

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

**ZONING BOARD OF APPEALS
REGULAR MEETING
APRIL 19, 2010
7:15 P.M.
TOWN HALL ANNEX - MEETING ROOM A**

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

ABSENT: Steven Davidson (notified intended absence)

A. CALL TO ORDER

Ms. Sayegh called the meeting to order at 7:20 P.M. She briefly reviewed the hearing and appeals process for applications that come before the Zoning Board of Appeals.

B. PUBLIC HEARINGS

1. #10-04-07 REISS (Appeal) 178 MATHER STREET

Ms. Sayegh called the Hearing to order at 7:20 P.M., seated members Bufano, Comiskey, Frees, Gardiner, and Sayegh, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest. Ms. Bufano read into the record the legal notice dated April 6, 2010, the Cease and Desist Order dated February 11, 2010, and details of the appeals application.

Ms. Sayegh noted for the record that although a newspaper article appeared in the editorial section of the Wilton Bulletin, Board members remain objective and have not pre-judged the case.

Present was Andrew Reiss, the appellant.

ZBA Minutes – April 19, 2010 - Page 2

Mr. Reiss distributed handouts to the Board entitled “Response to ‘Cease and Desist’ Order, April 19, 2020 [sic]”. He read the aforementioned document into the record, along with an attached “Public Hearing Notice” and article titled “Landscape turns trash into treasures” by Mark Ginocchio.

Mr. Reiss explained that the items in question on the property represent 3 years of continuous work on his part to explore different means of conserving energy, water and materials in landscaping. He felt that one of the items along a portion of his property is, in fact, a fence and not a structure, and he requested permission to continue construction of said “fence”.

He proceeded to give the Board a demonstration of his construction process on a much smaller scale, utilizing a wooden picture frame, pipe, wire hanger, wires, and artificial greenery. He explained that he was constructing the “fence” to keep his dog away from neighboring properties and to prevent deer from entering his garden, as well as to provide privacy and screening for his property.

When questioned by the Board, he explained that the “fence” (which was referenced by various names throughout the hearing including “victim wall”, “peace wall/fence”, and “frustration wall”) extends approximately 60 to 80 feet along the right side of his property and partly around the back, and as foliage begins to grow and fill in, the “fence” would become a “living/growing wall/fence” and the objectionable materials would no longer be visible. He noted that when he moved into the property about 3 years ago, he brought materials with him to build and renovate the whole landscape. He referenced, in particular, one item (a tarp on poles) which he had constructed and which he felt was temporary but had prompted numerous neighbor complaints. He stated that he ultimately complied with the Zoning Enforcement Officer’s (ZEO) order to remove that particular construction (one of the items listed on the February 11, 2010 Cease and Desist Order) although he felt that it was a form of art/self-expression. He stated that he was not storing materials on the site but rather was using said materials to build his “fence” and therefore the area could not be termed a “junk yard”.

He also noted for the record that he lost \$6000 in connection with a landscaping business that he runs. He explained that as a result of these ongoing issues with the Town and his neighbors, he was unable to meet a promised timeframe for one of his customer and, as a result, the customer refused to pay him.

In response to questions from the Board, Mr. Reiss stated that the height of the “fence” varies, noting that it extends at some points up to 12 feet high with openings for planned vegetation that will eventually grow up to the post heights.

Present for the Town was Timothy Bunting, Zoning Enforcement Officer.

ZBA Minutes – April 19, 2010 - Page 3

Mr. Bunting distributed handouts for Board review, including zoning regulation definitions, relevant regulations and color photos of the subject property, and he posted photos of the items in question. He briefly reviewed a history of events leading to issuance of the Cease and Desist Order. He reviewed Wilton's zoning definition of "structure", calling particular attention to the phrase "including but not limited to", noting that one of the items following that phrase and therefore included in the definition of structure is "fences or walls more than six feet in height, other than retaining walls." He referred to a photo of an item that was attached to an existing nonconforming garage, which he considered to be an addition to a nonconforming structure and which the appellant eventually took down.

