

TOWN OF HAMDEN

ZONING BOARD OF APPEALS

MINUTES: THE ZONING BOARD OF APPEALS, Town of Hamden, held a Public Hearing and Regular Meeting on Thursday, March 19, 2009 at 7:00 p.m. in the 3rd floor Conference Room, Hamden Government Center, 2750 Dixwell Avenue, Hamden, CT and the following was reviewed:

Commissioners in attendance: Wayne Chorney, Acting Chair
Elaine Dove
Fran Nelson
Bill Reynolds
Steven Walsh, Alternate sitting for Jeff Vita

Staff in attendance: Dan Kops, Assistant Town Planner
Holly Masi, Zoning Enforcement Officer
Tim Lee, Assistant Town Attorney
Peggy Craft, Acting Commission Clerk
Linda O'Neill, Stenographer

Vice Chairman Chorney called the meeting to order at 7:05 PM, reviewed the agenda and meeting procedures and the panel introduced themselves.

Public Hearing opened at 7:10 PM

1. 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 861.1, Appeal of Cease and Desist Order (dated 12/28/07), CDD-1 Zone, Empire Paving, Applicant. **Tabled**
- 3) 09-6451 33 Roosevelt Street, Requesting variances of the following: Section 314.4 to allow an accessory structure with a side yard of 0 feet where 10 feet is required, and a rear yard with 54 percent of the area covered where only 20 percent is allowed. Section 435 to allow lot coverage of 30 percent where only 25 percent is allowed. R-4 Zone. Dale and Scott Badger, Applicants.

Public Hearing continued from 2/19/09

Mr. Chorney stated that he and Ms. Dove had not been at the last meeting but had reviewed the Minutes of the meeting. Scott Badger stated that the reason the public hearing was continued was that they needed a surveyor's report. Mr. Badger presented this to the Commission. Zoning Enforcement Officer Holly Masi reviewed the survey. She stated that this was advertised as 0 side foot side yard because without the surveyor's report they were not sure what the side yard would be.

Mr. Chorney asked if Ms. Masi and Mr. Kops had received all the information they needed. He also asked if the Fire Department and the Health Department had also received the necessary information. Ms. Masi explained that the survey that had been requested had just been received. Ms. Masi also stated that this issue had come to their attention through a violation. She added that this is an attempt to get a permit for these structures. The issue was a deck and fireplace that replace a one story concrete block that already existed and the remains of a cement wall that was taken down. Ms. Masi received the complaint during the construction of the structures. Ms. Masi further stated that the Applicants have been very cooperative, and have provided all the information required.

Mr. Badger, 33 Roosevelt Street, the Applicant, said the problem is that the hood of the grill is higher than his neighbor's (Mr. & Mrs. Mucha) fence. Mr. Badger said the hood of the grill can be removed and then the grill will not be seen from the neighbor's yard. As far as respecting the Mucha's complaint regarding smoke, Mr. Badger stated that you can't control which way the wind blows the smoke. He added that the grill was moved to avoid the smoke blowing their way. He also said that the fireplace would not be used until it is approved and a cap is placed on it. He said that the grill is close to the Mucha's fence and they are worried about grease and stains on their fence. Mr. Badger said to prevent this he will put a splashguard up against the fence and will take responsibility for any damage that might occur. He added that the only thing that will be seen from the Mucha's yard is the fireplace, and he feels that this is a pleasant view.

Next, Mr. Badger presented pictures of the structures in the yard. Commissioner Nelson asked if this was a regular grill. Mr. Badger said yes it is, and added that it is a propane grill.

Commissioner Dove said that she feels the biggest issue is how close the grill is to the property line, and that the neighbor's concerns were about the grill and/or the fireplace causing a fire. Mr. Badger said that his masonry worker was present and would state on the record that this would not happen.

Mr. Chorney stated that the issues are the side lot lines, the neighbor worries about the possibility of a fire and smoke and grease damage to their property and an illegally built deck and fireplace that are too close to the property line. He also asked if the fireplace, which is a stationary structure, is in need of a building permit.

Mr. Badger next discussed the need for a ramp for a special needs child. Mr. Kops said that ramps are exempt from coverage and setback requirements.

Mr. Badger said that what he is trying to figure out why he can't put things in his own backyard without the Town telling him what to do. He added that he pays taxes and should be able to enjoy his property.

Commissioner Chorney asked if there was anyone present who wished to speak in favor of this request.

Robert Benton, 507 Newhall Street, Hamden spoke in favor of this request. He said that the addition of the deck was an attempt to bring peace and love to the neighborhood and the deck with the handicap ramp was to add a nice feature to the yard that was previously unusable. He added that the yard is now beautiful and adds to the neighborhood.

Mr. Chorney said he didn't see a rear yard setback line on the deck. Mr. Kops said it is three feet. Mr. Chorney said he is two feet over what is required. There was a discussion of setback figures.

Commissioner Chorney asked if there was anyone present who wished to speak in opposition to this request.

