

**ZONING BOARD OF APPEALS  
EXECUTIVE SESSION OF FEBRUARY 3, 2011**

The Zoning Board of Appeals Commission of the Town of Fairfield held the Zoning Board of Appeals Public Hearing Meeting on February 3, 2011 in the First Floor Conference Room of the Honorable John J. Sullivan Independence Hall, 725 Old Post Road, Fairfield. The Public Hearing was recorded on disc and is available for review at the Plan and Zoning Department.

**PRESENT:** James Hamilton, acting as Chairman, Kevin Coyne, Secretary, Duncan Keith, Donald Cafero, Edward Cheffetz, Alternate, Daphne Dixon, Alternate.

**ABSENT:** Robert Brennan, Chairman

1. **Minutes of January 6, 2011:** Donald Cafero *moved* and Duncan Keith *seconded* to approve the proposed minutes as submitted. *Motion passed unanimously.*
2. **Approval of Secretary's Fee:** Duncan Keith *moved* and Kevin Coyne *seconded* to approve the proposed Secretary's Fee. *Motion passed unanimously.*

This portion of the Executive Session started at 2:56 and continued into Public Hearing.

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Kevin Coyne, Secretary

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Josephine M. Keogh

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**PRESENT:** James Hamilton, acting as Chairman, Kevin Coyne, Secretary, Duncan Keith, Donald Cafero, Edward Cheffetz, Alternate, Daphne Dixon, Alternate.

**ABSENT:** Robert Brennan

**1. 410 South Benson Road, Map 139, Parcel 68.** Petition of Michael Dirende for a variance of the Zoning Regulations; Section 5.2.4 to reduce the minimum required secondary street line setback from 22 feet, currently 9.4 feet, proposing 13.5 feet.

**Permission to construct a new two and a half story single family dwelling. Premises: A Zone**

Attorney Joel Green, representing the applicant, presented the application for a variance of the Zoning Regulations. The applicant wishes to expand the existing footprint of the home by adding square footage on the first floor and second floor levels. The majority of the addition will occur on Judson Road. This additional space will include a larger kitchen area, a new garage to replace the existing one which is in need of structural repair, a mud room and a larger dining room on the first floor. The second floor will have two additional bedrooms, a laundry room and a Jack and Jill bathroom with raised ceiling heights from the existing 7 foot ceiling heights.

Attorney Green noted, after taking into consideration, the recommendations made by the Board members during the hearing on January 6, 2011, the applicant has modified the structure, such that the majority of the structure lies within the required 22 foot front yard setback on South Benson Road. Due to the modifications, only two small sections of the structure approximately a total of 160 square feet of footprint, lies beyond the required 22 foot front yard setback on South Benson Road. The variance request is for the required 22 foot setback on South Benson Road to a setback of 13.5 feet, solely for these two small sections which lie beyond the required setback. The proposed expansion is located on an irregularly shaped corner lot, which prohibits construction within the required front yard. Without this variance, construction of the structure will occur in the backyard, depriving the owner of significant space and use of the backyard area. The proposed expansion will also alleviate the non-conforming accessory structure which encroaches on the rear setback, while maintaining the language and character of the neighborhood. In addition, this will bring the house into full FEMA compliance, thereby lessening the damage to the town.

Petitions of support from the neighbors were submitted.

**GRANTED:** Kevin Coyne *moved* and Edward Cheffetz *seconded* to approve the proposed application. *Motion passed unanimously.*

**2. 20 Homeland Street**, Map 7, Parcel 57. Petition of James & Jennifer Holfelder for a variance of the Zoning Regulations; Section 5.2.4 to reduce the minimum required rear property line setback from 30 feet, currently 28.7 feet, proposing 22.4 feet. **Permission to construct a deck. Premises: A Zone**

Application was not heard, due to applicant not appearing at the hearing.

