

**ZONING BOARD OF APPEALS
EXECUTIVE SESSION OF OCTOBER 10, 2013**

The Zoning Board of Appeals Commission of the Town of Fairfield held the Zoning Board of Appeals Public Hearing Meeting on October 10, 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.

MEMBERS PRESENT: Kevin Coyne, Chairman, James Hamilton, Vice Chairman, Duncan Keith, James Baldwin, Daphne Dixon, Alternate, Edward Cheffetz, Alternate.

MEMBERS ABSENT: Donald Cafero

1. Minutes of September 12, 2013: James Hamilton *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 Daphne Dixon *seconded* to approve the proposed Secretary's Fee. *Motion passed unanimously.*

This portion of the Executive Session adjourned at 2:57 p.m.

Daphne Dixon, Acting Secretary

Josephine M. Keogh, Clerk

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MEMBERS PRESENT: Kevin Coyne, Chairman, James Hamilton, Vice Chairman, Duncan Keith, James Baldwin, Daphne Dixon, Alternate, Edward Cheffetz, Alternate.

MEMBERS ABSENT: Donald Cafero

CONTINUED DOCKET:

6. 109 Cummings Avenue, Map 183, parcel 208. Petition of Celia Campbell for a variance of the Zoning Regulations; Section 5.2.4 to reduce the minimum required street line setback for a corner lot from 17 feet, currently 17.5 feet, proposing 14.1 feet. Permission to expand the second floor. Premises: B Zone

Celia Campbell, owner, presented the application for a variance of the Zoning Regulations. She wishes to expand the second floor towards street line in order to relocate mechanicals. The home is a pre-existing legal non-conforming dwelling, positioned too close to secondary street line. The proposed addition does not project any closer to street line than existing footprint.

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.*

10. 589 Fairfield Beach Road, Map 184, Parcel 4. Petition of Megan McNamara for a variance of the Zoning Regulations; Section 11.1.1 to increase the numbers of dwellings on one lot from one, proposing two. Permission to remove the existing dwelling and rebuild to meet the new FEMA regulations. Premises: BD Zone

The proposed application was continued to November 7, 2013.

15. 95 Chester Place, Map 241, Parcel 111. Petition of Walter Buck for a variance of the Zoning Regulations; Section 31.2.21 to allow a portion of the minimum square

of a lot to contain wetlands. Permission to allow the square for a building lot to contain an area of wetlands. Premises R-3 Zone

The proposed application was continued to November 7, 2013.

17. 605-607 Fairfield Beach, Map 184, Parcel 5. Petition of Maureen DiGennaro for a variance of the Zoning Regulations; Section 11.1.1 to increase the total number of dwellings on one lot from 1, currently 4, proposing 3 and Section 11.11.3 to reduce the sum of two side yard setbacks from 22, currently 6.6 feet, proposing 13 feet and Section 11.12 to reduce the setback from Long Island Sound from 129.5 feet, proposing 111.4 feet. Permission to demolish two single family dwellings and construct a new FEMA compliant single family dwelling with deck and stairs. Premises: BD Zone

Attorney John Fallon presented the application for a variance of the Zoning Regulations. Jim Jamieson, Architect, and Carol Roache, aunt of Ann Bonnie (adjoining neighbor) was also present. With respect to Ann Bonnie, Mr. Fallon stated there will be no provision or intension to place any new fences or landscaping along the property line and will make it a condition of approval, if the Board wishes to do so.

The applicants are the owners of the subject property located in the beach district. They are requesting a variance to demolish two single family homes and replace them with FEMA compliant homes. The application is consistent with CAM policies. Mr. Fallon noted they will be reducing a number of units on the property from four to three, constructing a FEMA compliant single family home and by providing better more usable beach access in terms of widening the setbacks.

With regard to the matter of hardship, as this Board is well aware, preexisting nonconforming uses which predate current zoning regulations are legally protected pursuant to the provisions of Connecticut General Statute 8-2.

