

ZONING BOARD
OF
APPEALS
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TOWN HALL ANNEX
238 Danbury Road
Wilton, Connecticut 06897

**ZONING BOARD OF APPEALS
REGULAR MEETING
FEBRUARY 18, 2014
7:15 P.M.
TOWN HALL ANNEX - MEETING ROOM A**

PRESENT: L. Michael Rudolph, Chairman; Albert Nickel, Vice-Chairman; John Comiskey, Secretary; Brian Lilly; Timothy Meyer; Gary Battaglia, Alternate; Libby Bufano, Alternate; R. Andrew McNee, Alternate

ABSENT:

A. CALL TO ORDER

In the absence of officers, Town Planner Nerney called the meeting to order at 7:15 P.M. He briefly reviewed the hearing process for applications that come before the Zoning Board of Appeals. Board members Rudolph, Comiskey, Lilly, Meyer, Battaglia, and Bufano were present for officer nominations.

B. OFFICER NOMINATIONS

Mr. Nerney opened the nominations for Chairman.

CHAIRMAN:

MOTION was made by Mr. Meyer to nominate Mr. Rudolph for Chairman.

MOTION was made by Mr. Lilly to nominate Mr. Lilly for Chairman.

In the absence of further nominations for Chairman, the nominations for Chairman were closed.

Both motions were seconded by Ms. Bufano.

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The first motion carried (5-1) to nominate Mr. Rudolph for Chairman. Mr. Lilly opposed.

The second motion failed (1-5) to nominate Mr. Lilly for Chairman. Mr. Lilly voted in favor of the motion. All others opposed.

VICE-CHAIRMAN:

MOTION was made by Mr. Rudolph to nominate Mr. Nickel for Vice-Chairman.

In the absence of further nominations for Vice-Chairman, the nominations for Vice-Chairman were closed.

The motion was seconded by Mr. Meyer and carried (6-0) to nominate Mr. Nickel for Vice-Chairman.

SECRETARY:

MOTION was made by Mr. Rudolph to nominate Mr. Comiskey for Secretary.

In the absence of further nominations for Secretary, the nominations for Secretary were closed.

The motion was seconded by Mr. Meyer and carried (6-0) to nominate Mr. Comiskey for Secretary.

Chairman Rudolph thanked Mr. Meyer for his service on the Board and for serving as Vice-Chairman. He expressed hope that Mr. Meyer would come back and serve again in the future.

B. PUBLIC HEARINGS

1. #14-01-01 FLANAGAN 308 MOUNTAIN ROAD

Mr. Rudolph called the Hearing to order at approximately 7:20 P.M.

Mr. McNee arrived at approximately 7:20 P.M.

Mr. Rudolph seated members Bufano, Comiskey, Lilly, Meyer and McNee, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest. Mr. Comiskey read the legal notice dated January 7, 2014 and noted that the application was not heard last month due to inclement weather.

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Mr. Comiskey referenced four letters from neighbors in support of the application, with a cover letter dated January 15, 2014 from J. Casey Healy to Zoning Board of Appeals.

Mr. Nickel arrived at approximately 7:28 P.M.

Mr. Comiskey referenced details of the application and the hardship as described on the application. He read the last paragraph of the hardship description summarizing details of the hardship.

Present was J. Casey Healy, attorney on behalf of the applicant.

Mr. Healy explained the applicant's plans to replace an existing above-ground pool with an in-ground pool, with virtually the same legally nonconforming setback. He reviewed a history of the site, noting that it was part of a 1971 subdivision when side yard setbacks in the R-2A zone were only 30 feet as compared to current side yard setback requirements of 40 feet. He explained that the pool was installed in 2003 in accordance with setback requirements in place in 1971 and without consideration to site coverage limitations (since none existed in 1971), as per CT General Statutes pertaining to older subdivisions at that time.

Mr. Healy explained that the existing above-ground pool has a 30.01-foot side yard setback whereas the proposed in-ground pool would be sited 29.3 feet from the side yard property line and would have a lower visual profile from the perspective of abutting properties. He noted further that site coverage would be reduced from approximately 13.6% to 12.6%, where 12% is currently allowed.

Addressing issues of hardship, Mr. Healy explained that the proposed pool could not be located farther from the side yard property line due to septic system, well, septic reserve area, and inland wetlands setbacks. He also cited the long and narrow, currently nonconforming, lot configuration which contributes further to the hardships of the site.

