

GLASTONBURY ZONING BOARD OF APPEALS
Regular Meeting Minutes of Monday, February 7, 2022

The Glastonbury Zoning Board of Appeals with Mr. Jonathan Mullen, Planner and Mr. Lincoln White, Building Official, held a Regular Meeting on Monday, February 7, 2022 via ZOOM video conferencing.

ROLL CALL

Board Members- Present

Brian Smith, Chairman
Susan Dzialo, Vice-Chair
Nicholas Korn, Secretary
Jaye Winkler
Douglas Bowman, Alternate
Philip Markuszka, Alternate

Board Members- Excused

David Hoopes

Chairman Smith called the meeting to order at 7:04 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.

The Chairman welcomed Mr. Lincoln White, the new Town of Glastonbury Building Official.

Secretary Korn inquired about seating an alternate. The Chairman appointed Mr. Bowman to fill in for Mr. Hoopes.

Secretary Korn read the 2 agenda items.

Public Hearing

- 1. By Gregory S. Hester for a variance from Section 4.2.7 to allow a deck to be constructed closer to the side yard than permitted at 41 Paddock Lane - Rural Residence Zone.** (Application continued for the March meeting.)

Mr. Mullen read the 1st application.

Mr. Mullen stated that the applicant had withdrawn the application.

Chairman Smith inquired if the applicant sent in an email or a letter.

Mr. Mullen stated that he does not have that information.

Mr. White explained that the applicant sent in an email. The applicant could not make the meeting. Mr. White added that the application will be on the agenda for the March meeting.

Chairman Smith remarked that it does not sound like the application was withdrawn. He stated that it seems like it was postponed.

Mr. Mullen explained that he was notified by the department admin, Ms. Krystina Kramer. He remarked that withdrawal is not the right word if the applicant asked to continue the application for the next month.

Chairman Smith checked to see if Mr. Hester is in attendance. The Chairman asked the applicant to raise their hand via Zoom.

Mr. Mullen noted that no hands were raised.

Chairman Smith suggested for the Board to continue the application for the next month. He noted that it will give them time to find out if the applicant plans on proceeding. The Chairman asked if there were any objections to continuing the application for the next month.

Ms. Winkler inquired if the purpose to re-advertise the notice was because of an incorrect address, a scrivener's error.

Chairman Smith replied yes and added that this is the first month the application is properly noticed.

Ms. Winkler inquired if the address is 47 Paddock Lane.

Mr. Mullen replied no and stated the address is 41 Paddock Lane.

Chairman Smith remarked that there is no advertising issue tonight.

Ms. Winkler stated that she has no objections to continuing the application for the next month.

There were no objections. The Board agreed with continuing the application for the next month.

- 2. By Richard E. Czarnecki for a use variance from Section 7.1.a.1 to allow an accessory use without a principal use and a use variance from 7.1.b.2.k to allow a storage container in a residential zone at Lot N-82 Hebron Avenue – Rural Residence Zone.**

Mr. Mullen read the 2nd application.

The hearing was delayed for a few minutes due to technical problems.

Ms. Winkler inquired if Mr. Bobby Ashton was logged in.

Mr. Mullen noted that Mr. Ashton is not at tonight's meeting.

Mr. Czarnecki stated that he wants to claim a hardship due to the wetlands and streams on his property. He explained that there is no room for a well and septic system on his property and because of this he cannot put in a primary residence. Mr. Czarnecki explained that storage is all he can put on the land, and without the storage container the property is almost useless.

Chairman Smith wanted to confirm that there are no sewer lines on the property.

Mr. Czarnecki stated that there are no sewers.

Chairman Smith asked the applicant what his intentions are for the property.

Mr. Czarnecki explained that he cuts and processes firewood. He noted that he is not able to build a home because there is not enough square footage due to the constraints of the wetlands. Mr. Czarnecki stated it is his land and his private property and he has a right to use it.

Chairman Smith noted that Mr. Czarnecki is applying for two variances. He asked the applicant to explain the hardship regarding the storage container.

Mr. Czarnecki informed the Board that on Hebron Avenue and Sturgeon River Road, there are 2 storage containers on a property in that area. He noted that he took pictures of the 2 storage containers and sent it to Mr. Mullen.

Chairman Smith inquired what the storage is being used for.

Mr. Czarnecki stated that he needs the storage container to protect his equipment. He explained that he is away from his property during the week and works on the property on the weekends and when he has time off. Mr. Czarnecki stated that his equipment was stolen, his container was shot at, and he needs to be able to store his equipment so he can work on cleaning up and maintaining his land. Mr. Czarnecki noted that he has filed reports with the police. He stated that crime and car thefts have increased in the area.

