

**CITY OF NORWICH
ZONING BOARD OF APPEALS
August 13, 2019
Minutes**

The regular meeting of the City of Norwich Zoning Board of Appeals was called to order at 7:03 p.m. Roll call was taken.

PRESENT: Marc Benjamin, Chairman
Dorothy Travers
David Martin
Robert Phoenix
Gregory Schlough, Alternate

ABSENT: Peter Cuprak
Kevin Saythany, Alternate

OTHERS: Richard Shuck, Zoning Enforcement Officer, and Katherine Rose,
Recording Secretary

Marc Benjamin called the meeting to order at 7:03 p.m. Marc Benjamin stated all seated members would be voting on all matters.

D. COMMUNICATIONS: None.

E. ACCEPTANCE OF MINUTES: Gregory Schlough made a motion to accept the July 9, 2019 minutes. Dorothy Travers seconded. Motion passed unanimously.

F. OLD BUSINESS: None.

G. NEW BUSINESS:

- 1. Appeal #19-01.** Appeal of Cease and Desist for the Non-Permitted Expansion of a Non-Conforming Use on the property located at 145-147 Franklin Street. Property of Alirio Gaitan; Application of Alirio Gaitan, Assessor's Map# 102, Block# 4, Lot# 86.

Richard Shuck read into record Exhibits A - O.

Attorney Santa Mendoza of 111 Huntington Street, New London introduced herself on behalf the applicant who is her client and unable to speak English. Santa Mendoza stated the applicant wishes to appeal the cease and desist order as they do not feel as they are expanding a non-conforming use. Attorney Mendoza brought forth Exhibit M, the site plan that had been submitted in 1999, and discussed that at the time the owner of the property had been granted a special variance to operate a motor vehicle service within 500 feet of a park and church based on that site map for 145-147 Franklin Street. Santa Mendoza stated the applicant has been operating at this property for the past 19 years and recently the building at the front of the property was demolished as it had become a safety hazard so he now wishes to use that vacant space for the same purpose he has been permitted. Santa Mendoza stated the applicant does not agree with the cease and desist as he was permitted to use the entire lot for the purpose of repairing and selling used vehicles so he does not feel he is expanding a non-conforming use of the property. Attorney Mendoza brought forth Exhibit P, a notice from The Norwich Bulletin to the town reporting the approval of a special permit application to the

original owner James McGowan along with Alirio Gaitan for repairing and selling motor vehicles at 145-147 Franklin Street, which she noted does not specify any specific portion of the property to be used for any specific purpose but the property as a whole. Attorney Mendoza then brought forth the Special Permit Application 99-12 as Exhibit Q and noted where Mr. Gaitan stated he wished to repair automobiles at 147 Franklin Street which he was granted to do. Attorney Mendoza reiterated that the applicant does not feel as though he is expanding a non-conforming use as none of the exhibits she has discussed refer to any specific portion of the addresses but lot as a whole. Santa Mendoza brought forward a diagram labeled Exhibit R showing what Mr. Gaitan wishes to create a usable driveway and additional storage for vehicles with some bushes lining the sidewalk. Attorney Mendoza also wished to note the neighbor to Mr. Gaitan's property is a car dealer who has cars already along the sidewalk.

Richard Shuck reported his interpretation of the address 145-147 Franklin Street based on the history of Norwich combining addresses where multiple tenants are located without further researching the address history that all the automotive use applied to 147 Franklin Street, not 145 Franklin Street, where the former garage sat. Richard Shuck stated on the Special Permit Application it stated the application complies with the proposed special permit but there was a request for a waiver on the site plan stating no changes be made to the outside building or parking area. Mr. Shuck stated he interpreted that at the time the property may have met regulations but without the former building it now does not meet regulations so it is in fact an expansion of a non-conforming use. Richard Shuck added there are avenues that can be taken to resolve this issue such as applying for a variance and getting a modification to the application approval. Mr. Shuck stated the Department of Motor Vehicle may question the property change as well which recently occurred with another property that underwent a similar situation.

