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**TOWN OF NEWTOWN
ZONING BOARD OF APPEALS**

**MINUTES
REGULAR MEETING**

Wednesday, October 6, 2021 – 7:30 PM
Newtown Community Center, the Meeting Room
8 Simpson Street, Newtown CT 06470

Present: Alan Clavette, Ross Carley, Jane Sharpe, Prerna Rao, Joseph Bojnowski, Christina Paradis, Rachel Rowan

Also Present: Rob Sibley, Deputy Director of Land Use, Helen Fahey, Clerk

Mr. Clavette called the meeting to order at 7:37 p.m.

Public Hearings

ZBA Application #21-07 by Hans Barth, for a property located at 254 Berkshire Road, for a Variance of the Zoning Regulations of the Town of Newtown §8.03.222, so as to permit the placement of a shed forty feet from the road in lieu of the required fifty, as shown on a set of plans titled “Zoning Location Survey (showing Proposed Structure), 254 Berkshire Road, Sandy Hook, CT”, date revised 1/11/21.

Hans Barth, 254 Berkshire Road, explained there is a downhill slope behind the shed which would make moving it challenging. Mr. Barth had an issue with wetlands on his property causing his proposed home and garage location to change. Mr. Clavette asked for clarification that he is looking for a variance based on where Mr. Barth proposed to put his home but there is currently no residence on the maps shown. Mr. Barth said that was correct.

Mr. Clavette asked Mr. Barth to talk about the number of storage containers on the property. Mr. Barth said they will be moved once the building starts but right now they house his belongings. Mr. Clavette asked if the containers had a valid permit. Mr. Barth said it ran out but after his last discussion with zoning enforcement officer Steve Hnatuk he was hoping he will allow them to stay until the building is up.

Mr. Clavette said while the issue being addressed tonight is the shed it is important to be aware that Mr. Barth is not compliant with a lot of zoning requirements. Mr. Clavette said it seems a commercial operation is being run out of the property and asked Mr. Barth for comment. Mr. Barth said there is no commercial operation at that property, the trailers hold his belongings.

Mr. Carley asked if the shed setback was the only issue being considered tonight and Mr. Clavette confirmed the application is for a variance to leave shed within the 50ft setback. Mr. Clavette said there are lots of other places to put the shed on the lot once the trailers are gone and the location of the house is decided, he pointed out that the area where the trailers are is flat and within setbacks. Ms. Rowan asked Mr. Barth to explain why it would be difficult to move the shed 10 feet back. Mr. Barth said because the land drops 5ft down behind the shed. Mr. Clavette agreed but also noted it becomes flat beyond that which is within setbacks.

Mr. Carley asked when the building will start and trailers will be moved. Mr. Barth said 6 months.

Mr. Clavette asked what happened to the dwelling that was there prior and Mr. Barth said it burned down in 2014, the house was where the trailers currently are.

Mr. Clavette said he was having a difficult time finding a hardship to grant the variance. He asked how long the shed has been there and Mr. Barth said 6 months. Ms. Rao explained that a hardship has to relate to the property itself not what's being built so because there are other places on the lot the shed can be placed, that is not a hardship.

Ms. Sharpe asked if Mr. Barth went to the building department to confirm that location was OK, and Mr. Barth said yes.

With no further comment from the ZBA, Mr. Clavette invited public comment. With no public comments, Mr. Clavette declared the hearing closed at 7:48pm

ZBA Application #21-09 by Santo Silvestro, for a property located at 18 Platts Hill Road, for a Variance of the Zoning Regulations of the Town of Newtown §7.02.100, so as to permit the creation of an accessway closer to the property line than the setbacks allows, as shown on a set of plans titled "Overall Site Plan, 18 Platt Hill Road, Newtown, CT" dated 8/26/21 and supporting documents submitted to the Land Use Agency 9/1/21.

Steve Trinkaus, Licensed Professional Engineer, 114 Hunters Ridge Road, Southbury CT representing Mr. Silvestro gave an overview of the property which consists of an FAA approved airstrip and 4 residential structures. Because one of the structures (a barn with an apartment) did not have proper permits, it was recommended to subdivide the lot into 3 lots. One with the barn, one with the small cottage, and one with the two larger houses and the airstrip. Doing this requires the creation of an access way to the rear and he is about 6.5ft out of the setbacks. The access way can't go from Orchard Hill Rd. because of the development easement and FAA approval. The three parcels will all still be owned by Mr. Silvestro.

