

ZONING BOARD OF APPEALS
MEETING MINUTES OF MARCH 2, 2023

The Zoning Board of Appeals held a meeting at 3:00 p.m. on Thursday, March 2, 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 Chair, Jane G. Nishball, Secretary, Brian Avallone, Katie O'Grady

EXECUTIVE SESSION

1. Approval of Minutes of Thursday, February 2, 2023: Brian Avallone *moved* and Jane G. Nishball *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 2:55 p.m.

CONTINUED DOCKET:

5. 2268 Fairfield Beach Road, Map 234, Parcel 90. Petition of 2268 Fairfield Beach Road, LLC for a variance of the Zoning Regulations Section 11.13 to reduce the street line setback from the center line of Fairfield Beach Road from 25 feet, currently 7.9 feet, proposing 10.2 feet to roof overhang and 15.7 feet to dwelling. Permission to construct a 2-story, FEMA compliant, single-family dwelling with a C.A.M. application. Premises: BD Zone.

The proposed application is continued to April 6, 2023.

GENERAL DOCKET:

1. 186 Hillside Road, Map 176, Parcel 59. Petition of Marsh Real Estate LLC for a variance of the Zoning Regulations Section 12.5.5 to reduce the street line setback from 70 feet, currently 31.9 feet, proposing 31.9 feet; and Section 12.7.6.4 to reduce the side property line setbacks from an adjacent residential district from 30 feet, currently 18.6 feet and 7.2 feet, proposing 18.6 feet and 7.2 feet. Permission to construct a 2nd floor addition. Premises: NDD Zone

Attorney John Fallon presented on behalf of the petitioner.

As part of the purchase of the Greenfield Hill Animal Hospital practice from his father in January 2020 Dr. Andrew Marsh and his wife also purchased the real estate that included the veterinary building as well as a residential cottage located on the property which is a legally protected pre-existing nonconforming structure constructed in 1938. Dr. and Mrs. Marsh want to take this opportunity to renovate this residential space so that it is safe and comfortable for future tenants.

The proposal involves raising the second story ceiling height to be 7 1/2 feet as depicted in the architectural drawings submitted herewith. This will allow for the replacement of the cramped downstairs bathroom with an appropriately sized full bathroom upstairs and a more sanitary half bath downstairs. Central air conditioning can also be accommodated and the widening of the stairway will significantly benefit safety considerations. In order to accomplish

these goals Dr. and Mrs. Marsh are asking for permission to raise the height of the second story roof by approximately 5 feet which is the only substantive alteration being made to the exterior of the cottage other than the replacement of some windows. After the renovation, the cottage will be 20 ft. in height well within the provisions of the regulations for the District which allow a height of 30 ft.

To accommodate the proposed renovations a variance of Section 12.5.5 is sought in order to reduce the minimum street line setback for a building with ground floor residential occupancy located on a parcel with multiple buildings from 70 feet to 31.9 feet. There will be no change in the location of the existing building which has been occupied and utilized as a residence for 84 years and constitutes a legally protected pre-existing nonconformity. Similarly, a variance of Section 12.7.6.4 is requested to reduce the side property line setbacks from adjacent residence districts from 30 feet to the presently existing 18.6 feet and 7.2 feet. Again, this is an existing condition based upon the location of the cottage since it's construction in 1938.

In order for a 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, it has been held by our Appellate Court 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 residence which is explicitly permitted under the Zoning Regulations. The use has been ongoing since 1938. The contemplated second floor addition will allow for much needed repairs and enhancements to this dwelling unit to improve convenience and safety for its occupants. As shown on the architectural plans submitted, the proposal is aesthetically pleasing, harmonizes with the character of the neighborhood and will represent an aesthetic enhancement to this dwelling unit. Dr. and Mrs. Marsh have been in regular contact with her neighbors in order to ensure that they are supportive of the plans involving the proposed renovation.

With regard to hardship, a hardship which justifies a Zoning Board of Appeals to grant a variance must be one that originates in the Zoning Ordinance and arises directly out of the application of the ordinance to unique circumstances pertaining to the property in question; the applicant must demonstrate that because of some peculiar characteristics of the property, strict application of the Zoning Regulations results in unusual hardship. It has long been held by our Connecticut Courts that the historic location of a legally protected pre-existing nonconforming structure on a lot creates a proper basis for a finding of hardship. It is in fact the historic location of this existing dwelling and its already nonconforming status that creates the need for the technical variances that are requested in order to allow for the second story addition over the existing first floor area. It should again be emphasized that the proposed construction will not result in any actual further encroachment into the existing setbacks but is simply required because of the nature of the work on the existing structure that is already nonconforming to both the street line and side property line setbacks. For all of the above reference reasons, it is respectfully requested that this application be approved.

