

TOWN OF WESTON, CONNECTICUT  
ZONING BOARD OF APPEALS HEARING

June 23, 2009

MINUTES

Present: Board Members: Vice-Chairman MacLeod Snaith, Nick Noyes, Carolyn Mulcahey and Robert Gardner

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Mr. Snaith opened the public hearing at 7:41 p.m. The Board Secretary read the agenda into the record. He then explained the public hearing procedure to the applicant.

88 LYONS PLAIN ROAD, owners, MCGINNIS, PETER J. & CHESMAN, MELISSA H., Map 27, Block 1, Lot 35, variance to Sections 321.5 and 374 of the zoning regulations to construct additions to an existing non-conforming residence with a front yard setback of 31 feet.

Ms. Chesman came forward and explained that they have an existing screened porch and they are planning on adding a 2<sup>nd</sup> floor on top of that to create the master bedroom. They are hoping to have enough space to have an office/guest room for in-laws. She noted that there are not many other options, the biggest issue preventing them from pushing the addition back is the large existing tree in the way, also the property slopes down and it would create a railroad scenario where they have to go through one room to get to another. They have revised their original plan and the addition is now 43 ft. from the property line.

Mr. Snaith commented that their revisions were very good and Ms. Chessman presented pictures of the tree for the board members to see. Mr. Snaith also noted that they are dealing with a whole area of property that is noncompliant, and the revisions are not increasing the noncompliance. Mr. Noyes commented that they have done away with a whole room and are now going to create a 2-story area and now the only increase into the setback area is that southwest corner which will be an "everything" room. He also noted that it was a nice change. Ms. Mulcahey concurred and had not additional comments.

The public hearing was closed at 7:51 p.m.

11 BLUEBERRY HILL ROAD, owners, JACOBY, FRANK & DORIS, Map 24, Block 5, Lot 3, Variance to Section 321.5 of the zoning regulations to allow an existing swimming pool to remain 27.1 ft. from the side line; (b) existing pool shed to remain 28.8 ft. from rear; (c) existing filter to remain approx. 24 ft. from the rear line and (d) existing shed to remain in side yard setback area.

Doris & Frank Jacoby came forward to present their application. Ms. Jacoby explained that the reason this hearing is late in coming is because when Bob Turner brought their attention to the issues regarding the violations in September 2007, they were out of the country. Then, Mr. Jacoby got sick and was in the hospital. Ms. Jacoby read from a prepared statement to the Board explaining their delinquency.

Ms. Jacoby then explained that they bought their house in the fall of 2003 but did not move into it for 8-9 months because they were doing renovations and repairs. When they finally moved in in June of 2004 there was a slab of concrete at the property line fence and on it was a small

garden shed that was falling apart so they replaced it. Subsequently, it was discovered after a survey in 2006, that the shed was actually partially on the neighbor's property. When Mr. Turner inspected the property in 2007, he indicated in a letter dated 5/25/2007 that they could leave the shed where it was because it had been there for over 15 years and therefore grandfathered. The neighbors have expressed concern because the shed is over the property line onto their property and they are under contract to sell the home but the buyer wants that issue cleared up. Discussion ensued.

Mr. Snaith commented that the replacement shed is still in the setback and grandfathering would only relate to the slab. Since the shed was replaced in 2003, it should comply with the current regulations, which is a 30 ft. setback. Mrs. Jacoby stated that they can slide the shed forward if necessary.

Mrs. Jacoby then addressed the issue of the pool noting that when they had the pool built, they used Lang Pools and relied on their reputation and assumed that Chris Lang was being careful in complying with the zoning regulations. He measured many times, but according to the current survey, it is 2 ft. too close to the side lot line. Mr. Snaith commented that there seems to be a number of problems with the survey and/or the fence running along the property line. He noted that they need an A-2 survey, but the plan presented indicates that it is an A-2.

Mrs. Jacoby then explained that the other shed on the property is really a dressing room. They have the same problem, noting that they measured and get to the line at 31.7 feet and the plan shows that it is 24 ft. She then presented a letter from the neighbor, Steve Grosinger, who stated that he had no objection to the placement of pool and pump house. Discussion continued.

Mr. Snaith stated that it seemed hard to find a hardship here. He questioned whether they could have someone else come in and re-survey the property to see if the problem lies with the staking. Ms. Mulcahey asked Mrs. Jacoby to review the timeline and dates of the installation of the fence and pool. Mr. Noyes noted that on the survey it is clear where the property line is, but he does not see the fence. The plan is dated 3/2004 and revised 12/2006 and the fence was there, but not on the revised survey. He also noted that the neighbor has a survey done by a different company which shows the houses in different locations.

