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2021 APR 12 P 3:39

TOWN OF STONINGTON
PLANNING & ZONING

April 12, 2021

VIA Email only: cpalmer@stonington-ct.gov

James Kadding, Chairman
Stonington Zoning Board of Appeals
152 Elm Street
Stonington, CT 06378

Re: ZBA #21-05, Jennifer and Daniel Wilson – 2 Plover Lane, Mystic –
Variance request to reduce side yard setback from 10 feet to 1.5' – Zone
RA-20

Dear Chairman Kadding:

I represent Candice Georgiadis, the owner of 1 Seagull Lane, Masons Island, Mystic. The Georgiadis property is directly adjacent to that of the Wilson property, and the variance being sought is for the side of the Wilson property which abuts the Georgiadis' property. My client opposes this variance and feels that the law clearly does not authorize the Board to grant it. The Wilsons (the "Applicants") have no lawfully cognizable hardship and the hardship that they claim in their application is self-created.

The Applicant's claim of hardship is that trees were removed from the Georgiadis property, depriving them of privacy for their deck and the outdoor shower located upon it. As indicated on the Applicant's site plan, their deck is located almost entirely within the required ten-foot side yard and ends only 1.5 feet from the Georgiadis boundary line. Thus, **the existing deck was installed in violation of the Zoning Regulations.** We cannot be certain when the deck was constructed, but it looks quite new. Decks are considered "structures" under the Stonington Zoning Regulations and cannot be located within required yards. **The Applicants are asking this Board to grant a variance to provide privacy to a deck that should never have been built in the first place.**

Even if the deck were legal, a variance to enclose it with a pergola and fence would not meet the legal requirements under Connecticut law.

In order for a zoning board of appeals to grant a variance under General Statutes § 8-6(a)(3), two conditions must be met: (1) the variance must be shown not to substantially affect 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.

§ 9:2. Test for variances, 9 Conn. Prac., Land Use Law & Prac. § 9:2 (4th ed.)

This variance certainly does substantially affect the comprehensive zoning plan because the whole purpose of a required yard is to provide light and air for the adjacent property. In this case, activity is being carried out on a deck illegally constructed within that required yard, which is actually affecting *the Georgiadis* privacy, not the *Wilsons*. The privacy which the Applicants are seeking is only an issue because they built their deck where it was not allowed to be built, and now they seek to make that violation even worse by enclosing the deck with a pergola (which could easily be covered later on with canvas or some other material) and a fence located 1.5 feet from the Georgiadis property line.

This variance application also does not present legal hardship.

A person is not entitled to a variance where the hardship claimed is not different in kind from that generally affecting property in the same zoning district, namely the hardship is not unique or unusual.

§ 9:3. Hardship requirement, 9 Conn. Prac., Land Use Law & Prac. § 9:3 (4th ed.)

There is nothing unique about the Applicant's property. It is required to have the same 10-foot side yard as any other property in the RA-20 Zone. The house was constructed close to (if not on) the setback line, and the Applicants knew that when they bought it.

Where the effect of applying the regulations to the property is so severe as to amount to practical confiscation, that is sufficient hardship to allow and even require the zoning board of appeals to grant a variance. There is an extensive discussion of the two confiscation tests, the practical confiscation test and the balancing test, as they apply to variances in the *Verrillo* case; the decision held that a variance was not required under either of those tests and there was no hardship since there was some reasonable use of the property.

§ 9:3. Hardship requirement, 9 Conn. Prac., Land Use Law & Prac. § 9:3 (4th ed.)

In this case, the Applicant's property is perfectly useable without the enclosure of the deck, and the inability to enclose the illegal deck certainly does not amount to "practical confiscation" of their property. Many homes have decks which are not enclosed with pergolas or privacy fences, and they don't need them if they are built in conformance with required setbacks.

The construction of a deck on a building in violation of the zoning setback is a self-created hardship which justifies the denial of a variance.

