

MINUTES  
PUBLIC HEARING  
ZONING BOARD OF APPEALS  
LISBON TOWN HALL  
TUESDAY, APRIL 26, 2011  
6:45 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. 6:45 PM – Application 11-05: Walter Derjue, Lot Number 11, Assessor's Map 23 (18 Pleasant View Cove), seeking variance from zoning regulations sections 8.1 and 8.5, to allow 25 ft x 30 ft addition for garage and habitable space.
2. 7:00 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  
MEMBERS ABSENT: John Magness, Leo MacDonald

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

1. 6:45 PM – Application 11-05: Walter Derjue, Lot Number 11, Assessor's Map 23 (18 Pleasant View Cove), seeking variance from zoning regulations sections 8.1 and 8.5, to allow 25 ft x 30 ft addition for garage and habitable space.

The applicant, Walter Derjue, stated that he does not have enough land in back and would like to add a garage at the side of his house. He stated that the neighborhood already has similar additions, using Lot #7 as an example. Chairman Babbitt questioned if his intentions were to create an apartment in the garage, to which the answer was "No". F. Kral requested to look at the plans.

Ben Hull stated that there is a railroad right of way adjacent to the property, and that this lot is the second largest lot at the cove and is in an R-80 zone. The applicant stated that all the lots at the cove are non-conforming. His lot is five lots put together.

R. Strnad stated that when the lot was put together, there were no regulations. Ben Hull stated that trucks, snow plows, etc. have no trouble getting down this street. Chairman Babbitt stated that in order to approve an application, the applicant must show a hardship. He feels that Planning and Zoning Commission needs to do something to help guide the Zoning Board of Appeals in their decisions. F. Kral gave an example of living on ¼ acre lot in Waterford. The applicant stated that he feels that the garage would be situated in a good place. R. Strnad questioned if the application is for a set back at the back of the property only, to which the answer was "yes".

Ben Hull stated that he was in favor of the application.

Chairman Babbitt asked for comment in opposition to the application, to which there was none.

This public hearing was closed at 6:57 PM.

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The following public hearing was called to order at 7:00 PM:

2. 7:00 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.

Atty. Harry Heller of Heller, Heller & McCoy, 736 Route 32, Uncasville, was there to represent the applicants. He stated that the applicants were requesting a variance on the set back for the front yard from 80 feet to 43 feet (29 foot variance) and the rear setback from 40 feet to 29 feet (11 foot variance), with a variance of the minimum building area from 40,000 square feet to 25,000 square feet. He presented a site plan delineating the septic and driveway locations. He stated the lot is crescent shaped, and is located at the north side of Kendall road. He also stated that the lot is in compliance but with the exception of the yard containment. He then submitted for the record a copy of the deed from John McCahan to relocate Kendall Road, creating the lot in September of 1949. Atty. Heller states that this shows that the lot exists as a valid lot. Chairman Babbitt questioned if the property was taken as eminent domain, to which the answer was "no". The land was deeded after an agreement between the original owner and the town. Atty. Heller stated that the town created the non-conformity of the lot, because there were no regulations at the time. Chairman Babbitt questioned if the applicants attempt to buy more property, to which the answer was "no", that the appellate court says the applicant is not required to do so. Chairman Babbitt then questioned if the abutting property was the golf course, to which the answer was that part of it is, and that it is zoned R-80.

Chairman Babbitt then stated that everyone on that street seems to have a good setback. He questioned if the applicant had given it any thought to move the house back to the golf course, which is also owned by the applicant. Atty Heller answered that the applicant had concerns that doing so would affect the future development of the golf course.

Atty. Heller submitted a mark-up of the same plan, applying front and side setbacks showing buildable area, which is not adequate for building. Atty. Heller stated that the hardship is that the lot was created prior to zoning, and that there is no possible way to build without a variance. He stated that the proposed house will not be out of character, and that the requirements for development for a single-family lot is consistent with the neighborhood. The house plan shows parking at side of house, with a 2 car garage below the house on left side. R. Chubka questioned if any other piece of land similar to this one has been approved for building. Atty. Heller stated that he has "done over 100 like this". It is a 1-½ acre lot, 60,000 square feet – it is not a small lot, he said. He stated it is "undersized" only that it is located in an R-80 zoning district. It would be compliant in an R-40 zone.

Applicant Walter Dziengiel spoke in favor of the application, citing homes that have 40 foot front yards that were built prior to zoning.

Ben Hull commented that it could be averaged within 300 feet for a set back based on neighboring homes.

Chairman Babbitt asked for comments opposed to the application.

