

MEMBERS PRESENT: Rich Carey, Fred Katen, Ed Mead, Nanci Seltzer

ALTERNATES PRESENT: David Hulme, Charles Montalbano

STAFF PRESENT: Linda Stock, Zoning Enforcement Officer; Rose Elliott, Clerk

The meeting was called to order at 7:00 p.m. Chrmn. Katen called for a moment of silence in memory of Board Member Ronald Spangler, who recently passed away.

A. CONSIDERATION OF AGENDA ITEMS

1. **90 Heenan Drive** (Zone CBDD) Leo P. Carroll, attorney, for 90 Heenan Drive, LLC, owner – appeal the decision of the City Planner to rescind a Certificate of Zoning Compliance. Map 91, Block 807, Parcel 2.

Postponed to the April 14, 2009 meeting.

2. **729 Buckingham Avenue cor. Passway** (Zone R-7.5) Michael A. Gardocki, owner – vary Sec. 3.1.4.1 front yard setback from 20' to 16.5'; rear yard setback from 25' to 21.2' to allow dwelling to remain. CAM required. Map 38, Block 558, Parcel 81.

Michael A. Gardocki, 729 Buckingham Avenue, said he is not razing the house or changing the shape of the house or its footprint, they are just trying to update the structure. His hardship is the shape of the lot.

Chrmn. Katen confirmed the only reason Mr. Gardocki is here is because he is exceeding the 50% limit for renovations to which Mr. Gardocki said that was correct.

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

DISCUSSION:

Chrmn. Katen said this is a more than 50% renovation item and is due to damage to the house. The footprint will not be changed.

Mr. Carey made a motion to approve with Mr. Hulme seconding. The hardship is the size and shape of the lot. The house is only being repaired. The motion carried unanimously with Ms. Seltzer, Messrs. Carey, Hulme, Mead and Katen voting.

3. **13 Milesfield Avenue** (Zone R-5) Scott Farquharson, appellant, for Robert Macci, owner – request to vary Sec. 3.1.4.1 side yard setback from 5' to 2.6' and 10' to 7.2' to allow dwelling to remain; vary Sec. 4.1.4 Projections from 3' allowed to 5.8' to construct front porch and one step. CAM required. Map 28, Block 571, Parcel 9.

Scott Farquharson, 69 Central Avenue, Wolcott, passed out paperwork to the Board. He said they would like to construct a 20'x54' second floor addition, with walkway to attic and renovations to the existing first floor. A 15'x8' two floor addition would be within the setbacks. The pictures he submitted showed area homes with second floor additions like he is proposing.

Mr. Carey confirmed the house is existing and will not be encroaching any further in the setbacks to which Mr. Farquharson said that was correct.

Ms. Stock added the variance request is because they are doing over 50% reconstruction and they would like to make the porch a little bigger including 1 stair.

Chrmn. Katen confirmed the house was built in the early 1920's.

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

DISCUSSION:

Chrmn. Katen stated the house has been there since the 1920's. Ms. Seltzer asked if the Board could approve the variance without the porch to which Ms. Stock answered they could encroach 4' but that would have to include the stair. They can still have a porch without a variance. It is up to the Board.

Mr. Carey made a motion to approve with Mr. Hulme seconding. The reason for approval is the variance request is for renovations of over 50%. The motion carried unanimously with Ms. Seltzer, Messrs. Carey, Hulme, Mead and Katen voting.

4. **9 Norwood Avenue** (Zone R-10) Stephen W. Studer, attorney, for First Connecticut Capital, LLC, owner – request to vary Sec. 3.1.4.1 lot size from 10,000 square feet (8,334.84 square feet existing) to 6,278 square feet and lot width from 70 feet to 60 feet to allow for lot line adjustment between 9 Norwood Avenue and 17 Norwood Avenue (Map 49, Block 604, Parcel 22A). CAM received. Map 49, Block 604, Parcel 22.

