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STAFFORD, CT

Town of Stafford
Zoning Board of Appeals
Veterans Conference Room – 1 Main Street
Stafford Springs, CT 06076
July 8, 2021 – 7:00 p.m.

2021 JUL 12 AM 9:01

Margie Farnham 8 pages
TOWN CLERK

Members Present: Judith Mordasky, Chair
Arlene Avery
Dennis Kaba
Janene Berriault
Rich Longmore

Also Present: David Perkins, ZEO
Morris Lewis, applicant
Attorney Dori Famiglietti, Kahan, Kerensky, & Capossela,
representing the applicant
Mark Reynolds, P.E., Reynolds Engineering Services
Public

Public Hearings

1. Call to Order
2. Establish a Quorum
3. Public Hearings

Variance request of Morris Lewis to vary

**Section 4.9 to allow front line setback of 4 feet where 40 feet is required,
Section 3.11 to allow building on a lot with usable lot area of 13,848 sq. ft., where 22,000 sq. ft. is
required.**

Applicant: Morris Lewis – c/o Dorian R. Famiglietti – Kahan, Kerensky & Capossela, LLP, 45 Hartford
Tpke, Vernon, CT

Owner: Morris Lewis, 25 Margaret Drive, South Windsor, CT

Location: 118 Lake Shore Boulevard, Stafford, CT – Map 17, Lot: 46, Zone: AA

Variance request of Morris Lewis to vary

**Section 4.9 to allow front line setback of 8 feet where 40 feet is required,
Section 4.9 to allow average lot depth of 94 feet where 200 feet is required**

**Section 3.11 to allow building on a lot with usable lot area of 734 sq. ft. where 22,000 sq. ft. is
required**

Applicant: Morris Lewis – c/o Dorian R. Famiglietti – Kahan, Kerensky & Capossela, LLP,
45 Hartford Tpke, Vernon, CT

Owner: Morris Lewis, 25 Margaret Drive, South Windsor, CT

Location: 359 East Street, Stafford, CT – Map: 31, Lot: 20.1, Zone: AA

1. Call to Order.

Judith Mordasky Chair called the meeting to order at 7:00 P.M.

2. Establish a Quorum.

Judith Mordasky, Chair, established a quorum with Judith Mordasky, Chair; Dennis Kaba, Arlene Avery, Janene Berriault, and Rich Longmore

3. Public Hearings

Dennis Kaba read the legal notice for the first public hearing. Judith Mordasky explained the two part process of the public hearings.

Variance request of Morris Lewis to vary

Section 4.9 to allow front line setback of 4 feet where 40 feet is required,

Section 3.11 to allow building on a lot with usable lot area of 13,848 sq. ft., where 22,000 sq. ft. is required.

Applicant: Morris Lewis – c/o Dorian R. Famiglietti – Kahan, Kerensky & Capossela, LLP, 45 Hartford Tpke, Vernon, CT

Owner: Morris Lewis, 25 Margaret Drive, South Windsor, CT

Location: 118 Lake Shore Boulevard, Stafford, CT – Map 17, Lot: 46, Zone: AA

Attorney Dori Famiglietti, representing the applicant Morris Lewis, reviewed the variance requests. Her client purchased the 118 Lake Shore Blvd property in March for the purpose of building a single family home. This parcel is made up of four smaller lots created in the 1930s which are treated as one. The total lot area is 35,259 sq. ft., which is a little over .8 acres. It is undersized for the AA zone, but it is protected as a lot of record. Therefore, there is no need for a variance due to its size.

Her client is proposing a single family home of about 2,153 sq. ft. in size. There are two zoning regulations that were adopted after the lots were created. The first is in Section 3.11 and refers to usable lot area, which was adopted in 2003. This regulation requires 22,000 square feet of usable lot area and cannot include flood plains, wetlands and other factors, such as naturally occurring slopes in excess of 15 percent. Because nearly the entire lot has naturally occurring slopes in excess of 15 percent, the engineer determined that there is only 13,848 sq. ft. of usable lot area. Therefore, it is impossible to meet that requirement on this lot, and without the requested variance, the property is not usable for any allowed uses in the AA zone. The hardship is the unique characteristics of the land and the existing topography.

