

DRAFT

Wallingford Zoning Board of Appeals

Monday, April 19, 2021

7:00 p.m.

Meeting Conducted Remotely through GoToMeetings

Minutes

Present: Chairman Joseph Rusczek; Vice-Chair Raymond Rys; Secretary Louis Czerwinski; Commissioners Thomas Wolfer; Samuel Carmody; and 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 was to be run.

Chairman Rusczek noted that tonight's decisions will be published in the Record-Journal on Friday, April 23, 2021. The effective date of your variance will be Friday, April 23, 2021; the date a certified copy is recorded on the land records. The statutory 15-day appeal period will expire on Sunday, May 9, 2021. If you commence operations and/or construction during the appeal period, you do so at your own risk.

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

PUBLIC HEARINGS

1. #21-002 – Variance Request/Rizzo/1451 Durham Road

Mr. Czerwinski read the staff notes into the record for application. The applicant is requesting a front yard of 29.8 ft. where 29.8 ft. exists and 75 ft. is required to reconstruct and vertically expand a residential dwelling unit at 1451 Durham Road in an RU-80 District. The application is after the fact and a result of Zoning and Building Code violations issued in January 2021. The applicant was the former owner of the property as well as the building through 12/21/2020. This office was advised of the building code violations (no proper building permits, no proper licensure, failed inspections and no Certificate of Occupancy issued) to determine any companion zoning violations. The dwelling was constructed in 1948 pre-dating zoning (non-conforming) and entirely located in the front setback. Dwelling permitted to remain yet the expansion of non-conformity requires Variance Approval. Construction completed property sold and dwelling currently occupied in violation. This office can determine no hardship with regards to this application as it is being sought to correct a series of violations deliberately pursued. In addition, there is correspondence dated February 10, 2021, from Justin Rossetti, Building Official.

No one came forward to present the application. Chairman Rusczek opened the hearing and stated that he sees no way to support the application based on the information given to the Board. Board members agreed.

Mr. Rys asked if anyone is currently living in the house. Chairman Rusczek replied yes. Mr. Rys asked if that was allowed and if the Town would be liable. Chairman Rusczek replied that it is not allowed and that the Town would not be liable because they didn't get a Certificate of Occupancy or apply for the permits or get inspections.

Chairman Rusczek called again for a representative for the applicant. Hearing none, he closed the public hearing and noted that the applicant can reapply.

Mr. Czerwinski: Motion to approve application #21-002 Variance request for front yard of 29.8 ft. to construct residential dwelling unit with vertical addition as shown on Improvement Location Survey prepared for Rizzo Construction, dated January 25, 2021, and plans received February 17, 2021.

Mr. Rys: Second

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

The application is denied.

**2. #21-003 – Special Exception Request – Customary Home Occupation (Services/Consulting)/
Migliaro/9 Bridle Lane.**

Mr. Czerwinski read the staff notes into the record. The applicant requests a Special Exception Approval for a Customary Home Occupation (Services/Consulting) for 48 sq. ft. of the first floor of the residence at 9 Bridle Lane. The nature of the services provided is conducted on the computer and telephone in entirety and does not require Special Exception Approval. The applicant is seeking the Special Exception to allow the possibility of client or colleague in-person appointment and to correlate with any required licensure identifying the business location. The office has no objections to this application. The location of the residence, the space allotted for the occupation, and the minimum, if any, client interaction are conducive to the intent of a home occupation. In addition, there are maps submitted with the application dated March 9, 2021, and a description of the applicant's services and/or occupation.

Chris Migliaro, 9 Bridle Lane, presented his request to start a business. He is applying for an FFL which requires Town approval to operate out of his home. He explained that he works for an auction house that auctions firearms. He won't be buying and selling but does the pick-up and delivery in the state and out of state. He will be transferring the firearms more than working out of his home but the ATF requires Town approval for this business.

Chairman Rusczek clarified that he mostly works offsite, but this will cover him in case someone comes by the house. Mr. Migliaro replied yes.

Hearing no public comment, Chairman Rusczek closed the public hearing and called for a Motion.

Mr. Rys: Motion to approve application #21-003-Special Exception Request for a 48 sq. ft. customary home occupation as shown on Zoning Location Survey Lot 9, Woodhouse Hunt Subdivision dated 8/4/1997 and submitted proposal received 3/9/2021.

