

MEMBERS PRESENT: Richard Carey, Howard Haberman, Edward Mead, Fred Katen, Nanci Seltzer

ALTERNATES PRESENT:

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. **180 Melba Street** (Zone RMF-16) Stephen W. Studer, attorney, for Milford Arms, LLC, owners – appeal the decision of the City Planner in correspondence dated April 15, 2008. Map 38, Block 533, Parcel 1.

Postponed to July 8, 2008 hearing.

2. **141 Fourth Avenue** (Zone R-10) Brian & Maria Bannon, owners – request to vary Sec. 3.1.4.1 rear yard setback from 13.7' granted by variance to 9.8' to allow stoop and stair to remain and to 16' to allow hatchway to remain. CAM received. Map 9, Block 78, Parcel 12.

Brian Bannon, stated he was approved for a rear addition by this Board in April 2006. They forgot to list the air compressors, bilco doors and stoop and stairs on the drawings. This was noted by Peter Crabtree when he came by for an inspection. The bilco doors are the only access to the mechanicals in the basement. The rear stoop and stairs serve as a secondary egress from the second floor playroom. The air compressors will be moved to the side yard.

Chrmn. Katen asked what the hardship was to which Mr. Bannon answered if they remove the bilco doors, there is no access to service the heating system in the basement. If the stoop and stairs were removed, there would be no secondary means of egress.

Chrmn. Katen questioned how so much work could be done and then the stoop and the hatchway are left off the plans? He asked if these items were already built.

Mr. Bannon answered in the affirmative.

When asked by Chrmn. Katen, Ms. Stock answered that Mr. Crabtree did go out, saw these items and an order was sent. These items were put in after the original permit was issued. No permits were pulled for these items.

Ms. Seltzer asked if this rear stoop and stairs was the only way to exit the home to which Mr. Bannon said they could go through the house to exit.

Mr. Mead asked how much of a rise would be needed.

Mr. Bannon answered 18".

Mr. Mead asked what the size of the stoop is now to which Mr. Bannon answered 42"x42".

Mr. Haberman asked what the original hardship was.

Mr. Bannon said the addition was put on for the in-laws to live there. An attorney handled the first variance application.

Mr. Mead asked Ms. Stock if the 42"x42" is code to which she answered she believed code was 3'.

Chrmn. Katen asked how the basement was accessed before the bilco door.

Mr. Bannon stated there was a hatchway. He then submitted a letter in favor of the application to the Board.

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

DISCUSSION:

Mr. Carey said he didn't see a problem with the hatchway because it is within the confines of the footprint of the house. **Mr. Mead** said they could regrade the backyard, eliminate the stairs and still use the door. **Chrmn. Katen** said he didn't feel there was any hardship and didn't think they were just put up "by mistake". **Mr. Haberman** stated they received a variance from the Board two years ago, so obviously there is a hardship or this would have never been approved to begin with. **Ms. Seltzer** asked Ms. Stock if there were anything to add to which Ms. Stock said **Mr. Haberman** is correct there had to be a hardship to begin with but these items were done after the variance was granted. It was not proposed nor shown on any site plan – it was just done. They are here after the fact. **Ms. Seltzer** said she could see the hatchway but not the rear stairwell. **Mr. Carey** said the Board should ask themselves if the original variance would have been approved with the hardships presented if the stoop was included in the original application. If the answer is yes, then this variance should be granted too.

Mr. Carey made a motion to approve with **Mr. Haberman** seconding. There were hardships shown for the original variance even though this stoop and hatchway were not on the plans. The hatchway is not an issue because it does not extend beyond the house. He believed a rear exit was needed. The motion failed to carry 3-2 with Messrs. Mead, Carey, Haberman in favor and Ms. Seltzer and Katen against.

