

**MEMBERS PRESENT:** Rich Carey, Howard Haberman, Fred Katen, Nanci Seltzer, Joseph Tuozzola

**ALTERNATES PRESENT:** Tom Nichol, William Evasick

**STAFF PRESENT:** Kathy Kuchta, Zoning Enforcement Officer, Rose Elliott, Clerk

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

## **A. CONSIDERATION OF AGENDA ITEMS**

1. **23 Morehouse Avenue** (Zone R-5) Allan York, owner – request to vary Sec. 3.1.4.1 side yard setback to 4.2' (3.2' to overhang) in lieu of 5' required to construct new single family dwelling. CAM required. Map 30, Block 638, Parcel 24.

**Allan York**, 23 Morehouse Avenue, owner, said he is looking to build a new single family dwelling. The current setback on the side yard is 3'2". He would like to maintain that setback with the proposed new house. While most of the people in the neighborhood park on the street, he requires the variance to be able to park his car the way he always has, in his driveway on the side of the house. The new structure would be no wider than what is there now. He is not looking to gain anything, only to keep what he already has.

**Chrmn. Katen** asked if the new house would be on the same footprint to which Mr. York answered the footprint would be longer. The front and rear setbacks would conform to the zoning regulations and the house would be taller.

**Mr. Tuozzola** confirmed the structure currently was 3.2' from the property line.

**Mr. York** said that was correct and he would be moving the house in to a distance of 4'2", so his new overhang would be where his current structure is now.

**Mr. Haberman** asked how much longer the house would be?

**Mr. York** answered it is currently 40' long and would be 64' long; 20'x64'.

**Ms. Kuchta** added the front yard would be more conforming as the homeowner is removing a large deck.

**Ms. Seltzer** asked if he had considered rather than following the same footprint to remove the side deck and move the house over.

**Mr. York** said the deck would be above the driveway and if he built the house without a deck, there would be no reason for him to stay there. The current foundation is 20' wide, which he will maintain. The house will only be 16' wide. The deck is going to be 4' to where the foundation wall would be and then cantilevered 2' up in the air. He showed the plans to Ms. Seltzer.

**Mr. Haberman** asked how his new house would compare to the other houses on the street to which Mr. York answered there are no houses on his side of the street that length, but there are 3 houses of equal length on the opposite side of the street.

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

## **DISCUSSION:**

**Ms. Kuchta** told the Board when a house is raised for FEMA flood standards, you are allowed a 4' deck projection to enter and exit your home. Chrmn. Katen said it

appeared the new house would be along the same line as the existing house and did not see a problem with it.

**Mr. Tuozzola** made a motion to approve with Mr. Carey seconding. The variance is only for the eastern side of the house. The current house has a sideyard setback of 3.2'. As stated by the owner, the new house would be narrower and the new distance on the side yard would be 3.2' to the eave. The motion carried unanimously with Ms. Seltzer, Messrs. Tuozzola, Haberman, Carey and Katen voting.

2. **Marion Avenue cor. Waverly Avenue cor. Harriet Avenue** (Zone R-12.5) Ronald Standish, appellant, for Priscilla Zweeres, owner – request to vary Sec. 3.1.4.1 front yard setback (paper road Waverly Avenue) to 20.2' (19.2' to overhang) in lieu of 30' required; vary rear yard setback to 15.8' (14.8' to overhang) in lieu of 25' required to construct new single family dwelling. Map 25, Block 212, Parcel 1.

**Ronald Standish**, 240 Fresh Meadow Lane, said his hardship is the dogleg shaped lot, and it is located on the corner of three streets. He meets all the wetland requirements and is looking to build a normal two story house, rather than a narrow, three story dwelling.

**Chrmn. Katen** noted this was a very odd shaped piece of property to which Mr. Standish agreed.

**Mr. Standish** said he built a house on the parcel to the right of this one and it is a narrow, three story house. He said he explained to every homeowner on the street that he wanted to build a 28'x54' house and submitted a petition to the Board signed by more than half of them.

**Ms. Kuchta** explained the lot without the extending dogleg shape towards Marion Avenue, is a legal, non-conforming lot by Sec. 6.4.1 of the Zoning Regulations. It was taken to Court and approval was granted by Judge Ripley in 2007. That proposed house was 10' wide by 128' long. Mr. Standish is proposing to buy additional property on the right side so a normal size house could be built instead. That 10' x 128' house could be built right now.

