

Unapproved

Minutes of Public Hearings of Zoning Board of Appeals Meeting held January 12, 2010

**MEMBERS PRESENT:** Fred Katen, Howard Haberman, Nanci Seltzer, Rich Carey, Joseph Tuozzola

**ALTERNATES PRESENT:** Bill Evasick, Thomas Nichol

**STAFF PRESENT:** Emmeline Harrigan, Assistant City Planner; Rose Elliott, Clerk

The meeting was called to order at 7:05 p.m.

**Chairman Katen** turned the meeting over to Emmeline Harrigan, Executive Secretary of the Zoning Board of Appeals, for the purpose of election of officers.

## **A. ELECTION OF OFFICERS**

**Emmeline Harrigan** asked for nominations for Chairman. Mr. Tuozzola nominated Fred Katen with Mr. Carey seconding. There being no more nominations, Ms. Harrigan moved that one vote be cast for Fred Katen for Chairman. Ms. Harrigan asked for nominations for Secretary. Mr. Katen nominated Mr. Haberman with Mr. Tuozzola seconding. There being no more nominations, Ms. Harrigan moved that one ballot be cast for Howard Haberman as Secretary. Ms. Harrigan congratulated the officers and turned the meeting over to Chairman Katen.

## **B. CONSIDERATION OF AGENDA ITEMS**

1. **130 Merwin Avenue** (Zone R-7.5) Washington Cabezas, Jr., for Luis Sanchez, Lufam Homes, LLC, owner – request to vary Sec. 3.1.4.1 side yard setback from 10' to 4.2' and from 5' to 4.2' to construct new single family dwelling with overhangs. CAM required. Map 59, Block 737, Parcel 19.

**Chris DeAngelis**, 1450 Barnum Avenue, Bridgeport, Engineering partner with Washington Cabezas, who could not be there this evening, said they are back addressing some concerns the Board had when they appeared last month. They have made changes including centering the building on the lot, which increases the distance to the side yards and narrowing the building itself by two feet. They felt these changes brought the house into compliance as much as possible. They would also elevate the first floor above the flood plain elevation in accordance with FEMA requirements and remove an old dilapidated garage at the rear of the property. Since they are working with Codespoti and Assoc., they will be able to determine the rear property line and eliminate the existing encroachment of the garage onto City property. The proposed development will be in keeping with the neighborhood. He submitted photos to the Board.

**Chrmn. Katen** asked what the hardship was.

**Mr. DeAngelis** answered the hardship is geometric in nature. The Zoning Regulations cover a large area of town and when they are put into place, they don't always fit every site. These lots fall into a zone that doesn't allow them to be developed in the typical fashion of the neighborhood. The house is 25' wide. It would be difficult to make it narrower.

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**Mr. Haberman** confirmed the undersized lot was the hardship to which Mr. DeAngelis said that was correct.

**Chrmn. Katen** asked Mr. DeAngelis to briefly describe what happened at last month's meeting to which he did.

**Chrmn. Katen** asked what the size of the existing footprint of the house was.

**Mr. DeAngelis** answered approximately 900 sq. ft. with the garage being 620 sq. ft.

**Chrmn. Katen** asked how wide the existing house is to which Mr. DeAngelis answered 27' wide.

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

#### DISCUSSION:

**Mr. Haberman** noted the Board turned down this application last month. The applicant came back this month and reduced the non-conformity. They took into consideration the Board's concerns and decreased the size and centered the house on the lot. There will parking for four cars underneath. The hardship is the undersized lot. Chrmn. Katen said this proposal will be less non-conforming. Ms. Seltzer noted less non-conforming is still non-conforming. She felt it was still taking up so much of the lot that she would not be able to vote favorably for it.

**Mr. Carey** made a motion to approve with Mr. Haberman seconding. The hardship is the width of the non-conforming lot. They revised their plans to incorporate the Board's suggestions and any further narrowing of the house would make it unsightly and not in keeping with the neighborhood. The motion carried 4-1 with Messrs. Carey, Haberman, Tuozzola and Katen voting in favor and Ms. Seltzer voting against.

