

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

The Zoning Board of Appeals Commission of the Town of Fairfield held the Zoning Board of Appeals Public Hearing Meeting on November 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, Vice Chairman, Kevin Coyne, Secretary, Duncan Keith, Donald Cafero, Daphne Dixon, Alternate

1. **Minutes of October 7, 2010:** James Hamilton *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 started at 2:53 p.m. and finished at 2:56 p.m.

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Kevin Coyne, Secretary

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Josephine M. Keogh

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**GENERAL DOCKET**

1. **73 Noyes Road**, Map 143, Parcel 97. Petition of Eric and Catherine Scholl for a variance of the Zoning Regulations; Section 5.2.5 to increase the maximum lot coverage and total floor area from 20% and 40%, currently 21.5% and 34.9%, proposing 24.5% and 44.1% and Section 5.2.4 to reduce the rear line setback from 30 feet, currently 18.2 feet, proposing 9.5. **Permission to construct a one and two story addition. Premises: A Zone**

James Girardi, Architect, presented the application for a variance of the Zoning Regulations. He noted the applicants wish to construct an addition approximately 24' x 25'. The addition will have a garage at grade level and a bed room/bath at the second floor level. An 8' x 14' mud room at first floor level will house new stairs up to bedroom & new stairs down to the garage.

The applicants have five children. The existing house has five bedrooms. Recently they took in their father to live. Now there are eight people living in a five-bedroom house. Three of the children now sleep in one bedroom. Their intent is to build the new bedroom over a new attached garage in place of the existing detached garage. The new garage will be seven feet off the side set back and nine and one half feet off of the rear set back. The placement of the new garage on the site will have one conforming and one non-conforming setback as opposed two previous non-conforming setbacks. The one non-conforming setback for the proposed addition is greater off of the rear property line than the existing. Floor area and lot coverage have increased due to the request for a new addition.

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

2. **65 Fern Street**, Map 139, Parcel 135. Petition of Sirirat DeStefano for a variance of the Zoning Regulations; Section 5.2.5 to increase the maximum lot coverage from 20%, currently 20.98%, proposing 23.4%. **Permission to construct a front covered porch. Premises: A Zone**

Gary DeStafano presented the application for a variance of the Zoning Regulations. He wishes to construct a 7' x 39' Farmer Porch. The porch will replace the current stairs because they are in need of repair. The old cement stairs are discolored, cracking, and falling apart. Repairing in front of the house will enhance the appearance of the neighborhood over all. Wish to build 19' x 10' deck on rear of house to replace existing 6' x 4' landing that is in very poor shape and beyond repair. The house is built a few inches from rear set back line leaving no room for code required platform and stairs for rear door. Existing platform is beyond repair and unsafe and needs to be replaced. Existing platform is about 6.5 feet into setback.

**Chairman Brennan had a conflict of interest with the proposed application. Daphne Dixon sat in for Chairman Brennan.**

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

**3. 175 Jefferson Street, Map 22, Parcel 48.** Petition of MetroPCS for a variance of the Zoning Regulations; Section 31.2.16 to increase the maximum height of roof top equipment from 5 feet to 11 feet and reduce minimum setback of two feet from all edges of the building for each foot or portion thereof that the equipment extends above the roof from 20 feet to 2.6 feet. **Permission to install telecommunication equipment and antennas.**  
**Premises: R-3**

Scott Muskasa presented the application for a variance of the Zoning Regulations. Section 31.2.16 requires that rooftop equipment not extend more than five (5) feet above the roof and be set back two (2) feet from the edge of the building for each foot the equipment extends above the roof.

The Applicant proposes to install a rooftop wireless telecommunications facility. The facility consists of a screened equipment platform and four sectors of antennas (two per sector). The platform will be approximately 10' by 16' and will support telecommunications equipment, including two GPS antennas, and one sector of antennas. The other sectors will be mounted on structural frames similar to the existing antenna mounts.

The telecommunications equipment and antennas will have a maximum elevation of 65'-9" or 10' above the roof. The GPS antennas, which are much smaller in size, will have maximum elevation of 66'-9" or 11' above the roof.

The Applicant requests a waiver for the maximum height of rooftop equipment as it relates to the telecommunications equipment and antennas. The Applicant further requests a waiver of the required setback distance for its equipment platform and two antenna mounts. The requested waivers are as follows:

The size of the antennas and the coverage requirements of this facility make compliance with the five feet (5') maximum height a hardship. The height of the antennas, which matches that of the existing rooftop antennas, is required in order to provide adequate wireless coverage and capacity to this area while minimizing the need for additional rooftop facilities.

