



STATE OF CONNECTICUT – COUNTY OF TOLLAND
INCORPORATED 1786

TOWN OF ELLINGTON

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**ZONING BOARD OF APPEALS
REGULAR MEETING MINUTES
MONDAY, JUNE 7, 2021, 7:00 PM
TOWN HALL MEETING HALL, 55 MAIN ST, ELLINGTON, CT**

**IN-PERSON PUBLIC ATTENDANCE LIMITED DUE TO COVID19 RESTRICTIONS
AND ZOOM MEETING ATTENDANCE**

PRESENT: Chairman Art Aube, Vice Chairman Sulakshana Thanvanthri, Regular members Ken Braga, Katherine Heminway, Subhra Roy, and Alternate Ron Stomberg; Present via ZOOM meeting: Alternates Rodger Hosig

ABSENT: Alternate Ron Brown

STAFF

PRESENT: John Colonese, Assistant Town Planner/Zoning Enforcement Officer, Lisa Houlihan, Town Planner and Barbra Galovich, Recording Clerk

I. CALL TO ORDER:

Chairman Aube called the Zoning Board of Appeals (ZBA) meeting to order at 7:01 pm at the Ellington Town Hall Meeting Hall, 55 Main Street, Ellington, CT and read the Statement of Conduct for the meeting.

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

III. PUBLIC HEARINGS:

1. V202107 – Betty Lukens, owner/applicant, request for a variance of the Ellington Zoning Regulations Section 3.2.3-Minimum Yard Setbacks: to reduce the front yard setback from 35ft to 31ft and side yard setback from 10ft to 5ft for a detached garage at 28 Florence Avenue, APN 020-012-0000 in a Residential (R) zone.

TIME: 7:02 pm

SEATED: Aube, Heminway, Thanvanthri, Roy and Stomberg

Betty Lukens, 28 Florence Avenue and Dan Shustock, 61 Miller Road, Broad Brook, CT were present to represent the application.

Ms. Lukens stated she is seeking a variance for the detached garage, which gives her easier accessibility to her vehicle. She noted that she was in a skydiving accident and can't walk on snow, ice or uneven ground.

Vice Chairman Thanvanthri asked Ms. Lukens if she has another garage. Ms. Luken said the attached garage is on the other side of the house on the basement level of the dwelling. Vice Chairman Thanvanthri said she did some research pertaining the Americans with Disabilities Act (ADA) compliance. She noted that zoning boards need to make reasonable accommodations for ADA situations and the applicant does not need to provide a hardship. Ms. Lukens said she already installed the garage and is now aware of the rules for permits.

Kathy Vaiciulis, 26 Florence Avenue, stated she lives next door and read her letter that was submitted to the Planning Department on June 3, 2021. She noted according to the University of Connecticut Land Use article which explains conditions for a variance referring to Section 8 of the Connecticut General Statutes (CGS) that Ms. Lukens is pleading a hardship that she does not see meeting the CGS requirements.

Mr. Colonese, Assistant Town Planner, stated he did not locate an as-built plan of the property in the Planning Department files. Mr. Shustock stated he found two stakes and ran a string from one to the other. Ms. Vaiciulis asked him how he measured with the bushes, he noted that he laid the string over the bushes to get a straight line. Vice Chairman Thanvanthri asked Ms. Vaiciulis if she is disputing the accuracy of the measurement. Ms. Vaiciulis confirmed she is disputing the measurements provided by the applicant, since a land surveyor did not stake the property line and feels the installation of the detached garage will decrease her property value.

Ms. Vaiciulis stated there is no railing on the side door step adjacent to the detached garage and asked if the applicant had any other option, such as adding a chair lift within the house that could lead Ms. Lukens to the garage space provided on the lower level. Mr. Shustock said the stairs are too steep and cannot be reconstructed to accommodate a chair lift.

Alternate Stomberg noted he wished the owner would have approached the Planning Department before installing the detached garage. Commissioner Heminway would like to see a property survey before making a decision. Vice Chairman Thanvanthri stated the Board should accommodate the applicant. Chairman Aube suggested the board continue the application to the next meeting and requested the applicant provide a survey of the property line for the July 12, 2021 ZBA meeting.

