

**ZONING BOARD OF APPEALS
EXECUTIVE SESSION OF MARCH 4, 2010**

The Zoning Board of Appeals Commission of the Town of Fairfield held the Zoning Board of Appeals Public Hearing Meeting on March 4, 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: Robert Brennan, Chairman, James Hamilton, Ph.D., Vice Chairman, Kevin Coyne, Secretary, Duncan Keith, Donald Cafero, Edward Cheffetz, Alternate, Daphne Dixon, Alternate.

1. **Minutes of February 4, 2010:** Duncan Keith *moved* and James Hamilton *seconded* to approve the proposed minutes as submitted. *Motion passed unanimously.*

2. **Approval of Secretary's Fee:** Duncan Keith *moved* and James Hamilton *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. 340 Joan Drive, Map 120, Parcel 109. Petition of Jeffrey and Amy Pressman for a variance of the Zoning Regulations; Section 5.2.4 to reduce the minimum required side line setback from 25 feet, currently 14.3 feet, proposing 14.3 feet. **Permission to connect existing detached garage and construct a second floor addition. Premises: AA Zone**

James Ezzes, agent, presented the application for a variance of the Zoning Regulations. He noted the applicant wishes to construct a second story over the existing garage. The current garage is 20 x 24. There will be no bathroom over the garage. The intention is to utilize existing foundation and walls on first floor, assuming both foundation and walls meet current building code.

Regarding the hardship, the house is nonconforming. The options to relocate garage is limited by the existing septic system fields and mature trees. The existing garage has been in the current location for over 45 years.

Petitions of support from the neighbors were submitted.

Edward Cheffetz, Alternate, sat in for Kevin Coyne on applications 1-6.

DENIED: Edward Cheffetz *moved* and James Hamilton *seconded* to approve the proposed application. **In Favor:** Robert Brennan and Donald Cafero. **Opposed:** Duncan Keith, James Hamilton and Edward Cheffetz. *Motion denied 3-2.*

2. 305 Middlebrook Drive, Map 147, Parcel 253. Petition of Steven and Karla Palmer for a variance of the Zoning Regulations; Section 5.2.4.3 to reduce the minimum

required unattached accessory structure setback from 30 feet, proposing 6.9 feet.

Permission to construct a storage shed. Premises: A Zone

Steven Palmer, owner, presented the application for a variance of the Zoning Regulations. He wishes to construct a 10' x 16' detached shed within the required front setback. The property is a corner lot with an unusually long frontage on Middlebrook Drive. Because the house faces Middlebrook Drive there is little backyard area. The problem is with a 75 feet deep lot and a 30 feet front setback, there is a greatly reduced conforming area to place a shed. Furthermore, the side yard slopes down from the road and driveway 3 to 5 feet into a bowl that is subject to flooding. The shed is needed for excess storage for house hold items, bikes, and other frequently used items that don't fit in the garage. The house is a modest cape with no attic and a small basement. The shed is very attractive and will blend into the neighborhood.

The hardship is due to the corner lot, lot shape, orientation of the home and topography of the property the proposed location is the most appropriate location for the shed.

Petitions of support from the neighbors were submitted.

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

3. 296-298 Pine Creek Avenue, Map 238, Parcel 22 and 23. Petition of Laurie Zollinger for a variance of the Zoning Regulations; Section 11.1.1 to increase the number of dwellings from one, currently two, proposing two and Section 11.1.3 to reduce the cumulative side yard setback from 22.27 feet, currently 9.78 feet, proposing 9.78 feet.
Permission to remove one (1) dwelling and rebuild it to the submitted construction plans. Premises: BD

Attorney John Fallon presented the application for a variance of the Zoning Regulations. The property has long historically been improved with two (2) existing single family dwellings. These dwellings were established prior to the adoption of the Zoning Regulations of the Town of Fairfield and have long constituted legally protected preexisting nonconforming uses with respect to the two dwelling lots located on the property. In September of 1977 the Zoning Board of Appeals granted a variance with respect to the number of dwellings on the lot in order to allow conversion of one of the structures from a summer cottage to year round use. Again, in January of 2007 the Board granted a variance of Section 11.1.1 in order to allow permission to demolish one of the existing single family dwellings for the purposes of constructing at the same location a new single family dwelling on the property. The previous owners did not proceed with the construction authorized by this variance.

