

TOWN OF WESTON, CONNECTICUT
ZONING BOARD OF APPEALS HEARING
July 8, 2008

MINUTES

Present: Board Members: Chairman Richard Wolf, Vice-Chairman MacLeod Snaith, Nick Noyes, Carolyn Mulcahey, Robert Gardner and Alternate: Maryann Murray

Mr. Wolf opened the public hearing at 7:32 p.m. The Board Secretary then read the notice of the public hearing into the record.

78 BIRCH HILL ROAD EXTENSION, owner, ROGERS, EDWARD N., Map 15 Block 2 Lot 21, variance to Section 321.4 (d) to permit the approval of a "split lot", a lot that does not have 2 contiguous acres of land because it is divided by an access way.

Tracy Kulikowski, Land Use Director, came forward to explain that the P&Z tapes from 1999 are gone. She contacted Attorney Pat Sullivan to see if a transcript had been done because the matter went into litigation, but a transcript had not been done for that meeting, although there was a transcript for the following meeting on 12/20/99. She noted that she talked to the P&Z Chairman who indicated that from an overall planning perspective it made sense to combine the applications into one. Ms. Kulikowski also noted that Attorney Guidera would not be here tonight.

Phyllis & Jon Anderson, 73 Birch Hill Road came forward and commented that their real concern is that if the ZBA allows an easement, it will diminish the building allotment for at lot and another two houses can go up on less than 4 contiguous acres. She questioned how that will affect other lots that area available that belong to Mr. Weeks in the 21 acres beyond that.

Mr. Snaith commented that this situation is a result of all sorts of confusions and problems between the two applicants. The problem that they are dealing with is the fact that zoning regulations have been changed since the time frame for the filing of those maps ran out. The new regulations would not allow a split lot and he feels that this does not establish a new precedent but is dealing with administrative problems during the process. The question they now face is whether the reason why Mr. Rogers can't get the split lot is because of an actual hardship or a self created hardship.

Jeanne Pearl , 82 Birch Hill Road commented that she knows that Mr. Weeks had to file the mylar map by May of 2007 in order for the subdivision to go through. At the time, they were negotiating to buy their property and probably would not have bought their property had that subdivision gone through. She now wonders why, if this were a hardship, Mr. Rogers waited so long to bring this up. The deadline to file the mylar expired last May, over a year ago. It seems to her that if it were a hardship, the matter would have come to the Board sooner. She also noted that in reviewing the file, it seems that there was a contract between Mr. Weeks and Mr. Rogers, but there is not copy of a contract in the file which raises the question in her mind of the issue of hardship.

Ms. Murray also noted that Attorney Guidera's letter referred to an April 14, 1999 agreement between Mr. Weeks and Mr. Rogers, but there was no copy as part of the packet.

Hearing no additional discussion, the public hearing was closed at 7:43.

367 NEWTOWN TPKE, owner, FRIEDMAN, MICHAEL A., Map 11 Block 3, Lot 15, variance to Section 313.2 of the Zoning Regulations to permit the approval to retain a fence 6 feet in height due to the topographical features of the property

Michael Friedman, owner, came forward to present his application along with his wife. He read from a prepared statement noting that they purchased their house 5 years ago and intended to put fence up along the road due to the noise and lack of privacy. At the time there was no regulation regarding fence height, but because of necessary renovations they were unable to go forward with the fence because they could not afford it. Newtown Turnpike is a very busy road and for the past 3 years they have endured a constant parade of motorcycles, trucks and cars speeding by their house which has become intolerable. The area in front of the house is a straight-away where vehicles routinely speed up to 60 mph and more. There are no noise regulations in Weston and he asked the Board to imagine what it sounds like with loud motorcycles going by in the summer. They have been living in a pretty noisy "fish bowl". The decision of the fence was not a frivolous issue, it was a quality of life issue. Had they known the extent of the noise or the 4 ft. regulation before the moved here, they would not have invested their life savings in this house. Mr. Friedman noted that they checked with other surrounding towns, and no one has fence regulation under 6 ft. and Westport's is 8 ft. At great expense they purchased trees from Canada and have been cut and fabricated into panels here because they wanted to be respectful of the natural surroundings of the house and their neighbors. They purposely did not cover the entire frontage so that the home would still be visible from the road.

Mr. Friedman explained that the house is built on ledge and therefore the main floor of the house is elevated and although it looks like a 2 story house, it is actually a one story house. Since the house is elevated, a 4 ft. fence would do little to nothing to help alleviate the noise and provide privacy. He then presented maps showing the location of the property lines.

Upon review, Mr. Snaith commented that it appears that the fence has been constructed on State land. Discussion on jurisdiction ensued. Ms. Mulcahey then commented that she does not believe that they can offer a variance because it is on state property.

