

Minutes of Public Hearings of Zoning Board of Appeals November 13, 2007

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

**ALTERNATES PRESENT:** KathyLynn Patterson, Ronald Spangler

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

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

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

1. **20 Falmouth Street** (Zone R-12.5) Warren Field, Jr., owner - request to vary Sec. 3.1.4.1 side yard setback both sides from 10' to 8' with 18" eave projection each side. Map 19, Block 249, Parcel 5.

**Withdrawn.**

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2. **40 Soundview Avenue** (Zone R-5) Gisela Boxleitner, owner – request to vary Sec. 3.1.4.1 front yard setback from 10' to 2' to allow 2<sup>nd</sup> floor balcony to remain. CAM required. Map 49, Block 732, Parcel 10.

**Gisela Boxleitner**, 40 Soundview Avenue, said the 2<sup>nd</sup> floor balcony is already there, is 3'x6' and 7'x6' above the staircase.

**Mr. Tuozzola** asked how long the structure had been there and if a permit was pulled for it to which Ms. Boxleitner answered it has been there 3 ½ years and she was not aware the balcony was not on the plans.

**Mr. Crabtree** said there was a major rehabilitation of the home and during his inspection he noted the second floor balcony, which projected out over the first floor stair area, was not on the plans. The balcony is within the confines of the first floor stairs but on the second floor level.

FAVOR:

**Linea Brinkerhoff**, 46 Soundview Avenue, said she is in favor of the application.

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

DISCUSSION:

**Chrmn. Katen** said it doesn't extend out beyond the first floor stairs and is not in anyone's way.

**Mr. Carey** made a motion to approve with Mr. Mead seconding. The reason for approval is the balcony is staying within the original footprint, but on the second floor. The motion carried unanimously with Messrs. Mead, Tuozzola, Haberman, Carey and Katen voting.

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3. **4 Lawrence Court cor. Lawrence Avenue** (Zone R-5) Jason Pereira, owner – request to vary Sec. 3.1.4.1 front yard setback from 10' to 1' to Lawrence Court, front yard from 10' to 5' to Lawrence Avenue, vary side yard from 4' to 1' to erect 3 car garage; vary Sec. 11.2 to allow accessory building to exceed 50% of the principal building footprint size to 80.5%+/- . CAM received. Map 28, Block 579, Parcel 1.

**Jason Pereira**, 4 Lawrence Court, stated he would like to remove the existing 2 car garage and put up a three car garage. Parking and storage are a problem. The current two car garage doesn't fit two cars and he has no storage in the house. He has one parking spot in the driveway but there is no other parking.

**Chrmn. Katen** asked how many drivers were in his family to which Mr. Pereira answered he has two cars and his girlfriend has one car. When asked what his hardship was, Mr. Pereira answered it is mainly the lack of parking and storage. The existing garage needs repairs to the roof and there is rotting wood inside from termites. He was hoping to knock it down and rebuild it as a three car garage.

**Mr. Tuozzola** asked where the three cars were being parked currently.

**Mr. Pereira** stated there is one in the garage, one in the driveway and one is parked on the side street where there is no parking. He added he is just looking to extend the proposed garage into his property.

**Mr. Spangler** asked if it was possible to move the whole proposed garage forward towards the house.

**Mr. Pereira** said it's possible but he was hoping to leave it where it is and add another ten feet.

The Board discussed moving the garage to a different location with Mr. Pereira.

**Mr. Crabtree** added wherever the garage was positioned, it would require a variance somewhere.

#### OPPOSITION:

**Brian Lema**, 75 Broad Street, attorney for Theresa Covaleski and Scott Digris, 3 Lawrence Court, submitted paperwork to the Board including photos and a petition of neighbors in opposition. He stated even if the garage were moved off of Lawrence Court, two variances would still be needed. There is no hardship. The construction of a new garage is not necessary for the reasonable use and enjoyment of the property. It will have a significant adverse impact on the neighborhood. The property already has a 2800 sq. ft. house with 1200 sq. ft. of wood decks, standing 50' tall and 46' long. He explained the photos to the Board. There is currently 378 sq. ft. of garage area and the proposed garage would have 670 sq. ft. The proposed garage would be a substantial enlargement on the property, which has already benefited from five prior variance approvals. He is not proposing to rebuild the existing structure but proposing to build an entirely new structure. He added this application is inconsistent with the goals and purposes of the Coastal Area Management boundary. There has been no hardship shown. The applicant has and will continue to make reasonable use of the property. The size of the lot is not unique to the area and no one in the area has a three car garage.

