

ENFIELD ZONING BOARD OF APPEALS
REGULAR MEETING
MINUTES
MONDAY, May 24, 2021 7:00 PM
ENFIELD TOWN HALL – COUNCIL CHAMBERS
820 ENFIELD STREET – ENFIELD, CT

Call to Order

Chairman Maurice LaRosa called the meeting to order at 7:09 p.m.

Roll Call

Commissioner Turner took the roll and present were Commissioners Maurice LaRosa, Kelly Davis, Charles Mastroberti, Mary Ann Turner and Alternate Commissioner Richard Stroiney. Absent were Commissioners Catherine Plopper, Robert Kwasnicki and Andrew Urbanowicz.

Also present was Jennifer Pacacha, Assistant Town Planner and Ricardo Rachele, Zoning Enforcement Officer.

Chairman LaRosa seated Alternate Commissioner Stroiney.

New Business

- a. **ZBA# 2021-03-30** — 128 Moody Road — Appeal of the Zoning Enforcement Officer's Cease & Desist Order following a Notice of Violation of section 6.2 – Industrial Zones Use Table; 128 Moody Road, LLC., owner/applicant; Map 93/Lot 5; I-1 Zone.

Commissioner Turner read the legal notice.

Derek Donnelly, 2 Concord Way, Windsor Locks addressed the Commission along with Carl Landolina, 487 Spring Street, Windsor Locks. Mr. Landolina stated that they had received a Cease & Desist (C&D) regarding the parking of trucks where the Jarmoc family runs their farm. He stated that the trucks are used in the farming activities.

Mr. Donnelly distributed packets to the Commission and provided the Commission with an overview of the Jarmoc Farms history and farming activities. He explained that federal law allows farms to distribute their products within 150 air miles of the farm, but that the farm has found markets well beyond that 150 miles. Mr. Donnelly stated that the Jarmocs started an LLC for the trucks in order to keep that operation separate from the farming operation. He stated that the LLC is federally licensed with the DOT to transport agricultural items and general freight beyond 150 miles. He stated that there are currently 12 trucks in operation.

Mr. Donnelly went over the general requirements in Article 3 of the regulations, explaining how the C&D is incorrect according to the regulations. He stated that this property was already being used as a farm when the regulations were passed into the table in 2012, so it is grandfathered in.

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Mr. Donnelly stated that the regulations allow commercial vehicles to be used as part of the agricultural use, which is what this is. He stated that the trucks are a vital part of the agricultural use, and the use fits squarely within the exemption in 3.30.13G. Mr. Donnelly concluded that the ZEO's reliance on Table 6.2 was misplaced.

Mr. Donnelly stated that having commercial vehicles on the property as an accessory to the agricultural use has taken place for decades. He went over the various affidavits that were included in the Commissioners' packets. He stated that the language of the regulation clearly permits this use, and the trucks have been at the property long enough to create a grandfathered use.

Mr. Donnelly concluded that the regulations may violate the commerce clause of the United States Constitution.

Commissioner Turner requested five minutes to allow the Commission time to review the documents submitted.

Commissioner Turner asked if the client pays property tax on the trucks to the town. Mr. Donnelly stated that the LLC does.

Commissioner Turner stated that she got the impression that the trucks were also moving other peoples' products. Chairman LaRosa asked if the trucks are for hire, and are moving other people's products.

Owen Jarmoc, 33 School Street, stated that the trucks are an accessory use to the farm and are essential in moving their products. Chairman LaRosa asked if the trucks are used for other people to rent, to which Mr. Jarmoc replied that they are not. He stated that they had been in the past but they are currently too busy farming.

Commissioner Stroiney stated that farming operation is a vague term, to which Mr. Donnelly replied that the regulations are very vague in terms of defining farming.

Mr. Landolina went over what the state considers to be agriculture and described some examples such as crop cultivation, animal husbandry, fish farming, and the processing of these products. He stated that almost anything that happens on a farm can fit within the definition of agriculture.

Commissioner Stroiney questioned whether the trucks really fall under operations and how that is defined within the state statutes and the DOT rules. He stated that he needs some help with that bigger picture.

Mr. Landolina stated that the transportation of goods off of the site to market is included in the definition of farming. He went over the definition of a truck terminal and stated that these trucks are not being utilized in that way. Mr. Landolina stated that farms are commercial activities.

Mr. Donnelly stated that the language of the regulations is very important, and the regulation says "as part of."

Commissioner Davis asked how the company overview in their original packet is related to the farming. Mr. Donnelly stated that it refers to when the farm moves a vehicle such as an excavator from the main location to one of the other farms. Mr. Jarmoc stated that they have never hauled mail but it is not unusual for them to pick up building materials and transport them to another farm.

Commissioner Mastroberti stated that if the trucks were for private hire then it would be against the regulations. He suggested that they should make a note if they put this through that it will not cover private hire. Mr. Jarmoc explained that in order to register the vehicles with the DOT they had to pay the \$300 fee that marks them for hire. He stated that this is a technicality with the DOT as they do not govern farms separately like the regulations do.

