ZONING BOARD OF APPEALS
EXECUTIVE SESSION OF MARCH 1, 2012

The Zoning Board of Appeals Commission of the Town of Fairfield held the Zoning Board of Appeals Public Hearing Meeting on March 1, 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, Margaret McKay, Alternate.

1. **Minutes of February 2, 2012:** James Hamilton *moved* and Duncan Keith *seconded* to approve the proposed minutes as submitted. *Motion passed unanimously*

2. **Approval of Secretary's Fee:** James Hamilton *moved* and Duncan Keith**,** *seconded* to approve the proposed Secretary's Fee. *Motion passed unanimously*

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, Margaret McKay, Alternate.

GENERAL DOCKET

1. 316 Pine Creek Avenue, Map 234, Parcel 246. Petition of Steven and Tracy Cahillane for a variance of the Zoning Regulations; Section 11.14 to reduce the setback from Pine Creek from 123.62 feet, proposing 112.8 feet. **Permission to construct an extension to an existing deck. Premises: BD Zone**

Christine Lavigna, agent, presented the application for a variance of the Zoning Regulations. They wish to construct an extension to their existing wood deck.

He noted the setbacks from Pine Creek creates a peculiar disadvantage because the majority of homes fronting Pine Creek and the sound are much closer to the water. The restrictive regulation causes a hardship to this parcel preventing its full use and enjoyment contrary to what adjacent parcels have been allowed to do.

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

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

2. 201 Grandview Road, Map 47, Parcel 210. Petition of Charles and Tania Thomas for a variance of the Zoning Regulations; Section 5.2.5 to increase the maximum lot coverage from 15%, currently 16.52%, proposing 17.5%. **Permission to remove an existing deck and build a new one story addition with new landing and stairs. Premises: R-3 Zone**

Charles Thomas, owner, presented the application for a variance of the Zoning Regulations. He wishes to remove an existing deck and build a new one story addition with new landing and stairs.

He noted due to declining health and age related issues, their in-laws have moved in with them. Also, after loosing his father in January, they want to provide the security his mother and handicapped sister. Due to this family consolidation and an already approved variance in 2011, it will make a more comfortable and open living environment.

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The property is nonconforming. Also, there have been two other variances granted in this area in the past five years that were under similar hardship.

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

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

3. 575 Harbor Road, Map 241, Parcel 6. Petition of David Rosow for a variance of the Zoning Regulations; Section 5.2.4.3 to reduce the street line setback for an accessory structure from 40 feet, proposing 18.5 feet. **Permission to install a generator. Premises: R-3 Zone**

David Rosow, owner, presented the application for a variance of the Zoning Regulations. He wishes to install a generator. The property is a narrow waterfront lot with extreme topography. The proposed generator is convenient to electric and gas utilities above flood level and sited within an existing retaining wall. Also, it is also located in the Southport Historic District.

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.*

4. 105 Meeting House Lane, Map 171, Parcel 32. Petition of Thomas and Taylor Purdy for a variance of the Zoning Regulations; Section 5.1.1 to relocate an existing nonconforming second dwelling unit on a lot. **Permission to construct an addition. Premises: AAA Zone**

Attorney John Fallon presented the application for a variance of the Zoning Regulations. Attorney Fallon noted Mr. & Mrs. Purdy are the owners of the property located at 105 Meeting House Lane. The property for many decades has included a two story single family residence and an accessory structure that has been used as a garage and the location of a preexisting inlaw apartment which is located on portions of both the first and second floor. The in-law apartment was approved under a variance granted by the Zoning Board of Appeals on December 11, 1983 and consists of approximately 975 sq. ft. (498 sq. ft. on the first floor and 477 sq. ft. on the second). Mr. & Mrs. Purdy seek approval to renovate this existing structure and add a small addition. As part of this renovation and addition the in-law apartment would be relocated entirely on the first floor and would be reduced in size to 927 sq. ft. Also as part of the contemplated work an existing frame shed which is presently nonconforming to the side yard setback on the westerly boundary would be relocated to a conforming location. The in-law apartment is occupied by Mr. Purdy's mother. Consolidating this living area on the first floor only will have significant benefit now and in the future and be of great convenience to her by eliminating the living area on the second floor.

Attorney Fallon also noted the Board previously found sufficient hardship in 1983 in approving the addition to the existing in-law apartment. The renovation and addition will not enlarge the in-law apartment and a variance is not required on that basis.

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The sole reason that the variance as requested of Section 5.1.1 is deemed to be required at this time is due to the fact that a portion of the second dwelling will be now located in an area of the new addition which will be otherwise conforming to all applicable requirements of .the Zoning Regulations. The technical application of the zoning regulations would negate the legally protected status of the property with regard to its use for a second dwelling as established by the Zoning Board of Appeals variance in 1983 solely due to the fact that a portion of the second dwelling will now be located in ail area of new construction. This is a unique situation impacting the property and its statutorily protected status with regard to use for two (2) dwelling units as certified by the Zoning Board of Appeals in 1983. Courts have repeatedly recognized that where the effect of applying a technical regulation to a situation and property is so severe as to amount to a practical confiscation or loss of a legally protected status that this is sufficient hardship to allow the Zoning Board of Appeals to grant the variance requested.