To prevent signal blockage by the parapet or roofline, the antennas must be positioned near the edge of the building or further elevated. The proposed locations provide more setback distance for the antenna that is currently existing on the building. The five feet (5') maximum height limit creates a hardship as applied to the telecommunications platform and equipment. The platform structure requires several feet of elevation to adequately span the existing structural members. The equipment cabinets placed on top of the platform are fairly standardized with heights ranging from 5 to 7 feet. Consequently, the 5' limit is not achievable. Importantly, the proposed platform is at or below the height of the existing rooftop penthouses and equipment.

Existing building or structures with comparably high elevations are the preferred locations when locating telecommunications sites. Collocation is encouraged as it serves to minimize the visual impact of multiple rooftop installations within a jurisdiction. If an existing structure cannot be found, a new tower must be constructed. Installing antennas at 175 Jefferson Street allows the Applicant to provide adequate coverage without constructing a new tower. However, a height of approximately ten feet (10') above the roof is required for the equipment and antennas in order to achieve the necessary coverage. Additionally, a setback of less than the 20' required to avoid blockage of the signal. Without the requested relief, the Applicant will not be able to provide adequate service to the residents and businesses in this community of Fairfield. As a result, a substantial "hole" would exist in the Applicants coverage area resulting in substantial hardship to the Applicant.

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

**4. 375 South Benson Road, Map 139, Parcel 255.** Petition of Donna and Michael Ertel for a variance of the Zoning Regulations; Section 5.2.5 to increase the maximum lot coverage from 20%, currently 21.7%, proposing 21.7%, and Section 5.2.4.3 to reduce the side setback from 4 feet, currently 2.89 feet, proposing 2.89. **Permission to rebuild existing garage. Premises: A Zone**

Michael and Donna Ertel, owners, presented the application for variance of the Zoning Regulations. They wish to legitimize an existing garage on a nonconforming lot in order to rebuild to current flood codes and building codes. The garage was built in 1924 and is rotting and falling apart.

Petitions of support and photographs were presented for the record.

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

**5. 342 South Pine Creek Road, Map 231, Parel 264X.** Petition of Can Real Estate Investment and James Ballas for a variance of the Zoning Regulations; Section 5.2.4 to reduce the minimum required rear property line setback from 20 feet, currently 13.8 feet, proposing 10.2 feet. **Permission to construct a new deck. Premises: B Zone**

Bill Micellanio presented the application for a variance of the Zoning Regulations. They wish to build 19'x10' deck on rear of house to replace existing 6'x4' landing and is in very poor shape and beyond repair.

The house was built a few inches from rear setback line, leaving no room for code required platform and stairs for rear door. Existing platform is beyond repair and unsafe and needs to be replaced existing platform is about 6.5 feet into setback.

Petitions of support were presented for the record.

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

**6. 633 South Benson Road, Map 139, Parcel 206.** Petition of William Zane for a variance of the Zoning Regulations; Section 5.2.5 to increase the maximum lot coverage from 20%, currently 23.28%, proposing 23.22%. **Permission to remove existing decks and construct new one story addition. Permission: A Zone**

Manuel DeSilva, Agent, presented the application for a variance of the Zoning Regulations. He noted the applicant wishes to construct a single story addition consisting of a great room, and a pergola area. They have a young growing family needs additional space. Existing lot conditions were by previous owners. Current design attempts to minimize lot coverage by making addition smaller than existing decks that are to be removed.

Petitions of support were presented for the record.

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

**7. 2316 Post Road, Map 229, Parcel 30.** Petition of 2316 Post Road, LLC 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 to expand an existing restaurant and an additional 8 spaces for outdoor seasonal dining. **Permission to expand existing restaurant and establish an additional 320 square feet of outdoor seasonal dining. Premises: DCD**

**The proposed application was continued to December 2, 2010**

**8. 402 Davis Road, Map 47, Parcel 250.** Petition of Richard Stein and Cecily Gans for a variance of the Zoning Regulations; Section 5.2.5 to increase the maximum lot coverage from 15%, currently 21.1%, proposing 26.2%, and Section 5.2.4 to reduce the street line setback from 40 feet, currently 32.1, proposing 37.8 feet. **Permission to construct a two story addition. Premises: R-3**

Arnold Gans and Richard Stein presented the application for a variance of the Zoning Regulations. The present one-story residence was constructed in the 1950' with an undersized one car garage that was subsequently converted into a study/bedroom. The present owners have not had a garage since purchasing the residence. There is a driveway that enters/exits onto both Davis Road and Grandview Road, close to corner. Cars park only in the driveway.

