



Town of Hamden
Planning and Zoning Department

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January 28, 2021

MINUTES: ZONING BOARD OF APPEALS, Town of Hamden, held a Regular Meeting via Zoom teleconferencing technology on Thursday, November 19, 2020 at 7:00 p.m. with the following results:

Commissioners in attendance:

Wayne Chorney, Chair
Ricci Cummings
Elaine Dove
Steve Walsh, Sitting for Vacancy
Andrew Houlding, Sitting for Francis Nelson

Staff in attendance:

Matthew Davis, Assistant Town Planner
Tim Lee, Assistant Town Attorney
Genovieve Bertolini, Stenographer
Natalie Barletta, Clerk

The meeting was called to order at 7:02 p.m. by the Chair, Wayne Chorney. Chairman Chorney went over meeting procedures and read the Public Hearing items into the record. The Commission and Staff introduced themselves.

1. 20-059, 2485 Whitney Avenue, Location Approval for auto sales and general repair, T-4 Zone, Tech Auto, Inc., Applicant
WITHDRAWN
2. 20-6671, 2485 Whitney Avenue, Requesting a Variance of 650.1 of the Regulations to permit motor repair on property with 101.45 feet of street frontage where 150 feet is required, Tech Auto, Inc., Applicant
WITHDRAWN
3. 20-6672, 820 Mix Avenue, Section 220, Table 2.1, Requesting a .58' lot width where 60' is required, Section 220, Table 2.3, Requesting 10' and 12' rear yard setbacks, where 25' is required, Section 220, Table 2.1, Requesting a 50.3 impervious percentage, where 35% is required, Spilt of an existing parcel and construction of a new lot, Sajida Farooqui, Applicant
WITHDRAWN
4. 20-058, 839 Sherman Avenue, Location Approval for auto sales and general repair, M Zone, Frederick Uhllein, Applicant
Continued to the February 18, 2021 Public Hearing
5. 20-6673, 1965 Shepard Avenue, Section 220, Table 2.3, Asking for a variance for continuance of a legal, non-conforming use of primary residence, including variance for minimum side yard and minimum front yard requirements and vertical expansion within the existing footprint, Bernardo and Josephine Azurin, Applicant

Mr. Chorney said he was concerned because some materials have arrived late afternoon on January 20, 2021. He added that he would like an engineer's report as well as information about the previous variance that was granted. Ms. Cummings added that she was reluctant to make a decision as well because of those reasons as well.

Attorney Lee suggested opening the public hearing, and then continuing if the Board wishes.

David Rosenberg, Attorney at Gambardella, Cipriano, Gottlieb and Hathway PC, addressed the Board. He apologized for the lateness of the material. He added that he thought that it was additional information to the application, but didn't know if it was required with the application.

Mr. Rosenberg stated that the previous variance was not prepared by him. The property was damaged in the May 2018 tornado to the point where the Applicants were not able to live there. The property is legally nonconforming, and the original footprint was in the rear and side yard. The plans increase the square footage of the property, and shows a significant slope of 10 percent at the rear of the property. These plans demonstrate that there isn't no other possible location to put the addition. Mr. Rosenberg said that there was an issue with a neighbor in the prior application, but that has since been resolved. A variance isn't required if it was only the first floor since that is just being restored to the previous condition and there is no additional hardship. The basis of the variance before the Board is because there is nowhere else to put the second floor addition on the property, and if a second floor was constructed, it would create a structural hardship and wouldn't be a viable second floor structure. Attorney Rosenberg added that the property is currently partially repaired and the formation on the first and second floor, but cannot move forward into moving their home until a variance is granted and construction is completed. Quinipiack Valley Health District had previously approved the health standards, and the applicant is asking for this to be approved so they can move forward into moving into their home.

Ms. Cummings asked where Mr. Rosenberg's concern came from. Attorney Rosenberg said that based on conversations with the building inspector, it was indicated that it would be a stronger construction than in the existing setbacks.

Ms. Dove commented that she remembered that this piece of property had an overhang in the front. Attorney Rosenberg answered that the overhang is the construction of the second floor is beyond what the setbacks are. He added that there is some concern by the neighbor about the house become a student housing property.

Ms. Cummings asked if it was flushed. Attorney Rosenberg answered based on the drawings provided by his clients that it was.

