STATE OF CONNECTICUT – COUNTY OF TOLLAND
INCORPORATED 1786

TOWN OF ELLINGTON

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ZONING BOARD OF APPEALS
REGULAR MEETING AGENDA
MONDAY, JULY 1, 2024, 7:00 PM

IN-PERSON ATTENDANCE: TOWN HALL ANNEX, 57 MAIN STREET, ELLINGTON, CT
REMOTE ATTENDANCE: VIA ZOOM MEETING, INSTRUCTIONS PROVIDED BELOW

I. CALL TO ORDER:

II. PUBLIC COMMENTS (ON NON-AGENDA ITEMS):

III. PUBLIC HEARING(S):

1. V202406 – Stephen D. Williams, owner/applicant, request for variance of the Ellington Zoning Regulations Section 3.2.3-Minimum Yard Setbacks: to reduce the front yard setback from 35ft to 9ft on Wendell Road and the rear yard setback from 25ft to 11ft to construct a single-family dwelling at 37 Wendell Road, APN 169-019-0000 in a Residential (R) zone. ***(Continued from June 3, 2024, meeting.)***

2. V202404 – Gondal Corporation, owner/applicant, to appeal a decision from the Zoning Enforcement Officer dated March 27, 2024, of Section 6.3.2-General, Section 6.3.9-Illumination, and Section 6.3.10-Prohibited Signs at 83 West Road, APN 028-056-0000 in a Commercial (C) zone. ***(No proof of notice to abutters.)***

VI. ADMINISTRATIVE BUSINESS:

1. Approval of the June 3, 2024, Regular Meeting Minutes.
2. Correspondence/Discussion:

V. ADJOURNMENT:

Next Regular Meeting Scheduled for Monday, August 5, 2024

Instructions to attend remotely via Zoom Meeting listed below. The agenda is posted on the Town of Ellington webpage (www.ellington-ct.gov) under Agenda & Minutes, Zoning Board of Appeals.

Join Zoom Meeting via link:
https://us06web.zoom.us/j/82506255184
Meeting ID: 825 0625 5184
Passcode: 755948

Join Zoom Meeting by phone:
1 646 558 8656 US (New York)
Meeting ID: 825 0625 5184
Passcode: 755948

From: Edward Schenkel
To: Barbra Galovich; John Colonese
Subject: Ellington Zoning Board of Appeal - Gondal
Date: Tuesday, June 25, 2024 1:34:17 PM

Dear Barbra and John,

I no longer represent Gondal Corp. or Hussnain Gondal. Please direct all communications to him regarding the zba appeal. You have his email and phone number.

I have emailed him to contact you about the July 1st hearing and advised him to attend and to retain a new attorney.

Thank you.

Regards,

Edward M. Schenkel, Esq.
Tel: 860.997.7835
ESchenkel@Schenkellaw.com

Law Offices of Edward M. Schenkel, LLC
Connecticut Office:
157 Church Street, 19th Floor | New Haven, CT 06510

New York Office:
3950 Blackstone Avenue, Suite 6E | Bronx, NY 10471

WE DO NOT ACCEPT OR REQUEST CHANGES TO WIRING INSTRUCTIONS VIA EMAIL. ALWAYS CALL TO VERIFY.

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June 24, 2024

VIA EMAIL TO jcolonese@ellington-ct.gov ONLY

Sulakshana N. Thanvanthri,
Chair, and Members
Ellington Zoning Board of Appeals
P.O. Box 187
57 Main Street
Ellington, CT 06029

John D. Colonese
Ellington Town Planner/Zoning
& Wetlands Officer
P.O. Box 187
57 Main Street
Ellington, CT 06029

Re: Application of Stephen Williams for a Variance From the Front And Rear Yard Setbacks at 37 Wendell Road, Ellington, CT

Dear Chair Thanvanthri, Board Members, and Mr. Colonese:

This memorandum is written in support of Mr. Williams's pending variance application, number V202406.

Connecticut courts have held that the presence of wetlands, or natural features limiting where improvements can be built, are textbook cases of unique "legal hardship" warranting variance approval. Here, wetlands encompass nearly the entire eastern half of Mr. Williams's property. Approving Mr. Williams's variance application would be consistent with those cases determining that the presence of wetlands justifies variance approval. The following is an explanation of some of those cases, copies of which have been attached to this letter.

- *Levy v. Town of Westport*, 2007 WL 3318079 (Conn. Super. Ct., Oct. 25, 2007): Variance from two-acre minimum buildable lot area upheld where wetlands and front yard setback restricted buildable area on the property to 1.2 acres.

- *Simonson v. Town of Darien Zoning Bd. of Appeals*, 2011 WL 2150697 (Conn. Super. Ct., May 6, 2011): Court held that wetlands, a pond, and a watercourse on a parcel restricting where home could be built was legal hardship justifying variance approval from yard setback.

- *Fifteen N. Plains Indus. Rd., LLC v. Town of Wallingford Zoning Bd. of Appeals*, 2004 WL 2287744 (Conn. Super. Ct., Sept. 22, 2004): Variance approved to allow commercial processor to move equipment and earth materials from the center of the site, predominated by wetlands, to a non-wetland area within the side yard setback.

The volume of wetlands on Mr. Williams's property is also unique, and distinguishable from the conditions of other lots in the Pine Street neighborhood. Indeed, Mr. Williams's property is one of the few undeveloped lots remaining on Pine Street, Cedar Street, and Elm Street.

Variance approval would allow Mr. Williams to build a modest single family home, which use is consistent with others in the Pine Street neighborhood, without permanently disturbing the on-site wetlands. For this reason, we respectfully request the Board grant Mr. Williams variance approval.

Thank you for attention to this matter.

Very truly yours,

Andrew R. Morin

CC: Stephen Williams: sdwhomes@gmail.com

Barbra A. Galovich: bgalovich@ellington-ct.gov

2007 WL 3318079
Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Superior Court of Connecticut,
Judicial District of Fairfield.

Robert LEVY et al.
v.
TOWN OF WESTPORT.

No. CV064015543.
|
Oct. 25, 2007.

Attorneys and Law Firms

Lisa Kasden Kent, Westport, for Doree Levy.

Wake See Dimes Bryniczka Day & Bloo, Westport, for Westport Zoning Board of Appeals.

Opinion

OWENS, J.T.R.

***1** The plaintiffs, Robert and Doree Levy, appeal from a decision of the defendant, the Zoning Board of Appeals of the town of Westport (board), in which the board granted a request for a variance.

The plaintiffs commenced this action on March 15, 2006, when service of process was made on the defendant. (Marshal's return.) The plaintiffs are residents of Westport, Connecticut, and abutting neighbors of Ralph and Lynn Hymans. (Return of Record [ROR], Exhibit 2.) The plaintiffs are challenging the variance granted to the Hymans in March 2006. The Hymans purchased the lot in question in 1977 and it consists of 1.6 acres. (ROR, Exhibit 17.) With wetlands on the property and 50-foot setbacks, the lot is reduced to 1.2 buildable acres in a AAA (2-acre) zone. (ROR, Exhibit 17.) The Hymans first sought a variance in October 2005 to allow them to construct a new home within the side setbacks on a nonconforming lot. (ROR, Exhibit 6.) At that time, the plaintiffs did not have notice of the application hearing. (ROR, Exhibit 6.) The Hymans' application was denied because the board felt the proposed home was too big for the lot. (ROR, Exhibit 16.) The Hymans applied again in February 2006. (ROR, Exhibit 5.) They revised their proposal and sought a variance for a smaller home to be built on the lot, The plaintiffs were apprised of this meeting and were in attendance. (ROR, Exhibit 6.) The Hymans were granted a variance. (ROR, Exhibit 5.) The board cited wetlands, topography and setbacks as reasons for granting the variance. (ROR, Exhibit 5.)

This appeal was tried to this court on October 2, 2007. The plaintiffs were present, as was Attorney Ira Bloom for the board. The Hymans did not attend.

General Statutes § 8-8 governs an appeal from a decision of a zoning board of appeals. An appeal to the court from an administrative body exists "only under statutory authority ... Appellate jurisdiction is derived from the ... statutory provisions by which it is created, and can be acquired and exercised only in the manner prescribed." (Internal quotation marks omitted.) *Nine State Street, LLC v. Planning & Zoning Commission,* 270 Conn. 42, 46, 850 A.2d 1032 (2006).

A person must be aggrieved in order to have standing to maintain an administrative appeal. *Moutinho v. Planning & Zoning Commission,* 278 Conn. 660, 664, 899 A.2d 26 (2006). Pleading and proof of aggrievement are prerequisites to the court's jurisdiction over a plaintiff's appeal. *Id.,* at 664, 899 A.2d 26. Aggrievement is a factual question for the trial court. *Id.,* at 665, 899 A.2d 26.

Here the plaintiffs allege aggrievement as the owners of an abutting parcel of land. At trial on October 2, 2007 the Court found the plaintiffs to be aggrieved.

General Statutes § 8-8(b) provides that "[an] appeal shall be commenced by service of process in accordance with subsections (f) and (g) of this section within fifteen days from the date that notice of the decision was published as required by the general statutes."

***2** General Statutes § 8-8(f)(2) further provides that "[for any appeal taken on or after October 1, 2004, process shall be served in accordance with subdivision (5) of subsection (b) of section 52-57." Section 52-57(b) states that "[p]rocess ... shall be served as follows: (5) against a board ... provided two copies of such process shall be served upon the clerk and the clerk shall retain one copy and forward the second copy to the board ..."

The board published notice of its decision in the *Westport News* on March 3, 2006, and, on March 15, 2006, the appeal was commenced by serving two copies upon the assistant town clerk.

The proper parties were served in a timely manner.

"Where a zoning agency has stated its reasons for its actions, the court should determine only whether the assigned grounds are reasonably supported by the record and whether they are pertinent to the considerations which the [board] was required to apply under the zoning regulations." (Internal quotation marks omitted.) *R & R Pool & Patio, Inc. v. Zoning Board of Appeals,* 257 Conn. 456, 470, 778 A.2d 61 (2001). "It is well settled that a court, in reviewing the actions of an administrative agency, is not permitted to substitute its judgment for that of the agency or to make factual determinations on its own." *Id.,* at 470, 778 A.2d 61. The board in the present case found the hardship and granted a variance due to wetlands, topography and setbacks on the subject property. (ROR, Exhibit 4.)

"A variance is authority granted to use his property in a manner forbidden by the zoning regulations." (Internal quotation marks omitted.) *Reid v. Zoning Board of Appeals,* 235 Conn. 850, 857, 670 A.2d 1271 (1996). "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." *Id.,* at 857, 670 A.2d 1271. In addition, "the variance must be shown not to affect substantially the comprehensive zoning plan ..." (Internal quotation marks omitted.) *Bloom v. Zoning Board of Appeals,* 233 Conn. 198, 207, 658 A.2d 559 (1995).

The plaintiffs appeal on the basis that the board acted illegally, arbitrarily and in abuse of its discretion in that: (1) the record does not justify the decision of unusual hardship or exceptional difficulty; and (2) any hardship suffered was self-created and/or purely financial in nature.

The plaintiffs argue that the Hymans have not sufficiently shown that they suffered a legally cognizable hardship. "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." *Bloom v. Zoning Board of Appeals,* 233 Conn. 198, 207, 658 A.2d 559 (1995). Proof of existence of practical difficulty or unusual hardship is a condition precedent to the granting of a variance. "To support the granting of a variance, a hardship must arise from a condition different in kind from that generally affecting properties in the same zoning district and must be imposed by conditions outside of the property owner's control." *Stillman v. Zoning Board of Appeals,* 25 Conn.App. 631, 636, 596 A.2d 1 (1991). In other words, the hardship must originate in the zoning ordinance. The board in the present case found the hardship and granted a variance due to wetlands, topography and setbacks on the subject property. (ROR, Exhibit 4.)

