

ZONING BOARD OF APPEALS
November 3, 2008 Meeting Minutes

Board Members Present: Shane O'Connor, Howard Aspinwall, Ray Williams,
Robert Rosenberg, Curtis Ruckey and
Alternate Joseph Lawsing

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

Chairman O'Connor called the meeting to order at 7:07 pm.

Board roll call was taken.

Chairman O'Connor referred to the October 6, 2008 meeting minutes and asked for any corrections or changes. There were none. He then asked for a motion regarding the minutes. Mr. Williams moved to accept the October 6, 2008 meeting minutes, as published. Mr. Aspinwall 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 #FY08-09-06, Owner/Applicant: Walter P. Seaha for the property located at 10 Wedemeyer Street to reduce lot frontage on the combined Lots 11-12 from 100 feet to 83 feet, where 120 feet are required; increase the frontage on Lot 13 from 50 feet to 67 feet, where 120 feet are required; reduce square footage of combined Lots 11-12 from 10,000 square feet to 8,038 square feet, where 21,000 square feet are required; and increase square footage of Lot 13 from 5,000 square feet to 6,488.5 square feet, where 21,000 square feet are required.**

Attorney Paul Smith addressed the Board on behalf of the applicant and stated that there were two existing lots; one was an existing lot with a house on it and the other was an existing undeveloped lot. He went on to say that the applicant was proposing to take a little bit from the existing lot with the house on it and add it to the undeveloped lot to make it a little more conforming. He then pointed out that that

would make the lot with the house on it a little less conforming, but that they would end up with two lots that were better matched. Attorney Smith reiterated that one lot had been built on and the other could be built on. He then stated that they wanted to take some off of the existing house lot and put it with the existing building lot to get a little bit more uniformity for the area. He noted that they were not asking the Board to approve a new lot.

Attorney Smith explained that back in the 1950's the Seaha's had owned Lots 11, 12 and 13 and that they were all 50 foot lots. He went on to say that they had built the existing home on two of the lots leaving Lot 13 remaining as an undeveloped 50 foot lot. He noted that under Section 203 of the Zoning Regulations, because the lot existed in a deed prior to 1959 they had a right to build on it as it currently existed. Attorney Smith commented that they wanted to make the lot larger to make it more in conformance with the neighborhood without detracting too much from the other lot.

Attorney Smith stated that the house lot had 100 feet of frontage and that the building lot had 50 feet of frontage. He then explained that they were proposing to take 17 feet of frontage from the house lot and add it to the building lot which would leave the house lot with 83 feet of frontage and the building lot would then have 67 feet of frontage. He commented that they would end up with two lots with more comfortable space to them. Attorney Smith then noted that after taking the 17 feet from the house lot they would not go below the side or rear yard requirements.

Attorney Smith stated that even without a variance they would still have the right to build on the 50 foot lot. He pointed out that there was already sewer and water on the street; therefore it was feasible to build on a 50 foot lot. He then reiterated that it would better fit in the neighborhood if the lot were expanded a little.

Attorney Smith stated that the hardship was a lot configuration of 50 feet of frontage. He went on to say that there would be a significant gain in aesthetics.

Chairman O'Connor asked the Board members for any questions. Mr. Williams asked who currently lived in the existing home. Attorney Smith replied that no one currently lived there. Mr. Williams then asked who would live in the new home. Attorney Smith replied that it would be sold and that the existing home would probably also be sold.

Mr. Ruckey stated that he was struggling with the noted hardship which was essentially that they wanted to make the lot more palatable to a potential buyer. Attorney Smith commented that he would not really put it that way. He went on to say that they would be making it more palatable to the neighborhood; a 50 foot lot would be less aesthetically nice for the neighborhood.

Mr. Williams questioned whether it would be more aesthetically pleasing to move the line in the other direction. Attorney Smith then asked why the owner would want to lose an existing building lot. Mr. Williams commented that the aesthetics seemed to be secondary; it seemed as though it was simply that it would make it easier to sell the lot. Attorney Smith commented that if they were to build a nicer home on the larger lot it would make the community nicer as well. He then reiterated that they were not asking the Board to cut up a single lot to develop; there were currently two existing lots. He further explained that they were simply asking the Board to allow them to take some frontage off of one of the lots and put it with the other to end up with two nicer lots. The discussion continued briefly and Attorney Smith then commented that a nicer lot was more valuable and more conforming to the neighborhood. He went on to say that it was unrealistic to expect the owner to merge them into one lot.

