

**TOWN OF SOMERS
ZONING BOARD OF APPEALS
REGULAR MEETING MINUTES
May 08, 2007**

1. Call to Order: Chairman Torres called the meeting to order at 7:37 P.M.

11. Members Present: John Torres, Robert Minch, Barbara Flebotte, Daniel Scully, Jerry Young, Edward Mack, B.J. Ferro III

Public Hearing was called to order by Chairman Torres at 7:38 P.M.

111. Public Hearing

1. 1. Mohammad Razavi

Secretary, Mr. Scully read the legal notice. Mohammad Razavi of P.O. Box 265, Somers, CT is seeking a variance from Somers Code 214-54 requirement for illuminated signs concerning his Pizza restaurant located at 48 South Road, unit #13 and #14 of Southfield Plaza, Somers.

Mr. Razavi was present and explained that for his restaurant, Mona's Pizza & Wings, he had requested all the appropriate permits. He further explained to the Commission that he had expressed to individuals at the town hall that he wanted his sign to be "like that of the Plaza Restaurant ". He spent over \$3,000 and purchased a sign that would allow for illumination from within. It was upon a visit from the inspector that he explained that the sign Mr. Razavi had purchased could not to be utilized because it did not meet current regulations.

Chairman Torres explained that the Plaza Restaurants' sign that he referred to prior has been internally lit since 1990 and was "grandfathered in" when new regulations were passed after its erection. Chairman Torres also explained that he did have the option of lighting the sign from the outside like other businesses in that plaza. Mr. Razavi stated that when the inspector visited the sight he explained the conditions and regulations he would have to follow if he wished to illuminate the existing sign using external lighting fixtures.

Unfortunately the only hardship Mr. Razavi's case had was monetary. Although the Commission did feel that there may have been some miscommunication on both the applicant and that of town hall employees, Mr. Torres stated that a regulation such as this could not be overturned simply on a monetary hardship.

No abutters to the business location were present.

Motion made by Commissioner Scully, seconded by Commissioner Minch, and unanimously approved to cease discussion.

After all discussion, motion made by Commissioner Minch; seconded by Commissioner Young to adjourn the public hearing. Motion approved unanimously.

Public Hearing closed at 7:45 p.m.

IV. Regular Meeting

The regular meeting continued at 7:45 P.M.

V. Minutes Approval – April 10, 2007

Corrections – April 10, 2007 – Page 1 MEMBERS PRESENT B.J. “Farrow” to be replaced with “Ferro”
Page 2 3. “Marie Theresa Demers” to be replaced with “Marie Therese Demers”

Motion made by Commissioner Minch, seconded by Commissioner Flebotte to approve the ZBA April 10, 2007 minutes with above noted corrections. Motion approved unanimously.

VI. Public Hearing Discussion

1. 1. Mohammad Razavi

After much discussion, motion made by Commissioner Scully; seconded by Commissioner Mack and unanimously voted to cease discussion and vote.

The Commission voted unanimously to deny a variance from Somers Code 214-54 requirement for illuminated signs concerning Mr. Razavi’s Pizza restaurant located at 48 South Road, unit #13 and #14 of Southfield Plaza, Somers.

2. 2. Marie Therese Demers

Note: Alternate member Jerry Young sat in for Commissioner Scully for this case. Mr. Young was present for the hearing phase of the appeal while Commissioner Scully was absent.

Atty. Conti asked who does the Commission believe has the burden of proof? Is it an issue of conforming to nonconforming? These will need to be considered and will aid in the Commission being able to site whether specific past cases come into play when deciding on the case before them. He also mentioned equitable estoppel; a legal principle that prevents a person from asserting or denying something in court that contradicts what has already been established as the truth. This may be considered by the Commission. He would like time to further review the letter presented by Att. Landolina before he provides any opinion on the statute of limitations.

Commission members opened further discussion in regards to the continued review of the public hearing appeal from Ms. Demers. The Commission members had received prior to the May 10th, 2007 ZBA meeting a lengthy transcript of the prior months meeting. This transcript included additional pieces of information to further understand and research Ms. Demers appeal such as previous case files which came before the Board. Mr. Torres had hoped that this additional information would elicit questions from the Commission as well as provide a better understanding of what the ZBA Commission was being requested to do. Attorney Rick Conti was present to answer questions presented by the Commission members as well as give his legal

Page 2 of 4

analysis of further gathered information/cases and whether he felt they were pertinent to the case before them. He also was able to speak to the legal issues which were presented at the last Commission meeting where both Attorney Carl Landolina and Bruce Tyler were in attendance.

