

February 27, 2009

**Minutes:** THE ZONING BOARD OF APPEALS, Town of Hamden, held a Public Hearing and Regular Meeting on Thursday, February 19, 2009 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 was reviewed:

***Commissioners in attendance:***

Jeff Vita, Chair  
 Bill Reynolds  
 Fran Nelson  
 Andrew Houlding, Alternate sitting for Elaine Dove  
 Steve Walsh, Alternate sitting for Wayne Chorney

***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 7:03 p.m., reviewed the agenda and meeting procedures and the panel introduced themselves.

**A. Public Hearing**

**1) 08-6317** 2895 State Street, Requesting action under Section 861.1, Appeal of Cease and Desist Order(dated 12/28/07), CDD-1 Zone, Modern Materials, Applicant.  
**TABLED**

**2) 08-6318** 2895 State Street, Requesting action under Section 861.1, Appeal of Cease and Desist Order(dated 12/28/07), CDD-1 Zone, Empire Paving, Applicant.  
**TABLED**

Mr. Vita advised the Commission that items 1 and 2 have been tabled.

**3) 09-6350** 19 Reyna Road, Requesting variances of the following: Section 326 to allow an expansion of a non - conforming structure for a second floor addition. Section 434b to allow a side yard of 8 feet where 12 feet is required. R-4 Zone, Garland Patterson, Applicant

Ms. Debra Dozier, Architect addressed the Commission and reviewed the application. The owner would like to increase the size of the bedrooms on the second floor. There is an existing concrete pad with anchor bolts that they would like to use for the structure. The Commission discussed with Ms. Dozier the elevation which is 23 feet to the peak. The existing concrete pad would be used to build the structure and go up. Ms. Dozier reviewed with the members the assessor map and the surrounding properties. She explained that the lot is non conforming because of

its shape. Ms. Masi, Zoning Enforcement Officer reviewed with the Commission the existing structure and the surrounding properties.

Mr. Vita asked for comments in favor of the application:

Mr. Herbert Facey , owner addressed the Commission. He stated that the addition would be for his parents who are elderly and will be moving into the home.

Mr vita asked for comments against the application. There were none

The Public Hearing closed at 7:14 p.m.

- 4) 09-6351** 33 Roosevelt Street, Requesting variances of the following: Section 314.4 to allow an accessory structure with a side yard of 3.5 feet where 10 feet is required, and a rear yard with 54 percent of the area covered and only 20 percent is allowed. Section 435 to allow lot coverage of 30 percent where 25 percent is allowed. R-4 Zone, Dale and Scott Badger, Applicant's

Mr. Scott Badger, applicant addressed the Commission. He stated to the members that he was unaware that a permit was necessary for the work he had done on the existing stone structure and building a deck. He reviewed with the members the site plan and measurements for the deck. He has also completed a stone fire place and retaining wall that is located to the front of a preexisting structure. Mr. Badger showed the members pictures of the existing structure. Ms. Masi, Zoning Enforcement Officer advised the Commission that she was unable to find a zoning permit for the previous or existing structure. She had sent a letter to the applicant and he had responded immediately.

Mr. Badger explained to the Commission that the previous structure was unsafe. The Commission asked if the deck could be place at another location on the property. Mr. Badger advised the members if he went in 10 feet the deck would be in the middle of his yard and a tree would have to be removed. Ms. Masi explained to the members that the lot is narrower than other lots on the street. Mr. Badger stated to the members that the outhouse located on the property would be staying. Mr. Kops, Assistant Town Planner asked the Commission if the drawing that had been submitted would be sufficient for the members to make a decision.

Mr. Vita asked for comments in favor of the application:

Ms. Lachesha Gaskins, 33 Roosevelt Street, addressed the Commission. She advised the members that she is the daughter of the applicant. She stated that her children play in the yard . When the house was purchased the shed and a wall went up a slope in the yard and they were falling apart. The cinder block structure was crumbling. They added on to the retaining wall to strengthen. This was done for the safety of her children and others that may be in the yard.

