

GLASTONBURY ZONING BOARD OF APPEALS
Regular Meeting Minutes of Monday, October 4, 2021

The Glastonbury Zoning Board of Appeals with Mr. Jonathan Mullen, Planner, in attendance held a Regular Meeting on Monday, October 4, 2021 via ZOOM video conferencing.

ROLL CALL

Board Members- Present

Brian Smith, Chairperson
Nicolas Korn, Secretary
Jaye Winkler
Susan Dzialo- audio only
David Hoopes
Philip Markuszka, Alternate

Board Members- Excused

Doug Bowman, Alternate

Chairman Smith called the meeting to order at 7:03 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 2 agenda items.

Due to technical difficulties, Ms. Dzialo joined the meeting via audio.

Public Hearing

- 1. By Corrine Crocker-Luby for a Use Variance from section 4.18.2 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.**

Mr. Mullen read the 1st application.

Chairman Smith asked the applicant to state her name and address for the record.

Ms. Corrine Crocker-Luby stated her name and provided her address, 82-84 Naubuc Avenue.

Chairman Smith clarified that applicants should send materials to the Town staff and not to the Board. The Chairman explained that sending emails and materials directly to the Board could be construed as ex parte communication. The Chairman further explained that with the exception of a site visit, there should be no communication with applicants and members of the Board.

Chairman Smith reiterated that all communications, emails, and documentation should go through the Town staff. To remedy the situation, all documents will be shared on screen and will be on the Town website.

Ms. Crocker-Luby explained that she is looking to add an 8-foot privacy fence to both her properties. She stated that the fence will benefit the neighbors. It will also provide a courtyard feel. Ms. Crocker-Luby stated that her neighbor, Ms. Generosa Mendez has verbally expressed approval for the fence. This is the same neighbor that sold property to Ms. Crocker-Luby.

Ms. Crocker-Luby asked the Board if she can proceed with the use variance component of her application.

Chairman Smith replied yes.

Ms. Crocker-Luby explained that in 2008, she received a use variance which would allow her place of business to have eating and drinking on site. Ms. Crocker-Luby explained that she is the current owner of the property and the general manager of the Tiffany Juliet House for 8 consecutive years. She noted that they were closed briefly due to the pandemic. Ms. Crocker-Luby informed the Board that she received a favorable recommendation from TPZ on September 21, 2021. She noted that, according to the TPZ, there is no conclusive definition of mixed use properties and it is up to interpretation. Ms. Crocker-Luby explained that her special event venue fits the criteria for a mixed use space. She stated that the properties are located in the historic Curtisville section of Glastonbury.

Ms. Crocker-Luby asked the Board if she can continue with presenting the other components of her application.

Chairman Smith said yes.

Ms. Crocker-Luby stated that she will have to demolish the building located at 97 Naubuc Avenue. She explained that she received a variance in the past to build a structure that is larger than permitted and referenced a 1988 court ruling in Fairfield, CT as the precedent. Ms. Crocker-Luby stated that she is requesting over 4,000 square feet, which will eliminate the non-conforming structure. She explained that she was advised by architects and engineers to put in a new building with a new foundation. Ms. Crocker-Luby explained that the new building will look vintage and maintain the historic look of the Curtisville neighborhood. The first floor will comprise of 2,000 square feet, the second floor will comprise of 1,800 square feet, the half attic will comprise of 800 square feet, and the basement with a commercial kitchen will comprise of 395 square feet. Ms. Crocker-Luby noted that she will have as much parking as allowed. The presentation was concluded.

Chairman Smith explained that the application for 97 Naubuc Avenue was the second agenda item. He suggested that the Board incorporate the information that was just presented into the

next hearing. The Chairman asked if there were any questions on the first agenda item (83 Naubuc Avenue).

Mr. Mullen stated that the emails and communication that the Chairman referred to earlier were not posted on the website. Mr. Mullen explained that he tried to post them during the meeting but did not have access.

