

**Bolton Zoning Board of Appeals
Regular Meeting Minutes
January 10, 2023 7:00 p.m.
Bolton Town Hall, 222 Bolton Center Road
Hybrid Meeting-In person and virtual via Zoom**

Members Present: Chairman Mark Altermatt and Morris Silverstein and Alternates William Anderson (seated for William Pike), Joshua Machnik (seated for Anne Decker) and Mary Terhune (seated for Jonathan Treat)

Staff Present: None

Regular Meeting

1. Call to Order: Chairman M. Altermatt called the meeting to order at 7:10 p.m.

2. Public Comment: No public comment

Public Hearing

3. CONTINUATION: #ZBA-22-3 Nathaniel Fleming, on behalf of Asif Choudhry – 271 Hop River Rd – variance from zoning regulations 18.D.4 & 18.G.1.a.ii.

Representing the applicant was his counsel, Dory Famiglietti with Kahan Kerensky Capossela, LLP and Gregg Fedus of Fedus Engineering.

Since November when the application was submitted to the ZEO, Ms. Famiglietti has reviewed the application, the regulations and the law as it relates to non-conforming uses.

Ms. Famiglietti provided a copy of Section 8.2 of the CT zoning statutes and Section 3.A.2 of the Bolton zoning regulations that state that current zoning regulations don't apply to existing structures. The existing signage on the canopy was on two sides and that is what is being proposed going forward. The mere relocation of the canopy does not affect the nonconforming issue. State statutes, the town of Bolton zoning regulations and case law protect non-conforming structures until they are abandoned.

Ms. Famiglietti reviewed Section 3A3.b of the Bolton zoning regulations and pursuant to that she didn't feel that the non-conforming use was considered terminated as none of the conditions in that regulation were met.

Ms. Famiglietti then reviewed CT Statute 8.2 concerning the conditions necessary to deem a non-conforming structure abandoned. She suggests that the intention of the current owner is to restore the property to a gas station. Therefore, abandonment of the property is not indicated. The mere fact of the canopy sign being painted over is not sufficient evidence that the property was abandoned. The signage was painted over strictly at the instruction of CITGO to indicate that their gas was not being sold at that location.

Ms. Famiglietti stated that her client as been cooperative in his dealings with the town and that the reopening of this facility as a gas station would be beneficial for the town.

She then quoted Adolphson v. Zoning Board of Appeals to back up her opinion regarding non-conformity. There are two non-conforming issues on the property, the canopy and the canopy sign. Her client is willing and able to move the canopy to be in a conforming location although he wants to maintain the signage. That would reduce two non-conformities to one. There would now be a less offensive conforming canopy with a non-conforming canopy sign. For those reasons, Ms. Famiglietti believes that the ZBA has authority to grant the variance.

Ms. Famiglietti also noted that hardships are very difficult to substantiate. She hopes that the ZBA will consider granting the variance and she opened up the floor to questions.

B. Anderson asked if there was a zoning permit required to reestablish the two legged freestanding sign on the property. Mr. Fedus replied no and Ms. Famiglietti stated that her client is not interested in added more signage. He wishes to keep the amount of signage that was there previously.

M. Altermatt asked if the site plan application that was submitted in November was approved by the Planning and Zoning Commission. Mr. Fedus replied yes although the P&Z stated that they could not approve the canopy and signage.

M. Altermatt quoted Section 18H of the Bolton Zoning Regulations that covers comprehensive signage plans. He feels that the applicant should have discussed what signage was being proposed at the last P&Z meeting as now it seems as though they are side-stepping the current regulations. Now, in addition to the variances that are currently being requested, a variance to Section 18H may have to be applied for. Mr. Fedus stated that at the P&Z meeting, they were told to come back to the ZBA for signage approval.

B. Anderson quoted Section 3A2 of the Bolton zoning regulations. M. Altermatt confirmed that the canopy is still standing in its original location. Ms. Famiglietti again noted that her client is willing to move the canopy but the currently nonconforming signage would go along with it.

M. Silverstein asked if the existing canopy would be moved and if the new gas station would be a CITGO. Ms. Famiglietti indicated yes to both questions, stating that the CITGO sign would be repainted.

B. Anderson feels that the Bolton regulations concerning abandonment are in violation of State statutes. He feels that this is a preexisting nonconforming sign that can be reestablished. M. Silverstein agrees. B. Anderson asked if the State statutes can be followed instead of town regulations. Additionally, he noted that the decision should be documented well.

After discussion about the existing canopy being replaced with a new larger canopy if it is moved, M. Silverstein feels that is an intention of the owner to abandon the existing canopy. Ms. Famiglietti noted that the signage is a separate issue from the canopy. Moving the canopy and

replacing it is an abandonment of the current nonconformity. The signage is a nonconforming no matter where the canopy is located.

Discussion ensued regarding the issue of nonconformity and how painting over signage could be considered abandonment.

M. Altermatt asked what the applicant's position was as to the necessity of a hardship in granting a variance. Ms. Famiglietti did not feel that hardship needed to be established. M. Altermatt asked if the applicant is asking the board to grant a variance of a new nonconforming use. Ms. Famiglietti would like the ZBA to grant a variance on the premise of the Adolphson case. M. Altermatt feels that if a variance was to be granted there would need to be proof of hardship.

B. Anderson asked the commission if there was agreement that the applicant can leave the canopy where it is and refurbish the existing signage. M. Altermatt noted that generally yes, but in this case he is concerned that as part of the site plan the signage plan should have been submitted.

B. Anderson feels that the existing canopy is very close to the road and that it would be safer if it was moved further back. The applicant should not be penalized for doing the right thing. He is in favor of granting the variance as is M. Silverstein.

Ms. Famiglietti noted verbiage that she would like to see used in the ZBA decision.

The public hearing closed at 8:32 p.m.

J. Machnik understands the logic behind the case law. B. Anderson suggested a variance to 3A2 with justification from the Adolphson case. All members agree that moving the canopy is warranted. The P&Z approved the building but wanted the ZEO to take a stance on the signage.

M. Terhune is struggling to understand whether or not abandonment of the signage is still an issue. The issue was debated among the commission members.

M. Altermatt suggested wording to grant a variance due to a hardship. The hardship being that in their efforts to make the layout safer and less nonconforming, the applicant would lose the benefit of the preexisting nonconforming sign. The applicant should not be penalized for doing the right thing.

J. Machnik made a motion to grant a variance based on a hardship and entitlement to the signage that is currently in place to make accessibility to the property safer to the public. M. Silverstein seconded. The motion passed unanimously 5:0:0. The board grants M. Altermatt authority to polish up the language of the motion.

Other Business

4. Approval of Minutes:

December 13, 2022

J. Machnik made a motion to accept the minutes as presented. M. Terhune seconded. The motion passed unanimously 5:0:0

5. Correspondence: None

6. Other: None

7. Adjournment

M. Silverstein made a motion to adjourn at 8:36 p.m. J. Machnik seconded. The motion passed unanimously 5:0:0.

Respectfully submitted,

Leslie J. Brand

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Please see minutes of subsequent meetings for corrections to these minutes and any corrections hereto.