



Town of Hamden
Planning and Zoning Department

**Hamden Government
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June 25, 2019

AGENDA: THE ZONING BOARD OF APPEALS, Town of Hamden, held a Public Hearing and Regular Meeting on Thursday, June 20, 2019 at 7:00 p.m. in the 3rd Floor Conference Room, Hamden Government Center, 2750 Dixwell Avenue, Hamden, CT with the following results:

Commissioners in attendance:

Jeff Vita, Chair
Wayne Chorney
Fran Nelson
Elaine Dove
Ricci Cummings, sitting for vacancy

Staff in attendance:

Matt Davis, Assistant Town Planner
Tim Lee, Assistant Town Attorney
Stacy Shellard, Commission Clerk
Genevieve Bertolini, Stenographer

Mr. Vita called the meeting to order at 7:00 p.m., reviewed the agenda and meeting procedures, and the panel introduced themselves.

A. Public Hearing

1) 19-6650 1965 Shepard Avenue, Section 220, Table 2.3 to permit a 35 foot front yard where 40 feet is required & to permit a 17.7 foot side yard where 20 feet is required for a 2nd story addition, R-2 zone, Mark Paluzzi, Applicant

Public Hearing continued from the May 16, 2019 meeting.

Mr. Mark Paluzzi, Applicant, addressed the Commission and stated that the variance request is for a second floor addition. The owner of the house would like to expand his home to provide for his family when they visit.

Mr. Vita asked if there would be any changes to the footprint. Mr. Paluzzi replied no, that the second floor will include one master bedroom, a master bathroom, and sitting room.

Mr. Nelson asked how many bedrooms are currently in the house. Mr. Paluzzi replied three.

Mr. Vita asked if the second floor that already exists and is being placed over the existing bedroom, bath and family room one the first floor. Mr. Pauluzzi replied yes.

Mr. Tim Lee, Assistant Town Attorney, asked with the addition if there would be three or four bedrooms. Mr. Paluzzi replied three bedrooms.

Ms. Cummings asked any portion the addition has already been built. Mr. Paluzzi replied yes. Ms. Cummings stated that the addition looks as if it was already completed. Mr. Paluzzi replied that it is almost completed and he had scheduled an inspection with the Building Department. He explained that he had received a building permit. Prior to receiving the permit he had gone through the preliminary application and had received word that he needed additional information as to what was being proposed. Mr. Paluzzi said he emailed all the information and received an okay. He

then went to the Building Department and the application was submitted, paid close to \$3000.00 and received his permit to build.

Ms. Cummings asked why a variance is needed if the building permit was accepted and how Mr. Paluzzi obtained the permit when the proposed project was non-conforming. Mr. Paluzzi stated that he came in and did the preliminaries with the Building Department and that there had been communications from the beginning. He said that the family has been displaced since the hurricane and would like to get back into their home. While the repairs had to be done, it was decided by the owners to expand the house because they have a large family. Mr. Paluzzi said that he had scheduled an appointment for an inspection and that is when he was told by the Building Department that he did not have everything he needed. He feels that the hardship is that the owner is not in good health.

Mr. Nelson asked if the damages were due to the tornado. Mr. Paluzzi replied yes. Mr. Nelson asked if there was a lot of damage. Mr. Paluzzi replied yes and that the damage to the house was devastating.

Ms. Dove asked if he did the work without a permit. Mr. Paluzzi replied no. Mr. Chorney asked if he had received a Zoning Permit. Mr. Paluzzi replied no, just a permit from the Town saying he could proceed with the work. He explained at the beginning of the process with the Building Department a lot of emails exchanges had occurred about what information was needed, but when he went for his inspection the emails were gone and the Building Official had told him there was nothing in the system.

Mr. Lee asked Mr. Paluzzi if he has copies of the emails that were sent. Mr. Paluzzi explained that it was on the Town's computer portal. He explained what had occurred and when he went home to print it out it was gone.

