

Minutes of Public Hearings of Zoning Board of Appeals February 12, 2008

MEMBERS PRESENT: Richard Carey, Howard Haberman, Fred Katen, Edward Mead, Nanci Seltzer

ALTERNATES PRESENT: David Hulme, Charles Montalbano, Ronald Spangler

STAFF PRESENT: Peter W. Crabtree, Assistant City Planner, Linda Stock, Zoning Enforcement Officer; Rose Elliott, Clerk

The meeting was called to order at 7:06 p.m.

A. CONSIDERATION OF AGENDA ITEMS

1. **37 Dogwood Place** (Zone R-7.5) Erik & Marcela Schmaling, owners – request to vary Sec. 11.2 to allow construction of detached garage, which exceeds 76% of the floor area of the principal building where 50% accessory structure maximum floor area is allowed. CAM required. Map 14, Block 33, Parcel 18.

Erik & Marcela Schmaling, 37 Dogwood Place, said they are proposing to remove an old garage and construct one that is approximately 8' wider than what is allowed by the Regulations, on the other side of the house, in order to allow them to get some of their cars off the street. They would also use the garage for their hobbies. They don't have any access to the basement other than through the house. There is no outside access to the basement. They would also be moving the driveway to the other side of the house as the current driveway is narrow, approximately 10' wide. The proposed driveway would be 15' wide, allowing them to open the doors on both sides of the car.

Chairman Katen confirmed they were moving the driveway from the left side of the house to the right side and doubling the size of the garage to which Mr. Schmaling said that was correct. Chrmn. Katen asked for the hardship.

Mr. Schmaling said all their cars are parked on the narrow street. He has a company van along with his large SUV and added that by the end of this year he will have five drivers in his house: himself, his wife and their three kids. They need to remove the cars from the street. The driveway is so narrow that no one wants to park in it because you have to play musical cars to get the cars out.

Ms. Seltzer stated she visited the residence and can't understand why such a large garage is needed.

Mr. Schmaling said they are asking for an oversized two car garage. Two of the bays would hold his SUV and his wife's Mustang. He also has a motorcycle, a tractor and kids' bikes, that he would also like to store there. He repeated he doesn't have access to the basement from the outside. The existing garage was built in the forties and is falling down.

Chrmn. Katen explained that the Board needs to hear a hardship and he has not heard anything other than they have a lot of cars.

Mr. Schmaling said if it were just he and his wife a regular sized two car garage would be sufficient but with three teenagers that will be driving this year, there will be a lot of cars parked on the street. He can't pull out of his driveway if his neighbors are parked in the street across from him and his neighbors have the same problem.

Mr. Spangler asked if they were planning on keeping a portion of the existing driveway.

Mr. Schmaling said that was correct as they could park one car there.

Mr. Spangler asked if he thought about reducing the garage size to the 50% requirement and extending the driveway up along the left side.

Mr. Schmaling said he also has a motorcycle.

Chrmn. Katen repeated there is no hardship and what they are proposing is almost as big as the house. He added the Board cannot approve this just because they have a lot of cars.

Mr. Schmaling said the neighborhood is comprised of cape cod style homes with single car garages but at least 6 houses on their street have been remodeled into larger homes for larger families, and there is no room on the street.

Chrmn. Katen said he was not disagreeing with him but merely stating that the Board is not able to approve something without a hardship.

Mr. Mead suggested a 24'x24' garage could be built with a smaller variance and a shed could be put up to house the other items.

Mr. Schmaling said that would have to be an option. He added that he was aware that with large garages there is always a concern by the neighbors that you will be starting a business. This is exactly why the proposed garage will have the gable on the side. Most garages that are to be used for a business have the gable in the front so they could put in a lift. He added all other setbacks could be met.

OPPOSED:

John O'Brien, 38 Dogwood Place, right across the street, said he doesn't have a problem with him putting up a garage that meets the Regulations. His concern is the proposed new driveway will be right next to the neighbor's driveway and that will create two driveways directly across the street from his driveway. He felt that would increase the chances of someone backing into someone.

Susan Feher, 348 Housatonic Drive, said her property is located right behind this property. She is concerned they will have two driveways on one property. Other concerns are water runoff, mosquitoes, and improper drainage. She submitted photos looking from her backyard into the applicant's backyard along with a petition from neighbors in opposition.

