

March 23, 2010

**AGENDA: THE ZONING BOARD OF APPEALS**, Town of Hamden, held a Public Hearing and Regular Meeting on Thursday, March 18, 2010 at 7:00 p.m. in the 3<sup>rd</sup> Floor Conference Room, Hamden Government Center, 2750 Dixwell Avenue, Hamden, CT. and the following items were reviewed:

***Commissioners in attendance:***

Jeff Vita, Chair  
Wayne Chorney  
Fran Nelson  
Andrew Holding, sitting for Elaine Dove

***Staff in attendance:***

Dan Kops, Assistant Town Planner  
Holly Masi, Zoning Enforcement Officer  
Tim Lee, Assistant Town Attorney  
Stacy Shellard, Commission Clerk  
Lisa Raccio, Stenographer

Mr. Vita called the meeting to order at 7:02 p.m., reviewed the agenda and meeting procedures, and the panel introduced themselves.

Mr. Vita explained to the applicants that there are four Commissioners in attendance at the meeting and an application would need a unanimous vote to be approved. He advised the applicants that they have the option of not being heard at this meeting.

**A. Public Hearing**

- 1) 10-6381** 169 Mill Rock Road, Requesting a variance of the following: Section 220 to allow a lot area of 10,000 square feet where 20,000 square feet is required. Section 220 to allow a lot width of 80 feet where a minimum of 100 feet is required. Section 530.5 to allow steep slopes in the minimum lot area calculation. R-3 zone, East Rock Partners, LLC, Applicant  
**Public Hearing Continued from February 18, 2010 meeting**

Mr. Joe Porto, Attorney, addressed the Commission and stated that he would like this application to be heard. He submitted an affidavit and picture of the sign that was posted as required by the zoning regulations.

Mr. Tim Lee, Assistant Town Attorney, advised Mr. Porto that Mr. Houlding has asked to recuse himself and that there would not be a quorum for this application to proceed.

Mr. Vita stated that the Public Hearing for this application is continued until the April 15, 2010 meeting.

- 2) 10-6383** 145 Bradley Avenue, Requesting a variance of the following: Section 220, Table 2.3 to allow a three foot side yard to construct a garage where 12 feet is required. R-4 zone  
Ruben Jackson, Applicant

Mr. Ruben Jackson, 145 Bradley Avenue, addressed the Commission and reviewed the application. Mr. Vita asked if Mr. Jackson would be enlarging an existing garage or constructing a new one. Mr. Jackson said that he would be constructing a new garage. Mr. Vita asked Mr. Kops if the plot plan submitted is adequate. Mr. Kops explained that if the plot plan adequately depicts the variance requested and it shows what the impact would be, it is sufficient. He said that if it is not as desirable as a plot plan that shows all the dimensions and the boundaries. Mr. Kops stated that the requested variance is for the left side yard, and if the Commission feels the plan submitted is giving them the sufficient information that is needed to make a decision, then it is acceptable to him. Mr. Chorney said it does not meet the criteria that is asked for in the application. The plan does not show all the lot lines, there is a deck on the property that is not shown, and the scale is correct in square, but it is not correct if taken from the front lot line. Mr. Chorney said that the lot is large for the neighborhood and that the hardship must be shown. Mr. Jackson stated that the hardship is that his wife is handicapped and an attached garage would make it easier to get her from the house to the garage when the weather is bad. Mr. Chorney said that there is an access door on the right side of the house and the driveway is flat, and that there is an option of putting the garage to the rear of the property. Mr. Chorney feels that a hardship on the property has not been shown because there are other options. Mr. Chorney said that the garage could be located close to the house and the zoning regulations would then allow for a 3 foot rear yard and 3 foot side yard. Mr. Kops said that it would have to be in the required rear yard and side yard. Mr. Chorney feels that the plans submitted do not show if a garage can be placed in the rear yard. Mr. Jackson reviewed the submitted plans with the Commission. Ms. Holly Masi, Zoning Enforcement Officer, stated that an attached garage must meet the setbacks of the primary structure. Mr. Chorney said that there is an option to move the garage back and have it as a detached garage. Ms. Masi feels that a detached garage may defeat the purpose of why Mr. Jackson is asking for a garage. Mr. Chorney does not feel it would defeat the purpose of having a garage, because a side exit door from the house would be closer to the garage. Mr. Vita asked if the plan is for a one or two car garage. Mr. Jackson said the plan is for a one car garage. The Commission discussed the possible options for the garage and if it would be handicapped accessible. Mr. Nelson asked if there would be a cut through for a door into the garage. Mr. Jackson said there will be a door and will add it to the plans.