Mr. Comiskey raised concerns regarding the accuracy of site coverage calculations cited by the applicant, particularly whether the alleged reduction in site coverage would be as large as the applicant claims. He referenced in particular site coverage calculations pertaining to an existing slate-on-dirt patio and an existing turnaround in the driveway. Mr. Healy assured the Board that he consulted with Town Planner Nerney to confirm the proper methodology for calculating site coverage and then double-checked/confirmed with the surveyor that such methodology was utilized in the calculations.

In response to further questions from the Board, Mr. Healy stated that it is not possible to reduce the proposed intrusion into the side yard setback due to septic/wetland setback constraints, and he noted that less of the proposed pool (from a volume perspective)

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would actually be located within the setback than is the case with the existing pool.

Referencing Section 29-4.F of zoning regulations pertaining to Nonconforming Lots, Uses and Structures, Mr. Rudolph raised a question as to whether the Board has the authority to increase/extend an existing nonconformity. Mr. Healy stated that the application is not a request to expand/increase an existing nonconformity but rather is a request for a variance, which is fully within the purview of the Board.

A question was raised by Mr. Lilly as to whether the existing driveway circle could be enlarged in an effort to reduce site coverage somewhat on the lot. Mrs. Flanagan, present in the audience, explained that there are already difficulties with the radius of that turn, which would be further exacerbated for vehicles attempting to navigate around it if it were enlarged.

In response to further questions from the Board, Mr. Healy stated that Mr. Jablonski (the neighbor closest to the proposed setback intrusion) was not one of the four neighbors who had submitted letters of support for the application, although he noted that Mr. Jablonski would have received a legal notice since his property is within 500 feet of the subject parcel. He noted further that Mr. Jablonski is a builder and therefore would have well understood the nature of the letter.

Mr. Rudolph asked if anyone wished to speak for or against the application.

There being no further comments, the public hearing was closed at 7:54 P.M.

**2. #14-02-02 SAUGATUCK CAPITAL MGMNT, LLC/DEAN
23 DANBURY ROAD**

Mr. Rudolph called the Hearing to order at 7:54 P.M., seated members Battaglia, Bufano, Comiskey, Nickel and Rudolph, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest. Mr. Comiskey read the legal notice dated January 7, 2014 and details of the application and the hardship as described on the application. He also referenced a document submitted by Nick Cuoco, licensed engineer, dated January 20, 2014.

Present were Christopher Dean, owner/applicant; and Nick Cuoco, licensed engineer.

Mr. Dean stated that the structure is 256 years old, although very little of the original structure actually remains. He explained that the building is nonconforming with respect to setbacks to the river, Kent Road and Danbury Road, noting that almost all of the

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structure lies within the setback areas and therefore any work on the building would require a variance. He explained that very serious structural issues were discovered when the building was recently gutted, which need to be addressed for safety reasons.

Mr. Cuoco explained that significant structural deficiencies were discovered in the roof, including ceiling height issues. He stated that a small area of the roof (approximately 20-foot square) needs to be raised/restructured to meet snow load requirements per Building Code and to provide adequate ceiling height inside the building. He noted that the roof section in question would be raised about 20 inches but would not impact the exterior façade/view of the building.

Mr. Dean emphasized that there would be no change to the footprint of the building, i.e. no portion of the structure would be moving any closer to Kent or Danbury Roads. He explained that the existing flat roof area fills up with snow, resulting in unsafe weight loads on the roof and on the parking lot wall. He stated that structural beams are proposed across the parking lot wall to alleviate that issue. He also noted that the roof leaks every day and as a result he goes up on the roof to clear away ice/snow every day to reduce the likelihood of collapse.

Mr. Rudolph asked if anyone wished to speak for or against the application.

There being no further comments, the public hearing was closed at 8:11 P.M.

3. #14-02-03 O'DONNELL 18 BALD HILL ROAD

Mr. Rudolph called the Hearing to order at 8:11 P.M., seated members Battaglia, Lilly, McNee, Nickel and Rudolph, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest. Mr. Comiskey read the legal notice dated January 7, 2014 and details of the application and the hardship as described on the application.

Present were Kevin Quinlan, architect; and Matthew O'Donnell, owner.

Mr. Quinlan stated that the house was built in 1967 when side yard setbacks were only 30 feet versus the current day requirement of 40 feet. He explained that the plan is to enlarge the master suite upstairs, and to add a mud room, entry way and laundry room below. He noted that the house recedes back on the second floor so there would be no further encroachment into the setback than currently exists.

