



TOWN OF WINCHESTER – CITY OF WINSTED
Town Hall – 338 Main Street
WINSTED, CONNECTICUT 06098

DEC 3 2007

*Minutes of Meeting
Zoning Board of Appeals
November 27, 2007*

The Zoning Board of Appeals met in the P. Francis Hicks Room. The meeting was called to order by Chairman Nalette at 7:20 p.m. The following members answered the roll call: Richard Nalette-Chairman, Ronald Dew, John Massicotte, alternate Michael DeClement and Zoning Enforcement Officer Marc Melanson. Susan Lange, Ray Winn, alternate Michael Fox and alternate Ernie Wolff were not present.

Chairman Nalette seated alternate M. DeClement as voting member for this meeting.

Item 3 Public Hearings – Variance Applications & Decisions

Chairman Nalette informed Mr. Kores and representative Attorney Cohen that since there are only four members present this evening that he can choose whether he would like to continue his application to the next meeting in accordance with State Statute or be heard this evening. If he is heard this evening then all four members must vote in favor for the application to be approved.

#07-5021 Request for variance for section 4a.2 Lot width, 4a.2 lot coverage, 4a.2 Front yard set back and 4a.2 side yard set back at 302 ROW 1 for Edinburg LLC.

M. Melanson informed the Commission that this application has been withdrawn by the applicant because there is a different application that has been submitted to the Building Department that meets the State Statutes. Chairman Nalette said that he has a little background and most respectfully disagrees with M. Melanson and would like the to table the application to the next meeting in order to get an opinion from the Town Attorney in order to be fair to everyone. M. Melanson said that the applicant has the right to withdraw it. Chairman Nalette said that he would like to table is so when a building permit is given and it is appealed, he doesn't want Mr. Kores to have a lot started in case the appeal is lost. Tabling it would put this on hold when they get an opinion, they can continue from there. Attorney Cohen said that they would like to withdraw the application. Chairman Nalette believes that they have right not to allow the applicant to withdraw and that the simple way to do this is to table it and the Commission can vote to do that. He also believes that M. Melanson has done due diligence and that M. Melanson believes the building permit can be issued but Chairman Nalette does not want a precedent to be set at Highland Lake in that every piece of land at Highland Lake that has water and sewer will be buildable without constraint. He does not believe that the Highland Lake Shores fit that law or the intent of that law. M. Declement asked for copy of the legislation that M. Melanson has provided. He asked if that M. Melanson's interpretation of this law is that if the land is vacant it goes back to the regulations at the time it was formed or the first regulations that the Town adopts. Chairman Nalette said incorrect because in 1932 there were regulations voted in and then voted out in 1936. M. Melanson said that according to the Town Zoning Regulations they were adopted in 1956. M. Declement asked if this was recent legislation? M. Melanson said January 1st, 2007. J. Massicotte asked that there 3 lots combined into one lot on the deed and was deeded as a subdivision in 1920. Mr. Kores said it was deeded as subdivision in 1927. J. Massicotte asked if it changes 310 and 311 to flip flop and in order to make this one null and void it is contingent on the lot in question. M. Melanson said that if the other application gets denied this will be

void because there is a structure already half on it and he will not be able to put a structure on it. Chairman Nalette asked that wouldn't that lot already become built on because it has a structure on it. Mr. Kores said that there was a permit given in 1984 to build the house A2 survey. Chairman Nalette answered an audience question that in order to build on the Lake a person is required to have an A2 survey and you must have one to appear at ZBA. There have been instances of an A2 being waived for example if you have a 50 acre parcel and put your house in the middle then there really isn't probably a reason to have a survey. Audience member Mr. Mosur asked what has changed in this application since August? Is it that now that there is a loophole? Chairman Nalette said that it was pointed out that the conditions have changed and M. Melanson has researched it and agrees that this is the case. Mr. Mosur said that he agrees that it should be tabled to the next meeting. He said that he didn't get the mailing because a holiday was included and the Post Office is working with skeleton crews and also wants to see the agenda on the website. Chairman Nalette said they are working to develop a better website. J. Massicotte asked if the deeds to the subdivisions restrict for seasonal cottages because there were no provisions for sewer & water and now that improvements have come through then will this subdivision hold up because of improvements by the city. Mr. Kores said that it is not restricted to a seasonal cottage. Chairman Nalette said that the only time they are restricted to seasonal cottage is typically when ZBA felt they had to give the applicant something and gave restrictions to a seasonal cottage but the normal deeds are just land deeds without that restriction. Mr. Mosur asked why wouldn't any new ordinance or zoning law override anything that was written in the past because otherwise people wouldn't have to hook up to sewer and could just dump in the lake. Chairman Nalette health is different than zoning and that applicant is saying that the new State law supersedes anything that the Town has. In the court, if it is held by as a valid subdivision then they would be negating 30 years of zoning. Chairman Nalette again feels that this doesn't apply because they have had many people go to court for unbuildable lots

Brief discussion followed. Chairman Nalette believes they have the right to table this application and continue it to the next meeting by putting him on notice that there is more information that they need and that he has the right to withdraw it at the next meeting.

