



TOWN OF WOODBURY

Zoning Board of Appeals

281 Main Street South
Woodbury, CT 06798-0369
(203)263-3467 ~ www.woodburyct.org

PUBLIC HEARING/REGULAR VIRTUAL MEETING MINUTES March 15, 2021 – 7:30 P.M.

MEMBERS PRESENT

Joe Donato
Mike Novak
Bob Ratzenberger

ALTERNATES PRESENT

Vincent Farisello
Deborah Schultz

MEMBERS ABSENT

Adam Goldberg
Claudette Volage

ALTERNATES ABSENT

Jane Donn

ALSO PRESENT: Maryellen Edwards, Archie Tracy, Mike Lanese, Lisa Turoczi, Matt Rink and interested members of the public

REGULAR MEETING

Call to Order – Chairman Donato convened the virtual meeting at 7:39 p.m.

Seating of Members & Alternates/Conflict of Interest –Seated for the meeting were regular members Donato, Novak, Ratzenberger, and Alternates Farisello and Schultz. Reference to Conflict of Interest was made, Vincent Farisello recusing himself from the 21-ZBA-2101 / 420 Sherman Hill Road application. No other conflicts were heard.

PUBLIC HEARING

21-ZBA-2101 / Linden 40 LLC (Tracy/Lanese, Members) / 420 Sherman Hill Road / Variance Request to Vary the Regulation Section 4.1.1.4 Allowing Two Dwellings on the Property without the Required Lot Size / Map 004 / Lot 004

(Alternate Farisello recused himself from the discussions regarding this application)

Archie Tracy and Michael Lanese were present for the application. Mr. Lanese stated that they were just trying to keep it the way it was, not changing anything. It was built in built in the 1950s. When he purchased the property someone was living there and it had the appearance that it was a dwelling with full bathroom, kitchen, shower, a bedroom, and a living room. He stated he went to the town and asked questions before purchasing. They are in the process of trying to sell the property, but people are deterred because they are told they cannot live in the “cottage.” Mr. Lanese exclaimed that people have been and are living in it. Chairman Donato noted that they are looking at a variance on the regulation that requires a certain amount of square footage to allow two dwellings on one lot. He asked if this was a continuance of use as a dwelling or was it something else. It was asked if a CO was ever obtained for someone to live there. Mr. Lanese didn’t know he needed one, someone was already living there. The applicants purchased the property in 2018. There is a greenhouse, a storefront, an ice cream parlor, and the cottage all on the same property. Chairman Donato noted those aren’t in question, that they are

looking at two dwellings on one property. Member Novak stated they need to differentiate between a structure and a dwelling, a greenhouse for instance is not a dwelling. Archie Tracy noted that they purchased the property not knowing it needed a CO for this use, as someone had been living there for years. They are looking to bring it up to code. He felt this was grandfathered in. They didn't do anything to the property, except for installing new appliances and things like that. People do not want to purchase the property without this being a dwelling. There was heat, toilet, electric, gas there prior to their purchase. He felt they could not "win" on the land usage, so were trying to "win" on what was there before. Member Novak questioned how a structure noted as an office became a dwelling. Archie Tracy noted that someone before them had made it a dwelling, apparently without the proper permits and they are trying to get it up to code. Member Novak appreciated this, however, questioned why it needed to be a second dwelling. It's a residential area with a commercial use. Mr. Tracy stated that it is income producing. They may not have done their due diligence before purchasing the property. Member Ratzenberger noted the issue is the square footage to put two dwellings on the property, not a CO. The size of the property is not large enough to support two residences. There was not a CO, it was listed as an office, not a dwelling. Mr. Lanese reiterated that the structure has been there since the 50s and someone has lived there for years. There is an 1800 sq ft house that sits up on the knoll. None of the neighbors are opposed to this. Chairman Donato reminded that they are ruling on varying the lot size for two dwellings. Alternate Schultz questioned the septic on the hand drawn map provided by the applicant and whether it was separate septic systems or one for each building. Mr. Tracy was unsure. Mr. Lanese stated that he was told that a very large septic system was installed for the cottage and the two stores and the house has its own septic in the back. A memo was noted as being received from the Building Official. There was discussion about the septic capacity. Chairman Donato noted they are not responsible for the septic approvals; their review is focused on whether to vary the regulation regarding two dwellings on this property. Mr. Tracy noted that neighbors were informed of this application and no one has spoken in favor or against it. The variance should be allowed since the dwelling has been there for a long period of time. Member Novak stated they are claiming that the dwelling has always been there but according to the tax records it has been taxed as a single-family dwelling since 1969. Member Ratzenberger felt the purchaser should have done their due diligence before buying the property and the onus was on the purchaser. The applicant's claimed to have gone to the town, but they didn't get anything in writing, record it or have an attorney look at it. Chairman Donato explained the public hearing process to the applicants. Mr. Lanese reiterated that he did do his due diligence in going to the town and asking questions and didn't feel the need to question the legality of the dwelling since someone was living there already. He was assured that if he kept it as it was, he wouldn't have a problem. Member Novak read the Building Officials letter with respect to the septic system that would be required and did not feel comfortable moving forward with approving this without knowing if they could get the proper septic system. Perhaps they could deny without prejudice until they get approvals for the septic system. The Building Officials memo was referred to regarding the sanitarian's comments that an approval from the state would be required if they changed to two dwellings on the property. Mr. Tracy questioned who would be harmed by this approval.

