

ZONING BOARD OF APPEALS
MEETING MINUTES OF JANUARY 5, 2023

The Zoning Board of Appeals held a meeting at 3:00 p.m. on Thursday, January 5, 2023. 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 Chairman, Jane G. Nishball, Secretary, Brian Avallone.

MEMBERS ABSENT: Katie O'Grady

ALTERNATE MEMBERS PRESENT: Elise McKay, Alternate, sat in place of Katie O'Grady.

EXECUTIVE SESSION

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

Approval of Secretary's Fees: Brian Avallone *moved* and Terry Keegan *seconded* to approve the secretary's fees as presented. *Motion passed unanimously.*

Executive Session started at approximately 2:50 p.m.

GENERAL DOCKET:

- 1. 244 Greenfield Street, Map 42, Parcel 51. Petition of Town of Fairfield for a variance of the Zoning Regulations Section 5.1.1, 5.2.1 and 2.7 to reduce the street frontage and lot square from 60 feet and 60 feet, proposing 53 feet and 53 feet. Permission to create a building lot for a two family dwelling. Premises B Zone.**

Mark Barnhart, Director of Community and Economic Development for the Town of Fairfield presented on behalf of the petitioner. Carolyn Vermont, CEO and Kevin Moore, COO, both of Habitat for Humanity were present.

The property is comprised of 18,026 sf or 0.41 acres. The proposal is for the property to be divided into two lots. The Town has entered into a development agreement with Habitat for Humanity of Coastal Fairfield County to construct two duplexes on the property, comprising four units in total, all of which would be offered for sale as affordable homeownership units to income eligible, first-time homebuyers with incomes at or below 60% of the area median income. All units would be deed restricted to ensure that the units remain affordable. As such, the four units would count toward the Town's affordable housing goals as well as provide housing unit equivalency points toward a future moratorium application under Connecticut General Statutes 8-30g.

Habitat for Humanity of Coastal Fairfield County is a non-profit organization that has a reputation for success in transforming underutilized parcels into homes for working families, providing a pathway to home ownership. Habitat CFC utilizes a proven model of partnering with and supporting low-income families through each of the steps toward homeownership, not only to build and sell the house, but to educate, empower

244 Greenfield Street (continued)

and engage with families so that their home can be a source of long-term financial health, stability and pride to the families as well as an asset to the community. Habitat requires that all families provide sweat equity to the project to help instill a sense of ownership and pride as well as to prepare families for the inevitable challenges of home ownership

The Town selected Habitat CFC as its development partner following a solicitation for proposals and rigorous selection process. The Town selected Habitat based on its proven track record, ability to self-finance the project and experience in managing all aspects of the development process. Habitat will serve not only as the general contractor but lender, providing 30-year interest free mortgages that require no down-payment to maximize affordability to qualified, lower income, working families. Since 1985, Habitat CFC has built or renovated nearly 300 homes within the region, helping over 1100 family members achieve the American dream of home ownership. This would be the first project that Habitat for Humanity has undertaken within the Town of Fairfield.

The applicant is requesting a very modest decrease of seven (7) feet in the required lot square and street frontage to facilitate the construction of a new single detached dwelling on one of the two lots, identified on the aforementioned Parcel Petition Map as Lot A. It is noted that the required lot square of 60 feet is achieved, but not within the 20' front yard setback. Granting this request will not substantially affect the comprehensive zoning plan. The proposed residential use is compatible with surrounding properties and will harmonize with the existing neighborhood.

Strict adherence to the zoning regulations would create a hardship, and would not serve the public interest to provide more affordable housing. The unique shape of "Lot A" based on the abutting property results in the inability to meet the minimum lot square, although the 60' requirement is easily met throughout the rest of the parcel. Moreover, as this Board is no doubt aware, the Town of Fairfield has a well-documented need for affordable housing. Though the Town has been working diligently to address this need, only 2.8% of the Town's housing stock is recognized by the State of Connecticut as being affordable. The need is particularly acute with regard to affordable homeownership units. Of the Town's 608 affordable units, only 44 are deed restricted affordable home ownership units. The median price of homes sold in Fairfield during the first eleven months of 2022 was \$815,000. Moreover, of the 680 sales recorded to date in 2022, only 3 were for less than \$300,000, which has been the Town's unofficial barometer for affordability. With anticipated sale prices of less than \$200,000, the four units would help address the community's need for affordable ownership housing.

