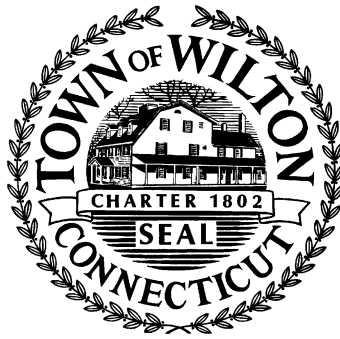


ZONING BOARD
OF
APPEALS
Telephone (203) 563-0185
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TOWN HALL ANNEX
238 Danbury Road
Wilton, Connecticut 06897

**ZONING BOARD OF APPEALS
REGULAR MEETING
APRIL 20, 2009
7:15 P.M.
TOWN HALL ANNEX - MEETING ROOM A**

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

ABSENT: Peter Bell, Alternate; Daniel Darst, Alternate (notified intended absence)

A. CALL TO ORDER

Ms. Sayegh called the meeting to order at 7:20 P.M.

B. PUBLIC HEARINGS

1. #09-04-04 F.O.A.D., LLC 830 DANBURY ROAD

Ms. Sayegh called the Hearing to order at 7:21 P.M., seated members Bufano, Comiskey, Frees, Gardiner, and Sayegh, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest. Ms. Bufano read the legal notice dated April 6, 2009 and details of the application and the hardship as described on the application.

Present were Clarissa Cannavino, attorney; and David M. Katz, owner.

Ms. Cannavino referred to posted plans. She explained that the surveyor had corrected the previously submitted plans to correctly measure from the property boundary to the edge of the proposed overhang (a distance of 1.4+/- feet), noting that the application submitted and eventually withdrawn last month had indicated a measurement of 3.2+/- feet, not taking into account the overhang protrusion. She noted further that, depending upon which gutter is used (industrial being 6" wide and standard residential 4" wide), the structure would actually be a bit farther away from the edge of the property and farther away from the road than currently since the existing overhang is larger than the proposed.

Ms. Frees expressed concern with whether the applicant had adequately exhibited hardship. Ms. Cannavino explained that the top half story has caved into the first story and needs to be raised in order to be aesthetically pleasing. In response to whether and how the second story had been used before its collapse, Mr. Katz did not know, but Ms. Cannavino noted that the proposed height would be well within what is permitted in the General Business (GB) zone. Ms. Frees stated that, given the two other structures/uses on the property, she was having difficulty justifying a hardship with respect to the subject structure.

Ms. Sayegh asked for some clarification from Town Planner Nerney on use of the structure for storage purposes. Mr. Nerney explained that the GB zone allows for a host of different uses. He noted that the building was built well before zoning regulations were in place and, given the scant building code requirements that were in effect in the 1930s, the half second story may have been used lawfully at that time whereas today a greater/higher clearance would be required by the building department for the same use. He explained further that a half story today would be limited to storage use per current zoning regulations.

Mr. Nerney noted further that the Board could consider, if it were inclined to act favorably on the matter, conditioning a variance to be subject to development per submitted plans/testimony, effectively requiring the applicant to come back before the Board if any substantial design modifications (such as changing garage doors to plate glass windows with entry door, for example) were proposed.

Ms. Cannavino stated that the applicant would have no objection to referencing submitted plans/designs in any approval.

In response to a question from Ms. Sayegh regarding proposed uses, Ms. Cannavino stated that the applicant's intent is to use the first floor for storage and the second floor for light office use. Mr. Katz noted that a computer repair service had expressed interest in the premises some time ago but may not still be interested. He indicated that he has not marketed the building for rental as yet.

In response to another question from Ms. Sayegh, Mr. Katz explained that Attorney Casey Healy had conducted some research about prior uses and found that the subject building was an ancillary use to an old garage, used primarily for storage and work on vehicles.

Ms. Cannavino explained that the point of rehabilitating the structure is to give it a second story use.

Mr. Gardiner asked the applicant to expand on the hardship issue, in particular whether

the applicant is being denied reasonable use of the land.

Ms. Cannavino explained that the building is a legally nonconforming structure which cannot be expanded towards the back because of the steep topography of the site. She stated that the height of the roof has to be increased in order to properly repair it and to rebuild it as it is now, with just a half story, it would not be usable. She noted again that the proposed height would be well within regulation requirements for the GB zone.

In response to further questions from the Board, Ms. Cannavino stated that the applicant would not rebuild the structure at all if the second story could not be made into a usable space. Mr. Katz concurred, noting that it is a matter of economics. Ms. Cannavino explained that the hardship is due to the topography as well as the odd shape of the lot.

Ms. Sayegh and Ms. Frees asked how the applicant was being denied reasonable use of the site since there are two other usable buildings on the site. Ms. Cannavino explained that usability of the site would be decreased by one-third if the applicant lost use of the subject building.

Mr. Comiskey questioned whether the Board should be concerning itself with issues of use and whether these are valid objections.

Mr. Nerney explained that the fundamental issue concerns visual separation and massing of buildings, especially so close to the property line. He explained that while the Zoning Board of Appeals is not a design board, it does have a general charge to protect the health, safety, and welfare of the public and be sure that any site modifications would not be to the public detriment.

