

TOWN OF NEW WINDSOR

ZONING BOARD

June 13, 2016

MEMBERS PRESENT: FRANCIS BEDETTI, ACTING CHAIRMAN
RICHARD HAMEL
GREGORY BIASOTTI

ALSO PRESENT: GEOFFREY CHANIN, ESQ.
ZONING BOARD ATTORNEY

STEPHANIE RODRIGUEZ
ZONING BOARD SECRETARY

ABSENT: MICHAEL KANE, CHAIRMAN
HENRY SCHEIBLE
PATRICK TORPEY

MEETING AGENDA:

1. Dahlin/Pushman
2. Thomas Palmer

REGULAR MEETING:

MR. CHANIN: If it's alright with everybody, we're going to commence the regular meeting of the Town of New Windsor Zoning Board of Appeals for Monday, June 13.

APPROVAL OF MINUTES DATED 5/23/16

MR. CHANIN: Need a motion to accept the minutes of the May 23, 2016 meeting as written.

MR. HAMEL: Make a motion.

MR. BIASOTTI: Second it.

ROLL CALL

MR. BIASOTTI AYE
MR. HAMEL AYE

June 13, 2016

2

MR. BEDETTI

AYE

PRELIMINARY MEETINGS:

DAHLIN/PUSHMAN (16-11)

MR. CHANIN: Okay, there's only two items on our agenda, they're both preliminary meetings. The first one is for the Dahlin/Pushman application for area variances. Is anybody here for that? Come on over here, stand right where you're standing right there, speak so that our stenographer can hear you and the board members can hear you, identify yourself by name, please.

MR. LYDECKER: My name is Lee Lydecker, I'm here on behalf of Bill Pushman and the Dahlins and I've got a proxy here if you need it.

MR. CHANIN: Your relationship to the applicants?

MR. LYDECKER: I'm just a friend of Bill Pushman trying to get this thing through because it's been way too long trying to go through the judicial system.

MR. CHANIN: Are you familiar?

MR. LYDECKER: Yes.

MR. CHANIN: Tell us what it is they're asking for.

MR. LYDECKER: Basically, what Bill Pushman is asking for after being a lifelong friend to the Dahlins who have passed away, the children are there, they've issued a 30 foot piece of property to Bill Pushman so that he can straighten out his driveway so it's more accessible to his wife and himself in his later years. And that's strictly all it is. It's just a driveway straightening so that, you know, he can maintain his driveway. And I don't know if you're familiar with the whole site but there is a fire hydrant and some trees, just trying to straighten it out so he and his wife can get down to the house a little more efficiently

MR. BEDETTI: Is it correct that both of those parcels are actually non-conforming right now?

MR. LYDECKER: There's three parcels, Dahlins have two that are non-conforming and Pushman is non-conforming and this is going back, I guess back into the early '60s the way I understand it.

MR. BEDETTI: But the two that are involved in the lot line change, they're both non-conforming, is that correct?

MR. LYDECKER: Well, yeah, there's three the Dahlins own, two which are both non-conforming and Pushman owns one which is non-conforming and the Pushman's is becoming more conforming but it's still non-conforming and one of the Dahlin's properties are going to become a little bit less but they've still got another property that's tied to it so it's a catch 22.

MR. BEDETTI: Okay, before we even act a little bit further, just a reminder that formally each of these cases that we have here we have a preliminary hearing and then there is a public hearing.

MR. LYDECKER: Right.

MR. BEDETTI: Each case is actually heard twice, you come here, you tell us essentially exactly what you're doing right now, give us an idea what it is that you want then we'll have to schedule a public hearing and those people that are affected by within a certain distance will come here and listen to what you have to say and then the vote would be then.

MR. LYDECKER: Right. The reason why I'm here is because Howard Weeden has dropped the ball for over two years, he was supposed to be here tonight, apparently he's on vacation. Bill has presented it before the planning board, now we're in front of the zoning board so we're trying to get through the zoning board, I'm just here to try and explain everything.

MR. BEDETTI: You had a proxy?

MR. LYDECKER: Yes, I've got a proxy from Vanessa Carrol, I just brought it with me.

MS. RODRIGUEZ: I've got it.

MR. LYDECKER: I'm just here to try to help things along because we're not, none of us are getting any younger.

