

“DRAFT”
ZONING BOARD OF APPEALS
EXECUTIVE SESSION OF MARCH 7, 2013

The Zoning Board of Appeals Commission of the Town of Fairfield held the Zoning Board of Appeals Public Hearing Meeting on March 7, 2013 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: James Hamilton, Acting Chairman, Donald Cafero, Duncan Keith, James Baldwin, Daphne Dixon, Alternate and Mary McKay, Alternate

ABSENT: Kevin Coyne

1. Minutes of February 7, 2013: Duncan Keith moved and Daphne Dixon seconded to approve the proposed minutes as submitted. Motion passed unanimously.

2. Approval of Secretary’s Fee: Duncan Keith moved and Donald Cafero seconded to approve the proposed Secretary’s Fee. Motion passed unanimously.

This portion of the Executive Session adjourned at 2:55 p.m.

Donald Cafero, Secretary

Josephine M. Keogh, Clerk

**ZONING BORD OF APPEALS
MINUTES OF MARCH 7, 2013**

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PRESENT: James Hamilton, Acting Chairman, Donald Cafero, Duncan Keith, James Baldwin, Daphne Dixon, Alternate and Mary McKay, Alternate

ABSENT: Kevin Coyne

CONTINUED DOCKET:

3. 2428 Easton Turnpike, Map 24, Parcel 2. Petition of Cambridge Manor Realty, LLC for a variance of the Zoning Regulations; Section 5.2.5 to increase the maximum lot coverage from 15%, currently 15.13%, proposing 15.45% and to increase the maximum total floor area from 30%, currently 30.42%, proposing 30.74%. Permission to construct a ten (10) bedroom addition. Premises: R-3 Zone

Attorney John Fallon presented the application for a variance of the Zoning Regulations. He noted Cambridge is recognized as a leader in skilled nursing health and rehabilitation services with a goal of providing patients and their families the highest quality of health care. This has been the hallmark of its operation at the Cambridge Health and Rehabilitation Center. At a time when the shortage of skilled licensed nursing home beds is so critical in our area, Cambridge Manor has worked diligently to make a positive contribution to our community and the neighborhood.

In March of 1992 the predecessor of Cambridge, Fairfield 1 – Oxford Limited Partnership was granted variances of Section 5.2.5 of the Zoning Regulations to increase the allowable lot coverage from 15% to 15.1% and total floor area from 30% to 30.2% in order to construct a ten (10) bed addition to the nursing home facility.

In an effort to maintain the highest level of facilities and service Cambridge plans to undertake a renovation project that will substantially involve only the existing interior space. The plans include provision to construct nine (9) new residence rooms within the existing building in order to create additional single residence rooms with ADA compliant bathrooms. This will provide the opportunity to offer more single bed rooms which are in high demand but will not increase the existing bed count which will remain at one hundred sixty (160). It is also planned to renovate all of the existing rooms with new finishes including flooring, paint, wallpaper and fabrics. Cambridge will also undertake an upgrade of wall finishes in the hallways and common areas and redesign of the entrance to the building with new automatic entrance doors and finishes. Finally, the plans call for the construction of a very small one (1) story addition wherein one (1) new two (2) bedroom

residential room of 353 sq. ft. will be located. This component is the only addition to the footprint of the building associated with the renovation plan and it is this small addition that requires the modest variances that are requested with regard to coverage and floor area ratio.

In the present case there will be no change in the use of the property as a skilled nursing facility as has been the case for almost three decades. The total number of beds will not be increased and the small addition is a part of an overall renovation project designed to insure that the highest level of facilities and service are maintained at Cambridge Manor.

With regard to the hardship requirement it has long been held by our courts that the existing location of a structure, especially if the structure is already nonconforming to the zoning requirements, creates a proper basis for a finding of hardship.

The existing building received the benefit of the variances approved in 1992 establishing an allowable coverage of 15.1% and an FAR of 30.2%. The increases requested in coverage and FAR due to the proposed modest addition are very small and will increase coverage to 15.45% and FAR to 30.74% and are occasioned by the enclosure of the small area of the existing building.