The granting of this application is consistent with the previous decision of the Board in 1983, statutory authority and case law. The granting of the variance as requested will not result in any change of use of the property from that which has been established for many decades nor will it result in any intensity of the residential use of the property in general or the in-law apartment in particular. The consolidation of the second dwelling as approved on one level will be of significant benefit and convenience to its occupant, Mr. Purdy's mother.

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

5. 67 Pepperidge Circle, Map 125, Parcel 243-J. Petition of Brian and Eileen Ainsworth 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 line from 25 feet, currently 23.7 feet, proposing 21.5 feet. **Permission to construct a second floor addition.**
Premises: A Zone

Joseph Hanecak, agent, presented the application for a variance of the Zoning Regulations. He wishes to construct a second floor addition over the existing garage. The hardship is due to the irregular shaped lot, the required lot width does not exist.

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.*

6. 935 Harbor Road, Map 241, Parcel 18. Petition of JCU LLC for a variance of the Zoning Regulations; Section 5.2.4 to reduce the street line setback from40 feet, currently 37.7 feet, proposing 37.7 feet, and from 40 feet, currently 30.1 feet, proposing 36.7 feet, and 40, currently 37.7 feet, proposing 37.7, and Section 5.2.4.3 to reduce the street line setback for an accessory structure from 40 feet, currently 26.5 feet, proposing 37.3 feet.
Permission to construct (3) additions and to raise the existing structure one foot.
Premises: R-3 Zone

Attorney John Fallon presented the application for a variance of the Zoning Regulations. The applicant, JCU, LLC, is the owner of the subject property located at 935 Harbor Road. The members of JCU, LLC are Alex and Judy Urquhart, long time residents of the Town of Fairfield. Mr. & Mrs. Urquhart purchased the property in July of 2010. Their initial intention was to demolish the existing structure which for many decades has been nonconforming to the current street setback requirements. Subsequently, an application to the Historic District Commission of the Town of Fairfield for a Certificate of appropriateness in order to demolish the existing structure and build a new structure in its place was denied with the Historic District Commission articulating its position that the existing structure had historic significance, contributed to the character of the Southport Historic District and should be preserved. In accordance with this input from the Historic District Commission and in a constructive response thereto Mr. & Mrs. Urquhart commissioned Mark Finlay to design a plan that would preserve and restore the existing structure and at the same time provide additional space for the Urquharts and their family.

The existing structure will be maintained in its present location. Other than the variances with regard to the street setback as set forth in Schedule A the proposal conforms in all respects with all applicable provisions of the Zoning Regulations including those pertaining to lot coverage and building floor area. As shown on the Site Plan the property also lies within the FEMA flood zone and the renovation and additions will also provide for the structure to be raised by 1 ft. to provide additional flood protection consistent with current FEMA guidelines.

Attorney Fallon noted there are numerous factors which satisfy the hardship requirement with regard to the present application. It has long been held by our Connecticut Courts that either the irregular shape of a lot and/or the historic location of a preexisting nonconforming structure on a lot creates a proper basis for a find of hardship. It is the fact of the historic nonconforming location of the existing structure that causes the need for the variances requested with regard to the street setback. This fact satisfies the hardship requirement as referenced in the case law. In that regard it should be noted that the proposal for the renovation and additions will not intensify the existing nonconformities with regard to the street setback but are technically required in order for approval of the contemplated work based upon the current location of the structure. It is solely the historic location of this existing nonconforming dwelling that creates the need for the technical variances that are requested. In addition, the action of the Historic District Commission in determining the existing structure to be of historical significance and not legally to be subject to demolition is another unique factor creating hardship especially in light of the fact that the structure deemed entitled to protection is already nonconforming to the street setback.

The applicant seeks approval of these technical variances required due to the current nonconforming location of the existing structure in order to move forward with the plan for renovation and additions to the dwelling. This plan will preserve the existing structure deemed of historic significance by the Historic District Commission and will improve the flood protection of the property in accordance with FEMA guidelines while providing additional and much need space to the Urquhart family. The proposal will not intensify any existing nonconformities and will be otherwise compliant with all applicable provisions of the Regulations. The application meets the standards for approval as set forth in Connecticut General Statutes 8-6(a)(3) in that it will not substantially effect the

Comprehensive Zoning Plan and is supported by facts with regard to the property and the current location of the structure that established a proper basis for a finding of legal hardship under the case law.

