

**TOWN OF WINDSOR
ZONING BOARD OF APPEALS**

**Hybrid meeting held on April 20, 2022, @ 7:00 p.m.
Ludlow Room and Online
Unapproved Minutes**

Present: Commissioners Joe Breen, Raney, Kirkwood, Bolduc, and Durant.
Alternate Commissioner Dawn Kirkwood was seated for Commissioner Robert Griffiths.
Alternate Commissioner Jim Durant was seated for Commissioner Max Kuziak.
Commissioner Lorretta Raney (arrived at 7:27 p.m.).
Staff: Eric Barz, Town Planner

I. CALL TO ORDER – PUBLIC HEARING:

The meeting was called to order at 7:02 p.m. by Commissioner Breen in the Ludlow Room.

A. READING OF PUBLISHED HEARING NOTICE:

Commissioner Bolduc read the full Public Hearing Notice into the record.

B. READING OF PROCEDURES TO BE FOLLOWED:

Commissioner Kirkwood read the statement of procedures for the presentation of a variance application and appeals. Hearing no comments, the hearings proceeded.

II. PUBLIC HEARINGS:

A. CASES HEARD DURING PUBLIC HEARING:

1. #22-02 – 1208 Poquonock Ave., Section 4.1.1 – minimum lot size. Matt Genakopolis was present from the CT Department of Transportation (DOT) at 2800 Berlin Turnpike in Newington, CT. DOT has a project to repair a failing culvert under Route 75. As part of the project, they'll be reconstructing the end wall of a culvert and pushing it away from the road and into the property at 1208 Poquonock Ave. DOT is proposing to acquire 1,008 square feet of property from the owner. The lot now is non-conforming. It consists of approximately 24,581 square feet, the minimum required in the zone is 27,500 square feet and after the proposed acquisition the amount will be 23,573 square feet. State statute 48-24 states that when a condemning authority such as DOT is acquiring less than the total amount of a piece of property if the remaining portion of that property doesn't meet the minimum lot size standards set by local zoning, we must first obtain a variance. Commissioner Breen asked if all the

abutters have been notified of DOT's intentions. Mr. Genakopolis said yes, all have been notified. Commissioner Breen asked Mr. Barz if the town had received any communications for or against the project. Mr. Barz reported that he received a voice message from Mrs. Martin of 1208 Poquonock Avenue, who was unable to attend the meeting, and that she is 100% in favor of this application.

Discussion:

Jim Durant had two questions. It was his understanding if the ZBA doesn't approve the variance then the DOT will take the whole piece of property. Is that correct? Mr. Genakopolis stated that the way the statute reads is if they were to continue the acquisition as proposed they would have to take title to the whole property. What they would do if the variance was denied is go back to the design team and see if they could eliminate the need for this acquisition by pulling in the culvert. That would be the first option. The second option would see if an easement could be acquired instead of a full acquisition because that wouldn't trigger the statute because the lot size would remain the same as it was. Mr. Genakopolis stated he knew the next question would be why not start with an easement, to begin with. The reason is based on the department's experience that it is better to own the land the structures rest on. It makes our rights and the property owner's rights clearer and they don't have an end wall supporting the highway on their property. The preferred option is to own the land this end wall will sit on in fee.

Commissioner Durant's other question was what it does with the taxes for the property. Will the town lose the taxes from the property? Mr. Barz addressed the question by stating this would be best answered by the Tax Assessor but his understanding is that taking away 1,000 square feet from the property would have a nominal if any, effect on the taxes.

Public Comment – None

Zoning Enforcement Officer Comment: Mr. Barz had no comments. If the property owner wishes to stay in the house despite this taking then he would recommend the approval of the variance.

2. #22-03 – 98 Niles Road, Section 4.1.1 – front yard setback. The property owner Diane Higgins was present to speak on behalf of the application. Ms. Higgins would like to construct an addition to the house to allow them to stay in the home. It is an older house that was built before the setbacks. She is requesting a 20-foot variance. Commissioner Mr. Breen asked if it was true that the home predates the current zoning regulations and Mrs. Higgins stated, yes that is correct. He also asked if she felt this was her hardship and she stated yes.