Attorney Gregory Gallo of the Pellegrino Law Firm spoke on behalf of Mr. & Mrs. Mucha. Mr. Gallo stated that variances are not granted when they are a danger to public health, safety and welfare, which he feels this request is. Mr. Gallo said this does not adhere to the zone regulations, and he read in detail the zoning regulations that he said this request violates. He further stated that this case does not establish a hardship and is not the only narrow lot in Hamden. He added that you can't build a structure and then claim a hardship. He said the setback and the coverage regulations have been violated, and that the structures were built without permits. Mr. Gallo added that the Muchas are sensitive to the fact that the deck was built without a permit. He said the problem is with the big chimney. He also questioned whether the grill is a permanent structure. Mr. Gallo said that if case law is carried out, the Badgers would not be entitled to a variance because the grill and chimney are too close to the property line.

Commissioner Chorney suggested that the two parties get together to see if they can come up with a solution. He said perhaps the grill can be moved and the chimney on the fireplace can be lowered.

Next, Mr. Edward Mucha, 39 Roosevelt Street spoke in opposition to the variance. Mr. Mucha lives next door to the Badgers. He said he has not seen the drawings but believes they are in line with what he turned in. He said he had no objections when the deck went up, but when he saw the fireplace being built he started to investigate. He learned that there were no permits taken for this construction. He also said that he was a toolmaker and was very precise in his measuring. He said the deck is 32 inches from the fence in

the back, and the fireplace is only 8 inches from the fence line. He has a wooden shed in his yard and a six-foot high fence and he is concerned that the shed and fence could catch fire. He said he has spoken with the Building Inspector who said the grill is a permanent structure. He also spoke with the Fire Chief who said that the use of a grill eight inches from a fence could be a nuisance if the smoke affects the neighbors. He said that this was done illegally and there was not any consideration given to the neighbors. As far as he knows as of yesterday the contractors doing the work did not have licenses in the State of Connecticut. Mr. Mucha said he is willing to compromise but he should not have to live with these structures eight inches from his property.

Mr. Kops said that Mr. Mucha's fence is on part of the Badgers' property. Mr. Mucha did not agree with this.

Mr. Badger's contractor, Mr. Ajaro, spoke stating that he did have a license when he was performing the work on the Badger's property.

Mr. Badger agreed to an extension to the April meeting. Mr. Badger was advised by Zoning Enforcement Officer Masi and Assistant Town Planner Kops to have his surveyor list the shortest distance between the deck and the property line. He was further advised to have the surveyor do this and provide the Planning & Zoning Office with the information two weeks prior to the meeting.

- 4) **9-6355** 67 Greenway Street, Requesting variances of the following: Section 314.4 to allow a 3 foot side yard where 10 feet is required and a 3 foot rear yard where 5 feet is required for an accessory structure. Section 326 to allow the expansion/continuation of a non-conforming structure. Section 314.4 to allow an accessory structure with a height of 16 feet 6 inches where no more than 15 feet is allowed. Zone R-4, Valacour Ganuchau, Applicant.

Mr. Kops stated that after a staff review of the last request for a variance for a height of 16.6 inches that no variance was required. The height was measured from the mid point and is 15 feet.

Val Ganuchau, 67 Greenway Street, Hamden presented photos of the garage next door. This is the same garage that Mr. Ganuchau is seeking to build, and he will be using the same contractor. Mr. Ganuchau said that the garage he presently has is too small to fit his cars. He said the garage next door was approved under the same conditions. He added that his neighbor has no objection to his proposed garage.

There was no one to speak in opposition to this request.

Mr. Kops had no comments on this request.

Ms. Masi stated that it seemed reasonable

- 5) **09-636456** 161 Darley Drive, Requesting a variance of the following: Section 701.b to allow an accessory apartment in a principal dwelling on tax records after 10-1-76 and section 701.e to allow the accessory apartment to be occupied by a person unrelated to the owners of record. Zone R-2, John and Donna Gaudio, Applicants.

John Gaudio, 205 Midwood Drive, Wolcott, Connecticut addressed the Commission. Mr. Gaudio is the owner of 161 Darley Drive. He rented this house through a realtor to five students. He said he was not aware that he was in violation of the student housing code. He said one of the students renting his house would not have a place to live if he had to vacate the house. Commissioner Nelson asked who his realtor was. Mr. Gaudio said he was not sure. Several of the Commissioners said that the realtor should have known better. Next, Mr. Gaudio was asked how long the house had been rented. Mr. Gaudio said since last May. Mr. Gaudio does not presently live there, but did live there previously.

Section 701.e states that the owner of record has to live at the address to rent the accessory apartment. This came up because of complaints regarding students. The student housing code allows only four students to lease a house. Mr. Gaudio was asked for a copy of the lease, but did not have it with him. He informed the Commissioners that each student has a separate lease. Mr. Chorney said the issue is that the owner of record does not live there which means the accessory apartment cannot be used.

