

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

**ZONING BOARD OF APPEALS
REGULAR MEETING
APRIL 18, 2011
7:15 P.M.
TOWN HALL ANNEX - MEETING ROOM A**

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

ABSENT: Steven Davidson, Miriam Sayegh, and John Weiss (notified intended absences)

A. CALL TO ORDER

Ms. Frees, acting as Chairwoman in the absence of Ms. Sayegh, called the meeting to order at 7:19 P.M.

B. PUBLIC HEARINGS

1. #11-04-03 JONES 200 PIMPEWAUG ROAD

Ms. Frees called the Hearing to order at 7:19 P.M., seated members Bufano, Comiskey, Fiteni, Frees, and Shiue, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest. Ms. Bufano read the legal notice dated April 4, 2011 and details of the application and the hardship as described on the application.

Ms. Frees briefly reviewed the hearing process for applications that come before the Zoning Board of Appeals.

Present was Steven Jones, applicant.

Mr. Jones reviewed details of the application, noting that his pre-existing nonconforming residence, built in 1900+/-, sits almost completely within the 50-foot front yard setback. He stated that they wish to add a second story dormer that would not increase the existing footprint, and they want to extend an existing porch (which is currently rotting and unsafe) across the full length of the house, which he noted would be less of an encroachment into the setback than the existing porch due to the way the house is sited on the property. He explained that their intent is to restore the historic style of the home.

Mr. Jones explained further that as part of the proposed renovations, the home would be brought completely up to code, noting in particular that replacement windows would be insulated and would have larger openings to allow for possible exit during a fire. In conclusion, he felt that the proposed renovations would in no way be contrary to the spirit, purpose and intent of the public interest, nor interfere with the use and development of neighboring properties.

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

There being no further comments, the public hearing was closed at 7:29 P.M.

2. #11-04-04 BORRERO 177 OLD KINGS HIGHWAY

Ms. Frees called the Hearing to order at 7:29 P.M., seated members Bufano, Comiskey, Fiteni, Frees, and Shiue, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest. Ms. Bufano read the legal notice dated April 4, 2011 and details of the application and the hardship as described on the application.

Present were Martha and Robert Borrero, applicants.

Ms. Borrero explained that their home sits on a pre-existing nonconforming lot, which is very long and narrow, and they wish to extend an additional 3 inches off the existing structure as well as add another bedroom to the second floor. She explained that they need to take down portions of the existing structure which are quite old and rotting and plan to rebuild within the existing footprint, except for the additional 3-inch expansion. In response to questions from the Board, Mr. and Mrs. Borrero indicated that the additional encroachment would represent less than one square foot of space.

Mrs. Borrero noted that the existing home has no dining room, mud room or modern day conveniences and they are hoping that their proposed modest renovations will accommodate small yet valuable improvements to their living space. She submitted into the record a letter of support dated April 18, 2011 from William A. Zoeller.

Ms. Frees asked if anyone wished to speak for or against the application. No one in the audience responded.

Ms. Bufano read into the record the aforementioned letter from William A. Zoeller; and a letter dated April 10, 2011 from G. Ackerman and M. Ackerman, expressing no objections to the subject application.

There being no further comments, the public hearing was closed at 7:40 P.M.

3. #11-04-05 HATZIS 210 BELDEN HILL ROAD

Ms. Frees called the Hearing to order at 7:40 P.M., seated members Bufano, Comiskey, Fiteni, Frees, and Shiue, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest. Ms. Bufano read the legal notice dated April 4, 2011 and details of the application and the hardship as described on the application.

Present were Rob Sanders, architect; and Steve Hatzis, property owner.

Mr. Sanders distributed to Board members copies of a site plan (SP-1) for the subject variance request, in addition to minutes and maps/renderings pertaining to a previous variance application (#04-06-23) for the site. He explained that the variance granted in 2004 granted permission to construct a two-car garage (shown in red on site plan SP-1, but never constructed), with the understanding/condition that an existing one-story garage located 5.5 feet from the side yard property line would be removed. He noted that a proposed addition for the existing residence on the property was denied at that time.

