ZONING BOARD OF APPEALS
EXECUTIVE SESSION OF OCTOBER 6, 2011

The Zoning Board of Appeals Commission of the Town of Fairfield held the Zoning Board of Appeals Public Hearing Meeting on October 6, 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, Chairman**,** James Hamilton, Vice Chairman, Kevin Coyne, Secretary, Duncan Keith, Donald Cafero, Edward Cheffetz, Alternate, Linda Snelham-Moore, Alternate.

1. **Minutes of August 4, 2011:** Duncan Keith *moved* and James Hamilton *seconded* to approve the proposed minutes as submitted. *Motion passed unanimously*.

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

This portion of the Executive Session started at 2:48 and continued into Public Hearing.

Kevin Coyne, Secretary

Josephine M. Keogh

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PRESENT: Robert Brennan, Chairman**,** James Hamilton, Vice Chairman, Kevin Coyne, Secretary, Duncan Keith, Donald Cafero, Edward Cheffetz, Alternate, Linda Snelham-Moore, Alternate.

1. 323 Old Dam Road, Map 234, Parcel 224, Petition of Daniel Epifano for a variance of the Zoning Regulations; Section 5.2.5 to increase the maximum lot coverage from 15%, proposing 24.5% and to increase the maximum total floor area from 30%, proposing 45%, and Section 5.2.4 to reduce the street line setback from 30 feet proposing 16 feet; and Section 5.2.6 to reduce the minimum ground floor square feet from 800 square feet, proposing 696 square feet. **Permission to construct a new three (3) story building. Premises: Flood Plain District.**

Attorney John Fallon presented the proposed application for a variance of the Zoning Regulations. David Huntington, Surveyor, was also present.

Attorney Fallon noted the Costa family has owned the subject property since 1963. When the Flood Plain District was established in 1961 to include this property the new regulation provided that lot development would remain subject to the standards established under Residence District B. Prior to the adoption of the new Flood Plain District in 196 1 the property had for many decades been zoned Residence District B. At the time of their purchase in 1963 there was a house located on the property. In 1965 the Town amended the Flood Plain District and provided as presently set forth in Section 23.7 that all lot development within the Flood Plain District would be subject to the standards established for the Residence R-2 Zone. This zone as then established encompassed land north of Old Dam Road including the Costa's property. Also, for the first time in 1965 due to the amendment to the Flood Plain District the property was rezoned and became subject to the more stringent R-2 zoning standards. The Flood Plain Zone as adopted does require the use of Residence R-2 zoning standards with regard to construction in the Flood Plain Zone. As documented by the Zone Map, all other residences in the area have been built to Residence B or Beach Zone standards, the Beach Zone having been adopted in 1989.

Attorney Fallon further noted the then existing house on the premises was demolished in 1997. The property contains 1.34+/- acres (58,400 +/- sq. ft.). The greater portion of this land is below the one year tidal flood line which is elevation 4.8. Therefore in accordance with the Regulations, only that portion of the land above elevation 4.8 can be built upon. The land above elevation 4.8 is only 3,250 sq. ft. In addition, State DEEP requires that any construction must be at least 5 ft. away from the elevation 4.8 line.

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With regard to the hardship requirement, the hardship which justifies a Board of Appeals to grant a variance must be one that originates from the application of the zoning ordinance to the property in question and arises directly from the application of the ordinance to the unique circumstances pertaining to the lot in question. Archambault v. Wadlow, 25 Conn. App. 375 (1991). In essence the applicant must show that because of some peculiar characteristics of the property or its zoning history, strict application of the zoning regulations results in such unusual hardship. Archarnbault, supra.; Dolan v. Zoning Board of Appeals of the Town of Fairfield, 156 Conn. 426 (1968).

