

Transcript of the public hearing on Item #1, Proposed Special Exception to permit a home occupation for the repair of TV sets located at 1195 South Main Street in an R-1 zone. Applicant Whitney Withey/Atty. Dean A. Thomasson.

Secretary Carta:

Item #1, Proposed Special Exception to permit a home occupation for the repair of TV sets located at 1195 South Main Street, in a R-1 zone. Applicant Whitney Withey/Atty. Dean A. Thomasson.

Chairman Gionfriddo:

Okay, this legal notice appeared in the Middletown Press twice, Friday November 30, 1984 and Friday, December 7, 1984. Attorney Thomasson?

Attorney Thomasson:

Yes, good evening, my name is Dean Thomasson and I represent Whitney A. Withey in his application for a special exception and home occupation to conduct a repair of television sets. In front of you you may have a map which shows the parcel on the dwelling. The dwelling is located in an R-1 zone and located at 1195 South Main Street. The area proposed for the home occupation is in the dining room area which is on the first floor, approximately 10 by 14. That area is less than the 20 percent of the gross floor area of the house and less than the 300 square feet required by your regulations. Because you are entering through the front door there is no separate entrance. Because it is within the house there will be no evidence, no external evidence of the operation of his business. He uses his station wagon rather than any kind of commercial vehicle for his work. Most of it is picking it up from phone calls or there is a few people who drop off their sets. He is the only one who will be using the dwelling for the repair, he has no employees. The equipment that he uses is not detrimental to the neighborhood. The signs that he proposes to use is within the sign regulations or will meet the sign regulations. The extent of increase or percentage increase in traffic on Route 17 will be incontestable I don't even think that that needs to be dwelled on. There will be no sale of television sets, it is strictly repairs. At the very most he never will expect to have more than four people at the residence at any one time. Probably no more than one or two. If anybody has any questions?

Chairman Gionfriddo:

I have one before I call on you. Just to be blunt about it, why should we, or what information can you give us that would lead us to believe that what you are telling us this evening is anymore factual than what we were told when he was here in April. That he wasn't going to be selling and we saw ads in the newspaper that it was sales and service and after we turned him down it seem like there was still work going on out there with TV repairs and later I think lawnmowers. This is after he came to the Commission and was turn down for a home occupation. On what basis could we be led to believe that things are going to be any different if we approve him this time.

Attorney Thomasson:

Well, there were two main objections last time if I recall after reading the minutes. The first one was, attach versus detach structure. Unfortunately Mr. Withey got some bad advice with regard to where to place the garage in the future of his business. He followed that advice and that is why his first application, home occupation application was denied. If he had it to

Attorney Thomasson (continued):

do over again, the garage would be attached to the house. I've made him aware of the fact that he has to conduct this in the house, and it will be conducted within the dwelling. The second thing with regard to repairs, since he has come to me, I've clearly stated to him that that was the second reason why he had been denied, because he had advertised sales and I told him that if you want your home occupation you better not advertise sales. There are zoning enforcement procedures to be taken against you, and even if we were to get you your home occupation permit tonight, the first time that it is violated, there are procedures in the regulations for removal of the permit and enforcement proceedings against him.

Chairman Gionfriddo:

Well that's good, but that doesn't answer the question that even when we turned him down in April, or whenever the final decision was made last time, it was my understanding that there were complaints from people in the neighborhood driving by the area that the occupation was still going on without a permit. So what's, to tell him, to tell us that you've told him that we could pull his permit, doesn't seem to be enough to stop the action from going on. What is to stop him from continuing to do the work even without a permit? I mean that is the past track record.

Attorney Thomasson:

I would appreciate it, I can appreciate your looking at the past track record and I would also appreciate it if you would look at what we are trying to do now in getting him to conform. We haven't moved into the house yet, because there is a possibility that it just might get rejected and it would put him through a lot of cost and expense. If it gets approved he will be into the house within a very short order and will be conducting his business from within the house. As far as whether or not it is strictly repairs and side sales, I only know of enforcement proceeding that can be taken against him. I don't think that you can deny an application just because you think he's lying to you or was misrepresenting the facts here. I believe that we have conformed to all the rules and if we have conformed, we should be granted a permit. If you discover that he is not conforming to his permit it can be evoked and enforcement proceeding taken against him.

Chairman Gionfriddo:

Commissioner Leinwand.

Commissioner Leinwand:

You asked my question for me.

