

**TOWN OF WINDSOR  
ZONING BOARD OF APPEALS**

**Regular Meeting  
October 17, 2007**

Approved Minutes

**PRESENT:** Chairwoman Fran Rothenberg, Commissioners Thomas Ferranti, Max Kuziak, and Alternate Loretta Raney

**EXCUSED ABSENCE:** Secretary Helene Shay, Joseph Breen, Alternates Roseanne Lombardo and Milo Peck III

The Meeting was called to order at 7:03 P.M. by Chairman Rothenberg in the Council Chambers of Town Hall, 275 Broad Street, Windsor, Connecticut.

**ESTABLISHMENT OF QUORUM:**

Chairman Rothenberg announced the four board members who were present. Because three regular and 1 alternate members were present a quorum was not established. Chairman Rothenberg stated that the zoning enforcement regulations require that a majority of the seated commissioners vote on an item for approval; and tonight seeing as there were only four seated commissioners, if the case goes forward, all four commissioners need to vote unanimously to either approve or disapprove the case. She further stated if anyone chooses not to go forward, he/she will then reappear next month for a hearing. She asked if there were any questions.

**CALL TO ORDER – PUBLIC HEARINGS:**

**LEGAL NOTICE:**

The Legal Notice submitted by Helene H. Shay, Secretary, which appeared in The Hartford Courant on Oct. 4<sup>th</sup> and 11<sup>th</sup>, 2007 was read by Commissioner Kuziak and included the following variances to be heard:

#07-06 181 Birchwood Rd. – Section 4.1.1 Rear yard setback variance  
Section 4.1.1 Maximum coverage variance

#07-11 141 Hayden Station – Section 4.1.1 Minimum lot area variance

**PROCEDURES:**

Commissioner Ferranti read the procedures for presentation of an application and appeal. He then queried the audience for any questions regarding the procedures which were read. Hearing no comments, Chairman Rothenberg declared the hearings proceed.

**PUBLIC HEARINGS #07-06** 181 Birchwood Rd. – Section 4.1.1 Rear yard setback variance  
Section 4.1.1 Maximum coverage variance

**DISCUSSION:**

Mrs. Patricia Stamper, 181 Birchwood, read from a prepared text outlining her request; addressing concerns; a defining the hardships her property faced. The full text is attached (Exhibit A). Summarized, the size and location of the existing property leaves no other alternatives. The deck, as is, is unsafe and must be rebuilt. The added space on the deck will add value to the neighborhood, be safe, and environmentally sound. The commissioners commended Mrs. Stamper on being very well prepared.

**PUBLIC HEARINGS #07-11** 141 Hayden Station – Section 4.1.1 Minimum lot area variance

**DISCUSSION:**

Mr. Thomas McCue, 1 Austin Brook Dr., East Granby, CT is the applicant and spokesman for the application. He is not currently the owner of the property. He explained that the lot became non-conforming in size when the town took a piece of the property for reconstruction of Hayden Station Rd. He stated that the owner was minimally compensated for the land, approximately \$6000. This was not the value of a building lot. It does not believe it was the intention at the taking to change the status of the building lot to a non-buildable lot.

A letter from Pete and Bea Deresienski, 128 Hayden Station Rd. was read into the record by Commissioner Raney which expressed their feeling that there was not a hardship proven.  
(Exhibit B)

Mr. Bill Sigmund, 149 Hayden Station Rd said that he was neutral. He was at the meeting as a concerned abutter in the proceedings.

**CLOSE OF PUBLIC HEARINGS:**

Chairman Rothenberg CLOSED the Public Hearing.

**COMMENCE REGULAR BUSINESS MEETING/1. cases heard during Public Hearing/Application #07-06** 181 Birchwood Rd. – Section 4.1.1 Rear yard setback variance  
Section 4.1.1 Maximum coverage variance

**MOTION:** Commissioner Kuziak made a motion for purposes of discussion to approve the application #07-06 181 Birchwood Rd. – Section 4.1.1 Rear yard setback variance in the amount of 12 feet and Section 4.1.1 Maximum coverage variance in the amount of 4.5%. Commissioner Raney seconded the motion. Commissioner Kuziak felt the size of the lot is the hardship. Commissioner Ferranti also felt the second means of egress was a hardship as will.

**DISCUSSION:** The board was in agreement.

**VOTE:** 4-0-0

In favor of the motion to approve application #07-06 - 181 Birchwood Rd. – Section 4.1.1 Rear yard setback variance in the amount of 12 feet and Section 4.1.1 Maximum coverage variance in the amount of 4.5%.

