

ZONING BOARD
OF
APPEALS
Telephone (203) 563-0185
Fax (203) 563-0284



TOWN HALL ANNEX
238 Danbury Road
Wilton, Connecticut 06897

**ZONING BOARD OF APPEALS
REGULAR MEETING
OCTOBER 15, 2012
7:15 P.M.
TOWN HALL ANNEX - MEETING ROOM A**

PRESENT: Sally Poundstone, Chairman; Timothy Meyer, Vice Chairman; John Comiskey, Secretary; Brian Lilly, Steven Davidson, Alternate, Joe Fiteni, Alternate

ABSENT: Libby Bufano, Albert G. Nickel

A. CALL TO ORDER

Ms. Poundstone called the meeting to order at 7:15 P.M.

B. PUBLIC HEARINGS

1. 12-09-20 GABORIAULT HONEY HILL ROAD

Mr. Comiskey read a letter from Atty. Healy, requesting a continuation on Application 12-09-20, Garboriault to November 19, 2012.

Ms. Poundstone asked if there was anyone present from the public who wished to address the Board on this matter.

Mr. Edward Benison, who resides on Honey Hill Road came forward and asked how long continuations could be filed. Mr. Neary reviewed the regulations.

Mr. Thomas of 19 Mayapple Road asked if an advisory to the parties had to identify themselves. Ms. Poundstone said that representatives of any application would identify themselves to the Board.

2. 12-10-23

VAN

96 WEST MEADOW ROAD

Ms. Poundstone called the Hearing to order at 7:20 P.M., seated members Lilly, Comiskey, Meyer, Davidson and Fiteni. Ms. Poundstone then referenced the Connecticut General Statutes, Section 8-11, Conflict of Interest. Mr. Comiskey read the legal notice and the variance description regarding the replacement of two existing non-conforming A/C condensers, the addition of a third condenser along with the addition of an emergency generators within the required setbacks.

Present was Mr. Rob Saunders, the representative for the applicant.

Mr. Saunders came forward and greeted the Board members. He said that there had been an earlier application in 2010 regarding a garage. This application is for an additional generator on the south side of the house. The house was built in the 1930s and has three and a half acres. However, the parcel is oddly shaped with the house located in the center of the hour glass shaped parcel. Mr. Saunders indicated where the existing equipment was located and said that the idea was to organize the equipment more in line with the zoning regulations. This project proposes to move the AC units into a well next to the generator for sight line improvements and sound mitigations. Mr. Saunders reviewed the elevations and the distance between units on the site plan.

Mr. Saunders said that there had been an addition in the 1990's, which was built on a slab. Due to this, the units cannot be moved to the opposite side of the house.

Mr. Fiteni asked about the stone wall in the back of the property. Mr. Saunders said that the wall was about seven feet and gradually tapers down to about 6 feet.

Mr. Comiskey asked about a pool on the grounds. Mr. Saunders indicated where that was on a site map.

Ms. Poundstone asked if there was any member of the public present who wished to address the Board at this time.

Ms. Kathryn Tafuro of 106 Meadow Road came forward. She asked if the generator was basic services or more. Mr. Saunders said that the tank was propane. She said that she had asked Mr. Saunders several question about generator earlier, which he answered, included how much noise that generator would create.

Mr. Lilly asked if the two parcels were on the same electrical line. Mr. Saunders said that originally they thought the same line was for both residences, but the line that came into the Van's property was only for the parcel. The discussion then moved to how much noise a generator would create. It was pointed out that if the power was out in the neighborhood, there would be several generators running. Mr. Saunders added that putting the generator down in the proposed well would help suppress the sound of the generator.

Ms. Poundstone closed the hearing on 96 West Meadow Road at 7:39 p.m.

3. 12-10-24

SULLIVAN

356 NOD HILL ROAD

Ms. Poundstone called the Hearing to order at 7:40 P.M., seated members Lilly, Comiskey, Meyer, Davidson and Fiteni. Ms. Poundstone then referenced the Connecticut General Statutes, Section 8-11, Conflict of Interest. Mr. Comiskey read the legal notice and the details of the request for variance.