Mr. Matt Davis, Assistant Town Planner, stated that he is not taking a position with respect to veracity of the statements that have been made by any of the parties involved. He explained that he is only going to relate to the Commission from his perspective what occurred. Mr. Davis stated that the Planning Office was contacted in March, 2019 by one of the Building Official. The Building Official had gone to the property and then came to the Planning Office and said that there was a second floor that had not been permitted by the Building Department. Mr. Davis stated that he had not recalled the Planning Office issuing a Zoning Permit for work to be done on the first floor or second floor. Mr. Davis said that he went to see Mr. Bob Labulis who explained to him and showed him on the Building Department system what the applications were and the permit he issued. He explained that the documents shown to him were also located in the material submitted (June 20, 2019) by Mr. Leonard Lye. Mr. Davis stated that Mr. Labulis was adamant that he did not permit work for a second floor, only to repair the damage that had occurred from the tornado. Mr. Davis explained that portions of the second floor were constructed into the required front yard and rear yard setbacks and this is why a variance is needed. If Mr. Paluzzi receives relief from the ZBA, he will have to correct the Zoning Permit and Building Permit issues. Mr. Paluzzi worked with QVHD to make sure that the additional living space can be accommodated by the existing septic system and he received a signoff from QVHD. Mr. Davis stated that the dispute between the applicant and the Building Official is between them. The Commission needs to evaluate the variances requested on the merit of the hardship and relief. Mr. Davis said that he is unsure the health of the owner is a legal hardship and had spoken Mr. Jeff Rubin.

Mr. Nelson and Mr. Paluzzi discussed the footprint of the addition that was added.

Ms. Dove asked Mr. Paluzzi if when the work was started, could the abutting neighbor (Mr. Lye) verify that there was a building permit for the work. Mr. Paluzzi replied that the building permit was displayed in the window. Ms. Dove and Mr. Paluzzi further discussed the building permit process that occurred.

Ms. Cummings asked if the question of whether there was a building permit or not has any effect on the decision the Commission makes for this application. Mr. Lee agreed with Mr. Davis' recommendation that the Commission should look at the merits of the application and judge it by traditional hardship standards, such as, any uniqueness of the property which would justify the granting of a hardship. Mr. Lee understands that the applicant has argued that his hardship is the Building Official issued the permit. It would be helpful if the applicant had a copy of the Building Permit with him at the meeting. Ms. Cummings asked if the second floor stays within the existing footprint. Mr. Paluzzi replied yes.

Ms. Dove asked why the neighbors would object to the addition of a second floor.

Mr. Chorney reviewed the application with Mr. Paluzzi. He asked if there was an engineer's report available. Mr. Paluzzi replied yes, and that he can obtain a copy of it. Mr. Chorney discussed the need for the engineer report with Mr. Paluzzi and Mr. Lee.

Mr. Nelson asked if building plans showing the second floor were submitted to the Building Department. Mr. Paluzzi replied that he had submitted some plans via email. Mr. Nelson asked if the building permit was approved. Mr. Paluzzi replied yes. Mr. Nelson stated that there have been the same issues in the past with building permits. Mr. Lee stated that enough information has not been submitted and that it would be helpful if the applicant could provide what was submitted by him to the Building Department, including correspondence to the Building Department on his computer. Mr. Lee said that there is no question about the permitting of the first floor. Mr. Paluzzi further discussed getting the information requested, the approved Building Permit and communications with the Building Department with the Commission and Planning Staff.

Mr. Vita discussed extending the Public Hearing with the Planning Staff. He would like a copy of the plans that were submitted to the Building Department, a copy of the Building Permit and a copy of all the communications that Mr. Paluzzi had with the Building Officials. Mr. Paluzzi stated the he would like an investigation into what happened to the information that he put into the Town's computer system.