Mr. Gardiner asked about any potential impact of the new Route 7 on the subject property. Mr. Katz stated that the new Route 7 would in all likelihood not impact the side of the road on which his property is located. Mr. Nerney stated that it would be safe to assume that Route 7 would be widened in the area of this parcel, although it would not be happening as part of the current widening project.

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

There being no further comments, the public hearing was closed at 8:02 P.M.

C. APPLICATIONS READY FOR REVIEW AND ACTION

Ms. Sayegh called the Regular Meeting to order at 8:02 P.M., seated members Bufano, Comiskey, Frees, Gardiner, and Sayegh, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest.

1. #09-04-04

F.O.A.D., LLC

830 DANBURY ROAD

The Board discussed details of the application.

Ms. Bufano stated that she supported the application. She felt that the applicant had proven a hardship since there is no area to expand in the rear due to the topography of the site.

Ms. Frees felt that the hardship was more of an economic one. She was not convinced that the applicant could not build the structure as it was before with just a small increase in height.

Mr. Gardiner indicated that while he was initially wrestling with his decision, he ultimately decided to support it, noting that a different use of that property is appropriate and in order to use it some additional height is needed.

Mr. Comiskey felt that the proposed solution would be a good one for the site as well as for the Town, noting that it would look better and bring in revenue/taxes. He thought that it made more sense to improve the property as proposed than to tear it down or let it stay as is.

Mr. Shiue stated that although he is not thrilled with the proposed increase in height, he noted that it would be less than the 35 feet permitted in the GB zone. He stated that the only way economics factors into this is that it doesn't make sense to rebuild the structure unless a certain amount of cash flow/rental income can be achieved. He felt that the role of the Board is to improve aesthetics in the Town, even if it is not part of the hardship, and leaving the subject structure in its current condition does no one any good. He stated that he would therefore support the application if he were voting on it.

Ms. Sayegh raised again the question of reasonable use and hardship, noting that there are three buildings on the one lot. She was concerned that the applicant had not adequately proven hardship to justify the proposed site renovations. She asked Mr. Nerney for his thoughts on the matter.

Mr. Nerney explained that it would be difficult for him to comment at this time since the hearing had been closed and the applicant would not have an opportunity for rebuttal. He recommended in general that the Board stick to the basics, analyze the hardship, weigh the testimony before it, and not speculate.

Mr. Shiue noted that the applicant is not trying to take advantage of the full 35-foot height permitted in the GB zone. He acknowledged that it does not make economic sense to

ZBA Minutes – April 20, 2009 - Page 5

rebuild the structure without the proposed second story improvements.

Mr. Comiskey felt that the hardship is due to the fact that the building cannot be moved. He felt that whether the applicant is allowed to go up is a matter of opinion and judgment. He did not think the proposed work would be massive and he felt that the Board was discussing height only because of the pre-existing nonconforming nature of the site.

MOTION was made by Mr. Comiskey, seconded by Mr. Gardiner, to grant the variance, per submitted plans, since the applicant is in a commercial (GB) zone permitting up to a 35-foot height, on grounds that sufficient hardship was demonstrated due to the nonconforming setback situation and the steep topography in the back of the property. The motion **FAILED (3-2)** and the variance was **DENIED**. Board members Frees and Sayegh opposed the motion.

D. OTHER BUSINESS

1. Minutes – March 16, 2009

MOTION was made by Ms. Frees, seconded by Ms. Bufano, and carried unanimously (6-0) to approve the minutes of March 16, 2009.

2. Discussion of Package Pick-Up

Mr. Nerney explained that all departments have been directed by the First Selectman to request that packages be picked up by Commissioners/Board members to save on the cost of periodic mailings. He noted that package pick-up was recently instituted with the Planning and Zoning Commission whereby packages are deposited in a drop box in the front lobby and Commissioners are free to pick up packages at their convenience since the lobby door is always unlocked.

Board members were reluctant to follow the recommended package pick-up procedures, referring in particular to the additional time and fuel that the extra vehicle trips would entail. Ms. Sayegh indicated that while she would be willing to pick up her packages in the future since she works in Town, she felt that it would be an inconvenience to other Board members who generously volunteer their time for the Town and who may not work nearby.

Board members Bufano, Comiskey, and Gardiner indicated that they would be willing to pick up their packages. Ms. Frees indicated that she would be willing to pay for her postage, if necessary, in order to continue to receive her mailings.

Mr. Shiue was not happy with the proposal and the resulting inconvenience to Board

ZBA Minutes – April 20, 2009 - Page 6

members, referring to the relatively small savings that the Town would reap as compared to its total annual budget.

Ms. Sayegh requested that the item be tabled until she has some time to consider the matter and to possibly speak with First Selectman Brennan.

Mr. Nerney understood the concerns expressed by the Board and recognized that there could be extenuating circumstances affecting the final resolution of the matter. The decision was postponed, with the understanding that the packages would at this time continue to be mailed to all Board members.

E. ADJOURNMENT

MOTION was made by Mr. Gardiner, seconded by Ms. Frees, and carried unanimously (6-0) to adjourn at 8:40 P.M.

Respectfully submitted,

Lorraine Russo
Recording Secretary