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

- 2. 812 Hillside Road, Map 174, Parcel 40. Petition of Benjamin Kinney and Megan McDonald for a variance of the Zoning Regulations Section 5.2.4 to reduce the street line setback from 60 feet, currently 32.5 feet, proposing 32.5 feet. Permission to construct attic dormers. Premises AAA Zone.**

Beatrice DeSantis, Architect, presented on behalf of the petitioner.

They proposed to add five (5) dormers to the existing house, to improve the existing living space in the attic; and to make the existing stairs meet the minimum height at the top of the existing stairs going to the attic. The dormers will not make the building higher, and they are staying within the existing footprint.

812 Hillside Road (continued)

The existing house is outside the setbacks; it was built in 1930, under different building and zoning regulations. The creation of the front dormers is to meet the minimum height required at the top of a set of stairs per current building codes, and the height of the existing living space.

Neighbor, Dabney Bowen of 317 Verna Hill Rd. spoke in favor.

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

3. 2644 Bronson Road, Map 225, Parcel 20. Petition of Bronson Meadows, LLC for a variance of the Zoning Regulations Section 5.1.1 to add a 2nd floor to the existing groom's quarters. Permission to construct a 2nd floor addition to an accessory dwelling. Premises AAA Zone.

Craig Flaherty, Sr. Engineer and Principal with Redness and Mead presented on behalf of the petitioner.

The applicant is the owner of property known as 2644 Bronson Road located on the east side of Bronson Road and identified in the Assessor's records as Parcel 20 on Assessor's Map 225. The property contains 30.28 acres and includes a main house on the northerly portion of the property and several ancillary and support buildings including a guest house, gate house, pool house, green house, horse barn, southerly garage, horse walker, and grooms quarters. The property has three forms of access: a driveway to the north that abuts the Greenfield Hill Cemetery, the primarily used middle driveway, and a southerly access driveway for the barn area. The property is in the Residence AAA zone which has a minimum lot area requirement of 2 acres.

Two variances were previously granted for the property as recorded on the Fairfield Land Records Volume 5365, Page 1, on January 26, 2016. This included a variance of Section 5.1.1 of the Zoning Regulations to permit three dwellings (the main residence, guest house, and grooms quarters) on a single lot; and a variance of Section 5.2.6 to permit a reduction in minimum floor area for a one-story dwelling from 1,200 square feet to 979 square feet for the grooms quarters.

The applicant proposes to modify the existing grooms quarters by adding a second floor and an addition. The grooms quarters is occupied by a full time staff member responsible for the care of the horses and other animals on site. All other structures will remain as-is or otherwise in compliance with previously issued Zoning Permits.

Once the improvements to the grooms quarters are complete, it will comply with Section 5.2.6 of the regulations as it will be a two-story structure with more than 1,000 square feet on the first floor and a gross floor area of more than 1,500 square feet, obviating the need for the prior variance. There will continue to be three dwellings on a single lot, therefore, the applicant is requesting confirmation/renewal of a variance of Section 5.1.1. The factors the Board considered in approving the prior variance application are similar or more favorable today:

The guest house and grooms quarters are uses clearly appurtenant to the main residence. The grooms quarters will now be compliant with Section 5.2.6 of the regulations for which a variance was previously granted.

2644 Bronson Road (continued)

The property is now two acres larger than it was when the original variances were granted as a separate building lot once known as 2550 Bronson Road (Tax Parcel 20A) was consolidated into the subject parcel in 2020. The property is fifteen times larger than the minimum lot size of 2 acres permitted in the Residential AAA zone.