Discussion:

Commissioner Bolduc asked for clarification that the addition will not be even with the front of the house. It's going to be set back, correct. Mrs. Higgins verified yes, it will be set back.

Commissioner Breen asked if all the abutters were notified and Mrs. Higgins stated yes and she dropped off the confirmation to the town. Commissioner Breen asked Mr. Barz if any communication had been received from abutters. Mr. Barz stated he had not received any.

Public Comment: Patrick Higgins of 1207 Poquonock Avenue was in favor of the application. There was no other public comment.

Zoning Enforcement Officer Comment: Mr. Barz stated given the older nature of the neighborhood and the non-conforming setback of this and other houses and the fact that they made an attempt to set the addition more than 10 feet beyond the face of the front porch of the house, I think that this a reasonable request.

3. #22-04 – 374 Windsor Ave., Section 3.3.5 (f) – parking ratios. The applicants Kameika Richardson and Anthony Peay were present via Zoom. Ms. Richardson stated they are trying to open up a takeout restaurant only. Mr. Peay described it as a snatch and grab where people will call to order and pick up. There will be no dining in. No one should wait more than 15 minutes for their food. The other businesses around have agreed to let them use parking spaces. The landlord at 378 Windsor Ave. has said they could use their parking. There will be no delivery trucks. The owners will be picking up food and supplies and bringing it in. Commissioner Breen stated the parking regulations require 29.3 spaces. The applicants are requesting 5 parking spaces with a variance request of 24 parking spaces. Commissioner Breen asked what is their proof of hardship and unique about their property. Mr. Peay stated that he didn't know he could attend the meeting in person. He stated that he had a presentation with a video to share that shows how busy the street is on certain days.

Commissioner Breen asked the applicants if they read the staff comments. They stated that they had. Commissioner Breen asked if they would like him to read them and go over them with them or comment on their suggestions. Ms. Richardson stated that there will be no delivery trucks and the wait time will be about 15 minutes maximum. Commissioner Breen stated that it is required to have adequate space for delivery trucks, dumpsters, and disposal of oils and all that is supposed to take place in an area that can barely handle 5 parking spots and the town requires 29. Commissioner Breen asked if they thought 5 parking spots would be enough for their business. Mr. Peay stated

that there is also off-street parking and on the days they are open the other shops around them are closed around us so there is more than enough parking. Commissioner Breen asked how much space they thought the dumpster would take up. Mr. Pay said about 4 feet. Commissioner Breen asked how much space would the disposal of oil take. Mr. Peay said there is a place in the back of the building for all that.

Discussion:

Commissioner Bolduc stated that he drove by there and he's not clear on where the business will be. Where exactly in that building will the business be? Ms. Richardson said in the back on the side of the barbershop.

Commissioner Durant asked how many days a week will they be open and what days will they be. Ms. Richardson replied that they will be open four days a week – Sunday, Monday, Thursday, and Friday. They will be in there by 11 a.m. cooking and prepping and thinking about Thursdays and Fridays to be open from 1-7 p.m. On Sundays and Mondays, the other businesses (Barbershop and shoe store) aren't open on those days and they were thinking about opening from 12-6 p.m.

Commissioner Durant also asked what will prevent your customers from just eating in the parking lot. Ms. Richardson stated that there will be signs posted for no standing or loitering and no parking.

Commissioner Rainey stated that she did drive by and went down the driveway and wasn't able to turn around. She ended up having to back her vehicle out onto Windsor Avenue and it was challenging because it's busy almost any time of the day. There's not a lot of room there.

Commissioner Breen stated that we have comments from the Fire Marshall as well. They stated the one-way access to the driveway and limited parking may make access difficult. He asked if they had any comments. Mr. Peay said the Building Inspector didn't say too much and that everything looked fine to him.

