

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 7:00 p.m.

A. CONSIDERATION OF AGENDA ITEMS

1. **59 Sixth Avenue** (Zone R-10) Brian Lema, attorney, for Michelle Smith, owner – request to vary Sec. 3.1.4.1 side yard setback from 10' to 8'; rear yard setback from 25' to 10'6" and 11'9"; building area from 35% to 36% to construct addition. CAM received. Map 9, Block 128, Parcel 14.

Brian Lema, 75 Broad Street, attorney for owner, Michelle Smith, who is requesting a variance to construct a single story addition to the rear of the existing home. The addition will expand the existing family room area; the existing bathroom will be relocated and a guest bedroom added to the lowel level. The lot is 4780 s.f. in an R-10 zone, approximately 45'x90'. He submitted paperwork to the Board. The lots were created in 1901 and predate zoning. Lot #58 and a portion of Lot #59 were merged by ownership and use to create 59 Sixth Avenue. The lot is narrow at 45' wide where 70' is required. The lot is also short, 90' where 100' is required. The lot is undersized, does not comply with the standards of the R-10 zone and is one of the smallest lots on Sixth Avenue. The hardships are the lots were created prior to Subdivision Regulations and the lot is undersized in all respects: lot area, lot depth and lot width. The proposal is in harmony with the existing character of the neighborhood. The improvements to the house will improve property values in the area and will allow the reasonable and continued use and enjoyment of the residence. It will not have an adverse impact on the neighbors. He added there was a letter of support from all the adjoining neighbors in the file.

Chrmn. Katen stated this was not the first time this application was before the Board to which Atty. Lema said the owner appeared before the Board in March and was denied, 3-2. They are here with essentially the same application, although it has been reduced in size by ½ a foot in depth. They felt it was appropriate to reappear because sometimes, lay people are not as familiar with what are considered hardships. He thought it would be helpful if he could submit some information regarding the neighborhood. Hopefully, he has now presented some additional information that was not presented with the last application to help facilitate the Board's consideration of the application.

Chrmn. Katen said it looked like they were not extending any further into the setback, only squaring off the house.

Atty. Lema said that was correct.

Mr. Haberman confirmed that this house is 50% smaller than the other lots on the street to which Atty. Lema answered in the affirmative, adding only 81 Sixth Avenue is smaller.

FAVOR:

Chrmn. Katen read the petition into the record.

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

DISCUSSION:

Mr. Carey made a motion to approve with Ms. Seltzer seconding. The reason for approval is the lot predates zoning, is undersized and is the smallest lot in the neighborhood. Approving this application will allow the applicant reasonable use of the property. Chrmn. Katen added it will not be going beyond the footprint on the rear and the side. The motion passed unanimously with Ms. Seltzer, Messrs. Carey, Haberman, Mead and Katen voting.

2. **27 Arlmont Street cor. Thornton Street** (Zone R-7.5) James & Wendy Williams, owners – request to vary Sec. 3.1.4.1 front yard setback from 20' to 4.3'+/- to construct addition. Map 32, Block 349, Parcel 6.

Jim Williams, 27 Arlmont Street, said they are requesting a variance to extend the home and add a garage. The house is on a corner lot. The property line on Thornton Street angles in so the house is closer to Thornton Street. The addition will run flush with the existing house. The existing house sits 11' from the property line; the proposed garage will sit at 4.3'. Although the corner of the garage is 4.3' from the property line, it will still be 20' off the edge of the street.

Mr. Mead asked if the City owned the property where the existing gravel driveway is to which Mr. Williams answered yes.

Ms. Stock added they would have to go to Engineering to plot out where the driveway could go.

Mr. Haberman asked even though the addition would be 20' to the road, did they ever consider moving it over for less of an encroachment.

Mr. Williams said part of the idea for the addition was to extend the kitchen.

Ms. Seltzer asked about the shed on the property.

Ms. Stock said it was already discussed with the applicant and the shed will be taken down along with the pool.

Ms. Seltzer repeated Mr. Haberman's question about considering moving the addition to which Mr. Williams said he would consider moving it a little bit but no matter where he moved it to, he would still have to apply for a variance.