The underlying facts with regard to the subject application provide numerous alternative grounds for a finding of hardship as legally established and defined by our case law. It must first be pointed out that because of the application of the Flood Plain Zone regulations and binding determinations with regard to the property by FEMA and the DEEP land on the property below the one (1) year spring tidal flood elevation as previously referenced cannot be counted when calculating lot coverage. As previously indicated application of these requirements reduces the buildable area on this lot of over 58,000 sq. ft. to only 3,250 sq. ft. Pursuant to the provisions of Section 23.7 of the Regulations the standards with regard to coverage, setback, and lot area applied in the Flood Plain District are the same as those established under the R-2 Residential District. As noted in Section 5.1.1, the R-2 District contemplates a minimum lot size of 14,000 sq. ft. and bases its requirements with regard to coverage of 15% and floor area of 30% upon this minimum lot area requirement assumption. Pursuant to the provisions of Connecticut General Statutes 8-2, the Applicants' lot is a valid and legally protected preexisting nonconforming lot. Nonetheless the coverage and FAR requirements established under the Residence R-2 District Regulations must be calculated based upon an actual lot area over 10,000 sq. ft. less in size than the minimum requirement in the contemplated R-2 zone. It has been held by our Supreme Court that where property is a valid nonconforming lot with regard to lot area sufficient hardship to support the granting of variances with regard to coverage and FAR is established because the application of those regulations peculiarly affects the property and it's protected status in an adverse manner. Such strict application of the zoning requirements in question result in unusual hardship providing a proper basis for the granting of the variances requested. Scobie v. Idarolla, 155 Conn. 22 (1 967); Kelly v. Zoning Board of Appeals of Town of Hamden, 21 Conn. App. 594 (1990); Dolan v. Zoning Board of Appeals of the Town of Fairfield, 156 Conn. 426 (1 968).

Another legally recognized basis for a finding of hardship arising from the facts of the present application is based upon the long settled authority that hardship can arise due to the enactment or amendment of zoning regulations affecting the property in question. Santos v. Zoning Board of Appeals Town of Stratford, 100 Conn. App. 644 (2007); Kulak v. Zoning Board of Appeals of the City of Stamford, 184 Conn. 479 (198 1).

At the time of the acquisition of the property by the Costa family in 1963 the property was located in the Residence B Zone. As previously indicated, the amendment to the Zoning Regulations in 1965 made the provisions of the R-2 District applicable to this lot. As previously indicated, this zone amendment in 1965 not only made the provisions of the R-2 District applicable to this property but also left the properties south of Old Dam Road still governed by the Residence B regulations and subsequently the less stringent Beach Zone Regulations. This amendment to the Flood Plain District regulations and the application of those regulations in 1965 to the subject property previously controlled by Residence B

standards establishes an additional legally recognized and proper basis for a finding of hardship legally supporting and indeed requiring the approval of the variances in question.

