

TOWN OF FAIRFIELD
ZONING BOARD OF APPEALS
MEETING MINUTES OF APRIL 7, 2022

The Zoning Board of Appeals held a meeting at 3:00 p.m. on Thursday, April 7, 2022 via WEBEX. Audio of this meeting can be found here: <https://fairfieldct.org/meetingrecordings>

MEMBERS PRESENT: Kevin Coyne, Chair; Terry Keegan, Vice Chair; Jane Gitlin Nishball, Secretary, and Brian Avallone

MEMBERS ABSENT: Katie O'Grady

ALTERNATE MEMBERS PRESENT: Faith Dillon, Alternate, sat in place of Kevin Coyne on General Docket #2, Harold Zawadski sat in for Katie O'Grady.

EXECUTIVE SESSION

1. Minutes of Thursday, March 3, 2022: Brian Avallone *moved* and Terry Keegan *seconded* to approve the minutes as presented. *Motion passed unanimously*
2. Approval of Secretary's Fees: Brian Avallone *moved* and Harold Zawadski *seconded* to approve the proposed minutes as presented. *Motion passed unanimously*

Executive Session started at approximately 2:45 p.m.

CONTINUED DOCKET:

9. 1088 Harbor Road, Map 241, Parcel 149. Petition of 1100 Harbor Road, LLC to reverse and modify the decision of the ('ZEO') regarding a zoning compliance stamp on an application to the Historic District Commission and issuance of a Zoning Compliance. Premises: R-3 Zone

Attorney Joel Green presented on behalf of the owner.

Chairman Coyne confirmed with Attorney Green that they would be going ahead with two (2) appeals that were filed, one on December 3, 2021, and another on December 30, 2021. The first issue for the Board to resolve is the issue of timeliness; whether or not the applications were filed within the 30-day deadline, pursuant to Section 8-7 of the CT General Statutes. The second issue is to decide if the December 30, 2021 decision made by the Zoning Enforcement Officer ('ZEO') should be reversed.

Attorney Green presented his argument:

Regarding the Appeal Filed on 12/3 (of the 11/4 endorsement)

1100 Harbor Road LLC of 1100 Harbor Road, Southport, Connecticut (the "Appellant"), hereby appeals the decision (the "Decision") of the Zoning Enforcement Officer to endorse as "Approved for Zoning Compliance" on November 4, 2021 a site plan entitled "Data Accumulation Plan Prepared for Mitchell and Jessica McManus, 1088 Harbor Road, Southport, Connecticut" prepared by the Huntington Company dated February 1, 2019 and revised to September 13, 2021 (the "Site Plan"). The Site Plan was submitted to the Town Plan and Zoning Commission

for review and endorsement preliminary to the filing by Jessica McManus and Mitchell McManus (the "Applicants") of an application to the Historic District Commission of the Town of Fairfield for a Certificate of Appropriateness pertaining to proposed additions, alterations and related site improvements upon the premises at 1088 Harbor Road in Southport (the "Subject Property") including, but not limited to, the demolition of an existing one-car, single-story garage and the construction of a new, larger and taller two-car garage.

The Appellant is the owner of the premises at 1100 Harbor Road in Southport that abuts the Subject Premises.

At present and as shown on the Site Plan, the Subject Property is nonconforming with the Zoning Regulations of the Town of Fairfield (the "Zoning Regulations") with respect to: Minimum Lot Area, Minimum Lot Frontage, Setback from Street Line, Setback from One Side property Line, Maximum Building Lot Coverage as a Percentage of Lot Area and Maximum Building Coverage as a Percentage of Lot Area. The Appellant also disputes several of the calculations, dimensions and conclusions set forth on the Site Plan that, in one or more instances, understate the degree of nonconformity.

Moreover, the development proposed by the Applicants fails to comply with the Zoning Regulations in several respects.

Section 2.8 of the Zoning Regulations of the Town of Fairfield provides, in relevant part, as follows:

2.8 Continuation of Nonconforming Uses

Any use of land, buildings and other structures, and any buildings or other structures, lawfully existing on the effective date of the Zoning Regulations, or any amendment thereto, which use does not conform to one or more of the provisions of the Zoning Regulations, may be continued in accordance with the following provisions:

2.8.1 No nonconforming use of land, building or any other structure:

- 2.8.1.1 shall be enlarged or extended to include any other building, land or other structure or part thereof, which is not subject to such nonconformity; or
- 2.8.1.2 shall be changed to another use unless such new use is substantially a conforming use;
- 2.8.1.3 which shall have been discontinued for a continuous period of six (6) months shall thereafter be resumed or be replaced by any other nonconforming use.

Section 2.9 of the Zoning Regulations of the Town of Fairfield provides, in relevant part, as follows:

2.9 Enlargement of Nonconforming Uses

A nonconforming building or structure may be enlarged, provided such enlargement does not affect the nonconformity of the building or structure. Enlargement, extension or structural alteration of a building or other structure or on the use of a lot, as defined in Section 31.0 of the Zoning Regulations is permitted, provided:

- (1) the lot has the required access on a street; and
- (2) the use is not a special exception use; and
- (3) the use, building or other structure conforms to all the requirements of the Zoning Regulations.

9. 1088 Harbor Road (continued)

As the Site Plan indicates and as confirmed by the Applicants in their comments during a public hearing on the Application before the Historic District Commission, the existing one-car, single story garage is planned to be entirely demolished and removed from the Subject Property. In its place, the new, larger and taller two-car garage is proposed on other portions of the land.

Accordingly, there is no enlargement or extension of the non-conforming garage but, rather, a new building is proposed.