Mr. Quinlan passed around 2 photos of the house, noting that it is tucked way into a corner of the property. He stated that the applicant had considered more expansive options but pared down the plans to hold the line at the existing wall in order to be deferential to current day regulations. He noted further that no alternative connecting

options are available due to the existing conditions of the house.

In response to questions from the Board, Mr. Quinlan explained that the variance request would result in a .2% increase in building and site coverage, well below the permitted 7% and 12%, respectively. He noted that 217 square feet of the proposed addition are as-of-right and 57 square feet encroach into the setback, although no further encroachment into the setback will occur than currently exists. He also explained that the increased coverage results from approximately 14 square feet of space attributable to a proposed window seat.

Mr. Quinlan responded further that the three neighbors who can see the proposed addition (i.e. Kolman, Worst and Facini) have all endorsed the project.

Mr. Rudolph asked if anyone wished to speak for or against the application.

There being no further comments, the public hearing was closed at 8:20 P.M.

**4. #14-02-04 HOFFMAN LANDSCAPES, INC. DANBURY ROAD
(a/k/a Assessor's Map #23, Lot #26A)**

Mr. Rudolph called the Hearing to order at 8:20 P.M., seated members Bufano, Comiskey, Lilly, Meyer and Nickel, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest.

Mr. Rudolph recused himself and left the meeting room due to a conflict of interest. Vice-Chairman Nickel acted as Chairman in the absence of Mr. Rudolph, and read the legal notice dated January 7, 2014.

Mr. Comiskey referenced the last paragraph of the Statement of Hardship summarizing details of the hardship.

Present were J. Casey Healy, attorney; and Mike Hoffman, applicant.

Mr. Healy referenced a posted map of 647-651 Danbury Road, a 0.91+/- acre land-locked parcel that is owned by Conn Dot and which has recently been leased to Hoffman Landscapes; and of a second parcel at 631-643 Danbury Road that is also being leased by Conn Dot to Hoffman Landscapes, both of which are zoned General Business. He noted that a residentially-zoned (R-1A) parcel, owned by the State of CT and originally planned for the construction of Super 7, abuts the subject 0.91-acre parcel to the west.

He explained that the subject parcel ranges in width from approximately 124 feet to 149 feet wide and is encumbered by a 50-foot front yard setback (to the rear of the Calico

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Corners building) and an 85-foot rear yard setback to the residentially zoned parcel behind it. He stated that the applicant is seeking a 59-foot rear yard setback variance to house tool storage sheds on the property. He noted that the residentially zoned parcel to the rear will likely never become a Super 7 highway as originally planned and will probably sit forever in its current state. He noted further that the residential parcel slopes up from the subject property at approximately a 30-degree angle, and no homes are visible from the subject property.

In response to questions from the Board, Mr. Hoffman stated that the applicant would like to install 6 storage containers on the property where there are currently 4, all of which would be the same kind of container. Mr. Healy explained that for reasons of security/theft concerns, the applicant also plans to fence in the entire area so that the only way in to the site would be from the rear residentially-zoned property. Mr. Hoffman stated that they would prefer to have the loading area away from any pedestrian traffic in the morning hours for safety sake.

In response to a question from Mr. McNee, Mr. Healy stated that a letter of authorization signed by Michael Kanios of Conn Dot authorizing Gregory and Adams to act as its agent was submitted with the application package.

In response to a question from Mr. Nickel, Mr. Healy stated that there were no objections to the variance application from other property owners.

Mr. Nickel asked if anyone wished to speak for or against the application.

Mr. Quinlan, in the audience, indicated that he was in favor of the project.

There being no further comments, the public hearing was closed at 8:34 P.M.

Mr. Rudolph returned to the meeting room at 8:35 P.M.

C. APPLICATIONS READY FOR REVIEW AND ACTION

Mr. Rudolph called the Regular Meeting to order at 8:35 P.M., seated members Bufano, Comiskey, Lilly, McNee and Meyer, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest.

1. #14-01-01 FLANAGAN 308 MOUNTAIN ROAD

The Board briefly discussed the application.

Mr. Rudolph referenced Section 29-13 of zoning regulations regarding expansion of a non-conforming use, and he again raised the issue of whether the Zoning Board of Appeals has jurisdiction in such matters. Mr. Nerney explained that the proposed pool is an allowable use in a residential zone and is not considered a nonconforming use. He noted for the record that applicants are not permitted to come before the ZBA to vary a use.

Mr. Battaglia felt that the proposed in-ground pool would be more aesthetically pleasing than the existing above-ground pool/platform and less activity will be visible to surrounding neighbors as a result.