***3** Moreover, under *Stillman v. Zoning Board of Appeals,* the hardship must simply be that an owner would never be able to use the land for its intended purpose. In *Stillman,* the lot had a well and septic system preventing the proposed construction. These obstacles were not considered personal, as any purchaser of that land would be unable to build. Similarly, the Hymans face challenges based on the topography, with wetlands and uneven ground, that would prevent any owner from building or making improvements.

The topography of a property is a recognized ground for hardship. "A hardship resulting from the peculiar topography or condition of the land or a particular location which makes the property unsuitable for the use permitted in the zone in which it lies may well be such a hardship as is contemplated by the ordinance." *Plumb v. Zoning Board of Appeals,* 141 Conn. 595, 601, 108 A.2d 899 (1954). Consequently, in the present case, the topography, wetlands and narrowness of the property create a legally cognizable hardship.

The plaintiffs further argue that, even if a hardship exists, it was "self-created." As stated above, a hardship "must be imposed by conditions outside of the property owner's control." *Stillman v. Zoning Board of Appeals, supra,* 25 Conn.App. at 636, 596 A.2d 1. "Where the condition which results in the hardship is due to one's own voluntary act, the zoning board is without the power to grant a variance ... Where ... the hardship arises as the result of a voluntary act by one other than the one whom the variance will benefit, the board may, in the sound exercise of its liberal discretion, grant the variance." (Citation omitted; internal quotation marks omitted.) *Belknap v. Zoning Board of Appeals,* 155 Conn. 380, 384, 232 A.2d 922 (1967). In the present case, the property is limited by its unique characteristics. Nevertheless, the Hymans did nothing to create the situation nor are they seeking to exceed the reasonable use of the lot. Specifically,

the wetland restrictions were imposed by the city, first in 1977 and again in 2004.[1] In *Archambault v. Wadlow,* 25 Conn.App. 375, 383, 594 A.2d 1015 (1991), the Appellate Court affirmed the trial court's finding that when a parcel of land was rendered nonconforming by the enactment of the zoning regulations the resulting hardship was not self-created: "[T]he plaintiffs did not create the nonconformity, but, rather, the nonconformity arose with the enactment of the zoning regulations. Thus, the plaintiffs did not create their own hardship." Likewise, in the present case, the property in dispute has been affected by the zoning regulations. Consequently, pursuant to the *Archambault* and *Stillman* cases, the hardship is not self-created.

The board's decision to grant the variance is reasonably supported by the record. Based upon the foregoing reasons, the applicant's appeal is dismissed.

All Citations

Not Reported in A.2d, 2007 WL 3318079

Footnotes

1 The Levys did not plead the "purchaser with knowledge rule." Nevertheless, it was raised at trial by one of the parties. Upon request of the court, Attorney Bloom filed a supplemental brief regarding this doctrine.

2011 WL 2150697
Only the Westlaw citation is currently available.

Superior Court of Connecticut,
Judicial District of Stamford–Norwalk.

Eric SIMONSON et al.
v.
TOWN OF DARIEN ZONING
BOARD OF APPEALS et al.

No. FSTCV106003074S.
|
May 6, 2011.

Opinion

ALFRED J. JENNINGS, JR., Judge Trial Referee.

***1** The plaintiffs Eric Simonson and Barbara Simonson appeal from a decision of the defendant Zoning Board of Appeals (ZBA) of the Town of Darien in which the ZBA granted three setback variances to the defendants J. William Ropp and Adrienne Dreiss (the "Ropps") with respect to the proposed tear down and replacement of their existing residence on the property at 364 Hollow Tree Ridge Road in Darien.

Background

The Ropps' existing home is a legally nonconforming structure for which the prior owner Suzanne Shutts was granted three building setback variances in 1997 based on hardship because of the unique configuration of the property which is a 2.8577–acre rear lot in a Residential Two Acre ("R–2") zone with no public street frontage. The plaintiffs, Eric and Barbara Simonson, own and reside at the premises at 362 Hollow Tree Ridge Road. The Simonson property is a 5 .335–acre rear lot. Both the Ropp property and the Simonson Property were created from the 1959 subdivision of an existing lot that was over 7 acres in size. When the properties were first subdivided, it was understood that the Ropp property would be accessed off a private road to be known as Whitewood Lane. (See Return of Record ("ROR") # 9.) Whitewood Lane, however, was never developed and the Ropp property became a rear lot with no frontage. *Id.* All the Ropp lot lines are therefore considered to be rear lot lines causing the lot to be subject to fifty-foot setbacks from all lot lines under Section 406 of the Darien Zoning Regulations. (ROR # 38.) The Simonson and Ropp properties now share a common driveway providing access to a public highway.

Approximately two-thirds of the Ropp property consists of a pond, stream and related wetlands. The only land on the Ropp property that is outside the wetlands is the northwest corner, a good deal of which is within the fifty-foot setback areas. (ROR # 31.) In October of 1997 the ZBA granted Variance Application No. 67–1997 (ROR # 9, # 30) to Mrs. Shutts in order to add an addition to her house, add a second floor, and add a deck. The ZBA granted three variances from the setback requirements of Zoning Regulations § 406: "23 in lieu of 50 foot required setback from the northerly property line; 22 in lieu of 50 foot required setback from the westerly property line; and 35 in lieu of required 50 foot setback from the southwest property line." The 1997 variances were granted *by the ZBA* "due to the unusual circumstances of the property and because strict application of the regulations would cause undue hardship." *Id.* When the Ropps purchased the property from Mrs. Shutts she had completed some, but not all, of the renovations proposed in her 1997 variance application. Specifically, she had added on an addition to the westerly side of the building extending to ±22 feet of the property line, and added a deck to the north of the building within ±23 feet of the property line in conformance with the approved plans. (See Plans ROR # 31 and photo ROR # 20.) She did not at any time, however, construct the second floor addition to the home and the variance to commence construction on the second floor has expired. After the Ropps purchased the property they decided to renovate the existing structure by taking it down to the foundation walls and building a new house structure on substantially the same foundation footprint. (Application Form ROR # 7.) They planned to re-use approximately 70% of the existing foundation walls. (Transcript p. 36 ROR # 37.) As their attorney testified, "the purpose of maintaining the existing foundation and footprint was to minimize disturbance to the existing onsite wetlands." (Tr. 3. ROR # 37.) The Ropps also planned to decrease the nonconformity of the existing home into the setback area by removing the large porch on the northern side of the building, and removing a majority of the existing paved driveway by replacing it with grass pavers. (Tr. 5–6 ROR # 37; plans ROR # 31.)

***2** The Ropps' 1997 Variance Application No. 67–1997 (ROR # 7), seeks variances of the Section 406 setback requirements to allow the replacement structure to be built on the same location as the existing foundation: ±31 feet in lieu of 50 feet from the northerly property line; and ±28 feet (later amended to 28.3 feet) in lieu of 50 feet from the southwesterly property line. After public notice (ROR # 1–4) the application was considered at public hearings of the ZBA on September 23, 2009 and November 18, 2009. On November 18 the ZBA unanimously (4–0) approved the requested variances. See ZBA Minutes and resolution Cal No. 39–2009, ROR # 35. Specifically the ZBA granted the requested variances on the following grounds:

> [D]ue to the demonstrated, unusual hardship circumstances of the subject property, and because granting of the request is in harmony with the general purposes and intent of Section 100 of the Zoning Regulations; and because strict application of the Zoning Regulations would deprive the applicant of substantial justice in the use of the property; and because the requested variance is the minimum adjustment necessary to achieve substantial justice while securing public safety and welfare; and because the proposed project will not have any significant, negative impacts upon the neighboring properties.

The plaintiffs have properly served and filed a timely appeal of the granting of the foregoing setback variances, claiming that the ZBA acted illegally, arbitrarily, and abuse of discretion in that (a) the Board granted the requested variances even though the applicants failed to provide evidence of a hardship; (b) the Board granted the requested variances even though any hardship the applicants may have shown was self-created, and not a valid basis for granting the requested variances; (c) The Board granted the requested variances even though the Application was incomplete; (d) the Board granted the requested variances even though the proposed residence did not comply with the maximum height limits; (e) the Board granted the requested variances on the basis that the proposed building would be built on the same footprint as the existing residence, even though reconstruction on an existing footprint is not a valid basis for granting variances; (f) the Board granted the requested variances on the basis that a variance had been granted for the property several years previously, even though the existing of prior variances is not a valid basis for granting a new variance; and (g) the Board's decision was arbitrary, capricious an abuse of discretion, and illegal.

Jurisdiction

General Statutes § 8–8 governs an appeal taken from a decision of a zoning board of appeals. "A statutory right to appeal may be taken advantage of only by strict compliance with the statutory provisions by which it is created." (Internal quotation marks omitted.) *Cardoza v. Zoning Commission,* 211 Conn. 78 (1989).

Aggrievement

"It is well settled that pleading and proof of aggrievement to a trial court's jurisdiction over the subject matter of an administrative appeal ... It is [therefore] fundamental that, in order to have standing to bring an administrative appeal, a person must be aggrieved." *Bongiorno Supermarket, Inc. v. Zoning Board of Appeals,* 266 Conn. 531, 537–38 (2003). The plaintiffs have pleaded aggrievement based upon their ownership of property at 362 Hollow Tree Ridge Road, Darien, Connecticut, which abuts and lies within 100 feet of the subject property. (Appeal, ¶ 4.) Conn. Gen.Stat. § 8–8(a)(1) provides that an "aggrieved person" includes "any person owning land that abuts or is within a radius of 100 feet of any portion on the land involved in the decision of the board." The court has reviewed the deeds by which the plaintiffs acquired title to the premises at 362 Hollow Tree Ridge Road (Pl.Ex, 1, 2) and the survey map (ROR # 31) and finds that the plaintiffs Eric Simonson and Barbara Simonson are statutorily aggrieved in that they own property which abuts the subject property.

Standard of Review

***3** Zoning boards are endowed with liberal discretion. *Cumberland Farms v. Zoning Board of Appeals for the Town of Groton,* 74 Conn.App. 622, cert. denied 263 Conn. 901 (2003). "Generally, it is the function of a zoning board or commission to decide within prescribed limits and consistent with the exercise of [its] legal discretion, whether a particular

section of the zoning regulations applies to a given situation and the manner in which it does apply." *Raymond v. Zoning Board of Appeals for Norwalk,* 76 Conn .App. 222, 228 (2003). "Upon appeal, the trial court reviews the record before the board to determine whether it has acted fairly or with proper motives or upon valid reasons ..." (Internal citations and quotation marks omitted.) *Adolphson v. Zoning Board of Appeals for Fairfield,* 205 Conn.703, 707 (1988). As stated in *Hoffer v. Zoning Board of Appeals of Town of Oxford,* 64 Conn.App. 39, 41 (2001):

> Courts are not to substitute their judgment for that of the board ... and decisions of local boards will not be disturbed so long as honest judgment has been reasonably and fairly exercised after a full hearing ... The burden of proof to demonstrate that the board acted improperly is upon the plaintiffs.

Thus, this court may interfere only if the board acted arbitrarily or illegally or so unreasonably as to have abused its discretion. *Culinary Institute of America v. Board of Zoning Appeals,* 143 Conn. 257, 262 (1956).

