

ZONING BOARD OF APPEALS
June 2, 2008 Meeting Minutes

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

Town Staff Present: David Elder, Temporary Planning Coordinator and
Assistant Zoning and Wetlands Officer

Chairman O'Connor called the meeting to order at 7:05 pm.

Board roll call was taken.

Chairman O'Connor referred to the April 7, 2008 meeting minutes and asked for any corrections or changes. There were none. He then asked for a motion regarding the minutes. Mr. Rosenberg moved to accept the April 7, 2008 meeting minutes, as published. Mr. Ruckey 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 #FY07-08-09, Owner: David T. Chase, Applicant: M&L Development Corporation for a variance for the property located at Oak Ridge Drive, on the west side of the street and approximately 700 feet from its intersection with South Center Street, to approve the lot without frontage on public street in lapsed subdivision, where public road and related improvements incomplete, no bond in place, and fee title to large portion of road inadvertently conveyed to third party.**

Attorney Thomas Fahey addressed the Board and stated that the following individuals were also present:

- Gary Merrigan, applicant;
- Daniel Lefevere, applicant; and
- John Mallats, Counsel with the owner of the property.

Attorney Fahey then submitted full size copies of the map to the Board members and staff.

Attorney Fahey stated that the property in question was shown as Parcel 3 on a subdivision map that had been approved in 1992. He went on to say that at that time the Howard Johnson's was already located on Parcel 1 and Add's Pizza had wanted to build a new building on Parcel 2. He explained that in order for Add's Pizza to acquire Parcel 2 and build their building they had needed to get a subdivision. Attorney Fahey noted that when the application had been done it had been done for Parcels 1, 2 and 3 with a cul-de-sac.

Attorney Fahey pointed out that the private road (Oak Ridge Drive) was subject to a series of easements allowing access to the three rear parcels. He went on to say that the meeting minutes for that Add's Pizza subdivision application reflected a concern by the Town Engineer, who wanted to be sure that emergency vehicles could access and turn around. Attorney Fahey explained that that was why the cul-de-sac had been included on the plan. He then noted that the conditions of that approval were that Oak Ridge Drive up to the cul-de-sac be a Town road. He went on to say that a bond amount had also been made a condition of approval.

Attorney Fahey stated that after their recent research they discovered that there was a subdivision map, but that a bond had never been put in place. He commented that they had discovered that there were some discussions about bonding, but it had never actually been put in place. He went on to say that subsequent to that subdivision approval the hotel had been sold several times over the years. Attorney Fahey noted that as part of one of those transactions, the fee ownership of the road up to the Parcel 3 boundary had been conveyed to the hotel.

Attorney Fahey commented that they had approached Attorney Mallats and the current owner of the hotel, Beverly Hills, Inc. He then noted that Beverly Hills, Inc. was currently in bankruptcy in Long Island. He commented that they could not make any headway with Beverly Hills, Inc. in reconveying the land while they were going through their bankruptcy.

Attorney Fahey stated that they had approached the Town and met with the First Selectman, the Town Planner and the Town Engineer. He went on to say that they had suggested that the Town condemn the property, but that the Town had preferred not to do so. Attorney Fahey explained that the Town had then suggested that they approach the Zoning Board of Appeals to get a frontage variance. He noted that if they were able to receive the variance they would then be able to take title to the property and then come forward with an application.

Attorney Fahey pointed out that anything that the applicant did with the property would result in the correction of the title issue and then would also make all of the necessary improvements to the road. He went on to say that the applicant's plans for the property were to apply for an AIOZ Zone application. He noted that the property was currently zoned Business 1 and 2. Attorney Fahey commented that, at the time that Oak Ridge Condominiums were approved, multifamily was allowed in Business zones, although currently it was not. He went on to say that multifamily was allowed in the AIOZ Zone.

Attorney Fahey stated that the applicant planned to do something very similar to Oak Ridge on the site in question. He then noted that they would not be putting in nearly as many units as were in Oak Ridge. He explained that when they applied for the AIOZ Zone they would have to submit a conceptual plan and that a full public hearing would be required, with public notice.

Attorney Fahey stated that the parcel in question already had a right-of-way for access to Oak Ridge Drive. He commented that they were trying to right what should have been done in 1992 with the bond. He explained that when it became a Town road it would be a benefit to Oak Ridge Condominiums because they would no longer have to maintain the entire road.

Chairman O'Connor asked the Board members for questions. Mr. Ruckey referred to the extended piece of property shown on Page 148 and asked if it was currently part of Lot 3. Attorney Fahey replied that it was. He went on to say that the cul-de-sac would be carved out of Parcel 3.

Mr. Williams asked if there was a reason, other than convenience and time, not to wait for Beverly Hills, Inc. to get through their bankruptcy and then deal with the title. Attorney Fahey stated that neither the applicant nor the Town had control over that. He then reiterated that they were trying to correct a Town error. He pointed out that the Town would be off the hook for the bond money.