Mr. Vita asked for comments in favor of the application:

Mr. Jeff Rubin, Private Insurance Adjuster, addressed the Commission and stated that he is working with Mr. Paluzzi. He said that homeowner's insurance company was only going to pay them \$72,000.00 and he was able to get them over \$160,000.00 to settle the claim. Mr. Rubin reviewed the time table to get the project started. He said the full value was paid for the permits and it will be reimbursed by the insurance company. The building permit was placed in the window and it is visible. Mr. Rubin stated that he had hoped Mr. Paluzzi would have put in for separate permits for the first and second floor. He said that the submitted application can be found on line and reviewed his responsibilities as an insurance adjuster. Mr. Rubin explained that the insurance company did bring in an engineer, but it was to look at the damage that at the time was to a ranch style house. There was no engineering report done by the insurance company discussing or hinting that a second floor was being added. Mr. Rubin stated that he was the one who suggested adding the second floor addition to provide additional room for family visits. The couple who own the home are in their 70's and retired and with the money from the insurance company and the additional money they were willing to put in, the addition was able to be built. Mr. Rubin explained that the building permit was pulled and the work began, then on February 26, 2019 he received a call that the permit was being pulled. He reviewed the building permit application and said that on it showed an addition and a second floor. Mr. Rubin reviewed the process necessary to receive the QVHD approval and said the process was a hardship. He stated that a formal engineering report was not done, but that an engineer had looked at the damage to the house. The insurance company is not paying for the second floor, and the engineer had said that the second floor addition placed on the existing footprint would be stronger than if it was indented. Mr. Rubin reviewed the placement of the existing house and the property. Mr. Rubin stated that the roof structure was destroyed and it was determined that it needed to be replaced. He noted that the homeowner is 75, retired and in ill health. Mr. Rubin stated that the homeowners have been living in the basement of their son's house waiting for the addition to be completed. He had spoken with Mr. Lye and was told him that he was concerned that the house would become housing for students. Mr. Rubin stated that the house is being built for the owners to live in.

Ms. Dove stated that people do live in basements of homes. She feels that the responsibility of what permits needed to be received prior to doing the work was up to Mr. Paluzzi and Mr. Rubin.

Ms. Cummings asked for a copy of the application of the building permit. Mr. Rubin stated that it is in the materials submitted by Mr. Lye. Mr. Rubin reviewed the application with Ms. Cummings and the need for QVHD approval.

Mr. Nelson stated that he understands Mr. Lye's concerns about the house being used for student housing and that a lot of houses being sold in the area are being used for student housing. Mr. Rubin stated that student housing was never the owner's intention. He had spoken with the Lye's about the work that was being done and he had spoken with the

owner's son who said that his parents are willing to have a condition that would not allow the house to be used for student housing.

Ms. Cummings stated that whatever the owner's intentions are for the use of the house, he cannot control the use once the house is sold.

Mr. Vita asked for comments against the application:

Mr. Leonard Lye, II, 1975 Shepard Avenue, reviewed the documents and statement submitted June 20, 2019.

Mr. Davis stated that the application is requesting relief from the required side yard and front yard setbacks. It relates to a portion of the footprint of the second floor. The Commission does not have any jurisdictions on how many bedrooms there are. If the applicant had done the process correctly a Zoning Permit is required prior to getting the Building Permit. If this had been done and not requested the relief by meeting the setbacks, it would have required only a Zoning Permit. The Zoning Permit would have still required QVHD approval. If the application is denied it does not mean that the applicant cannot do a second story addition, it only means that that decision it is about the relief for the vertical and horizontal part that is in the setback. Mr. Davis and Mr. Lee discussed the regulations as it relates to the preexisting structure and addition with Mr. Vita.

Mr. Davis asked Mr. Paluzzi to provide a copy of the plans he submitted to the Building Official for the second floor.

Mr. Nelson stated that an addition could be added to the back of the house for additional bedrooms. Mr. Lye replied that the more bedrooms create the likelihood for student housing. Ms. Cummings explained that basing an addition on the possibility of student housing is not within the ZBA's function.

Mr. Vita stated that the only issue before the Commission is with regard to the setbacks. He asked Mr. Paluzzi how many bedrooms currently existing in the house. Mr. Paluzzi replied two. Mr. Vita asked if with the addition there are three bedrooms. Mr. Paluzzi replied yes.

