

ZONING BOARD
OF
APPEALS
Telephone (203) 563-0185
Fax (203) 563-0284



TOWN HALL ANNEX
238 Danbury Road
Wilton, Connecticut 06897

**ZONING BOARD OF APPEALS
REGULAR MEETING
SEPTEMBER 21, 2015
7:15 P.M.
TOWN HALL ANNEX - MEETING ROOM A**

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

ABSENT: Joshua Cole and Andrew McNee (notified intended absences)

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. #15-09-16 FAWCETT 27 REDDING RD/RTE 107

The application was withdrawn at the request of the applicant.

2. #15-09-17 CROWTHER 45 BELDEN HILL ROAD

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

Present was Ivan Crowther, applicant/owner.

Mr. Crowther reviewed details of the application, noting that the lot consists of only 0.5+ acres, but is located in and constrained by two-acre zoning regulations. Because of the

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lot's size, he explained that it is difficult to satisfy the required setbacks for the proposed propane tanks. He cited additional constraints to locating the tanks in conforming locations on the site, including the steep rear topography that requires an extensive drainage system to stop water flow towards the back of the house; and the fact that tank-refill hoses cannot be stretched farther than 100 feet, thus further restricting the tanks' locations.

Mr. Crowther explained that the tanks should have been included as part of a previous variance application but weren't, which was an unintentional oversight since they were under the impression that the propane company had taken care of this; thus the reason that the tanks have already been installed on the site.

In response to further questions from the Board, Mr. Crowther stated that there is no conforming area available beyond the well to the north due to the existence of underground pipes/drains in that location, and he confirmed that there is no neighbor opposition to the proposed tank locations.

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

There being no further comments, the public hearing was closed at 7:27 P.M.

3. #15-09-18 SULLIVAN/QUINLAN 28 SHARP HILL ROAD

Mr. Lawrence called the Hearing to order at approximately 7:27 P.M., seated members Battaglia, Bufano, Lawrence, Lilly, and Preston, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest. Mr. Lilly read the legal notice dated September 8, 2015 and details of the application and the hardship as described on the application.

Present were Kevin Quinlan, applicant; and Robert Desel, homeowner.

Mr. Quinlan posted site plans and photos of the subject property.

He reviewed details of the application, noting that the applicant wishes to add a second bay to the existing undersized garage as well as a covered walkway to provide passage from the garage to the house, particularly necessary during inclement weather. He explained that the house and garage are both pre-existing nonconforming from 1935, with the garage located fully within the rear yard setback, and the existing site coverage is already at 16.2% where 18.1% is requested and 15% is permitted today. He noted that although the applicant has pinned the northeast corner of the proposed garage in the same location as existing, the proposed 4-foot overhang brings that side of the garage to within 4 feet of the rear yard property line, whereas the existing garage is approximately 8.7+/-

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feet from that property line. He explained that the large overhang is a result of the requirement for a 5-foot knee wall above the garage and the fact that any attempt to reduce the overhang while maintaining the 5-foot knee wall would result in an extremely steep-pitched roof.

He summarized hardships/constraints of the property including: 1) a required 75-foot well radius which prevents the garage from being pulled up closer to the residence/farther away from the property line; 2) steep topography in the back, plus the need for a reserve septic in that area; 3) existing septic in the front of the property; 4) the configuration of a very long driveway whose square footage (approx. 9000+ s.f.) is not included for purposes of calculating coverages on the site, thus resulting in a lot that is actually less than 1.0 acre and is therefore undersized for the R-1A zone and its requirements.

He noted that the proposed site modifications would not be visible from Sharp Hill Road and he cited additional screening as a result of the wooded nature of the area and the fact that Town Conservation land backs up to the northern property line where the work is proposed. He stated that the applicant met with the directly adjacent neighbors and they expressed no opposition to the requested variances.

In response to a question as to whether both wood sheds were included in coverage calculations for the site, Mr. Quinlan stated that he had spoken with the surveyor who confirmed that they were included in building and site coverage numbers.

The Board had a lengthy discussion and many questions regarding the subject application. A number of issues/concerns were raised by Board members, summarized as follows:

- Excluding the driveway/access road may actually benefit the applicant's site coverage calculations (as opposed to it being considered a hardship) since the driveway is fully paved and would therefore add significantly to any site coverage calculation for the property
- The lot would still be above the 15% permitted site coverage even if considered as a typical 1-acre lot without the paved driveway
- The lot is relatively square (excluding the driveway), i.e. not odd-shaped, and the owners are not being denied reasonable use of a garage, although it is a 1-car currently, all of which they were aware of at time of purchase
- There appears to be no necessity for the 4-foot overhang in the back, which increases the existing nonconforming setback from 8.7 feet to only 4 feet from the rear yard property line

A question was raised regarding drainage from the newly configured garage since such information was not included on the submitted plans, specifically whether water would be flowing towards the neighbor's property. Mr. Quinlan stated that he generally addresses such matters with the Environmental/Inland Wetlands department at time of application/permitting, but he assured the Board that any drainage/overflow would be

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diverted away from the neighbor's property. He also indicated that the garage gutters could be pulled in an additional 4-5 inches to avoid any further intrusion into the setback.

