

**ZONING BOARD OF APPEALS
Monroe, Connecticut**

**MEETING MINUTES
June 7, 2016**

Meetings are Audio and Video Recorded

- Meeting:** Zoning Board of Appeals
Regular Meeting – June 7, 2016
7 Fan Hill Road, Town Hall, Council Chambers
- Present:** James Wendt, Chairman
Marion Callo, Secretary
Robert Saraco, Jr.
Dominic Paniccia
Ryan Condon (alternate) – Seated
Ben Maini (alternate)
- Absent** Vacant Board Member Seat
Michael Pinto (alternate) – Seated
- Also Present:** William Agresta, Planning and Zoning Administrator
Rebecca Wood, Recording Secretary

OPENING OF MEETING

- **Call to Order** – Chairman Wendt called the meeting to order at 7:34 p.m.
- **Roll Call & Seating of Alternates (if required)** – Board members were seated on a roll call with the seating of alternate Condon for the vacant full member seat.
- **Election of Officers** – The election of new officers was tabled.

PUBLIC HEARINGS

Secretary Callo read the Notice of Public Hearings.

- **ZBA-2016-02, File #1382– 21 Crescent Place, Assessor Map 4, Lot 24**
Application of property owners Ruth E. Lewis, Gail Lent and Joan Cisneros for area variances of the Zoning Regulations to eliminate the need for a driveway easement. The property is located in a Residential and Farming District 1 (RF-1) and is seeking the following:
 - Variance of §3.1.6 to permit a side yard setback of 9.2 feet in lieu of the required 30 feet.

- Variance of §3.1.5 to permit a street frontage of 90.46 feet in lieu of the required 150 feet.
- Variance of §1.9.6 to permit a lot width of 90.46 feet in lieu of the required 150 feet along the depth of the lot from the street frontage to the back end of the required minimum 135 feet square.

Tracy Lewis, a Licensed Land Surveyor doing business as Lewis Associates at 260 Main Street, Monroe representing the owner of 21 Crescent Place introduced the properties through a visual presentation citing that the applicant owned 21 Crescent Drive and he owned 25 Crescent Drive. Mr. Lewis is related to the applicant through marriage, as his father purchased the properties in 1922, and now through the death of his brother and the applicant's husband, she can no longer care for the home and wishes to sell it. The variances requested in this application are to correct and remediate lot and real estate sale problems that would arise from new non-family ownership. The property used to exist as one lot and was subdivided into two lots in 1977 to provide for a separate home, and was sold to his brother and wife with a driveway easement. As the properties existed in a family setting, the lot lines were fairly arbitrary as both homes shared either utilities or one home gave utility access to another, a driveway easement, and other uses, now with the need to sell the property, these items need to be corrected.

In 1990 a driveway easement was granted from 21 Crescent Place to 25 Crescent Place. The easement of access for the driveway currently has, according to regulations, a 50' setback. The requested variances would eliminate the need for the easement, and thus eliminate the 50-foot setback, which presently is a nonconforming condition (thereby the variance would eliminate that nonconformity). In 1977 stone piers were built at the end of the driveway along with a small retaining wall, a well that served both properties, an overhead electric line that controlled numerous lights on both lots, as well as a handicap accessible ramp that was built for their son, but who no longer resides at that residence. A new garage was built on 21 Crescent Drive so there is no use for the triangular strip of land, a new well was constructed and both properties no longer utilize the same well. The driveway only serves 25 Crescent Place, there is no longer any shared electrical, and the piers at the end of the driveway are split between the two abutting lots. The elimination of the easement would also remove any liability of the new owners and only create a hardship and conflicts with future owners. The water line will be moved, the handicap accessible ramp will be removed, and the catch basin will now be located on 25 Crescent Drive to create a definitive line between the two properties.

Secretary Callo inquired if the easement applied to the driveway done in 1977. Mr. Lewis stated "yes, it only related to the driveway as of 1977," and the paved area would remain the same as it provided access to his home at 25 Crescent Drive.

