

ZONING BOARD OF APPEALS
MEETING MINUTES OF SEPTEMBER 7, 2023

The Zoning Board of Appeals held a meeting on Thursday, September 7, 2023 at 3:00 pm. Executive Session started at approximately 2:45 pm. This meeting was held both in person as well as a hybrid manner.

Audio Recording of this meeting can be found here: <https://www.youtube.com/watch?v=A8IKAtPBBOc>

MEMBERS PRESENT: Kevin Coyne, Chairman, Terry Keegan, Vice Chair, Jane G. Nishball, Secretary, Katie O'Grady, Brian Avallone

EXECUTIVE SESSION

1. Approval of Minutes of Thursday, August 2, 2023: Brian Avallone *moved* and Terry Keegan *seconded* to approve the minutes as presented. *Motion passed unanimously.*
2. Approval of Secretary's Fees: Brian Avallone *moved* and Jane G. Nishball *seconded* to approve the secretary's fees as presented. *Motion passed unanimously.*

Executive Session started at approximately 2:45 p.m.

CONTINUED DOCKET:

11. 750 Post Road, Map 141, Parcel 80. Petition of Eliot Street Partners, LLC & Wiehl Associates, LLC to reverse or modify the decision of the Zoning Administrator. Permission to reverse the decision to issue a zoning permit. Premises: DCD Zone.

Chairman Coyne explained that first they would address the timeliness of the appeal and after each attorney presents on the timeliness, the Board will vote at that time. Depending on that vote it will either proceed to discussing the merits or the appeal will be found to be untimely and denied.

Attorney Joel Green presented on behalf of the petitioner.

1. On 9/2/22, 750 Post Road Associates submitted an application to the Planning and Zoning Department of the Town of Fairfield seeking a Certificate of Zoning Compliance for "renovations to the exterior of the existing building."
2. On 9/2/22 the application was approved and a compliance certificate was issued; Notice of 9/2/22 approval was published on 10/6/22.
3. On 11/18/22 the applicant filed through Phil Cerrone an application for a Certificate of Zoning Compliance, and was approved by Matthew C. Decker. This was noticed by publication on 12/7/22.
4. Prior to 1/12/23 Philip Cerrone, as applicant, submitted an application to the Town of Fairfield Building Department for a Permit to build for "Interior renovations to prep for future restaurant"
5. Prior to 1/12/23 the application for Building permit was endorsed by the Zoning Enforcement Officer, Matthew C. Decker as being in compliance with the Zoning Regulations.
6. On or about 4/25/23 it was first disclosed to officials of the Town of Fairfield including, but not limited to the Zoning Enforcement Officer Matthew C. Decker, the Planning Director, James Wendt, and the general public that the proposed renovations to 750 Post Road were being performed in order to accommodate a Chik-fil-A.

750 Post Road (continued)

On or after 4/25/23 and having been notified of the proposed use as a Chik-fil-A and the actual scope of work to be performed and the noncompliance with the Zoning Regulations, it is our belief that Jim Wendt and Matthew C. Decker failed, neglected and/or refused to rescind the September approval and/or the November approval and/or the Building Permit Endorsement.

Our position is that a special permit is required; with a special permit review, the Plan and Zoning Commission would assure that all requirements of a special permit were met.

As for timeliness, our position is that the town or the public had no notice of the change of use until the owner announced it was using the property for a Chik-fil-A on 4/25/23. Our appeal was filed within 30 days of that date as soon as we got notice. We are suggesting that on that date when staff became aware of the change of use that staff should have rescinded their approvals.

Chairman Coyne confirmed with Attorney Green that their appeal originates from (2) sign offs from the Zoning Enforcement Officer which were done in August and November of 2022, and that they are arguing that the Zoning Enforcement Officer should have revoked or rescinded their approval when it was announced this would be a Chik-fil-A on 4/25/23.

Attorney John Knuff rebutted that the ZBA does not have jurisdiction to hear this appeal because it is plainly untimely; the appeal was not filed within 30 days of the published notice.