Mr. Nerney advised the Board that engineering aspects of applications are generally not within the purview of this Board, and therefore plans submitted to the ZBA would not generally include or be required to include drainage/engineering information.

In light of the many concerns raised by the Board, particularly pertaining to the requested site coverage variance, Mr. Quinlan stated that the applicant is prepared to remove the covered walkway from the application (amounting to 425 s.f. of site coverage and 460 s.f. of building coverage), thus reducing overall building coverage to 7.6% and total site coverage to 17.1% from the previously requested 18.1%, if that would alleviate some of the Board's concerns.

Mr. Nerney felt that any such modification to the plans as proposed should be submitted as part of a new application at a future date. He cited problems that have arisen in the past when applications have been revised on-the-fly and incorrect calculations have resulted. He noted that the applicant has the option of withdrawing and resubmitting if so desired.

Mr. Desel explained that the garage is very desirable and necessary for the growing needs of his family, and he noted that the driveway's slope makes it difficult to traverse/icy during winter months, although he confirmed his willingness to remove the covered walkway to address some of the site coverage concerns expressed by the Board.

Mr. Lawrence read from Section 29-13.B.6 of zoning regulations pertaining to the four findings that must be made by the Board in order to grant a variance. Referencing those requirements, he explained that while the pre-existing nonconforming nature of the property seemed to address/satisfy the hardship issue in connection with setbacks on the property, he was having (and other Board member(s) appeared to be having) difficulty justifying the site coverage variance in light of the aforementioned regulations. He noted that even if the setback variances were granted by the Board, they would be virtually useless without the site coverage variance. He explained that if the application were denied without prejudice, then the applicant could reapply to the Board without having to wait the 6-month period generally required for resubmission.

Addressing the aforementioned issues and the requirements of Section 29-13.B.6, Mr. Quinlan noted the following:

- The long driveway is a peculiarity and special circumstance of this particular lot, adding to the property's overall site coverage
- This is not a man-made/self-created hardship since the applicant is proposing expansion of a pre-existing nonconforming structure, i.e. it has not resulted from any willful act on the part of the applicant

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- Denying the applicant a 2-car garage denies reasonable use of this property since most 1-acre zone parcels have more than a 1-car garage
- Addressing the issue of drainage, an Adirondack-style trough drainage system, without gutters, could be utilized so as to assure absolutely no drainage/runoff issues for the site
- The proposed site modifications will not be injurious to the neighborhood since adjoining neighbors had no objections/concerns when noticed
- The parcel, without the additional driveway square footage, is undersized and thus constrained by required conformance to 1-acre zoning requirements

Mr. Rhodes felt that the driveway should be a consideration of this application, particularly from the perspective of lot peculiarity, since the driveway/accessway would not have to be so long (and consequently add to overall site coverage) if the property were not, in fact, peculiarly shaped.

Mr. Lilly noted that if the applicant is able to remain at the existing 16.2% site coverage level, then a site coverage variance would not be required.

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

There being no further comments, the public hearing was closed at 8:30 P.M.

4. #15-09-19 HALAN 295 NEWTOWN TURNPIKE

Mr. Lawrence called the Hearing to order at approximately 8:30 P.M., seated members Battaglia, Bufano, Lawrence, Lilly, and Rhodes, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest. Mr. Lilly read the legal notice dated September 8, 2015 and details of the application and the hardship as described on the application.

Present was Mark Halan, applicant.

Mr. Halan explained that he had previously been granted a 40-foot front yard setback variance for a detached garage, but after meeting with the contractor it was determined that the garage could only measure 22 feet in depth in order to comply with the 40-foot variance. He noted further that, after accounting for wall thicknesses, the actual depth of the garage would then actually be only 20 feet, which would not be adequate for a current day garage. As a result, he was requesting 2 additional feet for the garage foundation itself and an additional 1 foot for the overhang, noting that the structure would still be sited 52 feet away from the roadway itself. He confirmed that the application was already approved by the Inland Wetlands Commission (IWC).

In addition to cited hardships including wetlands, difficult topography, and an irregularly

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shaped parcel, Mr. Halan noted that the area is totally within a regulated/buffer zone for IWC and part of the property is located in a flood zone.

When asked why the proposed garage location is so far from the residence, he explained that he wanted to protect the view of the property, noting further that the garage will be used primarily for storage.

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

There being no further comments, the public hearing was closed at 8:38 P.M.

C. APPLICATIONS READY FOR REVIEW AND ACTION

Mr. Lawrence called the Regular Meeting to order at 8:38 P.M., seated members Battaglia, Bufano, Lawrence, Lilly, Preston and Rhodes, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest.

1. #15-09-16 FAWCETT 27 REDDING RD/RTE 107

Application was withdrawn.