2. **5 Bridgewater Avenue** (Zone R-5) David Greenberg, attorney, for Mark Pucci, appellant, for P & G Development, owner – request to vary Sec. 3.1.4.1 for an 8.6' side yard setback in lieu of 10' required to allow a single family residence to remain. CAM required. Map 13, Block 136, Parcel 7.

**David Greenberg**, 40 Reef Road, Fairfield, attorney, said the lot is non-conforming at only 35' wide. They are looking to reduce the side yard setback to 8.6' to allow the single family residence to remain.

**Mr. Haberman** confirmed this house is existing to which Atty. Greenberg answered in the affirmative and added the applicant had an As-built survey done.

**Chrmn. Katen** asked when this home was built.

**Atty. Greenberg** answered it was constructed a few years ago but not completed. There is a foundation, framework, roof, some windows and doors but is not completely finished and has been sitting this way for about four years. It was recently acquired through a foreclosure.

In answer to Chrmn. Katen's question, Ms. Harrigan explained the history of the property saying the original house plans met the required setbacks. During construction, they were stopped in the field by City staff and informed they needed to obtain a survey because it did not appear that it met the required setbacks. It appeared a portion of the house was too close to the property line. They were also informed they

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had overworked the scope of the permit. Work was halted. The former owner couldn't resolve the issues so the house went into foreclosure. The applicant is the purchaser trying to buy the property and finish it off.

**Mr. Haberman** noted the property needs a 1.6' variance on one side. The lot is undersized and non-conforming.

**Atty. Greenberg** said the home is in conformity with the neighborhood and submitted letters in favor to the Board, in addition to the ones already in the file.

FAVOR:

**Olin Hoover**, 122 Broadway, said this project started three or three and one half years ago and was never completed. The previous owner did not comply with all of the necessary permitting and he was forced to stop the building process. This house has been sitting as an empty shell for many years; inviting pigeons and such. Mr. Pucci's proposal is to finish it. As a homeowner, he is strongly in favor of the application.

**Eileen Hoover**, 122 Broadway, said Mr. Pucci has built beautiful properties in the area and she can see nothing wrong with letting him continue to do so with this property.

OPPOSED:

**Chrmn. Katen** informed the Board there were two letters of opposition in the file that state this application does not have a hardship and is self-inflicted by the previous owner. They ask the Board to deny the application as it does not fit the flavor of the neighborhood and has ruined the view. He passed the letters to the Board members to read.

**Chris Palen**, 94 Wild Cat Road, Burlington, stated his wife submitted one of the letters just mentioned by the chairman. They own the cottage next to this property, which was built by his great grandfather and has been in the family for over one hundred years. They are appalled that this monstrosity was built. They challenged the process several times with the City, because they knew it was not within the specifications, but they were repeatedly told that it was. Come to find out they were right, it was not built correctly.

**Jesse Palen**, stated when construction first began on the home, the permit was taken out to add a bedroom and a bath. Then the whole house was taken apart and only the electrical panel was left. They built a three story house with enclosed swimming pool. The distance from house to house, not including the overhangs, is eight feet. He didn't know how someone would exit this home unless they used the garage as the exit. There isn't any home in the area that has a swimming pool inside the house.

**Mr. Haberman** stated the swimming pool isn't at issue here. At issue is a 1.6' variance request for the left side of the building.

**Mr. Palen** said he disagrees strongly with the statement that it conforms to the other properties in the neighborhood. He would like to see something done with the house but not have the house take over the whole area between the houses. His concern is that it is more house than needed.

**Penny Vasilas**, 111 Broadway, said she lives across the street and is not opposed to something being done to this home. She applauds Mr. Pucci for purchasing this blighted property. She is, however, opposed because this house was not in

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compliance with the regulations and to allow someone to just come in and continue building something not in compliance sets a bad precedent. She does not agree that it is in conformity with the other homes in the neighborhood. She has a one and one half story cape and this structure literally blocks her sunlight and part of her view. These skyscrapers on the beach are not fair to small homeowners that have been in the neighborhood for many years. This is allowing someone to come and turn over the property for high profit while encroaching on the neighbors' property and blocking the view. This structure takes up 85% to 99% of the lot. She is opposed.

**Chrmn. Katen** noted there are also two letters of support in the file and put the names of the people writing the letters into the record.

