

GLASTONBURY ZONING BOARD OF APPEALS

Regular Meeting Minutes of Monday, March 2, 2020

The Glastonbury Zoning Board of Appeals with Peter Carey, Building Official, in attendance held a Regular Meeting on Monday, March 2, 2020 in Town Council Chambers of the Town Hall located at 2155 Main Street, Glastonbury, Connecticut.

ROLL CALL

Board Members- Present

Brian Smith, Chairperson

Nicolas Korn, Secretary

Timothy Lamb

Jaye Winkler

Susan Dzialo, Alternate (assigned as voting member)

David Hoopes, Alternate (assigned as voting member for Agenda items 5&6)

Doug Bowman, Alternate

Chairperson Smith Called the meeting to order at 7:03 pm and explained the public hearing process to the audience. He also stated that the Board will do things differently. They will vote after each application. Chairman Smith also noted that 4/5 votes are needed for an application to pass and there is a 15-day appeal period.

Town Attorney, Ms. Andrea Gomes recommended the Board vote to change the agenda. The Board will vote for each agenda number immediately after the application is presented.

Motion by: Chairman Smith

Seconded by: Jaye Winkler

MOVED, that the Glastonbury Zoning Board of Appeals has amended the agenda and each matter will be voted on separately.

Result: Motion passes unanimously. (5-0-0)

Public Hearing

- 1. By Kenneth H. Wells for a special exception as provided for in Section 7.1b.2b.1 to permit a fourth car garage space located at 201 Dug Road in RR zone.**

Mr. Kenneth H. Wells of 201 Dug Road spoke to the Board about his application for a fourth car garage. Mr. Wells said he has run out of space and cannot fit his cars due to the many vehicles which include: 3 tractors, an antique car, and a UTV. The proposed structure will be 20'x30.' Ms. Winkler asked how large the property is. Mr. Wells said it is 3600 square feet.

Chairman Smith opened the floor for public comment, either for or against the application, and seeing as no one came forward to speak, Mr. Smith closed public comment on the application.

Motion by: Jaye Winkler

Seconded by: Nicolas Korns

MOVED, that the Glastonbury Zoning Board of Appeals approves the application by Kenneth H. Wells for a special exception as provided for in Section 7.1b.2b.1 to permit a fourth car garage space located at 201 Dug road in RR zone. The requirements of Section 7.1b.2b.1 have been met.

Result: Motion passes unanimously. (5-0-0)

2. By David Cabeza for a variance from Section 4.2.8 to allow the placement of a new home to be closer to the rear property line than permitted at 2524 New London Turnpike in RR zone owned by Paul & Janet Colasanto.

Ms. Cheryl Newton, architect on behalf of Mr. David Cabeza, presented the application for a variance from Section 4.2.8 to allow the placement of a new home closer to the rear property line than permitted. A variance is needed due to the irregular shaped lot and the existing topography. The placement of the leeching field on the widest portion of the site also causes limitations and hardships. Ms. Newton requested a rear setback of 35 feet from the property line.

Ms. Newton also stated that it is very unusual to ask for a variance for new construction properties. The lot is narrow and sloping and the leaching field must be placed at the south end. She also mentioned that there are very few lots at affordable price points.

Chairman Smith wanted to confirm that there is no public water in the area. Ms. Newton confirmed this. Chairman Smith also wanted to confirm that there are no sewer lines in vicinity. Ms. Newton confirmed this point.

Secretary Korns asked if there is a house behind the proposed lot. The architect said it is an empty lot, but there are proposed plans. Chairman Smith asked if there are any houses in the subdivision that are already built or if this is the first planned house. Mr. Cabeza said that the owner of the subdivision has a house built there with a 150-foot setback.

Mr. Cabeza also stated that he wants to put up solar panels and wants to create a house with sustainable and renewable energy. He said the location of the house has an extreme latitude and they are trying to maximize the position of the house for cooling and heating. Mr. Cabeza stated that the maximum square foot of the house would be 2200 square feet and the lot is only about 40,000 square feet.

Chairman Smith asked if there is any overhang. The architect replied yes and stated the lot is on a sloping site. Mr. Bowan (alternate) countered by saying how can the Board make a decision that can impact lot number 1 without the owner present.

Chairman Smith opened the floor for public comment, either for or against the application, and seeing as no one came forward to speak, Mr. Smith closed public comment on the application.

Motion by: Nicolas Kornis

Seconded by: Timothy Lamb

MOVED, that the Glastonbury Zoning Board of Appeals approves the application by David Cabeza for a variance from Section 4.2.8 to allow the placement of a new home to be no closer than 35 feet to the rear property line than permitted at 2524 New London Turnpike in RR zone. The requirements of Section 4.2.8 been met.

Disc: Ms. Winkler wants to encourage more people to use sustainable energy. She said she will vote yes. Mr. Kornis stated that it is difficult to work on the boundaries of an odd lot. Mr. Lamb said he gave approval for this subdivision a few years ago and will vote yes again.

Result: Motion passes unanimously. (5-0-0)

3. By Asana Organic, LLC for a use variance from Section 4.15.1 to allow a personal service business at 730 Hebron Avenue located in Planned Commerce zone owned by Realty Management of Glastonbury LLC.

