

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

**ZONING BOARD OF APPEALS  
REGULAR MEETING  
MAY 18, 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 7:15 P.M. He briefly reviewed the hearing process for applications that come before the Zoning Board of Appeals.

**B. PUBLIC HEARINGS**

**1. #15-04-12 LINDQUIST 658 DANBURY ROAD**

Mr. Lawrence called the Hearing to order at approximately 7:16 P.M., seated members Battaglia, Cole, Lawrence, Lilly, and Preston, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest. Mr. Lawrence noted that the application was continued from the previous meeting.

Present were J. Casey Healy, attorney on behalf of the applicant; and Michael Lindquist, applicant.

Mr. Healy referenced a survey dated April 9, 2015, noting that the applicant wishes to relocate his current business (Wilton Auto and Tire at 210 Danbury Road) and purchase the 2.6-acre parcel at 658 Danbury Road where he will sell and repair used vehicles but no longer sell any fuel. He explained that the applicant is applying for a Certificate of Approval for the aforementioned business activity pursuant to Section 29-13.A.3 of zoning regulations.

Mr. Healy noted that although Section 14-55 of the Connecticut General Statutes was

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repealed in the recent past, careful reading of the Statutes, particularly Section 14-54, seems to imply that the Department of Motor Vehicles (DMV) still requires a Certificate of Approval where the population of a municipality is less than 20,000. Mr. Healy acknowledged that it is not entirely clear what criteria, if any, the Board is supposed to apply when reviewing such an application since standards are no longer clearly set forth in the Statutes. He felt that the likely approach would be to utilize the standards that were previously utilized per Section 14-55 of the Statutes.

Citing those criteria, Mr. Healy noted that there are no churches, schools, or theaters in the nearby area; Danbury Road is a principal arterial road of proper width; and the proposed sales/servicing of used vehicles will not have any significant impact on traffic in the area. Overall, he felt that the subject location would be suitable for the proposed business activity.

A conversation ensued between Mr. Healy and Mr. Lawrence regarding some ambiguity within the Public Act whereby some of the repealed language of Section 14-55 seems to have been reinserted at a later date. Mr. Healy was familiar with the issue and, as a result, had called a colleague who assured him that Section 14-55 is no longer in the Statutes and has definitely been repealed.

Mr. Lilly noted for the record that the Board did apply the aforementioned criteria to a similar application on Danbury Road, which Mr. Healy noted was actually reviewed by the Board subsequent to the alleged repeal of Section 14-55.

Mr. Lawrence noted the monitoring wells currently on the site and environmental studies that are ongoing with the parcel, questioning whether all of these other aspects/issues connected with the site will be addressed by the Planning and Zoning Commission during the Special Permit process which is yet to occur. Mr. Healy confirmed that the Planning and Zoning Commission will essentially be starting from scratch during its review process. Mr. Nerney added that the ZBA application deals with a Certificate of Approval that is necessary for the acquisition of a license that is specific to this individual (Michael Lindquist) for this specific property (658 Danbury Road), whereas the Special Permit process will deal more with issues of the land.

Mr. Healy distributed into the record copies of the “Procedure for Obtaining a Connecticut Automotive Dealer’s or Repairer’s License” from the State of Connecticut, Department of Motor Vehicles.

Referencing the aforementioned document, Mr. Nerney explained that he spoke with the DMV, noting that the form’s required approval from the Chief of Police stems from concerns with possible prior police records, and its required approval from the ZBA stems from concerns with people potentially operating out of garages.

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Questions arose about the monitoring wells and related environmental concerns with the property. The applicant explained that environmental studies have been conducted on the site (Phases 1, 2 and 3), noting that one area of concern was uncovered on the southern portion of the property which will eventually be remediated by the owner (CL&P), likely via a soil removal process. Mr. Healy noted that CL&P [now known as Eversource] will be responsible to the Department of Energy and Environmental Protection for the clean-up of the site.

In response to a question from Mr. Lilly about possible impacts from future widening of Route 7 which is anticipated in that area of the roadway, Mr. Healy stated that there are no such plans for the time being, noting that if the State did need to take some portion of the property, the owner would be fairly compensated for such loss.

