

GLASTONBURY ZONING BOARD OF APPEALS
Regular Meeting Minutes of Monday, September 13, 2021

The Glastonbury Zoning Board of Appeals with Mr. Jonathan Mullen, Planner, in attendance held a Regular Meeting on Monday, September 13, 2021 via ZOOM video conferencing.

ROLL CALL

Board Members- Present

Brian Smith, Chairperson
Nicolas Korn, Secretary
Jaye Winkler
Susan Dzialo
David Hoopes
Doug Bowman, Alternate
Philip Markuszka, Alternate

Board Members- Excused

None

Mr. Jonathan Mullen was filling in for Mr. Carey.

Chairman Smith called the meeting to order at 7:05 pm and explained the public hearing process to the audience. Chairman Smith also noted that 4/5 votes are needed for an application to pass and there is a 15-day appeal period.

Secretary Korn read the 7 agenda items.

Chairman Smith explained that the chat feature is not part of the record and asked applicants to wait for their turn to present. Chairman Smith informed the Board that the applicant for the agenda items 5 and 6 requested a postponement.

Secretary Korn clarified that the chat feature was used to bring up technical questions.

Public Hearing

- 1. By Douglas R. Cahill for a variance from Section 7.1b.2f to permit an above ground swimming pool to be located in the side yard at 2291 Hebron Avenue in RR zone.**

Mr. Mullen read the 1st application.

Mr. Douglas Cahill asked the Board if they received his application materials.

Chairman Smith replied yes.

Mr. Cahill explained that he was unaware that the pool could not be installed in the side yard. He explained that the pool installer informed them that they must apply for a permit. Mr. Cahill stated that his property is on 6 acres of land and has no immediate neighbors nearby. Mr. Cahill explained that he spoke with Mr. Carey and was told that, because of the regulations, a pool in the side yard cannot be personally approved and the application must go before the Zoning Board of Appeals. Mr. Cahill explained that the only feasible location for the pool is the side yard. The backyard is steep, contains solid ledge and large boulders. Mr. Cahill noted that the proposed pool will not have any impact on the neighbors. He informed the Board that two neighbors have emailed Mr. Carey in support of the application. Mr. Cahill stated that two Board members visited the property and they should concur that the proposed pool will not have any negative impact on the neighbors.

Chairman Smith asked IT Manager, Mr. Bobby Ashton, to put up exhibit 2 of the application materials. The Chairman inquired if the plot of land measuring 1.92 acres that is adjacent to the property belongs to the applicant.

Mr. Cahill stated that he owns the property.

Ms. Winkler asked if the neighbor that provided the letter of support resides on the same side of the pool.

Mr. Cahill explained that the neighbor is downhill from the 1.92-acre lot.

Mr. Bowman remarked that he initially went to the wrong house. He stated that he can confirm that the property is spacious, remote and surrounded by forest.

Mr. Cahill replied correct.

Secretary Korns stated that there are references to 2-3 letters, but he has only seen only 1 letter. He asked Mr. Cahill if he had the additional letters.

Mr. Cahill explained that he spoke to his neighbors and was told that they would email letters in support of the pool. He stated that his neighbor Ms. Mary Agapoglou lives downhill from him at 2295 Hebron Avenue, and will not be negatively impacted by the pool. Mr. Cahill stated that Ms. Leslie Cayer Ohta, his other downhill neighbor at 2273 Hebron Avenue, said that she would write a letter in support of the pool. Mr. Cahill reiterated that the neighbors would not be negatively impacted and stated that the neighbors might have emailed Mr. Carey.

Ms. Winkler stated that Mr. Carey is on vacation.

Secretary Korns read out the letter of support from Mr. Jason Lathe of 2289 Hebron Avenue.

Mr. Mullen informed the Board that he was copied to an email from Ms. Leslie Cayer Ohta, one of the neighbors residing at 2273 Hebron Avenue, and only saw an out-of-office response. Mr. Mullen explained that he could not see the content of the email.

Mr. Cahill stated that he was not copied on that email.

Chairman Smith remarked that the Board does not know what the contents of the email are and explained that they will move on to the public comment portion of the meeting.

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

Chairman Smith asked Mr. Cahill if he had any questions.

Mr. Cahill thanked the Board for considering his application. He explained that he has more of a suggestion to make. Mr. Cahill stated that the City Squared system is difficult to maneuver and noted that Mr. Carey indicated that some users were having trouble with the application. Mr. Cahill asked if there was a way for an application to be approved by a Town employee in order to bypass the Zoning Board of Appeals hearing.

Chairman Smith stated that he can answer the second question. He explained that bypassing the Zoning Board of Appeals would require an amendment to the regulations. The Chairman explained that the Board has no role in amending or changing the regulations. Mr. Cahill thanked the Chairman.

2. By Daria M. Biancardi for a variance from Section 7.1b.2f to allow an above ground pool and attached deck to be closer to the property line than permitted at 55 Williams Street West in Residence A zone.

Mr. Mullen read the 2nd application.

Ms. Daria Biancardi and Mr. James Norkawich began the presentation. Mr. Norkawich informed the Board that his fiancé, Ms. Biancardi, has multiple sclerosis and the primary purpose of the pool is for medical reasons. Mr. Norkawich explained that the pool was installed 5 years ago and added that he does not use the pool and does not benefit from it.

