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ENFIELD ZONING BOARD OF APPEALS
SPECIAL MEETING
MINUTES
MONDAY JUNE 26, 2023 7:00 PM
ENFIELD TOWN HALL – COUNCIL CHAMBERS
820 ENFIELD STREET – ENFIELD, CT

Call to Order & Pledge of Allegiance

Roll Call

Commissioner Turner read the roll and present were Commissioners Andrew Urbanowicz, Timothy Neville, Kelly Davis, Mary Ann Turner, Charles Mastroberti and Richard Stroiney. Absent was Commissioner Robert Kwasnicki.

Also present were Laurie Whitten, Town Planner, Ricardo Rachele, Zoning Enforcement Officer and Rebecca Jones, Recording Secretary.

Town Attorney Report

An updated report was circulated by staff prior to the meeting. Commissioner Turner asked for staff to deliver materials earlier than immediately prior to the meeting. Chairman Urbanowicz shared a brief overview of the report's contents for Commissioner Turner.

Old Business

- a. **ZBA 2023-04-10 - 110 Raffia Road** – Appeal of Cease & Desist Order for Section 4.20 Residential uses; Raffia Farms Inc, Applicant/Owner; Map 67/Lot 432; R33 Zone

Commissioner Urbanowicz recused himself from the public hearing and seated Commissioner Stroiney in his absence.

Commissioner Urbanowicz appointed Commissioner Neville to Chair.

Motion to take ZBA 2023-04-10 off the table made by Commissioner Turner; seconded by Commissioner Davis and approved unanimously by a 5-0-0 vote.

Attorney Landolina was present on behalf of the applicant. He distributed a packet to the commissioners of the same document received at the last meeting however this is now appropriately numbered for easier review and discussion. No new information was included in this packet per Attorney Landolina. He also distributed a copy of the Town of Enfield Zoning Laws effective March 13, 1925. A copy of a zoning map was also given to the commissioners.

Attorney Landolina gave a brief review of the cease and desist and the previous hearing. The question before the commission is if this property has been grandfathered in as a pre-existing nonconforming use. He argued that there has been no abandonment of its use since its inception, the current use is permissible by law and shared similar court cases confirming the same. Attorney Landolina reviewed several documents from the packet distributed which supported the

argument that the use has been well known in the neighborhood. Minutes from a Planning and Zoning Commission meeting in 1992 made note of the building and use in question. Several personal letters were shared attesting to the use and its longevity. A street map of the town was included which showed Demond Construction Company was listed at 116 Raffia Road. Attorney Landolina reviewed the earliest available zoning records, which go back to 1930. In his review, he did not see a zoning permit ever issued to Schneider. He also noted there was a large gap in the records during the 1940's. He shared a copy of a zoning map dated 1961, which did not list 110 Raffia Road as residential.

Commissioner Turner referred to the meeting minutes from 1992, which refer to the building as a pole barn and then later a shed. She also made reference to a portion of the minutes which states that the building is on Lot 4 and will be removed if Lot 4 is used for residential development. Attorney Landolina explained that because Lot 4 was never used, the building was never removed. He shared documents from 2001 confirming the same. He argued that subsequent owners have used it for the same use since the 1930's and the lot meets all other frontage requirements otherwise.

Commissioner Turner asked Mr. Rachele if there was any record of these businesses registering or paying taxes to the Town. He was unable to find anything regarding taxes other than the property has been taxed as open space since 2013. Commissioner Neville asked Mr. Rachele what the proper process is for a business opening in Enfield. When the property was purchased, there was a mention in the warranty deed that the property is subject to zoning restrictions by the Town of Enfield. Commissioner Neville also questioned why permits are not required when diesel equipment and similar operations are occurring. Attorney Landolina rebutted that without a change of use, a zoning permit is not required.

There are 3 bays with 3 tenants, which was Mr. Raffia's intent when purchasing the property. Commissioner Turner argued that the type of businesses using the building has changed, making it not within the purview of a lawful preexisting non-conforming use. Attorney Landolina argued that there can be conditions placed upon who rents bays from the owner. There was discussion as to what the original intended use was. Ms. Whitten provided clarification related to allowed uses for contractor storage yards. Commissioner Stroiney argued that the use has become more non-conforming over time and there is a duty owed to surrounding landowners to follow the zoning laws. Commissioner Neville brought up potential environmental concerns and Attorney Landolina argued that is not what is before the Commission to discuss. Mr. Rachele opined that the intended use was farming as that is what it has been historically taxed as. Commissioner Neville raised his remaining concerns, which echoed those of Mr. Rachele.

