

TOWN OF SOMERS
ZONING BOARD OF APPEALS
REGULAR MEETING
JUNE 9, 2020
7:00 P.M.

HELD AT TOWN HALL LOWER CONFERENCE ROOM AND VIA ZOOM

MINUTES

(NOT OFFICIAL UNTIL APPROVED AT SUBSEQUENT MEETING)

Call to order at 7:02 p.m.

ROLL CALL

Present: members Dean Hills, Doug Stebbins, Joseph and Marinaccio and alternates Dan Thayer and Ralph Williams

Absent: members Susan Peck and Andy Rockett

(NOTE: Alternate BJ Ferro arrived late but did not participate in discussions or votes.)

ORDER OF BUSINESS

Chairman Dean Hills proposed that application #20-004 be heard and acted on before applications #20-002 and #20-003. This was moved by Dan Thayer, seconded by Doug Stebbins, and passed unanimously.

PUBLIC HEARINGS AND DISCUSSION

Chairman Dean Hills designated alternates Dan Thayer and Ralph Williams to sit on the evening's applications.

Application #20-001: Paul Mailhot, 154 Hall Hill Road, Somers, CT. Seeking a variance from Section 214-98 of the Somers Code concerning front yard setback requirement of 50' (fifty feet), to construct a 4'x4' front porch 41' (forty-one feet) from the front property line in the "A-1" residential Zone.

Zoning Enforcement Officer Jennifer Roy stipulated that notice has been given to abutters. Paul Mailhot told the board he wants to build a landing to safely enter his house as well as a storm door. It was noted for the record that the property is nonconforming. No one else spoke. At the close of the hearing, Dan Thayer moved for approval of the application, with Doug Stebbins seconding. The application was approved 5-0. Voting in the affirmative were Dean Hills, Doug Stebbins, Joseph Marinaccio, Dan Thayer, and Ralph Williams.

Application #20-004: Jeffery Cooley Construction LLC, on behalf of Dale and Randi Brockway, 247 Mountain View Rd, Somers, CT. Seeking a variance from Section 214-98 of the Somers Code concerning front yard setback requirement 50' (fifty feet) to construct an 8'x28' front porch, 31' (thirty-one feet) from the front property lines, in the "A-1" Residential Zone.

Zoning Enforcement Officer Jennifer Roy stipulated that notice has been given to abutters. Neither the contractor nor the property owner offered any testimony. One neighbor, Gary Wysocki of 265 Mountain View Road, spoke in favor of the application. It was noted for the record that the property is nonconforming insofar as the house's setback from the road. At the close of the hearing, Ralph Williams moved for approval of the application, seconded by Dan Thayer. The motion was approved 4-0. Voting in favor were Doug Stebbins, Joe Marinaccio, Dan Thayer, and Ralph Williams. Dean Hills abstained because of a financial relationship with the applicant.

Application #20-002: Amy L. Eastman, 40 Hallie Lane, Somers, CT. Appeal of Cease and Desist Order issued by Jennifer Roy, Zoning Enforcement Officer, and variance from Section 12-Earth Removal and Filling, in the Somers Zoning Regulations; in the "A-1" Residential Zone.

Application #20-003: Amy L. Eastman, 42 Hallie Lane, Somers, CT. Appeal of Cease and Desist Order issued by Jennifer Roy, Zoning Enforcement Officer and variance from Section 12-Earth Removal and Filling, in the Somers Zoning Regulations, in the "A" Residential Zone.

The board held a consolidated hearing on the two applications, both in terms of appealing the zoning enforcement officer's cease and desist orders and in terms of granting variances.

Representing the applicant were Attorney John Parks, joined by Attorney Dwight Merriam and James E. Ussery, Jr., a licensed land surveyor. Town Attorney Carl Landolina was present to advise the board, and Attorney Michael Zizka was present to represent Zoning Enforcement Officer Jennifer Roy.

