

July 18, 2002

Members Present: Edmund White, Katharine Leab, Reese Owens, Bradford Sedito, Polly Roberts

Alternates Present: Heman Averill, Bruce Skoog

Guests: James J. Bonsignore, Esq., Thomas & Tracy Tibbatts, Charles LaMuniere, Selectman Nick Solley

Edmund White, Chairman opened the meeting at 7:30pm.

The Chairman read a letter of withdrawal for ZBA-0212, Request of BBNH, LLC, 20 New Preston Hill Road, for a variance from Zoning Regulation 12.5.1 (accessory structure), 11.6.2 (setback from town boundary), to construct garage.

PUBLIC HEARING - Continued from June 20, 2002

Mr. White seated all regular members. (Mr. White listened to the recorded Hearing from June 20, 2002.)

ZBA-0214, Request of Steven J. Kantor and Ilene Lanier, 240 Wykeham Road, for a variance from Zoning Regulation 11.6.1.b (rear set back), to construct a garage. James J. Bonsignore, Esq., of Ebersol & McCormick was present to represent the applicants for Charles R. Ebersol, Esq., who was out of town. Atty. Bonsignore admitted that he became aware of the continuation of this Public Hearing just this morning, but feels he is up to speed on the file. He reviewed with members the issue of the rear property line and the two preexisting surveys. The only survey not within the 25' set back requirements is the Farnsworth survey done in 1979 which brings the rear set back to within 8' of the proposed garage. Atty. Bonsignore found out that Mr. Farnsworth has since passed away, his son has taken over the business but Atty. Bonsignore was unable to reach him. Atty. Bonsignore feels the main reason Atty. Ebersol filed this application was if the issue of the rear lot lines cannot be resolved than he assumes there is a chance that Mr. Farnsworth's rear lot line can be a valid lot line, in which case there would be a need for a variance. Mr. White explained that this is not the forum for a multiple lot line discussion to be decided. Mr. White understands the need and desire of the applicants/owners to sell the property, but the Zoning Board of Appeals doesn't have concrete/ complete information to deal with. The file is incomplete and a decision cannot be made on an incomplete file. Mr. White gave Atty. Bonsignore the option of withdrawing or proceeding with a vote, which would be on an incomplete fill. Atty. Bonsignore suggested continuing the Public Hearing until the next meeting of the Zoning Board of Appeals, which would allow more time to gather information for proceeding or withdrawing this application. Atty. Bonsignore has contacted Kurt Smith from the Connecticut Board of Surveyors, who gave him a few suggestions that he would like to follow up on. Mr. White feels that this situation is better addressed to a higher authority. Ms. Roberts described the situation as the applicant applying for a variance on the most constricting property line, the Zoning Board of Appeals doesn't want to grant that knowing that there are two other conflicting property lines that show the property shouldn't carry a variance. There needs to be a firm property line to establish a need for the variance. At this point there was discussion on having a quorum for the August 8th meeting due to vacation schedules. Mr. White gave Atty. Bonsignore the option of withdrawing and reapplying with the fee being waived, because of the time restraints. Mr. Owens addressed the issue of proving hardship. Atty. Bonsignore doesn't feel comfortable withdrawing the application with out seeking input for Atty. Ebersol or the applicants and asked to continue the Public Hearing. Mr. White doesn't feel there is sufficient time to resolve the property line dispute. Mr. White asked for additional questions and comments from the public.

MOTION: to close the Public Hearing Re: ZBA-0214, Request of Steven J. Kantor and Ilene Lanier, 240 Wykeham Road, for a variance from Zoning Regulation 11.6.1.b (rear set back), to construct a garage, was made by Mr. Owens, seconded by Ms. Leab, by a 5-0 vote.

MEETING

Mr. Owens moved to close the hearing because he doesn't foresee a resolution within the continuance period. He doesn't see a resolution that is sufficiently definitive that would make for a comfortable ruling on a line. Mr. Owens also stated that the issue of hardship is in question and needs to be demonstrated. He has seen no evidence of hardship. Mr. Sedito agrees but does assume they can reapply. Ms. Roberts had nothing to add. Ms. Leab added that there needs to be one legal line, which ever one that may be. Mr. White ended by saying it will take some time deciding on the legal line. Mr. Sedito asked if Janet Hill had been approached about a Zoning Permit. Mr. White answered by stating that a Zoning permit couldn't be issued with out a definitive answer on the lot lines either.

MOTION: to deny SBA-0214, Request of Steven J. Kantor and Ilene Lanier, 240 Wykeham Road, for a variance from Zoning Regulation 11.6.1.b (rear set back), to construct a garage, by a 5-0 vote.

PUBLIC HEARING

Mr. White seated all regular members.

