

**Town of Cromwell Zoning Board of Appeals
Public Hearing and Regular Meeting
7:00 P.M. Tuesday, November 23, 2010
Room 224 Cromwell Town Hall, 41 West Street**

Minutes

1. Call to Order

Chairman Thomas Tokarz called the meeting to order at 7:05 PM.

2. Roll Call

Present: Chairman Thomas Tokarz, Kimberley Enowitch, Shaun Sullivan, Ed Wenners

Also Present: Town Planner Craig Minor, BOS Liaison Ann Halibozek, Commission Clerk Sarah Voog

Absent: Alternate Stanley Stachura, Alternate Jeffery Ramia, Alternate Brian Fisk

3. Seating of Alternates

None Present-

4. Approval of Agenda

Kimberley Enowitch made a motion to approve the agenda, 2nd by Ed Wenners.

All in Favor, Motion Passed

5. Public Comments

Ann Halibozek, 7 Christian Hill Rd, BOS Liaison and BOS Liaison to the P&Z Commission said that at the P&Z Meeting last Tuesday (11-16-10) they discussed clarifying the regulations regarding a sloping yard and where the measurement for height are to be taken for the new regulations.

Herb Mitchell of 11 Robertson Rd said that the Town should inform any potential new homeowners of any grandfathered businesses within the zone of the property they are looking to buy. He said such as an industrial business in a residential zone.

Chairman Tokarz informed the applicants that there were only four board members present at the meeting as no alternate members were available to attend. He indicated a majority vote of four is required to pass any of the variances it would mean that all the members present would need to vote yes for any applications to be approved. He offered the applicants the opportunity to postpone their hearing until there were more than four members present.

All applicants opted to go forward with their applications.

6. Public Hearing:

- a. Application #10-16: Variance from Article 8.1 (minimum rear yard setback) to construct an attached deck onto the existing house at 3 Cedar Drive. Jason LeBlanc, owner/applicant.

Homeowner Jason LeBlanc presented application #10-16. He asked if everyone received the color copies he provided of the site of the proposed construction, he then proceeded to review each of the 14 site explanations with the Board. He explained that 60% of the parcel was a sloped bank. He described the proposal as an enclosed screened-in porch with an open attached deck around a pool that would allow use of the backyard that was not usable or a safe place to play as it is now. He told the board that he sent, two times, the required certified letters to the neighbors and Craig Minor agreed that he had complied with the requirement.

Kimberley Enowitch asked who designed the plan. He said his wife is a designer so she designed it and that he built this home, so he would be the one to do the construction.

Thomas Tokarz asked if the neighbors had any problem with the proposal and he said "No" that he spoke with Mr. Pandolfi, who is the neighbor that could see from his home the proposed improvements, and he had no problem with it.

Ann Halibozek, speaking as a resident (7 Christian Hill Rd), said that she lives near the applicant and walks Cedar Drive. She said she wanted to give him credit for trying to do something with the lot to make a backyard since it is such a steep slope and seemingly unsafe.

Thomas Tokarz asked if anyone else would like to speak on the application. Hearing none this motion followed.

Kimberley Enowitch made a motion to close the public hearing for application # 10-16, 2nd by Ed Wenners.

All in Favor, Motion Passed

Thomas Tokarz stated that the application was a classic hardship of shape of the lot and topography and there appeared to be no impact on the neighbors. He also cited that the proposed construction would be a drastic improvement to the lot. Ed Wenners and Kimberley Enowitch both agreed.

Ed Wenners made a motion to approve Application #10-16, Variance from Article 8.1 (minimum rear yard setback) to construct an attached deck onto the existing house at 3 Cedar Drive, Jason LeBlanc, owner/applicant, 2nd by Kimberley Enowitch.

All in Favor, Motion Passed

- b. Application #10-17: Variance from Article 11.3.b.4 (minimum buildable square)

to enable approval of a rear lot on North Road. Sebastian and Penelope Damiata, owner/applicant.