Mr. Clavette wanted to be clear that these lots have not been approved yet, and Mr. Trinkaus confirmed. He said an approval tonight was needed before taking the application to zoning. Mr. Clavette asked Mr. Sibley if that is correct. Mr. Sibley said subdivision regulations have a section for waivers associated with the waivers in the subdivisions, they cannot command the decision to approve or deny a variance to the zoning regulations that the subdivision regulations are waived on. That process is reserved for a waiver process within the planning commission.

Mr. Trinkaus said as Mr. Sibley pointed out Planning and Zoning cannot condition an approval subject to another commissions actions, he needs ZBA approval before going to Planning and Zoning. That was not what Mr. Sibley said so he reiterated that subdivision regulations have a section that allow planning to waive a portion of the subdivision regulations.

Mr. Carley asked if the property line abuts the Town of Newtown Property and Mr. Clavette said it does to the west.

Mr. Clavette pointed out that Newtown doesn't allow shared driveways so a variance for the setback could be granted but that doesn't mean a shared driveway. Mr. Trinkaus said he knows and that will be addressed with Planning and Zoning. Mr. Clavette asked for Mr. Sibley's input. Mr. Sibley had research from appellate courts that said an applicant's desire to subdivide a property into multiple lots is a voluntary hardship created by the applicant requiring a denial of the variance. The power to create or have a waiver is contained within the subdivision process, denying the application tonight would mean that Planning and Zoning couldn't pass a waiver.

Mr. Trinkaus said the variance runs with the land. The Silvestro's are not subdividing because they want to but are being required to. Mr. Sibley asked who is ordering the subdivision and Mr. Trinkaus said Mr. Benson and the Planning and Zoning Department. Mr. Sibley stated that no one is the Land Use Office or Planning and Zoning is compelling anyone to do a subdivision. Mr. Clavette said that the barn was never an approved residence, so the only way to make it a livable dwelling is to subdivide.

Mr. Clavette said if we deny the application then there is no waiver opportunity, he asked if there is a middle ground where they can withdraw the application and get approval from Planning and Zoning. Mr. Sibley said that is an option or the application can get tabled until a waiver is obtained from Planning and Zoning.

Mr. Trinkaus withdrew the application on behalf of his client and will take the application to Planning and Zoning.

Discussion and Action

ZBA Application #21-07 by Hans Barth, for a property located at 254 Berkshire Road, for a Variance of the Zoning Regulations of the Town of Newtown §8.03.222, so as to permit the placement of a shed forty feet from the road in lieu of the required fifty, as shown on a set of plans titled "Zoning Location Survey (showing Proposed Structure), 254 Berkshire Road, Sandy Hook, CT", date revised 1/11/21.

Mr. Carley asked if they could grant Mr. Barth a contingency until the trailers were moved.

Mr. Clavette said the trailer permits expired many years ago and that variances can't be granted if there is a violation on the property.

Ms. Rowan said there is no reason why he can't move the shed back.

Mr. Clavette said the trailers were there with the idea that he was going to rebuild, but the permits expired 6 years ago. Mr. Sibley said temporary trailer permits are allowed during construction with continuation up to 9 months and up to 3 times from then. Mr. Barth did that only after a violation was issued. He is now claiming that his materials for his home are in those trailers. Ms. Sharpe asked if Mr. Barth is living in the trailers and Mr. Sibley said he was living in the shed prior to being asked to move.

Mr. Clavette spoke about all the items scattered throughout the property and said there is plenty of flat space available to put the shed.

Ms. Rao said Mr. Barth wasn't able to present a hardship.

Ms. Sharpe said this has been going on for years and the property looks like a dump yard. Mr. Rao asked if there are unresolved violations on the property and it was confirmed there are.

Mr. Clavette moved to deny Application 21-07 due to a lack of hardship. Mr. Carley seconded. All were in favor of the denial and the motion carried unanimously.

Minutes

Ms. Sharpe moved to approve the minutes from the meeting of July 7, 2021. Ms. Rowan seconded. All were in favor and the minutes from the meeting of July 7, 2021 were approved.

Adjournment

Mr. Clavette moved to adjourn the meeting. Mr. Carley seconded. All were in favor and the meeting was adjourned at 8:18 p.m.

*Respectfully submitted,
Helen Fahey, clerk*