

Minutes of Public Hearings of Zoning Board of Appeals August 14, 2007

**MEMBERS PRESENT:** Richard Carey, Howard Haberman, Fred Katen, Edward Mead, Joseph Tuozzola, Sr.

**ALTERNATES PRESENT:** Ronald Spangler

**STAFF PRESENT:** Peter W. Crabtree, Assistant City Planner, Rose Elliott, Clerk

The meeting was called to order at 7:05 p.m.

**Chairman Katen** recused himself from Item #1. He called for a ½ hour recess.

The meeting resumed at 7:36 p.m.

[7:36:00 PM](#)

**A. CONSIDERATION OF AGENDA ITEMS**

1. **28 Atwood Street** (Zone R-7.5) Max S. Case, attorney, for Bastarache Properties, LLC, owner – appeal the decision of the Zoning Enforcement Officer's determination of a non-conforming lot. Map 32, Block 351, Parcel 6.

**Attorney Max Case**, 300 Bic Drive and Mr. Bastarache, 22 North Stone Road, Swampscott, MA., said they are appealing the decision of the Zoning Enforcement Officer's letter dated May 16, 2007, denying the certification of a lot under Section 6.4.2 of the City of Milford Zoning Regulations. The property predates zoning and was purchased by his client, Bastarache Properties, LLC, on December 22, 2006. On March 29, 2007, he wrote to the Zoning Enforcement Officer requesting certification of Lot #384. Ms. Stock asked for additional information, which he provided to her on April 17, 2007. On April 20, 2007, Ms. Stock told him she had an aerial photo showing a shed on the rear portion of the lot and asked him to investigate. He did investigate and on April 27, 2007, he responded to her letter by telling her the shed was a portable structure used by a prior owner as a place to grow herbs. It had no footings, no flooring, no utilities and consisted of light metal poles and plastic. It was light enough to be moved from place to place by one person. The Building Department didn't have a permit for a shed. He realized that there were no permits because it was not a permanent structure. It was a seasonal, temporary structure, which does not constitute a merger of the lots. The Zoning Enforcement Officer erred in her decision and she should have issued a Certificate of Zoning Compliance as requested by the property owner.

**Mr. Bastarache** said it was a fiberglass structure which his 88 year old dad took down.

**Mr. Haberman** asked if it could be moved without taking it down to which Mr. Bastarache said yes.

**Mr. Haberman** asked how big it was to which Mr. Bastarache answered about 8'x10'.

**Mr. Spangler** asked if it seemed like it had been there a long time.

**Mr. Bastarache** said it was in bad shape, but he wasn't sure and couldn't testify to how many years it was there.

**Atty. Case** said this was the type of structure you put out when it is cold to start your plants and then you take it and store it someplace.

OPPOSED:

**Peter Crabtree**, Assistant City Planner, 64 Stanley Street, New Haven, said he was representing Linda Stock, who is on medical leave. He submitted paperwork to the Board and stated the picture on the last page shows there was a shed on the property. The argument that the structure is temporary holds little weight because whether it is temporary or not, they are not exempted from the Zoning Regulations. It is his opinion that when they put this building up, which was, by their own admission, over 6', that it had bulk and it was not temporary. If the applicant thought that being temporary exempted them from the Regulations, they should have come into the office prior to the structure being removed and the lot being sanitized, and not come in after the fact and make that claim. There is nothing new about an accessory shed constituting a merger of two lots.

**Mr. Spangler** asked Mr. Crabtree if he had knowledge of any of the conversations between Atty. Case and Ms. Stock after the date of the letter to which Mr. Crabtree replied he was not privy to that information.

**Mr. Crabtree** added that the building permit process has changed over the years with regards to these sheds and has not always been treated uniformly by the Building Department. However, Planning and Zoning has always treated them the same.

REBUTTAL:

**Atty. Case**, said the issue is whether it is temporary or not, as stated in the Regulations. The photos taken are snapshots in time and can't tell you whether it was there every day of the year. The Assessor's card mentions there was a shed but not where it was located. It was movable and there was no indication it was located in that spot on a permanent basis. It was a temporary shed.

The hearing was closed.

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2. **320 Calf Pen Lane cor. Buckingham Avenue** (Zone R-10) Thomas B. Lynch, attorney, for Kayser Martin, owner – request to vary Sec. 3.1.4.1 lot size from 10,000 sq. ft. to 9,124 sq. ft. to create legal non-conforming building lot. CAM required. Map 46, Block 529, Parcels 2 & 3.

