

November 25, 2014

MINUTES: THE ZONING BOARD OF APPEALS, Town of Hamden, held a Public Hearing and Regular Meeting on Thursday, November 20, 2014 at 7:00 p.m. in the 3rd Floor Conference Room, Hamden Government Center, 2750 Dixwell Avenue, Hamden, CT. with the following results:

Commissioners in attendance:

Jeff Vita, Chair
Wayne Chorney
Fran Nelson
Elaine Dove
Suzanne Carroll

Staff in attendance:

Dan Kops, Assistant Town Planner
Tim Lee, Assist Town Attorney
Holly Masi, Zoning Enforcement Officer
Stacy Shellard, Commission Clerk
Genevieve Bertolini, Stenographer

Mr. Vita called the meeting to order at 7:01 p.m., reviewed the agenda and meeting procedures, and the panel members introduced themselves.

A. Public Hearing

1) 14-6543 23 Thompson Street, Request variance: Section 220, Table 2.3, to allow a side yard of 0ft where 12ft is required for an addition. R-4 zone, Dominic Perrelli, Applicant, *Public Hearing continued from 10/16/14 meeting*

Mr. Dominic Perrelli & Ms. Patty Perrelli, addressed the Commission and introduced themselves to the board. Mr. Perrelli reviewed the variance request and noted that the abutting neighbor does not have any objections to the variance request. He stated that currently there is only one bathroom in the house and it is located on the second floor. Ms. Perrelli said that she and her husband are getting older and have health issues, but would like to remain in the home that they have owned for 38 years.

Mr. Vita asked if the variance request is for a bathroom only. Mr. Perrelli replied yes. He reviewed pictures of the house, yard and abutting property with the Commission.

Ms. Dove asked how old the kitchen cabinets are. Ms. Perrelli replied that they were put in back in the 1990's. Ms. Dove asked why the proposed bathroom could not be put where the deck is currently located. Mr. Perrelli replied that he would need to remove the deck. Ms. Dove stated that the request is for a half bathroom and the applicants may need a full bathroom in the future.

Mr. Vita stated that proposed bathroom will be right on the property line with a 0 side yard. He noted that the Commission rarely approves a variance for zero foot side yard and asked if the applicant has reviewed all possible locations for the bathroom.

Mr. Fred Massotta, Contractor, addressed the Commission and stated that he could narrow the proposed bathroom which would place it one foot from the property line. Ms. Dove stated that reducing the size of the bathroom would make it very small and difficult to move in.

The Commission discussed alternative locations for the bathroom with Mr. Massotta, Mr. Perrelli and Ms. Perrelli. Mr. Vita noted that a variance stays with the property and future neighbors may not like the addition being at the property line. Further discussion ensued.

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

The Commission & Planning Staff discussed the existing side yard and possible locations for the proposed bathroom.

Mr. Vita asked Mr. Perrelli if he was willing to consider an alternative that does not require an additional variance on the side yard and reduces the amount of the variance. Mr. Perrelli replied that he is not willing to change the location of the proposed bathroom.

Mr. Vita closed the Commission.

2) 14-6544 50 Maplewood Terrace, Request variances: Section 220 Table 2.3 to permit an 18ft front yard where 25ft is required for an enclosed porch; Section 220, Table 2.3, to allow a side yard of 6.5ft where 12ft is required for a storage room; Section 220, Table 2.1 to permit 26.5% building coverage where 25% is allowed. R-4 zone, OVZ Home Improvement, Applicant, *Public Hearing continued from 10/16/14 meeting*

Mr. Ismael Marrero, Contractor, addressed the Commission and reviewed the variance. Mr. Marrero reviewed the existing conditions and the proposed work with the Commission and Planning Staff.

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

Mr. Vita closed the Public Hearing.