The applicants explained that their contractor indicated it would be difficult to obtain a permit for the deck. The contractor advised the applicants that they could proceed with installing the deck if they would remove the deck before selling the house. Ms. Biancardi explained that they have no intention to sell their house and would like to keep the deck where it is because it is away from the large sink hole which has gotten worse due to the increased rainfall. Ms. Biancardi explained that Mr. Carey visited the property and noticed the sinkhole, decayed tree

stumps, and the sinking ground. The applicants noted that they have a privacy fence and the pool and deck are placed in the stabilized area of the yard. Ms. Biancardi explained that they are first time home buyers and she had to deplete her savings to install the deck. She explained that it was unsafe for her to climb up a ladder to enter the pool. Ms. Biancardi explained that it would be very distressing to remove the deck because it is placed in the most structurally sound portion of the yard. The applicants explained that it is not feasible to move both structures and it would result in losing both the pool and the deck.

Chairman Smith remarked that the applicants made a reference to putting in the pool 5 years ago.

Mr. Norkawich replied correct and added that it was done in 2015.

Chairman Smith inquired if the citation references the pool and the deck.

The applicants replied that the citation references both. They explained that it was the deck that prompted a neighbor's objection. The applicants reiterated that Mr. Carey inspected the yard and had seen the sink hole and the unstable land.

Mr. Hoopes inquired how far the pool is to the rear or side property line.

The applicants replied that it is about 18 inches from the privacy fence.

Mr. Hoopes inquired if the fence was just on the side.

The applicants stated that they have a fence all around. They explained that directly behind their property is a busy baseball field parking lot. During May through August, the parking lot is very busy with dust and traffic. Ms. Biancardi remarked that it is a "fuzzy divide" between the public Town owned land and their private property. Mr. Norkawich stated that Mr. Carey informed them that the deck is missing a railing and it will need to be in compliance. The applicants explained that they are willing to make the modifications in order for the deck to be up to code.

Chairman Smith asked the applicants if they have received any other citations.

They replied no and added that the pool is not visible.

Chairman Smith explained that Connecticut State Statute Sec. 8-13a might apply to the pool. The Chairman began to read Sec. 8-13a:

Sec. 8-13a. Nonconforming buildings, structures and land uses. (a)(1) When a building or other structure is so situated on a lot that it violates a zoning regulation of a municipality that prescribes the location of such a building or structure in relation to the boundaries of the lot or when a building or structure is situated on a lot that violates a zoning regulation of a municipality that prescribes the minimum area of the lot, and when such building or structure has been so situated for three years without the

institution of an action to enforce such regulation, such building or structure shall be deemed a nonconforming building or structure in relation to such boundaries or to the area of such lot, as the case may be. For purposes of this section, "structure" has the same meaning as in the zoning regulations for the municipality in which the structure is located or, if undefined by such regulations, "structure" means any combination of materials, other than a building, that is affixed to the land, including, without limitation, signs, fences, walls, pools, patios, tennis courts and decks.

Chairman Smith pointed out that if something is in place for 3 years, it is permitted to stay and may apply in this case. The Chairman asked Mr. Mullen if this is correct.

Mr. Mullen stated that he is reading it now and agrees that the structure is deemed nonconforming after 3 years.

Mr. Hoopes asked if an above ground pool is a building.

Ms. Winkler remarked that she did not understand what is meant by "nonconforming".

Chairman Smith explained that "nonconforming" means that the building or structure does not meet the zoning regulations but is permitted to stay. The Chairman remarked that the question is if the pool fits the definition of a structure.

Mr. Mullen read out the rest of the Connecticut Statute Sec. 8-13a: *"structure" means any combination of materials, other than a building, that is affixed to the land, including, without limitation, signs, fences, walls, pools, patios, tennis courts and decks.*

Mr. Hoopes remarked that settles that.

The applicants stated that they have been living in Glastonbury and trying to do what others are doing, which is living a good quality life. They explained that some things are beyond their control, like mother nature.

Mr. Hoopes noted that the variance application is for the pool and does not know if there is a separate rule that would apply to the deck. He asked if the Board is treating the deck as part of the pool.

Mr. Mullen said that he would say yes, it is part of the pool.

Chairman Smith looked at the letter and stated that the pool and deck are combined.

Secretary Korn stated that the citation may be more about the deck and not the pool. He inquired if the deck is more visible than the pool.

The applicants replied yes. They explained that 2 posts of the deck show, but the pool is not visible. The applicants stated that a neighbor must walk halfway through the property to even see the deck. Ms. Biancardi stated that the neighbor was taking pictures of her underage son, while photographing the deck. She added that it was disturbing.

Chairman Smith stated that they will move on to the public comment portion of the hearing.

Mr. Jody Kretzmer of 2400 Hebron Avenue stated that he is in favor of the application. He asked Ms. Biancardi if she was visible using the ladder to climb into the pool. Ms. Biancardi stated that she was visible while climbing the ladder. Mr. Kretzmer commented that, even if the deck was not there, Ms. Biancardi would still be seen. Ms. Biancardi replied yes. Mr. Kretzmer thanked the Board.

Chairman Smith asked IT Manager, Mr. Ashton, if anyone else from the public wanted to speak on the application. A hand was raised.

Ms. Maureen Dwyer of 61 Williams Street West explained that she had her property surveyed 10 years ago. She stated that the privacy fence put in by the applicants is right on her property stakes. Ms. Dwyer explained that a deck is supposed to be 5 feet away, and currently it is much less and very close to her property. Ms. Dwyer stated that she called Mr. Peter Carey to investigate. Ms. Dwyer stated that she began contacting the Town in May of 2020. She said she has not received a response. She stated that she understands that it is a busy time due to Covid-19. Ms. Dwyer explained that on June 16, 2021 she was mowing her lawn and took a picture of the neighboring deck to show how high and close it is to her property. Ms. Dwyer explained that she had no intention of taking a picture of a child, and only took pictures, including of the male adult homeowner, to demonstrate that the deck is too close to her property line. The pictures with people using the deck show just how close it is to the property line. Ms. Dwyer stated that she was embarrassed that the police came to her property. Ms. Dwyer stated that, after she explained the situation to the police and informed them that the deck was installed without a permit and placed less than 5 feet away, she was told that it is her right to photograph on her property. The police told the neighbors to get a permit for the deck. That was 1.5 years ago. Ms. Dwyer explained that she is a structural engineer and has done hundreds of projects. She explained that moving the deck would require installing some sauna tubes that go 4 feet down. Ms. Dwyer explained that it is not an expensive project.

