

ZONING BOARD OF ADJUSTMENT
MINUTES
AUGUST 22, 1988

MEMBERS PRESENT: William Colbath, Barry Hager, Joyce Bowden, Chairperson, Mark Dellner and David Anderson, Alternate.

Also present: Steve Stancel and Dick Selleck.

Meeting was called to order at 7:05. This meeting is a continuation of the meeting of August 18, 1988.

Joyce Bowden introduced the Board.

Joyce Bowden asked if anyone wanted to make a motion to accept the minutes of the August 18, 1988 meeting.

William Colbath made the motion to accept.
Randy Turner seconded.

VOTE U/A

It was established that Case #H88-47 and H88-48, Weathervane Seafood withdrew and will be heard in September.

H88-49 Bruce Noel (Applicant: Prescott Farms Supermarket Inc.) 118 Central Avenue A/K/A Map 15, Lot 113, zoned B-1 requests a variance from the terms of Article IX, Section 170-32 D(21) to have one hundred sixty (160) sq. ft. of signage on an awning where one (1) line of letters not exceeding nine (9) inches in height and an identification emblem not to exceed four sq. ft. is allowed.

Ann Thompson representing Prescott Farms Supermarket Inc., stated the awning will be 105' in length and it will say Prescott Farms with the Prescott above the Farms.

Mr. Taylor McPherson is doing the awning. He said the awning will be much like the Leader Drug awning only it will be straight on the bottom edge. The awning will be bow front and be dark green with tan letters.

Ann Thompson stated that the ordinance is outdated. The awning will help to keep people dry. The Prescott Farms building is 111 feet long and the awning is 105 feet in length.

The question was asked if the awning would protrude too much on the adjacent drug store. Mr. McPhearson said it would only protrude from the building 5 feet and should not hinder identifying the drug store.

Mark Dellner made the motion to hear the case.
Randy Turner seconded.

VOTE U/A

Steve Stancel said the Planning Department doesn't have a problem with the awning.

Close public hearing.

5 Points

1. The applicant does face an unnecessary hardship because the of the outmoded current sign ordinance concerning awnings. They will meet the requirements of the proposed sign ordinance when it comes into effect.
2. If granted the variance will deliver substantial justice because it will allow for a more effective and safer identification of the business.
3. If granted the variance will be in harmony with the spirit and intent of the zoning ordinance because it will meet the current proposed sign ordinance.
4. If granted the variance will not result in a diminution in value of surrounding properties because no evidence was given.
5. If granted the variance will be of benefit to the public interest because it enhances the appearance of the building.

GRANTED

VOTE U/A

H88-50 Seacoast Savings Bank and Rowell & Watson Inc., Central Avenue & Pierce Street, A/K/A Map 4, Lots 16, 17, 18 & 18A, zoned B-2, requests an appeal from an Administrative Decision concerning a use classification (Article IX, Section 170-11 & 170-12).

Malcolm McNeil represented the applicants as well as David Rosania. He stated the Administrative Decision was made by the Building Inspector. He stated that the issue is a carwash in a B-2 Zone and whether it's permitted or isn't permitted. The Board's job is to decide one way or another.

Mr. McNeil stated that the use (car wash) could not be found among the permitted uses so they chose to call it a Personal Service which is permitted. He stated that auto service is not permitted.

He submitted a document with the definition of personal and a copy of a 1986 car owner's manual. It is his view that the wrong part of the issue was concentrated on when the decision was made. He asked if a Mydas Muffler, Jiffy Lube, Tune-up Shop can be a personal service. He asked if anyone with any degree of reasoning can call those personal.

Mr. McNeil pointed out that Mydas Muffler charges more for putting in the muffler than the muffler costs. Is that auto or a personal service? He asked if work done to a car a personal service? Services like beauty shop, cobbler, barber, relate to the person.

When Rowell & Watson were processed they were processed as an auto service.

Mark Dellner made the motion to accept the case.
William Colbath seconded.

VOTE U/A

Tom Dunnington represents the individuals who want to build this car wash. He said we must rely on common sense and common usage of English. What is repairing an auto? Is a car wash a repair? No it is not.

A gas station definition - provides gas and oil and maintenance.

An auto repair definition - repair of auto.

This car wash will only wash cars and provide vacuums. He went on to say they were told by the Building Inspector that this use was permitted in this zone. The City Attorney said in his opinion this was a permitted use. We relied on his statement to us.

Mr. Selleck said that they came to the decision that this was a Personal Use after consulting with the City Attorney, Tom Clark and the Planning Director. He also consulted Webster's Dictionary and routine maintenance is defined as a habitual mechanical procedure. Habitual means on a regular basis. When he takes his car to a garage he doesn't get it back washed and waxed. It must be requested and is not considered habitual. It was determined it is more a personal service than an auto service.

Malcolm McNeil stated that you take the car out of carwash and you take the ball out of baseball. He again stated that auto service is not permitted and they all went to something else to put it under.

