

**ZONING BOARD OF APPEALS
EXECUTIVE SESSION OF JUNE 3, 2010**

The Zoning Board of Appeals Commission of the Town of Fairfield held the Zoning Board of Appeals Public Hearing Meeting on June 3, 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, Linda Snelham-Moore, Alternate.

1. **Minutes of May 6, 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 Secretary's 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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PRESENT: Robert Brennan, Chairman, James Hamilton, Ph.D., Vice Chairman, Kevin Coyne, Secretary, Duncan Keith, Donald Cafero, Linda Snelham-Moore, Alternate.

CONTINUED DOCKET

2. 63 Cummings Avenue, Map 183, Parcel 171. Petition of Judith Kohan for a variance of the Zoning Regulations; Section 5.2.5 to increase the maximum lot coverage from 30%, currently 28.1%, proposing 32.6%. **Permission to construct a new front porch. Premises: B Zone**

Judith Kohan, owner, presented the application for a variance of the Zoning Regulations. She noted she wishes to construct a new front porch with roof above. She also wants to attach a front stairway to the porch.

With respect to the hardship, the existing lot is an undersized lot. A required lot is 6,000 square feet. Existing conditions are 5,123 square feet. With a conforming lot the allowable coverage is 30%. With the existing 5,123 square feet we are only allowed 1,536.9 square feet. Ms. Kohan noted she would like to extend her lot coverage from 30% to 32.6%, which would be 1670 square feet.

Petitions of support from the neighbors were submitted.

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

11. 30 Biro Street, Map 79, Parcel 158. Petition of Frank Barucci for a variance of the Zoning Regulations; Section 5.2.5 to increase the maximum lot coverage from 30%, currently 23.56%, proposing 38%. **Permission to construct a detached single car garage and a rear deck. Premises: C Zone**

Attorney William Fitzpatrick presented the application for a variance of the Zoning Regulations. The applicant recently purchased the property and wishes to upgrade his property in a manner consistent with the surrounding area. The property had been the subject of a foreclosure and a significant interior cleanup of the house has been completed. The applicant has constructed perimeter fencing and will paint the exterior of the house this spring. The proposal here involves the construction of a one car garage to the rear of the property and construction of a wood deck on the side and behind the house.

The proposed garage will accommodate one car and will include cedar clapboard siding and an asphalt shingle roof. The proposed deck will replace an existing bilco door and stairs and will be located adjacent to the asphalt driveway behind the existing two-story house.

The garage and deck constitute coverage under the Zoning Regulations. As a result, the applicant is requesting a variance of Section 5.2.5 of the Zoning Regulations to permit an increase in coverage from the permitted 30% to 38%.

Attorney Fitzpatrick noted the coverage variance request does not relate to interior living area. Instead, this variance request is necessitated by the proposed garage and deck construction, both of which are normal amenities of today's single family homes. This proposal does not constitute an overbuilding of the property, since the proposed floor area ratio is 43.4% with the proposed construction completed, while the permitted floor area ratio in the Residence C Zone is 50%.

A garage and deck, necessarily constitute coverage, but do not create the building volume or mass which make a property look overcrowded. The proposed deck provides a welcome point for outdoor, seasonal relaxation, which is not unduly intruding on any neighboring property.

Petitions of support from the neighbors were submitted.

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

GENERAL DOCKET

1. 855 Mill Plain Road, Map 179, Parcel 155-A. Petition of Patrick Donaher for a variance of the Zoning Regulations; Section 5.2.4.3 to reduce the minimum required unattached accessory structure setback from 60 feet, previously approved at 28 feet, proposing 25.9 feet. **Permission to adjust previously approved variance structure already built. Premises: A Zone**

Patrick Donaher, owner, presented the application for a variance of the Zoning Regulations. He is requesting a variance due to a construction error. The garage was built approx. 2 feet too close to Glover Street setback. He received a variance to build a detached garage. The as built survey revealed the garage was built erroneously approximately 2 feet too close to the Glover Street setback.