Mr. Chorney reviewed with the Commission where a detached garage could be placed and would have the three foot side yard. Mr. Chorney asked if the garage is moved back a foot would it be considered to be located in the rear yard. Mr. Vita said that if the garage is detached there would be an issue with regards to the height. The Commission discussed the location of the garage with regard to being made handicapped accessible. Mr. Chorney said that if the hardship is because someone has a serious physical problem they should submit a medical report to clarify the degree of disability.

Mr. Vita asked for clarification with regard to the rear yard setback. Ms. Masi said that a detached garage would have a height requirement of no more than 15 feet and the rear yard setback would be 3 feet with a side yard of 3 feet. Mr. Houlding asked Mr. Jackson if there would be a handicapped van. Mr. Jackson stated he does not own one. Mr. Chorney stated that he does not feel that there is a strong hardship to grant the variance. The Commission continued to discuss the placement of the garage with Mr. Jackson and the Planning Staff, and that the lot is narrow and deep. Mr. Nelson asked if other houses in the neighborhood have garages. Ms. Masi said that there are other homes in the neighborhood that have garages. Mr. Jackson discussed with the Commission the garages located in the neighborhood and stated that they do not have 12 feet side yards. Mr. Jackson submitted an affidavit and picture of the public hearing sign required by the zoning regulations.

Mr. Vita asked for comments in favor or against the application and there were none.

Mr. Vita closed the Public Hearing.

- 3) 10-6384** 42 Farm Brook Court, Requesting a variance of the following: Section 220, Table 2.3 to allow a rear yard of 26.4 feet where 40 feet is required to add an enclosed porch and deck R-3 zone, William Menosky & Linda Simmons, Applicants

Mr. Bill Menosky and Ms. Linda Simmons, 42 Farm Brook Court, addressed the Commission and reviewed the application. Mr. Menosky said that the hardship is the placement of the house and that the septic system is located in the left side yard. Mr. Chorney reviewed previous variances for houses in the neighborhood. He explained that

there were errors made when the original surveys were done and that the original builder placed the houses too far to the rear of the lots. Mr. Kops gave the Commission minutes from the previous meetings that granted the variances. Mr. Menosky said he had a survey done one year after he brought the house to confirm the lot lines.

Mr. Vita asked for comments in favor of the application and there were none. Mr. Vita asked for comments against the application and there were none. Mr. Vita stated that a letter dated March 12, 2010 was received from Mr. John Lujick and Ms. Patricia Lujick in favor of the application. Ms. Masi stated that a letter from the RWA was received and they had no comments. Also, a letter from the QVHD was received which addressed the septic and sanitary systems.

Mr. Vita closed the Public Hearing.

**4) 10-6385** 123 Forest Street, Requesting variances of the following: Section 220 to allow the lot width of 32 feet legal non-conforming lot where 80 feet is required. R-4 zone  
Forestland Homes, LLC, Applicant

