

Development Review Board
July 20, 2020
Town Office, New Haven, VT

DRB Members Present via Remote:

Kathy Barrett, Carol Charbonneau, Donald Johnston, Victor LaBerge, Charlie Roy, Susan Smiley

DRB Members Absent:

Paul Audy

DRB Alternate Present via Remote:

Tom Fyles

Staff Present via Remote

Karen Gallott – Minute Taker

Aaron Brown – Zoning Administrator & Town Administrator

Guests via Remote:

Jeff Meyers, Tammy Newmark, Dave Matthews, Alyssa Rittendale, David Maille, Seanaveri (Averi) Smith, Ashley Smith, Lynn Wolf, David Munzer, Ron Yara, Maggie Eaton

Charlie Roy, Development Review Board (DRB) Chair called the remote meeting to order at 7:05 PM. Alternate Tom Fyles will be a voting member tonight.

Adjustments to the Agenda: None

Visitors Business: None

Applications:

Hearing #2020-DRB-11-SD Proposed Subdivision Amendment of Seanaveri (“Averi”) Smith to Adjust Building Envelope on Helena Lane.

Seanaveri (Averi) Smith currently owns Lot #6 of 8.07 acres on Helena Place. Averi is requesting a subdivision amendment to move a “zoning setback line” established under Town of New Haven Order 2011-DRB-28 (Wright Stowe Planned Unit Development). Averi, a contractor, would like to move this setback line to accommodate housing of his construction equipment and tools keeping these items out of sight of his residence and to keep the meadow open. The movement of the setback line would be toward the east into a wooded area.

When Wright Stowe planned this subdivision, he applied for a PUD (Planned Unit Development) to consolidate development and to keep it located within the meadow area.

DRB questions/concerns/thoughts:

- DRB - What is Averi Smith planning on doing with the land?
 - Averi Smith - future construction of a detached 2,000 square foot garage to house equipment/tools and for his employees to come pick up and return equipment needed for their daily use. Employees will not perform work at this location.
- DRB - There are 2 streams located within the wooded area that flow north towards Route 17 where Averi Smith wants to store and future build.
 - Averi Smith -indicated the streams are seasonal only and he will install 2 large culverts located next to each other to access to the area
- DRB would like assurance that stream(s) flow will not impact the abutting Mayer property to the East.

- DRB indicated that preservation of wooded areas should be taken into consideration.
- DRB - Will this amendment change location of Averi Smith's residential well and well shield and will it impact any of the neighbors?
 - Averi Smith- his residential well will stay in the original position and the residential house will not be moving
- DRB - Permission to build a 2,000 square foot garage is not allowed unless the DRB grants a variance
- DRB - Averi Smith will have to come back to DRB for a request for a Home-Based Business
- DRB - Why the request for such a large building and building envelope? Or is something else going to happen on the property?
 - Averi Smith - haven't picked the final location, the building envelope is within the rules and regulations of the board, and this is what his engineer suggested they do.
- DRB can deny the amendment for an enlarged building envelope until Averi Smith comes back to the DRB with more information on number/type/size of equipment to be housed
 - Averi Smith - wants a ruling now on the building envelope because it is what his engineer suggested
- DRB can make a site visit

Open for Public Comment:

David Munzer – neighbor located to the West:

- Wants to be a good neighbor but...this is not a hobby, but a large-scale business operation
- Is this considered a "Home-Business" and is the DRB agreeable to this?
- The area is zoned for single family home – this request doubles the building envelope
- Indicated the area is wet
- Concern about the location of a construction business:
 - Loud equipment
 - Diesel engines running for long periods of time
 - Typical hours of operation 5:30 to 6:00AM and again late in the evening as it relates to noise/equipment traffic/inconvenience for residential neighbors

Fyles made the motion to approve the amendment to adjust the building envelope for 2020-DRB-11 SD–Seanaveri (Averi) Smith's (Lot #6) on Helena Lane with the following condition:

- Must come back before the DRB for a building permit and for a request for a Home-Based business, based on the 2012 regulations.

