



TOWN OF
North Stonington, CT
ZONING BOARD OF APPEALS

TUESDAY, NOVEMBER 21, 2017

REGULAR MEETING

**SENIOR CENTER
HOLLY GREEN PLAZA
391 NORWICH-WESTERLY ROAD
NORTH STONINGTON, CT 06359**

MINUTES APPROVED ~ FEBRUARY 20, 2018

1. CALL TO ORDER: Chairman Charlie Burger called the Regular Meeting of the North Stonington Zoning Board of Appeals to order at 7:00 p.m. at the Sr. Center, Holly Green Plaza.

BOARD MEMBERS PRESENT: Charlie Burger, Chairman, James Lord, Vice-Chair, Robin Hall, Secretary, Mark Leonard and Alternate Members Gary Thompson and Shawn Murphy

COMMISSIONERS ABSENT: Candy Palmer

STAFF PRESENT: Administrative Assistant Cheryl Konsavitch Planning, Development & Zoning Official Juliet Hodge, and Commission Attorney Thomas Collier and ZEO's Attorney Sandra Dombro

Secretary Hall read the Rules of Procedure into the record.

2. ADDITIONS TO THE AGENDA:

2018 Schedule of Meetings

3. MINUTES:

Review minutes of October 17, 2017 meeting

**MOTION J. Lord, SECOND by R. Hall to approve the minutes of October 17, 2017 as written.
MOTION CARRIED UNANIMOUSLY**

4. PUBLIC HEARINGS:

ZBA Application #17-005 (*Appeal*), In a matter involving property owned by Robert Broccolo, 32 Denison Hill Rd. N. Stonington, CT 06359, located on the east side of Denison Hill Rd. approximately 2100 feet north from the intersection of Rt. 216 & E. Clarks Falls Rd., with E. Clarks Falls Rd. in an R-

80 Zone. Tax Map #98, Lot #3033. Applicant is appealing the decision made by the Zoning Enforcement Officer regarding the improper use of the property by having multiple units in violation of Section 107 of the regulations.

Secretary Hall read the application into the record.

Seated: C. Burger, J. Lord, R. Hall, M. Leonard, S. Murphy

Atty. Matthew Berger representing the applicant along with Mr. Robert Broccolo were present for this application.

Atty. Berger went over the appeal and stated his client received a Notice of Violation on or around August 7, 2017 for having multiple units in violation of North Stonington's Zoning Regulation 107. Atty. Berger stated the property has had the multiple units for many years, and it has been taxed by the Town as a multi-unit property since at least 1999. Atty. Berger stated the multiple units were first noted by the Town in March of 1995 at which time the Town opened Enforcement File 05-011. Atty. Berger stated that the Town closed its enforcement file in 2006, and then reopened the matter in 2013, but then did not follow up. Mr. Broccolo took title in 2016. In March 2016, his client stated he had met with the Town about purchasing the property. Atty. Berger stated Mr. Broccolo came to North Stonington in good faith, purchased an existing property, and made no illegal changes to the property. Atty. Berger stated his client received the Notice of Violation after he took title. Atty. Berger stated he believes the Town is estopped from proceeding against Mr. Broccolo as the violation has existed on the property for over 22 years. He also feels the Town is barred from proceeding based on the doctrine of Laches and Inverse Condemnation which he then explained in more detail and how he felt they apply to this case. For these reasons he feels the Zoning Board of Appeals should overturn the Notice of Violation.

Atty. Berger submitted for the record the following exhibits:

Exhibit 1 – Letter to for owners Mary Ann & Thomas Simone (1995)

Exhibit 2 – ZEO Enforcement File History #05-011

Exhibit 3 – Assessor's Card from 08/09/99

Exhibit 4 – Assessor's Card from 7/11/00

Exhibit 5 – Assessor's Card from 12/08/00

Exhibit 6 – Assessor's Card from 12/27/11

Exhibit 7 – Letter from Atty. Berger regarding the appeal (11/21/17)

Mr. Broccolo stated he bought the property because he was driving by one day and saw it and thought it was a beautiful piece of property. Mr. Broccolo stated he checked with the ZEO Tom Zanarini about the violations noted in the file before he purchased the property and submitted the following letters in support of his appeal read into the record by C. Konsavitch. The letters were read aloud.

Exhibit 8 – Letter from James Heath (32 Denison Hill Rd.)

Exhibit 9 – Letter from Krystin Maine (29 Denison Hill Rd.)

Exhibit 10 – ZEO Hodge packet with Exhibits A – W

ZEO Hodge addressed the Board and presented the members with Exhibit 10 – ZEO Hodge packet with Exhibits A – W.

