

**CITY OF NORWICH
ZONING BOARD OF APPEALS
Tuesday January 8, 2019
Meeting Minutes**

The regular meeting of the City of Norwich Zoning Board of Appeals was called to order at 7:05 p.m. Roll call was taken.

PRESENT: Marc Benjamin, Chairman
David Martin
Dorothy Travers
Peter Cuprak
Robert Phoenix
Gregory Schlough, Alternate
Kevin Saythany, Alternate

ABSENT: None.

OTHERS: Richard Shuck, Zoning Enforcement Officer, and Katherine Rose, Recording Secretary

Marc Benjamin called the meeting to order at 7:05 p.m. Marc Benjamin stated all 5 members would be seated. Kevin Saythany was seated as first alternate then Gregory Schlough would follow as necessary.

D. COMMUNICATIONS: Notice from City Council of Robert Phoenix's appointment as a regular seated member.

E. ACCEPTANCE OF MINUTES:

Marc Benjamin stated on page 3 of the previous month's minutes the law office is called 'Cotter and Greenfield,' not 'Charter.' Robert Phoenix made a motion to accept the minutes as amended. Gregory Schlough seconded. The motion passed unanimously.

Marc Benjamin asked for a motion to go out of order for A#18-01 as the seated members would need to reflect the seated members from last month and Peter Cuprak would be recusing himself. Dorothy Travers made a motion to hear new business V#18-13 out of order. Robert Phoenix seconded. The motion passed unanimously.

F. NEW BUSINESS:

1. **V#18-13:** 619 Boswell Avenue. Request Variance of ZR Sec. 1.1 Residential Bulk Requirements to reduce the front yard setback from 25 ft. to 13 ft. 2 in. on the westerly boundary and reduce to 7 ft. on the southern boundary for the construction of an 8 x 8 wood landing and associated stairs over the existing concrete stairs on the south side of the dwelling. Variance of Sec. 1.1 to reduce the front yard setback from 25 ft. to 16 ft. 11 in. on the southerly boundary and reduce the rear yard setback from 25 ft. to 21 ft. on the easterly boundary to construct 6 x 6 porch with associated stairs over existing concrete stairs on the rear of the dwelling. Variance of Sec. 4.3.8 Corner Visibility to enlarge the existing non-conforming landing and stairs in excess of 3 ft. in height within the 50 ft. triangular area of a corner lot. Property of Matthew B Longo; Application of Matthew B Longo, Assessors Map

Richard Shuck read into the record Exhibits 'A - J.'

Matthew Longo of 187 Miller Road, Preston explained the existing concrete steps are in poor condition so they cannot rebuild and instead wish to go over the structures with an 8' x 8' deck in the front and 6' x 6' on the backside. Matthew Longo illustrated the areas in drawings he provided to the Board.

Robert Phoenix asked why build an 8' x 8' opposed to something smaller. Matthew Longo responded the proposed size is only slightly larger than the existing structures which allows them to properly seat footings as well as benefit future tenants when moving furniture into the apartments.

Robert Phoenix asked if there was a large porch planned for the future and Matthew stated they only planned to build the decks with handrails.

Peter Cuprak asked for clarification on his appeal about what is unsafe about existing steps. Mr. Longo stated it is hard to determine from photographs but the concrete steps are deteriorating.

Marc Benjamin questioned if the reason they are building over the structures opposed to removing them is because they appear to be solid Matthew Longo agreed and stated while that they may remove the top tier of the existing structures but it would take a substantial amount of time to complete excavate the concrete.

G. OLD BUSINESS:

- 1. A# 18-01:** Continuation Appeal of Decision by Zoning Enforcement Officer regarding the determination of residential and commercial units located on the property at 227 West Town Street. Property of Opal Capital Inc.; Application of Robert Lindsley, Assessors Map #58 Block # 1, Lot # 7, NC Zone .

Peter Cuprak recused himself.

Richard Shuck submitted an Exhibit List marked Exhibit OO into the records listing each exhibit within Index A01-18 chronologically but sorted by 'Garage' and 'House'. Richard Shuck also stated that while the information was discussed he was not aware a copy of Variance V#99-21 was not included in the original exhibit packet which reads "Appeal of Carl Chaluto for property at 227 West Town Street variance requested of Section 9.1.1 permitted use to allow three new apartments to be permitted on the property. Approved; Third apartment in principal resident. Denied; two apartments in garage." Marked as Exhibit PP.

Richard Shuck also read into record a letter from the Fire Marshal's Office stating the Marshal he spoke to Lieutenant Jake Manke whom was the last to inspect the property in 2016 where he inspected the house as a three-family property. He stated Jake Manke did not

inspect the garage which is listed as a two-family residence as of September 27, 2010 per the Fire Marshal office records.