In summary, Cambridge seeks approval for these technical variances as the first step to the process (which will also include Planning & Zoning Commission review) to obtain the necessary approvals to implement the contemplated renovation project which will result in very beneficial upgrading of the existing facilities benefiting the interest of our patients and their families.

Duncan Keith recused himself from the proposed application. Daphne Dixon sat in for Mr. Keith.

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

GENERAL DOCKET:

1. 21 Rhoda Avenue, Map 138, Parcel 83. Petition of James Pat and Julie Anderson for a variance of the Zoning Regulations; Section 5.2.4.2 to reduce the street line setback for an unenclosed porch stairs from 20 feet, proposing 15.8 feet. Permission to construct a new two and a half story single family dwelling. Premises: A Zone

Pat Anderson, owner, presented the application for a variance of the Zoning Regulations. He wishes to construct a new single family home after Hurricane Sandy significantly damaged his home. The home will consist of 4 bedrooms, 3.5 baths, kitchen, family, room, dining room, home office, with a rear deck and a covered front porch. They will be raising the finished first floor to an elevation of 14.6. The current 100 year flood elevation for home is 10 and will be going to 11 based on NAVD 88 data. The new residence will require 14 steps to gain access. Due to the FEMA and Town of Fairfield regulations they will be required to raise the new home above the flood elevation of 11. Their intentions are to raise the finished first floor to an elevation of 14.6 to allow for mechanicals under as well as an additional buffer above the flood elevation.. They are asking for relief of Section 5.2.4 Z of

5 additional feet for the front stairs to extend a total of 15' into the front yard setback Section 5.2.4.2. Allows for 10' the existing structure is currently non-conforming on both the level and right side yard requirements. The proposed will bring the home into conformity with all zoning regulations with the exception of the front stairs. In order to access the new home at elevation 14.6 it will require 14 steps for entry. There is currently an in-ground pool in the back yard, which they want to preserve; therefore they are located the new home accordingly to allow for access to our pool without the impact of re-building it due to the new elevation of the home.

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

2. 340 Long Meadow Road, Map 165 parcel 23H. Petition of Patricia Jonker for a variance of the Zoning Regulations; Section 5.2.4.3 to reduce the rear setback for an accessory structure from 50 feet, proposing 42 feet. Permission to construct an in-ground swimming pool. Premises: AAA Zone

John Barricelli, agent, presented the application for a variance of the Zoning Regulations. The applicants wish to install an in-ground pool, approximately 20 x 40 or 800 square feet. They currently have all setbacks, except from rear property line. The natural stone wall that is 15 feet beyond the property line acts as a boundary. They cannot move the pool closer to the house because of a septic field and septic reserve.

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

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

3. 846 Jennings Road, Map 126, Parcel 272. Petition of George and Kathryn Louloudis for a variance of the Zoning Regulations; Section 5.2.4.3 to reduce the sideyard setback for an accessory structure from 10 feet, currently 3.5 feet, proposing 3.5 feet. Permission to construct a second floor over existing garage. Premises: A Zone

George Louloudis, owner, presented the application for a variance of the Zoning Regulations. They wish to enlarge existing garage with a second floor above same. This appeal for a variance is sought to alleviate the hard ship on the land by virtue of the topography and lot situation and design. There is a drop off in the middle of the property of about five feet which runs across the entire width of the lot.

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.*

4. 345 Governors Lane, Map 225, Parcel 13. Petition of Craig Dean for a variance of the Zoning Regulations; Section 5.2.4.3 to reduce the street line setback for an accessory structure from 60 feet, proposing 33.5 feet. Permission to construct twenty-three foot high pole lights. Premises: AAA Zone

The proposed application was continued to 4-4-13

5. 207 Main Street, Map 241, Parcel 48. Petition of 207 Main Street, LLC for a variance of the Zoning Regulations; Section 5.2.5 to increase the maximum lot coverage from 15%, currently 24.4%, proposing 26.6%, and to increase the maximum total floor area from 30%, currently 35.7%, proposing 36%, and Section 5.2.4 to reduce the sideyard setback from 15 feet, currently 8 feet, proposing 7.7, and Section 5.2.4.3 to reduce the sideyard setback for an accessory structure from 10 feet, proposing 3.5 feet. Permission to legitimize a previously approved variance and to install a generator. Premises: R-3 Zone

Attorney John Fallon presented the application for a variance of the Zoning Regulations. In December of 2009 the Board granted certain variances of Section 5.2.4 and 5.2.5 with regard to the side yard setback, maximum lot coverage and total floor area and granted permission to the applicant to construct a one story addition, convert an existing screen porch to heated space and the addition of a third floor dormer.

