

**CITY OF NORWALK
ZONING BOARD OF APPEALS
JUNE 4, 2009 *Approved July 9, 2009***

I. CALL TO ORDER

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

II. ROLL CALL

Ms. Rochefort took the roll call.

PRESENT: Gordon Tully, Acting Chair; Dawn Del Greco; John Hamlin; Joe Santo; Stephen Colarossi

STAFF: Aline Rochefort

OTHERS: Jeanne Mason; James Mason; Gary Oberst; Jason Minoff; Anthony Schwartz; Richard Valez; Atty. Lawrence Church; Mr. Richardson

III. PUBLIC HEARINGS

Mr. Tully stated that Item D (09-0604-03 Jonathan Clark Farber) had been removed from tonight's agenda, but was still an open hearing.

**** MR. HAMLIN MADE A MOTION TO CLOSE THE HEARING.
** MS. DEL GRECO SECONDED.
** MOTION PASSED UNANIMOUSLY.**

a) 09-0604-01—Jeanne Mason—Variance to legalize construction of ½ story dormer for premise located at 32 Avenue D

Mr. Tully opened the public hearing . Ms. Jeanne Mason, the applicant, agreed to waive the reading.

Mr. Colarossi explained that the item did not involve a setback variance and that there had been no setback variance.

Ms. Mason turned in the green cards.

Mr. Colarossi stated that the Board had received a copy of an email between applicant and Mike Greene. Ms. Mason agreed to waive the reading. Mr. Colarossi also read a letter from a neighbor in support of the application.

Mr. Colarossi read a memo from Ms. Rochefort concerning the variance.

Ms. Mason explained that she acted under the advice of the architect with regard to the definition of dormer in the Zoning regulations. She added that a misinterpretation of the regulations and a lack of awareness of the need for a variance later on both influenced her decisions. Ms. Mason described the idiosyncrasies of the property.

Mr. Tully pointed out that a drawing from Zimmerman Architects indicated the manner in which the construction was built rather than the manner in which it was actually approved. There was a discussion of the date of the two different drawings.

Ms. Del Greco asked who the contractor was. Ms. Mason said that both Dwayne Bryant Construction and Clifton Construction had been involved. She added that it had been the contractor himself who had visited the Zoning office for approvals and had spoken with Ms. Rochefort.

Ms. Rochefort stated that the plans had been sent back in order to comply with regulations, yet that the contractor had not followed them.

Mr. Hamlin asked if the contractor had told Ms. Mason that his work would be a change from what had been approved. Ms. Mason described how the room would have been if it were built exactly as approved, but also stated that she knew that a variance could have been an issue.

Mr. Colarossi asked what had been Ms. Mason's reason for seeking to do construction. She said that it was for the utilization of the space and merely for personal use. She said that no kitchen had been added and the area was basically a master bedroom.

Ms. Del Greco asked if the project would have involved major construction, if the original plan had been followed. Ms. Rochefort said that this point was debatable.

Mr. Santo asked if the applicant had realized that the work being done was outside of the plans would require variance. Ms. Mason said that she did realize it to some extent, but also that the contractor's presentation of the work had played a role in her decision.

Mr. Tully asked if Ms. Mason had contacted her in the Zoning office. Ms. Rochefort said that Ms. Mason had not visited her until after Zoning had received a request for inspection from the building Department.

Mr. Tully asked if the applicant had seen the drawing with a large green mark on it. Ms. Mason said that she was not sure. Ms. Rochefort clarified that this was something the applicant would most likely see.

Mr. Tully asked how often it occurred that applicants or contractors with non-compliant plans were advised of the necessary changes. Ms. Rochefort said that it happened “all the time.”

Mr. Colarossi stated that the contractor would have no independent authority to violate zoning and permits and also that contractors should be presumed to have more expertise than owners in such matters.

Mr. Hamlin pointed out that the while the Board had no recourse with the builder, the property owner did.

Ms. Mason described the hardship with regard to the property. She confirmed that she was not asking for a variance on anything that had occurred prior to this construction.

Mr. Santo asked when the staff became aware of the situation. Ms. Rochefort said that it was during the final inspection.

Mr. Santo asked if the builder had admitted his mistake in building illegally. Ms. Rochefort said that she did not know.