The relatively limited use of the parcel is evidenced by the fact that the building coverage on site, permitted within the residence AAA regulations to be 10%, will be less than 3.2%, and the floor area ratio on site, permitted under residence AAA regulations to be 15%, will be less than 3.7%.

The 30.28-acre parcel could accommodate, if subdivided, more primary home sites which would likely be much larger than the relatively modest appurtenant guest house and grooms quarters.

Approval of this application will permit the continued uses of the property with the grooms quarters enlarged to comply with the size requirements of the zone.

Neighbor, Dabney Bowen of 317 Verna Hill Rd. spoke in favor.

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

4. 186 White Oak Road, Map 44, Parcel 17. Petition of Heath and Alyssa Kent for a variance of the Zoning Regulations Section 5.2.5 to increase the lot coverage from 15%, currently 14.11%, proposing 15.5%. Permission to construct a rear, one story addition. Premises: R-3 Zone.

Owner Alyssa Kent presented on her own behalf.

They wish to construct a 9' x 12'-5" single story rear addition to expand the kitchen and living room. Additionally they wish to construct a 8' x 19'-4" front addition over 3 floors to expand the dining room, primary bedroom and create new bedrooms in the attic.

This variance is for a proposed lot coverage increase of .5% over the allowable in an R-3 Zone. Our hardship is due to the fact that our parcel is 2,861 sq. ft. under the minimum lot size for the R-3 Zone. All other zoning restrictions and setbacks are being maintained under the proposal.

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

5. 593 Rowland Road, Map 138, Parcel 228. Petition of Nicholas and Meaghan Lillo for a variance of the Zoning Regulations Section 5.2.4.3 to reduce the street line setback for an accessory structure on a corner lot from 30 feet, proposing 23.9 feet. Permission to construct an in ground pool. Premises: A Zone.

James Vadas, Owner Marquee Pools & Services, Inc. presented on behalf of the petitioner.

They wish to install/construct a 12' x 26' in ground fiberglass pool in this non-conforming lot. The install would meet the side and rear setbacks of 10' each, but would be approximately 26' from the front vs. the 30' required in A zone setback.

The corner lot configuration makes it difficult to construct any structure within the A zone setbacks. The pool we wish to install would meet side and rear setbacks and despite being 4' shy of the 30'

593 Rowland Road (continued)

front setback, it would still be farther from the street than the stairs of the house which has been built outside of A zone setbacks.

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

6. 1838 Black Rock Turnpike, Map 76, Parcel 169. Petition of Joel Paul Berger for a variance of the Zoning Regulations Section 28.6.12 to reduce the required parking spaces by 8. Permission to convert a retail space into a restaurant. Premises: DCD Zone

Eva Korneich, Commercial Broker, presented on behalf of the petitioner.

They wish to convert an existing retail space of approximately 1,380 sq. ft. to a sushi restaurant. The existing retail space is 1,380 sq. ft., our plan is to convert the space into a sushi bar with a rotating/revolving bar that will consist of 578 sq. ft. of patron area. The parking requirements for retail space are 200 sq. ft. per space. The prior use required a total of 7 parking spaces. Our sit-down area will require a total of 15 spaces and requires a variance of 8 spaces. The current uses in the plaza are typically 9-5 with the exception of the liquor store which is open to 8 pm but typically only has a visit time of 5-10 minutes. Our business model will provide hours of operation for lunch 11:00-3:00 and for dinner 5:00-9:00.

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

7. 605 Stillson Road, Lot A, Map 123, Parcel 10. Petition of 21 Keeler Ave, LLC for a variance of the Zoning Regulations Section 5.1.1, 5.2.1 and 2.7 to reduce the minimum lot size, square and frontage from 9,375 sq. ft., 75 sq. ft., and 75 feet frontage, proposing 6,745 sq. ft., 60 sq. ft. and 60.37 frontage; and Section 5.2.4 to reduce the street line setback from 30 feet, currently 26.7 feet, proposing 26.7 feet. Permission to establish a building lot and to construct a (1) one and 2 (two) story additions to an existing single-family dwelling. Premises: A Zone.

