

ZONING BOARD OF APPEALS
MEETING MINUTES OF DECEMBER 1, 2022

The Zoning Board of Appeals held a meeting at 3:00 p.m. on Thursday, December 1, 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; Brian Avallone, Katie O'Grady

MEMBERS ABSENT: Jane G. Nishball, Secretary

ALTERNATE MEMBERS PRESENT: Elise McKay, Alternate, sat in place of Jane G. Nishball.

EXECUTIVE SESSION

1. **Approval of Minutes of Thursday, November 3, 2022:** Elise McKay *moved* and Katie O'Grady *seconded* to approve the minutes as presented. *Motion passed unanimously.*
2. **Approval of Secretary's Fees:** Brian Avallone *moved* and Elise McKay *seconded* to approve the proposed Secretary's fees. *Motion passed unanimously.*
3. **Approval of Public Hearing Dates and Submission Closing Dates for 2023:** Terry Keegan *moved* and Katie O'Grady *seconded* to approve the proposed Public Hearing Dates and Submission Closing Dates for 2023. *Motion passed unanimously.*
4. **Election of Officers, pursuant to Town Charter:**
 - Terry Keegan *moved* and Elise McKay *seconded* to nominate Kevin Coyne as Chairman of the Zoning Board of Appeals. *Motion passed unanimously.*
 - Kevin Coyne *moved* and Elise McKay *seconded* to nominate Terry Keegan as Vice Chairman of the Zoning Board of Appeals. *Motion passed unanimously.*
 - Kevin Coyne *moved* and Katie O'Grady *seconded* to nominate Jane G. Nishball as Secretary of the Zoning Board of Appeals. *Motion passed unanimously.*

Executive Session started at approximately 2:56 p.m.

GENERAL DOCKET:

1. 85 Split Rock Road, Map 229, Parcel 242. Petition of Stanton H. and Jill K. Lesser for a variance of the Zoning Regulations Section 5.2.4 to reduce the rear setback from 40 feet, proposing 21 feet; and Section 5.2.5 to increase the lot coverage from 10%, currently 9.31%, proposing 10.94%. Permission to construct a detached garage. Premises: AA Zone.

Attorney Bill Fitzpatrick presented on behalf of the petitioner.

The first factor for the Zoning Board to take into account in evaluating this request is the fact that the property is undersized. The lot contains 35,218 square feet when the existing zoning classification, AA zone, has a minimum lot area requirement of 43,560 square feet. The property was part of a subdivision approved by the Town Plan & Zoning Commission on December 3, 1948, and has been rendered legally nonconforming by the subsequent re-zoning of the property by the P & Z Commission. The appropriate zoning classification for a lot containing 35,218 square feet is the R-3 zone which has a minimum lot area requirement of 20,000 square feet. The coverage maximum for the R-3 zone is 15%. The proposed coverage of 10.94% is well below the appropriate coverage maximum for a lot of this size of 15%. In addition, the proposed coverage overage of .94% constitutes approximately 331 square feet. This proposed coverage overage is not significant in the context of a lot of this size.

The second variance request is a reduction in the rear property line setback from 40 feet to 21 feet. This variance request is necessitated by the unusual configuration of the lot. The northeasterly boundary line of the property is 118.89 feet while the southwesterly boundary of the property is 181.93 feet. This trapezoidal configuration of the property results in a limited depth of the property at the point the proposed garage is to be located. The garage cannot be located elsewhere on the property given the location of the existing driveway at the northeasterly side of the home. If the property were a rectangle containing the same area, the variance request would be limited in scope. The construction of the detached garage does not constitute an overbuilding of this property. The property with the proposed garage in place will have a floor area ratio of 8.09%, less than half the AA zone permitted floor area ratio of 20%.

Approval of these variance requests will permit the construction of a detached garage in a manner which will have virtually no impact on neighbors or the neighborhood as a whole.

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

2. 117 Churchill Street, Map 130, Parcel 428. Petition of Paul H. Hughes for a variance of the Zoning Regulations Section 5.2.5 to increase lot coverage from 30%, currently 42.6%, proposing 43%. Permission to legitimize an increase of open porch and steps for egress. Premises: B Zone.

Attorney John Fallon presented on behalf of the petitioner.

In June of 2021 the three-family dwelling located at 117 Churchill Street was substantially destroyed by fire. In April of this year the owner of the property, Paul Hughes received variances from this Board as necessary to allow for the reconstruction of this previously existing three-family dwelling. The variances proposed reconstruction of

117 Churchill Street (continued)

the three-family dwelling on the same footprint as well as a reduction of the pre-existing lot coverage from 43% to 42.6%. The construction is now completed.

