

BOARD OF APPEALS 3, 2011 Meeting Minutes

Board Members Present: Shane O'Connor, Howard Aspinwall, Curtis Ruckey
Robert Rosenberg and Peter Lambert

Town Staff Present: Jennifer Rodriguez,
Planning Coordinator and Assistant Zoning and Wetlands Officer

Chairman O'Connor called the meeting to order at 7:23 pm.

Board roll call was taken.

MINUTES:

Chairman O'Connor referred to the September 6, 2011 meeting minutes and asked for any corrections or changes. There were none. He then asked for a motion. Mr. Lambert moved to accept the September 6, 2011 meeting minutes, as published. Mr. Rosenberg seconded the motion. All were in favor. The vote was 5 – 0, the motion was approved.

BILLS & CORRESPONDENCE:

None

OLD BUSINESS:

None

NEW BUSINESS:

- a. **Public hearing on Application #FY11-12-03, Owner/Applicant: Terrence Lucas for a variance for the property located at 64 Bel Aire Circle for a 440 square foot driveway widening to within one foot of the property line, where 10 feet is required.**

Terrence Lucas addressed the Board and distributed a color GIS print-out of the property in question. He explained that the light pink area was the area that was currently paved and that to the right of that area was a 9 x 35 foot grassy area. He noted that the grassy area was a little tapered. Mr. Lucas then distributed a photograph to each of the Board members and staff and stated that the photograph was of the same type of thing that he was proposing to do. He went on to say that he was trying to do the right thing the right way. He then noted that the piece of property in question served no purpose to him as a home owner other than a driveway.

Mr. Lucas explained that he had started the process back in April and that he had been on the Board's docket in July. Unfortunately, there had been a miscommunication and he could not make it to the July meeting. He went on to say that the communication from that evening was that he needed to get a variance.

Mr. Lucas read the following hardship from his application:

I will be arguing several different hardships at my appeal, but they will all primarily focus on the fact that my driveway is currently paved in a manner that is in violation of the regulation change that took effect on 11/1/2008; and that it is unrealistic for the town to expect me to dig up pavement to make my driveway comply with this regulation. In the same context, I feel it is also inappropriate for me to be compelled by this regulation that is currently requiring me to have an inconsistently paved surface, which doubles as an aesthetic eyesore, which forces me to improperly utilize a segment of my property to its maximum usefulness.

I feel that my having in writing by an Officer of the Zoning/Wetlands Department that my permit request was "a fair one" supports my above statement.

Mr. Lucas stated that his first hardship was that he was being forced to have a hardship. He went on to say that he believed that he initially was not in variance territory. He pointed out that had he been at the July meeting he was going to argue that his proposal was declined because it had been considered an expansion. Mr. Lucas then noted that the word "expansion" had not appeared anywhere on his permit application. He explained that it was his contention that the area in question was already a driveway and that he was merely asking to change the surface of that driveway.

Mr. Lucas stated that when he had originally started the process in April he had been given a copy of Section 225 of the Regulations. He then read the following excerpt from Section 225:

"A driveway shall be defined as any area used for vehicle ingress or egress to any building, structure, use, or lot, or any area used for outdoor parking of vehicles." He then noted that, by default, the section of his property in question was designed for ingress and egress. Mr. Lucas commented that they needed to employ common sense; there was already precedence on his own driveway. He then explained that his driveway was already in violation of the 10 foot setback.

Mr. Lucas stated that he had listed the following two options on his application and that he really did not care which option was approved:

1. pavement, blacktop, or asphalt like what was already on his property; or
2. to replace the grass with another pervious surface such as gravel, stone, etc.



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He explained that he had proposed both of these options to Mr. Szczesny.

Mr. Lucas read the following letter that had accompanied his original application:
"Enclosed is my permit application to have a portion of my driveway repaved.

Going by the definition of a "driveway" in Section 225 of the Windsor Locks Zoning Regulations, the space that I am referring to is already considered a driveway, even though it is not fully paved. My current driveway is currently flush against my neighbor's house. I understand that new construction forbids a driveway to be within 10 feet of a neighbor's property, but my situation precedes that law update.

In addition to obtaining a permit, I also need to be explained by the zoning board what my options are. Ideally, I'd like to dig up the dirt, and replace it with stones or possibly recycled asphalt. If I go the stone route, I need the town to verify if I am able to go to the street with stones. I believe that this may be problematic come snow removal time. If this is a problem, then I will employ the recycled asphalt approach.

