



Present: Anthony Murad, Chairman
Ted Salem
Phyllis Stoller, Member
Jeannine Tonetti, Member

Absent: Chuck Gerald, Member

Others Present: Cissy Hernandez, CEO; Jeff Hattat, Deputy CEO; Herbert & Darlene Jones;
Darrell Pucciarello; Kevin C. Smith, Sr.; Gaston Robert, Jr.; Cathy
Wilkerson

I. Call to Order

Chairman Murad called the Regular Meeting of the Town of New Lebanon Zoning Board of Appeals to order at 7:00 p.m.

II. Minutes Review

Upon review of the July 3, 2018, Regular Meeting Minutes, a motion was made by Jeannine Tonetti and seconded by Phyllis Stoller to accept the minutes, and the vote carried, as follows:

Chuck Gerald	Absent
Ted Salem	Aye
Phyllis Stoller	Aye
Jeannine Tonetti	Aye
Chairman Murad	Aye

III. Regular Meeting

Upon conclusion of the Public Hearing on Case Nos. ZBA-2018-008 and ZBA-2018-009, Chairman Murad called the resumption of the Regular Meeting of the Town of New Lebanon Zoning Board of Appeals to order at 7:17 p.m.

Case No. ZBA-2018-008 - Herbert & Darlene Jones (7-1-21.200)

[Public Hearing] Herbert & Darlene Jones are requesting an area variance to build a 24' x 36' garage.

The Applicant, Herbert Jones, explained the project and said that the proposed location of the garage was selected because the location of the existing well and septic limited any other possible placement. Jeannine Tonetti said the Applicant had explained the project very well, and confirmed that he was seeking a 25' variance.

Phyllis Stoller made a motion to grant the 25' variance on the south side of the property for the reason that there's no other place to build the garage due to the topography of the property and the location of the existing septic and well, which motion was seconded by Jeannine Tonetti. The vote carried as follows:

Chuck Gerald	Absent
Ted Salem	Aye
Phyllis Stoller	Aye
Jeannine Tonetti	Aye
Chairman Murad	Aye

Case No. ZBA-2018-009 – Darrell Pucciarello (29.1-67)

[Public Hearing] Darrell Pucciarello is requesting an area variance to demolish an existing home (24' x 45') and replace it with a modular home (26' x 50'). In addition, the Applicant needs a variance to add 18' x 8' to an existing garage.

The Applicant, Darrell Pucciarello, provided a summary of his plans. He has lived in the existing, small house for 16.5 years and the house is in need of repair. He would like to demolish the existing 1928 house and replace it with a modular home. To do so requires a variance for the right side of his property line where he needs 10'. He's not moving frontage. In addition, the Applicant announced at the Public Hearing that the construction of the sunroom and garage will no longer be going forward.

Jeannine Tonetti said the rear has plenty of setback area available and the north side has extra setback area available, so this is a motion granting the Applicant a 10' variance for the south side of his property so he has the space to place his new home.

Jeannine Tonetti made a motion to grant the Applicant the 10' variance, which motion was seconded by Phyllis Stoller. The vote carried as follows:

Chuck Gerald	Absent
Ted Salem	Aye
Phyllis Stoller	Aye
Jeannine Tonetti	Aye
Chairman Murad	Aye

Case No. ZBA-2018-010 – Kevin C. Smith, Sr. (19.1-1-15.200)

[Appeal/Interpretation] Kevin C. Smith, Sr. is requesting an appeal from a determination by the ZEO regarding an interpretation of the definition of fence.

Deputy CEO, Jeff Hattat, said a neighbor made a complaint because he thought Mr. Smith erected a fence, and he knows the zoning rules. What was erected fits the definition of a fence. Mr. Hattat then sent Mr. Smith a violation notice and instructed him to take it down. However, Mr. Smith doesn't think what he erected is a fence and that's why he asked for an interpretation from this Board.

Chairman Murad asked what Mr. Smith erected. Jeff Hattat said it's two stakes with a caution tape between them located on the property line with the neighbor. Chairman Murad said unfortunately before the discussion can continue, a Public Hearing must be

held. If Mr. Smith wants to continue and can't reach a resolution with his neighbor, then they will need to go to a Public Hearing at the Zoning Board's next meeting.