Ms. Seltzer made a motion to approve the hatchway and deny the rear stairwell with **Mr. Mead** seconding. The hatchway is needed for good, safe access to the basement and a rear stairwell from the second floor is not a hardship. The motion carried unanimously with Ms. Seltzer, Messrs. Haberman, Mead, Carey and Katen voting.

3. **13 Mont Street cor. Chapel Street** (Zone R-5) Tom Henry, appellant, for Donald & Jane Eager, owners – request to vary Sec. 3.1.4.1 rear yard setback from 20' to 9.5' and front yard setback from 10' to 2.6' to construct 2 story addition and wrap around porch. CAM received. Map 70, Block 739, Parcel 41.

Tom Henry, 176 Old Field Lane, contractor, said this is the second time the owners, the Eagers, are before the Board. The previous variance was approved a couple of years ago. Unfortunately, due to budget concerns, construction did not begin. The application has not changed. Only interior issues have been changed to amend the cost. They would like to construct a 14'x30' side yard addition along with a porch on the front of the house which fronts Mont Street. The hardship is the building as it

exists is already non-conforming. If the house was built with Chapel Street as the front of the house, they would not need to be before the Board. They want to continue the lines of the house as they are to construct the addition.

Mr. Carey confirmed this is the exact variance that was granted with no changes to which Mr. Henry stated that was correct.

Mr. Haberman asked if the front porch was open.

Mr. Henry said it was and will be the front entrance to the house. The driveway is at such a steep pitch there that the current front entrance is unusable.

Ms. Seltzer asked if there was a deck in the rear to which Mr. Henry answered there is no deck behind the proposed addition and there is not going to be.

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

DISCUSSION:

Chrmn. Katen stated this was approved before. There are no changes.

Mr. Carey made a motion to approve with Mr. Haberman seconding. The reason for approval is this was approved before with no changes. The motion carried unanimously with Ms. Seltzer, Messrs. Carey, Haberman, Mead and Katen voting.

4. **15 Wildemere Avenue** (Zone R-7.5) Raul Sanchez & Robert Storm, appellants, for Michael Mocciae, owner – request to vary Sec. 3.1.4.1 rear yard setback from 25' to 15.1' to construct 2 rear additions to square off dwelling. CAM received. Map 9, Block 126, Parcel 21.

Robert Storm and Mr. Sanchez, architects at 315 Main Street, Westport, stated the existing house currently extends into the required setback to 15.1'. The hardship is the home as it exists is already non-conforming and predates zoning. The owners would like to expand and remodel their home. They would like to square off the back of the house.

Chrmn. Katen confirmed they wanted to extend the house on both sides without encroaching any further to which Mr. Storm said that was correct. He submitted photos to the Board.

Chrmn. Katen asked for the hardship to be restated to which Mr. Storm stated the existing structure, which extends into the setback, is already non-conforming. They are asking to bring the current house into compliance by squaring off the two corners, which would remain in the setback already created by the existing structure.

Ms. Seltzer stated this does not make the house conforming. The house does predate zoning, but this addition does not make it conforming, it continues the non-conformity.

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

DISCUSSION:

Chrmn. Katen stated there is so much renovation proposed for this property, and they are only requesting a variance for two little things.

Mr. Carey made a motion to approve with Mr. Mead seconding. The reason for approval is it is not increasing any non-conformity if the non-conformity is still existing and has not increased. It is not different from other projects of this type that the Board has approved before. The motion carried 4-1 with Messrs. Carey, Haberman, Mead and Katen voting in favor and Ms. Seltzer voting against.

5. **15 Boxwood Court** (Zone R-12.5) Lonnie and Rosalynn Blackwell, owners – request to vary Sec. 3.1.4.1 side yard setback from 10' to 6' and rear yard setback from 25' to 6' and 19' to construct deck and pool. Map 77, Block 800, Parcel 5AW.

Rosalynn Blackwell, 15 Boxwood Court, said she would like to add a pool and deck to their existing deck. The hardships are the shape of the lot and the placement of the house on the lot. Also, the septic system and leach fields are in the front yard. Any improvements would require a variance.

