

**ZONING BOARD OF APPEALS
EXECUTIVE SESSION OF APRIL 5, 2012**

The Zoning Board of Appeals Commission of the Town of Fairfield held the Zoning Board of Appeals Public Hearing Meeting on April 5, 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, Edward Cheffetz, Alternate

ABSENT: James Baldwin

1. **Minutes of March 1, 2012:** James Hamilton *moved* and Edward Cheffetz *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.* Duncan Keith. *Motion passed unanimously.*

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

Donald A. Caferro, Secretary

Josephine M. Keogh

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PRESENT: Kevin Coyne, Chairman, James Hamilton, Vice Chairman, Donald Caferro, Secretary, Duncan Keith, Edward Cheffetz, Alternate.

ABSENT: James Baldwin

1. 232 Hurd Street, Map 182, Parcel 761. Petition of Ted and Sally LeBouthillier for a Variance of the Zoning Regulations Section 5.2.5 to increase the maximum allowable lot coverage From 30%; Currently 27.79%; Proposing 31.20%. Permission to construct a front porch. Premises B Zone

Ted and Sally LeBouthillier presented the application for a variance of the Zoning Regulations. They wish to construct a front porch. The proposed porch would run the length of the house. This will put their home over the allowable lot coverage.

If they were to reduce the length of the front porch by 10.8 feet to comply, this cap style home would not fit in with the character of the neighborhood. If they were to reduce the depth by 2.7 feet it would become almost unusable at 4.3 feet. They are requesting a variance to have a usable sitting porch, which will be aesthetically pleasing to the neighborhood.

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

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

2. 3810 Congress Street, Map 170, Parcel 12. Petition of Shaun and Jennifer Williams for a variance of the Zoning Regulations Section 5.2.4 to reduce the minimum required street line setback From 60'; Currently 36'; Proposing 43.2. Permission to construct a 1 & 2 story and 2nd floor additions. Premises: AAA Zone.

Robert Williams, Owner, presented the application for a variance of the Zoning Regulations. Robert Sanders, Architect, was also present. He wishes to construct a new addition. New roof construction over the existing roof is needed to connect the addition to the existing house and provide proper drainage.

With respect to the hardship, the original house and property pre-date the Town's Zoning Regulations. The house was constructed in 1890 and is presently located approximately thirty-six feet from the street line. Also, the eastern rear portion of the property is located in wetlands. An approved "As Built" septic plan limits the available area for an addition.

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

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

3. 211 Harbor Road, Map 231, Parcel 421. Petition of Philip and Patricia King for a variance of the Zoning Regulations Section 5.2.4 to reduce the minimum required rear property line setback From 30'; Currently 0'; Proposing 8.6' and 10'. Permission to construct (2) two dormers. Premises: R-3 Zone.

Attorney John Fallon presented the application for a variance of the Zoning Regulations. David Parker, Architect, was also present. Attorney Fallon noted Mr. & Mrs. King plans an interior renovation of the space that will include utilization of the usable and habitable floor area in the existing loft area of the structure. This area will be used as a small recreation room for Mr. & Mrs. King's children. The dormers as proposed will provide daylight to this area and also proper stair headroom for access. The building is situated below sea level and therefore the ground floor of the structure is not considered habitable space. The square footage of the ground area is counted as part of the lot coverage. The renovations contemplated by the Kings will include the installation of flood vents and other required improvements bringing the structure into compliance with the provisions of the FEMA regulations and the Coastal Area Management Act.

Attorney Fallon noted the accessory structure is a classic preexisting nonconforming structure having been established at its current location immediately adjacent to the harbor well before current zoning regulations were enacted. It is further nonconforming due to the fact that as previously indicated the ground floor level is set at elevation 7.3 which is well below the 12.0 datum specified for structures newly constructed today in such an area. The existing topography of the property in the area of the accessory structure is also quite irregular. All of these factors have led the Kings and our architect, David Parker, to propose the utilization of the loft level of the structure as habitable space in -the building for use by the family and especially their children as a recreational area. One of the proposed dormers will be 10 ft. from the rear property line. The other dormer symmetrically opposite on the north side will be setback 8 ft. 6 inches due to the angle of the property line.

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 lot in question. It has long been held by our Connecticut Courts that irregular topography on a lot and or the historic location of a preexisting nonconforming structure on the lot creates a proper basis for a finding of hardship. In the present case, it is in the historic location of this existing structure and it's already nonconforming status that creates the need for the technical variance that is requested in order to allow for the construction of the dormer in question. Moving of the structure or its elevation is made extremely problematic due to considerations of existing topography. These circumstances arising from the current nonconforming location of the existing accessory structure satisfy the hardship requirement as defined in the relevant case law.

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

GRANTED: James Hamilton *moved* and Duncan Keith *seconded* to approve the proposed application. *Motion passed 4-1. Edward Cheffetz opposed.*

4. 531-535 Fairfield Beach Road, Map 138, Parcel 33. Petition of Stephen M. and Deborah J. Carr for a variance of the Zoning Regulations Section 11.1 to permit (2) two dwelling units on (1) one lot and Section 11.10 to increase the maximum allowable lot coverage from 50.8%, Proposing 52.1%. Permission to legitimize a second dwelling unit and to construct an elevated deck. Premises: BD Zone.

Attorney Kevin Gumper presented the application for a variance of the Zoning Regulations. Neil Jain, Architect, was also present. Stephen Carr and Deborah Carr are seeking two variances in connection with the renovation and reconstruction of the buildings on their property at 531-535 Fairfield Beach Road.

