TOWN OF WASHINGTON

BRYAN MEMORIAL TOWN HALL

**POST OFFICE BOX 383**

**WASHINGTON DEPOT, CT 06794**

**ZONING BOARD OF APPEALS**

**MINUTES**

**JULY 16, 2015**

**Members Present:** Ms.Roberts, Mr. Catlin, Mr. Bowman, Mr. Wyant, Ms. Leab

Members Absent:

Alternates Present: Mr. Peterson, Mr. Wildman, Ms. Kaplan

Alternates Absent:

**Staff:** Ms. Nelson. Mr. Ajello

**Others:** Mr. Provey, Mr. Sedito, Mr. Szymanski, Mr. Frisch, Mr. & Mrs. Mackesy, Atty. Kelly, Atty. Fisher, Mr. Carpanzano, Mr. Siemans, Mr. Harris, Mr. Studer, Mr. Stange, Atty. Bloom

Ms. Roberts, Chairman, called the Public Hearing to order at 7:30 pm.

**Continued:**

**PUBLIC HEARING**

**Seated:** Roberts, Catlin, Bowman, Wyant and Leab

**ZBA-0989-**Request of Edwards/ 14 Church Hill Rd., for Special Exception for Expansion of Nonconforming Dwelling, 17.5 to build an addition.

Mr. Carpanzano represented the applicant and came before the commission with revised drawings that included dimensions. The commissioners looked at First Floor Existing, First Floor Proposed, Second Floor Proposed, South View Proposed and West View Proposed dated 7/16/15 by Michael Carpanzano. Mr. Carpanzano added as much information as he could to the drawings. He said the roof line does change by 1 foot 6 inches. The roof line is extended with different pitches and adds head room to the existing bedroom. He said they are using an existing footprint and are adding 32 SF. The applicant wants the addition to match the current structure. The commissioners looked at the proposed west view and proposed south view and discussed the ridgeline in detail. Mr. Carpanzano said the highest peak is well within zoning regulations. He explained the end of the gable ties with the ridgeline and there will be a siding surface that goes past the ridge by nine inches.

There were no comments from the public.

**Motion:** to close the Public Hearing for **ZBA-0989** – Request of Edwards-14 Church Hill

Road, for Special Exception for Expansion of Nonconforming Dwelling, 17.5 to

build an addition by Mr. Catlin, seconded by Mr. Wyant, passed by 5 – 0 vote.

**MEETING:**

Ms. Leab said this was a modest proposal and reasonable in scope. She said it supports the continued use of a single family dwelling and takes into consideration the architectural style and appearance. Mr. Bowman agreed with the comments from Ms. Leab and added that this was a difficult house to build an addition for. He said the applicant did a good job of trying to blend the addition with the existing house. Ms. Roberts agreed with previous comments. Mr. Wyant commended the architect and was in favor of the project. Mr. Catlin also agreed with prior comments and was in favor.

**Motion:** to approve **ZBA-0989–** Edwards – 14 church hill Road, for Special Exception for Expansion of Nonconforming Dwelling, 17.5 to build an addition, passed by 5 – 0 vote.

**PUBLIC HEARING**

**ZBA-0990-**Request of Provey/ 9 Sandstrom Road, for Variance, Zoning Regulation Section (s) 11.6 and 11.6.1 (Minimum Setback and Yard Dimensions) to remodel a house.

**Seated:** Roberts, Catlin, Bowman, Wyant, and Leab

Mr. Provey discussed the elevations on his proposed project. The commissioners looked at drawings of Proposed First Floor Plan, Proposed West Elevation and East Elevation dated 7/16/15 and signed by Mr. Provey. Mr. Provey said that one of the things that became larger was the gable over the portion of the study and kitchen. This was due to lost space when bringing down the height of the roof. Mr. Provey was able to determine some of the elevations of his neighbors and he submitted some photos (unlabeled). Ms. Roberts noted that the East Elevation has a dormer on the left that pokes out and on the South Elevation it isn’t visible. Mr. Provey said he didn’t show it on his drawing because it would over shadow another dormer and it was difficult to draw. The commissioners continued to look at the elevations. Ms. Roberts said we are considering setbacks for this application said the deck is now nineteen feet on the diagonal to the northwest corner of the lot, this is fine in the rear setback and the side yard setback is now eleven feet. The new setback becomes greater than whats there now. The commissioners are now looking at “Lot Specifications for 9 Sandstrom Road”. The highlighted areas indicate non-conforming setbacks. Mr. Provey pointed to a jog in the map where his neighbor’s well is located on his property. His neighbor built a shed on this piece as well. Mr. Provey said the addition to the rear, about 75%, doesn’t conform to the side setback. He is asking for a variance for the second floor and a piece of the porch. The other hardship is the septic system and there is only one location for it. Mr. Provey said his property has a lot of restrictions and he is in an unusual situation.