In the Site Plan, the Applicants propose to eliminate floor area in the existing home upon the Subject Property by raising the floor of the third floor of the home to reduce the height below seven (7) feet thus deducting that portion of the home from the calculation of floor area. The Applicants then propose to use the floor area that has been eliminated from the third floor of their home and to use that floor area to accommodate a larger garage. Given the present and continuing non-conformities existing upon the Subject Property, the Zoning Regulations do not allow for a new structure to be established as is proposed by the Applicants in this instance.

Finally, the Appellant submits that the Applicants did not submit sufficient documents or information to the Plan and Zoning Commission with which the Commission or the Zoning Enforcement Officer could determine that the Site Plan and the proposed resulting development is compliant with the Zoning Regulations.

For the foregoing reasons, the Appellant respectfully requests that the Zoning Board of Appeals sustain its appeal and reverse the Decision.

Regarding the Appeal Filed on 12/30 (of the 9/21 endorsement)

1100 Harbor Road LLC, the owner of the premises at 1100 Harbor Road, Southport, Connecticut (the "Appellant"), hereby appeals the following decisions (the "Decisions") of the Zoning Enforcement Officer:

1. To endorse as "Approved for Zoning Compliance for Historical Review Only" on September 21, 2021, a site plan entitled "Data Accumulation Plan Prepared for Mitchell and Jessica McManus, 1088 Harbor Road, Southport, Connecticut" prepared by the Huntington Company dated February 1, 2019, and revised to September 13, 2021 (the "Site Plan");
2. To endorse the Site Plan as "Approved for Zoning Compliance for my existing garage & rear deck, brand new detached 2 car garage & mechanical platform w/2 rear landings and stairs" on October 15, 2021;
3. To endorse as "Approved for Zoning Compliance for 12x25 in-ground pool w/7x7 spa, 21x22 2 car garage w/mech platform & 2 rear landings & stairs" on October 15, 2021, and approve an Application for a Certificate of Zoning Compliance on October 15, 2021 (Permit No. 42345) pertaining to the premises at 1088 Harbor Road (the "Certificate of Zoning Compliance"); and
4. To endorse as "Approved for Zoning Compliance for my existing garage & rear deck, build new 2 car garage w/loft, elevated mech. Deck & 2 rear landings & stairs & mechanical platform w/2 rear landings and stairs" on October 15, 2021, an Application for a Building Permit pertaining to the premises at 1088 Harbor Road (the "Application for a Building Permit").

The Site Plan endorsed on September 21, 2021, was, upon information and belief, submitted to the Town Plan and Zoning Commission for review and endorsement preliminary to the filing by Jessica McManus and Mitchell McManus (the "Applicants") of an application to the Historic District Commission of the Town of Fairfield for a Certificate of Appropriateness (the "Application") pertaining to proposed additions, alterations and related site improvements upon the premises at 1088 Harbor Road in Southport (the "Subject Property") including, but not limited to, the demolition of an existing one-car, single-story garage and the construction of a new, larger and taller two-car garage (the "Proposed Project").

9. 1088 Harbor Road (continued)

The Site Plan endorsed on September 21, 2021, was omitted from the file maintained online by the Historic District Commission with respect to the Application. Moreover, the Historic District Commission does not have an office or place of business nor are its files maintained by the Town Clerk and the files of the Historic District Commission are not readily available for inspection by the public during regular office or business hours. As a result, the Appellant did not become aware of the existence of the September 21, 2021 endorsement of the Site Plan until December 3, 2021, when informed by of it by Plan and Zoning Department staff while in the course of filing an appeal also relating to the Subject Property.

The Certificate of Zoning Compliance was submitted to the Town Plan and Zoning Department by the Applicants with respect to the Proposed Project and was approved on October 15, 2021.

The Application for a Building Permit was submitted to the Town Building Department by the Applicants with respect to the Proposed Project and was approved on or about October 22, 2021.

The Appellant first had knowledge of the endorsements and approvals of the Certificate of Zoning Compliance and the Application for a Building Permit and the October 15, 2021 endorsement of the Site Plan on December 9, 2021, when demolition work was commenced on the existing garage as part of the Proposed Project.

The premises owned by the Appellant at 1100 Harbor Road in Southport abuts the Subject Premises.

At present and as shown on the Site Plan, the Subject Property is nonconforming with the Zoning Regulations of the Town of Fairfield (the "Zoning Regulations") with respect to: Minimum Lot Area, Minimum Lot Frontage, Setback from Street Line, Setback from One Side property Line, Maximum Building Lot Coverage as a Percentage of Lot Area and Maximum Building Coverage as a Percentage of Lot Area. The Appellant also disputes several of the calculations, dimensions and conclusions set forth on the Site Plan that, in several respects, understates the various nonconformities with the Zoning Regulations.

Moreover, the Proposed Project fails to comply with the Zoning Regulations in several respects including, but not limited to, Section 2.8 of the Zoning Regulations of the Town of Fairfield that provides, in relevant part, as follows:

2.8 Continuation of Nonconforming Uses

Any use of land, buildings and other structures, and any buildings or other structures, lawfully existing on the effective date of the Zoning Regulations, or any amendment thereto, which use does not conform to one or more of the provisions of the Zoning Regulations, may be continued in accordance with the following provisions:

2.8.1 No nonconforming use of land, building or any other structure:

- 2.8.1.1 shall be enlarged or extended to include any other building, land or other structure or part thereof, which is not subject to such nonconformity; or
- 2.8.1.2 shall be changed to another use unless such new use is substantially a conforming use;
- 2.8.1.3 which shall have been discontinued for a continuous period of six (6) months shall thereafter be resumed or be replaced by any other

9. 1088 Harbor Road (continued)

Section 2.9 of the Zoning Regulations of the Town of Fairfield also provides, in relevant part, as follows:

2.9 Enlargement of Nonconforming Uses

A nonconforming building or structure may be enlarged, provided such enlargement does not affect the nonconformity of the building or structure. Enlargement, extension or structural alteration of a building or other structure or on the use of a lot, as defined in Section 31.0 of the Zoning Regulations is permitted, provided:

- (1) the lot has the required access on a street; and
- (2) the use is not a special exception use; and
- (3) the use, building or other structure conforms to all the requirements of the Zoning Regulations.

