

HARWINTON ZONING COMMISSION
MONDAY, FEBRUARY 12, 2024
TOWN HALL 7:00 P.M.

Present: Chairman Daniel Thurston, Secretary Theodore Root, Deborah Kovall, Michelle Whitford, Alternate Member Dave Foster, Alternate Member Victoria Elliot, Land Use Coordinator Polly Redmond and Zoning Enforcement Officer Don Truskauskas

Absent: William Ponte and Alternate Member Stephen Smith

PUBLIC HEARING - CONTINUED

1. OPEN HEARING – ESTABLISH QUORUM.

Chairman D. Thurston called the hearing to order at 7:00 p.m. All regular members present are seated with Alternate Member D. Foster seated for W. Ponte.

2. KEVIN MCGIVERN – APPLICATION FOR SPECIAL PERMIT FOR ACCESSORY APARTMENT (EXISTING) IN NEWLY CONSTRUCTED HOME, 91 CATLIN ROAD.

Mr. McGivern is present. LUC Redmond states that she checked with the Torrington Area Health District on their approval of the accessory apartment being on the main level and not above the garage and was told by Kelli George, Sanitarian, that the approval is still valid. A letter from Todd Werner, 38 Lake Shore Drive, Lake Association Board Member as well as an Inland Wetlands Commissioner, has been received and is read into the record by LUC Redmond. Points of Concern expressed by Mr. Werner in his letter include: 1. Lack of reasoning for the accessory apartment by the applicant and that there should be clear differentiation between a dwelling with an apartment for profit and a dwelling with a special permit for an accessory apartment. Zoning Regulation Section 9.3 uses the term “under special circumstances” and Mr. Werner writes that there is no documentation or record where the owner of this property has stated what the special circumstances necessitating a special permitted use are. 2. Subordinate and Incidental Use. The need to separate the proposed accessory apartment from the main dwelling and that the design does not include any communicating door from the primary use space to the accessory use space. Mr. Werner points out that the definition of Accessory Building or Use in Zoning Regulation 2.3 clearly states “A building structure or use which is subordinate and customarily incidental to the principal building and/or use...” The entry door to the proposed accessory apartment is on the opposite side of the house in what is arguably not a very convenient location. He questions why the perceived need for separation between the apartment and the principal house is so strong. 3. Lot Size. Mr. Werner notes the size of the habitable area in the approval is 1,600 SF and the habitable area of the house that was built is 2,200 SF + 510 SF of the accessory apartment, so the overall building habitable area is 2,710 SF, or about 1,100 SF larger than what was presented to ZBA and approved. The attached garage is an additional 1,020 SF and it is Mr. Werner’s belief that the application misrepresented the overall size of this house while seeking variances. 4. Off Street Parking, Zoning Regulation Section 9.3.5 is of concern to Mr. Werner in that the site plan presented does not identify/designate the location and size of the off-street parking and he believes the Inland Wetlands Commission should review all feasible locations for additional parking as it would be well within the upland review area. 5. Landscaping, Zoning Regulation 9.1.1.e requiring suitable landscaping. Mr. Werner points out that, to his knowledge, a landscaping plan has not been submitted and one should be produced and available for public comment. 6. Future Use. Mr. Werner points out in his letter that a.) the primary use portion of the dwelling is approximately 2,200 SF with a single bedroom, b.) the proposed accessory apartment is approximately 510 SF with two bedrooms (one identified as a storage room, however, it contains a closet and a window making the likely use a bedroom), c.) the modular construction of the dwelling is restrictive to any future re-joining of the accessory apartment to the primary use which poses concerns for future marketing of the home. If/when the property is sold, it would more than likely be marketed as a multi-family/investment home. Mr. Werner writes that he believes this request for an accessory apartment is not in compliance with Zoning Regulation 9.3.10 since approval would result in the single-family character of the neighborhood being affected. 7. Reasonable and Prudent Alternatives. Mr. Werner writes that the Commission should consider why this application is being made and challenge the applicant for any reasonable and prudent alternatives. He believes that residence for an adult family member could easily be accomplished by joining the proposed accessory apartment to the primary use as 2nd and 3rd bedrooms by way of a communicating door and the 2nd kitchen, 4th bathroom, and even the 2nd family/dining room could be retained if desired.

Mr. Werner points out that the Zoning Regulations, through the use of Special Permits, allows for applicants needing special accommodations/considerations an avenue to help meet their unique needs and that this particular application has the appearance that the applicant is attempting to find a need that justified a special accommodation without an actual unique need. He asks that his concerns be placed on the record and that they be brought to resolution prior to any potential approval of the requested special permit application.

Mr. Werner's letter remains on file.