Mr. James Mason, 19 Avenue D, described the background of his conversation with the contractor. He said that he spoke with the builder after the framing had already begun and the roof was already removed. Mr. Mason clarified that the builder had shown him plans of how it should have been built, but that the actual construction differed from the drawings. He also discussed the details of the property, adding that it looked fine aesthetically and that the applicant had been “caught in the middle.”

Mr. Tully closed the public hearing.

b) 09-0604-02—19 Fort Point St., LLC—Variance of minimum lot size required for contractor’s storage yard. Property located at 19 Fort Point Street

Mr. Tully opened the public hearing. Mr. Gary Oberst, 111 East Avenue, agreed to waive the reading.

Mr. Colarossi read a memo from Ms. Rochefort, indicating that there had been two previous applications for the same variance. Ms. Rochefort added that there was also a CAM memo from Mr. Strauch.

Mr. Oberst described the hardship concerning the shape of the property, stating that the front could not be expanded, the back abutted a railroad, and one side

was adjacent to a bar that actually encroached onto the property. He distributed photos of the property.

Mr. Tully pointed out that a previous variance had stipulations regarding fencing and materials storage. Mr. Oberst explained that the material in question was mulch, which came onto and off of the site frequently,

Mr. Tully reiterated that the Board was obligated to approve a variance if conditions had not changed on the property.

Mr. Colarossi compared the details of a 2001 file with those from a 2004 file. He asked why different conditions had been imposed on the property, particularly the condition concerning the storage of vehicles and equipment. Mr. Oberst addressed the issue, describing conditions on the site. He added that the neighbors had not complained about the conditions and that there was no impact on traffic.

Mr. Santo asked how long it had taken for the violations to be cleared up, before the storm wall and plantings had been put in place. Ms. Rochefort said that it had taken years and that Zoning had to take the applicant to court to get compliance.

Mr. Hamlin asked if intervening violations and significant issues during the last few years would change the Board's obligation to grant the variance. Mr. Oberst said no, adding that the condition of the property had changed for the better.

Mr. Tully asked about the wording of the case law and requested that the hearing be held open in order to get input from Corporation Counsel. Ms. Rochefort agreed, pointing out the significance of materials storage.

Ms. Del Greco pointed out that the mulch was in a transfer state and might be considered somewhat differently than other materials.

Mr. Jason Minoff described the process of mulch arriving at the property and the duration of its storage there.

Mr. Hamlin asked if the property were compliant. Ms. Rochefort said no, because there were no permits.

Mr. Colarossi asked for details about the actual improvements intended for the site. Mr. Minoff said that additional plantings would be added, as well as a new, more modern building to replace the dilapidated garage.

Mr. Hamlin asked what the Court would be seeking. Ms. Rochefort said that it would address Cease and Desist violations and attempt to bring the property into compliance.

Mr. Colarossi asked what else could be put on the site. Ms. Rochefort said that the zone allowed for two-family residences, warehouse use, offices, banks and retail.

Mr. Santo asked if holding the hearing open would force the applicant to stop doing business. Ms. Rochefort said that the applicant would continue to operate regardless.

Mr. Tully asked if an exception could be made for mulch, since it was not a construction material, but rather a planting aid.

**** MR. HAMLIN MADE A MOTION TO HOLD THE HEARING OPEN FOR ANALYSIS AND INPUT FROM CORPORATION COUNSEL UNTIL JULY 9, 2009.**

**** MS. DEL GRECO SECONDED.**

**** MOTION PASSED UNANIMOUSLY.**

c) 09-0604-03—Hollywood Restoration, LLC—Variance of parking spaces provided and variance to allow parking within the side setback. Property located at 115 Woodward Ave.

Mr. Tully opened the public hearing.

Mr. Colarossi explained that there were several variances involved in the application. He said that there was a narrow lot, which necessitated a buffer because it was in a residential area. He described the ongoing problem with vehicles on the site.

Mr. Colarossi read a memo from Mr. Strauch, indicating that flood certification was not required. He also read a letter from Dave and Michelle Torrey, indicating their objection, as neighbors, to the application.