As the Site Plan indicates and as confirmed by the Applicants in their comments during a public hearing on the Application before the Historic District Commission, the existing one-car, single story garage is planned to be entirely demolished and removed from the Subject Property. In its place, the new, larger and taller two-car garage is proposed on other portions of the land.

Accordingly, there is no enlargement or extension of the non-conforming garage but, rather, a new building is proposed.

In the Site Plan, the Applicants propose to eliminate floor area in the existing home upon the Subject Property by raising the floor of the third floor of the home to reduce the height below seven (7') feet thus deducting that portion of the home from the calculation of floor area. The Applicants then propose to use the floor area that has been eliminated from the third floor of the home together with floor area associated with the removal of certain outdoor decks and to use those removed floor areas to accommodate a larger, taller garage. Given the present and continuing non-conformities existing upon the Subject Property, the Zoning Regulations do not allow for a new structure to be established as is proposed by the Applicants in this instance.

Finally, the Appellant submits that the Applicants did not submit sufficient documents or information to the Plan and Zoning Commission and/or the Plan and Zoning Department with which the Commission or the Zoning Enforcement Officer could determine that the Site Plan and the Proposed Project is compliant with the Zoning Regulations.

For the foregoing reasons, the Appellant respectfully requests that the Zoning Board of Appeals sustain its appeal and reverse the Decisions.

VOTES

1) As to the appeal of December 3, 2021, as it relates to the November 4, 2021 decision (indicating that it was zoning compliant) by the ('ZEO') prior to the HDC hearing. The Board discussed whether or not the appeal was filed timely:

Brian Avallone ***moved*** and Jane G. Nishball ***seconded*** to discuss that the appeal of the December 3, 2021 application, was filed in a timely manner (within 30 days of 11/4).

APPEAL ACCEPTED - The vote was unanimous that the December 3, 2021 application was filed timely.

9. 1088 Harbor Road (continued)

2) As to the appeal of December 30, 2021, as it relates to the initial sign off, before the HDC, on September 21, 2021 and October 15, 2021 by the ('ZEO'). The Board will decide if the appeal was filed timely.

Brian Avallone moved and Jane G. Nishball seconded to discuss that the applications were filed timely.

APPEAL DENIED – The vote was 4 to 1 that the application was not filed timely. Jane G. Nishball voted Yes.

3) As to the appeal of December 3, 2021, as it relates to the November 4, 2021 sign-off by the ('ZEO'), prior to the HDC hearing, indicating that it was zoning compliant. The Board will decide if the ('ZEO') decision should be reversed based on it being non-compliant:

Jane G. Nishball moved and Harold Zawadski seconded to approve his application (decide if the ('ZEO's') decision should be reversed).

APPEAL DENIED – The vote was unanimous that the decision made by the ('ZEO'), on the December 3, 2021 application should not be reversed.

7. 250 Pequot Avenue, Map 241, Parcel 175A. Petition of Pequot Realty, LLC for a variance of the Zoning Regulations; Section 10.12 to increase total lot coverage and total floor area from 20% and 50%, proposing 33.66% and 127.69%, and Section 10.6.7 to reduce the distance within 4 miles of another such district and Section 10.14 and 28.6.1 to reduce the minimum required off-street parking from 63, proposing 52 and Section 10.11 to increase the number of stories from 3, proposing 4. Permission to construct a proposed, (4) story, elderly multifamily (18) unit residential building. Premises: NDD Zone

The proposed application was Continued to May 5, 2022

2. 86 French Street, Map 238, Parcel 71. Petition of Andrew B. and Kathleen A. Wile for a variance of the Zoning Regulations; Section 11.15 to reduce the two street line setbacks on a corner lot from 15 ft., currently 10.6 ft. and 2.7 ft., proposing 9.8 ft. to dwelling and 3.1 ft. to stairs and 10 ft.; and Section 11.10 to increase the total lot coverage from 20%, currently 39.3%, proposing 39.6%. Permission to remove existing dwelling and construct a new FEMA compliant single-family dwelling. Premises BD

Attorney William Fitzpatrick presented on behalf of the owners. The applicants here are the owners of a single-family home located at 86 French Street. This property contains 2,250 square feet and is located in the Beach District. The Beach District set forth a minimum lot area requirement of 9,375 square feet. The existing lot at 86 French Street is 2,250 sq. ft., or less than one-quarter of the Beach District minimum lot area. This property is identified in the Town Assessor's records as Parcel 71 on Assessor's Map 238.

The intent of the applicants is to replace the existing substandard structure constructed in 1920 with a new FEMA-compliant home. To that end, the applicants are requesting a variance of Section 11.10 of the Zoning Regulations to permit an increase in lot coverage from 20%, presently 39.3%, to 39.6%, and a variance of Section 11.15 to permit a reduction in the street line setback to French Street from 15ft., presently 2.7 ft. to 10 ft., and a reduction in the street setback to the right-of-way from 15ft., presently 10.6 ft., to 9.8 ft. to the house and 3.1 ft. to the stairs, in conjunction with the construction of a new FEMA-compliant home.

The Board will recall that this property was the subject of an earlier variance application, which was heard by the Board in February of 2022. That application requested an increase in lot coverage, a reduction of the side yard setback, and a reduction in the street setbacks to French Street and the right-of-way. That application was presented to the Board

2. 86 French Street (continued)

without the benefit of counsel, and was denied. This revised application has eliminated the variance request for the side setback reduction. The street line setback variance requests remain, as revised, which is understandable given the small lot size and location on a corner. Most importantly, the original proposed increase in lot coverage from 20%, presently 39.3% to 49% has been significantly reduced to a proposed coverage of 39.6%. This request constitutes an increase in lot coverage of .3%, approximately 67 sq. ft. (essentially equivalent to the area of the stairs and porch required to access the raised first floor).