Mr. Bunting referred to additional photos of what the appellant referred to as a "peace wall/fence", consisting of various recycled/discarded items such as frames, pipes, an ironing board, etc., and which Mr. Bunting considered to be a structure built without permits. He noted that although the appellant claimed that the "fence" was built to contain his dog and prevent deer from entering the property, there are many openings in the alleged "fence" that are large enough for a person to walk through.

Mr. Bunting next referred to photos of additional items which he considered to be "structures", including one with a pitch fork; another that stands about 15 feet high located in the front yard setback with orange arm-like protrusions which rotates in the wind (subsequently referred to as a "mobile"); and another located in the rear of the property which he noted may or may not be in conformance with setbacks. He explained that since an accurate survey of the property was not available, he was forced to estimate distances to the property lines.

In response to questions from the Board, Mr. Bunting explained that the Town regulates air conditioner units, propane tanks, pool equipment, etc. and he noted that the subject situation is no different. He stated that anyone has a right to build as long as it is done properly, with permits and in compliance with all setbacks and zoning regulations. He noted that the appellant could obtain a survey, apply for permits for the alleged "structures" and move items if necessary to be in conformance with regulations. He referred to Section 29-12.D.1 of zoning regulations requiring zoning permits for all buildings/structures; Sections 29-12.D.2.a & b setting forth the requirements for a zoning permit application; and Section 29-5.D. indicating the setback requirements in the R-2A zone. He explained that one of the reasons for setback limitations is for safety purposes since items built too close to the property line could blow onto a neighbor's property. Although he acknowledged that the appellant's property is only .75 acre+/-, he explained that it still has to comply with two-acre setback requirements since it is located in a two-acre zone.

Mr. Bunting addressed certain statements made by the appellant. He noted that the appellant is not allowed to operate a commercial business on his property, referencing a

ZBA Minutes – April 19, 2010 - Page 4

statement made earlier in the evening by the appellant regarding a landscaping business that he is operating. Mr. Bunting referred to Section 29-5.C of zoning regulations, noting that if the appellant is building structures and/or storing items outside in connection with his business, he could be in violation of home occupation regulations requiring that “there shall be no outside storage and no display, advertising or other visible evidence of such use outside the building in which it is located”. He also noted that the alleged “peace wall” is in excess of 10-12 feet in height in certain areas.

In response to questions from the Board, Mr. Bunting explained that even if structures meet setback restrictions, the Town requires that a permit be sought by the applicant.

The Board raised some issues/questions for the Zoning Enforcement Officer’s response. A question was raised as to whether zoning regulations distinguish between art work and structures. The Board referenced Section 29-4.E.5, noting that fences/walls are permitted by regulation as long as the wall/fence area which exceeds 6 feet in height is not less than 75% open construction. Also, in connection with the appellant’s claim that one of the items in question could be termed a “living fence”, the Board referenced Section 29-2.B.52 (the definition of “fence”), noting that it allows for “any material or combination of materials erected to enclose, separate, screen or buffer areas of land”.

Mr. Bunting responded to the Board’s comments/questions. He stated that the regulations do not specifically address the issue of art work. With respect to the issue of allowing 75% open construction above a fence’s 6-foot mark, he felt that the item in question did not fit zoning regulation’s definition of a fence. He also noted that although there is no specific definition in the zoning regulations for a “living fence”, since the item in question does not consist of all natural materials and since those non-natural materials extend well above the 6-foot mark in many places, it would not in his opinion fit the meaning/intent of a “living fence”. He noted further that, in his opinion, the alleged “fence” does not serve as a screen or buffer, nor does it prevent ingress/egress of animals as alleged by the appellant due to the many openings/holes within the construction itself.

Ms. Frees noted use of the word “separate” in the regulation’s definition of “fence” and she questioned whether it could be interpreted to merely mean delineate, as opposed to necessarily physically keeping things in/out.

