

ZONING BOARD OF APPEALS
MEETING MINUTES OF NOVEMBER 2, 2023

The Zoning Board of Appeals held a meeting on Thursday, November 2, 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://fairfieldct.org/government/fairtv>

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

EXECUTIVE SESSION

1. Approval of Minutes of Wednesday, October 11, 2023: Katie O'Grady *moved* and Terry Keegan *seconded* to approve the minutes as presented. *Motion passed unanimously.*
2. Approval of Secretary's Fees: Terry Keegan *moved* and Katie O'Grady *seconded* to approve the secretary's fees as presented. *Motion passed unanimously.*

Executive Session started at approximately 3:00 p.m.

CONTINUED DOCKET:

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 12/7/23

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 12.4.18 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

Attorney Kevin Gumper presented this application jointly, with continued item # 12 (3300 Post Road) on behalf of the petitioner. Each property was voted on independently.

The property designated as #599 Kings Highway West runs from Kings Highway West to the Post Road. There is a single-family house on the property which faces Kings Highway West and has an address of 599 Kings Highway West. There is also a substantial masonry mixed use building which faces Post Road and has an address of #3300

599 Kings Highway West (continued)

Post Road. There is a retaining wall running through the property which forms a physical barrier (but not a legal boundary) between the two uses. (#599 is higher than #3300).

Gerri and Joseph want to continue living in the house at #599 and want to sell the building at #3300. They are seeking the necessary variances to allow them to split the lot so that #3300 can be sold separately and Gerri can retain #599. No physical changes to either the house or the building are proposed. The applicants are seeking to formalize (or legalize) a situation which has existed for 60 years. Without the requested variances, it will as a practical matter be impossible in the near future for the house to continue in use as a residence. If the existing property is to be sold as a whole, it is very unlikely any new owner will be willing to allow the residential use to continue.

The variance requested for #599 Kings Highway West is to reduce the required minimum size from 10,000 square feet to 5,019 square feet; reduce the minimum square to 65 feet +/-; and allow residential use of 100 % of the building, including the ground floor. For #3300 Post Road, to reduce the required minimum size from 10,000 square feet to 8,079 square feet; reduce the minimum square to 65feet +/-; and reduce the required rear setback from 10 feet to 5.5 feet +/-.

The specifics of the requested variances are as follows:

Minimum Square. It is questionable whether any variance is needed, as the width of the lot has been the same since before the minimum square regulation was adopted. No change in the width of either proposed lot is requested. Nevertheless, to avoid any questions in the future, a variance of the minimum square is being requested. With respect to the proposed #3300, it should be noted that no variance of the minimum square was necessary for the construction of the existing building. It should also be noted that no minimum square is required in either the Center Designed Business District or the Neighborhood Designed Business District.

Minimum Lot Size. It is not possible to divide this lot in any manner that will result in even one with the minimum area. With respect to the proposed #599, it should be noted that the proposed lot size does meet the minimum required for a single-family dwelling in the C zone. With respect to the proposed #3300, it should be noted that there is no minimum lot size required in either the Center Designed Business District or the Neighborhood Designed Business District.

Rear Line Setback. The proposal is to generally use the existing retaining wall as the new boundary line. The existing masonry building is located 5.5 feet from the wall. There are considerable plantings on the 599 side of the retaining wall which screen the residence from the commercial use. It makes most sense to keep the screening with 599. The requested variance will allow this.

Residential Use. Once #599 is separated from #3300, it will no longer comply with the 50% residential use limitation. It could be argued that no variance is necessary, since the residential use of the house, including the residential use of its ground floor, predates the zoning regulations.

The topography is a hardship as is the two uses that are non-compatible. The zoning regulation that has been imposed on this property for many years has rendered this property with two incompatible uses and it would make most sense to legitimize what is here and split the property along the existing retaining wall.

Attorney Joel Greene, representing the Sasquanaug Association and Southport Woods Condominium Association spoke in opposition of both the 599 King Highway West and 3300 Post Road applications.

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

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.

Attorney Kevin Gumper presented with continued item # 11. Each property was voted on independently.

Attorney Joel Greene, representing the Sasquanaug Association and Southport Woods Condominium Association spoke in opposition of both the 599 King Highway West and 3300 Post Road applications.

DENIED: Terry Keegan *moved* and Katie O'Grady *seconded* to approve the proposed application. *Motion denied unanimously.*

GENERAL DOCKET:

1. 1120 Hulls Highway, Map 246, Parcel 2 B. Petition of Butternut Farm LLC for a variance of the Zoning Regulations Section 5.1.1 to reduce the minimum required square for a single-family building lot from 135 feet, proposing 129 feet. Permission to establish a single-family building lot. Premises: AA Zone.

