

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

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

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

ABSENT: Steven Davidson (notified intended absence)

A. CALL TO ORDER

Ms. Sayegh called the meeting to order at 7:19 P.M. She briefly reviewed the hearing process for applications that come before the Zoning Board of Appeals.

The agenda was scrambled. Officer elections were postponed until later in the evening.

B. PUBLIC HEARINGS

1. #10-12-18 GUEDES 96 W. MEADOW RD

Ms. Sayegh called the Hearing to order at 7:19 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 the legal notice dated December 6, 2010 and details of the application and the hardship as described on the application.

Mr. Nerney read into the record a faxed letter received December 17, 2010 from Steven M. Tafuro (106 West Meadow Road) to Zoning Board of Appeals requesting a postponement of the subject hearing. In his letter, Mr. Tafuro explains that he was unable to be present this evening because of an "unalterable commitment" and needs additional time to seek the advice of a local land use lawyer in order to properly review the application and its impacts on his property. In light of the aforementioned letter, Mr. Nerney explained that the Board could open and hear the application this evening, and then could choose to continue it until its next meeting in January.

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Ms. Sayegh felt that it would be prudent to provide the neighbor, Mr. Tafuro, with the opportunity to hear the tape of this evening's meeting and read the written minutes, and then to comment at the next meeting if he so desires.

Present were Joseph Guedes, applicant/builder; and George and Debra Van, property owners.

Present in the audience was Larry Church, attorney for Mr. Tafuro. He explained that Mr. Tafuro is requesting a postponement because he was not given enough information to date about the application as proposed, particularly about the planned retaining wall height. Mr. Church noted that he advised Mr. Tafuro to hire a local land use attorney to better represent his interests.

Mr. Guedes did not understand Mr. Tafuro's need for additional information, noting that he met with Mr. Tafuro three times in the past four months and was under the impression that Mr. Tafuro was satisfied regarding the proposed plans and the extent of the project. He noted further that the applicant intends to comply with all other zoning regulations as required.

Addressing in particular the aforementioned issue of the proposed retaining wall height, Mr. Nerney explained that when zoning/building permits are issued prior to the start of any construction project, a host of other items (in addition to the requested setback variance) will be examined and reviewed by the Zoning Enforcement Officer, including height limitations on walls.

Addressing the requested continuance, Mr. Shiue questioned whether it might be unfair to an applicant to continue a hearing and thus postpone a decision based on a neighbor's request. He suggested that perhaps the neighbor could have made a greater effort to attend the hearing.

Upon request from the Chair to move forward with presentation of the application, Mr. Guedes reviewed details of the application, referring to posted renderings of proposed site modifications. He noted that the existing garage needs to be enlarged since it currently accommodates only one small car, and more on-grade living space/facilities will be required in the near future due to plans to move an elderly parent into the residence. He noted that locating the garage on the other side of the residence would result in potential flooding issues given the severe pitch/topography of the land in that area, and would also not permit construction of an on-grade living area for the elderly parent.

Mr. Guedes stated that it is the applicant's intention to plant fourteen eight-foot white pines along the property line to improve privacy/screening for Mr. Tafuro. He felt that the plan as currently proposed would be better for Mr. Tafuro than an alternate plan that

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would not require a variance from the Town since the latter would actually increase Mr. Tafuro's view of the proposed retaining wall. He noted further that the proposed retaining wall will conform to zoning regulations and will probably measure 6 feet in height (lower than the height of the garage doors) and extend only about 15-20 feet along the property line.

Mr. Van noted for the record that the existing retaining wall is more than 8 feet above grade. Mr. Nerney explained that any newly constructed walls cannot be greater than 6 feet in height.

Mr. Comiskey raised the issue of coverage levels on the site. Although it was noted that the application cover page indicated a proposed site coverage of 11%, Mr. Nerney stated that building and site coverage percentages should be indicated on the plans by the surveyor. Mr. Guedes stated that the applicant would provide that information as requested.

Mr. Comiskey questioned whether the needs mentioned by the applicant for the proposed site renovations meet the required definition of adequate hardship. He questioned further whether the proposed addition could perhaps be constructed on the other side. Mr. Guedes explained that more excavation would be required and it would be more difficult to construct living quarters on the other side that are on grade, as required for the elderly parent's intended move into the premises. Mr. Comiskey stated that it would be helpful to the Board if the applicant could provide more information on the feasibility of that option as an alternative to the submitted plans.