There was a lengthy discussion regarding whether the issue is the use of the accessory apartment or a violation of the student housing code. Mr. Chorney asked if the accessory apartment is part and parcel of the house. Ms. Masi said the accessory apartment has its own entrance. Mr. Gaudio said there is access between the two apartments. There was further discussion regarding whether this house is being leased as a one family dwelling. It must be determined whether this is an accessory apartment issue or if the issue is too many students. Mr. Gaudio was advised that this situation should be rectified before the next lease is signed

There was a discussion regarding the size and use of this house. Ms. Masi will look into this problem.

The applicant requested a continuance and re-advertisement. Mr. Gaudio will call Ms. Masi to go over this situation. Mr. Gaudio was again advised to not write another lease until this situation is resolved. Mr. Gaudio agreed to make an appointment with Ms. Masi and Mr. Kops to discuss this matter.

An extension of 35 days was granted, and this application was continued to the May meeting.

- 6) **09-6357** 1970 Whitney Avenue, Requesting variances of the following : Section 753.4.d to allow a free standing sign with a height of 22 feet where 20 feet is permitted. Section 753.4.e to allow a free standing sign with a bottom edge at 111 inches above ground level where at least 10 feet above ground is required. Section 753.4.g to allow a free standing sign with a total surface area of 78 square feet where 32 square feet is permitted. Section 756.b.1 to allow 376 square feet of aggregate surface area of signage where approximately 78 square feet is permitted. One CDD-2, Nickabam, LLC

Ken Ginsberg, Nickabam Manager, 377 Main St, West Haven addressed the Commission. He stated that the Glen Terrace property hardship is that the property is very narrow along the street line, and very deep. It is 160 feet wide and 420 feet deep. A new building has been approved and will be constructed. The building will be 47 feet by 255 feet. The Glen Terrace building will remain. The two buildings will house up to 13 tenants, and will be called Glen Terrace Commons.

Mr. Ginsberg would like to construct a pylon sign in front of the buildings. The sign would consist of two matching posts with a crown over the top. The sign meets regulations, it is the cap that creates the need for a variance. The cap on the bottom of the sign would be nine inches high with the name of the complex on it; this creates the need for the variance on the bottom.

If the 13 spaces are rented then to be in conformance with the regulations the lettering on the signs would be only two inches high, and not clearly visible. Mr. Ginsberg said that he wants people to be able to clearly identify businesses as they are driving by.

Mr. Chorney asked Mr. Kops what originally came in and was approved for signage. Mr. Kops explained that this is separate from the application. He added that Planning & Zoning does not approve signage. Mr. Ginsberg was asked what size the letters on the proposed pylon sign would be. Mr. Ginsberg said the letter would be nine inches, but depending on the length of the sign some sizes would have to be adjusted. Mr. Chorney said he thinks the sign might not be visible either way. Mr. Ginsberg disagreed with Mr. Chorney. Mr. Chorney next suggested that just the address and name of the complex be used on the pylon sign and signs identifying the businesses be placed on the exterior of the buildings facing the parking lot. Mr. Ginsberg said he would like to create a sign so it is visible from the street

Mr. Chorney asked what size sign the regulations would allow. Mr. Kops said according to the regulations they would be entitled to 47 square feet of signage.

Commissioner Dove stated that she feels this will not be clearly visible and could cause an accident.

Mr. Kops said they were encouraged to build closer to the street. That would have made an area for the sign. Mr. Kops agreed with Commissioner Dove that the sign could cause accidents. Mr. Ginsberg said that he feels it is very important to have a sign that is clearly visible from the street especially for new businesses.

Mr. Chorney asked Mr. Kops if the handicap parking spaces on left are where they are supposed to be? Mr. Kops said this issue was discussed at length and approved.

Mr. Chorney suggested that Mr. Ginsberg come back with a better set of plans. Ms. Masi suggested that Mr. Ginsberg provide plans and pictures of what the sign would look like under the current regulations and what it would look like as proposed.

Mr. Chorney again suggested that Mr. Ginsberg consider a sign with just the name of the complex and the street address. Mr. Ginsberg stated that his potential tenants want their names on the sign.

This request was continued to the April meeting.

The Public Hearing was closed at 8:55 p.m.

B. Regular Meeting

a. Discussion and voting on public hearing items

Vice Chairman Chorney asked if there was a motion in regard to Request 09-6355 – 67 Greenway Street, requesting variances of Section 314.4 to allow a 3 foot side yard where 10 feet is required and a 3 foot rear yard where 5 feet is required for an accessory structure and Section 326 to allow the expansion/continuation of a non-conforming structure.

Commissioner Nelson motioned to approve the variances. Commissioner Reynolds seconded the motion. The vote was unanimously in favor of the motion.

b. Approve Minutes of February 19, 2009

There were not enough Commissioners present that had attended the February 19, 2009 so approval of the Minutes was tabled to the April meeting.

C. Old Business.

There was no Old Business to come before the Commission

D. New Business

There was no New Business to come before the Commission

E. Adjournment

There was no further business to come before the Commission and Vice Chairman Chorney called for a motion to adjourn. **Commissioner Nelson motioned for adjournment. Commissioner Dove seconded the motion. The motion passed unanimously.** Vice Chairman Chorney adjourned the meeting at 9:00 PM.

Submitted by:

Peggy Craft, Acting Clerk of Commission