

TOWN OF WESTON, CONNECTICUT  
ZONING BOARD OF APPEALS HEARING  
October 23, 2012

MINUTES

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

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Mr. Snaith opened the public hearing at 7:30 p.m. The Board Secretary read the agenda into the record.

39 PHEASANT HILL ROAD, owner, DEBBIE T. BEAR TR, applicant, STEVE MIN, Map 25, Block 1, Lot 23, Variance to Section 321.6 to allow a deck to remain less than 30 feet from the side property line.

Attorney Jamie Gerard, representing owners, Debbie and Marty Bear came forward and noted that her clients purchased the house in 1998 and the pool and deck were the same as they are presently. When they went to sell the property, the title searcher did a municipal search and discovered that there was no Certificate of Occupancy issued for the pool. At that time they had a survey done and discovered that a portion of the pool deck is within the setback area.

Attorney Gerard noted the hardship as being the inability to sell the property without a variance. They are set to close on the property, the buyers have moved into house so their children could start school and they are just waiting to close. She also noted that this is not a self-created hardship it was a situation that existed prior to the time her clients purchased property. Attorney Michael Rosten came forward, noting that he represents the contract purchasers.

Mr. Tallman questioned when the pool was put in and Ms. Kulikowski noted that the building permit was issued in 1988 but there were never any inspections done. Mr. Wolf noted that the plan from 1988 shows the outline of the deck with a 31 ft. setback and in 2012 there is a 13' 6" setback and questioned what happened between those dates. Attorney Rosten noted that the town had issued a temporary C.O. in 1988 which indicated that someone came out and issued it pending completion of the deck and railings. Discussion ensued.

Mr. Snaith brought discussion to the issue of statute of limitations and whether the pool deck is the same as a terrace. If it is a terrace than there is only a 20 ft. setback requirement. Mr. Van Deusen noted that if the applicants were to cut off the portion of the deck/terrace that was in the setbacks it would then be in compliance. Discussion continued.

Mr. Tallman stated that it seems like a mistake on the part of the town and now the owner is being penalized. Mr. Van Deusen commented that it was also a mistake of the owners not to follow up and complete the necessary steps to obtain the CO. Ms. Bear noted that all the work was done by the prior owners and before she purchased the property. Attorney Rosten stated that since this was not a voluntary act of the current owner, it is in the discretion of the board to grant a variance. Discussion ensued.

The public hearing was closed at 8:39 p.m.

Deliberations:

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

Mr. Tallman began by stating that this is a problem created by prior owner and thinks that this would never happen today because the rules that are in place now were not back in 1988. Mr. Wolf commented that no one knows when the additional deck was created and they are to take the word of the applicant that when they bought the house, the deck was configured the way it is now. Mr. Snaith noted that sometimes strict application of the regulations becomes overly burdensome to the citizen and the Board can offer some amelioration of that situation. Mr. Van Deusen commented that there is a simple resolution by removing a few feet of decking. Mr. Gardner commented that he understands that it is hard to demonstrate hardship in this instance, but here a current owner is made to pay a penalty for something that happened before they even bought the house.

MOTION FOR APPROVAL

Mr. Tallman made a motion to approve the application for a variance to Section 321.6 to allow the existing non-conforming portion of a pool terrace, which is a 6.4 feet encroachment, to remain less than 20 feet from the side property line. The hardship is the pre-existing nonconforming condition which was created prior to the current owner and was only discovered by a recent A-2 Survey. Mr. Wolf seconded the motion. The motion was voted on and carried (4-1[Noyes]).

APPROVAL OF MINUTES

Mr. Snaith made a motion to approve the Minutes from the October 2, 2012 meeting and Mr. Noyes seconded. All in favor, the motion carried (4-0).

MOTION TO ADJOURN

Mr. Snaith made a motion to adjourn the meeting and Mr. Noyes seconded. All in favor, the meeting adjourned at 9:18 p.m.

Respectfully submitted,

Delana Lustberg  
Board Secretary