**CITY OF NORWALK**
**ZONING BOARD OF APPEALS**
**ZOOM MEETING**
**JULY 15, 2021**

**ATTENDANCE:** Lee Levey, Chairman; Andy Conroy; Marilyn Altman; Tad Diesel; Keith Lyon

**STAFF:** Tammy Maldonado

**OTHER:** Atty. Adam Blank; Chris Pagliaro; Danilo Marini; Atty. Liz Suchy; Lyle Fishell; Mark Nathan; Jyoti Mokal

## CALL TO ORDER

Chairman Levey called the meeting to order at 7:37 P.M. There was a quorum present.

## ROLL CALL

Chairman Levey reviewed how the meeting would be conducted for all those present. For the first two hours, prior to 9:30 P.M. a Zoom public hearing will be held on the applications that have been received.

## PUBLIC HEARINGS

### A. 21-0715-01
### MARK NATHAN & JYOTI MOKAL – VARIANCE FOR BUILDING LOT COVERAGE, SIDE YARD SETBACK AND AGGREGATE SIDE YARD SETBACK FOR PROPOSED 2 STORY ADDITION TO SINGLE FAMILY DWELLING IN A ZONE. APPEAL OF ZEO DECISION TO REQUIRE 50% COMMON WALL CONNECTION FOR PROPOSED ADDITION OF GARAGE AND LIVING SPACE. PROPERTY LOCATED AT 67 BLUFF AVE. DISTRICT 6, BLOCK 17A, LOT 11.

The home in question was built in 1890. It has existing non-conformities within the lot width, lot area, and lot coverage. Variance was granted in October 2020 for proposed attached accessory structure in front of the residence. In April 2021 an extension of time was granted for that same variance. Currently the new homeowners proposed a detached addition in front of the existing house. Departmental policy dictates any addition must be attached with a 50% common wall in order to be considered integral with the structure and part of the dwelling. If it is not attached with a 50% common wall it is deemed detached and must meet setback and height requirements for detached accessory structures. This policy has been consistently applied to project review by staff for appx. 14 years.

Atty. Liz Suchy came forward to discuss this item. She reviewed the details of the property for the Commission. Two flood designations are on the property at ae 15 and ae 17. Photos of the property were provided for the Commission. The lot size is undersized for a resident zone at 8,900 square feet instead of the 12,500 square feet required. There is an existing 3-story rear single family dwelling that was constructed in the early 1960's. There is also an existing one-story non-conforming structure 3 ½ feet off the northern property line. In October 2020 the Board granted variances to the predecessors entitled to the property in order to demolish the existing 1-story shed and construct a 1-story, 2-car

garage in the same location of a similar size. The new owners requested a time extension to obtain the permits so they could review the property. They wish to renovate and reconfigure the interior of the existing house and construct an addition which would consist of a two-story, two-car garage with a living space on the second floor consisting of a bedroom and bathroom. It will be less than 1,000 square feet. Parking will be well behind the 40-foot setback as will the addition to the structure. They were informed that this would not be compliant with the 50% common wall policy. This policy is not part of the regulations and they feel it's improper for the City to impose this policy based not only statute but also the Connecticut Case Law. While the clients are fine with the first floor being connected by a 50% common wall, they do not wish the second floor of the proposed structure to have this same design. The floorplans of the current house need to be revised for better use of space and better livability.

Mr. Chris Pagliaro came forward to address the Commission. He reiterated that the property was much narrower than other lots on the avenue. Due to the narrow lots on the avenue, it is common to have a garage that's toward the street. He provided photos of the structure. They are proposing to create a new bedroom over the garage since they are displacing a pre-existing bedroom with the reconfiguration of the house. He pointed out that a neighboring garage is very far forwards with their garage. He also pointed out that other houses in the area have non-conformities when it comes to their garage placements. He provided images of the rendering done on the neighboring houses as well as the garage at 63 Bluff Ave and his house at 61 Bluff Ave as examples of the existing conditions on Bluff Ave on the eastern side of the road.

He then provided the blueprint drawings for the Commission. The proposed 2-car garage is 22 feet clear and width on the interior by 21 feet deep. And then it will have a link to the main house which is elevated from the garage level. The proposal is to kind of take the western-most wall to use the architecture to create a landscape gate and then develop a courtyard and be able to climb the stairs to the existing main front door. He then reviewed the proposed links between the structures for the Commission using the drawings. Their solution was to widen one of the links so it would be 50% of the garage common wall.

