



CITY OF DANBURY
155 DEER HILL AVENUE
DANBURY, CONNECTICUT 06810

ZONING BOARD OF APPEALS
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MINUTES
Web-Based Meeting Hosted on ZOOM
August 13, 2020
7:00 p.m.

ROLL CALL:

Acting Chairman Joseph Hanna called the meeting to order at 7:00 p.m. Mr. Hanna seated Alternates Peter DeLucia and Rick Roos as voting members in the absence of Richard Jowdy and Rod Moore.

Present: Juan Rivas, Michael Sibbitt, and Alternates, Peter DeLucia and Rick Roos.

Absent: Richard Jowdy, Rod Moore, and Anthony Rebeiro.

Voting will be by roll call.

ACCEPTANCE OF MINUTES: July 9, 2020

Motion to accept the minutes of July 9, 2020 was made by Juan Rivas; seconded by Michael Sibbitt. Motion passed with Ayes from Joseph Hanna, Peter DeLucia, Juan Rivas, and Michael Sibbitt.

The next regular meeting is scheduled for **August 27, 2020**

Motion to hear applications Nos. 20-20, 20-21, 20-22, and 20-23 made by Rick Roos; seconded by Juan Rivas. All in favor with Ayes from Joseph Hanna, Peter DeLucia, Juan Rivas, Rick Roos, and Michael Sibbitt.

OLD BUSINESS: None

NEW BUSINESS/PUBLIC HEARINGS: Pursuant to Executive Order No. 7I Section 19.c., Notice is hereby given that Item Nos. 20-20, 20-21, 20-22, and 20-23 will be heard.

#20-20: Carvalho, Jose, 125 Stadley Rough Rd., (K06030), RA-40 Zone, Sec. 4.A.3 Reduce detached accessory side yard from 15' to 0.5' for existing canopy with covered roof over concrete, and Sec. 8.A.2.c.(4) allow retaining wall less than 5' from property line.

Motion to hear Application #20-20 by Juan Rivas seconded by Peter DeLucia. All in favor with Ayes from Joseph Hanna, Peter DeLucia, Juan Rivas, Rick Roos, and Michael Sibbitt.

Christina Carvalho, owner, appeared and explained that there was an existing canopy on the property when they moved there, so they moved the canopy in preparation for a future in-ground pool. Mr. Jose Carvalho, owner, also spoke. He was supposed to build a 2' stone wall and asked someone at the City if he needed a permit, which he did not. He did not have time to do the stone wall so he decided to do a concrete wall with stone veneer and was unaware that a permit is required for a retaining wall or that it needed to be 5' from the property line.

Mr. Hanna inquired as to the highest point of the wall? Mr. Carvalho answered it is 4' at the highest and about 100' long. The rest is 18" to 24". Mr. Hanna said he visited the property and it looked pretty high and any wall over 3' requires an engineered design. Mr. Carvalho agreed that he did not have an engineered design. Mr. Hanna asked if the canopy was engineered to carry the weight of snow? Mr. Carvalho said it is made of aluminum and can carry the snow in the winter because it is very heavy. Mr. Hanna asked if he put the pool in yet. Mr. Carvalho replied, "No, not yet." Any other questions? Mr. Sibbitt asked what is the hardship? Mr. Carvalho did not understand the meaning of hardship. Mr. Hearty said the applicant must explain why he built the concrete wall and said when he went to the town he only discussed a stone wall. Mr. Carvalho indicated he has septic and well back there. Mr. Hanna asked if he was going to build the pool next to the canopy. Mr. Carvalho said it would be about 15' away. Mr. Hanna suggested he could make the canopy smaller. Mrs. Carvalho said the canopy cannot be smaller because it is existing.

Mr. Rivas said the canopy could have been placed elsewhere. Mr. Carvalho said that they were told a stone wall could be at the property line, so he thought the same was okay for a concrete wall. Mr. Hearty, Zoning Enforcement Officer, stated, through the Chair, that a small stone wall is permitted as landscaping to which they agreed, but they changed it to a retaining wall. Mr. Rivas asked if it could just be a wall or does it have to be a retaining wall. Mrs. Carvalho said, yes, it is a retaining wall right now. Mr. Hanna asked Sean if they had permits. Mr. Hearty helped explain what he thinks happened that the stone wall turned into a retaining wall due to the topography of the property. Mrs. Carvalho agreed. Mr. Roos stated that it is his understanding that the canopy was already there when they purchased the lot. Mrs. Carvalho indicated it was on the lot; they built the house.

No further questions. No one in support or opposed to this application.

Motion to close No. 20-20 was made by Rick Roos; seconded by Peter DeLucia. All in favor with Ayes from Joseph Hanna, Peter DeLucia, Juan Rivas, Rick Roos, and Michael Sibbitt.

#20-21: 345 Main St LLC, 345 Main St., (I13028), C-CBD Zone, Sec. 5.F.3.c., Allow the existing drive-through window to be used only for the dispensing of prescription drugs, medicine, and medical supplies by a pharmacy duly licensed pursuant to Chapter 400j of the CT General Statutes.