Chairman Smith noted that the applicant had presented some of this information at the last meeting and explained that all of the information has to be presented again so it is all on the record.

Mr. Czarnecki reiterated that he needs the storage container to store his equipment which is needed to maintain his land. He noted that not all of the equipment can be stored in the storage

container because gasoline becomes explosive. Mr. Czarnecki stated that gasoline cannot be kept in an enclosed structure.

Chairman Smith asked the Board if they had questions.

Secretary Korns remarked that it is impossible to build a residence on that lot and inquired if the purpose of the land is to harvest firewood. Secretary Korns noted that he has been to the property and has seen a lot of firewood. He inquired how long until all of the firewood has been exhausted. Secretary Korns also inquired about the size of the property.

Mr. Czarnecki stated that the property is 1.35 acres.

Secretary Korns remarked that a large number of trees have been taken down.

Mr. Czarnecki explained that he processes firewood on his property and brings it to Enfield, CT.

Secretary Korns noted that Mr. Czarnecki has a Massachusetts address and asked if any firewood would be transported there.

Mr. Czarnecki replied no. He stated that he does not transport firewood across state lines.

Secretary Korns noted that he has read the regulations and found that storage containers are only permitted during times of active construction or reconstruction.

Mr. Czarnecki stated that he plans to use his land for agricultural purposes. He stated that he plans to grow hops and it is the perfect spot for that.

Mr. Bowman remarked that between the harvesting of the firewood and the agricultural uses, the applicant is asking for the container to remain there indefinitely. He asked Mr. Czarnecki if this was correct.

Mr. Czarnecki replied correct.

Ms. Winkler asked how the application was referred to TPZ.

Chairman Smith explained that whenever a use variance is requested it automatically goes before TPZ. The Chairman noted that TPZ's recommendation is not binding and the Board can accept it or reject it.

Ms. Winkler inquired how TPZ noticed the hearing.

The Chairman asked Mr. Mullen to explain.

Mr. Mullen explained that, back in September, the application was denied and the applicant was advised to come back for a use variance. The applicant came back, refiled the paper work and consulted with the Town staff. Mr. Mullen explained that when a use variance comes in it is automatically referred to TPZ.

Ms. Winkler explained that her question was about how the notice is advertised.

Mr. Mullen began reading from Section 13.2b of the regulations. He explained that the TPZ referral meeting was not a public hearing and it was noticed on the agenda which was posted on the Town website.

Ms. Winkler remarked that the Board is not notified and a memo goes out to the Chairman.

Mr. Mullen replied correct.

Chairman Smith explained that, under state law, the Board is not allowed to convene with TPZ. He noted that this would be a conflict.

Ms. Winkler remarked that she understood and added that she was just curious how the referral makes its way to various boards.

Chairman Smith asked Secretary Korns to read the memo regarding the TPZ referral.

Secretary Korns read out the memo from Rebecca Auger, AICP, Director of Planning & Land Use Services, dated January 21, 2022. The Secretary read out the two motions that was voted on at the January 18, 2022 meeting. Motion #1 failed with 2 members voting in favor and 4 members voting against. Motion #2 also failed with 1 member voting in favor and 5 members voting against.

Mr. Czarnecki noted that the wording of the memo contains the language “residential zone” and reiterated that he cannot build on his lot of land. Mr. Czarnecki also reminded the Board that there is another storage container in the area.

Secretary Korns inquired if the applicant’s address is Hebron or Old Hebron.

Mr. Czarnecki replied Old Hebron Road.

Mr. Mullen said that he will look for the GIS listing.

Mr. Czarnecki explained that the public road ends, and the rest of the road belongs to him and his neighbor, Lenny. Mr. Czarnecki noted that he has the right of way and explained that it is not a public access area.

Mr. Mullen confirmed that it is not a public access area.

Secretary Korns remarked that he did not realize Old Hebron Road is private.

Chairman Smith inquired whether the container is placed where the Town road ends.

Mr. Czarnecki replied correct and added that he did not want to encroach into the wetlands.

Mr. Mullen put up the GIS map on the screen. The address shown is Lot N-82 Hebron Avenue. Mr. Mullen put up a map of the property that shows the Town road and private road.

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

Mr. Mullen stated that there were no hands raised.