Ms. Dwyer stated that she has no issues with the pool and is only concerned about the placement of the deck. She stated that it is an invasion of privacy and added that a legitimate contractor would have advised the applicants to get a permit. Ms. Dwyer thanked the Board for listening.

Chairman Smith told the applicants that they can respond.

The applicants stated that Ms. Dwyer is rarely at the property located at 61 Williams West. They explained that she cuts the grass and maintains it. The applicants stated that their 13-year-old son alerted them that he was being photographed.

Chairman Smith interjected and explained that the Board does not deal with police matters. The relevant issue is the deck location.

Mr. Norkawich stated that, if the deck was flipped around to the other side, the ground would be unstable and the height would be the same. He added that “the deck height is the deck height.” Mr. Norkawich stated that the deck is there to help Ms. Biancardi get in and out of the pool. He explained that Ms. Biancardi has multiple sclerosis and swimming is rehabilitation.

Chairman Smith stated that Ms. Dwyer will have one more chance to respond and explained that the applicants get the final word.

Ms. Dwyer stated that she does not know how the applicants know her schedule. She explained that they have no say regarding what she does to her property. Ms. Dwyer noted that she is a structural engineer and explained that putting in some extra supports, like the sauna tubes that go 4 feet down, is not a financial hardship. Ms. Dwyer explained that the placement of the deck constitutes an invasion of privacy. She stated that she knows all of her neighbors and has been there for 18 years. She thanked the Board.

Chairman Smith told the applicants that they have the final word.

The applicants stated that they would like to keep the deck where it is. They reiterated that “the height is the height,” even if it was flipped. Mr. Norkawich stated that Ms. Biancardi’s health condition is getting worse. Mr. Norkawich said he respects the neighbor’s argument, but they have to place the deck where it is structurally sound. Mr. Norkawich explained that the particular location happens to be perfect and no one else has a problem with it. The applicants thanked the Board for hearing their case.

Chairman Smith closed the hearing.

3. By Richard E. Czarnecki for a variance from Section 7.1a.1 to permit an accessory structure to be located on a lot without a Principal structure at Lot N-82 Old Hebron Avenue in RR zone.

Mr. Mullen read the 3rd application.

Mr. Richard Czarnecki explained that he was experiencing technical difficulties and would be on speaker phone.

Mr. Czarnecki explained that he put a container on his property because of the increased crime and theft in the area. He stated that some of his expensive equipment was stolen and he needs the container to lock up the items. Mr. Czarnecki explained that the land has been in his family since the 1940s and he plans on building a house. He also stated that he plans on installing some

security cameras and Wi-Fi. Mr. Czarnecki explained that it is hard to leave equipment behind and it is difficult having to go back and forth. He reiterated that some of his equipment and tools have been stolen and some other neighbors have had expensive items stolen as well. Mr. Czarnecki explained that he is in the process of cleaning up the land. He explained that the land was littered with garbage and had frequent trespassers. Mr. Czarnecki stated that he is requesting a variance to leave the container onsite.

Chairman Smith referenced the photograph of the container that the applicant included in the material packet. He asked Mr. Czarnecki if this is the container that he is requesting the variance for.

Mr. Czarnecki replied correct.

Chairman Smith inquired how the applicant can protect the rest of the materials that are left outside.

Mr. Czarnecki explained that he does not like to store equipment with gasoline because it is dangerous and may explode.

Mr. Bowman remarked that Old Hebron Road should be regarded as a private driveway. He explained that it services the applicant's property and those residing across the street. Mr. Bowman stated that he feels badly for Mr. Czarnecki and his neighbor because they have been the victims of crime. Mr. Bowman informed the Board that the house across the street has installed security cameras and has posted warning signs. Mr. Bowman noted that he had observed the remoteness of the property and location.

Ms. Dzialo inquired if Mr. Czarnecki has a timeline for building the house.

Mr. Czarnecki replied no. He noted that he is working with Mr. Mocko. Mr. Czarnecki added that he is in the process of getting septic and well approvals, but coronavirus is delaying things. He stated that he cannot commit to a timeline. Mr. Czarnecki explained that the property has been in his family since the 1940s, and his father died in 2010. Mr. Czarnecki explained that he took over the property, cleaned it up from trash and dog poop. He explained that people would argue with him and they would attempt to trespass on his property.

Mr. Hoopes remarked that the container is there already and inquired why Mr. Czarnecki is even applying for a variance.

Mr. Czarnecki stated that Mr. Carey asked him to fill out an application.

Mr. Hoopes inquired if anyone complained about the container.

Mr. Czarnecki stated that the neighbor across the street does not like looking at it.

Mr. Hoopes asked Mr. Mullen if a trailer with wheels would be allowed.

Mr. Mullen said he will look in the regulations.

Mr. Kornis inquired if a shipping container is considered a structure.

Chairman Smith stated that a container has a roof and holds things, and it looks like a structure to him.

Mr. Hoopes agreed with the Chairman.