Mr. Peter Alter, of Alter & Pearson, LLC presented on behalf of his client, Asana Organic, LLC. Mr. Alter said the proposed business site used to be Glastonbury Bank and Trust, a sizeable bank with drive-through. Glastonbury Bank and Trust then became TD bank and some years later this branch location was abandoned. The owner of the bank building is now left to find suitable uses for the vacant space. Mr. Alter explained that the proposed use falls under the Personal Services use category of the Building-Zone regulations. He also explained that Personal Services is not a Permitted Use in the Planned Commerce Zone. Mr. Alter stated the hardship from which relief is sought is found in the Building-Zone Regulations. The tax assessor for the Town of Glastonbury characterizes the building at 730 Hebron Avenue as a "Retail Strip."

Mr. Alter explained that the location of 730 Hebron avenue is better suited for small businesses. He explained that Asana Organic is a skin care and beauty treatment business. The space will comprise of 2 treatment rooms by licensed professionals. There will also be a small retail section. The Clients will occupy about 900 square feet of space located at the entrance of the old bank. Mr. Alter stated that the building has been vacant for a bit of time. He also said that this building fills a need for small businesses that would otherwise find difficulty in securing space. Because the space is small, it is not suitable for larger businesses. Mr. Alter said he has provided

the TPZ with a parking analysis and the site is adequate with a slight surplus at the present time. Secretary Korn stated he couldn't find a definition of "Personal Service." Mr. Alter explained that there are categories for medical and retail and when something doesn't fit it is designated as "Personal Service." Mr. Carey stated that he has land use planning information in his office which contains federal standard zoning regulations.

Chairman Smith asked how many employees. Mr. Alter said just two – they are owners and partners. They could not be at the hearing because they are currently traveling in Spain. Chairman Smith inquired whether the business has any additional staff. Attorney Alter said just the two owners.

Attorney Alter said the site requires 6 spaces. He then explained that a warehouse property is adjoining, creating additional parking. Mr. Alter said the business will not be a traffic generator like a medical office which has appointments every 15 minutes with people sitting around and waiting. Chairman Smith said taking this proposal into account affects the whole building.

Chairman Smith opened the floor for public comment, either for or against the application, and seeing as no one came forward to speak, Mr. Smith closed public comment on the application.

Motion by: David Hoopes

Seconded by: Nicholas Korn

MOVED, that the Glastonbury Zoning Board of Appeals approves the application by Asana Organics, LLC by Peter Jay Alter, duly authorized for a use variance from section 4.15.1 to allow a personal service business at 730 Hebron Avenue, on the grounds hardship is found in the zoning regulation. The requirements of Section 4.15.1 have been met.

Disc: Mr. Lamb said the building already has "Personal Services" and they have approved many of them. Ms. Winkler said it was helpful to look at the parking analysis and the traffic issue and noted the parking lot is yet to be full. She said she planned on voting yes.

Result: Motion passes (4-1-0)

Against: Chairman Smith

4. By DPS Builders and Remodelers LLC for a variance from Section 4.2.8 to allow an addition closer to the rear yard than permitted at 37 Strickland Street in RR zone owned by Kim & Ethan Reid.

Mr. Louis Rubino of DPS builders spoke on behalf of homeowners Kim & Ethan Reid. He stated his clients intend to use the space (screened-in porch) a lot and he wants to ensure the space is functional enough to fit furniture. The style of the screened-in porch will match the house. The porch would not be visible from the road.

Chairman Smith wanted to confirm that the front lawn of the house is located on Strickland Street. Mr. Carey confirmed this. Chairman Smith also asked if there is an overhang. Mr. Rubino stated there is not much of an overhang.

Chairman Smith opened the floor for public comment, either for or against the application, and seeing as no one came forward to speak, Mr. Smith closed public comment on the application.

Motion by: Ms. Winkler

Seconded by: Mr. Lamb

MOVED, that the Glastonbury Zoning Board of Appeals approves the application for a variance from Section 4.2.8 to allow a screened-in porch to be no closer than 45 feet from the rear on the grounds that hardship is due to the placement and shape of the lot. The conditions of Section 4.2.8 have been met.

Disc: Ms. Winkler said it wouldn't make any sense to put the screened-in porch in any other place. (See survey map for details.) Mr. Lamb agreed that the location is good and the added protection against mosquitos is another benefit.

Result: Motion passes unanimously. (5-0-0)

- 5. Continued application from February 3, 2020 by John Alan Sakon to appeal an adverse ruling by the Building Official/Zoning Enforcement Officer regarding the expiration of the special permit for the project known as "The Shoppes at Avalon" at 2980 Main Street, 131 Griswold Street (Lot 27600131), N2B Griswold Street Rear (Lot 27600002B), E8A Main Street Rear (Lot 41400008E), in Planned Travel Zone.**

Mr. Lamb recused himself from the proceedings. He left at 7:58 pm.

Mr. Sakon suggested a brief recess before continuing with the remaining agenda. Chairman Smith stated that the Board needs to figure out if they can have an alternate to sit in Mr. Lamb's place.

The Town Attorney, Ms. Gomes, informed the Board and Mr. Sakon that the tapes failed to record the last meeting. She said a 5th voting member would not be available tonight because of the technical difficulties that occurred at the last month's meeting. Mr. Sakon wanted to know how this conclusion was made and if they referred to any statutes or state laws. Ms. Gomes brought up a 1986 case where the tapes were defective and a member could not listen, resulting in not being able to vote on a continuation. Mr. Sakon said he respectfully disagrees and said that he should have been notified. He then said he could have researched the issue. He explained that in Supreme Court cases a review of just the Minutes is adequate and it was at the option of the applicant.