**Theresa Covaleski**, 3 Lawrence Court, opposes the application.

**Betty Jane Marshall**, 48 ½ Lawrence Court, is opposed to the construction.

**Scott Digris**, 3 Lawrence Court, also opposes the application.

REBUTTAL:

**Mr. Pereira** stated they are not asking to increase the garage by 50%, they are only asking to extend the garage 10 more feet. The proposed garage would be in line with the neighbors' garage and would not block their views. The height of the garage will not block any views either. The original setbacks on Lawrence Court will remain the same.

**Chairman Katen** asked again what the hardship was.

**Mr. Pereira** answered it is the lack of parking and lack of storage in the house.

The hearing was closed.

DISCUSSION:

**Mr. Haberman** said he realizes the applicant has a right to rebuild his existing garage, which is falling down, but he did not hear any hardship that would justify the Board's approval of increasing an existing non-conformity. Having three cars is not a hardship.

**Mr. Tuozzola** added there are no other 3 car garages in the area and approval of this variance would have other neighbors thinking about doing the same.

**Chrmn. Katen** said there is no hardship; the owner just wants it.

**Mr. Haberman** said it is very tight there; the buildings are close together. There is not a lot room there for any type of expansion.

**Mr. Spangler** said there wouldn't be any blocking of the neighbors' views, but there does have to be a hardship.

**Mr. Mead** agreed there was no hardship and added the owner could rebuild where the existing one is.

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

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4. **887 East Broadway** (Zone R-7.5) John Strom, appellant, for Priscilla Belanger, owner – request to vary Sec. 4.1.1.3 to construct accessory structure of 22' in height where 15' is allowed with 2<sup>nd</sup> story storage. CAM received. Map 27, Block 475, Parcel 20.

**John Strom**, said the owner would like to construct an accessory garage of 22' in height with second floor storage. The hardship is there is no attic or basement in the existing home. They would also like to create off-street parking. He added because of the age of the homeowners, they would like to have a standard stairway going up into the second floor rather than something that is a pull down staircase. The owners, who winter in Florida, are considering living here year round. When they leave for Florida, they move everything that is outside to inside the house. They could not do this if they were living here permanently.

**Chrmn. Katen** stated that needing storage is not a hardship.

**Mr. Spangler** asked Mr. Strom to elaborate on how the owners' age affects this proposal to which he answered if the second floor only had a pull down staircase, it would be dangerous moving things up and down to the storage area because of their age. A regular stairway requires more height and the owners still need to be able to park two cars on the first floor.

**Mr. Haberman** confirmed the proposal was to tear down the existing 1 car garage and build a two car garage with 2<sup>nd</sup> story storage. All the setbacks can be met but the height requirement cannot.

**Mr. Spangler** asked if the hardship was getting up into the storage space to which Mr. Strom answered that was correct and also having enough room for storage.

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

#### DISCUSSION:

**Mr. Haberman** stated the issue was whether the need for storage is a hardship. He said he didn't think so.

**Mr. Mead** said if they can remove the one car garage and build a two car garage legally, they will pick up storage there. There is no hardship. They can still build the garage and have storage.

**Mr. Haberman** made a motion to deny with Mr. Mead seconding. There was no hardship shown. The motion carried unanimously with Messrs. Mead, Tuozzola, Haberman, Carey and Katen voting.

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5. **35 East Avenue** (Zone R-7.5) Frank Mingrone, owner – vary Sec. 3.1.4.1 side yard setback from 4' to 1' to allow accessory structure to remain. CAM received. Map 38, Block 588, Parcel 90A.