REBUTTAL:

Mr. Schmaling said having the two driveways together would give the cars more room to pull out.

Ms. Schmaling added they would be leaving only a portion of the existing driveway in the very front, for only one car.

Mr. Spangler asked Ms. Stock if there was any latitude in the Regulations for a growing family as a hardship to which Ms. Stock answered there was not.

The hearing was closed.

DISCUSSION:

Chrmn. Katen said that while he feels for the couple, there was no hardship shown and there are other options they could use to which Ms. Seltzer agreed. Mr. Mead reiterated they could build a normal sized garage and put up a shed.

Ms. Seltzer made a motion to deny with Mr. Mead seconding. The reason for denial is there was no hardship shown. The motion carried unanimously with Ms. Seltzer, Messrs. Mead, Carey, Haberman and Katen voting.

2. **76 Beach Avenue** (Zone R-7.5) Thomas B. Lynch, attorney, for William Corriveau, owner – request to vary Sec. 3.1.4.1 rear yard setback from 25' to 14' to erect addition (includes roof overhang). CAM received. Map 71, Block 756, Parcel 2A.

Attorney Thomas B. Lynch, 63 Cherry Street, said the existing property consists of a dilapidated, boarded up, 1,300 sq. ft. house built around 1910. This property is shown as Lot #58 on an old Woodmont subdivision map filed in the Milford Town Hall back in 1887. This is one of numerous non-conforming lots in the area. It has 5,394 sq. ft. in a zone that requires 7,500 sq. ft. The current house as constructed meets all the setbacks and the reconstructed dwelling will also meet all the setbacks except for the rear yard. The proposed addition will be a two car garage with a master bedroom suite over it. This is one of numerous properties his client's father had inherited after the passing of Warner Gutenberg in 1991. His client purchased this property from his father two months ago and his intent is to construct this dwelling and reside there. He proposes to reconstruct the current house and with the proposed addition will total about 2,300 sq. ft. The variance is to allow the garage to be attached. The hardship is it is a narrow lot and there is not enough room to put a garage on the side of the house. They are not tearing down a house and building a large structure.

Paul Holub, 191 Country Club Drive, Oxford, architect, spoke of what is proposed and showed the plans to the Board. The variance is for 10' behind the house. The house will be 34' high or less. The master bedroom is on the second floor. The third floor level will be for a family room, t.v. room, playroom. The garage will be connected to the existing house by a mudroom.

Atty. Lynch submitted a petition of neighbors in favor of the application.

Chrmn. Katen asked Atty. Lynch to restate the hardship to which Atty. Lynch said it is a narrow lot.

Ms. Seltzer asked where the garage would be placed if the application is denied.

Mr. Holub said the master bedroom suite would have to be moved to the third floor and the garage would be placed in the rear corner of the lot. In that location, it would take up more of the views from the neighbors, which is why they are trying to keep the garage directly behind the house.

OPPOSED:

Attorney Win Smith, Jr., 9 Depot Street, passed out information to the Board and said he represents Rich & Eugenia Penn, the neighbors directly behind this property.

They oppose the application because it is almost half of the entire setback. He didn't feel there was a hardship. The CAM report says the garage would be small and there would not be a side entrance. These are not recognized hardships. The applicant told his clients that he intends to sell the house. Financial hardship is not a justification for a variance. The Corriveau family was involved in creating the back lot line they now share with his clients. Any hardship was self-imposed. The family created the lot line. They are now asking the Board to help them undo what the family did a few years ago. The applicant needs to live within the rules applicable for his property like everyone else does. He knew the restrictions when he bought it. There is no deprivation of reasonable use of the property. The applicant stated they could come back with a different plan. The petition he submitted has about 20 neighbors opposed to it. His clients will be directly impacted. The character of neighborhoods is being lost all over the City. The applicant can fix up the house without breaking the rules. This is not reconstruction; this is new construction.

Edward Bonessi, Jr., 83 Beach Avenue, said he knows the Corriveau family and also knew and loved Mr. Gutenberg. This is one little piece of many properties that the Borough of Woodmont has been saddled with for 40 years; that have been barely maintained. The taxes are paid and the grass is cut but that's it. The neighbors pleaded with Mr. Corriveau to do something about these properties back when the initial properties were being acquired through the Gutenberg estate. This is a self-imposed hardship. The Board cannot approve this application.