Chairman O'Connor asked the Board members for any further questions. Mr. Williams asked how long they had owned the property. Attorney Mallats replied that the Chase family had owned the property since the mid-1970's. Mr. Williams then asked why they had never done anything with the property. Attorney Mallats explained that they had developed a hotel with partners and lost money on it. He went on to say that Mr. Chase sometimes held on to properties for some time even when there was nothing going on with them. Attorney Mallats then stated that they had just discovered that they still owned the parcel in question; they had forgotten about the property.

Mr. Ruckey clarified that the bond had not been acted upon, the cul-de-sac had not been put in, and that the applicant's intention was to put the cul-de-sac in so that Mr. Chase could sell the property and M&L could buy it. Attorney Fahey replied that that was correct; the applicant wanted to buy the property, but they could not do so until the problem was straightened out. He went on to say that they would do the road improvements right away and would then transfer the road to the Town later on once their project was completed.

Chairman O'Connor reiterated that the parcel was in place and owned by Mr. Chase prior to the subdivision.

Mr. Williams asked where the applicant was from. Mr. Merrigan stated that they were from Windsor Locks and that they had been in business for over 35 years. He went on to say that they had many commercial, business and residential entities in Town.

Mr. Williams asked how many units they would be proposing for the site. Mr. Merrigan replied that they really did not know yet. Mr. Williams then asked how many they could put in. Attorney Fahey replied that it was complicated and they simply could not say yet; they would need to calculate the wetlands and figure the roads and setbacks in. Mr. Merrigan noted that they could not put any units in under the current zoning; they would need to go before the Planning and Zoning Commission for a zone change.

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

Chairman O'Connor asked Mr. Elder for any comments or questions. Mr. Elder clarified that the variance that was being requested was to permit a lot without frontage on an accepted Town road. Attorney Fahey agreed. Mr. Elder then pointed out that the lot was an existing lot prior to the subdivision and that the bond having not been in place really should not impact the decision regarding the variance of frontage. He then explained that 50 feet of length on a public road was what was required.

Mr. Merrigan pointed out that Oak Ridge Condominiums also did not have frontage on a Town road. A brief discussion followed and Mr. Elder then clarified that Oak Ridge Condominiums had an easement on the parcel in question and the owner of that parcel had a title. Mr. Merrigan replied that that was correct. Mr. Elder then asked what the applicant needed a variance for. Mr. Merrigan replied that there was no access. Attorney Fahey explained that Parcel 2 and Oak Ridge Condominiums never

had frontage on a public road. Attorney Mallats then explained that the condominiums had an easement that went across Parcel 3 and that the concept had been to create a street so that the entire roadway would be a public road. Mr. Elder then clarified that all of the easements were currently on the Chase property. Attorney Mallats replied that that was correct and that neither Oak Ridge Condominiums nor the Chase property had access on a Town road.

Mr. Elder stated that a 50 foot frontage variance was what was being requested. He went on to say that it was a little difficult to decipher what the hardship was. Attorney Mallats stated that the hardship, with regard to the property, was that there was no ability to control the balance of the parcel.

Mr. Williams asked if Oak Ridge was in the same boat. Attorney Fahey replied that they were not, because they were never part of the subdivision. He went on to say that Oak Ridge currently maintained the entire road; but that once the road was completed they would only have to maintain about 300 feet of the road.

Attorney Fahey commented that one of the legal definitions that they would look to in determining the hardship was whether or not the land was affected in any different way. He went on to say that they submitted that the parcel in question was the only piece of land affected in that particular way.

Chairman O'Connor asked Mr. Elder if he had anything further. Mr. Elder pointed out that the AIOZ did not require that there be frontage on a Town road. Attorney Fahey agreed but went on to say that the frontage was needed to have a lot. He then reiterated that they were trying to help the Town. Attorney Fahey stated that if the variance were not approved they would still go forward, although it would not really benefit anyone.

Mr. Elder clarified that they had an existing lot, with a pre-existing condition of not having frontage on a Town road; an existing, pre-existing nonconformity. Attorney Fahey pointed out that the pre-existing nonconforming lot had been submitted to the Commission for subdivision approval.

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.

John Conkowski, Treasurer of Oak Ridge Condominiums, of 67 Oak Ridge addressed the Board and then proceeded to review the map. A brief discussion between Mr. Conkowski and Mr. Merrigan took place regarding the map, but he made no comments to the Board.

Dave Michael addressed the Board and stated that he had lived at Oak Ridge since 1986. He then referred to the stream that ran from South Center Street and asked if the Water Company owned any of that land. Chairman O'Connor stated that the stream was on the Water Company land and had nothing to do with the parcel in question.

Ron Waffle of 24 Oak Ridge addressed the Board and stated that if he were on the Board his concern would be the hotel that was in bankruptcy; if Oak Ridge Drive were to become a public road then couldn't they go after the Town for some reimbursement. Attorney Fahey stated that the right-of-way that they had was already subject to easements in favor of Oak Ridge, the parcel in question and the pizza parlor so there was nothing to be reimbursed for. He went on to say that the improvement of the road becoming a public road would benefit the hotel.

