

TOWN OF WESTON, CONNECTICUT
ZONING BOARD OF APPEALS HEARING
August 25, 2009

MINUTES

Present: Board Members: Chairman Richard Wolf, Vice-Chairman MacLeod Snaith, Carolyn Mulcahey, Robert Gardner and Alternates: Marianne Murray and Ken Edgar

Mr. Wolf opened the public hearing at 7:42 p.m. The Board Secretary, read the agenda into the record. Mr. Wolf then explained the public hearing procedure to the applicants.

146 LYONS PLAIN ROAD, owner, SAWCH, WILLIAM, Map 27 Block 1 Lot 26, variance to Section 321.5 of the Zoning Regulations to allow construction of a 2 car garage addition on a pre-existing non-conforming house that would be setback 26 feet from the front property line.

Mr. Sawch and architect, Susan Lockwood, came forward and Mr. Sawch read from a prepared statement to the Board explaining his proposal. He brought up the hardship issues, the preexisting, nonconforming house, with all the original living space within the 50 ft. setback. Mr. Sawch addressed the topography and also the proximity of the house to the Saugatuck River and also noted that he has respected the regulations governing construction near a riverfront. He further stated that his well and septic locations have been a serious constraint for the architect.

Susan Lockwood, architect, then discussed how she has been working on this project for 3 years, exploring many options to put on an addition that meets the needs of the owner and also addresses the site constraints and zoning regulations. She stated that this has been one of the more challenging projects she has confronted because of the number of hardships specific to this parcel. Ms. Lockwood explained the parameters she needed to follow and explained how she ended up with the proposed addition location.

Mr. Snaith noted that any connection to the existing house requires a variance and asked Ms. Lockwood to indicate where the septic system is on the plan. Ms. Lockwood indicated that location and continued to explain how they explored alternatives noting that they have pushed the addition back 6 ft. from the proposal presented last month making the distance 32 feet from the road. Discussion ensued.

Mr. Wolf then asked the applicant to discuss why the hardships are unique to his specific property. Mr. Sawch stated that there are several houses in this neighborhood that have this same condition, but the precedent seems clear on justifying a variance. They may be unique to the rest of the town, but they do share a condition in this neighborhood. Ms. Lockwood commented that the challenge of the topography is shared by many of these properties along the river, but the locations of the well and septic system are hardships specific to this parcel. Discussion continued.

Ms. Mulcahey questioned what the square footage of the house was and also stated that she liked what they did in going back to ground zero and seeing where they would be if they were in full compliance and then moving forward to see what the minimal impact could do.

Mr. Snaith wanted clarification that they are as close to the river and the well that they can be at this point and the other side of the house is the septic, which precludes any addition on that side.

Mr. Sawch then addressed Ms. Mulcahey's question noting that the original house was roughly 980 sq. ft., the last addition was 1,340 sq. ft. which brings the total square footage to 2,328. This proposal, excluding the basement and garage is 1,100.

Hearing no additional comments, the public hearing was closed at 8:40 p.m.

112 GEORGETOWN ROAD, owner, FRANK, GEORGE ANDREW, Map 3, Block 1, Lot 22, appeal to order or action by Code Enforcement Officer dated June 15, 2009

Attorney Chris Vaugh came forward representing the owner and stated that there was a cease and desist order issued for the sign located at the property and the basis of the violation was a commercial sign in a non-commercial zone, specifically a violation of Sec. 350.6 and Sec. 350.2(a) of the zoning regulations. Attorney Law noted that that this property has been called Georgetown Gardens since 1968 and the sign in question has been there for that period of time. Mr. Frank bought the property in 1976. He also noted that it is a pre-existing non-conforming sign that pre-dates the regulation which would allow Mr. Frank to continue the use. He believes the essence of the cease and desist order is that the sign contained language about landscaping. There was an issue years ago regarding landscaping use at the property and the Superior Court in Bridgeport determined that a landscaping use was an illegal expansion of the pre-existing use. Attorney Law explained that the landscaping language has been removed from the sign. He noted that the principal use of the property is as a truck garden and the residence is incidental to the primary use as a truck garden. Discussion ensued.

James Pjura, Code Enforcement Officer, came forward and explained that he inherited the file from Bob Turner and his understanding is that it is a residential property and illegal to run a business from the property. The regulations speak to the fact that the property is in a residential area and they should not be conducting business from that property. Mr. Edgar noted that it appears that just because something is zoned residential, it doesn't mean that they can't have a truck farm and it appears that it is a permitted use in a 2 acre residential zone and farming district.

Tracy Kulikowski stated that the Town's position is based on the 1999 court case where the Judge rejected Mr. Frank's arguments and found that there was no pre-existing, non-conforming use and therefore any commercial use of the property is illegal. Discussion continued.

Attorney Law stated that Mr. Frank can testify to the fact that he gets billed for equipment related to the use as a truck garden from the Tax Assessor. Mr. Frank stated that he does not have a retail business at the site and the goods that are grown and trucked are not sold to retail users. Attorney Law commented that it is not so much the retail use or the financial benefit, it's an allowed sign under the regulations, which is the point of the argument. Mr. Wolf noted that they cannot prove that it was a pre-existing the regulations. Mr. Frank stated that since 1975, there has been a sign there. Attorney Law stated that the property could be called "Georgetown Gardens". He then asked Mr. Frank to testify as to when he first time he viewed the property and Mr. Frank stated that it was 1976 when he used to buy flowers from Mr. Budell. He testified that in 1976 there was a sign on the property in the same place it is now and to his knowledge the sign has never been moved. The only difference is that the language regarding landscaping has

been removed. Mr. Frank noted that, as far as the business and Georgetown Gardens, he has been taxed and paying taxes since the early 1980's as a farming business.