Attorney Fallon further noted the case law has long recognized that although financial considerations are generally not relevant in the context of a variance application they become legally controlling in those exceptional situations where application of the zoning regulations to the property in question either destroys or drastically reduces its value for any of .the uses to which it could reasonably be put. Vine v. Zoning Board of Appeals of Town of North Branford, 93 Conn. App. 1 (2006); Grillo v. Zoning Board of Appeals of the City of West Haven, 206 Conn. 362 (1988); Berlani v. Zoning Board of Appeals of the Town of Plainville, 160 Conn. 166 (1 970); Goldreyer v. Board of Zoning Appeals of the City of Bridgeport, 144 Conn. 64 1 (1 957). Where the effect of applying the regulations to the property is so severe as to amount to a practical confiscation our Courts have held that this establishes sufficient hardship to allow and require the Zoning Board of Appeals to grant a variance. Archarrlbault v. Wadlow, 25 Conn. App. 375 (1991); Stankiewicz v. Zoning Board of Appeals of the Town of Montville, 15 Conn. App. 729 (1988), affirmed 21 1 Conn. 76 (1989); Smith v. Zoning Board of Appeals of Town of Norwalk, 174 Conn. 323 (1978); Chevron Oil Co. v. Zoning Board of Appeals of the Town of Shelton, 170 Conn. 146 (1 976); Culinary Institute of America v. Board of Zoning Appeals of City of New Haven, 143 Conn. 257 (1956). There was a house located on the property when purchased by the Costa's in 1963 that was used continuously for thirty-four (34) years before being demolished. Based upon the application of the provisions of the presently existing Regulations which so drastically limit lot area for purposes of coverage and FAR compliance no functional house as a practical matter can be built on the property without the granting of variances pertaining to coverage, FAR and setbacks and minimum ground floor area. Indeed, the dwelling as proposed has a modest total floor area of 1, 4 17 sq. ft. Such a circumstance satisfies the standards for practical confiscation as articulated by our courts in the case law. An illustrative example is found in the case of O'Neill v. Madison Zoning Board of Appeals, 24 Conn.L.Rptr. 176 (1999) In that case a variance was granted by a zoning board of appeals and upheld by the Court where no house as a practical matter could be built on an irregularly shaped lot even though a prior structure on the lot had been demolished. The Court found that the house was an appropriate use in a residential zone and that the demolition of the structure did not impact whether or not the variances should be granted or a determination with regard to hardship. The Court further dismissed the claim of self created hardship finding that the demolition of the structure violated no zoning laws and was not relevant to the hardship established with regard to the variance requested. Similarly in Archambault v. Wadlow, supra. where the property was a valid nonconforming lot and a building could not conform to the current setback requirements denial of a variance which prevented the use of the lot for reasonable residential purposes constituted a practical confiscation. Again, in MacDonald v. Town of Waterford, 10 Conn.Ops. 8 15 (2004) the Court upheld a setback variance for a house on a small nonconforming lot which did not meet the then applicable minimum lot size for the zone of 20,000 sq. ft. The Court held that because without a variance the house would be the size of a 2 or 3 car garage, which was not practical, and other houses in the area were also on small nonconforming lots that the facts established circumstances satisfying the statutory standard of Connecticut General Statutes 8-6 and the hardship requirement.

The facts in the present case established compliance with the provisions of Connecticut General Statutes 8-6 in that the allowance of a modest single family home to be

reestablished on this nonconforming lot will not substantially affect the Comprehensive Zoning Plan and numerous factors with regard to the property and the application of the current Flood Plain District regulations establish hardship as defined in our case law as justifying the approval of the variances requested as a matter of law. For all of the above referenced reasons, the applicant's respectfully request approval of 'this application.

IN OPPOSITION: Diane Wagner, 289 Old Dam Road, Christina Taylor, 311 Old Dam Road, Sara Folkos, 311 Old Dam Road, Neil Bonnie, 241 Old Dam Road, Elena Heller, 175 Old Dam Road, spoke in opposition of the proposed application.

GRANTED: James Hamilton *moved* and Kevin Coyne *seconded* to approve the proposed application. **In Favor**: Robert Brennan, Kevin Coyne, Duncan Keith, Donald Cafero**.** **Opposed**: James Hamilton**.** *Motion passed 4-1.*

2. 535 Westport Turnpike, Map 258, Parcel 51. Petition of Justin and Christy Charise for a variance of the Zoning Regulations, Section 5.2.4 to reduce the minimum required side line setback from 30 feet, currently 16 feet, proposing 16 feet. **Permission to construct a rear deck. Premises: AAA Zone**

The proposed application was withdrawn.

Edward Cheffetz left the meeting at 4:33

3. 255 Meadowbrook Road, Map 128, Parcel 231, Petition of Mark Berish for a variance of the Zoning Regulations, Section 5.2.5 to increase the maximum lot coverage from 20%, currently 27.8%, proposing 33.7%, and Section 5.2.4 to reduce the street line setback from 22 feet, currently 11.8 feet, proposing 2.2 feet. **Permission to construct a front porch. Premises: Z Zone**

William Derry, Agent, presented the proposed application for a variance of the Zoning Regulations. He is requesting a variance to construct a front porch. The porch will tie into the existing front steps. The existing lot is undersized.

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

4. 233 Springer Road, Map 121, Parcel 27F. Petition of Robert and Jennifer Covino for a variance of the Zoning Regulations; Section 5.2.5 to increase the maximum lot coverage from 10%, currently 11.9%, proposing 12.3%. **Permission to construct a shed. Premises: AA Zone**

Richard Kornutik with RFK Construction presented the application for a variance of the Zoning Regulations. He is requesting a variance to construct a shed. The house is located on a nonconforming one acre lot, which reduces the usable square footage for building coverage. This causes the existing condition to be over coverage by 97.7 square feet.

