

ZONING BOARD OF APPEALS
MEETING MINUTES OF JUNE 2, 2022

The Zoning Board of Appeals held a meeting at 2:00 p.m. on Thursday, June 2, 2022. This meeting was held in a hybrid manner.

Audio Recording of this meeting can be found here: <https://fairfieldct.org/meetingrecordings>

MEMBERS PRESENT: Kevin Coyne, Chair, Katie O'Grady, Jane Gitlin Nishball, Secretary

MEMBERS ABSENT: Terry Keegan, Vice Chair, Brian Avallone

ALTERNATE MEMBERS PRESENT: Harold Zawadski, Alternate, sat in place of Katie O'Grady, Elise McKay, Alternate, sat in place of Brian Avallone

EXECUTIVE SESSION

1. Approval of Minutes of Thursday, May 12, 2022
2. Approval of Secretary's Fees

Executive Session started at approximately 1:45 p.m.

CONTINUED DOCKET:

3. 1386 Hillside Road, Map 173, Parcel 73. Petition of Erik and Heather Mahland for a variance of the Zoning Regulations; Section 5.2.4 to reduce the street line setback from 60 ft., currently 45.2 ft., proposing 34.3 ft. Permission to construct a (1) one-story pool house. Premises: AAA Zone

Attorney John Fallon presented on behalf of the petitioner; Architect John Wazaluski was present.

This property is an oddly shaped corner lot and has unique and challenging topography. There is an existing 2 1/2 story residence and an existing in-ground swimming pool. The proposed pool house is proposed to be located immediately south of the existing swimming pool. The granting of the variance will not change the use of the property which remains as a single-family residence explicitly permitted in the zone. Other than the variance requested for the street setback no other variances are sought and the proposed new construction will comply with all other technical requirements of the Regulations. There are three (3) factors that as a matter of law support a finding of hardship with regard to this property and the variance requested. The Connecticut Supreme Court has recognized that the unique configuration of a lot provides a proper basis for a finding of hardship for purposes of granting a variance. This lot qualifies for such hardship consideration based upon its shape which is unique and this circumstance directly impacts compliance with the street setback requirement. Secondly, the lot is a corner lot bounded by Hillside Road to the west and Old Academy Road to the east.

The Connecticut Supreme Court has recognized that a proper basis for a finding of hardship for granting of the street line setback requirements on two sides. This corner lot is so subject to the application of

1386 Hillside Road (continued)

the street setback regulation on two boundaries and caselaw holds that hardship is established for purposes of granting the variance requested based upon this fact.

Our Connecticut courts have long held that the historic location of pre-existing structures on the lot creates a proper basis for the finding of hardship. It is in fact the historic location of the existing swimming pool that creates the need for the variance requested in order to allow the construction of the pool house in reasonable proximity to the existing pool.

Granted: Jane G. Nishball moved and Katie O'Grady seconded to approve the proposed application. Motion passed unanimously.

12. 888 Oldfield Road, Map 232, Parcel 162. Petition of 888 Oldfield Road for a variance of the Zoning Regulations section 5.1.1 to increase the number of dwelling units from two (2), proposing six (6). Permission to construct three (3) two-family dwellings with a C.A.M. application. Premises: B Zone

The proposed application was Continued to July 7, 2022

GENERAL DOCKET:

1. 11 Southfield Road, Map 231, Parcel 259. Petition of Edward C. & Jean L. Mason for a variance of the Zoning Regulations section 5.2.5 to increase lot coverage from 20%, currently 23.4%. Permission to legitimize a construction error. Premises: A Zone

Edward Mason, the Petitioner, presented on his own behalf.

In 2000, we were granted a variance to add on to our home. Due to a contractor's error made at that time, the steps from the back door have caused us to exceed the approved lot coverage ratio. This mistake is standing between us receiving approval from the Planning & Zoning Department so that we can sell our home. We respectfully ask that you approve this variance that would allow the steps to remain.

Granted: Elise McKay moved and Jane G. Nishball seconded to approve the proposed application. Motion passed unanimously.

