

TOWN OF WESTON, CONNECTICUT
ZONING BOARD OF APPEALS HEARING
October 29, 2008

MINUTES

Present: Board Members: Chairman Richard Wolf, Nick Noyes, MacLeod Snaith, Carolyn Mulcahey, and Alternates: Maryann Murray and Ken Edgar

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

Before discussion ensued, Ms. Mucahey indicated that she was acquainted with the applicant but did not feel that it would cause her to have to recuse herself in the decision making process.

5 PHEASANT HILL ROAD, OWNERS, WERNER, CRAIG & LINDA VAR. SEC. 321.5 TO ALLOW GENERATOR TO REMAIN WITHIN 30 FT. OF PROPERTY LINE.

Mrs. Werner came forward and explained how the generator got in its current location. She noted that it currently is not within the setbacks and they were here to request a variance to let the structure remain at its current location. In January 2007 their contractor came to get permits and he was given a map that she provided for the Board Members to review. Mrs. Werner indicated that they relied on the map provided by the town, for the contractor to locate the generator. Mrs. Werner further noted that her neighbor had brought the matter to their attention and they had spoken and she believed, that they had come to some agreement regarding the placement of the generator. After discussion with the neighbor, they believed that the issue had been resolved until they received a letter from the Town in April noting that they would need to move the generator. She further indicated that the contractor stated that it would be difficult to put the generator unit against the house and the only other option is having it in the middle of their yard that many children from the neighborhood, including their own, play in. She then presented letters from neighbors indicating that they had no objection to leaving the generator unit where it is. Discussion ensued regarding possible alternate locations.

Mrs. Werner then explained that they had relied on the drawings provided by the town in the location of the generator unit and the contractor placed it there based on that map. Discussion continued.

Following discussion, Robert Turner, former Zoning Code Enforcement Officer came forward, along with the current zoning enforcement officer and stated that on 1/15/07, he received a call regarding the generator being installed on the property. They went over that day, the contractors were there, there was a trench dug from the house to where they wanted the generator to go, the pad was there in the location. Mr. Turner noted that they looked at it and the property line and it was clear that the pad was in the setback. The contractor had presented a map and after review of that map, Mr. Turner indicated that the information on that map was not reliable and the pad was in the setback and would have to be moved. He further noted that he has had contact with the homeowners advising them of the violation and let them have some time to see if they could work out some form of land swap with the neighbor to bring that generator unit into conformity. Discussion continued.

Mr. Turner then explained how he became involved and noted the dates and contents of the letters that he had sent to the Werners' informing them of the non-compliance. Following that, Mr. Jim Pjura, Weston Code Enforcement Officer, came forward and stated that he also sent a letter in July informing that Werner's that he was going to issue a cease and desist order if they did not bring their property into compliance. On August 13 he issued a Cease & Desist Order. Discussion ensued.

Andrea DePasquale, 16 Pheasant Hill, came forward and stated that the generator is really in between the properties in a perfect area for the generator equipment to be placed. There is a flat back yard and if did have to be placed into the middle of their yard, it would be problem because it is not a feasible area to put the generator. She further noted that the Werner's generator is back to back with the neighbor's equipment. She stated that she hopes that they can get a variance because there are a lot of children that play there because the lot is so flat with no obstructions in the middle.

Ms. Mulcahey then expressed her wish to recuse herself at this point in the discussion. She stated that she also knows the DePasquale family and would not want there to be an issue regarding her impartiality.

Bill Pitt, 10 Pheasant Hill Rd. came forward and stated that he lives across the street. He noted that Weston has done a good job with zoning, although it can be confusing at times. He further noted that he thinks that the generator is located where it should be on the property and questioned what good it could possibly do to place it right in the middle of the yard. All the children in the neighborhood play there and it would be an eyesore if the Werners had to move the unit 22 feet closer to their house.

Mr. Wolf then asked the applicant to address the hardship and why strict application of the regulations would create a hardship. Mrs. Werner stated that the hardship would be the health and safety of the children that play in that yard. The property is unique, one of the most flat and open areas in Weston and they have a constant flow of children back and forth across that area. Placing the unit outside of the setback would place it right in the middle of that play area.

Mr. Snaith noted that there was an area where the two 30 ft. setbacks meet in the corner and the generator could be placed there. He explained that the Board has to deal with a hardship and children playing is not a hardship, the variance runs with the land. Relocating the generator does not jeopardize health and safety.

Mrs. Werner then expressed concern that they are being brought into the whole variance process while her neighbor, who also has a generator equally not in compliance, has not had one letter written to her asking her to conform. Discussion ensued.

Hearing no additional discussion, the pubic hearing was closed at 8:49 p.m.

Deliberations:

Voting: Wolf, Snaith, Noyes, Murray, Edgar

Mr. Noyes opened discussion by addressing the hardship and stated that he believes there is no hardship topographically, or in any other definition of hardship that he can find. The directions from the Town were not followed and the applicant's statement of hardship does not hold water.

Mr. Snaith commented that as much as he can sympathize with homeowners situation, he agrees that there is no hardship and the owners were not directed by the Town to place that generator where located, the contractor was warned that it was in potential violation at that location. He further noted that he sees no way to grant variance.

Mr. Edgar commented that he agrees with both Mr. Noyes and Snaith. There is no question that everyone knew it wasn't in compliance but the source of the misunderstanding was the sense that two neighbors could work out a zoning problem.

Ms. Murray stated that she concurs and can find no hardship and that the application isn't consistent with facts with respect to town's position on generator. Construction proceeded with full knowledge that it was in violation.

MOTION TO DENY

Mr. Noyes made a motion to deny the application for a variance on the basis that the applicant has failed to show a requisite exceptional or undue hardship. Mr. Snaith seconded. All in favor, the motion carried (5-0).

ELECTION OF OFFICERS:

Mr. Snaith nominated Richard Wolf as Chairman and Ms. Murray seconded. All in favor, the motion carried (6-0).

Mr. Noyes nominated Mr. Snaith as Vice-Chairman and Mr. Wolf seconded. All in favor, the motion carried (6-0).

APPROVAL OF MINUTES:

Mr. Noyes made a motion to approve the Minutes from the September 23, 2008 meeting and Mr. Gardner seconded. All in favor, the motion carried (6-0).

MOTION TO ADJOURN

Hearing no additional business Mr. Noyes made a motion to adjourn the meeting and Mr. Snaith seconded. All in favor, the meeting adjourned at 9:05 p.m.

Respectfully submitted,

Delana Lustberg
Board Clerk