Attorney Fallon also noted in the present instance hardship does in fact arise from the application of the Regulations to this property. Specifically, the application of the zoning regulations would technically negate the legally protected status of the property with regard to the nonconforming use of two dwelling units solely due to the fact that new construction rather than repair of one structure is contemplated. This is a unique situation impacting the property and its statutorily protected status with regard to its use. The courts have repeatedly recognized that where the effective applying a technical regulation to property is so severe as to amount to a practical confiscation or the loss of a legally protected status that this is sufficient hardship to allow the Zoning Board of Appeals to grant a variance. *Archambault v. Wadlow*, supra. *Stankjewicz v. Zoning Board of Appeals of the Town of Montville*, 15 Conn. App. 729, affirmed 211 Conn. 76 (1989); *Smith v. Zoning Board of Appeals of the Town of Norwalk*, 174 Conn. 323 (1978).

An additional proper basis for granting the variances in this case is found in the holding of *Hyatt v. Zoning Board of Appeal of Norwalk*, 163 Conn. 379 (1972). 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 variances involves a proposal that will actually reduce existing nonconformities this fact provides an additional and proper basis for the

Zoning Board of Appeals to grant the variances requested. Such is the case with this application.

Mr. Fallon presented petitions of support were submitted for the record from the adjoining neighbors; email from Kristal Kallenger from DEEP.

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

18. 893 Sasco Hill Road, Map 239, Parcel 3. Petition of Sasco Hill Neighborhood Association, Inc. for a variance of the zoning Regulations to reverse decision of the Zoning Administrator. Premises: AAA Zone

Attorney Joel Green, representing Sasco Hill Neighborhood Association presented and addressed the following Schedule A for the record:

He noted the Sasco Hill Neighborhood Association, Inc., a non-stock corporation organized and existing under the laws of the State of Connecticut with an office and principal place of business in Fairfield together with Kevin Kelly and Ellen Kelly of 131 Sasco Hill Road, Jeffrey Burki of 258 Sasco Hill Road, Stanley Morten of 290 Sasco Hill Road, Robert Ross and Theresa Ross of 500 Sasco Hill Road, Joyce Hergenhan of 715 Sasco Hill Road, Jaquett Heck and Harold Heck of 794 Sasco Hill Road, Jeffrey Rubin and Cynthia Rubin of 847 Sasco Hill Road, Michael Berman and Victoria Hagan of 1067 Sasco Hill Road, William Russell and Erin Russell of 1095 Sasco Hill Road, Timothy Zaino and Noreen Zaino of 100 Tide Mill Terrace, all of Fairfield, Connecticut hereby appeal from a decision made by Joseph E. Devonshuk, Jr. in his capacity as the Director of the Planning and Zoning Department of the Town of Fairfield as the Zoning Enforcement Officer of the Town of Fairfield.

On May 7, 2013, Attorney Green, wrote to Joseph E. Devonshuk, Jr., Director of the Plan and Zoning Department of the Town of Fairfield as the Zoning Enforcement Officer of the Town of Fairfield, on behalf of the Sasco Hill Neighborhood Association, Inc., regarding the alleged existence of zoning violations upon the premises owned by Bernard and Cynthia McDonald at 893 Sasco Hill Road in Fairfield, a copy of which letter is attached hereto as Exhibit "A".

On July 3, 2013, having not received a response to the letter dated May 7, 2013 (Exhibit "A"), once again wrote to Mr. Devonshuk inquiring as to the status of the action, if any, the Zoning Department had taken in its capacity as Zoning Enforcement Officer to investigate and address the alleged zoning violations, a copy of which letter is attached hereto as Exhibit "B".

On or about July 8, 2013, Joseph E. Devonshuk, Jr. responded to the undersigned counsel for the Sasco Hill Neighborhood Association wherein Mr. Devonshuk indicated that the Zoning Department in its capacity as the Zoning Enforcement Officer had concluded that no zoning violations exist upon the premises at 893 Sasco Hill Road, a copy of which letter attached hereto as Exhibit "C".

While in his letter dated July 8, 2013 (Exhibit "C") Mr. Devonshuk did not directly address the claim that the so-called "onion barn" was being used as a residential rental unit, the Zoning Enforcement Officer apparently concluded that no zoning violation exists and that the premises may be rented for reason that the "onion barn" has been in existence since 1928 as a residential dwelling unit. The applicants hereby submit that the use of the "onion bam" upon the premises at 893 Sasco Hill Road as a residential rental unit in addition to the occupancy of the main residence upon the premises together with the incorporated accessory apartment constitutes a violation of the Zoning Regulations of the Town of Fairfield.

