

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

**ZONING BOARD OF APPEALS
REGULAR MEETING
NOVEMBER 16, 2009
7:15 P.M.
TOWN HALL ANNEX - MEETING ROOM A**

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

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

A. CALL TO ORDER

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

B. PUBLIC HEARINGS

1. #09-10-09 FOSTER 195 BRANCH BROOK ROAD

Ms. Sayegh called the Hearing to order at 7:20 P.M., seated members Bufano, Comiskey, Frees, Gardiner, and Sayegh, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest. Ms. Sayegh noted that the hearing had been continued from the previous meeting.

Present were Kevin Quinlan, architect; and Chris Foster, homeowner.

Mr. Quinlan posted the property survey and an updated diagram of proposed site modifications. He noted that the applicant had shifted the proposed barn 2 feet inward toward the existing retaining wall, and had also eliminated the previously proposed lean-to structure. He indicated that the size of the proposed barn had been reduced from 18 x 32 feet to 18 x 24 feet as a result of the removal of the 8-foot lean-to.

Mr. Foster explained further that Brian Andronico, a local excavator, had visited the property again since the last hearing, and was not sure as to whether several large boulders were indicative of ledge on the property, although he felt they could be dealt

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with under any circumstances.

Mr. Foster noted the following points: that the adjacent neighbors had no issue with the proposed renovations; that the setback in question appears to be a side, rather than a front, setback and the proposed modifications do adhere to the 40-foot side yard restriction; and the proposed construction would represent an improvement (i.e. lesser setback intrusion) over what is currently on the site.

Mr. Quinlan acknowledged that cost and aesthetics are not the criteria by which the Board can grant a variance, although both Mr. Quinlan and Mr. Foster indicated that taking out the retaining wall and/or moving the proposed structure into an existing elevated garden area that is quite ornately laid out, would be aesthetically unpleasing and expensive.

In response to a question from the Board, Mr. Foster indicated that the structure could be moved closer to the driveway if the Board preferred, although that would not reduce the incursion into the setback. Mr. Quinlan noted further that such a move would not make any difference to the neighbors due to the existing tree line and the relative perspective that the neighbors have from their property.

The question arose as to whether the existing shed, which does not have a concrete floor, is considered a permanent structure. Town Planner Nerney explained that for purposes of zoning, a structure is a structure, no matter how it is affixed to the ground. He explained further that in order to rebuild the existing barn in its current location, the envelope of construction would have to be identical to the existing structure.

In response to a question from Mr. Gardiner, Mr. Foster explained that the additional upper floor space is required for higher quality storage space of yard and sports equipment, and potentially as a place for kids to sit/socialize with friends in the future.

Mr. Quinlan explained that boring, chipping and blasting would be necessary if ledge were encountered. He noted that huge, heavy equipment would be required, which would raise concerns regarding deterioration of the roadway, adequate turning radius on the street, potential damage to low-hanging trees, and possible vibration-induced structural damage to the home and patio which is in very close proximity to the construction area.

In response to questions from the Board, Mr. Foster stated that the proposed barn footprint would be approximately 201 square feet larger than the existing shed, noting further that 264 square feet would be as-of-right and 168 square feet would be located in the restricted setback area. Mr. Quinlan and Mr. Foster also calculated cubic feet of incursion into the setback, noting that the proposed construction would represent approximately 346 cu. ft. of greater incursion into the setback than the existing shed.

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Mr. Comiskey felt that the argument regarding the front yard versus side yard setback was not valid, noting that the setback in question is clearly defined by zoning regulations as a front yard setback. He felt that the Board needs to consider the application strictly from the perspective of whether a hardship to the land has been adequately proved.

Ms. Sayegh noted for the record that no one was in the audience to either support or object to the application.

There being no further comments, the public hearing was closed at 8:00 P.M.

C. APPLICATIONS READY FOR REVIEW AND ACTION

Ms. Sayegh called the Regular Meeting to order at 8:00 P.M., seated members Bufano, Comiskey, Frees, Gardiner, and Sayegh, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest.

1. #09-10-09 FOSTER 195 BRANCH BROOK ROAD

The Board discussed the subject application.

Mr. Shiue did not have any problem with the requested variance, noting that there was no neighbor opposition, the applicant would be taking down a greater-encroaching shed, and the likelihood of ledge on the property would likely result in environmental damage, as well as structural damage, to the existing house if the proposed structure were sited differently on the property. He felt that these issues outweighed any negative concerns with placing the structure as proposed.

Ms. Bufano agreed, noting that the neighbors' letter weighed heavily on her decision.

Ms. Sayegh favored granting the variance, referring to the applicant's 2-foot reduction in setback incursion, the lack of neighbor opposition, the side yard/front yard setback issue, the existence of boulders/possible ledge on the property, and the fact that an existing nonconforming condition would be mitigated.

Ms. Frees supported the requested variance. She felt that removing the existing shed (which the applicant could rebuild as-of-right in its current location) is a benefit to surrounding neighbors. She was also pleased with the 2-foot reduction in setback incursion. She felt that since the underlying purpose of front yard setback regulations is to maintain a large, structure-free area in front, from a purely logical standpoint the side yard/front yard setback argument seemed to support that scenario.

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Mr. Gardiner stated that he was struggling with the size/height of the proposed structure, but he felt that the 2-foot decrease in the requested variance showed good intent. He referenced the existing boulders and possible ledge on the property as a hardship, and he felt that reducing the existing setback incursion would be an overall positive for the property.

Mr. Comiskey did not see any evidence of a hardship in the subject application. He did not feel that the front versus side yard setback issue was relevant nor did he think that ledge was a real hardship in this instance since it could be built upon. He felt that the proposed shed size could be reduced, and he did not feel that the applicant's reticence to disturb the stone wall was a hardship according to the letter of the law.

Ms. Frees noted that the applicant's decision not to rebuild the existing shed in its current location represents a real improvement to the property.

MOTION was made by Ms. Sayegh, seconded by Ms. Frees, and carried (4-1) to **grant** the variance to allow a new shed with a 42-foot front yard setback in lieu of the required 50 feet, subject to revised renderings received November 9, 2009, on grounds that sufficient hardship was demonstrated due to the topography/boulders in various areas of the site, the mitigation from the old shed, the letter of support from the neighbors, and the look of the side yard versus the front yard,. Mr. Comiskey opposed.

D. OTHER BUSINESS

1. Minutes – October 19, 2009

MOTION was made by Mr. Gardiner, seconded by Ms. Bufano, and carried unanimously (6-0) to approve the minutes of October 19, 2009.

E. ADJOURNMENT

MOTION was made by Ms. Sayegh, seconded by Mr. Shiue, and carried unanimously (6-0) to adjourn at 8:25 P.M.

Respectfully submitted,

Lorraine Russo
Recording Secretary