



# TOWN OF ROXBURY CONNECTICUT

Zoning Board of Appeals

29 North Street • P.O. Box 203 • Roxbury, CT 06783-0203

## ROXBURY ZONING BOARD OF APPEALS PUBLIC HEARING / REGULAR MEETING MAY 19, 2016

### MINUTES

#### CALL TO ORDER

Nanette Falkenberg, Chair, called the meeting to order at 7:30 PM.

#### IDENTIFICATION OF MEMBERS

Members Present: Nanette Falkenberg, Judith Kelly, Margaret Miner and Karen Kopta.

Alternates Present: Ed Cady, Nancy Schoenholtz

Alternate Nancy Schoenholtz was seated as a Regular Member.

Others Present: ZEO John Cody, Marc Olivieri, Steven Lasar, Jeff Mose, Brenden Kolnick, Susan Payne, Brian Neff, Arthur and Joanna Green Copel

#### PUBLIC HEARING

#### CALL TO ORDER

#### IDENTIFICATION OF ZONING BOARD OF APPEALS MEMBERS PRESENT

Alexander S.C. Rower, Assessors Map 38 Lot 1, located at 340 Painter Hill Rd.

Case file 2016-0072, variance to reconstruct previously existing barn 5 feet further from Painter Hill Rd. to achieve safety traffic sight lines. Ref: Zoning Regulations variance from 5.3.1(c) and 3.10.4

- Confirmation of certified mailings

Chair Falkenberg read the legal notice for the record. Notices to abutters were confirmed to be in the file.

- Applicant presentation

Steven Lasar and Marc Olivieri came forward and explained that in 2008 a variance was received to rebuild this barn that had deteriorated. However, once the recent driveway permit application was submitted it was realized that this building needs to be moved five feet back to achieve the sightline requirements. It was explained that this variance request is to change a plan that was granted in 2008 five feet further from the road.

- Questions from the Board

Nanette Falkenberg inquired how this building would be used. It was advised that the barn would be for personal storage and tractors from the farm. She asked if there is any other place on property it can go. It was explained that moving the building back further would encroach on the wetlands. This is the same issue for which a variance was received last month for a different barn. Ms. Falkenberg explained that the difference in this application is that there is no barn currently standing and this should be treated as new construction. This is not a renovation of a historic barn because there is no barn there.

Margaret Minor asked for the reasons from the variance given in 2008. The file from 2008 was reviewed.

Mr. Olivieri confirmed for Nancy Schoenholtz that this will be a new foundation with timber frame structure approximately 8 feet from the road. The Board was reminded that a variance was granted last month for the existing barn to be rebuilt 10 feet from the road

- Public comment

Mr. Copel explained that the foundation that currently sits on the site is in a disastrous state and something must be done. He would have no objection with a building 8 or 10 feet from the road. Mr. Lasar explained that the newly proposed barn will be an exact replication of what was there.

- Additional Questions from the Board

Chair Falkenberg reviewed the minutes of the 2008 approval noting that a condition was that the barn was not to be used as a residence. The reasons for the approval in 2008 include the preservation of rural character. Chair Falkenberg advised that case law changed since that decision. This is part of a more extensive development of the property and it is difficult to find hardship

Mr. Olivieri explained that the new buildings will be modern buildings and the only preservation to maintain the historic integrity of the site would be to rebuild this barn.

Ed Cady noted that the fact that the foundation is still there shows intent to rebuild the deteriorated building

Margaret Miner questioned whether in fact the Historic District is interested in seeing this approved. Mr. Olivieri explained that the Historic District Commission has no jurisdiction over this matter, but are pleased that the plan does have this historic aspect to it. Ms. Miner confirmed that the equipment will be for farm use and questioned whether this building is required for equipment or if the equipment can be stored elsewhere. Mr. Lasar explained that storing the equipment elsewhere would destroy the integrity of the project. A barn would have to be behind the building where there are wetlands. Margaret Miner questioned whether this is an as of right agricultural activity.

Karen Kopta asked for the hardship to be stated. Mr. Lasar noted that if they have to move building back to setback line the project will not work because it would be too close to the side property line and in wetlands area.

Nanette Falkenberg questioned whether the equipment can be stored someplace else on the property. It was advised that this is possible, but the hardship would be that you could not use this historic barn.

Karen Kopta asked whether the driveway can be rearranged so the old variance can be used. Mr. Olivieri advised that this property has wetlands and wetlands are really the hardship. The historic value is also a hardship. He noted that the PoCD places a high priority on historic value. Most buildings that have historic significance sit close to the road.

Nanette Falkenberg reminded the group that this building does not exist. Nancy Schoenholtz confirmed that building was there previously.

John Cody asked to see site plan showing the wetlands. Mr. Lasar reviewed 100 foot regulated area line that runs behind the new buildings.