**DENIED WITHOUT PREJUDICE:** James Hamilton *moved* and Kevin Coyne *seconded* to approve the proposed application. *Motion denied without prejudice unanimously.*

**3. 525 Tunxis Hill Cutoff**, Map 77, Parcel 200. Petition of Black Rock Associates for a variance of the Zoning Regulations; Section 28.6.12 to reduce the minimum required total number of off-street parking spaces by 28. **Permission to establish a restaurant. Premises: DCD Zone**

Attorney John Fallon presented the application for a variance of the Zoning Regulations. 525 Tunxis Hill Cutoff, LLC is a limited liability company the sole member of which is George Chatzopoulos. Mr. Chatzopoulos is the owner and operator of the legendary Chip's Family Restaurant located on the Boston Post Road in Orange, Connecticut. For forty-five (45) years Chip's has been an extremely popular regional landmark serving casual family dining including breakfast all day, lunch and dinner. Chip's has repeatedly been voted the maker of the best pancakes in the state. Mr. Chatzopoulos makes this application in order to obtain approval, subject to a further review by the Town Plan & Zoning Commission, to establish a Chip's Family Restaurant at the Shopping Center located at 525 Tunxis Hill Cutoff. The Applicant, owner of the center and other tenants are very excited about this addition to the Shopping Center.

Chip's is a community centered restaurant that prides itself on catering to families by providing the highest quality in casual dining in a comfortable, attractive and friendly environment. The addition of a Chip's Family Restaurant will be a welcome one for Fairfield adding another element of variety and diversity to the dining options available to our restaurants and visitors. Hours of operation will generally be between 6:30 a.m. and 9:30 p.m. daily.

With respect to the variance, the patron floor area is 2, 5 18.8 1 sq. ft. This establishes a parking requirement of 63 spaces. The leasehold area is currently occupied by Blockbuster Video and based upon the existing square footage of this gross leaseable area (4,630 sq. ft.) a parking credit of 24 spaces applies with regard to this prior retail use. As confirmed by the Zoning Department, current uses in the Center yield a total parking requirement of 214. As shown on the Site Plan, 225 spaces are provided. This provides a total of 11 excess spaces on site. Taking into consideration these 11 spaces and the credit of 24 spaces applying to the previous retail use of the leasehold area the net parking attributable to the patron floor area of the new Chip's Family Restaurant is 28 spaces. As a practical matter,

the variance requested is highly technical in nature in that the 225 spaces provided on site in the Center are and will continue to be far more than adequate to meet the needs of the existing tenants in the Shopping Center and the new Chip's restaurant. As confirmed by experience of the other restaurant in the Center, Stefano's, more than sufficient parking will be provided for during daytime luncheon hours to accommodate afternoon diners. During the morning hours when breakfast is predominantly being served the vast majority of the 225 spaces on site will be available. In the evening, this availability will be even more dramatic as parking is generally unused after the retail businesses in the Center are closed.

The application is consistent with prior approvals and precedents established with regard to the granting of parking variances for restaurant uses in both the Center and Designed Commercial Districts. These important economic areas in our community and the entire Town of Fairfield have benefited substantially due to the vibrancy and activities created by these numerous restaurants which now operate successfully in Fairfield. The location selected for the new Chip's Family Restaurant is ideal in that the demands for parking will be well accommodated in the existing and very expansive parking lot of the Center with 225 spaces.

