



TOWN OF NEWTOWN
ZONING BOARD OF APPEALS

MINUTES
REGULAR MEETING
December 4, 2019 at 7:30 p.m.
Meeting Room 3, 3 Primrose Street, Newtown, CT 06470

Present: Alan Clavette, Barbara O'Connor, Prerna Rao, Ross Carley, Jane Sharpe, Christina Paradis, Joseph Bojnowski, and Rachel Rowan
Also Present: Christine O'Neill, Clerk

Mr. Clavette called the meeting to order at 7:32 p.m.

Mr. Clavette explained that the first order of business after an election is to elect Board members to the positions of Chair and Secretary. All were in favor of adding this agenda item.

Board Elections

Ms. O'Connor nominated Mr. Clavette for Chairman. Mr. Carley seconded. All were in favor and Mr. Clavette was elected Chairman.

Ms. O'Connor nominated Ms. Sharpe for Secretary. Mr. Clavette seconded. All were in favor and Ms. Sharpe was elected Secretary.

Public Hearings

Application 19-08 by Andrew Visinski, for a property located at 10 MacKenzie Circle, Sandy Hook, CT, for a Variance of Chart VII-I of the Zoning Regulations of the Town of Newtown, so as to permit a sideyard setback variance for a proposed deck, patio, and garage, as shown on a set of plans entitled "Plot Plan prepared for Andrew Visinski, 10 MacKenzie Circle, Sandy Hook, Connecticut" dated 7/23/19 revised 9/19/19, and supporting documents submitted to the Land Use Agency 9/24/19 and 10/22/19.

Mr. Visinski explained that he is building a house for his daughter and he would like to construct a 24 x 24 foot garage. He would need to build 15 feet from the property line in order to avoid underground utilities (existing well and propane tank). Mr. Clavette asked if Mr. Visinski was also seeking a Variance for the deck and patio demonstrated on the map. Mr. Visinski explained that the deck had already been built and the patio is flush with the ground.

Ms. Rao asked if there is an existing garage, and Mr. Visinski replied that there is a single garage underneath the house. Ms. Rao asked how many cars the new garage would fit, and Mr. Visinski responded two cars. He added that because this is a lakefront property, they would want to be able to store watercrafts as well.

Mr. Bojnowski asked if anything had been submitted by the neighbors. Mr. Clavette stated that there is nothing else in the file.

Mr. Clavette invited public comment. No one came forward. Mr. Clavette declared the hearing closed at 7:41 p.m., with discussion and possible vote to take place later in the meeting.

Application 19-09 by Santo Silvestro and Lynda Silvestro, for a property located at 18-22 Platts Hill Road, Newtown, CT, for a Variance of § 3.01.330 of the Zoning Regulations of the Town of Newtown, so as to permit the continued use of two non-conforming detached apartments on the property, as demonstrated in supporting documents submitted to the Land Use Agency 10/28/19.

Mr. and Mrs. Silvestro came forward and introduced themselves.

The Clerk read into the record a memorandum submitted by Senior Land Use Enforcement Officer Steve Maguire dated 12/4/19, which outlined the situation. The property has four dwellings, two of which were grandfathered and are protected as legal non-conforming residences; the other two are currently considered illegal accessory apartments. The Variance that the applicant is seeking would be to retain the two extra buildings on the property as legal dwellings.

Mrs. Silvestro explained that when they purchased the property in February 2015, those dwellings were already occupied. The Silvestros did some “clean up” work to the buildings, but did not change the footprints. The Town informed the Silvestros that these apartments are not legal. Mrs. Silvestro said she was told that she has two options: to subdivide the land, or apply for a Variance. After looking into the subdivision option, they found that the cost would be a minimum of \$25,000.

Mrs. Silvestro expressed that she had trouble locating building permits for these two extra dwellings, which were constructed in the 1960s. Mr. Clavette pointed out that the buildings may have been around for fifty years, but there is no record of how long they have been used as dwellings. Mr. Silvestro added that the tenants had been occupying those buildings for years when the Silvestros purchased it.

