

**Minutes of
ZONING BOARD OF APPEALS
April 3, 2006**

MEMBERS PRESENT

Mrs. Yanicelli, Chairman
Mr. Barfuss, Secretary
Mrs. Davis
Ms. Vollmer

MEMBERS ABSENT

Mr. Moylan

ALTERNATES PRESENT

Mr. Socci
VACANCY
VACANCY

ALTERNATES ABSENT

None

Also in Attendance:

Steve Kleppin, Acting Town Planner/Zoning Enforcement Officer
Chris Jarboe, Town Attorney

MEETING OPENED

At 7:30 p.m.

Mrs. Yanicelli, Chairman, explained to those members of the public present how the proceedings would be conducted and that discussion and possible decision on each public hearing item will be held after the public hearing on each item.

PUBLIC HEARING

The Chairman then called the Public Hearing to order in the Town Hall Board Room. Mr. Socci was seated for Mr. Moylan. The call read as follows.

LEGAL ADVERTISEMENT NEW CANAAN ADVERTISER, NEW CANAAN, CONN., THURSDAY, MARCH 23, 2006 PAGE 27A

STATE OF CONNECTICUT
TOWN OF NEW CANAAN
ZONING BOARD
OF APPEALS
NOTICE IS HEREBY GIVEN
that the ZONING BOARD OF
APPEALS of the Town of New
Canaan will hold a Public Hearing
on Monday, April 3, 2006, in the
Board Room of the Town Hall at
7:30 p.m. to hear the following
appeals and applications:
1. Appeal of Walter and Megan
Stearns, owner of 165 Jelliff Mill
Road. The Stearns are appealing

the Certification of Occupancy
for the new construction at 21
Shady Knoll Lane. The property
is located in the One Acre
Residence Zone (Map 24 Block
241 Lot 246).
2. Application of Edward
Mellick, Authorized Agent, for
Jeffrey P. Williams and Mayree
C. Clark, Owners, 337 Valley
Road, for a variance of Sections
7.1.B.4.c, 3.5.F.1 and 3.5.F.2 to
allow an existing cottage to be
rebuilt in a different location (18
farther away from Huckleberry

Hill Road) with two stories and
height of 24' 2" and total height
of 30', for property in the Two
Acre Residence Zone (Map 45
Block 115 Lot 59).
HANDICAP ACCESS
DURING MEETING:
Please notify the Planning &
Zoning office in advance if wheelchair
accessibility is required.
FRANK BARFUSS,
Secretary
03/17/06
3-23
3-30

I. Appeals:

1. Roy and Janice Abramowitz, 581 Laurel Road

Regular Meeting on this Application

Appeal of Roy and Janice Abramowitz, 581 Laurel Road. The Abramowitz's are appealing the Cease and Desist Order issued by the Planning & Zoning office to remove the fence exceeding the Town height requirement which was constructed along the northern property line. The property is located in the Four Acre Residence Zone (Map 40 Block 105 Lot 68). Continued from November 7, 2005 meeting, closed on February 6, 2006 meeting and continued from March 6, 2006 regular meeting.

Attorney Jarboe addressed the Board citing C.G.S. Sec.8-7 regarding the authority of the Board in context of the hearing. He explained that the issue is whether there was a violation of the regulations and not whether there is a hardship. The Board discussed the issues at length.

Upon motion of Ms. Davis and second of Mr. Socci, Mr. Socci, Chairman Yanicelli and Mesdames Davis and Vollmer voted in favor, and Mr. Barfuss opposed. The Board voted in favor 4 to 1. "The Appeal is sustained upon the condition that the Order be modified, such that the maximum height of the existing Abramowitz fence, at the discretion of the Planning and Zoning Department, is not significantly (not to exceed six inches) higher at any point than the Pogacnik fence."

2. Walter and Megan Stearns, 165 Jelliff Mill Road

Appeal of Walter and Megan Stearns, owner of 165 Jelliff Mill Road. The Stearns' are appealing the Certification of Occupancy for the new construction at 21 Shady Knoll Lane. The property is located in the One Acre Residence Zone (Map 24 Block 241 Lot 246).

Mr. Stearns presented the matter saying the Assistant Town Planner should not have signed off on the routing sheet for the certificate of occupancy because the grade is not to code and the drainage is excessive. Consequently, the certificate of occupancy should be rescinded. The Assistant Town Planner replied that the grading and drainage are to code. Mike Pastore, Town engineer spoke, noting that a curtain drain already exists on the property line, so water problems must have been pre-existing. He noted also that the appellant's property is a downhill from the new construction, and that the last few years have been very wet. Leonard d'Andrea, consulting engineer, described the plan he had prepared prior to the construction, advised that there is no increase in water runoff due to the construction, and there is no adverse impact on Mr. Stearns' property or septic system. He suggested that the silt fence be reinstalled until the lawn is established, that the breach in the berm be repaired, and that the asphalt be removed. John Reese, attorney for Peter Marquee, owner of 165 Jelliff Mill Road, argued that the Board has no jurisdiction, and that even if it did, the Board has no jurisdiction to revoke a certificate of occupancy. Further, he claimed that the Assistant Town Planner performed his work as required by the regulations. Joe Riccici, attorney for the builder Carlton Homes, said the issue is between the buyer and the builder, and that the builder will remedy defects.