Mr. Sanders explained that the current owner of the property (Mr. Hatzis) plans to demolish the existing residence and construct a new residence which will be located substantially farther back on the property. Although the proposed house itself will be completely compliant with setback requirements, he noted that a small portion of the proposed garage would be located 33 feet from the side yard property line in lieu of the required 40 feet and thus the reason for the subject application. He explained that this proposed garage location would, in fact, encroach less into the setback than if the applicant were to build the garage that was approved by the ZBA back in 2004 and which he would still be permitted to build as long as it was sited exactly per the plan submitted in 2004.

Mr. Sanders explained that the property pre-dates zoning regulations and is nonconforming with respect to lot size and width. In addition, he noted that the site is further constrained by well and septic locations.

In response to questions from the Board regarding the possibility of lessening the proposed encroachment into the setback, Mr. Sanders explained that there are many architectural reasons underlying the proposed garage location. He noted again that the site is very tightly situated with respect to the well and septic, and is further constrained by the pool location.

Steve Hatzis reiterated the tightness of the site, noting its nonconforming 0.843 acreage within a two-acre residential (R-2A) zone. He explained that he did his due diligence with respect to the previously granted variance prior to purchasing the property and also spoke with Wilton's Zoning Enforcement Officer regarding what could be built on the

ZBA Minutes – April 18, 2011 - Page 4

property in that regard. He noted further that he tried to respect setback and volume requirements and plans to locate the proposed residence completely behind the required setback lines.

Mr. Sanders noted further that the existing house is only 700 square feet, including the second floor, and the footprint of the proposed new residence would only be approximately 1550 square feet. He explained that sliding the garage back to reduce the setback encroachment would block light coming into the house and cause the applicant to lose a proposed door out from the kitchen.

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

There being no further comments, the public hearing was closed at 8:01 P.M.

4. 11-04-06 STANDARD PETROLEUM OF CT 287 DANBURY RD

Ms. Frees called the Hearing to order at 8:01 P.M., seated members Bufano, Comiskey, Fiteni, Frees, and Shiue, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest. Ms. Bufano read the legal notice dated April 4, 2011 and details of the application and referenced the hardship as described on the application.

Present were John Fallon, attorney; and Mark Smith of TwoDesign, engineer; on behalf of the applicant.

Mr. Fallon briefly reviewed a history of variances granted for the site, noting in particular that a variance to extend the floor plan under the existing roof of the existing convenience with a front yard setback of 31.19 feet was granted in 2005. He noted that the development work contemplated at that time was delayed subject to finalization of a new lease, which has now been executed.

Mr. Fallon explained that when the plans were being finalized recently for the proposed site modifications, it was discovered that a scrivener's error had led to the miscalculation of the front yard setback in 2005 and that the actual setback for the proposed convenience store, as proposed at that time and as currently proposed, would be 30 feet, not the 31.19 feet indicated on the previous plans. He stated that the applicant would like to correct that error for the record, noting again that the plan/footprint has not changed since the previous variance approval in 2005.

Mr. Fallon next explained the rationale for the second variance request to allow pumps and a pump island for the storage of motor vehicle fuel to be 31 feet from the property line in lieu of the required 35 feet. He stated that this particular section/requirement of the regulations (29-6.B.3.p.(1)) was inadvertently overlooked by everyone in 2005. He

ZBA Minutes – April 18, 2011 - Page 5

emphasized that the plans have not changed since that time and that this was a condition of the site plan that was approved back in 2005. He noted that the applicant just wishes to have everything in proper order prior to beginning its site development work for the subject property.

For the record, Mr. Fallon explained that if the subject application is approved by the ZBA, the applicant would then apply to the Planning and Zoning Commission for a formal site plan/special permit approval of all aspects of the proposed site development. He stated that the applicant plans to eliminate the repair facility and will install state of the art gasoline storage equipment. He also advised the Commission that the Conservation Commission recently approved their application unanimously, noting the many environmentally friendly elements of the plan.