Specifically, pursuant to Section 5 .1.1 of the Zoning Regulations, the uses of properties in the AAA Zone are limited to "a single detached dwelling for one (1) family." Under certain limited circumstances, accessory apartments may be permitted within a one-family residence located in a AAA Zone pursuant to Section 6.0 of the Zoning Regulations. There is, however, no basis upon which a one-family dwelling with a single accessory apartment together with a separate, detached residential rental structure may be maintained in a AAA Zone pursuant to the Zoning Regulations nor is there any basis upon which such a use may be maintained as a legally existing, non-conforming use upon the premises at 893 Sasco Hill Road..

Section 8-6 of the Connecticut General Statutes provides in relevant part at subparagraph

(a) as follows:

"(a) The zoning board of appeals shall have the following powers and duties: (1) To hear and decide appeals where it is alleged that there is an error in any order, requirement or decision made by the official charged with the enforcement of this chapter or any bylaw, ordinance or regulations adopted under the provision of this chapter; ... "

Moreover, Section 8-7 of the Connecticut General Statutes provides, in relevant part, as follows:

"§ 8-7. Appeals to board. Hearings. Effective date of exceptions or variances; filing requirements

The concurring vote of four members of the zoning board of appeals shall be necessary to reverse any order, requirement or decision of the official charged with the enforcement of the zoning regulations or to decide in favor of the applicant any matter upon which it is required to pass under any bylaw, ordinance, rule or regulation or to vary the application of the zoning bylaw, ordinance, rule or regulation. An appeal may be taken to the zoning board of appeals by any person aggrieved or by any officer, department, board or bureau of any municipality aggrieved and shall be taken within such time as is prescribed by a rule adopted by said board, or, if no such rule is adopted by the board, within thirty days, by filing with the zoning commission or the officer from whom the appeal has been taken and with said board a notice of appeal specifying the grounds thereof. Such appeal period shall commence for an aggrieved person at the earliest of the following: (1) Upon receipt of the order, requirement or decision from which such person may appeal, (2) upon the publication of a notice in accordance with subsection (f) of section 8-3, or (3) upon actual or constructive notice of such order, requirement or decision ... "

To the extent that the decision of the Zoning Enforcement Officer in this instance is that a one-family dwelling with a single accessory apartment together with a separate, detached residential rental unit may legally exist upon the subject premises, the undersigned hereby appeal to the Zoning Board of Appeals from the ruling of the Zoning Enforcement Officer and respectfully request that the Zoning Board of Appeals reverse the decision of the Zoning Enforcement Officer.

Attorney Green also presented and discussed the following for the record:

Attorney Green's Memorandum, dated October 10, 2013, Assessor's Cards, Bianco v. Darien, December 4, 1968, Argued; February 19, 1969, Decided, Zoning Regulations, effective date August 27, 1925.

In opposition: Joseph E. Devonshuk, Jr., Director of Plan and Zoning Department, stated based on Town records the proposed structure has existed since 1928 and is an established use. It has been interpreted as an existing non-conforming use, which has been protected by the Zoning Regulations/Statutes.

In opposition: James Wendt, Assistant Director, of Plan and Zoning Department, stated there are three dwelling units on the property. What this issue seems to center around is who is occupying the units, not that there. Historically, it used to matter who occupied a dwelling, pursuant to the zoning definitions Attorney Green pointed out. The current regulations do not make that distinction. The reason is legally, zoning does not have the ability to make that decision. The Zoning Regulations evolve over time, as does the Case Law, which shows that zoning regulates the use not the user. Mr. Wendt also noted the fact that the units may be rented is an issue, which they can't prohibit.

In opposition: Attorney William Fitzpatrick, representing Bernard and Cynthia McDonald, owners of 893 Sasco Hill Road, spoke in opposition of the proposed application. the owners of property located at 893 Sasco Hill Road. He noted his clients' property is located on the easterly side of Sasco Hill Road and contains 4.57 acres. The property is located in the Res. AAA Zoning District. The Zoning Regulations pertaining to the Res. AAA Zoning District require a minimum lot area of 2 acres, as well as the accommodation of a 200' square. It's been his clients' intent, from the beginning, to subdivide the property into two lots. The proposed lots exceed the two acre minimum lot area requirement. Both lots accommodate the 200' square.

