

TOWN OF WESTON, CONNECTICUT
ZONING BOARD OF APPEALS HEARING
June 28, 2016

MINUTES

Present: Board Members: Chairman MacLeod Snaith, Vice-Chairman Glenn van Deusen, Dan Gilbert, Bob Machson and Alternates: John Moran and Mike Riley
Also present: Tracy Kulikowski, Land Use Director

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

12 LITTLE BROOK LANE, owner, JON J. AND JENNIFER ROH, Map 30, Block 3, Lot 10, Variance to Section 321.6 of the Zoning Regulations to allow a ground mounted solar array to remain installed 7.6 feet from the rear property line.

Glenn Simons from Ross Solar came forward to present the application. He explained that there are 30 panels, gave the dimensions and showed the Board Members pictures of the installed system. He noted that the location of the system was hard and this location was chosen because of the locations of the septic field, house and wetlands.

Mr. Snaith questioned why they decided to relocate the array from the approved location without notifying the Zoning Enforcement Officer. Mr. Simons stated that the location was the proposal that was brought to the Zoning Officer and it was their understanding that the location was approved. He explained that his office wasn't notified that the change was made from the 30 ft. setback to the area drawn in on the plan submitted with the zoning department. They received a building permit and a zoning permit so they went ahead with the installation. Dave DiSalvo from Ross Solar commented that they have not received anything back from zoning, and nothing mentioned about moving the location from what was proposed.

Tracy Kulikowski stated that at some point the company must have been aware when the language "as noted" appeared on the Zoning Permit. There must have been a miscommunication. She noted that the Zoning Permit is needed to get the Building Permit and gets filed in the Building Department file.

James Pjura, Zoning Enforcement Officer, came forward and stated that the applicants came in wanting to install a ground mounted solar array. His first understanding was that there was a wetlands issue but when he saw the proposed placement, it was clearly in the setback. He explained to the agent from Ross Solar that they couldn't put it there and then they drew a square with red for the new location of array outside of the 30 ft. setback. He further stated that it was clearly understood by whoever was pulling the permit. Discussion ensued.

Mr. Machson questioned what the fallout would be if they moved the array to within the setback area. Mr. Simons stated that there is a tremendous amount of shade area and the sun will be blocked for a large portion of the day thereby reducing the production of electricity. The location of the house will also block sunlight. The current location is optimal and anywhere else wouldn't make sense.

Mr. Snaith noted that one of their major complaints was a large rock that would have to be built over and he doesn't see that as problem, they can drill through the rock. Mr. Simons explained that they did a lot of measuring by computer modeling and by placing it in a location anywhere else will reduce the amount of electricity. With the arc of the sun, seasons, etc. the production substantially drops.

Mr. Van Deusen questioned what the hardship would be that they could base a variance on and Mr. Simons stated that they can't put it anywhere else on property.

John Roh, owner, explained that when the Town had a meeting to solarize Weston, he was excited and signed up soon after that. They were thinking about the shade and trees and were trying to figure out where and how it would work best. It took time for the requirements to be worked out, and finally saw the light at the end of the tunnel. Somehow, in going thru the process, there was a misunderstanding, and it is no one's fault, but now they are in a situation where they are stuck, the panel is there. The hardship is that there has been a lot of money spent and it will give him a lot of problems if it can't continue to remain in its current location.

Mr. Gilbert stated that he made a good decision, there were mistakes made and unfortunately it is part of life. While it seems realistic that it is not much and would not be a big deal to leave it, the Board doesn't make decisions on what's reasonable and fair, they are held to law, and the decision should reflect what the law states. He referred to a case that was decided in Fairfield where the owner wanted to put a second story on a nonconforming structure. One cannot create their own hardship.

Mr. Machson questioned whether Mr. Disalvo knew when siting the solar panels that what they were applying for was within the setback? Mr. Disalvo stated that he was aware but when they applied for and received a Zoning Permit and then a Building Permit he thought everything was OK.

Mr. Van Deusen commented that if they were given permit that stated, "as noted on map", they should have been given that map. Had the permit stated that they were not allowed to install in that location and a new map provided, we would not be here right now. Discussion ensued.

Margaret Wirtenberg, 15 Wilson Road, stepped up and stated that she served many years on P&Z and obviously some things are questionable as to whose responsibility this was, and now days with Zoning Regulations being on-line, one would assume people know what the regulations are. The ZBA considers things one thing at a time and in this particular case it might be a good thing if this variance was granted. It might be seen as a friendly matter to place this array where it is rather than to take it out and incur additional expenses.

