

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

**ZONING BOARD OF APPEALS  
REGULAR MEETING  
MAY 20, 2013  
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

**A. CALL TO ORDER**

Ms. Poundstone called the meeting to order at 7:15 P.M. She briefly reviewed the hearing process for applications that come before the Zoning Board of Appeals.

**B. PUBLIC HEARINGS**

**1. #13-05-06 HARRELL 39 WARNCKE ROAD**

Mr. Nickel noted that he is a friend of Tucker Kellogg (the applicant's representative), but he did not feel it would interfere with his ability to remain objective. [Mr. Nickel was not subsequently seated on the matter.]

Ms. Poundstone called the Hearing to order at 7:15 P.M., seated members Bufano, Comiskey, Lilly, Meyer and Poundstone, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest. Mr. Comiskey read the legal notice dated May 3, 2013 and details of the application and the hardship as described on the application.

Present was Tucker Kellogg, contractor, on behalf of the applicants.

The hardship was described during the reading of the "Hardship Description", including the fact that the existing home does not currently have a garage, and the fact that if the proposed garage were pushed back farther into the lot in order to conform with setback requirements, it would encroach into the septic area. It was also noted that the proposed

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garage attachment to the house would allow the owners and their young children to safely enter/exit the home during inclement weather, as well as allow the children to wait safely under cover for the school bus.

Mr. Kellogg explained further that a previously granted variance, which runs with the land in perpetuity, would allow the homeowners to build the proposed garage as a detached, stand-alone structure. He stated that since the owners wish to attach the garage structure to the home, zoning staff determined that another variance would be required.

Mr. Comiskey questioned whether the applicants were, in fact, creating their own hardship out of a concern for aesthetics regarding the location of the garage doors. He noted that the subject variance would likely not be required if the garage were reconfigured so that the doors face the road, thus reducing the potential septic encroachment noted earlier since the driveway would not need to wrap around toward the rear.

Mr. Kellogg noted that the driveway already exists in that location. He also noted that such a reconfiguration would not provide any room for guest parking. He explained further that existing grades would make a driveway change more difficult, and would also result in greater disturbance to the land.

In response to further questions from Mr. Comiskey regarding hardship, Mr. Kellogg noted that the previously granted variance was for a garage structure in the exact location as currently proposed (except for the newly proposed portion connecting it to the house) and the granting of said variance at that time clearly indicated that a hardship was recognized by the Board. He noted further that due to the location of the septic on the property, there is not enough room to push the garage farther back into the lot.

Mr. Lilly noted for the record that even if the variance were denied this evening, the applicant would still be able to build the garage without the connecting portion since a variance for the garage structure itself was already granted previously. He noted that the only difference between the previous application and this one is that the applicant is adding two walls and a ceiling to an existing porch in order to connect the garage to the house.

It was also noted for the record that the current application would be less intrusive into the setback than the previously approved variance.

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

There being no further comments, the public hearing was closed at 7:27 P.M.

**2. #13-05-07 CROWTHER 45 BELDEN HILL ROAD**

Ms. Poundstone called the Hearing to order at 7:27 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 May 3, 2013 and details of the application and he summarized the “Statement of Hardship” submitted with the application.

Present was Ivan Crowther, applicant/owner.

Referencing the submitted “Statement of Hardship” (which listed the pre-existing nonconforming nature of the 0.518-acre lot located in an R-2A zone, the steep slope and ledge rock in the rear, and the septic location constraints), Mr. Crowther also noted that the applicants wish to attach the house to the detached garage and would like to reconfigure the upstairs so that it is no longer necessary to walk through one bedroom to reach the second bedroom. He explained that variances were granted a couple of years ago in connection with a larger, more expansive plan which the applicants have since had to scale back, and thus the reason for the subject application.

Mr. Comiskey recalled the previous application and confirmed the constraints/hardships of the subject property.

Mr. Lilly asked if there was any way to withdraw the previous, unused variances and to just retain the subject variance (if it were to be approved) so that there would not be so many outstanding variances running in perpetuity on the subject parcel. He expressed concern that future owners, by utilizing the previously approved variances, could potentially someday build out the property way beyond the scope of what the Board believes it is currently approving.

Mr. Nerney explained that, per Town legal counsel, the Town cannot void a previously granted variance nor can a variance be granted conditioned upon the removal of a prior variance. However, he noted that an applicant can voluntarily agree to abandon a prior variance, but it must be the applicant’s decision. In such a situation, he explained that the Town has a form that can be recorded on the land records indicating a property owner’s desire to relinquish a previous variance.

Mr. Crowther stated that he had no objection to renouncing the prior variances.

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

There being no further comments, the public hearing was closed at 7:36 P.M.

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

Ms. Poundstone called the Regular Meeting to order at 7:36 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. #13-05-06 HARRELL 39 WARNCKE ROAD**

The Board briefly discussed the application. It was the consensus of the Board that since the garage itself was already approved in connection with a previous variance application, the only additional portion of consideration to the Board was the proposed connection to the house, which the Board felt would not be problematic.

MOTION was made by Mr. Lilly, seconded by Ms. Bufano, and carried unanimously (5-0) to **grant** the variance to allow a garage addition with a 33-foot front yard setback in lieu of the required 50 feet; as per submitted Zoning Location Survey prepared by Ryan and Faulds Land Surveyors, dated April 18, 2013 and received April 25, 2013; on grounds that sufficient hardship was demonstrated when the original garage application was approved and the additional portion currently proposed just involves enclosing in an already existing porch.

**2. #13-05-07 CROWTHER 45 BELDEN HILL ROAD**

It was the consensus of the Board that the application was fairly straight-forward and represented less of an intrusion than what was previously approved for the site a couple of years ago. Mr. Fiteni indicated that he would be more comfortable if the prior unused variances were relinquished by the applicant, although he understood that the Board could not require such a relinquishment. Ms. Poundstone noted that the applicant had indicated a willingness to void the previous variances granted for the property. Mr. Nerney stated that he could speak with Mr. Crowther later in the week if he is interested in pursuing such a course of action.

MOTION was made by Mr. Fiteni, seconded by Mr. Lilly, and carried unanimously (5-0) to **grant** the variance to allow an addition with a side yard setback of 27 feet in lieu of the required 40 feet; construction of a second story addition above an existing legal nonconforming structure resulting in a front yard setback of 41 feet in lieu of the required 50 feet and a side yard setback of 30 feet in lieu of the required 40 feet; conversion of a deck to a storage room resulting in a side yard setback of 14 feet in lieu of the required 40 feet; and building coverage of 9.2% where a maximum of 7% is allowed; as per submitted property survey prepared by Roland H. Gardner, dated June 19, 2007, revised April 25, 2013 and received April 25, 2013; on grounds that sufficient hardship was demonstrated given the pre-existing nonconforming nature of the very small-sized lot, and the limitations of the grade behind the house.

**D. OTHER BUSINESS**

**1. Minutes – April 15, 2013**

It was the consensus of the Board to unanimously approve, as drafted, the minutes of April 15, 2013.

**E. ADJOURNMENT**

MOTION was made by Ms. Poundstone, seconded by Mr. Lilly, and carried unanimously (7-0) to adjourn at 7:45 P.M.

Respectfully submitted,

Lorraine Russo  
Recording Secretary