

DRAFT

Wallingford Zoning Board of Appeals

Monday, November 15, 2021

7:00 p.m.

**Robert F. Parisi Council Chambers
Town Hall – 45 South Main Street**

Minutes

Present: Chairman Joseph Rusczek; Board Members: Thomas Wolfer; Samuel Carmody; Bruce Conroy; Karen Harris; Raymond Rys and Amy Torre, Zoning Enforcement Officer.

Chairman Rusczek called the meeting to order at approximately 7:05 p.m. The Pledge of Allegiance was recited.

Voting members tonight are Carmody, Wolfer, Harris, Rys, and Rusczek.

Chairman Rusczek noted that tonight's decisions will be published in the Record-Journal on Friday, November 19, 2021. The effective date of your variance will be Friday, November 19, 2021; the date a certified copy is recorded on the land records. The statutory 15-day appeal period will expire on Sunday, December 5, 2021. If you commence operations and/or construction during the appeal period, you do so at your own risk.

Chairman Rusczek noted that the following application will not be heard this evening, but will be heard next month.

PUBLIC HEARINGS

1. #21-029 – Variance Requests/Kowalczyk/1340 Whirlwind Hill Road

Chairman Rusczek read the staff notes into the record. The applicant seeks a front yard of 43.2 ft. where 75 ft. is required, a side yard of 23.9 ft. where 40 ft. is required, and building coverage of 7.9% where 5% max is permitted to construct a new single-family dwelling at 1340 Whirlwind Hill Road in an RU-120 District. The parcel is a non-conforming vacant lot with respect to lot area and frontage. The parcel also has identified wetlands and will require Wetlands permitting and Health Department Permit for a septic system before any construction may commence. ZBA has the determination strictly for the building and its location on the parcel. Though the parcel area is non-conforming, the building envelope is sufficient to accommodate a home without requiring both front and side yard setbacks. Alternate design such as 2-story vs. ranch-style or orienting structure parallel to the street would either reduce or eliminate the need for the Variance Approval. The application submission lacks building plans and elevations, therefore, preventing the review of particular alternative(s) for compliance. Since options do exist for further or complete compliance, this office would compel the Board to discern any hardship. The application has been presented without necessary Wetland and Health Approvals which may hinder any construction following any potential ZBA Approval. There is correspondence from the Wetlands Commission, the Health Department, and a letter from John Craniak at 1349 Whirlwind Hill.

Joseph Kowalczyk and Colleen Morgan, 1161 South Broad Street, explained that Ms. Morgan is the owner of the property. Mr. Kowalczyk was going to build a house there for Ms. Morgan and her fiancé. The fiancé became handicapped so the house now needs to be handicapped accessible which requires a

bigger first-floor design. Due to the septic, the only buildable spot is what shows on the plan. He stated that 5% land coverage is pretty small even for a two-story house.

Chairman Rusczek stated that other than the A2 survey, they don't have anything showing what is being built. Mr. Kowalczyk replied that they weren't going to do full architectural designs until they knew they could get the setbacks. Chairman Rusczek stated that they are all for making the home handicapped accessible but would like to see some sort of plans so they know there are no other options. Mr. Kowalczyk asked if he gave them the plans, it wouldn't really change what we are looking at. Chairman Rusczek noted that they need to clarify what is a wish versus what they can legally do. Mr. Kowalczyk stated that due to the septic, the wetlands, the first floor requirements for handicapped accessibility, and the attached garage, that's the only place to put the house. Chairman Rusczek asked about the square footage. Mr. Kowalczyk replied 2500 sq. ft. or less. Ms. Morgan noted that it is the garage that puts them over. She stated that they can't do a second story.

Mr. Rys asked if there will be a basement. Mr. Kowalczyk replied that there will be a half-basement on the dry side, the hill side. Mr. Rys asked where the property is in relation to the vineyards. Mr. Kowalczyk described the location. He added that this one-acre lot was created pre-zoning.

Ms. Torre added that for a variance request of any nature, building plans are required. They don't have to be blueprint level. This is to convey the structure. In addition, when the Board makes a determination on a variance, it is on a particular project, not a general concept. The square footage needs to be exact for a variance. The Board needs to see what the project is.

Chairman Rusczek stated that he would like to see a set of plans before moving forward. Mr. Wolfer agreed. We can't make a determination without seeing what all the variances are for. Mr. Carmody agreed and recommended that the applicant come back instead of holding a vote tonight.

Chairman Rusczek stated that this application can be continued and noted that the next meeting won't be until January. Mr. Kowalczyk asked what was required. Mr. Rusczyk replied that the Board needs to see what you are planning on building. Mr. Kowalczyk agreed with the continuation of the January 18th meeting.

Ms. Torre explained that the applicant does not need to re-notify as the public hearing will be continued.

Mr. Rys: Motion to continue application 21-029 Variance Request for Kowalczyk, 1340 Whirlwind Hill Road.

Mr. Carmody: Second

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

The continuation is approved.