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 regulations produces an unusual hardship, as opposed to the general impact which the regulation has on other properties in the zone. *Moon v. Zoning Board of Appeals,* 291 Conn. 16, 24 (2009). As said by the Supreme Court in *Moon,* at 24, quoting from *Bloom v. Zoning Board of Appeals,* 233 Conn. 198, 205–08:

> Accordingly, we have interpreted [General Statutes § 8–6(a)(3)] to authorize a zoning board of appeals to 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 ... Proof of exceptional difficulty or unusual hardship is absolutely necessary as a condition precedent to the granting of a zoning variance ... A mere economic hardship or a hardship that was self created, however, is insufficient to justify a variance ... and neither financial loss nor potential for financial gain is the proper basis for granting a variance.

Discussion

Hardship

Plaintiffs claim that the record in the present case contains no evidence of a legally cognizable hardship.

***4** In face of this allegation the court must consider whether the board gave reasons for its action. Where a zoning board of appeals does not formally state the reasons for its decision, the trial court must search the record for a basis of the board's decision. *Bloom, supra,* at 208. Although individual members of the board may discuss or articulate their reasons for granting a variance, that cannot stand as the formal, official collective reason for the board's action, which must include an ultimate decision with express reason behind that decision, *Harris v. Zoning Commission,* 259 Conn. 402, 420–21 (2002). In this case, although the transcript contains some statements by individual board members in their deliberations, (TR. 53–71, ROR 37) there is no collective official statement of the reason or reasons for granting the variances other than the conclusory non-factual statement from the minutes quoted above at page three, which is inadequate for purposes a judicial review. The court will therefore search the record for a basis of the board's decision.

As did the Supreme Court in the *Moon* case, at 26, the search is directed by looking first at the application for variance. The application (ROR # 7) includes the following statements in Item K. "The majority of the property is wetlands and includes a pond and watercourse. In addition, the Property is a rear lot in the R–2 zone and is therefore subject to a fifty foot setback

from all property lines." "Due to the existing wetlands on the property and the unique shape of the lot, it would be a hardship to require the applicant to require the building to be set back 50 feet from all property lines. On the whole, the Applicant's proposal will serve to reduce the existing nonconformity and is therefore an improvement over the existing conditions."

There are two reasons set forth in the application—which is part of the record—each on its own sufficient to support the granting of the variances: (1) the topography and configuration of the property, especially the extent of the wetland setback or "upland review areas"; and (2) the reduction of the existing nonconformities brought about by the requested variances. Each will be discussed.

The wetlands on the property and the relationship between the wetlands and 50–foot setbacks are well documented in the record. In addition to the statements in the application the wetlands setback lines and the "upland review area" are clearly depicted on the Zoning Location Survey (ROR, 27, 31) and the wetlands are shown on the Erosion and Settlement Control Plan (ROR # 28). Atty Zabetakis, representing the Ropp applicants at the public hearing of November 18, 2009 (Transcript is ROR 37) gave a detailed explanation of the wetlands (which she described as constituting "the vast majority of the property," TR3), the detention pond on the property, the plans to decrease runoff by decreasing impervious surfaces and adding trench drains for gutter runoff, and a summary of the drainage report, and erosion and sedimentation control plan as prepared by a drainage engineer. (TR 3–5.) The wetland buffer played a role in the board's deliberations where the chairman made specific reference to "the 50 foot buffer zone from a wetland" (TR 56) and a member noted the application of the 50–foot rear property line setback from every property line of the lot "which creates a smaller building envelope in relation to the wetlands" (TR 57), causing the chairman to conclude "I think the wetlands, the existence of the wetlands prohibits this building." (*Id.*)

***5** The existence of wetlands has been found to constitute a basis for the granting of a variance. See, e.g. *Levy v. Westport,* Docket No. CV06–4015543S, Superior Court, Judicial District of Fairfield (October 25, 2007, Owens, JTR, 2007 WL 3318079 at *3 (" 'A hardship resulting from the peculiar topography or condition of the land or a particular location which makes the property unsuitable for use permitted in the zone in which it lies may well be such a hardship as is contemplated by the ordinance' [citing] *Plumb v. Zoning Board of Appeals,* 141 Conn. 595, 601 ... 1954). Consequently, in the present case, the topography, wetlands, and narrowness of the property create a legally cognizable hardship"); and *Fifteen North Plains Industrial Road, LLC v. Wallingford Zoning Board of Appeals,* Docket No. CV03–0475864, Superior Court, Judicial District of New Haven (September 22, 2004, Burns, JTR), 2004 WL 2287744 at *6 (existence of wetlands in the middle of the property "constitutes a topographical condition to support the board's approval of the variance").

The plaintiffs have not met their burden of showing that the board acted without the basis of a legally cognizable hardship. Their citation of *Moon v. Zoning Board of Appeals, supra,* is unavailing. In that matter the application for hardship variance was denied by the Madison ZBA, which was affirmed by the Superior Court which was affirmed on appeal. The primary litigated issue was whether or not the plan to add additional living space to the second story of the plaintiffs' nonconforming residence even required a variance, which turned on a judicial construction of a particular provision of The Town of Madison Zoning Regulations. The Supreme Court (which had taken the appeal on transfer from the Appellate Court) agreed with the Superior Court that a variance was required, which then brought into focus the trial court's conclusion that the plaintiffs had failed to establish before the board that strict enforcement of the zoning regulations would cause them exceptional difficulty or unusual hardship. The claims of hardship claimed before the ZBA were twofold: "(1) that their lot was so undersized that the strict enforcement of the zoning regulations would leave only a small strip of land unsuitable on which to build any house; and (2) that the internal layout of the house was poorly designed to meet the needs of modern living." The court, noting from photographs, drawings, and plans in evidence that there was already an existing residence on the property, ruled that the plaintiffs had "utterly failed" to present evidence to support the first claim (*id.* at 26) and that the second claim —the point for which plaintiffs herein cite *Moon*—was an "inconvenience" that "does not rise to the level of hardship necessary for approval of a variance." *Id.* at 27, n. 9. The Ropps in this case have not made any claim of hardship premised on the internal layout of the house they intend to build, or internal convenience factors.

Self–Created Hardship

***6** Plaintiffs claim that any hardship alleged by the Ropps cannot support the granting of a variance because it would be self-created, in that the evidence shows that the Ropp property and the Simonson property were formerly part of the same parcel which was voluntarily subdivided into two lots by a previous owner in 1959.

It is well established that a hardship that is self-created is never a proper ground for a variance. *Pollard v. Zoning Board of Appeals,* 186 Conn. 32, 39–40 (1982); and that where an applicant or his predecessor in title creates a nonconformity, the board lacks power to grant a variance. *Santos v. Zoning Board of Appeals,* 100 Conn.App. 644, cert. denied, 282 Conn. 930 (2007). Plaintiffs also cite two cases where applicants were seeking variances for purposes of being able to subdivide their properties, and were denied on the ground of self-created hardship because of their voluntary decision to subdivide. See *Aitken v. Zoning Board of Appeals,* 18 Conn.App. 195, 206 (1989) and *Dupont v. Zoning Board of Appeals,* 80 Conn.App. 327, 330–31 (2003). None of those cases, however, establish that the hardship claimed by the Ropp defendants in this case was self-created. They are not seeking to subdivide the property. That was done more than fifty years ago. Nor are the Ropps claiming that the 1959 subdivision caused a nonconformity. Their lot contains more than 2.8 acres of land in a 2–acre zone, and there is nothing in the record to indicate that any variance was sought or obtained by the previous owner to enable that subdivision to occur. So far as the record shows, the lot existed without variance from 1959 until the Ropps' predecessor, Mrs. Shutts, was granted a variance in 1997 to build the existing house partially within the 50–foot rear lot line setback areas, because of the same wetland-related hardship now advanced by the Ropps. Counsel for Ropps has argued—and plaintiffs do not dispute—that the Town of Darien wetland regulations affecting this property were enacted in 1973, and it is the existence of those regulations and their impact on a substantial portion of the Ropps' lot which is basis of the hardship they are now claiming. Where the hardship is created by the enactment of a zoning ordinance, and the owner of the parcel could have sought a variance, a subsequent purchaser has the same right to seek a variance and, if his request is supported in law, to obtain the variance. *Santos, supra,* at 652; *Kulak v. Zoning Board of Appeals,* 184 Conn. 479, 482 (1981). The same principle applies to the enactment of a wetland regulation. Likewise the 50–foot setbacks did not apply to the lot as first subdivided. It was only later, when the strip known as Whitewood Lane was not developed as access to a public highway that the lot became a rear lot with all lot lines subjected to the setback of a rear lot line. For these reasons the voluntary subdivision of the property by a predecessor in title does not put the Ropps in the situation of claiming self-created hardship in these proceedings.

***7** Plaintiffs also argue that the Ropps' voluntary decision to tear the existing house down to the foundation walls and build a new house on the same footprint is a personal preference which has resulted in a self-created hardship. This same argument was rejected in *Spiro v. Town of Madison Zoning Board of Appeals,* Docket No. CV01–0455293S, Superior Court (July 23, 2002, Burns, JTR), 2002 WL 005863, where the applicants successfully sought a hardship variance from a coastal site plan review, seeking to demolish their existing nonconforming house and to build a new house. The appealing neighbors argued that any hardship was self-created because the existing house preexisted the enactment of zoning regulations and the claimed hardship would only occur if the applicants voluntarily demolished the existing "charming structure which is worth $400,000)." *Id.,* at *4. The court nonetheless dismissed the neighbor's appeal, holding that the hardship was not self-created but arose from the enactment of a zoning ordinance affecting their property. *7. This court will follow that same reasoning and holds that the Ropps have not created their own hardship by seeking to demolish and rebuild.

Reduction of the Existing Nonconformity

The Ropps' application sought, and the board granted, yard setback variances that actually reduced the nonconformity as compared to the variances granted in 1997. The existing (1997) variances, which run with the land, include: 23 feet in lieu of 50 feet from the northerly property line; and 35 feet in lieu of fifty feet from the southwesterly property line. (ROR # 7.) Those variances as granted to the Ropps in this 2009 proceeding have been reduced to 31 feet in lieu of fifty feet from the northerly property line (a reduction of eight feet), and 28.3 feet in lieu of fifty feet from the southwesterly property line (a reduction of 6.7 feet). Primarily by the proposed elimination of a large deck presently encroaching into the setback area, the Ropps have achieved a substantial decrease of the nonconformity of the existing structure and a substantial decrease in the extent of the setback encroachment granted in Cal. No. 76–1997. The fact of this reduction in the nonconformity did not go unnoticed at the public hearing of September 23, 2009: "[Acting Chairman] Greene: "Is it true that you're improving your encroachments generally in every

direction ... ? Zabetakis: Improving or maintaining, yes." See September 23, 2009 Transcript ROR # 36, at 7.

One of the purposes of the Darien Zoning Regulations is to "[b]ring about the gradual conformity of the uses of land and buildings throughout the Town to comprehensive zoning plan set forth in these Regulations ..." Section 100e ROR # 38. In keeping with that policy it has been held the elimination and reduction of existing nonconformities can be an independent basis for granting a variance. *Hesock v. Zoning Board of Appeals of the Town of Stonington,* 112 Conn.App. 39 (2009). (Granting of variance on application to raze a house located in flood control zone affirmed: increased compliance with the 100–foot setback requirement on the property served as an independent basis for granting the variance without a showing of unusual hardship.) As Explained by the Connecticut Supreme Court in *Vine v. Zoning Board of Appeals,* 281 Conn. 553 (2007):

> ***8** In cases in which an extreme hardship has not been established, the reduction of a nonconforming use to a less offensive prohibited use may constitute an independent ground for granting a variance. (Citation omitted.) *Id.* at 561
>
> [I]t would elevate form over substance to insist on the principle [a showing of exceptional hardship] when there is no claim or evidence that granting the variance could result in even minimal harm to the neighborhood or undermine in any way the overarching zoning scheme, especially when substantial evidence to support a conclusion that it would result in a more conforming use. *Id.* at 571

Even if the Ropps did not make a showing of exceptional hardship, then, the granting of these variances are upheld on the independent basis that the variances granted to them would reduce the existing lot line nonconformities and there is no evidence that the variances granted would result in harm to the neighborhood and they would advance the goal of Section 100e of the Darien Zoning Regulations.

