ZBA VARIANCE *or* APPEAL APPLICATION

WESTPORT ZONING BOARD OF APPEALS Tel: 203-341-1030 Fax: 203-454-6145

OFFICE USE ONLY
Application#: ZBA-20-00705
Submission Date: 10-5-20
Receipt Date: 10-6-20
Fee Paid: Ø

INSTRUCTIONS *for* APPLICANT: *For Questions visit P&Z office Daily 9:00-11:30.*
Complete pgs 1 & 2 then, REVIEW & COLLECT ALL materials listed on pgs 3&4.
When all is collected DROP OFF to P&Z OFFICE DAILY between 8:30 & 4:00.
After the STAFF REVIEW is complete, a Hearing Date will be set. Please Review pgs. 5&7.
Note: Commercial projects may require Architectural Review Board approval, If needed. You MUST submit ARB application BEFORE going to ZBA Hearing.

1. Property Address: 1655 Post Road East Rear Tax Map H09-151 Zone: MHP
   Commercial Property: ◯ or Residential: ◯
2. Applicant's Name: M. Kurt Lentz E-Mail: kjcurseaden@cmctlaw.com
   Applicant's Address 27 Westfair Drive, Westport Daytime Tel: 203.874.9500

***NOTE:* Below List Owner's Name (s) as appears on the DEED (No abbreviations) If more space needed submit list.**

3. Property Owner's Name: MAXWELL LENTZ E-Mail: kjcurseaden@cmctlaw.com
   Property Owner's Address: 27 Westfair Drive, Westport Daytime Tel: 203.874.9500
4. Is this property on: a Septic System: ◯ or Sewer: ◉
5. Is this property within 500 feet of any adjoining municipality? Yes ◯ No ◉
6. Does this project involve the **demolition** of any **structures** that are **50 years old or more?** Yes ◯ No ◉
7. Briefly Describe your Proposed Project:
   Appeal decision of Zoning Enforcement Officer Mary Young that C.G.S. Sec. 8-13a applies to patios located at the 1655 Post Road East and 1655 Rear where no patios previously existed. Patios are being illegally installed where no patios previously existed entirely within the required yard setbacks and one foot from the property line in violation of yard setback requirements and other zoning regulations.
8. Will any part of any structures be demolished? No ◯ Yes ◯ - If **Yes** Attach a Demolition Plan:
   Not applicable.
9. List each ***"Regulation Section Number"*** you are requesting a variance for: ***i.e. (Sec 6-2 = Set back)***
   Not applicable.
10. List any other variances that are requested to legalize any previous issues: i.e. ***(Sec 11-5 Coverage for existing shed)***
    Not applicable.
11. List the **PROPERTY HARDSHIP(s)** or **REASON(s)** why this Variance or Appeal should be granted, stating clearly the exceptional difficulty **REGARDING YOUR PROPERTY. Note: Financial Hardship will NOT warrant a variance approval** *see pg 5.*
    Patios were never approved or built on this property, and therefore C.G.S. 8-13a does not apply. The patios being newly constructed violate the setback requirements, as they are being built entirely within the required setback and one foot from the property line, and violate other zoning regulations 16.2, 16.4 and 35.
12. I hereby certify that the above information is correct and that the accompanying exhibits attached are true.

Applicant's Signature *(If different than owner)* ***Owner's Signature*** *(Must be signed)*

If the applicant is unable to obtain the signature of the property owner, a letter of authorization by the property owner must be submitted.

From: Young, Mary <maryyoung@westportct.gov>
Sent: Thursday, September 3, 2020 8:44 PM
To: Michael DAngelo <michaeldangelo@hotmail.com>
Cc: Montagna, Laurie <lmontagna@westportct.gov>; Rycenga, Anna <annarycenga@gmail.com>; Marpe, Jim <JMARPE@westportct.gov>; Carol Martin <cmartin@westportha.org>
Subject: Re: Westfair Drive

My position has not changed since I wrote to you on Sept. 2. As some of the folks you copies on your email of today were not included in our exchange on 9/2/20 I am pasting my position it into the body of this email.
Mary

Good afternoon Mr. D'Angelo,

Laurie conveyed to me your concerns after you two spoke. Now that I know the subject matter, I'm sorry I didn't initially reach out to you. Yes I am aware of the work to replace patios on the Housing Authority property designed to improve safety conditions on site. Yes some of the work occurs in the setback areas. In my view this work is allowed as although the patios were not originally approved as part of the development they are protected by CGS 8-13a (see below) that prevents enforcement on buildings and structures located in the setbacks for more than 3-years for which no enforcement action was taken. It was in fact a local attorney (Larry Weisman) who modified this statute a few years back to extend these protection to include "structures" such as patios. **No enforcement will be taken by my office.**

Sec. 8-13a. Nonconforming buildings, structures and land uses. (a)(1) When a building or other structure is so situated on a lot that it violates a zoning regulation of a municipality that prescribes the location of such a building or structure in relation to the boundaries of the lot or when a building or structure is situated on a lot that violates a zoning regulation of a municipality that prescribes the minimum area of the lot, and when such building or structure has been so situated for three years without the institution of an action to enforce such regulation, such building or structure shall be deemed a nonconforming building or structure in relation to such boundaries or to the area of such lot, as the case may be. For purposes of this

section, "structure" has the same meaning as in the zoning regulations for the municipality in which the structure is located or, if undefined by such regulations, "structure" means any combination of materials, other than a building, that is affixed to the land, including, without limitation, signs, fences, walls, pools, patios, tennis courts and decks.