The zoning map was discussed in further detail. Ms. Whitten attested that she was the one who copied the map for Attorney Landolina. Mr. Rachele stated that the signed map that was provided was from 1961 and revised in 1972. He has no idea why the zoning districts were changed between those times. Details of these maps were debated by Attorney Landolina and the commissioners. Commissioner Stroiney asked Mr. Rachele what Business A represented in the original zoning regulations, which typically were small businesses. Attorney Landolina opined it is much more complex than the answer provided by Mr. Rachele. He read sections of the original zoning regulations to support his argument. Commissioner Turner noted that it does say in these

regulations that cement was not allowed in that zone. The 65-day window is ending and the commissioners and Town staff discussed best next steps.

The public hearing was opened for comment.

Bob Herdman, 108 Raffia Road, spoke for the first time. He submitted renderings of four maps that were already filed as part of the original packet for the April meeting. Mr. Herdman reviewed the renderings and the structural changes to the property over time. He requested that the residential subdivision be preserved and protected by upholding the cease-and-desist order. After speaking with the neighbors, he believes that Mr. Bull intended to build on lot 4 and tearing down the accessory building in question. Mr. Herdman opined that all the testimony submitted by Attorney Landolina speak to activities prior to 1988, which is when the parcel was subdivided into a residential parcel. He shared drone photos from 2022 and 2023, which show significant activity over the last year.

Attorney Landolina shared closing comments. He argued that the building meets all the criteria for a nonconforming use. He urged the commissioners to watch the prior meeting to review previous testimony.

Commissioner Neville offered a second round of public comment.

Bob Herdman, 108 Raffia Road, spoke for the second time. He stated that Mr. Bull has subdivided Lot 4 away from the main parcel and is consistent with the intent of creating building lots.

Justin D'Alia, 8 Harrison Avenue, spoke and opined that the business type has changed considerably over time.

Motion to close the public hearing made by Commissioner Turner; seconded by Commissioner Stroiney and approved unanimously by a 5-0-0 vote.

Commissioner Davis asked staff if they were able to find the minutes from 2001 when Lots 1 and 4 were redone. Mr. Rachele replied that he did not look for or find those minutes. Commissioner Davis wanted to review those minutes to see if there was anything regarding the abandonment of the use and its nonconforming status. Because the public hearing has been closed, any further information cannot be included. Commissioner Turner opined that although the use may have continued for several years while the Commission turned a blind eye, it still does not make it right. The Town has proven that it is an R33/farm zone but it is not a business or industrial use. It needs to be brought into uniformity with the rules that surround the property today. Commissioner Neville struggled with the use as legal nonconforming because it has evolved over time. The use does not fit any of the other zoning rules for R33 zones. He discussed the 3 questions presented to the ZBA by the Town attorney to factor into their vote.

Motion to approve ZBA 2023-04-10 made by Commissioner Turner; seconded by Commissioner Stroiney and failed by a 2-3-0 vote.

Motion to take a five minute recess made by Commissioner Turner; seconded by Commissioner Davis and approved by a unanimous vote of 5-0-0.

Chairman Urbanowicz re-joined the meeting at 9:37 pm.

8. New Business

- a. ZBA 2023-04-27- 90E Elm Street- Application seeking relief from Section 10.30.5 Signs in Business Districts' Raising Cane's Chicken Fingers, Applicant; Enfield Square Realty LLC and CH LLC and Enfield Nassim LLC, Owners; Map43/Lot 28; BR-Zone

Commissioner Turner read the legal notice into the record. Applicant representatives were present for discussion. Site map was presented for discussion. They are requesting a sign variance for the rear of the building. The language of the code requires that a variance be requested due to the sign's location. Signage is needed in this location because there will be no other way to alert vehicles traveling the mall's ring road of Raising Kane's location. There are no other entrances on the main road. This site has already received approval from IWWA and PZC. There is another sign facing Elm Street.

Commissioner Neville confirmed that the applicant is within the total square footage of the signs, which they are. Commissioner Turner confirmed with Mr. Rachele that the applicant is within their square footage requirements but are seeking the variance solely due to placement. Commissioner Neville confirmed the sign is internally luminated.

Chairman Urbanowicz opened the public hearing for comment. No one spoke for or against the application.

Motion to close the public hearing made by Commissioner Stroiney; seconded by Commissioner Neville and approved by a unanimous vote of 5-0-0.

Motion to approve ZBA 2023-04-27 made by Commissioner Turner; seconded by Commissioner Neville and approved by a unanimous vote of 5-0-0.

Motion to extend meeting past 10:00pm made by Commissioner Turner; seconded by Commissioner Neville and approved by a unanimous vote of 5-0-0.

- b. ZBA 2023-05-23 – 65 Park Ave – Application seeking relief from Section 3.30.7 ss IV Accessory Accessory Building; Adam Hull, Applicant/owner; Map 39/lot 27; Zone R-33

Commissioner Turner read the legal notice into the record. Owner/applicant was present for discussion. Mr. Hull contacted the Building Department to see if a building permit would be required for a backyard greenhouse. He was told to keep it under 200 square feet and under 15 feet high, a permit would not be required. He was not told to contact the Planning Department or take any further action with the Town. His lot is a through lot and is in violation of the zoning codes for through lots however the area in which he would have been approved is an are of his property that floods on a regular basis and the ground is extremely wet. The Town placed a drainage system before he bought the property, where the drains are far above the area of his

yard that floods and he cannot build in that area without major complications to the building or the drainage system.