3) 14-6548 20-36(aka 35-36) Todd Street, Request variance: Section 652.4 (previously 736a) to eliminate the need for Assisted Living Services or other services for persons aged 55 or older in a Managed Residential Community. T-3 Zone, Trailside Village Assc, Inc., Applicant

Ms. Lisa Anderson, Attorney, addressed the Commission and reviewed the variance request to remove the requirement that the Homeowners Association provide assisted living services. There are 45 units completed, but the infrastructure remains unfinished. The project has failed and the development rights for 65 units have expired with no more units being constructed. Ms. Anderson stated that at the time of purchase the buyers were not aware of the condition that assisted living services be provided. The condition of approval that the homeowners association provides and pays for assisted living services was due to the developer and not by the owners. The developer lost the project and the bank has stepped in to complete it. The clubhouse that was to house the nurse is not owned by the owners of the association. Ms. Anderson stated that the idea that assisted living services can be provided by laborers who are not health professionals is a flawed idea. Ms. Anderson reviewed the original approval minutes of the Planning & Zoning Commission meeting that included the testimony from expert witnesses. Except in one minor place, the public offering document provided to her clients did not mention the managed residential communities. The public offering document and subsequent budgets did not provide for assisted living services. The Commission and Planning Staff discussed the approval for assisted living services and the Managed Residential Community zoning regulations with the Commission.

Mr. Nelson asked if there is a bond in place. Mr. Kops explained that there is a bond but it is not enough to complete the work. Mr. Lee stated the bond that is in place is for the physical improvements and work needed

within in the Town's right of way. The Town and the bank have started discussions and have discussed calling the bond. Ms. Anderson discussed the bond currently in place with the Planning Staff and Commission.

Ms. Anderson stated that the condominium has attracted healthy people who are not in need in of services. If the variance is granted the Town will be asked to call the bond and the project site work will be completed. No more units will be constructed.

Mr. Chorney asked where the community building is located. Ms. Anderson reviewed the location of the community building with the Commission.

Mr. Dan Franchi, 35 Todd Street, Homeowners Board Member, addressed the Commission and stated that his understanding is that the club house is owned by the declarant, Mr. Fiske, and that the bank has a mortgage in excess of what the value is. The bank has taken over the clubhouse and winterized it to protect its asset. The Commission further discussed the club house.

Mr. Chorney asked how it affects banks giving mortgages to those who are purchasing the units. Ms. Anderson stated that if the variance is not granted, it would create issues because the homeowners association is not offering assisted living.

Mr. Nelson asked if it would be an asset to the community to have a part time nurse. Ms. Anderson stated that she has had to have other assisted living communities dismantled because it does not work. She represents over 350 communities in the state and not a single one has been successful. Mr. Nelson asked if the title for the property will be affected and Ms. Anderson replied no.

Mr. Chorney questioned if a certificate of occupancy was granted. Ms. Holly explained that the individual units have conditional certificates of occupancy.

Mr. Vita asked for comments in favor of the application. There was none.

Mr. Vita asked for comments against the application:

Mr. Alan Gold, 95 Todd Street, addressed the Commission and asked why the project was built under Managed Care. Also, the approval required that the road be widened and asked who will pay for it. Mr. Gold stated that the Commission should get the State stipulations before voting on this variance. Mr. Vita stated that the developer had proposed the project under the regulations that allowed assisted living. Mr. Gold questioned why the project was approved under the managed care. He objected to the project because it made the area too congested. Mr. Gold would like to see what the State stipulations are before the Commission approves the variance.

Ms. Anderson said that if approved she most go back to the Planning & Zoning Commission to address the issues that exist on the site.

Mr. Gold stated that the approval required the road to be 30 feet wide with access to both driveways.

Mr. Kops said the project was approved in 2004 and the widening of the road was part of an amendment to the original application and not required for managed care services. The Commission further discussed the approved project and bond requirements with Mr. Kops.

Mr. Sandra Schiff, 35 Todd Street, addressed the Commission and reviewed the existing conditions and noted that the development is not equipped to provide managed care or assisted living. The existing units cannot be sold because of the requirement that the association provide managed care services.

Mr. Chorney asked Ms. Anderson if the homeowners association would be willing to a condition that limits the site to only the 45 existing units. Ms. Anderson replied yes. She reviewed the declaration that was created and filed on the land records.

Mr. Vita closed the Public Hearing.