Chairman Gionfriddo:

Any other questions anyone has of Mr. Thomasson or his client?

Commissioner Carta:

Just a general comment, I've long had trouble with commercial uses or near commercial uses in residential homes, residential areas. I don't know that this is going to, I can't see the change, I know his business has always been repairing, selling and buying, and selling of TV's as far as I remember from living in the town. It is difficult for me to think that he is going to forego a large part of his business. That is my major concern here.

Chairman Gionfriddo:

Do you want to respond to how much is your sales?

Attorney Thomasson:

As far as the sales go now, as far as second hand recondition sets, that is almost dead, because you can go out right now and buy a brand spanking new set for 180 or 190 dollars. Now who is going to spend 99 dollars or 120 dollars for a second hand recondition set that is 8, 9 or 10 years old, when they can buy a brand new one for 189 with a two year guarantee, the other guarantee would be no more than 90 days. So the sales are more or less zero.

Commissioner Carta:

Do you handle or sell new sets?

Whitney Withey:

No, I had a franchise with Zenith, they wanted me to take an order for this franchise and I told them that I couldn't do it because of the zoning, we are within a R-1 zone. When I talk to Bob, Mr. Frank he told me, I figure, instead of a home occupation permit, I should go right ahead and build a garage. So I went right ahead and built a garage, I invest 15,000 dollars from my savings account, went to that garage insulated, heated the whole area. All of a sudden, boom, it went right down the tubes. I was kind of hurt. So as far as the sales goes, it is very very seldom that someone asks me for a set anymore. Repairs, yes, it is going on constantly Repairs are good, but sales no.

Attorney Thomasson:

He realizes that if he does any sales there is enforcement that can be taken against him. I have drilled this into him time and time again. He realizes that this permit is not something for life, if he doesn't conform to the rules it is all over.

Whitney Withey:

You see gentlemen I didn't realize that I was being underhanded or anything like that I was trying to stay right above board and I talked to Mr. Frank

Attorney Thomasson:

In reviewing the minutes of the last meeting, I think that and you will see that it was the sales and the detached structure. That was the basic reason for the denial. The denial based on the detached structure is clearly in black and white. The denial was very simple and straight forward to base it on that. Now that he is within the structure, he is not doing sales, I don't see any reason why he can be denied at this time.

Chairman Gionfriddo:

I have a question for Mr. Withey himself if he wouldn't mind answering it? From the time that we turned you down in April, were you ever visited from time to time by Bob Frank?

Whitney Withey:

Yes.

Chairman Gionfriddo:

Who told you to cease from repairing television.

Whitney Withey:

He said to keep it cool, let's put it that away.

Chairman Gionfriddo:

Keep it cool?

Whitney Withey:

Yes, keep it cool and he is a nice guy. You can't get me to say anything against Mr. Frank, he is a super nice guy and as far as the lawnmowers, that is one of my hobbies, model airplanes, radio control planes and old guns, and lawnmowers, old tractors. As a matter of fact I got two 1944 Gratelys in the garage right now. This is where I spend my time, I don't go to a bar, I don't take to raising cain or anything like that. I don't go out honky tonkying around you might say. I don't drink at all. I just like to you know ---

Chairman Gionfriddo:

I guess the question that I am trying to drive at is that you knew in April of last year that we had turned down your home occupation and yet you continue to function that occupation for--until now, aren't you still doing it?

Whitney Withey:

No, I haven't done repairs, I don't think I've done

Attorney Thomasson:

There have been repairs, I have to admit to that but what we are trying to do now is to clear the record and to conform. That is why we are here. He needs this business to make a living and I have advise him that if he can conform to each one of these rules and regulations there is no reason that they can deny you. We went through it point by point and he was fully inform and he fully understood that this is what he has to do or he is going to have to leave the area.

Chairman Gionfriddo:

Okay, any other questions?

Whitney Withey:

Another thing sir, is that I could not enlarge a business like that being alone, I can only do so much.

Chairman Gionfriddo:

Okay, Thank you, there is no other question so, is there any members of the public who wishes to speak in favor of this proposal? Is there any members of the public who wishes to speak in opposition of this proposal? Come forward and give your name and address.

Dwight Norwood:

My name is Dwight Norwood

Chairman Gionfriddo:

Excuse me, wait a minute, why don't you

Attorney Thomasson:

I would like to request that this could be put under new business.

Chairman Gionfriddo:

That is fine.

