

Wallingford Zoning Board of Appeals

Monday, June 15, 2020

7:00 p.m.

DRAFT

Meeting Conducted Remotely through GoToMeetings

Minutes

Present: Chairman Joseph Rusczek; Secretary Louis Czerwinski; Commissioners Thomas Wolfer; Samuel Carmody, Raymond Rys; Alternate: Bruce Conroy, Karen Harris, and Robert Parisi; Amy Torre, Zoning Enforcement Officer.

Chairman Rusczek called the meeting to order at 7:00 p.m. The Pledge of Allegiance was recited. Chairman Rusczek explained how the meeting would be conducted and provided instructions for participating.

Chairman Rusczek noted that tonight's decisions will be published in the Record-Journal on Friday, June 19, 2020. The effective date of your variance will be Friday, June 19, 2020; the date a certified copy is recorded on the land records. The statutory 15 –day appeal period will expire on Sunday, July 5, 2020. If you commence operations and/or construction during the appeal period, you do so at your own risk.

Voting members are Carmody, Wolfer, Czerwinski, Rys, and Chairman Rusczek.

Chairman Rusczek noted that application 20-004, 20-008, and 20-010 requested no action at this meeting and will be heard at the June meeting.

PUBLIC HEARINGS

3. # 20-009 – Variance request/Side Yard8McCarn/19 Pierson Drive

Mr. Czerwinski read the staff notes into the record. "Applicant proposes a 445 sq. ft. addition to the rear of the dwelling. Said addition extends the southern building line. The existing dwelling is non-conforming (pre-dating the inception of zoning), encroaching in the side yard by 6 inches. The expansion of the building line requires a variance for a side yard of 19.5 ft. where 19.5 ft exists and 20 ft. is required in an R-19 zone." Also, correspondence dated June 8, 2020, from the Department of Public Utilities.

Mr. Sean McCarn of 19 Pearson Drive explained that they want to go out a little further for a living room. He noted that the survey found that some of his driveway is in his neighbor's yard and on the other side; the neighbor's garage is in his yard. So he thinks he's actually 10 foot 6 inches closer than he needs to be. Chairman Rusczek asked for clarification that the dimensions are the same, just adding in the back. Mr. McCarn confirmed and stated it is for a living room/family room.

Mr. Rys asked about the coverage of the parcel with the two sheds. Amy Torre replied that the applicant is compliant with coverage.

Public Comment – none

Hearing no further questions or comments from the Board, Chairman Rusczek closed the public hearing and opened it up for discussion and possible action by the Board.

Mr. Rys: Motion to approve application #20-009 Variance request for side yard of 19.5 ft. where 20 ft. is required to construct a 24 ft. x 18.5 ft. addition to the rear of the dwelling at 19 Pierson Drive as shown on Improvement Location Survey February 13, 2020 and General Location Survey prepared for Davis T Warren Family Trust dated February 10, 2020, subject to comments of Water and Sewer Division from Erik Krueger, Senior Engineer dated June 8, 2020.

Mr. Czerwinski: Second

Vote: Carmody – yes to approve; Wolfer – yes to approve; Rys – yes to approve; Czerwinsky – yes to approve; Chairman Rusczek – yes to approve.

The application is approved.

5. #20-011 – Special Exception Request – Custom Home Occupation/Bartone/43 South Elm Street
Mr. Czerwinski read the staff notes into the record. “Applicant seeks customary home occupation of 144 sq. ft. on the second floor for massage therapy at 43 South Elm Street. The office has concerns that off-street parking may not be available. On-street parking is not an option for fulfilling any parking requirements, nor is parking in such a manner as to prevent residential occupant(s) from accessing off-street parking. Applicant should demonstrate hours and number of clients at any given time and how that relates to provided off-street parking.”

Jill Bartone of 43 South Elm Street explained that she wants to do massage out of her home. Due to the pandemic, she lost her leased space and wants to turn a room in her house into a massage space. She is a single mother of 5 and shares the two-family house with her parents. The house has been in her family for many years. She explained that she would see one client at a time, between the hours of 8:00 am and 3:00 pm with between one and five clients a day. She sees on average 10 – 15 clients a week. She has a private driveway which is available during the day as the other residents are at work. She will not be advertising as she already has an established clientele.

Chairman Rusczek stated that he is struggling with the parking and the business fitting into the neighborhood. He noted that if it is approved, the special exception stays with the property.

Mr. Wolfer asked where customers would park if the downstairs residents are home. Ms. Bartone replied that there is room for three cars in the driveway without blocking the sidewalk. She also stated that she has one client at a time with 20 minutes between them. Mr. Wolfer asked if she works weekends. Ms. Bartone replied that she sometimes works on Saturday or Sunday but was willing to limit her hours to Monday through Saturday, 8:00 am to 3:00 pm. Mr. Wolfer asked if there is a peak time for her business. Mr. Bartone replied that early to late morning would be her peak.

