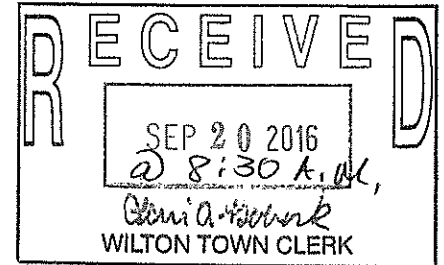


ZONING BOARD  
OF  
APPEALS  
Telephone (203) 563-0185  
Fax (203) 563-0284



TOWN HALL ANNEX  
238 Danbury Road  
Wilton, Connecticut 06897

**ZONING BOARD OF APPEALS  
REGULAR MEETING  
JUNE 20, 2016  
7:15 P.M.**



**TOWN HALL ANNEX - MEETING ROOM A**

**PRESENT:** Gary Battaglia, Chairman; Joshua Cole, Vice-Chairman; Brian Lilly, Secretary; Libby Bufano; Tracey Serpa; Andrew McNee, Alternate; Kenny Rhodes, Alternate; Ray Tobiassen, Alternate

**ABSENT:**

**A. CALL TO ORDER**

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

**B. PUBLIC HEARINGS**

**1. #16-03-02 HONEY HILL RD SO, LLC/QUINLAN HONEY HILL RD**

Mr. Battaglia referenced a letter dated June 20, 2016 from J. Casey Healy to Zoning Board of Appeals requesting that the application be withdrawn and indicating that the application will be refiled in the near future.

**2. #16-06-08 BEST FRIENDS TOTAL PET CARE 213 DANBURY RD**

Mr. Battaglia called the Hearing to order at approximately 7:16 P.M., seated members Battaglia, Bufano, Cole, Lilly, and Serpa, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest. Mr. Lilly read the legal notice dated June 7, 2016 and details of the application and the hardship as described on the application.

Present were J. Casey Healy, attorney; and Alex Desmarais, Owner/Chairman of Best Friends Total Pet Care.

Mr. Healy referenced a posted survey, noting the property boundaries and adjoining property owners. He explained that the existing building and parking setbacks are legally nonconforming since the property was developed prior to June 15, 1946 when zoning regulations were first adopted. He stated that the applicant wishes to connect the front building to the rear to provide for a doggy motel, which is a permitted use by Special Permit. He noted that the proposed connecting hall addition will comply with setback and coverage regulations, requiring only an FAR variance (Floor Area Ratio), although the proposed outdoor staircase at the rear, which will provide a separate/second means of egress from the building, will require setback variances. He explained that the setback variances are required since the rear of the property abuts a Residential (R-1A) zone.

He stated that the applicant would be eliminating some parking at the rear of the site, thus eliminating an existing nonconformity, and all southerly parking would be reconfigured in conformance with regulations, resulting in a total of 23 parking spaces as required. He noted that the lot is undersized in the General Business (GB) Zone where a 1-acre minimum lot is required. He noted further that if the lot were of the required minimum size, the proposed FAR, including the addition, would only be 0.293 and would be in conformance with the 0.35 permitted.

Addressing another Board question, Mr. Healy stated that the closest home to the property is 37 Orems Lane, which is approximately 380 feet away at its closest point.

Mr. Desmarais explained that dogs will be utilizing the outside dog runs, with the assistance of dog handlers, between 9AM-12PM and 3-5PM. He noted that the ratio of dog handlers (some of whom have been with the company for over 20 years) to dogs is approximately 1 to 18, and any barking and/or group play would be immediately addressed by moving the dog(s) inside. He also noted that the sloping nature of the back of the property, in addition to the large amount of timber in the area, provides additional screening from the closest residential properties. Mr. Healy added that there will also be fencing which will provide further shielding, and he confirmed that no outside dog walking is planned.

Mr. Rhodes cautioned Board members that their purview does not extend beyond looking at the proposed addition/site modifications and their resulting impacts on setbacks/bulk measurements.

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

Lucy Krupenye, 19 Orems Lane, stated that she was speaking on behalf of the neighborhood, all of whom are very concerned about the proposed site modifications adjacent to their residential properties. She stated that dog runs don't belong in a residential area because they can be very loud, and with the impending sale of Young's

property there is no way to know whether existing natural screening will remain on the site. She asked that the Board take neighbor concerns into consideration and deny the subject application.

Attorney Alan Spirer stated that he was representing the interests of his client, Dr. Ralph Hunt, whose property adjoins the subject parcel on the north. He expressed particular concern with the proposed expansion of an existing nonconformity, i.e. increasing the existing nonconforming FAR from 0.358 to 0.368. He noted further that the applicant needs to show that proposed variances will not affect substantially the comprehensive zoning plan and that the application of the regulations creates exceptional difficulty and unusual hardship, neither of which he felt the applicant demonstrated this evening.