Dwight Norwood:

My name is Dwight Norwood and I live at 190 Coleman Road and I happen to be nere last April on another matter when I came aware of the fact that the gentleman had applied for an exception. At that time I spoke against it for

Dwight Norwood (continue):

reasons which are, probably still on record. I am here tonight because I am very concerned about the gentleman's attitude since that time. I heard you address several specific points regarding his continued conduct of a TV repair business in that location. I think I could understand why the gentleman can answer with a clear conscience because at this time he is not particularly active in that endeavor. That is because he has taken up a, or placed a used car lot on the premises. In the last several months, whether you are aware of it or not, I have seen 'for sale' in that location a school bus, a dump truck, a tractor, a number of small riding motors or lawn mowers of various kinds. I haven't stop there to prove exactly what they were. I think that it is a travesty. He has done nothing but thumb his nose at the decision of this Commission last April. He has not continue his business, he has expanded, he's enlarged it. If you grant him permission, I think for any kind of a business in that location, we can't do anything but expect that there will be further enlargement of it and a continuation of the behavior that you have already seen. Which means no matter what the exception is that you grant him, he will enlarge on that and we will continue to see an eye sore in that particular location. I for one will be very much against that, and very unhappy to see that particular part of the City become commercialized in this fashion. It is one thing if someone wishes to maintain a small home business, which is not unsightly, which does not cause local traffic problems. It is quite something else to have someone take a lot and engage in various kinds of commercial endeavors which creates a blot in the landscape and also pave the way for further exceptions in the future basing the fact that there has been one granted.

Chairman Gionfriddo:

Thank you. Anyone else wishing to speak in opposition?

Virginia Renschen:

I don't want to speak in opposition but I would like to ask a question.

Chairman Gionfriddo:

Name and address?

Virginia Renschen:

Virginia Renschen, 227 Atkins Street, Middletown, Connecticut. What is the ultimate on this, in other words, suppose you give him the thing and he goes ahead and expand as this gentleman just suggested, I mean is the ultimate that he is arrested and put in jail, what happens to people who go against the Code and are requested several times to quit, what happens to them eventually?

Chairman Gionfriddo:

In Middletown it seems nothing.

Virginia Renschen:

In other words there is no real way of stopping them.

Chairman Gionfriddo:

That seems to be the answer that I have to give you unfortunately. I know a cease and desist order would be issued and I don't know if that would be the ultimate solution to it. Whether a person could be incarcerated for avoiding a

Chairman Gionfriddo (continued):

cease and desist order of a town, I doubt that it would ever come to that.

Virginia Renschen:

So it is basically a slap on the wrist situation. I am just asking because we have a similar situation in our neighborhood and I know that it won't be stopped and I was wondering what the end....

Chairman Gionfriddo:

Well that is the kind of question that I was trying to draw out since we denied it in April and the business continued on and I was trying to find out exactly from him what transpired and I guess that I did.

Virginia Renschen:

Thanks.

Chairman Gionfriddo:

Okay. Any one else? I have a letter here which came from a member of the public, William Wamester, 1225 Randolph Road and it just says, "attached please find a copy of a previous letter to the Commission regarding this application. The proposal is to conduct a business within the house, normally based on the applicants request this would not represent a major problem, however since April of '84 as well as before the applicant has continued to operate a business at this address in violation of the Zoning Code. If you check with your Zoning Enforcement Officer you will find that advertising has continued including the address of this business, a residential zone. The City has responded and the advertising has change from the Middletown Press to the Rare Reminder or other papers. It appears that the applicant is playing games with the Commission, The Zoning Code and the Zoning Enforcement Officer. I seriously question how the Commission can reward these actions by approving this application. Based on past practice how can the Commission expect compliance with the Zoning Code. I respectfully request that you read this letter as well as the attached letter into the public hearing record of this application. In review of the attached letter you will note that except for the location, the concerns express in that letter still apply to this application." The only difference with this application is the applicant is quote claiming unquote 'that he will conduct the business within the dwelling unit'. Commission members will certainly not be mislead by the applicant's circumvent application. You must see the facts and demonstrated will to comply with the regulations and the spirit of the Commission. I believe the Commission should and must deny his application. I ask that you deny this application. What he attached here was a letter of April 17, 1984. Three pages in length which was made part of the record of the April hearing and I am going to submit it to Hope to make it part of this record rather than reread the entire letter again. We did see it in April. I will close the Public Hearing on Item #1 and entertain a motion to make this Item 6.4 under new business. Move to Item 2.