

**ZONING BOARD OF APPEALS  
EXECUTIVE SESSION OF JUNE 6, 2013**

The Zoning Board of Appeals Commission of the Town of Fairfield held the Zoning Board of Appeals Public Hearing Meeting on June 6, 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:** Kevin Coyne, Chairman, James Hamilton, Vice Chairman, Duncan Keith, Donald Cafero, James Baldwin.

1. Minutes of May 2, 2013: Duncan Keith moved and Donald Cafero seconded to approve the proposed minutes as submitted. *Motion passed unanimously.*
2. Approval of Secretary's Fee: Duncan Keith moved and James Hamilton seconded to approve the proposed Secretary's Fee. *Motion passed unanimously.*

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

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Donald Cafero, Secretary

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Josephine M. Keogh, Clerk

**ZONING BORD OF APPEALS  
MINUTES OF JUNE 6, 2013**

The Zoning Board of Appeals Commission of the Town of Fairfield held the Zoning Board of Appeals Public Hearing Meeting on June 6, 2013 in the First Floor Conference. 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, Duncan Keith, Donald Cafero, James Baldwin.

**CONTINUED DOCKET:**

**11. 222 Post Road, Map 130, Parcel 295. Petition of Charcoal Hill Associates for a variance of the Zoning Regulations; Section 28.6.12 to reduce the minimum required total number of off-street parking spaces by ten (10) and Section 30.2 to reduce the distance between two (2) café permits from 1,500 feet, proposing 85 feet. Permission to convert an existing deli to a sit down Café restaurant. Premises: DCD Zone**

Attorney James Miller presented the application for a variance of the Zoning Regulations. The Applicant, Lelo & Sandis, LLC, requests variances of Section 28.6.12 and Section 30.2 as discussed hereinafter in order for permission to establish a restaurant by the name of Grain, a contemporary gathering place serving the finest in appetizers and entrees, at a property located at 222 Post Road. The Applicant is seeking two (2) variances: 1. a variance of Section 28.6.12 often (10) parking spaces; and, 2. a variance of Section 30.2 regarding Alcoholic Beverages: Location and Classification. The Applicant has entered into a lease with the property owner, Charcoal Hill Associates, LLC, to establish the restaurant described above at 222 Post Road. The premises are located in a Designed Commercial District. The premises consist of a single building strip center which contains a mixed use of two (2) restaurants, a Laundromat, a car rental business and a massage spa. This strip center is also part of complex know as Post Plaza which also contains another property known as 238 Post Road which is owned by Charcoal Realty, LLC, which is also a single building strip center consisting of three (3) restaurants, a hair salon and a dry cleaner. While two (2) separate entities own each property, the ownership of the companies is by the same family, and thus they actually operate and manage Post Plaza as one strip center. There is a shared driveway into the Post Plaza and the parking is shared between all the tenants of 222 Post Road and 238 Post Road. Post Plaza has 104 total parking spaces, 67 are located on the premises of 222 Post Road and 37 are located on the premises of 238 Post Road.

The principals of the Applicant are Emir Lelo Arslanagic and Sand is Veselovs. Mr. Arslanagic is a resident of Fairfield. The restaurant will be located in the west corner of the premises, in a location previously occupied by Pranza Italian Deli and 2 Fitness Deli. Mr. Arslanagic has been a professional chef/restaurant general manager most of his adult life. He has previously been employed as the General Manager for Aqua in Westport and Mediterraneo in Greenwich, as well as having worked at Wasabi Chi and Z Cafe, both having been located in South Norwalk at the time. All of these restaurants have been wildly successful and critically acclaimed. Mr. Arslanagic is experience at running restaurants and always believes that any restaurant has to be community centered and provide unequaled

hospitality. The Applicant would like to bring this hospitality to his hometown, by investing in Fairfield and continuing the revitalization of the Post Road.

The Applicant would like to open a new restaurant by the name of Grain. Grain would serve contemporary American food with a Mediterranean flair, in a stylish and warm environment. This new restaurant would add another element of variety and diversity to the dining options available to our residents and visitors. This exciting proposed new restaurant will harmonize and compliment the Designed Commercial District and further energize the exciting and ongoing revitalization therein.