Mr. Chorney asked if Mr. Paluzzi has a set of plans for the addition. Mr. Paluzzi will submit a set of plans. Mr. Chorney asked for a copy of the picture that shows the Building Permit in the window. Mr. Paluzzi will submit at the next meeting and a copy of the Building Permit.

Mr. Vita continued the Public Hearing until July 18, 2019.

2) 19-6653 94 Swarthmore St, to permit a 6 feet fence where 4 feet is allowed, R-4 zone, Meghan Lovegren, Applicant

Public Hearing continued from the May 16, 2019 meeting.

Mr. Joe Porto, Attorney, addressed the Commission and reviewed the existing site, the existing fence. He submitted a picture of the proposed fence (Exhibit 1). He explained that the configuration of the lot and the location of the pre-existing house create a hardship.

Mr. Chorney asked Mr. Porto if he would be amendable to a six foot fence from the house to the rear edge of the garage and then go down to a four foot fence so that the fence does not create any issues with the sight line. Mr. Porto asked if it could scallop down to a four foot fence. Mr. Chorney replied yes

Ms. Ricci asked if a four fence with slates closer together provides adequate privacy. Mr. Porto replied no, because someone over four feet tall would be able to see over it.

Ms. Dove stated that she does not feel a six foot wooden fence would fit in the neighborhood. She feels that a wooden fence is hard to maintain over the years and it would be seen by the neighbors who live directly across the street. She noted that the existing fence has not been maintained. Mr. Vita stated that the neighbors are looking at the fence now. Mr. Porto stated that the fence is preexisting. Ms. Dove replied that it is not in good condition and as the new fence ages in approximately 10 years it will deteriorate. The Commission discussed the need to maintain the Cedar fence, the sight line, and the height of the fence with Mr. Porto.

The Commission discussed with Mr. Porto if he would be amendable to have a six foot fence to the garage and then it would scallop down to four feet.

Mr. Vita asked for comments in favor and against the motion. There were none.

Mr. Vita closed the Public Hearing.

B. Regular Meeting

- a. Discussion and voting on Public Hearing items

19-6650

This application was tabled until the July 18, 2019 meeting

19-6653

Mr. Nelson made the motion to approve Application 19-6653 with the following condition: The fence will be six feet from the house to the garage overhead doors and then scallop down at the gate area to a four foot fence for the remainder of the fence. Mr. Chorney indicated on the plan (Existing Conditions Property Located at #94 Swarthmore Street, Hamden Connecticut-Drawing no. 1 of 1) the placement of the approved fence and he stated that the plan will be placed in the record. *Ms. Cummings seconded the motion.* The Commission discussed the placement of the fence. *Mr. Nelson, Ms. Cummings, Mr. Chorney and Mr. Vita voted in favor of the motion. Ms. Dove voted against the motion. Therefore, the motion passed 4-1-0.*

- b. New Business

Approve Minutes of April 18, 2019

Ms. Dove made the motion to approve the Minutes of April 18, 2019. Mr. Chorney seconded the motion. Ms. Dove and Mr. Chorney voted in favor of the motion. Mr. Nelson and Ms. Cummings abstained. Therefore, the motion passed.

Approve Minutes of May 20, 2019

Mr. Nelson made the motion to approve the Minutes of May 20, 2019. Ms. Cummings seconded the motion. The motion passed unanimously.

- c. Old Business

There was none.

- d. New Business
Election of Officers

Mr. Nelson made the motion that Mr. Vita remain as Chairperson and Mr. Chorney remain as vice-chair. Ms. Cummings seconded the motion. The motion passed unanimously

- e. Adjournment

Mr. Nelson made the motion to adjourn. Mr. Chorney seconded the motion. The motion passed unanimously.

The meeting adjourned at 8:11 p.m.

Submitted by: _____
Stacy Shellard, Clerk of the Commission