Mr. Kevin O'Brien of Wilton Country Homes was present to represent the applicant.

Mr. O'Brien came forward and greeted the members of the Board. He said that he had come before the Board in the past as a land surveyor. He said that this was difficult request because the pergola and fireplace were already in place. The owner hired a pool contractor to construct a pool with the pergola and fireplace in 2005.

When the owners came in for another application for a generator, the open permits were discovered. Mr. O'Brien reviewed the details on the structures that were existing. However, the zoning compliance letters were never done. The pergola comprises four posts with laths across the top for the wisteria. These are situated on a four foot high stone wall. He also gave an overview of the regulations.

Mr. O'Brien noted that the applicant had the driveway pavement removed to come into compliance with the site coverage. Mr. Nerney pointed out that the Building Department would only deal with the building codes, not the zoning regulations.

Mr. Lilly asked if the retaining wall had a permit. Mr. O'Brien said that it did not because the stone wall was under 6 feet tall.

Mr. Comiskey asked how long the Sullivan's had owned the house. Mr. O'Brien said that the Sullivan's had owned the house since 2001. Mr. Comiskey then asked if the pool company and the landscaping company were still in business. Mr. O'Brien said that he believed they were still in business. Mr. Davidson then reminded everyone about a case where a family had to remove a pool from their property. He asked how far the home owner's responsibility extended. Mr. O'Brien replied that unlike the other case, the pool, pergola and fireplace were not on someone else's property.

Mr. Fiteni asked what the hardship was. Mr. O'Brien said that there was a drop off in the topographical layout. The level of the pool to the backyard is not even. Mr. Nerney said that the chimney and the pergola were in the setback. The walls are all permitted.

Mr. Nerney said that in reference to another property with a pool, he advised caution in comparison to other parcels. He reminded everyone that the hardship test would be applicable in this case.

Ms. Poundstone asked if there was any member of the public present who wished to address the Board at this time. No one from the public wished to address the Board.

Ms. Poundstone closed the hearing on 356 Nod Hill Road at 8:04 p.m.

4. 12-10-25

ARAVENA

21 OREMS LANE

Ms. Poundstone called the Hearing to order at 8:05 P.M., seated members Lilly, Comiskey, Meyer, Davidson and Fiteni. Ms. Poundstone then referenced the Connecticut General Statutes, Section 8-11, Conflict of Interest. Mr. Comiskey read the legal notice and the application request.

It was noted that the parcel is .207 acres in area rather than 0.21+/- as stated in the legal notice.

Present were Ms. Tracy DePaulis and Daniel Aravena, applicants/owners.

Ms. DePaulis came forward and stated that she was a co-owner of 21 Orem's Lane. She said that her previous application had been denied and now was requesting a deck on the garage area and an addition on the opposite side of the house from where it was previously proposed.

Mr. Fiteni asked why the addition could not go in the back. Ms. DePaulis said that the backyard bordered the Norwalk River and she didn't want to put an addition where there was a possibility of flooding. Mr. Nerney said that he did not believe that flooding would come over the patio. Mr. Fiteni asked where the wetlands setback was. Discussion followed about this.

Ms. Poundstone asked about the fact that the addition would be within 2 feet of the property line. Ms. DePaulis said that she had no other option. She can't build over the garage and can't build in the back. She added that Orem's Lane was wooded and the set back was used for drainage. She then passed around a photograph showing the area. The deck would be identical to the neighbors to be in harmony with the existing deck.

Mr. Meyer asked if there was one or two AC units. Ms. DePaulis said that it was one unit.

Mr. Comiskey asked about the removal of the paving of the driveway. However, he pointed out there would be an increase of 2% of building coverage. She said that she was granted a new patio last month, and the new patio proposal was smaller than the original proposal. Mr. Nerney reviewed the details of the variances and indicated where they were on the site plan.

Ms. Poundstone asked if there was any member of the public present who wished to address the Board at this time.

Atty. Doug Bayer, came forward and said that he represent Ms. Lucy Krupenye. He said that he would give a brief overview of the history of the property. He said that it would be important that the record reflect his client's concerns. In 2007, the applicant requested several variances

and were able to increase the size of their house. He said that his client had objected to the increase in the size of the house then.

