

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

**ZONING BOARD OF APPEALS
REGULAR MEETING
DECEMBER 15, 2008
7:15 P.M.**

TOWN HALL ANNEX - MEETING ROOM A

PRESENT: Miriam Sayegh, Chairwoman; John Gardiner, Vice-Chairman; Barbara Frees, Secretary; Lori Bufano; John Comiskey; Peter Shiue, Alternate

ABSENT: Peter Bell, Daniel Darst – notified intended absences.

A. CALL TO ORDER

Ms. Sayegh called the meeting to order at 7:21 P.M. and briefly reviewed the hearing process for applications that come before the Zoning Board of Appeals.

B. PUBLIC HEARINGS

1. #08-09-16 MAZIER 1072 RIDGEFIELD ROAD

Ms. Sayegh called the Hearing to order at 7:25 P.M., seated members Bufano, Comiskey, Frees, Gardiner and Sayegh, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest. She noted that it was a continuation of a hearing that had started in September.

Present for the applicant was J. Casey Healy. He said the matter was carried over in order to have a representative from Signature Pools available to answer questions. He posted the Zoning Location Survey prepared by Ryan and Faulds dated July 1, 2008. The property, which is 2.79 acres, is located in a two acre zone. The zoning regulations require 25' of frontage on a street, and in this case, the 25' of frontage is actually on Great Rocks Place, which is a road in Ridgefield. Because of this fact, the front yard for the property is the northern boundary line and the rear yard for the property is the southerly boundary line, making what would appear to be the front yard and the backyard actually the side yards.

The applicant sought to put in a pool principally for their 2 ½ year old son, who suffers from sensory integration disorder, and one of the recommendations made to them was to

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provide an environment that would get him in water, dirt, sand and elements such as that. The pool that was installed is 48' by 20'. A customary pool is 40' by 20', and the extra 8' is a small wading area to allow their son to get into the water.

When the pool was installed, the contractor measured off the southerly boundary line and staked the pool excavation at 44' in the mistaken belief that he was measuring a side yard. He thought he had allowed for 4' of safety to what he thought was the side yard. In fact the pool was installed at just under 43' (42.9').

Mr. Healy pointed out that under the Zoning regulations, the Board has authority to vary an application based upon unusual shape, topography and other physical characteristics. This is an unusually shaped lot by virtue of the paper access out to Great Rocks Place that produces the legally conforming but uncustomary front, rear and side yards. If the pool had been installed further to the north, ledge would have been encountered, a large boulder retaining wall would have had to be taken down and rebuilt, and trees removed. In order to move the pool over, the area would have to be reconstructed and flattened to get a 20' to 25' flat area to avoid downward pressure on the edge of the pool. Otherwise the pool would not hold up.

The applicant looked at doing a property exchange with the Fredricks, who own the property to the south, but their house is located so that there is no room to pick up the 8'. Mr. and Mrs. Fredericks have submitted a letter saying they have no objection to the location of the pool, and have subsequently submitted a second letter requesting that the Board grant the variance stating that they did not want to live through the deconstruction and reconstruction of the pool, and are happy with where it is.

Ms. Sayegh said she would like to hear more about the downward sloping pressure and the inability to move the pool without the retaining wall being moved.

Mr. Bruno Iacono, President of Signature Pools, explained that a buffer of at least 10' is needed behind the back of the pool so it can carry a flat grade, which benefits the longevity of the pool and also provides safety for people running around the pool. Further north of where the pool was installed, the more abrupt the grade becomes. The area would have to be regraded, the boulders holding up and protecting the foundation would have to be reconstructed, trees would have to be removed and retaining walls would have to be built, all of which would create more watershed towards the wetland.

Mr. Iacono said sloping pressure on a pool is a big problem. The walls of the pool are impacted by it, even with additional steel reinforcing. Before they graded the area there was a tremendous slope. They were able to flatten the area and fill in where necessary in order to provide for a buffer and protect the pool. To go further into the slope would require constructing a wall of about 3' to 4' high and 40' to 50' long. In addition, they

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would have to excavate the boulders and the foundation could topple.

Mr. Iacono said he has been in business since 1978 and builds approximately 80 pools a year in the tri state area. Looking at the front of the house with the pond in the rear of the house, he was under the impression that the pool was to be placed in a side yard where the setback is 40'. The pool was staked at 44'. The terrace itself does not encroach more than 50% into the setback line, so it is clear what his thoughts were when he laid out the pool, and it was an honest mistake.

Ms. Sayegh concurred that it was no doubt an honest mistake, but he needs to show hardship for a variance.

Mr. Healy said had the applicant come to the Board in the first place, he believes they could have demonstrated legal hardship due to the unusual configuration of the lot, the topography and the impact of the additional retaining walls, and could have shown that the pool could not have been put northerly as they would have had to literally fill in the whole backyard towards the pond. He pointed out that the setback regulation is principally to protect abutting property owners, and the only abutting property owners are Mr. and Mrs. Fredericks, who would have supported the variance to put the pool where it is and are supporting the pool remaining there.