The original plans that were prepared and submitted to the Board were drawn in compliance with the Residential Building Code. Subsequently, the Applicant was made aware that as a three family dwelling the structure had to comply with the technical provisions of the Commercial Building Code pertaining to apartment structures. This required that the rear steps and deck had to be reconfigured to meet the requirements of the Commercial Building Code. This resulted in a minor increase in coverage of .4%. Thus the as-built survey, as submitted for purposes of obtaining a certificate of occupancy, establishes current final coverage at 43% rather than the 42.6% as approved by the Board in April of this year. Interestingly, the now final coverage of 43% is identical to the coverage that existed at the time that the original structure was destroyed by fire in June of 2021.

The granting of this variance with regard to legitimizing the minor increase in coverage will not change the use of the property from its use as a three- family dwelling that has been ongoing for many decades. As previously noted by the Zoning Board of Appeals in April of this year when granting variances pertaining to the reconstruction of the destroyed structure, three family dwellings are common in the immediate area. The approval granted by the Zoning Board of Appeals earlier this year simply provided permission to restore and rebuild the preexisting structure that was substantially unfortunately destroyed by fire in June of 2021. The increase in coverage resulting from compliance with the commercial rather than residential Building Code is .4% and will not have any negative impact or result in any change of the previously existing use of the property. It will also be identical to the building coverage of 43% that existed prior to the fire.

With regard to the matter of hardship as it relates to the minor increase in coverage that is requested, a controlling legal fact is that the lot as recognized by the Board earlier this year is a valid and legally protected nonconforming lot as relates to lot area. The present Zoning Regulations establish a contemplated minimum lot area in the Residence B zone of 6,000 sf. This lot established for residential purposes before the imposition of these regulations has only 3,333 sf. Both our Supreme and Appellate Courts have recognized that such a factor provides a proper basis for hardship to support the granting of a variance with regard to coverage and the Board so found earlier this year. In addition, caselaw is clear as well, that variances resulting from compliance with applicable building code requirements are well grounded and establish hardship for purposes of ensuring compliance with the applicable provisions of the code.

Finally, there is legal authority as established by our Appellate Court that provides that an honest error made by a property owner or his agent establishes a proper basis for a finding of. Although the present situation does not technically involve an "error" but simply a subsequent application of the commercial building code provisions to a three family residential structure nonetheless the caselaw pertaining to legitimizing of such honest and good faith errors is applicable.

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

3. 41 Old Elm Road, Map 26, Parcel 280. Petition of Vera L. Candini for a variance of the Zoning Regulations Section 5.2.5 to increase the total lot coverage from 15%, currently 17.82%, proposing 22.77%. Permission to construct a rear deck. Premises: R-3 Zone.

Veronica Ventreschi, Architect, presented on behalf of the petitioner.

They would like to build a new deck of 19'-9" x 14'-0" to be attached to the back of the house and will have access from the kitchen. In addition, a patio will also be built behind the garage area.

The house was built in 1941 as a cape style home. The lot area is currently 8,075 sq. ft. where 20,000 is required. The minimum square on the lot is 67' existing where 100' is required. With these limitations, the house is considered non-conforming with the current code which is why they are not allowed to build the new deck.

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

4. 205 Autumn Ridge, Map 24, Parcel 47. Petition of Linda S. and Gene A. Koski for a variance of the Zoning Regulations Section 5.2.5 to increase the lot coverage from 15%, currently 16.02%, proposing 16.39%. Permission to construct a side deck and to legitimize a previously built rear deck. Premises: R-3 Zone.

Linda Koski, owner, presented on her own behalf.

They wish to construct a deck/walkway to connect the back deck to the kitchen door. 28.5 feet with steps to the ground. 4' wide and 26" high.

The existing rear deck was not permitted with the town. Upon request to construct a minor deck extension from the kitchen door to the back deck they were advised that there was no permit on file for the deck. Upon completion of a survey it was discovered that they were over their allotted coverage allowance of 15%. Their request is one-third of a percent additional.

GRANTED: Terry Keegan moved and Katie O'Grady seconded to approve the proposed application. Motion passed unanimously.

5. 519 Knapps Highway, Map 42, Parcel 550. Petition of Sofia Olexovitch for a variance of the Zoning Regulations Section 5.1.1 to reduce the lot size for a two family dwelling from 9,000 sq. ft., proposing 6,952 sq. ft. Permission to construct a two family dwelling. Premises: B Zone.