Donna Tully of 36 Oak Ridge Drive addressed the Board and stated that the Condominium Association did maintain the road out to South Center Street. She then asked what their guarantee would be, if the variance were granted, that the road would be properly maintained in the interim period from when the variance was granted to the time that the applicant would actually buy the property. Attorney Fahey stated that when the subdivision was originally approved it was a condition of approval that there be a recorded easement and reference rededicated by the owner of Parcel 3 in favor of Oak Ridge. He went on to say that if the applicant were successful that evening and when they went to petition for the AIOZ and show their concept plan that there would be another process that required a Special Permit. Attorney Fahey noted that when the Planning and Zoning Commission granted a Special Permit they would impose conditions of approval, one of which would be to address that situation.

Ms. Tully commented that a Town road could become a detriment to Oak Ridge. She went on to say that if their contractor did not plow properly then they did not get paid; that would not be the case when the Town took over. Attorney Fahey stated that most condominium associations were usually very eager to have their roads accepted as Town roads. He went on to say that the applicant's buyers would have the same concerns that the residents of Oak Ridge were having. Attorney Fahey then noted that the residents of the 132 units at Concorde Landing had lobbied for years to get their road accepted as a Town road. Mr. Merrigan commented that they had heard

similar arguments from some Concorde Landing residents, but what they had found was that they had better snow removal when it was a Town road. Attorney Fahey pointed out that at some point the road would need to be replaced and at that point it would be crucial for it to be a Town road.

Ms. Tully then commented that there had been a lot of people on the property in question and that there were a lot flags on the property. She went on to say that they had to have some idea of the number of units that they would be proposing. Mr. Merrigan replied that the flags showed the property boundaries and topography. He reiterated that they had not paid an engineer to get into a design review. Mr. Merrigan stated that the density would be less than that of Oak Ridge.

Attorney Fahey stated that the Oak Ridge residents would be notified prior to the Inland Wetlands Commission meeting regarding the property and also for any public hearing regarding the AIOZ Zone change. He went on to say that that would be when all of the design issues would be discussed.

Mr. Merrigan stated that they did not even know what type of units they were going to build; townhouses, ranches, garages, etc. Ms. Tully asked how many acres the parcel in question was. Mr. Merrigan replied that it was 13 acres.

Chairman O'Connor reiterated that there would be other meetings that the applicant would have to go through.

Sean Scanlon of 2 Oak Ridge addressed the Board and clarified that the land in question was part of the same piece of land that had been sold off to build the hotel; they were all owned by Chase. Attorney Fahey stated that the hotel land was owned by the Chase Corporation, but that the parcel in question was owned by a Chase family member. He explained that it had a separate boundary; it was not co-mingled with the hotel parcel. Mr. Scanlon commented that at some point the Chase family interest broke the parcels up and sold them and developed them in a manner that landlocked the parcel. Attorney Fahey stated that it had never been landlocked, because it had always had the exact same easement that Oak Ridge had. He then reiterated that Chase had never cut off their access.

Mr. Scanlon stated that he did not think that a public road was much of an issue. He went on to say that their contractor did an amazing job with the property and that their condominium fee was only \$165.00. He commented that it would be a logistical problem with regard to what part would be plowed at what time. He then stated that he did not see the benefit to the Oak Ridge residents. Mr. Scanlon then pointed out that there would be an increased amount of noise and dust during the construction as

well as an increased amount of traffic and people in their area. Attorney Fahey reiterated that the people who would live on the applicant's parcel would have the same concerns. He then pointed out that it was a 13 acre parcel of Business land and that it would be developed one way or another. He went on to say that they could put a strip mall on the parcel without touching the road. Attorney Fahey admitted that there would be noise during construction, but that Mr. Merrigan built quality products. He went on to say that it would benefit the residents of Oak Ridge if the property in question were developed more compatibly with the condominium use and that it be a Town road.

Mr. Scanlon asked if an environmental impact study had been done. Attorney Fahey replied that they had not gotten to that yet; the hearing that evening was only the first step. He commented that one would certainly be done as they moved forward with the project.

Chairman O'Connor asked the Board members for a motion regarding Application #FY07-08-09, Owner: David T. Chase, Applicant: M&L Development Corporation for a variance for the property located at Oak Ridge Drive, on the west side of the street and approximately 700 feet from its intersection with South Center Street, to approve the lot without frontage on public street in lapsed subdivision, where public road and related improvements incomplete, no bond in place, and fee title to large portion of road inadvertently conveyed to third party. Mr. Williams moved to approve the variance as presented. Mr. Rosenberg seconded the motion. All were in favor. The vote was 5 – 0; the motion was approved.

Mr. Rosenberg moved to adjourn the meeting. Mr. Ruckey seconded the motion. All were in favor. The vote was 5 – 0, the meeting was adjourned at 8:20 pm.

Respectfully submitted,

Diane Ferrari
Recording Secretary

**ZONING BOARD OF APPEALS
Extract from the July 7, 2008 Meeting Minutes**

Chairman O'Connor referred to the June 2, 2008 meeting minutes and asked for any corrections or changes. There were none. He then asked for a motion

regarding the minutes. Mr. Rosenberg moved to accept the June 2, 2008 meeting minutes, as published. Mr. Williams seconded the motion. All were in favor. The vote was 4 – 0, the motion was approved.