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TOWN OF WESTON
ZONING BOARD OF APPEALS

ZONING BOARD OF APPEALS TOWN OF WESTON, CONNECTICUT

FEE: $160.00 **ZBA Agenda** July 28, 2020

APPEAL FROM ORDER OR ACTION

APPELLANTS ① Three K's LLC ② Nicholas Klokus **Date** 6/15/2020 **TELEPHONE** Bob Walpuck@gmail.com NickKlokus@gmail.com

Address 96 Georgetown Rd

OWNERS Same **TELEPHONE** As Above

Address 27 Rogues Ridge Rd

TAX ASSESSOR MAP NO. 3 **BLOCK NO.** 1 **LOT NO.** 27

DISTRICT: RESIDENTIAL: ☑ **BUSINESS:** ☐

Property Is: ☐ **Is Not** ☑ **Within 500 Feet Of A Town Line.**

Give accurate description of property site so it can be located when an inspection is required.

Former Baseball Field, Address as Above

Based on the Order or Action, a copy of which is included with this Appeal form, state precisely the nature of your Appeal including reasons and any other pertinent information in support of your Appeal.

*

Applicant hereby grants to ZBA Members the right to make physical on-site inspection of the subject property as may be necessary to acquaint themselves with actual conditions.

I hereby affirm that I have read the "Application Procedure and Requirements for Appeal from Order or Action" and that all statements in the Application, and the information contained in the accompanying submissions are true to the best of my knowledge.

Owners ① Three K's LLC by Robert Walpuck **Date** 6/15/2020
② Nick Klokus **Date** 6/15/20

Appellants Same **Date**

Received By Code Enforcement Officer **Date** 6/16/20

REV 9/17/09

Please ATTACH to ZBA APPeal Form

* We have now had the opportunity to discuss MR Bamonte's opinion letter with our Attorney's and we disagree with virtually everything stated in the letter and stand on our previous assertions, which are part of the existy P&Z Record. We especially disagree that the March 2020 conveyance of the adjoing Property (100), from a description using maps 3443 & 3444, did Not eliminate the required frontage (attached) for the applicants other alleged lot (98). The opinion letter also mischaracterizes several of my other objections. Please also ADD.

The Property was conveyed in June 2017 after the March/April 2017 APPlication. The attached APPlication ASKs: "5. Was a Conservation Regulated Activity Permit Issued for the Property"? You can Not answer "Yes" on the APPlication and then convey the property using a different description from the one approved by the commission and still have a Valid permit. PERIOD. You can not rely on an application which is No longer Valid. If a New APPlication was required (as it should have been) and the APPlicant answered "Yes", he would be making a false Statement and the Permit would be Void (see Attached).

If you say on your Zoning Permit that you have a permit for a Conservation regulated activity and this permit is void because you conveyed the property by a different description subsequent to the approval, how are you not making a false statement on your Zoning Permit Application??

Sprint 6:53 AM 100%

Town of Weston, CT

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Town of Weston, CT / The Code / Part II: Regulations / Zoning Regulations

Article X **Administration and Enforcement**

§ 240-67 Zoning permits.

until an A-2 Zoning Location Survey has been submitted to and approved by the Commission. This Subsection **C** shall apply to all construction in the R-2A and NSC Districts including, without limitation, construction pursuant to a special permit.

[Added 12-30-2009]

D. Any permit issued on the basis of false or inaccurate information supplied by the applicant, or contained in the application, shall be null and void.

E. No zoning permit shall be issued unless the lot has

E. No zoning permit shall be issued unless the lot has the required road frontage, in accordance with §§ **240-11D** and **240-12D**, whichever is applicable, and unless such road has been completed or has had its subbase completed and specified gravel applied.

F. No zoning permit shall be issued for a use listed in

By using eCode360 you agree to the Terms of Use.

Sent from my iPhone

ZONING PERMIT APPLICATION

An appointment to submit this application to the Code Enforcement Officer is recommended. Please call Jim Pjura at 222-2559.

