

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

The Zoning Board of Appeals Commission of the Town of Fairfield held the Zoning Board of Appeals Public Hearing Meeting on March 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, Daphne Dixon, Alternate, Linda Snelham-Moore, Alternate

1. **Minutes of February 3, 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, Daphne Dixon, Alternate, Linda Snelham-Moore, Alternate

**GENERAL DOCKET**

**1. 1525 Fairfield Beach Road, Map 243, Parcel 12.** Petition of Susan E. Lane for a variance of the Zoning Regulations; Section 11.1.1 to reduce the minimum setback from Fairfield Beach Road from 45 feet, currently 28.5 feet, proposing 39.6 feet. **Permission to construct a new single family dwelling with attached garage. Premises: BD Zone**

Attorney John Fallon presented the application for a variance of the Zoning Regulations. He noted the applicant, Susan E. Lane, makes this application in connection with her proposal to construct a new single family residence at her property at 1525 Fairfield Beach Road. The variance requested is in regards to Section 11.1.1 and requests approval to reduce the minimum setback from Fairfield Beach Road for this lot bounded by Long Island Sound from 45 ft. to 39.6 ft. He also noted that the current structure on the property to be demolished is more nonconforming with regard to the street setback being 28.5 ft. from the street line of Fairfield Beach Road. All other aspects of the proposed new dwelling will conform to all requirements of the Regulations including those related to side yard setback, setback from Long Island Sound and coverage.

With regard to the matter of hardship, the Board has previously recognized that the established right of way of Fairfield Beach Road and its utilization for purposes of compliance with the street setback is a unique circumstance that establishes hardship for purposes of granting the variance requested. This determination is consistent with the case law defining hardship as set forth in *Archambault v. Wadlow*, 25 Conn.App. 375 (1991) and *Dolan v. Zoning Board of Appeals of Fairfield*, 166 Conn. 426 (1968).

Attorney Fallon further noted an additional proper basis for granting the variance requested in this case is found in the holding of *Hyatt v. Zoning Board of Appeals of Town of Norwalk*, 163 Conn. 379 (1972). In *Hyatt*, the State Supreme Court held that since a goal of zoning is the elimination or reduction of nonconformity that, therefore, when an application for a variance involves a proposal that will actually reduce an existing nonconformity this fact provides an additional and proper independent basis for the Zoning Board of Appeals to grant the variance requested. Such is the case with regard to this application where the approval of the plans will result in a decrease in the existing street setback nonconformity from 28.5 ft. to 39.6 ft.

**GRANTED:** Linda Snelham-Moore *moved* and Duncan Keith *seconded* to approve the proposed application. *Motion passed unanimously.*

**2. 41 Poe Court,** Map 79, Parcel 290. Petition of Thomas Vitale Sr, LLC for a variance of the Zoning Regulations; Section 5.1.1 to reduce the lot size for an existing four (4) family dwelling from 12,500 square feet to 9,786 square feet. **Permission to create an easement to gain access to a new building lot through an existing parking lot.**  
**Premises: C Zone**

**The proposed application was continued to April 7, 2011**

**3. 79 Hurd Street,** Map 180, Parcel 62. Petition of Sandra Bogdon and Gary Romeo for a variance of the Zoning Regulations; Section 5.2.5 to increase the maximum lot coverage from 20%, currently 20%, proposing 22.5%. **Permission to legitimize existing garage. Premises: A Zone**

Gary Romeo presented the application for a variance of the Zoning Regulations. He wishes to maintain the existing detached garage in its current dimensions. As opposed to reducing its length by one half as exists in the current plan. Because the lot is nonconforming and predates current zoning regulations, the existing garage dimensions result in total lot coverage being greater than 20% (approximately 22%). He noted that residing the garage and maintaining the current footprint will not reflect unfavorably on the neighborhood.

Petitions of support from the neighbors were submitted.

**GRANTED:** Duncan Keith *moved* and Linda Snelham-Moore *seconded* to approve the proposed application. *Motion passed 4-1. Kevin Coyne was in opposition.*

**4. 20 Homeland Street,** Map 7, Parcel 57. Petition of James and 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 new rear deck. Premised: A Zone**

Jennifer Holfelder presented the application for a variance of the Zoning Regulations. She wishes to construct a new rear deck. She noted he is requesting a variance to decrease the rear setback from 30 feet to 22.4 feet for the deck. They have a split-level home with a rear porch that had already been constructed 1.3 feet passed the 30 foot setback. This occurred before the ownership of the home. They have a laundry room exit door which prohibits them from building past that area. To stay within the setback, the deck can only be 8 feet wide.