Attorney Stephen Studer, 75 Broad Street, said the president of First Connecticut Capital, Mr. Lawrence Yurdin, is in the audience. The two lots were acquired through foreclosure. They are not asking for a variance to create a new lot, but rather two variances to allow for a lot line adjustment between #9 Norwood Avenue and #17 Norwood Avenue. The idea is to make #9 Norwood Avenue a smaller lot and #17 Norwood Avenue a larger lot by the same amount. In the end, there would be two lots approximately the same equal size. He gave a brief history of the parcels. These two lots were originally part of three lots established in 1912. In February of 2006, after the posting of a 6.4.2, the Zoning Enforcement Officer, Linda Stock, certified that the third lot (#17 Norwood Ave.) was a separate, legal, non-conforming lot that hadn't merged with the house and driveway on the other two lots. No appeal was taken. In April of 2006, then owner of the lots, Mr. Rosado, applied for the same variances that are being requested tonight. He simultaneously poured a couple of foundations and started construction on a house before any approval or permits were issued, and in such a way as to aggravate and annoy his neighbors. That night, 47 people attended the meeting in opposition. Mr. Rosado's application was denied. In June of 2006, there was litigation involving these properties between the Morningside Association, Zoning Board of Appeals and Mr. Rosado. That litigation is still open and unresolved, pending in the Superior Court in Milford. However, both the Association and Mr. Rosado did sign a stipulation to conclude the litigation and filed the stipulation with the Court. What they didn't do was to ask the Court to schedule a hearing to discuss and approve the stipulation. So it remains unresolved. Mr. Yurdin has agreed to comply with the

stipulation and the Morningside Association does support the application. They are requesting to reduce the lot size of #9 Norwood Avenue by 2,056 sq. ft. and give it to #17 Norwood Avenue, essentially creating two approximately equal lots. A house can be built on #17 Norwood Avenue without a variance but a nicer house can be built with the variance. He submitted paperwork and photos to the Board. The hardship is Sec. 2.3.1 of the Subdivision Regulations which allows lot line adjustments, but only to conforming lots; these are two, legal, non-conforming lots.

Chrmn. Katen remembered back to the meeting in 2006 and agreed there were many people in opposition in attendance. The foundation had already been put in by Mr. Rosado at the time of the meeting.

Mr. Carey added not only was it already put in, but it was put in on the other lot.

Atty. Studer stated Mr. Rosado had anticipated a favorable decision from this Board allowing him to adjust the lot line and he built accordingly. It greatly annoyed the neighbors.

Ms. Seltzer questioned why this lot line adjustment wasn't just done in the office by Ms. Cervin to which Ms. Stock answered that a lot line adjustment could be done only if both lots would be conforming.

Mr. Carey noted that they could still build on the lot without the variance.

FAVOR:

Bob Weitzel, 131 Morningside Drive, president of the Association Board stated the Association had a public hearing and those in attendance were, for the most part, in support of the lot line adjustment. He submitted six pages of signatures in support of the application. They realize that a house will be built and feel it will be more conforming with the neighborhood if it is built on a sixty foot lot as opposed to a forty foot lot.

Irv Hetherington, 45 Morningside Drive, supports the application. It will be better for the community.

OPPOSITION:

Denis Garvey, lives at 247 First Avenue, and is co-owner of 25 Norwood Avenue, adjacent to #17 Norwood Avenue, where his mother currently resides. He stated he had a copy of the Superior Court judgement and a letter from Peter Crabtree to Victor Rosado which revoked his previous approval to construct a house, which he submitted to the Board. The home at #9 Norwood Avenue doesn't fit in with the street nor the rest of Morningside. He noted any further development would further crowd an already crowded street.

