

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
JUNE 17, 2013
7:15 P.M.
TOWN HALL ANNEX - MEETING ROOM A**

PRESENT: Sally Poundstone, Chairwoman; John Comiskey, Secretary; Brian Lilly; Libby Bufano, Alternate; Joe Fiteni, Alternate

ABSENT: Steven Davidson; Timothy Meyer and Albert Nickel (advised intended absences)

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. #13-06-08 JOHNSON 12 KEELERS RIDGE ROAD

Ms. Poundstone called the Hearing to order at 7:15 P.M., seated members Bufano, Comiskey, Fiteni, Lilly, and Poundstone, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest. Mr. Comiskey read the legal notice dated May 30, 2013 and details of the application and the hardship as described on the application. He referenced a letter dated June 13, 2013 from H. Casey Cordes to Zoning Board of Appeals, with 5 pages of attached photos/maps; a letter of support dated June 7, 2013 from Jeffrey A. and Christine Titus to Zoning Board of Appeals; and a letter of support dated June 14, 2013 from Richard Nichol to Zoning Board of Appeals. Ms. Poundstone noted that copies of the referenced documents were provided to the applicants.

Present were Kevin Johnson and Carol Johnson, applicants.

Ms. Johnson submitted into the record two additional letters of support from neighbors Matt Ellenthal, and David and Tina Boudreau, dated June 12, 2013 and June 16, 2013, respectively.

Ms. Poundstone noted that Commissioner Al Nichol was not present this evening because he owns property close to the subject site.

ZBA Minutes – June 17, 2013 - Page 2

Mr. Johnson reviewed details of the application. He stated that the applicants have an undersized, legally non-conforming rear lot that is set far back from the road, surrounded by Land Trust property to the north and west, and the Norwalk Taxing district to the east. He explained that the applicants had applied for a zoning permit as required prior to construction of their pool, but when they requested a Zoning Certificate of Compliance prior to obtaining their Certificate of Occupancy, an error was discovered by the Zoning Enforcement Officer (ZEO).

At that time, the ZEO noted that the property, which the applicants thought was 2.79 acres in total area, was actually only 1.8 acres for purposes of coverage calculations due to a very long access way that should not have been counted towards total acreage. He explained that both the applicants' surveyor and the acting ZEO, who signed off on the original zoning permit, had erred in the calculation of coverage for the site. He noted further that the applicants had actually been under the impression that they owned 3.79 acres since they had been assessed/taxed on that amount of land until recently when the Town Assessor confirmed the lower acreage total of 2.79 acres, and refunded them the pro-rated share of back taxes relating to the additional acre.

He noted hardships/constraints as follows: 1) the legally undersized 1.8-acre lot that is burdened by an access way of .99 acre (which is not counted towards total acreage); 2) the need to rip up the current driveway and reconstruct it with new materials in order to comply with site coverage restrictions, thus creating unnecessary site disturbance/earth removal; and 3) the location of the well and wetlands, making it difficult to site the pool pad in a different location.

Mr. Johnson referenced a letter submitted by South Norwalk Electric and Water (SNEW) expressing various concerns, including the deleterious effects of excess impervious coverage on the watershed; existing areas of erosion on SNEW property as a result of over-development in the area, with resulting impacts on water quality and the environment; and dumping of yard wastes from the subject property onto SNEW property. He explained that the yard waste noted by SNEW was as a result of trees that were dropped on the property by the recent hurricane. He stated that the applicants wish to correct whatever they did incorrectly, although he felt that SNEW had not provided any proof of any damage to the watershed.

In summary, Mr. Johnson acknowledged that the pool pad siting was the applicants' mistake, but he felt that was the only thing the applicants did wrong, noting that the coverage aspect of the application was not their fault. Referencing the errors on the part of the surveyor, the acting ZEO, as well as the Town Assessor, he felt that the entire incident was essentially a "comedy of errors".

Ms. Johnson submitted photos of the pool into the record for Board review.

ZBA Minutes – June 17, 2013 - Page 3

Mr. Nerney explained that the 1.88-acre parcel was created at a time when the Town permitted lot “averaging” within a subdivision, which he noted is no longer permitted and therefore each R-2A-zoned parcel now requires a minimum of 2 acres. He explained further that the subject parcel has a very long tail (perhaps 700-800 feet in length) which is not counted towards lot acreage since zoning regulations discounts pieces of land that are less in width than one-third the minimum lot width required for the zone.

In response to questions from Mr. Comiskey, Mr. Nerney confirmed that both the acreage associated with the tail piece of land, as well as any coverage associated with the tail piece, are not counted in coverage calculations. He also confirmed that the original permit review had included the full 2.79 acres in the coverage calculation and thus the determination was mistakenly made at that time that it conformed with required coverage limitations.

In response to a question regarding possible alternate locations for the pool equipment, Mr. Johnson indicated that the applicants could ask the pool company whether an alternate site would be possible. Mr. Lilly noted for the record that the site appears to be limited in that regard due to the topography (i.e. a hill) to the right of the pool and the fact that such equipment must be sited in a flat area. He expressed doubt as to whether it could be moved anywhere on the site and be totally conforming.

In response to a question from Mr. Comiskey regarding any other consideration/remedy that might be available on the part of the Town, Mr. Nerney explained that the ZEO requires an as-built to close out zoning permits and he felt that the ZEO made the correct decision in this situation. He indicated that the only recourse would be some mitigation on the part of the applicants. He noted that land acquisition from the southern neighbor was one suggestion, which the applicants explored, but this did not prove to be a viable option due to wetland limitations/issues on the neighbor’s site.

