East Haddam
Zoning Board of Appeals
June 6, 2023

1. Call to Order

The Regular Meeting of the East Haddam Zoning Board of Appeals was held on Tuesday, June 6, 2023, at 7:00 PM. The Chairperson and Secretary being present.

2. Attendance

Diane Quinn, Richard Fiala, William Smith, Laurie Alt, James Ventres – Land Use Officer

Others Present: Roger Nemergutm P.E., Attorney Scott Jezek, Aisha Khan (applicant), Rebecca Skinner, Debbie Beard, Elizabeth Johnson, Kevin Staehly

3. Public Hearing

1) Appeal #1155 – Shahani Incorporated (applicant & property owner), 416 East Haddam Moodus Road (Property location). Requesting a variance for a canopy nine (9) feet from the property line where thirty (30) feet is required continuance of an existing non conformity. Map 064, Lot 064

Mr. Ventres read into the record the letter from Town Attorney Willis, which addressed the concerns raised at the last meeting about the continued use of non-conforming use and abandonment.
Mr. Nemergut noted that listening to the letter from Attorney Willis notes that the non-conforming use as a gas station is still permitted. The concerns raised at the meeting previously are not germane to the matters related to hardship before the ZBA.

Mr. Jezek noted the C-3 district is not meant to include gas stations but is residential in nature. Any other use requires special exception. He also noted that hardship is also needed to require an exception. The only hardship would be slope which is in the back, which will not impact the gas station pumps being planned.

Attorney Scott Jezek reiterated that the gas station has not been in use for over a decade and the gas pumps have been removed. He provided a case law example for inclusion in the record that speaks to the need to understand the prior owner's mindset to determine if a property usage was abandoned.

Expansion of use is another area that Attorney Jezek discussed. He noted that the new proposal includes adding more gas pumps and expanding the canopy size as well. There is no evidence of the prior volume; and the expansion of use is not allowed under the regulation. Attorney Jezek noted the Zoning Board of Appeals has the right to consider any information on the property related to appropriate use of the property and use that to inform their decision.

Attorney Jezek also addressed the use of a drive-through and noted the regulations do not permit the use of a drive-through in the zone this property is in.

Attorney Jezek also provided additional case law examples of the need for the ZBA to consider issues that were raised prior, and all the issues discussed at this meeting when making their decision.

Ms. Khan provided an overview of the project. The company is a family owned and run company and is local within CT. There are other gas stations that are owned and operated by the family. The company works with towns to make sure that they are serving their customers and community. Every site has a unique item within it, and every town deserves to have a service station that meets the needs of the community. She noted there is often a stigma associated with gas stations. It is not unique to have removed the old gas pumps. The goal is to open a business that merges into the community. She oversees operations and runs all the logistics associated with the store. The goal is to hire local employees. The location is not restricted. The company has been in the fuel distribution market since the 1990s and is now moving into the Electric Vehicle (EV) market; they are focused on doing what is needed and right in each community they serve. She noted that the focus will be to have little noise and will be well-lit to provide a safe space to get fuel while open.

Mr. Nemergut P.E. addressed the hardship questions. The hardship question is related to the size of the new canopy given it is proposed to be built closer to the road than regulations allow. There is a traffic study underway, and any findings will be addressed prior to going to P&Z. There are some things that can be done onsite and off-site to mitigate headlights hitting residential properties across the street.

A community member spoke before the Zoning Board of Appeals and provided feedback on the increase in the noise of cars, the drive-through and loitering and trespassing, and garbage and the increase in traffic at an already dangerous intersection. She noted that these issues will happen all day and every day given the hours of operations. She noted that she is a 3rd generation town resident and is operating a family business in town. She noted that the opening of a gas station does not install a small-town feel. She is concerned that the larger canopy will increase the traffic in that area.

Ms. Khan noted she can provide information on several of Ms. Skinner's concerns and comments. Ms. Beard spoke about the intersection traffic concern and that adding more traffic will make the area much more congested. Ms. Khan noted that a larger canopy does not equate to more business. The amount of business is denoted by the size of the community. Ms. Johnson also spoke about the traffic safety issue.

Attorney Scott Jezek asked if the Zoning Board of Appreals decided to approve the application, he asked if the reasons for the approval are clear.

Mr. Nemergut P.E., asked for another continuance until the next meeting to allow the applicant time to reply to the new information provided.

Mr. Ventres noted that he would like the Town Attorney to review the new information that Attorney Scott Jezek presented and outline the appropriate uses in the C-3 zone.

Mr. Ventres read into the record the minutes from when the original gas station was approved in the 1960s. The canopy was never considered by Planning & Zoning Commission and a site plan was never submitted when it became a gas station.

Mr. Ventres noted that there is a continuance submitted by the applicant and June 19, 22, 26, and July 5 and 6 are options for the follow up meeting. June 19th is the next meeting. Mr. Ventres will ask Mr. Fennema to review the meeting notes prior to the next meeting.

Mr. Staehley informed the commission that he was part of the Economic Development and noted that he was part of the commission that wrote the updated regulations on reuse and the goal was for redevelopment with new businesses. He also noted that he would like to see a traffic study and DOT information before considering the exception. He is also concerned about altering a tourist district and noted that the canopy may be an issue. He also noted that if the Zoning Board of Appeals approves the canopy exception, it is providing its tacit approval to the use of a drive through.

Ms. Khan noted that the State of CT requires the canopy to be 15 feet high and while it is possible to go higher, higher canopies promote larger trucks, which is not the target market for this location.

Mr. Nemergut P.E. noted the traffic study will be provided to the commission prior to the next meeting.

Motion by Mr. Smith to continue the public hearing part of the meeting to June 19th at 7pm. Seconded by Ms. Alt, unanimously approved.

4. Minutes

   Motion by Ms. Alt to approve the minutes from the May meeting as presented. Seconded by Mr. Smith and unanimously approved.

5. Bills

   No bills.

6. Adjournment

   Motion by Mr. Smith to adjourn. Seconded by Mr. Fiala and unanimously approved.

   Meeting adjourned at 8:03pm.

Respectfully submitted,
Shannon A. Goyette
Recording Secretary