

MEMBERS PRESENT: Rich Carey, Howard Haberman, Fred Katen, Ed Mead, Nanci Seltzer

ALTERNATES PRESENT: David Hulme

STAFF PRESENT: Emmeline Harrigan, Assistant City Planner; Linda Stock, Zoning Enforcement Officer; Rose Elliott, Clerk

The meeting was called to order at 7:04 p.m.

A. CONSIDERATION OF AGENDA ITEMS

1. **66 Point Beach Drive** (Zone R-7.5) Thomas B. Lynch, attorney, for Robert & Charlene Benoit, owners – request to vary Sec.3.1.4.1 rear yard setback from 25' to 1.7', 2' and 8.4'; side yard setback from 5' to 1.5' to construct one story addition. CAM required. Map 30, Block 631, Parcel 21.

Thomas Lynch, 63 Cherry Street, attorney, is representing the owners who purchased the home in 2004. They want to remove the old garage and build a new 2 car attached garage and breezeway. The current non-conformity that exists because of the detached garage necessitates the variance application. The property consists of two lots that were combined and shown on a 1927 subdivision map. The garage and breezeway cannot be constructed on the left side of the lot because the lot is an unusual shape and the placing of the proposed addition on either side would require a variance. Another reason is the lawn area on the left side of the house affords water views to the neighbors on Atwater Street. Since the existing garage is already non-conforming, they decided to keep the garage on that side. The hardship is the lot is such an unusual shape. The proposed garage will not increase the non-conformity in terms of the setbacks on the side and the rear. There are at least 7 or 8 residences on Point Beach Drive that have come before the Board for variances.

Jim Denno, 93 Sunnyside Court, architect, told the Board of the specifics of the proposed addition and said the floor elevation will be at 13.93', and anything mechanical or electrical will be at that level. The lower level will be a basic mudroom leading from the garage. The absolute height will be only 20' from the average grade. It is 14' to the midpoint. There will only be storage above the garage. He added they are staying within the same line of where the garage is now. The rear setback has been increased from 2.7' to about 3' for maintenance.

Atty. Lynch submitted letters of support from the neighbors. He read a letter of support into the record from Catherine Cuggino, attorney for Stephen and Ann Hallberg, 17 Atwater Street.

Chrmn. Katen added there was another letter submitted to him earlier in the evening.

Ms. Seltzer asked if there was any consideration given to putting the addition on the other side to which Atty. Lynch answered they did but due to the odd shape of the lot, a variance request would be required on that side also.

Ms. Seltzer asked the dimensions of the proposed garage.

Mr. Denno said it is basically a 22'x23' garage.

Ms. Seltzer questioned how two cars were going to get in and out of the garage.

Robert Benoit, 66 Point Beach Drive, said he has driven across the ground print and it does work. It would be great if there were another 2' or 3' of garage but it is manageable.

Chrmn. Katen asked the hardship to which Atty. Lynch said there are non-conformities on the site currently with the existing garage and those non-conformities would not be increased. He added variances would be required on the other side of the property as well.

Chrmn. Katen wondered why a 2 car garage couldn't be placed on the left side of the house.

Atty. Lynch answered a 2 car garage could be put there but not with a mudroom and laundry room. The addition would not flow. It would be going off the dining room or living room.

Mr. Mead asked Ms. Stock if variances were discussed if the addition were placed on the left side to which Ms. Stock answered it was discussed with Mr. Denno and there was only the rear yard setback that would be encroached upon. They have 34' on the left side to build; the side yard setback is only 5'.

Atty. Lynch reminded the Board that this addition was designed to preserve the water views of the neighbors on Atwater Street.

FAVOR:

Alan Caden, 61 Point Beach Drive, read his letter of support into the record and added while the placement of the house needs to be considered, esthetics are important too.

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

DISCUSSION:

Ms. Seltzer felt in reviewing the property that it is very tight on one side and open on the other side. She wasn't sure the hardship was significant enough.

Mr. Carey disagreed and said by putting this addition on the other side, you will be blocking water views. There is already an existing non-conforming garage on the property and they are not increasing the non-conformity. The hardship is the shape of the lot and the placement of the house.

Ms. Seltzer commented that the blocking of water views of the neighbors is not a purview of the Board.