Attorney John Fallon presented on behalf of the petitioner.

The Applicant is the owner of the property designated as 605 Stillson Road. It is located in the Residence A zone and is a significantly oversized parcel containing 14,615 sq. ft. wherein the Zone establishes a minimum lot area of 9,375 sq. ft.. The property was created as two lots (lots #1 and #2) as shown on a map entitled "Property of John and Anna Zadravcez, Fairfield, Connecticut" dated November 30, 1938 and duly recorded on the Land Records of the Town of Fairfield.

It is noted the property bounded by Stillson Road to the west and Judd Street to the south was created as two separate building lots (Lots # 1 and #2) as shown on the Map. Indeed recorded deeds as confirmed by a title search have consistently conveyed the property by way of a description that reads "All that certain piece or parcel of land, situated in the Town of Fairfield, County of Fairfield, State of Connecticut, being known and designated as Lots #1 and #2 on map of property of John and Anna Zadravcez, Fairfield, Connecticut dated November 30, 1938.

605 Stillson Road, Lot A (continued)

In addition, the two lots are shown as separate parcels on the Town Assessor's map (#123) being designated as parcels 9 and 10. Thus, since their creation by way of the filing of the map in 1938 the parcels both by way of conveyance and reference on the Town Assessor's map have existed as separate parcels in accordance with the recorded map and property description. A review of the land records of the Town of Fairfield reveals that the recorded deeds in the chain of title with respect to these lots as shown on the exhibit submitted herewith conveying the parcel all make reference to the fact that it consisted of two separate lots as established under the original filed map. Each deed as indicated above references the parcel as being "known and designated as Lots # 1 and #2". Since their creation in 1938 the lots as established by the filed map have been continuously maintained by the original owners and their successors as separate and independent parcels. The existing one and one half story structure at 605 Stillson Road and the improvements associated therewith are and have historically been located on that portion of the property designated as Lot 1 on the original map (parcel 10 on the Town Assessors Map). The portion of the parcel designated as Lot 2 on the Map (and as parcel 9 on the Assessor's Map) has been maintained and held in an undeveloped state for purposes of future development of a single family home.

The Applicant makes the applications for variances in order to establish a building lot for a single family dwelling at the property to be designated as 617 Stillson road. The new home proposed for construction will comply with all provisions of the Zoning Regulations as it relates to height, coverage, floor area ratio and setbacks. A variance of Section 5.1.1 to reduce the minimum lot size to 7,870 sq. ft. and the minimum square to 65 sq. ft. is requested in order to establish the parcel as a building lot for this single family dwelling. It is the intention of the Applicant to maintain the current single family structure at 605 Stillson Road and to construct a one and two story additions to this existing dwelling as shown on the architectural plans submitted herewith. The structure once the additions are completed will comply with all provisions of the Zoning Regulations with respect to height, coverage, floor area ratio and setbacks except that a variance of Section 5.2.4 is requested in order to reduce the street line setback from 30 ft. to 26.7 ft.. The current street setback based upon the location of the existing porch is 26.7 ft. so there will be no increase in this nonconformity.

In order to facilitate this addition to the existing residence, a variance of Section 5.1.1 to reduce the lot size to 6,745 sq. ft. and the square to 60 ft. is requested. The current square footage of the existing home at 605 Stillson Road is 1,433 sq. ft. The proposed additions will increase the square footage to a modest 2,101 sq. ft. dwelling very much in character with the surrounding neighborhood. The structure once the additions are completed will comply with the coverage requirements of the zone notwithstanding the reduced lot size at 19.72%. Similarly the floor area ratio will be compliant with the requirements of the Regulations at 39.05%. The new single family residential structure to be constructed on the vacant parcel (to be known as 617 Stillson Road) excluding the garage will total 2,701 habitable sq. ft. again modestly sized to be consistent with the character of the surrounding neighborhood. Notwithstanding the reduced lot area the new home will comply with the coverage requirements of the zone with coverage at 19.77% and the FAR requirement at 39.40%.