Attorney Fallon noted the applicant seeks permission to demolish one of the existing single family dwellings on the property and to replace it with a new two story dwelling built over the existing foundation and to be occupied by her and her family. The new construction has been carefully reviewed by Mr. Bienkowski of the Zoning Department and conforms in all respects to all applicable requirements of the Zoning Regulations. It will also allow for the property owner to bring the structure into building code and FEMA code compliance.

The new home will have a very positive aesthetic impact on the neighborhood. It is extremely attractive in design and will constitute an aesthetic enhancement to the property.

The hardship arises directly from the application of the Regulations to this property and its historically existing nonconformity. As previously found on two occasions by the Board, the application of the Zoning Regulations would technically negate the legally protected status of the property with regard to the nonconforming use of two dwellings due solely to the fact that what is proposed is new construction on the same foundation rather than renovation of one structure. This is a unique situation impacting the property and its statutorily protected status with regard to its use for two dwelling units.

The granting of this variance will not result in any change of the historic use of the property nor result in any intensification of the residential use of the property. The approval of the application will insure an aesthetic, code compliant upgrade with regard to the proposed new construction that will benefit the area and be consistent with the character of the neighborhood.

Petitions of support from the neighbors were submitted.

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

4. 1939 Bronson Road, Map 226, Parcel 58. Petition of Igor Jureczko for a variance of the Zoning Regulations; Section 5.2.4 to reduce the minimum required street line setback from 50 feet, currently 6.5 feet, proposing 7.5 feet. **Permission to construct three (3) dog house dormers and a rear two-story addition. Premises: AA Zone**

Michael Butler, builder, presented the application for a variance of the Zoning Regulations. The applicant wishes to construct a second floor addition to an existing two story one family dwelling. The addition will consist of a bedroom, a full bathroom and a deck over an existing first floor laundry/mudroom.

Although the house is not in a historic district and not designated as a historic structure this traditional dwelling is over 100 years old. Like many homes built before the time of automobiles this house was built close to Bronson Road for the purpose of convenience in accessing the street during winter conditions. In order to meet the street setback the existing house would have to be demolished and rebuilt or physically moved to the other side of the brook which bisects this property. Moving this house across the brook or building a new house across the brook would require the construction of a substantial bridge. A bridge to access the interior of this property would be very expensive and unnecessarily cause environmental problems. A new septic system would also be required for a new location.

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

5. 219 Brooklawn Terrace, Map 31, Parcel 124. Petition of Mariko Iwai for a variance of the Zoning Regulations; Section 5.2.4 to reduce the street line setback from 30

feet, currently 12.3 feet, proposing 12.7 feet and Section 5.2.5 to increase the maximum lot coverage and floor area from 20% and 40%, currently 39.9% and 47.5%, proposing 36.6% and 49.7%. **Permission to remove existing rear deck and construct a one story addition with landing and stairs. Premises: A Zone**

Kevin Gallgher, contractor, presented the application for a variance of the Zoning Regulations. The owner wishes to remove existing deck and construct a 6' x 17' single floor addition.

The owner is adopting a child and looking to modify the first floor by adding a room to serve as a nursery and eventually a small family room.

Location is the section of the home that receives most sun and daylight making it the best location for the nursery.

Petitions of support from the neighbors were submitted.

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

6. 50 Sanford Street/57 Unquowa Road Map 180, Parcel 242. Petition of Fischel Properties for a variance of the Zoning Regulations; Section 28.6.12 to reduce the minimum required total number of off-street parking spaces by 19. **Permission to expand an existing restaurant. Premises: CDD Zone**

The owner presented the application for a variance of the Zoning Regulations. She wishes to extend Cafe Lola Restaurant 1400 square feet to an adjacent space proposed Bar Luca 1265 square feet. Bar Luca would be a wine bar serving light food.

