

Robert & Monica Brina
455 Thayer Pond Road – Wilton, CT

Application for Variances

Narrative

SCHEDULE A

BACKGROUND: Mr. and Mrs. Robert R. Brina (hereinafter referred to as “Applicants”) are the owners of that certain real property (together with certain improvements situated thereon) and located at 455 Thayer Pond Road in Wilton, Connecticut, and designated as Tax Map 128, Lot 18: the property itself is 0.99 acres (43,143+/- sq. ft.) and zoned R-2A (the “Property”). The lot is currently legally nonconforming insofar as the R-2A zoning designation formally requires that lots conform to a minimum of two (2) acres in size **with 200 feet of lot width**. (Refer to “Zoning Information” on “Zoning Location Survey, Proposed 455 Thayer Pond Road Prepared for Applicants, Monica C. Brina and Robert R. Brina, Wilton, Connecticut Scale 1”=20 **February 17, 2022**” [“ZLS Proposed”] prepared by Ryan and Faulds, LLC (surveyors), attached hereto and made a part hereof).

The Property is improved with a single-family residence and detached garage constructed circa **1932**, well before the initial enactment of formal zoning regulations in Wilton, which occurred in **1946**. A side yard setback variance had also been subsequently granted in 1989 to a predecessor-in-interest for the construction of an addition for a kitchen.¹ **Current side yard setbacks (since 1946 Zoning Regulations) for the existing residence on the southern border** are approximately **37’ 4”**, and the **northern border** enjoys a current setback of **20’ 3” at the existing garage**, and **36’ at the existing house**, while the **front yard setback to the existing porch** is approximately **46.0 feet**, all of which are legally nonconforming. (See ZLS Proposed).

¹Variance Application #89-0306 approved March 15, 1989 for side yard setback – 40’ required, 30’ approved. Volume 679 Page 120, Wilton Land Records.

PROPOSAL

The Applicants propose to adaptively reuse the existing dwelling as well as the existing garage, using essentially the same footprint. Applicants propose to renovate the existing front house, from a current one and $\frac{3}{4}$ -story ($1\frac{3}{4}$) residence to a two (2)-story, 4 bedroom home on the second floor. The adaptive reuse of the existing garage, will consist of physically joining it to the former front house, and will have the 4th bedroom above. This 4th bedroom will be immediately accessed through a door on the adjoining second floor of the proposed house. The existing dwelling, and garage, and essentially the existing footprint, will create a new, and habitable, dwelling. As part of this proposal, the Applicants will eliminate the existing nonconforming front yard setback **by removing part of the enclosed porch** on the existing dwelling. (Refer to architectural drawings, designed by Mrs. Monica C. Brina, for “Brina Residence 455 Thayer Pond Rd. Wilton, CT 06897” dated February 23, 2022 prepared by Greenwich Design Architects, [architectural plans] attached hereto and made a part hereof).

The side setbacks will remain the same –i.e., the existing side setbacks since 1946. With the exception of the existing side yard setbacks, the proposed dwelling complies with all other requirements of the zoning regulations.

In order to achieve this, the Applicants therefore seek approval from the Town of Wilton Zoning Board of Appeals (“ZBA”) for variances to the **already existing side yard setback** dimensions ranging from 20’ 4” (North Side-Garage) to 36.0’ (North Side-Residence), rather than the 40’ required. On the southern side of the property, the existing setbacks are contemplated to remain, and range from 37.4’ (Residence) in lieu of the 40’ required. On the front, West side, part of the front-porch-Sun Room will be removed. The Front Steps alone will have a Front Setback, of 48’, in lieu of the 50’ required. (Refer to Schedule B), (Refer to “Variances Required” on ZLS Proposed). In addition, the Applicants propose to **build a Maximum Building Coverage of 6.8% whereas the Maximum Building Coverage permits 7%. The Lot Coverage Site will consist of 7% where 12% is permitted.** (Refer to “Zoning Information” on ZLS Proposed, attached hereto and made a part hereof).

