

MEMBERS PRESENT: Rich Carey, William Evasick, Howard Haberman, Fred Katen, Joseph Tuozzola

ALTERNATES PRESENT: John Collins, Thomas Nichol

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

The meeting was called to order at 7:00 p.m. Chrmn. Katen announced Item #1, Alpha Street had been postponed. Item #4, 326 Calf Pen Lane cor. Buckingham Avenue would not be heard because the application was withdrawn so therefore, could not be appealed. Item #6, 767 East Broadway had been postponed. Mr. Tuozzola would not be voting on Items #6, #8, #9 & #10.

A. CONSIDERATION OF AGENDA ITEMS

1. **Alpha Street** (Zone R-18) Stephen W. Studer, attorney, for John P. Horton, appellant, for Milford Heights, LLC, owner – appeal the decision of the City Planner in the interpretation and application of Sections 6.2.1 and 6.2.6 of the Milford Zoning Regulations to Alpha Street as per correspondence dated February 25, 2011. Map 69, Block 711, Parcel 17A.

Postponed to August 9, 2011 meeting.

2. **114 Kings Highway cor. Clinton Street** (Zone R-7.5) Susan Reynolds, owner – request to vary Sec. 3.1.4.1 front yard setback to 17.2' in lieu of 20' required for a 23' x 14.5' addition (Clinton Street); vary Sec. 4.1.7 to allow 6' high x 67' long fence to remain in front yard setback 5' in lieu of 20' required (Clinton Street). CAM required. Map 71, Block 758, Parcel 1.

Susan Reynolds, 114 Kings Highway, has owned this home for 18 years and it is over 100 years old. She needs to replace the rear entrance on Clinton Street and she would like to put an addition on the back with a handicap ramp as she has numerous handicapped relatives. The addition would be inline with the existing house. Her hardship is it's a corner lot with two front yards. If she weren't a corner lot, she would not require a variance. The fence is for the safety of her six year old child. There are always people walking past her house to get to the shopping center and Dunkin' Donuts. Her yard would be totally exposed if she had to remove the fence. When she first purchased her home, there was no parking allowed on her street. Now, the street is like a parking lot. It's common practice and no one notices people coming and going.

Mr. Haberman asked if the fence was there prior to her purchasing the home 18 years ago?

Ms. Reynolds stated she put the fence in. It's not completely closed in. It has openings and is more of a visual deterrent.

Mr. Tuozzola asked if the fence would be taken down to construct the addition. It would be a perfect time to reduce the fence to 3'.

Ms. Reynolds said she would like to keep the fence the way it is and passed out pictures to the Board. She said the fence is a safety issue and believed zoning was there to support the health, safety and welfare of the community. She has a unique

property. If she just had neighbors walking by her property that would be one thing, but there are three hundred properties in Woodmont and people walk by her house all the time to and from Dunkin' Donuts. It is not a safe location and the same hardship of being a corner lot would apply. She has more restrictions on her lot than someone else who is not a corner lot.

OPPOSITION:

Ms. Kuchta read a letter of opposition from Phyllis Medvedow, into the record.

Ms. Reynolds commented the fence is not near the corner.

Chrmn. Katen wondered if this variance should be split and asked for comments from the Board.

Mr. Carey agreed it should be split but noted he is familiar with the house and Ms. Reynolds is correct. The fence, as shown on the map, is not near the corner. It has been there for 18 years.

The hearing was closed.

DISCUSSION:

Mr. Haberman said the fence has been there for 18 years, is not on the corner and doesn't affect the line of site in any way. If someone had a problem with it they would have brought it to someone's attention long ago. Mr. Evasick said he is more concerned with how the very old fence is going to be put back up. Chrmn. Katen reiterated that maybe the variance should be split. Mr. Evasick agreed.

Mr. Carey made a motion to split the application into two separate items; one for the fence and one for the addition with Mr. Haberman seconding and unanimously carried.

Mr. Carey made a motion to approve the addition for all the reasons stated with Mr. Haberman seconding. The motion carried unanimously with Messrs. Carey, Evasick, Tuozzola, Haberman & Katen voting.