Mr. Sakon also suggested that he can withdraw the application and start it again as a new record. Mr. Sakon also stated the point of matter is that he is prejudiced by the Town for the failure to record the Minutes.

Chairman Smith said if the Board agreed and allowed the alternate would Mr. Sakon not object to the alternate (Mr. David Hoopes). Chairman Smith asked the Town Attorney, Ms. Gomes, to elaborate. She stated that it is standard in case law for a voting member to be sufficiently informed of the facts and listening to the recordings. She told Mr. Sakon that he could have the 5th voting member (Mr. Hoopes) if he waives the claims about the alternate being unprepared. Mr. Hoopes has read the application material, but did not listen to the tapes. Secretary Kornis said the Minutes are based on the tapes.

Mr. Sakon stated that his second request is to sit. He received ADA approval from the last meeting based on his injury and medical condition.

The Town Attorney, Ms. Gomes, said there will be a second recording device (tape recorder) in case technical difficulty arises from the main recording device.

Mr. Sakon agreed to the conditions of allowing the alternate (Mr. David Hoopes.)

Chairman Smith called a recess at 8:10 with the meeting to be reconvened at 8:15. Chairman Smith reconvened the meeting at 8:15. He asked Mr. Sakon if he is ready to proceed. Chairman Smith commented that the session on February 3 was lengthy. He stated the Board needs to understand Mr. Sakon's appeal so they can rule on it.

Mr. Sakon said out of respect for the new alternate and Board he went about the proceedings all wrong. He said there needs to be a history of why substantial construction started. He brought up one of the permits for the Shoppes of Avalon. Chairman Smith wanted to know if this ties in with the proceedings. Mr. Sakon said it does. He showed the Board a video rendering of what the Shoppes of Avalon would look like. Chairman Smith asked if Mr. Sakon can supply a copy.

Mr. Sakon said he can do that and explained the video is about a minute long. Chairman Smith asked if this was a rendering of what was approved. Mr. Sakon said he used it in the Zoning Application. He said the Shoppes of Avalon would be similar to the Shoppes of Somerset.

Mr. Sakon said the application was made in 2006. The Town Plan and Zoning Commission approved the application. He said in the third meeting with TPZ a traffic study was required. He then said the Town Engineer wrote a memo in support of the project. He said he had a right turn left turn on Griswold Street. He then stated the Police Chief "showed up" saying he was "the traffic authority" and would not approve the Griswold Street traffic plan. Mr. Sakon said the Police chief would only support a right turn on Griswold Street. Mr. Sakon stated that the Police chief lived on Griswold Street and had a vested interest. Mr. Sakon explained that in order to solve the traffic issues on Griswold Street, the Harrison – House intersection had to be fixed first because it was badly degraded. Mr. Sakon said, "being a good citizen," he redesigned the intersection. He said the intersection is critical for this appeal.

Mr. Hoopes asked how is this relevant. Mr. Sakon said he will explain the relevance. He said he drew the design for the intersection on his kitchen table for the now constructed and complete intersection. He said the permit failed in 2006 but was approved in 2010. He then stated that in 2013 the shopping center was approved and predicated until the intersection was complete.

Mr. Sakon stated that Chip Becket ordered the intersection built before the application received approval. He said the same thing happened in 2014 regarding the application and intersection but "they got rid of the left turn requirement." Mr. Sakon said he had been delayed for 8 years from starting the project because of the intersection.

Chairman Smith asked Mr. Sakon to start tying it together. Mr. Sakon explained that every application costs him around 25 thousand dollars. He is spending about \$25,000 to \$30,000 on applications to get renewals. An attorney advised him to start substantial construction to avoid paying the hefty application fees. Mr. Sakon said he put in about \$200,000 in site improvements to signify substantial construction. He said he put in pipes for the infrastructure. Mr. Sakon stated Mr. Carey and everyone was on board with this.

Mr. Sakon said in 2017 he went through financing institutes once he started construction. He then said "you only have one special permit for the site." He then said "belt and suspenders."

Mr. Sakon said he did major heavy-duty piping because it was a concern from the Wetlands. He said he put the pipe structure to ensure substantial construction.

Mr. Sakon then asked "what happened in 2016 to 2019?" He then stated that the Town of Glastonbury had him arrested 5 times. Mr. Sakon stated that he was run over by a sworn officer during a bike rally which had 75 others participating. Mr. Sakon stated that 11 days prior to the incident he accused the police of being corrupt.

Chairman Smith asked how is this relevant. Mr. Hoopes said that while the history is informative it is not getting the Board to the issue of the appeal. He also stated that Mr. Sakon made an allegation that Mr. Carey did something wrong.

Mr. Sakon began reading several emails introduced into evidence. The first email from Jonathan Mullen asking for clarification from Mr. Carey and Ms. Dodds about a special permit. Mr. Sakon stated that Mr. Carey and Ms. Dodds asked him for additional time. He said after 2 months of waiting for them to respond he gave up and filed an appeal. He said the appeal was denied because it was after the 15-day period. Mr. Sakon then stated that if they needed more time the clock continues on the appeal. It is not limited to just 15 days.

Chairman Smith asked Mr. Sakon if he was saying that back in October someone told him they need more time. He asked him who said this. Mr. Sakon said it was Ms. Dodds. Mr. Sakon said he had already submitted these emails into the record. He then said that Ms. Dodds instructed Mr. Carey not to say anything until the Town Attorney tells them to. Secretary Korn said that looking back at the last Minutes, he wanted to know if it is Mr. Sakon's understanding that the permit had expired because it was based on hearsay.

