

April 27, 2009

MINUTES: THE ZONING BOARD OF APPEALS, Town of Hamden, held a Public Hearing and Regular Meeting on Thursday, April 16, 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:

Jeff Vita, Chair
 Bill Reynolds
 Fran Nelson
 Elaine Dove
 Andrew Houlding, Alternate

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 7:05 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.
- 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.

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

- 3) **09-6351** 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 314.4 to allow an accessory structure with a rear yard of 3 feet where 5 feet is required. Section 435 to allow lot coverage of 30 percent where only 25 percent is allowed. R-4 Zone, Dale and Scott Badger, Applicant's

Ms. Masi, Zoning Enforcement Officer, advised the Commission that at the previous meeting the property boundaries were not clear on the survey. The applicant went back to their surveyor to get clarification. The Mucha's hired an attorney Mr. Greg Gallo who has submitted a written statement to the Commission.

Mr. Edward Mucha, 39 Roosevelt Street, addressed the Commission and would like to know what the findings are with regards to the setbacks. Ms. Masi, advised that a revised survey has been submitted. Mr. Lee, Assistant Town Attorney stated that the meeting had been continued because there were questions regarding where the rear

property line is. Clarification of the rear property boundary line was necessary to determine which variances were needed for the rear yard. Mr. Mucha reviewed with the Commission Mr. Gallo's statement. He said that Mr. Badger had not taken out a building permit or contacted the Planning Office before building the stone fireplace and grill. Mr. & Mrs. Mucha were unable to come to a compromise with Mr. & Mrs. Badger. They do not have an issue with the deck that was built within the rear yard. Mr. Mucha stated that the wood burning fireplace is 8 inches from the property line. The barbecue is located next to it and is 7 feet long and over 6 feet tall. He does not feel this is a standard barbecue as it was stated to him by Mr. Badger. The structures devalue his property. The smoke is a nuisance and the fire is a hazard due to the close proximity of the fence. Mr. Mucha said that he does not feel there is a hardship to move the structure and has room within his yard. His fence has been up since they purchased the home in 1999 and they were never questioned by the previous owner or the Badger's.

Mr. Chorney asked Mr. Mucha what compromise he is looking for. Mr. Mucha noted that the smoke is a nuisance and the fire is a hazard due to the close proximity of the fence. The structures devalue his property because the wood burning fireplace is 2 feet above and next to the fence. The barbecue is 8 inches from the property line Mr. Mucha said that he does not feel there is a hardship to move the structure and has room within his yard.

Mr. Scott Badger, 33 Roosevelt Street, addressed the Commission and stated that the issue is not about fire safety. He could place portable grills along the property line. This issue is regarding Mr. & Mrs. Mucha who sit on their back deck that looks into his backyard. He does not feel he should have to ask or get permission for anything in his backyard. He pays his taxes to the Town and his mortgage to the mortgage company. He stated to the Commission that Mr. Mucha had contacted the Fire Department and spoken with the Fire Marshall and was advised that they could not do anything. Mr. Badger reviewed with the Commission the location of his wood deck and stone fireplace/grill in his backyard. He explained that there are trees in both yards and Mr. Mucha's deck is located 30 feet away from the structure. He does not feel the smoke would travel that distance and would dissipate. Mr. Badger did not realize that he needed permits and when notified by Ms. Masi, the Zoning Enforcement Officer, he began to take steps to resolve the issue. He does not feel this will lower the value of his property, but increase it. The grill is portable and was carried into the back yard by four people and can be moved. The fireplace was built by a licensed and insured professional with insurance, and would not be a hazard. The Commission advised Mr. Badger that the professional should have known that he needed a permit. Mr. Badger agreed. Mr. Badger will not use the fireplace until it is capped and a screen is placed in front for safety issues. He does not see a difference if he is able to place portable grills and fireplaces along the property line. He stated that he had offered to Mr. Mucha a compromise to install a splash guard along the fence. He is willing to sign a legal agreement that if the fence were to be damaged he would be legally responsible. The hood is tall and does stand above the fence, and it can be removed. He stated that Mr. Mucha would not agree and he wants the fireplace destroyed. Mr. Mucha had advised him that his attorney said if the fireplace is not removed, they would also ask to have the deck removed. Mr. Lee advised the Commission that you are able to put portable grills next to the property lines and they would not be defined as a structure. Mr. Chorney said that the problem is the stone masonry structure, which is considered a structure.