2. 110 Shoreham Terrace, Map 130, Parcel 181. Petition of Leigh Overland for a variance of the Zoning Regulations section 5.2.4.1 to reduce the side setback for a utility deck and stairs from 5 ft., proposing 4.4 ft., and Zoning Regulation 5.2.4.3 to reduce the side setback for an accessory structure from 4 ft., proposing 0.6 ft., and section 5.2.5 to increase lot coverage from 20%, currently 26%, proposing 27.5%. Permission to legitimize a utility platform and stairs and two propane tanks. Premises: A Zone

Leigh Overland, the Petitioner and architect, presented on his own behalf.

The previous coverage variance request did not include the FEMA utility platform as it was open grate and the surveyor did not think it was counted in coverage. The propane tanks were originally located close to the open lower level, however, Fairfield Building inspectors requested it be moved five feet away. This put it close to

110 Shoreham Terrace (continued)

the property line; we were unaware it needed to be 4 feet away from the property line. The FEMA utility platform was pushed out 6" for a preferred structural attachment to the building.

In regards to hardship: This is a non-conforming lot of 7,759 square feet in lieu of the required 9,375 sq. ft.; FEMA's requirement for a raised platform to elevation 12 added coverage not required for the typical RA Zone; UI (United Illuminating) requested a large enough platform, and code-conforming stairs for the safety of the meter reader. Code also requires distance between the equipment and electrical. I was unaware that the changes to the above would be non-conforming.

Granted: Jane G. Nishball moved and Harold Zawadski seconded to approve the proposed application. Motion passed unanimously.

3. 2150 Post Road, Map 231, Parcel 380. Petition of 2150 Post Road Realty, LLC for a variance of the Zoning Regulations section 31.2.16, to reduce the setback from the edge of the building 2 ft. for every 1 ft. in height. Antennas are 12 ft. in height and are required to be 24 ft. from the roof's edge. Proposing 6 ft., 20'10", 21'4", and 23'. Permission to install three (3) new cellular antennas and one (1) equipment panel box. Premises DCD

Presenting on behalf of the Petitioner was Alec Gladd of Cuddy and Feder; also present was Michael Jones of M&K Development.

The installation of this telecommunications equipment will provide wireless coverage for the Dish wireless network in the surrounding area. The hardship here is the topography of the land. Antennas require a particular height and placement to transmit and receive signal. Since the building is more than 30 ft. in height, we are requesting the setback variance to place the antennas closer to the edge of the roof of the building. Setting them back the required 2 ft., for every 1 ft. in height will not allow necessary clearance over the roof parapet to transmit and receive signal. We need to be set back 6 ft. from the edge in order for the signal to propagate off of the building correctly. This building was chosen over others in the area because there are currently antennas on the roof for other telecommunication carriers.

Granted: Katie O'Grady moved and Jane G. Nishball seconded to approve the proposed application. Motion passed unanimously.

4. 190 Sherman Street, Map 180, Parcel 55. Petition of McKenzie Real Estate Group, LLC for a variance of the Zoning Regulations section 12.7.6.2 to increase the side setback from 0 ft., currently 4 ft., proposing 4.9 ft. and section 28.6.6 to reduce the required number of parking spaces from seven (7), proposing five (5). Permission to construct a two (2) story rear addition. Premises: CDD

Attorney John Fallon presented on behalf of the petitioner. Jimmy Zumo, Architect was present.

McKenzie Real Estate Group LLC, and Culpeo HR, soon to be the occupant of the premises, make this application for approval of a modest addition to the property in order to accommodate the offices of Culpeo HR, a human resources consulting firm. The proposal is to construct a modest 283 sq. ft. addition. In order to accommodate the proposed addition, the applicant seeks a variance of section 12.7.6.2 to allow for a continued side yard setback at 4 ft. The regulation provides that the side yard setback on one side should be 0, but as shown on the survey submitted, the existing and longstanding structure is 4 ft. from the property line and will be unchanged. This request is technical in nature and only required due to the nonconforming status of the existing building as it relates to the side yard setback requirement.