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

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

5. 789 Harbor Road, Map 241, Parcel 14. Petition of Southport Realty Corporation for a variance of the Zoning Regulations; Section 5.2.4 to reduce the rear setbacks from 30 feet, currently 0 feet, proposing 0 feet, and the side setback from 15 feet, currently 0.5 feet, proposing 0.5 feet, and the street line setbacks from 40 feet, proposing 4.9 feet, currently 4.9 feet. **Permission to raise existing dwelling and make alterations per drawings. Premises: R-3 Zone**

Attorney Joel Green presented the application for a variance of the Zoning Regulations. He noted that Southport Realty's Application calls for the repair and reconstruction of a legal nonconforming cottage, which, as discussed above, is permitted as of right. However, because the property is located in a flood zone and because the proposal is anticipated to cost more than fifty percent of the structure's fair market value, the structure must comply with FEMA Regulations, the State Building Code, and the Flood Protection provisions of the Fairfield Zoning or Fairfield Zoning Regulations. 8 2.14.2 Coastal Site Plan Review Exceptions a. Pursuant to Section 22a-109 (b) of the Connecticut General Statutes, the following activities are exempt from coastal site plan review requirements: . . . (2) Minor additions to or modifications of existing buildings (4) Construction of the following new, or modification of, existing on-premises structures, fences, walls, pedestrian walks and terraces, underground utility connections, essential electric gas telephone, water and sewer service lines, signs and such other minor structures as will not substantially alter the natural character of coastal resources as defined by Section 22a-93 (7) of the Connecticut General Statutes or restrict access to the public beach; b. The foregoing exemptions from coastal site plan review requirements shall apply to the following site plans, plans and applications: . . . (3) Applications for a variance submitted to the Zoning Board of Appeals in accordance with subdivision (3) of Section 8-6 of the Connecticut General Statutes and Section 2.13 of these regulations; Regulations. Those provisions require that the cottage to be built with the lowest floor at or above base flood levels. In order to meet these elevation requirements, the structure proposed by the Southport Realty will be 5 feet taller than the presently existing cottage.

Although this increased height may be considered an increase in the nonconformity of the present use that requires a variance, the proposal also brings the new structure into compliance with Flood Protection provisions of the Zoning Regulations which include the federal and state mandates discussed above and thus in that respect reduces the nonconformities on the property. Flood conditions unique to this parcel and not present on all parcels within the same zone have damaged the existing structure and created health and safety hazards that necessitate the reconstruction of the cottage.

Southport Realty Corp. therefore faces a hardship that would arise solely from the strict application of the Zoning Regulations to their uniquely burdened property. If the Zoning Regulations were to be literally enforced, Southport Realty would lose its right to perpetuate the legal nonconformity on their land - a result that contravenes Conn. Gen. Stat. Sec. 8-2, and would injure constitutionally protected property rights. & Gold Diggers, LLC v. Berlin, 469 F.Supp.2d 43 (D. Conn. 2007); Northeast Parking, Inc. v. Planning & Zoning Cornrn'n, 47 Conn. App. 284, cert. denied 243 Conn. 969 (legally existing nonconforming uses are property rights vested in land).

The higher elevation would reduce the nonconformities on the property in one respect while increasing them in another; at the same time, the rebuilt structure would be considerably safer than the existing one. On balance, therefore, the proposal satisfies the statutory requirement that a variance be granted only where the resulting use would harmonize with the "general purpose and intent" of the zoning regulations and "conserve the public health, safety, convenience, welfare and property values". Conn. Gen. Stat. 88-6(a) (3).

Donald Cafero recused himself from the proposed application. Linda Snelham-Moore sat in for Donald Cafero.