4) 14-6549 123 Park Avenue, Request variance: Section 220, Table 2.1 to permit 31% building coverage where only 25% percent is allowed for a detached garage; Section 220, Table 2.1 to permit 39% impervious surface where only 30% is allowed. R-4 Zone, Amanda Vercellone, Applicant

Ms. Amanda Vercellone, owner, addressed the Commission and reviewed the variance request. She stated that the existing garage is in disrepair and needs to be rebuilt.

Mr. Vita asked if the new structure will be the same size as the existing structure. Ms. Vercellone said that currently the garage is 12 feet x 18 feet and the proposed garage will be 14 feet x 20 feet in size.

Mr. Chorney asked if the proposed garage will have any issues with the required setbacks. Ms. Holly Masi, Zoning Enforcement Officer, stated that the setbacks will be in compliance and the building coverage and impervious surface is the only issue.

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

Mr. Vita closed the Public Hearing.

5) 14-6550 2812 State Street, Request variance: Table 3.4 & Figure 3.6 to allow a third story with a front yard setback of 39.3 feet where a maximum of 18 feet is allowed. T-4 zone, Keith Frost, Applicant

Mr. Tim Yolen, Attorney, addressed the Commission and reviewed the variance request for the lot known as 2812 State Street. He noted that the lot was previously zoned R-4 and that it was changed to a T-4 zone when the zoning map was amended in 2010. Mr. Yolen reviewed the location of the lot and the location of the existing building. He explained that his client would like to utilize the building and add a third floor that will house an apartment that will be approximately 500 square feet in size. The hardship is the preexisting building. The owner of the building intends to have two floors that will house small offices and the third floor will be used as an apartment. Mr. Yolen stated that the zoning regulations create a hardship because they limit the expansion of the building on a small lot.

Ms. Dove questioned if the lot in question is parcel "B". Mr. Yolen replied yes and explained that both parcel "A" and "B" were previously zoned as residential. In 2010 the State Street parcel was designated as a T-4 zone. A lot line revision application will be submitted to split the lots.

Mr. Dan Kops, Assistant Town Planner explained that the parcel is one property and is split zoned. He stated that the legal address is 17 Maple Street.

Ms. Dove stated that she had trouble locating the address on Google. Ms. Holly Masi, Zoning Enforcement Officer, stated that the application was filed under 2812 State Street, and that 2812 State Street does not exist. Mr. Yolen replied that 2812 State Street is shown on the survey. The Commission further discussed the addresses in question.

Mr. Kops stated that he sent out an email on 10/16/2014 to the email address listed, which was srikin@planetrealtyct.com. The email indicated that the survey and property address do not match. He reviewed the contents of the email. Mr. Yolen submitted a field card and noted it was not the current one. Mr. Kops said the field card submitted was dated in 2008 and the lots were merged in 2009.

Mr. Keith Frost, 17 Maple Street, addressed the Commission and reviewed the location of the properties and the surrounding area.

Mr. Yolen stated that he was advised by Mr. Kops that a lot split was needed.

Mr. Vita said if the address is in question then it would need to be re-advertised. The Planning Staff and Commission further discussed the address with Mr. Yolen.

Mr. Tim Lee, Assistant Town Attorney stated that the public hearing should be continued so that the variance request can be re-noticed with the correct address.

Mr. Steve Rivken, Broker and Agent, addressed the Commission and said he went to the Town Engineer and there was confusion with the map.

The Planning Staff and Commission further discussed the property address with the owner of the property.

Mr. Frost stated that it would be a hardship if the public hearing were to be continued. Mr. Kops explained that an email was sent to the email address on the application. The Commission and the Planning Staff further discussed the issue of the address being incorrect.

Mr. Vita asked Mr. Yolen if he would like to continue the public hearing or have a decision this evening. Mr. Yolen replied that he would like to continue the public hearing to allow the variance with the correct address to be re-advertised.

The clerk stated that the field cards submitted would be marked as Exhibit 1 and Exhibit 2.

Mr. Vita continued the Public Hearing until the December 18, 2014 meeting.

