

ZONING BOARD OF APPEALS OF RIDGEFIELD

MINUTES OF MEETING

OCTOBER 18, 2010

NOTE: These minutes are intended as a rough outline of the proceedings of the Board of Appeals on Zoning of Ridgefield held on October 18, 2010, in the Public Meeting Room, Town Hall Annex, 66 Prospect Street, Ridgefield. Copies of tapes of the meeting may be obtained from the Administrator at cost.

The Chairman called the meeting to order at approximately 7:30 p.m. Sitting on the board for the evening were: Charles Creamer (Chairman), Duane Barney, Dwayne Escola, and Glenn Smith. Mr. Campbell, a respected board member since 2000, had passed away on October 14, 2010. Alternates Michael Stenko and Steven Coury sat on petitions continued from the October 4, 2010 meeting; alternate Henry Seemann sat in the place of Mr. Campbell.

ROTATION OF ALTERNATES

The rotation of alternates prior to this meeting was: first, Mr. Stenko; second, Dr. Seemann; third, Mr. Coury. Mr. Stenko was not able to sit on new petitions. Dr. Seemann sat for Mr. Campbell. Thus the rotation for the next meeting will be: first, Mr. Coury; second, Mr. Stenko; third, Dr. Seemann.

CONTINUED PETITIONS

The following petitions were continued from the October 4, 2010 meeting:

Appeal No. 10-036 – Petition of Christine and Kenneth McGarry

Mr. and Mrs. McGarry were present. All board members had visited the property at **5 Silver Spring Park Road** and had no additional questions.

Mr. Stenko and Mr. Barney both felt the porch would improve the house and area.

No-one appeared to speak for or against the petition and the hearing was concluded. The decision may be found in the end section of these minutes.

Appeal No. 10-032 – Petition of Chris and Lesley Poulton

This hearing concerning property at **55 Gilbert Street** was re-opened for additional testimony at the request of the applicants. Mr. Poulton appeared with his architect, Elizabeth Zieman.

Mr. Poulton noted that the board had been concerned at earlier hearings about the overall height of the building and the number of stories. He referred to a memorandum written by the Town Planner, Betty Brosius, to the Zoning Enforcement Officer concerning a discrepancy in the zoning regulations concerning the calculation of number of stories. Ms. Brosius had indicated that until the regulations could be changed, the ZEO should use the least restrictive interpretation. In view of that ruling, Mr. Poulton noted that although he still needed a variance of lot coverage, there was no issue with the number of stories or overall height. He provided a revised survey which reflected the interpretation and provided new coverage figures.

Mr. Poulton and Ms. Zieman also explained that they had modified the design of the addition, reducing the slope of the roof at the rear of the building to 4/12, which brought down the ridge of the roof 4 ft., although the front would not change.

No-one appeared to speak in favor of the petition. David Choplinski of 218 High Ridge Avenue spoke in opposition, deferring to his counsel, Dan Casagrande.

Attorney Casagrande noted that he had listened to tapes of the earlier hearings and reviewed the material presented. With the addition, the house would exceed the permitted coverage by 24% (1,353 sq. ft. permitted; 1,670 sq.ft. requested). The house already exceeded the permitted coverage, and the addition would be more than 10% in excess of what currently existed.

Mr. Casagrande believed from the tapes that the hardships presented by Ms. Zieman on behalf of the applicant were that the floor plan of the house was obsolete, the stairs did not meet code, and the Poultons did not want to leave town. Mr. Casagrande did not feel those issues met the legal requirements for hardship and were really only the owners' preferences. The purpose of zoning was not to maximize use on any property but to regulate all properties for the public health, safety and welfare. There had to be some peculiar characteristic of this property that presented unusual hardship as opposed to a hardship that had general application to the neighborhood. In addition, the Poulton's proposal was not in harmony with the comprehensive plan, and a disadvantage in value or income could not be claimed as hardship.

Mr. Casagrande reviewed the bullet points concerning hardship that had been submitted by the applicants at the previous hearing.