The Prior 1997 Variance

Plaintiffs argue that the variance granted to the Ropps in 2009 was allowed on the basis of the variance granted to their predecessor Mrs. Shutts in 1997 to build the existing house. They cite *Aitken v. Zoning Board of Appeals, supra,* for the proposition that a prior variance is not a basis for granting a new variance. In *Aitken* the applicant Stosse was seeking a frontage variance in order to subdivide his property into two lots. Ten years prior, the parcel was four times larger, and he had obtained a frontage variance to subdivide into four lots, one of which he kept and was seeking to subdivide into the two lots. He put on no evidence of hardship other than to mention the earlier variance. The Appellate court reversed the dismissal of Aitken's appeal ordered the appeal to be sustained, saying "The fact that he [Stosse] obtained a variance more than ten years ago for property that was four times the size and subsequently subdivided is not sufficient reason to grant a variance." 18 Conn.App. at 195. This case is much different. The property is exactly the same lot, the variance being sought is virtually the same, the only difference being that the Ropps were seeking slightly less intrusion into the setback area. The claim of hardship was based on the same factors: the 50–foot setbacks on all sides and the wetlands. Unlike Mr. Stosse in the *Aitken* case, however, the Ropps included in the record and presented at the hearing substantial evidence of hardship presently existing in 2009, summarized above. There was mention of the 1997 variance, and the 1997 variance was part of the record (ROR # 9) and counsel for the Ropps argued the 1997 variance as a reason for granting the Ropps' variance. Under all the circumstances, this court is not convinced that was improper. It is clear, however, that the ZBA had before it adequate evidence of present hardship to justify its finding of hardship. In fact, the issue of the earlier variance came up in deliberations, and the non-voting Code Compliance Officer, Mr. Woodside, told the board: "Any prior variance is certainly a good guide, but you're not bound by it. This is a start-over project effectively." (TR 61, ROR 37.)

***9** The court finds no impropriety related to the evidence of the 1997 variance being before the ZBA

Adequacy of the Application

Plaintiffs point out that, in accordance with Conn. Gen.Stat. § 8–6(a)(3), in addition to finding unusual hardship, a ZBA must also find that the variance must be shown not to affect substantially the comprehensive zoning plan. The Darien ZBA in granting the Ropp variance did make a finding of that nature in its minutes and resolution, saying "... because granting of the request is in harmony with the general purposes and intent of Section 100 of the Zoning Regulations. [1] ..." (ROR # 35.) Plaintiffs argue, however, that it was impossible for the ZBA to determine whether the proposed project complied with the applicable zoning

regulations, because the application was incomplete in that it did not include elevation data sufficient to determine height in stories or in linear feet. The height limitations for a single-family house in an R–2 zone in Darien are: Maximum Height in Stories—2 1/2; Maximum Height in Feet—30. (ROR # 38, Section 406.) The architectural plans for the proposed new house were submitted. (ROR # 27.) The architect Mr. Schownenberger testified at length at the public hearing. He told the ZBA that the roof ridge "dimension [height] is 29 feet and change, 29 and 10, and I understand 30 feet is the maximum allowed." (ROR # 37, Tr. 5.); and Atty. Zabetakis told the board: "[t]he architectural plans that were approved by the board for the Shutts residence, as you can see there is clearly a second floor on this building and because it is a roof with a much greater peak than is being proposed for this house. It [the proposed (but never built) second floor on the Shutts plans] is, in fact, a taller building if you look at it to the top peak on the roof" (TR 31). There was adequate basis to find that the 30–foot maximum height was not exceeded. There was also extensive discussion about whether or not the plans called for a three-story house, with focus on whether or not the basement would constitute a "story" or a "half story," and the effect of the sloping elevation of the soil around the house. (TR 31–51.) Atty. Zabetakis offered to get square foot calculations (TR 40) but was not asked to do so. The chairman commented "We're not going to pass on that. That's the Building department's job." (TR 45.)

Keeping in mind that requirement is for the board to find the variance must be shown not to affect *substantially* the comprehensive zoning plan, and the ZBA did find that "granting of the request is in harmony with the *general purposes and intent* of Section 100 of the Zoning Regulations" (emphasis added) based on the plans submitted and the testimony and extensive colloquy at the hearing, the court cannot say that the granting of the variance was unreasonable, arbitrary or illegal. It was not unreasonable for the board to defer the detailed calculations to the expertise of Darien Building department in conjunction with the application for the issuance of a building permit. The ZBA determined that it was satisfied with the information provided to it and satisfied that, as indicated by ZBA staff: "a routine part of any subsequent construction permit application process would be confirmation by Zoning staff that the maximum height was not exceeded and that the basement level and story maximum height was not exceeded." ZBA Resolution, ROR # 35, ¶ 26, at 6. The board noted that the application for variance before it was not seeking to vary the height or story requirements of the zoning regulations. (ROR # 37, TR 47–48) and that "it has to meet the requirements when they come in for their construction permit ..." (TR 48) and that "[i]f they hit the three story issue they may not be able to build it" (TR 67).

***10** "An administrative agency has reasonable discretion to determine if sufficient documentation has been submitted to proceed with an application." *DeMilo v. Norwalk Planning Commission,* Docket No. FSTXV06–4010464S, Superior Court, Judicial District of Stamford/Norwalk at Stamford (March 10, 2010, Mottolese, JTR), 2010 WL 1508302 at *2 quoting from R. Fuller, 9 Conn Practice Series, Land Series, *Land Use Law and Practice* (2d Edition 1999) Section 15.12 at 360. The Darien ZBA did not abuse that discretion in proceeding to decide this application and make its finding of harmony with the general purposes and intent of the zoning regulations.

Section 383b of the Zoning Regulations

Plaintiffs argue that the defendants failed to request or obtain a necessary variance to Section 383b of the Town of Darien Zoning Regulations (ROR # 38). Section 383b provides, in part:

> Such non-conforming building shall not be structurally altered to an extent greater than 50 percent of its current fair market value unless such alterations are required by law; provided, however, that such maintenance and repair work as is required to keep a non-conforming building or structure in sound condition shall be permitted; ...

The meaning of the term "[s]uch non-conforming building" is apparent by reference to the preceding section, 383a, and the following section, 384, of the Regulations. Section 383a provides:

> A building or structure, *the use of which* does not conform to the *use regulations* for the zone in which

> it is situated, shall not be enlarged or extended unless such building or structure, including such enlargement or extension, shall be made to conform to all regulations, including use, for the zone in which it is situated. (Emphasis added.)

Section 384 provides:

> A building that is conforming in use, but does not conform to the height, yard, land coverage, or parking requirements of these regulations shall not be considered to be non-conforming within the meaning of Subsection 383.

Reading these three provisions together it is obvious that the term "[s]uch non-conforming building" as used in Section 383b refers only to a building that is non-conforming in *use,* and that a variance from Section 383b would be a use variance. But this case has nothing to do with a use variance. The Ropp property is located in a R–2 residential zone. It has been used as a residence. The replacement building they would like to construct would also be used as a residence. The only variances they sought and obtained were yard setback variances. Section 383b has no application to yard setback variances, and no variance from Section 383b would be necessary or appropriate.

Order

For all the foregoing reasons the plaintiffs' appeal from the granting of the variances is dismissed.

All Citations

Not Reported in A.3d, 2011 WL 2150697

Footnotes

1 Section 100 of the Darien Zoning Regulations (ROR 38) is entitled "Purposes" and sets forth in subsection a through k the general objectives of the regulations. There are no specific numerical goals or objectives and no references at all to roof heights or number of stories of a building.

2004 WL 2287744
Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Superior Court of Connecticut,
Judicial District of New Haven.

FiFTEEN NORTH PLAINS INDUSTRIAL ROAD, LLC et al.
v.
TOWN OF WALLINGFORD ZONING BOARD OF APPEALS et al.

No. CV030475864S.
|
Sept. 22, 2004.

ROBERT P. BURNS, Judge Trial Referee.

STATEMENT OF APPEAL

***1** The plaintiffs, Fifteen North Plains Industrial Road, LLC, and Precious Cargo Daycare and Learning Center, Inc., appeal from a decision of the defendant, the Wallingford zoning board of appeals, in which the board granted a variance application of the defendant, Walter Vining.

II. BACKGROUND

The defendant, Walter Vining, applied for a variance from § 6.10.B.2 of Wallingford's zoning regulations, the regulation setting forth the setback requirements for processing machinery, seeking "to operate a small scale materials processing operation." (Return of Record [ROR], Exhibit 1.) Vining sought to vary the setback from the required 200 feet to 16 feet. (ROR, Exh. 1.) The stated hardship was "the shape of the property as well as the location of wetlands dictates where the screener must go." (ROR, Exh. 1.) Following a public hearing conducted on March 3, 2003, and continued to March 17, 2003 (ROR, Exhs. 4; 8); the board approved the application "[t]o compensate for an irregularity in the land." (ROR, Exh. 1.)

The plaintiffs are Fifteen North Plains Industrial Road, LLC, the owner of "property ... known as 15 North Plains Industrial Road," and Precious Cargo Daycare and Learning Center, Inc., the "lessor of 15 North Plains Industrial Road upon which it operates a day care center ... [caring] for one hundred forty-three (143) children." (5/28/03 Amended Appeal, ¶¶ 1, 2.) They filed this appeal with the Superior Court on April 1, 2003, alleging that the board's approval of the variance application was arbitrary, illegal and an abuse of its discretion. The court, Burns, J., conducted the trial on March 2, 2004. [1]

III. JURISDICTION

General Statutes § 8-8 governs an appeal from a zoning board of appeals to the Superior Court. A plaintiff may take advantage of a statutory right of appeal only by complying strictly with the statutory provisions governing that right. *Bridgeport Bowl-O-Rama, Inc. v. Zoning Board of Appeals,* 195 Conn. 276, 283, 487 A.2d 559 (1985).

A. Aggrievement

"[P]leading *and* proof of aggrievement are prerequisites to a trial court's jurisdiction over the subject matter of an administrative appeal." (Emphasis added; internal quotation marks omitted.) *Harris v. Zoning Commission,* 259 Conn. 402, 409, 788 A.2d 1239 (2002). "Aggrievement is an issue of fact ... and credibility is for the trier of the facts." (Internal quotation marks omitted.) *Quarry Knoll II Corp. v. Planning and Zoning Commission,* 256 Conn. 674, 703, 780 A.2d 1 (2001). Fifteen North Plains and Precious Cargo allege that they "are aggrieved by the actions of the defendant." (5/28/04 Amended Appeal, ¶ 15.)

General Statutes § 8-8(a)(1) provides, in part, that " 'aggrieved person' includes any person owning land that abuts or is within a radius of one hundred feet of any portion of the land involved in the decision of the board." The transcript of the March 17, 2003 public hearing reflects that Attorney Vincent McManus attended the hearing and stated on the record that he "represent[ed] the abutting property owner ... in this matter." (ROR, Exh. 9, p. 3.) In addition, at the time of trial, a deed was submitted into evidence evincing the ownership interest of Fifteen North Plains in said property. (Plaintiffs' Exh. A.) Accordingly, the court finds that Fifteen North Plains and Precious Cargo have pleaded and proven aggrievement.

