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To: [Zoning Board of Appeals](#); [Trianovich, Amanda](#)
Subject: 238 Hillspoint Rd. - ZBA-24-00579
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To: Westport Zoning Board of Appeals
From: Don Bergmann 32 Sherwood Dr. Westport CT 203 226 8712
Re: ZBA Variance Request 24-00579 238 Hillspoint Rd

November 4, 2024

This variance should be denied.

The following are reasons to deny this variance, there may be others from other members of the public or as a result of the Staff Report or the independent thinking of the ZBA.

1. Height

a. General

The proposed new house is overly and illegally tall. The highest point on the house is very high. I think it is not consistent with the other houses on this portion of Hillspoint Rd.

The analysis presented as to height reflects a continuation of a fundamental error in the Town roof height regulations, That error is embodied in many houses that are designed to allow a lower roof midpoint than the design justifies. These designs take excessive advantage of Regulation 5-2, the definition of "Building Height and Heights". That definition allows a mid point determination based upon aberrational roof lines.

One classis example is at 15 Old Mill. That house, designed by Peter Cadoux, creates a roof that is about 8 inches wide over much of its length in order to allow the mid point to be rather low. This allows the house to have an unusually high peak.

The Staff of P&Z, I am told, is looking into making a change that would preclude the misuse of the present regulation.

The roof height and roof line for 238 Hillspoint Rd. is also a dramatic expansion of the applicability of the regulation, the ZBA should deny this application since it does not satisfy the intent of the roof height requirements.

b. Specifics, the Roof Is Not Perpendicular

Whether the ZBA agrees with my point raised in "a", the ZBA should find that the roof height proposed for 238 Hillspoint Rd. does not comply with the Town regulations since the roof is "curved". A curved roof is not a perpendicular roof. Section 5-2 of the Zoning Regulations, definition of Building Height or Heights, applies only to "perpendicular" roofs. Those words and the definition of perpendicular in Webster's dictionary, addresses only straight line roofs. In other words, the roof line must at all points be straight. An angle change or changes may be acceptable, but only if the resulting roof line is always straight, not curved.

I have no idea if Staff or the ZBA has ever realized this fact. I did inquire as to

historic background analysis, but was told there was none. The Staff Report for 238 Hillspoint Rd. does not address the point. That Staff Report should have done just that.

As to how Staff should analyze a curved roof, I can only speculate. For me, logic suggests that a curved roof be treated for height purposes as a flat roof, i.e. the highest point on the curve would be the roof height. However, that analysis is not now required. Rather, the ZBA and Staff need only determine that a curved roof is not perpendicular as required by the regulatory definition. Hence, this variance request application has a fatal flaw and needs to be resubmitted.

2. Coverage

This Application and this submission seek huge coverages variances. Most importantly, the coverages sought exceed the coverages of the present house, proposed to be torn down. While not required, the ZBA often looks at the coverage of an existing house and if the coverage is reduced, the ZBA will grant a variance or variances for coverage, even though the final coverage exceeds, often by a lot, the maximum coverages set forth for the zone.. While that judgment and the variances granted based upon a reduction in the present coverage may in fact be subject to legal challenge, there is little question that an increase in coverage should be found to be unacceptable to the ZBA. Hence, the large coverage variances increases for building and total coverage should be denied.

3. Town Plan of Conservation & Development

As the ZBA determined for the recent denial of the variance application for 39 Sherwood Dr., a new house should be consistent in style, design and appearance with the neighborhood. The ZBA makes this analysis and determination by reason of the requirements that appear in many places of the Town Plan of Conservation & Development. All variance grants must be consistent with that Town Plan. It is my judgement that this proposed new house should be found to violate the Town Plan of Conservation & Development.

4. New Construction Rules

In general, our Zoning Regulations work and are directed towards having all new construction comply with all applicable zoning regulations. This concept is reinforced by the important case of E&F Associates LLC. v. ZBA (CT Supreme Court, 2015). That case states that the ZBA should make a determination that the denial of a new house variance denies the owner a reasonable use of the property and as to whether or not a property ceases to have value if compliance with the zoning regulations is imposed.

As is common with most Westport tear downs, there now exists a perfectly serviceable and livable house at 238 Hillspoint Rd. While that house was constructed before our Town had adopted zoning regulations and that house presently exceeds certain zoning regulations, the fact that there is presently a house that has long been lived in at this site pretty well establishes that the site has value as is, with the present house. Further, the existing house addresses the reasonable use standard. This reality should be confirmed by the ZBA by not allowing the demolition of the present house and its replacement with a house that is so dramatically different and increases the non-conformities. (As a note, the fact that a reduction to a set back is set forth as something that the ZBA should be pleased with, is not very relevant. The present set back violation is minimal, with most of that side of the present house being in conformity with the 7.5' set back rule. In fact, while the proposed house may

eliminate this small set back violation, the proposed house has a legal set back for a much longer length than the existing house.)

Thank you for your efforts. I think this variance application should be denied.

Don Bergmann