

DRAFT
Zoning Board of Appeals Public Hearing and
Regular Meeting Minutes October 23, 2024
Held in the Aurora Firehouse Meeting Room at 7:00 PM

Present: Chair Karen Hindenlang, Alexis Boyce, Brad Brokaw, Laura Holland, and Jeri Vargo

Others Present: Clerk Ann Balloni, Frank Losurdo, Jeff Martin (7:15), and Brian & Michele Murphy

Call to Order: Ms. Hindenlang called the meeting to order at 7:07 p.m.

Public Hearing

Application #24-21 from Jeff Martin for a storage container at 46 Sherwood Road (Tax Map #182.09-1-15) The appeal is for an interpretation of the zoning law, based on a denial of the application from the village code enforcement officer.

On motion by Vargo, seconded by Brokaw, the ZBA voted to open the public hearing for Application #24-21 at 7:08 p.m.

AYES: Boyce, Brokaw, Hindenlang, Holland, and Vargo

NAYS: None

Motion carried unanimously.

Ms. Hindenlang asked the village zoning enforcement officer if he had any comments. Officer Rhea submitted his comments to the ZBA (attached), explaining that the applicant was allowed to have a “temporary” structure during renovations to his house, but the container has been on the property for five years and they are not allowed as permanent structures per the village zoning law.

Public Comment

Frank Losurdo (attached): Mr. Losurdo reiterated his written comments that the container is a clear violation of the village zoning law.

Ms. Hindenlang asked the applicant if he had any comments. Mr. Martin argued that he was given permission for the container by the previous zoning enforcement officer and no violations were issued despite site checks.

Ms. Hindenlang reminded the ZBA that they have 62 days to render a decision, may adjourn the public hearing to another date, or close the public hearing.

On motion by Brokaw, seconded by Vargo, the ZBA voted to close the public hearing for Application #24-21 at 7:17 p.m.

AYES: Boyce, Brokaw, Hindenlang, Holland, and Vargo

NAYS: None

Motion carried unanimously.

Regular Meeting

Changes to the Agenda: No changes.

Approval of Minutes: On motion by Vargo, seconded by Ms. Brokaw, the ZBA voted to approve the minutes of September 25, 2024.

AYES: Boyce, Brokaw, Hindenlang, Holland, and Vargo

NAYS: None

Motion carried unanimously.

Announcements: No announcements

Old Business: No Old Business was discussed.

New Business

Application #24-21 from Jeff Martin for a storage container at 46 Sherwood Road (Tax Map #182.09-1-15) The appeal is for an interpretation of the zoning law, based on a denial of the application from the village code enforcement officer.

Ms. Hindenlang explained that the appeal came in under the previous village zoning law, Local Law #3 of 2023, under section 405.P1.A.3.f.:

“An unattached accessory structure shall not be a building, structure, or other assemblage of materials designed for, or customarily used as, a principal structure allowed under this law; nor shall an unattached accessory structure be a vehicle, or a container primarily intended for commercial storage or transportation of goods, animals, or people.”

The appeal is for an interpretation of the law and the ZBA must act to either “affirm, modify, or overturn” the zoning officer’s decision.

Ms. Hindenlang confirmed that each ZBA member had reviewed the following documents (attached), as requested by the village attorney. These were then examined and discussed in the meeting:

- A. Village of Aurora Zoning Law, Section 405.P1.A.3.f
- B. Emails between the CEO and Applicants, dating from June 29, 2023 and July 19 of 2023, and January 8, 2024, 2024, in which the CEO notified the Applicant that containers intended for commercial storage or transportation were prohibited on residential property and must be removed from 46 Sherwood Road as being violation of Village Law. The CEO also informed the Applicant that no previously written note, memo, or permit could be found regarding the storage containers at 46 Sherwood Road that could be considered as an approval by the Village. In addition, the CEO relayed a conversation with former CEO Patrick Doyle, in which Mr. Doyle said that he made no statement that they are allowed as permanent structures.
- C. Village of Aurora v. Albert J. Martin Complaint, dated March 18, 2024
- D. CPP determination dated July 3, 2024, denying Applicant’s Application 24-21 for a Certificate of Appropriateness, together with draft minutes from the July 3, 2024 CPP meeting
- E. Village of Aurora Code Enforcement Officer Robert Rhea’s letter to Applicant dated July 8, 2024 regarding CPP denial of Applicant’s Application for a Certificate of Appropriateness

- F. Village of Aurora Code Enforcement Officer Robert Rhea's Order to Remedy Violations dated July 8, 2024
- G. Applicant's Notice of Appeal under Village of Aurora Local Law #3-2019 dated September 5, 2024
- H. Village of Aurora Planning Board Minutes dated May 27, 2015, denying an application for site plan approval for a similar violation of Section 405.P1.A.3.f.

Ms. Boyce confirmed that the ZBA's review is on the intent of the law, not how the container is used and noted that commercial containers may be appropriate in commercial zones. Ms. Hindenlang added that the section disallowing these containers was carried over into the new zoning law, Local Law #2 of 2024, but with the word "commercial" being deleted.

Ms. Holland questioned the reason for sending the application to the Community Preservation Panel (the CPP refused to review the application due to the zoning law disallowing shipping containers as accessory structures). Officer Rhea replied that it was an additional avenue for the applicant.

Ms. Holland questioned if the containers are registered, and Mr. Martin replied that they have serial and tracking numbers.

Ms. Holland questioned painting or adding a roof to the container and Ms. Boyce replied that the law would have to be revised for that to be allowed because the intent is to prohibit containers as accessory structures. Officer Rhea added that shipping containers are exactly what the law is intended to prevent in residential zones.

