

**CITY OF NORWICH**  
**ZONING BOARD OF APPEALS**  
**September 10, 2019**  
**Minutes**

The regular meeting of the City of Norwich Zoning Board of Appeals was called to order at 7:03 p.m. Roll call was taken.

PRESENT: Marc Benjamin, Chairman  
Dorothy Travers  
David Martin  
Peter Cuprak  
Gregory Schlough, Alternate

ABSENT: Robert Phoenix

OTHERS: Richard Shuck, Zoning Enforcement Officer, and Katherine Rose,  
Recording Secretary

Marc Benjamin called the meeting to order at 7:05 p.m. Marc Benjamin stated all seated members would be voting on all matters.

**D. COMMUNICATIONS:** None.

**E. ACCEPTANCE OF MINUTES:** Gregory Schlough made a motion to accept the August 13, 2019 minutes. Dorothy Travers seconded. Motion passed unanimously.

**F. OLD BUSINESS:** None.

**G. NEW BUSINESS:**

**V# 19 – 06: 2 Andrew Ave.** Request for Variance to ZR Sec. 1.1 Residential Bulk Requirements, to reduce the front yard setback from 30 ft. to 23 ft. to construct a 16 ft. x 24 ft. garage. Property of Shannon L. Flewelling; Application of Denver R. Barnett, Assessors Map #87 Block # 3 Lot # 77, R-20 Zone

Richard Shuck read into record Exhibit A - G.

Denver Barnett of DRB Construction Corp, 100 Plaza Court, Groton introduced himself and stated if this property was not a corner lot it would likely be buildable without the variance. Mr. Barnett stated he measured the property himself and came up with different and in fact larger measurements than what is shown for the property on record so he does not believe the building will be an issue. Denver Barnett stated he sent certified letters to the neighbors and have heard back from most with no negative feedback. Mr. Barnett stated there is plenty of space on the property for the structure but are required to get the variance to build.

David Martin asked if there was any spot on the property to build the garage without the variance to which Mr. Barnett responded there was not.

Mike Previl of NP Excavation, 46 Bruce Lane, Oakdale introduced himself and stated the steel pins that are currently in place are not up to code if go off of the engineer drawings

unless that pin has been moved since but he does not believe so. Mike Previl stated he went out to the property to check the site lines for Public Works and found no issues as far as restricting the roadway or visibility.

Marc Benjamin asked for clarification if the recorded dimensions are being challenged or if the contention is there is enough space on the property to build without impeding anything. Denver Barnett responded that the latter is correct and they are not intending to contest the distances. Richard Shuck stated as it was explained to him what is on record is the as-built plans for how the homes were constructed in that time and there are some discrepancies.

Denver Barnett submitted a diagram of the proposed construction as Exhibit H. Marc Benjamin asked if the variance is requesting a setback of seven feet as without the variance they would not be able to construct a usable garage to which Denver Barnett agreed.

Shannon Flewelling of 2 Andrew Avenue, Norwich introduced herself and stated her home is very small so the proposed garage would provide needed additional storage as well as increase the value of the property.

Gregory Schlough made a motion to close the public hearing. Peter Cuprak seconded. The motion passed unanimously.

#### **H. DISCUSSION AND POSSIBLE DECISIONS:**

Gregory Schlough made a motion to go out of order. Dorothy Travers seconded. Motion passed unanimously.

**V# 19 – 06: 2 Andrew Ave.** Request for Variance to ZR Sec. 1.1 Residential Bulk Requirements, to reduce the front yard setback from 30 ft. to 23 ft. to construct a 16 ft. x 24 ft. garage. Property of Shannon L. Flewelling; Application of Denver R. Barnett, Assessors Map #87 Block # 3 Lot # 77, R-20 Zone

Gregory Schlough made a motion to APPROVE the variance. Peter Cuprak seconded. The motion passed unanimously. Gregory Schlough stated the incompatible property lines on the corner lot create a hardship for the owner to construct a garage. David Martin agreed and stated the variance is a reasonable request.

**Appeal #19-01.** Appeal of Cease and Desist for the Non-Permitted Expansion of a Non-Conforming Use on the property located at 145-147 Franklin Street. Property of Alirio Gaitan; Application of Alirio Gaitan, Assessor's Map# 102, Block# 4, Lot# 86.

