

TOWN OF NEWINGTON
ZONING BOARD OF APPEALS
CONFERENCE ROOM L101
NEWINGTON, CONNECTICUT 06111
DECEMBER 1, 2016

I. MEMBERS PRESENT

Chairman Louis Califano
Commissioner Willard Bechter
Commissioner Nicole Pane
Commissioner Judith Igielski
Commissioner Audra Ekstrom: Absent
Commissioner Timothy Hutvagner
Commissioner Michael Karanian

PRESENT

Michael D'Amato
Zoning Enforcement Officer
and Assistant Town Planner

Chairman Califano: Before we start the meeting let me just go over the way the ZBA meetings are run. There are two separate parts, the public session and the work session. In the public session the petitioner will come up and state their name and address, and in this case, it would not be a petition, it is an appeal instead of a petition. After the appeal has been heard we will have anyone from the public, if they wish to say anything for or against the petition, they will have two minutes to do so. You will need a vote of four out of the five commissioners to have appeal passed or then turned down. Then we will end that public session and go into the work session in which the public may stay, but they cannot make any comments and any speaker while we are having the work session. If the petitioner cannot stay for the work session, they may call the Building Department tomorrow and they will tell you the decision that was made. We will start the meeting now. Judy, please read the roll call.

Commissioner Igielski: Louis Califano: Present

Commissioner Igielski: Judith Igielski: Present

Commissioner Igielski: Nicole Pane: Here

Commissioner Igielski: Timothy Hutvagner: Here

Commissioner Igielski: Willard Bechter: Present

Commissioner Igielski: Audra Ekstrom: Absent

Commissioner Igielski: Michael Karanian: Here

Chairman Califano: Thank you.

Commissioner Igielski: You're welcome.

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Commissioner Igielski: APPEAL 00-02-2016 Susan Tine of 62 Francis Avenue is requesting a hearing to appeal the decision of the Zoning Enforcement Officer in regard to a notice of Zoning Violation of Section 1.2.1 for operating a "bed and breakfast" issued under the provisions of Section 7.1 of the Newington Zoning Regulations."

Chairman Califano: Thank you. Judy will be sitting in as a permanent member in order to vote. Will the person or persons who are going to be up here, step up.

Atty Robert A. Randich: Mr. Chairman, I am Robert Randich representing Susan Tine. I anticipated that this was going to be a difficult appeal so I had prepared questions for my client for the Zoning Enforcement Officer and witnesses if there was any issue with me proceeding.

Chairman Califano: Proceed.

Atty Randich: First, I would like to ask Mr. D'Amato a few questions. Was this done based on a resolution that was passed by the Zoning Commission?

Mr. D'Amato: I am not sure how you are using the word "resolution" but it was issued following a consensus that was taken by the TPZ.

Atty Randich: It was a motion, wasn't it?

Mr. D'Amato: One second, I don't know what questions you're going to ask so that I might not have answers. This is a staff report that I provided for the ZBA.

Atty Randich: That was in preparation for this meeting?

Mr. D'Amato: Yes.

Atty Randich: Okay, I am talking about before you issued notice.

Mr. D'Amato: Correct. It says in the staff report, on September 10th the Planning and Zoning Commission came to the consensus that traditional Bed and Breakfasts as well as Air B&B are not included with the Zoning Regulations as permitted use, so based on that finding, based on the September 23rd meeting, I was instructed by the Town Planner to move forward with enforcement on the property at 62 Francis Avenue.

Atty Randich: Okay, how did you know that the property at 62 Francis had such an operation?

Mr. D'Amato: Because I was instructed by the Town Planner that this was a topic that came up at the TPZ. I don't attend all of their meetings.

Atty Randich: So you weren't at the meeting where they passed this resolution, this motion?

Mr. D'Amato: I was not.

Atty Randich: In reviewing the minutes I didn't see that they cited the address of the property, and I am just wondering, how did you know where the property was?

Mr. D'Amato: Well, you can do a quick Google search and it is the only property in the area that is on there, so you can find 62 Francis Avenue on line.

Atty Randich: So you went to the Air B&B web site?

Mr. D'Amato: I did, once I was instructed.

Atty Randich: At this time, I'm just stating the facts.

Mr. D'Amato: Okay.

Atty Randich: So, all right, did you talk to the owner of the property about the activity going on prior to issuing the notice?

Mr. D'Amato: No.

