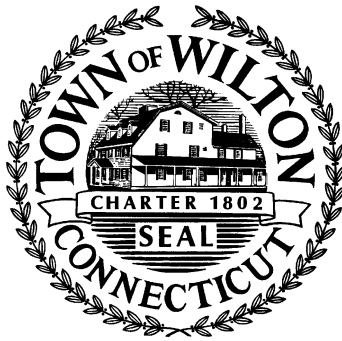


ZONING BOARD  
OF  
APPEALS  
Telephone (203) 563-0185  
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TOWN HALL ANNEX  
238 Danbury Road  
Wilton, Connecticut 06897

**ZONING BOARD OF APPEALS  
REGULAR MEETING  
DECEMBER 17, 2012  
7:15 P.M.  
TOWN HALL ANNEX - MEETING ROOM A**

**PRESENT:** Sally Poundstone, Chairwoman; Timothy Meyer, Vice-Chairman; John Comiskey, Secretary; Brian Lilly; Albert Nickel; Libby Bufano, Alternate; Joe Fiteni, Alternate

**ABSENT:** Steven Davidson (notified intended absence)

**A. CALL TO ORDER**

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

**B. PUBLIC HEARINGS**

**1. #12-12-28 NESHEIWAT/RUSSELL 411 OLMSTEAD HILL RD**

Ms. Poundstone called the Hearing to order at 7:15 P.M., seated members Bufano, Fiteni, Lilly, Meyer, and Nickel, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest. Mr. Comiskey read the legal notice dated December 3, 2012 and details of the application and the hardship as described on the application.

Present was Ed Schenkel, Gregory and Adams, attorney for the applicant.

Mr. Schenkel referred to a posted site plan and reviewed details of the variance application for installation of a generator and two propane tanks. He noted that alternative site locations are not available on the west side, due to the existing driveway, or on the south side, given safety concerns in connection with an existing play area. He cited Cannondale Generator's recommendation of the proposed east side location since utility lines run along that side of the house.

## **ZBA Minutes – December 17, 2012 - Page 2**

Referencing hardships for the site, Mr. Schenkel explained that the pre-existing nonconforming property, at 0.248+/- acres, is one of the smallest lots in Wilton (so small that the two side yard setbacks overlap each other). He also noted that when the State expanded Route 7 some years ago, the topography in the area was significantly altered, resulting in increased runoff toward the property as well as basement flooding, making a generator a necessity for the homeowners.

Mr. Nesheiwat explained further that the flooding issues occurred after the State filled in part of a previously existing ice pond in the area. He noted that the applicants subsequently discussed the matter with the State but were informed that nothing could be done to rectify the situation.

In response to a question from the Board regarding the possibility of installing the propane tanks underground, Mr. Nesheiwat explained that, although the applicants would actually prefer that option, it would be far more difficult from an environmental perspective to obtain such approvals. Town Planner Nerney noted for the record that underground tanks are not regulated from a zoning perspective.

Mr. Lilly indicated that he was very familiar with this particular property in Town and he confirmed that there is no alternate location available on the site for the proposed equipment.

In response to a question from the Board regarding adjoining neighbors, Mr. Nesheiwat indicated that the applicants had general discussions with nearby neighbors regarding their plans and no objections were raised.

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

There being no further comments, the public hearing was closed at 7:32 P.M.

### **2. #12-12-29 QUINLAN/WHITE 188 DRUM HILL ROAD**

Ms. Poundstone called the Hearing to order at 7:32 P.M., seated members Comiskey, Fiteni, Lilly, Meyer, and Nickel, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest. Mr. Comiskey read the legal notice dated December 3, 2012, details of the application and the hardship as described on the application, referencing in particular pages 1 and 2 of "Summary of Variance & Proposed Project/Overall Summary" which was submitted as part of the original application.

Mr. Comiskey referred for the record to a letter of support from Janet and Kyle Nobles, 190 Drum Hill Road, dated December 6, 2012; two letters of opposition - from Kerry

### **ZBA Minutes – December 17, 2012 - Page 3**

Nicholas, 182 Drum Hill Road, dated December 3, 2012 and Diane R. Busby, 186 Drum Hill Road, dated December 16, 2012; and two response letters from Kevin Quinlan dated December 10, 2012 and December 17, 2012, respectively. Mr. Nerney noted for the record that copies of all of the aforementioned letters were provided to all Board members.

Mr. Nickel noted for the record that he knew Kevin Quinlan remotely but he did not feel it represented any conflict of interest.

