

MINUTES
PUBLIC HEARING
ZONING BOARD OF APPEALS
LISBON TOWN HALL
TUESDAY, MAY 24, 2011
6:30 P.M.

The Zoning Board of Appeals held the following public hearings in the Town Hall, 1 Newent Road, Lisbon, Connecticut beginning at 6:45 PM on Tuesday, April 26, 2011:

1. 6:30 PM – Application #11-06: Ronald & Cindy Lisee, 138 Bundy Hill Road (Lot #0001, Assessor's Map #08), seeking variance of 5 feet (sec 8.5 of regulations) to erect accessory garage.
2. 6:45 PM – Application 11-04: Walter & Valerie A. Dziengiel, Lot Number 071, Assessor's Map 3 (102 Kendall Road), seeking variance from zoning regulations sections 8.4 and 8.5, to allow building on a pre-existing, non-conforming lot.

MEMBERS PRESENT: Ronald Babbitt, Robert Chubka, Richard Strnad, Frederick Kral, John Magness, Leo MacDonald, Attny. Kari Olson

MEMBERS ABSENT:

The following public hearing was called to order at 6:35 PM:

1. Application #11-06: Ronald & Cindy Lisee, 138 Bundy Hill Road (Lot #0001, Assessor's Map #08), seeking variance of 5 feet (sec 8.5 of regulations) to erect accessory garage.

Chairman Babbitt asked if there was anyone present to speak in favor of the application. No one stood to speak in favor of the application.

Chairman Babbitt asked if there was anyone present to speak in opposition of the application. No one stood to speak in opposition to the application.

This public hearing was closed at 6:40 PM.

The following public hearing was called to order at 6:45 PM:

2. Application #11-04: Walter & Valerie A. Dziengiel, Lot Number 071, Assessor's Map 3 (102 Kendall Road), seeking variance from zoning regulations sections 8.4 and 8.5, to allow building on a pre-existing, non-conforming lot.

Atty. Harry Heller of Heller, Heller & McCoy, 736 Route 32, Uncasville, was there to represent the applicants. He discussed that fact that R. Chubka should disqualify himself from this proceeding because he had had communications outside of the Public Hearing and again made that request for the record. R. Chubka would not honor that request, stating that he researched the lot at the assessor's office. Attny. Olsen asked R. Chubka if he had admitted his evidence at the hearing. He stated that he did not have the information at that meeting, but since the public hearing is still open, he could submit it today. The question then arose to whether or not the land was one parcel or two at the time of purchase. The Dziengiels stated that it was two. According to R. Chubka, it was shown as being one parcel.

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Attorney Heller stated that McMahon conveyed the deed in 1949. That created the lot as a separate piece of land, Lot 71 Assessor's Map #31, opposite side being Lot 72.

The question then arose as to whether or not a parcel could have a highway running through it, to which Attny Olson stated "yes". Attny. Heller then gave a copy of the deed and assessor's map to Attny. Olson. Chairman Babbitt questioned if the land was deeded so that the town may put a road through it? Does that necessarily create a "lot"? If the town took it on eminent domain, could the parties have met with agreement to make the parcel a building lot? Attny. Olson stated that she has not yet seen a deed making this a separate lot. She also stated that she does not know that it was a buildable lot in 1949 at the time of transfer.

L. MacDonald asked Attny. Heller if there is proof that there were 2 separate lots in 1949 in the material he just handed Attny. Olson. Attny. Heller stated that Exhibit B shows that when Kendall Road was conveyed there was a deed of record that severed ownership of the two parcels, and they have existed separately and independently since that day, and has been treated that way since then by the tax assessor.

Attny. Heller entered into the record a letter and packet marked as exhibits D & E.

L. MacDonald questioned how far back does the record go? Attny. Heller stated that he believes it goes back to 1949, since the road was built.. He stated that Dziengiels purchased the property in 2009. Attny. Heller believes the road created a legal severance of lots.

He then introduced a copy of a Notice of Decision of the Conservation Commission, which approved the lot a couple of weeks prior to this hearing.

Valerie Dziengiel spoke on her behalf. She is a licensed real-estate broker, and gave testimony as to the value of the property, or a market analysis. Based on the property being a buildable lot, it is estimated at \$100,000.00 to \$125,000.00. She also gave an analysis of the lot, if it was NOT approved, stating it would have no value and would actually be a liability to them.

Attny. Olson questioned Mrs. Dziengiel, as to what they paid for the parcel. Mrs. Dziengiel stated that it was a second tract of property conveyed to them. Attny. Heller submitted copies of two deeds pursuant to the Dziengiels acquiring property from McMahon, showing it was conveyed as two tracts. He states that the "Current owner stands in the shoes of the previous owners. Whatever rights the previous owners had, the new owner has the same right".

Attny. Olson then replied that the history of the entire property is at issue here.

J. Magness questioned if it was deeded as a separate tract in 2009. As far as a statute is concerned, there needs to be a record of a non-conforming lot. Attny. Heller stated that it was a non-conforming lot since 1970. R. Chubka questioned how that was determined, to which Attny. Heller answered, "by title search".

