

ZONING BOARD OF APPEALS
MEETING MINUTES OF OCTOBER 6, 2022

The Zoning Board of Appeals held a meeting at 3:00 p.m. on Thursday, October 6, 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, Chairman; Terry Keegan, Vice Chair; Jane G. Nishball, Secretary; Brian Avallone and Faith Dillon

MEMBERS ABSENT: Katie O'Grady

ALTERNATE MEMBERS PRESENT: Faith Dillon, Alternate, sat in place of Katie O'Grady.

EXECUTIVE SESSION

Approval of Minutes of Thursday, September 1, 2022: Brian Avallone *moved* and Terry Keegan *seconded* to approve the minutes as presented. *Motion passed unanimously.*

Approval of Secretary's Fees: Brian Avallone *moved* and Jane G. Nishball *seconded* to approve the minutes as presented. *Motion passed unanimously.*

Executive Session started at approximately 3:05 p.m.

GENERAL DOCKET:

1. 26 Sherman Court, Map 180, Parcel 48. Petition of Robert J. and Maria L. Decesare, Trustees for a variance of the Zoning Regulations Section 12.3.16 to allow the total square footage of residential use to exceed 50% of the total floor area to 54%. Permission to create a residential use to the 2nd floor. Premises: CDD Zone.

Attorney John Fallon presented on behalf of the petitioner.

For the last 37 years Maria has operated her beauty salon, Images Hair Designers on the first floor of the premises. The second floor has been utilized by business office tenants during that period. The property is located in the Center Designed Business District.

The Decesares seek a variance to allow utilization of the second floor for residential use. Pursuant to Section 12.3.16 residential use is allowed in the Center Designed Business District provided that it is not located on the first floor and does not exceed 50% of the total floor area of the building. In order to allow the second floor to be utilized as a residential apartment, a minor variance of this Section of the Regulations is required since the total area of the existing second floor to be devoted to residential use is 54% of the structure's total floor area.

26 Sherman Court (cont.)

It is submitted that utilization of the second floor as a residential apartment will have less impact with regard to considerations involving traffic and parking than would the continued utilization of the second floor for business offices. All other provisions of the Zoning Regulations pertaining to mixed-use will be complied with and the variance is only to allow a 4% increase in the floor area to be devoted to residential use. In the present case residential use is permitted in the zone and on the upper floor of the structure in accordance with the provisions of Section 12.3.16.

Strict enforcement of the zoning regulations, with regard to the 50% percentage of residential use, clearly creates hardship in the context of this request for a variance that will allow the already existing second floor to be used as a residence constituting 54% of the total floor area of the structure. No change to the existing structure is proposed and the variance is necessitated only because the second floor already constitutes 54% of the total floor area of the building.

Ron Friedson spoke in favor of the application.

GRANTED: Brian Avallone moved and Jane G. Nishball seconded to approve the proposed application. Motion passed unanimously.

2. 284 South Street, Map 232, Parcel 208. Petition of Rhonda Eleish for a variance of the Zoning Regulations Section 5.2.4.3 to reduce the side line setback for an accessory structure from 10 feet, currently 3.6 feet, proposing 4.6 feet. Permission to construct a detached garage with studio above. Premises: A Zone.

Patricia Gill, Architect, presented on behalf of the petitioner. Rhonda Eleish spoke as well.

The homeowner wishes to remove the existing non-conforming, deteriorating, 13' wide x 22' deep 1-story, detached garage and replace it with a 12'-3" wide x 35'-6" deep, 2-story detached garage with studio above. Proposed garage height is 14'-6" whereas 15' maximum is allowed.

The required side yard setback for this accessory structure is 10'. Compliance with this would shift the garage behind the existing house and make it inaccessible from the driveway. The existing house location, site topography, and trees prevent us from locating the proposed garage anywhere else.

Ms. Poppy Bonuoma resident of 341 South Street spoke in opposition.

GRANTED: Brian Avallone moved and Faith Dillon seconded to approve the proposed application. Motion passed unanimously.

3. 146 Chelsea Street, Map 229, Parcel 167. Petition of Raymond J. Forehand II for a variance of the Zoning Regulations Section 5.2.4 to reduce the street line setback from 17 feet, currently 23.6 feet, proposing 9.1 feet; and Section 5.2.5 to increase the total lot coverage from 20%, currently 19.7%, proposing 23.1%. Permission to construct a one story, one car garage addition. Premises: A Zone.

146 Chelsea Street (cont.)

Attorney Ray Rizzio presented on behalf of the petitioner.