Chairman Torres asked Att. Conti if he felt that the case concerning Georgewood Road which happened about 2 years ago could be considered similar in nature to the one the Commission was dealing with now. The first Case was a cease and desist due to a neighbor complaint, while the latter was a cease and desist due to the zoning officer's visit which was not generated by an external neighbor complaint. He also inquired whether the ZBA Commission's "hands are tied" on the case.

Att. Conti explained that he would take all comments and listen to the discussion of the Commission before giving his legal opinion. At that point, he was not sure if the information gathered would help or hinder the Commission's decision making.

Commissioner Minch stated that the Demers Home was always used as a "rooming house". This had been known for many years. Regulations were adopted, rooms were for rent, and it was owner occupied within all that time.

Commissioner Young has been living in Somers since 1963 and he explained that the Demers home was always open as a boarding facility since he could remember. It was for individuals with different needs; some needing physical assistance due to being aged to those simply needing a room to rent. Rooming house/boarding house the terms were interchangeable but the end result was the same and it was owner occupied to his knowledge as well.

Commissioner Mack explained that at one time the facility was licensed by the state and then lost its license. It was at that time that the regulations changed. Pointing out that due to these changes in regulation and status that Ms. Demers was now only to receive compensation from 3 people living on the property and she was currently receiving monies well over that limit.

Commissioner Flebotte mentioned that when there was an issue that presented itself i.e. the providing of meals to some individuals per Steve Jacobs 1992 report, Ms. Demers discontinued this upon request. Otherwise the facility had been functioning to her knowledge in the same capacity for decades.

Chairman Torres added that he understood why initially the facility was being run as a convalescent home due to the first owner's wife being a certified nurse. There were individuals on the premises that were

immobile and due to that, they could house 2 individuals in one room. Adding that in 1995 when Ms. Demers was no longer state licensed and receiving individuals from state hospitals, the town was aware of this change in status and didn't act on this knowledge. Jim Taylor did try to voice that the facility could not continue as a rooming house, but the town did nothing to enforce this opinion.

Commissioner Flebotte asked Att. Conti if there was a statute of limitations for which the town has time to act. Was there a timeframe that the applicant had to appeal and was that timeframe exceeded? As well, did the town have a timeframe in which to enforce these changes in status but is now too late to do so because it has been going on for decades?

Page 3 of 4

Chairman Torres asked if the Commission has jurisdiction to make this decision (to support the cease and desist) or is it out of the Commission's realm. Att. Conti stated that he would like to review further and clarify whether it is an estoppels issue or a jurisdiction issue. As he sees it now, the case can go one of three ways; 1.) The Zoning Enforcement officer had no authority to take such action 2.) There is unlimited (no time limit) to the situation which was going on at the Demers location and the ZBA Commission must take action or 3.) While there was no time limit, there was a lengthy duration of continued practice at the above mentioned location. And with that knowledge, although the Zoning Officer maybe in her right to wish the cease and desist, the situation has gone on too long and because of that the ZBA Board can not support the decision.

Att. Conti stated that he felt the last option was where he was leaning, however he felt it was necessary to continue review of all materials presented to him and only then would he feel comfortable writing an opinion to the Commission's inquiries before their next meeting on June 12, 2007.

Motion made by Commissioner Mack, seconded by Commissioner Minch, and unanimously voted to table decision on Marie Therese Demers appeal until June 12, 2007.

VII. Old Business:

None

VIII. New Business:

None

IX. Correspondence:

None

X. Bills:

Motion made by Commissioner Mack; seconded by Commissioner Flebotte to pay all ZBA bills including the Journal Inquirer in the sum of \$472.20. Motion approved unanimously.

XI. Adjournment:

Motion made by Commissioner Mack; second by Commissioner Minch to adjourn the meeting.

Motion approved unanimously. The meeting stood adjourned at 9:02 P.M.

Respectfully submitted,

Jennifer D. Boudreau

Recording Secretary