

TOWN OF WESTON, CONNECTICUT  
ZONING BOARD OF APPEALS HEARING  
August 24, 2010

MINUTES

Present: Board Members: Chairman MacLeod Snaith, Richard Wolf, Nick Noyes, Robert Gardner and Jeff Tallman

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Mr. Snaith opened the public hearing at 7:35 p.m. The Board Secretary read the agenda into the record. Mr. Snaith then explained the public hearing procedure to the applicants.

306 LYONS PLAIN RD, OWNER, TOAD HALL, LLC, Map 19, Block 3 Lot 32  
Variance to Sections 312.7 and 321.1a of the zoning regulations to allow a reconstructed cottage to remain 39.6 ft from the edge of a watercourse and to be used as an accessory dwelling unit

Attorney Fallon, representing the owner came forward and explained that the matter was continued so that the Board could get comments from the town attorney. He presented a letter from the neighbor across the road supporting the proposal and then read that into the record. He also noted that they have received approval from the Westport/Weston Health District for the septic to support the cottage. He noted the D'Apice case stating that the ZBA and the Court made the right decision and that Mr. Faillace's actions are consistent with D'Apice case. Attorney Fallon explained that they are only seeking two variances to legitimize the reconstruction of the cottage on the same footprint. He further explained that Mr. Faillace obtained a building permit in 2009 to do renovation work on his house and in the course of that work, he became aware that the porch to the main house was structurally unsound. He was given permission under the existing permit to renovate the porch even though it was not on the originally approved plans, provided he didn't do anything to change the footprint of the porch. He took that to mean that he could also restore the cottage under the permit as long as he did not change the footprint. It was an honest mistake and instead of fighting it, he stopped all work and made applications to all the Boards and Commissions necessary.

Attorney Fallon noted that the old cottage was not in compliance and the new septic system will comply with the regulations. He further noted that the Board should consider that there are some facts which constitute a hardship and cited cases that state that when the imposition of the regulations negates the legally conforming status, the loss of the legal status could satisfy the hardship requirement. They are asking the Board to approve the variances so they can move forward with the Conservation Commission and Planning and Zoning Commission and end up with an improved structure on the same footprint with the use remaining unchanged. Mr. Noyes then asked Attorney Fallon to explain the relevance of CT Gen. Statute 8-6 and he explained that the Statute gives the ZBA authority to grant variances on a 2-prong test and cited case law. Discussion ensued.

Following discussion, Attorney Fallon stated that they have come before the Board to recognize and explain the good faith error and asked the Board to concentrate on Section 8-6. He noted that there are cases cited that talk about loss of pre-existing use noting that and the location of the original structure gives the Board the discretion to grant a variance. Mr. Wolf then noted that the building permit makes no mention of the cottage and has a problem, as member of the Board examining cases on good faith and error. He does not claim that the owner is not telling the truth, but he is not sure that they can rely on statements of good faith and honest error. Discussion continued.

Mr. Noyes then stated that he wanted to draw more attention to the phrase "applicant considered porch and cottage external stand alone structures and thought that he could fix the porch and then demolish and rebuild the cottage as well". He noted that they were diligent about getting approval for the porch and questioned why they had not at least mentioned the cottage. Mr. Fallon explained that once the owner was advised that he was wrong, he stopped work and came forward to follow the correct process. Mr. Snaith then questioned that if they are granted the variances, will they be going forward with flood plain review? Mr. Fallon explained that they still have to go to before the Conservation Commission and then to P&Z under the flood plain regulations. Discussion continued.

Town Attorney Sullivan then explained that there are two issued, the use issue and the location and there are different regulations for both. The use, as presented in the last meeting, was as a second dwelling, a caretaker cottage and not considered an ancillary unit to the main house. She further noted that she would like to see a hardship for the location supported by topography or other issues. Attorney Fallon then explained that the mapping of the property supports the pre-existing non-conforming use. Mr. Snaith commented that it seems the Connecticut Statutes increased the protection of non-conforming use, and an owner has to state specifically that they want to abandon pre-existing use. Attorney Sullivan commented that she was not sure that they need a variance for useage and Attorney Fallon explained that they felt it would be better to request a variance for that.

Mr. Wolf then commented that they have a property that was used in this fashion for many years and if the Board was to deny both sections, it would be denying the ability to use the cottage as a dwelling. If they were denied a setback variance and approve the allowable dwelling unit, it might give some "wobble room" to work with the setback issue. Attorney Fallon then explained that they do not have that flexibility because of the Conservation and Flood plain setbacks and would never get permission for a new structure because they need to rely on the original footprint. Discussion ensued.

Following discussion, the public hearing was closed at 8:29 p.m.

118 GEORGETOWN ROAD, OWNER, LENHART, AUGUST, Map 3, Block 1, Lot 19, variance to Section IV A of the Floodplain Management Regulations to allow a house to remain with a basement floor below the base flood elevation.

Paul Lenhart representing the owner, his father, August, came forward and explained that they are requesting a variance to Section IV A of the floodplain management regulations

for a house that is already constructed. They started the house in 2006 and completed it in 2007. A year later they pursued an application for a map revision through FEMA so they would no longer have to carry flood insurance on the property. In pursuit of that permit, they discovered that the house was across the floodplain line and FEMA requested that they make an application for action in the floodplain, which application was rejected because of the non-conforming issue. Victor Benni, P.E., came forward and gave a quick overview of the R-40 zoning district. He noted that the property is 1.7 acres in size with a watercourse that flows through the property originating from the northwest end of the property. The water flows under the bridge and exits on southeastern side of the property. There is also a tributary, not shown on the map, that comes from the northeast corner of the property. Mr. Benni then noted that the lowest floor of the dwelling has to be at least one foot above the flood plain elevation. The variance request is for the basement which is 1.5 ft. lower than what is allowed, or ½ ft. lower than what the State requires, and the building is at base flood elevation. Discussion ensued.

