



TOWN OF WINCHESTER ZONING BOARD OF APPEALS
Town of Winchester Town Hall, 338 Main Street
2nd Floor – P. Francis Hicks Room
October 22, 2019 – 7:00PM
Regular Meeting Minutes

Chairman Phillip Allen called the meeting to order at 7:00PM.

1. ROLL CALL:

Mr. Allen noted that the following individuals were present in addition to himself: Neil Hunt, John Massicotte, Hal Wilkes, and Alternates Aubrey English and Paul Marino.

John Pollack was absent excused. Mr. Marino was seated in his stead. Also, present for this meeting was Zoning Enforcement Officer/Building Official Marc Melanson. Town Attorney Kevin Nelligan was also present for the discussion and review of the first application only.

2. EXPLANATION OF PROCEDURE:

Mr. Allen explained that an approval from this Board requires four affirmative votes. Accordingly, Mr. Allen also explained that the applicants were entitled to a vote before five seated members. He noted that applicants usually receive a disposition on the application the same evening of the meeting. Mr. Allen explained that the proceedings include the applicant's opportunity to provide information regarding the application, a chance for the Board to question the applicant and/or representative as well as closing comments by the applicant.

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3. PUBLIC HEARINGS – VARIANCE APPLICATIONS & DECISIONS:

A. ZBA #19-5220 Appeal from ZEO Decision Location: 142 Laurel Way Owner: Alain Jacques and Jacqueline Jacques Applicant: Attorney William A. Conti Proposal: Appeal from Zoning Enforcement Officer's Decision 1. Cease and Desist Use of Accessory Apartment; and 2. Obtain Building Permit for Deconstruction of Unit.

Attorney Bill Conti appeared before the Board on behalf of Alain Jacques and Jacqueline Jacques. The Certificate of Mail receipts were submitted, providing evidence that the abutting property owners had received notice of the public hearing. Additionally, the original legal notice from July, 2019 was submitted as Attorney Conti noted that this hearing had been continued. He also distributed copies of the 2017-2019 Assessor's cards for the subject property. Copies of the 2017 ZBA application were also provided to the Board by Attorney Conti. Documents from Torrington Area Health District (TAHD) and copies from an electrician were also submitted. The original application was also provided by him.

Attorney Conti explained that he had submitted copies of the Assessor's cards to demonstrate that his clients had been paying property taxes on the 1008 square foot accessory apartment over the garage. He indicated that his argument was based on estoppel, noting that his clients have lived in this home for twenty-two years and that his clients have been paying taxes for all this time. Attorney Conti argued that someone had gone into this property and noted that there was a unit and had therefore taxed the owners.

Alternatively, Attorney Conti, noted the issue then transfers to enforcement and questioned what power under the general statutes does the Zoning Enforcement Officer have. He noted that the Town's ZEO is ordering a dismantle of the apartment. Attorney Conti reported that his clients are elderly and are planning on marketing the property. He explained that they only reside in the subject apartment for three or four weeks per year as they have other homes in Maine, Canada, and Florida. Attorney Conti requested the Board to delay the dismantling of the apartment should they be inclined to not approve the variance request. He opined that part of the ZEO's order exceeds his authority statutorily.

Referring to the 2017 agenda that was provided by Attorney Conti, Mr. Marino questioned what the result of that application was. Attorney Conti indicated that the application was denied. Mr. Marino questioned whether this application was filed prior to the apartment being built or after it was built. Attorney Conti noted that the 2017 application was after the apartment was built. Mr. Hunt questioned how the apartment would be legal without building permits to construct it. Attorney Conti agreed but noted that the Town continues to collect tax revenue on it. Mr. Hunt and Mr. Marino questioned who occupies the apartment. Attorney Conti noted that his clients, the applicants, do. Mr. Marino questioned what year the apartment was built. Mr. Jacques indicated that it was built twelve years ago. Mr. Wilkes questioned how the electric and plumbing would be inspected if the drywall has already been installed. Attorney Conti noted that it would be a more difficult issue.

