

November 21, 2002

Members Present: Edmund White, Katharine Leab, Reese Owens, Bradford Sedito, Polly Roberts

Alternates Present: Heman Averill, Georgia Middlebrook, Bruce Skoog

Guests: James G. Kelly, Esq., Joseph & Leah Pullaro, Stephen Lazar, James Churchill, Gretchen & Phil Farmer, Tom Farnen, Dorota Habib, residents

The Chairman, Edmund White, opened the meeting at 7:30pm.

Let the record show that Katharine Leab listened to the tape of the October 17, 2002 meeting and public hearings of the Washington Zoning Board of Appeals.

MEETING - Continued from October 17, 2002

Mr. White seated Katharine Leab, Bradford Sedito, himself, and alternates Heman Averill, Bruce Skoog.

ZBA-0221, Request of Arnold J. Herrmann, Trustee, 316 Nettleton Hollow Road, for a variance from Zoning Regulations 11.6.1 (minimum yard setback), to construct a porch Mr. Skoog began by stating that a lot of the discussion centered around the architectural integrity of this building and he felt that the addition of the porch would neither improve or harm the building. He also felt there was no proven hardship. Ms. Leab felt there was no proof of hardship and found backward arguments to the fact that the whole house is nonconforming keep it that way or tear it down, which she felt was wrong. In regards to preserving an historic structure upon doing research Ms. Leab found that screen porches did not come into being until the early twentieth century. Ms. Leab also felt that there were other ways of dealing with the potential tree problem. Upon visiting the site Mr. Averill felt that the hardship in the removal of the trees is not as members were lead to believe. Mr. Sedito also visited the site and stated that members had asked the applicant to scale down and or push back the porch so it would not encroach on the set backs as much and the applicants chose not to change the scale of the project. Mr. Sedito is wavering on the issue of the porch being necessary for the continued use of the property as residential? He doesn't feel that the addition would be any more intrusive than the rest of the house. Mr. White finds no hardship in the need for the porch. He also felt that there were other alternatives.

MOTION: to deny ZBA-0221, Request of Arnold J. Herrmann, Trustee, 316 Nettleton Hollow Road, for a variance from Zoning Regulations 11.6.1 (minimum yard setback), to construct a porch, by a 5-0 vote.

PUBLIC HEARING - Continued from October 17, 2002

Mr. White seated Katharine Leab, Bradford Sedito, Polly Roberts, himself and alternate Bruce Skoog.

ZBA-0222, Request of Nine Main Street Associates LLC, 9 Main Street, for a variance from Zoning Regulation 16.5.1 (set back from property line for a sign), to install a sign. There was no one present to represent the applicant. Mr. White asked members if they had a chance to visit the sight and check on other opportunities for signage. Mr. White also stated that the commission took this application very seriously because of the obvious suggestion of the applicant that the large trees would be removed if they did not receive their variance for the sign. Mr. White asked for questions or comments from the public.

MOTION: to close the Public Hearing Re: ZBA-0222, Request of Nine Main Street Associates LLC, 9 Main Street, for a variance from Zoning Regulation 16.5.1 (set back from property line for a sign), to install a sign was made by Mr. Sedito, seconded by Ms. Leab, by a 5-0 vote.

MEETING

Mr. Sedito visited the sight and felt that the sign they have requested a variance for will be no more visible than the signs already in place. He also felt that if the applicant did not get the variance and removed the trees that the sign would need to meet the set back requirements and the sign would be set back into what is now the parking lot. Mr. Sedito feels that removing the trees and installing a sign would be detrimental to the property. In closing Mr. Sedito stated that the Zoning Board of Appeals has always been strict with sign issues and he hopes the owners will not cut down the trees. Ms. Roberts also visited the sight and felt there was already a lot of signage and the proposed sign would not be any more visible. Ms. Leab agreed with Mr. Sedito and Ms. Roberts. Mr. Skoog approached the property from both sides and feels that more signage is not a necessity.

Mr. White added that the past history of the ZBA has proven tough on the sign issue. He also stated that it would be sad to see the trees cut and felt there was extra pressure put on the commission that clouded the issue.

MOTION: to deny ZBA-0222, Request of Nine Main Street Associates LLC, 9 Main Street, for a variance from Zoning Regulation 16.5.1 (set back from property line for a sign), to install a sign, by a 5-0 vote.

