



TOWN OF NEWTOWN

ZONING BOARD OF APPEALS

MINUTES

Regular Meeting

Wednesday February 1, 2017 at 7:30 pm

Municipal Center – Meeting Room 3

These minutes are subject to approval by the Zoning Board of Appeals.

Present: Charles Annett III, Barbara O'Connor, Alan Clavette, Jane Sharpe, Joseph Bojnowski

Also Present: Robert Sibley (Deputy Director of Planning and Land Use), Georgia Contois (Clerk)

The meeting was opened by Chairman Annett at 7:30pm, and Ms. O'Connor called the roll.

Mr. Annett asked the Commission to take a vote on the Minutes of January 4, 2016.

Ms. O'Connor made a motion to accept the Minutes. Mr. Clavette seconded. All members were in favor and the Minutes were approved.

Ms. O'Connor read the call for the continuation of Docket #16.08: Application by Richard Barillari for a property located at 46 Glen Road, Sandy Hook, CT, 06482, for a variance of Section 7.04.800 of the Town of Newtown Zoning Regulations so as to permit a front lot to share an existing driveway that currently serves two rear lots, as shown on a map titled "Site Plan prepared for Rich Barillari, Assessor's Map 40, Block 4, Lot 5, 46 Glen Road, Newtown, CT 06482". Mr. Annett asked to hear a recap and any updated information from the applicant.

Mr. Barillari, 64 Watkins Drive, owner of 46 Glen Road, and John Mack, P.E. with Stuart Somers CO., 1211 Main Street South, Southbury, came forward as the applicants. Mr. Barillari updated the Commissioners that the lot line revision had been approved by Mr. Sibley that morning, and was not yet filed with the Town Clerk. He and Mr. Mack met with Jim Lapan of ConnDOT regarding the sightlines from the driveway access but did not receive a written confirmation of Mr. Lapan's requirement. Mr. Mack explained that Mr. Lapan requested to push the sight line work back another 90' along the road frontage, increasing the sight line length from the driveway towards 44 Glen Road to a total greater than 300'. Mr. Mack felt this will benefit multiple lots on the road. The Commission discussed the driveway and the process with Mr. Sibley, who requested that the applicant file the new approved map with the Town Clerk, and submit the new stamped map for the ZBA file before a decision is made. The hearing was closed at 8:04 P.M. and no decision was made.

Ms. O'Connor read the call for Docket # 17-01 Application by Jordan and Jennifer Levy for a property located at 146 Walnut Tree Hill Road, Sandy Hook, CT, 06482, for a variance of Section 8.02.231 of the Town of Newtown Zoning Regulations so as to permit the removal of an excess of 8,500 cubic yards of material in order to complete a bank stabilization project, as shown on a map titled "Proposed Wall Plan, Prepared for 146 Walnut Tree Hill Road, Sandy Hook, Connecticut". Mr. Annett asked to hear from the applicant.

Mr Annett asked Ms. O'Connor to note the proper section of the Town of Newtown Zoning Regulation is 8.08.231. Jordan Levy, 146 Walnut Tree Hill Road, was accompanied by Mike Reardon, L.S. and Al Shepard, P.E.. Mr. Reardon presented the history of the lot and explained the hardships. Mr. Reardon explained that the proposed location of the house versus the actual location and elevation created the hardship. The house was lowered in elevation by about 10 feet and pushed further towards the hillside. He said that the construction affected the stability of the bank, causing the current hardship. The house was built in 2006 and was purchased

after foreclosure by the Levy Family in 2013. He explained that the homeowners noticed the bank crumbling and washing out throughout the year and knew they would have to hire a contractor at some point.

The original discussed plan was to work between 146, 148 and 152 Walnut Tree Hill Road. Those plans never came to fruition so the homeowner decided to get a Construction Permit from the Land Use Agency to work on his property only.

Once the work began, the operator and Mr. Shepard discovered that the material was more unstable than originally expected. Complaints from neighbors caused Land Use Enforcement Officer Steve Maguire to visit the site multiple times, and eventually stopped the work. The applicant was advised that a Construction Permit would only allow 200 cubic yards of material to be removed from the site. Mr. Reardon explained that the current nature of the lot is unsafe and material will need to be removed in order to create a retaining wall. Mr. Shepard said that the calculation of 8,500 cubic yards was conservative, and some material was already spread to the other side of the driveway.

Wayne Marchese, 170 Walnut Tree Hill Road, stated that he noticed the bank needed work when he moved into his own property and was not disturbed by the construction. He did not notice construction work being done after he typically arrives home in the evening. He considered the work being done 'understandable'.

Catherine Bailey, 177 Walnut Tree Hill Road, alerted the Commission of her concerns. Ms. Bailey read a letter for the record (attached). She felt there was a lack of consideration and did not want her life to be disrupted any longer. Ms. Bailey mentioned the potential profit of selling the material on the property which she was advised could be upwards of \$200,000. She asked that no material would be removed and the site tidied up. Ms. Bailey also mentioned that she has witnessed materials leaving the property with the screen over the top of the dump body.