If granted, the variances will allow the Carrs to continue the historic use of the property as two separate dwellings and will also allow the Carrs to add a 12' x 17' deck to the cottage. The subject property has for many years included both a main house and a smaller cottage. Health Department records show that the cottage has been rented out as a separate dwelling unit since at least 1973. John and Maureen Bike, former owners of the property, obtained a variance in 1987 allowing them to expand the main house slightly and add a garage to it. The Carrs acquired the property from the Bikes in February 1999. The Carrs are now substantially rebuilding both the main house and the cottage. The Carrs have obtained the necessary permits for the rebuilding of the main house and do not require any variances to carry out their plans with respect to the main house.

The Carrs have also obtained the necessary permits to demolish the cottage and replace it with a four car garage with a large "storage room" above it. These permits were obtained solely to expedite the permitting process and to allow construction to begin. The Carrs in fact intend, and have always intended, to use the second floor of the garage building as a separate apartment and not as a storage room. The Carrs also desire to add a 12' x 17' deck to the apartment. That deck was not shown on the plans submitted in connection with the application for the building permits.

The Carr property will qualify for the Special Exception under Section 11.4 because it contained two dwellings (the main house and the cottage) as of September 1, 1989, which was the effective date of the Beach District Regulations. However, the Zoning Department has consistently interpreted the Beach District Regulations as providing two routes for the obtaining of the necessary approvals to validate multiple dwellings on one lot. The first route is an application for a Special Exception pursuant to 11.4. The other route is an application for a variance of Section 11 .I .I. The applicants would suffer severe hardship if their application for a waiver of 11. I .I were denied in that they have a vested right under the regulations to have two dwelling units on their lot. The variance if granted would not be contrary to the general plan inasmuch as there are numerous lots within the Beach District which have more than one dwelling upon them and the Beach District Regulations themselves contemplate that there will continue to be multiple dwellings upon those lots which had multiple dwellings on them as of September 1, 1989.

Section 11.10 of the regulations provides: "The maximum lot coverage permitted shall be the same as the existing lot coverage or twenty (20) percent of the lot area, whichever is greater." The lot coverage on the Carr property as of September 1, 1989 was 6,115 square feet (50.8% of the lot size which is 12,045 square feet.) The plans as previously submitted and approved in connection with the building permits call for the elimination of some impervious surfaces and the creation of other impervious surfaces, with a net result that the proposed coverage (without including the proposed deck) is actually reduced by 47 feet to 6,068 square feet. The Carrs are now proposing to add a 12' x 17' deck (204 square feet) which will produce a net increase of 157 square feet in the coverage. A deck is a very common amenity in the Beach District. Denial of the requested waiver would work a hardship upon the owners in that they would be unable to make full use of their property in the same manner as many of their neighbors are able to do.

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

GRANTED: Donald Caferro *moved* and Edward Cheffetz *seconded* to approve the proposed application. *Motion passed 4-1. James Hamilton opposed.*

5. 84 Pine Creek Ave, Map 238, Parcel 44. Petition of Nicols D. and Julia B. Kennedy for a variance of the Zoning Regulations Section 11.11.1 to reduce the side yard and the sum of side yard setbacks From 9.87' and 5.77', Currently 9.87' and 5.77', Proposing 5.3' and 5.3' and Section 11.13.1 to reduce the setback from the center line of Pine Creek Ave From 45', Currently 19.2', Proposing 24.34'. Permission to construct a (2) two story and attic addition. Premises BD Zone.

The proposed application was withdrawn.

6. 1086 Cedar Road, Map 246, Parcel 41. Petition of Nicholas J. Pichotta for a variance of the Zoning Regulations Section 5.2.4 to reduce the minimum required street line setback and (2) two side yard setbacks From 50', 25', and 25', Currently 32.2', 20.7', and 26.8', Proposing 33.3', 13.9', and 23'. Permission to construct (2) two, 1 story additions. Premises AA Zone.

Nicholas J. Pichotta, owner, presented the application for a variance of the Zoning Regulations. Kenneth Devellis, agent, was also present. He wishes to expand the existing garage to accommodate two cars and is proposing to construct two separate one story additions. The proposed lot is an existing legal non-conforming dwelling.

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

DENIED: James Hamilton *moved* and Edward Cheffetz *seconded* to deny the proposed application. *Motion denied 3-2 Edward Cheffetz and Duncan Keith was opposed.*

7. 261 Millard Street, Building B, Map 182, Parcel 214. Petition of Ferry Blvd Partners LLC for a variance of the Zoning Regulations Section 2.8.1.1 to allow the extension of an existing non conforming residential use. Permission to construct an extra dwelling unit. Premises NDBD

Attorney John Fallon presented the application for a variance of the Zoning Regulations. Al Dimarco, Owner, was also present.

The applicant makes this application for a variance of Section 2.8.1.1 in order to allow for the establishment of a superintendent's dwelling unit in the existing multi family residential structure located 261 Millard Street. The overall property is located in the Neighborhood Design Business District. There are a total of twenty (20) units of residential housing located in three (3) buildings on the property all of which constitute a legally protected preexisting nonconforming use in the current Neighborhood Design Business District. The building at 235 Millard Street consists of four (4)-two (2) bedroom units. The building at 391 Reef Road contains eight (8) units of residential housing and the building at 261 Millard Street eight (8) one (1) bedroom units. The applicant previously received zoning and building department approval to establish an office in the basement area of 261 Millard Street to be used by the superintendent of the complex as an office.