The previously submitted Assessors map showing the surrounding neighborhood confirms that due to the fact that most lots in the area were created by the recordation of the previously referenced map # 123 or similar maps the proposed lots are in terms of their size and shape consistent in character with other lots in the area.

In order for the Zoning Board of Appeals to grant variances pursuant to the provisions of Connecticut General Statutes 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

605 Stillson Road, Lot A (continued)

unusual hardship unnecessary to the carrying out of the general purposes of the Zoning Plan. With regard to the first aspect of the test it has been held that if the use to be allowed by a variance is consistent with other uses in the area and/or is permitted in the zone, the first part of the test has been met. In this instance, the variances requested will simply provide that the original parcels as established by the recordation of the 1938 map can be utilized for purposes of single family residences as has already for many, many years been the case with regard to the existing home at 605 Stillson Road. Single family residences are of course a permitted use in the zone.

Furthermore, as referenced above and as shown on the analysis of the Assessor's Map provided herewith, the two proposed lots for single family dwellings will be similar in size, shape and character with the size, shape and character of many other lots in the immediate and general area and will be consistent with the surrounding neighborhood. As previously indicated the home to be constructed at the proposed 617 Stillson Road and the existing home at 605 Stillson Road will comply with all applicable provisions of the Zoning Regulations with regard to coverage and FAR.

Perhaps most importantly the granting of these variances will ensure that a dwelling will be constructed at the proposed 617 Stillson Road that in its size and character will be in harmony with the surrounding neighborhood. The alternative is to demolish the small but charming existing home at 605 Stillson Road, merge the parcels and build a compliant but very large structure of up to almost 6,000 sq. ft. that would be out of character with the surrounding neighborhood.

With regard to the hardship requirement, 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 ordinance to unique circumstances pertaining to the parcel in question. *Archambault v. Wadlow*, 25 Conn.App. 375 (1991). With regard to the specific facts in this case the State Supreme Court decision in *Horwitz v. Town of Waterford*, 151 Conn. 320 (1964) is instructive. In *Horwitz*, the Court was confronted with a similar situation. A lot created by the filing of a recorded map on the Land Records but not on a subdivision map approved after zoning regulations were established in the Town of Waterford was rendered non-conforming based upon subsequent adoption of land use regulations to which the lot in question did not conform with regard to size, width, depth or frontage. The Supreme Court found that it would be an unconstitutional taking to apply these regulations to the pre-existing lot in question which had always been maintained as a buildable parcel. The Court's decision was in keeping with the long and well established legal principle that where the effect of applying a zoning regulation to property is so severe as to amount to a practical confiscation that this establishes hardship to allow and even require a zoning board of appeals to grant the variances in question.

In summary, the proposal with regard to these two parcels as established by the recordation of the map on the Land Records in 1938 will conform to the character of the surrounding neighborhood and result in lots that are consistent in size and shape with many of those in the area. Granting the variances requested will allow for the construction of a moderately sized home at 617 Stillson Road and an attractive addition to the existing residence at 605 Stillson Road. As referenced previously, each of the single family homes will be moderately sized and will conform with the character of the neighborhood and the applicable provisions of the zoning regulations with regard to coverage and FAR. The request satisfies the standard established by Connecticut General Statutes 8-6 in that the granting of the variance will not substantially effect in any negative manner the Comprehensive Zoning Plan. Indeed the construction of the proposed two moderately sized single family

605 Stillson Road, Lot A (continued)

homes is preferable to the option of merging the lots in order to construct a fairly massive single family home of almost 6,000 sq. ft.. Hardship exists based upon the confiscatory impact that would occur as a result of the application of the current zoning regulations to these parcels which have long been maintained since their creation as separate building lots.

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

8. 605 Stillson Road, Lot B, Map 123, Parcel 10. Petition of 21 Keeler Ave, LLC for a variance of the Zoning Regulations Section 5.1.1 to reduce the lot size and square, from 9,375 sq. ft., and 75 square, proposing 7,870 sq. ft. and 65 ft. square. Permission to establish a building lot for a single family dwelling. Premises: A Zone.