Richard Penn, 93 Hawley Avenue, said when he went around the neighborhood with a petition in opposition, it was eagerly signed. This shack has been an eyesore for years, but nothing has ever been done to fix it. They welcome improvements but don't think this is an improvement. This proposal is a large house on a small lot. They have no problem with a small house. Without the setback requirement of 24', they will have to build a fence to hide it from their view. He wondered how many years of construction the neighbors will have to suffer through if this variance is approved.

Eugenia Penn, 93 Hawley Avenue, said there is one option that has not been considered for this property. The application is for a two story structure, which includes a garage and 7' breezeway between. If the breezeway was removed, a good sized attached garage could be built without Zoning Board of Appeals approval. The neighbors are not opposed to a detached garage. If this application is approved, they will have to build a fence to hide garbage cans or air conditioning units that will be placed on the side of the garage, which will be facing their property. Their petition was signed by people in the neighborhood and should send a strong message to the Board as to how much the neighborhood cares about what happens.

REBUTTAL:

Atty. Lynch commented on the handout he received from Mr. Smith and said it shows other properties that are owned by Mr. Corriveau's father. He said he made it very clear at the onset that his client is a young man, 35 years old, who bought the property from his father and wants to build a beautiful house. This is not a self-imposed hardship. Atty. Lynch handed to the Board a copy of the Schedule A for the property that showed it is the same lot shown on an 1887 map, showing no property lines were altered. These lots were recognized as non-conforming lots.

Mr. Penn's lot is the same size as this lot. Mr. Penn's house is larger than the house his client wants to build. The proposed house will be a reasonably sized, 2300 sq. ft. house.

There hearing was closed.

DISCUSSION:

Mr. Haberman said his concern is if the Board approves this variance, they will be creating a non-conformity. The existing structure conforms and can be developed in a way that conforms. Mr. Carey added there are many non-conforming houses in Woodmont. Some of the new construction does seem to be overbuilding. He didn't feel this house was oversized or out of character with the neighborhood. The hardship is the lot is a non-conforming lot that predates zoning. Ms. Seltzer said the plans are lovely but there is no hardship. This individual can modify his plans and should consider doing just that. Mr. Mead said the backup plan was to have a detached garage. The garage has to be 5' from the rear property line and 4' from the side property line. If placed in this rear corner, this garage would be closer to the neighbor in the rear. It wouldn't be as high but it would be closer. Does the neighbor want the garage 15' away from their backyard or 5'? Chrmn. Katen stated the lot line situation and the other buildings owned by this family, are not concerns of this Board and are not part of what the Board will consider for approval of this variance application. There is no hardship and they can build without asking for a variance.

Ms. Seltzer made a motion to deny with Mr. Haberman seconding. The reason for denial is there was no hardship shown. The applicant is willing to build within the setback regulations. Mr. Haberman added it is an undersized lot but can be developed within the setbacks. The motion failed to carry 3-2 with Ms. Seltzer, Messrs. Haberman, and Katen voting in favor and Messrs. Mead and Carey voting against. A second motion was made by Mr. Carey to approve with Mr. Mead seconding. The hardship is the undersized lot, which predates zoning. The applicant should be allowed reasonable use of his property. Mr. Mead added the percentage of the buildings on the lot would be similar whether the garage is attached or detached. This motion also failed to carry 2-3 with Messrs. Carey and Mead voting in favor and Ms. Seltzer and Messrs. Haberman and Katen voting against.

3. **102 Broadway** (Zone R-5) Linda Baumgarten, owner – request to vary Sec. 3.1.4.1 side yard setback from 10' to 5', rear yard setback from 20' to 10' and building area as percentage of lot from 45% to 48.5% to construct new single family dwelling. CAM received. Map 13, Block 38, Parcel 7.

Linda Baumgarten, 102 Broadway, said this is a re-approval of a variance that was granted in November of 2006. She mistakenly thought she had a year from the date of filing the approval certificate on the land records to begin building. The hardship is the lot is 1,732 sq. ft. where 5,000 sq. ft. is required. The variance will make the house less non-conforming than it currently is and will provide off-street parking for

two cars. The existing house cannot be renovated, as the foundation is a ring of cinder blocks with joists that couldn't support anything else.