Mr. Bernard Pellegrino, Attorney, submitted an affidavit and picture of the posted sign required by the zoning regulations and addressed the Commission. Mr. Lee asked if Mr. Pellegrino was going to proceed with only four Commissioners present at this meeting. Mr. Pellegrino stated that he would go forward with the application. Mr. Pellegrino stated that Mr. Wilson owns 123 Forest Street, 98 Orchard Street and 106 Orchard Street and has a contract with Forestland Homes LLC to purchase the 3 parcels with the intent to build 3 single family homes. Mr. Pellegrino reviewed the site plan and said that the existing lots were created in 1920 with a subdivision. Mr. Pellegrino said that the original subdivision were adjacent to paper roads and reviewed the area with the Commission. The proposal is to revise the current lot line configurations and this would eliminate the non-conformities for 98 Orchard Street and 123 Forest Street and allow 3 single family homes to be developed on the parcels. Mr. Pellegrino said that the existing lot line for 123 Forest Street is 7,000 square feet where 10,000 square feet is required and has 57 feet of frontage on Forest Street. Mr. Pellegrino said that 98 Orchard Street is 9,000 square feet and is a preexisting non conforming lot and will be revised with the lot line revision to be 27,000 square feet, and 106 Orchard Street is on 48 acres will be reduced to 32,000 square feet. Mr. Pellegrino said that the result of the lot line revision would create 3 lots that meet the zoning regulations. He explained that lot 2 on Forest Street has no frontage and in the proposed lot line revision would have the 25 foot frontage that is required for a rear lot, and 98 Orchard Street would have a 25 foot wide strip. Mr. Nelson asked how 106 Orchard Street would be accessed. Mr. Pellegrino explained that all three lots would share the same access by one driveway, and reviewed the location with the Commission. Mr. Pellegrino stated that IWC has approved a conservation easement. Mr. Pellegrino reviewed with the Commission the IWC map that was approved at the March 3, 2010 meeting.

Mr. Chorney stated that a previous application which was denied had a driveway access of 400 feet was denied and it was because emergency vehicles did not have the accessibility to move their equipment. Mr. Pellegrino said that the zoning regulations are met with the proposed application. Ms. Masi stated that she has spoken with the Fire Marshal and he told her that there were inquiries made regarding the safety. Ms. Masi reviewed the conversation she had with the Fire Marshal and that he had referenced homes in Northern Hamden that have similar accesses and that the Fire Department does not regulate the width of driveways. Mr. Chorney would like something in writing from the Fire Marshal stating his position. Mr. Pellegrino reviewed the length of the access driveway and the zoning regulation with the Commission.

Mr. Chorney asked Mr. Kops if he had verified who currently owns the properties. Mr. Kops said that the owner is Mr. Wilson and the lots have not been sold. Mr. Chorney discussed with the Commission his findings when researching the properties at the Town Clerks Office. Mr. Pellegrino stated that Mr. Wilson owns all 3 properties.

Mr. Victor Benni, Civil Engineer, addressed the Commission and reviewed the easement that is on a portion of 98 Orchard Street that services a drainage pipe that extends off the property at 111 Orchard Street. He said that the Assessor's records itemize the 3 parcels as being under the ownership of Mr. Wilson. Mr. Chorney said that the

computer shows both lots as being sold. Mr. Kops said that Vision Appraisal shows the owner is Mr. Wilson. Ms. Masi stated that she had researched the land records and Mr. Teig was the only reference she found and it was to the easement. Mr. Benni stated that Mr. Wilson's sister Ms. Robinson had stated they paid taxes on the property as recently as 2010. Mr. Chorney said that the survey should show the easement. Mr. Benni said that the survey being presented only has to show the property boundaries and shows the limits of the properties and it was done prior to the easement being filed on the land records.

Mr. Pellegrino stated that the proposed lots that are being proposed meet all the zoning and ordinance requirements and the variance being requested is for the frontage at 123 Forest Street. The proposed frontage for 123 Forest Street is 32 feet where 80 feet is required. Mr. Nelson asked if the frontage at 98 Orchard Street is 25 feet. Mr. Pellegrino stated it is 25 feet and if the variance at 123 Forest Street is granted it would eliminate the legal non-conforming lot sizes and the frontage that is currently a legal non-conforming frontage for 98 Orchard Street. Mr. Pellegrino said that the hardship at 123 Forest Street was created prior to zoning regulations. Mr. Pellegrino reviewed the appeal for Adelson vs. ZBA 205 CT 713 in 1988 held a variance that would eliminate a non-conformity and constitutes an independent grounds for sustaining the granting of the variance. The case was decided positively by the appellate court in a case Stancuna vs. ZBA of Wallingford(submitted copy) and Mr. Pellegrino reviewed the findings and stated that it had valid ground and hardship which permits granting the variance. Mr. Vita asked if the finding means that they would not have to show a hardship or that the elimination of a non-conformity is a substitute for showing hardship. Mr. Pellegrino feels it is saying that in and of itself constitutes grounds for granting the variance. Mr. Chorney asked that this application is creating a more severe non-conformity with regards to the frontage and appears to be creating 3 rear lots by moving the lot lines around. Mr. Pellegrino said that it would be 2 rear lots and 123 Forest Street would be legally a front lot with the variance. Mr. Chorney said that 123 Forest Street is currently a legal non-conforming lot and does not need a variance. Mr. Pellegrino said that there are 3 lots existing and are being reconfigured and that the proposed lot line revision would reduce the frontage at 123 Forest Street.