Mr. Mead asked how long they have lived there to which Mr. Williams said since 1990.

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

DISCUSSION:

Chrmn. Katen said even though it is 4' to the property line, there is 20' to the road. He felt the Board should take that into consideration.

Ms. Seltzer made a motion to approve with Mr. Mead seconding. The hardship is the shape of the lot and the distance between the City property and their property. **Chrmn. Katen** added no matter how they reconfigured the addition, they would still require a variance. The 20' to the road makes the variance request palatable. Mr. Mead added they have two front yards. The motion passed unanimously with Ms. Seltzer, Messrs. Carey, Haberman, Mead and Katen voting.

3. **175 Forest Road** (Zone RA) Linda Leo, owner – request to vary Sec. 3.1.4.1 side yard setback from 25' to 21' and rear yard setback from 50' to 46' to construct addition. Map 88, Block 832, Parcel 33.

Stephen Leo, 175 Forest Road, husband of the owner, Linda Leo, submitted paperwork to the Board. He said the lots were created in 1939. He added his section of Forest Road has remained an RA zone while all around it, the zones have changed. Across the street it is R-30; behind it is Forest Glen in a PRD; below the turnpike is R-18 and RMF-16; above it on Cedarhurst Lane, the first houses are RA, but behind that is R-30. They have the smallest lot on Forest Road, at .35 acres, 1/3 of the requirement for an RA zone. Also, there are topographical problems. The requirement is for a 50' front yard setback but their house is setback 86' because most of the yard is a hill. The builder had no choice but to put the house way back on the property. The existing rear yard is only 30' instead of the requirement of 50'. He added they also abut about 250' of open space of Forest Glen. He added the width requirement is 150' and they only have 100'. They are a small lot. He added they have lived there since 1986 and all the bedrooms are upstairs. His wife is ill and they would like to have a bedroom downstairs. There is no other place to put this addition on the property. He submitted a letter of support from the neighbor most affected by the addition.

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

DISCUSSION:

Chrmn. Katen said it is a small, odd shaped lot and the placement of the house on the lot is the hardship. Ms. Seltzer agreed. Chrmn. Katen reminded the Board that they cannot consider medical conditions in their decision. He added the ledge and the hill cover a lot of the area of the lot and cannot be used which only adds to the hardship.

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

4. **523 Orange Avenue cor. Singer Terrace** (Zone R-18) Michael Paoletta, owner – request to vary Sec. 4.1.7 fences and walls to allow 6' high solid fence in front yard. Map 98, Block 835E, Parcel 1.

Michael Paoletta, 523 Orange Avenue, said he replaced an existing 3½' high wire fence with a 6' high vinyl fence. He submitted pictures to the Board. He stated he

lives across the street from the baseball field. It is a very busy corner with the ballplayers walking around and drinking beer. He put a 6' high fence there for safety reasons for his wife and daughter and her friends when they come over to use the pool. The pictures tell the story. The guys hang out in their cars on Singer Terrace using foul language and it is inappropriate for his family. The fence does not block anyone's driveway.

Chrmn. Katen confirmed there was a 3' high fence there to which Mr. Paoletta said that was correct and he replaced it. Chrmn. Katen stated 6' high fences are not allowed in the front yard.

Mr. Paoletta said he put up the 6' high fence because the ballplayers are right on top of his property and can look right into his back yard. He has to clean up the property after the games and he worries about the safety of his family. He doesn't like people whistling at his daughter and his wife as they are going into the pool. It is a safety issue and doesn't want anyone bothering his family.

Chrmn. Katen said he understands why he put up the fence but wished he had contacted the Planning and Zoning office to see if it was allowed before he spent the money to put up the fence. He said there has to be other ways to remedy this.

Ms. Seltzer said the ballfields have been there a long time and asked when the house was purchased.

Mr. Paoletta answered he and his family have lived there since 2002. It wasn't an issue then. It has now become a safety and privacy issue for his family. He shouldn't have to go out in his backyard with his family and friends and see guys drinking beer and hear them swearing.