PUBLIC HEARING - Continued from October 17, 2002

Mr. White seated Katharine Leab, Reese Owens, Bradford Sedito, Polly Roberts and himself.

ZBA-0223, Request of Joseph and Leah Pullaro, 23 Calhoun Street, for a variance from Zoning Regulations 11.6.1.c (front and rear yard setbacks), 12.1.1 (no building other than a boathouse shall be located within 50 feet of any body of water), 17.4.a (increasing the nonconformity of a non conforming building), to construct a two story addition. Joseph and Leah Pullaro and Stephen Lasar were present. Mr. White began by reviewing the history of variances for the Pullaro property at 23 Calhoun Street. A request for a variance was granted in 1989 for additions to remodel a second floor bathroom, add a third floor bathroom and deck (there is still only one bathroom, the work hasn't been completed). A variance was granted in 1994 for an above ground pool which the Pullaros state they have decided not to build. Mr. White made reference to an article asking for church support and an article in the Waterbury Republican, both pertaining to the applicant's request for a variance. Mr. White read into record the article from the Waterbury Republican. (both articles were added to this file) He also stated that he was contacted by a reporter but did not issue comment. In reference to these articles it is obvious that the Pullaros are a great family doing wonderful things for their children, the town needs affordable housing and by the show of people in attendance here now they are supported by people in the community. In speaking for the members of the Zoning Board of Appeals Mr. White assured the public that they share the same feelings toward the Pullaros. Ms. Roberts read a letter dated November 11, 2002 from Stephen Lasar, agent for the Pullaros and Mr. White read a letter dated November 20, 2002 from Atty. Thomas Byrne, a land use attorney for the Town of Washington. (both letters were added to the file) Mr. White stated that we have a lovely family who has adopted children with "special needs" and then we have the zoning regulations that have been adopted by the town. Stephen Lasar stated that the issue of the peculiar characteristics of the property, in that the building cannot be added on to have not been addressed. Ms. Leab interjected that Atty. Byrne's letter doesn't address the issue of "disability" of a full time resident. Discussion continued and Ms. Pullaro explained the physical "disabilities" of two of their adopted children and the limited mobility they experience and will continue to experience throughout their lifetime. In requesting a variance the Pullaros are trying to prepare ahead of time for accessibility and mobility of their children. Mr. White asked about needing a future variance for ramps. Ms. Pullaro stated that they won't need a variance because they have found a lift that can be installed