Mr. Rys asked if this application is similar to other applications for home businesses that the Commission has declined because they were in residential type neighborhoods. Ms. Torre confirmed that this is a residential neighborhood but this is a permitted use by special exception as a customary home occupation if it meets the criteria that the Board determines. The Board can make sure it conforms to the needs of the neighborhood and the parking needs. Ms. Torre noted that stacking cars in a driveway is not acceptable. She added that it is a permitted use in a residential neighborhood as a customary home occupation. Mr. Rys stated a concern that this would set a precedent. Ms. Torre noted that if this was approved with the special exception, it will be on the land records for that parcel for whoever lives there for that particular use. The Board needs to determine if it is suitable and appropriate in the area

and on the parcel. Ms. Bartone noted that on her block is the YMCA, a medical office building, and a lawyer's office. It is residential but within this small area are many businesses. It's not like a private residential area.

Mr. Czerwinski stated that he would like to make it work for this person whose business was affected by COVID but has concerns because the change follows the property. He asked if there was a way to put a constraint on the use for the number of people per day, number per week, or number at any given time. Ms. Torre replied concurred that the change would follow the land. She stated that conditions can be added such as the number of clients, days of the week, and hours. The conditions will also follow the land.

Mr. Parisi asked if this would limit the property for use only for massage and only in the one room. Chairman Rusczek replied that it can be used as a residence with the option to use the single room for Massage. Mr. Parisi asked if the owners could ask to change or extend the use. Chairman Rusczek said yes. Mr. Parisi asked where clients would wait. Ms. Bartone replied that she does not have a waiting room and State regulations state that clients have to wait in their cars. Her clients text or call when they arrive and she calls them when it's their turn to come in.

Ms. Harris asked if the residence is family-owned. Ms. Bartone stated that her family has lived there for 35 years and her parents live on the first floor and they support the application. She noted that she will inherit the house and plans to stay there for a long time. Ms. Harris asked if the waiting in the car is just during COVID-19. Ms. Bartone replied that no one knows how long the CDC guidelines will last for massage therapy. Once lifted, her clients should be able to come in when they arrive due to the time between appointments. She instructs her clients not to come early and all are long-standing clients. She noted that she also does in-home visits. Ms. Bartone added that she will not change the outside appearance of the home, nor turn it into a retail space. She's looking for a way to legally earn an income while still being home for her children.

Public Comment – none

Hearing no further questions or comments from the Board, Chairman Rusczek closed the public hearing and opened it up for discussion and possible action by the Board.

Chairman Rusczek stated that he understands where she is coming from but is having a hard time with the location and it being on the second floor.

Mr. Wolfer asked if having the entry and exit in the same location is permissible. Ms. Torre replied that it is permissible from a zoning perspective, though any modification will need Health approval. She noted that any interior modifications will be an issue for the Building Inspector and the Fire Marshal. It's not within the purview of Zoning but accessibility can be a factor to consider but is not a reason for denial. Mr. Wolfer asked if the applicant needs Fire Marshal and Building Inspector approval. Ms. Torre replied not if not changing the building space. She noted that the Health Department will make sure the applicant complies with health regulations.

Mr. Rys asked if this business needs to be ADA compliant. Ms. Torre stated that she wasn't sure, but probably not. She noted that the Commission can make a condition that this is required and stated that the Commission can factor that into their decision. She reminded them that the focus is the use of the site. Mr. Rys asked if we approve the special exception, can we add language that if the business stops, it reverts back to a room. Ms. Torre replied that the approval follows the land, but noted that just

because something can be done doesn't mean that it has to be done. Mr. Rys noted that if the house was sold, the next group could run a business without the ZBA knowing. Ms. Torre replied that they could do massage therapy under whatever conditions are made in the exact same space.

Mr. Wolfer: Motion to approve application #20-011 Special Exception Request for Customary Home Occupation (Massage Therapy) of 144 sq. ft. on the second floor at 43 South Elm Street as per submitted plans received May 12, 2020, from Jill Bartone, subject to hours limited to Monday through Friday, 8:00 am to 3:00 pm.

Mr. Carmody: Second

Vote: Carmody – yes to approve; Wolfer – no to approve; Rys – no to approve; Czerwinsky – yes to approve; Chairman Rusczek – no to approve.

The application is denied.

