

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

**ZONING BOARD OF APPEALS  
REGULAR MEETING  
JANUARY 20, 2009  
7:15 P.M.  
WILTON HIGH SCHOOL - CAFETERIA**

**PRESENT:** Miriam Sayegh, Chairwoman; Lori Bufano; John Comiskey; Peter Shiue, Alternate; Daniel Darst, Alternate

**ABSENT:** Board members Bell, Frees, Gardiner (notified intended absences)

**A. CALL TO ORDER**

Ms. Sayegh 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. #08-12-24 MANNINO 46 OLD MILL ROAD**

Ms. Sayegh called the Hearing to order at 7:17 P.M., seated members Bufano, Comiskey, Darst, Sayegh, and Shiue, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest. Ms. Sayegh noted that the hearing had been continued from a previous date.

Present was Mr. Mannino, applicant.

Mr. Mannino referenced photos previously submitted and distributed copies of a full survey recently completed. He explained that the proposed swimming pool location had been reconfigured since the last hearing due to Health Department setback requirements from the septic system and constraints imposed by B-100 reserve requirements; and due to Building Department recommendations that the pool be placed at least 10-15 feet from the residence because of grading considerations. He noted that due to the foregoing constraints he was unable to increase the rear yard setback from 28 feet to 34 feet, as he had speculated at the last hearing.

The Board questioned possible utilization of the front area of the property as an alternative pool location so that a variance would not be required. Mr. Mannino cited constraints including the public water supply line which runs in that area and under the driveway, which would require a portion of the driveway to be dug up; a rock wall which would have to be taken down; water drainage issues which would necessitate major changes/disturbances to the topography of the land; and future neighbor issues with respect to their views of a pool in the applicant's front yard. He noted for the record that there is a huge cliff in the rear of the property which is dangerous and he explained that the required pool fencing would serve to address this safety issue as well.

Mr. Nerney cautioned the applicant to carefully stake out the final location of the proposed pool, should the application be approved, so that future zoning compliance issues can be avoided.

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

There being no further comments, the public hearing was closed at 7:48 P.M.

**2. #09-01-01 THOM 82 LIBERTY STREET**

Ms. Sayegh called the Hearing to order at 7:48 P.M., seated members Bufano, Comiskey, Darst, Sayegh, and Shiue, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest. Ms. Bufano, acting as Secretary, read the legal notice dated January 5, 2009 and details of the application and the hardship as described on the application.

Present was Charles Shafer, builder, on behalf of the applicant.

Mr. Shafer reviewed details of the application to permit increased site coverage. He explained that replacement of the existing asphalt driveway with gravel as a way to reduce site coverage would be difficult due to erosion concerns in light of the driveway's slope and curvature.

In response to questions from the Board, Mr. Shafer acknowledged that an existing shed could be removed, resulting in a coverage loss of approximately 100 square feet. He explained, however, that it would be difficult to also reduce the size of the proposed 24-foot deep garage since loss of the existing storage shed would necessitate extra storage capability in the proposed garage.

After further discussion, it was determined that replacement of some of the asphalt material in the upper, flatter portion of the driveway with Belgian block set in stone dust

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would reduce site coverage and possibly bring the site into compliance, thereby not requiring a site coverage variance at all.

Mr. Shafer stated that he would consult with his client regarding the alternative proposal. The Board and the applicant agreed to continue the hearing until February 17, 2009.

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

There being no further comments, at 8:07 P.M. the public hearing was continued until Tuesday, February 17, 2009.

### **3. #09-01-02 HORVATH 126 OLD MILL ROAD**

Ms. Sayegh called the Hearing to order at 8:09 P.M., seated members Bufano, Comiskey, Darst, Sayegh, and Shiue, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest. Ms. Bufano, acting as Secretary, read the legal notice dated January 5, 2009 and details of the application and the hardship as described on the application.

Present was Wesley Horvath, applicant.

Mr. Horvath distributed photos of the site. He explained that the 1350 square-foot home, built in 1850, was purchased in March, 2003. Since there was no ductwork on the second floor for heating and the bedroom over the living room was very cold, a wood stove was installed in July, 2003, with the exhaust vented through a stove pipe located on the exterior of the house. In 2006, an enclosure was built for the stovepipe which encroached 3 feet into the front yard setback. The applicant stated that at the time he did not consider that a permit would be needed. He explained that the septic system would have constrained placement of the stovepipe enclosure further toward the back, and on the other side he would have had well issues as well as a 30-foot spruce tree obstructing any such construction. He noted additional hardships in that the lot is under-sized and the house itself is pre-existing and non-conforming.

Mr. Shiue asked if other work had been done and if any of it had affected the encroachment into the setback. Mr. Horvath indicated that while other work had been done, none of it had affected the setbacks.

In response to questions pertaining to the installation of the stovepipe itself in July of 2003, Mr. Horvath presented an original sales receipt from Yankee Doodle, a local company. A question arose as to whether proper permits were pulled in connection with the stovepipe installation. Several Board members speculated that since Yankee Doodle was a reputable, long-established company in the area, probably the necessary permits

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would have been obtained at the time of installation.

