

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

**ZONING BOARD OF APPEALS
REGULAR MEETING
SEPTEMBER 20, 2010
7:15 P.M.
TOWN HALL ANNEX - MEETING ROOM A**

PRESENT: Miriam Sayegh, Chairwoman; Barbara Frees, Vice-Chairman; John Comiskey;
John Gardiner; Peter Shiue, Alternate; Steven Davidson, Alternate

ABSENT: Peter Bell, Lori Bufano (notified intended absences)

A. CALL TO ORDER

Ms. Sayegh called the meeting to order at 7:17 P.M. She briefly reviewed the hearing process for applications that come before the Zoning Board of Appeals. She asked John Gardiner to act as Secretary in the absence of Lori Bufano.

B. PUBLIC HEARINGS

1. #10-09-11 REID 51 HURLBUTT STREET

Ms. Sayegh called the Hearing to order at 7:18 P.M., seated members Comiskey, Frees, Gardiner, Sayegh, and Shiue, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest. Mr. Gardiner read the legal notice dated August 26, 2010 and details of the application and the hardship as described on the application.

Mr. Nerney noted for the record that the building and site coverage numbers noted on the submitted application were inadvertently transposed. He confirmed that proposed building coverage is actually 5.5% and proposed site coverage is 10.0%.

Present was Larry Reid, property owner.

Mr. Reid explained that the existing house and lot have become nonconforming as a

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result of changes in zoning regulations that occurred after the house was constructed around 1950. In fact, he noted that a portion of the house currently encroaches significantly further into the side yard setback (about 6 feet) than is being requested in the subject application. He cited property constraints preventing alternative options, including a significant grade change and drop-off of about 40 feet in the rear of the property. He stated that the applicant has tried to keep the proposed encroachment as small as possible, and he noted that the adjoining neighbors (Giordanos) have no problem with the application as proposed.

In response to a question from the Board, Mr. Reid stated that the living space would increase from 2800 square feet to approximately 3000 square feet as a result of the proposed site modifications, and he confirmed that the applicant has no further expansion plans for the parcel.

There being no further comments, the public hearing was closed at 7:36 P.M.

2. #10-09-12 MILLER 221 SHARP HILL ROAD

Ms. Sayegh called the Hearing to order at 7:38 P.M., seated members Davidson, Frees, Gardiner, Sayegh, and Shiue, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest. Mr. Gardiner read the legal notice dated August 26, 2010 and details of the application and the hardship as described on the application.

Present was Joe Cugno, architect, on behalf of the applicant.

Mr. Cugno explained details of the application, noting that the applicant had neglected to include condenser units as part of a previous variance application that was approved in November, 2008. He noted that the property is severely constrained by wetlands and a large change in grade, as well as by the siting of the residence directly on the street. He noted that the proposed condensers would be no closer to the setback than the existing addition.

Mr. Nerney confirmed that the property is not located in the flood plain.

There being no further comments, the public hearing was closed at 7:46 P.M.

3. #10-09-13 ROBINSON 8 WEST MEADOW ROAD

Ms. Sayegh called the Hearing to order at 7:46 P.M., seated members Comiskey, Davidson, Frees, Gardiner, and Sayegh, and referred to Connecticut General Statutes,

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Section 8-11, Conflict of Interest. Mr. Gardiner read the legal notice dated August 26, 2010 and details of the application and the hardship as described on the application. He referred for the record to a letter dated September 20, 2010 from Judy Robinson authorizing Charles Loucks to act on her behalf this evening.

Present was Charles Loucks, architect, on behalf of the applicant.

Mr. Loucks posted plans and explained details of the subject application, noting the applicant's request to increase the roof height and wall height on a pre-existing nonconforming structure, where the proposed work will not go beyond the existing footprint nor extend beyond the already existing 25-foot front yard setback. He explained that the lot is undersized and the house is unusually sited, with the front of the house facing the side property line rather than the street. He noted further that the second floor renovations would bring the structure up to modern standards and current building codes, providing a more habitable space overall.

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

4. 10-09-14 DE STEFANO 42 HUNTING RIDGE LANE

Ms. Sayegh called the Hearing to order at 8:01 P.M., seated members Davidson, Frees, Gardiner, Sayegh, and Shiue, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest. Mr. Gardiner read the legal notice dated August 26, 2010 and details of the application and the hardship as described on the application.

Present was Rob Sanders, architect; and Harrison DeStefano, applicant.

Mr. Sanders noted for the record that the property is not located in a watershed.

Mr. Sanders explained that the applicant is applying for a building coverage variance of 7.41% where 7.0% is permitted (representing an overage of approximately 385 square feet), noting that the owner's desire to double-wall the home to increase its energy efficiency is the major driver for the additional building coverage. He explained that the original overage was closer to 485 square feet, but the applicant was able to remove a shed and a covered overhang on the property to minimize the requested variance. He stated that neighbors to the south, west and north have no issues with the proposal and have submitted letters of support into the record.

