

TOWN OF WESTON, CONNECTICUT  
ZONING BOARD OF APPEALS HEARING  
January 26, 2010

MINUTES

Present: Board Members: Chairman MacLeod Snaith, Vice-Chairman Richard Wolf, Nick Noyes, Robert Gardner and Alternates: Ken Edgar and Jeff Tallman

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Mr. Snaith opened the public hearing at 7:40 p.m. The Board Secretary read the agenda into the record. Mr. Snaith then explained the public hearing procedure to the applicants.

4 GOODHILL RD, owner GERALD LIEBERMAN, Map 31, Block 8, Lot 3, Appeal to cease and desist order of Code Enforcement Officer, dated December 31, 2009.

Jim Pjura, Code Enforcement Officer, came forward to discuss the cease and desist order. Mr. Edgar asked whether the Town had ever issued a special permit and Mr. Pjura stated that there was a special permit issued, but not for this number of employees. Tracy Kulikowski, Land Use Director noted that the Town issued a letter on July, 26, 1983 permitting a professional medical office under Sections 330 and 343 of the zoning regulations. At the same time, there was a request for a variance to have 4 non-resident employees, which was denied. Discussion ensued.

Mr. Snaith noted that the Board's decision is whether they agree with upholding the cease and desist order issued by the Code Enforcement Officer regarding the issue of the number of non-resident employees. Mr. Noyes commented that his recollection of the regulation is that it allows for two non-resident employees and that has not changed. Mr. Snaith stated that right now it is undisputed that six non-resident employees are working for Dr. Lieberman and in order for the Code Enforcement Officer's decision to have been erroneous, something would have had to have changed in the regulations or a special permit would have had to been issued. Ms. Kulikowski noted that at the time, the letter would have constituted the permit. She indicated the Minutes from 1983 state that a special permit was issued, but the request for 4 non-resident employees was denied because they failed to show hardship. Discussion continued.

Attorney Larry Wiseman, from Halloran and Sage came forward and stated that he was representing Dr. Lieberman in 1983 when he received the special permit. He noted that Dr. Lieberman struggled to maintain his practice with 2 non-resident employees. He further noted that they brought the appeal because it was suggested that Dr. Lieberman did not reside at the residence, and explained that he has moved into the residence permanently. They are requesting a variance to the number of employees, which would remedy the issue of the violation of the number of non-resident employees. Attorney Wiseman explained that when the special permit was issued in 1983, the full-time resident requirement was not part of the regulations. The use should be grandfathered and the cease and desist order found to be defective. He noted that the property is a 3.24 acre corner lot with the building set back from the road and surrounded by trees. It is at the intersection of two very heavily traveled roads with a traffic signal and across the street from a commercial nursery. Attorney Wiseman further stated that this is the only medical practice in town and contributes to the health and welfare of the community and

explained that there are not always 6 employees working at the same time, it is usually 3 or 4. They are asking for a variance for up to 6 employees but if the Board wanted to have a provision that they can only have 4 non-resident employees working at one time, they would be willing to work with that.

Town Attorney Pat Sullivan came forward and noted that everyone is admitting that there is a violation of the regulation, but what they are really dealing with here is the variance request. Mr. Edgar questioned whether there was supportable authority that would say that this variance is appropriate in running with the land. Attorney Sullivan explained that the Board would have to find a hardship and in looking to the future, if a variance is granted, it runs with the land and anyone could run a business there which changes the economic value of property and creates a commercial operation in a residential zone. This is a residential lot in a residential zone and the Board would need to find a hardship in order to grant a variance. Mr. Noyes noted that a variance runs with the land but a special permit goes with the individual and asked how the two are reconciled. Attorney Sullivan stated that the idea is to be limiting in scope and the special permit allows some extra protection. If Dr. Lieberman closed his office, there would still be a variance running with the property that would allow for more than 2 non-resident employees.

Mr. Wolf then asked for restatement of the hardship and Attorney Wiseman explained that the property is already in a commercially intruded area, at a major intersection with a very limited use. It has been there for all these years and should be allowed to continue as it is unique to this property and warrants a variance. Mr. Snaith commented that he has a problem with how it relates to the hardship because it has to be a land hardship. Mr. Gardner commented that he thinks this could tie into the health and welfare of community and thinks that having a doctor in the community relates to that. Discussion ensued.

Hearing no further discussion on the appeal to the cease & desist order, the public hearing closed at 8:31 p.m.

Voting Members: Snaith, Wolf, Noyes, Gardner and Edgar

**MOTION:**

Mr. Noyes made a motion to uphold the cease and desist order issued by the Code Enforcement Officer dated December 31, 2009, only to the issue of Section 343.3, relating to the number of non-resident employees. Mr. Wolf seconded the motion. All in favor, the motion carried (5-0).

