

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

**ZONING BOARD OF APPEALS
REGULAR MEETING
JULY 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 Weiss; Joe Fiteni, Alternate; Peter Shiue, Alternate

ABSENT: Steven Davidson

A. CALL TO ORDER

Ms. Sayegh called the meeting to order at 7:18 P.M.

B. PUBLIC HEARINGS

**1. #11-04-07 KJC REAL ESTATE OLD HUCKLEBERRY HILL RD
DEVELOPMENT, LLC**

Ms. Sayegh called the Hearing to order at 7:18 P.M. She noted that the applicant had requested that the subject application be withdrawn. Ms. Bufano read into the record a letter dated July 18, 2011 from J. Casey Healy to Wilton Zoning Board of Appeals requested that the application be withdrawn.

There being no further comments, at 7:22 P.M. the application was withdrawn.

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

2. #11-06-11 I.PARK NORWALK, LLC KENT RD & “DANBURY RD TOWN LINE”

Ms. Sayegh called the Hearing to order at 7:23 P.M., seated members Bufano, Comiskey, Frees, Sayegh, and Weiss, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest. Ms. Bufano read the legal notice dated May 27, 2011 and details of the application and the hardship as described on the application.

Present were Jim Murphy, attorney, Gregory and Adams; and Ken Schuler, intern, Gregory and Adams.

Mr. Comiskey noted for the record that although he was a member of LA Fitness, he did not feel that his membership represented any conflict of interest for him. Mr. Murphy did not have any issue with Mr. Comiskey remaining seated on the hearing.

Mr. Murphy distributed four handouts to Board members, including a 24-page Summary Package with photos; two site plans SP-1 and SP-2, dated April 13, 2011; and an enlarged copy of Section 29-13 of Wilton zoning regulations.

Mr. Murphy reviewed the configuration of the former Perkin-Elmer site, noting that approximately two-thirds of the 29.6+/- acres is located in Norwalk and the remaining one-third lies in Wilton. He noted the narrowness of the site due to the juxtaposition of the Norwalk River, the railroad, and the Route 7 right-of-way. He explained side yard setback requirements for the site, noting that the required 100-foot setback (due to the site abutting a residential district) may be reduced to 50 feet because it lies within the railroad right-of-way. He explained further that approximately 9000+ square feet of the proposed new development/expansion of the LA Fitness facility would be located in Norwalk, with approximately 3000+ square feet located in Wilton. He noted for the record that if the Board were to approve a variance this evening, the applicant would still have to go through the Special Permit process with the Planning and Zoning Commission and would be required to satisfy all of its respective requirements as well.

Addressing the issue of hardship, Mr. Murphy referred to aerial photos, noting that there are no residences in the immediate area of the site and thus he felt that holding the applicant to so strict a letter of the regulations imposes a requirement that is totally unnecessary to meet the intent of the regulations. He utilized a slider (cut to scale) to represent the proposed addition and the effect that relocating it would have on the parcel. He noted that shifting it southeastward to conform with Wilton setback requirements would interfere significantly with the central thoroughfare and circulation for the site, impacting users as well as first responders.

Referring to Section 29-13 of zoning regulations pertaining to variances and the various justifications for granting variances, he cited the following: 1) the parcel's adjacency to

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the railroad and its unusual juxtaposition of buildings; 2) the exceptional difficulty involved with shifting the proposed addition southeastward, as illustrated previously; 3) the fact that substantial justice shall be served by maintaining the necessary site circulation for the protection of public health and safety; 4) and the location of the nearest residence at over 400-450 feet away.

He distributed photos of Chipmunk Lane, noting the deeply wooded nature of the area and therefore the lack of impact of the proposed development on its few residences.

In response to a question from Mr. Shiue regarding the possibility of locating the proposed addition on the southern side of the existing building, Mr. Murphy cited the current layout/design of the building and efforts to maximize efficiency of use, as well as the negative impact such a siting would have on the recently done parking area to the south. Mr. Murphy acknowledged that other possible locations exist, but he noted that the standard for granting a variance, per Section 29-13, is the creation of exceptional difficulty or unusual hardship, not that something cannot be done at all. He also noted that most of the proposed addition would be located where the original building used to be, and thus he felt that the proposed work could be considered more rehabilitative in nature.

A question arose regarding potential traffic impacts to the area. Mr. Murphy noted that access into the site is actually through Norwalk, although he explained again that such issues would be considered by the Planning and Zoning Commission as part of the Special Permit process, emphasizing that the subject application involves only the issue of a setback variance. Addressing a question about a planned hotel for the area, Mr. Murphy stated that he did not know any details in that regard, noting that such a proposal would also involve obtaining a Special Permit application from the Planning and Zoning Commission.

Mr. Fiteni asked about setback requirements for the city of Norwalk. Mr. Murphy was not knowledgeable in that area.

