

ZONING BOARD OF REVIEW MINUTES

Tuesday, June 28, 2016 Meeting 7:00 pm

Town Council Chambers, Town Hall

Present: Richard Land, Chair; Renu Englehart, Vice-Chair; Ashley Cullion, Jody Sceery, and Melody Alger (Alternate).

Absent: Christopher Mulhearn, Barry Golden (Alternate).

Staff: Lea Anthony Hitchen, Assistant Town Planner; and Town Solicitor Peter Clarkin.

Mr. Land, Chair of the Board, called the meeting to order at 7:00 PM and introduced the members and staff present. He then read the Board's procedures into the record. Each person addressing the Board will first state his or her name and address for the record. The applicant and his or her legal representative will present the case and witnesses may be called to testify. Such testimony must be relevant to the application. Expert witnesses will be sworn in and there will be no prejudgment as to the expertise of any witness. Pictures, diagrams and other documents given to the Board as evidence will be appropriately marked as exhibits and will be retained by the Board for the record. Upon completion of the applicant's presentation all other persons wishing to offer evidence in favor of the application may then do so one at a time. Following that all persons wishing to offer evidence against the application may then do so one at a time. It is asked that comments are confined to the zoning matter being heard and that repetitive remarks are avoided. Cross examination or rebuttal may be allowed if the Board feels it would be appropriate and useful. All questions from the floor will be directed through the Chair only. After all relevant facts have been heard the Chair will call for a motion; the Board will then discuss the motion and the Chair will call for a vote. During the discussion among voting Board members, the Board will not accept any new and further testimony unless it is specifically requested by a Board member. The Board will make every attempt this evening to render a decision. The written decision will be recorded in the Town Clerk's Office as soon as possible following the approval of the minutes of the meeting.

Zoning Board of Review Hearings – 7:00 PM

- 1. Donald & Sherri Dunwoody** for property located at 2080 Frenchtown Road; Map 19 A.P. 19 Lot 82 (Zoned Farming, F-2). The Applicant requires a Dimensional Variance from the allowable maximum height for the construction of a detached garage. Chapter 260 of the Town Code, Zoning Ordinance, Table 2 – Table of Dimensional Regulations by Zone sets forth a maximum height of 15 feet for accessory structures. The Applicant is requesting to increase the garage height to 23’.

Ms. Englehart disclosed she and the Dunwoody family are personal friends from hockey. She has given no advice on the matter and there is no financial gain involved and feels as though she can sit in as a voting member.

Mr. Donald and Ms. Sherri Dunwoody of 2080 Frenchtown Road, owners of the property, represented the application. Mr. Dunwoody explained he has been a resident since 1959 and was requesting a height variance for the construction of a detached garage to a height of 23 feet. He asserted the garage will be built in the middle of the property, essentially behind the existing house and will not require setback relief.

Mr. Dunwoody testified the new structure will provide for much needed storage space for lawn and garden equipment, kid’s toys, seasonal items as well as to park a vehicle in the garage.

Mr. Dunwoody noted that he was not aware of any abutters objecting to the application and actually had a neighbor submit a letter in support of the application (submitted as Exhibit 1).

Mr. Land commented that the new accessory structure will have a second floor space for storage. He asked the Applicant if they understood that that space cannot be converted or used for residential purposes. Mr. Dunwoody said he understood.

Mr. Land opened the hearing for public comments. With no public comments, Mr. Land asked for a motion.

Motion by Ms. Sceery to approve the application as submitted. Seconded by Ms. Englehart.

Mr. Land read the standards into the record for a dimensional variance, those being the following:

The hardship from which the applicant seeks relief is due to the unique characteristics of the subject land and not the general characteristics of the surrounding area.

The hardship is not the result of any prior action by the applicant and does not result primarily from the desire for greater financial gain.

Granting the request will not alter the general character of the surrounding area or impair the purpose or intent of the Zoning Ordinance or Comprehensive Plan.

The relief to be granted is the least relief necessary.

The hardship suffered by the owner if the variance is not granted shall amount to more than a mere inconvenience.

Mr. Land felt that under these particular circumstances these standards have been met, did not feel there is any impairment of any kind and the addition would be an improvement to the property.