190 Sherman Street (continued)

A variance of section 28.6.6 is also being requested to reduce the required number of parking spaces from seven (7) to five (5). The nature of their business is such that only very rarely will clients visit the office. The company employs five core consultants all of whom work on a hybrid schedule of three (3) days on-site, and two (2) days remote. All other employees function on a fully remote basis. Due to the majority of employees working remotely, the applicant is extremely confident that five (5) parking spaces will be more than sufficient to meet the needs of the firm. With regard to hardship, the law recognizes as the Board has previously found with regard to properties located in the CDD, that the application of current parking regulations, to properties previously existing and nonconforming as to both use and parking establishes a proper basis for a finding of hardship.

With regard to the variance of section 12.7.6.2, the controlling legal fact is that the existing structure is a legally protected, pre-existing nonconforming structure in that regard, as it is located 4 ft. from the side yard property line. It is the fact of this existing non-conformity that creates the need for the variance requested. It is the historic location of the existing structure and it's already nonconforming status that creates the need for the technical variance that is requested in order to allow for the modest addition as proposed. The proposed construction will not result in any actual change to the existing side yard setback, and is simply required because of an already nonconforming status of the existing structure with regard to side yard setback.

Granted: Katie O'Grady *moved* and Elise McKay *seconded* to approve the proposed application. Motion passed unanimously.

5. 50 Berkeley Road, Lot A, Map 42, Parcel 80. Petition of Julia G. Smith for a variance of the Zoning Regulations section 2.7 to reduce the lot frontage from 60 ft., currently 100 ft., proposing 50 ft. and section 5.1.1 to reduce the lot size and lot square from 6,000 sq. ft., and 60 sq. ft., currently 10,000 sq. ft., proposing 5,000 sq. ft. and 50 sq. ft. Premises B Zone

Bill Achilles, Architect, presented on behalf of the petitioners. Julia Smith, Owner, commented.

The owners wish to divide an existing 100 ft. x 100 ft., 10,000 sq. ft. property with a single-family house into two equal-sized 50 ft. x 100 ft., 5,000 sq. ft. properties. The existing house will remain on one lot, and one lot would be vacant. Each property would require variances for:

- Frontage – 50 ft. in lieu of the required 60 ft.
- For lot size of 5,000 sq. ft. in lieu of the required 6,000 sq. ft.
- For minimum square on the lot of 50 ft. in lieu of the required 60 ft.

The existing 100 ft. x 100 ft., 10,000 sq. ft. lot is oversized for the B Zone that requires 6,000 sq. ft. and is one of the largest in the neighborhood, making it unique and unusual. An existing single-family house is situated to one side of the lot. The existing home on Lot A is compliant with setbacks, lot coverage, and floor area ratio. Most of the existing properties in the area are one (1) family and have similar frontage, lot size and lot square required issues.

The proposal to split the lot into two equal-sized lots to allow two (2) single houses would be consistent with the neighborhood in regards to lot size and one (1) family use as opposed to a two (2) family house allowed in this zone.

Several neighbors signed in favor of the variance; one opposed.

Granted: Elise McKay *moved* and Jane G. Nishball *seconded* to approve the proposed application. Motion passed unanimously.

6. 50 Berkeley Road, Lot B, Map 42, Parcel 80. Petition of Julia G. Smith for a variance of the Zoning Regulations section 2.7 to reduce the lot frontage from 60 ft., currently 100 ft., proposing 50 ft., and section 5.1.1 to reduce the lot size and lot square from 6,000 sq. ft. and 60 sq. ft., currently 10,000 sq. ft., proposing 5,000 sq. ft. and 50 sq. ft. Permission to establish a building lot. Premises B Zone

Granted: Elise McKay *moved* and Jane G. Nishball *seconded* to approve the proposed application. Motion passed unanimously.