The Board referenced the item previously referred to as a “mobile” and questioned whether its attachment to a tree fits the regulation’s definition of “structure” (Section 29-2.B.154) which requires “attachment to something having location on the ground or water”. The question of whether a sculpture would require a zoning permit was also raised. In response, Mr. Bunting noted that tree houses, attached to and constructed within a tree, do require permits since a tree is attached to the ground, and he indicated that a sculpture would also require a permit as it, too, is considered a structure.

ZBA Minutes – April 19, 2010 - Page 5

Mr. Nerney clarified that the Board needs to determine if the items in question would be considered “structures” and if so, per zoning regulations, the appellant would have been required to seek the proper permits.

Ms. Sayegh asked whether anyone wished to speak for or against the application.

The question arose as to whether residents living more than 500 feet from the subject site would be permitted to speak.

The Board took a short break at 9:10 P.M. to clarify the matter.
At 9:15 P.M. the Board returned from break.

Mr. Nerney indicated that after telephone consultation with Town Counsel Pat Sullivan, he was advised that it is discretionary on the part of the Board as to whether residents living beyond the 500 foot mark may speak. Residency within 500 feet automatically entitles persons to speak before the Board. Ms. Sayegh exercised her discretion to permit those persons living beyond the 500 foot mark to speak, noting that most of them live relatively close to the subject parcel.

Marianne Ross, 195 Mather Street, who lives diagonally across the street from the subject parcel, expressed opposition to the appeal. She noted that these properties already live with the stigma of being in close proximity to the transfer station and as a result they must work particularly hard to preserve their property values. She felt that the surrounding neighbors have been quite reasonable over the course of the past 3 years in giving the appellant time to complete his project. She was upset that the normally harmonious atmosphere of the neighborhood has been disrupted.

Ann McDowell, 186 Mather Street, agreed, noting that up until the recent couple of years, it was always a very pleasant neighborhood, which has now been replaced with tension and unpleasantness.

Madeline Avnayim, 172 Mather Street, distributed handouts to the Board and she exhibited a photo of what she referred to as the “victim” wall. She read her 2-page statement to the Board, noting in particular that these issues have been going on since 2007/2008. She called particular attention to the fact that the appellant is running a business from his home, noting that his commercial vehicle continues to be parked on the property and a business sign continues to be exhibited, both of which are in violation of zoning regulations. She then read a letter written by Mr. Reiss that was distributed to neighbors’ mailboxes.

Diane Rhode, 7 Mather Street, complained of a dump truck that is frequently left parked in the middle of the road and she felt that the amount of what she termed as “junk” qualifies the area to be cited as a “junk yard”. She stated that this “art” doesn’t belong in

a residential neighborhood.

Ms. Sayegh asked whether Mr. Reiss would like to offer a rebuttal to the information presented by Mr. Bunting. Mr. Reiss stated that he had no further response. Mr. Bunting therefore had no subsequent rebuttal.

Ms. Bufano read a letter of opposition into the record dated April 17, 2010 from Maryann Lombardi.

Ms. Avnayim added that since some of the alleged “structures” are taller than a one-family house, permits should be required.

Ms. Sayegh asked whether Mr. Reiss wished to rebut after the letter of opposition from Ms. Lombardi was read into the record.

Mr. Reiss addressed the issue of ground water contamination referenced in the aforementioned letter of opposition. He noted that the ground water in the area was already contaminated by the Town in connection with the nearby transfer station and that is why there is city water along that street. He also apologized to everyone involved in this matter, noting that he was not the only one at fault for the misunderstanding that has occurred.

Ms. Sayegh then closed the public hearing at 9:35 P.M.

2. #10-04-08 YEAGER 134 RIDGEFIELD ROAD

Ms. Sayegh called the Hearing to order at 9:39 P.M., seated members Bell, Bufano, Frees, Gardiner, and Shiue, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest. Ms. Bufano read the legal notice dated April 6, 2009 and details of the application and the hardship as described on the application. She also referenced a letter dated March 16, 2010 from Aldo Insurance Agency LLC to Michael and Diana Yeager, with attached photo and “Hazards/Conditions” addendum.