**Attorney Thomas Lynch**, 63 Cherry Street, said he was representing Joseph Gelb, contract purchaser of the property. They are here for a variance to recognize a 9,124 sq. ft. parcel of land in an R-10 zone, as a legal non-conforming building lot. Back in 1999 a prior Zoning Board of Appeals application was presented by Joan Brockenberry, former wife of Harry Brockenberry, who at one time owned this property before he transferred it to his daughter Nancy, wife of Kayser Martin. In 1999, Mr. Crabtree certified this lot under Sec. 6.4.2 as a legal, non-conforming building lot. Mrs. Brockenberry filed an appeal of Mr. Crabtree's decision and the decision was overturned. Atty. Lynch stated a structure could be built on this lot that meets all the setback requirements of the R-10 zone and by not allowing this lot to be recognized as a legal, non-conforming lot, creates a hardship. He showed a

highlighted map of 37 parcels within one tenth of a mile of the subject property that have been developed on 8,000 sq. ft. lots. In 1936, when this area was subdivided, there was a series of 400 or 500 lots that were all 40'x100'. Over the years they were combined, some by triplicate, creating 120'x100' sq. ft. lots; but the majority of the houses were built on lots that were two lots combined, to create a 80'x100', 8,000 sq. ft. lot. The entire area is like this and this creates a hardship when this applicant wants to develop a 9,124 sq. ft. in an area where many other houses have been built on 8,000 sq. ft. lots. There is an imposition of the Zoning Regulations in a prejudicial manner on this property owner that is not being imposed to others in close proximity. This is a reasonable request.

**Mr. Mead** asked what the original zoning was in that area to which Atty. Lynch answered it was probably R-4, 40'x100'.

**Mr. Haberman** asked if his hardship was that many houses in the area, over time, have been built on smaller lots.

**Atty. Lynch** stated that was correct and it is the confiscatory argument that has been recognized by courts as a legal hardship.

#### **FAVOR:**

**Mark Schairer**, 40 Ash Drive, Northford, said he also owns a non-conforming lot diagonally adjacent to this lot and is in favor of the application because it conforms to the neighborhood and added he plans to bring his lot, which is 80'x100', before the Board later this year. While the lot does not conform to Zoning it does conform to the neighborhood.

#### **OPPOSED:**

**Joan Brockenberry**, 326 Calf Pen Lane, stated the property is ¼ block from the wildlife preserve on Shadyside Lane creating a lot of wildlife in the area. This is a wetland area; water stands on the ground. She submitted photos to the Board. If a house were to be put on the property, the ground that presently helps absorb the water will be lost causing the displaced water to drain into neighboring properties. This land was quit claimed by her, to her former husband, Harry, who is now deceased. These lots were never meant to be built on; only to give their large family of ten children, a space to play and grow. They used the lots, for 40 years, as part of the yard. When she and her husband divorced, part of the settlement was for that lot to be deeded to him. Harry still knew the intent was not to build. In 1999, Harry tried to transform the lots into one building lot. The Zoning Board denied his petition. Just before his death, he quit claimed the lot to his daughter, Nancy, from his first marriage and Mr. Martin is her husband. All of a sudden this lot has grown from 8,000 sq. ft. to 9,000 sq. ft. The only question of land here is the two building lots she had to give her husband, nothing else. There is no hardship for this variance. She added she has twice offered to buy the lot from Nancy. She is still willing to buy the land. Any hardship is a self-made hardship. She asked the Board to maintain the R-10 zoning laws, keep Milford green, keep it unique and deny the variance request.

**John Russell**, 65 Indian River Road, stated it seems like every time they turn around, another builder is trying to force something into the neighborhood. It is true

that there are 40'x100' lots in the neighborhood, however, he didn't think there were any on a corner lot. There is also a safety issue with adding another driveway so close to the intersection. There are kids playing all around. The hardship is going to be on Mrs. Brockenberry with a house built so close to hers. He hoped the Board would deny the variance.

**Patty Gambori**, 349 Calf Pen Lane, stated she was there in 1999, and is here again to oppose this application. The curvature of the road couldn't possibly tolerate a house on this corner. There are many children in the area and their safety would be compromised. It would be unsightly and crowded and also a detriment to the neighborhood. She added she herself asked for a variance for her lot on Midwood Road. It was 8,000 sq. ft. and her application was denied because there was no hardship. She stated this was not a threat, but if the Board approved this, she promised that Milford would have the fight of their lives on their hands. She couldn't do it and neither should they.

**Mike Saldaris**, 111 Indian River Road, said it is amazing that attorneys and builders come in and purchase and attempt to build on the land, but neither the seller, the builder, nor the attorney has any intention of living on the land. They have no concern of the impact on the neighborhood. They don't want a 3,500 sq. ft. monster house on a small lot.

**Marc Lovejoy**, 100 Indian River Road, lives on a 80'x100' lot and wished his zoning was 12,000 sq. ft. Once you start deviating from the laws and grant this variance tonight, what will the next size lot be that comes before the Board, a 4,000 or 5,000 sq. ft. lot? The water and safety issues are a concern to him. He asked the Board to not let them build on it.

**David Gibbs**, 87 Indian River Road, stated Atty. Lynch said his client has a hardship. But it also creates a hardship for the residents. He understands that the Board has a duty to be advocates of a legal system but he felt they also had a duty as citizens, neighbors and residents of the City to ask what is happening in the neighborhood. The Board should also decide the size and style of the home and determine if it fits into the neighborhood.