2. #15-09-17 CROWTHER 45 BELDEN HILL ROAD

The Board briefly discussed the application. It was the consensus of the Board that hardship was demonstrated, given the pre-existing nonconforming nature of the property, the odd shape of the lot, its difficult topography, and the 100-foot stretch limitation of the filling hose from the driveway.

The Board noted for the record that it does not look favorably upon after-the-fact applications such as this one, i.e. where the work has already been completed prior to submission of the application.

MOTION was made by Mr. Lawrence, seconded by Mr. Lilly, and carried unanimously (5-0) to **grant** the variance to allow placement of two one-hundred gallon propane tanks with a side yard setback of 4' in lieu of the required 40'; as per Survey prepared by Roland H. Gardner dated June 19, 2007, revised April 25, 2013, July 28, 2014, and August 19, 2015; on grounds that sufficient hardship was demonstrated due to the pre-existing nonconforming nature of the lot which is irregularly-shaped and undersized; the severe slope requiring an extensive drainage system in the rear; septic and well setback constraints; and the 100-foot hose distance limitation; making placement anywhere else impossible; and he enumerated the four required findings of Section 29-13.B.6 of zoning regulations, noting that the application satisfies all four requirements.

3. #15-09-18 SULLIVAN/QUINLAN 28 SHARP HILL ROAD

The Board discussed the application in detail. Board members Lawrence and Lilly were of the opinion that hardship in connection with the requested site coverage variance was not adequately demonstrated, although the hardship for setback variances involving the garage and walkway seemed justified/straightforward.

Mr. Lilly stated that the proposed 4-foot garage overhang seemed to be more of an aesthetics issue, noting that if the existing 8.7-foot setback distance was maintained the site coverage impact could be reduced. He felt that the applicant was not being deprived of reasonable use of the property, noting that the property was purchased by the applicant with a 1-car garage and no walkway.

Messrs. Rhodes and Battaglia felt that the topographical conditions, lot shape and accessway configuration were adequate factors to demonstrate a site coverage hardship. They were of the opinion that the Board has deemed such constraints adequate in the past for other similarly configured lots and that it would be essentially “splitting hairs”/not logical to deny the site coverage variance for so minimal a proposed increase. Mr. Rhodes noted in particular that due to the configuration of the lot, with its long driveway/accessway, the amount of site coverage/paving needed to get to the house from the entrance to the rectangular portion of the lot is a pre-existing nonconforming condition which is negatively impacting site coverage for this property.

Ms. Preston and Ms. Bufano agreed with Messrs. Rhodes and Battaglia.

Mr. Lawrence stated that he would like to see a different application from the applicant that will have less of an impact on site coverage, noting that there is too much coverage on this 1-acre+/- lot, even if it is viewed as an undersized lot due to the exclusion of the accessway acreage.

MOTION was made by Mr. Battaglia, seconded by Ms. Preston to grant variances to permit construction of a garage with a proposed rear yard setback of 4’ in lieu of the required 40’; to permit construction of a covered walkway with a proposed rear yard setback of 23’ in lieu of the required 40’; and to permit site coverage of 18.1% where 15% is allowed. He cited/enumerated the 4 findings of Section 29-13.B.6 of zoning regulations, noting that the application satisfies all 4 findings.

The motion **failed** (3-2). Messrs. Lawrence and Lilly opposed for reasons heretofore noted.

MOTION was made by Mr. Lawrence, seconded by Mr. Lilly, and carried unanimously (5-0) to **deny without prejudice** the requested variances for the subject property.

4. #15-09-19 HALAN 295 NEWTOWN TURNPIKE

The Board briefly discussed the application. It was the consensus of the Board that the application was essentially amending a prior variance so that an actual car could fit into the proposed garage, and to not grant it would deny the applicant reasonable use of his property. The Board also noted that there are numerous hardships associated with the subject property (i.e. very challenging topography, river, wetlands, shape of the lot, flood zone, etc.) such that the proposed garage location is the only place where it can be located on the site.

MOTION was made by Ms. Bufano, seconded by Mr. Battaglia, and carried unanimously (5-0) to **grant** the variance to allow a building with a 37' front yard setback in lieu of the required 50', where a previous variance allowed 40'; as per Survey prepared by Roland H. Gardner, dated June 20, 2008, revised Nov 5, 2008, August 24, 2015, and August 25, 2015; on grounds that sufficient hardship was demonstrated given the shape of the parcel, the existence of wetlands/flood zone on the property, the unsuitability of any other location on the site, and because denying the requested expansion would make the garage unusable and thus deny the applicant reasonable use of his property.

D. OTHER BUSINESS

1. Minutes – June 15, 2015

MOTION was made by Mr. Lilly, seconded by Mr. Battaglia, and carried (3-0-3) to approve the minutes of June 15, 2015. Ms. Bufano, Mr. Lawrence and Ms. Preston abstained.

E. ADJOURNMENT

MOTION was made by Mr. Lawrence, seconded by Mr. Lilly, and carried unanimously (6-0) to adjourn at approximately 9:25 P.M.

Respectfully submitted,

Lorraine Russo
Recording Secretary