Sophia Olexovitch, homeowner, presented on her own behalf.

This home was built in 1920 with a detached garage; the property is 6,952 sq. ft. She is seeking a variance to reduce the lot size for a two family dwelling from 9,000 sq. ft. to 6,952 sq. ft. in order to construct an attached second dwelling. The new dwelling would comply with all other regulations for setbacks, lot coverage and total floor area. There will be (4) off street parking spaces provided for the two units.

519 Knapps Highway (continued)

The State of CT has created additional regulations to help neighborhoods like this with their ADA guidelines to allow accessory detached dwellings. Although not textbook hardship, she is looking to provide a separate living space for her grandmother, as well as her mother who is a cancer survivor.

All of the surrounding neighbors are in support of her application.

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

6. 171 Birch Road, Map 139, Parcel 155. Petition of Jeffrey R. and Lori T. Charlton for a variance of the Zoning Regulations Section 5.2.5 to increase the lot coverage from 20%, currently 21.2%, proposing 21.5%. Permission to legitimize the pool equipment pad. Premises: A Zone.

Tim Meehan of Meehan and Ramos Pools presented. Jeffrey Charlton also spoke.

This property received a coverage variance in 2012. A building permit was issued in 2021 for construction of a swimming pool and included a 10' x 3' concrete pad to hold the pool equipment (filters and heater). The owner being aware of the flood zone, requested the pool equipment be slightly elevated to reduce the chance of being impacted by future flooding. The pad was installed 18" above grade. The as-built survey was prepared for submission to the Town and it was determined that while the equipment pad installed at grade would not have counted as coverage, the pad installed over 12" above grade does. The result is that because the lot was already at maximum coverage allowed through the 2012 variance, the additional coverage associated with the pad resulted in the building lot exceeding allowable coverage by 29 sq. ft.

The owner is requesting the variance due to the hardship of the property residing within the FEMA Special Flood Hazard Zone, and placing the pool equipment pad at grade would increase the likelihood of damage due to flooding.

There is no impact on abutting neighbors as the equipment is shielded from visibility completely by fencing and the pad is raised only 6" above the allowable height not counting as coverage. Because the house itself is raised due to the flood zone, the equipment still sits well below the first floor of the home.

There were no neighbors in opposition.

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

7. 212 Buena Vista Road, Map 28, Parcel 235. Petition of Brian N. Kinsley for a variance of the Zoning Regulations Section 5.2.5 to increase lot coverage from 20%, currently 20.46%, proposing 23.43%. Permission to construct a rear, one story addition and deck. Premises: A Zone.

Veronica Ventreschi, Architect, presented on behalf of the petitioner.

212 Buena Vista Road (continued)

The homeowners are proposing to build an addition of 23'-3" x 12'-5" facing the back of the house (new mudroom, storage and new access), as well as a new patio. The first and second floor will follow the footprint of the addition to have a better layout and accommodate all needs in each floor.

This house was built in 1957 with a colonial style, and the lot area is currently 9,375 sq. ft., where 7,497 sq. ft. is required. Moreover, the minimum square on lot is 75' existing when 60' is required. With this limitation, the house is considered non-conforming with the current code, so we are not allowed to build the new addition.

GRANTED: Brian Avallone moved and Katie O'Grady seconded to approve the proposed application. Motion passed unanimously.

8. 2081, 2082, and 2088 Fairfield Beach Road, Map 234, Parcel 63, 69. Petition of Cemsco, LLC, and Scott Lippstrue and Jessica Golden for a variance of the Zoning Regulations Section 11.13.2 to reduce the street line setback from 25 feet, proposing 16 feet; and Section 11.1.4.1 to allow for the upper floor to be finished with plumbing fixtures. Permission to construct a detached garage with a finished loft. Premises: BD Zone.

Attorney Ray Rizio presented on behalf of the petitioner.

The Applicant requests waivers to revise the lot lines of the Site to merge the property known as 2088 Fairfield Beach Road with the property known as 2081 Fairfield Beach Road, and 2082 Fairfield Beach Road. The property known as 2087 Fairfield Beach Road would be its own separate property. The proposed lot line revision would not result in a change of building coverage on the Site.