7. 142 Hunter Road, Map 147, Parcel 281 Q. Petition of John and Gabriela Cevallos for a variance of the Zoning Regulations section 5.2.4 to reduce the sum of the sideline setbacks from 25 ft., currently 24.6 ft., proposing 24.6 ft. and section 5.2.5 to increase the total lot coverage from 20%, currently 26%, proposing 26.7%. Permission to construct a rear two (2) story and 2nd floor additions. Premises A Zone

John and Gabriella Levallos presented on their own behalf. Bill Leavy, Architect, also spoke.

They wish to construct and expand the 1st floor in the rear to square off, 6' x 14', the back right corner of the 1st floor. This will allow an expansion of the kitchen and relocate the bathroom. The 2nd floor addition will be over the existing garage with a new primary suite to create an additional bedroom for their family. When the home was purchased the owners were unaware that the deck and pool were not permitted and already over the lot coverage. This was discovered once the design was started and they examined the survey.

Granted: Elise McKay *moved* and Jane G. Nishball *seconded* to approve the proposed application. Motion passed unanimously.

8. 288 Adley Road, Map 49, Parcel 49. Petition of Arthur Baruch for a variance of the Zoning Regulations section 5.2.4 to reduce the street line and sideline setbacks from 40 ft., (30 ft. to the open porch), and 15 ft., currently 18.5 ft. and 14.8 ft., proposing 30.3 ft. to house, 26.4 to open porch and 14.8 ft. Permission to construct a two (2) story and 2nd-floor addition with attic and open front porch. Premises: R-3 Zone

Owner Arthur Baruch presented on his own behalf.

They would like to renovate an existing single family home by adding a 2nd story addition consisting of 3 bedrooms with two (2) full bathrooms and a one (1) car garage with a master suite.

Granted: Jane G. Nishball *moved* and Katie O'Grady *seconded* to approve the proposed application. Motion passed unanimously.

9. 250 Pequot Avenue, Map 241, Parcel 175 A. Petition of Pequot Realty, LLC for a variance of the Zoning Regulations section 12.5.5 to allow residential use on the first floor and section 12.7.4 to increase the number of stories and height from three (3) stories and 30 ft., proposing four (4) stories and 40 ft. and section 12.7.5.2 to increase the total floor area from 100%, proposing 126%, and to permit a single building greater than 14,000 sq. ft. Permission to construct a four (4) story multi-family, eighteen (18) unit residential building. Premises NDD

The proposed application was Continued to July 7, 2022

10. 111 Blackrock Turnpike, Map 80, Parcel 4. Petition of Invest II for a variance of the Zoning Regulations section 28.6.12 to reduce the minimum required parking spaces from 402, proposing 111. Permission to establish a brewery. Premises: DI

Attorney Steven Chardello presented on behalf of the petitioner. Also presenting were Ellis Reilly and Bob Hill.

The applicant, Elicit Brewing Co (EBC), is a brewery concept first located at 165 Adams Street in Manchester, CT owned and operated by the Eli's Restaurant Group. EBC, in addition to brewing beer, is an all-encompassing hospitality concept with a full kitchen, beer hall, biergarten, cocktail bar, and entertainment. The property, 111 Black Rock Turnpike, is a commercial building owned by United Properties. This 1.93-acre site is located in the Commerce Drive Area Designated District, and is improved by a 25,757 sq. ft. commercial building.

The applicant plans to renovate the building to create a second location for its brewery concept mimicking the one they have in Manchester. The brewery concept offers a full scale brewing facility, kitchen, cocktail bar, and the like with live music, festivals, and regular events.

Full utilization of the building at 111 Black Rock Turnpike would result in approximately 16,066 square feet of patron floor area with 111 parking spaces. Given the size of the building on the parcel, full compliance with the required parking spaces for the proposed use is not possible to achieve. This parcel, however, is uniquely positioned such that patrons can utilize existing nearby public parking to supplement the on-site parking.

To that end, the applicant is requesting a variance of Section 28.6.12 of the Zoning Regulations, which states that there is a requirement of one (1) parking space for every 40 square feet of patron space for restaurants and other food service establishments. The patron floor area is expected to be 16,066 sq. ft., which would require 402 parking spaces per Section 28.6.12. The applicant seeks relief to reduce the required 402 spaces to the existing 111 spaces.

