

**ZONING BOARD OF APPEALS  
EXECUTIVE SESSION OF JULY 7, 2011**

The Zoning Board of Appeals Commission of the Town of Fairfield held the Zoning Board of Appeals Public Hearing Meeting on July 7, 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:** Robert Brennan, Jr., Chairman, James Hamilton, Vice Chairman, Kevin Coyne, Secretary, Duncan Keith, Edward Cheffetz, Alternate, Daphne Dixon, Alternate.

1. **Minutes of June 2, 2011:** James Hamilton *moved* and Duncan Keith *seconded* to approve the proposed minutes as submitted. *Motion passed unanimously.*
2. **Approval of Secretary's Fee:** James Hamilton *moved* and Edward Cheffetz *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:** Robert Brennan, Jr., Chairman, James Hamilton, Vice Chairman, Kevin Coyne, Secretary, Duncan Keith, Edward Cheffetz, Alternate, Daphne Dixon, Alternate.

**CONTINUED DOCKET**

**14. 1623-1624 Fairfield Beach Road, Map 234, Parcel 22, 117.** Petition of Barbara Bertozza, Castelli and Jose Meller for a variance of the Zoning Regulations; Section 11.7 to increase the dwelling height from 30 feet, proposing 31.33 feet, and Section 11.1.1 to permit to construct two dwellings on one parcel. **Permission to remove two existing dwellings and construct two new dwellings. Premises: BD**

Attorney William Fitzpatrick, representing the applicants, presented the application for a variance of the Zoning Regulations. This property extends from Long Island Sound across Fairfield Beach Road to Pine Creek. The property fronting on Long Island Sound is known as 1623 Fairfield Beach Road and is identified in the Assessor's records as Parcel 22 on Map 234. The property to the north of Fairfield Beach Road, fronting on Pine Creek, is known as 1624 Fairfield Beach Road and is identified in the Assessor's records as Parcel 117 on Map 234.

The property at present contains an existing two-story house and one-story guest house on the parcel of property fronting on Long Island Sound and a garage on the parcel of property across Fairfield Beach Road, fronting on Pine Creek. The intent of the applicants is to demolish all three existing buildings and construct a two-story new home, and separate one-story storage building on the parcel of property abutting Long Island Sound and to construct a new guest house with garage below on the parcel abutting Pine Creek.

The applicants are requesting a variance of Section 11.7 to permit an increase in height from 30 feet to 31.33 feet and a variance of Section 11.1.1 to permit the construction of two homes on one lot. The height variance request is due to the nature of the proposed construction and the proposed roof line. The new home will be a contemporary design which will incorporate a flat roof. As shown on Sheet 2005 of the architectural plans, the area which exceeds the height limitation of 30 feet is very limited in size. The area of exceedance is highlighted in orange on Sheet 22005. This area of exceedance is essentially a room at the top of the stairs utilized to access the proposed roof top deck. Sheet 2005 also depicts the permitted height, as per the definition of height in the Zoning Regulations, which would be permitted if a pitched roof were to be constructed. The

mass and actual height of a pitched roof is considerably greater than the roof design proposed here.

The applicants also request permission to construct two new dwellings to replace the two dwellings presently located on the property. Per discussions with the Zoning Department staff, there are two regulatory options to reach this end. Either an application can be made as here, or Section 11.4 of the Regulations can be utilized and application can be made to the Town Plan & Zoning Commission. In the interest of time and administrative efficiency, application is being made to this Board. The most important factor to consider is that Section 11.4 of the Beach District Regulations explicitly permits the construction of one or more dwellings in replacement of the same number of existing dwelling units, provided all other requirements are satisfied. All other relevant requirements are satisfied, including specifically the relevant coverage restrictions. Approval of this request permits the replacement of two older dwellings with two new homes.

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

**16. 155 Halley Avenue, Map 79, Parcel 92.** 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 family from 10,000 sq. ft., currently 7,000 sq. ft., proposing 7,000 sq. ft. **Permission to construct a three family dwelling. Premises C Zone**

**The proposed application was continued to August 4, 2011**

### **GENERAL DOCKET**

**1. 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 square feet, currently 10,960 square feet, proposing 4,960 square feet. Reduce the minimum square required on a lot from 60 square feet, currently 99 square feet, proposing 45 square feet. **Permission to establish a building lot. Premises B Zone**

**2. 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 square required on a lot from 60 square feet, currently 99 square feet, proposing 54.55 square feet, and to reduce the minimum required lot size for a two family dwelling from 9,000 square feet, currently 10,960 square feet, proposing 6,000 square feet. **Permission to establish a legal non-conforming two family dwelling. Premises: B Zone**

Attorney Patrick Henry, representing the applicants, presented the application for a variance of the Zoning Regulations. 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.