Discussion ensued over the exhibits presented. Dorothy Travers asked if this property would be grandfathered into regulations. Richard Shuck responded that the use is not grandfathered unless it does not undergo a change but once you change or expand the use that would not apply. Robert Phoenix asked to clarify that while in 1999 an automotive dealer was permitted in the Chelsea District but that would not be approved today which Richard Shuck stated was correct. Robert Phoenix also asked if there were separate utilities for 145 Franklin Street and 147 Franklin Street to which Richard Shuck was not sure. Discussion ensued over the discrepancies on the clarification of the address history. Robert Phoenix asked if hypothetically had the building remained would the applicant have been permitted to put cars within the building. Richard Shuck responded that if the building had been a parking garage the applicant would be permitted but had it been turned into a showroom it would have required another variance as the property is located in the Chelsea Central District. Dave Martin stated on the Special Permit Application it lists the lot size as by 62 feet by 256 feet which is the size of the entire lot and it does not indicated any building on the property. Richard Shuck agreed but stated the site plans does indicate a building.

Attorney Santa Mendoza asked Richard Shuck to clarify that it is his opinion that in 1999 the Town thought that this property was two separate addresses. Richard Shuck responded that he felt the Town may have considered it two separate buildings based on how Norwich historically has processed things even though it is in fact only one parcel. Santa Mendoza responded that if that is his opinion, it would mean that in 1999 the applicant would have only been permitted to use one third of the entire lot for automotive repair. Richard Shuck explained in context if you receive a three-acre location approval

on a ten-acre piece of property and you were to operate an automotive repair facility outside of those three-acres you would be in violation of state statute and motor vehicle laws therefore a location approval map is for the area of operation and anything outside of that is an expansion. Attorney Mendoza then introduced a copy of the application notification the applicant received from the Town as Exhibit I and questioned why none of the approval documents state that the approval only applies to a portion of the lot. Attorney Mendoza wrapped up her testimony but stating it is the applicant's opinion that the 1999 site plan that was submitted which responded to item six in the special application request which refers to the entire property and was approved by the Town at the time so if the Board was now to go by the opinion of the Zoning Officer the applicant would have only submitted a portion of the Exhibit M plan at the time so again there is not an expansion of a non-conforming use occurring. Attorney Mendoza stated no evidence has been presented to support the mail address argument and as the abutting neighbor is also an automotive sales business there is no negative impact on the Chelsea Central District.

Marc Benjamin asked if the Board was to overturn the Zoning Officer's decision and approve the plan the applicant wishes to submit with conditions is the applicant flexible to changes. Attorney Mendoza stated he would be. Gregory Schlough questioned why the site plan refers to a building that was in place in 1999 but states two different addresses there as well, including 157 Franklin Street. Santa Mendoza responded that the applicant was approved based on the lot location not any specific address.

Robert Phoenix made a motion to close the public hearing. Gregory Schlough seconded. The motion passed unanimously.

2. **V# 19-05: 9 Hunters Road.** Request Variance of ZR Sec. 1.1 Residential Bulk Requirements, to reduce the side yard setback from 15 ft. to 6 ft. to allow the 10 ft. x 10 ft. addition to an existing deck. Also request variance of ZR Sec. 1.1 Residential Bulk Requirements to adjust the allowable lot coverage from 20% to 40.3% where 37.16% currently exists. Property and application of Craig J. Fowler, Assessors Map 63 Block #1 Lot #9.

Craig Fowler of 9 Hunters Road, Norwich introduced himself and stated he is requesting the variance for a few reasons including health reasons and accessibility as well as the existing steps not being up to code and also crushing the existing deck that lies beneath them. Mr. Fowler stated his plan is to extend the existing deck over the adjacent roof to building a slightly larger deck that will connect with the existing laundry room steps which will bring the property up to code without taking a significant of lawn space. Craig Fowler provided pictures demonstrating the area and rough sketches of his intended plan, introduced as Exhibits I, J and K. Mr. Fowler stated he has already had the Fire Marshall and Building Inspector to the property who gave their approval. Discussion ensued. Robert Phoenix asked if the applicant was the sole occupant of the property which he responded that it is a three-family property but he is the owner.

Marc Benjamin asked the applicant if it is his intent to reconstruct an existing deck to reinforce it while also increasing it slightly to support a hot tub and moving an existing staircase in order to bring it up to code. Craig Fowler stated that it was. Marc Benjamin

stated for the record the property is already non-conforming at 37% so the requested variance would bring it only to 40%.