There was a comment from the public.

Mr. Siemans, a neighbor, showed the commissioners a few photos from the perspective on his property. He was not in favor of the application. Mr. Siemans did not email the photos to be added to the record. There were no more comments.

**Motion:** to close thePublic Hearing for **ZBA-0990 –** Request of Provey – 9 Sandstrom Road, for Variance, Zoning Regulation(s) 11.6 and 11.6.1 (Minimum Setback and Yard Dimensions) to remodel a house, by Ms. Roberts and seconded by Mr. Wyant,

passed 5 – 0 vote.

**MEETING:**

Mr. Catlin spoke in favor of the application and said how far this application has come. There is a significant land based hardship and the scale has been reduced significantly and it’s a very tricky lot. He said he was sensitive to the notch that has his neighbors well and that makes the side yard setbacks impossible to comply with. Mr. Wyant agreed with Mr. Catlin and supports this project. Ms. Roberts said this project was modest in scope and she agreed with Mr. Catlins comments. She also said she appreciated the applicant is keeping the original footprint except for the modest addition to the west and the applicant had even brought side yard setbacks in compliance. Mr. Bowman agreed and said the design has evolved in a very pleasing way and the appearance is very nice. He also said that given the hardship what is being proposed is reasonable. Ms. Leab said she appreciated the effort of the applicant has put in to make the project a manageable form. Mr. Catlin asked Mr. Provey to supply a final set of correct plans for the file.

**Motion:** to approve **ZBA-0990 –** Request of Provey – 9 Sandstrom Road, for Variance, Zoning Regulation(s) 11.6 and 11.6.1 (Minimum Setback and Yard Dimensions) to remodel a house, contingent on final accurate drawings. Passed 5 – 0 vote.

**PUBLIC HEARING:**

**ZBA-0991-**Request of John Harris/ 254-258 New Milford Turnpike, for Variance, Zoning

Regulation Section(s) 12.1.1 and 12.1.2 (Wetlands and Watercourses Setbacks) to build an addition to the restaurant and install a parking lot, etc.

**Seated:** Roberts, Catlin, Bowman, Wyant, and Leab

Mr. Harris addressed the commission and they looked at Sheet One of Two 258 & 254 New Milford Turnpike dated May 7, 2015. He said the White Horse has challenges that are three fold. This is a very limited property, the septic is in front under the parking lot, and there is limited storage and staff has to go across the street to get supplies. Mr. Harris said now he has the opportunity to purchase neighboring property which consists of 14 acres. With this purchase he will be able to locate a new septic system across the river for the restaurant and the apartment building. Once the apartment septic is abandoned he will be able to use this space as a parking lot. Mr. Harris said employee parking will be relocated to across the river. The third part of the project is the building addition to the restaurant that would encompass a brand new kitchen. There would also be space for a walk-in refrigerator and freezer and additional space for private parties.

Mr. Studer, design architect for Mr. Harris, addressed the commission. He said what drove this project was the septic. There is nowhere to replace the existing septic. The relocation of the septic would alleviate the existing nonconforming condition. There was a lengthy discussion of safety issues for the staff and restaurant clients and parking. Ms. Roberts asked about the expansion of the restaurant. Mr. Harris explained he would like to use this more for overflow in the winter when he looses the use of outside tables. Ms. Roberts asked if there were any comments or questions from the public.

Mr. Stange commented on the smells from the kitchen and he was concerned about the restaurant growing and the increased volume of cooking.

Mr. Bowman then asked about the exhaust fans. Mr. Harris said the two large exhaust fans are out back and with the proposed addition the exhaust fans would be facing the apartment building. Mr. Catlin expressed concern over the scale. He was concerned with the additional usage of the building. He said the commission is being asked to approve a really large building in a sensitive area in a tricky lot. Mr. Studer said the existing kitchen is too small and they are asking to fix a problem. He also said this project didn’t happen because Mr. Harris wanted more seating, it happened to alleviate a septic issue and a parking issue but the reality is that it has to make sense for Mr. Harris.

**Motion:** to close the Public Hearing for **ZBA-0991 –** Request of Harris **–** 254-258New Milford Tpk., for Variance, Zoning Regulation Section(s) 12.1.1 and 12.1.2 (Wetlands and Watercourses Setbacks) to build an addition to the restaurant and install a parking lot, etc. By Ms. Roberts, seconded by Mr. Wyant and passed 5 – 0 vote.