Ms. Winkler remarked that the container seems to be a temporary structure. She inquired about the definition of a temporary structure.

Mr. Hoopes explained that Mr. Czarnecki wants to leave the container there permanently.

Chairman Smith asked Mr. Czarnecki what he intends to do with the container once the house is built.

Mr. Czarnecki stated that he would like to keep it as a storage shed. He stated that it will be his secondary accessory structure.

Mr. Mullen stated that he found the answer to Mr. Hoopes' question. He began reading a portion of Section 7.1 of the Glastonbury Building Zone Regulations dealing with Accessory Uses and Structures:

Parking or storage of a boat, trailer or mobile home. A maximum of one (1) such vehicle may be parked or stored outside on the lot, provided such vehicle is parked in the rear yard and is owned or leased by the owner or permanent resident of the property on which such vehicle is parked. No such boat, trailer or mobile home shall be occupied for living, sleeping or cooking purposes or for carrying on business except as provided in Section 6.10 of these Regulations.

Mr. Mullen read out another passage of the Glastonbury Building Zone Regulations: Town Plan and Zoning Commission Proposed Amendments to Section 7.1.b.2.i

Storage Containers EFFECTIVE MARCH 15, 2003

The use or installation of storage containers shall not be permitted within the Town of Glastonbury except those storage containers that meet one of the following standards:

- *are duly registered and being actively used for the transit of goods on public highways and are located only on a commercial or industrial property*

- *are being used for solid waste disposal or recycling and are located only on a commercial or industrial property*
- *are located on properties in the Planned Industrial Zone that provide contract construction services*
- *are located on properties in Planned Industrial Zone that retail or wholesale farm products that are harvested (straw, hay, or like products, etc.)*
- *are located on properties that have an active construction or reconstruction project and only during the term of such construction*
- *are located on bona fide farms that are regulated by Sections 7.2.a and 7.2.b of these regulations*
- *are located adjacent to Town-owned athletic fields and are utilized for the storage of athletic equipment*

Mr. Mullen explained that storage containers are not permitted in Town under accessory uses. Some exceptions are made but those uses are limited to commercial and Planned Industrial Zone use. He noted that the phase out period ended 10 years ago.

Mr. Hoopes remarked that there is no circumstance where a container can be kept on a residential property.

Mr. Mullen replied correct.

Ms. Dzialo stated that she thought a storage container was permitted on a residential property if it was being modified.

Mr. Mullen replied correct and added that they can be located on active properties.

Mr. Hoopes inquired if this applies specifically to residential zones.

Mr. Mullen explained that the regulations do not say.

Mr. Hoopes remarked that it sounds to him that if Mr. Czarnecki is building something, he does not need a variance.

Chairman Smith remarked that a use variance may be needed in residential zones.

Mr. Hoopes stated that the Board still has to determine if the gradual clearing of trees fits the criteria.

Mr. Czarnecki stated that he will remove the container once his house is built.

Chairman Smith explained that normally storage containers are not permitted on residential properties except in cases when construction takes place. He noted that it is not something the Board can determine but the Town Building Department.

Mr. Czarnecki stated that a Town official is coming out to his property on Wednesday at 9:00 am.

Mr. Mullen asked if Mr. Czarnecki was referencing Mr. Mocko. He explained that Mr. Mocko is addressing a potential wetlands violation.

Mr. Czarnecki explained that someone wrongly accused him of diverting a stream. Mr. Czarnecki said he did not divert the stream and Mr. Mocko will see that.

Chairman Smith noted that this application is a difficult one. He suggested the Board hear the rest of the application and see if any members of the public have anything to say.

Secretary Korns stated that it appears there is another regulation regarding storage containers. He inquired if this application should be continued.

Chairman Smith stated that the Board can continue it, but explained that they should hear from the public before any steps are made.

Ms. Winkler informed the Board that she spoke with Mr. Mocko. She explained that she was told the lot can only be used for harvesting wood.

Chairman Smith explained that Mr. Czarnecki will have the last word. The Board will move on to public comment. Chairman Smith noted that once the Board has a full picture, next steps can be suggested.

Mr. Jody Kretzmer of 2400 Hebron Avenue explained that he lives across the street from the applicant. He noted that he heard a chainsaw and went over to introduce himself to Mr. Czarnecki. Mr. Kretzmer explained that he has renovated his own property, and what should have taken 2 years ended up taking 6 years. Mr. Kretzmer explained that it is frustrating and difficult to keep to a time limit when complaints from the neighbors happen, theft, Covid-19, and other situations occur. Mr. Kretzmer noted that Mr. Czarnecki has a night job and works on the property on the weekends, and on other occasions. Mr. Kretzmer explained that Mr. Czarnecki has been preparing to build a house on the lot and may go through the process of purchasing some land from the Manchester Water Company. Mr. Kretzmer stated that he knows for a fact that the wetlands have not been impacted and will not be impacted. Mr. Kretzmer remarked that the storage container is temporary, and is needed to protect equipment. Mr. Kretzmer stated that there has been an increase in crime in the area and some equipment has been stolen as well. Mr. Kretzmer reiterated that complaints from neighbors throw things off and slows down the timeline. Mr. Kretzmer stated that he is in favor of the application as long as the storage box is temporary and removed once construction is complete. Mr. Kretzmer informed the Board that 5 years ago the property was a complete mess. The land is much better and it will take time. Without the storage container, it is difficult to work on the property. A property that is a mess will not benefit anyone, including the neighbor that made the complaint.

Chairman Smith asked IT Manager, Mr. Ashton, if there was anyone else from the public wishing to speak on the application.