Mr. Sakon said he sent Mr. Carey an email asking him to take a position on the permits. He said he got a read receipt.

Chairman Smith said that Mr. Sakon is bringing up a series of events from October 2. Mr. Levine telling Mr. Sakon about conversations he had with Ms. Dodds, Mr. Mullin, and Mr. Carey. Chairman Smith then said that is not you (Mr.Sakon) with them; that is Mr. Levine with them.

Chairman Smith wanted to know how Mr. Sakon found out about the conversation. Mr. Sakon said he got a report from his lender. Chairman Smith asked Mr. Sakon if he has communication with Mr. Levine in writing. He said this information was not provided at the last meeting or tonight.

Mr. Sakon said he would like to submit emails to the record. He handed various emails to the Board. He then stated that the point he would like to make is hardships were created and he cannot secure a lender. He said that Mr. Carey is silent about his requests and will not take a stand and it creates hardship and damages. Mr. Sakon then said he would like the Board to rule on the matter. He then said a zoning officer must make a ruling on the matter and the silence has been quite upsetting.

Chairman Smith asked if he goes back to TPZ would he be charged another \$30,000 to \$40,000. Mr. Sakon said if there is no change in circumstance they have to approve his appeal. He then said the traffic study was not \$25,000 but really \$300,000. He said he has plans filed in the records.

Chairman Smith stated that he does not want Mr. Sakon to confuse or perjure himself. Mr. Sakon then stated he filed a 2017 permit and has copies to submit to the record. Chairman Smith stated that the Board needs to determine if they have jurisdiction to hear that part. He then said no doubt there will be a variance. He then said he thinks Mr. Sakon is saying the conversations from October 1 and 2 prompted him to figure out there was an issue. He then wanted to clarify if he was told by the Town to wait back in October and on December 11 – the appeal is clearly beyond the 15-day period.

Chairman Smith stated, if Mr. Sakon was told to hold off, it is a question of the jurisdiction of timing. Chairman Smith wanted to confirm whether Mr. Sakon found out there was an issue from an email dating October 2 regarding financing from Mr. Levine. Mr. Sakon said he was never given a decision on the matter.

Chairman Smith stated the Board has a second question. If there is something in the regulations if someone does not respond – is it actionable by appellate. Chairman Smith reiterated that the Board needs to vote on those 2 questions. He also stated that that the Board needs to decide if they have jurisdiction over these questions.

Chairman Smith stated he gets Mr. Sakon's point (October 2 delay) that the Town told him to give more time. And then secondly, Mr. Sakon said that Mr. Carey has not issued anything. He then said the Board has to determine if that is that appealable.

Mr. Sakon then quoted section 13.2a of the Zoning Board of Appeals. He then stated that Mr. Carey was required to respond. Mr. Sakon then said because of this there are damages from money withdrawn based on a hearsay statement. Mr. Sakon then said Mr. Carey is required to undertake and do his duties.

Chairman Smith stated that before the Board adjourns, they needed to consult with the Town Attorney. Chairman Smith asked if Ms. Gomes is familiar with case law regarding no action taken on a request. Attorney Gomes said she came across a 2014 Supreme Court case, Reardon vs Zoning Board of Appeals of Darien. It was decided that a lack of response was not appealable. Mr. Sakon said that is different and he is asking the Board to order Mr. Carey to respond. He then said if his permits were not valid why didn't the zoning officers issue cease and desist letters. He then stated that the lender denied financing based on hearsay statements. Mr. Sakon said that a lender is not going to risk \$4.8 million in financing when they are not sure what is happening.

Mr. Sakon also said the difference in the case is not concerning a neighbor, which is a whole other matter. He then said the police department has its own decision making. He then stated this is about his property. Mr. Sakon then stated he is asking Mr. Carey to rule on his applications. And there is a requirement to do so.

Chairman Smith said he is not sure what is meant by the word requirement. He reads the word requirement as he makes an order. Mr. Sakon then said if the Board chooses not to act he can sue Mr. Carrie and Mr. Mullin. He then said he will sue them for libel and slander because he lost \$4 million in financing. Chairman Smith then stated he does not read the word requirement the way Mr. Sakon reads it but he may change his mind.

Mr. Sakon then said the Zoning Board of Appeals was created to resolve issues. He then stated to take any other position and arguing from the negative is giving him huge authority. Secretary Korns said he is having trouble following. Secretary Korns then said it is alleged that Mr. Carey made a decision and spoke to Mr. Levine about it and never put it into writing. He then asked Chairman Smith why can't the Board ask Mr. Carey.

Chairman Smith said it was a timing issue. He then stated that Mr. Sakon is alleging "we will get back to you" is extending the appeal time. He then stated, if the Board decides we have jurisdiction, the question is well placed.

Attorney Gomes said she is unaware of cases. She then said under Section 13.6 an applicant may appeal within 15 days.

Secretary Korns asked how can the Board address a ruling if there is nothing in writing. Chairman Smith said he thinks that is what he is appealing from – Mr. Sakon had to wait and

relied on the Town and thought the appeal would be extended. Chairman Smith then said they have to decide if it's a valid argument.

Mr. Sakon stated that the statute of limitations can be waived. Attorney Gomes stated that it is a 2-part inquiry. The first is timeliness, 15 days from the ruling. The second part is an order requirement made by a town building official.