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

2. 314 Windermere Street, Map 28, Parcel 38 and 39. Petition of Angelo Zucaro for a variance of the Zoning Regulations; Section 5.2.4 to reduce the minimum required street line setback from 30 feet, currently 9.4 feet, proposing 25.1 feet. **Permission to construct a two (2) story addition. Premises: A Zone**

Angelo Zucaro, owner, presented the application for a variance of the Zoning Regulations. He wishes to construct a two-story addition. In order to maintain the existing structure, which was built in 1917, and without losing curb appeal, he needs a 4 foot variance. The original structure was built 10 feet over the setback line and is requesting a variance to not only keep the curb appeal but also be able to access the addition from the existing second floor.

Petitions of support from the neighbors were submitted.

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

3. 152 Dill Road, Map 143, Parcel 154. Petition of Samuel Febraio for a variance of the Zoning Regulations; Section 5.2.5 to increase the maximum lot coverage from 20%, currently 20%, proposing 20.97%. **Permission to construct a new front porch, rear steps and landing and bay window. Premises: A Zone**

Samuel Febraio, owner, presented the application for a variance of the Zoning Regulations. He wishes to build a one-story addition to an existing one-story ranch style home, with a new front porch and a bay window with steps in back.

He noted his lot is narrow. The front porch extension will allow for a small interior vestibule, as the home now has the main entrance opening directly into the living room. The porch will also offer cover and protection from the elements.

Petitions of support from the neighbors were submitted.

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

4. 2021 Cross Highway, Map 253, Parcel 4. Petition of State of Connecticut, D.O.T. for a variance of the Zoning Regulations; Section 5.1.1 to reduce the minimum required lot size for a single detached dwelling for one family from 2 acres, proposing 1.19 acres. **Permission to establish a building lot for a single family dwelling. Premises: AAA Zone**

Robert Ike, supervising property agent for the State of Connecticut, Department of Transportation, presented the application for a variance of the Zoning Regulations. He noted State of Connecticut, Department of Transportation a governmental condemning authority has embarked on a program to release all excess property. The variance is

required to market the property for private ownership and return it to the tax rolls of the Town of Fairfield.

In Oppositions: Thomas Dailey, 20 Southport Woods Drive; Kimberly Fawcett, State Representative, and Lawrence Aiken

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

5. 132 Barry Scott Drive, Map 76, Parcel 198. Petition of Joshua Gorruso for a variance of the Zoning Regulations; Section 5.2.4 to reduce the minimum required rear property line setback from 30 feet, currently 30.9 feet, proposing 16 feet. **Permission to construct a rear deck. Premises: R-3 Zone**

Joshua Gorruso, presented the application for a variance of the Zoning Regulations. He wishes to construct a 12' x 20' second story deck. The lot shape is oddly shaped.

Petitions of support from the neighbors were submitted.

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

6. 180 Barberry Road, Map 228, Parcel 104. Petition of Gregory & Michelle Berg for a variance of the Zoning Regulations; Section 5.2.4 to reduce the minimum required rear property line setback from 30 feet, existentially 46.9 feet, proposing 11 feet. **Permission to construct a new two car garage with breezeway. Premises: R-3 Zone**

Gregory & Michelle Berg presented the application for a variance of the Zoning Regulations. They wish to construct a 2 car garage. The garage will have attic/storage space above. The garage will measure 28'8" wide by 22'6" deep, and have a height of 15'0". The garage will have 8 ft wide open breezeway that will make it part of the primary structure by virtue of the fact that it therefore connects to the house. The back corner of the garage will be 11 feet from the rear property line and 24 feet from the side property line. We are asking for a variance to the primary structure setback from 30 feet to 11 feet. Due to the shape of the lot and contour of the property, there is no other location that the garage can be located. There is a large amount of ledge running up approximately 12 feet starting at the western side of the house. The eastern side of the house is just over 15 feet from the eastern side property line, leaving only the north side as an option. We believe the house was constructed in the corner of the lot due to the large amount of ledge described. The proposed lot coverage area of 11.4% and proposed building floor area of 12.1% are well below maximums and not an issue.