Ben Hull, Lisbon Zoning Enforcement Officer, presented the board with copies of deeds and other materials

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related to this application. He stated that he believes the applicant had deeded the property in 2009, creating their own hardship. He states that the "side yard" is not actually the side yard. Ben Hull respectfully requested that the commission not make a decision that night in regard to this application. He requested that the board consult with the town attorney over the matter. He re-iterated that any hardship present, was made by the applicant in 2009. Chairman Babbitt asked for clarification on how the lot was created. B. Hull stated that Rex Road and the cove were good examples of similar situations. He stated that the applicant created the "lot". Prior to that, it was just a piece of land.

Chairman Babbitt asked if there was anyone else to speak in opposition to the application.

Robert Adams of 60 Kinsman Hill Road stated that the applicant's hardship appeared to be a financial one, which the applicants created for themselves. He stated that there are many parcels of land that are similar to this one, that are NOT building lots. If this goes through, he has concerns that it will give builders an "in" to do the same, and buyers will be unaware of the zoning problems.

Atty. Harry Heller stood for rebuttal. He asked to see Ben Hull's packet. He stated that it was not the case that the client created the hardship, and was concerned that Ben Hull would accuse them of such. A copy of the assessor's map at the time the application was acquired shows two distinct tracts of land, two separate and distinct parcels of property, billed by the assessor as "lots". The lot in question is #71. Walter Dziengiel stated that there are two houses on the same side, in regard to Ben Hull's statement regarding side yards.

Atty. Heller entered a copy of section 9.3 of the zoning regulations into the record (non-conforming lots). R. Chubka stated he had conversation with the town's assessor regarding this lot. Atty. Heller believes R. Chubka should be excused from voting, as he believes it is the board's right to evaluate only the information obtained through the public hearing, not from outside sources.

Atty. Heller reviewed the regulations, stating that in Section 8.5 it states that a set back variance would be required. Section 8.5.1 – Parking Spaces, was already addressed earlier. Section 8.4 – Minimum Buildable Area – 40,000 square feet, he acknowledges the need for relief from that. Section 8.2 – Residential Density may apply. The regulations determine how many lots may be subdivided, and Town Planner Jamie Rabbitt already stated it would not apply here, according to Atty. Heller. He stated that the lot was two tracts when McCahan owned it in 1949. Since then it has been treated as a distinct parcel, according to Atty. Heller.

Atty. Heller continued to say that this lot is bigger than other lots in town and yet has a hardship. He requests that all board members listen to the tape of the public hearing before voting at next month's meeting.

Chairman Babbitt stated that although Atty. Heller makes sense, Ben Hull's packet, including the deeds, clouds everything. He would prefer to have counsel at the next meeting for legal advice.

Ben Hull stated that he felt the applicants went around his back in trying to have the application approved, without his first reviewing the application and putting his signature on it. Atty. Heller stated that they did not go behind Ben Hull's back, saying they withdrew the original application when they did not have the signature.

Chairman Babbitt asked for public comment.

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Robert Adams, 60 Kinsman Hill Road, said that Atty. Heller made reference to what others said, and would like to see evidence instead. He would like to see evidence that the tax assessor is showing the lot as a “building lot”, as the applicant is stating. Adams stated that everything in reference to a lot would have a number assigned to it, but that not all are “building lots”. Atty. Heller stated that this lot is designated as a distinct lot. Atty. Heller then argued that he said it was a “separate and distinct parcel”, which is in conflict with what Ben Hull had said, according to him.

Ben Hull stated that all applicants are required to come to him first. He stated that he has worked with the Dziengiels for nearly 24 years and they know the “correct trail”. The applicant is a developer, he said, and they are good at it, which is why in his opinion they went around him on this one.

Mrs. Dziengiel commented that she did not know why Ben Hull was upset. She stated that they have been in business over 30 years and recognize the regulations. They checked to make sure it met state requirements first, having engineers and sanitation doing site work. She stated again that the property met the guidelines for the state of Connecticut. She stated she and Mr. Dziengiel knew the town regulations, and sought the advice of an attorney. It was the attorney who prepared the application and instructed the applicants to hand it in to the town clerk.

This public hearing was continued to May 24, 2011 at 6:45 PM.

This public hearing ended at 8:15 PM.



Elaine Joseph, acting clerk

APPROVED: \_\_\_\_\_  
Ronald Babbitt, Chairman

RECEIVED FOR RECORD AT LISBON.  
CT ON 5-3-2011 AT 1:50 PM  
ATTEST. BETSY M. BARRETT, TOWN CLERK