VOTE: 5 – 0.

2. **Wendy and Thomas Roskowski** for property located at 122 Crompton Road; Map 78 A.P. 13 Lot 52 (Zoned Farming, F-2). The Applicant requires a Dimensional Variance from Table 2 of Chapter 260 of the Town Code; Zoning Ordinance, Dimensional Regulations by Zone which sets forth the setbacks for the zone. The Applicant is requesting to construct a front porch and side addition to the existing structure which will not comply with the front setback requirement.

Mr. Thomas Roskowski of 122 Crompton Road, owner of the property, represented the application. Mr. Roskowski explained he is proposing a 20'x32' addition to the west side of the existing home and a 26.5'x5' covered front porch to the front elevation – the addition will extend into the front setback by 2.1' where a 60' front setback is required, thereby being 57.9' from the street when complete.

No questions from Board members.

Mr. Land opened the hearing to the public. No comments from the public.

Mr. Land called for a motion.

Motion by Ms. Cullion to approve the application as submitted. Seconded by Ms. Englehart.

Ms. Englehart complimented the proposal and thought it would be an improvement to the property.

Mr. Land stated that he reviewed the plans, elevations and diagrams and believes it is appropriate to the property and will be an improvement to the property.

Mr. Land read the standards into the record for a dimensional variance, those being the following:

The hardship from which the applicant seeks relief is due to the unique characteristics of the subject land and not the general characteristics of the surrounding area.

The hardship is not the result of any prior action by the applicant and does not result primarily from the desire for greater financial gain.

Granting the request will not alter the general character of the surrounding area or impair the purpose or intent of the Zoning Ordinance or Comprehensive Plan.

The relief to be granted is the least relief necessary.

The hardship suffered by the owner if the variance is not granted shall amount to more than a mere inconvenience.

Mr. Land pointed out the request is a very small variation. Based on the testimony from the Applicant he will be voting in favor of the application.

VOTE: 5 – 0.

3. Robert & Ann McCann for property located at 110 Tipping Rock Drive; Map 7 A.P. 19 Lot 292 (Zoned Farming, F-2, Cluster). The Applicant requires Dimensional Variances from Chapter 260 of the Town Code; Zoning Ordinance, Article III, Zoning Districts, Section 8 General Regulations, Subsection (F) pertaining to the siting of accessory structures and swimming pools and Article IX Cluster Subdivisions; Section 43 Minimum Requirements, Subsection (B) Dimensional Requirements which provides the Dimensional Regulations for Cluster Subdivisions. The installation of a pool and pergola at the property has caused an encroachment into abutting conservation land.

Attorney John C. Revens, Jr. of Revens, Revens & St. Pierre Law Offices located at 946 Centerville Road, Warwick, represented the owners, Robert and Ann McCann. Atty. Revens submitted the affidavit of notice and “green cards.”

Atty. Revens began by saying the Applicant is present for dimensional relief to allow for an existing in-ground pool and pool cabana to remain where they are currently located. The proposal is to exchange an equal amount of land with the Homeowner’s Association. Atty. Revens stated he submitted minutes of the Homeowner’s Association meeting to Staff endorsing the exchange. He confirmed the Homeowner’s Association has also joined with the McCann’s on the Administrative Subdivision application which will require approval of the Administrative Officer of the Planning Department subject to zoning relief being sought tonight.

Atty. Revens explained how the situation came to light. He asserted the McCann's hired a pool contractor to install a pool who was responsible for obtaining proper permits for its construction; it was the pool contractor that submitted plans but no one knows for sure where the plans came from. The plans were reviewed by the Building Official, a permit was issued and the pool was constructed. Subsequent to that construction, the McCann's engaged another contractor to perform services to erect a pergola; apparently that contractor neglected to obtain a permit and used the same plan the pool contractor used to site the pergola and built it. Atty. Revens went on to say that some years later a neighbor complained that they thought the pergola structure was located in the Homeowner's Association land even though the neighbor who complained is not part of the Homeowner's Association. This particular neighbor also complained that the pool did not meet the 30' setback requirement which it does not.

