

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
NOVEMBER 17, 2014
7:15 P.M.
TOWN HALL ANNEX - MEETING ROOM A**

PRESENT: Scott Lawrence, Chairman; Gary Battaglia, Vice-Chairman; Brian Lilly, Secretary; Joshua Cole; R. Andrew McNee, Alternate; Andrea Preston, 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. #14-10-12 SHULMAN 109 SIGNAL HILL ROAD

Mr. Lawrence called the Hearing to order at approximately 7:17 P.M., seated members Battaglia, Cole, Lawrence, Lilly and Preston, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest. He noted that the hearing was continued from a previous date at the request of the applicant.

Town Planner Nerney moved into the audience, noting that the application involves an appeal of a decision made by his department.

Present were Lowell and Amy Shulman, appellants.

Mr. Shulman stated that they were protesting the approval by Town planning staff of a zoning permit for development of 109 Signal Hill Road and for a driveway over a portion of their property at 115 Signal Hill Road. He cited environmental, health and safety issues, as well as potential driveway damage and loss of property value. He explained

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further that wetlands have been identified in the area and he expressed concern for impacts resulting from another septic system being installed nearby. He stated that the appellants are also still researching other issues in support of their opposition, including a legal question as to whether their driveway, which has been there more than 15 years, is successfully blocking/limiting access to the easement in question. He requested another continuance to allow them more time to conduct said research.

In response to a question from Mr. Lawrence, Mr. Nerney explained that while continuances may be granted by the Board up to the maximum timeframes allowed by CT Statutes, the Board is not bound to grant continuances. He explained further that a continuance is not for the benefit of allowing an applicant to have extra time but rather to provide the Board with additional time, if necessary and at its discretion, in order to acquire a complete record upon which to make a decision. He noted that continuances do require the consent of the applicant.

At this time, Mr. Lawrence noted for the record that although he knows the Kellogg brothers, he did not feel his acquaintance rose to the level of a conflict of interest for him in this matter. He also asked whether any other seated member had a conflict of interest, noting that the same question had been addressed at the last hearing as well. No conflict was cited by any other Board member.

Mr. Lawrence stated that the issues presented by the appellant appeared to be fairly complex and beyond what was originally noted in the application. He noted that they also appeared to be beyond the scope/purview of this Board. He asked whether the appellants had any supplemental materials to present to the Board this evening.

Mr. Shulman cited previously submitted information regarding wetlands on the site and driveway coverage/issues pertaining to the aforementioned easement obstruction question. Mr. Lawrence noted that some of the issues cited by the appellants might need to be addressed elsewhere, e.g. the Inland Wetlands Commission, rather than by this Board.

Ms. Shulman explained that their neighbors pursued this issue about 10 years ago. She noted that tests were done on the subject property which she felt were no longer relevant since land/soil changes over time.

Mr. Battaglia asked whether the appellants were aware of the easement and the additional lot when they purchased their property. Mr. Shulman stated that they were aware of the lot but not the easement. Ms. Shulman explained that they were aware the lot was for sale but it had not sold since the 1950s, although many people had tried to acquire it. She expressed concerns from a safety perspective, citing the very steep pitch of the driveway and the fact that it would have to be a gravel surface due to coverage constraints. She expressed particular concern regarding emergency vehicle access to the site.

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In response to questions from Mr. Lawrence, Ms. Shulman explained that they did try to make contact with the current owners. She also expressed the opinion that owners should be notified by the Town when a zoning/building permit is issued that involves an easement over their property. Ms. Shulman also acknowledged that they obtained a title report when they purchased their property and that the deed referenced the easement, but they did not anticipate the actual use of the easement since the property had sat unused for such a long time.

Mr. Nerney presented the Town's position on the matter. He posted aerial maps of the subject parcel and referenced a 3-page memorandum dated September 24, 2014, with attachments, from himself to the Zoning Board of Appeals. He noted that the lot was created as part of a subdivision approved in May of 1958 and was recorded on the land records in June of 1958. He referenced a zoning permit (included in the package) that was issued by his department on July 25, 2014.

