

**ZONING BOARD OF APPEALS
EXECUTIVE SESSION OF JANUARY 7, 2010**

The Zoning Board of Appeals Commission of the Town of Fairfield held the Zoning Board of Appeals Public Hearing Meeting on January 7, 2010 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, Ph.D., Acting as Chairman; Kevin Coyne, Secretary, Duncan Keith, Donald Cafero, Edward Cheffetz, Alternate, Daphne Dixon, Alternate

1. **Minutes of December 7, 2009:** Duncan Keith *moved* and Kevin Coyne *seconded* to approve the proposed minutes as submitted. *Motion passed unanimously.*
2. **Approval of Secretary's Fee:** James Hamilton *moved* and Duncan Keith *seconded* to approve the proposed Secretary's Fee. *Motion passed unanimously.*

This portion of the Executive Session adjourned at 2:54 p.m.

Kevin Coyne, Secretary

Josephine M. Keogh

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GENERAL DOCKET

1. **1960 North Street, Map 158, Parcel 23.** Petition of Thomas and Linda Blackwell for a variance of the Zoning Regulations; Section 5.2.4 to reduce the minimum required street line setback from 60 feet, existentially 45.2 feet; proposing 52.9 feet. **Permission to establish a two-story addition. Premises: AAA Zone**

Peter Cummings, Architect, presented the application for a variance of the Zoning Regulations. It is the owner's intent to construct a new family room and mud room in the area of the existing sun room and design a master bedroom suite over the existing two bay garages; create an optional laundry room/office in place of the existing bedroom office; change the existing roofline of the house to create a turn of the century house and in doing so create a walk up attic with a future use as a playroom.

With regards to the hardship, the property is located in a triple A zone, which requires 2 acres and a minimum square on the lot of 200 feet. The current condition of the property is .866 acres (under 2 acres) and the maximum square for this property is 136 feet (64' under 200'). The hardship of the property is an existing nonconforming lot with an existing house that was built in 1960. In redesigning the new addition to the existing house they did not go past the outline of the existing foot print. Also, they removed the existing back door location to the house and in doing so removed the raised landing inside the front yard setback to take away some of the nonconformities.

In Favor: Mr. Redgate and Attorney Peter Ambrose spoke in favor of the proposed application.

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

2. **1520 Post Road, Map 180, Parcel 250.** Petition of Mercurio Brothers, Inc. for a variance of the Zoning Regulations; Section 28.6.12 to reduce the minimum required total number of off-street parking spaces by 33. **Permission to establish a restaurant. Premises: CDBD**

Attorney James Walsh presented the application for a variance of the Zoning Regulations. Ken Martin, Chris Dury, Paul Kaniglio, Cody Lee and Kevin Hassler, architect, were also present.

Fairfield Colony, LLC, is a tenant of the aforementioned property. They are requesting a variance in order to obtain approval, subject to review by the Town Plan & Zoning Commission, of the establishment of a restaurant by the name of Colony Grill at the Premises in space previously occupied by Fairfield Stationers. The property is owned by Mercurio Brothers, Inc. who are in full support of the application.

The Applicant is very excited about opening Colony Grill restaurant at the Premises. Colony Grill will be a community-centered family restaurant that primarily serves pizza. For seventy-four (74) years, the original Colony Grill Restaurant, located in Stamford, Connecticut, has attracted people from across Fairfield County to dine on its famous pizza in a relaxed environment. Fairfield Colony, LLC has received a license to operate the first Colony Grill outside of the original Stamford location. Just as the original Colony Grill prides itself on being a neighborhood establishment, so will the Colony Grill in Fairfield. The Applicant plans to design the interior of its restaurants to emphasize local history of Fairfield and will expose the original exterior brick of the building on the interior of the restaurant. As is well known to the many patrons of the original Colony Grill, Colony Grill in Fairfield will provide the highest quality in casual dining in a comfortable, attractive and family friendly environment. The addition of Colony Grill will be a welcome one in downtown Fairfield adding another element of variety and diversity to the dining options available to our residents and visitors.