Attorney Smith stated that they were trying to do a win-win for the developer and owner because they would end up with a lot that was aesthetically better and, therefore, more valuable and diminish the lot with the house on it but not significantly to the extent of diminishing the existing home. He pointed out that any applicant that he represented before the Board was looking to increase the value of their property. Attorney Smith then asked the Board if they wanted a 100 foot lot and a 50 foot lot or to move the property line over and have an 83 foot lot and a 67 foot lot so that it would be a better fit.

Mr. Ruckey commented that he took exception to Attorney Smith's comment that if the Board did not approve the variance they would go ahead and put a home on the 50 foot lot anyway. Ms. Rodriguez commented that they did have the right to do so. Mr. Ruckey then commented that Attorney Smith had said that if the Board did not approve the variance it would be unfavorable to the neighborhood. Attorney Smith disagreed that that was not what he was saying. He then went on to explain that what he was saying was that there was a building lot and the owner, because of the death of his mother was going to sell the property. He then stated that someone would buy the lot and that there was the presumption that they would then build on it.

Attorney Smith stated that he was trying to argue that by going to a little larger lot they could build a little bit better house, it would be a little bit better lot and that essentially it would be better for the Town. He commented that the Board should not take it as a threat, rather there was just a certain amount of inevitability to the fact that someone would build on the lot whether it was made a little larger or not. Attorney Smith then stated that it would make better sense for the neighborhood and better sense for the Town to have a little bit larger lot since it would make it a little bit more valuable so that there could be a little bit nicer house.

Attorney Smith noted that the purist hardship was topographical, but that the Board did not see those types of hardships very often. He went on to say that the second level of hardship was similar to the one being presented which was that the lot sizes coupled with the Regulations made it so that the lot could not conform. Attorney Smith stated that he was comfortable with the variance because in the end they would have two lots that would fit into the neighborhood pretty well.

Mr. Williams stated that he was not quite so comfortable because the idea of having two different lot sizes next to each other did not concern him, because he felt that a mixed neighborhood was a good thing. He went on to say that, in his position on the Board, he needed to ask if he had a reason to over-ride the Regulations. He further explained that such a reason would be a hardship or unique situation. Mr. Williams then stated that he did not see a hardship other than it was going to be better for the owners and Town. He noted that that was not a hardship; it was an advantage. He went on to say that the only unique thing was that there were two different size lots. Mr. Williams commented that he sympathized with the situation, but that the Board's job was to find a unique situation or a hardship to justify the variance. He then stated that he found that it was a convenience and a benefit, but not a hardship.

Attorney Smith reiterated that the lots were put in many years ago and that the zoning had changed long after that, therefore the uniqueness came from the historical perspective. He went on to say that the reason that the Board existed was because the regulations had outstripped a lot of the older areas in Town. He then stated that the uniqueness came from the owner having the three lots. Attorney Smith noted that the hardship was the same hardship that the Board faced when they were asked to reduce a side yard because with the historic characteristic of some of the lots in Town the owners could do all of that stuff (there were no side yards, rear yards, etc.) prior to the regulations. He commented that the Board needed to decide if what was being proposed would make things more or less conforming. Attorney Smith then stated that they were trying to make the building lot more conforming; it would bring the lot closer in conformity to what was in the neighborhood. He then continued briefly.

Chairman O'Connor asked the Board members for any further questions. They had none.

Chairman O'Connor asked Ms. Rodriguez for any comments. Ms. Rodriguez stated that in the three years that she had been with the Town there had been at least three or more 50 foot lots that had been developed in Town. She went on to say that everyone in those surrounding neighborhoods were generally not pleased with those lots having been developed. She then commented that she agreed that the Board needed to feel comfortable with the hardship. Ms. Rodriguez noted that the applicant could build and probably would build on the existing lot. She then referred to her memo that she had distributed at the beginning of the meeting and stated that one of the things the Zoning Regulation intended was property value. She noted that they did look to have a hardship not be financial, but pointed out that property value might be different. Ms. Rodriguez then stated that she would like to hear what the members of the public had to say.

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.

Mr. Ruckey asked Patricia Logan, the abutting property owner, how she felt about the proposal. Ms. Logan stated that she had been there for 50 years and for 50 years it was the Seaha's yard. She went on to say that a house would have to be squeezed in on the lot. She then pointed out that the lot was not a straight lot; it went on an angle. Ms. Logan stated that she was concerned; she had been very happy with the way it was.

