

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

**ZONING BOARD OF APPEALS
REGULAR MEETING
MARCH 16, 2009
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; Peter Bell, Alternate

ABSENT: Daniel Darst, Alternate

A. CALL TO ORDER

Ms. Sayegh called the meeting to order at 7:20 P.M. She briefly reviewed the hearing process for applications that come before the Zoning Board of Appeals.

B. PUBLIC HEARINGS

1. #09-02-03 F.O.A.D., LLC 830 DANBURY ROAD

Ms. Sayegh called the Hearing to order at 7:23 P.M., seated members Bufano, Comiskey, Frees, Gardiner, and Sayegh, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest. Ms. Frees read the legal notice dated February 3, 2009 and details of the application and the hardship as described on the application.

Present were Clarissa Cannavino, attorney; Leigh Overland, architect; and David Katz, principal.

Ms. Cannavino briefly reviewed details of the proposed variance, noting that the applicant is proposing to increase the height from 14.2+/- feet to 25.2+/- feet for an existing structure with a legally nonconforming front yard setback of 3.2+/- feet in lieu of the permitted 50 feet. She posted "before and after" photos of another recently renovated structure on the site for which the applicant had received a variance.

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Ms. Cannavino explained that the structure known as 830 Danbury Road (the subject of this variance) is in need of major renovations, referring in particular to the roof which has collapsed into the half second story. She stated that the hardship involves an oddly-shaped parcel, a steep topography to the rear of the structure, and the locations of two other existing structures on the site. She explained further that the footprint would not be expanded and that the proposed height would be well below what is permitted in a General Business (GB) District. She submitted into the record seven photos of the site and three letters of support from surrounding neighbors.

In response to questions from Ms. Sayegh, the applicant indicated that:

- gross square footage would double from 820 to 1640 square feet
- there would be storage on the first floor and light office use on the second floor
- the additional height is necessary to make the building more viable/usable since it is currently built into a gravel slope, resulting in a dark, basement-like feeling.

A question arose as to whether the 3.2-foot measurement from the property line, as shown on the survey, measures to the foundation or to the edge of the overhang. It was noted by the Board that it could be problematic if the measurement did not take into account the additional extension of the overhang/gutters into the setback. Mr. Overland was unable to provide a definitive answer on the question, although he confirmed that the overhang would extend approximately one foot beyond the face of the building.

Ms. Sayegh interrupted the meeting to place a phone call to Town Planner Robert Nerney to discuss the matter.

Upon conclusion of the phone conversation with Mr. Nerney, Ms. Sayegh stated that if her colleagues were so inclined to approve the requested variance, the final wording of the variance could be crafted as follows: *“approval of a variance to permit a front yard setback of 3.2 feet as measured from the front property line to the building foundation and 2.2 feet from the front property line to the proposed overhang”*, with a specific additional note that *“this represents a 6-inch reduction from existing conditions”* and that *“any construction shall be performed in a manner consistent with submitted plans.”*

At this point, the applicant realized that there would be an additional extension into the setback of about 5 or 6 inches to accommodate proposed gutters on the building. The Board realized at this point that the above proposed wording would not apply under this scenario since the final structure would no longer represent a *“6-inch reduction from existing conditions”*.

Ms. Frees asked what would preclude the applicant from rebuilding the structure as it was originally, i.e. without the increased height. Ms. Cannavino explained that the roof

collapsed as a result of its pitch and that a higher pitch would hold the snow, water, and ice better. In response to a further question from Ms. Frees as to whether the roof could be rebuilt to address that problem without increasing the height as much as is proposed, Mr. Overland stated that the height could be lowered but then the applicant would lose the second story office space use. He again noted that the proposed height is less than what is permitted in the GB zone. Mr. Frees noted that there would still be two other structures on the site, questioning the need for a third structure with uses as proposed.

In response to a question from Ms. Sayegh regarding the possibility that the first floor might someday be utilized for tenant use instead of storage, Ms. Cannavino explained that it is partially underground and therefore would not qualify as a good tenant use. She noted further that the applicant would be required to come back to zoning in order to change any approved storage use into tenant use in the future.

Ms. Frees referenced into the record three letters of support dated February 16, 2009 from Leslie Lewis at 848 Danbury Road; Victor and Cheryl Muniz at 852 Danbury Road; and Scott and Geri Tait at 822 Danbury Road. Ms. Frees read one of the letters into the record, noting that the three letters were virtually identical.

There being no further comments, the public hearing was closed at 8:14 P.M.

C. APPLICATIONS READY FOR REVIEW AND ACTION

Ms. Sayegh called the Regular Meeting to order at 8:15 P.M., seated members Bufano, Comiskey, Frees, Gardiner, and Sayegh, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest.