The first variance request in the revised application is an increase in the permitted lot coverage from 20%, presently 39.3%, to 39.6%. This proposed coverage is the same as the existing house, which warrants replacement, with the addition of a de minimus increase in sq. ft. (approximately 67 sq. ft.) as needed for the stairs and porch access to the raised first floor of the new home.

The additional variance requests relate to the two street line setbacks. The street line setback to French Street is presently 2.7 ft. and the applicant is proposing a setback to the new home of 10 ft. This represents a reduction in the existing non-conformity.

The proposed streetline setback to the right-of-way, which is treated as a street for setback purposes, is 9.8 ft. to the new home and 3.1 ft. to the proposed stairs. This proposed setback is consistent with the setback of the existing home (10.6 ft.), with the addition of the stairs necessary to access the raised first floor of the home. The first floor must be raised from an elevation of 7.1 ft. to 14 ft. in order to satisfy the FEMA requirements.

Approval of this revised variance application will permit the construction of a new FEMA compliant single family home of essentially the same footprint as the existing home which was constructed in 1920.

GRANTED: Brian Avallone moved and Terry Keegan seconded to approve the proposed application. Motion passed unanimously

3. 1386 Hillside Road, Map 173, Parcel 73. Petition of Erik and Heather Mahland for a variance of the Zoning Regulations; Section 5.2.4 to reduce the street line setback from 60 ft., currently 45.2 ft., proposing 35.7 ft. Permission to construct a (1) one-story detached pool house. Premises: AAA Zone

The proposed application was Continued to May 5, 2022

8. 95 Old Post Road, Map 241, Parcel 216. Petition of Baltimore Associates Limited Partnership for a variance of the Zoning Regulations; Section 12.7.6.1 to reduce the street line setback from 25 ft., currently 20.9 ft., proposing 21 ft., and Section 28.8 to reduce the required parking spaces from 24, proposing 21. Permission to construct a new (3) story, mixed-use building. Premises: DI Zone

The proposed application was Continued to May 5, 2022

GENERAL DOCKET:

1. 478 Holly Dale Road, Map 120, Parcel 33. Petition of Gregory Bugaj for a variance of the Zoning Regulations; Section 5.2.4 to reduce the sideline setback from 25 ft., currently 24.4 ft., proposing 24.5 ft. Permission to construct a 2nd floor addition and raise the 1st floor height for a new (2) car garage. Premises AA Zone

Gregory Bugaj presented on his own behalf; he wishes to construct a second-floor addition over an existing first floor. Because the house is a pre-existing, non-conforming structure to the sideline setbacks. Our home was built in 1959 and the existing garage and driveway were cut into a ledge wall. This prohibits access in and out of our existing garage and first floor.

GRANTED: Terry Keegan moved and Harold Zawadski seconded to approve the proposed application. Motion passed unanimously

2. 1073 North Benson Road, Map 143, Parcel 160. Petition of Fairfield University for a variance of the Zoning Regulations; Section 5.2.2 to increase the height of a structure from 40 ft., proposing 56 ft., and the number of stories from three (3), proposing five (5). Permission to construct a new student dormitory. Premises: AA Zone

Attorney John Fallon presented on behalf of the applicant; David Frasinelli, VP of Facilities at Fairfield University spoke as well.

Fairfield University makes this application for a variance of Section 5.2.2 of the zoning regulations in conjunction with plans to construct a 203-bed, new student residence hall in the residential quadrangle area of the campus. The original application asked for a variance to allow the height of the new structure to be 56 feet with a total of five (5) stories. We have submitted revised plans modifying that request. We reached out to the neighbors to make them aware of what Fairfield University was planning to do, and to get feedback. There were numerous meetings held between the University, represented by Mr. David Frasinelli and the neighborhood, in an effort to address what was heard. Following these meetings, we submitted revised plans, and those are the plans that are actionable before you today. They have reduced the number of stories from five (5) to four (4), and they've reduced the proposed height variance from 56 ft. to 46 ft., and have committed themselves to other significant modifications that should be made conditions of approval. You will see that Mr. Frasinelli's presentation will not only mitigate any impact of the revised designed building, but also significantly improve existing conditions relative to views and vistas from Round Hill Road.

The Fairfield University 2015 Master Plan described a \$225 million building program, much of which was directed at enhancing the student experience through upgrades and renovations to existing facilities. Fairfield University has planned for control growth of undergraduate enrollment to approximately 5000 with current enrollment trends of approximately 1200 per class. The modest growth described above suggest that Fairfield needs to add proximately 600 beds to address it's housing needs. The University plans to address these needs through a series of internal structural upgrades and modest additions to our internal campus footprint. The current application is consistent with this approach. Fairfield is proposing a new dormitory providing an additional 203 beds in the area of the existing student residence hall quadrangle. The new building will blend in architecturally with the existing adjacent residence halls and will be centrally located on the campus. By way of background, until it's amendment in 1989 Section 27.5 of the Zoning Regulations which had existed for many decades allowed the maximum height of structures on the campus constituting special exception

2. 1073 North Benson Road (continued)

structures in the residential districts to be 60 feet and five stories. A most substantial portion of the campus was constructed in compliance with these then existing regulations. For example the height measured from ground level of dormitories in the Quad area are 58.8' (Jogues Hall), 58.8' (Regis Hall), 54.38' (Gonzaga Hall), 59.04' (Loyola Hall), and 53.67' (Campion Hall). Taking into consideration the existing height of numerous structures on campus the Board has seen fit to grant numerous variances with respect to height regarding more recently constructed buildings on campus. For example, Regis Hall West was approved in April 2022 at five stories with the height of 56'. A variance was granted with regard to the School of Nursing in July 2014 allowing a height of 58.8' and in 2017 a variance was granted with regard to the construction of the Dolan School of Business at a height of 53'. The Convocation Center presently under construction received a variance in June 2019 for a height of 53.2'. Similarly in 1999 the Board granted a height variance pertaining to the construction of a significant addition to the University Library and in July 2000 again granted a variance for height with regard to a significant expansion of the Bannow Science building. In each of these cases the Board has found that the change in the Zoning Regulations with regard to height and the number of stories as previously referenced and applicable to Fairfield University did establish hardship supporting the granting of a variance of Section 5.2.2.