The Applicant is the owner of the property designated as 605 Stillson Road. It is located in the Residence A zone and is a significantly oversized parcel containing 14,615 sq. ft. wherein the Zone establishes a minimum lot area of 9,375 sq. ft.. The property was created as two lots (lots #1 and #2 as shown on a map entitled "Property of John and Anna Zadravcez, Fairfield, Connecticut" dated November 30, 1938 and duly recorded on the Land Records of the Town of Fairfield.

It is noted the property bounded by Stillson Road to the west and Judd Street to the south was created as two separate building lots (Lots # 1 and #2) as shown on the Map. Indeed recorded deeds as confirmed by a title search have consistently conveyed the property by way of a description that reads "All that certain piece or parcel of land, situated in the Town of Fairfield, County of Fairfield, State of Connecticut, being known and designated as Lots #1 and #2 on map of property of John and Anna Zadravcez, Fairfield, Connecticut dated November 30, 1938.

In addition, the two lots are shown as separate parcels on the Town Assessor's map (#123) being designated as parcels 9 and 10. Thus, since their creation by way of the filing of the map in 1938 the parcels both by way of conveyance and reference on the Town Assessor's map have existed as separate parcels in accordance with the recorded map and property description. Indeed a review of the land records of the Town of Fairfield reveals that the recorded deeds in the chain of title with respect to these lots as shown on the exhibit submitted herewith conveying the parcel all make reference to the fact that it consisted of two separate lots as established under the original filed map. Each deed as indicated above references the parcel as being "known and designated as Lots # 1 and #2". Since their creation in 1938 the lots as established by the filed map have been continuously maintained by the original owners and their successors as separate and independent parcels. The existing one and one half story structure at 605 Stillson Road and the improvements associated therewith are and have historically been located on that portion of the property designated as Lot 1 on the original map (parcel 10 on the Town Assessors Map). The portion of the parcel designated as Lot 2 on the Map (and as parcel 9 on the Assessor's Map) has been maintained and held in an undeveloped state for purposes of future development of a single family home.

The Applicant makes the applications for variances in order to establish a building lot for a single family dwelling at the property to be designated as 617 Stillson road. As shown on the architectural plans submitted herewith the new home proposed for construction will comply with all provisions of the Zoning Regulations as it relates to height, coverage, floor area ratio and setbacks. A variance of Section 5.1.1 to reduce the minimum lot size to 7,870 sq. ft. and the minimum square to 65 sq. ft. is requested in order to establish the

605 Stillson Road, Lot B (continued)

parcel as a building lot for this single family dwelling. Similarly, it is the intention of the Applicant to maintain the current single family structure at 605 Stillson Road and to construct a one and two story additions to this existing dwelling as shown on the architectural plans submitted herewith. Again, the structure once the additions are completed will comply with all provisions of the Zoning Regulations with respect to height, coverage, floor area ratio and setbacks except that a variance of Section 5.2.4 is requested in order to reduce the street line setback from 30 ft. to 26.7 ft.. However, the current street setback based upon the location of the existing porch is 26.7 ft. so there will be no increase in this nonconformity.

In order to facilitate this addition to the existing residence, a variance of Section 5.1.1 to reduce the lot size to 6,745 sq. ft. and the square to 60 ft. is requested. The current square footage of the existing home at 605 Stillson Road is 1,433 sq. ft.. The proposed additions will increase the square footage to a modest 2,101 sq. ft. dwelling very much in character with the surrounding neighborhood. The structure once the additions are completed will comply with the coverage requirements of the zone notwithstanding the reduced lot size at 19.72%. Similarly the floor area ratio will be compliant with the requirements of the Regulations at 39.05%. The new single family residential structure to be constructed on the vacant parcel (to be known as 617 Stillson Road) excluding the garage will total 2,701 habitable sq. ft. again modestly sized to be consistent with the character of the surrounding neighborhood. Notwithstanding the reduced lot area the new home will comply with the coverage requirements of the zone with coverage at 19.77% and the FAR requirement with a FAR of 39.40%.