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

Mr. Nathaniel Coburn of 2501 Old Hebron Road stated that he does not believe the structure adheres to the setback requirements. Mr. Coburn stated that the container is 6 feet off the street line and 25 feet from his driveway. He noted that the lot is a corner lot and does not meet any of the setback regulations and read out several sections of the regulations. Mr. Coburn informed the Board that there is a large amount of excavation and fill and questioned if there were any erosion control measures in place. Mr. Coburn stated that the storage container sits on bare wood chips.

Ms. Winkler inquired if 6 feet from the road makes it the front property.

Mr. Czarnecki stated that the container is 12 feet from the road and not 6 feet. He also noted that his property is not on a corner lot. Mr. Czarnecki stated that Mr. Coburn rents the property and is not the property owner.

Chairman Smith explained that the applicant will have the last word. He noted that all questions go through the Chair and added that there is no cross examining.

Ms. Winkler inquired about the street that would be used to measure the setbacks.

Mr. Coburn stated that he has been in the construction business for 13 years and added that the structure is not the minimum 50 feet distance. He noted that the container should be located at least 75 feet from the street line.

Ms. Winkler asked Mr. Coburn if he was reading the regulations regarding customary home occupation.

Mr. Mullen explained that the property does not fit under the customary home occupation regulations.

Chairman Smith asked if there were any other questions.

There were no other questions.

The Chairman asked Mr. Czarnecki to speak.

Mr. Czarnecki stated that he will answer Mr. Coburn's question. Mr. Czarnecki explained that the frontage is Hebron avenue. He noted that the placement of the container is in the backyard and added that there are maps available that show this.

Mr. White read off the Rural Residence setbacks and noted that it is a 50-foot setback for the front and rear yard.

Mr. Bowman noted that there is a lot of conversation about setbacks and remarked that they are putting the cart before the horse. Mr. Bowman stated that he is sympathetic that the applicant cannot build and thanked him for paying his taxes. He remarked that the applicant is conflating "building" and "container." Mr. Bowman stated that a container is not a building and added that a container is unseemly.

Mr. Czarnecki asked why a container would be deemed unseemly compared to a storage shed.

Mr. Bowman remarked that a building and a container are different and noted that it is like asking the difference between apples and oranges.

Mr. Czarnecki stated that both are structures. One is metal versus wood. A flat roof versus a peaked roof. Mr. Czarnecki began reading a passage about property owners being protected from Town restrictions that prevent homeowners from using their property. Mr. Czarnecki stated that it is "written in the Constitution."

Chairman Smith asked the applicant if he meant to say "case law."

Mr. Czarnecki replied yes and said the passage he read out was from a case law that he found.

The Chairman noted that Mr. Bowman hit the nail on the head with his comment. The Chairman explained that the issue is whether to allow an accessory structure. Assuming the answer is yes, the next question would be whether a storage container would be allowed. The Chairman stated that the Board's function is to relax the regulations. Chairman Smith explained that the applicant has constraints, topographical, wetlands and watercourses. The applicant cannot build a house. The Chairman explained that the Board is only deciding whether the applicant can have an accessory structure. The location would be up to Town staff and the Wetlands Commission.

Mr. Czarnecki stated that he is not at the property all of the time. He explained that there are a lot of car break-ins, theft, and increased crime in the area. Mr. Czarnecki noted that there is lots of lawlessness in the area and he sleeps well at night because he knows if someone tried to break into the storage unit, it would make a lot of noise. He also noted that his property and signs were shot at. A storage container is made of metal and will not burn down. Mr. Czarnecki stated that the container is secure and added that, if he put on a peaked roof, it would look more like a shed. He also stated that his land is not on a corner lot. Mr. Czarnecki stated that the lot to the left of his property is a corner lot.

Chairman Smith noted that he was confused about the assertion made that the property is a corner lot.

Mr. Czarnecki asked Mr. Mullen to put up a map on the screen to show that the property is not a corner lot.

Mr. Mullen put up the GIS map of the property on the screen.

Mr. Czarnecki noted that if his container was moved 30 feet over it would encroach into the wetlands. He asked Mr. Mullen to show the property on the left which is a pie shaped corner lot.

Mr. Mullen put up the property image of the neighboring lot, 2477 Old Hebron Road. It was confirmed that the neighboring lot is pie shaped.

Chairman Smith stated that the wetlands issue is not the before the Board. He explained that the issue is whether the applicant can have a container without a principal structure. Chairman Smith noted that the Board has granted this before for the application on Eastern Boulevard. The Board granted an accessory structure without a principal structure.

The Chairman asked Mr. Coburn if he would like a chance to speak.