As previously found by the Board, a finding of hardship arises from the application of the current regulations as amended in 1989 regarding height and number of stories to the University and its current uses. As previously indicated, substantial portions of the University were approved and constructed in accordance with the regulations then in effect which allowed five story buildings of up to 60'. The application of the amended regulations as it pertains to these characteristics of number of stories and height to the ongoing previously established University uses and existing structures has a unique and adverse impact on the applicant and such circumstances have been previously recognized by the courts and this Board

In addition, a second basis for a finding of hardship with respect to this application arises from the case law that establishes that existing topography and constraints imposed by surrounding wetland regulated areas and the wetlands setbacks that apply thereto establish hardship when, as in this case, these factors requires a somewhat higher building be constructed since the footprint of the building cannot be expanded due to these topographical and regulatory constraints. Such considerations regarding topographical conditions and the constraints imposed by wetland areas and regulations have been recognized to support a proper basis for a finding of legal hardship.

In summary, the application is in conformity with the Comprehensive Plan of Development and will not have any detrimental impact on the community. The new residence hall has been sensitively architecturally designed to ensure that it will be attractive, unobtrusive and harmonize with the existing buildings on campus. The application satisfies the standards for approval as set forth in Connecticut General Statutes Section 8-6, is supported by factors as above referenced which in accordance with our caselaw establish hardship and is consistent with previous decisions of the Board relating to variances of Section 5.2.2 concerning structures located on the University campus.

There were four (4) neighbors in opposition present, and letters from others were submitted.

GRANTED W/ CONDITIONS: Brian Avallone moved and Jane G. Nishball seconded to approve the proposed application. Motion passed 4 to 1 (Jane G. Nishball opposed). Chairman, Kevin Coyne recused himself, alternate Faith Dillon sat in.

2. 1073 North Benson Road (continued)

CONDITIONS:

- 1) An 8 ft. berm and 16 ft. arborvitaes will be planted.
- 2) Removal of 200-400, 16-18 ft. light poles to be replaced with 51 watt, 12 ft. poles.
- 3) Trees will be planted every 50 ft. on the Round Hill Road side of the berm.
- 4) Lights in the dorm rooms will be placed on the inside face of the wall.

3. 75 Old South Road, Map 241, Parcel 156A. Petition of Haylee and Christopher Milligan for a variance of the Zoning Regulations; Section 5.2.5 to increase the total lot coverage from 15%, currently 16.1%, proposing 16%. Permission to construct a chimney. Premises R-3 Zone

Presented by Tanner White, Architect. The owners would like to construct a wood-burning fireplace chimney on the side of the family room. This will add 22 sq. ft. of coverage. Total lot area is 28,872, but due to the shape of the lot, there is only a new net lot area of 25,893 sq. ft. The unusual shape provides a hardship in relation to the amount of net lot area that is used for the building lot coverage calculations.

GRANTED: Brian Avallone moved and Jane G. Nishball seconded to approve the proposed application. Motion passed unanimously

4. 536 Post Road, Map 141, Parcel 60. Petition of McDonald's USA LLC, c/o TERFTZ Corporation for a variance of the Zoning Regulations; Section 28.6.12 to reduce the total number of parking spaces from 43, proposing 30. Permission to add a second drive-thru lane. Premises DCD Zone.

Presented by Kelly Bohnenberger with Bohler Engineering on behalf of the owner. They would like to include an additional drive-thru lane and order point with associated menu and pre-browse boards in a 'side by side' configuration. This configuration will not only provide improvements to stacking and queuing, but will also maintain the circulation of the bypass lane along the drive-thru.

By code, approximately 38 parking spaces are required on site, one (1) space per 40 sq. ft. of patron floor area.

In existing conditions, 26 spaces are located on the subject parcel and an additional seventeen (17) spaces are located within two leased parcels adjacent to the site for a total of forty-three (43) spaces.

In the proposed conditions, thirteen (13) parking spaces are located on the subject parcel, and an additional seventeen (17) are located within two (2) leased parcels adjacent to the site for a total of thirty (30) spaces.

The reduction in thirteen (13) spaces is to accommodate the addition of an additional drive-thru lane and order point with associated menu and pre-browse boards in a 'side by side' configuration to provide improvements for stacking and queuing.

GRANTED: Terry Keegan moved and Brian Avallone seconded to approve the proposed application. Motion passed 4 to 1. (Jane G. Nishball opposed)

5. 116 Sherman Street, Map 180, Parcel 102. Petition of MTM Sherman Street LLC for a variance of the Zoning Regulations; Section 28.6.6 to reduce the total number of required spaces from 18, proposing 13. Permission to construct a new three (3) story mixed-use building. Premises CDD Zone

Attorney John Fallon presented; Architect Philip Cerrone, spoke as well.

Michael T. Meehan and Meehanlaw LLC make this application for approval of the development of a mixed use office and residential building at 116 Sherman St. This new building will house the offices of Meehanlaw on the first floor as shown on the plans submitted with two residential dwelling units located above. The firm wishes to establish its new home at the Sherman Street location.