**COMMENCE REGULAR BUSINESS MEETING/1. cases heard during Public Hearing/Application #07-11 141 Hayden Station – Section 4.1.1 Minimum lot area variance**

**MOTION:** Commissioner Ferranti made a motion for purposes of discussion to approve the application #07-11 141 Hayden Station – Section 4.1.1 Minimum lot area variance of 648 sq. ft. reduction to 26,852 sq.ft. Commissioner Kuziak seconded the motion.

**DISCUSSION:** The board agreed that the property owner had a lot that was in compliance and was forced to sell a piece of the property for road reconstruction. He was compensated for that piece of property only, not the value of the property.

**VOTE:** 4-0-0

In favor of the motion to approve application #07-06 - 181 Birchwood Rd. as presented

**COMMENCE REGULAR BUSINESS MEETING/2. New Business/b. Approval of the 2008 ZBA calendar**

**MOTION:** A motion was made by Commissioner Kuziak and seconded by Commissioner Raney to approve the 2008 ZBA calendar as presented.

**VOTE:** 4-0-0 to approve the calendar

**COMMENCE REGULAR BUSINESS MEETING/2. New Business/b. Communications from the Public**

There were no Communications from the Public.

**COMMENCE REGULAR BUSINESS MEETING/2. New Business/c. Minutes Acceptance – March 21, 2007**

**MOTION:** Commissioner Kuziak made a motion, seconded by Commissioner Ferranti, to **APPROVE the Minutes of the Regular Meeting September 19, 2007**

**VOTE:** In Favor: 4-0-0

**COMMENCE REGULAR BUSINESS MEETING/2. New Business/d. Communications from Board Members**

Commissioner Kuziak requests that a letter be sent to Alternate Milo Peck III regarding his intentions to be an alternate on this board. Members present agreed that Recording Secretary Hartmann draft a letter for Chairman Rothenberg.

**COMMENCE REGULAR BUSINESS MEETING/2. New Business/e. Communications from Staff Liaison**

None

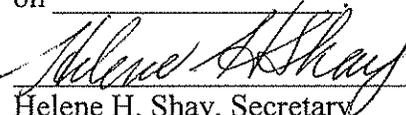
**ADJOURNMENT:**

**MOTION:** Commissioner Raney made a motion, seconded by Commissioner Ferranti, to **ADJOURN the meeting at 7:55 PM**

Respectfully submitted,

\_\_\_\_\_  
Lori Hartmann, Recording Secretary

I certify that these Minutes were accepted

on \_\_\_\_\_  
  
\_\_\_\_\_  
Helene H. Shay, Secretary  
Zoning Board of Appeals

Zoning Board of Appeals Meeting  
October 17, 2007  
Regarding property at  
181 Birchwood Rd.  
Windsor, CT 06095

Exhibit A

Re: Section 4.1.1 Rear yard setback variance of 12 feet (increase of 6')  
Section 4.1.1 Maximum coverage variance of 19.5 % (increase of 1.8%)

Request: We would like to remove the old deck and replace it with a new, larger deck. The current deck is 26.8 by 6 feet, or 161 sq. ft. The new deck would be 12' by 24' (288 sq. ft). We intend to bring the deck in by a little over one foot on each side, making it slightly farther away from the side properties. The stairs will face the front of the property instead of facing the neighbors' property.

Concerns: Building, Zoning, Fire Marshal, Engineering, Wetlands, and Planning have no comments. Health Dept. stated that the septic tank should be pumped out, crushed and back filled. We checked with the excavation contractor who connected us to the city sewers and he said that because the tank is concrete it is not required that we do this. The tank is located to the side of the house and will not be next to or under any part of the deck or stairs. In addition the piers do not impact the septic as the house was connected to the MDC sewer in 1999, and the existing leach field was abandoned. The existing leach field was constructed of pipes; there are no dry wells or pots.

