

ZONING BOARD OF REVIEW MINUTES
Tuesday, January 24, 2017 Meeting 7:00 pm
Town Council Chambers, Town Hall

Present: Richard Land, Chair; Ashley Cullion, Jody Sceery, Christopher Mulhearn and Barry Golden (Alternate).

Absent: Renu Englehart, Vice-Chair; and Melody Alger (Alternate).

Staff: Lea Anthony Hitchen, Assistant Town Planner; Wayne Pimental, Building/Zoning Official, 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. **Vajra Daumont** for property located at 81 Fourth Avenue; Map 74 A.P. 4 Lot 183 (Zoned Residential, R-10). The Applicant requires Dimensional Variances from Table 2 of Chapter 260 of the Town Code; Zoning Ordinance, Dimensional Regulations by Zone which sets forth the setbacks for the zone and Section 260-8(F) pertaining to the siting of accessory structures. The Applicant has begun construction on a 10'x30' carport within the side and front setbacks.

Mr. Vajra Daumont, applicant and owner of the property, represented the application. Mr. Daumont testified he was seeking dimensional variances for a carport that when complete will not be fully enclosed. He explained the carport will be 10'x30' in size and it will be replacing a 10'x10' carport which was originally situated in the same location on the property. He confirmed the variance being requested is 2.96' from the front setback and 11' from the side setback where it will sit adjacent to the neighboring abutter. Mr. Daumont advised the closet abutter, Oren & Nancy Robinson, had submitted a letter in support of the application and also pointed out they were present in the audience if they needed to state they had no objections. Mr. Daumont went on to say he was constructing the carport by himself and wants to maintain a simple design in order to cover two vehicles. He also noted he had the property surveyed as requested by the Planning Department.

Ms. Sceery questioned if the previous carport was in the same location as the proposed carport. Mr. Daumont said yes.

Mr. Land confirmed a carport previously existed. Mr. Daumont asserted the previous carport was in the same location but it was much smaller, being only 10'x10' in size.

Ms. Cullion queried if the new carport will encroach any closer to the neighbor's property than the previous carport. Mr. Daumont said no.

With no further questions Mr. Land asked for a motion.

Ms. Sceery motioned to approve the application as submitted. Ms. Cullion seconded the motion.

Mr. Land commented that because the Applicant is replacing a previous existing carport and there are no neighbors objecting to the application he intends to vote in favor. He noted that every application stands on its own so the relief that he would vote in favor of does not necessarily impact any other decisions the Board may or may not make this evening or in the future.

VOTE: 5 – 0.

2. **Claudio Marasco** for property located at 20 Osprey Drive; Map 33 A.P. 15 Lot 388 (Zoned Farming, Farming). The Applicant seeks a Dimensional Variance from Table 2 of Chapter 260 of the Town Code; Zoning Ordinance, Dimensional Regulations by Zone. The Applicant is requesting to construct a four (4) bedroom dwelling with associated driveway, septic system, rain gardens, utilities and landscaping which will not comply with the western front setback requirement. The Applicant received a RIDEM Permit to Alter a Freshwater Wetland on the subject property on November 16, 2016.

Mr. Claudio Marasco, owner and applicant of 20 Osprey Drive, represented the application. Mr. Marasco stated he is an attorney and licensed real estate broker in RI and CT. He noted also present this evening were Mr. Ron Blanchard, P.E., President of Site Engineering and Mr. Scott Rabideau, a wetland biologist and President of Natural Resource Services, Inc. Both professionals helped in working with Mr. Marasco in site engineering/design and in obtaining the necessary alteration of freshwater wetland permits.

Mr. Marasco summarized the subject property, being 20 Osprey Drive, a one acre zoned parcel and designed to preserve existing farmland and provide low density residential development within the Town. He noted the neighborhood is comprised of single-family homes on roughly 1 acre lots; the subject lot is an approved lot of record and is not existing farmland. He stressed the lot conforms in all respects to the EG Zoning regulations as

well as with the Town's Comprehensive Community Plan and but for the delineated wetland located in the middle of the property would not require a variance. For this reason only dimensional relief is required to construct a residence. A permit to alter freshwater wetlands was granted by RIDEM on November 16, 2016 – the DEM determined the proposed project did not represent a random unnecessary or undesirable alteration of freshwater wetlands. Mr. Marasco stated he included a copy of the DEM approval was submitted as part of the application.