Motion made by Chairman Nalette to table application #07-5021 request for variance for section 4a.2 Lot width, 4a.2 lot coverage, 4a.2 Front yard set back and 4a.2 side yard set back at 302 ROW 1 for Edinburg LLC. to the next meeting. R. Dew second. In favor R. Dew, M. Declement, Chairman Nalette. Opposed Massicotte. Motion Carries.

#07-5022 Request for a Variance for section 4a.2 front yard set back, 4a.2 side yard set back, 4a.2, 4a.2 lot coverage at 304 ROW 1 for Harris Daigle.

Attorney Cohen and Peter Kores presented the application. Peter Kores gave certification that the ZBA "Certification of Notice" was posted prior to this public hearing.

Chairman Nalette stated that they first need to decide if this is a significantly different application. Mr. Kores stated that the first application was withdrawn and in that case it does not have to be significantly different. Chairman Nalette clarified that the Daigle house is now on lots 310 and 311. For the purposes of this application, Attorney Robert Cohen represents Harris Daigle and Peter Kores. Attorney Cohen explained that Mr. Daigle has owned this cottage for a considerable period of time. The house is not a typical house that is on the lake. It is not any particular style of house and when it was built there was only a guess as to where the boundaries were. The house is serviced by water "black lighted" from the lake and the septic system is a pump system and is hooked into the existing system in the area. Water is down at the main road and has not come up the ROW. The house is not in good condition and the desire is to tear down the house and build a house with a smaller footprint and entirely in the border of the lots. It will also be in conformity to other houses in the neighborhood. It will be provided with parking and

may alleviate the general area concerns that were heard pre-hearing. Frontage is well defined so that it isn't going to be in conflict with any of the other neighbors. For those reasons the applicant feels that the application is reasonable. Attorney Cohen said that it will be winterized too so it has the possibility to be used year round.

Mr. Kores said that the house is currently on lots that really don't belong to the property and he wants to put it where it belongs. Attorney Cohen emphasized that this application should stand on its own regardless of the withdrawn application. Mr. Kores said that there is an even swap of 10 feet on the lake and 10 feet on the ROW. J. Massicotte asked what the difference is to where it now stands. Mr. Kores explained that lots 308, 309 & 310 would gain 10 feet on the water and Mr. Daigle would gain 10 feet on the cul de sac. J. Massicotte asked if there was an A2 on Mr. Daigle's lot? Mr. Kores said yes. J. Massicotte sees no pins set on the upside on the drawing. Mr. Kores said that he does not believe that the pins were set and J. Massicotte feels they should be shown on the map. Chairman Nalette asked if there was a copy of the A2 in the application and there was not in this month's application. J. Massicotte said that the size of the property is not shown on the map. Mr. Kores said that he has a map with the measurements. J. Massicotte asked Mr. Kores how long he has owned the property of 308, 309 & 310. Mr. Kores said for about a year. J. Massicotte asked if there was an A2 survey before he purchased it and Mr. Kores said no that he had the A2 done and that he had purchased $\frac{3}{4}$'s of Mr. Daigle's house.

Chairman Nalette said that from application difficult to see what they are asking for. Attorney Cohen said that they are asking to tear down existing house and build the Daigle house completely within the lots and asking to waive frontage and side requirements. It was discussed that there will be a full basement and no blasting would be required. The sewer will be hooked back up to the existing sewer and the pump chamber to the well will be in the house so that it reduces the required distance of 75 feet from sewer pump. J. Massicotte asked if this should be 2 applications which would be one to switch lot lines and one for variance. M. Melanson said that they are not switching the lot lines and not making the lot lines any smaller. Mr. Kores said that they are just trying to clear up a messy situation. Attorney Cohen doesn't harm the town or the neighborhood in any way and clears up a problem. Chairman Nalette stated that if he was a neighbor he may have an objection to having a house moved closer to him. M. DeClement asked what the driveway will be and Attorney Cohen said that it will be gravel. Chairman Nalette inquired of Mr. Melanson why there are not four numbers in the motion. Mr. Melanson said that lot coverage is not listed as it usually would be because Mr. Kores will not have more than 15% lot coverage and if the plan presented to the Building Department proves to be different than 15% lot coverage then Mr. Kores will have to go back for a variance for that. The Commission briefly discussed the set backs and measurements as listed on the map presented. Mr. Kores said that the current house is only a seasonal cottage and that is what the new house will be. Chairman Nalette asked if the house will have a furnace, will be insulated and have thermal windows? Mr. Kores said yes. Chairman Nalette stated that it is then not a seasonal cottage. Discussion ensued on requirements for a seasonal cottage and that furnace, insulation and square footage are considerations in whether it is considered a seasonal cottage or year round home. Mr. Kores asked M. Melanson if he could build a house without a furnace and insulation and Mr. Melanson said no. R. Dew said that the regulations state a seasonal cottage shall not be occupied more than 30 days between October 15 and May 1st.

