

TOWN OF WESTON, CONNECTICUT  
ZONING BOARD OF APPEALS HEARING  
August 28, 2012

MINUTES

Present: Board Members: Chairman MacLeod Snaith, Richard Wolf, Nick Noyes, Robert Gardner, Jeff Tallman and Alternates: John Moran and Glenn Van Deusen

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Mr. Snaith opened the public hearing at 7:33 p.m. The Board Secretary read the agenda into the record and Mr. Snaith explained the process for the applicants.

306 LYONS PLAIN ROAD, owner, PETER J. FAILLACE, Map 19, Block 3, Lot 32, Appeal from the May 7, 2012 decision of the Planning & Zoning Commission

Gloria Gouveia, representing the owner, came forward and noted that they continued the hearing in order to give the Board time to review materials that were submitted at the meeting last month and for Attorney Fuller to respond to the Town Attorney's memorandum.

Attorney Fuller then came forward and stated that the regulation that the Town has regarding the nonconforming use is unenforceable and the Board should ignore that regulation because it is not consistent with state statutes. He noted that moving the cottage may sound like a good idea, but there are problem with moving it and they feel that the Board should sustain the appeal and allow the dwelling to be rebuilt where it is currently located.

Ms. Gouveia stated that she reviewed the possibility of relocating the cottage and noted that the building has existed in its current location since before the regulations even existed and it retains a non-conforming status. She further noted that the proposed location of the new septic system would not be approved by the health department as it is within the 100 year flood area. In moving the septic system out of the 100 year flood zone, it would make the relocation of the cottage possible, however, the zoning regulation 373.5 regarding continuation of the non-conforming use, prevents that. Mr. Snaith noted 375.2(c) regarding restoration of damaged buildings, that if it is possible to bring the building into conformity, it should be done. Discussion ensued.

Ms. Gouveia then addressed the concern of the Board that the cottage could even be rebuilt and meet the FEMA regulations, and noted the letter from Achilles Architects dated 8/8/2012 in which it is confirmed that there will be no difficulty with bringing the cottage into conformity with FEMA and State Building Code regulations. She also noted the letter from Alan Shepard, PE, dated 8/1/2012, who confirmed that, in his professional opinion, the reconstruction of the cottage in its current location will not increase base flood elevation or reduce water holding capacity of the flood plain. Ms. Gouveia then read Section 375.1 of the Zoning Regulations regarding reconstruction of building damaged greater than 50% of its fair market value. Appraisal value of the cottage is \$208,800 and the amount to finish reconstruction will be less than \$100,000 and well within the parameters of 375.1. She then addressed Section 373.2 and introduced John Oppenheimer who inspected the house prior to Mr. Faillace purchasing the property and addressed the safety repairs that were necessary to bring the cottage into compliance.

Ms. Gouveia then stated that she believes that after a review of Attorney Sullivan's memo, it is her point of view that if they prove that the owner did not intend on abandoning the use, they are assured the ability to continue that use. The issue then becomes the location which cannot be relocated by virtue of Sec. 373.5.

Mr. Faillace then commented that he has lived on the river since 1978 and referred to the photos he showed the Board of when the Cartbridge Rd. bridge was under water, and the cottage was still safe and dry and at least 60-70 feet away from the high water. He further noted that the cottage has been there for over 70 years and has never been compromised.

Discussion and clarifying questions from Board Members ensued.

James Maggio, commented by questioning that if Mr. Faillace had decided to do the renovation in stages, would the same issues be involved? It appears that you can do an "end run" around the regulations just by staging the project. Why have the regulation in place that prohibits doing all the repairs in one shot? It does not make sense and the decision has cost the applicant money to defend the actions and he has paid as a taxpayer to defend the action.

Jeff Moore, commented that he knows the cottage and has seen it all his life. Everything he has seen that has been done to the property has all been good for the Town. The owner did a great job renovating the cottage and commends him for keeping the integrity of the cottage and doesn't see a problem with keeping it where it is.

Hearing no further discussion, the public hearing closed at 8:22 p.m.

42 CARTBRIDGE ROAD, owner, FRANCES von MALTITZ REAL ESTATE TRUST, Map 27, Block 1, Lot 6, Variance to Sections 311.5 and 321.5 to construct a new dwelling on an existing lot where the lot width is less than the minimum of 170 feet.

Tracy Kulikowski came forward and explained that after the meeting last month, she had received information from the owner's counsel that he had found notations in his files from 1955 that a previous variance had been granted for the lot width. There was not a requirement to record the variances on the Land Records back then which is why it did not show up. Notice can now be put on the Land Records by filing a copy of the Minutes from that 1955 Zoning Board of Appeals meeting, which the attorney for the owners will do along with filing a withdrawal of this variance application.

7 SMITH RIDGE ROAD, owner, DHIAA SHUBBER, Map 24, Block 4, Lot 85, Variance to Sec. 321.6 to allow generator and transformer to remain 20 ft. from side property line.