Marc Benjamin stated he followed up with Attorney Driscoll per the motion made at the last regular meeting along with the ZEO in regards to the legal description of the property at 145-147 Franklin Street. Marc Benjamin said through other conversations it has been stated that Attorney Driscoll would determine the fate of this hearing which was not the Board's intention as we were trying to get information in order to make an educated vote. Marc Benjamin stated he has served on the Zoning Board of Appeals since October 1996 and as Chairman or Vice Chairman for half of that time and during that time it has been a common action to pursue further information before moving forward. Marc Benjamin stated he met with Attorney

Driscoll on September 10<sup>th</sup> and following which he received a call from the City Planner informing him that she was upset with what he had done and felt he behaved irresponsibly and unethically by pursuing the direction we took. Marc Benjamin stated he takes all of the titles he holds in the City very seriously and takes great offense of being called unethical. Marc Benjamin stated he felt it was out of line and out of place but it was requested that he recuse himself from the discussion on this appeal. Marc Benjamin said he does not feel as he should but wanted to discuss it with the Board. Discussions ensued on the Board's thoughts and potential actions to be taken. Marc Benjamin stated her understood the viewpoint of potentially taking testimony after closing the public hearing however the obtained information was going to be entered into the record for the education of the group not as testimony and not for my personal knowledge. Marc Benjamin clarified that the problem being arose is that the public hearing was closed at the previous meeting and it was felt were planning to enter Attorney Driscoll's opinion into the record whereas we only sought to get a legal definition from him. David Martin said he personally was bothered that it would be assumed he as a member of the Board would approve a definition as his vote, if even legal, without looking at it as part of the entire testimony. Gregory Schlough responded that he wished for the Chairman to acquire that information as he was planning to support the ZEO's decision at the previous meeting without that clarification as in his opinion the building that was in place was not part of the parcel they were granted to use but everything around the building. Gregory Schlough recommended that Marc Benjamin pursue an ethics complaint against the City Planner due to the nature of the conversation and Peter Cuprak agreed. Marc Benjamin stated in the past it has occurred that the Board is not always aware of what questions they will need to ask staff and he could understand the problem if it was the intent to provide Attorney Driscoll's opinion on the ZEO's decision but he simply received a legal definition from corporate counsel. David Martin stated he feels as though all members of the Board were in agreement with Chairman Benjamin's actions so if he were to recuse himself from the discussion then all members should.

Richard Shuck provided the statute definition of non-conforming buildings and uses to assist the Board in making a decision. Marc Benjamin stated that while the statute definition may have been the appropriate question for a legal decision it was not the question the Board was seeking clarification on rather what is the legal definition of the specific property which is the information he received and does not feel as that would cause a need for him to recuse himself.

Gregory Schlough made a motion that the information obtained by Chairman Marc Benjamin from Attorney Driscoll should be presented to the Board in order to make the best educated decision on behalf of the City and the applicant. Peter Cuprak seconded. Marc Benjamin recused himself from the vote. Four voted in favor. The motion passed.

Marc Benjamin stated he asked Attorney Driscoll what constitutes the legal definition of the property and how the removal of the building affects it. Marc Benjamin stated they discussed the discrepancies between the property address, the legal definition and how it is identified by the maps. Marc Benjamin stated the legal description of the property is how it is referenced and identified by the maps. Marc Benjamin reported that 147 Franklin Street is the entire property while 157 Franklin Street covered ten apartments that are no longer existent. Marc Benjamin stated that

regardless of the street address the description of the property is based off of what it was when it was constructed and the legal map lot block submitted into evidence is the best identifier to the definition of the property. Marc Benjamin stated again the entire property is 147 Franklin Street therefor the special permit and everything within the record is for the entire property not specific units.

Gregory Schlough stated he was still inclined to enforce the ZEO's decision as the statute definition states once a building is removed the property beneath it cannot be used for the same purpose.

Peter Cuprak made a motion to UPHOLD the cease and desist from the Zoning Enforcement Officer of the non-permitted expansion of a non-conforming use at the property. Gregory Schlough seconded. Dorothy Travers and Peter Cuprak voted in favor. Marc Benjamin and David Martin opposed. The motion failed.

- I. **OTHER MATTERS:** Marc Benjamin stated the Board is still short two members and that he saw Kevin Saythany recently and thanked him for his participation as well as mentioned the openings to Alderman DeLucia. Gregory Schlough stated again he would like to recommend that the Chairman considers filing a complaint with the Ethics Commission against the City Planner in regards to comments made against him and the Board. David Martin said while he will support whatever decision the Chairman pursues the action should be left up to his discretion. Marc Benjamin responded he is planning to have a conversation with the Zoning Director the following morning and go from there.
- J. **ADJOURNMENT:** A motion was made by Gregory Schlough to adjourn at 8:02 PM. Dorothy Travers seconded. The motion carried unanimously.

Respectfully submitted,  
Katherine Rose  
Recording Secretary