

December 18, 2003

Members Present: Edmund White, Bradford Sedito, Randolph Snook, Polly Roberts

Alternates Present: Todd Catlin, Georgia Middlebrook

Guests: Robert L. Fisher, Jr., Esq., Ralph Corbo, Chuck Farnsworth, Dean & Janet Sarjeant, Robert Winston & John David Hunter

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

PUBLIC HEARING CONTINUED

Mr. White seated Bradford Sedito, Randolph Snook, himself and alternates Todd Catlin and Georgia Middlebrook.

ZBA-0322 Request of Corbo Associates, Inc., 218 Wykeham Road, for a variance from Zoning Regulations 11.1.2 (area of soil type), 11.3.2 (Acreage based on soil types), to qualify a lot as a building lot. Robert L. Fisher, Jr., Esq., Ralph Corbo and Chuck Farnsworth, land surveyor were present for this application. Ms. Roberts read a letter dated December 11, 2003 from David and Camille Gillespie into the record. All members also received a copy of this letter. Atty. Fisher felt that the Gillespie letter was a NIMBY (not in my backyard) response. Mr. Corbo stated that the Gillespie's purchased (2) of the original (3) lots in the subdivision and were aware of the remaining building lot. Mr. Corbo went on to state that he has contacted all surrounding property owners Gould at lot #68, FMI at lot #67, and the Gillespie's at lot # 69 & lot # 65 none of which are interested in allowing Mr. Corbo to purchase the needed land to make his lot conforming. Mr. Corbo also reiterated the site plan information he presented at the last meeting and that if he had not had the land surveyed nobody would have known about the acreage error. Mr. Corbo quoting from Section 18.1 of the Zoning Regulations feels this plan is in harmony with the purpose and intent of the zoning regulations, the present owner purchased the lot for estate planning reasons over 25+ years ago that is when this error happened. Mr. Snook asked if Mr. Corbo owned the parcel in question. Mr. Corbo does not; he has an option to buy it. Mr. White interjected that the present owner Ms. Taylor could sell her parcel to adjoining property owners. Atty. Fisher stated that this is not a self-created hardship and feels that granting a variance would not defeat the purpose of the Town's overall Plan of Development, the site plan presented last month shows that the lot can hold the proposed project within the required setbacks. This is not a commercial development. Mr. Farnsworth did a survey for the parcel in March of 2003. Mr. Farnsworth stated that the error occurred over 36 years ago. The land was surveyed in 1967 by Osborne, at that time it was a (9) acre parcel with a 50' right-of-way. In 1979 Mr. Farnsworth's father, who is now deceased prepared the subdivision map. In 1986 a survey was done by a Mr. Hock. In 1997 Michael Alex, land surveyor found the error while surveying lot#68. The north east corner monument is off, which makes lot #69 incorrect also. At this point Mr. Gillespie owns lot #69 which has a right-of-way to it from Wykeham Road which runs beside his other lot #65. At this point Mr. Snook addressed the Gillespie's concern of the proposed house being close to their property line. Mr. Corbo explained the location was chosen because of a ledge problem, the natural topography of the land is the reason for the driveway location. He also needed to fit in the septic. Mr. Corbo stated that he could blast. The house will be a (3) bedroom two story house, Mr. Corbo has a fully engineered site plan. Mr. Farnsworth noted that Mr. Gillespie knew about the approved building lot, it has been a viable building lot since 1979. Atty. Fisher added that there are several lots of smaller size along Tompkins Hill Road and there are lots of much larger size too. Mr. White asked for questions or comments from the public. Mr. Farnsworth restated that the lot was viable in 1979 and is a suitable building lot. Mr. White added that it never had (3) acres, it was recorded incorrectly. Mr. Corbo feels that there was always enough property for (3) 3/acre parcels, everyone did the right thing from the beginning;

Mr. Farnsworth continued by doing the right thing, an honest mistake was made. Mr. Sedito asked about the effect on the other parcels deeds. Atty. Fisher stated that when Mr. Corbo purchases the lot he will refile a map, the variance will not affect the other deeds. Mr. Catlin asked if all calculations will be corrected. Mr. Corbo closed by stating that he had Smith land surveyors from Woodbury survey the parcel also and they agreed with Mr. Farnsworth's March 2003 findings. Mr. White asked for further questions/comments from members.