Dhiaa Shuuber, owner, came forward to present the application. He noted that the issue is because the generator is within the setback and presented a plan showing the location as being within 25 ft. of the side property line. He explained that the reason for the location is that the property is irregularly shaped and surrounded by wetlands and the generator must be at least 100 feet from the wetlands. Mr. Snaith questioned that regulation noting that the wetlands setback zone is 50 feet but with a 100 foot recommendation. He also noted that this is not a conservation issue, it is a zoning issue and there are a number of locations on the property that comply. Mr. Wolf reviewed the hardship and Mr. Shubber stated that he researched why the transformer was placed there and it was because of the 100 foot requirement and it is the same for the generator because of the chemicals involved.

Discussion ensued regarding multiple alternate locations for the generator.

Following discussion, the hearing was continued to get additional information regarding the placement of a generator 100 feet from wetlands.

**18 SAUGATUCK RIVER ROAD, owners, JUDITH L. AND JOHN H. WETZEL, Map 28, Block 4, Lot 10, Variance to Section 321.6 to allow construction of a 1 story addition to an existing dwelling to be 17.3 feet from the rear property line**

Eric Michaels, representing the owners came forward to present the application. He presented some additional exhibits from soil scientist, Bill Kenney, indicating the wetlands location. He noted that the house was built in 1978 and the wetlands regulations went into effect in 1977, one year before the house was built. He indicated the 100 ft. regulated area and showed that they placed the house as far away from the regulated area as possible and at the rear of the property. Mr. Michaels then noted the setback line to the rear and showed the area of the proposed extension. The proposal is an extension of the 3<sup>rd</sup> level of the home, the kitchen/living room area and the addition a new reading room. The house is on a steep slope and he indicated the location of the well and septic which leaves no other place to locate the addition. Mr. Michaels then addressed the hardships of the topography and wetlands the fact that it would not impact the neighbors in any way.

After some discussion and clarifying questions, the public hearing was closed at 9:09 p.m.

**DELIBERATIONS:**

**18 SAUGATUCK RIVER ROAD**

Voting members: Snaith, Noyes, Wolf, Gardner, Tallman

Mr. Snaith commented that the request is not unreasonable. It is a unique property which limits certain options on where to place an expansion and there is not much question that the topography figures into a serious hardship. The interior layout also adds to the fact that the addition needs to be where it has been proposed and he has no problem with the request. Mr. Noyes commented that the wetlands caused the house to be built so far back against the rear setback line and the addition has been placed so as to be out of the regulated area. Mr. Gardner concurred stating that it was a reasonable request given the unusual house and lovely property. Mr. Tallman agreed and added that they did a nice job of trying to situate the addition and still conform as much as possible.

**MOTION FOR APPROVAL**

Mr. Tallman made a Motion to approve the variance to Section 321.6 to allow construction of a one-story addition to be 17.3 ft. from the rear property line as shown on plans prepared by Land Surveying Services, LLC, dated 6/30/12 and drawings by Ranney, Michaels Architects dated 7/11/12. The variance is based on the hardships of topography, wetlands setbacks and interior layout. Mr. Wolf seconded the motion. All in favor, the motion carried (5-0).

**306 LYONS PLAIN ROAD**

Voting members: Snaith, Noyes, Moran, Gardner, Tallman

Mr. Snaith commented that the initial item before the Board is the denial from P&Z on the request for a zoning permit based on Section 375.1 that provides that once you take a

nonconforming structure down, you can't put it back up in the same location. He further commented that the nonconforming use is not extinguished unless the owner states that he chooses to extinguish the nonconformity. Mr. Tallman questioned that if the use has never changed, why would the use be non-conforming? Mr. Snaith noted that the 2<sup>nd</sup> dwelling on a lot is nonconforming and the location is also nonconforming.

Mr. Snaith stated that he gets hung up on why not relocate building as per Sec. 375.2 (c), but the applicant points out that under Sec. 373.5, it says that if you move the structure, you lose the non-conforming use. Discussion ensued.

Mr. Noyes noted that the mission is to address an appeal of the action by the P&Z and they should be looking at the grounds on which the P&Z took action. Discussion continued.

Mr. Snaith stated that given that the Board received more information than the P&Z, he would feel comfortable sending the matter back to P&Z and not upholding their decision.

#### MOTION

Mr. Noyes made a Motion to uphold the decision of the Planning & Zoning Commission and Mr. Gardner seconded. The motion was voted on (2 [Noyes, Moran] – 3 [Snaith, Gardner, Tallman]) and failed.

#### MOTION

Mr. Snaith made a motion to reverse the decision of the Planning & Zoning Commission based on the additional information received, the most compelling being the valuation of the cottage by the income method, and the reconstruction of the cottage would be 1/3 of the fair market value. The applicant should be allowed to reconstruct the cottage because the cost of reconstruction is less than 50% of the fair market value. Mr. Moran seconded. All in favor, (5-0) the motion carried.

#### APPROVAL OF MINUTES

Mr. Snaith made a motion to approve the Minutes from the July 24, 2012 meeting and Mr. Tallman seconded. All in favor, the motion carried (5-0).

#### MOTION TO ADJOURN

Mr. Wolf made a motion to adjourn the meeting and Mr. Noyes seconded. All in favor, the meeting adjourned at 10:45 p.m.

Respectfully submitted,

Delana Lustberg  
Board Secretary