Charbonneau seconded

Discussion: none

Roll Call Vote: Yes – 4 (Barrett, Charbonneau, Fyles, LaBerge)

No – 3 (Johnston, Roy, Smiley)

Abstention – 0

Motion carries

Hearing #2020-DRB-10-AP Appeal of Zoning Administrator's Issuance of Zoning Permit #2020-ZP-25 WAF LLC (Yara-Eaton) for Conversion of 3-BR Primary Residence to 1-BR Accessory Dwelling.

Jeff Meyers read aloud the June 18, 2020 document (WAF LLC, Permits for 191 Sherman Lane) sent to the DRB, PC (Planning Commission) and Selectboard from the Neighbors of Sherman Lane. (document attached).

Aaron Brown-Zoning Administrator (ZA) then read aloud the eight (8) questions that the Neighbors of Sherman Lane presented to the DRB

1. Why is the state septic permit for 7 bedrooms?
2. A condition of the CO for the new house was that Maggie and Ron had to submit a plan for “renovating” the existing Randy house in a timely fashion. What defines a timely manner?
3. How can a Certificate of Occupancy be legitimate, if it is issued without following the stipulated clauses?
4. Did the New Haven Development Review Board uphold the zoning laws of New Haven and perform due diligence and follow up regarding these properties?
5. How to explain two separate addresses, 149 and 191 with two separate driveways on a 12.5-acre lot zoned RA 10, as one primary residence/lot?
6. How does an accessory dwelling become a rental property?
7. Does the DRB limit the number of accessory dwellings on a property? Do they all combined have to be within the 30% of the main residence, square footage?
8. While we are talking about accessory dwellings, according to the zoning by-laws would the in-law apartment attached to the main house at 125 Sherman Lane with separate kitchen, entrance, etc. be considered an accessory dwelling?

David Matthews – there are two separate addresses #149 (new 6,000 square foot house) and #191 (Randy/Marie Boise) and 2 separate driveways, how does that come about?

Aaron Brown-ZA, indicated that State E911 address services assign separate numbers if there is a different telephone service set up in separate buildings.

Barrett - could it also be because they purchased 2 distinctly separate lots?

Jeff Meyers - they purchased #149 and #191 Sherman Lane and these two have been combined into #191 Sherman Lane.

Fyles asked about tax map properties and on what properties are all the houses located on?

David Matthews –Clifford property includes: (big red house, 3 car garage with apartment above and attached mother-in-law apartment and a rustic cabin. Yara/Eaton purchased the Boise house on 12.5 acres and built a 6,000 square foot house on same property. Boise house had to have a development plan other than storage.

Tammy Newmark- expressed concern regarding converting the accessory dwellings into rental properties. The rustic structures located on the Clifford property and multiple structures on the Boise property -could these properties become rentals thus creating a sub-development instead of single-family residence?

Aaron Brown-ZA, then read aloud his testimony RE: Appeal of 2020-ZP-25 WAF, LLC to Convert 3-BR Primary Residence to 1-BR Accessory Dwelling. (Testimony attached). Aaron Brown-ZA mentioned a Certificate of Occupancy was issued on December 18, 2019 to Yara/Eaton for their new house and was not appealed by the Neighbors of Sherman Lane.

Tammy Newmark mentioned for the record there was a 15-day window once the Certificate of Occupancy was issued that an appeal could have been made. Tammy and Aaron Brown-ZA, had a conversation in December 2019 (which may or may not have been within the 15-day window), and Tammy shared the emails with the neighbors, where Brown indicated - don't worry they (Yara/Eaton)

are only using it for storage. Aaron Brown-ZA, indicated tonight, that was what was represented to him at that time.

Jeff Meyers wanted to make clear that neither he nor the Neighbors of Sherman Lane never said it was a 7-bedroom house. Aaron Brown-ZA, mentioned another resident of New Haven claimed in the *Eagle* newspaper that the house contains seven bedrooms, but that it false. Eaton and Yara have three bedrooms. The septic permit for the property allows two separate septic systems - one system for the 4-bedroom house and one system for a 3-bedroom house.

Jeff Meyers mentioned that this could be a possible potential of a growing compound.

There was further discussion:

- Tammy Newmark - about the plumbing not being removed from the building used for storage.
- Alyssa Rittendale - Rental of accessory dwellings
 - How long can a person reside in an accessory dwelling?
 - Can't say no to a rental unless the zoning regulations specifically say so
 - The rental unit has to be 1 - bedroom and can be rented for one night or one year

Yara/Eaton - if there is a specific question from the DRB, they will answer it.