Mr. Vita asked for comments against the application:

Mr. Edward Mucha, 39 Roosevelt Street, addressed the Commission and submitted a letter. He stated that he was never notified of the work being done. The property was previously owned by a family that processed animals. There was a retaining wall that was cinder block. He did not feel that the retaining wall was unsafe because he had walked on it when he was painting his fence. He advised the Commission that after the deck was built the applicant was working on the wall located to the front of the property and dug up a fence post that was on his property. When his fence was put in he had it installed 3 to 6 inches from the property line. The sidewalk is marked by surveyor Gordon Bilides. There are stakes located in the back of his property. The side variance requesting 10 feet to 3.5 feet is incorrect. He stated that from the deck to his fence is 34 inches, not 42 inches. The fence is on his side of the property not the property line. The stone and concrete wood burning stove that shores up a dirt berm at the base is only 8 inches from the fence. The chimney stack is located 22 inches from the fence and the top of the stack is 24 inches over the top of his fence. The concrete foundation for a barbecue is 5

feet long and approximately 6 feet tall and is located 8 to 9 inches from the base of his fence. The top of the barbecue is 18 inches away. Mr Mucha is concerned that these structures are a health and fire hazard. He feels that the soot, grease and fumes would go on to the fence and shed located in the rear of his yard. Mr. Mucha stated that during the summertime when the barbecues are in use and there is wind, he is unable to use his deck. On the property line there was a pipe put in the ground approximately half way back. He is not sure if it is still there. He feels that the value of his property and house could be affected. He showed pictures of the previous structure and reviewed it with the Commission.

Mr. Vita asked Mr. Kops, Assistant Town Planner if the correct distance was in the legal advertisement. Mr. Kops directed the question to Ms. Masi, Zoning Enforcement Officer. Ms. Masi advised that the applicant may have used the fence as a guide. Mr. Vita asked if incorrect would it impact the variance. Ms. Masi advised that it would and that the applicant would need a survey to verify the information on the application.

Mr. Vita asked for further comments against the application.

Mr. Michael Hines , 111 Maplewood Terrace, addressed the Commission. He advised the members that his property is to the rear of the applicant's property and would like the structure to be conforming to the regulations. He stated that the safety of children are a concern. On the applicants property there are 2 trees that are rotten and he has notified Mr. Badger. When one of the trees was cut down it landed on his fence and he notified Mr. Badger, and nothing has been done.

Mr. Badger advised the Commission that Mr. Mucha had failed to advise the members that when the deck was completed they gave him a gift and said that the deck looked nice. Mr. Badger stated to the Commission that the Fire Department was called and he was advised the fence would be okay. He is willing to place something on the grill so that no grease would get on the fence. He is unable to move the grill without destroying it. Mr. Vita advised the applicant that it was his responsibility as a property owner to know the regulations for the structure. Mr. Badger advised that he has placed a cap on the fire place so nothing can come out.

Ms. Gaskins advised that when the house was purchased, in front of the house there were railroad wood ties that were wrapped around the neighbors fence. When the mother put in the retaining wall nothing was touched. It was water and mold that destroyed the post.

Mr. Vita asked Ms. Masi if Mr. Mucha's opposition of the distance from the fence to the deck was incorrectly stated in the application and published as 42 inches and should be 34 inches. Ms. Masi advised the Commission that the variance must be for the set back. She asked for a setback measurement, Mr. Badger may have used the fence as the property line. The applicant does not have a survey. Mr. Nelson suggested if there are stakes from a previous survey, a line could be run from stake to stake so that a measurement could be obtained.

Mr. Mucha said that when his wife was invited over he thought the deck was within the regulations. He became concerned with safety when he saw the fireplace and barbecue being constructed next to his property line and shed.

Mr. Kops stated that there would be an issue if the board determines that there is a hardship and grants the variance. If the distant was specified incorrectly the variance would be inadequate. He suggested that the applicant may want to keep the public hearing open so they could check the measurements. If they are incorrect, the application should be modified and re advertised. He advised the Commission that any safety issues should be directed to the Building Department and Fire Department.

Mr. Vita advised Mr. Badger that when a variance is being requested the distance from the deck to the fence must be accurate when being published. Mr. Vita encouraged the applicant to keep the public meeting open and meet with Mr. Kops and Ms. Masi to verify that the measurements are correct so the commission would be acting on the correct information.

Mr. Vita continued the Public Hearing until the March 19, 2009 meeting.

- 5) **09-6352** 1060 Ridge Road, Requesting a variance of the following: Section 310.2 to permit a lot with a buildable square containing 3,043 square feet of land excluding steep slopes in excess of 20 percent where 4,900 square feet is required. Zone R-4, Bernard Pellegrino, Applicant

Mr. Pellegrino, Attorney addressed the Commission and reviewed the application. He stated that the owner had purchased the property in 1960, and then purchased the rear parcel that is on Underhill Road. The lots were created by a subdivision map in 1926.

