

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

**ZONING BOARD OF APPEALS
REGULAR MEETING
SEPTEMBER 19, 2011
7:15 P.M.
TOWN HALL ANNEX - MEETING ROOM A**

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

ABSENT: John Comiskey (notified intended absence)

A. CALL TO ORDER

Ms. Sayegh called the meeting to order at 7:20 P.M. She briefly reviewed the hearing process for applications that come before the Zoning Board of Appeals.

B. PUBLIC HEARINGS

1. #11-06-11 I.PARK NORWALK, LLC KENT RD & "DANBURY RD TOWN LINE"

Ms. Sayegh called the Hearing to order at 7:21 P.M., seated members Bufano, Frees, Sayegh, Shiue, and Weiss, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest. Ms. Sayegh noted that the hearing was continued from a previous date.

Present were Jim Murphy, attorney; David Schiff, certified planner; and Lynne Ward, I.Park Norwalk, LLC representative.

Mr. Murphy distributed materials for review by the Board, including two presentation packets dated July 18, 2011 and September 19, 2011, respectively; seven pages of aerials and site maps; and a summary page of court-approved variances with similar characteristics to the subject application. He explained that the proposed addition involves 4300 square feet of space in Wilton, of which only 2000 square feet requires a variance, and he noted that Norwalk approvals are already in place for the portion of the

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addition that lies in Norwalk.

He summarized hardships for the site, explaining that an addition to the south is not feasible because of an existing watercourse to the south, a state-imposed drainage easement, an existing gas line, topography that drops off to the south, location of storm drainage that would be under the building, and child safety (i.e. the necessity to keep the children's quarters separate from both the workout and pool areas of the facility). He also explained that a setback-compliant addition to the north is not feasible since it would impair emergency response access and choke off central site circulation. He noted an inherent hardship in that the site must satisfy two different sets of regulations (i.e. Norwalk and Wilton), which creates conflicting setbacks mid-building/property. He stated that the addition as proposed represents the best solution for the site.

In response to issues raised at the last hearing, Mr. Murphy referenced a 1969 aerial view of the site to show exactly what was demolished by the current owner and what was recently built on the site. He also referenced legal cases involving approved variances with similar characteristics, including *Carberry, et al. v. Zoning Board of Appeals of City of Stamford, et al*; *Beaver Dam Lake Associates, Inc. v. Board of Zoning Appeals of the Town of Stratford*; and *Stillman v. Zoning Board of Appeals of the Town of Redding, et al.*

Mr. Murphy explained that no variances have been issued by Wilton for the site, although a variance was issued by Norwalk allowing a one-story structure where two stories are generally required.

Mr. Nerney noted further that if the building were relocated in such a way as to require parking to also be relocated, it would result in an unsafe condition on the site.

Lynne Ward noted that the applicant is happy with the subject property, which she noted has, overall, been a successful venture for the owner.

Ms. Bufano read into the record a letter dated September 15, 2011 from James O'Sullivan, P.E. to James D'Alton Murphy, Gregory and Adams, explaining that construction of an addition off the south end of the facility would be poor engineering practice and could cause temporary outages at the site since the primary gas line runs underground at the south end of the building.

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

There being no further comments, the public hearing was closed at 7:55 P.M.

2. #11-07-14 POIRIER/PUMA 464 NOD HILL ROAD

Ms. Sayegh called the Hearing to order at 7:55 P.M., seated members Bufano, Fiteni, Frees, Shiue, and Weiss, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest. Ms. Sayegh noted that the hearing was continued from a previous date.

Present were Kathleen Poirier, architect; and Pat Puma, owner.

Ms. Poirier referenced a new topography map that was recently submitted into the record, addressing questions raised at the last hearing. She summarized hardships of the subject application, including the difference in elevations (approximately 14-foot drop-off) between Breeds Hill Place and the existing pool; the watercourse along the eastern boundary of the property; significant ledge on the parcel resulting in the need for a mound-type septic system, which further necessitated the existing pool location and consequently the proposed pool pavilion; and the corner nature of the property, constraining the site with two front yard setbacks. She noted that the site is already nonconforming since the residence is located completely within the front yard setback.

Ms. Poirier stated that the applicant had reduced the size of the proposed pool pavilion as much as possible since the last hearing, noting that the original front yard setback request was for 40.3 feet where 41.8 feet is now proposed.

Ms. Puma referenced a letter from licensed arborist, Leslie A. Lewis, III, to Bobby Puma, dated August 29, 2011, advising against transplantation of the existing specimen boxwood hedges on the site. Ms. Bufano read the aforementioned letter into the record.