2081 and 2087 Fairfield Beach Road are bounded by the Long Island Sound. 2082 and 2088 Fairfield Beach Road are bounded by South Pine Creek. 2081 and 2082 Fairfield Beach Road are significantly nonconforming as to lot area at 4,797 sq. ft. 2087 and 2088 Fairfield Beach Road are also nonconforming as to lot area at 7,269 sq. ft.. The Applicant proposes no change to the building coverage of the Site despite the lot line revision. The Applicant proposes to merge 2088 with 2081 & 2082 Fairfield Beach Road for a more compliant lot area of 7,063 sq. ft.

The Applicant also proposes to construct a detached outbuilding garage. The Site previously received approvals to construct a similar garage at a setback of 15.3', which is more non-conforming than the revised garage proposed under this Application. Said garage was proposed as a ground floor garage with a habitable story above with finished floor area, plumbing fixtures and heat. However, the garage was designed at an angle from Fairfield Beach Road and Pine Creek. With additional time to review design, the Applicant and its architect were able to create a better design where the front and rear frontages of the proposed garage would be parallel to Fairfield Beach Road and Pine Creek. In addition, the proposed garage would be set slightly back from the original approved garage at 16'.

The Site is located in the VE flood zone and the proposed garage meets the required minimum first floor elevation and flood design standards. Pine Creek cuts into a significant portion of the Site. The first level of the proposed

2081, 2082, and 2088 Fairfield Beach Road (continued)

two-story garage will be two (2) garage bays with break-away panel walls and flood vents. Akin to the previously approved garage, there will be a stairwell to a second floor for a home office. This floor will also contain a half-bath with no shower or tub. The elevations and size of the proposed garage will be in keeping with the character of the neighborhood and similar in design and size to many structures on the Pine Creek side of Fairfield Beach Road. It will also be improved, as stated above, by the revised location and angle of the proposed garage.

Granting the Applicant said variance will not substantially affect the comprehensive zoning plan of the Town of Fairfield and adherence to the strict letter of the Fairfield Zoning Regulations will cause an unusual hardship to the Applicant as the Applicant is proposing a detached accessory garage which is in character with the surrounding neighborhood and severely limited by Pine Creek. 2088 Fairfield Beach Road has already received the necessary variances for a detached accessory garage. The Application merely makes the proposed more conforming as to street line setback at 16' and properly locates the front and rear of the garages at the same angle as Fairfield Beach Road and Pine Creek.

Patty Zecky, resident of 1791 Fairfield Beach Road, spoke in favor of this application.

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

9. 2087 Fairfield Beach Road, Map 234, Parcel 70. Petition of Cemsco LLC for a variance of the Zoning Regulations Section 11.3 to reduce the lot size from 9,375 sq. ft., currently 7,269 sq. ft., proposing 5,003 sq. ft. Permission to do a lot line revision. Premises: BD Zone.

Attorney Ray Rizio presented on behalf of the petitioner.

The Applicant requests waivers to revise the lot lines of the Site to merge the property known as 2088 Fairfield Beach Road with the property known as 2081 Fairfield Beach Road, and 2082 Fairfield Beach Road. The property known as 2087 Fairfield Beach Road would be its own separate property. The proposed lot line revision would not result in a change of building coverage on the Site.

2081 and 2087 Fairfield Beach Road are bounded by the Long Island Sound. 2082 and 2088 Fairfield Beach Road are bounded by South Pine Creek. 2081 and 2082 Fairfield Beach Road are significantly nonconforming as to lot area at 4,797 sq. ft. 2087 and 2088 Fairfield Beach Road are also nonconforming as to lot area at 7,269 sq. ft.. The Applicant proposes no change to the building coverage of the Site despite the lot line revision. The Applicant proposes to merge 2088 with 2081 & 2082 Fairfield Beach Road for a more compliant lot area of 7,063 sq. ft. The lot area of 2087 Fairfield Beach Road will be reduced to 5,003 sq. ft. The applicant proposes no increase in coverage on 2087 Fairfield Beach Road by removing a significant portion of decking and concrete walkways, therefore on 2087 Fairfield Beach Road, the public will actually observe a reduction in the impervious area as the only perceptible change from existing conditions.