A title search reveals that even though the property is taxed as one big lot, there are actually two 5,500; t 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 19 15 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 this 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 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 years after Waterford enacted zoning regulations that first established, then increased the minimum required lot size.

The applicant has made a substantial change in its two Zoning applications. The plans that were submitted in February of this year had called for the creation of two lots: Lot "A" for the proposed single family house containing 5,360 square feet and requesting two (2) variances, one for the minimum lot area and the other for the minimum building square; and Lot "B" for the existing two-family house and garage, containing 5,600 square feet and requesting three (3) variances, one for the minimum lot area, another for the minimum building square and the last one for the maximum floor area coverage.

The revised plans that are before you now show that the applicant has responded to the Board's concerns for more green space and fewer variances. The applicant has moved the proposed boundary line to the west resulting in a larger Lot "B": for the existing two-family. By doing this, there will be an additional 400 square feet of green space, and the elimination of the need for a floor area variance for the existing house. The resulting Lot "A", although smaller by 400 square feet, will be larger than five (5) of the other twelve (12) properties on Roselle Street, and will need no additional variances.

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

**3. 66 Beaver Brook Lane, Map 26, Parcel 274.** Petition of Jason and Ingrid Prueher for a variance of the Zoning Regulations; Section 5.2.4 to reduce the minimum required street line setback and side yard setback from 40 feet and 15 feet, currently 24.7 feet and 12.4 feet, proposing 24.7 and 12.4 feet. **Permission to construct a 2nd floor dormer. Premises R-3**

Jason and Ingrid Prueher presented the application for a variance of the Zoning Regulations. They are requesting a variance to put a second floor dormer on their house. Their house is nonconforming and is undersized. .

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

**4. 433 Pine Creek Avenue, Map 234, Parcel 247.** Petition of Robert and Nancy Strong for a variance of the Zoning Regulations; Section 11.10 to increase the allowable lot coverage from 23.61%, currently 25.5%, proposing 25.5%, and Section 11.14.1 to reduce the minimum setback from pine creek from 43 feet, currently 26.5 feet, proposing 35.1 feet. **Permission to construct an attic deck and stair case along with rooftop walkway. Premises BD**

Attorney John Fallon presented the application for a variance of the Zoning Regulations. The applicants purchased the subject property on November 12, 2007. As confirmed by the Site Plan, the lot is a legally protected preexisting nonconforming lot consisting of 9,002 sq. ft. As shown in the Zoning Data Grid a previous existing conditions map established lot coverage at 23.61% based upon a survey performed at the property in April of 2006 prior to the acquisition of the property. The existing conditions, however, established by the survey prepared at the applicants request in March of this year by The Huntington Company established existing coverage as 25.5%. Whether the earlier survey was in error or the prior owner made certain additions to coverage after the 2006 map was prepared is unknown. What is confirmed, however, by the Huntington survey of March of this year is that existing coverage is 25.5%. The Huntington Survey also confirms that the setback of the existing house from Pine Creek is 43' and the setback from Pine Creek of the existing first floor deck is 26.5'.

The applicants make this application for a variance of Section 11.10 to increase the allowable lot coverage to the existing 25.5% from the coverage percentage established by the 2006 survey of 23.61%. As shown on the site plans, there will not be any new construction which will actually add to the coverage on the property since the only structural addition that might otherwise implicate lot coverage is the proposed spiral stair which is being built on the existing deck which is already included in the coverage calculation of 25.5. The actual coverage of 25.5 is not being increased.