Mr. Smith said what he erected is a piece of caution tape and a surveyor pin. He believes good neighbors should stay on their own property and stay off of other people's property. He installed the caution tape merely to indicate the location of the property line.

Chairman Murad said if the ZEO is going to continue the violation, and he has the authority to discontinue it if he wants to, the next step is for the Applicant to file an appeal (which he has already done), and the matter will be scheduled for a public hearing at our next meeting.

Phyllis Stoller moved to grant Kevin Smith's request for an interpretation, to be scheduled for a Public Hearing which will be held at the next ZBA meeting on September 4, 2018, which motion was seconded by Jeannine Tonetti. The vote carried as follows:

Chuck Gerald	Absent
Ted Salem	Aye
Phyllis Stoller	Aye
Jeannine Tonetti	Aye
Chairman Murad	Aye

Case No. ZBA-2018-011 – Shedman (19.1-1-13)

[Appeal/Interpretation] Gaston Robert, Jr., is requesting an appeal from a determination by the ZEO that his site is taking on a different use. (The lot which stored and sold sheds is now to have an office.)

Chairman Murad asked CEO Cissy Hernandez if this would be considered an accessory use. CEO Hernandez said this matter goes back to last fall when the Applicant first applied to the Planning Board for approval, prior to there being an office on the site. At that time, she advised him that she felt site plan review was required. The Applicant went to the Planning Board, and they asked for nothing more than a plot plan; however, the Applicant felt he didn't need to submit that and said he was going to go into Tilden Plaza. This Board needs a plot plan in order to make a decision; the CEO needs a plot plan in order to issue a permit. At the December meeting, all the Planning Board asked for was distances from the property lines. Mr. Robert decided to move his office to Tilden Plaza instead of proceeding with the application, which he then withdrew. Should he have continued with the application, he would have received the Planning Board's approval already.

Currently, there's a garage located on the property. The original request was to install a new shed to be used as an office. The current request is to install an office in the shed which the former CEO, Kent Pratt, previously issued a permit allowing it to be used for display purposes only.

The Applicant has been upset with the current CEO, saying she issued a cease and desist; however, the CEO says she did not do so. A complaint came in about a carport being installed without a permit. CEO Hernandez inspected the property, came back to

the office, and marked the complaint unfounded; there was no cease and desist issued. However, the Applicant reported this misinformation to the Town Board who instructed the Applicant to come to the ZBA. Basically, the Applicant wishes to run an office out of the display structure.

Chairman Murad asked to hear from the Applicant who was in attendance and asked him to describe what he wishes to do. The Applicant said the only difference in what he wants to do and what he's been doing for twenty years is he wants to put a small office on the property and continue to do what he's been doing, that's it.

Chairman Murad said if you're going to have sales, you have to have a place where you can contract for the sales. That may be the issue here. Previously, this location was used for the storage of buildings, and no sale activity took place. The Applicant said people go to the site to purchase sheds; they also buy them online. This is a continuing operation. Chairman Murad asked the Applicant what he does at his office at Tilden Plaza, and the Applicant said he completes the paperwork to sell the sheds.

CEO Hernandez said the display shed was permitted for display purposes only, with no electric and water. Ted Salem asked what's the use now for the property, and CEO Hernandez said it's not tagged for a use. They've been using it for the storage sheds. The Applicant previously had a site on Route 22 which he used for retail purposes; however, that site has now been sold and he's moving everything to the Route 20 location. Ted Salem said he's trying to establish what the use is at that location now. The Applicant said it's the same activity as he's been using the property for. CEO Hernandez said except there are now more sheds and more traffic at the site than there was previously. Chairman Murad said that issue is now beyond this Board because it requires site plan review.

CEO Hernandez said one of the issues was the Applicant had been issued a permit years ago to build furniture; however, that permit was issued for the retail site on Route 22. There were no permits ever issued for the current location other than for a display shed on a foundation, which is the only permit on file for this location.

Chairman Murad asked CEO Hernandez if she's suggesting the Applicant needs a permit. CEO Hernandez said yes, he also needs to have parking, including ADA parking, and she doesn't have the authority to approve that as that falls under the responsibility of the Planning Board.