Chrmn. Katen confirmed this application is the exactly the same as the one approved in 2006.

There being no one to speak in favor or opposition the hearing was closed.

DISCUSSION:

Chrmn. Katen said this application was already approved and the time ran out. There are no changes.

Mr. Carey made a motion to approve with Mr. Haberman seconding. The hardship is the same as the original approval and was an oversight on the applicant's part. The motion carried unanimously with Ms. Seltzer, Messrs. Carey, Haberman, Mead and Katen voting.

4. **161 Beach Avenue** (Zone R-5) Ken Markus, appellant, for Michael Buckley, owner – request to vary Sec. 3.1.4.1 side yard setback from 5' to 3.8' to allow existing structure to remain. CAM required. Map 59, Block 739, Parcel 25.

Ken Markus, 46 Hollywood Avenue, said the variance is to allow the existing structure to remain where it is.

Chrmn. Katen confirmed neither the setbacks nor the footprint of the house were being changed to which Mr. Markus answered that was correct.

FAVOR:

Paul Daniels, said he grew up in and has lived in different locations throughout Woodmont all his life. This house was built around 1910. The variance request is for 14". It is an existing house that has been there for 97 years. The current owners are trying to improve their home like everyone else is. It will improve the neighborhood and it should be approved.

The hearing was closed.

DISCUSSION:

Chrmn. Katen said the home was constructed in 1925 and does not require any other variance.

Mr. Haberman made a motion to approve with Mr. Carey seconding. The hardship is the undersized lot and the existing house is already non-conforming. They are only asking to keep it as it is. The motion carried unanimously with Ms. Seltzer, Messrs. Carey, Haberman, Mead and Katen voting.

5. **53 West Orland Street** (Zone R-5) Anthony & Joanne Tom, Jr., owners – vary Sec. 4.1.4 projections to allow stoop and stairs to remain 2' from property line where 8' is allowed. CAM required. Map 37, Block 561, Parcel 20.

Joanne Tom, 26 Briarwood Drive, Orange, said she is asking for approval for a 4' stoop to step from the kitchen down to the ground. The stairs were constructed opposite of the neighbor's house because that is where the driveway is located. There is still 2' to the property line.

Chrmn. Katen asked when this was built to which Ms. Tom answered the house was remodeled in 1999 or 2000. There was a stairway between the bedroom and the bathroom. In order to enlarge the bathroom, they had to use the space over the stairway.

Chrmn. Katen asked if a permit was pulled and why she was here now when this remodel was done in 2000.

Ms. Tom answered a permit was pulled and she is here tonight because her neighbor doesn't like the tenant of the house, her relative, and this is his way of getting back at them.

Mr. Haberman confirmed this is an entrance to the home to which Ms. Tom said yes, along with the one in the front. She added there is no other place to put the entrance.

Ms. Seltzer asked Ms. Stock if the addition and the stairs were approved by the Planning and Zoning office.

Ms. Stock answered a permit was issued in 2003 for a shed and a one story addition in the rear to enlarge the bathroom. The plot plan did not show any stairs on the side.

Ms. Seltzer continued the stairway looked shaky at best when she went by to look at it.

OPPOSED:

Mitch Fitzgerald, 51 West Orland, the neighbor, said he does not have a problem with the neighbors. They rent out the house and in the 5 years that he has been there, the people who rent the house are fairly good people. The problem he has is that they had someone living in the shed in the rear of the lot. There is 7' from their foundation to the property line. He wants to know if this stairway is legal.

Chrmn. Katen said if this is not approved, the homeowner will have to go back and renovate the house. If there are people living in the shed, that is another issue and has nothing to do with this application. He added there is a big problem if they just blatantly put a stairway there.

Mr. Carey stated if a permit was pulled, an inspection had to have been made by the Building Dept. It looks like this was missed.

Ms. Stock said if they had gone to the Building Dept., they would have been told they needed to get a permit from the Planning and Zoning office. It appears that it didn't have a building permit either.

REBUTTAL:

Ms. Tom said she didn't understand to which Chrmn. Katen replied the stairway wasn't inspected, it wasn't done properly and it is 2' from the property line. This was done **without going through the proper channels.**

Ms. Tom said a permit was pulled to enlarge the bathroom.

