

MEMBERS PRESENT: Howard Haberman, Nanci Seltzer, Richard Carey, Fred Katen
ALTERNATES PRESENT: Joseph Tuozzola
STAFF PRESENT: Emmeline Harrigan, Assistant City Planner, Linda Stock, Zoning Enforcement Officer; Rose Elliott, Clerk

The meeting was called to order at 7:03 p.m.

A. CONSIDERATION OF AGENDA ITEMS

1. **Alpha Street** (Zone R-18) Alphonse Ippolito, attorney, for Alpha Milford Realty, LLC, appellant, for the United States of America, owner – appeal the decision of the Zoning Enforcement Officer regarding a request for a Certificate of Zoning Compliance dated May 22, 2009. Map 69, Block 711, Parcel 16B.

Len Fasano and **Al Ippolito**, Law firm of Fasano, Ippolito and Lee, attorneys for the applicant, 388 Orange Street, New Haven, told the board this property has a unique situation. It was purchased by the United States government around 1956 and developed in 1957. The fifteen buildings located there have been being used for housing by the Coast Guard. The road coming off of Eels Hill Road is a private road maintained by the government. The Coast Guard, in an effort to secure housing in another part of the state, would like to sell the property to a private owner. The private owner wants to take over the property and leave everything as is. All that would change is the property would then be on the tax rolls of Milford. The City would then have jurisdiction over the property with respect to any outstanding zoning issues or compliance. Once it is under private ownership, it would become like any other parcel in the City. He sent a request to the City to determine whether this sale from government ownership to private ownership would be permissible, claiming it is a pre-existing non-conforming use since 1957. The government appraiser met with the City Planner, David Sulkis, and it was determined it was okay for this sale to take place. Subsequently, there was some miscommunication that perhaps it wasn't okay. His office wrote several times but never got a firm response. This is an appeal of a non-decision and they are asking the Board to determine whether or not they can go forward with this project.

Chrmn. Katen asked if they were here this evening to appeal the Zoning Enforcement Officer decision not to issue a Certificate of Zoning Compliance.

Ms. Stock clarified they are here appealing Mr. Sulkis' letter of July 14, 2009.

Chrmn. Katen stated the letter was not an order, agreement or decision so he didn't know what the Board would be voting on.

Ms. Seltzer said she didn't see any letter from the Coast Guard to David stating it was no longer for sale to which Ms. Stock stated she didn't believe there was a letter, that it was a telephone conversation and/or meeting. They are appealing this letter that says no response is necessary.

Atty. Fasano said they have a letter from the Coast Guard, he submitted copies to the Board, that says the information received from the City Planner is inaccurate and a misinterpretation of their conversation. A subsequent letter dated July 31, 2009 to the Mayor and copied to Mr. Sulkis as well, makes it clear that the sale is on.

Ms. Seltzer noted the letter from the Coast Guard was not dated.

Atty. Ippolito handed out copies of a letter dated July 31, 2009 and refers to the letter received from the Coast Guard. He added that after he received Mr. Sulkis' letter of July 14, 2009, he sent a letter to the Coast Guard asking them to confirm whether they were taking it off the market or not and that's when they sent their undated letter. He then followed up with the July 31, 2009 letter.

Chrmn. Katen wondered why these letters were not in the file.

Mr. Carey asked exactly what they were appealing to which Atty. Fasano said there seems to be a reluctance when you ask the ZEO for a permit that says this is existing and it is okay. Verbally Mr. Sulkis has said it was okay and submitted to the Board a letter from the appraiser dated October 12, 2009, stating Mr. Sulkis indicated that the rebuilding of the 16th unit that was destroyed, was an expansion of a non-conforming use, which means the other existing structures are a non-conforming use. This seems to mean it is okay but yet, the difficulty is the inability of Mr. Sulkis to do anything. His office is taking the view that a non-answer is an answer. This Board has the right under CT General Statutes to interpret the Regulations. Because of the non-decision of Mr. Sulkis, the Board can decide the Regulations. The only other way to decide this is to sue the City spending their resources, the City's resources and the State's resources defending a very simple issue: is this property a pre-existing non-conforming use or is it not? He repeated Mr. Sulkis has indicated at times to some people that it was non-conforming but he would not give it to them in writing. He added he could understand the Board postponing it to ask for legal advise because it is a difficult situation.

Ms. Stock stated for clarification that Mr. Sulkis is not the Zoning Enforcement Officer but the City Planner. She is the Zoning Enforcement Officer. She did not make any decision, requirement or order on this at all.

