

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

**ZONING BOARD OF APPEALS
REGULAR MEETING
MARCH 16, 2015
7:15 P.M.
TOWN HALL ANNEX - MEETING ROOM A**

PRESENT: Scott Lawrence, Chairman; Gary Battaglia, Vice-Chairman; Brian Lilly, Secretary; Joshua Cole; Andrea Preston, Alternate; Kenny Rhodes, Alternate

ABSENT: Andrew McNee, Libby Bufano (notified intended absence)

A. CALL TO ORDER

Mr. Lawrence called the meeting to order at approximately 7:18 P.M. He briefly reviewed the hearing process for applications that come before the Zoning Board of Appeals.

B. PUBLIC HEARINGS

1. #15-03-07 PRIEST 19 FAIRVIEW LANE

Ms. Preston and Mr. Rhodes indicated that they knew Ms. Priest in her capacity as a teacher for their children, but they both felt it did not represent a conflict of interest for them.

Mr. Lilly stated that he knew the prior owners of the property many years ago and Mr. Lawrence stated that he knows the current owners, but both felt this did not represent a conflict of interest.

Mr. Lawrence called the Hearing to order at 7:20 P.M., seated members Battaglia, Cole, Lawrence, Lilly, and Rhodes, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest. Mr. Lilly read the legal notice dated March 3, 2015 and details of the application and the hardship as described on the application.

Present were John and Heather Priest, applicants/owners.

ZBA Minutes – March 16, 2015 - Page 2

Mr. Priest explained that they would like to expand their 2-bedroom, 1-bath home by adding a dormer and front porch to better accommodate the needs of their family as well as the likely necessity of having to care for aging/disabled parents in the future. He noted that the small lot is pre-existing nonconforming, built at a time when R-2A zoning and current setback regulations were not in effect.

He explained further that small-sized lots and frequent foot traffic in the area make the property particularly suitable to having a covered front porch, which will also provide easier and safer access to the front of their home for their elderly parents. He noted further that the proposed design is in keeping with the style and charm of the house and neighborhood.

Town Planner Nerney confirmed that the home was built around 1950 at a time when setback requirements were different in this part of Town. He noted in particular that the 1-acre parcel required even lesser setbacks at that time than currently, which was perhaps the reason that the residence was sited so close to the property line in the first place.

Mr. Lilly cited topographical issues in the back area as well that may have contributed to the siting decision.

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

There being no further comments, at approximately 7:31 P.M. the public hearing was closed.

2. #15-03-08 FAWCETT 27 REDDING RD/RT 107

Mr. Lawrence called the Hearing to order at approximately 7:31 P.M., seated members Battaglia, Cole, Lawrence, Lilly, and Preston, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest. Mr. Lilly read the legal notice dated March 3, 2015 and details of the application and the hardship as described on the application. Mr. Lilly also read into the record a letter dated March 11, 2015 from Redding Planning Commission to Robert J. Nerney.

Present was Gavin Fawcett, applicant/owner.

Mr. Fawcett distributed a letter dated March 3, 2015 from three surrounding neighbors (Pape at 3 Church St, Hegnauer at 25 School Street, and Peterkin at 50 New Street) in support of the application, with map and photo attachments.

Mr. Fawcett explained that the contractor installed the heating/air conditioning unit in question without the foreknowledge of the applicant, although Mr. Fawcett assured the

ZBA Minutes – March 16, 2015 - Page 3

Board that, if necessary, he would have it moved it immediately out of its current location. He noted that the site is constricted with respect to possible alternate locations for the unit, referencing in particular 1) a lack of required ventilation clearance on the upper deck; 2) the existing stairs might be able to be moved to accommodate the unit, although a variance would still be required in that location as well; 3) there is no basement along the Hegnauer side so access to the unit would be very restricted. He stated that there is really no other suitable location on the site, noting further that the proposed location (where it is flanked by two large shrubs) would have little if any impact on nearby neighbors. He stated that neighbors are happy about the ongoing improvements on the site.

Mr. Lilly read into the record the aforementioned letter, with attachments, dated March 3, 2015 from three surrounding neighbors.