Alan Cramer, owner of 1 Danbury Road, was present in the audience and asked if he could speak to the application. The Chair granted permission.

Mr. Cramer expressed opposition to the requested variance. He stated that he was unable to discern a hardship in the application, noting that alternatives exist and should be explored, referring in particular to reconfiguring the existing building and/or utilizing other existing buildings on the site. He stated that the accessway, which is already very crowded and trafficked, presents a serious safety issue which will only be exacerbated by the subject application, along with the already announced plans for a hotel on the site. He cited the large number of medical offices on the site which he felt generate more traffic than regular office uses.

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Ms. Frees, referencing her experience as a former Planning and Zoning Commissioner, explained that these types of concerns are not under the purview of the Zoning Board of Appeals but rather will be addressed by the Planning and Zoning Commission when the applicant comes in for the required Special Permit approval.

Mr. Murphy noted further that such issues will actually be more under the purview of Norwalk's Planning and Zoning Commission due to the bulk of the property's location in Norwalk. He passed around photos of Mr. Cramer's property at 1 Danbury Road, noting that the proposed site modifications would have zero impact on Mr. Cramer's property.

Mr. Shiue noted again that he was having difficulty understanding the nature of the applicant's hardship. Mr. Comiskey asked for additional details about any long-term lease arrangements for the LA Fitness facility and whether there are any specific parking commitments in connection with the lease, especially in the southern parking area. Mr. Weiss asked if any portion(s) of the foundation from the original building remain in some form on the site.

Mr. Murphy stated that he would look into these matters, in particular whether the new addition could possibly be located where the original building was sited.

Ms. Sayegh requested additional details on any other variances that were ever granted for the site. The Board reiterated its request that the applicant clarify the nature of the hardship for the site; provide additional details on where previous buildings were located; and also some general statements regarding public safety, particularly with respect to traffic/circulation on the site.

In response to the Board's suggestion that the applicant consider continuing the application until the next meeting, Mr. Murphy requested that the application be continued until September 19, 2011. He submitted into the record a letter dated July 18, 2011 granting the Board an extension to September 19, 2011 of the deadline to close the public hearing.

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

There being no further comments, at 8:36 P.M. the public hearing was continued until September 19, 2011.

The Board took a short recess.

The Board returned from recess at 8:49 P.M.

3. #11-07-13 FRENCH 388 DANBURY ROAD

Ms. Bufano indicated that she was one of the neighboring property owners legally noticed in connection with the application and, as a result, she recused herself and left the meeting room.

Ms. Sayegh called the Hearing to order at 8:49 P.M., seated members Fiteni, Frees, Sayegh, Shiue, and Weiss, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest. Ms. Frees, acting as Secretary, read the legal notice dated July 5, 2011, and details of the application.

Present was Jim Murphy, Gregory and Adams, attorney.

Ms. Sayegh explained that the subject application did not involve a request for a variance but rather a request for a location approval pursuant to Section 14-54(b) of Connecticut General Statutes. She explained further that the Board needs to make a finding that the proposed use/activities will not be inconsistent with the character of the neighborhood.

Mr. Murphy distributed a 4-page handout to Board members. He explained that since the application does not involve a request for a variance, there is no hardship standard that must be met. He referred to a letter dated July 15, 2011 (submitted into the record) from J. Casey Healy to Wilton Zoning Board of Appeals, explaining that the Board will be acting as an agent of the State when considering the applicant's request for a Certificate of Location Approval". He noted further that per Section 14-55 of the General Statutes "no such certificate shall be issued until the application has been approved and such location has been found suitable for the business intended, with due consideration to its location in reference to schools, churches, theaters, traffic conditions, width of highway and effect on public travel."

Addressing the issue of the limited auto repair business use, Mr. Murphy noted that its suitability is already established since it is a permitted Special Permit use in the General Business Zone per Section 29-6.B.3.f of Wilton zoning regulations. He explained that this use has been at this location for decades and the applicant, Mr. French, has operated the business for 30+ years. He noted that although the use is permitted, the business is technically considered legally nonconforming because it does not hold a Special Permit as regulations requiring such a permit were not in place when the business first began.

Addressing the site's proximity to Wilton H.S., located across the street, Mr. Murphy noted that the business was in its current location before the high school was built and has been peacefully coexisting with the school for many years, noting further that any interaction would be hundreds of feet away. He cited the various business uses located in and around the subject building, highlighting the compatibility of the subject use with those surrounding it. He stated that Mr. French is a welder, with particular emphasis on auto/truck welding, in addition to furniture, gates and other items made of metal that

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require either fabrication or repair.

Mr. Murphy noted in particular that there would be no change to the existing ongoing use or footprint, nor is there any impact from/on width of highway or public travel. He stated that there is good access to the site as well as good sight lines, noting that the subject business is ideal for Route 7.