The second variance request is in Section 4.9, and refers to the front yard setback. The requirement is for 40 feet and the applicant is asking for a 4 foot setback. Attorney Famiglietti explained that the outer boundaries of the road do not line up with the actual paved street. There is a significant offset from the property line to the road of about 25 to 50 feet. As a result, a large part of what appears to be the front yard is really in the town Right of Way. Attorney Famiglietti said if you couple the road misalignment with the grade of the lot, it will require significant excavation work. The less they have to push the house back, the less need there will be to cut into the land. Therefore, the amount of excavation and disturbance to the land could be greatly minimized by granting this variance. It would also shorten the construction period. The hardship is the misalignment of the road coupled with the topography.

Attorney Famiglietti said that granting these variances will allow for the construction of a single family house on a taxable lot.

The public hearing was opened to public comment.

Michael Finch of 53 Delphi Road asked about the driveway construction. Mark Reynolds, P.E., of Reynolds Engineering Services, also representing the applicant, said the first 25 feet of the driveway would be built at a 5 percent grade, and the remainder would be built at a 14 percent grade, which would be another 20 to 25 feet up to the house. It would be a paved driveway. Michael Finch asked how wide the lot is. Attorney Famiglietti said there is about 105 feet of frontage on a curve. David Perkins did some measurements and confirmed it would be about that.

Nancy Ravetto of 89 Lake Shore Blvd and Colburn Road, referred to an ordinance that discusses surface runoff discharging into the roadway. She said she had not seen an erosion control plan. She said the grade of the driveway would be an issue for runoff and expressed concerns about the environmental impact on the lake and on the neighboring cottage properties below the road.

She also asked if perk tests have been done and where the well would be located. She noted that because town offices were open fewer hours due to the July 4 holiday, there was not enough time to do proper research on this application.

Nancy Ravetto read a portion of Section 8.16 under the Zoning Regulations which call for protecting the health, safety, and welfare of the community. She expressed concerns about property values and said she did not see how this would be an appropriate use of the land. She said it does not meet the square footage requirement and approving the variance would set a precedent. She said she is opposed to the application.

Gary Hartell of 14 Reservoir Road said he was opposed to the application. His main concern also was that approving the variances would set a precedent for further building on the hill. He expressed concerns about negative impacts on the lake.

Cheryl Mawaka of 117 Lake Shore Blvd said she had similar concerns about runoff. She said she lives across the street from the subject property and the drainage in the area is horrible. She said she has a retaining wall and was worried about if water ends up running through it. She said they would need to put something in place to direct the drainage.

Nancy Ravetto read a notice in the newspaper about the property that claimed there is a three-foot wide access strip to the lake next to the property. She asked if that is part of the property.

Dr. David Mordasky of 21 Lake Shore Blvd and 21 Buckley Highway said with all the houses in that area, water runs down driveways into a culvert and into the lake. As does the town road. He referenced a recent project at the Callahan property that required four infiltrator boxes with six to eight-inch pipes be installed. He said the application they are talking about tonight would be new construction and it should comply with those standards. He said the challenge is to understand the engineered aspects that will deal with these runoff conditions.

Attorney Famiglietti said she is not dismissing any of these concerns, but these engineering issues are not the purview of the Zoning Board of Appeals. She noted if the variances are approved, they still will not be able to build a house on the property without demonstrating that runoff issues on the driveway are suitably handled. These are site design details that will need to be fleshed out and satisfy relevant town staff before a shovel goes in the ground. She noted that despite the newspaper ad that references an access strip to the lake, there is no such pathway indicated on the property records.

Attorney Famiglietti said the property being discussed is zoned AA to allow residential construction, which is what her client wants to build. For this reason, she said the usable lot area issue is clear cut. As for the front yard setback issue, due to the road misalignment issue, if they allowed the house to be built closer to the road, it would greatly minimize excavation. She said they could meet the regulations by pushing the house way back on the property, but that would result in a lot more excavation and land disturbance.