6) 14-6551 1633 Whitney Avenue, Request variance: Section 360.4 to permit parking in the 1st & 2nd layer where it is only allowed in the 3rd layer, for a package store, T 3.5 zone, Varsha & Prashant Mehta, Applicants

Ms. Varsha Mehta and Mr. Varsha Mehta, Applicants, introduced themselves to the Commission. Ms. Mehta reviewed the variance request. Ms. Mehta submitted an aerial photo of the lot and reviewed the location of the proposed parking and existing building with the Commission. She noted that their business is currently located across the street and they are in need in more room. Ms. Mehta reviewed the site plan and the elevation plan. She discussed the proposed planting plan.

Mr. Dan Kops, Assisted Town Planner, explained that in the T zones properties are divided into layers. He reviewed the layers and noted that the zoning regulations require that the parking be located in the rear. Mr. Kops said that the existing building has the parking located in the front of the building.

Ms. Mehta reviewed the proposed entrance to the site. She noted that the property is in need of attention.

Mr. Chorney said that patrons of St. Rita have used the parking area.

Ms. Dove asked if the gas tanks have been removed and Ms. Mehta replied yes.

Mr. Vita asked if the hardship is due to the area being rezoned. Mr. Kops replied that the building existed prior to the zoning regulations being amended. Mr. Chorney said that the amended regulations make it difficult for small lots to comply. Ms. Mehta said that there will be no change to the structure.

Ms. Dove asked if the applicant needs to go before the Planning & Zoning Commission. Ms. Masi stated that a Special Permit is required. Mr. Kops explained that the property is located in the Village District and the plans were reviewed by the Village District Consultant. Ms. Mehta said that she met with the Village District Consultant.

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

Mr. Vita read into record a letter from Ms. Christine Esposito expressing her concerns for the application. Ms. Masi read into the record a letter from Ms. Marsha Walsh expressing her concerns about the application.

Ms. Mehta said that she would like an entrance only on Whitney Avenue and an exit only on Gillies Road. She explained that the gas tanks previously used for the gas station have been removed. Mr. Mehta reviewed the exit/entry plan and signage with the Commission.

Mr. Vita closed the Public Hearing.

B. Regular Meeting

a. Discussion and voting on Public Hearing items.

14-6543

Mr. Nelson made a motion to approve Application 14-6543. Mr. Vita asked for a second to the motion and there was none. Therefore, the motion did not move forward.

Ms. Dove made a motion to deny Application 14-6543. Ms. Carroll seconded the motion. Ms. Dove stated that The applicant created the hardship. A variance to create extra space had been previously granted. A zero side yard is unacceptable for the future. The applicant has not satisfied the hardship.

Ms. Dove, Ms. Carroll, Mr. Vita and Mr. Chorney voted in favor of the motion. Mr. Nelson voted against the motion. Therefore, the motion to deny the variance passed 4-1-0.

14-6544

Mr. Nelson made the motion approve Application 14-6544. Mr. Chorney seconded the motion. Mr. Nelson stated that the applicant is enclosing an existing landing with an existing roof and removing the stairs. Mr. Vita noted that the proposed addition encroaches less than the existing structure. The variance is minor for a small addition. *The motion passed unanimously.*

14-6548

Mr. Chorney made the motion to approve Application 14-6548. Ms. Carroll seconded the motion. Mr. Chorney noted that the process is complicated. The developer went bankrupt, a portion of the property belongs to the bank, there are bonds pending and there was a sale of a building located on the property. The complex was not completed so a permanent Certificate of Occupancy was not issued. The assisted living services are nonexistent and were supposed to take place in a building that is not owned by the association. The assisted living services were supposed to be run by the association. The Planning & Zoning Commission will be addressing the issues that exist on the property. The owners of units did not create the situation and were provided misinformation. Mr. Chorney would like a condition that limits the units to the 45 existing units. The Commission discussed the number of units with the Planning Staff. *Mr. Chorney amended the motion to add the following condition: Limiting development to the existing 45 units. There is to be no further development. Ms. Carroll seconded the motion. The motion passed unanimously.*

14-6549

Mr. Nelson made the motion to approve Application 14-6549. Ms. Dove seconded the motion. Mr. Nelson stated that the garage is old and needs to be rebuilt and brought in compliance for the setbacks. The lot is small

