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August 4, 2024

RECEIVED

AUG 28 2024

ZBA

Westport Zoning Board of Appeals
Town Plan and Zoning Department
110 Myrtle Avenue, Room 203
Westport, CT 06880

Re: Request for Letter of Zoning Compliance – 4 Compo Parkway

Dear Chairman Ezzes and Members of the Westport Zoning Board of Appeals:

Please accept the following narrative as part of an appeal of the decision of the Westport Planning and Zoning Department to not issue a Letter of Zoning Compliance under the Westport Zoning Regulations (the “Regulations”) for the property located at 4 Compo Parkway, Westport, CT (the “Site”) after I submitted a request for said Letter on August 4, 2024.

On August 4, 2024, on behalf of my client, Andrew R. Jones, the owner of the Site, I requested a Letter of Zoning Compliance for the Site to be issued by the Westport Planning and Zoning Department. This Letter was requested to confirm an existing putting green on the Site was compliant under the Regulations.

The Site is located in the Residence AA District. Currently, the Site contains a single-family dwelling. The Site also contains a putting green in connection with the residential use, which is compliant under the Regulations. The putting green consists of artificial grass. In a Memorandum dated May 4, 2022, Zoning Official Laurie Montagna (the “ZEO Memo”) stated that “It was determined that installation of artificial grass can be considered the same as real grass and not considered an improvement and therefore can be located in the setback area without a variance.” As the artificial grass that constitutes putting greens has been determined not to be an improvement, it can not be considered a structure.

In a Notice of Violation issued for the Site, dated February 29, 2024, it states that the Site violates §45-3 of the Regulations concerning Zoning Permits. Said Section states the following:

No building or structure shall be erected, added to, or structurally altered and no change of use shall be established until a Zoning Permit has been issued by the Zoning Enforcement Officer.

Certainly, if artificial grass is considered equivalent to real grass and it is not an improvement, it can not be considered a building or structure. If it were, any type of natural plant or product of nature would have to be considered and permitted by the Regulations. Flowers, bushes and trees would all be governed and restricted by the Regulations. This is obviously not the case under the Regulations. Therefore, the artificial grass of the putting green does not satisfy the first part of the definition for §45-3 of the Regulations as it is not a building or structure.

The second part of said definition relates to change of use. The term "Change of Use" is actually defined in the Regulations as follows:

- "Any change that requires the designation or construction of more than three (3) spaces for a building or use.
- Any change from a vacant lot area to a parking area.
- The change from any residential use to any commercial use shall also be deemed to be a 'change of use'"

The existing putting green does not meet any of these standards. It does not require additional parking, it is not a change from a vacant lot area to a parking area and it is not a commercial use. A "commercial use" is defined under the Regulations as "an occupation, employment or enterprise that is carried on for profit by the owner, lessee or licensee." This putting green is not used for any type of profit.

Even if it is argued that a "change of use" is not limited to the scenarios described in its definition under the Regulations, the putting green does not constitute a change of use. As stated above, a single-family dwelling is the principal use of the Site. §12-2 of the Regulations states that the permitted uses in the Residence AA District are the same as any use permitted in the Residence AAA District, which are stated in §11-2 of the Regulations. Specifically, §11-2.4.3 states that "outdoor recreational uses, paddle tennis courts and tennis courts" are permitted.

Said Section also states that "any tennis court or paddle tennis court located closer than 50 feet from a side or rear property line shall be screened along said property line in accordance with §35-2.4 (Buffer Strip)." This Section is important for two reasons. First, it specifically does not include other outdoor recreational uses, just tennis courts and paddle tennis courts. Second, it is not a setback requirement, but merely requires a buffer within a certain distance to a property line. It is then necessary to refer back to the setback requirements of the Residence AA District in §12-4 of the Regulations, which states "No principal building, structure or use or accessory building or structure shall extend closer than thirty (30) feet from any street line or twenty-five (25) feet from any side or rear lot line." The key point in this definition is that the only use that is specified in terms of setback is the principal use. The setback is applied to the "principal building, structure or use." However, it is not also applied to the accessory use. That portion of the Regulations simply states "accessory building or structure." Therefore, even if the putting green is considered an accessory outdoor recreational use, §12-4 of the Regulations does not apply.

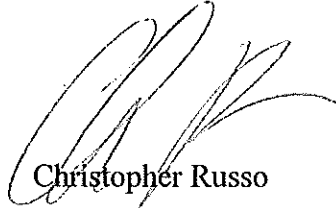
In response to the my request for a Letter of Zoning Compliance, Deputy Planning and Zoning Director Michelle Perillie highlighted a portion of the ZEO Memo, which stated that recreational uses, such as putting greens, can be installed in setbacks and that the setback area is

intended to provide a buffer free of structures and activities. Director Perillie quoted Sec. 12-4 of the Regulations discussed above. As explained above, that section requires a setback for the principal use. If this logic were applied, a child could not play within the setbacks of their own yard. Under this interpretation, if a child were to draw hopscotch lines at the beginning of their driveway or play wiffle ball from a fence that separated abutting properties, they would be in violation of the Regulations. Similar to the putting green, none of these activities involve building or structures. There is no requirement under the Regulations for these types of normal activities in connection with a single-family residential use to be setback from the property lines.

For these reasons, I respectfully request that the Westport Zoning Board of Appeals approve our appeal of the decision of the Westport Planning and Zoning Department to not issue a Letter of Zoning Compliance for the Site and its putting green and instruct the Westport Planning and Zoning Department to issue said Letter.

Thank you for your consideration of this matter.

Sincerely,



Christopher Russo