

From: Lois Laczko January 28, 2010 12:12:04 PM  
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ADOPTED

ZONING BOARD OF APPEALS  
REGULAR MEETING  
NOVEMBER 18, 2009

I. CALL TO ORDER

Chairman Stempien called the regular meeting of the Zoning Board of Appeals to order at 7:30 p.m. in the Main Meeting Room of the Simsbury Town Offices. The following members were present: Peter Stempien, Thomas Horan, Nancy Haase, Katie Martin, John McCann and Sharon Lawson. Also in attendance were Lynn Charest, Zoning Enforcement Officer and other interested parties.

II. APPOINTMENT OF ALTERNATES

None needed.

Mr. Horan read the Call.

III. PUBLIC HEARING(s)

1. 09-18 Application of Elizabeth H. Dolin, Owner, Mark S. Drake, Applicant, requesting a side yard variance from Article Eight, Section A of the Simsbury Zoning Regulations to construct a front entrance foyer on property located at 5 West Tomstead. (Map G-08, Block 121, Lot 060A). R-15 Zone

Mark Drake (representing Elizabeth Dolin) handed out drawings of the entranceway. He said that this is a pre-existing non-conforming condition. The house was built before the existing zoning regulations were in effect. This is an R-15 zone with a 12-foot setback from the property line. The lot should also have 100-feet of frontage, but this has only 50-feet of frontage. The house is a cape placed sideways so that the gable end is pointing to the street. There is no visible entrance to the house. The driveway is to the left side. Mr. Drake said that they want to give themselves a street presence with a formal entrance to the house. The

septic field was placed in the front yard so the driveway cannot be moved to the opposite side of the house. Mr. Drake said that they have 12-feet to the left side property line and are asking for a variance of 8-feet encroaching upon the side line by four-feet.

Chairman Stempien asked if there was a garage. Mr. Drake responded no garage and the driveway is oriented on that side of the property. Mr. Stempien said that this would make the car being parked in front of the house all of the time. Mr. Drake said yes and that is where it is already. Mr. Drake said that the hardship is the fact that setbacks on zoning for the R-15 is nonconforming to begin with. They cannot expand either way. Mr. Stempien discussed the possible location of a garage in the back yard if someone (in the future) wanted to place a garage on this property. If a porch is placed in the location requested that would stop anyone from driving down the driveway to gain access to a garage. Chairman Stempien explained that when a variance is granted it goes with the land.

Chairman Stempien asked if they had talked to the neighbors. Mr. Drake said that they have. Most of the neighbors are in favor with one neighbor opposed. The home of the neighbor that is opposed fronts on Seminary and their rear yard backs up to 5 West Tomstead. Mr. Drake showed this on a plot plan. Mr. Horan asked what is behind the frontage. Mr. Drake said that it is the living room and the kitchen (showed on a plan). Mr. Horan asked if they had thought about putting the front door into the living room. Mr. Drake said that they would also be non-compliant if they did that. Also, there would now be several entrances into the same room area. He also explained where the existing driveway and septic field is located.

Elizabeth Dolan, Owner, said that when she purchased the house she did not know that the house was non-conforming. She purchased the house ten years ago. Mr. Horan asked if she had concerns about not having any access to the back yard if this is constructed. She said that they do not have much of a back yard to begin with. She said that if they ever built a garage, they would not have any grass or play area for the kids. Mr. Drake said that they do have a rear entranceway for the kids to go out to the backyard. He said that the entrance in the front would give them a safe entrance street side.

Chairman Stempien opened the public hearing for public comments. He also read a letter from Mrs. Dolin dated November 15, 2009 stating that her surrounding neighbors are aware of the meeting to be held on November 18th. Eight neighbors signed that they are aware and have no issue with this application. Chairman Stempien also read a letter from Eric and Anne Hellwig, 26 Seminary Road, stating that they are not in favor of this application. Chairman Stempien asked Mr. Drake if he had spoken with the Hellwig's. Mr. Drake said no, but he does respect the opinion of all the

neighbors. He said that they find themselves in a box that they cannot get out of. The lot is non-conforming and there is no room for negotiation here because any type of improvement will be encroaching upon that sideline. It is through no fault of their own other than the fact that it was zoned that way. The zoning took place after the house was built in the non-conforming lot. It puts the home owner in an impossible position.

