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

ZONING BOARD OF APPEALS
REGULAR MEETING
MARCH 15, 2010
7:15 P.M.
TOWN HALL ANNEX - MEETING ROOM A

PRESENT: Barbara Frees,Vice-Chairman; Lori Bufano, Secretary; John Gardiner; John Comiskey; Peter Shiue, Alternate; Peter Bell, Alternate; Steven Davidson, Alternate

ABSENT: Miriam Sayegh (notified intended absence)

A. CALL TO ORDER

Ms. Frees, acting as Chairwoman in the absence of Ms. Sayegh, called the meeting to order at 7:18 P.M. She briefly reviewed the hearing process for applications that come before the Zoning Board of Appeals and welcomed new Board Member Steven Davidson.

B. PUBLIC HEARINGS

1. #10-02-03 FERRERO 34 SADDLE RIDGE ROAD

Ms. Frees called the Hearing to order at 7:20 P.M., seated members Bufano, Comiskey, Frees, Gardiner, and Shiue, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest. Ms. Bufano read the legal notice dated February 2, 2010 and details of the application and the hardship as described on the application.

Present were Dennis Peters, on behalf of the applicant; and Craig Ferrero, homeowner.

Mr. Peters briefly reviewed the application, noting that the Ferreros applied for, and received, a variance for a deck in 2006 with a 40-foot rear yard setback in lieu of the permitted 50 feet, since a previously granted 40-foot setback in the same area had been granted for a kitchen addition only. He explained that although the applicant's surveyor had field-staked the setback line and the deck was constructed based on this information, the Ferreros were unable to finalize their zoning compliance because the surveyor was unresponsive to the Ferrero's request on many occasions for a required as-built plan.

When the services of another surveyor were engaged, it was ultimately determined that the deck was built 13 inches closer to the property line than the 40 feet allowable, necessitating the applicant's request to this Board.

Mr. Ferrero noted that the 40+/- foot length of deck that is currently not in conformance ranges from 6 inches into the setback line in the corner area to 13 inches into the setback at its widest point. He explained that the applicants made approximately 20 phone calls to the original survey over a period of about two years, which information was documented in their zoning file by the Zoning Enforcement Officer at that time.

Mr. Peters felt that had the applicant come to the Board originally for a variance of 38.9 feet instead of the requested 40 feet, the Board would probably have been inclined to grant it, given the placement of the residence in the far corner of the lot as well as the extensive wetlands that are located on the lot.

Mr. Ferrero explained further that there is no residence to the west or north of the residence and he affirmed that the error was in no way intentional.

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

There being no further comments, the public hearing was closed at 7:37 P.M.

2. #10-02-04 BAUER 31 DEEPWOOD ROAD

Ms. Frees called the Hearing to order at 7:38 P.M., seated members Bell, Bufano, Comiskey, Frees, and Gardiner, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest. Ms. Bufano read the legal notice dated February 2, 2010 and details of the application and the hardship as described on the application.

Present was Scott Duffield, designer, on behalf of the applicant.

Mr. Duffield briefly reviewed details of the application, noting that when the original house was built in 1959 the front yard setback was 40 feet, but was changed in 1971 to 50 feet, thus making the house legally nonconforming. He noted that the proposed addition, which will create a laundry room, would come out flush with the line of the existing house and would not encroach any further into the front yard setback than is presently the case.

In response to questions from the Board, Mr. Duffield stated that 1) the encroaching area represents approximately 60 square feet; 2) there is a large amount of wetlands on the 2.7-acre site; 3) there are further constraints on the parcel due to more restrictive cul-de-sac zoning regulations; and 4) the gable was proposed in order to improve the odd shape of

the roof line and would extend to the existing roof height of 18 feet.

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

John Koster, 118 W. 88th Street, NYC, present in the audience, referenced case law indicating that minor changes to a roof, even if located within a setback, do not require a variance.

There being no further comments, the public hearing was closed at 7:52 P.M.