Mr. Clavette shared that the dilemma of the Board is that a non-financial, non-personal hardship must be present for a Variance to be granted. He gave examples of topography and safety as valid hardships. Ms. Rao added that the hardship would need to be specific to the land, whereas a financial constraint is unique to the owner.

Mr. Silvestro wondered why when the Fultons (former property owners) had this property, no one had any issues with the apartments until the Silvestros purchased it. Mr. Clavette suggested that these non-compliance issues should have come up when the Silvestros were researching the property.

The Board spent some time looking at the reference maps trying to figure out how the four buildings were distributed among the two lots, 18 Platts Hill Road and 22 Platts Hill Road.

Mr. Bojnowski asked how these buildings were permitted in the first place if they were not compliant. Mr. Clavette explained that the buildings themselves are okay - the fact that they are being used as dwellings is in violation of the Zoning Regulations.

Ms. Rao asked about the permits for this property. Mrs. Silvestro explained that their attorney, Bob Hall, is very familiar with the property. She continued that when the Fultons proposed subdividing this property years ago, the buildings were already in existence and no one seemed to have a problem with

them. Mr. Clavette pointed out that in the proposed map, those buildings were labeled as a cottage and a wood barn, which is why they did not raise any red flags at that point.

Mrs. Silvestro stated that the buildings have been around for 51 years, and Ms. O'Connor added that she knew a resident who has lived in one of these dwellings for decades. Mr. Clavette stated that while no one seems to have any documentation of when these buildings began to be used as apartments, he has still not heard a hardship.

Mr. Carley explained that just subdividing into two lots would solve all the problems. The Board agreed. The Silvestros understood this, but wanted to pursue the possibility of a Variance before spending all that money.

Mrs. O'Connor asked if the Silvestros had installed the kitchens into the dwellings. Mr. Silvestro said the kitchens were already existing when they purchased the property, but had been renovated.

Mrs. Silvestro stated that Director of Planning George Benson told them if they removed the stoves, they could maintain the apartments as dwellings according to the Zoning Regulation. Mr. Clavette said he would need to look at the Zoning Regulations to see if it specified a full kitchen or simply a stove is what constituted an apartment.

Ms. Paradis asked why the apartments were not grandfathered. Mr. Clavette explained that while a structure can be grandfathered after existing for three years, a use cannot.

Mr. Clavette invited public comment.

Nancy Humphreys of 26 Platts Hill Road, Newtown, CT asked which buildings were built in which years. Mr. Clavette demonstrated on a map. She pointed out another building on the property and said there are frequently lights coming from it, so she wanted to know if it was also a dwelling. Mr. Silvestro said it was being used as a woodworking shop.

Lou Reszoly of 5 Bridle Path Trail, Newtown, CT expressed that anyone who buys a property inherits existing zoning violations, so it was the applicants' responsibility to do that research before they purchased it. He felt that the applicants have not displayed a hardship.

Anthony D'Ausilio of 26 Platts Hill Road, Newtown, CT said that while he understands there is a regulation issue, as a neighbor he sees no issue with the continued occupation of these buildings. One of the former renters had told Mr. D'Ausilio that three rentals were going on at that time. He also shared that the Town bought development rights to the airstrip.

Mrs. Silvestro said that she has discovered, after owning the property for four years, that the Fultons had gotten a pass on a lot of things.

Warren Davis of 42 Orchard Hill Road, Newtown, CT said he believes there is a division stipulation on the property specifying that it could only be split one or two more times. Mr. Silvestro asked for clarification, and Mr. Clavette explained that sometimes when a property has an easement there is a stipulation that limits the amount of times it can be subdivided in the future.

Jim Bauer of 7 Bridle Path Trail, Newtown, CT stated that he is in favor of the continued occupation of these buildings.

The Silvestros spoke about how they were unaware of these zoning violations at the time of the purchase. Ms. Rao suggested that the Silvestros look into what their title insurance can do for them, and speak with their attorney.

