ZONING BOARD OF APPEALS
EXECUTIVE SESSION OF AUGUST 5, 2010

The Zoning Board of Appeals Commission of the Town of Fairfield held the Zoning Board of Appeals Public Hearing Meeting on August 5, 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, Edward Cheffetz, Alternate, Linda Snellham-Moore Alternate.

ABSENT: Donald Cafero

1. **Minutes of July 8, 2010:** James Hamilton *moved* and Linda Snelham-Moore *seconded* to approve the proposed minutes as submitted. *Motion passed unanimously.*

2. **Approval of Secretary's Fee:** Linda Snelham-Moore *moved* and Duncan Keith *seconded* to approve the proposed Secretaryôs Fee. *Motion passed unanimously.*

This portion of the Executive Session adjourned at 1:59 p.m.

Kevin Coyne, Secretary

Josephine M. Keogh

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GENERAL DOCKET

1. 430 Tunxis Hill Road, Map 42, Parcel 234. Petition of Clear Wireless, LLC for a variance of the Zoning Regulations; Section 31.2.16 to increase the maximum height of roof top equipment from 5 feet to 19 feet and reduce minimum setback from all edges of the building for each foot or portion thereof that the equipment extends above the roof from 38 feet to 2 feet 11 inches. **Permission to establish three (3) dish antennas and two (2) panel antennas. Premises: NDBD**

Attorney Jennifer Herz with Brown Rudnick, LLP, representing the Applicant, presented the application for a variance of the Zoning Regulations. Attorney Herz noted Section 31.2.16 requires that rooftop equipment should 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 is comprised of an equipment cabinet, three (3) antennas and two (2) dishes. The applicant proposes to lease a ten-foot by ten-foot (10ô x 10ô) area in the second floor of the existing building for its equipment.

The Applicant also proposes to mount locate two (2) antennas and two (2) dishes behind the proposed screen on the existing elevator penthouse and to locate 1 antenna on the façade of the building. The antennas and dishes located behind the stealth screen will have a centerline of fifty-five and one half feet (55.5ô). The antenna located on the façade of the building will have a centerline of thirty-six and on half feet (36.5ô). The antenna located on the façade of the building complies with Fairfieldôs regulations.

The Applicant requests an increase in the maximum height of rooftop equipment above the roof for the stealth screen, antennas and dishes. The Applicant further requests a decrease in the minimum setback from the edge of the building for its antennas and dishes located behind the proposed screening.

The height of the antennas and dishes makes compliance with the five foot (5ô) maximum height a hardship. The height of the antennas and dishes is needed in order to provide wireless coverage and capacity to this area and to create a line-of ï sight (ñLOSò) path link to other sites. The location of the antennas and dishes makes compliance with the setback minimums a hardship. The antennas and dishes must be located as shown on the drawings in order to provide wireless coverage and capacity in this area and to create a LOS path to link to other sites. Furthermore, at this location on the penthouse they are able to screen the installation from public view.

When trying to locate a telecommunications site, buildings or existing structures that are tall enough to attach antennae to are always the preferred locations. Collocation is generally 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 and dishes allows the Applicant to provide adequate coverage without constructing a new tower. However, a height of approximately nineteen feet (19ô) above the roof for the antennas and dishes is required in order to achieve the necessary coverage. Additionally, the setback of the antennas and dishes will be approximately one-foot, seven-inches (1ô-7ò) to twenty-one feet, eight inches (21ô-8ò). Without the requested relief, the Applicant will not be able to provide adequate service to the residents and businesses of the Town of Fairfield. As a result, a substantial ñholeò would exist in the coverage area resulting in substantial hardship to the Applicant.

Attorney Herz presented courtesy letters to the abutting neighbors for the record.

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

2. 636 Mill Hill Road, Map 228, Parcel 35. Petition of Jorge and Catherine Rivera for a variance of the Zoning Regulations; 5.2.4.3 to reduce the minimum required unattached accessory structure setback from 25 feet, proposing 10 feet. **Permission to construct an in ground swimming pool. Premises: AA Zone**

Jorge Rivera, owner, presented the application for a variance of the Zoning Regulations. He noted he is requesting a variance to install an inground pool for his family to enjoy. The lot is grandfathered half acre in an acre zoning. The lot is deep and the required 25 foot side setbacks make it difficult. The lot was obviously established prior to the current zoning regulations, which makes improving the property difficult. Mr. Rivera also noted he doesnôt need a variance to install the pool in the center of the lot, but that would take away the use of the yard. He would like to install the pool behind the existing playground area and a 10 foot setback would work nicely. This would allow him to maintain a nice stretch of lawn and keep the existing mature tree.

The existing garage is only 8.76 feet from the line. He is not looking to go past the existing conditions for the pool.