Mr. Haberman confirmed the proposed deck is at a different level than the existing deck to which Ms. Blackwell said that was correct. The house is a raised ranch, so the existing deck is higher and they would like to go down a level, construct another deck and attach it to the pool.

Chrmn. Katen asked Ms. Stock if there were any comments she would like to add to which she said when the house was first proposed it was to be placed more forward on the lot. For some reason, the contractor changed the original plans for the house. They pushed the house to the rear of the lot and put all the septic system and leaching fields in the front. The house barely meets the setback requirements now. Anything they would like to do would require a variance.

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

DISCUSSION:

Chrmn. Katen stated the septic system in the front yard really creates the hardship along with the placement of the house on the lot.

Mr. Carey made a motion to approve with Mr. Haberman seconding. The hardships are the placement of the house on the lot, the septic system and leaching fields. There is nothing that can be done with this property without getting a variance. The motion carried unanimously with Ms. Seltzer, Messrs. Carey, Haberman, Mead and Katen voting.

6. **81 Milford Point Road** (Zone R-7.5) Thomas B. Lynch, attorney, for Brett Howell, owner – request to vary Sec. 3.1.4.1 front yard setback from 20' to 10' and vary Sec. 4.1.4 projections from 2' to 3.33' to construct new single family dwelling with front porch (Sand Street). CAM received. Map 6, Block 84, Parcel 23.

Thomas B. Lynch, 63 Cherry Street, passed out paperwork to the Board. He said this is a resubmission of an application from April of 2007. The owners purchased the home in 2006. The original application was for a 6,000 sq. ft. house. The night

of the public hearing, there was a large contingency of neighbors in opposition from the Cedar Beach area. The owners withdrew that application and have worked with their architect to scale down the proposed home. It will now be a three story dwelling with approximately 3,000 sq. ft. and will be in conformity with the neighborhood. The hardship is the Regulations state that when you have a corner lot, you have two front yards. The reason is you need to create a site line. When traffic comes to the intersection, you want to be able to look to the left and the right. The hardship here is you are imposing a regulation that has a clear intent that has no applicability to this site. There will be no traffic on Sand Street. It is a beach passway. It was shown on an 1895 subdivision map of Cedar Beach but was never improved. The 10' setback off of Sand Street and the 5' setback off the other side constitutes the setbacks that would be required for side yards in this zone. The other variance requested is for projections into the setbacks for a porch along the side of the property. This would create a privacy buffer for the residents from the foot traffic along Sand Street.

Jim Denno, 93 Sunnyside Court, architect, said they would like to create a classic Nantucket style shingle house, approximately 3,000 sq. ft. The mechanicals and storage will be on the third floor. It is really a 2 ½ story house with no basement.

Ms. Seltzer asked Ms. Stock if she had any comments to which Ms. Stock said the street is a 30' right-of-way and will never be improved as it is a beach passway. The Regulations state it is a corner. The porch roof will not extend past the porch. It has to remain at the setback of 4.67'. She added if the Board approved the variance request, the applicant will still need to go before the Planning and Zoning Board for a Coastal Area Site Plan Review.

Mr. Denno passed out photos to the Board along with a letter in favor from a neighbor.

Atty. Lynch concluded that his client has agreed in writing that plantings, fences or any improvements made along the westerly boundary line would be limited to 4' in height.

FAVOR:

Justin Falco, 84 Milford Point Road, stated Mr. Howell has scaled back his proposal quite a bit and took into consideration most of the neighbors concerns. He is the neighbor most affected and he is happy with the proposal.

OPPOSED:

David Ivanovich, 25 Marsh Street, stated his concern is that a house will be built right on top of the passway. The neighbors don't see a problem with giving the applicant some relief but going that close to the passway, he wondered if this would set a precedent for the person on the other side of the paper street. He does think the house will be beautiful and looks forward to seeing it.