Concerning obsolescence: Obsolescence in and of itself was not grounds for hardship. Mr. Casagrande cited Moon vs. ZBA, 291 Conn. 16 (2009), which had addressed a second story addition for which a similar argument of obsolescence had been argued. He quoted from Footnote 9 of the opinion:

" The plaintiffs also asserted that they had suffered unusual hardship from the fact that the internal layout of the house was poorly designed to meet the needs of modern living. Such an inconvenience, however, does not rise to the level of hardship necessary for the approval of a variance. See Jaser v. Zoning Board of Appeals, 43 Conn. App. 545, 548, 684 (where zoning regulations allowed plaintiffs to build house, although not type they desired, no hardship existed; disappointment in use of property does not constitute exceptional difficulty or unusual hardship...'

Jaser v. ZBA (1996) also held that disappointment in the use of property does not constitute hardship.

Concerning the staircase and landing: Mr. Casagrande noted that there was no case in Connecticut that he could find that allowed a desire to meet current building codes to constitute hardship. There were many small houses in this district and throughout the Town of Ridgefield, so there could be no showing that this property was different in kind from other houses in the area.

Further, Mr. Casagrande submitted a copy of Section 29-265 of the CGS concerning the issuance of Certificates of Occupancy, and read:

"Nothing in the code or in this part shall require the removal, alteration or abandonment of, or prevent the continuance of the use and occupancy of, any single-family dwelling but within six years of the date of occupancy of such dwelling after substantial completion of construction of, alteration to or addition to such dwelling, or of a building lawfully existing on October 1, 1945, except as may be necessary for the safety of life and property."

Mr. Casagrande noted that the house had been occupied since 1941, so there were no issues of safety of life. The owners might wish to bring it up to code, but that was not a recognized hardship. If the code did not require the alteration, then it was an issue of the owners' preference.

The applicants had submitted a spreadsheet showing that their house was in the range of the other homes in the neighborhood that exceeded lot coverage. The spreadsheet was fatal to the claim of uniqueness. This house was no different from others in the area. Mr. Casagrande also cited from Fuller's Land Use Law and Practice, Section 9-2, page 240, 2007 edition, which stated that the existence of similar lots in the zone made it difficult to prove unusual hardship

In McCarthy vs. ZBA, a 1996 Superior Court case (1996 WL 499173 (Conn.Super.)), the owners needed both setback and lot coverage variances. Although the Court found hardship for the setback issue, it found that the increase in lot coverage from 10% to 13.9% was not insignificant. In the current petition, Mr. Casagrande pointed out that the increase over the permitted amount was 24%. He read:

“In the case before the court, the applicant cannot place an addition anywhere on the lot without a variance to increase the size of the building as a percentage of the lot area from 10% to 13.9%. As to this issue the only apparent claim of hardship is “I need additional living space.” The house predated zoning and has been lived in by the applicant and others for many years as a residence. There is absolutely no evidence that it cannot continue to be used as a residence. Undoubtedly lots of various sizes, including other nonconforming lots, exist within the zoning district. The owner of the lot, whether conforming or nonconforming, would have to establish a specific hardship in order to obtain a variance to exceed the allowable building coverage ratio when building a house. This court is not prepared to hold that owners of a nonconforming lot, smaller in size than that required by the Zoning Regulations, have greater rights than other land owners in the district and can show a hardship sufficient to expand a presently existing dwelling merely because their lots are nonconforming and they desire more living space.”

The Poulton lot was conforming, but the applicants could not use that fact to claim more hardship.

Mr. Casagrande further noted that the effect on the Choplinski lot could not be ignored. That area of Ridgefield was quaint but congested, and the Poulton house, if the variance were granted, would tower over and affect the use of the Choplinski yard. The fact that the addition would not violate the setbacks did not remove its interference with the use of the Choplinski property. The variance would be deleterious to its value. The claim that the Choplinski house was also high did not apply in this case; the Choplinskis were not seeking a variance.

Concerning the Comprehensive Plan: Attorney Casagrande read from Section 1.2 of the Zoning Regulations (Purposes), two of which were to provide for adequate light and air and to prevent overcrowding of land. One of the reasons for lot coverage regulations was to prevent overcrowding, and thus the application was contrary to the comprehensive plan.

