APPROVED MINUTES

Zoning Board of Appeals
Regular Meeting
Monday, March 14, 2016 at 7:30 pm
Library Community Center, Room F
40 Dyer Avenue, Canton, Connecticut

CALL TO ORDER: Chairman Brainard called the Regular Meeting of March 14, 2016 to order at 7:30 p.m.

PRESENT: Robert Brainard, Christopher Kerr, Guerry Dotson, Gary Adajian, Walter LeGeyt and Lucien Rucci (Alternate).

ALSO PRESENT: Zoning Enforcement Officer Emily Anyzeski and Recording Secretary Jennifer Scott

A quorum of the Commission is present.

MODIFICATION TO THE AGENDA:

MOTION: Mr. Brainard moved that the agenda be modified so that File #2016-2; 146 Powder Mill Road under "New Business" is addressed prior to opening the Public Hearing. Mr. LeGeyt seconded the motion, which passed unanimously, 5-0-0.

REMARKS BY CHAIR: None

REGULAR MEETING

NEW BUSINESS:

1. **File #2016-2**; 146 Powder Mill Road; Assessor's Map 25; Parcel 4310146; Zone I; Section 9.7, Motor Vehicle Location Approval, Used Car Dealer and General Repairer License; Collinsville Auto Repair, LLC, applicant; Sack Properties, LLC, owner

   Commissioners Seated: Robert Brainard, Christopher Kerr, Guerry Dotson, Gary Adajian, and Walter LeGeyt

   Michael and Jennifer Rindflesh of 152 Carpenter Rd, New Hartford, CT and owners of Collinsville Auto Repair, LLC were in attendance to present their application. Mr. Rindflesh stated that they have outgrown their current location and are looking to move to a new location at 146 Powder Mill Road. Although the property is zoned for Industrial, per Section 9.7.A.1, "In accordance with CGS Section 14-54, the ZBA shall have the power and duty to determine location approval for dealing and/or repairing motor vehicles defined under CGS Section 14-1." The listed activity at this site will be auto repair, used car sales, and towing operations.

   Mr. Brainard stated that it appears that the applicants have completed all the necessary steps as required by the Land Use office. He also said that in 2010, a Special Permit was issued for this location for automotive use which would include a used car dealer's license. He added that there are no other neighboring facilities that would make this location unsuitable for dealing or repairing motor vehicles.

MOTION: Mr. Brainard moved that the property located at 146 Powder Mill Road, Unit A be approved for a Used Car Dealer and General Repairer License for use by Collinsville Auto Repair, LLC. Mr. Adajian seconded the motion, which passed unanimously, 5-0-0.

PUBLIC HEARING

READING OF THE LEGAL NOTICE: Read by Mr. Brainard

1. **File #2016-1**; 20 Canton Springs Road; Assessor's Map 35; Parcel 1640020; Zone I; Appeal the decision of the Zoning Enforcement Officer from the Observation of Violation regarding unapproved vehicular storage, dated January 15, 2016; Steven Lingenheld, applicant; Kings Highway Associates, LLC, owner

Commissioners Seated: Robert Brainard, Christopher Kerr, Guerry Dotson, Gary Adajian, and Walter LeGeyt

Steven Lingenheld of 98 Morgan Road and Anthony Potamitis of 20 Canton Springs Road came before the Board to present their application. Mr. Brainard, Mr. Kerr, Mr. LeGeyt, and Mr. Adajian all stated for the record that they know Mr. Lingenheld, but not to the extent that it would influence their decision on this matter. Mr. Dotson said that he knows Mr. Potamitis but not to the extent that it would influence his decision on this matter.

Ms. Anyzeski provided a brief history of the case for the group. She said that the Land Use office received a complaint on November 20, 2015 regarding concerns of an increased number of vehicles being stored on the grass at 20 Canton Springs Road. Ms. Anyzeski said she observed the site condition on November 24, 2015 and reviewed the applicable zoning regulations. Pursuant to town regulations, both current and as far back as 1958, parking more than 5 motor vehicles and more than 3 commercial vehicles is permitted in light industrial and industrial zones so long as site plan approval or a zoning permit is obtained. Ms. Anyzeski stated that the town does not have a site plan on record requesting or approving large quantity vehicular storage on the grass at this location. She said that unless vehicles were being stored there prior to 1958 in which case the use would be considered "grandfathered", approval is required. She said that the earliest she could find photographic evidence of vehicular storage at the property was 2010. Ms. Anyzeski advised that she issued an "Observation of Violation" to Mr. Lingenheld to open a dialogue about the site condition. She said that she asked Mr. Lingenheld to provide her with evidence that might disprove a violation exists and to date he has not responded to that request.

