ZONING BOARD OF APPEALS
EXECUTIVE SESSION OF AUGUST 4, 2011

The Zoning Board of Appeals Commission of the Town of Fairfield held the Zoning Board of Appeals Public Hearing Meeting on August 4, 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 Caferro, Edward Cheffetz, Alternate, Linda Snelham-Moore, Alternate.

1. **Minutes of July 7, 2011:** Donald Cafero *moved* and Kevin Coyne *seconded* to approve the proposed minutes as submitted. *Motion passed unanimously*.

2. **Approval of Secretary's Fee:** Donald Cafero *moved* and Duncan Keith *seconded* to approve the proposed Secretary's Fee. *Motion passed unanimously*.

This portion of the Executive Session started at 1:56 and continued into Public Hearing.

Kevin Coyne, Secretary

Josephine M. Keogh

DRAFT

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PRESENT: James Hamilton, Acting as Chairman, Kevin Coyne, Secretary, Duncan Keith, Donald Caferro, Edward Cheffetz, Alternate, Linda Snelham-Moore, Alternate.

CONTINUED DOCKET

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**

Attorney John Curren presented the application for a variance of the Zoning Regulations. He noted the applicant is proposing 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 two story single family dwelling approximately 20 feet wide, that is not conforming with the zoning regulations in that it is 18.6 feet from the street as proposed to the required 20 feet, and it is non-conforming as to side yard setbacks in that it is 3 feet from the north side property line as opposed the minimum 5 feet. Presently, a driveway travels along the south side of the dwelling to a two car garage in the rear of the property that is over 20 feet in width and in violation of the side yard setback requirements in that it is 4 .4 feet from the south side property line. There is presently a metal shack in the rear of the property and a swing set. The property is also in a flood zone and none of the buildings on the property comply with Federal Emergency Management Administration (FEMA) construction requirements.

The proposed structures that will replace all of the structures on the property will also present itself to the street as a two story dwelling of 21feet in width will conform to both the street line and side property line setbacks. Each unit in the dwelling is rotated about 20 degrees favoring the street. A driveway will also travel alongside the dwelling, but instead of terminating at a garage, the driveway will provide access to two parking spaces underneath each dwelling. The new dwelling will be built to comply with FEMA rule and regulations.

The applicant is asking the board to vary the zoning regulations so that the applicant may build a single detached dwelling f o r 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 7,000 square feet, which is 70% of the area required for a three (3) family dwelling in a C zone.

Under The Zoning Regulations of the Town of Fairfield as amended to January 1, 1941 the regulations 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.

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 have been carried forward into the present regulation 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 f 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 in order to make it conforming for the present day three family requirements. Deeds showing the chains of title to the adjacent property 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. The hardship runs with the land.

The applicant purchased the property in 2004 with the intension of developing it. The hardship caused by the change of zone, combined with present market conditions make the development of a single family or two family dwelling a loss for the applicant. He needs to be able to build three units to recover the costs and make enough money to pay himself for the work.

Public safety and welfare will be secured in that the new construction will be compliant with FEMA rules and regulation s for construction in a flood zone. The present structure is not FEMA compliant, and like so many of the other older structures on the southern end of Halley Avenue, it has experienced flood damage that never would have occurred in FEMA compliant dwelling. This flood emergency used up town money and resources on this property which would not have been expended on this property had it been FEMA complaint.

There is an absence of any negative change to the neighborhood by increasing the density of housing on this property. The proposed development is in perfect keeping with the present development of the neighborhood. The Halley Avenue neighborhood is nestled

between the Designed Commercial District that runs on both sides of Kings Highway and the Connecticut Turnpike at the south end of the street. Presently of the twelve (12) dwellings located on Halley Avenue in the C Zone between the Commercial District on Kings Highway and the Turnpike in nine (9) of them, (75%) are multi family. Two (2) of them are three (3) family and one of them is four (4) family. One of the three (3) family dwellings is 165 Halley Avenue, which is immediately next door to the property. Like the applicant's property the three (3) family dwelling at 165 Halley Avenue is also on a 7000 square foot lot. The other three family dwelling, which is almost directly across the street, is 168 Halley Avenue. It is a three (3) family dwelling on a 5,000 square foot lot. Directly in back of the house across the street on Brentwood is a four (4) family dwelling as well as a four (4) family dwelling at the southern end of Halley Avenue. This neighborhood is full of multifamily dwellings and a number of them are on lots that are technically nonconforming for a two and three family dwellings. Only two dwellings in the neighborhood other than 155 Halley Avenue are single family. 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.