MOTION: to close ZBA-0322 Request of Corbo Associates, Inc., 218 Wykeham Road, for a variance from Zoning Regulations 11.1.2 (area of soil type), 11.3.2 (Acreage based on soil types), to qualify a lot as a building lot was made by Mr. Sedito, seconded by Mr. Snook, by a 5-0 vote.

MEETING

Mr. White reminded members that the hearing has been closed but voting doesn't have to be done tonight. Mr. Sedito stated that the Town/Assessor has been treating this parcel as a building lot. He can see the hardship. Will Ms. Taylor be able to retrieve taxes she has paid for a building lot that now is not? Mr. Sedito feels the Gillespie's should have expected a house to be built on the lot. Mr. White asked if it is the ZBA's job to clean up an administrative mistake? Mr. Snook agrees with Mr. Sedito it's a distinct hardship. Ms. Taylor should be able to sell the lot as a building lot, there's a substantial difference in the cost of a building lot as opposed to forest land. He would vote to approve the variance. Mr. Snook would like Mr. Corbo to move the house to the east to address the Gillespie's issues. Mr. Catlin commended the honesty and work done by Mr. Corbo. Mr. Catlin feels the Gillespie's knew about the building lot, that concern is not a factor. He doesn't feel that ZBA should respond to clerical errors the problem should be solved with the Town and surveyor. He's not in favor of the variance. Ms. Middlebrook agrees with Mr. Snook she can see the hardship. Mr. White stated that this is a tough situation, a mistake was made, and the lot was never a legal building lot. Mr. Sedito feels the intent was for a legal lot, ZBA has addressed similar situations; need to look at the scale of the error. Mr. Roberts feels the hardship is Ms. Taylor's, she has been paying taxes on a building lot, she agrees with Atty. Fisher it is within the ZBA purview. Mr. White feels a vote should be delayed he is having a problem with this being the right venue and would like to seek council. He's uncomfortable with voting tonight. Members agreed to postpone a vote and seek legal council.

PUBLIC HEARING

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

ZBA-0325 Request of Dean & Jane R Sarjeant, 28 Tinker Hill Road, for a variance from Zoning Regulations 11.5.1.a (lot coverage) and 11.6.1 (setback) for a boathouse. Robert L. Fisher, Jr., Esq. and Dean & Jane Sarjeant were present for this application. Atty. Fisher read the letter of request into record. Mr. Sedito questioned the increase in size from what the permit was for. Mr. Sarjeant stated that he used the existing pad/foundation and the building ended up being off the pad and larger & closer to the road than the permit was for. Mr. Sarjeant referenced photos from the previous application which showed the old and new boat house. The old boat house was much larger, and could legally have been rebuilt. Atty. Fisher interjected that the size was not the problem it was the proximity to West Shore Road. The boathouse is built. Mr. White stated that he has received complaints from lake residents who have been denied in the past. Ms. Roberts added that they had the right to rebuild the original structure. Atty. Fisher stated that a town official made a mistake and the applicant over built, the affected neighbor is happy, the boat house is much less intrusive than what was originally present. Atty. Fisher addressed the issue of the chain of title which describes the property as (1) parcel with a highway running through it, the boat house never appears on the surveys. Members discussed the coverage issue. The structure was built off the original footprint. Mr. Sarjeant states that he added concrete piers; the structure is made of

pressure treated wood and would not be easy to move. He built it well and carefully. If asked to move the boathouse he would have to rebuild it. Mr. Sarjeant explained that the boathouse contains boat supplies, is a "storage shed" and has an electrical outlet. It is a 10x12 building 10x16 with the roof overhang. Ms. Sarjeant noted the overhang was addressing a health issue she has. Members asked the applicant to confirm lot coverage figures. Pam Osborne, secretary will mail copies of correspondence between Janet Hill, Zoning Enforcement Officer and Atty. Thomas P. Byrne pertaining to this application.

MOTION: to continue ZBA-0325 Request of Dean & Jane R Sarjeant, 28 Tinker Hill Road, for a variance from Zoning Regulations 11.5.1.a (lot coverage) and 11.6.1 (setback) for a boathouse was made by Ms. Roberts, seconded by Mr. White, by a 5-0 vote.