She reiterated that drainage, erosion control and other such issues are staff concerns and that if they cannot meet those concerns, the work cannot happen.

Nancy Ravetto suggested the house then be pushed further back to meet the front setback. She expressed concern that if the ZBA approves the variance, the construction will happen and the runoff concerns will not be addressed. She disagreed with the claim that these items are not the ZBA's purview. She said the ZBA has the right to deny a variance request to protect the public health, welfare, and safety.

Attorney Famiglietti asked Mark Reynolds to review the alternative building plan if the house had to be pushed back beyond the 40 foot front setback. Mark Reynolds provided a drawing with the proposed house on the rear of the parcel. In this scenario, the driveway would still be built with a 5 percent grade for the first 25 feet, then at a 14 percent grade for the remainder. The grading work, however, would increase by about 75 percent. He said building the house four feet from the front property line would be beneficial in respect to design with less grading, less drainage, and less erosion sedimentation control required.

David Perkins asked what would be the volume of material that would need to be removed in each scenario. Mark Reynolds said if it was built closer to the road (their preferred option), it would be about 10,000 yards of material. With the alternative, it would be at least 75 percent more, in the neighborhood of 17,500 yards of material. He reminded the Board that the property line is essentially 40 feet back from the street.

Cheryl Mawaka said for her it is not about the aesthetics of the property. She questioned how this would be considered a hardship as the property owner should have known that the property was not buildable at the time he purchased it.

Mr. Dimaura of 58 Wales Road said they can't say the property is not usable for anything as it could be used for camping.

In response to Cheryl Mawaka's question, Attorney Famiglietti said a hardship adheres to the land, so the fact that her client purchased it in March does not matter. The hardship establishes that since the adoption of the usable lot area regulation, the lot cannot meet the requirements without a variance. She said that because the regulation is so restrictive, it prevents any reasonable uses of the property. She said the courts have held that this warrants a hardship. She noted also that sometimes a regulation made with good intentions doesn't work for a property and that is what the ZBA is for. It is why the ZBA is empowered to act. She noted also that the ZBA could very well deny the variance request, but the property owner would have the right to sue in court.

Nancy Ravetto said she felt the statement that the applicant could sue was a threat and that it did not sit well with them. She said sometimes a piece of land is not usable enough to be developed. She reiterated her concerns about the environmental impact to the lake and that it could fill with silt and be no good to anyone.

Cheryl Mawaka noted the applicant purchased the land for \$28,000. She said the claim that not approving the variance would devalue the applicant's property did not sound right as a buildable piece of property on the lake would sell for far more.

Gary Hartell said he did not feel the request passed the "smell test." He questioned why the applicant would purchase an unbuildable piece of property and allowing him to build would set a precedent.

David Perkins asked about the location of the well. Mark Reynolds said it would be behind the house and not in the town ROW. He said leader drains and foundation drains would be addressed in the final site plan. He noted there are a variety of methods such as infiltration that could be used to minimize the energy of sheet flow onto pavement.

David Perkins noted the plan presented here is a conceptual drawing and, due to the cost of drawing up fully engineered plans, the applicant would not go forward with them unless he gets the variance. However, that creates a challenge for staff as it is difficult to approve a site plan when there is something of a moving target. Attorney Famiglietti said she understood this as the applicant would not want to incur a lot of engineering costs if the variances are not approved. She said, however, the engineering details would be worked out during the permitting process. Additionally, engineering plans could not be made until they know if the front setback variance request was also granted. This question would need to be answered first as they will need to know where they could site the house.

Judith Mordasky noted that all the houses in the area are pushed back on the property and she suggested that if the house was pushed further back, it might create less runoff and impact on the properties below it. She asked in the long term if it would be better to build the house closer or further back from the road. Mark Reynolds said in the long term, the further back the house is pushed the more drainage and runoff would need to be managed on the site. He noted that the proposed curve of the driveway is an attempt to minimize the grading and disturbance.