**Ms. Seltzer** asked for a history of the court case to which Ms. Kuchta answered the neighbors did not want this long, skinny house and appealed the decision that it was a certified Sec. 6.4.1 lot. It was taken to court where the determination it was a legal, non-conforming lot was upheld. Attorney for the City, Matthew Woods said the neighbors would not appeal the Court's decision, but only asked that the owner or builder go before the Zoning Board of Appeals once again, to ask for a variance to build a more normal sized house.

**Chrmn. Katen** confirmed it was certified as a legal, non-conforming lot in 2003.

**Ms. Kuchta** said it was certified in 2003, but the final decision was made in February of 2007.

**Mr. Standish** said he would be adding 30' of property to make it more conforming. He submitted a copy of the plot plan showing what the previous long and narrow house was proposed to look like.

**Mr. Tuozzola** confirmed wetlands approval had already been given to which Mr. Standish said that was correct.

FAVOR:

**Laura Frutkin**, 80 Marion Avenue, directly across the street, wants a two story, not a three story house to be built on the lot.

**William Muir**, 74 Marion Avenue, across the street, thought a two story house would look better than a three story.

**Ronald Casson**, 80 Marion Avenue, agreed with the others who spoke that a two story home would be better than a three story home.

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

DISCUSSION:

**Chrmn. Katen** said the lot is dogleg shaped, has wetlands approval and will not be appealed by the neighbors. Mr. Carey said the applicant would add more land to make it less non-conforming.

**Mr. Carey** made a motion to approve with Mr. Haberman seconding. The hardship is the odd shaped lot. The alternative would not be in the best interest of the community. The motion carried unanimously with Ms. Seltzer, Messrs. Tuozzola, Haberman, Carey and Katen voting.

3. **306 High Street** (Zone R-12.5) George W. Adams, III, attorney, for ABAR Development, LLC, appellant, for Donna C. Kustra, owner – request to vary Sec. 3.1.4.1 lot width from 80' to 70.47' for Parcel A and vary Sec. 3.1.4.1 lot width from 80' to 70.48' for Parcel B for proposed lot subdivision. Map 65, Block 310, Parcel 7.

**George Adams**, 300 Bic Drive, attorney, said the owner, Donna Kustra, was in the audience, along with the contract purchaser, Mark Romano of ABAR Development LLC. Ms. Kustra's parents purchased the home in 1966 and are recently deceased. Mr. Romano's intentions are to buy the entire parcel, rehabilitate the existing house and build a new house on the building lot. They are asking to waive the lot width requirement for the two lots to allow a division of the parcel, which would then go before the Planning and Zoning Board for approval. Since this is not a free cut, if approved by the P & Z Board, a contribution would be required to the open space fund. The lot width waiver represents a 12% reduction in lot width and is the only waiver needed for either lot. The resulting lots would still be 6% and 7% larger in area than is required for the zone. Each of these new lots would be in excess of 13,000 sq. ft. where 12,500 sq. ft. is required. Although the proposed width is 12% narrower than permitted, the depth of the lots is 91% greater than required. He felt the 12% reduction in width is offset by the 90% overage in depth. The lots still comply and is a fair trade off that would be a hardship for the Board not to allow. The hardship arises from the shape of the parcel. While the parcel is larger than the area required for the zone, it is slightly deficient in width to comply with the regulations. The parcel is part of the old Baldwin Homestead and existed as two separate parcels prior to the adoption of Milford's Zoning Regulations in 1930. The existing house was built in 1928 and predates zoning. The owners are stuck with a parcel created prior to zoning, which the subsequent imposition of the zoning regulations has caused to become non-

conforming. The imposition of the zoning regulations in addition to the shape of the parcel creates the hardship. The parcels to the left and to the rear of this parcel are zoned RO. Had this parcel been zoned as RO, only 10,000 sq. ft. of area and 70' of frontage would be required and they would not need to come before the Board. Their proposal tonight is to draw the dividing line down the middle to minimize the amount of variance requested for either lot.

**Ms. Seltzer** noted he was asking the Zoning Board of Appeals to take a conforming lot and create two non-conforming lots to which Atty. Adams agreed.

**Ms. Seltzer** confirmed the hardship stated was the zoning regulations.

**Atty. Adams** said the subsequent imposition of the zoning regulations after these parcels were created is the hardship. The chief hardship is the shape of the lot, being oversized and over deep but under wide.