Mr. Czerwinski: Second

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

The application is approved.

3. #21-004 – Variance Requests/Frank/3 Beechwood Drive

Mr. Czerwinski read the staff notes into the record for application. The applicant requests a variance for side yard of 6.5 ft. where 37.5 ft. exists and 20 ft. is required, the front yard of 12 ft. where 26 ft. exists and 40 ft. is required, and building coverage of 17% where 8% exists and maximum 15% is permitted to construct an attached 2-story garage. The lot is a corner, undersized lot which currently is non-conforming with respect to its 2 front yard setbacks as it pre-dates the inception of zoning. The dwelling

is oriented diagonally on the lot with no garage. The proposal also includes a 2-story addition to the existing dwelling, further encroaching on the front setback. The Board should consider whether alternatives to lessen or eliminate any/all variance requests exist. For example, adding an attached garage and 2-story living space to the rear of the diagonally-oriented dwelling allows access from the drive on Beechwood Drive while eliminating the front yard Variance Request. Another potential option is to reduce the proposed square footage of the new garage/living area footprint by 209 sq. ft. which would eliminate the building coverage Variance Request. In addition, there are two drawings dated March 12, 2021, and a map.

Jonathan Frank, 3 Beechwood Drive, explained that they will be building a two-story attached garage with living space above. The house is situated diagonally and the property in the back slopes toward the house. There is a retaining wall to divert rainwater. The variance is for the side and front to use the existing features of the property and the driveway for a garage.

Chairman Rusczek stated that there seems to be a different way to situate the addition so it won't need as many variances. Mr. Frank replied that the back corner of the house is where the oil tank is and the bilco door. So to build there he would need to move them. He noted that the sewer line is 7 feet from that spot.

Chairman Rusczek asked if there was a way to use the existing driveway and adjust the garage to eliminate a variance. Mr. Frank stated that there is potential to make it smaller and eliminate the coverage variance. He stated it could be 4 ft. less wide (the side with the garage doors) which would make it 26 ft instead of 30 ft. That would increase the distance from the neighbor to 10.5 ft and the building coverage would be 120 sq. ft. less.

Mrs. Torre noted that 26 x 4 eliminates 104 sq. ft. which is close to eliminating a variance and lessening the other setbacks. She encouraged eliminating the variance if possible. She noted that it is hard to demonstrate hardship when you can cut it down. She explained that the Board could approve the setbacks and not the coverage; the plans could be altered to match that. It doesn't have to be redesigned tonight.

Chairman Rusczek stated that if it is to be redesigned, resulting in a change to the setback request, we should continue the public hearing. That gives Mr. Frank time to redesign it and come back next month. Mrs. Torre noted that if the applicant is interested, that it is fair. Chairman Rusczek asked Mr. Frank if he is open to returning next month with a revision. Mr. Frank agreed.

Mr. Carmody stated that it would be great if he could come back with a revision. The other Board members agreed.

Mr. Czerwinski asked what the actual square footage is of the house and of the addition. Mr. Frank replied that the house is 768 sq. ft., Mrs. Torre noted that based on the proposal the total square footage will double with the addition.

Mrs. Torre stated that by continuing the public hearing re-notification is not necessary. The Public Hearing will be continued for modification to the proposal. Mr. Frank agreed to come back to the May 17th meeting.

Mr. Rys: Motion to continue application #21-004 Variance Requests/Frank/Side yard of 6.5 ft. (20 ft. required), the front yard of 12 ft. (40 ft. required), and building coverage of 17% (max 15% permitted) to construct a 2 story, 2 car attached garage at 3 Beechwood Drive in an R-18 District, to the May 17, 2021 meeting.

Mr. Czerwinski: Second

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

The continuance is approved.

4. #21-005 – Variance Requests/Morgillo/654A North Colony Road

Mr. Czerwinski read the staff notes into the record for application. The applicant seeks front yard variances of 5 ft. and 35 ft. where 50 ft. is required to locate an 8 ft. x 20 ft. and an 8 ft. x 40 ft. storage container at 654A North Colony Road in an RF-40 District. The site is a thru lot with two front yards. The buildings are oriented facing North Colony Road yet the rear of the buildings are also considered to be front yards as there is frontage on Old (North) Colony Road. The compliant building envelope between 2 front yards is 25 ft. wide to locate all buildings. The applicant proposes pool and spa sales at the site necessitating merchandise/material storage in addition to the 320 sq. ft. existing building. In addition, there is a site plan received on March 12, 2021.