Mr. Marasco discussed the hardships involved. The hardship from which he sought relief was due to the unique characteristics of the subject land and not the general characteristics of the surrounding area; is not due to a physical or economic disability of the Applicant either. He went on to say that strict adherence to the dimensional requirement would interfere with the reasonably full enjoyment of the permitted use of the property. Mr. Marasco explained the unique characteristics of this property are that there are delineated wetlands which prevent adherence to the Town's Zoning Ordinance requirement of a 60' front setback. Mr. Marasco stated he worked extensively with RIDEM and they determined that this proposed house location was the only area on the lot that would provide the least disturbance to the perimeter wetland. The hardship is not the result of any prior action of the Applicant and does not result primarily for the desire to realize greater financial gain. The relief requested is solely due to the presence of existing wetlands on the property and is not of the result of any prior action of the Applicant.

Mr. Marasco said he was building the new home for his family to live in and not resell or flip. He points out the ZBR staff report dated January 24, 2017 notes the history of this lot as an approved lot that was not developed by the original developer (High Hawk General Partnership) due to the parcel being located in the wetlands/wetland buffer. He noted his family has lived next door at 30 Osprey Drive for the last ten years; we love the neighborhood, the community and our current home.

Mr. Marasco advised that unfortunately there is a handicapped family member who had to move out of their existing house after the summer months as their current home is not handicapped accessible. It is for this

reason that he began thinking about constructing a home that is ADA accessible and allowing him and his wife to age in place. Mr. Marasco indicated he worked with an architect who specializes in ADA design to design the proposed home.

Mr. Marasco attested that the granting of the request will not alter the general character of the surrounding area or impact the intent or purpose of the Zoning Ordinance or Comprehensive Community Plan upon which the ordinance is based and the relief granted is the least relief necessary. The least relief necessary is in essence a reasonableness test; comparing the proposed project to what is characteristic of the surrounding area – the proposed dwelling footprint is 40' wide x 32' deep and being 1,280 s.f. He testified the new home will be the smallest of any of the surrounding home footprints and it will comply with the High Hawk subdivision's conditions.

Mr. Marasco presented a Google aerial photo and described the existing conditions of the surrounding neighborhood. Mr. Marasco explained he obtained the following information from the E.G. Tax Assessor's database (Northeast Revaluation Group LLC): 25 Osprey Drive (marked as Exhibit 1) has a 2,214 s.f. footprint compared to the subject 1,280 s.f. proposed structure; Five Osprey Drive (marked as Exhibit 2) has a 3,490 s.f. footprint; his current home – 30 Osprey Drive (marked as Exhibit 3) has a footprint of 2,097 s.f.; 35 Osprey Drive (marked as Exhibit 4) has a footprint of 2,543 s.f.; 40 Osprey Drive (marked as Exhibit 5) has a 2,509 s.f. footprint; 1105 High Hawk Drive (marked as Exhibit 6) has a 3,038 s.f. footprint; 5 Pheasant Drive (marked as Exhibit 7) has a 2,969 s.f. footprint and 1040 High Hawk Drive has a 5,261 s.f. footprint. He noted that all homes in the immediate distance to the subject property. Mr. Marasco attested that he demonstrated that all the surrounding homes are sprawling, all larger with several more than double the size of the proposed structure. He added the characteristic of the neighborhood is such that there is no one design type yet all are expansive sprawling larger homes.

Mr. Marasco submitted photographs of surrounding homes to the subject property, marked as follows:

- 30 Osprey Drive, marked as Exhibit 9;
- 5 Pheasant Drive, marked as Exhibit 10;

- 25 Osprey Drive alternate angle, marked as Exhibit 11;
- 5 Osprey Drive, marked as Exhibit 12;
- 5 Osprey Drive elevation angle, marked as Exhibit 13.

Mr. Marasco went on to say that the home directly across the street from the subject lot is at a higher elevation. He showed a plotted graph comparing the finished ground elevation of 25 Osprey Drive at 280' which was taken from USGS topography maps. Mr. Marasco noted the subject property ground level is at 268' which was taken from the submitted site plan – this being a difference of 12' in elevation. His illustration showed that his property starts out at a 12' grade lower than the neighboring property. Mr. Marasco pointed out because of the declining grade and in order to comply with the confines of the DEM approval the garage will be 5 feet below street level tucked under the home. He explained Osprey Drive is not a bunch of row houses perfectly lined; his home for instance at 30 Osprey Drive is 196' back from the street which is also based on the unique characteristics of the land. Mr. Marasco added that 25 Osprey Drive, the home directly across the street is setback 100 feet from the street and at a higher elevation, again most likely due to the unique characteristics of the lot when it was developed.