Chrmn. Katen confirmed this appeal of a decision of the Zoning Enforcement Officer, really has nothing to do with the Zoning Enforcement Officer. He added there is a fifteen day appeal period which this application is beyond and could be denied on that reason alone.

Atty. Fasano said he understood but subsequent actions by Mr. Sulkis, lead to the conclusion they were not going to get a response from him regarding anything he's done.

Chrmn. Katen repeated the appeal is untimely and there is no decision by the ZEO that needs to be overturned.

Atty. Fasano said the bottom line is there is a piece of property that is not taxed and the Coast Guard wants to get rid of. They are here to ask that whatever the confusion is, to open the doors of communication and figure it out. If it is a non-conforming use, so be it, if it is not, we take the appeal from that. An indecision to him is a decision. They cannot run out of an appeal period if the argument is there is no decision.

Mr. Haberman stated if there is a misunderstanding between you and Mr. Sulkis, you need to go back to him with the new information regarding the property and make a request for the opinion you need to go forward. Based on that you can decide whether you want to appeal it or not. It is not this Board's responsibility to make an opinion for somebody or force someone to respond to a letter. If there's a decision made or there is a revocation of something, then this Board is here for an appeal of that, but that is not the case here.

Atty. Fasano said that he would write to the Zoning Enforcement Officer directly and circumvent Mr. Sulkis. He then asked to withdraw the appeal at this time.

Chrmn. Katen asked of Ms. Stock if that was acceptable procedure to which she answered that legally she wasn't sure if they could withdraw at this time since they have already made their argument and it has been discussed. She wasn't sure if you could withdraw after the fact.

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

DISCUSSION:

Chrmn. Katen said this is a cloudy issue. The decision was supposed to be for the Zoning Enforcement Officer but she was not even involved. It involves the City Planner and he is not even here. We can table this item and ask the City Attorney for her opinion.

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

2. **45 Dogwood Place** (Zone R-7.5) Imelda & John Benedicto, owners – request to vary Sec. 3.1.4.1 Accessory Structure setbacks from 4' to 0.83' on side and from 5' to 0.74' in rear and 7.5' from dwelling unit where 8' is required to reconstruct garage on existing footprint. CAM required. Map 14, Block 33, Parcel 17

Imelda and John Benedicto, 45 Dogwood Place, want to reconstruct their existing garage on the same footprint because the structure is rotting. It will be 21'4"x22'4" and 7.5' from the house. The hardship is the lot is pie-shaped and the house is setback 40' from the front where 20' is required making most of the usable property in front of the house.

Mr. Haberman asked if they were going up higher to which Mr. Benedicto said it would be a two car garage built to the Regulations.

Ms. Seltzer asked if the height would remain the same.

Mr. Benedicto said it would be a little higher to create storage space.

Mr. Tuozzolo asked if it was currently a two car garage.

Mr. Benedicto said yes and it has been there since 2001, when they moved in.

FAVOR:

Mary Keegan, 53 Dogwood Place, said she grew up in a house nearby and she didn't think this garage would be a big change. She is not opposed.

OPPOSITION:

Erik Schmaling, 37 Dogwood Place, said his property borders two sides of the Benedicto property. He opposes the application because the rear of the garage is less than a foot from his property and Mr. Benedicto would be unable to maintain the garage without going onto his property. He has heard him talk about putting a second floor in the garage. The neighborhood is very congested and the garage being that close to

the property line will bring down property values. It is so close now that the runoff from the garage leaders doesn't even leach into the ground it goes right under the fence. The leaders are within two inches of the fence and are directed under the fence.

Mr. Haberman asked if the structure was there when he bought his house to which Mr. Schmaling answered in the affirmative but added it has a low roofline because it was originally a single car garage that was added onto. It probably began as a porch that was turned into a garage. He would like to see the plans showing what he going to put up.

Mr. Tuozzolo asked how Mr. Benedicto is maintaining the garage now.

Mr. Schmaling said he himself cuts the grass in the back and actually gave Mr. Benedicto and another neighbor some extra feet so they could run a lawn mower behind there when he put up his fence. He submitted and explained pictures to the Board.

Ms. Stock said for clarification, the leaders cannot extend beyond what the variance is granted for; they have to remain within the roofline.

The hearing was closed.

DISCUSSION:

Chrmn. Katen said the structure has existed there for years. The lot is pie-shaped and the placement of the house on the lot makes it a hardship. Mr. Haberman added it is a always a struggle for him to decide between an owner's right to have what is existing even though it is located so close to the property line in neighborhoods where everything is congested. It's hard to tell someone they can't keep what they already have.