The McDonalds' property at the time of their purchase included an existing single-family home as well as two additional attached apartments at either end of the home. The property also includes a separate building, originally an "onion barn", which now includes two separate apartments. They made an application for a two-lot re subdivision to the Town Plan & Zoning Commission, which was denied for various reasons, including the fact that there was only one driveway accessing both his clients' home and the onion barn as well as a separately owned property to the rear- the chard property. His client appealed that denial to the Superior Court and has filed a new application with the Town Plan & Zoning Commission addressing, he believes, the relevant concerns of the Town Plan & Zoning Commission. In the interim, Attorney Green, on behalf of the Sasco Hill Neighborhood Association, Inc., has appealed to the ZBA from the finding of Mr. Devonshuk's letter that

the use of the onion barn for residential purposes did not constitute a zoning violation. Mr. Wendt, of the Fairfield Zoning Department, has more than adequately outlined the regulatory interpretation which the Zoning Department utilized and with which the applicants fully agree. The definition of dwelling has changed over the years and the town, including the Sasco Hill area, is replete with separate accessory apartments, dwellings, etc., once utilized for family use, but which are now utilized for third party occupancy.

Attorney Fitzpatrick also noted various items of documentation to ensure that the Board has a comprehensive view of just what's being requested here by the Neighborhood Association was submitted. First, the applicant has submitted photographs which clearly confirm that the onion barn was converted to a residential use by the owners of the property at the time of construction of the main residence. The photographs paint a very clear picture. Also submitted to the Board, are various documents relating to rental of the onion barn. Included is a packet of materials put together by Jessie Ferris, a realtor noting on the second page the first floor of the home includes literally, a kitchen, a servant's kitchen, as well as an eat-in-kitchen for an in-law apartment. That is the three units which were originally part of the main house. There is a description of the guest house, which was originally, an onion barn, converted to living space in 1927, and currently divided into two apartments. Also, is a copy of a real estate report from Zillow which states that the four apartments on this property provide income of such-and-such, as well as an additional real estate report statement talking about the four apartments. The purpose in introducing this evidence is to point out to the Board that this alleged apartment conspiracy, this illegal renting, is quite simply based in fact. The fact of the matter is that everyone knew that there were four apartments on this property, plus the main house. It was publicized and utilized as a selling point- for the neighbors to now assert that the onion barn constitutes an illegal use is difficult to understand.

Also included in that packet are three separate rental occupancy certificates for George Greika, which were obtained in 2009. One for the east wing of the house, one for the guest house west and one for the guest house east. These apartments were approved by the Town and relied upon by his clients at the time was purchased. It was his clients' intention to eliminate the apartments in the home itself and utilize the onion barn for rental purposes, as a single apartment. The end result is that the former five occupancies will be reduced to two.

Also included is a significant list of Sasco Hill Road homes with second dwellings upon a single family lot. This is not an attempt to assess the legality or illegality of any of those second homes, but simply to make the point that many properties on Sasco Hill Road contain second dwellings on a single-family lot, as is the case with the McDonalds property.

Lastly, the McDonalds submitted a copy of the Gangemi case, which states quite clearly that the imposition of restrictions on the use of property such as for family use only and not for rental purposes are illegal and invalid.

Mr. Fitzpatrick further noted he filed an appeal where Anna Verrilli who owned a beach house on Fairfield Beach Road with a not-for-rental purposes, family use only, restriction imposed by the ZBA and when the real estate taxes became too much, Mrs. Verrilli rented the property in the winter. The appeal was taken to the Superior Court as the result of the

attempted enforcement of those conditions and Judge Fred Freedman ruled that such conditions of approval were invalid. Unfortunately, in moving his law office, locating a copy of the Verrilli case of is easier said than done and he referred the Board to the Gangemi case which basically stands for the same principle and is available.

The applicants' appeal alleges that use of the onion barn on the premises at 893 Sasco Hill Road as a residential rental unit in addition to the occupancy of the main residence of the premises together with the incorporated accessory apartment constitutes a violation of the Zoning Regulations of the Town of Fairfield. Attorney Green's clients bear the burden of proof to establish their contention that the use of the onion barn as a residential rental unit is illegal. For those reasons the Board has heard, this contention is quite simply without substantial evidence that the petitioners' home failed to satisfy their burden of proof and that this appeal to the Board to reverse the decision of the Zoning Enforcement Officer should be denied.