Finally, the use to be made of the property subject to the granting of the variance is a use that is explicitly permitted pursuant to the provisions of Section 12.4.1 5 of the Regulations. Connecticut case law has established that if the use to be allowed under the variance is consistent with other uses in the area and is a permitted use in the zone, the first part of the statutory test is met. *Eagan v. Zoning Board of Appeals of Old Lyme*, 20 Conn. App. 61 (1990). The second statutory condition that must be met is that it must be found that "a literal enforcement of the regulations would result in exceptional difficulty or unusual hardship.. .". In this particular instance the "exceptional difficulty or unusual hardship" emanates from the fact that the parking regulations established pursuant to Section 28 require a cumulative analysis of parking requirements for each individual use established in a large shopping center such as the one in this case and there is no provision in the Regulations with regard to consideration of comparative periods of peak operating demands between diverse tenant uses. The impact of the Regulations to this specific property, constituting one of the largest shopping centers in the Town with a total of 225 spaces, establishes a basis for a finding of exceptional difficulty or unusual hardship because it renders the property technically deficient with regard to parking spaces although as a practical and realistic matter far more than ample parking is provided.

It should be noted that in numerous other applications where restaurants have been granted similar variances in Fairfield with regard to parking a finding of hardship sufficient to form the basis for the granting of such variances was due to the fact that the buildings wherein the restaurants in question were located were nonconforming as to the existing parking requirements and had little or no onsite parking whatsoever. In the present case, the Regulations require a variance notwithstanding the fact that the proposed restaurant is established in a shopping center with 225 spaces which has historically proven to be far more than needed as a practical matter to meet the needs of the existing and contemplated tenants.

**GRANTED:** Kevin Coyne *moved* and Edward Cheffetz *seconded* to approve the proposed application. *Motion passed unanimously.*

**4. 73 Noyes Road, Map 143, Parcel 97.** Petition of Eric & Catherine Scholl for a variance of the Zoning Regulations; Section 5.2.4 to reduce the rear setback from 30 feet, currently 18.2 feet, proposing 16.4 feet and Section 5.2.5 to increase the maximum lot coverage from 20%, currently 21.5%, proposing 23.6%. **Permission to construct a two-story addition. Premises: A Zone**

Attorney William Fitzpatrick presented the application for a variance of the Zoning Regulations. The intent of the applicants is to construct a two story addition to their home consisting of a 2 car garage and mudroom on the first floor and a new bedroom and full bath on the second floor above the garage for the use of Mrs. Scholl's father. The existing detached garage will be removed.

This property was the subject of a prior variance application to the Zoning Board of Appeals, which was heard at the November 2010 meeting. That application included a number of variance requests including an increase in coverage from 20% to 24.5%, an increase in floor area ratio from 40% to 44.1% and a reduction in the rear property line setback from 30 feet, presently 18.2 feet, to 9.5 feet. That application was denied by the Board.

The present application has been substantially revised in an effort to bring the proposal into substantial compliance with the relevant zoning regulations. The proposed addition has been significantly reduced in size and moved away from the rear property line. The end result is an application requesting a variance of Section 5.2.4 of the Zoning Regulations to reduce the rear property line setback from 30 feet, presently 18.2 feet to 16.4 feet, and a variance of Section 5.2.5 of the Regulations to increase the lot coverage from the permitted 20%, presently 21.5%, to 23.6%. This application, by comparison to the November application, reduces the rear property line setback variance request, reduces the proposed increase in coverage and entirely eliminates the floor area ratio variance request.

The rear property line setback request must be evaluated in the context of the existing house location (18.2 feet from the rear property line) and the existing garage (1.8 feet from the rear property line). The house design and present location dictate the placement of the proposed addition.

In addition, the fact that the lot is narrower at Noyes Road than in the rear limits the ability to site the addition further away from the rear property line since it would then infringe on the westerly property line sideyard setback. The resulting rear property line setback of 16.4 feet is appropriate given the present location of the house at 18.2 feet from the rear property line and the existing garage at 1.8 feet from the rear property line.

The proposed coverage variance request, to increase coverage from the permitted 20%, presently 21.5%, to 23.6% represents the increase in square footage necessary to construct a new two car garage replacing the former two car garage, and provides for a much needed mudroom to the rear of the house. It is important to note that the proposed construction complies with the Residence A floor area ratio requirement.