Lia Margillo and Nicolas Valentine, of 654A North Colony Road, presented their variance request due to the restrictions applied in the reasonable use of the property. Any other location of the storage units would be too far away.

Chairman Rusczek asked for the sizes of the containers. Mr. Valentine replied that the one already there is an 8ft. x 20 ft. and the other proposed unit would be 8 ft. x 40 ft. He apologized that one of the containers was already delivered and is in place. Chairman Rusczek asked what will be stored in the containers. Mr. Valentine explained it will be skimmer poles, nets, gate valves, plumbing parts, and other pool supply items that customers pick up. The location is to provide accessibility to restock the store. Chairman Rusczek noted that it is good to see something happening on that property.

Mr. Wolfer asked if there would be storage of any combustible items. Mr. Valentine replied that it is mostly opening kits, pool accessories, liners, and building materials to install pools. Nothing combustible or hazmat required is stored in the units.

Mr. Czerwinski noted that certain pool chemicals need to be kept separate or they become combustible when combined. He asked if any of those chemicals would be stored here. Mr. Valentine replied not at this location. He stated that most of the chemicals they sell are drop shipped directly to the customer. He added that they are trying to turn the site into less of an eyesore.

Hearing no public comment, Chairman Rusczek closed the public hearing and called for a Motion.

Mr. Rys: Motion to approve application #21-005 – Variance Request for a front yard of 35 ft. to locate an 8 ft. x 20 ft. storage container as per Site Plan for seasonal office, Heartland Industries, Inc. dated 7/5/2000, modified with the proposal and received 3/12/2021.

Mr. Czerwinski: Second

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

Mr. Rys: Motion to approve application #21-005 – Variance Request for a front yard of 5 ft. to locate an 8 ft. x 40 ft. storage container as per Site Plan for seasonal office, Heartland Industries, Inc. dated 7/5/2000, modified with the proposal and received 3/12/2021.

Mr. Czerwinski: Second

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

The application is approved.

5. #21-006 – Variance Request/Hogan/361 North Colony Street

Mr. Czerwinski read the staff notes into the record for application. The applicant seeks to Use Variance Approval to allow first Floor residential use in a single-story accessory structure at 361 North Colony Street where first-floor residential use is not permitted in a CA-12 Zone. The site consists of a 2 story commercial building with a second-floor residential unit as well as a 1056 sq. ft. single-story commercial/storage building formerly a garage. The property owner/applicant is leasing at least a portion of the single-story building as a residential unit. This office was made aware of the use violation following the Fire Marshal's inspection of the property. Subsequently, the property owner was served a Notice of Zoning Violation on 12/23/2020. The property owner did respond and was advised to cease leasing residentially and allowance for additional time to terminate the agreement would be granted. The applicant chose to pursue Use Variance Approval as a means to comply. A Use Variance was denied for the same regarding the two-story building in 2013 citing compliant uses for the property exist and no hardship is present. This office cannot support another Use Variance request for the same reason that existed in 2013. There is no hardship and the basis for the request is financial in nature. In addition, there is correspondence dated March 12, 2021; a commercial lease agreement; photos; and a certified letter that Kacie Costello sent to Mr. Hogan on February 21, 2013.

Lawrence Hogan, the owner of 361 North Colony Road, explained that he has been unable to rent that section of that building. He believes it is partly due to the adjacent lot full of rusting cars. He stated that he was told in 2013 that the lot next to him would be cleaned up and it has not happened. He stated that this has caused him financial hardship. He explained that he rented it to a man who drives limos to the airport that needs to sleep between trips. This is a commercial lease. He has no problem keeping everything else commercial.

Chairman Rusczek stated that he can feel the applicant's pain about the adjacent lot, but that is not related to this application. The applicant was denied for residential in 2013 and nothing has changed. The property is classified as commercial not residential/commercial. Residential is approved for only the second floor.

Rita Hogan, 361 North Colony Road, asked why only that unit must be commercial. The property is mixed-use. The upstairs is residential for the four units. She said that they have a commercial lease and it is not harming anyone. They are just trying to make a living.