Mr. Nathaniel Coburn of 2501 Old Hebron Road stated that he had 4 points to bring up. The first point was the signage on the applicant's property. Mr. Coburn referenced Section 10.3 of the Glastonbury Zoning Regulations. He said that he has counted 8 no trespassing signs on the applicant's property, including a sign that says "You are no longer a trespasser but a target." Mr. Coburn remarked that he was curious if this was in compliance with the Town codes. The second point was a reference to Section 7.1 of the Glastonbury Zoning Regulations. Mr. Coburn stated that the applicant, as of today, has 3 trailers and motorized implements stored on the property. Mr. Coburn stated that this is a violation of the Town Zoning regulations. The third point is regarding the regulations concerning the storage unit as outlined in Section 7.1. Mr. Coburn explained that he did not want to get involved and simply asked Mr. Czarnecki to move the container out of sight. Mr. Coburn stated that he was met with hostility and now wants the storage container removed. Mr. Coburn urged the Board to act and explained that, under the law, no house can be built on the parcel of land. Mr. Coburn stated that since Mr. Czarnecki began showing up at the property, gunshots have been heard and there has been an increase in violence. Mr. Coburn stated that his final point was regarding the wetlands violation.

Chairman Smith explained that the Board does not have any jurisdiction on the wetlands. He stated the applicant will have the last word.

Mr. Czarnecki stated that he would never bring a gun and he is not responsible for the gunshots. He stated that he is not responsible for any violent things, and remarked that Mr. Coburn should have called the police. Mr. Czarnecki stated that he has not diverted the stream, and noted that the rainfall is the highest it has ever been. He reiterated that he has never interfered with the stream and is working with Mr. Mocko.

Chairman Smith explained that the Board does not handle wetlands issues and it needs to be discussed with Mr. Mocko.

Mr. Czarnecki stated that, when Mr. Coburn came over, he was hostile and ordered him to move the container. Mr. Czarnecki remarked that "if you start with that kind of an attitude, you get that kind of attitude." Mr. Czarnecki explained that he had a nice conversation with Mr. Kretzmer, and they became friends. Mr. Czarnecki stated that he is working on his property peacefully and not bothering anyone. He noted that the equipment on his property is not visible unless someone is trespassing. Mr. Czarnecki explained that he has the no trespassing signs to make sure no one gets hurt on his property, and added that he does not want to be sued.

Chairman Smith remarked that the application is unusual. He noted that the Board is not sure what is being requested and if it is the correct request. Chairman Smith explained that, if the Board denies the request, it will be up to the Town Building Department to allow the container if they believe a house is in the process of being built.

Mr. Czarnecki stated that the container is not a permanent structure, and noted that he can add wheels, converting it into a trailer.

Chairman Smith asked Mr. Czarnecki not to interrupt and explained that the Board is working with him. The Chairman explained that, under the Town regulations, storage containers are not allowed unless construction is underway. Chairman Smith explained that this is not a determination the Board can make. The Chairman explained that it is for other Town agencies to make the call and a variance is not needed for this.

Secretary Korns suggested for the application to be continued, giving the applicant time to contact Town officials about whether a variance is necessary.

Mr. Czarnecki inquired if it would be allowable if he puts siding and a roof on the container.

Chairman Smith stated that the Board cannot speculate. The Chairman explained that the applicant resides in a zone where containers are not permitted. He pointed out that a use variance is not what the Board has before them.

Secretary Korns explained that, normally, the Building Department guides the applicants. He noted that the regulations are extensive.

Mr. Czarnecki stated that he needs the container to protect his items from theft.

Secretary Korns stated that he understands that. He explained that his suggestion would be to continue the application. Secretary Korns explained that the applicant needs to apply for a use variance and will need to find out the process from a Town Building Official.

Mr. Hoopes remarked that the Board has heard everything they needed to hear.

Mr. Bowman remarked that, had the applicant applied for a shed, the Board would be having a different conversation.

Chairman Smith closed the hearing and noted that the applicant can apply again.

4. By Danuta Gryczan for a variance from Section 7.1a.2b to allow a detached garage with greater than permitted average roof height at 224 Wood Pond Road owned by Danuta Gryczan / Eva Gryczan (POA) in Residence AA zone.

Mr. Mullen read the 4th application.

Ms. Eva Gryczan explained that she and her mother have lived at the property for 16 years. She stated that they are looking to put in a detached garage measuring 24 feet by 24 feet. Ms.

Gryczan stated that she had no idea that the garage they selected is a higher height than allowed. Ms. Gryczan explained that they need a garage with a higher height because her father is in a wheelchair and they have bulky equipment, such as oxygen tanks, and more space is needed to store the medical items. Ms. Gryczan explained that the proposed garage is located 11 feet from the house and this would allow emergency vehicles to get in and out.

Chairman Smith asked Mr. Ashton to put up the garage rendering. He noted that the variance is only for the height and asked Mr. Mullen to confirm this.

Mr. Mullen replied yes.

Ms. Gryczan also replied yes.

Chairman Smith noted that the proposed garage is 10 inches too high.

Mr. Mullen explained that he is not sure how Mr. Carey came to his conclusion.

Ms. Gryczan explained that, in her communication with Mr. Carey, the garage height was the only concern and not the location.

Chairman Smith stated that the Board will act on the height.

Ms. Winkler explained that the property setting is situated on a dell, making the ground uneven. She added that in this case, like many other cases, the garage height is an anomaly. Ms. Winkler explained that no one would really notice the higher garage height and added that the property is set back from the road. She added that 10 inches is not noticeable.

Ms. Dzialo stated that, based on the garage renderings, it appears that the height measurement is 18 feet and the maximum height allowed is 15 feet. Ms. Dzialo noted that the Board should ensure the correct differential for the variance.