Ms. Dove asked why is this question is whether or not something is sturdy enough to support 2 floors. Mr. Rosenberg said if you put the second floor where the setbacks are, the second floor would have to have a more compact design and wouldn't be flushed from a construction standpoint.

Ms. Cummings asked if this was an argument as to why the bottom floor was extended. Attorney Rosenberg answered that his client is not extending it, but because the client is adding a second floor, it requires a variance. Ms. Cummings said she wants to make sure that she understands what's going on. Her understanding was that they are building back the first floor as it was, which already was non-conforming, and then adding a second floor that precisely fits the first floor. She added that she noticed that there was a drop-off that was greater than 10 degrees when she drove by the property earlier that day.

Mr. Davis said that there was some debate between the prior Building Official and previous contractor on what was approved, but there is no need to revisit that at this time. Mr. Davis said his main concern in the prior application was the septic system needed to get it resolved with QVHD. The applicant was finally able to get it resolved, and the previous builder was not able to take the Department's guidance of the nature of the hardship, and how the septic system was related to the rear slope. He added that the neighbors weren't as concerned about the variance versus the fact that it might be rented to students. The neighbors have since come to an agreement, and given that it is the same design as the first floor and a compliant septic system, he doesn't have any concerns construction-wise.

Ms. Dove asked if the current septic tank plan was more modern. Mr. Davis stated that while he can't comment on whether or not it's modern, he can say that the Quinnipack Valley Health District had reviewed the design and approved it. Mr. Davis said that is all the Department can hope for. Ms. Dove asked if it wasn't part of the project. Mr. Davis then said that it is, because in the prior application, he didn't want the ZBA to approve something that couldn't be occupied, because there wasn't a compliant septic system approved by QVHD.

Ms. Cummings asked if the septic system is part of the project that is approved by another entity, and once that is approved, then it's not being considered at the meeting tonight. Mr. Davis answered yes, but he wouldn't say that it is part of the application, but they are dealing with the substance of the hardship.

Chairman Chorney said that there are some concerns because of the number of rooms, as well as the size and air concerns with bedrooms and doesn't think the Building Department will approve the renovations that are being proposed. Chairman Chorney asked if the Applicant was well beyond the timing of storm damage repair. He also added that there are a lot of things missing items on the application, as well as the reports that were submitted late.

Chairman Chorney asked Attorney Lee about storm damage and doesn't know where the Town stands on that at this point. Attorney Lee explained that it's in the context of FEMA floodplain damage, where a house on the water gets damaged by a storm, and the damage extends 50 percent, it needs to be brought into compliance with FEMA Flood Plain, but has not seen that rule with a house that is not subject to the FEMA requirements. He added that he feels that this is a Building Department issue, as a Building Permit would not be issued if a house wasn't structurally sound. In this case, the Applicant can't get a copy of the Building Permit, a Zoning Permit is needed before obtaining a Building Permit. Attorney Lee continued by saying that the Applicant is at the right step, and what the Board is asking for is under the Building Department. Attorney Lee continued by saying the only way that he can see it be relevant to the application is in the case of ensuring that the addition is structurally sound, and the Board can ask the Building Department if they wish. Chairman Chorney commented that he knows that there have been situations where engineering reports were provided for damaged garages.

Mr. Holding asked if the Board was going out of its area of expertise. Ms. Dove said that she feels like Chairman Chorney's question was reasonable because in the previous application, there were a lot of steps that were skipped, and all Chairman Chorney is asking if there was an engineering report done. Ms. Dove asked if that can be a condition for it to be approved. Attorney Lee responded that he supposed that it could be a recommendation to the Building Department if the variance was granted, but ultimately that it is a Building Department issue, versus a Zoning one. He added that the Board may want to red flag it for the Building Official.

Attorney Rosenberg responded that the original applicant was the builder, who had gotten a Building Permit without a Zoning Permit. Attorney Rosenberg said as far as he knew, there wasn't an engineering report on

this, but he was able to get the records. The building permit that was issued was 5872-m, as well as electrical permit 6507. Both of those were issued on February 5, 2019. He thinks that it was done backwards, and once the Building Department was aware that there wasn't a Zoning Permit, a Cease and Desist Order was issued and construction then stopped. Attorney Rosenberg added that he doesn't know if it's a reasonable condition to have the Building Department make sure that the Applicants have all of the correct permits.