within the existing footprint of the building. Mr. Averill commented that the question of disability is the key. Mr. White is concerned, from a fire stand point, with safety and losing the rear exit. Ms. Pullaro has discussed a plan with local fireman. Mr. White also asked about a safe play area for the children. Ms. Pullaro explained that there is a gated garden area and large movable play equipment. At this point Mr. White opened the hearing to public comment. Ivan Park a builder who has worked with Habitat for Humanity for six years explained work that he has done on projects in New Milford and Kent. In working with the various commissions and boards it has been a give and take to meet both the human and geographical needs of applicants. It is his opinion in each case Habitat for Humanity has provided decent housing and has enhanced neighborhoods. Mr. Park feels that in this day and age personal hardship needs to be considered, this is an unusual situation. He urged the board to expand the hardship definition; it would be a loss to Washington to have the Pullaros leave town. Bill Bucklin from Cook Street spoke next. Mr. Bucklin referred to the Canoe Brook as nonexistent in the summer and doesn't form the view for the area. He feels that this is a very exceptional situation. Mr. Bucklin has been a teacher for 28 years and spoke of the security that children crave and he feels that ZBA has the power to give the Pullaro children the security to live in their house. William Fairbairn was present as a citizen of Washington. Mr. Fairbairn feels that ZBA is in a difficult situation and presented a map with highlighted area. Mr. Fairbairn states that 85% of the property cannot be used because of set back requirements and because of the unique land this is a clear case of exceptional hardship. He referenced a case "Chevron" which dealt with the same 85% set back issue and the variance was up held according to Mr. Fairbairn. Pete Tagley was next to speak and stated that he felt all requests for variances have a personal component. Mr. Tagley listened to the special needs of the children and questioned if as the children grow will this property still work? If the Pullaros needs or financial situation changes and they do leave town what will happen to this property and the variances granted to it? Mr. Tagley also questioned if granting this variance would set precedent. Mr. White answered that once a variance is granted it stays with that property and regarding the setting of precedent Mr. White stated that each situation is assessed individually. Ms. Roberts added that variances a specific to each property. Kirsten Peckerman stated that she has lived in town since 1971 and that this property was once "an ugly little house" but has since been transformed. Peter Bowman was next to speak. Mr. Bowman stated that it is his understanding that zoning regulations are intended to improve and protect the town, people should be encouraged to improve their properties and he feels it is the Pullaros who should decide if this property will work for them. Dick Sears from 43 Cook Street understands that the ZBA is up against a legal wall but stated that if there is a way to do this do it now for the Pullaros. Doug Bixby pastor of the Salem Covenant Church in Washington referred to the Pullaros house as "the house of love" and spoke the difference between the letter of the law and the spirit of the law. Mr. Bixby ended by stating that the community is blessed by the Pullaros and supports them. Bill Williams, a neighbor to the Pullaros offered his land and stated that this should be built for the kids. Bob McDonald, a 20 year resident of Washington stated that the Zoning Regulations and Zoning Board of Appeals don't take into fact that since the Pullaros bought the house their needs have changed. Mr. McDonald feels that the legal justification is in the nature of the lot. Susan Swanson states that her children are friends of the Pullaro children and that if the Pullaros are forced to leave town it would affect other families, take away a piece of everybody. Ms. Swanson feels the Pullaros are looking for a way to make a safe living environment for their family. Cindy Collins spoke as an adoptive parent. The Pullaros have been of great support and inspiration to her family. Ms. Collins pleaded to let the children grow up in their hometown and in a safe environment. At this point there being no further comments from the public Mr. White spoke of the pickle the ZBA was in because after hearing all the comments from the public there were still regulations and he saw no legalities for hardship. Referring to Section 17 of the Zoning Regulations Mr. White spoke of proposed rewrites to these regulations for non conforming structures in cases when it is hard to show classic hardship. Mr. Lasar feels that there is a legitimate hardship and that ZBA has the right to vary the regulations in regards to exceptional difficulty and hardship. Mr. Owens interjected that the personal issues need to be set aside and it needs to be determined that all reasonable viable alternatives have been ruled out. Ms. Pullaro answered by stating

that they have five bedrooms with seven children and two adults, the fact that they have sought the help of Habitat for Humanity means they have found no other alternatives, Habitat for Humanity was their last hope. They do not want to leave this school system; having the children start out in a new system would be hard on the children. Ms. Leab feels that the matter of "disability" as grounds for a variance constitute a "taking", they are keeping up with a growing family, and she would have no problem granting a variance. Mr. Pullaro stated that the need to uphold one law is violating another law, the law of expulsion, excluding a disabled child from their domicile. Mr. White introduced Hank Martin, Chairman of the Zoning Commission. Mr. Martin started by stating that at present there really is no way to regulate non conforming structures. The standard to apply for a variance is difficult and has to do primarily with the land. To vary these regulations is a very serious decision. Zoning will work to create more flexibility in Section 17 to give the Zoning Board of Appeals the ability to regulate without needing to meet the standard of hardship. These proposed changes should be in effect in the next few months and would be another option for the Pullaros to explore. Mr. Martin added that Zoning is trying to be proactive in identifying problems within the regulations. There was discussion on the varied courses that the Pullaros could take. At this point James Kelly spoke of his thoughts on how the Zoning Commission has changed the regulations a lot and in his opinion made it harder to build in Washington. Mr. Kelly spoke of non conforming properties and the need for the regulations to allow these properties to exist. He also stated that the Zoning Board of Appeals has the absolute power to vary for the sake of public health, welfare and safety and in his opinion ZBA can approve anything. Mr. Kelly added that the ZBA would be sued only if somebody proved that the variance has hurt them and from what he has heard in the meeting room tonight no one would. Mr. White reminded Mr. Kelly as well as the public that they have input at Public Hearings and that all boards' members are elected volunteers. Talk ensued about the Americans with Disabilities Act, which Mr. White had limited dealings with. Mr. Sedito interjected that the addition of the first floor bedroom was required to sustain use as a residence. Ms. Roberts felt that hardship was found in the nature of the lot, there was nowhere else to build and it was in keeping with the harmony of the Zoning Regulations. She stated that it made sense, there was no down side. Mr. White stated that he doesn't disagree, but feels the proposed regulation changes would be a better avenue.