Mr. Coburn stated that as an occupant he still has rights. He explained that whether the applicant processes wood, or grows hops, there is still a storage container. Mr. Coburn noted that because of the applicant's private road, the snow pile is closer to his property. He noted that he does not think the Town has done anything to investigate the woods chips and the excavation on the land. Mr. Coburn added that the land has been permanently altered and not for the better. He noted that he used to go over to that area and now he cannot access that land.

Chairman Smith opened the floor to Mr. Czarnecki.

Mr. Czarnecki stated that his land is private property. He stated that he has had to pick up debris and glass bottles and it gets old very fast. Mr. Czarnecki stated that he has the right to use his property. He noted that he is not clear cutting the land and there are still a lot of trees there. Mr. Czarnecki stated that he is getting a lot of accusations from someone who is growing marijuana. Mr. Czarnecki stated that this is a fact.

Chairman Smith stated that the comment on marijuana is not relevant to the hearing.

Mr. Czarnecki stated that he only brought it up because Mr. Coburn has brought up issues that are not relevant.

Mr. Mullen informed the Board that a hand was raised.

Mr. Jody Kretzmer of 2400 Hebron Avenue stated that he lives directly across the street from Mr. Czarnecki and his neighbors. Mr. Kretzmer explained that he has seen Mr. Czarnecki work really hard cleaning up the property. Mr. Kretzmer stated that there is always going to be discontent with the neighbors and said that the neighbors have given him a hard time over the last 5 years while he was renovating his own property. Mr. Kretzmer stated that he is 100 percent in favor of Mr. Czarnecki fixing up and maintaining his property. Mr. Kretzmer explained that before Mr. Czarnecki took over, the land was neglected and full of debris. Mr. Kretzmer stated that it is wrong for neighbors to think they have a right to access and go through Mr. Czarnecki's land. Mr. Kretzmer pointed out that it is against the law for neighbors to walk their dogs and trespass onto Mr. Czarnecki's land. Mr. Kretzmer stated that he is in favor of having Mr. Czarnecki do what he needs to do as long as it is in the confines of the law.

The Chairman told Mr. Czarnecki that he will have the last word.

Mr. Czarnecki thanked the Board for their time. He noted that his family owned the land since 1952 and has paid taxes for about 70 years. Mr. Czarnecki remarked that the Board should help him and not hinder him. He added "that is why we pay taxes."

Chairman Smith closed the public hearing.

The Chairman stated that a brief recess would be taken before the Board moves on to deliberations.

1) Action on Public Hearings

- 1. By Gregory S. Hester for a variance from Section 4.2.7 to allow a deck to be constructed closer to the side yard than permitted at 41 Paddock Lane - Rural Residence Zone.** (Application continued for the March meeting.)
- 2. By Richard E. Czarnecki for a use variance from Section 7.1.a.1 to allow an accessory use without a principal use and a use variance from 7.1.b.2.k to allow a**

storage container in a residential zone at Lot N-82 Hebron Avenue – Rural Residence Zone.

Secretary Korn reads the 2nd application.

Motion by: Secretary Korn

Seconded by: Mr. Bowman

MOVED, that the Glastonbury Zoning Board of Appeals approves the application by Richard E. Czarnecki for a use variance from Section 7.1.a.1 to allow an accessory use without a principal use and a use variance from Section 7.1.b.2.k to allow a storage container in a residential zone at Lot N-82 Hebron Avenue in Rural Residence Zone on the grounds that equipment stored at the location is not secure and has been subject to criminal activity and residential construction is not feasible on this lot due to wetlands constraints on any well or septic installation. The requirements of Section 13.9 have been met.

Discussion:

Mr. Mullen informed Secretary Korn that both variances are use variances.

Secretary Korn stated that it was an omission and asked if an amendment is needed to change the motion.

The Chairman asked Mr. Bowman if he accepts the amended change to reflect that both variances are use variances.

Mr. Bowman agreed to the change.

Secretary Korn noted that there are 2 parts to this motion. If the Board does not approve the first part, then the second point is moot. Secretary Korn stated that his main concern is regarding the regulations on storage containers. The only item that could possibly apply to meeting the standard is during active construction or reconstruction. The container would only be allowed during the period of such construction. Secretary Korn added that the Board has heard that there is going to be no construction. He noted that he does not feel it is appropriate to approve. Secretary Korn stated that the applicant mentioned that there are other storage containers sitting on a property a quarter mile away. He stated that he has not seen the other storage containers, and if that is true, the Town has to deal with that. The Board's job is not to deal with all of the violations. Secretary Korn stated that he has been to the area and does not feel it merits a use variance. He stated that he will be voting no.

Chairman Smith asked the Secretary if he was talking about the second part which refers to the storage container. The Chairman asked the Secretary his thoughts on permitting an accessory use.

