

Wallingford Zoning Board of Appeals

Monday, May 15, 2023

7:00 p.m.

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

Minutes

Present: Vice Chair, Ray Rys; Board Members: Bruce Conroy (phone); Karen Harris; Alternates: Robert Gross; Robert Parisi; Robert Prentice; and Amy Torre, Zoning Enforcement Officer.

Acting Chair Rys called the meeting to order at approximately 7:00 p.m. The Pledge of Allegiance was recited.

Voting members tonight are Conroy, Harris, Gross, Parisi, and Rys.

Acting Chair Rys noted that tonight's decisions will be published in the Record-Journal on Friday, May 19, 2023. The effective date of your variance will be Friday, May 19, 2023; the date a certified copy is recorded on the land records. The statutory 15-day appeal period will expire on Sunday, June 4, 2023. If you commence operations and/or construction during the appeal period, you do so at your own risk.

PUBLIC HEARINGS

1. #23-013/Appeal of Decision of ZEO/Siddiqy/68 North Turnpike Road

Ms. Harris read the staff notes into the record. Application #23-013 is an Appeal of a Cease and Desist Order issued July 30, 2021, for the continued violation first issued August 20, 2020, for the unpermitted expansion of a Special Permit for non-conforming Use at 68 North Turnpike Road in a DD-40 District. The Appeal period is 15 days per Section 9.1.C.1 of the Zoning Regulations, and no Appeal was taken during that period which expired in August 2021. The Board cannot approve the request per Section 9.1.C.1 (expired Appeal period). Furthermore, the applicant applied for and was denied a Variance Request for the same on September 20, 2021. The Town has filed Legal Action that is currently pending in the CT Superior Court system to compel action and remediation for the aforementioned Violation. Correspondence included the Cease and Desist Order dated July 30, 2021.

Faran Siddiqy and Samira Faran, of 68 North Turnpike Road explained the appeal. Ms. Faran explained that Mr. Siddiqy had a medical condition that affected his memory which is why he missed the deadline. She reported that they removed the things they were told to remove, except for a couple of things that they thought improved the property. They presented a document signed by 513 people saying that the property looks nice. Mr. Siddiqy offered a doctor's note explaining that his memory was affected by an illness in 2013. He added that everything is in order with the State.

Mr. Conroy asked what can be done at this meeting. Ms. Torre replied that per the regulations the Board cannot approve the appeal because the appeal period expired in 2021. The Board must deny the appeal.

Mr. Siddiqy stated that he did not receive the notice canceling the meeting. He added that the Town didn't accept the papers he was submitting. Mr. Siddiqy reported that the U-haul trucks have been removed and the water problem was also fixed.

PUBLIC COMMENT

She Siddiqy, 78 Shortbeach Road, Branford, son of Mr.Siddiqy, stated that he helped paint walls to make them look better.

Hearing no further public comment, Acting Chair Rys closed the public hearing and asked for discussion or possible action.

Mr. Gross clarified that the Board can't do anything and noted that the issue is in the courts. Ms. Torre agreed that the appeal period for the decision being appealed tonight expired. The Board cannot approve it.

Ms. Harris: Motion to deny application #23-013 for Siddiqy, 68 North Turnpike Road for an Appeal of Decision of ZEO-Cease and Desist Order dated July 30, 2021, for the violation of Special Permit #408-03 and the expansion of the nonconforming use at 68 North Turnpike Road.

Mr. Parisi: Second

Vote: Conroy – yes to deny; Gross – yes to deny; Harris – yes to deny; Parisi - yes to deny; and Acting Chair Rys – yes to deny.

The application is denied.

2. #23-014 – Variance Requests/Dowty/32 Cardinal Drive

Ms. Harris read the staff notes into the record. The applicant seeks a front yard of 37 ft. where 40 ft. is required and a side yard of 9 ft. where 20 ft. is required to construct a 572 sq. ft. 2-story addition at 32 Cardinal Drive in an R-18 District. The Board should consider the fact that should the applicant alternately locate or size the proposed addition less or no variance approval would be necessary. For example; flush with the front of the existing dwelling or locating simply 1 ft. forward and extending the remainder to the rear of the dwelling, and then the front yard variance would not be required. Locating the addition to the rear or vertical addition to the existing dwelling would require no variance approval. The ability to construct compliant additional living space raises the question as to hardship versus preference.

Brent Dowty and Ashley Dowty, 32 Cardinal Drive explained the request. Mr. Dowty explained they want to add space for their growing family. They are landlocked to the right, there is a pool and an addition in the back, so the only option is on the left side. Ms. Dowty stated that they don't want to build up because they'd have to move out and because the HVAC system is in the attic.