**MEETING:**

Ms. Roberts spoke in favor and understands the hardship. She thought the septic issue was huge and this is a sensitive development. Mr. Catlin is struggling with the idea but agreed with Ms. Roberts comments. He thinks there is some real hardship and a significant need to make some changes. He hopes that Zoning will take into consideration the extra seating. Mr. Wyant said he thinks there is a need to get the septic out of where it is and he supported it. Mr. Bowman agreed with Mr. Catlin about being cautious. He thinks it will be an improvement over the current situation. Ms. Leab said that moving the septic system is very important and she was in favor of the project.

**Motion:** to approve **ZBA-0991 –** Request of Harris **–** 254-258New Milford Tpk., for Variance, Zoning Regulation Section(s) 12.1.1 and 12.1.2 (Wetlands and Watercourses Setbacks) to build an addition to the restaurant and install a parking lot, etc. passed 5 – 0 vote.

**PUBLIC HEARING:**

**ZBA-0992**-Request of Schein and Mostajo/2 Wykeham Road, for Variance, Zoning Regulation Section(s) 12.1.3 (Wetlands and Watercourses Setbacks) to replace a septic system.

**Seated:** Roberts, Catlin, Bowman, Wildman, and Leab

Atty. Fisher spoke to the commission on behalf of the applicants and submitted two sheets of Septic System Repair revised to 07/08/15 by Smith and Company. Ms. Roberts noted that the Gunnery has plans to buy this property. Atty. Fisher continued saying the lot itself is just under a half an acre. It has an existing septic system that is about 60 feet from a stream so it violates the 100 ft. setback of a septic system from a watercourse. The plan is to abandon the existing septic system in place and put the proposed septic 78 feet from the stream so that is slightly further away but still not to 100 feet. Atty. Fisher said that because of the small lot with other buildings on it there is no feasible alternative. The only changes to the map were changes requested by Wetlands to show. They were 1.) where is the stock pile for fill? Atty. Fisher pointed to the map. And 2.) excavation for the power line from the house to the pump in the septic tank, it will be in the same trench as the effluent line. The hard ship is obvious. Atty Fisher said the applicant has a failing septic system that has to be replaced and no other location to put it, no municipal sewer so they are asking for a variance from the 100 ft. setback from a watercourse to the location of the septic leaching fields.

**Motion:** to close the Public Hearing for **ZBA-0992** – Request of Schein and Mostajo – 2 Wykeham Road, for Variance, Zoning Regulation Section(s) 12.1.3 (Wetlands and Watercourses Setbacks) to replace a septic system by Mr. Catlin, seconded by Ms. Leab and passed 5 – 0 vote.

**MEETING:**

Ms. Roberts said this application was straight forward. She was happy it had been to Inland-Wetlands and she recognized the hardship. She noted the applicant is moving the septic further from the stream. The remaining seated member agreed with Ms. Roberts comments and were in favor.

**Motion:** to approve **ZBA-0992** – Request of Schein and Mostajo – 2 Wykeham Road, for Variance, Zoning Regulation Section(s) 12.1.3 (Wetlands and Watercourses Setbacks) to replace a septic system, passed 5 – 0 vote.

**PUBLIC HEARING**:

**ZBA-0993**-Request of Mackesy/233 West Shore Road, for Variance, Zoning Regulation Section(s) 11.5 (Maximum Lot Coverage), 17.4 (Nonconforming Structure) and 12.1.1 (Wetlands and Watercourses Setback) to renovate a house, construct an addition to rear of house, and move a pool.

**Seated:** Roberts, Catlin, Bowman, Wyant, and Leab

Ms. Roberts noted that there is an appeal pending on last months decision made on this application.