MOVED (AUBE), SECONDED (BRAGA) AND PASSED UNANIMOUSLY TO CONTINUE THE PUBLIC HEARING TO THE JULY 12, 2021 REGULAR MEETING FOR V202107 – Betty Lukens, owner/applicant, request for a variance of the Ellington Zoning Regulations Section 3.2.3-Minimum Yard Setbacks: to reduce the front yard setback from 35ft to 31ft and side yard setback from 10ft to 5ft for a detached garage at 28 Florence Avenue, APN 020-012-0000 in a Residential (R) zone.

2. V202108 – Cathy Pinard, owner/applicant, request for a variance of the Ellington Zoning Regulations Section 3.2.3-Minimum Yard Setbacks: to reduce the front yard setback to 3ft and the side yard setback to 7.3ft for changes to previously approved Variance V201722 granted for house and attached garage on the west side of road at 12 East Shore Road, APN 149-089-0000 in a Residential (R) zone.

TIME: 7:28 pm

SEATED: Aube, Braga, Heminway, Thanvanthri and Roy

Cathy Pinard, 12 East Shore Road, was present to represent the application. Ms. Pinard explained that she is planning on reconstructing her home that previously received a variance in January of 2018. She stated she has acquired a strip of land adjacent to her property of about 2900 sf, which eliminates the need for a side yard setback variance. She is proposing to increase the size of the garage. Ms. Pinard would like to construct a chimney on the north side of the home, where she previously received a 7.3ft setback to a roof overhang she would like to put the chimney at the same distance. She would also like to construct 2ft x 13ft bump out on the street side of the home, which would be setback 3.8ft from the sewer easement line. The final request is for the expansion of the garage which would be setback 4.6ft setback from the sewer easement line.

Ms. Pinard stated her hardship is the lot size and configuration, the location of existing home, the lot is located on a private road that runs through the property, as well as the topography of lot.

No one from the public spoke regarding the application.

MOVED (HEMINWAY), SECONDED (ROY) AND PASSED UNANIMOUSLY TO CLOSE THE HEARING FOR V202108.

MOVED (AUBE), SECONDED (HEMINWAY) AND PASSED UNANIMOUSLY TO APPROVE V202108 – Cathy Pinard, owner/applicant, request for a variance of the Ellington Zoning Regulations Section 3.2.3-Minimum Yard Setbacks: to reduce the front yard setback to 3ft and the side yard setback to 7.3ft for changes to previously approved Variance V201722 granted for house and attached garage on the west side of road at 12 East Shore Road, APN 149-089-0000 in a Residential (R) zone.

Hardship: Lot configuration; size and location of existing road and structures; topography of lot; lot located on a private road that runs through the property.

3. V202101 – 15 Green Street, Susann McCarthy owner/applicant, to appeal a Cease & Desist Order from the Zoning Enforcement Officer dated December 11, 2020 of Section 2.1.1.D-Zoning Compliance, Section 3.1-Permitted Uses and Section 2.1.7-Construction in Required Yards of the Ellington Zoning Regulations.

TIME: 7:47 pm

SEATED: Aube, Braga, Heminway, Thanvanthri and Roy

Chairman Aube stated file V202101 was opened last month and continued to tonight's meeting. He announced that Lisa Houlihan, Town Planner, will address a few items.

Ms. Houlihan read a statement of conduct and reviewed the hand out of the Application Control Log, which is a list of documents on file through May 28, 2021. She noted that the application materials are available for public inspection in the Planning Department during Town Hall hours and posted on the Town's website, under ZBA's Agendas. Since the last meeting, the applicant submitted over 200 pages of documentation and over 200 photos. The ZBA members have visited the Planning Department and reviewed the contents of the file.

Ms. Houlihan noted the applicant claims the copy of the fence brochure submitted to file during the May 3, 2021 meeting is not the exact document she submitted. Ms. Houlihan has reviewed

the file and there is only one copy of the brochure date stamped 5/3/2021. She also reviewed the available electronic copies of the fence brochure and there are only two versions, one from 2010 and one from 2017. She added that the one from 2017 matches the copy submitted last month and she has compared all three brochures and there is no substantive difference between them. The brochures are for informational purposes only, the language within the Zoning Regulations is the governing text and the resource the commission should use when considering the fence standard.

Ms. Houlihan noted the order of presentations tonight will be John Colonese, ZEO, Susann McCarthy, appellant, public comments, and finally the commissioners of the Board.