Chrmn. Katen said if that is the case, you should contact the police because there are a lot of streets here that border ballfields. A 6' high fence is not going to stop people from drinking beer to which Mr. Paoletta said he understood that. Chrmn. Katen said there are other things, like a 4' fence or 6' tall trees, that he can do. A 6' high solid vinyl fence is not appropriate.

Ms. Seltzer agreed with the planting of tall shrubbery in its place.

Chrmn. Katen said while he understood the situation and felt for the applicant, there was just no hardship. There are portions of the fencing that can remain.

Mr. Paoletta asked where his privacy was?

Ms. Stock, when asked for comments, added a neighbor came into the office and didn't have an issue with the fence.

OPPOSITION:

Sheila Wolfe, 4 Lowell Terrace, said she was concerned whether the fence was going to be extended to Orange Avenue to which Chrmn. Katen said it would not be extended to Orange Avenue.

Karen Geanocopoulos, 86 Mansfield Road, said she has no problem with the fence as it is now. She was only also concerned it would be extended to Orange Avenue. If it stays as it is now, she doesn't have a problem with it.

Tom McNemar, 65 Mansfield Road, felt if the fence were to be placed closer to Orange Avenue, it would be difficult to get out of the street. He did sympathize with the applicant and he has called the police himself on several occasions. The police do nothing.

REBUTTAL:

Mr. Paoletta said when he first moved there, he had the same situation on his front yard as he now has on the side. The first week he was there, he pulled out of his driveway and had an accident because you have to pull so far into the street before you can see the oncoming traffic. He went to the Police and they posted no parking signs. Why shouldn't he have no parking on the side street from the tree, right where the fence starts, to the corner. There wouldn't be a problem then.

Ms. Stock said to Mr. Paoletta if he wants a no parking zone there, he needs to address that with the Police Commission.

Chrmn. Katen agreed with Ms. Stock and added if there is a matter that requires more police attention, then a petition should be drawn up and signed by all the neighbors, stating they would like more police coverage when the games are held. He said a no parking zone sounds like another way to handle the situation. He couldn't remember the last time a 6' high solid fence in the front yard was approved. He is sympathetic to the applicant's plight but everyone on Orange Avenue would be applying for a 6' high fence if this were approved.

The hearing was closed.

DISCUSSION:

Mr. Haberman said he sympathized with the applicant and understood his reasons for wanting to have the fence there but didn't think variances were the way to handle police matters. There are other options. Mr. Mead reminded the Board a 6' high fence was approved on Hawley Avenue a couple of years ago. It was on a corner and it was allowed to remain because the lot had no yard at all; that was the only place for a yard.

Mr. Carey made a motion to deny with Mr. Haberman seconding. There was no hardship shown and there are other avenues the applicant can take by putting up a legal fence and addressing his privacy issues in other ways. The motion carried unanimously with Ms. Seltzer, Messrs. Carey, Haberman, Mead and Katen voting.

5. **92 Naugatuck Avenue thru Walnut Avenue** (Zone CDD-2) Rosette Liberman, owner – request to vary Sec. 3.17.4.2(1)(a) front yard setback from 10' to 5' and 7' to construct one story addition. Map 16, Block 152, Parcel 5.

Rosette Liberman, 92 Naugatuck Avenue, said she would like to enclose the existing porch and square off the footprint of the house. She submitted photos to the Board. The hardship is the house was built in 1925 and predates Zoning Regulations. This small alteration will improve the value of the properties in her neighborhood.

Mr. Mead asked if it would add more living space to which Ms. Lieberman answered in the affirmative.

Ms. Seltzer asked what the hardship was.

Ms. Lieberman said the house was built in 1925 and predated zoning.

Ms. Stock added this property is not located in a single family residential zone. It is a Corridor Design District and only requires a 10' front yard setback.

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

DISCUSSION:

Mr. Carey made a motion to approve with Ms. Seltzer seconding. The hardship is the width of the lot and the fact that it predates zoning. The addition will square off the house, not encroaching anymore than what is already there. The motion carried unanimously with Ms. Seltzer, Messrs. Carey, Haberman, Mead and Katen voting.