**William Brockenberry**, 326 Calf Pen Lane, said it is not just a piece of property to him. He has worked on the property in the past with his father and he maintains the property. When he spoke with Mr. Crabtree, he was told this would never come up again, Planning and Zoning would never let it. They don't want it to be built on. It is part of the family, part of the Brockenberrys' history as one of the founding black families in Town. There is no hardship; it is only greed. He urged the Board to look at the big picture before they make their decision.

**Paul Sullivan**, 562 Buckingham Avenue, stated allowing them to build on this lot would be a detriment to the neighborhood and safety is a big concern to him as he has two small kids. He added when it rains, his backyard is a pond and so is his neighbor's.

**Ed Lewis**, 599 Buckingham Avenue, said he is concerned about the numerous children in the area and the serious water problem. There is a marsh in the back of the lot and the neighbors to the east and the north are constantly pumping out their cellars. He has not heard a hardship expressed that would hold water. He moved here 10 years ago because Milford was the type of atmosphere that he wanted for himself and his family. He is bothered by the type of houses being built and he hoped it wasn't because of variances. He asked the Board to deny the request.

**Sharon & Keith Hayes**, 580 Buckingham Avenue, bought their house a year ago, next to Mrs. Brockenberry. Her backyard is always underwater. The soil slopes down into their yard. Every time you get a heavy rain, there is a foot of water. She worries if they were to build on the lot, the soil erosion would get worse. It is a great neighborhood. When they did their renovations to their previous home on Orland Street, they built everything by the book. Building in that area would be a detriment to the environment and the community.

#### REBUTTAL:

**Atty. Lynch** said he could appreciate the arguments the neighbors have regarding the vacant piece of land in their neighborhood. They don't want to see it developed but the owner has rights too. The house would be reasonably sized. It meets all the setbacks. The front yard setbacks on both Calf Pen Lane and Buckingham Avenue, and the side and rear yard setbacks. The variance that is sought here is to recognize a building lot that is 850 sq. ft. shy of what the zone requires. There are homes built on lots that are 25% smaller than what the zone requires. This variance is for a lot that is 7.6% smaller. Mr. Brockenberry's daughter is entitled to develop as long as it is in conformity with the area and this variance is granted. There has been preliminary soil testing that has been done. If there are wetlands, an application will be made to the Inland Wetland Agency. A Site Plan Review will need to be done by staff. The driveway shown on the survey is at least 40' from the intersection.

**Mr. Spangler** asked how the lot grew from 8900 sq. ft. to 9124 sq. ft. to which Atty. Lynch said his client's survey was performed in accordance with A-2 standards. He can't say which is right but he is standing by the one submitted with the application. He added what Mrs. Brockenberry submitted to the Board from 1999 was not a variance but an appeal, filed by Mrs. Brockenberry, of the decision by Mr. Crabtree's certification of the lot as a building lot under Section 6.4.2 of the City of Milford Zoning Regulations.

The hearing was closed.

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3. **3 Willow Street** (Zone R-5) Andrew P. Wilson, owner – request to vary Sec. 3.1.4.1 rear yard setback from 20' to 14.3' to reconstruct two story single family dwelling. CAM required. Map 35, Block 439, Parcel 17.

**Andrew P. Wilson**, 272 Oak Avenue, Cheshire, said this house was destroyed by fire from a cigarette by a tenant in February and he wants to rebuild on essentially the same footprint. Since the original house was non-conforming, he needs a variance to rebuild. He will move the house back a few inches so it will be more conforming. He is only asking to put back what is currently there on the rear yard.

**Mr. Tuozzola** asked if he would be using the current foundation.

**Mr. Wilson** said he would remove the existing foundation and completely redo it because he doesn't think the existing foundation is sound. The house was built in 1915.

OPPOSED:

**Priscilla Halkovic**, 104 Seaside Avenue, Unit B, said she didn't understand how he could change it from 20' to 14' when it appears that the setback was already 14'.

**Chrmn. Katen** said according to the drawings it looks like he will not encroach onto the setback any more than it is; it will actually be 1' less than what is existing.

REBUTTAL:

**Mr. Wilson** repeated the house would be more conforming; he will not be going back any further than it is now.

The hearing was closed.

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4. **64 Cherry Street** (Zone RO) Monica Costantini, owner – request to vary Sec. 5.3.4.1 to allow a ground sign with 9.26 sq. ft. where 9' sq. ft. is permitted; vary sign front yard setback from 10' to 2' to allow ground sign to remain. Map 66, Block 822, Parcel 38.

**Monica Costantini**, 101 Red Root Road, said she is there with her partners Trish and Susan, and they have opened Sitka Wellness Center. They changed the sign that was already there and had been there for thirty years. The hardship is if the sign were moved, you wouldn't be able to see the sign. She submitted pictures to the Board that showed the alignment of the signs on the street. They were all in line.

**Chrmn. Katen** asked what was on the sign before to which Ms. Costantini said her deceased husband's law offices. She took that sign down and replaced it with this sign.

**Mr. Mead** asked how long the other sign was up.

**Ms. Costantini** answered 30 years.

FAVOR:

**Thomas Lynch**, 63 Cherry Street, said they have kept their property up wonderfully over the years and he supports the application.

The hearing was closed.

