

MORRIS ZONING BOARD OF APPEALS
Morris Community Hall, Morris, CT
SPECIAL MEETING MINUTES
June 26, 2018 6:30p.m.

Chairman Allen Bernardini called the meeting to order at 6:30 p.m.

Present: Meg Palumbo, Eric Edwards, and Dereck Galinski (Alt.)

Absent: Jim Wheeler, Mark Conlon, Giles Giovinazzi (Alt.)

Town Clerk
Laura Halloran
JUL 11 2018

Presentation of requested variance for 6 North Street

First Selectman Tom Weik presented proof of notification to abutting neighbors of 6 North Street that the Town of Morris was requesting a variance to install a premade shed 12'x20' on the northeast corner of the Town of Morris property. The shed would sit on a layer of crushed stone and would be sited approximately 2' from the eastern property line and approximately 3' from the northern property line, which location would fall within the setbacks for this location.

First Selectman Weik said he had received written approval from abutting neighbor Ms. Munson. He explained the shed is needed to store materials close to community hall. Some of the items stored in the shed would be tables and chairs, ladders, ice melt, chemicals, etc. He noted that due to insufficient storage space within town hall, some of these items had been stored in the boiler room and the Town of Morris had received a notice from Fire Marshal Dave Hardt that these stored items must be immediately removed from the boiler room as they represented a violation of the Connecticut Fire Codes.

Discussion

Members and Board members of abutting neighbor Morris Congregational Church asked questions about the positioning and installation of the shed, possible other sites, concern about its proximity to church property, the lack of hardship attached to the requested variance, and the possibility of storing these items in the fire house building, which has recently been cleared out, and which belongs to the Town of Morris.

Chairman Bernardini closed the public discussion.

Committee Vote

Chairman Bernardini noted there was an applicant for a very similar appeal that was refused and he did not see sufficient justification to grant this hardship.

Motion: Eric Edwards moved to deny the appeal by the Town of Morris for a variance to install a shed at 6 North Street since no hardship was met. Meg Palumbo seconded the motion. All voted aye and the motion carried.

Old Business – Vote on decision regarding 158 Island Trail

Motion: Eric Edwards moved to close the 158 Island Trail Appeal without prejudice. Meg Palumbo seconded the motion. All voted aye and the motion carried.

Adjournment

Motion: Eric Edwards moved to adjourn the meeting at 6:47p.m. Meg Palumbo seconded the motion. All voted aye and the motion carried.

Respectfully submitted,

Jo Ann Jaacks
Recording Secretary

X

Town Clerk
Laura Halloran
JUN 27 2018
10:20 A.M.

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June 22, 2018

Allen Bernardini, Chairman
Morris Zoning Board of Appeals
Town Hall
3 East Street
Morris CT 06763

Re: Garrity Appeal – 158 Island Trail

Dear Mr. Bernardini:

A 'Position Statement', dated May 2, 2018, was submitted by Bridget Garrity to the Board at the Board's meeting of the same date. In this paper, she makes several statements, only one of which merits a legal opinion. This is whether the Board must provide a public hearing on this matter because the appellant, Ms. Garrity, was not aware that the mandatory time limits imposed by Connecticut General Statutes Sec. 8-7 and Sec. 8-7d were due to expire.

These state laws require that this Board commence a public hearing within 65 days of receiving an appeal of a decision by the zoning enforcement officer, complete the hearing within 35 days and then render its decision within 65 days of closing the hearing. The state statutes also provide that the appellant can consent to extensions of these time periods, but the extensions cannot exceed 65 additional days.

The appeal filed by Ms. Garrity was received by the Board at its November 21, 2017 meeting. Within 65 days, the public hearing was opened at the December 20, 2017 meeting. This hearing was continued to February 6, 2018 and the appellant consented to an extension of time allowing for the hearing to stay open beyond the 35 day statutory period. Due to a lack of a quorum, the February 6, 2018 hearing did not take place.