In Opposition: Thomas Tomasini, 620 Mill Hill Road, spoke in opposition of the proposed application. He presented a letter in opposition to the Commission for the record.

Petitions of support from the neighbors were submitted.

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

3. 510 Sasco Hill Road, Map 231, Parcel 390. Petition of James and Whitney Vose for a variance of the Zoning Regulations; Section 5.2.4 to reduce the following setbacks: from 60 feet (street), thirty feet (side), 50 feet (rear), currently 26.24 feet, 8.28 feet, 10.42 feet, proposing 28.5 feet, 8.9 feet, 19.9 feet, and for a variance of the Zoning Regulations; Section 5.2.5 to increase the maximum building lot coverage from 10%, currently 19%, proposing 20.8%, and to increase the maximum building floor area from 15%, currently 23.2%, proposing 26.2%. **Permission to construct additions to the existing dwelling. Premises: AAA Zone**

Attorney John Fallon, representing the Applicant, presented the application for a variance of the Zoning Regulations. The ownersô intent is to construct additions to the existing dwelling.

The property is located in a AAA Zone. It is a preexisting and legally protected nonconforming lot as to both lot area and shape. As the Board is aware, the present provisions of the regulations establish that the minimum lot area in the zone is two (2) acres but the Applicants lot is significantly nonconforming in its preexisting protected state containing only 0.236 acres. Similarly, the minimum square requirement presently in effect in the zone requires a square of 200 ft. and the property has a square of only 68 ft. The lot is also oddly shaped, quite narrow and triangular dimension.

In order to accommodate the proposed small additions to the home the variances are required due to the severe nonconforming status of the lot with regard to its area and shape. However, with respect to the variances, the application will not result in any increase in the existing nonconformity based upon the present structure and its location regarding the setbacks from the street line, side property line and rear property line. In each case the additions will be accommodated without ay further encroachment into the setback already existing based upon the location of the house. Similarly, the variances requested are modest. The coverage presently existing at 19% will be increased by 1.8% in order to accommodate the additions and floor area ratio presently existing at 23.2% will be increased by only 3%.

With regard to the matter of hardship, the unique shape of a lot and its configuration provides a basis for a finding of hardship for purposes of granting variances related to setbacks.

Also, the basis for the granting of the variance results from the fact that the lot is a legally protected non conforming lot as it relates to both its area and shape. As previously indicated, the present requirements within a AAA zone establish a minimum lot area of 2 acres and a square of 200 ft. This lot, established for residential purposes before the zoning regulations were imposed, has only 0.236 acres with a square of 68 ft. and is a valid and legally protected preexisting nonconforming lot. Nevertheless, the setback requirements as well as the coverage and floor area ratio requirements must be calculated based upon

assumption of a lot almost 10 times the size of the existing lot and more than double the width as contemplated under the regulations. The modest addition could easily and legally be accommodated but for the preexisting nonconforming status of this undersized and irregularly shaped lot.

Petitions of support from the neighbors were submitted.

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

4. 234 Windermere Street, Map 28, Parcel 22. Petition of Donald Barton for a variance of the Zoning Regulations; Section 5.2.5 to increase the maximum lot coverage from 20%, currently 19.36%, proposing 21.78%. **Permission to remove existing deck and build new elevated deck per plans. Premises: A Zone**

Donald Barton, owner, presented the application for a variance of the Zoning Regulations. He is requesting a variance to remove the existing deck and build new elevated deck.

Regarding the hardship, the lot is undersized. The existing lot coverage is 19.26% and the proposed deck is slightly larger, which will be 21.7%.

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

5. 28 Newman Place, Map 28, Parcel 499. Petition of Brian Sicignano and Jill Ippolito for a variance of the Zoning Regulations; Section 5.2.5 to increase the maximum lot coverage from 20%, currently 21.5%, proposing 21.6%. **Permission to construct a 2nd floor addition. Premises: A Zone**

Brian Sicignano, owner, presented the application for a variance of the Zoning Regulations. He wishes to construct a second story addition over existing 1st floor living area. The new addition will consist of a closet, full bath, and extension of current bedroom. The addition will include attic space above the new living area and a roof which will be slightly lower than the current roof line.

Mr. Sicignano noted developing this property in full accordance with the current regulations would be extremely difficult because the maximum building lot coverage as a percentage of lot area is already exceeded by a small amount (21.5% to an allowable 20%). Granting them a variance to change the building lot coverage amount of the house by a nominal 0.1% (the proposed 2ô overhang) would give the house much needed space and a second full bathroom. The proposed changes are in line with renovations that other properties in the area have done, and would not be detrimental to property values or the charm of the neighborhood.