Mr. Melanson distributed packages to the Board that he characterized as a timeline of events according to the Town's records which included the following:

- A copy of the 1998 variance to build a garage with a second floor to be used for storage only. He noted that it included language, "*Not to be used for living space.*" Copies of the building drawings along with the application were included with this;
- A copy of the Zoning Permit that had been applied for and granted at the time of the original building permit for the garage. Mr. Melanson noted that the approval noted the condition that it was granted pursuant to the variance granted August 25, 1998. He noted that the building permit accompanied an electrical permit to wire the garage along with a set of drawings.
- Copies from the 2017 realtor.com listing that showed pictures of the apartment and description of the property;
- Notice of Violation, under the Building Codes, sent to the owners in March, 2017. Mr. Melanson noted that a response was provided by them;
- A Special Permit application submitted in 2017 along with a copy of the minutes from that meeting and a copy of the letter denying the request;
- A copy of the Variance application, a copy of the meeting minutes, and the August, 2017 denial letter;
- A copy of the letter from 2019 to the owners, outlining to them, the necessary building modifications for the garage in order to be in compliance;
- A copy of Connecticut General Statutes Section 8-12, which Mr. Melanson noted authorizes him to enforce the Zoning Regulations; and
- A copy of the Connecticut General Statutes Section 8-6, which outlines the powers and duties of the Zoning Board of Appeals, which Mr. Melanson noted was namely to hear appeals.

Mr. Melanson noted that he, as Building Official, had only inspected the foundation and the electrical work for the garage itself. He noted that there was no Certificate of Occupancy for the upstairs space.

Attorney Conti noted that the minutes reflect the town's attorney Kevin Nelligan had concurred that the deck was grandfathered due to C.G.S. § 13-a, in terms of its location.

Mr. Melanson noted that he has issued violation letters to the owners previously and this appeal was the first and only appeal ever received.

The hearing was open to the public. No comments were received.

Attorney Conti reiterated that the Town has been collecting taxes on this space for years.

Mr. Wilkes questioned whether the 1998 permit indicated that there should be no living space and whether the letter specified it. Mr. Melanson noted the approval letter and the variance on the land records all indicated that there should be no living space about garage.

The hearing was closed to the public.

Mr. Marino noted that the claim that the property owners had been paying taxes on the space for years was not supported with what was submitted.

MOTION: Mr. Massicotte, Mr. Hunt second, to uphold the Zoning Enforcement Officer's decision; unanimously approved.

B. ZBA #19-5224 Variance Location: 11 Brook Street Owner/Applicant: Carol D. Osborn & Kimberly Ann Gilbert Proposal: Construct Roof Over Back Deck.

Kimberly Gilbert and Carol Osborn appeared before the Board regarding this application. Copies of the certificate(s) of mail, serving as evidence that notice of the public hearing had been provided to the abutting property owners, were submitted. Ms. Gilbert reported that the proposal to construct a roof over their back deck was necessary because of the roof mounted solar system. She distributed photographs showing the dwelling and the site conditions. She explained that during the winter months, the snow slides off the roof and will sometimes hit them in the head as they're shoveling. Ms. Gilbert also noted that when the snow piles up, it necessitates them climbing out their first floor windows. Ms. Gilbert explained that they can't go out their front door due to the icy conditions that occurs there and the slope of the land on that northerly side of their parcel.

Ms. Gilbert submitted a letter from the abutting neighbor, Bill Lamoin, owner of Swell's Car Wash next door, who indicated he had no objection with the proposal. Mr. Marino questioned the size of the deck. Ms. Gilbert noted that it was 13'x16'. Mr. Massicotte questioned how the roof will be constructed. Ms. Gilbert explained that it will be a metal roof.

The hearing was open to the public.

Jack Bourque of 78 Crown Street spoke in favor of the application, concurring with the safety concern with the snow falling off the roof.

The public hearing was closed.

MOTION: Mr. Hunt, Mr. Marino second, to approve variance application #19-5224, for a variance from Section II.A.b, for a rear yard setback variance of nineteen feet, for the purpose of putting a roof over an existing 13'x16'deck for the property located at 11 Brook Street; unanimously approved.

