

Minutes of Public Hearings of Zoning Board of Appeals May 13, 2008

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

ALTERNATES PRESENT: Charles Montalbano

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

The meeting was called to order at 7:04 p.m.

A. CONSIDERATION OF AGENDA ITEMS

1. **123 Beachland Avenue** (Zone R-5) Michael Donegan, owner – request to vary Sec. 4.1.7.3 to allow 42” high open fence to remain. Map 29, Block 548, Parcel 1.

Michael Donegan, 123 Beachland Avenue, said he is here to ask the Board to allow an existing 42” high fence, which has been there for 8 years, to remain. The fence exceeds the corner of his house by a few feet, but does not exceed the roofline of the porch. He added the intent of the Regulations was such, for shorefront homes, that no views or access to the water be obstructed. There is no obstruction either physically or visually. He submitted photos to the Board. One of his hardships is a safety issue. The fence is a guardrail that protects his two young children from the more than 3’ drop off from the patio. If the fence were moved, there would be a grade difference of about 5 or 6” between the top of the concrete and the dirt on the sideyard. This would create a hazard. He also couldn’t replace the dirt with concrete because he would then have to come before the Board for a variance for lot coverage. It would also landlock the small piece of land, approximately 175 sq. ft., which could be used for placement of a swing set for the kids.

Chrmn. Katen asked why is he before the Board now if the fence has been there for 8 years, to which Mr. Donegan said a neighbor is pushing the issue.

FAVOR:

Anthony Vitelli, 115 Melba Street, in favor of the application. He has lived there for 5 years with his sister and everything the Donegans have done to the property has never obstructed any views or passageways. It has only enhanced the neighborhood.

Tracey Donegan, 123 Beachland Avenue, asked the Board to allow the fence to remain, as it doesn’t block any views or access of the beach. There is a potential danger to her two young children if the fence is moved. It would create a large gap between the concrete and the soil, which could be dangerous to children and adults alike. She considers the fence a safety guardrail for the children.

Dennis Jordhamo, 117 Melba Street, said he is the next door neighbor to the 123 Beachland. This fence is of no obstruction to anyone and causes no problems. He asked the Board to grant the application.

Karen Fitzmaurice, 53 Pelham Street, said she is in favor of the application.

Inaudible, 55 Pelham Street, said she lives up the hill and the fence does not interfere with anyone going to the beach and has always been there. She is in favor of the application.

William Fitzmaurice, 53 Pelham Street, is in support of the application. He said Beachland Avenue ends at the beach. The fence is no where near the street. All the homes on the other side of the Donegans are on a bluff 15' or 20' above the home. They can't even see this fence. He supports the application.

Dean Har, 127 Melba Street, said he has always believed that a homeowner has the right to put up safety rails and fences when it comes to the safety of children and pets. It is a safety issue and the fence should remain. He has placed a fence on his property adjacent to the Donegan's which is the same dimension so his kids and their friends will not be frightened by the dogs when they come up to his property. He supports the Donegans' right to maintain the fence although it may violate the Regulations. He hoped the Board would vote in favor and not oppose and discriminate against other shoreline residents when similar fence variances are presented to the Board.

OPPOSED:

Wanda Har, 127 Melba Street, opposes the fence as it would set a precedent for others to follow. She wants everyone living on the shoreline to have the same rights as the Donegans. There will be other residents with the same concerns and hardships and hoped they too would be given a variance when requesting a similar fence.

REBUTTAL:

Mr. Donegan said he didn't understand why the husband spoke in favor and the wife in opposition. He didn't know what message that was sending. Mr. Har did put up a fence that sticks out further than his does but he is not going to take it to the length that he was made to go. The Har's fence is directly on the shoreline, his is pulled back.

The hearing was closed.

DISCUSSION:

Chrmn. Katen said the area where the fence is, is not an entryway, doesn't obstruct anything, has been there for 8 years and he didn't see a problem with this particular fence. The Board is not in favor of fences except when it becomes an exception, which this is. Mr. Carey added there are safety concerns and he thought the fence should remain. He added as far as setting a precedent, every variance application stands on its own merit.

Mr. Carey made a motion to approve with Mr. Mead seconding. The reason for approval is the fence does not obstruct views and there are safety concerns. The motion carried unanimously with Ms. Seltzer, Messrs. Haberman, Mead, Carey and Katen voting.

2. **22 Elder Street cor. Bassett Street** (Zone RMF-16) Susan Martins Monteiro Clark, owner – request to vary Sec. 4.1.4 to allow balcony with rear yard setback of 19.3' where 21' is required. Map 35, Block 424, Parcel 1-22.