With respect to the variance sought pursuant to Section 28.6.12, the patron floor area of the Applicant as shown on the plans submitted herewith is 712 square feet. This establishes a requirement of eighteen (18) parking spaces. As discussed earlier, 222 Post Road has 67 parking spaces, but shares an additional 37 parking spaces with 238 Post Road in the Post Plaza strip center. The use of the premises by the previous tenant as a takeout restaurant assigned them eight (8) parking spaces of the parking spaces on site. The Applicant is seeking a variance for the additional ten (10) parking spaces needed for the Applicant's proposed new use of the premises as a full service restaurant. As a practical matter, the variance is highly technical in nature in that the 104 spaces are provided in the Post Plaza area and will continue to be far more than adequate to meet the needs of the existing tenants of the Park Plaza and the proposed Grain restaurant. While the parking on the specific premises only has 67 parking spaces, the practicality is that all tenants use the parking of the Post Plaza because there is no differentiation of where a patron can park. As confirmed by the experience of other tenants in the Park Plaza, more than sufficient parking will be provided for during daytime luncheon hours to accommodate afternoon diners. In the evening this availability will be even more dramatic as additional parking will be available after the retail businesses in the Post Plaza are closed (Avis, Organic Cleaners, etc.). A review of the parking lot both during the day and in the evening reveals that there are plenty of parking spaces always available.

The application before the Board is consistent with prior approvals and precedents established with regard to the granting of parking variances for restaurant uses in the Designed Commercial District and Center Designed Business District. These important economic areas in our community and the entire Town of Fairfield have benefited substantially due to the vibrancy and activity created by these various restaurants, which now operate successfully in Fairfield. As discussed above, the location selected by the Applicant for Grain is ideal in that all demands for parking will be well accommodated in the existing and very expansive parking area of the Post Plaza with its 104 parking spaces. The application meets the legal standards for granting of a variance as established by Connecticut General Statutes 8-6(a) (3). As the Board is well aware, case law (*Adolphson v. Zoning Board of Appeals of the Town of Fairfield*, 205 Conn. 703 (1988)) and the Statute provide that there is a two-part test which must be applied with regard to consideration of the granting of a variance.

The Applicant is also 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 Designed Commercial District and 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 Designed Commercial Districts and 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 internal layout required for this proposed restaurant are 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. Within 85 feet, within the Post Plaza but of the 23 8 Post premises, Michael Gerularo's Steakhouse operates under a cafe permit that is within 1500 feet of the proposed location for the Applicant's proposed restaurant.

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 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.

Attorney Miller noted, 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 Zoning Plan. *Grillo v. Zoning Board of Appeals of the City of West Haven*. 206 Conn. 362 (1988).

In the present case the configuration of the interior space to be leased 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. 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. Also, 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 extends Fairfield's dining options along Post Road, closer to the Black Rock Border. It will provide Fairfield residents with another

unique and attractive dining option. As with the establishment of previous restaurants in the Designed Commercial District, the proposed restaurant will contribute to the continued energization, revitalization and excitement on Post Road 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 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 10 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 Designed Commercial District.

In summary, the Applicant's restaurant Grain 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.

Attorney Miller presented a copy of the proposed lease for the record.

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

**GENERAL DOCKET:**

**1. 1135 Mill Hill Road, Map 228 Parcel 102. Petition of Susan Earls and Leif Vik for a variance of the Zoning Regulations; Section 5.2.4.3 to reduce the rear and side setbacks from 40 feet and 25 feet, proposing 10 feet and 10 feet and Section 5.2.4 to reduce the street line setback from 50 feet, currently 5.9 feet, proposing 48.3 feet and Section 5.2.5 to increase the maximum allowable lot coverage and total floor area from 10% and 20%, currently 5.8% and 7%, proposing 15.1% and 23.8%. Permission to construct a detached three (3) car garage and rear two (2) story additions. Premises: AA Zone**

Susan Earls presented the application for a variance of the Zoning Regulations. The rear two story addition and proposed two story detached three car garages with storage above is a pre-existing legal "non-conforming" lot and dwelling. With a conforming lot in a one acre zone the lot coverage would be seven percent and the total floor area would be twelve percent. The maximum allowable lot coverage in a one acre zone is ten percent and maximum allowable floor area is twenty percent. With their growing family and deep desire not to leave the neighborhood, they are requesting these variances.