Atty. Revens confirmed he and this client are here this evening to request the relief in order for the two structures to remain and to allow the Administrative Officer to approve Subdivision. He noted that the legal notices have been properly sent to the neighbors and the Homeowners Association has endorsed the zoning application and participated and signed the Administrative Subdivision application. Atty. Revens said the neighbor who filed the complaint is represented by Attorney Andrew Teitz; he and himself have engaged in discussions regarding the situation and it appears an agreement has been reached to the construction of a fence on the new proposed property line between the Homeowner's Association and the McCann's property which will ensure the activities that occur on the McCann's property occur there and not on the association's property or the Huling's property. Atty. Revens pointed out a fence already exists because of the backyard swimming pool so the proposal is to relocate the fence to the new proposed line and also plant some shrubbery in the triangle on the McCann side of the fence.

Attorney Andrew Teitz, with offices located at 2 Williams Street, Providence, representing Dianne and Raymond Huling, who are direct abutters to the subject property and along the property line where the encroachment into the common area as well as a 10' buffer has taken place. Atty. Teitz confirmed he and Atty. Revens did come to an agreement and in

fact there is an exhibit of a site plan (which as submitted is a split rail fence and will now be the existing fence). Atty. Teitz explained the proposal includes the Applicant moving their existing fence; he confirmed there is no preference as to what kind of fence, whether it be split rail or the existing fence, but it is to demarcate the property line and the McCann's would provide some landscaping in the corner of the lot where it comes closest to the Huling's property and that it be maintained by the Applicants as conditioned in running with the land of the Zoning approval. Atty. Teitz requested that this be put in as a condition of the Board's written decision and recorded in land evidence.

Site plan, submitted by Atty. Teitz, marked as Exhibit #1.

After reviewing the exhibit/site plan submitted by Atty. Teitz, Mr. Land commented that it appears the request is for a property line fence along the entire edge of the property. He questioned if a fence exists there already.

Atty. Revens replied yes, all the way to Tipping Rock Drive, from the cul-de-sac, right up alongside the property and all around the back. He informed the Board that in lieu of fencing the pool area, the homeowners fenced the whole side and the fence abuts up to the side of the house to where the garage is located. Atty. Revens asserted the fence will be relocated which is not now on the property line to put it where it belongs.

Mr. Land questioned if the Applicant is agreeable to the additional landscaping in the corner area where Atty. Teitz has indicated located on Exhibit 1 of the site plan. Atty. Revens replied in the affirmative.

Ms. Englehart clarified that the exchange of land is a piece of the McCann's property being exchanged with a piece of the Tipping Rock's Homeowner Associations land. Atty. Revens said yes; he explained the exact amount of square footage is coming out as will be going in, being 2,096 s.f. will be traded.

Mr. Land asked that once the fence is moved will there be considerable distance between the Huling property and the fence at that point. Atty. Revens pointed out that from the home there is because the Huling's have a

huge amount of acreage. Atty. Teitz verified that the distance will vary; at the corner of the “triangle,” the Huling property is right there; most of this is an average buffer which is why his client are willing to agree to this and as long as the additional landscaping is planted which will help with the additional screening.

Ms. Englehart asked if there will be any markers/boundaries set. Atty. Revens said not necessarily since the fence footings will be in concrete but the Applicant is willing to do whatever the Board conditions.

Mr. Land opened the hearing for public comments.

Atty. Teitz spoke for his client, Ms. Dianne Huling, who had concerns that the proposed fence at the anticipated new corner of the property line basically touches the Huling property; people from the Tipping Rock neighborhood passing through the open space would not be able to get through now where that new corner is located. Atty. Teitz commented that he was of the understanding there are not people from the Association going through there as there is not a path or trail located there to begin with. He realizes the Applicant has approval from the Tipping Rock Executive Board and he simply wants to make sure that there is a clear understanding and it is on the record the Applicant received approval from the Association that there will not be the possibility of them installing a path at this location. Atty. Teitz assumed the Homeowner’s Association Executive Board was aware of this since they saw this plan.