Attaching the garage with an open breezeway makes entry to it in bad weather safer and keeps with the character of the neighborhood as to match all the 33 other houses on the street, (Barberry and Juniper) that have attached garages.

Petitions of support from the neighbors were submitted.

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

7. 72 Rita Avenue, Map232, Parcel 286. Petition of Kevin Holtz for a variance of the Zoning Regulations; Section 5.2.4 to reduce the minimum required street line setback from 30 feet, currently 29.7 feet, proposing 25.7 feet. **Permission to enclose existing front porch to heated space. A Zone**

Kevin and Jennifer Holtz presented the application for a variance of the Zoning Regulations. They wish to utilize the existing porch to create a 4 x 10 enclosed porch with a 3 x 10 portico landing with steps.

The front of the home/dwelling lies on the edge of the 30 feet zoning limit for the property setbacks from the street. The current front porch and steps exist within this boundary. They would like to enclose our existing front porch to gain comfortable access through the main entry of their home.

Petitions of support from the neighbors were submitted.

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

8. 1460-1462 Post Road, Map 180, Parcel 246. Petition of 1460 Post Road, LLC for a variance of the Zoning Regulations; Section 12.7.6.1 to reduce the street line setback from 10 feet, currently 0, proposing 6 inches and Section 12.7.6.2 to reduce the side property line setback from 10, currently 0, proposing 0. **Permission to construct a one (1) story addition to expand existing kitchen and storage area. Premises: CDBD**

Attorney James Walsh presented the application for a variance of the Zoning Regulations. John Karageorge, agent, was also present for questions. The Applicant, Rhone Corporation, requests a variance of Section 12.7.6.1 and Section 12.7.6.2 of the Zoning Regulations in order for permission to establish a restaurant, a contemporary gathering place serving the finest in all-natural appetizers and entrees, at a said property. The Applicant is seeking two (2) variances: 1. a variance of Section 12.7.6.1 reducing the street line setback from 10 feet, existentially 0 feet, proposing 6 inches; and, 2. a variance of Section 12.7.6.2 reducing the side property setback from 10 feet, existentially 0 feet, proposing 0 feet.

The Applicant has entered into a lease with the property owner, 1460 Post Road, LLC, to establish the said restaurant. This is the same premises previously occupied by Las Vetas Lounge, which were before this Committee on April 3, 2010 for a parking variance and variance to allow a café permit within 1500 feet of another café permit. The Applicant needs these variances in order to allow for a larger kitchen and storage only. If these requested variances are granted, no further parking variance will be necessary. The principals of the Applicant are Susan Dederick and William Auer. The Applicant is also the owner of Centro Restaurant, that has been in existence here in Fairfield on Post Road for twenty-one (21) years. Ms. Dederick and Mr. Auer, both long-term residents of Fairfield, also own the Firehouse Deli in town, along with numerous other restaurants. The

Applicant would like to continue to invest in downtown Fairfield and to continue in their efforts to revitalize the downtown area.

Regarding the variance sought pursuant to Section 12.7.6.1, the Applicant would like to enclose a small triangle portion of the property and attach it to a second building located on the property along Sanford Street. The purpose of this expansion is to enlarge the kitchen area, as well as provide additional storage/refrigeration area. The patron floor area and the previous layout of the Applicant as shown on the plans submitted herewith will not increase from 600 square feet of patron area. Therefore, no additional parking will be required. Further, by enclosing in the portion of land located between the two (2) buildings on the property will have the added benefit eliminating an attractive nuisance in the triangle piece of land that the applicant would like to enclose. For years, the small piece of property located between the two (2) buildings on the property has attracted loitering from members of the public. Some have used it for an area to smoke or hang-out, since it is shielded in some degree from the rest of the street, especially by the darkness of night. Some of the patrons of local bars have used the area as a public bathroom. Many have used it to dispose of garbage. This area has not provided any beautification of the area, but is more of an eyesore. Enclosing this area will eliminate the loitering and other bad activities that this small piece of land attracts and provide a more visually appealing streetscape for this busy area of out downtown.