Ms. Lakeisha Gaskins, 84 Church Street addressed the Commission. She reviewed with the Commission the pictures that had been submitted and were in the file. She said that the reason everything has been built was because the previous structure was falling apart. She and Mr. Mucha had spoken and she advised him that a retaining wall was being built in front of the old one, because it was falling apart, and that they were building a fireplace. She stated that he replied okay. Mr. Mucha then talked to the masonry man with regards to what was being built. The masonry contractor should have known that they needed a permit. As soon as they were notified by the Zoning Enforcement Officer they responded. They thought that they were making improvements to the lot by adding the grill/fireplace, and making it safe for their family. If Mr. Mucha had come to them and let them know there was a problem when the grill/fireplace was being built, they would have stopped and looked for a solution. She stated that in the past if there were a problem, Mr. Mucha would come to them or has left notes in their mailbox. Mr. Mucha has a deck that sits high, she is not comfortable with him looking down into the yard, but the Town had allowed it. She is asking the Commission that they be fair and grant them the variances. She advised the Commission that her mother met with their attorney and was told, if the stove is not removed and moved away from the fence, everything would need to be destroyed. She said that when Ms. Masi, Zoning Enforcement came out she advised them that Mr. Mucha's fence is too high on the hill and is in violation. The

surveyor that they hired said that the fence is on their property. If Mr. Mucha does not want to compromise, then they will have to move their fence. She said that a chimney sweep company was called to install the grill/fireplace, but when he arrived he thought it was going to be inside and he was unable to help them. He did say that if there were a flue, this would be considered a damper and if a cap were put on it, he thought it would be okay. He could not put that in writing, because he was not qualified to inspect it. The Fire Marshal would not come out, because he was not qualified to inspect anything on the outside. They also tried to have the building inspector come out. They have tried everything to have it put in writing that the structure is safe. They have no problems with the Mucha's and she does not understand how this issue has become so nasty. She asked the ZBA Commission to rule fairly. The Mucha's told them that if the structure is not removed, they will ask that they also have the deck removed. Ms. Gaskins thanked the Commission.

Mr. Mucha asked to make additional comments. Mr. Vita advised him that both sides have been presented. He asked for comments from the public.

Ms. Debra Mucha, 39 Roosevelt Road. She addressed the Commission and stated that when the Badgers had move in everything was fine, and they were good neighbors. They had put the lattice on two sides of the top part of the deck. It was placed on the property side and the back side to block the view into the Badger's yard. She stated that last year she could not sit on her deck, because of the smoke from the grill and there is food cooking all day long. She is unable to stay outside and must go in and turn the air conditioner on because of the noise, music and smoke. She feels the structure is over sized and with the amount of people the Badger's entertain the lot is too small.

Mr. Vita asked for comments from the Commissioners.

Mr. Chorney stated that the stone work with the fireplace constitutes a structure and a permit would be needed. If the Badger's apply for a permit it would have been for the entire deck. There was an original wall that they had built within it, which may be looked at favorably. The grill is portable and the Badgers are willing to move it and incapacitate the fireplace. Mr. Badger had stated that if the Commission advises them to, they would cap it and close it off. Mr. Chorney advised that they may have to remove the chimney section so that it would become a wall and incapacitate the fireplace by closing the opening. If the chimney is leveled and the fireplace was incapacitated they would not be able to use. The grill can be removed and the Badger's could go to a store and replace it, and then it would be portable. There should be some type of fire protection and that the fireplace cover could be placed, so that it would become a back splash below the fence. Mr. Badger advised the Commission that he has purchased three fire extinguishers. Mr. Vita asked Mr. Lee to clarify what is considered a structure. Mr. Lee advised them that the grill itself is not, but the height of the structure with the chimney and the hood are over six feet. Mr. Nelson asked Mr. Lee if the chimney for the fireplace were reduced to under six feet and is no longer considered a structure would they be able to use it however they wanted. If they wanted to use it as a wood burning grill they would just need to have food next to it. Mr. Lee advised that would be correct from a zoning perspective. Mr. Nelson stated that there are no laws for a chiminea or a barbecue/grill. The Commission discussed what was considered a structure, if the height were to be reduced. Ms. Dove stated that they may not be able to bring the structure under six feet by looking at the pictures that are in the file. They discussed that if gas logs with propane were used, it would not be an issue for smoke.

The Commission discussed what was determined at the last meeting, which was to remove the top off the gas grill or incapacitate it and reduce it to 6 feet. Mr. Badger stated that at the last meeting he would remove the hood from the grill and use it for a back splash. The hood contains three lights. If the top of the fireplace needs to be removed he would do it. He asked the Commission if the size were reduced, could he place a fire pit inside. Mr. Lee stated that if the height were reduced, it would no longer be a structure and a permit would not be needed. Mr. Lee asked Mr. Badger if he would reduce the height of the structure. Mr. Badger advised him that if he had to it would be done. The Commissioners determined that if it were brought below 6 feet a fire pit would be an issue for QVHD, and would no longer be within the ZBA jurisdiction. Mr. Lee advised that if the height of the structure were reduced, a variance would still be needed for the lot coverage.

Ms. Masi explained that the variance for the setbacks and lot coverage would be for a structure. If the fireplace remains the coverage would be over the allowable amount. The rear yard structures cannot cover over 20 percent

of the area. The Commission determined what coverage is allowed with the structures in the back yard. Ms. Mucha stated that the Badger's have added a concrete structure. Ms. Masi advised her that it depends on how high the structure is and the concrete foundation is considered a patio, which is not regulated.