Two months ago, there was an application for a two story addition over the garage. Atty. Bayer said that at the hearing in August and September, his client objected because there was no hardship and it would have a negative impact on his client's property. At the conclusion of the hearing, the Board concluded there was no hardship regarding the garage.

Now, a month later, there is a new application involving the garage and there still is no hardship. It would still have a negative impact on his client's property. It is the applicant's burden to show the need for this variance. They are seeking outdoor recreation and were granted permission for a patio. The proposed use over the garage would be more obnoxious than the previously proposed living space. Now the garage serves as a buffer between where the applicants spend their time and his client's property. By putting a patio on the garage, it would be much more intrusive since it is over the garage and there is no way to screen it.

Mr. Lilly pointed out that each of the variances stands on its own.

Ms. Lucy Krupenye came forward and said that she would like to thank the Board for listening to her on the previous application. She then read a statement saying that building a deck over the garage would be much more detrimental than an addition. The only buffer that exists between the two parcels is the garage. Her privacy would be destroyed. She then listed a number of the problems that would be created including the view into her living room and dining room windows and the voices amplification on the patio. There are two sets of flood lights that already shine into her backyard. Ms. Krupenye said her deck is over 45 feet from their property and faces the other way. She reviewed the barriers between her deck and the other property.

Ms. Krupenye pointed out that the other three houses on the lane were all owned by the same family. Ms. Krupenye said that she had owned the house for 19 years, and 12 of those were in peace and tranquility. She bought her house in Wilton because she wanted privacy and thought she had been granted that. She said that the deck should be on the other side of the house, like the other neighbors.

Ms. Krupenye came forward and submitted photographs of the view from her windows.

Ms. DePaulis said that she had been present when Ms. Krupenye had requested her deck that looks over 80% of her backyard. She passed along a drawing showing where the windows were. Ms. Tracy then passed along more photographs of Ms. Krupenye 's deck to the Board.

Ms. DePaulis then displayed the variance that was granted last month and stated that she had not filed it. Mr. Fiteni said that it was a legal document. Mr. Nerney said that the Board had approved it. The last variance has no bearing on this. She said that she had been told that she didn't have a hardship and was asking simply to have what others had.

Atty. Bayer came forward and pointed out that with the pictures that were submitted by his client had been taken from the windows of her house.

Mr. Nerney suggested that all five variances be voted on separately.

Ms. Krupenye came forward to state that her photographs had been taken from inside of her home.

Ms. Poundstone closed the hearing on 21 Orems Lane at 8:43 p.m.

RECESS

Ms. Poundstone announced a recess at 8:43 P.M. She called the meeting back to order at 8:47 P.M.

C. APPLICATIONS READY FOR REVIEW.

1. 12-09-20 GABORIAULT HONEY HILL ROAD

This application was continued to November 19, 2012 at the request of the applicant.

2. 12-10-23 VAN 96 WEST MEADOW ROAD

Mr. Lilly pointed out that just gathering the utilities into one location. There have been no dissenting letters from the neighbors. Mr. Fiteni added that the applicant was limited as to where they could place the utilities because of slab foundation. Mr. Comiskey reminded everyone that generator must be located close to the surface and there are proximity constraints.

MOTION was made by Mr. Lilly, seconded by Mr. Fiteni and carried unanimously (5-0) to **grant** the variance of Section 29-5.D to relocate two existing non-conforming A/C condensers and add a third condenser with a side yard setback of 32 feet in lieu of 40 feet required; and install an emergency generator with a side yard setback of 32 feet in lieu of 40 feet required.

3. 12-10-24 SULLIVAN 356 NOD HILL ROAD

Mr. Fiteni said that the one hardship would be topographical and he did not believe hardship had been demonstrated. Mr. Lilly said that the question for him was if it was not there and the applicant had requested it, whether he would he approve it. He said that he did not think it would be granted in that location. Mr. Comiskey pointed out that he couldn't see why the pergola and the fireplace could be located to the other side. He did not see a hardship there.