Ms. Dove commented that it's only part of the problem since construction has already taken place. She wants to know whatever was put in already was structurally sound. She asked about an engineer's report as well. Ms. Dove added that given what the Commission knows about the previous applicant and that it was an application that wasn't approved in one meeting. She continued by saying that she thinks it makes the most sense to add a condition that the client gets approval from the Building Department since this application hasn't been looked at for over a year.

Chairman Chorney commented that he would like to see something come back to the Board since they are the first to approve applications.

Mr. Holding said that it sounds like there are some concerns, and asked if Attorney Rosenberg would want the application to be tabled for the next meeting so that he can come back with more information. Mr. Holding added that he doesn't think that this is in the Board's area of jurisdiction. Attorney Rosenberg said that he is happy to table if the Commission wishes to so and get the information from the engineer.

Ms. Dove commented that the Building Department has been busy with permits, and asked if were possible for the couple to get a second opinion. Attorney Lee said he thinks that if the Public Hearing is getting continued until the next month, than the Applicant should consult a builder or a structural engineer to prove whatever has been built is structurally sound, and will support a second story. He said that after that has been done, the Board will feel more comfortable approving it

Attorney Rosenberg thanked Attorney Lee, and will be happy to request an extension so that the applicant can get the report from a structural engineer.

Chairman Chorney asked if there was anyone who wanted to speak in this application. There were none.

Chairman Chorney asked if there was anyone who wanted to speak against this application. There were none.

Mr. Holding moved to continue this to the February 18, 2021 meeting. It was seconded by Ms. Cummings, and the vote was unanimous in favor.

A. Regular Meeting

- a. Discussion and voting on Public Hearing items
- b. Approve Minutes of November 19, 2020 Regular Meeting

Ms. Dove moved to approve the minutes from the November 19, 2020 meeting. It was seconded by Ms. Cummings, and all were in favor. The minutes from the November 19, 2020 meeting were approved.

- c. Old Business
- d. New Business

Chairman Chorney said he had some questions about the departments' ability to provide the Board with information. Attorney Lee commented that the Planning Department doesn't have the manpower at the moment, and then discussed what a few other towns that he files applications in require.

Mr. Davis stated that due to the Hamden Government Center being closed due to the COVID-19 pandemic so applicants can't access the files and staff are working remotely. Chairman Chorney said that he is looking for one application, and he needs to know what the previous variance was. Mr. Davis said seeing if a variance has been granted is a simple request, and thought Chairman Chorney wanted file materials.

Ms. Dove commented that piece of property also had some variances and restrictions on it, and it was a matter of remembering what it was. Ms. Dove said she appreciates Mr. Davis' help.

Mr. Davis said that the Planning Department is in a difficult situation, with COVID-19 restrictions, remote work protocols, and being short-staffed because the Town Planner had retired and another staff member is on FMLA. Therefore, he is asking for grace and accommodation until the Department is fully staffed, and then they will be able to accommodate the population that they serve in the capacity that they were once able to. He advised board members to pay attention to the budget, especially since there are proposals for a potential reorganization.

Mr. Davis continued that he is not accepting any town planner position, and the Planning Department doesn't have a Department Head. He added that Planning and Zoning Department is doing the best that they can do to keep things afloat until things are decided.

Chairman Chorney asked if there is anything the Board can do. Mr. Davis said there is nothing that they can do in the moment, but to the extent of the budget process, and wants them to be aware of what's going on.

Chairman Chorney asked if Mr. Davis understood what he was asking for. Mr. Davis asked if Chairman Chorney was asking for a previous variance. Chairman Chorney said that the Board needs to know what was approved and not approved. Mr. Davis reminded the Board of the COVID-19 requirements. Chairman Chorney said the Board's requirements are different, and the Board can't approve something that has been denied, and vice versa. Mr. Davis said that the Department will do what they can, which is their first priority.

C. Adjournment

Mr. Holding made a motion to adjourn. It was seconded by Ms. Dove, and all were in favor. The meeting was adjourned at 8:07 p.m.

Submitted by: _____
Natalie Barletta, Clerk of the Commission