Atty Randich: Did you talk to any of the neighbors?

Mr. D'Amato: No.

Atty Randich: Other than the direction you received from the Town Planner, did you conduct any kind of an evaluation concerning issues that zoning regulations typically are concerned with such as traffic, crime, pollution, use?

Mr. D'Amato: No.

Atty Randich: No, that's fine. Have you personally received any complaints from any of the neighbors or anybody else?

Mr. D'Amato: No.

Atty Randich: Now, you're familiar with section 3.3.3 of the zoning regulations - 3.3.3 about home businesses being allowed within a residentially zoned property?

Mr. D'Amato: Yes.

Atty Randich: Okay.

Mr. D'Amato: Certain types of home businesses as specified in that section are allowed, not all home businesses.

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Atty Randich: Okay, so - but that section does set forth certain requirements and if you meet those requirements in your home business you are eligible for use, that allows use, right?

Mr. D'Amato: Correct. If someone met the requirements as listed in that sections and I am going to bring it up for everybody so that we are all on the same page, Section 3.3.3.

Atty Randich: So I just want to establish that a home business is an approved use within this zone, if you meet A, B, C and D, correct?

Mr. D'Amato: Correct.

Atty Randich: Is it fair to say that the only complaints you received concerning this activity is the simple fact that it is going on. You didn't get any complaints that there was undo traffic, or noise...

Mr. D'Amato: Correct, not directly to me, because I didn't receive the complaint. I received the direction from my boss that this went on at the TPZ meeting and they came to a consensus that the activity was not allowed and based on the fact that it was prohibited, asked me to open an enforcement case against them which I did, so I didn't receive the complaint, I didn't discuss the complaint and I don't have the details how they arrived at that because that has nothing to do with my task.

Atty Randich: And the Town Planner, you are talking about, does he have the ability to direct you to start such an action such as this, or is it under, are you the Zoning Enforcement Officer?

Mr. D'Amato: I am.

Atty Randich: Okay, so, do you exercise independent judgment in determining whether or not a violation has occurred, or is that something...

Mr. D'Amato: I have discretion, yes,

Atty Randich: You have discretion, okay, but in this case, you were directed to this.

Mr. D'Amato: In this case, I was... they asked me to issue the notice and I agreed that this use is not permitted in the zone.

Atty Randich: Okay, Thank you very much. Could she just sit here? Just state your name and address.

Mrs. Tine: Susan Tine, 62 Francis Avenue, Newington.

Atty Randich: Okay, are you familiar with - you own 62 Francis Avenue.

Mrs. Tine: Yes.

Atty Randich: And are you familiar with how a Bed and Breakfast operates?

Mrs. Tine: Yes.

Atty Randich: And how are you familiar with that?

Mrs. Tine: A bed and breakfast is where you can book a room or a house and they get meals prepared for them.

Atty Randich: So you pay consideration and part of the consideration is you get a bed to sleep in and then you get a meal. Okay. And typically is someone that operates a bed and breakfast have a sign outside advertising it?

Mrs. Tine: Oh no.

Atty Randich: They are typically housed within residential units, where the people that operate them, live there, correct.

Mrs. Tine: Yes.

Atty Randich: And sometimes these people have additional parking to address this?

Mrs. Tine: Yes.

Atty Randich: Is it typical to pay for the service either at the time you arrive, or before you leave?

Mrs. Tine: They can pay ahead of time, but if you have a credit card, too.

Atty Randich: Would someone who operates a Bed and Breakfast accept like a walk up customer, someone driving by and stops in and say 'I want to stay here tonight', and they would pay for it probably, right at that time.

Mrs. Tine: Right.

Atty Randich: Do you operate a Bed and Breakfast at 62 Francis Avenue?

Mrs. Tine: No, I do not.

Atty Randich: I assume that we can all agree on the Notice that was given her, the Notice of Violation.

Mr. D'Amato: Agree what?

Atty Randich: That it s what it is.

Mr. D'Amato: That she was issued a Notice of Violation?

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Atty Randich: And the Notice, can you put that up on the screen?
The letter that you sent to her.

Mr. D'Amato: So you want us to agree that we sent her a Notice?

Atty Randich: This is to stipulate what the Notice said.

Mr. D'Amato: I should be able to pull that up.

Atty Randich: Okay, this is the Notice that you received from the Town?

Mrs. Tine: Yes.

