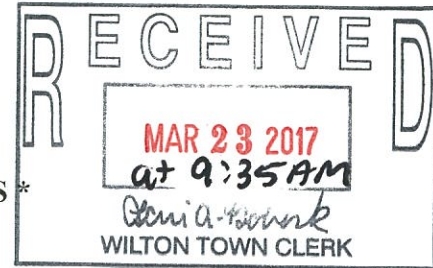


ZONING BOARD
OF
APPEALS
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TOWN HALL ANNEX
238 Danbury Road
Wilton, Connecticut 06897



**WILTON ZONING BOARD OF APPEALS MINUTES *
MARCH 20, 2017 – REGULAR MEETING**

PRESENT: Joshua Cole, Chairman; Gary Battaglia, Vice-Chairman; Brian Lilly, Secretary; Ray Tobiassen; Jaclyn Coleman, Alternate; Kenny Rhodes, Alternate; Tracy Serpa, Alternate

ABSENT: Libby Bufano

A. CALL TO ORDER

Mr. Cole called the meeting to order at 7:15 P.M. He briefly reviewed the hearing process for applications that come before the Zoning Board of Appeals.

B. PUBLIC HEARINGS

1. #17-03-02 CARDIELLO 78 BORGLUM ROAD

Mr. Cole called the Hearing to order at approximately 7:16 P.M., seated members Battaglia, Cole, Lilly, Rhodes and Tobiassen, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest. Mr. Lilly read the legal notice dated March 6, 2017 and details of the application and the hardship as described on the application.

Present were Ruth and Joe Cardiello, applicants.

Ms. Cardiello reviewed constraints of the property, citing topography, existing rocks, well and septic location, slope and existing plantings. She explained that locating the proposed shed in the rear would provide greater privacy from surrounding properties and be less intrusive for the rear adjoining neighbor due to the incline of the property.

Mr. Lilly noted that there seemed to be another available area on the site (about 20 feet forward from the proposed location) that would accommodate the shed without the need for a variance and he questioned what the hardship is for locating the shed as proposed. Ms. Cardiello explained that keeping it in the rear would be less disruptive to neighbors and to the neighborhood as a whole. She noted further that there is no other flat area on the property that would accommodate the shed. Mr. Cardiello cited slopes, rocks, retaining walls, well and septic as constraints to the site.

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Mr. Cole observed that the ground looked relatively flat in the alternative area referenced earlier by Mr. Lilly.

Mr. Cole asked if anyone wished to speak for or against the application.

There being no further comments, at approximately 7:30 P.M. the public hearing was closed.

2. #17-03-03 ASML US, INC. 59 DANBURY ROAD

Mr. Cole called the Hearing to order at approximately 7:30 P.M., seated members Battaglia, Cole, Coleman, Lilly, and Tobiassen, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest. Mr. Lilly read the legal notice dated March 6, 2017 and details of the application and the hardship as described on the application.

Present was Jeremy Oskandy, Arthur Howland & Assocs, on behalf of the applicant.

Mr. Oskandy referenced posted plans, highlighting the front area of the site where the applicant is proposing new parking to accommodate a planned build-out in one of the buildings. He cited constraints preventing the proposed parking from being constructed in other areas of the property, including topographic issues, wetlands, the curve of the driveway, floodway issues, and CL&P high tension wires. He noted that out of 11.8 acres on the site, only 5.9 acres are not encumbered in some way.

Mr. Oskandy reviewed a landscaping plan, noting that heavy landscaping is proposed between the roadway (Route 7) and the parking lot to provide screening of parking and lighting. He noted that the site would comply with all other zoning requirements.

In response to questions from the Board, Mr. Oskandy indicated that ASML plans to add approximately 166 office seats as part of its proposed build-out; and he felt there would not be any safety issues as a result of the proximity of the parking area to the roadway. The Board observed that some parking on the site had been removed when Westy's moved in.

In response to a comparison that was made to other sites along Route 7 where parking is located in close proximity to the roadway, Mr. Nerney explained that the Design Enterprise (DE) district, in which the subject site is located, is different from retail districts. He noted that DE districts, which include parcels with a minimum of 5 or 10 acres, encourage larger buildings set back off the road to reduce massing along the roadway. He noted that the Board needs to consider whether a denial of the requested variance would result in loss of reasonable use for the applicant.

