

**Minutes of
ZONING BOARD OF APPEALS
March 6, 2017**

MEMBERS PRESENT

Mrs. Yanicelli, Chairman

Ms. Edmonds

Mr. Mahoney

Ms. Rozel

MEMBERS ABSENT

Mr. Ziotas, Secretary

ALTERNATES PRESENT

Mr. Bilus

ALTERNATES ABSENT

Mr. Tashjian

Ms. Walsh

Also in Attendance:

Steve Palmer, Town Planner/Sr. Enforcement Officer

MEETING OPENED

At 7:05 p.m.

Chairman Yanicelli explained to those members of the public present how the proceedings would be conducted, and that discussion and possible decision on each public hearing item would be held after the public hearing on each item.

PUBLIC HEARING

The Chairman then called the Public Hearing to order and read the call, as follows:

LEGAL ADVERTISEMENT

NEW CANAAN ADVERTISER, NEW CANAAN, CONN., THURSDAY, FEBRUARY 23, 2017

STATE OF CONNECTICUT TOWN OF NEW CANAAN ZONING BOARD OF APPEALS
<p>NOTICE IS HEREBY GIVEN that the ZONING BOARD OF APPEALS of the Town of New Canaan will hold a Public Hearing on Monday, March 6, 2017 in the Board Room at Town Hall, 77 Main Street at 7:00 p.m. to hear the following application(s):</p> <p>1. 909 West Road – Appeal pursuant to Conn. Gen. Stat. Sec 8-6 by Mr. Thom Harrow, 871 West Road, of a decision by the Zoning Enforcement Official that the house located at 909 West Road can be utilized as a Sober House residence, in the 4 Acre Zone (Map 28, Block 31, Lot 131).</p> <p>2. 109 Knapp Lane – Zoning Variance – Application of Mario P. Musilli, Esq., Authorized Agent for Hasim Sabovic, owner, for a Variance of Section(s) 3.5.E.3 to legalize the construction of a shed and a bridge in the side yard setback, in the One Acre Zone (Map 31 Block 11 Lot 163).</p> <p>HANDICAP ACCESS DURING MEETING: Please notify the Planning & Zoning office in advance if wheelchair accessibility is required.</p> <p style="text-align: right;">Angelo A. Ziotas Secretary February 23, 2017 2-23 3-2</p>

1. 392 Brushy Ridge, JH Tucker Wilson, Jr., owner, Variance

David Rucci, Lampert, Toohey & Rucci, attorney for applicant, continued his presentation for a request of a variance for a front and side yard setback to add a garage and additional bedrooms. Mr. Rucci reiterated the hardships with the lot, which was irregular shaped, the back lot was unbuildable due to existing wetlands and septic system and architectural irregular layout which prevents additional rooms to be built on the main floor. Mr. Rucci did receive approval from the neighbors closest to the lot. Additionally, after the February 6 meeting, Attorney Rucci met with Mrs. Wolyner, 226 Canoe Hill Road and reviewed the plans. After seeing the plans, Ms. Wolyner agreed

to the changes as long as the garage addition is painted with a muted color. There was no decision on additional screening but it would be addressed once the renovations are complete.

During the business session, the board members discussed the application and determined that there was a topographical hardship. In reviewing the neighbors' concerns, the following conditions would need to be met:

- 1) The garage would be painted a neutral color to not be so visible from Mrs. Wolyner's property.
- 2) The owners would be subject to additional screening once the renovations were complete.

Upon motion of Mr. Mahoney, second of Ms. Rozel, the Board unanimously voted to the request for a variance with the above-stated conditions.

2. 147 River Street, Anna M. Paglialunga, owner, Variance

Application withdrawn.

3. 109 Knapp Lane, Hasim Sabovic, owner, Variance

Mario Musilli, Attorney representing owner opened the presentation for the applicant by describing the existing lot which contained a river and pond and the need for a new bridge to replace the old bridge structure that washed away in 2013 due to storms. The shed was deteriorated and needed to be replaced. Both structures were in the process of being rebuilt which included the dredging of the pond and before there was approval from Inland & Wetlands. There was a cease and desist, fines paid, and an agreement to repair any damage to the water course as being overseen by engineers and excavators. After Inland and Wetlands approved repairs and plans, the owner requested that ZBA approve the already existing new structures which are in the side yard setback. The hardship cited was limited buildable area due to the pond and water course. The reconstruction of the bridge was done in such a manner that it is slightly wider than the previous bridge. A structural engineer was retained who reviewed pictures during construction, reviewed the structure that is in place, and then certified that the bridge that had been constructed is appropriate for that location and can withstand the hydraulic pressures. There was discussion of the bridge being used as an access way for vehicles. Mr. Musilli stated that the bridge would not be used for anything larger than a lawn-mower. It is positioned over the narrowest part of the watercourse. The shed is approximately 25% larger than the prior shed. The shed will house lawn equipment and furniture. It will not house any vehicles nor will have an adjoining driveway.