Ms. Sayegh said she would have liked to hear from an expert about sloping and pressure and asked if they had an engineer look at the site. Mr. Healy noted that the person who has installed thousands of pools is an expert by virtue of what he does. He noted that Town Counsel, Mr. Bernhard, had issued an opinion that, notwithstanding the self creation, if they presented the facts for legal hardship based upon change, topography, etc., the Board could find that it would have granted the variance and therefore the self imposition issue disappears.

Mr. Nerney pointed out that the public hearing has to be closed at this time, and if they are requesting a continuance, they will have to withdraw the application.

Ms. Sayegh said the Board would want to know from an engineer's prospective why the pool cannot be moved northerly without having so much pressure that a huge wall has to be built in the middle of the property and another wall reconstructed. Mr. Nerney said also what detriment might shifting the pool to the north have and would it require more blasting, more tree clearing, would it affect the grades, and would that have a deleterious impact on the wetlands and the pond.

Mr. Healy said they will withdraw the application and refile it, and will submit a letter to that effect.

2. #08-12-24 MANNINO 46 OLD MILL ROAD

Ms. Sayegh called the Hearing to order at 8:10 P.M., seated members Bufano, Frees, Gardiner, Sayegh and Comiskey, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest. Ms. Frees read the legal notice and description of hardship.

Present was Rosario Mannino, applicant. He presented several pictures of the site and went through them to show the hardships in locating the pool in different areas as follows:

1. A water line providing public water runs through the middle of the property;
2. There is a downward slope all the way to Old Mill Road;
3. There are wetland issues;
4. There is a row of trees that acts as a natural buffer between the two houses that he would not want disturbed;
5. The location of the septic and leeching field in front of the swing set will not permit placement there; and
6. There is a large rock wall at the back left corner of the property, which would require blasting.

Mr. Mannino pointed out on the drawing the proposed pool location and said there is another natural buffer at the back of the property as there is only a 50' piece of land and then the property drops down 100', so it cannot be developed.

Mr. Nerney said the zoning regulations limit the amount of disturbance to steeply sloped parcels to prevent pan caking of sites. Parcels with slopes in excess of 35% are limited to 2,500 square feet that can be disturbed.

Mr. Mannino said the pool is designed to be a play pool for the kids and is 18' by 36' and about 3½" to 5' deep. The proposed decking will be 3' to 4' all the way around. It may be possible to locate the pool closer to the house, but he went with the maximum measurements as he does not know whether they will encounter stone or ledge when they start excavating.

Mr. Nerney asked if the Health Department had been contacted in terms of the proximity of the pool to the septic and what ramifications there might be if they were to move the pool closer to the house.

Ms. Sayegh said she would recommend that they continue the hearing so Mr. Mannino can check on how much closer to the house he can get the pool and also contact the Health Department to determine where legally he can build the pool according to the setbacks and according to the septic system.

Mr. Nerney said he would suggest that the applicant go back to Roland Gardner to have him show the adjusted location on the survey and take that to the Health Department to determine if there are any issues that would pose a problem. He might also have the pool installer look at it in the field just to verify that things are okay.

At 8:48 P.M. the hearing was continued.

3. #08-12-25 MILLER 221 SHARP HILL ROAD

Ms. Sayegh called the Hearing to order at 8:49 P.M., seated members Bufano, Frees, Gardiner, Sayegh and Shiue, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest. Ms. Frees read the legal notice and description of hardship.

Present for the applicant was Joe Cugno, Architect. He said it is a wonderful old structure built in the 1800s, which used to be a barn for the house across the street. It was converted to a residence sometime prior to the 1960s and is now in pretty sad shape.

The initial hardship is the existing driveway on the crest of the hill that literally has no sight lines getting in and out. It is quite dangerous and part of what they want to do is eliminate the driveway, landscape that area and use the driveway that is at the lower part of the property. The proposal is to construct a two story addition with the lower level being a garage, utility room, a laundry and a bedroom, and a second floor with two bedrooms, so there is actually one additional bedroom being added to the house.

Mr. Cugno posted a blowup of the survey map and pointed out that of the 3.1 acre parcel, 1.8 is wetlands, so there is almost no buildable area on the property. They have received approval from Wetlands for the proposed addition. As part of the approval, they are going to abandon most, if not all, of the lower gravel driveway and landscape that area.

There is a covered porch they are adding as an aesthetic feature, but they are basically staying within the same footprint. The additions on the back are squaring off the structure.

The last hardship is topography as there is a significant drop-off on the property. The house sits on a little knoll that is there. In short, the three hardships they claim are the wetlands, the zoning setback and the topography.

It is a modest sized house with approximately 1,200 square feet on the first floor and about 300 square feet on the second floor. They are adding 283 square feet. The peak of the roof will be rotated 90 degrees and will be in character with the old barn that is there.

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The addition will be 4½‘ higher from the old ridge.

Ms. Sayegh said she is concerned about the increase in the scope and the mass of the addition, especially the covered front porch which will be near the street line. Mr. Cugno said the space currently exists, it’s just that it will be covered. He explained that the applicants are a young couple who have a child and one on the way and need the space. The walls in the rooms are only about 4½‘ above the floor, so they have already pressed the roof down about as much as they can and still get usable rooms. Flattening the roof would make it less attractive, and since it is an older structure from the 1800s, they would like to keep a little character to it.

