

RECV'D: Office of the Town Clerk March 15, 2016 3:51pm
ZONING BOARD OF APPEALS
Durham Town Hall
Durham, CT 06422

Minutes of the March 10, 2016 Regular Meeting

Mr. LaFlamme opened the meeting.

Attendance:

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

A=Absent
X=Present

Seating of Alternates

Thomas Wenchell was seated for Chris DiPentima.

Amendments to Agenda

None.

Approval of Agenda

A motion was made by David Slight, seconded by Mark Jungels, to approve the agenda as presented.
Motion passed.

Payment of Bills

A motion was made by David Slight, seconded by Mark Jungels, to pay \$110.00 Membership Dues to the Connecticut Federation of Planning & Zoning Agencies. Motion passed.

Minutes of Previous Meeting(s)

A motion was made by David Slight, seconded by Mark Jungels, to approve the minutes from the February 11, 2016 meeting. Motion passed.

Public Session

None

A motion was made by David Slight, seconded by Mark Jungels, to close the regular meeting and open the Public Hearing. Motion passed.

Anthony Calabrese, request a front building line setback variance of 25' and a front building line setback variance of 32' and a side building line setback variance of 12.5' and a fence height to be no greater than 6' on all sections from sections 12.13.01 and 12.13.02 of the Durham Zoning Regulations to construct a fence at 645 New Haven Road

Mr. Calabrese, VP of Operations, TMC, was present to discuss the request. Mr. Calabrese mentioned that there was a site walk done at the property. He also noted the correct zoning regulations from which the variance is requested. Mr. LaFlamme read into record the hardship that is being requested.

A motion was made by Bill LaFlamme and seconded by David Slight, to close the public hearing and approve the request for a front building line setback variance of 25' and a front building line setback variance of 32' and a side building line setback variance of 12.5' and a fence height to be no greater than 6' on all sections from sections 12.13.01 and 12.13.02 of the *Durham Zoning Regulations* to construct a fence at 645 New Haven Road. The hardship is property is being accessed unlawfully, there is illegal dumping and a safety concern for employees, and lastly the right of way for CT Route 17 would force the fence to be in the middle of the parking lot. Motion passed.

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 Rd.

John Corona, Lang & Corona, Pat Benjamin, Bascom & Benjamin and Elliot O'Shana were present. Mr. Corona stated that a letter in support was received from the adjoining property owner. He also stated that the variance requested, the rectangle requirement, is in the zoning code as well as the subdivision code. Mr. Corona wanted to clarify that the request is for both. The property is very unusually configured, a spine of land that runs diagonally through it, it has wetlands on both sides, it may not be the only property in town with those physical features but it is unique. The hardship is driven by the fact that wetland is cutting in on both sides and the spine of land. The land itself has enough area to create 3 lots, it's over 6 acres and it is 2 acre zoning in this area.

Mr. Benjamin addressed the commission. He stated it is a 6.64 acre parcel in the farm residential zone, located on the south side of Old Blue Hills Road. He presented a map and reviewed where the existing house, well, septic and reserve system, and existing driveway are located. Lot 1 is 2.22 acres, which was pointed out, lot 3 is 4.42 acres. A site plan was presented. Lots were pointed out, culverts, wetland dams, and existing house with ridgeline that runs diagonally across the property. The rectangle was pointed out, 150x130. There are several requirements to the rectangle; one is that no portion can be within 50' of a wetland. This was presented on the map along with an area that has slopes that are over 30% as measured over 100' and measure 15' outside of the rectangle. The engineered septic and reserve areas were also pointed out. There was clarification concerning the zoning regulation and subdivision regulation. Mr. Benjamin also stated that certified letters were sent out to other neighbors which were presented to the commission. Mr. LaFlamme read into record the letter of support from Paul Haberern.

Mr. Corona addressed the concern of neighbors having a house in the proposed location. Mr. Corona stated it is a pretty heavily wooded site. If it was an accessory building and not a second home the property owner could build a structure with wetlands approval and can also clear the entire area. The variance will not change the physical situation on the site, but the decision of the owner as to what particular use of the building will be. A variance would not be required if it was just an out building on the site. The impact on the neighbor would be the same. This is important to realize that whatever impact there might be on the neighbor the property owner already has the right to create, the variance does not give them the right to clear or build a building, it only gives them the right to create a second

lot and make the building a dwelling instead of an accessory building. Mr. Corona reminded the commission about asking Mr. Delvecchio about getting a variance in the past. He presented information regarding a variance for signs. Regulations allow one sign and Mr. Delvecchio was granted a variance for two.

Mr. Delvecchio stated it was not a personal issue but a concern as to how the regulations are being applied because it has consequences for future variances. Mr. Delvecchio stated he will use the drawing to clarify what is known as a hardship to the property and a hardship to the applicant. One is clearly legally recognized and the other is not in court. He pointed out the original lot and stated that he was the original developer of the parcel. The reason they only got one building lot was due to the zoning regulation of a minimum rectangle, it's a requirement to establish a building lot. He stated that Mr. Corona is correct in stating that Mr. O'Shana is able to build an accessory structure on the property. The reason they are here is because they are seeking a subdivision of an existing lot. The minimum rectangle requirement applies to all lots in Durham. This is not a unique situation, it is not a hardship. He spoke about how the lot was developed originally. Mr. Delvecchio stated that the hardship is only to the applicant due to the fact that the original lot was approved by meeting the requirements. Mr. Delvecchio continued to state that it must be a hardship to the property, not the applicant. Mr. Delvecchio suggested seeking advice from town counsel. He reiterated that it wasn't personal but stated that it was similar to opening Pandora's Box if the variance was granted. Mr. Corona addressed Mr. Delvecchio's concern of opening the floodgates. It was 2006 when an almost identical variance was granted to Mrs. Stannard and there aren't really any other similar applications that Mr. Corona could find. Mr. Corona stated that if someone came along with a legitimate hardship and they had the same situation that the variance should be granted. Mr. Corona agreed with Mr. Delvecchio about how everyone needs to comply with the zoning regulations. It's also true that that law gives relief when someone can give a good reason as to why they won't comply. Mr. Delvecchio stated again that the lot is a legal building lot and believes that there is no hardship to the property. He believes it is a personally created hardship to the applicant.

Mr. LaFlamme stated that under state statute it requires a hardship that is unique, personal or financial hardships cannot be considered. Mr. LaFlamme read more from the statute. Mr. LaFlamme believes that the commission deals with a small community of people that they'd like to see stay in the community and lends itself to some consideration. Mr. LaFlamme also spoke in regards to Mr. Delvecchio's concern over proper notice from the last meeting-it is in state statute that a notice should be given within a certain time frame within 3 days before meeting, no earlier than 14 days. It does not have to include abutting land owners as long as the issue is put into the paper with a certain circulation amount and posted at the town hall. It is not required to send letters by state statute or town charter. Mr. LaFlamme spoke of the site walk. He stated they could see the issues with wetlands and sloping that will cause a problem for the minimum rectangle. Mr. LaFlamme stated it is required that 4 members approve the motion in order for the motion to pass.

Mr. LaFlamme made a motion, seconded by Tom Wenchell, to approve Elliot O'Shana's 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. The hardship is the topography. Motion did not pass.

A motion was made by David Slight, seconded by Tom Wenchell, to close the public hearing and return to the regular meeting. Motion passed.

Miscellaneous

Mr. LaFlamme stated that money was put into the budget for training. If approved he will set up some training in the future.

Adjournment

A motion was made by David Slight, seconded by Tom Wenchell, to adjourn. Motion passed.

Respectfully submitted,

Jennifer Keogh

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