Mr. Smith briefly reviewed details of the site plan, noting again the issue of the scrivener's error in 2005, at which time the front yard setback numbers were incorrectly transferred from one plan to another. He felt that the proposed site modifications would represent a tremendous upgrade to the site.

Mr. Fallon reviewed parking for the site, noting that the site would become conforming (where it is currently nonconforming) by adding four parking spaces and bringing the total parking spaces up to nine. He reminded the Board that per Connecticut Case Law, condemnation (which was the situation with the subject parcel) is a proper basis for the finding of a hardship by a Zoning Board of Appeals and, further, that elimination/reduction of elements of nonconformity for a site also provides proper basis for a finding of hardship, which he noted is also the situation with respect to parking on the subject site.

In response to questions from the Board, Mr. Fallon explained that the pump island could not be moved further back from Route 7 due to the need for safe turning radii and safe circulation within the site. Mr. Smith noted for the record that the canopy and pumps are in exactly the same location as they were on the 2005 plans, noting again that the need for this particular variance was just missed at that time.

Mr. Nerney, Town Planner, called attention to the fact that the size of the parcel is nonconforming and that the site topography limits the option of moving the pump island any further back from Route 7. He noted that the Home Heating Oil Company, formerly at that location, is no longer on the site and that the proposed development presents an opportunity to make the site more attractive as well as safer. Mr. Fallon noted further that an existing CL&P easement also inhibits the applicant's ability to relocate the tanks.

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

Ned Greene, Whitewood Lane, stated that he had no objection to the site modifications as

ZBA Minutes – April 18, 2011 - Page 6

proposed, although he would have objected if the applicant were seeking to move any of the proposed site improvements closer to Route 7.

There being no further comments, the public hearing was closed at 8:25 P.M.

**5. 11-04-07 KJC REAL ESTATE OLD HUCKLEBERRY HILL RD
DEVELOPMENT, LLC**

Ms. Frees called the Hearing to order at 8:25 P.M., seated members Bufano, Comiskey, Fiteni, Frees, and Shiue, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest. Ms. Bufano read the legal notice dated April 4, 2011 and details of the application and the hardship as described on the application.

Mr. Shiue stated that he needed to recuse himself since he lives within 500 feet of the subject parcel.

In light of Mr. Shiue's recusal, Mr. Nerney explained that under Connecticut Statutes four affirmative votes are required to grant a variance and therefore an applicant has the right to continue a public hearing when there are only four Board members available to hear an application.

Matt Mason, attorney for the applicant, felt that it would be in his client's best interest to continue the application until the Board's next meeting on May 16, 2011.

There being no further comments, the public hearing was continued until May 16, 2011.

The Board took a short break at 8:35 P.M.
The Board returned from break at 8:43 P.M.

C. APPLICATIONS READY FOR REVIEW AND ACTION

Ms. Sayegh called the Regular Meeting to order at 8:43 P.M., seated members Bufano, Comiskey, Frees, Gardiner, and Sayegh, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest.

1. #11- 04-03 JONES 200 PIMPEWAUG ROAD

The Board briefly discussed the application. It was the consensus of Board members that the proposed use is entirely reasonable, that the variance request/proposed incursion into the setback is modest, and that the hardship is clear.

ZBA Minutes – April 18, 2011 - Page 7

MOTION was made by Mr. Shiue, seconded by Mr. Comiskey, and carried unanimously (5-0) to **grant** a variance of Section 29-5.D to allow a front yard setback of 30.6' and 31.3' in lieu of the required 50' for extension of a second story dormer; and a front yard setback of 27.2' in lieu of the required 50' for extension of an existing porch; on grounds that sufficient hardship was demonstrated given the pre-existing nonconforming nature of the use, the challenging lot and the position of the residence on the lot.

2. #11-04-04 BORRERO 177 OLD KINGS HIGHWAY

The Board briefly discussed the application. It was the consensus of Board members that the lot size and position of the home on the lot are overriding considerations in this application. It was also noted that the proposed renovations are modest, are within the spirit of past variances that were granted, and would not be exacerbating existing setback conditions.