**GRANTED:** Edward Cheffetz *moved* and Donald Cafero *seconded* to approve the proposed application. *Motion passed unanimously.*

**5. 191 Merwins Lane, Map 223, Parcel 39.** Petition of Allyson Redmond Burns for a variance of the Zoning Regulations; Section 5.2.4.3 to reduce the rear yard setback for the pool from 50 feet, currently 62.7 feet, proposing 39.1 feet, and to reduce the rear yard setback for the cabana from 50 feet, currently 62.7 feet, proposing 25 feet. **Permission to construct an in-ground pool and pool house/cabana. Premises: AAA**

James Walsh presented the application for a variance of the Zoning Regulations. The applicant requests a variance of Section 5.2.4 of the Zoning Regulations in order for permission to construct an in ground swimming pool and a pool house. The property is located in a AAA Residential District.

The applicant is seeking two (2) variances: 1. a variance of Section 5.2.4 reducing the rear property setback for the proposed swimming pool from 50 feet, existentially 62.7 feet, proposing 39.1 feet; and, 2. a variance of Section 5.2.4 reducing the rear property setback for the proposed pool house from 50 feet, existentially 62.7 feet, proposing 25 feet. The applicant resides at the residence with her husband, Peter, and their three (3) children, ages 9, 11 and 14. They are seeking to construct a swimming pool and pool house on the property. While they have a large home, most of the rooms are small and they are seeking additional area for the family to gather during the warmer months for recreational time. Further, their children enjoy spending free time at their home and this project would give them additional area to enjoy with family and friends. They are long term residents of Fairfield and seek to live here for many years to come.

With respect to the variances sought pursuant to Section 5.2.4, the Applicant is required to construct the swimming pool and pool house so that they encroach into the rear property setback for a AAA Residence District due to conditions existing on the lot and need the two variances discussed above. The location of the house makes it impossible to construct the swimming pool and pool house in the rear of the property within the setbacks created by the AAA Residence District. The reason for the house being located where it is on the property was caused by the fact that there are wetlands that encroach in the front of the property. Further, the swimming pool and pool house could not be constructed on the large side yard because this is where the existing septic tank and leaching fields for the septic system of the premises are located as detailed on the survey. Thus, the only place to realistically and aesthetically construct the pool and pool house is in the rear of the property and encroach into the rear setback requirements.

The application meets the legal standards for granting of a variance as established by Connecticut General Statutes 8-6(a) (3). As the Board is well aware, case law (*Adolphson v. Zoning Board of Appeals of the Town of Fairfield, 205 Conn. 703 (1 988)*) and the Statute provide that there is a two-part test, which must be applied with regard to consideration of the granting of a variance. First, the variance requested must be shown not to substantially affect the Comprehensive Zoning Plan. This request conforms to the Comprehensive Zoning Plan and is in harmony with the general purpose and intent of the Zoning Regulations of the Town of Fairfield. It promotes the public health, safety, convenience and welfare. It will have no adverse effect on property values. This request will also maintain the character of the neighborhood. The purpose and intent of the

regulations is to prevent development that would be lacking in harmony with adjoining properties, conflict with the development purposes of the Town and create an undue hardship and unsightly area for surrounding properties. In fact, the swimming pool and pool house addition will enhance the appearance of the house, and will create harmony within the neighborhood that also have swimming pools, and will not adversely affect the property values.

The second statutory condition that must be met is that it must be found that "a literal enforcement of. . . the regulations would result in exceptional difficulty or unusual hardship. . .". (emphasis added) In this particular instance the "exceptional difficulty or unusual hardship" emanates from the fact that the shape of the lot, the location of the wetlands, septic system and house on said lot, are such that they have no option or alternative but to seek these variances as the literal application and enforcement of the regulations to their property would create exceptional difficulty and unusual hardship, preventing them from being able to construct almost anything they seek to build. The rear set back line regulations established pursuant to Section 5.2.4 require a rear setback of 50 feet, when the existing house is currently 62.7 feet from the rear property line. This would leave them with only 12.7 feet to construct anything off the back of their home. Clearly, this is not enough room to construct a swimming pool or pool house, or almost anything else. The impact of the Zoning Regulations to this specific property establishes a basis for a finding of exceptional difficulty or unusual hardship because it renders the property technically deficient with regard to rear property line setback (requirements for the construction of the swimming pool and pool house requested.) For all the above referenced reasons, it is respectfully requested that the

