

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

The Zoning Board of Appeals Commission of the Town of Fairfield held the Zoning Board of Appeals Public Hearing Meeting on July 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, James Baldwin (arrived at 2:20) Daphne Dixon, Alternate, Margaret McKay, Alternate.

**ABSENT:** Donald Caferro

1. **Minutes of June 7, 2012:** James Hamilton *moved* and Duncan Keith *seconded* to approve the proposed minutes as submitted. *Motion passed unanimously.*
  
3. **Approval of Secretary's Fee:** James Hamilton *moved* and Daphne Dixon *seconded* to approve the proposed Secretary's Fee. *Motion passed unanimously.*

This portion of the Executive Session started at 1:56 and continued into Public Hearing.

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Daphne Dixon, Acting as Secretary

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Josephine M. Keogh

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**ABSENT:** Donald Cafero

**CONTINUED DOCKET**

**1. 48 Sanford Street**, Map 180, Parcel 242. Petition of 50 Sanford Road, LLC for a variance of the Zoning Regulations; Section 28.6.12 to reduce the minimum required total number of off street parking by six (6). **Permission to establish 240 square feet of seasonal outdoor dining. Premises: CDD**

Hal Fishel presented the application for a variance of the Zoning Regulations. He noted Archie Moore's Bar & Restaurant Proposed Seasonal Outdoor Seating Area Archie Moore's Bar & Restaurant has been a tenant in our Galleria Building at 48 Sanford Street for the past twenty (20) years. They are proposing to add a seasonal outdoor dining area in a section of the recently created Donnelly Way, an eighteen foot (18') walkway on our property adjacent to the building. The proposed seating area would measure approximately 22' - 6" x 10' - 0" in which there would be three (3) tables with a total of twelve (12) seats. On their behalf, we are seeking a parking variance of six (6) spaces. As the Galleria Building and Donnelly Way cover one hundred percent (100%) of the property and consequently there are no parking spaces on site, Archie Moore's, The Brasserie and associated Bubble Lounge (formerly St. Tropez restaurant and O Bar), and Cafe Lola have all been granted parking variances by the Zoning Board of Appeals in the past to allow their restaurant uses based on the overall availability of municipal parking in the downtown area. We believe this application's request is in keeping with these previously granted variances and with what other area restaurants with seasonal outdoor seating areas have been granted and that Fairfield Center will benefit through this seasonal addition by adding diversity and enhancing the evening vitality of the area.

Letters from Selectman Tetreau and Mark Barnhart with Economic and Development were presented for the record.

Duncan Keith recused himself from the proposed application. Margaret McKay sat in for Duncan Keith.

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

### **GENERAL DOCKET**

**1. 2150 Post Road**, Map 231, Parcel 380. Petition of Reservoir Associates, LLC for a variance of the Zoning Regulations; Section 31.2.16 to increase the maximum height of roof top equipment from 5 feet to 12 feet 4 inches and reduce minimum setback of two feet from all edges of the building for each foot or portion thereof that the equipment extends above the roof from 24 feet 8 inches to 8 feet 6 inches. **Permission to replace existing antenna and add three (3) new antennas. Premises: DCD**

Eric Dawn with Team Mobile presented the application for a variance of the Zoning Regulations. He is requesting a variance to replace the existing antennas and add three new antennas at the same height above the roof, and add two small equipment cabinets.

Margaret McKay sat in for James Baldwin.

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

**2. 297 Pine Creek Avenue**, Map 234, Parcel 258-A. Petition of Jeffrey and Robin Nye for a variance of the Zoning Regulation; Section 5.2.5 to increase the maximum lot coverage from 20%, currently 26.33%, proposing 21.55%. **Permission to construct an inground pool (20'x32'). Premises: BD**

Attorney John Fallon presented the application for a variance of the Zoning Regulations. The applicants, Jeffrey A. and Robin Nye, are the owners of property located at 297 Pine Creek Avenue and seek a variance of Section 11.10 in order to construct an inground pool on their property as shown on the plans submitted herewith. As part of the proposal, the overall nonconforming lot coverage on the property of 26.33% will be reduced to 21.55%. This will be accomplished by the removal of an existing deck, shed, exterior shower and existing patio as shown on the site plan submitted herewith. The elimination of these coverage features will reduce the existing lot coverage by almost 5%.

