

McNally, Stephanie

From: don bergmann <donlbergmann@sbcglobal.net>
Sent: Thursday, July 9, 2020 10:30 AM
To: Zoning Board of Appeals
Cc: Tyminski, Cindy; Peter Gelderman
Subject: 233 Hillspoint Rd. # 20-00305 and Appeal # 7773

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To: ZBA
From: Don Bergmann 32 Sherwood Dr. Westport CT 203 226 8712

The above Appeal will now be heard by Zoom on 7/14/20. My prior e mail of 6/18/20 remains applicable.

New Points:

1. Applicant's Response of 6/5/20 to Staff Comments is lengthy and complicated. While I will read it, I will mostly rely upon Staff, Cindy Tyminski, and the ZBA to determine what is or is not accurate and its significance. That effort would seem to justify at least a second public hearing.
2. The materials listed on the Town website file include a Landscape Plan, 6/22/20, a B&D Survey, 6/22/20 and Architectural Plans, 6/25/20. I cannot recall if those were submitted in connection with the postponed ZBA hearing or the one scheduled for 7/14/20. I mention this in case these documents are new submissions that should meet the 14 day in advance rule of the ZBA respecting the completeness of Applications. If the dates, all in June, are when the materials were submitted, then the 14 day rule has been satisfied. I simply could not tell.
3. The Applicant provided on 7/7/20 a list of out of pocket expenses incurred to date for the construction undertaking, a total of \$940,615.79. I do not know what is the purpose of this information. That should be addressed, as well as all the fees and soft but real costs that the Applicant would be charged for that work. An expected issue is the "burden" to the Applicant that has resulted from its errors and changes, as well as the financial burden to the Applicant if the Applicant is required to build the house and land work in accordance with the ZBA and P&Z Commission approved plans. In that connection, I note that financial burdens are not relevant to any determination as to the grant or denial of a variance. Finally, there could be a question as to whether this list of costs should also satisfy the 14 day rule of the ZBA. My guess is that it need not.

I hope Cindy Tyminski has recovered sufficiently from her accident to do her usual excellent work, particularly on this matter. Cindy has addressed this matter in depth and, I believe, very fairly. I hope the ZBA, Cindy and the Applicant can sort out the disparate analysis of the changes and, with Town Atty. Gelderman, most likely, the relevant law. As to the law, it is my expectation that Town Atty. Gelderman will assure the ZBA that the ZBA has wide latitude to require that the Applicant build the house and use the land as approved by the ZBA and the P&Z Commission. If the Applicant and its counsel, Atty. Pires, assert otherwise, I hope the ZBA is not reluctant to allow the matter to go to Court for resolution. This matter has generated much attention within the neighborhood and to an extent throughout our Town. If the ZBA does not issue the rulings it believes appropriate from fear of litigation or Atty. Pires takes positions that can only be resolved in a Court of Law, I recommend that the ZBA let that process play out. I think that could be the outcome that best addresses issues and is seen as the most fair to all by the public. I also happen to think that the ZBA/Town will prevail in Court.

Thank you all, Don Bergmann