John Colonese, Assistant Town Planner/Zoning Enforcement Officer, briefly reviewed the photos he took today. With regard to violation of the fence regulation Section 2.1.7, photos 1 through 8 show that the fence and fence panels are still located within the front yard setback area, and pursuant to the regulations. He noted a fence constructed in the front yard setback area over 2 ½ feet in height that provides more than fifty percent obstruction of vision through the fence, such as a stockade fence, or any fence over 4 feet in height is a violation. Therefore this fence should be removed or a variance sought. He stated the Board has interpreted the regulations this way many times in the past by way of granting variances for fences within the front yard setback area. With regard to violation of the junk yard regulation Sections 2.1.1.D and 3.1

With regard to violation of the junk yard regulation Sections 2.1.1.D and 3.1 Mr. Colonese stated photo 1 shows stacked disassembled fencing, white wooden platforms, a blue tarp covering articles, spools, and an exercise devise. He said if the board feels the white wooden platforms, spools, and an exercise devise are being used by the applicant and are not junk, then they can decide to partially affirm and/or modify his order. Mr. Colonese indicated photo 2 shows stacked disassembled fencing, white wooden platforms, and spools, and if the board feels the white wooden platforms and spools are being used by the applicant and are not junk then they can decide to partially affirm and/or modify his order.

Mr. Colonese stated photo 4 shows an exercise devise, white wooden platforms, and spools. If the board feels the white wooden platforms, spools, and an exercise devise are being used by the applicant and are not junk then the Board can decide to partially affirm and/or modify his order. Mr. Colonese said photo 6 shows a white wood rectangular object that was once covered by gray tarp. This was consider junk, however if the board feels that this may be a building depending on how it is being used, then they may want to require a variance for the building as it appears it is near or over the front property line. Mr. Colonese stated photo 7 and 8 show the same white wood rectangular object that was once covered by gray tarp.

Susann McCarthy, 15 Green Street, said Mr. Colonese stated one of the violations is the fence, which is within in the setback area. She asked if he was aware of the house being legal existing non-conforming building and structures, which was built prior to the Zoning Regulations first adopted in 1952. Mr. Colonese stated he doesn't have that information and the information was not pertinent to the issuance of the order.

In response to the photos presented to the Board today, she stated there is wood for fencing under the blue tarp and she has it covered for safety reasons. Mr. Colonese recommended in the Cease and Desist Order to apply for a variance for the fence. Chairman Aube asked Ms. McCarthy to address all questions to the Board and not Mr. Colonese.

Ms. McCarthy said she has additional handouts for the Board to review, which are not already in the file.

Commissioner Braga stated he is disappointed that Ms. McCarthy did not allow the Board to walk the property, he said it would have been helpful. He also asked when is the last time she used the exercise bike that is outside, she said Saturday night. Ms. McCarthy said she emailed Ms. Houlihan a complaint that the evidence presented at the May meeting was not the evidence that she submitted in reference to the fence brochure. She said the document is either miss placed or substituted for something different and is not the document in the file. She stated that she read off that document, which had significant instructions on how to determine a setback line.

Ms. McCarthy reviewed her interpretation of the Ellington Zoning Regulations. She noted that Mr. Colonese was out to her property four different times and she said Mr. Colonese stated he was not at the site pertaining to the junk. She stated her retaining wall and structures go right up to the street line. She also said that her setback line is the street line. She again review Mr. Colonese's timeline of when he observed the site and its conditions.

Ms. McCarthy read Section 2.1.7 of the regulations. Ms. McCarthy stated the purpose of the fence is due to vandalism, has privacy issues and being harassed. She said she placed the fence behind the retaining stone walls around her property. Chairman Aube made a recommendation to have her lot surveyed so it is clear on her boundaries. The Board requested that Ms. McCarthy provide a survey showing her property lines, location of the house, stone walls and any other structures on the site from a licensed land surveyor.

Kathy Guilmette, 10 Keeney Street, stated the fencing that Ms. McCarthy has installed is obstructing her sightline to the street while backing out of her driveway. She is requesting the fencing come down because she can't see if anyone is coming down Sweeney Street and this is a safety issue for her to drive out of her driveway.

Ms. Houlihan asked if Ms. McCarthy thinks the zoning regulations allow a fence at the side yards where the edge of the building is. Ms. McCarthy agreed that is her interpretation of the regulations.

Michael Vengruskas, 14 Green Street, said all the fence needs to come now, it's been going on for over a year. Mr. Vengruskas reiterated that the Board did in fact offer Ms. McCarthy to apply for a variance, which she has not applied for, and hasn't let any Board members on the property to view.