Mr. Tuozzola made a motion to deny the fence with Mr. Evasick seconding. The motion carried 4-1 with Messrs. Evasick, Tuozzola, Haberman and Katen voting in favor and Mr. Carey against.

3. **9 Benson Street** (Zone R-10) Jason DiGiandomenico, of Building Concepts, agent, for William & Kathleen Swenning, owners – request to vary Sec. 4.1.1.4 distance from dwelling unit to accessory structure to 4.6' in lieu of 8' required (to construct sunroom); vary Sec. 4.1.1.4 to ½' in lieu of 8' required to allow shed to remain. Vary Sec. 3.1.4.1 rear yard setback to 1.67' in lieu of 5' required to allow shed to remain. CAM required. Map 19, Block 233, Parcel 28.

Jason DiGiandomenico, 308 East Main Street, Building Concepts, Branford, said there is an existing deck and shed. He is looking to enclose a portion of the deck with a sunroom, 11'x 16'. They would also be cutting the deck back to a smaller size. He is

here this evening because the deck is currently too close to the garage. He submitted pictures to the Board. The existing shed was there when the home was purchased but was also placed too close and he was informed he should apply for a variance for that also.

Mr. Carey asked how long the shed and the garage were there to which Mr. DiGiandomenico answered he didn't know about the garage but the shed was there for about nine years.

Mr. Evasick asked for the hardship.

Mr. DiGiandomenico answered the lot predates zoning and is non-conforming as it stands.

Chrmn. Katen asked if they ever considered removing the shed to which Mr. DiGiandomenico answered if the shed wasn't approved, they were going to try to relocate it.

Mr. Carey noted if the shed was there for longer than three years wouldn't it then be allowed to remain by State Statute.

Ms. Kuchta said that was true but since the applicant was asking for a variance, in order to approve the variance, the Board could require the rest of the non-conformities be removed.

Mr. Evasick asked if the sunroom was being custom built, could it then be reduced by 4'.

Mr. DiGiandomenico said the size could be reduced but if they did, the door would be in the way.

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

DISCUSSION:

Chrmn. Katen noted this could be another case of splitting the application to which Mr. Evasick agreed.

Mr. Carey made a motion to split the application with Mr. Tuozzola seconding. It carried unanimously.

Mr. Evasick then made a motion to approve the addition with Mr. Carey seconding. The motion carried unanimously with Messrs. Evasick, Haberman, Carey, Tuozzola and Katen voting.

Mr. Tuozzola made a motion to deny the shed with Mr. Evasick seconding. The motion carried unanimously with Messrs. Evasick, Carey, Tuozzola, Haberman and Katen voting.

4.326 Calf Pen Lane cor. Buckingham Avenue (Zone R-10) Joan Brockenberry, appellant, appeal the decision of the Zoning Enforcement Officer in her determination of legal, non-conforming lots under Sec. 6.4.3. Map 46, Block 529, Parcel 2 & 3.

Application withdrawn.

5. **41 Elgin Road cor. Elgin Road** (Zone R-10) Tom Holmberg, owner – request to vary Sec. 3.1.4.1 side yard setback to 9.04' in lieu of 10' required & vary Sec. 3.1.4.1 front yard setback to 19.51' in lieu of 25' required for existing garage, portion of house & 3'x9' porch to remain. Map 92, Block 706C, Parcel 1.

Tom Holmberg, 73 Golden Hill Street, Apt 2R, said he recently purchased the property and is asking for a variance for an existing building that has been there without all the necessary permits for close to 10 years. He is not adding or reducing anything on the house. He is just trying to bring up to code, what the previous owner did, by getting the variance and then going through the Building Dept. process. The structure hasn't changed in ten years, the neighbors have been living with it for ten years and he is just trying to make it all legal.

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

DISCUSSION:

Mr. Tuozzola said the applicant is going through the process of making the house legal and up to code. Chrmn. Katen agreed.

Mr. Tuozzola made a motion to approve with Mr. Haberman seconding. The variance is part of the process to legalize the house. The motion carried unanimously with Messrs. Carey, Evasick, Tuozzola, Haberman and Katen voting.

6. **767 East Broadway** (Zone R-5) Stephen W. Studer, attorney, for Irene Buckley and Ann Marie Mockler, owners – request to vary Sec. 4.1.7.3 to permit existing 3 foot high open, metal fences to remain between the rear wall of the principal dwelling and Long Island Sound. CAM received. Map 22, Block 474, Parcel 28.