The Applicant requests this variance to construct a one-story attached garage on the western side of the existing single-family dwelling. They are proposing a modest addition and renovations to the existing dwelling. They would like to readjust the existing driveway to provide an area for vehicles to turn around within the Site; this is especially important with the Site's location on a corner lot and it will enable the Applicant and his family to exit the Site with their vehicles facing forward.

The Applicant proposes to extend the garage to accommodate two vehicles, which will add Three hundred and forty-one square feet (341 SF). This addition is the subject of the variance from the minimum setback from a street line on a corner lot; it is important to note that the addition will extend towards an existing masonry wall located on the west side of the Site with the front of the garage flush with the wall so the proposed addition will appear flush with the existing conditions. The street property line along Somerset Avenue is set back from the edge of the pavement on Somerset Avenue by over Fifteen feet (15'). Therefore, in actuality, the proposed addition will be setback almost Twenty-five feet (25') from Somerset Avenue, which is well in excess of the Seventeen feet (17') required under the Regulations.

Adherence to the strict letter of the Fairfield Zoning Regulations will cause an unusual hardship to the Applicant as the Site is located on a corner lot and the Applicant is proposing a modest one-story addition towards one of the sides of the existing dwelling. The street property line along Somerset Avenue is significantly set back from the edge of pavement on Somerset Avenue and, therefore, the proposed addition will be setback almost Twenty-five feet (25') from Somerset Avenue, which is well in excess of the Regulations. The Application still fulfills the intent of the Regulations in being set back the required distance from the Street. If the Site was not located on a corner, the Applicant would be permitted to locate a principal building Seven feet (7') from the property line and the Applicant has proposed Nine and 10/00 feet (9.1'). This addition brings the existing dwelling flush with an existing masonry wall and essentially will cover a vehicle that would be allowed to park in that location. In addition, it should be noted that the proposed application will still be well below the permitted maximum floor area under the Regulations. The Regulations permit a building floor area as a percentage of lot coverage of Forty percent (40%) and the Applicant still only proposes Thirty-four and 00/00 percent (34.00%) for a modest two-story dwelling in a zone that permits two and a half (2.5) stories. In addition, the Regulations permit additions of one story to extend closer to the street line than two-story additions. However, it does not create that same exception for building coverage even though the Regulations are encouraging more building coverage for one-story additions.

GRANTED WITH CONDITIONS: Brian Avallone moved and Jane G. Nishball seconded to approve the proposed application. Motion passed unanimously.

CONDITION: There will be no living space above the new garage.

4. 90 Rosedale Street, Map 79, Parcel 845. Petition of Charles J. and Deborah L. Zsebik for a variance of the Zoning Regulations Section 5.2.5 to increase the lot coverage from 20%, currently 19.98%, proposing 20.9%. Permission to construct a one (1) story, 8' x 12' shed. Premises: A Zone

90 Rosedale Street (cont.)

Charles Zsebik, petitioner, presented on his own behalf.

He would like to construct an 8' x 12' shed on the property. The property usage is close to what is allowed. He is requesting the shed so he can relocate lawn equipment from the garage to get a second vehicle in.

GRANTED: Brian Avallone moved and Jane G. Nishball seconded to approve the proposed application. Motion passed unanimously.

5. 56 Shoreham Terrace, Map 130, Parcel 188. Petition of Andrew Lileika and Marie Lileika-Browne for a variance of the Zoning Regulations Section 5.1.1 to reduce the minimum lot size and lot square from 9,375 sq. ft. and 75 square, currently 5,000 sq. ft. and 50 square, proposing 4,780 sq. ft. and 46 square; and Section 2.7 to reduce the lot frontage from 75 feet, currently 50 feet, proposing 44.52 feet. Permission to grant a driveway easement. Premises: A Zone.

Ron Friedson presented on behalf of the petitioner.

They are granting the neighbor an easement for their driveway. They have no other way to access their lot and have been using this land for part of their driveway for over 25 years. This does not change the physical layout of the land or theirs; it is basically an administrative matter. The size and shape of the lot are the contributing factors to their hardship.

Linda Hamilton, resident of 46 Shoreham Terrace spoke in favor.

GRANTED: Brian Avallone moved and Faith Dillon seconded to approve the proposed application. Motion passed unanimously.

6. 259 Barberry Road, Map 228, Parcel 75. Petition of David T. and Nicole Ciaburro for a variance of the Zoning Regulations Section 5.2.4 to reduce the street and side line setbacks from 50 feet and 25 feet, currently 41.3 feet and 20.4 feet, proposing 41.3 and 8.8 feet; and Section 5.2.5 to increase the total lot coverage and floor area from 10% and 20%, currently 10.5% and 9.8%, proposing 11.8% and 20.4%. Permission to construct a 1 ½ story and 2 story additions. Premises: AA Zone.