Chrmn. Katen explained each variance application is determined individually so there will be no precedent set. This is a beach access and it will never be blocked. The integrity of the street will still be maintained with this application.

Ms. Stock said the 30' right-of-way would always have to remain 30' and never get any smaller.

The hearing was closed.

REBUTTAL:

Jim Denno, started to speak when Chrmn. Katen reminded him that he may only rebut what Mr. Ivanovich said to which Mr. Denno said he was done.

DISCUSSION:

Chrmn. Katen agreed that Ms. Stock clarified it all when she said the 30' passway would always remain 30' and that Sand Street would never be improved. It is considered a corner by the Regulations.

Mr. Carey made a motion to approve with Ms. Seltzer seconding. The hardship is that Sand Street is not a real street but a paper street that is a right-of-way. Mr. Mead added that if gutters are added, the gutters are still part of the projection and need to be within that setback. The motion carried unanimously with Ms. Seltzer, Messrs. Carey, Haberman, Mead and Katen voting.

7. **13 Francis Street** (Zone R-7.5) Andrea Bauer, owner – request to vary Sec. 3.1.4.1 rear yard setback from 25' to 1' to construct 2 car garage with room over; vary Sec. 4.1.4 projections from 4' to 10' to construct porch and stairs. CAM required. Map 6, Block 90, Parcel 17.

Andrea Bauer, 13 Francis Street, stated they wish to construct a 2 car garage with room over. The hardships are the lot is non-conforming, only 50' deep, and the placement of the house on the lot. The house is set 1" to 2" from the property line.

Chrmn. Katen stated it appeared the only access to Francis Street was the narrow strip beyond someone else's house.

Ms. Bauer explained it was a passway that no one owned so she legally acquired it.

Ms. Stock explained the Bauer's received a variance to put the carport on years ago. At that time, their front yard faced Milford Point Road. Since they acquired this 10' strip off of Francis Street, their front yard is now on Francis Street. It's a zoning requirement. The proposed garage will replace the carport.

Mr. Haberman said it is a big structure on a relatively small lot.

Ms. Bauer stated her house is much smaller than most of the houses in the area.

Mr. Haberman asked how wide the house was to which Ms. Bauer answered 25' wide, about 1,600 sq. ft. She added the room over the garage would be office space for her husband and herself. The garage will also protect their cars from further vandalism.

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

DISCUSSION:

Chrmn. Katen said Ms. Stock explained it all. There is a hardship here.

Ms. Seltzer made a motion to approve with Mr. Carey seconding. The reason for approval is they are having issues with the neighborhood and they want to be safe. Everyone wants to be safe. The garage will not be going past where the carport is now. The lot is small. The motion carried unanimously with Ms. Seltzer, Messrs. Carey, Haberman, Mead and Katen voting.

8. **185 Kings Highway** (Zone R-7.5) Joseph A. Kubic, attorney, for David Yanik, owner – request to vary Sec. 3.1.4.1 side yard setback from 5' to 4.8' to construct 2 story addition. CAM received. Map 59, Block 795, Parcel 6.

Attorney Joseph Kubic, 300 Bic Drive, said his client is looking to construct an addition. He explained to the Board the portion of the addition closet to the road would be 4.8' from the property line. As you get closer to the water, the addition would be 5.2' from the property line. The total variance is less than 4.6' x 3". He submitted photos to the Board. There will be no adverse impact on the neighborhood. The addition will be in character with the neighborhood and will not block any views or vistas. He submitted a letter from the abutting neighbor in favor of the application. The hardship is the placement of the house on the lot, which was built in 1950. They want to maintain the straight line of the house.

Chrmn. Katen confirmed they are just extending the house on the existing line.

Mr. Mead asked if there were any overhangs to which he was told no.