ZBA-0215, Request of Thomas A. & Tracy A. Tibbatts, 1 Barnes Road, for a variance from Zoning Regulations 17.4.a (increase the nonconformity of non-conforming building) and 11.6.1.c (side and front yard setbacks), to add a mudroom. Thomas Tibbatts read his letter of request for a variance. Mr. and Mrs. Tibbatts went on to describe their property location as a triangle shaped piece, the house is located at the top of the point bordering the old Moody Bridge Road, which is now the Greenway walking path, and Barnes Road. The north side is where they want to expand. On the south are their septic fields and basement access, on the east are Moody Bridge Road and their driveway and on the west side is a steep embankment. The addition is a 8x20 mudroom. Mr. Tibbatts states they are 36' from Barnes Road and 24' from Moody Bridge Road. Mr. Owens asked which was the front of the house? Mr. Tibbatts said it is his understanding that driveway access determines the front of a house, which would make it Barnes Road. Siting Zoning Regulation Section 21 - Definitions, Section 21.1.35 for Front Lot Line because of the two bordering streets it is the owners privilege to name the front lot line. So in fact if Barnes Road is determined to be the side lot line the proposed addition would conform to side yard setback. Mr. Sedito stated that if Moody Bridge Road was determined the side lot line the addition could be decreased by 1' and be within the 25' side lot line setback (decrease the addition to 8x19). Mr. White inquired about neighboring properties. Mr. Tibbatts stated that their lot has never been surveyed but that both neighbors properties have been surveyed. Mr. Owens asked how setback measurements were taken with out a survey being done. Mr. Tibbatts and Mr. Rosa (the engineer who drew the map for the Tibbatts) measured to the road. Mr. Owens stated that the entire issue is with setbacks and is not a lot coverage issue. Mr. White asked if there would be a basement under the addition. Mrs. Tibbatts stated no, there is also no basement under the porch or existing kitchen either. Mr. White asked for questions or comments from the public.

MOTION: to close the Public Hearing Re: ZBA-0215, Request of Thomas A. & Tracy A. Tibbatts, 1 Barnes Road, for a variance from Zoning Regulations 17.4.a (increase the nonconformity of non-conforming building) and 11.6.1.c (side and front yard setbacks), to add a mudroom, was made by Ms. Roberts, seconded by Mr. Sedito. After a brief discussion the motion to close was withdrawn.

Mr. Owens objected to closing the Public Hearing because he is not comfortable with the lot lines. Mr.

Tibbatts asked if the property had to be surveyed. Mr. Owens said not necessarily but perhaps Mr. Rosa can provide an explanation of how he determined the lines, how true they are or whether they are to the road. Mr. Owens feels it is in the applicants best interest to continue the Public Hearing to obtain specific location of the lot line and it is not unreasonable to ask Mr. Rosa to verify the lot lines.

MOTION: to continue ZBA-0215, Request of Thomas A. & Tracy A. Tibbatts, 1 Barnes Road, for a variance from Zoning Regulations 17.4.a (increase the nonconformity of non-conforming building) and 11.6.1.c (side and front yard setbacks), to add a mudroom, was made by Mr. Owens, seconded by Ms. Roberts, by a 5-0 vote.

PUBLIC HEARING

Mr. White seated all regular members.

ZBA-0216, Request of Charles & Judith LaMuniere, 7 Barnes Road, for a variance from Zoning Regulations 11.6.1.c (front yard setback), 12.1.3 (setback to Shepaug River), 17.4.a (making non conforming building more non conforming), to build a gable over an existing dormer. Mr.

LaMuniere read his letter of request for a variance and went on to explain the plan. The front of the house is traditional while the back in a more modern style. The proposed gable over an existing dormer will insulate against heat and cold and also make the back side appear more traditional looking. The gable will be installed on the river side and below the roof line. Mr. Owens verified the setbacks. Mr. LaMuniere clarified his intent to have the gable height 5'6". Members reviewed previous Zoning Board of Appeals files on this property. Mr. White asked for comments and questions from the public.

MOTION: to close the Public Hearing Re: ZBA-0216, Request of Charles & Judith LaMuniere, 7 Barnes Road, for a variance from Zoning Regulations 11.6.1.c (front yard setback), 12.1.3 (setback to Shepaug River), 17.4.a (making non conforming building more non conforming), to build a gable over an existing dormer, was made by Ms. Leab, seconded by Mr. Owens, by a 5-0 vote.

MEETING

Ms. Roberts has no problem with granting this variance, it does not increase the footprint. She understands the reasons for it, not sure if the heat/cold is a hardship. Ms. Leab agrees with Ms. Roberts. Mr. Sedito has nothing to add. Mr. Owens added that the proposed addition doesn't expand the use of any kind, is an appropriate repair and given the fact that the building is fully within the front yard setback he would consider it reasonable hardship to grant a variance to make a reasonable repair. Mr. White agrees.

MOTION: to approve ZBA-0216, Request of Charles & Judith LaMuniere, 7 Barnes Road, for a variance from Zoning Regulations 11.6.1.c (front yard setback), 12.1.3 (setback to Shepaug River), 17.4.a (making non conforming building more non conforming), to build a gable over an existing dormer, by a 5-0 vote.