In connection with the issued permit, Mr. Nerney explained that Connecticut General Statutes have certain protections in place for lots approved via the subdivision process and which have never been developed, whereby such lots can be built in accordance with zoning regulations in place at the time of the subdivision recording. He noted that while other departments' regulations are not under the purview of this Board, he did confirm that a previously issued Inland Wetlands permit was deemed to still be valid for the property and he noted that the Health Department had also signed off on the permit in question.

He explained that the issue before the Board this evening is whether the parcel was in fact entitled to a zoning permit. He stated the Town's position that since the parcel was originally approved via the subdivision process and had not been developed to date, i.e. no building permit was ever issued, the Town had no justifiable reason to deny the permit. He did cite some ambiguity as to whether the aforementioned protections provided by State Statutes extend beyond the boundaries of the lot itself. In that regard, he stated that the Town took the position that the easement area (which is beyond the boundaries of the lot) was not protected and therefore did need to comply with today's regulations for steepness, height of retaining walls, shelf space requirements, etc.

He noted further that site coverage was also considered since paving of the driveway easement area would have risked placing the Shulman property over its allowed site coverage maximum. He referenced conditions to that effect that were imposed as part of the July 25, 2014 zoning permit. He held up a booklet of zoning regulations that were in effect at the time of the 1958 subdivision approval, highlighting the thinness of the booklet and thus the very few regulations that were actually in place at that time.

Addressing some concerns voiced by the appellant, he explained that his department does

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not provide zoning permit notices to property owners, noting that over 1000 such permits are issued per year. He noted further that easements are not unusual in general. He stated that extinguishment of an easement is a civil matter and would be adjudicated through the courts, not via the ZBA. He acknowledged that although he had suggested that the parties speak to each other, the Town cannot mediate such discussions.

He concluded by stating that the issue before the Board this evening is very narrow, i.e. was the permit issued correctly, emphasizing that the issue must be considered in terms of statutory law.

Mr. Lawrence asked if anyone in the audience wished to speak.

Doug Bayer, attorney representing Lilian Gilman, the contract purchaser of 109 Signal Hill Road, asked to speak to the matter. Mr. Lawrence referenced a letter, with attachments, dated October 15, 2014, from Attorney Bayer to Zoning Board of Appeals. Mr. Lilly referenced said letter with attachments into the record, noting that it was in opposition to the subject appeal.

Mr. Bayer stated that the appellants raised vague concerns, noting that they gave no evidence that the permit in question was granted improperly. He stated that the driveway use is a civil matter between the two parties and is not under the purview of this Board and he noted that there is a valid wetlands permit issued for the property.

Addressing the issue of whether the aforementioned protections extend to the right-of-way, he felt that this remains a serious open question of law but in an effort to move the matter/permitting process along, his client accepted all conditions imposed by the zoning permit issued in July, 2014.

Mr. Bayer noted for the record that the Shulmans took title to their property subject to this right-of-way and thus there should be no issue as to whether they knew of its existence. He distributed into the record a copy of their Warranty Deed.

He asked that the Board close the hearing this evening since granting more time to the appellants would be unfair and prejudicial to his client. He noted for the record that they had a meeting with the appellants to discuss issues of screening but the appellants appeared uninterested. He stated that he reached out two times to a person he believed was representing the Shulmans but to no avail.

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

Mary Ellen Baker, 121 Signal Hill Road, provided a brief history of the subject parcel. She explained that the parcel went on the market around the year 2000 and neighbors had

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offered to buy it from then-owner Thorpe three different times, but all of their offers, including a full price offer, were declined. As a result they did not think it was worth presenting another offer to the seller when it came on the market again more recently. She noted further that Inland Wetlands was very concerned about development of the parcel back in 2002 and she asked that the Board consider the Shulmans' request for more time.