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5. **79 Harkness Drive** (Zone R-7.5) Douglas & Myriam Hill, owners – request to vary Sec. 3.1.4.1 side yard setback from 10' to 5' to construct attached garage. Map 34, Block 215, Parcel 48.

**Douglas Hill**, said his hardship is the configuration of the lot which narrows from the front to the back. He submitted an additional survey to the Board. There are other houses on the street that have attached garages.

**Chrmn. Katen** asked about the shed that encroaches onto the neighbor's property to which Mr. Hill answered it was there when they moved there and would be taken down.

**Mr. Crabtree** added if the variance is granted the removal of the shed could be made a condition.

**Mr. Mead** said in looking at the survey, it appeared the dimensions are different in the front than in the back; 16.89' in the front and 16.33' in the back.

**Mr. Hill** said they do not have an architectural plan yet and he only asked the surveyor to draw it where the line would be at 5'.

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

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6. **11 Grassy Lane** (Zone R-7.5) Christine Lill, appellant, for Christopher Lill, owner – request to vary Sec. 4.1.1.4 to allow open front porch to be 3' from garage where 8' is required. Map 76, Block 918, Parcel B12.

**Christopher Lill**, said they are adding a second story to their ranch style house and the existing garage is 3' from the house. They would like to add an open front porch with a roof over and extend it to the end of the house.

**Chrmn. Katen** confirmed the house has always been 3.75' from the garage to which Mr. Lill said the house is approximately 3' from the side of the garage.

**Chrmn. Katen** asked if the decks and pool have permits.

**Mr. Lill** answered they were there when they moved in, 16 years ago.

**Mr. Tuozzola** asked if there were any fences on the other side of the house to block access to the backyard for safety reasons.

**Mr. Lill** answered there is fence to the backyard now with no gate but they could put a gate there.

FAVOR:

**Bill Sayles**, 17 Grassy Lane, said the Lills are in the process of remodeling their home and they currently have an unsightly concrete mass that was a semi-usable front patio which they are ripping up. He is in favor of the application as it will improve the neighborhood.

The hearing was closed.

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7. **48 Oriole Lane** (Zone R-12.5) Willard J. Parker, appellant, for William & Patricia DiSiero, owners – request to vary Sec. 4.1.4 to allow new enlarged stoop 8'x9'+/, to project to within 22' of the front property line where 26' front yard setback is required. CAM received. Map 57, Block 529, Parcel 45A.

**Willard Parker**, 33 Lawson Avenue, West Haven, said he is the contractor for the DiSieros. The existing stairs and stoop are in need of replacement. The hardship is the swing of the storm door requires anyone standing on the stoop to back down onto the yard to allow the door to be opened for access into the house. The original first step is already non-conforming. They are looking for approximately 3'. It will create something that is usable and esthetically pleasing.

**Mr. Haberman** asked if it is coming out to the sidewalk to which Mr. Parker said the sideway that connects the driveway to the front entry.



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

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8. **439 Bridgeport Avenue** (Zone CDD-3) Christian Trefz, appellant, for McDonalds Corporation, owner – request to vary Sec. 5.3.7.11 to allow mansard roof sign to project above the parapet; vary Sec. 5.3.5.1 to allow flag pole to be used as 2<sup>nd</sup> ground sign (only 1 ground sign is permitted), maximum sign height is 20', merchant flag is displayed above the 20' permitted height (varies). CAM required. Map 24, Block 207, Parcel 5.

**Christian Trefz**, 21 Burritts Landing, Westport, owner and operator of the two McDonald's in Milford.

**Chrmn. Katen** asked if Mr. Trefz would like to combine both Items #8 and #9 to which Mr. Trefz answered he would.

**Mr. Trefz** said the variances are to allow a mansard roof banner, 20' wide x 2' high, to remain. It is attached to the parapet of the roof and protrudes 6-8" over. The banner is changed monthly and used to introduce new items, advertise specials, solicit help, etc. The Devon restaurant is in its 43<sup>rd</sup> year and the Turnpike Square restaurant in its 22<sup>nd</sup> year. These banners have been allowed to be there for at least 20 years and he would appreciate the Board's approval to allow them to remain. The second issue is the maximum sign height for the McDonald's flags that fly together with the American flag. These McDonald's flags, also there for at least 20 years, fly below the American flag. Every McDonald's in America is flying both the American flag and McDonald's flag below it. Some restaurants also fly a third flag, the Connecticut flag. He asked the Board to allow him to continue flying the flags at both restaurants.

**Chrmn. Katen** asked Mr. Crabtree if these items have been there for so long, why is it an issue now.

**Mr. Crabtree** answered there is a new flag pole at the Boston Post Road location and when the permit was issued for the new flag pole, they were very explicit to the contractor that it was not for additional purposes. They were cited for having an additional flag. It was discovered they were doing the same thing at the Bridgeport Avenue restaurant. They already have a ground sign at the Boston Post Road location.

**Mr. Spangler** asked what the hardship is to which Mr. Trefz answered it is what McDonald's does and does well. They display the American flag and the McDonald's flag goes with it. It is like a package. It is something they have been doing for many years and he was quite surprised when he received a violation notice from the Planning and Zoning office.