4 GOODHILL RD, owner GERALD LIEBERMAN, Map 31, Block 8, Lot 3, Variance to Section 343.3 to permit continued use of premises under existing special permit for pediatric practice requiring more than 2 non-occupant employees (6 in all)

Catherine McCarthy, 1 River Road, came forward and stated that her property abuts Dr. Lieberman's property. She has 3 young children, all under the age of 7, and uses a pediatrician in Norwalk. The convenience factor of having a doctor's office in town argument doesn't pertain to her because she travels for other services and is happy to do so. She stated she is surprised that no one has brought up the issue that the property abuts the Kettle Creek district with historic homes dating to 1725 and the character of the neighborhood would be impacted if a

variance is granted. She stated that Dr. Lieberman has been flicking his nose at the Board and the community and it sets a bad precedent. She is worried that he now has 6 employees and would continue to add to that and if the property were sold, another medical practice could come in, knock down the house and put up a medical building.

Dr. Brett Lieberman, came forward and stated that he is Dr. Lieberman's son and stated that Dr. Lieberman regrets that he couldn't be here tonight. He stated that it is in the best interest of Weston residents have a doctor in town and in general, people like to know that they have a doctor in the community. He noted that the problem with the practice has always been that it is impossible to run a practice with only 2 employees and their only recourse is to get a variance based on the hardship that there has always been a commercial business adjacent to it and it abuts a busy intersection in Weston. He further noted that he takes exception to the fact that his father flaunted his violation for years, as his intention is not to increase the practice, just to continue with the amount of employees they have now to continue his service to town.

Chris Kimberly, 3 Broad Street, came forward and stated that he would like to add that the last time Dr. Lieberman was before the P&Z, the question of where he lived came up and that question of where he lives always comes up. It doesn't matter whether he lives there currently or not because obviously he has been in violation for long time and will continue to if the town doesn't stand up and enforce the regulations.

Hearing no additional comments, the public hearing was closed at 8:45 p.m.

Voting Members: Snaith, Wolf, Noyes, Gardner and Edgar

MOTION:

Mr. Snaith made a motion to deny the application for a variance to Section 343.3 to permit continued use of a premises under an existing special permit, based on the lack of demonstrable hardship. Mr. Edgar seconded the motion. The motion was voted on and carried (3 [Snaith, Noyes, Edgar] – 2 [Gardner, Wolf]).

81 DAVIS HILL ROAD, owners, DAVID & CLAUDIA TOM, Map 17, Block 2, Lot 19, Variance to Sections 312.5 and 321.5 to allow for the enclosure of the space below the existing deck to create an enclosed garage space to be setback 19 feet from Martin Road.

Hunter Smith, architect, and Claudia Tom, owner, came forward to discuss the request for a variance to the side yard setback. Mr. Smith noted that this is a corner lot and the portion of the property in question was the original house on the property and they wish to convert it to a carriage house. It will not be used as a dwelling. It has been added on to without seeking any variances. There is a deck on the southeast corner and they are looking to enclose the area underneath it to make a 3-bay garage. Mr. Smith explained that the property has topography, ledge and configuration issues and further explained that the house is in poor shape and there are portions where the roof has collapsed. They are seeking a reduction of the setback from 50 ft. to 19 ft. to allow them to enclose that area under the deck. Discussion ensued.

Mr. Wolf questioned whether they would be changing any roof lines and Mr. Smith indicated that they would be reducing the structure in terms of the footprint and would just be in-filling.

Mr. Wolf explained that if the Board were to decide on the variance, they would need to see more detailed drawings.

Discussion will be continued next month.

11 BLUEBERRY HILL ROAD, owners, DORIS & FRANK JACOBY, Map 24, Block 5, Lot 3, variance to Sec. 321.5 to allow continued existence of a small portion of an in-ground swimming pool approx. 26 ft. from the side lot line.

Attorney George Gudiera came forward with the Jacobys. He noted that they had been before the Board in June, 2009 asking for a variance for a 3.9 ft. setback for the existing pool which was denied. He explained that the sheds have been moved to inside the property line but there still remains the 26.74 ft. variance for the pool. Attorney Gudiera stated that the last time they were before the Board, they came in with arguments that did not pertain to hardship, that it would be a financial problem if they had to move the pool and that surveyor had made mistake when placing the pool. He presented the map which has the septic tank located within 30 feet but has no indication of how far the fields go. The Health Department has no documents to indicate where that septic system goes so they had a septic person lay out a reserve area and they can barely get the primary system and reserve system in and meet that 25 foot setback from the pool. Also, the lot is only 1 acre and is pre-existing, nonconforming. Attorney Gudiera stated that the problem is that they can't move the pool, it would have to be destroyed and the regulation when Weston went from 1 to 2 acre zoning created the hardship. Mr. Snaith questioned why it wouldn't be negligence on the part of the contractor for putting the pool in the wrong place. Attorney Gudiera stated that there is no question that there was negligence in the beginning, but they are asking for a 3.9 foot variance in a zone that has all preexisting nonconforming lots. Discussion ensued.