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 4-1. Donald Cafero was opposed.*

**2. 105 Alden Street, Map 182, Parcel 499. Petition of Hari Iyer and Hemalata Athreya for a variance of the Zoning Regulations; 5.2.5 to increase the total floor area from 50%, currently 51.3%, proposing 58.9%. Permission to construct a 2<sup>nd</sup> floor dormer. Premises: B Zone**

Hari Iyer presented the application for a variance of the Zoning Regulations. The property is legal, non-conforming with a lot size of 4586 square feet in a zone where the minimum required lot size is 6000 square feet.

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

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

**3. 715 Fairfield Beach Road, Map 184, Parcel 14. Petition of Lisa Russell for a variance of the Zoning Regulations; Section 11.11.3 to reduce the setback from one side line setback from 6 feet, currently 2.4 feet, proposing 2.4 feet and Section 11.10 to increase the maximum allowable lot coverage from 20%, currently 27.5%, proposing 27.6% and Section 2.8.1.1 to enlarge a non-conforming structure. Permission to enclose an existing two (2) story porch for living space and add a landing and stairs. Premises: BD Zone**

Lisa Russell presented the application for a variance of the Zoning Regulations. She is requesting a variance to construct a two story addition to include a full bath and add bedroom space to the first floor. The three bedrooms will remain on the second floor. The house is a pre-existing, non-conforming lot.

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

**DENIED:** Donald Cafero *moved* and James Baldwin *seconded* to approve the proposed application. *Motion denied unanimously.*

**4. 121 Woodland Road, Map 47, Parcel 167. Petition of Belinda Papageorge for a variance of the Zoning Regulations; Section 5.2.4 to reduce the minimum required street line setback from 40 feet, currently 37.5 feet, proposing 35 feet. Permission to construct a two (2) story and 2<sup>nd</sup> floor additions. Premises: R-3 Zone**

Lucas Papageorge presented the application for a variance of the Zoning Regulations. They wish to construct a second floor addition with a 2.5 foot cantilevered section on the second floor in order to create a gabled front over the front porch, extending the covered front porch from 18.2 feet to 23.7 feet. They would also like to put a 22' x 9.9' addition on the back of the house as well as a 19' x 9.9' addition on the back of the house as well as a 19' x 9.9 deck. In total, this will provide a four bedroom and three and a half bathroom home. The existing structure is on conforming and to avoid demolishing to rebuild we would like to save the majority of the existing structure, as not to cause undo waste. The dead end was built so that the majority of the turnaround circle encompasses the front of the property in question. Rather than an equal split centered on the road, this cuts deep into the property causing the 40 foot setback to protrude into the existing structure 2.5 feet at its worst. They

are cantilevering the front gable end out 2.5 feet to allow for a more architecturally pleasing structure as to avoid a large box look. The house will be occupied by a married couple, both life-long Fairfield residents, and their growing family.

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.*

**5. 1652 Melville Avenue, Map 46, Parcel 161. Petition of Ryan and Heather Gleason for a variance of the Zoning Regulations; Section 5.2.4 to reduce the minimum required side line setbacks from 15 feet, currently 8.2 feet and 11.1 feet, proposing 8.2 feet and 11.1 feet. Permission to construct two (2) rear dormers. Premises: R-3 Zone**

The applicants' contractor presented the application for a variance of the Zoning Regulations. They wish to construct two dormers on the back of the house, which will be on the second floor. The house is non-conforming in an-R-3 Zone.

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

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

**6. 71 Larkspur Road, Map 125, Parcel 92. Petition of David and Kristen Lynch for a variance of the Zoning Regulations; Section 5.2.4 to reduce the street line setback on a corner lot from 22 feet, currently 22 feet, proposing 16.4 feet and Section 5.2.5 to increase the lot coverage from 20 %, currently 10.7%, proposing 20.8%. Permission to construct a two (2) car garage with rear addition. Premises: A Zone**

**Continued to July 11, 2013**

**7. 111 Edward Street, Map 138, Parcel 126. Petition of Robert Camarda for a variance of the Zoning Regulations; Section 5.2.5 to increase the maximum lot coverage from 20%, currently 21.8%, proposing 22.97%. Petition to elevate a one story single family dwelling and construct a one story addition and front and rear stairs and landings. Premises A Zone**

