

October 21, 2009

**MINUTES: THE ZONING BOARD OF APPEALS**, Town of Hamden, held a Public Hearing and Regular Meeting on Thursday, October 15, 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  
Wayne Chorney  
Fran Nelson  
Bill Reynolds  
Steve Walsh, Alternate 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 7:05 p.m., reviewed the agenda and meeting procedures, and the panel introduced themselves.

**A. Public Hearing**

- 1) **09-6365** 87 Central Avenue, Requesting variances of the following: Section 314.4 to permit a 2 foot 6 inch side yard where 10 feet is required for the expansion of an existing detached garage. Section 435 to permit 40% lot coverage where no more than 25% is permitted. Section 326 to allow the expansion/continuation of a non-conforming structure. Zone R-4  
Crystal Brian, Applicant

Ms. Crystal Brian, owner, addressed the Commission and stated that her lot is a legal non-conforming lot built in 1929. The garage is falling down and she would like a two car garage in its place. She would use half the garage as a workshop and studio space. There would be no bathroom or kitchen and it would not be used as living space. She showed pictures of similar work done by the contractor she has hired. Mr. Chorney asked Ms. Brian if it would be a one car garage with a studio area. Ms. Brian agreed and explained that she would be using the studio area as an office and a place to do her artwork. There will be a freestanding propane stove used for heat. She explained that she is a professor at Quinnipiac University. Mr. Chorney asked if students would come to the premises. Ms. Brian stated no students would come to the premises. Ms. Masi reviewed the expansion requested and the lot coverage allowed. She explained that the lot coverage allowed for the rear yard setback is 20 percent, and the proposed coverage would be over. Mr. Kops explained that the proposed zoning regulations will allow for a 3 foot setback for an accessory structure instead of the 5 and 10 that are required under the current regulations and if she does not need to start construction immediately, the coverage requested will be allowed with the proposed zoning regulations. If she cannot wait, she would need a variance for the lot coverage. The Commission reviewed what the applicant is requesting and what would be allowed with the proposed regulations. Mr. Vita

explained there is a possibility that what she is asking for may not be allowed in the proposed regulations and would have to come back for a variance for the lot coverage. Ms. Brian stated that she understood.

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

The Public Hearing was closed.

- 2) 09-6366** 49 Hampton Road, Requesting action under Section 861.1, Appeal of Zoning Enforcement Officer Decision dated 8/31/09, 49 Hampton Road, Zone R-4.  
49 Hampton Road, LLC, Applicant

Mr. Carl Porto, Attorney, addressed the Commission and asked that the public hearing be continued. He explained that the students living in the house will be leaving the property and the applicant is working towards a resolution of the matter.

The Public Hearing was continued until November 19, 2009.

- 3) 09-6367** 2989 Whitney Avenue, Requesting a variance of the following: Section 504.c to permit a side yard of 2 feet where 10 feet is required for the installation of a drive-up window overhang roof. Zone B-1.  
Carl M. Porto, Applicant

Mr. Carl Porto, Attorney, addressed the Commission and reviewed the location of the building and the request for a variance. He explained that his client has been approached by a bank as a possible tenant, but they would require a drive-through teller window. Under the current regulations a 10 foot side yard is required. The overhang being requested would go 8 feet into the side yard. Mr. Vita reviewed with Mr. Porto the location where the drive-through teller would be located.

Mr. Hunter Smith addressed the Commission and reviewed the site plan that has been presented to Planning and Zoning. He explained that placing the drive-through at the rear of the building would create a safety hazard with vehicle, and pedestrian traffic. Locating the teller window in the rear would isolate it. The existing building is 30 inches above grade that they must provide handicap accessibility and explained the location of the ramp. They would not be increasing the second floor which is approximately 600 square feet. The first floor would be extended to allow for a bank vault. Mr. Nelson asked if the drive through teller could be placed at the end of the building to allow for the overhang. Mr. Smith stated that it could still be a safety hazard because of the lack of queuing space. He reviewed with the Commissions the problems that would exist if the window is not place were proposed. Mr. Nelson asked if the fire department located next door would have rights to the driveway. Mr. Smith stated that they would not have driveway rights and reviewed the location of the fire department driveway.