Chairman Coyne entertained a motion to accept jurisdiction, that the appeal is timely and the Board could proceed on the merits.

APPEAL DENIED AS UNTIMELY – Jane G. Nishball moved and Katie O'Grady seconded to accept jurisdiction that the appeal is timely. The vote was 4 to 1 that the application was not filed timely. Jane G. Nishball voted Yes.

GENERAL DOCKET:

1. 689 Unquowa Road, Map 179, Parcel 45. Petition of Town of Fairfield for a variance of the Zoning Regulations Section 5.2.2 to increase the height of light stations from 40 feet, proposing 70 feet and 80 feet. Permission to install four (4) light stations at 70 feet and two (2) light stations at 80 feet. Premises: A Zone.

Anthony Calabrese, Director of Parks and Recreation, presented on the Town's behalf; also presented was Curt Lowenstein, Engineer with Landtech.

The installation of the lighting system is part and parcel of the Town of Fairfield's efforts to enhance the Fairfield athletic programs. The lighting system will allow for the scheduling of additional night games. The scheduling of the night games will enable the Town of Fairfield athletic programs to have a schedule which is on par with the schedules of other communities.

The hardship in this matter stems from the necessity of light stanchions which exceed the forty (40') foot height limitation which is imposed by section 5.2.2 of the Regulations. The lighting system has been redesigned to maximize luminescence and efficiency while accommodating a maximum stanchion height of eighty feet (80'). The proposed height of the light stanchions is the minimum height which is compatible with the light system design. The proposed system provides optimal lighting for the players and spectators, thereby fostering public safety concerns, while also providing a system which can operate in a cost-effective manner over the long term. A reduction in the height of the light stanchions below eighty feet (80') will significantly decrease the efficiency

689 Unquowa Road (continued)

of the proposed lighting system. A decrease in the height of the light stanchions below eighty feet (80') will also increase the risk of flat light glare and the corresponding "blinding" of the players on the field. A reduction in height below eighty feet (80') will also compromise the effectiveness of the lighting system for the spectators and those walking in and around the field. Public safety would be compromised.

Taken in conjunction, the physical characteristics of the site, the improvements located on the site, and the need to maintain public safety for the players and spectators create significant and unique conditions for the construction of the proposed lighting system.

Several people spoke in favor of the application; many emails were sent in support of the application.

Ted Luxinger of 529 Cascade Drive and Amy Barno, Director of CT Audubon Society for Fairfield region opposed the application.

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

2. 543 Old Mill Road, Map 177, Parcel 173. Petition of Christopher Tymniak 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 14.3 feet, proposing 7.8 feet. Permission to construct a two (2) story, one car garage. Premises: R-2 Zone.

Christopher Tyminak, owner, presented on his own behalf.

They are seeking this variance to reconstruct a failing garage with a cracked foundation and roof in need of repair. While making these repairs, they are proposing to add a second story living area to be used as a playroom and office. In order to facilitate this construction, they seek a single variance. Due to the layout of the existing structure and the existing site topography, it is not feasible to build the proposed accessory structure in another location on the property while still providing enough room for a two-car garage.

The lot and existing structure conform to the existing zoning requirements for the "R-2" zone. The existing house was constructed in 1939. There are no wetlands located on the site; however, the western portion of the property is located within a FEMA Flood Zone X {500-year). The proposed accessory structure is being constructed outside of the limits of the designated flood zone.

Granting the variance will not substantially affect the comprehensive zoning plan of the Town of Fairfield and adherence to the strict letter of Fairfield Zoning Regulations will cause an unusual hardship. Because of the layout of the existing structure, the existing site topography is not feasible to build the proposed accessory structure in another location on the property.

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

3. 883 Black Rock Turnpike, Map 79, Parcel 320. Petition of 883 Black Rock Turnpike, LLC for a variance of the Zoning Regulations Section 28.6.5 to reduce the required parking spaces by 5. Permission to establish a medical use to the 2nd floor. Premises: NDD Zone

Attorney Bill Fitzpatrick presented on behalf of the petitioner.