Atty Randich: All right, and does it say that the violations that you are accused of committing in operating a Bed and Breakfast by renting a room on a daily basis?

Mrs. Tine: Yes.

Atty Randich: Okay, and do you operate a Bed and Breakfast at 62 Francis Avenue?

Mrs. Tine: No, I don't.

Atty Randich: What do you operate?

Mrs. Tine: An AirB&B.

Atty Randich: And can you explain how an AirB&B operation differs from a Bed and Breakfast operation.

Mrs. Tine: An AirB&B you open your place and people can find you here heading to Newington and they are looking for a place to stay and they can see what is in the radius of where they are visiting and they can see all the houses that are located in that area and they choose you based on reviews, basically when you get your request from someone that they are interested in staying overnight at your place, you can look back at their facebook page and look back at their previous stays at other AirB&B sites, so you have a pretty good idea who they are, and plus they give you a little synopsis of you know, ' I have been with AirB&B for five years, I've used it extensively around the world, I am an attorney, I am very often on a plane traveling and it gets tiring staying in a hotel, I enjoy AirB&B, it is much more family like and it gets boring, so then you say, well, okay, it sounds great and there have been times when I have turned people down when they are contacting me perhaps in the middle of the night and I say well, at those hours, I don't want them, yeah, you pick and choose and they pick and choose, and I have received super hose status for this point, which means that I have had a good record for the guests that I have had who reviewed me and liked when they stayed with me and they report back their experience.

Atty Randich: How does it work in terms of getting a reservation?

Mrs. Tine: So, you get a little pin on your phone notifying you that somebody is interested for such and such a date and you look and see if you're available, you can book it here, you can ask for their report, their profile and you contact them and say you can accept or decline, or ask for more info, and then you confirm that and you wait to hear through AirB&B they are going to be taking care of everything and then AirB&B does the actual booking, the actual payment, and all that stuff goes through AirB&B, so there is no involvement with money at all.

Atty Randich: Okay, let's say you - somebody expresses an interest for a bed for a night and you get a message to that effect and you review the profile and you say, 'okay, this is somebody I am willing to allow into my house' and you accept. Then, what happens?

Mrs. Tine: Then you just have a chance - there is a little message area and you are welcome and tell them, you know, where we are located, because until they pay they can't even get your address, there is no way that will happen and as soon as they leave, within twenty four hours your information is erased so they can't even find you, even if they left their keys behind.

Atty Randich: Okay, so what do they get for what they pay for?

Mrs. Tine: They get a bed, they get a towel to take a shower with and very often I put on a pot of coffee in the morning.

Atty Randich: Do you provide a meal?

Mrs. Tine: No, some do though. No, because most people are on a mission, they have to get on with what they've got to do.

Atty Randich: Now who is involved on your end in this activity:?

Mrs. Tine: Me.

Atty Randich: Nobody else?

Mrs. Tine: No.

Atty Randich: And have you a record to have paid for any signs in your yard to promote this activity?

Mrs. Tine: No, I don't want people to know about the B&B.

Atty Randich: Is there any external evidence of this activity going on in your property?

Mrs. Tine: No.

Atty Randich: Is the automobile traffic generated by this activity beyond that generated by a normal presence?

Mrs. Tine: Yeah, it might have.

Atty Randich: All right. Do you have adult children:?

Mrs. Tine: I do. Three.

Atty Randich: Do they all live with you?

Mrs. Tine: Two of them are out of state, and one got out of school last year

Atty Randich: The children that don't live with you, do they come to visit you on occasion?

Mrs. Tine: Oh, Absolutely.

Atty Randich: And how do they travel to your property?

Mrs. Tine: They fly, or rent cars, they have been here from Boston.

Atty Randich: And after their visit, they drive off again?

Mrs. Tine. Yes.

Atty Randich: So, is there any difference between someone who comes and stays with you for a night at your AirB&B vs. if your child came in and stayed overnight?

Mrs. Tine: Not in my house - 7 kids, 24 grandchildren.

Atty Randich: Okay, aside from listing at the AirB&B web site, is this activity advertised in any way?

Mrs. Tine: No.

Atty Randich: Do you pay for pop up ads on the computer? Okay. You've got to talk.

Mrs. Tine. Yes.

Atty Randich: Do you have your own Web site?

Mrs. Tine: No.

Atty Randich: Okay, so if you list all the ways you can find out about the availability of the service.

