

ZONING BOARD OF APPEALS

FEBRUARY 7, 2007

A regularly scheduled meeting of the Zoning Board of Appeals of the Town of Trumbull was held in the Town Hall on Wednesday, February 7, 2007.

Attendance: Richard Puskar, Chairman; Michael Muir; Carl Scarpelli; Joseph Vitrella; John Savino; and alternate Frederick Garrity

Staff Present: James Cordone, Town Attorney; Joan M. Gruce, Planning and Zoning Administrator/Clerk

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Chairman called meeting to order at 7:35 p.m.; Mr. Vitrella read the call as filed in the office of the Town Clerk, published, and listed herewith:

The following is a brief summary of the hearing. The complete record is on tape, on file in the office of the Zoning Board of Appeals.

Upon motion made (Vitrella), seconded (Scarpelli), and carried unanimously (Puskar, Muir, Scarpelli, Vitrella, Savino), it was voted to add Executive Session to discuss pending litigation (Jen-Con Properties, LLC v. Trumbull ZBA) to this evening's agenda.

07-01) Atty. Jim Cordone represented the Town's position, indicating that he met with Mr. and Mrs. Evans, and Ray Baldwin (First Selectman) primarily to address soil erosion concerns. After that he contacted the builder, Jim Fracker, to try to resolve it. Some of these issues are civil matters, and primarily the drainage issues. Someone can put fill in their property and cause drainage problems. The retaining wall and stone wall is within the setback, even if the 10 foot setback is used. He recently had a meeting with Joan Gruce, Brian Smith, Fred Bietsch, Dick Eigen, and Don Murray concerning the subject property; Mr. Smith stated that he did advise Corica's to put in a swale, but interpreted Art. X (soil erosion) to not apply here because it was only one lot and not a subdivision.

Atty. Evans indicated the Corica's had to finish the foundation before June 1, 2004, and they did not; Public Act 04-210 was effective June 1, 2004. He submitted pictures and indicated that they disturbed 80% of the property; more than 200 truckloads of dirt and gravel were brought in.

Atty. Raymond Rizio represented the Corica's, and indicated that when a subdivision plan is submitted they are required to also submit a soil erosion and control plan. When a single lot is developed, it does not fall under those regulations. He submitted photos, and indicated the stone walls are not more than 3 feet in height. If the Board finds that

there are violations, he requested that they have 90 days to bring them into compliance because of the cold weather and the condition of the ground.

John Curry, 73 Poplar Street, indicated he is neither for nor against this application, but offered his opinion.

Atty. John Evans commented that Atty. Rizio indicated that there are no zoning regulations about retaining walls, but it is a structure if it is not a fence or a boundary wall. The building permit did not include the retaining wall. The wall coming from the street has no other purpose but to divert water off Corica's property. The shed is within the 20 foot setback. A swale should be put on the Corica property to handle run-off and drainage. The lot was the same as the Evans' when it was purchased, and now it is totally different. The dirt is also going down to the lake, and there is a loss in value of real estate.

07-08) Robert Martino indicated they would like to construct a one and one-half car detached garage. If they use the current setbacks, it would be in the middle of the yard. The neighbors properties are the same with regard to setbacks, and the lot is non-conforming.

07-09) Atty. Raymond Rizio represented the applicant, and submitted pictures of the house. The patio is above grade, but there is no impact to the neighbors. They could fill up to the patio, but it would serve no purpose. When the foundation was staked, the patio was not considered, resulting in this problem.

07-10) Atty. Raymond Rizio represented the applicant; Kevin Casey was also present. Atty. Rizio indicated this is for young children. They have received approval under Compatible Alternate Uses from Planning and Zoning, but the museum use is not listed as such, and if the variance were obtained it could stand on its own if necessary. Across the street is a dance studio, sports facility, and a gym. The hours of operation are listed in the brochure submitted with the application.

Kevin Casey, 20 Meadow Wood Rd., indicated they have been looking at this concept for several years, he has a background in business, and his wife in education. The museum is open from 11 to 5, and will also be open on Saturday and Sunday. The nursery school is totally drop-off traffic, and there are 80 to 90 parking spaces available. This use complies with the new Plan of Conservation and Development.