**GRANTED:** Duncan Keith *moved* and Donald Cafero *seconded* to approve the proposed application. *Motion passed unanimously.*

**6. 346 Halley Avenue, Map 79, Parcel 224.** Petition of Donald Lee for a variance of the Zoning Regulations; Section 5.1.1 to reduce the minimum required lot size for a single detached dwelling for three families. From: 10,000 sq. ft., currently 9,287 sq. ft., proposing 9,287 sq. ft. **Permission to construct a three (3) family dwelling. Premises: Zone C**

Attorney John Curren presented the application for a variance of the Zoning Regulations. The application proposes to demolish a single family dwelling on the property and build a detached dwelling for three families. Presently, this parcel shows from the road a dwelling about 26 feet wide, 23.6 feet from the road with a driveway traveling along the south side of the dwelling. The proposed structure will also present itself to the street as a dwelling 26 feet A wide 23.6 feet from the road with a driveway traveling along the south side of the dwelling. The difference will be that the dwelling will be two floors and go deeper into the property using more of its back section which is now empty. Parking for the structures will be in the rear of the property. The application is asking the board to vary the zoning regulations so that the applicant may build a single detached dwelling for three (3) families in a C Zone, which the regulations permit; however, Fairfield Zoning Regulations § 5.1.1 require a lot area of 10,000 square feet for a three family dwelling. The lot area of the subject property is 9,287 square feet, which is 93% of the area required for a three (3) family dwelling.

Change of zoning regulations. Under The Zoning Regulations of the Town of Fairfield as amended to January 1, 1941 the regulations expressly allowed the construction of a three family detached dwelling in a C zone on a lot no more than 5,000 square feet. That rule is expressed on page 6 of the 1941 regulations in which "Apartment or tenement houses or row houses" are permitted. The area requirements for that use in a C Zone is expressed on page 12 of the regulations in "Section 7 - Heights and Areas" in which the only area requirement for the above use, which would include a 3 family dwelling, is a lot size of 5,000 square feet. That is the only area requirement for a C Zone use regardless the number family dwellings within a single detached building. The 1941 regulations have no further incremental area requirements corresponding to additional units as found in the present regulations for a C Zone. A full copy of the 1941 zoning regulations will be provided at the hearing. In the next available amendment of the Fairfield Zoning Regulations that is still available in the Zoning Department's library are the regulations instituted as of 1961 in which the present area requirements of an additional 2500 square feet of lot area is necessary for each additional family unit over the base requirement of a single family dwelling requiring a lot area of 5,000 square feet. Those are the requirements that exist today for which this application seeks a variance. It is evident that sometime during the 20 years between 1941 and 1961 the zoning regulations of the town of Fairfield took away from the owner of this property the right to put up a 3 family detached dwelling on his lot. That is a legal hardship well established in Connecticut law that was not of the owner's own doing. The Fairfield Land Records show that the property that is the subject of this application has not changed dimensions with the subsequent conveyances from 1941 to the present owner. None of the owners since 1941 have owned adjoining property that could have provided additional land to add to the subject property. Deeds showing the chains of title will be provided at the hearing. Although it might appear that each purchaser of the property after 1961 took title with notice of the amended zoning requirements and thereby created their own hardship, Connecticut law is construed differently. If the hardship is created by the enactment of a zoning ordinance and the owner of the parcel could have sought a variance, then subsequent purchasers have the same right to seek a variance. That is the rule from *Johnny Cake, Inc. v. Zoning Bd. of Appeals of Town of Burlington*, 180 Conn. 296, 429 A.2d 883 (Conn. 1980) citing *Petruzzi v. Zoning Board of Appeals*, 176 Conn. 479, 483, 408 A.2d 243 (1979). 2. Hardship arising from lot shape and size. There is also a hardship arising from the condition of the shape of the lot. The property presently has a one family dwelling on it. The lot is as 50 feet wide which is as wide as most of the single family residential lots in the neighborhood but is unusually deep to the point where it is almost double the area of what is required for a single family residential lot. It has 1,787 square feet more than what is necessary for a two family residence. And this unusually deep lot has 93% of the necessary area for a three family dwelling, which is a de minimus shortfall for the three family requirements. A literal enforcement of such bylaws, ordinances or regulations would result in exceptional difficulty or unusual hardship so that substantial justice will be done and the public safety and welfare secured by the granting of the variance.