Mr. Hoopes stated there is a claim in Mr. Sakon's application that he was appealing from some decision Mr. Carey made. But no decision was made. Mr. Hoopes stated the Board should dismiss the appeals application. He explained that there has to be an official decision to appeal from. He then said, even if an official decision occurred, it was more than 15 days. It is untimely on that ground. Mr. Hoopes said he can sympathize with the financing aspect but has not been persuaded that there is a requirement in the laws – and even if there was, they are not relevant to this appeal.

Chairman Smith asked the Board if they should dismiss or not.

Mr. Sakon said the Board is walking into some public policy issues. He then said his property has been appraised for \$11.4 million and "the good people of Glastonbury will be liable". He then said he thinks the Board has to rely on the public good. He then said he will get into Shipman and Goodwin later.

Chairman Smith said they are in the midst of deliberation on jurisdiction and he is not sure how the value of the property is relevant. He then told Mr. Sakon that he also has a variance application.

Mr. Sakon then asked Mr. Carey if he has a permit. He then asked him who instructed him to be silent.

Mr. Hoopes stated the Board should dismiss the appeal because there is a lack of jurisdiction. He also stated an official decision was never made and, even if it had been made, it would have been 15 days over the appeal period.

Mr. Sakon then said "point of order." He said to divide the issue and vote on the issues separately. He said the Board cannot combine them and must decide separately. He said this is based on Robert's Rule of Order.

Chairman Smith said they do not need to do that. He then told Mr. Sakon that he is out of order and the Board will proceed. Ms. Susan Dzialo asked whether the Board can make a recommendation. Chairman Smith said there can be a recommendation on having to vote. He then said the Motion still needs a second. Ms. Dzialo seconded the motion. Chairman Smith confirmed a motion to dismiss has been made and seconded.

Motion by: David Hoopes

Seconded by: Susan Dzialo

MOVED, that the Glastonbury Zoning Board of Appeals dismisses the application of John Alan Sakon.

Disc: Ms. Dzialo recommended that the Board speak with Mr. Carey and the Town Attorney to find out what is meant by substantial construction. Secretary Kornis stated there is no evidence a decision has been made, therefore the Board should dismiss the appeal.

Ms. Winkler said there needs to be more clarification. She said the fact that no decision had been made is problematic. She also stated it is bad to allow public officials to sit on something and citizens having no recourse. She then said the Board is not the recourse.

Chairman Smith said there is a real problem of proof. If they accept Mr. Sakon's testimony, they are then relying on hearsay. He said the Board does not have Mr. Levine here or further evidence from that individual. Chairman Smith then stated he would vote to dismiss the appeal on that basis – because of the lack of evidence, they do not have to get to the timely issue. Chairman Smith explained that his main view is having sufficient credible evidence and what Mr. Sakon provided was insufficient.

He asked the Board to vote on dismissing the appeal.

Result: Motion passes unanimously. (5-0-0)

6. Tabled a variance from Building Zone Regulations Section 12.7 for the property known as “The Shoppes at Avalon” at 2980 Main Street, 131 Griswold Street (Lot 27600131), N2B Griswold Street Rear (Lot 27600002B), E8A Main Street Rear (Lot 41400008E), in Planned Travel Zone by John Alan Sakon.

Chairman Smith stated that before the Board proceeds, they can incorporate part of the record from agenda number 5.

Motion by: David Hoopes

Seconded by: Nicholas Kornis

MOVED, that the Glastonbury Zoning Board of Appeals accepts the summary of information from the previous matter.

Result: Motion passes unanimously. (5-0-0)

Mr. Sakon began to speak and said it all has to do with the intersection. He said he tried to work with the Town. Mr. Sakon said the question was whether the police chief acted improperly by stating he was the traffic authority. Mr. Sakon said the address of the police chief is concealed, so when he appeared at the Zoning Board no one thought it was a problem.

Mr. Sakon said the only change in the 2 applications was the left turn being eliminated. He then handed out material to the Board. Chairman Smith asked if it starts on page 4. Mr. Sakon said yes. Mr. Sakon said Paragraph 5 section a is the approval dated on April 4, 2013. (See document for more information.) He began reading the section and noted that approvals are required and will not be approved until House Street and Griswold Street are operational.

Mr. Hoopes asked whether it is phase 2. Mr. Sakon said yes. To make the infrastructure, he had to break it into phase 1 and 2 at the request of the Town. Mr. Sakon said he needed to build a quarter mile of road. Mr. Sakon explained the road had to be of town arterial road standards. An arterial way, Griswold to Main Street, so a person can turn into the Shoppes from a public road then into Main Street. Mr. Sakon said the Glastonbury traffic engineers recommended that. He then stated that Avalon was built to arterial standards.

Mr. Sakon said Chip Becket said to complete in intersection in 2014. He then stated that in 2014 he anticipated the construction would be completed in 2015. Mr. Sakon explained that he is spending a lot of money on applications. The traffic engineer cost \$10,000.

Mr. Sakon then said he consulted with attorneys because he did not want to keep renewing applications. The applications are very expensive so he said he started substantial construction in 2016 based on attorney advice.