6. **64 Shell Avenue** (Zone R-5) Scott Farquharson, appellant, for Vladimir & Mira Sabin, owners – request to vary Sec. 3.1.4.1 side yard setback from 5' to 1.65' to allow dwelling to remain. CAM received. Map 27, Block 443, Parcel 6.

John Grant, 11 Ettadore Park and Vladimir Sabin, 64 Shell Avenue, are requesting a variance to allow the existing dwelling to remain. The hardship is the small size of the lot, 2700 sq. ft. in a zone where 5,000 sq. ft. is required. The width is also undersized, 30' wide where 50' is required. This was first before the Board in July of 2006 and was denied without prejudice but was approved when it was before the Board again in August of 2006. In October, a contractor was hired and in December, a permit was issued by the Planning and Zoning Dept. Between December of 2006 and March of 2007, the drawings were submitted to the Building Dept. for review. In March, Mr. Sabin was told by the Building Dept. that any wall of a dwelling that is within 3' of a property line can have no openings and must be fire rated. Since all of the bedrooms, bathrooms and most of the living space was on that side of the house, Mr. Sabin had to 1) move the house over more to the center of the lot or 2) remove all the windows on that side per Building code which would then put him in violation of other Building Codes or 3) fire rate all the windows. Option 3, was cost prohibitive. Option 2, was sought by a variance request in May of 2007, which was denied. The only option left was to redesign the house which they did. They submitted the plans to the Building Dept. for review and a Building Dept. permit was issued. The contractor did not understand that variance approval is for exactly what is shown on the plans at the time of the application and not approval to encroach the whole length of the property line. When Mr. Crabtree did an inspection for a Certificate of Zoning Compliance, he informed the contractor of his error. It was suggested to Mr. Sabin to reapply for Zoning Board of Appeals approval to keep the house the way it is and that is why they are here this evening.

Mr. Sabin added they did not exceed any allowed setbacks, they are exactly at what was approved. Only the inside of the house was flipped.

Chrmn. Katen confirmed the house wasn't built to what was approved.

Mr. Grant said it was built to maintain the setback that was required. There is approximately 8 sq. ft. of house that is closer to the property line than what was on the original footprint.

Chrmn. Katen asked who screwed up to which Ms. Stock said when plans are brought to the Building Dept. and the plans are not what Planning and Zoning has

signed off on, the Building Dept. should have sent them back to Zoning, which they did not do in this case.

Chrmn. Katen said this is ludicrous.

Mr. Carey stated the Board has to look at this plan as a new plan and take into consideration whether they would have approved it this way or would it have made a difference and been denied. He said personally he saw no difference.

Ms. Seltzer asked Ms. Stock to explain what was originally approved since she was not on the Board at that time to which Ms. Stock explained.

Mr. Sabin said he believes since the ZBA approved the bump out to 1.63' from the property line, the builder and the Building Dept. both assumed it was okay to come that close all the way down the property line.

Ms. Stock said the Building Dept. is not the reason for the hardship but it is the reason these gentlemen are here this evening. This wasn't discovered until the As-built was received by this office. The homeowner is left holding the bag. He did what he was required to do.

FAVOR:

Nancy Pocock, 60 Shell Avenue, said Mr. Sabin built a lovely home and she hoped the Board would consider their application.

Mary Ann Griffin, 53 Shell Avenue, requested the Board to grant the application as Mr. Sabin has taken an undesirable, poorly maintained, animal infested house down and replaced it with a beautiful home that complements the neighborhood.

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

DISCUSSION:

Chrmn. Katen said the Board has no control over the situation and the applicant did everything correctly. The builder is at fault for not checking and blindly going along as is the Building Dept. for this screw up.

Mr. Carey made a motion to approve with Ms. Seltzer seconding. The hardship is the same as the original variance request. Chrmn. Katen agreed. The motion carried unanimously with Ms. Seltzer, Messrs. Carey, Haberman, Mead and Katen voting.

