

Minutes of Public Hearings of Zoning Board of Appeals March 11, 2008

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

ALTERNATES PRESENT:

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

The meeting was called to order at 7:00 p.m.

A. CONSIDERATION OF AGENDA ITEMS

1. **835 East Broadway** (Zone R-7.5) Brian M. Stone, attorney, for Brian Hambidge, owner – request to vary Sec. 3.1.4.1 side yard setback from 10' to 4.5' to construct 2 story addition and deck. CAM received. Map 27, Block 475, Parcel 3.

Atty. Brian Stone, 653 Orange Center Road, Orange, is the attorney for the applicant. The property is 9,356 sq. ft, 25% larger than required. The length is 308', almost 4 times the required depth. Currently the building area coverage is 24.7% and the proposed addition will add 4.8% more, keeping the coverage at less than three quarters of the allowed coverage. The same increase is proposed for the lot coverage and that would be slightly more than half of what is allowed. He explained the photos he brought to the Board. They are looking to remove a 2nd story porch, to relocate an existing 30'x20' deck and to construct a new 20'x30' addition on the footprint of the previously mentioned deck. It will be a two story glass sunroom addition. The existing deck will be relocated and placed in front of the new addition. The hardship is the lot is an existing, non-conforming lot with a width of only 30', which is half of what is required. The addition will continue along the lines of the existing house and be 19' high to the peak. He explained and submitted photos to the Board.

Mr. Haberman asked what the length of the existing house is to which Ms. Stock answered 74'.

Ms. Seltzer said if they are moving the deck that is in violation of Sec. 6.3.5, which strictly prohibits the movement or relocation of any non-conforming structure, unless it is to reduce or eliminate the non-conformity. She added another concern is the addition extending into the seagrass, which protects the environment.

Atty. Stone said that is the reason they are asking for a variance, because they cannot meet the regulation requirements. The hardship is the width of the property. He added there would be no disturbance of the seagrass. The CAM application in the file reflects that.

Chrmn. Katen asked if Atty. Stone was aware of the number of variance requests for this property to which Atty. Stone answered five. Atty. Stone added all the variances are an attempt to improve and enhance the property. He submitted letters of support to the Board from the neighbors. They recognize this will be an improvement to the property that will enhance the neighborhood. The fact that so many variances have been applied for only underscores his point that because of the nature of the property, you can't do anything without getting a variance. This is

the hardship. They are not trying to build anything that wouldn't conform on a lot that was 60' wide. He didn't feel they were requesting anything extraordinary or unusual.

OPPOSED:

Lynn Chesnel, 841 East Broadway, said the applicant is saying his hardship is the narrow nature of his lot. Her lot, several other neighbors' lots and Mr. Hambidge's lot are all non-conforming. Mr. Hambidge knew when he purchased the property that it was a non-conforming lot. No adverse circumstances have occurred since that time that would create a hardship. The lot is simply narrow. The homes in the area are extremely close to each other already. The close proximity allows for hearing cell phone calls and the flushing of toilets. The decreasing of another side yard from 10' to 4.6' is the last thing the neighbors need. Her house sits the furthest back then any other house on that beach and this proposal will very negatively affect the light and the view she currently enjoys. She pays huge taxes to enjoy a pleasant beach environment, including light and view. This addition will compromise her enjoyment and possibly decrease the value of her property. The only hardship is the hardship he would be creating for herself and her neighbors.

Melody Grant Bucci, 839 East Broadway, adjacent to the applicant, said she feels this proposal is a major infringement on her property. The Regulations were created for a reason. She thought variances were granted only when there is a particular parcel with an exceptionally difficult or unusual hardship. She referenced Statute 8.6. Approval of this application will set a precedent for future requests to come before this Board.

REBUTTAL:

Atty. Stone said buying a piece of non-conforming property is not a self-created hardship. Being aware that it is non-conforming is not a self-created hardship. The hardship arises from the property itself. This is an existing, non-conforming lot. As a result of the adoption of the Regulations, a hardship was created for this particular property. There is a hardship that prevents his client from making good use of his property, which is his right. They would be maintaining a setback which is common along the beachfront, for which variances have been granted for in the past.

Mr. Haberman said if you made this addition only 15', you wouldn't need a variance to which Atty. Stone agreed. Atty. Stone continued that ultimately, you are not benefiting the town nor the neighborhood by trying to make it fit. They are not increasing the non-conformity, they are extending it.

