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ZONING BOARD

OF

APPEALS

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TOWN HALL ANNEX  
238 Danbury Road  
Wilton, Connecticut 06897

**WILTON ZONING BOARD OF APPEALS MINUTES \*  
APRIL 17, 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 (notified intended absence)

**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. #17-04-06 HUDSON 532 DANBURY 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 April 4, 2017 and details of the application and the hardship as described on the application.

Present was Daniel Hudson, applicant.

Mr. Hudson distributed copies of an updated A-2 survey and photos of the site, noting that he wishes to construct a garage with a second level master bedroom since the house currently has neither. He cited weather and security issues as major drivers for the garage addition. He referenced numerous hardships for the site, noting that the property is pre-existing nonconforming, with the house located within the setbacks; the property consists of approximately 90% wetlands; there are septic constraints on the side; as well as steep slopes and grading issues.

Mr. Rhodes cautioned the applicant when implementing grade modifications to avoid having to appear before the Board again.

In response to a question from the Board, Mr. Nerney confirmed that building in a flood plain is permitted as long as any proposed addition is at or higher than base flood elevation levels. He noted that the applicant's plans indicate that the proposed work will be in conformance with flood plain regulations.

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

There being no further comments, at approximately 7:34 P.M. the public hearing was closed.

**2. #17-04-07 COLE 135 DE FOREST ROAD**

Mr. Cole called the Hearing to order at approximately 7:34 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 April 4, 2017 and details of the application and the hardship as described on the application.

Present was Edward Schenkel, Gregory and Adams, attorney for the applicant.

Mr. Schenkel explained that the applicant wishes to install a deck on an existing garage, where the second floor of the garage serves as a business which has been run by the family for 50+/- years. He cited the pre-existing nonconforming nature of the property as a hardship, noting that the garage was built in 1947. He also explained that a variance granted in 2013 allowed a second floor addition to the garage to accommodate a home office that was previously located in the residence.

Mr. Schenkel cited reductions of nonconformities that have recently occurred on the site, including merging the nonconforming parcel 145 De Forest Road with 135 De Forest Road; replacement of a paved driveway with gravel; and removal of an existing shed on the parcel.

Addressing the requested variance in greater detail, Mr. Schenkel explained that the deck would measure 14' x 16' x 11' high, representing an increase of .45% in building coverage, and he noted that there is no intention to increase the intensity of the office use in connection with the proposed deck addition. He stated that the 1.2-acre site is constrained by 2-acre zoning requirements which create a further hardship for the applicant. Ms. Serpa noted that the applicant would still need a setback variance even under one-acre zoning requirements.

In response to questions from the Board regarding the necessity for such a deck and whether its denial would deprive the applicant of reasonable use of the property, Mr.

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Schenkel explained that it will make the office more comfortable and provide a better working environment for the business.

In response to a question from Mr. Nerney regarding the business use in a residential district, Mr. Schenkel explained that the garage has been used legally as an office for 4 years.

Mr. Lilly noted that footings appear to have already been installed for the deck.

Addressing a question of residential use of the garage during evening hours, Jim Cole, owner, present in the audience, stated that the garage is not being used as a residence at night.

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

Mark Wiltamuth, 156 DeForest Road, read and entered into the record a letter of opposition dated April 17, 2017. He expressed concerns with added encroachment onto the neighbor's property and privacy. He stated that the structure has become an occupied residence, not an office over a garage, and thus the property has 2 dwellings on a 1.2-acre site. He questioned whether the garage complies with plans previously approved; in particular, whether the parcel conforms with site coverage regulations given the recent removal and then re-paving of some driveway areas.

Guthrie Woolard, 149 DeForest Road, distributed photos of the subject garage for Commission review. He stated that he shares the southern property line with the applicant and, having lived here for 30 years, was stunned at the magnitude of the structure that was constructed three years ago. He explained that the garage structure is located 7'9" from his property line and was built to accommodate commercial vehicles, thus towering over his back yard and providing a window view into his house. He stated that the structure has been used as a residence over the past few years, referencing lights and a TV that is on late into the evening hours. He noted that a deck was constructed without a variance 1.5 years ago, which was then required by the Town to be removed, along with kitchen/bath modifications that were also not permitted. He stated that the deck severely impacted his privacy and should not be permitted to be constructed again. He felt that his property value is being negatively impacted by the structure's proximity to his property.

Mr. Schenkel responded, noting that the garage is used strictly as an office and not a residence. He stated that the proposed deck represents a small modification to an already granted 2<sup>nd</sup> floor office.

There being no further comments, the public hearing was closed at 8:06 P.M.

**3. #17-04-08 TOMASETTI/GANY 66 LITTLE BROOK ROAD**

Board members Rhodes and Tobiassen stated that they know Mr. Tomasetti on a personal and professional level, but did not feel it represented a conflict of interest for them.

Board member Lilly knew of Mr. Tomasetti's sponsorship of Little League teams in Town, but he also did not feel it represented a conflict of interest for him.

Mr. Cole called the Hearing to order at approximately 8:06 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 April 4, 2017 and details of the application and the hardship as described on the application.

Present were Rick Tomasetti, architect; and Eric and Nancy Gany, property owners.

Mr. Tomasetti explained that the existing home does not have a family room on the main level and its 2-car garage is only 17 feet deep, which makes it difficult to park cars. He noted that they investigated other configuration/location options for both the proposed family room and garage but due to wetland issues, the location of the well, and topographical constraints, they were unable to develop a plan that would provide any viable connections to the kitchen and parking. He stated that the pre-existing nonconforming building is already encroaching into the setback, noting further that there is no view of neighbors from the back of the property. He also noted that the applicant is proposing to move an existing shed that is located in the setback, thus making the site more compliant.

