

**CITY OF NORWALK
ZONING BOARD OF APPEALS
SEPTEMBER 3, 2009 (Approved October 1, 2009)**

I. CALL TO ORDER

Mr. Strubinger called the meeting to order at 7:30.

II. ROLL CALL

Ms. Rochefort took the roll call.

PRESENT: Taylor Strubinger, Chair; Gordon Tully; Joe Santo; Dawn DelGreco; Tony Lopez

STAFF: Aline Rochefort

OTHERS: Howard Patterson; Susan Morrison; Greg Stewart; Atty. John Devine; Brian Highland; Mark LeFavre; Barbara Sibiskie; Atty. Mel Barr; Jack Franzen; Jonathan Clark Farber; James Carter; Atty. David Waters; Kim Tsocanos; Joe Pugliese; Atty. Alan Spier

III. PUBLIC HEARING

A. 09-0903-01 Susan Morrison – Variance of side setback for proposed 1 story rear addition to single family residence Property located at 312 Silvermine Ave.

Mr. Strubinger opened the public hearing.

Mr. Tully described the application. Mr. Howard Patterson stated that the applicant had turned in the green cards. He explained that the hardship was due to the site itself, which was 44 feet wide; he added that the width in an A zone needed to be 100 feet. Mr. Patterson presented renderings of the home, adding that the house was approximately 1100 square feet. He explained that the proposal would not invade the side yard, but rather that the site was simply quite narrow. Mr. Patterson gave background about the house itself, stating that it had been a carriage house in 1770, an artist's studio later on, and was last renovated in 1988.

Ms. Susan Morrison, the property owner, also described the history of the house, including its appearance in various magazines. She gave details about the dining area and other living space, emphasizing that she wanted to keep the house as it is.

Mr. Tully asked about alternatives to the proposed variance. Ms. Morrison said that she wanted to avoid removing certain doors or eliminating kitchen windows. She added that the lot, although narrow, was very deep and that there was plenty of land in back of the house.

Mr. Strubinger asked when the area was subdivided. Ms. Morrison said that she did not know the date of the subdivision, but that most of the houses on that road were historic.

Mr. Strubinger closed the public hearing.

B. 09- 0903-02 Barbara & Mark Sibiskie - Special Exception to develop non-conforming lots in same ownership Property located at 6 & 8 Avon Street.

Mr. Strubinger opened the public hearing.

Mr. Tully described the application and read two letters opposing the application. Both letters stated objections to tree removal at the property, as well as the negative impact that new development would have on the neighborhood.

Atty. John Devine turned in the green cards.

Ms. DelGreco asked about the exact location of the property. Atty. Devine described the location and distributed photographs. He also confirmed that the property was not for sale currently.

Atty. Devine reiterated that the applicant was seeking a special exception, rather than a variance, and therefore was not required to show a hardship. He emphasized that the house on one lot was not merely incidental to the house next door, but rather that it stood on its own. He said that the two lots were created in 1924, as part of a 90-lot subdivision. He added that the lots were "grandfathered in, as they pre-dated Zoning regulations.

Mr. Tully asked how many of the properties were double lots. Atty. Devine said that his impression was that the majority were double lots. He reiterated that the applicant's relatives had acquired the property in 1949.

Mr. Tully asked for clarification of the difference between a special permit and a special exception. Ms. Rochefort explained that a special permit involves a two-year period, whereas a special exception is an exception to the Zoning regulations.

Atty. Devine said that there were no improvements, easements or outbuildings involved in the property, and that it appears to any observer to be a separate lot. He added that the applicant had no idea that it was not a separate lot, until they considered selling it. Atty. Devine reiterated that the properties have been taxed as separate lots for 85 years. He also pointed out that the size of the lot (50 x 100 feet) was in keeping with the neighborhood. He stated that no significant precedent would be set by granting the special exception.

Mr. Strubinger asked if there was construction in progress in the rear of the property. Atty. Devine said no.