3. #10-03-05 COSLICK 232 NEW CANAAN ROAD

Ms. Frees called the Hearing to order at 7:53 P.M., seated members Bufano, Comiskey, Frees, Gardiner, and Shiue, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest. Ms. Bufano read the legal notice dated February 2, 2010 and details of the application and the hardship as described on the application.

Present was John Koster, architect, on behalf of the applicant; and Steven Coslick, applicant.

Mr. Koster explained that the 2-lot subdivision was approved in 1965 and the currently nonconforming structure was in conformance when it was originally built. He noted the following hardships: 1) the original side yard setback was 20 feet, where it is now 30 feet; 2) site coverage limits were adopted in 1994, making the property nonconforming; and 3) slope regulations, also adopted in 1994, further constrain the property.

Mr. Koster explained further that the house cannot be expanded without creating additional violations, referring in particular to the fact that the existing driveway, which serves two other neighboring parcels, consumes 9.3% of the 15% permitted site coverage. He noted that the pre-existing location of the house in the far northwest corner of the lot is a hardship, probably precipitated by a desire to move the structure as far away as possible from the shared driveways. He also explained that expanding into the back area would encounter a slope restriction and result in an even greater encroachment. He stated that the proposed encroachments would be the minimum necessary to accomplish the goal and he felt that the hardship was not self-imposed due to the evolution of zoning regulations since the house was first constructed.

In response to questions from the Board, Mr. Coslick stated that 1) the existing 4-bedroom house consists of 2,147 square feet; and 2) the applicants would prefer a slightly larger porch since the existing chimney cuts into some of the living area of the home.

Mr. Koster explained further that the additional 1’6” requested for the porch area would

barely be discernible to surrounding neighbors. He speculated that the builder, in proposing this small expansion of the existing footprint, probably desires not to be working in an area recently disturbed by the demolition of the existing sunroom.

Ms. Frees referred for the record to "Notes from Neighbors" on page 23 of the application package, noting that there were four emails submitted by abutting neighbors in favor of the application.

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

There being no further comments, the public hearing was closed at 8:22 P.M.

4. #10-03-06 BROCK 42 CHARTER OAK DRIVE

Ms. Frees called the Hearing to order at 8:22 P.M., seated members Bell, Bufano, Comiskey, Frees, and Gardiner, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest. Ms. Bufano read the legal notice dated February 2, 2010 and details of the application and the hardship as described on the application.

Present was Roger Valkenburgh, attorney, Gregory and Adams; and Jennifer Hustas, architect; on behalf of the applicant.

Mr. Valkenburgh reviewed a brief history of the Brock's ownership of the parcel, noting that they purchased the property in 1983 and, in spite of some grave health issues and the acquisition of other properties over the intervening years, continue to hold onto this parcel (which they consider to be their primary residence) and now wish to construct an addition to accommodate extended visits from their grown children and grandchildren. He referred to property constraints/hardships, noting a pond in the northeast area as well as a stream running north to south on the property; rock ledge throughout the parcel; a septic system location that inhibits construction; and several very large trees located in the southwest section of the property.

Referring to the property constraints cited above, Ms. Hustas stated that the proposed location is the only area where the addition can be constructed without running into even further issues. In response to questions from the Board, she indicated that the existing 4-bedroom house is 3500+ square feet and only a very small corner of the proposed addition would intrude into the front yard setback. Mr. Valkenburgh explained further that the addition itself would be built upon stone piers over the existing driveway and the actual footprint of intrusion into the setback would be approximately a 15 square-foot triangle.

Mr. Comiskey questioned the existence/visibility of ledge on the property. Mr.

Valkenburgh stated that the builder confirmed ledge throughout the parcel and also indicated that a possible alternative location would be too close to the septic system. He noted further that when a survey was recently conducted, site coverage was determined to be too high (14.5% existing versus 12% permitted) due to 2500 square feet of paved driveway under an existing gravel surface. Mr. Valkenburgh stated that when this information first surfaced, he had advised his clients to bulldoze the paved driveway area to bring site coverage into compliance with existing regulations rather than come before the Board to request an additional variance related to site coverage. He noted that the proposed plans would bring the property into greater conformity with zoning regulations.

Mr. Bell felt that the two issues (the request for a setback variance and bringing site coverage into compliance) are really separate and distinct.