Ms. Frees referred for the record to the aforementioned letter dated July 15, 2011 from J. Casey Healy to Wilton Zoning Board of Appeals.

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

There being no further comments, the public hearing was closed at 9:10 P.M.

Ms. Bufano returned to the meeting room at 9:11 P.M.

4. #11-07-14 POIRIER/PUMA 464 NOD HILL ROAD

Ms. Sayegh called the Hearing to order at 9:12 P.M., seated members Bufano, Comiskey, Frees, Shiue, and Weiss, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest. Ms. Bufano read the legal notice dated July 5, 2011 and details of the application and the hardship as described on the application.

Present were Kathleen Poirier, architect; Patricia and Bob Puma, owners; and Mary Lou Logan, Historical Society.

Ms. Poirier referred to a posted site plan. She reviewed the applicant's request for a 40.3' front yard setback to allow a pool pavilion east of the existing pool. She cited wetland constraints along the eastern portion of the property; septic system and ledge rock issues which constrained the original placement of the pool; and grade changes that make it impossible to legally locate the pavilion without destroying significant historical aspects of the property.

In response to a question from Mr. Weiss, she approximated the drop-off at about 10-15 feet in total but she did not have elevations available for Board review.

Ms. Logan addressed the historical significance of the site, noting that she was a neighboring property owner when the noted Colonial Revival landscape architect Nelson Breed, then owner of the property, returned from Buckingham Palace with boxwood cuttings given to him by the Queen Mother. She explained that it is from these cuttings that the existing boxwood bushes on the property were grown. She noted that these

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boxwoods represent a very important historical element of the property and its setting.

The applicant noted that if the proposed pavilion were built to the north in the as-of-right location, it could threaten the health of these boxwoods, destroy the landscape element created, and impact the historically significant visual vista from the home.

Mr. Comiskey asked for further clarification regarding the hardship of the site. It was noted that in addition to the uniqueness of the boxwoods on the property (which the applicant does not wish to destroy), the corner location of the property is particularly relevant because it is thus constrained by two front setbacks.

Mr. Fiteni requested additional information on the previously cited drop-off so that he could better understand the hardship of the site. He felt that the hardships/considerations noted by the applicant were more of an aesthetic nature. He suggested the possibility of transplanting the boxwoods which he felt would not necessarily kill them. He also suggested either changing the shape of the proposed pool pavilion or moving it northward so as not to require a variance at all.

Ms. Poirier addressed the issue of the drop-off and possibly relocating the pavilion in that area, noting that fill would have to be brought in and a large retaining wall would have to be built.

Mr. Comiskey suggested that a topographical map might be helpful to the Board.

In response to a question from Mr. Weiss regarding the possibility of reducing the proposed pavilion footprint somewhat, Ms. Poirier explained that the pavilion as currently proposed is not that large and any shape other than a rectangle would result in a significantly smaller pavilion which would not provide any more shade than an umbrella.

Considering the foregoing alternatives offered by the Board as well as the historical significance of the site, Mr. Comiskey suggested that the Board be careful not to push too hard to alter the property and the proposed plans. He felt that the uniqueness of the property should be taken into consideration when making a final decision on the application.

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

There being no further comments, at 9:41 P.M. the public hearing was continued until September 19, 2011.

5. #11-07-15 ARENAS 14 OWN HOME AVENUE

Ms. Sayegh called the Hearing to order at 9:41 P.M., seated members Bufano, Frees, Sayegh, Shiue, and Weiss, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest. Ms. Bufano read the legal notice dated July 5, 2011 and details of the application and the hardship as described on the application.

Present was Mario Arenas, applicant/homeowner.

Mr. Arenas reviewed details of the subject application for a building addition with a 664 square-foot footprint as well as various other site modifications as delineated on the submitted site plan. He stated that the hardships include the need for the safety of his family; the small size of the existing 7 x 11-foot bedroom; the lack of closet space as well as an additional means of egress in the bedroom when an air conditioner is located in the window; the small 1000 square-foot size of the existing home for four in which there is no living room; the small 1/3-acre lot which is zoned/constrained by R-1A zoning; and the overall pre-existing nonconforming nature of the lot.

In response to a question from Ms. Sayegh regarding the possibility of reducing the size of the proposed addition due to the sizable coverage variances requested by the applicant, Mr. Arenas addressed the proposed siting of the location. He explained that due to well, septic tank and leaching field constraints, the addition could not be located further northward on the property. Addressing the issue of reducing site coverage, Mr. Arenas stated that he could replace some of the driveway asphalt with Belgian Block to reduce the proposed site coverage.

A question arose as to whether the coverage numbers submitted with the application reflect all the changes being proposed/discussed. Mr. Arenas stated that all proposed site modifications were reflected in the coverage numbers submitted.

