

# July 15, 2004

**Present:** Edmund White, Katharine Leab, Bradford Sedito, Randolph Snook, Polly Roberts

**Alternates:** Mark Averill, Todd Catlin, Georgia Middlebrook

**Guests:** Peter Talbot, Penny Bardel, Harold Wellings, Stephen Wright, Daryl Wright, Andrew Borst, Robert Fisher, Jr., Kathleen Taylor, Winston Fowlkes, Press

Edmund White Chairman called the meeting to order at 7:40pm and read the legal notice for tonight's meeting. Noting that Ms. Leab had not yet arrived the Chairman started with the third item on the agenda.

## **PUBLIC HEARING**

Mr. White seated regular members Randolph Snook, Polly Roberts, himself and alternates Mark Averill and Georgia Middlebrook.

**ZBA-0409 Request of Mr. & Mrs. William Bardel, 166 Baldwin Hill Road, for a variance from Zoning Regulations 11.6.1.c (front yard setback), to construct a greenhouse.** Peter Talbot, architect and Penny Bardel, owner were present to represent this application. Mr. Talbot began by reading his letter of request into the record. He also presented and added to the file an A-2 survey and greenhouse plans showing elevations. Mr. Talbot stated that the proposed greenhouse will be centered on the gable of the addition section of the house and will be 13.6' x 14.8'. Ms. Bardel added that they worked with an architect to find the best location for the proposed greenhouse. Ms. Roberts asked about locating the greenhouse off the barn. Ms. Bardel replied that that this area is shaded. Mr. White asked about the existing greenhouse located on the property. Ms. Bardel stated the existing greenhouse is plastic and is located 150' from the house; she wants year round use of the greenhouse. Mr. White expressed his concern that the greenhouse will become a "sun porch"; this will not be a traditional greenhouse with a dirt floor. Mr. White noted the difference between agricultural and residential use. The applicants were asked if other locations had been considered. Mr. Talbot mentioned that the ideal location is off the front of the house which would be more nonconforming. Ms. Bardel added that the proposed location is the only place with (3) exposures for the greenhouse which is practical for growing and is the least disruptive to the existing floor plan for the house, she pointed out the location of the septic and well on the property. It was noted that Mr. Alex's A-2 survey shows the proposed greenhouse 38.33' from the stonewall boundary line. Mr. Talbot feels there is a historical hardship in that the house was built in 1780 next to the road. Mr. Snook asked about moving the proposed greenhouse back to comply with the front yard setback and building a corridor or breezeway for access. Mr. Talbot answered that the kitchen is located on that corner of the house and the cabinetry is in the way. Mr. Averill felt what is proposed is more architecturally appropriate. Members reviewed the A-2 survey; Mr. Talbot believes all of the Bardel parcels have been merged to create one lot of 11.18 acres. Ms. Bardel presented a note from adjoining property owners Whalen/Oneglia in favor of the project. Mr. White read this note into the record but Ms. Bardel did not submit it to the file. Mr. White asked for further questions and comments from the public.

**MOTION: to close ZBA-0409 request of Mr. & Mrs. William Bardel, 166 Baldwin Hill Road, for a variance from Zoning Regulations 11.6.1.c (front yard setback), to construct a greenhouse was made by Ms. Roberts, seconded by Mr. Snook by a 5-0 vote.**

## **MEETING**

Ms. Roberts felt this is a reasonable request and it will most clearly be a greenhouse. This is a historical situation, they have explored other options but there is the struggle with hardship. Ms. Middlebrook

agrees with Ms. Roberts it will be a nice addition and she finds hardship in the position of the house with the road. Mr. Snook is inclined to approve this variance it is reasonable. He noted that the greenhouse will be 77' from the center of the road. Mr. Averill felt the request is not unreasonable; it appears to be the only place to go. Mr. White stated there is obviously no classic hardship, it is a historical structure which has been varied before, and it's attractively put together. He feels they are approving a room as opposed to a dirt floor greenhouse and he understands the location for the propose greenhouse.

**MOTION: to approve ZBA-0409 request of Mr. & Mrs. William Bardel, 166 Baldwin Hill Road, for a variance from Zoning Regulations 11.6.1.c (front yard setback), to construct a greenhouse by a 5-0 vote.**

## **PUBLIC HEARING CONTINUED**

Mr. White seated regular members Katharine Leab, Bradford Sedito, Randolph Snook, Polly Roberts and himself.

