ZONING BOARD OF APPEALS
EXECUTIVE SESSION OF FEBRUARY 2, 2012

The Zoning Board of Appeals Commission of the Town of Fairfield held the Zoning Board of Appeals Public Hearing Meeting on February 2, 2012 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: Kevin Coyne, Chairman, James Hamilton, Vice Chairman, Donald Caferro, Secretary, Duncan Keith, James Baldwin, Daphne Dixon, Alternate, Margaret McKay, Alternate.

1. **Minutes of January 5, 2012:** James Hamilton *moved* and Duncan Keith *seconded* to approve the proposed minutes as submitted. *Motion passed 4-1.* James Baldwin abstained.

2. **Approval of Secretary's Fee:** Donald Caferro *moved* and James Hamilton**,** *seconded* to approve the proposed Secretary's Fee. *Motion passed 4-1.* James Baldwin abstained.

This portion of the Executive Session started at 2:55 and continued into Public Hearing.

Donald A. Cafero, Secretary

Josephine M. Keogh

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PRESENT: Kevin Coyne, Chairman, James Hamilton, Vice Chairman, Donald Caferro, Secretary, Duncan Keith, James Baldwin, Daphne Dixon, Alternate, Margaret McKay, Alternate.

1. 117 Carlynn Drive, Map 138, Parcel 38, Petition of Kraig and Suzanne Schulz for a variance of the zoning regulations; Section 5.2.4 to increase the maximum allowable lot coverage; From 20%, Proposing 20.8%. **Permission to increase lot coverage due to a construction error. Premises A Zone**

Kraig Schulz, owner, presented the application for a variance of the Zoning Regulations. He is requesting a variance of approximately 90 feet to the allowable total coverage of his lot. Mr. Schulz noted the excess coverage on his lot was an honest mistake caused by 3 errors. First, when the surveyor translated the construction plans onto the proposed survey he missed 2 staircases, one coming off the front porch and one off the rear of the house in front of the double French doors. These 2 errors, when combined with a miscalculation by the architect in how many steps were required off the front and an allowance for a landing in front of the French doors off the back results in approximately 100 ft of incremental coverage. The third error occurred because the contractor pouring the concrete walls did not properly brace the forms, resulting in an uneven exterior surface which needed to be firmed? by a 2" all around the house before siding could be applied. This resulted in an additional 30 ft of coverage. Mr. Schulz also noted these were all honest construction errors and would require significant expense to correct while reducing the aesthetic appeal of the house relative to other homes in the neighborhood and would offer little to no public benefit.

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

2. 211 Harbor Road, Map 231, Parcel 421, Petition of Philip and Patricia King for a variance of the
zoning regulations section 5.2.4.3 to reduce the rear setback for an accessory structure From 10 feet, Currently 0 feet, Proposing 8.6 feet. **Permission to construct two (2) side shed dormers. Premises R-3 Zone**

Continued to 3-1-12

3. 1280 Post Road, Map 180, Parcel 224 and 226, Petition of CATF, 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 6. **Permission to establish table seating in an existing take out food establishment. Premises CDBD**

John Fallon presented the application for a variance of the Zoning Regulations. He noted Sixteen Handles opened in August of 2011. Offering the highest quality of delicious yogurt and toppings with a unique concept for self service preparation, Sixteen Handles has become extremely popular and is a distinctive addition to the already dynamic downtown Fairfield Center scene. Serving yogurt products in an informal and relaxed setting it has complimented the full service restaurants in the area and also provides a popular and convenient product for people seeking a healthful lunch, snack or dessert.

The floor plan has been unchanged since Sixteen Handles opened in August. This includes the area of 460 sq. ft. which is the area of the premises open to the public. The gross square footage of the premises is approximately 1,500 sq. ft. and as retail location requires six (6) parking spaces. The Applicant seeks approval to add four (4) small tables (designated as "cubes") and eight (8) small ottomans in order to provide patrons with a convenient small sitting area in which to enjoy their purchases if they so choose. The addition of these small seating elements, however, convert the area in question to "patron floor area" under the Regulations and it is for this reason that the variance of Section 28.6.12 is requested after crediting the six (6) spaces provided to retail use, the variance required for this patron floor area is six (6) spaces. It is important to note, however, that the "patron floor area" in question is exactly the same area that has been used for customer access and service since Sixteen Handles opened. There will be no expansion of the store or the areas accessible for customers whatsoever. This is simply a request to allow the installation of these four (4) small cubes and eight (8) ottomans where customers can sit after purchasing their yogurt. There will be no service associated with this informal seating area but it will provide an important convenience to many customers, especially parents with children who wish to sit while their purchase is consumed.

