

TOWN OF NEWINGTON
ZONING BOARD OF APPEALS
CONFERENCE ROOM L101
NEWINGTON, CONNECTICUT 06111
July 7, 2016

I. MEMBERS PRESENT

Chairman Louis Califano
Commissioner Willard Bechter
Commissioner Nicole Pane
Commissioner John Richter
Commissioner Judith Igielski: absent
Commissioner Audra Ekstrom
Commissioner Paul Plavcan absent
Commissioner Timothy Hutvagner (excused)
PRESENT:
Michael D'Amato
Zoning Enforcement Officer
and Assistant Town Planner

Chairman Califano: Before we begin, let me explain how the ZBA meetings are run. There are two parts to the meeting. First is the public session and the petitioner will come up to the podium and give their name, address and comment on the petition and what the hardship is. After the petition has been heard, anyone from the public may come up to the podium and express whether they are for or against the petition. The public part of the meeting will then be closed. During the work session the public may stay but cannot comment. If the petitioner can stay for the work session, fine, if not they will be called by the Building Department tomorrow and let you know what the decision was made. Please read the Petition 00-16-06.

Commissioner Ekstrom: PETITION 00-16-06 Clifton Darr, Jr, Barbara Coppa and Grant C. Darr of 125 East Robbins Avenue request a Variance of 5 ft. from the required 10ft of the Newington Zoning Regulations, Section 4.5 concerning side yard setbacks for primary buildings in the R12 zone to facilitate a lot line revision. 125 East Robbins Avenue is located on the South side of East Robbins Avenue, North of Flagler Street.

Attorney Markowitz: I am Attorney Markowitz representing the applicants of 125 East Robbins Avenue and for the purpose of this meeting also 119 East Robbins Avenue and I will explain that shortly. For the record, the sign has been posted and my clients are here today seated behind me and with me also is T.J. Barresi who is the surveyor and he will answer any questions you may have after his summary. This background - 125 East Robbins Avenue was built in 1876 and 125 is a larger lot and that contains 119 East Robbins Avenue as well. In the 50's the owners of the property and also relatives of the applicant wanted to construct a house at #119. In July they had a survey which is part of your package and the survey is certified by the surveyor is in conformance with the zoning regulations. At that point the property was in the R10 zone with a 5ft side yard on one side and a 10 ft side yard on the other side for a total of 15 feet. That plan did happen. They built a house, the house was constructed in 1957 and from 1957 until today it has been taxed as two separate parcels and on the assessor's list it shows two separate parcels, 119 and 125 East Robbins Avenue. #125 is right in the center of the screen and as I stated it was built in 1867 and predates building. 119 is just to the left of it; and is the house that was constricted on it. Behind that is #117 East Robbins Avenue. That is owned by one of the applicants and he wants to acquire #119 and that is the reason why we are here today.

The Filer's submitted their survey and as you can see the footprint is labeled #119 and next to it is the other piece #125. Of course, unfortunately, although their predecessors of the applicants did everything right, they never had the property physically separated so when Clifton Darr decided he wanted to buy the home at #119. A title search was done and it was determined that these homes are in fact, on one parcel. The parcel was never separated and that is the reason for the application today. As you know, Connecticut case law permits you, especially where conditions affecting a particular parcel are not a bunch of parcels in a particular district are such that a literal enforcement of the zoning regulations would create an exceptional difficulty or unusual hardship that has been determined in case law and the variance if granted will denote justice so you have the power to vary the enforcement and the provisions of the government, so what we are asking today is a 5' yard requirement for #119. R12 requires 10ft sideyard, we have 5' which was what was permitted in the R10 zone when the home was constructed. I cited in the application some case law and a treatise on zoning by Fuller and that provides that in order to grant a variance the first step is that the variance must be shown not to be in the comprehensive plan and the second is restricted adherence to the zoning ordinance causing unreasonable hardship which is unnecessary for carrying out the general purpose of the zoning code. The classic reason - actually there are two classic reasons, one is its peculiar shape of the property and the other is the impact of zoning on the property and that is our concern here and that is when the Filer's created the home and they thought they created #119 and they complied in every respect with the Zoning Department and that is a minimum of 15' for the sideyards, 5' on one side and 10' on the other. Unfortunately over time the R12 zone was passed and that required a 10' sideyard on both sides. If you look at the assessor's map, it is clear that this application is consistent with its comprehensive plan. Many of the lots in the neighborhood are quite narrow and many do not meet the sideyard requirements, some because of the time when the neighborhood was built in 1867 and the fact that the town has recognized that these two houses are separate since 1957. The other thing is that the lot doesn't comply with zoning the 2 houses on it and is not permitted in an R12 zone. So I would submit that the variance that we are requesting makes a lot more sense and is a lot more consistent with the zoning code than to leave these two homes on one parcel. We are submitting a lot line revision that T.J. Barresi created and he will go through it briefly. He does provide for the minimal amount required for a variance and we are asking for anything more than a 5ft variance for the sideyard setback and when T.J. is done, if you have any questions we will try to address them. Thank you for your time.