Margaret Miner asked if it has been considered to implement the existing variance in part. Mr. Lasar and Mr. Olivieri confirmed that there is an approval to rebuild without the driveway. They are asking to move it back 5 feet to accommodate the sightline. Ed Cady questioned whether the barn can be rebuilt five feet smaller under the existing variance.

- Close or continue public hearing

Motion to close the public hearing for Alexander S.C. Rower, Assessors Map 38 Lot 1, located at 340 Painter Hill Rd. Case file 2016-0072, variance to reconstruct previously existing barn 5 feet further from Painter Hill Rd. to achieve safety traffic sight lines. Ref: Zoning Regulations variance from 5.3.1(c) and 3.10.4. Motion by Margaret Miner, seconded by Judith Kelly

Discussion: Mr. Olivieri questioned whether the building can be rebuilt 5 feet shorter using the existing variance. Nanette Falkeberg advised that the plan can be adapted to meet the driveway requirements. Margaret Miner withdrew her motion.

Motion to continue to the public hearing to the June ZBA meeting for Alexander S.C. Rower, Assessors Map 38 Lot 1, located at 340 Painter Hill Rd. Case file 2016-0072, variance to reconstruct previously existing barn 5 feet further from Painter Hill Rd. to achieve safety traffic sight lines. Ref: Zoning Regulations variance from 5.3.1(c) and 3.10.4. Motion by Margaret Miner, seconded by Nanette Falkenberg and carried unanimously.

#### **REGULAR MEETING**

Alexander S.C. Rower, Assessors Map 38 Lot 1, located at 340 Painter Hill Rd.

Case file 2016-0072, variance to reconstruct previously existing barn 5 feet further from Painter Hill Rd. to achieve safety traffic sight lines. Ref: Zoning Regulations variance from 5.3.1(c) and 3.10.4

Tabled - Public Hearing was continued to June 16, 2016.

#### **PUBLIC HEARING**

Roxbury Land Trust, Inc., Assessors Map 8 Lot 9, located at 6 Mine Hill Rd.

Case file 2016-0073, variance to construct handicap access ramp to the Roxbury Land Trust Office. Ref: Zoning Regulations variance from 5.3.1(c)

- Confirmation of certified mailings.

The legal notice was read for the record. The certified mailings to abutters were confirmed to be in the file.

- Applicant presentation

Brian Neff and Susan Payne came forward and reviewed 5/3/16 plans entitled Handicap Access Ramp and Proposed Addition to Plot Plan dated 4/20/16.

Mr. Neff distributed a detailed explanation for the variance and read it for the record which noted that the existing building is more than 100 years old and was constructed prior to the adoption of the Zoning Regulations. The building is approximately 1 foot away from the front property line; therefore, nonconforming. The handicap access ramp installation is required by the CT Building Code to provide access to the Land Trust Office in compliance with the Americans with Disabilities Act.

Mr. Neff explained that they located the ramp in the back of the building to be as conforming as possible. The handicap parking will be adjacent and paved. If this variance is not granted the Land Trust Office will not be ADA compliant.

- Questions from the Board - N/A
- Public comment - N/A
- Close or continue public hearing

Motion to close the public hearing for the Roxbury Land Trust, Inc., Assessors Map 8 Lot 9, located at 6 Mine Hill Rd. Case file 2016-0073, variance to construct handicap access ramp to the Roxbury Land Trust Office. Ref: Zoning Regulations variance from 5.3.1(c). Motion by Nancy Schoenholtz, seconded by Margaret Miner and carried unanimously.

#### **REGULAR MEETING (continued)**

Roxbury Land Trust, Inc., Assessors Map 8 Lot 9, located at 6 Mine Hill Rd.

Case file 2016-0073, variance to construct handicap access ramp to the Roxbury Land Trust Office. Ref: Zoning Regulations variance from 5.3.1(c)

Karen Kopta was in favor of this variance and noted that this is a well thought out proposal and there must be a handicap ramp for a public building.

Margaret Miner was also in favor and noted that this is a unique property with a unique problem.

Nanette Falkenberg agreed that this is a well thought out proposal and it is federal law to have handicap access.

Judith Kelly explained that this is a very timely request with the recent Zoning Regulation revisions regarding handicap ramps. She is in favor of granting this variance.

Nancy Schoenholtz found no concerns with this request and is in favor of granting the variance.

A letter of support for this project from Elliott Davis, an adjacent property owner, was read aloud.

Nanette Falkenberg directed that the hardship should be recorded specifically regarding the nonconformity and the need to be in compliance with the ADA. Margaret Miner noted that the wetlands also form a part of the hardship.