We propose to extend Café Lola Restaurant into the adjacent space at 63 Unquowa Road. In order to achieve that, we need to convert the said space from its current use as retail into a restaurant. Therefore, we need a variance which will allow us the additional parking spaces required for the proposed change of use.

The addition of a wine/food establishment would increase foot traffic on Donnelly Walk at night and make the neighborhood feel safer and livelier.

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

Kevin Coyne arrived at 4:00 p.m.

7. 38 Tahmore Drive, Map 73, Parcel 62. Petition of Thomas Leonardo for a variance of the Zoning Regulations; Section 5.2.4 to reduce the minimum required street line setback from 40 feet, currently 42.4 feet, proposing 38.9 feet. **Permission to establish an enclosed front porch, constructed prior to permits. Premises: R-3 Zone**

Attorney William Fitzpatrick presented the application for a variance of the Zoning Regulations. The Applicants request a waiver of Section 5.2.4 to permit a reduction in the street line setback to an existing enclosed front porch from the required 40 feet to 38.9 feet.

The Applicants engaged a builder to perform various home improvements including the enclosure of an existing entry area measuring approximately 4 feet by 7 feet. The applicants were assured by the contractor that the required building permit had been obtained. The preparation of an as-built survey revealed the street line setback violations. Subsequent inquiry confirmed that the Town Plan and Zoning Department had not signed off on a building permit and, in fact no building permit had been obtained by the builder.

The intrusion into the street line setback consists of the enclosure of an earlier existing concrete slab front stoop. The footprint, i.e. the concrete slab, was not increased in area. The enclosed area contains no heat. The applicants relied on the builder to their detriment and had no knowledge that the construction violated the zoning regulations.

It is also important to note that the enclosed porch into the street line setback is relatively minor (1.1 feet). Approval of this variance will permit the existing enclosed front stoop area to remain as is.

Petitions of support from the neighbors were submitted.

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

8. 46 Miller Street, Map 180, Parcel 254. Petition of 46 Miller Street Associates, LLC for a variance of the Zoning Regulations; Section 28.6.5 to reduce the minimum required total number of off-street parking spaces from 16 to 4. **Permission to utilize the basement and first floor for general office space. Premises: CDBD**

Attorney William Fitzpatrick presented the application for a variance of the Zoning Regulations. The applicant requests a variance of Section 28.6.5 of the Zoning Regulations to reduce the number of required parking spaces from sixteen (16) spaces to four (4) spaces in order to permit the utilization of the basement and first floor for general professional offices.

In September 2004, the Town Plan and Zoning Commission approved 46 Miller Street Associates, LLC's application for a Special Permit for use of the first floor of the property (which contains 1,521 square feet) as retail and the second floor of the property (which contains 1,924 square feet) as two residential apartments. The approval of the Plan and Zoning Commission reduced the residential parking requirement from four (4) spaces to three (3) spaces.

Many years have passed since the Special Permit was approved, and the applicant has been unable, despite his best efforts, to rent the first floor to a retail tenant. The location is unappealing to potential retail tenants who are seeking prime Post Road traffic and visibility. The end result is that my client has been without a first floor tenant since the completion of the building in March 2006.

The applicant, therefore, sought to convert the first floor use from retail to medical/professional offices. Such an application was made to the Zoning Board of Appeals in January, 2008 and was denied. Subsequently, in June 2009, essentially the same application was made to the Board which was also denied.

In the interval between the above referenced “medical office” applications, the applicant requested a variance to permit the use of the first floor of the premises for business/professional offices (i.e. non-medical offices). That application was approved by the Zoning Board of Appeals in February 2008.

As a result of the February 2008 Board approval of the use of the first floor by a business/professional office tenant, he has sought such a tenant for the past two years.

