

TOWN OF WESTON, CONNECTICUT  
ZONING BOARD OF APPEALS HEARING

July 24, 2012

MINUTES

Present: Board Members: Chairman MacLeod Snaith, Nick Noyes, Robert Gardner, Jeff Tallman and Alternate: John Moran

---

Mr. Snaith opened the public hearing at 7:40 p.m. The Board Secretary read the agenda into the record.

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 the owner, came forward and Attorney Fuller discussed the memorandum he submitted noting the issue that there is no loss of non-conforming use unless there is intent to abandon that use. He noted that the owner has never intended to abandon use of the cottage. Attorney Fuller also noted that the Connecticut General Statutes have passed amendments to statutes that have deleted language which is still a provision in the Weston regulations making those regulations illegal. Discussion ensued.

Mr. Snaith stated that Town Attorney Sullivan had provided the Board with a memo and was of the opinion that the Board cannot rule on whether that regulation is illegal or not. He further noted that he does not have a problem with the right to the nonconforming use but does have a problem that the cottage was totally demolished and then reconstruction on same the same footprint when alternative locations were available that would comply with floodplain regulations. Attorney Fuller explained that the floodplain regulations came into being after the structure was already there so the regulations cannot apply retroactively. Ms. Gouveia then brought discussion to the issue of the river and flood zones noting the different boundaries.

Mr. Wolf commented that as a resident that lives along the river, in the past few years the waters were close to 15 feet from the 100 year flood line and while the owner may be able to rebuild in that location, he wouldn't consider that prudent when there is the possibility of having the first floor under water. Ms. Gouveia explained that FEMA states that as long as the utilities and first floor are above 100 ft. elevation, they cannot take away the funding. Discussion on the issue of 50% fair market value then ensued.

Following discussion, it was decided that the owner's representatives would grant an extension for 35 days to enable Attorney Fuller to respond to Attorney Sullivan's memo.

Felix Charney, who owns property at 6 & 8 Colony Road, neighbors on the river, came forward and stated that he was surprised to see the level of construction in the flood plain. He noted that in the 12 years he has lived there, every neighbor has flooded except him and expressed concern that the owner would even want to have a structure that close to the river and it should comply with the most recent flood regulations.

Hearing no additional discussion, the matter was continued to next month.

42 CARTBRIDGE ROAD, owner, FRANCES von MALTITZ REAL ESTATE TRUST, Map 27, Block 1, Lot 6, Variance to Sections 311.5 and 321.5 to construct a new dwelling on an existing lot where the lot width is less than the minimum of 170 feet.

Daniel Magaud, grand nephew of Frances von Maltitz, came forward representing the owner/trustee. He explained that the property is held in trust and the Trustee is located in California so he was not the person who filed the application. He noted that the property currently has a small 20' x 10' cottage which is habitable, but the parcel does not comply with Sec 321.5 regarding the required building rectangle of 170' x 200'. The parcel is larger than 2 acres, but it is a long and narrow sliver and cannot accommodate a building rectangle of that size. If the house was to be improved, it comes close, (200' x 156') but falls just short of the requirement and would need a variance. Tracy Kulikowski, Land Use Coordinator noted that Weston has a merger regulation which may or may not come into play because the Trust also owns the adjacent property. She explained that they have been separate lots since the 1950's, which pre-dated the rectangle requirement. Mr. Magaud further noted that if they were to change the lot lines, the structure on the adjoining property would then be within the setbacks and would need a variance for that. Discussion ensued.

Mr. Wolf stated that he would like the Town Attorney to interpret the section of the regulations regarding the merger regulation. Mr. Tallman noted that the lot has been in existence and taxes have been paid on it for years and the merger regulation is triggered when they go to put a new structure on the property. A totally conforming structure can be built, it just doesn't have that required rectangle. Mr. Noyes noted that the Board granted a similar variance to a property within 100 yards of this property. Mr. Snaith stated that he thinks that the Board needs more information in order to make a decision.

Rick and Susan Anderson, 38 Cartbridge Road, came forward and stated their objection to the granting of a variance. It is a very narrow lot, and very close to their own and if a house is built there, it is going to be right next to them. Mr. Snaith explained that the owners have the ability to build within the setbacks and they would not approve a variance to build within the legal side lot setbacks.

Hearing no additional discussion, the matter was continued to next month's meeting.