REBUTTAL:

**Atty. Greenberg** said the complaints regarding this property have nothing to do with this application. There will be no swimming pool. The request is to lessen the setback requirement and will not encroach onto anyone's property. The side we are requesting the variance on is not anyone in opposition. The lot coverage is in compliance and no variance is being requested for that. It is simply a variance on a lot that is undersized. They are only looking to allow this building to conform with the rest of the neighborhood.

The hearing was closed.

DISCUSSION:

**Chrmn. Katen** noted the swimming pool has nothing to do with this application. Mr. Carey said the Board has to look at this application like they look at every other variance application. The applicant is looking to vary the side yard setback from 10' to 8.6' for a 1.6' variance. The Board would normally grant such a variance for this type of lot. Chrmn. Katen asked whether the eaves were included in the variance request to which Ms. Harrigan said the roof is in place and she specifically requested the survey indicate to the eave line. She asked Mr. Pucci to confirm the survey includes the eaves to which he did. Ms. Seltzer noted that if Mr. Pucci leaves the footprint as is, all zoning requirements: height, building lot coverage, building height in stories, building area as a % of lot, are all acceptable. She wondered why this didn't need a variance for over 50% renovation. Ms. Harrigan again explained the former property owner pulled a permit to remodel the house. At that time, it wasn't considered more than 50% renovation. The permit was overworked and work was stopped. The original permit was voided and they came back in for new permits. The new permit was for a new single family dwelling with a plan showing a 10' setback on one side and 5' on the other. When they started building, the City stopped them and requested a progress survey to find out where the actual building had been constructed. They never submitted a survey. The house went into foreclosure. When the property became available for purchase, it was determined that anyone interested in the property would need to supply an As-built and if the survey showed the building was not in compliance, a variance would be required from the Zoning Board of Appeals. That is what Mr. Pucci did. This permit is still in progress. Ms. Seltzer asked if there was a time limit on

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the permit. Ms. Harrigan said for Planning and Zoning, once you initiate construction and you are in the construction phase, your permit is still valid. She added that is not true for the Building Dept. The permits there have expired but that is not this Board's concern. Mr. Carey confirmed the only variance request is for the 1.6'. The rest of the house is compliant to which Ms. Harrigan said that was correct.

**Mr. Carey** made a motion to approve with Mr. Haberman seconding. The hardship is the width of the lot and the fact that only a portion of the side yard is out of compliance. Chrmn. Katen added that all other zoning requirements are being met except for that 1.6'. The motion carried 4-1 with Messrs. Haberman, Tuozzola, Carey and Katen voting in favor and Ms. Seltzer voting against.

3. **753 East Broadway** (Zone R-5) Ron D'Aurelio, appellant, for Patricia M. Rogers, owner – request to vary Sec. 3.1.4.1 and Sec. 4.1.4 to allow a 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> story deck with a side yard setback of 5' in lieu of 8' required and Sec. 6.2.1 to allow for expansion of a two family residence in a single family zone. CAM received. Map 22, Block 474, Parcel 24.

**Ron D'Aurelio**, 42 Cherry Street, architect, submitted photos and drawings to the Board. The project is an existing house they would like to raise to be above the flood plain. They also plan to remove and replace the gable roof with a gambrel roof for more room on the third floor. The existing front stoop and steps encroach onto City property and that encroachment will be removed. The variance request is for the three, tiered decks on the rear of the house. The hardship is the non-conforming lot.

**Mr. Haberman** confirmed the variance is only for the decks to which Mr. D'Aurelio said the decks and the increasing of the non-conformity of the two family residence in a single family zone by the raising of the house.

**Mr. Tuozzola** asked if besides the proposed decks, the existing structure would remain the same only being raised up and the roof changed.

**Mr. D'Aurelio** said that was correct.

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

#### DISCUSSION:

**Chrmn. Katen** confirmed the house is existing and this is just for the decks. Ms. Harrigan said that was correct but because of the raising and the remodeling being done, it is increasing the non-conformity of a two family house in a single family zone. That is the purpose of the second variance request. Ms. Seltzer asked when it became a two family to which Ms. Harrigan said it is shown as a two family dwelling on the 1950 field card.