Postponed to July 12, 2011 meeting.

7. **274 Broadway cor. Grant Street** (Zone R-7.5) James R. Denno, appellant, for P.J. Moore, owner – request to vary Sec. 3.1.4.1 front yard setback for front stoop (4'x7') and deck (11.4'x12.2') to 7.7' in lieu of 20' required. Vary Sec. 3.1.4.1 side yard setback for shower (3'x3') and triangular deck platform (3.6'x4.8' overall) to 1.4' in lieu of 5' required. CAM required. Map 9, Block 130, Parcel 15.

Carmine Perri, attorney with Bishop Jackson & Kelly Law Firm, 472 Wheelers Farms Road, submitted material to the Board. The house was built in the 1920's. Improvements were made after it was purchased in 2001 and then finally purchased by the current owner, P.J. Moore, in December of 2010. There are four modifications they are requesting. The hardship is it is a corner lot with a non-conforming width. They have two front yards. First, they are looking to do an outdoor shower, which is about 13 sq. ft. The neighbors' also have an outdoor shower. The second is the platform (deck) that is not even one foot high, so you can step up into the shower. Third, they are looking to modify the entrance. What they are proposing would not go beyond the existing line of the house. Presently, there are two steps and when you open the door, you have to lean back off the first step to clear the door and enter the house. They are

proposing to eliminate those two steps and construct a platform in their place. Fourth, is a request for a second floor balcony. This balcony could be built on the other side of the house without a variance. They are requesting the variance in an effort to keep it as far away from the neighbors as possible. There is a tree growing in that same corner that would still be taller than the proposed balcony and railing. What they are attempting to do is accommodate the neighbors. The plans are consistent with page 136 of the Plan of Conservation and Development and are consistent and compatible with the area homes. They are also removing some impervious surfaces, consistent with page 153 of the POCD, reducing the coverage from 62% to 60%. The hardship is the narrowness of the lot which is located on a corner. He added the requests are minor.

Mr. Tuozzola asked what the hardship was for the corner shower and deck.

Atty. Perri, said the width of the property is less than what is required by the regulations. The shower is 1.4' and the deck is 1.9' from the property line. They could take a couple of inches off to make it in line with the house. It is just a step up platform for the shower.

Mr. Evasick agreed the shower was an issue.

Mr. Haberman said he didn't have a problem with the shower, but with the deck that leads up to the shower and extends farther into the setback than the house.

OPPOSITION:

John Pedrow, 272 Broadway, adjacent neighbor, said while he didn't have a problem with the shower, although it is very close to his house, he did have a problem with the 12' deck. It would obscure all his beach and waterviews to the west. There are no existing homes in the neighborhood with large rear decks. This would set a precedent for all the other homeowners to start building decks off their houses. His property values and privacy would also be compromised. He spoke with the owners' attorney earlier and felt he could compromise with a 6' deck rather than a 12' deck.

Chairman Katen asked Ms. Kuchta for her comments and she informed Mr. Pedrow that if the variance was denied, the deck could be placed in another area of the rear of the house without a variance.

REBUTTAL:

Atty. Perri said they are in a precarious position because they need a variance to construct the deck on the westerly side of the property, to try to accommodate the neighbors.

The hearing was closed.

DISCUSSION:

Mr. Carey said his only concern was the deck with the shower. He felt it would be alright as long as it didn't go past the existing line of the house. Mr. Evasick thought that maybe this item should also be split.

Mr. Evasick made a motion to split the variance with Mr. Tuozzola seconding and was unanimously carried.

Mr. Carey made a motion to approve the deck and shower with the condition than it didn't go any farther out than the existing line of the house with Mr. Haberman seconding. The motion failed to carry with Messrs. Carey, Haberman, Tuozzola voting in favor and Messrs. Evasick and Katen voting against.

Mr. Haberman made a motion to approve the front entrance with Mr. Carey seconding. The motion carried unanimously with Messrs. Carey, Haberman, Evasick, Tuozzola and Katen voting.

