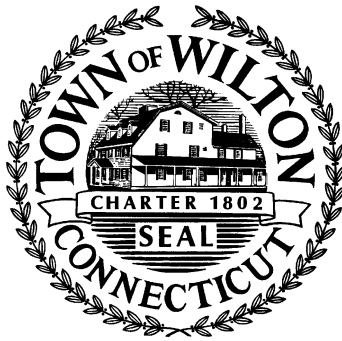


ZONING BOARD
OF
APPEALS
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TOWN HALL ANNEX
238 Danbury Road
Wilton, Connecticut 06897

**ZONING BOARD OF APPEALS
REGULAR MEETING
OCTOBER 21, 2013
7:15 P.M.
TOWN HALL ANNEX - MEETING ROOM A**

PRESENT: Sally Poundstone, Chairwoman; Timothy Meyer, Vice-Chairman; John Comiskey, Secretary; Brian Lilly; Libby Bufano, Alternate; Joe Fiteni, Alternate

ABSENT: Albert Nickel (advised intended absence)

A. CALL TO ORDER

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

B. PUBLIC HEARINGS

1. #13-10-16 GIORDANO 139 CEDAR ROAD

Ms. Poundstone called the Hearing to order at 7:15 P.M., seated members Bufano, Comiskey, Fiteni, Lilly, and Meyer, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest. Mr. Comiskey read the legal notice dated October 8, 2013 and details of the application and the hardship as described on the application. He also referenced photos that were submitted with the application package.

Present was Karen Giordano, applicant/owner.

Ms. Giordano stated that the applicants need a shed for additional storage, noting that the property is very challenging given its wooded and multi-tiered topography and the nonconforming placement of the house on the site. She stated that there is no alternative location on the property for the shed, given accessibility issues with the driveway and the unique topography of the site. She noted further that they spoke with their adjoining neighbors, the Amelios, who indicated that they have no problem with the proposed shed location.

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In response to a question from Ms. Poundstone regarding an already existing shed on the property, Ms. Giordano explained that it is more of an outhouse-type structure, i.e. quite small; it is infested with spiders; and its bottom is falling apart.

Noting that coverage percentages were not included on the application, Mr. Comiskey asked whether building and site coverage numbers for the site will be compliant if the proposed shed is approved. Upon further review of the site plan, both Mr. Fiteni and Town Planner Nerney were of the opinion that coverage percentages would likely not be an issue on the subject site, although Mr. Nerney explained that such numbers would be confirmed by staff if the variance is granted.

Ms. Poundstone asked if anyone wished to speak for or against the application.

There being no further comments, the public hearing was closed at 7:23 P.M.

2. #13-10-17 MANNIX 8 SEELEY ROAD

Ms. Poundstone called the Hearing to order at 7:23 P.M., seated members Bufano, Comiskey, Fiteni, Lilly, and Meyer, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest. Mr. Comiskey read the legal notice dated October 8, 2013 and details of the application and the hardship as described on the application.

Present was Dennis Peters, on behalf of the applicants.

Mr. Peters briefly reviewed details of the application. He stated that the applicants have owned their home since 2001 and would like to add a mudroom by enclosing an existing breezeway that currently connects the residence to a detached garage. He explained that portions of the garage and breezeway are located within the side yard setback, which was changed due to rezoning of the property after the residence was constructed, creating the current nonconformity. He stated that a covered porch, which necessitates this application, is also proposed for aesthetics and for functionality of the floor plan and driveway. He explained that the face of the expansion will line up with the face of the existing garage and thus would not encroach farther into the side yard setback line. He noted further that the existing covered area of the breezeway would not require a variance per guidance from Zoning Enforcement Officer Tim Bunting.

In response to a question from Ms. Poundstone, Mr. Peters confirmed that a portion of the existing driveway that is currently very close to the property line would be removed and the driveway would be reconfigured closer to the residence and farther away from the property line. He thought that the applicant would be amenable to making said driveway reconfiguration a condition of approval if the Board so desired.

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In response to a question from Mr. Fiteni, Mr. Peters stated that a landing is not part of the subject application, noting that the applicants have not yet determined what they would like to do in that regard, but he explained that the hallway would have been exceedingly narrow without the proposed porch addition.

Ms. Poundstone asked if anyone wished to speak for or against the application.