Ms. Bufano read into the record a letter dated March 13, 2010 from Michael and Catherine Chung to Zoning Board of Appeals and a letter dated March 1, 2010 from Brian and Christine McGovern to Roger Valkenburgh – both of which were in support of the application.

The question arose as to whether the site coverage violation should be mentioned in any ZBA ruling and/or whether an approval, if granted, should be contingent upon correction of said violation. The Board also questioned whether the condition would be corrected if the variance was denied by the Board.

Mr. Valkenburgh stated that if there is any way that an addition could be fashioned, the coverage issue would be dealt with at that time. He felt that if the variance were denied and the applicants were unable to develop an alternative plan, then they would probably not rush to correct the existing situation.

Mr. Davidson concurred with Mr. Bell's concerns that the two issues should be considered separately. He expressed particular concern with the appearance of a sort of "quid pro quo" situation, especially from a precedent-setting perspective, and did not feel that a variance should be granted conditional in any way upon the correction of any self-created violation on a property.

Mr. Valkenburgh assured the Board that the applicant never had in its mind any type of "quid pro quo" situation, noting that the coverage issue dates back 9-10 years. He emphasized the aforementioned hardships pertaining to the land itself, noting further that the proposed encroachment is very modest and, if denied, would make the entire addition virtually undoable since it would require a stone pier to be located between the two garage bays, effectively resulting in the loss of one or both of the garage bays.

Mr. Gardiner noted that the coverage issue could become even a bit more complicated since the Inland Wetlands Department could potentially deny the proposed driveway

demolition due to the impact that such an activity might have on wetland soils and wildlife.

The Board considered the consequences of a possible Inland Wetlands denial and determined that even if this Board were to approve the requested variance, if Inland Wetlands were to deny the applicant's request to demolish the existing driveway, then this ZBA application would essentially be null and void.

The applicant considered continuing the hearing so that this issue could be explored/resolved with Inland Wetlands, but ultimately requested that the Board close the hearing this evening and rule on the application, with the understanding that the applicant would deal with the consequences of that ruling in either case.

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

There being no further comments, the public hearing was closed at 9:25 P.M.

The Board took a short break and returned at 9:30 P.M.

C. APPLICATIONS READY FOR REVIEW AND ACTION

Ms. Frees called the Regular Meeting to order at 9:30 P.M., seated members Bufano, Comiskey, Frees, Gardiner, and Shiue, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest.

1. #10-02-03 FERRERO 34 SADDLE RIDGE ROAD

The Board briefly discussed the application

It was the general consensus of the Board that the encroachment was not intentional and is not easily detectable to the naked eye, and it felt that the previous variance approval could just as easily have been granted for 39 feet instead of 40 feet. The Board further determined that it had no objection to the variance as proposed, given the de minimus nature of the encroachment, the extent of wetlands on the site, and the fact that no neighbors objected.

MOTION was made by Mr. Gardiner, seconded by Mr. Comiskey, and carried unanimously (5-0) to **grant** the variance of Section 29-5.D for a deck with a 38.9-foot rear setback in lieu of the required 50 feet on grounds that sufficient hardship was demonstrated due to the existence of a great deal of wetlands on the property and the pre-existing nonconforming nature of the structure.

2. #10-02-04 BAUER 31 DEEPWOOD ROAD

Mr. Shiue was unseated. Mr. Bell was reseated.

The Board briefly discussed the application.

It was the general consensus of the Board that hardship was proved, given the pre-existing, nonconforming nature of the property and the peculiarity of the lot whereby the actual front of the house is considered to be the side yard. It was further noted that the variance request was very minor.

MOTION was made by Mr. Bell, seconded by Ms. Bufano, and carried unanimously (5-0) to **grant** a variance of Section 29-5.D for a 42.3-foot front yard setback in lieu of the required 50 feet, on grounds that sufficient hardship was demonstrated due to the legal nonconforming nature of the property.

3. #10-03-05 COSLICK 232 NEW CANAAN ROAD

Mr. Bell was unseated. Mr. Shiue was reseated.

