

TOWN OF SOUTHBURY
ZONING BOARD OF APPEALS
REGULAR MEETING
JANUARY 6, 2009
(summary of meeting)
(subject to approval)

MEMBERS PRESENT: Lemuel Johnson, Jr. – Chairman; Peter Peterson; Geoffrey Ice; Paul Sullivan; John Bucciarelli – Alternate; Robert Lieber - Alternate

MEMBERS ABSENT: Peirce Behrendt – Vice Chairman; Robert Greene; Douglas Breakstone – Alternate

OTHER'S PRESENT: Member of the press and other interested parties.

CALL TO ORDER: Chairman Johnson called the meeting to order at 7:30 p.m.

SEATING OF ALTERNATES:

John Bucciarelli seated for Peirce Behrendt
Robert Lieber seated for Robert Greene _

OUTSTANDING APPLICATIONS:

There were no outstanding applications.

PUBLIC HEARINGS:

Application #7342 Nancy A. Davis/owner & applicant - applying for a variance of Section 4.1, Schedule B, Line 8 of the Zoning Regulations, relating to the minimum setback from the property lines (20 feet) so as to permit creation of an interior lot from existing parcel. Property located at 250 Main Street North, Zone R-30.

Joseph Bette a Southbury Realtor representing Ms. Davis gave an overview of the variance request highlighting the fact that Ms. Davis's property and structures lie within the Historic District #1 and her desire to sell the house and barn and retain proposed Lot 2 for a future home. He noted the property has two setback issues. The first issue is the closeness of the dwellings stone basement hatchway located one foot within the proposed 30 foot right of way access to proposed Lot 2 and 18 feet from the proposed property line. The second issue is the historic barn which is located 8 feet within the proposed right of way and 5.9 feet from the proposed property line.

Mr. Bette continued as the Historic District Commission's charge is the preservation and upkeep of old barns by property owners, they are considered by the commission to contribute to the overall aesthetic value within the district. The demolition of all or part of the barn even though it would affect the aesthetic value was possible. Emergency vehicle access would not be impeded by the protrusion of the barn within the proposed right of way.

Zoning Official, Mark Massoud in a memo dated January 7, 2009 to the Board gave his review of the application request suggesting a possible alternative to achieve access to the rear proposed Lot 2 by the granting of a 30 foot right of way or easement from the original front parcel to the proposed rear lot. Property lines would not be affected reversing the need for a variance request to demolish or structurally alter the historic barn.

Commissioner Sullivan questioned the reason for the increase in the middle of the proposed revised property line for the original parcel.

Mr. Bette explained by moving the property line 10 feet this would allow road access to the applicant's proposed Lot 2 as well as the adjoining property owners 34 acres of which zoning regulations require 50 feet of road frontage.

Chairman Johnson questioned the hardship.

Mr. Bette explained the applicant is requesting the Board approve the demolition of the barn; and that the Historic District Commission requires the aesthetic preservation of all barns within the district.

Chairman Johnson noted for the record the Board cannot grant a variance request unless there is evidence of a land induced hardship of which placement of the barn as observed is strictly aesthetic.

After discussing issues relating to the possible granting of the proposed right of way, the Chairman suggested a continuation of the application to next months meeting so that Mr. Bette could review the issue with the Planning Administrator, DeLoris Curtis.

Return receipts were received for the record.

Correspondence was received for the record from adjoining property owners, Francis E. Lanois of 95 Old Waterbury Road, and Jean D. Agid of 240 Main Street North in support of the application.

Due to issues within the application relating to the historic barn and the proposed right of way, and the establishment of a hardship by the applicant Application #7342 was withdrawn.

Application of Appeal #7340 Cynthia J. Barry/applicant; Cynthia J. Barry, Rosemarie Ahern & Raymond L. Lewis, Jr./owners - to appeal for correction of alleged error in a decision of the Zoning Officer who on October 23, 2008 did deny a permit requested by Cynthia J. Barry. Property located at 462 South Britain Road, Zone R-60.

Commissioner Ice recused himself at this time from the application.

Timothy Barry, husband of the applicant Cynthia Barry and representing her submitted for the record two notebook copies of all information submitted to the Zoning Official.

Mr. Barry gave a summary and timeline of the property. He explained the property in the 1950's originally contained two separate parcels split by the Pomperaug River. The parcel closest to South Britain Road contains a trailer which has been in continuous use since 1956. The zoning application as submitted to the Zoning Office was for the replacement of the trailer.

Mr. Barry reviewed and highlighted three major points in the decision to appeal the Zoning Officials denial decision as follows:

- 1) The Zoning Official had only circumstantial evidence to establish a legal non-conforming use. An affidavit establishing that usage was submitted in January 1990 from deceased former owner Raymond L. Lewis.
- 2) The Zoning Official requested pertinent information relative to Section 5 (Flood Plain District) of the zoning regulations, base flood elevations and lowest floor elevations of the proposed structure. The zoning application contained architectural drawings showing the elevation of the trailer from the ground.
- 3) The Zoning Official citing Section 13 and 13.6 of the zoning regulations alleging there was an enlargement of a nonconforming use on the property. The trailer has been a continuous legal non-conforming usage on the property for a long period of time.