In response to comments made by Attorney Bayer, Mr. Shulman noted for the record that they had personally reached out to the current owner, but had received no response until they filed their formal appeal with the Town.

In response to a question from Mr. Lawrence as to the feasibility of further discussion between the parties, Mr. Shulman stated that screening might ease the pain somewhat but he noted again that if they had been aware of the situation, they would have tried to purchase the lot.

In response to a question from Mr. Lilly, Mr. Shulman stated that they would have less concern regarding the driveway easement if the parcel remained open space as opposed to being developed as a residential lot.

Ms. Shulman stated that they did try to reach out to the current owner and they are still open to trying to work something out, although she noted that they made no progress in that regard during their initial meeting.

Mr. Bayer corrected the record, acknowledging that his previous comment was incorrect and confirming that the Shulmans did reach out to his client first, prior to the filing of their appeals application with the Town.

Mr. McNee stated that there didn't seem to be any room for compromise here based on the testimony given during the hearing.

There being no further comments, at approximately 8:09 P.M. the public hearing was closed.

2. #14-11-14 HURWITZ 335 NEWTOWN TURNPIKE

Mr. Lawrence called the Hearing to order at approximately 8:09 P.M., seated members Cole, Lawrence, Lilly, McNee and Preston, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest. Mr. Lilly read the legal notice dated November 4, 2014 and details of the application and the hardship as described on the application.

Present were Bob and Lisa Hurwitz, applicants/owners. Mr. Hurwitz noted for the record

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that title had transferred from his Mom's name (Marilyn Hurwitz) to their names since the application was filed, although his Mom will continue to reside in the home. He stated that notice of this anticipated transfer of title was provided in the original application package.

Mr. Hurwitz reviewed details of the application, noting that they would like to install a carport near the main entrance of the house since there is no garage on the property. He stated that the home was built in 1943, noting hardships including topography, the siting of the pre-existing nonconforming house, the irregularly shaped parcel, and the location of septic and wetlands on the property. He noted further that his Mom is elderly and a carport close to the home would provide shelter for her entering/exiting the residence.

He explained that the carport would involve only 4 posts and would be located where a tent is currently located. He noted that a part of the existing house is actually closer to the rear yard setback than what is being requested. In response to a question from Mr. Cole, Mr. Hurwitz confirmed that a well is located on the southeast corner of the residence and is a further constraint on the property. He noted that alternate locations are similarly constrained by both wetlands and topographical issues and would also require setback variances due to the nonconforming nature of the residence.

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 8:16 P.M.

3. #14-11-15 MINOGUE 93 KENT ROAD

Mr. Lawrence called the Hearing to order at approximately 8:16 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 November 4, 2014 and details of the application and the hardship as described on the application.

No one was present on behalf of the applicant.

MOTION was made by Mr. Lilly, seconded by Mr. Lawrence, and carried (5-0) to continue the hearing until the next meeting.

There being no further comments, at approximately 8:19 P.M. the public hearing was continued until December 15, 2014.

4. #14-11-16 MC KAY 74 HORSESHOE ROAD

Mr. Lawrence called the Hearing to order at approximately 8:20 P.M., seated members Cole, Lawrence, Lilly, McNee and Preston, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest. Mr. Lilly read the legal notice dated November 4, 2014 and details of the application and the hardship as described on the application.

Present were Brian and Elizabeth McKay, owners/applicants.

Ms. McKay distributed photos and proposed elevations into the record, and she confirmed that a revised survey was submitted, with the additional information requested by staff, on November 14, 2014.

Mr. McKay explained that the house, constructed in 1910, is pre-existing and nonconforming, noting that it is located only 29.5 feet from Horseshoe Road where 40 feet are currently required and 32 feet are being requested in connection with the proposed addition. He stated that the applicants would like to construct a 2-story addition, with garage underneath, in keeping with the style of the existing residence.