Motion to hear No. 20-21 by Rick Roos; seconded by Juan Rivas. All in favor with Ayes from Joseph Hanna, Peter DeLucia, Juan Rivas, Rick Roos, and Michael Sibbitt.

Attorney Thomas Beecher appeared on behalf of the applicant, Dr. Jack Yeung, the owner of Main Street Pharmacy. Before filing the application Mr. Beecher had extensive conversations with Zoning Enforcement Officer Sean Hearty that this would be a very limited application. The portion of 345 Main that the pharmacy will occupy is the northernmost portion of the building. This space was previously occupied by Sikorsky Credit Union Bank with an existing drive-through window. The pharmacy has been located at 151 Main Street. This has on-site parking, and they hope to be able to utilize the drive-through window, which will be strictly for prescriptions and medical supplies. A review by the Pharmacy Commission will occur next week, and they are hopeful that the drive-through window will be part of that review.

Attorney Beecher explained when it was a bank the window was located in the teller area. Opposite the drive-through in the bank there was a customer counter. The drive-through window will be in the pharmacy area. The drive-through window and the pharmacy area will be isolated from the general merchandise part of the store. The general public area and general merchandise area is only 735 sq. ft.

Mr. Beecher continued to explain that even before the pandemic the drive-through window was and is an important convenience. Regarding vehicle circulation there is a clearly-marked entrance with signage, and the pavement has a painted inbound arrow. The driveway aisle runs parallel around back of building. The drive-through window is for prescription and medical supply pick up only. The average number of customers picking up at the drive-through window is three to four per hour. There are two exit driveways onto Main Street. One lane is strictly for the drive-through window, the second lane is for exiting cars that did not use the drive-through window. For people exiting the drive through there are four car lengths of space from the light. According to the managing partner, who has been involved with this building for 21 years, there have been no accidents with any cars exiting the driveways.

Sec. 5.F.3.c of the C-CBD regulations states: “No restaurant, including fast-food restaurants, no retail store or shop may be accessed by a drive-in or drive-through facility or used by which food, beverages, or products are dispensed to patrons within motor vehicles.” The CA-80 regulations are similar but specifically exempt delivery of prescription drugs. They are only asking for use of the existing drive-through facility in this building, in the C-CBD zone, for that limited purpose. Dispensing of prescription and medical supplies by a pharmacy for pick up by its customers is not a classic retail store or shop, it is really a health-care facility per Mr. Beecher.

Mr. Beecher further explained that this limited variance would not be of any use to any restaurant, classic retail store, or shop that might occupy this space in the future. It is consistent with the CA-80

Zone exemption. It will not open the door to any occupant of the building to use this drive-through window for any other purpose. Only for a pharmacy – duly licensed with the state of Connecticut.

Mr. Hanna asked, “What is the hardship?” Mr. Beecher explained the hardship is in the regulations with an inconsistency between zones.

Questions: Mr. Rivas asked about signage and markings for both entrance and exit. His concern is traffic from the Citgo gas station and pharmacy patrons exiting while people are attempting to enter through the exit –can signage emphasize one-way traffic? Mr. Beecher said two driveways stating exit from the drive-through RX only exit and yellow arrow and neighbors have two driveways with partial retaining wall separating properties. Mr. Beecher doesn’t think it is a problem nor does the property owner and the property owner’s 21 years of experience. No other questions, no opposition, no one present in favor or opposed. Mr. Hearty brought to the attention of the Board the suggested language in the application to be used if the board votes to approve.

Motion to close No. 20-21 was made by Rick Roos; seconded by Juan Rivas. All in favor with Ayes from Joseph Hanna, Peter DeLucia, Juan Rivas, Rick Roos, and Michael Sibbitt.

#20-22: Bassler, Christopher & Deborah, 10 Snug Harbor Dr. (I06151), RA-20 Zone, Sec. 4.A.3 Reduce minimum side yard setback from 6’ to 3.5’ for detached garage.

Chris and Deborah Bassler explained this is a home with a single-car garage under the house, and they would like a small, 12’ x 20’ detached garage to maximize turnaround space in driveway and not remove a mature tree. Mr. Hanna asked if their property was on the left-hand side, to which the replied, “Yes”. Rick Roos asked how many bays for this detached garage. Chris Bassler answered that it is a single bay. No other questions. No one in favor or opposed.

Motion to close No. 20-22 was made by Peter DeLucia; seconded Juan Rivas. All in favor with Ayes from Joseph Hanna, Peter DeLucia, Juan Rivas, Rick Roos, and Michael Sibbitt.

#20-23: DeAlmeida, Mario, 34 Federal Rd., (K12150), CG-20 Zone, Sec. 5.A.3 Reduce minimum side yard setback from 20’ to 5’ for proposed steps, reduce side yard setback from 20’ to 7.4’ for proposed addition. Sec. 9.C.2.(b) Allow expansion of non-conforming structure for proposed addition.

Mr. Hanna said for the record, we have three letters of support, which he read into the record and were marked as Exhibit A, B, and C. Carmen Cyr, 74 James. St.; Emilio Cordova, 68 James St.; and Crandell Shelton (72) James St.