Attorney Sal Petrella of 630 Main St, representing the applicant, presented application #10-17. He indicated that the required cards for the application and posted signs were in place for a month or more and Craig Minor agreed. He asked if anyone would be abstaining from the vote and all members said "No". He said he did not want to talk about the industrial land use issue as it was not part of the application or the intended use of the property in question as the proposed use would be strictly residential. He indicated that the use of the term "buildable square" was implied and did not mean that it needed to look or be exactly like a square. He explained that the Damiata's have a right to use the property and the ZBA has a right to regulate what can be built on the property. He said the property is a five-acre parcel, and the intention is to build a single-family home in a residential zone and nothing more. He commented that if the variance was denied the parcel would be rendered unusable. He said the property has been assessed for years as a buildable parcel. Then he questioned what could the property be used for, if not for a residential building in a residential zone. He stated that the proposal would not affect the Town's comprehensive zoning plan. He talked about the 200' conservation easement bordering Robertson Rd where no tree removal or disturbance will occur and that the use of the land beyond the wetlands will not be an issue as it will not be used for any improvements per the current proposal. He addresses neighbors concerns from a prior meeting. He explained that with this proposal they have addressed privacy to be maintained at the entranceway and the entire row of trees wherever possible will be preserved. He indicated that the applicant has a three-phase process to go through before any construction can begin. He said they have approval from the Wetlands Commission, now they are before the ZBA and the next step is the P&Z approval for the special permit, where all plans are subject to the same approval process. He reminds the Board that the applicants do not want to do any subdividing of the property.

Jim Cassidy of Hallisey, Pierson & Cassidy, based in Rocky Hill, presented the engineered design. He indicated that there were big changes from the previous proposal. He reviewed, in detail with plan sketch boards, the proposed site plan depicting the home placement and land topography. He commented that he went to the site of the southerly accessway with the intent of recording, by photos, a few different perspectives of the property, but the wetlands vegetation in the area was much too dense and therefore this area could not be visible to the neighbors either. He said that the setbacks for the proposed building area are well over zoning requirements. He described the topography of the land and indicated that an actual square would be impossible. He then stated that in order to comply with the Town's regulations to develop the land a variance from the minimum buildable square would be needed. Upon conclusion, Attorney Petrella asked that the board allow time for rebuttal if needed after public comments are heard, Chairman Tokarz agreed to the request.

Public Comments on Application #10-17

Herb Mitchell of 11 Roberson Rd indicated that he would be speaking for a group of residents that are neighbors of the property under discussion (a group assembled at the podium, and Chairman Tokarz asked them to speak separately if they wished to).

Joe Polkowski and Olga Kwasnik of 1 Robertson Rd discussed a fire safety concern over emergency response vehicle being able to locate the property and the potential for their property and safety that could be affected in the event of a fire. They explained that their concern comes from a prior fire incident.

Herb Mitchell asked for the reason that the Chairman abstained his vote at the other meeting and Chairman Tokarz explained that although he is not compelled to say why, he chose to abstain because the motion had already fail without his vote, so he chose not to vote on the matter. He indicated a concern that the septic would drain down hill toward the pond.

Jim Cassidy and Sal Petrella gave responses to all the residents concerns of the use of the property and the intentions of the applicants.

Dan Cass of 48 North Rd a 30 year resident of Cromwell said he has lived across from the Damiatas for all that time and until recently he was not even aware there was an industrial business back there. He said they keep the grounds of their place impeccable and that he knows they keep both a personal and civic pride in their property.

John Brackley of 37 North Rd, a 35 years neighbor to the Damiatas, said that Seby was the first person to welcome him into the neighborhood. He described how Mr. Damiata wanted a new goat barn and that he came to ask him how he felt about it, since he would be able to see it from his place, which says that he cares about their neighborhood and what the neighbors think.

Marjorie Marchese of 45 North Rd said she looks at the 16 acres that is the developed Damiata property as gorgeous. She said that the proposed application can only improve property value.

Manuel Lavado of 51 North Rd said he knew his father (Sebastian) and he has seen how his son takes care of any property he owns and it is beautiful. He said that he is the former owner of the property in question.

Sandra Brackley of 37 North Rd described the Damiata property as beautiful. She said that they must spend thousands of dollars maintaining their property as she has seen the constant upkeep on the properties they do already.

