

From: Lois Laczko August 5, 2010 12:18:03 PM
Subject: Zoning Board of Appeals Minutes 06/23/2010 ADOPTED
To: SimsburyCT_ZBAMin
Cc:

ADOPTED

ZONING BOARD OF APPEALS
REGULAR MEETING
JUNE 23, 2010

I. CALL TO ORDER

Chairman Peter Stempien called the regular meeting of the Zoning Board of Appeals to order at 7:05 p.m. in the Main Meeting Room of the Simsbury Town Hall. The following members were also present: Thomas Horan, Katie Martin, Carol Bingham and Alternate Edward Cosgrove. Also in attendance were Lynn Charest, Zoning Compliance Officer, and other interested parties.

II. APPOINTMENT OF ALTERNATES

Chairman Stempien appointed Edward Cosgrove to serve for John McCann.

Thomas Horan, Secretary, read the Call.

III. PUBLIC HEARING(s)

1. 10-04 Application of Richard Civitella, Owner, Conrad Emmons, Applicant, requesting a side yard variance from Article Eight, Section A of the Simsbury Zoning Regulations to build a deck on property located at 7 Andrew Drive. (Map E-17, Block 208, Lot 103). R-40 Zone

Richard Civitella, property owner, spoke on behalf of this application. Also in attendance was Conrad Emmons, Contractor, who turned in the signed affidavit for posting of the sign. Mr. Civitella showed photo's of the property to the Board. He said that there is a heavily wooded area between their home and the neighbors. They have a letter from this neighbor stating their approval of the deck location. He said that one of the reasons that they are putting a deck on is to improve the property. Ms. Martin questioned the drop off in the topography from the back of the house. She asked why the deck cannot be placed anywhere else on the property. Mr. Civitella said that the area on the side of the house leads right off of their kitchen and is also shaded. The other areas of the house have direct

sunlight from 9:00 a.m. until 4:00 p.m.

Chairman Stempien asked what the problem is in putting the deck on the back of the house. He went on to explain that the job of the Zoning Board of Appeals is to look at what your uniqueness is, and because of this uniqueness, and the specific piece of property will not allow you to do anything other than place the deck where you want to place it, they try to give the applicant that benefit. Their job also is to make sure that they grant the least amount of variance that they have to give, and if they can possibly place it somewhere else where you do not have to have any variance at all, that would be for the best.

Mr. Civitella said that they purchased this house in 1992, which has an existing deck in the back of the house that is 22 to 23 years old that is in need of a lot of repairs. They do not want to rip it out and replace it at this time due to their budget. The sun also shines there all day and they are looking for a little bit of space away from the sun and also for something that is not as expensive for them to do at this time. He showed the Board on a photo where he wants the deck to be constructed. Conrad Emmons, Contractor, described the proposed deck location to the Board. Mr. Emmons said that this is the only shaded area in the yard and showed on the plan how the lot tapers in. Mr. Civitella said that he has city water and a septic system that comes off the back of the house that runs into the back yard and down. He said that he is looking into having the deck constructed on the side of the house as there is a door from the kitchen that goes out. There is really no direct access other than the door that is on the deck. You would have to go through the entire house to get out to the back yard. Also, the existing septic system is to the right and the leech field runs down to the side.

Mr. Emmons said that the old existing deck is not code compliant. The railings are not code compliant, and the deck is need of some major work. Ms. Bingham asked if there was any way they could scale down the size of the deck to come closer to the setback. Mr. Emmons said that if they did that it would be a very narrow L because the property line tapers. They are not trying to go out towards the side, they are turning it towards the back. He also said that it would be much more convenient to access off the kitchen and is also the only shaded area on the lot.

Chairman Stempien opened the public hearing to public comment. Chairman Stempien read a letter from David and Celia Chow, 9 Andrew Drive approving the proposed deck. The public hearing was closed.

Ms. Martin moved to approve as stated the application of Richard Civitella, Owner, Conrad Emmons, Applicant, requesting a side yard variance from Article Eight, Section A of the Simsbury Zoning Regulations to build a deck

on property located at 7 Andrew Drive. The motion was seconded by Mr. Horan.

The Zoning Board of Appeals members discussed the problem of a lack of hardship for this application.

As a hardship was not proven, the motion failed to carry. Application denied.

2. 10-05 Application of Ted J. Braidich, Owner, requesting two (2) side yard variances from Article Eight, Section A of the Simsbury Zoning Regulations for an existing shed on property located at 1 Cedar Hill Road. (Map E-10, Block 147, Lot 113). R-40 Zone

Ted Braidich, property owner, spoke on behalf of this application saying that he is looking for two side yard variances. One side yard variance is for 34.5-feet and the second is for 27.3-feet. Mr. Braidich said that they have an existing shed as shown on the survey. They are also within the FEMA floodplain. He said that the shed has been in this location for approximately two years. Mr. Braidich explained that his whole lot is extremely wet. The property is a corner lot that comes into Cedar Hill, and they have two water ways that disperse on their property. There is a town culvert that basically takes the street water and drops it onto the property through a culvert, and also Hopbrook comes through the property. When it rains, they do get extensive water on the land. There are also slopes on several different levels on the property. Mr. Braidich provided photos to show the Board the different slopes in the yard.