David Perkins asked Mark Reynolds to review the proposed retaining walls. Mark Reynolds said with the preferred plan, they would create a terraced set of four-foot high retaining walls so there would be no large vertical drop. Runoff and drainage would then be managed in each step. This would create a little backyard space as well. If, however, they had to go with the alternative plan pushing the house further back, they would need to create several more retaining walls creating an almost amphitheater type look.

Attorney Famiglietti said the whole purpose of ZBAs is to grant relief when it is not possible to comply with zoning regulations. However, if the variances were granted, they would still need to meet drainage, runoff and other regulations.

After a brief discussion, the ZBA agreed to keep this public hearing open. As Attorney Famiglietti would not be available for the August meeting, the public hearing was continued to September 9th at 7:00 PM in the Veterans Conference Room. She provided an extension to the Board.

Variance request of Morris Lewis to vary

Section 4.9 to allow front line setback of 8 feet where 40 feet is required,

Section 4.9 to allow average lot depth of 94 feet where 200 feet is required

Section 3.11 to allow building on a lot with usable lot area of 734 sq. ft. where 22,000 sq. ft. is required

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Owner: Morris Lewis, 25 Margaret Drive, South Windsor, CT

Location: 359 East Street, Stafford, CT – Map: 31, Lot: 20.1, Zone: AA

Dennis Kaba read the legal notice for the second public hearing. Attorney Famiglietti and Mark Reynolds represented the same client, Morris Lewis, for this hearing as well.

Janene Berriault read written correspondence from Judith Geary of 180 Stafford Street, an abutter, in opposition to the application. Judith Geary indicated that her research showed Charles Freeland as the owner of the property, not Morris Lewis, and that because of shortened hours at Town Hall due to the 4th of July holiday, there was insufficient time to get detailed information on the application and how it will affect her property.

In her letter, Judith Geary said she felt the proposed house was too large for the site. She expressed concerns about safety and liability, as well as concerns about drainage and environmental impacts due to the steep slopes. She expressed concerns that granting the request would set a precedent. She was also concerned about negative impacts on the charm and historical properties in the area.

Attorney Famiglietti said the record owner of the property as of June 10, 2021 is New Home Concepts, LLC, solely owned by Morris Lewis. She said the assessor's cards were not yet updated. She said her client acquired the property in March of 2021 for the purpose of building a single family home. The original lot was created in 1989 carved off of a larger parcel through a variance. This lot is 20,290 sq. feet.

She said that since the creation of the lot in 1989, two other regulations were adopted. These include Section 4.9 which has a lot depth requirement of 200 feet. When the lot was established in 1989 it had only 94 feet of depth, so that new regulation made the lot impossible to comply with the regulation. The hardship, therefore, is the existing depth predating the enactment of a later regulation.

Section 3.11 includes the usable lot area regulation adopted in 2003. The requirement is for 22,000 square feet and as this is another very steep parcel, there is only 734 square feet of usable lot area due to the requirement to eliminate naturally occurring slopes. Without these two variances, no allowable uses in the AA zone could be had on this property. The hardship for this regulation is the existing configuration of the land and the topography. This would result in complete devaluation of the land.

Attorney Famiglietti discussed a third variance request. This is also in Section 4.9 and refers to the front yard setback where 40 feet is required. The applicant is requesting an 8 foot setback. She noted that if the house was pushed way back, it would require a series of retaining walls. The ZEO had suggested if they were going to come in for the two variance requests, they might also want to ask for this one as well as it would be consistent with other houses to the east and west. This would minimize disturbances to the land, drainage, and excavation. However, while it warrants consideration, she noted the property could be developed with or without this third variance.

In response to the letter from Judith Geary, Attorney Famiglietti said her client would like to build a modest 1,850 square foot raised ranch home that is consistent with the AA zone. It is a reasonable use of the land and it is a legal lot created in 1989. With their concept plan, there would be no retaining walls and the house would be moved up closer to the road allowing more space between the neighbor's house and her client's. She disagreed that the house is too large for the lot.