MR. BEDETTI: Don't remind me of that.

MR. LYDECKER: I understand the process because my father sat on the Town of Oakland Planning Board for 27

years, Flood Control for 22 years, he was in the military for 37 years and some of it's been kind of drilled into myself.

MR. BEDETTI: Any new construction?

MR. LYDECKER: No, just strictly just to open up the driveway a little bit so it's easier for Bill and his wife who are getting elderly to get in and out of that piece of property on Route 32 because it's, 32 has become quite busy so that's--

MR. PUSHMAN: There's a fire hydrant on it too.

MR. LYDECKER: That's strictly always it's just trying to make it easier for him and Bill's taken care of the Dahlins' mother and father for many, many, many years and both of them have passed away and in gratitude they just granted Bill a 30 foot piece of property to help him out for everything that he's done. There's no monetary value associated with everything other than just neighborly love.

MR. BEDETTI: No projected change in the construction or any construction or widening of the driveway or anything?

MR. LYDECKER: Straightening the driveway out, I don't think it's going to be widened further, just ease of access, that's all.

MR. CHANIN: If the variances are approved, will there be any significant cutting of vegetation?

MR. LYDECKER: Maybe a tree or two, that's about it, there's a dead tree that I think borders right alongside the driveway that will be taken down, some minor scrub brush which is just overgrown over the years, nothing significant.

MR. CHANIN: Will the work create any ponding or collection of water or erosion of anything of that nature?

MR. LYDECKER: No, absolutely not.

MR. CHANIN: Will the work involve a trespass over any existing easements?

MR. LYDECKER: No, because the fire hydrant is in the

town easement on 32 already so there will be no easement change.

MR. CHANIN: Any other questions from the board members?

MR. BIASOTTI: No, I have no questions.

MR. LYDECKER: Strictly it's just ease of access in and out of Mr. Pushman's driveway.

MR. CHANIN: Mr. Hamel, any questions?

MR. HAMEL: No, maybe just when he comes back the next time he could bring some pictures.

MR. LYDECKER: Oh, absolutely. Howard didn't provide those at all, I know he provided a survey, like I said, I'm coming in last minute to represent Mr. Pushman because it's been too long for this thing to go on and Howard hasn't done due diligence and that's why I got involved, just to try to help the Pushmans and the Dahlins out. I can bring pictures, anything you want.

MR. BEDETTI: Other than the map, there are no pictures.

MR. LYDECKER: Okay, if I would have known, I would have brought them tonight.

MR. CHANIN: Next time bring photos.

MR. LYDECKER: Will do. So this is the first meeting?

MR. BEDETTI: Yes, this is a preliminary.

MR. LYDECKER: I know we've been before the planning board, the planning board referred us to the zoning board, the zoning board is going to refer us back to the planning board.

MR. BEDETTI: We either will grant or disallow the variance and then you'd go back to them.

MR. LYDECKER: Like I said, I'm just here to try to sort everything out and try to keep things moving along, if you know what I mean.

MR. PUSHMAN: One year and four months.

MR. CHANIN: What's your name?

MR. LYDECKER: Mr. Pushman.

MR. CHANIN: Just so the stenographer knows who's speaking I asked you to identify yourself. So you're the applicant?

MR. PUSHMAN: Yes.

MR. CHANIN: Mr. Biasotti, any questions?

MR. BIASOTTI: No.

MR. HAMEL: No, I'm fine.

MR. BEDETTI: We'll take a motion.

MR. LYDECKER: So I'll bring back pictures.

MR. CHANIN: Is there a motion?

MR. BEDETTI: Schedule a public hearing.

MR. BIASOTTI: I'll make a motion we schedule a public hearing for the variance for Pushman located at 2615 Route 32 in an HC Zone.

MR. HAMEL: Second it.

ROLL CALL

MR. BIASOTTI AYE

MR. HAMEL AYE

MR. BEDETTI AYE

MS. RODRIGUEZ: This is for you, it's all the information for the public hearing.

MR. LYDECKER: Okay, I'll take care of that and you said you had the proxy?

MS. RODRIGUEZ: Yes, I got the proxy today.

MR. LYDECKER: I'll probably be coming back just to make sure Mr. Weeden does due diligence. Thank you.