Mr. Chorney stated he is concerned with the traffic in the area because of the speed of the traffic, and the intersections at Whitney Avenue and Ives Street. Mr. Kops stated that the traffic issues would be addressed at the Zoning Section of the P&Z when the application is presented. He feels that traffic does not move much because of the light at the intersection. He could recommend to the Zoning Section a condition of approval that cars only be allowed to make a right turn only, and a sign be required. Mr. Vita stated that a curbing island could also solve the traffic problem. Mr. Porto said an application needs to go the Zoning Section for site plan approval if an approval is received for the variance requested. Mr. Smith does not feel that the traffic would be an issue because the road is being widened. Mr. Chorney asked if a free-standing window with or without a teller had been considered. Mr. Smith said that a free-standing window is not preferable for a relationship with bank clients and could be a security issue. The 8 feet they are requesting is to support the structure and columns will be used.

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

Mr. David Berardesca, Fire Chief for the Town of Hamden, addressed the Commission and stated that there is a concern for the fire station. He explained that it is a volunteer station and the Town rents space for an Emergency Rescue Truck and there are career fire fighters that are always stationed at this location. He reviewed how the Town emergency vehicles enter and exit the facility. They are also having a fire truck at the station temporarily because of the renovations being done to the Town Hall. The call volume is not high for the Volunteer Fire Department. The drive-through window that is being requested would have no impact to the Career Center operations for the Town's Fire Department.

Mr. Chorney asked Mr. Porto if the tenant has signed a lease. Mr. Porto advised that the bank who is interested in the location will not sign a lease without the drive-through window. Currently Prezioso Furs is located at the site and will be moving to a different site or will close. The risk is to the owner of the property and he would like to pursue the bank as a tenant. The application being made before the Zoning Section of the Planning and Zoning Commission will be site specific and the hope is the bank will sign a lease. Mr. Chorney is concerned that if a drive-through window is approved, a Dunkin Donuts could go into the space. Mr. Lee explained that queuing ratio for a Dunkin Donuts exceeds the queuing ratio for a bank. He reviewed the queuing ratios that the DOT would require. Mr. Vita asked Mr. Lee if they could place a condition for the drive-through window that it be for use by a bank only. Mr. Lee said a condition could be placed and asked if the applicant would still want the variance with the condition of approval. Mr. Porto stated that the drive-through window would not be built without the tenant. If the bank does not sign a lease and the use changes they would have to come back to the ZBA if another variance is necessary. The Commission discussed a condition of approval being use by a bank only. Ms. Masi will not issue a zoning permit without a specific use request. Mr. Hunter explained that the site plan is site specific for this use because of the parking requirements. Mr. Kops stated that the site plan application is specific for a bank.

Ms. Cindy Civitello, 61 Berkely Court addressed the Commission and is concerned for a drive-through window at this site because of traffic exiting on Whitney Avenue. She likes the suggestion for a right turn only coming out of the bank exit. There is also a concern if the bank is not a tenant what other type of business would be put in the space.

Mr. Carl Olson, 585 West Todd Street, volunteer at Mt. Carmel Fire Company, addressed the Commission and stated he is concerned with the pitch of the overhang. It could allow water to go onto the fire department property which could create water problems in the building and into the area of the fire escape. In the winter time the water could create ice on the property and there is a concern for where the property owner will place the snow. He said if the overhang structure were hit by a vehicle it could come down onto the fire house. Mr. Nelson asked how close to the fire house the property is. Mr. Olson said the fire escape is two to three feet from the property line. Mr. Smith stated that the fire house is 10 feet off the property line and the fire escape comes out 4 feet. Mr. Vita asked Dan if the design or the pitch of overhang is an issue the ZBA should deal with for a variance. Mr. Smith explained that the roof will be guttered and go down into a drywell. Mr. Kops explained that the Town Engineer would review the site. Mr. Olson stated that a right turn only from the driveway would be directly in front of the fire house and could impact the fire trucks going out. Mr. Nelson explained that the right of-way is to the emergency vehicle. Mr. Olson feels that the drivers could be distracted leaving the bank. Mr. Olson is also concerned with the exhaust coming from vehicles sitting in line for the drive-through would drift towards the fire department building and could limit them leaving their windows open. Mr. Chorney asked Mr. Olson if there was a fence located between the properties. Mr. Olson stated there was not a fence. Mr. Hunter stated that there may be a fence on the site plans.