Mr. Evasick made a motion to deny the second floor balcony with Mr. Carey seconding. The motion carried 4-1 with Messrs. Evasick, Carey, Haberman and Tuozzola voting in favor and Katen voting against.

8. **42 Laurel Avenue** (Zone R-5) Stephen W. Studer, attorney, for John F. Simpson, Elysa Simpson, George W. Simpson and Margaret L. Simpson, owners – request to vary Sec. 6.2.1 to permit the construction, reconstruction and structural alteration of a structure devoted to a non-conforming use (i.e. two-family) and Sec. 6.2.6 to permit the restoration of a structure purportedly damaged to an extent of 50% or more by a fire originating on an adjacent property. CAM required. Map 13, Block 146, Parcel 5.

Stephen W. Studer, attorney, 75 Broad Street, submitted paperwork and a petition signed by over 40 people to the Board members. The two family house was built in 1910, prior to the adoption of the zoning regulations. The house did not meet the zoning regulations as it was approximately 11' from the front property line and did not have the required 5' and 10' side yard setbacks. It was a two family house located in a single family zone. The use and the structure itself were pre-existing, legal non-conforming. On April 24, 2010, there was a fire at the property next door at 38 Laurel Avenue, and the Simpsons' house was extensively damaged because of it. The building official ordered the complete demolition of the house, despite the owners' wishes. They believe the building official lacked the authority to do that and his actions were both illegal and violated the owners' constitutional rights. He informed the Board of a similar case in Hamden with a 5 family house where the building official was found to have lacked the authority. The Simpsons' are not looking for a lawsuit, they are looking for the right to replace that which they had and which was lost as a result of the fire. He referred to a letter he passed out dated July 8, 2010 from himself to Winthrop Smith, City Attorney, where he stated the Simpsons' wish to promptly rebuild what was damaged. They believe that although their house was severely damaged, more than 50% of the structure, excluding foundation, remained. Even though the building official ordered the house demolished, it should not affect their right to rebuild. They are only looking to continue the legal, non-conforming use which has existed for 101 years. The practical solution is to grant the variance they are asking for tonight. His clients did nothing wrong. They awoke one morning to find their property damaged through no fault of their own. Before the insurance adjustor could arrive, before they could get an engineer to look at the structure, before any documentation of the damage could be

done, the house was ordered demolished by the City. The Simpsons' later discovered there were alternatives to the demolition of the house but were never given any options. They are asking the Board for a variance to allow them to construct or reconstruct a structure devoted to a non-conforming use and to allow them to restore a structure which the building official claims was damaged to an extent in excess of 50%. They are not asking for a use variance - they don't need a use variance. They have a legal, non-conforming two-family use they never abandoned. He passed out paperwork and spoke to the Board regarding abandonment. He read Sec. 6.2.1 of the Zoning Regulations and said they are not talking about a non-conforming use of land. They are not looking to enlarge, extend or alter the legal, pre-existing, non-conforming two-family use of the property. They've had a house devoted to a non-conforming use since 1910. The house the Simpsons' are proposing to build, if the variance is approved, would fully comply with today's R-5 zoning requirements. If they were to agree to abandon the two family use and build a single family home, a permit could be issued tomorrow. They do not want to and they won't. They have a legally protected property right and they shouldn't be forced to abandon this right in order to rebuild a house damaged by an act of God, a casualty outside of their control. He read from CT State Statutes Sec. 8-2 stating the zoning regulations shall not prohibit the continuance of any non-conforming use. This is however, exactly what Sec. 6.2.1 and 6.2.6 of the Milford Zoning Regulations do. They prohibit the continuance of a legal, non-conforming use by forcing you to either abandon the use or to leave your property vacant. That is inconsistent with the statute and inconsistent with our sense of fair play and morality and the Constitution. He then spoke of Sec. 6.2.6 of the Zoning Regulations, Restoration. It reads a structure damaged to more than 50% may not be repaired or reconstructed unless the structure is made to conform to the regulations. The Simpsons' are doing exactly that. They are proposing to rebuild the structure to conform to today's regulations. The regulation also says no repairs or construction shall be made unless the use is made to conform. Both sections are forcing a property owner to abandon a legal, non-conforming use if he or she wants to repair, rebuild or restore a damaged structure through no fault of the property owner. It is harsh and unfair to the Simpsons' - the victims. The hardship arises out of the application of the regulations to the property. The circumstances and conditions outside their control - the fire and the improper demolition - are all part of the hardship. The strict application of these regulations, 6.2.1 and 6.2.6, deprives the Simpsons' of the reasonable use of their property. They are not allowed to make reasonable use of their property unless they abandon something they have every legal right to do. He quoted from the case of Hesock vs. Zoning Board of Appeals, where the court held that the elimination and reduction of existing non-conformities can be an independent basis for granting a variance. The plans show that the proposed house would be narrower at 25' wide vs. 31' wide. The old house was a two-family with four bedrooms up and two bedrooms down. The new house would still be a two-family but with four bedrooms total, two up and two down. The old house had a total square footage of approximately 2,800 sq. ft. compared to the new house which would be 2,150 sq. ft. The reduction or elimination of the previous non-conforming elements of the structure which was burned and demolished by the City, is a basis for the granting of the variance. There are a number of two, three and five family homes in the immediate vicinity of the neighborhood, along with a condominium. He passed out a GIS map to the Board showing these nineteen properties circled. The requested variances are a practical solution to the situation.

