

Killingworth Zoning Board of Appeals

October 23, 2023

Town of Killingworth

Zoning Board of Appeals

Minutes of October 23, 2023

1. Call to Order and Seating of members

Chairman Dodson called the meeting to order at 7:00 PM. ZBA members and seated were Bruce Dodson, Charles Martens, Brian Young and Graig Judge. Others present include Attorney Mark Branse, John Bradley, Jr., and ZEO Leo Bombalicki Jr. as well as about 20 members of the public. The Notice of Public Hearing was read into the record.

2. Public Hearing and Consideration of Application

Papoosha Real Estate Investors LLC, 212 Route 80, Killingworth, Map 28, Parcel 39, for appeal of decision of the Zoning Enforcement Officer per letter dated 3/20/2023 re: retail nursery and commercial greenhouses, 219 Route 80.

Chairman Dodson noted for the record that a minimum of 4 affirmative votes was required to pass a motion.

Chairman Dodson asked the applicant to present his application. Attorney Syvlia Rutkowska represented Papoosha Real Estate Investors in this Appeal of the Zoning Enforcement Officer's Decision. Proof of notice to abutters was presented. She noted this was a recorded hearing and subject to appeal. It was also noted there was no conflict of interest with the attorney.

There was a Cease & Desist Order issued in March 2023 from Tom Talbot, ZEO. Attorney John Bradley is representing the ZEO. ZEO's counsel has provide a copy of the March 30, 2023 letter with attachments. The Cease & Desist Order was concerned with 2 items, mulch and firewood at 219 Route 80. The Order does not involve wood burning furnaces on the property.

Both storage and processing has occurred on this property since 1999. The owner has done their best to accommodate the flux in materials. The site plan from 2007 with the Coppola map was reviewed. The wood lot in the center of the page noted where the logs are stored when brought in from other people. Left of the wood lot is the heating unit, wood burning stoves. There were 5 bins in the center of the property. One was firewood, one was brush and 3 were wood chips. They operated this way since 2007, but eventually the original bins were removed. Mulch and firewood were processed and stored on the property since 1999. Nothing was done maliciously or willfully.

It was noted this hearing was not about the wood burning stoves. There has been a wood burning furnace on this property for a very long time. The buildings and structures were approved with outdoor wood burning stoves for heat. There was an application for a building permit for heating source to be wood for all structures on the property. The wood lot area is for storage of logs.

With respect to fire wood, the Killingworth regulations are silent. The regs do allow wood burning stoves. Firewood storage is necessary for that. Firewood and mulch processing and storage is an accessory usage on this property. Letter from Doane Engineering dated August 28, 2023 regarding volumes of firewood was reviewed. This also enclosed the firewood processor. Also reviewed were documents from the DeFrancesco Firm, screen shots throughout the years as well as aerial views and aerials and screen shots taken today along with a photo of 10 Warwickshire Drive.

Scott Papoosha noted they have been on 219 Route 80 since 2003. They have been doing mulch and processing and storage on the property since day one along with wood burning furnaces. When they build the greenhouses, they decided to go with wood furnaces. They talked with others in the State for recommendations to see what they were using. It was customary to have 2 years of whatever came in. It would be piled up for year, processed and sat for 6 months and then burned. Piles then came in again for the next year. Wood needs to season for 2 years and then can be processed.

Becky Getsch reviewed the transient nature of the yard. The largest quantity of storage is for two years. There are 3 wood burning furnaces; 2 on 219 Route 80 and 1 on 212 Route 80. Doane Engineering letter was reviewed regarding the

wood burning furnaces. It was noted 1200 cords of wood are stored at one time for the 3 furnaces.

Dates were reviewed for doing mulch and storage bins ranging from 1999-2000 to 2014-2015.

It was noted a lot of trees were lost the last 4-5 years. A lot of wood comes from neighboring municipalities. Martens asked if there was a limit to the amount allowed to be on the site. Papoosha noted they have gotten permission from the Town to bring in more material after storms. Becky reviewed what happens with the grinding and processing after extreme weather events.

Judge inquired about operating hours. It was noted hours are 7 to 5 and for heavy machinery 8 to 3 or 4. Papoosha referenced the Stipulation from November 16, 2015 regarding storage of logs and firewood.

There were concerns about the bins and they were removed. Becky noted Talbot's letter in August claimed the bins were not there, but they were there and she explained where they were. Subsequently, the bins were dismantled in order to access the oldest wood.