The Applicants' submitted plans establish a requirement of 46 parking spaces. Based upon the existing square footage of the gross leasable area of the current Premises, a parking credit of 12 spaces is established by the prior retail usage. The net technical additional requirement regarding parking for the restaurant use is 34 spaces. As certified by the Survey, 53 spaces are currently required for the Mercurio Center based upon the use as established (including the former Fairfield Stationers) and 54 spaces are provided, thus allowing a further credit by the Owner of an additional one (1) space for the new proposed restaurant. The net additional requirement by variance for the proposed restaurant use is 33 spaces.

The impact of the Regulations to this specific property establishes a basis for a finding of exceptional difficulty or unusual hardship because it renders the property technically deficient with regard to parking spaces; however, as a practical and realistic matter, far more than ample parking is provided. Also note, in numerous other applications where restaurants have been granted similar variances in Fairfield (Las Vegas Lounge, Centro, Tommy's, Mulino's, Archie Moore's, San Tropez, Quattro Pazi, Avellino's, Pearl of Budapest, Voila, etc.), a finding of hardship sufficient to form the basis for the granting of a variance was due to the fact that the buildings wherein the restaurants were located were nonconforming as to the existing parking requirements and had little or no parking whatsoever. In the present case, however, the Regulations require a variance notwithstanding the fact that the proposed restaurant is established at the Mercurio Center with 54 spaces which has historically proven to be far more than required as a practical matter to meet the needs of the existing and contemplated tenants.

Attorney Walsh further noted Colony Grill in Fairfield will be a friendly, comfortable, community oriented restaurant offering a unique and exciting concept in casual dining. It will provide a prestigious and quality addition to Fairfield's economic base in these difficult economic times. Colony Grill will be a tremendous addition to the economic and social interests of our town. The application meets the technical requirements of Connecticut General Statutes 8-6, is consistent with the precedents of past decisions of this Board and the Town Plan & Zoning Commission and the goals and policies adopted in the Town Plan of Conservation and Development.

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

3. **270 Palamar Drive, Map 74, Parcel 100.** Petition of James and Kristen Kuczo for a variance of the Zoning Regulations; Section 5.2.4 to reduce the minimum required side line setback from 15 feet, existentially 12.6 feet, proposing 12.6 feet. **Permission to construct a second floor addition. Premises: R-3 Zone**

James Kuczo, owner, presented the application for a variance of the Zoning Regulations. The owner is requesting a variance to add a 28.3 x 38.3 second floor to our existing ranch. The addition will consist of a master bed and bath, another full bath and two bedrooms.

With respect to the hardship, the lot is a pre-existing nonconforming lot. They have lived in the house for ten years. The addition will be done in a tasteful manner and will not be the biggest house on the street.

Petitions of support from the neighbors were submitted.

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

4. **7 Grandview Road, Map 47, Parcel 217.** Petition of Carol A. Lansing for a variance of the Zoning Regulations; Section 5.1.1 as to the number of units in a dwelling permitted in the R-3 zone from 1 unit, presently 3 units, proposing 4 units. **Permission to convert existing first floor storage into an apartment. Premises: R-3 Zone**

Attorney Edward Kunin presented the application for a variance of the Zoning Regulations. The Applicant seeks a variance to increase the allowable number of single family dwelling units in this building from three to four.

The property is located in an R-3 Residence Zone and was built in 1917 and used as a firehouse. For many years predating the adoption of zoning regulations, the building was used as a three-family dwelling with the first floor unused. That first floor area is still unused. The Applicant seeks to renovate the first floor area to create a handicap accessible single dwelling unit.

The granting of the variance requested is consistent with the Comprehensive Zoning Plan and the intent of the zoning regulations. While the R-3 Residence Zone is a single-family zone and a multi-family use would not be acceptable today. This application intends to

minimize the impact of this long-standing nonconforming use while enhancing property values of the surrounding properties.

