



Town of Watertown Connecticut

Planning and Zoning, Zoning Board of Appeals,
Conservation Commission/Inland Wetland Agency
Watertown Government Municipal Center

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MINUTES ZONING BOARD OF APPEALS WATERTOWN, CONNECTICUT

PUBLIC HEARING

Candee Hill Junction, LLC
1400 Main Street, Watertown

Time: 7:30 P.M.
Date: Wednesday, October 26, 2011
Place: Watertown High School Lecture Hall
324 French Street
Watertown, Connecticut

1. Call Meeting to Order

Chairman, Mr. Enrico Sarandrea called the public hearing at 7:35 P.M.

2. Roll Call

Secretary, Mr. Phil Roger executed the roll call

Present: Chairman, Mr. Enrico Sarandrea
Secretary, Mr. Phil Roger
Mr. Jason Alldredge
Vice Chairman Mr. Chris Dupont
Mr. Gary Swingle

Absent: Ms. Joanna Abraham
Mr. Roger Mitchell
Mr. Ned Dalton

Also Present: Land Use Secretary, Mr. Chuck Bezio

Chairman, Mr. Enrico Sarandrea seated Mr. Gary Swingle for Mr. Roger Mitchell.

Chairman, Mr. Enrico Sarandrea seated Mr. Jason Alldredge for Ms. Joanna Abraham.

Chairman, Mr. Enrico Sarandrea read the ground rules into the record.

“ZONING BOARD OF APPEALS GROUND RULES”

1. The applicant or his representative will make his formal presentation to the board stating his specific hardship and precisely why this merits a variance from the Zoning Regulations of the Town of Watertown.
2. All comments, discussions, and observations shall be made through the Chair after proper recognition by the Chairman. This is necessary to ensure that only one person at a time speaks on any issue, thus making it easier for everyone to understand, and for clearer legal transcription.
3. All persons addressing the Commission shall begin by first clearly stating their name and address for the record. If necessary, the person may be asked to spell his or her name for the record.
4. Following the presentation of the application, the Zoning Board of Appeals will ask specific questions of the applicant.
5. After the Board has asked its questions of the applicant, I shall then allow members of the public who wish to speak either in favor of this application or against it, to address the Board.
6. I shall then allow the applicant to respond to the comments of the members of the general public.
7. I shall then allow any members of the general public who wish to present any additional information or clarifying discussion to do so.
8. I shall then provide an opportunity for the applicant to respond to these additional remarks if he or his representative so wishes.
9. The Zoning Board of Appeals has thirty-five (35) days from the date the Public Hearing commences to complete the Public Hearing. The Board may ask the applicant for a thirty-five (35) day extension of the Public Hearing period if the Board requires any additional information or wishes to schedule a site walk to observe the situation for themselves.
10. The Zoning Board of Appeals has sixty-five (65) days from the date when the Public Hearing is closed to render its decision. The Board may or may not make its decision tonight at its Regular Meeting following the Public Hearing.
11. You may stay for the Regular Meeting if you wish or you may leave at the end of the Public Hearing and contact the Zoning Office the following morning to determine the status of your application.

3. Hearing of Cases

A. Continuation of the public hearing from September 28, 2011 – Application #943 of Candee Hill Junction, LLC for a variance of 6 feet to side yard property line setback for existing A/C units at 1400 Main Street, Watertown.

The Public Hearing must be closed by October 26, 2011.

Mr. Pilicy

Attorney Franklin Pilicy was present on behalf of the applicant and explained the application to the Board. The current set back requirements are 10. The existing A/C units are 4' from the property line. We are requesting a 6' variance on the side yard property line. He submitted the memorandum in support of Zoning variance into the record.

PH 10/26/11
#943

**MEMORANDUM IN SUPPORT
OF
ZONING VARIANCE**

To: Town of Watertown Zoning Board of Appeals

Re: 1400 Main Street Watertown, CT
Owner: Candee Hill Junction, LLC
Application #943 of Candee Hill Junction, LLC for a variance of 6 feet to side yard property line setback for existing a/c units.

LEGAL ARGUMENT

Any municipality having a zoning commission must have a zoning board of appeals. (C.G.S. Section 8-5). It has been stated that the purpose of the zoning board of appeals is to keep the law running on an even heel. The essential purpose of the zoning board of appeals is to give elasticity in the application of the zoning regulations by granting variances so that they do not operate in an arbitrary or confiscatory and consequently unconstitutional manner.

C.G.S. Section 8-6 provides the specific powers and duties of a zoning board of appeals:

The authority of the zoning board of appeals to grant variances is governed by section 8-6(a)(3) of the General Statutes. Section 8-6(a)(3) allows the board to vary the application of the zoning ordinance or regulations, consistent "with their general purpose and intent and with due consideration for conserving the public health, safety, convenience, welfare and property values solely with respect to a parcel of land where owing to conditions especially affecting such parcel but not affecting generally the district in which it is situated, a literal enforcement of such bylaws, ordinances or regulations would result in exceptional difficulty or unusual hardship so that substantial justice will be done and the public safety and welfare secured.

