

From: Lois Laczko August 17, 2009 1:07:36 PM
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Cc:

DRAFT

ZONING BOARD OF APPEALS
MINUTES – SPECIAL MEETING
AUGUST 12, 2009

I. CALL TO ORDER

Peter Stempien, Chairman, called the Zoning Board of Appeals to order at 7:30 p.m. in the Main Meeting Room of the Simsbury Town Hall. The following members and alternates were present: Peter Stempien, Thomas Horan, Nancy Haase, Sharon Lawson, Tegan Blackburn and Craig MacCormac. Also in attendance were Lynn Charest, Zoning Compliance Officer and other interested parties.

II. APPOINTMENT OF ALTERNATES

Chairman Stempien appointed Ms. Blackburn to sit for Mr. McCann and appointed Mr. MacCormac to sit for Ms. Martin.

III. PUBLIC HEARING

1. 09-02 Application of Christine Bonchick, Owner, requesting a Variance from Article Three, Section A.5 of the Simsbury Zoning Regulations for placement of a shed in front of a dwelling, and front and side yard variances pursuant to Article Eight, Section A of the Simsbury Zoning Regulations on property located at 23 Drumlin Road (Map B-18, Block 504, Lot 061). R-40 Zone (continued from special ZBA meeting held on August 12, 2009)

Mr. Bonchick, Owner, spoke on behalf of his application. He said that he is trying to place a shed on his property. The shed is not a typical shed, but more along the lines of a barn type structure. A drawing of the shed was shown. Mr. Bonchick said that the difference between what he has purchased and that drawing is that his shed does not have a cupola and the door is on the side of the structure. He is requesting permission to place the shed in

front of the house because the way the property is set up does not accommodate it to be easily placed in the back yard or the side yard. Pictures of the property and proposed shed location were passed around for the Board members to look at. Mr. Bonchick said that the shed is pre-built, and he explained by showing on the plot plan why a truck would not be able to get around his house and place the shed in the back yard. One of the problems is that his septic system is in the front of the property. He also showed on the property where there is a steep wooded hill, and also where the swimming pool is located, which would prevent a truck from getting to the rear property.

Mr. Bonchick said that when he was at the last meeting he was asked to get an engineering survey done. The survey was done and the survey was shown at this meeting. He has tried to minimize the variance and is now requesting about a five-foot variance from the side yard. This is somewhat centered from both the street and the front of the house. This is the best he can do because of the topography of the land (the hills and the wooded nature of the lot). Ms. Blackburn asked if any neighbors have made any comments. Mr. Bonchick said that the immediate neighbor has no problem with the shed placement (email in the file).

Mr. Bonchick said that they are trying to place the shed in such a position to minimize the visibility from the street using the natural tree and bush coverage. Ms. Blackburn asked why he needs the shed. Mr. Bonchick said that he has three young children with multiple bikes, skateboards, etc. He also has pool equipment, a generator, etc. which have all overcrowded the garage to the point where one car cannot get into the garage. Mr. Bonchick also explained that to get to the garage they have to go outside (no access from house). There is also no mud room.

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Mr. MacCormac asked why the shed cannot fit within the lower right corner of the building envelope (showed on the plan). M. Bonchick explained that there is a significant amount of trees there (50 – 60 foot pine and oak trees), and the property also slopes. The Board looked at the topography map and saw where the area Mr. MacCormac was questioning actually looked kind of open. Chairman Stempien said at that location the shed would still be located in front, but would not be on the side. This would eliminate the side yard variance, but the applicant would still need a front yard variance. Mr. Bonchick explained that in that area there is a slope, a stonewall, and also a number of bushes and trees. He also had a concern regarding the plumbing of the pool that is also located in that area.

Chairman Stempien asked about the orientation of the shed. Mr. Bonchick said that the doors would be facing the driveway. The narrow end of the shed will be facing the street with a window also facing the street. Anything that can be seen from the street will have landscaping in front of it. Chairman Stempien asked if any trees would be coming down. Mr. Bonchick said that they are trying not to take down any trees.