Attorney Kevin Gumper presented on behalf of the petitioner. Mr. Kenney, owner was also present.

This variance is necessary because the zoning regulations were changed after the premises were established as a lot, and after a previous owner had granted a Conservation Easement to the Town. The applicant has a hardship in that, without the requested variance, there is no reasonable use which can be made of the property, which is tantamount to a confiscation of the property.

The property is shown and designated as "Lot B" on "Property Survey Showing Proposed Division of Land 1133 Cedar Road Prepared for The Estate of Helen M. Gerety Fairfield, Conn", which was filed on the land records on March 13, 2001 as Record Map number 6751. Lot B has an irregular shape, with frontage of 231.38 feet on Hulls Highway; a maximum depth of 259.69 feet, and an area of 1.13 acres.

Lot B has been a separate lot, in its present configuration, at all times since Lot A as shown on Map 6751 was sold by the Gerety Estate on March 16, 2001. Significantly, Lot B was established "as of right" as a so called "first cut" or "free cut", meaning it was a division of the Gerety property, and not a subdivision, and therefore subdivision approval by the Town Plan and Zoning Commission was not required. Nevertheless, both Lot B and Lot A were "legal" building lots and complied with all zoning regulations then in effect, including the required 135-foot square.

In 2007 the Gerety Estate applied to the Conservation Commission for the Inland Wetlands permit needed to build to build a single-family house on Lot B. As a condition of approval, Conservation required a Conservation Easement along the Southerly boundary of the property, which was recorded on July 6, 2007. The easement did not cover any wetland area. Instead, it covered the "upland review" or "setback" area, relating to a wetland which was not even on Lot B. After the easement was granted, Lot B still complied with all zoning regulations, including the 135-foot minimum square requirement.

On May 29, 2008, the property was sold to MOSD Holdings LLC, which intended to build a house on the property. However, MOSD ran into financial difficulty, and no house was built.

Following MOSD there have been three owners, including the applicant. The applicant and the immediate prior owner (Evelyn Lee) have used Lot B for "farm" purposes since 2012. Mrs. Lee raised and sold flowers on Lot B, and the applicant has sold flowers from Lot B. A barn and a shed, but no dwelling, have been built on Lot 8.

1120 Hulls Highway (continued)

On February 24, 2009, the Town Plan and Zoning Commission amended §31.2.21 of the Regulations, "Lot Area and Shape" by adding the following sentence: "The area of the minimum square required on each lot shall be exclusive of wetlands, watercourses, conservation easements, or any other restriction other than setbacks which would prevent actual house construction within the square." Solely as a result of this amendment, adopted 19 months after the conservation easement was granted, Lot B no longer met the 135-foot minimum square requirement.

The Applicant has a hardship in that, without the requested variance, Lot B cannot be put to any reasonable use. The primary use permitted in the AA zone is "[a] single detached dwelling for one (1) family" (§5.1.1), which is what the applicant wants to do. Other permitted uses include "nurseries, truck gardens and farms" (§5.1.3) and, subject to the securing of a special permit, "recreational facilities, nature preserves and wildlife sanctuaries" (§5.1.4 d) and "commercial greenhouses" (§ 5.1.4 e). None of these other uses are a reasonable use for a lot located within one of Fairfield's prime residential zones. In particular, the Applicant has determined, through its own experience, that a farm use on Lot B is simply not economically feasible.

A mere decrease in property value or other financial loss will not, ordinarily constitute a hardship sufficient to justify the issuance of a variance. The financial impact must be such that the application of the regulations to the property greatly decreases or practically destroys its value for any of the uses to which it could reasonably be put. A confiscatory effect results when a zoning regulation practically destroys the or greatly decreases the value of a specific piece of property, when such an effect results, a variance may be granted provided that the variance does not materially impair the effectiveness of the zoning regulations as a whole and that the action promotes substantial justice. This is a situation in which the hardship results entirely from a change in the zoning regulations, made after Lot B was established, and after the Conservation Easement was granted.

This is not a condition which generally affects other properties within the AA zone. Had Lot B been part of a subdivision approved by TP&Z, it would have been protected from subsequent changes in the zoning regulations by virtue of by CGS §8-26a (b) (1). But because Lot B was created by a division of the Gerety property, §8-26a does not apply. And had either owner of Lot B built a dwelling on it prior to February 24, 2009, the use of Lot B for residential purposes would have been protected as a nonconforming use under CGS § 8-2. But since neither of these statutory protections apply, the Applicant's only recourse is to seek a variance to prevent a practical confiscation of Lot B.