Chairman Wendt asked if Mr. Lewis could access the property from Laurel Drive. Mr. Lewis replied that Laurel Drive access would be an entry from the back of his property and be a less practical alternative given the topography in that portion of the lot. Chairman Wendt inquired if his understanding of the situation was that the easement of access did not exist in 1977 but came into existence in 1990's, and the current regulations would treat the easement differently now. He stated that by eliminating the easement, this would reduce the magnitude of the existing nonconformity to a 25-foot setback instead of 50-feet, and the property line would be closer to the existing house. Mr. Lewis agreed.

Mr. Paniccia inquired if Mr. Lewis would be changing the driveway or if it could be moved to the left. Mr. Lewis responded that no changes would occur to the driveway, and the edge of the driveway would be the new property line. Moving the drive would place it very close to his house without solving the problem of the piers. In addition, there would be a 5 to 6-foot drop off to the house and a much steeper driveway.

Mr. Condon inquired if the handicap accessible ramp removal was part of the variance? Mr. Lewis responded that removal of the ramp could be done without the variance and was not a part of the application.

Secretary Callo indicated it might be easier to sell the house without the driveway, to which, Mr. Lewis concurred, adding that the driveway, piers, and drainage created a hardship in selling.

Planner Agresta stated that this variance would not change the physical property itself, but would instead change the perception of the property. Chairman Wendt stated that the variance would be a cleaner and more practical resolution to the problem. Mr. Lewis stated that there will be no visual difference to the property and none of the neighbors had any issues with the variance request.

Chairman Wendt noted for the record that there were no members of the public in attendance and thus no public comments. Polling the Board and hearing no objections, Chairman Wendt closed the public hearing for this application.

- **ZBA-2016-03 File #1383– 2 Shelton Road, Assessor Map 63, Lot 68**

Application of the State of Connecticut Department of Transportation for an area variance of §3.1.5 of the Zoning Regulations for property located in a Residential Farming District 1 (RF-1) pertaining to the taking of two (2) separate portions of the subject property totally 4,956 square feet in area for highway purposes related to the State construction of a roundabout at the intersection of State Routes 110 and 111. The area variances seek to permit a lot area of 0.69 acres (0.8 acres existing) in lieu of the required minimum 1 acre. Property owner: Harmony Grange No. 92 Patrons of Husbandry.

Chairman Wendt began by noting that required referrals regarding the site's location in a mapped public watershed, that referrals to Aquarion Water Company and State Commissioner of Public Health had not yet been completed, and therefore this matter would need to be adjourned to next month's meeting.

Mr. Robert W. Ike, Supervisor of Property for the State of Connecticut, Department of Transportation Department of Rights and Way introduced himself and presented the application.

Mr. Ike submitted for the record copies of the post office tracking numbers for the certified mailing to neighbors of the public hearing notice, as well as copies of the referral notices sent today to the State Department of Public Health and the Aquarion Water Company, with the noted tracking numbers, and duly takes responsibility for the lateness of the referrals.

Mr. Ike read from the Connecticut State Statutes regarding nonconforming lots, and summarized that a public meeting was held on February 24, 2015 regarding the roundabout project and today the State is seeking a lot area variance. Refusal of the variance could result in the total acquisition of this property which is unlikely; redesign of the project encroachments which is not possible; or the taking of a defined easement instead which would be the likely alternative to the variance, should same be denied.

Chairman Wendt restated his understanding of this application for clarification, there is a strip of property along Route 111 for road widening, and there is a second piece along Hurd Avenue which would support the construction of dead end cul-de-sac terminating Hurd Avenue with its closure from Route 110. Mr. Ike concurred.

Secretary Callo inquired what would happen to the portion of the right-of-way on Hurd Avenue past the new dead end. Mr. Ike stated that since this road would no longer access Route 110 or be maintained as a road, in some cases, the Town would abandon the right-of-way and the lands would be split and merged with the abutting lots on Hurd Avenue. Planner Agresta stated that the Town was not planning giving up the rights to the road right-of-way, and instead additional parking that could be used by the Grange was planned, resulting in a net increase in the number of parking spaces. Access to the homes and to the Grange would only be through the southern end of Hurd Avenue, as access to Route 110 would no longer exist (as it would conflict with the cross-over traffic in the future round-about at the intersection of Routes 111 and 110).