A variance of Section 2.8.1.1 is requested to allow this basement area at 261 Millard Street to be converted into a small dwelling unit to be utilized solely by the superintendent of this multi family residential complex. The ability to have an onsite superintendent seven (7) days per week twenty-four (24) hours a day will be of great convenience and benefit the safety of the residents and will similarly have a positive benefit with regard to the surrounding neighborhood as there will be someone available and on premises twenty four (24) hours a day to deal with an emergency and any safety or security needs that might arise at the premises.

In the present instance the hardship does in fact arise directly from the application of the regulations to this preexisting nonconforming residential property and its historic use. The addition of one dwelling unit to be used exclusively by the superintendent in this area of the building already used as an accessory use for the existing nonconforming residential use is a unique situation impacting the property and its statutorily protected status with regard to utilization for residential purposes. The courts have recognized that where the imposition of a regulation has such an effect this is a sufficient basis for a finding of hardship to allow a zoning board of appeals to grant a variance.

In summary, the granting of this application is consistent with all statutory authority and case law. The granting of the variance as requested will not result in any change of the use of the property from what has been historic and ongoing for many, many decades. The granting of the variance will benefit the interests of community safety, security and convenience by providing a 24 hour 7 day a week presence on the property by a superintendent charged with the care, supervision and maintenance of the facility.

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

GRANTED: Donald Caferro *moved* and Edward Cheffetz *seconded* to approve the proposed application. *Motion passed 4-1* James Hamilton was opposed.

8. 500 Mill Hill Terrace, Map 228, Parcel 31. Petition of Rune and Isabelle Johansen for a variance of the Zoning Regulations Section 5.2.5 to increase the maximum lot coverage from 10%, currently 15.3%, Proposing 16.5% and to increase the maximum total

floor area from 20%, currently 20.3%, Proposing 21.23%. Permission to construct a one story addition and covered rear porch. Premises AA Zone.

Attorney William Fitzpatrick presented the application for a variance of the Zoning Regulations. The applicants wish to make some minor additions to their home including the construction of a one-story mudroom on the westerly side of the existing home, together with a small covered porch and steps. The applicants also want to improve the front of the home by constructing a proposed roof over the existing porch.

Attorney Fitzpatrick noted the most relevant factor to consider in evaluating the applicants' variance request is the undersized nature of the property. The property contains 13,906 sq. ft. or less than one-third of the required minimum lot area for the Residence AA Zone of 43,560 sq. ft. The relevant coverage and floor area ratio requirements for the Residence AA Zone are calibrated to be fair and reasonable for the minimum lot area in the zone that is a one acre lot. To apply one acre zoning requirements to a .32 acre lot is, on its face, a hardship.

If the property in question were located in the proper zone for a property containing 13,906 sq. ft., the Residence A Zone, the proposed construction would fully satisfy the Residence A coverage maximum of 20%, as well as the Residence A floor area ratio maximum of 40%. An additional factor to consider is the small size of the proposed one-story mudroom (approximately 125 sq. ft.) as well as the modest covered porch (approximately 25 sq. ft.). The proposed mudroom and adjoining covered porch are Located in the center of the property to avoid any infringement on any neighbors. The proposed construction is no nearer to any property line than the existing home and garage. Approval of this application will permit the applicants the opportunity to improve their home with the construction of a minor one-story addition and adjoining covered porch, and the construction of a covered front porch, without any negative impact on adjoining neighbors.

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

GRANTED: Edward Cheffetz *moved* Duncan Keith *seconded* to approve the proposed application. *Motion passed unanimously.*

9. 824 Riverside Drive, Map 139, Parcel 295. Petition of Ruth and Richard Pavone 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 9,375 sq ft., Currently 15,000 sq ft., Proposing 5,000 sq ft., and to reduce the minimum square required for a lot From 75', Currently 150', Proposing 50'. Permission to establish a building lot. Premises A Zone.

Attorney John Fallon presented the application for a variance of the Zoning Regulations. Richard F. Pavone and Ruth A. Pavone acquired the parcels located at 824 Riverside Drive, 836 Riverside Drive and 844 Riverside Drive on August 24, 1990. The Executor's Deed of Conveyance recorded on that date at Volume 10 1 Page 190 of the Fairfield Land Records (attached hereto) conveyed each of the three (3) lots as separate parcels ("first parcel, second parcel and third parcel"). A review of the title history of these three (3) lots confirms that throughout the chain of title conveyance of the lots had always been separate and distinct reference has been made to each of the three (3) separate parcels.

The lots in question were created by the recording of a map entitled "Plan of Lots of Fairfield Avenue Estates, Fairfield Connecticut owned by Mark C. Meagher & Co.", prepared by Palmer and Goodell, Civil Engineers, and dated December, 1917. This map was filed on the Land Records of the Town of Fairfield. Title searches initiated recently in anticipation of this application confirm that 824 Riverside Drive, 836 Riverside Drive, and 844 Riverside Drive are owned by Mr. & Mrs. Pavone as separate and distinct parcels. In accordance with this title history the Town of Fairfield has always and continues to assess the properties for real estate purposes as separate and distinct legal parcels.