The hearing was closed.

DISCUSSION:

Ms. Seltzer said she didn't feel the Board could support this application. There is no need to expand on the non-conformity, to increase the density in the area or to encroach on the environment. This addition could be made narrower. Mr. Mead agreed with Mr. Haberman. The addition is for two sunrooms. If they are just going

to be sitting out there, the 5' decrease in size shouldn't create a big difference. They are still building a two story addition for a total of an additional 900 sq. ft. Chrmn. Katen added this is the sixth variance in seven years. He didn't see a hardship. Ms. Seltzer agreed with Chrmn. Katen by saying this should not be allowed to continue. The environment and the density need to be protected. The neighbors are being negatively affected.

Ms. Seltzer made a motion to deny with Mr. Mead seconding. The reason for denial is there was no hardship shown. The motion carried 4-1 with Ms. Seltzer, Messrs. Haberman, Mead and Katen voting in favor and Mr. Carey against.

2. **73 Green Meadow Road** (Zone R-18) Tom & Rosanne Gauthier, owners – request to vary Sec. 4.1.4 projections from 4' allowed to 7.5' to construct stairs. Map 108, Block 836, Parcel 125.

Thomas Gauthier, 73 Green Meadow Road, said he requesting a variance for a set of stairs for his porch. The most feasible spot for the stairs is in front of the main entryway. If he were to put them on the side of the driveway, they would encroach into the opening of the garage door. Originally the architect had drawn the plans with the stairs recessed into the porch. It was determined there could be a hazard with tripping or falling when you come out of the front door or from either side of the porch. The stairs would have to be very narrow if placed by the garage because the garage protrudes out farther than the front of the house.

Ms. Seltzer asked how narrow would the stairs be to which Mr. Gauthier answered about 3' at the most.

Mr. Gauthier continued the reason for the porch was so you could use it as a sitting area. By putting the stairs recessed on the one side, he would lose that half of the porch. It would also be difficult to bring any large items into the house with such a narrow area. He was planning on putting in a walkway from the driveway to the proposed stairs at front of the house.

Rosanne Gauthier, said the driveway that is there now is coming out and there will be a new driveway put in, in front of the garage.

Mr. Haberman said it appeared the neighbor's stairs protrude out further than what is being proposed to which the applicants agreed.

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

DISCUSSION:

Chrmn. Katen said it appeared the architect or the builder messed up. Mr. Carey said it is a fairly large piece of property; there should be no problem.

Mr. Mead made a motion to approve with Mr. Carey seconding. The reason for approval is the architect made a mistake and didn't figure in the amount for the stairs. The way that the porch is designed, the stairs cannot be put by the garage because it would block the garage door and would have limited space to access the

porch. The motion carried 4-1 with Messrs. Mead, Haberman, Carey and Katen voting in favor and Ms. Seltzer against.

3. **11 Soundview Place** (Zone R-10) Robert Marx, Roger Ferris & Partners, appellant, for Ann Moore & W.H. Connery, Jr., owners – request to vary Sec. 4.1.4 projections from 4' allowed to 8' to construct raised terrace. CAM received. Map 39, Block 615, Parcel 2.

Rob Marx, architect with Roger Ferris & Partners, 285 Riverside, Westport, said the owners purchased the property in 2006. They are looking to extend a blue stone terrace into the front yard. Originally it was to have a 4' landing at the front of the house but as construction commenced, the owners asked to have the terrace extend further out so they could sit there. The hardships are the non-conforming lot and the topography. The front yard drops off down to the street about 6 or 8 feet. This makes the terrace a structure and requires a variance. A second hardship is the lot is non-conforming.

Ms. Stock said this is a patio that usually wouldn't require a permit, but because of the slope of land, it has to be raised and a variance is required.

Mr. Mead asked if there were stairs to which Mr. Marx said there would be access from the house and stairs on the side to the front door.

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

DISCUSSION:

Chrmn. Katen stated he didn't have a problem with it. Ms. Seltzer said there is no number on the house and they need to post one per the Regulations.

Mr. Haberman made a motion to approve with Mr. Carey seconding. The hardship is the topography of the land. The motion carried unanimously with Ms. Seltzer, Messrs. Carey, Haberman, Mead and Katen voting.