883 Black Rock Turnpike (continued)

Westport Place LLC, is the contract purchaser of a two-story commercial building located in the southwest quadrant of the intersection of Black Rock Turnpike and Jennings Road. This property contains 21,103 square feet and is located in the Neighborhood Designed Business District. The principal of the applicant, Westport Place LLC, is Dr. Jaquel Patterson who is seeking to relocate her naturopathic medical practice to the second floor of the existing building. The majority of the second floor will be Dr. Patterson's main practice, Fairfield Family Health. The remainder of the second floor will be occupied by Dr. Patterson's supplements entity, Fairfield Family Health Wellness Supplements, LLC.

The Town of Fairfield Zoning Regulations require one parking space for every 250 gross square feet of office space (Section 28.6.6), and one parking space for every 200 gross square feet of medical use (Section 28.6.5). The use of the first floor of the building, which contains 4,488 gross square feet per the A-2 survey prepared by the Huntington Company accompanying this application, is office and will be utilized as offices in the future. The past use of the second floor of the building, which contains 4657 square feet per the A-2 survey, was office. Dr. Patterson's naturopathic practice, encompassing approximately 4000 square feet, is medical in nature and the separate supplements entity occupying the remainder of the second floor will be considered medical for parking calculation purposes. The present office use for the entire building of 9,145 square feet requires 37 spaces at the requirement of one space per 250 square feet set forth in the Zoning Regulations. The first floor requires 18 spaces and the second floor requires 19 spaces. The proposed medical use of the second floor of 4,657 square feet requires 24 parking spaces at the one space per 200 square feet standard set forth in the Zoning Regulations. The first-floor parking requirement of 18 parking spaces will remain the same. The total building parking requirement will then be 42 spaces, or an increase of 5 parking spaces over the present requirement for the building with office use on both floors.

It should be noted that the parking provided on site is 32 spaces. This is likely due to a change in the required parking for office use in the Zoning Regulations. The Zoning Regulations in the past required one parking space for every 400 square feet of second-floor office use.

The critical factor for the Board to consider in evaluating this variance request is the nature of Dr. Patterson's practice. The patients are seen for visits ranging from 30 to 90 minutes. Acupuncture appointments are scheduled for 60 minutes. Fairfield Family Health will see approximately 2500 patients a year versus an average traditional medical practice which will see a multiple of that figure. Additionally, 35% of the Fairfield Family Health patient base is telemedicine/remote, meaning the patients do not come on-site.

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

4. 196 Wormwood Road, Map 143, Parcel 146. Petition of Nicholas and Angela Mercurio for a variance of the Zoning Regulations Section 5.2.4 to reduce the street line setback from 30 feet, currently 43.8 feet, proposing 26.9 feet, and the side line and sum of two side line setbacks from 7 feet and 25 feet, currently 16.7 feet and 36.5 feet, proposing 4.3 feet and 21 feet; and Section 5.2.5 to increase the lot coverage from 20%, currently 15.1%, proposing 23.5%. Permission to construct a front and rear two story addition and a side one story addition. Premises: A Zone

Cynthia Jensen, Landscape Architect, presented on behalf of the petitioner.

196 Wormwood Road (continued)

The applicants are seeking variances necessary to build a proposed 1-1/2 car garage and small addition to their existing house. The additions include: A proposed two-story addition on the north side of the house consisting of an expanded kitchen and new laundry/mudroom on the first floor and an expanded second floor bedroom, and a partial new basement below the new addition. A proposed minimal 1-1/2 car garage on the northwest corner of the existing house with a second-floor home office space. A new entry porch to coordinate with the new proposed garage and interior renovations. A small deck addition for egress from a new rear door.

The requested setback variances are needed for the small garage which will extend 3.1' into the front setback, 2.7' into the minimum side yard setback of 7', and reduce the sum of two side lot lines by 4'. A requested variance is needed for the new addition, garage, porch and deck landing which will increase coverage by 3.5% over the allowed 20%. The project remains in compliance with the rear setback requirements, maximum building floor area and building height. A portion of the existing back deck will be removed to facilitate construction, but then rebuilt in place.

