Mr. Mulhearn: I have no idea. I was not provided advance notice. I was notified by the landlord and zoning official.

Mr. D'Onofrio: What assurances does this Board have that it won't re-open prior to the meeting?

Mr. Mulhearn: Other than the assurance that I instructed the client that they are not to take any action including opening for any type of business activity absent of this Board taking a position with regards to the pending application for a Special Use Permit or determination otherwise. I have their assurances they are not going to.

Mr. D'Onofrio: Is it your opinion that the language barrier will not cause a problem and he will not re-open again?

Mr. Mulhearn: I think at times it can be a challenge communicating with my client, that being said I am relatively confident he will require the approvals of this Board before taking any more action.

Mr. Crowe: Does the Board feel this needs to be advertised in order to continue?

Ms. DeGraide: I think it does due to the amount of time that has lapsed since the original notice and the public needs to know its still pending.

Mr. Peabody: Just re-advertise in the newspaper or notice the neighbors as well.

Mr. D'Onofrio: If they do re-open again can we automatically kill this application?

Ms. Assalone: If they re-open again and every time they have been open you can certainly consider all of that evidence and render a decision.

Ms. DeGraide: Newspaper and the neighbors.

Mr. Crowe: We will continue this until April 1, 2015.

Mr. Lacaillade: So moved.

Ms. Soucy: Second.

Mr. Crowe: Motion made and seconded all those in favor say aye.

Board: Aye.

Mr. Crowe: Nays? Ayes have it.

COVENTRY ZONING BOARD OF APPEALS

February 4, 2015

Town Council Chambers

1670 Flat River Road

Work Session & Regular Meeting

7:00 p.m.

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Location of Property: AP 27 Lot 108; 21 Reservoir Road

Zone: I1

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Re: Appeal of Decision of Zoning Enforcement Official
Location of Property: AP 35 Lot 36; 31 Reservoir Road
Zone: I1

Appellant is appealing the Zoning Enforcement Officer's Notice of Violation dated November 24, 2014 regarding certain activity occurring on said premises.

Refer to steno transcript in files for minutes.

Meeting adjourned at 9:06 p.m.