Upon receipt of the violation, Mr. Hull contacted Mr. Rachele and asked how he could keep his greenhouse and was guided by Mr. Rachele to appeal. After appearing before this commission during the April meeting, he learned that this was not the correct course of action leading him to this variance request. Mr. Hull clarified that despite Town staff comments, he was never told to apply for a variance instead of an appeal. He thanked the commissioners for their guidance at the past meeting. Mr. Hull also noted that the staff photos shared with commissioners were from the winter months and the water issues always peak during the spring. He shared other water issues on the site, including his garage. He shared other major structural changes that would have to occur on the lot should he have to move the greenhouse. He shared a petition with neighbor signatures supporting the Hull's greenhouse.

Commissioner Turner asked Mr. Hull to explain where the alternate locations of the greenhouse would be. Commissioner Neville asked about trees on the property. Mr. Hull shared other details of the lot with the commissioners. Chairman Urbanowicz asked if the garden area and the greenhouse area could essentially be 'flip flopped'. Mr. Hull noted the area would be more shaded and water gathers in that area as well. The greenhouse is at the highest elevation with the most amount of sun on the lot. Commissioner Neville asked why the staff report states that the topography map has the property at 120 degrees with no elevation. Mr. Hull shared history of the water issues on the lot as told by his father-in-law. After concentrated action made by concerned residents, the Town acted by installing the aforementioned drainage system. There are still flaws but it has improved road flooding. Commissioner Neville asked about the accuracy of the site plan measurements.

The public hearing was opened for comment.

Debra Dwyer, 14 Harrison Avenue, spoke in support of the greenhouse. Her front yard looks directly across to the Hull's home. She has lived there for over 30 years and the water flooding issues continue to get worse. She loves seeing the children in the neighborhood playing and growing food in the greenhouse together.

Justin D'Alia, 8 Harrison Avenue, owns and manages 5-7 and 9-11 Harrison Avenue. He is constantly dealing with drainage issues. He attested to the flooding between his yard and Mr. Hull's yard. Mrs. Hull shares her fresh produce with the neighbors and Mr. D'Alia starts his seeds in the greenhouse.

Motion to close the public hearing made by Commissioner Turner; seconded by Commissioner Neville and approved by a unanimous vote of 5-0-0.

The commissioners discussed the setback and the best course of action regarding relocation of the greenhouse.

Motion to approve ZBA 2023-05-23 made by Commissioner Turner; seconded by Commissioner Davis and approved by a unanimous vote of 5-0-0.

c. ZBA 2023-06-08 – 66 Enfield St – Application for Automotive Location Approval; Joel Wheeler, Applicant; 66 Enfield St, LLC, Owner; May 35/Lot45; BG Zone

Commissioner Turner read the legal notice into the record. Applicant representative was present for discussion. Commissioner Turner confirmed with the applicant that the address in question was correct. This application is for a powersports dealership, similar to their other location on Palomba Drive.

Motion to approve ZBA 2023-06-08 made by Commissioner Turner; seconded by Commissioner Neville and approved by a unanimous vote of 5-0-0.

Approval of Minutes

a. April 24, 2023

Commissioner Turner noted spelling errors on page 5 from ‘no come’ to ‘not come’. Commissioner Davis recommended a global change to change Mr. Hull’s name from Mr. Hall to Mr. Hull.

Motion to approve April 24, 2023 meeting minutes as amended made by Commissioner Stroiney; seconded by Commissioner Neville and approved by a unanimous vote of 5-0-0.

Correspondence / Staff Reports

Mr. Rachele shared information with the commissioners regarding similar sized towns and the fees they charge for appeals. Enfield is one of the only towns that does not charge for an appeal. Commissioner discussed best next steps and agreed that the fee of \$120 be reinstated until future discussion. Council approval will be needed to set a new rate.

Motion to reinstate fees for the appeals at the previous rates made by Commissioner Stroiney; seconded by Commissioner Neville and approved by a unanimous vote of 5-0-0.

Other Business

Mr. Rachele requested that the July ZBA meeting be moved a week earlier due to scheduling. All staff was agreeable to the date change.

Motion to move the July ZBA meeting to July 17, 2023 made by Commissioner Davis; seconded by Commissioner Stroiney and approved by a unanimous vote of 5-0-0.

Commissioner Turner shared an update regarding the state legislation changes.

Adjournment

Motion to adjourn made by Commissioner Stroiney; seconded by Commissioner Neville and approved by a unanimous vote of 5-0-0.

The meeting was adjourned at 10:47 PM.

Prepared by: Rebecca Jones

Respectfully Submitted,

MaryAnn Turner, Secretary