As noted above, the ZBA can grant a variance when (1) "the action promotes substantial justice" and (2) the variance will "not materially impair the effectiveness of the regulations as a whole." The Applicant is seeking to use Lot B for the primary use allowed in the AA zone, so the effectiveness of the regulations will not be immaterially impaired by granting the requested variance. And the granting of the variance will "promote substantial justice" remedying a situation cause through no fault of the owners of Lot B, yet which has almost completely destroyed its value. The requested variance should be granted.

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

2. 78 Sasco Hill Road, Map 231, Parcel 434 A. Petition of Gloria and Harry French for a variance of the Zoning Regulations Section 5.2.4 to reduce the sum of two side line setbacks from 25 feet, currently 21.5 feet, proposing 21.5 feet. Permission to construct a 2nd floor addition. Premises: A Zone.

Lucas Papageorge, presented on behalf of the petitioner. Harry French, homeowner, also spoke.

78 Sasco Hill Road (continued)

They are proposing a 2nd story addition over the existing garage. The topography of the lot with its steep slope down to Mill River and the flood zone requires the structure on this property to hug the roadway. Due to the topography, the garage needed to be built alongside the original home, rather than behind it, which limited the width to 19 ft which is not ideal for a garage or the proposed room above. Due to this they need to use all of the space above that garage and not step in the 3.5 ft necessary to meet current zone regulation. The neighboring properties at 66 Sasco Hill Road has been granted two variances over the years for setbacks and lot coverage, 116 Sasco Hill road was awarded a variance for side setback and the neighbor at 102 Sasco Hill is over on lot coverage as per town field card.

The homeowners requesting this variance are life-long Fairfield residents and small business owners in town, as they look forward into retirement and passing down the family business to the next generation, they are realizing they will need more space in their home, as they will not be spending much of their time at the family storefront. This is a caringly maintained modest home for the neighborhood and converting the already utilized attic space over the garage would allow them to stay in the home they love for years to come.

Christine Mallin who resides at 66 Sasco Hill Road spoke in opposition, citing the addition would block their view of Mill Pond and will reduce the amount of sunlight on that side of the house.

DENIED: Brian Avallone *moved* and Katie O'Grady *seconded* to approve the proposed application. *Motion denied 3-2.* (Jane G. Nishball and Kevin Coyne were in favor).

3. 146 Sasapequan Road, Map 74, Parcel 349. Petition of Barbara McQuillan Shay EST. for a variance of the Zoning Regulations Section 5.2.4 to reduce the sum of two side line setbacks from 25 feet, currently 14.1 feet, proposing 14.1 feet; and Section 5.2.5 to increase the lot coverage from 20%, currently 28.9%, proposing 22.5%. Permission to construct 2nd floor dormers and additions with covered front porch and rear deck. Premises: A Zone.

Lucas Papageorge presented on behalf of the petitioner.

They propose to install two dog house style dormers and a portico roof on the front of the house, and to raise the roof of the existing family room to accommodate an access hallway from the two separated 2nd floor area of the home. We also propose to remove the two large decks on the back of the home to reduce the lot coverage and replace it with one 10' x 10' deck.

Currently on this property there is an an existing structure built in 1958 and expanded in 1978. The existing condition of this structure has a side setback of 2.8 feet on the south side of the property for 1st /2nd floor, a 10.3' setback on 1st and an 11.3' setback on 2nd floor of the north side of the property. This property has an existing lot coverage of 28.9%. The proposal reduces the non-conformity by reducing the lot coverage to 22.5%. The dog house dormer on the north side of the property that we are proposing will have 14.5 ft. setback and although this is not within the 25 ft. combined side yard setbacks for 2nd stories that is required in the A Zone, it is well within the minimum 7 feet, further away than the existing dormer at 11.3 ft

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

4. 53 Rhoda Avenue, Map 138, Parcel 81. Petition of Margaret and Josh Cohen for a variance of the Zoning Regulations Section 5.2.5 to increase the total lot coverage from 20%, currently 21.9%, proposing 23.9%. Permission to construct a rear elevated deck to a FEMA compliant home. Premises: A Zone.

The proposed application is continued to 12/7/23

5. 99 Baldwin Terrace, Map 139, Parcel 9. Petition of Marina and Michael Bresnan for a variance of the Zoning Regulations Section 5.2.4 to reduce the street line setback from 20 feet for an open porch, currently 14.9 feet, proposing 15.1 feet; and Section 5.2.5 to increase the lot coverage from 20%, currently 22.6%, proposing 22.7%. Permission to remove and rebuild existing front porch and stairs. Premises: A Zone.