Present was Kevin Quinlan, architect, on behalf of the applicant.

Mr. Quinlan reviewed details of the application, noting that the pre-existing nonconforming parcel is very under-sized, consisting of 0.587+/- acre in a 2-acre zone. He also noted that the residence, constructed in 1978 (several years after zoning setbacks were increased for the site), is only 20 feet wide, which was necessary to conform with the narrow as-of-right construction permitted at that time. He also noted that the house has no attic, no basement and a failing furnace on the second floor of the house, which he felt was a potential health/safety issue.

Mr. Quinlan explained that most of the proposed additions/modifications would be as-of-right. He noted that a small basement under the proposed mudroom portion of the residence would house the electrical panel and furnace and provide much-needed storage space, with access provided via a Bilco stair hatchway to the basement. He highlighted converging roof lines and gutter overflow that occurs above the existing entry door (resulting in icing of the landing during inclement weather), which he explained would be corrected via the proposed enclosed entry vestibule and expanded kitchen area.

Mr. Quinlan explained further that a highly nonconforming cottage that currently encroaches onto the adjacent Nicholas property would be removed and thus the net amount of proposed square footage, after the planned demolition of the existing cottage, would be 118.4 square feet. He noted that the proposed garage could not be pulled forward on the site and still meet all driveway layout/turning requirements.

Citing the letters of opposition that were submitted into the record by two neighbors, Mr. Quinlan stated that he respectfully disagreed with the issues raised in both letters. Referencing the Nicholas letter, he noted that the net result of the proposed project would be to move building mass more than 30 feet farther away from the Nicholas property and he felt that the proposed modifications would increase, not decrease, the value of their property. Referencing the Busby letter, he stated that not having a garage is a land use hardship; the furnace situation is a health and welfare hardship and would be corrected via the application; an A-2 survey was obtained and therefore exact property lines have been established; drinking water and well location will not be impacted; no blasting will be done at any time on the site; and the proposed site modifications should increase the

## **ZBA Minutes – December 17, 2012 - Page 4**

values of all neighboring properties.

In summary, he felt that the proposed site modifications and the proposed demolition of the existing, encroaching cottage, would represent a “win-win” situation for all involved.

Mr. Fiteni asked if the applicant had considered locating the garage in the rear of the lot, where the existing deck is located. Mr. Quinlan replied that there is a septic system in that location, and he noted that engineer Tom Quinn determined that location to have the most suitable soil for a reserve septic area.

In response to a question from Mr. Comiskey regarding a possible reduction in size of the proposed garage, Mr. Quinlan stated that the absolute smallest size it could be reduced to would be 21 x 21 feet from its current proposed 24 x 24-foot size, although he felt that would be quite small given today's standards.

In response to a question from the Board as to whether not having a garage is considered a hardship, Mr. Nerney explained that hardship relates more to the land than to a structure, noting further that an applicant must demonstrate denial of a reasonable use of the property because of constraints such as ledge, wetlands, etc. He cited the subject parcel's pre-existing, nonconforming 0.587-acre size in a minimum 2-acre zone, noting that the Board could possibly consider that aspect of the application and whether it is unique to the surrounding neighborhood.

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

Diane Busby, 186 Drum Hill Road, objected to the application. She noted that she has lived in her small home on less than 0.3-acre for many years and she felt that the applicant's hardship is self-created since the applicant was aware of the property's shortcomings at time of purchase. Ms. Busby stated that the hardship is actually upon her and her cats since it imposes on her privacy, in addition to the fact that she will have to deal with the inconveniences/impositions of ongoing construction. She expressed concern regarding impacts on her drinking water and she felt that, overall, the applicant is attempting to squeeze “ten pounds into a five-pound bag”. She distributed and entered into the record photos of the property given to her by a former owner, dating back many decades.

Mr. Quinlan responded, noting that while Ms. Busby's response was emotional and from her heart, some of her statements were incorrect. He stated that the applicant is entitled to have a garage and, referring to the demolition of the existing cottage, he reasserted the applicant's intention to make the site more conforming.

There being no further comments, the public hearing was closed at 8:29 P.M.

**C. APPLICATIONS READY FOR REVIEW AND ACTION**

Ms. Poundstone called the Regular Meeting to order at 8:29 P.M., seated members Bufano, Comiskey, Fiteni, Lilly, Meyer, Nickel, and Poundstone, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest.