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

3. 13-10-18 PENDERGAST 133 SKUNK LANE

Ms. Poundstone called the Hearing to order at 7:34 P.M., seated members Bufano, Comiskey, Fiteni, Meyer, and Poundstone, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest. Mr. Comiskey read the legal notice dated October 8, 2013 and details of the application and the hardship as described on the application. He referred for the record to letters of opposition from Rebecca Madeira and Grant Castle dated October 16, 2013, with cover letter dated October 17, 2013, emailed from Rebecca Madeira to Lorraine Russo; and from Sandy Strain to Town of Wilton dated October 17, 2013, with site plan and photo attachments.

Present were Christian and Meghan Pendergast, owners/applicants.

Mr. Pendergast stated that he grew up in Wilton and they have always wanted a pool. He noted that before they purchased their home, they contacted someone in Town who told them that obtaining approvals for a pool shouldn't be an issue. He explained that due to the positioning of the residence on the site, their front yard is actually considered a side yard for purposes of setback regulations, and their side yard is considered a front yard. He noted further constraints on the property due to the location of the well, the septic and the driveway, which leaves the right rear corner as the only possible pool location.

Mr. Pendergast explained that they did not realize the property was already over its allowed site coverage when they purchased it (at 17% site coverage where only 12% is permitted). In that regard, he noted the undersized, nonconforming nature of the .856-acre parcel which is located in and constrained by two-acre residential zoning requirements. He stated that they spoke with a neighbor abutting their property, who also has a pool for which a variance was granted, and said neighbor had no issue with the subject application as proposed. He passed around photos for the Board's review.

Mr. Lilly noted that pool equipment did not appear to be included on the submitted site plan and he questioned what impact the additional equipment might have on coverage numbers for the site. Mr. Nerney confirmed that site coverage would be impacted but not building coverage. Mr. Pendergast indicated that any such equipment would be located

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on a small, 2.5-foot concrete pad and would be located up against the house. Mr. Nerney suggested that if the pool application were approved, then perhaps the patio could be modified/reduced slightly to offset the additional equipment-generated site coverage.

Several questions arose as to the origin of the undersized lot and whether it was pre-existing nonconforming, given the fact that the house was so recently constructed in 2004. Mr. Pendergast explained that the property was not a part of an old subdivision, noting that there was a pre-existing small house on the property, which was knocked down so that the current residence could be constructed.

A question also arose as to how the 17% site coverage was permitted when a maximum of 12% is allowed in this zone. Mr. Nerney did not know how the excess site coverage evolved.

Mrs. Pendergast explained further that they are a dual-working couple with two young children, unable to afford a country club membership, and the pool would be especially appreciated by their children during the day when they are not home.

Ms. Poundstone asked if anyone wished to speak for or against the application.

Jennifer Kearney, tenant at 143 Skunk Lane, stated that she was present on behalf of, and serving as proxy for, her landlords Rebecca Madeira and Grant Castle, who have lived in Wilton over 30 years. She noted that she rents one of the four homes that they own, three of which are on an abutting property, and all of which have consistently been invested in by Ms. Madeira and Mr. Castle over the years. She stated that the subject site is a nonconforming lot with known significant density challenges that the current owners were aware of at time of purchase and thus, in the opinion of her landlords, the cited hardship is not credible.

She cited the ZBA definition of a variance as an exception from the terms or standards of the zoning regulations for an individual property, which may be granted where special conditions and literal enforcement of the regulations would result in exceptional difficulty or unusual hardship for the owner; she stated that it would be difficult to argue that a swimming pool meets this definition/requirement.

She emphasized the equity impact that the proposed site modifications would have on the Madeira/Castle properties, making it difficult to attract new tenants as well as retain existing tenants. She concluded by noting that in 2004 a building permit for the property was granted with strict limitations on the location and size of structures, patios and driveway, after a request in 2003 for an expanded patio was rejected by the ZBA due to density and setback issues. She questioned why the ZBA would grant the current application when it denied the 2003 variance request.

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With respect to the cited history of past approvals/variances on the property, Mr. Nerney advised the Board that it may not want to consider such information, but rather just focus on the request before it today. He referenced Section 29-13.B.6 of zoning regulations pertaining to criteria for granting a variance, and he recommended that the Board go through said criteria methodically during its review process for each application.