Hardship: We could not find a definition for "legal hardship" in any Windsor zoning documents. In fact we could not find the term "legal hardship" anywhere. However, on many internet sites regarding legal definitions with respect to zoning we did find the term "unnecessary" hardship. It is defined as "a situation where, in the absence of a variance, an owner cannot make feasible use of the property, or strict conformity is unnecessarily burdensome." Hardship must be due to unique physical limitations of the property, i.e. steep slopes, location to wetlands, under-sized or odd shaped lot on which the variance is needed. It must be unique to the particular site and not a general characteristic of the neighborhood. It cannot be self-imposed, and the proposed change cannot alter the character of the neighborhood or reduce the neighboring property values. The applicant cannot realize a reasonable financial return because of the improvement; it must be for the public good. We did find that small lot size has been used in the past as a hardship when requesting a variance from the Windsor ZBA. In addition we found a Windsor Zoning Document that states in part that "the enlargement, extension, reconstruction, or structural alteration of a nonconformity may be permitted to improve safety, reduce fire hazard, and/or to improve the appearance of the structure." (Ch. 27.50.020 # 5 – restrictions on nonconforming structures)

With regards to "under-sized or odd shaped lot", our property is zoned single-family AA. According to that designation the minimum lot size is 27,500 square feet; our lot size is approximately 7500 square feet, or less than one third the minimum size permitted. We cannot increase the lot size to conform to the zoning. The dwelling has already been extended by two additions to the maximum amount allowed. We cannot add a garage due to the proximity to our side neighbors, and the locations of both the sewer and water lines. We cannot add a small shed

anywhere on the property due to fire regulations. Our front porch is small and inadequate for outdoor activities.

With regards to **“being unique to the particular site and not a general characteristic of the neighborhood”**, our property is the oldest and smallest property in the entire Birchwood and Hilltop neighborhoods in Windsor, and the only one abutted on 2 sides by land owned by Farmington River Power.

With regards to **“not being self-imposed and the proposed change cannot alter the character of the neighborhood or reduce the neighboring property values”**, we did not build the original house or deck. The new deck will be gray flooring with white railing, looking very much like our existing front porch. In style, size and design it is appropriate to a small colonial cottage on a river. Because it will be safer and more attractive, it will improve the value of the neighboring property.

With regards to **“not realizing a reasonable return because of the improvement”**, the new deck will cost over \$11,000. If we were building a deck just to increase the value of our house so we could sell it, then we would build one out of pressure treated wood, with 42” standard piers and only 6 ft by 26 ft as it would cost approximately ½ as much as the proposed deck. In the event that we ever move we will not realize substantial financial return on the proposed deck; we just want to enjoy it.

With regards to **“the enlargement, extension, reconstruction, or structural alteration of a nonconformity ... to improve safety, reduce fire hazard, and/or to improve the appearance of the structure”**, our current deck is inadequate in size, unsafe, and the joists are damaged and must be replaced. In addition, it offers the only other egress from the house in the event of an emergency. *The back door opens outward and covers more than ½ of the walkway, impeding passage across the deck.* As to appearance, the deck is not wide enough for a table and chairs or our grill, which is currently on the front porch. Most people do not grill on their front porches.

With regards to **“being for the public good”**, we plan on using better materials than necessary, putting wider piers in than are necessary, and putting them deeper than required. We will also voluntarily install a silt fence to mitigate any soil discharge to the river. The contractor will not use large machinery or vehicles in the back yard, and will dig all piers “by hand”. The deck will no longer be cantilevered off the house, but will be supported by keystone piers that are placed at a depth of 48”. The deck flooring and railing will be made of composite materials that use 90% post consumer waste i.e. recycled plastic and wood flour, and is non toxic. The piers will be made of pressure treated wood on concrete, however new methods of pressure treatment do not use toxic chemicals.

It was stated at the last zoning meeting that coverage is determined by how much of the property appears to be covered if viewed from above. i.e., from a plane. Although our actual property has over 15% coverage, it “looks” as if our property includes an additional parcel approximately 65’ X 75” as it extends to the river, and an approximately 200 ft by 10 ft parcel to the side of the property that is designated as “Right of Way.” There is a forest on one side; that area and the land leading to the water will never be developed. From the sky it “looks” as if we are covering less than 10% of the property – 1375 for the dwelling and 14375 for the entire land area.

Exhibit B

From: "Pete & Bea Deresienski" bfderesienski@snet.net

To: hartmann@townofwindsorct.com

Subject: Property located at 141 Hayden Station Road  
in Windsor, CT.

Date: Monday, October 15, 2007 5:02 PM

To: Chairman, Windsor Zoning Board of Appeals  
Windsor Building Dept.  
275 Broad Street  
Windsor, CT, 06095

From: Beatrice Deresienski  
128 Hayden Station Road  
Windsor, CT, 06095

The applicant is asking for a proposed Lot Area  
of 26,852 (Sq Ft.), which is a variance of  
648 (Sq Ft.). This is the equivalent of a 25 foot  
square, a sizeable piece of land on a small lot.

I do not see any claim of hardship. The applicant  
knew what he was buying!

Beatrice Deresienski