STANDARD OF REVIEW

Pursuant to the Zoning Regulations of the Town of Wilton ("Zoning Regulations"), the ZBA has the authority to "vary or adjust the strict application of these Regulations in only those cases where the *unusual size, shape or topography of a lot* or other *unusual physical conditions* pertaining to it . . . make it impossible to strictly apply a specific provision of these Regulations to such lot without resulting in an exceptional difficulty or unusual hardship, so that substantial justice shall be done and the public health, safety and welfare secured." (Sec. 29-13(2)) (emphasis added).

The ZBA is required to find "that there are special circumstances or conditions . . . applying to the lot . . . which are peculiar to such lot . . . and not apply generally to lots . . . in the neighborhood and which have not resulted from any willful act of the applicant. . . ." (Sec. 29-13(6)(a)). Further, the ZBA is required to find that "circumstances or conditions are such that the particular application of these Regulations would deprive the applicant of the *reasonable use of the lot* . . . and that the variance as granted by the ZBA is the minimum adjustment necessary to accomplish this purpose." (Sec. 29-13(6)(b)) (emphasis added). Moreover, the ZBA must find that "the granting of the variance shall be in harmony with the general provisions and intent of [the] Regulations and the Town's Plan of Development and shall not be injurious to the neighborhood or otherwise detrimental to the public health, safety and welfare" (Sec. 29-13(6)(c)) and "[t]hat the granting of the variance is not based upon the nonconformity of neighboring lots, uses, buildings or structures nor upon a financial or economic hardship." (Sec. 29-13(6)(d)).

The essential difficulty for Applicants is the straitened circumstance of being able to use only 20 feet of the available width of the entire lot (i.e., approximately 100 feet of lot width minus the dual 40 foot setback requirements, thereby leaving as remainder but a mere 20 feet for a structure to be located therein). Contrast this reality with the Zoning Regulations for a typical **R2A Residence** -- where **lot width** contemplates **200 feet**, with **40 foot setbacks**. The latter requirement thus contemplates 120 feet available for building in the width of the lot. **Twenty feet (20') versus One Hundred Twenty feet (120'): an 83 AND 1/3 % difference.**

The "unusual or exceptional hardship" basis shown by Applicants, therefore, fundamentally rests upon, and derives from, the oddly configured, or "peculiar," physical condition of the lot itself: It is roughly rectangular in configuration (really almost oblong in configuration); two longer sides, two shorter sides. The shorter sides--together with the application of 40 foot side setbacks **intended for lots of at least 200 feet in width** -- result in the unduly straitened circumstance of a highly improbable building space of a **mere 20 feet of building width space for the entire length of the lot.**

Such condition of the lot proper would certainly appear to call for the issuance of a variance by the ZBA. **When the shape or condition of a subject property itself causes the difficulty, that constitutes an appropriate occasion for the Board of Zoning Appeals to exercise its authorized powers and to issue a variance. No other lot in Wilton, in Applicants' present understanding, suffers from this same infirmity. It would appear to be a defect unique (i.e., unique to the subject property).**

The Connecticut Supreme Court has consistently held that a variance constitutes permission to act in a manner that is otherwise prohibited under a municipality's zoning laws and it is well established that the granting of a variance must be reserved for unusual or exceptional circumstances. "An applicant for a variance must show that, because of some peculiar characteristic of his property, the strict application of the zoning regulation produces an unusual hardship, as opposed to the general impact which the regulation has on other properties in the zone.... Accordingly, we have [concluded that a zoning board of appeals may] grant a variance only when two basic requirements are satisfied: (1) the variance must be shown not to affect substantially the comprehensive zoning plan, and (2) adherence to the strict letter of the zoning ordinance must be shown to cause unusual hardship unnecessary to the carrying out of the general purpose of the zoning plan...." *Mayer-Wittmann v. Zoning Board of Appeals*, 333 Conn. 624, 640, 218 A.3d 37 (2019).