Attorney Fallon noted, with regard to the matter of hardship, of controlling legal significance is the fact that the lot in question is a valid and legally protected nonconforming lot as it relates to lot area requirements. The present requirements within the Beach District establish a minimum lot area requirement of 9,375 sq. ft. This lot, established for residential purposes before these zoning regulations were imposed, has 9,002 sq. ft. Pursuant to the provisions of Connecticut General Statutes 8-2 the lot is a valid and legally preexisting nonconforming lot. It has been previously held by State Supreme Court that where a property is a valid nonconforming lot with regard to lot area this establishes sufficient hardship to support the granting of a variance with regard to coverage since the coverage regulations peculiarly effects the property and its legal protected nonconforming status in an adverse matter.

Attorney Fallon also noted, the addition of the spiral staircase and the attic deck will not have any impact with regard to the use of the property and will not as a practical matter increase the lot coverage from its existing 25.5% or actually decrease the setback of structures from Pine Creek from what is legally presently existing. As a legal matter case law supports a finding that the imposition upon this preexisting nonconforming lot and the presently existing coverage requirement establishes a legal hardship under Connecticut case law sufficient for the granting of the variance requested.

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

5. 120 Eastfield Drive, Map 49, Parcel 125. Petition of Mary and Geoff Wargo for a variance of the Zoning Regulations; Section 5.2.5 to increase the maximum lot coverage from 15%, currently 11.8%, proposing 17.6%. Permission to construct a rear one story addition. Premises: R-3 Zone

Mary and Geoff Wargo presented the application for a variance of the Zoning Regulations. They wish to construct a 20' x 40' wide 1 story addition consisting of an expanded kitchen master bedroom and 1 full and 1 ½ bath. The size of the addition is at 1.7% and didn't realize it had been changed back to 1.5% a few years ago.

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

6. **358 Lalley Boulevard**, Map 138, Parcel 274. Petition of Brian and Marina Henninger for a variance of the Zoning Regulations; Section 5.2.5 to increase the maximum lot coverage from 20%, currently 20%, proposing 20.6%. **Permission to legitimize a construction error. Premises: A Zone**

Brian and Marina Henninger, owners, presented the application for a variance of the Zoning Regulations Existing renovations. They are requesting a variance because of a construction error. Their lot is undersized.

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

7. **1359 Unquowa Road**, Map 179, Parcel 254. Petition of Karl and Jennifer Elias for a variance of the Zoning Regulations; Section 5.2.5 to increase the maximum lot coverage from 15%, currently 15.77%, proposing 15.57%. **Permission to construct an addition. Premises: R-2 Zone**

Karl and Jennifer Elias, owners, presented the application for a variance of the Zoning Regulations. They wish to demolish an existing one story one family room and replace it with a new one story family room addition. They are also demolishing the existing one story three season room and replacing it with a new one story living room addition and constructing a new one story mud room addition with small covered porch. The proposed design is explicitly designed to comply with existing coverage. The proposed design does not increase coverage over existing conditions. During the design, it was discovered that the lot size is significantly smaller than all records indicated at the time

they purchased the house. Also, at that time of purchase and since then, the lot size has been represented as 0.44 acres by numerous sources, including assessor's office.

The actual lot size was determined to be 0.32 acres by a licensed surveyor (27% smaller than indicated by records). This was recently confirmed by the Assessor and was noted as an error in area computation by the assessor's office some time in the past.

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

**8. 312 Edward Street, Map 138, Parcel 275.** Petition of David and Sandra Boback for a variance of the Zoning Regulations; Section 5.2.4.3 to reduce the side yard setback for an accessory structure from 10 feet, proposing 5.5 feet. **Permission to construct an inground pool. Premises A Zone**

David and Sandra Boback, owners, presented the application for a variance of the Zoning Regulations. They wish to construct a vinyl liner in ground swimming pool. This pool will be 3' 6" deep and will have a filter/heater system and ladder. There will be no slide, diving board or special lighting. The built in steps will be within the shallow swimming area. Not out beyond the footprint of the pool on either side. I am applying for this variance because I own a very small narrow piece of property. Because of the corner lot, the pool needs to be 30 feet from the street and 10 feet from my property line. Their yard is only 50 feet wide and they are requesting a variance to put the pool 5 feet 6 inches from the rear line.

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

**9. 80 Wellington Drive, Map 251, Parcel 35A.** Petition of John Kudweis for a variance of the Zoning Regulations; Section 5.2.4 to reduce the minimum required side line setback from 30 feet, currently 51.4 feet proposing 28.1 feet. **Permission to construct an addition. Premises: AAA Zone**

John Kudweis, owner, presented the application for a variance of the Zoning Regulations. They are requesting a variance to construct an addition on their home.