Robert Camarda presented the application for a variance of the Zoning Regulations. He wishes to construct a two story expansion attached to the utility room at the rear of the house. The addition would measure 7'4 ½ x 4' 6", approximately 33 square feet. He would also like to construct a 12' 10" x 3' 6" stair way at the front of the house with a 5' x 6' landing, and a portico over the landing. The residence will be elevated to comply with FEMA and town of Fairfield's recommendations. The lift will require longer stairways from the garage, and also from the front and rear entrances. With no other viable option, our interior stairs will require taking space from an existing bathroom. Our plan calls for a small expansion only to accommodate the stairs and maintain the functionality of the present bathroom. In addition, he would like to incorporate a small portico at the front entrance. The present side-facing door combined with the FEMA required front stairs

would create a stair to nowhere appearance. The proposed stairway configuration will also allow for more foundation plantings in an attempt to minimize the visual impact of the home's new FEMA foundation wall.

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

**8. 108 York Road, Map 77, Parcel 177. Petition of Bill Roman for a variance of the Zoning Regulations; Section 5.2.4 to reduce the minimum required side line setback from 5 feet, currently 2.5 feet, proposing 2.4 feet and the sum of the two side yard line setbacks from 20 feet, currently 14.4 feet, proposing 14.3 feet. Permission to construct a 2<sup>nd</sup> floor addition. Premises B Zone**

William Roman presented the application for variance of the Zoning Regulations. He would like to build a second floor addition above the existing footprints of the first floor structure with a 2' cantilever off the rear of the house (west elevation). The addition would consist of three bedrooms, two baths, and a laundry.

The pre-existing non-conforming lot, due to required 60 feet square, and being only 49 feet is a 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.*

**9 789 Harbor Road, Map 241, Parcel 14. Petition of Southport Realty Corp for a variance of the Zoning Regulations; Section 5.2.4.3 to reduce the street line, sideline and rear line for an accessory structure from 40 feet, 10 feet and 10 feet, proposing 23.2 feet, 2.3 feet and 2.3 feet and Section 5.2.5 to increase the lot coverage from 15%, currently 45.3%, proposing 46.7%. Permission to construct a shed. Premises: R-3 Zone**

David Preusch, architect, presented the application for a variance of the Zoning Regulations. They wish to construct a 7'x 7' detached accessory structure, which will include space for a generator and trash containers. The generator pad will meet FEMA and Fairfield Regulations for flood zone elevations. The lot coverage will increase by 49 square feet.

The lot is non-conforming and is located in the Historic District, which dates to the 1830's. The property is currently being renovated under a Certificate of Appropriateness from Fairfield Historic District Commission.

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.*

**10. 65 Bonney Terrace, Map 232, Parcel 227. Petition of Verginia Wheaton and Harold Seglin for a variance of the Zoning Regulations; Section 5.2.4 to reduce the minimum required street line setback from 30 feet, currently 30.2 feet, proposing 22.2. Permission to construct a one story addition. Premises: A Zone**

Daniel Hipok, contractor, presented the application for a variance of the Zoning Regulations. The owners wish to construct a none-story addition, consisting of a dining room. They are also requesting to construct a roof overhang to cover front landing. The house is legally non-conforming.

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

**DENIED:** Donald Cafero *moved* and James Baldwin *seconded* to approve the proposed application. *Motion denied 3-2. Duncan Keith and Kevin Coyne were opposed.*

**11. 321 Foggwood Road, Map 215. Parcel 14. Petition of Pamela Holly for a variance of the Zoning Regulations; Section 5.2.4 to reduce the minimum required side line setback from 30 feet, currently 22.66 feet, proposing 26.8 feet. Permission to construct a one story addition. Premises: AAA Zone**

Neil Corcoran, architect, presented the application for a variance of the Zoning Regulations. They wish to construct a 13.6' x 16' 6" one story addition consisting of eating area / dining room, kitchen extension. The house is pre-existing non-conforming as it was originally built inside the setbacks. There is an existing concrete patio. They would like to remove this patio and replace it with a one story addition. Note, the patio is within 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.*

There being no further business to come before the Commission, Kevin Coyne, Chairman, adjourned the meeting at approximately 3:30 p.m.

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Donald Cafero, Secretary

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Josephine M. Keogh, Clerk

**KEVIN COYNE, CHAIRMAN**

**DONALD CAFERO, SECRETARY**

**JOSEPHINE M. KEOGH, CLERK**