MOTION: to close the Public Hearing Re: ZBA-0223, Request of Joseph and Leah Pullaro, 23 Calhoun Street, for a variance from Zoning Regulations 11.6.1.c (front and rear yard setbacks), 12.1.1 (no building other than a boathouse shall be located within 50 feet of any body of water), 17.4.a (increasing the nonconformity of a non conforming building), to construct a two story addition, by Mr. Sedito, seconded by Ms. Leab, by a 5-0 vote.

MEETING

Mr. White questioned if the members were informed and comfortable enough to vote. Mr. Owens is on the fence as to how he is going to vote because of the nature of the situation and how it was created. Mr. White is concerned with the loss of the porch and the safety issue connected with it. He feels the Pullaros have addressed the ramp and play area/garden issues, but feels that the proposed changes to the Zoning Regulations would help in this situation. He asked members if they wanted to vote tonight or take some time and vote at the next meeting. Members were in favor of voting.

MOTION: to approve: ZBA-0223, Request of Joseph and Leah Pullaro, 23 Calhoun Street, for a variance from Zoning Regulations 11.6.1.c (front and rear yard setbacks), 12.1.1 (no building other than a boathouse shall be located within 50 feet of any body of water), 17.4.a (increasing the nonconformity of a non conforming building), to construct a two story addition, by a 4-1 vote.

Ms. Leab, Mr. Owens, Mr. Sedito and Ms. Roberts voted to approve.

Mr. White voted to deny.

PUBLIC HEARING

Mr. White seated Katharine Leab, Reese Owens, Bradford Sedito, himself and alternate Georgia Middlebrook.

ZBA-0225, Request of Jane-Howard Hammerstein, 27 Scofield Hill Road, for a variance from Zoning Regulation 12.14.1 (generator/air conditioner unit located 10' from house), to install a generator & ac unit. James Churchill was present to represent the applicant. Mr. White read the applicants letter of request. Mr. Owens asked Mr. Churchill if he was aware that the regulations had been changed to locate units 25' from the house. Mr. Churchill stated that he wanted to place the units 200' from the property line. The house and garage are connected so are considered one building. Mr. White asked why the units could not be located within 25' of the garage. Mr. Churchill informed the members that there were buried tanks in the front and a garden in the rear. Gretchen and Phil Farmer are neighbors of the property and do not want the units located any closer to their property than allowed by the regulations. After minimal discussion the applicant chose to withdraw, he will forward a letter to that effect.

PUBLIC HEARING

Mr. White seated Katharine Leab, Reese Owens, Polly Roberts, himself and alternate Heman Averill.

ZBA-0226, Request of Rumsey Hall School, 201 Romford Road, for a variance from Zoning Regulations 12.1.3 (building within 200 feet of the Bantam River), to install a shed. Tom Farmen and Dorota Habib were present to represent the applicant. Mr. Farmen began by explaining the location of the septic work done this summer and the irrigation system that became necessary. He described the topography and the construction of the campus. He described the shed as a 7x10x7 floating shed located on crushed stone. Members asked what was in the shed. Ms. Habib stated that the shed houses a pump and control pane. Members were told that Inland/Wetlands have already given approval. Mr. White asked if they had considered any other locations. Mr. Owens would like time to investigate what is located in the shed, could it be smaller?

MOTION: to continue ZBA-0226, Request of Rumsey Hall School, 201 Romford Road, for a variance from Zoning Regulations 12.1.3 (building within 200 feet of the Bantam River), to install a shed, was made by Mr. Averill, seconded by Mr. Owens, by a 5-0 vote.

MOTION: to accept the minutes of the October 17, 2002 meeting as submitted, was made by Ms. Roberts, seconded by Ms. Leab, by a 5-0 vote.

OTHER BUSINESS

Pamela Osborne, secretary passed out a schedule of meeting dates for 2003 and also circulated email addresses to all members.

Ms. Roberts circulated a revamped copy of the ZBA application; she highlighted the changes she made. She pointed out the information she incorporated on to the back of the form and requested input from members.

Mr. White has submitted the annual report for the Zoning Board of Appeals. He also stated that work continues on both the lot coverage issue and Section 17.

MOTION: to adjourn was made by Ms. Roberts, seconded by Mr. Sedito, by a 5-0 vote at 10:15pm.

Submitted subject to approval,

Pamela L. Osborne, Secretary