The existing building, along with most of the buildings in the downtown, was built directly on the property line before the zoning regulations were formed. The street line setback from both buildings on the property is currently zero along Sanford Street. The new addition, if this variance is granted, is proposed to be six (6) inches. This would allow for a visually appealing streetscape along Sanford Street.

The Applicant is also seeking a variance of Section 12.7.6.2. As discussed above, the Applicant would like to enclose a small triangle portion of the property and attach it to a second building located on the property along Sanford Street. The purpose of this expansion is to enlarge the kitchen area, as well as provide additional storage/refrigeration area as discussed above. The benefits of this proposed expansion are also mentioned above.

The existing building, along with most of the buildings in the downtown, was built directly on the property line before the zoning regulations were formed. The side property setback in the back area where both buildings meet with a wall is currently zero. The new addition, if this variance is granted, is proposed to have a zero side property line setback in this area. This would just continue the legally non-conforming situation that currently exists.

In summary, the Applicant's restaurant will be a friendly, comfortable, community-oriented restaurant offering a unique and exciting concept in fine dining. It will provide a prestigious and quality addition to Fairfield's economic base in these difficult economic times. The Applicant's restaurant 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: James Hamilton *moved* and Kevin Coyne *seconded* to approve the proposed application. *Motion passed unanimously.*

9. 23 Ludlowe Road, Map 180, Parcel 343. Petition of Jason Landon for a variance of the Zoning Regulations; Section 5.2.5 to increase the maximum lot coverage from 20%, currently 20.2%, proposing 23.2%. **Permission to construct a new two car garage. Premises: A Zone**

Jason Landon, owner, presented the application for a variance of the Zoning Regulations. He wishes to construct a 24' x 24', two-car garage.

The current, existing 10.3 feet x 24.6 feet garage is falling apart. The proposed garage will be will be two-car, rather than a one-car garage.

Most of the neighbors have detached one to three car garages, so the proposed structure will be in keeping with the neighborhood. It is to be located in the northwest corner of the property.

Petitions of support were submitted from the neighbors.

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

10. 85 Four Seasons Road, Map 9, Parcel 10. Petition of Kazimierz and Deirdre Sikora for a variance of the Zoning Regulations; Section 5.2.5 to increase the maximum lot coverage from 15%, currently 13.37%, proposing 16.09%. **Permission to construct a rear deck. Premises: R-2 Zone**

Kazimierz and Deirdre Sikora request a variance to construct a 17.98 feet x 25.00 feet deck consisting of one set of stairs. This will result in the removal of a smaller deck which is decaying.

They would like to extend the outdoor living space on the property. Given the topography of the land, the resulting height of the deck will impact lot coverage.

Petitions of support were submitted from the neighbors.

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

11. 2940 Redding Road, Map 167, Parcel 17A. Petition of The Greenfield Hill Village Improvement Society, Et-al, Pursuant to Section 8-7 of the Connecticut General Statutes, to reverse or modify the decision of the Zoning Administrator pertaining to Zoning Enforcement. **Premises: AAA Zone**

Attorney Joel Green, representing Greenfield Hunt, LLC, presented the application for a variance of the Zoning Regulations. Attorney Green noted there was an action against

James Taylor of 2940 Redding Road, Fairfield, Connecticut and against Peter Marsala in his capacity as the Zoning Enforcement Officer of the Town of Fairfield, as Defendants.