Chairman Smith stated that it is hard to read where the arrow is pointing.

Ms. Dzialo agreed.

Ms. Winkler remarked that the Board receives many applications regarding larger than permitted garages. Ms. Winkler noted that she was curious for the reason why people need the extra space and thanked the applicant for telling the Board that a larger garage is needed for storing oxygen tanks. Ms. Winkler explained that the garage will be set in the ground and the peak might be higher in certain points.

Ms. Gryczan explained that they moved the proposed garage to a flat area. She reiterated that the proposed garage is detached, and the height will give them enough room to get in and out. Ms. Gryczan noted that the elevation on her property is not even.

Mr. Ashton stated that “TOW” might stand for the height of the ceiling.

Ms. Gryczan replied correct.

Chairman Smith explained that it does not mean that it is more than 10 inches, as Ms. Winkler just described. Chairman Smith asked Mr. Mullen for clarification.

Mr. Mullen explained that the building height is measured from the grade.

Chairman Smith remarked that it is buried in this instance.

Secretary Korn asked, for the sake of clarification, if the proposed garage is 10 inches greater than allowed.

Chairman Smith replied that it is his understanding.

Chairman Smith noted that the applicant described the hardship and stated that the Board will move on to public comment.

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

Ms. Gryczan thanked the Board.

5. By Corrine Crocker-Luby for a Use Variance from section 14.18.2 to allow a non-permitted use and a variance from Section 3.8 to allow a fence with greater than permitted height at 83 Naubuc Avenue in TCMU zone. (Postponed.)

Mr. Mullen read the 5th and 6th application.

Chairman Smith explained that he had received a phone call from the applicant to postpone the application until October. Chairman Smith explained that the applicant was told she must go to TPZ as a referral first. The TPZ meeting was postponed due to a lack of a quorum. Chairman Smith explained that the applicant’s application is out of sync and it seems reasonable to postpone. Chairman Smith stated that the applicant informed him that she had tried to reach Mr. Carey to postpone her applications for the October meeting.

Mr. Mullen stated that he spoke to the applicant. He stated that he can confirm that the applicant wants to postpone. Mr. Mullen explained that the next TPZ meeting is scheduled for September 21, 2021, and that he has advised the applicant to postpone her ZBA application until October.

Chairman Smith asked the Board to entertain a motion.

Motion by: Ms. Winkler

Seconded by: Ms. Dzialo

MOVED, that the Glastonbury Zoning Board of Appeals moves agenda items 5 and 6 to the October meeting.

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

- 6. By Corrine Crocker-Luby for a Use Variance from Section 14.18.2 to allow a non-permitted use and a variance from Section 3.8 to allow a fence with greater than permitted height at 97 Naubuc Avenue in TCMU zone. (Postponed.)**

- 7. By Kathleen Kaye for a Special Exception as provided for in Section 8.2b to allow an addition closer to the front property line but no closer than the existing non-conforming structure located 1241 Main Street in Residence AA zone.**

Mr. Mullen read the 7th application.

Ms. Kathleen Kaye stated that Mr. Megson is expected to attend the meeting.

Mr. Richard Megson of Megson, Heagle & Friend Civil Engineers & Land Surveyors, LLC began the presentation. He put up a GIS slide showcasing the property and Main Street.

Mr. Megson explained that the house was built in 1948, prior to the adoption of the Town zoning regulations, making the existing house nonconforming in terms of front yard setback. A special exception to 4.4.6 is required to allow the proposed addition of the house to encroach a maximum of 6 feet into the front yard, resulting in a front yard setback of 44 feet.

Mr. Megson pointed out that the Beckett & Associates Veterinary Services lies to the west of the property. He pointed out that the property is south of the Old Cider Mill. Mr. Megson explained that the total street line width is a full 100 feet in that area of Main Street. The applicant's house is accessed by a shared driveway, with a 71-foot elevation in the road, and steeper elevation in the front yard. Mr. Megson noted that it is a dramatic topographical change.

Mr. Megson put up a rendering of the site plan. He explained that the house is in the AA zone. It is required to have a 50-foot setback. He explained that the existing nonconforming house will have a 42-foot setback. Mr. Megson explained that the existing house is shown in red, and the existing driveway is shown in gray. Mr. Megson explained that he does not believe the addition will go a full 6 feet, but in a situation with a roof overhang, they would like a bit of a buffer. Mr. Megson concluded the presentation and said he is open for questions.

Ms. Winkler asked if the front property was shown in yellow, and if the road is in the back of the property, with 5 properties utilizing the driveway.

Mr. Megson replied yes.

Mr. Bowman remarked about the slope, making the walkway an unstable area.

Chairman Smith asked if the Town will take any of the property for the creation of the sidewalk.

Mr. Megson replied no. He explained that the Town will not want to disturb the slope, as was pointed out by Mr. Bowman.

Chairman Smith remarked that he does not see the house that easily. He noted that a fire hydrant is up the slope, not on the property but nearby.

Mr. Megson explained that the fire hydrant is right before an old beautiful red colonial, located south of the common drive.

Chairman Smith explained that a special exception application does not need to demonstrate a hardship. He added that the property is legally nonconforming. The Chairman stated that the Board will move on to public comment.

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

Chairman Smith asked Mr. Megson if he wanted to add any further comment.

Mr. Megson replied that he has nothing else to present and thanked the Board.

Chairman Smith called for a brief recess before the deliberations.

1) Action on Public Hearings

1. By Douglas R. Cahill for a variance from Section 7.1b.2f to permit an above ground swimming pool to be located in the side yard at 2291 Hebron Avenue in RR zone.