Mrs. Tine: Well, you have to know the AIRB&B service - you have to know how to access this.

Atty Randich: So is it just the AIRB&B web site in the only place that you can find out about it?

Mrs. Tine: Oh, yes.

Atty Randich: Okay

Atty Randich: How long has this activity been going on for?

Mrs. Tine: 2014.

Atty Randich: How many people have stayed with you since July 11, 2016?

Mrs. Tine: Two.

Atty Randich: Two. Do you think this activity amounts to being an occupation?

Mrs. Tine: Hardly.

Atty Randich: Why do you say "hardly"?

Mrs. Tine: I was a nurse; I am retired. I love entertaining people. I am here all the time. I have a big house. One of my youngest sons teacher actually told him about AirB&B years ago. She had one once and she said this would be perfect, perfect for this and when my son went off to college he said it was very difficult to find a place to stay up there so we were sort of forced into an R&B situation and I realized it was really a simple kind of B*B, it didn't require anything, just get up in the morning at a B&B and take a 5hr drive home, so for us it was perfect and instead of paying \$150 when you could get a room for a quarter of that so I thought I could do this and it is something I am good at doing.

Atty Randich: So even though there is a financial aspect to this we sense that you are being compensated for allowing people to stay with you, the driving fact that you have been doing this really is your desire to meet some people...

Mrs. Tine: ...it's filling my house again.

Atty Randich: Okay, all right. Is there anything else you wish to tell the board. Is there anything else you would like to tell the board?

Mrs. Tine: I am just kind of sad. I don't understand why somebody would have a problem with that, our neighbors have been wonderful, I actually told them what I was doing and they laughed at me and said you are always entertaining. Nobody knew I was doing it for many years and somebody got wind of it and turned me in and I happened to overhear a discussion about my AirB&B and I know I am not the only one in town; I know there are many other types of AirB&B that exist; it is really a great way for people to see Newington. I have had people who have decided to move here, have businesses here, guests that have stayed at my house and I have been invited to Ireland and Australia, New Zealand, Croatia; have had multiple invitations and developed friendships. I know there are other websites but I would not feel comfortable with anything but AIRB&B. It is a great organization and it is just a great way to embrace people in all walks of life and it contradicts where I am having to see shut myself down.

Chairman Califano: How often is this used?

Mrs. Tine: I have had 3 people since July.

Chairman Califano: So it is not something that is every week that you have someone there.

Mrs. Tine: Over holidays we just shut down when we are away, but my kids are flying in for the holidays and my son even though he has graduated comes back every year and the acapella group.

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Chairman Califano: So it is not something that is every week that you have someone there?

Mrs. Tine: No, over the holidays we just shut down when we are away, and my kids are flying in for the holidays, my son even though he has graduated comes back every year on tour and stay at my house.

Atty Randich: But not through AirB&B.

Mrs. Tine: No.

Chairman Califano: Do you charge your kids?

Mrs. Tine: No.

Chairman Califano: Any other questions from the commissioners?

Mr. D'Amato: When he is done I will read through my staff report for everybody. I am going to put it up here so you can see it and I do not know that I have an extra copy to give you, I could print one out, but I will put it up.

Atty Randich: What is your name?

A. Charamut:: My name is Alicea Charamut and I live at 56 Francis Street.

Atty Randich: Where is 56 Francis vs. 62 Francis Street?

A. Charamut: Her property is directly behind us and her driveway runs right along our driveway.

Atty Randich: And I take it that your back yard kind of abuts her front yard.

A. Charamut: Yes, that is right.

Atty Randich: And if there was an objection going on at 62 Francis Avenue such as excessive noise, cars pulling in and out all night or anything like is that something that you think somebody in the neighborhood would be aware of based on where you are situated?

A. Charamut: Yeah, when Sue first started her business I was still home.

Atty Randich: Were you aware of the fact that this was even going on?

A. Charamut: Only because as a courtesy she let me know, but other than that there was no difference or a conflict at all.

Atty Randich: Do you have any issue with her continuing this activity in the future.

A. Charamut: Not at all.

Atty Randich: Why is that.

A. Charamut: Because it is not an inn.

Atty Randich: And in your opinion does the activity at all change the character of the neighborhood?

A. Charamut: No.

Atty Randich: Does it interfere with the use and enjoyment of your property?