Mr. Sakon said he is putting the bond on record. He said the Town would not let him proceed without posting bond. Mr. Sakon then said, if he was doing site improvements, why would he need the bond. He then said Mr. Mocko and Mr. Carey required bond. Mr. Sakon said they told him he could not put in a structure unless there was bond. Mr. Sakon stated he took out a \$100,000 bond to put in a pipe. The bond would be collected if the work stops. Mr. Sakon stated that Shipman and Goodwin said he did not post bond, but showed them proof. Mr. Sakon then stated "building number 800." He then said Mr. Carey told him to pay the bond and do the piping and that would be substantial construction. Mr. Sakon then told Mr. Carey that he denied the application. Mr. Carey said "absolutely not."

Chairman Smith asked Mr. Sakon to continue and then Mr. Carey would be able to make a statement. Mr. Sakon then stated that Mr. Carey is doing what he is told. He then said the property is worth \$10 million and he is paying interest at 10 percent. Mr. Sakon said he needs to get permits.

Mr. Sakon said the Town turned down the proposal for a supermarket in 2005. He then said it was based on the testimony of Mr. Brantz. Mr. Sakon said Mr. Brantz is the person who wrote the regulations. Mr. Sakon then stated all of this presents him with hardship. He then said Mr. Brantz represents municipalities. Mr. Sakon then stated all uses by special permit is unconstitutional in Massachusetts. He also said it is also unconstitutional in 2 other states. Mr. Sakon stated that this is a hardship because the Town can arbitrarily say they do not like a project.

Mr. Hoopes then asked, "this application?" Mr. Sakon then stated "attorney client privilege –

asked a question and committed malpractice.” Mr. Sakon began to read from a transcript from Mr. Brantz. He then stated, “waiver of authority.” Chairman Smith stated that he was an attorney for years and takes issue. Mr. Hoopes asked if there is anywhere else in the transcript where Mr. Brantz explains the matter. Mr. Sakon stated, “Do you know the intent of the Town?” Chairman Smith asked why unique hardships affect this property. Mr. Sakon continued reading from the transcript which he said outlines Mr. Brantz opinion. Mr. Sakon stated that for 63 years he was an upstanding citizen, then arrested for 11 felonies and found innocent. He said the larceny charges were “so bogus” that they were dropped. Mr. Sakon then stated that the Glastonbury police are at odds with him.

Mr. Sakon stated that he is ordained as both a shaman and a minister. He said he allowed a church to use a property as a place of worship instead of letting it sit empty. Mr. Sakon said he was complimented for doing this but later was taxed by the Town for over \$400,000 for allowing the church to worship. Chairman Smith stated he was on the Board during that time. He said they denied the appeal but granted a variance.

Mr. Sakon then stated that hardship number 1 is trying to get approval. He said the reliance on having to get the intersection approved is a hardship. Mr. Sakon then stated he was the one who put the whole intersection together. Mr. Sakon said construction did not begin. He began reading a statute on hardship. He said he was faced with unusual hardship.

Mr. Sakon then noticed an error or a typo and said April 2017 should have read as 2015. Mr. Sakon said since it cost him over \$35,000 for each application it is much easier to throw money into the property to start substantial construction. He said he built the structure, posted the bond and it will meet the criteria. Mr. Sakon then said he invested millions, is running out of money, and needs to preserve the permits. Mr. Sakon then submitted invoices for 2016. He asked the Board to look at the invoices for the actual work that was done. Mr. Hoopes said he is confused. He wanted to know if the eliminated condition of the House street intersection meant that the condition is satisfied.

Mr. Sakon stated that in 2016 he did much work to preserve the permits and started substantial construction. Mr. Sakon said he met with the Town and Chairman and had a handshake agreement then, all of a sudden, was arrested as he was suing the Town. Mr. Sakon said a senior law partner told him that is very disruptive to the Town. Mr. Sakon said he spent 4 months in prison but was found innocent of all of the charges. He said this is very emotional to him. He then said he was arrested as he was gifting his son a \$100 bill.

Secretary Korn asked if they can fast forward to when the permit was approved for extension and which evidence Mr. Sakon had to present. Mr. Sakon stated that if one has an approval and it is good for one year, then they would pay \$30,000 and the extension would become automatic.

Mr. Sakon then stated that it took a jury minutes to drop the charges. He then stated his wife is mentally ill. Mr. Sakon said he had a minister contact his wife in order to see his son. Mr. Sakon then said he was arrested for asking the minister to ask his wife about seeing his son. He then stated that the police arrested him and the Town police arrested him. Mr. Sakon said that on

August 10 he was ordered from home and on August 22 he was arrested for 9 felonies. On October 3, he was arrested for more felonies. Mr. Sakon said because of these arrests, he is now "John Dillinger" and has a hardship in securing financing. Mr. Sakon said he is being singled out for arrests because he is suing the Town. He then stated that decisions are upheld by the Supreme Court. Mr. Sakon said he tried to work with the Town but "got nailed to the cross for telling facts."

Secretary Korn said he is getting lost with all this history. He then stated that this is an application for a variance. Mr. Korn said it doesn't mention ZBA or TPZ and wanted to know if the Board has the authority.

Mr. Sakon then cited section 12.7 and said he met the criteria for substantial construction. He then stated that he wants 12.7 waived to allow him to proceed. Chairman Smith commented that this is an odd request. He said he had never seen a variance to move a permit timing. Mr. Sakon said he is asking the Board to validate his permits. Chairman Smith said he doesn't know if they can do that. Mr. Sakon said "yes you can."

