

Minutes of Public Hearings of Zoning Board of Appeals Meeting on November 12, 2008

**MEMBERS PRESENT:** Rich Carey, Howard Haberman, 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. **223 Housatonic Drive** (Zone R-10) Jeffrey L. Elovitz, appellant, for Jeffrey & Theresa Moody, owners – request to vary Sec.3.1.4.1 side yard setback from 10' to 5.5' and 4.5' to construct 2 car attached garage and screen porch. CAM received. Map 14, Block 17, Parcel 13.

**Jeffrey Elovitz**, North Haven, architect, said the owners recently moved from Texas as Mr. Moody has been hired as the new CEO of Subway Advertising. The property meets all the zoning requirements except for the width at 60' where 70' is required. The hardships are the size of the lot, the wetlands in the rear of the property and a 4' drainage easement. The topography also falls down approximately 6-8' to the flood plain. They will eliminate an existing garage on the north side of the property, which encroaches on the easement, along with an existing sunroom which also encroaches on the setback on the south side of the property. They are proposing to construct a tandem 2 car garage and sunroom which will slightly encroach into the side yard setback. The adjacent neighbor has no problem with the proposal.

**Acting Chrmn. Haberman** confirmed what is being proposed will be less non-conforming than what is currently there to which Mr. Elovitz said that was correct. Acting Chrmn. Haberman added due to the topography and the wetlands, the addition cannot be placed in the rear.

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

## **DISCUSSION:**

**Mr. Montalbano** said the street seems to have many houses with this same configuration: small homes with single car garages set back on the property. When this tandem garage is constructed it will be a structure that is only 4-5' from the property line. He wondered if this were approved, how many other houses on the street would follow. Ms. Seltzer said this is not an unusual situation for the street. The hardship is the size of the lot. Acting Chrmn. Haberman added what is proposed, while it will be long, will be less non-conforming than the existing garage and they will also be removing another non-conformity on the other side of the house. Mr. Mead said the property slopes off in the rear and the addition cannot be constructed there.

**Mr. Mead** made a motion to approve with Ms. Seltzer seconding. The hardship is the size of the lot. The existing non-conforming garage will be removed and a more conforming garage constructed in its place. The motion passed 4-1 with Ms. Seltzer, Messrs. Mead, Carey and Haberman voting in favor and Montalbano voting against.

2. **91 Bayshore Drive cor. Oakland Avenue** (Zone R-7.5) Scott Farquharson, appellant, for Margaret & Roland Van Wijnen, owners – request to vary Sec. 5.8.3 Procedure to allow addition at elevation 10.1' where 12' is required; vary Sec. 5.8.6.1(4) to allow water heater below regulatory flood protection elevation of 12'. Map 28, Block 566, Parcel 1.

**Scott Farquharson**, 69 Central Avenue, Wolcott, Baybrook Remodelers, said the owners want to change a 6'x22' 3 season porch to living space. The house was built in a flood plain zone where the required floor elevation is 12' in 1920. The existing home has an existing floor elevation of 10.1'. The 3 season porch has an elevation of 9.66'. They are proposing to add sleepers to the existing floor to raise it to the same level as the rest of the house. Without the variance, to meet the elevation requirement of 12', they would have to remove the 3 season porch, raise the floor approximately 2' above the rest of the house and replace the 3 season porch. They feel this would create a hardship on the owners. The simplest solution is to add about 6" to the floor. All work would meet CT building codes. He then informed the Board they would not be moving the location of the water heater so they are no longer looking to obtain a variance to do that.

**Acting Chrmn. Haberman** asked him to repeat the hardship to which Mr. Farquharson asked if you were to lift a space that is 6'x22', how would you have continuation for the kitchen. You've created more of a hardship than anything else. They would have to raise the porch 2.6' and it would be 2' higher than the rest of the floor of the existing home.

**Acting Chrmn. Haberman** confirmed it is an existing structure that you are going to make part of the kitchen to which Mr. Farquharson agreed.

In answer to Mr. Mead's question, Ms. Stock said this is a FEMA regulation. This home is located in a flood zone. FEMA did not exist when this house was built. Now, because they want to do work, they have to bring it up to the flood elevation. It is a practical difficulty. You would have to step up onto it. It would not be a smooth transition into this room. They are willing to bring it up 6". The rest of the structure will not be changed.

**Mr. Farquharson** submitted a letter of support from a neighbor. He then withdrew the request for the second portion of the variance request.