Ms. Sayegh asked why the applicant had not obtained a building permit for the encroaching stovepipe enclosure. Mr. Horvath explained that the contractor he used was his son's football coach, who had assured him he would handle the permitting process since Mr. Horvath was away traveling at the time. He stated that he has spent the past year trying to correct these issues after the Town's assessor initially discovered the problem.

Ms. Bufano read into the record a letter dated January 15, 2009 from Diane F. Taylor (Redding Planning Commission) to Robert J. Nerney, AICP; a letter of support dated August 13, 2008 from Elizabeth Alicea to Zoning Office; and another letter of support dated August 13, 2008 from Erik Nordlund to Zoning Office was referenced as being identical to the aforementioned letter from Elizabeth Alicea.

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

There being no further comments, the public hearing was closed at 8:35 P.M.

The Board took a short break at 8:35 P.M.

The Board returned from break at 8:40 P.M.

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

Ms. Sayegh called the Regular Meeting to order at 8:40 P.M., seated members Bufano, Comiskey, Darst, Sayegh, and Shiue, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest.

**1. #08-12-24 MANNINO 46 OLD MILL ROAD**

The Board discussed details of the requested variance. While Board members felt there was a clear front yard alternative location for the proposed pool, it was their general consensus that topographical considerations, possible drainage issues, and potential negative impacts to existing/future neighbors from a front yard pool location on the subject site were all valid considerations in connection with the requested variance.

Mr. Comiskey had conflicting feelings, acknowledging all of the aforementioned constraints, but also questioning whether a professional landscaper might be of assistance in determining the viability of a front yard pool location. He referred to a recent application where the Board held to a very strict interpretation and had requested a

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professional engineering report from the applicant. Ms. Sayegh felt that the subject application was very different in terms of the property topography as compared to the application to which Mr. Comiskey referred.

Referring to concerns for setting an undesirable precedent, Mr. Nerney stated that while it would not be appropriate for him to speak to this particular application, he explained that the Board has the ability to rely on its own experiences as a result of visiting each individual site, in which case bringing in expert testimony might not be necessary. He noted for the record that no additional testimony could be sought in this particular application since it had already been closed.

Mr. Shiue noted that the pool location as proposed would not affect any neighbors in any detrimental way.

MOTION was made by Ms. Bufano, seconded by Mr. Darst, and carried (4-1) to **grant** the variance on grounds that sufficient hardship was demonstrated due to topographical issues. Mr. Comiskey opposed.

**2. #09-01-01 THOM 82 LIBERTY STREET**

Tabled.

**3. #09-01-02 HORVATH 126 OLD MILL ROAD**

The Board discussed/reviewed details of the application.

Ms. Sayegh stated that she had a legal issue with approving an enclosure for a stovepipe while a question was outstanding as to whether a permit was ever issued for the stovepipe in the first place.

Other members of the Board acknowledged that while they did not know for sure whether a permit was ever obtained for the stovepipe, they felt that the retailer (Yankee Doodle), who had installed the pipe, had in all likelihood obtained a permit since it is a reputable business which has been operating in the area for many years. Mr. Shiue noted further that the applicant had implied he was currently in the process of trying to obtain permits for all prior work completed on the site.

Ms. Sayegh questioned whether the Board could even grant a variance for the stovepipe enclosure if the applicant had not, in fact, obtained a permit for the stovepipe itself. Mr. Nerney felt that the Board did have the ability to grant such a variance. He explained that the Board's action to approve, if it so determined, would not relieve the applicant of

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obtaining the necessary subsequent inspections by the Building Department as well as any other necessary approvals that would be required to complete the permitting process. Mr. Nerney noted further for the record that the Board does not operate in a punitive fashion and therefore the variance process should not be impacted/tainted by past history (e.g. a failure to get a permit).

It was the general consensus of the Board that hardship was demonstrated due to the oddly-shaped, undersized lot, the pre-existing nonconforming nature of the property and the residence, and the fact that the Board in all likelihood would have approved a variance for the stovepipe enclosure had it been requested prior to installation given the issues with heating and lack of adequate insulation in the home.

MOTION was made by Mr. Shiue, seconded by Mr. Darst, and carried unanimously (5-0) to **grant** the variance on grounds that sufficient hardship was demonstrated due to the oddly-shaped, undersized lot and its pre-existing nonconforming nature.

**D. OTHER BUSINESS**

**1. Minutes – December 15, 2008**

MOTION was made by Ms. Sayegh, seconded by Ms. Bufano, and carried (4-0-1) to approve the minutes of December 15, 2008. Mr. Darst abstained.

**2. Election of Officers**

Ms. Sayegh suggested tabling the election of officers until the meeting in March, noting that three Board members were absent this evening. She stated that she expected a full slate of officers to be present at the March meeting, noting that she would prefer to give everyone an opportunity to vote. It was the consensus of the Board to table election of officers until March.

**E. ADJOURNMENT**

MOTION was made by Mr. Darst, seconded by Ms. Sayegh, and carried unanimously (5-0) to adjourn at 9:32 P.M.

Respectfully submitted,

Lorraine Russo  
Recording Secretary