Motion to approve the application of Roxbury Land Trust, Inc., Assessors Map 8 Lot 9, located at 6 Mine Hill Rd. Case file 2016-0073, variance to construct handicap access ramp to the Roxbury Land Trust Office. Ref: Zoning Regulations variance from 5.3.1(c). Motion by Margaret Miner, seconded by Karen Kopta and approved 5-0.

### **PUBLIC HEARING**

Brendan Kolnick, Assessors Map 18 Lot 45, located at 2 Hemlock Rd.

Case file 2016-0075, variance to restore one story cottage and add two cupolas. Ref: Zoning Regulations variance from 3.10.4.

- Confirmation of certified mailings.

The legal notice was read for the record and certified mailings to abutters were confirmed to be in the file.

- Applicant presentation

Jeff Mose came forward and reviewed the Zoning Location Survey dated January 21, 2015 showing the entire site. He explained that the plan is to upgrade the buildings for rental. He is working with Health Dept. for a septic and well plan which currently ties in with the property across the street and is proposed to be a separate system and designed for a five bedroom house. He explained that the building is in poor shape and as part of the renovation they would like to take advantage of space differently. Cupolas have been added to allow for extra light. The other exterior change is to remove the bay window which reduces the nonconformity. This is a pre-existing nonconforming building and predates Zoning Regulations. The current foundation will stay the same. Parking areas will be reestablished on the property in an effort to get the parking off the street.

- Questions from the Board

It was confirmed by Mr. Mose that the buildings are not separate tax lots and both buildings are used for rental. One of the buildings will be classified as a primary dwelling.

Ed Cady noted that getting the vehicle parking off the road is a good idea.

Nanette Falkenberg explained that without the cupola this proposal would be reducing the nonconformity.

Margaret Miner questioned whether there is a better way to get light into the building other than the cupola. Mr. Mose advised that a skylight would be seen from the road and would not be as nice of a look. There is historic precedent for this kind of an addition.

Mr. Mose confirmed for Nanette Falkenberg that the chimney will be removed from the roof.

Judith Kelly clarified that the cupola is a change to a nonconforming building that requires a variance.

Mr. Mose advised that they are willing to restrict size of cupola or eliminate it if necessary to receive this variance.

- Public comment - N/A

- Close or continue public hearing

A motion was made to close the public hearing for Brendan Kolnick, Assessors Map 18 Lot 45, located at 2 Hemlock Rd. Case file 2016-0075, variance to restore one story cottage and add two cupolas. Ref: Zoning Regulations variance from 3.10.4. Motion by Judith Kelly, seconded by Karen Kopta and carried unanimously.

### **REGULAR MEETING (continued)**

Brendan Kolnick, Assessors Map 18 Lot 45, located at 2 Hemlock Rd.

Case file 2016-0075, variance to restore one story cottage and add two cupolas. Ref: Zoning Regulations variance from 3.10.4.

Nancy Schoenholtz explained that as she understand it the cupola is the only issue. Otherwise, there is somewhat of a decrease in nonconformity by reducing the bay window. She is fine with this proposal; however, it is hard to find the hardship.

Karen Kopta explained that she sees this as a remodel on the same footprint of the existing structure. This is an improvement by getting the parking off the street. Cupolas seem aesthetically in keeping with the barn like look and have a purpose. She would be in favor of approving this variance. However, she would be in agreement with the restriction of the size of the cupolas as a condition.

Margaret Miner advised that she does not think the cupolas adds to the historic value. She would be favor of getting light into structure with the least change as possible. However, conditions regarding the restriction of size might address concerns.

Judith Kelly noted that cupolas are a positive addition to the design of the building. Their size as proposed is not too large. She would be in favor of granting this variance.

Nanette Falkenberg explained that she does not think there is a hardship. The aesthetics are beautiful, but that is not what is before us. She explained that the Town Attorney reviewed the requirement for variances with her. She advised that a hardship cannot be personal in nature. This is part of an important new court decision that the Town Attorney will review with the Board in person.

The group reviewed the application with the statement of the hardship and found nothing regarding the need for cupolas.

A motion was made to deny the application of Brendan Kolnick, Assessors Map 18 Lot 45, located at 2 Hemlock Rd. Case file 2016-0075, variance to restore one story cottage and add two cupolas. Ref: Zoning Regulations variance from 3.10.4. Restoration work can be done without a variance with the exception of the cupolas. Motion by Margaret Miner, seconded by Karen Kopta and carried 5-0.

### **PUBLIC HEARING**

Brendan Kolnick, Assessors Map 18 Lot 45, located at 4 Hemlock Rd.

Case file 2016-0074, variance to add a one and one half story addition and covered entry porch to two-story cottage. Ref: Zoning Regulations variance from 3.10.4.

- Confirmation of certified mailings.

The legal notice was read for the record. The certified mailings to abutters were confirmed to be in the file.