The proposed application was Continued to November 3, 2022.

7. 1901-2009 Black Rock Turnpike, Map 76, Parcel 336. Petition of Turnpike Shopping Center LLC for a variance of the Zoning Regulations Section 12.7.6.4 to reduce the rear setback from a residence district from 30 feet, currently 25.9 feet, proposing 26.3 feet. Permission to construct a new covered loading dock. Premises: DCD Zone.

Jackie Kaufman, Attorney, presented on behalf of the petitioner; David Woitowitz, Architect also spoke.

The applicant, Turnpike Shopping Center, LLC owns a commercial shopping center located at 1901-2009 Black Rock Turnpike, Fairfield, CT. The Property contains 279,985 sf of lot area and is bounded by Black Rock

1901-2009 Black Rock Turnpike (cont.)

Turnpike to the north/east, Designed Commercial District (DCD) Zoned properties to the east and south, and property zoned Design Residential District (“DRD”) to the south and west. The Property is in the DCD Zone.

The Property is improved with multi-tenanted buildings, a paved parking lot and associated loading facilities to the rear of the building. According to the Assessor’s Records, the Shopping Center was first built in 1959. The Owner and tenant, Wakefern Food Corporation (d/b/a Grade A Market, Inc./Shoprite), seeks to improve the existing loading facilities located within the southwest portion of the Property with a new, covered loading dock on the rear of the building, adjacent to Shoprite’s leased premises. The enclosed plans propose the construction of a concrete loading dock, stairs, and steel roof, open on four sides, adjacent to an existing dock door (total height of 15 feet). Presently, there is no loading dock in this area and trucks must make several turns to back directly up to the Shoprite loading door.

The proposed loading dock is located 25.9 feet from the rear Property line. The DCD zone requires only a 10 foot rear yard setback; however, when the DCD zone abuts a more restrictive zone, as it does here (to the DRD Zone), the rear yard setback is increased, and in this case, to 30 feet.

The application of Section 12.7.6.4 of the Zoning Regulations results in the exceptional difficulty or unusual hardship of preventing the installation of a loading dock that will significantly enhance the safe and efficient use of the Property. The Shopping Center was built in 1959 under less a less restrictive zoning code and prior to the creation of the adjacent residential, multifamily residential uses and increased setback requirement. This has resulted in legal non-conforming features on the Property as the Zoning Regulations have advanced over time (such as the rear yard setback). The Property was also designed at time when delivery trucks were smaller and did not require as much turning radii. An older development that must adapt to modern advancements and meet a zoning code which has significantly changed since it was first approved, creates an unusual hardship.

The proposed loading dock provides a more effective and efficient way for loading activity to take place, reducing the driving maneuvers (turns) required to access the loading door. This will also result in reduced truck queuing because the truck trips and loading can now occur at a faster pace, a benefit to both adjacent neighbors and the Shopping Center Property.

The requested relief is the minimum necessary to afford relief. The loading dock is located no closer to the Rear Lot Line than necessary to allow delivery vehicles to safely enter and exit the loading premises. Granting the requested relief will not be injurious to the neighborhood: 1) the dock is designed to make truck turning and loading more efficient, thereby reducing truck queuing on site; 2) fewer truck turns will result and, therefore, produce less noise than currently may exist; and 3) the loading dock will also be set back further away from the Rear Lot Line than existing, permitted improvements on the Property. Approving the Variance relief requested herein will allow the Applicant to reasonably improve the Property and Shoprite operations.

Residents from 3 neighboring properties on Melody Lane spoke in opposition.

GRANTED: Brian Avallone moved and Terry Keegan seconded to approve the proposed application. Motion passed unanimously.

8. 31-38 Pine Creek Avenue, Map 238, Parcel 62. Petition of Joseph Cioffi for a variance of the Zoning Regulations Section 11.1.4.1 to allow for a detached structure to contain finished floor area with plumbing and heat/cooling to the 2nd floor; and Section 11.13.1 to reduce the setback from the center line of Pine Creek Avenue from 45 feet, currently 27.1 feet, proposing 27.1 feet. Permission to elevate the existing detached garage to be FEMA compliant and to construct a dormer. Premises: BD Zone

Attorney John Fallon presented on behalf of the petitioner.