A garage utilized in conjunction with the main dwelling is located on portions of both that parcel and the adjacent parcel to the west, 844 Riverside Drive. The parcel located at 824 Riverside Drive is vacant and unused and has always been maintained by the Pavones and their predecessors with the intention of renewing their rights as discussed herein after to establish a single family home on this lot created by the recorded map in 1917. The predecessors in title of Mr. & Mrs. Pavone, while utilizing a portion of Parcel 297 for the construction of a garage in conjunction with the primary dwelling located on Parcel 296 reserved Parcel 295 (the parcel subject to this application) for single family residential construction in the future. Variances with regard to minimum lot size and minimum square are requested in conjunction with this anticipated utilization of the property at 824 Riverside Drive.

The Assessor's map confirms that the general area of the neighborhood was ultimately developed in accordance with the layout of the recorded map establishing the "Fairfield Avenue Estates". Additionally, the Assessor's map confirms that the development of single family homes on parcels of approximately 50 ft. by 100 ft. was the norm based upon the development plan reflected in the recorded map. Also, the zoning regulations were first promulgated in the Town of Fairfield in 1925, so the map in question which resulted in the development of the neighborhood predates zoning. The Assessor's map further confirms that many, many lots in the immediate area have minimum squares of 50 ft. with lot areas of approximately 5,000 sq. ft. Therefore, the use of the parcel at 824 Riverside Drive as proposed for a single family home will certainly not be out of character with the neighborhood but rather will conform to the normal lot size and shape of many parcels in the area.

824 Riverside Drive is a vacant residential lot which was created and existed prior to the enactment of Zoning Regulations in Fairfield. Based upon established case law because it was created prior to enactment of zoning and subdivision regulations and was not a subdivision lot" established pursuant to the provisions of Connecticut General Statutes 8-26(a) the property owner has two (2) possible options: 1) To obtain a variance of the Zoning Regulations from the Zoning Board of Appeals or 2) To establish an inverse condemnation claim based upon a premise that the legally recognized parcel cannot be utilized for a residential dwelling.

The granting of the variances will be legally proper in that the standards for approval established by Connecticut General Statutes 8-6 have been met. The utilization of this parcel long held and taxed for purposes of development of a single family residence will conform to the pattern of development to the surrounding neighborhood and will have no adverse impacts thereupon. Legal hardship is established and utilization of the property for purposes of a single family dwelling is consistent with the general history of residential use

in the area, the pattern of development in the area and the taxation that has been applied to the parcel for decades.

In Favor: Patrick Burhenne, 827 Riverside Drive, Timothy Leahy, 52 Eleanor Terrace, spoke in favor of the proposed application.

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

DENIED: Donald Caferro *moved* and Edward Cheffetz *seconded* to deny the proposed application. *Motion denied 3-2. James Hamilton and Edward Cheffetz were opposed.*

10. 1233 South Pine Creek Road, Map 238, Parcel 91. Petition of One Six Holding, LLC for a variance of the Zoning Regulations Section 5.2.5 to increase the maximum lot coverage From 15%, Currently 14.8%, Proposing 18.3% and to increase the maximum total floor area From 30%, Currently 27.4%, Proposing 30.9% and Section 5.2.4.3 to reduce the street line setback for an accessory structure From 30', Proposing 15'. Permission to construct a detached 1 car garage. Premises R-2 Zone.

Attorney John Fallon presented the application for a variance of the Zoning Regulations. One Six Holdings, LLC is the owner of property located at 1233 South Pine Creek Road. The property comprises 7,189 sq. ft. and is located in the Flood Protection Zone (Section 32 of the Fairfield Zoning Regulations). It is a corner lot bounded by both Dunhill Drive and South Pine Creek Road. Pursuant to the provisions of the Regulations the design standards of the R-2 Residential Zone are applicable to all properties located within the Flood Plain District.

The Applicant seeks approval of the variances requested as set forth in Schedule A in order to construct a small new garage. When the Applicant purchased the property in 2011 it had located upon it an existing one story frame residence and a large garage storage building with approximate dimensions of 26 ft. x 12 7/4 ft. Lot coverage was 31.03%, over double the maximum building lot coverage allowed under the R-2 zone standards of 15%.

In October of 2011 the Applicant made an application in order to construct a new single family home on the property and remove the existing residence, storage garage and all other structures. The Applicant sought a variance of certain provisions of the Zoning Regulations including coverage which was, however, proposed to be reduced from the existing 31.03% to 26.5%. The Applicant also sought variances with regard to the street setbacks for a corner lot although again the existing nonconformity in that regard was also to be reduced. The overall square footage of the dwelling was proposed to be 3,021 sq. ft. This application was denied. The applicant then returned in November of 2011 having reduced the overall square footage of the proposed dwelling to 2,714 sq. ft. The lot coverage was reduced from the previously proposed 26.5% to 24.9%. This application was also denied. Subsequently the applicant made an application to the Planning & Zoning Commission in December of 2011 for Special Exception approval to construct a single family residence compliant with the standards of the R-2 zone in the Flood Plain District. The square footage of this house which was approved by the Planning & Zoning Commission is 1,966 sq. ft. and the coverage is compliant with the standards of the R-2 zone at 14.8%. As previously referenced the current application seeks approval in order to construct a small new garage on the property. The new and smaller garage will replace the

larger storage structure that historically existed on the property and contributed to the then existing lot coverage of 3 1.03%. Construction of the garage requires a variance of Section 5.2.5 of the Regulations in order to increase the maximum lot coverage to 18.3% and maximum total floor area to 30.9%. A variance of the street setback on this corner lot for an unattached accessory structure to 15' is also requested.