Ms. Seltzer said she was shocked that a plot plan was submitted to enlarge the bathroom area and then suddenly a side stairway appears that was not included on the plot plan and was missed by the Building Dept. on their review.

Ms. Tom repeated that they had to use the original stairway space to enlarge the bathroom.

The hearing was closed.

DISCUSSION:

Chrmn. Katen said he thought this should go back to the Building Dept. It should be denied without prejudice so she can find out what her options are. We don't know if this was built before the reconfiguration of the bathroom or not. We can't make an intelligent decision without the Building Dept. going out there and checking. Ms. Stock added for clarification that the bathroom addition was done in August of 2003. Mr. Spangler asked Peter Crabtree how they should respond to which Mr. Crabtree said when someone comes in for a permit, it is up to them to show the office what they are proposing to do on the plot plan. The plot plan showed the addition but there was no stairs or landing on the plan. His position is it is a violation and it requires a variance or it needs to be relocated. Ms. Stock added that in some instances the Building Dept. would inform our office that there is something there that is not on the plot plan. This time, when the Certificate of Building Compliance was sent to our office, there was nothing on it about stairs. Had they seen the stairs, they would have told the owner they needed to go back to Planning and Zoning for a permit.

Mr. Carey made a motion to deny without prejudice with Ms. Seltzer seconding. This will allow the applicant to check with the Building Dept. and come back to the Board. The motion carried unanimously with Ms. Seltzer, Messrs. Carey, Haberman, Mead and Katen voting.

6. **10 Silver Street** (Zone R-5) John-Henry M. Steele, attorney, for William & Marsha Ziebell, owners – appeal the decision of the Assistant City Planner's order dated January 4, 2008. Map 27, Block 454, Parcel 6.

Attorney John-Henry Steele, said this appeal of Mr. Crabtree's order concerns what is claimed in the order to be an addition and also a deck. Before he begins, he asked for clarification from either Mr. Crabtree or Ms. Stock, to specify what the addition is.

Ms. Stock said she would have to review the entire file to respond to the question.

Atty. Steele said he had some pictures he provided to the Board. He continued that there is no addition on this house. There is an enclosure of a side porch, but no addition, which is an important distinction to clarify before this Board.

Ms. Stock, after reviewing the file, stated in 1999 they submitted a plot to rebuild a front porch area and showed no structure to the rear where a large porch was constructed without a permit and subsequently enclosed. That is why the order went out.

Atty. Steele asked when the porch was constructed to which Ms. Stock answered she didn't know as there was no permit pulled for it and repeated that is why the order went out.

Atty. Steele asked if the order was for June of 2003.

Ms. Stock answered that was correct.

Atty. Steele confirmed that order was based on a site visit performed by her.

Ms. Stock said complaints and a site visit.

Atty. Steele handed Ms. Stock a photo and asked whether the photo showed the addition.

Ms. Stock said she would have to review the file.

Chrmn. Katen asked Atty. Steele if he wanted to continue or to wait to which Atty. Steele said he thought it important to identify what the addition is and the dates involved. One of the issues is his claim that this is a non-conforming building.

Ms. Stock after review, showed a picture of what she was referring to and not the picture Atty. Steele showed her. She added the picture from Atty. Steele was from 1992 and she wasn't even the Zoning Enforcement Officer at that time.

Atty. Steele stated the picture should be made part of the record and asked her to circle on it what constitutes the addition.

Ms. Stock said she didn't want to alter the picture and stated that same picture is in the file as part of the record already.

Atty. Steele then asked Ms. Stock to circle on his picture what she claimed the addition is to which Ms. Stock answered his picture is not the same picture and doesn't show the same thing. She didn't see the house as shown in his picture. She stated all his picture showed to her was lattice. She added that this is Mr. Crabtree's appeal not her court case paperwork.

Atty. Steele said it is based on some of her site visits.

Chrmn. Katen confirmed Ms. Stock's picture shows the addition and Atty. Steele's picture showed lattice work.

Atty. Steele stated the only work done was an enclosure of that particular lattice work surrounding a porch that is on the side of the house. All the Ziebell's did was to enclose that existing structure. Under Statute 8-13(a), if there is a non-conforming building that has been there for more than three years, then it is a valid non-conforming building. According to Milford Regulations, a structure also constitutes a building. In Milford, buildings are defined to also include structures as stated in the Regulations under Definitions. The side porch that was enclosed is an enclosure not an addition. The porch has been there since 1992 and is a valid non-conforming building. It cannot be the subject of any order issued by Mr. Crabtree nor anyone else for encroaching on the side setback. He submitted an additional picture of the side porch to the Board showing it was taken on July 21, 1994.