Mr. Hoopes said he needs to better understand the arguments about hardships. He then asked if Mr. Sakon is saying he would have commenced construction if the offsite projects had been done earlier. Mr. Sakon stated yes. He also said it would have also commenced if he didn't have to spend a quarter of a million on arrest charges. Mr. Hoopes asked if the House Street reconstruction could have been done earlier. Mr. Sakon said if there was no 2013 condition he would have been able to pay taxes. He then said he only made the claim when the Town started foreclosing. Mr. Sakon then stated that the Board has the power to validate the permits.

Mr. Sakon said the Town attorney would agree that the Board can validate permits. Mr. Hoopes asked, if there were no conditions, how long would it have taken to build the project. Mr. Sakon responded that it would have taken less than a year if it was not for the intersection. Mr. Hoopes asked about phase 1 and 2. Mr. Sakon said that he had to build a quarter of mile of road and he also built a drainage structure. He said he got approval for the 95,000-square foot space. Ms. Dzialo asked whether on February 5, 2013 Mr. Sakon received approval for phase 1, for 67,690 sq. feet. Mr. Sakon said yes and a month later was approved for additional square feet, compliant with conditions of the intersection. Mr. Hoopes asked if phase 1 could have started. Mr. Sakon said not without completing the intersection. Mr. Sakon said in 2016 he started substantial construction. He said he is asking the Board to give a variance because substantial construction was started. Mr. Sakon said if he has approvals he can get money for financing. He said the Board has the power to approve the application. He then said they have more power than TPZ.

Chairman Smith asked about the bond that was entered into evidence. He stated there is a big blank on the page and it doesn't indicate what the \$50,000 was for. Mr. Sakon said it was for piping of the stream and there is a lot more to the bond. Chairman Smith stated that he is aware Mr. Sakon has approval and he is trying to tie the evidence. He then said principle entered into agreement and Mr. Sakon's argument is that he had started construction. Mr. Sakon said the bond has a lot of paperwork. Mr. Sakon showed a diagram to the Board. Chairman Smith asked

whether it was Wetlands or TPZ. Mr. Sakon said it was approved by both. Mr. Sakon said the pipe, grading, putting in fill. He said it is a structure, substantial construction of building.

Chairman Smith asked Mr. Carey if he wants to make a rebuttal. Mr. Carey said he is not sure of the dates but Mr. Sakon did apply for a foundation permit. It was denied and not issued and returned within 30 days. Mr. Carey then stated that since that time, Mr. Sakon has not applied for any building for foundation permits. Mr. Carey also stated that the mylars and the special permits have not been filed into the land records. Since they were not done they were denied. Mr. Sakon said he filed the mylars in 2013. He said he thinks Mr. Carey is honest but got his times lapsed. Chairman Smith asked if the building permit was denied. Mr. Sakon then stated that the application was withdrawn because they were discussing it. Chairman Smith wanted to know if the application was returned. Mr. Sakon said it was and he did not pay for the application. Mr. Sakon then stated they both agreed that he would get the bond and fix the pipes.

Chairman Smith asked Mr. Carey to tell the Board about the pipe. He asked if the pipe was installed. Mr. Carey stated they do not approve site improvements and do not issue permits for site work. Mr. Sakon then stated, "Why did I spend \$1,500 for a bond if the town didn't require bond?" Mr. Sakon then stated that Mr. Carey works for Ms. Dodds in Community Development. He then stated, "When you work with Community Development, you do as they instruct."

Chairman Smith asked who granted the permit. Mr. Sakon said, in 2016, Mr. Carey told him "as long as you post bond, you get a permit." Mr. Sakon said Ms. Dodds handles the bonds.

Chairman Smith stated the Board has to construe what structure means. He then asked Mr. Sakon if he is saying a pipe is structure. Secretary Kornis read the definition and stated it does not including fences. Chairman Smith asked the Town attorney what the definition of a structure is. Ms. Gomes, Town attorney, stated that substantial construction, as outlined in a 2019 letter, does not apply to general construction work like pipes. Ms. Gomes gave out copies of the letter. Ms. Gomes directed the Board to page 3 and said the section on special permits starts there.

Mr. Hoopes asked if the Wetlands permits expired. Ms. Gomes stated they are expired, and they are only effective if additional time was requested. She said Mr. Sakon did not request additional time and referred to a letter from Mr. Mocko. Ms. Gomes said there is no provision in the special permits for a re-approval process. She also stated the special permit must be located on the land records. Ms. Gomes said there is no record of the mylars or anything ever filed. Ms. Gomes instructed the Board to turn to page 4 and stated that even if the applicant had recorded a special permit, it expired on April 4, 2019. Mr. Hoopes stated that was interpretation and asked if there was any case law. Ms. Gomes stated she was not aware. She also said if the permit is not recorded there was no substantial construction.

Mr. Hoopes asked, if the work Mr. Sakon did counts as substantial construction, are his permits valid. Mr. Hoopes also asked if there is any reason based on case law that can satisfy the hardship requirement. Ms. Gomes handed the board a copy of Connecticut statute 8.6. She instructed them to skip to section 3 and read it aloud. Ms. Gomes stated that she does not know anything of time requirement being applicable.

Chairman Smith stated the condition with the road problem was resolved. Mr. Hoopes commented that arrests do not have any relevance to the parcel of land. He said TPZ has approved it 3 times and has no reason to believe they will deny it. Mr. Hoopes also stated that, if the arrests are related to the delays, that might qualify for an unexpected delay. He said Mr. Sakon is seeking a variance because of financial hardship. Chairman Smith said Mr. Sakon has argued that he has done substantial construction. Mr. Hoopes said the Board cannot decide on this issue. Ms. Winkler stated that financial hardships are not an argument in Supreme Court decisions.