Alberta Jagoe, 1 Morningside Drive, directly across the street, reminded the Board that this is the third time she is appearing before the Board to discuss the problems at this location. After the Board's decision two years ago, some people did file an appeal with the Court. The letter from Mr. Crabtree said since the Association had prevailed in its quest to prevent the two homes, it would be necessary to revoke #17 Norwood Avenue's zoning approval. It added that unless an appeal of the Morningside Association decision is taken, it would be necessary for the parcel size of #9 Norwood Avenue to default back to its original parcel size of 12, 235 sq. ft. This property is now

one lot and this variance should be denied. First Connecticut Capital loaned Mr. Rosado the money and they should have been watching what was going on with all the violations. The reason members of the executive board are here, is because as part of the agreement, if no one appeals this variance, the Morningside Association would receive \$50,000 from the developer. She supports her neighbors and knows they would like the money but that doesn't mean she has to give up her rights to express her opinion. She said the variance request is not about hardship, it is about greed.

Richard Jagoe, 1 Morningside Drive, said there is no hardship for this application and should be denied. He asked the Board to take the 65 days allowed by Statute to weigh the items and consult with the City Attorney before the decision is made. The notice was incorrectly advertised as it said it was an 80' and 40' parcel. Mr. Crabtree's letter and the Court's stipulated agreement states it is one parcel with 120' frontage. If an appeal wasn't taken to the Court's stipulated agreement, this is what it is. Until someone goes to Court and takes that appeal, that's the way it exists. He reminded the Board of the other issues such as height and drainage that is part of the history of this parcel.

REBUTTAL:

Atty. Studer reviewed what was submitted by the opposition and added this case is not resolved. There was a judgement by default entered in January that was reopened in July and is still pending. The stipulation may have been filed but was never accepted by the Judge. This is an open case. Mr. Crabtree's letter is wrong. That case was about an issuance of Zoning Compliance for #9 Norwood Avenue, not #17 Norwood Avenue. #17 Norwood Avenue had been certified several months before the variance request in 2006. #9 Norwood needs no certification because it has a house on it. When a 6.4.2 analysis is done, it is done for the vacant parcel. Because of the uproar of the neighbors, they issued a second certificate because the neighbors wanted one. They took the fact that she issued the second certificate and used that to file an appeal. They couldn't attack the first decision so they tried to attack the second decision. Either way, the legal existence of #17 Norwood Avenue has never been questioned, overturned or appealed. There are two lots there. First Connecticut Capital held the mortgage but was not the developer. He submitted a petition with 52 signatures in favor of the application to the Board.

Chrmn. Katen said he remembered the meeting when drainage issues were brought up but said this is not an issue for this Board. The house was built and it is done.

Ms. Seltzer asked if the document regarding the \$50,000 to the Morningside Association could be explained to which Atty. Studer obliged. He added whether they get the money or not has no relevance to the issue of the variance.

Chrmn. Katen noted that there are two letters of support in the file.

The meeting was then closed.

DISCUSSION:

Chrmn. Katen said neither the \$50,000 nor the statement that the mortgage holder should have been a watchdog to this property, have anything to do with what this Board

will rule on. Mr. Mead added it would be better to make it a 60' lot. Ms. Seltzer agreed it would be better if the lots were similar in size. Mr. Montalbano asked what the square footage of the existing house is to which Ms. Stock said they could look at the plans but reminded Mr. Montalbano it would only be the square footage of the footprint for lot coverage. Mr. Mead confirmed the lot was a legal, non-conforming building lot to which Ms. Stock answered in the affirmative.

Ms. Seltzer made a motion to approve with Mr. Hulme seconding. The reason for approval is two equal sized lots would be more appropriate for the Morningside area. The motion carried unanimously with Ms. Seltzer, Messrs. Mead, Hulme, Carey and Katen voting.

5. **4 Market Place** (R-10) Philip J. Vetro, appellant, for Donato Barbiero, Jr., owner – request to vary Sec. 4.1.4 Projections from 2' allowed to 7' to construct open carport. CAM received. Map 39, Block 611, Parcel 8.