He noted on October 2003 and continuing to the present, James Taylor, has used or allowed his property to be used in violation of the Zoning Regulations of the Town of Fairfield and in February 2008 and continuing to the present, James Taylor has used or allowed his property to be used for a filling operation involving the use of hundreds of cubic yards of asphalt millings containing pollutants that have been deposited and spread out upland of adjacent wetland areas and a watercourse on the property that have polluted and/or will spread into and pollute the wetland areas and watercourse on the property and the watercourse downstream on the property of others.

Further, pursuant to Zoning Regulations, Peter Marsala as the Zoning Enforcement Officer of the Commission is empowered with the authority and has the duty to enforce the Zoning Regulations. On numerous occasions the Plaintiffs have requested, Peter J. Marsala as the Zoning Enforcement Officer, to take steps to prevent the unlawful storage and maintenance of commercial vehicles, equipment, machinery and waste and to stop the illegal activities involving earth processing and filling by James Taylor. Attorney Green also noted that Mr. Marsala had sent three orders to comply regarding the alleged zoning violations to James Taylor. Mr. Taylor had thirty (30) days from the date of each notice to discontinue or remedy the violations or proper legal redress would be taken. Despite the failure and/or refusal of James Taylor, to discontinue or remedy the zoning violations well past the thirty-day periods, the Plaintiffs alleged that Peter Marsala in his capacity as the Zoning Enforcement Officer had taken no action to enforce the Zoning Regulations. As a result, among other requests for relief from the court, the Plaintiffs sought a writ of mandamus ordering Peter Marsala as Zoning Enforcement Officer, to enforce the Zoning Regulations against James Taylor.

Responding to the complaint, Mr. Marsala, ZEO, filed a cross complaint in the pending action against James Taylor. In his cross complaint, Mr. Marsala seeks, among other relief, a permanent injunction to enjoin the continued use by James Taylor of his property in violation of the Zoning Regulations.

Among other provisions in the agreement the parties agreed that certain vehicles would be removed from the Taylor property while other vehicles could continue to be stored there and that there are no violations of the Fairfield Zoning Regulations at the premises. Later Mr. Peter Marsala filed a withdrawal of his cross claim against James Taylor.

James Wendt, Assistant Planning Director of the Town of Fairfield, acting on behalf of Peter Marsala, Zoning Enforcement Officer, entered into an agreement with James Taylor pursuant to which the parties purported to resolve the allegations in the pending cross complaint.

Attorney Green provided the Commission copies of the Land Excavation and Fill Definition and Residence District Regulations, Memo from Linda Laske, Esq. and Joel Green, Esq. and the Deposition of James Wendt for the record and spoke about it in great detail.

Attorney Green advised the Commission the reason the Plaintiffs are requesting the Board to reverse and modify the decision made by Mr. Marsala, the ZEO. First, because of the alleged, nuisance; second, Mr. Taylor is using hundreds of cubic yards to use as fill for excavation; third, they are requesting that the Board command Peter Marsala as the Zoning Enforcement Officer to enforce the Zoning Regulations regarding the illegal use and activities conducted upon Mr. Taylor's premises.

Jim Wendt, Assistant Director for Plan and Zoning, provided the Commission copies of the related file and explained his position to for the record.

Attorney Richard Saxl, Town Attorney, noted the Conservation Appeal is still pending. He also noted, Mr. Marsala, the Zoning Enforcement Officer, was made Defendant in this matter against the Town. He noted there are no current violations on the property at this time.

IN OPPOSITION: James Taylor, Ryan McKain, Attorney for James Taylor, spoke in oppositions of the proposal. Attorney McKain presented a Statement in Opposition to Appeal for the record.

IN FAVOR: Marianne Ruscito spoke in favor of the proposal.

The Commission continued this matter to June 10, 2010

There being no further business to come before the Commission, Chairman Brennan adjourned the meeting at 5:40p.m.

Kevin Coyne, Secretary

Josephine M. Keogh

ROBERT BRENNAN, CHAIRMAN

KEVIN COYNE, SECRETARY

JOSEPHINE M. KEOGH, CLERK