From a legal perspective, this request for variances to construct the new garage meets the requirements established by Connecticut General Statutes 8-6(a) (3) in that, as will be discussed hereinafter 1) the variance does not substantially affect the Comprehensive Zoning Plan and 2) adherence to the strict letter of the Zoning Ordinance does cause unusual hardship unnecessary for the carrying out of the general purposes of the Zoning Plan.

With regard to the first consideration there will not be any substantial affect on the Comprehensive Zoning Plan in that construction of the proposed garage will not change the use of the property which will remain a single family residence as permitted in the zone. Our Supreme Court has held that if the use to be made after a variance is granted is a permitted use under the zoning regulations then the first part of the test is met. *Eagan v. Zoning Board of Appeals of Old Lyme*, 20 Conn.App. 561 (1990). It is also important to note that this application should be reviewed in the context of the fact that the Applicant since acquiring the property has ultimately determined in light of the previous decisions of the Board to reduce the original coverage by almost 50% (from 3 1.03% to 18.3%). With regard to the matter of hardship, it must first be pointed out that the lot in question is a valid and legally protected nonconforming lot as it relates to both lot area and shape requirements. The present requirements of the R-2 zone applicable to this property establish a minimum lot area of 14,000 sq. ft. This lot, made subject to the Flood Plain District Regulations after it was established for legal residential purposes, has 7,189 sq. ft., approximately only one half of the present contemplated minimum lot size requirement. Similarly, the lot is noncompliant to the current lot square requirement of 80 ft. Pursuant to the provisions of Connecticut General Statutes Section 8-2 the lot is a valid and legally protected preexisting nonconforming lot. The 15% coverage and 30% FAR requirement presently applicable to the property under the provisions of the R-2 Regulations must be calculated based upon a lot area almost 7,000 sq. ft. less in size than the minimum requirement contemplated in the zone. It has been previously held by our Supreme Court that where a property is a valid nonconforming lot with regard to lot area sufficient hardship to support the granting of a variance with regard to coverage and maximum floor area is established because the application of these regulations peculiarly affects the property and it's protected nonconforming status in an adverse manner. The modest garage that is proposed of approximately 242 sq. ft. could easily and legally be accommodated but for the preexisting nonconforming status of this undersized building lot rendered nonconforming when the property was rezoned to the Flood Plain District. In accordance with the court decisions strict application of the zoning regulation requirements in question does result in an unusual hardship to this Applicant based upon the protected preexisting nonconforming status of the lot.

Also with regard to the matter of hardship and the setback variance that is requested it is of crucial and controlling legal importance that the property is a corner lot bounded by Dunhill Drive and-South Pine Creek Road. Although Section 5.2.4 does make some allowance for the street line setback required for a primary structure on a corner lot it does

not make such provision for an unattached accessory structure. Indeed, both this section and Section 5.4.2.3 require a 30 ft. street line setback in the R-2 zone with regard to such a structure even if it is located on a corner lot. In the present instance, compliance with this street setback requirement as measured from Dunhill Drive would place the garage in the middle of the backyard which is not in character with the placement of such accessory structures throughout the neighborhood. In addition, compliance with this setback would place the garage in a location that will have greater impact on the adjacent neighbor and their home. The law is well settled that the basis for hardship for granting a street line setback variance is established when the property in question is a corner lot and therefore subject to the application of street setback requirements on two sides. This corner lot is so subject to the application of the street setback sits on two boundaries. Connecticut case law holds that hardship is established for purposes of granting the variance requested.

In summary, the construction of the proposed modest garage will be in keeping with the surrounding neighborhood and consistent with the Comprehensive Zoning Plan. Imposition upon the property of the presently imposed R-2 District coverage, floor area ratio and setback regulations which contemplate a significantly larger and uniformly shaped lot creates a legal hardship under Connecticut case law sufficient for the granting of the variances requested. In addition, with specific reference to the street setback variance, the fact that the property is a corner lot also satisfies the hardship requirement.

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

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

11. 320 Lockwood Road, Map 47, Parcel 4. Petition of Steven and Jennifer Ferentzy for a variance of the Zoning Regulations Section 5.2.4.3 to reduce the street line setback for an accessory structure From 40', Proposing 29.3'. Permission to locate a generator. Premises R-3 Zone

Jennifer Ferentzy, owner, presented the application for a variance of the Zoning Regulations. She wishes to install a generator on her property.

Her hardship is the extreme physical disability of Jennifer Ferentzy, one of the co-owners. She is quadriplegic and uses an electric wheelchair and many other appliances and devices that require power. Being without electricity is a treat to her health and well-being. Also, because of the shape and lot size, they are extremely restrictive of the where placement of the generator is concerned.

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

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

12. 1215 Post Road, Map 180, Parcel 14. Petition of Brick Walk Assoc. 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 4. Permission to establish an additional 135 sq ft. of seasonal outdoor dining. Premises CDBD.

Attorney John Fallon presented the application for a variance of the Zoning Regulations. In 2009 the Zoning Board of Appeals and Planning and Zoning Commission approved the establishment of Molto, a contemporary gathering place serving the finest in Italian and Continental wines, appetizers and entrees at the Brick Walk at 1215 Post Road. From the outset Molto has proven to be a most exciting and popular restaurant that emphasizes high quality casual dining in surroundings that have a special ambiance. Molto has been a primary contributor to the remarkable resurgence and vitality experienced in the Downtown Center District over the past few years.