William Ziebell, 10 Silver Street, as directed by Atty. Steele, circled and x'd the deck and side porch on a survey. He stated the deck was built in the spring of 2000 and the double deck was built in 1986.

Atty. Steele stated since they have been here before, it is apparent they have not made it clear to the Board that these structures predate any enforcement action taken by the Board. They are valid non-conforming parts of the building.

OPPOSED:

Peter W. Crabtree, 64 Stanley Street, New Haven, stated that usually when someone appeals the decision of the Zoning Officer, there is a discussion that takes place in the office regarding the items they don't agree on. A lot of this discussion could have been avoided. He does not agree that enclosing a porch is not an addition. This has been subject to a court case in the Superior Court and the applicant lost. The Appellate Court had an option as to whether they wanted to take up the case or not. Since it was denied at the Superior Court level, they have decided not to take up the case. He stated that this item has been clearly heard before at many levels and referred the Board to the Section in the Regulations, Sec. 4.1.4.2, page IV-2. He explained this Section allows you to enclose a porch if it does not conform to the Zoning Regulations but added you have to show that it is on the 1948 Tax card. We heard testimony tonight that neither of these items were built pre-1948.

REBUTTAL:

Atty. Steele said the State Statute states that it is a valid non-conforming building that has been there for more than 3 years. Also, Mr. Crabtree's order doesn't say these items need to cut back to the setback line, the order says they have to be removed. The Zoning Enforcement Officer does not have the jurisdiction to enter an order beyond what is within the setback requirements. They can issue an order up to the setback but not beyond. This order is also invalid because it doesn't recognize the limits within which it can be issued. Nevertheless, the order is unenforceable because they have been there for more than three years.

Chrmn. Katen stated he is putting into the record, a memo to himself as the Chairman of the Zoning Board of Appeals from the City Attorney and closed the hearing.

Atty. Steele asked to see the memo to which Chrmn. Katen stated the hearing is closed and if he wanted a copy he would have to see the City Attorney tomorrow. He added since the memo has been put into the file and the file is of public record, he could see it tomorrow at the Planning and Zoning office. The hearing is now closed. Chrmn. Katen cautioned Atty. Steele several times that the hearing was closed.

Mr. Haberman made a motion to deny the appeal and uphold the decision of the Assistant City Planner with Mr. Mead seconding. The reasons are the Appellant Court has denied their petition and all of the remaining grounds for appeal have been previously considered and rejected by the Board. Also, the Ziebell's claim is

now res judicata based on the Court's Decision in Ziebell vs. Stock as explained in the memo from the City Attorney's office dated February 8, 2008 with Mr. Mead seconding. The motion carried unanimously with Ms. Seltzer, Messrs. Carey, Haberman, Mead and Katen voting.

7. **73 Botsford Avenue cor. Joanne Drive** (Zone R-5) Walter Erikson, appellant, for Ugly Duck Home Buyers, LLC, owner – vary Sec. 3.1.4.1 front yard setback from 10' to 9' from Joanne Drive and Sec. 6.2.6 to allow restoration to exceed 80% limitation for single family dwelling to remain. CAM required. Map 12, Block 107, Parcel 111.

Walter Erikson, 17 Pond Brook, Newtown, said he is looking to restore a house. They have not added anything or changed the footprint. It was not their intention to exceed the 80% limit. They are dealing with a 98 year old structure and as they started working they found they had to do more work to bring it back to what it should have been. The house has been resided and they are trying to improve the neighborhood.

Ms. Seltzer confirmed that all renovations that exceed 80%, besides the siding, is internal to which Mr. Erikson said that was correct.

There being no one to speak in favor or opposition the hearing was closed.

DISCUSSION:

Mr. Haberman stated the house is existing, non-conforming and Chrmn. Katen added it is still the same footprint.

Ms. Seltzer made a motion to approve for all the items noted with Mr. Haberman seconding. The motion carried unanimously with Ms. Seltzer, Messrs. Carey, Haberman, Mead and Katen voting.