2. #21-030 – Variance Request/Zeng/600 Williams Road

Chairman Rusczek read the staff notes into the record. The applicant seeks a side yard of 15.5 ft. where 30 ft. is required to erect a 22.7 ft. x 28.3 ft. attached garage at 600 Williams Road in an RU-40 District. The existing dwelling is oriented diagonally on the parcel. The Parcel is hourglass-shaped with minimum width at the location of the dwelling. The parcel building area has 60% width at the location of the

dwelling than width along the front boundary. The foundation for the proposed garage is existing. Option(s) exist to locate a detached garage of the same size in compliance with Zoning Regulations and eliminate the need for variance approval. The foundation for the proposed attached garage was erected in 2020 without seeking any variance approval and therefore does not contribute to hardship for the Board's determination process. Letter from 604 Williams Road; Correspondence dated October 18, 2021, from Christopher Juliano, Juliano Associates to Amy Torre; memorandum dated October 20, 2021, from Justin Rossetti, Building Official to Kevin Pagini, Town Planner; correspondence from the Health Department; Zoning Location Survey Land of Lian Zeng, 600 Williams Road, Wallingford, CT dated October 15, 2021.

Christopher Juliano, licensed land surveyor and professional engineer with Juliano Associates, 405 Main Street, Yalesville, presented for the applicant. He stated that his office surveyed this land for Ms. Zeng in 2017 to establish the boundaries. They were brought back in 2020 when they found there was a foundation for a proposed garage. He noted that there is a bit of a language barrier. The lot and the orientation on the lot are very unusual. The lot was created back in 1977 and all the properties in the development have odd shapes. He shared a plan with the same size garage on the south side of the building, which would also be over the setback. He agreed that a detached garage in the rear of the property would not need a variance. He noted that the topography falls off in the back and the well is there. He requested a little bit of leniency from the Board. He suspected that the foundation was a result of a language barrier. Any good builder should have known to come to the town and pull a building permit.

Chairman Rusczek asked where the hardship is. Mr. Juliano replied that it is in the configuration of the lot and the orientation of the house. Chairman Rusczek noted that there are options for a two-car garage on the property. He asked about the location of the well. Mr. Juliano pointed it out in the middle of the backyard. He said that he didn't investigate the backyard.

Ms. Harris asked for clarification of the alternative garage location to the south. Mr. Juliano noted it and said it was just to show that it would be over the setback as well. Ms. Harris asked if it was doable in the backyard. Mr. Juliano replied that theoretically it could, but getting to the backyard involves dealing with steep grades. Ms. Harris asked if a one-car garage would be within the setbacks. Mr. Juliano replied on the back of the proposed garage, yes but on the front no. They would still need a variance. Ms. Harris asked about a one-car detached garage in the rear. Mr. Juliano didn't think the size would matter, getting back there would still be difficult, but doable.

Ms. Torre concurred with Mr. Juliano that putting the garage at the opposite end would have the same issue. She clarified that this is not a zoning violation to have a foundation. She noted that moving a driveway doesn't require zoning approval. The house is not currently in violation. To erect something on that foundation would require a variance. She encouraged the board to look at structure, appropriateness, and hardship or lack of. She noted that the homeowner has been persistent in trying to do this the right way.

Mr. Rys asked about the height of the proposed garage and if there would be living space above it. Mr. Juliano replied that the height of the roof will match the existing house. On the plan, the space above the garage is noted as a bonus room. He shared the plans with the Board.

Mr. Rusczek noted that he doesn't see the hardship.

Debbie Mishler, 604 Williams Road noted that she had submitted a letter that she read. "I am the owner of the northerly neighboring property. I am the neighbor that is directly affected by this request. I've owned my property since 2007. One of the most significant features for me when I purchased this property was the privacy it afforded given the lot size and the setback requirement in this RU-40 zone. Before you tonight is an application that does not meet any of the legal requirements for granting such an application. As you know far better than I do, the hardship required for a variance to be granted must originate in the zoning ordinance and arise directly from the application of the ordinance to the circumstances or conditions beyond the control of the party involved. The concept that the grounds for a variance must arise from circumstances beyond the applicant's control is related to the concept that the variances cannot be granted for a self-created hardship where, as here, the alleged hardship is self-created. ZBA cannot properly grant a variance. The applicant wants a two-car garage on the opposite side of her driveway built over a foundation that was illegally installed. Clearly, there are many locations on her parcel where she could construct a garage, such as a freestanding garage that does not need a variance. Self-created hardship is not a sufficient reason for a variance because the hardship does not arise from the application of the zoning regulations per se, but from the zoning regulations coupled with an individual's personal needs, preferences and circumstances. This is a quote from the 1972 Connecticut Supreme Court case of Garibaldi vs. ZBA of Norwalk, 163 Connecticut 235-239. I also want to comment on the application itself. Interestingly it identifies the current side yard setback at 15.5 feet from my property based on an existing foundation. Mrs. Torre can tell you that the foundation was illegally built within the required side yard without proper authority. The granting of this variance would be a reward for someone who acted outside the legal process which I would think is not something that you want to do. Lastly, I've spoken with a local realtor after she viewed my property, who advised me that construction of a garage so close to my property line will have a deleterious effect on the privacy my property currently enjoys and on the value of my home. I have a letter to that effect if the Commission would like to see a letter from a real estate agent from Century 21. I am not sure a requirement from the ZBA that the applicant plant at least eight fast-growing arborvitae trees along our common border will give me the privacy that a 30-foot side yard provides. Please consider my concerns with your decision.