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.*

7. 2940 Redding Road, Map 167, Parcel 17A. Petition of James Taylor for a variance of the Zoning Regulations; Section 5.2.4 to reduce the minimum required street line setback from 60 feet, currently 37.3 feet, proposing 37.3 feet. **Permission to construct a roof over an existing stoop. Premises: AAA Zone**

Mrs. Taylor, owner, presented the application for a variance of the Zoning Regulations. She noted they wish to construct a roof over the back door. Their hardship is due to the entire house being within the front setback.

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.*

8. 721 Kings Highway, Map 79, Parcel 76. Petition of Anthony Riskalla for a variance of the Zoning Regulations; Section 28.6.8 (a) to reduce the minimum required total number of off street parking spaces from 14 to 11. **Permission to convert service bays to a convenience store. Premises: DCD**

Attorney Kevin Gumper presented the application for a variance of the Zoning Regulations. He noted the owner wishes to convert service bays to a convenience store. Jan Risk Capital LLC intends to lease the site from Greenvalley Oil LLC. The property currently houses a vacant eight pump gas station with three auto repair bays. It is Jan Risk Capital's intent to convert all three auto repair bays into a convenience store and re-open the location as a gas station and convenience store. .Parcel 76 on map 79 had been operated as a gas station and auto repair facility in 2010 and 2011. It is the applicants understanding that according to zoning section 28.6.G.8, such a site would require ten conforming parking spaces. With a the applicant's intent to convert the site to a gas station and convenience store, the parking space requirement increases to 14 according to zoning sections 28.6.5 and 28.6.8

The applicants are planning to add three new parking spaces and believe the site can only support eleven conforming parking spaces. This is primarily due to pre-existing structures in the form of pumping stations and a repair facility. If the site were to continue operating as a gas station and repair facility, only six of the previously approved. ten parking spaces would comply with current zoning requirements while the applicant's are requesting a variance of three parking spaces, granting this request will actually bring the site more closely into compliance with current regulations.

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

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

CONDITION: Conditioned upon employee use only for parking space identified as 12, 13, 14, 50, on map submitted with application.

9. 1460-1462 Post Road, Map 180, Parcel 246. Petition of 1460 Post Road, LLC for a variance of the Zoning Regulations, Section 12.7.6.1. to reduce the street line setback from 10 feet, currently 0 feet, proposing 0 feet, and Section 12.7.6.3 to reduce the rear setback from 10 feet, currently 0.2 feet, proposing 0.2 feet. **Permission to construct a second floor addition for restaurant office and storage space. Premises: CDBD**

Attorney James Walsh presented the application for a variance of the Zoning Regulations. The Applicant, 1460 Post Road, LLC, requests a variance of Section 12.7.6.1 and Section 12.7.6.3 of the Zoning Regulation in order for permission to establish a restaurant at its property located at 1460-1462 Post Road. The Applicant is seeking two (2) minor variances.

The Applicant is seeking these variances after having just been before this Board last month seeking a series of variances. The Applicant heard some of the Board members' opposition to the prior application's request for a parking variance in order to construct an outdoor seasonal garden terrace. For this reason, the Applicant substantially changed its current Application in order to seek immediate approval for the variances requested in this Application. The Applicant is no longer seeking the parking variance for the outdoor seasonal garden terrace.

The Applicant's building is unique in that it is a small single story brick building on a comer 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 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.

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; and; 2. the lack of an office. 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 basement storage. Further, the Applicant has now designed plans and is prepared to build at its expense if approved a partial second story to its building so that it can add the office and more storage space that so many restaurateurs need.

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

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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 beautiful boutique restaurant in the heart of the Center.

The Applicant has entered into negotiations with numerous experienced restaurateurs. Despite their desire to invest in Fairfield Center, a repeated request from all restaurateurs that look at the space is that the Applicant find more room for an office and more storage. In order to find this room and to improve the street scape of the building, the Applicant has sought the approval of these requested variances. All love the location, but the space limitations and the, lack of an office for all of the needed computer equipment make it difficult to successlly operate a restaurant in the limited space.

With respect to the variance sought pursuant to Section 12.7.6.1, the Applicant would like to add a partial second floor to the building in order to accommodate the office and additional storage. The purpose of this second floor expansion is to construct the office and storage area for the restaurant and two (2) sets of interior stairs for ingress and egress to the second floor. 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 in order to build an office/storage area 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, not the rear one, on the property and not coming close to the rear line setback. Nonetheless, because the addition would expand the legally non-conforming situation that currently exists; this variance must be sought and approved.

The Applicant's proposed new plan for a restaurant with a second story office and storage area 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 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

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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.

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

There being no further business to come before the Commission, Kevin Coyne, adjourned the meeting at: 5:04 p.m.

Donald A. Cafero, Secretary	Josephine M. Keogh

KEVIN COYNE, CHAIRMAN

DONALD CAFERO, SECRETARY

JOSEPHINE M. KEOGH, CLERK

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