Young noted global and natural events constantly exceed what is allowed. Becky noted between the gypsy moths, the oak trees, ash trees and beach trees and extreme weather events, that all impacts them and they exceed the limits. She stated their goal is to stay within the limits. They will have to turn people away in the future.

Judge asked what the greatest problem was with processing wood. What is the major factor preventing you from growing your business.

Becky noted have been trying to manage the site and spending a lot of money talking to engineer and redeveloping the site proactively. A new plan was approved by Inland wetland by denied by Planning & Zoning. We are appealing that decision.

She noted in May there was a big pile of mulch type material not intended for sale. They ground up a lot of logs. This was called the first grind. In May of 2022,

that material was transferred to a different facility. In September, the ZEO was invited to the site to view things. They toured the site and ZEO suggested redoing the site plan. We reassembled the bins and cut wood piles and came into compliance.

They also filed an application for additional grinding which was denied. They would like to see site cleaned up but can't clean up without doing the grinding. Young asked how long to grind the mulch piles. Papoosha replied one month. The mulch is sold after grinding. Martens asked if they want to stay within the regulations now, there is no solution to the problem?

The following items were reviewed – 3 screen shots

(1) from 2012 Feb, March in the wood lot making mulch for spring season.

Grinder, payload, excavator.

(2) from 2016, installed planted berm, bins, mulch and firewood.

(3) from 2022, foot prints are the same but piles are in different places. Square footage and height changes in the mulch piles. Making mulch for spring season. Mulch is an integral part of their business.

They noted for the record, they will comply and do it within the time requirements and regulations.

Attorney Bradley asked if firewood is sold from there and how much. The reply was yes, in 2022 probably 200 cords of firewood was sold retail. Bradley also asked what make and model were the wood burning furnaces. Papoosha noted he would get back to Attorney Bradley by email tomorrow with this information. The wood processor is tier 3 licensed. Bradley also noted they are now under a Court Injunction and read it into the record. Reviewed Injunction dated May 10, 2023. Becky noted they want a solution that works, satisfies everybody and allows them to earn a livelihood. They realize things have gotten out of hand, but they now have the Doane Engineering plan.

Attorney Chris McKeon introduced himself as representing a group of neighbors. He noted the proposed settlement was rejected by Planning & Zoning on October 17th. He further noted processing was in the regs as an accessory use. There's been years of overstepping things by prior ZEO's. Talbot issued a Cease & Desist Order in March of 2022 and that's what is before us today. This is an Appeal of

Talbot's Cease & Desist Order. They admittedly violated what was allowed. Processing was not allowed. It has to be renewed each year as an accessory use. If they are to do processing as an accessory use, they have to request a change to the regs as it's not permitted. One has to be limited by the regulations. If the regulations are exceeded, a Cease & Desist Order is issued.

Young asked how long it would take to work through the Courts. Most cases resolve by settlements. One can also request court mediation or pre trial. Attorney Rutkowska noted the ZEO has the right to bring it to court without a C&DO. We have to go through this process. McKeon noted there are clear violations, that's why it's a Cease & Desist Order. Rutkowska noted this Board doesn't just affirm or deny a C&DO, it can be modified too. McKeon noted Talbot issued a C&DO because the reasons were many. Wood storage from 2015. Site plan to allow processing as accessory use 2015. Regulation change in 2014 and 2015. Applicant got regulation change but didn't follow through by applying for a Special Exception. It's important to put this in chronological order. It's an extraordinary pile of wood. There has to be a limit. This shouldn't have morphed out of control. It was noted in previous minutes the processing of wood as become the primary use. Mistakes have been made. This has to be done right. McKeon noted we need to come to a decision on what is going to be enforced in the regulations and come to an understanding on what will be allowed in the future. You should deny the Appeal and move on.

Scott Kasper noted this is a hardship to the business, not the property. This is all financial hardship to the business which is in contradiction to the Appeal form. They are manufacturing something. 500-69 is Garden Center and not allowed under these uses. 1) Wifi Café and 2) Processing of Mulch only two things approved by Special Exception. Only processing of mulch. Planning & Zoning is charged with making it okay for us to enjoy our property. We only want them to comply with the regulations.

Unknown resident – can one manufacture in a commercial zone?

McKeon noted Talbot took the position as to what is or isn't allowed on the property. A Judge validates the C&DO issued. Killingworth has a permissive code. You can't do anything that isn't in the Book, The Code of Town of Killingworth.

Attorney Bradley noted Section 569(C) (6) processing of trees, etc. accessory to an approved garden center. Past performance has been an issue.