Chairman Stempien asked if he had gone back to Kloter Farms and asked them about being able to place this shed within the envelope in the back corner of the house. They could unscrew the sides, bring it in, and put it back together. Ms. Lawson said when she purchased a shed the shed was brought to the house by truck, but was then placed onto rollers and moved onto the property. It also had to go up a fairly steep hill. Mr. Bonchick said that at Kloter Farms they load the shed onto a truck and then drop it right onto the location at the site. He was told by Kloter Farms that the only piece they put on at the site is the roof for this particular model shed. He also said that the other sheds come 100% built. Chairman Stempien asked why this shed (which was constructed) cannot be un-constructed, placed at a location and then be reconstructed. Mr. Bonchick explained that this is a prefab shed and was built in Pennsylvania (by the Amish). He has already purchased the shed and Kloter Farms would like it off of their site and onto his property. The Board members further discussed with the applicant other possible locations for the shed on his property. Mr. Bonchick explained why the locations pointed out would not work (including blocking the garage, blocking the pool gate and also back of shed facing the neighbors home). Chairman Stempien explained that he cannot find a hardship for the land owner. Mr. MacCormac discussed the possibility of Kloter Farms rolling the shed onto a rear location. Mr. Bonchick said that there is also three tons of crushed stone that would have to also go underneath the shed.

Mr. Bonchick told the board members that he would not have bought the highest end shed that they make to get the most aesthetically pleasing shed, nor would he have put in the extra options of the windows to make it look pleasing from the street (all cost him extra money). He does realize that the board does not care about the economic hardship for a variance (board explained that they care, but are not allowed to consider that as a hardship). Mr. Bonchick said that he thought after the last meeting that he had to come back with a survey (which he does have) and try to minimize the requested variances. He said that he has done what was requested, but feels that even though he has done what was asked, that is not what they want. He said that he knows nothing in life is guaranteed, but felt when he left last time that if he got the survey and made a very good attempt to minimize the variances, which he has mitigated (now five-foot variance) that he thought he had done everything he could be meet the criteria. Mr. MacCormac said that he has done that and the providing of the survey helps

a lot in terms of the board being able to conceptualize. He feels that the applicant can position the shed with the same exact configuration except for three/four feet towards the driveway and then back maybe 20-feet. Mr. MacCormac showed the possible positioning of the shed on the site plan (the same orientation and back into the building envelope). He said that it does not impinge upon the gate, pool; or the piping. Chairman Stempien said that this site would not work because there is a topo line (showed the line). There would have to be leveling.

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Ms. Blackburn asked when this plan was prepared did the engineer look at some other options for placement of the shed. Mr. Bonchick said that he was not home when the survey was done, but he said the engineer took into account the topography, the trees, retaining walls, etc. He also took into account the aesthetics from the street as that was the applicant's biggest concern. Ms. Lawson said that this shed was purchased without working out the logistics first (cart before the horse). Mr. Horan said that it is almost a self-imposed hardship. Ms. Lawson said that now the board is running into all sort of obstacles, which are stressful to the applicant, but also they have they limit of the law that they have to work with in terms of what the board can say yes and no to. Mr. Bonchick said that the law is written to try and protect the character of the neighborhoods, keep good will in neighborhoods, trying to protect safety zones, environmental concerns, etc. He does not feel that the placement of the shed is impacting or violating the spirit of any of the reasons that the law was created. Mr. MacCormac said that they are required to uphold the zoning laws, protect the interest of the neighbors in the community, and also attempt to find the means to satisfy the applicant's desires. Ms. Blackburn said the hardship is based upon the unique characteristics of that particular parcel and piece of land. She said that the difficulty that this board has whenever anyone comes before them is if they did something to create a condition (self-imposed condition) that is not something that enables the board to approve an application for. There are requirements they have in terms of what they can and cannot do. She said that they work with people to have the best possible outcome. This is the challenge that the board has this evening with the current application. The component being that the shed has been purchased and the applicant wants to do something with it.

Chairman Stempien said that he got upset earlier in this meeting because the Kloter Farms salesman told the applicant that they cannot take the shed apart to place it in the back yard. Ms. Lawson said that Kloter Farms may

not have anyone on staff that can do that type of work, but she said that there are construction people out there that can get that shed to the back lot (may have to be subcontracted). The applicant reiterated his shopping for the shed at three shed companies (Cape Cod Fence, Skips and Kloter Farms). He said that all three told him the same thing; they will not drive over a septic system, nor deliver over a septic system.

Mr. Bonchick said that he is here to answer all questions. He does not know what he can say that will help his situation and he also does not want to hurt his situation. Chairman Stempien said that the hearing is still open, but once he closes the hearing the applicant cannot say anything else. Mr. Bonchick asked for any questions or suggestions. He said that the board has the benefit of having access to the tape and he only has his notes, which were to get an A-2 survey (which he did), and minimize the best he can the variance (which he did). Chairman Stempien said that the applicant has done what was asked and it is appreciated.

Ms. Lawson suggested that the applicant go back to the salesman and explain that he is in a bind and ask if they have anybody anywhere that can get this shed to the back of the property. Let them know that accepting delivery from them is going to necessitate them finding a way to get it into the back yard.