Chairman Aube reiterated they are asking Ms. McCarthy to provide a survey for all four sides of the property, showing house, stone walls, shed, and other structures on the property with measurements of all by a registered surveyor.

Ms. McCarthy reviewed her research of the history and definitions of what junk and junk yards are in the State of CT. She stated she owns one registered truck on the property. She noted according to the zoning regulations, properties are allowed one unregistered vehicle.

Commissioner Heminway asked if the truck behind the fencing is her truck. Ms. McCarthy said it is her truck and that she is not currently driving it. Commissioner Heminway asked if the big box blocks her from moving the truck, Ms. McCarthy stated no. She showed the Board pictures of her truck plate registration.

Ms. McCarthy noted that the Town of Ellington does not have a Blight Ordinance and Mr. Colonese is stretching the regulation of a junk yard on her property. Again, she repeated what objects and materials are on the property and for what reason. She stated she brought the materials on site to complete a platform, and fencing around her property. She reviewed a brochure for the exercise bike (Outdoor Fitness Strider) that is located on the property. She noted she brought metal framing for the chain link fence. She decided to remove the chain link fence from the property since the ZBA's last meeting. Ms. McCarthy listed the design elements that are on her property. She provided multiple pictures of other properties using blue tarps to protect their supplies or other items. Her interpretation of the materials on her property are that they are not junk.

Rene Prentiss, 11 Green Street, stated Ms. McCarthy keeps bringing more materials onto the site from everywhere, which the neighbors feel is junk. She stated she has put money into her property and applied for a variance for a fence that was denied by the ZBA, but was allowed to install arborvitae, and Ms. McCarthy has not even applied for a variance for the fencing. She noted Ms. McCarthy is installing the fencing around the property to hide all of her junk, which is currently under gray tarps.

Michael Vengruskas, 14 Green Street, stated Ms. McCarthy has a dump in the back of the property under tarps with stuff all over the site and requested the Board to require a time limit on obtaining the survey. Ms. Hemingway told Ms. McCarthy it would be in her best interest to obtain a survey before the next meeting.

Michael Damico, 12 Kenney Street, the Board should be granted permission to visit the property to determine if there is junk on the property. Mr. Damico asked if Mr. Colonese researched the unregistered vehicle. Mr. Colonese responded residents are allowed one unregistered vehicle and that it was not relevant to the Order.

Patricia Collins, 15 Green Street, stated the Fire Marshal Department and the Health Department have stated there are no violations on the site and other agencies have also said no violation. She said the neighbors are making false accusations. She has walked and driven in a car around the area, and there are other properties that have similar violations. Ms. Collins said Ms. McCarthy has had people that she has hired to do work but they are being harassed by the neighbors.

Kathy Guilmette, 10 Keeney Street, would like to pull in and out of her driveway safely. She is requesting that the objects blocking her sightline be removed. Ms. McCarthy noted that 10 Keeney Street has two driveways.

MOVED (AUBE), SECONDED (BRAGA) AND PASSED UNANIMOUSLY TO CONTINUE THE APPEAL TO THE JULY 12, 2021 REGULAR MEETING FOR V202101 – 15 Green Street, Susann McCarthy owner/applicant, to appeal a Cease & Desist Order from the Zoning Enforcement Officer dated December 11, 2020 of Section 2.1.1.D-Zoning Compliance, Section 3.1-Permitted Uses and Section 2.1.7-Construction in Required Yards of the Ellington Zoning Regulations.

IV. ADMINISTRATIVE BUSINESS:

1. Approval of the May 3, 2021 Regular Meeting Minutes.

MOVED (AUBE), SECONDED (BRAGA) AND PASSED UNANIMOUSLY TO APPROVE THE MAY 3, 2021 MEETING MINUTES NOTING THE LOCATION OF THE MEETING WAS AT THE TOWN HALL MEETING HALL, 55 MAIN STREET.

2. Correspondence/Discussion:

- a. Cease and Desist Order – 97 West Shore Road Re: Violation of the Zoning Regulations.

V. ADJOURNMENT:

MOVED (HEMINWAY), SECONDED (AUBE) AND PASSED UNANIMOUSLY TO ADJOURN THE ZBA MEETING AT 9:40 PM.

Respectfully submitted,

Barbra Galovich, Recording Clerk