Mr. Donnelly stated that the regulations are not specific and say "as part of" so it is a bit broader. He stated that it is difficult to understand what a truck terminal is since it is not defined in the regulations.

Chairman LaRosa asked if anyone would like to speak in favor or against the application; no one came forward.

Mr. Rachele stated that the photographs in the packets show the address of 128 Moody Road in the winter with one or zero trucks, so they are someplace else doing something else. He stated that the Facebook page shows the trucks in different locations delivering construction pads, Carris Reels, groceries and other non-farm items to various places. Mr. Rachele stated that the trucks are used for farm use to a certain extent, but they are also used as commercial vehicles to transport goods and other things that are not produced on the farm. He concluded that this is the definition of a truck terminal, which is what the violation is based on.

Commissioner Turner asked Mr. Rachele to elaborate on what he means by other things. Mr. Rachele stated that at the last meeting Mr. Jarmoc stated that they would be storing pumpkins and then transporting them, which is a warehousing and transportation company.

Mr. Jarmoc stated that they were delivering pumpkins and squash to Trader Joe's. He stated that a byproduct of the Carris Reels is wood shavings, which they use for their animals. He stated that the construction pads are environmental timber mats, which protect the environment. Mr. Jarmoc stated that all of these activities fit into the definition of agriculture.

Commissioner Stroiney asked if the material the applicant transports is either coming from or going to his farm. Mr. Jarmoc stated that all material they transport is coming to or going from his farm.

Mr. Donnelly stated that the applicant sells leftover products that they are not using. He stated that litigating the posts on a Facebook page is a bit of a stretch when there is very clear language in the regulations that permits this use.

Chairman LaRosa asked if anyone in the audience would like to speak in favor or against the application.

Ms. Pacacha read an email from Edward Sergel and Kelly Grandahl of 6 Park Street Unit 2 into the record. The letter stated that they do not want the loud trucks in their neighborhood.

Motion: Commissioner Turner made a motion, seconded by Commissioner Stroiney, to uphold the Zoning Enforcement Officer's Cease & Desist Order.

Commissioner Turner stated that she believes it is a farm use and the C&D is not valid. She stated that it is a permitted agricultural use and the farm needs trucks of this size and caliber to move their products.

Chairman LaRosa stated that he believes the C&D is valid. He stated that the state gives farmers 150 miles until they force them to register their vehicles so they become commercial vehicles. He stated that when the applicant decided to bring in multiple trucks to go across the country, they turned it from agricultural use for the farm to a trucking company. Chairman LaRosa stated that since they are bringing products from farms out of town to Enfield rather than transporting the products straight from the other towns to the market, they have created a trucking and warehousing industry.

Commissioner Turner disagreed, stating that a farmer has the right to have farms wherever he wants and should not be limited from working. She stated that they have the right to use their vehicles on any of their farms regardless of where the farms are located.

Commissioner Davis agreed with Commissioner Turner, stating that as long as it is his product with his trucks it is ok.

Commissioner Turner stated that farming is a difficult business and they should be careful how they treat farmers.

Commissioner Stroiney stated that he is concerned with whether a shipping company has been created, and he is not sure if the trucks being parked there is creating a terminal or not.

Commissioner Mastroberti stated that as long as the trucks are not for private hire in the future, he has no problem.

Commissioner Turner stated that a yes vote will uphold the violation and a no vote is for the applicant.

The motion passed with a 2-3-0 vote with Commissioners Turner, Mastroberti and Davis voting against.

Discussion took place regarding how many votes are required to overturn the enforcement order, with the Commission concluding that 4 votes are required.

Votes: 2-3-0

Chairman LaRosa and Commissioner Stroiney stated that they want to uphold the violation because they believe the applicant created a trucking company.

Commissioner Mastroberti asked for clarification on what the enforcement action will stop. Mr. Rachele stated that the issue is the transportation of materials other than what is produced on farms, such as groceries being delivered to grocery stores out of state. Commissioner Turner asked if this means he must remove the trucks, to which Mr. Rachele replied that he must as it is not allowed under the zoning regulations.

Ms. Pacacha stated that Staff will review the record and they should not continue to discuss it now that it is closed.

- b. **ZBA# 2021-04-29** – 20 Mathewson Avenue – Variance application to Section 4.10.3 to allow an increase in lot coverage to 22% where 20% is the maximum, and to allow 10-feet of rear yard where 35-feet is currently required; Martin & Sheena White, owner/applicant; Map 20/Lot 303; Residential-33 Zone.

Sheena and Martin White, 20 Mathewson Avenue, addressed the Commission. Ms. White stated that they are requesting a variance to increase their lot coverage and decrease their rear yard setback.

Ms. White stated that their lot is smaller than the neighboring properties, which is creating a hardship. She stated that they are removing a non-conforming ground level deck and replacing it with a paver patio, which will decrease the nonconformity of the lot by 6%. She stated that they also want to add a 120 square foot (SF) concrete pad for a swim spa that requires at least 4 feet of reinforced concrete.

Ms. White stated that they are hoping to have the same privileges that their neighbors have by obtaining this variance.

