

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

**ZONING BOARD OF APPEALS
REGULAR MEETING
NOVEMBER 18, 2013
7:15 P.M.**

TOWN HALL ANNEX - MEETING ROOM A

PRESENT: Sally Poundstone, Chairwoman; John Comiskey, Secretary; Brian Lilly; Libby Bufano, Alternate; Joe Fiteni, Alternate

ABSENT: Timothy Meyer, Albert Nickel (advised intended absences)

A. CALL TO ORDER

Ms. Poundstone called the meeting to order at 7:15 P.M. She briefly reviewed the hearing process for applications that come before the Zoning Board of Appeals.

B. PUBLIC HEARINGS

1. #13-11-19 DONAHUE 99 WESTPORT ROAD

Ms. Poundstone called the Hearing to order at 7:15 P.M., seated members Bufano, Comiskey, Fiteni, Lilly, and Poundstone, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest. Mr. Comiskey read the legal notice dated November 5, 2013 and details of the application and the hardship as described on the application.

Present were Margaret and Stephen Donahue, applicants.

Ms. Donahue briefly reviewed proposed site modifications, calling specific attention to the uniqueness of the subject lot. She cited its very long but narrow configuration as a topographical hardship, noting that it does not legally conform to today's requirement that it be able to accommodate a 150' x 150' square. She explained that the applicants' proposed plans are sensitive to flood plain issues, another constraint of the lot, and she noted that building /site coverages would be within the allowable percentages for the zone.

It was further noted that wetlands are an additional hardship on the lot and Ms. Donahue indicated that a wetlands application is in the process of being prepared as well.

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Ms. Poundstone asked if anyone wished to speak for or against the application.

There being no further comments, the public hearing was closed at 7:21 P.M.

C. APPLICATIONS READY FOR REVIEW AND ACTION

Ms. Poundstone called the Regular Meeting to order at 7:21 P.M., seated members Bufano, Comiskey, Fiteni, Lilly, and Poundstone, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest.

1. #13-11-19 DONAHUE 99 WESTPORT ROAD

The Board briefly discussed the application. It was the consensus of the Board that the application was fairly straight-forward and adequate hardship was proved.

MOTION was made by Mr. Lilly, seconded by Ms. Poundstone, and carried unanimously (5-0) to **grant** the variance of Section 29-5.D to allow a first and second story building addition with a 19 foot side yard setback in lieu of the required 30 feet; as per submitted “Zoning Location Survey” prepared by Ryan and Faulds, dated August 26, 2013, and “Proposed Additions & Alterations To: The Donahue Residence”, designed by Susan L. Thompson, LLC, dated October 18, 2013, pages 1 thru 7; on grounds that sufficient hardship was demonstrated given the property’s pre-existing nonconforming nature, the fact that the proposed addition does not extend any farther into the existing setback, the unique shape of the lot, and flood plain constraints.

2. 12-04-09 TOWN OF WILTON 131 SCHOOL ROAD

Present was Assistant Town Counsel Pat Sullivan, Cohen and Wolf.

Mr. Nerney briefed the Board on the history of the application, noting that the application for 70-foot lights at Middlebrook School, instead of the 30-foot maximum permitted, was granted in the Spring of 2012 by a vote of 4-1. He explained that the decision was appealed to the CT Superior Court and the judge ruled that there was not sufficient evidence to support findings required to grant such a variance. As a result, he stated that the application has been remanded back to the Board to clarify the record in that regard.

He distributed copies of Section 29-13.B.6 (“Finding”) of zoning regulations, explaining the four findings necessary for a variance to be granted by the ZBA. He cautioned the Board not to take any new testimony from the public this evening or attempt to enter any new evidence into the record that wasn’t already entered at the time of the application.

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He noted that two Board members who were seated on the original application are no longer on the Board (Peter Shiue and Steven Davidson), although the remaining three are present this evening (Sally Poundstone, Brian Lilly and Joe Fiteni).

Ms. Sullivan referenced the original discussion pertaining to the application, noting the Board's dual supporting reasons for granting the variance: 1) hardship and 2) reducing an existing nonconformity. She referenced the judge's opinion that the two reasons were sort of conflated, noting that the judge wants the Board to separate out the two supporting arguments. She recommended that the Board go through the four items referenced earlier as necessary findings in any variance decision and clarify the record. She noted that the Board could reference transcripts of the proceedings [which were previously provided to all current members], as well as any documents submitted as part of the original application to support its findings.

In response to a question from Ms. Poundstone as to whether the Town's Plan of Conservation and Development (POCD) could be cited in the course of the Board's discussion, Ms. Sullivan felt that reference to the POCD to support the Board's findings would be appropriate.