7. **847 East Broadway** (Zone R-7.5) Kevin J. Curseaden, attorney, for William C. & Pamela T. Doolittle, owners – request to vary Sec. 3.1.4.1 front yard setback from 20' to 16'; side yard setbacks from 10' to 3' (to building) and 2' (to overhang); other side from 5' to 1.84' (to building) and .73' (to overhang); vary Sec. 4.1.5 paved area setback from 4' to 3.59' and 2.47' to construct new 3 story single family dwelling. CAM received. Map 7, Block 475, Parcel 27.

Kevin Curseaden, attorney, 26 Cherry Street, said the lot and house are legal, pre-existing, non-conforming with the plot plan filed in the Land Records in 1911. The summer home built on the undersized lot cannot be rehabilitated. A variance is needed for a new home. The hardship is the size and shape of the lot. Another

hardship is a 5' passway that impacts only East Broadway. They would be decreasing the non-conformity of the front yard from 15' to 16'.

Mr. Haberman asked if the new home would be built on the existing footprint to which Atty. Curseaden said it is being extended a little bit.

Mr. Haberman asked how far is it being extended to which Atty. Curseaden said an additional 20'.

Ms. Seltzer asked what the percentage of building coverage is existing and what is proposed.

Atty. Curseaden said he didn't know what was existing but the proposed would be 15.3%.

Ms. Seltzer said the proposed house would be so close to the neighbors and wondered how could they build without encroaching on the neighbors property. She asked how they will protect the neighbors from the water from the overhangs? Will there be an agreement with the neighbors?

Atty. Curseaden answered during construction, they will not have full control over the laborers on a day by day basis. The owners have had conversations with the neighbors.

Jim Denno, 93 Sunnyside Court, architect, said the roofing is designed so water would not be going to either side. There is a gutter in the back and one in the front.

Mr. Haberman said it appeared that the proposed three story house is approximately the same height as the two, 2 story houses on either side of it.

Mr. Denno said the proposed home is probably about 3' to 3½' lower than the old house.

Chrmn. Katen asked how much closer to the property lines is the proposed house compared to the old house.

Atty. Curseaden answered the eastern side, with the overhang, is a foot closer and the western side, with the overhang, also a foot closer.

OPPOSITION:

Lois Fagan, 856 East Broadway, said she is pleased the Doolittle family is seeking to improve the existing home. All the old un-winterized homes are being taken down and new homes are being built and Milford's tax base can really grow. However, she has serious concerns about the side yard setbacks. The existing setbacks are really too narrow by today's standards and reducing them would be dangerous for 3 reasons. 1) Emergency response would be slowed by EMT's struggling to fit through the narrow passages with all their equipment for medical emergencies on the beach such as heart attacks and diabetic shock. 2) Fire personnel might get stuck in the passageways with all their hoses and extremely heavy gear. 3) In case of fire, all the houses on East Broadway are too close already. A fire could spread to adjacent dwellings. To uphold public safety, the Board should instruct the applicants to modify the plans.

REBUTTAL:

Atty. Curseaden said the proposed house will probably be safer when it is rebuilt with the existing codes, firewalls and fire rated windows that would be required as part of the project. The harshness of the variance is not that much different than

what is existing. He added he didn't think the firemen would have a hard time getting through and it will be much less likely that there will be a fire with the existing codes.

The hearing was closed.

DISCUSSION:

Chrmn. Katen said if the proposed house was to be built on the same footprint he wouldn't have as much ambivalence. He doesn't see a hardship. Ms. Seltzer agreed that extending beyond the footprint is increasing the density in an area that is so dense already. If it would remain within the footprint, it would be different.

Mr. Carey made a motion to deny without prejudice with Mr. Mead seconding. The applicant can redesign the plans and come back. The motion carried unanimously with Ms. Seltzer, Messrs. Carey, Haberman, Mead and Katen voting.

8. **786 East Broadway cor. Gardner Avenue** (Zone R-5) Ray S. Oliver, agent, for Nicholas Amico, owner – request to vary Sec. 3.1.4.1 front yard setback from 10' to 5' on Gardner Avenue; rear yard setback from 20' to 4' and 15.5' to construct new single family dwelling. CAM received. Map 27, Block 455, Parcels 5 & 6.