Mr. Land commented that he saw what the approval from the Tipping Rock Board was; it did not dictate anything relative to a path. He did not believe the Tipping Rock Board has the right to unilaterally take someone else’s property to create a path over it. He added the Board would be hard pressed to create one there. If the Zoning Board is to approve the application, Mr. Land wanted it to be clear which he thought to be reasonable, that there is nothing to stop anyone from walking through the open space or anywhere for that matter to make their own path regardless of whether there is a fence there or not. He was not sure how the Zoning Board could practically resolve that particular issue.

Atty. Revens asserted that he reviewed the Tipping Rock subdivision plan not too long ago; often times when there is open space provided in subdivisions it is either in one or two areas that is designed to be passive or recreation/active or a path that navigates through the property that would be maintained by an association. He commented in looking at the Tipping Rock plan it appeared that the areas of open space were rather randomly or haphazardly located throughout the subdivision and are not contiguous and are more importantly not maintained as walking trails or paths including the particular area Atty. Teitz just discussed. Atty. Revens stated he was just out at the subject location, specifically in the area of the pool and pergola and there is no path in the open space that someone could take advantage of. He reminded everyone that many years ago when Tipping Rock was approved it was approved as a cluster subdivision which had to provide open space; the fence will keep anyone who is on the Applicant's property from spilling over onto the Huling's property or the Homeowner's Association because there will be a fence. Atty. Revens opined the Homeowner's Association is well aware of the ongoings which is why they were so willing to swap out the land and because there was no consequence to the use and enjoyment of open space to the people who live in Tipping Rock.

Atty. Teitz agreed with Atty. Revens statement but reiterated he wanted to confirm everything was on the record and there were no waivers or anything like that that his client would be agreeing to.

Mr. Peter Hopelain, resident of 35 David Court and President of the Tipping Rock Homeowner's Association, commented that the open space in question that is currently nestled between the McCann property and the Huling property is essentially an "island" in between the two cul-de-sacs; in order to access that area one would have to go in amongst our properties to get to that common space. He said the Executive Board took the position that is if it is a matter of concern where the McCann's property abuts up to neighboring property the Board would work with our neighbor to allow him whatever makes that concern dissolve so there is no friction from our Board. Mr. Hopelain added that we, as the Executive Board are happy to give our neighbors whatever they need for the record.

With no further questions and or comments from the public, Mr. Land asked for a motion.

Ms. Sceery motioned to approve the application with the condition the existing fence be relocated and additional landscaping be planted in the corner of the lot where it comes closest to the Huling's property (Map 7 AP 19 Lot 12) and that it be maintained by the Applicants in running with the land and of zoning approval. Seconded by Ms. Alger.

Mr. Land read the standards into the record for a dimensional variance, being the following:

The hardship from which the applicant seeks relief is due to the unique characteristics of the subject land and not the general characteristics of the surrounding area.

The hardship is not the result of any prior action by the applicant and does not result primarily from the desire for greater financial gain.

Granting the request will not alter the general character of the surrounding area or impair the purpose or intent of the Zoning Ordinance or Comprehensive Plan.

The relief to be granted is the least relief necessary.

The hardship suffered by the owner if the variance is not granted shall amount to more than a mere inconvenience.

Mr. Land stated that he reviewed the record and he saw that the homeowner attempted to do things properly and would characterize the situation as a series of missteps by overstepping the boundary to the property literally. He thought the application and the agreement amongst the landowners and the abutter satisfies the concerns and he would support the application and he also believes it satisfies the standards.

VOTE: 5 – 0.

4. **Dana Tessier** for property located at 2254 Division Road; Map 68 A.P. 14 Lot 272 (Zoned Farming, F-2). The Applicant requires a Dimensional Variance from Table 2 of Chapter 260 of the Town Code; Zoning Ordinance, Dimensional Regulations by Zone and Section 8(f) of the same chapter pertaining to the siting of accessory structures. The Applicant seeks to construct a shed within the side setback.

Mr. Scott Parker of 2254 Division Road, owner of the property, represented the application. He explained he recently completed construction on the new house and needed additional space for storage. Mr. Parker stated the builder (Mr. Gashy Dowlatshahi) told him to just put it out there even though he knew he had to talk to the Town. Mr. Parker added that the builder without him knowing also constructed a house to the side of his which he was not aware of; therefore he installed the shed so he could not see into the new house.

