APPROVED MINUTES

Zoning Board of Appeals
Regular Meeting
Monday, April 11, 2016 at 7:30 p.m.
Community Center, Room B
40 Dyer Avenue, Canton, Connecticut

CALL TO ORDER: Chairman Brainard called the Regular Meeting of April 11, 2016 to order at 7:30 p.m.

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

ABSENT: Guerry Dotson

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

Mr. Rucci was seated as a Regular Member by R. Brainard.

A quorum of the Commission is present.

MODIFICATION TO THE AGENDA: None

REMARKS BY CHAIR: None

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, Gary Adajian, Walter LeGeyt and Lucien Rucci

   Mr. Brainard stated that prior to the last meeting, he was not given enough time to sufficiently review the documentation related to this case. As a result, he said that he discovered two errors that he made. The first was that he learned the aerial map he used at the last meeting was not of the M. Swift and Sons factory, but of the cemetery to the north of the property. The second error was that the parking situation at 20 Canton Springs Road was characterized at the last meeting as having a possible pre-existing, non-conforming use. In reality, Mr. Brainard said that it has a possible pre-existing use because when the 1958 regulations were adopted, the parking of more than 5 motor vehicles or more than 3 commercial vehicles was a permitted use at the property. The regulations at that time required a permit for this use, but it was in fact allowable. Pursuant to today's regulations, it is still a permitted use so long as a site development plan is submitted through the Planning & Zoning Commission for their approval prior to getting a zoning permit. He said that the same question of whether more than 5 motor vehicles or more than 3 commercial vehicles were being parked at this property prior to zoning still remains. He added that if the ZBA finds that vehicle parking was not being done prior to zoning regulations, the applicant would have to submit a site development plan to

Planning & Zoning, go through the approval process and be issued a permit. If they find it to be a pre-existing use, the owner may continue to park vehicles anywhere on the property with the exception of the area for AA Automatic & Brake.

Mr. Brainard said that because they had considered the property to have a pre-existing, non-conforming use, it was requested at the last meeting that Mr. Lingenheld obtain a letter from the prior owner stating what vehicles were parked on the lot prior to 1958. He said that Mr. Lingenheld submitted a notarized letter from Mr. Ernest Smith who is the son-in-law of the prior owner of M. Swift & Sons. The letter simply stated that cars were parked in the grassy lot on the southerly side of the property. Mr. Brainard then advised that Mr. Lingenheld brought with him this evening a second notarized letter from Mr. Smith dated March 30, 2016 which Mr. Brainard read aloud to the group. The letter was more detailed than the first and stated that the factory's 15 to 20 employees began parking their vehicles in the grass lot south of the building beginning in the early 1950's when the factory was built as this was the only available place for them to park.

Steven Lingenheld of 98 Morgan Road and Anthony Potamitis of Winsted, CT came before the Board to continue with the presentation of their application. Mr. Lingenheld stated that to the best of his knowledge, Mr. Ernest Smith is the sole authority on the history of this property. He contested a photo of the property from 1959 that does not show cars parked in the area in question. Mr. Lingenheld argued that there are no cars parked anywhere in the photo which would be odd for a fully operational factory. He said that the conclusion he drew is that the photo was taken on a weekend or off hours when no one was there. Next, Mr. Lingenheld referenced a photo of the property taken in 1968. He said that while the photo does not depict any parked cars, a defined parking area and driveway can be seen as well as a pathway for employees to walk from their cars to the factory. Mr. Lingenheld reasoned that any car parked at the property would have to have been parked on the grass prior to the installation of a paved parking area in the early 1970's. He added that because the 4.2 acre lot is contiguous, it does not matter in this case where on the property the vehicles were parked. Finally, Mr. Lingenheld rejected the concern that oil from the cars currently parked on his lot may leak into the soil saying it is unlikely because all of the vehicles are brand new. He added that they do not want the soil to be contaminated either which is why they go to great lengths to eliminate that risk. Mr. Lingenheld ended by reiterating that vehicles have continuously been parked on the property since the early 1950's.

Ms. Anyzeski informed the members that she is just learning of the second letter from Mr. Smith despite it being dated March 30, 2016. She stated that she as town staff and the public are entitled to have an opportunity to review new information as it becomes available. She commented that the second letter does provide more detail in comparison to the first letter that she considered somewhat vague. Ms. Anyzeski referenced the Google Earth aerial photographs she presented at the last meeting. As a result of the reliability and credibility of those photos being taken into question, she said she obtained several aerial photographs of the property between 1968 and 2012 from the Nationwide Environmental Title Research who partners with the United States Department of Agriculture and the United States Geological Survey. She also presented an aerial from 1959 from the Town Assessor's office. Ms. Anyzeski stated that while it is reasonable to argue that some of the photographs could have been taken on a weekend or during off hours, it is unlikely that is the case for all 10 of the aerial photographs she has obtained. None of them show cars parked in the area in question until 2012.