**ZBA- 0406 Request of Harold J. Wellings, 298 West Shore Road, for a variance from Zoning Regulations 11.6.1 (side yard & front yard setback) to construct a garage.** Mr. Wellings was present to represent his application. Mr. Wellings erected his mock up of the proposed garage and members were contacted to do individual drive bys, he also submitted plans for the proposed garage. Mr. Wellings began by submitting a new site plan which moved the proposed garage 50' off the front property line so that the front line variance will not be needed and this also moves the entire proposed garage onto existing driveway so lot coverage is a non issue. Mr. Wellings stated that he has addressed the concerns of his neighbor Mr. Funston by downsizing the garage to 20' x 24' and is facing the garage doors toward his own house. Mr. Wellings is requesting an increase from 20' x 24' to 21'x 24' for the proposed garage because he is unable to access the garage at the 20' dimension. Mr. Wellings noted this change on his plans submitted on July 1, 2004 and initialed it. Mr. Wellings submitted letters of approval from both neighbors Funston and Alldrege/Daly and also pictures of the mock up garage. It was noted that the existing plastic garage has been in place for 5+ years and will not be removed if a variance is not granted for the proposed garage. The plans submitted show the overall height of the proposed garage to be 13'6" it will have a 4' storage space in the peak. Mr. Wellings states it will be an exact replica of his house presently on the property and at this point he is only requesting a variance for side yard setback. Mr. White asked for further questions or comments from the public.

**MOTION: to close ZBA- 0406 request of Harold J. Wellings, 298 West Shore Road, for a variance from Zoning Regulations 11.6.1 (side yard & front yard setback) to construct a garage was made by Mr. Sedito seconded by Ms. Roberts by a 5-0 vote.**

## **MEETING**

Ms. Leab has a problem with this being a self created hardship but in comparison with the existing ugly green plastic thing she would allow the proposed garage which is more in keeping with the surrounding area. Mr. Sedito drove by the mock up and is in favor of the proposed 21' x 24' garage, a house deserves a garage. Mr. Sedito added that he did not feel the original garage was big enough to be a garage. Mr. Snook also drove by the mock up and is in favor of granting the variance. Ms. Roberts feels the hardship is self created; there is the historical problem which runs with the older houses on the lake. Ms. Roberts appreciates the work Mr. Wellings did with addressing the neighbor's issues and she is in agreement with Mr. Sedito. Mr. White agrees in general with all members, he noted that the temporary plastic structure became permanent, it slipped by.

**MOTION: to approve ZBA- 0406 request of Harold J. Wellings, 298 West Shore Road, for a**

**variance from Zoning Regulations 11.6.1 (side yard setback) to construct a garage by a 4-1 vote.**

**Ms. Leab, Mr. Sedito, Mr. Snook and Ms. Roberts voted to approve.**

**Mr. White voted to deny.**

## **PUBLIC HEARING CONTINUED**

Mr. White seated regular members Katharine Leab, Bradford Sedito, Randolph Snook, Polly Roberts and himself.

**ZBA-0407 request of Caroline Vanderlip, 28 Shearer Road, for a variance from Zoning Regulations 12.5.2 (no accessory structure shall be higher or larger in ground floor area than the principal structure, except in connection with an agricultural use) and 12.14.1 (generator location), to make several changes to an existing building, including garage space and install a generator.** Stephen Wright was present to represent this application. It was noted that all but one certified mailing card was returned, Mr. Wright hand delivered that last card from Michaud/Steinmetz. Mr. Wright brought additional pictures showing the main house, he stated that they cannot accommodate the garage in the footprint of the existing turkey cooler footprint. Mr. Sedito asked if they had thought about attaching the proposed garage structure to the main house. Mr. Wright explained that they felt doing that was not in keeping with the purpose or intent of the Zoning Regulations and the applicants felt the breezeway would make it look too suburban they were opposed to connecting the two structures. Mr. Wright went on to say that he talked the applicants out of constructing an additional much larger structure further down the property that would become a (4) car garage. ZBA members seem to be concerned with the size of the turkey cooler section of the accessory structure which will become the garage. The accessory structure at present is 2834 sq. ft. with the improvements will become 3408 sq. ft., the main house including the porch is 2125 sq. ft. Mr. Wright explained the architectural design of the gables on the proposed garage portion and stated that if the building was brought in line it would appear much larger. Mr. White asked for comments from the public. Mr. Snook asked if any previous variances had been granted, the answer was no. Mr. Sedito inquired about the possibility of cutting in a new driveway and building a garage. Mr. Wright answered that the applicants did not want to clutter the property with more buildings and were trying to contain the disruption to the property. Mr. Sedito asked about disconnecting the garage from the guest house part of the structure to have it conform. On behalf of the applicants Mr. Wright agreed to vote on the additions and generator separately. Discussion went on to the generator portion of the application. Mr. Wright explained that putting the generator near the house was a poor location, it's a piece of large machinery, and they want to install it next to existing pool equipment which is further from the nearest neighbor and owners houses. Daryl Wright of Wright Electrical stated that the generator is a 20kw; the footprint is 2' x 5'. The property is a 7.6 acre parcel. Mr. Wright was asked about putting the generator in the garage, he answered that was not a good idea with a combustible engine, and it would also be very noisy. Mr. Snook asked how often it would have to run; the answer was once a week for 20-30 minutes. Mr. White located the well and septic on the property map. Mr. Catlin commented that he feels the additions can all be made within the regulations and would have a hard time granting a variance; this doesn't need to involve the ZBA at all. Mr. Snook added that the generator is more removed from the neighbor but would still like to see it between the pool and main house.