**Ms. Seltzer** asked if he had considered leaving one lot conforming and only making one lot non-conforming.

**Atty. Adams** said they did studies and had a surveyor draw it up that way but discovered if they did, they would have to ask for two variances on the other lot - one variance for lot area and a second variance for lot width. He felt it would be less intrusive on the zoning regulations to have two lot width variances that created lots that are fully conforming in area. Area is a more important component of the decision than lot width should be.

**Mr. Tuozzola** asked if there were any other parcels in the area that are 70' wide.

**Atty Adams** produced a copy of the assessor's map that showed a couple of parcels across the street from the parcel that are 70' wide. Closer to the Post Road, there are some parcels that are 50' wide. Daverlin Terrace has some 75' wide parcels but they are only 90' deep. He submitted the assessor's map and photos to the Board.

#### OPPOSED:

**Linda Gustafson**, 294 High Street, the abutting property, said she has lived there for over 50 years. It is a dangerous intersection where High Street meets the Boston Post Road. Another driveway onto High Street could cause an extremely dangerous situation. There are a lot of school children walking on the street and there is a bus stop on the corner. High Street has a high flow of traffic due to the location of the train station. She has sat in her driveway for over fifteen minutes in the morning, trying to exit out onto High Street and the condition keeps getting worse. Squeezing in and making the lot smaller would destroy the integrity of the older neighborhood. She felt there was no hardship, it was only being done for profit. She submitted a letter to the Board from the neighbor directly across the street, who was unable to attend.

#### REBUTTAL:

**Atty. Adams** said Ms. Gustafson has had the benefit of having 100' of side yard that this property was not utilizing. That is not a reason to deny the variance. One more house would not make a difference in the traffic on High Street. Each of these houses would be designed in such a way that you wouldn't be backing out onto High Street but would be able to exit in a front direction. Traffic review would be under the purview of

the Planning and Zoning Board, if approved this evening. To punish his client who has a lot that is more than twice as large and 90% deeper than is required, would be unfair.

The hearing was closed.

#### DISCUSSION:

**Ms. Seltzer** said she feels very strongly that it is against the regulations to take a conforming lot and create two non-conforming lots. Mr. Tuozzola said when you look at the lots and the actual square footage, he didn't see why the lots couldn't be split. Mr. Haberman said he did not think there was an inherent right to subdivide a lot and did not feel this was a good thing.

**Ms. Seltzer** made a motion to deny with Mr. Carey seconding. Just because it is a larger lot than what the zone requires, is not a reason to create a non-conforming situation, as stated in the Regulations. The motion carried 4-1 with Ms. Seltzer, Messrs. Carey, Haberman and Katen voing in favor and Mr. Tuozzola voting against.

4. **20 Milesfield Avenue** (Zone R-5) Robert L. Tobin, appellant, for Peter Maselli & Tony Bozutti, owners – request to vary Sec. 3.1.4.1 rear yard setback to 7' (6' from overhang) in lieu of 20' required for a new one story addition. CAM received. Map 28, Block 570, Parcel 19

**Robert Tobin**, architect, submitted five letters of approval and a handout to the Board. He was hired to design an addition to accommodate the owners; one who has a handicap and uses a walker and the other who just had surgery to remove several of his toes. In looking at the lot, he thought they could add a third floor but discovered the current house is non-conforming on the side yard and would have to apply for a variance to add the third floor. He also found the house is structurally insufficient to support a third floor. The second option he looked at was using the side yard to the Sound side of the house, but that option eliminated the two required parking spaces. He could widen the driveway, but then he would lose one parking space on the street. So to maintain the off street and on street parking, his only option was to remove the existing garage, which is currently 3' from the rear property line, and build a one story addition using the area under the current deck, garage and shed and request a variance of 7' in lieu of the 20' required. This would allow a first floor bedroom and bathroom for Mr. Buzutti and still maintain the off street parking and the integrity of the lot. Visually the impact of the addition is zero. He added they would also be reducing the lot coverage from 64% to 58%.