Ms. Harris asked if they thought about any of the modifications suggested in the staff comments to reduce the variance. Mr. Dowty replied that building up would be hard due to the HVAC ductwork and configuring the stairs would be a challenge. He noted that they have no garage and little storage. The hardship is that they can't go to the right or back and there is already an addition on the left that sits on piers. Ms. Dowty stated that they are only adding two bedrooms, a bathroom, and storage. They had several quotes and they all agreed that this was the best way to renovate without having to move out for six months. Ms. Harris noted that the hardship has to do with the property. Ms. Dowty replied that they can't do anything else.

Mr. Gross asked about the pool. Mr. Dowty stated that it is aboveground off the back, right of the house. There is a deck that connects the house to the pool.

Mr. Rys asked if they could expand off the back if the pool wasn't there or if there were any other alternatives. Ms. Dowty replied not that they can see. She added that if they try to go up there is nowhere to put the stairs.

Ms. Torre explained that the staff comments were suggestions for compliant options. She noted that the Board can approve one variance and not the other.

Ms. Harris asked if the applicant has looked at making the addition flush with the front of the house. Mr. Dowty replied that the back addition is on piers so tying it in may be difficult. The builders they talked to recommended not adding to the addition on piers. Mr. Dowty added that connecting the roofline to the house is easier than reconfiguring the roofline in the back.

Hearing no public comment, Acting Chair Rys closed the public hearing and asked for discussion or possible action.

Ms. Harris: Motion to approve application #23-014 for Dowty, 32 Cardinal Drive for a Variance Request for a front yard of 37 ft. where 40 ft. is required to construct a 572 sq. ft. 2-story addition at 32 Cardinal Drive as shown on Plot Plan, prepared for JC Builders c/o Roanne Marquadt, 32 Cardinal Drive, dated 5/15/2017 and submitted plans received April 6, 2023.

Mr. Parisi: Second

Vote: Conroy – no to approve; Gross – no to approve; Harris – no to approve; Parisi - no to approve; and Acting Chair Rys – no to approve.

The application is denied

Ms. Harris: Motion to approve application #23-014 for Dowty, 32 Cardinal Drive for a Variance Request for a side yard of 9 ft. where 20 ft. is required to construct a 572 sq. ft. 2-story addition at 32 Cardinal Drive as shown on Plot Plan, prepared for JC Builders c/o Roanne Marquadt, 32 Cardinal Drive, dated 5/15/2017 and submitted plans received April 6, 2023.

Mr. Gross: Second

Vote: Conroy – yes to approve; Gross – no to approve; Harris – yes to approve; Parisi - yes to approve; and Acting Chair Rys – yes to approve.

The application is approved.

Ms. Torre clarified that the approval is for the side, not the front.

Ms. Harris explained that this was done because there is a compliant alternative.

Ms. Torre explained that hardship has to do with the land, not a preference. The applicant did not provide enough demonstration that they could not comply with the front yard variance.

3. #23-015 – Variance Request/McInvale/45 North Turnpike Road

Ms. Harris read the staff notes into the record. The applicant requests a front yard of 31.3 ft. where 40 ft. is required to allow a vertical addition at 45 North Turnpike Road in an R-18 District. The applicant has already constructed the vertical addition without Zoning Approval or necessary building permits. The applicant inquired of the Planning and Zoning Office about how to potentially pursue an addition and/or an additional dwelling unit at the parcel in April of 2022. The applicant was advised that no additional dwelling units are permitted and an A-2 survey would be required for any addition. In this particular case, the structure appeared as though it may be encroaching on the front setback from the information the office had available. An A-2 survey would determine whether the existing structure was, in fact, compliant and a building permit could be issued for the vertical addition, or if the existing dwelling was shown to be encroaching into the front setback, then a variance request with the accompanying survey would be required to expand that non-conformity. As a result of blight complaints and follow-up on blight violations, the Building Department noted the unpermitted construction in progress in August 2022 and substantially completed in October 2022. To date, no building permits have been issued for the fully constructed vertical addition. The survey enclosed with this application was prepared on May 17, 2022, but only provided to the PZC Office for the first time in April 2023, confirming the need for a Variance Approval before the issuance of any building permit for construction commencement. The Survey confirms the property is in a Zoning Violation This Variance request is to remediate the violation and allow the expansion of a non-conforming structure. Correspondence included Interdepartmental Memo from Amy Torre, Land Use Specialist, Zoning Enforcement Officer to Justin Rossetti and Peter LeClerc, Building Department, dated October 12, 2022.

