

CITY OF NORWALK
ZONING BOARD OF APPEALS
MINUTES - May 16, 2019 (approved July 18, 2019)

PRESENT: Lee Levey, Chair; Taylor Strubinger; Marilyn Altman; Chris Gavrielidis; David Heuvelman

STAFF: Aline Rochefort

OTHERS: Atty Peter Olson; Marc Laibe; Atty Gary Oberst; Juan Perez; Richard Gilhooly

I. CALL TO ORDER

Mr. Levey called the meeting to order at 7:30 p.m. and then went over the rules of the public hearings.

II. ROLL CALL

Ms. Rochefort called the roll.

III. PUBLIC HEARINGS

A. 19-0516-01 – Elizabeth & Steven Najarian – Variance to permit three story house where 2 ½ stories are allowed. Property located at 19 Richmond Rd.

Mr. Levey opened the public hearing and Mr. Heuvelman read the legal memo into the record.

Peter Olson, the attorney for the applicants, submitted the certified return receipt cards evidencing notification of the public hearing to the neighbors. He also passed out a color photo of the current house. He explained the variance and noted that they did not need a variance for height. He showed them a Google Street view of the home. He said that there was a survey and architectural plans in their packets. The plans showed the new heights and what was to be added on the photo of the current house. It would add square footage to the house. There would be a change in the number of stories in the home. Since the house in a flood zone they cannot add fill to the property. There was a discussion about the basement walls. Atty Olson also discussed an engineering report that was submitted. Mr. Levey noted an error in the report. Atty Olson discussed the hardships on the property because of FEMA regulations. He also noted that they had submitted letters of support for the variance from neighbors. Mr. Heuvelman read these letters into the record. Neighbors were pleased that the applicants were not demolishing the house, which had been a part of the neighborhood for decades. Atty Olson noted that the house was a Sears and Roebuck home kit, built in 1929. There were no other questions from the commissioners.

Marc Laibe, 22 Drum Road, spoke in support of the application and noted that he had also submitted a letter in support.

No one spoke against the application. Mr. Levey closed the public hearing.

B. 19-0516-02 – David & Kathie Oberst – Variance to allow a reduction in required driveway width in order to access a compliant parking space. Property located at 21 Assisi Way.

Mr. Levey opened the public hearing and Mr. Heuvelman read the legal memo into the record.

Gary Oberst, the attorney for the applicants, submitted the certified return receipt cards evidencing notification of the public hearing to the neighbors. He noted that the case was different from others because the homeowners' contractor went to DPW for driveway permits but did not go to Zoning. He then handed out photos of the work that had been done. They did not know they needed a zoning permit for the driveway. He then handed out copies of the plans which include an area on it that indicated the violation. He also noted the size of the variance. Ms. Rochefort handed out the site plans which indicated where the compliant parking space would be. The commissioners asked for a condition which would have the applicant provide a new map. The picket fence would have to be re-located but the neighbors would not give up 5" because these were small lots. Atty Oberst then handed out photos of the current parking space. He noted that none of the neighbors would be inconvenienced and it freed up a parking space on the street. There was a discussion about the setbacks and why a variance was necessary. Atty Oberst then handed out another photo for the commissioners. The house when it was built in 1952 had no driveway. The commissioners had no other questions.

No one spoke for or against the application.

C. 19-0516-03 – Richard Gilhooly – Variance for after-the-fact expansion of a non-conforming single family house within the front setback. Property located at 28 Amundsen St.

Mr. Levey opened the public hearing and Mr. Heuvelman read the legal memo into the record.

Juan Perez, the engineer for the applicants, submitted the certified return receipt cards evidencing notification of the public hearing to the neighbors. He explained that the applicant was a developer and this was the first time he had encountered problems. Mr. Perez explained the documents that he had submitted to the commissioners. There were site plans pre and post construction. He then explained that many of the properties on the street were non-conforming. He also noted that another applicant had noted that other areas of Norwalk were similar to this property. He also believed that the architectural designs were in keeping with the neighborhood. He showed them a photo of the current property, built in the 1920s, and noted that it had not been maintained over many years. He then discussed the other photos in the packet. There was a discussion about the variance for the front portico which Ms. Rochefort noted that had not been on the application. It was, however, discovered and she added it to the legal notice. There was a discussion about the sketches in the packet. Mr. Perez said he was responsible for one of them. He also explained that the other pages of the packet were in support of the development

and that they had been reviewed and given a building permit. Mr. Perez also reminded the commissioners that they could have been built a larger house. Ms. Rochefort noted that there had been a misrepresentation what was on the plans. They reviewed the new survey. There was a discussion about the addition and how it was built. Mr. Perez discussed the schematic and how the contractor excavated. There was then a discussion about how many neighbors were notified. Mr. Perez said that he had not received any green cards back but that they had met with neighbors. There was a discussion about the building's non-conformity. Mr. Gilhooly said that he had not had a survey done until afterwards. Mr. Perez said that the applicant had known about it and that there was a hardship. Mr. Levey noted that if the application was denied they could sue the other parties that had made misrepresentations. Mr. Perez then discussed a law case, similar to this application. He also discussed the construction of the wall which the contractor had made a decision to build it slightly different with the owner's knowledge. Mr. Perez said that the portico could be removed if the commissioners wanted to make that a condition of the approval. He then discussed reasons why this application should be approved and what the hardships of the property were. He also noted that some of the neighbors wrote letters in support.

