

MEMORANDUM

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FROM: OFFICE OF THE CITY ATTORNEY
MIDDLETOWN, CONNECTICUT 06457

TO: Anthony S. Marino, Mayor
Eugene Kuzminski, Chairman, Zoning Board of Appeals

DATE: October 27, 1976

RE: Opinion re Number of Votes Necessary For Decisions
By The Zoning Board of Appeals

The zoning board of appeals has requested an opinion as to the votes necessary for decisions of the board when acting on the various types of matters it is required to consider.

General Statutes §8-5, Chapter 124, so far as it pertains to the City of Middletown, provides for a zoning board of appeals to consist of five regular members and three alternate members to be appointed by the Mayor. The Middletown Charter, in Chapter V, Sec. 3B, also provides that there shall be a zoning board of appeals in accordance with the provisions of Chapter 124 of the General Statutes.

Generally, the board is required to make decisions on two kinds of matters. These are (1) zoning matters, which are those which arise under Chapter 124 of the General Statutes, and (2) other types of matters involving locations for certain types of automobile uses, which the board is required to pass upon under various general statutes.

It is my conclusion that, when acting under the zoning statutes, the concurring vote of four members of the board

Anthony S. Marino, Mayor
Eugene Kuzminski, Chairman, Zoning Board of Appeals
October 27, 1976
Page 2

is necessary to reverse any order of the official charged with enforcement of the regulations, to decide in favor of the applicant upon any matter upon which it is required to pass upon under the regulations such as a special exception, or to grant a variance and, that with respect to a non-zoning matter, unless there is a specific statutory requirement specified, the vote of a majority of those voting at a meeting at which a quorum is present is sufficient. These conclusions are based on the following.

General Statutes §8-6 provides as follows:

§8-6. Powers and duties of board of appeals. The zoning board of appeals shall have the following powers and duties; (1) To hear and decide appeals where it is alleged that there is an error in any order, requirement or decision made by the official charged with the enforcement of this chapter or any by-law, ordinance or regulation adopted under the provisions of this chapter; (2) to hear and decide all matters including special exceptions upon which it is required to pass by the specific terms of the zoning by-law, ordinance or regulation; and (3) to determine and vary the application of the zoning by-laws, ordinances or regulations in harmony with their general purpose and intent and with due consideration for conserving the public health, safety, convenience, welfare and property values solely with respect to a parcel of land where, owing to conditions especially affecting such parcel but not affecting generally the district in which it is situated, a literal enforcement of such by-laws, ordinances or regulations would result in exceptional difficulty or unusual hardship so that substantial justice will be done and the public safety and welfare secured.

The first sentence of §8-7 of the General Statutes provides as follows: "The concurring vote of four members of

Anthony S. Marino, Mayor
Eugene Kuzminski, Chairman, Zoning Board of Appeals
October 27, 1976
Page 3

the zoning board of appeals shall be necessary to reverse any order, requirement or decision of the official charged with the enforcement of the zoning regulations or to decide in favor of the applicant any matter upon which it is required to pass under any bylaw, ordinance, rule or regulation or to vary the application of the zoning bylaw, ordinance, rule or regulation."

These statutes are clear and unambiguous with respect to the number of votes necessary for decisions of the zoning board of appeals concerning the matters referred to. Clearly, the concurring vote of four members is necessary to reverse any such order of the zoning enforcement officer or to grant a special exception or variance. 4 McQuillan, Municipal Corporations §13.30.

General Statutes §21-16 requires the zoning board of appeals to pass upon applications seeking approval of the location for the establishment, operation or maintenance of a motor vehicle junkyard or junk business. In acting upon such an application, the board must comply with §21-17.

General Statutes §14-54 requires the zoning board of appeals to pass upon applications for approval of the location for which a license may be issued by the Department of Motor Vehicles for dealing in or repairing motor vehicles.

Anthony S. Marino, Mayor
Eugene Kuzminski, Chairman, Zoning Board of Appeals
October 27, 1976
Page 4

In acting upon such an application the zoning board of appeals must comply with §14-55 of the General Statutes.

General Statutes §14-321 requires the zoning board of appeals to pass upon applications for approval of the location for the sale of gasoline or other products referred to in §14-319. In acting upon such an application, the board must comply with General Statutes §14-322.

None of these sections, General Statutes §§21-16, 21-17, 14-54, 14-55, 14-319, 14-321 or 14-322, specifies the number necessary to constitute a quorum of the board when acting upon such applications or the vote necessary for approval of such an application.

