



TOWN OF NEWTOWN

Zoning Board of Appeals

MINUTES

Regular Meeting of December 3, 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), Ross Carley, Alan Clavette (Vice-Chair), Timothy Cronin and Barbara O'Connor (Secretary); **Alternates Present:** Roy Meadows, Herb Rosenthal and Jane Sharpe.
Staff Present: George Benson, Director of Planning and Tammy Hazen, Recording Clerk.

The meeting of the Zoning Board of Appeals was called to order by Chairman Annett at 7:33 pm. Ms. O'Connor called the roll and then read Docket #14-12.

DOCKET #14-12 Application of John Neuhoff for a variance of Sections 7.02.100 and 7.02.110 of the Zoning Regulations to permit the building of a single family dwelling without the proper acreage and frontage. The property is located at 48 Algonquin Trail in the Town of Newtown, CT in an R2 zone

Atty. James Strub from Secor Cassidy and McPartland, Waterbury CT, was present. Mr. Annett explained the hearing process. Atty. Strub submitted the mailing receipts and affidavit. He reviewed the explanatory statement that was submitted with the application. The pending case is on hold by agreement of both parties and the court in order to allow for the current variance application to be heard. The applicant feels that 48 Algonquin Trail is a pre-existing non-conforming lot which should be allowed to be developed. The following exhibits were handed out:

- Exhibit #1: Copy of Planning & Zoning minutes 9/5/02, pgs 6–9 re: steep slope regulations.
- Exhibit #2: Tax Assessor Card
- Exhibit #3: Statement of appraisal and assessment of property
- Exhibit #4: Slope Analysis Map
- Exhibit #5: GIS Map, large and in color
- Exhibit #6: Statement from Judge Fuller
- Exhibit #7: Letter from Paul Brautigam
- Exhibit #8: Warranty Deed
- Exhibit #9: GIS Map

A fence, a carport and propane tanks are on the property in question but is owned by neighbors. Mr. Annett asked if the applicant owned the property prior to or after the upzone. The applicant acquired the property in 2013, after the upzone. Atty. Strub discussed the regulations for topography (steep slopes). He noted the applicant purchased the property after these regulations were in place. Mr. Rosenthal asked how long the Carport has been on the property. Atty. Strub said it is a civil matter.

Mr. Rosenthal asked how long the driveway has been used by the Cleary's. Atty. Strub said he assumes a long time and there are property line and title issues. Mr. Carley asked if prior owners of this lot historically paid taxes for it as a buildable lot. Atty. Strub said they have and he explained Exhibit #2 and #3. Mr. Carley said the building was condemned back in the 1960's. Mr. Clavette said the Tax Assessor's office does not determine whether or not parcel is a buildable lot. Atty. Strub agreed.

Larry Edwards, PE, from Easton, said in his opinion, the property will support a four bedroom home, a well and septic, with 0.4 acres of usable space. Mr. Annett asked where the driveway would be located. Mr. Edwards said they will provide an extension to the existing driveway used by the Cleary's. The board members shared concerns over water flow and how development on the lot would affect the drainage downhill.

Mr. Carley asked about the trail (right-of-way) that goes into the Paugussett State Forest off of Algonquin Trail. Mr. Edwards said he doesn't think it's a legal easement at the end of Algonquin Trail, but there is a trail on top of the property (Cedarhurst Trail).

Mr. Rosenthal asked Atty. Strub if he felt there was any legal difference between someone who comes to the hardship (the hardship was created prior to the time the owner purchased the property) versus the Town creating a hardship for an existing property owner. Atty. Strub said in his opinion the hardship was not self-created. Atty. Strub then discussed the chain of ownerships and the right to access from private roads. This is in response to a letter from the Cedarhurst Association regarding access to the property. The discrepancies between the applicant's maps and the GIS maps were discussed.

George Benson, Director of Planning and Land Use, 9 Old Purdy Station Road, Newtown, resubmitted his letter dated March 21, 2014 (Benson Exhibit #1). He said the Board has already upheld his decision on the previous Zoning application and the Assessor's tax bills do not determine whether or not a lot is buildable. He said the request for variance was not a result of an official remand back to the commission. He explained that the purpose of upzoning was to prevent small lots, homes built on steep slopes, and to protect the environment and the development in town. He shared concerns over impacts to the lake. He noted that shared driveways are not allowed unless it is a new subdivision. Mr. Clavette agreed that this lot is not part of an approved subdivision. Mr. Benson said that he informed the applicant - prior to his purchasing 48 Algonquin Trail - that the lot was not a buildable lot. He disagreed with Atty. Strub and strongly feels that since Mr. Neuhoff bought the property with full knowledge of this, he then created a self-imposed hardship. He does not feel anyone should be granted a variance from regulations if they buy property that is sub-par, and for a lower price, then request a variance after-the-fact. He said Mr. Neuhoff did not pay the price for a buildable lot.