THOMAS PALMER (16-12)

MR. CHANIN: Next is Thomas Palmer, application number 16-12 Mr. Dickover, you know that we only have three board members tonight, if you want to go ahead with your preliminary hearing, that's fine. If you want to, if you'd rather wait until we have a more full board, that's your option

MR. DICKOVER: Let me consult with Mr. Palmer.

MR. BEDETTI: We're not voting tonight.

MR. DICKOVER: I understand. I'd like to proceed if it's alright with the members, yes.

MR. CHANIN: Give us the rundown.

MR. DICKOVER: I'll try and be brief because you're familiar with this parcel and this particular project in question. We appreciate the opportunity to speak to you again about the matter. And I'm here to make a presentation on behalf of Mr. Palmer Thomas who's my client. My name is Robert Dickover, I'm a partner in the Law Firm of Dickover, Donnelly & Donovan in Goshen, New York. Mr. Palmer was previously before you with an application to construction a single-family residential home on a parcel of property that he owns over on Sycamore Drive over in the Beaver Dam Lake subdivision area. That's a photograph blown up of the parcel in question. Just to clarify with you for a moment in the previous application which you heard the address of this property was referred to as 199 Sycamore Drive. That is not the correct address for this property. That is in fact where Mr. Palmer resides, he lives in the area. In your minutes, you'll see that the property and even your decision on the matter did refer to the property as being 199 Sycamore, it is not, it does not have a designated street address at this point I surmise that that's because it's undeveloped.

MR. CHANIN: How would you like me to refer to it?

MR. DICKOVER: Section, block and lot probably which is referred to on this exhibit 63-4-9.2.

MR. CHANIN: Thank you.

MR. DICKOVER: So in that prior matter in which heard Mr. Palmer was seeking three variances pursuant to

comments that we heard and your decision in that matter the plan has been modified to eliminate the need for the side yard variances. The home that was previously proposed would have exceeded the side yards on both sides which is a 30 foot requirement. New home has been designed at the behest of his architect which brings the home within the building envelope and so there's no further need for side yard variances. The home which is proposed, I think perhaps you have a photo of it in the application, it looks similar to this two story cottage style covered porch garage on the inside. So that is currently the proposed home which is part of the current application, there's also perhaps attached to the photograph the first and second floor plan. Total square footage of the house not including the porch, not including the garage is approximately 2500 square feet. On the back of this board is the current survey, I'll call it a site plan or a plot plan for the home. It shows the proposed house to be within the side yard bulk area requirements. So what Mr. Palmer is left with and what he is applying for is for two variances. One is for the bulk lot size in the R-4 zoning district where this property is located, the bulk size requirement is 40,000 square feet, this parcel is 20,000 square feet. Its dimensions are 100 feet across the front and 200 feet deep, a total of 20,000 square feet. The second variance that he is requesting is for lot width. Your zoning ordinance requires 150 feet in width and this parcel as it's presently constructed is 100 feet in width. So he's gone from requesting three variances down to two. Now, the import of the two variances being requested since he's now building within the building envelope is that the lot as it's presently configured 100 by 200 feet is an existing lot. And your zoning ordinance requires for single-family residential dwellings as you note 40,000 square feet and there are other permitted uses in the zone, things like houses of worship, recreational uses, things like that, none of which would fit on this property, either because of the size of the parcel being substandard or because it doesn't make any sense to put a house of worship on a half acre piece of property. As a result of which your zoning has rendered this parcel useless in the absence of the two variances which we have requested, the lot width and the lot size. So that's the application for Mr. Palmer. In addition to that, we have some photographs that I will share with you, if you would like, perhaps you also have them as part of your package. One is a photograph of the parcel from

the street, I think you have that, it's a double size.

MR. BEDETTI: Yes, got it.

MR. DICKOVER: That's another picture on the right-hand side of that as you look at it is the neighbor's home that belongs to Dryer is the last name of the owner of that property. We also submitted I believe in the application photographs of other homes in the neighborhood, a series of approximately maybe eight photographs or so, make that 16 photographs of homes in the neighborhood. The purpose of that simply is to show you that this is a developed single-family residential neighborhood and we're proposing nothing more than a single-family residence on this lot. We believe the structure and style of the home is in keeping with what's there. And so we have submitted these to you as well. So we have that as part of the application. If I might take a moment, I'd like to just address a couple of other matters with you, I'll try to be brief.