Attorney Rutkowska noted she'll clarify the regulation Bradley read is only applied to mulch, doesn't apply to firewood. Customary and incidental on property that is permitted. Some things have been remediated. We clarify for the record and acknowledge firewood and log storage. This should be dealt with in litigation. Then you Appeal that. She noted the provision about mulch is inappropriate and should not be in the regulations. We have to comply with the Fire Marshal and comply with the limits. Papoosha noted Dennis Campbell did a site review for the March public hearing and approved our lot. We are in compliance with State and Local Fire Marshalls. Everything we do is agricultural and forests. We are within the legal definitions of farming. In December 2021 regarding tree issues, most of this wood is used for firewood. Lentz noted they are allowed to use the wood in the wood burning stoves.

Rutkowska noted the application form is really a variance form so the hardship language is not applicable in this case. This should be approved, modified or denied. There was discussion regarding procedure for remedies.

Unknown neighbor – noted we have to spend our own money. This is not what we wanted to do but neighbors felt strongly about this.

Unknown neighbor – 1200 to 1500 cords of wood to heat furnaces. How many logs does it take to make a cord of wood. There's an awful lot of wood on that property. Much more to heat the wood furnaces and that property.

Bradley noted on behalf of ZEO Talbot – this is a very serious C&DO, well documented and includes exhibits. It should be upheld. This is not an accessory use. It violates existing ordinances. It's a primary use. McKeon noted exparte orders are very hard to get.

Motion by Judge, second by Young, to close public hearing discussion. PASSED UNANIMOUSLY.

3. Public Hearing and Consideration of Application

Christopher J. Caprio and Amanda Garbinski, 81 Green Hill Road, Killingworth, Map 32, Parcel 12, for variance of Section 500-44(D)(4) Front Setback 40 feet to add to home while respecting original 1767 structure. Project will be least invasive to add modern amenities while maintaining historical integrity.

Chairman Dodson read the Notice of Public Hearing into the record. He noted this was the former home that belonged to Harold and Dorothy Wright. It was noted the Caprios applied to the Historic Review Committee to remove the back of the house and that was approved. The hardship was the shape of the lot and the placement of the house on that piece of land. Setback lines were reviewed. It was noted this plan was the least invasive and doesn't affect sight lines for drivers. Mr. Caprio reviewed the design of the house noting they would like to remove the annex of the house, but would leave the "L".

It was noted the addition would be about 20' from Chittenden. It would also have a second floor. Martens noted this was a classic for a variance with the placement of the house.

Motion by Judge, second by Martens, to approve the variance on Map 37 for Section 500-44D for front setback of 44' to add to home while respecting the 1776 structure. House is placed on a lot and no alternative to the addition placement that would not be nonconforming. UNANIMOUSLY APPROVED.

Papoosha

Chairman Dodson noted he has 2 problems with this. One is that it is Planning & Zoning's purview to make Zoning Regulations and decide what is acceptable and what is not. It's a stretch for ZBA to weigh in with this. We are not a policy organization. The second thing is its always a reservation on the part of the ZBA to approve something the owner or applicant has claimed is a problem. Somebody does something opposing to the Zoning Regs, we don't approve that after the fact. We discussed this about 10 years ago and we asked Planning & Zoning to review it again as it was beyond the scope of what we do. He felt ZBA

should not approve this. He suggested maybe giving them 6 months to comply through the winter. Young noted there are so few businesses in town, he would hate they have exceeded the volume. He would like to see if we could come up with a way of preventing them to be shut down but still comply. Maybe a limited 6 months to a year for them to get through the Court. Can we suspend this for a time. If they haven't complied for the last several years how do we encourage them to comply. He noted he would like to see the Court case make the decision. Executive Session was closed.

There was further discussion regarding suspending the Cease & Desist Order for 6 months. Can we allow them to process what they have and not accept any more through the winter. Martens asked if this was a legitimate C&DO.

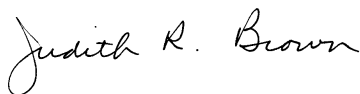
Motion by Martens, second by Dodson, to deny the Appeal of Scott Papoosha of the ZEO's letter of March 30, 2023. In favor of the motion was Martens and Judge. Opposed to the motion was Dodson and Young. Motion did not receive 4 affirmative votes therefore failed.

4. Any Other Business

5. Adjournment

There being no further business, the meeting adjourned at 10:00 PM.

Respectfully submitted,



j

Judith R. Brown, Recording Secretary