The public hearing closed at 9:29 p.m. The meeting was reconvened to act on the following:

07-01) Williams E. Evans, et al. 82 Old Dike Road (Danny Corica, et al.). Upon motion made (Vitrella), seconded (Garrity), and approved unanimously (Puskar, Vitrella, Scarpelli, Muir, Garrity for Savino who was not present at the first public hearing), it was voted that pursuant to Art. VI, Sec. 1, Par. A, appeal from decision of Zoning Enforcement Officer (dated 10-19-06) concerning construction of stone wall and concrete wall, both exceeding height allowed within setback; drainage and erosion problems for adjacent property (94 Old Dike Road); and storage shed too close to property line, is hereby SUSTAINED with respect to the walls and shed. However, the Board determined that the Soil Erosion regulation (Art. X) does not apply to this property.

Evidence was presented to indicate that the Zoning Enforcement Officer acted improperly in not issuing the Cease & Desist Order for the stone wall and retaining walls in excess of three feet in height within the minimum setback (in this instance 10 feet), and the location of the shed which should be 20 feet from the rear and side property lines at closest point. The violations will be addressed by the Zoning Enforcement Officer.

During the discussion Mr. Muir commented that a drainage plan should have been part of the application to build the house since the entire grade was changed on the Corica property. Whether fences and stone walls constitute an annoyance or something other was a question raised by the ZEO. There are separate issues cited after the sentence concerning annoyance in the regulation, and if the ZEO wants to look at fences and walls as only an annoyance to be a violation, he is wrong. The shed regulation is separate and the shed was constructed at a later date. Mr. Garrity added that a settlement should be reached between the two parties regarding drainage and erosion.

07-08) Robert V. Martino. 23 Evelyn Street. Upon motion made (Savino), seconded (Vitrella), and carried unanimously (Puskar, Muir, Scarpelli, Vitrella, Savino), it was voted that application for a variance of Art. III, Sec. I, and Art. III, Sec. 3, Par. B, with respect to insufficient minimum yard requirements to construct detached one and one-half car garage 3' from E/S property line, and 8' from rear property line, is hereby APPROVED, and will become effective upon recording of certified notice thereof in the Land Records in the name of the record owner. The Board determined it would be in harmony with the area.

07-09) Sherwood Homes, LLC. 31 Under Cliff Road. Upon motion made (Vitrella), seconded (Savino), and carried unanimously (Puskar, Muir, Scarpelli, Vitrella, Savino), it was voted that application for a variance of Art. III, Sec. 1, with respect to insufficient minimum yard requirements to construct elevated patio and entryway 46' from front property line, is hereby APPROVED, and will become effective upon recording of certified notice thereof in the Land Records in the name of the record owner.

07-10) Imagine, Create, Explore, The Children's Museum, LLC. 2285 Reservoir Avenue. Upon motion made (Savino), seconded (Vitrella), and carried unanimously (Puskar, Muir, Scarpelli, Vitrella, Savino), it was voted that application for a variance of Art. II, Sec. 3, Par. H, with respect to permitting a children's museum in an industrial zone, is hereby APPROVED, and will become effective upon recording of certified notice thereof in the Land Records in the name of the record owner.

The effective date of action was set for February 28, 2007 (expiration of appeal period). Of those approved, FAILURE TO RECORD NOTICE WITHIN SIX MONTHS OF EFFECTIVE DATE SHALL NULL AND VOID THE VARIANCE. In the event of appeal or appeals, time periods shall commence from date of final decision on the appeal or appeals.

EXECUTIVE SESSION: At 9:50 p.m. Mr. Vitrella moved to go into Executive Session, seconded by Mr. Scarpelli, and carried unanimously (Puskar, Muir, Scarpelli, Vitrella, Savino) to discuss pending litigation (Jen-Con Properties, LLC v. Trumbull ZBA).

Attendance: Richard Puskar, Michael Muir, Carl Scarpelli, Joseph Vitrella, John Savino, Fred Garrity, James Cordone, Town Attorney

At 10:02 p.m., Mr. Scarpelli moved to go out of Executive Session, seconded by Mr. Muir, and carried unanimously (Puskar, Muir, Scarpelli, Vitrella, Savino).

The regular meeting resumed.

The meeting adjourned at 10:15 p.m.

By: _____

Joan M. Gruce

Planning and Zoning Administrator/Clerk