

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

**ZONING BOARD OF APPEALS  
REGULAR MEETING  
MAY 16, 2016  
7:15 P.M.  
TOWN HALL ANNEX - MEETING ROOM A**

**PRESENT:** Gary Battaglia, Chairman; Joshua Cole, Vice-Chairman; Brian Lilly, Secretary; Libby Bufano; Tracey Serpa; Andrew McNee, Alternate; Kenny Rhodes, Alternate; Ray Tobiassen, Alternate

**ABSENT:**

**A. CALL TO ORDER**

Mr. Battaglia 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.

**B. PUBLIC HEARINGS**

**1. #16-03-02 HONEY HILL RD SO, LLC/QUINLAN HONEY HILL RD**

Mr. Battaglia called the Hearing to order at 7:15 P.M., seated members Battaglia, Cole, Lilly, McNee, and Serpa, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest. Mr. Battaglia noted that he was seating an additional member (Tracey Serpa) this evening since only four members were seated on this hearing back in March. Mr. Nerney noted further that since no testimony was taken at the March hearing, it was appropriate to seat a fifth member this evening.

Mr. Tobiassen recused himself and left the meeting room.

Mr. Lilly referenced into the record for a second time all correspondence that was originally entered into the record at the March 21, 2016 meeting.

Mr. Battaglia also referenced into the record a letter from J. Casey Healy to Zoning Board of Appeals requesting that Town Counsel be present this evening, and he noted that Town Counsel Pat Sullivan was present this evening and would speak after the applicant had presented.

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Present were J. Casey Healy, attorney; Kevin Quinlan, architect; Peter Gaboriault, property owner.

Mr. Healy referenced the variances being requested, noting that the question of whether the subject parcel is or is not a building lot is not the issue before the Board this evening. He stated that the applicant's position is that it is requesting that the Board vary the zoning setback regulations, which the Board is authorized to hear.

Mr. Rhodes arrived at 7:25 P.M. He recused himself from the subject hearing and left the meeting room.

Mr. Quinlan reviewed details of the requested setback variances necessary to construct a new home on the subject property. He noted that the property depth is less than 100 feet and thus front and rear yard setbacks cannot be complied with since they literally overlap each other, but he noted that both building and site coverages would be in compliance, even though the lot is only 0.261+/- acre. He explained that the applicant salvaged the timber frame and windows from an antique home at 211 Hurlbutt Street, which will be utilized to construct the front portion of the proposed residence, comprising about 372+/- square feet. He explained that the applicant plans to add on another 387+/- square feet behind that structure for a total of 760+/- square feet. He noted that they are not asking for any kind of garage or carport, and are proposing a crushed stone driveway, in an attempt to respect coverage regulations. He stated that from a Town character and preservation standpoint, the utilization of the antique house elements is important, even though this aspect of the application is not technically a zoning issue.

In response to questions from Mr. Cole, Mr. Quinlan explained that the application represents a classic hardship case, i.e. an undersized lot in a 2-acre zone. Mr. Cole pointed out that the lot was created after zoning went into effect so cannot be considered a pre-existing nonconforming parcel; and the applicant purchased the lot in 2011 with that knowledge.

Mr. Quinlan pointed out that zoning regulations were changed in 1973 and, as a result, became more constraining.

Mr. Healy explained further that the lot was created sometime in 1962 or 1964. He noted that there is no use that can be made of the parcel due to its overlapping setbacks.

Peter Gaboriault, owner of the parcel, clarified that the applicant is not saying for the purpose of this application that the subject parcel is a lot. He explained that he needs a zoning permit and in order to obtain a zoning permit, these variances are required. He stated that the next step would be to apply for a zoning permit with Zoning Enforcement Officer (ZEO) Tim Bunting, who he felt would likely deny said permit and, if so, then the applicant would have to come back before the Board to plead its case that the lot is a

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building lot.

Referencing Section 29-13.B.6 of zoning regulations and the four findings that the Board must make in order to grant a variance, Mr. Cole expressed concern that granting the requested variances to construct a new home on the subject parcel would be setting a dangerous precedent.

Mr. Quinlan suggested that such concerns could be allayed by conditioning any approval such that it could pertain to antique homes only or to proposed new construction of less than 800 square feet, etc. so that such approvals wouldn't spiral out of control going forward.

Mr. Gaboriault expressed serious doubt that there would be any other similar lots in Town for which the subject application could be cited as precedent.

Mr. Lilly cited in detail the aforementioned four findings of Section 29-13.B.6 of zoning regulations that need to be satisfied in order to grant a variance. He went through each one, noting in particular that the applicant purchased the property after setbacks were already established/known. He stated that the property was purchased unimproved and no one is preventing the applicant from using it as is. Addressing the applicant's contention that the hardship is a classic case of an undersized parcel in a two-acre zone, Mr. Lilly felt that said argument doesn't give an applicant the right to build a home on a parcel just because the parcel is undersized. He felt that this parcel has been reasonably used since it was created in the 60s for the purpose of parking.