Chairman Rusczek closed the public hearing and asked for discussion or possible action.

Mr. Rys: Motion to approve application 21-030 a Variance Request for a side yard of 15.5 ft. where 30 ft. are required to construct an attached garage at 600 Williams Road as shown on Zoning Location Survey, Land of Lian Zeng dated 8/24/2020, subject to:

1. **Comments from the Building Official received October 20, 2021, and**
2. **Comments from the Health Department received November 8, 2021.**

Ms. Harris: Second

Vote: Carmody – no to approve; Wolfer – no to approve; Harris– no to approve; Rys –no to approve and Chairman Rusczek – no to approve.

The variance request is denied.

3. 21-031/Special Exception Request/Casertano Greenhouses/180 New Cheshire Road, Meriden

Mr. Rusczek read the staff notes into the record. The applicant requests a Special Exception Approval to erect a Solar Array of Ground Mounted Solar Panels at 180 New Cheshire Road in and RU-40 District. The parcel is greater than a 54-acre farm. The proposed location is not in proximity to any neighboring

properties. The Board should consider the size, location, height, screening, and technical specifications of the array as it applies to this parcel.

Cormac Seyfried, Pure Point Energy, 22 South Smith Street, Norwalk, explained that they are proposing to do a ground mount system at the farm at 180 New Cheshire Road in Meriden. They are requesting a special exception. This project will generate a lot of clean energy.

Chairman Rusczyk asked if it is just going to be in the open field shown in the aerial view. He asked what is to the left. Mr. Seyfried replied yes and that he's not sure but they may be the greenhouses. Chairman Rusczyk asked how many arrays and how many panels in each array will be installed. Mr. Seyfried replied there will be four arrays with 90 panels and one array of 51 panels. Each array of 90 panels is about 103 feet wide and about 28 feet long. So an array of five of them is a little more than 100 feet wide and a little bit less than 200 feet long. Chairman Rusczyk asked how high off the ground they will be. Mr. Seyfried replied that the high point is 12.5 feet. Chairman Rusczyk asked for an estimate of what they will generate. Mr. Seyfried replied that the system is a 184.95 kW system. He didn't have an estimated annual production but for a system this size, it will be quite substantial. Chairman Rusczyk asked if the power generated will be just for that property. Mr. Seyfried replied yes. Chairman Rusczyk asked if there was a battery backup. Mr. Seyfried replied no, there is no storage. It will be used to power their greenhouse.

Ms. Harris asked if the panels would be visible from anyone else's property. Mr. Seyfried replied that he wasn't sure. Chairman Rusczyk noted that the farm is tucked on the other side of the airport so he didn't think it would be visible.

Chairman Rusczyk closed the public hearing and called for discussion or action.

Mr. Rys: Motion to approve application 21-031, Special Exception Request for a ground-mounted solar array at 180 New Cheshire Road as shown on Solar PV Project for Casertano Greenhouses, 184.95kW (DC Photovoltaic PV System), 180 New Cheshire Road, Meriden, CT by Pure Point Energy, dated October 9, 2021.

Mr. Carmody: Second

Vote: Carmody – yes to approve; Wolfer – yes to approve; Harris – yes to approve; Rys – yes to approve and Chairman Rusczyk – yes to approve.

The variance request is approved.

MEETING SCHEDULE

Mr. Rys: Motion to approve the 2022 Schedule of Meetings, Wallingford Zoning Board of Appeals.

Mr. Wolfer: Second

Vote: Unanimous to approve

CONSIDERATION OF MINUTES

Mr. Wolfer: Motion to accept the minutes of the Monday, October 18, 2021, Wallingford Zoning Board of Appeal meeting as submitted.

Mr. Carmody: Second

Vote: Unanimous to approve

Chairman Rusczek thanked and congratulated Sam Carmody and wish him well as he's been elected to the Town Council. He thanked Sam for his positive input and stated that he was very good to work with and that he will be missed. Mr. Carmody thanked Chairman Rusczek and stated that it was a pleasure working with all the board members. He stated that he appreciated the opportunity to have served.

ADJOURNMENT

Mr. Wolfer: Motion to adjourn the November 15, 2021 meeting at approximately 7:55 pm.

Mr. Rys: Second

Vote: Unanimous to approve

Respectfully Submitted,
Cheryl-Ann Tubby
Recording Secretary