Mr. Chorney stated that it appears to be a re-subdivision of a subdivision by recommending a lot line movement and it creates 3 lots that are viable where there are 3 lots that are not viable because of access. Mr. Pellegrino said that it is not a re-subdivision and is a lot line revision legally, because it is not creating additional lots. Mr. Vita said it is legally not a subdivision or a re-subdivision. Mr. Pellegrino said that the Planning Office and Mr. Lee had determined that it would be a lot line revision.

Mr. Chorney asked if there could not be a maximum access way off of one drive service 3 lots. Mr. Kops said that the issues are driveways and access ways. The requirement is that rear lots must have 25 feet of frontage and that the access way has a maximum of 400 feet to the property. There is nothing that requires an individual property owner to have a driveway on the property, and may share a driveway as long as each property has an access way. Mr. Chorney asked if it would be a deeded right of way. Mr. Kops said it would need an easement. Mr. Kops reviewed the proposed access ways that starts with frontage on Forest Street.

Mr. Vita asked Mr. Kops if he would like to comment from the Town's respective regarding the application. Mr. Kops stated that he will answer any questions that the Commission has with regards to the application, but he does not have a statement regarding the application.

Mr. Vita asked for comments in favor of the application and there were none.

Mr. Vita asked for comments against the application:

Mr. Geoffrey Ramsey, President of the Mount Carmel Action Committee addressed the Commission and reviewed the homes located in the area and who currently owns them. He said that the ZBA had heard a request for a variance in 1990 for the same type of application. Mr. Ramsey submitted a copy of the Town Map. He stated that Mr. John Busca had tried to push through a development that would have allowed 13 houses that required 80 foot width frontages and they were asking to allow 50 or 60 foot width frontages. The ZBA required a road with a turn around in so that emergency vehicles could have access. Mr. Ramsey said that area is a wet area and water runs off the property. He submitted and reviewed with the Commission pictures of 123 Forest Street and the surrounding

properties which shows the damage done by water runoff. He said the lots are wet and that is why they have not been developed and he reviewed the conservation area that it is not shown on the applicant's plans. Mr. Vita asked if the application were approved if the length of the driveway could not be more than 400 feet long. Mr. Kops said that they would not be able to get a zoning permit if the driveway were more than 400 feet. Ms. Masi said that the plan meets the regulations and its intent. Mr. Ramsey said that the new property line goes through a shed on the abutting property which can be moved, but if there is any digging in the area, it could cause erosion in the area of the deck foundation. Mr. Ramsey reviewed 129 Forest Street and said that the owners had no idea when they bought the house, they would have 3 rear houses built. Mr. Ramsey reviewed 106 Orchard Street and where the driveway widens to 12 feet there is a retaining wall, so that an emergency vehicle would have trouble entering if the lots are developed. He reviewed the location of the fire hydrants. Mr. Ramsey submitted an ordinance titled Building on Unaccepted Streets. He reviewed ordinance 154.02 and the third lot does not show a driveway. Ms. Masi said that this meeting is not to allow the building of a house, but grant a variance for the lots themselves. Mr. Ramsey said that 123 Forest Street does not conform to the 80 foot frontage and he feels that a hardship has not been shown. Mr. Ramsey said that Mr. Wilson lives in the state of Washington, the builder is from Cheshire and the Attorney is from New Haven, and the residents who are concerned all live in Hamden and are taxpayers.

Ms. Debra Ramsey, 78 Melrose Drive, addressed the Commission and stated she is opposed to the variance being granted. She feels that once the variance is approved she is concerned with the problems that the lots would have with regards to the wetlands, a turn around and the driveways. She stated that the homes will have small back and front yards.

Mr. Ira Kleinfeld, 93 Melrose Drive, addressed the Commission and stated that he feels the owner of the property is out to make a quick buck, and that it would be to the detriment of the town, homeowners, and neighborhood.