Mr. Barresi: I am T.J. Barresi of Barresi Associates of Windsor, Ct and I am licensed as a professional engineer and surveyor. (screen power point presentation) Right now, there are only 2 lots here, one lot in front, one lot in back, there used to be 3 lots but that is not the case obviously, in fact, pre 1950 this house didn't exist so they had one lot in front and one lot in back and after this lot was built, after that home was built, to allow aggregation, we had to take this lot line and sweep it down and around in between these two houses down to the right of way, still maintaining the two lots, #125 would be on one lot and #119 would be on its own lot and grabbing all this land in back. Here is the variance plan that we submitted with the application and as I indicated this lot line will disappear over here and this will stay here and the new lot line will run right through this area here and that is the reason it is between the two homes right here and back out to the street right of way.

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Unfortunately between this house and this house it does not have real estate to maintain that requires 10ft sideyards so we had to make the decision of where do we push the line, push it towards #125 or #119. We steered it toward #125 for a couple of reasons, one is #125 already has an existing non-conformance on the lot, what we did was take a 1/2 a foot off the sideline of the existing garage so by adding another non-conformance on that property, we felt that was better than throwing another non-conformance on this property. Also the existing driveway coming out of East Robbins Road is right in this area here, so we thought it was prudent to keep the new property line off the driveway to maintain in keeping this driveway all down hill on lot #119. At the bottom of the plan there are two zoning compliance blocks; one is #119 and the one from #125 and as you can see the minimum sideyard requires 10 feet and five feet required for #125. That is what we are hoping to do.

Comm. Richter: What happens with #117?

Mr. Barresi: It gets combined with #119, more than likely will maintain an address of #119.

Comm. Richter: So #117 will be eliminated and all of that will be #119.

Mr. Barresi: Correct.

Comm. Brechter: #119 is completely surrounded by the other properties?

Mr. Barresi: Yes, a significant portion is wetlands, right now it is land locked.

Comm. Richter: #119 and #125 was considered as one?

Mr. Barresi: This is what exists today, there are two houses on one lot.

Comm. Richter: Who is getting the taxes?

Mr. Barresi: There is confusion in the town. The town is recognizing that it is two separate lots so #119 is going to get a tax bill and #125 is going to get a tax bill and has been that way since the late 50's and if you go to the land records come to find out that that lot that I showed earlier was never formally created.

Comm. Richter: So how do they determine #119 and #125? What the taxes are.

Mr. Barresi: That is a good question.

Comm. Richter: Somebody may be getting a pay back, with the amount of footage there and do they determine that, I would like to know.

Mr. Barresi: Maybe they used the plan from the late 50's - this plan is listed by the town and is on file, you see the seal up there and it is certified as correct by the surveyor and is put on file and adjusted the taxes accordingly.

Comm. Richter: Who is paying #117?

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Attorney Markowitz: The property has always been assessed and taxed separately, #119 and if you look at that line and the assessor's map you can see the outline of #119 so once the house was built, the plan was filed with the Building Department and the C.O. was issued and I guess once the C.O. was issued in 1957 they started assessing and taxing #119, which would have been perfect had the Filer's actually divided the property into two lots and they never did that. So it is the Filer Family, their heirs and now my clients who are the second set of heirs have been paying the taxes on those two houses and Clifton Darr has been paying taxes on the rear parcel which is #117.

Comm. Richter: So you're going to merge that.....

Attorney Markowitz: ...with #119 because he is going to acquire #119 from his brother and sister. He already owns an undivided 1/3 interest.

Mr. D'Amato: I think I am oversimplifying it but the town - as far as the town is concerned, this is the town's GIS system, this is in town so as far as the town is concerned they are being taxed separately, there was a description filed a way back that showed separating the lots and while it is something that they provided and it came from our files and the building permit was issued for the second house and the mailing address was the first house, so the town knew there were two separate parcels, and so when we went through the file, this is the copy of the building permit from our file and it shows a ton of stuff, but we issued the permit for the second house and this is listed the same owner. The town was well aware of the situation. If they end up with the approval here of what we have already talked about, they will file a map on the land records which then the assessor will see and will adjust the configuration, that process is in place now, so it will be rectified. The only other thing I want to clarify, they are not going to the TPZ. They are not creating anything they don't have now plans to put another lot, they do not have that, We would agree with that, there would be no ability for them to then turn around and say we are going to sub-divide.

Comm. Richter: What I am getting at is #119 and #125, now #117 was really the land mark and still is and goes into #119. Now in building ability it is not going to be #117, it is going to be #119. Now I understand.

Chairman Califano: Would anyone from the public like to make a comment either for or against the petition? Seeing none.

Comm. Richter: I make a motion to close the public session.

Comm. Brechter: I second the motion. The motion passed unanimously.

