

ZONING BOARD  
OF  
APPEALS  
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TOWN HALL ANNEX  
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**WILTON ZONING BOARD OF APPEALS MINUTES \*  
FEBRUARY 20, 2018 – REGULAR MEETING**

**PRESENT:** Joshua Cole, Chairman; Gary Battaglia, Vice-Chairman; Tom Gunther, Secretary;  
Libby Bufano; Kenny Rhodes; Jaclyn Coleman, Alternate

**ABSENT:** Tracy Serpa, Alternate

**A. NOMINATION & ELECTION OF OFFICERS  
Chairman**

**MOTION** was made by Mr. Battaglia, seconded by Ms. Bufano to nominate Josh Cole for the position of Chairman, Zoning Board of Appeals.

Mr. Rhodes indicated a willingness and desire to serve as either Chairman or Vice-Chairman.

**MOTION** was made by Mr. Gunther, seconded by Mr. Cole to nominate Kenny Rhodes for the position of Chairman, Zoning Board of Appeals.

No additional nominations were proffered and nominations were closed.

Regular members of the Board voted (2-0-1) in favor of electing Josh Cole to the position of Chairman, with Board Members Battaglia and Bufano voting in favor, and Cole abstaining.

Regular members of the Board voted (2-0) in favor of electing Kenny Rhodes to the position of Chairman, with Board Members Gunther and Rhodes voting in favor.

In light of the tie vote, the votes were retaken.

Regular members of the Board voted (3-0) in favor of electing Josh Cole to the position of Chairman, with Board Members Battaglia, Cole, and Bufano, all voting in favor.

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Regular members of the Board voted (2-0) in favor of electing Kenny Rhodes to the position of Chairman, with Board Members Gunther and Rhodes voting in favor.

Josh Cole was re-elected to the position of Chairman.

**Vice-Chairman**

MOTION was made by Mr. Cole, seconded by Mr. Gunther to nominate Kenny Rhodes for the position of Vice-Chairman, Zoning Board of Appeals.

No additional nominations were proffered and nominations were closed.

All regular members of the Board voted (5-0) in favor of electing Kenny Rhodes to the position of Vice-Chairman.

**Secretary**

MOTION was made by Mr. Cole, seconded by Mr. Rhodes to nominate Tom Gunther for the position of Secretary, Zoning Board of Appeals.

No additional nominations were proffered and nominations were closed.

All regular members of the Board voted (5-0) in favor of electing Tom Gunther to the position of Secretary.

**A. CALL TO ORDER**

Mr. Cole called the meeting to order at approximately 7:25 P.M. He briefly reviewed the hearing process for applications that come before the Zoning Board of Appeals.

**B. PUBLIC HEARINGS**

**1. #18-01-01 SHUTSIKAU 285 CHEESES PRING ROAD**

Mr. Rhodes recused himself, indicating a prior business relationship with the applicant, and he left the meeting room.

Mr. Cole called the Hearing to order at approximately 7:25 P.M., seated members Battaglia, Bufano, Cole, Coleman, and Gunther, and referred to Connecticut General

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Statutes, Section 8-11, Conflict of Interest. Mr. Gunther read the legal notice dated February 6, 2018 and details of the application and the hardship as described on the application.

Present were Mikalai Shutsikau and Veletta Syaglova, applicant/owners.

Mr. Shutsikau posted plans and renderings. He explained details of the application, noting their intent to build an addition/add another story onto their one-story house, with a pergola in the rear yard. He noted that the residence was built in 1954 and the existing garage is located within the setback. He cited constraints/hardships of the subject parcel, including the irregular shape of the lot, extensive wetlands located on two sides of the house, and the location of the septic and reserve septic. He cited the difficult design of the existing flat roof and noted further that they would not be moving the exterior walls nor would they be moving the proposed rear patio out any farther than the existing house line.

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

There being no comments, at approximately 7:40 P.M. the public hearing was closed.

Mr. Rhodes returned to the meeting room.

### **2. #18-01-02 MEJIA**

### **218 HURLBUTT STREET**

Mr. Cole called the Hearing to order at approximately 7:40 P.M., seated members Battaglia, Bufano, Cole, Gunther, and Rhodes, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest. Mr. Gunther read the legal notice dated February 6, 2018 and details of the application and the hardship as described on the application.

Present were Carlos Mejia, applicant/homeowner; and Eduardo Zunka, representing the applicant.