Ms. Elizabeth Howard, 129 Forest Street, addressed the Commission and stated that her property would be next to the proposed shared driveway entrance. She is concerned with the traffic and the amount of space for the driveway. This would only leave a small piece of parcel between her driveway and the proposed drive way. Ms. Howard stated that she is opposed to the variance.

Mr. Tom Harberg, 13 Vine Street, addressed the Commission and stated that he purchased his property in 1987 which he had purchased from his landlord at 27 Vernon Street. Mr. Harberg reviewed the history of his property. He explained that he needed a variance to split his lot from his landlords and he was told by the ZBA Commission that because of an error made with the deed the sewer assessment charges had been incorrectly billed. Mr. Harberg stated that at the time he was told by the Commission that there would never be another variance granted in the area because of the small lot sizes in the area. Mr. Harberg is concerned with the wetlands. He is also concerned that it is probable that when the houses are built they will become student housing and it will devastate the area.

Ms. Irma Davis, 64 Melrose Avenue, addressed the Commission and stated that her primary concern is the characteristics of the neighborhood. If the variance is granted and construction takes place she is concerned about her yard. She stated that she has been working for the last 25 years to build a foundation so that her yard does not slip further into the woods. Ms. Davis feels if there is any digging in the area she could lose her deck. She invited the Commission to do a site visit. Ms. Davis said her primary concern is not to interfere with the property owners right to build on their property, but that it should conform with the existing homes in the neighborhood.

Mr. Olmar Stokes, 129 Forest Street, addressed the Commission and stated he and his wife purchased their home because it was a quiet neighborhood and as a young couple a home where they could grow. He feels that the houses being proposed would diminish the feeling of the neighborhood. There is some heavy traffic on Forest Street and additional homes would add to it. Mr. Stokes is also concerned with possible student housing. He said that they had moved from Aspen Glen because of the student population.

Mr. Michael Iezzi, 1<sup>st</sup> District Councilman, addressed the Commission and he stated that he has had extensive conversations with the neighbors in the area and that their concerns are legitimate. Mr. Iezzi stated that the neighbors are not against the building, but want it done correctly and responsibly and it be built within what the

zoning regulations allow. Mr. Iezzi said that he hopes the Commission listens to the neighbors because they are familiar with the area and the erosion that has taken place.

Ms. Darlene Cox, 135 Forest Street, addressed the Commission and stated that she has lived in her home for 30 years and has seen how the traffic increased in the area. Ms. Cox said that her concern is that Melrose Avenue is hilly and cars travel quickly. The common driveway proposed, she envisions increased amount of trash cans, recycle bins, bulk trash pickup and additional mail boxes would become a problem. Ms. Cox said that she and the neighbors take great pride in the neighborhood and want to maintain what has existed for 30 years.

Ms. Debbi Fredericks, 86 Melrose Avenue, addressed the Commission and stated that she has owned her home since 1976 and has a problem with erosion. She said that the proposed driveway will be built on an angle and it will not be workable. Ms. Fredericks feels that if the proposed driveway is flat it will have to be built up and that would cause further erosion. She could not afford a retaining wall and has lost all of her property. There is a sewer main that was flush and is now up over 10 inches, and was told it was her problem when she tried to get an easement.

Mr. David Cox, 135 Forest Street, addressed the Commission and stated he had been a member of the IWC in the past. He said that the way the lot is configured the last house is 1000 square feet and both the drainage pipes on the wetlands drawings extend into the non-disturbance area. The ZBA should only look at the redesigning of the lot. Mr. Cox feels that the applicant proposed a small rear lot so that it would get approved by IWC and now they are taking the property and reconfiguring it for 3 rear lots. He said that because 3 rear lots are not allowed they are giving frontage to one lot. Mr. Cox stated that if each commission does not look at the overall picture of what is happening with the lots and if the application is approved it will end up with what can be perceived as 3 rear lots. Mr. Cox feels that houses on two properties would be reasonable based on the frontage, IWC, and the neighborhood. Mr. Cox stated that he is against the application.