Nancy Ravetto of 119 Coburn Road said she felt it was an affront that this house has been advertised for over a month for sale before the application even came before this Board. She read the ad. She questioned if it was the best use of the land. She said there are two other houses near the road that are in disrepair. She said it is on a state highway and asked what the ROW regulations are for a state highway with a driveway that enters onto it.

Nancy Ravetto said abutters are concerned about the huge, steep grade and that the lot might be unsafe for children living in the house. She said the retaining walls might be a better solution with the house built further back. She said the ZBA needs to consider public health, safety and welfare of people backing out onto the highway.

Jill Carlson of 170 Stafford Street said she owns an abutting property. She read a letter she had written indicating it was difficult to research the property and application over a holiday weekend and felt the public was not given sufficient time to do this. She asked that the public hearing remain open so further research can be done.

Jill Carlson said her main concern was for her liability. She said this is a heavily wooded area with a very steep grade. There are several large pines on her property and she would feel the need to take down some of those trees on her property. As it costs about \$2,000 to take a large pine down, she does not have the funds to do this.

Attorney Famiglietti said this is only Step 1 in a process. Step 2 would be the permitting process and town staff would need to do multiple reviews. There are engineering details and other matters that would need to be addressed. She added that while it may seem presumptuous that her client ran an advertisement before coming before the Board, he is just a business owner trying to line up an end buyer to get a return on his investment. Either way, he would not be able to build unless the variances are approved.

Attorney Famiglietti said the driveway can be designed for a turnaround so the homeowner would not need to back out onto the highway. She said she believed they can work out all the various necessary details, but her client needs relief first of regulations that were enacted after the legal creation of the lot.

Jill Carlson asked what her liability would be if one of her pine trees come down on this house. She expressed concerns about erosion and high winds that could bring a tree down and that she doesn't want any liability and can't afford the burden of taking down trees. Attorney Famiglietti said she was under no obligation to take down trees on her property.

Nancy Ravetto said the ZBA needs to consider public safety issues. She said the ZBA has the power to determine whether or not a property is usable and deny the variances if it is not. She said some areas are not appropriate for development.

Attorney Famiglietti reiterated that the neighbor was under no legal obligation to accommodate development on an adjacent property. She said Jill Carlson would have liability if one of her pine trees fell on her own house, and that is never considered a justification for denying development of a property. Jill Carlson disagreed. She said if the house was pushed back, it could be built as of right.

Arlene Avery asked about the six-sided stars indicated on the plan. Mark Reynolds said these represented existing trees that were on or near the property line, marked to help people looking at the plan get an understanding of where the property line is.

After a brief discussion, the Board agreed that due to the holiday weekend and town hall being open for fewer hours, the public should be given more time to do further research if need be on this application. This public hearing was also continued to September 9 in the same location. Attorney Famiglietti provided an extension for this hearing also. She noted she complied with all mailing requirements and the required posting of signs.

Regular Meeting

1. Approval of 6/15/2021 meeting minutes.
2. Review public hearing items and discuss possible decision.
3. Adjournment

Judith Mordasky called the meeting to order at 8:57 PM, continuing with the same quorum as was established for the public hearings.

- 1. Approval of 6/15/2021 meeting minutes.**

Rich Longmore made a motion to approve the 6/15/2021 meeting minutes, seconded by Arlene Avery. Rich Longmore, Arlene Avery, Judith Mordasky, and Janene Berriault voted to approve the minutes. Dennis Kaba abstained. Motion carried.

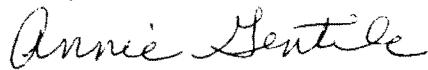
- 2. Review public hearing items and discuss possible decisions.**

The public hearings were both continued to the September meeting.

- 3. Adjournment.**

Dennis Kaba made a motion to adjourn, seconded by Arlene Avery. All were in favor. Motion carried. The July 8, 2021 meeting of the Stafford Zoning Board of Appeals was adjourned at 8:59 PM.

Respectfully submitted,



Annie Gentile
Recording Secretary