

**CITY OF NORWICH
ZONING BOARD OF APPEALS
January 10, 2017
Meeting Minutes**

The regular meeting of the City of Norwich Zoning Board of Appeals was called to order at 7:00 p.m. Roll call was taken.

Marc Benjamin stated they have 5 members including the alternates and all would be seated.

PRESENT: Marc Benjamin, Chairman
 Henry Olender, Vice Chairman
 Mark Kulos
 Robert Phoenix, Alternate
 David Martin, Alternate

ABSENT: Dorothy Travers
 Peter Cuprak, Alternate

OTHERS: Deanna Rhodes, City Planner, and Linda Lee Smith, Recording Secretary

D. COMMUNICATIONS - None

E. ACCEPTANCE OF MINUTES

A motion was made by Mark Kulos to **APPROVE** the minutes of the December 13, 2016 as amended. Second by Robert Phoenix. The motion passed unanimously.

F. OLD BUSINESS: None

G. NEW BUSINESS:

1. V#16-15: 617 North Main Street. Request for a variance to ZR Section 2.4 to allow a single-family residential use of a property which is zoned for business and located within the General Commercial Zone; and a variance to ZR Section 5.1.3.2 to reduce the required off-street parking spaces from 2 to 1 for the proposed use. Application of Attorney Konstant Morell and Attorney Sikandar Rana; Property of Sheffield's Variety, LLC. Assessor's Map 87, Block 1, Lot 14, Zone GC

A motion was made by Marc Benjamin to open the public hearing. The motion was seconded by Robert Phoenix. The motion passed unanimously.

Attorney Rana, 111 Huntington Street, New London, CT introduced himself. He stated that he was there in lieu of Konstant Morell, 121 Broadway, Norwich, CT to present application for 617 North Main St. Also present was Randy Noyes who stated that he was the property manager on site for 4 years. Attorney Rana stated he was requesting a variance that the commercial building to be allowed to be used as a single family residence. He explained the history of the property and stated that in stated in 1938 they were selling soda here. The last business was a flower shop. He stated that over the past 5 years it has been empty as the owners have not been able to rent it out for a commercial use. There is limited parking and that makes it hard to lease. Attorney Rana stated he had pictures of the property. He stated that if it were occupied as a residence it would at least generate funds for the City and keep the bad elements out.

Mark Kulos asked about the number of bedrooms based on the diagram. Mr. Noyes stated that the sketch was a misprint. There are 2 bedrooms only, the upstairs one has a walk in closet.

Robert Phoenix directed his question to Ms. Rhodes and asked whether residential use is allowed in a commercial zone. Deanna Rhodes stated not for single family, as requested, but read other types of residential uses that were permitted. Ms. Rhodes stated that this property is directly across from other commercial uses and that there are several others, including a bar nearby. She stated zoning non-conformities should not be created as being requested, but eliminated. She suggested that the parcel could be sold with other surrounding properties to create a larger property for a commercial use. A dissuasion then ensued.

Marc Benjamin questioned what the parking requirements would be for a building of this size. It was determined that if the existing building were to be built today for a retail use, that 5-6 parking spaces would be necessary. However, Ms. Rhodes clarified that a retail use could re-occupy this existing building without having to provide any additional on-site parking. A discussion then ensued about the one on-site parking and a single garage space located the rear of the building.

Mark Kulos asked about the Commission on the City Plan's (CCP) referral. Deanna Rhodes stated that on December 21, 2016 the CCP gave an unfavorable recommendation for this application which she then read into the record.

Marc Benjamin asked attorney Rana to discuss the statutory hardship. Attorney Rana stated that the hardship is that if the building stays as is and unrented, it's an eyesore. It will attract bad elements.

Henry Olender asked if the property at one time was a single family home. Attorney Rana stated no. He stated it had always been a small business selling trinkets and/or a flower shop. Mr. Olender then asked Attorney Rana to read aloud the hardship directly from the application.

As requested, Ms. Rhodes then read into the record the exhibits (A through K). She mentioned that the referral to the Police Department did not get a response. Ms. Rhodes then distributed photographs that were identified as Exhibit "K1 through 12.

A discussion about the existing parking then ensued.

Marc Benjamin asked for the record if this Randy Noyes owned any of the adjacent properties. Mr. Noyes confirmed that he did not own the other properties, only this one.

Motion was made by Robert Phoenix to close the Public Hearing, Mark Kulos seconded the motion. The motion carried unanimously.