Secretary Korns read the 1st application.

Motion by: Ms. Winkler

Seconded by: Secretary Korns

MOVED, that the Glastonbury Zoning Board of Appeals approves the application by Douglas R. Cahill for a variance from Section 7.1b.2f to permit an above ground swimming pool to be located in the side yard at 21 feet from side yard lot line at 2291 Hebron Avenue in RR zone on the grounds that a rear yard placement is impractical, as the backyard is steeply sloped with a retaining wall and rock ledge, while the side yard offers a flat area and the lot is shaped so that the side yard gives more privacy for the neighboring properties. The requirements of section 13.9 of the regulations have been met.

Discussion:

Ms. Winkler stated that the Board is required to give a rationale behind the motion. She explained that the location of the proposed pool is sensible, given the peculiarities of the lot. Ms. Winkler added that she would be voting in favor.

Secretary Kornes agreed and added that the rear location is not feasible. He also stated that there are no issues with the neighbors.

Ms. Dzialo agreed with the comments.

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

2. By Daria M. Biancardi for a variance from Section 7.1b.2f to allow an above ground pool and attached deck to be closer to the property line than permitted at 55 Williams Street West in Residence A zone.

Secretary Kornes read the 2nd application.

Motion by: Mr. Hoopes

Seconded by: Secretary Kornes

MOVED, that the Glastonbury Zoning Board of Appeals approves the application by Daria M. Biancardi for a variance from Section 7.1b.2f to allow an above ground pool and attached deck to be closer to the property line than permitted at 55 Williams Street West in Residence A zone on the grounds that there is a hardship consisting of the topography, specifically the sinkhole. The criteria of Section 13.9 are satisfied.

Mr. Hoopes withdrew the first motion, because it was not worded in the affirmative as Secretary Kornes pointed out.

Chairman Smith explained that traditionally, the motions are worded in the affirmative, and in cases where Board members disagree, they can vote it down.

Chairman Smith asked board members if they wanted to second the motion. He explained that it would fail without a second. Secretary Kornes stated that he will second the motion.

Discussion:

Secretary Korns stated that the application is muddy. He remarked that the pool was noncompliant, and now there is a noncompliant deck. Secretary Korns remarked that now the two are being lumped together based on their proximity to the property line. He explained that they should be separated out. Secretary Korns noted that he was having difficulty with this application.

Chairman Smith remarked that it is an odd situation. He explained that, although the pool was put in without a permit, the neighbor does not object to the pool, and only cares about the deck. Chairman Smith stated that the deck was not permitted and the applicants relied on the contractor. The contractor was not the right person to rely on in this situation. Chairman Smith stated that, if that is what the contractor advised, it was poor advice. The Chairman explained that the application could be denied, and the applicants would still have their pool, based on the statute that was referred to earlier. Chairman Smith noted that the application does not impact the pool, but it would impact the deck. He explained that the applicants can turn the deck around and build it somewhere else, where it is legal. Chairman Smith remarked that, even if one can still see people, the deck would be 5 feet further away, as the neighbor was trying to explain. Chairman Smith added that it is what the regulations call for and that is what the neighbor wants. He noted that those are the rules, whether the Board sees a hardship or not.

Mr. Hoopes remarked that the hardship issue would be difficult and he was struggling with it. He noted that there was testimony from a structural engineer explaining that the deck can be placed on the other side quite easily. Mr. Hoopes added that the Board has to credit this testimony.

Chairman Smith agreed and added that there was no dispute and no one challenged that. He stated that the Board has to credit that the neighbor is a structural engineer.

Secretary Korns asked if the Board can split out the pool and deck. He noted that the neighbor is interested in only the deck.

Mr. Hoopes explained that the Board needs to deny the whole application, for the sake of consistency. He noted that the Board must trust the Town staff to apply the regulation. Mr. Hoopes remarked that there are no guarantees the applicants will even comply.

Ms. Dzialo asked if the Town officials would allow the pool because it is effectively grandfathered. She inquired if the Town would be responding to the deck issue.

Mr. Hoopes remarked that it is not their call to say the pool is grandfathered. He explained that, since the neighbor does not care, hopefully the Town will see it that way too.

Secretary Korns asked if staff can still participate in the deliberations.

Chairman Smith explained that they can ask them questions and Mr. Mullen can certainly comment.

Mr. Mullen asked if there was a question.

Secretary Korns inquired whether the staff can split out these 2 issues if the Board denies this application. He noted that the only issue seems to be the deck, which will have to be moved.

Mr. Mullen noted that the statute that was read out earlier means that the pool is nonconforming now. The same case does not apply to the deck. Mr. Mullen explained that if the application is denied, action will be taken to move the deck, done through the Building Department and Zoning Enforcement Officer.

Secretary Korns noted that the applicants emphasized both in word and in documentation that the pool is very therapeutic. Secretary Korns noted that the warm months are coming to an end and it would not be a hardship to deprive the applicant of the pool in winter. Secretary Korns explained that the applicants can move the deck in the winter, if they choose.

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

Chairman Smith recapped that the pool appears to be grandfathered and it is up to the Town to administer.

3. By Richard E. Czarnecki for a variance from Section 7.1a.1 to permit an accessory structure to be located on a lot without a Principal structure at Lot N-82 Old Hebron Avenue in RR zone.

Secretary Korns read the 3rd application.

Motion by: Ms. Winkler

Seconded by: Ms. Dzialo

MOVED, that the Glastonbury Zoning Board of Appeals approves the application by Richard E. Czarnecki for a variance from Section 7.1a.1 to permit an accessory structure to be located on a lot without a Principal structure at Lot N-82 Old Hebron Avenue in RR zone on the grounds that construction of the home is underway. The requirements of section 13.9 will be met before construction begins.