Mr. Tim Lee, Assistant Town Attorney advised the Commission that Commissioner Houlding has advised him that he is a personal friend of the owner and would like to recuse himself. The applicant would need the remaining four commissioners to vote in favor of the variance to receive an approval. Mr. Pellegrino advised the Commission that they would continue with the application. Mr. Reynolds advised the members that he had been a childhood friend of the owner, and has had no contact with Mr. Lyons in the last 20-30 years. . Mr. Lee asked Mr. Reynolds if he could consider the application fairly and impartially. Mr Reynolds replied that he could. Mr. Lee asked if his relationship with Mr. Lyons 20-30 years ago would affect his decision this evening. Mr. Reynolds advised it would not.

Mr. Pellegrino advised the members that the owner would like to recreate the original 2 lots. Mr. Vita asked if the rear lot was accessible to Ridge Road. Mr. Pellegrino advised that the rear lot fronted Underhill Road. He stated to the members that in 2002 the regulation that was passed states that a building lot must have a 70 x 70 building square. The regulation 310.2 says there can be no slopes in excess of 20 percent within the building square. The rear lot would not be able to have a 70 x 70 building square without steep slopes. He stated to the Commission that the hardship is the topography of the slope through the middle of the lot. The original 2 lots were merged into one and approximately 6 years ago a new regulation was created.

Mr. Kops, Assistant Town Planner asked how the lots were combined. Mr. Pellegrino stated that the lots were merged by the Town in 1967 because they were common ownership. There was a pool constructed on the lot which has since been removed. Mr. Dave Sampson, designer, advised the pool was on the property when it was purchased by the Lyon's. Mr. Pellegrino reviewed the lot map with the members. Mr. Nelson asked how you would enter the property because there is a stone retaining wall. Mr. Pellegrino advised the members that the wall would need to be removed.

Mr. Vita advised Mr. Lee that he understands the hardship, but asked how the applicant would split the lot. Mr. Lee advised if the variance is approved they would have to submit an application for a subdivision of the lot.

Mr. Vita asked for public comment in favor. There was none. Mr. Vita asked for public comment against the application.

Mr. Richard Resch, 95 Broadfield Road addressed the Commission. He advised the members that he was asked to submit a letter from Cynthia and Borisslav Meandzija against the application. Mr. Resch stated to the Commission if a house were to be built it would create an additional impervious service that would cause water to flow down hill. This would create a water problem to neighboring houses. Previous work on trees done by the Town in the area has created erosion. His retaining wall has collapsed and he has had to trench around the house. He advised the Commission that \$75,000.00 has been spent on repairs to the wall and managing water. He submitted a petition against the application.

Mr. Steve Hudd, 87 Broadfield Road addressed the Commission and stated his house was built in 1936. The applicant's lot is very steep and there is a rock wall and trees. The pool was filled in two months ago. If the variance were approved it would impact neighbors and a house would have to be located very close to neighboring homes. He advised that the building of a house would create water problems.

Mr. James Maher, 200 Glen Parkway addressed the Commission and stated that he has water problems and has had to spend a lot of money to resolve the issues. He stated that building a house on the lot would create a water impact and erosion on Glen Parkway. He advised the Commission that the High Lane Club has also had flooding problems in the past. He feels the variance would create an adverse development.

Ms. Paula Resch, 95 Broadfield Road addressed the Commission and stated she is opposed to the Variance because of the water problems it would create.

Mr. Pellegrino advised the Commission that the lot is in keeping with the neighborhood. The lots are small and the houses close to each other. He explained that the lot would sustain a house. He stated to the Commission that when the owners purchased the lot, they had paid fair market price for a building lot that it could someday be developed. He explained that the water going off site could be controlled and the older homes had been built when there was a lack of stormwater management at the time.

Mr. Vita entered into the record a letter from Rosemary Balsam-Schwaber M.D. And Paul Schwaber, Ph.D., dated 2/16/2009, a letter from Richard and Paula Resch dated 2/16/2009, a letter from Borisslave and Cynthia Meandzija dated 2/11/2009, and a petition signed by neighbors. Mr. Kops made note that the letter from the Meandzija's states they feel there is no hardship, and the other letters refer to their concerns regarding water problems.

Mr. Vita asked for further comments. There were none.

Closed Public Hearing at 8:20 p.m.