2. V#16-17: 27 Andrea Lane. Request for variances to ZR Section 1.1 to allow for a 3 ft. encroachment into the 60' front yard setback for a portion of newly constructed single-family dwelling; and to allow an existing 8 ft. x 34 ft. front porch to be located 48.7 ft. from the front property line where 60 ft. is required. Application of John R. Quinn; Property of John R. and Marsha E Quinn. Assessor's Map 36, Block 1, Lot 11-3, Zone R-80.

Robert Phoenix made a motion to open the Public Hearing, Marc Benjamin seconded the motion. The motion passed unanimously.

The Chairman asked Ms. Rhodes to read the Exhibit items (A through J) into the record.

Bill Sweeney, Land Use Attorney with Tobin and Carberry, 43 Broad Street, New London, CT then introduced himself. Attorney Sweeney stated he was representing John and Marsha Quinn who currently live at 26 Baltic St. He then provided a detailed chronology that led to his client discovering that a portion of their new home and the porch was over the front yard setback. Attorney Sweeney stated that his presentation would demonstrate that the contractor didn't properly site the house due to the location of the engineered septic system and the lot's unique and very steep topography. Attorney Sweeney attributed the error to the subcontractors working for their contractor. He stated that the contractor, Mr. Bruce Lozier, is known in the community for building homes and is a relative. He stated that he offered to build his client's a house on the subject property for a price within their budget. The lot they had selected was challenging due to its topography having a 9% slope from west to east, the underlying soils weren't great and only a small area of land was flat for the engineered septic system.

In December 2015, Mr. Lozier applied for a zoning permit and submitted a sketch of the property suggesting the house would be located 60' back from the road, however, no distances were specified. The sketch was accepted by the ZEO and approved.

Attorney Sweeney stated that he reviewed the City files and found no evidence that the City ZEO ever did any follow-up inspections to confirm the house location after the permit was granted. He stated that although there's evidence that a number of building inspectors had gone out to review the various building permits that had been issued, none noticed the house wasn't located as the original zoning permit. This was not caught until Ms. Rhodes, acting as interim ZEO inspected the property for zoning compliance for issuance of a Certificate of Occupancy. She said it looked too close and asked for an A-2 As-built.

Attorney Sweeney stated Mr. Lozier is not a licensed land surveyor. He is a building contractor and admittedly didn't use a surveyor to stakeout the corners of the house foundation before construction. He stated Mr. Lozier retained an independent contractor, Lou DiCesare, to assist him with the stakeout. Mr. Sweeney stated that Lou DiCesare is a former employee Town of Stonington and an assistant building official in other communities. He is not a land surveyor and is not qualified to do this type of work. He then explained how he thought the error may have occurred. He reiterated that he was a subcontractor, and not hired by his clients.

Attorney Sweeney then entered into the record Exhibit "K" which was an As-built survey prepared by Jay Dempsey after completion of the dwelling. He also entered into the record Exhibit "L" – a case called Osborne v Zoning Bd. Of Appeals. He stated that the Osborne case was almost identical to this variance request as the problem was created by a subcontractor and not directly hired by the owner.

Attorney Sweeney stated there was a suggestion that his clients could remove the front porch and lessen the requested variance. However, he stated that he thought this would leave a featureless and ugly front to the building. He then entered Exhibit "M" into the record which were photos of the Quinn's house with and without the front porch, and photos of other houses in the neighborhood that have porches.

Attorney Sweeney asked that Exhibit "I" be considered by the Board as it was support from the neighbors stating they had no issues with the variance request.

At this point, Attorney Sweeney mentioned that Mr. Quinn was an employee of Electric Boat. David Martin then spoke up and stated that he wanted to recuse himself as he was also an EB employee. Attorney Sweeney asked that he not recuse himself, because 4 votes are necessary for a variance to be granted. He then questioned Mr. Martin to determine if there was any direct financial interest, familiar relationship, predisposition or bias. After this inquiry, Mr. Martin decided not to recuse himself and felt he could fairly act upon this request.

Mark Kulos asked a general question whether an A-2 survey is required prior to construction of a new dwelling. Attorney Sweeney spoke up and stated that when he was the former City Planner, prior to 2004, it was not a requirement but thought it should be now. Ms. Rhodes read aloud ZR Sections 7.2.2.3 and 7.2.2.9 for clarification which requires an A-2, but allows the ZEO discretion to reduce the requirements provided sufficient documents are submitted. Attorney Sweeney then asked Ms. Rhodes if there was an A2 survey in the property file for approval of the zoning permit. Ms. Rhodes stated there was not. The plan submitted was a partial copy of the approved subdivision survey map which showed a footprint for a generic house located in compliance with the setbacks, grading that was not consistent with a dwelling having a walk-out basement, and a different driveway layout.