Christopher McInvale, 176 Peters Lane, Rockfall, explained that he is representing his father who is traveling. He stated that the building didn't change or go forward. The only change is the dormer that was squared up to allow better access to the stairway. The house was in disrepair for years. His father understood that he could not make the house bigger. The roof on the front of the house was different. He just squared it up. It doesn't come out any farther.

Mr. Conroy asked if the Zoning office had informed him that he had to come in before he did anything. Ms. Torre replied that there was an inquiry in April of 2022. At that time, the staff couldn't tell where the house was with the documents they had. They informed the applicant that he needed to do the survey. The Building Department reported that construction had commenced. The office had advised the applicant that even a vertical addition needs a variance. It affects the front non-conforming boundary. Mr. Conroy stated that it sounds like the applicant was notified but built the addition anyway. Mr. McInvale replied that they originally had plans to add on but didn't. They just fixed it up. It looks much better now. He stated that the Building Department warned them about closing up the house because work was done in the winter. He stated that the house did not come forward. The footprint is not changed. Mr. Conroy asked if the applicant was aware that they needed a building permit. Mr. McInvale replied that he wasn't there, so doesn't know, but they were just fixing up the house.

Ms. Harris asked if they live there. Mr. McInvale replied no, it is a vacant rental property. They own many properties in town and keep them up. Ms. Harris noted that the property is significantly improved over what it was a couple of years ago. She asked if the applicant didn't understand that they needed a variance for a vertical addition. Mr. McInvale replied that his father didn't understand that the work he did was a problem.

Mr. Gross asked about the permits. Ms. Torre replied that they had a permit at the time of the initial inquiry for windows, siding, and roof. They were told that an A-2 survey was needed for any addition to get a permit. They got the survey but never applied for the permit. The front of the house encroaches by 10 feet, so the vertical expansion is also encroaching by 10 feet. Mr. Gross noted that it is hard to understand that they didn't know. Mr. McInvale replied that they had the permit for the roofing. They squared the side of the house at the roofline. They did not add on.

Mr. Parisi asked if the applicant understands the problem. He suggested they meet with staff. Mr. McInvale replied that he understands that it is something to do with the dormer and that it should not have been changed. He asked what they should be doing to go forward.

Ms. Torre noted that there was no violation issued because the Town didn't know. They tried to assist with the process. The survey was done but not given to the building department, so there was no sign-off on compliance with zoning. 10 feet of the house is already non-conforming. The confusion is about vertical additions. They always require variances by regulation. She agreed that the property looks much better. Technically they were in violation but the violation notice was not issued.

Mr. Rys asked if this is a single-family home. Mr. McInvale replied yes. He explained that the stairway is short because of the roofline. The dormer makes the stairway a normal stairway. No walls have moved.

Hearing no public comment, Acting Chair Rys closed the public hearing and asked for discussion or possible action.

Ms. Harris: Motion to approve application #23-015 for McInvale, 45 North Turnpike Road for a Variance Request for a front yard of 31.3 ft. where 40 ft. is required to construct a vertical addition at 45 North Turnpike Road as shown on Zoning Location Survey, Second Floor Addition, prepared for Huston McInvale, #45 Turnpike Road, dated 5/17/2022, and submitted photographs received 4/15/2023.

Mr. Parisi: Second

Vote: Conroy – no to approve; Gross – yes to approve; Harris – yes to approve; Parisi - no to approve; and Acting Chair Rys – no to approve.

The application is denied.

Mr. McInvale asked what his next steps are. Mr. Rys suggested he meet with the staff. Ms. Torre replied that there is an appeal period and they can go to court. She stated that the property is in violation. The remedy is to remove what is in violation.

CONSIDERATION OF MINUTES

4. April 17, 2023, Regular Meeting

Ms. Harris: Motion to approve April 17, 2023, Zoning Board of Appeals Minutes as submitted.

Mr. Parisi: Second

Vote: Conroy – yes to approve; Gross – yes to approve; Harris – yes to approve; Parisi - yes to approve; and Acting Chair Rys – yes to approve.

The minutes are approved.

ADJOURNMENT

Ms. Harris: Motion to adjourn the May 15, 2023, regular meeting of the Zoning Board of Appeals at 7:50 pm.

Mr. Parisi: Second

Vote: Conroy – yes to approve; Gross – yes to approve; Harris – yes to approve; Parisi - yes to approve; and Acting Chair Rys – yes to approve.

The motion passed

Respectfully submitted,
Cheryl-Ann Tubby
Recording Secretary