Herb Mitchell of 11 Robertson Rd said that the Damiata's property is truly beautiful and there's no argument that the Damiata's keep nice properties. He is worried about the buzz saw noises that start at 6am.

The members heard all neighbor accounts of different issues.

Sal Petrella addressed certain concerns relating to soil & perk tests on site regarding the professionally engineered septic system plan. He stated that the applicant did not create the hardship relative to the parcel.

Sal Petrella asked Jim Cassidy to discuss the numerous site perk tests and ledge tests that were done on the site. Mr. Cassidy explained that although the buildable area is not technically square under the terms of the regulations he believed it to be within the realm of a variance issuance.

Ann Halibozek, 7 Christian Hill Rd, BOS Liaison indicated that the inland wetland permit was approved based on the uplands area review.

Thomas Tokarz asked if anyone else would like to speak on the application. Hearing none this motion followed.

Kimberley Enowitch made a motion to close the public hearing for application # 10-17, 2nd by Ed Wenners.

All in Favor, Motion Passed

Chairman Tokarz noted that this application was significantly different from the earlier one, and that there is no "financial hardship" claimed by the applicant; he is just asking to make residential use of a lot in a residential zone. Kim Enowitch noted that the proposed conservation easement was helpful. Ed Wenners agreed.

The consensus of the board was that the hardship was based on the unusual shape of the lot and the severe topography.

Ed Wenners made a motion to approve Application #10-17, Variance from Article 11.3.b.4 (minimum buildable square) to enable approval of a rear lot on North Road, Sebastian and Penelope Damiata, owner/applicant, 2nd by Kimberley Enowitch.

All in Favor, Motion Passed

c. Application #10-19: Variance from Article 8.1 (minimum side yard setback) to connect the existing detached garage to the existing house at 58 Field Road. James Morrissey, owner/ applicant.

Homeowner James Morrissey presented application #10-19. James Morrissey explained that the steps leaving his home would end where the proposed garage would be. He said that this would be a hazard to his wife and child as they would likely run into the garage when leaving their

home. He indicated that there is really no other placement of the garage because of the property lines and placement of the house on the parcel. He also said he can't move the structure back because of the septic system. Kimberley Enowitch said she is familiar with the house and the position of the home on the lot. She said she can't see any other placement of the garage and noted that there are several homes in the neighborhood that have added garages. She said she feels their request is in keeping with the neighborhood and that the addition would be an improvement to property values.

It is noted by Craig Minor that the required notifications were made.

Thomas Tokarz asked if anyone else would like to speak on the application. Hearing none this motion followed.

Kimberley Enowitch made a motion to close the public hearing for application # 10-19, 2nd by Ed Wenners.

All in Favor, Motion Passed

Ed Wenners made a motion to approve Application #10-19, Variance from Article 8.1 (minimum side yard setback) to connect the existing detached garage to the existing house at 58 Field Road, James Morrissey, owner/ applicant due the hardship of the "unusual" requirement, which is the placement of the home and septic system to the proposed improvement, 2nd by Kimberley Enowitch.

Ed Wenners said that this fits in with the rest of the neighborhood, and that the same garage could be built in the spot requested if it were detached. Kim Enowitch agreed.

Shaun Sullivan said that the "hardship" was the unusual placement of the house, and the location of the septic field.

All in Favor, Motion Passed

7. Old Business: None.

8. New Business: None

9. Approval of Minutes:

a. September 28, 2010

Kimberley Enowitch made a motion to approve the minutes as presented, 2nd by Ed Wenners.

Vote:

Yes: Thomas Tokarz, Kimberley Enowitch, Ed Wenners

Abstain: Shaun Sullivan (not present at minutes meeting)

Motion Passed

Ed Wenners mentioned that the minutes from the August meeting have not been approved.

Craig Minor said he would put that on the next agenda.

10. Adjourn

Kimberley Enowitch made a motion to adjourn the meeting at 8:55 PM, 2nd by Thomas Tokarz.

All in Favor, Motion Passed

Respectfully Submitted By,

Sarah A. Voog, ZBA Commission Clerk