**Mr. Tuozzola** asked if these roof signs are done locally or nationally to which Mr. Trefz answered that 80% of the McDonald's in the country have them. They own 40 restaurants throughout Connecticut and New York and 39 of the 40 do allow the mansard banners.

**Mr. Spangler** asked when the banner sign went up, did he ask if it could be put there or did he just put it up.

**Mr. Trefz** said they have been there since the restaurant opened. They have been there at the Boston Post Road restaurant for 22 years.



**Mr. Mead** said when they fly the McDonald's flag with the American flag, it is a second advertising sign. He asked at what height are the flags flown on the 50' tall flagpole at the Boston Post Road location.

**Mr. Trefz** answered the American flag flies at about 35' and the McDonald's flag is at about 33'.

**Chrmn. Katen** asked Mr. Crabtree if the issue was the entire sign and not the flagpole.

**Mr. Crabtree** answered the flagpole is there and is being used as a 2<sup>nd</sup> pylon or ground sign. The Regulations are clear that only 1 ground sign is allowed per lot. Neither restaurant is located on a corner so they cannot have a second ground sign.

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

9. **1376 Boston Post Road** (Zone CDD-5) Christian Trefz, appellant, for McDonalds Corporation, owner – request to vary Sec. 5.3.7.11 to allow mansard roof sign to project above the parapet; vary Sec. 5.3.5.1 to allow flag pole to be used as 2<sup>nd</sup> ground sign (only 1 ground sign is permitted), maximum sign height is 20'; merchant flag is displayed above the 20' permitted height (varies). Map 89, Block 836, Parcel 59E.

Combined with Item #8.

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10. **79 Orland Street** (Zone R-5) Stephen W. Studer, attorney, for Angelo & Maria Macci, owners – request to vary Sec. 3.1.4.1 side yard setback from 10' to 4' (5' to dwelling; 4' to overhang) to construct new single family dwelling. CAM received. Map 38, Block 559, Parcel 38.

**Attorney Stephen Studer**, 75 Broad Street, submitted three returned letters to the Board. He said the owners, the Macci's, are looking to build a 20' wide house on a 30' wide lot. The additional one foot is not for the house but for the roof eave and the gutters on the right hand side of the structure. He passed out copies of the house to the Board. The lot is narrow, at 30' where 50' is required and undersized, at 3,000 sq. ft. where 5,000 sq. ft. is required. The lot is a pre-existing, nonconforming lot, which was certified in December of 2005 by the Zoning Enforcement Officer under Section 6.4.2. The lot was created in 1918. When the lot was posted, there was no objection filed and no appeals were taken. The prior owner, applied for and received a variance for the side yard setback from 10' to 5' in May of 2006. The Macci's purchased the property in December of 2006 and were aware that a variance was granted. He submitted copies of the prior variance recorded on the land records. He said the variance is broad enough to cover any size house provided the overall length of the proposed structure fits within the rear and front yard setbacks; with the house not being wider than 20'. In May of 2007, the Macci's applied for a side yard variance and was denied without prejudice. Mr. Macci feels the Board might have been troubled by the length of the house and may have felt it was unusual for the neighborhood. It is not. They have new evidence of houses in the area where they are of the same, or close to the same, lengths. He submitted pictures to the Board. The proposed house conforms with the building area, lot coverage, height and story requirements. The first floor will be a 2 car

garage, entry stairway and unfinished space for utilities and storage. The 2<sup>nd</sup> level has 1,200 sq. ft. of living area consisting of 2 bedrooms, kitchen, 2 baths and combination great room, living room and dining area along with a 6' deck on top of the garage at the front of the house. It will be 25' high to the midpoint and the length of the house conforms to the Regulations and is not out of character with the neighborhood nor is it unusual because of the narrow, long length of the lot, 100' where 70' is required. He submitted photos to the Board showing at least 3 properties where this type of variance was granted. He submitted a petition in favor of the application. The hardship is the pre-existing, exceptionally long and narrow, legal non-conforming lot. You have previously granted this same variance to the previous owner, Mr. Giannattasio. The same hardship and the same considerations applied to his application apply to Mr. Macci. You have recently extended that application for one year to 2008. A 20' wide house is the minimum width to accommodate a two car garage. It is consistent with other houses and other setbacks in the neighborhood.

**Mr. Tuozzola** asked if the house would be built or would it be a prefab to which Atty. Studer said a prefab but the foundation for the garage would have to be built in the field by a typical contractor.

**Mr. Mead** asked about the 20% projection rule.

**Atty. Studer** said Ms. Stock said when you vary a sideyard, you are no longer entitled to the automatic projection of 20% or 4', whichever is lesser.