They do no harm to the neighborhood because they simply allow the Simpsons' to replace a damaged structure with a smaller, conforming structure without being required to abandon a protected property right. The variance is consistent with the Statutes, with CT Case law, the purposes and intent of the Zoning Regulations and is not injurious to the neighborhood.

Mr. Nichol asked if there were any pictures of the structure after the fire and if they were available for viewing to which Atty. Studer said there were pictures and they were given to the City Attorney when they met back in July of last year. The City Attorney was relatively comfortable with their argument but it wasn't his decision to make.

OPPOSITION:

Ms. Kuchta said she had four letters of opposition in the file. Letters from Patricia E. Hanlon, 47 Laurel Avenue; Constance Henshaw, 41 Broadway; Michael Caro, 48 Laurel Avenue; William J. Sidarweck, 53 Laurel Avenue, were read into the record.

REBUTTAL:

Atty. Studer commented on the letters by saying tonight's variance application is not for a use variance. It would not open the flood gates because they are not talking about putting two family houses on vacant lots, nor would there be people coming in to ask for variances for two-family houses where none existed before. The use existed, it was legal and then the structure was damaged through means outside their control. They are looking to restore and rebuild a structure without having to abandon the pre-existing legal use that existed. It would not lower property values. It would not compromise the integrity of the area. He was not sure whether Mr. Standish, the owner of the house that burned down, could come in and ask for the same variance as he was not aware of the nature of that use.

Chrmn. Katen asked if there was anyone there in favor or opposition of the application and hearing none, closed the meeting.

Ms. Harrigan, Assistant City Planner, asked if Staff got a chance to speak on the item. She said they would have to speak before the public hearing was closed.

Chrmn. Katen said that was true and agreed she was right.

Atty. Studer argued the Chrmn. had asked if there was anyone to speak for or against. Staff had a chance to say something before the public hearing was closed.

Chrmn. Katen said he understood but wondered if he was a little too hasty and Ms. Harrigan was a little too slow. He allowed Ms. Harrigan to speak and informed Atty. Studer he would be allowed to rebut.

Ms. Harrigan reminded the Board to look very carefully at what their powers and duties allowed them to do as the Zoning Board of Appeals in terms of the hardship characteristics that have to be met for a variance application as well as the prohibitions

within that section in terms of what you are not supposed to look at. The Regulations are their guide. She hoped they looked very carefully at that as well as the Plan of Conservation and Development in terms of what the intention for this neighborhood was. These are all non-conforming lots. Every lot on Laurel Avenue and Park Avenue experience the same lot characteristics. There are a lot of single family houses within that neighborhood. Many of the circled properties Atty. Studer presented are in a CDD-2 zone. In that zone, a two-family home is allowed. The City of Milford allows two-family houses, unfortunately, not in the R-5 zone. That is very clear.