Morton Schindel, 398 Newtown Turnpike commented that he is the next door neighbor, and at the time the house was built, Newtown Turnpike was a dirt road. He noted that the house literally grew out of the property, the logs in that house grew on that property, and the stones in that house were taken off the property. The house was going back into nature when Mr. Friedman rescued it and has done a most exquisite job of restoring the house. It is a historical gem and something that needs to be preserved. He noted it is a great credit to the town and to the neighborhood and in his opinion, should not be disturbed.

Mr. Noyes questioned how the two feet would affect the sound level as the noise comes from the lower portion of vehicles and commented that the noise level is not unique to their property. Ms.

Mulcahey suggested checking with the Historic Society to see if there was ever a fence there. Discussion continued.

Hearing no additional discussion, the public hearing was closed at 8:10 p.m.

234 LYONS PLAIN ROAD, owner, WESTON VOLUNTEER FIRE DEPARTMENT, Map 24 Block 4, Lot 66, variance to Sections 341.2 A-E and Sections 370-375 of the Zoning Regulations to allow the demolition of the existing fire house and the construction of a new fire house
Curtis Gunn, President of the Fire Department, Chief John Pokorny, Capt. Larry Roberts, and firefighter Dana Coates, came forward to present the application. Mr. Gunn stated that they are here to request 18 variances for the demolition and reconstruction of the firehouse on Lyons Plain Road. Ms. Mulcahey then informed the Board that she was on Weston Little League with Mr. Roberts and knows some of the other gentlemen a little, and wanted to state that for the record but feels it is not necessary to recuse herself.

Mr. Gunn then stated that all the requested variances are due to the preexisting, nonconforming status of the fire department property. The Weston Volunteer Fire Department, Inc. and not the town owns the firehouse. The property was obtained in 1947 by gift from Clarence C. Smith, the firehouse was built in 1947 and is now 61 years old. It is currently the oldest continuously used municipal building in the town of Weston. The original lot was 1/3 acre and in 1985 George Gudiera gifted another 1/3 acre property to make 2/3 acre. They desire to build on the exact same footprint as the existing fire house. The department is the only municipal building on the east side of Weston and the only facility on the east side of town to provide emergency services. Since 1931, there has been an agreement with the town of Weston to provide manpower services for the prevention and suppression of fires. This service is offered free to the citizens of Weston and not one member of the Weston Volunteer Fire Department receives compensation from the town for these services. The Volunteer Fire Department has born the cost of housing the town owned fire truck and all necessary equipment at the Lyons Plain fire house since 1947 and also provides free EMT services to the people of Weston. In keeping with the area's look of 1800's, they have designed the proposed building to resemble a country barn, one that will fit into the character of Lyons Plain Road. The building needs to be replaced due to the fact that the foundation of the structure is failing, there are deep wide cracks that run the length of the floor and walls and it is unknown how long the structure will remain safe for occupancy. There is no way that the structure can be rebuilt in compliance with existing regulations and the current regulations create a classic hardship.

Capt. Roberts then recited the variances that they are requesting, Sections 341.2 A-E and Sections 370 – 375, and the reasons why. He then addressed the hardship issue noting that they cannot purchase or obtain any more land adjoining the property and there is an impossibility of compliance with 18 provisions of 341.2 for which the variances are sought. They then presented the plans for the building for the Board members to review.

Ms. Murray asked whether they have had any structural engineers look at the current building and Mr. Roberts explained that the original structure is not constructed adequately and the walls are sinking which makes it obvious that the building is failing.

Chief Porkonoy noted that they did research on response times which showed that if they did not have this building on that side of Town, and fire trucks only responded from Norfield, what it would cost in time. He noted that they recently had a structure fire on High Noon Road and the fire engine was there in 4 minutes. From town hall it would have been 8 minutes.

Mr. Wolf then asked whether they were increasing the capacity of the fire house as far as the number of vehicles. Mr. Gunn noted that they now have 3 bays and the existing door is really designed for fire trucks from the 1940s. They used to be able to fit two fire trucks in and now it is impossible. They have had to design a larger garage space for the larger vehicles. He reiterated that the current footprint will never change, they are adding a 2nd floor which is where they are getting the extra space.

Mr. Snaith commented that when you look at the elevations, it will be massive and questioned the increase in intensity of use of the building. In looking at the community room and kitchen, he understands the need for those but wondered if they need so much. Discussion ensued.

During discussion, Mr. Gunn noted that they have spoken with the neighbors, shown them the plans and no one within 250 feet has any objections. Mr. Coates commented that there are some facilities that they are required by regulation to have in place, i.e. separate male and female restrooms and the elevator for handicap access to the second floor. Discussion continued.