**MOTION: to close ZBA-0407 request of Caroline Vanderlip, 28 Shearer Road, for a variance from Zoning Regulations 12.5.2 (no accessory structure shall be higher or larger in ground floor area than the principal structure, except in connection with an agricultural use) and 12.14.1 (generator location), to make several changes to an existing building, including garage space and install a generator was made by Ms. Leab seconded by Ms. Roberts by a 5-0 vote.**

## MEETING

Ms. Leab stated there was not even a remote hardship, they were only accommodating architectural plans and felt many other things could be done. Mr. Sedito felt the proposed plans were complicated there were other alternatives that were not explored in depth. He has no problem with the generator. Mr. Snook would be in favor of the proposed changes to the building, the auxiliary building is already larger than the main house he has no problem with the arrangement. Ms. Roberts felt the proposal was way too big, there are other options. Mr. White thought the plan went beyond what could have been requested and could accomplish the same end. The structure needs to be kept in proportion with the main house, the size was not necessary.

**MOTION: to deny ZBA-0407 request of Caroline Vanderlip, 28 Shearer Road, for a variance from Zoning Regulations 12.5.2 (no accessory structure shall be higher or larger in ground floor area than the principal structure, except in connection with an agricultural use), to make several changes to an existing building, including garage space by a 4-1 vote.**

**Mr. White, Ms. Leab, Mr. Sedito and Ms. Roberts voted to deny.**

**Mr. Snook voted to approve.**

**MOTION: to deny ZBA-0407 request of Caroline Vanderlip, 28 Shearer Road, for a variance from Zoning Regulations 12.14.1 (generator location), to install a generator by a 2-3 vote.**

**Mr. White and Mr. Snook voted to deny.**

**Ms. Leab, Mr. Sedito and Ms. Roberts voted to approve.**

## PUBLIC HEARING

Mr. White seated regular members Katharine Leab, Bradford Sedito, Randolph Snook, Polly Roberts and himself.

**ZBA-0410 request of Andrew Borst - 202 Marketplace LLC, 210 New Milford Trpk., for a variance from Zoning Regulation 16.3.6 (signs), to install signage.** Andrew Borst was present to represent his application. Mr. Borst began by stating that he felt the hardship was the building location which is set back from the road 100'-125'. Mr. Sedito asked about an existing sign under the eaves. At present there is a "Dean's Deli" sign under the eaves. Mr. White read into record a letter from ZEO Janet Hill. Mr. Sedito asked the applicant if the sign could be dropped below the gutter of the roof. Mr. Borst answered that they plan on installing awnings over both entrances and windows. Mr. White interjected that the ZBA has been very tough on signs in the Marbledale Business District. Mr. Snook felt the applicant could accomplish the same effect while dropping the sign down. Mr. White asked for further questions or comments from the public.

**MOTION: to close ZBA-0410 request of Andrew Borst - 202 Marketplace LLC, 210 New Milford Trpk., for a variance from Zoning Regulation 16.3.6 (signs), to install signage was made by Mr. Sedito seconded by Ms. Roberts by a 5-0 vote.**

## MEETING

Ms. Leab felt the sign was too big, there were other possibilities, and a large sign does not assure success. Mr. Snook agrees with Ms. Leab. Mr. Sedito finds no reason to vary the regulations for this application. Ms. Roberts added that the regulations in the business district are generous. Mr. White agrees with the

other members.

**MOTION: to deny ZBA-0410 request of Andrew Borst - 202 Marketplace LLC, 210 New Milford Trpk., for a variance from Zoning Regulation 16.3.6 (signs), to install signage by a 5-0 vote.**

## **PUBLIC HEARING**

Mr. White seated regular members Bradford Sedito, Randolph Snook, Polly Roberts, himself and alternate Todd Catlin.