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

Mary Lou Logan, a neighbor residing at 467 Nod Hill Road, spoke in support of the application, noting that the subject proposal would be a wonderful addition to a beautiful property, and indicating that it would be a terrible mistake to attempt to move the specimen boxwoods that have been on the site for over 60 years.

There being no further comments, the public hearing was closed at 8:05 P.M.

3. #11-07-15 ARENAS 14 OWN HOME AVENUE

Ms. Sayegh called the Hearing to order at 8:05 P.M., seated members Bufano, Frees, Sayegh, Shiue, and Weiss, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest. She noted that the hearing was continued from a previous date.

Present was Mario Arenas, applicant/owner.

Mr. Arenas distributed a new proposal (survey map ZL1 revised August 8, 2011 prepared by Michael W. Finkbeiner) into the record. He reviewed details of the proposed site modifications, noting the following changes: 1) proposed building coverage reduced from 14.55% to 13.8%; proposed site coverage reduced from 27.58% to 19%; 3) proposed front yard setback increased from 29.2 feet to 29.4 feet. He noted further that the proposed 497 square-foot addition would actually be constructed over an existing concrete walkway, thus minimizing incremental site coverage to approximately 399 square feet.

Mr. Fiteni noted for the record that the applicant's 19% site coverage proposal represents a reduction from existing site coverage of 22.4%.

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

There being no further comments, the public hearing was closed at 8:17 P.M.

4. #11-09-16 JANSEN 70 MIDDLEBROOK FARM ROAD

Ms. Sayegh called the Hearing to order at 8:17 P.M., seated members Bufano, Davidson, Frees, Sayegh, and Weiss, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest. Ms. Bufano read the legal notice dated September 1, 2011 and details of the application and the hardship as described on the application.

Present were Greg Jansen, owner; and Michael Smith, architect.

Mr. Jansen briefly reviewed details of the proposed patio, pergola and outdoor fireplace, requiring a rear yard setback of 41.2 feet in lieu of the permitted 50 feet. He noted that the area is very private and would not be visible to surrounding properties. He indicated that he spoke to all four neighbors, none of whom objected to the application, and one of whom (Tim Roberts) wrote a letter in support of the application.

Mr. Smith reviewed details of the proposed site modifications. He summarized hardships for the site, including placement of the existing house right up against the rear setback and completely within the wetland buffer, as well as location of a watercourse on the

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property. He explained further that the proposed outdoor improvements need to be near the kitchen and family room in the rear of the house, noting that the basement walk-out area has no connection to the main living space of the house. In response to questions from the Board, he stated that the proposed location is the only feasible alternative from both a design perspective and due to regulated wetland and wetland buffer constraints.

In response to a question from Mr. Nerney regarding grading near a retaining wall to the west of the house, Mr. Jansen explained that there is approximately a 4-foot drop-off beyond the wall and he noted the septic location as a further constraint in that area.

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

Ms. Bufano read into the record a letter dated August 20, 2011 from Tim Roberts expressing support for the subject application.

There being no further comments, the public hearing was closed at 8:32 P.M.

The Board recessed at 8:32 P.M.

The Board returned at 8:40 P.M.

5. #11-09-17 QUINSEE 312 NOD HILL ROAD

Ms. Sayegh called the Hearing to order at 8:40 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 September 1, 2011 and details of the application and the hardship as described on the application.

Present were Ned Hoffman, contractor; and Elizabeth S. Zieman, architect.

Ms. Zieman noted that the applicant wishes to construct dormers with a side yard setback of 30 feet in lieu of the required 40 feet, noting that there are inherent construction and egress defects in the early 1900s design of the existing home. She entered into the record photos of the home, noting that the applicant wishes to bring the house up to construction quality and add casement windows as part of the gable dormer-construction proposed, which would bring the structure into compliance with building egress codes. She explained that only three of seven dormers actually require a variance. She also explained that the proposed work would not increase the overall footprint and would encroach no closer to the property line than existing, nor would the building height be raised above what is permitted by zoning regulations.

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

There being no further comments, the public hearing was closed at 8:54 P.M.

6. #11-09-18 UGARTE 81 MOUNTAIN ROAD

Ms. Sayegh called the Hearing to order at 8:54 P.M., seated members Davidson, Fiteni, Frees, Sayegh, and Shiue, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest.

Ms. Bufano recused herself and left the meeting room.

Ms. Frees, acting as Secretary in the absence of Ms. Bufano, read the legal notice dated September 1, 2011 and details of the application and the hardship as described on the application.

