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

ZONING BOARD OF APPEALS
REGULAR MEETING
JANUARY 18, 2011
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; Steven Davidson, Alternate

ABSENT:

A. CALL TO ORDER

Ms. Sayegh called the meeting to order at 7:20 P.M.

B. PUBLIC HEARINGS

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

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. Sayegh noted that the hearing was continued from the December 20, 2010 meeting.

Present were Joseph Guedes, applicant/contractor; and George & Debra Van, homeowners.

Mr. Guedes posted and distributed several copies of a revised site plan showing spot elevations and coverage percentages, noting in particular that the site would be at 11.8% site coverage with the proposed improvements, where it is currently at 11.3% and where 12% is permitted by regulations. He stated that the applicant could shift the proposed building addition forward by about 8 feet, modifying the requested side yard variance from 19.4 feet to approximately 25 feet, and he noted that such a modification would also save a couple of major trees.

Addressing the issue of alternate locations, Mr. Guedes explained that siting the garage on the other side would create a serious water condition and result in flooding due to that area's lower elevation. He noted further that one would have to drive over the well in order to access the garage in that alternate location.

Addressing the issue of hardship, Mr. Guedes explained that the owners need a 3-bay garage for additional storage (e.g. oil tank, etc.) and to accommodate 3 cars. He also explained that the upper levels of the proposed three-car garage will be necessary to provide additional living space for two elderly family members who will at some point be living on the premises.

Mr. Guedes noted that while an addition could be constructed so as to require no variance from the Town, such a plan would require demolition of the existing retaining wall and would result in the loss of the most of the trees that are currently providing screening for that portion of the property line.

In response to questions from the Board regarding the amount of additional square footage that would be provided with the proposed addition, Mr. and Mrs. Van estimated that the resulting residence would consist of approximately 4200 square feet, where about 600 square feet would be new construction, although they explained that they were not sure of the exact numbers since some existing square footage would be lost as a result of the proposed renovations.

A question arose as to why the revised site plan was not stamped by the architect. Mr. Guedes explained that the plan had been transmitted as a PDF document earlier in the day but he indicated that he could provide the Board a stamped plan if necessary.

Ms. Sayegh stated that she would have preferred seeing a drawing/site plan representing the 25-foot side yard setback option. Mr. Guedes stated that he had drawn that option to scale on one plan copy which he had is in his possession and which he showed to Ms. Sayegh. He also showed members of the Board a site plan version that would not require any setback variance from the Town and which could be built in conformance with the 40-foot setback requirement, but which he noted would result in even more damage to the site (i.e. loss of retaining wall and trees).

Mr. Nerney noted that there is a risk if the Board is inclined to approve the 25-foot side yard setback option without an architect's signed/stamped plan since after-the-fact designing can be problematic in many regards, particularly when the applicant tries to obtain building/zoning permits at a future date.

A number of board members indicated that it would have been helpful, and they would have preferred, to see more plans to better understand exactly what the various site

impacts would be, referring in particular to architectural and topographical plans.

Mrs. Van felt that if she and her husband are willing to make this investment and to attempt to satisfy their neighbor, then the onus is on them (i.e. if they are unable to satisfy all zoning requirements, then they will be back before the Board at a future date.) She indicated that they would be willing to accept the 25-foot setback version.

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

Steve Tafuro, 106 West Meadow Road, an adjoining neighbor, stated that he would prefer the alternate plan that would conform with the required 40-foot setback. He presented 4 mounted aerial views of the subject site and surrounding properties. He also submitted a large mounted site plan of his property. He highlighted the proximity of his home to the subject site, noting that although he preferred the 25-foot setback option over the originally proposed 19.4-foot option, he felt that 25 feet would still be quite close to his property.

Mr. Van noted that pulling the proposed addition forward by approximately 8 feet would save all the large trees that currently provide screening for that area of the property.

Mr. Tafuro stated that he would like to see an actual plan of what the applicant is proposing. He noted that another adjoining neighbor of his built an addition in conformance with the 40-foot side yard setback line and it still feels imposing from the perspective of his property.