Mr. Healy disagreed, noting that no reasonable use of the property exists given its overlapping setback issue.

Mr. Battaglia asked for testimony from Town Counsel Pat Sullivan who was present in the audience.

Ms. Sullivan explained that a lot is established either pre-zoning regulations or post-zoning (by way of either a first cut or subdivision). She felt that the subject parcel did not fit into either one of those categories, noting that it appears to have been specifically created for parking, in which case it is not unusable. She questioned what the Board would be varying if the parcel is not, in fact, a building lot, noting that the applicant and Mr. Healy both agreed earlier that they don't know whether it is a building lot. Explaining further, she stated that setbacks are calculated from the boundaries of a building lot, not from the edge of a property. She stated that the first step in the process is for the applicant to go to the ZEO and ask for a certificate of compliance that the parcel is in fact a building lot and, if said compliance is not granted by the CEO, then the applicant would have to appeal that issue before the ZBA. It was her opinion that the applicant could not apply for setback variances until the building lot issue is resolved.

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Mr. Healy disagreed, noting that the State Statutes section that addresses Zoning Board of Appeals matters references only a parcel of land and nowhere references a lot. He stated that it is up to the applicant as to the order he wishes to proceed in this process, noting that this is just a sequencing question.

Ms. Sullivan agreed that a variance could be granted without a parcel necessarily be a building lot, but she explained that in this case the applicant is asking for a variance of a building setback (emphasis on the word “building”) and thus the parcel has to be a building lot in order for such a variance to be considered/granted.

Addressing the applicant’s prior request that Town Counsel issue a legal opinion, Ms. Sullivan explained that she does not work for the applicant or for the neighbors, but rather for the Town, and in such capacity is not required to provide a legal opinion to the applicant.

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

Ed Benison, 91 Honey Hill Road, an adjacent neighbor, indicated that he had already submitted a letter into the record. He summarized issues raised in his letter of March 19, 2016, noting in particular that the lot was not created prior to the adoption of zoning regulations, but rather the  $\frac{1}{4}$ +/- acre lot was created/sold in 1962 for purposes of parking. He felt that any hardship cited was self-created because the parcel was carved down to a space that is too small to be built upon. He asked that the application be denied, noting that the parcel continues to serve its purpose, i.e. parking, and that construction of a home on the parcel would not be in keeping with the character of the surrounding neighborhood.

Brian Hall, attorney for Ed Benison, noted that there is no existing house on the subject parcel at this time. He stated that if it is not a building lot, then there is no point in appearing before the ZBA to request that building setbacks be varied. He felt that there is a reasonable use for the property and that use continues to remain a reasonable use. He reviewed and addressed in turn the four findings of Section 29-13.B.6 of zoning regulations that are required for the granting of a variance. In particular, he noted that 1) there is no lot like this in Town, noting in particular that splitting the parcel into two LLCs was a willful act on the part of the applicant; 2) the applicant is not being deprived reasonable use of the property since it was created for parking and can continue in that capacity; 3) construction of a home on the property would not be in harmony with the intent of the zoning regulations and the Town’s Plan of Conservation and Development (POCD), referencing in particular density of development and open space considerations, and 4) there is no financial hardship. He summarized by stating that the Board should not issue any variances for the subject site.

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Mike Dragunat, 7 Mayapple Road, referenced his letter of March 21, 2016 to the Zoning Board of Appeals and asked that the Board review his letter again. He referenced an aerial view of the parcel and surrounding area, noting that the parcel is not a buildable lot. He stated that allowing a house to be built on such a parcel would create a dangerous precedent, resulting in development that would be dramatically out of scope with the existing neighborhood. He cited concerns including overcrowding; incompatibility with the neighborhood and character of the area; the threatening of economic stability; setting a precedent of blatant disregard of the zoning regulations; and environmental concerns in connection with the septic that will threaten pollution to surrounding properties.

John Logan, 34 Quail Ridge Road, stated that while he is not an immediate neighbor, he is interested in the matter before the Board this evening. He felt that if the Town allows development of a ¼-acre lot, it will devalue other lots in Town and set a bad precedent. He noted that the owner could place the historic home somewhere on his other property, perhaps subdividing off a 2-acre lot from his 12 acres in order to accommodate it.

