

ZONING BOARD OF APPEALS  
TOLLAND, CONNECTICUT  
REGULAR MEETING MINUTES OF MARCH 25, 2010

**MEMBERS PRESENT:** Warren McDermott, Chair  
Peggy Boyajian, Vice Chair  
Vin Avino, Secretary  
Robert Green  
Stephen Caron

**MEMBERS ABSENT:** Kuhrt Bidorini, Alternate  
Mark Robertson, Alternate

**OTHERS PRESENT:** Stephen Lowrey, Zoning Enforcement Officer & Wetlands Agent  
Applicants and their representatives

**CALL TO ORDER**

Mr. McDermott called the meeting to order at 7:30p.m. in the 1<sup>st</sup> Level Community Room. He explained the two-part process of the meetings and confirmed that all members had visited the sites.

**MOTION:** Peg Boyajian/Steve Caron motion to open the Public Hearing. Motion was unanimously approved. Mr. Avino read the legal notice into the record.

**PUBLIC HEARING**

1. ZBA #10-2 – Thomas Guerra: 520 Old Post Road. Variance from Sec. 170-37.E to allow construction of a front porch to be 34' from the front property line, where 60' are required. Thomas "Phil" Guerra and his wife, Trisha, attended the meeting. Mr. Guerra said he and his wife would like to construct a front porch which would be about a 6' extension to the front of the house. He said the house was built in the mid-1960's before the zoning regulations were changed.

Mr. Avino asked if the porch would be at the second level of the house. Mr. Guerra said it would and the roof comes out over the door. Ms. Boyajian confirmed that there is no access from below. Mr. Guerra submitted receipts showing notifications to neighbors. Mr. Lowrey said he received no written comments or phone calls from any residents about this application. Mr. Guerra said he wants to extend the roof somewhat to cover the front entry to the house. He said right now his garage slopes inward, so that when it rains, water gets in. This would help to rectify the situation. Mr. Green noted that other homes on the street also have porches and asked if this porch would differ visually significantly from the others. Mr. Guerra said it would not. He submitted drawings of the proposed front porch showing a top view, front view and side view. There were no other questions from the Board and no comments or questions from the public.

2. ZBA #09-1 – Lloyd and Jayne Bahler: 97 Cook Road. Appeal from the Zoning Officer's order to 1) remove an Outdoor Wood-burning Furnace pursuant to Sec. 170-84 B., and 2) to remove an accessory building erected without a permit, pursuant to Sec. 170-85 B. and 170-124. The Bahler's are also seeking variances from Sec. 170-84B. & 170-85B.2 should the appeal fail.

Lloyd Bahler, the applicant was in attendance, accompanied by his attorney, Bruce Fader. Mr. Avino read Attorney Conti's letter to Steve Lowrey dated March 8, 2010 into the record, and referenced Connecticut DEP Fact Sheet on PA05-227. Mr. Avino also read the letter from Raymond Steadward, Jr., Building Official, which identified when permits are required at a residential property. Ms. Boyajian read Attorney Fader's February 10, 2010 letter to Attorney Conti into the record.

Mr. McDermott asked when Attorney Conti's letter was written, and verified that it was dated March 8, 2010. Mr. Fader noted that he wrote his letter of February 10 speculating what Mr. Conti's letter would contain. Mr. Fader said that in Mr. Bahler's situation, his outdoor woodburning furnace (OWF) was installed in April of 2005, prior to the date when the environmental statutes were adopted in the State and also prior to Tolland's zoning prohibition on OWFs. He said Mr. Bahler would qualify for an exemption from the environmental statutes if he installed his OWF prior to July, 2005. He said they are at a bit of a loggerhead because Mr. Bahler's OWF qualifies for an exemption from the State environmental statute but not from Tolland's prohibition because local permits were not taken out. He said this creates a legal problem between the Town and the State because there are two different standards.

