

MEMBERS PRESENT: Rich Carey (7:10), Howard Haberman, Nanci Seltzer, Joseph Tuozzola, Fred Katen

ALTERNATES PRESENT: Thomas Nichol, William Evasick

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

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

A. CONSIDERATION OF AGENDA ITEMS

1. **5 Gibson Road cor. Orange Avenue** (Zone R-18) Jay & Patricia Hanna, owners – request to vary Sec. 3.1.4.1 to 3.8' in lieu of 40' required front yard setback to allow 6' fence to remain along Orange Avenue. Map 98, Block 835E, Parcel 5.

Pat and Jay Hanna, 5 Gibson Road, said their hardship is the fact they are a corner lot, located on a curve in the road, where there have been several serious accidents. They purchased the property over ten years ago. The first accident happened in 2003 with the driver sustaining serious injuries after hitting a tree. In the second accident in 2004, a Milford police officer hit the curb and ran over shrubbery on their property. He barely avoided hitting the same tree that was hit in 2003. The most recent accident was in 2006, when a car actually hit their house, going through the wall of their youngest son's bedroom. This last accident impacted the way they viewed the safety of their home and they began to try to find solutions to make their property safer. A traffic engineer looked at the road and concluded that speed was the biggest factor in the accidents and signs were installed warning of the curve in both directions. They met a local landscaper who suggested that they place a wall at the front corner and a fence at the back corner. This way, they would not only get some protection in the back, but would gain some privacy as well. They purchased the fence from Orange Fence and checked with the Building Dept. to see if a permit were required and were told that there was a height limit of 4' in the front and 6' on the side and back. In good faith, they had the fence put up believing they had done the right thing for their family and property. The hardship is the lot is a corner lot, on a curve, on a busy road with a history of accidents. The fence is white and sits behind the warning signs of the curve in the road, helping to highlight the signs, making it safer for them and the drivers on Orange Avenue. The posts are 6' high but the solid portion of the fence is only 4.5' high with 1' to 1.5' spindles on top. To take it down, to decrease the height or to move it, would be very costly. They have received compliments from the neighbors saying it beautifies the neighborhood. She submitted pictures to the Board.

Ms. Seltzer asked if the hardship they were claiming is the cost of redoing the fencing.

Ms. Hanna said the hardship is the property is located on a curve in the road. She agreed the cost would be part of the hardship. The other part is they gained a sense of privacy and security with this fence and they would lose that sense of security.

Ms. Seltzer noted they could have a lower fence according to the Regulations to which Ms. Hanna stated the signs would not be highlighted if the fence were lower.

Chrmn. Katen said he understood the security issue because of the corner, however, the financial piece of the argument is not a hardship. He thought a chain link fence with trees would be more in order.

Mr. Tuozzola said the fence could be 3' high. The fencing company should have known that a 6' high fence wasn't permitted.

Ms. Hanna said they did have different people look at the problem and no landscape or fencing company would guarantee any fence would stop a car. There should be some liability on the fence company but also on the Building Dept. who gave them incorrect information. They did make a good faith effort to find out about the rules before it was put up. It is a permanent structure, cemented into the ground and provides a purpose for their family. Also, it makes it safer for drivers going up Orange Avenue, who can now see the curve up ahead in the road before they are on top of it.

Ms. Seltzer asked if they checked with the fence company as to what the cost would be to cut the fence.

Ms. Hanna said everything would have to be removed. She added there are a lot of fences in the area that are 6' high. There is one neighbor that was notified years ago of the violation but there was no follow-up. Everyone has to be held to the same standards.

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

DISCUSSION:

Chrmn. Katen said he understood their safety concerns, although he felt a metal, anchor fence would be a stronger fence and added a 6' high fence is just not allowed. Ms. Seltzer agreed and said if they wanted to go with white vinyl for the contrast, a 3' high fence is allowed.