Jesse Bailey, 177 Walnut Tree Hill Road, stated that the hillside was vegetated with low growth, the same that runs through many of the properties on Walnut Tree Hill that back up to the railroad tracks. He asked how the Engineer would not know that disturbing the hillside would make it more compromised, causing the current issue. Mr. Bailey said that the sand dust traveling off site accumulates on his windowsills and prevented him from opening his windows throughout the summer and fall months of 2016. He understands the need for a stable backyard, but urged the Commission to ask the applicant to complete the job in a timely manner, not be allowed to process the materials with a screener on site, and avoid allowing a mining operation.

Leslie Rich, 167 Walnut Tree Hill Road, asked if the request for 8,500 cubic yards would be the total no matter what may arise during further construction. She said that the area had been used by many of the neighborhood kids years ago before the houses were constructed. Ms. Rich said that she never witnessed an unsafe condition due to the grade or materials. Mr. Shepard said that the construction of the house affected the conditions.

George Totir, 148 Walnut Tree Hill Road, read specific zoning regulations in regard to variances and construction permits. He was concerned with the proximity to his yard and asked for the Commission to compromise the Levy's want and needs with the requests of the neighbors. He was afraid of a precedence that this approval may set, and also requested a timeline. Mr. Clavette stated that legally there will be no precedence set per State Statute. The construction began in the early summer of 2016, and Mr. Totir asked for a deadline for the construction to end.

Mr. Shepard answered a few of the questions and clarified some details. He explained that stumps were removed from the property. The hearing was closed at 9:17 P.M.

The Commission deliberated all aspects of the application and the neighbors' concerns. Ms. Sharpe said that something needed to be decided for the safety of the residents. Commission members recognized the hardship as

the situation created during original construction. Mr. Clavette asked Mr. Sibley when he thought construction may be able to start again in regards to weather. Mr. Sibley expected that construction could begin any time after the appeal period is over. The Commissioners were also concerned about the sand that was leaving the property either into the road or into neighboring properties. Mr. Sibley advised that an Erosion and Sedimentation Plan should be put in place. The Commission also deliberated the visual appeal of the rock wall and discussed options regarding ground cover.

Mr. Clavette made a motion to approve the application with the following modifications and stipulations:

- A. A maximum of 7,000 cubic yards of material will be able to be removed
- B. An Erosion and Sedimentation Plan will need to be submitted to the Land Use Agency and approved before construction begins
- C. No screening or processing of materials will be allowed on site.
- D. Hours of operation must remain between 8 a.m. to 5 p.m. Monday through Friday.
- E. All construction on the property associated with this variance needs to be completed by June 15, 2017.
- F. Groundcover is required on all disturbed areas of the yard with the exception of the rock wall.

Ms. Sharpe seconded. The Commission took a vote. All members were in favor.

With no other business, Mr. Annett moved to adjourn, Mr. Bojnowski seconded. All members were in favor. The meeting of February 1, 2017 was adjourned at 9:59 pm.

Zoning Board of Appeals of the Town of Newtown

*Respectfully Submitted,
Georgia Contois, Clerk*

We were first approached by Jordan with his initial plan of removing 36,000 yards of earth across his property and 2 others. From what I understand, the town, thankfully, made it clear that all the material that was allowed to be removed from the property had already been removed when the house was built. That initial plan required those 2 neighbors to sign a permit because it included removing earth from their properties. When at least one of these required permits was not signed we as neighbors were extremely happy and thankful and thought that was the end of plans for mining projects in our fully developed and established neighborhood.

From what I further understand the final engineer's plan last spring, that was used to obtain the permit for this current project, was for no removal of earth from the property. So the permit was granted with that stipulation that no earth was to be removed. The engineer had a plan.

I cannot help but wonder why the engineer's plan and the ordinances set forth by the town have apparently been disregarded. These ordinances are there to protect the rights and quality of life of the people who live in a neighborhood. This is a completely developed neighborhood. The quality of our lives have been extremely disrupted and negatively effected through this lack of consideration, apparent lack of compliance with town ordinances and apparent lack of compliance with the permit issued.

At this time the variance should be denied. I cannot understand why 8,500 yards of earth need to be removed? The machinery, the truck traffic and if a screening machine is used that noise and pollution will be horrendous. Engineers are very clever. Common sense suggests an engineer could be consulted for redistributing the sand on the property. I ask why was earth removed from the top of the hill that's the far back and side of the property? That earth can be distributed back? There is a large enough yard it could be distributed there. There is also property along the side of the driveway. Then grass seed, or sod could be put down, or hydro-seeded and it's done. This all should be required to be done in a timely fashion.

8,500 yards of septic grade sand, as described by the zoning official, could be worth or exceed \$200,000 depending on current market value. Removal of no earth is \$0.

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@ ZBA hearing