Parks and Merriam contended that despite the wording of the town's zoning regulations, no special use permit was required for the excavation and removal of rock from the Eastman's properties. Parks also acknowledged that such work has continued on the properties despite the cease and desist order, but contended that the applicants believe they were entitled to continue the work while appealing. Parks also said that the applicants have completed 60 percent of the excavation they intend to do, and he denied that the work had continued in defiance of the cease and desist order. Parks also contended that the presence of a large rock outcrop on their land presents the applicants with a "classic" hardship. Parks and Merriam further contended that the town

has allowed excavation within residential development in several occasions without requiring special use permits.

Zizka noted that the applicants previously filed and then withdrew an application with the Zoning Commission for a special use permit for their property before coming to the Zoning Board of Appeals, contending that "exhaustion of administrative remedies" is the legally preferred course of action. He also disputed Parks' claim of hardship, noting that the applicants have owned 40 Hallie Lane, the property on which their house stands, for 15 years and that the rock outcrop was present when they acquired the land. He also argued that "personal desire is not enough for a variance." Zizka also noted that all of the cases cited by Parks and Merriam in which excavation was allowed without special use permit occurred in the development of new subdivisions and not within existing residential neighborhoods.

A number of neighbors and nearby residents spoke against the application, contending inter alia that they have been beset by loud, incessant daytime noise for many months and that the disturbing of the underlying rock is to blame for a rise in radon levels and the recent discovery of uranium in their well water. They also said that the work poses a risk to the structural integrity of their homes and consequently to their property values. The one resident who spoke in favor of the application made many of the same claims, but argued that allowing them to finish their work quickly was the best course.

Speaking in favor of the application was Janet Shlafstein of 155 Mountain Road. Speaking in opposition to the application were Carole Falkowski of 19 Root Road; Kristin Curran of 9 Hallie Lane; Joseph Figlar of 159 Mountain Road; Patricia Banach of 104 Green Tree Lane; Sandra Olearcek of 47 Long Hill Road; Kathleen Welch of 168 Mountain Road; Jennifer Griger of 24 Amie Lane; Fred Thompson of 54 Green Tree Lane; and Tom and Vicki Clark of 175 Mountain Road. A letter in opposition also was received from Joseph Obara of 95 Green Tree Lane.

Dan Eastman, the husband of the applicant, spoke in rebuttal of the opponents, denying that the excavation has affected well water and disputing a claim that the work was tantamount to a quarry.

After the hearing was closed, a motion was made by Ralph Williams and seconded by Dan Thayer, to grant the applicant's appeal of the cease and desist order for 40 Hallie Lane (Application #20-002). After brief discussion, the board voted 5-0 against granting the appeal. Voting against were Dean Hills, Doug Stebbins, Joseph Marinaccio, Dan Thayer, and Ralph Williams.

A motion then was made by Ralph Williams and seconded by Joseph Marinaccio to grant the applicants' appeal of the cease and desist order for 42 Hallie Lane (Application #20-003). The board voted 5-0 against granting the appeal. Voting against were Dean Hills, Doug Stebbins, Joseph Marinaccio, Dan Thayer, and Ralph Williams.

A motion then was made by Ralph Williams and seconded by Dan Thayer to grant a variance from Section 12-Earth Removal and Filling for 40 Hallie Lane (Application #20-002). After brief discussion, the board voted 5-0 against granting the variance. Voting against were Dean Hills, Doug Stebbins, Joseph Marinaccio, Dan Thayer, and Ralph Williams.

A motion then was made by Joseph Marinaccio and seconded by Dan Thayer, to grant a variance from Section 12-Earth Removal and Filling for 42 Hallie Lane (Application #20-003). The board voted 5-0 against granting the variance. Voting against were Dean Hills, Doug Stebbins, Joseph Marinaccio, Dan Thayer, and Ralph Williams.

The chairman then entertained a motion to adjourn, which was made by Dan Thayer and seconded by Doug Stebbins. The motion to adjourn was passed unanimously, and the meeting adjourned at 10:17 p.m.

Respectfully submitted by Ralph Williams, serving as secretary in the absence of Andy Rockett.