B. Timeliness and Service of Process

***2** General Statutes § 8-8(b) provides that "[an] appeal shall be commenced by service of process in accordance with subsections (f) and (g) of this section within fifteen days from the date that notice of the decision was published as required by the general statutes."

General Statutes § 8-8(f) provides that "[s]ervice of legal process for an appeal under this section shall be directed to a proper officer and shall be made by leaving a true and attested copy of the process with, or at the usual place of abode of, the chairman or clerk of the board and by leaving a true and attested copy with the clerk of the municipality."

Fifteen North Plains and Precious Cargo allege that notice of the decision with respect to the subsequent application was published on March 21, 2003. (5/28/03 Amended Appeal, ¶ 13.) The application, itself, states that the decision was published in the *Record Journal* on March 21, 2003. (ROR, Exh. 1.) This appeal was commenced by service of process on the proper parties on March 26, 2003. Accordingly, this appeal was commenced in a timely manner.

IV. SCOPE OF REVIEW

"The Superior Court's scope of review is limited to determining only whether the board's actions were unreasonable, arbitrary or illegal ..." (Internal quotation marks omitted.) *R & R Pool & Patio, Inc. v. Zoning Board of Appeals,* 257 Conn. 456, 470, 778 A.2d 61 (2001). "It is well settled that a court, in reviewing the actions of an administrative agency, is not permitted to substitute its judgment for that of the agency or to make factual determinations on its own." (Internal quotation marks omitted.) *Id.*

"When a zoning agency has stated its reasons for its actions, a court should not reach beyond those stated purposes to search the record for other reasons supporting the commission's decision ... Rather, the court should determine only whether the assigned grounds are reasonably supported by the record and whether they are pertinent to the considerations which the authority was required to apply under the zoning regulations." (Citation omitted; internal quotation marks omitted.) *Harris v. Zoning Commission, supra,* 259 Conn. at 420. The board's stated reason for granting the variance application was "[t]o compensate for an irregularity in the land." (ROR, Exh. 1.) Accordingly, this court will confine its search of the record to determining whether the record supports that reason.

"A variance constitutes permission to act in a manner that is otherwise prohibited under the zoning law of the town." *Bloom v. Zoning Board of Appeals,* 233 Conn. 198, 206, 658 A.2d 559 (1995). The granting of a variance, however, "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, [the Supreme Court has] interpreted General Statutes ... § 8-6 to authorize a zoning board of appeals to 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." (Citations omitted; internal quotation marks omitted.) *Id.,* at 206-07.

V. DISCUSSION

***3** Fifteen North Plain and Precious Cargo appeal on the grounds that Vining, the applicant, failed to disclose his interest in the subject property on the application, and that the application proposed a "temporary screening operation," which constitutes a personal hardship, rather than the statutorily-required unusual hardship that runs with the land. They further appeal on the basis that Vining's site plan was deficient, there is no hardship, and that the impetus for the application was financially based. In addition, they claim that Vining failed to apply to the wetlands commission for a permit, and, finally, that the board failed to consider the public safety and welfare when it approved the application.

Vining counters that he has a sufficient interest in the subject property to apply for a variance because he has demonstrated that he is a real party in interest. He further argues that substantial record evidence supports the board's approval of his variance application.

The board represents that it had requested additional evidence to determine whether Vining had a sufficient interest in the

property to request a variance, but that the present record reveals that the owner consented and intends to use some of the fill from Vining's operation. The board concludes, therefore, that Vining had a sufficient interest to apply for a variance.

A. Whether the Applicant Had a Sufficient Interest in the Subject Property to Request a Variance

"[T]he standard for determining whether a party has standing to apply in a zoning matter is less stringent [than establishing aggrievement]." *Gladysz v. Planning & Zoning Commission,* 256 Conn. 249, 257, 773 A.2d 300 (2001). "[I]t is not possible to extract a precise comprehensive principle which adequately defines the necessary interest which a nonowner must possess in order to have standing to apply for a special permit or a variance. The decisions have not been based primarily on whether a particular applicant could properly be characterized as an optionee or a lessee, but, rather, on whether the applicant was in fact a real party in interest with respect to the subject property. Whether the applicant is in control of the property, whether he is in possession or has a present or future right to possession, whether the use applied for is consistent with the applicant's interest in the property, and the extent of the interest of other persons in the same property, are all relevant considerations in making that determination." *Richards v. Planning & Zoning Commission,* 170 Conn. 318, 323-24, 365 A.2d 1130 (1976).

"The gist of the action is the same. It is still a mere possessory action and possession alone will maintain it so far as the plaintiff's right is concerned. The person in possession the law regards as owner, except in a content with one who has the true title." *Fowler v. Fowler,* 52 Conn. 254, 257. Accord *Cavallaro v. Chapel-Heights Corporation,* 141 Conn. 407, 411. *Antenucci v. Hartford Roman Catholic Diocesan Corporation,* 142 Conn. 349, 355.

***4** In the present appeal, the record demonstrates that Vining signed the application as the "applicant," and Keith Devit signed the application as the "property owner of record." (ROR, Exh. 1.) Further, Vining submitted the affidavit of the owner of record, Devit, attesting to Devit's ownership of the subject property, and further attesting that Vining has equipment at the property, and that Vining has Devit's permission to use the equipment as long as Devit "doesn't need the room." (Supp.ROR.) The record also reflects that Devit would "use [the material produced] as fill material, which is allowed, in his own operation in our site." (ROR, Exh. 9, p. 2.)

In *DiBonaventura v. Zoning Board of Appeals,* 24 Conn.App. 369, 588 A.2d 244, cert. denied, 219 Conn. 903, 593 A.2d 129 (1991), at issue was an application for a certificate of approval for a used car dealership and a car repair business. The father, the owner of the subject property, intended to provide the land for the business, and the son, the sole listed applicant of record, planned to operate and manage the business. The zoning board of appeals denied the application. The plaintiffs appealed, but the trial court concluded that neither plaintiff could prove aggrievement. The court reasoned that the father, the property owner, had not been an applicant for the certificate and "had failed to establish that his interest had been injuriously affected by the decision." *Id.,* at 373. The trial court further determined that the son, the applicant of record, had failed to "prove a legally enforceable interest in the subject matter of the decision." *Id.,* at 373.

The Appellate Court disagreed, concluding that "given the special circumstances presented by this case-the property owner's written consent to his son's use of that property, the appearance of father and son before the board as applicants, and the board's admission in its pleading that the plaintiffs were applicants-that the trial court's decision that neither plaintiff is aggrieved is an overly technical application of the test for aggrievement." *Id.,* at 376-77.

In the present appeal, the court finds that Vining is a real party in interest vis-a-vis the variance application. Vining signed the application in his capacity as the "applicant" and has produced written evidence demonstrating the owner's approval of the application.

Therefore, the court will not sustain the appeal on this basis.

B. Whether the Record Supports the Board's Reason for Granting the Variance Application

As previously set forth, Vining sought a sideyard setback variance from the 200 feet required by § 6.10.B.2[2] to a proposed setback of 16 feet in order to operate a small-scale materials processing operation. The subject parcel is located in an industrial district (I-40) zone (ROR, Exh. 1); and, subject to site plan approval, the processing of materials is a permitted use in the district. (ROR, Exh. 12, § 4.8.B.3.) The board

granted the application "[t]o compensate for an irregularity in the land." (ROR, Exh. 1.)

***5** With respect to variances, the regulations provide that "Variances, where by reason of exceptional narrowness, shallowness, shape, topographical or unusual condition of a specific property, and not common to the surrounding areas as a whole, and where the strict application of the requirement or limitations of any district would result in peculiar and undue hardship upon the use of the property, as contrasted with merely granting an advantage or convenience, the regulations may be varied." (ROR, Exh. 12, § 9.1.H.) Section 9.1.H.1 further provides that prior to "granting a variance on the basis of unusual difficulty or unusual hardship, the [board] shall consider the following conditions: (a) That if the owner complies with the provisions of these regulations, he would not be able to make any reasonable use of his property. (b) That the difficulties or hardship are peculiar to the property in question, in contrast with those of other properties in the same district. (c) That the hardship was not the result of the applicant's own action. (d) That the hardship is not merely financial or pecuniary." (ROR, Exh. 12, § 9.1.H.1.a.b.c.)

The topography of an applicant's parcel may constitute a hardship justifying the approval of a variance; however, "[t]o support the granting of a variance, a hardship must arise from a condition different in kind from that generally affecting properties in the same zoning district and must be imposed by conditions outside the property owner's control." *Stillman v. Zoning Board of Appeals,* 25 Conn.App. 631, 636, 596 A.2d 1, cert. denied, 220 Conn. 923, 598 A.2d 365 (1991).

At the March 3, 2003 public hearing, the chairman reiterated that Vining sought the variance "to locate earth materials' processing machinery 16 feet from the property line, where a minimum of 200 feet are required for an earth materials' processing operation ..." (ROR, Exh. 5, p. 4.) Vining emphasized that he had to move the screener away from the wetlands that were located on the property because, at the present time, the screener was sitting on the wetlands buffer. (ROR, Exh. 5, p. 4.) The assistant town planner also attended the hearing, and he informed the board that he had been present at a meeting involving Vining and the wetlands consultant, and that the consultant advised Vining "to move the equipment and the stockpile back out of the wetlands buffer ..." (ROR, Exh. 5, p. 6.)

The March 3, 2003 public hearing was continued to March 17, 2003, where Vining's licensed professional engineer, Christopher Juliano, spoke on behalf of the application. Juliano stated that "[t]he reason for the variance is to keep ... both the operation and stockpiling as far away from the wetlands and wetlands buffer as possible. These are some sensitive areas in this location ... In addition, the location of the screener and the stockpile is well over 200 feet away from the ... abutting property owner, which at one time was Verna Home Builders and I understand now it's an operational day care facility. So we should have little to no impact on the facility." (ROR, Exh. 9, p. 2.) Referring to the site map (ROR, Exh. 2); Juliano further explained that "the southern bound along the daycare is 328 feet long. The northeastern bound along Church Street, if you add the two distances, you're about 303 feet. So if we were to put in a 200-foot offset-front setback from North Plains Industrial Road, 200 feet back, and a 200-foot setback from the Wilbur Cross, they would be overlapping each other. So that is the hardship. We can't go anywhere on this property that we're not in violation of the 200-foot setback. That is the hardship-coupled with the fact that there is a standing wetlands running through the middle on which we would not be able to locate a use such as this because it would be a filling operation and the attendant possibility of fill going into the wetlands. There is the hardship. The screening operation just cannot be put on this piece of property without violating that 200-foot setback. This is a location in which we maintain at least 200 feet from the daycare. We're next to the Wilbur Cross Parkway, which is probably the best location for it and as far away from 68 as we can be without affecting the proposed use. We're off North Plains Industrial Road. It won't be visible-won't affect the wetland. So this is probably one of the best locations on the site. Again, the property is too narrow. It's only 300-303 feet, 328 feet. If you offset 200 feet from any setback or from any property line, you're going to be in violation. Therein lies the hardship." (ROR, Exh. 9, p. 6.)

***6** Following the close of the March 17 public hearing, a motion was made to "approve the variance to compensate for an irregularity in the land on the property line." (ROR, Exh. 9, p. 8.) The motion passed, with four in favor and one opposed. (ROR, Exh. 9, p. 8.)