Sixteen Handles is a unique and exciting yogurt shop that has harmonized with and complimented the Center Designed Business District further energizing our downtown area. As a technical "restaurant use" it is important to note that the Town Plan of Conservation and Development identifies among its goals for the Center Designed Business District the revision of required parking for such uses in the area as it relates to restaurants and other retail food services. The proposal to allow the small seating amenities in the already existing patron floor area is consistent with those goals.

With regard to hardship and the variance sought with regard to Section 28.6.12 initial emphasis is placed upon the fact that the 460 sq. ft. area in question is already existing and approved for patron access and sales. The store is not particularly large and this area has been used since its opening with no issues arising with regard to parking. This is due to the fact that in addition to their being ample on street parking directly proximate to the premises at 1280 Post Road where Sixteen Handles is located the shopping center has ninety-six (96) on site parking spaces that are more than adequate to meet the needs of the tenants and especially Sixteen Handles whose busiest hours of operation are in the evening when the other retail and office tenants in the building are generally closed making most if not all the ninety-six (96) on site spaces available for the patrons of Sixteen Handles. As has been shown by the actual operation of Sixteen Handles over the past six (6) months any

demand for parking occasioned by the store has and will continue to occur most significantly during evening hours at which time there is substantial availability both with regard to existing onsite parking and parking on the adjacent street.

This application before the Board is to allow the placement of a modest number of seats in the already existing "patron floor area" is consistent with the prior approvals and precedents established by the Zoning Board of Appeals in granting parking variances for restaurant and other retail food service uses in the Center Designed Business District. This policy has been a very substantial benefit to the downtown and the Town of Fairfield as a whole.

Attorney Fallon further noted Sixteen Handles is a friendly, unique and community oriented store with a self service concept providing quality yogurt that has become a downtown favorite with our residents. Permission to install the four (4) cube type tables and eight (8) seating ottomans in the already existing area of the store will simply provide a convenient and comfortable option for patrons who wish to sit briefly while enjoying their purchase. The application meets technical requirements of Connecticut General Statutes 8-6 and is consistent with the precedents of past decisions by the Board and the goals and policies of the Town Plan of Conservation and Development.

Donald Cafero recused himself of the proposed application. Daphne Dixon sat in for Mr. Cafero.

IN FAVOR: Kim Kane, Eileen Feldman, Brad Weinstein and Tracy Taylor, spoke in favor of the proposed application**.**

OPPOSITION: Attorney James Walsh, representing Jamie Karson, owner of Pinkberry, spoke in opposition of the proposed application

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

CONDITION: 1. A signage plan, subject to review by Fairfield ZEO, which relates to and provides direction for visitor use of the rear parking area. 2. The subject establishment must place a sign in the retail space advising patrons of the availability of parking in the rear of the building. NOTE: Any signage must comply with all applicable rules and regulations.

4. 930 Kings Highway, Map 79, Parcel 177, Petition of Ted Miller Buick, Inc for a variance of the zoning regulations section 12.7.6.1 to reduce the street line setback; From 25 feet, Currently 9.6 feet, Proposing 24.1 feet. **Permission to renovate the existing building. Premises DCD**

Phil Tiso, Architect, presented this application for a variance of the Zoning Regulations. He wishes to reconfigure and renovate the front showroom portion of the building and modernize the entire facility. He noted the proposed renovation and reconfiguration of the building will result in a substantial decrease of the existing non conformity. The non conformity is due to a portion of the building being situated over the 25' setback. The proposed renovation will result in a 2 square foot additional non conformity while

eliminating and existing 616 square foot non conformity.

Petitions of support were submitted for the record from the adjoining neighbors.

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

5. 404 Pine Creek Ave., Map 234, Parcel 237, Petition of Francis and Philippa Poli for a variance of the zoning regulations section 11.10 to increase the maximum allowable lot coverage From 20%, Proposing 23.5% and section 11.14 to reduce the setback from South Pine Creek From 88.3 feet, Proposing 79.5 feet. **Permission to relocate an existing Dock and Chimney and to increase an existing Deck. Premises BD**

Attorney William Fitzpatrick presented the application for a variance of the Zoning Regulations. He noted the property is located in the Beach District and contains 14,146 Square feet. The intent of the applicant is to replace the existing dock in Pine Creek and to address design deficiencies in the existing home. Specifically, the applicant's intent is that the existing dock be replaced; the chimney that sits in the middle of the front wall of the home be relocated to the easterly side of the home; and that the existing wood deck in the front of the home be expanded.