Addressing the issue of alternate locations and constraints to the land, he explained that there is shallow ledge and steep grade/slope issues on the west side; and there is shallow ledge, which would precipitate substantial blasting, on the north side. He noted that the proposed addition would intrude less into the front yard setback than currently exists, thus making the house more compliant and in conformance with regulations that encourage reduction of nonconformities on properties.

In response to a question from Mr. McNee, Mr. McKay explained that their plans propose an increase from 2,475 square feet to 3300 square feet, and he confirmed that they had spoken with their neighbors who are fully supportive of the proposed site modifications and happy that the 1910 house will be preserved.

Ms. McNee confirmed that their plans do not require any regrading of the driveway.

Mr. Lawrence expressed some concern regarding the proposed full 3-story projection into the setback and its anticipated visibility from the roadway, and the fact that the subject residence will be projecting farther into the setback than any other residence on the road. He questioned whether the applicants had considered, or would consider, a 2-story addition instead.

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Ms. McKay noted that the garage level is mostly under grade and thus the proposed addition will more closely resemble 2 stories rather than 3, and will actually be just one story above what is visible now. She noted further that the large red maple tree will be able to stay, thus providing additional screening.

Mr. Lilly noted that he was originally concerned about potential site coverage on the property, but since it appears to be compliant in that regard he had no major concerns with the application.

Ms. Preston felt that the proposed renovations were in keeping with the feel/character of the rest of the neighborhood.

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

There being no further comments, at approximately 8:37 P.M. the public hearing was closed.

5. #14-11-17 CROWTHER 45 BELDEN HILL ROAD

Mr. Lawrence called the Hearing to order at approximately 8:37 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 November 4, 2014 and details of the application and the hardship as described on the application.

Ms. Preston stated that the applicants are her neighbors although she noted that she was not seated on the matter in any case.

Present were Ivan and Susan Crowther, owners/applicants; and Roland Gardner, Jr., surveyor.

Ms. Crowther reviewed details of the application. She explained that a variance was granted in 2013 and renovations, as approved, were completed in accordance with the variance. However, when the as-built was prepared, an error was discovered on the original survey which was prepared by Roland Gardner in 2007, and, as a result, the applicants were found not to be in conformance with building coverage in spite of the fact that all renovations were constructed as per the variance previously granted.

Responding to a question from Mr. Lawrence as to whether the previous variance would need to be modified or repealed, Mr. Nerney felt that it would be sufficient, if the Board were inclined to approve, to just note in the motion of approval that the previous variance is superseded by the subject variance, particularly since the previous variance was for a lesser amount of coverage.

Mr. Nerney noted for the record that the subject parcel is only a half-acre but is located in and constrained by two-acre zoning requirements. Mr. Gardner confirmed same, as well as the fact that no variance would be required if the property were even a 1-acre parcel located in the two-acre zone. He stated that he had a 100% level of confidence in the accuracy of his current survey.

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

There being no further comments, at approximately 8:47 P.M. the public hearing was closed.

6. #14-11-18 O'BRIEN/ROTH 249 CHESTNUT HILL ROAD

Mr. Lawrence called the Hearing to order at approximately 8:47 P.M., seated members Cole, Lawrence, Lilly, McNee and Preston, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest. Mr. Lilly read the legal notice dated November 4, 2014 and details of the application and the hardship as described on the application.

Present was Kevin O'Brien, on behalf of owners, Erik and Kate Roth.

Mr. O'Brien reviewed details of the application, noting that the proposed plan is to add outdoor space, including a new patio and two new decks of 123 s.f. and 139 s.f., respectively. He explained that the one-acre site is located in and constrained by two-acre zoning requirements, noting that if the parcel were located in a one-acre zone the maximum building coverage permitted would be greater than 7%. He noted that the homeowners have elected to remove some asphalt paving from the site so that they will conform to site coverage requirements of the zone. He also cited issues with the existing masonry structure on the site which is not water-proof, resulting in water seepage into the basement, necessitating its removal.

