

**ZONING BOARD OF APPEALS  
Durham Town Hall  
Durham, CT 06422**

Minutes of the February 11, 2016 Regular Meeting

Mr. LaFlamme opened the meeting at 7:30 p.m.

Attendance:

Members		Alternates	
x	David Heer	A	Michael Geremia
x	David Slight	x	Tom Wenchell
x	Mark Jungels	x	Anton Nolan
x	Chris DiPentima		Others
x	William LaFlamme*	A	Colegrove, Geoffrey

A=Absent

X=Present

**Seating of Alternates**

None

**Amendments to Agenda**

None

**Approval of Agenda**

A motion was made by Dave Heer, seconded by Dave Slight to approve the agenda. Motion passed.

**Payment of Bills**

None

**Minutes of Previous Meeting(s)**

A motion was made by Dave Slight, seconded by Mark Jungels, to approve the minutes of the January 8, 2016 meeting. Motion passed.

**Public Session**

None

**Public Hearing**

A motion was made by Dave Slight, seconded by Mark Jungels, to close the regular meeting and open the public hearing. Motion passed.

**Anthony Calabrese, request a front yard and side yard variance from section 05.02.01 of the Durham Zoning Regulations to construct a fence at 645 New Haven Road**

Mr. LaFlamme stated that this is a continuation from the previous meeting and that a site walk was done on the 23rd of January. Lines were staked for the fence. Mr. LaFlamme stated that it was determined that there are no site line issues with the traffic, the stakes are back far enough that it does not interfere with the site line coming from the east, coming south on route 17. Mr. LaFlamme states that the application was changed a little bit. At the last meeting there was confusion as to where the setback line is. The Howd Road side will be a variance of 25' and the front is looking for 32'. The stakes were placed where the fence will be placed. Mr. Calabrese discussed the type of fence material to be used, showing some examples, and security with the fence. Mr. Calabrese stated that they would like to install a fence that is aesthetically pleasing. Mark Jungels stated that the request refers to setbacks for buildings, not fences, which is section 12 of the *Durham Zoning Regulations*. The other variance being requested is for the height as well, not just the setbacks. Mr. LaFlamme stated that the right section is quoted in the motion. Mr. LaFlamme stated that not being in the historic district they should not be demanding certain material for the fence. Wood does block some site line vs. a chain link fence. Mr. LaFlamme suggested that the board make a motion to approve the height of the fence and the variance of the 32' and 25'. The board is being asked to vary a distance and the height was not being requested but the board would add that. There was discussion regarding the height of the fence. Mr. LaFlamme brought up justifying a hardship, such as the fence being in the middle of the parking lot, as well as safety issues. The sections of the regulations affected are 12.13.01 and 12.13.02, which were read to the commission. Mr. Calabrese requested to amend his application to reflect the proper zoning regulations. Mr. Delvecchio, 61 Sand Hill Road, stated that he wasn't for or against this fence but stated that it appears that the commission is amending the variance for the height restriction at this evening's meeting and without noticing that to the public that that is indeed the variance you have to give the public an opportunity to comment on it. He stated the reason he brings this up was due to a Planning and Zoning issue where an application was not noticed properly to the abutting neighbors and it was passed and the abutting neighbors were opposed. Mr. Delvecchio believes that if the variance proposal is being changed to include height restriction then it should meet minimum notice requirements in case someone does oppose. Mr. LaFlamme stated that the legal notice did not reflect the variance being requested. It was concluded that the applicant should withdraw his application and reapply with the proper variance being requested and noticed.

**Elliot O'Shana, request to subdivide property with a variance from section 02.12.02 of the Durham Zoning Regulations to build a single family dwelling at 235 Old Blue Hills Road**