Philip J. Vetro, 10 Carmen Road, said they are here for an open carport. The proposed carport will be 33.3' away from the neighbor's home. Mr. Barbiero is older and this carport will allow him a safe entry into his car avoiding ice and snow. The hardship is the undersized building lot which does not allow for an application for a garage. A carport is much less obtrusive.

Chrmn. Katen asked if this application was before the Board in the past and if it was, what is different now?

Mr. Vetro said this carport was before the Board and the application was denied. He believed since an elevation view was not submitted at the previous hearing, the Board was unable to visualize how unobtrusive the carport would be.

Mr. Mead asked how far off the property line the carport would be to which Mr. Vetro said approximately 1' away from the property line.

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

DISCUSSION:

Mr. Hulme agreed with the applicant this carport would be unobtrusive.

Mr. Carey made a motion to approve with Mr. Mead seconding. The hardship is the undersized lot. He added for safety reasons, Mr. Barbiero should be able to keep his car protected from the elements. The motion carried unanimously with Ms. Seltzer, Messrs. Mead, Hulme, Carey and Katen voting.

6. **53 Pelham Street** (Zone R-7.5) Karen Fitzmaurice, owner – request to vary Sec. 3.1.3.9 to allow camper within front yard and 5' from side property line where 6' is required. CAM required. Map 29, Block 548, Parcel 6.

Postponed to the April 14, 2009 meeting.

7. **131 Harrison Avenue** (Zone R-7.5) Andrey Ramza, owner – request to vary Sec. 3.1.4.1 Accessory Structure rear yard setback from 5' to 3.5' to allow eave to remain; vary Sec. 4.1.4 Projections to allow stairs 18' from property line where 21' is required. Map 16, Block 257, Parcel 6.

Bruce Hultgren, 244 Gulf Street, said this application is the result of a renovation of this residence. The original documents called for a shorter overhang on the garage roof. The builder tried to make the garage more attractive by extending the overhang but didn't realize he was projecting into the setback. The rear stairs were another good intention by the builder, to align the stairs with the rear door in the kitchen. They wanted another egress and thought they had more room in the rear yard. He submitted photos to the Board. The roof projection will not affect anything else and a second means of egress is a good idea. He repeated the builder had good intentions. The hardship is the configuration of the lot.

Mr. Mead asked if there were stairs proposed on the original plans to which Mr. Hultgren answered there was a stair that went off to the left. They decided they didn't want that and created just a porch, then decided to add the stairs.

Mr. Mead asked if the porch with a stair off to the side was part of the original plans.

Ms. Stock said there was always a porch in the back with no stairs.

Chrmn. Katen stated so it was just the builder who decided to do it or the owner who decided to change it.

Mr. Hultgren said that was correct.

Ms. Stock said this wasn't discovered until the as-built came in.

FAVOR:

Roman Tudruj, 136 Harrison Avenue, brother-in-law of the applicant, is in favor of the application. The property is very attractive as built.

OPPOSITION:

Jim Napolitano, 129 Harrison Avenue, thought that variances had to be approved before the building is complete. He said we have these rules and regulations for a reason. He didn't believe this is the first time the applicant has done things without getting approval and asked the Board to deny the application.

REBUTTAL:

Mr. Hultgren repeated the configuration of the lot is their hardship.

The hearing was closed.

DISCUSSION:

Chrmn. Katen said the configuration of the lot is a hardship, however, the fact is they went ahead and did something that was not part of the plans and without approval.

Mr. Carey agreed but added when the variance is considered, it should be considered as if they had come before the Board for the first time. If the answer is yes, then we should approve it because it is the right thing to do. Whether they did it honestly or dishonestly, the Board has to ask themselves, would they have approved it if it were not already built? Ms. Seltzer said she would like to split the decision. Mr. Hulme agreed and said he can understand the garage roof and would vote to split the decision. Mr. Carey repeated his thinking. Ms. Seltzer said she listened to what Mr. Carey said but still feels that she would have gone along with the garage but she would have wanted the stairs to come off to the side.

