

**TOWN OF SOMERS
ZONING BOARD OF APPEALS
MEETING MINUTES
TUESDAY, OCTOBER 13, 2009**

I. Call to Order: Chairman Torres called the regular meeting to order at 7:36 pm.

II. Members Present: John Torres, Barbara Flebotte, Daniel Scully, Robert Minch, Jerome Young, B.J. Ferro III and Rick Krein.

Public Hearing was opened at 7:36 pm.

III. Public Hearing

1. Winthrop Stevenson

Dana Steele of J.R. Russo & Associates of East Windsor spoke on behalf of the applicant. The applicant owns a 30-acre parcel on the south side of Mountain Road. The Land Trust would like to purchase the land but they do not want the land that includes the house. The house was built in 1960 before the current zoning regulations that require a lot to have 40,000 square feet of buildable area. Buildable area must be contiguous area that does not include wetlands, flood zones or slopes over 25% in grade.

The applicants would like to create a new property line that surrounds the house and to deed the rest of the property to the Land Trust as conservation land. The new lot that would be created would be non-conforming to the current Zoning regulations. Town Attorney, Karl Landolina, advised the applicants to apply to the ZBA for a variance that states that the house is permitted. The stated hardship is that the house was built before the regulation regarding buildable area and the topography around the house is steeper than 25% grade and is therefore not buildable. The applicant intends to sell the property and needs a variance to do this.

Chairman Torres pointed out that what they are describing is considered a financial hardship and the ZBA cannot grant a variance for a financial hardship. He said that what the Land Trust needs to do is take the entire property and destroy the house.

Jackie Stevenson currently lives in the house. Chairman Torres explained that if she came to the ZBA as the house occupant with an intention to live in the house then the variance could be allowed. Then after 3 years elapses the variance would be recognized and could not be challenged. However, during this 3-year period someone could challenge the validity of the variance. Ms. Stevenson stated that over the 1-½ years that they have been working with the Land Trust and the Town, she was told that this issue fell under an exemption from the subdivision requirements.

Chairman Torres read aloud from the Zoning Regulation section 214-111 that refers to a variance for non-conforming use. The section specifically excludes monetary hardship as grounds for a variance. Chairman Torres explained that changing something so it can be sold would be a monetary hardship. Mr. Steele questioned Mr. Torres interpretation of the issue and explained that the applicant is not changing anything but that they are looking for a variance to make the lot conforming for buildable area. Mr. Torres explained that creating the new lot for the purpose of selling it is the change.

The applicants questioned the 3-year challenge period and Chairman Torres explained this requirement in detail. The ZBA also pointed out the problem of setting a precedent in allowing a building lot with less than 40,000 square feet contiguous buildable area. This may encourage builders to expect this when they want to create a lot. Chairman Torres added that the current configuration of this house and lot is hazardous because there is a 15-foot drop from the deck.

Chairman Torres explained that when the ZBA considers an appeal they must look issues such as safety, the legitimacy of the hardship, and whether any problems will be created.

The applicant asked for the appeal to be tabled so they can confer with the Town Attorney. Chairman Torres agreed and reiterated the concerns: 1. The severe slope and setting a precedent, 2. The legitimacy of the hardship.

A motion was made by Commissioner Scully; seconded by Commissioner Flebotte and unanimously voted to continue the Public Hearing until the next ZBA meeting on November 10, 2009.

The applicants offered that they have letters from their abutters and Chairman Torres said to bring the letters for the next meeting.

IV. Regular Meeting

The Regular Meeting was continued at 8:05pm.

V. Minutes Approval: June 9, 2009 & August 18, 2009

Corrections for June 9, 2009 Minutes are as follows:

Section III.1., paragraph 4, change **Mr.** Flebotte to **Mrs.** Flebotte.

Section VI.2., paragraph 1, sentence 2: change “**she**” to “**shed**”.

A motion was made by Commissioner Minch; seconded by Commissioner Young and unanimously voted to approve the Minutes of June 9, 2009 as amended.

Corrections for the Minutes of August 18, 2009 are as follows:

Section III.1., paragraph 1 and paragraph 5: change Commissioner **Sculley** to Commissioner **Scully**.

Section X., paragraph 1: change Commissioner **Sculley** to Commissioner **Scully**.

A motion was made by Commissioner Sculley; seconded by Commissioner Flebotte and unanimously voted to approve the Minutes of August 18, 2009 as amended.

VI. Public Hearing Discussion/Decision

1. Winthrop Stevenson

No discussion as the Public Hearing was continued.

VII. Old Business

Chairman Torres distributed an updated copy of the annual report showing Barbara Flebotte as Vice-Chairman and with the name of new permanent member Rick Krein noted.

VIII. New Business: There was not New Business.

IX. Correspondence: There was no Correspondence.

X. Bills:

The following bill was presented for payment:

Journal Inquirer \$78.70

A motion was made by Commissioner Minch; seconded by Commissioner Young and unanimously voted to pay the bills.

XI. Adjournment:

A motion was made by Commissioner Scully; seconded by Commissioner Young and unanimously voted to adjourn the Meeting of the Zoning Board of Appeals at 8:18 pm.

The meeting stood adjourned at 8:18 pm.

Respectfully Submitted,

Jeanne Reed
Recording Secretary

MINUTES ARE NOT OFFICIAL UNTIL APPROVAL AT A SUBSEQUENT MEETING