

**TOWN OF EAST WINDSOR
ZONING BOARD OF APPEALS
11 RYE STREET
BROAD BROOK, CT 06016**

MINUTES OF REGULAR MEETING

Monday, November 07, 2022

*****These minutes are not official until approved at a subsequent meeting*****

Zoning Board of Appeal

Jose Giner, Chairman
Nolan Davis, Vice Chairman
Steve Smith
Mystica Davis
Dan Noble

Alternates

Kurt Kebschull
David Swaim
Scott Morgan

Join Zoom Meeting

<https://us06web.zoom.us/j/7148971799>

Meeting ID: 714 897 1799

Dial by your location

+1 312 626 6799 US (Chicago) +1 646 558 8656 US (New York)

Meeting ID: 714 897 1799

Find your local number: <https://us06web.zoom.us/j/7148971799>

ATTENDANCE: Director of Planning & Zoning Enforcement Officer Ruthanne Calabrese attended the meeting (via Zoom). Danielle Miller, Assistant Town Planner, Zoning Enforcement Officer, & Wetlands Agent hosted the hybrid meeting – in person. Chairman Jose Giner (in person), Vice Chairman Nolan Davis (via Zoom), Regular Member Dan Noble (in person), David Swaim (joined the meeting at 7:13 pm), and Alternate Commissioner Kurt Kebschull (via Zoom) were present at the Call to Order.

ABSENT: Regular Member Mystica Davis, Steve Smith and Alternate Member Scott Morgan

TOWN OF EAST WINDSOR
ZONING BOARD OF APPEALS
Regular Meeting Minutes - November 07, 2022

GUESTS/SPEAKERS signing in to teleconference remotely: Some Zoning Board of Appeal Members noted above; Dave Hammond Applicant/Owner, United AG & Turf/SCF Funding IV, LLC (via Zoom), Matt Geanacopoulos, CT DOT (via Zoom), Jessie Endicott & DaQuan Adams, property owners (via Zoom), and Recording Secretary, Sabo Maniscalco (via Zoom)

GUEST/SPEAKERS attending in person: Paul Anderson, Marie DeSousa, Peter J. Sterling, Esq. Attorney representing Kement Family, Stanley J. Kement, Jr, Bill Hastings, and Edward S.

I. TIME AND PLACE OF MEETING:

Chairman Giner called the November 07, 2022 Regular Meeting of the East Windsor Zoning Board of Appeals to Order at 7:04 p.m. in person and via Zoom.

II. ESTABLISH QUORUM:

Chairman Giner noted the Board has established a quorum with three Members (Alternate Member Kurt Kebschull via Zoom) present in-person at the Call to Order. David Swaim joined the meeting at 7:18 p.m.

III. PLEDGE OF ALLEGIANCE:

Chairman Giner led the Board in the Pledge of Allegiance.

NEW HEARING: ZBA #2022-03:

Applicant/Owner: United AG & Turf/SCF Funding IV, LLC, is requesting a variance to relocate their current sign per the East Windsor Zoning Regulations Section 602. MBL: 052-20-061-1, Zone TZ-5.

Chairman Giner read the Legal Notice for the record.

LEGAL NOTICE

EAST WINDSOR ZONING BOARD OF APPEALS

The East Windsor Zoning Board of Appeals will hold a public hearing on Monday, November 7th at 7:00 p.m. at the East Windsor Town Hall, 11 Rye Street, Broad Brook, CT to consider the following application:

TOWN OF EAST WINDSOR
ZONING BOARD OF APPEALS
Regular Meeting Minutes - November 07, 2022

The East Windsor Zoning Board of Appeals will hold a public hearing on Monday, November 7th, 2022 at 7:00 p.m. to consider the following application. The meeting will be held at The East Windsor Town Hall, 11 Rye Street, Broad Brook, CT and online. Details regarding how to attend will be published on the Commission's Agenda and will be made available on the Town's website.