After discussion, upon motion of Mr. Barfuss and second of Ms. Vollmer the Board voted unanimously to deny the appeal.

II. Variance Application:

3. Jeffrey P. Williams and Mayree C. Clark, Owners, 337 Valley Road

Application of Edward Mellick, Authorized Agent, for Jeffrey P. Williams and Mayree C. Clark, Owners, 337 Valley Road, for a variance of Sections 7.1.B.4.c, 3.5.F.1 and 3.5.F.2 to allow an existing cottage to be rebuilt in a different location (18' farther away from Huckleberry Hill Road) with two stories and height of 24' 2" and total height of 30', for property in the Two Acre Residence Zone (Map 45 Block 115 Lot 59)

Attorney Mellick explained that the building pre-dated zoning. The building is under the coverage requirements, the square footage will be decreased, the floor area is being reduced, and the building will be only a few feet higher than the regulations allow. Further there will be no negative affect on the neighbors and they have expressed support for the project. All notices have been provided. The public hearing on this matter was closed.

Regular Meeting on this Application

Upon motion of Mr. Barfuss and second of Mr. Socci, the Board voted unanimously to grant the variances.

Conditions, modifications, or restrictions are as follows:

1. Per map prepared by Jeffrey P. Williams and Mayree C. Clark prepared by RKW Land Surveying, dated August 9, 2000, as revised February 14, 2006, on file with Planning and Zoning.
2. Per Architectural Plans, Basement and First Floor (A-100), Second Floor and Roof (A-101), South and East Elevations (A-200), and North and West Elevations (A-201) prepared by Brian E. Boyle, dated March 2, 2006 on file with Planning and Zoning.

III. Regular Meeting:

APPROVAL OF MINUTES

Approval of Minutes: March 6, 2006.

Upon motion of Mr. Barfuss and second of Mr. Socci, the Board voted unanimously to approve the above minutes.

REVIEW OF STATUTORY LAWS APPLICABLE TO THE ZONING BOARD OF APPEALS

Attorney Jarboe discussed recent case law, in particular the Hobbs case which was an appeal to the Superior Court from the New Canaan Zoning Board of Appeals. Citing C.G.S. Sec. 8.6 he discussed the issue of "hardship" and reviewed the elements of this standard. Further he discussed special permits and reviewed conditions that may be placed on a variance.

There being no further business to come before the meeting, the Board unanimously voted to adjourn at 10:50 p.m.

Frank Barfuss, Secretary

LEGAL ADVERTISEMENT

NEW CANAAN ADVERTISER, NEW CANAAN, CONN., THURSDAY, APRIL PAGE 10C 13, 2006

STATE OF CONNECTICUT
TOWN OF NEW CANAAN

ZONING BOARD
OF APPEALS
NOTICE IS HEREBY GIVEN
that the ZONING BOARD OF
APPEALS of the Town of New
Canaan after a Public Hearing
held on Monday, April 3, 2006
duly adopted the following
resolutions

effective April 14, 2006:

1. RESOLVED, appeal of Roy
and Janice Abramowitz, 581
Laurel Road. The Abramowitz s

are appealing the Cease and
Desist Order issued by the
Planning & Zoning office to
remove the fence exceeding the

Town height requirement which
was constructed along the
northern

property line. The property
is located in the Four Acre
Residence Zone (Map 40 Block
105 Lot 68). Appeal is sustained
subject to modifications.

2. RESOLVED, appeal of
Walter and Megan Stearns,
owner of 165 Jelliff Mill Road.

The Stearns are appealing the
Certification of Occupancy for
the new construction at 21 Shady
Knoll Lane. The property is
located

in the One Acre Residence
Zone (Map 24 Block 241 Lot
246). Appeal is denied.

3. RESOLVED, application

of) Edward Mellick, Authorized
Agent, for Jeffrey P. Williams

and Mayree C. Clark, Owners,
337 Valley Road, for a variance
of Sections 7.1.B.4.c, 3.5.F.1 and
3.5.F.2 to allow an existing cottage
to be rebuilt in a different
location (18' farther away from
Huckleberry Hill Road) with two
stories and height of 24' 2" and

total height of 30', for property
in the Two Acre Residence
Zone (Map 45 Block 115 Lot 59)
is hereby approved with conditions.

FRANK BARFUSS,
Secretary
April 10, 2006
4-13