

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

**ZONING BOARD OF APPEALS
REGULAR MEETING
MAY 19, 2014
7:15 P.M.
TOWN HALL ANNEX - MEETING ROOM A**

PRESENT: L. Michael Rudolph, Chairman; Scott Lawrence; Brian Lilly; Gary Battaglia, Alternate; Libby Bufano, Alternate; R. Andrew McNee, Alternate

ABSENT: Albert Nickel & John Comiskey

A. CALL TO ORDER

Mr. Rudolph 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. #14-04-07 JOSEPH 19 HEATHER LANE

Mr. Rudolph called the Hearing to order at 7:15 P.M., seated members Battaglia, Bufano, Lawrence, Lilly, and Rudolph, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest. He noted that the hearing was continued from the previous meeting.

Mr. Rudolph requested that Mr. Lilly act as Secretary this evening in the absence of Secretary Comiskey.

Present were Shoy & Keenia Joseph, owners/applicants; and Keith Bigelow, Design Builders & Remodeling, Inc., on behalf of the applicants.

Mr. Bigelow explained that the 1-acre subject lot is constrained by 2-acre zoning requirements since the parcel was up-zoned to a 2-acre zoning district some years ago. He noted that original designs for the residence involved setback encroachments and

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greater building/site coverages to accommodate a 3-car garage, but plans were ultimately revised to minimize variances required for the site. He stated that the major hardship for the site is the small 1-acre size of the lot which is located in a 2-acre zoning district, noting that if the parcel were still zoned 1-acre residential, then the applicant would not need to be here applying for a variance this evening.

Mr. Bigelow explained that he and the applicants recently met with Town Planner Nerney, who encouraged him to appear before the Board this evening to address some technical issues that had arisen at the last meeting.

Mr. Nerney explained that the submitted materials, specifically coverage calculations/footprint measurements, were reviewed again at the aforementioned meeting with the applicants and it was determined that the proposed coverages, as indicated on the plans, were in fact within 50+ square feet of what was requested by the applicant/legally noticed. He considered this finding to be supportive of the accuracy of the requested variances since they were just utilizing a hand scale for their calculations at said meeting. He felt that the Board's concern had arisen from a discrepancy between the square footage as noted on the submitted plans and a statement made at the meeting that proposed new square footage would only be 700 square feet, where it was in fact considerably more.

Mr. Nerney noted further that the applicant was also asked to confirm the submitted numbers/measurements with his surveyor prior to this evening's meeting. Mr. Joseph stated that he did verify the accuracy of all coverage numbers with his surveyor.

Mr. Rudolph explained that the Board was coming up with a conflict at the last meeting that was actually in the applicant's favor in terms of the magnitude of the proposed coverage numbers for the site. Mr. Bigelow reviewed in detail each portion of the proposed site modifications, noting two very minor discrepancies between the "Proposed Building Additions Plot Plan" and the "Proposed Building Footprint". He explained that the correct measurements of the left-most rectangle (the kitchen space) should read 17' wide (as opposed to 17.4' shown on the "Proposed Building Footprint" plan and 18' long (as opposed to 18.4' shown on the "Proposed Building Additions Plot Plan"). He confirmed that their calculations at the aforementioned meeting with staff came within about 60 square feet of the surveyor's submitted coverage numbers.

Mr. Nerney suggested that if the Board is inclined to grant the requested variance, it would be advisable to specifically note that said approval is subject to compliance with the plan as submitted.

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

There being no further comments, the public hearing was closed at 7:29 P.M.

2. #14-05-08 HINSHAW

71 SUGARLOAF DRIVE

Mr. Rudolph called the Hearing to order at 7:29 P.M., seated members Bufano, Lawrence, Lilly, McNee and Rudolph, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest. Mr. Lilly, acting as Secretary, read the legal notice dated May 6, 2014 and details of the application and the hardship as described on the application.

Mr. Lilly noted for the record that he grew up on Sugarloaf Drive and knows the house but not the current residents. He did not feel it would present a conflict of interest.

Present were John and Leslie Hinshaw, owners/applicants.

Mr. Hinshaw stated that the 1-acre property is pre-existing nonconforming, located in a 2-acre zoning district, and thus is constrained by 2-acre zoning restrictions. He explained that if the property were zoned 1-acre residential (as opposed to 2-acre residential), they would not need to apply for a variance, noting further that the property will be only 172 square feet over the permitted building coverage and 630 square feet over permitted site coverage.