Present were Gerry Panico, designer; and Gonzalo Ugarte, homeowner.

Mr. Panico reviewed details of the application, noting that the site is constrained by topographical conditions (i.e. grade changes/depressions in the area of the house) and by ledge and wetlands on other portions of the site. He noted that an existing topographical depression in the area where the garage structure is proposed would provide inherent screening of the structure for neighboring properties. He also noted that the long driveway has a significant impact on site coverage percentage for the property.

Responding to a question regarding the feasibility of locating the garage in a more conforming area of the site, Mr. Panico explained that siting it on the existing driveway would result in loss of a vehicle turn-around area as well as block the main entrance of the residence; and the field area in the center portion of the property experiences seasonal ponding and is therefore also not a feasible location. Mr. Ugarte noted further that they are trying to position the garage in a flat area of the site and closer to the residence, citing serious icing conditions that occurred along the driveway last winter. He noted that the neighbor's garage is located more than 200 feet away from the proposed garage location for the subject site, and he felt that there would be no impact on surrounding neighbors due to the wooded nature of the surrounding area.

Addressing the issue of building/site coverage, Board members questioned the applicant's need for a three-car garage as well as whether any consideration was given to removing an existing shed on the property. Mr. Ugarte stated that a three-car garage would be useful/practical since they own three cars, although he indicated that, if necessary, he would be willing to remove the existing shed from the property.

Mr. Panico also indicated that the driveway could possibly be shaved some to reduce the amount of site coverage proposed.

In response to questions as to whether a second floor/upstairs loft area is proposed for the

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garage, Mr. Panico stated that the design is a matter of aesthetics, noting that the proposed 22-foot high ceiling is an attempt to give the structure a barn-like appearance.

It was the general consensus of the Board that the applicant should seriously consider modifications to the proposed plan, including the possibility of removing one of the garage bays and the existing shed to reduce proposed building/site coverage percentages; and relocating the garage as much as possible away from the property line to reduce proposed encroachment into the side yard setback.

Ms. Sayegh noted that the applicant could request a continuance of the hearing until October to consider plan modifications to address the aforementioned issues.

Mr. Weiss stated that he would also like to see a plan indicating elevations/changes in grade at the next hearing.

The applicant requested that the hearing be continued until the next meeting on October 17, 2011.

Mr. Nerney noted for the record that the applicant must prove a hardship unique to the land that relates to physical conditions which, if denied, would disallow the property owner reasonable use of the property. He stated that there appear to be ways to lower the impact of the requested site modifications, i.e. to reduce encroachments to minimal levels with respect to coverages and setbacks.

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

There being no further comments, at 9:26 P.M. the public hearing was continued until October 17, 2011.

The Board took a short recess at 9:26 P.M.

The Board returned from recess at 9:36 P.M.

C. APPLICATIONS READY FOR REVIEW AND ACTION

Ms. Sayegh called the Regular Meeting to order at 9:36 P.M., seated members Bufano, Frees, Sayegh, Shiue, and Weiss, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest.

**1. #11- 06-11 I.PARK NORWALK, LLC KENT RD & “DANBURY RD
TOWN LINE”**

The Board discussed the application for a 14.9-foot side yard setback in lieu of the required 50 feet.

Mr. Fiteni felt that the applicant did not prove a hardship. He stated that drainage and gas pipes could be moved, noting that this is done all the time, albeit not without some expense; many alternative interior floor plans are possible; and the shape of the proposed building represents more of an architectural preference as opposed to an inherent hardship.

Addressing the issue of the State-imposed drainage easement to the south, Mr. Nerney and Ms. Frees noted that it is not always easy to renegotiate such an easement since permission from the State would be required.

All other Board members were in general agreement that a hardship was demonstrated since they felt that: 1) the south side, as an alternative location for the proposed addition, has too many issues and would impact site circulation/safety and emergency vehicle access; 2) the State taking has made site conditions worse; 3) Norwalk’s previous approval of the proposed site modifications should receive some weight in the Board’s consideration of the application; 4) the addition is not going any farther out; and 5) there are no surrounding properties that would be negatively impacted by the proposed addition.

MOTION was made by Ms. Bufano, seconded by Ms. Frees, and carried unanimously (5-0) to **grant** the variance for a 14.9-foot side yard setback in lieu of the required 50 feet, in accordance with submitted plans, on grounds that sufficient hardship was demonstrated given the existing State easement, the topography of the site, and the existing gas lines.

2. #11- 07-14 POIRIER/PUMA 464 NOD HILL ROAD

Ms. Sayegh was unseated. Mr. Fiteni was reseated.