Mr. Quinlan noted that just because the subject parcel was created/used for parking, it doesn't mean it has to remain a parking area forever. Utilizing that logic, he felt that the whole Town should then remain farmland as it had been in the past. He noted that a well-regarded engineering firm had created a code-compliant septic plan for the property and thus it would not be faulty or environmentally threatening in any way. He repeated that this is a classic variance case of an undersized property constrained by zoning regulations developed for larger parcels.

Mr. Gaboriault noted for the record that parking is a secondary use and a primary use is needed for the site. He stated that if the Board denies the requested variances, it would be denying the applicant reasonable use of the property.

In that regard, Mr. Nerney stated that parking lots are not allowed as a primary use today, but he was not sure how the regulations were written in the early 1960s when the map was recorded. He surmised that the regulations may have been silent at that time on the issue of parking.

Mr. Gaboriault requested that the hearing not be closed until the Board requests a written opinion from Town Counsel. Ms. Sullivan explained that if the Board requests a written opinion, then the applicant would have the opportunity to respond. Mr. Healy stated that the applicant would be happy to grant an extension of the time to close the hearing until the June meeting.

The Board agreed to continue the hearing so that Town Counsel could provide a written opinion and the applicant could respond.

There being no further comments, at approximately 8:48 P.M. the public hearing was continued until June 20, 2016.

**2. #16-04-03 HIRN/VAIL 60 NOD HILL ROAD**

Mr. Battaglia called the Hearing to order at approximately 8:48 P.M., seated members Bufano, Cole, Rhodes, Serpa, and Tobiassen, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest. Mr. Lilly read the legal notice dated April 5, 2016 and details of the application and the hardship as described on the application.

Present were Richard Vail, architect; and Shelly Hirn, owner.

Mr. Vail reviewed details of the proposed site improvements, noting that the owner wishes to expand and cover an existing front porch and add a generator pad on the side yard for emergency use. He explained that the existing stoop/steps, which do not have any roof protection, are north-facing and thus become hazardous during winter months. He stated that they are proposing a 7-foot deep porch, which he felt was the minimum depth to make the porch functional.

Addressing the issue of hardship, Mr. Vail explained that the house was built in 1923 and thus predates current zoning; the general shape of the lot is constraining; it is a small (approximate half-acre) lot located in a two-acre zone; the proposed changes would be in character with the neighborhood.

He noted that the net additional coverage amounts to about 200 square feet, equivalent to approximately .9% increase in building coverage. He explained that the steps are already protruding into the setback and there is no other feasible location for the proposed generator.

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

There being no further comments, the public hearing was closed at 8:52 P.M.

**3. #16-04-04 BEST FRIENDS PET CARE 213 DANBURY ROAD**

Withdrawn.

**4. #16-05-05 MINOGUE**

**93 KENT ROAD**

Mr. Battaglia called the Hearing to order at approximately 8:52 P.M., seated members Battaglia, Bufano, Cole, Lilly, and Tobiassen, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest. Mr. Lilly read the legal notice dated May 3, 2016 and details of the application and the hardship as described on the application.

Present was Michael Minogue, applicant/owner.

Mr. Minogue explained that a variance was granted for a pool/deck addition back in December of 2014, but when the final as-built was prepared, it was determined that the contractors had over-built the corner of the deck by approximately 1.5 square feet. He stated that the contractor had hired a subcontractor who was responsible for the error.

Mr. Minogue requested that the Board give consideration to the fact that the intrusion was due to contractor error and was not intentional on the part of the owner. He noted that if he had known this was going to happen, he would have applied for a slightly larger variance in 2014, when hardship was established for the site, and he was confident that his neighbor would have had no objection.

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

There being no further comments, the public hearing was closed at 8:58 P.M.

**5. #16-05-06**

**BEST FRIENDS TOTAL PET CARE**

**213 DANBURY RD**

Withdrawn.

**6. #16-05-07**

**JACOBS**

**165 DRUM HILL RD**

Mr. Battaglia called the Hearing to order at approximately 8:58 P.M., seated members Cole, McNee, Rhodes, Serpa, and Tobiassen, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest. Mr. Lilly read the legal notice dated May 3, 2016 and details of the application and the hardship as described on the application.

Present was J. Casey Healy, attorney for the applicant.

Mr. Healy reviewed a survey of the property, noting that it consists of 3.55+/- acres with a principal residence that was constructed in 1770, a residence barn, a second barn and a shed. He explained that the applicant is in the process of restoring the principal residence and wishes to add a small, recessed second story addition, as well as extend the existing

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porch and porch roof overhang. He cited hardships to the site, including the pre-existing nonconforming nature of the property and the location of the residence so close to the road. He noted that although the proposed second story addition would expand the volume of the house, it would not be encroaching any closer toward the road than existing.

It was noted that the front porch would be going out approximately another 10 inches.

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

There being no further comments, the public hearing was closed at 9:05 P.M.