Mrs. Van stated that they have offered accommodations to Mr. Tafuro, but she felt that Mr. Tafuro just wanted them to not ask for any variance at all. She stated that while she appreciated his point, their property/house just doesn't currently work for them.

Mr. Comiskey stated that the Board is missing much of the information/plans that are usually provided to them by applicants, referring as examples to topographical maps and to the depiction of large trees on submitted maps. He felt that he did not have enough information to prove adequate hardship, noting that the spot elevations in and of themselves were not really enough to prove that building the addition on the other side would result in flooding issues on the site. He stated that he would have liked to have seen architectural plans of the other alternatives that could also be built on the site.

Mr. Nerney noted further that the terminology referenced on the site plan is not consistent with the Town's code/terminology. He explained that eventually these plans, if approved, will make their way through the administrative permitting process and additional information, as well as stamped plans, will be required.

There being no further comments, the public hearing was closed at 8:16 P.M.

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

Ms. Sayegh called the Hearing to order at 8:16 P.M., seated members Bufano, Frees, Gardiner, Sayegh, and Shiue, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest. She noted that the hearing was continued form December 20, 2010.

Present was Clarissa Cannavino, attorney on behalf of appellant Stephen Czarnecki; and Tim Bunting, Zoning Enforcement Officer, representing the Town of Wilton.

Ms. Cannavino distributed maps of the property. She explained the nature of the application, noting that it is an appeal of the Zoning Enforcement Officer's (ZEO) decision to issue a cease and desist (C&D) order in connection with a pool that was built in error by the Laskys, adjoining neighbors of the appellant. She stated that the C&D order is improper because Mr. Czarnecki did not build the pool himself nor can he remove it.

Ms. Cannavino briefly reviewed a history of the site, noting that the Laskys had received a variance in July of 2005 to build a pool with a 10-foot setback instead of a 40-foot setback. However the pool was ultimately built 10 feet onto the Czarneckis' property and in 2008 a C&D order was issued by the ZEO against the Laskys. The Laskys were to begin removal of the pool on May 1, 2010 and were to finish by June 1, 2010, but they did not comply. She explained that in August, 2010, the Laskys requested permission from the Czarneckis to remove the pool from the Czarneckis' property, at which time the appellant requested that the Laskys supply them with 1) a pool removal plan, 2) an indemnity agreement and 3) proof of insurance. She explained that the Czarneckis refused to supply the Laskys with a letter of authorization to remove the pool from their property until the aforementioned three items were first submitted, all of which were not received by the Czarneckis until November, 2010.

Ms. Cannavino stated that in October, 2010, the ZEO issued a C&D order against the Czarneckis, causing significant damage to the reputation of the appellant, as well as expense. She asked that the ZBA remove the C&D order for a trespass that the appellant didn't commit and can't correct.

At this point, Mr. Davidson recused himself from the hearing and left the meeting room because he realized that he knew one of the parties involved.

In response to questions from the Board, Ms. Cannavino explained that the appellant cannot correct the situation himself (i.e. remove the portion of the pool that is on his property) without trespassing onto the Laskys' property and thereby breaking the law. She stated that it is impossible to not touch the other property in some way in the course of any attempt to remove a portion of the pool. She emphasized that the appellant cannot

cure the trespass and since there is no possibility of performance and the appellant cannot comply with the C&D order, the C&D should be void. She likened this scenario to contract law and the way contracts are interpreted and determined to be void under similar types of circumstances.

Mr. Bunting, Zoning Enforcement Officer (ZEO), distributed packets of information to the Board, including a survey of the Lasky property with the pool portion that infringes onto the Czarnecki property; a photograph of the pool; a land record form pertaining to the variance granted for the Lasky property; a copy of Section 29-12 of Wilton Zoning Regulations; and a copy of the Cease and Desist Order (C&D) issued to the Czarneckis on October 15, 2010.

