

TOWN OF WESTON, CONNECTICUT
ZONING BOARD OF APPEALS HEARING

June 26, 2012

MINUTES

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

Mr. Snaith opened the public hearing at 7:38 p.m. The Board Secretary read the agenda into the record.

7 LAUREL RIDGE LANE, owner, ARTUR DOMKA, Map 10, Block 2, Lot 8, Variance to Sections 321.5, 321.6 and 374 of the Zoning Regulations to reconstruct a house on the existing foundation of a demolished nonconforming house and to construct additions onto the east, west and south sides. The new house, located entirely within the front setback, would be 10 feet from the front property line and 6 feet from the side property line. The proposed house would be taller than the house that was demolished.

Artur Domka came forward to present the revised plans. He noted that he switched the house around a little so that it made better sense. Mr. Snaith noted that he was building over the existing footprint with the exception of the expansion of the north east corner, the area of the existing porch and then filling out the building on the south west corner and moving the building to the edge of the building limit. Mr. Van Deusen questioned whether the shed that is currently on the property is going to be removed and Mr. Domka stated that it will be removed.

Nickoll Dushku, neighbor, 11 Laurel Ridge, came forward and stated his concerns with the height of the house and how close to the road it is.

Tom Tuttle, 15 Laurel Ridge, came forward and stated that he did not think that the applicant has met the burden of hardship, and does not reach the standard for being unique. He also stated that he thinks the height of the proposed structure is misrepresented because the foundation is taller. He spoke to the reasonableness and believes that a structure that is 50% larger is a substantial variance request considering the amount of mass on top of the road. He concluded by stating that he feels there are a lot of reasons to deny the variance request but thinks that Mr. Domka should be allowed to rebuild the structure exactly as it was.

Mr. Domka then pointed out that his survey shows that the road currently is 8 ft. onto his property and noted that everyday his neighbors are driving on his property.

After some additional discussion, the public hearing was closed at 8:19 p.m.

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 from Land Use Consultants & Robert Fuller, Esq. representing owner, came forward. Ms. Gouveia noted that this matter has been before the Board previously for a variance request and that matter is currently in litigation. She stated that they are here to appeal a denial of a zoning permit request that was based on Section 375.1 which they believe conflicts with

other regulations. Attorney Fuller then came forward and addressed the nonconforming use and Section 375.1, that says that any building or structure which is nonconforming in use and damaged to an extent greater than 50% of its fair market value shall be permitted to be reconstructed only if the use is conforming with the regulations. He further stated that it is an obsolete regulation that has been superseded by changes in Connecticut law having to do with intent to abandon non-conforming uses. Attorney Fuller then explained how the Zoning Board of Appeals has jurisdiction to hear this appeal. Mr. Faillace then came forward to describe the background and circumstances leading to this issue and noted that his intent was never to abandon the use of the cottage.

Ms. Gouveia then passed out a summary of the chronology of events and a copy of a permit issued 7/21/61 for the expansion of the cottage and explained that the cottage was conforming in 1961 and approved in the same shape and configuration as it is today. Also, in 1969 there was a zoning permit issued for the expansion of the porch which is clearly in the setbacks. She then referred to sections in the regulations relating to nonconformity in use and continued discussion on procedural errors and the issue of 50% fair market value replacement.

Mr. Snaith noted that they are dealing with a building that was 100% damaged or destroyed, not 50%. Ms. Gouveia continued to describe the methodology of determining value which is also in the use, not just the building.

Mr. Snaith then stated that there are two issues of nonconformity here, one of use and one of location and 2 years ago they were separated out and he thinks that is the proper way to do that this time around as well. Ms. Gouveia noted that there is no one here on behalf of the Planning & Zoning Commission and their absence does not confer the authority to substitute the judgment in terms of other regulations and the focus can only be the regulation under which they were denied. Discussion continued.

Attorney Fuller stated that he agrees that there are two aspects of nonconformity here. The Board can make its own interpretations of the regulations and noted that there is no change in the use of the cottage and there is no increase in the number of residences and no change in the footprint and there is clearly no intent to abandon use of the cottage as residential use. He stated that 375.1 is an old obsolete regulation because there has been a statutory change in Section 8-2 of the CT General Statutes and discussion continued on the regulation being unconstitutional.

Ms. Gouveia then addressed Mr. Snaith's concerns regarding the flood zone noting that according to statute, as long as a certified engineer performs calculations that prove that the structure will not increase the flood levels of the Saugatuck River at this point then the structure can stay where it is. She then concluded by noting that they have discussed intent, the illegal regulation and the term 'fair market value' and there are conflicts in the zoning regulations but she believes that they have met the standard in all, including the one denied by the Planning & Zoning Commission.

Mr. Snaith noted that the Board has questions about separating the use and location and asked the Town Attorney to provide the Board with a memo regarding that so they could review prior to next month's meeting.

The discussion was continued to next month.

Deliberations: Voting members: Snaith, Van Deusen, Tallman, Gardner, Noyes

7 Laurel Ridge Lane

Mr. Snaith began deliberations by stating that he thinks that Mr. Domka's drawings are worthy of review and they should consider some of Mr. Tuttle's arguments because he is a neighbor and has a strong opinion. He noted that the lot is unique, it is small and very pinched off in configuration leaving a limited place to build. This is a situation where the septic system determined where house could go, the septic location is to the south and the well is to the north, there are tight boundaries east and west so the location of the house is pretty well limited to what is proposed. It is clear that this is a legal lot and as such, the owner has the right to construct a building for permitted use as a single family dwelling. He also stated that he does not think that this is a particularly oversized building. Mr. Noyes commented that he thinks the proposal put forth is quite acceptable and the owner has answered his questions in terms of detailed drawings and the footprint is not significantly different from the original. He also thinks that the concern of the neighbors is mitigated by the evergreen screening. It is a tight neighborhood and anything to be built will appear large as one drives down road. Mr. Van Deusen commented that this was a much better presentation this time and does not see it as inconsistent with the neighborhood. The new structure will be no closer to the road than the prior structure was and adjoining property values will only be helped from what was there previously. Mr. Gardner commented that it appears that every issue has been addressed in new plans.

MOTION FOR APPROVAL

Mr. Van Deusen made a motion to approve the Variances to Sections 321.5, 321.6 and 374 of the Zoning regulations to allow for a house to be constructed per the plans submitted by owner, received 6/6/12 and noted on 6/26/12 as Exhibits A B & C for 7 Laurel Ridge Lane. The hardships are based on the preexisting nonconforming lot with steep slopes to the south, the well to the north, tight configuration to east and west and the septic system to the south all limit the ability to locate the house in another location. Mr. Noyes seconded the motion. All in favor, the motion carried (5-0).

APPROVAL OF MINUTES

Approval of the Minutes was continued to the next month's meeting.

MOTION TO ADJOURN

Mr. Tallman made a motion to adjourn the meeting and Mr. Van Deusen seconded. All in favor, the meeting adjourned at 10:22 p.m.

Respectfully submitted,

Delana Lustberg
Board Secretary