In November of 2009 the Board approved a variance of Section 28.6.12 to allow the establishment of a small area for seasonal outdoor dining of 276 sq. ft. This area of outdoor dining has been most popular with the patrons of Molto and, as with the restaurant itself, has generated an ambiance and energy in our Downtown Center.

This application seeks approval of two (2) additional small areas totaling 135 sq. ft. to be utilized by Molto for seasonal outdoor dining in conjunction with the already existing area of 276 sq. ft. This application is motivated by the request of many patrons and the demand during these seasonal periods for additional outdoor dining which is a strong preference of Molto's customers. The additional outdoor dining area will of course be subject to the same conditions imposed with regard to such applications in the past by this Board and the Town Plan & Zoning Commission. As is the case with the existing outdoor area and in accordance with the provisions of the Liquor Control Commission of the State of Connecticut the area will be enclosed and attractively screened. Molto seeks permission to serve lunch and dinner in this additional outdoor area from April 15 to October 15.

As has been shown over the past three (3) years with regard to the seasonal outdoor dining area the parking needs of the restaurant will continue to be fully met by utilization of the abundant available parking of six hundred fifty-two (652) spaces at Patriot Plaza and the Brick Walk. This very small additional outdoor dining area is not intended to nor will it increase patron volume but will simply provide an additional area for a dining option for Molto's patrons who would be coming to the restaurant in any event but prefer outdoor dining when seasonally available. The fact that such outdoor dining when added as an option to an existing restaurant does not cause undue parking issues is well established by the historical experience of Molto and the other restaurants in town that operate lunch and evening seasonal outdoor dining under previous variances granted by this Board. Attached hereto is a list, which may not be wholly comprehensive, of restaurants that have in the past received the benefit of such variances to allow seasonal outdoor dining.

Over the past decade outdoor dining has been recognized by the Board and the Town Plan & Zoning Commission as an important seasonal amenity that brings vibrance and activity to our retail center and provides a desired convenience for patrons. This certainly has been true at Molto. The applicant is anxious to have this small additional area available for outdoor dining for its customers on a seasonal basis. The addition of this small area for seasonal outdoor dining at Molto will benefit the area, its merchants and residents as a whole by providing additional space for this popular dining option.

DENIED: Donald Caferro *moved* and Edward Cheffetz *seconded* to deny the proposed application. *Motion denied unanimously.*

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

13. 1326 Post Road, Map 180, Parcel 229. Petition of Betty R. Mercurio and ET AL for a variance of the Zoning Regulations Section 30.2 to reduce the distance between Cafes' From 1,500 feet, Proposing 523', 615', 1080', 1155', and 1450'. Permission to establish a Café Restaurant. Premises CDBD

Attorney James Walsh presented the application for a variance of the Zoning Regulations. The Applicant, Chelsea Pub, LLC, requests a variance of Section 30.2 of the Zoning Regulations as discussed hereinafter in order for permission to establish a restaurant, European style cafe serving the finest in appetizers and entrees, at a property located at 1326 Post Road, although the proposed restaurant will face Unquowa Place.

The Applicant is seeking a variance of Section 30.2 regarding Alcoholic Beverages: Location and Classification, commonly referred to as the "1,500 foot rule." The Applicant has entered into a lease with the property owners, Betty R. Mercurio and Betty R. Mercurio, Trustee of the Dominic C. Mercurio 1991 Revocable Trust, to establish said restaurant. The premises consist of two (2) buildings which contain a mixed use of retail, restaurant, business/professional offices and apartments.

The restaurant will be located in the building known as 12 Unquowa Place, in a location previously occupied by The Greenhouse Grill and The Fairfield Spot. The principals of the Applicant are Kevin McHugh, Scott Beck, Steve Calzone and Susan Calzone. These principals have been professional restaurateurs most of their adult lives. Mr. McHugh and Mr. Beck have successfully owned more than ten (10) restaurants in Connecticut, currently having ownership interests in The Gray Goose in Southport, Spotted Horse in Westport, The LOR in Norwalk and Match in Norwalk. These restaurants have all been Wildly successful and critically acclaimed. Mr. and Mrs. Calzone currently have ownership in Mesa restaurant in Fairfield.

The Applicant would like to bring their style, experience and hospitality to Fairfield, by investing in downtown Fairfield and continuing the revitalization of the downtown area. This proposed restaurant would provide the highest quality in casual dining in a stylish and warm environment. The proposed new restaurant will be serving small, handcrafted plates consisting of meats, poultry, fish and produce. This exciting proposed new restaurant will harmonize and compliment the Center Designed Business District and further energize the exciting and ongoing revitalization of the district.