Attorney Fader said that Mr. Bahler asked a licensed contractor, Homestead Fuel to look at the installation in the past week to confirm if the OWF was installed properly. Mr. Fader said Jeff Gerber also contacted the building inspector in Tolland to find out if there were any specific building codes that OWFs need to adhere to for installation. He said that Mr. Gerber was told that there are no specific building codes or fire safety regulations for installing OWFs, rather they need to comply with general building regulations. Attorney Fader submitted a letter from Jeff Gerber, proprietor of Homestead Fuel. Mr. Avino read Mr. Gerber's letter into the record which indicates Mr. Gerber found the installation was done in compliance with State building and fire safety codes.

Attorney Fader also submitted a letter from Bill Venora Electric which was written to Lloyd Bahler. He established that the letter was written in the past week after Homestead Fuel visited the Bahler property and inspected the OWF. Mr. Avino read the letter into the record, which indicated the electrical wiring for OWFs was done satisfactorily.

Attorney Fader said that manufacturer's specifications are often more stringent than building codes and Homestead Fuel put its reputation on the line saying the work was done right. Mr. Caron said that Mr. Gerber bears no responsibility if the work was not done right. Attorney Fader said that the letter from Jeff Gerber establishes credibility that the work was done properly.

Mr. McDermott said that nevertheless, the required permits were never taken out to do the work. He said he has a hard time understanding that Mr. Bahler might have known in advance that he would be entitled to an exemption. Attorney Fader said there was no attempt on Mr. Bahler's part to avoid the law. He said Greg Lanz, the contractor who helped him with the installation, has installed OWFs in the past in towns where no permits were

required. Mr. McDermott said that a licensed contractor would know that permits are required in Tolland and would know better to check this out. Mr. McDermott also said there was no certainty established exactly when the OWF was installed. Attorney Fader said the OWF did not have to actually be installed, and the Board reviewed Sec. 22a-174k of P.A. 05-227 for verification. Mr. Avino read this section into the record.

Attorney Fader said that laws recognize that private citizens have private property rights and Boards need to reconcile those rights with their charge to promote the general welfare of the public. He said the difficulty for the Board is in reconciling a local zoning prohibition with an environmental prohibition in which his client qualifies for an exemption. He said the one neighbor that made a complaint wrote that they did not object to Mr. Bahler operating his OWF, except in the summer months. Attorney Fader said in warmer weather smoke from OWFs remains lower to the ground and can cause more of a problem during that time. Therefore, Attorney Fader offered that his client would be willing to restrict the time frame he would use his OWF, and not operate it between June 15 and September 15. He said Mr. Bahler also talked to the manufacturer's representative for his OWF and they recommended increasing the stack height. Attorney Fader said Mr. Bahler would also be willing to increase his OWF's stack height to 20' or 25'. Attorney Fader said the Board could grant a variance but attach conditions and suggested that they could grant Mr. Bahler a variance attaching those two conditions, the hardship being that Mr. Bahler had a pre-existing non-conforming use.

Attorney Fader also noted that a number of Mr. Bahler's neighbors did express support of him being allowed to continue using his OWF. He said anonymous complaints are difficult because you can't always know what the real reason is for the complaint. Mr. McDermott said the supporting comments are in the record. In support of the claim that he did have his OWF installed prior to July 8, 2005 to meet the State exemption, Mr. Bahler said that he spent \$8,000 on this unit so he definitely would have wanted to install and use the OWF as soon as possible. He thanked the Board for their time and consideration.

**MOTION:** Peggy Boyajian/Steve Caron to close the Public Hearing. Motion was unanimously approved.

## **BUSINESS MEETING**

**MOTION:** Peggy Boyajian/Vin Avino to open the Business Meeting. Motion was unanimously approved.

1. ZBA #10-2 – Thomas Guerra: 520 Old Post Road. Variance from Sec. 170-37. E to allow construction of a front porch to be 34' from the front property line, where 60' are required.

**MOTION:** Peggy Boyajian/Steve Caron motion to grant a variance to ZBA Application #10-2 to allow construction of a front porch to be no closer than 34' from the front property line, where 60' are required, the hardship being because the house was constructed prior to the road being deemed a collector road. Motion was unanimously approved.

Mr. Lowrey explained that he would put an ad in the paper and the Guerras should receive their variance in the mail next week. He said they need to take this to the Town Clerk's office and have it filed on the land records. They can then file for a building permit.