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

GENERAL DOCKET:

1. 911 Harbor Road, Map 241, Parcel 17. Petition of Marc Flaster for a variance of the Zoning Regulations; Section 5.2.4.3 to reduce the side yard setback for an accessory structure from 10 feet, proposing 5.7 feet. Permission to install a generator. Premises: R-3

Luis Almeida, Architect, presented the application for a variance of the Zoning Regulations. He noted the owner is requesting a variance to install an emergency generator to service kitchen and general lighting during times of no power. They would like to install the generator within the side yard setback adjacent their neighbors existing generator.

The hardship is the entire rear yard is 5'0" to 8'0", below base flood elevation and is within the 100'0" mean high water flood line setback. The generator will also be in compliance within the 40' frontage.

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.

2. 533 Mill Hill Terrace, Map 228, Parcel 10. Petition of Rob and Barbara Voytas for a variance of the Zoning Regulations; Section 2.9 to enlarge the living space in existing legal non-conforming second dwelling. Permission to convert the existing two car garage into living space. Premises: AA Zone

Rob Voytas, owner, presented the application for a variance of the Zoning Regulations. They are requesting a variance in order to convert the existing attached garage space to a living room. In doing so, they would like to have a bigger living space for their aging

parents. The home is pre-existing and is a legal non-conforming second dwelling on one lot is currently in need of repair due to age of structure.

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.*

3. 644 Fairfield Woods Road, Map 46, Parcel 284. Petition of David Goldberg 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 29.75 feet. Permission to install a generator. Premises: R-3

Michael Thibodeau, agent, presented the application for a variance of the Zoning Regulations. The owner is requesting a variance to install a backup generator along the left side near the front of the house. Due to the ever changing weather patterns, their home has become vulnerable to power outages on a regular basis. The most important issue is the basement water proofing system, which requires electricity. The backup battery option is limited and the result is flooding of the “finished” basement.

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

4. 3060 Redding Road, Map 167, Parcel 18. Petition of Christopher and Anne Pullen for a variance of the Zoning Regulations; Section 5.2.4 to reduce the minimum required street line setback from 60 feet, currently 0 feet, proposing 45 feet. Permission to construct a two car detached garage. Premises: AA Zone

Attorney James Walsh presented the application for a variance of the Zoning Regulations. He noted the Applicant, Christopher T. Pullen and Anne G. Pullen, requests a variance of Section 5.2.4 of the Zoning Regulations as discussed hereinafter in order to construct a two car garage, with a playroom and half bath above it. This proposed structure is meant to replace a large barn that contained a two garage that was destroyed by a fallen tree approximately eighteen months ago. The property is located in a AAA Residential District. The Applicant is seeking a variance of Section 5.2.4 reducing the street line property setback for the proposed garage from 60 feet, existentially 22 feet proposing 22 feet. The proposed Barn will be 45 feet from the street line. The existing and proposed 22 feet street line setback, as can be seen on the A-2 survey provided, is measured from the front of the house which is legally preexisting non-conforming.

The applicants currently are leasing the property but are planning on moving back into the residence when that lease expires in June 2014. The applicant will reside at the residence with their three (3) children, ages 17, 14 and 6. They are seeking to construct a two car garage, with a playroom and half bath above it on the property prior to them moving back into the property. While they were residing in the home previously they always had a two car garage to store their vehicles in. They feel the need to have the same when they return next year. While they have an average sized home, the recreational area for their three (3) growing children is getting tight. The Applicants children enjoy spending free time at their home and this project would give them additional area to enjoy with family and friends.

The Pullen family has been long term residents of Fairfield, having only relocated temporarily to Easton several years ago. They have missed Fairfield and their home here and looking forward to returning next year. They plan to live here for many years to come.

With respect to the variances sought pursuant to Section 5.2.4, the Applicant is required to construct the garage so that it encroaches into the street line setback for a AAA Residence District due to conditions existing on the lot and need the variance discussed above. As can be seen on the survey, the location of the house makes it impossible to construct the garage on the property within the street line setback created by the AAA Residence District. Also, the only place to realistically and aesthetically construct the garage is where it is proposed and to encroach into the street line setback requirements.