The Applicant is seeking a variance of Section 30.2 of the Zoning Regulations. Section 30.2 as amended many years ago eliminated the historic "1500 foot rule" restriction for establishments operating as restaurants as the Zoning Regulations define the term. The amendment eliminated the restriction for facilities operating under a full service restaurant permit, restaurant service bar permit, restaurant permit for wine and beer only or a restaurant permit for beer only. The purpose of the amendment was to increase, especially in the Center Designed Business District, the opportunities for restaurants to be established and prosper. The elimination of the 1500 foot rule for restaurants has proven very successful and important to the revitalization, energization and enhancement of the Downtown Business District. Notwithstanding the previous amendment to the Regulations,

Section 30.2 retains the 1500 foot rule for premises operating under various other types of liquor permits issued by the Liquor Control Commission, including a cafe permit. The distinction between a "restaurant" and a "cafe" for purposes of liquor permits generally involves the fact that a restaurant must have an internal layout that segregates the dining area from the bar lounge area. The new internal layout required for this proposed restaurant, due to the constraints of the interior space, technically requires that it be categorized as a "cafe" although, as described above, it will clearly operate, as a practical matter, as a restaurant as defined under the Regulations where customers will be served when seated at tables and counters. Nonetheless, because for liquor control permitting it must be characterized as a cafe, a cafe permit is required. There are six (6) other establishments operating under cafe permits that are within 1500 feet of the proposed location for the proposed restaurant, one being approximately 523 feet (1460 Post Road, LLC - Previous Las Vegas Lounge), one being approximately 615 feet (Molto), one being approximately 880 feet (Osiana), one being approximately 1,080 feet (Wild Rice), one being approximately 1,155 feet (Quatro Pazi) and one being approximately 1,450 feet (Bodega) from the 1326 Post Road location.

It is the composition of the interior floor plan of the proposed restaurant due to the configuration of the space which requires, pursuant to the regulations of the Liquor Control Commission that an application for a cafe permits rather than a full service restaurant permit must be made. This distinction based solely on the floor plan and interior layout of the premises rather than the nature of its operation give rise to the need for this technical variance based upon the language and provisions currently applicable under Section 30.2 of the Zoning Regulations. From a legal perspective, this request meets the requirements established by Connecticut General Statutes 8-6(a) (3) in that, as will be discussed hereinafter, 1) the variance does not substantially effect the Comprehensive Zoning Plan and, 2) adherence to the strict letter of the Zoning Ordinance does cause unusual hardship unnecessary to the carrying out of the general purposes of the Comprehensive Zoning Plan. With regard to the first consideration, there will not be any substantial effect on the Comprehensive Zoning Plan in that the proposed restaurant will operate as a restaurant as is explicitly permitted pursuant to the provisions of Section 12.3.15 of the Zoning Regulations. If the use to be allowed by the variance is consistent with other uses in the area and/or is permitted by the Zoning Regulations then our Connecticut Courts have held that the first part of the test as above referenced has been met. *Eagan v. Zoning Board of Appeals of the Town of Old Lyme*, 20 Conn.App. 561 (1990). Indeed, and in the present case not only is the use permitted but the establishment of an additional restaurant use in the Center Designed Business District is most certainly consistent with surrounding uses in the zone and will benefit the downtown business district by providing another unique and vibrant dining option.

In the present case the configuration of the interior space to be leased and the constraints imposed thereby technically requires that due to the new floor plan for the restaurant it be characterized as a "cafe" rather than a "restaurant" for liquor control purposes. This fact gives rise to the need for the variance of Section 30.2 based upon its current provisions. Nonetheless, as a practical matter and for purposes of the Zoning Regulations and land use the operation meets the definition of a restaurant as set forth in the Zoning Regulations. Thus, it is the unique application of Section 30.2 of the Zoning Regulations to conditions arising from the configuration of the interior floor space that peculiarly impacts the applicant and prevents the Applicant from using the premises as the regulations otherwise

permit and intend unless the subject variance is granted. These factual circumstances satisfy the hardship requirement of the statute as interpreted by the case law above referenced.

The Applicants proposed new restaurant is an exciting, unique and upscale addition to our downtown business district and dining scene. It will provide Fairfield residents with another unique and 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 variance requested of Section 30.2 is very technical in nature and arises solely due to the proposed configuration of the interior leasehold space and the ability of the applicant to create a floor plan satisfying Department of Liquor Control definition requirements with regard to restaurants and cafes. The granting of the variance will have no negative impact whatsoever, in that the proposed restaurant will operate consistent with the permitted use of a restaurant in the Center Designed Business District.

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. For all the above referenced reasons, it is respectfully requested that the application be granted.

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

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

14. 1603 Post Road, Map 180, Parcel 78. Petition of S.P.J. LLC for a variance of the Zoning Regulations Section 30.2 to reduce the distance between Cafes' From 1,500', Proposing 10', 105', 420', and 703'. Permission to establish a Café Restaurant. Premises CDBD.

Attorney James Miller presented the application for a variance of the Zoning Regulations. The Applicant, Cafe 4 U LLC, requests a variance of Section 30.2 of the Zoning Regulations in order for permission to reconfigure an existing restaurant, a contemporary gathering place serving the finest in custom Italian appetizers and entrees, at a property located at 1603 Post Road. The Applicant is seeking one (1) variance: (1). a variance of Section 30.2 regarding Alcoholic Beverages: Location and Classification.

The Applicant has maintained a lease with the property owner, S.P.J. LLC, to operate the restaurant as described. The premises consist of a single building which contains restaurants and business/professional offices. The restaurant will be located in the west side on the first floor of the building, in a location it currently occupies, adjacent to the restaurant, Quatro Pazi. The principal of the Applicant is Madeline Migliorini.