Ray Oliver, 3 Lafayette Street, architect, said the variance is to replace the existing house with a new single family dwelling. The lot predates zoning. This parcel is comprised of two lots that were determined by this Board to be merged in 1991. The hardship is it is an odd shaped corner lot with 2 front yards. The setback on the East Broadway side will be increased from 8' to 25' to center the house more on the property. The rear yard setback of the existing house is the same distance now that the proposed house will be. The proposed house will have 2 offstreet parking spaces. There will be no living area on the first floor. The main living area will be on the second floor with living room, dining room and family room with 2 children's bedrooms and a master bedroom on the third floor. The overall height will be 30'9" to the mean height. The drainage from the building and the site would be directed toward the front and the rear so no water would be coming to the sides of the property. The engineer, Ted Witek, has designed inventive biological absorption devices for the property. A rain garden, which would be planted along the side to absorb some of the water from the dwelling and also a biofiltration area in the rear of the house to function as a drywell system would be built. He felt the proposed house would enhance the neighborhood.

Chrmn. Katen confirmed the proposed house would be further back from East Broadway than what is existing to which Mr. Oliver said that was correct.

Mr. Haberman said it appeared they were doubling the length of the existing home.

Mr. Oliver said that was true. The proposed building area is 39% with the lot coverage at 50%, where 65% is allowed.

Ms. Stock said the shape of the property is very odd.

Mr. Haberman said it appeared that the proposed home will be taking up the entire yard. It will be a 35' high, elongated house with a garage on one side and no land to which Mr. Oliver said that is true in the front because the lot is only 25' wide but the

rear part of the house is quite open. The property behind the house is a City parking lot.

Chrmn. Katen asked what was the hardship.

Mr. Oliver said the property is narrow and of a difficult configuration. The lots predate zoning.

Ms. Stock added that even though the plan looks huge, the lot coverage and the building coverage have not been met.

FAVOR:

Nicholas L. Amico, 22 Sobin Drive, Ansonia, said his son was the owner of the home and two years ago he passed away, leaving the property to him. His son's intent was to always improve on the property by extending it. East Broadway will be the address. There will be no impact on parking as they will have 2 off-street parking spaces. They enjoy the neighborhood and the area and plan on making it a residence. His son, bought the house in 1987, never rented it and they will do the same thing. It will be their residence. It will improve the neighborhood.

Ken Haddad, 836 East Broadway, said he just built a house nearby. He has lived down the street from the Amico's in Ansonia all his life. He has known these people to always maintain everything in pristine condition. They are assets to the neighborhood in Ansonia and would be the same in Milford as well.

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

DISCUSSION:

Mr. Haberman said the Board is being asked to grant a variance to double the non-conformity for the length of the home. He didn't think the Board should be doing that. Chrmn. Katen said the house could be extended even more. Mr. Carey said the applicant has worked with Planning and Zoning to come up with a suitable plan to build on an odd shaped lot.

Ms. Seltzer made a motion to approve with Mr. Carey seconding. Approval is for reasons previously stated. The motion carried 4-1 with Ms. Seltzer, Messrs. Carey, Mead and Katen voting in favor and Mr. Haberman against.

B. TABLED BUSINESS

C. OLD BUSINESS

Ms. Stock informed the Board the Judge in the Ansonia Superior Court has made his decision regarding the Silver Street case and the City has won, finally. However, she believes they will be appealing it to the Appellate Court. She added Peter's order is still going through the process. The Ziebell's have been ordered by the Judge to remove the structure so we will see what happens. If they don't appeal to the Appellate Court and they don't remove the structure, then we bring them in for contempt of Court. Mr. Mead asked how long they had to appeal to which Ms. Stock said she thought it was thirty days.

D. NEW BUSINESS

E. STAFF UPDATE

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

The minutes were approved unanimously.

G. ACCEPTANCE OF APPLICATIONS FOR OCTOBER 14, 2008 MEETING.

The meeting was adjourned at 9:00 p.m.

Attest:

Rose M. Elliott
Clerk - ZBA