Petitions of support from the neighbors were submitted.

**GRANTED:** Duncan Keith *moved* and Linda Snelham-Moore *seconded* to approve the proposed application. *Motion passed unanimously.*

**5. 130 Woodrow Avenue,** Map 243, Parcel 70. Petition of Joan Seiler for a variance of the Zoning Regulations; Section 5.2.5 to increase the maximum lot coverage from 30%,

currently 24.6%, proposing 32.2%. **Permission to remove existing garage and build a new two car garage. Premises: B Zone**

The applicant did not show for the hearing, therefore the application was not heard.

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

**6. 249 Fairview Avenue, Map 143, Parcel 34.** Petition of Jennifer Anderson for a variance of the Zoning Regulations; Section 5.2.5 to increase the maximum lot coverage from 20 %, currently 23.8%, proposing 32.1%, and to increase the maximum total floor area from 40%, currently 34.9%, proposing 48.2%, and Section 5.2.4 to reduce the rear setback from 30 feet, currently 41.7 feet, proposing 26.8 feet. **Permission to construct a rear two story addition. Premises: A Zone**

Scott and Jennifer Anderson presented the application for a variance of the Zoning Regulations. They wish to construct a rear two story addition. They noted because the lot is nonconforming, they are at a disadvantage to build the addition within the required setbacks. If the lot did conform, the proposed addition would bring the lot coverage to only 17.1% and building floor area to 25.7%, both below the requirements.

They also noted their neighbor has the same nonconforming lot size and hardship and were granted variances for similar requests in February of 2009.

The design and color will be consistent with the existing structure and is in keeping with the character of the neighborhood.

Petitions of support from the neighbors were submitted.

**GRANTED:** Duncan Keith *moved* and Linda Snelham-Moore *seconded* to approve the proposed application. *Motion passed unanimously.*

**7. 1599-1601 Post Road, Map 180, Parcel 78.** Petition of S.P.J. LLC for a variance of the Zoning Regulations; Section 28.6.12 to reduce the minimum required total number of off-street parking spaces from 32 to 18. **Permission to expand an existing restaurant for additional indoor and seasonal outdoor dining. Premises: CDD**

Attorney William Fitzpatrick presented the application for a variance of the Zoning Regulations. He noted the applicant is the lessee of the above mentioned property. Directly adjacent to Quattro Pazzi on the west, is the Audubon Copy Shoppe. Quattro Pazzi is seeking to expand its successful restaurant operation into the space presently occupied by the Audubon Copy Shoppe.

In the event that Quattro Pazzi is permitted to expand into the Audubon Copy Shoppe space, the expanded Quattro Pazzi will include an expanded patron floor area of 1146 sq. ft. Pursuant to Section 28.6.12 of the Zoning Regulations, this patron floor area produces a parking demand of 29 spaces, per the regulatory requirement of one space for each 40 square feet of patron floor area. In addition, the applicant is requesting approval for outdoor seating in front of the newly leased space, which will become part of the very popular

outdoor dining area in front of Quattro Pazzi. The parking requirement for the proposed outdoor seating of 120 sq. ft. is an additional three spaces.

The end result is a parking demand of 32 spaces for the expanded Quattro Pazzi and outdoor seating. The parking attributed to the existing Quattro Pazzi (17 spaces) and the Audubon Copy Shoppe (1 space) totals 18 spaces. As a result, the application is requesting approval to reduce the required parking for the expansion of Quattro Pazzi, with associated outdoor dining, from 32 spaces to 18 spaces.

The lunch patrons of the expanded Quattro Pazzi are anticipated to be the downtown shoppers, business owners and employees, thereby generating no material parking demand. Evening visitors to Quattro Pazzi will have the opportunity to utilize the parking to the rear of the building, accessed by Sherman Street, as well as on-street parking.

Approval of this application will permit the expansion of the very popular Quattro Pazzi Cafe. The reconfigured Quattro Pazzi will contribute to the continuing revitalization of Fairfield's downtown, a resurgence spearheaded to a significant degree by the burgeoning downtown restaurant community.