In sum, Mr. Casagrande felt the application should be denied because there was no hardship, only personal preference; non-compliance with the building code was not hardship; the lot was not different from others in the neighborhood; there would be a negative effect on the adjoining Choplinski property.

In response, Mr. Poulton noted that he could not build in any other way without violating the setbacks. He had a growing family, and to expand he needed to go up. He wanted to be able to utilize the house and have his children on the same floor. The adjoining property had 41% lot coverage, so his proposal was consistent with the neighborhood.

Ms. Zieman noted that the staircase had been constructed in the late 1990s. She asked if the board had found hardship in the building codes on previous occasions. Mr. Creamer noted that in some case, the health codes had presented a hardship, but no board member was aware of the building code per se being used.

Mr. Escola commented that the front yard of the property was sloping, making it hard to expand in that direction. He felt the issue with the neighbor's property was that it was such an odd shape. Ms. Zieman noted that the Choplinski property violated the setbacks

in five places. Mr. Smith did not feel that helped the applicants' case. Mr. Barney commented that the sloping front yard might present a hardship for a location variance but it found it hard to apply to the lot coverage one.

Mr. Escola also believed that the board should use its judgment, not just follow the letter of the law. Mr. Smith felt that the board should vary when the regulations affected a property differently. Mr. Barney stated that in this case, the sliding scale in the zoning regulations for lot coverage presented him with a problem, regardless of the staircase issue.

No-one else appeared to speak for or against the petition, and the hearing was concluded. The decision may be found in the end section of these minutes.

NEW PETITIONS

The following new petitions were heard:

Appeal No. 10-037 – Petition of Dominick Colabella

Mr. Colabella explained that he was seeking a setback variance to allow him to construct an additional two-car garage on his property at **18 Kimberly Court**. The garage would be attached to the existing garage by means of a breezeway. He felt that the proposed location was the only one possible because of the slope of the property, a large amount of granite on the land, the location of the well, and the location of the septic system.

Mr. Creamer noted that the house already had a three-car garage and asked why the additional garage spaces were needed. Mr. Colabella explained that he was a car collector.

Mr. Barney asked why the applicant could not stack the cars. Mr. Colabella responded that this would interfere with the hot tub, pool, and entrance to the house.

Mr. Smith asked if the applicant would have to blast rock to construct the garage. Mr. Colabella said he would not need to in that particular location. Mr. Smith questioned whether there would be room for a proper turning radius.

Mr. Creamer asked why the new garage bays were deeper than the existing ones. Mr. Colabella said there was little difference: the existing ones were 22 ft. deep; the proposed would be 24 ft.

No-one appeared to speak for or against the petition. Board members wished to visit the property, and the hearing was continued to November 1, 2010.

Appeal No. 10-038 – Petition of George M. Cohan, Agent for Terence and Sarah Sullivan

Attorney George Cohan appeared with Ms. Sullivan. He explained that his clients had recently purchased property at **18 Woodlawn Drive**. A previous owner, Conway, had received a variance in 1973 to construct an in-ground pool at 15 ft. from the side line. At that time, the board did not require a plot plan, and the building inspector at that time had issued a C.O. However, the ZEO had not issued zoning compliance.

When his clients had purchased the house a few months earlier, Mr. Cohan, in performing due diligence, had found that the pool had been located 12.5 ft. from the line, not 15 ft. The current ZEO, Richard Baldelli, had sought opinion of his counsel who had found that the pool was technically in violation.

All of the neighbors had been notified, and none had a problem with the variance.

Mr. Creamer noted that there had been a lot of personnel changes in the zoning department in the 1970s which might have caused the problem.

No-one appeared to speak for or against the petition and the hearing was concluded. The decision may be found in the end section of these minutes.

Appeal No. 10-039 – Petition of Ann H. Vallerie

Ann and Donald Vallerie explained that they were seeking a setback variance to remove an existing shed and replace it with a larger one on their property at **28 Tannery Hill Road**. They would move the new shed farther from the line to meet the one acre setbacks (25 ft) that had been in effect at the time their property was created.

