

MEMORANDUM

Building
Dept.

FROM: OFFICE OF THE CITY ATTORNEY
MIDDLETOWN, CONNECTICUT.06457

TO: Anthony S. Marino, Mayor
Thaddeus Reneson, Chief Building Inspector

DATE: July 23, 1976

RE: Opinion Re Application Of Theodore J. and Diana Tine
For Proposed Sign On Washington Street Property

Theodore J. Tine made application to the building inspector pursuant to the State Building Code for construction of a sign on property located on Washington Street. Upon receipt of the application for construction of the sign, the building inspector referred it to the Planning & Zoning department for comment. The comment from the City Plan was to the effect that it should be disapproved on the basis that there is no street frontage. Section 48 of the Zoning Code, controlling signs, establishes permitted sizes of signs in terms of lot frontage.

The property is located in a B-3 Zone. The parcel has a frontage on Washington Street of 84 feet. Located on the parcel are two buildings. One is on the front portion, and another in the rear portion. The proposed sign is to serve the rear building. The building in the rear portion of the lot was constructed in 1972. Construction of the building was over the objection of the Planning department as in violation of the Zoning Regulations. However, the Zoning Board of Appeals granted a variance to construct the building. No appeal was taken to court from the decision of the Zoning Board of Appeals.

The building inspector has requested an opinion as to whether the basis for disapproval of the proposed sign by the Planning & Zoning Commission is valid under the present circumstances.

General Statutes §8-8 permits appeals from the Zoning Board of Appeals to the Court of Common Pleas. The statute specifies the time limits within which the appeal must be brought. Upon a failure to appeal within the time limited, the decision ordinarily will become final. See Kelly v Zoning Board of Appeals, 126 Conn. 648, 649; Bernard v Planning & Zoning Commission, 26 Conn. Sup. 85; Masone v Zoning Board, 148 Conn. 551. The effect of a grant of variance is to make the use a permitted use, either as a conforming use or a legal nonconforming

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use. See Rathkopf, The Law Of Zoning And Planning (3d ed.) Chapter 46; and Garibaldi v Zoning Board of Appeals, 163 Conn. 235, 239.

The City, acting through its Planning & Zoning Commission, is authorized to enact zoning regulations pertaining to signs. General Statutes §8-2. In exercise of this authority, the Commission has enacted regulations found in §48 of the zoning regulations. Signs are regulated as to size, number, location and type. There is no distinction in the zoning regulations between signs pertaining to buildings located at the front of the lot as opposed to the rear. The zoning regulations, being in derogation of common law property rights, should not be extended by construction beyond the fair import of their language and cannot be construed to include by implication that which is not clearly within their express terms. Park Construction Co. v. Planning & Zoning Board of Appeals, 142 Conn. 30, 35; Service Realty Corporation v. Planning & Zoning Board of Appeals, 141 Conn. 632, 638; Langbein v. Board of Zoning Appeals, 135 Conn. 575, 580; J & M Realty Company v Board of Zoning Appeals, 161 Conn. 229, 233; Fisher v Board of Zoning Appeals, 143 Conn. 358, 361; Rathkopf, Law Of Zoning And Planning (4th ed.) Chapter 9.

Section 48 of the Middletown Zoning Regulations cannot be read to prohibit installation of a sign that pertains to a building located at the rear of the lot on the basis that because of the building location there is no frontage as referred to in the zoning regulations. Therefore, this cannot be a valid basis for the building inspector to refuse to issue a permit for construction of a sign.


Francis O'Neill
City Attorney

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