**Frank Mingrone**, 35 East Avenue, said he is looking for a variance for a utility shed. He said he also has no storage. The shed is too close to his neighbor's property line. He didn't want to take a tree down so he tried to squeeze it in between the fence and the deck. There is no garage and no basement, just a crawl space. Without the shed, everything would be lying out in the yard under tarps. He has a couple of motorcycles, woodworking tools and lawn furniture stored in the shed. The shed is 8'x12'.

**Chrmn. Katen** asked how long he owned the house to which Mr. Mingrone answered 2 or 2 ½ years.

**Chrmn. Katen** referred to the plan and asked about the full deck in the rear of the house.

**Mr. Mingrone** said the deck came with the house.

**Chrmn. Katen** asked if he was aware that the deck was supposed to have been cut down.

**Mr. Mingrone** said he was not.

**Mr. Crabtree** stated it was discovered in the file that there was a court case with the prior owner and the deck was supposed to have been cut back. A portion of the deck would still remain.

**Chrmn. Katen** said it sounds like if the deck had been cut back like the court case specified, there would be room to put the shed.

**Chrmn. Katen** stated the shed could be reduced to make it less non-conforming. He thought because of the discovery of the court case, the item should be tabled so more research could be done.

**Mr. Mingrone** said he bought the house for what it was; including the deck and the views. Now he was being told the deck might have to come down.

**Chrmn. Katen** said what he is saying is the office needs to research the court case.

**Mr. Crabtree** said the record is on file.

**Chrmn. Katen** said he is saying there is a bigger issue than the shed. He is trying to do what is fair and it seems to him that tabling it to the next meeting is the right thing to do.

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

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6. **41 Kent Street thru Warfield Street** (Zone R-7.5) George W. Adams, III, attorney, for BAMF Homes Limited, appellant, for Jason M. Hart, owner – vary Sec. 3.1.4.1 lot area from 8,396 sq. ft. to 5,529 sq. ft. where 7,500 sq. ft. is required. Map 23, Block 343A, Parcel 13.

**Attorney George Adams**, 300 Bic Drive, stated the application is to decrease the lot area from 8,396 sq. ft. to 5,529 sq. ft. for that portion of the property that fronts on Kent Street. What exists now is a house at 41 Kent Street with its garage on an “L” shaped lot; and a tall skinny house at 36 Warfield Street in the rear. They are proposing to make a rectangular lot facing Kent Street and a rectangular lot facing Warfield Street. This would enable a raised ranch to be built on Warfield Street, which would be similar to the other houses in the neighborhood. The property was originally divided in 1912 into 4 lots. Lots #140 and #141 face Kent Street and Lots #176 and #177 face Warfield Street. He passed out copies to the Board along with a petition of neighbors in favor of the application. Lots #176, #140 and #141 were merged because of an above ground pool on Lot #176. Lot #177, 36 Warfield Street, was certified as a building lot. If the variance is approved, Lots #176 & #177, will be combined into one building lot, through a lot line adjustment by the Planning and Zoning Board. The proposed house will be keeping with the neighborhood. The hardship is the creation of the merger policy, which postdated the creation of the lots.

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

#### DISCUSSION:

**Mr. Haberman** said it makes sense to approve it and allow it to be divided in a way that is keeping with the neighborhood with Mr. Carey and Chrmn. Katen in agreement.

**Mr. Tuozzola** made a motion to approve with Mr. Haberman seconding. The combining of the two lots will make for a more attractive house in the area. Mr. Carey added the hardship is these lots predate zoning and the merger regulation is

also a hardship. The motion carried unanimously with Messrs. Mead, Tuozzola, Haberman, Carey and Katen voting.

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7. **20 Chetwood Street** (Zone R-5) John W. Knuff, attorney, for Wilson F. Chicos, owner – vary Sec. 3.1.4.1 side yard setback from 5' to 0.7' to construct side deck with stairs to rear 2 tiered deck. CAM required. Map 22, Block 457, Parcel 9.