OPPOSED:

**Elizabeth Beirne**, 83 Orland Street, stated when she met with Ms. Stock in June, she was told the Giannattasio variance granted in April of 2006, was void when the next variance was asked for. The next variance was denied without prejudice and the Board told them they could come back but they would have to start from scratch. The design of the structure is the same as what was denied on June 12, 2007. There is no difference. It is still too big and too close. The house next door is only 2.5' away. She is against any deviation from what is allowed for a dwelling. The overhang will almost overhang her fence and driveway. The front yard is not in harmony with neighboring houses. The majority of the houses are setback at least 14.4' to 14.6'. The proposed house will block her view of Long Island Sound in the winter. She asked the Board to deny the application for the 4<sup>th</sup> time.

**Margaret Beirne**, 83 Orland Street asked the Board to deny the variance request. She still does not think this is a legal building lot.

**Ann Maher**, owns 84 and 88 Orland Street, and said it is the 4<sup>th</sup> time this has come before the Board and asked the Board to consider all that has been said before making their decision.

**Chrmn. Katen** asked Mr. Crabtree if he had anything to add to which he said if the plans that applicants are using for the hearings are not what they are planning to build, that they in fact want to make it bigger, they should state that on the record at the hearing.

REBUTTAL:

**Atty. Studer** said they are not proposing to vary the side yard setback as it relates to the Beirne's side. Under the Regulations, the Beirne's are entitled to 5' and they will get the full 5'. The variance is on the southerly side of the property and the owner of that adjacent property has not objected to the proposal. The proposed is a reasonable request and within the character and scale of the development in the neighborhood. He submitted a copy of the approved extension of time given to Mr. Giannattasio's approved variance application.

The hearing was closed.

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11. **78-80 Munson Street** (Zone LI) Anita Flannagan Steenson, attorney, for Mathew Bull, appellant, for H & L Properties, LLC, owner – request to vary Sec. 5.4.2.1 minimum lot area for automotive use from 22,000 sq. ft. to 15,000 sq. ft. Map 32, Block 337, Parcel 8 & 9.

**Mathew & Margaret Bull**, 24 Holly Street, owns Mattie's Service Center, on Bridgeport Avenue and he is looking to relocate to the Munson Street address. A variance was granted in 1996 for this parcel but was never recorded.

**Chrmn. Katen** asked what the use was now to which Mr. Bull answered it is not being used for anything now, just storage of garbage. Four trailers and the building were full of garbage. Since July 1, 2007, he has spent over \$4,000 in dumpsters alone just removing the old tenant's garbage. A truck he hired removed over 350 tires from all around the building.

**Chrmn. Katen** asked Mr. Crabtree for any comments to which Mr. Crabtree said that after the variance was granted there was an unauthorized repairer that moved into the location and was there for years. When the Bulls came in and it was determined the variance was never recorded, I informed them they had to start the process over again.

**Mr. Mead** asked what the hours of operation would be and if there was room for storage of the vehicles.

**Mr. Bull** answered Monday through Friday, 8-5 with no weekend hours and there is room for storage of the vehicles.

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

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12. **3 Walker Street** (Zone R-12.5) Vincent & Victoria Ambrosey, owners– request to vary Sec. 3.1.4.1 front yard setback from 30' to 20' to extend open, covered porch with "doghouse" dormer over. CAM received. Map 45, Block 513, Parcel 5.

**Victoria & Vincent Ambrosey**, 3 Walker Street, said they are remodeling their home and would like to add a porch to the front of the house.

**Chrmn. Katen** asked if there were an existing porch there now.

**Mr. Ambrosey** answered no. They have an approved plan for a side porch that stops 10' shy of the end of the house due to the front yard setback. So they are requesting a variance to continue the porch all the way to the end of the house.

**Mr. Mead** asked if the stairs are off of the porch or built in, to which Mr. Ambrosey answered they are built in.

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

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13. **198 West River Street** (Zone R-12.5) John Grant, appellant, for Melvyn & Amanda Pond, owners— request to vary Sec. 3.1.4.1 front yard setback from 30' to 22' to erect addition. Map 65, Block 314, Parcel 27.

**John Grant**, JLG Designs, 11 Ettadore Park, said the hardship is it is a corner lot which is narrow in the front and widens out towards the rear of the lot. The addition would be for a mudroom entry and family room. The portion of the addition that is encroaching into the setback is only 98 sq. ft. The existing house already encroaches on the Bridge Street side. They are keeping the addition in line with the house, by filling in the balance of the triangle that encroaches over the line. It is only about 23' that sticks out. There are no neighbors on that side, only trees.

**Mr. Tuozzola** said the existing house is 8' from the property line and the new addition will be 23' from the property line to which Mr. Grant said that was correct.

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

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14. **130 Fourth Avenue** (Zone R-10) Thomas Cianciolo, owner— request to vary Sec. 3.1.4.1 side yard setback from 10' to 2'3" and rear yard setback from 25' to 3'11" to construct 1 ½ story addition. CAM required. Map 9, Block 78, Parcel 19.

Thomas Cianciolo, 130 Fourth Avenue, said his hardship is he has had the use of his neighbor's garage where he stored numerous items and now the neighbor is selling his home. Another hardship is the size of his lot; there is no room to expand. Throughout Laurel Beach there are numerous passways. He lives on one of the passways. It is useless land because you have no privacy and you can't do anything on that side. The addition would be for yard equipment and tools, bikes, a boat and beach equipment. It will have no access to the house, no heat and no plumbing. It will have a pull down staircase to the second floor and will be built on a concrete slab. He submitted letters from the neighbors in support of the application which he submitted to the Board. Plans submitted to the Laurel Beach Association and Board of Managers have met with no objections.