Richard Shuck reported on notes given to him from NPU dating December 12, 2018 stating per their accounts they had records of one unit listed as 'Apartment 1' which had no records of gas meters and another unit listed as 'Store' which was provided a gas meter which was then returned to stock as unused. Mr. Shuck stated the notes continued to read that 'Floor 1' has electric, gas, water and sewer account in the owner's name, Opal Capital Incorporated, 'Floor 2' has electric and gas with active tenant, 'Floor 3' has electric and gas with active tenant, and 'Garage' gas and electric in owner's name. Mr. Shuck stated there is a note in the file from 2015 stating, "The store was made part of the first floor apartment, the meters were in the owner's name and the first floor was always in the owner's name. Units were to be combined. Garage is currently being billed at residential rates and there is no record of any commercial rates being applied to any meters on the property." Richard Shuck clarified that was exactly how the note was stated in the file. Marked as Exhibit UU.

Richard Shuck reported on a, now inactive, Trulia listing he discovered for 227 West Town Street advertising a fully-remodeled one bedroom and one bathroom apartment including all new furnishings. Richard Shuck stated that is the same unit the applicants are claiming to be a commercial unit. Richard Shuck clarified the confusion is that the applicant and previous owner are arguing for a commercial unit while advertising a residential unit for rent. Marked as Exhibit RR.

Robert Phoenix asked for clarification on what determination is being appealed. Richard Shuck responded that Exhibit C is being appealed which is explained on the second page of the December 2018 minutes.

Richard Shuck distributed an opinion letter he received from corporation counsel Attorney Driscoll advising the Board to not rule on this issue. Marked as Exhibit QQ.

Marc Benjamin stated based on what he discussed with Attorney Driscoll and the letter provided that he feels testimony should be received and then the Board should make a decision. Discussion ensued on what possible actions the Board can take if corporation counsel felt as though they don't have proper jurisdiction.

Kevin Saythany exited the meeting.

Robert Phoenix made a motion to suspend at 8:17 PM. David Martin seconded. The motion passed unanimously.

Robert Phoenix made a motion to reopen at 8:22 PM. David Martin seconded. The motion passed unanimously.

Attorney Mark Block of 138 Main Street, Norwich introduced himself on behalf of the property owner Robert Lindsley, Opal Capital Inc. Mr. Block stated the variances throughout the years reference residential use without directly stating a release of commercial use while the commercial usage is recognized in other records. Attorney Block stated that his client Mr. Lindsley is just requesting a determination so that he may move forward to document what is permitted properly and get permits if need be.

Attorney Block presented chronological zoning permits, included in the existing exhibits, dating back to 1998 that discusses a retail unit being permitted in the main two-family home,

marked as Exhibit Y, and an August 4, 1999, marked Exhibit PP, variance which approved a three-family residential at the main home and while the variance does not refer to the commercial unit it also does not state the commercial property disappeared. Attorney Block stated that variance did deny two apartments in the garage which they contend left them with one residential and once commercial unit in the garage. Mr. Block then discussed an August 5, 1999 zoning permit, marked Exhibit W, which details a conversion from a two-family to a three-family which is the permit that supports the prior variance, Exhibit PP. Attorney Block presented an approved notice of variance dated April 10, 2008, marked Exhibit L, to convert the garage to a one-family dwelling which also does not state the commercial was revoked for residential approval. Attorney Block stated they feel that the zoning permits, marked Exhibit M, issued April 25, 2008 exhibiting the conversion of the second story of the garage to an apartment supports that the bottom floor of the garage was never converted to an apartment which puts the total units at four residential and two commercial. Attorney Block also demonstrated on the zoning permit application from April 25, 2008, marked as Exhibit N, also states the change in use requested is to convert second floor to apartment.

Attorney Mark Block read into the record a letter from Attorney Frank Manfredi dated January 2019 stating he witnessed catering trucks operating out of 227 West Town Street for a period of time during which he recalls that Attorneys Cotter and Greenfield worked to change the zoning of the area specifically to permit the catering business. Attorney Block read into the record a second letter from Assistant City Clerk Rosanne Muscarella stating she witnessed several catering trucks operating out of 227 West Town Street and that she worked at Lightolier from 1981 to 1988 during which time the same catering trucks serviced their vending machines and various other businesses in the industrial park. Marked as Exhibit VV.

Attorney Block submitted a copy of an April 2015 to March 31, 2018 lease from Eastern Wholesalers Llc and Trudy Thuls / KJT Entertainment for 227 West Town Street, First Floor 'White Building,' Apartment A along with a trade name certificate stamped by the City of Norwich clerk's office on September 12, 2015 establishing KTT Wholesale Enterprises at 227 West Town Street.

Richard Shuck asked for clarification which building was the 'White Building.' Russ Palazzo of 227 West Town Street clarified the 'White House' is the main house.