Susan Clark, 73 Green Meadow Road, said this a reapproval of a deck that was approved in 2003. Her neighbor was before the Board last month and was approved. The condo association was approved for decks in 2003.

Chrmn. Katen confirmed all the units were approved for decks but this particular unit's deck was not built.

Mr. Mead asked if this was the last unit without a deck to which Ms. Clark said there are 2 or 3 more units without decks.

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

DISCUSSION:

Chrmn. Katen said this was all previously approved and this particular unit was just not built. He had no problem with the application.

Mr. Carey made a motion to approve with Ms. Seltzer seconding. The reason for approval is it will conform to the rest of the decks in the association, which have already been approved. The motion carried unanimously with Ms. Seltzer, Messrs. Mead, Haberman, Carey and Katen voting.

3. **33-35 Laurel Avenue** (Zone R-5) Thomas B. Lynch, attorney, for Titanium Properties, LLC, owner – request to vary Sec. 3.1.4.1 lot width from 50' required to 40'; lot area from 5,000 sq. ft. to 3,600 sq. ft. to allow two non-conforming building lots. CAM required. Map 16, Block 147, Parcel 23.

Attorney Thomas Lynch, 63 Cherry Street, is requesting to subdivide the property to allow for the demolition of a non-conforming house and the construction of two single family dwellings on lots consisting of 3,600 sq. ft. He passed out information to the Board. He stated there is a two family residence on the site, which is in disrepair, along with a shed that appears to have someone living there, along with a separate storage shed. There are two bedrooms per unit. His clients want to develop the property and continue in the renovation and development of the Walnut Beach area. The property consists of two lots shown on an 1899 subdivision map. The area consists of beach cottages that were improved over time. The use is non-conforming and only one car can fit in the driveway. What is proposed will eliminate the non-conformity and will be in harmony with the neighborhood. There are numerous lots in the area that are constructed on 3,600 sq. ft. lots.

Chrmn. Katen asked if this was two lots to which Atty. Lynch agreed; lots #64 and #65 on the 1899 subdivision map.

Chrmn. Katen asked when they were merged.

Atty. Lynch said the house was built in 1915.

Mr. Carey asked Ms. Stock if they were two building lots or one merged lot to which Ms. Stock answered one merged lot.

Atty. Lynch said he knows the Board is against the division of merged lots but there is currently a non-conforming, multi-family use that will be eliminated and two single family dwellings will be built in its place.

Chrmn. Katen asked if the owner was living on the premises.

Atty. Lynch answered no, it was an investment property.

FAVOR:

Michael Caro, 48 Laurel Avenue, said he has lived in the area for over 20 years and is the past vice-president of the Walnut Beach Association. He was previously against the application as the lots were merged about 5 years ago when the previous owner built the shed. Currently, there is a two family dwelling with 5 cars parked there every evening. It is a mess. He changed his mind about the application after he obtained the plot plan from Planning and Zoning office. He decided if they are going to demolish the two family home, build two new single family houses and sell the houses, not rent them; he is favor of that. He supports growth in the neighborhood and is all for families moving into the neighborhood. He is not in favor of rentals. His only concern is that the owners will change their mind after approval is given and decide not to demolish the two family house and shed and build the new homes.

Chrmn. Katen confirmed with Ms. Stock that the variance is only to split the lots not anything about the removal of the house to which Ms. Stock answered they want to make two non-conforming lots from one lot. She reviewed the plans and stated the plans say the garage shed is to be removed and the dwelling is to be removed also.

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

DISCUSSION:

Ms. Seltzer stated according to the plans, the side, rear and front yards all fit within the R-5 zone. The size of the lots are smaller and non-conforming but this would be a huge asset to Walnut Beach. It will promote revitalization and bring in families and she is in support of it. Mr. Carey said that by not granting the variance, the hardship would be on the owners of the larger lots to maintain them. Mr. Mead agreed with Ms. Seltzer that the lot looks like a junkyard with the trucks and the shed people are living in. This area is getting revitalized and Mr. Caro, who spoke in favor, was before the Board himself several years ago for his garage, and it looks good. Although the Board is not in favor of splitting one lot back to two, this will help clean up the neighborhood. Mr. Haberman stated he doesn't like to see lots divided, but this will get rid of the two family and improve the neighborhood. The neighborhood wants it. Chrmn. Katen stressed the Board does not look favorably on splitting a lot. He can't be in favor of it. He agreed with Mr. Caro that there is no fail-safe. They can split the lot, tear down the shed, sell the two pieces and they are back where they started.

