

**New Hartford Zoning Board of Appeals  
TOWN OF NEW HARTFORD, CONNECTICUT  
SPECIAL MEETING MINUTES  
Wednesday, April 25, 2019 at 7:00 PM  
New Hartford Town Hall  
530 Main Street, New Hartford, Connecticut**

**PRESENT:** Chairman Mary Lou Rayno, Bert Brander, Lew Chappel, Paul Griffin, Scott Goff, Alternates Keith Schaufler and John Wilhelm; and Zoning Enforcement Officer Mike Lucas.

**ABSENT:** Scott Goff and Alternate John Rouleau.

Chairman Mary Lou Rayno called the meeting to order at 7:00PM.

Mr. Schaufler was seated for Mr. Goff.

**1. PUBLIC HEARINGS:**

**A. Klaus Gorski/Applicant - Klaus J. & Carol J. Gorski/Owner Map 023 – Block 034 – Lot 007 – 98 Bruning Road - Variance: Front Yard Setback.**

The legal notice was read into the record and was noted as having been published the requisite two times, April 12, 2019 and April 19, 2019 in The Hartford Courant. The proof of notice to the abutting neighbors was noted as having been received.

Ms. Rayno reminded all those present that this was the third time that the Board was reviewing this matter. Klaus Gorski appeared before the Board regarding this application. He presented an updated survey which was stamped by a licensed land surveyor. Additional unstamped copies were also provided. Ms. Rayno questioned whether the survey was identical to the one submitted previously. Mr. Gorski reported that it was an “enhanced map” but explained that everything else was the same. He noted that the only difference on this updated survey was that the septic system reserve area by the shed and to the right side of the house and the trenches in front of the driveway had been depicted.

Mr. Gorski reported that he is requesting a fifty (50') variance. He submitted approval from the Farmington Valley Health District for the proposed structure. Additionally, he noted that he had received approval from the Inland Wetlands Commission (IWC).

Mr. Brander questioned what hardship the applicant was claiming. Mr. Gorski noted that due to the parcel fronting a collector road, the 100' front yard setback could not be met. He explained that he also could not meet the required 75' setback from the wetlands. He noted the location of the brook. When questioned about another alternate spot, Mr. Gorski explained that he could not locate the structure in that spot because of the brook and other wetlands. When questioned about the wetlands being verified, Mr. Gorski explained that IWC Chairman James Hall indicated that the area was wetlands.

When questioned about another alternate spot on the other side of the driveway, Mr. Gorski explained that the steep slope prevents him from building in that location. Mr. Brander noted that topography was not included on the survey. Mr. Gorski indicated that the topo indicators were on it. Ms. Rayno questioned the area that Mr. Gorski had indicated as being unable to be utilized because of the slopes. Mr. Gorski shared photographs in this regard. The Board noted a shed in this area. Mr. Gorski noted that just to the left of the shed, the land drops off. Mr.

Brander noted that he would have preferred the survey to include the topography of the land. Mr. Chappel agreed.

Ms. Rayno questioned the purpose of the proposed structure. He noted that he wants to be able to use it as a workshop, explaining that he works on antique cars. Mr. Brander questioned whether any of the work was for commercial purposes. Mr. Gorski confirmed that it was not.

The Board discussed what information had been presented relative to the presence of wetlands on the site. Mr. Gorski noted that they had been flagged in the field. Mr. Brander indicated that if a survey had included the wetlands, it would better help establish Mr. Gorski's claim of a hardship. Mr. Gorski maintained that the IWC noted the wetlands after having walked the site. Mr. Brander questioned whether Mr. Gorski had anything further to confirm that.

Mr. Griffin questioned whether at the last hearing, the Board had been presented with a survey depicting the reserve area. Mr. Gorski confirmed that the Board did not have the reserve called out on the survey at previous meetings.

The lack of topography information on the survey was discussed.

The temporary structure on the turnaround was reviewed.

In response to an inquiry about why the structure cannot be located up in back of the house, Mr. Gorski explained that it is a 25% grade. Mr. Brander also noted the location of the well in that area.

Ms. Rayno questioned what size garage the applicant has currently and what size the additional garage would be. Mr. Gorski noted that he has a two-car garage and is proposing an accessory structure to use for a workshop and storage area.

Mr. Brander questioned the generator. It was noted that this could be moved. The 4'x4' structure was also questioned. Mr. Gorski explained that when former Zoning Enforcement Officer Ruth Mulcahy had advised him that he was in violation with that structure, he had indicated that he could add cardboard to it and call it a dog house because it was so small.

Ms. Rayno questioned why Mr. Gorski could not locate this proposed accessory structure in the turnaround where the temporary structure is currently. Mr. Gorski explained that he would not be able to drive out. Mr. Brander pointed out that this would equate to asking the applicant to give up a structure. Mr. Chappel noted that it is possible as this temporary structure has recently already been moved to this location. Ms. Rayno noted that it is a smaller structure than the new additional structure. She noted that the request is for a rather large building on a small piece of property. Mr. Gorski noted that the current temporary structure in the turnaround is 640 square feet.