The Public Hearing was closed.

- 4) 09-6368** 1970 Whitney Avenue, Requesting variances of the following: : Section 753.4.e to allow a free standing sign with a bottom edge at 33 inches above ground level where at least 10 feet above ground level is required. Section 753.4.e. To allow total surface area of pylon sign to be 74.25 square feet where no more than 32 square feet is permitted. Section 756.b.1 to allow 390 square feet of aggregate surface area of signage where 82 square feet is permitted. Zone CDD-2.  
Omnivision Eye Associates, Applicant

Dr. Louis Hochberg, owner, addressed the Commission and submitted a packet that contained the schematics and pictures of the signs being proposed. He has been in private practice for over 20 years in Hamden, and at his current location since 1989. The sole sign to identify his practice was an awning and there were no additional signs. All his patients know his building. A developer had approached him two years ago and stated his intentions to develop the site. His only choices regarding the changes were to accept them or to move. He chose to stay because of his established patient base. A larger sign is for the patients who come to him because they have visual difficulties. It is important that the practice can be located by a sign large enough to be seen by the clients. The building being constructed is long and the narrow width of building fronts Whitney Avenue. The building is below the grade of the street. Dr. Louis Hochberg stated that from a safety stand point it is difficult for traffic moving at 30 or 40 mph on Whitney Avenue to locate the building without a visual aid. There have been calls into the office from patients who have had trouble locating the building. The new building will have up to ten tenants, with more in the Glen Terrace building. There will be a uniform sign over the entrance window. The sign that was originally proposed is a small sign located over the entrance of the building and is difficult to see. Dr. Hochberg would like a larger sign at the street that would display his location and avoid hardship to his patients and will be a visual aid. The sign would also identify the individual business located in the building. He stated that there is a potential for retail business.

Ms. Rhoda Saltz, co-owner addressed the Commission and explained that people have been trained to locate their business by the color of the sign and its shape as a visual cue. They are asking for the visual aid to make it easier to locate the building.

Mr. Tony Lano, the sign maker, addressed the Commission and stated that the building is placed sideways with the short end facing the street, which is what counts for the sign square footage. The front of the building facing the parking lot is 255 square feet. If the long side of the building were facing the street 255 square feet is what would have been allowed. The applicant did not have any control over the placement of the building.

Mr. Vita verified that the schematic included in the packet was for the free standing sign. Ms. Saltz reviewed with the Commission the packet that was distributed, and explained the wall sign schematic that is included.

Mr. Chorney stated that there was a previous application for a large sign from another individual that had been denied. He said that other tenants may also want additional signage and this could create a problem. Mr. Chorney stated that there needs to be a complete plan for signage for the entire complex. He explained that Dr. Hochberg would be allowed to have a temporary sign for his business until the other tenants are in place. This application is just for Omni Vision, and other tenants may need a variance claiming they do not have enough room for themselves. Mr. Chorney feels that some of the argument is valid because of the setback. Ms. Saltz reviewed other signs in the area and the size of the signs which allows the business to be seen. Mr. Lano explained that he was involved with the previous application and the design for the signage. The sign being proposed is for Omni Vision and the 9-11 other tenants that will be located on the property. He explained how the tenants will be listed on the signage by the amount of space they have. Mr. Lano understands the comprehensive sign, but Omni Vision may be the only tenant for a time because of the economy.

Mr. Tim Lee, Assistant Town Attorney explained that a temporary sign is allowed for 30 days. Mr. Chorney asked if a permit for a temporary sign can be renewed. Ms. Holly Masi, Zoning Enforcement Officer explained that there is no provision to renew a temporary sign permit in the Zoning Regulations. Mr. Lee explained that a comprehensive sign plan makes sense and would need something from Nickabaum, LLC, who is the owner of the property. Ms. Masi said that the current owner has given the current applicant permission to act as his agent and permit the sign.