Granting the Applicant said variance will not substantially affect the comprehensive zoning plan of the Town of Fairfield and adherence to the strict letter of the Fairfield Zoning Regulations will cause an unusual hardship to the Applicant as the Applicant is actually proposing to reduce the actual square footage of coverage on the Site

2087 Fairfield Beach Road (continued)

while the building coverage will remain the same despite the reduction in lot area. No perceptible change will occur on 2087 Fairfield Beach Road except for the removal of decks, walkways and other impervious areas to ensure 2087 Fairfield Beach Road maintains the coverage permitted for 2087 Fairfield Beach Road and 2088 Fairfield Beach Road. Physically, 2087 Fairfield Beach Road is actually becoming more conforming as to the amount of building coverage on the Site. While the percentage remains the same, the actual square footage of coverage is being reduced. 2087 contains compliant off-street parking for its existing single-family dwelling. This section of Fairfield Beach Road contains properties where the Long Island Sound properties are not necessarily held in the same ownership as the corresponding Pine Creek properties located directly across the road. Therefore, approval of the requested variance will not have an impact on the surrounding neighborhood.

Patty Zecky, resident of 1791 Fairfield Beach Road, spoke in favor of this application.

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

10. 263 Katona Drive, Map 76, Parcel 277. Petition of Milford Fenway Realty, LLC for a variance of the Zoning Regulations Section 5.2.4 to reduce the sum of two side line setbacks from 25 feet, currently 22.8 feet, proposing 19.7 feet. Permission to construct a (2) story and 2nd floor with attic additions. Premises: A Zone.

James Zummo, Land Surveying Services, presented on behalf of the petitioner.

They are proposing a 2nd floor addition across the entire existing split level style home in addition to a new patio and driveway. The existing building was built non-conforming. Any addition to the right side of the dwelling would require a variance. The proposed setback of 12'-5" is too close to the property line. Consideration was taken on the left side of the house to stay in conformity with the required setbacks. The combined bring us to 19'-7" on the side setback variance.

The hardship here is the large angle of the property. The shape of the lot affects the ability to do much of anything to the house that would not trigger a variance.

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

11. 107 Newton Street, Map 139, Parcel 280. Petition of TJK Builders, LLC for a variance of the Zoning Regulations Section 5.2.4.3 to reduce the street line setback for an accessory structure from 30 feet, proposing 9 feet to the pool, and 19.6 feet to the pool equipment. Permission to construct an in-ground pool with equipment. Premises: A Zone.

In February of 2022 the Board granted variances to TJK Builders LLC to construct a two story addition to the existing dwelling on the property. Located in the Residence A zone the lot is a legally protected, pre-existing non-conforming lot as to lot area containing 7,900 sq. ft. when the minimum lot area requirements of the zone is 9,375 sq. ft. The lot is also a corner lot bounded to the west by Newton Street and to the south by Riverside Drive.

107 Newton Street (continued)

Subsequent to the approval of the plans with regard to the proposed addition and after contracting to purchase the property Mr. and Mrs. Browe determined that they would like to add a small inground pool. In order to facilitate the installation of the pool a variance of Section 5.2.4.3 is requested in order to reduce the setback from the street line on this corner lot for the pool from 30 ft. to 9 ft. and for the pool equipment to 16.6'. Were the parcel not a corner lot the side yard setback that would otherwise be applicable would be 10 ft.

Granting of the variance will not change the use of the property which will remain as a single family residence as explicitly permitted in the zone. As proposed the pool will have no adverse impact on surrounding properties. With regard to the hardship requirement, this lot qualifies for such a hardship finding because it is a corner lot bounded by both Newton Street to the west and Riverside Drive to the south. Connecticut case law is well settled that a proper basis of hardship for granting a variance is established when the property in question is a corner lot and therefore subject to the application of street setback requirements on two sides. This corner lot is so subject to the application of street line setback regulations regarding accessory structures on two boundaries. Connecticut case law holds that hardship is established under these circumstances. In addition, our case law provides that the nonconforming status of a lot as to lot area and its shape creates a proper basis for a finding of hardship. These cases are applicable here where the shape of the lot, its nonconforming status at only 7,900 sq. ft. and the fact that it is a corner lot all preclude the locating of the pool at any other location than as proposed.

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

12. 150 Acorn Lane, Map 243, Parcel 230 A. Petition of Adam E. Shanahan for a variance of the Zoning Regulations Section 5.2.5 to increase the lot coverage from 15%, currently 15.27%. Permission to legitimize a previous built, one story addition and rear deck. Premises R-3 Zone.

Attorney Bill Fitzpatrick presented on behalf of the petitioner.

The applicant is the owner and resident of a single-family home located at 150 Acorn Lane. The applicant purchased this property in 2020. The applicant was unaware at the time of his purchase that there was an open building permit for the wooden deck to the rear of the home. The applicant retained a local permitting consultant to obtain the appropriate Certificate of Occupancy after the closing, only to find that the contractor had overbuilt the deck. It should be noted that the property purchase in question took place during the COVID real estate market, which resulted in purchasers having limited opportunities for due diligence.