Ms. Seltzer made a motion to approve with Mr. Carey seconding. The reason for approval is this property has declined over the years and this is a change for the better for Laurel Avenue and for Walnut Beach. Mr. Carey added the rest of the lots

in the area are all of smaller size similar to what they are approving. By not approving it would be a hardship on the applicant. The motion carried 4-1 with Ms. Seltzer, Messrs. Carey, Haberman, Mead voting in favor and Katen voting against.

4. **354 Woodmont Road cor. Quarry Road** (Zone ID) Thomas B. Lynch, attorney, for Naples Pizza, c/o A. Prefiatera, appellant, for Woodmont Business Park, LLC, owner – request to vary Sec. 5.5.4.1 restaurant permit location from 1,500' to 25'+/- to allow additional restaurant in shopping center. Map 91, Block 809, Parcel 6B.

Thomas Lynch, 63 Cherry Street, represents Anthony Prefiatera, who does business under his company name of Naples Pizza. This variance is for a waiver of the minimum distance between liquor permits within a plaza from 1,500' to 25' to allow the new Naples Pizza restaurant to locate in the Woodmont Plaza. Naples Pizza has been in existence in New Haven for over 60 years, in the heart of the Yale University campus on Wall Street. They would like to open a second restaurant and feel that this would be an appropriate spot with regard to the proximity to Exit 40 of the Interstate and the industrial park location which would generate business both during the afternoon and evening hours. The restaurant would occupy 4,400 sq. ft., Units #3 & #4. The entire plaza consists of 44,000 sq. ft. The Regulations state that one liquor permit per 40,000 sq. ft. of size is allowed. Since the plaza exceeds 40,000 sq. ft., a second liquor permit is allowed. The variance is for the fact that the restaurant wants to occupy this space, which is next door to Keepers Café. The café liquor permit is a café license with hours of operation late into the evening hours, up to 2:00 a.m. The amount of traffic generated for Naples will take place earlier in the evening. The nature of the two permits is different. The café license includes entertainment and music. This is an adult entertainment lounge. The restaurant permit will be to have a full service bar during the dinner hours. Maximum occupancy of the restaurant will be 86 patrons, with the bar occupying 18 spaces. He submitted a letter from the president of Keepers Café, stating they are in favor of the application, due to the fact that Naples liquor permit will be different from the liquor permit they possess. The hardship is the intent of the Regulations to keep similar permits distanced from each other to incur competition. These are two different liquor permits.

Ms. Seltzer asked what the anticipated hours of operation would be to which Atty. Lynch said they would close at 10:00 p.m. during the week and 11:00 p.m. on weekends.

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

DISCUSSION:

Ms. Seltzer said she spoke with one of the neighbors in the plaza who said she would love to have a restaurant there. It would be an asset. She didn't feel one establishment would harm the other. There is also a lot of parking available. Mr. Mead felt it might be distasteful to bring your kids for dinner to a family restaurant located next to a gentlemen's club.

Ms. Seltzer made a motion to approve with Mr. Carey seconding. The reason for approval is there would not be a conflict and there is plenty of parking during the day. The motion carried 4-1 with Ms. Seltzer, Messrs. Carey, Haberman, Mead voting in favor and Katen voting against.

5. **10 Warfield Street cor. Warfield Street** (Zone R-7.5) Joyce Pica, appellant, for Gene Pica, owner – request to vary Sec. 3.1.4.1 side yard setback from 5' to 4.96' and rear yard from 25' to 4.76' and 3.97' to allow dwelling to remain. Map 23, Block 343A, Parcel 1.

Joyce Pica, 9 Kerry Court, said the variance is to rebuild a home that was destroyed by fire on Thanksgiving Day.

Chrmn. Katen asked if the foundation is still there.

Ms. Pica said the foundation is still there. Nothing will be changed and it will be rebuilt exactly as it was standing previous to the fire.

Chrmn. Katen confirmed with Ms. Stock that the only reason they were before the Board is because it is more than 85% reconstruction to which Ms. Stock said that was correct. The exterior will remain as it is.

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

DISCUSSION:

Chrmn. Katen repeated there was a fire, the foundation is not being changed and he didn't have a problem with it.

Mr. Carey made a motion to approve with Mr. Haberman seconding. The reason for approval is it is staying within the original confines of the footprint and will not be any more non-conforming than it was before. The motion carried unanimously with Ms. Seltzer, Messrs. Carey, Haberman, Mead and Katen voting.

