

MINUTES OF MARCH 4, 2019 REGULAR MEETING OF THE  
EASTON ZONING BOARD OF APPEALS

The meeting was called to order at 5:30pm by Chairman John Harris

Regular members present - John Harris, Raymond Ganim, Charles Lynch and Maureen Williams and Victor George

Alternate members present - Tom Dollard

Alternate member absent - Dr. Mitchell Greenberg and Scott Charmoy

For the record: - Tom Dollard was appointed to vote for Victor George, who arrived a few minutes late at approximately 5:32pm.

1. Appointments: None
2. Public Hearing: **Appeal of the decision of The Zoning Enforcement Officer to issue a Cease and Desist to Michael and Joanne Grinnell, 15 Fensky Road, Easton, CT**, for violation of Article 6, Sect./Para. 6.1.2 (Home Occupations), Article 8, Sect./Para. 8.2.3 (Non-conforming Use) and Article 4, Sect. 4. (Uses) of the Easton Zoning Regulations, to allow for a home occupation in a garage. A copy of the Appeal is on file in the Easton Town Clerk's office. The Chair read the legal notice into the record. The Chair next read the Appeal from Joanne Fensky into the record as well as the letter containing the cease and desist order, dated January 4, 2019, from Phillip A. Doremus, Zoning Enforcement Officer, so that everyone knew what was being appealed. Next, the Chair read the original complaint from Bill Walker with pictures attached.

Present at the meeting was Joanne Grinnell and her Counsel, Jim Nugent. Attorney Nugent responded to the order by the Zoning Enforcement Officer, and stated that the operation at 15 Fensky Road was not a roofing business; he stated that it was a home repair service. Attorney Nugent asked his client, Joanne Grinnell, a number of questions which Ms. Grinnell answered:

1. Who owns the business? Ms. Grinnell answered that she owned business with the Donahue's (father and son).
2. When was this property acquired? Ms. Grinnell stated that it was acquired in 1993 and that the realtor told her that the garage had been a cabinetry workshop which she assumed was grandfathered.
3. Ms. Grinnell was asked to state the current operations at Fensky Road. Ms. Grinnell stated that they fabricate sheet metal (aluminum and copper) to create gutters and flashing for houses, the metal is cut with shears and bent onsite; and the metal is kept in the garage. Ms. Grinnell stated that a truck brings the copper in a roll of approximately 3,000 lbs. to the property and then a forklift is used to bring the copper into the garage. Ms. Grinnell was asked if there was anything else which she stored in the garage; she stated that she also stored hangers for the gutters. Ms. Grinnell stated that there were no roofing materials stored on-site other than the gutters and that she had a yard in Bridgeport where she stored roofing materials. Ms. Grinnell was asked about outside presence of the business. Ms. Grinnell stated there were no displays or advertising on the property. Ms. Grinnell was asked about vehicular traffic at the property. She stated that vehicular traffic was usually just once a day.

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3. (continued)

Ms. Grinnel was asked if there were any commercial vehicles kept on the property? Ms. Grinnell stated that there was only one commercial vehicle kept on-site by her partner Scott Donahue, as her 2010 Silverado and 2014 Chevrolet Van were not considered commercial.

4. Ms. Grinnell was asked about the impact of future business on the street. She stated that they only have to go by one house on the street and that there is no outside presence of the business; no noise and no fumes. Attorney Nugent submitted three pictures as exhibits for the record:

1. Picture of the garage
2. Picture of the house
3. Picture of the road; it was noted that it is on a private road.

Attorney Nugent responded to the ZEO's letter and stated that this is a small operation and that it will be restricted going forward to keep it in full compliance.