Atty. Bloom represented Mr. & Mrs. Mackesy. He plans to address some of the concerns that were brought up last time. The focus tonight will be on the new plan. Atty. Bloom noted that if the plan was approved they will drop the lawsuit. Briefly Atty. Bloom wanted to highlight the main changes. The rear portion of the building has been tucked behind the residence and this will make it less visible from the road. The lot coverage is less than the last application. They are now proposing 17,866 SF it is lower than the existing coverage of 19,191 SF. In addition the intrusion into the wetlands has gone down. Atty. Bloom said they are reducing two non-conformities with this application. He said he would try to address a couple of legal issues. All this is in a memo he submitted with the application. Number one it is not necessary for the Mackesys to prove hardship in this case. There are many residential cases that are cited in the memo which clearly that where an application for variance results in the reduction or elimination of nonconformities, it is not necessary for the applicant to prove hardship. This new application the lot coverage has gone down and the intrusion into the wetland setback area has been reduced. There was a brief discussion between Atty. Bloom and Mr. Bowman regarding “use”. The second issue that Atty. Olson is reviewing is that the wetland setback regulation and denying the application for it raises some legal issues. Mr. Catlin said he didn’t notice any meaningful change. He said if you have a variance for 21,168 SF of coverage you are allowed to build on those 21, 168 SF not over here or over there. This was a problem last time. He agreed that there is legitimate hardship but he is struggling with the increase of the amount of allowable lot coverage, 30% over what is allowed. Ms. Leab said it’s not tradesies. Mr. Szymanski represented the applicant and the commissioners looked at EC.1 Existing Conditions Map, revised to 02/19/15 by Arthur H. Howland & Associates and ZL.1 Proposed Zoning Location Plan revised to 6/25/15 by Arthur H. Howland & Associates. There was a discussion that followed. Mr. Frisch also represented the applicants. They had a scale visibility issue that they were discussing visibility from the road and it was not presented well last time. Mr. Frisch showed the commissioners some drawings. The commissioners looked at Perspective Diagrams A-301A, A-301B and A-301C by Daniel Frisch Architect dated 7/16/15. Ms. Roberts said in comparing this application to last time claiming lot coverage was 17.24 and now they are saying it is 16.61. Mr. Szymanski said the prior calculations included CT state right of way on the opposite side of the road and that has been removed from the calculations. The volume of the structure was a concern said Mr. Catlin. Atty. Bloom wanted the commissioners to look at this as an independent application as opposed to what happened in the past. He thinks the application is reasonable and complies with the law. He said the regulations do limit what you can do with lot coverage. Atty. Kelly represented Mr. Stitler, a neighbor, who said he had no objection to this application. Atty. Kelly confirmed the idea when you reduce a non conformity you don’t have to prove hardship. He cited a couple of court cases that supported this issue.

**Motion:** to close the Public Hearing for **ZBA-0993** – Request of Mackesy – 233 West Shore Road, for Variance, Zoning Regulations(s) 11.5 (Maximum Lot Coverage) and 12.1.1 (Wetlands and Watercourses Setbacks) and 17.4 (Nonconforming Structure) to renovate a house, construct an addition to rear of house, and move a pool. By Ms. Roberts, seconded by Ms. Leab and passed 5 – 0 vote.

**MEETING:**

Ms. Leab said she thinks that by moving things and not making them smaller, the impact is reduced and she thinks this is just as good. Ms. Roberts is ok with the new application and the applicant has made a huge improvement in water quality. Mr. Wyant said the plan is safer and more family oriented and he is in favor of it. Mr. Bowman said the objections they had the last time remain. He said the plans were similar and he is unconvinced. A lot of built structure is on the site. He doesn’t believe that the square footage of asphalt is the same as square footage of a building. Ms. Leab disagreed with Mr. Bowman. She tends to be in favor of this application because the physical impact in terms of the lake is not going to be worse. She believes there is hardship. She is in favor now and said it makes sense. She said it is better and safer. Mr. Wyant said he thinks the applicant is trying to make the place safer and more family oriented. They have approval from wetlands and he thinks the commission should support it. Mr. Catlin applauded the applicants aesthetic and safety sensibilities but thinks there is too much house for the lot. He is not in favor and thinks the applicatioin has not changed since the previous denial.

**Motion:** to approve **ZBA-0993**– Request of Mackesy – 233 West Shore Road, for Variance, Zoning Regulations(s) 11.5 (Maximum Lot Coverage) and 12.1.1 (Wetlands and Watercourses Setbacks) and 17.4 (Nonconforming Structure) to renovate a house, construct an addition to rear of house, and move a pool. **VARIANCE DENIED**

by 3 – 2 vote.

**Other Business:**

The commissioners decided to change the date of the meeting in August because of attendance of the members. The monthly meeting will now be held on Tuesday August 25, 2015 at 7:30 PM in the Main Level Meeting Room at Bryan Memorial Town Hall.

The commissioners considered the Zoning Board of Appeals Meeting Minutes of June 18, 2015.

**Motion:** to accept the Zoning Board of Appeals Regular Meeting Minutes of June 18, 2015 as submitted by Ms. Roberts, seconded by Mr. Wyant, passed by 5-0 vote.

**Motion:** to adjourn at 11:30 pm, by Ms. Roberts, seconded by Mr. Wyant, passed 5 – 0 vote.

**Submitted Subject to Approval**,

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Linda Nelson, Land Use Clerk 7/23/15

**A recording of the meeting is available in the Land Use Office.**