Mr. Mead added that if they had come before the Board, they would have had a couple of options to consider for the stairs. They could have come back and asked where they could legally put the stairs. The members then reviewed the plans.

Ms. Seltzer made a motion to split the decision on the variance with Mr. Hulme seconding. The motion carried unanimously with Ms. Seltzer, Messrs. Mead, Hulme, Carey and Katzen voting.

Mr. Hulme made a motion to approve the variance for the overhang on the garage with Mr. Carey seconding. The hardship is the configuration of the lot. The motion carried unanimously with Ms. Seltzer, Messrs. Mead, Hulme, Carey and Katzen voting.

Ms. Seltzer made a motion to deny the stairs with Mr. Mead seconding. The reason for denial is the original plans showed the stairs located on the side by the driveway and that is the way they should have been built. The motion carried unanimously with Ms. Seltzer, Messrs. Mead, Hulme, Carey and Katzen voting.

8. **23 Silver Street** (Zone R-5) Joseph Mager, Jr., attorney, for Diana & Gary Cirillo, appellant, for Michael Tarantino, owner – request to vary Sec. 3.1.4.1 side yard setback from 10' to 4' to construct new single family dwelling and 1' overhang; vary rear yard from 20' to 17.5'; vary Sec. 4.1.4 Projections from 4' to 6'. CAM required. Map 27, Block 453, Parcel 22.

Joseph Mager, attorney at 87 River Street, explained this is a vacant lot at the end of Silver Street on the right hand side before the marsh. It is a dead end street bounded on the east and south by residences, by Silver Street on the west and to the north by Silver Sands State Park. It is a 6.4.2 certified lot predating zoning. A 15'x43' house can be built on the lot without the benefit of variances. However, the applicants would like to construct a 20'x42' house. The 20' wide, three story house would be more aesthetically pleasing and more importantly, allow for parking for two cars underneath with storage or possible 3 compact cars. A variance is also being requested for the rear yard so the house could be slid back 2.5' to accommodate 2 off-street parking spaces in the driveway. Because they are sliding the house back 2.5', a third variance required to allow a rear deck to project 6' where 4' is allowed. He submitted paperwork to the Board. The proposed home will be in conformity with the neighborhood. There are many 20' wide homes with garages under as a result of approved variances. The hardship is the lot predates zoning and is extremely undersized.

Chrmn. Katen confirmed this was originally two lots and is now one lot that is 30' wide, in existence prior to zoning.

Ms. Stock said it was in 1909 when they were configured.

Chrmn. Katen said there will never be anything built on the Silver Sands State Park.

Mr. Mead agreed that this is typical of the houses that are being built in this area.

Chrmn. Katen read a letter of opposition into the record.

Atty. Mager responded to the letter by saying they are addressing the parking by putting up a 20' structure and by sliding it back 2.5'. They do have the right to build a house within 5' of the property line. The side yard variance request is on the side of Silver Sands State Park.

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

DISCUSSION:

Ms. Seltzer said this application is using an opportunity to not only build a home they could be comfortable in but to create a fair amount of parking on their lot at their own expense. **Chrmn. Katen** agreed.

Mr. Carey made a motion to approve with Mr. Mead seconding. The hardship is the undersized lot that predates zoning and added the objections raised will be addressed by the applicant. The motion carried unanimously with Ms. Seltzer, Messrs. Mead, Hulme, Carey and Katen voting.

9. **57 Windy Hill Road thru to Thornton Street** (Zone R-12.5) Holly Nitchke, owner – request to vary Sec. 3.1.4.1 side yard setback from 10' to 6.5' to construct one story addition. Map 32, Block 346, Parcel 15.