Mr. Clavette declared the hearing closed, with discussion and possible vote to take place later in the meeting.

Discussion and Action

Application 19-08 by Andrew Visinski, for a property located at 10 MacKenzie Circle, Sandy Hook, CT, for a Variance of Chart VII-I of the Zoning Regulations of the Town of Newtown, so as to permit a sideyard setback variance for a proposed deck, patio, and garage, as shown on a set of plans entitled “Plot Plan prepared for Andrew Visinski, 10 MacKenzie Circle, Sandy Hook, Connecticut” dated 7/23/19 revised 9/19/19, and supporting documents submitted to the Land Use Agency 9/24/19 and 10/22/19.

Mr. Carley said that in the past, a very similar situation occurred with a neighbor a few doors down, and they were also granted a Variance.

Ms. Rao asked if there was anything in the Zoning Regulation limiting the number of garages on a property. Mr. Clavette confirmed that there was not.

Mr. Carley made the following motion to approve Application 19-08: I move that we grant the requested Variance due to hardships created by the topography of the property, and the location of the well and buried gas tank.

Ms. O'Connor seconded. The Board voted as follows:

Alan Clavette - AYE

Barbara O'Connor - AYE

Ross Carley - AYE

Jane Sharpe - AYE

Prerna Rao - AYE

The motion to approve Application 19-08 passed unanimously.

Application 19-09 by Santo Silvestro and Lynda Silvestro, for a property located at 18-22 Platts Hill Road, Newtown, CT, for a Variance of § 3.01.330 of the Zoning Regulations of the Town of Newtown, so as to permit the continued use of two non-conforming detached apartments on the property, as demonstrated in supporting documents submitted to the Land Use Agency 10/28/19.

Mr. Clavette restated that he did not see a hardship; however, Ms. O'Connor commented that the Town was remiss in not enforcing those regulations for all these years and therefore she believes the property owners should be able to continue the use of the apartments.

Ms. Sharpe contributed that the ZBA heard a case several years ago with an illegal rental for which a Variance was granted. Mr. Ross explained that in that situation, the Town had approved a permit for septic, thereby recognizing the rental as legal.

Ms. Paradis pointed out there is no proof that the Town knew that these buildings were being used as rentals – which in essence eliminates the argument that the Town was remiss in not enforcing the regulations. Ms. O'Connor and Ms. Sharpe shared that they are sympathetic to the property owners because it seemed that the Town does not have good records and the Town did not catch this violation for so many years.

There was some discussion among the Board about what would take place if the applicants pursued the subdivision route.

Ms. Rao wondered if there were permits issued by the Town that would indicate the Town knew those buildings were being used as dwellings. Mr. Carley suggested looking into this and then voting at the next meeting, since they do have 65 days to render a decision.

Mr. Clavette said that he spoke to both Mr. Maguire and Mr. Sibley of the Land Use Agency about this application, and neither of them were able to tell him what the hardship was. He stated that his personal opinion is that whether or not they find permits, it makes no difference because there is no hardship.

Ms. Rao, Ms. Sharpe, Mr. Bojnowski, and Ms. O'Connor shared that they would all feel more comfortable if they could do due diligence to gather more information before making a final decision.

The Board decided to request that a staff member of the Land Use Agency 1) investigate if there are any permits in reference to the property, and 2) add a memorandum to the record explaining how the presence of permits impacts the request for a Variance and/or constitutes a hardship.

Mr. Clavette made a motion to table this decision until the next meeting. Ms. O'Connor seconded. All were in favor the decision was tabled.

Minutes

Ms. O'Connor moved to approve the minutes from the meeting of November 6, 2019. Ms. Sharpe seconded. All were in favor and the minutes from the last meeting were approved.

Adjournment

Mr. Carley moved to adjourn the meeting. Mr. Clavette seconded. All were in favor and the meeting was adjourned at 8:54 p.m.

*Respectfully submitted,
Christine O'Neill, Clerk*