REBUTTAL:

Atty. Studer said this is a variance and isn't about the Plan of Conservation and Development. This is not about the Planning and Zoning Regulations being your guide. This is the Zoning Board of Appeals. You look to statutes, you look to case law. Your job is to take a look and see whether or not there is a hardship, whether or not there is a need to relax the strict application of the Zoning Regulations on a case by case basis in order to allow people to make reasonable use of their property. This is a case that cries out for some relief. Even if some of the properties circled were located in a CDD-2 zone, the point is, it is still the neighborhood.

The hearing was officially closed.

DISCUSSION:

Chrmn. Katen said this is a house that was a two family house for over 50 years. It was burnt down by virtue of a fire next door and they are asking to rebuild it.

Mr. Evasick made a motion to approve the application with Mr. Carey seconding. The motion carried unanimously with Messrs. Evasick, Haberman, Carey, Nichol and Katen voting.

Chrmn. Katen said Mr. Carey is being excused so Mr. Collins would fill in for him for the last two items.

9. **63 Westmoor Road por. Lot 338 and Lot 339** (Zone R-12.5) Thomas B. Lynch, attorney, for Jen & Ryan James and Field & Son Builders, LLC, owners – request to vary Sec. 3.1.4.1 front yard setback to 18' in lieu of 30' required (16' to porch/deck). CAM required. Map 30, Block 613A, Parcel Portion 34.

Thomas B. Lynch, attorney, 63 Cherry Street, passed out paperwork to the Board. They are requesting a variance to construct a single family dwelling on the property. He said Westmoor Road is a paper street extending all the way down to Point Beach Drive except for #63 Westmoor Road. In 1938, a hurricane wiped out Point Beach. As part of that storm, there was a tremendous tidal back wave that extended from Marie Street to Westmoor Road. Even though this entire area was subdivided in the 1925 Elaine Realty Map, there is a pocket in the middle of Point Beach that has remained undeveloped because of that tidal backwash. Many property owners abandoned their property, so the City foreclosed and took title. Chris Field looked into the feasibility of

purchasing some of the lots and hired Codespoti & Assoc. to come in and do soil analysis. With the passage of time, it was determined it is now feasible to extend Westmoor Road. He has bought enough properties for the development of six houses. The road currently ends at the end of the Chase property and there is a guard rail barrier there. He added that when he himself lived there years ago, it was an area where youths would congregate and do drugs and drink. There was also dumping of refuse in the area. They are contending that extending the road and developing the area would be an enhancement. The photos distributed as part of the paperwork handed out shows what could be built without a variance and what they are proposing to build. The proposed house would be a four bedroom colonial with approximately 2,000 sq. ft. It would be a more esthetically pleasing house than compared to the second photo of what could be built as a matter of right. The hardship is the existence of wetlands to the rear of the property. They are requesting to move the house closer to the road because of the wetlands.

Mr. Haberman confirmed the front yard setback variance was being asked for because of the wetlands that cut across the corner of the back of the lot.

Mr. Nichol asked if this was approved for two lots to which Atty. Lynch said the lot itself consists of 2 lots on a 1925 subdivision map.

FAVOR:

Ryan James, 63 Westmoor Road, said they are in favor of the application. They have seen the caliber of houses Chris has built and they approve. The wooded area next to their house is overgrown, is an eye sore and a neighborhood dumping ground. They are the people most affected by this project and they approve it.

Jennifer Chase James, 63 Westmoor Road, said they have three children and they enjoy the environment and this would only enhance their neighborhood.

OPPOSITION:

Joyce Day, 111 Atwater Street, said she has lived there for 38 years. When the house at 63 Westmoor Road was built, it had to abide by the 30' setback. When someone wanted to build a house on the lot between #63 Westmoor Road and her house, she came to speak against it and now that house has a 30' setback. Building this house or houses so close to the curb would block site lines when looking down the street. It would have the look of row houses or condos without the beauty of a front yard as the rest of the neighbors on the street have. If Public Works asks for sidewalks, as they do for most new construction, the front yard would then be even less.

Shannon Cleary, 95 Atwater Street, said the end of Westmoor Road is very child friendly. There are at least 10 to 15 children that play there. It is not a drug type of dead end road. There are still wetlands back there and photos were submitted to the Board. The proposed house is very different than the ones currently existing on the street and in the neighborhood. There is a body of water running behind all four of those lots. The whole look of the neighborhood would be changed. She also created a dvd that shows the before and after photos of Chris Field's construction and that was submitted also. More than 50% of the second house runs across the wetlands. They have a map from the Engineering Department that shows there is a pond where they

are proposing to build the houses. A petition with 100 signatures asking the variances be denied was submitted.