As a result, the owner is requesting a variance of Section 5.2.5 of the Zoning Regulations to allow an increase in coverage from 15% to 15.27% in order to legitimize a previously constructed deck and stairs. The factors for the Zoning Board to consider in evaluating the variance application are three-fold. The first factor is the fact that the overbuilding of the deck is not the work of the applicant. The overbuilding took place prior to his purchase. The applicant has "clean hands". The second factor is the nature of the overbuild. The building overage is a rear deck. It is not four season living area, but rather a deck. Lastly, the coverage overage is .27%. This coverage overage is 55 square feet. By any analysis, this coverage overage of 55 square feet is a de minimis figure in the context of a lot containing 20,055 square feet.

150 Acorn Lane (continued)

Approval of this variance request will permit the applicant to legally remediate a mistake made by a prior owner in a manner which will have no impact on the neighboring properties or the neighborhood in general.

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

13. 831 Black Rock Turnpike, Map 79, Parcel 332. Petition of Hanford Avenue Associates, LLC for a variance of the Zoning Regulations Section 5.2.4 to reduce the side, and sum of two side line setbacks from 5 feet and 20 feet, currently 3.8 feet and 20.2 feet, proposing 0.1 of a foot and 16.5 feet. Permission to construct a two story, egress staircase addition. Premises: C Zone.

Robert Mills, member of Hanford Ave Associates presented. Rick Santella, member, also spoke.

Due to the non-conforming footprint of the existing building, they plan to build a 2 story common area to the right side of the existing building. This new addition will provide a safe means of egress to the rear parking area and will not allow anyone to exit the front of the building onto Black Rock Turnpike. Upon completion this building will eliminate any life safety issues in regards to the means of egress for the first and second floors.

Ana Villalba, resident of 821 Black Rock Turnpike spoke in opposition.

GRANTED: Terry Keegan moved and Katie O'Grady seconded to approve the proposed application. Motion passed unanimously.

14. 190 Sherman Street, Map 180, Parcel 55. Petition of McKenzie Real Estate Group, LLC for a variance of the Zoning Regulations Section 12.3.16 to allow residential use on the first floor and more than 50% of the total floor area; and Section 12.7.6.2 and 12.7.6.3 to reduce the side and rear property lines from 10 feet, proposing 4 feet. Permission to convert the commercial space to full residential, and to construct a detached garage with office space above. Premises: CDD Zone.

Attorney John Fallon presented on behalf of the petitioner.

In June of this year the property owner made an application to this Board for approval of a small addition constituting 287 sq. ft. for purposes of converting the use of the property to office use only. The variances granted included a variance of Section 28.6.6 to reduce the required number of onsite parking spaces for the office use from 7 to 5 and Section 12.7.6.2 to allow the existing house to remain 4 ft. from the side yard property line.

After careful consideration Ralph and Leslie Tavella, parties in interest of McKenzie Real Estate Group, have determined that the neighborhood would be better served by the renovation of the structure for utilization as a single family residence. Although the property is zoned in the Center Designed Business District, taking into consideration the character of the substantially residential neighborhood, it was decided that commercial use of the structure is not as desirable as residential use. The Applicant requests a variance of Section 12.3.16 to increase the percentage of residential use of the structure from 50% to 100% and to allow residential use of the ground floor of the building. In addition, a new garage structure is proposed that will also accommodate a small home office to be utilized solely by the occupants of the primary residential structure. The narrow shape of the lot and location

190 Sherman Street (continued)

of the existing structure and driveway require that a garage be located in the northwesterly corner of the property. Variances of Section 12.7.6.2 and 3 are there requested with regard to the locating of this accessory structure 4 ft. from the side and rear property lines. This setback will be consistent with the side yard setback of the primary structure as approved by the Board in June of this year.

All other provisions of the Zoning Regulations will be complied with including those pertaining to lot coverage which will be 19.8% when the zone allows coverage of up to 90% and maximum floor area which will be 24.7% although the zone allows FAR of 200%. There will be no material exterior changes to the existing primary structure which is very much in keeping with the character of the neighborhood and surrounding dwellings. An excess of on site parking as required for the residential use is provided by the five (5) spaces onsite.