Mr. Lingenheld began by saying that he spoke with Mr. Ernie Smith, the son-in-law of the founder of M. Swift & Sons who previously owned the property in question. Mr. Lingenheld said that Mr. Smith told him that the grass lot was used as the main parking area for the Swift factory from 1955 to the late 1960's when the parking lot was paved. He went on to list several other examples of how the grass lot has been used to park vehicles for dozens of years including Lobsterfest, Sam Collins Day, and other festivals. He stated that Canton Village Construction used the lot to park their construction equipment and said the area was rented to a fleet of airplane de-icers. Finally, he said that the lot has had boats, trailers, and trucks parked there for approximately 15 years without any complaints. He said that the recent complaint came about after Kings Highway Associates leased the lot to a car dealership that is using the area to park their overflow inventory. He said his position is that historically, the grass area has always been utilized for parking and that there has been no change in use. Mr. Lingenheld added that Kings Highway Associates has resurrected this property from a state of vacancy and disrepair. He commented that they currently have five or six businesses leasing space at this building.

Mr. Brainard referenced a site plan for the property that was issued to Towstar several years earlier when the property was still owned by M. Swift & Sons. Towstar is another company owned by Mr. Lingenheld that continues to lease space and operate at 20 Canton Springs Rd. Mr. Brainard asked if Towstar ever received permission from M. Swift & Sons, as the prior owner, to use the grass lot for

parking. Mr.Lingenheld answered that it was assumed Towstar would use the grass lot for parking because it had always been used for parking. Therefore, he said that formal approval was not given or required.

Ms. Anyzeski spoke saying that if cars were parking on the grass lot in 1955, she encourages the ZBA members to consider obtaining proof. She also said that town approval would be required pursuant to the regulations for any vehicle or special event parking at the location. In her research, she said that the matter of special event parking had surfaced before and she found that the First Selectman at the time did not feel the need to enforce for one day events such as Lobsterfest and Sam Collins Day. The only means of enforcement would be a Notice of Violation which allows for a 30 day timeframe for removal of any vehicles. She said although it lacks approval, they have received guidance not to enforce for these events because of the difficulty involved. Mr. Lingenheld replied that the cars there now are rotated on a very regular basis implying that no car on the lot is there longer than 30 days. Ms. Anyzeski replied that even if they are changed out, there are cars continually parked in the lot.

Mr. Brainard asked Mr. Lingenheld if he thought that Mr. Smith would give him a notarized letter that states that cars were parked on the grass lot when M. Swift & Sons began operations back in 1955. Mr. Lingenheld stated that he is confident that he can obtain such a letter from Mr. Smith. Mr. Brainard explained that the regulation states that approval would be needed “before any land or structures are devoted to a new or changed use.” He said if M. Swift & Sons was using the lot for parking prior to the 1958 regulations, there is no new or changed use. Mr. Brainard also said that he located a map from 1965 that was filed with the State that shows “things in rows” drawn in the area in question. Mr. Lingenheld commented that he believes the map is showing Swift trucks which contained surplus machinery from their Hartford location.

Mr. Brainard clarified with Mr. Lingenheld that M. Swift & Sons ceased operations around 1976 and was storing items there until Kings Highway Associates purchased the property in 2008. Mr. Brainard asked Mr. Lingenheld if he had always been using the grass lot for parking since Towstar began leasing space at the property in 1998. Mr. Lingenheld replied that Towstar has been utilizing the grass lot for parking without interruption since he has been there.

Next, Mr. Brainard asked if any members of the public wished to speak.

- Dr. Richard Abraham has lived at 19 Pond Rd, a neighboring residence, since 1976. He said that back when M. Swift & Sons was still operating at the site, they were using organic industrial solvents that contaminated the surrounding air and ground. He said that the concern of the residents at the time was that the aquifer and surrounding well water would be contaminated also. He said that the concern now is not just about aesthetics but more so about the possibility of contamination of the ground water with transmission oil or other organic products associated with automobiles and trucks.

  Mr. Lingenheld responded that all of the cars stored there now are brand new making the chances of an oil spill unlikely. In addition, he said that even if the cars were parked on the asphalt and a leak happened to occur, a rainstorm would likely cause the oil to run into the grass anyway. He pointed out that the cars driving along Canton Springs Road could leak oil that could get into the aquifer as well. Mr. Lingenheld noted that before Kings Highway Associates purchased the property in 2008, there was a thorough environmental study completed where no issues were identified. He added that they are very vigilant about protecting the aquifer and keeping the property free from any environmental concerns.

- David Evans of 30 Canton Springs Road is the abutting property owner to the south side of the site and has lived there since 1960. Mr. Evans spoke in favor of allowing the applicant to park cars on his grass lot. He said he thinks that Mr. Lingenheld has done a great job improving the property which had previously been foul-smelling and an eyesore in the

neighborhood. He commented that Kings Highway Associates is a good neighbor and he does not find the cars being parked there intrusive or bothersome.