Chairman Wendt opened the meeting for public comment.

Mr. Gordon Gibson, Senior Right Way Agent of the International Right of Way Association representing Harmony Grange and on the Executive Committee of The Connecticut State Grange introduced himself, noting that he did not represent in any way the State Grange, only the local Grange. He noted that the Grange was opposed to the proposed takings which involved only partial acquisition, as it will cause more hardship for the Grange. Mr. Gibson indicated that the Grange was not provided information on the application by the State (applicant) and that they reviewed the materials in the Planning and Zoning office files. Mr. Gibson noted that there were several errors on the State's application:

- Page 2, Item 2: origin of application property is listed as "unknown" but he noted the Grange had been unchanged since 1932.
- Page 2, Item 5, the applicant's interest in this property is listed as "Other Condemning Authority per GCS 48-24 but should be CGS 48-24, which only gives the State the authority to apply, their Condemning Authority is Section 13A-73B.
- The approximately 4,000 square feet of land to be acquired, differs from the 3,008 square feet of land to be acquired in a May 23, 2016 letter addressed to him and signed by Chellis Allen, Department of Transportation, is for only one parcel of land. When Mr. Gibson contacted the Office of Rights and Way regarding the errors and their needed correction, he said that the Office did not see the seriousness of the errors.
- Page 4, Item 17, the applicant has checked off that municipal public water is available and connected on this property. This property has a private well only and has no access to a municipal public water supply.

- Page 5, lower section at the bottom: this application must include the Owner's Signature but it was never presented to the Grange for signature.

The Grange suggests the Board reject the application as incorrect and incomplete, and to not take any action on it and have the State resubmit a new application.

Planner Agresta requested clarification from Mr. Gordon regarding which square footage he believed to be correct. Mr. Gordon responded that he believed the square footage noted on the application was correct and provided a copy of the letter previously mentioned to Staff for the record.

Mr. Ike responded to the comments as follows:

- The State does not provide copies of applications to property owners.;
- The State is at the Zoning Board of Appeals under Statute 48-24.
- The State takes full responsibility for the courtesy letter sent to the Grange that was sent out by a trainee and her work should have been double checked. All property owners receive a courtesy letter which in no way impacts the application itself.
- As a governmental condemning authority, we perform title searches on all acquisitions up to 40 years, we do not identify the origin of a property.
- The State has no interest in the property, and is only at this meeting due to Statute 48-24, if the Board denies this variance, the State has three options: 1) acquire the property in total; 2) try to remove the proposed construction from the property which cannot be done here; or 3) the State would take an easement for the defined highway purposes instead.
- The State acknowledges the error regarding public/municipal water availability and connection.
- The included State Attorney General opinion on this matter states that as a governmental condemning authority, they are not required to seek an applicant's signature under State Statute 48-24 dating back to 1986.

Mr. Paniccia requested a summary of the entire acquisition process. Mr. Ike provided the Board of Appeals with a summary of the process:

- State holds public hearing in the Town with 30% design approval.
- With 30% design complete, a cost assessment and title search are completed.
- Property maps are obtained.
- Projects are funded 80% Federal/20% State.
- Federal funding is disbursed only after design approval by the Federal Highway Administration.
- Design approval follows a public meeting in the Town.
- Once the design is approved and a public meeting held, property appraisals are performed.
- Once property appraisals and evaluations are performed, reviewed, and registered, letters are sent to property owners to tender an offer to purchase.
- The property owners given sufficient time in which to accept or decline State's offer.

- If the property owners choose not to accept the State's offer, the State can then force the acquisition under the State's power of Eminent Domain.
- If a lot area variance is needed, a taking offer is tendered after application to and action by the ZBA.
- If ZBA approves variance, State then moves forward with the taking; if the ZBA denies, State has three options as stated earlier.

