

TOWN OF EAST GREENBUSH ZONING BOARD OF APPEALS

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MEMORANDUM

EAST GREENBUSH ZONING BOARD OF APPEALS MEETING MINUTES JANUARY 25, 2022

Members

Jeff Pangburn, Chairman
Matt Ostiguy
Scot Strevell
Tom Hickey
Bob Seward III

Also Present:

William Hessney, Attorney
Alison Lovely, Zoning Board Secretary
Kateri Rhatigan, Stenographer
Adam Yagelski, Director of Planning & Zoning

CALL TO ORDER / DETERMINATION OF QUORUM

Chairman Pangburn called the meeting to order and determined a quorum of five (5) members were present.

ORGANIZATIONAL MEETING 2022

Meetings:

- Meetings will be held two times per month on the second and fourth Tuesday of each month.
- Meetings will commence at 7:30 PM in Town Court Room, in the Community Room or via Zoom.

Appointments:

The Town Board appointed Alison Lovely as the Zoning Board of Appeals secretary & William Hessney as the Zoning Board of Appeals attorney at their January 3, 2022 Organizational Meeting.

Appointment of Vice Chairperson:

MOTION: A motion was made by **Jeff Pangburn** as follows: **The Town of East Greenbush Zoning Board of Appeals hereby appoints Matt Ostiguy as the Vice Chairman in absence of the Zoning Board Chairman.**

Second by **Bob Seward III** & roll called as follows:

J. Pangburn-Yes; B. Seward III-YES; M. Ostiguy-YES; S. Strevell-YES; T. Hickey-YES.

MOTION CARRIED BY A 5-0 VOTE

Authorization for scheduling applications for public hearings:

MOTION: A motion was made by **Jeff Pangburn** as follows: **The Town of East Greenbush Zoning Board Chairman and secretary have approval to schedule applications for Public Hearings.**

Second by **Tom Hickey** & roll called as follows:

J. Pangburn-Yes; B. Seward III-YES; M. Ostiguy-YES; S. Strevell-YES; T. Hickey-YES.

MOTION CARRIED BY A 5-0 VOTE

Acceptance of 2022 Meeting Calendar:

MOTION: A motion was made by **Jeff Pangburn** as follows: **The Town of East Greenbush Zoning Board of Appeals hereby approves the proposed 2022 meeting calendar.**

Second by **Scot Strevell** & roll called as follows:

J. Pangburn-Yes; B. Seward III–YES; M. Ostiguy-YES; S. Strevell-YES; T. Hickey-YES.

MOTION CARRIED BY A 5-0 VOTE

PUBLIC HEARINGS:

Reconvene ZBA Appeal #2021-13–Benoit – 416/418 Hays Road- Area Variances- Proposed two lot major subdivision to separate a parcel with two single family dwellings on it.

Chairman Pangburn stated that the public hearing for the above was held on December 14, 2021 and tabled for future follow up of the SEQR determination from the Planning Board, which they have received. The applicant for the above was not present.

Chairman Pangburn stated that due to the lack of the applicant being present, he would like to table the Public Hearing until the next meeting on February 8, 2022.

Seconded by Bob Seward III. Motion carried by a 5-0 vote.

ZBA Appeal #2021-14-C & T EG LLC.-590 Columbia Trpk-Interpretation-Storage

Chairman Pangburn referenced the following as being in the record:

- Legal Notice-was referenced
- ZBA Application, Authorization Form, Narrative
- Original Use Variance Resolution for the property

Don Zee was present who is representing the applicant C & T EG LLC who owns the property at 590 Columbia Turnpike. Don Zee stated that back in September of 2021 the applicant received a notice from Kevin Hitchcock to remove all of the outdoor storage items at the facility. Don Zee stated that a use variance was granted back on August 28, 2007 for storage. Don Zee stated that he sent a couple of photos from January of this year, showing the outdoor storage of vehicles and stated that there is adequate room outside and it is neatly stored. Don Zee stated that the current owner purchased the property in 2017 and been using it for inside and outside storage. Don Zee stated that the use variance granted in 2007 was for storage, it did not distinguish between indoor storage and outdoor storage. Don Zee stated that for a practical matter that if there is any vagueness in a determination or in a decision by a Zoning Board it should be held in favor of the landowner. The courts have stated that if there is any dispute in regards to Interpretation and ambiguity in the decision or what it is determined it should be held in favor of the property owner.

Chairman Pangburn asked if Don Zee had a reference for the statement just made. Don Zee stated that he can provide that to Bill Hessney.

Chairman Pangburn asked how long the property has been doing outdoor storage. Don Zee stated that his client has owned it since 2017 and they have been utilizing it consistently since that time. Don Zee stated that it was his clients understanding that outdoor storage had been used prior to their purchase as well. Don Zee stated that it may not have been visible up until recently as there has been redevelopment in front of this parcel, so possibly the outside storage is now visible. Don Zee stated that a parcel nearby has been doing outdoor storage for quite a while as well and he knows that they have never obtained a use variance & were notified the same time that his client was.