Mr. McGivern addresses points made in Mr. Werner's letter stating that the footprint of the house hasn't changed from when application was first made and that only the apartment location has changed from above the garage to the main level. He refers to Mr. Werner's letter that pointed out there is no communicating door from the primary use space to the proposed accessory use space. Mr. McGivern states that he had asked for a door between the apartment and the primary residence and was told one could not be installed. Mr. McGivern states that his 34-year-old son, for personal reasons he wishes not to disclose, must be "kept an eye on". In regards to the two required parking spaces for an accessory apartment, Mr. Werner stated in his letter that a compliant site plan identifying/designating the location and size of these parking spaces has not been provided and that parking areas should be reviewed by the Wetlands Commission as all feasible locations for additional parking are well within the upland review area. Mr. McGivern refers to the as built provided tonight for review stating that the as built is incorrect and that the original site plan presented does show adequate parking for the accessory apartment. Mr. McGivern will get a revised copy of the as built showing the parking. ZEO D. Truskauskas notes that the retaining wall is shown differently on the as built than on the original site plan and should also be amended. He informs Mr. McGivern that he will have to return to the Wetlands Commission for a modification of previous approval for the retaining wall on March 4, 2024. This in no way prevents the Zoning Commission from taking action on the application.

D. Kovall states that this is a lot of house on this size lot and being 7 feet from the property line, it doesn't sound like there's enough room for parking. ZEO Truskauskas points out the driveway and possible parking area on the original site plan submitted. T. Root states that the ZBA minutes of 5/15/2019 note that the Lake Association had no objection to construction but a representative of the Lake Association was at the previous Zoning meeting stating the Association didn't know it would be this big of a home. D. Kovall agrees that, as noted by Todd Werner, there should be a landscaping plan. She also notes that the Special Permit goes with the property so any decision by this Commission would be set in stone though any new owners may not agree with keeping the accessory apartment for use by family. ZEO Truskauskas states that the apartment is very separate from the main home which is unusual and separates the house greatly. Mr. McGivern states that he will look into a separation door. ZEO Truskauskas advises Mr. McGivern to look into landscaping for the yard and that it could be drawn in on the as built along with other required revisions.

First Selectman Michael Criss is present in the audience and questions whether the Commissioners have to make a motion on what Mr. McGivern is required to bring back. A motion is not required but Mr. McGivern is told to have the as built plan revised to show the true driveway layout and showing that the two adequate parking spaces for the accessory apartment are available and to sketch in landscaping. D. Kovall questions if a communicating door would be required with ZEO Truskauskas stating that the Commission can't require that of Mr. McGivern.

3. CONTINUE OR CLOSE HEARING.

T. Root **motioned** to continue the hearing to Monday, February 26, 2024 at 7:00 p.m., seconded by D. Foster. Motion passed unanimously.

REGULAR MEETING

1. OPEN MEETING – ESTABLISH QUORUM.

Chairman D. Thurston called the meeting to order at 7:42 p.m. All regular members present are seated with Alternate Member D. Foster seated for W. Ponte.

2. APPROVE MINUTES OF PREVIOUS MEETING: 1/22/2024

M. Whitford **motioned** to approve the minutes of the previous meeting, seconded by D. Foster. Motion passed unanimously with T. Root abstaining from vote due to his absence at the previous meeting. D. Kovall abstains from voting also due to her recusing herself for a portion of the meeting concerning Peter Hock.

3. DISCUSSION/POSSIBLE DECISION – KEVIN MCGIVERN - APPLICATION FOR SPECIAL PERMIT FOR ACCESSORY APARTMENT (EXISTING) IN NEWLY CONSTRUCTED HOME, 91 CATLIN ROAD. No discussion.

4. LEONARD LOPARDO – DISCUSSION OF SUNSET RIDGE OFF MOUNTAIN VIEW DRIVE, HANNAH WAY, LAUREN LANE.

Mr. Lopardo is present and responds to the matter of 5 Ross Drive taken up for discussion at the last Zoning meeting. It was found that the flooding in the homeowner's basement was due to a condensation pump that failed that should have pumped the water into the septic system. Mr. Lopardo states that the basement of 5 Ross Drive has been professionally cleaned. Water accumulation, as shown in pictures presented by the homeowners, Kevin and Ingrid Canady at the last Zoning meeting, was due to settling that took place at the Bilco door and sunroom. Mr. Lopardo states that this will be addressed in the spring. He states he believes the Canady's are satisfied with what has been done. V. Elliot states her belief that the Canady's are not perfectly happy. Mr. Lopardo states that he has text messages from the Canady's and as he was trying to bring them up on his phone at this time, Chairman Thurston asked that they be forwarded to LUC Redmond.