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

Mr. Carey made a motion to approve with Mr. Haberman seconding. The hardship is the placement of the house on the lot. The motion carried unanimously with Ms. Seltzer, Messrs. Carey, Haberman, Mead and Katen voting.

9. **15 Brooklawn Court** (Zone R-18) James F. McElroy, appellant, for Maurice & Donna Gomes, owners – request to vary Sec. 4.1.4 projections from 4' allowed to 11' to construct front porch and stairs. Map 101, Block 809, Parcel 47.

James F. McElroy, 26 Hauser Street, architect, stated they are adding a second story but need a variance to also add a front porch and stairs. The house is located on a cul de sac. The curvature of the property varies from 40' to 38'. The porch would be extending beyond the 4' encroachment allowed. The location of the stairs is dictated by the fact that the property falls off dramatically towards the street. **Chrmn. Katen** said it appeared there was no other place to put this porch due to the curvature of the cul de sac, the topography and the placement of the house on the lot.

Mr. Mead added there also appeared to be ledge to the left of the house to which Mr. Elroy agreed.

DISCUSSION:

Chrmn. Katen said the curvature of the road, topography and the placement of the house on the lot are the hardships.

Mr. Carey made a motion to approve with Mr. Haberman seconding. The hardships are the topography of the land, the curvature of the cul de sac and the placement of the house. The motion carried 4-1 with Messrs. Mead, Haberman, Carey and Katen voting in favor and Ms. Seltzer against.

B. TABLED BUSINESS

C. OLD BUSINESS

D. NEW BUSINESS

Ms. Stock explained there would probably to be a large number of people requesting extensions of time due to the economy. People are unable to financially begin construction.

1. **460 Gulf Street** – request for an extension of time. Ms. Stock read the letter into the record. She added it was originally approved in June 2006 and was given an extension of time in June 2007. They are now asking for an additional extension as they are being delayed by the State.

Mr. Haberman made a motion to grant a one year extension of time with Ms. Seltzer seconding. The motion carried unanimously with Ms. Seltzer, Messrs. Mead, Haberman, Carey and Katen voting.

2. **25 Deerwood Avenue** – request for an extension of time. Ms. Stock read the letter into the record. She added it was originally approved in July 2007.

Mr. Haberman made a motion to grant a one year extension of time with Mr. Haberman seconding. The motion carried unanimously with Ms. Seltzer, Messrs. Mead, Haberman, Carey and Katen voting.

3. **10 Smith Avenue** – request for an extension of time. Ms. Stock read the letter into the record. She added it was originally approved in July 2007.

Mr. Carey made a motion to grant a one year extension of time with Mr. Haberman seconding. The motion carried unanimously with Ms. Seltzer, Messrs. Mead, Haberman, Carey and Katen voting.

4. **Hauser Street** – request for an extension of time. Ms. Stock read the letter into the record. She added it was originally approved in June 2007. Ms. Seltzer recused herself.

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

E. STAFF UPDATE

Ms. Stock informed the Board that she would not be at next month's hearing. Peter Crabtree will fill in for her and it will be his last hearing as he is retiring on July 18, 2008 and invited the Board to attend the party at the Parsons.

Chrmn. Katen stated he wants someone to make sure that for the next hearing the lights and the air conditioning are turned on. Ms. Stock suggested a letter could be sent in his name to the Mayor's office to which Chrmn. Katen agreed.

F. ACCEPTANCE OF MINUTES FROM MAY 13, 2008 MEETING.

The minutes were approved unanimously.

G. ACCEPTANCE OF MINUTES FROM MAY 21, 2008 SPECIAL MEETING.

Mr. Mead explained that the minutes state that Ms. Stock was at the meeting when in fact she was not. They need to be corrected.

H. ACCEPTANCE OF APPLICATIONS FOR JULY 8, 2008 MEETING.

The meeting was adjourned at 8:35 p.m.

Attest:

Rose M. Elliott
Clerk - ZBA