Ms. Seltzer made a motion to deny with Mr. Tuozzola seconding. The reason for denial is it doesn't meet the regulations and a fence within the height allowed would be sufficient. The motion carried unanimously with Ms. Seltzer, Messrs. Tuozzola, Evasick, Haberman and Katen voing.

2. **222 Merwin Avenue** (Zone R-12.5) Zainodin & Cynthia Jani, owners – request to vary Sec. 4.1.4 front yard projection to 6' in lieu of 4' allowed for deck. Map 70, Block 737, Parcel 38.

Zainodin Jani, 222 Merwin Avenue, said he is requesting a 2' variance for a deck. The deck would be keeping with the front of the house and would look better esthetically.

Mr. Haberman confirmed he wanted to keep the deck even with the line of the house rather than setting it back 2' to which Mr. Jani said that was correct.

Mr. Tuozzola asked if the front porch was there when he purchased the house.

Mr. Jani said yes. Mr. Tuozzola added the existing front porch is closer to the road than the deck would be.

Chrmn. Katen asked how old the house was.

Mr. Jani answered the house has been in the family since about 1912.

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

DISCUSSION:

Chrmn. Katen said the house has been this way for a long time and the deck would follow the line of the house. Mr. Carey added the front porch already encroaches into the front yard setback and the proposed deck would be no more non-conforming.

Mr. Tuozzola made a motion to approve with Mr. Carey seconding. The existing porch is closer to the street than the deck would be. The motion carried unanimously with Ms. Seltzer, Messrs. Carey, Tuozzola, Haberman and Katen voting.

3. **335 Meadowside Road** (Zone R-12.5) Thomas B. Lynch, attorney, for 335 Meadowside, LLC, owners – request to vary Sec. 2.5.5 lot area to .65 acres in lieu of 1 acre required (54,560 sq. ft. to 28,146 sq. ft.); lot width to 125.4' in lieu of 150' required for a rear lot. CAM received. Map 26, Block 213, Parcel 3A.

Thomas B. Lynch, attorney, 63 Cherry Street, said he is representing Greg and Buddy Field, the principals of 335 Meadowside Road, LLC. The property was purchased two years ago and at that time, the plan was to develop the property into a multi-family development under Sec. 8-30g of the State Statutes, which provides for affordable housing. His clients have decided against that application and now would like to create a two lot subdivision. The existing residence was built in 1879 and the property was subdivided originally in 1979, creating the lot to the rear, 331 Meadowside Road. Although this property is located in an R-12.5 zone, it consists of an acre in size and is quite large in comparison to the properties in close proximity. Elgid Drive and West Shore Drive subdivisions are located on either side of this property. Across the street are the Oyster Bay condominiums, the Meadowside condominiums are on Seemans Lane, and the Jagoe senior housing complex is nearby. It is an area of transition with numerous multi-family developments. He reminded the Board that back in July, he presented basically the same application for 12 Tower Street, and it was approved unanimously. This parcel is an acre in size but with the other parcels in the area being a quarter acre in size, the resulting three quarter acre lot they are seeking to create is more than twice the size of the other lots in the area. That along with the fact this is a narrow lot and cannot be divided uniformly through the middle for two houses, creates a hardship that would warrant the granting of the variances. He passed out photos to the Board along with a petition signed by neighbors in support and one letter. He explained this application would still need to go before the Planning and Zoning Board for re-subdivision approval.

Mr. Haberman asked him to restate the hardship.

Atty. Lynch said the fact that the property is oversized in respect to the other properties in the area, the property owner is forced to basically carry and maintain a property that cannot be put to it's highest and best use such as other properties in the area. It is a 28,000 sq. ft. lot in an R-12.5 zone. Also, because of the narrow shape of the lot, it cannot be subdivided into two lots that would create sufficient frontage with the existing house.

Mr. Tuozzola asked how long the proposed driveway to the rear lot would be.