Commissioner Kirkwood appreciates the information on when they will be open but there is nothing saying that either the applicants or the other businesses will maintain those days. The variance goes with the property. It's not just for the applicant's use so those are a lot of her concerns in addition to the traffic and other concerns mentioned.

Commissioner Breen, getting back to the hardship, stated that the town requires 29.5 parking spaces and you will only have 5 parking spaces. What is the legal hardship? What is unique about this property for the town overlook the required parking spaces for this property? Mr. Peay said that he has made

it into something. It's a space just big enough for the two of them to work together and build a startup business. This is a perfect place for them to start at.

Commissioner Breen asked if this is the same parking lot that is being shared with the other businesses. Mr. Peay stated yes. Commissioner Breen stated so now we are down to 5 parking spaces for 3 businesses. Is that correct? Mr. Peay said yes.

Public Comment: There was no public comment.

Zoning Enforcement Officer Comment: Mr. Barz stated that the staff comments speak for themselves but he touched on some of the high points. The property has many non-conformities. Parking is one of them as well as access to the rear is by a single lane. The staff has doubts about a garbage truck being able to go down that alley and tip a dumpster and then back out of the alley because they can't turn around. Also, customers having to walk down that alley as well as cars, it could create hazards. Access to emergency vehicles is an issue. Backing into Windsor Avenue is not allowed by zoning and this is an existing non-conforming property. Any new use requires an adequate maneuvering area so that cars could pull in and park and finding there wasn't any available space there would be sufficient space to turn around and leave without having to back out into the street. This property does not meet any of those basic requirements and varying 24 of the 30 spaces would create a situation far worse than what is happening on Tunxis Street. The Tunxis Grill had a small parking lot of its own and had some town parking. They were granted a variance and residents on the street have been complaining ever since about traffic and parking on the street. The applicant has made numerous comments about neighbors agreeing to let them use that parking and while that may be suitable on Mondays and Sundays, they intend to operate other days of the week. Like Commissioner Kirkwood pointed out, there is no condition of this Board that would limit them from operating seven days a week, and under zoning regulations, off-site parking is not counted unless there is a written agreement.

Public Comment:

John Gibson, the landlord at 374 Windsor Avenue, raised his hand via Zoom. He stated that he has talked to a few of the landlords and they are pretty sure that they will assist us with the parking. He offered to bring in the paperwork signed by the other landlords if the Board is willing. Commissioner Breen repeated that the variance would be a part of the property even though other businesses and neighbors could come and go and their decisions could easily change over time that's why we are just looking at this particular property and what's available for parking and do not foresee the future in any way regarding

other business owners, properties and neighbors. Commissioner Breen asked if Mr. Gibson had any other comments. Mr. Gibson stated that he thought it would be very beneficial to have this business in the neighborhood and he doesn't think the traffic is going to be a problem in this area at all.

III. CLOSE OF PUBLIC HEARINGS:

Chairman Breen CLOSED the Public Hearings at 8:47 p.m.

IV. COMMENCE REGULAR BUSINESS MEETING

Chairman Breen OPENED the Regular Business Meeting at 7:43 pm.

1. CASES HEARD DURING THE PUBLIC HEARING

- a. #22-02 – 1208 Poquonock Ave. – Section 4.1.1 – Minimum lot size

MOTION: Commissioner Dawn Kirkwood

SECONDED: Commissioner James Durant

DISCUSSION:

Commissioner Kirkwood stated in light of the fact that the property owner who is most impacted and is affected for all the other reasons, it makes sense to grant the variance and she would be in favor.

VOTE: 4-0-1 (Commissioner Rainey abstained)

- b. #22-03 – 98 Niles Rd. – Section 4.1.1 – Front yard setback

MOTION: Commissioner Dawn Kirkwood

SECONDED: Commissioner George Bolduc

DISCUSSION:

Commissioner Kirkwood stated the applicant made the point that the hardship is that the home predates the zoning regulations. All efforts were made with the proposed extension to set it back even further than the existing structure and it seemed like a reasonable request.