C. ZBA #19-5225 Variance Location: 146 Shore Drive Applicant: Anthony Anzellotti Owner: Barbara Anzellotti Family Trust Proposal: Variance for Wall, Patio, Shed, and Fence.

Attorney Bill Conti appeared before the Board regarding this application, noting that his client is a disabled Vietnam War veteran with PTSD who was out of state for this meeting. Copies of the certificate(s) of mail, serving as evidence that notice of the public hearing had been provided to the abutting property owners, were submitted. Attorney Conti submitted photographs of the site, copies of CGS§8-13a, case law regarding the three-year rule, explanation why the variance was requested, and a letter from the neighbor at 144 Shore Drive indicating no objection to the proposal.

Attorney Conti explained that the wall was constructed due to the topography. He noted that his client has agreed to modify the wall to make it shorter. He explained that the patio exceeded the maximum impervious surface despite his client having thought that it had been installed correctly. With regards to the sheds, Attorney Conti opined that these have been at the site so long that they ought to be considered legally non-conforming. He explained that the fence was installed when his client's wife had been ill to provide her privacy. Attorney Conti noted that the other neighbors liked the fence, too, and that as it had been there twelve years, it too was legally non-conforming. Attorney Conti explained that the impervious surface numbers are such because of the gravel, rather than mulch, in the walkways. He attributed this to the topography, too.

Mr. Melanson explained that there had been a complaint about the wall which prompted a review of the site. He noted that CGS§8-13a pertains to location and setbacks but does not address impervious surface coverage.

The hearing was open to the public.

Nicole Salvatore of 148 Shore Drive noted that she was the complainant on the wall. She presented with copies of the wall prior to the wall being heightened and then this past April of 2019. She requested that the shed at the end of the driveway be relocated, reporting that it has also been moved making it difficult to back up her car.

The public hearing was closed.

MOTION: Mr. Hunt, Mr. Massicotte second, to approve variance application #19-5225, for a variance from Section I.G.b.ii. Impervious surface for a variance of 6%, from Section I.G.d.iii.b. Fence height not to exceed six (6') feet for a variance of one (1') foot, from Section I.G.d.iii.b. Fence design to be semi-open for a variance to allow three solid fence sections, from Section I.G.d.iii.b. Wall height not to exceed six (6') feet for a variance of one (1') foot, from Section 1.G.d.iii.d. Wall height within twenty (20') feet of lake not to exceed thirty-six (36") inches for a variance of six (6") inches, from Section I.G.d.iii.g. Walls and fences to be at least two (2') feet from the property lines for a variance to allow the wall on the property line, from Section I.G.d.ii, for a Northeast side yard setback variance of 34.8 feet, from Section I.G.d.ii, for a frontyard setback variance of a variance of 15 feet, for the purpose of building stone walls, putting up a fence and putting a shed on the property as per survey submitted for the property located at 146 Shore Drive;

MOTION TO MODIFY: Mr. Marino, Mr. Hunt second, to modify to strike the following, *“from Section I.G.d.iii.b. Wall height not to exceed six (6') feet for a variance of one (1') foot, from Section 1.G.d.iii.d. Wall height within twenty (20') feet of lake not to exceed thirty-six (36") inches for a variance of six (6") inches”* and adding the following condition, *“Stone wall to be flush with existing grade...”*; motion to modify approved unanimously.

Modified Motion Approved Unanimously.

Mr. English exited the meeting at 8:45PM.

D. ZBA #19-5226 Variance Location: 132 Wahnee Road Applicant: Dave Stricker Owner: Camp Wah-nee in the Berkshires, Inc. Proposal: Variance for Impervious Surface Coverage for New House and Addition to Fitness Center.

Dave Stricker appeared before the Board regarding this application. Copies of the certificate(s) of mail, serving as evidence that notice of the public hearing had been provided to the abutting property owners, were submitted. Mr. Stricker explained that he was looking to replace the existing house with a new house and a ten-foot patio with building space. He also explained how the fitness center was too small for today's fitness standards, noting that kids are waiting for equipment and that a place to do cycling, an area for free weights, and space for yoga are all needed. Mr. Stricker noted that most of the buildings are counted as impervious surface despite many of them not having foundations. He explained that the rain flows under the building and hits the ground.