An examination of the site plan map reveals that the existence of wetlands on the parcel, coupled with the location of the wetlands in the middle of the property, constitutes a topographical condition sufficient to support the board's approval of Vining's variance application. [3]

B. CONCLUSION

For the foregoing reasons, the court dismisses the appeal of Fifteen North Plains and Precious Cargo.

All Citations

Not Reported in A.2d, 2004 WL 2287744

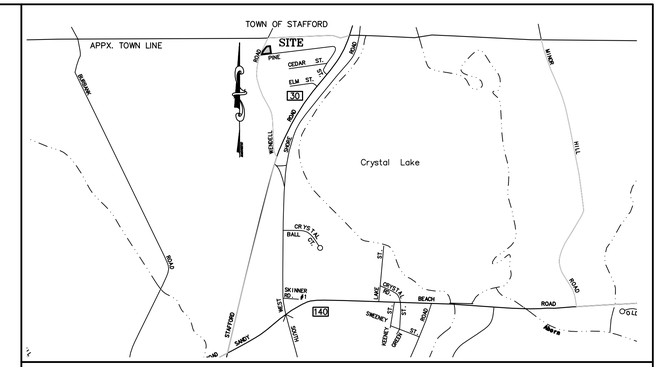
Footnotes

1 This appeal was consolidated with *Fifteen North Plains Industrial Road, LLC v. Wallingford Planning & Zoning Commission,* Superior Court, judicial district of New Haven, Docket No. CV 03 0477240, by order of the court, Radcliffe, J., on August 25, 2003.

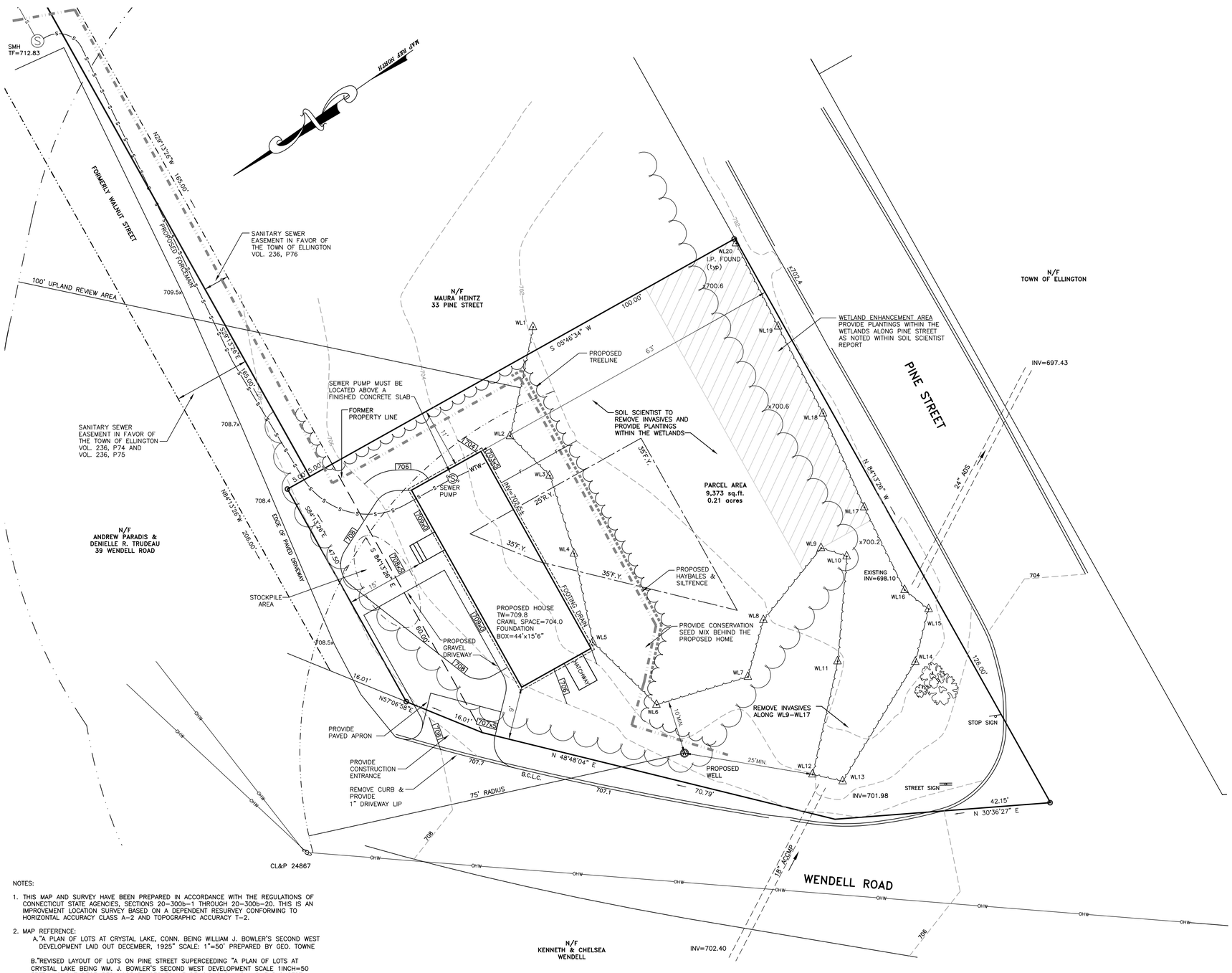
2 Section 6.10.B.2 provides "No processing machinery shall be erected or maintained on the lot within 200 feet of any property or street lines, and any such machinery shall be removed from the lot upon termination of the permit. No materials shall be stockpiled and no equipment or structures covered by the permit shall be operated or located outside the permit area. Except in an industrial district, no screening, sifting, washing, crushing or other forms of processing shall be conducted upon the premises. No other machinery, not required for the operation, shall be on the site." (ROR, Exh. 12.)

3 The other basic requirement authorizing a board to grant a variance is that "the variance must be shown not to affect substantially the comprehensive zoning plan ..." *Bloom v. Zoning Board of Appeals, supra,* 233 Conn. at 207. "A comprehensive plan has been defined as a general plan to control and direct the use and development of property in a municipality or a large part thereof by dividing it into districts according to the present and potential use of the properties." (Internal quotation marks omitted.) *First Hartford Realty Corp. v. Plan & Zoning Commission,* 165 Conn. 533, 541, 338 A.2d 490 (1973).

Here, as discussed, *supra,* the subject parcel is located in an industrial district zone (ROR, Exh. 1); and, subject to site plan approval, materials processing is a permitted use. Accordingly, the board could have found that the requested variance did not violate the comprehensive zoning plan.



KEY MAP SCALE: 1"=1,000'



LEGEND

- PROPERTY LINE
- ABUTTING PARCEL
- EXISTING I.P.
- EXISTING MONUMENT
- EXISTING DRAINAGE
- ZONING SETBACK – PRINCIPAL STRUCTURE
- 226x5 EXISTING ELEVATION
- 240 EXISTING CONTOUR
- 240 PROPOSED CONTOUR
- 226x5 PROPOSED ELEVATION
- UTILITY POLE WITH WIRES
- PROPOSED FOUNDATION DRAIN
- PROPOSED SILTFENCE
- PROPOSED HAYBALES
- W PROPOSED WELL
- PROPOSED SEWER FORCEMAIN
- WTW PROPOSED WATER TREATMENT WASTEWATER
- EXISTING TREELINE
- PROPOSED TREELINE

IMPROVEMENT LOCATION SURVEY

NOTES:

1. THIS MAP AND SURVEY HAVE BEEN PREPARED IN ACCORDANCE WITH THE REGULATIONS OF CONNECTICUT STATE AGENCIES, SECTIONS 20–300b–1 THROUGH 20–300b–20. THIS IS AN IMPROVEMENT LOCATION SURVEY BASED ON A DEPENDENT RESURVEY CONFORMING TO HORIZONTAL ACCURACY CLASS A–2 AND TOPOGRAPHIC ACCURACY T–2.
2. MAP REFERENCE:
   A."A PLAN OF LOTS AT CRYSTAL LAKE, CONN. BEING WILLIAM J. BOWLER'S SECOND WEST DEVELOPMENT LAID OUT DECEMBER, 1925" SCALE: 1"=50' PREPARED BY GEO. TOWNE
   B."REVISED LAYOUT OF LOTS ON PINE STREET SUPERCEEDING "A PLAN OF LOTS AT CRYSTAL LAKE BEING WM. J. BOWLER'S SECOND WEST DEVELOPMENT SCALE 1INCH=50 FEET LAID OUT DECEMBER 1925 BY GEO TOWNE REVISIONS BY HD. HOWE RLS SEPT 1948."
   C. "CONVEYANCE MAP OF A PORTION OF "BOWLER SECOND WEST DEVELOPMENT" LOCATED AT CRYSTAL LAKE ELLINGTON, CONNECTICUT ALFRED E. SCHINDLER DATE 8/21/93 SCALE: 1"=50'"
3. THE WATER TREATMENT WASTEWATER, IF NEEDED, SHALL DISCHARGE TO THE SANITARY SEWER.
4. UNDERGROUND UTILITY, STRUCTURE AND FACILITY LOCATIONS DEPICTED HEREON HAVE BEEN COMPILED, IN PART, FROM RECORD MAPPING, OR OTHER SOURCES. THESE LOCATIONS MUST BE CONSIDERED APPROXIMATE IN NATURE. ADDITIONALLY, OTHER SUCH FEATURES MAY EXIST ON THE SITE, THE EXISTENCE OF WHICH ARE UNKNOWN TO GARDNER & PETERSON ASSOCIATES, LLC. THE EXISTENCE, SIZE AND LOCATION OF ALL SUCH FEATURES MUST BE DETERMINED AND VERIFIED IN THE FIELD BY THE APPROPRIATE AUTHORITIES PRIOR TO CONSTRUCTION. CALL BEFORE YOU DIG 1–800–922–4455.
5. PARCEL IS LOCATED IN ZONE R AND IS WITHIN THE SEWER SERVICE AREA.

I HEREBY DECLARE THAT, TO THE BEST OF MY KNOWLEDGE AND BELIEF, THIS MAP IS SUBSTANTIALLY CORRECT AS NOTED HEREON.

ERIC R. PETERSON — L.S. 23430 REGISTRATION NO.

STATE OF CONNECTICUT ERIC R. PETERSON No. 23430 LICENSED LAND SURVEYOR

THE WETLAND SOILS ON THIS PROPERTY WERE IDENTIFIED IN THE FIELD USING THE CRITERIA REQUIRED BY CONNECTICUT P.A. 72–155 AS AMENDED BY P.A. 73–571 AND ARE ACCURATELY REPRESENTED ON THIS PLAN.