The work approved in 2009 has been completed. The As-Built Survey prepared at the time this work was completed revealed minor inconsistencies with the approval previously granted.

The purpose of this application is to legitimize these minor variations with regard to the previously approved coverage, FAR and side yard setback. In addition, a variance of Section 5.2.4 is requested in order to allow placement of a generator as shown on the site plan along the southerly boundary are aware of and have approved this request which is consistent with the placement of other approved this request which is consistent with the placement of other generators on properties in the immediate area

With regard to the matter of hardship, the Board found in 2009 that hardship was established with regard to then proposed variances concerning coverage, floor area ratio and side yard setback due to the fact that the lot in question was and is a valid and legally protected nonconforming lot as it relates to both lot area and shape. The lot is only approximately one-half the size presently required in the zone and is narrow in shape and nonconforming to the current lot shape requirements. The Board found in 2009 and is equally applicable here that pursuant to the provisions of Connecticut General Statutes 8-2; the lot is a valid and legally protected preexisting nonconforming lot. The coverage and floor area ratio requirements currently applicable in the R-3 Zone must be calculated upon a lot area approximately one-half the current contemplated minimum size and shape that is also narrow than currently contemplated in the zone. The Supreme Court has held that where a property is a valid nonconforming lot with regard to lot area and shape sufficient hardship to support the granting of variances with regard to coverage, floor area ratio and setbacks is established because the application of these regulations affects the property and its protected nonconforming status in an adverse manner.

An additional basis for hardship with regard to the request seeking to legitimize the minor variation in coverage, floor area ratio and the side yard setback found to exist as a result of the final As-Built Survey is established based upon Connecticut legal authority that holds that an honest error was made by a contractor or an agent of the owner establishes a proper basis for finding a hardship with regard to granting of a variance associated with legitimizing of an error made during construction.

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

6. 1261 Pequot Avenue, Map 281, Parcel 19. Petition of Spyglass Associates, LLC for a variance of the Zoning Regulations; Section 5.2.4 to reduce the following setbacks, street line from 40 feet, currently 2 feet, proposing 1 foot, sideyard line from 15 feet, currently 2.7 feet proposing 10 feet, sum of the two sideyards from 30 feet, currently 14.2 feet, proposing 23.9 feet, rear line from 30 feet, currently 12.6 feet, proposing 26.1 feet, and Section 5.2.5 to increase the total lot coverage and total floor area from 15% and 30%, currently 31.1% and 38.17%, proposing 31.4% and 45%. Permission to construct a new two story dwelling using partial existing walls. Premises: R-3 Zone

Attorney Raymond Rizio presented the application for a variance of the Zoning Regulations. The applicant seeks to remove most of the existing pre-existing non-conforming building and construct a new two story residence using partial existing walls.

The current dwelling on the property has a first floor elevation of 12.7 feet, well below the FEMA standards. During Hurricane Sandy, the dwelling was damaged due to its low elevation. The applicant seeks to raise the first floor elevation of the new structure to 17.45 feet to achieve FEMA compliance and create a safer condition on the site. Although the applicant is seeking a modest increase in square footage by increasing the size of useable space on the second floor. The applicant is also decreasing the amount of ground floor area.

The hardship is the unique pre-existing non-conforming size of the lot also with its unusual shape, elevations and its proximity abuts to Long Island Sound.

Pictures of said property were submitted for the record.

