



TOWN OF NEWTOWN

ZONING BOARD OF APPEALS

MINUTES

Regular Meeting of June 4, 2014 at 7:30 pm

Meeting Room #3, Municipal Center, 3 Primrose Street, Newtown CT

These Minutes are Subject to Approval by the Zoning Board of Appeals

Members Present: Charles E. Annett (Chair), Alan Clavette (Vice-Chair), Barbara O'Connor (Secretary), Timothy Cronin, and Ross Carley; **Alternates Present:** Jane Sharpe; **Staff Present:** Jean St. Jean, Zoning Coordinator/Liaison Official; George Benson, Director of Planning and Land Use; and Tammy Hazen, Clerk

The meeting of the Zoning Board of Appeals was called to order by Chairman Charles Annett at 7:30 pm.

Mr. Annett asked the secretary to call the roll and read the legal notice for the first docket.

DOCKET 14-02 Application of John Neuhoff for the Correction of an Alleged Error by the Zoning Enforcement Officer for property located at 48 Algonquin Trail in the Town of Newtown in an R2 Zone.

The secretary, Ms. O'Connor, read the docket. Mr. Annett asked the applicant to come forward. Atty. James Strub with Secor, Cassidy & McPartland, P.C., Waterbury and Southbury, was present to represent the applicant. John Neuhoff from 63 Lakeview Terrace was also present. Mr. Annett explained the process of the hearing.

Atty. Strub said since the applicant is waiting on some testing for the Health Dept. on his site, he planned to submit a request for an extension. Mr. Annett and Mr. Clavette explained why it is more beneficial for the board to hear all evidence during one hearing. They gave the applicant the option to present all material at a future meeting. The applicant decided to proceed.

Atty. Strub distributed maps and a package containing a letter dated 6/4/14 with tabbed information (Exhibit 1). Note: The "exhibits" Atty. Strub refers to during his presentation pertain to documents that are attached to "Exhibit 1" (tabbed items). Atty. Strub explained the property, the cabin and a history of ownership. Steep slopes on the site were discussed. Mr. Annett asked if they have a topographical map. Mr. Neuhoff said that Brautigam Surveyors will do a topo map at a later date. Atty. Strub reviewed his letter in Exhibit #1 which responds to Mr. Benson's letter dated 3/21/14.

Mr. Annett asked about utilities in the cabin (plumbing, heating, and electric). Atty. Strub explained some existing items in the cabin including pipes, a toilet (not hooked up) and an old generator previously fed by propane. The propane tanks on the property belong to a neighbor. The cabin was last used in 1955. The size of the cabin is 10' x 26'. Pictures of existing items in the cabin were distributed (applicant's Exhibits #2 to #15). A plumber told Mr. Neuhoff that the pipes date back to pre-1950's and doesn't know when the propane line was cut. A well was never hooked up to the cabin and the cabin is not hooked up to the Cedarhurst pipeline. Mr. Carley asked why the lot was not part or be qualified for being part of the Cedarhurst Association. Mr. Neuhoff explained the history of the ownership.

George Benson presented his response to Atty. Strub's rebuttals. Mr. Benson explained the differences between a "parcel" of land in Town as opposed to a "lot" and that the only lots protected are those that are part of a subdivision approved by Planning and Zoning. This has been proven in court and defined in the State

of Connecticut Statutes. The current lot does not conform as a buildable lot due its size and the percentage of slope. Mr. Benson said that although the map was filed in the Town Clerk's office, it does not designate it as a lot, it is just a map of a parcel of land. He then explained principal uses of a single family resident, which require a kitchen and bathroom and submitted copies of the Tax Assessor's cards (G. Benson's Exhibit 1). A 1966 card describes the cabin as having no heating system, no electric, and no plumbing. A 1967 card (after the zoning regulations were in place) also indicates no plumbing, heating or electric and establishes it as an "abandoned" structure. He emphasized that these are two inspections by the Town's Tax Assessor's office. He also noted that anything installed or improved after zoning was in place would have been illegal. He also said that upon inspection of the cabin, there was no hole for a toilet, no bedrooms, and that the Town's Building Dept. would not C.O. a home without bedrooms, kitchen and a bathroom. It cannot be called a primary use or a residential dwelling. The cabin can only be considered an accessory use without a primary dwelling or structure. Mr. Carley asked Mr. Benson if he saw any plumbing in place. Mr. Benson said he saw a toilet and sink but there were no corresponding holes for plumbing and no plumbing in place. He noted that a nonconforming building is allowed to be brought back to its original intent. The cabin was a plain structure with no utilities and therefore, a camp shelter. Mr. Benson passed out contour maps from GIS (Mr. Benson's Exhibit 2). He said there is more than a 25% slope on the lot.

Atty. Strub then asked if he could refute a few points and discussed his interpretation of the Zoning Regs regarding nonconforming building lots, etc. Mr. Neuhoff said when you walk into the cabin there are bunk beds, fixtures for gas lighting and a pipe and head flange for the toilet. After no further comments, Mr. Annett opened the hearing for public comments.

Donna Cleary, 83 Algonquin Trail, said that Mr. Neuhoff installed a new roof on the cabin illegally without a permit. She said the cabin should not qualify as a residence and that there were trees growing out of the middle of the cabin prior to the new roof. She also said Mr. Neuhoff used her electricity without her permission (tapped into her electricity) and got into a fight with her 20 year old daughter. She also said she did not receive the notification in a timely manner and that it was originally mailed to someone in New York and then forwarded to her. **Donald Jewel, 81 Algonquin Trail**, said they are new residents. He noted some lot line discrepancies with his lot and the applicant's. Mr. Cronin noted it was a legal issue out of the ZBA's purview. **Jim Brant, 79 Algonquin**, needed more information about the proposal. Mr. Cronin explained more details.