Mr. Lilly stated that he read through both transcripts, noting that the Board had discussed 1) the need to make the field safe and usable for the youngsters and 2) the fact that light spillage onto neighboring properties already exists and would be reduced by the proposed taller lights. Referencing current zoning regulations, he noted that the proposed lights would bring an existing, nonconforming situation (i.e. how far the 30-foot high lights travel onto neighboring properties) into conformity.

Mr. Lilly referenced Section 29-13.B.6.b, i.e. the required finding that the application of these zoning regulations "would deprive the applicant of the reasonable use of the lot or structure, that the granting of the variance is necessary for the reasonable use of the lot or structure" and that the variance is the "minimum adjustment necessary to accomplish this purpose". He noted that the minimum adjustment requested (i.e. increasing the lights from 30' to 70') brings this particular property back into conformity on the spillage aspect of the regulations.

Mr. Lilly next referenced Section 29-13.B.6.c, i.e. the required finding that the "granting of the variance shall be in harmony with the general purposes and intent of these Regulations and the Town's Plan of Development and shall not be injurious to the neighborhood or otherwise detrimental to the public health, safety and welfare". He stated that the proposal is in conformance with the Town's regulations, noting that this is not a new concept in Town. In that regard, he referenced variances for the higher light poles (greater than 70') that have been granted for other fields in Town (e.g. Lilly field, the varsity baseball field, varsity softball, football field, etc.) in order to keep light

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focused on the fields and not spill onto neighbors' properties. He noted that these lights will be equipped with timers and will have the ability to be shut down via phone deactivation. He noted that the proposed lights would bring this field, which already has lights, in conformity with the rest of the Town's fields and with the Town's plan of what a sports facility for our children should be.

Mr. Fiteni stated that the application had not referenced light spillage as a hardship in its application and therefore it should not be cited in the discussion. He also stated that the Regulations and the POCD do not talk about conformity of all athletic fields and light spillage and therefore it is disingenuous to include such references in this discussion.

Ms. Poundstone referenced paragraphs in the POCD that talk about safety and the fact that these athletic facilities are integral to the Town, its well-being, etc.; although she acknowledged that there was no specific reference to spillage per se.

Mr. Fiteni stated that the POCD talks about light pollution, not light spillage, noting that there is nothing about lit fields helping the Town.

Mr. Lilly stated that it would be different if the Board was discussing a previously unlit field, whereas Middlebrook field is already lit with 30-foot lights.

Mr. Fiteni stated that he did not see any hardship in the application as it relates to the necessary findings listed in Section 29-13.B.6 of the regulations.

Ms. Poundstone referenced page 24 of the POCD pertaining to "Infrastructure Goals", which states: "Ensure that community facilities are located in areas that meet the needs of residents and the Town and that facilities and utilities meet desired levels of service." She felt that the aforementioned goal, in particular that facilities meet desired levels of service, could be construed to apply to this situation.

She also referenced page 50, item #1, of the POCD, "Actions to Minimize Light and Noise Pollution" to support the granted variance, which states: "Encourage property owners to retrofit lighting to reduce light pollution."

Mr. Fiteni acknowledged the anticipated light spillage reduction, but not necessarily light pollution reduction. He felt that it could be argued that the application would exacerbate light pollution, not reduce it.

In response to a comment from Mr. Lilly that the proposed lights could be set on a timer, Mr. Fiteni stated that the existing lights could be placed on timers as well. He felt that the Board brought spillage into its deliberations, not the applicant.

Ms. Sullivan suggested that the Board "bullet-point" its findings this evening that address

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the four points noted in Section 29-13.B.6 of the regulations.

Mr. Nerney explained that it wasn't the intent of the judge to create a situation where there would be a different decision this evening. He noted that the purpose of the discussion this evening is to supplement the decision already reached with whatever findings the Board can find/enumerate to support that decision.

Mr. Lilly referenced lines 73-102 of the transcript of the Board discussion on April 16, 2012, noting that the essence of the argument was that there would be greater light spillage and glare for surrounding properties with the 30-foot high poles, which would be diminished by the use of visors, the improved optometric design and the higher mounting height of the 70' poles, which was the proposal of the subject application.

Mr. Nerney suggested that the Board consider if there is something unique about the property that sets it aside from other properties and that was not anticipated in the zoning regulations at time of drafting.

Ms. Poundstone felt that the uniqueness of the property (i.e. that it is school property and a playing field) is quite obvious. Mr. Comiskey noted that we currently have an intensification of use, and technology is now able to accomplish what is needed/wanted by the Town, essentially by utilizing a new and better lighting product.

Summarizing that point, Ms. Poundstone stated that the subject site is school property that is presently being used as a playing field, where existing 30-foot lights would be replaced by taller lights, incorporating technological improvements in lighting that would also improve the existing nonconformity because anticipated light spillage onto neighboring properties would be less than existing.