Petitions of support from the neighbors were submitted.

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

6. 218 Farmington Avenue, Map 7, Parcel 131. Petition of David Farrell for a variance of the Zoning Regulations; Section 5.2.4 to reduce the minimum required street line setback from 30 feet, currently 29.8 feet, proposing 18 feet, and Section 5.2.4 to reduce the minimum required sum of the side setbacks from two property lines from 25 feet, currently 22.9 feet, proposing 22.9 feet, and Section 5.2.5 to increase the maximum lot coverage from 20%, currently 26.36%, proposing 28.8%. **Permission to construct a 2nd floor addition and a new front porch and stairs. Premises: A Zone**

David Farrell, owner, presented the application for a variance of the Zoning Regulations. He is requesting a variance to construct a 2nd floor addition and a new front porch and stairs.

The hardship is that the house is an existing, non-conforming structure, in an ñAò zone. It is a 5,000 sq. foot lot where the minimum required is 9,375 sq. feet. The minimum square on lot is seventy five (75) and the existing condition is fifty (50).

Petitions of support from the neighbors were submitted.

CONDITIONS: Conditioned upon steps to be relocated towards the driveway not the street side.

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

7. 167 Woods End Road, Map 147, Parcel 100. Petition of Peter and Tara Cowles for a variance of the Zoning Regulations; Section 5.2.5 to increase the maximum lot coverage from 20%, currently 20%, proposing 24%. **Permission to construct a front porch and additions to the existing dwelling. Premises: A Zone**

Tara Cowles, owner, presented the application for a variance of the Zoning Regulations. He wished to construct a front porch and additions to the existing dwelling.

The existing detached two car garage is oversized, taking up a large percentage of the lot. They would like to keep the cape style and add a master bath, which will require a variance to increase the lot coverage, which is currently at 20% due to the garage.

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

8. 1865 Black Rock Turnpike, Map 76, Parcel 338. Petition of Katona Corner, LLC for a variance of the Zoning Regulations; Section 28.6 to reduce the minimum required total number of off-street parking spaces from 91 to 79. **Permission to establish outdoor seating on an existing patio. Premises: DCD Zone**

William Fitzpatrick, representing the applicants, presented the application for a variance of the Zoning Regulations. The applicant is the owner of a mixed-use commercial property located at the intersection of Black Rock Turnpike and Katona Drive. This property is identified in; the Assessorôs office as Parcel 338 on Map 76.

Among the tenants in the building is Billyôs Bakery, which is located in the corner of the building fronting on Black Rock Turnpike and Katona Drive. The Applicant has constructed a brick patio directly adjacent to the Billyôs Bakery location, between the Bakery and Katona Drive. The Applicant is seeking permission to utilize the existing brick patio for the placement of tables and chairs for informal eating, sitting, reading, etc., purposes.

The Applicant is requesting a variance of Section 28.6 of the Zoning Regulations to permit a reduction in the required parking from the required 91 spaces to the present 79 spaces. The site plan accompanying this application confirms the availability of the present 79 parking spaces on site. The twelve space reduction requested is due solely to the proposed utilization of the 480 square foot brick patio, which generates a parking requirement of 12 additional spaces, per Section 28.6.12, which requires one parking space for each 40 square feet of patron floor area.

The most critical element of this request is the fact that the proposed patio seating will not, in and of itself, generate any additional parking demand. The patio tables and chairs are rather an amenity that offers, for example, patrons of Billyôs Bakery the chance to sit and enjoy a coffee and Danish before starting the work day. No table service is proposed for the patio, but it is rather a shared amenity for customers and employees of the whole building.

The patio area will be buffered from Katona Drive with landscaping, providing an attractive, informal social area.

CONDITIONS: Conditioned upon no direct access from Billy's Bakery; no table service; approval of variance will be subject to review on October 1, 2011.

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

9. 1995 Fairfield Beach Road, Map 234, Parcel 60 and 154. Petition of Nancy, Josh and Lisa Samuelson for a variance of the Zoning Regulations; Section 11.13.1 to reduce the house setback from Fairfield Beach Road from 45 feet, currently 24.7 feet, proposing 25 feet, and Section 11.13.2 to reduce the garage setback from Fairfield Beach Road from 25 feet, proposing 19.8 feet, and Section 11.14 to reduce the garage setback from Pine Creek from 10 feet, proposing 8.6 feet. **Permission to raze existing beach cottage and construct new beach cottage and garage. Premises: BD Zone**

Attorney William Fitzpatrick, representing the Applicants, presented the application for a variance of the Zoning Regulations. He noted the applicants are requesting a variance to reduce the house setback from Fairfield Beach Road from 45 feet, presently 24.7 feet to 25.0 feet; a variance of Section 11.13.2 to reduce the garage setback from Fairfield Beach Road from 25 feet to 19.8 feet; and a variance of Section 11.14 to reduce the garage setback to Pine Creek from 10 feet to 8.6 feet.