Chrmn. Katen stated that Ms. Seltzer was correct in saying that the blockage of water views is not a hardship according to the Statutes.

Mr. Carey stated they would still require a variance to put it on the other side.

Chrmn. Katen said he believes he heard it would be a small variance. They have a lot of land. It all seems to be pushed into one area.

Mr. Haberman said if they came back with a proposal for the left side there would be a lot of opposition from the neighbors. You have to consider neighbors' feelings.

Mr. Carey said all the houses in the neighborhood are configured the same way. It's a beach neighborhood.

Mr. Mead added it would have been nice to see how it would have looked on the left. If it is denied and they come back with the addition on the other side, there will be a line of opposition out the door.

Chrmn. Katen said it is only a one story addition and he didn't see a "hardship".

Mr. Carey made a motion to approve with Mr. Haberman seconding. There is already a non-conforming structure there and they are not increasing the non-conformity. It is the best place to put the addition. The motion failed to carry 3-2 with Messrs. Carey, Mead and Haberman voting in favor and Ms. Seltzer and Chrmn. Katen voting against.

Ms. Seltzer made a motion to deny with no second. The application is denied.

2. **12 Francis Street** (Zone R-7.5) Kevin Curseaden, attorney, for Joseph G. Voll, appellant, for Antoinette Voll, owner – appeal the decision of the Assistant City Planner's cease and desist order and the City Planner's decision and letter. Map 6, Block 84, Parcel 2.

Attorney Kevin Curseaden, 26 Cherry Street, said he had faxed to the Planning and Zoning office earlier in the day, a request for a continuance to the January 13th ZBA hearing. They have a soil scientist who was planning on testifying as an expert witness but was unable to attend due to an illness in her family. He didn't believe that it caused anyone any hardship if it were carried over to next month. He added the Planning and Zoning meeting on the cease and desist had been continued to January 20th, so this appeal would still be heard before then.

Chrmn. Katen stated before they can vote on a continuance, they have to decide whether or not the ZBA Board has any jurisdiction in this appeal. He then asked Ms. Stock for her comments.

Ms. Stock stated the Assistant City Planner, Emmeline Harrigan, issued an order to the property owner on October 24, 2008, so the appeal period was over on November 8th. The appeal wasn't filed until November 13, 2008 making it past the time. She continued that it is and has been the policy in our office set in 1977, that the appeal period begins on the day of the order. There is nothing written in State Statutes or the Regulations that states anything different but that's the way it has always been done. So the appeal was not timely. The letter Mr. Sulkis sent was done on behalf of the Planning and Zoning Board as its executive secretary just like I am this Board's executive secretary. It was not an order or a requirement. It was a decision made by the Planning and Zoning Board. The mention of Ms. Harrigan's order was just that, a mention that this is why the P & Z Board was calling for the public hearing. So for those reasons, it is up to this Board to decide whether or not they have jurisdiction on an order that 1) had an untimely appeal and 2) on a letter that was not an order requirement by a zoning official, it was an informational notice.

Mr. Haberman confirmed the letter was the notice of a hearing to which Ms. Stock answered in the affirmative.

Atty. Curseaden stated that State Statute does state that it is upon actual notice received that the 15 day appeal period begins. He said he faxed over paperwork to the office earlier today that addresses Assistant City Attorney Anger's opinion and attached the statute and a CT Supreme Court case that is very clear. He said the cease and desist order was not sent certified mail or return receipt requested, nor was it published in the newspaper. So there was no actual notice given until Mr. Voll received it at the end of November. State law is very clear when the appeal period starts. He believes Ms. Anger and Ms. Stock are incorrect.

Chrmn. Katen said he did not think this Board could make a ruling on a law or the interpretation of a law and he was not going to be the first one to do it.

Ms. Seltzer said she is confused and would like clarification.

Board discussion continued.

Ms. Stock said he is asking for a continuance of both items, the cease and desist order and the letter, until January 13th. It has to be heard within 65 days of when it was filed, so it has to be heard at the January 13th meeting. If the Board feels it is within their purview at this point, to let him go forward with the appeal then you can grant it. The point she was trying to make to the Board was to first decide whether or not it was under their jurisdiction.

Mr. Haberman said it seemed clear that the second part, the letter, is a notice and not a decision. The real question to him was when the 15 days actually start.