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

The Board took a recess.

Minutes of Business Meeting of Zoning Board of Appeals August 14, 2007

**MEMBERS PRESENT:** Richard Carey, Howard Haberman, Fred Katen, Edward Mead, Joseph Tuozzola, Sr.

**ALTERNATES PRESENT:** Ronald Spangler

**STAFF PRESENT:** Peter W. Crabtree, Assistant City Planner; Rose Elliott, Clerk

[10:27:46 PM](#)

1. **28 Atwood Street** (Zone R-7.5) Max S. Case, attorney, Bastarache Properties, LLC, owners – appeal the decision of the Zoning Enforcement Officer's determination of a non-conforming lot. Map 32, Block 351, Parcel 6.

**Mr. Tuozzola** made a motion to deny the appeal and uphold the decision with Mr. Carey seconding. The reason for denial is the belief that the shed was there for nine years thus constituting a merger of the lot. The motion carried unanimously with Messrs. Mead, Tuozzola, Haberman, Carey and Spangler voting.

2. **320 Calf Pen Lane cor. Buckingham Avenue** (Zone R-10) Thomas B. Lynch, attorney, for Kayser Martin, owner – request to vary Sec. 3.1.4.1 lot size from 10,000 sq. ft. to 9,124 sq. ft. to create legal non-conforming building lot. CAM required. Map 46, Block 529, Parcels 2 & 3.

**Mr. Haberman** made a motion to deny with Mr. Mead seconding. The reason for denial is the lack of a hardship. Even though there have been other properties developed on 8,000 sq. ft. lots over time, that is not a hardship and doesn't justify making the area denser. The motion carried 4 to 1 with Messrs. Mead, Tuozzola, Haberman and Katen voting for and Mr. Carey voting against.

3. **3 Willow Street** (Zone R-5) Andrew P. Wilson, owner – request to vary Sec. 3.1.4.1 rear yard setback from 20' to 14.3' to reconstruct two story single family dwelling. CAM required. Map 35, Block 439, Parcel 17.

**Mr. Tuozzola** made a motion to approve with Mr. Mead seconding. The reason for approval is the house will be a complete rebuild on the original footprint. The motion carried unanimously with Messrs. Mead, Tuozzola, Haberman, Carey and Katen voting.

4. **64 Cherry Street** (Zone RO) Monica Costantini, owner – request to vary Sec. 5.3.4.1 to allow a ground sign with 9.26 sq. ft. where 9 sq. ft. is permitted; vary sign front yard setback from 10' to 2' to allow ground sign to remain. Map 66, Block 822, Parcel 38.

**Mr. Mead** made a motion to approve with Mr. Tuozzola seconding. The reason for approval is the sign has been in existence in the same location for over 30 years. The new sign has a slight increase of 9 sq. ft. The motion carried unanimously with Messrs. Mead, Tuozzola, Haberman, Carey and Katen voting.

5. **79 Harkness Drive** (Zone R-7.5) Douglas & Myriam Hill, owners – request to vary Sec. 3.1.4.1 side yard setback from 10' to 5' to construct attached garage. Map 34, Block 215, Parcel 48.

**Mr. Carey** made a motion to approve with Mr. Tuozzola seconding. The hardship is the shape of the lot. The motion carried unanimously with Messrs. Mead, Tuozzola, Haberman, Carey and Katen voting.

6. **11 Grassy Lane** (Zone R-7.5) Christine Lill, appellant, for Christopher Lill, owner – request to vary Sec. 4.1.1.4 to allow open front porch to be 3' from garage where 8' is required. Map 76, Block 918, Parcel B12 .

**Mr. Tuozzola** made a motion to approve with Mr. Carey seconding. The reason for approval is the house is being remodeled and the extension will follow the lines of the house and will keep the same distance to the existing garage. The motion carried unanimously with Messrs. Mead, Tuozzola, Haberman, Carey and Katen voting.

7. **48 Oriole Lane** (Zone R-12.5) Willard J. Parker, appellant, for William & Patricia DiSiero, owners – request to vary Sec. 4.1.4 to allow new enlarged stoop 8'x9'+/- , to project to within 22' of the front property line where 26' front yard setback is required. CAM received. Map 71, Block 755, Parcel 5.

**Mr. Carey** made a motion to approve with Mr. Haberman seconding. The hardship is the placement of the house on the lot and there is also a safety issue. The motion carried unanimously with Messrs. Mead, Tuozzola, Haberman, Carey and Katen voting.

8. **439 Bridgeport Avenue** (Zone CDD-3) Christian Trefz, appellant, for McDonalds Corporation, owner – request to vary Sec. 5.3.7.11 to allow mansard roof sign to project above the parapet; vary Sec. 5.3.5.1 to allow flag pole to be used as 2<sup>nd</sup> ground sign (only 1 ground sign is permitted), maximum sign height is 20', merchant flag is displayed above the 20' permitted height (varies). CAM required. Map 24, Block 207, Parcel 5.