To achieve these changes on site, the applicant is requesting a variance of Section 11.10 of the Regulations to allow an increase in coverage from the permitted 20% to 23.5%, and a variance of Section 11.14 of the Regulations to permit reduction in the setback to Pine Creek from 88.3 feet to 79.5 feet. The three proposed alterations to the home, i.e., relocation of the dock from Pine Creek to dry land, relocation of the existing chimney, and expansion of the existing deck, together comprise the requested increase in coverage. The requested reduction in the setback to Pine Creek is a prerequisite to the expansion of the existing deck.

The proposed relocation of the existing dock from Pine Creek to dry land on top of the existing berm results in an increase in coverage because the present location of the dock in the creek is not included in coverage since it is off the property. The property line extends only to the mean high water line and the existing deck is located beyond the mean high water line on the edge of the creek.

Attorney Fitzpatrick also noted the existing deck is approximately 45 years old and needs to be replaced. The Connecticut DEP, which has jurisdiction over floats and docks in Pine Creek, has recommended the relocation of the new dock to the top of the berm. It is the Applicant’s intent to comply with the DEP findings.

The second piece of the requested increase in coverage is the relocation of the chimney. The chimney at present is located in the center of the front wall of the home, blocking views to the creek from both the first Floor living room and the second floor master bedroom. The applicant's intent is to relocate the chimney to the easterly wall of the home, and install windows or doors in the front of the home in the chimney location. The relocation of the chimney constitutes an increase in coverage.

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The last component of the coverage increase is the proposed expansion of the deck in front of the home. The existing deck is relatively narrow, and is correspondence by the swing of the doors from the house onto the deck. The renovation which must take place as part of the chimney relocation will involve replacing the existing deck, so the intent is to increase the size of the deck, making it more usable, given the fact the deck must be replaced in any event.

The variance request relative to the setback to Pine Creek relates to the deck expansion. It is important to note in this regard that the deck, with the expansion in place, will not extend beyond the line drawn from the corners of the two homes on either side.

Petitions of support were submitted for the record from the adjoining neighbors.

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

6. 1460-1462 Post Road, Map 180, Parcel 246, Petition of 1460 Post Road for a variance of the zoning regulations section 28.6.12 to reduce the minimum required total number of off street parking spaces by 10; section 12.7.6.1 to reduce the street line setback From 10 feet, Currently 0 feet, Proposing 0 feet; and section 12.7.6.3 to reduce the rear line setback From 10 feet, Currently 0.2 feet, Proposing 0.2 feet. **Permission to construct a second floor office and a roof top deck for 480 square feet of patron area. Premises CDBD**

Attorney James Walsh presented the application for a variance of the Zoning Regulations He noted the Applicant is requests a variance of Section 28.6.12, Section 12.7.6.1 and Section 12.7.6.3 of the Zoning Regulations as discussed hereinafter in order for permission to establish a restaurant at its property located at 1460-1462 Post Road. The Applicant is seeking three (3) variances: 1. a variance of Section 28.6.12 to reduce the minimum required total number of off street parking spaces by ten (1 0) parking spaces; 2. a variance of Section 12.7.6.1 reducing the street line setback from 10 feet, Currently 0 feet, proposing 0 feet; and, 3. a variance of section 12.7.6.3 reducing the rear property line setback from 10 feet, Currently 0.2 feet, Proposing 0.2 feet.

The Applicant's building is unique in that it is a small single story brick building on a corner and appears out of place compared to the other two (2) story buildings that surround it on Post Road in the heart of Fairfield Center. The Applicant proposes an exciting new plan of adding a partial second floor and a seasonal outdoor garden terrace to the building. The Applicant's design will make this particular building better blend with the other buildings in Fairfield Center for a cohesive look, while at the same time enhancing this corner of our downtown with a beautiful seasonal outdoor garden terrace. Instead of placing the outdoor dining area in front of the busy intersection of Post Road, Sanford Street and Reef Road, the Applicant proposes building the seasonal outdoor garden terrace on a new second floor of its building. This prevents the reduction of pedestrian sidewalk area used by the public in front of its restaurant at this busy intersection.

The Applicant has been having difficulty getting a quality restaurant to lease the building because of the small size of the premises and because of: 1. the lack of a basement for storage; 2. the lack of an office; and, 3.the lack of exterior land to have a seasonal outdoor

dining area. The Applicant's proposed lease with Rhone Corporation (owner's of Centro) ended because of the lack of storage space needed to operate a restaurant effectively. The Applicant has spent the last year expending great amounts of its resources to cure many of these site issues in order to bring a quality restaurant tenant to Fairfield Center. It has dug out a basement and installed a sophisticated ground water pumping system in order to provide a restaurant with the requisite storage. Further, the Applicant has now designed plans and is prepared to build at its expense if approved a second story to its building so that it can add the office and seasonal outdoor garden terrace that so many restaurateurs crave.