The proposal is to construct as set forth in the plans submitted a mixed use building attractively designed by architects, Philip H. Cerrone and Nick Demaio. The firm consists of 10 employees with six of those generally

working full-time at the office. The other four employees work part time and generally remotely. The law firm has historically operated Monday through Friday from 8:30 AM to 5 PM. As a boutique law firm, Meehanlaw represents no more than 50 active clients at any one time. Client meetings are by appointment only and are conducted in person but also more and more often remotely. The regular legal business of the firm is often conducted out of the office including client meetings and legal proceedings as well as virtual court appearances, depositions and virtual trials which have all become common. The office has been carefully designed and planned to provide the technical capability to conduct all of the firm's business remotely which will greatly benefit efficiency and client convenience. The two residential units proposed, each with two bedrooms, will provide additional housing inventory for our downtown and is consistent with past approvals encouraging such mixed use opportunities in the Center Designed Business District.

The applicant seeks a variance of Section 28.6.6 of the Regulations in order to reduce the required parking for this proposed mixed-use development from 18 spaces to 13 spaces. In calculating the required parking, the provisions of Section 28.6.1 [with regard to the reduction of required parking for residential uses in a mixed-use development in the Center Designed Business District] have been applied.

The legal standard for granting variances is established by Connecticut General Statute Section 8-6(a)(3). The statute provides that there is a two-part test that must be applied with regard to consideration of the granting of a variance. First, the variance requested must be shown to not substantially affect the comprehensive zoning plan. In this particular instance the Comprehensive Zoning Plan will not be negatively impacted in that the proposed use of the property will be as permitted in the zone. Our Appellate court has stated that if the use to be made after a variance is granted is a permitted use under the zoning regulations, than the first part of the test is met.

As detailed above the firm only employs six (6) individuals, working full-time at the office Monday through Friday from 8:30 AM to 5 PM. The balance of the employees generally work remotely. Because of the nature of the practice, only limited active clients are serviced during any period of time. The regular business of the firm is often conducted out of the office utilizing the benefits of virtual technology in order to address considerations of client convenience and office efficiency. All of these factors ensure that appropriate provision for parking addressing the needs of the firm will be provided by the parking as proposed. Furthermore, as confirmed by the experiences of other mixed-use development in the District all onsite parking will generally be available to residents during periods of peak use by them involving evening hours and on weekends.

With regard to hardship, the law recognizes as the Board has previously found with regard to properties located in the Center Designed Business District, that the application of current parking regulations to

5. 116 Sherman Street (continued)

properties previously existing and nonconforming, as to both use and parking, establishes a proper basis for a finding of hardship provided the first part of the statutory test has been met. The application meets the technical requirements of CT General Statutes 8-6 and is consistent with the historic character of the surrounding area as it relates to similar mixed-use developments.

GRANTED: Brian Avallone *moved* and Terry Keegan *seconded* to approve the proposed application. *Motion passed 4 to 1 (Jane G. Nishball opposed)*

6. 249 Pell Meadow Drive, Map 177, Parcel 87. Petition of Jennifer Skinner and Michael Palumberi for a variance of the Zoning Regulations; Section 5.2.5 to increase the total lot coverage and total floor area from 20% and 40%, currently 19.9% and 38.6%, proposing 25.5% and 44.1%. Permission to construct a one (1) story addition over an existing patio. Premises A Zone

Attorney Kubic presented on behalf of the owners. Applicants seek to construct a 516 sq. ft., one (1) story, enclosed porch, 14.0 ft. x 38.0' ft., on an existing bluestone/concrete slab patio. The existing concrete slab with bluestone patio has a full southern exposure causing the patio to be essentially unusable in full sun weather due to the intense heat. Enclosing the patio will make an essentially unusable space usable. Additionally, due to the property's proximity to Mill River wetlands and ponds, mosquitoes at dusk are particularly bad. A screened porch will permit the use of the patio during the mosquito feeding season.

GRANTED: Brian Avallone *moved* and Jane G. Nishball *seconded* to approve the proposed application. *Motion passed 4 to 1 (Jane G. Nishball opposed)*

7. 257 Reef Road, Map 182, Parcel 218. Petition of Max-Fin Realty, LLC for a variance of the Zoning Regulations; Section 30.2 to reduce the distance between two café's from 1,500 LF, proposing 1,458 LF. Permission to establish a café. Premises NDD Zone

The proposed application was Withdrawn

8. 288 Rowland Road, Map 182, Parcel 96. Petition of Andrew Schulz and Tajar Risa for a variance of the Zoning Regulations; Section 5.2.5 to increase the lot coverage and total floor area from 20% and 40%, currently 18.83% and 28.65%, proposing 25% and 48%. Permission to construct a rear deck and a two (2) story addition. Premises A Zone

Attorney Chris Russo presented on behalf of the owners. The Applicants propose to construct a detached accessory garage at the Site with associated improvements within the Residence A District ("R-A District"). The Site currently contains a principal single-family dwelling with a pre-existing nonconforming detached garage, which is not FEMA-compliant. The Site is significantly undersized for the R-A District. The R-A District requires a minimum lot area of nine thousand three hundred and seventy-five square feet (9,375 sq. ft.), but the Site only contains seven thousand five hundred and two square feet (7,502 sq. ft.) of lot area with a minimum nonconforming square of Fifty feet (50'). The size of the Site necessitates the variances for a reasonably sized garage for the neighborhood.

8. 288 Rowland Road (continued)

The existing two-car garage at the rear of the Site is currently nonconforming as to its setback from one side property line at two and 80/00 feet (2.80') where four feet (4') is required. The dimensions of the existing garage also do not meet the requirement for two (2) parking spaces. The Applicant has proposed to demolish the existing garage, which will eliminate the setback nonconformity on the Site. To replace said garage, the Applicant proposes to construct a FEMA-compliant detached two-car garage directly behind the principal dwelling, which will be completely conforming in its design, including height and setbacks. The proposed ground floor of the garage will contain two (2) garage bays, which will provide conforming parking spaces, and an enclosed stairwell to the second floor. The second floor will contain two (2) separate offices for the Applicant and his wife, whom both partially work from home, two (2) storage closets and a half bath. The principal dwelling and detached garage will feature a deck less than twelve inches (12") in height in between them. The Applicant also proposes to remove an existing landing, two (2) sets of stairs and a portion of the principal dwelling to reduce the lot coverage and floor area on the Site.