In the present proposal, the Applicants have carefully considered dwelling configuration in an effort to design a dwelling that would approximate the allowable building envelope. Proposed setbacks are those which, essentially, already exist, generally about 20'-36' instead of 40' required. Overall **Lot Coverage** is now not only **fully compliant**, but is **under the 12% allowed, at 7%**, and **Building Coverage**, is now also **under the 7% allowed, at 6.8%**.

We emphasize that had the Property been two (2) acres in size as required, or at least, wider than 100', no variance for the side setback variances would be required at all for the proposed dwelling.

The Applicants, submit that the nonconforming lot dimensions, area, and lot width, pose within the confines of a 20' wide space, an exceptional legal hardship unique to their lot -- not of Applicants' own making -- and thus, deprives the Applicants, of reasonable use of the lot. These limitations create both obvious difficulties and unnecessary hardships which impair the Applicants' ability to achieve compliance with the regulations in connection with the proposed renovation of the existing 2 structures in order to create a habitable dwelling.

The authority of the ZBA is strictly limited by Connecticut law. True enough. The ZBA Board may, however, properly acknowledge that the inherent conditions and limitations of the lot, as such conditions and limitations currently exist, and which, notably, have not been created by the Applicants. The granting of the modest variances requested, is the minimum adjustment necessary to accomplish reasonable use of the property. Moreover, the granting of the variances requested, would be in harmony with the *intent* of the Regulations and the Town's Plan of Development, and would be, in no way, injurious to the neighborhood or otherwise detrimental to the public health, safety and welfare. **Because the hardship *has not been created by the Applicants, but rather is inherent as a unique, "peculiar," and existing condition of the property configuration itself*, the ZBA Board may confidently issue a Variance Permit, to the Applicants of the property.** By granting the minimum in the variances requested, the intent of the Regulations would be served because substantial justice would thereby be equally bestowed (i) upon the Applicants, who purchased the property *in good faith* (i.e., no detail of the Preliminary Title Report on the subject lot, nor any realtor -- whether seller's realtor or that of buyer) had disclosed the highly relevant detail of "nonconformity") and (ii) upon the integrity of the Zoning Regulation ordinances and their vigilant enforcement. By granting the Variance Permit to this "*unique*" property, the public health, safety, welfare, and beauty of the neighborhood, and the *intent* of the Zoning Regulations shall remain duly secured.

Robert R. Brina
Monica C. Brina
455 Thayer Pond Road
Wilton, CT 06897
(213) 361-6053
ggharmony24@yahoo.com

SCHEDULE B
Supplement to Application for Variances ¹

SIDE YARD SETBACK VARIANCES REQUESTED with DIMENSIONS
Wilton Zoning Regulations Sec. 29-5 D

WEST SIDE of RESIDENCE:

FRONT YARD SETBACK:

1. STAIRS: 48.0' proposed vs 50.0' required

NORTH SIDE of RESIDENCE (Existing house to be remodeled):

SIDE YARD SETBACK (EXISTING):

- | | | |
|----|---------------------------------------|---------------------------------|
| 2. | GARAGE/RESIDENCE (EXISTING): | 20.4' proposed vs. 40' required |
| 3. | RESIDENCE ROOF (EXISTING) | 35.0' proposed vs. 40' required |

SOUTH SIDE of RESIDENCE (Existing house to be remodeled):

SIDE YARD SETBACK (EXISTING):

- | | | |
|----|-------------------------------------|---------------------------------|
| 4. | RESIDENCE (EXISTING): | 37.4' proposed vs. 40' required |
| 5. | RESIDENCE ROOF (EXISTING): | 36.4' proposed vs. 40' required |

¹ Refer to Zoning Location Survey prepared by Ryan & Faulds Land Surveyors