MOTION:

To close the public hearing on application 21-ZBA-2101 (*Linden 40 LLC (Tracy/Lanese, Members) / 420 Sherman Hill Road / Variance Request to Vary the Regulation Section 4.1.1.4 Allowing Two Dwellings on the Property without the Required Lot Size / Map 004 / Lot 004*)

Made by Member Ratzenberger, Seconded by Member Novak

Vote: 4-0-0 in favor

REGULAR MEETING (Continued)

NEW APPLICATIONS

21-ZBA-2102 / Hine (owners), Turoczi (agents) / 233 Weekeepemee Road / Variance Request of Section 4.2 to Allow Property Side Setback 20 ft. instead of 40 ft. / Map 040 / Lot 035

Lisa Turoczi, agent for the applicants, was present for the discussion. She explained that the owners went to the Wetlands Agency to build a barn near to existing animal fencing and were denied. A site plan showing the location of where they tried to put the barn and where they are suggesting putting it now was reviewed by the Board. The house is located close to the road and the septic is on the other side. A different location was approved by the Wetlands Agency. An existing drainage ditch and crossing was noted. Ms. Turoczi stated that if they had the extra 20' to work with, the barn would fit. This would benefit them as they can keep an eye on the animals and the barn. She stated that the neighbors are not opposed to the construction. Trees will be planted between the houses. Barns exist in the area. Chairman Donato confirmed that their hardship is the "lay of the land" and the constraints put in place by the Inland Wetlands Agency. Ms. Turoczi stated they are a certified farm and need housing for the animals. Member Novak suggested that they stated they needed space for the animals, at the public hearing, they should be ready to address where the space for the animals was prior.

MOTION:

To accept application 21-ZBA-2102 (*Hine (owners), Turoczi (agents) / 233 Weekeepemee Road / Variance Request of Section 4.2 to Allow Property Side Setback 20 ft. instead of 40 ft. / Map 040 / Lot 035*) for a public hearing at the next regularly scheduled meeting April 19, 2021.

Made by Alternate Farisello, Seconded by Member Novak

Vote: 5-0-0 in favor

21-ZBA-2103 / Braxton Mfg Co. Inc. (owners), Rink & Bader (applicants) / Special Permit for Change of Use from Existing Non-Conforming Use as Metal Manufacturing to Woodworking, Carpentry Shop & Office Sec. 9.6.1.3 (8.5 & 9.6.2.3) / Map 040 / Lot 045A

Matt Rink was present for the application. This was a metal manufacturing shop, and they want to convert it to woodworking, carpentry, and office. They do not currently own the building. Mr. Rink and his wife own an architectural and millwork business and are looking to potentially move the business to this location. It is an existing nonconforming use. Member Novak noted that nonconforming uses can be extended and continued but not increased. They should be prepared to speak to how this use will not be more intensive of a use. Mr. Rink questioned how they could best exemplify this and if there were examples that they could refer to. Member Novak suggested the example of Town and Country Glass. They could compare the chemicals used, noises, hours of operation, number of cars, etc. to show how the use associated with the business could be less. The Board would be looking for how the intensity of this use is different or how it is this the same or less intensive.