Chairman Nalette asked for public comment. Mr. Mosur stated that he is not against what Mr. Daigle wants to put up but there is issue with the surveying is a monstrosity up there. There is talk on swapping 10 feet below and 10 feet above and there is not definition on boundaries as to what the circle is. Chairman Nalette said that he has no problem that the surveyor can do this and there will be nothing different in the actual lot lines over all. Mr. Mosur said that then they should just give Mr. Daigle the circle and let him beautify it and take ownership of it. Chairman Nalette said that has nothing to do with this and is completely a different issue.

J. Massicotte asked to clarify that the hardship is that Mr. Kores bought a piece of property with someone else's house on it and wants to flip flop land and build him a new house. Attorney Cohen stated that the question of hardship is not that the house is on the property that Mr. Kores bought but that Mr. Daigle has a house that is not on his lot and that his house is in need of renovation. J. Massicotte asked if Attorney Cohen is representing Mr. Daigle as well and he responded yes. M. Declément asked if the back of the house that is facing the lake is 28 feet high? Mr. Kores responded yes but that it will not be as tall as the current Daigle structure because it is starting lower down the hill. J. Massicotte asked if there will be stairs off the deck because he doesn't see that reflected. M. Melanson said that there will probably be but if he puts him on the side then it will not be any closer to the property line. J. Massicotte said that the motion has nothing regarding the flip flop of the property. M. Melanson said that flip flopping the property has nothing to do with ZBA. The applicant cannot do anything without the flip flop. Mr. Kores said that the plan is subject to flip flopping the property. They do not need a variance for flip flopping the property because that is the only way they can get the measurements presented. Chairman Nalette called for further questions. R. Dew stated that he is not happy with dimensions not shown. Mr. Kores offered to leave and get a map and return tonight. Attorney Cohen said that if a major issue then they would ask for a continuance to the next meeting in order to provide the information that is needed. After brief discussion Chairman Nalette said that if Attorney Cohen will provide more information at the next meeting that since they have tabled things in the past and if they would agree to that then it would be appropriate to keep in with past practices. M. Melanson made a point of order that Mr. Kores may consider withdrawing the application because only the present four members will be able to vote at the next meeting. If he continues to the next meeting in order to have five members that are present at the next meeting vote on it then any members that are absent tonight would have to listen to the recording of the public hearing that happened tonight and that may be a problem. Attorney Cohen said that they would move to withdraw the application. Chairman Nalette said that he would entertain a motion to withdraw the application under the circumstances.

Motion made by J. Massicotte to withdraw application #07-5022 Request for a Variance for section 4a.2 front yard set back, 4a.2 side yard set back, 4a.2, 4a.2 lot coverage at 304 ROW 1 for Harris Daigle. R. Dew second. Chairman Nalette called for any discussion. J. Massicotte asked if all that was needed was an A2 with resubmission. R. Dew said that it is his understanding that this is a seasonal cottage and would like that somehow put into the variance if granted. Otherwise this would be allowing him to build seasonal house based on square footage alone and it could be used as a year round home with no policing action. Marc nothing in regulations that says have to go through (listen) J. Massicotte said that in the past they have seen deeds stating as seasonal. Is there anything that enforces that? M. Melanson said that the only thing the zoning regulations say regarding a seasonal cottage is by square footage. No further discussion. All in favor. Unanimous. Motion carries.

#07-5023 Request for a Variance for section 4a.2 front yard set back, 4a.2 side yard set back, 4a.2, 4a.2 rear yard set back at 536 West Wakefield Blvd. for Sherwood Dawson.

M. Melanson said that this application was withdrawn because the wrong address was put on the application.

Motion made by R. Dew to withdraw the application #07-5023 request for a Variance for section 4a.2 front yard set back, 4a.2 side yard set back, 4a.2, 4a.2 rear yard set back at 536 West Wakefield Blvd. for Sherwood Dawson. J. Massicotte second. All in favor. Unanimous.

Item 4 Approval of Minutes of October 23, 2007 meeting.

Motion by J. Massicotte to approve the minutes as presented. Seconded by R. Dew. All in favor. Unanimous. Motions passes.

Old business: Chairman Nalette called for old business. None presented.

New business: Chairman Nalette called for new business. None presented.

Bills:

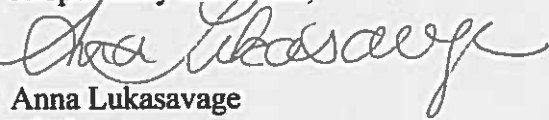
Motion by R. Dew to approve clerk's hours at 1.75 hours. M. DeClement second. All in favor. Unanimous.

Correspondence: Chairman Nalette called for any correspondence. None presented.

Chairman Nalette called for discussion with ZEO. J. Massicotte inquired that he was under the understanding that the State Statute or Town regulation, the building permit must go with whatever one is more stringent. M. Melanson said that ZBA cannot override State Statute when it comes to something like that.

Motion to adjourn by J. Massicotte. R. Dew seconded. All in favor. Unanimous. Motion Carries.

Respectfully submitted,



Anna Lukasavage
Clerk

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D. C. 20535

TO : SAC, NEW YORK (100-100000)

FROM : SAC, NEW YORK (100-100000)

RE : [Illegible]

DATE: [Illegible]

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