Mr. Hinshaw noted that they had considered removing driveway pavement to reduce site coverage but they were concerned that a gravel driveway might be problematic given the driveway's topography (i.e. steeply sloped).

In response to a question from Mr. Rudolph regarding an existing shed that is very close to the property line, Mr. Hinshaw stated that the shed, which is approximately 10 x 14 feet, has been there quite a while. He explained that they installed it to provide sorely needed storage space for lawn equipment, bikes, etc., noting that they were not aware that it required a permit. He noted further that their neighbor has no issue with it.

Addressing the issue of the nonconforming shed, Mr. Nerney explained that a nonconforming structure becomes legal by state statute after 3 years.

In response to additional questions from the Board, Mr. Hinshaw stated that their neighbor's swing set is actually on the applicant's property and about 50 square feet of their neighbor's driveway also encroaches onto the applicant's property. He noted that the addition will essentially replace an existing lower deck.

Mr. Nerney noted that the proposed improvements will consist of a one-story structure that will be located behind the two-story house and thus will not be visible from the side property line.

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

Ms. Lanni of Saunders Drive stated that she had concerns with water drainage/runoff which she now understands is not under the purview of the Planning and Zoning Commission. She indicated that she also had a concern that an undesirable precedent might be set for others in the neighborhood with respect to site coverage, but she was satisfied that such concerns were addressed during the course of the hearing since much of the proposed coverage replaces already existing site coverage.

There being no further comments, the public hearing was closed at 7:49 P.M.

3. #14-05-09 WOOD/O'BRIEN 5 HIGH RIDGE ROAD

Mr. Rudolph called the Hearing to order at 7:49 P.M., seated members Battaglia, Bufano, Lilly, McNee and Rudolph, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest. Mr. Lilly read the legal notice dated May 6, 2014 and details of the application and the hardship as described on the application. He referenced an email communication to Lorraine Russo from Toby McKenna sent May 19, 2014.

Present were Kevin O'Brien, applicant; and Robert Wood, owner.

Mr. O'Brien distributed a letter from Philip and Jane Feick of 9 High Ridge Road, [undated] in favor of the application.

Mr. O'Brien explained that the Woods would like to add some dormer space to provide a full-height upstairs level. He stated that Health Department regulations require that the existing septic system be relocated or a new one installed since it is not currently outside the required radius of the well. Since the only possible location for the new septic is under the existing driveway, the owners also plan to relocate the existing driveway to address that issue.

Mr. O'Brien noted the following hardship for the site, i.e. the residence was built prior to zoning regulations and, as a result, the 1-acre parcel is located in and thus constrained by 2-acre zoning requirements. He pointed out that there would not be any additional setback encroachment, noting that the proposed modifications would in fact result in a net setback improvement of two-tenths of a foot.

Addressing the aforementioned letter of concern from Toby McKenna regarding their properties' well-sharing situation, Mr. O'Brien stated that the Woods also have a vested concern regarding the adequacy of the shared well and their plan is to install a new well if necessary. Mr. Wood explained that the owners plan to test the existing well to determine whether it will be able to continue to support all three properties that it is

currently serving. Mr. O’Brien explained that any required well permits/approvals would be processed through the Health Department.

Mr. O’Brien distributed copies for Board review of an elevation drawing and a septic plan prepared by Peak Engineers, LLC, titled the “Building Additions Wetland Application Plan”.

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

There being no further comments, the public hearing was closed at 8:07 P.M.

C. APPLICATIONS READY FOR REVIEW AND ACTION

Mr. Rudolph called the Regular Meeting to order at 8:07 P.M., seated members Battaglia, Bufano, Lawrence, Lilly, and Rudolph, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest.

1. #14-04-07 JOSEPH 19 HEATHER LANE

The Board briefly discussed the application. It was the consensus of the Board that sufficient hardship was demonstrated and that approval would be contingent upon compliance with the submitted plans, as corrected per applicant’s testimony during the hearing.

Mr. Lawrence observed that all applications this evening claimed hardship due to the 1-acre parcels being located in and constrained by 2-acre zoning districts, and he expressed some concern as to whether the Board’s goal should be to preserve the Town’s 2-acre zoning standards/requirements.

Mr. Rudolph referenced Section 29-13.B.6 of zoning regulations pertaining to “Findings” under the Zoning Board of Appeals, noting that each case/application must stand on its own. In particular he referenced 29-13.B.6.a when “there are special circumstances or conditions . . . which are peculiar to such lot or structure . . . and which have not resulted from any willful act of the applicant”. He felt that a 1-acre parcel located in a 2-acre zone is a condition that satisfies such a requirement and gives the Board the ability to make a finding of hardship. He explained that the Board must take each application on its own merit, noting further that members will recognize “over-reaching” with respect to a claim for hardship if/when it occurs.