Discussion:

Secretary Korns noted that Ms. Winkler lives near the property.

Chairman Smith interjected and explained that the Board cannot have new testimony. He explained that the applicant will not be able to have the chance to respond at this point during the deliberation.

Secretary Korns told the Chairman to disregard his question. He said he will abstain from voting. Secretary Korns explained that the Town staff should have directed the applicant to apply for a use variance. He further explained that the application was set up in error and the Board should not be voting on it.

Mr. Hoopes stated that he agrees with Secretary Korns. He remarked that it is a shame that the application was not structured as a use variance. Mr. Hoopes noted that it should be denied. He explained that it does not preclude the applicant from coming in the future with a proper application. Mr. Hoopes stated that, if the applicant applied for a shed, that would have been a hard issue as well. Mr. Hoopes explained that the applicant is applying for a metal storage container, which is not allowed.

Chairman Smith stated that he also agrees with Secretary Korns. He explained that it is unfortunate that it had not been thought through. He added that it should be a use variance. Chairman Smith explained that, at the outset, the applicant wanted to keep the container as a permanent structure. Then the applicant changed his mind. Chairman Smith explained that all of this is an application for a use variance. The storage container is simply not allowed in that zone. He noted that he thinks the Board should deny because it is not the correct application. Chairman Smith noted that, as Mr. Hoopes pointed out, a denial does not preclude the applicant from applying for a different application.

Ms. Dzialo stated that she agrees. She explained that it appears the application is headed for a denial. Ms. Dzialo noted that the applicant should have had better guidance and he will feel like he paid for something he did not get. She added that the application, as presented, should be denied.

Result: Motion fails. (0-4-1)

Secretary Korns abstained.

4. By Danuta Gryczan for a variance from Section 7.1a.2b to allow a detached garage with greater than permitted average roof height at 224 Wood Pond Road owned by Danuta Gryczan / Eva Gryczan (POA) in Residence AA zone.

Secretary Korns read the 4th application.

Motion by: Secretary Korns

Seconded by: Ms. Winkler

MOVED, that the Glastonbury Zoning Board of Appeals approves the application by Danuta Gryczan for a variance from Section 7.1a.2b to allow a detached garage with greater than permitted average roof height but no more than 10 inches variance at 224 Wood Pond Road owned by Danuta Gryczan / Eva Gryczan (POA) in Residence AA zone on the grounds that the extra height is needed for storage of oxygen tanks, which are medically required by her father. The requirements of section 13.9 have been met.

Discussion:

Ms. Winkler stated that the extra height is an almost imperceptible increase over the limit, especially given the setting in which it will be built. She added that she is planning to vote in favor.

Secretary Korns agreed. He stated that it makes sense in terms of the applicants' needs. It is an insignificant increase that will not impact anyone.

Chairman Smith stated that the application is quite reasonable and makes sense.

Ms. Dzialo noted that the overall position of the building is well within conforming guidelines.

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

Chairman Smith noted that applications 5 and 6 have been postponed for next month. He asked Secretary Korns to read the 7th application.

7. By Kathleen Kaye for a Special Exception as provided for in Section 8.2b to allow an addition closer to the front property line but no closer than the existing non-conforming structure located at 1241 Main Street in Residence AA zone.

Secretary Korns read the 7th application.

Motion by: Ms. Dzialo

Seconded by: Secretary Korns

MOVED, that the Glastonbury Zoning Board of Appeals approves the application by Kathleen Kaye for a Special Exception as provided for in Section 8.2b to allow an addition closer to the front property line but no closer than the existing non-conforming structure located 1241 Main Street in Residence AA zone on the grounds that the current nonconforming distance from the front is just over 42 feet and the requested addition will be at least 44 feet from the front property line. The criteria of Section 13.9 have been met.

Discussion:

Mr. Hoopes noted that the applicant did a great job showing there are no adverse impacts.

Chairman Smith remarked that it seems like a pretty good addition, well hidden, and hard to see from Route 17.

Ms. Winker agreed.

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

Chairman Smith thanked presenters.

2.) Acceptance of Minutes from August 2, 2021 meeting

Ms. Winkler noted that more details and information should be captured in the minutes, particularly in cases that require appeals and may end up in court. Ms. Winkler remarked that she is sure Mr. Carey reads and checks the minutes for accuracy.

Mr. Hoopes noted that, in situations where an applicant would go to court, the tapes would be used.

Chairman Smith explained that, if a whole discussion is left out, a Board member can say X was discussed and left out of the minutes. The Chairman noted that the previous minutes seemed ok in terms of detail.

Ms. Winkler reminded the Board that there was a typo in the June minutes.

Secretary Kornis noted that in most cases the applications are routine. He pointed out that tonight was an exception. Secretary Kornis stated that there is always the tape.

The Chairman asked the Board to entertain a motion.

Motion by: Mr. Hoopes

Seconded by: Ms. Winkler

MOVED, that the Glastonbury Zoning Board of Appeals approves the August 2, 2021 minutes as presented.

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

Discussion:

Mr. Ashton addressed technical issues.

Secretary Kornis inquired if the ZBA meetings will be held via Zoom.

Mr. Mullen stated that he was informed the meetings would be via Zoom.

3) Adjournment

Motion by: Mr. Hoopes

Seconded by: Ms. Winkler

MOVED, that the Glastonbury Zoning Board of Appeals adjourns their regular Meeting of September 13, 2021 at 10:15 pm.

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

Brian Smith, Chairperson