Members Present: K. Gubner, K. Fazzone, W. Jones, A. Chiaramonte, and J. Bonner

Members Absent: Alternates D. Raines and V. Gentile

Also: C. Branson, Board Administrative Clerk

Audience: M. Carpanzano

W. Jones stated he was not present at the November Administrative Meeting, however listened to the recording from the previous Meeting and read the Minutes and was comfortable participating in the Administrative Meeting tonight.

**ADMINISTRATIVE MEETING**

**Call to Order:** Chair K. Gubner Called the Administrative Meeting to Order at 7:08 pm.

Discussion of ZBA By-Laws, last updated 2009:

The Board briefly discussed the items reviewed at the November ZBA Meeting. The Board agreed to remove Article VIII, Section 9, as shown below:

**REMOVE:**

**ARTICLE VIII - Meetings**

**Section 9.** Unless otherwise specified, ROBERTS' RULES OF ORDER, AMENDED, shall govern the proceedings at all public hearings and meetings of the Board.

K. Fazzone Moved to Amend the Zoning Board of Appeals By-Laws, last revised 2009 to remove ARTICLE VIII - Meetings, Section 9. Unless otherwise specified, ROBERTS' RULES OF ORDER, AMENDED, shall govern the proceedings at all public hearings and meetings of the board.

**Seconded by:** A. Chiaramonte

**Vote: For: Unanimous**

J. Bonner Adjourned the Administrative portion of this Meeting at 7:12 pm.

**REGULAR MEETING**

Chair, K. Gubner Called the Regular Meeting to Order at 7:13 pm.

K. Fazzone Moved to Amend the Agenda to add 2020 FY Proposed Budget Discussion following the Approval of the Minutes.

**Seconded by:** J. Bonner

**Vote: For: Unanimous**

PUBLIC HEARING:

**ZBA Case # 707- 33 ORCHARD REST ROAD (M. - 63, L. -12)- Johnson, Paul & Lauren.** With reference to Zoning Regulations, Section 332.5 Minimum Setback Requirements, requesting Variance of Zoning Regulation, Section 324.3 B- Generators, Air Conditioners, Pool Filters and other Noise Generating Equipment to allow placement of one emergency standby generator and two AC units from 25’ to 13.8’ from the Side Yard Setback line as shown on submitted A-2 Survey entitled, “Property Survey prepared for Paul S. & Lauren Johnson, 33 Orchard Rest Road, Town of Sherman, Fairfield County”. Dated: October 21, 2019. Prepared by: PAH, Inc Land Surveyors. Zone B.
Chair K. Gubner Opened the Public Hearing for Case # 707-33 ORCHARD REST ROAD (M. - 63, L. -12)- Johnson, Paul & Lauren. Clerk, C. Branson read the Legal Notice into record. The Legal Notice was published in the Town Tribune on November 21st and again on November 28th, 2019. Three abutting neighbors were sent the Legal Notice by certified mail. No correspondence was received. Health approval has been granted, dated November 12, 2019. There was a hardship letter in the file. There was an Agent Letter in the file, appointing M. Carpanzano the ability to act on behalf of the owners. There were several photographs submitted by Mr. Carpanzano showing the terrain surrounding the dwelling. The proposed activity is to remove a greenhouse that received a variance back in 1982 and within it’s footprint place two HVAC units and one stand by generator shown in exact locations on a new A-2 survey. A copy of the original variance was also included in the application file. Mr. Carpanzano was invited to come forward to present the case. Mr. Carpanzano began his presentation with a color coded map that accompanied the hardship letter. This map shows non-compliant areas in pink, and compliant areas in green. Mr. Carpanzano showed the Board, aside from the previous variance to the Southern side of the property, where the greenhouse exists, there were very few areas where two HVAC units and a generator could be placed where they would meet code as well as compliance to the Zoning Regulations. Mr. Carpanzano explained that the HVAC units and generator require a buffer area for proper ventilation and circulation, narrowing other possible locations even more. Discussion continued regarding the provided HVAC specifications for proper installation. Mr. Carpanzano stated he was reducing the non-conforming area by demolishing the greenhouse and placing the three units in the same location. Mr. Carpanzano stated that he spoke to the neighbors and they did not have any objection to the proposed placement of the HVAC units or the generator. In fact, he stated the neighbors plan on planting several additional arborvitae along the South sideline for their own benefit of privacy, there already are several tall plantings between this location. The Board discussed the recent trend of generator installations within the last five years and the noise impact within a close community such as this. Mr. Carpanzano stated there is no current Zoning Regulation that specifically regulates the allowable amount of noise a generator or HVAC system makes. The Board asked Mr. Carpanzano to explain the demolition of the existing greenhouse. Mr. Carpanzano stated he plans to remove entirely the 6’ x 32’ greenhouse as well as the existing concrete piers it sat on, reducing a 200 square foot area to a 21 square foot area of non-compliance. There were no additional questions or comments from the Board.