Mr. Lilly noted further the following points: 1) that the applicant had only requested 70-foot lights, not 90-foot lights; 2) the property is pre-existing nonconforming because it already has light spillage that does not conform with existing regulations and the proposed lights would actually bring the property into conformity; 3) currently, young players are looking directly into the lights and are therefore unable at present to utilize the facility in the proper manner, i.e. they are not being afforded reasonable use of the lot per Section 29-13.B.6.b of the regulations.

He felt that the variance essentially trades one nonconformity for another, i.e. the poles would be higher than what is currently permitted by regulations, but they would also make the field safer for the kids and reduce light spillage for the neighbors, making the proposal an obvious fix for a current light spillage problem that is pre-existing nonconforming.

Mr. Lilly also addressed the uniqueness of the property, noting that it is a 109+ acre

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parcel located in a residential 2-acre zoning district, and it is also a school property, all of which he felt qualifies the lot under Section 29-13.B.6.a in terms of uniqueness and special circumstances which do not apply to other parcels in the neighborhood, and which have not resulted from any willful act of the applicant.

Ms. Poundstone referenced prior testimony about collisions with existing light poles located within the play area of the field, and the fact that the higher poles would be moved farther away from the playing area, thus improving overall safety on the field.

Mr. Lilly referenced Section 29-13.B.6.d requiring a finding that the “granting of the variance is not based upon the nonconformity of neighboring lots, uses, buildings or structures nor upon a financial or economic hardship”. He felt that was clearly satisfied in this particular application, noting that it is not based on any nonconformity of neighboring lots or structures.

Ms. Poundstone addressed Section 29-13.B.6.b, noting that the applicant demonstrated that it would be deprived of reasonable use of the lot or structure, absent the proposed lighting change. Mr. Fiteni noted his disagreement with that interpretation since he felt it was based on the word of the lighting salesman who had a vested interest. Ms. Poundstone stated that there are two clear safety issues that would be mitigated or alleviated with the proposed higher lighting, including 1) the improvement of players’ vision when looking up into the lights and 2) the ability to place the light poles in closer proximity to the side lines, both of which would improve safety for the young players who, she noted, are a vital asset of the community.

At this point, Ms. Sullivan attempted to summarize some of the Board’s findings, pursuant to Section 29-13.B.6a, b, c & d of the regulations:

6.a – The property is a 109+ acre school site located in a residential two-acre zone and is therefore not typical of the surrounding neighborhood, thus supporting a finding of special circumstances warranting special treatment.

- The property is designed for use as a ball field.
- It is already a lighted field, which means that it is going to be used in a situation where lights are necessary.
- The proposed lights represent an improvement to both the users and surrounding property owners.

6.b – The findings demonstrate that, absent the proposed site change, the applicant would be denied reasonable use of the property, with safety of the young players found to be paramount in this regard, as follows:

- The field would be safer since the young players would no longer be looking up into the glare of the lower light poles.
- The increased proximity of the higher poles to the side lines would allow for

fewer collisions.

- Improvement in the spillage of the light from the 70-foot lights which are more efficient and direct/focus light onto the playing field better than the existing 30-foot lights.

6.c – The findings indicate that the application is in harmony with the POCD's goal of encouraging the reduction of light pollution (even though it was commented that light would still be visible from a distance) since there would be less light spillage onto surrounding properties, and the lighting would be better and safer on the property itself.

- Another finding related to the POCD and its stated goals is that the application ensures that community facilities are usable.

6.d – It is clear that the granting of the variance was not based on the nonconformity of any neighboring lot, use, building or structure nor upon a financial or economic hardship; it was merely to make the property safer and more usable for its current and continued use.

Ms. Sullivan encouraged the Board to make it clear on the record that there were two bases for granting the variance: 1) that hardship exists and 2) that a nonconformity was improved by the increased height of the lights which, under Connecticut law, is currently a basis for a variance even if a hardship did not exist.

Addressing Section 29-13.B.6.c, Mr. Lilly stated that the granting of the application will bring the subject field into conformity with the rest of the Town's fields and, while the POCD may not specifically state it, the actions of the Town in installing 70+ foot light poles on every other lit field in the Town demonstrates an implicit plan that such an approach is the safe and reasonable thing to do for the Town's children when they are playing on these fields. He noted further that one aspect of the public welfare is the reduction of light spillage.

Addressing Section 29-13.B.6.b and the issue of depriving the applicant of reasonable use of the lot, Mr. Lilly stated that there is a hardship right now for the applicant, i.e. not being able to use the field to a reasonable level of use for which it was designed. He stated the 70-foot pole variance would address that issue by allowing a safer and better use of the field, keeping in mind the specific purpose for which it was designed many years ago.