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

#### DISCUSSION:

**Acting Chrmn. Haberman** said there is a practical difficulty here. Mr. Mead added all work will be internal. Ms. Stock answered Ms. Seltzer's question saying the regulations allow for either a hardship or practical difficulty. In this instance, the practical difficulty is the hardship. You cannot take an addition that is already there and make it part of a room that is already there if you have to raise it up.

**Mr. Carey** made a motion to approve the first part of the variance request and noted the second part of the request, Sec. 5.8.6.1(4), has been withdrawn with Mr. Montalbano seconding. The hardship is the practical difficulty of raising that portion of

Minutes of Public Hearings of Zoning Board of Appeals Meeting on November 12, 2008

the house to meet the rest of the house. The motion passed unanimously with Ms. Seltzer, Messrs. Carey, Montalbano, Mead and Haberman voting.

3. **226 Meadowside Road cor. Wayland Road** (Zone R-7.5) Fred Sears, owner – request to vary Sec. 3.1.4.1 rear yard setback from 25' to 8' to construct one story addition and deck. Map 34, Block 264, Parcel 20.

**Fred Sears**, 226 Meadowside Road, said he is seeking a variance to construct a one story addition and deck in the rear of his home. The house was originally built into the rear setback. Had they placed it more towards the front of the property, there would be plenty of room to be in the rear without a variance.

**Acting Chrmn. Haberman** confirmed the house is nonconforming as is and added it is also a corner lot.

FAVOR:

**Ken Daigle**, 220 Seabreeze Avenue, Daigle Construction LLC, said he met with Mr. Sears and tried numerous ways of putting an addition on the lot and there just isn't any other place for him to put it. This is the only way to do it.

OPPOSITION:

**Frank McCann**, 7 Wayland Road, said if Mr. Sears is allowed to build this addition and deck 8' from the property line, there will be no privacy. He has been there for 30 years and he doesn't want to pay taxes to have no privacy.

**Linda Seaholm**, 11 Wayland Road, said all the houses on corners lots in the neighborhood are built on the same angle as Mr. Sears. The owners have put additions on without going for variances and the backs of their homes do not come within 8' of their property lines. She agreed that Mr. McCann will have no privacy if this is approved. After review of the plans, she said she is not thrilled with the application.

REBUTTAL:

**Mr. Sears** stated the construction closest to the property line would be the deck and not any actual living space.

The hearing was closed.

DISCUSSION:

**Mr. Mead** said if the house were built differently, there would be no need for a variance. The hardship is the shape of the lot. Ms. Stock added no matter where he tried to put this addition, he would need to come before the Board. This way makes the most sense and is the least intrusive.

**Mr. Carey** made a motion to approve with Mr. Mead seconding. The hardship is the placement of the house on the lot. The corner of the deck at 8' from the property line is the closest point with the rest of the addition angling up to 25'. There is no other place

Minutes of Public Hearings of Zoning Board of Appeals Meeting on November 12, 2008  
this addition could be placed. The motion carried unanimously with Ms. Seltzer, Messrs. Carey, Montalbano, Mead and Haberman voting.

**B. TABLED BUSINESS**

**C. OLD BUSINESS**

**D. NEW BUSINESS**

1.) **242 Broadway** – request for an extension of time (3<sup>rd</sup>).

**Ms. Stock** explained the applicant is requesting their third extension of time. She read the letter into the record. She said they can pull a permit and then they would have a year to begin construction. The fact that they can't sell their home in Trumbull shouldn't have much bearing.

**Acting Chrmn. Haberman** said there has to be some limit on the amount of extensions the Board grants.

**Mr. Carey** made a motion to deny with Mr. Montalbano seconding. The Board is fairly lenient with extensions of time but this is excessive. The motion carried unanimously with Ms. Seltzer, Messrs. Carey, Montalbano, Mead and Haberman voting.

**E. STAFF UPDATE**

**Ms. Stock** spoke of the owners of 91 Merwin Avenue, who went for a variance and the variance lapsed. They appeared again before the Board and were again approved. They pulled their zoning permit in January of this year but didn't go for their Building permit until August. The Building Dept. informed them of what was required and the owners didn't return to the Building Dept. until last week. It was then that the request for an extension was received. Unfortunately, they already took out their permit from us. She spoke with City Council and then told the owner that because the permit had been pulled, it would not be heard at tonight's meeting. They have a year from when the zoning permit was issued to begin construction.

**F. ACCEPTANCE OF MINUTES FROM OCTOBER 14, 2008 MEETING.**

The minutes were approved unanimously.

**G. ACCEPTANCE OF APPLICATIONS FOR DECEMBER 9, 2008 MEETING.**

The meeting was adjourned at 7:40 p.m.

Attest:

Rose M. Elliott  
Clerk - ZBA