Granting the Applicant said variance will not substantially affect the comprehensive zoning plan of the Town of Fairfield and adherence to the strict letter of the Fairfield Zoning Regulations (the "Regulations") will cause an unusual hardship to the Applicant as the Applicant is removing a nonconforming detached two-car garage, which is not FEMA-compliant, to replace it with a two-car detached garage, which is actually conforming with regards to its parking space dimensions, height and setback as well as being FEMA-compliant. The proposed garage is not an oversized structure. It is a reasonable size for a two-car garage along with a stairwell to a second floor, which is permitted under the Regulations. During the pandemic, there has been an overwhelming demand for home office space and the Applicant has designed the detached garage in a compliant manner. The variances are only necessary due to the fact that the Site is significantly undersized for the R-A District. To reduce the variance request, the Applicant proposes to remove portions of the existing dwelling. The proposed two-story detached garage is completely conforming to the neighborhood where several similar structures are located.

DENIED: Brian Avallone *moved* and Terry Keegan *seconded* to approve the proposed application. *Motion Denied 3 -2 (Harold Zawadski and Jane G. Nishball opposed)*

9. 1555 Fairfield Beach Road, Map 234, Parcel 15. Petition of 1555 Fairfield Beach LLC for a variance of the Zoning Regulations; Section 11.12 to reduce the setback to Long Island Sound from 130 ft. proposing 126 ft. Permission to construct a 2nd floor balcony. Premises BD Zone

The proposed application was Continued to May 5, 2022

10. 610 Riverside Drive, Map 130, Parcel 78. Petition of Eric Porco and Heidi Auge for a variance of the Zoning Regulations; Section 5.2.4 to reduce the street line and sum of two sideline setbacks from 30 ft. and 25 ft., currently 24.4 ft. and 24 ft., proposing 28.6 ft. and 24.1 ft. Permission to construct two (2) shed style dormers. Premises A Zone

Eric Porco presented on his own behalf. He wishes to construct a 32 ft. x 25 ft. dormer in the attic space; the attic to become one (1) open storage room.

10. 610 Riverside Drive (continued)

The hardship is that the lot is smaller than most, therefore is nonconforming to the neighborhood. They are seeking a variance to build within the existing side setback, There is no change to any of the proposed conditions as shown in the survey.

GRANTED: Brian Avallone moved and Jane G. Nishball seconded to approve the proposed application. Motion passed unanimously

11. 117 Churchill Street, Map 130, Parcel 428. Petition of Paula H. Hughes for a variance of the Zoning Regulations; Section 5.1.1 to increase the number of dwelling units from 2, currently 3, proposing 3; Section 5.2.4 to reduce the street line, sideline and sum of two sideline setbacks from 20 ft., 5 ft. and 20 ft., currently 8 ft., 3.8 ft. and 9.1 ft., proposing 8 ft., 3.8 ft. and 9.1 ft.; Section 5.2.5 to increase the total lot coverage and total floor area from 30% and 50%, currently 43% and 83.1%, proposing 42.6% and 85.7%. Permission to reconstruct an existing three-family dwelling due to fire. Premises B Zone

Attorney John Fallon presented. On the night of June 4, 2021 the three family dwelling located at 17 Churchill Street was substantially destroyed by fire. The owner seeks approval of four (4) variances in order to reconstruct the residence on the same foundation and footprint as existed prior to the fire. The work as proposed will involve restoration on the first and second floor and reconstruction of the third story that was substantially destroyed. This will include the replacement of a three- story staircase in compliance with all current applicable provisions of the Building Code, with regard to the new construction.

Prior to the fire the structure was a legally protected nonconforming structure with regard to the street line setback, side yard setbacks, coverage and total floor area provisions of the Regulations. Due to the provisions of Section 2.10.1 of the Regulations and because the damage to the structure exceeded 50%, it is necessary to seek approval of the variances requested even though there will be no change to the setbacks of the building as they existed prior to the date of the fire. As will be further discussed hereafter coverage will be reduced from the pre-existing 43% to 42.6% and total floor area will be increased by 2.6% to 85.7% due to the need to ensure that the reconstruction satisfies all provisions of the Building Code.

The lot is located in the Residence B District and is a legally protected pre- existing nonconforming parcel with respect to lot area (having an area of 3333 ft.² whereas the zoning regulations contemplate a minimum lot area of 6000 ft.²) and lot shape (having a square of 33.3 feet whereas the regulations contemplate a minimum lot square of 60 feet in the zone).

Prior to the fire, the dwelling was also a legally protected pre-existing nonconforming use based upon its utilization as a three-family dwelling which predated the adoption of the zoning regulations. It is noted that this was a historically common pattern of development in the neighborhood as confirmed by the fact that three of the dwellings immediately adjacent to the subject property are also three-family dwellings.

In order for the zoning board of appeals to grant a variance pursuant to the provisions of Connecticut general Statutes section 8-6(a)(3), two conditions must be met:

1) the variance must be shown not to substantially affect the comprehensive zoning plan and

II. 117 Churchill Street (continued)

- 2) adherence to the strict letter of the zoning ordinance must be shown to cause unusual hardship unnecessary to the carrying out of the general purposes of the zoning plan.