8. **90 Hawley Avenue** (Zone R-5) Jeffrey M. & Lorraine Roblyer, owner – vary Sec. 4.1.1.3 accessory building height from 15' to 16'; vary Sec. 11.2 to allow accessory building footprint to exceed 50% of the principal building footprint (53% of actual +/-). CAM required. Map 71, Block 757, Parcel 3.

Jeffrey Roblyer, 90 Hawley Avenue, stated they want to build a garage larger than what is allowed. Their house was built in 1890 and has no basement and little storage. They tore down the existing, rotting garage and are buying a pre-built garage. The hardship is the height of the garage scales to 1' over but it is really only 3". Also, when the footprint of the house was calculated for area, there is a three season porch in the rear that will be renovated and enclosed this summer, and that will add another 50'. Also, a portion of the front porch will also be enclosed and that will add another 60' to the footprint of the house. If the garage is not built, there will be nowhere to put everything when these renovations are done.

Ms. Stock said for clarification, once they enclose those two porches, the footprint would be 1,147 sq. ft. The calculation is based on only a bird's eye view, not the whole house.

Mr. Haberman said needing storage or a place to put your vehicles is not a hardship. The fact that the pre-built garage is 3" too tall is not a hardship. The many trees on the lot is a hardship and possible the small size of the house may be a hardship.

Ms. Seltzer asked if the renovations to be made to the porches would make a difference.

Ms. Stock said with the proposed renovations, they could have a 24' x 24' garage. What is proposed is 24' x 34'.

Mr. Carey stated the hardship is the house was built in the 1900's and added he didn't think the size of the garage was unreasonable to which Chrmn. Katen agreed.

FAVOR:

Eugenia Penn, 93 Hawley Avenue, said this proposal will have no negative impact on the neighborhood and they will be keeping the six trees. The trees will hide the proposed garage.

There being no one to speak in opposition the hearing was closed.

DISCUSSION:

Chrmn. Katen said the house was built in the 1900's and will be about 3" over the height limit. Ms. Seltzer asked if the garage could be moved forward to reduce the damage to the trees to which Ms. Stock answered the minimum setback is 5'. Mr. Roblyer can make the setback larger.

Mr. Carey made a motion to approve with Mr. Haberman seconding. The hardships are the lot and the house predates zoning, along with the size of the house. The motion carried 4-1 with Messrs. Carey, Haberman, Mead and Katen in favor and Ms. Seltzer against.

9. **715 East Broadway** (Zone R-5) Tara and Robert Vercellone, owners – request to vary Sec. 3.1.4.1 side yard setback from 10' to 3' and 18" (for stoop roof); rear yard setback from 20' to 5' to construct new single family dwelling. CAM received. Map 22, Block 474, Parcel 13.

Robert and Tara Vercellone, owners of 715 East Broadway, stated this is a reapproval of a variance granted in April of 2006 for a new single family dwelling. The only change if for an 18" stoop, to provide overhead protection. The hardships are the size of the lot, which predates zoning, beach erosion that reduces their lot depth from 93' to 66.8' and limited parking on the street. The proposed house will have off-street parking, less lot coverage and will be more conforming on all sides.

Ms. Vercellone said they had originally planned on knocking the house down and rebuilding but then because of financial reasons, they decided to try to renovate it. It then became apparent that in the long run, it just needed so much work to renovate it, and with building prices coming down, they should just go back to the plans to knock it down and build a new one.

Mr. Vercellone added that originally the first price to knock it down and rebuild it was \$700,000 and now they are getting bids in the \$500,000's.

Chrmn. Katen confirmed with Ms. Stock that everything is the same except the front stoop to which she agreed.

There being no one to speak in favor or opposition the hearing was closed.

DISCUSSION:

Chrmn. Katen stated this is a reapproval. They thought they could renovate it and now they have decided to rebuild it.

Mr. Mead made a motion to approve with Mr. Carey seconding. The reason for approval is it is a reapproval of a variance granted in 2006 and the house will be less non-conforming than it is now. The motion carried 4-1 with Messrs. Carey, Haberman, Mead and Katen voting in favor and Ms. Seltzer voting against.

10. **30 Coolridge Road** (Zone R-7.5) Andrew J. Kopchak, owner – vary Sec. 3.1.4.1 lot size from 7,500 sq. ft. required to 4,000 sq. ft. to create 2 non-conforming building lots. CAM received. Map 30, Block 634, Parcel 11.