(Please submit an A-2 Survey and a $110.00 filing fee with this application. Check # _____)

LOCATION: _____
PROJECT DESCRIPTION: _____
OWNER'S NAME: _____
OWNER'S ADDRESS: _____
OWNER'S PHONE: _(___)_____

PLEASE ANSWER THE FOLLOWING QUESTIONS. IF YES, SUPPLY A COPY OF THE RESOLUTION/APPROVAL

(CIRCLE ONE)

1. IS A SPECIAL PERMIT REQUIRED FOR THIS PROPERTY? Y N NA

   IF YES, WAS A SPECIAL PERMIT APPROVED BY THE PLANNING & ZONING COMMISSION? Y N NA

   IN HOME OCCUPATION Y N NA
   APARTMENT Y N NA

2. IS THE PROPERTY LOCATED IN A SUBDIVISION? Y N NA
   IF YES, IS THE SUBDIVISION SITE SPECIFIC? Y N NA

3. IS PROJECT LOCATED WITHIN A FLOODPLAIN? Y N NA

   IF YES, WAS A FLOODPLAIN DEVELOPMENT PERMIT ISSUED BY THE PLANNING & ZONING COMMISSION? Y N NA

4. WAS A VARIANCE GRANTED BY THE ZONING BOARD OF APPEALS? Y N NA

5. WAS A CONSERVATION COMMISSION REGULATED ACTIVITY PERMIT ISSUED FOR THIS PROPERTY? Y N NA

APPLICATION DATE: _____
SIGNATURE OF OWNER: _____

I HEREBY CERTIFY THAT THIS APPLICATION IS BEING FILED BY THE UNDERSIGNED AS AGENT FOR THE OWNER NAMED HEREIN.

SIGNATURE OF AGENT: _____
AGENT'S ADDRESS: _____
AGENT'S PHONE: (___)_____

BY SIGNING THIS APPLICATION, YOU HEREBY GRANT THE CODE ENFORCEMENT OFFICER THE RIGHT TO ENTER ONTO THE PROPERTY TO CONDUCT NECESSARY INSPECTIONS.

FOR OFFICE USE ONLY BELOW THIS LINE

A-2 PROPERTY SURVEY Y N
FOUNDATION AS BUILT BEFORE FRAMING Y N
DRIVEWAY PERMIT REQUIRED Y N
LOCATED IN HISTORIC DISTRICT Y N

CODE ENFORCEMENT OFFICER SIGNATURE: _____
DATE: _____

BERCHEM MOSES PC

MEMORANDUM

To: Planning and Zoning Commission, Town of Weston
From: Nicholas R. Bamonte, Esq.
Date: May 27, 2020
Re: Legal Questions regarding 98 Georgetown Road

NRB

On May 4, 2020, just prior to the Regular Meeting of the Planning and Zoning Commission (the "Commission"), the Planning and Zoning Department received email correspondence from Mr. Robert Walpuck alleging various legal defects pertaining to the request for an extension of the existing zoning permit for 98 Georgetown Road (the "Permit"). At that time, the Commission requested that the Town Attorney's office review and analyze each of the seven (7) claims. The following summarizes our findings, in the order as presented by Mr. Walpuck (italics indicate an original query by Mr. Walpuck).

1. *The permit has already expired. A new hearing w/ the requisite notice to All is Required. I understand that multiple neighbors have not received notice of tonight's meeting. On what basis can P&Z have a meeting without notifying the neighbors??*

The zoning permit initially issued on April 23, 2018. Although Weston Zoning Regulations § 411.1 provides that such permits expire after two years, we believe that the law further provides that the expiration date is impliedly extended in the event of an appeal to a local ZBA, for the applicable appeal periods and any period of time that an appeal was pending. Here, the Permit had been appealed to the ZBA on May 17, 2018 and the ZBA ultimately denied the appeal on June 26, 2018. The ZBA published its notice of the denial on July 5, 2018, and for 15 days thereafter the Permit had been subject to appeal to the Superior Court under the General Statutes. Considering these dates together, we conclude that the Permit would normally expire on July 20, 2020, and therefore the request to the Commission for an extension does not constitute a new application requiring notice to neighboring property owners.

Moreover, on May 6, 2020, Governor Lamont issued Executive Order # 7JJ (the "Order"), which at Section 3 provided that "an approval or permit issued by a municipal land use agency ... and valid as of March 10, 2020, shall not lapse or otherwise expire during the state of emergency, and the expiration date of the approval shall toll during the state of emergency." Here, the Permit had been valid as of March 10, 2020, and therefore the Order extends the validity of the Permit throughout the state of emergency that is currently in effect across Connecticut.

2. *The Conservation Permit is No longer Valid. It was conveyed to a different entity without the requisite Approval of the Commission (see also #3).*

The Conservation Permit for 98 Georgetown Road (Permit No. 16-17) was issued on October 20, 2016 and expires on October 20, 2021. There is no prohibition against a contractor or third party seeking/obtaining a land use permit for a particular property and then selling/transferring its development rights under such permit to another entity. No Commission approval is necessary. For these reasons, the Conservation Permit is still valid.