Mrs. Van questioned whether stone-on dirt patios are factored in to site coverage calculations. Mr. Nerney explained that all patios are counted towards site coverage at 50% of their square footage. Mrs. Van was upset with the prospect of continuing/delaying the hearing for another month, noting that they have been communicating with Mr. Tafuro throughout their planning process.

Mr. Nerney noted for the record that his greatest concern at this point was with the application itself since it appeared to be incomplete. Mr. Guedes stated that he would provide the lot coverage information requested earlier as well as additional topographic data.

Ms. Sayegh noted that there would be less encroachment into the side yard setback if the garage were pushed forward as much as possible. Mr. Van stated that if it is necessary they would do it, although he noted that it would not be as appealing and a variance would be required in any event. He referenced an old tree that has been on the property for many years that he did not wish to lose. He speculated that perhaps the proposed addition could be moved forward another eight feet, which might result in a slightly smaller side yard encroachment. He stated that they could get back to the Board on the

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exact number, but he speculated that it might be in the range of 25 feet instead of the requested 19.4 feet.

In response to further questions from the Board, it was noted that the septic system is located in the front. In light of the septic location, Mr. Guedes noted that the well might also have to be moved if the addition were relocated to the other side.

Mr. Shiue noted for the record that he would, in fact, have pressed for a continuance of this application (regardless of the neighbor's request for same), given the amount of information he felt was missing from the submitted application.

Mrs. Van asked the Board not to attempt to design their proposed addition, noting that they are not in need of any coaching from the Board regarding ideas for redesigning the addition on the other side of the residence. She stated that if they do not receive approval from the Board for the site modifications as proposed, then they won't do it at all.

Mr. Comiskey explained that his intent was to try to get a better idea of the hardship involved in the application as opposed to trying to redesign the residence.

Ms. Sayegh explained that it is to the applicant's advantage/benefit to provide all information requested by the Board.

Mrs. Van stated that she was upset with the Board's intent to continue the application, which she felt was due to the neighbor's request to postpone.

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

There being no further comments, at 8:11 P.M. the public hearing was continued until Tuesday, January 18, 2011.

2. #10-12-19 CZARNECKI 84 OLD MILL ROAD

After a few moments, Ms. Sayegh called the Hearing to order at 8:16 P.M. Ms. Bufano read the legal notice dated December 6, 2010. She also read into the record a letter dated December 3, 2010 from Clarissa H. Cannavino to Zoning Board of Appeals requesting that the public hearing be continued to January 18, 2011.

Per the request of the applicant, at 8:19 P.M. the public hearing was continued until January 18, 2011.

3. #10-12-20 DIAZ 192 NEW CANAAN ROAD

Ms. Sayegh called the Hearing to order at 8:19 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 December 6, 2010 and details of the application and the hardship as described on the application.

Present was Jose Diaz, applicant.

Mr. Diaz posted proposed plans and photos of the site. He explained that they would like to add a master bath, and also enclose an existing screened porch to provide an additional bedroom. He noted that a large portion of the site is constrained by wetlands, topographical conditions and the location of the septic system, in addition to the fact that it is a nonconforming 1.3+/- acre lot located in a two-acre zone.

Mr. Nerney explained that the existing footprint will remain essentially the same and any soffit area that may protrude slightly has already been factored into the variance request. Mr. Diaz noted that the proposed master bathroom would not encroach into the setback.

For the record Mr. Nerney noted that the property is not technically located within the public water supply watershed area (although the application incorrectly indicated otherwise) and therefore the water company did not require official notification of the application.

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

There being no further comments, the public hearing was closed at 8:35 P.M.

4. 10-12-21 KATZ 830 DANBURY ROAD

Ms. Sayegh called the Hearing to order at 8:35 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 December 6, 2010 and details of the application and the hardship as described on the application.

Present was David Katz, applicant.

Mr. Katz distributed photos of the property to the Board. He explained that his architect had inadvertently excluded a condenser unit from the original plans which were presented to this Board as part of a previous variance. He did not believe that the unit would present any issues to passersby since it will be located behind the building on Route 7.

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In response to questions from the Board, Mr. Katz estimated the size of the condenser unit to be about 41” x 24”, with an approximate height of 2 – 2 ½ feet.

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

There being no further comments, the public hearing was closed at 8:44 P.M.