On the second floor was the link they were hoping to appeal. The proposed bedroom and proposed the bathroom is not accessible from anywhere outside. It is only accessible through the main house. There will be a second-floor length that comes through a connection and a new stairway up to the second floor but they will be removing bedroom that is in the northwest corner. They want to replace the removed bedroom with the proposed one above the garage.

He provided potential images of what the house would look like if they were required to maintain the 50% common wall for only one story and one for if they had to maintain the 50% common wall for both stories and clarified that they wanted the 50% connection on the first floor to reduce the amount of mass on the proposed garage.

Chairman Levey asked Ms. Maldonado if the 50% common wall rule has been part of an unspoken regulation for the last 14 years and why it hadn't been codified if so.

Ms. Maldonado said that that it was not unspoken but unwritten. Prior to this, they typically see one or two at least applications each month that features some type of addition, that doesn't meet the

unwritten 50% policy connection. Normally the applicants revise it. She'd never heard of anybody challenge it previously.

Chairman Levey asked if there was any consideration being taken by staff to incorporate this into the zoning regulations.

Ms. Maldonado said they didn't think they would propose any type of text amendment at this time. She said she did feel it should be made into a definition.

Mr. Pagliaro said he didn't understand the spirit of it.

Ms. Maldonado said since there's not a metric specified anywhere, it goes to defining or identifying detached versus attached. Discussion followed on the potential origin of the ruling.

Mr. Levey said that he had encountered a similar situation about 20 years ago in a different municipality. Staff was insistent that he couldn't do what he had designed despite his insistences that there was no regulation against it. They built it as he had drawn it against the unspoken regulation or unwritten regulation. After he had applied for a building permit, within 30 days,
they had incorporated it into the zoning regulations. He suggested that if this is something that's going to happen more frequently, that Planning and Zoning begin to act on this.

Atty. Suchy added that, very often, in situations such as this and others, where unintended consequences emerge, and it's the proper function of Zoning to address them and the best way to address them is to create regulations that are plain, are clear, and are understandable, not only by a homeowner, but by designers as well. She recounted a similar situation that had occurred for the Commission. She suggested that this policy should become part of the regulations however it was not a regulation and to impose it on her client, or the next applicant, doesn't have validity.

Commissioner Conroy pointed out that the number for what constitutes an attached structure being part of the dwelling was not defined though there was a lower bound.

Commissioner Altman asked if they got responses from the people living around the site.

Mr. Mark Nathan, the homeowner, spoke with all the neighbors. The next-door neighbors were in favor of this according to him. He didn't ask them to put letters in but they were all very supportive. He thinks they all will benefit also because they're not going to be parking on the street and will get rid of the non-conforming parking.

Ms. Maldonado provided a diagram from a memo dealing with the 50% common wall law and examples of how the law helped with potentially detached structures in the city.

Chairman Levey said that he understood it but felt a regulation could be written to be more specific and clearer and address issues like topographic changes.

Atty. Suchy said that there is a detailed process to modify regulations which would require a vetting process. It was important to be clear so people know exactly what the parameters and design requirements are.

**** COMMISSIONER CONROY MOTIONED TO ACCEPT THE APPEAL FOR APPLICATION 21-0715-01.**
**** CHAIRMAN LEVEY SECONDED THE MOTION.**
**** THE MOTION PASSED UNANIMOUSLY.**

Further discussion followed regarding the potential 50% wall variance.

No one wished to speak in favor of this application.

No one wished to speak in opposition to this application.

**B. 21-0715-02**
**JOAN OSMAN GRAY – APPEAL OF ZEO DECISION TO REQUIRE 50% COMMON WALL CONNECTION FOR PROPOSED ADDITION OF GARAGE AND LIVING SPACE. IN THE ALTERNATIVE, VARIANCE FROM DEFINITION OF DWELLING UNIT TO ALLOW AN ADDITION SHARING 40% COMMON WALL IN A ZONE. PROPERTY LOCATED AT 30 SHOREHAVEN RD. DISTRICT 3, BLOCK 79, LOT 1.**

Commissioner Conroy said that the applicant is appealing the 50% common wall connection policy for the proposed addition and if the appeal denied then applicants experience redefinition of a dwelling unit. The home was built in 1910. The applicant proposes adding a garage with living space above as well. Department policy dictates any addition must be attached with a percent common law in order to be considered intervals in the structure that not connected with 50% and acquisition is deemed a detached structure and must mean setbacks, and height requirements for the tax accessory structures. The 50% common law policy, although not codified, has been consistently applied to project review by staff for 14 years, which is the longest tenure of any current staff member.