Mr. Lingenheld countered that the aerial photographs of the property presented by Ms. Anyzeski are irrelevant as the question is whether or not vehicles were parked at the property before 1958. Ms. Anyzeski responded that if the members decide that there is insufficient evidence to prove vehicles were parked on the lot prior to 1958, the 2012 aerial supports that the property is in violation of zoning regulations as it shows cars parked there without approval.

Ms. Anyzeski addressed concerns that the members had with the acceptability of the site plan she discussed at the last meeting that was originally dated 1971 and revised in 1993. Ms. Anyzeski stated that this site plan is the approved site plan the town has on file for 20 Canton Springs Road

and it gives no indication that parking was ever approved in the area where cars are currently being parked. Mr. Lingenheld stated that since he began operations at the property in1990, he has always had cars parked on the grass.

Mr. Brainard asked Ms. Anyzeski what concerns she has with Mr. Smith's second letter and what she would have done had she received it earlier. She said she does not have concerns with the letter's content but feels the public should have been given the opportunity to see it when it became available. Mr. Lingenheld said that unfortunately he only received the letter yesterday.

Mr. Adajian raised the concern that none of the new aerials presented have a specified date or time. He said he cannot accept them as evidence without that information which may or may not prove if the photographs were taken on a weekday or weekend or before, during, or after work hours.

Mr. Brainard stated that the permitted use stays with the property and that it does not come and go. Whether the use is utilized is immaterial. He said if vehicle parking was permitted at the property on the first day of zoning, it's a permitted use today. He next asked if there were any members of the public who wished to speak in favor or against upholding the appeal.

- Suzanne Gerber of 24 Pond Rd, an abutting land owner, asked if there were not any cars parked on the grass between 1959 and 2009, would it still be a permitted use according to the regulation. Mr. Brainard explained that if the property were characterized as having a pre-existing non-conforming use and at some point there was intent to abandon that use, it would no longer be permitted. He added that in that scenario, it would also have to be proven that the use was abandoned. He reiterated that the property in this case is not a pre-existing, non-conforming use. It is a pre-existing use that was permitted when zoning regulations were put in place.

  Ms. Gerber added that there must be concerns associated with parking more than 5 vehicles on a grass lot for today's zoning regulations to require site plan approval. She added that she does not believe that the members are seriously considering the potential risks associated with this activity. Mr. Rucci explained that people can not be penalized retroactively if they are doing something that is permitted and then the regulations change.

- Sandy Marinan of 6 Evens Dr spoke next against the applicant's appeal. She said that when she purchased her property in 2005 she was informed by Town Hall that no more than 5 vehicles could park on the grass lot at 20 Canton Springs Rd. Mr. Brainard said she must have been misinformed. Mr. Rucci read the 1958 regulation to Ms. Marinan that states that the parking of more than 5 motor vehicles or more than 3 commercial vehicles is permitted in that district. Ms. Anyzeski argued that it is permitted with a zoning permit which has never been issued for this location.

- Glenn Barger of 8 Pond Rd said that he is concerned that the issue at the last meeting is no longer the issue at this meeting. He feels what is being ruled on has suddenly changed and is discouraged that there is a second letter being presented as evidence that the public has not had a chance to review. He stated that some of the members appear confused by the documentation related to this case which does not give him much confidence in their ability to rule at this time. He added that he does not think that Mr. Smith's letter is adequate proof that cars were parked on the lot prior to 1958.

  Mr. Brainard responded that the only issue that has changed from the last meeting is that the property went from being viewed as pre-existing, non-conforming use to pre-existing use. Either way, they would have to determine whether vehicles were parked on the site prior to 1958. Mr. Brainard asked Mr. Barger what it is that is contained in Mr. Smith's second letter that he would like an opportunity to review. Mr. Barger said that it is not so much the content as it is the concern that the letter is coming in last minute and no one has had a chance to

look at it. He stated that he does not feel it is appropriate for the commission to rule when the public has not had an opportunity to review all of the evidence.

Ms. Gerber spoke saying that it would be nice for the interested members of the public to have an opportunity to present their evidence as well that may challenge the information included in Mr. Smith's letter. Mr. Brainard said that they were given the 30 days between last meeting and tonight's meeting to gather any relevant evidence.

- Michael Campbell of 9 Pond Rd commented that he was disappointed by what he views as the members' disrespectful attitudes toward the Zoning Enforcement Officer. He added that the preponderance of the evidence as presented in numerous aerials indicates that no vehicles were parked on the lot for 40 or 50 years. Mr. Brainard said that the members have a duty to scrutinize evidence presented by both Ms. Anyzeski and Mr. Lingenheld. He said that their intention was never to be disrespectful and regrets if it was interpreted in that way.