6. #20-012 – Variance Request/Side Yard/Ricci/17 Fritz Place

Mr. Czerwinski read the staff notes into the record. "Applicant seeks side yard setback of 10.6 ft. where 20 ft. is required and 34 ft. exists to construct a two-car attached garage. The applicant will also need to procure a wetland permit as the location of said garage is within 50 ft. of a stream/watercourse/wetland. Option(s) exist to erect a compliant garage such as a detached garage of the same size located to the rear of the dwelling, or an attached garage of a smaller size. Surrounding parcels appear to have either detached garages or single car attached garages that are compliant. With compliant options available, this request appears to lack any hardship. This office suggests conditioning any approval on securing companion wetland permit." He noted correspondence from Public Utilities, Department of Water and Sewer dated June 8th.

Frank Ricci, 46 Chimney Sweep Road, presented on behalf of his Mother, Nancy Ricci of 17 Fritz Place. He thanked the staff for their support during the process. He explained the three hardships as 1) the neighborhood predates the current zoning regulations; 2) concern with preserving the character of neighborhood and property values, and 3) safety of the senior residents. He reported that he spoke with Erin O'Hare, from Inland Wetlands, who said there are no wetlands issues because the watercourse is for drainage of stormwater only. He noted that the current zoning request is for 20 feet set back, yet currently, most houses on the street are not in compliance. He showed neighboring properties with only 6 – 8 feet from the garage to the property lines. He noted that out of the 13 houses on this side of the street, this is the only one without covered parking. He shared data on the garage to property line measurements for the neighborhood. Mr. Ricci noted that the town suggested putting the garage in the backyard. He explained that there is a significant grade change to the yard and it would require a retaining wall. He noted that there are natural springs in the back yard that might qualify as wetlands. He noted that the neighbors have garages in the back yard but they are not predominantly used for passenger car parking. He also noted that a driveway would take up a lot of the yard creating an impervious surface. He explained that the proposed garage would go over the existing driveway. Mr. Ricci stated that they are asking for the garage because the driveway is on the north side and ice and snow doesn't melt. The garage will help prevent falls for the elderly residents. He stated that this will be a single car garage, 24 ft x 26 ft, and will allow for building a ramp inside. He noted that it will have a smaller footprint than the side of the house. The main purpose of the garage is for safety.

Chairman Rusczek asked about the brook on the north side. Mr. Ricci replied that it carries water from Fritz Place and Chimney Hill and that there is a steep drop to it. He stated that from the edge of the

garage to the drop off for the watercourse would be 15 feet. Chairman Rusczek asked if they had looked at setting the garage in the back. Mr. Ricci replied that they did look at it. The grade drops about 10 feet and a detached garage negates the purpose for the garage.

Ms. Harris asked if his mother still drives. Mr. Ricci noted both residents (mother and aunt) still drive and are very active. Ms. Harris asked if the proposal is for a two-car garage. Mr. Ricci replied that it is classified as a two-car garage but his Mom and Aunt drive small cars, so they should fit. Ms. Harris asked if they had considered a one-car garage. Mr. Ricci replied that even if it were smaller, they still wouldn't meet the 20-foot setback. He added that a two-car attached garage would increase the property value and help the values in the neighborhood. Ms. Harris asked if we know if most of the garages in the neighborhood are not compliant. Ms. Torre replied that people have a right to a three-bay garage under 3600 square feet. A detached garage, if 100% behind the building may be 5 feet off the property line. She noted that in the '80s attached garages were allowed to be 5 feet from the property line. She noted that the neighbors didn't need a variance to do the detached garages and that she didn't know if any of the other neighbors had variances. Ms. Torre stated that staff recommends the applicant go with the detached garage. She noted that the hardship needs to be with the land, not the individuals. Ms. Harris stated that if they want to be compliant and have the 20 feet, can they do a one-car garage. Mr. Ricci replied that he didn't think the one car garage would be compliant. He understood that in the 80s the rules were different. He stated that the attached garage would fit with the neighborhood. He stated that if they can't do an attached garage, they won't do a garage. Ms. Torre noted that the character in the neighborhood is not grounds to grant a variance. She stated that the regulations today state that an attached garage needs to meet the setbacks. Mr. Ricci restated his main points: the neighborhood predates the zoning regulations; in the 80s it allowed 5 feet; the grade of the yard and potential wetlands in the yard, the amount of paving that would be necessary, and the safety of the residents. He asked that the Commission grant the variance.

Chairman Rusczek agreed that part of the hardship is the land because if they put the garage in the back it will be in a hole.

Public Comment – none

Hearing no further questions or comments from the Board, Chairman Rusczek closed the public hearing and opened it up for discussion and possible action by the Board.

Mr. Wolfer: Motion to approve application #20-012 Variance Request for side yard of 10.6 ft. where 20 ft. is required to construct an attached 26 ft. x 24 ft. garage at 17 Fritz Place as shown on Zoning Location Survey prepared for Ricci 2019 Living Trust dated March 17, 2020, subject to the following conditions:

1. Securing Wetland Permit/Approval
2. Comments of Water and Sewer Division from Erik Krueger Senior Engineer dated June 8, 2020.