Mr. Marasco submitted the following exhibits in reference to topography and elevation:

- Topography at Osprey Drive, marked as Exhibit 14;
- Topography at Osprey Drive (wide view), marked as Exhibit 15;
- 12' Elevation Difference Between 25 Osprey Dr. & 20 Osprey Dr., marked as Exhibit 16;
- 25 Osprey Drive, Elevation to Street, marked as Exhibit 17.

With regard to fair market value of homes surrounding the subject lot with a fair market value as the price that would be negotiated between a willing buyer and willing seller both well informed and neither under duress or forced to sell, Mr. Marasco stated he reviewed all sales from January 1, 2014 to June 10, 2016 and found that there were four sales transaction on Osprey Drive ranging from \$475,000 to \$670,000 with an average of \$568,750. He also examined sales on the upper part of the High Hawk neighborhood during the same period and found four sales ranging from \$497,000 to \$600,000 with an average price of \$535,372. Mr. Marasco testified the

proposed footprint of the subject home using high quality building material in conformance with High Hawk plat restrictions although not for resale will result in a fair market value at or above the noted average price of the surrounding homes and as such will be in line with the character of the neighborhood. Mr. Marasco submitted a copy of the sales data as noted, marked as Exhibit 18 and a Google Earth map of the subject property and High Hawk neighborhood, marked as Exhibit 19.

Mr. Marasco stated the hardship suffered by the owner of the subject property if the dimensional variance is not granted amounts to more than a mere inconvenience – in this instance without a dimensional variance the land in question could not reasonably or realistically be used for a dwelling, meaning that he would not be able to enjoy a legally permitted beneficial use of his property. He added that conforming to the restrictions imposed by the RIDEM and the Town setback requirements would require constructing a 12' wide home. Mr. Marasco opined a 12' wide home is not reasonable, is unrealistic and not characteristic of the neighborhood of the High Hawk neighborhood nor could it satisfy the High Hawk building restrictions. Making a 32' livable wide home necessitates 20' of relief of the 60' front yard setback because of the DEM restrictions. Mr. Marasco went on to say that what he has proposed is the smallest footprint in the entire neighborhood; to propose a smaller footprint given the grading and slope of the lot would look out of place given the surrounding homes and be completely uncharacteristic of the surrounding neighborhood.

Mr. Ron Blanchard, P.E., explained the engineering behind the project and noted that since the submitted plan he has performed some revisions. He explained the wetland area and properly sited the certified surveyor's plan.

Ms. Hitchen queried why Mr. Blanchard references wetlands flags that refer to a plan from 1985. Mr. Blanchard testified RIDEM asked that the wetlands be reverified considering a number of years had gone by so the wetlands had been remarked. Ms. Hitchen pointed out on page 2 of the plans it reads under note #6 "wetland flags as depicted are believed to be from Garafalo plan referenced above which is from 1985."

Mr. Blanchard reiterated that the wetlands were reflagged; Mr. Rabideau went to the site and reflagged the wetlands while he resurveyed the area to the satisfaction of the DEM staff.

Ms. Cullion clarified that what the Board is reviewing on the site plan are the up-to-date actual delineated wetlands. Mr. Blanchard said that is correct and the wetlands are just slightly different from the original survey.

Mr. Land questioned that the new delineation of the wetlands has no effect on what the applicant is requesting. Mr. Blanchard said that is correct.

Ms. Cullion questioned the drainage pattern, the porous pavement and the 5 percent slope down the proposed driveway. She also asked whether the engineer anticipated water to rush down considering it will not infiltrate at the proposed slope. Mr. Blanchard explained the driveway is an open cell format and the bottom of the driveway is a fairly open flat area which will drain to the rain gardens which are intended to collect runoff. Ms. Cullion asked if it is anticipated to see any runoff go to the south from the driveway. Mr. Blanchard said no.

Ms. Cullion queried about the maintenance of the porous pavement areas; if the porous pavement areas are not properly maintained after a couple of years it can get backed up and will function as regular pavement. She asked if that was something that was a condition in the DEM approval.

Mr. Blanchard mentioned that underneath the driveway pavers will be a layer of stone and fabric for proper drainage but the porous driveway was a requirement of DEM but there was no requirement to perform or include a maintenance plan. Mr. Marasco submitted the Freshwater Wetlands Site Plan (revised for Zoning Application), Drainage & Erosion Control Plan, marked as Exhibit #20.

Mr. Scott Rabideau, a practicing Professional Wetland Scientist since 1987, submitted his resume, marked as Exhibit #21. He started by saying that we are here today because of him and apologized for that. Mr. Robideau addressed the RIDEM process and the series of procedures the particular application went through at the DEM level.