Mr. Smith asked why the applicant could not move it even farther to meet the 35 ft. two-acre setbacks. Mr. Vallerie explained that they would have to remove a lot of trees, and the shed would be closer to the septic fields. Mr. Vallerie also felt the proposed location would better hide the shed from view from the road.

Mr. Vallerie noted that the adjoining neighbors did not object to the shed. In response to questions from Mr. Smith, Mr. Vallerie explained that the property to the rear consisted of a pond and wetlands partly owned by the town.

No-one appeared to speak for or against the petition. As board members wished to visit the property, the hearing was continued to November 1, 2010.

Appeal No. 10-040– Petition of Ian McCann

Mr. McCann explained that he had received two earlier variances for additions to his house at **19 Griffin Hill Lane**. He needed additional setback variances for his front porch and a small deck he had constructed to the rear of the house.

Concerning the front porch: Mr. McCann said he had built exactly what he had shown the board in 2007, but he had genuinely not realized that he had to include overhangs in calculating the setbacks. The porch itself met the 14 ft. setback the board had granted, but the overhangs projected 9 inches farther. Dr. Seemann questioned why 4 inches of the overhangs, which consisted of a gutter, could not be removed. Mr. McCann felt a gutter in the front would be preferable to a leader at the side.

Concerning the deck: Mr. McCann explained that when he finished the house, the door to the garage was two feet in the air. He had constructed the deck to get from the garage to level ground without thinking that he would need an additional variance. The deck was tucked in a corner of the house to the rear. It would allow him to get out lawn mowers, etc., from the garage without lifting them to the yard. He reminded the board that he had no neighbors and was surrounded by State of Connecticut land. His land was very topographically challenged.

There was one additional variance needed for lot coverage. This had been omitted from the 2007 variances, although the board had recognized at that time that the front porch would not meet coverage. Mr. McCann had constructed the additions as shown to the board in 2007.

No-one appeared to speak for or against the petition and board members did not feel they needed to revisit the property. The hearing was concluded and the decision may be found in the end section of these minutes.

DECISIONS

The board voted the following actions:

PETITION OF CHRIS AND LESLEY POULTON
PROPERTY LOCATED AT 55 GILBERT STREET
APPEAL NO. 10-032

REQUESTED: a variance of Section 3.5.F, lot coverage, to allow an addition that will not meet the lot coverage requirement; for property in the R-10 zone located at **55 Gilbert Street.**

DATES OF HEARINGS: July 26, September 13, and October 18, 2010
DATE OF DECISION: October 18, 2010

VOTED: To Deny a variance of Section 3.5.F, lot coverage, to allow an addition that will not meet the lot coverage requirement; for property in the R-10 zone located at 55 Gilbert Street.

VOTE: To Grant: 1 To Deny: 4
In favor Opposed
Escola Barney, Coury,
Creamer, Smith

The board voted this action for the following reasons:

1. The applicants presented no unusual hardship peculiar to this particular parcel of property and not generally shared by other properties in the neighborhood that would justify the grant of the lot coverage variance requested in this case.

PETITION OF CHRISTINE AND KENNETH MCGARRY
PROPERTY LOCATED AT 5 SILVER SPRING PARK ROAD
APPEAL NO. 10-036

REQUESTED: variances of Sections 3.5.H, setbacks, and 3.5.F, lot coverage, to allow a front porch addition that will not meet the lot coverage and setback requirements; for property in the RAA zone located at 5 Silver Spring Park Road.

DATES OF HEARINGS: October 4 and 18, 2010
DATE OF DECISION: October 18, 2010

VOTED: To Grant, with Condition, variances of Sections 3.5.H, setbacks, and 3.5.F, lot coverage, to allow a front porch addition that will not meet the lot coverage and setback requirements; for property in the RAA zone located at 5 Silver Spring Park Road.

VOTE: To Grant: 5 To Deny: 1
In favor Opposed
Barney, Coury, -0-
Creamer, Escola, Stenko

CONDITION:

This action is subject to the following condition which is an integral and essential part of the decision. Without this condition, the variance would not have been granted:

The front porch shall be constructed exactly as shown on plans and drawings presented to the board during the hearing and made part of this decision.

