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ZONING BOARD OF APPEALS
Durham Town Hall
Durham, CT 06422

Minutes of the July 14, 2016 Regular Meeting

Mr. LaFlamme opened the meeting.

Attendance:

Members		Alternates	
x	David Heer	A	Michael Geremia
x	David Slight	A	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

Anton Nolan was seated for Chris DePentima.

Amendments to Agenda

None.

Approval of Agenda

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

Payment of Bills

None.

Minutes of Previous Meeting(s)

A motion was made by David Slight, seconded by David Heer, to approve the minutes from the April 14, 2016. Motion passed unanimously.

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 unanimously.

R. & N. Sleath, request to permit accessory unit to exist outside the single family residence and to permit the accessory unit to exceed the one-third limitation by 62 square feet from section 13.05.05(4) of the Durham Zoning Regulations at 360R Johnson La.

Mr. John Corona, Lang & Corona, was present and represents Mr. & Mrs. Sleath. The Sleaths and the potential purchasers of the Sleath's property were also present, which is the drive for the requested variance. Mr. Corona distributed a handout to the commission members which contained letters of support from the three adjoining property owners, a copy of the assessor's map, showing the location of the Sleath property on Johnson Lane and the location of the adjoining property owners as well as a topography map which shows the Sleath property so the grade is shown.

Mr. Corona stated in 1970 the Sleaths purchased the property. At that time there was a small modest house and then built a larger house on the property and kept the original house. All necessary permits to build the second house were obtained from the town of Durham. All this time the Sleaths have lived in the larger house and rented out the smaller house. Mr. Corona attached an assessor's record from 1972 referring to the fact that two houses are on the lot. It shows that the town is aware of a second house existing on the property since 1972. The zoning regulations state only one house permitted on any individual lot. There is no record as to how the town permitted the property to have two or how it issued a CO. The Sleaths are now in a situation where their buyers and their buyers' lender would like to know that the property conforms with the applicable zoning regulations.

The Sleaths choices are to tear down one of the houses, which they do not want to do. They've looked into subdividing the property and the opinion of the engineer they consulted was that because of the grade dividing the property into two lots is not a possibility considering the geometric and grade requirements that the town imposes. The two houses have separate septic systems and separate wells; they function entirely separately from each other and they're served by a common driveway. They could bring a lawsuit against the town and ask the court to make some sort of declaratory relief, they could have petitioned the ZBA for a variance to simply allow two houses to exist on one lot despite the zoning requirements that would allow only one, but felt this could then make it a rental property. They opted for a more modest and less imposing request. The zoning regulations currently allow an accessory apartment. In your home you can create an accessory apartment as long as the space devoted to that does not exceed 1/3 of the overall living space of your home. The regulations require that the accessory apartment be within the envelope of the existing house and require the owner of the property live either in the accessory unit or the main house. The smaller house is a little bit over the square footage and is a little bit more than the ratio requires for an accessory apartment and the accessory apartment is not within the envelope of the existing home. Mr. Corona spoke of a variance granted to Mr. and Mrs. Korn who live on the corner of Maple Ave. and Rte. 68. They were going to build an accessory apartment in the garage they planned on building on the property.

Mr. Corona stated that the hardship is the origin of the problem which is the town giving permission to do something that the town should not have given permission to do. The other hardship is it is not simple to subdivide due to the house layout, the grade, the geometric requirements it can't be done. Mr. Corona feels that the variances requested are less imposing.

The Sleaths are planning to sell the property as one unit. The potential buyers want it as it is, they want to be able to have an accessory apartment and plan to live in one of the houses. If the variance is granted, then they will have to apply for the permit from the Planning and Zoning Commission. Mr. LaFlamme stated that it will have to be inspected every five years.

Mr. LaFlamme asked if there were any questions or comments. Mr. Parmelee stated he wishes the Sleaths well with their application.

A motion was made by Bill LaFlamme, seconded by David Slight to approve the request to permit accessory unit to exist outside the single family residence and to permit the accessory unit to exceed the one-third limitation by 62 square feet from section 13.05.05(4) of the *Durham Zoning Regulations* at 360R Johnson Lane. Motion passed unanimously.

M. Criscio, request a side yard variance of 9.9' from section 05.02.01 of the *Durham Zoning Regulations* to construct a 3 car garage at 41R Summit Dr.