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

2. 57 Brookdale Road, Map 79, Parcel 837. Petition of Lisa Fortuna for a variance of the Zoning Regulations Section 5.2.4.3 to reduce the side setback for an accessory structure greater than 15 feet in height from 10 feet, currently 4.2 feet, proposing 4.2 feet. Permission to construct a 2nd floor to an existing detached garage. Premises: A Zone.

Owner, Lisa Fortuna presented, Ken Wokanovic was also present. They would like to add a half story over their garage for storage. The existing structure is slightly over the setback. All of their neighbors are in support of the project.

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

3. 22 Partridge Lane, Map 177, Parcel 106. Petition of Miguel Morales for a variance of the Zoning Regulations Section 5.2.4 to reduce the sum of two side line setbacks from 20 feet, currently 20.6 feet, proposing 19.2 feet; and Section 5.2.5 to increase the total lot coverage from 20%, currently 20%, proposing 25.1%. Permission to construct a one-story addition and a detached shed. Premises: A Zone.

Owner, Miguel Morales presented. He is requesting to construct a 10'x14' shed in the rear of the house. He is also requesting to construct a 17'x10' addition consisting of a dining room and powder room on the first floor.

He and his wife both work from home and need separate offices. They are also expecting a child this year. The shed will be used to store outdoor equipment, tools, etc. that he is currently storing this equipment in his garage.

GRANTED: Brian Avallone moved and Terry Keegan seconded to approve the proposed application. Motion passed 4 to 1 (Jane G. Nishball opposed).

4. 1499 Post Road, Map 180, Parcel 86. Petition of RK Fairfield LLC for a variance of the Zoning Regulations Section 30.2 to reduce the distance between two café's from 1,500 feet, proposing 300 feet and 410 feet. Permission to establish a café permit. Premises: CDD Zone

Jardan Nygaard, owner of Nordic Fish, presented.

They are seeking a café permit to be able to expand their indoor dining and serve alcohol on the premises. Signatures from both nearby café owners were submitted.

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

5. 126 Old Post Road, Map 141, Parcel 4. Petition of Beverly Vanier for a variance of the Zoning Regulations Section 5.2.4.3 to expand the existing dormers and to reduce the side and rear setbacks from 10 feet, currently 5 feet and 5 feet, proposing 5 feet and 5 feet. Permission to expand the existing dormers to create a home office to a detached garage. Premises: A Zone.

Beverly Vanier, owner, presented on her behalf. She would like to extend the dormers, on an already approved and permitted garage with storage loft above. Her hardship is that with the new measurement for height being the midpoint of the ridge beam and the dormer eave, the setbacks have changed and is now required to maintain a 10 ft. side and rear setback, rather than 4 ft. which was already in compliance at a 5 ft. distance away. They are in compliance with the street line setback. The overall footprint does not change, nor does the height of the existing ridge, only the width of the pre-existing dormers.

Steve Ramsey and Ann Jones submitted a letter in opposition.

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

6. 164 Applegate Road, Map 46, Parcel 211. Petition of Erin and Thomas Toller for a variance of the Zoning Regulations Section 5.2.4 to reduce a side line and rear line setback from 15 feet and 30 feet, currently 13 feet

and 32.5 feet, proposing 8 feet and 19.2 feet to house and 18.5 feet to deck; and Section 5.2.5 to increase the lot coverage from 15%, currently 12.4%, proposing 17.9%. Permission to construct (2) one-story additions and rear deck. Premises: R-3 Zone.

Erin Toller, owner, presented on her own behalf.

They wish to construct a 24' x 24', two-story addition consisting of a first-floor family room, second floor bedrooms and a bath; the proposal is to add a total of 938 sq ft of living space. The initial build would be to replace the existing 240 sq ft wood deck with a 362 sq ft family room, guest bath and smaller 166 sq ft deck and stairs for BBQ grill and access to the yard away from the property line. Later they plan to add a 576 sq ft of additional living space consisting of a master bedroom suite with closets, an ensuite bathroom and laundry above a new garage, within existing setback requirements on the north side of the house adjacent to the current bedrooms. They supplied a survey that includes the engineering design for the required drainage work to support the additions.

After analyzing multiple options, including turning it into rental property and moving to a new property, or doing a much larger scale/longer (1 year+) renovation to add up to 2 more floors above to the existing footprint, it was decided that a smaller 2 phase single floor expansion would be most in keeping with the existing neighborhood and minimize construction time. This proposal would result in 2505 sq ft of living area which is in line with other local homes.