Chairman Smith explained that he will summarize the events. He noted that the applicant sent the Board a link to the TPZ meeting, as well as a series of emails from Ms. Winkler and the applicant discussing the site visit. The Chairman explained that there was not much in those emails, but reminded the Board that such communication outside of a site visit can be construed as ex parte communication. The Chairman explained that the situation can be remedied by sharing all documentation on the screen. The Chairman stated that if someone from the public is listening in and has a concern or wants to view the materials or emails, it can be done during the public comment portion of the hearing. Chairman Smith asked if there were any questions on the first agenda item.

Mr. Hoopes asked if the neighbor, Ms. Mendez, is aware of the application and public hearing.

Ms. Crocker-Luby replied yes. She explained that she is honest and direct and even reminded Ms. Mendez earlier today that a public hearing was scheduled for this evening.

Ms. Winkler asked if the court case referenced earlier concerned the 8-foot fence.

Ms. Crocker-Luby explained that the court case deals with the use variance. She explained that Attorney Hope brought up the 1988 court case as a precedent. Ms. Crocker-Luby explained for this application she does not have a lawyer, and decided to present on her own. She added that she does not have any additional information on the case and cannot explain the ruling any further.

Secretary Korns inquired if the fence would be around the entire perimeter. He also asked about the design features of the proposed fence.

Ms. Luby explained that there will be no fence in the back. The back of the property opens up to a preserve with no neighbors. The fence will be on the east and west side of the property. Ms. Crocker-Luby explained that she is considering an "L" shape in the back, which will add a cosmetic look. She assured the Board that the fence will be done nicely. Ms. Crocker-Luby explained that one of her neighbors put in a very large garage that does not fit in with the historic neighborhood. She noted that the 8-foot fence will conceal the garage from view. Ms. Crocker-Luby stated that to the right of her property are shrubs, which are on her land. Ms. Crocker-Luby noted that she initially wanted to remove the shrubs, but after speaking to the neighbor's son, she found out that the shrubs were planted by his father who passed away.

The Chairman asked Ms. Dzialo if she had any questions.

Ms. Dzialo stated that she has no questions, and noted that the Board covered everything.

The Chairman asked Mr. Markuszka if he had any questions.

Mr. Markuszka replied no.

Chairman Smith asked if the fence would be solid.

Ms. Crocker-Luby replied yes. She explained that they might have spears on the top and it will have a Cape May look.

Chairman Smith asked about the hardship.

Ms. Crocker-Luby explained that there is parking all around, and a fence is needed for the aesthetic. She added that the fence will provide privacy that will benefit her and the neighbors. She noted that the fence is needed for cosmetic reasons and privacy reasons. Ms. Crocker-Luby reiterated that she kept the shrubs because she respected her neighbor's wishes.

Chairman Smith clarified that the hardship should be about the use variance.

Ms. Crocker-Luby explained that one of the commissioners at the TPZ said there was no concise definition of mixed use and it is up to interpretation. She reiterated that she is very respectful of her neighbors and the hardship is that her business is not listed as one of the permitted uses. Ms. Crocker-Luby explained that she is retaining an apartment as well as a business. She noted that mixed use can be any business and the regulations can be very lengthy. Ms. Crocker-Luby stated that TPZ is under the impression that her business qualifies as a mixed use property.

Chairman Smith thanked the applicant for the summary. He noted that the Board will move on to public comment.

Ms. Kathy Hahn of 164 Craigemore Circle, Avon, CT 06001 stated that she is in support of the application and has worked with the applicant for 20 years. Ms. Hahn stated that the renovation proposed by the applicant will enhance Glastonbury.

Mr. Kevin Dooley of 229 East 21st Street, New York, NY 10010 stated he worked with the applicant while he was a student. Mr. Dooley stated that he supports the applicant and the proposal.

Ms. Natalie Blimmel of 217 Cedar Ridge Drive stated that she has known the applicant for years and added that the renovation will fit in with the historic charm of Glastonbury. Ms. Blimmel stated she supports the project and the applicant.

Ms. Sydney Marecki of 430 Copper Ridge Road, Southington, CT 06489 stated that she has known the applicant since she was 15 years old. Ms. Marecki stated that the applicant is very

welcoming. She also noted that everyone loves the applicant including the neighbors. Ms. Marecki stated that Ms. Crocker-Luby will do great things if this proposal is accepted.

Chairman Smith asked if there were any members of the public that would like to speak out against the application.

No hands were raised.