Atty. Lynch measured 120'.

Ms. Seltzer asked if this driveway would meet the requirements of the Fire Dept. and if a fire hydrant would be required.

Atty. Lynch stated if approved, this application would still need to go before the Planning and Zoning Board and the Fire Dept. would be one of the departments consulted.

OPPOSED:

Scott McMahon, 36 West Shore Drive, said there is no hardship. The property was purchased two years ago and they knew what they were buying. He purchased his property 23 years ago and was told by everyone that the property was landlocked and could never be developed. Also, the owner came into the neighborhood 1½ years ago threatening to put in low income housing and shook up the whole neighborhood. So since the time that petition of support was signed, a lot of the neighbors have changed their minds. At the time they were fearful of the development that might be put in if they didn't support this one. He himself would prefer a house not be built there.

Sharon and Richard Riley, 24 West Shore Drive, said there are no trees that would block the view of this proposed house. There are only one or two houses that have a buffer of trees. They have a problem with water and cannot get into their backyard until May or June. If a house were built back there, it would cause more of a water problem. This property is uphill so anytime they would be on their deck or in their yard, the people in the new house will be looking down on them. This open area is lovely as it is. The people who signed the petition live on Great Meadow Drive, which is up the road and across Meadowside Road. Those residents have nothing to do with this application. The affected streets are Elgid Drive and West Shore Drive. It will block the sunlight and impact their lovely home. Ms. Riley asked if approval was given for a single family house, could the developer change his mind and build several homes or condos.

Chrmn. Katen said if approved, this would need to go before the Planning and Zoning Board and they would review it.

John Pagliano, 325 Meadowside Road, said he is very familiar with the property and told the Board at one time, Alex Kish owned all of the property on Meadowside Road. Mr. Kish gave those chunks of property to his niece and nephew, Carl Gardner in the back and Winnie Fisher in the front and is why they are oddly shaped. He agreed with the previous speaker in that the owner did come by and talked about building back there. His original threats of 6 or 8 units of affordable housing did upset the neighbors. If another house is built there, he worried about what it might do to the drainage. The properties work the way they are. The people who live across the street don't have any say in this application.

Robert Perkowski, 7 Elgid Drive, said the area is quite congested now and Meadowside Road is heavily traveled. His concern is with the standing water he gets now that might be exacerbated by the runoff from the proposed driveway.

Denise Doucette, 331 Meadowside Road, agreed that Mr. Field made everyone nervous when he spoke to them about affordable housing. The Regulations are there for a reason. The neighbors are nervous that something else might be built there.

Bill Healey, 37 West Shore Drive, wondered why the owners purchased it in the first place if they knew they needed a variance. As an emergency service worker in Milford, he worried about gaining access to this proposed property. There are more and more

properties being built behind other homes and the concern is getting 120' from the road to the home. This driveway may not be able to support heavy apparatus. It makes a hardship for us and for the homeowner. He hoped the Board would take that into consideration.

REBUTTAL:

Atty. Lynch passed out one additional photo to the Board. The picture showed the rear of the Rileys' house as seen from the middle of this property. It is a level site, and approximately 200 feet from where Mr. Field wants to build his house to the rear of their house. There is an area of buffer that exists between the two properties. Mr. Field is proposing to build a house on a piece of property that is more than 2½ times the size of the lots required in that area. This is a narrow lot, which is very large, in comparison to the other properties in the area and the development of one, single family residence on that lot is not unreasonable. The neighbors' concerns about runoff and drainage would be part of the Site Plan Review by the Planning and Zoning Board.

Ms. Kuchta asked if a line shown on the plan depicted a tree line or wetland line to which Atty. Lynch said there are no wetlands on the property; it is a tree line.

The hearing was closed.