A. Charamut: No.

Atty Randich: Do you think a reasonable person would think it would interfere with anything that you would normally do in a residential zone

A. Charamut: I don't see how anybody could. She really knows what she is doing.

Atty Randich: Thank you. I have an argument I would like to make about my client. I do not think I will be able to stick around for the work session, so in some respect are you going to give your report after I give my report?

M. D'Amato: When the public meeting is over I will give my report so when you are done I will give my report and then we close the public hearing and go into the work session.

Atty Randich: I guess the only courtesy I would ask is if you say something in your report that I feel I would like to respond to, I be allowed to do so. In summary, I think what we are looking for here is for some simple common sense. We are looking for the board of appeals to exercise its checks and balances to overturn what we believe is a clear case of government over reach. The activity in question in our opinion is an allowable use under Section 3.3.3 of the zoning regulations and they are on the board right now, you can see the requirement is to have an allowable person business use A. No business conducted on the premises except by mail, telephone or data terminal. In this case, as this client testified, all the business - the financial aspect of this business is done on the internet. You cannot show up at this place and pay cash, you have to make your reservation through AirB&B, pay AirB&B either through your credit card or Pay Pal, or however it is done, so that there is no cash on the property. Clearly you know we think that where it talks no business being conducted except by mail, telephone or data terminal is getting at exactly that financial aspect of it, which clearly is being done exclusively by data terminal so that there isn't an issue. B. No persons other than members of the resident family are employed in the activity and she has testified that she is the only one involved in the operation. She does everything. C. There is no external evidence of the business being visible and that is exactly as she testified. There are no signs, nothing to indicate that this is going on, you would never know it was going now if somebody didn't tell you. Her neighbor who lives in her front yard indicated that there is nothing objectionable about this and says no possible impact is upon the neighborhood. D. There are no signs promoting the property. She testified there aren't any signs. She has a picture of the property but there are no signs as you can see. E. The traffic generated by the activity is normal for a residence and she testified that she has the above children; it is a big house, they have numerous family gatherings there. There are plenty of times when there are absolutely no B&B people there at all and there are way more cars than nights when someone happens to be staying for AirB&B and so clearly, there isn't any issue with traffic or the property being overused and losing its character as a residence. Now if you look at Section 3.3 as a whole, I think the idea that it jumps out clearly is that residents should be allowed for personal business

if the business in question is pretty much invisible because of the neighborhood itself and the residents living there. Well, I don't know what could be more invisible than the activity that Ms. Tine describes, you know, a person drives up, they stay the night and they drive away the next day. There is no external evidence of it, there are no signs, she is not looking for the general public to show up here, she is very selective about the type of people she allows because they have the run of her house, so you know, I really question this type of use doesn't qualify as a personal business, then what would qualify as a personal business and if nothing does, well then you are rendering this section useless and that is clearly not an appropriate thing to do. It would not exist if it did not have a means for someone. The next point I would like to make is that the activity in question is so diminimus, two bookings in the last five months and does it defy logic as to why the government would intervene and get involved in this situation, you know, we are supposed to live in a free country, to be free to do what we want to do. I have full respect for the zoning regulations and the fact that there are matters that rise to the level of public importance that the zoning board should be authorized to come in and regulate but I find it hard to believe that in the last five months that two people stayed at this house one night and paid a fee that the government of Newington should come on this. No evidence has been brought forth to suggest that this activity has had any negative impact on any relevant zoning concerns such as traffic noise, crime or pollution. The only complaint in this matter is the mere complaint that the activity itself is ongoing, that in and by itself should not be the basis to stop it. The report that the notice of violation is factually and false; the notice says that she is operating a bed and breakfast. She is not operating a bed and breakfast. She testified to that fact. The record in front of you supports that conclusion. The last thing I would like to say is that the zoning commission is free to prohibit this activity if in fact they wish to do so, but any such prohibition must be accomplished by a formal amendment to this zoning regulation. That process would include a public hearing where people from the public would come in and give their two cents about what they think about the government coming in and trying to stop something that occurs on occasion of every couple of months and whether or not that is something that the government ought to be involved in, not by simply passing the resolution during a course of a year. We respectfully ask the Zoning board to appeal and send a message that this type of over reach should not be accepted in the town of Newington. Thank you.

Chairman Califano: Thank you.