Secretary Korns stated that TPZ broke them into two motions and added that he does not agree with the first part at all.

Vice-Chair Dzialo stated that she is in agreement with Secretary Korns' assessment with respect to the storage container. She stated that she has also read the regulations a number of times and it is very clear that it is not permissible. Vice-Chair Dzialo noted that, at the same time, she is sympathetic to Mr. Czarnecki. She noted that she understands the applicant needs to protect his equipment and added that it sounds burdensome to transport the equipment that he needs to use. Vice-Chair Dzialo stated that she does think it is appropriate to allow some form of an accessory structure that would be suitable to the lot and located appropriately. She noted that she would be in favor of allowing some kind of structure to keep the applicant's equipment safe.

Chairman Smith noted that Vice-Chair Dzialo's take is that she is in favor of the first part and not the second part.

Vice-Chair Dzialo stated that is correct.

Mr. Bowman stated that he is in complete agreement with Vice-Chair Dzialo. He noted that he is very sympathetic to the property owner. Mr. Bowman remarked that if this was merely a variance from Section 7.1.a.1 for an accessory use without a principal residence, he would be very inclined to vote for it. Mr. Bowman noted that it seems like the gentleman is trying to do very good things to his property. Mr. Bowman remarked that the idea of a container there in perpetuity is simply not acceptable to Town standards, let alone the specific regulations pertaining to containers. Mr. Bowman noted that there has to be a difference between a building and a container. He stated that he agrees with the point Secretary Korns made: if there are other containers, it is a matter of enforcement. Mr. Bowman stated that unfortunately it is a package deal and he intends to vote no.

The Chairman asked Ms. Winkler to weigh in.

Ms. Winkler stated that she would like to speak about the requirements of Section 13.9 of the regulations, specifically 13.9.5 and 9.9 which talk about the overall effects on the neighborhood properties and the preservation of the residential character of the neighborhood. She stated that she does not think that a storage container, under any circumstances helps preserve the value of homes. Ms. Winkler stated that a container would reduce the values of properties. She added that she cannot agree that the requirements of section 13.9 have been met.

Chairman Smith noted that there are two requests. He asked Ms. Winkler about allowing an accessory structure.

Ms. Winkler stated that she does not see anything that has changed from the last hearing in September. She noted that it is a different application with two variances.

Chairman Smith asked what if the applicant requested permission for something other than a storage container.

Ms. Winkler stated that she could not speak on that. She added that the accessory structure has to be placed somewhere on the property. Ms. Winkler said that she spoke to Mr. Mocko and was told that the applicant cannot build there. She noted that Mr. Mocko might have been speaking about a house. Ms. Winkler stated that she does not see an accessory use without a principal use for this application.

The Chairman repeated his question on allowing the applicant an accessory structure that is different than a storage container.

Ms. Winkler stated that this is in the realm of speculating. She noted that is not what the Board is looking at now. Ms. Winkler stated that the applicant can combine land with the corner lot and added that there are many possibilities where this lot can be useable. She noted that the road can be moved. Ms. Winkler noted that the Casella property is going to be developed and added that there could be different access points. Ms. Winkler stated that at the moment she is not in favor of allowing an accessory building. She stated that the Board does not know what the structure would be or where it would be placed. Ms. Winkler added that in her opinion it would affect the neighboring homes.

The Chairman stated that his view is different. He noted that the applicant made a very good case about accessory use without a principal use because of the wetlands constraints. The Chairman stated that if it was separated out, he would vote for the first part. The question of the storage container is a harder question. The Chairman noted that, as Mr. Bowman pointed out, it is a storage container and not another kind of structure. The Chairman explained that the location of the structure is not before the Board. He explained that it is addressed by Town staff and the Conservation Commission. Chairman Smith remarked that the applicant made a point that he needs help and added that he will be voting in favor of the application.

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

The Chairman thanked Mr. Czarnecki for his presentation.

2.) Acceptance of Minutes from January 3, 2022 Meeting

Motion by: Secretary Kornis

Seconded by: Vice-Chair Dzialo

MOVED, that the Glastonbury Zoning Board of Appeals accepts the January 3, 2022 minutes as presented.

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

Discussion:

Chairman Smith and the Board welcomed Mr. White.

Mr. White invited the Board to reach out to him with any questions.

3) Adjournment

Motion by: Mr. Bowman

Seconded by: Secretary Korns

MOVED, that the Glastonbury Zoning Board of Appeals adjourns their regular Meeting of February 7, 2022 at 8:52 pm.

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

Brian Smith, Chairperson