3. *As previously repeatedly documented, in emails sent in March and April (and previously) the Conservation permit was given to a different entity and then subsequently conveyed to Lampert in 2017 by a Legal description that was radically different from the approved description, different access, different acreage, different frontage, etc, etc. (per Map 3443 and 3444 attached). A new Conservation Permit is required. The act of subsequently deeding the lot in a different configuration from the configuration approved by the commission is a change to the lot. How is this legal??*

Any conservation permit associated with the property falls under the jurisdiction of the Conservation Commission, not this Commission. Under the Zoning Regulations, there is no prerequisite that a valid conservation permit be issued or demonstrated before the issuance or extension of a zoning permit. Therefore, even if the allegations by Mr. Walpuck have any merit, they are moot for purposes of this Commission's consideration of the pending request for extension.

Even if a conservation permit did involve this Commission, there is no prohibition against a contractor or third party seeking/obtaining a land use permit for a particular property and then selling/transferring its development rights pursuant to such permit to another entity. Further, if a property has been altered by deed to the extent that activity authorized under a pre-existing conservation permit no longer applied, the owner would need to reapply to the Conservation Commission for approval of any modifications, independent from any action of this Commission.

4. *Since a new Conservation Permit is required, The Planning and Zoning Commission can not just renew the already expired Zoning Permit.*

As discussed above, the existing Conservation Permit is beyond the jurisdiction of this Commission. Because the two-year expiration timeframe for zoning permits exists solely in the local Zoning Regulations, the Commission is authorized in its discretion to extend the existing Permit.

5. *A new Zoning Permit Application is required. The last application is more than three years old. As an aside, the Health District, also Taxpayer funded, required a new Application with the payment of an additional fee, when the septic permit expired, even though the Septic was in the same place. Here we have a new entity asking for a renewal of an expired permit, without an application or the requisite fee being paid.*

There is no obligation for an applicant to seek a new zoning permit after three years. As discussed above, the Permit is still valid, and therefore there is no need to apply for a new zoning permit. In addition, no evidence has been submitted supporting that any Health District approval for septic alterations, as required under Regulations § 410.1, has expired. If such approval has expired, the Commission may require renewed Health District approval as a condition for approval of the pending request for extension of the Permit.

6. *It is well documented that The Planning and Zoning Commission can not determine matters of Title. The approved Record Map (3443 and 3444) shows a circle with access for the Three K's lot. In a legal opinion (the only one given to the town), given to the ZBA by the previous Town Attorney, the town was told to assume the existence of the right of way. The Planning and Zoning Commission can not ignore this and determine a matter of title. Especially since the legal description of The property is per record map 3443 and 3444. That is the purview of the court and Three K's is already a Defendant, in an action brought by 100 Georgetown Road, the grantee in the March 2020 deed.*

It is unclear what action the Commission has taken in regards to "determin[ing] matters of Title," as alleged above. In our opinion, the Commission has not made any such determinations, and will not do so in acting upon the pending request for extension. Although litigation had been initiated by 100 Georgetown Road LLC against Three K's LLC, it is not an appeal of any action by the Commission or implicate the Commission in any way.

7. *In March of 2020, Lampert conveys the adjoining piece to a new entity, 100 Georgetown LLC, by a new description (attached). The New description does not match the description of 98 Georgetown Road, which legal description is also attached (2017 deed from Arctic to Lampert). As stated, in my previously sent and attached email the applicant has created his own nonconformity (As opposed to Three k's deed to Nicholas Klokus). This matter was correctly stated by one member of the Commission previously. If you have a conforming lot, you can not deed out the frontage, that makes it conform, to one of your neighbors and still have a conforming lot. Yet this is precisely what happened in March of 2020.*

The documents submitted do not substantiate that the boundaries of the properties located at 98 or 100 Georgetown Road have been altered in a manner that creates a non-conforming lot. The revised property boundaries resulting from the March 2020 deed of 100 Georgetown Road to 100 Georgetown Road LLC only appear to expand the eastern property line of 98 Georgetown Road, and do not appear to alter any frontage. As a result, the revised property boundaries do not alter or impact the development of the single-family residence authorized under the Permit at 98 Georgetown Road. For these reasons, the March 2020 conveyance of 100 Georgetown Road, utilizing a revised legal description, does not invalidate the Permit applicable to 98 Georgetown Road.