John Corona, Lang & Corona, was present to speak on behalf of the applicant. Mr. O'Shana was also present. Mr. Corona stated that Pat Benjamin is the project engineer. Mr. O'Shana owns a piece of property on Higganum Road which is in excess of 6.5 acres and there is a house on it. The property has wetlands on both sides, a very unique piece of property. Mr. Corona stated that the O'Shanas are looking to downsize, they both have some health issues, Mr. O'Shana has suffered a broken neck and suffers some physical limitations but understand that is not a basis for a variance. Mr. Corona stated they are able to meet all the subdivision requirements except a portion of one requirement, the rectangle. Mr. Benjamin explained how the property is laid out and what the request is and shows what the rectangle is with the corner where there is an issue. Mr. Benjamin stated he is a civil engineer with an office on Main Street, Durham. Mr. Benjamin stated that the property is 6.64 acres in the farm residential zone on the south side of Old Blue Hills Road. Maps were presented to the commission. The perimeter of the entire property was pointed out as well as where the wetlands are located and the direction they drain. There is an existing house on the property with the well in the back, primary system and reserve system in the front. The setbacks were pointed out. The rectangles were placed on

the site development plan. The proposal is to subdivide the property into two lots, lot one is 2.22 acres, lot three is 4.42 acres. The minimum rectangle was pointed out and stated that was what the waiver requested was for. There was a driveway and existing house pointed out. Every town has a minimum rectangle requirement and Durham's is a flat, level, 130' by 150' imaginary rectangle and it's placed on the lot with several criteria for it. Mr. Benjamin stated the criteria that applied to their request: has to be 10' from a property line, it has to be 50' away from a wetland. The area was pointed out on the map that does not conform to that regulation. It's closer than 50' to the wetlands and that makes about a 9.4% of the rectangle. The other regulation is that land must slope in excess of 30% as measured over 100' intervals perpendicular to the contour lines. They shot topography on the lot and measure the slope over 100' perpendicular to the contours just over 30%. This other area was pointed out on the map, where there is 9% at about 7%. These are the two small areas that do not conform to the rectangle. Other requirements were read to the commission. Mr. Benjamin stated that the variance they are looking for the minimum rectangle was the area that is within 50' of the wetlands which is grass and partial woods and the other area that has slopes that go over 100' in excess of 30%. The request will not cause any problems with public safety, the engineered septic system, or with erosion or sedimentation control. It meets the criteria of the new rectangle just not some of the geometry of it. Mr. LaFlamme questioned what the reasoning is that they don't let you include a 30' slope in a minimum rectangle. Why does it have to be flat? Mr. Benjamin stated he honestly does not know why Durham has a slope regulation, he believes it's to prevent someone from developing a piece with a huge portion of the rectangle at 30% they're trying to stop erosion and sedimentation, he believes that is the reason. Every town is slightly different. Mr. Corona gave more explanation to the regulation as well as the variance being requested. He stated that they are welcome to a site walk, although the map does a better job showing what they are discussing. Mr. Corona presented two examples of when a waiver to the rectangle was granted; both situations being very similar to the one being requested. Mr. Corona stated that Mr. O'Shana did speak with the surrounding neighbors and those on the left and right side and Mr. O'Shana reported that they are aware of the application and have no objections. It was discussed that the applicant would also need to be required to go before the Planning and Zoning Commission and the Inland Wetlands commission but Mr. Corona does not foresee any difficulties.

Mr. Dom Delvecchio addressed the commission. He stated he is the original developer of the parcel and owns the remaining 40 acres behind the piece and he believes the general statute requires direct mail notification to abutting property owners and requests that the green cards be presented to insure that all the abutting property owners were notified. It was stated that this is not required. Mr. Delvecchio stated that he wanted to point out the concerns about the consequences of granting the variance in this matter and the impact it has upon the zoning regulations in the town of Durham. He stated the reason this parcel was not subdivided when it was originally proposed and submitted a subdivision was much larger at the time. There is one other building lot and a third parcel of property that was granted in the state of Connecticut as part of open space, there is a small historic cave in the back that the state wanted to preserve, in exchange for another piece of property on Old Blue Hills. It's important to recognize the excess acreage on this lot, the 6.64 acres, the reason we subdivided it in the manner we did was because of the minimum rectangle obviously couldn't support two individual lots, it could only support one building lot. The purpose of the zoning regulations is to preserve property values and the orderly development of the community. Mr. Delvecchio stated that a variance requires a hardship; it has to be to the property, not personal in nature. It has to be some unusual characteristic that is unique to the property. He believes there is not a hardship to the property. Mr. Delvecchio stated that an important thing to recognize is a hardship that has to be some unusual characteristic to the property itself that makes the property unsuitable for the use permitted in the zone. The use that is permitted in the zone it exists, it's a single building lot, and there is no hardship. Mr. Delvecchio continued to say