Johnston asked and Aaron Brown-ZA confirmed that an accessory dwelling can only be 30% of the size of the primary dwelling and the accessory dwelling can only be 1-bedroom.

Johnston mentioned that the septic plan and permit clearly state two separate systems: one for a 4-bedroom house and one a 3-bedroom house with the replacement system fully permitted.

- What purpose is this size septic system if it's going to be a 1-bedroom dwelling?
- The 1-bedroom accessory dwelling, was that the plan from the beginning?
- What construction will be done to ensure that it is a 1-bedroom dwelling and not a 2-bedroom dwelling

Maggie Eaton replied:

- Told the septic contractor that they were building a 3-bedroom house. It was the practice of the contractor to over spec septic systems and recommend a system for a 4-bedroom dwelling
- Already a septic system attached to the Boise house for 3-bedroom. Yara/Eaton plan to take it down to 1-bedroom.
- In effect Yara/Eaton have a septic system that accommodates 7-bedrooms, when Yara/Eaton will only have 4-bedrooms between their new house and the renovated accessory dwelling.
- Accessory dwelling is not Yara/Eaton's intent to increase the 1-bedroom to more bedrooms.
- Intent fluctuated over time, in a conversation with a previous ZA who indicated that Yara/Eaton may have to take down the house if it is over 30% of the primary dwelling. Since then, Yara/Eaton entertained taking it down, donating it to the Fire Dept for training purposes, move dwelling if someone was interested. In the spring a contractor inspected the building and found it to be sound, and mentioned there was no need to tear it down. There is a need for rentals/accessory dwellings in New Haven and the Boise residence could be renovated to a 1-bedroom accessory. Yara/Eaton agreed to that. The interior renovation is to do exactly that and make it into a 1-bedroom accessory dwelling.

Aaron Brown-ZA, mentioned at the time construction is complete, he will need do an inspection before he issues a Certificate of Occupancy. He bases his inspection on state Wastewater permitting defining a bedroom.

Johnston – was the square footage of the new house based on the square foot size of the accessory dwelling?

Ron Yara - no. The new house square footage is based on what they wanted for the new house.

Johnston is confused by the process of where this is now and he doesn't feel comfortable.

Tammy Newmark – the accessory dwelling is right next to the road (Sherman Lane) and quite some distance from Yara/Eaton's new house, so the Neighbors of Sherman Lane will be very much aware of the new residence – it will be like another residence or rental property, instead of Yara/Eaton's new home being right next to the accessory dwelling. Thus, it subjects the Neighbors of Sherman Lane to another residence and does not subject the owners of the property to the same. Tammy encourages the DRB to make a site visit.

Barrett made the motion to uphold the ZA issuance of a zoning permit #2020-ZP-25 WAF LLC (Yara/Eaton) for conversion of 3-BR Primary residence to 1-BR Accessory Dwelling.

Fyles seconded

Discussion – none

Roll Call Vote: Yes – 6 (Barrett, Charbonneau, Fyles, LaBerge, Smiley, Roy-understands Johnston's vote and Roy is reluctantly voting yes)

No – 1 (Johnston – voting on a common sense stand-doesn't feel right to him)

Abstention – 0

Motion carries

There was no further DRB business to attend to.

Charbonneau made the motion to adjourn

LaBerge seconded

Discussion – none

Roll Call Vote: Yes – 7 (Barrett, Charbonneau, Fyles, Johnston, LaBerge, Roy, Smiley)

No – 0

Abstention – 0

Motion carries

The meeting was adjourned at 9:10 PM

Respectfully Submitted By
Karen Gallott


Charlie Roy, Chair


Kathy Barrett, Vice Chair

Donald Johnston, Clerk


Carol Charbonneau


Tom Fyles


Victor LaBerge

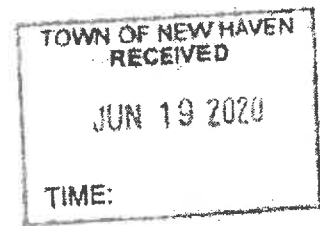

Susan Smiley

To: Development Review Board, Planning Commission, Selectboard,
Town of New Haven, VT

From: Neighbors of Sherman Lane

Date: June 18, 2020

In regards to: WAF LLC., Permits for 191 Sherman Lane



Purpose

This is to serve notice that we, all who own property adjoining the property at 149 Sherman Lane (formerly 191 Sherman Lane) owned by Maggie Eaton/Ron Yara/WAF, LLC (address: 2200 Geng Road, Suite 100 Palo Alto, CA 94303), hereby appeal the permit issued to Eaton/Yara by the Town of New Haven on June 4, 2020 to "Convert Former 3-BR Primary Residence to 1-BR Accessory".

