



TOWN OF WOODBURY
Zoning Board of Appeals
281 Main Street South
Woodbury, CT 06798
203.263.3467 ▪ www.woodburyct.org

MEETING MINUTES – OCTOBER 16, 2023
Shove Building, 281 Main Street South

MEMBERS PRESENT

Mike Novak, Chairman
Robert Ratzenberger
Claudette Volage

ALTERNATES PRESENT

Jacob Amorando
Jane Donn
Vincent Farisello

MEMBERS ABSENT

Joe Donato
Adam Goldberg

OPENING OF MEETING

- Call to Order –Chairman Novak called the meeting to order at 7:35 p.m.
- Seating of Members / Alternates – Seated for the meeting were regular members Novak, Ratzenberger, Volage and Alternates Amorando & Donn (*who arrived late*)
- Chairman Noak reminded the members of Conflict of Interest. No member expressed a conflict.

PUBLIC HEARINGS – None

OTHER BUSINESS / CORRESPONDENCE – None

DELIBERATIONS / DETERMINATIONS:

23-ZBA-0003 – 361 Rail Tree Hill Road / Map 54, Lot 3C-5 / OS-100 District / Appeal of Zoning Enforcement Officer May 31, 2023, Cease and Desist Order (22-ENF-0018 regarding the unauthorized use of the premises in violation of Zoning §1.3.1.2 and §4.1.1.5C as a non-permitted transient visitor lodging facility). Daniel T. and Francesca K. Lisk (appellant/owner).

MOTION:

To open discussion on item 23-ZBA-0003 – 361 Rail Tree Hill Road / Map 54, Lot 3C-5 / OS-100 District / Appeal of Zoning Enforcement Officer May 31, 2023, Cease and Desist Order (22-ENF-0018 regarding the unauthorized use of the premises in violation of Zoning §1.3.1.2 and §4.1.1.5C as a non-permitted transient visitor lodging facility). Daniel T. and Francesca K. Lisk (appellant/owner).

Moved by **RATZENBERGER**, Seconded by **VOLAGE**

Vote: 4-0-0 – **Approved** – Motion Passed

Aye Amorando, Novak, Ratzenberger, Volage

Nay None
Abstain None

Chairman Novak began the discussion and noted that it is the applicant's position that this is a permissible use referring to the Wihbey court cases. The Town's position is that this is a new use. Short term vacation rentals (such as Airbnb) are a new concept and since it is not specifically permitted it is prohibited by the regulations.

Member Volage questioned if the supreme court had decided on the outstanding case(s). It is unknown, but it would not affect what the Board has to do with this appeal. Member Volage expressed that the way the regulations read now, if it is not permitted, it is prohibited.

Alternate Amorando questioned if there was a regulation that specifically states this. Section 1.3.1.2 was noted "Uses of land, buildings or structures not specifically permitted in the various zoning districts are prohibited." Member Volage stating that if that is how it is now, that is what they have to go by.

Member Ratzenberger noted that this is a residential area. He felt that if you are a resident, you are taking up residence, you are getting your mail there, you set up home there. If you take up home there you are a resident, it is not a vacation place. Member Ratzenberger also reiterated Section 1.3.1.2 that if it is not permitted, it is prohibited and restated it is a residential area.

Chairman Novak agreed with Member Ratzenberger also looking at Section 8.3 for the criteria the Board uses when they look to vary the regulations. It talks about the integrity and heart of the neighborhood. This is a new concept that the regulations haven't quite caught up with. He felt Section 1.3.1.2 is clear. Being consistent with public welfare, the overall impact on the neighborhood, and character of the neighborhood he felt that has been a consistent position of the Board and what they need to consider.

Alternate Amorando questioned if the applicant's goal was to rent for a short period of time. It was noted that the property owners were okay with not offering short term rentals, they had stopped when the Cease and Desist was issued but they felt that it should be enforced consistently throughout the Town. They shouldn't be held to a different standard than anyone else. It was noted that this came about from a neighbor complaint. It was agreed by the members that if there was a decision to not allow this use, then the Town should move forward with looking at and enforcing the others (short term rentals) in town. Alternate Amorando asked if they could rent for longer term. Members briefly touched on the question of rental timeframe, Chairman Novak feeling that it cannot be for transient stays of two weeks or a month. Member Volage reminding that the Town stated that the length of time was not compatible with the intended use, the intended use needs to be clear and this type of rental is not for residential use.