Ms. Mulcahey then asked where they will be situated during construction. Mr. Gunn noted that they would like to begin in March as soon as the weather breaks and would situate the engine on the other end of the parking lot in a temporary tent structure for the summertime with the goal to be weather tight by the winter. Discussion continued.

Captain Rogers then stated that the hardship is based on the fact that they have only .66 acres of land and cannot meet any of the regulations.

Ms. Mulcahey asked how the project is being funded and Mr. Gunn noted that they have been saving for a long time and also from donations. They have come up with 50% of the cost of the reconstruction and the Selectmen have given their support to help them fund \$900,000 which is the difference that they need over the next three years.

Mr. Snaith stated that he would like the architect to look at the building again to get the height down and the mass decreased. Discussion then ensued regarding lowering the height of the structure.

Following discussion, the public hearing was closed at 8:58 p.m.

103 OLD EASTON TURNPIKE, owner, CURTIS, ALEXIS, Map 25, Block 10, Lot 6, variance to Section 321.5 of the Zoning Regulations to allow existing deck built 25.3 feet from the side set back line.

Alexis Curtis came forward and noted that when she last appeared before the ZBA, the suggestion was to go to her neighbor to see if they could work out a land swap. She stated that she did speak with her neighbor who is currently out of the country and although he was not willing to do a land swap, gave her a letter indicating that he would agree to let the deck stand

where it is constructed. She noted that he did contact his lawyer, who spoke with her lawyer and discussed a land swap, but the neighbor was not interested and is very happy with the way the boundaries are now. It would require surveying and additional legal fees which she would have to incur.

Mr. Noyes asked whether the contractor had ever filed any building permits and Ms. Curtis explained that he did not and she got ripped off by him and had to have another company come in to finish the project.

Hearing no additional discussion, the public hearing was closed at 9:10 p.m.

DELIBERATIONS:

(Voting members: Wolf, Snaith, Noyes, Mulcahey and Gardner)

78 Birch Hill Road Extension, Rogers, Edward N.

Mr. Noyes began deliberations by noting that when Mr. Rogers wanted to get subdivision approval, the regulations allowed for a split lot and the only reason the P&Z approval was not completed is that his partner in the application process refused to submit the mylar in a timely fashion. He further commented that it appears that Mr. Rogers has a hardship administratively. He did everything he could at the time to comply with the regulations and move ahead with the subdivision, but was thwarted by his partner and the P&Z subsequently enacting regulations that put him in violation. Mr. Noyes stated that he would be inclined to favor a variance.

Mr. Wolf commented that this was a business deal that the parties would develop the properties together. One partner did not agree with the conditions of the P&Z approval and as a result, started a lawsuit and then would not file the mylars. He commented that he is concerned that it appears that a business relationship went bad and as a result one party lost the ability to divide his property into two building lots but does not see why the town has to grant a variance when the regulations have changed.

Ms. Mulchaey commented that she does not think that the business relationship would have existed had it not been for the P&Z stating that they were not comfortable having one application contingent upon another. The two properties are not even contiguous, they were not developing two properties together, they were just applying together and developing their properties separately.

Mr. Gardner commented that it did not appear to be a partnership because the conditions imposed did not affect Mr. Rogers' property. Mr. Snaith commented that the reason why Mr. Rogers got stuck with the joint application process was because it was strongly recommended by the P&Z to have a joint application. Ms. Mulcahey commented that it appears that Mr. Rogers acted in good faith all along. Mr. Snaith further commented that if they deny the variance, the guy that gets hurt is Mr. Rogers, Mr. Weeks will still have the potential to develop his property. Ms. Murray commented that there seemed to be nothing that prevented Mr. Rogers from filing the mylar maps.

Ms. Murray stated that she felt that the variance should not be granted because there was nothing that prevented Mr. Rogers from filing the mylars and she does not see a hardship.

Mr. Gardner stated that it seems that Mr. Rogers was forced or coerced into joining the applications to make it easier for P&Z and he ended up getting “shafted” by Mr. Weeks’ decision to not participate and it seems that Mr. Rogers has had a hardship forced upon him.

Mr. Snaith stated that he does feel from the minutes that the joining of the applications was a P&Z requirement, but once it was all done, it seems that there were plenty things Mr. Rogers could have done to finalize the approval. Given the parties’ agreement, it seems that there were remedies that Mr. Rogers had that he did not pursue.

Mr. Noyes stated that Mr. Rogers had remedies where he could have filed that mylar and gotten his subdivision prior to the regulation that prohibited split lots. Ms. Kulikowski commented that once the lawsuit was decided, that started the first 90 days and then Mr. Rogers had at least 180 days to file the mylars.