The previously submitted Assessors map showing the surrounding neighborhood confirms that due to the fact that most lots in the area were created by the recordation of the previously referenced map # 123 or similar maps the proposed lots are in terms of their size and shape consistent in character with other lots in the area.

In order for the Zoning Board of Appeals to grant variances pursuant to the provisions of Connecticut General Statutes 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 it has been held that if the use to be allowed by a variance is consistent with other uses in the area and/or is permitted in the zone, the first part of the test has been met. In this instance, the variances requested will simply provide that the original parcels as established by the recordation of the 1938 map can be utilized for purposes of single family residences as has already for many, many years been the case with regard to the existing home at 605 Stillson Road. Single family residences are of course a permitted use in the zone.

Furthermore, as referenced above and as shown on the analysis of the Assessor's Map provided herewith, the two proposed lots for single family dwellings will be similar in size, shape and character with the size, shape and character of many other lots in the immediate and general area and will be consistent with the surrounding neighborhood. As previously indicated the home to be constructed at the proposed 617 Stillson Road and the existing home at 605 Stillson Road will comply with all applicable provisions of the Zoning Regulations with regard to coverage and FAR.

Perhaps most importantly the granting of these variances will ensure that a dwelling will be constructed at the proposed 617 Stillson Road that in its size and character will be in harmony with the surrounding neighborhood. The alternative is to demolish the small but charming existing home at 605 Stillson Road, merge

605 Stillson Road, Lot B (continued)


the parcels and build a compliant but very large structure of up to almost 6,000 sq. ft. that would be out of character with the surrounding neighborhood.

With regard to the hardship requirement, 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 ordinance to unique circumstances pertaining to the parcel in question. *Archambault v. Wadlow*, 25 Conn.App. 375 (1991). With regard to the specific facts in this case the State Supreme Court decision in *Horwitz v. Town of Waterford*, 151 Conn. 320 (1964) is instructive. In *Horwitz*, the Court was confronted with a similar situation. A lot created by the filing of a recorded map on the Land Records but not on a subdivision map approved after zoning regulations were established in the Town of Waterford was rendered non-conforming based upon subsequent adoption of land use regulations to which the lot in question did not conform with regard to size, width, depth or frontage. The Supreme Court found that it would be an unconstitutional taking to apply these regulations to the pre-existing lot in question which had always been maintained as a buildable parcel. The Court's decision was in keeping with the long and well established legal principle that where the effect of applying a zoning regulation to property is so severe as to amount to a practical confiscation that this establishes hardship to allow and even require a zoning board of appeals to grant the variances in question.

In summary, the proposal with regard to these two parcels as established by the recordation of the map on the Land Records in 1938 will conform to the character of the surrounding neighborhood and result in lots that are consistent in size and shape with many of those in the area. Granting the variances requested will allow for the construction of a moderately sized home at 617 Stillson Road and an attractive addition to the existing residence at 605 Stillson Road. As referenced previously, each of the single family homes will be moderately sized and will conform with the character of the neighborhood and the applicable provisions of the zoning regulations with regard to coverage and FAR. The request satisfies the standard established by Connecticut General Statutes 8-6 in that the granting of the variance will not substantially effect in any negative manner the Comprehensive Zoning Plan. Indeed the construction of the proposed two moderately sized single family homes is preferable to the option of merging the lots in order to construct a fairly massive single family home of almost 6,000 sq. ft.. Hardship exists based upon the confiscatory impact that would occur as a result of the application of the current zoning regulations to these parcels which have long been maintained since their creation as separate building lots.

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

There being no further business to come before the Commission, at 4:55p.m. Chairman Coyne adjourned the meeting.



Jane Gitlin Nishball, Secretary



Jodi Karagianes, Clerk

KEVIN COYNE, CHAIRMAN

JANE GITLIN NISHBALL, SECRETARY

JODI KARAGIANES, CLERK