I am obviously undertaking this project to improve the appearance of my yard, but this will benefit my entire neighborhood. For my immediate neighbor, it will drastically cut down or eliminate the amount of dust and dirt my cars routinely generate as they come and go. It will also provide a clear separator between our properties. I am fearful that their grass is being negatively impacted. As for my non-immediate neighbors, it is an eye sore seeing cars parked on beat up grass and dirt."

Mr. Lucas distributed two photographs of examples of the type of stone options he was considering. He then noted that one of the photographs was of a neighbor's property on Bel Aire Circle.

- Photograph #6 is a stone option with railroad ties
- Photograph #5 is another stone option

Mr. Lucas stated that another hardship he had was that the permit was only good for six months and that he was not confident that he could complete the project in six months. He went on to say that a variance was needed in order to give him more time to complete the project. Mr. Lucas pointed out that had he been before the Board in July he could have completed the project in the six months, but that it wasn't July and he now couldn't get it done before winter.

Mr. Lucas stated that another hardship was that his house should have been grandfathered, since it had been built in 1955 and pre-dated the Regulation that had taken effect on November 1, 2008. He then pointed out that the narrow part of his driveway was only 9 feet wide, but that the Regulation stated that it needed to be 10 feet. Mr. Lucas noted that his current driveway violated the Regulation two different ways.

Mr. Lucas distributed more photographs of various properties on Bel Aire Circle.

Mr. Lucas stated that another hardship was that the Regulations were ambiguous at best. He went on to say that he had not been able to get answers to his questions. He noted that he had been told that stones were no different than grass, but that he had since been told that stone was the same as pavement. Mr. Lucas wanted to know which was correct.

Mr. Lucas stated that he had received some additional information regarding Section 225 which he had not originally been given. He then distributed copies of Section 225 to the Board members and staff exactly as it had come to him; with the text "Other materials may be approved by the Town Engineer" highlighted in yellow. Mr. Lucas read the following from Section 225:

"Driveway shall be at least 10 feet in width and no more than 30 feet in width, unless otherwise approved by the Town Engineer. Driveways shall be paved for at least the first 10 feet beyond the edge of street pavement. The first 10 feet beyond the street right-of-way line shall be no greater than 5% grade. The next 10 feet shall serve as a grade transition to a maximum grade of 15% for paved driveways and 10% for unpaved driveways. The driveway pavement section shall include a minimum of 2" compacted bituminous concrete pavement on 6" processed aggregate base. All materials shall conform to the Connecticut Department of Transportation Standard Roadway Specifications, Form 816 as amended. Other materials may be approved by the Town Engineer."

Mr. Lucas commented that the above guaranteed him the right for his proposed Options 1 and 2, yet he was told no for both proposals on his original application.

Mr. Lucas stated that the Town needed to tell him whether the area in question was a driveway or not a driveway. He went on to say that if it was a driveway then he would need to pave it, but that if it was not a driveway he could simply lay down stone. He noted that he was being told that it was a driveway, but that he could not lay down stone or he was being told that it was not a driveway, but that he must abide by the driveway paving rules.

Mr. Lucas stated that his final hardship was all of the above. He reiterated that he was trying to do the right thing the right way. He then commented that he was going to park cars in the

area in question, just like he had already been doing. Mr. Lucas distributed a photograph of a situation that was similar to what he was currently doing and commented that it looked awful.

Mr. Lucas stated that he had already done a survey of his property. He then distributed a photograph showing a wooden stick where his property ended. He pointed out that there was one foot between his fence and where his property line was; he was already conceding one foot of property that had no use.

Mr. Lucas stated that his neighbor was not present that evening, but that they had spoken about his proposal and that his neighbor had no problem with either of his proposed options.

