

ZONING BOARD OF APPEALS
TOLLAND, CONNECTICUT
REGULAR MEETING MINUTES OF SEPTEMBER 23, 2010

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

MEMBERS ABSENT: Kuhrt Bidorini, Alternate

OTHERS PRESENT: Stephen Lowrey, Zoning Enforcement Officer & Wetlands Agent
Applicants and Public

CALL TO ORDER

Mr. McDermott called the meeting to order at 7:34p.m. in Council Chambers. He explained the two-part process of the meeting and verified that Board members visited the sites.

Mr. Avino read the legal notice into the record.

MOTION: Vin Avino/Peggy Boyajian motion to open the Public Hearing. Motion was unanimously approved.

PUBLIC HEARING

1. ZBA #10-9-Leonard & Lance LeBlond: 199 Peter Green Road. Variance from Sec. 170-37.G & F to allow the foundation of a house to be 46.8' from the rear (westerly) property line, where 50' are required and 24.6' from the side northerly property line.

Leonard LeBlond of 180 Peter Green Road and Lance LeBlond attended the hearing. Leonard LeBlond turned in receipts for notifications to neighbors. He said Greg Toth Construction excavated the foundation for 199 Peter Green Road and in the process encountered a great deal of ledge that was extraordinarily hard and which caused some machine damage. As a result they made a minor shift to the foundation which they did not realize was slightly out of conformance until it was already in. He is asking for a variance, the hardship being the ledge situation.

Mr. Avino read a letter from Greg Toth Construction at 63 Gottier Road in Tolland that stated the same problem Mr. LeBlond described.

There were no questions from the Board or from the public.

2. ZBA #10-8 – Betty Webber: Appeal from a Cease and Desist Order regarding the use of property and building at 124 Brown’s Bridge Road. Betty Webber of 79 Webber Road and Joe Matteis attended the hearing. Betty Webber turned in receipts of notifications to neighbors.

Mr. Green recused himself from the hearing and Mr. Eccles was seated in his place.

Mr. Avino and Ms. Boyajian read the following items into the record:

- An August 10, 2010 memo from Steve Lowrey
- The Cease and Desist order
- An email from Sandie Miller of 128 Browns Bridge Road dated May 30, 2010
- An email from Sandie Miller to Steve Lowrey (cc’d to Linda Farmer) dated June 25, 2010, in response to a June 24, 2010 email from Steve Lowrey to Sandie Miller
- A March 7, 2010 memo to Betty Webber from Steve Lowrey
- An August 24, 2010 email from Betty Webber to Steve Lowrey, Joe Matteis, and Walter Lawrence

Mr. Caron said he understands that the property and building at 124 Brown’s Bridge Road needed to be made into an agricultural use, and he asked how this was done. Ms. Webber said they want to put in ball and burlap trees and shrubs in a cleared area on the property. She said they began clearing the area and the wood that was removed was sold. She said she was told by Steve Lowrey and by Walter Lawrence, the Town Assessor, that doing this was meeting the requirements for an agricultural use on the property. She added that Mr. Lawrence told her it is not unusual to take two to three years to clear land for agricultural use.

Mr. Matteis said that there was an investment in time and expense (approximately \$12,000) to clear, stump and grind, and dispose of the wood. He said he has about three acres cleared at this point, which he expects to be ready in the spring for planting.

Mr. Avino asked Mr. Lowrey why he felt that the property owners had not made the land into an agricultural use. Mr. Lowrey said he visited the property sometime in June and he saw no verifiable agricultural use. He said he did see that some land was cleared but that it was planted with grass. Mr. Matteis said he put in the grass just so it would not turn into a mud pit while he waited to be able to start planting.

Mr. Eccles asked if the State had determined this agricultural use to be forestry. Ms. Webber said it does not meet the forestry definition by the State because the property is less than 25 acres. However, clearing land and selling firewood met the agricultural use requirement. There was some discussion about whether the property could be classified under Open Space 490. Mr. Lowrey said Open Space 490 is a tax status. He said to qualify for 490 in forestry, one must have 25 acres, but this property is less than that. He said forestry under the definition of agriculture does not reference anything to do with a 490 status.

Peggy Boyajian noted that they were given over two years to establish an agricultural use, but it has taken a significant amount of time just to clear a few acres. Mr. Matteis acknowledged that he cleared only one acre on his own in that time and in the last two months, he hired outside companies to clear (cut, remove and grind stumps, and dispose) another two acres for a total of about three acres. He noted that in order to have an agricultural use, he need only make \$1,200 a year on agricultural sales and he could easily make \$4,000 a year just raising hay. Ms. Webber said she spoke to Mr. Lawrence and was told they could plant Christmas trees on the slopes on the property.