Mr. D'Amato: Okay, so I am going to try to - as much as I can - try to keep everybody on the same page so if you do not understand something, let me know. So relative to the impressions of what I read basically, in September, the TPZ came to the consensus that traditional bed and breakfasts were not, as well as Air B&B's, in quotation marks, were not included within the zoning regulations as permitted use. The town of Newington and just about every other town in the state of Connecticut and probably everywhere we have permissive regulations. We write what we specifically allow; and if we do not allow it, it is expressly denied and that is based on the fact that we don't know what your property use, property design; we don't know what is going to happen five years from now, five months from now, five minutes from now. We can't constantly amend regulations and it just takes a long time with public hearings, we have to send notices to CROG, have to do a lot of different things, so we just state what we allow, what we know is right for Newington. So the TPZ will pick the regs and after that discussion felt that it was not an allowed use because it was not stated in the regs; it is prohibited the way the regs are written, based on Section 1.2.1, any use not expressly stated, and based on that, after that discussion at that meeting in September, I issued a notice of violation, so this is just more background on my action involving the case. Those in violation came to the town hall to discuss the matter further after she received my letter and during extensive conversation she felt she would like to speak directly

to the TPZ at their upcoming meeting during public participation in which we explained the process to her and she did do that. I was present at that meeting and the property owner and the father all spoke to the commission; it was done during their public participation so it was not back and forth and following that meeting I had a conversation with the Chairman of TPZ regarding this issue. We came to the agreement that it would be appropriate for Ms. Tine to make an application for Special Permit 3.4.4 home occupations and professional offices. The TPZ has never heard of an application of this kind under this specific regulation and Ms. Tine had asked for a chance to present her case and this was the most appropriate avenue. Following that discussion with the Chairman I spoke with Miss Tine and her attorney at the office of the Town Hall on 10/14. I informed them of this option and I explained to them that we had come to an agreement that the Chairman was going to hear this application and put it before the commission. I went to a meeting and she filed her appeal so that is the pertinent history. The attorney is going through section 3.3.3 which is a different section stating it is an allowed use which means you just go ahead and do it. You do not need permission. TPZ and myself disagree with his interpretation of this regulation. No business conducted on a premise on which she is conducting business' she is providing a service; she is making money. So it does not matter if she is currently only seeing two people in the last three months because tomorrow something could happen and she could start seeing people nightly. There is nothing that is going to stop that. So there is business being conducted on the premises other than that. No pedestrian automobile traffic other than normally generated by residents. A resident doesn't generate traffic that involves people coming from other parts of the country, or world. They stay for the night and leave. So while we are not talking about high volume, no one is saying there is a thousand people coming here, the fact of the matter is the use, where she rents portions of her home on a nightly basis in exchange for money which is advertised on line., except that there are no signs on the property, but she is advertising on the world wide web, anybody in the world with a computer can access the internet, find her site and book through her, so, yes I am sure she has some discretion, but the point of the matter is the activity here is not the same as a residential property and while she is making the case for her property the regulations make the case for the Town. So we provide a level playing field which means his interpretation is - anybody in town can rent rooms in their house to anybody on the internet whether they are AirB&B, VRBO, Home Away, Craig's List, Facebook, it does not matter because it is just being done on line, so based on that interpretation, our feeling is that it would not be appropriate for anybody with a structure within the town of Newington to rent out rooms to anyone on line , and given the fact that we gave her an avenue to seek potential approval in an open session with a public hearing with the TPZ who is in charge of creating regulations, which I enforce, I feel that this notice was issued properly and at this point in time I see no reason why the commission should not uphold the issuance of that notice. If you have questions...

Atty. Randich: Just briefly, just a couple of thoughts, the amount of business that is done is highly relevant, I mean, if there was concern for the public that there was traffic going in and out, in and out, which you would have if she had a business that was doing 40 nights a month, you know, then you would have legitimate zoning issues that would be invoked and it would be appropriate at that point to take action to do what he suggested on occupation, but when you are only doing a couple of bookings every 5 months, it costs \$%240.00 to do the application and you have to come back every year, or once every three years, the entire amount of whatever she gets is going to go to the zoning fee. I just think that you know there is a diminimus exception here, or there should be that occupation means that, occupation is an activity that you are supporting yourself on, well, she clearly is not doing that so that is not an appropriate avenue and I do think because of the amount of use that she has had in this, that she does qualify as a personal business and you know, it is not my opinion, not advertising to have a listing on a web site, you have to go to the web site, you have to do a search; it takes a lot of effort to find this, advertising is something that

you see whether you want to or not, there is no pop up ads or a web site of her own; it's like are you advertising your telephone number because it is listed in the phone book; that is essentially what we are talking about here, you gotta go look, you gotta go find it, so, I think that just to emphasize as you said, because it is an allowed use and it is an allowed business use, it does not require any permit.