**Attorney Catherine Cuggino**, 147 Broad Street, said the lot is 20' narrower than required in an R-5 zone. The owners want to raise the house 3' to accommodate a carport. There is no parking other than in front of the houses across the street. For many years, the owners and their neighbors have been parking in a gravel area adjacent to the Chicos' property, which is owned by the State of Connecticut. A few months ago, they received a letter from the State ordering them to cease using this area for parking. She submitted photos to the Board.

**John Grant**, 11 Ettadore Park, designer, explained the proposal for the carport will not increase the existing structure in height or width. The entire house will be lifted 3' and the additional space will be made up in the basement. The basement walls will be brought up to the new floor level to support the structure. The existing basement floor, which is currently below grade, will be raised above grade. The grade itself will be raised to above street level. The side deck will go out 3½'; building code requires 3'.

**Mr. Haberman** asked why the side deck is needed to which Mr. Grant answered the existing front door will need to be moved from the street side to the side of the house when the house is raised.

**Chrmn. Katen** stated the raising of the house has nothing to do with the variance to which Mr. Crabtree agreed.

**Chrmn. Katen** said the variance is for a walkway around the side of the house and asked what is the hardship.

**Mr. Grant** said the hardship is the lot is non-conforming, smaller than what is required by zoning. With the narrowness of the lot, it is impossible to put the entrance and the carport in the front so it is necessary to move the entrance to the side of the house, along with stairs and a landing to enter.

**Chrmn. Katen** said it looks like the variance is to exit the rear door, walk around and go out the front to which Mr. Grant said it is a second exit off the deck.

**Mr. Crabtree** said they could walk through the house to get from the front to the back and he is troubled by the request.

**Atty. Cuggino** added that Chetwood Street is very narrow at only 19.3' wide. This allows no parking in front of or on the property. The property is in a flood zone and a portion of the street extends onto the Chicos property. The side of the house where the variance is being requested is where the State property is. No neighbors will be affected by it. She submitted letters from neighbors in favor of the application.

**Mr. Tuozzola** asked how long the owners have lived there.

**Atty. Cuggino** answered since 1972. The DEP is now just cracking down on the neighborhood for parking on State property.

**Chrmn. Katen** said this is not about parking and raising the house.

**Atty. Cuggino** added the State has told the owners they have no objection to them building up to the property line.

**Mr. Mead** asked if she had a letter from the State saying that to which Atty. Cuggino said she only had the cease and desist letter. This was a verbal statement told to the Chicos' by Tom Morrissey of the DEP.

**Mr. Mead** asked what measures the DEP are going to take to prevent people from parking there in the future.

**Atty. Cuggino** said the DEP is working on the problem.

**Mr. Haberman** said he understands the need to put the stairs on the side of the property to access the entrance, but why extend the walkway to the back deck. It is not a necessity, just a convenience.

**Mr. Grant** said that was correct. They could eliminate the side deck, but it would landlock the backyard.

**Atty. Cuggino** concluded by saying the owners are trying to enhance the neighborhood and make it safer. The hardship is the narrow, non-conforming lot.

FAVOR:

**John Cooper**, 622 Arrowhead Drive, Orange, said he is in the process of building a home 50-75 yards away and he is in favor of the application because he recognizes the parking problem. He received a similar side variance to park underneath his house.

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

DISCUSSION:

**Mr. Carey** stated they did show a hardship with the non-conforming lot.

**Mr. Haberman** said the only problem he had was with the extension of the side walkway to the rear of the property. It is more of a convenience than a hardship. It was stated the State doesn't care if they build there. It would have been more of an issue if there were a house on that side.

**Chrmn. Katen** agreed.

**Mr. Mead** said if the State were to put up a fence, the walkway would allow the owners access to the back. The hardship is the lot. The house is being raised above the flood zone and they are providing off-street parking.

**Mr. Tuozzola** said the State has forced the owners into a big expense after all these years.

**Chrmn. Katen** stated they don't need the walkway on the whole side of the house. They could go around the other way or go through the house. The Board can't make a decision on what the State might do in the future.