In response to a question from Ms. Sayegh regarding site coverage, Mr. Sanders explained that the parcel was over the permitted site coverage of 12% since the original house pre-dated site coverage regulations which were adopted in the early 1990s. He noted that the original site coverage of 13.4% would be reduced by the proposed site

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modifications to 13.1%, where approximately 8000 square feet of site coverage is attributable to a long, sloping driveway on the site. He also noted that the original house on the site was a large ranch consisting of approximately 4200 square feet.

The Board asked the applicant to address the issue of hardship. Mr. Sanders explained that the applicant, in an effort to address a steeply sloping site and a wind-blown landscape in an environmentally friendly manner, had constructed an exceptionally energy efficient building (consuming energy at a rate of a structure half its size). He noted that, inadvertently and completely unintentionally, the building coverage had expanded beyond the amount permitted by zoning regulations, primarily as a result of the 10-inch wide walls that are an integral part of the building's high energy efficiency. He noted further that the size of the residence is not out of context for the area.

Mr. Nerney asked the applicant to address the issue of visibility. Mr. Sanders explained that existing large trees do an effective job of concealing the site from Hunting Ridge Lane, and he noted that the applicant plans to install a vegetative screening border on the side of the one neighbor who will have a view of the site. He noted that all neighboring homes in the rear face in the opposite direction from the subject residence and therefore have no direct view of the site.

Ms. Sayegh asked if there were any additional options available to the applicant to reduce building coverage any further. Mr. Sanders explained that the garage size is only 20 x 30 feet and therefore could not be reduced any further, and he noted that none of the adjoining neighbors have enough land to be able to provide the applicant with an additional 0.1-acre that would allow the site to comply with coverage regulations.

In response to a question from Ms. Frees, Mr. Sanders stated that the new house will consist of 7020 square feet, as compared with the original ranch which had 4200 square feet.

In response to a question from Mr. Nerney, Mr. Sanders confirmed that without the enhanced wall thickness around the entire perimeter of the residence, the site would have complied with building coverage regulations.

In response to a question from Mr. Davidson regarding the current level of completion at the site, Mr. Sanders explained that the garage is completely rough-framed, the pool is constructed except for the terrace areas, and floors are being laid in the residence today.

In response to questions from the Board regarding the possibility of reducing some site coverage, Mr. Sanders stated that there is no real opportunity for such a reduction except for the driveway. However, he explained that the use of permeable materials such as gravel or grass block would be problematic on a driveway with such a degree of slope.

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Referencing the issue of possible site coverage reductions, Ms. Sayegh noted for the record that the Board does not engage in trade-offs of any sort, although she noted that reduction of site coverage is always desirable.

Mr. Gardiner read into the record a letter dated September 9, 2010 from Kathleen and Bill Brennan to Miriam Sayegh, Chairwoman; a letter dated September 17, 2010 from John DiRocco to Miriam Sayegh, Chairwoman; a letter dated September 20, 2010 from Lee Wachter to Miriam Sayegh, Chairwoman; and an emailed letter dated September 20, 2010 from Bruce and Elizabeth Likly to Bob Nerney.

Mr. Sanders noted for the record that proposed drainage will be improved as compared with the original site's drainage.

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

Kathleen Brennan, 41 Hunting Ridge Lane, stated that she and her husband adjoin the south side of the subject parcel and are the applicant's closest neighbors. She stated that they have no objection to the application, noting that any concerns they had regarding screening are being addressed by the applicant. She noted further that paving is absolutely necessary for such a steeply sloped driveway. She referenced her own experience with a gravel surface on a driveway less steeply sloped than the applicant's, noting that the gravel just washes away over time. She expressed concern that any such pervious material would eventually end up in the cul-de-sac circle, negatively impacting all neighbors in the area.

There being no further comments, the public hearing was closed at 8:52 P.M.

The Board took a short break at 8:52 P.M.

The Board returned from break at 9 P.M.

C. APPLICATIONS READY FOR REVIEW AND ACTION

Ms. Sayegh called the Regular Meeting to order at 9:00 P.M., seated members Comiskey, Frees, Gardiner, Sayegh, and Shiue, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest.

1. #10- 09-11 REID 51 HURLBUTT STREET

The Board briefly discussed the application. It was the consensus of the Board that the

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subject application represented a minimal encroachment, being no closer to the property line than currently exists on the site. Board members felt that hardship was proved due to the lot's undersized nature, its topography, and its layout.

MOTION was made by Ms. Sayegh, seconded by Ms. Frees, and carried unanimously (5-0) to **grant** the variance on grounds that sufficient hardship was demonstrated due to the lot layout, its steepness, and the fact that it is a pre-existing nonconforming use.

2. #10-09-12 MILLER 221 SHARP HILL ROAD

Mr. Comiskey was unseated. Mr. Davidson was reseated.

