

**TOWN OF ELSMERE
BOARD OF ADJUSTMENT
MEETING MINUTES
July 25, 2023
6:30 P.M.**

PLEDGE OF ALLEGIANCE:

CALL TO ORDER:

ROLL CALL:

CHAIRMAN	JAMES PERSONTI	PRESENT
BOARD MEMBER	JOHN ACTON	ABSENT
BOARD MEMBER	PATRICIA BOYD	PRESENT
BOARD MEMBER	RON RUSSO	PRESENT
BOARD MEMBER	JOHN SMITH	PRESENT
Code Enforcement Officer, Nicole Facciolo – Present		
Code Enforcement Officer, Scott Allen - Present		

PUBLIC COMMENT: **None**

APPROVAL OF MINUTES:

Minutes from the April 25, 2023, Board of Adjustment Meeting

ACTION: Board Member Russo made a motion to approve the minutes from the April 25, 2023, Board of Adjustment meeting with no corrections. Board Member Smith seconded the motion.

VOTE: 4 in favor 1 Absent Motion carried

Boyd – Yes, Russo – Yes, Acton – Absent, Smith – Yes, Personti – Yes

OPENING STATEMENT:

Administrative Assistant for the Code Department Denise Lardani read the opening statement.

OLD BUSINESS: **None**

NEW BUSINESS:

Review Petition 23-07, Tax Parcel number 19-00400-003 through 19-00400-01

The applicant seeks to reverse subdivide Parcels 19-00400-003, 004, 005, 006, 007, 008 and 010 into one large parcel and rezone Parcel 19-00400-010 (1 Spruce Avenue) from R-1 (Single Family Dwelling) to CC (Community Commercial). The Board of Adjustment will review and make a recommendation to the Mayor and Council.

Pam Scott, the attorney with the law firm of Saul Ewing, is speaking on behalf of Serpes and Sons. The request is to consolidate 7 parcels into 1 parcel and rezone 1 parcel. The request is for the overall redevelopment of the Serpes site on Kirkwood Highway. The consolidation will reduce variances on the property. It will add additional parking, landscaping, and better safety. The original proposal had an egress exit onto Spruce Avenue but with several people expressing concern, the drawings were amended.

Chairman Personti asked to review exhibit 23-7AZ. This is a current existing property, is the house on Spruce proposed to be included in the one property? The liquor store is separate.

The response from Pam Scott and Carol Ohm, the engineer, is yes that is correct.

Board Member Boyd asked why there is no designated loading zone and how is that going to be managed? Is it normal to have a commercial property not have a loading zone with a company that will have deliveries?

Carol Ohm responded the loading will occur during off peak hours for example if the bakery opens at 8:00 am the deliveries would be before that time or after they close.

Chairman Personti stated that will be discussed and reviewed later not at this time. The meeting tonight is only pertaining to the consolidation into one parcel and rezoning the one parcel.

Code Enforcement Officer Scott Allen stated tonight's meeting is for the recommendation to Mayor and Council for the third and final reading for the reverse subdivision and the rezoning. This will go before the Planning Commission and the Board of Adjustment for the construction variances that are required.

Fred Carlson, 104 Western Avenue, stated that he is a lifelong resident. He thinks it is a great idea. He suggested increasing the size of the buffer zone.

ACTION: Board Member Russo made a motion to approve the Petition 23-07. Board Member Boyd seconded the motion.

VOTE: 4 in favor 1 Absent Motion carried

Boyd – Yes, Russo – Yes, Acton – Absent, Smith – Yes, Personti – Yes

Review Petition 23-08, Tax Parcel number 19-00100-013

The applicant seeks to appeal citations V2300587, V2300588, V2300627, V2300688, V2300689 and V2300690 issued by the Code Enforcement Department. The Board of Adjustment will review and render a decision regarding this petition.

The Appellant, Robert Ulrey, spoke on his own behalf as the Property Owner. He stated he is in the process of cleaning up the property to bring it in to compliance. He has submitted photos of his updates. The photos are labeled exhibit 23-08AX - 23-08BE. He admitted that he has neglected the property while taking care of his aging mother who has recently passed. He did not expect his mother to live to be 103. He stated the property has been vacant for 10 years. He is aware that there is a large amount of money that is due to the Town that he could not appeal all of it due to his lack of good timing. He is not disputing any of the citations and knows he is guilty of the neglect but is merely seeking financial relief.

Board Member Smith asked if there was an apartment in the back of the property.