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

7. 58 Norcliff Lane, Map 138, Parcel 120. Petition of Zach and Amy Chapman for a variance of the Zoning Regulations; Section 5.2.4 to reduce the minimum required street line setback from 30 feet, currently 21.8 feet proposing 21.8 feet, and Section 5.2.5 to increase the maximum allowable lot coverage from 20%, currently 23.6%, proposing 22.99%. Permission to raise and add additions to an existing single family dwelling damaged by super Storm Sandy. Premises: A Zone

Amy Chapman, owner, presented the application for a variance of the Zoning Regulations. They wish to elevate existing dwelling on the existing footprint to meet new FEMA requirements and construct new two story and second floor addition. They will remove existing rear deck and replace with new proposed landings and stairs. Due to the significant damage that Super Storm Sandy did to the home, they were left with a total loss. Due to the new FEMA regulations we are required to raise our house to elevation compliancy of no less than 12 feet. After receiving a survey, they realized that they are over lot coverage. In an attempt to become compliant with zoning regulations they are removing an existing non conforming rear deck and replacing with 2 new proposed landings and stairs. Due to their

growing family and limited living space they wish to construct an addition that would allow them to put the bedrooms on the second floor with a new bathroom.

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. 144 Westway Road, Map 241, Parcel 121. Petition of Mark and Charlotte Smith for a variance of the Zoning Regulations; Section 5.2.4 to reduce the minimum required side line setback from 15 feet, currently 1 foot, proposing 1 foot. Permission to construct a second floor addition. Premises: R-3 Zone

Mark Smith, owner, presented the application for a variance of the Zoning Regulations. They are seeking a variance to construct a second floor addition. The property is in an R-3 Zone and is a pre-existing non-conforming lot with a home constructed in the 1900's that pre-dates the current zoning regulations. Due to the unusual size and shape of the property and the location of the house on the property, specifically the sideyard setback, the applicant is claiming exceptional hardship.

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.*

9. 178 Pine Creek Avenue, Map 238, Parcel 34, Petition of Coastal Construction Group for a variance of the Zoning Regulations; Section 11.3 to reduce the minimum lot area from 8,972 square feet, proposing 7,602 square feet, and Section 11.7 to increase the allowable height of a structure from 30 feet, proposing 32.4 feet, and Section 11.10 to increase the allowable lot coverage from 20%, currently 37.03%, proposing 29.19%, and Section 11.12 to reduce the minimum setback from Long Island sound from 90.7 feet, currently 103 feet, proposing 75.5 feet, and section 11.13 to reduce the minimum setback from Pine Creek avenue from 45 feet, currently 9.2 feet, proposing 25.1 feet. Permission to construct a two story single family dwelling. Premises: BD

The proposed application was continued to 4-4-13

10. 186 Pine Creek Avenue, Map 238, Parcel 33. Petition of Coastal Construction Group for a variance of the Zoning Regulations; Section 11.7 to increase the allowable height from 30 feet, proposing 32.4 feet, and section 11.10 to increase the allowable lot coverage from 20%, currently 25.24%, proposing 30.2%, and Section 11.12 to reduce the minimum setback from Long Island Sound from 90.7 feet, currently 104 feet, proposing 84.3 feet, and Section 11.13 to reduce the minimum setback from Pine Creek Avenue from 45 feet, currently 14.9 feet, proposing 25.9 feet. Permission to construct a new single family dwelling. Premises: BD

The proposed application was continued to 4-4-13

11. 938 Fairfield Beach Road, Map 184, Parcel 190. Petition of Marc Papini for a variance of the Zoning Regulations; Section 11.7 to increase the maximum allowable height from 30 feet, proposing 35.5 feet and Section 11.11.1 to reduce the side setback from 4 feet, currently 1.1 feet, proposing 3.0 feet. Permission to construct a new elevated two story single family dwelling. Premises BD

Marc Papini, owner, presented the application for a variance of the Zoning Regulations. Due to Super Storm Sandy, the structure was damaged. He is proposing to rebuild a single family two story home in the proposed location.

He is requesting the allowance of height of 35'-5" in lieu of the 30' Town Planning and Zoning Regulations for the Beach District. The first height of the proposed structure will need to be at elevation 17". Conforming to the new regulation to the new regulations prohibits him from building a two story house in conformance with Planning and Zoning and the Beach District.