With regard to the matter of hardship, the Supreme Court case of Hyatt v. Zoning Board of Appeals of the Town of Norwalk, 163 Conn. 379 (1972) is controlling. In Hyatt, the State Supreme Court held that a goal of zoning is the elimination or reduction of nonconformities and that, therefore, when an application for variance involves a proposal that actually reduces an existing nonconformity this fact provides a proper basis for the Zoning Board of Appeals to grant the variance requested pursuant the provisions of C.G.S. Section 8-6. Such is the case with this application where the nonconforming coverage will be reduced on the property from 26.33% to 21.55% through the elimination of numerous structural elements.

For all of the above referenced reasons it is respectfully requested that the application for a variance be granted by this Board in accordance with this legal authority and the provisions of C.G.S. 8-6(a)(3).

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

Margaret McKay sat in for James Baldwin.

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

**3. 229 Eastlawn Street, Map 182, Parcel 387.** Petition of John Wetzel for a variance of the Zoning Regulations; Section 5.2.4 to reduce the minimum required sum of the side setbacks from the two side property lines from 20 feet, currently 16.2 feet, proposing 13.3 feet. **Permission to construct a two story addition. Premises: B Zone**

John Wetzel, owner, presented the application for a variance of the Zoning Regulations. He is requesting a variance to construct an 11'10" x 24' garage and a 16'x20' family room above by replacing the existing garage. He will also raise mechanicals, washer, and dryer from ground level in the breezeway to above flood level in the house. The existing garage is small and can not accommodate a car. In addition, the washing machine's water pipes have frozen and burst several times as it is located in the breezeway. The plan is to stay close to the existing footprint of the house with minimal increase to the lot coverage percentage.

**DENIED:** Daphne Dixon *moved* and James Hamilton *seconded* to approve the proposed application. *Motion denied 2-3. Duncan Keith, James Hamilton and Daphne Dixon were opposed.*

**4. 446 Sturges Road, Map 179, Parcel 308.** Petition of Frank and Kathy Marcinowski for a variance of the Zoning; Section 5.2.4 to reduce the minimum required street line setback from 30 feet, currently 14.2 feet, proposing 21.5 feet. and Section 5.2.5 to increase the maximum allowable lot coverage from 15%, currently 10.2%, proposing 16.9%. **Permission to construct a new 2 ½ story single family dwelling. Premises: R-2**

Attorney John Fallon presented the application for a variance of the Zoning Regulations. Frank and Kathy Marcinowski are the owners of property located at 446 Sturges Road. The property has been owned for many decades by the Marcinowski family. They make this application for permission to demolish the existing structure on the property and to construct a new single family residence.

The property is located in Residence District R-2. It is a preexisting and legally protected nonconforming lot as to both lot area and shape. Present provisions of the Regulations establish the minimum lot area in the zone as 14,000 sq. ft. and the Marcinowski's lot contains only 9,380 sq. ft. Similarly, the minimum square requirement presently in effect requires a square of 80 feet and the subject property has a square of only 67 feet. The lot is oddly shaped and triangular in its dimensions. Finally, the lot is a corner lot being bounded by Sturges Road to the south and Unquowa Road to the west.

In order to facilitate the proposed new construction the Marcinowski's seek a variance of Section 5.2.4 to reduce the required street line setback on a corner lot from 30 ft. to 21.5'. It should be noted that the existing structure is more nonconforming, being 14.2' from the

street line. Pursuant to the provisions of Section 5.2.4, the 22 foot setback from one property line will be accommodated from Sturges Road. The existing structure is currently nonconforming to that setback requirement being 9.7' from Sturges Road.

In addition, a variance of Section 5.2.5 to increase the allowable lot coverage to 16.9% is requested. The proposed new single family home will conform in all other respects with the applicable provisions of the Zoning Regulations including that pertaining to total floor area. Total floor area for the new dwelling will be 29.7% notwithstanding the significant nonconformity in lot area. In order for the Zoning Board of Appeals to grant a variance pursuant to the provisions of Connecticut General Statutes 8-6 (a) (3), two conditions must be met:

With regard to the hardship requirement there are three (3) factors which as a matter of law support a finding of hardship with regard to this property and the variances requested. The Connecticut Supreme Court has recognized that the unique configuration of a lot provides a proper basis for a finding of hardship for purposes of granting a variance. *Stillman v. Zoning Board of Appeals*, 25 Conn. App. 63 1 (1 991), cert. denied 220 Conn. 923.

This lot qualifies for such hardship consideration based upon its shape which is triangular in nature thus directly effecting compliance with the street setback requirements. Secondly, the lot is a comer lot bounded by Sturges Road to the south and Unquowa Road to the west. Connecticut case law is well settled that a basis of hardship for granting a street line setback variance is established when the property in question is a comer lot and therefore subject to the application of a street setback requirement on two sides. This comer lot is so subject to the application of street setback regulation on two boundaries. Connecticut case law holds that hardship is established for purposes of granting the variance requested with regard to the street setback based upon this fact. *Archambault v. Wadlow*, 25 Conn.App. 375 (1 991).