Chairman O'Connor asked Ms. Rodriguez to explain some of the points that Mr. Lucas had mentioned. Ms. Rodriguez explained that when a property had something that was legal, but nonconforming that nonconformity could remain. She then pointed out that it was general land-use law. She went on to say that to expand or make more permanent a nonconforming quality on a property was something Planning and Zoning Commissions all over were looking to lessen. Ms. Rodriguez stated that the driveway regulation was put in place because they were receiving a lot of complaints from neighbors who had had their neighbors paving right up to the property line and having run-off issues/drainage issues/snow shelf issues. She went on to say that the driveway, as Mr. Lucas had put it, if he were using it for ingress and egress, could remain as it was, but that in order to pave it or change the material he would be reconstructing or resurfacing and that that would require a permit. Ms. Rodriguez pointed out that her office would not be able to give a permit out to reconstruct or resurface where the material would become less pervious.

Ms. Rodriguez referred to Item C ó Drainage in Section 225 of the Regulations and read the following:

öThe application must demonstrate that the proposed driveway runoff will not adversely impact downstream properties.ö

She then acknowledged that a grassy area that has had vehicles parked on it was not as pleasing to look at, but that that area was permeable. She went on to say that when you increased to stone or pavement, there were different levels of permeability; therefore it could impact the neighbors.

Ms. Rodriguez clarified that Mr. Lucas had stated that the Town had said that the driveway needed to be removed. Mr. Lucas stated that he had not made that statement. Ms. Rodriguez went on to say that she had thought that Mr. Lucas had said that in order to be conforming he would have to remove some of the driveway in order to be 10 feet from the property line.

She then stated that that was not the case. Mr. Lucas commented that he had said those words, but that they had been out of context. Ms. Rodriguez then reiterated that the Town was in no way saying that Mr. Lucas would have to remove any of his existing pavement.

Ms. Rodriguez referred to Mr. Lucas's comment regarding the permit only being good for six months and pointed out that Mr. Lucas could simply hold off on applying for his permit. She reiterated that the actual building permit was only good six months, but that he did not have to apply for that permit immediately. Mr. Lucas commented that his point had been that he could not walk out of the meeting that evening with a permit that was good for six months, because he was not confident that he could get it completed in six. Mr. Ruckey pointed out that the Board did not give out permits. Ms. Rodriguez stated that, if the application were approved, the permit would not be given that evening.

Mr. Lucas asked Ms. Rodriguez if the area in question on his property was a driveway or not. Ms. Rodriguez replied that she had not been out to the property enough to see if the area in question was or not. Mr. Lucas then asked whose responsibility it was to tell him if it were a driveway or not. Ms. Rodriguez stated that the point was that if Mr. Lucas wanted to leave the area grass and continue to park on it and say it was a driveway he could do so, but that once he changed the materials, reconstructed or resurfaced the area it would be a new driveway expansion. Mr. Lucas commented that if it were not a driveway then he could put stone in that area just like in any other part of his yard. Ms. Rodriguez stated that he could put stone in the area and then not park on it.

Mr. Ruckey clarified that Mr. Lucas currently had a paved driveway with grass between his paved driveway and his neighbor's property. Mr. Lucas stated that that was correct. Mr. Ruckey commented that the ingress was what had already been created by the pavement, but that as soon as that paved area was expanded it would become a larger ingress. He went on to say that Mr. Lucas had a driveway and was also parking on grass and that the grassy area that he was parking on was not his driveway. Mr. Ruckey then stated that if Mr. Lucas were going to have his paved driveway resurfaced, he could do so without a variance. He then noted that, if Mr. Lucas were looking to expand his driveway and take over the grassy area, he would need a variance to do so.

Mr. Lucas argued that, if the area in question were a driveway already, it would simply be resurfacing it. He went on to say that the fact that it was grass was immaterial. Mr. Ruckey stated that the grassy area was not a driveway. Mr. Lucas insisted that it was. Mr. Ruckey reiterated that it was not a driveway; it was grass between his driveway and his neighbor's property.

Mr. Lucas commented that if he were to put stone down, there would be dirt under it. He then acknowledged that it would be less pervious than grass, but that he did not know how



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less pervious it would be. He then pointed out that he would maintain the same slope that currently existing. Mr. Lucas commented that if he were to put pavement down, it would make it even less pervious; but that they were only talking about a 9x35ø area. He went on to say that, if his application was otherwise acceptable, then he was not so sure that it was appropriate for that to be considered. Mr. Lucas stated that he didn't care, because he didn't have to care. He went on to say that he paid taxes to Windsor Locks for their services so if he were allowed to do what he was proposing and it did have an impact then it would be the Town's responsibility to address it.