Neighbors, Mark and Renata Gutowski, came forward and presented a copy of their surveyor's report. Mr. Gutowski reiterated that they have a buyer for their home and they need to get the Jacoby's shed off of the property line before they can go through with the closing.

Mr. Snaith then went through the various violations and stated that they have to go back to the issue of hardship. The Board has to decide to grant a variance based on hardship, other than financial. Mrs. Jacoby stated that they would be willing to remove the shed, but there is a hardship of moving the swimming pool. They would also be willing to pay for another survey, they can move the dressing room, and if the Board requires that they move the pool equipment, they can do that as well.

Following some additional discussion, it was decided that the Jacobys would get a new survey done and return at the next meeting.

The hearing was continued to the next meeting at 8:46 p.m.

29 CARDINAL ROAD, owners, GROTH, WILLARD & DIANE, May 26, Block 4, Lot 87, variance to Section 321.5 of the Zoning Regulations to allow the construction of a screened porch over an existing deck that would be setback 24 feet from the side property line.

Mr. & Mrs. Groth came forward to present their proposal. Mr. Groth explained that they purchased the home last August, and in the spring they decided that they wanted to add a screened porch. He noted that the existing deck runs the length of the house and they want to take a portion of that deck and put on a roof and screen it in. They want to extend the room 3 ft. past the existing deck and will need to put in footings. When they went for their permit, they were told that the porch would be over the regulated line by a number of feet. Mr. Groth explained that the way the house is situated on one side of the property, it would be impossible to move that screened porch to any other place on the deck because of a huge drop off. Where they would like to place it is on level land and would have access through the kitchen and dining room rather than the master bedroom. Mr. Snaith questioned whether they could move the side wall in 14-15 inches. Discussion ensued.

Following discussion, Mr. Noyes reviewed the hardships and stated that they would mark up the plan with the dimensions that the Board would approve, if that was acceptable to the applicants, and there would be a condition to not exceed that size. Mr. and Mrs. Groth agreed that would be acceptable. Mr. Snaith commented that no part of the structure, except the roof overhang would extend or encroach into the approved setback line. Revisions to the plan were made.

The public hearing was closed at 9:12 p.m.

#### DELIBERATIONS:

88 Lyons Plains Road:

Mr. Snaith opened discussion by noting that the building is entirely in the front yard setback area, and no matter what they want to do, they have to come before the Board. The applicant has revised the plan to have a second floor addition where the bathroom requires a variance for about 1.5 ft., and the office/guest area is filling out a corner on the south end of the property, all within the setback. Ms. Mulcahey commented that she thinks that Ms. Chessman did a good job of minimizing the impact of the extension into the setback. Mr. Gardner commented that although he missed the first portion of the discussion, he agrees. Mr. Noyes commented that he thinks the plan is improved and the applicant took the Board's suggestions in terms of intensity and minimized the incursion into the setback.

#### MOTION FOR APPROVAL

Ms Mulcahey made a motion to approve application for a variance to Sections 321.5 and 374 to construct additions to an existing nonconforming house set back 42.5 feet and a second floor addition above an existing screen porch, as shown on plans prepared by Guy G. Gabrielson, III, Architect, dated 5/26/09. The hardships are based on the pre-existing nonconformity with no where else to expand. Mr. Noyes seconded the motion. All in favor, the motion carried (4-0).

29 Cardinal Road:

Mr. Snaith commented that the new proposed porch addition to the deck shouldn't exceed the existing encroachment. The hardships are based on the topography, the interior layout of the house, and the corner of existing house to the setback line being just 2 inches. He stated that he

feels that it is not a serious encroachment and just a continuation of the non-conformity. Mr. Noyes commented that it does not expand the non-conformity and keeps it as status quo. Ms. Mulcahey noted that this situation should not have happened because the house was built after the regulations, but it is a good option to move forward without further encroachment.

#### MOTION FOR APPROVAL

Mr. Snaith made a motion to approve a variance to Section 321.5 of the zoning regulations to allow construction of a screened porch over an existing deck that will not encroach further than the existing deck at 27.4 feet from the northeast side property line, as shown on a survey prepared by L. Edwards Associates, dated 6/12/00 and revised 5/18/09 with handwritten revisions thereto dated 6/23/09. The hardships are based on the topography with steep slopes, the interior layout of the existing house and the existing deck encroachment. Mr. Gardner seconded the motion. All in favor, the motion carried (4-0).

#### APPROVAL OF MINUTES

Ms. Mulcahey made a motion to approve the minutes from the May 26, 2009 meeting and Mr. Snaith seconded. All in favor, the motion carried (4-0).

#### MOTION TO ADJOURN

Mr. Gardner made a motion to adjourn the meeting and Mr. Snaith seconded. All in favor, the meeting adjourned at 9:36 p.m.

Respectfully submitted,

Delana Lustberg  
Board Clerk