Andy Kopchak, 1 Liberty Drive, Sandy Hook, said he and his wife purchased his father's property and would like to subdivide the lot. In this way, they could build their home on one lot and their son could build his home on the other. Due to surgery he has had in the past year, he is unable to keep up the large lot where they currently live. If they were allowed to build their house here, he could be closer to family members. He has a sister who lives on the same street and four other brothers who live in Milford. He submitted photos of the area to the Board. He explained that the existing house is a small beach cottage and is out of place in the neighborhood.

Chrmn. Katen stated this property was merged years ago into one lot and asked for the hardship to which Mr. Kopchak asked if a medical reason is a hardship.

Chrmn. Katen explained it was not.

Ms. Stock stated for clarification that Mr. Kopchak is not here for a subdivision; he is here to make one conforming lot into two non-conforming lots. He needs 7,500 sq. ft. in that zone and he wants to split the lot to have two, 4,000 sq. ft. lots. He is asking for a variance to have two non-conforming lots. This would be a resubdivision and he would have to go for an additional public hearing before the Planning and Zoning Board.

Ms. Seltzer added it is a merged lot and cannot be split.

Mr. Kopchak asked why a medical reason cannot be a hardship to which Chrmn. Katen said the Board has to go by State Statutes which says medical and financial reasons are not hardships.

Ms. Stock said if you have a disability, that doesn't allow you make 2 non-conforming lots. She added she did explain this to Mr. Kopchak in the office. She added this lot could be built on now and he could be near his sister.

Mr. Kopchak said if approved, he would be creating a lot no different than any other lot on the street.

Mr. Haberman said the lots from this property down towards the beach are smaller, but the lots from this property up the street are larger.

OPPOSED:

Brian Simonette, 32 Coolridge Road, said he opposed to the application because it is a single lot and there are structures on the lot from one side of the lot to the other. It is a large "ell" shaped ranch. If approved, these lots will change the character of the street and possibly set a precedent for the future. His home was built on a double lot and is completely conforming. He added the placard was just posted today at 3:00 p.m. and he thought more notice had to be given than that.

Ms. Stock asked if notification was received in the mail to which Mr. Simonette said no. She checked the names on the mailing list.

Edie Francoeur, 27 Coolridge Avenue, said she has lived there for 20 years and feels the lot is not big enough to put two homes on and would be unsafe and inappropriate for the neighborhood.

REBUTTAL:

Mr. Kopchak said the sign has been there for 10 days. He did everything by the book. On two occasions, it was knocked down by the weather and put back up. The Board members agreed they all saw the placard in place.

Ms. Stock said for the Board's information, Mr. Simonette, who spoke in opposition, purchased the house in September and apparently the records have not been received by the Assessor's office yet and the letter went to the former property owner. Mr. Kopchak did as he was instructed to do.

The hearing was closed.

DISCUSSION:

Mr. Carey made a motion to deny with Ms. Seltzer seconding. There is no hardship and the Board can't approve an application to make two non-conforming lots out of one conforming lot. The motion carried unanimously Ms. Seltzer, Messrs. Carey, Haberman, Mead and Katen voting.

B. TABLED BUSINESS

C. OLD BUSINESS

Linda Stock asked if there were any Board members who would like another packet of information regarding hardships and passed the packets out to those members.

D. NEW BUSINESS

Chrmn. Katen reminded the alternates, as a former alternate himself for nine years, to just call the office and check with the secretary to see if a regular member is not coming. Let her know that you are available if needed. It is fine for one alternate to

be here but not necessary for all three. He added, but then again, if you want to come to the hearing anyway, you can just come.

Mr. Hulme asked if the start of each item on the agenda could be delayed until the Board members received the plans from Linda. Chrmn. Katen agreed this was a good idea.

Ms. Stock added she is collecting more information on hardships for the Board.

E. STAFF UPDATE

F. ACCEPTANCE OF MINUTES FROM JANUARY 8, 2008 MEETING.

The minutes were approved unanimously.

G. ACCEPTANCE OF APPLICATIONS FOR MARCH 11, 2008.

The meeting was adjourned at 9:54 p.m.

Attest:

Rose M. Elliott
Clerk - ZBA