Mr. Rhodes referenced an area behind the buildings in the southern interior portion of the

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site that he felt could perhaps support some additional parking in spite of its proximity to the floodway/wetlands. Mr. Oskandy briefly explained the condominium/dual-ownership setup of the site and the constraints resulting from such an ownership structure with respect to locating parking in certain areas of the site.

Mr. Cole asked if anyone wished to speak for or against the application.

Lee Wilson, owner of property to the south, and Robert Maslan, his attorney, spoke in opposition to the application.

Mr. Maslan distributed handouts into the record including Development Strategies from the Plan of Conservation and Development (POCD), information on Building Blocks and ConnectoTalk, an RHYS real estate listing for 59 Danbury Road, and recent photos of the 59 Danbury Road site.

Mr. Maslan referenced pages 53 and pages 70-76 of the POCD, citing its many references to the encouragement of larger setbacks and landscaped frontage, and improving the appearance along the Route 7 corridor. Citing the ConnectoTalk child therapeutic center located on the site, he stated that any hardship is entirely self-created because ConnectoTalk is actually a more intensive use, requiring more parking, than a traditional daycare use. He also cited the fact that parking is currently being utilized by people who park at the site but then walk over to the northern adjoining site (ASML) via an existing gravel path (photos of which were included in the aforementioned package), thus adding to the self-created hardship in his opinion.

Mr. Maslan stated that the property is already enjoying reasonable use, which is what the Board must determine in order to justify granting a variance. He felt that existing parking on the site could perhaps be reconfigured to narrow some aisles and/or to utilize some unused loading dock areas. He noted for the record that parking can be located in flood zones, contrary to the previous testimony, as long as it adheres to specific regulations for such areas.

Mr. Wilson asked whether the space ASML is leasing on the subject site is occupied or vacant.

He stated that he constructed two buildings under the DE zoning district regulations, specifically following zoning guidelines to enhance streetscape along Route 7, noting further that variances would severely violate the zoning code. He referenced the aforementioned photos and his observations of the site taken earlier in the day, confirming that 77 Danbury Road employees park on the subject site at 59 Danbury Road and walk to their offices on the adjoining northern property.

Mr. Maslan noted further that the site is a minimum 5-acre site and should be viewed as

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one site from the perspective of parking, i.e. the condominium aspect of the site should not be factored into the parking calculations because it is not relevant. He added that Westy's expanded at the cost of parking, further supporting his contention that this is a self-created hardship and not a legally valid justification for granting a variance on the site.

Addressing questions raised by the opposing parties, Mr. Oskandy explained that driveway areas are wide in the rear because of additional loading docks and greater turning radii required for some of the larger vehicles, as well as landscaping strips required by current zoning regulations; building near the flood plain area would be an economic issue; the site meets all the other requirements of zoning; and ASML has not actually occupied the space yet.

Mr. Wilson concluded by stating that the application should be denied.

There being no further comments, the public hearing was closed at 8:32 P.M.

3. #16-03-04 COLE 14 OLD BELDEN HILL ROAD

Mr. Cole called the Hearing to order at approximately 8:32 P.M., seated members Battaglia, Cole, Lilly, Serpa and Tobiassen, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest. Mr. Lilly read the legal notice dated March 6, 2017 and details of the application and the hardship as described on the application.

Present were Michael Schulta, architect; and Loren Cole and Candace DiConza, applicants.

Mr. Schulta referenced a posted plan, noting constraints of the subject parcel, including that it is a corner lot constrained by two front yard setbacks; the lot slopes towards the rear; there are septic constraints to the south and wetlands in the back; and the existing house is already located in the setbacks. He explained further that the front door (or what appears to be the front door) actually opens into a bedroom on the second floor, whereas the actual "front" door is located on a lower level in the rear and is not utilized as such, representing an unsafe situation.

Mr. Cole observed that the proposed addition location appeared to be the most reasonable given that the existing structure is already nonconforming, and the fact that the 1.3-acre site is located in and constrained by 2-acre zoning regulations.

Mr. Cole asked if anyone wished to speak for or against the application.

There being no further comments, at approximately 8:43 P.M. the public hearing was closed.

4. #17-03-05 HALAN 295 NEWTOWN TURNPIKE

Mr. Cole called the Hearing to order at approximately 8:43 P.M., seated members Cole, Lilly, Rhodes, Serpa, and Tobiassen, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest. Mr. Lilly read the legal notice dated March 6, 2017 and details of the application and the hardship as described on the application. He also referenced a letter of opposition dated March 20, 2016 [sic] from Kathleen Rubin Nash to Zoning Board of Appeals.