The applicants have a hardship due to the lot's physical characteristics of steep slopes, extreme grade change and the existing location and orientation of the house. The lot is on the east side of Wormwood Road and located on the portion of Wormwood Road that has a substantial elevation change and road slope. The topography of the area slopes generally from northwest to southeast with much of the elevation change occurring on the applicant's property. Consequently, the applicant's property is sloped from both north to south and from east to west with an overall grade change of 18 feet within their property. The property is bounded by two retaining walls - a ±5' high retaining wall along the north property line and a ±5'-3" high retaining wall along the south property line which create more gently sloping and generally level properties to the north and south of the applicant's property. The combination of the limited level space at the rear of the property and difficulty navigating a narrow space between multiple retaining walls, makes it impractical and unsafe to access and maneuver into a rear garage. The proposed garage addition is minimal in size and in keeping with other garages in the neighborhood. The extreme sloping terrain necessitates the use of a rear deck and deck steps for safe egress from the back of the house and around the property, and safe and reasonable use of the property.

Jane G. Nishball moved and Katie O'Grady seconded to amend approval to include the condition of screening offered by client. Vote was 3 to 2 against the amendment, condition not added. Kevin Coyne and Jane G. Nishball voted yes.

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

5. 1749 Stratfield Road, Map 47, Parcel 21. Petition of Jennifer Keller for a variance of the Zoning Regulations Section 5.2.4 to reduce both street line setbacks and the side line setback from 40 feet, 30 feet and 15 feet, currently 31 feet, 20.3 feet and 11.9 feet, proposing 31.2 feet, 22.8 feet and 14.5 feet. Permission to construct a 2nd floor addition. Premises: R-3 Zone.

Jennifer Keller, owner, presented on her own behalf. Dave Solway, Cornerstone Building spoke.

They would like to remove the two front existing single dormers and add one continuous dormer to the façade. The result will be to raise the existing ceiling height in the second floor bedrooms to meet current building codes.

Existing conditions on the second floor do not meet minimum residential ceiling height code. Current ceiling height is 6'8" and the code requires 7'0" as a minimum dimension. The existing setbacks restrict the property for any restorations to the dwelling. Existing 2nd-floor windows do not currently meet required egress type for fire or otherwise.

1749 Stratfield Road (continued)

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

6. 181 Katona Drive, Map 76, Parcel 273. Petition of James and Wendy Muschett for a variance of the Zoning Regulations Section 5.2.4 to reduce the rear setback from 30 feet, currently 23.2 feet, proposing 10.5 feet; and Section 5.2.5 to increase the lot coverage from 20%, currently 21.5%, proposing 25.9%. Permission to construct a one-story addition. Premises: A Zone.

Jim Muschett, owner, presented on his behalf.

He would like to construct a single-story addition 18'x22'6" on the rear side of the home. The new addition is a living room, bedroom, kitchenette and bath with shower. This will allow their mother to live with them and have access to their house and care when needed. We are only looking for enough space to allow for her needs.

The lot is a pre-existing, non-conforming corner lot. It is non-conforming in area, rear setback and coverage. There will be no change in the appearance of the house from the street.

There were several neighbors in favor of the proposal.

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

7. 855 Bronson Road, Map 228, Parcel 19A. Petition of Adam Munson and Brianna Solomon for a variance of the Zoning Regulations Section 5.2.4 to reduce the street line setback for an open porch from 40 feet, proposing 23.3 feet; and Section 5.2.5 to increase lot coverage from 10%, proposing 11.67%. Permission to expand front porch. Premises: AA Zone.

Adam Munson, owner, presented on his behalf.

This project was previously granted a variance on 4/14/23 by this Board. The client would like to add 2' to the width of the covered porch going from 5' to 7' to make the porch more useful.

This is a pre-existing, non-conforming lot.

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

8. 149 Beaver Street, Map 40, Parcel 341. Petition of Matthew Sylvia for a variance of the Zoning Regulations Section 5.2.4 to reduce the street line setback from 20 feet to the house and 12 feet from open front porch, currently 15.7 feet and 11.9 feet, proposing 15.7 feet and 8.2 feet. Permission to remove and rebuild existing front entry and open porch. Premises: B Zone.