Mr. Marino questioned what was allowed for impervious surface coverage versus what was being requested. Mr. Melanson explained that 15% is allowed and what was being requested was 19.9%. Mr. Stricker pointed out that the coverage is not merely due to this current project, explaining that the increase through this project is negligible, less than .1 percent.

The hearing was open to the public. No comment was received. The public hearing was closed.

MOTION: Mr. Hunt, Mr. Marino second, to approve variance application #19-5226, for a variance from Section II.F.b.ii, for a maximum impervious Surface Coverage of 4.9%, for the purpose of rebuilding a residence and putting an addition on the fitness center, for the property located at 132 Wahnee Road; unanimously approved.

E. ZBA #19-5227 Variance Location: 407 West Wakefield Boulevard Applicant: Matthew Closson Owner: Fridriksson Bjorgvin Proposal: Variance for Shed on Lakeside Property.

Matthew Closson appeared before the Board regarding this application. Copies of the certificate(s) of mail, serving as evidence that notice of the public hearing had been provided to the abutting property owners, were submitted. Mr. Closson reported that his client has proposed construction of a shed on the lake side of this property and that he had already received approval from the Inland Wetlands and Watercourses Commission.

Mr. Massicotte questioned whether the shed will have connections to water and power. Initially, Mr. Closson noted that it would not but then clarified that his client may want electricity at some point. Mr. Marino questioned whether the property has a dock. Mr. Closson noted that eventually one will be added as the IWWC approved a cantilever system that will likely be installed during the deep drawdown.

The hearing was open to the public. No comments were received. The public hearing was closed.

MOTION: Mr. Hunt, Mr. Massicotte second, to approve variance application #19-5227, for a variance from Section II.G.a, to allow an accessory use without a primary use, from Section II.G.b.ii, for a frontyard setback variance of 44.7', from Section II.G.b.ii, for a Northerly side yard setback variance of 29.5', and from Section II.G.b.ii, for a rear yard setback variance of 29.8' for

the purpose of building a 15'x12' storage shed on the water side of the road, as per the drawings submitted, for the property located at 407 West Wakefield Boulevard; unanimously approved.

F. ZBA #19-5228 Variance Location: 399 Winchester Road Applicant/Owner: Heather Frost Proposal: Variance for Addition to Front of Dwelling.

Andrew Solgovic accompanied by his client Heather Frost appeared before the Board regarding this matter. Mr. Solgovic described the proposed improvements and noted that there had been one call received from a neighbor. Ms. Frost noted that the neighbor wanted to be sure that he would not see the addition from his parcel.

The hearing was open to the public. No comment was received. The public hearing was closed.

MOTION: Mr. Hunt, Mr. Marino second, to approve variance application # 19-5228 , for a variance from Section II.F.b.ii, for a frontyard setback variance of 4.4', for the purpose of building a 10.5'x18.8', one-story addition and a 20.9'x 16' deck on the front of the residence, as per the drawings submitted, for the property located at 399 Winchester Road; unanimously approved.

4. OLD BUSINESS:

None.

5. APPROVAL OF MINUTES – SEPTEMBER 24, 2019:

MOTION: Mr. Hunt, Mr. Marino second, to approve the September 24, 2019 Minutes; Motion passed with Mr. Allen, Mr. Hunt and Mr. Marino voting aye while Mr. Massicotte and Mr. Wilkes abstained.

6. BILLS PRESENTED:

None.

7. CORRESPONDENCE:

None.

8. OTHER BUSINESS:

A. Approve 2020 Calendar.

MOTION: Mr. Hunt, Mr. Marino second, to approve the 2020 meeting dates as presented; unanimously approved.

9. DISCUSSION WITH ZONING ENFORCEMENT OFFICER:

None.

10. ADJOURNMENT:

MOTION: Mr. Hunt, Mr. Massicotte second, to adjourn at 9:18PM; unanimously approved.

Respectfully submitted,

**Pamela A. Colombie
Recording Clerk**