Attorney Walsh also noted as stated earlier, the proposed structure is meant to replace a large barn that contained a two (2) garage for that was destroyed by a fallen tree approximately eighteen months ago. This barn was over 100 years old when it was destroyed by a large tree falling on it during a storm. While his clients' were distraught by the loss of their beloved barn, there was nothing that could be done to save it. It was therefore removed from the premises. As can be seen from the survey, the existing barn was 54 feet by 23 feet. This previous barn was built right on the front property line of the Premises and contained no street line setback whatsoever. In redesigning the garage, the applicants sought to design the garage to match the house and the surrounding structures in the neighborhood to reduce the size of the garage and to set the garage as far back from the street line as was possible. The applicants' proposal reduces the footprint of the garage to 30 feet by 24 feet. As the survey shows, the unique configuration of the property forced the three clients to locate the proposed garage in the area planned. While they have a large property which meets the requirements of the zone in every other requirement other than street line setback, the proposed garage could not be located anywhere else on the property based on the location of the existing home, the location of their engineered septic system, the location of a Conservation Easement and the location of the Inland Wetland Setbacks. Based on these unique characteristics/configuration of this property, the client did its best to design the proposed garage to be as far away from the street line setback as possible. This design and location increase the street line setback from zero with the previous barn/garage to 45 feet with the proposed garage. This is a significant change and only 15 feet from what is required under the regulations.

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. First, the variance requested must be shown not to substantially affect the Comprehensive Zoning Plan. This request conforms to the Comprehensive Zoning Plan and is in harmony with the general purpose and intent of the Zoning Regulations of the Town of Fairfield. It promotes the public health, safety, convenience and welfare. It will have no adverse effect on property values. This request will also maintain the character of the neighborhood. The purpose and intent of the regulations is to prevent development that would be lacking in harmony with adjoining properties, conflict with the development purposes of the Town and create an undue hardship and unsightly area for surrounding properties. In fact, the garage addition will

enhance the appearance of the house, and will create harmony within the neighborhood that also all have garages, and will not adversely affect the property values.

The second statutory condition that must be met is that it must be found that "a literal enforcement of... the regulations would result in exceptional difficulty or unusual hardship ... ". (emphasis added) In this particular instance the "exceptional difficulty or unusual hardship" emanates from the fact that the shape of the lot, the location of the wetlands setbacks, Conservation Easement, septic system and house on said lot, are such that they have no option or alternative but to seek these variances as the literal application and enforcement of the regulations to their property would create exceptional difficulty and unusual hardship, preventing them from being able to construct almost anything they seek to build. The street line setback regulations established pursuant to Section 5.2.4 require a street line setback of 60 feet, when the existing house is currently 22 feet from the front property line. This prevents them from being able to construct anything they seek to build, including the replacement of the garage, which was destroyed by a storm. The impact of the Zoning Regulations to this specific property establishes a basis for a finding of exceptional difficulty or unusual hardship because it renders the property technically deficient with regard to street line setback requirements for the construction of the garage requested.

Chairman Coyne recused himself from the proposed application. Jim Hamilton sat in for Chairman Coyne and Ed Cheffetz sat in for Jim Hamilton.

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

Condition: "Conditioned upon no cooking or sleeping facilities"

5. 178 Lalley Boulevard, Map 182, Parcel 47. Petition of David and Christina Weselcouch for a variance of the Zoning Regulations; Section 5.2.5 to increase the maximum lot coverage from 20%, currently 23%, proposing 23.6%. Permission to add (2) two separate landings and stairs. Premises: A Zone

David Weselcouch, owner, presented the application for a variance of the Zoning Regulations. They would like to construct two stairways (including landings) that will connect two first floor French doors in the rear of the house. Since a portion of each stairway (including landing) will reside above 12" from grade, a variance is required and requested in connection with the lot coverage ratio. This project will increase the safety of the home and will have no impact on the surrounding properties.

The hardship is due to the property being in an A residence zone, which requires a minimum lot area of 9,375 square feet. Our actual lot area is only 8,450 square feet, which creates an undue hardship in our ability to expand any aspect of the existing h home.

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. 228 Grasmere Avenue, Map 128, Parcel 22. Petition of Gregory and Cecelia Fuimara for a variance of the Zoning Regulations; Section 5.2.4 to reduce the minimum required street line setback from 20 feet, currently 3.3 feet, proposing 3.8 feet. Permission to remove and rebuild existing deck. Permission to remove and rebuild existing deck. Premises: B Zone

Cecelia Fuimara, owner, presented the application for a variance of the Zoning Regulations. She is requesting a variance to remove and rebuild the existing deck. The home is a legal non-conforming dwelling.