Mr. Carey made a motion to approve with Mr. Tuozzola seconding. The hardships are the shape of the lot and the placement of the house on the lot. They are not increasing the non-conformity as the garage already exists. The motion carried unanimously with Ms. Seltzer, Messrs. Carey, Haberman, Tuozzola and Katen voting.

3. **8 Sachem Street** (Zone R-10) Dawn Dickinson, owner – request to vary Sec. 4.1.4 Projections from 4' allowed to 15' to construct deck with handicap ramp. Map 88, Block 800, Parcel 4R.

Dawn Dickinson, 8 Sachem Street, said her hardships are the location of the house on the lot and the location of the accessible door of the house located in the front of the house. This is the only door that can give them the proper angle and pitch from the driveway they need for the ramp. They have an eleven year old with cerebal palsy in a wheelchair. They need to be able to back into the driveway and have accessibility from the van to the ramp to the door.

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

DISCUSSION:

Ms. Seltzer thought handicap ramps were handled in the office by staff to which Chrmn. Katen said they still have to come before the Board because of the setback requirements. He added the house was built in 1942 and the setbacks have been changed; there is no other place this ramp could go.

Ms. Seltzer made a motion to approve with Mr. Haberman seconding. The hardship is the size of the lot and the frontage. The motion carried unanimously with Ms. Seltzer, Messrs. Carey, Haberman, Tuozzola and Katen voting.

4. **155 Beach Avenue** (Zone R-5) Daryl DiPaulo & Fred D'Amico, appellants, for Daryl DiPaulo, owner – request to vary Sec. 3.1.4.1 side yard setback from 5' to 3.2' to allow dwelling to remain; vary Sec. 4.1.4 Projections from 2.6' to 6' to construct front porch. CAM required. Map 59, Block 739, Parcel 23.

Fred D'Amico, 9 Park Road, Oxford, engineer, said they are remodeling an existing dwelling that is 3.2' from the side property line. They are reusing the existing footprint. There is an existing front porch extending out 6' and they want to make the porch longer.

Chrmn. Katen confirmed with Ms. Stock that if they were only doing 40% renovation, they would not need to be here to which she said that was correct.

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

DISCUSSION:

Chrmn. Katen said the house was built in 1925 and the applicant is renovating over 50% which requires them to come before the Board.

Mr. Haberman made a motion to approve with Mr. Carey seconding. The hardship is the undersized lot, the placement of the house on the lot and a pre-existing non-conformity that is not going to be expanded on. The motion carried unanimously with Ms. Seltzer, Messrs. Carey, Haberman, Tuozzola and Katen voting in favor.

5. **175-177 Cherry Street** (Zone CDD-1) John W. Knuff, attorney, for Stoneham Milford, LLC, owner – appeal the decision of the Assistant City Planner in the revocation of a zoning permit issued for a package store. Map 66, Block 813, Parcel 16.

John Knuff, attorney, 147 Broad Street, is representing Stoneham Milford, LLC., the new owner of the property, in the appeal of the Assistant City Planner to revoke a previously issued zoning permit for tenant fit up for a new, upscale wine and package store. The sale of alcohol is a permitted use in this CDD-1 zone. Best Buy Package store is currently located in the plaza at 165 Cherry Street. It is proposed that a new wine store will acquire Best Buy, change the name and relocate it to a larger space within the plaza, further away from the existing space. On September 4, 2009, a permit was issued for tenant fit-up for Best Buy Liquor. On September 8, 2009, the permit