- Applicant presentation

Jeff Mose came forward and described the two-story dwelling to be used as a two bedroom apartment. This proposal is one of egress and conformity. There is a need for a new set of stairs to the second floor. The building suffers from neglect. He reviewed plans date 5/19/16 noting there are dirt floors and cracked concrete in this building. They must redo the footprint to accommodate stairway. The proposed stairway is currently a shed roof which they would like to expand this to a second story to accommodate the stairway. As part of the proposal the

garage doors will be removed from the road view. The proposal is 29 feet off of the front setback. The width of 14'6" will shift back. The length of 5'4" will be increased to 7'9".

The hardship was stated as the requirement for the stairs to be brought up to code.

- Questions from the Board

Margaret Miner questioned whether there is anyway to bring the stairs up to code without increasing nonconformity. Mr. Mose explained that they can put the stairway in the middle of the building, but there would be no room for anything else in the space. This alternate plan would also require variance; therefore, he feels that they may as well do this correctly.

Nanette Falkenberg clarified that the stated hardship is that without rebuilding staircase this house cannot comply with the building code. Mr. Mose advised that a variance is required whether the stairs are shifted into the middle which will make the space useless or if they rebuild roof.

- Public comment - N/A

- Close or continue public hearing

A motion was made to close the public hearing for Brendan Kolnick, Assessors Map 18 Lot 45, located at 2 Hemlock Rd. Case file 2016-0074, variance to add a one and one half story addition and covered entry porch to two story cottage. Ref: Zoning Regulations variance from 3.10.4. Motion by Judith Kelly, seconded by Karen Kopta and carried unanimously.

### **REGULAR MEETING (continued)**

Brendan Kolnick, Assessors Map 18 Lot 45, located at 4 Hemlock Rd.

Case file 2016-0074, variance to add a one and one half story addition and covered entry porch to two-story cottage. Ref: Zoning Regulations variance from 3.10.4.

Margaret Miner noted that the owner is trying to make an existing building useful and has problem doing that and meeting the building code.

Karen Kopta agreed and questioned why the owner would even go through the trouble of rebuilding the structure if he was not able to have code compliant staircase. It seems reasonable to want to accommodate a compliant staircase.

Nancy Schoenholtz was also in favor. She noted that staircase not in code and not usable is not a personal reason for a variance. It is a hardship to have something in your home that is not safe.

Judith Kelly was in agreement with the variance request. This is a thoughtful way of making a more a useful space with the least encroachment necessary. The hardship is the need for code compliance.

Nanette Falkenberg asked Board if there are any issues with increased number of bedrooms from one to two. Judith Kelly noted that there are no requirements for this change as long as the septic can handle it.

Nanette Falkenberg stated that the hardship is that they should have right to use the property and without the new staircase they cannot bring the structure up to code.

A motion was made to approve the application Brendan Kolnick, Assessors Map 18 Lot 45, located at 4 Hemlock Rd. Case file 2016-0074, variance to add a one and one half story addition and covered entry porch to two story cottage. Ref: Zoning Regulations variance from 3.10.4. Motion by Judith Kelly, seconded by Karen Kopta and carried 4-1. Margaret Miner dissented noting that she would have liked to have seen more alternatives that would not increase the non-conformity and also be useful.

**APPROVAL OF MINUTES**

April 21, 2016 Regular Meeting and Public Hearings

Ed Cady was seated and Nancy Schoenholtz stepped down.

A motion was made to approve the minutes of the 4/21/16 Regular Meeting. Motion by Margaret Miner, seconded by Ed Cady and carried 4-0-1. Judith Kelly abstained.

A motion was made to approve the minutes of the 4/21/16 Public Hearing. Motion by Margaret Miner, seconded by Ed Cady and carried 4-0-1. Judith Kelly abstained.

**OTHER BUSINESS**

Chair Falkenberg reported on her conversation with the Town Attorney. Her understanding from the Town Attorney is that the ZEO can sign off on any building where there is no change or increase in nonconformity. Margaret Miner found this in conflict with former language in the regulations. The Town Attorney confirmed that nonconformance by itself does not constitute a hardship. All cases are fact driven and every case has its own set of facts.

The Board suggested a Zoning Regulation change to add the allowance of ADA access to Zoning Regulations.

The Town Attorney advised that the definitions for hardship are being tightened. The best argument for hardship still remains topography. It was confirmed that a complete rebuilding of a structure requires that it be made to conform.

The group agreed that they would try to schedule a Special Meeting with the Town Attorney.

**ADJOURNMENT**

A motion was made to adjourn at 9:47 PM, motion by Ed Cady, seconded by Karen Kopta and carried unanimously.

Respectfully submitted,

*Jai Kern*

Tai Kern, Secretary

*These minutes are not considered official until approved at the next Meeting of the Roxbury Zoning Board of Appeals*