Mr. Bunting explained that it is his responsibility, as Zoning Enforcement Officer (ZEO), to determine whether a property is compliant or not, noting that he must have blinders on with respect to the element of blame and is required to be consistent in the enforcement of all zoning regulations. He explained further that both properties (the Laskys' and the Czarneckis') are in violation of zoning regulations and therefore he is required to issue C&Ds against both properties, which he noted was done in consultation with Town attorneys. He stated that this matter has been in the courts for over a year, noting further that the Laskys have paid for a demolition permit to remove the pool but have not yet supplied an original copy of proof of insurance as required by the building department. He noted for the record that Mr. Czarnecki had at one time demanded of the ZEO that the Town take action and had threatened to sue everyone involved, including the Town.

Mr. Bunting continued, noting that the Laskys were unable for awhile to obtain a letter of authorization from the Czarneckis permitting access to the Czarneckis' property in order to remove the pool and therefore the Town was unable at that point in time to issue a demolition permit to the Laskys. He noted, however, that a letter of authorization had since been obtained from the Czarneckis (in November, 2010), after the C&D order was written against them in October, 2010. He stated that he is expecting the pool to be removed in the very near future.

Ms. Sayegh read from Section 29-12 of zoning regulations pertaining to Enforcement, noting in particular that owners of property upon which a violation exists "shall be subject to penalties in accordance with the provisions of Section 8-12 of the General Statutes." She also read the aforementioned Section 8-12 of CT General Statutes, printed at the bottom of the Cease and Desist Order issued October 15, 2010 against the Czarneckis, which defined the exact fines that may be levied by the Town against a violator under varying sets of circumstances.

Ms. Sayegh asked whether Mr. Czarnecki wished to continue the hearing until February in light of the Laskys' soon anticipated pool demolition. Ms. Cannavino consulted with her client and informed the Board that Mr. Czarnecki wished to resolve this matter as

soon as possible, noting that he runs a business in Town and all of the recent press has been reflecting very poorly on him and impacting his business.

In response to questions from the Board, Mr. Nerney explained that the issue before the Board is an extremely narrow one. He explained that, essentially, the Board must determine if the ZEO erred in finding the property to be in violation of zoning regulations.

Mr. Bunting stated that he was hopeful the Laskys would be supplying the Building Department very shortly with the certificate of insurance required for the pool demolition, perhaps by tomorrow. Ms. Cannavino was not as optimistic, noting that it took over 3½ months to receive the aforementioned three items that were requested of the Laskys this past summer.

Ms. Cannavino noted that it is the intent of the statute to spur compliance. She stated that the appellant had provided the necessary letter of authorization permitting the Laskys access to the Czarneckis' property and now there was nothing further that the Czarneckis could do.

Ms. Frees felt that the Board needed to consider whether the Czarneckis have now satisfied all the steps that they could possibly take. She felt that they have now done all that they could do to comply with the order.

Mr. Bunting stated that he could not remove the C&D order until the pool is removed since the existence of the pool in its current location is the reason the C&D was written in the first place.

Mr. Nerney noted that the appellant is alleging that the C&D order is not a solution. However he pointed out that the Board should be looking only at the interpretation of its zoning regulations, and not at how the matter eventually gets solved.

Mr. Gardiner felt that the C&D order was issued properly.

Ms. Cannavino expressed concern that the Town could levy fines against the appellant as long as the C&D order is in effect. She stated that the intent of the C&D order is to force compliance with zoning regulations but since the Czarneckis do not have it in their power to comply, the C&D is not appropriate. She stated that it was inappropriate when it was issued and continues to be inappropriate now.

Mr. Bunting stated that the C&D order was legal, proper and defendable.

Ms. Sayegh asked whether Mr. Bunting would have issued the C&D order against the Czarneckis if the Czarneckis had provided a letter of authorization to the Laskys early on

in the process. Mr. Bunting stated that he would have, and in fact he should have issued it against both parties originally. He noted further that the Czarneckis could have sought permission from the Laskys to remove the portion of the pool that is on the Czarneckis' property.