§ 9:3. Hardship requirement, 9 Conn. Prac., Land Use Law & Prac. § 9:3 (4th ed.), citing to the case of *Just Bee, LLC, V. Black Point Beach Club Zoning Board of Appeals et al.* 2003 WL 21675943 (New London Superior Court).

In the *Just Bee, LLC* case, the Court noted the facts, which are the same as the ones in this case:

At the hearing, the applicant admitted that it built the deck prior to obtaining a building permit and prior to finding out where the property line extended to. The applicant then applied for the variance seeking relief from the setback requirements. At the hearing, the board asked the applicant why it could not build or move their deck to the north side of the house to comply with the zoning regulations. The only response given to this question was by an unidentified man stating, "if we did put a deck on that side that would severely hamper the playing area not just for children but for the whole neighborhood." (*Id.*, at p. 18; citations omitted.)

The Court then held:

"The hardship which justifies a board of zoning appeals in granting a variance must be one that originates in the zoning ordinance ... and arises directly out of the application of the ordinance to circumstances or conditions beyond the control of the party involved." (Internal quotation marks omitted.) *Kaeser v. Zoning Board of Appeals*, 218 Conn. 438, 445, 589 A.2d 1229 (1991). In the present case, the placement of the deck is not beyond the control of the applicant in that the applicant need only move the existing deck to the north side, thereby eliminating the hardship and complying with the zoning regulations. The board's decision [to deny the variance application] is reasonably supported by the evidence in the record.

Just Bee, LLC v. Black Point Beach Club Zoning Bd. of Appeals, No. 564026, 2003 WL 21675943, at *3–4 (Conn. Super. Ct. July 1, 2003)

The same is true here. The Applicant's site plan doesn't have setback dimensions, but it is clear from the most casual review that there is plenty of room for a deck on the south, east, and west sides of the property, yet they (or their predecessors in title) chose to construct a deck in the very location where the house is *closest* to the abutting property, and now they seek to make that deck even more visually prominent and more conducive to activity through this variance request.

The hardship claimed by the Applicants is self-created because they or their predecessors in title built the deck where it was not allowed to be located.

The concept that the grounds for the variance must arise from circumstances beyond the applicant's control is related to the concept that

variances cannot be granted for a self-created hardship. Where a hardship is self-created, the zoning board of appeals cannot properly grant a variance. This also occurs where a predecessor in title created a nonconformity or zoning violation.

§ 9:3. Hardship requirement, 9 Conn. Prac., Land Use Law & Prac. § 9:3 (4th ed.)

Lastly, the factual claims of the Applicants are misleading. Their application implies that their hardship is the result of trees removed from the Georgiadis' property, but what they fail to state is that such removal was performed *with their consent*. Attached to this letter is a photograph of the Georgiadis' property before the trees were removed. This very photo was emailed to the Applicants along with an inquiry about whether the Applicants would mind. Note that the Georgiadis family did not need the consent of their neighbors to cut trees on their own property, but in the interests of good neighborhood relations, they checked first. Jennifer Wilson clearly consented to the tree removal ("if you'd like it gone, go for it!" and "Yup . . . have at it!!!!").

The Applicants also claim hardship because they fear that their privacy will be invaded by the Georgiadis family. This fear is based on the fact that the Georgiadis family plans to install security cameras on their property, and the Applicants seem to think that such cameras will be aimed at their deck and outdoor shower. First, that is not correct. The security cameras are to assist the family in monitoring their children when on the dock and other areas of the property that are not readily visible from the windows. They have no intention of aiming security cameras at the Applicants. Second, if they did so, it would be *criminal conduct*. Connecticut General Statutes Section 53a-189a reads in relevant part as follows:

Sec. 53a-189a. Voyeurism: Class D or C felony. (a) A person is guilty of voyeurism when, (1) with malice, such person knowingly photographs, films, videotapes or otherwise records the image of another person (A) without the knowledge and consent of such other person, (B) while such other person is not in plain view, and (C) under circumstances where such other person has a reasonable expectation of privacy . . .