Atty. Curseaden said if that's the City's practice, it is wrong. It is very clear in the CT Supreme Court case and State Statute 8-7, that the 15 days start upon receipt of notice.

Chrmn. Katen said we can't say yes or no because it just says "any appeal of a decision of the Zoning Enforcement Officer shall be taken within 15 days". Period. That's what it says.

Mr. Mead asked which one do they follow, City or State Statute?

Ms. Stock said this is a precedent that's been set in our office since 1977 and we've been using it ever since.

Chrmn. Katen said if that's what we been doing for thirty years...

Ms. Stock noted that the office does not send anything out certified except the decisions and explained the reason we don't is because the people have to go to the post office to pick them up and they don't pick them up. All orders she sends state: you are hereby ordered to such and such within ten days of the date of this order.

Atty. Curseaden repeated that with all due respect of the City's practice, it is contrary to well settled State law and the State Statute which the Regulations are derived from in the first place.

Chrmn. Katen said he hears both sides but still does not think that it is within the Board's jurisdiction to decide.

Ms. Seltzer made a motion to approve the continuance with Mr. Carey seconding for discussion. Mr. Carey said he didn't believe we should continue it because it's not the Board's purvey to do so. Mr. Mead added that if it's not our jurisdiction to make a decision on it then we shouldn't allow the extension and carry it over to next month. Mr. Haberman agreed. The motion was denied 4-1 with Messrs. Carey, Haberman, Mead and Katen voting against and Ms. Seltzer voting in favor.

Mr. Haberman made a motion to deny the request for a continuance with Mr. Carey seconding. The reason for denial is it is not within our jurisdiction to make that decision. The motion carried 4-1 with Messrs. Carey, Haberman, Mead and Katen in favor and Ms. Seltzer against.

3. **462 Oronoque Road** (Zone LI) Thomas B. Lynch, Esquire, for Oronoque Road, LLC, appellant, for Michael DeDonato Trust, owner – request to vary Sec. 2.5.5 to allow 15' wide access to rear lot where 50' is required. Map 74, Block 928, Parcel 18.

Withdrawn.

4. **49 Regent Terrace cor. Crescent Drive** (Zone R-10I) Daniel Blanchet, appellant, for Wayne W. Colbree, owner – request to vary Sec. 3.1.4.1 front yard setback from 25' to 15' to perform over 80% reconstruction of single family dwelling. CAM required. Map 14, Block 19, Parcel 1.

Daniel Blanchet, 172 Gulf Street, stated they are there for over 80% reconstruction to renovate the property and add a dormer on the 2nd floor. It was constructed in 1942 and is located on a corner lot. They have two front yards with a setback requirement of 25'. Since the reconstruction will exceed over 80%, they are required to maintain the requirement of 25'. The hardships are the house has existed since 1942, and met the requirements at that time. The Zoning regulations changed and thus created the hardship.

Mr. Haberman confirmed nothing is changing to which Mr. Blanchet said they were just proposing a dormer, no footprints will be increased, only renovations.

Ms. Seltzer asked about the fireplace and bilco doors to which Mr. Blanchet said the fireplace will be removed and the bilco doors will be improved.

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

DISCUSSION:

Mr. Carey said he didn't see a problem. Mr. Haberman added they are not increasing the non-conformity, just remodeling.

Ms. Seltzer made a motion to approve with Mr. Haberman seconding for all the reasons stated. The motion carried unanimously with Ms. Seltzer, Messrs. Carey, Haberman, Mead and Katen voting.

B. TABLED BUSINESS

C. OLD BUSINESS

D. NEW BUSINESS

1. **19 Hanover Street** – Request for an extension of time (2nd).

Ms. Stock read the letter into the record.

Mr. Mead reminded the Board that last month they denied a request for a 3rd extension of time. He felt the 2nd request should only be granted for 6 months. Mr. Carey said he felt it wasn't a big deal. Chrmn. Katen agreed that two extensions seemed reasonable especially in today's economy. But added the Board should think about when the extensions should be halted. He thought two extensions were reasonable while three extensions were excessive.

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

E. STAFF UPDATE

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

The minutes were approved unanimously.

G. ACCEPTANCE OF APPLICATIONS FOR JANUARY 13, 2008 MEETING.

The meeting was adjourned at 8:07 p.m.

Attest:

Rose M. Elliott
Clerk - ZBA