We put forth the following background to our request for remedy from the Development Review Board regarding violations of the New Haven Zoning by-laws.

Summary

All properties in the Sherman Lane neighborhood are zoned RA-10 and subject to a number of mutual covenants in the deeds.

The New Haven Zoning By-laws defines "accessory dwelling unit" as a "one-bedroom or efficiency apartment."

In 2011, Maggie Eaton and Ron Yara (WAF, LLC) purchased Nicholas Clifford's property at 125 Sherman Lane.

Prior to moving to New Haven in 2016, Eaton/Yara constructed two structures on the former Clifford property, a "rustic" structure and a large dwelling/two-car garage despite the fact the property already had a two-car garage and an apartment attached to the main residence.

It is our understanding that Eaton/Yara lived in this new dwelling/garage for a substantial time after moving to New Haven.

In 2017, Eaton/Yara/WAF, LLC purchased the property formerly owned by Randy and Marie Boise at 191 Sherman Lane.

On December 20, 2017 neighbors received a letter from Eaton stating plans to build a new house on the former Boise property. The letter indicated that although construction on the new house would begin in the Spring of 2018, construction of a driveway would begin right away.

Aaron Brown, New Haven Zoning Administrator and Town Administrator
Testimony Re: Appeal of 2020-ZP-25 WAF, LLC to Convert 3-BR Primary Residence to 1-BR Accessory Dwelling
Presented to the New Haven Development Review Board
July 20, 2020

Good evening. I am Aaron Brown, and I serve as the Town Administrator and Zoning Administrator in New Haven. I am not an attorney and nothing I present should be considered legal advice to the Town or appellants. This testimony provides an overview of my experience with permits related to the property of Ron Yara and Maggie Eaton at 191 Sherman Lane. The neighbors remotely present tonight did not appeal the certificate of occupancy I issued to Yara and Eaton in December 2019 for Yara and Eaton's new home, but on June 19 they timely appealed a permit I issued to convert the former Randy and Marie Boise house to a one-bedroom accessory dwelling unit. Eaton and Yara lived in the former Boise house while their new home was constructed.

In some sense, I see this appeal as a challenge to the *sequence* of permits associated with the development of 191 Sherman Lane.¹ The first two permits sought by Eaton and Yara for this property pre-date my employment with the Town. They are (1) 2018-ZP-07, which former Assistant Zoning Administrator Amy McCormick issued April 30, 2018, to install more than 50 cubic yards of clean fill to regrade and provide erosion control measures for Sherman Lane, which is a private road; and (2) the following month, on June 25, former Zoning Administrator Katie Raycroft-Meyer issued zoning permit 2018-ZP-15 for the construction of a large new single-family home on the same lot. This home has a general footprint of 156' 3" by 67' 10", though the house features large coves and is not a rectangle measuring 10,625 square feet. The house is approximately 6,000 square feet according to the certificate of occupancy (CO) application submitted on Eaton and Yara's behalf by Chris Quinn of Red House Construction in Colchester, Vermont. That size comports with the measurements I took in issuing the CO. The house has fewer bedrooms than what's allowed under septic permitting. It has three compared to the four for which the septic was designed.

Please note one item that is likely a typographical error in Raycroft-Meyer's permit 2018-ZP-15. She wrote "The existing home on the property will need to be permitted as an accessory dwelling (limited to 30% square footage of the proposed SFH [single-family home]) as a condition to receiving a **Certificate of Compliance** [my emphasis] for the proposed SFH." Raycroft-Meyer likely meant certificate of occupancy. Yara and Eaton have not needed a certificate of compliance, which banks and/or lawyers typically request at the time of sale or refinance to ensure a property complies with local zoning rules.