6. **247 Gulf Street** (Zone R-12.5) Alan C. Dodd, appellant, for Peter A. Dodd, owner – request to vary Sec. 3.1.4.1 front yard setback from 30' to 28.8' to reconstruct single family dwelling. CAM received. Map 45, Block 509, Parcel 15B.

Alan Dodd, 14 George Street, said his son Peter and his wife Suzanne, recently purchased the house. They were asked by the Planning and Zoning office to obtain a survey. When the survey was obtained they found that the house measures 30' from the sidewalk. They are asking for a variance to keep the house right where it is. The hardship is the house has been there 55 years and they do not want to build a new foundation.

Chrmn. Katen confirmed this is the way it was when it was purchased and the survey found it had been measured incorrectly 50 years ago to which Mr. Dodd said that was correct.

FAVOR:

Joseph Tuozzola, 118 Gulf Street, said he is in favor of the application.

OPPOSED:

Carter Colter, 258 Gulf Street, lives directly across the street. He said he would like to see the plans of the redevelopment of the house. He is for the application if he likes the house and has reservations if he doesn't.

Chrmn. Katen stated this Board is not an esthetics review board. The application is for how the house sits on the property.

Mr. Colter asked what would be the appropriate forum to discuss that issue since this area is being proposed for an historic district nomination.

Ms. Stock stated it is not an historic district as of yet and there is no forum to go to. The Dodds can build whatever type of house they want. The City doesn't tell people what type of house they can build.

Chrmn. Katen added they still need approval from the Building Dept., possibly Inland Wetlands. Approval by this Board allows them to go forward.

Mr. Colter then said he withdraws his statement of opposition.

The hearing was closed.

Mr. Carey made a motion to approve with Mr. Haberman seconding. The reason for approval is the variance is for only 1.2'. It was an oversight by someone 50 years ago. The motion carried unanimously with Ms. Seltzer, Messrs. Carey, Haberman, Mead and Katen voting.

7. **46 Point Beach Drive cor. Coolridge Road** (Zone R-5) John D. Rowe, owner – request to vary Sec. 4.1.4 projections from 3.8' to 5' to construct 2nd floor deck. CAM required. Map 30, Block 633, Parcel 1.

Withdrawn.

8. **20 Pond Street** - (R-12.5) Christopher Barrato, agent, for Kristin Huffman & Andy Reimann, owners – appeal the decision of the Zoning Enforcement Officer in issuing a cease and desist order. Map 44, Block 404, Parcel 14.

Withdrawn.

9. **50 Long Island View Road cor. Bryan Hill Road** (Zone R-10) Mark Paglinco, appellant, for Kathleen Paglinco, owner – request to vary Sec. 3.1.4.1 rear yard setback from 25' to 7'; front yard setback from 25' to 14' to construct one story addition and wrap around porch. CAM received. Map 47, Block 526, Parcel 19.

Mark Paglinco, and his mother, Kathleen Paglinco, 50 Long Island View Road, are requesting to put a small addition off the kitchen and add a small wrap around porch to the front of the dwelling. A second floor will also be added. Approval will give them much needed living space. The hardship is the parcel is unique to the neighborhood. All the other parcels are a minimum of 100' x 100' while their parcel is 50' by 80'. It is also a corner lot. The kitchen addition will stay in line with the back of the house and will not encroach any further to the neighbors.

Mr. Mead confirmed all construction would be to the left side of the house to which Mr. Paglinco said that was correct.

Ms. Stock added they need a front yard variance for the porch.

FAVOR:

Cathy Lang, 36 Long Island View Road, said she is in favor of the application and thinks it will do wonders for the neighborhood.

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

DISCUSSION:

Chrmn. Katen said it is the smallest lot in the neighborhood and will not be encroaching any further into the rear yard than it already is. Ms. Seltzer said there are larger lots in the neighborhood. The hardship is the size of the lot. The neighbors don't have a problem with it.

Mr. Haberman made a motion to approve with Mr. Carey seconding. The hardships are it is a corner lot and also the size of the lot. The motion carried unanimously with Ms. Seltzer, Messrs. Carey, Haberman, Mead and Katen voting.

10. **156 Fourth Avenue** (Zone R-10) Kevin Curseaden, attorney, for Daniel & Karen Lemire, owners – request to vary Sec. 3.1.4.1 front yard setback from 25' to 19.6'; side yard setbacks from 10' to 2.6' and from 10' to .9'; lot coverage from 50% to 60.5%; building area as percentage of lot from 35% to 43%; vary Sec. 4.1.4 projections from 4' allowed to 11.5' to construct new single family dwelling. CAM required. Map 9, Block 80, Parcel 6.