The subject parcel is located one parcel removed from the Fairfield Metro Railroad Station and is closest to the section of the parking lot that is farthest from the Fairfield Metro Station entrance. These additional parking spaces are available within a convenient walk of the proposed use. The State Department of Transportation provides 1,400 parking spaces in the Fairfield Metro lot which are open to the general public. Like all parking lots along the Metro North line, the public may park for free on nights (after 5pm), weekends, and holidays, which coincides with EBC's peak hours, as 93% of EBC's business takes place during these times. Former tenants of the subject parcel include Boston Billiard Club and Planet Fitness, of which were high capacity uses that were able to be accommodated on site without creating any adverse off-site impacts. The 111 parking spaces at 111 Black Rock Turnpike in conjunction with the parking at Fairfield Metro Train Station will be more than ample parking for EBC patrons.

Granted w/ Conditions: Elise McKay *moved* and Harold Zawadski *seconded* to approve the proposed application. *Motion passed unanimously*

Conditions

- 1) Provide a written agreement with the DOT, granting permission to use part of the Metro train station lot for additional parking.
- 2) Provide an Easement Agreement from the neighboring property at 81 Black Rock Turnpike to allow for the construction of a pedestrian crosswalk over and through their property.

11. 461 Riverside Drive, Map 130, Parcel 45. Petition of Robert and Jennifer Gainer for a variance of the Zoning Regulations section 5.2.4 to reduce the street line, sideline, and sum of two (2) sideline setbacks from 30 ft., 7 ft., and 20 ft., currently 32.3 ft., 6.9 ft., and 18.3 ft., proposing 25.3 ft., 6.9 ft., and 18.3 ft. and section 5.2.5 to increase lot coverage from 20%, currently 23.7%, proposing 25.1%. Permission to construct a one (1) story addition with open front porch. Premises: A Zone

Jennifer Gainer, Owner, presented on her own behalf.

She wishes to construct a 32' x 7' single story addition approximately 210 sq. ft., consisting of an expansion of the existing dining room and living room, plus an entry way. This will also include an approximate 10' x 3' covered staircase out to the front walkway.

The hardships are configuration, size and dimension. The minimum required lot size is 9,375 sq. ft. and the property is 5,787. This square footage was recalculated since we purchased the house from 6,155. The lot also has an area of wetlands in the rear left portion of the property. The minimum square on the lot is 75' square and the existing condition is 49.83'. Minimum lot frontage is 75', and the existing conditions are 50'. When the home was purchased the minimum was 20'. The plan keeps within the size and scale of the rest of the homes in the beach homes along Riverside Drive.

Granted: Katie O'Grady *moved* and Elise McKay *seconded* to approve the proposed application. Motion passed unanimously.

12. 115 Bel Air Lane, Map 76, Parcel 267. Petition of Binoy D'Costa and Pheroza Parashar for a variance of the Zoning Regulations section 5.2.4 to reduce the street line setback from 30 ft., currently 21.7 ft., proposing 21.7 ft. and section 5.2.4.3 to reduce the street line setback for an open porch from 20 ft., currently 18 ft., proposing 13.6 ft. Permission to construct a 2nd floor addition and open front porch. Premise: A Zone

Binoy D'Costa, Owner, presented on his own behalf.

The work we wish to perform on the first floor: replace the current mudroom with a dining room: build a new mudroom on the side of the outdoor patio: renovate the kitchen.

The addition of a second floor with: master bedroom, bathroom and walk in closet; two office spaces; laundry space.

The house is non-compliant according to the allowed setback guidelines.

Granted: Jane G. Nishball *moved* and Katie O'Grady *seconded* to approve the proposed application. Motion passed unanimously.