The owners propose to construct an addition on the west side of the house with a 24' x 24' two car garage at grade level, one half level below the existing first floor elevation, with

bedrooms and a bathroom above, a half level above the existing first floor elevation. The ridge of the addition will be nearly level with the existing ridge line. The materials will match the existing wood shingles and wood trim.

The lot is an existing non-conforming corner lot of 13,038 s.f. where 20,000 s.f. is required by present ordinances. The existing house is presently 15.9' from the property line where 40' would be required (as one front yard of a corner lot) and the other front yard is 32.1' where 30' would be required.

The new addition is set back from the Davis Street property line more than 36', more than is required. The north side yard is 15.9' where 15' is required. The new addition into the West/rear yard, along Davis Street, to 18' from the rear shown. The total coverage would be less than allowed if this were a conforming lot.

Petitions of support were presented for the record.

**Kevin Coyne had a conflict of interest with the proposed application. Daphne Dixon sat in for Kevin Coyne.**

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

**Condition: Conditioned upon the removal of existing driveway in its entirety.**

**9. 1700 Post Road, Map 180, Parcel 270.** Petition of Heritage Square, LLC for a variance of the Zoning Regulations; Section 28.6.5 to reduce the minimum required total number of off-street parking spaces by 4. **Permission to establish a dental office.**

**Premises: CDBD**

Attorney James Walsh presented the application for a variance of the Zoning Regulations. Brian Doran, Agent, was also present. The Applicant, Heritage Square, LLC, requests a variance of Section 28.6.5 of the Zoning Regulations in order for permission to establish of a dental office, a full service dental practice, to be located at a property it owns located at 1700 Post Road. The Applicant is seeking one (1) variance, a variance of Section 28.6.5 of four (4) parking spaces.

The Applicant has entered into a lease with the tenant, Jack L. Gish DDS & Associates, PC (hereinafter "Gish Dental Office"), to establish the dental office. The premises consist of three (3) buildings which contain a mixed use of retail, restaurants, business/professional offices and medical dental offices. The Gish Dental Office is currently a tenant on the first floor of the North Building and wishes to relocate within premises to occupy both floors of the East Building. This is the same office space previously occupied by Coldwell Banker Real Estate. The Gish Dental Office has been successful in serving the residents of Fairfield and the surrounding communities and needs to expand the floor area of its office in order to properly accommodate its patients.

This dental office would provide the highest quality in general and cosmetic dentistry in a comfortable, attractive and friendly environment. This exciting proposed new office will harmonize and compliment the Center Designed Business District and provide first-rate

dental services to the citizens of Fairfield and the surrounding communities. The Gish Dental Office has flourished in downtown Fairfield and it would like to remain here for the foreseeable future.

With respect to the variance sought pursuant to Section 28.6.5, the square footage of the East Building is 3,360 square feet. When Coldwell Banker Real Estate occupied the office space as a business office, they required under the Regulations one (1) parking space for each 250 square feet of the gross floor area in a building as determined by the exterior dimensions of the building, or 13.4 parking spaces. Section 28.6.5 of the Regulations requires medical and/or dental offices to have one (1) parking space for every 200 square feet of the gross floor area in a building as determined by the exterior dimensions of the building, or 16.8 parking spaces. The difference between the office use and dental office use is 3.4 parking spaces, rounded to the four (4) parking space variance that we are requesting in this application. The Applicant is seeking a variance for four (4) parking spaces, in order to comply with the requirements of Section 28.6.5.

The application is consistent with prior approvals and precedents established with regard to the granting of parking variances for restaurant uses in the Center Designed Business District and Designed Commercial District. These important economic areas in our community and the entire Town of Fairfield have benefited substantially due to the vibrancy and activity created by these various restaurants, which now operate successfully in Fairfield.

The relocation of the Gish Dental Office within the same office complex is an exciting and much needed expansion to a successful dental office in our downtown business district. It will provide Fairfield residents with a continued first-rate dental office. As with the establishment previous dental and/or medical offices in the Center Designed Business District, the proposed restaurant will contribute to the continued energization, revitalization and excitement in our downtown business district benefiting the interests of all downtown merchants and residents of the Town of Fairfield, by drawing customers into our downtown area.