Ms. Martin said that it looks like an entry way would improve the look of the house from the angle of the neighbors having to look at it. The existing stoop is not attractive. A nicer frontage for the entrance of the house would be a better look for the house aesthetically.

Mr. Drake said that there is an option of moving a bench (showed on plan) and putting in another door there so the kids have direct access from the kitchen out to the back yard. There would then be two doors, one facing the street and one facing the back yard from the mud room/foyer area.

Chairman Stempien suggested that they put in a fence from the edge of the lot across the area which would aim people to the other side. Mr. Drake said that there is a unique situation where all three neighbors are very close and all good friends. Mrs. Dolin said that she had mentioned a fence, but the neighbors did not like the idea. She said that she is trying to do what is best for the neighbors. Mr. Drake said that a fence will also confine the area even more. Ms. Haase asked about the fencing on the right side of the house and asked if it ever is open. Mrs. Dolin said that side is used as a dog pen and would not be a good use to get into the back yard.

Chairman Stempien asked Mr. Drake what if they decided to grant them only a 6-foot variance instead of 8-feet, what would this do for the applicant. Mr. Drake said that is not up to him as he is only the agent who is trying to help out the applicant and bring logic of their argument to the table. He said that he would have to discuss with the home owner what they possibly could do with 6-feet. Mrs. Dolin said that with the money that they are putting into this project, and then to only get six feet would not be worth the cost of this project. She will not go with six feet. It would be too small. She said that it had been mentioned going into the front. If the Town would let her go out into the front she has only 35-feet. She also has a septic tank to consider, and a very small leech field. This would also put her closer to the road. Chairman Stempien said that there could be a zoning and also a Health Department issue. Mr. McCann asked where the leech field is located. Mr. Drake showed the location on the plan. Mrs. Dolin said that the tank actually begins in the driveway and goes out in an angle into the front lawn.

Mrs. Hellwig said that she is willing to work with the Dolins, but did not agree with the eight-foot request as this would only leave a four-foot

sideline, and would be too close to their property. She said also that any maintenance work that is done on that side would be onto their property (i.e. putting up a ladder). Also, any traffic going back and forth on that side would go too close to their own property. Chairman Stempien asked if they would be willing to sell two-feet of their property to the Dolins. Mrs. Hellwig said that she would not save anything on taxes.

Ms. Martin said that four-feet is a very small space, but yet it would improve the entranceway. It would make a nice safe accessible way to enter the house from the street. This would be an improvement, but it is hard because of the configuration of the lot.

The Board members, applicant and Mrs. Hellwig (neighbor) spent some time discussing and looking at the plot plan for the Hellwig's property. Mr. McCann asked her if she was concerned about foot traffic going onto her property. Mrs. Hellwig said that she is not concerned with the current owner's going onto her property, but what will happen in the future (if the current owner should ever sell property). Mr. McCann asked Mrs. Dolin if she was interested in putting up a new fence (even a row of hedges) that would preserve their neighbor's property line. Mrs. Dolin is not interested in putting up a fence.

Ms. Lawson asked the applicant/agent to give a clear statement of what the hardship is. Mr. Drake said that the hardship is the fact that the house is squeezed within the nonconformity of the property lines that were put into place by zoning after the house was built. He said that this puts the applicant into an impossible position because neither side of the house can be improved in anyway because a variance request would be forced on either side of the house. There is no ability to make an improvement to the house. Ms. Lawson said her understanding of what was just said is that a change in the zoning regulations from the time the house was built until the present has put this house into a box that is small enough so that there is no way to move anything that is not going to need a variance. Mr. Drake said that there is no way that they can make an improvement without having a variance either to the front building line or to the side building lines.

Ms. Charest said that she did research on the lot as far back as she could in the Town Clerk's Office (by deeds). She went back to 1918, and the configuration of the lot at that time was 50-feet wide. She could not find any more deeds after that time. This house (on the assessor card) was built in 1964. The R-15 zone did exist in 1964 with at 12-foot side yard, 35-foot front yard and 25-foot rear yard. The house was built within the setbacks in the R-15 zone on a non-conforming lot.