Gregg Brauneisen, Esq., 148 Deer Hill Avenue, Danbury, representing the applicant who operates a car wash business, said the structure has been there since 1968 and been non-conforming with the side-yard setback since 1968. The proposed addition intrudes slightly into the side-yard setback because of the way the property angles. Structure will cover only 11% when 30% is allowed in that zone.

The proposed addition is to modernize the car wash and make it more environmentally friendly with improved ingress and egress for the customers. Neighbors support the variance.

Mr. Hanna asked if they could see the map on the computer. Mr. Hearty shared his screen. Mr. Roos assisted with the explanation. Juan Rivas asked if the additions were cover for equipment or people. Mr. Brauneisen said it was for the equipment. Mr. Hanna asked the hardship. Mr. Brauneisen answered that the hardship is the existing structure already intrudes into the setback, and the lot angles in. Open stairs that are means of egress do not need a variance per Zoning Enforcement Officer Sean Hearty. No other questions from the Board. No one in favor or opposed.

Motion to close No. 20-23 was made by Rick Roos; seconded by Michael Sibbitt. All in favor with Ayes from Joseph Hanna, Peter DeLucia, Juan Rivas, Rick Roos, and Michael Sibbitt.

Motion to go to voting for Applications 20-20, 20-21, 20-22, and 20-23 was made by Rick Roos, seconded by Juan Rivas. All in favor with Ayes from Joseph Hanna, Peter DeLucia, Juan Rivas, Rick Roos, and Michael Sibbitt.

CONTINUATION OF PUBLIC HEARING: None

DECISIONS:

#20-20: Carvalho, Jose, 125 Stadley Rough Rd., (K06030), RA-40 Zone, Sec. 4.A.3 Reduce detached accessory side yard from 15' to 0.5' for existing canopy with covered roof over concrete, and Sec. 8.A.2.c.(4) allow retaining wall less than 5' from property line.

Rick Roos said the hardships were self-imposed. The owners elected to relocate the canopy on the property, and stone wall brings about its own set of issues. Juan Rivas concurred, the canopy could have been moved to a different location on this two-acre property, and the retaining wall started out legally, but then they started to dig and that's when it became illegal. Michael Sibbitt concurred.

Motion to deny Application #20-20 was made by Rick Roos; seconded by Michael Sibbitt. All in favor with Ayes from Joseph Hanna, Peter DeLucia, Juan Rivas, Rick Roos, and Michael Sibbitt.

#20-21: 345 Main St LLC, 345 Main St., (I13028), C-CBD Zone, Sec. 5.F.3.c., Allow the existing drive-through window to be used only for the dispensing of prescription drugs, medicine, and medical supplies by a pharmacy duly licensed pursuant to Chapter 400j of the Connecticut General Statutes.

Motion to approve Application #20-21 was made by Juan Rivas; Mr. Roos added that this approval is contingent upon approval by the Consumer Protection department that regulates pharmacies. Michael Sibbitt seconded. All in favor with Ayes from Joseph Hanna, Peter DeLucia, Juan Rivas, Rick Roos, and Michael Sibbitt.

#20-22: Bassler, Christopher & Deborah, 10 Snug Harbor Dr. (I06151), RA-20 Zone, Sec. 4.A.3 Reduce minimum side yard setback from 6' to 3.5' for detached garage.

Motion to approve Application #20-22, per plan submitted, was made by Rick Roos due to the lot size and the location of driveway there is no other place to locate the garage; seconded by Michael Sibbitt. All in favor with Ayes from Joseph Hanna, Peter DeLucia, Juan Rivas, Rick Roos, and Michael Sibbitt.

#20-23: DeAlmeida, Mario, 34 Federal Rd., (K12150), CG-20 Zone, Sec. 5.A.3 Reduce minimum side yard setback from 20' to 5' for proposed steps, reduce side yard setback from 20' to 7.4' for proposed addition. Sec. 9.C.2.(b) Allow expansion of non-conforming structure for proposed addition.

Motion to approve Application #20-23, per plan submitted, was made by Rick Roos. The hardship is the shape of lot. Motion seconded by Peter DeLucia. All in favor with Ayes from Joseph Hanna, Peter DeLucia, Juan Rivas, Rick Roos, and Michael Sibbitt.

Motion to close Application Nos. 20-20, 20-21, 20-22, 20-23 was made by Juan Rivas; seconded by Peter DeLucia. All in favor with Ayes from Joseph Hanna, Peter DeLucia, Juan Rivas, Rick Roos, and Michael Sibbitt.

CORRESPONDENCE: Bloom Energy, letter dated 7-8-2020. Notice of application for location and construction at 114 Federal Road, Danbury, CT

OTHER MATTERS: None

ADJOURNMENT:

Motion to adjourn was made by Rick Roos; seconded by Juan Rivas. All in favor with Ayes from Joseph Hanna, Peter DeLucia, Juan Rivas, Rick Roos, and Michael Sibbitt. Meeting adjourned at 7:57 p.m.

Respectfully submitted,

Mary S. Larkin
Recording Secretary