There was discussion about Mr. Matteis owning a landscaping company and Mr. McDermott asked him where he stored this equipment. Mr. Matteis said sometimes he leaves his equipment at an existing job, other times at the 124 Browns Bridge Road location. He said his equipment is minimal. He said he has a dump truck that he keeps on this property and uses daily for the agricultural use there.

Ms. Boyajian asked if the property was zoned for agriculture, could the landscaping business be located there. Mr. Lowrey said there is a fine line between landscaping equipment and nursery equipment. Ms. Boyajian asked, however, if putting up a sign for a landscaping business on the property indicated that they were operating a landscaping business from there. It was noted that the landscaping business is also printed on the mailbox at the property. Mr. Matteis said he is not aware of any zoning regulations on mailboxes. He said he considers it advertising only and that he does not receive mail in the mailbox, but rather at a Post Office box. Mr. Matteis said he understands he can have up to four advertising signs on his property. He said he was told the mulch sign he had up was acceptable for an agricultural business. He said he must be able to make money in his landscaping business if he wants to make his agriculture business work. He added that his plan is to raise both Christmas trees and nursery stock, and he was under the impression that selling firewood counted toward the agricultural use status.

Mr. Avino asked if they should be determining if in the past 20 months whether an agricultural use had been established or if in that same period of time the applicants had been *pursuing* an agricultural use. Mr. Lowrey said when he inspected the property he felt an agricultural use had not been established in the previous 20 months; however, whether such a use has been pursued is harder to say. He said it did not appear that the applicants were growing any crops that would qualify as agriculture. Mr. Matteis said he was not going to spend another \$10K for nursery stock before the spring. Mr. Lowrey said you do have to be careful growing evergreens at this time of year because those plants need to establish a good root system to survive over the winter. Other plants could be planted now or in the spring. Mr. Avino asked Mr. Lowrey if the progress at the property made since June changes his mind at all. Mr. Lowrey said it does somewhat, that there has been more land clearing, but still nothing has been planted yet.

Ms. Boyajian asked Mr. Matteis about the email from Sandie Miller which said junk cars were being brought onto the property, stripped and taken off again, as well as about signs for scrap metal pickup. Mr. Matteis said he has a dumpster for scrap metal at a different location. He said he may on occasion have a junk car on a trailer that he leaves at the property when

the scrapyards are closed, but they do not come off the trailer and they don't dismantle any cars on the property. Mr. McDermott recalled seeing a photograph in the file on this application of a scrap car parked in the woods on the property. Mr. Matteis asked to see the picture. After reviewing it, he said the picture was not taken by a town official and he does not see the relevancy in addressing a picture that was taken by someone who was breaking the law by trespassing on his property. He said this particular car was one that belonged to a friend and it was driveable. He said Tolland residents are allowed one unregistered car at a time on their property and he may have on a few occasions had a lot car on his property for use on the property. He said this car is no longer there.

Ms. Boyajian asked of the three acres that were cleared over the past 2-1/2 years, how much of the land did he expect to plant in the spring. Mr. Matteis said he said he still needs to clear all the large pines which cannot be done until the winter. He said he then plans to plant at least two acres of the land depending on the types of plants. He said he would not expect to be able to sell any of the plants until at least a year afterwards. He said in the meantime he plans to plant perennials, which can be harvested anytime.

Ms. Boyajian asked Mr. Matteis what he planned as the next phase of getting his agricultural use going. Mr. Matteis said he is unsure at this time.

Ms. Boyajian asked Mr. Matteis what the barn is being used for. Mr. Matteis said it is used to store his skidsteer, a golf cart for driving around on the property, chainsaws, miscellaneous tools, as well as a woodsplitter. Mr. McDermott asked if the barn was being used to house any landscaping equipment. Ms. Webber said Mr. Lawrence told her it was fairly normal when raising nursery stock to have similar equipment as is used in a landscaping business.

Mr. Matteis said that once he has a house built on the property, he understands he can have a home business with more employees and equipment than he has now. However, he said he cannot get the paperwork for a building permit from Linda Farmer. Mr. Eccles asked what is the address of Mr. Matteis' landscaping business. Mr. Matteis said it is located at 79 Webber Road. Mr. Lowrey said with home occupations there are a number of conditions that must be met, which does not include having a lot of employees. The size of the accessory building allowed is in relationship to the footprint of the house. He added that building permits are on the wall in the Planning Office and he can take one from there anytime.