Mr. Ulrey responded that yes, it is one building with 2 residential units.

Chairman Personti asked for an explanation of the property is it two units, 2 houses, do they have separate addresses?

Code Enforcement Officer Allen stated there is a primary house at 106 Washington Avenue and this is a flag lot, the house in the back is addressed as 106 ½ Washington with a unit A and B. The 106 ½ address has been registered vacant before he came to work for the Town.

Joanne Personti, 5th district Councilwoman, asked if Mr. Ulrey knew when the house was built. He responded he bought it in the 1980's and it was old when he bought it.

Code Enforcement Officer Allen stated the New Castle County Parcel search says the house was built in 1940.

Chairman Personti asked how much does the appellant owe?

Code Enforcement Officer Allen stated there are numerous violations but on the back of the citations in writing there is a 20-day appeal process. What Mr. Ulrey qualifies to appeal is a total of \$2,579.14. There is more money that has already been applied to a special tax lien that is older than the appeal period.

Chairman Personti asked Mr. Ulrey has anything been paid on this property? He responded not yet because he wants to see if he is approved for a reduction in the fines owed.

There were questions as to the future of the house and Mr. Ulrey really is not certain what his plan is. Initially, it is to bring the property back in to compliance with the Town.

Board Member Russo asked what you can do to assure us this will not happen again because I do not feel like you have represented yourself well. He said we are representing the Town and the people that live around you. Some of these people here tonight are hired to do these violations and it is their job.

Mr. Ulrey said the best I can do is assure you and give you my word and pledge that I am not ignoring or avoiding the violations, and I am cleaning up the property and making it compliant with the Town. Also, I will be paying over \$4,000.00 that I do not want to have to pay again. That is good motivation not to have to pay for this again. He does not want anymore citations but if he were to get one, he would address it right away.

Chairman Personti asked can the Code Department give Mr. Ulrey a heads up or an email with a warning before he gets another citation?

Code Enforcement Officer Allen stated that we can set up a meeting, it is not something we typically do but we can. Also, he appreciates the fact that Mr. Ulrey does not want more citations, the Code Department does not want to give out more citations because even if it is a smaller citation such as high grass and weeds it stays on the history of the property and will trigger another the repeat public nuisance fee of \$2,000.00.

Councilwoman Joanne Personti, 108 Jefferson Avenue, 5th District, stated when the recent code went into effect everything in it was rezoned into R1 designation. Even the Jefferson Avenue business properties. If it were a multi-family dwelling the rezoning permitted it to stay as it was zoned but could not be expanded upon. After 90 days goes by of being vacant the property reverts to the rezoning of R1 usage.

Mr. Ulrey stated that he has kept up on his rental licenses every year and has paid his taxes every year. He stated the payment was gladly taken and it would be news to him if he is not able to rent it as 2 units.

Councilwoman Joanne Personti asked if the Code Department can provide the information for this property to our Town Solicitor as to whether it can be used as a dual family property due the property being vacant for more than 90 days. She feels the attorney needs to clarify the information.

John Smith made a motion to deny the requested appeal stating the property has been vacant for 10 years and it has been in poor condition. There was no second on the motion. The motion to deny was not granted.

ACTION: Board Member Russo made a motion to waive the requested \$2,579.14 with the condition that if there is another citation in the next 6 months, the appellant will be responsible for paying the waived amount of \$2,579.14 as well as all new fines. Board Member Boyd seconded the motion.

VOTE: 3 in favor 1 Absent 1 Opposed Motion carried

Boyd – Yes, Russo – Yes, Acton – Absent, Smith – No, Personti – Yes

ITEMS SUBMITTED BY CHAIRMAN AND BOARD MEMBERS: None

PUBLIC COMMENT:

ADJOURNMENT:

ACTION: Board Member Russo made a motion to adjourn. Board Member Boyd seconded the motion.

VOTE: 4 In favor, 1 absent Motion carried

Boyd – Yes, Russo – Yes, Acton – Absent, Smith – Yes, Personti – Yes

These minutes summarize the agenda items and other issues discussed at the July 25, 2023, Board of Adjustment meeting. Votes are recorded accurately. The audio tape(s) of this meeting will be available at Town Hall for a period of two years from the date these minutes are approved. The audio tape(s) may be reviewed at Town Hall by appointment and in accordance with the Freedom of Information Act.



JAMES PERSONTI, CHAIRMAN



PATTY BOYD, SECRETARY