Matthew Sylvia spoke on his behalf (via Webex).

He would like to remove the existing front porch and stairs that are in disrepair and construct a new one story addition with new front landing and stairs.

They have a pre-existing, non-conforming dwelling that was constructed within the street line setback. The front property line is currently 13' away from the street. Most normal right-of-way's are 8'-10' which would not require us a need for any type of variance.

149 Beaver Street (continued)

The current home, built in 1966 is your standard cape cod that has the stairs to the 2nd floor right in front of the front door. The added one-story enclosed entry will allow for safer access along with much needed closet space along with a newly constructed covered landing with stairs.

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

9. 38 Lighthouse Point, Map 184, Parcel 19. Petition of 38 Lighthouse Point, LLC for a variance of the Zoning Regulations Section 11.3 to reduce the minimum lot area from 9,375 sq. ft., proposing 3,647 sq. ft., and to reduce the minimum lot square from 50 feet, proposing 49.9 feet. Permission to establish a building lot for a FEMA compliant single family dwelling. Premises: BD Zone.

The proposed application is Continued to 10/5/23

10. 348 Sunnie Holme Drive, Map 139, Parcel 394. Petition of Maria P. Eberle for a variance of the Zoning Regulations Section 5.2.5 to increase lot coverage and total floor area from 15% and 30%, currently 15.83% and 29.9%, proposing 17.4% and 30.98%. Permission to construct a pool house. Premises: R-3.

George Skabardonis represented his wife.

The Applicant proposes to construct a single-family dwelling with an attached garage and accessory pool and detached pool house at the Site with associated improvements within the Residence R-3 District ("R-3 District"). The Site currently contains a principal single-family dwelling with an attached garage. Said structures will be demolished. The Site is shaped similar to a flag lot. It contains street frontage on two sides along Sunnie Holme Drive and Mariners Way. The "flagpole" of the lot originates from Mariners Way along a street frontage at 50.10'. However, the lot lines are slightly uneven, so the "flagpole" begins to pinch under 50' before the Site opens up for the "flag" portion of the Site. This slightly uneven lot line necessitates the requested variance.

The Site is currently and remains proposed to be accessed from Sunnie Holme Drive, which is the larger street frontage. The Site itself is fully compliant with the Regulations.

The proposed dwelling will be oriented towards Sunnie Holme Drive. It will be accessed from a horseshoe-shaped driveway off Sunnie Holme Drive, which will lead to a driveway extending to the rear of the proposed garage. The garage will be connected to the principal dwelling, but vehicles will be able to pass underneath the connection. The proposed dwelling will feature a covered porch along the front façade of the building and small terraces along the rear façade. Along the "flagpole" portion of the lot, the Applicant proposes a swimming pool with an accessory detached pool house. The proposed structures and improvements satisfy all

standards with regards to height and setback. The proposed floor area is well below the permitted standard of Thirty percent (30%) at only slightly above Twenty-four percent (24%).

The Site contains one of these sharp angled property lines along its northwestern side property, which intersects with the rear property line. While this is usable area of the Site, the definition of "Lot Area" under the Regulations does not allow the area of a lot which has a width of less than Fifty percent (50%) of the minimum required lot square width at the intersection of two property lines with an angle less than Sixty (60) degrees to be calculated.

348 Sunnie Holme Drive (continued)

On the Site, an area in the northwest corner meets the definition of this exclusion and it eliminates 847 SF towards the calculation of Lot Area on the Site.