Present was J. Mark Halan, owner/applicant.

Mr. Halan explained that when the Zoning Enforcement Officer (ZEO) came out to inspect his home, which is necessary prior to issuance of a Certificate of Compliance, it was determined that the embankment/stone wall was built at a greater than 6-foot height, which is the maximum height permitted by regulations. He estimated that the area in violation measures about 9-10 feet long, noting that he is also required to install a fence along the top of the embankment for safety reasons. He stated that he contracted an engineer to inspect the wall and it was evaluated to be stable and well-constructed, noting that he intends to install significant-sized plantings along the bottom to enhance the aesthetics of the wall.

Addressing hardship, he explained that Inland Wetlands, from whom he obtained a permit to build on his site in 2015, will not allow him to bring in fill which would lower the height of the wall by 1-2 feet as required by zoning. Referencing a posted plan/sketch, he noted that the property is very long and narrow, running along the river, and is almost all within the 100-foot wetlands buffer zone.

Mr. Lilly noted for the record that the area of violation seemed to extend more than the 9-10-foot span referenced earlier by the applicant, and it also seemed to be greater than 8 feet high in some areas as also referenced by the applicant.

Mr. Lilly explained that in situations such as these where a violation already exists, he examines the variance request from the perspective of whether he would have been likely to grant it had it been requested previously in connection with the original variance application.

In that regard, Mr. Halan expressed regret that he had not asked for more of a front yard setback variance years ago when he first appeared before the Commission, which would have prevented the current situation from developing in the first place. He explained that the hardship was the wetlands buffer zone and the difficult-to-work-with terrain.

Ms. Serpa agreed with the hardship as proffered by the applicant, and Mr. Rhodes also

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agreed that the property was a very difficult site to begin with, noting that the stone embankment is more attractive than a concrete wall.

Mr. Halan stated that the proposed landscaping will consist of plantings at least 4-5 feet in height.

Mr. Cole referred for the record to the applicant's statement of hardship submitted with the application, noting that it is thoroughly explained in the submission package.

Mr. Cole asked if anyone wished to speak for or against the application.

There being no further comments, at approximately 9:10 P.M. the public hearing was closed.

The Board took a short recess at 9:10 P.M.
The Board returned from recess at 9:14 P.M.

C. APPLICATIONS READY FOR REVIEW AND ACTION

Mr. Cole called the Regular Meeting to order at approximately 9:14 P.M., seated members Battaglia, Cole, Lilly, Rhodes and Tobiassen, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest.

1. #17-03-02 CARDIELLO 78 BORGLUM ROAD

The Board discussed the application. Messrs. Cole and Lilly expressed concern that, although hardships including topography, existing plantings, well, and septic exist on the site, there is an alternative location available where the shed could be placed that would not require a variance. They felt that adequate hardship was not fully demonstrated since denial of the variance would not deprive the applicant of reasonable use of the property.

Mr. Rhodes argued that since the lot has such a small usable area, placement of the shed in the aforementioned alternative location would take away reasonable use of the rest of the lot.

Board members discussed both sides of the issue at length, but Messrs. Cole and Lilly felt that the proposed variance did not meet all four findings that are required by zoning regulations [Section 29-13.B.6] in order to grant a variance, referring in particular to finding #2 regarding depriving the applicant of reasonable use of the property, as heretofore discussed.

MOTION was made by Mr. Rhodes, seconded by Mr. Battaglia, to **grant** the variance of Section 29-5.D to allow an outdoor shed building with a 19.6-foot rear yard setback in lieu of the required 40 feet; on grounds that sufficient hardship was demonstrated. He referenced the four findings as noted in Section 29-13.B.6 of zoning regulations, noting in particular that because of the limited, small amount of flat area available on the property, use of the property would be severely impacted, thus depriving the applicant of reasonable use. The motion failed to carry (3-2), with Messrs. Lilly and Cole opposing, on the grounds that denial of the variance would not deprive the applicant of reasonable use of the property given the alternative compliant shed location that is available on the site.

2. #17-03-03 ASML US, INC. 59 DANBURY ROAD

Mr. Rhodes was unseated. Ms. Coleman was reseated.