The Gish Dental Office will be a friendly, comfortable, community oriented dental office offering first-rate general and cosmetic dentistry. It will continue to provide a prestigious and quality addition to Fairfield's economic base in these difficult economic times. The Gish Dental Office restaurant will continue to be a tremendous asset to public in need of dental services and economic interests of our town.

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

**10. 334 Pine Creek Avenue, Map 234, Parcel 243.** Petition of John and Elizabeth O'Conner for a variance of the Zoning Regulations; Section 11.11.3 to reduce the setback from one side and to reduce the sum of two sides from 6 feet (one side) 26.6 (two sides), currently 2.7 feet (one side) 13.2 feet (two sides), proposing 2.7 feet (one side) 13.2 feet (two sides). **Permission to construct 2<sup>nd</sup> floor additions. Premises: BD**

Attorney John Fallon presented the application for a variance of the Zoning Regulations

Mark Andre, Architect, was also present. He noted, historically, the property was utilized as a preexisting nonconforming use having as many as four (4) dwelling units. The owner of the property prior to the O'Connor's made substantial alterations to the structure and converted the property into a single family home. As confirmed by the elevations shown on the A-2 Survey submitted the views from the ground floor level of the dwelling are generally blocked due to the existence and location of the existing beam adjacent to Pine Creek. Working with Marc Andre, their architect, the O'Connor's have considered various options that would allow them to remedy this situation and create a more aesthetically pleasing environment. As part of this analysis it was confirmed that the structure cannot be raised because of its age and the fact that it has been subject historically to numerous additions. Therefore, the plans submitted herewith contemplate generally reconfiguring the interior of the structure so as to substantially move the living area to the second level. Significantly a by product of this renovation will be to reduce the habitable area that presently exists on the ground floor that is not in compliance with current FEMA standards with regard to elevations.

In order to accommodate this renovation the plans propose modest additions to the existing house. As shown on the plans and survey the additions in question will each be constructed over already existing portions of the structure resulting in no change in the actual existing foot print and cumulative side yard and side yard setback. The variance sought pursuant to Section 1 1.1 1.3 to reduce the cumulative side yard setback to 13.2 ft. to accommodate the proposed second story addition will not change the footprint of the structure and the cumulative side yard setback will remain at 13.2 ft. Similarly, the request to reduce the side yard setback on one side to 2.7 ft. in order to accommodate a proposed second story addition will result in no change in the actual side yard setback which is currently 2.7 ft. It should also be noted that as an overall result of the proposed renovation and addition building lot coverage will be reduced from its current 38.8% to 37.1%.

With regard to the hardship requirement, the hardship which justifies a zoning board of appeals to grant a variance must be one that originates in the zoning ordinance and arises directly out of the application of the ordinance to unique circumstances pertaining to the property in question. In the present case, such a factual basis for hardship is established due to the fact that the topography of the lot, specifically the high berm adjacent to Pine Creek, results in the ground floor of the house being deprived of aesthetically pleasing views of the creek. This fact is the catalyst for the desire to renovate the house and move substantially all of the habitable area to the second level. It is this desired renovation that occasions the need for the modest addition over the footprint of the existing ground level. An additional factual basis for a finding of hardship arises from the fact that the result of the renovation will be to substantially reduce habitable area in the ground floor portion of the structure which is not compliant with current FEMA elevation requirements. It is clear the reduction in the nonconforming status of the dwelling as it relates to current FEMA requirement provides a proper basis for approval of the application.

Finally, an additional proper basis for granting the variances in this case which in fact will not increase any of the existing setback encroachments is found in the holding of *Hyatt v. Zoning - Board of appeals of the City of Norwalk*, 163 Conn. 379, (1972). In *Hyatt*, the State Supreme Court held that a goal of zoning is the elimination or reduction of nonconformities and that therefore when an application for variance involves a proposal that will actually reduce an existing nonconformity this fact provides an additional proper

basis for a zoning board of appeals to grant the variance requested. In the present case the end result of the approval of this proposal by the Applicants will be to actually reduce the existing building lot coverage.

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

Petitions of support were submitted for the record.

There being no further business to come before the Commission, Robert Brennan, Chairman, adjourned the meeting at 4:15 p.m.

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Kevin Coyne, Secretary

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Josephine M. Keogh

**ROBERT BRENNAN, CHAIRMAN**

**KEVIN COYNE, SECRETARY**

**JOSEPHINE M. KEOGH, CLERK**