If this application is declined by this Board, the Applicant would have to either try to find a lesser quality restaurant, coffee shop or other use for the location. The Applicant has had numerous offers from a major coffee donut shop, several national fast food retailers and other high turnover food establishments. The Applicant does not believe that it would be in the best interests of itself, the Town of Fairfield and the Fairfield Center merchants to entertain such offers as they would provide a much higher intensity in traffic in the already bustling Fairfield Center. For these reasons, the Applicant has focused all of its efforts and financial resources into converting this building into a gem of a restaurant in the heart of the Center.

The Applicant has entered into negotiations with Tommy Febbraio and Kevin McHugh, owners and operators of The Gray Goose Cafe in Southport. Both of these gentlemen have operated numerous quality restaurants in Fairfield, Westport, Norwalk, and Ridgefield. Despite their desire to invest in Fairfield Center and bring the same quality restaurant to Fairfield Center, a condition precedent to any agreement is the Applicant being approved for these requested variances. The Applicant has heard this same request from other quality restaurateurs. All love the location, but the space limitation s and the lack of a seasonal outdoor dining area put them at a financial disadvantage from the other restaurants in Fairfield that they would be competing with.

With respect to the variance sought pursuant to Section 28.6.12, the patron floor area of the Applicant as shown on the plans submitted herewith is 980 square feet, 500 of which will be used for indoor dining and 480 square feet of which will be used for seasonal outdoor dining. This establishes a requirement of twenty five (25) parking spaces. The property has no on site parking spaces. Two previous Tenants of the premises were each granted separate variances pursuant to Section 28.6.12 for a total of fifteen (1 5) parking spaces: 1. Las Vetas Lounge was granted a variance pursuant to Section 28.6.12 of nine (9) parking spaces on June 5,2003; and, 2. Rhone Corporation (owners of Centro) was granted a variance pursuant to Section 28.6.12 of six (6) parking spaces on April 1,201 0. The applicant is seeking a variance for an additional ten (1 0) parking spaces to provide outdoor seasonal dining on the proposed second floor of their premises, in order to comply with the requirements of Section 28.6.12.

The Applicant currently has approval for 600 square feet of patron area, or fifteen (1 *5)* parking spots. Pursuant to the plans, the Applicant has adjusted its plans to reduce the first floor patron floor area from 600 square feet to 500 square feet for interior dining, in order to have a credit of 100 square feet of patron floor area to apply against the 480 square foot seasonal outdoor terrace, thus requiring this additional variance to reduce the parking for the additional 380 (480 - 100) square feet of patron floor area, or ten (10) parking spaces.

This terrace can only be used on a seasonal basis. If this application is approved, during the non-seasonal months there will actually be less patron area on the first floor and thus the restaurant will hold fewer patrons than the previous plan.

The application before the Board is consistent with prior approvals and precedents established with regard to the granting of parking variances for seasonal outdoor dining areas for restaurant uses in the Center Designed Business District. This important economic area 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 influx of quality restaurants in our downtown, and throughout our Town, has been the single biggest driver of economic development in our Town, even in the current recession. Fairfield has become the destination for restaurants from the surrounding communities. Our Town has become the envy of the surrounding towns because of this and much of the credit for this has to go to the Zoning Board of Appeals for granting of similar parking reduction variances for seasonal outdoor dining.

With respect to the variance sought pursuant to Section 12.7.6.1, the Applicant would like to add a partial second floor and a seasonal outdoor garden dining terrace to the building. The purpose of this second floor expansion is to construct a seasonal outdoor garden dining terrace, an office for the restaurant and two (2) sets of interior stairs for ingress and egress to the second floor addition. 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 with a small area being six (6) inches. The new second floor addition, if this variance is granted, is proposed to be exactly the same, but on the second story. This is simply an expansion of the nonconformity that currently exists. This would allow for a visually appealing streetscape along Sanford Street that would be in more conformity with the two (2) story buildings that surround the Applicant's property. The Applicant is also seeking a variance of Section 12.7.6.3. As discussed earlier, the Applicant would like to add a partial second floor and a seasonal outdoor garden dining terrace to the building. The purpose of this expansion is to construct a seasonal outdoor garden dining terrace, an office for the restaurant and two (2) sets of interior stairs for ingress and egress to the second floor addition. The benefits of this proposed expansion are also mentioned earlier.