In addition, there is an area of the Site that extends towards Mariner's Way. This is the "flagpole" portion of the flag lot. At Mariner's Way, the Site has a street frontage of 50.1', which is a compliant width to be counted as Lot Area for the Site. Unfortunately, when the lot lines were created for the Site, one of the lot lines perpendicular to Mariner's Way had a very slight angle, so that by the end of the "flagpole", the width of the Site is less than 50% of the required lot width. Due to the definition of "Lot Area" under the Regulations, as described above, that portion cannot be used towards the calculation of Lot Area for the Site. However, even the portion of the "flagpole" that is compliant with the Regulations is not permitted to be counted towards Lot Area because it is not contiguous to the other compliant portion of the Site. This standard removes an additional 4,724 SF of area from the Lot Area calculation. So, despite the fact the Site contains 33,410 SF of land, only 27,839 SF of it can be counted towards Lot Area, which has a significant impact on the permitted lot coverage on the Site. If these areas were to be counted, the proposed plans would be compliant under the Regulations. The odd shape of the Site due to the unique street design and the extremely slight angle to one of the property lines necessitate the required variance.

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 necessitated by the truly unique design of Sunnie Holme Drive and an extremely slight angle to one of the property lines, which was likely the result of an error. In addition, the Site contains an area adjacent to Mariner's Way, which is fully compliant with the Regulations, but it cannot be counted towards Lot Area because it is not contiguous to the other compliant portion of the Site. The Applicant has proposed a beautiful dwelling to add to the already outstanding character of Sunnie Holme Drive. Its design is in complete conformity with the neighborhood. The unique design of the neighborhood has driven variances for other properties along Sunnie Holme Drive. In fact, 50 Sunnie Holme Drive received a variance increasing the lot coverage to 24.4%. The Applicant only requests an increase of maximum lot coverage to 17%.

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

11. 599 Kings Highway West, Map 243, Parcel 129. Petition of Geraldine M. Carlson and Joseph C. Bertini for a variance of the Zoning Regulations Section 12.7.2 to reduce the minimum lot size from 10,000 sq. ft., currently 13,098 sq. ft., proposing 5,019 sq. ft., Section 12.7.3 to reduce the required square from 75 feet, currently 65 feet, proposing 65 feet; and Section 12.7.6.2 to allow 100% of the total floor area to be used as residential. Permission to allow for the existing single family dwelling to be on a separate lot. Premises: DCD Zone

The proposed application is Continued to 10/5/23

12. 3300 Post Road, Map 243, Parcel 129. Petition of Geraldine M. Carlson and Joseph C. Bertini for a variance of the Zoning Regulations Section 12.7.2 to reduce the lot size from 10,000 sq. ft., currently 13,098 sq. ft., proposing 8,079 sq. ft., Section 12.7.3 to reduce the required square from 75 feet, currently 65 feet, proposing 65 feet; and Section 12.7.6.3 to reduce the rear setback from 10 feet, proposing 5.5 feet. Permission to allow for an existing commercial building on a separate lot. Premises: DCD Zone.

The proposed application is Continued to 10/5/23

13. 212 Center Street, Map 241, Parcel 107. Petition of Tracey L. Brittis, Trustee for a variance of the Zoning Regulations Section 5.2.4 to reduce the side line and rear line setbacks from 15 feet and 30 feet, currently 5.1 feet and 6.0 feet, proposing 10.1 feet and 7.2 feet. Permission to construct a two (2) story garage. Premises: R-3 Zone.

Attorney John Fallon presented on behalf of the petitioner.

Tracey's son Dante has expressed interest in one day moving into the house he grew up in and hopes it stays in the family for the next generation. With an ADU over the garage, there will be a place for the children to stay when they visit and a place for Tracey to one day live that is close to her son and hopefully grandchildren. This is more than just a dream to keep the family close, it will allow Tracey to be near the place she loves to paint, and if she needs help as time goes on, her family would be right there to assist. Adding this apartment above the garage will help in allowing this family to stay together and Tracey to stay near her friends, her garden, and her favorite place to paint.

The existing garage structure to be replaced is nonconforming to both the side property line setback (at 5.1 ft.) and the rear property line setback (at 6.0 ft.). As shown on the plans submitted herewith the new structure will reduce both of those nonconformities with the rear property line setback being increased to 7.2 ft. and the side property line setback to 10.1 ft. As designed by Jack Franzen of Franzen Associates the proposed structure is attractive in design, will harmonize with the character of the area and have a positive impact aesthetically.

