

**CITY OF NORWALK
ZONING BOARD OF APPEALS
JULY 9, 2009 (APPROVED SEPT. 3, 2009)**

I. CALL TO ORDER

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

II. ROLL CALL

Ms. Rochefort took the roll call.

PRESENT: Taylor Strubinger, Chair; John Hamlin; Dawn DelGreco; Tony Lopez; Joe Santo; Stephen Colarossi; Gordon Tully

STAFF: Aline Rochefort

OTHERS: Atty. Oberst; Jason Minoff; Atty. Anthony Schwartz; Richard Velez; Atty. Larry Church; Joe Cugno; Alan Blackie; Bob Everett; Atty. Chris Smith; Larry Cross; Manny Solva; Joseph Mann; David Sabarese

III. PUBLIC HEARING

A. 09-0604-02 –19 Ft. Point St. LLC, - Variance of minimum lot size required for contractor's storage yard, Property located at 19 Ft. Point St.

Mr. Strubinger and Mr. Lopez did not participate in this public hearing. Mr. Tully acted as Chair.

Mr. Tully stated the public hearing on this item would now continue.

Atty. Oberst addressed the issue of material storage, particularly mulch. He stated that theoretically the mulch is removed one day after it is delivered, but sometimes it remains on the property for slightly longer. He emphasized that the mulch was never for sale or held for long-time storage. Mr. Colarossi suggested that a condition be added regarding the sale and storage of mulch on the site. Atty. Oberst clarified that there were no mulch sales now nor would there be in the future. He also clarified that the applicant sought to remove the old building and put up a new one.

Mr. Santo read the draft resolution condition concerning mulch, pointing out that the large pile of mulch has been in violation all along. Mr. Jason Minoff stated that the mulch was a staging item, similar to the plants themselves.

Ms. Rochefort said that the whole property was in violation, because the applicant did not have permits.

Mr. Colarossi stated that the site was now an asset to the neighborhood and that it was also unreasonable to allow plants but to prohibit mulch on the site.

Mr. Santo said that the property looked reasonable from the road, but that it continued to be in violation since the earlier variance was granted.

Ms. Rochefort read aloud the ordinance regarding material storage and confirmed that there were Cease and Desist orders on the property.

Mr. Colarossi read aloud the opinion by Brian McCann of Corporation Counsel.

Mr. Hamlin began to ask the applicant if he promised to meet certain conditions, if the variance were granted. Atty. Oberst objected to the line of questioning, pointing out that this was a legitimate application and that the applicant was not asking for special treatment. He added that the Board also had the authority to put Mr. Minoff out of business.

Ms. DelGreco asked if there were an intermediate method of accommodating the mulch on the site. Atty. Oberst said that it was in the rear of the property now.

Mr. Hamlin alluded to a June 4 memo asking Corporation Counsel to provide more analysis of the application. He added that the application appeared to be exactly the same, asking if there were any material circumstances that would change the way the Board considered the item.

Mr. Tully said that there had been a substantial, startling improvement to the property. Mr. Hamlin acknowledged that, but asked if there were anything else that would make the Board reconsider. Mr. Hamlin said that he was sympathetic to the fact that an applicant who had been non-compliant in the past may be considered as unlikely to comply in the future.

Mr. Santo asked if the property had ever been in compliance. Ms. Rochefort said that it had been so prior to Mr. Minoff's ownership. She clarified that Mr. Minoff had not been in compliance at the time of the application.

Mr. Hamlin said that the applicant had been granted a variance twice with the same problem, asking how the Board could consider it differently this time, in the absence of changed circumstances.

Mr. Tully said that the applicant could not store mulch, if the application were to be passed with all conditions. He added that the Board did not need to repeat a past decision.

Mr. Santo asked what the next step would be, if the variance were to be denied. Ms. Rochefort said that the applicant could keep operating the business until the item was appealed.

Mr. Colarossi pointed out the absurdity of the fact that if the conditions were held to literally, nothing at all could be stored on the site.