Mr. Vita asked for additional questions or comments from the Commission. Mr. Chorney asked Mr. Badger if he would reduce the fireplace to under six feet in height and remove the hood and place a splash guard. Mr. Badger agreed he would do this. The Commission discussed that the fence should not be used as a guide, because there are areas that stand over six feet. Mr. Badger asked if he used a gas fireplace and placed a propane tank is that allowed. The Commission advised him this would eliminate a need for a chimney.

Mr. Lee stated that once the six foot structure is removed it would be in compliance and it would no longer be a ZBA issue. The Commission discussed which variances they needed to deny and if the deck that was built has the allowed amount of coverage. Mr. Lee advised that the deck could be approved.

Mr. Vita asked for any further comments from the Commission. There were none.

The Public Hearing was closed at 7:54 p.m.

- 4) **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 level 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. Zone CDD-2, Nickabam, LLC, Applicant
Public Hearing continued until 5/21/09 at the request of the applicant

Mr. Vita advised the Commission that the Public Hearing at the request of the applicant has been continued until the May 21, 2009 meeting

B. Regular Meeting

a. Discussion and voting on Public Hearing items.

09-6351

Mr. Nelson made the motion to approve the application for 09-6351 for discussion purposes. Mr. Reynolds seconded the motion. The motion passed unanimously.

Mr. Nelson asked if the Commission should deny the first variance for section 314.4 for the grill/fireplace. Mr. Lee advised that the second variance for 314.4 would be to allow for the deck as an accessory structure. The Commission determined that it could be approved because the deck is not an issue. The deck was built within the retaining wall that was preexisting and it is less than the established line. The deck has a handicap access which is necessary and can not be considered part of the lot coverage.

The Commission asked Mr. Lee what needs to be approved. Mr. Lee advised that the other variance covers the deck and the rear yard. This would be three feet from the rear yard and it should be five feet. This would need to be approved. Mr. Reynolds asked for clarification that the fifty four percent for the rear yard where twenty percent is allowed and if it should be denied. Also if the chimney structure could be split. Mr. Lee advised the Commission there should be 4 separate motions.

Mr. Chorney made a motion to deny the variance for section 314.4 to allow an accessory structure of 0 feet where 10 feet is required for the Stone/Grill fireplace as depicted on the map. Mr. Reynolds seconded the motion. The motion passed unanimously.

Mr. Nelson made a motion to approve the variance for section 314.4 to allow for the deck only as dimensionally shown on the plan. Mr. Reynolds seconded the motion. The motion passed unanimously.

Mr. Nelson made a motion to approve the lot coverage for section 314.4 for a deck that is shown on the plan dated March 20, 2009. Mr. Reynolds seconded the motion. Mr. Chorney advised that the existing block wall was built within the existing rear line as defined by the 1 story concrete block building, and a rear line is established which is under the requirements. The handicap access is taken out of consideration for coverage. When the grill/fireplace is being removed and the wood deck would be allowed as shown on the plan dated March 20, 2009. The motion passed unanimously.

Mr. Nelson made the motion to approve the variance for Section 314.4 to allow an accessory structure and allow a rear yard of three feet where five feet is required for the reasons as previous articulated by Mr. Chorney in the previous motion. Mr. Reynolds seconded the motion. The motion passed unanimously.

Mr. Reynolds made the motion to approve the variance for Section 435 for the overall lot coverage. Ms Dove amended the motion to allow specifically for the deck only and for no other structures. Ms. Dove seconded the motion as amended. The motion passed unanimously.

The Commission advised Mr. Badger that the work be done as soon as possible to bring the structure under six feet. Ms. Masi advised that when he is in compliance a permit can be issued for the deck.

b. Approve Minutes of February 19, 2009 and March 19, 2009

Mr. Reynolds made the motion to approve the minutes of February 19, 2009 as written. Mr. Nelson seconded the motion. Mr. Vita, Mr. Reynolds and Mr. Nelson voted in favor of the motion. The motion passed.

Mr. Reynolds made the motion to approve the minutes of March 19, 2009 as written. Ms. Dove seconded the motion. Mr. Nelson, Mr. Chorney, Mr. Reynolds, and Ms. Dove voted in favor of the motion. The motion passed.

c. Old Business

There was none.

d. New Business

Mr. Reynolds asked Ms. Masi if an A-frame sign is allowed in front of a home. Ms. Masi advised that the litter agent would be helpful in removing the sign, because it is private property. If it were in the right away she would be able to remove the signs. There was a discussion amongst the commission to place a sticker on the signs noting they are in violation.

e. Adjournment

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

The meeting adjourned at 8:15 p.m.

Submitted by: _____
Stacy Shellard, Commission Clerk