1. #09-02-03 F.O.A.D., LLC 830 DANBURY ROAD

The Board discussed details of the variance application. Board members Bufano, Gardiner, Comiskey, Shiue, Bell and Sayegh supported the application, noting various reasons including the pre-existing nonconforming nature of the site, intended maintenance of the same building footprint, safety improvements, and the proposed height conformance within the GB zone.

Ms. Frees opposed the application, citing lack of any supportable hardship except for what appeared to be economic issues. She felt that the building could be torn down or reconstructed without increasing building mass within the setback. Citing the other structures on the site, she did not feel the applicant was being deprived of reasonable use of the property.

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Mr. Shiue, although supportive of the variance request, expressed concern with the issue of a correctly published legal notice. He felt that the proposed variance needed to be correctly noticed before the Board could grant any approval. Ms. Sayegh and Mr. Gardiner concurred.

At 8:28 P.M., Ms. Sayegh placed a second phone call to Town Planner Nerney to discuss the issue of the legal notice.

At 8:34 P.M., after speaking with Mr. Nerney, Ms. Sayegh agreed that the legal notice represented a serious issue with respect to the legality of the application and she recommended that the applicant withdraw its current application and resubmit prior to the next ZBA submission deadline of March 25, 2009.

Ms. Cannavino, upon consultation with her client, stated that the applicant wished to withdraw the application. At 8:36 P.M., she submitted into the record a hand-written note to that effect.

The Board took a short break at 8:37 P.M.
The Board returned from break at 8:44 P.M.

D. OTHER BUSINESS

1. Approval of Minutes for January 20, 2009 and February 17, 2009

MOTION was made by Mr. Comiskey, seconded by Ms. Bufano, and carried (4-0) to approve the minutes of January 20, 2009 as written.

MOTION was made by Ms. Sayegh, seconded by Mr. Gardiner, and carried (4-0) to approve the minutes of February 17, 2009 as amended.

2. Election of Officers

Chairman –

Ms. Sayegh indicated that she would like to serve as Chairman of the ZBA for another year. No other Board member expressed a similar interest.

MOTION was made by Ms. Frees, seconded by Ms. Bufano, and carried (5-0) to nominate Miriam Sayegh as Chairman of the Zoning Board of Appeals.

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Only the five regular Board members were permitted to vote for officers.

Vice-Chairman –

Ms. Frees and Mr. Gardiner both expressed interest in the Vice-Chairmanship.

Ms. Frees noted that while she has served only one year on the Zoning Board of Appeals, she had served for 8 years on the Planning and Zoning Commission and also has zoning experience in the states of New York and Massachusetts. She stated that her involvement in the drafting of some of the zoning regulations has inspired her interest to see the same regulations carried out on a smaller scale. As a lawyer she felt she could view issues from a legal perspective and noted that she could fill in for Ms. Sayegh if/when necessary.

Mr. Gardiner stated that the main job of the Vice-Chairman is to fill in for the Chairman when the Chairman is unavailable, although he noted that in his capacity as Vice-Chairman for the past year, he was never called on to fill that function since it was never necessary. He stated that he was a member of the Inland Wetlands Commission (IWC) for 8 years and IWC Chairman for three years, and was active in zoning in Colorado. He noted that he, too, is an attorney, although he is not currently practicing law. He emphasized that he would be happy to serve as Vice-Chairman for the next year.

MOTION was made by Ms. Sayegh, seconded by Ms. Bufano, to nominate Ms. Frees for Vice-Chairman of the Zoning Board of Appeals. Board members Bufano, Frees and Sayegh voted in favor of the motion.

MOTION was made by Mr. Comiskey, seconded by Ms. Sayegh, to nominate Mr. Gardiner for Vice-Chairman of the Zoning Board of Appeals. Board members Comiskey and Gardiner voted in favor of the motion.

As a result of the vote, Ms. Frees was elected Vice-Chairman of the Zoning Board of Appeals. Ms. Sayegh expressed her appreciation on behalf of the Board for Mr. Gardiner's service of the past year and she congratulated Ms. Frees on her election.

Secretary –

Ms. Bufano stated that she was interested in running for Secretary again this year. No one else expressed any interest in the position.

MOTION was made by Ms. Sayegh, seconded by Mr. Gardiner, and carried (5-0) to

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nominate Ms. Bufano for Secretary of the Zoning Board of Appeals.

Ms. Sayegh expressed sincere thanks to all members of the Board and stated that she looked forward to this next year and to encouraging greater education for all throughout the coming year.

E. ADJOURNMENT

MOTION was made by Ms. Frees, seconded by Mr. Bell, and carried unanimously (7-0) to adjourn at 9:04 P.M.

Respectfully submitted,

Lorraine Russo
Recording Secretary