4. **32 Milford Point Road** (Zone R-7.5) Patrick Devine, appellant, for JNP, LLC, owner – request to vary Sec. 3.1.4.1 front yard setback from 20' to 12' to construct new single family dwelling. CAM received. Map 6, Block 88, Parcel 10.

Patrick Devine, 318 New Haven Avenue, said he needs to reapply for a variance to construct a single family dwelling. It was approved but the time lapsed.

Chrmn. Katen asked if there were any changes to which Ms. Stock answered there were not.

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

DISCUSSION:

Chrmn. Katen confirmed this was something that just fell through the cracks to which Ms. Stock answered she believed it was an oversight on the part of the

applicant. Ms. Seltzer stated she wasn't on the Board for the original hearing but didn't like the house being built so close to the road and could not vote in favor of it. Mr. Mead added they had to build forward because of the wetlands in the back. That is why it was approved originally.

Mr. Carey made a motion to approve with Mr. Mead seconding. This is a re-approval of a previously approved variance with no changes. The hardships remain the same. The motion carried 4-1 with Messrs. Carey, Haberman, Mead and Katen voting in favor and Ms. Seltzer voting against.

5. **40 Botsford Avenue** (Zone R-5) Kenneth Smith, appellant, for Wishing Well Properties, owner – vary Sec. 3.1.4.1 front yard setback from 10' to 5.1'; side yards from 10' to 7.6' and from 5' to 3.3' to allow dwelling to remain. CAM required. Map 13, Block 117, Parcel 6.

Kenneth Smith, said his wife, Nona Smith and Flora Whitelaw, Wishing Well Properties, purchased the bank owned property. They are proposing to do over 80% reconstruction and require a variance to allow it to exist as is. No part of the footprint will be changed. They will also be eliminating 3' of the existing deck to make it conforming.

Ms. Seltzer asked when the house was built to which Mr. Smith answered 1900.

OPPOSED:

Perry Vincenzi, 38 Botsford Avenue, said he and his father were able to renovate the home without the need for a variance. The applicant's 7'6" driveway is not wide enough to park a car without infringing on his property. As the owner, by right, he could extend his fence all the way to the front property line but he has not. He doesn't approve of leaving the house as it is. If they are going to rebuild they should do it the right way. He didn't see a hardship.

Ms. Stock explained they are not taking the house down, they are only renovating the interior of the dwelling. If they were only doing 50% renovation, they wouldn't be here tonight.

Mr. Vincenzi asked what the variance is for to which Ms. Stock explained that when the house was built, there were no Zoning Regulations. Today the Regulations state if you are doing over 80% reconstruction, it is considered a new house by Planning and Zoning. It doesn't meet the setbacks so a variance is required to legalize a house that has been that way for over a hundred years.

Chrmn. Katen said they are not asking for anything more than what is existing.

The hearing was closed.

DISCUSSION:

Mr. Carey made a motion to approve with Mr. Mead seconding. They are only asking for a variance for 80% interior reconstruction. It has been there since 1900. Mr. Haberman added the lot is undersized and Mr. Mead said they are removing 3'

of the deck to make it more conforming. The motion carried unanimously with Ms. Seltzer, Messrs. Carey, Haberman, Mead and Katen voting.

6. **11 Oljay Terrace cor. Red Root Lane** (Zone RA) Allan T. Wilcox, owner – vary Sec. 4.1.1.3 accessory building height from 15' to 28'; vary Sec. 11.2 to allow 768 sq. ft. structure where 570 sq. ft. is permitted. Map 119, Block 905, Parcel 16F.

Withdrawn.

7. **108 Hawley Avenue** (Zone R-5) Mark E. Kornhaas, appellant, for Flavio A. Alvarez & Steve Filippakos, owners – vary Sec. 3.1.4.1 side yard setbacks from 10' to 8.6' and other side from 5' to 4.8' to allow dwelling to remain. CAM required. Map 60, Block 746, Parcel 3.

Mark E. Kornhaas, 304 Federal Road, Brookfield, said the owners are looking to do more than 50% reconstruction on a house built in the 1900's. It is an existing, non-conforming house on an irregularly shaped lot. Permits were pulled from both Planning and Zoning and the Building Dept., but as the renovations progressed it was determined by the Building Dept, that the extensive amount of work being done went over that 50%. So they are here to ask for a variance.

Ms. Seltzer asked what percentage of the house is being renovated.

Mr. Kornhaas stated he wasn't sure of the exact percentage but the Building Inspector said it was over 80%.