The Board discussed the application at length. Mr. Cole referenced the four findings required to grant a variance, as heretofore noted. He felt that the application did not satisfy any of the findings, noting in particular that the hardship is self-imposed, i.e. essentially created by previous use decisions for the parcel; the building has been used previously so there has been demonstrated reasonable use of the structure/lot; and the proposal runs counter to the goals of the Plan of Conservation and Development to preserve setbacks along Route 7.

Addressing a comment from another Commissioner regarding proximity of parking to the roadway for other parcels along Route 7, Mr. Lilly noted that the variance cannot be based upon any nonconformity of neighboring lots, uses or structures.

MOTION was made by Mr. Cole, seconded by Mr. Lilly, and carried unanimously (5-0) to **deny** the variance of Section 29-7.D.6 to allow parking within 25 feet of the street line in lieu of the required 100 feet, on grounds that the application of this particular zoning regulation would not deny the applicant reasonable use of the property and, further, that although there are hardships to the topography of the site in the rear portion, the hardship is self-created and thus the application fails to meet the threshold necessary to grant a variance.

3. #17-03-04 COLE 14 OLD BELDEN HILL ROAD

Ms. Coleman was unseated. Ms. Serpa was reseated.

The Board reviewed the application.

After a brief discussion, it was the consensus of the Board that hardship was demonstrated due to the undersized lot, the pre-existing nonconforming structure which already intrudes into the setback, and the location of the septic and B-100 plan. The Board noted that reasonable use would be denied by not granting the requested variance, specific reference being made to the safety issue and allowing entrance to the structure from the main door, and it was further noted that the proposed variance represents the least amount of intrusion necessary to accomplish this purpose.

MOTION was made by Mr. Lilly, seconded by Mr. Battaglia, and carried unanimously (5-0) to **grant** the variance of Section 29-5.D to allow a building addition with a 35-foot front yard setback in lieu of the required 50 feet; as per “Property Survey” prepared by PAH, Inc., dated October 26, 2015, revised May 3, 2016 and February 24, 2017; on grounds that adequate hardship was demonstrated due to the topography of the land, the undersized lot, the pre-existing nonconforming structure, and the fact that all of the property is already taken up with septic and B-100 or with a substantial hill. It was further noted that the four findings necessary to grant a variance were all satisfied including that denial of the variance would deprive the applicants reasonable safe use of their property; changes would not be detrimental to the neighborhood; and it is the least amount of intrusion necessary to accomplish safe entry into the house.

4. #17-03-05 HALAN 295 NEWTOWN TURNPIKE

Mr. Battaglia was unseated. Mr. Rhodes was reseated.

The Board discussed the application.

Mr. Lilly noted again his perspective that he examines the variance request from the perspective of whether he would have been likely to grant it had it been requested previously in connection with the original variance application.

It was the consensus of the Board that hardship was demonstrated due to constraints presented by the wetlands buffer zone, the topography/slope of the site, its proximity to the river, the odd shape of the lot and the slope down to the river.

Ms. Serpa noted that the wall as constructed is what the applicant needs in order to have

reasonable use of the property.

Mr. Lilly stated that he hoped the applicant would work with his neighbor to provide as much shielding/screening as possible.

MOTION was made by Mr. Lilly, seconded by Mr. Cole, and carried unanimously (5-0) to grant the variance of Section 29-9.I.5.a to allow a stone retaining wall with a maximum height of 8 feet where a maximum height of 6 feet is permitted; as per “Zoning Location Survey and Topographic Map prepared by Roland H. Gardner, dated October 27, 2016; “Wetland Buffer Mitigation Planting Plan” by Aleksandra Moch, dated January 22, 2017; and 5 black and white photos dated February 24, 2017; on grounds that adequate hardship was demonstrated to the topography of the lot, its thin and long shape, and the river running through the entire back portion. The tremendous slope down to the river was also noted along with the necessity of the retaining wall so that the integrity of the garage structure is not compromised.

D. OTHER BUSINESS

1. Minutes – February 21, 2017

MOTION was made by Mr. Cole, seconded by Mr. Tobiassen, and carried (4-0-3) to approve the minutes of February 21, 2017 as drafted. Board members Battaglia, Serpa and Tobiassen abstained.

E. ADJOURNMENT

MOTION was made by Mr. Cole, seconded by Ms. Serpa, and carried unanimously (7-0) to adjourn at approximately 10:10 P.M.

Respectfully submitted,

Lorraine Russo
Recording Secretary