Mr. Brian Highland, 69 Walter Avenue, said that as a neighbor, he had assumed that the Sibiskies' property was all one lot. He described the area, stating that the buffer was quite small and that building a house there would make the area between the properties like an alleyway.

Mr. Tully pointed out that having inherited the two lots, the Sibiskies had the right to build on it. Mr. Highland acknowledged the owners' right, but stated that their financial gain would be to everyone else's detriment.

Mr. Strubinger stated that the most relevant fact that the Board needed to determine was where these two lots merged. He said that the Board understood the potential hardship to the neighborhood in building a new house.

Mr. LeFavre, 71 Walter Avenue, stated that he had written one of the letters objecting to the proposal. He discussed the quality of life in the area, pointing out that the noise generated by construction at the property would be very disruptive to his own household.

Mr. Santo asked Ms. Rochefort to clarify the meaning of the term "merging." Ms. Rochefort said that merging was defined as the intent of the owner to combine two lots. She explained that this was often achieved by adding on structures, such as a deck or a side entry. She said that this was not the case in this application.

Ms. DelGreco asked what could be put on the property, in the event that the two properties merged. Ms. Rochefort said that a big house could be put in the middle.

Mr. Greg Stewart, 73 Walter Street, stated that he had written one of the letters of objection. He said that he was opposed to the possibility of a large house being built so close to his property.

Atty. Devine stated that many of the points of objection were not pertinent to hearing. He reiterated that the deck was at least 10 feet from the property line, adding that any neighbor would prefer to live next door to an attractive vacant lot.

Ms. Barbara Sibiskie, the property owner, addressed the issue of the stone fireplace on the property, stating that it had been unused for several years. She added that her uncle, the previous owner, had hired a service to maintain the lawn. She said that "lot 6" had always been taxed separately and that the tax bills were quite high when done so. She also explained that her uncle had been approached many times by builders who wanted to buy the lot, but that her uncle had wanted to keep it unbuilt.

Mr. Tully asked if there had been any constructive use of the property. Ms. Sibiskie said that flowers and shrubs had been planted. She also gave background concerning lots #69 and #71, all of which were also 50 feet by 100 feet in size.

Mr. Strubinger closed the public hearing.

C. 09-0903-03 - Johathan Clark Farber – Variance to allow reconstruction of nonconforming accessory structure/cottage Property located 44 Shorehaven Rd.

Mr. Strubinger opened the public hearing.

Mr. Tully gave details about the item. He read a CAM memo into the record.

Atty. Mel Barr submitted the green cards. He also re-submitted additional documents, including a memo from himself, a memo from Brian McCann, a separate permit for the cottage, and a CAM short form.

He explained that the property had included two dwellings, one of which was a main house built in 1910 and the other which was a cottage built in 1940. He discussed the 1981 court stipulation involving the illegalized cottage and the two uses.

Mr. Tully asked for details concerning the court case.

Atty. Barr stated that the cottage was legally non-conforming and did not comply with building code. He added that the site was in the 100-year flood plain and also straddled two towns. He said that there was a discrepancy between the survey map, which indicated that the flood line went through the main house, and the City's GIS maps, which indicated that the flood line went through the cottage.

Mr. Jack Franzen, 95 Harbor Road, Southport, discussed the rendering of the site and described the two structures. He said that the footprint of the structure would actually be reduced by the application. He addressed the issue of habitable space on the second floor.

Atty. Barr explained that the elimination of the guest unit would change the use of the property, while reducing the building footprint and increasing the compliance of the property. He also reiterated that the accessory structure was at least 70 feet from the street. He added that the double frontages imposed a hardship on the applicant. He said that if the cottage were the main property, it would comply with regulations. He added that the owner was proposing a two-car garage in the cottage.

Mr. Tully pointed out that the proposal for a five-car garage overall, where a four-car garage was allowed, would represent an increase in the nonconformity. He asked the applicant to clarify the hardship. There was a discussion of the details of parking needs at the property.

Mr. Santo asked if the cottage were a residence. Atty. Barr pointed out that since it had a kitchen, it was in fact considered a residence.