**GRANTED:** James Hamilton *moved* and Daphne Dixon *seconded* to approve the proposed application. *Motion passed unanimously.*

**10. 104 Palamar Drive, Map 74, Parcel 83.** Petition of Andrew Calamri and Coleen Sullivan for a variance of the Zoning Regulations; Section 5.2.4 to reduce the minimum required side line setback and street line setback from 15 feet and 40 feet, currently 6.4 feet and 25.1 feet, proposing 10.2 feet and 25.1 feet, and Section 5.2.5 to increase the maximum allowable lot coverage from 15%, currently 14.49%, proposing 16.63%. **Permission to construct an open porch and an addition. Premises: R-3 Zone**

Calamri and Coleen Sullivan, owners, presented the application for a variance of the Zoning Regulations. They wish to expand the northern side of their house by 3'7" to enlarge their single car garage and their daughters' bedroom above the garage and add an

attic. They are also planning to add a 22'3" by 15'11" 2 story addition at the rear of their home over the existing deck. This will consist of a first floor kitchen, second floor master bedroom and bath with attic space above the bedroom. They are also adding a new deck to the rear of their home and a small portico over the currently existing front steps and adjoining porch.

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

**11. 281 Fairview Avenue, Map 143, Parcel 31.** Petition of Kevin and Frances Nolan for a variance of the Zoning Regulations; Section 5.2.5 to increase the maximum lot coverage from 20%, currently 25%, proposing 25%, and to increase the maximum total floor area from 40%, currently 42.2%, proposing 44.65%, and Section 5.2.4 to reduce the side yard setback from 7 feet, currently 6.7 feet, proposing 6.7 feet. **Permission to construct an addition and to legitimize pre-existing conditions. Premises: A Zone**

Kevin and Frances Nolan, owners, presented the application for a variance of the Zoning Regulations. They wish to reframe the existing main roof line to accommodate 2 bedrooms and 1 bathroom on the existing 3<sup>rd</sup> floor. We are proposing to increase the floor area by 2.45% from the current conditions of 42.2% to 44.65% this is a pre-existing non-conforming lot in A-zone. The existing lot area is 5000 sq. ft. The zone minimum is 9375 sq ft. Also zone A Floor area allowance is 3750 sq ft. We are proposing a floor area of 2230 sq. ft. While maintaining the existing lot coverage and meeting all other zone A setbacks, Height requirements and still meeting the 2 ½ story requirement.

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

**12. 18 Round Hill Drive, Map 145, Parcel 19.** Petition of James and Melissa Murphy for a variance of the Zoning Regulations; Section 5.2.4.3 to reduce the street line setback for an accessory structure from 50 feet, proposing 25.5 feet. **Permission to construct a detached screen porch with fire place. Premises AA Zone**

Melissa Murphy presented the application for a variance of the Zoning Regulations. They wish to construct a 12' x 18' one story screen house. This structure will include a shingle roof, decorative support columns with removable panels of screens. In addition at 2' footing will base an outside fireplace constructed of stone with a 14'2" chimney. The fireplace will be wood burning. Entry will comprise of sliding screen panels.

The request is based on the hardship of location A sanitary sewer lateral traverses the middle of the property combined with the set back requirements of (2) front and side setbacks. The location is governed by area of one side (1/2) of the property and corner property limitations. Ms. Murphy noted she is seeking relief from the side street setback requirements.

**GRANTED WITH CONDITION:** James Hamilton *moved* and Duncan Keith *seconded* to approve the proposed application with a condition. *Motion passed unanimously.*

**CONDITION:** Conditioned upon a solid fence or other natural screenings remain in place.

**13. 78 Valley View Place, Map 123, Parcel 117.** Petition of David and Danielle Gorski for a variance of the Zoning Regulations; Section 5.2.4 to reduce the minimum required sum of the side setbacks from the two side property lines from 25 feet, currently 24.7 feet, proposing 24.7 feet. **Permission to construct a 2nd floor addition. Premises: A Zone**

David and Danielle Gorski, owners, presented the application for a variance of the Zoning Regulations. They wish to add 2<sup>nd</sup> floor bedrooms above garage and sun/family room. For esthetics & structural purposes we have to follow existing wall line.