Mr. Lopardo refers to the detention pond stating that the pond will be looked at again in the spring when ice is not formed on top. He states that all utilities are in but the curtain drain at the toe of the slope that came down behind the Lucian property at 31 Hannah Way has not been installed yet as weather has been preventing this from being done. Any work being done on the slope now would result in a "mud mess" but Mr. Lopardo notes that haybales have been put in place on the slope and are working and the slope is stable. Greg Lucian states that the slope is not stable. Mr. Lopardo want the Commission to be aware that there is a gas line in this area of the slope and that he has to wait until spring to address the slope so the gas line won't be compromised.

Mr. Lopardo states that dirt has not been placed behind the curbing in the roads because top soil is frozen and unavailable. T. Root informs Mr. Lopardo that Supreme Industries on Bogue Road has dirt that they keep under cover that is not frozen. Mr. Lopardo states he will reach out to them tomorrow. Lillian Busse, 15 Hannah Way, states that this should have been done earlier and not when the ground is frozen. L. Busse shows photos she took of broken curbing because of the lack of dirt behind them with Mr. Lopardo stating that some curbing was destroyed by plowing but can be fixed. Concerning road standard verification, Mr. Lopardo states that a couple of borings remain to be done before submitting a final report to the town.

D. Kovall states her belief that Mr. Lopardo is just using delay tactics and that the most important thing to him is getting houses done and selling them, not addressing the problems. T. Root states that the most important thing to address is the drainage issue. Regarding the drainage problems, ZEO Truskauskas states that when Mr. Lopardo's engineer, David Battista, Haley Ward, was before this Commission back on December 11, 2023, Mr. Battista said the drainage matter should be taken care of within two weeks but it has not been done. Cindy Lucian, 31 Hannah Way, states that when Mr. Lopardo was out in her backyard with David Battista, P.E., observing the slope she heard Mr. Battista, via her Ring Camera, that he believed a retaining wall should be built behind the Lucian home. Greg Lucian states that the slope in their backyard came down on September 29, 2023 and if it was taken care of then, the problem would've been resolved.

This matter will once again be placed on the next Zoning meeting agenda on February 26, 2024 for further discussion.

5. COMPLAINTS/ENFORCEMENT ACTIONS.

ZEO Truskauskas informs the Commission that the home at 138 Scoville Hill Road is complete but the driveway doesn't meet the requirement of Zoning Regulation 6.4.6 that calls for driveways not to exceed 4% gradient for the first 30 feet in length. First Selectman Michael Criss states that the ZEO can't sign off on Compliance because the driveway is not paved and the driveway apron is now dirt. There is no bonding in place for the driveway opening because there was already a highway cut and the apron was already paved but not improved. He informs the Commission that the Board of Selectmen can require a bond, hold it, and when the driveway is complete, the Zoning Commission can vote to release it.

ZEO Truskauskas informs the Commission that a written complaint has come in from Judy Jasch, 477 Wildcat Hill Road, against her neighbor at 490 Wildcat Hill Road, who is not containing his guinea hens that are coming on to her property. ZEO Truskauskas will look into this.

Heather Burritt and Janet Burritt, 31 Whetstone Road, are present to express their complaint against a possible business being run out of 33 Whetstone Road. Heather Burritt states that out in the yard there is a large green container the size of two tractor trailers on the property, a dumpster, scaffolding, a barrel for burning, among other things. LUC Redmond informs the Commission that there is no C.O. on the newly built house yet with T. Root stating that perhaps the house is still under construction and is the reason for these items being there. Heather Burritt was advised that a complaint must be submitted in writing in order for the ZEO to address.

6. ANY OTHER BUSINESS.

LUC Redmond informs the Commission that Brett Stone, owner of 15-21 Burlington Road, has a tenant in the Liquor Store who wishes to relocate to another larger building on the property. Commissioners have no issue with the relocation but want to make certain the Liquor Control Commission is made aware of the change.

7. INFORMAL DISCUSSION – PROPOSED ZONING REGULATION AMENDMENTS.

No discussion.

8. CORRESPONDENCE.

First Selectman Michael Criss informs the Commission that notice has been given to the town that the DEEP/Department of Agriculture has issued Notices of Violations to Peter Hock, 797 Hill Road, for illegal dumping of animal waste and unlicensed slaughterhouse after inspecting the property on 2/10/2024. Torrington Area Health District has a pending case against Peter Hock that is slated to be heard on 2/20/2024. Atty. Kent Mancini is now representing the Town of Harwinton and not the Zoning Commission in this matter but First Selectman Criss states his belief that it was a bad decision for the Zoning Commission to close the matter of possible violation against Hock without the advisement of Atty. Mancini to keep the matter open or close it.

9. INVOICES.

None.

10. ADJOURN.

T. Root **motioned** to adjourn the meeting at 8:40 p.m., seconded by D. Foster. Motion passed unanimously.

Respectfully submitted,

Polly Redmond
Land Use Coordinator

