

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

**ZONING BOARD OF APPEALS
REGULAR MEETING
APRIL 20, 2015
7:15 P.M.
TOWN HALL ANNEX - MEETING ROOM A**

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

ABSENT: Libby Bufano (notified intended absence)

A. CALL TO ORDER

Mr. Lawrence called the meeting to order at approximately 7:20 P.M. He briefly reviewed the hearing process for applications that come before the Zoning Board of Appeals.

B. PUBLIC HEARINGS

Mr. Lawrence scrambled the agenda to open application #3 (15-04-12 Lindquist) first since the applicant had requested a continuance of the matter until the next meeting.

3. #15-04-12 LINDQUIST 658 DANBURY ROAD

Mr. Lawrence called the Hearing to order at 7:22 P.M., seated members Battaglia, Cole, Lawrence, Lilly, and McNee, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest. Mr. Lilly read the legal notice dated April 7, 2015 and details of the application and the hardship as described on the application.

Mr. Lilly read into the record a letter dated April 20, 2015 from J. Casey Healy to Wilton Zoning Board of Appeals requesting a continuance of the application until May 18, 2015.

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

There being no further comments, at approximately 7:26 P.M. the public hearing was continued until May 18, 2015.

1. #15-04-10 COOPER/LEE

5 SPICEWOOD LANE

Mr. Lawrence called the Hearing to order at 7:26 P.M., seated members Battaglia, Cole, Lawrence, McNee and Preston, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest.

Mr. Lilly recused himself due to a conflict of interest and left the meeting room.

Mr. Lawrence, acting as Secretary, read the legal notice dated April 7, 2015 and details of the application and the hardship as described on the application.

Present were Douglas Cooper, applicant; and Toni Lee, property owner.

Mr. Cooper reviewed details of the application, noting that the subject site (which is a flag lot) is pre-existing nonconforming, with an existing 30-foot front yard setback dating back to when the residence was first built. He cited property constraints including the septic system and topography of the site in the rear and the slope of the land on the side. He noted that the proposed addition will be nestled into the slope and thus will not be perceived as being close to the property line.

Ms. Lee submitted into the record a note from adjoining neighbor Rhonda Roberts at 3 Spicewood Lane expressing support for the application.

In response to questions from the Board, Ms. Lee explained that the septic system is located immediately off the deck at the rear of the house and goes all the way into the back yard, although the map submitted with the application did not actually locate the septic system.

Mr. Cooper noted further that due to a previous septic failure on the site, there is no other location available for the proposed addition, which he felt would improve the existing property.

Mr. Nerney noted for the record that current zoning regulations require the fitting of a 150-foot square into an R-1A-zoned property, which did not appear to be possible given the pre-existing nonconforming nature of the subject parcel. Mr. Cooper noted lot width of only 60+/- feet and lot length of approximately 220 feet.

It was the general consensus of the Board that the location of the septic represented a hardship to the site but without an actual map showing the septic location it would be difficult to justify granting the variance as requested. Ms. Lee offered to drive home to pick up her personal copy of the septic map and return same to the Board later in the evening.

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

There being no further comments, at approximately 7:40 P.M., the hearing was paused to give the applicant time to go home and obtain a copy of the septic map to submit into the record.

2. #15-04-11 WILSON PROPERTIES I, LLC 39 DANBURY ROAD

Mr. Lilly returned. Mr. Lawrence recused himself due to a conflict of interest and left the meeting room.

Mr. Battaglia, acting as Chairman in the absence of Mr. Lawrence, called the Hearing to order at 7:40 P.M., seated members Battaglia, Cole, Lilly, Preston and Rhodes, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest. Mr. Lilly read the legal notice dated April 7, 2015 and details of the application and the hardship as described on the application.

Present was Leland Wilson, owner/applicant, representing Wilson Properties I, LLC.

Mr. Wilson reviewed details of the application, noting that the proposed construction of a wheelchair accessible ramp represents an attempt to bring the existing building into conformity and to make the building (which dates back to 1880 and has been vacant for more than 10 years) more attractive to a prospective business tenant. He explained that since the property slopes to the rear, the proposed ramp location represents the best possible choice to keep the ramp as small and as accessible as possible, noting that it will be more akin to a sidewalk than a building structure.

In response to questions from the Board, Mr. Wilson explained that the total length of the ramp will be about 10 feet and its total width will be about 4 feet 3 inches, where a 3-foot width would have been permitted without a variance. He noted that the proposed ramp will be conveniently located close to the handicapped parking spaces, which he felt made the proposed location optimal and innocuous.