After further discussion between the board members, it was decided that this will be referred to Atty. Paul Pollock for interpretation of Zoning Regulations 9.03.500 (non-conforming lots) and to interpret the definition between a "parcel" and a "lot" under the current Zoning Regulations. Mr. Annette then declared the hearing closed at 8:59 p.m.

DOCKET 14-03 Application of Christopher Buczek for a Variance of Section 7.02.100 of the Zoning Regulations to permit the placement of a shed too close to the property line. The property is located at 3 Crestwood Drive in the Town of Newtown, CT in an R-2 zone.

The secretary, Ms. O'Connor, read the docket. Mr. Annett asked the applicant to come forward. Christopher Buczek, 3 Crestwood Drive, was present and explained the reasons for his variance request. He asked that the shed be placed on level ground and in an area where his power tools could be wheeled out of the shed and onto the driveway. There will be no power or plumbing connected to the shed. The shed is 10' x 14', will not be permanent, and will be placed on gravel and anchored. The board members asked about potential alternatives for the location of the shed and were concerned over trailers on the property. Mr. Buczek explained how easier it would be to be able to wheel the tools out onto the driveway. He then submitted a notification form returned to him by neighbors, Robert and Margaret Quibiek (Exhibit 1), which was read into the record by the secretary. The board members noted that he has encroachment issues with having items on an adjoining property. Mr. Buczek said it is a compost bin. No one from the public spoke in favor or in opposition of this application. Mr. Annette then declared the hearing closed at 9:17 p.m.

After reviewing all documentation and testimony, Mr. Clavette motioned to approve the variance as presented given that hardship was demonstrated due to the slope and topography of the property. The motion was seconded by Mr. Cronin. Therefore, the Board **APPROVED** the application of a four (4) foot side yard variance as presented.

Charles E. Annett.....“Yes”
Alan Clavette“Yes”
Barbara O’Connor“Yes”
Timothy Cronin.....“Yes”
Ross Carley“Yes”
Jane Sharpe“Yes”

DOCKET 14-04 Application of Paul Lindahl for a Variance of Section 7.02.100 of the Zoning Regulations to permit the placement of a garage too close to the property line. The property is located at 161 Lakeview Terrace in the Town of Newtown, CT in an R-1 zone.

The secretary, Ms. O’Connor, read the docket. Mr. Annett asked the applicant to come forward. Dainius Virbickas from Artel Engineering submitted revised drawings (dated 6/4/14) (Exhibits #1 and #2), which show a different well location. The well was closer to the road than first suspected. The portion of the road in front of the applicant’s home is part of the applicant’s property, as well as the parcel across the street. The applicant is asking to have the garage built on the parcel across the street. Mr. Virbickas presented a display with five pictures of the property (Exhibits #3 -#6). He noted the limits they have in the placement of a garage due to slopes, well, and septic. Mr. Annett asked why it could not be situated on the right side of the house. Mr. Virbickas explained the reasons are due to the well radius and future septic needs. Mr. Annett shared concerns over the garage being right on the street line and potential hazard for emergency vehicle access. Ms. Sharpe discussed additional critical questions such as the width of road and potential overflow of the brook running through that parcel. Mr. Virbickas said the garage is set at least 12 feet from current road and explained the storm water drainage system they will have in place. The garage is 33 x 26 with storage on top. Mr. Annett asked if there would be any blasting. Mr. Virbickas said he doesn’t suspect so. They also intend to have the garage positioned between two existing trees. No one from the public spoke in favor or in opposition of this application.

After reviewing all documentation and testimony, Mr. Clavette motioned to approve the variance as presented given that hardship was demonstrated by the irregular shape of the property and the unusual circumstances of the road easement through the middle of their property. A variance for the existing shed will be included. The motion was seconded by Mr. Carley. Therefore, the Board **APPROVED** the application of a garage with a front yard setback variance from 50 to 9 feet; a front yard setback from the center of the road variance from 75 to 27 feet; and a side yard setback variance from 25 to 11 feet. The approval also includes a variance of the existing shed that is only two (2) feet off the property line.

Charles E. Annett.....“Yes”
Alan Clavette“Yes”
Barbara O’Connor“Yes”
Timothy Cronin.....“Yes”
Ross Carley“Yes”
Jane Sharpe“Yes”

DOCKET 14-05 Application of Pasquale Rauccio for a variance of Section 7.02.100 of the Zoning Regulations to permit the placement of an above-ground pool too close to the property line. The property is located at 25 Cedar Hill Road in the Town of Newtown, CT in an R-1 zone.

The secretary, Ms. O'Connor, read the docket. Mr. Annett asked the applicant to come forward.

Pasquale Rauccio from 25 Cedar Hill Road was present. He explained that his property is mostly sloped with rocks and boulders and that there is only one spot on his land that is level for a pool. No one from the public spoke in favor or in opposition of this application.

After reviewing all documentation and testimony, Mr. Clavette motioned to approve the variance as presented given that hardship was demonstrated with the limits of the property, specifically its topography and the fact that it consists primarily of rocks and large boulders. Also, there are no other options on the property to locate a pool. The motion was seconded by Mr. Cronin. Therefore, the Board **APPROVED** the application of a 21 foot side yard variance as presented.

- Charles E. Annett..... "Yes"
- Alan Clavette "Yes"
- Barbara O'Connor "Yes"
- Timothy Cronin..... "Yes"
- Ross Carley "Yes"
- Jane Sharpe "Yes"

Mr. Carley motioned to adjourn and Mr. Clavette seconded. The motion was carried and the meeting was adjourned at 10:35 pm.

Respectfully submitted by Tammy Hazen