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

**14. 3657 Park Avenue, Map 7, Parcel 145.** Petition of Myron Smith for a variance of the Zoning Regulations; Section 5.2.4 to reduce the minimum required street line setback from 30 feet, currently 29.7 feet, proposing 21 feet; and Section 5.2.5 to increase the maximum allowable lot coverage from 20%; currently 17.5%; proposing 23.4%. **Permission to construct a one story addition. Premises: A Zone**

Myron Smith, owner, presented the application for a variance of the Zoning Regulations. They wish to construct 30'x40' 1 story garage with HC accessible ramp in garage for access to the existing house. Project includes demolition of existing garage.

The existing residence is over the bldg. setback line on the street sides of the property so construction on those sides requires a variance. The project is to construct a garage with a HC accessible ramp inside to gain access to the existing house for the owner's father. Due to the location of the existing house & the fact the oversized garage is required for the ramp the additional space requires a coverage variance. The existing garage is being removed as part of this project.

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

**15. 226 Shelter Rock Road, Map 74, Parcel 264.** Petition of Woodrow and Kathleen Gaskin for a variance of the Zoning Regulations; Section 5.2.5 to increase the maximum lot coverage from 15%, currently 16.4%, proposing 16.8%. **Permission to construct a new front porch. Premises: R-3 Zone**

Woodrow and Kathleen Gaskin, owners, presented the application for a variance of the Zoning Regulations. They wish to remove the existing concrete steps to our front door & replace them with a covered porch & new steps.

A previous owner apparently built the additions larger than that which was approved by the ZBA in 1988. We were unaware of this until we had a new survey prepared showing the porch addition we propose to build.

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

**16. 472 Rowland Road, Map 183, Parcel 79.** Petition of Ursula Natorp for a variance of the Zoning Regulations; Section 5.2.5 to increase the maximum lot coverage from 20%, currently 19.3%, proposing 22.5%, and to increase the maximum total floor area from 40%, currently 39.9%, proposing 43.12%. **Permission to construct a detached two car garage. Premises: A Zone**

Attorney John Fallon resented the application for a variance of the Zoning Regulations. The applicants are requesting a variance to construct a two car one story unattached garage with storage above on their property. They are also requesting a variance of Section 5.2.5 to increase the lot coverage to 22.5% and the floor area ratio to 43.12% for that purpose.

The present garage to be demolished is quite small and the house contains no basement or attic space. The construction of the new garage will constitute a substantial aesthetic improvement to the property and at the same time provide the applicants with sufficient space to store both their vehicles in an enclosed garage while maintaining a small area above for much needed storage. The property is located in Residence A Zone and is preexisting and legally protected nonconforming lot as to lot area comprising of 7,502 sq. ft. whereas the Zone currently contemplates a minimum lot area of 9,375 sq. ft.

Attorney Fallon noted, with regard to the matter of hardship it must be emphasized again that the lot in question is a valid and legally protected nonconforming lot as it relates to the present lot area equipment. The present requirements within the Residence A Zone establish the minimum lot area requirement of 9,375 sq. ft. This lot, established for residential purposes before the zoning regulations were imposed, has 7,502 sq. ft., approximately 1800 sq. ft. less than the present lot requirements. Pursuant to the provisions of Connecticut General Statutes 8-2 the lot is a valid and legally protected nonconforming lot. Nonetheless the 20% coverage requirement and 40% floor area ratio requirement presently applicable in the Residence A Zone must be calculated in this instance based upon a lot area of some 1800 sq. ft. less in size than the minimum requirement as contemplated by the current zoning regulations.

It has been previously held by the Supreme Court that where a property is a valid nonconforming lot with regard to lot area, sufficient hardship to support the granting of variances with regard to coverage and floor area ratio is established because the application of the coverage and floor area ratio regulations peculiarly effects the property in an adverse manner as it relates to its statutorily protected status as a nonconforming lot.

As a practical matter the proposed garage could be accommodated but for the preexisting nonconforming status of this undersized lot. The Courts have found that strict application of these zoning requirements with regard to this lot result in unusual hardship to the applicants.