Mr. Rosenthal said the upzoning occurred during his time as First Selectmen. It was clearly a goal of his administration during those 10 years that these types of changes took place, especially since it was a strong feeling of the public. They did not want to see continuation of small lots and used every legal means possible to protect the environment. Planning and Zoning, the Conservation Commission and the Inland Wetlands Commission were clearly in agreement. Mr. Benson then stated that if the variance was approved, there would be no way to stop clearcutting of the trees on the steep slope towards the lake. This would negatively affect the lake.

PUBLIC COMMENTS - Mr. Annett asked if anyone wished to speak in favor of the application. Hearing none, he then asked if anyone wanted to speak in opposition. The following residents spoke:

Denise Wiley, 71 Algonquin Trail (Treasurer of the Cedarhurst Association) read into the record a letter submitted to the Land Use Agency on 12/2/14 (Public Exhibit #1).

Anthony Dangelo, 18 Cedarhurst Trail, wished to add clarity regarding the access to the State Forest. He does not believe there is public access to the State Forest through the roads that are part of the Cedarhurst Association; access to the trails are exclusively for members of the Cedarhurst Association.

Jim Brant, 79 Algonquin Trail, said the car port on the property has been there for at least 15 years (the time he has lived there) and in speaking with previous owners, it had been there at least 20 more years. He has learned (in speaking with “old timers”) that the driveway in question (proposed shared driveway) has been there for something like 60 years. He is concerned over drainage off the proposed development entering the cul-de-sac. Using the GIS Map, Mr. Brant showed the commissioners the portion of land owned by the Cedarhurst Association that land locks 48 Algonquin Trail. This information is not shown on the applicant’s maps.

After discussions, the hearing was closed.

DOCKET #14-13 Application of Chris Godino for a variance of Section 7.02.100 of the Zoning Regulations to permit a garage too close to the property line. The property is located at 5 Adams Hill Lane in the Town of Newtown, CT in an R3 zone.

Jason Levesque, 52 Climax Road, Simsbury, CT 06070 was present and stated he was contracted to build a garage. He explained that due to human error during construction, the garage was built 1.5 feet closer to the property line than the original plans showed. He is looking for a 1.5 foot variance to the set back line. The surveyor did not come out afterwards to double check the work and the Town Inspector did not catch the mistake. The only alternative is to get a lot line revision but the neighbor was not agreeable until he went through the variance process. Mr. Annett asked if anyone wished to speak in favor of or opposition to this application. After hearing none, the hearing was closed.

Mr. Carley motioned to approve the variance of 1.5 feet, that this was no fault of the owner, rather the fault of the subcontractor and the Town building inspector in measuring the structure too close to the property line. Ms. O’Connor seconded the motion and all were in favor.

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

DOCKET #14-14 Application of Ronald Gada for a variance of Section 7.02.100 of the Zoning Regulations to permit a garage too close to the property line. The property is located at 8 Palestine Road in the Town of Newtown, CT in an R3 zone.

Ronald Gada from 34 Obtuse Road and Realtor Libby Tritschler were present. Written permission from the property owner was not submitted. Mr. Gada explained that he is an Equine Veterinarian and wants to purchase this property but needs to build a two car garage he can lock and heat in order to store his work vehicles. He spoke with neighbors and all had no objections. A letter from the current owner will be submitted. Mr. Annett asked if anyone wished to speak in favor of or opposition of this application. After hearing none, the hearing was closed.

Mr. Clavette motioned to approve the variance of five feet with hardship being there is no other location that will allow for the backing up of vehicles and that the applicant needs a secure garage for his vehicles. The application to be approved upon the condition that a letter granting permission from the owner is submitted. Mr. Cronin seconded the motion and all were in favor.

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

Ms. O'Connor motioned to adjourn the meeting at 9:42 pm. Mr. Cronin seconded the motion and all were in favor.

Respectfully submitted by Tammy Hazen