Close public hearing.

Randy Turner said he is an Auto Service Technician and he

takes things out of cars and puts things in. In his opinion a car wash is nothing different than washing clothes. He said auto service means repair.

Mark Dellner feels it is a personal service.

Barry Hager made the motion to uphold the administrative decision.

Mark Dellner seconded.

VOTE U/A

5 minutes recess.

H88-52 McQuade Realty, Inc., Knox Marsh Road, A/K/A Map H Lot 350/C-2A, zoned I-1, requests a Special Exception as provided by the terms of Article VII, Section 170-23 and Article XII, Section 170-52.C(3) to establish a gasoline station in an I-1 Zone.

Attorney Douglas Gray represented McQuade Realty. He showed aerial photos of the area and gave a history of the parcel. Mr. McQuade has gotten a Lot Line approval and also an approval for the plans for the convenience store from the Planning Board.

An analysis from the Finlay Co. was submitted saying that the proposed gasoline storage and retail gasoline sales would not cause any loss in value or locational obsolescence to neighboring properties.

Mr. Gray has said they have met the 60,000 sq ft lot size and the 25% open space and they will comply with the signage. He also stated there are no gas pumps for people in the area and that this use is desirable. He said that the engineering report states that there is not going to be any traffic congestion or safety problems. With the convenience store the addition of the gas pumps should make no difference and it will not cause an overload on utilities.

He claims that he has met the special exceptions and when they are met then the special exception must be granted.

Mark Dellner made a motion to accept the case.
William Colbath seconded.

VOTE U/A

Paul McQuade brought up a signed petition, 10 pages long of people who live and work in the area who are in favor of the gasoline station.

He said he is concerned in the environment. There will be 2

monitoring pumps on 2 corners of this property.

Steve Stancel stated that Mr. McQuade meets the 60,000 feet lot size and there will be no diminution of property and minimal traffic. He is located in a Secondary Groundwater Protection zone and must still prove to the Planning Board that it will be safe in the future, therefor, even if the Zoning Board approves the case it will still have to go to the Planning Board.

Mr. Michael Donahue, who represents Easter Air Devices, which is directly opposite the store in question stated that the zoning prohibits this use because of the underground storage of gasoline. He asked if the plans for the gasoline station have been brought before the Planning Department.

Attorney Gray answered that they have not.

Mr. Donahue stated he cannot see how the Planning Board can OK this type of use. He claims it is expressly prohibited in a Secondary Groundwater Zone.

Mr. Gray objected to this dealing with an ordinance that has not been adopted. He felt it was a waste of everyone's time. and should be thrown out.

Steve Stancel stated that the ordinance is posted and is in effect and Mr. McQuade would have to meet with the ordinance.

Mr. Donahue asked if a gasoline station is good for the public welfare and stated his concerns for the damage to the groundwater in this area.

Photos were removed from a the folder H87-10 to show the property in the spring with much surface water. He stated a big problem is that there are no traffic signals on Progress Drive. Another problem is this is a commercial facility in an Industrial Zone. He feels there will be a serious traffic problem and he feels it will diminish the value of his property. He also feels that if the Zoning Board grants this special exception they will be setting a bad precedence.

Mr. Gray said that the use is desirable because it will benefit the people. He said Mr. Donahue has no evidence to support his comments.

Mr. Donahue said that if you grant a special exception for Mr. McQuade you are chipping away at the Industrial Zone

Mr. Donahue said the plans don't deal with Progress Drive only with 155. He doesn't believe the traffic study that was done is accurate, it should have looked into the times that Eastern Air Devices gets in and lets out.

Barry Hager stated that the wells should be jet line.

Justin Locke said that the wells will be placed upgraded and 1 downgraded and the tanks are all fiberglass. Should a leak occur it would show the migration of any contamination.

Mr. McQuade said they also have test wells up the street.

John Chandler of Holden Engineering said that during peak hours there is a back up of traffic but it is very insignificant on Progress Drive and the signals will provide gaps for people on Progress Drive.

Mr. McQuade agreed to put in a third monitoring well downgradient to the project.

Close public hearing.

The Board went thru the guidelines for special exception and it was voted U/A that he met all the requirements.

Discussion ensued about Mr. McQuade agreeing to put in a third well; how they are suppose to guarantee the safety of the public but there are no guarantees anywhere; how he will have to comply with the State and that his word is on the line.

Barry Hager stated he felt comfortable with the decision.

Joyce Bowden took a vote to grant the Special Exception with the recommendation that Mr. McQuade puts in a 3rd well.

VOTE

GRANTED - Randy Turner
Mark Dellner
Joyce Bowden
Barry Hager

DENIED - William Colbath

GRANTED 4/1

Mark Dellner made the motion to adjourn
Randy Turner seconded.

VOTE U/A

Meeting adjourned at 9:55