Finally, it is keeping with the Master Plan for the improvement and development of the Kings Highway area. Kings Highway has a number of blighted and marginal properties that are an eyesore to our town. The proposed dwelling is an investment in the future of the Kings Highway neighborhood and a positive act to bring vitality to that area. The seller plans to make these units into condominiums which would add new moderately priced housing stock available for homeownership. This will increase a sense of pride and ownership of in the Kings Highway area of our town.

DENIED: Duncan Keith *moved* and Linda Snelham-Moore *seconded* to approve the proposed application. *Motion denied 3-2.* James Hamilton, Kevin Coyne, Edward Cheffetz were opposed.

GENERAL DOCKET

1. 1499 Post Road, Map 180, Parcel 86. Petition of Kleban Holding Company for a variance of the Zoning Regulations; Section 28.6.12 to reduce the minimum required total number of off-street parking spaces by 7. **Permission to establish 260 square feet of seasonal outdoor dining. Premises: CDD Zone**

Attorney John Fallon presented the application for a variance of the Zoning Regulations. Ken Kleban Jr. was also present and spoke in support of the application. Attorney Fallon noted the applicant makes this application for a variance of Section 28.6.12 to reduce the required parking for the proposed property by seven (7) spaces in order to accommodate a seasonal outdoor dining area of two hundred sixty (260) sq. ft. to be used in conjunction with the existing cafe operation that has been long ongoing at the property as part of the former Borders Book Store.

He also noted the Board is aware, Kleban Holding Company, LLC and Fairfield University recently announced the exciting news that the former Borders site will become the home of the Fairfield University Book Store insuring that the downtown area will continue to provide the services of a fully operational and convenient Book Store for its shopping patrons. This very welcome recent development will strengthen the ongoing vibrance and

economic vitality of the downtown area. The cafe will operate within the Book Store providing the continuance of this very popular amenity.

This application seeks approval of a small area of two hundred sixty (260) square feet to be utilized for seasonal outdoor dining in accordance with the standard conditions imposed with regard to such applications by this Board and the Town Plan & Zoning Commission.

The applicant seeks permission to serve patrons of the cafe on the outdoor terrace area from "April 5th to October 15". The parking needs of the Book Store and Cafe, including this small outdoor area, will continue to be fully met by utilization of the abundant parking of two hundred seventy two (272) spaces are available to patrons of this important commercial center. This very small outdoor dining area is not intended nor will it increase patron volume but will simply provide a seasonal option to patrons who will be coming to the Book Store in any event. It will provide a convenient location for patrons to enjoy the cafe's offerings while also purchasing items from the Book Store. The fact that outdoor dining when added as an option to an existing food facility does not cause undue parking issues is well established by the historical experience of other restaurants in the Town that operate seasonal outdoor dining under previous variances granted by this Board.

Attorney Fallon noted he has attached a list, which may not be wholly comprehensive, of restaurants that have in the past received the benefit of such variances to allow seasonal outdoor dining to the application.

He also stated over the past decade outdoor dining has been recognized by the Board and the Town Planning & Zoning Commission as an important seasonal amenity that brings vibrance and activity to our retail centers and provides a desired convenience for patrons. Kleban Holding Company is anxious to have an opportunity to provide this enjoyable amenity on a seasonal basis to patrons as part of the new Fairfield University Book Store. The addition of a small area for seasonal outdoor dining use at the Book Store will benefit the area, its merchants and residents as a whole.

IN FAVOR: Gail Ingis, 200 Old Black Rock Turnpike, spoke in favor of the proposed application.

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

2. 200 Old Black Rock Turnpike, Map 74, Parcel 322. Petition of Gail Ingis for a variance of the Zoning Regulations.; Section 5.2.5 to increase the maximum lot coverage from 20%, proposing 20.19%. **Permission to legitimize a construction error. Premises: A Zone**

Gail Ingis, owner, presented the application for a variance of the Zoning Regulations. Mrs. Ingris stated she is requesting a variance to rectify a construction error, due to a calculation error by the contractor. The deck was built at 7 ½'x 13' and was supposed to be 7'x10'.

Petitions of support were submitted for the record from the adjoining neighbors.

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

3. 50 Beverly Lane, Map 47, Parcel 332. Petition of John and Amy Calandriello for a variance of the Zoning Regulations; Section 5.2.4 to reduce the minimum required street line setback from 40 feet, currently 38.3 feet, proposing 38.3 feet. **Permission to construct a 2nd floor addition. Premises: R-3 Zone**

John and Amy Calandriello, owners, presented the application for a variance of the Zoning Regulations. They wish to construct a second story addition on their home. It will not exceed the existing footprint. Their home is a legal nonconforming structure.