In response to further questions from the Board, Mr. Johnson indicated that when they first applied for the zoning permit, they were of the belief that they actually had 3.79 acres, in addition to the .99-acre access way, and thus they felt that they were well within the coverage limitations set forth in the zoning regulations.

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

Casey Cordes, watershed inspector for SNEW, referenced his letter of June 13, 2013, which addressed a number of concerns previously referenced concerning the subject site. He explained that SNEW, which owns 200+/- acres to the east of the subject parcel, is more concerned about further erosion that is anticipated over time (referencing two existing areas of erosion, including a large gully on one side of the parcel) and less concerned about landscape dumping on SNEW property. He expressed additional

ZBA Minutes – June 17, 2013 - Page 4

concerns about septic issues on the site, referencing a large curtain drain that was installed some years ago. He noted specific remedies that could be taken by the applicants to ameliorate some of the aforementioned issues, including installation of rain gardens and/or a storm water detention system (i.e. anything to slow down water runoff/erosion on the site).

Mr. Nerney explained that the ZBA is limited from a legal perspective with respect to applying/requiring conditions of approval. However, he asked whether some deep-rooted vegetation or possibly some rip rap in certain areas of the site might be helpful to minimize scouring, if the applicants were willing to implement such remedies.

Mr. Fiteni suggested a level spreader as another alternative to minimize the impact of storm water runoff.

Mr. Cordes stated that SNEW would have recommended remedies had the application come to them prior to construction, noting that such conditions have been requested by SNEW in the past in connection with applications in Town.

Mr. Lilly noted that the gully referenced previously seems to be more connected with the septic system than with the subject pool. Mr. Cordes indicated that he was not really sure if the pool is causing the gully. However, he noted that SNEW's major concern is site coverage, which he explained is a significant and concerning issue when it rises beyond the 10-12% generally permitted in Town.

Mr. Nerney noted that even a lawn area will accelerate water runoff.

Mr. Comiskey asked whether the applicant should consider withdrawing the application to spend some time working with SNEW on site remediation, Mr. Nerney stated that he would not recommend such an approach in light of the ZBA's purview limitations discussed earlier. Rather, he suggested that the Johnsons contact SNEW of their own accord and perhaps consider installing a level spreader to slow down runoff/scouring. Mr. Johnson was under the impression that they had already installed a level spreader in connection with some large-scale septic work that was previously done on the site.

Ms. Poundstone felt that while there appeared to be a need for communication among the parties, she noted that it was not the responsibility of the ZBA to require that. She thanked Mr. Cordes for his correspondence and his appearance at the meeting.

Mr. Johnson noted that they had spent \$70,000 on a new septic system at the behest of SNEW and he assured the Board that they would take care of these issues independently, noting that they do not want to do anything to damage the watershed or to upset SNEW.

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

C. APPLICATIONS READY FOR REVIEW AND ACTION

Ms. Poundstone called the Regular Meeting to order at 7:55 P.M., seated members Bufano, Comiskey, Fiteni, Lilly, and Poundstone, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest.

1. #13-06-08 JOHNSON 12 KEELERS RIDGE ROAD

Ms. Poundstone suggested that a motion be put forward, with discussion to follow.

MOTION was made by Mr. Lilly, to **grant** variances of Section 29-5.D to allow a swimming pool with ancillary equipment, resulting in building coverage of 7.2% in lieu of the 7% permitted; site coverage of 15.9% in lieu of the 12% permitted, and to allow a pool pad with a 34.1-foot front yard setback in lieu of the 50 feet permitted, as per submitted “Zoning Location Survey” dated November 10, 2008, updated December 4, 2008 and May 23, 2013; on grounds that sufficient hardship was demonstrated given the lot size and the grade of the land, as well as the miscommunication from the Town to the applicants, and the inability to locate the equipment in another location due to the grade of the property.

Ms. Poundstone seconded the motion.

Mr. Comiskey expressed concern that approving the subject application could impact future projects coming before the Board from the perspective of setting an undesirable precedent. Mr. Nerney explained that variances, by law, do not set precedent. However, to Mr. Comiskey’s point, he encouraged the Board to look carefully at the standards of hardship (e.g. testimony pertaining to the size of parcels, grades, wetland issues, septic constraints, etc.). Mr. Comiskey felt that this application would probably not have been approved if it had come before the Board prior to the work being done, although he indicated that as long as it doesn’t set precedent, then he would be willing to approve it.

Mr. Nerney stated that Connecticut law is quite clear on the point of precedents, i.e. that each case is unique.

A vote was called and the motion was approved unanimously (5-0).

D. OTHER BUSINESS

1. Minutes – May 20, 2013

It was the consensus of the Board to approve the minutes of May 20, 2013 as written.

Ms. Poundstone advised the Board that Assistant Town Counsel will brief the Board on the Middlebrook School decision at its next meeting scheduled for July 15, 2013. Mr. Nerney indicated that a convenient time would be determined and the Board would be notified.

E. ADJOURNMENT

MOTION was made by Mr. Lilly, seconded by Ms. Bufano, and carried unanimously (5-0) to adjourn at 8:05 P.M.

Respectfully submitted,

Lorraine Russo
Recording Secretary