With regard to the matter of hardship as it relates to the request for the coverage variance the controlling legal fact is that the lot in question is a valid and legally protected nonconforming lot as it relates to the lot area requirements. The present requirements within the R-2 Zone establish a contemplated minimum lot requirement of 14,000 sq. ft. This lot, established for residential purposes before the imposition of the R-2 Zoning Regulations, has only 9,383 sq. ft.

Legal hardship is established based upon the analysis referenced above pertaining to the standards established by Connecticut General Statutes 8-6 due to the unique characteristics arising from the triangular shape of the lot, the fact that it is a comer lot and also a legally protected preexisting nonconforming lot as it relates to current lot area requirements. All other aspects of the new home will be in compliance with the applicable provisions of the Zoning Regulations including the regulation pertaining to maximum building floor area.

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

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

**5. 796 Riverside Drive**, Map 139, Parcel 292. Petition of Timothy and Alissa Schwartz for a variance of the Zoning Regulations; Section 5.2.4 to reduce the minimum required side line setback and sum of side line setbacks from 7 feet and 25 feet, currently 7 feet and 14.6 feet, proposing 6.9 feet and 14.4 feet, and Section 5.2.5 to increase the maximum allowable lot coverage from 20%, currently 22.7%, proposing 23.4%.

**Permission to construct a 2<sup>nd</sup> floor addition. Premises: A Zone**

Timothy and Alissa Schwartz presented the application for a variance of the Zoning Regulations. We wish to construct a one story second floor addition over the rear portion of the existing first floor adding a new master bedroom and hall bathroom as well as creating a covered back entryway.

The hardship is a preexisting nonconforming lot. The minimum required lot size in A zone is 9,375 square feet and the lot is 4,539 square feet. They are requesting a variance for an additional 0.7% lot coverage from 22.7% to 23.4%. The minimum side yard setbacks and sum of side yard setbacks in A zone is 7 feet and 25 feet, respectively. They are requesting a variance to reduce our side year setbacks and sum of side yard setbacks, currently 7.0 feet and 14.6 feet, to 6.9 feet and 14.4 feet.

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

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

**6. 945 Round Hill Road**, Map 143 Parcel 182. Petition of Thomas Grega for a variance of the Zoning Regulations; Section 5.2.4 to reduce the minimum required street line setback from 50 feet, proposing 20 feet; and Section 5.2.5 to increase the maximum allowable lot coverage from 10%, proposing 14%. **Permission to construct a new 2 ½ story single family dwelling. Premises: AA Zone**

Attorney Peter Ambrose presented the application for a variance of the Zoning Regulations. The lot is presently vacant and so has no street number. The applicant makes this application for permission to construct a single family, two-story frame residence.

The property is located in a Residence District AA. It is a preexisting and legally protected nonconforming lot as to both lot area and shape. As the Board is aware, the present provisions of the Regulations establish that minimum lot area in the zone is one (1) acre, but the Applicant's lot is significantly nonconforming in its preexisting protected state containing 24,635 sf. or 0.565 acres. The lot is oddly shaped with two corners having acute angles and what would have been another corner being occupied by a right of way or turnaround. In order to accommodate the proposed construction of the home in keeping with, but smaller in size than surrounding homes, the variances are required due to the nonconforming status of the lot with regard to its area and shape.

With regard to the matter of hardship, there are two (2) factors which, as a matter of law support the finding of hardship with regard to this property and the subject application. The Connecticut Supreme Court has recognized that the unique shape of a lot and its configuration provides a basis for a finding of hardship for purposes of granting variances related to setbacks. *Stillman v. Zoning Board of Appeals*, 25 Conn. App. 31 (199 I), cert.

denied 220 Corn. 923. This lot qualifies for such hardship consideration based upon its shape. Another legally recognized basis for the granting of a variance results from the fact that the lot is a legally protected nonconforming lot as it relates to both its area and shape.

As previously indicated, the present requirements within a AA Zone establish a minimum lot area of 1 acre. This lot, established for residential purposes before the zoning regulations were imposed, has only 0.565 acres. Pursuant to the provisions of Connecticut General Statutes 8-2, the lot is a valid and legally protected preexisting and nonconforming lot. Nevertheless, the setback requirements as well as the coverage requirement must be calculated based upon the assumption of a lot almost twice the size of the existing lot. It has been previously held by our Supreme Court that where a property is a valid nonconforming lot with regard to lot area and shape sufficient hardship to support the granting of the variance with regard to coverage and setbacks is established as the existing regulations regarding 'this topic peculiarly affects the property and is legally protected nonconforming status is an adverse matter.