Ms. Cannavino stated that it would have cost $47,000 to remove the pool and then the Czarneckis would have been further burdened with trying to recover those costs.

Mr. Bunting urged the Board to consider the matter from the perspective of a literal reading of the regulations.

Ms. Cannavino asked the Board to consider the intent as well as the uniqueness of the situation.

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

Maureen Bare, 254 Olmstead Hill Road, stated that she supported the removal of the C&D order that was issued against the Czarneckis. She referenced the newspaper articles that have been written about this matter as well as the TV coverage, all of which she felt was poisonous and a huge hardship to the Czarneckis. She stated that there should have been some kind of hold harmless to remove the potential for fines against the Czarneckis.

Kevin Czarnecki, brother of the appellant and a Wilton taxpayer, read into the record a letter supporting the removal of the C&D order. In his letter he stated that if the pool demolition were done at the time it was supposed to have been done, his brother would not be in the situation that he is in currently. He stated that the zoning department should refocus its efforts, noting that it is absurd to even suggest that his brother should have to pay to remove a pool that he did not build on his property. He questioned whether the Town would issue a C&D order on itself if someone were to build illegally onto a Town-owned property.

In conclusion, Mr. Bunting noted that the Laskys were unable to remove even their half of the pool without the letter of authorization from the Czarneckis, which was not provided until approximately 5 weeks after the C&D order was issued on October 15, 2010.

Ms. Cannavino noted that it took several months for the Laskys to provide the three documents (a pool removal plan, indemnity agreement and proof of insurance) necessary for the Czarneckis to issue the letter of authorization, which the Czarneckis provided in a very timely manner once those three documents were delivered to them.

There being no further comments, the public hearing was closed at 9:28 P.M.

The Board took a short recess at 9:28 P.M. and returned from recess at 9:39 P.M.

C. APPLICATIONS READY FOR REVIEW AND ACTION

Ms. Sayegh called the Regular Meeting to order at 9:39 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 ROAD

The Board discussed the application.

Mr. Fiteni did not believe enough information was provided on the site plan, referring in particular to topographical contours that he, as a licensed engineer, felt are critical to evaluate the potential drainage issues cited. He did not feel that adequate hardship was proved, referring to the angled garage placement that could be constructed in compliance with the 40-foot side yard setback requirement and which would not necessitate any variance from the Town.

Mr. Davidson also felt that adequate information was not provided. He referenced a recent application before the Board where three possible site plan options were possible and each plan was clearly depicted and submitted to the Board. He stated that he had trouble finding substantial hardship in this application, noting that the applicant had not met the legal standard of hardship that is necessary for the Board to grant a variance.

Mr. Shiue felt that the purported hardship for a three-car garage was not supported. He, too, felt that not enough information was provided on the plans. Although he noted that he is not a professional engineer, he stated that he was fairly convinced that the side proposed for the addition would be the better option, and he was pleased that the applicant had revised the variance request to 25 feet from 19.4 feet. He stated that if he were a voting member, he would probably be just barely leaning towards approving the application but, ultimately, it would not be an easy decision for him given the amount of information provided on the plans.

Ms. Bufano felt that the well and septic locations would make alternative plans difficult. She was encouraged that they met with the neighbor and she felt that they would make it as unobtrusive as possible and would preserve the trees to improve screening. She stated that she favored the 25-foot option versus the 19.4-foot proposal.

Ms. Sayegh felt that a hardship was not proved in connection with the original submission because alternate options existed. However, she was heartened that the applicant did try to reduce the proposed encroachment via the 25-foot option but she did

not feel enough information was submitted in order to make a decision on the alternate plan. She wanted to see more information depicted on the submitted site plan.

Ms. Frees felt that this is an application with one of the least amounts of information submitted to the Board given the relative size of the proposed project. She stated that the proposed setback would be perilously close to the adjoining neighbor. She felt that a legal hardship was not proved since an alternative exists, albeit for a two-car garage rather than three-car, but she felt that would be a reasonable use of the property and, further, would require no variance to be granted by the Board. She noted that variances run with the land and cannot be based on personal issues and, as a result, she was prevented from being sympathetic to the need for additional living space above the garage for other family members.