Mr. Comiskey said the mass does not concern him. The proposed addition is a vast improvement and eliminates a dangerous situation at the upper driveway. Mr. Shiue agreed that he is not concerned by the mass. He understands the limitations of the lot and the applicant’s desire to make it more functionoal.

Mr. Gardiner noted that the footprint is increasing by only 280’, but the actual living space is virtually doubled in size. Mr. Cugno pointed out that the current garage has no space above it, and the new garage will have space above it. The structure is designed so that the large gable will not be there. The roof will be turned, so it will be less imposing. The asphalt drive will be eliminated and replaced with plantings, which will much more attractive.

Ms. Frees said it is not going to be a big house in terms of square footage and thinks it is reasonable for people to have a reasonable use of their property so the house is livable.

There being no further comments, at 9:23 P.M. the public hearing was closed.

4. #08-12-26 REID 51 HURLBUTT STREET

Ms. Sayegh called the Hearing to order at 9:24 P.M., seated members Bufano, Frees, Gardiner, Sayegh and Comiskey, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest. Ms. Frees read the legal notice and description of hardship. Ms. Sayegh noted there was a typo and that the proposed building coverage is 5.2% and site coverage is 9.5%.

Present was Lawrence M. Reid, applicant. He posted pictures of the site and distributed copies of 4 letters of support from the abutting neighbors.

He explained that there is an existing porch with a set of steps that enter into the dining area, and that the kitchen area is going to be switched with the dining area, and this is a logical spot for a mudroom. The landing outside of the door will be covered, but the

steps will not. It is the main entry used to get in the house because it is right next to the driveway. The mudroom will also provide a buffer coming into the house and would be a heat benefit. Currently their daughter gets off the bus and goes directly into the dining area where she drops her coat and boots. The proposed mudroom will have a little bench and a small closet. As the photographs show, other than the stairs turning 90 degrees, the front of the house will look no different.

The setback was changed after the house was built, which put it in violation. The line showing the 50' setback goes right through the existing house. In addition to the setback being shifted from 40' to 50', the grade falls off a whole story from front to back, and the balance of the lot falls off another 30'.

They looked at the possibility of moving the driveway over, which doesn't work because of the steep slope and a very large white oak tree that would have to be taken down. In addition, they would still have a setback issue. They looked at moving the driveway to the other side of the house, which doesn't work because it would put them over the limit for site coverage. Also the headlights of cars coming in the driveway would shine in the neighbor's house. The only location where they would not be in the setback would be at the back of the house, which is a full story below the main part of the house and would involve climbing up a 10' stairway and entering the house in the middle of the living room or in the middle of a bedroom.

So the hardships are the topography of the property, the setback line that was moved from 40' to 50' and the fact that there is no other place to build the addition and eliminate the setback issue.

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

Ms. Frees read into the record four letters of support all dated November 20, 2008, and all having the same text, from Sally Roberts, William Doherty, Mary and Paul Giordano and Jessica and Josh McDowell.

There being no further comments, at 9:49 P.M. the public hearing was closed.

C. APPLICATIONS READY FOR REVIEW AND ACTION

1. #08-09-16 MAZIER 1072 RIDGEFIELD ROAD

Withdrawn.

2. #08-12-24 MANNINO 46 OLD MILL ROAD

Continued.

3. #08-12-25 MILLER 221 SHARP HILL ROAD

Members of the Board briefly discussed details of the application and were in general agreement that the site represents an extreme case of hardship, citing in particular its pre-existing nonconforming nature, its topography and the amount of wetlands.

MOTION was made by Mr. Gardiner, seconded by Ms. Frees, and carried unanimously (5-0) to **grant** the variance of Section 29-5.D to allow a first floor addition with a 12.1 feet front yard setback in lieu of the permitted 50 feet; hardship having been shown due to the preexisting nonconforming use, the fact that the property is almost entirely in the 50 foot setback area and the existence of a substantial amount of wetlands on the property, which makes this the only appropriate building location.

4. #08-12-26 REID 51 HURLBUTT STREET

Members of the Board briefly discussed details of the application and were in general agreement that the site presents a hardship, citing in particular its pre-existing nonconforming nature, its topography and the fact that there is no other place that would allow the addition to be built that is completely within the setback.

MOTION was made by Ms. Sayegh, seconded by Ms. Frees, and carried unanimously (5-0) to **grant** a variance of Section 29-5.D to allow a building addition with a 43-foot front yard setback in lieu of the permitted 50 feet in that sufficient hardship was shown and that it is a pre-existing nonconforming use and there are no other areas in which to build.

D. OTHER BUSINESS

1. Minutes – November 17, 2008

MOTION was made by Ms. Bufano, seconded by Mr. Gardiner, and carried unanimously (6-0) to approve the minutes of November 17, 2008.

E. ADJOURNMENT

MOTION was made by Ms. Bufano, seconded by Ms. Frees, and carried unanimously (6-0) to adjourn at 10:12 P.M.

Respectfully submitted,

Karen Pacchiana
Recording Secretary