**Mr. Carey** made a motion to approve with Mr. Mead seconding. The motion carried 4-1 with Messrs. Mead, Tuozzola, Haberman and Carey in favor and Katen voting against.

## **B. TABLED BUSINESS**

1. **862 East Broadway** – appeal the decision of the Assistant City Planner's refusal to issue permit for construction of new home.

**Ian Cole**, attorney, 215 Main Street, Derby, said in his letter to the City Attorney's office that his client has a right to rebuild the house within the original footprint. It is a non-conforming lot. He was granted a variance and he should have rebuilt in the time frame but he didn't. They are not asking for anything more. They submitted the elevations just to show that there was not going to be a problem with the overhangs. The original application did not have any elevations. The permit was issued by Mr. Crabtree in July of 2006. If need be, they will use those original plans that were already approved. He feels like he was sandbagged with the elevations. Mr. Crabtree used the elevations to say they needed to start from scratch again. If those elevations are a problem, they withdraw those elevations and will go with the ones that Mr. Crabtree approved by issuing the zoning permit in July of 2006. He added the property is for sale and Mr. Heslin may not be the person the Board will be dealing with in the future. The next owner may be back before the Board if they do not want to do what Mr. Heslin proposed.

**Mr. Crabtree** said he did not issue the permit, Linda Stock did.

**Mr. Haberman** made a motion to deny the appeal and uphold the decision of the Assistant City Planner with Mr. Mead seconding. The reason for denial is based on the opinion received from the City Attorney. Chrmn. Katen added the denial is also based on the record of this Board and the language of the request originally. Atty. Cole stated he did not receive a copy of the opinion and would like one. The motion carried unanimously with Messrs. Mead, Tuozzola, Haberman, Carey and Katen voting.

2. **862 East Broadway** – vary Sec. 3.1.4.1 side yard setback from 10' to 5' to construct single family dwelling.

**Chrmn. Katen** said there is no material change in any circumstances between the first and second variance applications.

**Mr. Crabtree** repeated he didn't issue the first permit and if elevations were received at that time, there wouldn't be this mess today.

**Mr. Haberman** made a motion to approve the variance with Mr. Carey seconding. The reason for approval is it is the same variance that was approved previously, based on the opinion from the City Attorney. Chrmn. Katen added there is no material change in any circumstances between the first and second applications. The motion carried unanimously with Messrs. Mead, Tuozzola, Haberman, Carey and Katen voting.

#### **C. OLD BUSINESS**

#### **D. NEW BUSINESS**

1. **6 Sand Street** – request for an extension of time.

**Mr. Carey** made a motion to approve the extension of time for one year with Mr. Haberman seconding. The motion carried unanimously with Messrs. Mead, Tuozzola, Haberman, Carey and Katen voting.



2. **242 Broadway** – request for an extension of time.

**Mr. Carey** made a motion to approve the extension of time for one year with Mr. Haberman seconding. The motion carried unanimously with Messrs. Mead, Tuozzola, Haberman, Carey and Katen voting.

**Mr. Mead** commented on the memo received from the City Planner regarding the question on projections after a variance is granted. The answer is the applicant gets no projection. He asked if the office could be sure the applicants know this.

**Mr. Crabtree** added there is a proposed regulation that will be heard next month that will take care of this problem. It is also being proposed to have a sketch in the book to explain it further.

**Mr. Mead** said Item #1, which was withdrawn, is asking for an 18" eave projection. They are not entitled to have a projection at all.

**Mr. Crabtree** said they are aware of the gutter problem. What he has been doing is if they need 4', he has been asking for a variance down to 3'.

**Chrmn. Katen** asked about the air conditioning units.

**Mr. Crabtree** said the proposed regulation will also address air conditioning units. They will have to be shown on the plans.

**E. STAFF UPDATE**

**F. ACCEPTANCE OF MINUTES FROM OCTOBER 13, 2007 MEETING.**

The minutes were approved unanimously.

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

The meeting was adjourned at 8:50 p.m.

Attest:

Rose M. Elliott  
Clerk - ZBA