Attorney Kunin noted, the proposed apartment will be suitable for disabled persons and complies with all regulations and codes relating to handicapped dwellings.

The three apartments are presently approved for twenty (20) occupants with nine in one apartment, seven in the second, and four in the third apartment. With this application, the population density will not be changed. The population would be divided among the four apartments, six in the two larger apartments and four in the other two apartments.

The exterior of the premises will be modernized and refurbished without altering the building's footprint. The improvements will change the look from a multi-family appearance to that of a large single family home. This will be consistent with the nature of the neighborhood and will enhance the neighboring property values.

The applicant will provide fencing or screening to separate this property from neighboring properties as the owners of the neighboring properties request. The Applicant is currently working with one neighbor to remove existing fencing to make the area look more natural and open.

The Zoning Board of Appeals has recognized with regard to previous applications that it may be appropriate to vary the requirements of the Zoning Regulations to encourage development of additional residential housing within the Town of Fairfield. This application is consistent with that precedent.

Petitions of support from the neighbors were submitted.

DENIED: Edward Cheffetz moved and Donald Cafero seconded to approve the proposed application. Motion denied 4-1. Donald Cafero was in favor of the proposed application.

5. 1000 Harbor Road, Map 241, Parcel 146. Petition of Jeremy and Joan Frost for a variance of the Zoning Regulations; Section 5.2.4 to reduce the minimum required side line setback from 15 feet, currently 3.9 feet, proposing 3.9 feet. **Permission to remove existing garage and rebuild for living space. Premises: R-3 Zone**

Attorney John Fallon presented the application for a variance of the Zoning Regulations. The Applicants wish to convert the existing garage into residential space to be utilized for a caretaker's bedroom and bath, mudroom and laundry. They travel quite often so the ability to provide suitable quarters for a caretaker to oversee the property during their absence is a very important consideration.

The property is located in the R-3 Zone and even after the contemplated renovation of the garage will be well within the requirements of the Regulations pertaining to maximum building floor area, having a floor area ratio of 21.4%.

A variance allowing the reduction of the required setback to 3.9' regarding the conversion of the garage was granted by the Zoning Board of Appeals in 1993. This approval included

the conversion of the garage into living space and the construction of a second floor above. The prior owners did not pursue this construction after the variance was granted.

The garage as currently existing is also nonconforming to the rear property line setback of 30 feet being situated 29.2 feet from the rear property line. As shown on the plans the renovated garage will be conforming to the rear property line setback of 30 feet. A variance of section 5.2.4 with regard to the westerly setback from the side property line is requested even though the footprint of the structure at the side yard will not be modified and the setback will remain at 3.9 feet. The variance is required as a technical matter due to the fact that, as shown on the architectural plans prepared by J. P. Franzen Associates Architects, the new structure to replace the existing attached garage although located on the same footprint (except for the rear setback) will be elevated in order to accommodate conversion into living space.

The contemplated renovation will not result in any actual further encroachment into the existing side yard setback but is simply required because of the nature of the work proposed with regard to the renovation of the structure that is already nonconforming as to setback. These circumstances satisfy the hardship requirement as addressed in relevant case law.

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

6. 1472-1492 Post Road, Map 180, Parcel 247. Petition of F & G Associates, LLC for a variance of the Zoning Regulations; Section 28.6.5 to reduce the required total number of off-street parking spaces by 5. Permission to convert existing retail space and business office space to dental office space. Premises: CDBD

Attorney John Fallon presented the application for a variance of the Zoning Regulations. The Applicant wishes to reduce the required number of parking spaces by five (5); permission to convert existing retail space and business office space to dental office space.