MOTION was made by Mr. Fiteni and seconded by Mr. Davidson Fiteni and carried unanimously (5-0) to **deny** the request for the variances of Section 29.5.D to allow a Pergola with a 25.6' side yard setback and a 45.7' rear yard setback in lieu of the required 40 foot side and required 50 foot rear setbacks; and allow an outdoor Fireplace with a 33.4' side yard setback and a 46.1' rear yard setback in lieu of the required 40 foot side and required 50 foot rear setback on the basis that there is no hardship.

4. 12-10-25

ARAVENA

21 OREMS LANE

Mr. Lilly asked about the two story addition that was proposed on the front side of the house with a 2 foot set back. He said that there is no portion of this parcel where one could build because the set backs overlap each other. So there is a legitimate hardship. The question then becomes whether the residence should become larger. Mr. Fiteni said that the regulations said that additions should not be encouraged because of the regulations. Mr. Davidson said that the deck seems to be a problem for the public, so he was suggesting putting the deck aside. Discussion followed.

Mr. Comiskey pointed out that last time, there was no increase in coverage, but now this proposal increases the land coverage. Coverage and give back were discussed last time, but there is no give back this time. He also asked where non-conformity would stop. Discussion followed.

The topic of the discussion then moved to the open deck. Mr. Davidson said that he believed the request would meet the hardship standard because of the lot size. Mr. Nerney said that the regulations state a "reasonable use of the property". Mr. Lilly pointed out that it would be taking an existing structure with a peaked roof and flattening the roof for the patio. It would not be increasing the footprint.

Mr. Meyer asked Mr. Nerney about the regulations and the intent. Mr. Nerney said that it could be taken into consideration, but the request still needed a hardship. Mr. Lilly replied that it would be a pre-existing hardship. Mr. Nerney said that it was not legally non-conforming structure. After checking the 2007 application, Mr. Nerney said that it appeared that the garage was pre-existing.

Mr. Meyer pointed out that the AC unit had been moved from the neighbor's side and placed in the back.

MOTION was made by Mr. Fiteni, seconded by Mr. Lilly and carried unanimously (5-0) to **deny** the request for the variances of Section 29.5.D to permit a two story structural addition with a front yard setback of 2 feet where 40 feet is required and a side yard setback of 9.5 feet where 30 feet is required.

MOTION was made by Mr. Fiteni, seconded by Mr. Meyer and carried unanimously (5-0) to **grant** the request for a variance for the installation of an air conditioning unit with a rear yard setback of 28.2 feet where 40 feet is required.

The discussion moved back to the deck. Mr. Nerney indicated that it was a modification of what had been previously approved. It was also pointed out that there was already an existing patio. Ms. Poundstone said that the hardship was not referred to in the application.

MOTION was made by Mr. Lilly seconded by Mr. Davidson to grant the request for a variance for modification of a roof to an open deck resulting in a rear yard setback of 12.1 feet where

40 feet is required (proposed modification of an existing roof to a second story open deck). The motion failed 2 to 3 and consequently the variance was denied. Messrs. Lilly and Davidson voted for the motion and Messrs. Comiskey, Fiteni and Meyer voted against the motion.

MOTION was made by Mr. Lilly, seconded by Mr. Fiteni, and carried unanimously (5-0) to **deny** the variance to permit building coverage of 16.9% where 15.5% presently exists and a maximum of 10% is allowed because the building currently exceeds the coverage percentage.

D. OTHER BUSINESS

1. Approval of Minutes – September 17, 2012.

It was noted that Mr. Meyer's name was incorrectly spelled in the body of the minutes.

MOTION was made by Mr. Meyer, seconded by Mr. Lilly, and carried unanimously (5-0) to approve the September 17, 2012 minutes as corrected.

2. Approval of proposed ZBA Meeting Schedule - 2013.

There was a brief discussion about possible conflicts because of school vacations.

MOTION was made by Mr. Fiteni, seconded by Mr. Lilly and carried unanimously (5-0) to approve the proposed ZBA Meeting Schedule for 2013.

E. ADJOURNMENT

Ms. Poundstone adjourned the meeting at 9:35 p.m.

Respectfully submitted,

Sharon L. Soltes
Telesco Secretarial Services