2. ZBA #09-1 – Lloyd and Jayne Bahler: 97 Cook Road. Appeal from the Zoning Officer's Order to: 1) remove an Outdoor wood-burning furnace pursuant to Sec. 170-84 B., and 2) to remove an accessory building erected without a permit, pursuant to Sec. 170-85 B. and 170-24. The Bahlers are also seeking variances from Sec. 170-84 B. & 17085B.2 should the appeal fail.

Mr. Avino said they have a number of letters in the record on this, and it appears that the PZC and ZBA can rule on the issue. He said he still has a problem with the fact that the applicant did not take out the required permits. Without taking out the permits, he said he cannot consider this an approved, functioning unit. He said the town regulations prohibiting OWFs were put in place after the installation and so he understands the Bahlers' concerns, especially because they invested a lot of money in the OWF. However, in his mind, it cannot be considered installed according to the regulations without the permits.

Mr. McDermott asked if increasing the chimney height and not operating the unit during the summer months, even increasing that time to from May 15 to October 15 would influence anyone to grant a variance. There was some discussion about how high the stack would have to be raised in relation to the distance of the nearest neighbors. Mr. Lowrey said if they went that route, he could check out the needed stack heights as required by law.

Mr. Avino said this still goes back to protecting the health and safety of the public. He said these devices have been found to impact health and the State is considering outlawing them all together. Mr. McDermott said the State's considerations right now are not germane to this discussion. Mr. Avino said however, that they have been found not to burn efficiently, to cause pollution, which could be hazardous to public health.

**MOTION:** Vin Avino/Peg Boyajian motion to support the cease and desist order for Section 170-84.B.1 for Installing and operating an Outdoor Wood-burning Furnace at 97 Cook Road.

There was discussion on the motion. Ms. Boyajian said she feels they would be setting a precedent if they did not support the cease and desist order as it would open the door to allow people to construct things without permits. Mr. McDermott said he feels they cannot consider this a functioning unit unless it was totally permitted. Mr. Caron said he was okay with assuming that the installation was done before the July 8, 2005 State statute because he would not expect the applicant to make the purchase and sit on it for nearly a year. However, the building official's letter made clear that permits would have been required to be pulled from 1987 and on. Ms. Boyajian said the installation was not done blindly. She said it was done with the assistance of a professional who would know the legal requirements.

A vote was taken on the motion, and the motion to uphold the cease and desist order was unanimously approved.

**MOTION:** Peggy Boyajian/Steve Caron to delay enforcement of Sec. 170-124 and 170-85.B.2 of the cease and desist order to remove the accessory building or bring said building into compliance with size limits of the regulations and apply for and be issued a Building/Zoning permit until October 30, 2011 to allow the applicant to establish an agricultural use for the building. If an agricultural use is not established by October 30, 2011, then the cease and desist will be enforced. Motion was unanimously approved. [This is a reiteration of a motion made and approved at the January 28, 2010 meeting and reference is made to the minutes of the January 28, 2010 meeting]

**MOTION:** Vin Avino/Peg Boyajian to deny the request for a variance from Sec 170-84.B.1 to allow the installation and operation of an Outdoor Woodburning Furnace at 97 Cook Road. Motion was unanimously approved.

**MOTION:** Vin Avino/Peg Boyajian to deny the request for variance from Sec 170-85.B.2 to allow a non-agricultural building to be constructed larger than the main floor of the house at 97 Cook Road. Motion was unanimously approved.

### **ACCEPTANCE OF MINUTES**

**MOTION:** Peggy Boyajian/Steve Caron to approve the minutes of the February 25, 2010 regular meeting. Motion was unanimously approved.

### **OTHER COMMISSION BUSINESS**

Since there had been some inadvertent e-mail communication between a new member of the Board and Attorney Fader, Mr. Lowrey gave a brief talk about ex parte communication. Members of the Board must have no communication with the applicants outside of the public hearing and must limit their conversation with the applicant during the site visit only to the factual elements of the application.

### **ADJOURNMENT:**

**MOTION:** Peggy Boyajian/Steve Caron motion to adjourn the meeting and pay the clerk at 8:50p.m. Motion was unanimously approved.

Respectfully submitted,

Annie Gentile  
Clerk