Robert Cleary, 95 Atwater Street, said he is strongly opposed to any variances granted for the building of these houses.

Arthea Walsh, 9 Northmoor Road, said there is a waterway behind her house that runs across #71 Westmoor Road, across the street, under Atwater Street, to #106 Atwater Street and then out to the river. But there is another waterway connected to it. The existing sewer system does not work. The houses at #71, #63 and hers, should never have been built in the first place. The wildlife is being harmed. When she bought her house, she was told that the land was a conservatory and it could not be built on. She is trying to create a trust fund to preserve the land for herself, her children and the future. The town is being destroyed. We don't need to be building on every piece of land. We need to stop and think. Crime will rise and schools will be overwhelmed. There are plenty of houses just waiting to be bought.

Ginella Corkery, 9 Northmoor Road, said the proposed home would not be in character with the other houses on the street.

Steve Cioppa, 106 Atwater Street, said the guard rail at the end of the street is no longer there as it was bulldozed last week. Children play at the end of the paper street; it is not a drug haven. There is precedent where this application was denied in the past and didn't feel it should be any different this time.

John Noonan, 98 Atwater Street, said he opposed the variance and would like to preserve the wetlands there.

Kevin Lawless, 68 Atwater Street, said he has lived there for 12 years and he is against any building at the end of that street. There haven't been any drug invested teenagers hanging out there as long as he has lived there. He is highly offended that was even said. There shouldn't be any building on wetlands. There have been enough wetlands built upon already. We've taken away all of our open spaces for viewing, for animals to live and building closer to the road would ruin the continuity of the street.

Theresa Burns, 87 Atwater Street, said she has lived there for 18 years and she agreed with everything her neighbors said. She opposes the application.

Diane Dumais, 21 Hilldale Court, feels if this is approved, it would open up a whole can of worms in other sections of the city. She bought her property where it was because supposedly, these properties weren't supposed to be developed.

REBUTTAL:

Atty. Lynch said any of the comments he made about what was happening in that open area thirty years ago was not said with any intention to slight nor disparage the neighbors. They feel the extension of the road, would enhance the area. These lots are legal, non-conforming lots. This variance request is just the start of the process. They still have to go before Inland Wetlands and the Planning and Zoning Board for approval. He understands the neighbors concerns. No one likes to see new development. Mr. Field has the right to develop these parcels.

The hearing was closed.

DISCUSSION:

Chrmn. Katen asked if they could still build a house there. Ms. Kuchta said as long as the house has a minimum of 625 sq. ft., which is required by the regulations, they can build a smaller footprint house and build up three stories. Chrmn. Katen said the question was asked so everyone in the audience understood a house could still be built there. Mr. Nichol asked if #63 Westmoor Road was the only house on that street. Ms. Kuchta said there are a couple of other houses. Mr. Haberman asked if the other houses are set back 30' to which Ms. Kuchta said she did not know.

Mr. Haberman made a motion to deny with Mr. Nichol seconding. A house can be built on the property. The neighborhood doesn't want to see a decrease in the front yard setback. They don't need a variance to build a house. The motion carried unanimously with Messrs. Carey, Evasick, Nichol, Haberman and Katen voting.

10. **0 Westmoor Road por. Lot 339 and Lots 340 & 341** (Zone R-12.5) Thomas B. Lynch, attorney, for Field & Son Builders, LLC, owner – request to vary Sec. 3.1.4.1 front yard setback to 19'; in lieu of 30' required (17' to porch); vary Sec. 3.1.4.1 side yard setback to 5' in lieu of 10' required. CAM required. Map 30, Block 613A, Parcel 34.

Thomas Lynch, 63 Cherry Street, attorney, said he has a similar argument as the prior application. This lot is the combination of the remaining portion of Lot 339 along with Lots 340 & 341 on the Elaine Road subdivision map. This lot has considerably more wetlands. The variance is to construct the house in the southwesterly section of the property. He handed out photos of the proposed colonial, 2,000 sq. ft. house which would enhance the area and the alternate house that would be built if the variance were denied. This is a situation where the property is encumbered by wetlands and for the reasonable development of the property a variance is required.