J. Hodge gave her presentation stating that in 1995 the barn was converted to 2 apartments and the house into a duplex. All 4 units use one well and one septic system. J. Hodge stated that the ZEO in 1995 was

George Brown and he initiated enforcement with a Cease and Desist order dated 3/8/95 (Exhibit A) and Mr. Simone indicated in March of 1995 that he would appeal the Cease and Desist to ZBA. J. Hodge stated that between March 1995 and December 1996 the case was referred to the Building Official, Sanitarian, Fire Marshall, Town Attorney and the Housing Prosecutor. Each official addressed issues related to their departments. The only official who did not provide a response was the housing prosecutor. J Hodge stated there was discussion about putting a notice on the land record in June 1995, a draft document was created, but not filed.

J. Hodge stated Craig Grimord took over as a ZEO and initiated Enforcement in 2005 after getting a complaint from the 1st Selectman about unregistered vehicles and junk and debris and unpermitted outbuildings, but there was no mention of the unpermitted apartments in that complaint. ZEO Grimord referred the case to Atty. Carey and eventually closed the file in May 2006 when the cars and junk were completely removed.

J. Hodge stated in 2008 she was hired as the Planning and Zoning Official and in 2013 received notice from several officials that there were illegal apartments. J. Hodge stated she reviewed the file and reopened the case with a Cease & Desist Order dated 9/17/13 and 1st Selectman Nick Mullane was going to look into the matter as it had been referred to the Housing Prosecutor. At that time J. Hodge stated she was directed by the Planning and Zoning Commission to focus on completing the Plan of Conservation and Development and for this to take priority over enforcement matters, but the file remained open. J. Hodge stated she never heard back from Mr. Mullane about the Housing Prosecutor and left her position in 2014, but made the new ZEO, Tom Zanarini aware of all the open enforcement cases, with this being one of them. Mr. Zanarini made 3 entries into our Enforcement Filing System indicating that a potential buyer was interested and that he discovered the enforcement file and he spoke to the prospective owner at the time about the illegal apartments and that ZEO Zanarini made a note he called the housing court on 4/8/16. J. Hodge noted that the file did not contain any certain proof of Zoning Compliance was requested or given at any time. Mr. Broccolo was made aware of the outstanding violations. ZEO Zanarini left the position and J. Hodge returned.

J. Hodge stated she issued a Notice of Violation on 8/7/17 to the new owner and Mr. Broccolo appealed her decision. J. Hodge stated the important facts to remember are (1) There were zoning regulations in place at the time the unpermitted activity began and the new owner was issued an order to cease the activity. (2) The owner at the time acknowledged the violation. (3) Several attempts were made to bring the property into compliance. (4) Zoning regulations were revised several times between 1995 and the present version. (5) The new owner was made aware of the illegal uses. (6) There has been no affirmative approval given by the ZEO or Commission or any other official for the unpermitted use. (7) Mr. Broccolo does not live on the property which is a new violation in this case.

Tom Zanarini was present and came forward as a witness and gave his recollection of the enforcement action. Mr. Zanarini stated that Mr. Broccolo asked him if there was anything filed on the Land Records regarding this enforcement.

Atty. Berger questioned Mr. Zanarini regarding this issue.

The Board asked questions regarding the appeal including the septic system.

Atty. Dombro, representing J. Hodge gave her remarks pertaining to this appeal.

Atty. Berger summarized his presentation and asked the Board to overturn the ZEO's decision. Atty. Berger also asked that R. Hall recuse herself as she did outside research based on this appeal which would make her bias. Atty. Collier asked R. Hall if she can be objective regarding this appeal. R. Hall stated that she can.

MOTION by R. Hall, SECOND by M. Leonard to close the Public Hearing on application #17-005. MOTION CARRIED UNANIMOUSLY

5. PENDING APPLICATIONS:

ZBA Application #17-005 (Appeal), In a matter involving property owned by Robert Broccolo, 32 Denison Hill Rd. N. Stonington, CT 06359, located on the east side of Denison Hill Rd. approximately 2100 feet north from the intersection of Rt. 216 & E. Clarks Falls Rd., with E. Clarks Falls Rd. in an R-80 Zone. Tax Map #98, Lot #3033. Applicant is appealing the decision made by the Zoning Enforcement Officer regarding the improper use of the property by having multiple units in violation of Section 107 of the regulations.

Seated: C. Burger, J. Lord, R. Hall, M. Leonard, S. Murphy

Chairman Burger read the application into the record.

The Board unanimously upheld the ZEO's decision with the following reasons:

- 1. The use is not allowed by the Zoning Regulations;**
- 2. The use code indicated on the property card is a record of what the Assessor has found on the property for tax valuation purposes and does not indicate zoning approval for that use;**
- 3. The owner has indicated he was knowledgeable about the violations prior to the purchase and;**
- 4. The property is not owner occupied as required in the regulations.**

6. NEW APPLICATIONS: None

7. NEW BUSINESS: None

8. OLD BUSINESS: None

9. CORRESPONDENCE: None

10. ADJOURNMENT:

MOTION by J. Lord, SECOND by R. Hall to adjourn the meeting at 8:25 p.m. MOTION CARRIED UNANIMOUSLY.

Respectfully Submitted,

Cheryl Konsavitch

Cheryl Konsavitch, Administrative Assistant, Zoning Board of Appeals

