

From: Lois Laczko April 28, 2011 12:28:29 PM  
Subject: Zoning Board of Appeals Minutes 03/23/2011 ADOPTED  
To: SimsburyCT\_ZBAMin  
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ADOPTED

ZONING BOARD OF APPEALS  
REGULAR MEETING  
March 23, 2011

I. CALL TO ORDER

Chairman Peter Stempien called the regular meeting of the Zoning Board of Appeals to order at 7:01 P. M. in the Main Meeting Room at Simsbury Town Hall. The following members were also present: Edward Cosgrove, Thomas Horan, Craig MacCormac, Katie Martin, and John McCann. Also present were Howard Beach and Lynn Charest, Zoning Compliance Officers; Lisa Gray, Commission Clerk, and other interested parties.

II. APPOINTMENT OF ALTERNATES

Chairman Stempien appointed Craig MacCormac to serve for Nancy Haase, and Edward Cosgrove to serve for Carol Bingham.

III. PUBLIC HEARINGS

A. 10-11 Application of David Sottile, Owner, Steven Mitchell, Applicant, requesting a Lot Frontage variance, pursuant to Article Eight, Section A of the Simsbury Zoning Regulations on property located at Lot 2A Eno Place. (Map I-06, Block 141, Lot 002A). R-40/FP Zone. (Continued from February 23, 2011 meeting)

Attorney Jay Weintraub reviewed his presentation made at the December 15, 2010 meeting at which he explained that the applicant is requesting a variance to construct a home on this property, approximately 97% of which is designated as flood plain. Attorney Weintraub then commented on the Zoning Compliance Officers' memo to the ZBA, dated February 4, 2011, reiterating staffs' findings as outlined in the memo. Attorney Weintraub noted that, at the conclusion of the staffs' memo, staff asserts that, "... research has not produced any documentation (of) the Town formally abandoning this public right-of-way to the landowner, thus this public right may still exist." He further noted that the Town's attorney, Robert

DeCrescenzo, in a letter dated February 7, 2011, was in agreement with staffs' finding. Attorney Weintraub went on to state his reasons he believes the road has, in fact, been abandoned and is no longer used as a public road. First, a gate was installed years ago by a previous property owner (Baker), which is often closed and sometimes locked, thereby preventing public access to the road. Next, he cited several court cases involving similar types of roads in which the courts found that the roads had, indeed, been abandoned.

Chairman Stempien argued his belief that, although the road may no longer be in use, it is still owned by the Town of Simsbury.

Ms. Martin asked Attorney Weintraub to clarify the hardship. Attorney Weintraub replied that the property is encumbered by the large area designated by FEMA as flood plain, thereby reducing the amount of frontage. In addition, there is a 47% slope, further limiting the buildable area. He also expressed his belief that, prior to becoming designated as flood plain by FEMA, the owners would have been able to receive a frontage variance.

Howard Beach clarified that this property is a parcel, not a lot, as it was never legally created as a lot and does not meet all regulations.

Steven Mitchell stated that his intention is to keep the land the same, except that he desires to build a home on it, keeping in the character of the area and the town. He also noted that the property deed makes no mention of rights of the town.

Zoning Board of Appeals  
Regular Meeting  
March 23, 2011  
Page 2

Dave Sottile wondered why one acre of buildable land was left on the property after sub-division if it was never intended to be developed.

Chairman Stempien opened the hearing to public comment.

Richard Shuler, 9 Eno Place, distributed and read a letter from his attorney, David Markowitz, dated March 18, 2011.

Robin Currier, 12 Eno Place, stated her belief that it would be irresponsible of the town to approve this variance.

Hearing no further comments, Chairman Stempien closed the public hearing.

A motion was made by Ms. Martin to approve the variance, as requested. The motion was seconded by Mr. Horan.

Ms. Martin noted that she does not see a hardship, and Mr. Horan agreed. Mr. MacCormas believed the hardship was as presented, and Mr. Cosgrove agreed. Mr. McCann stated his belief that the hardship is self-imposed and he did not support this application. Chairman Stempien reiterated that this is a parcel and not a lot, and that the applicant could build a cul de sac and would not need a variance.

Mr. MacCormac and Mr. Cosgrove were in favor of the motion. The remaining members were opposed. Motion failed.

B. 11-01 Application of John and Maryanne Doran, Owners, requesting a side yard variance, pursuant to Article Eight, Section A of the Simsbury Zoning Regulations to allow for placement of an existing shed on property located at 19 Nod Brook Drive. (Map C-20, Block 510, Lot 011). R-40 Zone.

John Doran noted he did not intentionally place the shed in its current, illegal, location, but it was placed there by the shed's builder/installer who believed it to be the best location considering the property's topography and existence of wetlands. The Dorans did receive a Building and Wetlands Permit approving placement of the shed in October 2010, but, after placement, the shed was found to be 12 feet into the 40-foot side yard setback.

Chairman Stempien opened the hearing to public comment, and read letters in favor of the application from Chuck Kohrer, 21 Nod Brook Drive, and Gerry and Elise Burke, 23 Nod Brook Drive.

Hearing no further comments, Chairman Stempien closed the public hearing.

A motion was made by Mr. MacCormac to approve the variance, based on the topography of the land and the unique nature of the lot. The motion was seconded by Mr. McCann, and unanimously carried.

C. 11-02 Application of Santina F. Ferri, Owner, requesting a Side Yard Variance, pursuant to Article Eight, Section A of the Simsbury Zoning Regulations, to allow for construction of an in-ground pool, on property located at 18 Old Stone Crossing. (Map A-18, Block 503, Lot 008)

Mr. Cosgrove and Mr. McCann noted that they have personal dealings with the applicant's attorney, Louis George. The applicant had no opposition to them hearing and voting on the application.

Zoning Board of Appeals

Attorney George explained that the applicant is seeking a 34-foot side yard variance to construct a pool and patio/deck. Due to the location of the house on the lot, and the existence of a well and septic system, space is limited for location of the proposed construction, thereby requiring a variance. Land topography and safety concerns also dictate placement at the proposed location. He further noted that the area requiring the variance is bordered by town open space.

Chairman Stempien opened the hearing to public comment and read letters in favor of the application from Francine Shanfield, 18 Brookridge; Wendy and Kevin Whirl, 11 Old Stone Crossing; John Luckner, 15 Old Stone Crossing; and Michael Zimmerman, 21 Old Stone Crossing. He also read into the record a letter granting permission for building from Anthony Frankoline, President of Avonridge, Inc.

Hearing no further comments, Chairman Stempien closed the public hearing.

A motion was made by Mr. Cosgrove to approve the variance, as presented, with the hardships as stated. The motion was seconded by Mr. Horan, and unanimously carried.

#### IV. APPROVAL OF MINUTES

##### A. February 23, 2011 Regular Meeting

A motion was made by Ms. Martin to approve the minutes of the February 23, 2011 regular meeting, as presented. The motion was seconded by Mr. MacCormac, and unanimously carried.

#### V. ADJOURNMENT

A motion was made by Ms. Martin to adjourn the meeting at 9:37 P.  
M.

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Thomas Horan, Secretary