Mr. Lowrey cautioned Mr. Matteis that building permits are only good for six months and that if the work is not started in that time, the permit expires. Mr. Matteis added in response to an earlier suggestion made in one of the items of correspondence that he may not have taken out permits for work done on the barn, that all electrical work done on it was permitted. Mr. Lowrey noted that there is no certificate of occupancy on the barn. Mr. Caron asked if Mr. Matteis can be using the barn without it. Mr. Matteis said he was never told the barn needed to be inspected for a Certificate of Occupancy. He said he was never told he could not use it without that. Mr. Caron asked if they ever got a permit to erect the barn. Ms. Webber said they did not take out a permit when it was first erected, but they have gotten one since.

The hearing was opened to public comment. The first person to speak was Al Bonner, who said he lived at 80 Webber Road. He provided paperwork to Board members and read from a statement. He said he objects to the application because he said Mr. Matteis is operating a commercial operation in the Residential Design District, which is not allowed in Sec. 170-35 of the zoning regulations. He submitted photos which indicated Brookside Landscaping was storing equipment on the property. Mr. Bonner said the property owners have not told the town assessor that a commercial operation is located there and that information is not on file with the tax assessor's office. Mr. Bonner said Brookside Landscaping is not registered with the town and no trade name certificate has been filed with the town. Mr. Bonner said the property owners have a history of violating the regulations. He said the building was constructed without a permit and they only got one later when they got caught. He said the land is not being used for agricultural purposes and the barn is being used to store trucks and equipment for the landscaping business. Mr. Bonner acknowledged that the picture of the car that was reviewed earlier was taken by him and that he could see it from his house. He said he took the picture about 4 to 5 weeks ago.

Ms. Boyajian asked what type of equipment was being stored on the property. Mr. Bonner said there is a wood chipper and a backhoe. Mr. Caron said that equipment could be used for forestry type operations. Mr. Bonner said the equipment was removed from the property just before Steve Lowrey's inspection and it was brought back after the inspection.

Sandie Miller attended with Wyman Griggs of 128 Brown's Bridge Road. She said Mr. Matteis' property abuts her backyard. She provided some photos for the record also. Ms. Miller said Mr. Matteis stores and repairs cars on the property. She said she has seen flatbeds come in with cars on them and then sees them leaving later stripped. She said there is an assortment of rotating signs that are advertised on the front lawn, including lawn care, mulch fill, firewood, and junk car removal. She said she has seen many truckloads of soil going into and out of the property. She said there is also excavation of boulders going on that has changed the contour of the property and which has resulted in runoff coming onto her property. She added that dust storms are being created by the flow of traffic into and out of the land and it has gotten so bad she can't often use her backyard anymore. She said when they harvested trees, big grinding machines were running for some length of time on the property.

Richard Webber of 56 Webber Road said he lives adjacent to Betty Webber's property. He said his home is the closest one to the barn. He said he has found Mr. Matteis to be always courteous and he has not witnessed any greater activity on the property than there would be with any active family. Mr. Webber said he cuts wood himself on his property, and owns a skid steer too, which he uses for plowing. Mr. Webber said that Mr. Bonner was being dishonest about where he lives when he spoke earlier to the Board. Mr. Webber said Mr. Bonner used to be a neighbor, but moved a year ago to Somers. Mr. Webber then began to cite what he felt were zoning violations made by some of the people who spoke earlier at the hearing, but both Mr. McDermott and Ms. Boyajian said he needed to keep his comments limited to the particular application before them.

Peter Anderson said he is Betty Webber's husband and owner of Anderson Automotive. He said he feels there have been some incorrect assumptions made by neighbors. Mr. Anderson said Mr. Matteis keeps a scrap metal container at his automotive shop. He said Mr. Matteis has never burned anything on the property nor buried anything there and that he is very particular about taking proper care of the property. Mr. Anderson said that when Mr. Matteis is slow with business, he offers to clear and clean up property and do some soft landscaping. He said Mr. Matteis puts the scrap metal he gets from these cleanups in his shop and when he has collected enough, he takes it to the scrapyard. Mr. Anderson said that when Mr. Matteis bought the property there was a lot of junk on the land and that Mr. Matteis cleaned it up and did a lot of beautification work such as building rock walls, so there should not be any runoff onto Ms. Miller's property.

Mr. Matteis asked to review the various pictures that were given to the Board by the earlier speakers. He said the dumpsters in the pictures that are on his property were for hauling out ground up stumps. He said this was from about 1-1/2 to 2 months ago. He also said the pictures of equipment belonged to the various contractors he hired to do work on his property, such as Manchester Materials. He verified that he is allowed to hire and have outside contractors put equipment on his property. He noted again that he felt some of these pictures were taken without permission to access his property.