Dr. Joseph Cioffi is the owner of the parcels designated as 31 and 38 Pine Creek Avenue located in the Beach District. Dr. Cioffi has recently purchased the property and plans to make extensive and aesthetically pleasing renovations to the existing two story main residence. In addition he wishes to address the condition and functionality of the one and one half story garage located on the property. This existing structure has deteriorated, is not FEMA compliant, is not functional and has a negative aesthetic impact based upon its condition. Dr. Cioffi makes this application for the variances in order to construct a new garage structure on the same footprint as the existing structure to be demolished. The new structure will also be the same height as the existing garage. As shown on the plans submitted the garage will have a home office area on the upper floor.

Dr. Cioffi has significant duties and responsibilities at his primary employment at the NYU Medical Center which includes resident education, research and scheduling of hospital physicians for coverage. In addition, Dr. Cioffi maintains a consulting practice for medical malpractice matters for insurance carriers and attorneys. Finally, as a consultant for Cooper Surgical in Trumbull, Connecticut he is responsible for implementing education and training for their sales staff and lectures including online seminars for physicians training with regard to obstetrical devices used during cesarean deliveries. All of these endeavors require regular and ongoing communication from a home office. The primary residence does not afford an opportunity for a separate workspace that will allow Dr. Cioffi a private area to tend to these daily professional obligations.

The nature of Dr. Cioffi's work as above referenced is such that he does not see clients or patients on a face-to-face basis at his home. His work in the home office area will be limited to phone conferences, virtual meetings and the like. In order to make the space reasonably functional he is requesting approval of a half bath in the home office area as shown on the plans submitted.

In order to facilitate the new construction two variances are sought. The proposed new garage structure will be built on the same footprint and be of the same height as the existing garage. It will be totally FEMA compliant. The current structure as shown on the survey is already non-compliant with the street setback from Pine Creek Avenue being set back 27.1'. The new FEMA compliant structure will be built on the same footprint and there will be no increase in the existing noncompliance. In addition, a variance of Section 11.1.4.1 is requested so that the office area located above the garage can be created and utilized. The structure will comply with all other provisions of the Zoning Regulations including those pertaining to height and setbacks and will be fully FEMA compliant. There will be no change in the historic use of the property as a residence and the existing accessory structure will be replaced on the same footprint with a new FEMA compliant aesthetically pleasing one.

A hardship which justifies a Zoning Board of Appeals to grant a variance must be one that originates in the Zoning Ordinance and arises directly out of the application of the ordinance to unique circumstances pertaining to the property in question; the applicant must demonstrate that because of some peculiar characteristics of the property, strict application of the Zoning Regulations results in unusual hardship.

31-38 Pine Creek Avenue (cont.)

With regard to the variance requested of Section 11.13.1 with regard to the setback from Pine Creek Avenue, it is again noted that the new structure will be built on the current footprint and there will be no increase in the setback nonconformity which will remain at 27.1'. The purpose of the new construction is to ensure compliance with all applicable FEMA regulations and the Board has previously recognized that variances necessitated in order to comply with FEMA regulations satisfy the hardship requirement as mandated by C.G.S Section 8-6.

The historic location of this legally protected preexisting nonconforming structure creates a basis for hardship. It is the fact of the historic location of the existing garage structure and its already nonconforming status that creates the need for the technical variance that is requested in order to allow reconstruction on the same footprint as presently exists.

With reference to the request of a variance of Section 11.1.4.1 to allow use of the area above the garage as a home office including a half bath, it is pointed out that the purpose and intent of this section of the Zoning Regulations is to ensure that an accessory dwelling in the Beach District will not be utilized as a residence in violation of the provisions of the Regulations. In the present instance it is noted that the floor plan makes no provision for any cooking or sleeping facilities and in addition requests approval of only a half bath. This is consistent with the purpose and intent of the Regulation with regard to avoidance of utilization of the accessory structure as a dwelling. Dr. Cioffi would most certainly agree to a condition of approval that the new structure will be maintained as approved and not be utilized, converted or occupied as a dwelling in the future.

Two neighbors, Laura Incerto of 89 Pine Creek Avenue and John Stauss of 48 Pine Creek Avenue, both attending virtually, spoke in favor.

GRANTED WITH CONDITIONS: Brian Avallone moved and Jane G. Nishball seconded to approve the proposed application. Motion passed unanimously.

CONDITION: The detached garage will be constructed as planned and maintained as such; it will not be converted or occupied as a dwelling in the future.

9. 316 Katona Drive, Map 77, Parcel 656. Petition of James K. Lucey Jr. for a variance of the Zoning Regulations Section 5.2.4.3 to reduce the street and side line setbacks for an accessory structure from 30 feet and 10 feet, proposing 10 feet and 4 feet. Permission to construct an above ground pool. Premises: A Zone.

James Lucey, owner, presented on his own behalf.