The existence of the variance power recognizes that zoning regulations which permits some uses of land and limit or prohibit others will adversely affect individual property rights in some cases, and variances furnish elasticity in application of the regulations so they do no operate in an arbitrary or confiscatory and therefore, unconstitutional manner. REID V. ZONING BOARD OF APPEALS OF TOWN OF LEBANON, 235 Conn. 850, 855, 670 A.2d 1271, 1274 (1996), quoting this text; FLORENTINE V. TOWN OF DARIEN, 142 Conn. 415, 425, 115 A.2d 328, 332 (1955). Without authorization to a board of appeals or some similar agency to grant variances, it would be difficult, if not impossible, to keep the law "running on an even keel" and to prevent attacks upon the constitutionality of the zoning ordinance. Id. At 855, 670 A.2d at 1274. SERVICE REALTY CORPORATION V. PLANNING AND ZONING BOARD OF APPEALS OF TOWN OF GREENWICH, 141 Conn. 632, 635, 109 A.2d 256, 258 (1954). "A board of appeals is indispensable to the zoning

process both from the constitutional and the practical standpoint.” FLORENTINE V. TOWN OF DARIEN, 142 Conn. At 425, 115 A.2d at 332.


This requires the hardship to be unique, which means that it must be more than and different from the restriction imposed by the zoning regulations on other properties in the area. The statute does not allow a variance to be granted where it would be inconsistent with a general purpose and intent of the zoning ordinance or would adversely affect public health, safety and welfare, or property values in the district.

Under some circumstances uncertainty as to the proper application of a zoning regulation may create an unnecessary hardship which would justify the granting of a variance. SHELL OIL V. ZONING BOARD OF APPEALS OF TOWN OF BLOOMFIELD, 156 Conn. 66, 70, 238 A.2d 426, 428 (1968); LEVELLE V. ZONING BOARD OF APPEALS OF TOWN AND CITY OF MERIDEN, 145 Conn. 468, 472, 144 A.2d 45, 47 (1958) (uncertainty as to zone boundary).

The applicant for a variance must show that because of some peculiar or unique 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. BERLANI V. ZONING BOARD OF APPEALS OF TOWN OF PLAINVILLE, 160 Conn. 166, 170, 276 A.2d 780, 782 (1970); BELKNAP V. ZONING BOARD OF APPEALS OF TOWN OF EASTON, 155 Conn. 380, 383, 232 A.2d 922, 924 (1967). In a proper case the location of the property, its unusual soil conditions, topography and drainage problems may make it unsuitable for residential use and allow a variance for a nonresidential use. PIKE V. ZONING BOARD OF APPEALS OF TOWN OF HAMPTON, 41 Conn.App. 270, 274, 624 A.2d 909, 911 (1993), citing this text. GOLDREYER V. BOARD OF ZONING APPEALS OF CITY OF BRIDGEPORT, 144 Conn. 641, 645, 136 A.2d 789, 791 (1957).

“When a zoning board of appeals acts on a variance, most cases conclude that it acts in a quasi-judicial capacity.” See Id.; citing NIELSON V. ZONING BOARD OF APPEAL OF CITY OF HARTFORD, 152 Conn. 120, 123 (1964). “Other cases indicate that it acts in an administrative capacity.” See Id.; citing ROCCHI V. ZONING BOARD OF APPEALS OF TOWN OF GLASTONBURY, 157 Conn. 106, 111 (1968). “In order for a zoning board of appeals to grant a variance under C.G.S.A. § 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 sworn to cause unusual hardship unnecessary to the carrying out of the general purpose of the zoning plan.” See Id.; citing GRILLO V. ZONING BOARD OF APPEALS OF CITY OF WEST HAVEN, 206 Conn. 362, 368 (1988).

CANDEE HILL JUNCTION, LLC

By:  _____
Franklin G. Pilicy
Its Attorney

Mr. Pilicy

He reviewed the Memorandum in Support of Zoning Variance with the Board that he prepared. The applicant feels that the strict requirement of carrying out the zoning regulation’s site plan requirements are unnecessary with carrying out the general purposes of what the zone is intended for. It is a commercial zone with a commercial building at this location. He passed out photo boards showing the property. He reviewed the photos with the Board. When the building was completed air condition units were

installed on the side of the building. In some jurisdiction they do not consider air conditioning units as a structure. Therefore are permitted in the setback. These air conditioning units have been in place for 2 to 3 years. What is unique about this property is it was considered to be very difficult to develop. The narrow depth of the property limits its ability to be developed. This property is triangularly shaped. This building has added more than \$20,000 to the tax base and 20 jobs to the community. It is an attractive building and an asset. The genuine legal hardship is the shape of the property and the narrow depth of the lot. Up to this point the property has not needed a variance.