was revoked as indicated by the correspondence sent the same day with the reasoning the shopping center contains a school with instruction for children and the distance requirement for shopping centers has not been met. The letter specifically makes a reference to children. Park's World Tae Kwon Do, is located at 151 Cherry Street. Atty. Knuff noted there is no dispute with the staff or the facts. Their appeal is based on what they view as an inappropriate application of the Regulations to those facts. They have met with David, Emmeline and Linda both singly and together along with phone calls and emails, and are most appreciative of their time. The first paragraph of Section 5.5.1.2 of the Regulations, calls out a distance requirement of 300 feet for a liquor permit on its own separate parcel from a public park or playground, public, parochial or private, nonprofit or for-profit school. The Regulations do not define a "for-profit school". They do define a commercial school. A for-profit school and a commercial school are functionally equivalent if not the same. If you have a package store and a school use, they cannot be located any closer than 300' measured property line to property line. The second paragraph says in any shopping center exceeding 40,000 sq. ft., a liquor establishment may be located at least 400 feet from the uses listed in this section. They then list all the same uses as the first paragraph except for a for-profit school. The third paragraph again references all the identical uses from the first paragraph except for the for-profit school. The first basis of their appeal is the plain language of the second paragraph, which says an establishment selling or serving alcoholic liquor may be located within 400 feet. It doesn't say "must be" or "shall be" located, it says "may be" located. That is fairly plain. The second basis is that they don't believe that Park's Tae Kwon Do is a school. It is primarily an exercise and physical fitness use and is more appropriately designated as a health club or health center, which is also permitted in a CDD-1 zone. There is no minimum distance between health clubs and package stores. Some children do attend the Tae Kwon Do facility along with adults. This is a training facility as referenced in the lease agreement of Park's World Champion Tae Kwon Do, Inc. The third basis is assuming that this is a commercial school. Sec. 5.5.1.2 makes a distinction between for-profit or commercial schools and public, parochial and non-profit schools. The first paragraph applies to a package store not located in a shopping center and lists those uses where a minimum distance of 300 feet must be maintained. The second paragraph provides the required uses for 400 feet when a package store is located in a shopping center exceeding 40,000 sq. ft. Every use listed in paragraph one is listed in paragraph two and three except for for-profit schools. This is important because there would be no reason to re-list the uses in paragraphs 2 or 3 if the lists were intended to be identical. There is only one difference between the two, the deletion of the reference to for-profit schools. Because a for-profit school is not listed in the second paragraph, there is no requirement to maintain the 400 feet distance. There is no need in a large shopping center for a 400 feet distance because the landlord would be the best judge as to whether the addition of a package store would negatively impact a commercial school. Many tenants insist on provisions in their leases that preclude a landlord from renting space within that shopping center to another tenant whose use could conflict with the tenant's use. There is a fundamental difference between public, parochial and non-profit schools as a group and commercial schools. The staff did contact Dick Harrall, who was the planning consultant at the time of this language change in the Regulations. It was his recollection that the commission was prompted to add this language as a result of the proximity of Archie Moore's to a ballet school. That did not

involve a shopping center. Atty. Knuff believes that commercial schools are intended to be treated differently when a package store is located within a shopping center and more so when a commercial school is located within the same shopping center. Finally, it is impossible to have a common boundary if both uses are located within the same shopping center as required in the third paragraph; although it is possible to have 400 feet between a school use and a package store use. The proposed relocation of the package store is further away from the existing Tae Kwon Do facility than the existing Best Buy store. If a school is established in a shopping center first, there is nothing to prevent the landlord from shutting down the school temporarily, putting the package store in, then re-establishing the school.

Ms. Seltzer remembered sitting through the Regulation change debates and discussions and recalled there were some errors in the format of the Regulations.

Atty. Knuff said even though the Tae Kwon Do facility did list themselves as a school when they first applied for a permit, the facility is more like a health club or health center and less of a school.

Mr. Tuozzola asked how far away is the parochial school in the rear of the building.

Atty. Knuff answered they realize there is a distance issue with the parochial school and they are working toward acquiring property to achieve the required distance to them as well.

Ms. Seltzer said there were a lot of errors in the Regulations that the Planning and Zoning Board is currently trying to clean up. Because of the extensiveness, it is taking years to remedy. She felt it may have been an oversight on the part of the Board back then to which Chrmn. Katen agreed. He added the Regulations were not intended to have a landlord move a school out to bring in a liquor store and then bring the school back.

FAVOR:

Ronald Porti, council for Stoneham Milford, LLC, said they own shopping centers around the country. This is a health club facility. In other states, the concept of a school means it is an institution that grants some type of license or some method of graduating students at the end of a course of instruction. It is not licensed as a school by the State of CT. This is no different than having a Gold's Gym in the shopping center that has dance classes or give instruction on weight lifting. There can be no distinction between this Tae Kwon Do facility and any other physical education or gym facility.

OPPOSITION:

Linda Stock, Zoning Enforcement Officer, 70 West River Street, said they are not trying to prevent anyone from upgrading the shopping center. She added she believes it was a clerical error when the for-profit schools were left out of paragraphs two and three of the Liquor Regulations. When the TaeKwon Do facility obtained their permit, they were a school. If there is a school located in a plaza, the office is going to regulate a liquor store that wants to go in there.

Varsha Mehta, 930 Boston Post Road, said she agreed with Linda Stock. She has met with Linda several times and discussed many locations for liquor stores and she

has explained on every occasion why a liquor store cannot be located next to a school. In the sixteen years that she has been in the business, she has had to withdraw applications that were located next to a school. She believes the Regulations are correct and she opposes the appeal on the basis of the school and the church.