With regard to the first aspect of the test it is been held that if the use to be allowed by the variance is consistent with other uses in the area then the first part of the test is met. In this instance the granting of the variances will not change the use of the property from its use as a three family dwelling that has been ongoing for many decades. As previously referenced three family dwellings are common in the immediate neighborhood. The application simply requests permission to restore and rebuild the pre-existing structure that was unfortunately substantially destroyed by the fire in June 2021.

With regard to the matter of hardship, the hardship that justifies the zoning board of appeals to grant a variance must be one that originates in the zoning ordinance and arises directly out of the application of the ordinance to unique circumstances pertaining to the property in question. In essence, the applicant must show that because of some peculiar characteristics of the property strict application of the zoning regulations results in unusual hardship.

With regard to the matter of hardship as it relates to the variances requested there are numerous factors that provide a legal basis for a finding of hardship. A controlling legal fact is that the lot is a valid and legally protected nonconforming lot as it relates to the lot area and shape requirements. As previously indicated the present zoning regulations establish a contemplated minimum lot area of 6000 ft.² This lot, established for residential purposes before the imposition of these regulations, has only 3333 ft.² Similarly, the contemplated lot shape is 60 feet and this lot has a square of only 33.33 feet. It has been previously held on numerous occasions by our Supreme and Appellate Courts that such factors provide a proper basis for hardship to support the granting of variances with regard to coverage, total floor area and setbacks because the application of these regulations affects the property and it's protected non- conforming status in an adverse manner. The reconstruction that is proposed will be consistent with the previously existing nonconformities involving the setbacks and will also reduce coverage. The small increase in total floor area is necessitated solely to ensure compliance with current provisions of the Building code. Our courts have also recognized that hardship is established based upon matters that pertain to the impact of forces of nature and casualty loss, as in this case arising from substantial beach erosion.

In summary, the applicant simply seeks approval to reconstruct this dwelling as previously existing prior to the casualty loss occasioned by the fire. The reconstructed structure will comply with all provisions of the Building Code and will be in keeping with the character of the immediate neighborhood as a relates to both its use as a three-family dwelling and its architectural design. Hardship has been established based upon the analysis referenced above pertaining to the standards of Connecticut General Statutes Section 8-6 and hardship is established based upon the status of the lot as a legally protected pre-existing nonconforming parcel as it relates to both lot area and shape. In addition, in accordance with the cases cited above the fire constitutes a casualty loss occasioned by forces of nature which in and of itself provides a basis for finding of hardship.

GRANTED: Brian Avallone moved and Terry Keegan seconded to approve the proposed application. Motion passed unanimously

12. 54 Kenwood Avenue, Map 130, Parcel 253A. Petition of Laura Pennock and Tara Collins for a variance of the Zoning Regulations; Section 5.2.4 to reduce the street line and sum of two sideline setbacks from 20 ft. and 20 ft., currently 19.7 ft. and 19.25 ft., proposing 19.7 ft. and 19.25 ft. Permission to construct a 2nd floor addition with attic over existing 1st floor. Premises B Zone

Owner, Tara Collins presented. They wish to convert their pre-existing non-conforming cape to a colonial with a full second floor that will not exceed the footprint of the first floor. The pre-existing non-conforming footprint of the first floor is slightly short on the street side and side yard footage. Our new second floor will not exceed the footprint of the first floor.

GRANTED: Brian Avallone *moved* and Jane G. Nishball *seconded* to approve the proposed application.

Motion passed unanimously

13. 221 Fairview Avenue, Map 143, Parcel 36. Petition of Denise Chambers for a variance of the Zoning Regulations; Section 5.2.4 to reduce the street line and rear line setbacks from 30 ft. and 30 ft.; currently 20.1 ft., and 36.5 ft., proposing 23.9 ft. and 8.1 ft.; and Section 5.2.5 to increase total lot coverage and floor area from 20% and 40%, currently 25.8% and 37.4%, proposing 31.9% and 48%. Permission to remove a detached garage and construct a (2) story, one (1) car garage attached to the dwelling with a 2nd floor addition and front porch. Premises A Zone

Ashley and Andy Rogers, daughter and son-in-law, respectively, presented on behalf of Denise Chambers.

On March 3, 2022 a different version of this request was presented, and we have since made significant changes to the proposal that will accommodate our three (3) children, as well as both parents who are working from home.

The hardship here is that the lot is 5,131 sq. ft., which is 50% of the average 9,375 sq. ft. lot size in Zone A; the revised proposal reduces the current 2-car garage to a 1-car garage, which allows them to:

1. Reduce the request of the rear setback variance by 3 ft. (Section 5.4.4)
2. Reduce the request of total lot coverage by 1.5 ft. (Section 5.2.5)
3. Reduce the request of total floor area by 2% (Section 5.2.5)
4. Reduce the height of the proposed addition by over 6". These changes will allow the space for the addition, which will add one (1) bedroom/bathroom and a home office.

Apart from the need for additional space, we also ask that the following be taken into consideration when reviewing our proposal:

1. Three (3) similarly approved variances on Fairview Ave received approvals for similar variance asks at 249, 281 and 295 Fairview.
2. There is limited housing available: As of March 31, 2022, there is exactly one (1) home for sale in Fairfield (32 Arising Street) that has four (4) bedrooms and is within our budget. It is also only 880 sq. ft., seems to have been abandoned for some time, and is nestled between an empty commercial lot and an unmaintained graveyard off King Highway East.

13. 221 Fairview Avenue (continued)

We are very limited in housing options and have made significant changes to our proposal to appease both the zoning restrictions and the committee's feedback. We have the full support from nine (9) of their immediate neighbors.

DENIED: Brian Avallone moved and Harold Zawadski seconded to approve the proposed application. Motion denied 3-2. Brian Avallone and Harold Zawadski were in favor.

KEVIN COYNE, CHAIRMAN

JANE GITLIN NISHBALL, SECRETARY

JODI KARAGIANES, CLERK