Atty. Adam Blank came forward to represent this item. He acknowledged that this was similar to the prior item and wished to review a few of the details relevant to this application. Green cards have been submitted and are part of the file. He provided images of the house in question. It would share 40% of the common wall but not 50% as the common wall connection policy asks. He noted that there was only one other spot viable to place the garage. The proposed addition complies with all of Norwalk regulations other than the 50% common wall rule. He argued that their variance was one of a dwelling unit and the current existing regulations allowed for a 40% variation for dwellings.

Mr. John Gray came forward to discuss this item. His family has lived at the site since 1986. They are insecure about their ability to climb stairs due to age. They are anticipating installing an elevator in the house.

Mr. Lyle Fishell came forward to discuss this item. He is the architect for the project. He provided a blueprint for the site. He pointed out that, technically, it's 42.5% that they are requesting for the shared common wall variance. The only way they'd be able to meet 50% would be to ask for a rear setback and a variance on the rear. They do not have a coverage issue as the existing proposed coverage is 14.87% and they're allowed 25%. So they don't have a coverage issue.

Chairman Levey asked if they could present a schematic of the full floor plan for the house and project.

Mr. Fishell provided blueprints of the whole house.

Chairman Levey clarified that he was asking for a full schematic of the floor plan.

Mr. Fishell said he did not have that. He did review the outline of the house from what he had for the Commission.

Atty. Blank asked if seeing the elevation map for the site would be helpful.

Chairman Levey said it would be.

Mr. Fishell provided further design images for the Commission.

Chairman Levey said he felt they still had a lot of design decisions to make in regards to the elevator.

Mr. Fishell said they had talked to several elevator companies and every elevator company is a little bit different in size and mechanics and the project needed to be designed around the elevator.

Commissioner Conroy asked if they have a variety of people that they're talking to the elevator, how much variance is there between the space they need?

Mr. Fishell said 6-8 inches.

No one wished to speak in favor of this application.

No one wished to speak against this application.

**** COMMISSIONER CONROY MOTIONED TO GRANT THE APPEAL FOR APPLICATION 21-0715-02.**
**** COMMISSIONER DIESEL SECONDED THE MOTION.**
**** THE MOTION PASSED UNANIMOUSLY.**

Commissioner Conroy commented on the 50% common wall rule. He said that, if it has been around this long and was adhered to for this long, then he thinks they should get it codified.

Chairman Levey said he agreed and recalled a case in Greenwich from appx 30 years ago, where the homeowner requested a corridor from their main house from a garage that resulted in years of court cases.

Commissioner Conroy confirmed that they should get it codified.

Discussion followed regarding the technicalities of the 50% common wall policy and its origins.

**BOARD ACTION ON**

## A & B

Chairman Levey said he had no difficulty stating that variances be granted for site coverage and setback as they've previously modified them earlier on this project. He also had no difficulty narrowing the connection at the second floor.

**** CHAIRMAN LEVEY MOTIONED THAT THEY ACCEPT THE PROPOSED SETBACKS AND THE COVERAGE OF 31.5% FOR APPLICATION 21-0715-01 (1:13:00).**
**** COMMISSIONER LYON SECONDED THE MOTION.**
**** THE MOTION PASSED UNANIMOUSLY.**

## ACTION ON HEARING MINUTES

## JUNE 17, 2021

Chairman Levey said he had not received the minutes of June 17, 2021. While the other Commissioners had the minutes, one of the Commissioners was not present at the meeting of June 17, 2021. Chairman Levey suggested that they move the approval of the minutes of June 17, 2021 to the next meeting.

## ADJOURNMENT

**** COMMISSIONER CONROY MOTIONED TO ADJOURN.**
**** CHAIRMAN LEVEY SECONDED THE MOTION.**
**** THE MOTION PASSED UNANIMOUSLY.**