Ms. Mulcahey stated that she thinks that the hardship is derived from P&Z’s requirements on the two joining together and a variance should be granted. Mr. Snaith agreed that had P&Z never said anything, Mr. Rogers would have had his subdivision.

MOTION:

Mr. Noyes made a motion to approve the variance to section 321.4(d) to permit the approval of a “split lot”. Mr. Gardner seconded. The motion was voted on (2-3) and therefore denied.

367 Newtown Turnpike, Friedman

Ms. Mulcahey commented that they can’t give a variance on someone else’s property. Mr. Wolf stated that he does not see how they can even consider the matter because they do not have jurisdiction. Discussion ensued. The Board decided that they would continue the matter so they may have an opportunity to consult with the Town Attorney.

234 Lyons Plains Road, Weston Volunteer Fire Department

Ms. Mulcahey commented that she has no problems with the application. Mr. Noyes commented that he would be in favor of the application. Mr. Snaith commented that he has a problem with the height of the building, but he does not want to put a condition on their building that makes the building less useable. He wanted it on the record that he feels that there is too much mass to the proposed building and that it is way out of character for the town, much less Lyons Plain Road. Ms. Murray commented that she thinks that they sufficiently established for the record the state of the building in terms of the need for demolition and rebuilding and complying with federal regulations.

MOTION

Mr. Noyes made a motion to approve the application for variances to Sections 341.2 A-E and Sections 370-375, specifically:

1. A variance to Sec. 341.2 A to allow construction of a new fire house on 0.660 +/- acres, being less than three (3) acres;
2. A variance to Sec. 341.2 B to allow a minimum rectangle of less than 170' x 200';
3. A variance to Sec. 341.2 B to allow a building coverage in excess of 10% of the site area and combined building and parking coverage in excess of 30% of the site area;
4. A variance to Sec. 341.2 C to allow a setback of less than 100 feet from the front line, side lines and back lot line for all principal facilities and structures;
5. A variance to Sec. 341.2 C to allow a setback of less than 50 feet from the frontline, sidelines and back lot line for land use;
6. A variance to Sec. 341.2 C to allow a setback from structure, land uses and facilities of less than 100 feet from the front line and less than 50 feet from the sidelines and back lot line for parking setback;
7. A variance to Sec. 341.2 C to allow the parking spaces shown on applicant's site plan to be the total required number of parking spaces;
8. A variance to Sec. 341.2 D to allow the buffer area to be less than 50 feet in depth or to be not required and to allow the existing natural growth of plants to continue to be the only screening required;
9. A variance to Sec. 341.2 D to allow the applicant to dispense with the necessity of having to erect a wall or fence providing screening equivalent to an evergreen buffer;
10. A variance to Sec. 341.2 E to allow membership in the applicant to be unlimited.
11. A variance to Sec. 341.2 E to allow use of the applicant's property to be as is consistent with its obligation to provide fire, emergency medical and paramedic services to the people in the Town of Weston as well as the training of firefighters, emergency medical technicians and paramedics;
12. A variance to Sec. 341.2 E to allow a maximum structure height of 41' 6", together with a cupola;
- 13-18. A variance to each and every one of Sections 370, 371, 372, 373, 374 and 375 so that they operate to allow the demolition of the existing fire house and the construction of a new fire house, new parking plan and new accessways, as shown on applicant's site plan, without the effect that the resulting new fire house, its new parking and access plan, size of its lot and all uses of the same be made conforming to the Zoning Regulations of the Town of Weston.

All as shown on plans prepared by Phillip Cerrone, III, Architect revision dated 6/12/08 and labeled A100-102, A201-204, and on a site plan labeled Sp-1, dated 6/08, prepared by Stearns & Wheeler, LLC. Mr. Gardner seconded the motion. All in favor, the motion carried (5-0).

103 Old Easton Turnpike, Curtis

Mr. Noyes commented that there was a potential solution, but it appears that is not going to happen. Ms. Murray commented that the neighbor's consent is not enough as properties change hands over they years and you can't bind the successors to the neighbor. Ms. Mulcahey commented that they can't be making rulings based on the builder's ineptness.

MOTION

Ms. Mulcahey made a motion to deny the request for variance to Sec. 321.5 for to allow an existing deck and Mr. Snaith seconded. All in favor, the motion carried (5-0).

APPROVAL OF MINUTES:

Approval of the May 27, 2008 minutes was continued to the next meeting.

OTHER BUSINESS:

Ms. Kulikowski gave a status on pending litigation.

MOTION TO ADJOURN

Hearing no additional business Mr. Noyes made a motion to adjourn the meeting and Mr. Gardner seconded. All in favor, the meeting adjourned at 10:15 p.m.

Respectfully submitted,

Delana Lustberg
Board Clerk