Mr. Ike submitted for the record a copy of design approval for the current project.

Planner Agresta stated that the construction for the property site will be identical whether the Board approves the variance or not. The difference will be that if the variance is approved, the State will have the liability for the construction and development as the new owner, whereas if it is not approved and a defined easement is taken by the State instead, which in turn will pass that to the Town, the owner will still have liability exposure. The Town does not want a defined easement; it wants ownership of its road right-of-ways.

Mr. Paniccia asked if the outcome/impact for the residents or the Grange would be different in either case. Mr. Ike responded that it would not. In either case, both the Grange and the residents will be impacted by the construction project. Chairman Wendt explained that the current lot size for the Grange is currently nonconforming; the road project and State acquiring additional land, will only make it more nonconforming. Mr. Ike responded that there was no way that the impact to both the six other property owners and the Grange could be avoided in building the planned round-about.

Secretary Callo asked the State intended to follow up with a letter making the necessary corrections to the application, to which Mr. Ike responded that he would first thing in the morning.

Planner Agresta wanted to clarify for the Board and members of the public, that the Board was holding the public hearing open to permit sufficient time for the applicant to make the required referrals to State Public Health Commissioner and Aquarion and to provide an adequate time to receive any input from those entities but that should no responses be received by the next meeting the expectation is the hearing would be closed, as it is not required to receive a referral response.

Mr. Bunovsky, VP of Harmony Grange, asked again for a summary of the State's three options for the construction project. He stated that acquiring square footage will create an unusable building for the Grange and it would be better if the State acquired the property in total. In addition, snow removal on the cul-de-sac will impact infrastructure such as the site's private well, cable lines, oil inlet, access to the boiler, and more. Mr. Bunovsky stated that the kindest decision the Board could make would be to deny the variance to force the State to acquire the property in total and relocate them. The State would then have more flexibility in design. Mr. Gibson stated that the State is required to assist in relocating any displaced business or resident if they have acquired the property in full. Mr. Ike responded by stating that there have been two public meetings regarding this project in the Town of Monroe, the State's Engineering staff has met with the Grange on numerous occasions to discuss this project, and would have been at tonight's meeting if they had not been placed on official leave.

The State is in no way attempting to conceal any information. In most cases, the State prefers a defined easement to a complete acquisition – Mr. Ike said the State in this instance would not take the whole property.

DELIBERATIONS

- **Meeting Minutes**

April 5, 2016 Minutes

MOTION: Condon – To approve the meeting minutes for April 5, 2016 as drafted.

SECOND: Callo

VOTE: 3-0-2 Approved

Ayes: Wendt, Callo, Condon

Nays: None

Abstain: Saraco, Paniccia

- **Determinations**

ZBA-2016-02, File #1382 – 21 Crescent Place, Assessor Map 4, Lot 24

MOTION: Paniccia – To approve the area variances per application ZBA-2016-02 subject to plan revisions as set forth in Staff memorandum dated June 7, 2016.

SECOND: Callo

At first glance Board members did not see the immediate hardship that it would harder or take longer of a time in sell the property. Secretary Callo sees the issue as more of an ongoing problem between the two properties vs. the extended sale time. Chairman Wendt voiced that it would be more practical to eliminate the easement as 21 Crescent would have a non-used driveway on their property if a variance was not granted, and lessening the magnitude of the nonconformity. Planner Agresta reminded the Board the variance would eliminate the affect of the nonconforming easement setback on both properties.

VOTE: 5-0-0 – Approved

Ayes Wendt, Callo, Saraco, Paniccia, Condon

Nays None

Abstain None

CLOSING OF MEETING

- **Correspondence / General Discussion**

None

- **Meeting Adjournment**

Polling the Board and hearing no objections, Chairman Wendt adjourned the meeting at 7:58 pm.

Respectfully submitted,
Rebecca Wood, Recording Clerk