Chairman Smith closed the hearing.

- 2. By Corrine Crocker-Luby for a Use Variance from Section 4.18.2 to allow a non-permitted use; a variance from Section 3.8 to allow a fence with greater than permitted height and a variance from Section 4.18.4.i.1 to demolish more than 50% of an existing building under special provisions for adaptive reuse of existing buildings at 97 Naubuc Avenue in TCMU zone.**

Mr. Mullen read the 2nd application.

The Chairman asked the applicant to state her name and address for the record.

Ms. Corrine Crocker-Luby stated her name and provided her address, 82-84 Naubuc Avenue.

Chairman Smith stated that the testimony from the first application will be used. He asked the applicant if there are any objections to this.

Ms. Crocker-Luby did not object and agreed to proceed.

Chairman Smith noted that the wrong variance was listed in the initial application. He asked Mr. Mullen if this was corrected.

Mr. Mullen stated that it was fixed. He explained that the variance the applicant is applying for could be interpreted to mean maximum floor area. Mr. Mullen stated that they went with the right variance.

Chairman Smith asked if there were any questions.

Secretary Korns remarked that he could not read the design. He asked the applicant if the same footprint will be used or will it be new.

Ms. Crocker-Luby stated that the new design will be larger than the current foundation. She explained that it will have a bit of an oval look and will be unique. Ms. Crocker-Luby stated that the proposed structure will be under 5,000 square feet and they will do what the fire marshal

instructs. Ms. Crocker-Luby stated that the design will be larger and it will be perfect for 90-degree parking. She noted there will be a 24-foot aisle even with the fence.

Chairman Smith asked about the number of parking spots.

Ms. Crocker-Luby stated that there will be 33 spaces.

Mr. Bobby Ashton, IT Manager, put up the parking plan on the screen.

Ms. Crocker-Luby pointed out the parking, the dumpster pad, the handicap parking and the garage.

Chairman Smith asked if the proposal was in the flood zone. He noted that flood zone matters are not relevant to this Board.

Ms. Crocker-Luby explained that the flood zone is past them. She stated that they had a land survey done and they are outside of the flood zone. Ms. Crocker-Luby explained that the design plan was thought out by architects, engineers, and herself.

Mr. Markuszka asked if there were any concerns about street parking and the blocking of traffic.

Ms. Crocker-Luby stated they have no problems with that. She explained that she is the owner of 3 properties and they share parking with themselves. Ms. Crocker-Luby stated that they have one event at a time. She stated that some people might park on the street on Parker Terrace, even if there is a sign that prohibits parking. Ms. Crocker-Luby stated that the neighborhood has adjusted and their events are not obtrusive. She noted that her business is professional and they are mindful of their neighbors.

Secretary Korns asked if 3 separate events would take place simultaneously at each of the locations.

Ms. Crocker-Luby explained that she has access to other parking. She noted that she has an agreement with the nearby Catholic Church and the Krishna Temple. Ms. Crocker-Luby explained that she does not intend to drive herself crazy and does not want burn out. She remarked that she is very busy as it is. Ms. Crocker-Luby added that there is a demand for events and people want to get together.

Secretary Korns stated that he saw that an inquiry to the Boathouse was included in the materials. The end time for events is midnight. He asked if the events would run until midnight.

Ms. Crocker-Luby explained that if she has a chance to make a booking that ends at midnight, she will take it. She noted that most of the events are from 4pm to 9 pm.

Chairman Smith explained that, even if the Board grants all of the use variances, the applicant would still need to go before the Conservation Commission for a referral and TPZ for a permit. The Chairman stated that all of these issues will be raised at those meetings.

Ms. Crocker-Luby stated that she will do what is needed.

Chairman Smith asked the Board if they have additional questions.

There were no questions. The Chairman moved on to the public comment portion of the hearing.

Mr. Paul Mawaka of 73 Paradise Lake Road, Monson, MA 01057 stated that he is in favor of the application. He explained that he worked at the Tiffany Juliet House and has seen the applicant improve her business throughout the years. Mr. Mawaka stated that he strongly encourages the Board to approve the application and added that the expansion will benefit the Town and the applicant's business.

There were no additional public comments. The hearing was closed.