Referencing the issue of hardship, Mr. O'Brien explained further that the back yard is elevated and thus any masonry would appear even more massive, whereas he felt that a deck would tend to soften the feel of the property.

Mr. O'Brien also referenced a letter of support from the adjacent owners to the north of the property, John and Ellen Campbell.

Mr. Nerney confirmed that terraces and patios are not counted as building coverage and are counted at only 50% of site coverage. He noted for the record that the survey submitted with the application did not show the proposed building coverage, although a subsequent addendum letter from surveyor Doug Faulds addressed that issue. He stated that if the Board were inclined to grant the requested variance, then the survey would

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subsequently need to be updated to reflect the findings of the addendum letter.

Mr. O'Brien confirmed that site coverage would conform with the 12% maximum permitted in the 2-acre zone.

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

There being no further comments, at approximately 9:00 P.M. the public hearing was closed.

The Board took a short recess at 9:00 P.M.

The Board returned from recess at approximately 9:05 P.M.

C. APPLICATIONS READY FOR REVIEW AND ACTION

Mr. Lawrence called the Regular Meeting to order at 9:05 P.M., seated members Battaglia, Cole, Lawrence, Lilly, McNee and Preston, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest.

Mr. Lawrence scrambled the agenda to hear application #14-10-12 Shulman (Appeal) last, after agenda items #2-#6.

2. #14-11-14 HURWITZ 335 TURNPIKE ROAD

The Board briefly discussed the application. It was the consensus of the Board that the proposed carport location was the only viable location. The Board felt that the application seemed reasonable overall.

MOTION was made by Mr. Battaglia (as stated by Mr. Lilly), seconded by Mr. Cole, and carried unanimously (5-0) to **grant** a variance of Section 29-5.D to construct a carport with a of 22.1-foot rear yard setback in lieu of the required 50 feet; as per submitted Zoning Location Survey prepared by Advanced Surveying Land Surveyors, dated September 6, 2014, and submitted Elevations A101 and A102, prepared by Studio Dumitru, dated September 9, 2014; on grounds that sufficient hardship was demonstrated due to the pre-existing nonconforming nature of the structure, as well as constraints presented by the river to the southeast and wetlands to the north; and, further, that the proposed carport location is the only place to put it and is the minimum intrusion necessary to accomplish said construction in its current location.

3. #14-11-15 MINOGUE 93 KENT ROAD

Tabled until December 15, 2014.

4. #14-11-16 MC KAY 74 HORSESHOE ROAD

The Board briefly discussed the application. Mr. Lawrence repeated his original concern that the addition might appear very large, but in light of the trees that would be remaining and providing additional screening, he stated that he was not opposed. Mr. Lilly also noted that the proposed front yard setback would be less of an intrusion than what currently exists on the property.

MOTION was made by Mr. Cole, seconded by Mr. Lilly, and carried unanimously (5-0) to **grant** a variance of Section 29-5.D to permit the construction of an addition with a front yard setback of 32.0 feet, where 40 feet is required and 29.5 feet presently exists; as per Zoning Location Survey prepared by Riordan Land Surveying, dated June 19, 2014 and revised November 13, 2014 (earlier survey submission excluded); and Front Elevation #Ex4, and Rear Elevation #Ex5, both dated July 9, 2014; on grounds that sufficient hardship was demonstrated due to the inability to construct anywhere else on the property because of ledge, elevation issues, and rock outcroppings which would entail blasting and excavation.

5. #14-11-17 CROWTHER 45 BELDEN HILL ROAD

The Board briefly discussed the application. It was the consensus of the Board to approve the application for the additional .4% of building coverage, based on the recently corrected as-built, since the issue resulted from an erroneous survey and was not due to the fault of the owners.