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.*

7. 1172 Unquowa Road, Map 179, Parcel 306. Petition of Philip and Mary Magnusson for a variance of the Zoning Regulations; Section 5.2.5 to increase the maximum lot coverage from 15%, currently 32.38%, proposing 33.53%, and to increase the maximum total floor area from 30%, currently 40.67%, proposing 41.81%. Permission to rebuild existing garage. Premises: R-2 Zone

Mary Magnusson, owner, presented the application for a variance of the Zoning Regulations. She is requesting a variance to rebuild the existing stand-alone garage. The parcel is a legal non-conforming parcel. The minimum lot size is in an R-2 zone.

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.*

8. 236 Surrey Lane, Map 120, Parcel 168. Petition of Julie Ann Lutz for a variance of the Zoning Regulations; Section 5.2.4 to reduce the minimum required street line setback from 50 feet, currently 45.3 feet, proposing 46 feet. Permission to construct a second floor addition. Premises: AA Zone

Richard Komutik, agent, presented the application for a variance of the Zoning Regulations. The owner wishes to construct a second floor addition. The lot is a pre-existing non-conforming legal dwelling on a corner lot. The dwelling when first built was constructed within 50 feet. of the street line setback.

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

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

9. 70 Sunrise Avenue, Map 79, Parcel 445. Petition of Robert and Jennifer Williams for a variance of the Zoning Regulations; Section 5.2.4 to reduce the minimum required side line setback from 5 feet, currently 1.1 feet, proposing 1.1 feet. Permission to extend existing deck.

Tim Dokter, contractor, presented the application for a variance of the Zoning Regulations. The owner is requesting a variance to remove and extend the existing deck. It is a pre-existing legal non-conforming deck. A copy of a survey from 1977 was submitted, showing that the house was 10 feet from the side property line. The current survey shows the house is 5.1 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.*

10. 1233 Bronson Road, Map 177 Parcel 193. Petition of Joanne Magluilo for a variance of the Zoning Regulations; Section 5.2.4 to reduce the minimum required street line setback from 50 feet, currently 42.3 feet, proposing 42.3 feet. Permission to construct new dwelling on existing foundation. Premises: AA Zone

Joanne Magluilo, owner, presented the application for a variance of the Zoning Regulations. Tim Mantz, builder, was also present.

The applicant is requesting a variance of section 5 .2.4 of the zoning regulations to reduce the street line setback for an existing home from 50 feet presently, to 42.3 feet in conjunction with a construction of a second story.

The applicant is proposing to renovate the existing home by eliminating the existing non-conforming portion of the home on the North side; adding a two car attached garage; raising the wall height of the existing first floor from 7'6" to 9'; adding a full second story above the South portion of the home; increasing the roof pitch from a 10 pitch (40 degrees) to a 12 pitch (45 degrees) over the center portion between the North and South ends of the home.

The proposed work requires a technical variance in that a second floor is being added to a portion of the home which intrudes into the street line setback at present. This is a technical variance since zoning considers the addition of a second floor an enlargement of the existing non-conformity despite the fact there is no construction closer to Bronson Road than at present.

The applicant is requesting a variance of section 5 .2.4 of the zoning regulations to reduce the street line setback for an existing home from 50 feet presently, to 42.3 feet in conjunction with a construction of a second story.

The legal hardship here is the fact that the existing home is located, at present, within the street line setback and the applicant merely wishes to improve the home with a second floor among other improvements. Additionally, the present home does not include an attached garage.

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.*

11. 90 River Street, Map 231, Parcel 451. Petition of Lynne Paushter for a variance of the Zoning Regulations; Section 5.2.5 to increase the maximum lot coverage from 15%, currently 10.93%, proposing 16.8%. Permission to construct one story additions. Premises: R-3 Zone

Attorney Raymond Rizio presented the application for a variance of the Zoning Regulations. The owner is requesting a variance to expand the first floor of the existing ranch style home and add a guest bedroom to the second floor. The improvements include expanding the garage and the living area on the first floor. Due to the ranch style of the home, the coverage requirement limits the ability of the owner to expand her home. The home is well within the setbacks. The variance requested will have no negative impact on adjoining or abutting properties.

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

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

There being no further business to come before the Commission, Chairman Coyne, adjourned the meeting at approximately 6:20 p.m.

Daphne Dixon, Acting Secretary

Josephine M. Keogh, Clerk

KEVIN COYNE, CHAIRMAN

DONALD CAFERO, SECRETARY

JOSEPHINE M. KEOGH, CLERK