



# ZONING BOARD OF APPEALS

Clifford J. Hurgin Municipal Center  
1 School Street, Bethel, Connecticut 06801 \*(203) 794-8578

## ZONING BOARD OF APPEALS SPECIAL MEETING MINUTES JULY 17<sup>th</sup>, 2014 – BETHEL MUNICIPAL CENTER 7:00 P.M. – MEETING ROOM D

**COMMISSION MEMBERS PRESENT** : J. Hurgin; J. Streaman; N. Santaniello  
R. Lawlor; S. Dolan; M. Ryan; W. Foster; C. Andres, TOB Land Use Counsel, B. Cavanna,  
Assistant Planning & Zoning official.

Chairman Hurgin called the meeting to order at 7:01 p.m.  
No alternate Board members were seated.

### **WORKSESSION:**

**14-07: Appeal by Michael J. Moore and Philip M. Lombino from a decision by the Zoning Enforcement Officer** to approve an application for a Zoning Permit filed by Angela D'Amico and Karen Barski for use of property located at 16 Stony Hill Road/4 Garella Road, Bethel, CT as a medical marijuana dispensary. Property Owner: JAMM Real Estate, LLC.

Chairman Hurgin explained the process of the Board's Worksession for the benefit of the Public in attendance.

Attorney Charles Andres reviewed the issues that were presented at the Public Hearing, for the benefit of Board members. These included:

Two (2) jurisdictional issues raised by Attorney Neil Marcus:

- Was the Appeal was properly filed with the ZEO?
- Are the Appellants aggrieved?

Three (3) issues on the merits of the Appeal:

1. Did the ZEO correctly rule that the Medical Marijuana Dispensary use is allowed at this site?
2. Is the ZEO's decision in conflict with Sec. 1.4.D.2 of the Town of Bethel Zoning Regulations?
3. Was a Special Permit from the Town of Bethel Planning & Zoning Commission granted on November 13<sup>th</sup>, 2007 properly filed on the Bethel Land Records?

The Board discussed the jurisdictional issues raised by Attorney Neil Marcus as to whether or not the Appeal was properly filed with the ZEO.

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The consensus was unanimous that given the testimony by Steven Palmer at the Zoning Board Public hearing on July 15<sup>th</sup>, 2014, the appeal was properly filed with the ZEO. (5-0)

The Board discussed the jurisdictional issues raised by the Applicant's Attorney Neil Marcus as the establishment of whether or not the Appellants are aggrieved. Attorney Andres provided the Board with an explanation of 'types' of aggrievement which constitute legal standing

Attorney Andres explained the standard of aggrievement for this process:

- Classical Aggrievement- The party has to demonstrate a specific interest as opposed to the interests of the "community as a whole".
- Aggrievement where there is a specific impact on the appellant. Absolute proof is not required of a direct impact but unsubstantiated fears are not sufficient to demonstrate aggrievement. Under this definition concerns for traffic volume, property values or increase in crime would be considered. .

After a brief discussion, Chairman Hurgin polled the Board members with regard to the issue of aggrievement. Board Members polled 3 no, party is not aggrieved: Hurgin, Santaniello, Streaman -2, yes, party is aggrieved: Lawlor, Ryan. Vote Failed. Majority of 4 needed to pass.

The Board then moved on to the issues concerning the merits of the Appeal.

**1. Did the ZEO correctly rule that the Medical Marijuana Dispensary use is allowed at this site?**

M. Ryan referenced TOB Zoning Regulations Sec. 4.3.5 concerning Retail sales indicating that her reading did not qualify the Medical Marijuana Dispensary as a retail store. R. Lawlor referred to the "Written statement from Steven Palmer "Medical Marijuana Dispensary " dated June 16<sup>th</sup>, 2014" regarding use and retail sales. N. Santaniello referenced correspondence from William M. Rubenstein, Commissioner of Consumer Protection to Philip Lombino dated 7/2/14 regarding Medical Marijuana Dispensaries and pharmacies. A lengthy discussion of 'retail store' and 'retail sales' ensued. Chairman Hurgin polled the Board: 4 yes, Hurgin, Santaniello, Streaman, Lawlor ZEO ruling is correct: 1 no, Ryan, ZEO ruling is incorrect. ( 4-1 ).

**2. Is the ZEO's decision in conflict with Sec. 1.4.D.2 of the Town of Bethel Zoning Regulations?**

The Board discussed whether this use was in conflict with Sec. 1.4.D.2 of Bethel Zoning Regulations. Citing the "Letter to ZBA Chairman Justin Hurgin from Attorney Neil R. Marcus, Cohen and Wolf, P.C., Danbury, CT dated July 3rd, 2014 with attachments, and the "memorandum issued by Attorney General of the State of Connecticut in response to a request from the Commissioner of the Department of Consumer Protection dated June 7, 2013 The consensus of the Board was unanimous that there was no conflict with Sec. 1.4.D.2 in this case. 5-0 The Decision is not in conflict with Section 1.4.D.2 of the Zoning Regulations

3. **Was a Special Permit from the Town of Bethel Planning & Zoning Commission granted on November 13<sup>th</sup>, 2007 properly filed on the Bethel Land Records?**

After a brief discussion the Board came to a unanimous consensus that the Special Permit for 16 Stony Hill Road granted by the Planning & Zoning Commission on November 13<sup>th</sup>, 2007 was properly filed on the Bethel Land Use Records. 5-0 .

The Board requested that Charles Andres, Land Use Attorney for the Town of Bethel, draft a resolution to be presented at a Special Meeting scheduled for August 19<sup>th</sup>, 2014 at 6:30 p.m. in the Bethel Municipal Center, Meeting Room D.

At this time, Chairman Hurgin and the Zoning Board requested that Staff draft a letter to the Planning & Zoning Commission requesting that they review the Appeal and make changes to the regulations such that, in the future, they will trigger the use of a Special Permit. This will help insure there will be an opportunity for public discussion on this matter.

Motion to Ajourn by N. Santaniello, seconded by J. Streaman. Motion Passed

Respectfully Submitted,



Nancy R. LoBalbo