Commissioner Bolduc stated the new addition is going to be set back from the front of the house and a lot of the properties on that street predate the zoning and are less than 40 feet from the road. It will not make the house stand out from the rest of the neighborhood.

VOTE: 4-0-1 (Commissioner Rainey abstained)

c. #22-04 – 374 Windsor Ave. – Section 3.3.5 (f) – Parking ratios

MOTION: Commissioner George Bolduc

SECONDED: Commissioner Joseph Breen

DISCUSSION:

Commissioner Durant asked what year the property was built. Mr. Barz stated that he didn't have that information on hand but that the property likely predates the zoning we now know. Commission Durant then asked does that means that the current zoning doesn't apply because it predates zoning. Mr. Barz stated no, it's not that simple.

Commissioner Breen stated that he is not in favor of this application. It's not just the parking. It's the access off of Windsor Avenue, the dumpster, emergency vehicle access, and the applicants didn't establish a hardship. He will be voting not in favor of this application.

Commissioner Bolduc asked Mr. Barz if the required 29.5 spaces are for the entire property. Mr. Barz said that the parking demand is for a retail store, a barbershop with a certain number of chairs, and a restaurant. Commissioner Bolduc asked for clarification if the variance is assessed to the entire building, not just for their business. They have 500 square feet, is it possible for 2 parking spaces. Mr. Barz stated that the building is already very non-conforming with respect to parking and to your point, as long as the building remains retail and service uses then the non-conformity is fine, but when you start adding a use that has a higher parking demand, you are expanding the non-conformity.

Commissioner Durant asked if this doesn't go through do they have another opportunity to present their videos or anything else. Commissioner Breen stated that they would have to reapply and start the process all over again. Commissioner Durant asked if we could offer them that opportunity. Mr. Barz stated that he could ask the applicants if they would like a continuance. Commissioner Breen spoke to Mr. Pay and explained the situation and offered them to move forward with a vote tonight or to continue the application until next month. Mr. Pay stated he wanted them to vote tonight. They have been waiting a while on this and want an answer.

VOTE: 0-4-1 (Commissioner Rainey abstained)

2. New Business

a. Communications from the Public – None

b. Minutes acceptance from March 16, 2022

Motion: Commissioner James Durant

Seconded: Commissioner George Bolduc

Vote: 5-0-0

c. Communications from Board Members

Commissioner Bolduc addressed the Chair and asked if there was any way the Board could request that the applicants give a little more information like a picture or a drawing. Some of the writing and dimension are very hard to see and is so small. Is it possible that it could be blown up larger for Commissioners to see the information better? Commissioner Breen agreed that it can be hard to see and encouraged Commissioners to drive by and visit the properties in person when they can.

d. Communications from Staff Liaison

Mr. Barz stated that right now we have an interim building official who is the South Windsor Building Official. He is being spread pretty thin right now as he is shared with South Windsor, East Windsor, and ourselves, so we see him a few hours a week. Zoning enforcement has fallen to Mr. Barz. He has a number of issues that are currently out there. A couple of tractor-trailer rigs in residential zones, some unregistered vehicles, some junk cars, boats, and trailers, and an animal complaint. Commissioner Breen asked if boats are allowed to be stored in driveways. Mr. Barz said they are not allowed to be stored in driveways. Boats and campers need to be stored on the side or rear of houses and we limit the size of those to trailers no longer than 25 feet. Commissioner Breen asked if there were notices out that the town is looking for more employees upstairs. Mr. Barz said yes. We have advertised in the newspapers and with professional organizations. With Covid, the CAZEO training and CT Building Official programs have been suspended, so there is quite a shortage of qualified people right now for both positions.

3. Old Business – None

V. ADJOURNMENT:

MOTION: Commissioner George Bolduc made a motion, seconded by Commissioner Dawn Kirkwood to ADJOURN the meeting at 8:12 p.m.

VOTE: 5-0-0

Respectfully submitted,

Andrea Marcavitch, Recording Secretary

I certify that these
Minutes were accepted on:

Loretta Raney, Secretary
Zoning Board of Appeals