Ms. Joan Sparapani, Hamden Resident, addressed the Commission and asked for clarification if in an R-4 zone 80 foot of frontage must face an existing street. Mr. Kops stated that the frontage must face an existing street. Ms. Sparapani said that when she looks at the map, Orchard Street is a paper road and if the variance is with regard to an entrance for the 3 lots. Mr. Kops explained that the variance is a request to reduce the existing lot width from 57 feet to 32 feet. The lot width is measured at the front yard setback and is usually equivalent to the frontage if there are perpendicular angles.

Mr. Pellegrino stated that Mr. Wilson is 91 years old and is currently in a convalescent home in Cheshire. Mr. Wilson has been the caretaker of the property for over 60 years and a taxpayer who should be given some respect to his property rights and desires. Mr. Pellegrino said that the property has been undeveloped for many years and can be a disconcerting issue for a property that has been enjoyed by the neighbors. Mr. Pellegrino feels that Mr. Wilson has been very careful to analyze who would develop the property and that the applicant has a very good reputation as a builder. The proposal is with keeping with what is already in the neighborhood. Mr. Pellegrino said that the lots sizes are up to 4 times larger than the other lots in the neighborhood and that it should not be forgotten that Mr. Wilson has taken care of and paid for the land for 60 years. Mr. Pellegrino said that his daughter Dale, who acts as Mr. Wilson's guardian has flown in from the State of Washington and is present along with Mr. Wilson's other daughter who have been active in the process of the project. Mr. Pellegrino feels that the request for a variance is not unreasonable and believes the project will benefit the neighborhood.

Mr. Pellegrino stated with regard to the water issues the proposed stormwater design will be contained in a swale system design and will improve the stormwater issues and has received IWC approval. The shed that is encroaching on to the property was determined by a survey and can remain on the property until the property is sold. Mr. Pellegrino said that the issue regarding student housing is not an issue, because the project is intended to be single family homes. He stated that any student housing requires a permit. Mr. Pellegrino said that Ordinance 154.04 based on discussions with the Town Engineer and Mr. Lee, Assistant Town Attorney would exempt the lot to the rear, so long as there is a permanently recorded easement.

Mr. Vita said that Ordinance 154.04 references two tracks and what is proposed is three tracks. Mr. Pellegrino said that one lot has its own access and would not be considered. Mr. Chorney asked if the access ways straddles two lots. Mr. Pellegrino reviewed the lots and access way locations. Mr. Chorney referred to the access ways that are referred to in the IWC plans that have received approval. Mr. Pellegrino said that he is not referring to driveways and he was referring to the access strip. Mr. Chorney reviewed Section 532.e of the zoning regulations and said it is confusing because there is reference to a driveway and an access way for a rear lot. Mr. Pellegrino said that technically 123 Forest Street would not be a rear lot. Mr. Chorney reviewed the lot line revision with Mr. Pellegrino. Mr. Chorney asked if by changing the lot lines it would create 2 or 3 rear lots, because it appears as 3. He said the existing smaller lot which will be 123 Forest Street is a legal non-conforming lot and now would become the access way for the 2 rear lots. Mr. Pellegrino reviewed the proposed lot line revision and said that the variance is pertaining to the frontage for 123 Forest Street. Ms. Masi said the variance is for the frontage which is currently 57 feet and if the variance is granted would become irregularly shaped, but still a front lot. Mr. Chorney feels that the request appears to have a lot going from a legal non-conforming lot with frontage to a rear lot which would have a frontage of 25 feet. Mr. Pellegrino said if the lot were a rear lot it would meet zoning requirements, to be legally considered a rear lot. Mr. Chorney said that the zoning regulations may not be clear with regard to rear lots. Mr. Chorney referred to Section 530.2.e and that the 400 hundred foot delineation is unclear. He said there is also a safety issue and if it were to go before the Fire Marshal, the plan submitted to the IWC should be referenced because it shows the physical features that are proposed.