GEORGE T. LOGAN, MS, PWS
Registered Soil Scientist

ZONING TABLE

R ZONE	REQUIRED	PROVIDED
MIN. LOT SIZE	40,000 SQ.FT.	9,373 SQ.FT.
MIN. LOT WIDTH	100 FEET	100+ FEET
FRONT YARD–WENDELL	35 FEET	9 FEET
FRONT YARD–PINE	35 FEET	63 FEET
SIDE YARD	10 FEET	N/A
REAR YARD	25 FEET–PRINCIPLE 10 FEET–ACCESSORY	11 FEET–PRINCIPLE N/A–ACCESSORY
MAX. LOT COVERAGE	25%	13.5%

10 5 0 10 20 30
GRAPHIC SCALE 1"= 10'

STATE OF CONNECTICUT MARK A. PETERSON No. 20905 LICENSED PROFESSIONAL ENGINEER

REVISIONS
01–30–2024
05–14–2024
06–04–2024 NCDHD COMMENTS

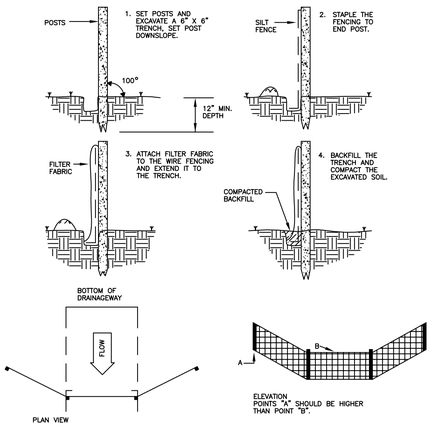
PERMIT PLAN PREPARED FOR
STEPHEN D. WILLIAMS
APN: 169–019–0000
37 WENDELL ROAD
ELLINGTON, CONNECTICUT

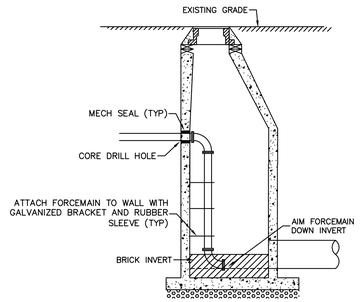
GARDNER & PETERSON ASSOCIATES, LLC
178 HARTFORD TURNPIKE
TOLLAND, CONNECTICUT
PROFESSIONAL ENGINEERS LAND SURVEYORS

BY	SCALE	DATE	SHEET NO.	MAP NO.
S.E.J./M.A.P.	1"=10'	02–23–1996	1 OF 2	9169A

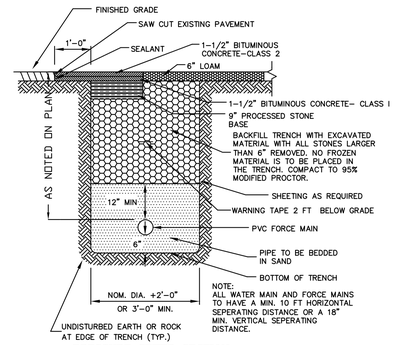
G:\PLOT\9169\VERMIT\06-04-2024\9169P.DGF
9169.cwy\9169.dwg

PLACEMENT AND CONSTRUCTION OF A SYNTHETIC FILTER BARRIER





FORCEMAIN DROP IN MANHOLE
N.T.S.



PRESSURE SEWER SECTION
N.T.S.

GENERAL EROSION AND SEDIMENT CONTROL NOTES

1. ALL EROSION AND SEDIMENT CONTROL MEASURES SHALL BE CONSTRUCTED IN ACCORDANCE WITH THE STANDARDS AND SPECIFICATIONS OF THE "GUIDELINES FOR SOIL EROSION AND SEDIMENT CONTROL" BY THE CONNECTICUT COUNCIL ON SOIL AND WATER CONSERVATION.
2. ALL SEDIMENT CONTROL PRACTICES AND MEASURES SHALL BE CONSTRUCTED, APPLIED AND MAINTAINED IN ACCORDANCE WITH THE APPROVED SEDIMENT CONTROL PLAN.
3. TOPSOIL REQUIRED FOR THE ESTABLISHMENT OF VEGETATION SHALL BE STOCKPILED IN THE AMOUNT NECESSARY TO COMPLETE THE FINISHED GRADING OF ALL EXPOSED AREAS.
4. AREAS TO BE FILLED SHALL BE CLEARED, GRUBBED AND STRIPPED OF TOPSOIL TO REMOVE TREES, VEGETATION, ROOTS OR OTHER OBJECTIONABLE MATERIAL.
5. ALL FILLS SHALL BE COMPACTED AS REQUIRED TO MINIMIZE EROSION, SLIPPAGE, AND SETTLEMENT. FILL INTENDED TO SUPPORT STRUCTURES, DRAINAGE, ETC. SHALL BE COMPACTED IN ACCORDANCE WITH THE APPROPRIATE STATE AND/OR LOCAL SPECIFICATIONS.
6. FILL MATERIAL SHALL BE FREE OF BRUSH, RUBBISH, LARGE ROCKS, LOGS, STUMPS, BUILDING MATERIAL, COMPRESSIBLE MATERIAL, AND OTHER MATERIALS WHICH MAY INTERFERE WITH OR PREVENT CONSTRUCTION OF SATISFACTORY FILLS.
7. FROZEN MATERIAL OR SOFT MUCKY OR HIGHLY COMPRESSIBLE MATERIALS SHALL NOT BE INCORPORATED INTO FILLS.
8. FILL SHALL NOT BE PLACED ON A FROZEN FOUNDATION.
9. ALL BENCHES SHALL BE KEPT FREE OF SEDIMENT DURING ALL PHASES OF DEVELOPMENT.
10. SEEPS OR SPRINGS ENCOUNTERED DURING CONSTRUCTION SHALL BE HANDLED IN ACCORDANCE WITH SOUND CONSTRUCTION PRACTICE.
11. ALL GRADED AREAS SHALL BE PERMANENTLY STABILIZED IMMEDIATELY FOLLOWING FINISH GRADING. IF FINISH GRADING IS TO BE DELAYED FOR MORE THAN 30 DAYS AFTER DISTURBANCE IS COMPLETE, TEMPORARY SOIL STABILIZATION MEASURES SHALL BE APPLIED. AREAS LEFT OVER 30 DAYS SHALL BE CONSIDERED "LONG TERM" AND SHALL RECEIVE TEMPORARY SEEDING WITHIN THE FIRST 15 DAYS.
12. SITE IS TO BE GRADED TO PERMIT THE USE OF CONVENTIONAL EQUIPMENT FOR SEEDBED PREPARATION, SEEDING, MULCHING, AND MAINTENANCE UNLESS OTHERWISE SPECIFIED IN THE PLANS.
13. CUT AND FILL SLOPES SHALL NOT BE STEEPER THAN 2:1. TOPSOIL SHALL BE SPREAD TO A MINIMUM DEPTH OF 4". ADDITIONAL TOPSOIL MAY BE REQUIRED TO MEET MINIMUM DEPTHS. NO TOPSOIL SHALL BE REMOVED FROM THIS SITE.
14. APPLY SEED UNIFORMLY BY HAND, CYCLONE SEEDER, DRILL CULTIPACKER TYPE SEEDER, OR HYDROSEEDER (SLURRY INCLUDING SEED AND FERTILIZER). NORMAL SEEDING DEPTH IS FROM 1/4" TO 1/2" INCH. HYDROSEEDING WHICH IS MULCHED MAY BE LEFT ON THE SOIL SURFACE.
15. WHERE FEASIBLE, EXCEPT WHERE EITHER A CULTIPACKER TYPE SEEDER OR HYDROSEEDER IS USED, THE SEEDBED SHOULD BE FIRMED FOLLOWING SEEDING WITH A ROLLER OR LIGHT DRAG.
16. FERTILIZER AND LIME ARE TO BE WORKED INTO THE SOIL AS NEARLY AS PRACTICAL TO A DEPTH OF 4 INCHES WITH A DISC, SPRING TOOTH HARROW OR OTHER SUITABLE EQUIPMENT. THE FINAL HARROWING OR DISC OPERATION SHOULD BE ALONG THE CONTOUR.
17. REMOVE FROM THE SURFACE ALL STONES TWO INCHES OR LARGER. REMOVE ALL OTHER DEBRIS SUCH AS WIRE, TREE ROOTS, PIECES OF CONCRETE, OR OTHER UNSUITABLE MATERIALS.
18. INSPECT SEEDBED BEFORE SEEDING. IF TRAFFIC HAS LEFT THE SOIL COMPACTED, THE AREA MUST BE RETILLED BEFORE SEEDING, THEN FIRMED AS DESCRIBED ABOVE.
19. WHERE GRASSES PREDOMINATE, FERTILIZE ACCORDING TO SOIL ANALYSIS, OR SPREAD 300 POUNDS OF 10-10-10 OR EQUIVALENT PER ACRE (7.5 POUNDS PER 1000 S.F.).

TEMPORARY SEEDING SCHEDULE:

SPECIES	LBS/ACRE	LBS/1000SF	SEEDING DATES
ANNUAL RYEGRASS	40	0.9	3/1-6/15, 8/1-10/1
WINTER RYE	40	0.9	4/15-6/15, 8/15-10/1
SUDANGRASS	11	0.25	5/15-8/15

TEMPORARY SEEDING IS NOT LIMITED TO THE SPECIES SHOWN. OTHER SPECIES RECOMMENDED BY THE SCS OR AS LIMITED BY SITE CONDITIONS MAY BE USED.

STRAW MULCH IS TO BE APPLIED TO SEEDED AREA AT THE RATE OF 1-1/2 TO 2 TONS PER ACRE, 70 TO 90 LBS. PER 1000 SQ. FT.

FINAL SEEDING SCHEDULE:

PROVIDE 4 INCHES OF TOPSOIL MINIMUM, FREE OF ROOTS, LARGE STONES, AND OTHER OBJECTS.

SPECIES	LBS/ACRE	LBS/1000SF	SEEDING DATES
KENTUCKY BLUEGRASS	40	0.90	4/15-6/15, 8/15-9/15
CREEPING RED FESCUE	120	2.75	
PERENNIAL RYEGRASS	40	0.90	

CONSTRUCTION SCHEDULE & EROSION & SEDIMENT CONTROL CHECKLIST

PROJECT NAME: PERMIT PLAN

LOCATION: 37 WENDELL ROAD ELLINGTON, CT

PROJECT DESCRIPTION:SINGLE FAMILY HOUSE

PARCEL AREA: 0.21 ACRES

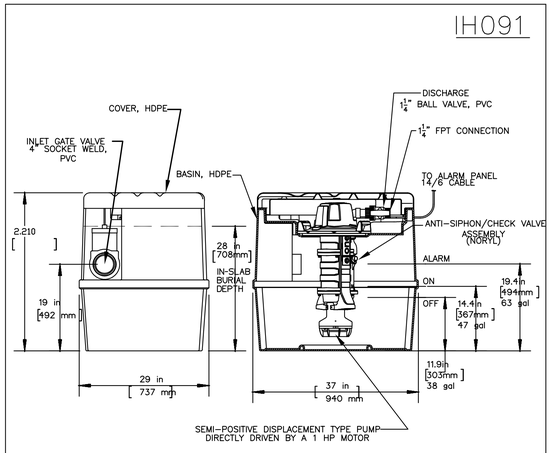
RESPONSIBLE PERSONNEL: STEPHEN D. WILLIAMS

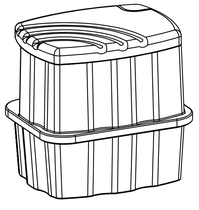
WORK DESCRIPTION	EROSION & SEDIMENT CONTROL MEASURES	DATE INSTALLED	INITIALS
CONTACT CBYD			
FLAG LIMIT OF CLEARING & STAKE PROPERTY LINE IN AREAS OF CONSTRUCTION			
CUT TREES			
INSTALL ANTI-TRACKING PAD			
INSTALL SILTFENCE & HAYBALES			
REMOVE STUMPS			
ROUGH GRADE SITE			
CONSTRUCT HOUSE AND UTILITIES			
FINAL GRADE SITE			
LOAM AND SEED ALL DISTURBED AREAS			
REMOVE SILTFENCE & HAYBALES WHEN SITE IS STABILIZED			

PROJECT DATES:
DATE OF CONSTRUCTION START APPROX. FALL 2024
DATE OF CONSTRUCTION COMPLETION 1 YEAR AFTER START

EROSION AND SEDIMENT CONTROL PROCEDURES SHALL ESSENTIALLY BE IN ACCORDANCE WITH THESE PLANS, AS REQUIRED BY TOWN REGULATIONS, AND THE MANUAL "GUIDELINES FOR SOIL EROSION AND SEDIMENT CONTROL" FOR CONNECTICUT, BY THE COUNCIL ON SOIL AND WATER CONSERVATION, 1985, REVISED TO 2002.