MOTION was made by Mr. Comiskey, seconded by Ms. Bufano, and carried unanimously (5-0) to **grant** a variance of Section 29-5.D to allow building additions with a 19.5' and 21.0' side yard setback where 30' is required and 19.8' and 21.0' presently exist; on grounds that sufficient hardship was demonstrated given the lot size and position of the home on the lot, which make it impossible to perform any type of renovations to the house without requiring a variance.

3. #11-04-05 HATZIS 210 BELDEN HILL ROAD

The Board discussed details of the application.

Mr. Shiue did not have a problem with the application as proposed since all footprints were being pushed back from Belden Hill Road and since the new garage would encroach less than the garage that was previously proposed/approved and that would have been built on the site. He felt that the application works to the benefit of the Town.

Ms. Frees agreed, noting that the site would be less nonconforming overall as a result of the subject application.

Mr. Comiskey stated that he would have preferred that the site be entirely conforming with respect to setbacks, although he acknowledged that the variance as proposed did not appear to be a major issue. For the record, he also stated that he would like to have seen the proposed floor plans to better understand how difficult it would have been to relocate the garage so as to be in total conformance with zoning regulations.

Mr. Fiteni was troubled by the same issue, noting that architectural preference is not a

ZBA Minutes – April 18, 2011 - Page 8

hardship. However, he did acknowledge that the lot is a very difficult one and he was pleased that the applicant was alleviating several other nonconforming uses and was reducing the extent of nonconformity that was previously approved for the garage proposed in 2004.

A question arose regarding whether the applicant might be able to also take advantage of the first variance approved for a garage back in 2004. Mr. Nerney noted that the applicant would likely not be able to also take advantage of that variance since the increased building coverage involved would push the property over the coverage limits permitted by zoning regulations.

MOTION was made by Ms. Bufano, seconded by Mr. Comiskey, and carried unanimously (5-0) to **grant** a variance of Section 29-5.D to allow construction of a one-story attached garage with a 33' side yard setback in lieu of the required 40 feet; on grounds that sufficient hardship was demonstrated given the nonconforming nature of the lot, its topography, and the fact that the applicant would be making the property less nonconforming by not utilizing the previously granted garage variance.

**4. 11-04-06 STANDARD PETRO- 287 DANBURY RD
LEUM OF CT**

Ms. Frees felt that the request was entirely appropriate since there had been a taking of a portion of the property and since it was a scrivener's error (and not a change in the plans themselves) that precipitated the variance application.

Mr. Comiskey agreed, noting that the front yard setback variance request was more of an administrative correction.

Ms. Frees also noted that the variance for the pumps/pump island was somewhat of a technicality since they were shown/approved on the original plans as well.

MOTION was made by Mr. Fiteni, seconded by Ms. Frees, and carried unanimously (5-0) to **grant** a variance of Section 29-6.E to allow extension of a floor plan under existing roof of existing convenience store with a front yard setback of 30', previously approved by variance #05-02-05 at 31.19', in lieu of the required 50'; and a variance of Section 29-6.B.3.p.(1) to allow pumps and a pump island for the storage of motor vehicle fuel to be 31' from the property line abutting Danbury Road in lieu of the required 35'; on grounds that sufficient hardship was demonstrated since dimensions of the previously granted variance were the result of a scrivener's error which needs to be corrected; the pumps/pump island were an oversight issue and were not moved from the location approved per the previous variance; and there will be a reduced nonconformity with respect to parking on the site.

- 5. 11-04-07 KJC REAL ESTATE OLD HUCKLEBERRY HILL RD
DEVELOPMENT, LLC**

Tabled.

D. OTHER BUSINESS

1. Approval of Minutes – March 21, 2011

MOTION was made by Ms. Bufano, seconded by Mr. Comiskey, and carried unanimously (5-0) to approve as drafted the minutes of March 21, 2011.

E. ADJOURNMENT

MOTION was made by Ms. Bufano, seconded by Mr. Fiteni, and carried unanimously (5-0) to adjourn at 9:10 P.M.

Respectfully submitted,

Lorraine Russo
Recording Secretary