MOTION: To accept the minutes of June 20, 2002 meeting as submitted, with the following change to "Other Business" second paragraph deleted and to read as follows: Selectman Nick Solley asked members to give some thought about the possibility of a change in the "Green District", the changes would be a lot coverage change. This was discussed at a meeting with the Chairman of the town's commissions. Nick went on to say that the Zoning Board of Appeals and Zoning Commission should discuss and together could write a letter to George Bender, Chairman of the Planning Commission suggesting that they include some consideration that allow lot coverage issues for institutions on the Green. Nick feels that Hank Martin Chairman of the Zoning Commission feels that the amendments should not exclude residents, considering it a zone not a use

issue. Ms. Leab asked if there has been a draft made. Mr. Solley said no. There was discussion on what is allowed now and what effects changes would have. Several members indicated that the district approach might not be the best approach. The problems facing institutions (churches and schools) in town differ from those facing residents and commercial properties. Ms. Leab commented that they are apples and oranges and why not treat them as such. Mr. Owens also brought up the subject of defining lot coverage., was made by Mr. Owens, seconded by Mr. Sedato, by a 5-0 vote.

OTHER BUSINESS

Mr. White and Mr. Owens had a follow up meeting with Hank Martin, Zoning Board Chairman and David Owen, Zoning Board Vice-Chairman. They discussed differences between Zoning and Zoning Board of Appeals(ZBA). Mr. Martin/the public is not getting a good idea how deeply ZBA deliberates on matters and what is said during the "meeting" after the Public Hearing. He didn't feel there was enough information on the discussion. Mr. Owens told Mr. Martin that ZBA would attempt to be clearer in their meeting and minutes. Mr. White felt Mr. Martin's ultimate request was to have ZBA deal more with the hardship issues. Mr. White checked with Land Use attorneys and it is an ongoing discussion between town Zoning and ZBA boards, a constant challenge of authority. Mr. White reminded members of the Warren application that was distributed, which is a bit more specific. He also portrayed the ZBA as going through a self-analysis. Mr. White feels that Mr. Martin feels that ZBA has chosen to rewrite the regulations to whatever extent they want. He had proposed regulations that cannot be appealed to ZBA but would go to special permit. Mr. Owens added that their proposed regulation gave them the authority to grant special permits, Mr. Owens felt this was appropriate rather than having ZBA search for a hardship for something that makes perfect sense. Zoning granted themselves the authority to vary their own regulations, allow latitude in their own regulations by special permit and at the end the language states that a variance may not be granted. Is this legal? A part of ZBA policy is to allow by special exception, which does not make the applicant show hardship. Mr. White personally feels this is a test case with Zoning and they may add the line to other regulations. He doesn't like the idea of being bookended out of the process. Mr. Owens feels as exhibited by some of Zonings recent activities where they allow themselves latitude they will find themselves sympathetic to the way ZBA has reacted. Mr. White is protective of ZBA powers which are still needed in town regulation and he is hoping for a slow down in changes in the Zoning regulations until after the new Town Plan of Conservation and Development. ZBA and Zoning need to jointly discuss plans. Mr. Owens stated that if regulations existed that gave landowners more latitude Mr. Martin would feel less strongly that ZBA is undermining the regulations. Mr. White feels that the regulations should be kept tight and Zoning should respect the ZBA process. There are issues that need clarification such as the lot coverage issue. Ms. Leab asked if the enforcement issue was discussed. It was not. Mr. White felt there should be a forum between ZBA and Zoning. Ms. Roberts added that a lot of the variances are for issues that are "grandfathered". ZBA has been tough on river properties and Lake Waramaug. There was discussion on the process of changing Zoning regulations and on the special permit process. Mr. White feels that the ZBA needs to comment to the Zoning on its proposals, he feels there is potential for precedent to be set. There was more discussion on the definition of "special exception". Ms. Leab stated that at her Uconn Extension course for ZBA Board members variances should only be granted for hardship and harmonization with the overall Plan of Conservation and Development. In closing Mr. White felt it was important for ZBA members to have a joint meeting with Zoning members and have a ZBA meeting with Atty. Byrne. There needs to be constant positive dialogue between boards and they need to work together. It was decided that the Chairman, Mr. White would draft comment to the Zoning Commission. Mr. Sedato feels that ZBA has done a good job for the people of the Town of Washington. Mr. White agreed and felt that Mr. Martin is not able to see all that ZBA does. Ms. Leab asked about the instances when ZBA finds holes in the Zoning regulations. Both Mr. White and Mr. Owens felt Mr. Martin wanted the ZBA to respond with a draft of the regulation to submit to Zoning, to get a sense for how the ZBA looks at it.

MOTION: to have the Chairman, Mr. White draft comment to the Zoning Commission on behalf of the Zoning Board of Appeals was made by Ms. Leab, seconded by Mr. Sedito, by a 5-0 vote.

Members agreed to change the next scheduled Zoning Board of Appeals meeting to August 15th, 2002 at 7:30pm.

MOTION: To adjourn was made by Mr. White, seconded by Mr. Sedito, by a 5-0 vote.

Adjourned at 9:30pm.

Submitted subject to approval,

Pamela L. Osborne, Secretary