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

6. 314 Birch Road, Map 138, Parcel 163. Petition of Armen and Dede Keteyian for a variance of the Zoning Regulations; Section 5.2.5 to increase the maximum lot coverage from 20%, 21.9%, proposing 22.8%, and to increase the maximum total floor area from 40%, 48.13%, proposing 49.26%. **Permission to construct a one story addition and rear landing and stairs. Premises: A Zone**

Attorney William Fitzpatrick presented the application for a variance of the Zoning Regulations. He noted it is the intent of the applicants to expand an existing wood deck/landing in order to accommodate the installation of French doors accessing the deck. The proposed expansion will permit the limited utilization of the deck area by a small table and chairs.

First, it should be noted that the lot area of this parcel is significantly less than the lot area required in Zone A. The lot area of this parcel is 7,606 square feet compared to Zone A requirement of 9,375 square feet. If the lot were located in the proper zone for the size, i.e., the Zone B, which requires a 6.000 square foot minimum lot area for a single family home, the coverage and floor area ratio requirements, would be 30% and 50%. The coverage of 22.8% and floor area ratio of 49.26% would satisfy both those standards.

Attorney Fitzpatrick also noted also of relevance is the size of the proposed addition to the deck. There is an additional 87 square feet of deck area. There is no interior living space being added to the home. Further, the existing overage relative to the floor area ratio of 48.13% is a function of the change in the Zoning Regulations several years ago, which now include the third floor, previously classified as attic, as a floor and, therefore, include that square footage in the floor area ratio calculations.

Donald Cafero recused himself of from the proposed application. Linda Snelham-Moore sat in for Donald Cafero.

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

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

7. **232 Lucille Street North,** Map 74, Parcel 47. Petition of Matthew and Nancy Pires for a variance of the Zoning Regulations; Section 5.2.4 to reduce the minimum required street line setback from 40 feet, currently 51.3 feet, proposing 30.3 feet. **Permission to construct a new attached garage. Premises: R-3**

Matthew Pires, owner, presented the application for a Zoning Regulations. He wishes to construct a 21' x 25'6" garage in front of the existing house. He noted the garage will be one level with a matching gable to the existing house. The total height will be 14'8" - including roof.

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

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

8. **51 Dwight Street,** Map 182, Parcel 84. Petition of Beau and Laura Campfield for a variance of the Zoning Regulations; Section 5.2.5 to increase the maximum lot coverage from 20%, currently 21.4%, proposing 22.1%. **Permission to construct a one story addition. Premises: A Zone**

Beau Cambell, owner, presented the application for a variance of the Zoning Regulations. He wishes to construct a 10' x 32' foot addition at the rear of the house & expand 2nd floor dormer for full bathroom. The existing lot coverage is currently 21.4% including a 14' 0" .x 16' 0", deck which will be removed. They are requesting a variance to add 36 sq. ft to the existing lot coverage, which would increase the coverage to approximately 22..2%. The addition will be constructed on piers, which will create less impact on land.

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

9. **339 Riverside Drive,** Map 130, Parcel 32. Petition of Alejandra Madrigal and Rodrigo Arana for a variance of the Zoning Regulations; Section 5.2.4 to reduce the street line setback from 30 feet, currently 26.1 feet, proposing 26 feet, and to reduce the side and sum of two side line setbacks from 7 feet and 25 feet, currently 3.6 feet and 13.3 feet, proposing 3.15 feet and 12.9 feet, and Section 5.2.5 to increase the maximum allowable lot coverage from 20%, currently 22.6%, proposing 23.2%. **Permission to construct a second floor addition. Premises A Zone**

Kurt Cihi, with Black Rock Realty, presented the application for a variance of the Zoning Regulations. The applicants are requesting a variance to construct an 8' x 17' square foot bedroom addition on top of an existing sunroom. An additional bedroom is needed for expanding their family. The second floor room will overhang the first floor by 4' towards the rear. It will match the existing ceiling height of 7'6" on the second floor. The bedroom will have a 4' closet.

The existing property is a non-conforming lot in that it is pie-shaped in design and goes all the way to the Ash Creek. The existing property line side setbacks are 3.15' on the North West side and 9.7ft. on the south east side. The street line is 50 foot and the creek side is 33 foot wide. The only option for expansion is to construct over the existing sunroom. As the

photo's show, the neighboring houses have two story constructions that are also close to side property lines.