Petitions of support were submitted for the record from the adjoining neighbors.

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

4. 97 Argonne Street, Map 47, Parcel 55. Petition of Robert and Kelly Greene for a variance of the Zoning Regulations; Section 5.2.4 to reduce the minimum required side line setback from 15 feet, currently 9.7 feet, proposing 12.5 feet. **Permission to construct a front dormer. Premises: R-3 Zone**

Robert and Kelly Greene, owners, presented the application for a variance of the Zoning Regulations. They wish to expand the living space of their second story home. To comply with the setback, the structure will need to be moved approximately 2.5 feet from the proposed location. If the variance is granted, it will not intrude with the character and physical appearance of the house.

Petitions of support were submitted for the record from the adjoining neighbors.

Kevin Coyne recused himself from the proposed application. Edward Cheffetz sat in for Kevin Coyne.

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

5. 150 James Street, Map 182, Parcel 517. Petition of Michaela McCabe for a variance of the Zoning Regulations; Section 5.2.5 to increase the total floor area from 50%, currently 45.52%, proposing 50.83%; and Section 5.2.4.3 to reduce the accessory structure setback from 10 feet, proposing 5 feet. **Permission to construct a 2nd floor addition and install an air conditioning platform. Premises B Zone**

Michaela McCabe, owner, presented the application for a variance of the Zoning Regulations. She is requesting a variance to position the central air conditioning units as proposed.

OPPOSED: Richard Barry, 140 James Street, spoke in opposition of the proposed application.

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

CONDITION: Conditioned upon withdrawal of application for setback and that air conditioning
platform be placed on rear side of house.

6. 863 Old Academy Road, Map 173, Parcel 68. Petition of Thomas and Michele Whelan for a variance of the Zoning Regulations; Section 5.2.4 to reduce the minimum required side line setback from 30 feet, currently 3 feet, proposing 3.9 feet. **Permission to construct a one story and 2nd floor addition. Premises: AAA Zone**

Michele Whelan, owner, presented the application for a variance of the Zoning Regulations. She noted they would like to construct a 2nd floor addition to their home. Their lot is nonconforming. The 2nd floor is within the footprint. The kitchen addition does not reduce existing setbacks and the enclosed existing covered front porch is also within the existing footprint.

Petitions of support were submitted for the record from the adjoining neighbors.

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

7. 73 Eastfield Drive, Map 49, Parcel 155. Petition of Peter and Maria Lazor for a variance of the Zoning Regulations; Section 5.2.4 to reduce the minimum required side line setback from 15 feet, currently 29 feet, proposing 8.5 feet. **Permission to construct an addition. Premises: R-3 Zone**

Attorney Patrick Henry presented the application for a variance of the Zoning Regulations. The applicants have owned the property for approximately 14 years. They would like to build a modest two-story addition, consisting of a ground level garage with a master bedroom suite above the new garage.

Since their last visit before the Zoning Board a few months ago, the applicant has made a substantial change in the size of the addition that he proposes. As a result, the finished building would be a foot and a half further away from the boundary line with the abutting neighbor, going from 7 feet as previously proposed, to 8 % feet as currently proposed.

The applicants' neighbors support the application, as evidenced by the petitions that have been distributed to the members of the board. Of particular importance is the fact that the neighbor who is most affected by this addition, the neighbor whose house is to the left of the applicants' house, does not object, and supports the proposal.

Given the demonstration of hardship due to topography and lot configuration, given the fact that this application satisfies the two prong test as set forth in the Archarnbault case, given the fact that the applicants have made a significant change in their addition by moving it further away from the sideline, and given the fact that the neighbors are unanimous in their approval of the applicants' application, it is respectfully submitted that

the members of the board "provide some elasticity in the application of regulatory measures" so that such regulations do not operate in an arbitrary, unreasonable or confiscatory manner. This guideline is provided by our Connecticut Supreme Court in the case of Astarita v. Liquor Control Commission, 165 Conn. 185.

The applicants respectfully ask the Board for its favorable consideration on their application.

Kevin Coyne recused himself from the proposed application. Edward Cheffetz sat in for Kevin Coyne.

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

There being no further business to come before the Commission, James Hamilton adjourned the meeting at 4:20 p.m.

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Kevin Coyne, Secretary Josephine M. Keogh

JAMES HAMILTON, ACTING AS CHAIRMAN

KEVIN COYNE, SECRETARY

JOSEPHINE M. KEOGH, CLERK

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