DISCUSSION:

Mr. Tuozzola said he had a concern about the driveway length and safety for the emergency vehicles. Ms. Seltzer agreed with the concern for emergency services and worried about the congestion. Mr. Haberman said increasing the density in the neighborhood is his concern. The Zoning Regulations were made to keep the density down, rather than to be viewed as a hardship. Chrmn. Katen noted this would create another non-conforming lot in Milford, which the Board is trying to reduce. The drainage issue is not under the purview of the Zoning Board of Appeals.

Ms. Seltzer made a motion to deny with Mr. Haberman seconding. Approval would be creating a non-conforming lot at a time when the Board is trying to curtail them. It could lead to unsafe conditions in the neighborhood. The motion carried unanimously with Ms. Seltzer, Messrs. Carey, Tuozzola, Haberman and Katen voting.

4. 89 Pond Point Avenue – (Zone R-12.5) Thomas B. Lynch, attorney, for Two Ninety-Six, LLC, owners – request to vary Sec. 3.1.4.1 rear yard setback from 25' to 13.5' for proposed resubdivision to allow existing house to remain on new lot. CAM received. Map 57, Block 529, Parcel 45A.

Thomas Lynch, attorney, 63 Cherry Street, said Angelo Lisi, principal of Two Ninety Six, LLC, is the contract purchaser and in the audience. They are looking for the Board to allow a 13' rear yard setback for the existing house on proposed Lot #3 on the subdivision map. This property has been owned by the Lucas family since 1954, and consists of 2.7 acres. The existing ranch style house is 1,600 sq. ft., built in 1954, with a garage that juts out from the house along with a patio and deck. The proposed layout of the resubdivision creates the need for a variance for the rear yard setback. If

approved, this resubdivision would still need to go before the Planning and Zoning Board. The proposal calls for two, new houses to be constructed. Lot #1, would be conforming at 13,000 +/- sq. ft. and Lot #2, would be a rear lot with 1.7 acres. The variance request for the setback of the garage is minimal. The proposed residence to the rear would be 75' away from the existing residence at 89 Pond Point Avenue. He informed the Board the small area of wetlands on the property, were a concern of the neighbors. He said their concerns would be addressed during the Site Plan Review process, by the Planning and Zoning Board. There would be 150' between the proposed house and the wetlands.

Mr. Haberman asked if the lines could be redrawn and moved back to avoid the variance request.

Atty. Lynch said the lines could be moved back but then it would necessitate a request for a variance of the Subdivision Regulations that call for a 150' square on a lot. A variance would be required for one or the other. It was laid out in a way that allowed for the maximum spacing between the houses.

Ms. Seltzer asked if there was any consideration given to removing the garage and relocating it elsewhere to which Atty. Lynch answered there was not.

Chrmn. Katen asked Ms. Kuchta if this property was subdivided before.

Ms. Kuchta answered in the affirmative and noted it is called out on the application as a resubdivision. Ninety-nine Pond Point Avenue was cut off of Eighty-nine Pond Point Avenue.

Atty. Lynch confirmed the property was subdivided in 1954.

Chrmn. Katen asked for the hardship to be restated.

Atty. Lynch said because of the Subdivision Regulations' requirement for a 150' square on a lot, Lot #3 was configured in a way to conform to that regulation. The logic behind having a rear yard setback is to have spacing between your house and anyone located behind you. There is 60' or 70' between this house and the garage at #89 Pond Point Avenue. The hardship is we have to conform to the Subdivision Regulations and it is a minimal request. The subdivision meets all the other zoning requirements.

OPPOSED:

Kenneth Brannin, 233 Shadyside Lane, said his property adjoins this property on the lowest point of drainage. He purchased his property in 1967 and is part of Cardinal Estates, built in 1964 or 1965. At that time, there was no provision for proper drainage. His property and two other properties, catch all the water. They had to put in huge drains and build retaining walls to keep their driveways from washing out. Every year he has to buy a skid of ice melt to keep his driveway free from ice. It is a severe problem.