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

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

10. 1657 Post Road, Map 180, Parcel 75. Petition of Allonge Holding LLC for a variance of the Zoning Regulations; Section 28.6.15 to reduce the minimum required total number of off-street parking spaces by 6. **Permission to establish a dance studio. Premises: CDBD**

I wish to renovate the existing property to consist of approximately 900 sq ft of retail space for dance wear sales and the remaining 5800 square feet to be used as a dance studio. Studios, office, teachers lounge. Limited parking available with this building & in Fairfield

IN FAVOR: David Bye, spoke in favor of the proposed application.

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

11. 1770 Kings Highway, Map 128, Parcel 123. Petition of JP Morgan Chase Bank for a variance of the Zoning Regulations; Section 29.10.1 to increase the number of signs allowed for one tenant from 2, proposing 3. **Permission to add a sign to the rear of the building facing Kings Highway. Remises: DCD**

Howard Sennis standing in for Jennifer Porter presented the application for a variance of the Zoning Regulations. J.P. Morgan Chase Bank, N.A. seeks a variance from 29.10.1 of the zoning regulations concerning the size and location of wall signs to permit a wall sign on the North elevation facing Kings Highway where a single front building may have up to two signs provided they are not on the same wall. Wall signs have already been approved for the wall sign on the South and West elevations.

This proposal is sought in connection with Chase's development of an in-line bank in the Fairfield King's Crossing Shopping Center. The sign requirements for the DCD zone permit a single building to have up to two wall signs provided they are not on the same wall. No sign may be on a sign or rear wall unless such wall faces a street, driveway or parking area, or is at least fifty feet from any other comment structure. Here the two permitted wall signs are proposed on the south elevation which is the entrance to the building and on the west elevation which identifies the drive through. The wall sign being sought on the north elevation faces a street (Kings Highway) and is necessary to give Chase visibility to the rear street which cannot be obtained from the other signs and which is important due to the unique features of the site.

The entire site is built in steps as the grades are steep; visibility of the Chase building from the road is difficult because the building sits ten feet lower than the street. If a customer was driving East on Kings Highway, they would not be able to see that the Bank is located in the shopping center unless there is a sign on the North elevation and this sign would

encourage the use of the run off of Kings Highway as opposed to Grasmere Avenue to ease the additional traffic coming from that location.

GRANTED: Kevin Coyne *moved* and James Hamilton *seconded* to approve the proposed application. **In Favor**: Robert Brennan, James Hamilton Kevin Coyne, Donald Cafero**.** **Opposed**: Duncan Keith. *Motion passed 4-1.*

12. 196 Alma Drive, Map 147, Parcel 292. Petition of Oliver and Elisha Page for a variance of the Zoning Regulation; Section 5.2.4 to reduce the minimum required sum of the side setbacks from the two side property lines from 20 feet, proposing 18.9 feet. **Permission to construct a one story addition to connect the garage and dwelling. Premises: A Zone**

Elisha Page, owner, presented the application for a variance of the Zoning Regulations. She is requesting a variance to construct a 1 story 6.5' x 19' mud room that connects the existing house side entrance to an existing detached garage. She also noted she wishes to construct an eight by four portico entrance on the front of the house. Both additions will be unheated and enclosed spaces. The original house and detached garage were built in 1961 on a pie shaped lot with a side property setback of 18.9 feet The act of connecting the two structures would violate the setback rules without moving either structure closer to the property lines. The reason for hardship is the existing structures were built in the most reasonable location on the lot due to the slope of the property towards the channel line. Both structures are in very good usable condition however pose a safety issue walking up the concrete steps, in the winter ice builds up could be avoided with an edge breezeway. The proposed breezeway is in line with the regulations and has consent from all immediate adjacent properties.

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

IN FAVOR: William Chaplinsky, 66 Paul Street, spoke in favor of the proposed application.