The modest home could easily and legally be accommodated but for the preexisting nonconforming status of this undersized and irregularly shaped lot. This results in unusual hardship forming a proper basis for approval of the variances requested in accordance with previous case law established by our Courts. *Scobie v. Idarola*, 15 5 Corn. 222 (1 967); *Kelly v. Zoning Board of Appeals of the Town of Hamden*, 21 Corn. App. 594 (1990).

The plan allows for two matters which will allow the placement of the home to be in harmony with the surrounding homes. First, the plan provides for the house to be oriented towards Round Hill Road. A plan which adheres to a 50' setback from the right-of-way would require the house to be oriented with the house facing the right-of-way. A side of the house would be facing Round Hill Road and the rear of the house would be facing the property at 941 Round Hill Road. Essentially, this would mean that the proposed home would have no back yard. The home at 941 Round Hill Road would have the back of the house facing it close by. Persons viewing the property from Round Hill Road would see the side of the house rather than the front of the house. Also, the new house would be located close to the south side of the property rather than centered on the lot, which would aesthetically be more pleasing and harmonious with the neighboring homes than a plan that would technically meet the zoning requirements.

The Board should note from the site plan that, at the present time, there is an encroachment pertaining to a driveway, presently used by the applicant, Thomas Grega and his wife for their property at 941 Round Hill Road. The Gregas will remove said encroachment from said property.

In summary, the new home proposed by Mr. Grega will be in keeping with the surrounding neighborhood and consistent with the Comprehensive Zoning Plan. The imposition on the property of the presently existing coverage and setback regulations which contemplate a significantly larger and uniformly shaped lot creates legal hardship under Connecticut law sufficient for the granting of the variances requested.

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

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

**7. 1482 Bronson Road, Map 176 Parcel 13.** Petition of Max Bender for a variance of the Zoning Regulations; Section 5.2.4.3 to reduce the side setback for an accessory structure greater than 100 square feet from 25 feet, currently 5.1 feet, proposing 5.1 feet; and Section 5.2.5 to increase the maximum allowable lot coverage from 10%, currently 14.59%, proposing 14.59%. **Permission to rebuild an existing 2 story, 2 car detached garage. Premises: AA Zone**

Max Bender, owner, presented the application for a variance of the Zoning Regulations. He wishes to rebuild an existing 19' x 30' garage on the existing slab. The said lot is an undersized non-conforming lot. Due to excessive damage and structural compromise none of the existing structure was able to be saved. He started to rebuild the garage and was then informed by the building department and zoning department that he would need a variance to rebuild the existing structure on the existing slab.

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

**8. 537 Cedar Road, Map 226, Parcel 40.** Petition of Dmitri and Vera Efimor for a variance of the Zoning Regulations; Section 5.2.4.3 to increase the height of a fence within the accessory structure street line and side line setbacks from 50 feet and 10 feet, proposing 16 feet and 0 feet. **Permission to install an eight (8) foot high fence on the driveway side of the property. Premises: AA Zone**

Dmitri Efimor, owner, presented the application for a variance of the Zoning Regulations. He wishes to put up a 9' fence on one side of our property. It will be placed on the western side of the property. It will stop short one section of the fencing at the road/start of driveway to assure good traffic observation from the west. The 9' fence is required to block the line of vision to and from the house.

Mr. Efimor noted the main and only grounds of this appeal are the safety and welfare of his family. His primary concern is for the safety and welfare of the children 11 and 15 yrs. old.

The height of the privacy fence is proposed to be 9' or min 8' on the west side of the property. This is due to the line of vision from the neighbors' windows to the vehicles and persons moving up and down their driveway. We require privacy from the neighbors to the west and have decided to block his view of our vehicles on our driveway. We feel extremely uncomfortable if the neighbors know when and which cars of ours left or entered our own property. This is due to the neighbors' previous erratic and aggressive behavior which resulted in summons of the police patrol. Due to the terrain and elevations of the driveway and the height of the vehicle.

**DENIED:** Daphne Dixon *moved* and James Baldwin *seconded* to approve the proposed application. *Motion denied 4-1. Kevin Coyne, Duncan Keith, James Hamilton, and James Baldwin were opposed.*

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

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Daphne Dixon, Acting as Secretary

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Josephine M. Keogh

**KEVIN COYNE, CHAIRMAN**

**DAPHNE DIXON, ACTING AS SECRETARY**

**JOSEPHINE M. KEOGH, CLERK**