Ms. Rhodes then gave a brief overview of her past experience and duties as a ZEO, which including conducting final inspections for dwellings to determine zoning compliance.

The Chairman then asked if there was anyone from the public present that wanted to speak in favor or against the application. Andrew Thatch, 19 Andrea Lane stated that he was in favor of granting the variance and allowing them to keep the front porch as it would be an eyesore if the porch was removed. He noted that almost all of the houses have large beautiful porches, and his property is next to the Quinn's. He also has topographic issues with his own property.

A discussion then ensued about As-built requirements. Ms. Rhodes read aloud ZR Section 7.2.6 which requires that the ZEO be notified within 7 days of completion of the installation of a foundation. Attorney Sweeney stated that there is no indication either way whether that notification was made to the ZEO after the initial permit had been issued, as well as no indication that the ZEO ever went out to check.

Henry Olender asked about encroachment of the stairs. Attorney Sweeney said that the 48.7' dimensions on the As-built is inclusive of the stairs and is the closest point to the front property line.

A motion was made by Robert Phoenix to close the public hearing. David Martin seconded the motion. The motion carried unanimously.

H. DISCUSSION/DECISION ON APPLICATIONS

1. V#16-15: 617 North Main Street. Request for a variance to ZR Section 2.4 to allow a single-family residential use of a property which is zoned for business and located within the General Commercial Zone; and a variance to ZR Section 5.1.3.2 to reduce the required off-street parking spaces from 2 to 1 for the proposed use. Application of Attorney Konstant Morell and Attorney Sikandar Rana; Property of Sheffield's Variety, LLC. Assessor's Map 87, Block 1, Lot 14, Zone GC.

Mark Kulos stated he wanted to take the variance in two separate votes. A discussion then ensued about splitting the application to discuss each variance request separately, as well as the number of existing on-site parking spaces.

A motion was made by Mark Kulos to APPROVE the variance to ZR Section 5.1.3.2 to reduce the required off-street parking spaces from 2 to 1 for the proposed use. Robert Phoenix seconded the motion. Henry Olender and Robert Phoenix voted in favor. Mark Kulos, Marc Benjamin, and David Martin voted in opposition. Motion failed and the variance request for the parking reduction was DENIED.

Mark Kulos made a motion to APPROVE to change the use from a commercial property to a residential property for the reason that there is very little parking associated with this commercial grandfathered property and is unmarketable because of the lack of parking. David Martin seconded the motion. A discussion then ensued where each member gave their own reasons for supporting or opposing the use variance. Henry Olender, Mark Kulos, Marc Benjamin, and David Martin voted in favor. Robert Phoenix voted in opposition. Motion passed and variance was APPROVED.

After the vote, Ms. Rhodes asked for clarification from the Chairman that the denial of the first motion meant that the owner is still required to have 2 parking spaces for the single family residence use. He confirmed that this was correct.

2. V#16-17: 27 Andrea Lane. Request for variances to ZR Section 1.1 to allow for a 3 ft. encroachment into the 60' front yard setback for a portion of newly constructed single-family dwelling; and to allow an existing 8 ft. x 34 ft. front porch to be located 48.7 ft. from the front property line where 60 ft. is required. Application of John R. Quinn; Property of John R. and Marsha E Quinn. Assessor's Map 36, Block 1, Lot 11-3, Zone R-80. Marc Benjamin wanted to make sure David Martin was going to be seated on this variance. Mr. Martin stated yes.

Motion was made by Mark Kulos to APPROVE V16-17 allowing for the existence of the 8' x 34' front porch to be located 47.8' from the front property line per the as-built, the hardship being the topography of the land, the placement of the engineered septic system and because the error was not self-created by the homeowner. Robert Phoenix seconded the motion. T. A discussion then ensued where each member gave their own reasons for supporting the variance request. Once concluded, a vote was taken and motion passed unanimously.

I. OTHER MATTERS

J. ADJOURNMENT

A motion was made by Robert Phoenix to adjourn at 8:46 p.m. It was second by Henry Olender. The motion passed unanimously.

Respectfully submitted,

Linda Lee Smith
Recording Secretary