Thank you in anticipation of your understanding.

Mary

From: Michael DAngelo <michaeldangelo@hotmail.com>
Sent: Thursday, September 3, 2020 8:33 PM
To: Young, Mary <maryyoung@westportct.gov>
Cc: Montagna, Laurie <lmontagna@westportct.gov>; Rycenga, Anna <annarycenga@gmail.com>; Marpe, Jim <JMARPE@westportct.gov>
Subject: Re: Westfair Drive

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Hi Mary - I spoke with Carol Martin and she is insisting that the WHA is entitled to put down stone patios behind every unit in the complex without needing P&Z permission. It seems very clear to me that P&Z was not consulted nor was the proper process followed.

As you can see from the attached landscaping plan, this complex was approved with grass only in the setback area and no patios were contemplated (and of course, no patios show up on google maps). The argument that the WHA is making is that there were patios there historically (behind every unit) and that they are now being replaced. This is false – most units - including nearly all of the ones behind me have not had patios for at least the last five years *and* I have pictures to prove this.

Their story doesn't line up and their argument is equally incredible - they are saying that the WHA either failed to enforce the bylaws which prohibit tenants from putting in patios as well as failing to adhere to the P&Z landscaping plan which didn't authorize patios. Now they are

saying that because the WHA failed to enforce the rules and/or conveniently looked the other way while their tenants broke the rules, now the WHA gets to argue that they can conveniently take advantage of 8-13a (the three year look back).

To be clear, no such patios ever existed in the units behand me (and in most areas) so they can't rely on *Sec. 8-13a. Moreover, as we all know,* ***the burden*** **of proof is on the WHA**. I've asked them for proof and let them know that I will happily stand down if I am wrong. Carol's response was that she will only show it to me if we are in litigation. This is telling. Obliviously, I hope to avoid this step and trust that P&Z will ensure that the rules are being followed - no one should be above the rules - especially, a quasi-government organization.

The units are ten feet away from the fence and adding patios in what is defined as a buffer zone will encroach on my rights.

Second, because garbage continues to be thrown over the fence (including multiple glass bottles - one just this weekend), I installed a video only camera that runs the property line (as is my right). In response, the WHA admitted to me that they authorized their staff to install a permeant tarp above the 8 foot fence that runs another 5 feet high and 10 feet long (see attached) - a permanent structure.

This is clearly not permitted by the zoning rules and I trust that the town and the P&Z will take immediate corrective action to enforce the rules and remind the WHA that the rules apply to them just like everyone else in town.

As I explained to Carol, this is the only means I have to ensure that my family is protected. My hope is that with the camera, people will not break the law. Instead of finding a solution to ensure that their tenants don't break the law, the WHA have now provided these bad actors with a means to mask their bad acts - in effect, the WHA is aiding and abetting this criminal behavior.

I would like to discuss this matter with you and Mr. Marpe to understand

what are my rights and what is the town planning to do about these issues.

Thank you,

Michael

From: Michael DAngelo <michaeldangelo@hotmail.com>
Sent: Thursday, September 3, 2020 11:09 AM
To: Young, Mary <maryyoung@westportct.gov>
Cc: Michael DAngelo <michaeldangelo@hotmail.com>
Subject: Re: Westfair Drive

Mary - I'd like to start with the facts first. Their setbacks are there for my protection, just like my setbacks are there for their protection.

My questions are:

- what proof has P&Z relied on to come to the determination that:
  - these are qualified as a nonconforming structures;
  - each of them were there for 3 years (each separate patio as they were put in by the tenants at the time);
  - each aren't now being enlarged;
- is the record clear that there are no patios in at least the 1200 and 1400 historically, and
- Is there a plan to put patios into the 1200 and 1400 block units?

Based on these answers there may not need to work it out. As town hall is closed, it would be helpful if you could email whatever proof there is so I along with my counsel can review?

If there is no proof at this point, I believe the only responsible action should be to shut the project down until this can be resolved through the proper channels.

Thanks again,
Michael

From: Young, Mary <maryyoung@westportct.gov>
Sent: Thursday, September 3, 2020 9:28 AM
To: Carol Martin <cmartin@westportha.org>
Cc: michaeldangelo@hotmail.com <michaeldangelo@hotmail.com>
Subject: FW: Westfair Drive

Hi Carol,

Please see Mr. D'Angelo's concerns below. I am hopeful as "neighbors" you two can "work it out."