**GRANTED:** Linda Snelham-Moore *moved* and Donald Cafero *seconded* to approve the proposed application. *Motion passed 4-1. Linda Snelham-Moore was opposed.*

**8. 693 South Pine Creek Road, Map 232, Parcel 83.** Petition of Meredith Lind for a variance of the Zoning Regulations; Section 5.2.4 to reduce the minimum required street line setback from 20 feet, currently 15.3 feet, proposing 17.4 feet. **Permission to remove front porch and rebuild on same footprint. Premises: B Zone**

Meredith Lind presented the application for a variance of the Zoning Regulations. She wishes to incorporate the existing front porch into the existing front room of the dwelling. She noted there will be no change to the existing footprint of the home. The house was built prior to the zoning regulations and is currently nonconforming.

**GRANTED:** Linda Snelham-Moore *moved* and Donald Cafero *seconded* to approve the proposed application. *Motion passed 4-1. Duncan Keith was opposed*

**9. 1791, 1801 – 1803 Fairfield Beach Road, Map 234, Parcels 40 & 41.** Petition of Paul and Patricia Zecchi for a variance of the Zoning Regulations; Section 11.13 to reduce the setback to Fairfield Beach Road from 45 feet, currently 24.8 feet, proposing 24.6 feet, and Section 11.11.3 to reduce the side yard setback from 6 feet, currently 2.7 feet, proposing 2.7 feet, and to reduce the sum of two side yard setbacks from 40.3 feet, currently 16 feet, proposing 16 feet, and Section 2.8.1 to expand an existing nonconformity. **Permission to renovate and expand a 2<sup>nd</sup> dwelling on one parcel. Premises: BD**

Attorney William Fitzpatrick presented the application for a variance of the Zoning Regulations. He noted the applicants are the owners of a beach property known as 1791 Fairfield Beach Road. This property is located in the Beach District and is identified in the Assessor's records as Parcel 40 on Map 234. In November of 2010, the applicants acquired the adjoining beachfront property to the west. This property, which contains two dwellings,

is known as 1801 -1803 Fairfield Beach Road, and is identified in the Assessor's records as Parcel 41 on Map 234.

The intent of the applicant is to join the two properties, which necessitates the removal of the existing shorefront cottage known as 180 1 Fairfield Beach Road. The existing second dwelling on the westerly parcel, a garage with an apartment above, known as 1803 Fairfield Beach Road, will be retained and renovated. The primary change the applicants wish to make to the existing garage apartment is to reorient the garage doors. The present garage doors open, essentially, onto Fairfield Beach Road, resulting in obvious pedestrian and vehicle safety issues. Given the narrowness of the existing 1801-1803 Fairfield Beach Road property, no other access to the garage was feasible. But the ownership of both the adjoining properties by the applicants permits a reorientation of the garage doors, and vehicle access, to the east.

Ingress and egress from the garage will now be to and from a gravel parking area rather than Fairfield Beach Road. A minor addition in the depth of the garage apartment is necessary in order to accommodate vehicles from the east rather than from the north of Fairfield Beach Road. The renovation of the garage apartment will also include an enlargement of the existing wood deck, with improved storage below. The garage apartment improvements do not result in any increase in interior living area.

Attorney Fitzpatrick also noted the initial variance request, to reduce the setback from Fairfield Beach Road from the required 45 feet, presently 24.8 feet, to 24.6 feet, is a function of the existing location of the garage apartment. The minor reduction in the proposed setback, .2 feet, is due to the fact the existing building is not "square" to Fairfield Beach Road.

The sideyard setback variance request, from the permitted 6 feet, presently 2.7 feet, to 2.7 feet, and the sum of sideyard setback variance request, from the required 40.3 feet, presently 16.0 feet, to 16.0 feet, is simply a reflection of where the two buildings presently are located on the premises. There is no construction proposed closer to any side property line than what exists today.

The final variance request, to permit the enlargement of an existing nonconformity, is a reflection of the legally nonconforming status of the garage apartment. Any enlargement of the structure, including as here, the addition to the depth of the garage to accommodate a vehicle, is technically an enlargement of a nonconformity.

Two existing dwellings are proposed to be retained on a combined parcel of property where three dwellings exist today. The proposed renovation of the garage apartment will significantly improve safety for drivers and pedestrians on Fairfield Beach Road.

Petitions of support from the neighbors were submitted.

**GRANTED:** Linda Snelham-Moore *moved* and Donald Cafero *seconded* to approve the proposed application. *Motion passed unanimously.*

**10. 51 Daves Lane, Map 243, Parcel 281.** Petition of Christopher and Sarah Saven for a variance of the Zoning Regulations; Section 5.2.4 to reduce the minimum required street

line setback from 40 feet, currently 26.1 feet, proposing 24.0 feet, and Section 5.2.5 to increase the maximum allowed lot coverage from 15%, currently 20%, proposing 20.6%.