ZBA-2022-03 Applicant/Owner: United AG & Turf/ SCF Funding IV, LLC, has an Application before the East Windsor Zoning Board of Appeals to request a variance to relocate their current sign per the East Windsor Zoning Regulations Section 602. MBL: 052-20-061-1, Zone TZ-5.

A full copy of the application is available in the Planning & Development Office at East Windsor Town Hall and will be posted online with the Commission's Agenda at www.eastwindsor-ct.gov. At this meeting, interested persons may be heard and written communications received. Information for how to attend this meeting will be published on the Commission's website and meeting agenda a minimum of 24 hours before the meeting.

Chairman Giner clarified the process of the hearing for applicant. First, the applicant would explain his request then the staff provides their reasoning followed by the Board Members to ask the questions including the Public.

Dave Hammond, Applicant/Owner of the United AG & Turf/SCF Funding IV, LLC explained his request to relocate the sign from 105 S. Main Street to 119 S. Main Street. It is the direct relocation of the John Deer Sign measuring 13 feet height and 7 feet wide. The sign would continue attracting the new businesses to our door.

Dannielle Miller, Zoning & Wetlands Compliance Official & Assistant Town Planner, provided the following:

The Subject site is 119 S. Main Street. Its closest cross streets are Tromley Road (North) and Phelps Road (South). It is located on the Easterly side of S. Main Street. The site is zoned TZ-5 and is 7 acres. The site is served by Public Water and Public Sewer. The request is for a variance of Section 602.5 of the Town's Zoning Regulation regarding Freestanding Signs.

The Applicant was denied a permit to relocate an existing legal non-conforming 91 sq. ft. freestanding sign at 105 S. Main Street to 119 S. Main Street. The addresses belong to legally separate and distinct parcels with different owners of record.

Section 602.5 (b) of the Zoning Regulations states "no freestanding sign shall exceed 32 sq. ft. in area and 15 ft. in height."

TOWN OF EAST WINDSOR
ZONING BOARD OF APPEALS
Regular Meeting Minutes – November 07, 2022

The hardship claimed by the applicant is “not being allowed to have a business sign will hurt business – this is as small of a sign as we currently have.” The applicant is not being denied a sign by the Planning Department. The applicant is being denied a sign that is 3 x the square footage allotment of a freestanding sign., per the Zoning Regulations.

The current 91 sq. ft. sign that is located at 105 South Main Street is legal non-conforming. The applicant would like to relocate this non-conforming sign to 119 South Main Street. *Section 602.10 Non-Conforming Signs* of the Zoning Regulations states that “[non-conforming] signs shall not be relocated to any other location unless such relocation results in reducing or eliminating the degree of non-conforming.”

Additionally, *Section 903.3*, outlined for additional requirements for use variances states that, “A variance from the terms of these Regulations shall not be granted by the Board of Appeals unless and until the Board shall make a written finding that:

- (b) ... the special circumstances relate to the condition of the land or parcel;
- (d) ... the special circumstances constitute an exceptional difficulty or unusual hardship not of applicant’s making and are not solely a financial detriment;
- (f) .. that granting the variance requested will not confer upon the applicant any special privilege or use that is denied by these Regulations to other lands, structures, or buildings in the same district.”

Due to these factors, I do not believe that the applicant has met the requirements outlined in the Zoning Regulations that make a use variance acceptable. In addition, allowing for this variance will set a precedent for freestanding signs for future businesses, rendering the current Zoning Regulations irrelevant.

It is my recommendation that the Zoning Board of Appeals denies the applicant’s request for a variance.

David Swaim joined the meeting at 7:18 p.m.

The Board Members discussed the regulations relevant to the sign and its last approval.

Jose Giner quired the members of the public for any questions.

Paul Anderson, 89 Main Street, Broad Brook: I am pro-business. The 4 feet piece on the bottom – does it serve any purpose?

Dave Hammond: No, it is just the way the sign was prepared to look aesthetically nice.

TOWN OF EAST WINDSOR
ZONING BOARD OF APPEALS
Regular Meeting Minutes – November 07, 2022

Chairman Giner again queried the Board for comments; no one raised any questions.

Chairman Giner called for a motion to close the Public Hearing.