The Chairman asked to hear from the Zoning Enforcement Officer, Phillip A. Doremus, who was also present. Mr. Doremus stated that he had received the complaint and photos previously noted by the Chair and that he first issued Zoning Violations on July 2 and July 26, 2018, to which Ms. Grinnell responded and came to a Planning and Zoning Commission Meeting, but the complaints seemed to continue. Both Ms. Grinnell and the Complainant, Bill Walker, attended the Planning and Zoning Commission meeting on November 5, 2018. The ZEO, Mr. Doremus, stated he did not attend that meeting. The Planning and Zoning Commission, as stated in their minutes dated December 10, 2018, requested that the Land Use Director, John Hayes, and the Zoning Enforcement Officer, Phillip Doremus, write a letter together, which they did. The letter dated January 4, 2019, was based on the evidence presented to the Planning and Zoning Commission. The letter listed several violations of the Easton Zoning Regulations and directed Ms. Grinnell to cease and desist the business operations at 15 Fensky Road. Mr. Doremus stated that he never went on Ms. Grinnell's property to inspect the property, but that he issued the order at the request of the Planning and Zoning Commission.

Ms. Grinnell, based on her statement that a realtor had told her that a prior owner had used the garage for cabinet making, assumed her business activity was grandfathered. The Chairman stated that while cabinet making is listed as a permitted use in Section 6.1.2, HOME OCCUPATION, if done in accordance with the requirements under Section 6.1.3 for a home occupation, which by their nature indicates that a home occupation is to be small and not disruptive to a residential setting. The Chair also noted that for a home occupation the business could take up to a maximum of ¼ of the building in which the resident resides, not be located in an accessory building.

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Based on the evidence received, the operation at 15 Fensky Road did not seem to be in keeping with Zoning Regulations 6.1.3.

The Chair also referenced the pictures that were taken by her neighbor, Bill Walker, and noted that based on the lighting, the foliage, and the fact that some photos showed snow on the ground while others did not, the photos appeared to be taken on several different days, across several seasons, not just taken on one day. He further noted that the volume of vehicle activity was not in keeping with the regulation's stipulation of no more than one commercial vehicle in connection with this use.

The Chair addressed Ms. Grinnell's claim of being grandfathered and discussed conforming versus non-conforming use. The Chairman stated that Section 8.2.3, stipulates that no non-conforming use may be changed except to a use permitted in the regulations. The Chair further stated that the regulation also stipulates that no non-conforming use shall be expanded, multiplied or enlarged, and any intensification of use requires review and approval by the Commission.

Board Member Raymond Ganim disclosed that he is related to neighbors of the property in question, the Khamarji's; Nick Khamarji is his nephew. Mr. Ganim asked if anyone had a problem with him participating because of his disclosure. No one raised an objection to him participating.

Mr. Ganim stated that the 18 wheeler truck carrying the metal materials to Ms. Grinnell at Fensky Road, could have other materials on the truck when making a delivery. Also, Mr. Ganim stated that he did not believe that Ms. Grinnell was conducting a roofing business on those premises. Ms. Grinnell stated she was fabricating gutters, flashing and edging.

Board Member Maureen Williams questioned Ms. Grinnell regarding the ownership of the property. Ms. Grinnell stated that she was a 1/3 owner of the property, 2/3 is owned by the Donahues.

Ms. Grinnell was asked when she became a part-owner? Ms. Grinnell stated that it was in 1993 and 2016. Ms. Grinnell stated that they started several businesses: Grinnell Services – Roofing, Carpentry Sandblasting etc. In 2014, the Company split and they started running the businesses separately and noted a gap in between. Maureen Williams stated that Ms. Grinnell had stated that you can go to the Secretary of the state address website regarding the ownership of the property. Ms. Williams stated she had gone to the website and that the legal address listed for Grinnell Services, residence and business, was 31 Old Barn Road, not 15 Fensky Road.

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The Chair noted that 6.1.3 did not allow fabrication or assembly of any products other than that which is “incidental” to the performing of a permitted service, as determined by the Commission.

The Chair further stated that the Board has no authority to grant a non-conforming use, noting that fabricating the gutters would not appear to be merely “incidental” to their gutter making business. Ms. Grinnell stated that the aluminum and copper were just cut off the roll and bent. Going forward, they would no longer have people pick up their products; Scott would have to deliver the products.