Holly Nitchke, 57 Windy Hill Road, said her hardship is the configuration of her property; it doglegs. She would like to bump out her little laundry room by 2' and extend it to the edge of the house. If the property were straight she would not have to be here.

Chrmn. Katen commented the house is positioned on the lot so a variance would be required for almost anything they wanted to do in that area of the house.

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

DISCUSSION:

Chrmn. Katen repeated that almost anything she does would require some sort of variance.

Mr. Carey made a motion to approve with Mr. Hulme seconding. The hardship is the shape of the lot and there is nothing she could do on her property without a variance. The motion carried unanimously with Ms. Seltzer, Messrs. Mead, Hulme, Carey and Katen voting.

10. **92 Sixth Avenue** (Zone R-10) Alcine M. Panton, agent, for Laurel Beach Association, appellant, William Kindley, owner – appeal the decision of the Zoning Enforcement Officer in the certification of Lots 92, 91 and ½ of Lot 90 under Sec. 6.4.3. Map 9, Block 129, Parcel 8.

Withdrawn.

11. **21 Mercury Drive cor. Columbia Drive** (Zone R-10) Stephen W. Studer, attorney, for Paul C. Mirmina, owner – vary Sec. 3.1.4.1 lot area from 10,000 square feet (required) to 9,440 square feet and 9,497 square feet to create two (2) non-conforming building lots. Map 92, Block 706 & 706C, Parcel 56 & 7.

Attorney Steve Studer, 75 Broad Street, said this is a unique, one of a kind property. There was a residential subdivision created in August of 1954, named Millwood Acres, Section V. He showed the lots in question, Lot #38 and Lot #39, on the original subdivision map to the Board members. Sometime between August of 1954 and 1957, the U.S. of America condemned a portion of Millwood Acres to construct a Nike Base. These two lots, #38 & # 39, were cut into two pieces; leaving an oddly shaped vestige. Shortly after the condemnation, a house was built on Lot #39, nka 21 Mercury Drive. In the mid 1970's, the U.S. government gave back the property and a 6-lot subdivision was built. The Mirmina's purchased the property in 1964 and approximately 4 or 5 years ago, purchased the portion of the property that the government took. A house could be built on the corner lot without any variances. The hardship is the irregular shape of the lot after condemnation. The condemnation itself is a hardship. This proposal will make the overall situation more conforming and more harmonious with the neighborhood. It will resolve the bizarre status of the "sliver" piece. He submitted pictures and a petition with 48 signatures in favor of the application. They are looking to create two lots that are consistent with the original lots and consistent with the lots in the neighborhood, which the neighbors are in favor of.

Ms. Seltzer asked who owns the sliver to which Atty. Studer said the Mirmina's.

Mr. Mead asked if we have to acknowledge the sliver is part of the property before it's divided into two?

Ms. Stock said that would be done by the deed if the variance is granted.

Mr. Hulme asked if the Board would be creating two lots if this variance is granted tonight, to which Ms. Stock answered yes.

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

DISCUSSION:

Mr. Carey made a motion to approve with Mr. Montalbano seconding. The reason for approval is this would bring the property back to the original subdivision plan. The motion carried unanimously with Ms. Seltzer, Messrs. Mead, Montalbano, Carey and Katen voting.

B. TABLED BUSINESS

C. OLD BUSINESS

D. NEW BUSINESS

E. STAFF UPDATE

Ms. Stock told the Board that 10 Silver Street has been decided and everything that the Ziebel's put up without permits has to come down. Everything has to be done in ninety days. This case has taken six years to settle.

F. ACCEPTANCE OF MINUTES FROM JANUARY 13, 2009 MEETING.

The minutes were approved unanimously.

G. ACCEPTANCE OF APPLICATIONS FOR APRIL 14, 2009 MEETING.

The meeting was adjourned at 9:20 p.m.

Attest:

Rose M. Elliott
Clerk - ZBA