Mr. Sakon said it has been recorded (the mylars). He then asked if Ms. Gomes was directed by Town authorities. She told Mr. Sakon that she will not answer his questions and told him to go through the Chairman. Chairman Smith stated we are an independent body and she is our attorney. Mr. Sakon then stated, "ask your attorney if she has been instructed by Eric Goldstein because the Bankruptcy Court mirrors her position." Chairman Smith stated that he doesn't know who that is. He then asked Mr. Sakon if he is talking about Shipman and Goodwin. Mr. Sakon then stated that "Ms. Gomes is serving two masters." He said the Town is represented by Shipman and Goodwin. He said there is a problem and "you cannot serve two masters." Mr. Sakon said Ms. Gomes' law firm has taken the position that he has no permits. He also said the bankruptcy court is playing both ends and has instructed Ms. Gomes to take a position. Mr. Sakon then stated "this is why the Town of Glastonbury was so eager to foreclose."

Chairman Smith asked Mr. Sakon if had filed and when. Mr. Sakon then stated (addressing Ms. Gomes), "Take you to task for misrepresentation." Chairman Smith asked Mr. Sakon about the 2013 mylar record. Mr. Sakon said he agreed with the Town staff. He said they called it re-approvals, since they were identical to past permits. Mr. Sakon then explained that it would take 30 pages of documents and "refile them again and again." He stated that the answer from Community Development and TPZ is that there was no need to refile. He stated that refiling all those pages is quite expensive. Chairman Smith agreed that it would be expensive.

Mr. Sakon said Ms. Gomes spoke about the permits filed in 2013 and 2105 and did not mention the one filed in 2017. Mr. Sakon stated that this is a technical issue with no time constraints. Mr. Sakon stated that Ms. Gomes is misleading the Board by not including the 2017 permit.

Mr. Sakon then stated he wants to submit the mylar from 2017, signed by TPZ, and said they are special permit approvals. He said he wants to submit the documents to the Board and have it on the record. Mr. Sakon then said as "Mr. Brantz says it is a technical issue." Mr. Hoopes stated that Mr. Sakon made a reasonable argument about hardships. Mr. Sakon stated that substantial construction occurred. He said it was a short meeting before TPZ. Mr. Sakon then stated "belt and suspenders."

Mr. Sakon stated that the administration of the Town of Glastonbury does not want him in town. He said his office was ransacked, he was run over and the Town wants him out. Mr. Sakon then said "it's a corrupt town" but he "won't go there because it is not a legal argument."

Mr. Sakon asked the Board to approve the variance. He stated substantial construction occurred in 2016 and permits are valid.

Chairman Smith stated there is a lot of information and testimony and the Board has to make tough decisions.

Mr. Sakon stated that it is an operation that went bad and wants to summarize. He said there is a misrepresentation from the town's attorney. Mr. Sakon said the 2006 Wetlands permit is not the same approval. He referred to a letter from Mr. Mocko stating that it expires in late 2020. Mr. Sakon stated that there is "lots of case law where the courts rule that the issue is technical." Mr. Sakon then stated that he did substantial construction. He said the wetlands permits will expire. Mr. Sakon said he placed silt fences, all substantial construction. He then stated that the courts are liberal and will preserve the permit. Mr. Sakon said he is upset with Community Development because they all settled on the pipe and are now taking different positions. He then stated that it leads him to believe there is another agenda. Mr. Sakon stated that the extensions are not required to be filed but the Board will find them.

Chairman Smith stated that the next meeting will be held on April 6. There will be a motion to continue. Mr. Sakon said they can settle the issue if Mr. Carey will issue a ruling.

Mr. Hoopes asked if they should close the public hearing. He said he is concerned about a rehash. Mr. Sakon said he would like the opportunity to counter the Town Attorney.

Chairman Smith said the Board will give Mr. Sakon a 15-minute limit to give a briefing. He then stated that he doesn't think anyone wants it to go long. Chairman Smith stated that Mr. Sakon can submit information to the Board.

Mr. Sakon said Mr. Hoopes raised the issue regarding what Board can approve and what it cannot. Chairman Smith asked Mr. Sakon to get the information to the Board before the next weekend.

Motion by: David Hoopes

Seconded by: Ms. Dzialo

MOVED, that the Glastonbury Zoning Board of Appeals continues the public hearing of item # 6 to the Regular Meeting of April 6, 2020.

Result: Motion passed unanimously (5-0-0).

2. Acceptance of Minutes from February 3, 2020 meeting

Motion by: Nicolas Kornis

Seconded by: Jaye Winkler

MOVED, that the Glastonbury Zoning Board of Appeals accepts the minutes of the regular meeting of February 3, 2020 with the following corrections:

Page 2, first paragraph should read Town Attorney and not Council. Page 2, paragraph 4 should read Harris and House. Page 3 remove AGA – the Board does not know what that is. Page 5, 1st paragraph should read continue not adjourns.

Result: Motion passes unanimously (5-0-0)

Motion by: Chairman Smith

Seconded by: Nicholas Kornis

MOVED, that the Glastonbury Zoning Board of Appeals continues their regular Meeting of March 2, 2020 at 11:19 pm.

Result: Motion passes unanimously (5-0-0)

Brian Smith, Chairperson