Mr. Gilhooly, 2 Althea Lane, Darien, CT thanked the commissioners for their time and that there were no deliberate misrepresentations. He felt bad that the property had to be removed from the market because the prospective buyers walked away from the deal. He has renovated several homes previously and this is the first where there had been a problem. He was unaware of the setback issues and it was not done to add square footage to the property.

Mr. Perez reminded the commissioners that the owner did not know the property was non-conforming. There was a discussion about a 2005 survey which Ms. Rochefort said that staff would next time require to be updated. Mr. Gilhooly noted that there were errors on all sides. He also discussed how the discrepancy had been found. There was also a discussion about where Mr. Gilhooly had developed his other properties and whether the people that worked on these plans were the same people who worked on those other properties. Mr. Gilhooly noted that the neighbors liked the house. Mr. Perez again noted that the portico would be removed and they would retain a landscape architect in connection with the encroachment.

No one spoke for or against the application.

IV. BOARD ACTION ON: A – C

A. 19-0516-03 – Richard Gilhooly – Variance for after-the-fact expansion of a non-conforming single family house within the front setback. Property located at 28 Amundsen St.

Before the commissioners voted on the application, there was a discussion amongst them. There was an explanation of the Zoning Department process. The applicant did not have a permit for the expansion. No amended plans had been filed with the Building Department. There was also a discussion about the foundations. Some of the commissioners considered denying the application. It would be an economic hardship which the commissioners were not allowed to approve. They also realized that the professionals on this project had not done their homework and had recourse.

**** MR. LEVEY MOVED to DENY the application without prejudice to give the applicant an opportunity to rectify the problem with the loss of setbacks. Mr. Strubinger seconded.**

At this point, there was a discussion about denying the application and whether there was another mechanism to be used. Ms. Altman asked if they could be fined but the Board did not have that authority. Mr. Levey then discussed denying with or without prejudice. He thought the owner could come up with a solution. Ms. Rochefort noted that there was an increase of the footprint by about 100 sq. ft. The commissioners decided to deny without prejudice.

Lee Levey; Taylor Strubinger; Marilyn Altman; Chris Gavrielidis; David Heuvelman voted in favor.

No one opposed.

No one abstained.

B. 19-0516-02 – David & Kathie Oberst – Variance to allow a reduction in required driveway width in order to access a compliant parking space. Property located at 21 Assisi Way.

Before the commissioners voted on the application, there was a discussion amongst them. The commissioners indicated that they would approve the application but they would have to have conditions about moving the air conditioning unit and the picket fence.

**** MR. LEVEY MOVED to APPROVE with the conditions that the applicant return to the ZBA with a new property survey showing the parking space, the relocation of the air conditioning unit and the picket fence.**

Mr. Strubinger seconded.

Lee Levey; Taylor Strubinger; Marilyn Altman; Chris Gavrielidis; David Heuvelman voted in favor.

No one opposed.

No one abstained.

C. A. 19-0516-01 – Elizabeth & Steven Najarian – Variance to permit three story house where 2 ½ stories are allowed. Property located at 19 Richmond Rd.

**** MR. STRUBINGER MOVED to APPROVE due to the fact that the hardship was that the lower level was impossible to occupy with the rock outcroppings. The other hardship was due to the FEMA regulations.**

Mr. Heuvelman seconded.

Lee Levey; Taylor Strubinger; Marilyn Altman; Chris Gavrielidis; David Heuvelman voted in favor.

No one opposed.

No one abstained.

At this point in the meeting, a member of the public asked to speak about an item which had not been scheduled on the agenda. The applicant had mistakenly notified the abutters before the complete application had been submitted to zoning.

V. ACTION ON HEARING MINUTES- April 25, 2019

**** MR. LEVEY MOVED to approve the April 25, 2019 Zoning Board of Appeals minutes.**

Mr. Strubinger seconded.

Lee Levey; Taylor Strubinger; Chris Gavrielidis; David Heuvelman voted in favor.

No one opposed.

Marilyn Altman abstained.

VI. ADJOURNMENT

Mr. Strubinger made a Motion to Adjourn.

Mr. Levey seconded.

Lee Levey; Taylor Strubinger; Marilyn Altman; Chris Gavrielidis; David Heuvelman voted in favor.

No one opposed.

No one abstained.

The meeting was adjourned at 9:09 p.m.

Respectfully submitted,

Diana Palmentiero