**Ms. Seltzer** made a motion to approve with Mr. Haberman seconding. The hardship is the size of the lot. The footprint of the house is not being changed. The motion carried unanimously with Ms. Seltzer, Messrs. Carey, Haberman, Tuozzola and Katen voting.

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**C. TABLED ITEMS**

**D. OLD BUSINESS**

**E. NEW BUSINESS**

**F. STAFF UPDATE**

**G. ACCEPTANCE OF MINUTES FROM DECEMBER 8, 2009 MEETING.**

The minutes were approved unanimously.

**H. ACCEPTANCE OF APPLICATIONS FOR FEBRUARY 9, 2010 MEETING.**

**Ms. Harrigan** said there have been no applications as of yet. People are still finalizing their plans.

**Any other business not on the agenda, to be considered upon two-third's vote of those present and voting.**

**Brett Howell**, 81 Milford Point Road, requested clarification on a variance originally granted him in June of 2008.

**Chrmn. Katen** asked the Board if they would allow this gentleman to speak at this time.

**Mr. Haberman** made a motion to allow him to speak with Mr. Tuozzola seconding. The motion carried unanimously.

**Mr. Howell** passed out copies of his plot plan to the Board. He explained they plan to make the house smaller than what was originally granted to them in 2008. The side yard setback off Sand Street was originally 4.67' and is now 6'. While they were developing the plans, they found they needed four extra stairs to get into the house. The stairs do lie outside the original site plan. He is here this evening to ask the Board to give him approval to add the stairs.

**Chrmn. Katen** asked why the extra stairs weren't included in the original variance request to which Mr. Howell said they didn't realize they needed those stairs to get in.

**Ms. Harrigan** explained the applicant decided to raise the house. Originally they had a crawl space and then realized they wanted to elevate the house so they could have parking underneath.

**Chrmn. Katen** asked if this was something the Board could vote on because it wasn't on the agenda and the public didn't know about it.

**Ms. Harrigan** explained what is before you is not what Mr. Howell originally requested which was noticed in the newspaper and held for public hearing. The Board has to decide whether this has to be re-noticed before approval could be granted.

**Chrmn. Katen** asked if the Board could vote to approve the request tonight and then ask the City Attorney about it.

**Ms. Harrigan** said she has already expressed her concerns to Mr. Howell in the past and explained that once you have received ZBA approval, the plot plan is the approval that was granted. If you are modifying a plot plan, you have to go back before the Zoning Board of Appeals. The Zoning Board process is outlined in State Statute. She felt the City Attorney would agree that the proposal would have to be re-noticed. The

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Board could discuss items with two-third's vote but didn't know if approval could be granted.

**Ms. Seltzer** agreed that voting on it now would not stand up in court with Mr. Carey saying they would have to apply for another variance.

**Mr. Howell** said they are meeting the terms of the original variance. Ms. Harrigan had the discretionary authority to approve the downsizing of the house. He didn't understand why she couldn't use her discretionary authority to approve the stairs.

**Ms. Harrigan** explained that once a variance is granted, the applicant receives a letter saying a variance was granted to vary the side yard setback from this to that. The approval is not just the letter alone. The approval is in conjunction with a plot plan that is stamped in and approved by this Board. They do not operate independently of one another. What has happened in the past by staff is if you have an approved plan and the applicant decides to make changes, as long as the changes fall within that footprint, we have utilized our discretion to say making something smaller is fine. However, if any portion of the project goes outside that original plot plan approval, the precedent of the office is that it automatically goes back before the Zoning Board of Appeals. By law, as a zoning enforcement officer, she can only issue a permit that is conforming to the City regulations or if the Zoning Board of Appeals has granted a variance for it.

**Mr. Howell** asked if the variance he would have to apply for now is specifically for the stairs and his original variance would still apply to which Chrmn. Katen said that was correct.

**Jim Denno**, 93 Sunnyside Court, asked if he needed to obtain a CAM before the zoning permit is issued to which Ms. Harrigan said he was correct. He then asked if he could go for the CAM with the stairs currently shown on the plan to which Ms. Harrigan said no because the stairs haven't been approved by the Zoning Board of Appeals.

The meeting was adjourned at 8:14 p.m.

Attest:

Rose M. Elliott  
Clerk - ZBA