

September 16, 2004

Present: Edmund White, Katharine Leab, Bradford Sedito, Randolph Snook

Alternates: Todd Catlin, Georgia Middlebrook

Guests: Kevin McGarry, Scoot Meeker, Ms. Buziak, Kelly Boling, Jennifer Mitchell, Daryl Wright, Mr. Manderson, press

Chairman, Edmund White called the meeting to order at 7:30pm and read the legal notice for tonight's meeting.

PUBLIC HEARING

Mr. White seated regular members Katharine Leab, Bradford Sedito, Randolph Snook, himself and alternate Georgia Middlebrook.

ZBA-0412 Request of 185 West Morris Road Ltd, 185 West Morris Road, for a variance from Zoning Regulations 12.14.3 (generator location) and 11.6.1.c (front yard setback) to install a generator. The secretary noted that only (1) reply card had been received from the (5) certified mails made by the applicant. Kevin McGarry authorized agent for 185 West Morris Ltd. stated that he had been out of town and mailed the certified mailings on Monday September 13, 2004. Mr. White read the explanation of request and addendum letter dated 8/11/04. Mr. McGarry stated that this was a 25K generator which services the guesthouse only. Referring to the map Mr. McGarry noted that the guesthouse is off the property line. He went on to state that this is an after the fact application the generator was installed 1 1/2 years ago. The generator is located next to a shed which houses gardening equipment. There are existing propane and ac units on the south side of the guesthouse. Mr. McGarry added that Inland/Wetland approval was received at the September 8, 2004 meeting. Mr. White read the Zoning Regulations pertaining to this variance. There was discussion on the distance from the Bantam River. Mr. McGarry stated that they used common sense in situating the generator, putting the generator in back of the guesthouse would be too close to the river. Mr. Sedito asked about installing the generator inside the shed. Mr. McGarry was concerned with the heat in the wood structure. There was a question about the deck on the back of the guesthouse and why there was no application for a variance for it. Mr. White asked for further questions and comments from the public. Mr. Sedito added that he understands the need for a generator and if this one was not already installed there would be no place to install a generator that would conform. Members felt that the public hearing should be continued to allow for more time for neighbors to receive the certified mailings.

MOTION: to continue ZBA-0412 request of 185 West Morris Road Ltd, 185 West Morris Road, for a variance from Zoning Regulations 12.14.3 (generator location) and 11.6.1.c (front yard setback) to install a generator was made by Mr. Sedito, seconded by Mr. Snook by a 5-0 vote.

PUBLIC HEARING

Mr. White seated regular members Katharine Leab, Randolph Snook, himself and alternates Todd Catlin and Georgia Middlebrook.

ZBA-0413 Request of Scott Meeker/Denscot Pool & Spa, 269 New Milford Trpk, for a variance from Zoning Regulation 16.5.1 (non residential district signs from front property line) to install a sign. Scott Meeker was present to represent his application. Mr. White read the explanation of request. Mr. Meeker stated that he is seeking better visibility for traffic headed north on Route 202, he would like to install a free standing sign. At present there are (2) signs on the building one on the north side and one

on the front of the building. Mr. Meeker stated that if he was granted a variance he would remove the sign on the north side but leave the one on the front of the building. Mr. Meeker explained that the building is set very close to the road and between the building and the road is a large Sycamore tree. Mr. Meeker stated that the tree is in the State's right-of-way which is 3' from the asphalt. He has asked the State to remove the tree; they refused because the tree is alive and healthy. Mr. Meeker went on to add that he could put a sign south and further back of the building but then the sign would be obstructed by the building. Mr. Catlin asked about attaching a sign to the porch on the front of the building. Mr. White went on to state that all businesses have to deal with the zoning regulations and overall in town the signage regulations are reasonable. Mr. Meeker explained that there is neighbor's shrubbery on the south side of the property which makes it difficult to see his business there is no sight line. He feels the style of sign he is proposing fits with others in the area, it's tasteful. Mr. Catlin stated that other businesses have signs closer to the road. Mr. Meeker stated that the building used to be residential and was run down when he purchased it. He feels the tree is his main problem. The signs that are presently on the building are on the north side vinyl and on the front wood. Members want to view the location. Ms. Buziak who resides across the street addressed the ZBA members. She stated that other trees had already been removed and asked if the signage on the building is within the regulations. Mr. Meeker stated that the present signs are within the regulations. Ms. Buziak then questioned Mr. Meeker about a neon sign on his building. He answered that the neon sign was removed. Ms. Buziak's opinion is that you know it's a pool place there are lots of equipment and accessories hanging from the building, how much advertising is needed? Mr. White stated that ZBA is dealing with the sign set back issue, the Zoning Enforcement Officer deals with the other problems. Kelly Boling commented that it's obviously a pool building, other signage should be minimized.

MOTION: to continue ZBA-0413 request of Scott Meeker/Denscot Pool & Spa, 269 New Milford Trpk, for a variance from Zoning Regulation 16.5.1 (non residential district signs from front property line) to install a sign was made by Mr. Snook, seconded by Mr. Catlin by a 5-0 vote.

PUBLIC HEARING

Mr. White seated Katharine Leab, Bradford Sedito, Randolph Snook, himself and alternate Todd Catlin.