Attorney Mark Block also submitted a commercial lease dated May 1, 2017 until May 1, 2020 between Opal Capital, Inc. and Russell Palazzo DBA Eastern Wholesalers Llc at 227 West Town Street, Building 2, First Floor (Garage Building) along with an attached trade name certificate. Marked as Exhibit XX.

Attorney Block submitted a trade name certificate with a City of Norwich Clerk's Office stamp dated November 12, 1996 for Mostly Angels Enterprise at 227 West Town Street, signed by Claire Chaluto.

Attorney Block submitted another lease for Eastern Wholesalers Llc with Laura Shelby Proscello DBA Tax Time Blues at the first floor of 227 West Town Street in the main building for a commercial space from 2011 until 2014. Marked as Exhibit ZZ.

Discussion ensued on the difference of what the variance records state versus what existed at the property and what the applicant believes to be permitted.

Russ Palazzo explained to the Board that he had been operating out of the property without issues and had paid taxes on the property for 35 years. Mr. Palazzo also contended all the requested variances were so that he could live above the businesses he ran which he did and would not have given up use of one for another.

Peter Cuprak of 85 Lambert Drive in Norwich stated he did business with the Palazzo's at Dave's Catering at the 227 West Town Street location dating back to the 1980's. Mr. Cuprak also recalled a vehicle body shop with an upstairs apartment at the location.

Robert Phoenix made a motion to close the public hearing. David Martin seconded. The motion passed unanimously.

H. DISCUSSION AND POSSIBLE DECISIONS:

1. **V#18-13:** 619 Boswell Avenue. Request Variance of ZR Sec. 1.1 Residential Bulk Requirements to reduce the front yard setback from 25 ft. to 13 ft. 2 in. on the westerly boundary and reduce to 7 ft. on the southern boundary for the construction of an 8 x 8 wood landing and associated stairs over the existing concrete stairs on the south side of the dwelling. Variance of Sec. 1.1 to reduce the front yard setback from 25 ft. to 16 ft. 11 in. on the southerly boundary and reduce the rear yard setback from 25 ft. to 21 ft. on the easterly boundary to construct 6 x 6 porch with associated stairs over existing concrete stairs on the rear of the dwelling. Variance of Sec. 4.3.8 Corner Visibility to enlarge the existing non-conforming landing and stairs in excess of 3 ft. in height within the 50 ft. triangular area of a corner lot. Property of Matthew B Longo; Application of Matthew B Longo, Assessors Map #79 Block # 2 Lot # 35

Robert Phoenix made a motion to open for discussion. Dorothy Travers seconded. The motion passed unanimously.

Robert Phoenix stated he would have liked to see more recent photographs but based on the 2013 images provided the steps are not in good condition and he does not see the requested setback as an issue as the adjacent Burnham Court Highway is not a highly used road so he would be speaking in favor. Robert Phoenix said he also did not feel like the 6' x 6' deck would impede visibility on the corner based on the limited setback amount. Robert Phoenix stated the building was likely constructed to appropriate setbacks at the time but construction setbacks have changed throughout the years causing a portion of the building to be non-conforming. Robert Phoenix stated a hardship on the applicant would be there is no place to build these decks outside of the setbacks.

Dorothy Travers stated she agreed with Robert Phoenix and believed the construction would improve the quality of the property as well as provide insurance benefits for having a proper structure in place.

Peter Cuprak stated the proposed work will definitely improve access of both sides of the building and that improvements are definitely needed.

Dave Martin also agreed with what has been said and added that the existing steps are a safety hazard and while the request is larger than the existing structures he did not feel it was an excessive request.

Marc Benjamin said he also would be supporting the request as the property is non-conforming on a corner lot with no option to replace the stairs without a variance.

Robert Phoenix made a motion to approve variance V#18-13. Dave Martin seconded. The motion passed unanimously.

2. **A# 18-01:** Appeal of Decision by Zoning Enforcement Officer regarding the determination of residential and commercial units located on the property at 227 West Town Street. Property of Opal Capital Inc.; Application of Robert Lindsley, Assessors Map #58 Block # 1, Lot # 7, NC Zone.

Discussion ensued on whether to vote on the appeal or continue a decision until the next meeting.

Gregory Schlough made a motion to table the decision until next month's meeting. Dorothy Travers seconded. David Martin and Robert Phoenix opposed. The motion passed.

I. OTHER MATTERS: Nomination and Election of Officers.

Dorothy Travers made a motion for Election of Officers move to continue to next meeting. Robert Phoenix seconded. The motion passed unanimously.

- J. ADJOURNMENT:** A motion was made by Robert Phoenix to adjourn at 9:34 PM. Gregory Schlough seconded. The motion carried unanimously.

Respectfully submitted,
Katherine Rose
Recording Secretary