Atty. Anthony Schwartz, representing Mr. Valez, explained that this application was a “re-do.” He said that variances had been obtained in the past, but had been revoked because the applicant did not obtain a building permit. He added that a site plan had been submitted, including repair of the parking lot, reorganization of parking, and a planting plan. He pointed out that drop-offs after hours were made only on Woodward Avenue, as required. Atty. Schwartz added that neighbors often parked illegally on the streets and that customers were blamed for the parking problem. He also said that the body shop was neat and in compliance with regard to parking and storage of parts inside. He said that the same use existed on the property since 1986 and that the neighbors were generally satisfied with conditions on the property.

Mr. Tully stated that he had noticed several items on the plan that were not in place, particularly a fenced-in storage area.

Mr. Richard Valez explained that the situation concerning the fenced-in area, stating that the fire marshal had indicated the need for egress, but also that a gate could not be placed on the fence.

Mr. Hamlin pointed out that the duration of time involved was also a significant concern. Atty. Schwartz disputed the 1986 date of non-compliance, stating that the correct date was 2002.

Atty. Lawrence Church, representing Mr. and Mrs. Richardson, gave background concerning the use of the building and the zone changes. He said that the property had become legally non-conforming and that the situation was complicated by a license transfer and a CAM permit. He said that there was a way to solve the problem and pursue the violations without denying the variance.

Mr. Tully pointed out that the application did not involve an automatic approval, because conditions had changed on the property. Atty. Church said that the only material change was in the new conditions imposed on the property (the zone change, the hours and operation and the parking). He said that the ZBA had imposed these conditions and therefore the application involved a violation issue only.

Mr. Hamlin asked if it were Atty. Church's contention that the property now complied with the variance granted in 2002. Atty. Church said yes, but commented on the complication involved with the gate in the fence. He added that compliance could be a moving target.

Mr. Santo asked whether Atty. Church believed that the applicant would be non-compliant if he committed violations. Atty. Church pointed out that the applicant was attempting to avoid court.

Mr. Santo asked why the City needed to take him to court before. Atty. Church discussed the background of the case, explaining that there had been no need to reapply because of a building permit, since the use on the site remained the same. Ms. Rochefort pointed out that the property owner had not presented an application and did not have a Certificate of Occupancy.

Mr. Colarossi asked about the letter concerning vehicle storage. Mr. Valez said that there was one panel truck, which was operable and that all parts were kept inside. He added that he would bring the truck inside too, if an area with a gate were permitted.

Ms. Del Greco asked about the number of employees at the site. There was a discussion of employee parking and neighborhood parking.

Mr. Richardson gave background concerning the property, explaining that Mr. Valez had been required to put in sidewalks and add parking. Mr. Richardson stated that Mr. Valez had worked hard to improve the site.

The Board agreed to hold the hearing open until July 9, 2009.

There was a five-minute recess in the meeting.

IV. BOARD ACTION ON ITEM A THROUGH C

Mr. Colarossi stated that Ms. Mason had perhaps not recognized her own error, but also that she had been at the mercy of the contractor.

Mr. Hamlin disagreed, stating that Ms. Mason had known that the contractor was changing what was approved.

Mr. Tully pointed out that the issue was whether to let people get away with changing the approved plans.

Mr. Santo said that he was sympathetic to this applicant, but that permitting the variance would open the door for similar applications in the future.

Mr. Hamlin stated that he felt that this was a self-imposed hardship.

Mr. Tully reiterated that the applicant still had recourse with the contractor.

Ms. Del Greco addressed the conversations that Ms. Mason had had at the Zoning office. Mr. Colarossi pointed out that these conversations had taken place only after Ms. Mason realized she the problems with the plan's discrepancies.

Mr. Tully read a letter from Ms. Mason, discussing the zoning regulations with regard to her property.

- ** MR. SANTO MADE A MOTION TO DENY THE VARIANCE, BECAUSE NO HARDSHIP HAD BEEN SHOWN.**
- ** MR. HAMLIN SECONDED.**
- ** MR. COLAROSSİ OPPOSED.**
- ** MOTION PASSED, 4-1.**

IV. ACTION ON HEARING MINUTES, May 7, 2009

- ** MR. COLAROSSİ MADE A MOTION TO APPROVE THE MINUTES.**
- ** MR. SANTO SECONDED.**

**** MOTION PASSED UNANIMOUSLY.**

VI. ADJOURNMENT

The meeting was adjourned at 9:50.

Respectfully submitted by Charlene Smith.