Mr. Robideau reviewed two sets of plans, the RIDEM Approved Home Location, marked as Exhibit #22, and the Alternative Home Location, marked as Exhibit #23. He noted the alternative home location does not require front setback approval but in each scenario the Applicant is under 5,000 s.f. of wetland alterations. Mr. Robideau pointed out the problem in order to get to the back of the property a driveway would have to go along the northern property line; there is less perimeter wetland alteration in this scenario and from a use perspective there is more land in the back for recreation use for the house but he would have to alter 1,100 s.f. of the actual swamp to locate there.

Mr. Robideau explained that his obligation under RIDEM is to minimize the alteration to the greatest degree practicable and in that minimization requires zoning relief he is obligated to seek that relief. But what some people fail to realize, if the Applicant does not get the zoning relief the Applicant can go back to RIDEM for the alternative home location scenario with the denial from the zoning board – that is his obligation.

Mr. Robideau testified all paperwork and procedures were properly followed and satisfied per DEM. He pointed out that a question that came up in the staff report was PLS stampers vs. P.E. stampers – DEM freshwater wetland regulations require P.E. to stamp a plan; they will not accept a PLS stamp. Mr. Robideau went on to say that everything else that was done to minimize the alterations based upon a normal protocol using a 1,200 s.f. footprint was considered reasonable by DEM for a single-family home; DEM is cognizant of having to provide a use that is consistent to the surrounding area.

Mr. Robideau noted the Applicant went through a DEM public notice, abutters were notified and they had the opportunity to comment. He added that comments were received and none of the comments were deemed sustentative – therefore from DEM's perspective no public hearing was held due to no public comments being sustentative. Mr. Robideau explained DEM came to the conclusion the Applicant as proposed did not represent a random, unnecessary or undesirable alteration of freshwater wetlands. He noted there is a freshwater wetland alteration taking place but it is not random, not undesirable and not unnecessary.

Mr. Land questioned to the extent that a home could be built in the back of the property what wetlands permit would be required for the installation of a driveway.

Mr. Robideau stated that it would be the same wetlands application – he would have to file a new application to alter the freshwater wetlands and it would have to go through the same process and would have to go through a subsequent public notice.

Mr. Robideau displayed an April 2016 aerial photograph from Nearmap which highlighted in red the subject property along with shades of green the area wetlands, marked as Exhibit 24. He used the aerial to explain the difference in significance between the wetlands located north of High Hawk Road and those located to the south noting in 1986 an application to alter the wetlands was approved with full knowledge that a “finger” was going to be created and essentially diminish and be fragmented on the southern side of High Hawk Road in the vicinity of subject lot; once a fragmentation is created it isolates the rest of the wetlands. Mr. Robideau commented that impacts from human habitation are more significant on wetlands north of High Hawk Drive as opposed to the south of High Hawk Drive. He explained the reason for this particular application being DEM acceptable as an alteration of wetlands is the functions and values of this subject wetland has been reduced due to the fragment.

Returning to the alternative home location proposed driveway, Mr. Land questioned if that driveway itself would go through the wetland. Mr. Robideau responded that it would and appropriate walls would have to be installed in order to minimize grading into the wetland. Mr. Robideau reiterated the obligation is on the Applicant to first seek out alternatives that minimize wetland alterations – this is the plan that is in front of the Board this evening. He noted if the zoning application is denied the Applicant would be able to back to DEM to request to go through the wetland which in Mr. Robideau’s opinion was a viable scenario.

Mr. Golden asked if impacting the setbacks and possibly moving into the wetland area would jeopardize the abutting properties. Mr. Robideau noted

that runoff is going into the wetland and did not feel as though it would affect any surrounding property or physical home.

Ms. Hitchen inquired as to whether the abutters had the opportunity to see the alternative house location. Mr. Robideau said that was not his obligation.

Attorney Matthew Callaghan, representing an abutter, asked to take a recess in order to examine the submitted exhibits then cross examine witnesses if necessary.

Mr. Land asked if there was anyone else to speak in favor of the application. With none noted, Mr. Land granted a 10 minute recess.

Mr. Land reconvened the hearing after a brief recess.

Mr. Land confirmed Mr. Ron Blanchard and Mr. Scott Robideau would be considered expert witnesses for this evening's testimony.

Mr. Land asked if there was anyone to speak against the application.