**ZBA-0411 Request of Kathleen B. Taylor, 218 Wykeham Road, for a variance from Zoning Regulations 11.1.2 (area of soil type), 11.3.2 (minimum lot size), 11.2.1 (density), to qualify a lot as a building lot.** Atty. Robert Fisher, Jr. and Kathleen Taylor were present to represent this application. Mr. White began the public hearing by stating that the commission could hear this application because six months has gone by since the last application. Atty. Fisher began by telling the members that the site plans for the property had changed the proposed driveway has been moved to address the neighbor's (Gillespie's) concerns. Members asked Ms. Taylor about Mr. Corbo's involvement in this application. Ms. Taylor stated that Mr. Corbo has agreed to buy the property if the variance is granted. Pamela Osborne, secretary informed members that four of the six certified mailing cards, from property owners within 200' had been received, cards from Gould/Connor and Gillespie have not been returned. Mr. Fisher began reading his letter of request into the record. Winston Fowlkes was present to address the question of acquiring property from adjoining land owners to have Ms. Taylor's parcel conform. Mr. Fowlkes owns the property referred to as #67, which Mr. Fowlkes states he has been told by council is a grandfathered building lot. Mr. Fowlkes stated that he was contacted by Mr. Corbo in December of 2003 about purchasing the land. Mr. Fowlkes stated that he gave Mr. Corbo a reasonable offer to buy the whole lot (#67). Mr. Fisher stated that he was unaware of this information. At this point Ms. Taylor gave a brief personal history. Mr. White told Ms. Taylor that the members understood her personal hardships, and went on to explain the ZBA process, the vote from the previous application and the litigation that followed. Mr. White went on to say that members have not turned a deaf ear and will discuss this application. Mr. Fisher addressed references in Michael A. Zizka's letter of January 15, 2004. Atty Fisher explained that he did not have the opportunity to discuss this with ZBA members because the previous application public hearing was closed when Atty. Zizka's letter came in. Atty. Fisher disagrees with Atty. Zizka's reference to case study entitled **Pollard v. Zoning Board of Appeals**, 186 Conn.32 (1982) and **Highland Park, Inc. v. Zoning Board of Appeals**, 155 Conn. 40,43 (1967) because in both instances the surveyors worked directly for the property owner which is not the case in the Taylor application. Atty. Fisher disagrees with Atty. Zizka in that this is not a self created hardship, he feels the hardship goes far beyond simple financial hardship everyone followed the law, he feels this is extreme hardship not self created. Ms. Roberts asked about the status of the litigation from the first application. Atty. Fisher stated that they are scheduled for oral arguments in August and then the Judge will issue a ruling within 120 days. Ms. Middlebrook asked about Mr. Fowlkes offer to sell his lot to Mr. Corbo. Mr. Fowlkes said that he told Mr. Corbo he would sell it for \$195,000, it's a buildable lot. Mr. Snook referred to a conversation he had with Atty. Zizka about hardship being monetary. This is a large amount of money which will certainly have significant financial hardship. Mr. Catlin addressed the concerns the Gillespie's had with the previous application. Mr. Catlin felt that the Gillespie's would still object to granting this variance but they were aware at the time they bought their property that the lot next door was in fact a building lot. Mr. White asked for further questions and comments from the public.

**MOTION: to close ZBA-0411 request of Kathleen B. Taylor, 218 Wykeham Road, for a variance from Zoning Regulations 11.1.2 (area of soil type), 11.3.2 (minimum lot size), 11.2.1 (density), to qualify a lot as a building lot was made by Ms. Roberts seconded by Mr. Sedito by a 5-0 vote.**

## **MEETING**

Mr. Snook felt that Atty. Fisher has made a good point and would be in favor of the variance. Mr. Sedito agrees with Mr. Snook. Mr. Catlin is on the fence he feels there certainly is a hardship; everyone did everything in good faith. Ms. Roberts noted that she was not seated on the first application, she feels this is a situation the board could remedy, and she disagrees with Atty. Zizka's references and agrees with Atty. Fisher. Mr. White is conflicted the previous application is still in Court and will be decided soon.

**MOTION: to approve ZBA-0411 request of Kathleen B. Taylor, 218 Wykeham Road, for a variance from Zoning Regulations 11.1.2 (area of soil type), 11.3.2 (minimum lot size), 11.2.1 (density), to qualify a lot as a building lot by a 4-1 vote.**

**Mr. Sedito, Mr. Snook, Ms. Roberts and Mr. Catlin voted to approve.**

**Mr. White voted to deny.**

Regular member Polly Roberts asked that the minutes refer to her as Ms. Roberts. In the minutes of June 17, 2004 the secretary referred to Ms. Roberts as Ms. Swain several times in error. Let the record show that Ms. Roberts and Ms Swain are one and the same person.

**MOTION: to accept the minutes of the June 17, 2004 meeting with amendments was made by Ms. Roberts seconded by Mr. Sedito by a 5-0 vote.**

**MOTION: to adjourn was made by Mr. Sedito at 10:35pm, all agreed.**

Submitted subject to approval,

Pamela L. Osborne, Secretary