Board members inquired about the amount built to date as well as the status of the silt. It was explained that 80% of the pond was dredged and without a permit. The Silt was spread over the low portion of the property which will be cleaned up under the guidance of an engineer.

Joseph Garra, 490 Springwater Lane, spoke in support of the variance citing no further flooding issues due to the new bridge and the shed painted in its neutral color is improvement to what was originally there.

Sperry DeCew, attorney representing the owners of 61 Knapp Lane, spoke in opposition to the variance, citing that the bridge was increased by a third of the original size and placed 4-feet from the property line. Also, the shed that replaced the prior shed is more the size of a garage. Mr. DeCew stated that the hardship was self-imposed and that there was no factual or legal reason that the variance should be granted.

The board members explained that the land itself and the history of flooding was the actual hardship.

Ann Cerratani, 61 Knapp Lane, spoke in opposition of the variance request, citing the size of the new shed which seemed more like a garage. Additional concerns were the debris strewn over the yard and the amount of time spent dealing with this construction issue by the applicant.

Tito Cerratani, 61 Knapp Lane, spoke in opposition to the variance, citing the new bridge is larger than the previous wooden structure and an eyesore.

Mr. Musilli stated that there was no other viable alternative to the placement of the bridge explaining that the location was the narrowest part of the watercourse. There would be added screening by bamboo plantings to block the view of the bridge from the neighbors.

The board members asked additional question about the flooding issues from dredging the pond, which built up silt along the banks of the pond. The silt would be removed and the water-flow back into the pond would be corrected.

Once in the business session, the members discussed the hardship and determined that there was a significant flooding hardship. The setback was not much greater than the prior shed structure. It was evident that the applicant did comply with Inland and Wetlands conditions and paid all imposed fines.

Upon motion of Mr. Mahoney and second of Mr. Bilus, the board voted unanimously to grant the variance with the following conditions:

- 1) The Bridge is not to be accessed by cars, trailers, nor any motorized construction equipment larger than a lawn mower.
- 2) The shed is not to house any items other than gardening and lawn care equipment and household items.
- 3) All debris picked up from yard.
- 4) Proposed screening of bridge from neighbors view.

4. 909 West Road – Appeal by Thom Harrow, 871 West Road

Attorney Joel Green, Green & Gross, representing Mr. Thom Harrow, 871 West Road, opened the presentation to oppose the application by explaining the 1932 town zoning regulations that were adopted from the Connecticut zoning regulations states there needs to be transparency in process and a right of appeal available pertaining to a zoning decision, specifically with regard to the decision to allow the renting of Anne-Lie Sparks' home for the use of a Sober House program in a residential areas. Mr. Green stated that Planning and Zoning made available, limited material on file pertaining to 909 West Rd's change of use from a residential property to a Sober House. This lack of information caused concern to the residents in that area. Mr. Green went on to explain the Federal and State requirements with regard to people with disabilities. For this particular program, there is no supporting state or federal funding. Additionally, the limitation on the number of patients or occupants is 6 people and the program is anticipating housing a total of 8 people.

Mr. Green discussed whether or not the zoning regulations allow for unrelated individuals to live under the same roof and questioned what the definition of reasonable accommodations was.

It was explained that the Lighthouse (Sober House) was a For Profit program designed for the occupancy of 8 individuals to coexist in a home that has accommodations for a Chef and a Driver. There is no financial burden on local government.

There was discussion regarding the number of occupants that would require state or federal funding.

Steve Palmer, Town Planner/Sr. Enforcement officer and Ira Bloom, Town Attorney then spoke and explained how the regulations were reviewed and sought legal counsel with regard to the occupants and discrimination issues as well as how it would affect

the neighbors. Mr. Palmer explained that federal law prevents discrimination and relied on the Town attorney's opinion in regards to occupancy of a private home. The Lighthouse provided all information regarding the program. All occupants are in program and stay overnight. Planning and Zoning met multiple times with the Lighthouse and all information of those meetings as well and any additional correspondence is on file for review. Currently there are only three people occupying the home and there is no trigger yet to re-evaluate the occupancy issue. The zoning regulations do not require a zoning permit for inhabitants of a private residence. Other towns allow this type of program as well and the decision of the Town was based on legal advice provided.

Some of the board members questioned the Trigger aspect of compliance with zoning regulations and the implication of the legal findings with regard to discrimination. There were also questions regarding when notice was made to the town and the residence. It was mentioned that various neighbors knew about the Lighthouse before the Town was notified. Since the town was notified, Planning and Zoning concluded that the decision could be appealed and Mr. Harrow had the right to appeal.

Ira Bloom, Town of New Canaan's attorney explained the history behind the sober house with regard to other towns allowing them and how there are some that do not operate without problems and these programs must comply with local laws. Mr. Bloom then went on to explain the definition of Group Homes and resident housing with regard to the Federal Housing Act (FHA) and the Americans with Disabilities Act (ADA). Mr. Bloom stated that local laws are superseded by Federal laws with regard to these housing regulations. Mr. Bloom then cited various cases in support which ultimately showed that these law suits against the towns were struck down and deemed discriminatory. The Lighthouse has a right to operate ("Right of Use") in view of the FHA and the ADA.