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

DISCUSSION:

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

8. **214 Forest Road** (Zone RA) Brian Cleveland, appellant, for Swanette & Richard Sellers, owners – request to vary Sec. 3.1.4.1 side yard setback from 25' to 8.3' to construct 2 story addition. Map 88, Block 831, Parcel 55.

Brian Cleveland, 57 Pardee Place, East Haven, stated the owners would like to construct a two story addition off the rear, right side of the existing home. A portion of the existing one car garage will be removed. He passed out floor plans to the Board that showed the mechanical space is being proposed to be placed in a similar location as they are now. There is only a crawl space, so the mechanicals are located on the first floor on the right hand side. The driveway will continue to be placed on the right side for the filling of the oil tank for the furnace. The existing stairs to the second floor on the right side of the building, next to the garage, will also be kept. The existing bedrooms on the second floor are all lined up on the left hand side of the home, so if the addition were constructed there, they would need to cut through the existing bedrooms to get to the proposed master bedroom on the

second floor. The hardships are the property is undersized, with a width of 100' where 150' is required, and the placement of the house on the lot.

Ms. Seltzer asked why they couldn't put the addition on the other side to which Mr. Cleveland answered the majority of the existing building is remaining. They are not touching the entire second floor, just one closet that is being removed to create a hallway that would lead to the master suite. On the first floor, they are only removing one wall that creates a division between a bathroom and the living space. The existing stairs are also remaining.

Ms. Seltzer stated when the existing garage is removed, the house would be at the required setback. Construction should stop there and the addition built on the other side where there is plenty of room.

Mr. Cleveland said it would still be over the setback line even if they were to just take the garage off.

Chrmn. Katen said the point is there is a lot of construction on the right side of the house when there is room on the left side.

Mr. Mead asked if there were any hardship with the land on the other side where it would make it hard to build there.

Richard Sellers, 214 Forest Road, said there is a lot of ledge in the property and a lot of huge boulders that protrude out of the ground on that side of the property. In order to build the garage, the plan worked best if they built off the right side of the house. He wasn't sure if that is why the original garage was built on that side or not. He repeated there is a lot of ledge and they would have to bring in some heavy machinery to remove the ledge, which would be very difficult.

Ms. Seltzer asked if the land had been tested by a professional to which Mr. Sellers answered not by a professional but his builder tried with a shovel and only the tip could be dug into the ground without hitting ledge. He repeated there are already big boulders above ground in the area.

Mr. Haberman asked why the overhang is needed on the second floor, creating the setback of 8.3' rather than just leaving the overhang off and having a setback of 10'.

Mr. Cleveland answered it was designed to be more esthetic.

Mr. Mead asked if the room over the garage would be the master bedroom to which Mr. Cleveland answered a master bedroom and closets. The windows would be facing the neighbor's backyard, not the house itself.

OPPOSED:

Chrmn. Katen read a letter of opposition into the record from Jen and Peter Bernhard, the neighbors directly to the right of this property.

Robert Stevens, 206 Forest Road, asked why a single family home needed more square footage. He stated a variance is not warranted and will lead to overcrowding. It is not fair to the neighbors. The City has Regulations, which should be preserved. He opposes it and added a large shed was built in the back of the applicant's property without a permit.

Howard Hemming, 199 Forest Road, said he has lived there for 63 years and he is concerned about density. He would like to see everyone comply with the zoning laws.

Dorothy Hemming, 199 Forest Road, said she has lived there since 1945 and asked the Board to deny the application.

REBUTTAL:

Mr. Cleveland said the existing house is a modest house with 2 bedrooms and 1½ baths. The existing dining room and kitchen are small. The shed does not have a permanent foundation so a permit is not required. He was then informed by the Board members that a permit was required. The existing setback is almost being maintained, it is an additional 1.6' closer to the property line.

Mr. Sellers said the original foundation was probably placed so far off to the right side because of the ledge on the other side. They are cramped and do need more room.

Chrmn. Katen said he understands the need for more room and the problem with the rock ledge but since this is such a large piece of property he felt there had to be another way to build this addition without infringing on the neighbors.

Mr. Cleveland said the ledge will always be a concern but even if they were to take the two car garage and try to put it off the back of the house, they couldn't because the grade slopes downward. Obviously, stairs could be installed but that would prohibit their ability to put in a kitchen and dining room and still have some type of natural light coming into the first floor. The only way would be to construct a very long house, which they didn't want to do.