He referenced recent Appellate Court decisions whereby the court has rearticulated the standards for a variance, in particular findings that expansion of existing nonconforming structures for more space or to modernize an antiquated building (which he felt was the situation with the subject application), were not considered to be adequate demonstration of hardship. He stated that this application will very much affect the comprehensive zoning plan, noting that Dr. Hunt is entitled to a setback, which he is not getting, and he is entitled to the property being made less nonconforming, not more.

Addressing the applicant's stated hardships in the application, Mr. Spirer stated that the development of the property prior to zoning does not create a hardship to warrant making the site even more nonconforming; rather it allows the continuing use of what is existing on the property but not to make it more nonconforming. He noted that the State did not take property from the site, but rather took an easement, and thus did not make the property any smaller. Finally, he stated that the current use of Young's Nursery (which is currently for sale) as a commercial property does not take away from the fact that part of that site is zoned residential, noting further that the Town should not be impacting the future use of Young's Property or of Dr. Hunt's property by granting variances on an abutting property.

In summary, he explained that to obtain a variance an applicant must show that without the variance there is a substantial diminution in the value of the property. He noted that the subject property was just purchased for over \$2 million and the buyer knew it was buying a nonconforming property and thus should have no expectation that it can make that property more nonconforming. He urged the Board to deny the variances requested.

Dan Fortin, 37 Orems Lane, stated that he and his wife have major concerns with the setbacks, noting that they moved here because they saw so much potential in the neighborhood. With Young's Nursery eventually moving out, he felt there will be huge potential for the neighborhood to grow beautifully, but abutting up against a property with dog runs will ultimately have a negative impact on the neighborhood. He noted further that there aren't a lot of woods in the winter months and barking is highly subjective,

questioning whether such a large group of dogs might actually violate the decibel levels currently permitted by zoning regulations. He concluded by pointing out that the applicant had not demonstrated any hardship to justify the proposed site modifications.

Mr. Healy responded to the issue of compliance with the Town Plan of Development, noting that kennels are a permitted use in the General Business Zone. Regarding the easement, he explained that the applicant just pointed that out since it's an area of the property that cannot be utilized in connection with any use on the property itself. He explained that the unusual distinct hardship is that this lot is undersized for the GB zone and it abuts residential property that is used commercially, and even though Young's is on the market, the site is not likely to be used residentially. He stated that the subject property is unique, noting that the aforementioned conditions of the site are not applicable to the other General Business-zoned properties in the neighborhood.

Mr. McNee questioned the validity of the applicant's assertion that Young's property would not be used residentially in the future. Mr. Healy explained that because Young's is split-zoned, it is not being looked at for residential uses.

In response to whether the staircase could be moved inside or into a conforming location, Mr. Healy stated that he did not know if it could be moved. He also concurred with Mr. Battaglia's observation that the proposed stairway would facilitate the use of the dog run/play area.

There being no further comments, the public hearing was closed at 7:56 P.M.

3. #16-06-09 GOLDSTEIN

3 CHURCH STREET

Mr. Battaglia called the Hearing to order at approximately 7:56 P.M., seated members Bufano, Cole, McNee, Serpa, and Tobiassen, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest. Mr. Lilly read the legal notice dated June 7, 2016 and details of the application and the hardship as described on the application.

Present was Greg Goldstein, owner/applicant.

Mr. Goldstein explained that they are doing a complete restoration of an 1890s Victorian. He stated that they found photos at the library showing that the home had a wrap-around porch in the past, and then during demolition, physical evidence of such a porch was also found. He explained that they would like to construct a front porch and connect it to the existing porch to bring the house back to its historical authenticity. He noted that they would also like to install an A/C unit in an area where it will be tucked in and screened with plantings, so that it will not be intrusive to surrounding neighbors.

In response to questions from the Board regarding hardship, Mr. Goldstein explained that the lot is very undersized at less than ¼ acre, but it is located in a Residential (R-1A) zone which requires a minimum 1-acre size parcel, and thus is pre-existing nonconforming. He stated that they don't know why the front porch was removed in the first place and noted that they are just trying to restore the home to its historical significance.

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

There being no further comments, the public hearing was closed at 8:09 P.M.

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

Mr. Battaglia called the Regular Meeting to order at 8:09 P.M., seated members Battaglia, Bufano, Cole, Lilly, McNee, Rhodes, Serpa, and Tobiasen, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest.

**1. #16-03-02 HONEY HILL RD SO, LLC/QUINLAN HONEY HILL RD**

Withdrawn.

**2. #16-06-08 BEST FRIENDS TOTAL PET CARE 213 DANBURY RD**

The Board discussed the application in detail.

Mr. Rhodes noted for the record that noise and use concerns are not issues over which this Board has purview. He felt that the property is pre-existing nonconforming with some issues involving egress, but he noted that there might be other ways to solve the egress problem.