Ms. Grinnell was questioned about creating noise at 6:30am in the morning with all the trucks, as alleged by her neighbor. Ms. Grinnell stated that no noise was coming from the garage, just bending the metal and cutting the metal with the shears. Ms. Grinnell further stated that Grinnell Services is a much different type of business in 2016 than it was when the storage yard was acquired in 1993.

Discussion was held as to whether they were conducting a roofing business or just focused on gutters flashing and edging for roofs. Discussion was held that this activity is a roofing business – Slate/Copper Services, at 15 Fensky Road. Ms. Grinnell stated that there was no slate kept there. Slate/Copper Services is just a division. Ms. Grinnell stated that they were just taking some thin metal and bending it into shape.

Discussion was held as to whether this activity and the volume of traffic is an intensification of a home repair business.

Discussion was held regarding warehousing and distribution of materials to off-site jobs. Discussion was held as to whether they are in compliance with the intent of the Zoning Regulations. It was stated that while it might be a cost-saving to be able to use your own property for storing materials, that does not justify this activity in a residential neighborhood or to this degree. A home occupation is only supposed to use ¼ of the area of your home by at most 2 people, not use 6 vehicles to pick up material.

Lucinda Walker and Bill Walker were in the audience. Mr. Walker responded to the testimony given. Bill Walker stated that he was the neighbor who lived across the street and that his main issue was that Section 6.1.3A. of the Zoning Regulations state that the business is supposed to take place in the building that the occupant resides in, not the garage. Mr. Walker’s second comment was that the resident was supposed to be the owner of the business, not 1/3 of the business, and that Mr. Donahue and his son, who own 2/3 of the business, reside in Trumbull.

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Mr. Walker also stated that the business should not create any noise according to 6.1.3; however, there are big trucks driving up and many pick-ups. Mr. Walker stated that there were alterations made to the garage for this business and that this is a new business in the last year. Finally, Mr. Walker stated that while someone might have run a business in a garage, he contested Ms. Grinnell's assertion that Art Fensky lived at 15 Fensky Road and ran a cabinet shop in the garage. Instead, he said Art Fensky lived at 25 Fensky Road, and that he ran his business in the basement of his house.

Discussion was held as to whether or not this is a new business. Ms. Grinnell stated that she has been running it since 2008.

Discussion was held that going forward Ms. Grinnell was proposing to no longer have people pick up at her property.

Discussion was held that the one who is residing there would be Joanne Grinnell and Mr. Donahue.

The Chair closed the public hearing.

The Board discussed whether the Zoning Enforcement Officer misinterpreted the Zoning Regulations and whether he was in his rights to issue a cease and desist order.

Motion was made by Tom Dollard, seconded by Maureen Williams, to deny the appeal, of the decision of the Zoning Enforcement Officer to issue a cease and desist to Michael and Joanne Grinnell, 15 Fensky Road, Easton, CT, as we have concluded that the Zoning Enforcement Officer's action was appropriate and consistent with the Town Zoning Regulations. The vote was 4 in favor and one opposed, motion carried. Raymond Ganim voted against the motion.

3. Minutes: Minutes of October 1, 2018 Easton Zoning Board of Appeals Meeting  
Motion was made by Victor George, seconded by Tom Dollard, to approve the minutes for the Easton Zoning Board of Appeals October 1, 2018 Meeting as presented. The vote was unanimous, 4-0, motion carried. Charles Lynch and Maureen Williams did not vote as they were not present at that meeting. Victor George voted in place of a voting member as he attended that meeting.
4. Old Business: None
5. New Business: None

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6. Meeting Adjourned: Motion was made by Raymond Ganim, seconded by Maureen Williams, to adjourn the meeting at approximately 7:30 PM. The vote was unanimous, 5-0, motion carried.

  
Margaret Anania, Recording Secretary