Mr. Pellegrino asked Ms. Masi if a zoning permit requires the application to go to all the departments. Ms. Masi said that whether it is the 2 lots that are allowed or the 3 lots proposed, the applicant would have to submit the final plans to the Town Engineer for a full review of all the stormwater management, meet all the conditions set by the IWC, health department, police department and the fire department for a review. She explained that all the departments would have to sign off and a performance bond would have to be posted for the required site work before a zoning permit could be issued. Mr. Chorney said that the ZBA has the responsibility to address a public safety issue and could deny or grant a variance. There is a question that needs to be answered by the Fire Department and they should be referring to the IWC plans because it shows the physical features and the plan before the ZBA only shows the grading. The IWC plan shows features to stabilize and change the terrain.

Mr. Pellegrino stated that he would agree to the public hearing remaining open so that the Fire Department could review the application and make comments. Mr. Chorney said that the Commission should receive something in writing from the Fire Department. Ms. Masi stated that the Fire Marshal has agreed to come to next months meeting to answer any questions. Mr. Chorney said that the layout of the plan looks to be viable. Mr. Pellegrino stated that a number of different layouts have been reviewed and were revised during the IWC meeting and was unanimously approved. Mr. Chorney feels that the ZBA should base some of their decision on the approved IWC plan and the public safety issues should refer to the IWC plans. Mr. Pellegrino would like the issue to be limited to the Fire Marshal's comments at the next meeting.

Mr. Vita asked Mr. Pellegrino if options were explored for ways to configure the lots to minimize the variances needed. Mr. Pellegrino said that they had explored different options. Mr. Vita asked if they had looked at reducing the plan to two lots instead of three. Mr. Pellegrino said no because the frontage is the frontage and they had looked at various options for three lots. Mr. Pellegrino said that Mr. Wilson has paid taxes on three lots, and two lots would still need a variance for the frontage. Mr. Nelson asked if on the paper roads can Orchard Street be used. Mr. Pellegrino advised the Commission that Orchard Street is within the wetlands and that Henley Street had also been looked at, but the topography was an issue. Mr. Pellegrino reviewed with the Commission the wetland areas and the conservation easement. Mr. Chorney asked Mr. Kops to explain the rear lot buffer area. Mr. Kops said that a buffer is required between the house to be built on the rear lot and the house in front of it, and there is a 50 foot setback between the property line and where the house will be built. Mr. Chorney asked if this would be a concern if a deck is built. Mr. Kops said that deck would be coming down the side.

Mr. Benni reviewed with the Commission the conservation easement required by the IWC. Mr. Benni said that they had demonstrated to the IWC that using the area outside of the conservation area but within the 100 foot buffer area was validated by the stormwater system to be used. This would also provide useable rear yards for each property. The stormwater quality measures offset using some of the 100 foot buffer area. Mr. Benni said that the

upland limits of a wetlands system that extends on to the subject parcel is 8,500 square feet and the proposed conservation area is 40,000 square feet. Mr. Chorney asked if it would be deeded. Mr. Benni said it would be a deeded conservation area which would be referenced on each of the property deeds.

Mr. Vita stated that the Public Hearing will be open for sole purpose of the receipt of the comments of the Fire Marshal and the ZBA's review of the comments. Mr. Vita explained that the next public hearing is for the purpose of hearing the Fire Marshals comments only, and any additional comments regarding this application should be made at this meeting.

Mr. Ramsey said that the 57 foot non-conforming frontage where 80 feet is required and dividing the frontage in half would not be improving the lots with larger rear yards. He feels that the ZBA should be looking at the width of the property. He said that the ordinance has an exception which is not shown on approved and recorded subdivisions and the lot is on a subdivision so it would not be an exemption. Mr. Ramsey said that the Legislative Council had passed the original ordinance and the ZBA should not override their decision. Mr. Ramsey feels that previous Fire Marshals have had concerns which should not be overlooked by a new Fire Marshal. Mr. Ramsey said that when the Wetlands application was approved it was not a unanimous vote.

Mr. Pellegrino said that subdivision was recorded prior to zoning regulations by the developer before the regulations governed the division of land and the exemption does not preclude this application.

Mr. Vita stated that the Public Hearing will be continued until the April 15, 2010 meeting.

The Public Hearing closed at 9:00 p.m.

## **A. Regular Meeting**

### **a. Discussion and voting on Public Hearing items.**

#### **10-6383**

Mr. Nelson made the motion to approve Application 10-6383. Mr. Houlding seconded the motion. Mr. Nelson said that the lot is narrow and deep and no matter where the garage is placed a variance would be needed. The hardship is to have handicap accessibility and the size of the lot and that it is narrow. The motion passed unanimously.

