



TOWN OF ELLINGTON

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**ZONING BOARD OF APPEALS
REGULAR MEETING MINUTES
MONDAY, FEBRUARY 3, 2019, 7:00 PM
TOWN HALL ANNEX, 57 MAIN STREET, ELLINGTON, CT**

PRESENT: Vice Chairman Arthur Aube, Regular Members Ken Braga, Mort Heidari, Erin Stavens, and Alternates Ron Brown, and Ron Stomberg

ABSENT: Regular Member Sulakshana Thanvanthri, and Alternate Roger Hosig

STAFF

PRESENT: John Colonese, Assistant Town Planner/Zoning Enforcement Officer

I. CALL TO ORDER:

Vice Chairman Aube called the Zoning Board of Appeals (ZBA) meeting to order at 7:00 PM at the Ellington Town Hall Annex, 57 Main Street, Ellington, CT.

II. PUBLIC COMMENTS (ON NON-AGENDA ITEMS): None

III. PUBLIC HEARINGS:

1. V202001 – Stephanie Dias & Douglas Miller owner/applicant, request for variances of the Ellington Zoning Regulations Section 4.1-Permitted Uses and Uses Requiring Special Permit & Section 3.1.2-Residential Uses: to permit an existing first floor unit used for retail business to be changed to an apartment creating a three-family dwelling at 11 West Road, APN 012-012-0000.

TIME: 7:01PM

SEATED: Aube, Braga, Heidari, Stavens, and Brown

Kari Olsen, Murtha Cullina, Attorneys at Law, 185 Asylum Street, Hartford, CT, was present to represent the application.

Attorney Olsen stated the applicants are seeking a variance from Sections 4.1 and 3.1.2 of the Town of Ellington Zoning Regulations. In particular, they are requesting to use the first floor of a pre-existing, multi-dwelling building as an apartment, due to a unique hardship and the desire to make reasonable use of this pre-existing structure. Attorney Olsen said the applicants have a unique hardship that justifies the requested variances. She proceeded to explain 11 West Road is a lot of record, which uniquely lies within both the Commercial and Residential Zones. The line between these zones runs through a portion of the building as shown in Exhibit C, which was provided as part of the application. The building was built in 1920 and is 3,252 square feet in size with 2,940 square feet of living area: 1,470 square feet on each of its two floors. The second floor is already improved with two pre-existing dwelling

units, which is shown in Exhibit B. The first floor is currently vacant. Attorney Olsen noted the current Zoning Regulations state that in a commercial zone, residential uses are not allowed and within a residential zone, commercial uses are not allowed.

Attorney Olsen proceeded to review Section 2.2.3 of the Regulations, which allows a non-conforming use to be changed to another non-conforming use of substantially the same character, or to a use permitted in "any zone in which it is located." This provision arguably allows the applicants to proceed without a variance considering that the building is located partially in a residential zone and already has two dwellings in it. The building sits more than 170 feet from the road and is accessed by a private driveway and parking area. The building's driveway and parking areas are sandwiched between two residential uses.

Attorney Olsen stated since the building sits so far back from the road, it lacks the visibility necessary to attract commercial businesses. While the first floor of the building was at one time a day care center, it ceased operating years ago. More recently, in 2017, the applicants rented the first floor to an appliance dealer/repairer. However, there were so many complaints to the Town Zoning Enforcement Officer about this commercial use of the property and its impact on the abutting neighbors, that the tenant's lease was not renewed. She explained efforts to rent the property for any permitted commercial use have been unsuccessful and the building has remained vacant for more than a year. Commissioner Braga stated that the hardship cannot be financial.

Attorney Olsen introduced Alison Malkin, the Head Broker with Re/Max Essentia, 51 East Main Street, Unit #15, Avon, CT was also present to represent the application. Ms. Malkin said she has been trying to rent the property for over 14 months. She explained the lack of visibility from the street and the layout do not attract commercial uses, and she feels the only reasonable use for this building is for it to be wholly residential.

Attorney Olsen reviewed the surrounding properties and passed out a map showing all of them having residential uses. For example, 15 West Street, has a non-conforming apartment on the second floor and a hair salon occupying the first floor, 9 West Street is a two-family dwelling, and the property abutting to the rear is a single family home. The three properties immediately across the street also contain multiple and single family homes. She referred to the Zoning Board of Appeals granting a variance for a residential use at 12 West Shore Road and noted the hardship stated with the approval as the "keeping of character with residential uses in a neighborhood".

Commissioner Brown requested Attorney Olsen explain the parking situation. Attorney Olsen showed where the parking would be located for the proposed apartment. She explained there is sufficient parking on the parcel.

Attorney Olsen explained that the hardship was not created by the applicants and would be problematic for anyone who owned the property. The variance would allow a viable and practical use as an apartment and would not negatively impact the Town's Comprehensive Plan. The requested variances also will not undermine the Town's Comprehensive Plan for the following reasons:

1. The Building is pre-existing. No new construction is proposed and there will be no change in the existing appearance of the property or the structures located thereon.
2. It is more compatible with the neighborhood in that all of the abutting properties have dwelling units in them and, as noted above, the impact on these residential uses from a commercial use located literally in their back yard, has been problematic.