**Chrmn. Katen** noted the non-conformity would be lessened.

**Ms. Kuchta** informed the Board of changes to the Federal Law regarding variances. She read that recent changes in the Federal law have added an exception to the rule of thumb that variances be related to unique conditions of the land. Now, if a variance is sought requesting a reasonable accommodation under the Federal Housing Act and the American with Disabilities Act, a variance may be required to be granted by the Zoning Board of Appeals. In such an instance, the variance does not have to apply to the land, but rather make a reasonable accommodation in accordance with the FHA

and ADA to assist a handicapped person. While neither act preempts local zoning, both acts apply to municipalities and their zoning codes, ordinances and regulations, and municipal zoning decisions. She explained this does not mean they are granted an automatic approval but it is a condition for their hardship. The applicant for 20 Milesfield Avenue is creating a distance of about 10' from the neighbor's rear garage with this proposal. The left side deck will also be removed and will bring it within the 5' setback requirement.

**Ms. Seltzer** asked how the proposed addition is more handicap accessible when you are building upward. Is there an elevator included?

**Mr. Tobin** said they would be providing a living area, bedroom and kitchen on one floor. They have anticipated that in the future, a handicap ramp would be required, but would not require another variance to build it. They have also installed a lift on the existing stairs in the house. They did look into installing an elevator, but one of the gentlemen also has a claustrophobic handicap. Still, the house foundation would not support it.

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

#### DISCUSSION:

**Chrmn. Katen** said the house would become more conforming by removing the deck and the garage and constructing the new addition.

**Ms. Seltzer** made a motion to approve with Mr. Haberman seconding. The house would be more conforming and the addition would meet the current and future needs of the residents, keeping them at home for a longer period of time. The motion carried unanimously with Ms. Seltzer, Messrs. Carey, Tuozzola, Haberman and Katen voting.

5. **70 Stowe Avenue** (Zone CDD-2) Dean Fisher and Josephine Robinson, owners – request to vary Sec. 3.17.4.2 to allow a 6' front yard setback (4.5' to the eave) in lieu of 10' required for two story garage to be rebuilt in same location. CAM required. Map 16, Block 107, Parcel 79C.

**Dean Fisher**, 70 Stowe Avenue, said he is seeking to take down his dilapidated garage and build a two story garage with guest area above it on the same footprint. He passed out photos to the Board along with a letter of support from the Mayor and Tom Ivers, who along with Bob Gregory, also supported a previous variance request to keep the garage, which was granted in 2002.

**Chrmn. Katen** noted the lot was subdivided and the variance was granted in October of 2002.

**Mr. Tuozzola** confirmed the garage would now be two story to which Mr. Fisher said it would be a one car garage with a guest area and bathroom above.

**Ms. Seltzer** asked him to explain what a guest area was.

**Mr. Fisher** said a bathroom and sleeping area.

**Ms. Seltzer** confirmed there would be no kitchen to which Mr. Fisher said that was correct.

**Mr. Haberman** asked if it would be for guests only, not for rental.

**Mr. Fisher** again said that was correct.

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

#### DISCUSSION:

**Ms. Seltzer** said it seemed to make a very dense area even more dense. Chrmn. Katen added it was not an apartment and wouldn't be rented out.

**Mr. Tuozzola** made a motion to approve with Mr. Haberman seconding. The reason for approval is the garage would be on the same footprint, just going up a story. The motion carried unanimously with Ms. Seltzer, Messrs. Tuozzola, Haberman, Carey and Katen voting.

#### B. TABLED ITEMS

#### C. OLD BUSINESS

#### D. NEW BUSINESS

**1. 4 Parkland Place** – request of Benjamin S. Proto, Jr., attorney, for Christopher T. and Kim E. Roberts, owners, for rehearing prior to the six month waiting period.

**Benjamin Proto**, attorney from Stratford, said the owners have substantially changed their plans and would like to be able to present the new application to the Board next month. All the variances that were being sought last month have now been reduced to two side yard variances. He asked the Board to allow them to come back next month with a brand new application, which would make the property more conforming.

**Chrmn. Katen** noted there were two letters in the file in support of the application being re-heard.

The hearing was closed.

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

#### E. STAFF UPDATE

#### F. ACCEPTANCE OF MINUTES FROM SEPTEMBER 14, 2010 HEARING

The minutes were accepted unanimously.

#### G. ACCEPTANCE OF APPLICATIONS FOR NOVEMBER 9, 2010 HEARING

The meeting was adjourned at 8:08 p.m.

Attest:

Rose M. Elliott, Clerk ZBA