



TOWN OF OXFORD
S.B. Church Memorial Town Hall
486 Oxford Road
Oxford, Connecticut 06478-1298
www.Oxford-CT.gov

Zoning Board of Appeals

TOWN OF OXFORD
ZONING BOARD OF APPEALS
Meeting Minutes
\July 29, 2019 – 7:00 PM

Call to Order

Chairman Jeff Holmes called the meeting to order at 7:04 PM.

Roll Call

Present: Jeff Holmes, Brett Olbrys, Larry Ellis, and Paul Aiksnoras (arrived at 7:07 PM).
Also Present: Steve Macary, ZEO and Jessica Pennell.

PUBLIC HEARING

ZBA Application - Z-19-A1 – New England Septic System of 110 Hawley Road.

Chairman Jeff Holmes opened the Public Hearing.

Brett Olbrys read the Legal Notice for the Public Hearing.

Chairman Jeff Holmes invited comments from the public.

Attorney Steven Kulas, representative for the applicant, submitted the proof of mailings with return receipt cards. He outlined of the events leading up to the issuance of the Cease & Desist Order. He explained that in 2017 various issues arose between certain property owners. He noted that during that time, Mr. Werden of 110 Hawley Road spoke to Steve Macary, ZEO and was told by Mr. Macary that there were no issues regarding his property. He stated that subsequently, there was a complaint by one of the neighboring property owners claiming that there was a host of things wrong with Mr. Werden's property; as a result of the complaints, Mr. Macary examined the property and issued a Cease & Desist Order.

Attorney Kulas stated that the Cease & Desist Order questioned the validity of his client's previous permits and approvals; Mr. Macary claimed that the permits were null and void. One violation cited in the letter claimed that his client operates a contractor's yard, but did not apply for a special exception. He noted that on behalf of his client, he appealed to the Planning & Zoning Commission and the Zoning Board of Appeals because it was unclear which entity had jurisdiction. It was concluded that the appeal should be filed and heard

by the Zoning Board of Appeals. He explained that what is in front of the board tonight is their appeal of the Zoning Enforcement Officer's decision to place a Cease & Desist on the property. He referred to a letter written by Town Counsel, Kevin Condon which points out that the original use was granted in 2002 before the Zoning Regulations required a special exception for a contractor's yard. He noted that Attorney Condon states in his letter, that no special exception was necessary at the time of the permit approval. He also noted that every time his client did something on his property a permit was applied for and approved.

Attorney Kulas handed out a packet of information to the board members. He went over the contents of the packet and concluded that all permits are still valid and therefore there is no need for his client to get additional permits. He believes that Town Counsel agrees with him and for those reasons they are requesting that the Cease & Desist Order be rescinded. He noted that the packet also contains a letter from a nearby property owner, in support of his client.

Larry Ellis questioned a document submitted by Attorney Kulas regarding Article 1 (Districts), of the Zoning Regulations, and asked if this was the definition, at the time, in the Planning & Zoning Regulations of the Town of Oxford.

Attorney Kulas stated that is correct.

Brett Olbrys asked Attorney Kulas the main reason why they are appealing the decision.

Attorney Kulas stated that the issue is that they have a valid, existing permit and there is no need for them to apply for another permit and appear before the P&Z Commission as long as they maintain their activities as permitted in 2000.

Brett Olbrys questioned if the impudence wasn't the Cease & Desist Order.

Attorney Kulas stated that it is because if they didn't come and appeal before the board tonight, his client would have to shut down his business. He commented that the reason, from the Cease & Desist Order added additional requirements to the application that the Planning & Zoning Commission previously approved unanimously, based on the regulations in effect at the time of that approval.

Steve Macary, ZEO stated that Mr. Werden came to his office and told him that his property was all set. After that, he received several calls from them about Mr. Tommy Beard, calls to himself and the Chairman of Planning & Zoning. He also said that he was receiving calls from Mr. Beard, who was also contacting the Chairman, the Fire Chief, and the Building Official. He commented that the calls were complaints about their activities and permits; it was two neighbors fighting. He stated that he went to the Planning & Zoning Commission and told them about the complaints he was receiving from both parties. He asked for the Commission's direction and was told to issue the Cease & Desist. He explained that if ZBA approves or denies their appeal, they still have to apply for a Special Exception from the Planning & Zoning Commission for a new use permit, which is what he is being told by the Planning & Zoning Chairman and Peter Olson, Land Use Counsel.

Brett Olbrys questioned who approved the Cease & Desist.

Steve Macary, ZEO stated it was approved by the Planning & Zoning Commission and Arnie Jensen.

Brett Olbrys questioned if it was stated on the record.

Steve Macary, ZEO commented that he is not sure.

Steve Macary, ZEO stated that they had no intention of shutting down their business.

Larry Ellis stated that the decision of whether they need a new permit is not up to this board.

Steve Macary, ZEO stated that he is just letting them know that they will have to come in and fill out another application.

Larry Ellis questioned a document in Attorney Kulas' packet and referred to page 22, which noted that on 3/4/04, the regulations were changed. He referred to the portion that noted that in 2004 contractor's yards changed from a permitted use to a use that required a special exception.

Steve Macary, ZEO stated that another issue is that the property is an expansion of a non-conformity.

Attorney Kulas stated that what is before this board right now is if they are going to dismiss or uphold the Cease & Desist Order.

Brett Olbrys stated that Article 19, Section 19.2 states that the ZEO has to provide notice before a Cease & Desist Order is issued, he stated that if no notice was ever provided prior to the Cease & Desist, the Cease & Desist may not be valid.

