HALLORAN SAGE

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Mr. James Ventres, Land Use Administrator
Town of East Haddam
1 Plains Road
Moodus, CT 06469

Re: Non-conformity and the application of Section 31 of the East Haddam Zoning Regulations

Dear Mr. Ventres,

Previously, I addressed the legal issue of abandonment and the protections afforded by the Connecticut General Statutes were answered in the applicant's previous Zoning Board of Appeals application. At one time, zoning regulations had provisions for the abandonment of a use which could be terminated by nonuse over a period of time. Changes have been made in the law to reduce the ability to terminate a nonconforming use.

Several years ago, Conn. Gen. Stat. Section 8-2 was amended to provide as follows:

"8-2(d) A zoning regulation may not .... (4) (A) Prohibit the continuance of any non-conforming use, building or structure existing at the time of the adoption of such regulations; (B) require a special permit or special exception for any such continuance; (C) provide for the termination of any nonconforming use solely as a result of nonuse for a specified period of time without regard to the intent of the property owner to maintain that use; or (D) terminate or deem abandoned a nonconforming use, building or structure unless the property owner of such use, building or structure voluntarily discontinues such use, building or structure and such discontinuance is accompanied by an intent to not reestablish such use, building or structure. The demolition or deconstruction of a nonconforming use, building or structure shall not by itself be evidence of such property owner's intent to not reestablish such use, building or structure;"

The termination of a nonconforming use is now controlled by the intent of the property owner and the discontinuance must be voluntary. Any provision to terminate a use cannot be done by a length of time in a zoning regulation.

The application before the Commission also triggers the issue of what changes are allowed to a nonconforming use. Fuller's treatise states as follows: "Where a nonconforming use is properly established, a mere increase in the amount of business done pursuant to a nonconforming use is not an illegal expansion of the original use. An increase in business of an existing nonconforming use is not an illegal expansion of the use. Using improved, more efficient equipment and modernizing nonconforming uses is permitted as long as the improvements are used to pursue the original uses." 9B Conn. Prac., Land Use Law & Prac. § 52:3 (4th ed.)

You also have asked questions concerning the applicability of Section 31 in an application seeking the approval of a drive-through facility at property known as 416 East Haddam Moodus Road, East Haddam, Connecticut.

Section 31 allows for the approval of drive-through facilities for food establishments, pharmacies and banks. The Planning & Zoning Commission ("Commission") needs to determine whether this new accessory use should be permitted as an accessory to the proposed use. Both sections 31.1 and 31.2 contain criteria which are required to determine whether this use should be located on the property. The term "food establishments" is not defined under the regulations but presumably means something other than a restaurant which is not a use which permits drive throughs as an accessory use. Whether this application proposes a food establishment and whether the proposed accessory use of a drive-through meets the criteria of Section 31 is up to the discretion of the Commission.

If you have any other questions, please do not hesitate to ask.

Very truly yours,

Matthew J. Willis

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