3. A new apartment better serves the Town's recognized need for affordable housing options.
4. The conversion of the pre-existing first floor space to an apartment will not substantially increase or otherwise overcrowd the property. There is ample pre-existing off street parking.

Attorney Olsen submitted letters of support for this application from abutting land owners. She noted the only residential regulation this parcel cannot meet is the amount of lot area needed for a three-family dwelling.

John Colonese noted his memorandum to the Board dated January 27, 2020. He reviewed the Zoning Regulations and sees the building as entirely within the commercial zone according to the Ellington zoning map, and therefore it is only allowed for commercial use. He read Section 2.1.1-Zoning Compliance of the Zoning Regulations, and noted the two existing apartments on the second floor of the building are non-conforming uses. He also disagrees with the applicant's interpretation of Section 2.2.3 of the Zoning Regulations as the existing commercial retail use conforms to the regulations and the zone within which it lies.

Stephanie Diaz, 18 Private Grounds. Ellington, CT, said the first floor was vacant for many years prior to their purchase of the property. They renovated the first floor and leased it to an appliance dealer/repair business and received many calls from the Zoning Enforcement Officer pertaining to the property. Ms. Diaz explained that she did not renew the lease due to the amount of complaints created by the tenant. She tried to rent the space for a long time. Tenants on the second floor have been there for over 17 years.

Ken Braga asked if the owner of the property should to apply to the Planning and Zoning Commission for a zone change. Mr. Colonese stated they have that option, however the property would also need a variance on lot area. He then reviewed Section 2.1.2-Lots of Record of the Zoning Regulations and noted that the commercial zone appears to be the more restrictive zoning district and would therefore be applied over the entire lot.

Commissioner Stavens asked how many individuals looked at the building to lease. Ms. Malkin said she has shown the unit to at least 15 or 16 individuals. She said they tried all avenues to get someone to rent the unit. Mr. Colonese stated commercial uses apply to the property, therefore the retail use approved on the first floor can be continued and he feels it is a reasonable use of the unit.

Commissioner Brown asked if the Board could approve the request due to two thirds of the units being currently approved and used as residential. Commissioner Heidari stated it seems like a financial hardship, but he understands the request.

Attorney Olsen explained the applicants are not claiming an economic hardship. The hardship is the property is pre-existing, non-conforming and the current regulations for either zone do not allow for the reasonable use of the building. For these reasons, the applicants' hardship is unique, is not self-created and justifies the variances requested.

MOVED (AUBE), SECONDED (BRAGA) AND PASSED UNANIMOUSLY TO CLOSE THE PUBLIC HEARING FOR V202001.

MOVED (BROWN), SECONDED (BRAGA) AND PASSED UNANIMOUSLY TO APPROVE V202001 – Stephanie Dias & Douglas Miller owner/applicant, request for variances of the Ellington Zoning Regulations Section 4.1-Permitted Uses and Uses Requiring Special Permit & Section 3.1.2-Residential Uses: to permit an existing first floor unit used for retail business

to be changed to an apartment creating a three-family dwelling at 11 West Road, APN 012-012-0000.

HARDSHIP: Existing lot falls within two zones; existing building currently approved for two residential units on the second floor.

IV. ADMINISTRATIVE BUSINESS:

1. Approval of the October 7, 2019 Regular Meeting Minutes.

MOVED (BRAGA), SECONDED (BROWN) AND PASSED UNANIMOUSLY TO APPROVE THE OCTOBER 7, 2019 MEETING MINUTES AS WRITTEN.

2. Election of Officers.

MOVED (BRAGA) TO NOMINATE COMMISSIONER AUBE FOR CHAIRMAN OF THE ZONING BOARD OF APPEALS FOR 2020.

COMMISSIONER AUBE ACCEPTED THE NOMINATION. HEARING NO FURTHER NOMINATIONS, NOMINATIONS CLOSED.

MOVED (HEIDARI) TO NOMINATE COMMISSIONER BRAGA FOR VICE CHAIRMAN OF THE ZONING BOARD OF APPEALS FOR 2020.

COMMISSIONER BRAGA ACCEPTED THE NOMINATION. HEARING NO FURTHER NOMINATIONS, NOMINATIONS CLOSED.

MOVED (BROWN), SECONDED (STAVENS) AND PASSED UNANIMOUSLY TO ELECT COMMISSIONER AUBE FOR CHAIRMAN AND COMMISSIONER BRAGA FOR VICE CHAIRMAN OF THE ZONING BOARD OF APPEALS FOR 2020.

3. Correspondence/Discussion:

- a. 406 Somers Road – Foreclose on the Judgement Lien

Mr. Colonese explained the property is located next to TSI Harley Davidson. He reviewed the history of enforcement action which led to fines and a lien against the property. He noted that the Town Attorney stated the Town can foreclose on the judgement lien in order to gain compliance with the zoning regulations. Mr. Colonese said he contacted the owner in the fall of 2019 to bring the property into compliance, and to date the property does not comply. Mr. Colonese felt the next step was to foreclose on the lien and the Board agreed.

V. ADJOURNMENT:

MOVED (BROWN), SECONDED (AUBE) AND PASSED UNANIMOUSLY TO ADJOURN THE ZBA MEETING AT 8:09 PM.

Respectfully submitted,

John Colonese
Acting Recording Clerk