Patricia Brannin, 233 Shadyside Lane, said the volume of water that runs through the middle of her land during the spring thaw, can get up to eight inches deep. They had to build a 2½' or 3' rock wall. They have walls and drains all over their yard trying to combat the water that drains onto their land from this property.

REBUTTAL:

Atty. Lynch said if approved, this would have to go before the Planning and Zoning Board for their review. One house being constructed to the rear portion of the property would not increase drainage. It should alleviate it if there is an engineered system with curtain drains and foundation drains to draw water away from the neighbor's property. It sounds like they have a far worse problem coming down Shadyside Lane and not caused by 89 Pond Point Avenue.

The hearing was closed.

DISCUSSION:

Ms. Kuchta noted there are wetlands in the back corner on the property but the way they have designed the lots, they are at least 150' away in both directions. If you don't grant a variance for the rear lot, Lot #1 can still exist. It will have to go for Wetland review and Planning and Zoning Board review. Ms. Seltzer wondered if one less house would be a better route. Chrmn. Katen stated for the whole subdivision, they are only talking about one 12' variance. He understood the concerns of the people in opposition. If approved, their concerns would be taken up during the review process by the other boards this project would need to go before. Mr. Carey said the hardship is the existence of that one house on the lot. Mr. Haberman didn't think the existing house was a hardship and added there is an acre of land this house could be built on. Chrmn. Katen thought there should be another way to do this. Ms. Seltzer said if this didn't fall under the Subdivision Regulations, these parcels would all fit in the zone; they are large properties. Mr. Haberman wondered why all large properties had to be developed – even if they didn't meet the exact requirements for development. Density would still be increased in the neighborhood. Ms. Seltzer didn't think 12,500 sq. ft. was that dense. Mr. Evasick said they are looking to vary only 12' of the rear yard setback of a parcel that will still have the minimum lot size required in the R-12.5 zone. The Board has seen many instances where building lots were of minimal size and the requested variances brought them even more below the minimum square footage. These three lots would more than adequately conform to the zone requirements and they would be only moving a line 11'8". He felt this would be an area where the impact would be negligent compared to the square footage.

Mr. Carey made a motion to approve with Ms. Seltzer seconding. The reason for approval is the line is only being adjusted 12' and would be conforming to all the other setback requirements. The motion carried 4-1 with Ms. Seltzer, Messrs. Tuozzola, Carey and Katen voting in favor and Mr. Haberman voting against.

5. 354 Woodmont Road (Zone ID) Reconsideration of variance granted to Woodmont Business Park, LLC, on May 13, 2008. Map 91, Block 809, Parcel 6B.

Ms. Kuchta explained the applicant gave the same improper notification as done for the variance request made in 2010. The Board needs to make a motion to void the approval for the variance granted on May 13, 2008 and have it removed from the land records. The applicant can reapply to the Board, but must give proper notice. The

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Board granted the variance without knowing improper notice was given. It now needs to be voided and the applicant needs to start over.

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

C. TABLED ITEMS

D. OLD BUSINESS

E. NEW BUSINESS

1. 306 High Street – George Adams, attorney, for Donna Kustra, owner, request for re-hearing prior to the six month waiting period.

George Adams, attorney, 300 Bic Drive, reminded the Board he was before them in October to divide the parcel into two, 70' wide lots. The application was denied 3-2. He noted Ms. Seltzer had questioned why both lots were being made non-conforming rather than just one. They have redesigned the subdivision to do just that. It is a substantial change and he would like to come before the Board prior to the six month waiting period.

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

F. STAFF UPDATE

G. ACCEPTANCE OF MINUTES FROM NOVEMBER 9, 2010 HEARING

The minutes were accepted unanimously.

G. ACCEPTANCE OF APPLICATIONS FOR JANUARY 11, 2011 HEARING

The meeting was adjourned at 8:36 p.m.

Attest:

Rose M. Elliott,
Clerk ZBA