The Board discussed the variance application for a 41.8-foot front yard setback in lieu of the required 50 feet.

It was the general consensus of the Board that a hardship was proved given the corner nature of the lot with its two front yard setback requirements, and the topography of the site where existing ledge necessitated a specific septic location, which ultimately mandated the current pool location and thus the need for a variance in connection with the proposed pool pavilion. The Board also appreciated the applicant's reduced setback request as compared with the applicant's original application, and felt that it would be a minimal intrusion with no negative impacts to surrounding properties.

MOTION was made by Mr. Shiue, seconded by Mr. Weiss, and carried unanimously (5-0) to **grant** the variance for a 41.8-foot front yard setback in lieu of the required 50 feet, in accordance with submitted plans, on grounds that sufficient hardship was demonstrated due to the site's challenging topography and the fact that it is a corner lot constrained by two front yard setbacks.

3. #11-07-15 ARENAS 14 OWN HOME AVENUE

Mr. Fiteni was unseated. Ms. Sayegh was reseated.

The Board discussed the variance application for front yard setbacks of 26 feet and 29.4 feet where 40 feet are required, in addition to building coverage of 13.8% where 10% is the maximum permitted, and site coverage of 19% where 15% is the maximum permitted.

It was the consensus of the Board that the proposed use was reasonable and that hardship was proved given the small (1/3-acre +/-) size of the lot which is located in, and constrained by, residential one-acre zoning requirements, as well as the pre-existing nonconforming nature of the property. It was also noted that the applicant reduced proposed site coverage as compared with the original application and as compared to the property's existing site coverage level of 22.4%.

MOTION was made by Ms. Frees, seconded by Ms. Bufano, and carried unanimously (5-0) to **grant** variances for front yard setbacks of 29.4 feet and 26 feet in lieu of the 40 feet required, for building coverage of 13.8% in lieu of the permitted 10%, and for site coverage of 19% in lieu of the permitted 15%, in accordance with revised plan ZL1 dated August 8, 2011, on grounds that sufficient hardship was demonstrated given the undersized lot and the pre-existing nonconforming nature of the property.

4. #11-09-16 JANSEN 70 MIDDLEBROOK FARM RD

Mr. Shiue was unseated. Mr. Davidson was reseated.

The Board discussed the variance application for a rear yard setback of 41.2 feet in lieu of the required 50 feet.

It was the consensus of the Board that hardship was proved given the location of the residence in the extreme rear portion of the lot; the location of septic and wetlands on the property; and the varying elevations/grades on the property. It was also noted that the applicant would be utilizing the existing footprint for the installation of the proposed new steps and there would not be any impact on surrounding properties in the vicinity of this addition.

MOTION was made by Mr. Weiss, seconded by Mr. Davidson, and carried unanimously (5-0) to **grant** a variance for a rear yard setback of 41.2 feet in lieu of the required 50 feet, in accordance with submitted plans, on grounds that sufficient hardship was demonstrated given the changes in grade, the location of wetlands in the front of the property, and the fact that the new deck construction will be set back approximately 3 feet from the existing deck.

5. #11-09-17 QUINSEE 312 NOD HILL ROAD

Mr. Davidson was unseated. Mr. Shiue was reseated.

The Board discussed the variance application for the construction of dormers with a side yard setback of 30 feet in lieu of the required 40 feet.

It was the consensus of the Board that a hardship was proved given the pre-existing nonconforming nature of the property and the unique shape of the lot. It was also noted that there would not be any increase to the footprint, and the applicant would be addressing a non-compliance issue related to means of egress.

MOTION was made by Ms. Sayegh, seconded by Mr. Shiue, and carried unanimously (5-0) to **grant** the variance for a side yard setback of 30 feet in lieu of the required 40 feet, in accordance with submitted plans, on grounds that sufficient hardship was demonstrated due to the pre-existing nonconforming nature of the property as well as the unique shape of the lot. The Board also noted that the applicant would be correcting an issue of non-compliance on the property.

6. #11-09-18 UGARTE 81 MOUNTAIN ROAD

Tabled.

D. OTHER BUSINESS

1. Minutes – July 18, 2011

MOTION was made by Ms. Bufano, seconded by Mr. Fiteni, and carried (6-0-1) to approve the minutes of July 18, 2011. Mr. Davidson abstained.

E. ADJOURNMENT

MOTION was made by Ms. Frees, seconded by Mr. Davidson, and carried unanimously (7-0) to adjourn at 10:22 P.M.

Respectfully submitted,

Lorraine Russo
Recording Secretary