Chairman Stempien asked what the purpose is of the shed. Mr. Braidich said that they store their patio furniture there over the winter, the grill, etc. They have a very small garage that just holds the cars. Chairman Stempien asked why, after two years of sitting there, he is coming in asking for a variance. Mr. Braidich said that they have a neighbor above them on Shady Lane who is complaining. He also supplied letters from neighbors who are in favor of this variance. They also have stated since Mr. and Mrs. Braidich have bought the property it has never looked nicer. He said that this shed is a standard 10-ft x 14-ft sided with a shingle roof. It is tucked into the corner of the woods at one of the highest points of their property. Mr. Braidich showed on the survey where the septic system is located and also where the leeching fields go off. He also said that their main utilities are all underground and showed on the photos where they are located.

Chairman Stempien questioned the house and the FEMA line. Lynn Charest said that the house is outside the FEMA line, but the stream is inside the FEMA line. She showed on the plan the elevation lines.

Chairman Stempien opened the public hearing to public comment. Chairman Stempien read several letters asking to approve the variance for the shed. The public hearing was closed.

Mr. Braidich turned the signed affidavit into the Chairman.

Mr. Cosgrove moved to accept as submitted the application of Ted J. Braidich, Owner, requesting two (2) side yard variances from Article Eight, Section A of the Simsbury Zoning Regulations for an existing shed on property located at 1 Cedar Hill Road. The hardship being the water on the property and the slope of the property. The motion was seconded by Mr. Horan and passed unanimously.

3. 10-06 Application of Marianne Szczesiul and Jean Bernard, Owners, Peter Ernst, Agent, requesting a rear yard variance from Article Eight, Section A of the Simsbury Zoning Regulations to allow for construction of a garage and master bedroom addition on property located at 2 Talcott Mountain Road. (Map H-12, Block 109, Lot 001). R-40 Zone

Jean Bernard, home owner, spoke on behalf of this application. He said that they are requesting a variance to allow them to build an addition consisting of a two car garage and a bedroom on the second level. This would add about 800 square feet to the house. Mr. Bernard said that they purchased the house in 2008 and the house did come with a variance, which they had intended to use to construct an addition based on plans that were transferred over to them by the then existing owner (Fishman). This would have doubled the size of the house so instead they worked with an architect and have come up with the plan shown this evening. Mr. Bernard said that the house is a contemporary style home. A very small amount of this property is buildable as most of the property is sloping. Mr. Bernard said that their children are living in the lower level, and they want to bring that living space up to the second level. At this moment they only have one room on the top level, which is their master bedroom.

Chairman Stempien asked about the variance they already have on the land that comes off the front end of the house. Mr. Bernard said that the previous variance had been for the east-north-easterly corner off the back of the house. Chairman Stempien said that variances run with the land so the previous variance that was on the land when they bought the house still exists. The concern is that if the Board gives him the new variance that he is requesting, the previous variance still exists and if he sells his home in the future that person can use the new variance, plus the previous variance and build something huge. Chairman Stempien said that the homeowner can say he would like to switch the variance, but it is entirely up to him. He can relinquish any request for the old variance in lieu of

the new requested variance, but they would need a formal statement from him saying this so it is on the record.

Chairman Stempien read the draft motion. Mr. Bernard agreed with the motion as he feels the new variance meets with their plans.

Chairman Stempien opened the public hearing to public comment. As no one in the audience wished to speak, Chairman Stempien closed the public hearing.

Chairman Stempien moved to approve the application of Marianne Szczesiul and Jean Bernard, Owners, Peter Ernst, Agent, requesting a rear yard variance from Article Eight, Section A of the Simsbury Zoning Regulations to allow for construction of a garage with a master bedroom addition above it as shown on a plan dated 6/18/10 submitted by Peter Taylor Ernst, Architect for the Bernard residence located at 2 Talcott Mountain Road. The motion reads as follows:

Whereas the Simsbury Zoning Board of Appeals has held the required public hearing on the above referenced matter on June 23, 2010, and

Whereas, the Board has taken all testimony pertaining to this matter as required by law and reviewed the details of all submitted materials, and

Whereas, during the public hearing on this matter, the OWNER has agreed to formally relinquish any rights to the variance granted previously on June 14, 2006, and has agreed to place such formal agreement on the Simsbury Land Records, and

Whereas, this finding is borne out by the circuitous nature of the driveway which serves as the access to the subject property, and

Whereas, the variance which is the subject of this application is actually a reduction in the rear yard variance which was previously granted in 2006. The 2006 variance permitted a structure to be constructed with a 34' 4" setback from the rear property line, whereas the current variance seeks approval to place a structure at 35.41' (PLUS OR MINUS) from the rear property line.