- Mr. Sarandrea We have granted variance for this building. We worked the applicant to assist in designing a the building. There is only one concrete slab for these three units. There is three units installed. I believe this was a created hardship. The developer should have known that they were creating a hardship. Why were the units not put on the roof?
- Mr. Pilicy It is also been the expressed opinion of the Planning and Zoning Commission to not have the units on the roof.
- Mr. Swingle He expressed confusion with the plans that were submitted with the application and the actual location of the units. Why is there is 6'x12' concrete pad show on the plans.
- Mr. Pilicy I do not know what the concrete pad is for. I did not prepare the map. I am not sure I have even seen this map. The pictures show the actual location of the units.
- Mr. Swingle There has been a letter written by our Town Attorney.
- Mr. Pilicy The letter has no relevance to the variance application. The letter is about whether the units are grandfathered because of the length of time they have been installed.
- Mr. Swingle When was the pad added to the site plan? Why was the pad not used? Was the pad approved by the Planning and Zoning Commission? I am concerned on were this plan came from?
- Mr. Pilicy I do not know if Planning and Zoning Commission has approved this plan with the pad on it.
- Mr. Roger The CO was issued in 2008 and the units were installed after.

Mr. Swingle I think we need to go look at this.

Mr. Sarandrea Complaints have been issued on this.

Mr. Bezio Chairman, Mr. Enrico Sarandrea, I have a question for the applicant. Where was the original location of the air condition unit originally approved for?

Mr. Pilicy I cannot answer this. I do not have the answer.

Mr. Dupont I would like to see the original approved site plan. I would like the applicant to present the Board a copy of the approved site plan.

Mr. Sarandrea I do not want to be sued. I want to understand what has happened and why before making any decisions.

Public:

Mr. Ward Attorney Bill Ward on behalf of Gary and April Benoit and Main Street Auto 1588 Main Street, Watertown CT, who have hired me to represent them in opposing this variance. Main Street Auto is located right next door to this property. My clients have filed the zoning violation complaint with Planning and Zoning and wish for the applicants to comply with the Zoning regulations. This is a self created hardship by the applicant. We have a true legal objection to this variance. These air conditioners were installed to close to the property line. Variance cannot be granted for a self created hardship under any circumstances. Where the applicants put these unit were there choice. To threaten to install them on the roof when there is plenty of space is just a threat. The applicant says the statement of hardship will be provided at public hearing. We had no idea what they were going to claim for a hardship and neither did the Board until the night of the public hearing. They installed thier air conditioners then come to the Board requesting a variance. Nothing defines a hardship more than that. This Board needs to find a hardship to grant a variance. He submitted a copy of plan that was submitted by the applicant with the application. The copy comes from the plans on file at the Planning and Zoning office. These units are not on the final as built plans signed 7/10/08. The pad was added to the plan as a revision on 6/18/11. This little pad was added this year. He reviewed the plans with the Board.

Mr. Swingle Did you say that there is alternative locations?

Mr. Ward Yes. There is a lot of space in the back.

Mr. Pilicy The applicant strongly disputes that this is a self created hardship. The complaint is based on two neighbors that just do not get along. I propose continuing the hearing and asking the staff to clarify your concerns.

Mr. Swingle If there is alternative locations to install these unit why can't they be installed in compliance with the Zoning regulations?

Mr. Roger The CO for this building was issued on 7/1/08. Then permits were issued on 11/17/08. The units were installed violating the setback rules. How did this get to this point? Why didn't the building or zoning official catch this before they were installed?

Mr. Bezio Chairman, Mr. Enrico Sarandrea, I have a question for the two Attorney involved in this application. We have continued this public hearing for a long time. We have received several extensions. There are statutory deadlines that the Board must comply with. What are the stator deadlines and can the Board legally continue the public hearing?

Mr. Pilicy The applicant has waived all statutory time limits and will do so in writing.

Mr. Ward I do not know the answer to your question. The opposition also waives all stator time limits and will do so in writing.

MOTION: Vice Chairman Mr. Chris Dupont moved to table the application to later in the agenda at 8:29 p.m. .

SECOND: Mr. Gary Swingle.

VOTE

AYES: Chairman, Mr. Enrico Sarandrea; Secretary, Mr. Phil Roger; Mr. Jason Alldredge; Vice Chairman Mr. Chris Dupont; Mr. Gary Swingle.

NAYS: None.

MOTION UNANIMOUS PASS T 5-0.

Chairman, Mr. Enrico Sarandrea called the public hearing back to order at 9:10 P.M.

MOTION: Secretary, Mr. Phil Roger moved to schedule a site walk on 11/12/11 and continue the public hearing to the next regularly scheduled meeting on 11/16/11 on the condition that both the applicant and Attorney Bill Ward submitted in writing a waiver of time.

SECOND: Vice Chairman Mr. Chris Dupont.

VOTE

AYES:

Chairman, Mr. Enrico Sarandrea; Secretary, Mr. Phil Roger; Mr. Jason Alldredge; Vice Chairman Mr. Chris Dupont; Mr. Gary Swingle.

NAYS: None.

MOTION UNANIMOUS PASS T 5-0.

Attest:

Chairman, Mr. Enrico Sarandrea
Zoning Board of Appeals