- 6) 09-6353** 164 Westwoods Road, Requesting variances of the following: Section 311.1a to allow a rear lot of 25,551 square feet of lot area excluding area containing wetlands and steep slopes greater than 20 percent where 30,000 square feet is required. Section 310.1 to permit 4,449 square feet of a lot area containing wetlands and steep slopes greater than 20 percent to be used in the calculation of minimum area where none is allowed. R-3 Zone, Malachi & Joyce Blandon, Applicants

Mr. Bernie Pellegrino, Attorney addressed the Commission and reviewed the application and location of the property. The parcel is under 6 acres and is an over sized rear lot. The property abuts Quinnipiac University. The owner would like to convey 3.68 acres to Quinnipiac University as a lot split. The front lot would continue to meet the regulations. The rear lot has steep slopes and the regulation requires there be 30,000 square feet, excluding steep slopes and wetlands. Mr. Vita asked if the location currently complies with the regulations. Mr. Pellegrino advised it does not. Quinnipiac University would like to acquire the lot for use as an additional buffer. Mr. Nelson asked if the buyer would give an affidavit stating they would not build on the lot. Mr. Pellegrino advised he is unable to confirm if the buyer would provide an affidavit. Mr. Kops stated that from a policy standpoint, Mr. Pellegrino was correct that the policy was created to reduce density on a problematic site. There is already a house on the lot and there is no development proposed.

Mr. Vita asked for public comment in favor of the application.

Ms. Joyce Blandon addressed the Commission and stated that the land sits on a heavily wooded lot. There is no way that you could build on the area because of the steep slope. Quinnipiac University would like to purchase the property to use as a buffer area for the York Hill Campus. Mr. Nelson asked Ms. Blandon if they intended on staying in their home. Mr. Blandon stated they would not be selling their home. Ms. Masi, advised the members there were no neighbors on either side of the property and it abuts Quinnipiac University's property.

## **B. Regular Meeting**

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

**09-6350**

Mr. Nelson made the motion to approve the request for the variances. The standard second floor height would not impede on their neighbors and the lot is an irregular shape. Mr. Walsh seconded the motion. The motion passed unanimously.

**09-6351**

Mr. Vita advised that the public hearing is continued until the March 19, 2009 meeting

**09-6352**

Mr. Nelson made the motion to deny the request for a variance. He stated that the hardship was self created. The location has steep slopes and neighbors are concerned with water problems. Mr. Walsh seconded the motion. Mr. Nelson, Mr. Vita, Mr. Walsh, Mr. Reynolds voted in favor of the motion. Mr. Houlding abstained. The motion passes.

**9-6353**

Mr. Houlding made the motion to approve the request for a variance. Mr. Nelson seconded the motion for discussion purposes only. Mr. Houlding stated that the hardship is that the parcel has slope issues, which existed prior to the regulation. Mr. Nelson is concerned with other uses of the property in the future that may not require zoning approval. There may be a plan already in process. Mr. Vita stated that the property being contained has slopes in excess of 20 percent and would have to come to the ZBA Commission. Mr. Nelson advised that the mountain had been conveyed without coming to ZBA and Quinipiac stays in compliance to avoid coming to the commission. Mr. Kops stated that the purpose of dividing the land is not to create a second parcel but to combine with a larger parcel. The improvements to Kimberly Road were to allow for emergency vehicle access. Mr. Vita stated that if the topography does not comply with the regulations to be developed, it would have to come before the Commission to be developed.

Mr. Vita, Mr. Houlding, Mr. Walsh, Mr. Reynolds voted in favor of the motion. Mr. Nelson abstained. The motion passed.

**b. Approve Minutes of January 15, 2009**

Mr. Houlding made the motion to approve the minutes of January 15, 2009 as written. Mr. Walsh seconded the motion. The motion passed unanimously.

**c. Old Business**

There was none.

**d. New Business**

Mr. Lee, advised the Commission that Mr. Chorney had invited Ms. Leslie Creane, Town Planner and Mr. Joe McDonagh to address the Commission regarding the Proposed Zoning Regulations. Mr. Kops advised the members that he had met with Mr. Chorney and reviewed all the proposed regulations. Also, Ms. Creane and he had met with Ms. Dove.

Ms. Creane addressed the Commission and discussed the SmartCode, form based approach to zoning and gave examples of how they would be applied. Ms. Creane explained that she has been working with the Planning & Zoning Commissioners, the consultants and the Planning staff since the Charrette to produce a draft of the Zoning Regulations. She advised the members that the Consultants had reviewed the past 5 years ZBA decisions. Mr. McDonagh reviewed with the Commission that the proposed zoning regulations would create commercial corridor's that are tax generating by creating pedestrian friendly areas with mixed uses. He explained that they have met with civic associations and the Chamber of Commerce for their input.

**e. Adjournment**

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

**The meeting adjourned at 9:24 p.m.**

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