The 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 particular regulations in question to the circumstances or conditions existing. With regard to the variance requested concerning Section 12.3.16 in this case strict enforcement of the zoning regulations with regard to the percentage of residential use and ground floor occupancy for residential use clearly creates a hardship not only to the Applicant but also to the neighborhood given the location of this property and the residential characteristics of Sherman Street. With regard to the variances requested pertaining to the side and rear yard setbacks these requests are driven by the narrow shape of the lot as well as the location of the existing main structure and driveway. 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. In addition the unique and/or narrow shape of a lot has been similarly found to establish hardship especially with regard to the granting of variances pertaining to side yard and rear setbacks.

The proposed utilization of the property as a residence will be in harmony with the character of the neighborhood and less intrusive than the previously contemplated office use. The architectural design of the new garage as proposed will be attractive and harmonize with the character of the area and benefit the interests of the immediate neighborhood by providing for enclosed parking for vehicles used in conjunction with the residential use of the property.

GRANTED: Brian Avallone moved and Katie O'Grady seconded to approve the proposed application. Motion passed unanimously.

15. 20 Old Barn Road, Map 143, Parcel 180. Petition of Kara L. Julian for a variance of the Zoning Regulations Section 5.2.4 to reduce the secondary street line on a corner lot from 50 feet, currently 48.84 feet, proposing 26.94 feet. Permission to construct an addition for an inlaw suite and garage extension. Premises: AA Zone.

Attorney Ray Rizio presented on behalf of the petitioner.

The Site currently contains a principal single-family dwelling with a pre-existing nonconforming garage along Round Hill Road. The Site is undersized for the R-A District with a lot area of Forty-one thousand two hundred and fifteen square feet (41,215 SF). It is located on the corner of Round Hill Road and Old Barn Road. The principal dwelling is oriented towards Old Barn Road as is the other corner lot dwelling on the opposite side of the street.

20 Old Barn Road (continued)

So, while the Site has a considerable frontage on Round Hill Road and Old Barn Road, Old Barn Road is clearly the frontage on the Site and the dwelling is relatively screened from Round Hill Road through existing landscaping.

The Site contains an existing principal dwelling. It is pre-existing nonconforming as to street line setback along Round Hill Road. The Applicant proposes to construct a garage addition at the rear of the existing dwelling, which is along Round Hill Road due to the Site's condition as a comer lot. A driveway is located along this frontage and separates the dwelling from Round Hill Road. The driveway wraps around the rear of the dwelling for the entrance into the proposed garage. On the second floor, the Applicant proposes an in-law suite where the Applicant's mother will live. The Applicant proposes a 3-car garage to provide Two spaces for the principal dwelling and a single space for the in-law suite. The first floor addition will contain a kitchen and half bath and the second floor will contain the in-law suite bedroom and full bath. The proposed addition is a modest increase of the dwelling that will be well below the maximum building coverage and floor area of the R-AA District. The Applicant proposes a building coverage of only Eight and 25/00 percent (8.25%) where Ten percent (10%) is permitted. The Applicant proposes a floor area of only Thirteen and 44/00 percent (13.44%) where Twenty percent (20%) is permitted. Again, as stated above, these conditions are proposed on an undersized lot.

The Application is in conformity with the neighborhood. The Site is part of a neighborhood that is oriented towards Old Barn Road and not Round Hill Road. Round Hill Road is treated as the side yard of this neighborhood. For those reasons, the comer lot on the opposite side of Old Barn Road was granted a less conforming street line setback variance than requested in this Application. The property located at 19 Old Barn Road was granted a variance by the Fairfield Zoning Board of Appeals to reduce the street line setback from Round Hill Road to Twenty-five and 80/00 feet (25.8'). The Application proposes to reduce the street line setback from Round Hill Road to Twenty-six and 60/00 feet (26.60'), which will be more conforming than the neighboring property.

Granting the Applicant said variance will not substantially affect the comprehensive zoning plan of the Town of Fairfield and adherence to the strict letter of the Fairfield Zoning Regulations (the "Regulations") will cause an unusual hardship to the Applicant as the Application is in conformity with the neighborhood and are a result of the Site's condition as a comer lot. The Application still proposes the Site to remain well under the maximum building coverage and floor area permitted on the Site even though the Site is undersized in lot area for the R-AA District. The Applicant proposes a modest addition for a garage to support the proposed in-law suite for the Applicant's mother. The design of the proposed addition will be in character with the existing dwelling and neighborhood. As stated above, the property located directly across Old Barn Road from the Site, which is also a comer lot, was granted a greater variance along Round Hill Road. Therefore, the proposed conditions will be in character and align with the existing neighborhood. In addition, the Site already contains landscape buffering to the eastern elevation of the existing dwelling to screen the proposed addition. The addition is also located at the very rear of the dwelling mainly out of view of its primary street frontage.