The Connecticut Supreme Court has ruled that the zoning board of appeals, when acting upon an application for a certificate of approval of the location of a motor vehicle junkyard or dealer, or location for a gas station, acts under the statutes regulating locations and licenses for these businesses as a local agency for the State and not under the local zoning regulations or zoning statutes. *Petrillo v Board of Zoning Appeals of the Town of North Haven*, 147 Conn. 469, 472; *Mason v Board of Zoning Appeals of the City of Bridgeport*, 143 Conn. 634, 637; *Etsel v Zoning Board of Appeals of the Town of North Haven*, 155

Anthony S. Marino, Mayor
Eugene Kuzminski, Chairman, Zoning Board of Appeals
October 27, 1976
Page 5

Conn. 539; Socony Mobil Oil Company v Zoning Board of Appeals of the Town of Enfield, 153 Conn. 257, 259.

In the absence of legislative restriction, the general rule is that a committee or commission performing a public duty can take valid action at a meeting of which all members have proper notice and at which a majority is present; Strain v Mims, 123 Conn. 275, 281; 56 Am.Jur.2.d., Municipal Corporations, §163; and, a majority of a quorum has the right to take any action which is within the power of the entire body, unless a statute provides otherwise. Somers v Bridgeport, 60 Conn. 521, 526-527; 56 Am.Jur.2.d, Municipal Corporations, §168. This is the generally accepted common law rule. Rhyne, Municipal Law §5-6; 4 McQuillan, Municipal Corporations §13.27.

Therefore, since the statutes pertaining to zoning do not apply to the zoning board of appeals when it is acting under one of the statutes pertaining to the location of a motor vehicle junkyard or dealer or gasoline station, and the statutes pertaining to these location and licensing matters do not specify the number that shall constitute a quorum or the vote necessary for approval, the following rule applies: A majority of the membership of the board (Three) constitutes a quorum to transact such business,

Anthony S. Marino, Mayor
Eugene Kuzminski, Chairman, Zoning Board of Appeals
October 27, 1976
Page 6

and a majority of such quorum (two) may vote approval and make a binding decision.

This is distinguished from the situation where the board is acting on a zoning matter and the concurring vote of four members is necessary. General Statutes §8-7. Since the statute requires the concurring vote of four members at least four members should be present to hear the application and vote on a decision. In *St. John's Roman Catholic Church v Board of Adjustment*, 125 Conn. 714, the board granted a certificate of approval for the location of a gasoline station and a variance. The hearing was held by four members of the board and the decision was made by the four members that held the hearing. The four voted in favor of the variance and location. The court found that the action by this number complied with the statutory requirement, and was not invalid because the full membership did not participate.

If an application is made to the board for a certificate of approval of a location for an auto dealer, etc., in a zone which permits that kind of use and no special exception or variance is required, then the board must act under the statute pertaining to location approval. If, in addition to the location approval, it is necessary to obtain a variance

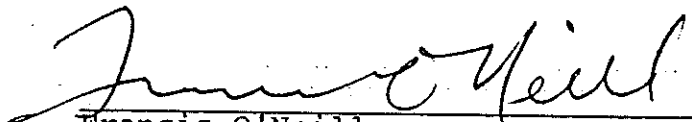
Anthony S. Marino, Mayor
Eugene Kuzminski, Chairman, Zoning Board of Appeals
October 27, 1976
Page 7

or special exception, then, the zoning board of appeals must also act under the zoning statutes, and the rule pertaining to zoning would have to be followed as to the special exception or variance. If this situation arises, where both zoning and location approval is required, the board should require the applicant to submit two applications; one for the zoning matter and one for the location matter. Both applications may be heard at the same public hearing, providing the proper notice is given as to each, and the decision of the board may be based on the evidence presented at that one public hearing. *Sun Oil Company v Zoning Board of Appeals*, 154 Conn. 32, 35; *St. John's Roman Catholic Church v Board of Adjustment*, 125 Conn. 714, 721. The board must first vote on the zoning application and then on the location application. It may grant or deny the zoning application. Approval of the zoning application does not mean that the board must approve the location application. It may approve or disapprove the location application based on the standards set forth in the relevant statute. However, if the board denies the zoning application, then it must deny the location application. The certificate of approval of the location should not be approved for a location where the use would be in violation of the zoning regulations.

Anthony S. Marino, Mayor
Eugene Kuzminski, Chairman, Zoning Board of Appeals
October 27, 1976
Page 8

Sun Oil Company v Zoning Board of Appeals, 154 Conn. 32, 35;
St. John's Roman Catholic Church v Board of Adjustment, 125
Conn. 714, 724.

Although the board may legally act with less than five members present, the statute provides for three alternate members and, if at all possible, a full board of five members should hear the applications and vote on the decisions.


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City Attorney

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