Following discussion, Mr. Tallman noted that the Board would be able to grant a variance to 314.5, but not below as they can only grant a variance to the Town regulations. Mr. Wolf then stated that he would like time to review the memo from the Land Use Coordinator, Tracy Kulikowski. Mr. Noyes questioned whether there is a hardship and Mr. Snaith noted they haven't even addressed the issue of hardship yet. Discussion ensued regarding continuing the matter to the next meeting.

Following discussion, the matter was continued to the next meeting.

36 TRAILS END ROAD, OWNERS, MORRISSEY, MIKE AND MARY, Map 13, Block 2, Lot 70, variance to section 321.5 of the regs to allow an existing Bilco cellar door to remain 26.2 ft. from side property line.

Doug MacMillan, architect, came forward and Mr. Snaith noted that in interest of full disclosure, the property was once in his family and if the applicant has a problem with that he will recuse himself, but does not think it is required.

Mr. MacMillan then explained that they renovated the house in two phases, they finished the basement and then put an addition to rear of the house and are 3 items that they need to address in pursuit of a CO. One is the generator location, the second is the 2 HVAC units location and the third is the bilco door. They are asking for a variance so that they can leave the door where it is. He further explained that the door was added during construction to facilitate exit from the basement. The corner of the house 30.6 ft. from the setback and the door is located at 26.2 feet, 4 ft. over the setback line. Mr. MacMillan explained that they feel that they have a hardship in that the bilco door for exit from the basement was added after the renovations were done. The owners are asking the door to remain because it is the best location for egress from the basement. Mr. MacMillan noted that they looked very hard at all the alternatives and thought that the bilco door did not need to comply with the setback regulations. Mr. Morrissey, owner, then commented on the safety issue, and infrequency of use. Discussion ensued.

Mr. Noyes noted that this property is a narrow lot and the house is on one side which happens to be the location of the door, and the safety consideration for egress from the cellar. Mr. Wolf commented that the situation is not unique to this property.

After some additional discussion, the public hearing was closed at 9:40 p.m.

Deliberations:

306 Lyons Plain Road

Mr. Snaith began by stating that the applicant demolished a building that was being used as a dwelling in a pre-existing, nonconforming situation. There was no mention of the cottage in the permit application for renovation to the porch and he does not know whether plans to demolish the cottage was an oversight or a conscious effort not to include it in the building application. By demolishing the pre-existing, nonconforming structure, the justification was lost and now they have to figure out whether they want to reinstate the non-conformity on the basis of oversight. Mr. Tallman commented that there have been several cases where something has been done and now the Board has to react to it. Mr. Wolf commented that these are the hardest cases because it is after the fact and has a financial impact on the owner, but the Board is not supposed to consider the financial aspect. He further questioned whether they are confiscating the practical use of the property by saying that the owners are in error and cannot rebuild in the existing location or on another location on property. Mr. Gardner stated that he was impressed with Attorney Fallon's presentation and it doesn't appear that they are trying to get away with something. When the mistake was noticed, everything stopped and it seems that there would be grounds to grant the variances. Mr. Tallman commented that had this been done the correct way there would be no issue, but are they to be penalized because the work was done unknowingly? Mr. Snaith commented that they can't claim ignorance as a hardship. Mr. Noyes commented that they are charged as a Board with working towards conformity and once the structure was lost through demolition, the permitted use goes back to "square 1". He noted that by way of the regulations, the Town does not want to develop multiple dwellings on a property. Mr. Wolf then commented that he is not comfortable granting a variance for location but would agree to a variance for useage. Discussion ensued.

Following discussion the following motions were made:

MOTION:

Mr. Wolf made a motion to deny the variance request to Section 312.7 to allow a reconstructed cottage to remain 39.6 feet from the edge of a watercourse and Mr. Noyes seconded. The motion was voted on and carried (3 [Wolf, Noyes, Snaith]-2 [Tallman, Gardner]).

MOTION:

Mr. Wolf made a motion to approve the variance request to Section 321.1(a) to increase the allowable dwelling units from one to two with the condition that the second dwelling shall not be greater in coverage than the footprint of the reconstructed cottage and not to

exceed the height of the reconstructed cottage. Mr. Snaith seconded the motion. The motion was voted on and did not carry. (3 [Wolf, Tallman, Snaith], -2 [Noyes, Gardner])

36 Trails End Road

Mr. Noyes began discussion noting that this is a safety issue and the width, size and location of the existing structure being too close to the setback makes a sufficient hardship. Mr. Snaith noted that the placement of the house on the lot is the problem and feels that it is a reasonable request and use of property.

MOTION:

Mr. Tallman made a motion to approve a variance to Section 321.5 of the regulations to allow an existing bilco cellar door to remain 26.2 feet from the side property line. The hardship is based on the narrowness of the lot and the placement of house on the lot. Mr. Gardner seconded the motion. All in favor, the motion carried (5-0).

APPROVAL OF MINUTES

Approval of the July minutes was continued to the next meeting.

MOTION TO ADJOURN

Mr. Gardner made a motion to adjourn the meeting and Mr. Wolf seconded. All in favor, the meeting adjourned at 10:45 p.m.

Respectfully submitted,

Delana Lustberg  
Board Secretary