Commissioner Turner asked what the difference is between a concrete pad and a brick patio. Ms. Pacacha stated that the patio pavers make it less pervious. She stated that the issue with the concrete was not the setback, but rather the impervious coverage on the site.

Commissioner Turner asked why the concrete is considered different from the patio structure in terms of lot coverage. Mr. Rachele stated that the issue comes into play when there is a raised concrete structure supporting it.

Commissioner Turner stated that they are taking the deck out completely so the only thing left on their property is the house and they are still over 20%. Mr. Rachele stated that this is because permits were not taken out when certain things were done. He stated that it is not the current homeowners' responsibility but rather their predecessors.

Commissioner Turner stated that the house itself is over 20% due to the screened in porch and garage, to which Mr. Rachele replied that this is correct. Commissioner Turner stated that the property is causing the problem.

Ms. White described the dimensions and depth of the concrete. Commissioner Turner asked why the concrete pad cannot be considered the same as the pavers in terms of lot coverage. Mr. Rachele stated that under the regulations, if it is being placed into the ground it is counted as lot coverage.

Commissioner Turner asked why this item has to sit on a pad, to which Ms. White replied that the manufacturer's warranty requires this as a solid foundation. Commissioner Turner asked if the property has a water issue, to which Ms. White replied that it does.

Ms. Pacacha read the definition of coverage in the regulations.

Commissioner Turner asked why this concrete pad is considered different if they can put in a patio with blocks. Commissioner Stroiney stated that the blocks allow water to go through while concrete is solid. Mr. Rachele stated that this is why an inground pool is considered lot coverage while an aboveground pool is not.

Commissioner Turner asked if the driveway is considered in coverage, to which Mr. Rachele replied that they do not count driveways.

Commissioner Stroiney asked where the change in the setback comes into play. Ms. White stated that it comes into play because of the concrete, which she is considering as an accessory structure. She stated that she would need a decrease in the setback of the concrete pad.

Discussion took place regarding the wording of the motion and what exactly the Commission is voting on with this application.

Chairman LaRosa asked three times if anyone in the audience would like to speak in favor or against the application; no one came forward.

Motion: Commissioner Turner made a motion, seconded by Commissioner Davis, to approve the application.

Commissioner Turner stated that the applicant should have their pool and concrete pad. She stated that the property causes the problem in multiple ways, as it is too short and has a water problem. She stated that they are working hard to come into compliance.

Motion: Commissioner Stroiney made a motion, seconded by Commissioner Mastroberti, to remove the 10-feet of rear yard where 35-feet is currently required from the motion.

The motion to remove it passed with a 5-0-0 vote.

Votes: 5-0-0

Motion: Commissioner Stroiney made a motion, seconded by Commissioner Davis, to vote on the motion as revised.

Commissioner Turner read the revised motion. Discussion took place regarding the wording of the revised motion.

Motion: Commissioner Turner made a motion, seconded by Commissioner Davis, to approve ZBA# 2021-04-29 as amended.

The motion passed with a 5-0-0 vote.

Votes: 5-0-0

Chairman LaRosa stated that the reason for approval is that the property has a water table issue and the slab is required by the manufacturer.

Approval of Minutes

a. April 26, 2021 – *Regular Meeting*

Motion: Commissioner Turner made a motion, seconded by Commissioner Davis, to approve the minutes from the April 26, 2021 Regular Meeting.

The motion passed with a 5-0-0 vote.

Votes: 5-0-0

Correspondence/Staff Reports

Ms. Pacacha stated that there are no other ZBA applications in the office.

Commissioner Turner asked if the par report is back, to which Ms. Pacacha replied that it is. Commissioner Turner requested that these be sent to the Commissioners along with any past ones.

Other Business

a. Review of Application Forms

Ms. Pacacha stated that they want the auto location approval application form to match the K7 form from the DMV. She went over the revisions that had been made to the forms, stating that they tried to keep it all on one document page.

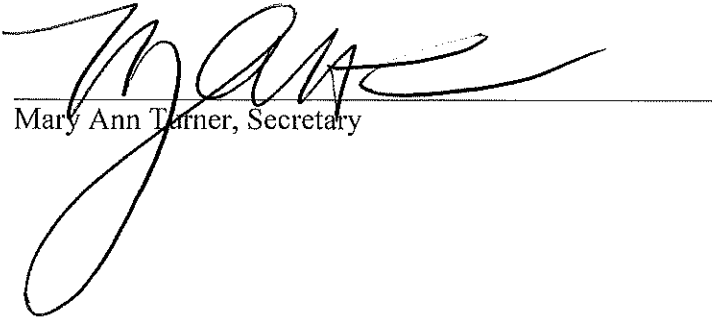
Commissioner Turner stated that the Commission needs to be careful about the language they use, as there were some language issues during the meeting regarding 710 and 718 Enfield Street. Discussion took place regarding the motions that took place during this meeting and what they meant.

Adjournment

Commissioner Turner made a motion to adjourn. The meeting was adjourned at 8:50 p.m.

Prepared by: Elizabeth Bouley, Recording Secretary

Respectfully Submitted,



Mary Ann Turner, Secretary