The Board briefly discussed the application. It was the consensus of the Board that the impact would be de minimus and the hardship was obvious, given the pre-existing location of the residence as well as the location of wetlands on the site.

MOTION was made by Mr. Gardiner, seconded by Mr. Davidson, and carried unanimously (5-0) to **grant** the variance on grounds that sufficient hardship was demonstrated due to the pre-existing nonconforming nature of the site as well as the extensive amount of wetlands on the property.

3. #10-09-13 ROBINSON 8 WEST MEADOW ROAD

Mr. Shiue was unseated. Mr. Comiskey was reseated.

The Board briefly discussed the application. It was the consensus of the Board that the application represents a reasonable use of the property, and that hardship is supported due to its pre-existing nonconforming nature. The Board also noted that the proposed modifications are within the existing footprint.

MOTION was made by Ms. Frees, seconded by Mr. Gardiner, and carried unanimously (5-0) to **grant** the variance on grounds that sufficient hardship was demonstrated due to its pre-existing nonconforming use, and the proposed modifications are a reasonable use of the property.

4. 10-09-14 DE STEFANO 42 HUNTING RIDGE LANE

Mr. Comiskey was unseated. Mr. Shiue was reseated.

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The Board discussed the application in detail.

Mr. Davidson felt that the presentation was candid and that great efforts were made by the applicant to minimize the encroachment. However, he expressed concern that the work continued even after the issue was noted/identified.

Mr. Shiue was impressed by the applicant's efforts to reduce its carbon footprint, but he stated that he still needed to be convinced regarding a supportable hardship for the requested variance.

Ms. Sayegh stated that she was inclined to approve the application but she, too, was having difficulty regarding proof of hardship. She acknowledged the wind issue and the steep topography of the site, but she did not see the relevancy of these issues to the requested building coverage variance.

Ms. Frees expressed concern as to how hardship can be justified for the requested variance, noting that an equally energy-efficient structure could have been built without exceeding building coverage. Although she felt that the overage was just a mistake on the part of the applicant, she felt it was not a minimal one, representing more than a 5% increase over the building coverage permitted by regulations. She expressed concern about setting an undesirable precedent with respect to future applications since she felt that the Board would be hard pressed to justify a legal hardship in this application.

Mr. Gardiner stated that he was really wrestling with the hardship issue due to its self-created aspect, although he believed that the overage in building coverage was completely accidental on the part of the applicant and would really have no impact on neighbors. He stated that he was moved fairly strongly by surrounding neighbor support. He expressed disappointment that the applicant did not make a greater effort to more substantially reduce building coverage or to bring site coverage down even farther, noting that site coverage, although slightly reduced, is still way over what is currently allowed.

Mr. Comiskey stated that he could not justify approving the subject application from a hardship perspective and he, too, expressed concern about setting an undesirable precedent for future similar applications. He felt that the Board must be true to the letter of the law, noting that he did not want to expose the Town to future liability by approving the subject application without proper hardship justification. He thought that there might be some opportunity to reduce building coverage on the site by focusing on the garage structure, which he felt would be a cheaper alternative than trying to reduce the size of the residence.

Mr. Shiue stated that he, too, was impressed by surrounding neighbor support. He also noted that the applicant would be gaining no additional living space as a result of the building coverage encroachment, noting that the same structure, without the additional

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insulation, could have been built in complete conformance with zoning regulations.

Ms. Frees stated that she appreciated the energy efficient elements of the residence but, correspondingly, she questioned the building's large size from an energy conservation perspective. Mr. Comiskey expressed the same concern.

A motion to deny without prejudice was put forth but did not carry. A second motion was proposed as follows:

MOTION was made by Ms. Sayegh, seconded by Mr. Davidson, and carried (4-1) to **deny without prejudice** the variance on grounds that sufficient hardship was not demonstrated in the fundamentals (i.e. topography, wetlands, or any other indicia of hardship). Mr. Gardiner opposed the motion to deny.

The application was therefore **denied**.

D. OTHER BUSINESS

1. Minutes – May 17, 2010

MOTION was made by Mr. Gardiner, seconded by Ms. Frees, and carried (5-0-1) to approve the minutes of May 17, 2010. Mr. Comiskey abstained.

Mr. Nerney informed the Board that the Town will be providing a Land Use Training Session to Board members under the direction of a well-regarded Hartford area attorney, Mike Ziska. It was determined that the session would be offered at 6 P.M. prior to one of the upcoming ZBA meetings, with a preference expressed for the November meeting scheduled on November 15, 2010. Pending an email from Mr. Shiue regarding his availability for the November meeting, the date will be finalized.

E. ADJOURNMENT

MOTION was made by Ms. Frees, seconded by Mr. Gardiner, and carried unanimously (6-0) to adjourn at 9:58 P.M.

Respectfully submitted,

Lorraine Russo
Recording Secretary