Another question arose as to whether said Certificate of Approval, if granted at this time, automatically stays with the property, or if it gets pulled, should something interfere with the eventual acquisition of this property by this applicant in the future.

Mr. Healy stated that the Certificate follows the specific individual at the particular location for which it is granted. He explained that if the property deal were to fall through, then the applicant would not be applying to the DMV for an Automotive Dealer's or Repairer's License at that location, in which case the Certificate of Approval for that specific location would, in effect, die.

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

There being no further comments, at approximately 7:50 P.M. the public hearing was closed.

### **2. #15-05-14 NORMAN 9 DEERFIELD ROAD**

Mr. Lawrence called the Hearing to order at approximately 7:50 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 May 5, 2015 and details of the application and the hardship as described on the application.

Present were David Norman, applicant; and Bill Earls, architect.

Mr. Earls reviewed details of the application, referencing various drawings/elevations of the site (existing and proposed). He noted that the parcel consists of only 0.4-acre and is located in an area that is very unlike the rest of Wilton, built prior to zoning.

Mr. Norman explained that an existing addition to the structure was done between 1958 and 1963, noting that the sunroom he wishes to modestly expand is rotting and in very

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bad physical condition.

Mr. Earls stated that the applicant would like to replace the sunroom with something a little more in keeping with the style/architecture of other properties on the street, noting that the width/intrusion into the setback would only be increased by about 18 inches, resulting in approximately 25 additional square feet.

Mr. Norman explained that he can't make the addition much larger since he is so close to maximum permitted coverages already, and he noted that he is constrained by a number of other factors as well, including an oil intake valve in the front, a window behind, eaves on top, and the driveway itself. He explained that the existing 7.5' width, which includes the step-down from the main level, creates an almost unusable small space.

Mr. Lilly asked for clarification as to the hardship of the property. He also wanted to be sure that the overhang/eave would not be going out over the driveway, which he felt could be problematic for any moving van/large truck backing into the driveway. Although Mr. Earls acknowledged that it would be tight, he felt that there would be enough clearance.

Mr. Nerney suggested that the applicant speak about the land.

Mr. Earls stated that the 0.4-acre property consists of only 19,000+/- square feet where 1-acre (i.e. 43,560 square feet) is required. He noted that there is approximately only 20 feet of legally buildable width area across the front which, by today's standards, would make the lot virtually unbuildable. He noted further that the parcel does not meet today's 150-foot minimum square requirement for a 1-acre parcel. Mr. Norman confirmed that the lot/structure is pre-existing, nonconforming by today's standards.

Mr. Lawrence expressed concern that further reducing the width of the existing driveway would result in the loss of any margin of error needed in connection with truck deliveries, snow removal, etc. in the future.

Mr. Cole asked if any thought was given to expanding the sunroom to the north instead of eastward toward the driveway. Mr. Norman explained that such an enlargement would just result in a longer but still extremely narrow room which wouldn't provide the additional living space he felt was necessary. He stated that the cost to replace the sunroom, which is necessary due to its deteriorated condition, would be quite high and it therefore seemed the likely opportunity to add some living space onto the small room as part of that reconstruction. He explained further that he had nowhere else to go, noting that he had considered numerous alternative options.

The Board discussed the possibility of parsing out the variance request and perhaps granting the applicant the ability to expand upward, but possibly not outward. Mr.

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Nerney recommended against such an approach, noting that it is never advisable for the Board to try to redesign plans, but rather they should vote either for or against the application as proposed.

Mr. Nerney also confirmed that if the subject application were denied, the applicant could submit a revised plan/application as soon as next month, perhaps incorporating an upward expansion only, if he so chose.

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 8:20 P.M.

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

Mr. Lawrence called the Regular Meeting to order at 8:20 P.M., seated members Battaglia, Cole, Lilly, Lawrence, Preston, and Rhodes, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest.