Ms. DelGreco asked why there continued to be a fixation on the storage of mulch at the site. Mr. Santo said that the storage yard had never complied.

Mr. Oberst said that mulch was a necessary part of planting and needed to be allowed on the property to some extent. He added that the applicant sought a variance because he needed one to comply.

Mr. Tully said that ill behavior in the past was not a ground for denial of the applicant.

Mr. Tully closed the public hearing.

B. 09-0604-03 -Hollywood Restoration, LLC– Variance of parking spaces provided & variance to allow parking within the side setback, Property located at 115 Woodward Ave.

Mr. Tully stated that the public hearing for 115 Woodward Avenue would now continue.

Atty. Anthony Schwartz stated that the application was a re-do of a previous motor vehicle application, adding that the client's mistake in not attaining a permit had brought them in front of the Board. He discussed the landscaping plan for the property. Atty. Schwartz said that no member of the public had spoken against the applicant. Mr. Tully said that this was untrue, pointing out that a letter had been read at the last public hearing. Ms. Rochefort submitted a new letter from Henry Williams, Jr., an adjacent property owner, objecting to the application. Mr. Colarossi read the letter that had been submitted at the previous hearing by David and Michelle Torre, alluding to a chronic history of abuse of zoning regulations on the site.

Atty. Schwartz said that motor vehicle licenses had been granted for the property in 1986 and that this applicant was granted his license in 2003.

Mr. Tully read aloud the reasons for that granting of a variance, stating that the applicant had presented a hardship unique to the property, had addressed the concerns of neighbors, and had met parking conditions. He asked if this were the same application and whether there had been any changes in circumstances.

Mr. Hamlin asked whether this meant changes with regard to this property or to

the neighborhood as a whole. He said that the higher-density neighborhood needed to be accounted for.

Mr. Colarossi stated that case law pointed to the reason for the variance, which had not changed, noting that the area was still a dense, mixed use neighborhood. He added that there was a traffic enforcement issue in the area.

Mr. Hamlin asked what the material change was. Mr. Colarossi read the memo from Brian McCann of Corporation Counsel this issue which was requested by the Board last month.

The Board debated the whether the reason had changed.

Atty. Schwartz explained that the changes to the property would enhance the neighborhood and that changes to the landscaping and parking had been made.

Mr. Tully pointed out that the applicant had not met all conditions.

Mr. Santo asked about the cars covered with tarps. Mr. Richard Velez said that there was one antique car under a tarp. He also asked for clarification as to whether the fenced-in area could remain.

Mr. Tully suggested that the applicant consider a creative solution to storage on the property, adding that the storage area need not be accessible only from inside the building. Storage at present was in a vehicle.

Atty. Larry Church, representing Mr. And Mrs. Richardson, the property owners, gave background concerning the property. He said that the area had been re-zoned in 1984, a year after the owners had purchased it. He said that although the property was legally non-conforming, the neighbors objected to it. He added that in 2002, Mr. Velez was told that he needed a variance, because there couldn't be two licensed operators on the property.

Mr. Tully pointed out that the Board was in the business of enforcing the purpose of the zoning regulations, rather than in the business of adding new restrictions to owners.

Atty. Church said that Mr. Richardson had given up his right to have the body shop and that the same variance was needed as before.

Atty. Schwartz alluded to the pictures submitted with the letter, indicating that two of the three parked cars belonged to neighbors.

There was a discussion of site improvements and plantings on the property.

Mr. Tully closed the public hearing.

C. 09-0709-01-- Peter Lavins & Donna Fernandez –Variance for required aggregate side setback. Property located at 28 Indian Spring Road.

Mr. Strubinger opened the public hearing.

Mr. Joe Cugno, an architect, gave background about the zone change that had made the property non-conforming.

Mr. Tully asked what the hardship was that prevented placing the addition where Ms. Rochefort had suggested. Mr. Hamlin added that the applicant's aesthetic preference did not constitute a hardship.

Mr. Cugno said that the penalty was due to the way in which the aggregate was calculated.