Attorney Kevin Curseaden, 26 Cherry Street, submitted a packet to the Board. He said the existing house was built in 1900. #155 and #156 Fourth Avenue, are on the same side of the street. They are intersected by a 4' passway, which is unique to Laurel Beach and other beach associations. Because of the passway, they have been before the Planning and Zoning Board for a Special Exception and Site Plan Review to allow a garage on #155 Fourth Avenue. As part of the approval, they have to tie the lots together. A covenant running with the land, will be filed, saying the garage will never be used for residential purposes and the two lots, for zoning purposes, will be forever tied together. The owners originally wanted to just renovate the existing house, however, past experience has shown that once construction begins, it is usually found that more work is needed than expected and then, a variance is needed to continue working. Rather than wait for that to happen, they are being proactive and coming to the Board with a new house construction application. They will substantially use the existing footprint of the deck and foundation with minor changes to the back of the property. The hardships are the size of the lot, 2700 sq. ft., pre-existing non-conforming, the shape of the lot, the presence of the passway and the restrictive covenants. The Laurel Beach Association was contacted and some of their concerns were addressed. They

worked with the neighbors and feel they have done the best they can do. They have two letters of support for the application.

John Wicko, 50 Broad Street, architect, explained the plans to the Board.

Ms. Seltzer asked if they were using the same footprint to which Mr. Wicko said they are using the existing footprint but suspect the house won't be of a construction they could keep.

Ms. Stock explained the overhangs are included in the variance application.

Mr. Mead confirmed they were not going any further to the front of the property.

Mr. Wicko said that was correct, however, they were adding steps that aren't there now, but they are not a structure.

FAVOR:

Peter Wall, 153 Fourth Avenue, is in favor of the application.

OPPOSITION:

Nancy Vollano, 158 Fourth Avenue, said the letter they received said the front of the house was being moved forward. If that is the case, their views would be impeded.

Ms. Stock explained the 19.6' exists now. The additional projection is for the stairs.

The hearing was closed.

DISCUSSION:

Chrmn. Katen said the new dwelling is basically going to be the same as the existing dwelling.

Mr. Haberman made a motion to approve with Mr. Carey seconding. The hardship is the undersized lot, pre-existing non-conforming, and this is the best they can do with what they have. Mr. Carey added it is an undersized lot and smaller than the other lots in the neighborhood. The motion carried unanimously with Ms. Seltzer, Messrs. Haberman, Carey, Mead and Katen voting.

11. **214 Forest Road** (Zone RA) Brian Cleveland, appellant, for Swanette & Richard Sellers, owners – request to vary Sec. 4.1.4 projections from 4' allowed to 9' to construct porch. Map 88, Block 831, Parcel 55.

Brian Cleveland, 57 Pardee Place, East Haven, said they were before the Board before and was denied a side yard variance. They took the Board's suggestions of moving the location of the primary addition to the left side of the property into account and are back before the Board asking to allow for a front porch to extend across the front of the house, which already encroaches into the side yard setback. The hardships are the undersized lot and the location of the house on the lot.

Ms. Stock said they are trying to bring the front porch over to where the front door is. The front door is into the required setback.

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

DISCUSSION:

Ms. Seltzer said she appreciates the owners going back and taking into consideration the Board's concerns and putting the addition on the other side of the house.

Mr. Carey made a motion to approve with Mr. Haberman seconding. The reason for approval is the plans were reconfigured to conform more with what the neighbors wanted and the Board suggested. The motion carried unanimously with Ms. Seltzer, Messrs. Haberman, Carey, Mead and Katzen voting.

B. TABLED BUSINESS

C. OLD BUSINESS

Ms. Stock informed the Board she went to court today on 10 Silver Street. The judge will render his decision next month. They were only allowed to present their case for her 1st order and after the judge's decision, they will go back to present their case for her 2nd order.

D. NEW BUSINESS

1. 264 Broadway cor. Hauser Street – request for an extension of time.

Ms. Stock said Ms. Barca was before the Board last year to construct a new single family dwelling. She read the letter from the owner into the record.

Mr. Carey made a motion to approve an extension of time for one year with Mr. Haberman seconding. The motion carried unanimously with Ms. Seltzer, Messrs. Haberman, Carey, Mead and Katzen voting.

E. STAFF UPDATE

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

The minutes were approved unanimously.

G. ACCEPTANCE OF APPLICATIONS FOR JUNE 10, 2008 MEETING.

The meeting was adjourned at 8:43 p.m.

Attest:

Rose M. Elliott
Clerk - ZBA