Ms. Migliorini has been a professional chef restaurateur most of her adult life. Ms. Migliorini is a long-term resident of Fairfield and has owned or operated multiple restaurants in the Fairfield community. Her last two (2) restaurant involvements were Quatro Pazi and Quatro Cafe 4, both located in Fairfield. They were and are both wildly successful and critically acclaimed. Ms. Migliorini creates "signature restaurants," with each restaurant telling its own unique story through its menu. Through the food, decor, atmosphere and music, Ms. Migliorini's restaurants make the patrons feel as though they have traveled somewhere. It is this sense of hospitality that makes Ms. Migliorini's restaurants so community driven. The Applicant has brought hospitality to her hometown, investing in downtown Fairfield and continuing the revitalization of the downtown area through the innovation of "Cafe Madeline".

The Applicant is seeking a variance of Section 30.2. Section 30.2 as amended many years ago eliminated the historic "1500 foot rule" restriction for establishments operating as restaurants as the Zoning Regulations define the term. The amendment eliminated the restriction for facilities operating under a full service restaurant permit, restaurant service bar permit, restaurant permit for wine and beer only or a restaurant permit for beer only. The purpose of the amendment was to increase, especially in the Center Designed Business District, the opportunities for restaurants to be established and prosper. The elimination of the 1500 foot rule for restaurants has proven very successful and important to the revitalization, energization and enhancement of the Downtown Business District.

Notwithstanding the previous amendment to the Regulations, Section 30.2 retains the 1500 foot rule for premises operating under various other types of liquor permits issued by the Liquor Control Commission, including a "cafe permit". The distinction between a "restaurant" and a "cafe" for purposes of liquor permits generally involves the fact that a restaurant must have an internal layout that segregates the dining area from the bar lounge area. It is important to note that the applicant, Café 4 U LLC, d/b/a Café Madeline, is an existing establishment with a current liquor license as a restaurant. Café Madeline would like to reconfigure its floor plan, replacing several tables with a "dining counter/bar". Café Madeline has a well established clientele, many of whom enjoy an early evening small plate dish with a glass of wine, after work or after leaving the train, or a late evening dessert and coffee. By reconfiguring the restaurant to create an "eating counter/bar", Cafe Madeline will accommodate its customers by creating a friendly, hospitable area for camaraderie.

The proposed internal layout of this existing restaurant was mandated by the constraints of the interior space that technically requires that it be categorized as a "cafe" although it will clearly operate as a practical matter, as a restaurant as defined under the Regulations where customers will be served when seated at tables and counters. Even though it has an existing restaurant permit, because for liquor control permitting it must be characterized as a "cafe", a cafe permit is required. There are six (6) other establishments operating under café permits that are within 1500 feet of the proposed location for the proposed reconfiguration, one being approximately 105 feet (Wild Rice), one being approximately 10 feet (Quarto Pazi), one being approximately 825 feet (Osianna), one being approximately 420 feet (Bodega), one being approximately 960 feet (Kiraku) and the last being 703 feet (1460 Post Road, LLC - Previous Las Vetas Lounge Location) from the 1603 Post Road location. It is the composition of the interior floor plan of the reconfigured restaurant due to its shape and

space which requires, pursuant to the regulations of the Liquor Control Commission, that an application for a cafe permit rather than a full service restaurant permit must be made. This distinction based solely on the floor plan and interior layout of the premises rather than the nature of its operation gives rise to the need for this technical variance based upon the language and provisions currently applicable under Section 30.2 of the Zoning Regulations. This location has a liquor license as a restaurant but due to renovation and reconfiguration will need to apply for a "new" permit that will be a "cafe" permit.

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 circumstances or conditions beyond the control of the party involved.

In the present case the configuration of the interior space and the constraints imposed thereby technically requires that, due to the floor plan for the restaurant, it be characterized as a "cafe" rather than a "restaurant" for liquor control purposes. This fact gives rise to the need for the variance of Section 30.2 based upon its current provisions. As a practical matter and for purposes of the Zoning Regulations and land use the operation meets the definition of a restaurant as set forth in the Zoning ' Regulations. Thus, it is the unique application of Section 30.2 of the Zoning Regulations to conditions arising from the configuration of the interior floor space that peculiarly impacts the applicant and prevents the Applicant from using the premises as the regulations otherwise permit and intend unless the subject variance is granted. These factual circumstances satisfy the hardship requirement of the statute as interpreted by the case law above referenced. The fact that the premises are already possessive of a liquor license, but will require a new license as a cafe merely by installing an eating counter bar merely emphasizes the point.

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

GRANTED: Donald Caferro *moved* and Edward Cheffetz *seconded* to approve the proposed application. *Motion passed unanimously.*

15. 59 Sanford Street, Map 180, Parcel 257. Petition of Sanford KAP 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 35. Permission to expand and existing restaurant. Premises CDBD.

Attorney David Quatrella presented the application for a variance of the Zoning Regulations. He noted the applicant proposed to convert the existing residential apartment located on the second floor of the existing building into a restaurant use, to be used in connection with the first floor of the existing building presently being used for a restaurant use. The first and second floor will be used together in connection with the operation of one restaurant containing approximately 1,879 square feet of patron area.

The hardship is that the existing two story building is located upon an irregularly shaped and sized parcel which prevents the creation of additional off street parking spaces on site. The applicant does not intend to enlarge or expand the existing building located on the site.

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

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

There being no further business to come before the Commission, Kevin Coyne, adjourned the meeting at: 6:30 p.m.

Donald A. Cafero, Secretary

Josephine M. Keogh

KEVIN COYNE, CHAIRMAN

DONALD CAFERO, SECRETARY

JOSEPHINE M. KEOGH, CLERK