C. APPLICATIONS READY FOR REVIEW AND ACTION

Ms. Sayegh called the Regular Meeting to order at 8:45 P.M., seated members Bufano, Comiskey, Frees, Gardiner, and Sayegh, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest.

1. #10-12-18 GUEDES 96 W. MEADOW RD

Tabled.

2. #10-12-19 CZARNECKI 84 OLD MILL RD

Tabled.

3. #10-12-20 DIAZ 192 NEW CANAAN RD

Ms. Sayegh was unseated. Mr. Shiue was reseated.

The Board briefly discussed the application. It was the consensus of the Board that the proposed site modifications were reasonable, given the small size of the existing house and the fact that the construction would essentially maintain the same footprint as currently exists. It was the Board’s opinion that hardship was adequately proved by the applicant.

MOTION was made by Mr. Gardiner, seconded by Mr. Comiskey, and carried unanimously (5-0) to **grant** the variance on grounds that sufficient hardship was demonstrated, given the wetlands on the site and the pre-existing nonconforming nature of the undersized lot.

4. 10-12-21 KATZ 830 DANBURY RD

Mr. Shiue was unseated. Ms. Sayegh was reseated.

The Board briefly discussed the application. It was the consensus of the Board that the proposed condenser installation would not have any impact on neighbors, and it was also agreed that if it had been included on the original application, the Board likely would have approved it at that time.

MOTION was made by Ms. Frees, seconded by Ms. Bufano, and carried unanimously (5-0) to **grant** the variance on grounds that sufficient hardship was demonstrated, given the pre-existing nature of the oddly-shaped and undersized lot.

D. OTHER BUSINESS

1. Minutes – November 15, 2010

MOTION was made by Mr. Gardiner, seconded by Ms. Bufano, and carried (4-0-3) to approve the minutes of November 15, 2010. Board members Fiteni, Sayegh and Shiue abstained.

E. NOMINATION & ELECTION OF OFFICERS

Chairman

MOTION was made by Mr. Comiskey to nominate Mr. Gardiner for Chairman. Mr. Gardiner seconded the application. The motion did not carry.

MOTION was made by Ms. Bufano, seconded by Ms. Frees, and carried to nominate and elect Ms. Sayegh for Chairwoman. Board members Bufano, Frees and Sayegh voted in favor.

Vice-Chairman

MOTION was made by Ms. Sayegh, seconded by Ms. Bufano, and carried (5-0) to nominate and elect Ms. Frees for Vice-Chairwoman.

Secretary

MOTION was made by Ms. Sayegh, seconded by Mr. Comiskey, and carried (5-0) to nominate and elect Ms. Bufano for Secretary.

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Town Planner Nerney reminded Board members that land use Attorney Dwight Merriam will be conducting a Land Use Training Session on Tuesday, January 18, 2011 from 6 – 7:15 P.M., prior to the Regular Meeting scheduled for that evening.

Mr. Shiue proposed a short discussion regarding the question of continuing a hearing and whether it is appropriate to continue a hearing based on a request from a neighbor. He stated that if he were an applicant in such a situation, he would feel wronged, noting that he would prefer that a decision to continue not be made until all evidence is first presented by an applicant to the Board.

Mr. Nerney stated that the Board has the discretion/right to keep a hearing open and that such a decision is always subject to the discretion of the Board.

Ms. Frees noted further that no applicant coming before the Board should assume that the process involves just a one-night appearance before the Board. She noted that the Board often has additional questions/issues regarding an application, which then results in the Board's decision to continue a hearing.

Ms. Sayegh explained further that such a decision is discretionary on the part of the Board and she felt that the actual location of a neighbor in such a situation is relevant (i.e. immediately adjoining versus 500 feet away). She also noted that one way to avoid costly appeals (for both the Town and an applicant) is to remove any potential issue with a neighbor that is located within 500 feet of the property, and thus she is a proponent of giving anyone who wishes to speak the opportunity to do so.

Mr. Nerney concurred that it is important to build the most complete record possible.

Mr. Shiue noted for the record that he personally felt it would be better/safer if the Board makes a continuance determination at the end of a hearing after an applicant has made its presentation.

F. ADJOURNMENT

MOTION was made by Mr. Gardiner, seconded by Ms. Frees, and carried unanimously (7-0) to adjourn at 9:18 P.M.

Respectfully submitted,

Lorraine Russo
Recording Secretary