**1. #12-12-28 NESHEIWAT/RUSSELL 411 OLMSTEAD HILL RD**

The Board briefly discussed the application. It was the general consensus of the Board that adequate hardship was demonstrated and that the proposed locations for the propane tanks and generator were the only places available for such purpose on the property.

MOTION was made by Mr. Lilly, seconded by Mr. Fiteni, and carried unanimously (5-0) to **grant** variances of Section 29-5.D to allow a generator with a 32-foot front yard setback in lieu of the required 50 feet and an 11-foot side yard setback in lieu of the required 40 feet; two (2) propane tanks with a 19-foot front yard setback in lieu of the required 50 feet and a 4-foot side yard setback in lieu of the required 40 feet; and site coverage of 31.2% in lieu of the 12% maximum permitted (where existing site coverage is 31%); per submitted Zoning Location Survey prepared by Ryan and Faulds, dated November 15, 2012; on grounds that sufficient hardship was demonstrated given the pre-existing nonconforming nature of the property and the hardship of periodic flooding that has occurred as a result of recent construction along Route 7.

**2. #12-12-29 QUINLAN/WHITE 188 DRUM HILL ROAD**

The Board discussed the application.

Mr. Fiteni stated that he did not feel a hardship was adequately demonstrated for the proposed 2-car garage which he noted also adds to building and site coverages; he noted that a one-car garage could be built instead. He felt that there was a clear need for the bilco stairs and properly-sited utilities. With respect to the entry/kitchen expansion, he did not see it as a real hardship although he indicated that he was not necessarily opposed to it, noting that it was in line with a previously approved variance for the site.

Mr. Lilly felt that taking down the illegal cabin/cottage did not automatically grant the applicants license to have equivalent nonconforming square footage elsewhere on the site. He agreed with Mr. Fiteni regarding the question of hardship for the proposed garage structure.

Mr. Comiskey expressed concern with the size of the proposed garage, questioning

## **ZBA Minutes – December 17, 2012 - Page 6**

whether there would be a site coverage issue at all if the applicant elected to construct a large one-car garage instead.

It was the consensus of the Board that the variances requested, except for those related to the garage, could be justified, but since there would be resulting impacts on building and site coverages, those variances could not be separated out for purposes of this hearing. It was therefore determined that the application should be denied without prejudice so that the applicant could come back at any time in the near future with an amended application.

MOTION was made by Mr. Fiteni, seconded by Mr. Comiskey, and carried unanimously (5-0) to **deny without prejudice** variances of 29-5.D for a proposed garage with 39-foot front yard setback in lieu of the required 50 feet and a 29-foot side yard setback in lieu of the required 40 feet; Bilco stair hatchway and adjacent air-conditioning condenser unit with a 32.5-foot side yard setback in lieu of the required 40 feet; entry expansion with landing, kitchen expansion and covered porch with a 34-foot side yard setback in lieu of the required 40 feet; building coverage of 11.8% in lieu of the 7% maximum building coverage permitted; and site coverage of 12.3% in lieu of the 12% maximum site coverage permitted; on grounds that sufficient hardship was not adequately demonstrated.

### **D. OTHER BUSINESS**

#### **1. Minutes – November 19, 2012**

It was the consensus of the Board to unanimously approve the minutes of November 19, 2012.

#### **2. Election of Officers**

##### **Chairman:**

MOTION was made by Mr. Meyer to nominate and elect Ms. Poundstone as Chairwoman of the Zoning Board of Appeals for 2013.

There were no other nominations for Chairman.

The Motion was seconded by Mr. Lilly, and carried (5-0). Regular members Comiskey, Lilly, Meyer, Nickel and Poundstone voted.

**Vice-Chairman & Secretary:**

MOTION was made by Ms. Poundstone to nominate and elect Mr. Meyer as Vice-Chairman of the Zoning Board of Appeals for 2013; and to nominate and elect Mr. Comiskey as Secretary of the Zoning Board of Appeals for 2013.

There were no other nominations for Vice-Chairman and Secretary.

The Motion was seconded by Mr. Lilly, under condition that the nominees were in agreement and willing to serve another term (and they indicated they were). The motion carried (5-0). Regular members Comiskey, Lilly, Meyer, Nickel and Poundstone voted.

Ms. Poundstone thanked all Board members for their service over the past year and noted that she looked forward to working with them in the future.

**E. ADJOURNMENT**

MOTION was made by Mr. Fiteni, seconded by Mr. Meyer, and carried unanimously (7-0) to adjourn at 8:55 P.M.

Respectfully submitted,

Lorraine Russo  
Recording Secretary