Mr. Colarossi pointed out that by that logic, a precedent would be set for all property owners to obtain variances simply to accommodate aesthetic issues and that all property owners would therefore be entitled to a variance.

Mr. Cugno discussed the topographical issues of the property. Mr. Lopez asked if these had been known at the time of purchase. Mr. Cugno said yes, stating that the slope was obvious.

Mr. Tully reiterated that it was possible to build the family room on top of the sunroom.

Mr. Strubinger asked if the setback in the new construction were any more encroaching. Mr. Tully said that it was less encroaching.

Ms. Rochefort asked that it be noted that Mr. Cugno had turned in the green cards.

Mr. Strubinger closed the public hearing.

D. 09-0709-02 –Alan & Karen Blackie-Application for variance to allow 3 1/2 stories vs. 2 1/2. Property located at 18 Devonshire Road.

Mr. Strubinger opened the public hearing.

Mr. Blackie showed photographs of the property and discussed the requirement to replace the fill up to a certain level. He also stated that the applicant sought to install a swimming pool. Mr. Strubinger said that the applicant had shown the Board a fait accompli.

Mr. Blackie asked if the previously existing house were considered one or two story. Ms. Rochefort said that it was considered a two-story, according to zoning regulations.

Mr. Bob Everett addressed concerns about height and topography.

Mr. Colarossi asked about the interior of home and whether it was substantially different from what it had been at the time of purchase. He said that the renovations could have anticipated safety concerns, once the pool was installed.

Mr. Tully addressed the complexity of the issue of building height and number of stories, noting that considerable effort had gone into drafting those provisions.

Mr. Strubinger said that what was being proposed suggested a 3 ½ story house.

Mr. Strubinger closed the public hearing.

E. 09-0709-03 Norwalk Community Health Center–Variance of number of required parking spaces. Property located 120 Connecticut Ave.

Mr. Strubinger opened the public hearing. Mr. Tully agreed to continue as Acting Chair, and Mr. Strubinger recused.

Atty. Chris Smith addressed the change in parking from a minimum of 121 to a minimum of 96 spaces. He discussed the geographic limitations of where in the City the site could be located, adding that the location limited the number of available parking spaces. He pointed out that the application presented a special, unique, and different use with regard to the hardship concerning parking. He gave details of the survey of clients and staff about parking needs.

Mr. Hamlin asked about the issue of granting the variance to this particular tenant and to subsequent similar uses of the property.

Atty. Smith agreed about such a condition. He discussed the state bond and reiterated that the hardship was based on the unique services provided by the facility.

Mr. Larry Cross discussed the parking analysis and discussed community health centers, which served patients regardless of their ability to pay. He gave details about the estimated number of patient visits. He emphasized that the total parking demand would never necessitate all of the required parking spaces. He submitted a handout to the Board and answered questions about the survey.

Mr. Colarossi asked about the proximity of the train station, as well as striping of parking spaces in the lot. Mr. Manny Solva addressed re-striping at the property.

Mr. Santo expressed concern about the removal of retail use from Connecticut Avenue. He also asked about the possibility of directing people to exit the site at Ferris Avenue.

Mr. Cross discussed the poverty map. He reiterated that the hardship involved the ability to find a location that met the needs of patients, adding that the facility's traffic patterns were not the same as those of the private sector.

Atty. Smith discussed the manner in which patients would get to the facility. He said that the parking requirements were unique relative to this application.

Ms. DelGreco asked about sidewalks and crosswalks. Mr. Cross described them, referring to his own conversation with Chief Denis McCarthy.

Mr. Joseph Mann emphasized that the Center needed this variance and that the application was also supported by Norwalk Hospital.

Mr. David Sabrese addressed the hardship of the applicant, adding that many hardships would be relieved by putting the health center in this location.

Mr. Tully closed the public hearing.

IV. BOARD ACTION ON ITEM A thru E plus action on #09-0108-02 STLJ LLC & 100Westport Avenue LLC. - request for extension of time in which to obtain building permits for signage. Property located at 100 Westport Avenue.