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

16. 160 Cedar Road, Map 226, Parcel 66. Petition of Jodie O'Brien for a variance of the Zoning Regulations Section 5.1.3 to reduce the setback for a building on a farm from 60 feet, proposing 22.3 feet. Permission to establish an existing structure to be used as a barn. Premises: AA Zone.

Attorney Chris Russo presented on behalf of the petitioner.

The Applicant requests a variance to reduce the setback of an existing farm building at the Site to 22.3 '. The Site is a rear lot that is located approximately 190' away from Cedar Road and is accessed through a 15' right of way. It is not visible from the public street. The Site abuts a very large vacant conservation area of over Seven (7) acres owned by the Aspetuck Land Trust to its west. The abutting properties to the north and south are buffered by a significant wetlands area. Finally, the abutting properties to the east are buffered by the existing dwelling, which lies on the eastern side of the Site. In compliance with Sec. 5.1.3 of the Regulations, all fenced pasture areas do not overhang any property line. The existing barn subject to this variance has existed for decades. The principal dwelling on the Site was constructed in 1890, so the Site has a long history in its agricultural and livestock roots. The Applicant is not proposing any new buildings under this Application, but simply to legalize the existing barn, which has always been used to house animals, as a farm building. The Site contains Three (3) separate barn structures, which will remain, but the barn that is the subject of this variance is the only one that is not compliant under the existing Regulations. Again, the structures on this Site predate the Regulations. Fenced pastures, divided into separate areas for the livestock, will be located to the rear of the existing buildings. The Applicant has owned the Site for over Two decades and the farm infrastructure is already in place.

Granting the Applicant said variance will not substantially affect the comprehensive zoning plan of the Town of Fairfield and adherence to the strict letter of the Fairfield Zoning Regulations will cause an unusual hardship to the Applicant as the variance with regards to the setback of a farm building pertains to an existing barn, which has existed for decades, and been used in connection with farming activities. The Applicant is requesting for said building to be legalized for farm use and house livestock since said use predates the Regulations. The Site has a longstanding agricultural and farming history, which dates back to 1890. The existing barn predates many of the homes in the area. A large number of properties in the area of the Town around the Site were formerly part of a working farm. Over time, these farms were subdivided until the original farms were reduced to a similar size as the Site. So, in many cases, it is the surrounding development encroaching on the farm use rather than the opposite. The Site, its use and this Application reflect such a situation. As this is a use that has existed well over a century, the approval of the Application will not have any negative impact on the surrounding neighborhood as the Site and its farming use have almost always been a part of the neighborhood character. The Applicant merely requests to finally formalize a use which has existed for over a century. In compliance with the Regulations, none of the fenced pasture will overhang a property line.

Neighbors John Desrochers and Sarah Johnston of 151 Cedar Road spoke in opposition. Neighbor Philip Congello at 20 Fields Rock Road commented. Linda Keating, resident of 23 Wayside Ct. spoke in favor of the application.

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

17. 383 Round Hill Road, Map 141, Parcel 267. Petition of Thomas W. and Melissa H. Miller for a variance of the Zoning Regulations Section 5.2.4 to reduce the sum of two side line setbacks from 25 feet, currently 32.8 feet, proposing 17.4 feet. Permission to demo a detached garage and build a new attached garage with a 2nd floor additions. Premises: A Zone.


Thomas Miller, homeowner, presented on his own behalf.

There home was built in 1919 and is on a pre-existing, non-conforming lot and in wetlands. They would like to demo the pre-existing garage and rebuild it and attach it to the house with a second story above to contain a playroom, bathroom and an office.

The variance request for a total side yard of 17.4 ft., current requirement being 25 ft. as per town regulation 5.2.4 is due to the fact that the parcel is a pre-existing non-conforming lot square and frontage. The original proposed addition was reduced to accommodate the 7 ft. requirement on one side and the distance to the rear because of the close proximity of the regulated area line. The wetland and regulated area on the property was an additional hardship. By reducing the original proposed additions and minimizing this variance to a one waiver request for total side yard the property is consistent with other properties in the neighborhood.

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

There being no further business to come before the Commission, at 5:52 p.m. Chairman Coyne adjourned the meeting.


Jane Gitlin Nishball, Secretary


Jodi Karagianes, Clerk

KEVIN COYNE, CHAIRMAN

JANE GITLIN NISHBALL, SECRETARY

JODI KARAGIANES, CLERK