Ms. Laure LeBlanc of 45 Deerfield Drive, and abutter to the rear of the subject property, submitted correspondence objecting to the application, marked as Exhibit #25 and a Police Report, incident dated June 11, 2013, marked as Exhibit #26. Ms. LeBlanc spoke to the character of the Applicant, referencing an incident that occurred including trees being cut down/trimmed on her property as well as illegally damaging the wetlands in 2009. She noted the Applicant stated he will adhere to strict conditions imposed by DEM but questioned if he truly will do that since his past record shows he has not strictly adhered to being a good neighbor and has not respected private property. She queried how she and her neighbors will know if the variance is granted that there will be reassurance that the Applicant will comply with the regulations and conditions.

Mr. Land explained that if the ZBR approves the application there is the Town Building Official who is responsible for building permits and making

sure the Applicant complies with what the Board grants. He reassured Ms. LeBlanc that there are mechanisms in place to manage concerns.

Ms. Marguerite Pallini of 25 Osprey Drive commented that when she bought her home opposite of the subject parcel she would have a beautiful view of vacant wetlands as the original owner purchased it that way. Ms. Pallini recalled how she witnessed the lot be cleared out in about 1 week a few years ago and it is only recently that it is starting regrowth. She took issue with the Applicant using the story of his mother-in-law requiring handicapped accessibility as the reason for the new house. Ms. Pallini did not feel a home with a 20' setback from the road would fit in with the character of the neighborhood.

Mr. Michael Pallini of 25 Osprey Drive recalled the original property owner telling him the only place to construct a home on the subject lot was in the rear southeast corner of the lot and nowhere else on that property was a home going to get constructed. Since then, he commented the property has been altered and wetlands have been reconfigured and it never should have come to this point. He added there is wildlife and protected species on that property including deer, owls and the spotted salamander which will change if the house gets built. He noted when this neighborhood was developed the subject lot was to remain wetlands and not be altered and it should remain as it is.

Mr. Erik Oberg of 5 Osprey Drive was sold on the fact that the subject lot, located diagonally from his house was a wetland and could not be altered. He was surprised to now find that he and his neighbors will be looking at a home much closer to the street than the other homes and located in a wetland.

No comments from Attorney Matthew Callaghan or Attorney John Revens.

Mr. Land asked for a motion if there are no further questions.

Ms. Sceery motioned to approve the application as submitted. Ms. Cullion seconded the motion.

Mr. Land explained in order for the Board to have a discussion on the application there has to be a motion.

Mr. Land commented that the neighbors have expressed some concerns particularly focused around the wetland issue on the property. He can appreciate that and their desire to maintain the neighborhood it has been and can appreciate their concerns about the way the property has been treated. Regrettably, for better or worse, Mr. Land asserted that is not in the ZBR purview. He went on to say that wetland issues, wetland setback issues are the purview of RIDEM. The materials the Zoning Board received demonstrate that RIDEM made determinations based on their expertise and their regulations and he thinks with respect to the wetland issues this Board is bound by those. With respect to certain other issues that were brought before the Board in terms of comments on how the property was cleared and damage that may or may not have been done to other people's property there are other venues for those grievances to be addressed – this is not the place for private rights of action or private disputes to be resolved with respect to damage to other people's property or wetlands. Mr. Land indicated he has yet to make a determination as to how he will vote but invited other Board members to comment.

Ms. Cullion stated that with the understanding that RIDEM has given approval for this project, she did not think the 20' of relief will alter the general character of the surrounding area or impair the purpose or intent of the Zoning Ordinance or Comprehensive Plan. She also thought the relief to be granted is the least relief necessary. In her opinion, the proposed house is not over scaled for the neighborhood and she thinks the hardship suffered will be more than a mere inconvenience. Ms. Cullion stated she will be voting in favor of the application.

Ms. Sceery agreed with Ms. Cullion's comments noting the alternative plan that was presented was worrisome to her – the driveway would cut right through the wetland as opposed to the submitted plan.

Mr. Land stated he struggled to recognize how the 20' of relief would materially alter the character of the neighborhood. The overhead aerials presented showed homes setback at different angles and different distances.

With his general familiarity with the neighborhood Mr. Land commented there is all kind of home configurations based on topography, wetlands, etc. He recognized it is a change and often times change is difficult to accept but he is leaning away from a denial and more toward an approval.

With no further comments from the Board, Mr. Land reiterated the motion was to approve the application as submitted.

VOTE: 5 – 0.

Zoning Board of Review Business

1. Minutes: Review/action on the minutes of the October 25, 2016 and November 22, 2016 meeting.

Motion to approve the October 25, 2016 and November 22, 2016 minutes as written. Seconded by Mr. Mulhearn. Approved 5 – 0.

Zoning Board of Review meeting adjourned at 8:30 pm.

Minutes respectfully submitted by:

Lea Anthony Hitchen,
Assistant Town Planner

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