Mr. Ruckey clarified that, if the Board did not accept the requested variance, it might push a house even closer to Ms. Logan's property. Ms. Logan stated that she understood that. She clarified that she was hearing that they could currently build on the 50 foot lot. Mr. Ruckey stated that that was correct. Mr. Williams noted that the applicant did not need to come before the Board at all; they could build on the 50 foot lot at any time as it was.

Roger Peppin of 17 Wedemeyer Street addressed the Board and stated that he was against it. He then pointed out that most of the homes on the street were built on two lots (equaling 100 feet); there were currently no houses built on a 50 foot lot. He then commented that it would be too cramped.

Mr. Williams asked Mr. Peppin if he would have the two houses on the 67 and 83 foot lots or two houses on the 50 foot and 100 foot lots. Mr. Peppin replied that he would rather leave it the way it was. Mr. Williams pointed out that that really was not an option. Mr. Peppin then stated that it would make more sense to open the lot up.

Chairman O'Connor asked for any further questions. Mr. Lawsing commented that from the point of view of the Town the 67 foot lot would offer the opportunity to build a bigger house and, therefore, provide a larger tax base. Attorney Smith agreed that the larger square footage house the more tax it would generate. He went on to say that the more compelling idea was that if they could build an aesthetically better house it would be better for the neighborhood and better for the Town, in terms of preservation of value. He then pointed out that there would be no wide swing in value from a 50 foot lot to a 67 foot lot.

Attorney Smith stated that their proposal would be an easier fit and that the neighbors would benefit more from the proposal than from a denial by the Board. He went on to say that he would be happy to provide the Board with a memo regarding the hardship, if necessary, and/or an analysis of past actions of the Board for the past two years to see how the proposed variance would fit in. Attorney Smith concluded by saying that it would be positive to the Town, the neighbors and to the future of the property.

Chairman O'Connor asked the Board members for any further questions. They had none.

Chairman O'Connor asked for a motion regarding Application #FY08-09-06. Mr. Ruckey asked Ms. Rodriguez for any comments. Ms. Rodriguez stated that the Board should read the reasons for their decision; the variance, if approved, was not a permit to build; and the variance, if approved, was solely for the changes requested in the application.

Mr. Ruckey stated that he was having exceptional difficulties with the proposal. He pointed out that the variance request was specifically for 10 Wedemeyer Street which was currently nonconforming and they were being asked to make it more nonconforming. He went on to say that there was no building proposed for the building lot, but the Board was being asked to consider that there was. Mr. Ruckey commented that he understood the reasons, but that he did not see a clear cut hardship.

Mr. Williams asked if the applicant had a business model and formal intent for the building lot. Attorney Smith replied that they had a house square shown on the map of the building lot. He went on to say that, if it would help the Board, he would be happy to come back with a firmer model. He then suggested that, if that was what the Board wanted, they hold the hearing open and continue it at the Board's December meeting. Mr. Williams stated that that would make him feel more comfortable. Chairman O'Connor asked Mr. Williams if he was indeed asking that they continue the hearing. Mr. Williams replied that he was asking that the public hearing be continued so that everyone could understand it better.

Mr. Ruckey commented that even if Attorney Smith came back with a proposal there were no assurances that that was what would actually go in; that was not what the Board was there for. Mr. Williams commented that a firmer model might help the neighbors.

Chairman O'Connor asked for any further comments. There were none.

Mr. Ruckey moved to continue the public hearing on Application #FY08-09-06, Owner/Applicant: Walter P. Seaha for the property located at 10 Wedemeyer Street to reduce lot frontage on the combined Lots 11-12 from 100 feet to 83 feet, where 120 feet are required; increase the frontage on Lot 13 from 50 feet to 67 feet, where 120 feet are required; reduce square footage of combined Lots 11-12 from 10,000 square feet to 8,038 square feet, where 21,000 square feet are required; and increase square footage of Lot 13 from 5,000 square feet to 6,488.5 square feet, where 21,000 square feet are required to December 1, 2008. Mr. Williams seconded the motion. All were in favor. The vote was 5 – 0, the motion was approved.

Mr. Aspinwall moved to adjourn the meeting. Mr. Rosenberg seconded the motion. All were in favor. The vote was 5 – 0, the meeting was adjourned at 8:30 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.