Mr. Zunka reviewed details of the application, noting that the existing house, which is located in the northwest corner of the lot, is very small and in need of a significant amount of work. He explained that the plan is to increase the number of bedrooms from 2 to 3; raise the ridge of the roof to accommodate greater than a 7-foot ceiling; and move the central stairway to improve circulation. Hardships were noted, including the corner location of the nonconforming structure; the ½-acre size of the lot which is located in and constrained by two-acre zoning requirements; the deteriorating condition of the structure; and the overall difficulty of doing any site modifications without intruding into the

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required setbacks.

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

Mr. Fogerty, 226 Hurlbutt Street, spoke on behalf of his wife (owner, 226 Hurlbutt Street) and neighbors Pforzheimers (199 Hurlbutt Street) and Bells (245 Hurlbutt Street). He distributed handouts with 14 tabs, including field cards, maps and photos of the property (copy of which is available in file #18-01-02 in Planning and Zoning office-Town Hall Annex). He referenced 2015 case law *Verrillo vs. ZBA of the Town of Branford* which sets forth the parameters for establishing hardship in connection with the granting of variances by Zoning Boards of Appeals. Referencing documents included in the handout, he stated that the subject application does not meet the strict standards established by way of the foregoing case and thus the requested variances should not be granted by this Board.

In support of his opinion and referencing the aforementioned handout tabs, he noted that the site has accommodated a family home/residence since 1924 and should not be intensified or expanded to suit someone's design needs or to increase the size of the home. He noted for the record that the applicant is actually proposing an expansion to 4 bedrooms, 2.5 baths from the existing 3 bedrooms and 2 baths. He noted further that the lot is capable of accommodating a modest home built to conform to today's zoning requirements should the applicant choose to either move the current structure or rebuild. He also noted for the record that an area referred to by the applicant earlier as a laundry room actually projects into the setback and constitutes a zoning violation, i.e. it was not lawfully permitted, and thus an existing encroachment will be further expanded by way of the subject application.

In summary, Mr. Fogerty stated that the applicant has no right to expand, absent demonstrated hardship with respect to the particular nature of the property. He stated that the home could be refurbished or it could be rebuilt as a conforming structure on the property.

Regarding the location of the well, Mr. Fogerty referenced Building Department plans indicating that the well is located somewhere south of the garage, noting further that a proper site development plan was not submitted by the applicant since the locations of the septic and well were not identified on the submitted survey.

He stated that he would welcome the opportunity to work with the applicant to find a solution to improve the property.

In response, Mr. Zunka explained that the property was purchased by the applicant in its current condition, noting that the laundry area intrusion into the setback was included as

part of the subject variance request. He stated that the exact locations of both the septic system and the well will be determined once the variance application is resolved, although he noted that the septic appears to be located towards the center of the lot by following a pipe on the property; and similarly with the well. He noted again the very small sizes of the existing rooms and the need to expand to make the home more livable.

There being no further comments, the public hearing was closed at approximately 8:39 P.M.

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

Mr. Cole called the Regular Meeting to order at approximately 8:40 P.M., seated members Battaglia, Bufano, Cole, Gunther, and Rhodes, and referred to Connecticut General Statutes, Section 8-11, Conflict of Interest.

**1. #18-01-01 SHUTSIKAU 285 CHEESESPRING ROAD**

Mr. Rhodes was recused and left the meeting room; Ms. Coleman was seated.

Mr. Cole referenced Section 29-13.B of zoning regulations regarding the four findings that are necessary to grant a variance. He felt that findings 1, 3 and 4 were clearly satisfied via the special circumstances/conditions of the irregularly shaped lot; the location of the septic and wetlands; the pre-existing nonconforming placement of the house on the lot; the fact that the variance would not be detrimental in any way to the neighborhood or to public health, safety and welfare; and that it is not based upon the nonconformity of any neighboring lots, uses, buildings, etc. or upon a financial or economic hardship. He questioned whether the application fully satisfied finding #2 requiring a determination that not granting the variance would deprive the applicant of reasonable use of the lot or structure. In that regard, he questioned whether the proposed modifications might represent more of a design element.

Mr. Battaglia felt that the proposed modifications represented more than just a design element. Mr. Gunther felt that the proposed changes represented the minimum necessary to accomplish the desired adjustment to the property.

It was the consensus of the Board to move forward with a motion to approve.

**MOTION** was made by Ms. Bufano, seconded by Mr. Battaglia, and carried unanimously (5-0) to **grant** the variance of Section 29-5.D to allow a building addition and pergola with a 24.1 foot rear yard setback in lieu of the required 50 feet; as per submitted Zoning Map of Property, dated September 21, 2017, prepared by

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Dennis A. Deilus; and Drawings P1 thru P8, dated January 9, 2018, prepared by Sunny House Construction; on grounds that sufficient hardship was demonstrated, having satisfied the aforementioned four findings necessary to grant a variance, including the preexisting nonconforming nature of the structure; the irregularly shaped lot; constraining features of the parcel, including location of the septic and extensive wetlands; and in particular the fact that the variance as proposed is the minimum adjustment necessary to accomplish the purpose.