Due to the changes in zoning regulations other properties in the area are also built within the newer setback regulations including the 146 Applegate garage that is less than 8 ft from the property line. The placement of the family room at the rear of the lot was designed to maintain sufficient space between the 164 and 146 Applegate for vehicular access over our property for tree work etc. at 146 Applegate Rd.

This is a pre-existing, non-conforming lot that does not meet the minimum lot size of 20,000 sq ft, existing per survey 15,252 sq ft. Strict adherence to the current Zoning Regulations that were enacted after construction of the original home, and which are designed for a lot size 25% larger than ours when combined with the additional 30-foot London Brook Watershed Regulated Area Setback based on the topography (location of a waterway) would deprive us of the reasonable use of our property. Granting the variance petition would be just and equitable given the facts presented and the topographical conditions that create hardship. Our design plan is based on keeping the external look and feel of the house and neighborhood the same and minimizing construction time and disturbance.

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

7. 857 Bronson Road, Map 228, Parcel 19. Petition of James Yacone for a variance of the Zoning Regulations Section 5.2.4 to reduce the street line and rear line setbacks from 50 feet and 40 feet, currently 23.3 feet and 54.2 feet, proposing 44.4 and 36.5 feet; and Section 5.2.5 to increase the lot coverage and total floor area from 10% and 20%, currently 11.1% and 16.4%, proposing 16.1% and 21.9%. Permission to construct a 1.5-story addition. Premises: AA Zone

Owner Jim Yacone presented.

The diminished size and odd shape of the lot cause it to be non-conforming. Section 5.1.1 also discusses lot size - minimum is 1 acre (43,560 sq ft) and the lot in question is only 17,404 sq ft. Section 5.1.1 states that the minimum square on the lot should be 135 sq ft; the existing home is 130 sq ft.

There is no location for the addition that would comply with the regulations in section 5.2.4 for setbacks. Street line setback should be a minimum of 50 ft, existing home is 23.3 ft. Minimum rear property line setback is 40 ft, existing home is 36.5 ft.

857 Bronson Road (continued)

Section 5.2.5 outlines minimum size requirements for building and floor areas of the home by comparing the structure's measurements with the lot itself. A home cannot occupy more than 10% of the lot's area; the lot in question covers 11.1% of the lot and with the proposed addition, it will be at 16.1%. The total floor area allowed is 20% but our addition will result in a total floor area that is approximately 21.9%.

Existing conditions do not allow access for a veteran with a disability. The staircase in the existing house is winding and does not meet code, so a first-floor bedroom is needed. James is a veteran with VA Certified Disability.

Mr. Najjar, a neighbor residing at 879 Bronson Road spoke in favor of the application.

GRANTED: Brian Avallone moved and Jane G. Nishball seconded to approve the proposed application. Motion passed 4 to 1 (Jane G. Nishball opposed).

8. 248 Sunnie Holme Drive, Map 139, Parcel 389. Petition of Thomas Montelli for a variance of the Zoning Regulations Section 5.2.5 to increase the lot coverage from 15%, currently 8.5%, proposing 17%. Permission to construct a new single-family dwelling with pool house. Premises: R3 Zone

Attorney John Fallon presented on behalf of the petitioner. Jay Valade, of Mark Finlay Architects was also present.

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 Applicant proposes to demolish the existing dwelling and construct a new single-family dwelling with an attached garage. 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 regard 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 33,410 SF (0.767 Ac.). It is one of the largest properties on the street. Sunnie Holme Drive is a very unique street. It is a dead end road off Beach Road, but the main portion of the road is a very long ellipse with a small park in the middle of the ellipse. The properties lie along the outer edge of the ellipse. At each end of the ellipse there is a very significant turn, which is essentially a U-turn. The Site frontage is located at the beginning of the turn. The design of the street causes very odd and unique property layouts for the properties located at each end, while the properties in the middle are more traditional. These properties at the end were created with sharp angled property lines where the properties have a narrow frontage on Sunnie Holme Drive and then expand in width as they move farther away from Sunnie Holme Drive. 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"

248 Sunnie Holme Drive (continued)

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. 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%. So, the proposed plans are not out of character for the neighborhood.

Attorney Russell Liskov represented an unnamed client despite request from the board to identify the client.

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

There being no further business to come before the Commission, at 4:30 p.m., Chairman Coyne adjourned the meeting.

Jane Gitlin Nishball, Secretary

Jodi Karagianes, Clerk

KEVIN COYNE, CHAIRMAN

JANE GITLIN NISHBALL, SECRETARY

JODI KARAGIANES, CLERK