MOTION was made by Mr. Lawrence, seconded by Mr. Lilly, and carried unanimously (5-0) to **grant** a variance of Section 29-5.D to permit building coverage of 9.6% where a maximum of 7% is permitted and 9.2% was authorized by previous variance; as per submitted survey prepared by Roland H. Gardner dated June 19, 2007, revised April 25, 2013 and July 28, 2014; on grounds that sufficient hardship was demonstrated due to the pre-existing nonconforming nature of the structure and the lot, the topography of the site, and the fact that construction is already completed and the applicants confirmed that they were not adding anything new.

6. #14-11-18 ROTH/O'BRIEN 249 CHESTNUT HILL ROAD

The Board briefly discussed the application. It was the consensus of the Board that adequate hardship was demonstrated in connection with the requested variance.

MOTION was made by Mr. Lilly, seconded by Mr. Lawrence, and carried unanimously (5-0) to **grant** a variance of Section 29-5.D to allow building coverage of 7.6% in lieu of the required 7%; as per submitted "Improvement Location Survey" prepared by Ryan and Faulds, LLC dated March 10, 2008, with follow-up letter of verification from Douglas R. Faulds, L.S. dated November 14, 2014; and Terrace Enlargement Plan prepared by Neil Brunetti Landscape Design dated May 11, 2014 and revised July 15, 2014; on grounds that sufficient hardship was demonstrated due to the 1-acre size of the lot which is located in and constrained by 2-acre zoning requirements, and the fact that the applicant is removing some driveway pavement to keep site coverage down.

1. #14-10-12 SHULMAN 109 SIGNAL HILL ROAD

Mr. Lawrence explained that the Board is tasked with determining if the Town did its due diligence when it authorized development of the subject lot and use of the right-of-way. He stated that he didn't hear from the appellant why the development permit granted by the Town was not valid. He explained further that what was presented by the appellants was either beyond the scope of this Board's purview or there were statements made for which no documentation was submitted. He noted further that the Board had granted a continuation of the hearing at the request of the appellants when the public hearing was first opened.

Mr. Lilly stated that the Town presented documentation to show that it did its due diligence prior to issuing the permit, and that what was granted was based on and consistent with State Statutes.

Mr. Lawrence concurred, noting that nothing was presented into the record by the appellants upon which to base a reversal of the Town's decision.

MOTION was made by Mr. Lawrence, seconded by Mr. Battaglia, and carried unanimously (5-0) to **deny** the appeal (#14-10-12 Shulman) and to **affirm** the Zoning Enforcement Officer's decision to issue a zoning permit to allow development of a single family residence at 109 Signal Hill Road and a driveway over a portion of property located at 115 Signal Hill Road; based on the findings of the Board that the memoranda and reasons provided by the Town for the granting of the permit were correct and remained

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unchallenged by the applicant during the hearing in which they had the opportunity to present evidence. He continued, noting that the grounds advanced by the applicant did not appear to be within the Board's purview and were not supported by any documentary or other evidence upon which the Board could have made a determination. The applicant had sufficient time, including one continuance of an additional 28 days because the applicant's attorney did not show (but no attorney appeared at the continued hearing either), in which to supplement the record with whatever information it wanted and they did not add any additional documentary evidence at the latest hearing, nor did the applicant dispute or refute the Town's basis for granting the application based on current Connecticut law.

D. OTHER BUSINESS

1. Minutes – October 20, 2014

MOTION was made by Mr. Lawrence, seconded by Mr. Lilly, and carried (5-0-1) to approve the minutes of October 20, 2014, as amended. Mr. McNee abstained.

E. ADJOURNMENT

MOTION was made by Mr. Lawrence, seconded by Mr. Lilly, and carried unanimously (6-0) to adjourn at approximately 9:48 P.M.

Respectfully submitted,

Lorraine Russo
Recording Secretary