Chairman Califano: Any questions from the commissioners?

Comm. Hutvagner: Was there any personal property tax paid for this business to the town?

Atty Randich: You mean like the bed that they slept on?

Comm. Hutvagner: Yeah, was there Declaration?

Atty Randich: It is not primarily a business use; nobody sleeps in the bed four times a year and I do not think anybody would declare that as business use.

Susan Tine: There are like I said multiple B&B's and all kinds of things going on in town and you are not going to find them and I am being picked out because I got found out but you are not going to change what is going on and the fact that it existed as many years as it did before somebody decided to turn me in, is pretty sad that if you obviously know if there was an issue somebody would have complained with something like noise, a lot of traffic and I happened to be where I overheard Mr. Sobiestki saying that there is a lady on our street that is doing this and we need to shut her down and that began all of this and I think that is very sad, paranoia over something that if people understood what it was you would think that they would.....I think educating is half the battle here, you know, I had a newspaper contact me through a friend and they wanted to interview me and I said, absolutely not, I don't want people to know what I am doing, you are going to shoot yourself in the foot, you have people who are yelping the best hamburger in town, the best restaurant, the best, you know, I had a guy from Ireland whose daughter got a full scholarship here, free to go to Central and he said tell them what you are doing and that you have made us feel that we belong here and are comfortable, and if more parents from other areas knew that they had a place that they could come and feel comfortable than in a hotel setting and you know alot of neighbors showed up at the last meeting and spoke on my behalf like Alicea did tonight, and for those who could not be here tonight I have letters and letters from guests about why they stayed with me, I had a girl speak about why she chose me and how she moved out of the hotel she was at and stayed with me and she just wasn't comfortable in the hotel lobby at night and her mom was very much at ease now that she was with us (tape change)

Comm. Igielski: The issue came up about taxes because of her business. Does that mean that if someone has a home business they can actually get taxed on their house?

Chairman Califano: No, not on the house but on the equipment.

Mr. D'Amato: Yes, Newington has taxes on any personal property associated with any business in town.

Comm. Igielski: Even in their personal home.

Mr. D'Amato: Yes,.

Comm. Hutvagner: If you have a home business, a computer, chair, fax machine, etc. I just want to know that people have personal businesses in their home.

Comm. Karanian: It is the business discretion of the state and the town sends you a declaration that you have to declare of the business in your home. You cannot get out of paying taxes if you have a business in town.

Chairman Califano: Can I have a motion to close the public session.

Comm. Pane:: I make a motion to close the public session.

Comm. Hutvagner: Second,.

Chairman Califano: All in favor. Aye unanimously.

III. WORK SESSION

PETITION 00-02-2016 Susan Tine of 62 Francis Ave is requesting a hearing to appeal the decision of the Zoning Enforcement Officer in regard to a notice of Zoning Violation of Section 1.2.1 for operating a bed and breakfast issued under the provisions of Section 7.1 of the Newington Zoning Regulations.

Chairman Califano: Miss Tine is looking to appeal the Notice that she got from the ZBA officer of having a B&B and I think the biggest thing here is even the way I look at these to me she is not breaking any of these laws herself but the only problem with this is if this appeal is upheld, if we override the zoning officer's decision, is it going to open up a bag of worms for anybody else in town to do that, other than that, I think she abides by all the use of her residence for a business, that is all I have and does anybody have anything else?

Comm. Hutvagner: Being a business owner and having a home that runs a business, you should have a registered business and pay taxes on the business. Having a business, that's fine, but you need to register that you have a business and pay your fair share of taxes and follow the regulations like everyone else does.

Comm. Pane: Under Section 3.3.3 technically it is a business being conducted. People are coming into the home, sleeping, technically the kitchen is in use and you fully understand what an AirB&B is, I have been to a few, it is a business! The major difference is you're taking cash on hand or going right through to your account, it's a business and unfortunately under Section 1.2 where Mike did send the notice to her, unfortunately it is not a use stated that is permitted and is not, so how are we going to allow someone something that is not stated, be allowed to do this and then, everyone else can, too. Just because someone does, does not mean everyone can and it is not allowed. Unfortunately, someone had told on her and if someone told on another AirB&B, then I guess we would have to be in this situation again, but someone complained and that is why she is here, so I do not know what else we can say, other than unfortunately I think, we think we need to uphold what Mike had sent out.