Steve Macary, ZEO stated that he does not believe they were sent any prior notice.

Attorney Kulas agreed with Mr. Olbrys point of validity regarding the Cease & Desist, and it could be a consideration for granting the appeal. He commented that there was no notice and the procedures outlined in the zoning regulations were not followed. He stated that they are also appealing on the basis that they have a valid permit that was obtained in conformance with the zoning regulations in effect at the time of approval, therefore, the Cease & Desist Order should not have been issued. He commented that these items have been substantiated by Kevin Condon's opinion.

Jeff Holmes questioned if Attorney Condon stated that they have to come back for a permit.

Steve Macary, ZEO explained that Attorney Condon did not say they needed to come back for another permit; the Chairman stated that they would have to come back for a special exception because they expanded the use.

Brett Olbrys questioned why they would have to apply for a permit.

Steve Macary, ZEO stated that they would have to apply for a new use permit because their permit doesn't specifically state that it is a "contractor's yard". He stated that the zone is complicated because they live there, and they've always lived there, they have a business there and there are other properties like this one, the Town changed the zone.

Attorney Kulas reiterated that all this board has to do is make a decision on whether or not the Cease & Desist Order should be rescinded.

Joseph Licnickas of 103 Hawley Road spoke in favor of Mr. & Mrs. Werden.

Steva Werden, 110 Hawley Road stated that they received the Cease & Desist in the mail; it was not sent as certified mail. She stated that after receiving the letter, they contacted the office, and were issued a FOIA from Attorney Condon. She stated that she exchanged emails with Jessica and Chairman Luff, who was unaware that the Cease & Desist order was issued. She stated that her husband spoke to Chairman Luff while he was on vacation. She noted that she has the emails that demonstrate their willingness to resolve this with and she has the Planning & Zoning Commission; she received no response. She stated that they contacted a lawyer to file

the appeal with the ZBA and the Planning & Zoning Commission. They filed the appeal because they were concerned that their business would be shut down.

Steve Macary, ZEO stated that the letter doesn't have to be certified as long as they acknowledge it, and the that the Town had no intention of shutting them down. For the record, he stated that this was going on for months and they were never shut down; they didn't lose anything.

Mrs. Werden stated that the complaint was received on 6/8/2018 and the Cease & Desist order was issued 4/2019.

Steve Macary, ZEO stated that after hearing complaints from both neighbors, he decided to bring the issues before the Planning & Zoning Commission.

Brett Olbrys asked how they can resolve this.

Steve Macary, ZEO stated that they should drop the Cease & Desist and have the owners come back to the Planning & Zoning Commission for a simple use permit; which they have to do anyway.

Brett Olbrys questioned why they need a use permit.

Steve Macary, ZEO stated that according to Jeff Luff they expanded their use and need to apply for a permit.

Brett Olbrys questioned the expanded use.

Steve Macary, ZEO stated that he is not sure what use has been expanded.

Brett Olbrys questioned if Mr. Macary would require them to get a special exception.

Steve Macary, ZEO stated "no", he thinks they will have to apply for a use permit, but he has to check with Chairman Luff.

Attorney Kulas stated that whatever happens before the Planning & Zoning Commission in the future is not subject to the Cease & Desist.

Steve Macary, ZEO noted that many items in the complaint are not handled by the Planning & Zoning Department.

Robert Werden, 110 Hawley Road noted that there were complaints about sewage leaking from his truck, but he has a letter from the Health Department; there has never been any sewage leaking out of his truck.

Steve Macary, ZEO stated that sewage isn't under the purview of Planning & Zoning.

No further comments from the public or the board members.

MOTION BY Larry Ellis to close the public hearing.

Second by Paul Aiksnoras.

All (4) Ayes.

Motion passed unanimously.

MOTION by Brett Olbry to enter the Regular Meeting and discuss Old Business #1 - **ZBA Application Z-19-A1 – New England Septic System of 110 Hawley Road**

MOTION BY Brett Olbrys rescind the Cease & Desist Order dated 4/17/19 per Article 19, Section 19.2 of the Zoning Regulations because the Cease & Desist was not properly executed under the guidelines set forth in the Town of Oxford Zoning Regulations.

Second by Larry Ellis.

Discussion:

Larry Ellis stated that he spent time going through the information submitted by Steve Macary, ZEO and Attorney Kulas and his clients. He noted that it seems that the issues are with the words, “excavation company”, and “contractor’s yard”. He explained that these are items that may not be recognized as something changing an order to do something else. He noted that if Planning & Zoning changes their terminology from time to time, every business cannot be asked to come back and get new permits if they were already approved.

Brett Olbrys agreed with Mr. Ellis.

Steve Macary, ZEO questioned if Mr. Ellis is implying that because they were pre-existing with permits, their business is approved, just like every other contractor’s yard in Town.

Vote on the Motion:

All (4) Ayes.

Motion passed unanimously.

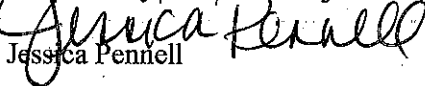
MOTION BY Brett Olbrys to adjourn the meeting at 7:43 Pm.

Second by Larry Ellis.

All (4) Ayes.

Motion passed unanimously.

Respectfully submitted subject to approval,


Jessica Pennell

19 SEP 19 PM 4:27
TOWN OF OXFORD, CT
Margaret A. West
TOWN CLERK