This property is located in the Beach District and contains 7,420 square feet. The property extends from Long Island Sound to Pine Creek and is identified in the Assessorôs records as Parcels 60 and 154 on Map 234. The single-family home of the applicants has been severely damaged by fire. The intent of applicants is to remove the existing structure and

construct a new single-family home in essentially the same location as the existing house. The applicants also purpose to construct a garage on the portion of the property between Fairfield Beach Road and Pine Creek.

The applicants are requesting a variance to reduce the house setback from Fairfield Beach Road from 45 feet, presently 24.7 feet to 25.0 feet; a variance of Section 11.13.2 to reduce the garage setback from Fairfield Beach Road from 25 feet to 19.8 feet; and a variance of Section 11.14 to reduce the garage setback to Pine Creek from 10 feet to 8.6 feet. The applicants are seeking permission to raze the existing beach cottage and construct a new beach cottage and garage. There is a single variance request relating to the new home. This is the reduction in the Setback to Fairfield Beach Road from 45 feet to 25 feet. The important factor to consider here is that the proposed setback to Fairfield Beach Road is actually an improvement, from a zoning perspective, compared with the street setback to the existing house, a distance of 24.7 feet.

Attorney Fitzpatrick noted the Board should take into account the fact that the property contains 7,420 square feet, or approximately 20% less than the minimum lot area requirement from the Beach District of 9,375 square feet. It is also relevant to stress that the proposal here does not constitute over-building of the site in that the coverage remains.

The proposed garage has been configured with a minimally acceptable depth thereby limiting the setback variance requests to Fairfield Beach Road and Pine Creek. The garage will provide much needed storage, which is always at a premium at Fairfield Beach, particularly when homes are made FEMA compliant.

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

10. 36 Quaker Lane, Map 128, Parcel 329. Petition of Giulio Cavali for a variance of the Zoning Regulations; Section 5.2.4 to reduce the minimum required street line setback from 30 feet, currently 29.1 feet, proposing 26.7 feet. **Permission to construct a two story addition and 2nd floor cantilever. Premises: A Zone**

Giulio Cavali, owner, presented the application for a variance of the Zoning Regulations. He wishes to construct a two story addition and 2nd floor cantilever.

The house is nonconforming. When the house was purchased, they thought to continue across the front furthest point creating a flat front with no jogs. Given the location of the existing structure, it was the only option in the efforts to improve the functionality and looks of the home.

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

11. 1876 Black Rock Turnpike, Map 76, Parcel 172. Petition of Miro 1876 Associates, LLC for a variance of the Zoning Regulations; Section 28.6 to reduce the minimum required total number of off-street parking spaces from 44 to 34. **Permission to establish an outdoor dining area. Premises DCD Zone**

The applicant is seeking to create a small outdoor dining area in front of the Tomato & Basil Restaurant. The outdoor dining area will measure approximately 17 feet by 17 feet and will be segregated from the parking by the utilization of removable bollards.

The seating area will encompass an area which formerly served as two parking spaces. The parking requirement for the site is 36 parking spaces, and the parking provided was 36 spaces. As the result of the proposed creation of outdoor seating, the parking available is now 34 spaces. The parking requirement for restaurant seating under the regulations on one space for every 40 square foot of patron floor area, resulting in a parking demand of 8 spaces.

Attorney Fitzpatrick also noted another relevant factor to consider in evaluating this application is the fact that this restaurant, and accompany outdoor dining, are likely to be the busiest during the evening when the other tenant is closed. At the time the restaurant is busiest, the entire 34 parking spaces will be available to service this small restaurant and outdoor dining area.

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

12. 689 Kings Highway, Map 79, Parcel 56. Petition of Anwar and Diala Malas for a variance of the Zoning Regulations; Section 28.6 to reduce the minimum required total number of off-street parking spaces from 5 to 0. **Premises to establish an outdoor patio for a smoking area. Premises: DCD Zone**

Applicant was not present for the Public Hearing therefore, application was denied.

DENIED: Linda Snelham-Moore *moved* and Duncan Keith *seconded* to approve the proposed application. *Motion denied unanimously.*

Chairman Brennan abstained from this motion.

There being no further business to come before the Commission, Chairman Brennan adjourned the meeting at 3:40 p.m.

_____ _____

Kevin Coyne, Secretary Josephine M. Keogh

ROBERT BRENNAN, CHAIRMAN

KEVIN COYNE, SECRETARY

JOSEPHINE M. KEOGH, CLERK