Ms. Seltzer stated the applicant should have the property professionally tested. She visited the house, listened to the neighbors and agrees it is very close to the neighbor's house. She felt it was unfair to continue that encroachment. She felt a professional should test the property as there could be other options available. A variance shouldn't be granted just because it easier for the applicant. It might be easier for the applicant but it is harder for the neighbors. Other options need to be explored.

Mr. Mead agreed with Ms. Seltzer. If a professional does find it is impossible to put anything on the left side, the variance may be granted with that as your hardship. As it is now, everything is going closer to the neighbor.

The hearing was closed.

DISCUSSION:

Mr. Carey made a motion to deny without prejudice with Mr. Mead seconding. There appears to be other alternatives for the addition. This will allow the applicant to reapply. The motion carried unanimously with Ms. Seltzer, Messrs. Carey, Haberman, Mead and Katen voting.

9. **59 Sixth Avenue** (Zone R-10) Michelle Smith, owner – request to vary Sec. 3.1.4.1 side yard setback from 10' to 8'; rear yard from 25' to 10'2"; building area from 35% to 36% to construct addition. CAM required. Map 9, Block 128, Parcel 14.

Michelle Smith, 59 Sixth Avenue, owner, said the house was built in the early 1900's. It predates zoning and is built on an undersized lot.

Mr. Haberman confirmed the house was already non-conforming on three sides and she is asking the Board to make it non-conforming on the 4th side to which Ms. Smith

said that was correct. He continued it would only leave about 10' for the backyard. All the lots in that area are pretty small. It would be a lot of house on a little lot.

Tibor Viniczay, 212 Oronoque Road, added the yards closer to the water are much smaller. The addition would only be a one story addition so as not to block the views of the neighbors.

Ms. Seltzer said that all the lots are pretty tight on that street and she didn't feel comfortable adding to the non-conformity.

Chrmn. Katen agreed with Ms. Seltzer. He said it is a small lot, 4,700 sq. ft. where 10,000 sq. ft. is required. It is non-conforming on three sides and they are asking for the 4th side to become non-conforming too. The only alternative is to go up instead of out.

Ms. Stock said the house is existing, non-conforming.

Mr. Viniczay added they already have a second story on the dwelling. They designed the addition to be in the back to keep it low so as not to block the neighbors' waterviews.

Mr. Haberman asked how the length of this house would compare to the lengths of the other homes in the neighborhood.

Mr. Viniczay said the house next door is literally to the back corner of the property.

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

DISCUSSION:

Mr. Haberman said he is not in favor of creating another non-conformity but it is an undersized lot and the addition is one story.

Ms. Seltzer made a motion to deny with Mr. Haberman seconding. The house is already non-conforming on three sides and they are asking the Board to add a fourth non-conforming side. She realizes the three sides predate zoning but the Board is not there to continue the non-conforming use. It is too close to the neighbor's, even though the neighbor is the applicant's sister. Her sister may not always live there. The motion failed to carry 2-3 with Ms. Seltzer and Mr. Haberman voting in favor and Messrs. Carey, Mead and Katen voting against.

Mr. Mead made a motion to approve with Mr. Carey seconding. Even though approval would create a fourth non-conforming side, part of the addition would be an open deck. The whole area is non-conforming. Mr. Carey added it does conform to a beach neighborhood. All the houses in the neighborhood don't conform in one way or another. The motion failed to carry 3-2 with Messrs. Mead, Carey and Katen voting in favor and Ms. Seltzer and Mr. Haberman against.

B. TABLED BUSINESS

C. OLD BUSINESS

D. NEW BUSINESS

Ms. Stock spoke of and distributed a copy of "Public Notice Standards for Variances" received from a fellow zoning enforcement officer from New Fairfield. She explained New Fairfield has very few variance requests because they have developed this standard. She sent a copy of it to the City Attorney's office to be sure

of its legality and was told this standard could be used in Milford. She will give one to everyone who wants to apply for a variance, which might cut down on the number of variance requests.

E. STAFF UPDATE

F. ACCEPTANCE OF MINUTES FROM FEBRUARY 12, 2008 MEETING.

The minutes were approved unanimously.

G. ACCEPTANCE OF APPLICATIONS FOR APRIL 8, 2008 MEETING.

The meeting was adjourned at 9:18 p.m.

Attest:

Rose M. Elliott
Clerk - ZBA