In response to further questions from the Board, Mr. Fawcett stated that 1) the proposed unit is 100% electric for both heat and A/C; 2) no further pruning will be done on the two flanking bushes and some additional landscaping will be installed for added screening; 3) the septic systems on both lots had to be re-done and a good portion of the applicants' driveway needed to be removed in connection with development of the two lots.

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

There being no further comments, the public hearing was closed at approximately 7:48 P.M.

3. #15-03-09 LESKA 50 SUNSET PASS

Mr. Rhodes explained that he is able to see a portion of the subject lot which is a street or two over from his property but he did not feel this would represent a conflict of interest for him.

Mr. Lawrence called the Hearing to order at approximately 7:48 P.M., seated members Battaglia, Cole, Lawrence, Lilly, and Rhodes, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest. Mr. Lilly read the legal notice dated March 3, 2015 and details of the application and the hardship as described on the application.

Present were Romi Leska, applicant/owner; and Roberta Fumega, representing the applicant's interests.

Ms. Fumega explained that the applicant wishes to expand 6 feet onto the front of his house to enlarge a small existing kitchen and living room, as well as raise the roof line approximately 18 inches to make the home more livable and attractive. She stated that there are many constraints on the property, including wetlands and a pond in the front; a

ZBA Minutes – March 16, 2015 - Page 4

septic tank in the rear; a well on the left side of the house; and narrowing property lines as the property extends towards the rear of the site.

Mr. Lawrence referenced an existing area/corner of the house that is currently only 21.4 feet from the side property line; he questioned whether the Board needed to concern itself with the legality of that setback intrusion or whether some statute of limitations exists that would override such a concern.

Mr. Nerney referenced a 3-year statutory rule in Connecticut whereby after 3 years setbacks become legally sanctioned, although he did not know if that was the situation in this particular case. He felt that a simpler approach is to reference the survey submitted with the application and to use that as a benchmark from which to establish what site conditions are today. He noted further that the Board would not in any way be granting an additional variance for that area of the site, but would just be approving variances (if it so deemed) as requested by the current application.

In response to a question from Mr. Lawrence pertaining to the southern property line, Ms. Fumega explained that that area of the map was erroneously drawn by the surveyor. She explained further that the area is not the applicant's driveway and the applicant will discontinue use of that area for parking once the proposed site improvements have been completed.

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

John Nessel, 3 Cora Lane, stated that he is an abutter but had not yet seen the proposed plans for the site. He reviewed the plans with the assistance of Ms. Fumega and Mr. Nerney. Upon review, he stated that he had no objections, noting that it will be nice to see the site improved finally after 50 years.

There being no further comments, the public hearing was closed at approximately 8:19 P.M.

The Board took a short break at 8:19 P.M.
The Board returned from break at 8:21 P.M.

C. APPLICATIONS READY FOR REVIEW AND ACTION

Mr. Lawrence called the Regular Meeting to order at 8:21 P.M., seated members Battaglia, Cole, Lawrence, Lilly, Preston, and Rhodes, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest.

1. #15-03-07 PRIEST 19 FAIRVIEW LANE

Mr. Cole expressed some hesitation as to whether the applicant had adequately demonstrated hardship that would prevent construction in conformance with current setback regulations.

After some further discussion, it was the general consensus of the Board that the requested variances were reasonable since rezoning of the 1-acre lot into 2-acre zoning, after it was developed, represented a hardship for the site and, had rezoning not occurred, the house would be sited within legal setbacks; proposed additions are compatible with the neighborhood and age of the house; the structure is pre-existing nonconforming; the proposed front porch is an asset from a safety perspective; and the proposed site modifications represent a reasonable use of the property.

MOTION was made by Mr. Rhodes, amended by Mr. Lilly, seconded by Mr. Battaglia, and carried unanimously (5-0) to **grant** the variance of Section 29-5.D to allow a 2nd floor shed dormer and an attached covered front porch with a 33.2-foot front yard setback in lieu of the required 50 feet; as per submitted Property Survey prepared by Pah, Inc. Land Surveyors, dated November 21, 2014 and revised February 3, 2015; on grounds that sufficient hardship was demonstrated due to the pre-existing nonconforming nature of the home and the fact that a front porch has to be constructed, by definition, on the front of the house.