In order for the Zoning Board of Appeals to grant a variance pursuant to the provisions of Connecticut General Statutes Section 8-6(a)(3) two conditions must be met: The variance must be shown not to substantially effect the Comprehensive Zoning Plan; and Adherence to the strict letter of the Zoning Ordinance must be shown to cause unusual hardship unnecessary to the carrying out of the general purposes of the Zoning Plan. With regard to the first aspect of the test, our Supreme Court has held that if the use to be made after the variance is granted is a permitted use under the Zoning Regulations, then the first part of the test is met. In the present case, there will be no change in the historic use of the property as a single-family residence with an accessory structure as explicitly permitted pursuant to the provisions of the Zoning Regulations. The Zoning Regulations also have been recently amended to allow a detached accessory structure to contain an accessory dwelling unit in the R-3 zone. As previously indicated and as shown on the architectural plans submitted herewith Mr. Franzen's design is aesthetically pleasing, harmonizes with the existing house and will have a positive impact on the surrounding neighborhood.

With regard to the hardship requirement, a hardship that 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. In essence the applicant must demonstrate that because of some peculiar characteristics of the property, strict application of the Zoning Regulations results in unusual hardship.

212 Center Street (continued)

It has long been held by our Connecticut Courts that the historic location of a preexisting nonconforming structure on a lot creates a proper basis for a finding of hardship. As previously indicated the property has for many decades had an accessory structure that is nonconforming to both the side property line and rear property line setback requirements. The applicant wishes to replace this structure with one that will be less nonconforming to those setback requirements while being located in the general vicinity of the existing accessory structure as it relates to the overall property. It is in fact the location of the preexisting nonconforming accessory structure that creates the need for the variances as requested.


An independent legal basis for the granting of the variances requested is found in the numerous cases that have held that the reduction of existing nonconformities provides a proper independent legal basis for the granting of variances. In the present case, the granting of the application and the construction of the new accessory structure as proposed will result as previously referenced in a reduction of the existing nonconformities pertaining to the side and rear yard setbacks. In *Hescock v. Zoning Board of Appeals*, supra, the Appellate Court sustained a decision of the Board of Appeals of the Town of Stonington to grant a variance of the regulation that required that any new construction or substantial improvement within the zone be located "one hundred feet landward of the reach of the mean high tide." The defendants, whose existing house was located 44 ft. from the mean high tide line wanted to locate a new house three ft. further back to 47 ft. from the mean high tide. The Appellate Court upheld the action of the Stonington Board and the trial court in granting the variance based upon a finding that the proposed application would diminish the existing nonconformity. In holding that the reduction of nonconformities was an independent basis for granting of a variance the Court stated: "...we conclude that the court in the present case properly concluded that the law developed in *Vine*, *Adolphson*, and *Stancuna* was fully applicable to the present circumstances ... The Board found that the grant of fifty-three foot variance is justified by a decrease in noncompliance with the hundred foot setback requirement set forth in Section 7.7.8.3.1 and the elimination of noncompliance with all remaining flood zone regulations".

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

14. 4185 Black Rock Turnpike, Map 118, Parcel 41. Petition of Fairfield Medical LLC for a variance of the Zoning Regulations Section 29.8.2 to permit a sign that will abut a right of way to the Merritt Parkway, Section 29.10.1 to increase the size of two wall signs from 3 feet in height and overall size of 72 sq. ft., proposing 4'4 3/4 " in height and overall size of 174 sq. ft. and to allow two wall signs above the ground floor; and Section 29.11 to permit a side wall sign that is greater than 3.5 feet long and wider than a foot within 300 feet of a residential district. Permission to approve a new sign plan for a new medical building. Premises: DCD Zone

The proposed application is Continued to 10/5/23

There being no further business to come before the Commission, at 6:00 p.m. Chairman Coyne adjourned the meeting.


Jane Gitlin Nishball, Secretary


Jodi Karagianes, Clerk

KEVIN COYNE, CHAIRMAN

JANE GITLIN NISHBALL, SECRETARY

JOD KARAGIANES, CLERK