Comm. Igielski: I agree with what you said; she is not violating anything in that section that I can tell and I think the way that this happened is unfortunate and the person who happened to bring it up etc., was in a position to do something about it. The fact that no other neighbors have complained etc., I think, is in her favor. I know that there is a lot more going on that we do not

know, etc., and there is really nothing we can put our hands on. I tend to agree with Lou.

Comm. Bechter: I think the best way to straighten this out is to get the zoning board to change their regulations so some things can be part of the system whereas it is currently not, so I kind of agree with Nicole.

Chairman Califano: Mike, a question, if we were to override your decision what would happen then, would it go back to TPZ?

Mr. D'Amato: You are acting as a mediator so if you overturn my decision, then the notice of violation goes away; they are not in violation of anything and can continue and that use is not a violation.

Chairman Califano: Can I have a motion?

Comm. Pane: I will make a motion to deny - basically upholding Mike's decision.
(In favor - Pane, Bechter, Hutvagner)

Comm. Hutvagner: Second. (Against/Denial Califano, Igielski)

Chairman Califano: All in favor. Aye unanimously.

The petition is denied,

V. MINUTES PREVIOUS MEETINGS

Mr. D'Amato: You have 3 sets - 3 different ones and I made the changes that you had suggested, the first one is going back, we did not have an October meeting which is why we have a little bit of a backup. We are going to be doing things a little bit differently as far as minutes are concerned now. We are getting a draft copy filed right away and then you will get the copy and we will make changes and we will vote on those changes and we will file an emended copy. I am also filing your record of votes with the clerk right after these meetings. IT is not a bunch of issues but some of the other boards have a lot of meetings and a lot of votes happening and things get choked up so it takes time for those minutes so you are going to get a copy of the exact minutes and then if you have changes, the changes will be voted at the meeting and we will vote to adopt them and then we will file a second copy with the clerk. So, if nobody has any questions of those we will just make a motion to approve the minutes as listed and the October minutes are not on there because we did not have a meeting.

Chairman Califano: We make a motion to accept the minutes.

Comm. Bechter: I make a motion to accept the minutes

Comm. Pane: I'll second.

Chairman Califano: All in favor? Aye unanimously

VI. COMMUNICATIONS AND REPORTS

None.

VII. NEW BUSINESS

We set our January meeting to do the first Thursdays of every month and we just need you to vote.

ZONING BOARD OF APPEALS 17 DECEMBER 1, 2016

Comm. Igielski: I move that we vote to accept the proposed meetings as presented.

Comm. Hutvagner: I second.

Chairman Califano: All in favor? Aye unanimously.

We have some new members that are going to be on the Zoning Board of Appeals. I have resigned so you will have to vote for a new chairman.

Comm. Igielski: A chairman will be picked; John is not here.

Mr. D'Amato: John's expired the end of November.

Comm. Igielski: So there is just the 5 of us.

Chairman Califano: You have to have someone nominate someone to be Chairman.

Comm. Bechter: I nominate Nicole.

Comm. Igielski: Second.

Chairman Califano: All in favor? Aye unanimously. Nicole is the Chairman.

Mr. D'Amato: If you want to wait, we can wait until the next meeting for secretary.

Chairman Califano: We will also have a listing of the new members.

Mr. D'Amato: We have an alternate vacancy. Tim has been made a full member so his spot is open, so we are still a 7 member board. Bill will be a full member. Audra will be a full member. Tim will be a full member. Nicole is a full member. Mike, I think was appointed as an alternate. I have not gotten the appointments yet. There were appointments that were accepted by the Town Council this past Tuesday, but we haven't gotten this sheet that we all use yet.

IX. ADJOURNMENT

Comm. Califano: Motion to adjourn.

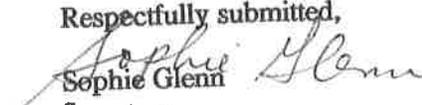
Comm. Igielski: Motion to adjourn.

Comm. Hutvagner: Second.

Comm. Califano: All in favor? Aye unanimously.

The meeting adjourned at 8:00 P.M.

Respectfully submitted,


Sophie Glenn

Secretary