The question that has been raised, on several occasions, by potential business/professional office tenants is whether the basement can be actively utilized as part of the office premises. As a result, the applicant is submitting this application to the Board, requesting a parking variance which will permit the office utilization of the basement area of the building.

The parking that is required, per the Zoning Regulations, is a total of 16 spaces. There are four parking spaces presently on site, and there has been a prior variance approval to reduce the required parking by six spaces. The net result is that this variance application requests approval to reduce the parking by an additional six spaces.

In evaluating this variance request, it is important to note that the actual available square footage of the first and basement floors is considerably less than the 3,042 square feet utilized by the Zoning Department for parking calculation purposes. Attached is a sheet prepared as part of the initial building approval process, which shows the net usable area on the first and basement floors to be 2256 square feet, or more than 25% less than the square footage used for parking calculation purposes.

Two (2) hour on-street parking is permitted on both sides of Miller Street (which is a one-way street). This on-street parking should satisfy any excess parking needs. In addition, the need for parking for an office use would be greater during the day, when the residential tenants are likely not at home.

Approval of this application will permit 46 Miller Street Associates, LLC the fair and reasonable use of its property.

GRANTED: Duncan Keith moved and Kevin Coyne seconded to approve the proposed application. Motion passed 4-1. James Hamilton voted against the proposed application.

9. 748 Rowland Road, Map 184, Parcel 102. Petition of Caitlin Bortolot for a variance of the Zoning Regulations; Section 5.2.5 to increase the maximum lot coverage from 20%, currently 17.78%, proposing 23% and Section 5.2.4 to reduce the minimum required sum of the side setbacks from the two side property lines from 25 feet, currently 19.2 feet, proposing 20 feet. **Permission to construct a new 2-1/2 story dwelling.**

Premises: A Zone

Neil Hauk, architect, presented the application for a variance of the Zoning Regulations. The applicant proposes to demolish the existing one-story house, and to construct a new 2-1/2 story house. The footprint of the new structure will be 20'.0" x 55'.7".

The lowest level will be set on grade and will house an open carport and a small entry vestibule. The first floor will be set at an elevation of 14'.4" which is 3'.4" above the minimum FEMA requirement. It will house living spaces such as a family room, kitchen and dining room. The second floor will house a master bedroom suite, two additional bedrooms, a shared bath, and a laundry closet. The attic is accessible via a pull down stair, and will be used for storage and for mechanical equipment. The entire attic has a ceiling height below 7'.0".

This property is nonconforming in terms of both minimum lot size and minimum lot width square. As a result, we are seeking variances for lot coverage and side yard setback.

Minimum lot area for this zone is 9,375 square feet. Actual lot size is only 6,000 square feet. This creates a textbook hardship on our ability to build a reasonably-size house. Although we are seeking a variance for lot coverage, please note that we conform to the maximum building floor area requirement.

Combined side yard setback: Minimum square of 75 feet must fit on property. Largest square we are able to fit is 40 feet. Lot width is constant at 40 feet from front to back. This creates a hardship on our ability to design a house with usable spaces. Please note that the proposed house width of 20 feet is similar to the width of the existing house that will be demolished. However, we are increasing the side yard setback along the south property line from 4.5 feet to 7 feet, to bring it into conformance with the minimum least side yard requirement of the regulations.

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

10. 40 Ermine Street, Map 141, Parcel 233. Petition of Kenneth and Jeanette Coley for a variance of the Zoning Regulations; Section 2.7 to create a rear lot. Permission to create a rear building lot in residential A Zone. Premises: A Zone

The proposed application was continued to April 1, 2010.

There being no further business to come before the Commission, Chairman Brennan adjourned the meeting at 5:30p.m.

Kevin Coyne, Secretary

Josephine M. Keogh

ROBERT BRENNAN, CHAIRMAN

KEVIN COYNE, SECRETARY

JOSEPHINE M. KEOGH, CLERK