In any event, I issued a certificate of occupancy for the new single-family home December 18, 2019. At the time, Yara and Eaton planned to continue using the Boises' former three-bedroom house for storage and workshop space. Later in the spring of 2020, Eaton sent a letter to neighbors that explained her and Yara's intent to move forward with the previously planned conversion of the former Boise house to a one-bedroom accessory dwelling. I assume this letter was a neighborly gesture. It certainly is not required for a regular zoning permit. The standard notice provided to neighbors is a permit sign posted from a place visible from a nearby public right-of-way.

¹ Appellants requested documents related to the permitting of a rustic cabin at neighboring 125 Sherman Lane (2015), but I fail to see the relevance of that permit here.

On April 11, 2018 Green Mountain Power notified the neighbors of electrical work on the property.

At the end of April 2018, the state of Vermont granted Eaton/Yara a septic permit with capacity for 7-bedrooms.

On April 30, 2018 neighbors received a letter stating

"Here is an update of what's happening with our construction project. You have seen that the new driveway and conduits were being installed after New Haven informed us that we could commence. But there has been some difficulty with the zoning administrator position – New Haven lost it's [sic] long time administrator, hired another who left after something like 2 months, and the Town is in the process of hiring another replacement. In the mean time without a zoning administrator, some wires got crossed and we recently asked that we submit a permit for activities involving moving more than 50 cubic yards of material, which we submitted. The bottom line is that, with this permit and weather permitting, we can resume the driveway work."

According to this communication and confirmed by the neighbors inquiring about the requisite permits to Eaton/Yara from the Town, construction had proceeded without authorization from the Town.

On June 25, 2018, Katie Raycroft-Meyers, Zoning Administrator for the Town of New Haven, issued a permit to Eaton/Yara/WAF, LLC to construct a 6,000 ft² residence on the property. The permit stated that as a condition to the issuance of a Certificate of Occupancy, the existing 3-BR home needed a permit as an accessory dwelling.

Eaton/Yara constructed the 6,000 ft², 4-BR single-family house, over a period of approximately two years.

In December 2019, zoning administrator Aaron Brown issued the Certificate of Occupancy for 191 Sherman Lane notwithstanding that the existing 3-BR home had not yet been permitted as an accessory dwelling.

Since June 2018, the neighbors of Eaton and Yara received various communications from Eaton/Yara and from Brown/Yara with respect to the plans for the former Boise 3BR house.

- In December 20, 2017, the neighbors received a letter from Eaton that stated, "We will be keeping the house and shop for now as our belongings are being stored

there. After the new house is completed, we will determine what we do with the existing house, since the Town has indicated we may have to take it down. We do intend to keep the shop....”

- On several occasions, Yara represented that Eaton/Yara planned to take down the Boise house.
- To different neighbors, Eaton/Yara relayed that they were speaking to the fire department to use the house for a training exercise.
- Aaron Brown commented on numerous occasions that Eaton/Yara planned to use the building only for storage.

On June 1, 2020, all neighbors received a letter from Eaton/Yara explaining that they had decided to renovate the building. The letter ended with an invitation to call Eaton/Yara if we had any “questions about the project.”

Naturally, all of the neighbors have had questions about the project since 2018. In light of the spectrum of representations which by this point resembled deceitfulness by Eaton/Yara with regards to their actual intentions (and in consideration of other instances of bad faith on the part of Eaton/Yara which include, but are not limited to: repeated cutting of woody plants on an adjoining property and a promise to supply a road maintenance plan for the period of construction that was never provided), however, we declined to ask Eaton/Yara any questions.

On June 2, 2020, we called Zoning Administrator Aaron Brown requesting information as to the status of the permit for the construction project alluded to in Eaton/Yara’s letter of June 1, 2020. Brown was not aware of a permit having been applied for, but offered to contact Eaton (member of the New Haven Planning Commission) regarding Eaton/Yara’s intentions.

On June 4, 2020, a permit was issued by the Town of New Haven to “Convert Former 3-BR Primary Residence to 1-BR Accessory.”

In a subsequent email, Brown explained that he issued the Certificate of Occupancy for the 6,000 ft² 4-BR new house without the conditions of the permit having been fulfilled based on Eaton/Yara’s verbal representations to him that they planned to use the building for storage.