**1. #15-04-12 LINDQUIST 658 DANBURY RD**

The Board discussed the application. It was the consensus of the Board that the proposed automotive sales/service facility is the best use for that property; that it would be consistent with other uses in the area; and that it would not cause any traffic issues for the Town.

Mr. Lawrence expressed concern with environmental indemnity issues for the property, as discussed briefly during the public hearing, although it was the general consensus that such issues were not within the purview of this Board nor the subject of this application.

MOTION was made by Mr. Lilly to **grant** the request for a Certificate of Approval for the location of an automotive sales and service facility at 658 Danbury Road pursuant to Section 29-13.A.3 of Zoning Regulations; with the understanding that said approval is based on the actual sale of the property to Mr. Lindquist from CL&P, and that Mr. Lindquist would be receiving the Certificate, not CL&P; and with the further understanding that said Certificate is for the subject address only.

MOTION was amended by Mr. Lawrence to reference criteria in Section 14-55 of Connecticut General Statutes that were since repealed but which are being used as guidelines for the subject application, those being that there are no schools, churches or theaters located within the immediate area of the premises (probably not within a quarter-mile); the premises are located on Route 7 which is classified as a principal arterial road; the travel-way is a 2-lane road approximately 34 feet in width; the facility is not expected to impact traffic operations on Route 7 in that

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area; and the location is suitable for a sales and service facility which is the proposed use.

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

**2. #15-05-14 NORMAN 9 DEERFIELD ROAD**

The Board discussed the application at length. Mr. Battaglia felt that the existing sunroom space is currently unusable and if the applicant is willing to take the risks cited earlier in connection with an extremely narrow driveway, then that decision is the applicant's to make. He felt that the space is currently unusable and the Board should not deny him the opportunity to make that part of his house usable.

Mr. Lilly noted that the applicant clearly has a hardship with the shape and size of the property and the pre-existing nonconforming nature of the home, with so little available space that would be considered buildable, and thus denying him the use of said space is not reasonable.

Mr. Lawrence felt that the Board would be granting a variance to build something that is unsound and unsafe, noting in particular that the adjoining neighbor could at some time in the future cut off safe/usable driveway access for the subject property. He felt that the resulting driveway space would be just too tight and therefore public safety outweighs the hardship issue in this situation.

Mr. Rhodes felt that an alternative solution exists for the applicant, i.e. creating a sunroom with skylights, either to the north or rear of the property, which would alleviate all of the aforementioned concerns. He felt that granting the subject variance would result in an unsafe site situation, essentially an accident waiting to happen.

Mr. Lilly, upon further consideration, agreed that granting the subject variance would be detrimental to public safety and welfare and, further, he noted that the Board is not authorized to base decisions on financial or economic hardship, pursuant to the guidelines of Section 29-13.B.6.c and d of zoning regulations, respectively. He also noted that all other properties in the immediate area are similar to the subject property and thus Section 29-13.B.6.a of zoning regulations also applies.

MOTION was made by Mr. Battaglia, seconded by Mr. Lawrence, to **grant** a variance of Section 29-5.D to allow replacement of an existing sunroom with a 10.7-foot side yard setback in lieu of the required 30 feet on grounds that sufficient hardship was demonstrated due to the nonconforming lot and existing structure and the general structures of the neighborhood in which it stands.

MOTION **failed** (1-4). Board members Cole, Lawrence, Lilly and Rhodes voted against. Application was **Denied Without Prejudice**.

**D. OTHER BUSINESS**

**1. Minutes – April 20, 2015**

MOTION was made by Mr. Lawrence, seconded by Ms. Preston, and carried unanimously (6-0) to approve as written the minutes of April 20, 2015.

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Ms. Preston advised the Board that she will be an applicant at next month's meeting and therefore will not sit on the Board that evening. She indicated that she would have no objection to 4 members hearing/voting on her application should only 4 members be present.

**E. ADJOURNMENT**

MOTION was made by Mr. Lawrence, seconded by Mr. Lilly, and carried unanimously (6-0) to adjourn at 8:50 P.M.

Respectfully submitted,

Lorraine Russo  
Recording Secretary