MOTION: To CLOSE THE PUBLIC HEARING on ZBA #2022-03: Applicant/Owner: United AG & Turf/SCF Funding IV, LLC, is requesting a variance to relocate their current sign per the East Windsor Zoning Regulations Section 602. MBL: 052-20-061-1, Zone TZ-5.

**David Swaim moved/Dan Noble seconded/DISCUSSION:
VOTE by a show of hands:
In Favor: Nolan Davis/Jose Giner/Kurt Kebschull/Dan Noble/
David Swaim
(No one opposed/No abstentions)**

Chairman Giner called for a motion of approval.

MOTION: To APPROVE the United AG & Turf/SCF Funding IV, LLC, requesting a variance to relocate their current sign per the East Windsor Zoning Regulations Section 602. MBL: 052-20-061-1, Zone TZ-5.

Dan Noble moved/David Swaim seconded/DISCUSSION:

Jose Giner clarified the laws and regulations of Zoning and Planning Commission pertaining to the signage. The issue here is to approve or deny the sign request in lieu of the set procedures by the Zoning Board of Appeals. The regulations are clear when it comes to the signage. It is the Board's duty to approve the request within the allowable parameters of the regulations.

**VOTE by a show of hands:
In Favor: Kurt Kebschull and Dan Noble**

Opposed: Nolan Davis/Jose Giner/David Swaim

Motion to approve failed.

Jose Giner read the Public Notice for **ZBA #2022-04: Applicant/Owner: Connecticut Department of Transportation / Jessie Endicott& DaQuan Adams, Pursuant to CGS 48-24 is requesting a variance from Section 401 for 41.5ft where 50ft is required pertaining to front yard setback requirements and variance request from Section 401 for 12,506sf where 80,000sf is required pertaining to minimum buildable area requirements in the A-2 Zone.**

TOWN OF EAST WINDSOR
ZONING BOARD OF APPEALS
Regular Meeting Minutes - November 07, 2022

Application is associated with bridge replacement by the CT Department of Transportation on Scantic Rd. MBL: 076-31-009, Zone A-2.

Jose Giner asked the CT Department of Transportation to present the request.

Matt Geanacopoulos, CT DOT: The CT DOT has a project to replace the bridge over the Scantic River. As part of the project, the DOT is going to realign the sightline of bridge which requires the acquisition of the easement from the property along the way. The DOT has the right of way per regulation 48-24 to acquire the setback and variance.

Jose Giner asked the Staff for any input or report.

Ruthanne Calabrese: The property is a corner lot and the frontage issue on 50 feet on Mahoney and Scantic. The portion impacted by the easement is on Scantic side and has not impact on public water or sewage. The variance is a non-conforming lot.

Jose Giner quired the Members of the Board for any questions.

The Board discussed the easement and how much would the residents be left with. The answer was 41 feet.

Nolan Davis described the lot as a narrow turn and whether it would have any impact on it.

Matt Geanacopolous, CT DOT: The bridge alignment will be straightened with clear sightline. The S-curve will be sightly flattened.

Jose Giner asked if the public or residents had any questions.

Jessie Endicott & DaQuan Adams introduced themselves as having met and creating a family with three children. The family purchased the property in April 2022 and was looking forward to creating a bird sanctuary including applying for a conservation preservation with the Town. The acquisition by the CT DOT would reduce their property and impose significant hardship for the family. The applicants asked the Board to deny the request. As Black members of the community, we feel vulnerable to defending our civil rights.

Jose Giner asked for any comments or questions from the Board members or public. No comments or questions were raised.

Jose Giner clarified the Board has no jurisdiction over the State regulations.

Chairman Giner called for a motion to close the Public Hearing.

TOWN OF EAST WINDSOR
ZONING BOARD OF APPEALS
Regular Meeting Minutes - November 07, 2022

MOTION: To CLOSE THE PUBLIC HEARING on ZBA #2022-04: Applicant/Owner: Connecticut Department of Transportation / Jessie Endicott & DaQuan Adams, Pursuant to CGS 48-24 is requesting a variance from Section 401 for 41.5ft where 50ft is required pertaining to front yard setback requirements and variance request from Section 401 for 12,506sf where 80,000sf is required pertaining to minimum buildable area requirements in the A-2 Zone. Application is associated with bridge replacement by the CT Department of Transportation on Scantic Rd. MBL: 076-31-009, Zone A-2.