A question arose regarding the nature of, and reasons why, 2 out of 3 past variances were denied, particularly with respect to the issue of potentially treading on past Board's decisions. Mr. Wilson noted that the last variance on the property dated back to 1963. Mr. Nerney added that 1963 was long before the Americans with Disabilities Act was passed, requiring accommodations such as ramps for handicapped individuals. In that regard, Mr. Lilly concluded that any past variances would therefore not be pertinent to the nature of the subject application.

In response to further questions from the Board, Mr. Wilson explained in more detail the proposed location of the ramp, noting that approximately 70% of it will be located inside

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the building, with only one short section located outside and not extending any farther into the front setback than the existing structure.

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

There being no further comments, at approximately 7:52 P.M. the public hearing was closed.

4. #15-04-13 DAHLEN 136 OLD KINGS HIGHWAY

Mr. Lawrence returned and Mr. Lilly recused himself due to a conflict of interest and left the meeting room.

Mr. Lawrence called the Hearing to order at approximately 7:52 P.M., seated members Battaglia, Cole, Lawrence, Preston and Rhodes, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest. Mr. Lawrence, acting as Secretary, read the legal notice dated April 7, 2015 and details of the application and the hardship as described on the application.

Present was Johan Dahlen, applicant/owner.

Mr. Dahlen referenced posted photos and a site plan. He reviewed details of the application, noting that the proposed pool would cross into the setback as it progresses from a conforming position (at 32 feet from the side yard property line) to its closest point to the property line (at 25 feet). He stated that the proposed pool location is the only viable one given the shape of the lot and the siting of the house on the lot. He noted further that the back area is encumbered by the septic system, a wetlands buffer, and an underground water retention tank, in addition to the fact that the property needs to accommodate a reserve septic area as well.

Mr. Dahlen stated that he spoke with all of the neighbors, who had no objection, noting further that the applicants plan to install additional plantings to provide greater screening for the neighbor on their left (#138). He explained that the pool would be approximately 125 feet from that neighbor's residence and even farther away from their patio, which is located on the other side of the neighbor's home. He noted that all pool equipment would be located even farther away from the neighbor's residence than the proposed pool.

Mr. Dahlen also called attention to the topography of the property, noting that it slopes down off the street and therefore the pool will not be visible from the street or injurious to the neighborhood.

Mr. Lawrence asked if anyone wished to speak for or against the application. There being no further comments, the public hearing was closed at 8:05 P.M.

1. #15-04-10 COOPER/LEE 5 SPICEWOOD LANE

Mr. Cooper and Ms. Lee returned to the meeting room.

Mr. Lilly again recused himself due to a conflict of interest and left the meeting room.

Mr. Lawrence reconvened the hearing.

Ms. Lee presented her map to the Board depicting the location of the septic system at the rear of her property, as indicated by the applicant earlier in the hearing. Mr. Nerney made a copy of the map, which was accepted into the record, and passed it around for Board review.

Mr. Lawrence noted for the record that the septic system appeared to extend all the way back beginning at the corner of the existing deck.

There being no further comments, the public hearing was closed at 8:10 P.M.

The Board took a 2-minute break and returned at 8:12 P.M.

C. APPLICATIONS READY FOR REVIEW AND ACTION

Mr. Lawrence called the Regular Meeting to order at 8:12 P.M., seated members Battaglia, Cole, Lawrence, Lilly, McNee, Preston and Rhodes, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest.

1. #15-04-10 COOPER/LEE 5 SPICEWOOD LANE

Mr. Lilly left the meeting room.

The Board discussed the application. It was the general consensus of the Board that the proposed location for the addition is the most logical choice. The Board acknowledged the topographical challenges of the property, including its irregular shape, the fact that it is a flag lot, and the complete utilization by the septic system of any available space on the site.

MOTION was made by Mr. Lawrence, seconded by Mr. Battaglia, and carried unanimously (5-0) to **grant** a variance of Section 29-5.D to allow a building addition with a 25-foot front yard setback in lieu of the required 40 feet; as per submitted Zoning Location Survey dated March 14, 2015 and “As-Built” Septic Drawing dated 8/95; on grounds that sufficient hardship was demonstrated, special circumstances being the pre-existing nonconforming nature of the irregularly shaped lot not

shared by other neighboring lots in the area, the sloping topography in the back and the existing septic occupying the only possible alternative area for the proposed addition, per plans submitted; and further, that the aforesaid conditions are such that the applicant would be deprived of reasonable use of the property if the variance were denied; that granting of the variance is in harmony with the Town's Plan of Conservation and Development and will not be injurious to the neighborhood or otherwise detrimental to public health, safety and welfare; that the granting of said variance is not based on the nonconformity of neighboring structures; and the proposed variance is supported by neighbors.