Zoning Enforcement Officer Ben Hull stated that it should not be called a "lot", that it is just a piece of land. He states that it wasn't deeded until 2009, and it is shown as such on the assessor's card. He stated that it was not a "lot" prior to that and that the applicant has caused the hardship by deeding the plot.

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L. MacDonald questioned the language; "lot" verses "plot". Attny. Olson stated that "plot" can not be used, that it is the Town Engineer who states it is not a buildable lot, and does not meet the definition of a buildable lot. Attny. Heller read the definition of "lot" in the town's regulations.

Attny. Heller then made a comment stating that Attny. Olson should not be consulting with Ben Hull, to which Attny. Olson retorted that she was not consulting with Ben Hull.

L. MacDonald then asked if Ben Hull had the assessor's cards in his possession right now.

Attny. Olsen reminded the board that that it is inappropriate for any board member to do independent research and should not engage in ex-parte communications, and reminded the board that it is the responsibility of the applicant and their attorney to prove their position.

Attny. Heller stated that Lot #71 has existed since 1949. He disagrees that it needs a deed describing it as a separate piece of property. He used subdivision with Planning and Zoning as an example. He stated that the applicants must demonstrate a hardship not arising from an act of their own and that it must be unique to this parcel. He states they are seeking relief due to the odd shape of this lot.

He stated that Exhibit B delineates location of three residential zones. Just a few 100 feet west on Kendall Road, it is located in an R-40 zone, 40 foot front 20 foot rear set back. He feels it is critical to compliance, as the neighborhood has been developed with setbacks consistent with those requested for this lot. (1.43 acres, 1 ½ times the requirement for an R-60 zone). He stated that Uncas health approved it for a septic system and that there are no site visibility impairments. He also stated that page 15 of the memorandum discusses cases described as safe havens. He cited cases that showed a great reduction in value, requiring the board to evaluate if there would be any public harm. He addressed the issue as to what precedent would be set, and submitted an example that states there would be no precedential value if the board were to grant the variance.

Attny. Olson asked if the applicant owned land contiguous to this land, to which the answer was "no", nor were any prior owners.

Chairman Babbitt clarified the question relating to the abutting golf course.

Chairman Babbitt then asked for comment in favor of the application, to which there was none.

He then asked for comment against the application, to which Ben Hull commented. He stated that the street card printed on March 4, 2011 shows where the property was separated on December 3, 2009, stating that the town works with the most up-to-date material. He also stated that he feels it is his duty to protect the town from something that could be a problem later.

Chairman Babbitt asked Ben Hull if anyone can do anything on Pleasant View Cove, to which Ben Hull replied that they still need to come to the Zoning Board of Appeals for building anything. Those on big lots could get some accessory structures, but not habitable space.

L. MacDonald stated that the previous town Attorney was to get a "cluster regulation" going.

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Attny. Olson suggested an "overlay zone" should be started with Planning and Zoning.

Chairman Babbitt asked for rebuttals. Attny. Heller questioned why Ben hull did not enter the document (property card) showing the status of 102 Kendall Road, having no value since it does not show the history of the property since 1949.

L. MacDonald questioned the packet from the applicant known as Exhibit E. Attny. Heller stated it was the property across the road (60 acres) with a list date of 12/18/2000. Attny. Heller states it may be the last evaluation date, but cannot be sure. Exhibit D shows a record date of 2/5/1979. Attny. Heller stated it was a certificate of devise from one generation to the next. L. MacDonald stated that exhibit D has 2/5/79 as a record date, and exhibit E has a different record date. Attny. Heller stated it was an error, that they should have been the same.

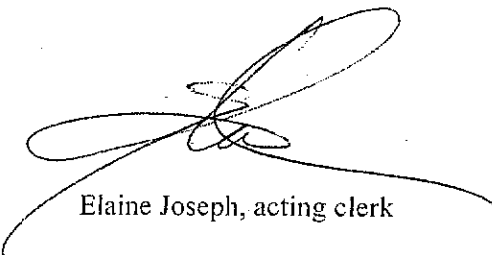
F. Kral stated that Exhibit D showed the land as forestland, and questioned if that was so because it was never built on. Attny. Heller stated that Public Act 490 classifies the property as forestland for a reduce tax rate, but does not know when it was classified as such.

Chairman Babbitt asked for public comment. Walter Derjue of 18 Pleasant View Cove stated that he has a lot where he cannot add on. What if the buyer wants to build, if this goes through? This needs to be a consideration.

A motion was made by L. MacDonald second by R. Chubka to close this public hearing at 8:20 PM.

VOTE: UNANIMOUS MOTION CARRIED

APPROVED: _____
Ronald Babbitt, Chairman



Elaine Joseph, acting clerk

RECEIVED FOR RECORD AT LISBON.
CT ON 6/1/2011 AT 10:30 AM
ATTEST. BETSY M. BARRETT, TOWN CLERK