He is requesting the allowance to reduce one sideyard setback from 4' to 3' only for approximately 18' of the structure. The existing one sideyard setback is 1.1; therefore the proposed structure's location will be an overall improvement.

The proposed home location is the only location that allows for the building of a livable home in compliance with all but one of the setback requirements.

The elevation of the home provides protection from future flooding, conformance with setback from Fairfield Beach Road and increased fire safety versus the current location of the proximately location only 4' and 5' away.

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

DENIED WITHOUT PREJUDICE: Donald Cafero *moved* and Daphne Dixon *seconded* to approve the proposed application. *Motion passed unanimously.*

12. 1218 Brookside Drive, Map 148, Parcel 59. Petition of Sage and Hunter Tremaine for a variance of Zoning Regulations, Section 5.2.4.3 to reduce the street line setback for an accessory structure from 60 feet, proposing 38.9 feet. Permission to install a generator. Premises: AAA Zone

Sage Tremaine, owner, presented the application for a variance of the Zoning Regulations. She would like to install a new generator. The generator will be placed by the basement bilco door. The location will not be viewable from the road. The lot is pre-existing and non-conforming.

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

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

13. 218 Puritan Road, Map 139, Parcel 148. Petition of Peter and Kristin Robinson for a variance of the Zoning Regulations; Section 5.2.4 to reduce the side property line and sum

of two side property lines from 7 feet and 25 feet, currently 3.3 feet and 19.8 feet, proposing 3.3 and 19.8 feet, and Section 5.2.5 to increase the maximum allowable lot coverage from 20%, currently 24.9%, proposing 26.9%. Permission to elevate an existing dwelling and add new stairs and landings and to construct an addition and dormer. Premises: A Zone

Attorney William Fitzpatrick presented the application for a variance of the Zoning Regulations. The applicants are requesting a variance to elevate an existing dwelling and add new stairs and landings and to construct an addition and dormer. The applicants' home was severely damaged as a result of Superstorm Sandy. The home must be raised to FEMA elevation. The proposal is to raise the existing home from the existing first floor elevation of 7.9' to first floor elevation of 13.9'. The raising of the home will necessitate the construction of additional landing and stairs.

Attorney Fitzpatrick noted the critical factor for the Board to take into account in evaluating this application is the fact that this proposal is due solely to the damage this home sustained as the result of Superstorm Sandy. In the absence of Sandy, there would be no variance application. However, the extent of the damage the home sustained leaves the applicants no choice but to elevate the home the required six feet. In doing so, the additional landings and stairs are counted in the calculation coverage.

It was also noted, that the total increase in coverage is approximately 242 square feet none of which is internal space. The applications are removing an existing shed from the property in an effort to ameliorate the increase in coverage.

The proposed variances pertaining to the sideyard setback, and the sum of sideyard setbacks, are the result of construction of a storage area above the existing garage. The creation of this storage area raises the elevation of the roof of the garage and, technically, is considered an expansion on non-conformity since the existing sideyard setback and sum of sideyard setbacks are legally non-conforming. The important factor relevant to this request is the fact no construction is proposed closer to any side property line that exists at present.

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

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

14. 271 Old Spring Road, Map 141, Parcel 152. Petition of Ben and Maureen Schubert for a variance of the Zoning Regulations, Section 5.2.5 to increase the maximum lot coverage from 20%, currently 23.29% proposing 25.42%. Permission to construct a new detached two car garage. Premises: A Zone

Ben Schubert, owner, presented the application for a variance of the Zoning Regulations. Due to Hurricane Sandy, he wishes to construct a new detached two car garage, which will accommodate two cars. The house is non-conforming.

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

In Favor: David Bolton, 138 Edge Hill Road, spoke in favor of the proposed application.

There being no further business to come before the Commission, James Hamilton, Acting Chairman, adjourned the meeting at: 5:10 p.m.

Donald Cafero, Secretary

Josephine M. Keogh, Clerk

JAMES HAMILTON, ACTING CHAIRMAN

DONALD CAFERO, SECRETARY

JOSEPHINE M. KEOGH, CLERK