#09-0108-02 STLJ LLC & 100 Westport Avenue LLC

**** MR. STRUBINGER MADE A MOTION TO APPROVE THE REQUEST FOR AN EXTENSION OF TIME IN WHICH TO OBTAIN BUILDING PERMITS FOR SIGNAGE.**

**** MR. LOPEZ SECONDED.**

**** MOTION CARRIED, 5-0.**

E. #09-0709-03 NORWALK COMMUNITY HEALTH CENTER

Mr. Hamlin said that the hardship statement was fair.

Ms. DelGreco said that the use of the exit street should be stated clearly.

Mr. Santo emphasized that the variance should apply only to this business.

There was a discussion of sight lines.

Mr. Hamlin stated that the parking variance should include language that indicated the same sort of health center.

**** MR. TULLY MADE A MOTION TO APPROVE THE VARIANCE, BECAUSE THE APPLICANT SHOWED A HARDSHIP IN THAT THE USE IS UNIQUE AND APPROPRIATE AND CANNOT OCCUR WITHOUT THE VARIANCE, AND BECAUSE THE APPLICATION INVOLVES A SERVICE SPECIFIC TO EXCLUSIVELY LOW-INCOME CLIENTELE IN THE 06854 ZIP CODE, AND BECAUSE THE VARIANCE WOULD ONLY APPLY TO A COMMUNITY-ORIENTED, LOW-INCOME ORIENTED HEALTH CENTER.**

**** MR. COLAROSSO SECONDED.**

**** MOTION PASSED UNANIMOUSLY. (DELGRECO, SANTO, LOPEZ)**

D. 09-0709-02 ALAN & KAREN BLACKIE

**** MR. STRUBINGER MADE A MOTION TO DENY THE VARIANCE, BECAUSE THE APPLICANT DID NOT SHOW A HARDSHIP.**

**** MR. SANTO SECONDED.**

**** MOTION PASSED UNANIMOUSLY.**

C. 09-0709-01 PETER LAVINS & DONNA FERNANDEZ

**** MR. STRUBINGER MADE A MOTION TO DENY THE VARIANCE, BECAUSE THE APPLICANT DID NOT SHOW A HARDSHIP.**

**** MR. TULLY SECONDED.**

**** MOTION PASSED UNANIMOUSLY.**

B. #09-0604-03 HOLLYWOOD RESTORATION, LLC

**** MR. TULLY MADE A MOTION TO APPROVE THE VARIANCE WITH CONDITIONS AS STATED IN THE DRAFT RESOLUTION, ON THE GROUNDS THAT THE VARIANCE WAS THE SAME AS THE ONE PREVIOUSLY GRANTED AND THAT CONDITIONS HAD NOT SUBSTANTIALLY CHANGED.**

**** MR. COLAROSSO SECONDED.**

**** MOTION CARRIED, 4-1 (SANTO OPPOSED).**

A. #09-0604-02—19 FT. POINT ST LLC

**** MR. HAMLIN MADE A MOTION TO APPROVE THE VARIANCE WITH CONDITIONS AS STATED IN THE DRAFT RESOLUTION, ON THE GROUNDS THAT THE VARIANCE WAS THE SAME AS THE ONE PREVIOUSLY GRANTED AND THAT CONDITIONS HAD NOT SUBSTANTIALLY CHANGED.**

- ** MR. COLAROSSİ SECONDED.**
- ** MOTION CARRIED, 4-1 (SANTO OPPOSED).**

✓. ACTION ON HEARING MINUTES June 4, 2009

- ** MR. STRUBINGER MADE A MOTION TO APPROVE THE MINUTES.**
- ** MR. COLAROSSİ SECONDED.**
- ** MOTION PASSED UNANIMOUSLY.**

✓I. ADJOURNMENT

- ** MR. STRUBINGER MADE A MOTION TO ADJOURN.**
- ** MR. COLAROSSİ SECONDED.**
- ** MOTION PASSED UNANIMOUSLY.**

The meeting was adjourned at 11:06 pm.

Respectfully submitted by Charlene Smith.