Emmeline Harrigan, said her letter speaks for itself but if there were any follow up questions, she would answer them.

REBUTTAL:

Atty. Knuff asked whether Ms. Mehta also owned a liquor store to which Ms. Mehta answered she did. He said her response is an anti-competitive comment and not a comment protecting the Tae Kwon Do facility or other similar uses. The current owners own other facilities and this will be a fine wine establishment. He noted Ms. Stock is following the Regulations as she interprets them. They have a disagreement in the way she interprets them. If there was a clerical error made, and he doesn't agree there was an error; that is not their problem. There has been more than ample time to correct this error. He believes what Dick Harrall indicated was that it was specifically left out of the Regulations. This is not a school for all the reasons he and Atty. Porti have cited.

DISCUSSION:

Ms. Seltzer said during the meetings regarding the Regulations many years ago, she saw a lot of mistakes and not all of them have been corrected yet. She felt it was an omission of error not of intent. She feels the Tae Kwon Do is a school and the liquor store will not be in compliance with the Regulations. Mr. Haberman said right now a school is a school regardless of whether the Regulations are changed in the future. If they put themselves down on the permit application as a school, they are a school. Mr. Carey said the fact that the Tae Kwon Do facility moved into the center after the liquor store was established does establish the fact they don't care whether they are located next to a liquor store or not. He didn't understand what the problem was with the store moving farther away. Mr. Tuozzola said he felt the Board should follow the Regulations as they are written and not turn them around in favor of the application. Chrmn. Katen said the Board is not here to debate whether a mistake was made when the Regulations were written. His concern is the intent of the Regulations to keep the liquor stores away from the kids. However, the liquor store has been there for years with no incident. The Regulations exist and he is not happy when they can be circumvented so easily and the intent is not being kept. It bothered him that the liquor store has been there all these years and now it can't be there anymore.

Ms. Seltzer made a motion to deny the appeal with Mr. Haberman seconding. The reason for denial is the Tae Kwon Do facility is a school. The motion failed to carry 3-2 with Ms. Seltzer, Messrs. Haberman and Tuozzola voting in favor and Messrs. Carey and Katen voting against.

Mr. Carey made a motion to approve the appeal with no second.

Chrmn. Katen clarified the result of the hearing for the people in the audience saying the motion to deny the appeal was not approved so therefore the decision of the Assistant City Planner was overturned.

6. **162 Hillside Avenue** (Zone R-5) Gernot Bruckner, appellant, for Philip and Valerie Macari, owners – request to vary Sec. 3.1.4.1 side yard setback from 10' to 2.2' to construct new single family dwelling. CAM required. Map 59, Block 736, Parcel 6.

Gernot Bruckner, 132 ½ Beach Avenue, said he is the future occupant of this building lot which is an undersized, oddly-shaped, legal non-conforming lot. He would like to construct a new single family dwelling.

Mr. Haberman confirmed the proposed house would be moved up further on the property. The house would be widened somewhat but would be less non-conforming than the existing house. The hardship is the undersized lot.

Ms. Seltzer asked if there was a chance of moving the house further back on the property as it is so close to the street.

Mr. Bruckner said they could do that as long as they could keep the 24' width.

Ms. Stock said if they push the house back they would need to come back before this Board for another variance.

OPPOSTION:

Ann Carter, 35 Burwell Street, stated as people are tearing down the old houses, they are rebuilding them larger and taking away the vistas. As the structures go up, they block out the views. It is becoming more and more canyon like. She is concerned with the scale and the blocking of views and light.

Mr. Haberman said the Board could not deny an application because of the height as long as it meets the Regulations.

Ms. Stock added for clarification that no one is allowed to build a new house unless they have two off-street parking spaces to alleviate the problem with on-street parking.

The hearing was closed.

REBUTTAL:

Mr. Bruckner said the distance to Tri-Beach Center is 39'. The proposed home would be a modest, 2,200 sq. ft. dwelling.

DISCUSSION:

Chrmn. Katen said the side yard setback is basically the same and the house will be moved up. He had no problem with it. Ms. Seltzer didn't feel it would be out of line with the neighborhood.

Mr. Tuozzola made a motion to approve with Mr. Carey seconding. The reason for approval is the house fits into the neighborhood and will not be too large for the property. The motion carried unanimously with Ms. Seltzer, Messrs. Carey, Haberman, Tuozzola and Katen voting.