David Swaim moved/Dan Noble seconded/DISCUSSION:
VOTE by a show of hands:
**In Favor: Nolan Davis/Jose Giner/Kurt Kebschull/Dan Noble/
David Swaim**
(No one opposed/No abstentions)

Chairman Giner called for a motion of approval.

MOTION: To APPROVE Applicant/Owner: Connecticut Department of Transportation / Jessie Endicott & DaQuan Adams, Pursuant to CGS 48-24 is requesting a variance from Section 401 for 41.5ft where 50ft is required pertaining to front yard setback requirements and variance request from Section 401 for 12,506sf where 80,000sf is required pertaining to minimum buildable area requirements in the A-2 Zone. Application is associated with bridge replacement by the CT Department of Transportation on Scantic Rd. MBL: 076-31-009, Zone A-2.

Dan Noble moved/David Swaim seconded/DISCUSSION:
Nolan Davis had no comments and in favor of the project.
Kurt Kebschull agrees with Nolan
David Swaim feels the same as Nolan and Kurt
Dan Noble understands that the project would go forward due to the State regulations regarding the easement variance.
Jose Giner elaborated the regulation and the two options are the statutory and the State buying out the property.

VOTE by a show of hands:
**In Favor: Kurt Kebschull/Dan Noble/ Nolan Davis/Jose
Giner/David Swaim**
Opposed: None
Motion PASSED

TOWN OF EAST WINDSOR
ZONING BOARD OF APPEALS
Regular Meeting Minutes - November 07, 2022

Jose Giner read the Public Notice for the Applicant/Owner: Kement Limited Partnership, Estate of Lisabella and North Rd Materials, LLC, is requesting an appeal for the notice of violation received September 28, 2022. MBL: 117-36-42B & 43C, Zone A-1 & A-2.

Chairman Giner explained the process for the appeal and that the Town Staff will be going first to provide the information and then the applicant would proceed with the request.

Danielle Miller read the Notice of Violation for the record.

The subject site is 297 North Road. Its closest cross streets are Rice Road (Northwest) and Harrington Road (South). It is located on the Easterly side of the North Road. The site is zoned A-1 and is 31.53 acres. The site is served by private well and septic system. The request is for an appeal to the notice of Violation dated September 28, 2022, for conducting unpermitted Inventory Holding on the property.

After witnessing fully loaded car haulers parked on the property of 297 North Road and after pictures supplied by a site visit of the Town Planner and Town Engineer taken August 9 of the empty car haulers, I sent a friendly reminder of the East Windsor Zoning Regulations concerning "Inventory Holding Areas" on September 9, 2022. "Inventory Holding Areas" are defined in the Regulations as areas designed for the storage and rotation of automobiles related to the operation of automotive use having Motor Vehicle Dealers/Repairers License or Used Car Dealers License." Said use permitted in the A-1 Zone, per *Section 402 (7) & 815 (3) Inventory Holding Areas* with the provisions that a Special Use permit is granted by the Planning & Zoning Commission and that the parcel "partially borders a B-2, M-1, or TZ5 Zone." I found no evidence of any permit granted for such land use by the PZC, nor does the land about the required zones. I found no Motor Vehicle Dealers/Repairers License or Used Car Dealers License listed for 297 North Road, North Road Materials LLC or under the Kement name with the State of CT.

On September 26, 2022, I received a letter, in response to the initial regulation, reminder letter, from Atty. Karen Elise Robbins, who claimed that her client, Mrs. Stanley Kement, assured her that "no vehicles are loaded or off-loaded and no cars are stored on his property". She stated that if she did not hear from me, she would consider the matter resolved. I replied via e-mail on September 27 that I would be issuing a Notice of Violation to the owners of the property and I included the photographs and log of car haulers being parked there that I would include in the Notice of Violation sent on September 28, 2022 and I continued to log and photograph car haulers on the property for an additional week.