Chairman Pangburn stated that the use variance says warehousing and storage & also needed three different meeting nights to get through it and unfortunately the Town has been unable to find the records or the notes & minutes of those meetings. Chairman Pangburn stated that the actually resolution itself refers to the appearance of the building but does not refer to outside so why the ambiguity here. Chairman Pangburn stated that for the public's benefit that this in in relation to the 1986 Comprehensive Zoning Law, which has been superseded in 2008 & last updated in 2004 & does not have a definition of warehouse & storage in it. Chairman Pangburn stated that Don Zee mentioned that this is a different property owner since 2017 & that it was your clients understanding that outdoor storage had already been occurring prior to his purchase. Don Zee stated yes since 2017, the new owner stated that outdoor storage was being done at their time of purchase.

Chairman Pangburn asked what the interior of the building was used for. Don Zee stated that it's used for indoor public storage.

Chairman Pangburn asked if there were any questions from the Board.

- Matt Ostiguy asked if the parking lot itself is set up for vehicles of those sizes, with appropriate parking space. Don Zee stated that yes and there is very little traffic going into the facility, it generates little traffic, maybe a ½ dozen cars a day.

- Matt Ostiguy asked if it was the landowner that cleared the property. Don Zee stated that it's different than the owner and that the adjacent landowner has never given an opinion. His client has granted easements to the adjacent property owner.

Chairman Pangburn asked if there were any other questions from the Board. There was none.

Chairman Pangburn asked if anyone in the public wished to comment.

- Dave Terpening asked about the easement with the other landowner and stated that there is a history with that property and that in the deed it states that the easement has been extinguished, this would be with the owners of the Town Center project. Don Zee stated that there is a 5' wide easement they needed for grading & stormwater and there is a written agreement with that property owner. Chairman Pangburn stated that it doesn't effect this parcel though. Don Zee stated that is correct, it's the parcel that adjoins this.

- Dave Terpening stated that this parcel was originally zoned B-2 and now its zoned B-1 and referenced the updated 2004 Zoning Law, there was a Use Schedule that was referenced on the resolution as "structured land use" warehouse & storage and both under 1 & 2 it states it's not allowed. In going forward to the current Zoning Law, Section 2, Use Schedule under accessory uses "Storage; outdoors, merchandise in stock" does this apply to this particular situation here.

Chairman Pangburn stated that he's not sure and a determination from the code enforcement officer is needed. The issue is the use variance made the warehousing and storage use a legally authorized use in 2007, but the 2008 code you're referring to rezone that parcel to B-1 and applies the current allowed uses to that parcel.

•Dave Terpening stated for the current zoning section 3.12; stated that is the preexisting use allowed and for section 3.12.1 .A. Pre-existing uses, which were lawfully conforming at the time of adoption of this local law, shall be considered pre-existing conforming uses and asked Chairman Pangburn if that's what he's referring to. Chairman Pangburn stated it is. Dave Terpening asked if you go down to D. A non-conforming use may not be changed to another non-conforming use & then you go to Section 3.12.2 Existing Prior Permits, Certificates & Variances and asked if this section applied & if those conditions required have been met.

Chairman Pangburn stated that would be another Interpretation, this Board has taken the approach if it was a legally allowed use prior to the adoption of the 2008 code, then it becomes a pre-existing non-conforming use and is allowed to remain in place as long as it's a continued use and not discontinued for month than a 12 month period. Chairman Pangburn stated that they would look to build a record that it was a continually used, as long as the Board feels that under the use variance of 2007 that outdoor storage was an allowed use as part of that use variance that was granted.

Don Zee believes that he doesn't have to demonstrate that outdoor storage was continuously used, because the approval was for storage and it doesn't say only outdoor had to be continuously used, it just had to be used for storage.

•Dave Terpening stated that section 3.12-2 doesn't apply here. Chairman Pangburn stated that would be a separate matter for the code enforcement officer to determine.

Chairman Pangburn stated that it's a different matter, the only matter that's in front of the Board tonight is whether outdoor storage was allowed underneath the prior code as part of warehousing & storage.

•Dave Terpening asked then when a properties zoning changes & the new zoning is more restrictive, how does that play into the current matter. Chairman Pangburn stated it would play into a future decision by the code enforcement officer, it wouldn't play into the matter at hand.

Don Zee stated that the variances run with the property.

Chairman Pangburn asked if there was anything else from the public. There was nothing. Chairman Pangburn asked if the Board had any further questions. There were none. Chairman Pangburn stated that he needs to check with the code enforcement officer if there is any other reference to outdoor storage.

Chairman Pangburn stated that he would like some guidance from Bill Hessney as well.

Chairman Pangburn made a motion to table the public hearing until the meeting on February 22, 2022 as Don Zee stated he wouldn't be available on February 8th.