A. Chiaramonte Moved to Close the Public Hearing for ZBA Case # 707-33 Orchard Rest Road (M. - 63, L. -12)- Johnson, Paul & Lauren. Seconded by: J. Bonner Vote: For: Unanimous

DELIBERATIONS:

ZBA Case # 707-33 ORCHARD REST ROAD (M. - 63, L. -12)- Johnson, Paul & Lauren. With reference to Zoning Regulations, Section 324.5 Minimum Setback Requirements, requesting Variance of Zoning Regulation, Section 324.3 B- Generators, Air Conditioners, Pool Filters and other Noise Generating Equipment to allow placement of one emergency standby generator and two AC units from 25’ to 13.8’ from the Side Yard Setback line as shown on submitted A-2 Survey entitled, “Property Survey prepared for Paul S. & Lauren Johnson, 33 Orchard Rest Road, Town of Sherman, Fairfield County”. Dated: October 21, 2019. Prepared by: PAH, Inc Land Surveyors. Zone B.

Chair, K. Gubner opened the Deliberations portion of the Meeting. The Board discussed the previous Variance granted for the greenhouse. Some members were concerned that the greenhouse was allowed because it is a passive structure and the new proposed activity is noise generating and could have a greater impact on the neighbor than a greenhouse. Chair Gubner reminded the Board that notification was sent to all of the neighbors, and no objections were received. There was a lengthy discussion regarding if the applicant considered other areas of the property that were more compliant to locate the three units. There was a lengthy discussion regarding hardship; some members stated they were having great difficulty finding the unique hardship as the applicant stated. There was also further discussion regarding the previous variance. Several members recognized the significant reduction of non-conformity by removing the greenhouse. Some members were still struggling with the proposed change of use and possible negative impact noise generating could cause. The applicant placed the book of Zoning Regulations opened to a specific section next to the Clerk during Deliberations. A member of the Board stated that new information cannot be received at this point. The Clerk closed the book and requested the book be handed back to Mr. Carpanzano. One member stated that comparing between the two variances was not relevant. The applicant stated he knew he should not speak during Deliberations, however aired his frustration that he could not understand why more questions were not asked during the Public Hearing where he can provide answers to questions from the Board.
K. Gubner Called a recess at 8:02 pm.

K. Gubner reconvened the Meeting at 8:10 pm.

Chair Gubner reconvened the meeting, re-capping the points of discussion previous to the recess. The Board discussed for clarification whether the previous variance would still be in effect if the greenhouse structure no longer existed. The consensus was that the new variance requested references the A-2 survey submitted along with the application, showing the exact footprint for each unit. The Board had no further comments. The following Motion did not carry.

**A.Chiaramonte Moved** to Approve ZBA Case # 707-33 Orchard Rest Road (M. - 63, L. -12) - Johnson, Paul & Lauren. With reference to Zoning Regulations, Section 332.5 Minimum Setback Requirements, requesting Variance of Zoning Regulation, Section 324.3 B- Generators, Air Conditioners, Pool Filters and other Noise Generating Equipment to allow placement of one emergency standby generator and two AC units from 25’ to 13.8’ from the Side Yard Setback line as shown on submitted A-2 Survey entitled, “Property Survey prepared for Paul S. & Lauren Johnson, 33 Orchard Rest Road, Town of Sherman, Fairfield County”. Dated: October 21, 2019. Prepared by: PAH, Inc Land Surveyors. Zone B.

**Seconded by:** J. Bonner  **Vote: For:** 3 / **Against:** 2 (A. Chiaramonte & K.Fazzone)

The applicant expressed his displeasure with the decision of the Board. Chair Gubner allowed the applicant the occasion to air his frustration. Mr. Carpanzano stated he is a local builder, and comes before this Board several times a year and feels often times he is not given the proper guidance from the ZEO with providing useful information to the Board regarding applications. Mr. Carpanzano did thank the members for their volunteerism and willingness to serve on this Board before he left. One member of the Board left the room during Mr. Carpanzano’s statement after the Deliberations concluded, and returned while Mr. Carpanzano was still speaking.

**Approval of Minutes:**

**ZBA Minutes of November 5, 2019 Meeting:**

**A. Chiaramonte Moved** to Approve the ZBA Regular Meeting Minutes of November 5, 2019, as written.

**Seconded by:** J. Bonner  **Vote: For:** Unanimous

**Approval of ZBA proposed FY 2020 Budget:**

**A.Chiaramonte Moved** to Approve the FY 2020 proposed ZBA Budget, with an increase of $ 300.00 to line #1-01-5-009-06 Legals (publications) bringing that line from $1,200.00 to $ 1,500.00.

**Seconded by:** W. Jones  **Vote: For:** Unanimous

The Board discussed the inappropriateness of the applicant’s comments earlier. One member stated that it made them very uncomfortable. Chair Gubner stated it is the applicant’s responsibility to provide as much useful information as possible with their application. It is the responsibility of the members of this Board to familiarize themselves with each case, visit the Zoning Office to review the Case file, look up the specific Regulations sited and visit the properties to view the existing conditions.

**Adjournment:**  **J. Bonner Adjourned the Meeting at 8:56 pm.**

Respectfully submitted by:

Christine Branson, Administrative Clerk
December 11, 2019

APPROVED AS FINAL AT THE FEBRUARY 4TH, 2020 MEETING