After asking if there were any further questions and hearing none, Chairman Stempien declared the public hearing closed.

Ms. Martin moved to approve the application of Elizabeth H. Dolin, Owner, Mark S. Drake, Applicant, requesting an eight-foot side yard variance from Article Eight, Section A of the Simsbury Zoning Regulations to construct a front entrance foyer on property located at 5 West Tomstead. The hardship being a non-conforming configuration of the property and there is not another suitable location on the property due to placement of the septic and the really small configuration of being right on top of the building lines. This entryway would improve safety and access into the home. The motion was seconded by Ms. Haase.

The board members discussed the application before voting on the motion.

The motion tied with a 3 yes (Stempien, Haase, Martin) and 3 no (Horan, Lawson, McCann) vote. The motion failed (variance denied).

2. 09-19 Application of Michael and Stacey Flammini, Owners, requesting a side yard variance from Article Eight, Section A of the Simsbury Zoning Regulations to construct an in ground pool on property located at 3 Kilbourn Farms. (Map G-05, Block 302, Lot 007-2). R-40 Zone

Michael and Stacey Flammini, home owners, spoke on behalf of their application. Mr. Flammini turned the sign affidavit into the chairman. He said that they are requesting an eight-foot variance in their side yard to put in an 18-foot x 36-foot in-ground swimming pool. Mr. Flammini said that he has spoke with all of their neighbors in adjacent properties. They are all in favor of the pool. He said that they also spent considerable time with the Planning Commission. Mr. Flammini said that when this property was originally built prior to their moving there in 2005 (developed in 2001), because of where the land is, their front yard is actually considered the property on the south that faces along Hoskins. They are actually building the pool in what is considered their rear and side yard. Mr. Flammini said that they have very little opportunity to put the pool in other places. The reason that they need a variance in their side yard is that for safety reasons and want the pool visible at all times to the deck that sits in the back of the house. Mrs. Flammini said that they currently have a fence going along the back yard (dog fence). This will be coming down and a new fence will go up. She showed on a plan the location. She also showed on the plan where they will place the pool equipment.

Ms. Martin asked why they could not place the pool on the other side yard where they would not need a variance. What would the hardship be in that location. Mrs. Flammini said that there are not any windows facing that direction, it is all garage. Chairman Stempien also said that this location would not be the side yard, but is considered the front yard.

Carol Wrobel (neighbor) said that she in support of this variance. She feels it will be a great improvement to the land.

Chairman Stempien closed the public hearing and read into the record names of neighbors who approve this application. They are Ramesh and Joyti Mugalam, 1 Kilbourn Farms, Edward and Carol Wrobel, 96 Hoskins Road, and Daniel Bravo and Ruth Crosby, 49 Kilbourn Farms.

Mr. Horan moved to approve the application of Michael and Stacey Flammini, Owners, requesting an eight-foot side yard variance from Article Eight, Section A of the Simsbury Zoning Regulations to construct an in ground pool on their property located at 3 Kilbourn Farms. The applicant has gone through all the hoops and hurdles trying to locate it in such a way as to conform to the strange configuration of their lot, and gone and agreed with the conservation easement suggestions. For safety reasons this location is where it is best placed on the property. The motion was seconded by Ms. Martin 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

None

VII. APPROVAL OF 2010 REGULAR MEETING SCHEDULE

The Board discussed the 2010 regular meeting schedule and decided to move their meeting start time to 7:00 p.m. (instead of 7:30 p.m.). Also a decision was made to hold the December 2010 regular meeting on December 15th (not on the 22nd)

Ms. Martin moved to approve the 2010 regular meeting schedule as amended. The motion was seconded by Ms. Haase and passed unanimously.

VIII. APPROVAL OF MINUTES of October 28, 2009

Ms. Haase moved to approve the minutes of October 28, 2009. The motion was seconded by Ms. Martin and passed unanimously.

IX. ADJOURNMENT

Before the meeting was adjourned, Chairman Stempien thanked Ms. Lawson for her time on the board. She received a letter of appreciation and a gift.

Ms. Haase moved to adjourn the meeting at 8:50 p.m. The motion was seconded by Ms. Lawson and passed unanimously.

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Thomas Horan, Secretary