The Board discussed the application.

Board members Comiskey and Gardiner both expressed some concern with the additional 1'6" add-on which didn't seem to be a necessity, although they acknowledged that it would be a rather small triangle of intrusion overall and it seemed to be the only place that the applicants could expand out.

Ms. Frees noted that the existing house is not large and the incursion would be quite minimal. She felt that a hardship was supported by the fact that the lot was created prior to the adoption of coverage regulations. Board members Bufano and Shiue concurred.

Mr. Comiskey felt that there was nothing the applicants could do to decrease coverage, noting that while the shared driveway access located on their property is paved, their own driveway consists entirely of gravel.

MOTION was made by Ms. Bufano, seconded by Mr. Gardiner, and carried unanimously (5-0) to **grant** a variance of Section 29-5.D. for a side yard setback of 20' in lieu of the permitted 30'; for raising the height of an existing nonconforming roof from 14'5" to 15'5"; and for site coverage of 18% in lieu of the permitted 15%, on grounds that sufficient hardship was demonstrated due to the topography of the lot, the pre-existing paved driveways and a previous variance.

4. #10-03-06 BROCK 42 CHARTER OAK DRIVE

Mr. Shiue was unseated. Mr. Bell was reseated.

The Board discussed details of the application.

Mr. Comiskey stated that he did not have a problem with the application since coverage would not be increasing and the encroachment would be a very small number of square feet, not much larger than in any of the foregoing applications. He felt that approval would allow the application to go forward and would give the Inland Wetlands Commission the opportunity to hand down its ruling on the issue of the driveway.

Mr. Gardiner did not have a problem with the minimal addition, although he questioned whether adequate hardship was proved. He felt that the applicant seemed to be acting in good faith and he agreed that Inland Wetlands would have to deal with the other aspect of the application, i.e. demolition of the paved driveway area.

Ms. Frees felt that it was a reasonable use and that it was a very small portion/corner of the proposed addition overall that would be encroaching into the setback. She noted that if Inland Wetlands denies the application to remove the driveway, the applicant would have to come back before the ZBA. She noted further that by denying the applicants that tiny corner portion of their application, the ZBA would in essence be denying them use of the rest of their proposal. Ms. Bufano concurred.

Mr. Bell expressed concern as to whether hardship was proved by the applicant, noting that ledge was not obvious on the site nor did he feel that the issue of trees necessarily represented a hardship. He was not comfortable with the perception of a "quid pro quo" whereby embedded in the approval is a requirement to reduce site coverage in another area of the property that is currently in violation of coverage regulations. He felt that the two were separate and distinct matters and should be treated as such.

Mr. Gardiner noted that there would be a hardship since removal of the small encroaching portion would negatively impact the garage doors and garage access.

Mr. Davidson felt that since the Board was put on notice regarding the existing coverage violation, an argument could be made that the Board granted the application knowing that there was an existing violation on the property. He felt that the driveway situation should be rectified prior to considering/granting any variance application.

MOTION was made by Mr. Gardiner, seconded by Mr. Comiskey, and carried (4-1) to **grant** a variance of Section 29-5.D. for a 44-foot front yard setback in lieu of the required 50', as presented in writing and verbally, on grounds that sufficient

hardship was demonstrated in that no additional site coverage is proposed, the addition is mostly permitted by regulations and only a small portion will be in the setback and eliminating it would cause the second garage bay to be inaccessible which would not make sense for a building of this size/type, in addition to the presence of substantial wetlands and watercourses on the subject property. Mr. Bell opposed for reasons previously stated.

D. OTHER BUSINESS

1. Minutes – January 19, 2010

MOTION was made by Ms. Bufano, seconded by Ms. Frees, and carried unanimously (6-0) to approve the minutes of January 19, 2010. Mr. Davidson abstained.

2. Election of Officers

Continued since Chairwoman Sayegh was not present.

E. ADJOURNMENT

MOTION was made by Mr. Bell, seconded by Mr. Comiskey, and carried unanimously (7-0) to adjourn at 10:25 P.M.

Respectfully submitted,

Lorraine Russo
Recording Secretary