The maximum amount of time allowed by state law for a hearing to remain open is 35 days, plus the maximum amount of 'extension' days [65 days] for a total of 100 days. This maximum time period expired on or about March 30, 2018.

In her 'Position Statement', Ms. Garrity demands that this Board schedule a public hearing on her appeal regardless of the above time requirements imposed by state law.

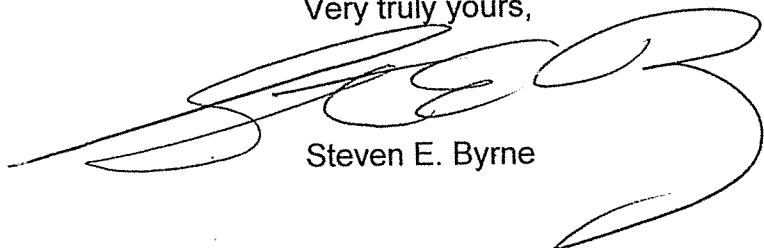
In my opinion, your Board can not hold a public hearing on this appeal as the time for doing so has passed. These statutory time limits are mandatory and the Board is without legal authority to act outside of them. "Cities, towns and the like have no inherent police power; zoning is an exercise of police power, and cities and towns must operate in zoning matters within the enabling statutory scheme." *Florentine v. Darien*, 142 Conn. 415, 422 (1955); *Strain v. Mims*, 123 Conn. 275, 285 (1937). Holding a public hearing now, after the statutory time period for doing so has expired, is beyond this Board's authority and would be unlawful. *Frito-Lay Inc. v. Planning & Zoning Commission*, 206 Conn. 554 (1988).

Whether Ms. Garrity is correct in her assertions that this Board had a duty to inform her of the approaching deadline to hold a public hearing and schedule same is without merit in this case. The time requirements for holding a public hearing as set forth in Connecticut General Statutes Sec. 8-7 and Sec. 8-7d are mandatory and this Board is without the authority to amend them for any reason.

I therefore recommend that this Board not schedule a public hearing as requested by Ms. Garrity as a public hearing was opened and then closed in accordance with State law. Instead, the Board should render a decision on this appeal, based solely on the evidence in the administrative record, within the 65 day time period prescribed by state law. In this case, this time period expires on July 5, 2018.

The Board should remember that the burden of proof is on the appellant to prove, with evidence, that the zoning enforcement officer's decision was wrong. A lack of evidence requires this Board to dismiss the appeal and uphold the enforcement officer's decision.

Very truly yours,

A handwritten signature in black ink, appearing to read "Steven E. Byrne", with a large, sweeping flourish extending from the end of the signature.

Steven E. Byrne

ATTORNEY STEVEN E. BYRNE

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attysbyrne@gmail.com

August 1, 2018

Allen Bernardini, Chairman
Morris Zoning Board of Appeals
Town Hall
3 East Street
Morris CT 06763

Re: Garrity Appeal – 158 Island Trail

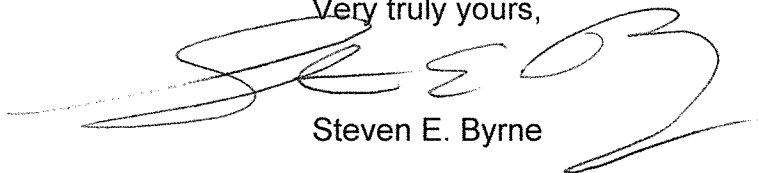
Dear Mr. Bernardini:

The agenda and minutes of the Morris Zoning Board of Appeals show that the pending appeal brought by Attorney Garrity regarding 158 Island Trail has been concluded.

Pursuant to Connecticut General Statutes Sec. 8-7d, any person aggrieved by this decision of the Board has 15 days from the date the decision is published to file an appeal with the Superior Court.

With no appeal filed as of this day with the Superior Court, we can consider this matter concluded. Accordingly, I will close my file on this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read 'SEB', is written over the typed name 'Steven E. Byrne'. The signature is fluid and stylized, with a long horizontal stroke extending to the left and a large loop on the right.

Steven E. Byrne