Mr. Gorski pointed out that his neighbor has built a large home behind him that is only fifty feet off the road because it was part of a different subdivision. Mr. Chappel explained that the Board was struggling to find the hardship for the application due to the information that had been submitted, agreeing that the applicant had not submitted adequate information on topography and on the location of the wetlands.

Mr. Gorski questioned whether approval could be granted pending a topo map. It was explained that the Board could not approve the request in such a manner. Mr. Gorski recalled a suggestion that he retain an engineer but noted the substantial cost for such an undertaking.

Ms. Rayno questioned how far the temporary shed had been moved. Mr. Gorski estimated it to be likely ten feet. She questioned whether it was possible to move that shed to the other side of the reserve area thereby freeing up the area to install this proposed accessory structure in that location. Mr. Gorski noted that he could not move that temporary structure as the land slopes uphill at that point. He reminded the Board that his home is built into a hill where the back of the house is first floor but the road side for that same level is the second floor. Mr. Brander pointed out that all questions circle back to topography but that the Board was lacking a rendering on the existing topography.

Ms. Rayno questioned whether a site visit might assist the Board. Attorney Benjamin Mathieu of Halloran and Sage, representing the Town, advised that such a visit is not allowed by the Zoning Board of Appeals. He noted, however, that the public hearing could remain open, allowing the applicant to provide more data on his topography in time for a Special Meeting on either Monday, April 29, 2019 or Tuesday, April 30, 2019. Mr. Gorski noted that he would be agreeable to this continuance and indicated that he would consult with his surveyor, Marty Post, to see if he could get topos for the following week. Mr. Brander also requested that any information from the soil scientist regarding the exact location of the flagged wetlands would also be helpful. Mr. Gorski noted that he had previously brought a topographic map from when he had built his house but that the Board had deemed that map too old. Attorney Curto reminded the Board that this application review was occurring under a stipulation agreed to in court which provided that the ZBA had until May 1, 2019 to hold a new hearing, close the hearing, and vote. He noted that this stipulation did not preclude the Board or the applicant from seeking an extension. Mr. Gorski confirmed that he did indeed want an extension beyond the May 1<sup>st</sup> deadline.

In response to an inquiry from Ms. Rayno about whether it was possible that Mr. Gorski would not need an extension, he agreed and confirmed that he would contact Mr. Lucas after having consulted with his surveyor the following morning.

The hearing was open to the public.

Polly Pobuda of 22 Church Street questioned whether Mr. Lucas visited the site and might possibly add to the hearing information that would be helpful to the Board.

Mr. Lucas confirmed that he had visited the site the day before and noted he agreed with Mr. Gorski's representations relative to the slope of the land and that the land drops off beyond the location of the temporary structure. Ms. Rayno questioned whether Mr. Lucas observed the wetlands, too. He confirmed.

Fellow Halloran & Sage partner, Attorney Alan Curto questioned the Board about what they consider as substantial evidence and whether testimonial evidence is enough to constitute substantial evidence or whether the Board typically requires documentary evidence. Referring to Attorney Mathieu's earlier caution against the Board visiting the site, Attorney Curto explained that the Board cannot receive substantial evidence based on a site visit. Unlike in some instances where the Board is allowed to use its own personal information and personal knowledge, they cannot generate substantial evidence based on the Board's own testimony. In

this case, the information would be derived from the Zoning Enforcement Officer and not the Board, Attorney Mathieu cautioned that Mr. Lucas' testimony may fall under this same rule. He noted the inherent risk in acting upon the testimony of Mr. Lucas is that it may be a problem should there be an appeal or should a future applicant claim that a precedent has been set.

Mr. Brander noted that this is why he has requested the topography information from the applicant. He noted that he would also like to see any information about the wetlands from an engineer. It was agreed that Mr. Gorski would contact Mr. Lucas to advise as to whether an extension beyond May 1<sup>st</sup> is requested. Attorney Mathieu recommended that Ms. Rayno request an extension from the court. Mr. Lucas concurred. Attorney Curto also noted that the information to be submitted by the applicant should be drafted by a licensed professional. The consensus of the Board was that additional information on the wetlands at the site should also be made by a professional. Noting that while the wooden manipulatives provided by Mr. Gorski to utilize in assessing possible locations for his accessory structure, Mr. Chappel suggested that the other possible locations be included on the submitted survey and the reasons why they are not feasible be clearly articulated to the Board.

Attorney Mathieu recommended scheduling a Special Meeting prior to Wednesday, May 1, 2019, explaining that a Motion for Extension will be filed simultaneously. Mr. Gorski indicated that he agreed with that.

**MOTION:** Mr. Brander, Mr. Griffin second, to continue the public hearing; unanimously approved.

## **2. PENDING APPLICATIONS:**

**A. Klaus Gorski/Applicant - Klaus J. & Carol J. Gorski/Owner Map 023 – Block 034 – Lot 007 – 98 Bruning Road - Variance: Front Yard Setback.**

As the public hearing was continued, no action was taken.

The meeting adjourned at 8:07PM.

**Respectfully submitted,**

**Pamela A. Colombie  
Recording Secretary**