In response to a suggestion to replace the entire paved driveway with gravel, Mr. Arenas stated that he would be willing to replace 664 square feet of the driveway with Belgian Block to offset the corresponding footprint of the proposed addition, but he was unwilling to replace the entire driveway with gravel due to its inherent maintenance issues, particularly in winter months.

The Board noted that the proposed addition would result in a 3000+ square-foot home, taking into consideration the second floor also proposed as part of the submitted plan, and the applicant was asked whether he would consider scaling down his proposed addition. Ms. Sayegh expressed great concern with the magnitude of the proposed site coverage, referring in particular to drainage/runoff issues, spatial proximity to other homes and the overall feeling of mass.

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Mr. Arenas was not amenable to the concept of reducing the size of the proposed addition, noting that all of the houses in the neighboring area are two-story homes and are as large, or larger, than what he is proposing. However, upon further consideration, he offered to reduce the proposed 20-foot addition by 5 feet, thus reducing the overall footprint by 155 square feet. The Board calculated the overall coverage impacts and determined that it would reduce the proposed site coverage to 26.6% from an originally proposed 27.58%, and it would reduce the proposed building coverage to 13.57% from an originally proposed 14.55%.

Mr. Arenas also indicated that he would be willing to consider some further site coverage reductions in connection with a proposed walkway. After further discussion it was the consensus of the Board that the applicant should submit a revised plan that would become part of the official record and that would reflect all of the aforementioned site modifications.

The Board urged the applicant to consider a continuation of the application so that revised plans could be prepared reflecting the coverage reductions discussed and so that possible further reductions could be contemplated. Ms. Sayegh noted for the record that if the applicant did not request a continuation of the hearing and if the application were to be subsequently denied this evening, then the applicant might have to wait six months before submitting again if the next application were deemed to be substantially similar to the subject application.

Mr. Arenas stated that he did not wish to continue the application.

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

Mr. Murphy, an attorney who had presented earlier in the evening and who was still present in the audience, requested a brief recess so that he could confer with Mr. Arenas.

The Board took a brief recess at 10:28 P.M. while Mr. Arenas stepped out of the meeting room to confer with Mr. Murphy. Mr. Arenas returned at 10:31 P.M. and the Board resumed its meeting.

When Mr. Arenas returned, he clarified for the Board that he was willing to reduce the proposed addition by 5 feet (i.e. 155 square feet of footprint in total) as well as reduce the impervious driveway coverage by approximately 600 square feet.

Upon consideration of the proposed site modifications, it was the consensus of the Board that it needed to see a drawing incorporating all of the applicant's proposed site modifications.

Mr. Arenas then requested a continuance of the hearing until September 19, 2011.

There being no further comments, at 10:38 P.M. the public hearing was continued until September 19, 2011.

C. APPLICATIONS READY FOR REVIEW AND ACTION

Ms. Sayegh called the Regular Meeting to order at 10:38 P.M., seated members Fiteni, Frees, Sayegh, Shiue, and Weiss, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest.

1. #11-04-07 KJC REAL ESTATE OLD HUCKLEBERRY HILL RD
DEVELOPMENT, LLC

Withdrawn.

2. #11-07-13 LPARK NORWALK, LLC KENT RD & “DANBURY RD
TOWN LINE”

Tabled.

3. #11- 07-13 FRENCH 388 DANBURY ROAD

Ms. Bufano recused herself and left the meeting room.

The Board discussed the application.

Ms. Sayegh reiterated that the Board needs to be sure that the subject use/footprint is not inconsistent with the character of the neighborhood. She also noted that the applicant must agree that there will be no increase in the footprint or the level/intensity of activity on the site other than what was testified to this evening.

It was the overall consensus of Board members that the business is consistent with the types of uses currently in the area; the location is suitable to the activity; no schools and/or churches would be impacted by the business; and there will be no negative effect on public travel in the area. Board members further noted the applicant’s contention that there would be no change in the size of the structure or in the use since the activity is already ongoing.

MOTION was made by Ms. Sayegh, seconded by Mr. Fiteni, and carried unanimously (5-0) to **grant** the permit for a Certificate of Location Approval since the proposed/existing use will not be inconsistent with the character of the neighborhood, based on the existing and proposed use as testified during the hearing and the fact that there will be no expansion of the existing footprint.

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Ms. Bufano returned at 10:47 P.M.

D. OTHER BUSINESS

1. Minutes – June 20, 2011

MOTION was made by Ms. Frees, seconded by Mr. Weiss, and carried unanimously (7-0) to approve the minutes of June 20, 2011.

E. ADJOURNMENT

MOTION was made by Mr. Fiteni, seconded by Ms. Bufano, and carried unanimously (7-0) to adjourn at 10:50 P.M.

Respectfully submitted,

Lorraine Russo
Recording Secretary