MOTION was made by Mr. Lilly, seconded by Mr. Lawrence, and carried unanimously (5-0) to **grant** the variance of Section 29-5.D to allow for building coverage of 8.69% in lieu of the required 7% on grounds that sufficient hardship was demonstrated given the pre-

existing nonconforming nature of the 1-acre lot located in a 2-acre zoning district, as well as the long, thin shape of the lot; as per submitted “Proposed Building Additions Plot Plan”, prepared by Leonard Surveyors, LLC, dated June 18, 2012, with the exception that the farthest left wall will be 18’ in length in lieu of the 18.4’ that is noted on the plan, and as per Elevations plan prepared by Design Builders & Remodeling, Inc., dated March 16, 2012 and revised July 13, 2012 and June 26, 2013.

2. #14-05-08 HINSHAW 71 SUGARLOAF DRIVE

Mr. Battaglia was unseated and Mr. McNee was reseated.

The Board briefly discussed the application. Mr. Rudolph referenced the hardship of the undersized 1-acre parcel located in and constrained by 2-acre zoning, and the fact that the applicants are losing 41 square feet of site coverage due to their neighbor’s encroaching driveway.

MOTION was made by Ms. Bufano to **grant** the variance of Section 29-5.D to allow a structural addition resulting in building coverage of 7.4% where 7% maximum is allowed, and site coverage of 13.4% where 12% maximum is allowed; as per “Zoning Location Map” prepared by Stalker Land Surveying, Inc., dated April 3, 2014, and Architectural plans A1 thru A8, prepared by John Jones Architect LLC, dated April 22, 2014; on grounds that sufficient hardship was demonstrated given the 1-acre size of the parcel which is located in and constrained by 2-acre zoning, the fact that the proposed addition does not encroach into any setbacks, the slope/topography of the site, and the encroachment of the neighbor’s driveway onto the applicant’s property.

Prior to the vote, Mr. Lawrence expressed concern that a civil issue (i.e. the neighbor’s driveway encroachment onto the subject property) is not a land hardship for purposes of granting a variance since a remedy exists for such a problem, and he felt that including this in the statement of hardship could potentially set the stage for future arguments of such a nature.

Mr. Rudolph felt that it was appropriate to leave it in the description of hardship and there was general agreement to leave it in.

The motion was then seconded by Mr. Lilly, and carried unanimously (5-0).

[Later in the evening Mr. Lawrence asked about the possibility of changing his vote to oppose the motion. After a brief discussion with Town Planner Nerney, Mr. Lawrence ultimately decided to leave his vote as it was.]

3. #14-05-09 WOOD/O'BRIEN 5 HIGH RIDGE ROAD

Mr. Lawrence was unseated and Mr. Battaglia was reseated.

The Board briefly discussed the application. It was the consensus of the Board that sufficient hardship was demonstrated given the pre-existing nonconforming nature of the 1-acre parcel in a 2-acre zoning district, and the fact that the applicant was actually decreasing the setback intrusion by two-tenths of a foot.

MOTION was made by Mr. Battaglia, seconded by Ms. Bufano, and carried unanimously (5-0) to **grant** a variance of Section 29-5.D to allow a building addition with a 28.7 foot side yard setback in lieu of the required 40 feet; as per "Improvement Location Map" prepared by Stalker Land Surveying, Inc., dated January 9, 2014, and "Building Additions Wetland Application Plan" #SI – 1/1 prepared by Peak Engineers, LLC, dated February 26, 2014; on grounds that sufficient hardship was demonstrated due to the need to relocate the proposed septic system, the pre-existing, nonconforming nature of the 1-acre parcel in a 2-acre zoning district, and the fact that the applicant is reducing existing encroachment into the setback from 28.5' to 28.7'.

D. OTHER BUSINESS

1. Minutes – April 21, 2014

MOTION was made by Mr. Lilly, seconded by Ms. Bufano, and carried (5-0-1) to approve the minutes of April 21, 2014. Mr. McNee abstained.

E. ADJOURNMENT

MOTION was made by Mr. Lilly, seconded by Ms. Bufano, and carried unanimously (6-0) to adjourn at 8:35 P.M.

Respectfully submitted,

Lorraine Russo
Recording Secretary