After a brief discussion as to the best way to memorialize the findings of the Board this evening, Ms. Sullivan suggested that perhaps some short sentences should be drafted for Section 29-13.B.6. a, b, c and d, with a further notation that a transcript is attached in support of the Board's findings. She suggested going through the four aforementioned points again.

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The Board determined that it would first address the issue of hardship, followed by the second reason for its decision, i.e. improvement of the existing nonconformity.

Ms. Poundstone referred to Section 29-13.B.6.a, noting that the special circumstance is that it is a school property of 109+ acres and the Board finds that the circumstances for which the variance is sought did not result from any willful act of the applicant subsequent to the date of adoption of the regulation from which the variance is sought. Mr. Lilly noted further that the school property of 109+ acres is unique to that particular lot and does not apply generally to other lots or structures in the neighborhood. Ms. Sullivan commented that this was sort of a size and use argument, to which Mr. Lilly agreed. Mr. Lilly felt that the current nonconforming use applies as well for the hardship portion.

For hardship in Section 29-13.B.6.b, Mr. Lilly stated that the regulations would deprive the applicant of reasonable use of the lot or structure, and that the granting of the variance was necessary for the reasonable use of the lot or structure, and that the variance granted by the ZBA was the minimum adjustment necessary to accomplish that purpose. He referenced the discussion as per the transcript of the inability of the players to see the ball and their having to look into the lights. Additionally, the fact that the applicant did not ask to raise the lights to 90', as is the case with some of the other Wilton fields, attests to the 70-foot height being the minimum adjustment necessary to accomplish its purpose for reasonable use of the lot/field.

Addressing Section 29-13.B.6.c, Ms. Poundstone stated that the Board finds that granting the subject variance is in harmony with the general purposes and intent of the regulations and the Town's POCD.

Addressing Section 29-13.B.6.d, Ms. Poundstone stated that the Board finds that granting of the variance was not based upon the nonconformity of neighboring lots, uses, buildings or structures nor was it based upon a financial or economic hardship.

The Board next addressed the second reason for its decision, i.e. improvement of an existing nonconformity.

Again addressing Section 29-13.B.6.a, Mr. Lilly stated that the points in this section would remain the same, i.e. a 109+ acre lot in an R-2A zone; the fact that it is school property, not a privately owned property; designed and used for many years for the purpose of athletic practice and playing; and the fact that replacing the 30' lights with 70' lights would be an improvement based on discussions previously referenced.

Addressing Section 29-13.B.6.b and with respect to the issue of improving the nonconformity, Mr. Lilly stated that the variance is necessary for the reasonable use of the

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lot/structure and it's the minimum adjustment necessary in that regard. Thus, the granting of the variance brings the current nonconformity into conformity and makes the field better/safer for the children.

Addressing Section 29-13.B.6.c and the Town's POCD, Mr. Lilly referenced the Town's actions on all other fields in Town which it has lit with 70' or higher lights in order to maintain lower light spillage for neighboring properties and better focus the light on the intended field. Additional findings noted were that the variance ensures that community facilities are maintained and meet the desired levels of service, and it serves to encourage the reduction of light pollution, as per the stated goals of the POCD.

Addressing Section 29-13.B.6.d, Mr. Lilly noted that the finding would be the same as stated in connection with the hardship portion of the analysis, i.e. the granting of the variance was not based on any nonconformity of neighboring lots, uses, buildings or structures nor upon any financial or economic hardship.

In response to a question from Mr. Nerney as to whether the Town is required to file its findings this evening with the court, Ms. Sullivan stated that the findings are a decision of the Board and she did not feel that the Town would be back to the judge unless the decision/findings of the Board were challenged. She suggested taking a vote supporting the conversation and findings that were put together this evening. She determined that the vote should include all five members as opposed to only the three who originally sat on the application last year.

MOTION was made by Mr. Lilly, seconded by Ms. Poundstone, and carried (4-1) that the findings as described on the record this evening represent the findings of the Board as to its reasons for granting the variance under application #12-04-09. Board members Bufano, Comiskey, Lilly and Poundstone voted in favor of the motion. Board member Fiteni opposed.

D. OTHER BUSINESS

1. Minutes – October 21, 2013

MOTION was made by Mr. Lilly, seconded by Ms. Bufano, and carried unanimously (5-0) to approve as drafted the minutes of October 21, 2013.

Ms. Poundstone noted that this evening's meeting was Joe Fiteni's, and also her last meeting on the Zoning Board of Appeals, as both would be moving onto Wilton's Planning and Zoning Commission effective December of this year. Ms. Poundstone recognized Mr. Fiteni's

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contributions to the Board and thanked him for his service.

E. ADJOURNMENT

MOTION was made by Mr. Lilly, seconded by Ms. Bufano, and carried unanimously (5-0) to adjourn at 8:25 P.M.

Respectfully submitted,

Lorraine Russo
Recording Secretary