Ms. Anyzeski pointed out that the aerial photographs she presented at tonight's meeting were dismissed because they were not date and time stamped. She noted that the aerials she presented at the last meeting were dated but those were also dismissed as unreliable because they came from Google Earth. Mr. Rucci responded that none of the aerial photographs presented at this meeting or the last meeting are germane because of the corrected interpretation of the property having a conforming use versus a non-conforming use prior to 1958. Ms. Anyzeski countered that in her professional opinion, the property is non-conforming because sufficient evidence does not exist to prove that vehicles were parked on the lot prior to zoning. According to Ms. Anyzeski, the fact that vehicles are being parked there now and no permit has ever been issued makes it non-conforming. Mr. Brainard replied saying that if they find that the property did not have a pre-existing use, the owner would be in violation for not having a permit, but it would not make the use non-conforming because the use is allowed.

While Mr. Brainard said that he believed the violation was for parking more than 5 vehicles on the lot, Ms. Anyzeski provided clarity stating that she issued the violation because the cars are being parked on an area that did not meet town standards for parking vehicles. Mr. Lingenheld said that from the early 1950's to 1968 there was no paving on the property and the only place the cars could park was on the grass. Ms. Anyzeski agreed but then said paved parking was applied for on a portion of the property but not for the grassy lot. She added that the approved site plan that was issued when parking was applied for specifies the southern lot as grass with no indication that parking took place there. Mr. Lingenheld restated that in the 1950's and 1960's, the employees must have parked on the grass because there was no pavement during that time.

Mr. Rucci referenced the 1970 map that is considered the approved site plan for the property. He noted that it specifically states that it is a layout showing building numbers in Canton and is not a site plan. Ms. Anyzeski said that it is the only map the town has on file for the property which therefore makes it site plan.

- Royce Christensen of 4 Evens Dr said that he has lived at that location for 11 years and stated that until recently, he has never seen cars parked in the grassy lot with the exception of Lobsterfest.

MOTION: Mr. Adajian moved to close the Public Hearing for File #2016-1; 20 Canton Springs Road. Mr. Kerr 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

Commissioners Seated: Robert Brainard, Christopher Kerr, Gary Adajian, Walter LeGeyt and Lucien Rucci

Mr. Brainard asked the members if they think that Ms. Anyzeski or the public has been denied anything by not getting to review Mr. Smith's second letter prior to tonight's meeting. He also wanted to know their general opinions about the case following the discussions that were had at the public hearing.

Mr. Celmer said that he is familiar with the property and has parked there for special events. He commented that unfortunately the only pieces of evidence they have to work with to prove that cars were or were not parked at the property prior to zoning are Mr. Smith's two notarized letters.

Mr. LeGeyt and Mr. Adajian stated that they accept Mr. Smith's second letter as sufficient evidence that cars were parked on the property prior to 1958. Mr. Kerr agreed adding that there was no pavement until the 1970's so parking would have had to have occurred on the grass.

Mr. Rucci stated that the only relevant evidence is the letter stating that there was a company at 20 Canton Spring Rd from the early 1950's and they parked their cars on site. He said that since parking more than 5 vehicles is a conforming use in that zone, evidence that explicitly excludes their ability to do so would have to be presented in order for them to lose it. He continued saying that in lieu of any counter evidence, there is no other recourse than to allow them to continue storing vehicles because the use predates zoning regulations.

Mr. Brainard said that regardless if we were looking at a pre-existing non-conforming use or a pre-existing use, they need the same information in order to come to a decision. He added that he does not feel that there is anything contained in the letter that could have been further researched. Mr. Rucci said that someone could conceivably have brought forward a notarized letter saying something different. Mr. Brainard said they had 30 days to bring forth that evidence.

MOTION: Mr. Brainard moved that the appeal for File #2016-1; 20 Canton Springs Road; Kings Highway Associates, LLC be upheld. The information provided by the applicant in the form of a notarized letter from Mr. Ernest Smith dated March 30, 2016 is the only evidence provided in the affirmative that parking of five or more vehicles occurred at 20 Canton Springs Road prior to the 1958 zoning regulations. No contradictory evidence pertaining to the use was presented. Parking of more than five vehicles may occur anywhere on the property with the exception of the area for File #288, Application #1275 as depicted on the map labeled Sheet L-3; Layout and Materials Plan; 20 Canton Springs Road; Prepared by LADA, PC; Prepared for AA Automatic & Brake; dated 1/12/10; revised 3/31/10 which may have restricted parking on it. Mr. Adajian seconded the motion, which passed unanimously, 5-0-0.

OTHER BUSINESS:

1. Approval of Meeting Minutes from March 14, 2016

   This item will be included on the agenda for the next Regular Meeting.

2. Staff Report

   a. New Policy Regarding Audio Recordings on the Town Website

      Ms. Anyzeski informed the members that pursuant to a recent vote by the Board of Selectmen, as of April 4, 2016, the audio recordings for all applicable town agency meetings will be made available on the town website.

AJOURNMENT:

MOTION: Mr. Adajian moved to adjourn the Regular Meeting of the Zoning Board of Appeals at 9:05 p.m. Mr. LeGeyt seconded the motion. The motion passed unanimously, 5-0-0.