If there is an issue with privacy and the deployment of cameras aimed at private property, it is just the reverse of what the Applicants have stated. The attached photos show that *the Applicants* are the ones aiming cameras at *the Georgiadis property*. The camera has been aimed like this since last summer.

In summary, there is no legal hardship because the property of the Applicants is not unique; the deck for which privacy is being sought shouldn't even be there and could be located elsewhere; the property remains perfectly useable and valuable without the proposed pergola and fence; whatever hardship exists is self-created; the Applicants consented to the tree removal of which their application speaks; and either party that aims cameras at private portions of the property of the other is engaged in criminal conduct.

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We ask the Board to deny this variance application and we ask the Zoning Enforcement Officer to investigate the construction of the deck within the required side yard. I will be present for the Board's hearing on April 13, 2021 if you have any questions.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Mark K. Branse', written over a series of horizontal lines.

Mark K Branse, Esq.

Enclosures

Cc: Candice Georgiadis, info@stockmarketipo.com
Jennifer Wilson, jenn.wilson@comcast.net

Mark K. Branse

From: Stock Market IPO <info@stockmarketipo.com>
Sent: Monday, April 5, 2021 2:41 PM
To: Mark K. Branse
Subject: Fwd: Trees

----- Forwarded message -----

From: F G <info@stockmarketipo.com>
Date: Tue, Dec 17, 2019 at 10:00 AM
Subject: Re: Trees
To: JENNIFER <jenn.wilson@comcast.net>

How about the first one in the picture on the corner? Keep or cut?

> On Dec 17, 2019, at 9:58 AM, JENNIFER <jenn.wilson@comcast.net> wrote:
>
> <IMG_7597.HEIC>



Mark K. Branse

From: Stock Market IPO <info@stockmarketipo.com>
Sent: Monday, April 5, 2021 2:41 PM
To: Mark K. Branse
Subject: Fwd: Trees

----- Forwarded message -----

From: F G <info@stockmarketipo.com>
Date: Tue, Dec 17, 2019 at 10:02 AM
Subject: Re: Trees
To: JENNIFER <jenn.wilson@comcast.net>

Exactly! TY

> On Dec 17, 2019, at 10:01 AM, JENNIFER <jenn.wilson@comcast.net> wrote:

>

> I am indifferent to that tree... if you'd like it gone go for it! 🤔

>

>

>

> Sent from XFINITY Connect App

>

>

>

> ----- Original Message -----

>

> From: F G

> To: JENNIFER

> Sent: December 17, 2019 at 10:00 AM

> Subject: Re: Trees

>

> How about the first one in the picture on the corner? Keep or cut? > On Dec 17, 2019, at 9:58 AM, JENNIFER wrote: > >

Mark K. Branse

From: Stock Market IPO <info@stockmarketipo.com>
Sent: Monday, April 5, 2021 2:42 PM
To: Mark K. Branse
Subject: Fwd: Trees

----- Forwarded message -----

From: JENNIFER <jenn.wilson@comcast.net>
Date: Tue, Dec 17, 2019 at 10:04 AM
Subject: Re: Trees
To: F G <info@stockmarketipo.com>

Yup... have at it!!!

Sent from XFINITY Connect App

----- Original Message -----

From: F G
To: JENNIFER
Sent: December 17, 2019 at 10:02 AM
Subject: Re: Trees

Yes.. The very first one in the picture with the ivy growing on it. > On Dec 17, 2019, at 10:01 AM, JENNIFER wrote: > >
Sorry... to Clarify, I assume You mean the dogwood > > Sent from XFINITY Connect App > > > ----- Original Message ----
-- > > From: F G > To: JENNIFER > Sent: December 17, 2019 at 10:00 AM > Subject: Re: Trees > > How about the first one
in the picture on the corner? Keep or cut? > On Dec 17, 2019, at 9:58 AM, JENNIFER wrote: > >



Mark K. Branse

From: foti gergadis <gdevgroup12@gmail.com>
Sent: Saturday, April 10, 2021 8:07 AM
To: Mark K. Branse



wilson



C.A. 12/1/77

15'

60'