Marina Bresnan, owner, presented on her own behalf.

They wish to rebuild the existing 10' x 18' deck located on the front of the home. The location, shape and size of the property creates unusual conditions for the zoning district as they are located at a 3-way intersection, their property has two street frontages creating a pentagonal-shaped pre-existing, non-conforming lot.

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

6. 220 Springer Road, Map 121, Parcel 28 M. Petition of Frederick Spadaccino and Sarah Clark for a variance of the Zoning Regulations Section 5.2.4 to reduce the street line setback for an accessory structure from 50 feet, proposing 35.7 feet. Permission to construct an inground pool. Premises: AA Zone.

Tim Meehan, pool contractor, presented on behalf of the petitioner.

They propose to construct a 20' x 14' inground concrete pool with a rated safety cover and surrounding patio. The pool will be 35.7' off of Mountain Laurel Road.

There are two hardships associated with the lot. The first being the lot is on 24,813 sq. ft. in a one-acre zone. This is just 56% of the normal size lot. This greatly hinders the owner's ability to reasonably work inside the setback requirement. The second hardship is that it is a corner lot which only compounds the setback issue.

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

7. 211 Rock Ridge Road, Map 73, Parcel 259. Petition of Terence Szanto for a variance of the Zoning Regulations Section 5.2.4 to reduce the street line setback for an open porch from 40 feet, currently 36.9 feet, proposing 36.9 feet. Permission to construct an addition to an existing front porch. Premises: AA Zone.

Terry Szanto, owner, presented on her behalf. They would like to widen the front porch to end of house, cover with roof.

The existing structure is less than 50 feet from street line setback. The existing porch is 36.9 ft. from setback. New porch addition will be 39 ft. from setback, which is slightly further from setback than existing. There is a rock wall between the house and the road.

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

8. 109-113 Churchill Street, Map 130, Parcel 429. Petition of ACK3 Realty LLC for a variance of the Zoning Regulations Section 5.2.4 to reduce the side, sum of two side lines and street line setbacks from 5 feet, 20 feet, and 20 feet, currently 3.9 feet, 9.4 feet, and 7.3 feet, proposing 3.9 feet, 9.4 feet and 7.3 feet; and Section 5.2.5 to increase the total lot coverage and total floor area from 30% and 50%, currently 38.4% and 93.8%, proposing 38.4% and 95.5%. Permission to construct two 3rd floor dormers. Premises: B Zone.

Louis Garcia, architect, presented on behalf of the petitioner.

They wish to reconstruct the existing third floor apartment to provide a 2-bedroom apartment with kitchen/dining room and a living room. The existing front and rear egress stairs will remain. The current dwelling consists of three apartments - one on each floor of the structure, including the third floor. I am proposing to remove a portion of the existing roof in order to properly accommodate a livable and building code compliant third floor apartment.

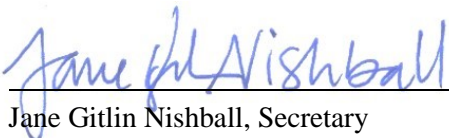
The current structure is a legally non-conforming structure in regards to the street line setback, side yard setback, coverage and total floor area provisions of the Zoning Regulations. The lot is in the Residence 'B' District and is a legally protected, nonconforming, parcel of land in respect to the lot area (3,333 sq. ft.) whereas the Zoning Regulations require a minimum lot area of 6,000 sq. ft. The lot shape has a 33.3' instead of a 60'-0" requirement. The dwelling is a legally protected 3-family dwelling which predates Zoning Regulations. The adjacent house was recently issued a variance for a very similar third floor apartment layout as mine. The neighborhood and other nearby houses are composed of 3- unit dwellings.

The Application requests permission to re-work the existing roof structure to properly provide a workable Building Code third floor apartment. The current layout lacks bedroom space due to the low overhead spaces. By this Board granting a variance it will not change the use of the property from its current use as a 3-family dwelling that has been in operation for many years. The footprint will remain the same. The first and second floor units will also remain the same along with existing building enclosed front and rear stairs. The reconstructed attic apartment will only have a small added area of 57 sq. ft. (existing area is 813 sq. ft. versus new area above 7'-0" of 888 sq. ft.).

This application seeks the approval to reconstruct this dwelling's roof in order to properly comply with all the provision of the current 2021 International Building Code (IBC). The raising of the roof will match the adjacent house and will fit in well in this neighborhood.

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