24 CHURCH LANE, owner, BERNADETTE PARK, Variance to Section 321.7 to allow for construction of a gazebo 23 ft. from a pond/watercourse.

Mr. Snaith noted that he was recusing himself from this application because he has a relationship with the applicant's representative. He appointed Mr. Moran to act in his place.

Richard Regan, P.E. from Rocco D'Andrea in Greenwich, and Michael Boyce, Landscape Consultant, and Gregory from Steck's, came forward representing the owners. Mr. Regan stated that they are requesting a variance to Sec. 321.7 to allow construction of gazebo 23 ft. from the pond instead of the required 50ft. He also explained that they have already obtained approval from the Conservation Commission and also approval from the Westport/Weston Health District. He then described the proposal noting that the Gazebo has to be 10 ft. from the septic system, and in doing so, they can't comply with the 50 ft. setback and indicated the location on the plan.

The proposed location is at the top of the ridge which slopes in an easterly direction towards the pond. Discussion ensued.

After some discussion, the hearing was closed at 9:35 p.m.

19 LORDS HIGHWAY EAST, owners, KAREN & DENIS TONER, Variance to Section 321.6 to allow the installation of a new above ground oil tank 7 ft. from Lords Highway East

Denis Toner came forward to present the application. He explained that they are looking for a Variance for the placement of an above-ground oil tank. He noted that they had a failure with their furnace and when they took the oil tank out of the ground they ran into difficulty in locating a new tank. Mr. Toner explained that the home is part antique, part new, with most of the house on slab with a small crawl space. They explored putting it in the crawl space, but the crawl space is very small and a tank cannot fit in area available. He explained the other possible options and noted why the proposed location would be desirable since there are already air conditioning units located in that location.

Mr. Snaith explained that while he appreciates the problem, there are other options on placement. Kathleen O'Connell, real estate agent in town, came forward and commented that the patio and backyard of this property are spectacular, and having an oil tank, even enclosed, in the middle of the patio would negatively affect the value of the property.

After some additional discussion, the public hearing was closed at 9:57 p.m.

Deliberations:

24 Church Lane, Park

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

Mr. Noyes commented that he thinks this is a reasonable request due to the topography and the approval of the Conservation Commission and Health District. Mr. Wolf commented that he thinks of this as a "moving target" because the lake changes in volume. Mr. Gardner, Tallman and Moran all concurred.

MOTION FOR APPROVAL

Mr. Noyes made a motion to approve the application for a variance to Section 321.7 for 24 Church Lane for construction of a gazebo 23 ft. from the pond/watercourse as shown on plans prepared by Rocco D'Andrea, Inc., last revised 6/30/12. The hardships are based on the location of the septic system and the limited area for construction. Mr. Tallman seconded the motion. All in favor, the motion carried (5-0).

19 Lords Highway East

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

Mr. Tallman commented that he doesn't have a problem with this and thinks the intent of the regulation was to avoid having unsightly structures in view of neighbors. Mr. Gardner agreed with Mr. Tallman. Mr. Wolf commented that he thinks that given the fact that there is additional footage on the property to place the oil tank, although maybe a more difficult location than suggested, it does not meet the hardship requirement. Mr. Snaith agreed with Mr. Wolf that he

doesn't see a hardship. Mr. Noyes commented that air conditioning units are already there and it would be compounding non-conformity.

MOTION FOR APPROVAL

Mr. Tallman made a motion to approve the Variance to Sec. 321.6 to allow for installation of a new above ground oil tank as shown on a plot plan submitted with the application. The hardship is based on the non-conforming house location, the cost to place in a conforming location and aesthetics. Mr. Gardner seconded the motion. The motion was voted on and failed (3 [Tallman, Gardner, Noyes] – 2 [Wolf, Snaith]). Variance denied.

APPROVAL OF MINUTES

Mr. Noyes made a motion to approve the Minutes from the May 29, 2012 meeting and Mr. Gardner seconded. All in favor, the motion carried (5-0).

Mr. Snaith made a motion to approve the Minutes from the June 26, 2012 meeting, as amended, and Mr. Gardner seconded. All in favor, the motion carried (5-0).

MOTION TO ADJOURN

Mr. Wolf made a motion to adjourn the meeting and Mr. Noyes seconded. All in favor, the meeting adjourned at 10:25 p.m.

Respectfully submitted,

Delana Lustberg  
Board Secretary