As it seemed they had a consensus, Chairman Novak proceeded to note items to be included in the structure of the motion:

- Use not intended to be residential.
- Residential area means you are taking up residence.
- Harmony and integrity of the neighborhood needs to be considered.

- Section 1.3.1.2 if it is not permitted, it is prohibited.

It was questioned how they enforce this whole issue. This is not the Board's jurisdiction to enforce, that is on the Zoning Enforcement Officer. The Board applies it as a ruling and vary the regulations as minimally required as they see fit. Alternate Amornado questioned the end outcome of this decision. As this is an appeal of the Zoning Enforcement Officer's decision, the Zoning Board of Appeals will vote to support it by denying the appeal or sustain the appeal which would reverse the Enforcement Officer's decision.

It was discussed if they needed to decide at the meeting. The hearing was closed. They could extend until the November meeting if they feel they need more time to consider a decision.

They would either deny or affirm the cease and desist order for unauthorized use of the premises in violation of Zoning §1.3.1.2 and §4.1.1.5C as a non-permitted transient visitor lodging facility.

Member Donn arrived at the meeting at 7:47 p.m. and was seated for the meeting.

It was noted that they could uphold the cease and desist, but it could get overturned by the Supreme Court decision. It was discussed what happens if they deny the appeal and the regulations are amended to make it a permitted use. The Board needs to be reviewing this as the regulations are currently. If it becomes permitted by the regulations, then it would no longer be prohibited. Should regulations be made to address this concept, there would most likely be conditions added as well. That would be up to the Zoning Commission.

Chairman Novak brought Member Donn up to speed with what they had discussed prior to her arrival. Reiterating 1.3.1.2 not being a permitted use, it is prohibited and that an Airbnb-type use is not intended to be residential, it is transient. Alternate Donn reminded that Attorney Kaelin had brought up that this was not a residential use of property several times during the public hearing.

It was noted that the property owners had stopped their Airbnb listings after receiving the Cease and Desist order, and since they have not advertised for anything less than a 30-day stay. At the public hearing Attorney Pilicy had questioned the definition of short term rental, suggesting the potential problems with associating specific timeframes.

Alternate Donn felt that the Wihbey case was different than this one, indicating there was reference to residential use in this one.

Member Ratzenberger did not feel that the Supreme Court decision should affect what they do, the outcome is unknown as is when it will be decided. The Board is deciding on what they have in front of them.

Consensus of the Board was to deny the appeal and support the Zoning Enforcement Officer's decision for the criteria noted during the meeting.

MOTION:

After careful consideration of 23-ZBA-0003 – 361 Rail Tree Hill Road / Map 54, Lot 3C-5 / OS-100 District / Appeal of Zoning Enforcement Officer May 31, 2023, Cease and Desist Order (22-ENF-0018 regarding the unauthorized use of the premises in violation of Zoning §1.3.1.2 and §4.1.1.5C as a non-permitted transient visitor lodging facility). Daniel T. and Francesca K. Lisk (appellant/owner) the Board denies the appeal based upon sections 1.3.1.2 which says, "Uses of Land, buildings or structures not specifically permitted in the various zoning districts are prohibited" and further the Board felt that the use of transient rentals would create negative impact to the harmony and integrity of the neighborhood and that the type of use is not intended to be residential in nature.

Moved by **RATZENBERGER**, Seconded by **DONN**

Vote: 5-0-0 – **Approved** – Motion Passed

Aye Amorando, Donn, Novak, Ratzenberger, Volage
Nay None
Abstain None

ADMINISTRATIVE Meeting Minutes – 09/18/23

To accept the minutes of the September 18, 2023, meeting as written.

Moved by **VOLAGE**, Seconded by **DONN**

Vote: 5-0-0 – **Approved** – Motion Passed

Aye Amorando, Donn, Novak, Ratzenberger, Volage
Nay None
Abstain None

PRIVILEGE OF THE FLOOR – Following the decision on the previous application those present had left the meeting.

ADJOURNMENT

MOTION:

To adjourn the meeting at 7:59 p.m., made by Chairman Novak with no objections.

Respectfully Submitted,
Anne Firlings
Anne Firlings, ZBA Clerk

RECEIVED & FILED
IN WOODBURY, CT
This 18th day of Oct 2023
at 3:56 o'clock P M
Maria Mancini
Town Clerk