#### **10-6384**

Mr. Chorney made the motion to approve Application 10-6384. Mr. Houlding seconded the motion. Mr. Chorney said that it is a minor variance being requesting and the ZBA has reviewed the previous variance and it is keeping within the existing sidelines and the dimension going to the rear is only six feet and is minor in depth. The motion passed unanimously.

### **b. Approve Minutes of February 18, 2010**

Mr. Nelson made the motion to accept the minutes of February 18, 2010 as written. Mr. Chorney seconded the motion. The motion passed unanimously.

### **c. Old Business**

Mr. Chorney stated that for the application that was approved for 1774 Dixwell Avenue at the last meeting, the applicant had represented parking spaces on the street as counting towards the required parking. Mr. Chorney had addressed that the parking requirements do not allow cars to park 25 ft to a corner or a bus stop, and the second space would not be conforming. When the applicant was asked if the parking existed, they had replied yes. When

asked if there was allowed parking on the side of the building, they said yes and there is a no parking sign. Mr. Chorney said that he would like the decision to be rescinded. Mr. Kops stated that the decision cannot be rescinded, and the applicant cannot go forward because he does not have the parking spaces required by the variance. Ms. Masi stated that the applicant cannot go forward with his amendment to the Site Plan Application, or get a zoning permit. Ms. Masi explained that the applicant is pursuing changes to the parking on Red Rock Terrace and will be going before the Traffic Commission next month and will be submitting a new variance application for the required parking. Mr. Chorney said that he saw a draft that Ms. Masi is working on to correct the parking regulations so that it complies with the State parking regulations. Ms. Masi said she had spoke with the Traffic Engineer and has gathered the State Statues and ordinances that pertain to legal parking and when the zoning regulations are amended the parking regulations states as defined by State and Local parking regulations. She will have them available to the applicants so that they have a reference regarding legal parking spaces. Ms. Masi explained that this was the first application that has come before a commission regarding parking on the street.

**d. New Business**

Mr. Chorney said that he has seen a problem with applications regarding owners of the property and not being able to read the signature, and he would like to see the printed name appear. He said that when the ZBA approves a plan, he would like a stamp that states that it was the drawing approved with a date and signed by the Chair of the ZBA at the meeting, and any modifications made to the plan after it was approved should also be reviewed by the Chair so that it is the Commission approving the plan. Ms. Masi stated that when a plan was approved by the Commission she verifies what was requested has been included. Mr. Kops said he would have to check and see if the ZBA would have the authority after a variance is approved. Ms. Masi explained that the ZBA grants the variance and she is charged with enforcing the regulations when she issues the zoning permit. Mr. Chorney said that the filing process should show that it is signed off by ZBA. Ms. Masi said that the notice of decision that is filed references the Chair person and the date. Mr. Chorney asked that when a variance was previously granted he would like the minutes included with the new application.

Mr. Vita asked Ms. Masi if there has been anything proposed for the Toys R Us location and Ms. Masi said she has not received anything.

Mr. Chorney said that there is a deadline for an application to be submitted, and if it is not complete it should be reviewed by a ZBA Commissioner prior to the meeting and no other information should be added. Mr. Kops stated that the Planning Office reviews the application and if something is missing they contact the applicant. If the information is brought to the Planning Office 10 days prior to a public hearing as required by the zoning regulations. When it is being heard and if it is determined to be incomplete the Commission can vote accordingly. Mr. Chorney discussed with Mr. Kops and Ms. Masi the difficulties of incomplete applications. Ms. Masi said that she does a site visit prior to the meeting, and determines that the calculations are complete and checks the assessor's cards. Mr. Chorney feels that if a commission member does not visit the property they may not know other options may be available for the application or that the application may not be complete. He also feels that a site visit could help to determine if a hardship does exist.

**e. Adjournment**

Mr. Nelson made a motion to adjourn. The motion was seconded by Mr. Chorney. The motion passed unanimously.

*The meeting adjourned at 9:20 p.m*

Submitted by: \_\_\_\_\_  
**Stacy Shellard, Commission Clerk**