Ms. Englehart affirmed that the Applicant constructed the shed in order to block the view of the other house. Mr. Parker said yes. Ms. Englehart questioned whether the Applicant asked the developer to plant a landscaping buffer or tree line along the property line.

Mr. Parker said he is building a tree house, or actually a tree line. Mr. Parker claimed his personal landscaper planted three white pines in the line to block the house on the outside of the shed.

Ms. Englehart asked if the shed is on the property line. Mr. Parker responded no, it is about 7' inside. He indicated he talked with Mr. Dowlatshahi yesterday via text message who specified if a few more white pines are installed in front of the shed he would be fine with the situation. Mr. Parker said the landscaper was at the site today and planted 2 white pines which will help block the house.

Mr. Land said it appears when Town staff visited the site the shed appears to be about 4'-5' from the property line and Mr. Parker is approximating it to be 7'.

Mr. Parker rambled on for a few minutes about how his landscaper is also Mr. Dowlatshahi's landscaper and has been busy yet was able to install the white pines today.

Ms. Cullion clarified that the Applicant has a 30' side setback, so regardless if the shed is 4' or 7' or if white pines were installed, the shed is still well within that setback.

Ms. Englehart asked Mr. Parker if he was aware of where the property line is and if it is marked. Mr. Parker said yes, he has 3 acres of land and it is fine. Ms. Englehart said no it is not fine because the shed is located in the setback and located very close to the property line – the recommendation by staff is to move the shed in further away from the property line.

Mr. Parker's response was he put the shed in and it looks awesome; when you pull in my driveway it looks really pretty and blocks not only the privacy of the house that is being built but the privacy of his house. The person that buys that house will be thankful that he put that shed there. If the shed is moved anywhere else it will be uncomfortable and will be in the middle of his yard.

Mr. Land asserted the issue is the Applicant did not get everything lined up properly and did not follow protocol and that is why he is here and that is why he is getting this type of feedback. Mr. Land commented that the Applicant feels as though the shed improves his property and feels it benefits the neighbor. Mr. Land was willing to say he thought the neighbor/developer, Mr. Dowlatshahi, is willing to allow the Applicant to leave the shed in the general area but be moved slightly, which is an inconvenience to Mr. Parker, which he recognized but he thought that is the direction the Board is headed in based on the comments and recommendations in addition to the submitted letter from Gashy Dowlatshahi to the Zoning Board. Mr. Land said acting, then asking for forgiveness later works sometimes and does not work other times and this is one time where the Applicant has experienced some frustration from some of the Zoning Board members.

With no other question or comments from the Board members, Mr. Land opened the hearing to the public. No public comments.

Mr. Land asked for a motion.

Motion by Ms. Sceery to approve the application with the conditions that two white pines be planted and the shed be moved to 10' from the property line. Seconded by Ms. Cullion.

Mr. Parker again went into an irrelevant tangent about his landscaper.

Mr. Land clarified the motion was to relocate the shed to a full 10' from the property line. (Mr. Parker unequivocally said yes.) Mr. Land said Wayne Pimental, the Building/Zoning Official would be checking to make sure the shed complies with the 10'.

Ms. Hitchen suggested an as-built plan be submitted in order for the Town to confirm the shed is 10' from the property line. Mr. Land asserted that will be an additional condition showing exactly where the shed is located once it is moved.

Mr. Land affirmed the motion as modified is to move the shed a full 10' from the property line, plant at least two white pines to create a buffer between the shed and adjacent property and submit an as-built plan to the Building Department once the shed is moved indicating the shed is 10' from the property line.

VOTE: 5 – 0.

Zoning Board of Review Business

1. Minutes: Review/action on the minutes of the March 22, 2016 meeting.

Motion by Ms. Cullion to approve the March 22, 2016 minutes. Seconded by Ms. Sceery. Approved 5 – 0.

Mr. Land asked for a motion to adjourn.

Ms. Englehart motioned to adjourn. Seconded by Ms. Sceery. Approved 5
– 0. Zoning Board of Review meeting adjourned.

Minutes respectfully submitted by:

Lea Anthony Hitchen,
Assistant Town Planner

For more information, please refer to the recording available in the Planning
Department.