2. #15-04-11 WILSON PROPERTIES I, LLC 39 DANBURY ROAD

Mr. Lilly returned. Mr. Lawrence left the meeting room.

The Board reviewed the application. It was the general consensus of the Board that the proposed ramp site is the best possible location, taking up as little room as possible, and that no alternative location is available that would not also require some form of variance. The Board further noted that installation of a handicapped ramp is a necessity on the property, bringing the site into conformity with the Americans with Disabilities Act, and the ramp would not extend any farther into the setback than the already existing nonconforming building.

MOTION was made by Mr. Rhodes, amended by Mr. Lilly, seconded by Mr. Battaglia, and carried unanimously (5-0) to **grant** a variance of Section 29-6.E to permit construction of a wheelchair accessible ramp resulting in a front yard setback of 38 feet where 50 feet is required; as per submitted Survey Map of Property dated May 31, 2006, received March 23, 2015, and a 1-page architectural plan, received March 23, 2015; on grounds that sufficient hardship was demonstrated, special circumstances being the pre-existing nonconforming nature of the building, the peculiar lot, and the requirements of the Americans with Disabilities Act; and further, that the aforesaid conditions are such that the applicant would be deprived of reasonable use of the property if the variance were denied; that granting of the variance is in harmony with the Town's Plan of Conservation and Development and will not be injurious to the neighborhood or otherwise detrimental to public health, safety and welfare; that the granting of said variance is not based on the nonconformity of neighboring properties since they are not similarly configured, i.e. the subject property/building has unique characteristics heretofore noted.

3. #15-04-12 LINDQUIST 658 DANBURY ROAD

Tabled.

4. #15-04-13 DAHLEN 136 OLD KINGS HIGHWAY

Mr. Lawrence returned. Mr. Lilly left the meeting room.

The Board reviewed the application. It was the general consensus of the Board that the proposed pool location is the only feasible location on the property due to wetland, septic, and storm water retention constraints behind the residence, in addition to limitations imposed by the general shape of the lot and the location of the house on the lot. It was further noted by Board members that the setback will move into compliance as the pool moves toward the corner of the property; that neighbors support the application; and, in that regard, that the applicant has agreed to install additional landscaping screening for the adjacent neighbor. Overall, the Board was comfortable with granting the variance, subject to the plans as submitted and on condition that the proffered additional screening for the adjacent neighbor will be installed as promised.

MOTION was made by Mr. Cole to **grant** a variance of Section 29-5.D to allow construction of a pool with a 25-foot side yard setback in lieu of the required 30 feet; as per submitted Zoning Location Survey dated March 18, 2015, revised March 20, 2015; on grounds that sufficient hardship was demonstrated, special circumstances being the existing storm water retention tank, wetland buffer area and septic system located behind the house making the proposed location the only feasible one, with the further acknowledgement that overall non-conformity will decrease as the pool extends towards the corner where it will ultimately be in compliance with setback regulations, and that these hardships were not created by the applicant; and, further, that the aforesaid conditions are such that the applicant would be deprived of reasonable use of the property if the variance were denied; that granting of the variance is in harmony with the Town's Plan of Conservation and Development and will not be injurious to the neighborhood or otherwise detrimental to public health, safety and welfare; that the granting of said variance is not based on the nonconformity of neighboring properties nor upon a financial or economic hardship; and that the application is supported by neighbors.

MOTION was further amended by Mr. Lawrence to reflect additional constraints due to the topography which slopes down towards the retaining wall and wetlands buffer and the fact that the lot is oddly shaped, with a further modification that the approval shall be conditioned on the landscaping screening as proposed by the applicant.

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

Mr. Lilly returned to the meeting room.

D. OTHER BUSINESS

1. Minutes – March 16, 2015

MOTION was made by Mr. Lawrence, seconded by Mr. Battaglia, and carried unanimously (6-0-1) to approve the minutes of March 16, 2015 as drafted. Mr. McNee abstained.

E. ADJOURNMENT

MOTION was made by Mr. Lawrence, seconded by Mr. Battaglia, and carried unanimously (7-0) to adjourn at approximately 8:32 P.M.

Respectfully submitted,

Lorraine Russo
Recording Secretary