ZBA-0414 Request of Jennifer and Neil Mitchell, 18 Shinar Mountain Road, for a variance from Zoning Regulations 12.14.1 & 12.14.3 (generator location) and 11.6.1 (setback), to install a generator. Jennifer Mitchell and Daryl Wright can forward to represent this application. Ms. Mitchell began by explaining that a buried propane tank and pool heater is already in place, they would like to situate the generator next to the pool heater. Ms. Mitchell owns (2) lots, she thought that when they bought the additional land it became one lot. It is still listed with the Assessor as (2) lots. Ms. Mitchell brought pictures to show the property. The pictures indicates 16'-35' between the house and rock wall in the back of the house. Behind the rock wall the grade goes up 60%. In front of the house there is 20'-30' between the house and rock wall. Ms. Leab verified that Ms. Mitchell owned the two building lots. Ms. Mitchell added that they have given an easement to Steep Rock on the back lot and intend to ease more land to Steep Rock in the future. She added that it is an interior lot and it is highly unlikely that it will be developed, you would have to access it through their driveway. The existing house and pool were built in 1997/1998 according to Ms. Mitchell. Mr. White asked Ms. Mitchell for a specific location on the generator and went on to explain the problem with larger lots and the hardship issue. You need to prove why you cannot situate the generator within 25' of the house. Ms. Mitchell stated that with only 16' how she can install a generator and propane. Daryl Wright added that the property is all ledge and went on to state that the propane tank is an issue, you cannot dig because there is ledge within 18" you would have to blast a troth. Ms. Mitchell feels there is physically no place for the generator near the house. Gas is not used in the house, but there is a buried line from the buried propane tank to the house. Mr. Wright states that it is an illegal line and not adequate for the generator. Ms. Mitchell added that to retrench you would

have to dig up the yard. Mr. White reminded Ms. Mitchell that hardship is not financial. Mr. White asked for further questions. Ms. Leab commented that having the generator smaller than the rock wall is good. Mr. Sedito was uncomfortable with the generator being so close to the property line. Mr. White asked for comments from the public.

MOTION: to close ZBA-0414 request of Jennifer and Neil Mitchell, 18 Shinar Mountain Road, for a variance from Zoning Regulations 12.14.1 & 12.14.3 (generator location) and 11.6.1 (setback), to install a generator was made by Mr. Catlin, seconded by Ms. Leab by a 5-0 vote.

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Mr. Snook feels there is not sufficient evidence of hardship, lots of homes and pools are built on ledge. Ms. Leab has no problem with putting the generator by the pool heater, it would be shielded by the stonewall. She is bothered by the proximity to the adjoining lot with only intent to join the lots. Mr. Catlin agrees with Ms. Leab the proposed location makes sense although there is no hardship, but it is too close to a potential building lot. Mr. Sedito agrees that it is a common sense location; they need exact distances from the property line. The adjoining property could be sold. Mr. White said that the commission is stuck with a request to vary so close to a current boundary line, we need to deal with that issue.

MOTION: to deny ZBA-0414 request of Jennifer and Neil Mitchell, 18 Shinar Mountain Road, for a variance from Zoning Regulations 12.14.1 & 12.14.3 (generator location) and 11.6.1 (setback), to install a generator was made by a 5-0 vote.

PUBLIC HEARING

Mr. White seated Katharine Leab, Bradford Sedito, Randolph Snook, himself and alternate Georgia Middlebrook.

ZBA-0415 Request of Lewis & Fay Manderson, 134 Nettleton Hollow Road, for a variance from Zoning Regulation 12.14.2 (pool equipment location), to install pool equipment. Mr. Manderson was present to represent his application. Mr. White read the letter of request into the record. Mr. Sedito asked when the pool equipment was installed. Mr. Manderson stated that the work was completed in May of 2003. Mr. Sedito could not believe that the pool installer would not relocate the equipment and asked Mr. Manderson if he had contacted a lawyer. The pool man should fix his mistake. Mr. White stated that the regulations were updated to give greater distance; this is an obvious mistake of the contractor. Mr. White added that normally the commission asks the applicant if they have exhausted all other options, the contractor needs to be pushed; Mr. White has a problem with correcting a contractor's mistake. He went on to state that this application puts the ZBA in a bad position; a hardship is unique to the land. Mr. Sedito recommended that the applicant contact an attorney. It was noted by the secretary that none of the certified mail notice cards had been returned.

MOTION: to continue ZBA-0415 request of Lewis & Fay Manderson, 134 Nettleton Hollow Road, for a variance from Zoning Regulation 12.14.2 (pool equipment location), to install pool equipment was made by Ms. Leab, seconded by Mr. Sedito by a 5-0 vote.

MOTION: to accept the minutes of the July 15, 2004 meeting was made by Mr. Sedito, seconded by Mr. Snook by a 5-0 vote.

OTHER BUSINESS

Mr. White read a letter dated September 15, 2004 from Aimee L. Hoben, of Murtha Cullina LLP

regarding The Winston/Hunter case. Oral arguments were heard on September 13th, the Court now has 120 days to issue a decision.

MOTION: to adjourn was made by Mr. Sedito at 9:17pm, Mr. Snook seconded and all agreed.

Submitted subject to approval,

Pamela L. Osborne, Secretary