**Permission to construct a new front covered porch and rear landing with steps.**

**Permits: R-3**

Christopher and Sarah Saven presented the application for a variance of the Zoning Regulations. They wish to construct a new front porch and rear landing with steps. Their hardship is due to the fact that they are zoned for a 20,000 square foot lot but have a 10,420 square foot lot size.

Petitions of support from the neighbors were submitted

**GRANTED:** Duncan Keith *moved* and Linda Snelham-Moore *seconded* to approve the proposed application. *Motion passed unanimously.*

**11. 254 Roselle Street, Map 31, Parcel 26.** Petition of 254 Roselle Street, LLC for a variance of the Zoning Regulations; Section 5.1.1 to reduce the minimum required lot size for a single detached dwelling for one family from 6,000, currently 10,960, proposing 5,360 and to reduce the square from 60 feet, currently 100 feet, proposing 49 feet.

**Permission to establish a building lot for a single family dwelling. Premises: B Zone**

**12. 254 Roselle Street, Map 31, Parcel 26.** Petition of 254 Roselle Street, LLC for a variance of the Zoning Regulations; Section 5.1.1 to reduce the minimum required lot size for a single detached dwelling for two family from 9,000, currently 10,960, proposing 5,600 and to reduce the square from 60 feet, currently 100 feet, proposing 51 feet, and Section 5.2.5 to increase the maximum allowed total floor area from 50%, currently 28.3%, proposing 55.4%. **Permission to establish an existing two family dwelling. Premises: B Zone**

Attorney Patrick Henry presented the application for a variance of the Zoning Regulations. According to the Fairfield Tax Assessor's office, the subject property presently consists of a 10,960 square foot parcel of land located in a "B" Zone. A two-family house and a detached two car garage are located on the northeasterly half of the property. The house is approximately 100 years old; the garage is much newer. The southwesterly half of the property is open and unimproved without any structures.

Attorney Henry noted, as a title search reveals, even though the property is taxed as one big lot, there are actually two 5,500 square foot lots that make up the large parcel. Since at least 1915, whenever the title changed to this large 10,960 square foot parcel, the two "paper lots" have been described as "FIRST PIECE" and "SECOND PIECE".

Prior to 1948, the owner of the southwesterly half, which corresponds to one of the old "paper lots", could have built a dwelling house, probably a 2 or 3 family, by simply obtaining a building permit. After reviewing pertinent documentation, including a 1915 deed to the entire parcel, personnel in the Fairfield Zoning Office have concluded that there is no necessity for a TP&Z commission hearing, as the premises are entitled to a free cut, as well as a sensible placement of the proposed boundary line between the two new lots. The applicant proposes to move the property line slightly from the line shown on the "paper

lots" in order to accommodate and preserve an existing two car garage that is in good shape.

The legal hardship for the property is rooted in the fact that the 10,960 square foot parcel was originally comprised of two separate lots, each of which was a separate building lot along with the other twelve building lots that were laid out on the same subdivision plan that was filed on the Fairfield Land Records approximately 100 years ago. Thus, the two lots, which maintained their separate identities as "FIRST PIECE" and "SECOND PTECE" , for nearly 100 years evolved from being simply "building lots" to legally non-conforming building lots.

Attorney Henry also noted, In the landmark case of Archambault v. Wadlow, 25 Conn. App. 375, the Appellate Court of Connecticut ruled that a legal hardship existed where a building lot had been created as a distinct, separate parcel before the enactment of zoning regulations. There, the zoning applicant bought a parcel of land in Waterford, CT several years after Waterford enacted zoning regulations that first established, then increased the minimum required lot size. At the time that the zoning applications was filed in Archambault, the parcel in question measured 8,250 square feet, while the minimum lot size had increased to 20,000 square feet. The Roselle Street applications now before you present very similar circumstances. The Zoning Board of Appeals in Waterford ruled against the applicant, holding that the hardship was self-created. On appeal, the Trial Court and the Appellate Court ruled that the Zoning Board was wrong, that the hardship was not self created and that the parcel was indeed a pre-existing non-conforming lot. Both Courts further ruled that refusal to grant a variance constituted a "practical confiscation of the applicant's land".

The rule in Archambault is quite clear. It protects legal, non-conforming building lots. Connecticut Courts have always held that the essential purpose of a Zoning Board of Appeals insofar as its power to grant variances under Connecticut General Statutes §8-6 is concerned, is to provide "some elasticity in the application of regulatory measures" so that such regulations do not operate in an arbitrary, unreasonable or confiscatory manner or in any manner that would be unconstitutional. See Astarita v. Liquor Control Commission, 165 Conn. 185.