Hearing no further discussion, the public hearing was closed at 9:43 p.m.

383 AND 389 NEWTOWN TURNPIKE, OWNER, MORTON SCHINDEL, TRUSTEE Map 11, Block 3, Lots 9-12, variance to Sec. 341.2c to allow existing building to remain 99 ft. from the front line setback and a variance to Sec. 341.2 e to allow dwelling use in an existing dwelling.

Attorney Gudiera, Morton Schindel and Dorothy Curran, from the Weston Historical Society, came forward to discuss the request. Attorney Gudiera explained that there was a subdivision approved in 1983 and then they applied to the Planning and Zoning Commission for a museum under special permit. He noted that Lot 6 is the subject of the museum and every other lot in the subdivision is owned by Mr. Schindel and has been for a long time. There is a residential building that is not part of the museum and they would like to use that building as part of the museum and would need a 1 foot variance. He further noted that the state took the portion of the road right where that building is and if they hadn't taken it by eminent domain, he would have had the 100 feet. Attorney Gudiera explained that the second variance is for relief from the section of the special permit that states that there will be no dwelling use on the property. Ms. Curran then explained the history and how Weston Woods came to be in Weston.

In response to a question posed by Mr. Wolf, Attorney Gudiera explained that the special permit only applies to the buildings that are used as part of the museum and if they do not get a variance, they won't be able to have anyone live there. Discussion ensued.

Attorney Gudiera explained that if the Board does grant variances and they don't get a special permit from the Planning and Zoning Board then the variances are useless. Mr. Edgar suggested that the Board could make the variance sufficiently specific and limit the dwelling use to Mr. Schindel or anyone who acts as caretaker as long as the property is used as museum in compliance with the regulations. Attorney Gudiera stated that they had no objection to setting that condition.

Hearing no further discussion, the public hearing was closed at 10:26 p.m.

Deliberations:

Voting Members: Snaith, Wolf, Noyes, Gardner and Edgar

383 and 389 Newtown Turnpike:

MOTION FOR APPROVAL

Mr. Wolf made a motion to approve variances for 393 and 389 Newtown Turnpike to Sections 341.2c, to allow existing building to remain 99 ft. from front line setback and 341.2e, to allow dwelling use in an existing dwelling provided, however, that the dwelling use shall be limited to Mr. Schindel or a person who has caretaker responsibilities with regard to the museum property, but only so long as it shall remain a museum. The hardship for 341.2c is based on the fact that the property was reduced by eminent domain by the Connecticut state highway system that took 12 feet from the front property. The hardship for 341.2e is based on the uniqueness of the property, the preexisting nonconforming dwelling and it is an integrated group of historic buildings and cannot be subdivided without such subdivision itself violating the regulations. Mr. Edgar seconded the motion. All in favor, the motion carried (5-0).

11 Blueberry Hill Road

Mr. Wolf read from the minutes from the July, 2009 hearing. He commented that he thinks it's a tragic situation and found Attorney Gudiera's arguments regarding the reserve septic field to be weak. Mr. Tallman commented on the one-acre zoning. Mr. Edgar commented that he did not find the arguments persuasive and it is a sad situation.

Voting Members: Snaith, Wolf, Noyes, Gardner and Edgar

MOTION TO DENY

Mr. Noyes made a motion to deny the request for variances to Sections 312.5 and 321.5 for 11 Blueberry Hill Road due to a lack of proven hardship. Mr. Wolf seconded the motion. The motion was voted on and carried (4-1 [Gardner]).

4 Goodhill Road

Mr. Wolf commented that he did not know why Dr. Lieberman was denied 4 non-resident employees when the Planning and Zoning Commission allowed more employees on other properties in town. He further commented that he had a hard time rationalizing the hardship.

Mr. Edgar commented that the fact that it is adjacent to other commercial properties isn't enough.

Voting Members: Snaith, Wolf, Noyes, Gardner and Edgar

MOTION TO DENY

Mr. Snaith made a motion to deny the application for a variance to Section 343.3 to permit a continued use of the premises under an existing special permit based on the lack of demonstrable hardship. Mr. Edgar seconded the motion. The motion was voted on and passed (3 [Noyes, Snaith, Edgar] – 2 [Wolf, Gardner]).

APPROVAL OF MINUTES

Approval of the Minutes from November 2009 was continued to next meeting.

MOTION TO ADJOURN

Mr. Snaith made a motion to adjourn the meeting and Mr. Edgar seconded. All in favor, the meeting adjourned at 11:05 p.m.

Respectfully submitted,

Delana Lustberg  
Board Clerk