7. **11 Way Street** (Zone R-12.5) Thomas B. Lynch, attorney, for Warren Field, appellant, for Jeanne Silvestri, owner – request to vary Sec. 3.1.4.1 front yard setback from 30' to 24' and side yard setbacks from 10' to 5' and 8' to construct new single family dwelling. Map 25, Block 218, Parcel 16.

Withdrawn.

8. **13 Way Street** (Zone R-12.5) Thomas B. Lynch, attorney, for Warren Field, appellant, for Mike Stella, owner – request to vary Sec. 3.1.4.1 front yard setback from 30' to 24' and side yard setback from 10' to 5' to construct new single family dwelling. Map 25, Block 218, Parcel 15.

Withdrawn.

9. **17 Way Street** (Zone R-12.5) Thomas B. Lynch, attorney, for Warren Field, appellant, for Avery L.L.C., owner – request to vary Sec. 3.1.4.1 front yard setback from 30' to 24' and side yard setback from 10' to 5' to construct new single family dwelling. Map 25, Block 218, Parcel 14.

Withdrawn.

10. **22 Way Street** (Zone R-12.5) Thomas B. Lynch, attorney, for Warren Field, appellant, for Jeanne Silvestri, owner – request to vary Sec. 3.1.4.1 front yard setback from 30' to 24' and side yard setback from 10' to 5' to construct new single family dwelling. Map 25, Block 217, Parcel 5.

Withdrawn.

11. **24 Way Street** (Zone R-12.5) Thomas B. Lynch, attorney, for Warren Field, appellant, for Avery L.L.C., owner – request to vary Sec. 3.1.4.1 front yard setback from 30' to 24' and side yard setback from 10' to 5' to construct new single family dwelling. Map 25, Block 217, Parcel 6.

Withdrawn.

12. **27 Way Street** (Zone R-12.5) Thomas B. Lynch, attorney, for Warren Field, appellant, for Mike Stella, owner – request to vary Sec. 3.1.4.1 front yard setback from 30' to 24' and side yard setback from 10' to 5' to construct new single family dwelling. Map 25, Block 218, Parcel 16.

Withdrawn.

13. **14 Pickett Street** (Zone R-10) Joy E. Rice, owner – request to vary Sec. 4.1.4 Projections from 4' allowed to 12' to construct front deck. CAM required. Map 19, Block 243, Parcel 10.

Joy Rice, 14 Pickett Street, said her concrete front landing along with a step is disintegrating. When the houses were built on her street in the 1940's, the existing 25' front yard setback Regulation was not in existence. She would like to construct a deck, 12'x6', which is only one foot more into the setback. Most of the houses on the street are about 19' from the street.

Mr. Tuozzola asked if she was replacing the front porch and then adding on the additional deck.

Ms. Rice explained she was taking out the concrete landing and step and replacing it with a 12'x6' deck. It would make the house more aesthetically appealing.

Ms. Seltzer asked if the measurement included the stairs to which Ms. Rice answered the proposed deck would not need a stair.

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

DISCUSSION:

Mr. Haberman said the house is set up close to the street and felt the application was for a small addition. Ms. Seltzer said this will not negatively impact on the street at all.

Ms. Seltzer made a motion to approve with Mr. Haberman seconding. The hardship is the placement of the house on the lot. The motion carried unanimously with Ms. Seltzer, Messrs. Carey, Haberman, Tuozzola and Katen voting.

14. **839 East Broadway** (Zone R-7.5) Ron D'Aurelio, appellant, for Melodye Grant Bucci, owner – request to vary Sec. 4.1.4 Projections from 4' to 6.28' in front yard and from 8' to 6.15' and 6.72' on side to construct new stoop, stairs and pergola. CAM required. Map 27, Block 475, Parcel 4.

Ron D'Aurelio, 42 Cherry Street, architect, said with this application, they are projecting more than the allowed 20% into the setback area for the proposed stoop, stairs and pergola. The stoop will be 13.72' from the property line. There is a 5' passway in front of the property line that he believes was for an old trolley system making the street much further away from the property line. They will not be going past the house except for the pergola going a few inches past the house, but the structure will be an open structure. No site lines to the water will be impacted. The hardship is the width of the lot.

FAVOR:

Melodye Grant Bucci, 839 East Broadway, stated currently you have to stand on the first step to get in the door. It made sense to place the entrance in a different location but to do this, they required a variance.

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

DISCUSSION:

Mr. Haberman said it was a small necessary addition and the hardship is the width of the lot. **Chrmn. Katen** added it was going no further into the side yard setback than what was existing.