- Teresa Barger of 8 Pond Rd started by saying she has no objection to special event parking at the site. She said that the applicant is in violation of the current regulations and feels it is irrelevant if cars have been parked on the lot all of these years.

  Mr. Brainard explained to Ms. Barger that M. Swift & Sons started using the property in 1956 which was prior to zoning. He said that Kings Highway Associates is "grandfathered" because there has been no change in use at the property. Dr. Abraham spoke up saying that M. Swift & Sons had not had cars parked there since 1976 when the company ceased operations. Mr. Brainard replied that if there was equipment, vehicles, etc. on the grass, they did not abandon the use. There would have to be "intent to abandon" and at this point it does not appear there was. Ms. Anyzeski responded that the site would be considered pre-existing non-conforming if there were vehicles being stored on the grass lot prior to the 1958 regulations. However, there is no evidence to prove when vehicles actually began being parked there.

- Michael Campbell of 9 Pond Road said that this is an issue of grave concern to the neighborhood. He urged the members to do what is "right" and considers the grandfather provision to be a technicality. He said that the residents would like to work together with neighboring businesses to resolve conflicts peacefully as they have done in the past. He asked that the members listen to and consider the residents' concerns.

  Mr. Brainard stated that the ZBA acts as a quasi judicial body that makes decisions based on the law and the evidence presented. Mr. Rucci asked if Mr. Brainard could expound upon non-conforming prior use statutes for the benefit of the record. Mr. Brainard explained that the CT state statute says that if you change regulations, you cannot prevent a person from continuing to do something they were doing prior to the regulation change. He added that pre-existing non-conforming use remains with the property until such time as someone abandons that use. He said that unless there is "intent to abandon", the use continues whether it conforms to today's regulations or not. Mr. Brainard went on stating that if Mr. Smith's letter says that cars were parked in the grass lot, more than likely that non-conforming use will be continued on to today.

- Suzanne Gerber of 24 Pond Rd, an abutting property owner since 2005, shared her concerns about the parked vehicles contaminating the soil. She said that it is much more difficult to be vigilant about what might leak onto a grass surface versus a paved surface. She said that residents and businesses should follow the rules and that it concerns her that Kings Highway Associates will not submit for site plan approval with the town.

- Ed Gabowski of 22 Pond Rd is an abutting property owner since 2002. Mr. Gabowski stated that no vehicles were being stored on the grass at the property for about 5 years up until 2009 / 2010 when the automotive repair shop took occupancy. He shared his concern that the vehicles stored on the grass lot will kick up dust and dirt that will blow toward the neighboring landowners' properties. He stated that in 2010, the town Planning & Zoning Commission required that all the tenants of 20 Canton Springs Road park their cars on paved surfaces. Mr. Gabowski said the applicant should obtain site plan approval pursuant to today's zoning regulations if they wish to continue storing vehicles on the grass area.

Ms. Anyzeski referenced a 1970 approved site plan for the property. She stated that it would be reasonable to assume that if the lot was being used for vehicle storage prior to the 1958 regulations the subsequent 1970 approved site plan would indicate that existing non-conforming condition. The members did not necessarily agree arguing that it could have just been an error or oversight.

Mr. Brainard directed Mr. Lingenheld to obtain a notarized letter from Mr. Smith stating that the grass lot in question was being used for vehicle storage prior to 1958 and submit the letter to the Land Use office prior to next month's regular meeting.

MOTION: Mr. Brainard moved to continue the Public Hearing for File #2016-1; 20 Canton Springs Road to the April 11, 2016 Regular Meeting. Mr. LeGeyt seconded the motion, which passed unanimously, 5-0-0.

REGULAR MEETING

PUBLIC HEARING ACTIONS:

1. **File #2016-1**; 20 Canton Springs Road; Assessor's Map 35; Parcel 1640020; Zone I; Appeal the decision of the Zoning Enforcement Officer from the Observation of Violation regarding unapproved vehicular storage, dated January 15, 2016; Steven Lingenheld, applicant; Kings Highway Associates, LLC, owner

OTHER BUSINESS

1. Approval of Meeting Minutes from February 22, 2016

   MOTION: Mr. Brainard moved to approve the meeting minutes from February 22, 2016 as presented. Mr. Dotson seconded the motion, which passed unanimously, 5-0-0.

2. Staff Report

AJOURNMENT:

MOTION: Mr. Adajian moved to adjourn the Regular Meeting of the Zoning Board of Appeals at 8:55 p.m. Mr. Kerr seconded the motion. The motion passed unanimously, 5-0-0.