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

There being no further comments, at approximately 8:17 P.M. the public hearing was closed.

The Board took a short recess at 8:17 P.M. and reconvened at 8:22 P.M.

**REGULAR MEETING**

Mr. Cole called the Regular Meeting to order at 8:22 P.M., seated members Battaglia, Cole, Coleman, Lilly, Rhodes, Serpa and Tobiassen, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest.

With the agreement of the Board, Mr. Cole scrambled the agenda to approve the minutes prior to discussing pending applications.

**D. OTHER BUSINESS**

**1. Minutes – March 20, 2017**

MOTION was made by Mr. Cole, seconded by Mr. Battaglia, and carried unanimously (7-0) to approve the minutes of March 20, 2017.

**C. APPLICATIONS READY FOR REVIEW AND ACTION**

**1. #17-04-06 HUDSON 532 DANBURY ROAD**

The Board briefly discussed the application. It was the consensus of the Board that a hardship was clearly demonstrated; the garage is a reasonable request/use; the proposed variance is the minimum amount necessary to meet the need; and the granting of the variance will be in harmony with the general intent of the regulations and the Plan of Conservation and Development.

MOTION was made by Mr. Cole, seconded by Mr. Rhodes, and carried unanimously (5-0) to **grant** a variance of Section 29-5.D to allow an addition with a 36-foot front yard setback in lieu of the required 50 feet; as per submitted “Improvement Location Map” prepared by Stalker Land Surveying, Inc., updated April 7, 2011, March 4, 2016, March 24, 2017 and April 3, 2017; and Drawings A1.0, A1.1, A1.2, A2.0, A2.2, and A2.3, prepared by Joseph M. Rousseau and dated March 22, 2017; on grounds that sufficient hardship was demonstrated due to the pre-existing nonconforming structure which was built around 1900; the topography and unusual characteristics of the lot with substantial wetlands/river in the rear and sloping topography from Danbury Road; and the fact that the proposed location is the only viable place on the lot to do the construction. Addressing the four findings necessary for granting a variance (as per Section 29-13.B.6 of zoning regulations) the Board felt that all findings were satisfied, noting in particular that the proposed variance is the minimum amount necessary to accomplish the purpose; it is in harmony with the intent of the regulations; and it does not encroach any further than the existing structure.

Mr. Rhodes left the meeting around 8:25 P.M.

2. #17-04-07 COLE 135 DE FOREST ROAD

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

The Board discussed the application in detail, referencing Section 29-13.B.6 of zoning regulations (findings for granting a variance). It was the consensus of the Board that while hardship could be argued for the setback variance due to the pre-existing nonconforming nature of the garage, a denial of the variance would not deprive the applicant of reasonable use of the structure. The Board felt that the applicant was already enjoying reasonable use of the structure/property, noting that a deck would not make the office better. Overall, the Board felt that the application failed on findings (b) and (c) of the aforementioned Section 29-13.B.6, i.e. that denial of the variance would not deprive the applicant of reasonable use of the structure and granting of the variance would not be in harmony with the intent of the regulations and the Plan of Conservation and Development (POCD).

MOTION was made by Mr. Lilly, seconded by Mr. Battaglia, and carried unanimously (5-0) to **deny** variances of Section 29-5.D to allow the addition of a deck to an existing garage with (i) building coverage of 8.55% in lieu of the 7% permitted, where 8.1% is currently allowed per previously granted variance; and (ii) a side yard setback of 23 feet in lieu of the 40 feet required; on grounds that sufficient hardship was not demonstrated, failing (b) and (c) of the findings necessary per Section 29-13.B.6 of zoning regulations, i.e. that denial of the variance does not deprive the applicant of reasonable use of the structure, and that the application is not in harmony with the intent of the regulations and the POCD.

3. #17-04-08 TOMASETTI/GANY 66 LITTLE BROOK ROAD

The Board reviewed the application. It was the consensus of the Board that hardship was demonstrated, given the pre-existing nonconforming nature of the structure; the fact that the proposed location for the addition is the only feasible one; and there are constraints with respect to the well location, the pond and slope issues. It was also noted that the proposed addition would not be visible from the street.

Addressing the four aforementioned findings necessary for granting a variance, the Board felt that all four findings were satisfied, noting in particular that denial of the variances would deprive the applicant of reasonable use of the property and the proposed variance was the minimum amount necessary to accomplish the purpose. It was also noted that there is already a patio where the proposed addition is going and the applicant is proposing to move the shed, thus removing an existing nonconformity.

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MOTION was made by Ms. Serpa, seconded by Mr. Tobiassen, and carried unanimously (5-0) to **approve** a variance of Section 29-5.D to allow a (family room) building addition with a 42.2-foot rear yard setback in lieu of the required 50 feet; and to allow a (garage) building addition with a 38.5-foot rear yard setback in lieu of the required 50 feet; as per “Zoning Location Survey” prepared by Ryan and Faulds dated June 15, 2016, amended March 23, 2017; and plans A-0.0, A-1.0, A-1.1, A-2.0, A-2.1, and A-3.0 prepared by Lovas & Tomasetti, dated March 27, 2017; on grounds that sufficient hardship was demonstrated, given the pre-existing nonconforming nature of the structure; topographical constraints; wetlands and well locations. Overall, the Board felt that the four necessary findings per Section 29-13.B.6 of the regulations were satisfied.

**E. ADJOURNMENT**

MOTION was made by Mr. Tobiassen, seconded by Mr. Battaglia, and carried (6-0) to adjourn at approximately 8:45 P.M.

Respectfully submitted,

Lorraine Russo  
Recording Secretary