Recognizing the parcel pre-exists as having a non-conforming Contractor Storage Use, we understand and expect that there would be a limited quantity of commercial vehicles on property, particularly in the form of construction equipment. It is unclear how car

TOWN OF EAST WINDSOR
ZONING BOARD OF APPEALS
Regular Meeting Minutes - November 07, 2022

haulers loaded with non-commercial vehicles fit in to this understanding. Without a permit for Inventory Holding, in the A-1 zone, in accordance with Section 404 (l) of the East Windsor Zoning Regulations, "Off Street parking or garaging of residents' vehicle(s) subject to the following restrictions:

1. Not more than one commercial vehicle with or without commercial markings.
2. In any case, not trucks, buses, trailers, construction equipment or any other vehicles exceeding one-and-a-half-ton capacity, excluding recreational vehicles.

1.5 tons equals 3,000 lbs. A typical 5-car hauler trailer, empty, weighs approximately 8,900 lbs. Fully loaded, it can weigh approximately 26,000 lbs. This far exceeds the permitted weight for a truck to be parked on a property. In addition, as the Zoning Enforcement Officer I have been diligent sending Violation notices to other properties in the Town who have parked trucks exceeding the weight limit, and they have complied by the regulations and moved the vehicles in question.

Due to these factors, I do not believe that the applicant has met any of the requirements outlined in the Town of East Windsor Zoning Regulations that would allow parking car haulers on the property at 297 North Road. I maintain the validity of my Notice of Violation.

Jose Giner asked the Applicants to present their case.

Peter J. Sterling, Esq., Law Offices of Nair & Kevin, PC, is presenting the case on behalf of the Applicants - Stanley J. Kement, Jr. He read the following Memorandum that he sent to the ZBA.

"[Z]oning regulations are local enactments ... and, therefore, their interpretation is governed by the same principles that apply to the construction of Statutes... moreover, regulations must be interpreted in accordance with the principle that a reasonable and rational result was intended" (Internal quotation marks omitted.) *Trumbull Falls, LLC v. Planning and Zoning Commission*, 97 Conn. App. 17, 21-22, 902 A.2d 706, cert. denied, 280 Conn. 923, 908 A.2d 545 (2006).

"Common sense must be used in constructing the regulation, and we assume that a rational and reasonable result was intended by the local legislative body." (Internal quotation marks omitted.) *Balf Co. v. Planning & Zoning Commission*, supra, 79, Conn. App. 636. "The words employed by the local legislative body are to be interpreted in accordance with their natural and usual meaning" (Internal quotation marks omitted.) *Farrior v. Zoning Board of Appeals*, 70 Conn. App. 86, 90, 796 A.2d 1262 (2002).

TOWN OF EAST WINDSOR
ZONING BOARD OF APPEALS
Regular Meeting Minutes - November 07, 2022

When construing a regulation, the fundamental objective is to ascertain and give effect to the apparent intent of the drafters of the regulation. The Zoning Board of Appeals must seek to determine, in a reasoned manner, the meaning of the language as applied to the facts.

Because Zoning Regulations are “in derogation of common law property rights... the regulation(s) cannot be construed beyond the fair import of its language to include or exclude by implication that which is not clearly within its express terms.”

The Zoning Board of Appeals must use the above cited legal principles to interpret the issues around the definition of Inventory Holding Area as related to the facts set forth above. The appellant’s position is that the property does not fit because:

1. It is not an “area designed for the storage and rotation of automobiles”. It is simply an area where, on occasion both loaded and unloaded car carrier trailers park. There is no “design”. There vehicles are simply parked on the subject property.
2. No automobiles are “stored” on the property.
3. No automobiles are “rotated” on the property. While the definition of “rotation” seems vague at first glance, we believe it refers to the process of moving automobiles from on auction lot to another as needed by the business.
4. No automobiles are loaded or off loaded from the car carriers while on the property. Exhibit A, letter from the Diversified Automotive, Inc.
5. There is no related automobile use requiring Dealers, Repairers or Used Car Dealer License nor is there one connected with the property.
6. Neither the car carriers, no any automobiles on the carriers are “inventory” of the property owner.
7. The way the Town reads the Regulation is somewhat illogical. Is there a violation only when there are automobiles on the car carriers but not when the carriers are empty?