Petitions of support from the neighbors were submitted.

**DENIED:** Linda Snelham-Moore *moved* and Donald Cafero *seconded* to approve the proposed application. Motion denied 3-2. Linda Snelham-Moore Duncan Keith and Kevin Coyne were opposed.

**13. 1560 Post Road, Map 180, Parcel 264.** Petition of Haralambos Giagkus for a variance of the Zoning Regulations; Section 28.6.12 to reduce the minimum required total number of off-street parking spaces from 7 to 0. **Permission to establish 250 square feet for outdoor seasonal dining. Premises: CDD**

Attorney Kevin Gumper presented the application for a variance of the Zoning Regulations. The applicant, Mike's Pizza of Fairfield, LLC, is a tenant in the building at 1560 Post Road. The property at 1560 Post Road is owned by Grasso Realty, Inc. Mike's Pizza is seeking a variance to allow it to offer seasonal outdoor dining at the front of the existing restaurant.

The deck will be level with the existing first floor of the restaurant and will have an elevation of approximately one foot from the existing sidewalk. The deck will be located entirely on the property owned by Grasso Realty, Inc. The outdoor dining will be seasonal only and will comply with the guidelines imposed by the Town Plan and Zoning Commission (assuming TP&Z approves). The zoning regulations require one parking space for every forty feet of patron space. The proposed expansion of patron floor area is 250 feet, meaning an additional seven spaces are required. As will be explained, there is no additional parking available on site. The applicant is therefore seeking a variance in the required additional parking from seven spaces to zero spaces. The property at 1560 Post Road has an area of 4,907 square feet (II acres).

The property is improved with a two-story building. The building has three storefronts on the first floor (two of the storefronts are occupied by Mike's Pizza, and the third is empty), and two residential apartments on the second floor. There are a total of six parking spaces presently located on the property, of which two are allocated to Mike's Pizza. There is no room for any additional parking.

Attorney Gumper also note Mike's Pizza was granted a parking variance on May 6, 2010. Prior to the granting of that variance, Mike's Pizza occupied only one of the three storefronts at 1560 Post Road. Upon the granting of the variance, which allowed a reduction in the additional parking from six spaces to one, Mike's Pizza was able to expand into the adjoining storefront.

Mike's Pizza has been operating in this location since 1974. The restaurant is open for business from 11 :00 a.m. to 10:00 or 11 :00 p.m., seven days a week. The menu consists primarily of pizza and related items. The restaurant has a beer and wine permit. A substantial portion of its business consists of takeout and deliveries. During the lunch hour and throughout the afternoon the majority of its customers walk to the premises either from nearby business or from the schools. Based on past experience, it is anticipated that the majority of the sit down business will occur during the evening hours.

Attorney Gumper also noted the strict application of the zoning regulations will hardship upon the applicant in that it would prevent the applicant from any expansion of its business. There is simply no room available on site for any additional parking. The strict application of the regulations is not necessary. The past experience of the applicant as well as .that of other merchants in the downtown area has shown that during the evening hours, when the applicant (based on its experience) will require parking, there is an abundance of readily available parking in the downtown area.

The use which the applicant proposes to make of the property is in harmony with the comprehensive plan for the town, as evidenced by the zoning regulations which specifically permit restaurant uses in the center designed district.

**DENIED:** Linda Snelham-Moore *moved* and Kevin Coyne *seconded* to approve the proposed application. Motion denied 3-2. Linda Snelham-Moore Duncan Keith and Donald Cafero were opposed

**14. 1424 Fairfield Beach Road, Map 234, Parcel 96.** Petition of Sylas Howland and Mary Jean Howland for a variance of the Zoning Regulations; Section 2.8.1.1. to extend a

single family dwelling that currently has two dwellings in one lot. **Permission to add a 2<sup>nd</sup> floor dormer to the primary structure. Premises: BD**

Mary Jean Howland presented the application for a variance of the Zoning Regulations. She wishes to add a 2<sup>nd</sup> floor dormer to the primary structure. Their hardship is due to limited headroom in the shower and bedrooms.

Petitions of support from the neighbors were submitted.

**GRANTED:** Linda Snelham-Moore *moved* and Duncan Keith *seconded* to approve the proposed application. *Motion passed unanimously.*

There being no further business to come before the Commission, James Hamilton, acting as Chairman, adjourned the meeting at 5:56 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**