Mr. Santo asked if the cottage could be rented. Ms. Rochefort said that there was nothing to prevent it.

Atty. Barr summarized the hardships involved in the application, citing the four-car garage limit, the fact that the property straddled two towns, the L-shaped lot, the two street frontages on the through lot, the encumbrance of the driveway easement, and the 1981 legal stipulation. He pointed out that there was an unusual hardship due to this set of factors.

Mr. Jonathan Clark Farber, the property owner, said that he had purchased the property 18 months ago and determined that it was highly impractical to make the cottage habitable. He added that neighbors had been supportive of his plans for reconstruction.

Mr. Santo asked what could legally be done on the property. Ms. Rochefort said that ordinary repairs could be done on up to 150 square feet of the existing footprint.

Mr. James Carter, 42 Shorehaven Road, explained that his driveway passed by the property and that the structure needed replacing. He described the cottage as a visual hardship not in keeping with the rest of the property.

Mr. Santo asked when the main house had been renovated. Mr. Farber said it was in 1910.

Mr. Lopez asked if the applicant would be free to do upgrades, if the construction were considered an accessory apartment.

Mr. Santo said that the regulations allowed for 400 to 700 square feet of accessory use within a house. He asked if that could be done on this property. Ms. Rochefort said no.

Mr. Strubinger asked if there could be a detached garage. Ms. Rochefort said yes, reiterating that the applicant could do ordinary repairs to the property.

Mr. Strubinger closed the public hearing.

D. 09-0903-04 – CT Friends School Corp. – Variance for maximum number of stories of building, variance of maximum height of building, and variance to reconstruct nonconforming structure to the extent of more than 50% of its market value. **Property located at 440 Newtown Avenue / 78 Cranbury Road.**

Mr. Strubinger opened the public hearing.

Atty. David Waters agreed to a waiver of the reading. He provided the green cards and pointed out the old Whitebarn theatre on the survey. He explained that Phase II of the project would actually be performed first. He gave background concerning the history of the property. Atty. Waters also discussed the two non-conformities, concerning the height of the roof, as well as the market value issue.

Mr. Tully asked what was preventing the applicant from changing the pitch of the roof. Atty. Waters said that the current existence of the structure, as well as the ability to maintain it, were both hardships. He added that the building was in the center of a very large property and that a two-foot difference would not even be visible from outside the property. He explained that the intent of the regulations had been met and also that the preservation of a historic building was an issue. He added that the variances were minimal in nature.

Ms. Kim Tsocanos gave background concerning the property, explaining that the barn had been moved in 1946 and then reconstructed.

Joe Pugliese stated that he had worked on the building in the past, but questioned why remodeling was being done now, when the school was not even built yet. He stated his concern about whether the structure were part of the school or a separate cultural area, pointing out that the use would determine whether the property needed a new septic system.

Atty. Waters clarified that the septic system would be upgraded and also that the barn was intended to be partly for classroom use.

Ms. DelGreco asked about the number of students, as compared to the school in Wilton. Atty. Waters said that there were 60 students at the Wilton school and that this school would have 125 at maximum.

Mr. Strubinger closed the public hearing.

E. 09-0903-05 - 80 Fair Street, LLC - Variance or number of ground signs and location of wall sign. Property located at 80 Fair St.

Mr. Strubinger opened the public hearing.

Atty. Waters submitted the green cards and agreed to a waiver of the reading. He showed a rendering of the site and discussed the frontage on the property. He said that there were two entrances at opposite ends of the property and that the application was seeking two ground signs, one for each end. He also pointed out that the proposal involved less total square area, which could be considered a fair balance.

There was a discussion of the framing of the sign.

Atty. Waters showed photographs from the Route 7 Extension, pointing out that a wall sign on one façade could not be seen at all. He added that the applicant was willing to stipulate that the sign's area not exceed 75 square feet.

The Board discussed other properties with similar signage concerns.

Atty. Waters clarified a comment in the Background section of the packets indicating that the Zoning Commission was "not informed that additional signage was needed." He pointed out that the item needed to go to the ZBA first, as the Zoning Commission had no ability to vary the regulations.