Present were Michael Yeager, applicant; and Hank Rosenbaum, architect.

Mr. Yeager explained that since 1961, when their home was built, rear zoning setbacks had been revised from 40 feet to 50 feet and, as a result, their home had now become nonconforming. He explained that the proposed roof work and small addition require a variance now, where none would have been required previously. He stated that the existing roof system needs to be replaced since its low pitch has resulted in rotting, mold, and mildew, and its insulation is substantially below current code. He noted that they

would also like to replace the existing greenhouse, which is currently unsafe, and replace it with a slightly larger footprint extending an additional 2.5 feet so as to align the roofs to the existing structure. He cited topographical constraints including the location of septic and well systems, as well as wetlands (the Comstock Brook and flood plain located directly behind the house).

Mr. Rosenbaum explained that one of the reasons for the proposed greenhouse extension is that they would like to sit the proposed extension on an existing foundation wall. He noted that there would be no additional encroachments to the rear of the property and that the current proposal would be in line with the existing intrusion, representing only a 0.6-foot further encroachment.

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

There being no further comments, the public hearing was closed at 9:55 P.M.

C. APPLICATIONS READY FOR REVIEW AND ACTION

Ms. Sayegh called the Regular Meeting to order at 9:55 P.M., seated members Bell, Bufano, Frees, Gardiner, and Shiue, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest.

Ms. Sayegh scrambled the agenda to review application #10-04-08 first.

2. #10-04-08 YEAGER 134 RIDGEFIELD ROAD

The Board briefly discussed the application. It was the general consensus of the Board that the proposed work is clearly necessary; the proposed encroachment is minimal; and the property is topographically constrained.

MOTION was made by Mr. Gardiner, seconded by Mr. Bell, and carried unanimously (5-0) to **grant** the variance to allow a new roof construction and building addition with a 39.1-foot rear yard setback in lieu of the required 50 feet, subject to adherence with the plans as submitted, on grounds that sufficient hardship was demonstrated due to the extreme prevalence of wetlands and FEMA regulations.

1. #10-04-07 REISS (Appeal) 178 MATHER STREET

Mr. Bell and Mr. Shiue were unseated. Mr. Comiskey and Ms. Sayegh were reseated.

The Board discussed details of the subject appeal. They categorized the issues into four separate items which they termed 1) a rear yard item on top of a rock; 2) an arbor with pitch fork; 3) a mobile; and 4) an alleged “peace fence”.

Mr. Comiskey felt that the applicant should have filed for permits or at least questioned whether permits were, in fact, needed. Upon much consideration, he ultimately felt that the heretofore referenced “mobile” was not a structure. He had mixed feelings about the other three items, noting that he initially felt they were not structures, but based on the ZEO’s arguments he might reluctantly concede that they are structures.

Mr. Gardiner felt that the alleged “peace fence” seemed to satisfy the definition of a fence but he was conflicted with respect to the other three items. He initially thought that the mobile would not be considered a structure since all examples of structures listed under Section 29-2.B.154 of the regulations are non-organic. However, the ZEO’s testimony that tree houses are considered structures requiring permits and constrained by setback regulations, persuaded him to consider the mobile as a structure. He felt that the other two items (the rear yard item on top of a rock and an arbor with pitch fork) were clearly structures.

Ms. Bufano agreed with Mr. Gardiner regarding the categorization of three of the items as structures. However, she was conflicted with respect to the alleged “fence” due to the fact that a fence greater than 6 feet in height appeared to be categorized as a structure in Section 29-2.B.154 of the regulations, yet seemed to be permitted as a “fence” under Section 29-4.E.5. She felt that under Section 29-2.B.154, the alleged “fence” would be considered a structure.

Ms. Sayegh reviewed the definitions of structures and fences in the zoning regulations. She felt comfortable categorizing the aforementioned three items as structures but she thought that the alleged “fence” could be categorized as a “living fence”, although she acknowledged that the regulations contained no actual definition of a “living fence”.