RELIEF REQUESTED

The Appellant requests the Zoning Board of Appeals overrule the Notice of Violation and find the temporary parking of car carriers, whether loaded or unloaded is not a violation of the East Windsor Zoning Regulations.

TOWN OF EAST WINDSOR
ZONING BOARD OF APPEALS
Regular Meeting Minutes – November 07, 2022

Ruthanne Calabrese stated the fact that the trailers were loaded with cars and it was observed by the Town Staff on numerous occasions. No staff member went out looking for any reason to cite the violation. Instead, after multiple sightings of car trailers loaded with cars, Danielle Miller, Zoning and Enforcement Officer, sent out the letter of inquiry to ensure that the information received would be within the Zoning and Planning regulations.

Chairman Giner called for a motion to close the Public Hearing.

**MOTION: To CLOSE THE PUBLIC HEARING on ZBA #2022-05:
Applicant/Owner: Kement Limited Partnership, Estate of
Lisabella and North Rd Materials, LLC, is requesting an appeal
for the notice of violation received September 28, 2022. MBL: 117-
36-42B & 43C, Zone A-1 & A-2.**

Dan Noble moved/ David Swaim seconded/*DISCUSSION: None*
VOTE by a show of hands:
**In Favor: Nolan Davis/Jose Giner/Kurt Kebschull/Dan Noble/
David Swaim**
(No one opposed/No abstentions)

Chairman Giner called for a motion of approval.

**MOTION: To APPROVE Applicant/Owner: Kement Limited Partnership,
Estate of Lisabella and North Rd Materials, LLC, is requesting an
appeal for the notice of violation received September 28, 2022.
MBL: 117-36-42B & 43C, Zone A-1 & A-2.**

Dan Noble moved/David Swaim seconded/*DISCUSSION:*
Nolan Davis had no comments
Kurt Kebschull had no comments
David Swaim had no comments
Dan Noble understands the issue Car Trailer Holding Area regulations
and why they were created.
Jose Giner elaborated the regulation and definition of the Holding
Inventory Area.

VOTE by a show of hands:
**In Favor: Kurt Kebschull/Dan Noble/ Nolan Davis/Jose
Giner/David Swaim**

Opposed: None
Motion PASSED

TOWN OF EAST WINDSOR
ZONING BOARD OF APPEALS
Regular Meeting Minutes – November 07, 2022

V. **OTHER BUSINESS:**

a. Review Bylaws

Ruthanne Calabrese stated that at the last meeting the Annual Election of Officers were discussed; and, therefore, the review of Bylaws was requested. The Election of Officers is second meeting after the August meeting.

Chairman Giner asked the Board Members to take a look at it and discuss it at the next meeting. He asked if there were any comments from public or the Board members. No one responded.

VI. **PUBLIC PARTICIPATION:**

None

VII. **APPROVAL OF MINUTES:**

A. October 3, 2022:

Vice Chairman Davis questioned if anyone had any comments, or edits, to the Minutes for October 3, 2022 as presented? No one requested any changes.

Vice Chairman Davis called for a motion of approval.

MOTION: To APPROVE the Minutes of the Zoning Board of Appeals dated April 4, 2022 as presented.

Nolan Davis moved/Dan Noble seconded/DISCUSSION: None.

VOTE by a show of hands:

In Favor: All

VIII. **ADJOURN:**

MOTION: To ADJOURN the meeting at 8:55 p.m.

Nolan Davis moved/David Swaim seconded/DISCUSSION: None.

VOTE by a show of hands:

In Favor: All

Respectfully submitted,
Sabo Maniscalco, Recording Secretary, East Windsor Zoning Board of Appeals