Mr. Barry reviewed a timeline of events showing the transfer of the property to various Lewis family members over a period of time from 1955 to current.

Documentation from year 1989 showed the then Zoning Official had issued a cease and desist order to Mr. Lewis with regards to the trailer on the property. In response legal council retained by Mr. Lewis made available in a letter dated January 3, 1990 to the Town of Southbury some research and further facts on the trailer's use over the years noting it was the Lewis's constitutional right to replace the trailer on the property. An affidavit to substantiate the facts from September 1955 to January 1990 regarding use of the trailer on the property and showing no intent to abandon that use was also submitted. After meeting with Town of Southbury counsel the cease and desist order was rescinded by the Zoning Official in January 1990.

Mr. Barry expanded on his appeal presentation referring to several sections of the zoning regulations as they relate to the existence of the property and the trailer and the fairness by the Town of Southbury to allow the trailer on the property as a dwelling. Section 1.2 of the zoning regulations which reads no zoning permit is required for a farm for continuation of an existing usage. He explained the property from 1955 to present has always been used as a farm and under the present zoning regulations has certain privileges of which other non-farming parcels in town do not have. Section 3.2.2 of the regulations specifically states trailers are not permitted within the Town of Southbury.

Under the regulations a trailer is considered a dwelling and the minimum square footage for a dwelling under the R-60 zone is 500 square feet. The current trailer on the property measured by the zoning official is 268 square feet and the proposed trailer is 399.75 square feet. The R-20 zone with respect to dwellings allows for the expansion of dwellings. Section 13.1 of the regulations refers to the intent of changing nonconformities to conformities as quickly as the fair interests of the parties permit.

Mr. Barry used as an example Public Act No. 07-43 passed as a result of a court case involving the Town of New Milford and the replacing of trailers within a mobile home park which stated future replacement of mobile homes with larger mobile homes conforming to federal standards will not constitute an expansion of a nonconforming use. The property in question will continue to be used for agricultural purposes and it is the intention of the applicant to retain the trailer as it exists on the property.

In closing Mr. Barry stated the property in question would continue to be used for agricultural purposes with the intent to retain the trailer as it exists on the property, further in fair interest to the applicant the decision of the Zoning Enforcement Officer should be reversed and the request granted.

The Board reviewed and discussed pictures of the trailer, past, present and proposed.

As requested by Commissioner Peterson, Mr. Barry gave his reasons as to why he felt the Zoning Enforcement Officer was incorrect in his decision. He noted all of the information requested was submitted to the zoning office.

Commissioner Peterson questioned whether or not the use has been continuous and what the occupancy status of the trailer has been for the last ten years.

Mr. Barry stated the usage has remained the same but the occupancy of the trailer had been about 60-70% within the last ten years.

Commissioner Peterson discussed with Mr. Barry the need for an affidavit from 1990 to present to support the applicants contention that there was no intention to abandon the property during that time period.

Mr. Barry agreed to submit such affidavit.

ZEO, Mark Massoud clarified for the Board his objections as they pertained to the expansion of the trailer, the location of the trailer on property within a flood plain and the expansion on a non-conforming use.

As Mr. Massoud did not know if the note book of information submitted contained any new information not received prior to his decision to deny, Chairman Johnson asked him to review the note book to determine if any of his issues could be resolved.

At that time all appeal information would be sent to the Land Use Attorney for review and opinion as to whether the Zoning Officers denial should be reversed or upheld.

Mr. Massoud explained information as provided by the Barry's relative to the timeline of apparent use of the trailer on the property seemed to be satisfied. It was hoped the Building Official could review information submitted with regard to the flood plain and trailer height.

Return receipts were received for the record.

Correspondence was read into the record.

The public hearing remained open and will continue at the February 3, 2009 meeting.

NEW APPLICATIONS:

There were no new applications were received.

MINUTES:

Approval of Minutes - November 4, 2008

A motion was made by Commissioner Sullivan and seconded by Commissioner Lieber to approve the minutes of the November 4, 2008 meeting. By unanimous voice vote, the motion was approved.

CORRESPONDENCE:

No correspondence was received.

BILLS:

No bills were received.

ANY OTHER BUSINESS THAT MAY PROPERLY COME BEFORE THE BOARD:

There was no other business

ADJOURNMENT:

Commissioner Peterson made a motion and seconded by Commissioner Sullivan to adjourn the meeting. By unanimous voice vote, the meeting adjourned at 9:30 p.m.

Respectfully submitted,

Deborah Zachariewicz
Secretary