13. 319 Harbor Road, Map 241, Parcel 1. Petition of 319 Harbor Road, LLC for a variance of the Zoning Regulations section 5.1 to legitimize the number of dwelling units on one (1) lot from one (1), currently three (3), proposing three (3). Permission to legalize three (3) dwellings on one (1) lot, and remove and rebuild the principal dwelling. Premises: R-3 Zone

The proposed application was *Continued* to July 7, 2022

14. 88 Dwight Street, Map 182, Parcel 73. Petition of Victor Nesi for a variance of the Zoning Regulations section 5.2.5 to increase lot coverage from 20%, currently 22.5%, proposing 22.9%. Permission to construct a platform for a stand-alone generator. Premises: A Zone

James Zumo, Architect, presented on behalf of the petitioner.

They wish to construct a generator deck on the rear of the garage for emergency power. The deck will be built greater than 12" above adjacent grade, therefore making it count in the total allowed coverage.

The existing site lies within a FEMA flood zone requiring all mechanical structures to be elevated above flood zone. In doing so, the deck will become coverage. Had the generator been able to be put on the ground, no coverage variance would be needed.

Granted: Katie O'Grady *moved* and Elise McKay *seconded* to approve the proposed application. Motion passed unanimously.

15. 492 Penfield Rd., Map 138, Parcel 202. Petition of John Sorensen and Julia McMahon for a variance of the Zoning Regulations section 5.2.4.1 to reduce the side setback for an accessory structure from 5 ft., proposing 3.1 ft. and section 5.2.5 to increase lot coverage from 20%, currently 19.9%, proposing 22.1%. Permission to construct a rear deck with stairs and a platform for a stand-alone generator. Premises A Zone

Attorney John Fallon presented on behalf of the petitioner. Also present were John Sorenson, homeowner, and Dennis Peters.

John Sorensen and Julia McMahon are the owners of the property located at 492 Penfield Road. The property is a legally protected pre-existing nonconforming lot with respect to lot area, shape and frontage. The parcel consists of 9,000 SF wherein the provisions of the zone establish a minimum required lot area of 9,375 SF. Similarly, the lot square is 50 ft. and the zoning regulations require a square of 75 ft. Finally, lot frontage is 50 feet, 25 feet less than the required 75 feet.

The Applicants request approval of these variances in order to construct a deck and generator deck as shown on the plans submitted herewith. The decks proposed conform in all other respects to applicable provisions of the Zoning Regulations and there will be no increase in the total floor area presently existing. The granting of the variances will not change the use of the lot which will remain as a single-family residence explicitly permitted in the zone. Other than the variances requested for coverage and the side yard setback to accommodate the generator, no other variances are sought and the proposal will comply with all other technical requirements of the Regulations.

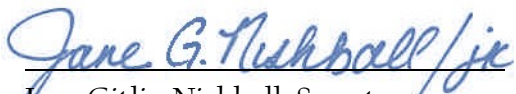
With regard to hardship, the controlling legal fact is that the lot in question is a valid and legally protected nonconforming lot as it relates to both the current lot area and shape requirements. As previously referenced this lot was established for residential purposes before the imposition of a square of 50 feet. This lot is a valid and legally protected preexisting nonconforming lot. Nonetheless, the 20% coverage requirements and the current setback regulations applicable in this zone must be calculated on a lot area 375 SF less than the minimum requirement of the zone. Similarly, the setback regulations currently contemplate a significantly wider lot which directly implicates compliance with the current side yard setback requirements. Only the generator deck requires the variance requested pursuant to the provisions of Section 5.2.4.1. Notwithstanding

492 Penfield Rd (continued)

the significant non-conformity of the lot the variance requested pertaining to coverage is only 2.2%. Our caselaw establishes that strict application of the Zoning Regulations regarding coverage and setbacks to this nonconforming lot does result in unusual hardship sufficient to support the granting of the variances requested.

Granted: Jane G. Nishball *moved* and Harold Zawadski *seconded* to approve the proposed application. Motion passed unanimously.

There being no further business to come before the Commission, at 4:20 p.m. Chairman Coyne adjourned the meeting.


Jane Gitlin Nishball, Secretary


Jodi Karagianes, Clerk

KEVIN COYNE, CHAIRMAN

JANE GITLIN NISHBALL, SECRETARY

JODI KARAGIANES, CLERK