Mr. Rys: Second

Vote: Carmody – yes to approve; Wolfer – yes to approve; Rys – yes to approve; Czerwinski – yes to approve; Chairman Rusczek – yes to approve.

The application is approved.

7. **#20-013 – Variance Request/Parking/Generations Obstetrics and Gynecology, P.C./150 South Main Street**

Mr. Czerwinski read the staff notes into the record. "Applicant proposes changing the use of the first floor at 150 South Main Street from Office use to Medical Office use. As a result, the parking requirement for the parcel increases by 6 spaces. Applicant is proposing a total of 22 spaces where 23 spaces are required. Applicant will need to follow with Site Plan Approval from PZC." Chairman Rusczek also read into the record a last-minute letter from the Wallingford Elks Lodge.

"Dear Sir or Madam, Wallingford Elks Lodge #1365 a member of the protective order of Elks, owner of 148 South Main Street, Wallingford, CT has no objection to the variance request from Generations Obstetrics and Gynecology, P.C. We welcome them to the neighborhood. Signed Board of Trustees, Richard.... [ask Amy to get the name from the letter]"

Joseph Porto of the law firm of Brett, Porto, Paris & Calwell, 2319 Whitney Avenue in Hamden presented on behalf of the applicant. He mentioned a letter sent June 1 to staff with a certificate of mailing that was sent to the abutters and asked that it be made part of the record. The property falls in the central limited business district and has frontage on South Main Street. It is a two-story office building currently occupied by a long-standing law firm. The intent is for the law firm to move to the 2nd floor and Generations Obstetrics and Gynecology to take the first floor. The gross floor area for the first floor is 2210 feet which requires 15 parking spaces. The second floor is 2000 square feet which requires eight spaces. The total required is 23 and they can provide 22 spaces. The uses of professional and medical offices are permitted, though site plan approval is required. He noted that the building exterior is not changing, nor is the footprint. The hardship is the topography. To the east and rear, the property drops off significantly. Mr. Porto added that this will be one of four locations of the practice and only one physician will be working out of this office. They are not anticipating a lot of traffic.

John Schmitz, Civil Engineer for BL Companies, 355 Research Parkway, Meriden, showed the site plan with the existing and proposed parking. Today there are 14-15 spaces and one handicapped space. He noted that on-street parking is allowed in the front. They are adding 8 spaces.

Chairman Rusczek asked if the dumpster is shielded. Mr. Schmitz replied yes.

Public Comment – none

Hearing no further questions or comments from the Board, Chairman Rusczek closed the public hearing and opened it up for discussion and possible action by the Board.

Mr. Rys: Motion to approve application #20-013 Variance Request for 22 parking spaces where 23 spaces are required to allow for the addition of medical offices at 150 South Main Street per submitted plans titled Boundary Survey Map. Land of Estate of Edward Pagman Laughlin dated March 3, 2020, and Concept Plan, Proposed Parking Lot Striping dated March 6, 2020.

Mr. Czerwinski: Second

Vote: Carmody – yes to approve; Wolfer – yes to approve; Rys – yes to approve; Czerwinski – yes to approve; Chairman Rusczek – yes to approve.

The application is approved.

CONSIDERATION OF MINUTES

8. February 18, 2020, Regular Meeting

Mr. Czerwinski: Motion to approve the minutes from the February 18, 2020 meeting.

Vote: Unanimous to approve.

9. May 18, 2020, Regular Meeting

Vice-Chair Rys Motion to approve the minutes from the May 18, 2020 meeting.

Vote: Unanimous to approve.

ELECTION OF OFFICERS

10. Election of Officers

Vice-Chair Rys: Motion to approve the nomination of Joseph Rusczek for Chair of Zoning Board of Appeals because he's done a good job deserves to be chair again.

Mr. Czerwinski: Second

Vote: Unanimous to approve.

Chairman Rusczek: Motion to approve the nomination of Raymond Rys as Vice-Chair because he does his homework and does a good job.

Mr. Czerwinski: Second

Vote: Unanimous to approve.

Chairman Rusczek: Motion to approve the nomination of Louis Czerwinski as Secretary from his former position as alternate. He's stepped right in and done a good job.

Mr. Rys: Second

Vote: Unanimous to approve.

Chairman Rusczek welcomed Karen Harris as a member and thanked her for coming prepared. Ms. Harris stated she was happy to be a part of the Commission.

Chairman Rusczek thanked Amy Torre for her support and for delivering the packets.

ADJOURNMENT

Mr. Parisi: Motion to Adjourn at 8:30 pm.

Mr. Wolfer: Second

Vote: Unanimous to approve

Respectfully submitted,
Cheryl-Ann Tubby
Recording Secretary