Chairman Murad said sellers need a location where they can transact business, so he wouldn't call this an accessory use – it's just part of what you do. What the CEO is saying is that essentially the business at this location has evolved, and the only existing permit on this property is for a display shed. The Applicant said he is selling sheds as he has always done. CEO Hernandez said the existing permit on file for this location on Route 20 is a "garage for display purposes only", and there are no provisions for the existence of electric or water at the site. The applicant said he obtained that permit from Kent Pratt because he was told you're pouring cement, and once you pour cement it becomes more of a permanent fixture even though it is a display. Unfortunately, the Applicant cannot locate the permit he received from Dean Herrick. (CEO Hernandez said that permit was issued for the Route 22 parcel.) The Applicant said several of the Town's Supervisors have met him at the property, as have three former building

inspectors, and no one has seen a problem with him having his sheds down there. CEO Hernandez said she doesn't have a problem with the sheds. Chairman Murad said he sees both points; however, while the Supervisors may have visited the site, they do not have the authority to grant anything period. There are three places where you can get that authority, from the CEO, from the PB or on appeal from the ZBA. Jeannine Tonetti said the Applicant should clear up the issue by making the property retail and get the required permits. CEO Hernandez said no matter which way he goes, whether through the CEO, the ZBA or the PB, the submission is exactly the same. Chairman Murad's recommendation is that the Applicant go to the Planning Board and submit his plan.

The Applicant said this sounds simple, but the Building Inspector wants him to put his sheds back 75' from the road where they have never been, and this will make the business unusable. The CEO said she has not looked at a site plan. The garage does meet the setback requirements on the permit that's on file. Chairman Murad reminded the Applicant that the 75' is measured from the middle of the road, not from the edge of the road. If after the Applicant goes to the Planning Board, they say his site plan has to have 75' because that's what they're allowed to grant, then the Applicant should return to the Zoning Board. If he can provide to the Zoning Board that he needs less of a front setback, that might be a solution. Chairman Murad said because of the width of the road and the State right-of-way, the Applicant is probably already 35' from the center of the road to the property, so he will only have to be back another 35'.

Ted Salem said in your site plan if you need to encroach on the 75', come back here and ask for a variance. The fact that it's been there for 20 years is going to be a compelling argument.

Chairman Murad told the property owner that it's better to have a piece of paper that says you can do something and that something is permitted. The Planning Board will probably ask how many sheds will be on the property and if there is enough room for a certain number of sheds, based on the amount of square footage. Jeannine Tonetti said you're changing the property use from storage to retail. It's not much of a change.

CEO Hernandez said because the Planning Board was ok with it, all she asked for was a plot plan. Chairman Murad said he can't foresee that the Planning Board will want to have each shed marked out on a plot plan. The Applicant will just have to show where the office is going to be and where the permanent shed is.

CEO Hernandez said there's the beginning of a plot plan on the permit the Applicant got from Kent Platt, and this can be used as a jumping off point, or the Applicant can use the orthos with an aerial view which shows that what's actually there meets the setback. Jeannine Tonetti said it has to show parking too.

IV. Additional Items

CEO Cissy Hernandez requested the Board's interpretation of the following section to the Zoning Ordinance:

205-11 A (4). Should the ZEO or Deputy be in doubt as to the meaning or intent of any provision of the chapter or as to the location of any district boundary line on the Zoning Map or as to the propriety of issuing a zoning permit or a permit of occupancy in a

particular case related to the provisions of this chapter, he SHALL address the matter to the Board of Appeals for interpretation.

Discussions ensued with regard to Section 205-11 A (4). CEO/ZEO Hernandez said that her concern with this section of Code is that it isn't clear what the proper procedures are for the ZEO to request an interpretation from the ZBA and whether or not a public hearing is required. Chairman Murad indicated that an interpretation is no different than an appeal for which the procedures are written into the Code. A ZEO would follow the same procedure as an applicant. Any time that the ZBA rules on a matter, a public hearing is required. CEO Hernandez said that explanation makes sense and requested to withdraw her request for an official interpretation.

Chairman Murad moved to close the meeting at 8:25 p.m. and Ted Salem seconded. The motion carried with the following vote:

Chuck Geraldi	Absent
Ted Salem	Aye
Phyllis Stoller	Aye
Jeannine Tonetti	Aye
Chairman Murad	Aye

Respectfully submitted,

Donna M. Gedeon

Donna M. Gedeon
Planning/Zoning/CEO Clerk