We note that, due to the actions of Eaton/Yara, our rural neighborhood has been subject to ongoing construction of one sort or another for close to nine years.

Appeal to the Development Review Board for Remedy:

We therefore formally appeal to the New Haven Development Review Board of the Town's Zoning Administrator's issuance of a permit to Eaton/Yara on the basis of the following points:

1. Eaton/Yara were twice in violation of the zoning by-laws of the Town of New Haven for having more than one primary residential unit on a lot (Section 511, New Haven Zoning By-Laws)
 - i. First, for the period in which they resided in the Accessory Dwelling/Garage of 125 Sherman Lane prior to moving into their new house, and
 - ii. Second, for the period between the issuance of the Certificate of Occupancy and the recent issuance of a permit to convert the 3-BR dwelling to a 1-BR accessory dwelling.
2. Eaton/Yara constructed a driveway and performed electrical work and site work prior to having been issued a building permit.

In consideration of the hardship experienced by the neighbors, collectively and individually, by transactions between the Town of New Haven and Eaton/Yara/WAF, LLC, we request the following remedies:

1. The Town of New Haven requires Eaton/Yara to take down the 3BR residence formerly resided in by the Boises.
2. The Town of New Haven Eaton/Yara limit long-term residence on the Eaton/Yara property to the 4-BR primary residence, Eaton/Yara having received state septic permit for 7 bedrooms notwithstanding.
3. The Town of New Haven provide neighbors with written assurances acceptable to the neighbors that any accessory dwelling, under the ownership of Eaton/Yara or a subsequent party, will remain a 1BR accessory apartment for occasional use, not a rental unit and not a long-term dwelling.

We thank you for your considerate attention to this matter. We look forward to discussing these matters at a publicly-warned DRB meeting.

Sincerely,

Jeff Meyers and Tammy Newmark (249 Sherman Lane)
Dave and Nancy Matthews (281 Sherman Lane)
Dave Maille and Alyssa Rittendale (184 Sherman Lane)
Lynn Wolf (392 Sherman Lane)

*Meeting that today
is today has it was
WAF
Lynn Wolf
Dave Maille
Alyssa Rittendale
Jeff Meyers
Tammy Newmark*

A neighbor, Jeffrey Meyers, asked me June 2, 2020 if this conversion were permitted yet. I replied no and asked Yara and Eaton that day to seek the permit which is now under appeal: 2020-ZP-25. Yara applied for that permit the next day, June 3. I issued permit 2020-ZP-25 June 4 to convert the former three-bedroom house to a one-bedroom accessory dwelling. The permit is for a change in use, as no change to the building footprint is planned. New Haven's bylaws, one should note, do not require permits for interior renovations.

Also worth noting here, permits are valid for two years per section 314 of the Zoning Bylaws. Yara sought the accessory dwelling permit approximately three weeks before the two-year mark of the issuance of 2018-ZP-15, which specified the need to get a permit to convert the Boise house to an accessory dwelling. Therefore, the timing of the most recent permit arguably falls within the requirements of the zoning bylaws and the original permit. Had Yara not made a timely application, however, Section 314 also allows parties to apply for an extension.

Now considering issues beyond sequence and timing, I will address why I issued zoning permit 2020-ZP-25 based on a literal interpretation of the Zoning bylaws on five standards:

- (1) **Size:** "Section 565: Accessory Dwelling Units" holds that the "[accessory] unit must not exceed 30 percent of the total habitable floor area of the primary dwelling unit." In this case, a 6,000-square-foot primary dwelling unit would accommodate an 1,800-square foot accessory dwelling unit. The Town of New Haven listers' card has the original Boise house measured at 1,736 square feet. There is no size limitation on accessory dwelling units in the Bylaws, though towns sometimes impose such limitations.
- (2) **Wastewater Capacity:** while New Haven does not issue wastewater permits under the state municipal delegation authority program, it does make a conditional statement in all zoning approvals that state permit requirements, including wastewater, must be met. Yara and Eaton received wastewater permit WW-9-2561 on June 21, 2018 to construct a mound system that could serve up to four bedrooms in a new residence. The state in the same permit approved the existing, separate on-site water supply and wastewater systems serving the former Boise house to remain in place.
- (3) **Setbacks:** both dwellings meet setback requirements for "Section 1003: Rural Agricultural – 10 Acre (RA-10)" zoning district, often referred to as RA-10. The required setbacks are 25 feet to side and rear yards and 100 feet in the front yard. The site plan submitted in application 2018-ZP-15 demonstrates compliance with the setback requirements. Indeed, they exceed the required setbacks by many feet, which is obvious to any observer who visits the lot.
- (4) **Lot coverage:** "Section 1003: RA-10" does not limit lot coverage in this district, perhaps because a ten-acre lot would very unlikely see a building that covered, say, 30% of that area (three acres).
- (5) **"Section 130: Definitions – Accessory Dwelling Unit"** holds that such developments are "an efficiency or one-bedroom apartment that is clearly subordinate to an owner-occupied single-family dwelling and has facilities and provisions for independent living, including sleeping, food preparation, and sanitation. Accessory Dwelling Units need not be attached to the primary residence but may exist within a separate structure." Yara and Eaton now live in the new primary residence and propose to convert a three-bedroom residence to one bedroom. A one-bedroom house under 1,800 square feet is clearly subordinate to a 6,000-square-foot owner-occupied home.

The appeal raises other issues worth discussion:

- (1) Appellants claim that Yara and Eaton wrote on December 20, 2017 that the Town indicated they might have to take down the former Boise residence. I have no record of that, and I do not know what the Zoning Administrator at the time might have cited from the regulations. Appellants claim in other conversations and letters that Yara and Eaton were inclined to take down the former Boise house at various points. I find nothing in the regulations that would require them to do so given the size of the new dwelling if the number of bedrooms were reduced to one. Eaton and Yara are legally entitled to change their minds about the use of an accessory structure if it meets the local bylaws and they seek permits when needed.
- (2) Appellants claim on page 4, Item 1, that Yara and Eaton violated local zoning rules for living in the former Boise house while building their new house. According to the Town Listers Card, the former Boise house was constructed in 1992, and it was clearly a primary residence for many years. Former Zoning Administrator Raycroft-Meyer granted permit 2018-ZP-15 to build a new primary residence with the expectation that the original house would then receive another permit to convert it to an accessory dwelling. No party appealed Raycroft-Meyer's action within the required 15-day appeal period.
- (3) Appellants question why the property has septic capacity for seven bedrooms, but that issue is irrelevant and ultimately a matter left to the State Department of Environmental Conservation. New Haven has not sought municipal delegation over wastewater permitting. One can legally build a mound system large enough to handle 25 bedrooms but connect it to a three-bedroom home, assuming a state permit is granted, if one wanted. It is not uncommon to find cases where people build systems larger than what they currently need. I issued wastewater permits for the Town of Charlotte and encountered people who were planning for future children, in-laws moving in, etc. Some people also oversize systems to make them last longer.
- (4) The appellants request that the Town provide "written assurances acceptable to the neighbors that any accessory dwelling under the ownership of Eaton/Yara or a subsequent party [remain] a 1BR accessory apartment for occasional use, not a rental unit and not a long-term dwelling." The Board would benefit from revisiting the Town Plan, Zoning Bylaws, and relevant case law before agreeing to such a stipulation. First, the Town Plan, like most municipal plans, has clear goals for diverse and affordable housing, and rental properties squarely fit into that goal. Second, the Zoning Bylaws do not even contain the word "rental," thus precluding any prohibition of the use of a single-family home by renters. Third, the Board would be well served by reading the 2012 Vermont Supreme Court Case *In Re Toor and Toor Living Trust*, which held that zoning permits are not required to change an owner-occupied single-family dwelling to a rental unit, including short-term rentals, unless such a requirement is clearly defined in municipal regulations.
- (5) Finally, the appellants request that the Town "[require] Eaton/Yara to take down the 3BR residence formerly resided in by the Boises." This relief, if it's given any serious consideration, will require the Town to seek specialized legal counsel. My limited understanding of the subject suggests the request would likely have to meet standards for public use or public welfare under eminent domain or condemnation standards.

That concludes my testimony. I am happy to answer questions.

Respectfully submitted,

Aaron Brown July 20, 2020