The new garage proposed by the applicants, in order to meet their needs for internal storage of their vehicles and some small amount of storage space for their personal items will provide an enhancement aesthetically to the surrounding neighborhood and is

consistent with the Comprehensive Zoning Plan. The imposition upon the property of the present coverage and floor area ratio regulations which contemplates a significantly larger

lot creates a legal hardship under Connecticut case law supporting the granting of the variances requested. All other aspects of the proposed addition will be in compliance with the applicable requirements of the Zoning Regulations.

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

**17. 330 Grasmere Avenue, Map 128, Parcel 123.** Petition of H H East Parcel, 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 25 to 12. **Permission to establish a Five Guys Restaurant. Premises: DCD Zone**

Attorney William Fitzpatrick presented the application for a variance of the Zoning Regulations. The applicant is the owner and developer of the Kings Crossing retail center located at the corner of Grasmere Avenue and Kings Highway East. This property is identified in the Assessor's records as Parcel 123 on Map 128.

This property contains 10.477 acres and is located in the Designed Commercial District. This retail center is nearly completed and will include a CVS Pharmacy in Building #3. Whole Foods Market is open and doing business in Building #2. The third building on site, Building #1, will be occupied by several tenants including Chase Bank at the easterly end of the building, Petco in the middle portion of the building, and Chipotle at the westerly end of the building.

The tenant space directly to the east of Chipotle (to the left if one is standing in the parking lot facing the building) has been leased for a "Five Guys" restaurant. The Five Guys space will encompass 2,315 square feet, including patron floor area of 932 square feet. The applicant also proposes the creation of a small outdoor dining area of 36 square feet.

The parking requirement for this building, Building #1, was originally formulated on a retail basis, that is one parking space for each 200 square feet of gross square footage. As a result, given the Five Guys 2315 square feet, the existing parking attributed to this tenant space is 12 spaces. The parking requirement for a restaurant, as per the language of Section 28.6.12 of the Zoning Regulations, is one parking space for each 40 square feet of patron floor area. Since the proposed Five Guys patron floor area is 932 square feet, and the proposed outdoor dining is 36 square feet, the Five Guys required parking is 25 spaces. since the original plan assigned 12 parking spaces to this retail space, the parking deficiency is 13 spaces.

The single access plan accommodated 580 parking spaces and the joint access plan included 504 spaces, resulting in a parking credit of 76 spaces. The P&Z acknowledged the parking credit in its prior approval of the adjacent Chipotle Grille, which involved an identical parking deficit of 13 spaces. In this case, however, the Plan & Zoning Commission rejected the Zoning Compliance application and suggestion was made that the applicant make application to the Zoning Board of Appeals.

Attorney Fitzpatrick noted this application to the Zoning Board of Appeals is requesting a reduction in the required parking for a Five Guys restaurant from the required

25 spaces to 12 spaces, a shortfall of 13 parking spaces. This request needs to be evaluated in the context of a retail center that will include 431 parking spaces.

He also noted, it is also important to note that the prime Five Guys demand period is between particularly on Friday and Saturday nights. The most significant traffic generator in this retail center is the Whole Foods Market. The Whole Foods Market is not busy during the 6:00 p.m. to 8:00 p.m. period, when compared to, for instance, a Saturday morning. Relatively few shoppers will be shopping for groceries at Whole Foods on Friday and Saturday nights, the very times that Five Guys will be at its busiest. It is also likely that many of the Five Guys lunch clientele will be retail center patrons who are already shopping on site. As such, no significant Five Guys parking demand will be generated.

Five Guys Burgers and Fries first opened in Arlington, Virginia in 1986. Five Guys popularity is such that there are now Five Guys restaurants in over 750 locations in 40 states and in four Canadian provinces. Five Guys has been ZAGAT survey rated every year since 2001 and has been rated the Washingtonian Magazine's "Reader's Choice" #1 burger every year since 1999.

A Fairfield Five Guys will be a welcome addition to the Fairfield restaurant scene, particularly in this economic climate.

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

There being no further business to come before the Commission, Chairman Brennan and Kevin Coyne adjourned the meeting at 5:45 p.m.

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Kevin Coyne, Secretary

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Josephine M. Keogh

**ROBERT BRENNAN, JR. CHAIRMAN**

**KEVIN COYNE, SECRETARY**

**JOSEPHINE M. KEOGH, CLERK**