Mr. Cole noted that the applicant is removing some existing nonconforming parking spaces and re-aligning others to be conforming; and he noted that the proposed addition would not be encroaching any closer to the property lines. He felt that the hardship is the undersized lot in a GB district which requires a minimum 1-acre lot size. He pointed out that it is not the purview of the ZBA to look at the surrounding neighborhood and the impacts of uses; but rather the Planning and Zoning Commission is charged with considering those aspects of an application.

Mr. Nerney noted that one of the findings the ZBA must make is whether the applicant is being denied reasonable use of the property if the variances are denied, taking into consideration the testimony of the applicant as well as the attorney and neighbors who spoke in opposition.

Mr. Cole went through the four findings that must be made for a variance to be granted, as delineated in Section 29-13.B.6 of zoning regulations. There was general consensus among Board members that finding #2, as to whether the applicant would be denied reasonable use of the lot or structure if the variances were denied, was not as clear as the other three conditions that have to be satisfied.

Ms. Serpa felt that the applicant would have reasonable use of the property without the proposed variances. Mr. McNee again questioned why the proposed staircase had to be located outside the structure and whether the applicant had considered other possible alternatives.

Mr. Lilly noted that the applicant would not be before the Board this evening if the lot were a full regular-sized lot in the GB zone. He also noted that the proposed connecting hallway requires just a slight increase in FAR, as requested by the applicant.

After further discussion, the majority of Board members felt that the proposed hallway satisfied the four required findings of the zoning regulations, but that the proposed stairway was not necessary for the applicant to have reasonable use of the property.

MOTION was made by Mr. Lilly, seconded by Mr. Cole, and carried (4-1) to **grant** the variance of Section 29-6.E.12 to allow a floor area ratio of 0.368 where 0.358 exists in lieu of the 0.35 permitted; as per submitted Zoning Location Survey prepared by Ryan and Faulds dated February 18, 2016; Site Plan C1.00 dated April 6, 2016, revised April 25, 2016; Architectural Floor Plans A101 and A102 dated April 22, 2016; and Exterior Elevation A201 dated April 25, 2016; on grounds that sufficient hardship was demonstrated due to the pre-existing nonconforming nature of the .795-acre lot which is located in the 1-acre minimum GB zone. Ms. Serpa opposed.

MOTION was made by Mr. Cole, seconded by Mr. Lilly, and carried unanimously (5-0) to **deny without prejudice** the variance of Section 29-6.E.4 to allow a rear yard setback of 48.85 feet from the property line and 44.0 feet from the zone line for an outdoor staircase in lieu of the 85 feet required; as per submitted Zoning Location Survey prepared by Ryan and Faulds dated February 18, 2016; Site Plan C1.00 dated April 6, 2016, revised April 25, 2016; Architectural Floor Plans A101 and A102 dated April 22, 2016; and Exterior Elevation A201 dated April 25, 2016; on grounds that sufficient evidence was not presented to establish that denial of the variance would deny the applicant reasonable use of the property, or that the variance requested was the minimum necessary to accomplish the purpose.

The Board requested that additional consideration be given to these concerns if the applicant decides to resubmit.

**3. #16-06-09 GOLDSTEIN**

**3 CHURCH STREET**

The Board briefly discussed the application.

It was the consensus of the Board that the pre-existing nonconforming .214-acre lot located in a 1-acre Residential zone represented a hardship for the applicant. The Board reviewed the four findings necessary to grant a variance and determined that all four findings were satisfied. Board members also felt that refurbishing such properties and bringing them back to historical authenticity was valuable to the Town.

MOTION was made by Ms. Bufano, seconded by Ms. Serpa, and carried unanimously (5-0) to **grant** variances of Section 29-5.D to allow construction of a front porch with front yard setbacks of 12.2 feet (School Street) and 37 (Church Street) where 40 feet is required, and a side setback of 23.2 feet where 30 feet is required; and to allow placement of A/C equipment with a side yard setback of 25.4 feet where 30 feet is required; and to allow building coverage of 10.5% where a max of 10% is allowed; as per submitted Map received June 1, 2016; two drawings depicting proposed front porch, received May 24, 2016; a drawing prepared by Sutherland Excavating Contractors, Inc., received May 24, 2016; on grounds that sufficient hardship was demonstrated due to the pre-existing nonconforming nature of the .214-acre lot and structure in the 1-acre Residential zone, and that it's consistent with the original photo.

**D. OTHER BUSINESS**

**1. Minutes – May 16, 2016**

MOTION was made by Mr. Battaglia, seconded by Ms. Serpa, and carried unanimously (8-0) to approve the minutes of May 16, 2016.

**E. ADJOURNMENT**

MOTION was made by Mr. Battaglia, seconded by Mr. Lilly, and carried unanimously (8-0) to adjourn at approximately 9:03 P.M.

Respectfully submitted,

Lorraine Russo  
Recording Secretary