Ms. Boyajian asked about the additional work on the pine trees this winter and if that would signify the end of significant truck traffic going in and out of the property. Mr. Matteis said he would expect that to amount to about two tractor trailer loads of material. However, he said he would not expect traffic to lessen because he will likely have extra mulch, topsoil, and gravel brought in. Ms. Boyajian asked what the gravel would be for. Mr. Matteis said it is to regrade his driveway. Ms. Boyajian said she would not expect this to be something that had to be done more than once a year. Mr. Matteis disagreed, saying he regrades his driveway every three to four weeks. He added that he uses his skidsteer on the property all the time. He also added that in and out traffic from the property will continue as he will be also clearing to build his house. He said he bought an excavator to do work on the property pulling stumps and that it has nothing to do with his landscaping business. However, he has since sold it because he got a really good price for it.

There were no further questions or comments.

MOTION: Vin Avino/Peggy Boyajian to close the Public Hearing. Motion was unanimously approved.

MOTION: Peggy Boyajian/Bill Eccles to open the Business Meeting. Motion was unanimously approved. Mr. McDermott unseated Mr. Eccles and reseated Mr. Green.

BUSINESS MEETING

1. ZBA #10-9-Leonard & Lance LeBlond: 199 Peter Green Road. Variance from Sec. 170-37.G & F to allow the foundation of a house to be 46.8' from the rear (westerly) property line, where 50' are required and 24.6' from the side (northerly) property line.

MOTION: Peggy Boyajian/Steve Caron motion to approve ZBA App. #10-9 to allow the foundation of a house to be no closer than 46.7' from the rear property line and no closer than 24.6' from the side property line, the hardship due to the topography and ledge located on the land and the position of the house on the lot. Motion was unanimously approved.

Mr. Lowrey informed the applicant that he will put an advertisement in the paper and send them their variance in the mail, after which the applicant must file it with the town. They can then continue building the house.

2. ZBA #10-8 – Betty Webber: Appeal from a Cease and Desist Order regarding the use of property and building at 124 Browns Bridge Road. Mr. McDermott unseated Mr. Green and reseated Mr. Eccles.

Ms. Boyajian asked what their options were with this application. Can they choose to uphold, deny, or modify the Cease and Desist order. Mr. Lowrey said they can do any of these including modifying it.

Mr. Avino said he was involved with the original decision. He said he feels that the condition of the property has changed some over time, but that he feels Mr. Lowrey did his job. Mr. Lowrey clarified that in this application Ms. Webber and Mr. Matteis are appealing the Cease and Desist. However, two years ago, they asked for a variance for the building saying it was going to be used to house animals. This was based on having a building on and use of the property for agricultural purposes. He said in today's hearing, their considerations are to be based on whether or not they established an agricultural use on the property.

The Board discussed that the applicants are appealing the Cease and Desist order because they feel they are meeting the requirements of, or are working toward, establishing an agricultural use. Peggy Boyajian said her concerns are that the timing is suspect. She said a lot started happening on the property only in the last few months. However, the activities taken demonstrate they are going in the right direction. Mr. McDermott said his concern is about the applicants' trustworthiness after having over 20 months time. Mr. Eccles said trust is an issue, but they need to be able to verify progress.

Ms. Boyajian said she thought there was a set time frame for establishing an agricultural use. Mr. Lowrey said there is no statute on this. Mr. Lowrey said there were reasonable suspicions that a commercial use was going on at the property and they were looking for the applicant to establish an agricultural use on the property to justify the building.

Mr. Eccles said there needs to be a firm line held that Brookside Landscaping is not operating out of this property. He said if Brookside Landscaping equipment is being kept

there, this is problematic. Ms. Boyajian asked if there is a limit to the amount of agricultural use on the property. Mr. McDermott said he could farm all 22 acres if he wanted to. Mr. Lowrey agreed that there can be a large agricultural use there.

Mr. Avino said he feels they are making slow progress to establish an agricultural use and he will expect to see a lot of plants in the ground by next year. He suggested they adjust and monitor the Cease and Desist order. Mr. McDermott agreed, saying they should put time limits on getting plantings in and if that is not met, the building needs to come down.

MOTION: Vin Avino/Steve Caron to uphold the Cease and Desist order, but to grant the applicant a one year extension to September 30, 2011 to fulfill the conditions of establishing an agricultural use on the property. If at such time an agricultural use is established, the Cease and Desist order will be dismissed. If, however, by that time an agricultural use has not been established, then the order will be enforced. Motion was unanimously approved.

ACCEPTANCE OF MINUTES

MOTION: Peggy Boyajian/Steve Caron to approve the minutes of the August 26, 2010 meeting. Motion was unanimously approved.

ADJOURNMENT

MOTION: Vin Avino/Peggy Boyajian to adjourn the meeting at 9:55 PM and pay the clerk. Motion was unanimously approved.

Respectfully submitted,

Annie Gentile
Clerk