PUBLIC HEARING

Mr. White seated Bradford Sedito, Randolph Snook. Polly Roberts, himself and alternate Georgia Middlebrook.

ZBA-0326 Request of Robert Winston & John David Hunter, 92 Bee Brook Road, for a variance from Zoning Regulations, 11.6.1.a (front set back), 11.5.2 (lot coverage), 17.4.a (increasing the nonconformity of a nonconforming structure), to make additions to an existing building. Robert L. Fisher, Jr., Esq., Robert Winston and John David Hunter were present to present this application. Atty. Fisher began by giving a history of the surrounding area dating back to the New Preston Railroad station and the right-of-way for the railroad tracks. He identified locations past and present on a 1915 map for the New York, New Haven, Hartford Railroad Company. He stated that Bee Brook Road is much closer to the property lines on the west side and the applicants are dealing with a large right-of-way from the old railroad company that is now open space on the east side of Bee Brook Road. Atty. Fisher also referenced various locations along Bee Brook Road such as signs and buildings that are built in the right-of-way. He feels that the purpose for the set back is safety reasons and that granting this variance is not violating the purpose of the regulations because of the large area in front of the applicants building. He feels the Winston/Hunter building needs to be seen from the road. Mr. Winston added that this is the "gateway" to Washington; you have to take into consideration the commercial use and the aesthetic aspect of the building. Mr. White read into the record the legal response from Atty. Michael A. Zizka. Mr. White feels that with larger windows and lighting people will see into the store front. Ms. Roberts confirmed that the old railroad property is now state land. There was discussion on the flood plain area. Mr. Hunter stated that if a variance wasn't granted the plan was to have as much glass front for as much exposure as possible. Mr. Catlin added that a "strip mall" store front would not be desirable. Mr. White asked for questions or comments from the public.

MOTION: to close ZBA-0326 Request of Robert Winston & John David Hunter, 92 Bee Brook Road, for a variance from Zoning Regulations, 11.6.1.a (front set back), 11.5.2 (lot coverage), 17.4.a (increasing the nonconformity of a nonconforming structure), to make additions to an existing building was made by Mr. Snook, seconded by Ms. Roberts, by a 5-0 vote.

MEETING

Mr. Sedito felt there was not much new information and Atty. Zizka's letter gave him the information the board was lacking last month. The granting of this variance would be forever and is not just approved for this particular use. Mr. Snook would like to approve this application it would enhance the appearance of the building, which should become a goal of the community. Ms. Roberts sees hardship in the deep right-of-way held by the state. It is a modest request that would look very attractive and feels it is within the intent of the Zoning Regulations. Mr. White interjected the need to balance the level of hardship; does it affect the use of the building? Ms. Middlebrook agrees with Ms. Roberts this will enhance the building,

she would approve the variance. Mr. Catlin also feels there is hardship in the right-of-way, but the situation was known to the applicant before they purchased the property. Mr. White feels that Atty. Zizka addressed the front line issue. He feels that with the right lighting and windows the applicant could attain a similar affect.

MOTION: to deny ZBA-0326 Request of Robert Winston & John David Hunter, 92 Bee Brook Road, for a variance from Zoning Regulations, 11.6.1.a (front set back), 11.5.2 (lot coverage), 17.4.a (increasing the nonconformity of a nonconforming structure), to make additions to an existing building, by a 2-3 vote.

Mr. Snook and Ms. Middlebrook voted to approve.

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

MOTION: to accept the minutes of the November 20,2003 meeting as submitted, was made by Mr. Sedito, seconded by Mr. Catlin, by a 5-0 vote.

Other Business

Members were reminded to read through Atty. Zizka's opinion letter.

Members were given the latest revisions to the Zoning Regulations to insert into their copies. Mr. Snook and Mr. Averill have up to date copies and don't need the revisions.

Members were also given a hand out about the Zoning Commission public hearing on January 26th regarding revisions to Section 17.5.

MOTION: to adjourn was made at 10:10pm by a 5-0 vote.

Submitted subject to approval,

Pamela L. Osborne, Secretary