When the applicant purchased the property in September of 2010, it had been occupied by persons who had profoundly polluted and wasted the property. The property had a long standing blight lien on it due to it being a disaster. The dwelling was filled to the rafters with garbage which poured out into the yard. There were serious pollution issues. The septic system did nothing more than pour sewage directly into the basement. The stench was overwhelming. Vermin and wild animals were well established on the property. The

applicant has made the decision to take the risk of putting out the considerable cost of 'rehabilitating the property and making it an asset to the neighborhood. He needs to be able build three units to recover the costs and make enough money to pay himself for the work. There is no way to rehabilitate the house to the point of habitation for resale without losing money in the present market. Tearing down the house and building a single or two family dwelling also falls short of repaying his efforts. Therefore the consequences of these hardships are that the property will remain stagnated, sold off in its present condition, unless a variance can be secured. The consequences to the neighborhood of failing to replace the present mess with new fresh housing is substantial. The health and vitality of the neighborhood can only be enhanced by this project, which will provide clean, new, moderately priced housing stock for the Town. There is an absence of any negative change to the neighborhood by increasing the density of housing. Presently twenty seven (27) of the homes located on property that have a boundary on Halley Avenue north of Kings Highway are in multifamily dwellings. Only eight (8) of the homes are single family residential. Nineteen (19) of the homes are in detached dwellings for three (3) or four (4) families. Therefore, changing this property from a single family residence to a three (3) family residence is in perfect keeping with the character and feel of the neighborhood.

**GRANTED:** Edward Cheffetz *moved* and Donald Cafero *seconded* to approve the proposed application. *Motion passed unanimously.*

**7. 514 Davis Road, Map 47, Parcel 258.** Petition of Janine Hatch, for a variance of the Zoning Regulations; Section 5.2.4 to reduce the minimum side yard setback from 15', currently 6.3 feet, proposing 6.3 feet, and section 5.2.5 to increase the maximum lot coverage from 15% , currently 14.7%, proposing 16.7% and the total floor area from 30%, currently 23.2%, proposing 31.4%. **Permission to remove the existing garage and build a new two-story, two-car garage addition. Premises: R-3 Zone**

David Salerno, agent, presented the application for a variance of the Zoning Regulations. The applicant wishes to remove the existing garage and build a new two-story, two-car garage addition. There is hardship due to lot coverage and an undersized lot for zoning in R-Zone.

Petitions of support from the neighbors were submitted.

**GRANTED:** Edward Cheffetz *moved* and Kevin Coyne *seconded* to approve the proposed application. *Motion passed unanimously.*

There being no further business to come before the Commission, Robert Brennan, Chairman, adjourned the meeting at 4:41 p.m.

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Kevin Coyne, Secretary

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Josephine M. Keogh

**JAMES HAMILTON, ACTING AS CHAIRMAN**

**KEVIN COYNE, SECRETARY**

**JOSEPHINE M. KEOGH, CLERK**