Wayne McCurdy of 11 Hunters Road, Norwich stated he is in support of the project.

Richard Shuck read into record Exhibits A - I.

H. DISCUSSION AND POSSIBLE DECISIONS:

1. **Appeal #19-01.** Appeal of Cease and Desist for the Non-Permitted Expansion of a Non-Conforming Use on the property located at 145-147 Franklin Street. Property of Alirio Gaitan; Application of Alirio Gaitan, Assessor's Map# 102, Block# 4, Lot# 86.

Robert Phoenix made a motion to open the application for discussion. Gregory Schlough seconded. The motion passed unanimously.

Gregory Schlough stated he understands both the ZEO's opinion and the applicant request and would like to see things move forward in the City while also not simply permitting property owners to just do as they see fit. Gregory Schlough stated he still has unanswered questions in regards to the address on the Exhibit M site map that was approved in 1999 which the Special Variance was approved on yet it does not jive with the address being discussed today.

Marc Benjamin stated that based on the testimony he heard today it seems as though it is very common to have multiple addresses on one lot even if they belong to a single building or property so the critical part to the discussion is the map and lot location. Marc Benjamin said speaking on memory he believed the original owner may have also owned the adjacent property at the time so may have listed it on the map in addition of the addresses being discussed

Robert Phoenix stated the way he views the request he aligns closer to the opinion of the ZEO in that the approvals on the Special Permit Applicant were given when a building was in place that limited the area that could be used for the requested purpose and the consideration of the approving authority may have been that they were giving permission to use the area not occupied by the existing building for the special permit application. Robert Phoenix stated that now that the building is gone he feels the mass of the building should be considered as existent until an authority can approve the inclusion of the new space but at this time he would uphold the ZEO cease and desist order and direction the applicant to make an additional Special Permit Request for the space in question.

Robert Phoenix made a motion to uphold the Zoning Official's cease and desist order. Dorothy Travers seconded.

David Martin stated based on the Special Permit Application and the site map that was presented in 1999 with both referring to the same lot size and 147 Franklin Street address he feels as though the Application approval was for the entire lot. David Martin added that if the Special Permit Application had not listed former next to automotive parts store there could be an argument of usage but he does not feel that is the case. David Martin said nothing on the 1999 paperwork states the applicant could not perform

automotive usage in the building that existed so again he feels approval applies to the entire lot.

Dorothy Travers suggested the applicant could subdivide the parcels based on usage and get special permits in that way since there are so many variables involved with the addresses.

Gregory Schlough stated he sees David Martin's contention but also the ZEO's as the conformity of the property has changed as an entire three-story building that was on the property is now gone.

Marc Benjamin stated he feels as though this matter should be forwarded on to counsel for a legal decision in order to get clarification on what the Zoning Board should be voting on as all Board members can see the various points in the issue.

Marc Benjamin made a motion to request legal opinion of counsel on how the property is identified. Robert Phoenix seconded. The motion passed unanimously.

Robert Phoenix made a motion to continue discussion until the next regular meeting. Gregory Schlough seconded. The motion passed unanimously.

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Robert Phoenix made a motion to open the application for the discussion. Gregory Schlough seconded. The motion passed unanimously.

Robert Phoenix stated he feels as there are a number of restrictions presented based on the existing condition of the property that constitutes the applicant's hardship to do any other configuration of an improvement.

Dorothy Travers agreed and stated the 3% reduction increase is inconsequential and stated the topography of the land creates a hardship for the owner as well.

Gregory Schlough stated the owner is simply attempting to improve the property while bringing to code so he does not see any issues.

David Martin agreed with the configuration hardship and stated the suggested deck is a reasonable size.

Robert Phoenix made a motion to pass the variance based on the hardships of the property condition and configuration. Dorothy Travers seconded. The motion passed unanimously.

- I. **OTHER MATTERS:** Marc Benjamin stated Kevin Saythany submitted a resignation letter. Robert Phoenix made a motion to table the materials discussion until the next regular meeting. Gregory Schlough seconded. The motion passed unanimously.
- J. **ADJOURNMENT:** A motion was made by Marc Benjamin to adjourn at 8:16 PM. Gregory Schlough seconded. The motion carried unanimously.

Respectfully submitted,
Katherine Rose
Recording Secretary