The Board took a short recess at 9:05 P.M.

The Board returned from recess at 9:11 P.M.

**C. APPLICATIONS READY FOR REVIEW AND ACTION**

Mr. Battaglia called the Regular Meeting to order at 9:11 P.M., seated members Battaglia, Bufano, Cole, Lilly, McNee, Rhodes, Serpa, and Tobiassen, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest.

**1. #16-03-02 HONEY HILL RD SO, LLC/QUINLAN HONEY HILL RD**

Tabled.

**2. #16-04-03 HIRN/VAIL 60 NOD HILL ROAD**

The Board briefly discussed the application. It was the general consensus that hardship was proved for the site modifications proposed, referencing in particular the small ½-acre lot located in, and constrained by, 2-acre zoning; the pre-existing nonconforming nature of the property; the lack of an alternate location for the generator. It was further noted that the steps and roof overhang would be essentially at the same distance from the road as the existing steps. The Board felt that granting the variances would not be in conflict with the general intent of the regulations and to deny it would deny reasonable use of the property.

MOTION was made by Mr. Cole, seconded by Ms. Serpa, and carried unanimously (5-0) to **grant** variances to allow a front porch addition with a 39.5' front yard setback in lieu of the required 50'; to allow a concrete pad and generator with a side yard setback of 21' in lieu of the required 40'; and to allow maximum building coverage of 10.1% in lieu of maximum 7% allowed; as per submitted Zoning



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Location Map prepared by Stalker Land Surveying, Inc. dated March 8, 2016; and Proposed Porch & Generator Plan A1, Proposed Porch South Elevation A2, and Proposed Porch Addition, all completed by Faesy-Smith Architects; on grounds that sufficient hardship was demonstrated due to the small size of the lot which is located in a 2-acre zone; the pre-existing nonconforming nature of the structure; the fact that denial of the application would deny reasonable use of the property; the location of the front porch represents a minimal intrusion; and the proposed generator location is the only realistic place to locate it on the property.

- 3. #16-04-04 BEST FRIENDS PET CARE 213 DANBURY ROAD**

Withdrawn.

- 4. #16-05-05 MINOGUE 93 KENT ROAD**

The Board briefly reviewed the application. It was the general consensus that in situations of this type, the Board generally considers whether it would have granted the additional setback encroachment had it been requested by the applicant originally. The Board was in agreement that this was a contractor error and that the additional variance would likely have been granted if it had been requested at the time of the original variance application.

MOTION was made by Mr. Lilly, seconded by Ms. Bufano, and carried unanimously (5-0) to **grant** a variance to allow a deck with a rear yard setback of 46.6 feet in lieu of a previously approved variance of 48.3 feet, where a minimum of 50 feet is required; as per submitted Zoning Location Survey prepared by Gregory Kogan, Advanced Surveying, dated October 22, 2014, updated January 4, 2016; on grounds that sufficient hardship was demonstrated when the original variance was granted in 2014, this being just an amendment to said variance, which would have been granted at that time if requested.

- 5. #16-05-06 BEST FRIENDS TOTAL PET CARE 213 DANBURY RD**

Withdrawn.

**6. #16-05-07 JACOBS**

**165 DRUM HILL RD**

The Board reviewed the application. It was the general consensus of the Board that the proposed modifications were justified and supported by hardship, given the age of the house and the pre-existing nonconforming nature of the property. The Board noted further that the proposed addition would not be encroaching any farther into the setback and the porch would entail very minimal encroachment. Mr. Nerney noted for the record that the second floor extension is adjusting the internal height to bring it up to code.

**MOTION** was made by Mr. Cole, seconded by Ms. Serpa, and carried unanimously (5-0) to **grant** a variance to allow a recessed second story addition with a front yard setback of 26.4 feet where 50 feet is required, and to allow the extension of a porch and porch roof overhang with a front yard setback of 20 feet where 50 feet is required and 19.2 feet presently exists; as per submitted Zoning Location Survey prepared by Ryan and Faulds, dated April 6, 2016; on grounds that sufficient hardship was demonstrated given the pre-existing nonconforming nature of the site, the minimal encroachment proposed, and the general increase to structural safety as a result of bringing the home up to code.

**D. OTHER BUSINESS**

**1. Minutes**

**MOTION** was made by Mr. Battaglia, seconded by Mr. Cole, and carried (6-0-2) to approve the minutes of March 21, 2016. Commissioners McNee and Bufano abstained.

**E. ADJOURNMENT**

**MOTION** was made by Mr. Lilly, seconded by Ms. Bufano, and carried unanimously (8-0) to adjourn at approximately 9:30 P.M.

Respectfully submitted,

Lorraine Russo  
Recording Secretary