



**TOWN OF WINCHESTER ZONING BOARD OF APPEALS**  
**Town of Winchester Town Hall, 338 Main Street**  
**P. Francis Hicks Room – 2nd Floor**  
**November 27, 2018 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 Pollack, Hal Wilkes, and Alternate Paul Marino.

John Massicotte and Alternate Aubrey English were absent.

Also, present for this meeting was Zoning Enforcement Officer Marc Melanson.

Mr. Marino was seated for Mr. Massicotte.

**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.

**3. PUBLIC HEARINGS – VARIANCE APPLICATIONS & DECISIONS:**

**A. ZBA #18-5199 Appeal from ZEO Decision Location: 2 East Lake Street  
Owner/Applicant: LaPointes Floor Covering and Design Proposal: Appeal of Notice of  
Cease and Desist Order Dated 6/25/2018.**

Ron LaPointe was present, accompanied by Attorney James Steck and consulting Planner Martin Connor, regarding this application. Attorney Steck referring to the order issued by former Director of Planning and Community Development Steve Sadlowski regarding shipping containers located on the site, noted that they had been moved from a non-conforming location to a conforming area on the northern border. Attorney Steck explained that the second point raised in the appeal was the outside storage of materials.

Attorney Steck submitted an A2 survey from April, 2017 that had been recently done as part of a Special Permit application to the Planning and Zoning Commission. He panned in on the survey where the applicant has indicated the shipping containers were previously and where they were relocated. Attorney Steck submitted Google satellite images dating back to 2010, that he noted would prove the location of them.

Attorney Steck submitted a photograph of the building as it was built in 1955. He also submitted photographs where a truck was parked to represent the location of where the shipping containers had been previously prior to them being moved.

Attorney Steck submitted information on a court case, Hinkley v. Prospect Zoning Board of Appeals, relative to a dispute between two neighbors over the non-conforming location of a shed. He explained that the Town had ordered the property owner to seek a Zoning Permit prior to moving it but that the court found that unnecessary as the relocating resulted in the shed as less non-conforming. Attorney Steck noted that there was a reasonableness factor considered, noting that it was not okay to move the shed across the property, but it was okay to bring it into the envelope of the setbacks. He noted that his client used the 2017 survey depicting the setbacks to locate the shipping containers outside the setbacks.

Mr. Pollack questioned the side of the shed in the Hinkley case. Attorney Steck noted that the case did not indicate the size of the shed.

Referring to outside storage, Attorney Steck noted that he was unable to find any language within the Zoning Regulations expressly prohibiting outside storage materials. Attorney Steck indicated that as the use has been grandfathered, the outside storage is a customary accessory use to the property. He referenced retail stores like Home Depot and Lowe's, who also sell flooring, have outdoor storage like that of his client's.

Martin Connor, identifying as the City Planner for Torrington with over thirty years of experience in planning, and having served as a consulting planner for Barkhamsted, Burlington, Goshen, New Hartford and even Winchester in the past, submitted a copy of a letter he then read aloud to the Board. He noted that the structures have been on the property for more than three years and are therefore deemed preexisting, non-conforming pursuant to Connecticut General Statutes Section 8-13a.

Attorney Kevin Nelligan, representing the Town of Winchester, was present to counsel this Board regarding procedure.

Mr. Melanson noted that the survey submitted by the applicant did not reflect the shipping containers and must have been removed thereby eliminating the claim that they were preexisting, non-conforming. He noted that even if structures are preexisting, non-conforming, a zoning permit would still be required in order to move them. Regarding outdoor storage, Mr. Melanson noted that the Zoning Regulations are permissive regulations and unless it is noted, the use is not allowed. He noted that while outdoor storage is indeed allowed in other zones within Town, it is not allowed in the Highland Lake Business District.

Additionally, the field cards submitted by the applicant only reflect one outdoor shed, according to Mr. Melanson.