After further discussion of the meaning and intent of the law, a "straw vote" indicated that the ZBA would interpret our Village law to uphold the determination of the CEO in this matter.

The ZBA received and reviewed a draft resolution to that effect which had been provided by the Village attorney (per Local Law #3 of 2012), made minor corrections and revisions, and included the public hearing comments.

VILLAGE OF AURORA, NEW YORK
ZONING BOARD OF APPEALS

DECISION – October 23, 2024

PROCEDURAL POSTURE:

Albert J. ("Jeff") and Jerelyn Martin (herein referred to as the "Applicants") are the owners of the subject parcel of real estate commonly known as at 46 Sherwood Road, in the Village of Aurora (Tax Map No. 182.09-1015) (hereinafter, the "Property"). The instant matter arises as a result of Applicants' appeal to the Village of Aurora Zoning Board of Appeals ("ZBA") for reversal of an Order to Remedy Violations, dated July 17, 2024 (the "Order to Remedy"), issued to Applicants by the Village of Aurora Code & Zoning Enforcement Officer ("ZEO").

BACKGROUND:

According to the Village ZEO the Applicants have, for several years, kept two (2) storage containers that are considered Accessory Structures under the Code, on the Property (the "Containers"). On March

18, 2024, ZEO Robert Rhea brought a Complaint in Ledyard Town Court accusing Applicants of failing to comply with Section 405 P1 A.3.f. of the Village of Aurora Zoning Code, Local Law #1 of 2023 (the “Code”) by keeping accessory structures (in this case commercial containers) primarily intended for storage on the Property and requesting an order directing Applicant to remove the Containers from the Property. At that Court appearance, Applicants agreed to remove one (1) of the Containers, and to apply to the Aurora Community Preservation Panel (“CPP”) for a Certificate of Appropriateness to keep the other Container on the Property as a permanent structure (Application #24-21). No action was taken on the application by the CPP, and on July 3, 2024, the matter was directed back to the ZEO for a determination of legality with respect to the container.

On July 8, 2024, the ZEO issued an Order to Remedy alleging that the Containers violated the Code and directed Applicants to remove the containers from the Property no later than August 31, 2024.

On September 5, Applicants appealed to the ZBA for an interpretation of the Code to determine whether the ZEO erred in issuing the Order to Remedy.

FINDINGS OF FACT:

Section 405 P1 A.3.f of the Code states: An unattached accessory structure shall not be a building, structure or other assemblage of materials designed for, or customary used as, a principal structure allowed under this law; nor shall an unattached accessory structure be a vehicle *or a container primarily intended for commercial storage or transportation of goods, animals or people.* (emphasis added)

EXHIBITS:

- A. Village of Aurora Zoning Law (“Zoning Law”)
- B. Emails between the ZEO and Applicants
- C. Village of Aurora v. Albert J. Martin Complaint
- D. CPP determination dated July 3, 2024, denying Applicant’s Application 24-21 for a Certificate of Appropriateness, together with draft minutes from the July 3, 2024 CPP meeting
- E. Code Enforcement Officer Robert Rhea’s letter to Applicant dated July 8, 2024 informing of CPP denial of Applicant’s Application for a Certificate of Appropriateness
- F. Village of Aurora Code Enforcement Officer Robert Rhea’s Order to Remedy Violations dated July 8, 2024
- G. Applicant’s Notice of Appeal under Village of Aurora Local Law #1-2023 dated September 5, 2024
- H. Village of Aurora Planning Board Minutes dated May 27, 2015, denying an application for site plan approval for a similar violation of Section 405 P1 A.3.f. of the Code

Each member of the ZBA has had the opportunity to review and consider each and every Exhibit referenced above and has reviewed each and every document carefully and fully. The ZBA held a public hearing, duly published and posted on 23 October, 2024, and at said hearing all who desired to be heard were heard and their testimony recorded, to wit ZEO Robert Rhea, Village resident Frank Losurdo, and applicant Jeff Martin.

RULING:

The Village of Aurora Zoning Board of Appeals hereby states that each of its members is familiar with the subject Property and the Application/Appeal. Each of its members is also familiar with storage containers such as the container at issue in the instant matter. After careful review of the Application/Appeal, the ZBA hereby finds that the language in Section 405 P1 A.3.f. of the Code (Local Law #1 of 2023) is clear as it pertains to the instant Application and therefore reaffirms the ZEO's Order to Remedy Violations, as the container is very plainly a container primarily intended for commercial storage or transportation of goods. Even if one may argue that such containers may be "re-purposed" for other uses, it is this ZBA's determination that the containers are nonetheless primarily used as "shipping" containers for the transport of goods. Applicants shall remove all violating structures in accordance with ZEO directive(s), but in any case, no later than 30 days from the filing of this Decision.

This Decision of the Village of Aurora Zoning Board of Appeals shall be promptly recorded in the Village Clerk's office and promptly transmitted to Applicants.

ZBA member Alexis Boyce made a motion to adopt this Decision. This motion was seconded by Brad Brokaw.

The question of the foregoing Resolution was duly put to a vote and upon roll call was as follows:

Alexis Boyce	Voting	AYE
Brad Brokaw	Voting	AYE
Laura Holland	Voting	AYE
Jeri Vargo	Voting	AYE
Chairperson Karen Hindenlang	Voting	AYE

Adjournment: On motion by Brokaw, seconded by Boyce the ZBA voted to adjourn the meeting at 7:55 p.m.

AYES: Boyce, Brokaw, Hindenlang, Holland, and Vargo

NAYS: None

Motion carried unanimously.

Respectfully submitted,

Ann Balloni
Village Clerk