The Public Hearing was closed at 8:20p.m.

186 VALLEY FORGE ROAD, owner, IAN AND MARI LEWIS, Map 9, Block 2, Lot 2, Variance to Section 374 of the Zoning Regulations to enlarge the existing dormers on a pre-existing, nonconforming house that is located 32.8 feet from the front property line and Variance to Section 321.6 to relocate the main entry of the house and construct a 7 foot x 6 foot projected posted awning to be located approximately 44 feet from the front property line.

Vivi Lee, architect, came forward to discuss the application. He explained that 50% of the existing house sits in the 50 ft. front setback, from the easement, not road. The easement is 15 ft. back from the road. They are seeking 2 variances, one to add a 2 story addition and 2 car garage and there are 2 basically un-useable dormers on the existing 2nd floor that they would like to enlarge. They would also like to relocate the new entry on the side of the house under a porch. He pointed out that the setback line runs right through the house.

Mr. Snaith noted that there was no height or footprint increase, just a minor increase in volume. Mr. Van Deusen noted that he doesn't have much of an issue with increasing the size of the dormers but the side extension into the setback area does not seem to be an essential component. Since they are more than doubling the size of the structure, there seem to be adequate opportunities to find way to place the entry that doesn't violate zoning. Mr. Snaith concurred with the dormer issue but stated that just having a step on the side would be OK, but having the cover is the issue making it a porch. Discussion on the proposed side entrance ensued. It was noted that an architectural detail would be conforming and would not need to come back to the Board for approval.

Margaret Wirtenberg questioned whether details are published or recorded anywhere and it was explained that the details are in the Building Department file.

Hearing no additional discussion, the Public Hearing was closed at 8:42 p.m.

DELIBERATIONS:

186 Valley Forge Road:

Voting members: Snaith, VanDeusen, Machson, Gilbert, Riley

Mr. Machson stated that he does not view the change in the size of the dormer as material and would vote in favor of the dormer. Mr. Gilbert stated that he views it differently, there are no minimal exceptions, they don't exist. If someone built a 36 ft. house, they would have to take a foot off. His basic decisions are made as of law, and he does see the dormer as an issue because it is an increase in the setback and it would be a violation of the regulations to increase that. Mr. Snaith noted that the general rules from the P&Z don't always apply fairly to all properties. They are dealing with a property that preexists zoning, and in his mind, the increase in volume is so minor that it barely bares discussion on issue of volume. Discussion on Section 374 and volume ensued.

MOTION TO APPROVE

Mr. Van Deusen made a motion to approve the variance request for 186 Valley Forge Road only for enlargement of existing dormers on a preexisting nonconforming house located 32.8 ft. from front property line, as shown on plans prepared by Vivi Lee, Sheet A300, dated 6/9/2016, the hardship being that interior dormer dimensions are too small with space unusable for bedrooms. This variance does not apply to the request for relocation of entry to house and projected posted awning as shown on plans. Mr. Machson seconded the motion. All in favor, the motion carried (5-0).

12 Little Brook Lane

Voting Members: Machson, Gilbert, Snaith, van Deusen, Moran

Mr. Gilbert opened deliberations by explaining that he goes back to the Supreme Court case which has application here. He read the decision into the record. Mr. Van Deusen commented that while it is a lousy situation, he doesn't think it was a situation brought on by the town, it seems to be a communication error on the part of the company that did installation. He questioned what the hardship is and stated that in the absence of hardship, there is no basis for granting, there is nothing to go on. Mr. Moran and Mr. Snaith agreed. Mr. Snaith stated that it was brought out in the presentation that some properties aren't suitable for solar arrays and he feels bad for the homeowner, but he just can't see approving a variance.

MOTION TO DENY

Mr. Snaith made a motion to deny a variance request because of the inability to find a proper hardship on which to base the granting of a hardship. Mr. Gilbert seconded. All in favor, the motion carried (5-0).

APPROVAL OF MINUTES

Mr. Gilbert made a motion to approve the Minutes from the April 26, 2016 meeting and Mr. Snaith seconded. All in favor, the motion carried (5-0).

MOTION TO ADJOURN

Mr. Gilbert made a motion to adjourn and Mr. Machson seconded. All in favor, the meeting adjourned at 9:13 p.m.

Respectfully submitted,

Delana Lustberg
Board Secretary

Date Approved: 8/23/2016