He would like to construct a 12' x 24' oval pool in the backyard; the yard is currently fenced in. They are on a corner lot which causes a hardship.

GRANTED: Brian Avallone moved and Jane G. Nishball seconded to approve the proposed application. Motion passed unanimously.

10. 154 Ferncliff Road, Map 46, Parcel 250. Petition of Madeline C. Gianatasio for a variance of the Zoning Regulations Section 5.2.5 to increase lot coverage from 15%, currently 16.2%, proposing 18.7%; and Section 6.3.2 to allow an accessory apartment to exceed 40% of the floor area of the original residence, proposing 42%. Permission to build a two story addition to accommodate an in-law apartment and reconstructed deck. Premises: R-3 Zone

The proposed application was Continued to November 3, 2022.

11. 438 Lucille Street North, Map 73, Parcel 5. Petition of Cristina Condulescu for a variance of the Zoning Regulations Section 5.2.4 to reduce the rear setback from 30 feet, currently 23.4 feet, proposing 17.5 feet. Permission to construct a one story addition to an existing sunroom. Premises: R-3 Zone

Cristina Condulescu, owner and Iancu Nicolae presented.

They wish to enlarge their existing sunroom from 12'x12' to 18'x22'. Due to the odd shape of the lot, it is difficult to add on to the house. There is a drainage easement that prevents building on the left side of the house and the topography on the left side makes it unusable as well. Also, due to the triangular shape of the lot, the right side is also not usable. Based on these hardships they would like a variance of the rear setback to 17 ft., from the existing 23 ft.

Hutchinson Williams, resident of 101 Lakeview Drive spoke in opposition.

GRANTED WITH CONDITIONS: Brian Avallone moved and Terry Keegan seconded to approve the proposed application. Motion passed unanimously.

CONDITION: To the area immediately adjacent, on the property line in front of the addition, 42 feet of 9-foot tall evergreens will be planted, properly spaced, centering on the back of the sunroom.

12. 828 Sasco Hill Road, Map 239, Parcel 5. Petition of Eugene and Janis Fox for a variance of the Zoning Regulations Section 5.2.4 to reduce the minimum required side setback from 30 feet, currently 5.8 feet, proposing 4.6 feet. Permission to construct a new one story, three car garage. Premises: AAA Zone

Attorney John Fallon presented on behalf of the petitioner.

Mr. and Mrs. Fox make this application for a variance of Section 5.2.4 of the Zoning Regulations in order to construct a new three-car, one-story garage. The existing garage area will be converted to use as a mudroom/storage area. The variance requested of Section 5.2.4 seeks approval to reduce the side yard setback by 1.2 ft. from the current setback of 5.8 ft. to 4.6 ft. Other than the variance requested of Section 5.2.4 the garage will be in compliance with all other requirements of the AAA zone including those provisions including lot coverage, floor area and height. There will be no change in the historic use of the property as a single-family residence which is explicitly permitted pursuant to the provisions of the Zoning Regulations.

828 Sasco Hill Road (cont.)

The existing structure is a legally protected preexisting nonconforming structure as it is situated 5.8 ft. from the northerly property line. The existing two car garage is extremely small and not functional for purposes of safely accommodating two vehicles. The new garage will provide sufficient space for the parking of three vehicles while the existing garage space can be utilized for a much needed mudroom and storage. The application meets the standards for approval set forth in Connecticut General Statutes 8-6(a)(3) in that it will not substantially affect the Comprehensive Zoning Plan and is supported by facts with regard to the existing nonconforming location of the current structure that establish a proper basis for legal hardship under our case law.

In terms of the hardship, the applicant must demonstrate that because of some peculiar characteristics of the property, strict application of the Zoning Regulations results in unusual hardship. It has long been held by our Connecticut Courts that the historic location of a legally protected preexisting nonconforming structure on a lot creates a proper basis for a finding of hardship. It is in fact the historic location of the existing dwelling and its already nonconforming status that creates the need for the technical variance that is requested in order to allow for the construction of the new garage as shown on the plans submitted. It is again noted that the proposed new garage dimensions required to make it functional results in a very small increase in the existing setback nonconformity of only 1.2 ft.

GRANTED: Brian Avallone moved and Jane G. Nishball seconded to approve the proposed application. Motion passed unanimously.

There being no further business to come before the Commission, at 5:00 p.m. Chairman Coyne adjourned the meeting.



Jane Gitlin Nishball, Secretary



Jodi Karagianes, Clerk

KEVIN COYNE, CHAIRMAN

JANE GITLIN NISHBALL, SECRETARY

JODI KARAGIANES, CLERK