The board voted this action for the following reasons:

1. This property predates zoning in Ridgefield and was made nonconforming by the enactment of the zoning ordinance and subsequent changes to the regulations. This fact, combined with the severely undersized lot (0.17 acre in the two acre zone), presents an unusual hardship that justifies the grant of the variance requested in this case.
2. The proposed porch is modest and improves the scale of the house. It will have no negative impact on the surrounding properties and is harmony with the general scheme of development in the area.

PETITION OF GEORGE M. COHAN
AGENT FOR TERENCE AND SARAH SULLIVAN
PROPERTY LOCATED AT 18 WOODLAWN DRIVE
APPEAL NO. 10-038

REQUESTED: a variance of Section 3.5.H, setbacks, to allow an inground pool to remain closer to the lot line than permitted by the zoning regulations and by ZBA variance #73-019; for property in the RAA zone located at **18 Woodlawn Drive.**

DATE OF HEARING: October 18, 2010
DATE OF DECISION: October 18, 2010

VOTED: To Grant, with Condition, a variance of Section 3.5.H, setbacks, to allow an inground pool to remain closer to the lot line than permitted by the zoning regulations and by ZBA variance #73-019; for property in the RAA zone located at 18 Woodlawn Drive.

VOTE:	To Grant:	5	To Deny:	0
	<u>In favor</u>		<u>Opposed</u>	
	Barney, Coury,		-0-	
	Creamer, Escola, Smith			

CONDITION:
This action is subject to the following condition which is an integral and essential part of the decision. Without this condition, the variance would not have been granted: This variance shall apply only to the pool as it currently exists. No additional construction is approved as a result of this variance.

The board voted this action for the following reasons:

1. The ZBA granted a setback variance for the pool in 1973 (ZBA variance #73-019), and a Certificate of Occupancy was issued after its construction. As no Zoning Compliance was issued at the same time, the pool is technically non-compliant. The same hardships that the board found in 1973 continue to apply in this petition.
2. The pool has existed for 37 years without negative impact to the neighborhood.

PETITION OF IAN MCCANN
PROPERTY LOCATED AT 19 GRIFFIN HILL LANE
APPEAL NO. 10-040

REQUESTED: variances of Section 3.5.H, setbacks, and 3.5.F, lot coverage, to allow (1) a roof overhang on a front porch to remain closer to the front lot line than permitted by the zoning regulations and ZBA variance #07-030; (2) a deck to remain closer than permitted to the lot lines; (3), additions approved in ZBA variances 07-019 and 07-030 to exceed the permitted lot coverage; for property in the RAA zone located at **19 Griffin Hill Lane.**

DATE OF HEARING: October 18, 2010
DATE OF DECISION: October 18, 2010

VOTED: To Grant, with Condition, variances of Section 3.5.H, setbacks, and 3.5.F, lot coverage, to allow (1) a roof overhang on a front porch to remain closer to the front lot line than permitted by the zoning regulations and ZBA variance #07-030; (2) a deck to remain closer than permitted to the lot lines; (3), additions approved in ZBA variances 07-019 and 07-030 to exceed the permitted lot coverage; for property in the RAA zone located at 19 Griffin Hill Lane.

VOTE: To Grant: 5 To Deny: 0

In favor Opposed
Barney, Coury, -0-
Creamer, Escola, Smith

CONDITION:

This action is subject to the following condition which is an integral and essential part of the decision. Without this condition, the variance would not have been granted:

The variances shall apply only to the house as constructed and shown on a survey of the property presented to the board during the hearing and made part of this decision.

The board voted this action for the following reasons:

1. The same hardships that the board found in ZBA variances #07-006 and 07-030 continue to apply in this petition, most particularly the severely undersized lot and its topography.
2. The property is in an isolated area, and these minor modifications to the earlier variances will have no negative impact on the neighborhood.

As there was no further business before the board, the Chairman adjourned the hearing at approximately 9:35 pm.

Respectfully submitted,

Marjorie Tippet
Administrator

Filed on the Town Website
October 19, 2007
4:12 pm