that if the variance is granted it is inconsistent with the Town's comprehensive zoning plan, undermines the safety, health and welfare of the community, the Connecticut general statute 8.6 authorizes zoning boards granting a variance only when the variance is not shown not to affect substantially comprehensive zoning plan. This variance would affect the comprehensive zoning plan. He went on to say that the most important thing the strict application of the regulation must produce a hardship as opposed to the general impact which a regulation has on other properties in the zone. In this case, it doesn't. The minimum rectangle affects every other single property in Durham in the same manner. Mr. Delvecchio believes that the applicant should go before the Planning and Zoning Commission and seek an amendment to the zoning regulation that would equally apply to all other parcels in town, give people fair notice about what is being proposed.

Mr. Owen Ulizio addressed the commission. He stated that Mr. O'Shana did mention in passing he was thinking about doing this but he never heard back. On a personal note he has seen his own property value decline and he feels this variance would further erode that. He has concerns with the clearing and concerns with the wetlands. He also has concerns about what impact this may have on his leaching system.

Mr. Corona asked if Mr. Delvecchio has ever obtained a variance. Mr. Delvecchio does not recall. Mr. Corona mentioned possibly for the Dunkin Donuts. Mr. Corona is concerned because the test for a variance is not the test that Mr. Delvecchio articulates. It doesn't have to be a situation that doesn't exist anywhere else in town. Mr. Corona is not really sure what the objection is. He stated that Mr. Delvecchio is a prolific developer, the original creator of this lot. There isn't anything about what's going on here that jeopardizes public health or safety, it's not enough to just say it does. Mr. Corona stated that it meets the purpose and intent of the regulation, and there really wouldn't be a need for a zoning board of appeals if the law didn't intend for there to be exceptions made on occasion for unique circumstances. This isn't the only place in town where this condition exists. Everyone has the same opportunity to apply for a variance. Mr. Corona believes that they meet the intention and have shown a hardship. Mr. Delvecchio was not deprived of notice due to the fact he is present and was able to state his piece. There was continued discussion regarding previously stated comments. Mr. Corona stated that Mr. O'Shana asked that two facts be pointed out: One is the approximate location of Mr. Ulizio's house. Mr. Benjamin pointed out on a map where the designed system would be placed in relation to Mr. Ulizio's house. The development of the lot will have no effect on the existing septic system of the other property or other nearby properties. Mr. Benjamin discussed how it is rare that a variance is requested regarding minimum rectangles and that they are each unique in nature. Mr. Corona then spoke regarding visibility from other properties-the proposed house will be in a fairly deep bowl and Mr. O'Shana would like you to know one of the reasons for building the house is to make something smaller and one floor. Mr. Corona thinks it will be invisible from anyplace other than inside his own property.

Mr. Delvecchio and Mr. Ulizio again stated their concerns.

Mr. Corona stated that the hardship is the unusual amount of wetland and the unusual nature of the grade of the property. Most property has some grade; this piece has a spine that runs roughly diagonally through it that basically splits it in two. At the base of each split is a very extensive amount of wetland. There is very good property which is why a septic system will work, very safe and appropriate house sites that will not impact the safety of the property or any adjacent property.

Mr. LaFlamme stated that he would like a site walk so that an informed decision can be made. A site walk was scheduled for Sunday, February 21, 2016 at 2:00 p.m. at 235 Old Blue Hills Road. The hearing will be continued to the next meeting.

A motion was made by Dave Slight, seconded by Chris DiPentima, to continue the Public Hearing to March 10, 2016. Motion passed.

A motion was made by Dave Slight, seconded by Chris DiPentima, to close the Public Hearing. Motion passed.

**Miscellaneous**

Mr. LaFlamme presented a letter from Attorney Steven Byrne regarding a variance that was decided upon. Mr. LaFlamme also mentioned that on March 17, 2016 is the annual conference for Connecticut Federation of Planning and Zoning Agencies.

**Adjournment**

A motion was made by Dave Slight, seconded by Chris DiPentima, to adjourn the meeting at 8:59 p.m. Motion passed.

Respectfully submitted,

Jennifer Keogh  
Administrative Coordinator  
Town of Durham