Whereas, the Zoning Board of Appeals finds the following regarding this appeal:

1. The OWNER of the subject property has agreed on the record during the public hearing to relinquish any and all rights to the previously granted 2006 variance, and has agreed to properly record this on the Simsbury Land Records.
2. The Board finds the steep topography of this site to be a

legitimate hardship with regard to construction of an addition to the existing dwelling on this site and in the location shown. In addition, it also finds that the area currently proposed for construction, as compared to the 2006 location, to be superior as regards its placement on the land, its relation to the existing dwelling and its relation to the existing topography and its relation to any abutting properties.

3. The Board finds this 2010 variance request to be less intrusive into the required rear yard setback and thus represents the minimum acceptable variance needed to grant the owner the needed relief.

4. The Board also finds the current variance less intrusive as to footprint as well in that the 2006 variance would have permitted construction of an additional footprint approximately 1,652 square feet while the current variance request permits the construction of an additional 725 square feet on the property. This is a significant reduction in site disturbance of this steep site.

5. The location of the proposed addition is farther from the down sloping property line and thus will lessen any potential for off site impacts during construction.

Therefore, based on the above findings and based on the OWNER'S agreement with regard to relinquishing any and all rights to the 2006 variance, this request is hereby GRANTED.

The motion was seconded by Ms. Martin and passed unanimously.

This was approved with a 5 to 0 vote (Stempien, Horan, Martin, Bingham, and Cosgrove all voted approval).

4. 10-07 Application of Wes Wisse and Deborah Hall-Wisse, Owners, requesting a side yard variance from Article Eight, Section A of the Simsbury Zoning Regulations to allow for an extension to a current deck on property located at 73 Laurel Lane. (Map E-05, Block 301, Lot 003A). R-80 Zone

Wes Wisse and Deborah Hall-Wisse, homeowners, spoke on behalf of this application. Mr. Wisse said that they would like to extend their deck along the house. It would not be any closer to their neighbor's yard and would go back farther into the woods/shade. He said that they originally wanted to put down a patio, but because of the sloping and the grading the contractor said that the yard is too wet, and the patio may shift around. Mr. Wisse said that they would have to put in six sonotubes dropped down to support the weight of the deck and have it not attached to the house or the other deck. They also would like to put a hot tub on the deck. Mr. Wisse showed pictures of the proposed deck taken from their next door neighbor's deck to show where the proposed location would be. Mr. Wisse said that there is

also a letter on file from their next door neighbors, the Elders, stating that they are not opposed to this deck.

Mr. Beach spoke of the A-40 zone history stating that the A-40 lots required 40,000 square feet, but did not have the 200-foot frontage. The side yard requirements in the original A-40 lots was 8 ½ feet. After the A-40 zone went away a lot of these lots automatically became R-40's.

Chairman Stempien opened the public hearing to public comment. Chairman Stempien read the letter from Stephen and Brenda Elder supporting the proposed deck extension. As no one in the audience wished to speak, Chairman Stempien closed the public hearing.

Mr. Wisse turned in the signed affidavit for posting of the sign.

Mr. Cosgrove moved to approve the application of Wes Wisse and Deborah Hall-Wisse, Owners, requesting a side yard variance from Article Eight, Section A of the Simsbury Zoning Regulations to allow for an extension to a current deck on property located at 73 Laurel Lane. The hardship being that this was originally an A-40 zoned lot, which with newer zoning regulations later became rezoned to be an R-80 Zone lot. The motion was seconded by Ms. Bingham and passed unanimously.

IV. DISCUSSION AND POSSIBLE VOTE ON ANY AGENDA ITEM

Done

V. OTHER MATTERS AS MAY PROPERLY COME BEFORE THIS COMMISSION

None

VI. DISCUSSION ITEMS

Chairman Stempien distributed a handout regarding alternates. He said that Tegan Blackburn researched an actual case regarding alternates. The Board had a brief discussion regarding procedures for alternates during the meeting and the actual voting process.

Chairman Stempien and the Board had a brief discussion with Howard Beach regarding the Charrette.

VII. APPROVAL OF MINUTES of March 24, 2010

Ms. Martin moved to approve as presented the Minutes of March 24, 2010. The motion was seconded by Mr. Horan and unanimously approved.

VIII. ADJOURNMENT

Mr. Cosgrove moved to adjourn the Zoning Board of Appeals meeting at 8:10 p.m. The motion was seconded by Ms. Martin and passed unanimously.

Thomas Horan, Secretary