**2. #18-01-02 MEJIA**

**218 HURLBUTT STREET**

Mr. Rhodes returned.

Mr. Cole again referenced Section 29-13.B of zoning regulations regarding the four findings that are necessary to grant a variance. While acknowledging special circumstances/conditions unique to the subject lot, including its undersized nature in a 2-acre zone and the existing nonconforming location of the existing house (none of which applies to other lots in the neighborhood), he felt that finding #2, i.e. denial of the variance would deprive the applicant of reasonable use of the lot or structure, was more challenging to satisfy for each of the variances requested in the application. He referenced the *Verrillo* case cited earlier as a high standard to overcome, noting further that a variance had been granted for the property in 1969 and the house had been in use as a functioning residence through 2007.

Mr. Rhodes cited many faults with the application itself, questioning how the Board could make a proper decision given the lack of some important information on the survey, e.g. where the wetlands, well, and septic are all located. In that regard, he felt that the hardship as stated was unclear.

Mr. Battaglia had questions as to whether denial of the variances might in fact deny the applicant reasonable use of the structure, if not the lot itself, noting that it is not a livable residence in its current condition.

A question arose as to whether the application should be tabled to give the applicant more time to develop a modified design to reduce the overall impact such that it will be the absolute minimum adjustment necessary to accomplish the purpose. It was the consensus of the Board and staff that it would be better from a legal perspective for the applicant to submit a new application, if so desired, and for the Board to take action on the matter before it this evening.

Mr. Gunther stated that he was inclined to approve the application because he felt it satisfied all four of the necessary findings, noting in particular that denial would, in his

opinion, deny the applicant reasonable use of the property.

**MOTION** was made by Mr. Cole, seconded by Mr. Rhodes, and carried (4-1) to **deny** variances of Section 29-5.D. (i) to allow construction of a deck with a front yard setback of 11 feet where 50 feet is required and a side yard setback of 20 feet where 40 feet is required; (ii) to allow construction of various additions to an existing residence with a front yard setback of 20 feet where 50 feet is required, a side yard setback of 6 feet where 40 feet is required, and a rear yard setback of 32 feet where 50 feet is required; and (iii) to allow expansion of a deck and construction of various additions to a residence resulting in site coverage of 16% where a maximum of 12% is permitted and building coverage of 10% where a maximum of 7% is permitted; on grounds that sufficient hardship was not demonstrated, with particular reference to the fact that insufficient evidence was presented that denial of the variances would deprive the applicant of reasonable use of the lot or structure. Mr. Gunther opposed.

It was noted that if the applicant elects to submit a new application, the Board is not obligated to hear the application for up to 6 months if it deems the application to be essentially the same as the subject application.

**D. OTHER BUSINESS**

**1. Approval of Minutes – November 9, 2017 (Special Meeting)**

**MOTION** was made by Mr. Cole, seconded by Mr. Battaglia, and carried (5-0-1) to approve the minutes of November 9, 2017. Mr. Gunther abstained.

**2. Proposed Meeting Schedule – 2018**

**MOTION** was made by Mr. Cole, seconded by Ms. Bufano, and carried (6-0) to approve the 2018 proposed Meeting Schedule.

**3. Plan of Conservation and Development Update (POCD)**

Mr. Cole briefly updated Board Members concerning the ongoing POCD rewrite process. He noted that a working group has been formed including all Planning and Zoning Commissioners as well as a representative from each of the major Town Boards/Commissions. He explained that he has been attending the workshop group meetings as the ZBA representative and has submitted an initial response to a Milone and MacBroom (MMI) questionnaire on behalf of the Board. He noted that said response could still be updated/modified if the Board so desired, although he felt that the ZBA has

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a very limited charge in that it does not set policy or engage in planning for the Town. He recommended, however, that members involve themselves in the process as individual residents. He referenced a POCD-dedicated website that has been developed by MMI (Wilton2029.com) and he noted that the next workshop meeting, which will focus primarily on issues of housing in Town, is scheduled for Thursday, February 22<sup>nd</sup> at 7 PM. at Trackside.

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Mr. Cole also indicated that he would circulate for everyone's reference the aforementioned *Verrillo vs. ZBA Branford* case.

**E. ADJOURNMENT**

MOTION was made by Mr. Cole, seconded by Mr. Rhodes, and carried unanimously (6-0) to adjourn at approximately 9:48 P.M.

Respectfully submitted,

Lorraine Russo  
Recording Secretary