Mr. Criscio stated he would like to build a 3 car garage. He thought he owned more property than he actually does. The foundation is already in place. He needs to build a garage for his cars and trucks. Chris DePentima has submitted a letter in support of the project. Mr. LaFlamme read the letter into record. Mr. DePentima and Mr. Criscio share a driveway. Maps were presented to the commission. Mr. Jungels asked if the other neighbors were in support. Mr. Criscio pointed out on the map another property that he owns and borders, Chris DePentima's property and Max Baldwin was willing to be present but Mr. Criscio stated he did not have to and is in support as well as David Fusco. Mr. LaFlamme clarified the properties on the map with the as-built of the foundation. It was asked if he obtained a permit prior to starting the project. Mr. Criscio stated he called Call Before You Dig a while ago and did that and realized he needed a permit. Mr. McManus, Building Official, Town of Durham, did inspect the foundation.

A motion was made by Bill LaFlamme, seconded by Dave Slight, to approve the request of a side yard variance of 9.9' from section 05.02.01 of the *Durham Zoning Regulations* to construct a 3 car garage at 41R Summit Drive. The hardship is the topography and location of existing septic and well. Motion passed with David Heer in opposition.

C. Flannery, request a front yard variance of 20' from section 05.02.01 if the *Durham Zoning Regulations* to construct a garage at 36 Old Farms Rd.

Mr. Flannery stated that he lives on a corner lot and it's a side yard that he is requesting a variance for. He lives at 36 Old Farms Road and is a corner lot with Buckboard Rd. He stated that the corner of his house out to the road is 67' but the map provided shows it being 65'. He stated he would like to get a 30' garage, depending on the angle that he puts it on, but he stated he was told to request a 30' variance if he wanted it to face Old Farms or Buckboard. He stated that the people he spoke with at the Town told him it could go from the edge of the curb to the center line in Buckboard which is why he applied for the variance. He then gave a background of how he is the 3rd generation living in the house, he totally renovated it, obtained all permits, it was his grandfather's at one time and when he passed they were not going to be able to sell it in the condition it was, he got all the permits, renovated the whole thing and he would like to continue living in it but it's one of the smaller houses and on less than a half-acre and it's small for a modern family, he would like to have his whole family live there one day and extend it to future generations and as it sits right now he can't do that. He stated that he spoke with all the surrounding property owners and they are all fine with it but he should have gotten it writing. He spoke with Lynn Johnson across the way and she said it was fine. He stated she has an addition that she received a variance for a number of years ago.

Mr. LaFlamme inquired that the variance he is requesting is actually facing Buckboard and Mr. Flannery confirmed that. He will be 15' from the curb of Buckboard and if he goes from the center line of the road

he will be fine. It was mentioned that a lot of fill was brought in and Mr. Flannery stated that it was a 16' drop off so he stated he obtained all necessary permits and spoke with town officials and he got fill in because from the edge of the corner of the road in the back to the front it was 16' so he got that all filled in and it actually helped his leaching field and everything else out. The way the well and leaching field is he is not able to move the garage back in the back yard of the property and the proposed spot is the only place it will fit. Mr. Flannery was asked when the house was built. He believes the house was built in 1957 but when it first went for approval it was a quarter acre and the town expanded it saying they needed a half and that's why he has a half now. He continued to say that it was the first of 12 in the first development phase. Mr. LaFlamme stated that it is a front yard because it is a corner lot. Mr. Jungels stated that he did drive by and that his hesitation is that he'd like to hear from the neighbors. Mr. LaFlamme confirmed this by saying a letter of approval from the neighbors is favorable. It was suggested that a continuation and a site walk may be necessary. Mr. Flannery stated that he has pictures on his phone. He stated that he leveled out the whole front yard and carried it the back gradient all the way out so it is completely flat, got it ready in case the variance was approved. It was discussed that a site walk is necessary as well as letters of support from the neighbors. The public hearing will be continued and a site walk scheduled for Saturday, July 23, 2016 at 9:00 a.m. Mr. Flannery was asked to stake out the property.

A motion was made by Dave Slight, seconded by Dave Heer, to continue the public hearing until August 11, 2016. Motion passed unanimously.

Miscellaneous

None.

Adjournment

A motion was made by Dave Slight, seconded by Dave Heer, to adjourn. Motion passed unanimously.

Respectfully submitted,

Jennifer Keogh