Mr. Rosenberg asked Mr. Lucas if there was a curb at the end of the grassy area in question. Mr. Lucas replied that there was not.

Chairman O'Connor asked for any public comments in favor of the application. There were none.

Chairman O'Connor asked for any public comments in opposition to the application. There were none.

Chairman O'Connor stated that he had gone out to look at the property. He went on to say that one of his concerns was that the driveway was also a bit of a safety concern for anyone walking; it did need to be redone. Mr. Rosenberg did point out that Mr. Lucas could resurface the existing paved area at any time without a variance; therefore the safety concern had no bearing that evening. He then commented that if the driveway was not safe, it was Mr. Lucas's problem.

Mr. Rosenberg stated that the fact that part of the existing driveway was already one foot from the property had no bearing that evening, because that area was either done before the Regulation had been created or the person who had originally put the driveway in to within one foot of the property line had gotten a variance for it.

Mr. Lucas asked if the fact that an area of his existing driveway was one foot from the property line supported his hardship. Mr. Rosenberg and Mr. Ruckey both responded that it did not. Mr. Lucas then asked, if he were allowed to park his car to within one foot of the property line on grass, how that would be better than if that area were concrete or stone. Mr. Rosenberg answered "because the law is the law". Mr. Lucas commented that he had accepted that from the Building Office, but that the Board was not bound by that. Mr. Rosenberg stated that he was bound by what made sense and by what was good for everyone, not just the applicant.

Mr. Ruckey commented that, if he were Mr. Lucas's neighbor or maybe someone who was going to move in, he might not be happy about Mr. Lucas moving snow from his driveway onto his grass. He went on to say that Mr. Lucas's hardship was that his property was very small. He then pointed out that it was a one family home with two or three vehicles and that the existing driveway was more than sufficient to park three cars, but that Mr. Lucas chose to park on the grass. The discussion continued briefly.

Mr. Lambert stated that the Board needed to be concerned about the runoff. Mr. Lucas pointed out that stone would be middle ground. Mr. Lambert commented that he worried about putting blacktop down, but that he did not worry about stone with regard to runoff. Mr. Lucas reiterated that he did not care which he put down; stone or blacktop.

Chairman O'Connor asked for a motion regarding Application #FY11-12-03. Mr. Lambert moved to approve Application #FY11-12-03, Owner/Applicant: Terrance Lucas for a variance for the property located at 64 Bel Aire Circle for a 440 square foot driveway widening to within one foot of the property line, where 10 feet is required with the condition that the applicant not put blacktop down, but put stone down instead. Mr. Ruckey asked Ms. Rodriguez if Mr. Lucas would need a variance if the Board were to accept putting stone down. Ms. Rodriguez replied that he would still need a variance. Mr. O'Connor commented that he was worried that the area would eventually become a dirt area like what had been presented in the photograph that had been submitted that evening. Mr. Lambert then pointed out that 10 feet at the end of the driveway would have to be pavement. Mr. Ruckey then clarified that they would actually end up with 25 feet of stone. Mr. Lambert stated that that was correct. Mr. O'Connor commented that he felt that half of a driveway in stone and half in pavement would look awful. Mr. Lucas asked if the variance could stipulate that the bottom 10 feet could not be pavement. Ms. Rodriguez replied that that was not possible. The discussion continued further and no one seconded the motion.

Mr. Ruckey moved to approve Application #FY11-12-03, Owner/Applicant: Terrance Lucas for a variance for the property located at 64 Bel Aire Circle for a 440 square foot driveway widening to within one foot of the property line, where 10 feet is required, with the surface of the applicant's choosing. He noted that the hardship was that the property was narrow and that the applicant was already parking on the area in question. He went on to say that the area between the existing driveway and the neighbor's house would not be encroaching on any part of his living space. He then noted that it was not a permit to build, the applicant would need to see the Building Office for all necessary permits. Mr. Lambert seconded the motion. The vote was 4-1 (Mr. Rosenberg was against the motion), the motion was approved.



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Mr. Ruckey moved to adjourn the meeting. Mr. Rosenberg seconded the motion. All were in favor. The vote was 5 – 0, the meeting was adjourned at 8:15 pm.

Respectfully submitted,

Diane Ferrari
Recording Secretary

THIS IS A DRAFT

Please check the following month's meeting minutes for official approval of these minutes and any amendments or corrections that were made.