Mr. Melanson reported that the May, 2018 emails from the neighbor, MaryAnn Lauretti, to Mr. Sadlowski complaining about the containers along with the pictures she had provided, have been provided to the Board. Additionally, copies of a friendly letter from Mr. Sadlowski in May, 2018 suggesting that Mr. LaPointe submit an application for the relocating of the containers and the outside storage, was noted as having been provided to this Board.

Mr. Pollack questioned whether there was only the one complaint received. Mr. Melanson noted that enforcement occurs when violations of the regulations are noted regardless of whether there are any complaints.

Discussion ensued regarding the requirement for a zoning permit even when relocating a building to a less nonconforming area. Reference was made to III.C.4.E. Common Regulations: Non-Conforming Uses, Buildings/Structures, Lots: Nonconforming Structures: “...A non-conforming structure shall not be moved to any other location on a property unless the structure conforms to all applicable sections of these Regulations after it is moved...”

Mr. Connor noted that the outdoor storage is also preexisting nonconforming. Mr. Melanson noted that the outdoor storage at the site is continuing to grow.

The hearing was open to the public. No comments were made. The hearing was closed at 8:10PM.

**MOTION:** Mr. Allen, Mr. Marino second, to uphold the decision of the Zoning Enforcement Officer based on materials presented as to the normal processes of zoning permits and the uniform application of the Zoning Regulations; Motion passes with Mr. Allen, Mr. Marino, and Mr. Wilkes voting aye while Mr. Hunt and Mr. Pollack were opposed.

Prior to the vote on the motion, the Board discussed whether outdoor storage was allowed in the Highland Lake Business District. At one point, the Commission weighed tabling their decision to allow the applicant to return with documentation showing how the new locations of the containers would meet the regulations.

**B. ZBA #18-5203 Special Permit (Modification of ZBA#16-5180) Location: 178 Shore Drive Applicant: Coldfire Mechanical, LLC Owner: One Hundred Seventy-Eight Shore Drive Proposal: Construct 13’3” x 25’7” Roof Over Existing Deck.**

Mike Ruzbasan and Dan Alves appeared before the Board regarding this application. It was explained that the applicants have already gained approval to enclose a portion of the existing deck and to add additional decking but that the owners would rather only cover with roofing the deck. It was noted that this is an existing deck. Mr. Alves noted that the existing parking will be converted to pervious pavers.

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

**MOTION:** Mr. Hunt, Mr. Wilkes second, to approve Application #18-5203 to modify Special Permit #16-5180, to not convert an existing deck into living space and to construct a 13’ 3” x 25’ 7” roof over the existing deck per the drawings submitted for the property located at 178 Shore Drive; unanimously approved.

#### **4. NEW BUSINESS.**

None.

#### **5. APPROVAL OF MINUTES – September 25, 2018:**

**MOTION:** Mr. Allen, Mr. Hunt second, to approve the September 25, 2018; unanimously approved.

#### **6. BILLS PRESENTED:**

None.

#### **7. CORRESPONDENCE:**

None.

**8. OTHER BUSINESS:**

**A. 2019 Regular Meeting Schedule.**

**MOTION:** Mr. Allen, Mr. Pollack second, to approve the 2019 Regular Meeting Schedule as presented with the addition of a December 17, 2019 meeting; unanimously approved.

**B. Corrective Action to Clarify Address on Variance ZBA#03-4861.**

It was noted that a variance issued previously had incorrectly listed the wrong address.

**MOTION:** Mr. Allen, Mr. Hunt second, to correct Variance #03-4861, noting the approval granted was for only Map 030 Block 154 Lot 031 also known as 102 Stonehouse Road; unanimously approved.

**9. DISCUSSION WITH ZONING ENFORCEMENT OFFICER:**

None.

**10. ADJOURNMENT:**

**MOTION:** Mr. Hunt, Mr. Marino second, to adjourn at 8:45PM; unanimously approved.

**Respectfully submitted,  
Pamela A. Colombie  
Recording Clerk**