MR. BEDETTI: You've got floor.

MR. DICKOVER: Thank you. The history of this parcel goes back to approximately 1931 when the Beaver Dam Lake subdivision was first created. At that time there was no zoning but they had deed covenants and the deed covenants for these parcels over in Beaver Dam Lake required in order to build on them you had to own at least two lots and the minimum frontage for your building parcel had to be 50 feet. Of course your zoning came after that but since at least 1957 these four, the four lots that Mr. Palmer owns and they're depicted on our site plan he owns four contiguous parcels since roughly 1957 and maybe even before that, I haven't been able to go back and search the records. These four parcels have been owned in single ownership, one person has owned all four of these lots and they've continued like that right until this day, Mr. Palmer owning those four lots. So back under the original subdivision plan for Beaver Dam Lake, you could have built on two of these lots with 50 feet of frontage and sort of explains why there are so many homes on substandard lots in the Beaver Dam Lake subdivision, I'm sure that all of you are aware of that neighborhood, you have a pretty good mix of style and size homes on lots. With that thought in mind, Mr. Palmer who has some expertise in the area of design and studying maps prepared a neighborhood diagram which I

will try to depict for you in simple terms. Mr. Palmer's parcel, the four contiguous substandard lots back in the old Beaver Dam Lake subdivision is the yellow parcel, it's 100 feet across the front, it's 200 feet deep. The homes in red and I'm colorblind so I think it's red but the homes in red are non-conforming lots which are under 40,000 square feet, your required building lot size. And on those homes in red there are homes on substandard size lots under 40,000 square feet just like Mr. Palmer's. The lots that are in orange, and by the way, the circumference that we drew around this was 1,000 feet in an attempt, there's no definition for neighborhoods, so pick a number, we just decided to use 1,000 feet from Mr. Palmer's parcel so within the 1,000 foot radius the parcels in orange are lots over 40,000 square feet but they also have some variance, let me take that back, they also are non-conforming with respect to one of your bulk area requirements, it might be side yard, it might be width, it might be setback, rear yard, back yard. But they're non-conforming with respect to some aspect of your current zoning requirement. The interesting piece of it is that every home within that 1,000 square feet and I'm not including the Town of Cornwall which is down below here are non-conforming in respect to your zoning ordinance which is kind of interesting. And Mr. Palmer is simply seeking relief from those two bulk area requirements that he can do nothing about lot size and lot width. So that probably sums up in short form what we'd like to say about this other than addressing the five factors necessary to grant area variance relief. One of which of course is is there another method feasible for him to pursue other than an area variance? The answer is no, he's down to the bare minimum, he can't do anything about the width, he can't do anything about the lot size. And he's building within the building envelope. Second of which is whether the requested area variance is substantial? I think proportionately and percentage wise it could be considered substantial but when you put it into the context of this neighborhood, it's not. It's just like many other lots that have already been built there and so you have, I would submit to you you need to take that into effect in considering this application. Whether the variance will have an adverse affect or impact on the physical or environmental conditions in the neighborhood? We submit to you that it does not, everybody else there is a single-family home, our proposal is a single-family home, there's been no demonstration that it will be any physical or

environmental detriment. And lastly in your question in your application whether or not the difficulty was self-created. Perhaps you could construe it as being self-created in that he bought the parcel at the time the zoning was in effect but self-created hardship in the context of an area variance is not fatal as it is in a use variance as you all well know. I'd submit that the hardship really is created by the zoning ordinance but for the bulk area requirement of 40,000 square feet and but for the width requirement this house is like many others. And so again, just submitting to you that the balancing test is the detriment to the neighborhood minimal or none and the benefit to the applicant is that he will be able to build on what he is otherwise and has been contemplated to be a building lot since at least back to 1931.

MR. CHANIN: Mr. Dickover, if the application is approved will your client be substantially cutting down any trees or vegetation?