**Mr. Haberman** made a motion to deny with Mr. Carey seconding. The reason for denial is the lack of a hardship shown. The motion carried unanimously with Messrs. Mead, Tuozzola, Haberman, Carey and Katen voting.

9. **1376 Boston Post Road** (Zone CDD-5) Christian Trefz, appellant, for McDonalds Corporation, owner– request to vary Sec. 5.3.7.11 to allow mansard roof sign to project above the parapet; vary Sec. 5.3.5.1 to allow flag pole to be used as 2<sup>nd</sup> ground sign (only 1 ground sign is permitted), maximum sign height is 20', merchant flag is displayed above the 20' permitted height (varies). Map 89, Block 836, Parcel 59E.

**Mr. Carey** made a motion to deny with Mr. Haberman seconding. The reason for denial is the lack of a hardship shown. The motion carried unanimously with Messrs. Mead, Tuozzola, Haberman, Carey and Katen voting.

10. **79 Orland Street** (Zone R-5) Stephen W. Studer, attorney, for Angelo & Maria Macci, owners— request to vary Sec. 3.1.4.1 side yard setback from 10' to 4' (5' to dwelling; 4' to overhang) to construct new single family dwelling. CAM received. Map 38, Block 559, Parcel 38.

**Mr. Mead** made a motion to deny with Mr. Tuozzola seconding. The reason for denial is the last application was denied without prejudice with the hope that the applicant would come back with a better plan for the overhang, but the applicant did not. The motion carried unanimously with Messrs. Mead, Tuozzola, Haberman, Carey and Katen voting.

11. **78-80 Munson Street** (Zone LI) Anita Flannagan Steenson, attorney, for Mathew Bull, appellant, for H & L Properties, LLC, owner— request to vary Sec. 5.4.2.1 minimum lot area for automotive use from 22,000 sq. ft. to 15,000 sq. ft. Map 32, Block 337, Parcel 8 & 9.

**Mr. Tuozzola** made a motion to approve with Mr. Haberman seconding. The reason for approval is this is a commercial zone and the applicant will be improving the area. The motion carried unanimously with Messrs. Mead, Tuozzola, Haberman, Carey and Katen voting.

12. **3 Walker Street** (Zone R-12.5) Vincent & Victoria Ambrosey, owners— request to vary Sec. 3.1.4.1 front yard setback from 30' to 20' to extend open, covered porch with “doghouse” dormer. CAM received. Map 45, Block 513, Parcel 5.

**Mr. Mead** made a motion to approve with Mr. Haberman seconding. The reason for approval is the applicant is putting an addition on the second floor with a front porch that will be within the setbacks. They just want to square off the corner where the front porch meets the house. There will be no stairs. The motion carried unanimously with Messrs. Mead, Tuozzola, Haberman, Carey and Katen voting.

13. **198 West River Street** (Zone R-12.5) John Grant, appellant, for Melvyn & Amanda Pond, owners— request to vary Sec. 3.1.4.1 front yard setback from 30' to 22' to erect addition. Map 65, Block 314, Parcel 27.

**Mr. Haberman** made a motion to approve with Mr. Tuozzola seconding. The hardship is the shape of the lot and it is also a corner lot. The motion carried unanimously with Messrs. Mead, Tuozzola, Haberman, Carey and Katen voting.

14. **130 Fourth Avenue** (Zone R-10) Thomas Cianciolo, owner— request to vary Sec. 3.1.4.1 side yard setback from 10' to 2'3" and rear yard setback from 25' to 3'11" to construct 1 ½ story addition. CAM required. Map 9, Block 78, Parcel 19.



**Mr. Mead** made a motion to approve with Mr. Haberman seconding. The hardship is the placement of the house on the lot and the shape of the lot. The storage area will not contain living space. The motion carried unanimously with Messrs. Mead, Tuozzola, Haberman, Carey and Katen voting.

**B. TABLED BUSINESS**

**C. OLD BUSINESS**

**D. NEW BUSINESS**

1. **105 Melba Street** – request for an extension of time.

Mr. Crabtree stated the applicants were about to run out of time and the approval just needs to be rolled over. The motion to approve the extension of time for one year carried unanimously.

2. **115A Merwin Avenue** – request for an extension of time.

Mr. Mead asked if this was the beach side home or the street side home to which Mr. Crabtree stated it was the beach side home. The motion to approve the extension of time for one year carried unanimously.

3. **715 East Broadway** – consideration of the need for additional variance. A discussion was held between Mr. Crabtree and the Board with the outcome being the owners would have to apply for another variance.

**E. STAFF UPDATE**

**F. ACCEPTANCE OF MINUTES FROM JULY 10, 2007 MEETING.**

The minutes were approved unanimously.

**G. ACCEPTANCE OF APPLICATIONS FOR SEPTEMBER 11, 2007.**

The meeting was adjourned at 10:45 p.m.

Attest:

Rose M. Elliott  
Clerk - ZBA