III. WORK SESSION

PETITION 00-16-06

Chairman Califano: Comments from the commissioners?

Comm. Brechter: I make a motion that we approve Petition 00-16-06.

Comm. Richter: I second it.

Chairman Califano: All in favor. Aye unanimously. The petition is granted.

IV. PUBLIC PARTICIPATION -- None.

V. MINUTES PREVIOUS MEETING June 2, 2016

Comm. Richter: I make a motion to accept the minutes,.

Comm. Brechter: I second the motion.

Chairman Califano: All in favor? Aye unanimously.

VI. COMMUNICATIONS AND REPORTS

Mr. D'amato: The only thing we talked about was raising the fees, the Council is a little leery of increasing the fees to \$360 I think, because it's so high compared to other application fees. They have tabled making any decisions for the last couple of meetings so I will be going back to the council next Tuesday and hopefully talking to them about any concerns that they have. I have talked to other Towns and a lot of them have lower fees but they do not cover their costs. So they are looking at other Towns and asking why are you asking for them to be so much higher but the other Towns have not raised their fees yet, and are losing money, so hopefully, we will have a decision on that next Tuesday.

Chairman Califano: What are their fees now compared with ours?

Mr. D'Amato: Some are \$200, some are \$150. When we compared other Towns we used the Towns in the area, so I can give you 20 towns that have fees close to \$350 but they are not nearby.

Comm. Richter: We are only \$75.00 paid for it. No refund.

Chairman Califano: Why can't we just double it?

Mr. D'Amato: The reason we are going to \$350 is to cover our costs. Because we have to send \$60 to the State for every application that we receive and then we have to publish twice before the meeting and once after, which costs roughly \$100 each time. At this point, just because of the financial situation of the Town, especially in the case of a variance, this isn't like somebody who is asking to open up a business and we are saying you need to pay the application fee. These folks are choosing to do something and they are needing a variance to do it. Someone comes in with a sub division or they want to build an addition, they are asking the Town for this. Because we are not forcing a variance on anybody I really feel that the people that are asking us for that should be covering those costs.

Comm. Ekstrom: If you want it, you pay for it. No refund.

Mr. D'Amato: If you go to TPZ and make an application for a permit for a restaurant, if something changes, you need to go back; or it may be granted for only two years if they choose. A variance gets filed on the land records and is valid until the end of time, so it's a one and done situation. So I think if you spend the \$350 you're spending it for the duration of keeping records. So I think when you put all that together, I don't think it's inappropriate.

Comm. Richter: I think it is going to modify the people that don't want to do that and really think, well, it is seventy-five dollars - but three hundred dollars, they are going to think twice, exactly.

Chairman Califano: Did anyone ask you why we should go to \$360.00

Mr. M. D'Amato: We provided them with a chart that showed our application and all the other applications in the areas and that over the last year and a half the average application costs X amount, this is what we take in, this is what we send to the city, and this is what the New Britain Herald charges. I did that average over a year and a half and have sent that in a memo so they could see what coincidentally the next item on their agenda after the fees was the transfer into the ZBA account because we under funded the budget every year. It is good for maybe 3 or 4 applications so if we get two, then it is okay, but if we get eight...so essentially after the 4th application everything is a loss. We have enough money to cover four. When you go to the store or buy some parts for your car they do not provide it to you for 75% of the cost, it provides you - we are not in the business of making money - we are going to cover our costs. We have gone from the Courant to the Herald because the Herald is cheaper. We cannot go to the Town Crier even though it has a 100% rate because they only print weekly and the State legislature never passes laws that will allow us to publish on line, so we really don't see the point in changing the fees as long as it covers the costs.

It does not seem fair to everyone else in Town that they should have to fund a portion of each application fee. That was kind of the sentiment when we talked about it before which is why we went forward with the \$350. There are many town in the state that charge more. They factor in staff review time and everything else involved in the ZBA application meeting. If you think about staff review time, using the building and everything else and the recordings, filing and tapes, it's a lot more than \$350. In the case of this meeting, it was originally postponed. So we published twice, but we only received one application fee. So we are in the double negatives for this application. So I really think we need to adjust that to reflect how things are.

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Chairman Califano: Do you think the Town Council would justify it?

Mr. M. D'Amato: Yeah, I think - I went to the first meeting and explained it to them, so they said okay and then the next meeting, I was on vacation and at the time they tabled it because they had some questions about publications. ZBA is different from TPZ. There are things that are different from the TPZ and hopefully I will be able to explain that. Don't look at the other towns because they are not covering their costs, because they may decide that they want to cover their costs, so that is where we are at.

Chairman Califano: New business.

None.

IX. ADJOURNMENT

Chairman Califano: Motion to adjourn.

Comm. Richter: I make motion to adjourn the meeting.

Comm. Ekstrom: I second the motion.

The motion passed unanimously.

The meeting adjourned at 7:30 P.M.

Respectfully submitted,


Sophie Glenn
Recording Secretary