The Applicant is a dentist specializing in pediatric dentistry and orthodontics and has been practicing pediatric dentistry and orthodontics since 2001. In 2004 he joined the practice of Gary Habansky at same location and purchased the practice from Dr. Habansky in 2005. Dr. Habansky has conducted a practice specializing in pediatric dentistry and orthodontics at this location on the Post Road for 25 years, establishing the practice in 1984.

The Applicant seeks a variance in order to reduce the required number of parking spaces by five (5) so as to allow him to convert a first floor area in the building below his present space which has been previously occupied for retail space and a business office for utilization as part of his dental office. The area in question has previously been leased as business offices by All State Insurance (635 square feet) and a retail dress shop (1,016 square feet). As confirmed by the Zoning Department, the parking attributable to these uses has been three (3) spaces for the business office use and one (1) space for the retail use for a total of four (4). The Applicant seeks to convert 1,651 square feet area for use as part of his dental offices which yields a parking requirement pursuant to Section 28.6.5 of nine ((9) spaces. Thus, the variance requested is for five (5) spaces.

The additional area will be used to create a staff lounge and space for the office manager as well as much needed additional space for patient treatment. A lab area will also be established. It is important to emphasize that the purpose of the use of the first floor area is to simply provide much needed additional space for the existing practice and its patients. There will be no increase in the number of employees of the practice nor any increase or intensification with regard to patient scheduling and appointments. Dr. Mokotoff simply wishes to enhance the physical facilities of his office so that he can efficiently provide the finest in dental services in the best facilities to his current and ongoing patients.

With regard to the hardship requirement the subject property like most in the Center Designed Business District is nonconforming as to the current parking regulations having been built, approved and occupied for retail and office use before the regulations were established.

GRANTED: Edward Cheffetz *moved* and Duncan Keith *seconded* to approve the proposed application. Motion passed 4-1. Duncan Keith voted against the proposed application.

7. **208 Wilson Street, Map 28, Parcel 266.** Petition of Cipriano and Joanne Pinto for a variance of the Zoning Regulations; Section 5.2.4 to reduce the minimum required of the sum of the side setbacks from the two side property lines from 25 feet, currently 16.2 feet, proposing 16.2 feet. **Permission to connect a detached garage with a two story addition. Premises: A Zone**

Mark Andre, architect, presented the application for a variance of the Zoning Regulations. Request a variance of Section 5.2.4 to permit a sum of side yard 16' where 16' currently exist and 25' is required for the purpose of constructing a 2-story addition to house a mudroom with a half bath and a bedroom suite with bath and loft partly constructed over an existing two car garage.

With respect to the hardship, the house is a pre-existing non conforming structure. The Applicant is only requesting a for the existing garage.

Petitions of support from the neighbors were submitted.

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

8. **89 Westway Road, Map 241, Parcel 130.** Petition of Yvonne Ferris for a variance of the Zoning Regulations; Section 5.2.5 to increase the maximum lot coverage from 15%, currently 19.21%, proposing 19.66%. **Permission to construct a one story rear addition. Premises: R-3 Zone**

Robert Marx, architect, presented the application for a variance of the Zoning Regulations. The Applicant requests a variance to construct a one-story rear addition.

Regarding the hardship, a public road crosses this historic property and as a result of this recent change to the definition of lot area a portion of this property can no longer be included when calculating lot area.

Until this recent revision to the regulations this parcel complied with lot coverage requirements. The original historic construction on this property dating back from 1840 which had previously complied with coverage requirements now exceeds maximum allowable coverage when calculated by the new guidelines.

The Applicant requests permission to build a small mudroom addition which would have complied with the town Zoning Regulations before the recent change.

This hardship is unique to this property and the limited number of historic properties, which are divided by a public road.

Petitions of support from the neighbors were submitted.

GRANTED: Duncan Keith *moved* and Kevin Coyne *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 5:15 p.m.

Kevin Coyne, Secretary

Josephine M. Keogh

JAMES HAMILTON, ACTING AS CHAIRMAN

KEVIN COYNE, SECRETARY

JOSEPHINE M. KEOGH, CLERK