There was discussion at this point from the Board members regarding the definition of reasonable accommodations, specifically near a densely populated area vs. a less populated area. Additionally, the question arose as to whether the owner who rented the property to a Sober House was now running a business and not residing. Attorney Bloom stated that these situations were legally challenged in other towns and struck down and deemed discriminatory.

Attorney Robert Maslan, representing the Lighthouse then spoke describing the Sober House and what it does and how the courts recognized the benefit of this program for successful recovery vs. the more traditional treatment which the chance of relapse is much greater. The purpose of the Sober House is to allow its participants to live in a transitional setting between a hospital/detox-center and a return back into mainstream living. It provides privacy and structure for each individual going through the program and it acts as a supports system among the patients. The zoning regulations cannot impose a limit on the number of people that can occupy the dwelling and the Sober Houses are treated the same way as single family dwellings. Each resident of the Sober House lives as a family with house rules, dinner and curfews. They tend to all of their medical and therapeutic needs off-site. There is required drug and alcohol testing, a no-tolerance policy for breaking rules. The Sober House relies on private paying clients and no support from the town or government. There is no requirement to notify neighbors, there are no signs promoting the business as well. The program is not a boarding house or hotel. There is no comparison of this program to that of a boarding house. Attorney Maslan pointed out that the Town exposes itself to monetary judgment against them due to public oppositions. Additionally, the preferential location of a Sober House would not hold up in court citing discrimination.

Joseph Trey Laird, recovering client, spoke in support of the Sober House, explaining his background and addictions.

Thom Harrow, appellant, discussed his opposition, citing no transparency or notification provided by the Town, concerns that it would be a revolving door every 3-9 months and who would be enforcing the regulations for the amount of people permitted. There was no process and requests a stay in the appeal.

Gail Stoddard, 740 West Road, opposes the Town's decision citing lack of process.

Scott Frisoli, 1715 Ponus Ridge Road, supports the program and states that the Town should be proud to have this type of program.

Anthony Kiniry, Co-founder of the Lighthouse explained his motivation behind the program and how he picked the property at issue and explained his commitment to New Canaan and for the sake of transparency, offered to discuss this with neighbors that were notified, but was denied that opportunity.

46 Buttery Road supports the Lighthouse.

James Hill, Turtleback Road reviewed the case-law pertaining to these Sober Houses and explained more should be reviewed by the board before a decision is provided explaining that the cases cited by the Town attorney were specific to intentional discrimination and closer legal examination would be necessary.

Caren Miller, 488 West Road opposes the Sober House, citing 6-deaths in Sober Houses across the country, no transparency from the town, not beneficial legal advice for the town and concern for unregulated For-Profit near her home.

John Sher – Client of Sober House states the program works and helps the transition to everyday life.

It was at this point, Town Attorney Ira Bloom discussed the option of retaining a third-party attorney to review Federal and State laws regarding the Sober House. Various board members also encouraged the Sober House and surrounding neighbors to meet to discuss issues. Also if a third-party attorney is retained, the issue regarding Right of Use should be reviewed as well as if there was adequate notice and should the Sober House and Town adhere to normal permit process.

Upon motion of Mr. Bilus and second of Ms. Rozel, the board unanimously voted to continue the appeal until April 3rd, 2017 where a third-party legal counsel can review and provide legal guidance.

Regular Meeting

5. Approve Minutes of February 6, 2017 Meeting.

The Board unanimously voted to approve the minutes of the February 6, 2017 meeting.

6. Other matters as may properly come before the Board.

7. Adjournment.

There being no further business to come before the meeting, the Board unanimously voted to adjourn at 11:45 p.m.

CARROLL YANICELLI, Secretary

LEGAL ADVERTISEMENT
New Canaan, Conn., New Canaan Advertiser, Thursday, March 16, 2017

TOWN OF NEW CANAAN

**ZONING BOARD
OF APPEALS**

NOTICE IS HEREBY GIVEN that the ZONING BOARD OF APPEALS of the Town of New Canaan after a Public Hearing held on Monday, March 6, 2017 duly adopted the following resolution(s). Approved applications become effective upon the filing of a copy thereof in the office of the Town Clerk.

1. RESOLVED, 392 Brushy Ridge – Zoning Variance – Application of David J. Rucci, Lampert, Toohey & Rucci, LLC, Authorized Agent for JH Tucker Wilson, Jr, owner, for a Variance of Section(s) 3.5.E.2 to allow a 2 story addition in the front and side yard setbacks on property located in the Two Acre Zone (Map 38 Block 100 Lot 23). Approved with conditions.

2. RESOLVED, 109 Knapp Lane – Zoning Variance – Application of Mario P. Musilli, Esq., Authorized Agent for Hasim Sabovic, owner, for a Variance of Section(s) 3.5.E.3 to legalize the construction of a shed and a bridge in the side yard setback in the One Acre Zone (Map 31 Block 11 Lot 163). Approved.

Angelo A. Ziotas

Secretary

Dated March 6, 2017

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