Mr. Gardiner stated that he could probably justify the 25-foot setback option for the garage itself since he could see a hardship with the existing 1-car garage, but he felt that no real hardship was proved in connection with the living space proposed above the garage. In that regard, he stated that he understood the adjoining neighbor's concerns regarding the massiveness of the proposed structure so close to the property line.

Mr. Comiskey agreed. He noted that this is not a small project and he felt that not enough information was submitted for the Board's review. He stated that he was unable, given the information presented, particularly without elevations, to see the alleged drainage issue described by the contractor. In summary, he stated that hardship was not adequately proved.

MOTION was made by Ms. Sayegh, seconded by Ms. Frees, and carried unanimously (5-0) to **deny** the variance on grounds that sufficient hardship was not demonstrated.

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

Mr. Davidson recused himself from the hearing and left the meeting.

Ms. Sayegh explained that a total of 4 votes would be required to overturn the Zoning Enforcement Officer's (ZEO) decision.

Mr. Comiskey stated that what the ZEO did was correct; it was legal; and he had to do it. However, he felt that the issuance of the Cease and Desist (C&D) Order had served its purpose to move things forward and, as a result, he felt comfortable that the Board would not be harming the process in any way by voting to overturn the order. He noted, however, that he was not a voting member on this hearing.

Mr. Gardiner felt that the C&D order was properly issued by the ZEO and its issuance

had encouraged the appellant to do all that was necessary to move the matter forward. He stated that since it had accomplished its goal in that regard, he felt comfortable to vote to overturn it.

Ms. Frees had a problem with saying that the C&D order (although correctly issued by the ZEO) is no longer needed. She noted that the situation which prompted the issuance of the order in the first place has not yet been remedied since the pool has still not been removed.

Ms. Sayegh felt that the purpose of the statute is clear, i.e. if nothing else can be done then the C&D order has served its purpose.

Ms. Frees felt that "overturning" the C&D is different in meaning from "removing" it. She felt that there was no problem with the issuance of the C&D, but rather there was a problem with enforcing it. She did not want to say that the ZEO did anything wrong even though she was sympathetic to the appellant's cause.

In response to a question from Ms. Sayegh, Mr. Nerney explained that the Board's authority comes from the statute, i.e. the Board has the right to review and, if so desired, to overrule the ZEO.

Ms. Sayegh noted that if the order were removed this evening and the Town was to determine at a future date that there is, in fact, something else that the appellant could do to effect the removal of the violation and the appellant did not so comply, then the Town could issue another C&D order against the appellant. However, since there is no violation now, she felt the Board should overrule the current C&D order.

Mr. Gardiner read from Section 29-13.A.1 of zoning regulations (Appeals), noting that "the ZBA shall have the authority to hear and decide upon any appeal where it is alleged that there is an error in the order, requirements, decision or determination of the ZEO."

Ms. Frees suggested that if the ZEO's decision to issue the order was correct and the appellants had since done what they needed to do, then perhaps the order could be considered inactive/moot.

In light of the aforementioned Section 29-13.A.1 of zoning regulations, it was the general consensus of the Board that the ZEO had acted properly in the issuance of the C&D order at the time it was issued, but since the "requirements" of the C&D order had since been met, the order could now be overturned.

MOTION was made by Mr. Gardiner, seconded by Mr. Shiue, and carried unanimously (5-0) to overrule the present Cease and Desist Order since the requirements of the C&D order have been met in full by the applicant to the extent possible and practicable.

D. OTHER BUSINESS

1. Minutes – December 20, 2010

MOTION was made by Ms. Bufano, seconded by Ms. Frees, and carried unanimously (7-0) to approve as amended the minutes of December 20, 2010.

E. ADJOURNMENT

MOTION was made by Ms. Frees, seconded by Ms. Bufano, and carried unanimously (7-0) to adjourn at 10:20 P.M.

Respectfully submitted,

Lorraine Russo
Recording Secretary