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

13. 1233 South Pine Creek Road, Map238, Parcel 91. Petition of Phillip Whalen for a variance of the Zoning Regulations; Section 5.2.5 to increase the maximum lot coverage from 15%, currently 31.03%, proposing 26.5% and to increase the maximum total floor area from 30%, currently 24.12%, proposing 49.5% and Section 5.2.4 to reduce the street line setbacks for a corner lot from 30 feet and 22 feet; currently 18 feet and 4.7 feet, proposing 20 feet and 17 feet. **Permission to remove existing dwelling and construct a new two story dwelling. Premises: FPD (R-2)**

Attorney William Fitzpatrick presented the application for a variance of the Zoning Regulations. It is the applicant's intent to remove existing dwelling and construct a new two story dwelling.

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Attorney Fitzpatrick noted several factors should be considered. It's important to realize the zoning classification, Flood Plain District, requires, per Section 23.7 of the Regulations, the application of the R-2 Zoning District standards.

In this matter, this results in the application of standards designed for a minimum lot area of 14,000 square feet to a lot containing 7,189 square feet. It explains the present non-conforming status of the existing home.

The initial variance request seeks a reduction on the two street setbacks for a corner lot from 30 feet and 22 feet, respectively, to 20 feet and 17 feet. The request must be considered in the context of the existing house where the present setback to South Pine Creek Road is 18.8 feet and the present setback to Dunhill Drive of 4.7 feet.

The variance request relative to coverage seeks an increase from the permitted 15% to 26.5%. The request must take in account the fact that the existing coverage is even greater at 31.3%. Also, the proposed new home will reduce the existing coverage on site, reducing an existing nonconformity.

The last variance request seeks an increase in floor area ration from 30%, presently 24.12%, to 49.5%. This is essentially equivalent to placing a second story on the existing home, but with the new home located in such a fashion as to reduce the existing zoning nonconformities.

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

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

14. 100 Ann Street, Map 182, Parcel 715. Petition of John and Michelle Kresser for a variance of the Zoning Regulations; Section 5.2.5 to increase the maximum lot coverage from 30%, currently 24.2%, proposing 31.3% and Section 5.2.4 to reduce the street line setback from 20 feet, currently 19.2 feet, proposing 19.2 feet. **Permission to construct a two story and second floor addition and a rear deck and porch. Premises: B Zone**

Attorney William Fitzpatrick presented the application for a variance of the Zoning Regulations. The applicants are requesting a variance to construct a two-story and second floor addition and rear deck and porch. It is his applicants' intent to engage in a comprehensive renovation and improvement of their home in order to address their family needs.

Attorney Fitzpatrick noted that the proposed lot is undersized. The proposed increase in coverage, 31.3%, constitutes approximately 70 square feet of coverage. The deck, which will be located at the rear of the home, is 11 feet by 11 feet. In this case, the overage in coverage could be ameliorated by the reduction or elimination of the deck. The deck will not be visible from the street, does not constitute interior living area and has little effect on their neighbors.

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

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

15. 66 Paul Place, Map 182, Parcel 819. Petition of William and Elaine Chaplinsky for a variance of the Zoning Regulations; Section 5.1.1 to reduce the minimum square from 60 square feet, proposing 50 square feet and to reduce the minimum lot size from 6,000 square feet, proposing 5,460 square feet. **Permission to establish a single family building lot. Premises: B Zone**

Attorney Charles Jankovsky presented the application for a variance of the Zoning Regulations. The applicant is requesting a variance to create a single family building lot. The applicants have owned the lot for more than forty years. During their ownership, the lot has been separately assessed and taxed as a building lot. The current assessed value is $245,770.00 for a tax of $4,735.98 per year. This is a tax they have paid for in excess of forty years because they had thought the property was a building lot because of the separate assessment.

The property is located in a B Zone. The applicants own the adjacent property, which has a modest dwelling. If this application were not granted, their house could be demolished and a duplex condominium could be built.

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

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

There being no further business to come before the Commission, Chairman Brennan adjourned the meeting at 6:25 p.m.

Kevin Coyne, Secretary

Josephine M. Keogh

ROBERT BRENNAN, CHAIRMAN

KEVIN COYNE, SECRETARY

JOSEPHINE M. KEOGH, CLERK

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