Chairman Stempien asked the applicant to go back to Kloter Farms and have them tell him that it is impossible to put the shed anywhere on that side of the house. This will give the board something to base their variance on. The next meeting is scheduled for two weeks from now. Mr. MacCormac said that they need input from a professional saying that what this commission is saying might be able to be done cannot be done. This would give them a hardship. He said that what they are asking the applicant to do is to seek a source of informed expertise that could determine whether it is, or is not, possible to convey weight across the septic system safely. If the applicant can come back with an expert opinion saying that it is not possible, then now they would have a hardship. The Board continued discussion of the requested variances and the possibility of eliminating one or two of them by placement of the shed. Also, they continued discussing the hardship as being self-imposed (or not).

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Ms. Blackburn said that what she thinks she is hearing from her fellow board members, and she thinks might be helpful to the applicant, is that they would have, perhaps, a sufficient basis to grant the variance that the

applicant is looking for if the board has some qualified opinion regarding the issue on the transport and damage that might be caused. Mr. MacCormac said, just to be clear, that information would not necessarily give the board enough information to grant the variance the applicant is asking for, but it would, perhaps, suggest that this option is not an option so perhaps they can then consider other suitable placement, which might result in a variance, but not this exact variance. Mr. MacCormac said that the board needs to consider what the zoning laws are in respect to the intent of the law and how they can avoid creating a variance to those laws, and would also have to consider the neighborhoods concerns. They need to help the applicant use his land in the way that he wants to. Chairman Stempien said that this variance would go with the land, meaning that whoever owns the home (in the future) still would hold whatever variance granted. Ms. Charest said that the variance has to be very clear in what is granted.

Mr. MacCormac suggested that they ask the applicant to get them some additional information and to continue this hearing understanding that if the board does not want to do that then the other option this evening would be to make a motion and vote on that motion. The applicant has heard the questions and concerns and that should be taken into consideration. Chairman Stempien said that the applicant has to ask them to make a motion and vote. Mr. MacCormac said that they could suggest that the applicant get them additional information, specifically an informed opinion, about whether or not it is feasible to transport this specific shed over the area and place it within the building envelope.

Chairman Stempien stated to the applicant that even if he does get the information requested, it does not mean an automatic approval of the requested variance. Mr. Bonchick asked for clarification by asking where the board proposes that he place the shed. Chairman Stempien showed on a small map a location where there would not be any side or front variance required. The only variance the applicant would be asking for would be a variance for the placement of the shed in the front of the house. Mr. Bonchick asked if he would need a septic engineer for that location. Mr. MacCormac said that the septic engineer is needed only if he decides to place the shed in the back of the house. He said that he would like to find out if it is feasible to transport the shed within the building envelope to a place that would not require a variance of any kind. If that could be done, then the applicant does not even have to come back. Mr. Bonchick said that his back yard is heavily wooded, and for him to place the shed in his back yard (if it can be transported) he would need a back yard variance. He showed on a map the wooded back area of his property to the board members.

Ms. Blackburn said if the applicant does choose to get an expert opinion that indicates that it would be impossible, or damaging to the septic system, to move it to the rear of the property to support the hardship that

the applicant articulated in the application it would be very helpful. There has to be a specific basis for a hardship for a variance. Mr. Horan suggested that the septic people give the board an idea of where the leeching fields go (straight out or off to the side). Mr. Bonchick told the board that the fields go straight out from his house.

Mr. Bonchick said his concern is that if he comes back to the Board with an expert opinion that it would damage the system (and gets this written to the board's satisfaction), will he again be placed in the same position where he comes to the meeting with what the board has recommended and still is not satisfying what the board wants. Mr. Bonchick said that is what he feels has happened this time. Ms. Blackburn said that the board is not recommending that he get an opinion, but more the case that it would be very helpful. If he does have it, it would give them the information that the board needs in order to consider the application and perhaps find a hardship. She said that without that her hands are tied.

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Mr. Bonchick asked that this board table this discussion. He does not know if he will be ready for the next meeting scheduled in two weeks. Ms. Charest said if he is not ready, he can request an extension (in writing).

Mr. Horan moved to continue this application until the next meeting. The motion was seconded by Ms. Haase and passed unanimously.

IV. DISCUSSION AND POSSIBLE VOTE ON ANY AGENDA ITEM

None

V. ADJOURNMENT

Ms. Haase moved to adjourn the meeting at 9:00 p.m. The motion was seconded by Mr. Horan and passed unanimously.

Thomas Horan, Secretary