Mr. Haberman made a motion to approve with Mr. Tuozzola seconding. The hardship is the width of the lot, which is only half of what it should be. The motion carried unanimously with Ms. Seltzer, Messrs. Carey, Haberman, Tuozzola and Katen voting.

15. **34 Hauser Street** (Zone 7.5) Luz Marina Giantomidis, owner – request to vary Sec. 3.1.4.1 rear yard setback for accessory structure from 5' to 4.9' to install inground pool. CAM required. Map 12, Block 124, Parcel 10.

Tom Giantomidis, 34 Hauser Street, would like a variance of 3" on the rear yard setback to install a pool.

Mr. Haberman asked what the hardship was to which Mr. Giantomidis said the 3 inches.

Chrmn. Katen asked if the pool was already there to which Mr. Giantomidis said it was not. They had an above ground pool which they took down.

Chrmn. Katen read highlights of a letter in opposition to the Board.

Ms. Stock said there is a lot of information in the file, which is not under the purview of this Board. She spoke with Ms. Giantomidis and her contractor today and they are putting in a new drainage pipe. The other one was only 4" so they are putting in a 6" drainage pipe that will run directly from the catch basin to the street.

Chrmn. Katen said it appeared the applicants were addressing some of the concerns of the neighbor to which Mr. Giantomidis said they are building a new retaining wall which will improve the drainage which they will backfill with gravel and a new drainage line to tie into the existing one. He added he had lived there almost 15 years and the neighbor has always had a water issue. His new construction had nothing to do with the water his neighbor is getting in his basement.

Mr. Haberman noted they could install a smaller pool and not be before this Board. He told the applicant they could still put a pool in even if this application was denied.

OPPOSITION:

John Gildea, 32 Hauser Street, said he is the person who wrote the letter. He has a good relationship with his neighbors. He wouldn't be here if he didn't feel this pool would exacerbate a bad problem. There is an underground stream that runs between two streets. When he wrote to the City Engineer in 1997, asking if there was something the City could do to remedy the situation, the response to him was that he was right and there were problems there before the construction of this house. This catch basin has never been maintained and the City Engineer clearly says this maintenance would be under the purview of the Planning and Zoning office to enforce. He paid thousands of dollars to have his basement waterproofed. His sump pump runs continuously. The catch basin was designed for a house that was there before two additions were added and doesn't even factor in the excavation of the area for the pool.

Water is now seeping up through the cracks of his basement, even with the lack of rain that we've had. He was told by Inland Wetlands that this seepage is from hydrostatic pressure; the pressure of the water table rising and having no place to go. He wouldn't care if they put in a pool if it were not going to exacerbate his already tough situation.

Ms. Stock noted that she spoke with the applicants today. They are going to increase the size of the pipe from 4" to 6". They were informed they would need to go to the Engineering Dept. to make sure the catch basin is in working order. When the new pipe is installed, it will carry away more water than what it had been carrying.

Chris Corvino, 35 Grant Street, said about four or five years ago, the applicants raised the grade of their land. They put four by fours all around their property and then they put a six foot fence on top of the four by fours. They then brought backfill in and filled it all in and built a double tier deck, above ground pool and a second story addition. He noticed when everything was done, that he got all their water because they raised the grade of the land. He had to bring top soil into his yard to eliminate some of the water so his kids could use it. He submitted pictures to the Board. His main concern is his tree that is over 100 years old. When Mr. Giantomidis puts in the pool, it is going to kill the roots and kill the tree. He is worried about the water and the tree.

Chrmn. Katen noted that if the pool were going to be 3" smaller, they wouldn't even be before this Board.

Bill Carlson, 31 Grant Street, commented that while the applicant says they are going to replace the 4" pipe with a 6" pipe, the plan shows the pipe is supposed to be an 8" PVC pipe. He is also concerned about the tree. It is located right next to the property line and if they are going to cut out 30' of root, 5' away from the tree, that tree is going to fall on his house. The applicant put up 2' of wall and then put a 6' high fence on top of that. The Building Dept. said that is a violation. If they were to do an inspection, they would send notice to the Planning and Zoning Dept. of the violation. He was told the lot coverage would be somewhere in the area of 50%, but the plot plan Mr. Giantomidis submitted to the Board, doesn't take into consideration the driveway and the concrete patio for the pool. More impervious surfaces will only result in the water being pushed onto the adjacent properties. When the applicant comes in for a permit, he hoped the plan would show the size of the patio for the calculation of lot coverage. He also didn't feel there was a hardship. He thought maybe another pipe on the other side might help alleviate the water problem.