Mary

Mary Young
Planning & Zoning Director
maryyoung@westportct.gov
(203) 341-1078

WESTPORT
CONNECTICUT

From: Michael DAngelo <michaeldangelo@hotmail.com>
Sent: Wednesday, September 2, 2020 11:00 PM
To: Young, Mary <maryyoung@westportct.gov>
Cc: Montagna, Laurie <lmontagna@westportct.gov>; Michael DAngelo <michaeldangelo@hotmail.com>
Subject: Re: Westfair Drive

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Hi - Thank you again for responding so quickly.

Further to the below, it is my recollection (and confirmed with my neighbor) that there was no patio in any of the units in the 1400, 1200 and 1000 block buildings (with the exception of one unit that was removed because I complained within the three year period). The only structure was a single wood step from the door to the dirt.

Can you please confirm that the WHA has provided you with proof that there

was in fact a structure that "qualified as a nonconforming structure" as well as confirm that it was there for more than 3 years? It is my understanding that the burden of proof is on the WHA and if there is proof, it should also be confirmed that the patio isn't now being expanded.

What I find most troubling is that the WHA is charged with ensuring that they comply with the State and local laws as well as ensuring that thier tenants comply with the same laws as well as the house rules (or bylaws). By their own admission, the WHA certainly didn't comply with the law and they failed to ensure that their tenants complied with the law as well as the house rules when (and if) a patio was put down. Furthermore, the WHA is a quasi-governmental body and it is too convenient for this quasi-governmental body to either choose not enforce the rules or look the other way while their tenants break the rules and then claim protection under 8-13a.

There is a significant conflict of interest where the land is ultimately town owned land and, a quasi-town entity (run ultimately by the town though appointed officials) is violating the law and then the same town government gets to approve it. Where is the independence?

In addition to the ordnance, these patios are not permitted in their bylaws (which prohibit permanent structures).

For the record, I object to this construction project and any future construction that takes place in the setback area. I request that this project be immediately suspended until the facts can be investigated.

Is it your understanding that patios will be built in 1200 and 1400 block units?

Thank you in advance,

Michael

From: Michael DAngelo <michaeldangelo@hotmail.com>

Sent: Wednesday, September 2, 2020 5:43 PM
To: Young, Mary <maryyoung@westportct.gov>
Cc: Montagna, Laurie <lmontagna@westportct.gov>
Subject: Re: Westfair Drive

Thanks Mary. It is my understanding that that building specially didn't have a patio - it was dirt as of last week. I will confirm with my neighbor. However, to be clear, the units in the 1200 and 1400 block to not have patios (i can confirm with pictures).

Can you confirm that there is no pending scheduled construction of a patio planned for these two buildings block 1200 and 1400?

Many Thanks,
Mike

From: Young, Mary <maryyoung@westportct.gov>
Sent: Wednesday, September 2, 2020 5:22 PM
To: Michael DAngelo <michaeldangelo@hotmail.com>
Cc: Montagna, Laurie <lmontagna@westportct.gov>
Subject: Re: Westfair Drive

Good afternoon Mr. D'Angelo,

Laurie conveyed to me your concerns after you two spoke. Now that I know the subject matter, I'm sorry I didn't initially reach out to you. Yes I am aware of the work to replace patios on the Housing Authority property designed to improve safety conditions on site. Yes some of the work occurs in the setback areas. In my view this work is allowed as although the patios were not originally approved as part of the development they are protected by CGS 8-13a (see below) that prevents enforcement on buildings and structures located in the setbacks for more than 3-years for which no enforcement action was taken. It was in fact a local attorney (Larry Weisman) who modified this statute a few years back to extend these protection to include "structures" such as patios. **No enforcement will be taken by my office.**

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which the structure is located or, if undefined by such regulations, "structure" means any combination of materials, other than a building, that is affixed to the land, including, without limitation, signs, fences, walls, pools, patios, tennis courts and decks.

Thank you in anticipation of your understanding.

Mary

From: Michael DAngelo <michaeldangelo@hotmail.com>
Sent: Wednesday, September 2, 2020 10:11 AM
To: Young, Mary <maryyoung@westportct.gov>
Cc: Montagna, Laurie <lmontagna@westportct.gov>
Subject: Re: Westfair Drive

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Thank you both. Much appreciated.

On Sep 2, 2020, at 10:09 AM, Young, Mary <maryyoung@westportct.gov> wrote:

Hi Laurie,

As our zoning official on duty today (or please refer to Michelle if I have the schedule wrong); can you give Mr. D'Angelo a call to discuss setbacks per his email below?

Thanks!
Mary

From: Michael DAngelo <michaeldangelo@hotmail.com>
Sent: Wednesday, September 2, 2020 9:49 AM
To: Young, Mary <maryyoung@westportct.gov>
Subject: Westfair Drive

CAUTION: This email originated from outside of the Town of Westport's email system. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Mary - I live across from Anna at 23 Westfair Drive. Do you have a few minutes today to discuss setbacks?

917-403-0617

Thanks in advance,
Mike