Following some discussion regarding confirmation on the sign regulation, it was decided that the matter would be continued to the next meeting.

18 BRADLEY ROAD, Owners, LOUISE & ROGER BOHLER, Map 17, Block 3, Lot 14, Variance to Sections 313.1b and 313.2c to allow construction of a 6 ft. cedar fence on 1 ft of capped cemented store wall with an extra 1 ft. of open spindles on the road side of the property and on the side of the prop adjacent to Trout Brook Nature Preserve.

Mr. and Mrs. Bohler came forward to present the application. Mrs. Bohler stated that they bought the property 10 years ago and they are in between the Aspetuck Land Trust property and the Morton Land Preserve, two really active spots that advertise all kinds of activities. There is also a parking lot for about 14 cars. Mrs. Bohler stated that they are asking for a fence along the roadway which would help to prevent dogs, bikes and people from walking across their property. Also, the lights from the parking lot are disrupting and are looking for a little more privacy with an 8 ft. fence with an open top on top of the existing stone wall. Discussion ensued.

Mr. Wolf asked what they would be able to put up that would comply with the regulations. Mrs. Bohler stated that they would be able to have a 4 ft. fence 10 feet back from the property line. Mr. Wolf then asked them to describe the hardship and Mrs. Bohler stated that they are in between two parking lots and between 2 public parks. Ms. Murray questioned what hardship would be abated by having a taller fence. Mrs. Bohler stated that it would provide privacy and reduce noise and lights from the traffic. Discussion continued.

Ms. Mulcahey commented that she thinks they have the ability to conform with the regulations and have a 6 foot fence on the parking lot side and a 4 foot fence along the road. The variance goes with the property and she doesn't see the headlight issue as a hardship. Mr. Wolf then stated that the applicants agreed that a 6 foot fence under the regulations will satisfy their need along the park side and agreed that they could settle for a 6 foot fence along Bradley Road. Discussion regarding the hardships ensued.

Hearing no additional discussion, the public hearing was closed at 9:57 p.m.

DELIBERATIONS:

146 LYONS PLAIN ROAD:

Voting Members: Wolf, Snaith, Mulcahey, Edgar and Murray

Mr. Wolf commented that it makes a big difference when you have a professional present to discuss the design and to give the history and chronology of how she and the owner arrived at their proposal. Ms. Murray commented that it was an excellent presentation and feels more sympathetic to the proposal now. Ms. Mulcahey commented that she liked the proposal and they made a good attempt to minimize the impact and encroachment further into the setback and she favors approval. Ms. Murray further commented that the hardship was made clear and a good record of that was made tonight. Mr. Edgar commented that he concurs.

MOTION:

Ms. Murray made a Motion to approve the request for a variance to Sec. 321.5 of the regulations to allow construction of a 2 car garage addition on an existing non-conforming house that would

be setback 32 feet from the front property line as shown on plans prepared by Susan Lockwood Architects, dated 8/27/09, a site plan, first floor plan, section of garage and basement plan all dated 8/17/09, and entitled map of Wolf Subdivision. The hardship is based on the topography, the river at the rear of the property and the locations of the well and septic system which were established with the testimony of Ms. Lockwood and Mr. Sawch. Mr. Edgar seconded the motion. All in favor, the motion carried (5-0).

18 BRADLEY ROAD

Voting Members: Wolf, Snaith, Mulcahey, Murray, Gardner

Ms. Mulcahey commented that she does not feel that she can support an approval because she does not think that there is a valid hardship and thinks a 4 foot fence would be sufficient. Mr. Snaith commented that he does not think that a 4 foot fence would be tall enough to give protection from the excessive noise from all the people who visit the nature preserves. Ms. Murray commented that she is not convinced that the extra 2 feet will abate anything additional. Mr. Snaith further commented that this is a unique situation with only Pent Road having some similar issues. Mr. Gardner commented that he can't think of another street in Weston that gets that much foot traffic and does not see a problem with a 6 foot fence. Mr. Edgar thinks that the additional 2 feet offers more privacy for the homeowners. Mr. Wolf concurred with Mr. Snaith and Mr. Edgar.

MOTION

Mr. Snaith made a motion to deny the request for a variance to Sec. 313.1b because the owners have agreed to comply with that regulation and approve the request for a variance to Sec. 313.2c to allow construction of a 6 foot fence along a public way measured from adjacent finished grade. The north corner alignment shall be reviewed by the Town Engineer for sightlines from the parking lot to Bradley Road. The hardships are based on the nuisance factor created as a result of the location being between 2 public parks and adjacent to a public parking lot. Mr. Gardner seconded the motion. The motion was voted on and carried (4-1 [Mulcahey]).

APPROVAL OF MINUTES

Approval of the July 28 Minutes was continued to next month.

MOTION TO ADJOURN

Ms. Mulcahey made a motion to adjourn the meeting and Mr. Edgar seconded. All in favor, the meeting adjourned at 10:27 p.m.

Respectfully submitted,

Delana Lustberg
Board Clerk