

TOWN OF WESTON, CONNECTICUT
ZONING BOARD OF APPEALS HEARING
June 22, 2010

MINUTES

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

Mr. Snaith opened the public hearing at 7:35 p.m. The Board Secretary read the agenda into the record. Mr. Snaith then explained the public hearing procedure to the applicants.

25 LAKESIDE DRIVE, OWNERS, BRET and KAREN HERMAN, MAP 14, BLOCK 1 LOT 24, Appeal of 4/19/10 decision of the P&Z and variance to Sec. IV.B.2 and III.E.3 of the Floodplain Management Regulations requiring the submission of an engineering report and an A-2 survey for an existing retaining stonewall.

Brett Herman, came forward to discuss the appeal and Mr. Edgar noted that he lives up the river on Wedges Field but does not believe he has a conflict of interest. Mr. Herman agreed that Mr. Edgar could participate in the hearing. After further discussion with Mr. Edgar, Mr. Herman stated that he was not pursuing his appeal of the P& Z decision, but was limiting his request to a variance.

Mr. Herman then explained that they moved to Weston in 1999, and since then they have lost 5-6 ft. of grass area due to erosion. He stated that he had asked his gardener to move stones from the property and make a retaining wall along the edge of the water and the gardener put in a finished stone wall. He noted that the wall doesn't come higher than the grade of the grass and doesn't affect waterflow or any adjacent property. Mr. Herman explained that it was never his intention to create a finished wall and has gone before the Conservation Commission who asked him to get engineering report to see if it has any effect. Dean Martin, P.E. from Grumman Engineering prepared a report that concluded that the wall does not have a measurable impact on the waterflow or neighboring properties and the Conservation Commission approved his application. He was then notified that because he lives in a flood plain, he would need to get a P&Z permit. When he went before the P&Z they told him he would need to get a hydraulic report, a more specific engineering report and an A-2 survey which would cost about \$2,500-\$3,000. While he knows that financial hardship is not a factor, and asked the Board to consider the circumstances of his case, that there is no effect on waterflow or the neighbors and if it comes to it, he would rather just take the wall down. If the Board would like his engineer to attend the discussion, he would like to have the matter continued. Discussion ensued.

Mr. Wolf commented that he doesn't see what having the engineer present will add to the report and questioned the timeline of events.

Mr. Herman explained that he hired a man to do spring clean up work, asked him to take rocks from the property and just make a wall against the embankment. There was a miscommunication, he didn't want a finished stone wall, just a berm and there was no written proposal.

Mr. Snaith commented that the problem is that the Board has to grant a variance based on hardship and the only hardship seems to be a financial one. Mr. Edgar commented that he has similar difficulties with this matter. Mr. Noyes commented that, officially, the decision is for a specific case and not for anything else, but attorneys come in and cite previous decisions all the time. If a variance was granted based on what is already in the file, the report from the engineer about conditions of the river and wall, it could be seen to satisfy the requirements except for the A-2 survey. Mr. Wolf noted that the engineer's opinion is that the wall makes no difference in the flow of the river, but if the regulations require certain things be followed, the Board is bound to uphold the regulations.

Following some additional discussion, the discussion was continued to the next meeting.

306 LYONS PLAIN ROAD, OWNER, TOAD HALL, LLC, Map 19, Block 3, Lot 32, variance to Sections 312.7 and 321.1(a) of the regulations to allow a reconstructed cottage to remain

John Fallon, Esq., representing applicant Toad Hall, LLC, and Jay Faillace, principal of Toad Hall LLC came forward to discuss the application. Attorney Fallon explained that Mr. Faillace has lived in Weston since 1978, he raised a family here and has been active in civic events. He noted that the property has been improved over a long time and since the 1950's there has been a cottage on the property. They are asking for a variance to Sec. 312.7 to maintain the structure and to increase the allowable units on the property from 1 to 2. Mr. Faillace explained that when he bought the property in 2009, the cottage was not compliant with fire codes, etc. He made a judgment error that as long as he worked on same footprint, it would not be a problem to rebuild the cottage. The decision was not made in an attempt to avoid the regulations, but made in connection with an ongoing building permit on the house. Mr. Wolf stated that he thought that Mr. Faillace would have understood that a permit, let alone a variance would be needed to take down the structure. Attorney Fallon explained that Mr. Faillace thought he could act on same permit to re-construct the cottage. Discussion ensued.

Following discussion, Attorney Fallon stated that the use of the property will be consistent with the pre-existing nonconforming use, which has technically been lost. There was no expansion of the cottage and it will be fully compliant with health and fire codes with an added new septic system. The cottage was legally preexisting, nonconforming and that right was lost due to an ill advised decision to totally demolish and reconstruct rather than repair. Mr. Edgar referred to the plans and noted that the height seems to be different from the original.

Mr. Snaith noted that the goal is to move towards compliance and this is a completely new structure and no longer a grandfathered building. He questioned that if the reason the cottage is noncompliant is that it is 10.5 too close to river, why couldn't they move it to where it would be compliant? Attorney Fallon noted that there are Conservation considerations. Discussion ensued.

Following discussion, Mr. Snaith asked Attorney Fallon to restate the hardship. Attorney Fallon stated that they had a preexisting structure which was protected by statute and due to a mistaken assumption, the reconstruction was undertaken that negated that preexisting nonconforming protection. He further stated that case law states that when an application for a variance is denied and the effect leads to confiscation, that confiscation establishes hardship.

Following some additional discussion, the matter was continued to the next meeting to give the Board members time to consult with Town Counsel.

The Board members had some discussion on the ZBA by-laws and made the following motion:

MOTION

Mr. Snaith made a motion to remove 13(d) from the ZBA by-laws and Mr. Gardner seconded. All in favor, the motion carried (5-0).

APPROVAL OF MINUTES

Mr. Wolf made a motion to approve the March 23, 2010 minutes and Mr. Edgar seconded. All in favor, the motion carried (5-0).

MOTION TO ADJOURN

Mr. Noyes made a motion to adjourn the meeting and Mr. Gardner seconded. All in favor, the meeting adjourned at 9:50 p.m.

Respectfully submitted,

Delana Lustberg
Board Clerk