Mrs. Torre noted that the Town can relate to the experiences businesses and individuals have had during COVID and acknowledged the violation on the abutting property. But that is not the basis for a

use variance. In this commercial zone, residential is only permitted in the upper stories. This property was declined a multifamily residential use in 2013. The most recent designation of that rear building was affiliated storage for the spa. Mrs. Torre stated that they are asking for is spot zoning for this property. She added that the renter can run his business there but needs to reside elsewhere. She stated that the applicant has asked for a use variance but the hardship has to be with the land, not the business. There is nothing with the land preventing them from using the property commercially.

Mrs. Hogan stated that the lease is commercial and is not rented as an apartment. There is a misunderstanding and the tenant is not living there. She doesn't understand why there is a violation just because he sleeps in the office. Chairman Rusczek noted that the Fire Department and the Zoning Officer say there is a violation and that the violation had a 15 day appeal period but they didn't appeal. He clarified that this Board is voting on the Use Variance request to change from commercial to residential, not the violation.

Hearing no public comment, Chairman Rusczek closed the public hearing and called for a Motion.

Mr. Rys: Motion to approve application #21-006 – Variance Request for Residential Use in a Commercial District at the rear single-story building at 361 North Colony Street per Site Plan, Land of Lawrence Hogan dated 1/18/13, revision 8/7/13, and submitted photographs and documents received 3/12/21.

Mr. Wolfer: Second

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

The application is denied.

6. #21-007 – Variance Request/Cavallaro/66 Cooper Avenue

Mr. Czerwinski read the staff notes into the record for application. The applicant requests a side yard of 10.2 ft. where 9.6 ft. exists and 20 ft. is required and building coverage of 18.9% where 16.7% exists and a maximum of 15% is permitted to allow a pre-fabricated 240 sq. ft. gazebo (detached accessory structure). The property is currently non-conforming with regard to lot size, front and side yard setbacks, and building coverage. The addition of an accessory structure of any size would require variance requests. The applicant is proposing more of a side yard (lessening the non-conformity for the side yard) than currently exists for the primary dwelling. In addition, there is a map by Juliano and Associates of the gazebo dated March 15, 2021, and a photo dated March 15, 2021.

Kevin Cavallaro, 51 Sylvan Hills Road, East Haven presented for homeowner Mike Venditto. He explained that they are going to rebuild the existing deck, which is in bad condition. The yard is muddy so they will install a retaining wall and put in drainage. In addition, they will install a 12 ft. x 20 ft. prefabricated gazebo. He noted that a prior application for an addition was denied. Mr. Cavallaro stated that the hardship is that the land goes uphill rapidly. They can't put the gazebo up the hill without stairs which would allow rainwater to come down into the house which is on a slab.

Mr. Czerwinski referred to the drawing and asked for the dimensions of the existing deck and how the proposed deck fits in with the existing dwelling. Mr. Cavallaro replied that he doesn't have the dimensions of the existing deck but the outline can be seen in the drawing under the proposed deck. The proposed deck is larger than the existing deck. He explained that they are eliminating the grassy area that becomes muddy.

Hearing no public comment, Chairman Rusczek closed the public hearing and called for a Motion.

Mr. Wolfer: Motion to approve application #21-007 – Variance Request for side yard setback of 10.2 ft. to locate a 12 ft. x 20 ft. gazebo as shown on Limited Property/Boundary Survey, Land of Michael and Maryann Venditto dated 6/9/20, revision date 10/14/20 and plans received 3/15/21.

Mr. Carmody: Second

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

Mr. Wolfer: Motion to approve application #21-007 – Variance Request for building coverage of 18.9% to locate a 12 ft. x 20 ft. gazebo as shown on Limited Property/Boundary Survey, Land of Michael and Maryann Venditto dated 6/9/20, revision date 10/14/20 and plans received 3/15/21.

Mr. Carmody: Second

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

The application is approved.

CONSIDERATION OF MINUTES

Mr. Rys: Motion to approve the minutes of the March 15, 2021 meeting.

Mr. Wolfer: Second

Vote: Unanimous to approve

ADJOURNMENT

Mr. Carmody: Motion to approve the minutes of the March 15, 2021 meeting at 8:15 pm.

Mr. Wolfer: Second

Vote: Unanimous to approve

Respectfully Submitted,
Cheryl-Ann Tubby
Recording Secretary