MR. DICKOVER: The answer to your question, you may recall that question was asked of Mr. Palmer as a preliminary submission in December of last year. There were trees cut down on this parcel in contemplation of the construction prior to that preliminary meeting, approximately seven to eight trees of dimension less than 24 inches in diameter were cut down. I'm not aware of any local rule or ordinance that requires, that disallows that. I certainly understand the board's concern with whether or not that's going to occur and it's obviously a valid consideration in a commercial development, a large subdivision development. But with a single-family residential home, the answer to your question is trees were cut down that are in the area of proposed construction and they're depicted in the photograph which I have now shown to you.

MR. CHANIN: Will there be any water collection, ponding, erosion, any problem of that nature?

MR. DICKOVER: No, there will not be, properties under an acre not subject to Army Corps regulations with respect to storm water drainage. It's a relatively flat parcel.

MR. CHANIN: Will the work involve any transgression over any easements or rights-of-way?

MR. DICKOVER: The answer to that question last time we were here was no. The answer is still no. But just to clarify, there's a two foot reserve utility easement at the front of the parcel and the back of the parcel from one of the owners back in 1956 reserved to themselves, the utility easement in the first two feet will not be encroached on or violated.

MR. BIASOTTI: No questions.

MR. HAMEL: And there isn't city water there, there is a well, correct?

MR. DICKOVER: Yes.

MR. HAMEL: How about sewers?

MR. DICKOVER: There's municipal water in the street. Proposal is to hook into that and the water proposal is to have and use a well that has been drilled on this property, it was drilled as a test well because there was some prior concern expressed by people in the neighborhood. And I might quote this, what was said was that every time somebody drills a well everybody else goes dry. That's almost the quote out of the minutes that I read. The fact of the matter is is that as the owner of this parcel, he has the right to use what we refer to as riparian rights, the right to use the water under your feet. To address the concern to see if there was in fact water available to this parcel, a test well was drilled. That work was done by I think they're referred to as Hudson Valley Drilling, they put a test well in, they hit ground water at 250 foot, they went 520 feet deep and over a two hour duration test drawdown the well produced nine gallons per minute with no visible or recognizable drawdown on the water table. We'll submit there's more than adequate water. There's also a DEC well dug in the neighborhood and another study done with respect to that, both of them showed wells that yielded between five and seven gallons per minute. And Mr. Palmer's property produces nine gallons per minute.

MR. CHANIN: Is your septic--

MR. DICKOVER: Municipal sewer, private well.

MR. BEDETTI: Did you say there was municipal water along the roadway?

MR. DICKOVER: No, no. Back in the chain of title, one of the prior owners who sold to somebody else in the chain of title reserved to themselves a two foot easement at the back of the property and the front of the property for their own utility connection, it won't be violated.

MR. BEDETTI: So there's no municipal water, I realize that he's chosen to use a well cause--

MR. DICKOVER: There is no municipal water.

MR. BEDETTI: I misunderstood you.

MR. DICKOVER: I'm sorry, I'll say it one more time, private well, municipal sewer.

MR. CHANIN: Mr. Biasotti?

MR. BIASOTTI: No questions.

MR. HAMEL: No questions.

MR. BEDETTI: I'm good.

MR. CHANIN: Motion?

MR. BEDETTI: Can we have a motion to schedule a public hearing?

MR. HAMEL: Yes, I'll make a motion that we schedule a public hearing for Thomas Palmer for the single-family dwelling.

MR. BIASOTTI: I'll second it.

ROLL CALL

MR. BIASOTTI AYE

MR. HAMEL AYE

MR. BEDETTI AYE

MS. RODRIGUEZ: This is for you.

MR. DICKOVER: Just to note on the agenda for this evening it's still making reference to a side yard setback.

MR. BEDETTI: Yes, it does.

MR. CHANIN: We're going to delete the side yard and delete 199 Sycamore Drive.

MR. DICKOVER: Thank you for your consideration, gentlemen and ladies, appreciate it, have a good evening.

MR. CHANIN: Well, gentlemen and ladies, I think that's the end of our agenda, we don't have any decision to approve. Anything else? So motion to adjourn?

MR. BIASOTTI: So moved.

MR. HAMEL: Second it.

ROLL CALL

MR. BIASOTTI	AYE
MR. HAMEL	AYE
MR. BEDETTI	AYE

Respectfully Submitted By:

Frances Roth
Stenographer