The existing building, along with most of the buildings in the downtown, was built almost directly on the rear property line before the zoning regulations were formed. The rear property setback behind the second building is currently 0.2 feet. The new second story addition, if this variance is granted, is being added to the front building on the property and not coming close to the rear line setback. Nonetheless, because of the addition this would just continue the legally non-conforming situation that currently exists and variance must be sought and approved.

The unusual hardship in regard to the variance sought of Section 28.6.12 emanates from the fact that the parking regulations established pursuant to Section 28 require parking, when there were no parking lots traditionally available to properties in the downtown prior to the zoning regulations being adopted. The site was developed as part of the downtown commercial expansion at a time when there were few, if any, automobiles. As is typical throughout the downtown, on site parking to service the premises is non-existent. The hardship of accommodating commercial uses in the downtown area in light of parking

regulations, particularly those for restaurants, is inherent to this and too many other properties. The impact of the Zoning Regulations to this specific property establishes a basis for a finding of exceptional difficulty or unusual hardship because it renders the property technically deficient with regard to parking spaces. Indeed, it should be noted that in numerous other applications where restaurants have been granted similar variances in Fairfield (Tommy's n/k/a Old Post Tavern, Fin, Wild Rice, San Tropez M a The Brasserie, Quattro Pazi, Cafk Madeline, Voila M a Oceana, Avellino's, Pearl of Budapest n/k/a Caf6 Lola, etc.), a finding of hardship sufficient to form the basis for the granting of a variance was due to the fact that the buildings wherein the restaurants were located were nonconforming as to the existing parking requirements and had little or no parking on site.

In reference to the variance sought pursuant to 12.7.6.1 the "exceptional difficulty or unusual hardship" emanates from the fact that the street line setback regulations established pursuant to Section 12 require a street line setback, when there has been no street line setback traditionally available to properties in the downtown prior to the zoning regulations being adopted. The site was developed as part of the downtown commercial expansion at a time when property owners traditionally built right up to their property lines in order to maximize the size of their commercial buildings. As is typical throughout the downtown, street line setback is non-existent. The hardship of accommodating commercial uses in the downtown area in light of street setback regulations, particularly those for restaurants, is inherent to this and to most other properties in the downtown. The impact of the Zoning Regulations to this specific property establishes a basis for a finding of exceptional difficulty or unusual hardship because it renders the property technically deficient with regard to street setback requirements for the additional space requested.

In reference to the variance sought pursuant to 12.7.6.3 the "exceptional difficulty or unusual hardship" emanates from the fact that the rear property setback regulations established pursuant to Section 12 require a rear line setback, when there has been no rear line setback traditionally available to properties in the downtown prior to the zoning regulations being adopted. The site was developed as part of the downtown commercial expansion at a time when property owners traditionally built right up to their property lines in order to maximize the size of their commercial buildings. As is typical throughout the downtown, rear property setback is non-existent. The hardship of accommodating commercial uses in the downtown area in light of rear property regulations, particularly those for restaurants, is inherent to this and to most other properties in the downtown. The impact of the Zoning Regulations to this specific property establishes a basis for a finding of exceptional difficulty or unusual hardship because it renders the property technically deficient with regard to rear property setback requirements for the additional space requested.

The Applicant's proposed new plan for a restaurant with a second story seasonal outdoor garden terrace will be an exciting, unique and upscale addition to our downtown business district and dining scene. It will provide Fairfield residents with another unique and a attractive dining option. As with the establishment of previous restaurants 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. The granting of the variances will have no negative impact whatsoever, in that the proposed restaurant will

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operate consistent with the permitted use of a restaurant in the Center Designed Business District.

In summary, the Applicant's restaurant will be a beautiful, comfortable, community oriented restaurant. It will provide a needed facelift to this beautiful building and will be 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.

Petitions of support were submitted for the record from the adjoining neighbors.

OPPOSITION: Attorney Joel Green, representing E &F Associates, spoke in opposition of the proposed application.

DENIED: Duncan Keith *moved* James Hamilton *seconded* to approve the proposed application. **In favor:** Kevin Coyne, James Hamilton and Donald Cafero. **In opposition:** Duncan Keith and James Baldwin. *Motion denied 2*-3

There being no further business to come before the Commission, Kevin Coyne, adjourned the meeting at: 5:50 p.m.

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Donald A. Cafero, Secretary

Josephine M. Keogh

KEVIN COYNE, CHAIRMAN

DONAKLD CAFERO, SECRETARY

JOSEPHINE M. KEOGH, CLERK