Seconded by Scot Strevell. Motion carried by a 5-0 vote.

ZBA Appeal #2021-15-DeJulio-40-44 Tanners Lane-2 Area Variances-Frontage

Chairman Pangburn referenced the following as being in the record:

- Legal Notice-was read above
- Rensselaer County Recommendation
- Planning Board Member report & recommendation by Matt Mastin
- ZBA Application, Authorization Form, Short EAF, Denial, Area Variance Criteria

Mike DeJulio & his surveyor Brian Holbritten were both present at tonight's meeting. Brian Holbritten stated that Mike DeJulio & his wife Mary Jane DeJulio own the property at 40 & 44 Tanners Lane. They are looking to sell 44 Tanners Lane to their daughter & son in law and subdivide 40 Tanners Lane and down size to a smaller home they would build on lot #2. The property is located in the R-2 Zone, 40 Tanners Lane was given the minimum frontage required of 75' and will have 11,250 sq. ft.; 44 Tanners Lane will have 47,000 and leaving a remainder of 20,232 sq. ft. for the proposed new lot & new home. Lot #1 would have 35.7' of frontage & Lot #2 would have 39.3' of frontage on the cul de sac.

Chairman Pangburn asked if Brian had dimensions along the front setback line for lot widths. Brian Holbritten stated no he does not.

Chairman Pangburn asked if there were any questions from the Board.

•Scot Strevell asked if the driveway for Lot #1 overlaps with Lot #2. Brian Holbritten stated that it does and they are proposing to set up an easement on Lot #2 so that the driveway for Lot #1 can remain as is.

Chairman Pangburn asked if they knew of any other house numbers on that street that were skipped over each other. Mary Jane DeJulio stated that when they originally bought the house number was #30 & the next house was 36, then 911 changed it to and their house was 40 and the next one was 45 & now has changed it to 44 & 40.

•Matt Ostiguy stated its unique being on a cul de sac and asked if the home next to 44 Tanners meets the minimum frontage. Brian Holbritten stated that it is.

Chairman Pangburn asked if they had any information about way it's such a large AT & T easement across the property. Brian Holbritten stated that there are no longer lines there and are working with them a quick claim deed so that they can make that go away.

Chairman Pangburn asked if there were any other questions from the Board.

•Tom Hickey asked if the utility pole on the lot to be subdivided will need to be relocated. Brian Holbritten stated that he doesn't think so, the proposed driveway is 5'-6' away from the pole and thinks its fine.

Chairman Pangburn asked if the DeJulio's plan to retain 40 Tanners Lane. Brian Holbritten stated yes.

Chairman Pangburn asked if the proposed house at 42 Tanners Lane meets all the other setbacks. Brian Holbritten stated that no other setbacks are needed, just for frontage.

Chairman Pangburn stated that there are two minor buildings that encroach in the rear yard. Brian Holbritten stated there are two sheds that encroach and can be moved.

Chairman Pangburn asked if there were any other questions from the Board.

There were none. Chairman Pangburn asked if there was anyone in the public that wanted to speak.

•Dave Terpening stated that the family has gone through a lot of expense hiring a professional land surveyor. It's more tax dollars for the Town of East Greenbush so that's a good thing and doesn't look like a major deal for utilities, which is a good thing. If I was a Board member, I would vote to approval it.
Chairman Pangburn asked if anyone else wanted to speak. There was none.
Chairman Pangburn stated that the Planning Board needs to complete SEQR as the Lead Agent & then the Zoning Board can proceed.

Chairman Pangburn made a motion to table the public hearing until the meeting on February 8, 2022, pending receipt of the SEQR determination from the Planning Board.

Seconded by Scot Strevell. Motion carried by a 5-0 vote.

SEQR DETERMINATIONS & RECOMMENDATIONS:

Reconvene ZBA Appeal #2021-13-Benoit – 416/418 Hays Road- Area Variances- Proposed two lot major subdivision to separate a parcel with two single family dwellings on it-PH & SEQR Determination tabled due to lack of representation of the project.

ZBA Appeal #2021-15-DeJulio-40-44 Tanners Lane-2 Area Variances-Frontage-
Awaiting Planning Board (Lead Agent) Determination

WORKSHOPS:

NONE

NEXT MEETING: The next scheduled meeting is February 8, 2022.

APPROVAL OF MINUTES:

Motion by Tom Hickey to approve the December 14, 2021 meeting minutes. Seconded by Bob Seward III. Motion carried by a 4-0-1 vote. Matt Ostiguy abstains.

Chairman Pangburn stated that the next meeting on February 8, 2022 recommends it be conducted via Zoom.

MOTION TO ADJOURN

There being no further business before the Board, the meeting was adjourned upon a motion by Chairman Pangburn. Seconded by Matt Ostiguy. Motion Carried by a 5-0 vote.

Respectfully Submitted

Alison Lovely
Alison Lovely, ZBA Secretary