Discussion:

Mr. Hoopes offered to make the motions for both applications. He asked the Chairman if he prefers separate motions for each of the separate variances.

The Chairman noted that, if the applicant does not get the use variance, the rest are irrelevant. He agreed with Mr. Hoopes's approach and explained that the Board can vote on the use variance first and the rest will follow.

1) Action on Public Hearings

- 1. By Corrine Crocker-Luby for a Use Variance from section 4.18.2 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.**

Secretary Korns read the 1st application.

Motion by: Mr. Hoopes

Seconded by: Ms. Winkler

MOVED, that the Glastonbury Zoning Board of Appeals approves the application of 83 Naubuc Avenue by Corrine Crocker-Luby for a Use Variance from section 4.18.2 to allow, as a special permit use, a mixed use to include a special event venue, with the hardship being the ambiguities and interpretive problems in the regulations. The requirements of Section 13.9 have been met.

Discussion:

Secretary Kornis inquired about the weight of the TPZ referral. He noted that it was referred with an approval, and obviously not sufficient. Secretary Kornis asked why TPZ had to weigh in.

Chairman Smith stated that he will try to answer the question and added that Mr. Mullen can explain as well. The Chairman explained that a use variance is not permitted in the applicant's current zone, but the Board has the authority to grant the variance if there is significant hardship. The Chairman reminded the Board of the application from last month which was better suited for a use variance. Typically, TPZ would handle this, but since the regulations have not been changed, the applicants do not want to wait for that time. TPZ will weigh in because it is their purview. The TPZ decision does not bind the Board, but some weight should be given.

Ms. Winkler inquired if the applicant was already approved for a permitted use. She reminded the Board that they did vote on this and they allowed the applicant to set up shop some years ago. Ms. Winkler explained that the applicant has an existing special events venue across the street. She asked if it is currently a permitted use in the zone.

Chairman Smith explained that the variance runs with the land it is issued on. He cited the example of the *1000 Degrees Pizza* establishment which did not have a liquor permit, but 8 other businesses in the area had one. The Chairman said it is better if the zoning regulations change, but many applicants cannot wait that long for the regulations to change, and the Board is the safety valve for situations like this.

Mr. Mullen explained that the variance granted some years ago was in the Planned Industrial Zone and not Town Center Mixed Use, which was not in effect yet. The Town Center Mixed Use came into effect about 8 years later. The applicant got a variance in 2008 for the Tiffany Juliet house. The entire area has been designated as the Town Center Mixed Use zone.

Chairman Smith explained that he is not generally in favor of the concept of a use variance, but noted that they serve a purpose. He explained that he would rather see the regulations changed. In this instance, for example, they do not define this particular use, and it suits the needs of the applicant to go before this Board.

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

Motion by: Mr. Hoopes

Seconded by: Ms. Dzialo

MOVED, that the Glastonbury Zoning Board of Appeals approves the application of 83 Naubuc Avenue by Corrine Crocker-Luby for a variance from Section 3.8 to allow a fence with the height of 8 feet, with the hardship being the small size of the lots in the area. The requirements of Section 13.9 have been met.

Discussion:

Chairman Smith stated that he believes a compelling argument has been made for the fence. He noted that it provides privacy for the neighbors and the applicant.

Secretary Korns inquired whether there would be any further approval needed about the type or design of the fence.

The Chairman asked Mr. Mullen to weigh in.

Mr. Mullen explained that it would be part of the design review. He explained that this Board determines the height. The design will be dictated with what the applicant works out with TPZ.

Ms. Winkler stated she likes the idea of two sides with the back open. She noted that it creates a larger feel to the smaller lot. Ms. Winkler stated that it is a great idea.

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

- 2. By Corrine Crocker-Luby for a Use Variance from Section 4.18.2 to allow a non-permitted use; a variance from Section 3.8 to allow a fence with greater than permitted height and a variance from Section 4.18.4.i.1 to demolish more than 50% of an existing building under special provisions for adaptive reuse of existing buildings at 97 Naubuc Avenue in TCMU zone.**

Secretary Korns read the 2nd application.