MOTION:

To accept application 21-ZBA-2103 (*Braxton Mfg. Co. Inc. (owners), Rink & Bader (applicants) / Special Permit for Change of Use from Existing Non-Conforming Use as Metal Manufacturing to Woodworking, Carpentry Shop & Office Sec. 9.6.1.3 (8.5 & 9.6.2.3) / Map 040 / Lot 045A and schedule a public hearing*) for the next regularly scheduled meeting April 19, 2021

Made by Member Ratzenberger, Seconded by Member Novak

Vote: 5-0-0 in favor

PENDING APPLICATIONS

21-ZBA-2101 / Linden 40 LLC (Tracy/Lanese, Members) / 420 Sherman Hill Road / Variance Request to Vary the Regulation Section 4.1.1.4 Allowing Two Dwellings on the Property without the Required Lot Size / Map 004 / Lot 004

(Vincent Farisello recused himself from the discussion).

Chairman Donato was not convinced that this use was grandfathered in. He reminded the Board that the Draft Zoning Regulations being proposed may bring this property into conformance. However, they are just a draft, not approved. Alternate Schultz noted a bill that the state wanted to take over zoning regulations. Reference was made to more affordable housing. One way to do this is, having two dwellings on one piece of property. She also expressed concerns with the wording on the memo from the Building Official. When the permit was filed, the applicant said it was a cottage it's not clear cut. Someone has been living in there. Member Novak stated this property has been a "mess" since he can remember. It was a greenhouse, they added a farm stand, then sold ice cream. If the Board stays true to their process, the applicant brought nothing to prove anything. He took issue with them saying the town screwed up, but then the property has enjoyed a tax benefit for years. Somebody living in what was declared an office doesn't make it a dwelling. Just because they want to fix it doesn't mean they need to fix it in the way they want it fixed. It can be fixed by making an office back to an office. A sheetrock and insulation permit were requested for an office. The role of the inspector was questioned, do they have to prevent or identify abuse of land law. There is nothing to show applications for a kitchen or a bedroom. Alternate Schultz questioned where the memo came from and did not like that it came to them so late. Member Novak stated the onus is on the applicant to prove their case. He questioned what due diligence the applicant did, all the Board has is a memo from the Building Official and the Planner. Member Ratzenberger felt that the owners did not due their due diligence in purchasing the property and felt that two dwellings does not conform. They didn't provide any reasons why it should be accepted as a nonconformance. The applicant indicated it was a revenue producing aspect, but it was made a revenue producing aspect without approvals. Member Novak asked if they should deny the application without prejudice and see if the applicant could get a septic approval or if they should take the position that they didn't make their case.

MOTION:

They did not make their case and deny their application.

Made by Member Ratzenberger, Seconded by Member Novak
(No vote)

Chairman Donato restated the motion adding "without prejudice."

MOTION:

To deny the application 21-ZBA-2101 without prejudice.
(No second, No vote)

Member Novak questioned if the motion made by Member Ratzenberger was to deny without prejudice, Member Ratzenberger stated no. Chairman Donato stating it should be denied without prejudice.

Alternate Schultz questioned what it meant to deny without prejudice. It was explained that to deny without prejudice indicates the Board didn't have enough information to make an adequate finding, which exonerates the applicant from the rule that they cannot reapply within one year. To do this means that if the Board denies it and the applicant can come back with something better, they can reapply as soon as they want to.

MOTION:

To deny without prejudice application 21-ZBA-2101 (*Linden 40 LLC (Tracy/Lanese, Members) / 420 Sherman Hill Road / Variance Request to Vary the Regulation Section 4.1.1.4 Allowing Two Dwellings on the Property without the Required Lot Size / Map 004 / Lot 004*)

Made by Chairman Donato, Seconded (reaffirmed by) Member Novak
Vote: 4-0-0 in favor

CORRESPONDENCE – None

CONSIDERATION OF MINUTES

MOTION:

To accept the minutes of the 2/16/21 meeting.

Made by Alternate Schultz, Seconded by Alternate Farisello
(*No vote*)

Member Novak stated he had arrived at 7:32 p.m., not 7:33 p.m.

MOTION:

To accept the minutes of the 2/16/21 meeting as amended.

Made by Member Novak, Seconded by Alternate Schultz
Vote: 5-0-0 in favor

ADJOURNMENT

MOTION:

To adjourn the meeting at 8:50 p.m.

Made by Alternate Farisello

Filed Subject to Approval.

Respectfully submitted,
Anne Firlings
Anne Firlings, ZBA Clerk

RECEIVED & FILED
IN WOODBURY, CT

This 17th day of March 2021
at 11:48 o'clock A M
Anders A. Cook
Town Clerk