2. #15-03-08 FAWCETT 27 REDDING RD/RT 107

Mr. Lawrence stated that he does not look favorably upon projects/construction that occur prior to the seeking of a variance but, in such instances, the Board must review each situation from the perspective of how egregious the construction/setback intrusion is, whether there is valid reason to excuse it, and whether the Board would have been inclined to grant such a variance had the applicant appeared before the Board prior to completing the work in question.

Mr. Lilly felt that there was no other place to site the unit on the property given its existing topography and the fact that the unit must be located next to the house. He felt that he would have been inclined to grant the variance had the application come before the Board prior to the work being completed. Mr. Battaglia concurred.

Mr. Cole noted further that the neighbor most affected did not have an issue with the proposed location of the unit.

Mr. Lawrence felt it was a reasonable request overall and was inclined to grant it, noting that the applicant's premature siting of the unit did not seem like a willful flaunting of the regulations nor was it terribly egregious.

MOTION was made by Ms. Preston, seconded by Mr. Cole, and carried unanimously (5-0) to **grant** variances of Section 29-5.D to allow a heat pump/air conditioning unit with a 17.9-foot side yard setback in lieu of the required 30 feet and a 36.1-foot front yard setback in lieu of the required 40 feet; as per submitted Zoning Location Survey prepared by Ryan and Faulds, dated February 13, 2015; on grounds that sufficient hardship was demonstrated due to the pre-existing nonconforming nature of the house and overlapping setbacks on most of the property, and due to topographical and driveway constraints; the proposed location being the only feasible one.

3. #15-03-09 LESKA 50 SUNSET PASS

Mr. Lawrence stated that the house was subjected to incredible abuse over time, noting that the proposed modifications will improve the roof as well as drainage on the site. He explained further that although he had some hesitation regarding the corner that intrudes into the setback, he would accept the property survey submitted, noting that he has no way to know when that corner was actually built and therefore it was not a reason to deny. He felt that topography and other challenges of the lot are numerous and thus he was inclined to grant the variances as requested. There was unanimous agreement among the Board.

Mr. Nerney further noted physical issues of the property, i.e. it is narrow, odd-shaped and burdened by wetlands.

MOTION was made by Mr. Lawrence to **grant** variances of Section 29-5.D to permit a building addition with a side yard setback of 18.4 feet where 30 feet are required; and a rear yard setback of 23.8 feet where 40 feet are required and a side yard setback of 21.4 feet where 30 feet are required to permit elevation of an existing roof line; as per submitted Improvement Location Survey Map prepared by Kristoffersen Land Surveying, LLC, dated February 20, 2015, and New Roof Plan A-2.0 dated February 23, 2015; on grounds that sufficient hardship was demonstrated due to the pre-existing nonconforming nature of the structure located on an irregularly-shaped parcel; numerous topographical challenges, including a stream, pond and wetlands that encompass a substantial portion of the

ZBA Minutes – March 16, 2015 - Page 7

site; and the location of the house on the only part of the land that could accommodate it. He further noted that the change in the roof line of the pre-existing nonconforming house does not adversely affect surrounding properties or adversely impact public health and safety.

MOTION was amended by Mr. Lilly to note that most of the addition is within the setback, which he felt was a challenge unto itself, but he noted for the record that the portion of the parking area that is on the neighbor's (Ronald Aronstam's) property, referenced earlier in the hearing, is to be returned to its rightful owner and shall not be improved upon or claimed by the applicant at any future time.

MOTION was seconded by Mr. Battaglia and carried unanimously (5-0).

D. OTHER BUSINESS

1. Minutes – February 17, 2015

MOTION was made by Mr. Lawrence, seconded by Mr. Battaglia, and carried (5-0-1) to approve the minutes of February 17, 2015. Mr. Rhodes abstained.

Mr. Lawrence reminded Board members of the legal training session to be conducted by Town Counsel on April 20th at 6 P.M., prior to the Board's regularly scheduled meeting. He noted that Board members may send questions in advance either to him or to Mr. Nerney.

E. ADJOURNMENT

MOTION was made by Mr. Lilly, seconded by Mr. Battaglia, and carried unanimously (7-0) to adjourn at approximately 8:45 P.M.

Respectfully submitted,

Lorraine Russo
Recording Secretary