Sandy Strain, 139 Skunk Lane, stated that she opposed the application. She noted that the applicant's proposed pool would be approximately 22 feet from her bedroom and would laterally span a large portion of her home, which is pre-existing and situated 7 feet at its closest point from their shared property line. She felt that the proposed site modifications, along with related activities that would result from such site improvements, would devalue her property.

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

C. APPLICATIONS READY FOR REVIEW AND ACTION

Ms. Poundstone called the Regular Meeting to order at 7:56 P.M., seated members Bufano, Comiskey, Fiteni, Lilly, Meyer, and Poundstone, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest.

1. #13-10-16 GIORDANO 139 CEDAR ROAD

The Board briefly discussed the application. It was the consensus of the Board that a hardship was proved in connection with the variance request.

MOTION was made by Mr. Lilly, seconded by Mr. Meyer, and carried unanimously (5-0) to **grant** a variance of Section 29-5.D to allow a shed with a 25.5-foot side yard setback in lieu of the required 40 feet, as per "Zoning Location Survey" prepared by Brautigam Land Surveyors, P.C., dated September 13, 2013; on grounds that sufficient hardship was demonstrated due to topography and also the pre-existing nonconforming areas of the yard.

In response to a question from the Board, it was confirmed that due to the proximity of the property to the Weston Town line, a letter was sent to the Weston Town Clerk by Robert Nerney dated September 27, 2013, advising the Town of the subject application.

2. 13-10-17 MANNIX 145 MILLSTONE ROAD

The Board discussed details of the application.

Mr. Lilly noted that the garage is already pre-existing nonconforming and the proposed site modifications are not going any farther into the setback than the existing garage face. He felt that the applicant was trying to deal with the property shape as best he could by proposing as much of the improvements as possible in the conforming area of the site.

Ms. Poundstone referred positively to the proposed driveway relocation that would move it away from its current, very close location to the property line. Also addressing the proposed driveway relocation/reduction, Mr. Comiskey felt that the site would work better as a result, although he acknowledged that it is not actually a part of the variance application.

MOTION was made by Ms. Bufano, seconded by Mr. Lilly, and carried unanimously (5-0) to **grant** a variance of Section 29-5.D to allow a building addition with a 33-foot side yard setback in lieu of the required 40 feet, as per “Map of Property” prepared by Dennis A. Deilus, dated September 22, 2013; on grounds that sufficient hardship was demonstrated given the pre-existing nonconforming nature of the garage and the fact that the proposed structure would be in line with that already existing structure.

A question arose regarding the possible inclusion of a condition of approval requiring the driveway reconfiguration/reduction as indicated in the proposed plans. However, Mr. Nerney noted that the driveway is currently compliant and would be compliant post-construction, and therefore he did not recommend setting a higher standard for the applicant than what is required by zoning regulations.

3. 13-10-18 PENDERGAST 133 SKUNK LANE

Addressing the subject application, Mr. Fiteni stated that he did not see any hardship. He noted that the house, which was built in 2004, is currently in conformance with required setbacks. He felt that it would not be in the best interest of the Town and would just exacerbate the existing site coverage nonconformance issue by now adding setback nonconformance to the site. He noted that the applicants were aware of the situation when they purchased the house and he did not feel that they were being denied reasonable use of the property. He stated that granting the application would be detrimental to the neighbors, noting that the intent of zoning regulations is never to have something such as a pool so close to a property line.

Mr. Comiskey stated that he was in agreement with Mr. Fiteni’s comments.

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MOTION was made by Mr. Fiteni, seconded by Ms. Poundstone, and carried unanimously (5-0) to **deny** variances of Section 29-5.D and 29-4.C.5 to allow construction of a swimming pool with a side yard setback of 15 feet in lieu of the required 40 feet; a swimming pool patio with a side yard setback of 12 feet in lieu of the required 20 feet; building coverage of 8.3% in lieu of the maximum allowable 7.0%; and site coverage of 19.1% in lieu of the maximum allowable 12%; on grounds that sufficient hardship was not demonstrated.

D. OTHER BUSINESS

1. Minutes – September 16, 2013

MOTION was made by Mr. Lilly, seconded by Ms. Bufano, and carried unanimously (6-0) to approve the minutes of September 16, 2013.

E. ADJOURNMENT

MOTION was made by Ms. Poundstone, seconded by Mr. Lilly, and carried unanimously (6-0) to adjourn at 8:10 P.M.

Respectfully submitted,

Lorraine Russo
Recording Secretary