FAVOR:

Ryan James, 63 Westmoor Road, said he is in favor. The houses are going to be built anyway, so he wants better looking houses. Extending the road is not going to hurt the play area; it's going to invite more children into the area. The woods are a dumping ground. All the neighbors dump their grass and leaves there. There are no dumping signs, but they do it anyway, right in front of their house. There are kids at the dead end into the wee hours of the morning. He wants the neighborhood to grow. You build better houses, you're going to get better people.

Jen James, 63 Westmoor Road, said they are one of two houses on the street. Only a few of these neighbors have lived there longer than she. When she was growing up, it was an area for partying. They don't want to cause an argument over it, they want to beautify the neighborhood. They border this area and they have to maintain the property. Neighbors have dumped their grass clippings, their Christmas trees and their garbage. Why wouldn't they want to see the area beautified and add to the neighborhood.

OPPOSITION:

Melissa Lawless, 68 Atwater Street, said she is opposed because the neighborhood is already an overcrowded beach area.

Joyce Day, 111 Atwater Street, is opposed to building the houses so close to the road. It would impede the site line looking down the street and it would make it look like condos.

Arthea Walsh, 9 Northmoor Road, said they are building in the water and she would have to look at the new house from her back yard. She hoped the Board would say no.

Ginella Corkery, 9 Northmoor Road, said if the house is moved forward, it would not be in character with the rest of the neighborhood.

Kevin Lawless, 68 Atwater Street, is also opposed as the continuity of the street and the neighborhood would be changed.

Steve Cioppa, 106 Atwater Street, said precedent was made for denial when Arnold Peck tried to build between the two other homes. A variance in the front yard is not going to make a difference in bringing people into the neighborhood.

Robert Cleary, 95 Atwater Street, said he is very opposed to the granting of the variance. This property was like this when Chris Field bought it. He knew what it was and he bought it anyway.

Shannon Cleary, 95 Atwater Street, is strongly opposed to the variance and would like what she said in opposition to the previous variance, to be applied to this one along with the petition, photos, dvd and maps.

Theresa Burns, 87 Atwater Street, agrees with and supports her neighbors in opposing the application.

Darlene Cioppa, 106 Atwater Street, opposes the variance. She agrees that looking at wildlife and trees is much more beautiful than looking at another house.

REBUTTAL:

Atty. Lynch said he has the same rebuttal as the last time and reminded the Board they are the ZBA and the variance is to allow his client to develop the property in a reasonable manner. There is a clear hardship because of the existence of wetlands. A house can be built there but his client wants to build a nicer house that would be more of an enhancement to the neighborhood.

The hearing was closed.

DISCUSSION:

Mr. Evasick said if the applicant is successful through the process, there are going to be houses built there. The owners are trying to build a more esthetically pleasing house. He hoped the neighbors understood that. The fact is you have a right as a citizen and landowner to develop your property based on the regulations.

Mr. Evasick made a motion to deny with Mr. Nichol seconding. The motion carried unanimously with Messrs. Evasick, Collins, Nichol, Haberman and Katen voting.

B. TABLED ITEMS

C. OLD BUSINESS

D. NEW BUSINESS

E. STAFF UPDATE

1. Overview of CAZEO Training Classes.

Ms. Kuchta said she was going to do an overview of the CAZEO training but because of the long meeting, she could do it next month if the Board wanted to postpone it. She informed the Board that two handouts were included with their paperwork this evening which might be something that could be handed out to the applicants when they come in to apply for the variance. If the Board could read over those two items, it could be discussed at next month's meeting.

Chrmn. Katen asked how many were on the agenda for next month to which Ms. Kuchta noted only 767 East Broadway.

F. ACCEPTANCE OF MINUTES FROM APRIL 12, 2011 HEARING

The minutes were accepted unanimously.

G. ACCEPTANCE OF APPLICATIONS FOR JULY 12, 2011 HEARING

The meeting was adjourned at 9:25 p.m.

Attest:

Rose M. Elliott,
Clerk ZBA