Chrmn. Katen asked Ms. Stock if lot coverage was anything they needed to be concerned about to which she answered not at this time as the applicant would have to submit an As-built once the work is completed.

REBUTTAL:

Mr. Giantomidis in response to one of the people who spoke in opposition, stated that gentleman's property is his whole house. If he had a 10'x10' section of grass, that was too much. Mr. Giantomidis said he has plenty of land even with the pool, a patio around it and a driveway in the front. He added his rear yard was so uneven when he first moved in that his kids couldn't play back there. So he graded it and made it level. He leveled the property on one side and made a retaining wall to hold the dirt in. His fence is 6' tall. His neighbor's tree had been dying long before he even moved in. The tree is dangerous. Is the tree going to fall, probably. Is it going to fall on the neighbor's

house, yes. But he wasn't going to let it fall on his house, which is why he had branches cut down that were on his property.

Chrmn. Katen asked if the pipe would be a 6" pipe or a 8" pipe to which Ms. Stock said the contractor said the pipe was not 8" but only 4" but they were going to put in a 6" pipe.

Mr. Giantomidis said they were willing to put in an 8" pipe. He added whomever installed the pipe originally didn't install the correct pipe. The pipe was made of plastic not PVC.

Chrmn. Katen asked about the fence to which Mr. Giantomidis said the fence between Mr. Corvino's property and his was existing. It was rotted so when he regraded his property, he replaced the fence and put a layer of 4x4's going down the length of the property. He put it there as a retaining wall. Chrmn. Katen confirmed he put a 6' fence on top so it is higher than 6'.

Ms. Stock said she was out there today but wasn't able to see too much because of the construction that was going on. She asked if the property was raised 2' to which Mr. Giantomidis said yes. She told the Chrmn. that she couldn't make a determination until she could get out there. She will measure the fence from their property.

Mr. Haberman asked again what the hardship was.

Mr. Giantomidis said they want to put a pool in the backyard so they could enjoy it with their family.

The hearing was closed.

DISCUSSION:

Chrmn. Katen said there is no hardship and he has a problem with the fence. He told the applicants there have been people that have come to this Board in the past that have had to cut down a vinyl fence because their request to keep one that was over 6' tall was denied.

Ms. Seltzer made a motion to deny with Mr. Carey seconding. The reason for denial is there is no hardship. The motion carried unanimously with Ms. Seltzer, Messrs. Carey, Haberman, Tuozzola and Katen voting.

B. TABLED ITEMS

C. OLD BUSINESS

D. NEW BUSINESS

1. **31 Maddox Avenue** – request from P. Joseph Marsala, owner, for an extension of time. (2nd)

Ms. Stock read the letter of request into the record.

Mr. Carey made a motion to approve the extension of time for one year with Mr. Haberman seconding. The motion carried unanimously.

E. STAFF UPDATE

Chrmn. Katen asked why all the Way Street applications were withdrawn. Ms. Stock answered the lot coverage was over what is allowed because of the driveway size. New plans need to be redrawn and resubmitted. They will be back next month.

1. Zoning Board of Appeals Fees – Review of proposed new fees.

Ms. Stock explained that as of October 1, 2009, the State raised their state fees from \$30.00 to \$60.00. The Zoning Board of Appeals needs to increase their fees because with what is charged now, we don't even recoup our advertising costs. She explained the proposed new fees and the Board discussed them. If they are approved here tonight, they will have to go before the Board of Alderman next month for their approval.

Mr. Carey made a motion to approve with Mr. Tuozzola seconding. The motion carried unanimously.

G. ACCEPTANCE OF MINUTES FROM SEPTEMBER 8, 2009 MEETING.

The minutes were approved unanimously.

H. ACCEPTANCE OF APPLICATIONS FOR NOVEMBER 10, 2009 MEETING.

The meeting was adjourned at 10:02 p.m.

Attest:

Rose M. Elliott
Clerk - ZBA

ZONING BOARD OF APPEALS PROPOSED FEES				
TYPE	EXISTING CITY FEE	PROPOSED CITY FEE	CURRENT STATE FEE	GRAND TOTAL
One Family Two Family Non-Corporate/Non-Agricultural Use	\$105	\$160	\$60	\$220
Multi-Family (3 or more) Commercial Industrial Corporate & Agricultural	\$145	\$200	\$60	\$260
Appeal Decision	\$145	\$200	\$60	\$260

These fees are proposed due to the increase in advertising costs. A study shows that the average public hearing ad costs approximately \$60/ad (these are run twice) and the action taken ad is approximately \$40/ad (these are run only once). Therefore, it is time to increase.