Mr. Rudolph felt the requested variance was reasonable under the circumstances.

Mr. Meyer also noted that site coverage would be reduced per the survey submitted.

MOTION was made by Ms. Bufano, seconded by Mr. Lilly, and carried unanimously (5-0) to **grant** variances of Section 29-5.D to allow an existing above-ground pool with a 30.01-foot side yard setback to be replaced with a new in-ground pool with a 29.3-foot side yard setback in lieu of the required 40 feet; and site coverage of 12.6% in lieu of the 12% allowed, where existing site coverage is 13.6%; as per Map of Property prepared by Land Surveying Services, LLC, dated January 28, 1999, revised October 13, 2005 and November 25, 2013; on grounds that sufficient hardship was demonstrated due to the pre-existing nonconforming nature of the lot.

The agenda was scrambled to next hear application #14-02-04.

**4. #14-02-04 HOFFMAN LANDSCAPES, INC. DANBURY ROAD
(a/k/a Assessor's Map #23, Lot #26A)**

Board member McNee was unseated and Mr. Nickel was reseated.

The Board briefly reviewed the subject application.

Mr. Meyer felt it was a reasonable request. Mr. Lilly stated that it was straightforward.

It was the consensus of the Commission to approve the application in light of the

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hardships demonstrated.

MOTION was made by Mr. Lilly, seconded by Ms. Bufano, and carried unanimously (5-0) to **grant** a variance of Section 29-6.E.4 to allow tool storage sheds to be located within 59 feet of the rear yard setback in lieu of the 85 feet required; as per “Property and Topographic Survey” prepared by CCA, LLC, dated September 25, 2013, and “Site Improvements with Ex. Fence” prepared by Hoffman Landscapes dated July 26, 2013, revised October 2, 2013, October 16, 2013, December 5, 2013 and December 26, 2013; on grounds that sufficient hardship was demonstrated due to the pre-existing nonconforming nature of the structure and the fact that there is no space available on the lot if required setbacks are respected.

**2. #14-02-02 SAUGATUCK CAPITAL MGMNT, LLC/DEAN
23 DANBURY ROAD**

Board members Lilly and Meyer were unseated and Board members Rudolph and Battaglia were reseated.

Mr. Meyer left the meeting for personal reasons.

The Board briefly reviewed the application. It was the consensus of the Board to approve the application in light of the hardships demonstrated.

MOTION was made by Mr. Nickel, seconded by Ms. Bufano, and carried unanimously (5-0) to **grant** a variance of Section 29-6.E.1 to permit the reconstruction of an existing flat roof resulting in a front yard setback of 29’ where 31.6’ currently exists and 50’ is required (Danbury Road setback) and a front yard setback of 11’ where 15.8’ currently exists and 50’ is required (Kent Road setback); as per “Zoning Location Survey” prepared by William W. Seymour & Associates, P.C. dated January 9, 2014, revised January 21, 2014; and “Structural Improvements” maps S1, S2, S3, S4 and S5, prepared by Cuoco Structural Engineers, LLC, dated December 30, 2013; on grounds that sufficient hardship was demonstrated due to the pre-existing nonconforming nature of the structure which is located on an undersized lot.

3. #14-02-03 O'DONNELL

18 BALD HILL ROAD

Board members Bufano and Comiskey were unseated and Board members Lilly and McNee were reseated.

The Board briefly reviewed the application. It was the consensus of the Board to approve the application in light of the hardships demonstrated.

MOTION was made by Mr. Nickel, seconded by Mr. Lilly, and carried unanimously (5-0) to **grant** a variance of Section 29-5.D to allow a two-story addition in place of existing one-story structure, with a 34-foot side yard setback in lieu of the required 40 feet; as per “Zoning Location Map” prepared by Stalker Land Surveying dated January 24, 2014, revised January 24, 2014 and January 25, 2014; on grounds that sufficient hardship was demonstrated due to the pre-existing nonconforming nature of the lot.

D. OTHER BUSINESS

1. Minutes – December 16, 2013

MOTION was made by Mr. Nickel, seconded by Mr. Lilly, and carried (6-0-1) to approve the minutes of December 16, 2013. Mr. Battaglia abstained.

E. ADJOURNMENT

MOTION was made by Mr. Nickel, seconded by Mr. Lilly, and carried unanimously (7-0) to adjourn at 9 P.M.

Respectfully submitted,

Lorraine Russo
Recording Secretary