Motion by: Mr. Hoopes

Seconded by: Secretary Korns

MOVED, that the Glastonbury Zoning Board of Appeals approves the application of 97 Naubuc Avenue by Corrine Crocker-Luby for a variance from Section 4.18.2 to permit a mixed use as a special permit use to include a special event venue, with the hardship being the ambiguities and interpretive problems in the regulations. The requirements of Section 13.9 are satisfied.

Discussion: (None)

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

Motion by: Mr. Hoopes

Seconded by: Ms. Winkler

MOVED, that the Glastonbury Zoning Board of Appeals approves the application of 97 Naubuc Avenue by Corrine Crocker-Luby for a variance from Section 3.8 to allow an 8-foot fence with the hardship being the small size of the lots in the area. The conditions of Section 13.9 are satisfied.

Discussion:

Chairman Smith stated that his observation is that the fence would provide a symmetry, especially because the Board just approved the application of the other property.

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

Motion by: Mr. Hoopes

Seconded by: Ms. Winkler

MOVED, that the Glastonbury Zoning Board of Appeals approves the application of 97 Naubuc Avenue by Corrine Crocker-Luby for a Variance from Section 4.18.4.i.1 to allow a demolition of 100 percent of the existing building on that site, with the hardship being the vagaries in the regulations. The criteria of Section 13.9 are satisfied.

Discussion:

Chairman Smith stated that he believes the motion is accurate. He noted that the applicant submitted an application for a complete tear down.

Secretary Korns stated that, when the project is completed, it will be a huge enhancement for the area and a positive development for the Town.

Chairman Smith agreed.

Mr. Hoopes explained that the concern with how much of a tear down is permitted applies to buildings with historic significance. He added that this particular house does not have any historic significance. Mr. Hoopes remarked that perhaps this reason might have been a better statement of hardship.

Ms. Dzialo stated that she would like to add a comment to what Mr. Hoopes brought up. She noted that the applicant has chosen a building design that will fit nicely with the historic character of the neighborhood. Ms. Dzialo added that it will be more of an improvement in appearance than the previous structure.

Secretary Korns noted that there were 36 support letters. He asked if these letters are automatically entered into the record.

Chairman Smith remarked that he is glad Secretary Korns referenced the letters. He stated that they were submitted as part of the application.

Mr. Mullen stated that the letters are on the website.

Secretary Korns explained that he wanted to be sure of that. In the past, the Board has only received 1 or 2 letters. He remarked that the Board cannot read all 36 letters during the meeting, and noted that, by report, they have been entered into the record.

Chairman Smith remarked that is the advantage of the Zoom meeting. He noted that it forces all of the documentation and materials on the website in advance for everyone to view.

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

The Chairman wished the applicant great success going forward.

2.) Acceptance of Minutes from September 13, 2021 Meeting

Discussion:

The Chairman asked the Board if they had a chance to review the lengthy minutes from the rather long September meeting.

Secretary Korns stated that he found a typo in case number 2. "Sauna tubes" will need to be corrected and replaced with "Sonotubes". The typo that needs to be corrected appears twice in the minutes on pages 6 and 7.

Chairman Smith stated that the correction should be made. He asked if there were any others corrections.

There were no other corrections.

The Chairman asked Secretary Korns to make a motion.

Motion by: Secretary Korns

Seconded by: Ms. Dzialo

MOVED, that the Glastonbury Zoning Board of Appeals approves the September 13, 2021 minutes with the typographic correction from "sauna tubes" to "Sonotubes".

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

Discussion:

Chairman Smith stated that he would like to address the situation that was discussed at the beginning of the meeting. He explained that the Board should make sure not to write emails back to applicants because it can be considered ex parte communication. The Chairman noted that it is a fine line, nothing happened and the situation was remedied. The best practice is not to trade emails or talk to the applicants, except for a site visit. The Chairman reiterated that members of the Board cannot talk to applicants or members of the public. Chairman Smith remarked that this is just a general comment across the board. He remarked that he thinks the meeting went well today and added that this was a mercifully shorter meeting than the last.

3) Adjournment

Motion by: Secretary Kornis

Seconded by: Mr. Hoopes

MOVED, that the Glastonbury Zoning Board of Appeals adjourns their regular Meeting of October 4, 2021 at 8:16 pm.

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

Brian Smith, Chairperson