Atty. Alan Spirer stated that this was a violation of the no-access line along New Canaan Avenue. He also said that this was a premature application. He emphasized that the sign should not extend beyond the top of the building.

Atty. Waters addressed the details of a certificate of variance, adding that the no-access line ran along Route 7, not along New Canaan Avenue.

Mr. Strubinger closed the public hearing.

IV. BOARD ACTION ON ITEM A thru E

E. 09-0903-05—80 Fair Street, LLC

**** MR. STRUBINGER MADE A MOTION TO DENY WITHOUT PREJUDICE, BECAUSE THE APPLICANT FAILED TO SHOW A HARDSHIP.**

**** MR. TULLY SECONDED.**

**** MOTION PASSED UNANIMOUSLY.**

D. 09-0903-04—CT Friends School Corp.

**** MR. STRUBINGER MADE A MOTION TO APPROVE THE VARIANCE, BECAUSE THE APPLICANT DEMONSTRATED A HARDSHIP IN THAT THE RECONSTRUCTING OF A SIGNIFICANT HISTORIC BUILDING GIVEN THE CONDITIONS OF THE SITE, AS WELL AS THE CURRENT COST, AND ALSO THE FACT OF THE ISOLATION OF THE STRUCTURE ON A LARGE PIECE OF PROPERTY, CONSTITUTED A UNIQUE HARDSHIP.**

BE IT FURTHER RESOLVED THAT THE CERTIFICATE OF VARIANCE BE FILED ON THE LAND RECORDS WITHIN 90 DAYS OF THE EFFECTIVE DATE; AND

BE IT FURTHER RESOLVED THAT A BUILDING PERMIT WILL BE OBTAINED WITHIN 180 DAYS OF THE EFFECTIVE DATE; AND

BE IT FURTHER RESOLVED THAT THE EFFECTIVE DATE IS SEPTEMBER 11, 2009.

**** MS. DELGRECO SECONDED.**

**** MOTION PASSED UNANIMOUSLY.**

C. 09-0903-03—Jonathan Clark Farber

**** MR. STRUBINGER MADE A MOTION TO DENY THE VARIANCE, BECAUSE THE APPLICANT FAILED TO SHOW A HARDSHIP.**

**** MR. LOPEZ SECONDED.**

**** MOTION PASSED UNANIMOUSLY.**

B. 09-0903-02—Barbara & Mark Sibiskie

**** MR. STRUBINGER MADE A MOTION TO APPROVE THE APPLICATION, BECAUSE IT WAS EQUIVALENT TO OTHER SPECIAL EXCEPTIONS IN SIZE AND BECAUSE THE PAYMENT OF TAXES ON TWO SEPARATE PROPERTIES REPRESENTED AN ACCURATE CONSIDERATION OF THE PROPERTY AS TWO SEPARATE LOTS.**

BE IT RESOLVED THAT THE EFFECTIVE DATE IS SEPTEMBER 11, 2009.

**** MR. SANTO SECONDED.**

**** MOTION PASSED UNANIMOUSLY.**

A. 09-0903-01—Susan Morrison

- ** MR. STRUBINGER MADE A MOTION TO DENY THE VARIANCE BECAUSE THE APPLICANT FAILED TO SHOW A HARDSHIP.**
- ** MR. SANTO SECONDED.**
- ** MOTION PASSED UNANIMOUSLY.**

V. ACTION ON HEARING MINUTES July 9, 2009

- ** MR SANTO MADE A MOTION TO APPROVE THE MINUTES.**
- ** MR. TULLY SECONDED.**
- ** MOTION PASSED UNANIMOUSLY.**

VI. ADJOURNMENT

- ** MR. STRUBINGER MADE AMOTION TO ADJOURN.**
- ** MS. DELGRECO SECONDED.**
- ** MOTION PASSED UNANIMOUSLY.**

The meeting was adjourned at 9:49 pm.

Respectfully submitted by Charlene Smith.