IH091





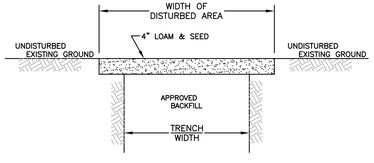
BASIN CAPACITY = 91 GALLONS

SGS		4-26-07	–	1/16
DR BY	CHK'D	DATE	ISSUE	SCALE

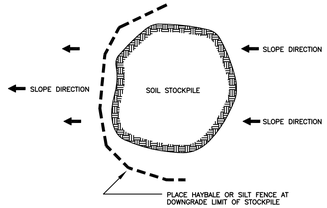
eone SEWER SYSTEMS

IH091 STATION, DETAIL SHEET

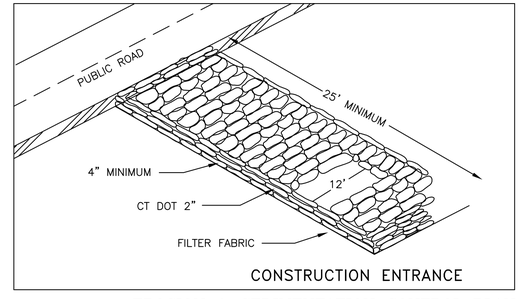
NA0056P02



LOAM & SEED REPAIR
N.T.S.



STOCKPILE EROSION PROTECTION DETAIL
N.T.S.



CONSTRUCTION ENTRANCE

EROSION & SEDIMENTATION CONTROL PLAN
DETAIL SHEET
PREPARED FOR
STEPHEN D. WILLIAMS
APN: 169-019-0000
37 WENDELL ROAD
ELLINGTON, CONNECTICUT

REVISIONS
01-30-2024
05-14-2024
06-04-2024 NCDHD COMMENTS

GARDNER & PETERSON ASSOCIATES, LLC
178 HARTFORD TURNPIKE
TOLLAND, CONNECTICUT
PROFESSIONAL ENGINEERS LAND SURVEYORS

BY	SCALE	DATE	SHEET NO.	MAP NO.
S.E.J./M.A.P.	NONE	02-23-1996	2 OF 2	9169A

9169\dwg\9169.dwg

STATE OF CONNECTICUT – COUNTY OF TOLLAND
INCORPORATED 1786

TOWN OF ELLINGTON

55 MAIN STREET – PO BOX 187
ELLINGTON, CONNECTICUT 06029-0187
www.ellington-ct.gov

TEL. (860) 870-3120 **TOWN PLANNER'S OFFICE** **FAX** (860) 870-3122

ZONING BOARD OF APPEALS
REGULAR MEETING MINUTES
MONDAY, JUNE 3, 2024, 7:00 PM

IN PERSON ATTENDANCE: TOWN HALL ANNEX, 57 MAIN STREET, ELLINGTON, CT
REMOTE ATTENDANCE: ZOOM MEETING
(ATTENDEES BELOW WERE IN PERSON UNLESS OTHERWISE NOTED)

PRESENT: Chairman Sulakshana Thanvanthri, Vice Chairman Katherine Heminway, Regular members Ken Braga, Subhra Roy and Miranda Graziani and Alternates Ron Stomberg, Ron Brown and Rodger Hosig

ABSENT: None

STAFF PRESENT: John Colonese, Assistant Town Planner/Zoning Enforcement Officer, and Barbra Galovich, Recording Clerk

I. CALL TO ORDER: Chairman Sulakshana Thanvanthri called the Zoning Board of Appeals (ZBA) meeting to order at 7:00 pm.

II. PUBLIC COMMENTS (ON NON-AGENDA ITEMS): None

III. PUBLIC HEARINGS:

1. V202404 – Gondal Corporation, owner/applicant, to appeal a decision from the Zoning Enforcement Officer dated March 27, 2024, of Section 6.3.2-General, Section 6.3.9-Illumination, and Section 6.3.10-Prohibited Signs at 83 West Road, APN 028-056-0000 in a Commercial (C) zone.

   Chairman Thanvanthri stated the Planning Department received a letter from Attorney Edward Schenkel dated May 13, 2024, requesting to continue the opening of the public hearing to July 1, 2024.

   MOVED (BRAGA), SECONDED (HEMINWAY) AND PASSED UNANIMOUSLY TO RECEIVE AND EXTEND THE OPENING OF THE PUBLIC HEARING TO MONDAY, JULY 1, 2024 IN THE ELLINGTON TOWN HALL ANNEX, 57 MAIN STREET, ELLINGTON, CT FOR V202404 – Gondal Corporation, owner/applicant, to appeal a decision from the Zoning Enforcement Officer dated March 27, 2024, of Section 6.3.2-General, Section 6.3.9-Illumination, and Section 6.3.10-Prohibited Signs at 83 West Road, APN 028-056-0000 in a Commercial (C) zone.

2. V202405 – Stephanie Dias and Douglas Miller, owner/applicant, request for variance of the Ellington Zoning Regulations Section 4.1-Permitted Uses and Uses Requiring Special

Permit: to permit an existing first floor unit used for a salon to be changed to an apartment creating a two-family dwelling at 15 West Road, APN 012-011-0000 in a Commercial (C) zone.

Time: 7:03 pm
Seated: Thanvanthri, Heminway, Braga, Roy and Graziani

Stephanie Dias and Douglas Miller, 18 Private Grounds 1, were present to represent the application.

Stephanie Dias explained the first floor of the dwelling has been vacant due to the salon owner's retirement and has been unable to fill the space with another commercial tenant. Stephanie stated the property is surrounded by other residentially used parcels. Stephanie noted a previous variance was received for 11 West Road to allow for a residential apartment and they are now requesting to change to residential in this building.

Alternate Ron Brown inquired about the parking for the proposed apartment unit. Doug Miller noted the space was previously a salon and the proposed dwelling unit would only need two or three spaces and said there is sufficient parking behind the building for the proposed two-family dwelling.

Alternate Ron Stomberg asked what the square footage will be for the apartment. John Colonese noted the owner provided a proposed interior layout for review. John added that Stephanie has spoken with the Building Official about building code requirements, should a variance be granted.

Commissioner Roy asked if the current tenants are aware of the possible change in use, Stephanie acknowledged they are aware of the proposal.

No one from the public spoke regarding the application.

MOVE (HEMINWAY), SECONDED (BRAGA) AND PASSED UNANIMOUSLY TO CLOSE THE PUBLIC HEARING FOR V202402.

MOVED (ROY), SECONDED (BRAGA) AND PASSED UNANIMOUSLY TO APPROVE WITH CONDITION(S) FOR V202405 – Stephanie Dias and Douglas Miller, owner/applicant, request for variance of the Ellington Zoning Regulations Section 4.1-Permitted Uses and Uses Requiring Special Permit: to permit an existing first floor unit used for a salon to be changed to an apartment creating a two-family dwelling at 15 West Road, APN 012-011-0000 in a Commercial (C) zone.

Condition(s):
1) Remove detached sign prior to issuance of final zoning sign-off for a two-family home.

HARDSHIP: Residential uses surrounding property; existing residential unit on second floor of building.

3. V202406 – Stephen D. Williams, owner/applicant, request for variance of the Ellington Zoning Regulations Section 3.2.3-Minimum Yard Setbacks: to reduce the front yard setback from 35ft to 9ft on Wendell Road and the rear yard setback from 25ft to 11ft to construct a single-family dwelling at 37 Wendell Road, APN 169-019-0000 in a Residential (R) zone.

Time: 7:08 pm
Seated: Thanvanthri, Heminway, Braga, Roy and Graziani

Stephen Williams, 36 Buff Capp Road, Tolland, CT was present to represent the application.

Stephen Williams explained that the property was inherited from his mother, and at the time of purchase in 1963 it was three lots. The lot has wetlands, and they are proposing to place a 16ft x 40ft home with a foundation in an area that does not comply with the building setback requirements.

Alternate Brown asked the applicant what the reasoning is for requesting the variance from 35ft to 9ft for a front yard setback. Stephen explained the lot has two front yards, being a corner lot, and there are wetlands on the parcel that have been flagged.

Stephen Williams explained there was previously a paper street, referred to as Walnut Street off Pine Street, and the Town installed a sewer pressure main along the paper street. Stephen noted the proposed dwelling would be connected to the sewer in that location.

Kevin Paradis, 82 Country View, South Windsor, CT, is speaking on behalf of his son who lives at 39 Wendell Road. Kevin's concern is the disruption from the installation of the sewer and well and potential impacts to the stream that runs through the property. Kevin asked about the sewer lateral, and Stephen noted there is an easement to connect. John Colonese referred to the plan which shows a sewer manhole and the proposed sewer connection.

Maura Heintz, 33 Pine Street, noted there is ledge on the site and expressed concerns with the digging and drilling activity when the sewer and well are installed. Maura also has concerns regarding the wetlands.

Ken Wendell, 13 Wendell Road, questioned how a structure will be allowed to be located so close to the wetlands. John Colonese noted the applicant will need to present an application to the Wetlands Agency.

Dennis Parsons, 26 Pine Street, is opposed to the application due to the lot being so small, the wetlands, and the stream that flows into Crystal Lake.

David Heintz, 33 Pine Street, is concerned about how close the activity will be to their well. David asked the applicant if other methods of installation could take place rather than blasting. Stephen Williams noted there may be other drilling options to complete the project.

John Colonese noted the Town Engineer was not asked for comment as its a variance application but will be consulted on the wetland's application. John noted the Water Pollution Control Authority (WPCA) requested the developer to coordinate with WPCA for the sanitary sewer requirements. Steven Williams indicated he had not reached out to the WPCA. Chairman Thanvanthri asked for more information from the Town Engineer and Water Pollution Control Authority.

MOVED (HEMINWAY), SECONDED (BRAGA) AND PASSED UNANIMOUSLY TO CONTINUE THE PUBLIC HEARING TO MONDAY, JULY 1, 2024, IN THE ELLINGTON TOWN HALL ANNEX, 57 MAIN STREET, ELLINGTON, CT FOR V202406 – Stephen D. Williams, owner/applicant, request for variance of the Ellington Zoning Regulations Section 3.2.3-Minimum Yard Setbacks: to reduce the front yard setback from 35ft to 9ft on Wendell Road and the rear yard setback from 25ft to 11ft to construct a single-family dwelling at 37 Wendell Road, APN 169-019-0000 in a Residential (R) zone.

IV. ADMINISTRATIVE BUSINESS:

1. Approval of the April 1, 2024, Regular Meeting Minutes.

   MOVED (HEMINWAY), SECONDED (ROY) AND PASSED UNANIMOUSLY TO APPROVE APRIL 1, 2024, REGULAR MEETING MINUTES AS WRITTEN.

2. Correspondence/Discussion:

V. ADJOURNMENT:

MOVED (BRAGA), SECONDED (HEMINWAY) AND PASSED UNANIMOUSLY TO ADJOURN THE ZBA MEETING AT 7:39 PM.

Respectfully submitted,

_____

Barbra Galovich, Recording Clerk