Mr. Bell noted that the appellant is in the landscaping business and therefore should have known about the need to seek permits or variances, if necessary. He felt that all four items are structures and therefore require permits. It was his opinion that the alleged “fence” is a structure because he felt that Section 29-2.B.154 would supercede Section 29-4.E.5 of the regulations in that regard. He did not feel that the “living fence” argument was applicable because it is not a “living fence” today.

Ms. Sayegh felt that the Board did need to account for Section 29-4.E.5 of the regulations

ZBA Minutes – April 19, 2010 - Page 9

as well (the 75% rule for fences greater than 6 feet tall), and therefore she believed the alleged “fence” complied with that section and thus was not a structure.

Mr. Nerney reminded the Board that it needed to first determine whether the items in question are structures, in which case permits should have been sought by the appellant. He noted that it would have been at that time (i.e. at the time of permit application) that compliance with respect to coverages, setbacks, height restrictions, etc. would have been required to be demonstrated.

Mr. Comiskey was somewhat conflicted. Although he felt that the alleged “fence” was not a structure and therefore did not require a permit, he recalled that the Board had taken quality of life issues into consideration in certain past applications, referring in particular to the many issues raised by the appellant’s surrounding neighbors. He stated that if he upheld the ZEO’s decision, he would prefer to know that the appellant would have another avenue to pursue (e.g. to file/apply to another Board for consideration).

The Board decided to vote on each of the four items separately.

MOTION was made by Ms. Frees, seconded by Ms. Bufano, and carried unanimously (5-0) to **uphold** the ZEO’s decision pertaining to the item referred to as “rear yard item on top of or behind a rock”, on grounds that the item is a structure and was built without obtaining a permit.

MOTION was made by Ms. Bufano, seconded by Ms. Frees, and carried unanimously (5-0) to **uphold** the ZEO’s decision pertaining to the item referred to as an “arbor with pitch fork”, on grounds that the item is a structure and was built without obtaining a permit.

MOTION was made by Ms. Frees, seconded by Mr. Gardiner, and carried (4-1) to **uphold** the ZEO’s decision pertaining to the item referred to as a “mobile”, on grounds that the item is a structure and was built without obtaining a permit. Mr. Comiskey opposed.

MOTION was made by Mr. Gardiner, seconded by Mr. Comiskey, and carried (4-1) to **overturn** the ZEO’s decision pertaining to the item referred to as an “alleged peace fence”, on grounds that the item is a fence and not a structure, and therefore does not require a permit. Ms. Bufano opposed

D. OTHER BUSINESS

1. Minutes – March 15, 2010

MOTION was made by Mr. Gardiner, seconded by Ms. Bufano, and carried (6-0-1) to approve the minutes of March 15, 2010. Ms. Sayegh abstained.

2. Election of Officers

Ms. Sayegh noted for the record that she would be happy to serve another term as Chairman of the Zoning Board of Appeals.

MOTION was made by Ms. Sayegh, seconded by Mr. Comiskey, and carried (5-0) to nominate Ms. Bufano as Secretary of the Zoning Board of Appeals.

The nomination carried and Ms. Bufano was elected Secretary.

MOTION was made by Mr. Gardiner, seconded by Ms. Bufano, and carried (5-0) to nominate Ms. Frees as Vice-Chairman of the Zoning Board of Appeals.

The nomination carried and Ms. Frees was elected Vice-Chairman.

MOTION was made by Ms. Frees, seconded by Mr. Comiskey, and carried (5-0) to nominate Ms. Sayegh as Chairman of the Zoning Board of Appeals.

The nomination carried and Ms. Sayegh was elected Chairman.

E. ADJOURNMENT

MOTION was made by Mr. Comiskey, seconded by Ms. Frees, and carried unanimously (7-0) to adjourn at 11:11 P.M.

Respectfully submitted,

Lorraine Russo
Recording Secretary