Mr. Lano explained that the lease would state the size and color of the sign on the building and the free standing sign. Dr. Hochberg said that it is stated in his lease the amount of space that is allowed on the sign is proportional to the amount of office space. Mr. Nelson asked Mr. Kops for his comments regarding the previous application for this location. Mr. Kops stated that when the owner of the property was considering building, the Planning and Zoning Department indicated appropriately that there may be a problem with the placement of the building. Mr.

Nelson stated that the owner of the property ignored the suggestion of the planner and has sent Dr. Hochberg to submit an application after the original application for a sign was denied. Dr. Hochberg said that he is submitting the application because of his own personal hardship. Mr. Nelson stated that it is the hardship of the property owner, because he did not listen to the Assistant Town Planner and the hardship was self created. Mr. Hochberg said that to place the building where it was suggested by the Town Planner, both buildings would have to have been knocked down at the same time. Mr. Lee asked how the application compares with the previous application in terms of the variance request. Mr. Hochberg said that the square footage of the sign is about the same for the building and the change is for the street sign. The height for the street sign would increase and there is a decrease in the width and square footage. Mr. Lano explained the changes that were made from the original proposal for the sign.

Mr. Kops stated that he is sympathetic to the idea of allowing total signage that would take in to account the long side of the building and the proposed zoning regulations would allow it. There have been the properties that have come before the Commission because they are perpendicular to the street. If the calculation of the signage is based on the end of the building that fronts the street, it penalizes the business owner. He is concerned about the size of the proposed free standing sign and does not see the justification for having a larger sign than what is allowed. Omni Vision will have signage on the building that fronts the street and feels it would be adequate to indicate where the business is. Ms. Salz said the signage can be put on the front or the side of the building and they would only be allowed one. Mr. Kops explained the potential changes of the proposed zoning regulations regarding signage. He discussed with the Commission the previous applications that have come before the Commission because of the placement of the building. There is another clause that limits the size square footage per lineage foot for each entity in the building.

The Commission reviewed the proposed signs with Dr. Hochberg and Mr. Lano and what each tenant would be allowed for signage. Mr. Nelson explained if the variance requested is approved it stays with the property forever. Ms. Masi stated that she feels the proposed signage plan is comprehensive and if it is not approved each business in the building would have to come before the ZBA to ask for a variance. The Commission discussed with Mr. Kops the size of the free standing signs visibility and what would fit on it. The Commission had a consensus that the Public Hearing should be continued so Mr. Hochberg could meet with the Planning Staff to seek a solution for the size of the signage and allowable space on the signage for each tenant. Mr. Walsh stated that if the request is approved for the signage the existing tenants signs would need to come down. Ms. Saltz stated that the existing signs would need to come down.

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

Ms. Christine Esposito, 1742 Whitney Avenue, addressed the Commission and stated that she is not opposed to there being signage, but feels that the application seems excessive for the free standing sign. She would like to see Dr. Hochberg send out postcards that states the location.

Mr. Lee stated that the public hearing could be continued until next month. This would allow the property owner and the tenant to have a comprehensive plan addressing the concerns of the freestanding sign. Ms. Saltz said there will be a hardship because there is no sign. Ms. Masi advised the existing temporary sign is only allowed for 30 days. Mr. Kops stated the Department does not have to take immediate action for a violation of the temporary sign. Ms. Masi reviewed the letters that have been received opposing the sign.

Mr. Vita asked Dr. Hochberg if he understands that continuing the public hearing would allow them to meet with the Planning Office staff, and determine if they can agree with signage and what should be allowed. Mr. Lee explained that Mr. Kops does not speak for the ZBA, but can make a recommendation. Mr. Hochberg is concerned, he would like a conclusion because of the colder weather coming and the ground freezing. Mr. Vita advised Dr. Hochberg that he could ask the ZBA to act on the application at this meeting, but it could be denied. Dr. Hochberg advised he will take the recommendation of the Commission to have further discussions with Mr. Kops.

Mr. Vita advised that the Public Hearing will be continued until the November 19, 2009 meeting

- 5) **09-6369** 400 Goodrich Street, Requesting a variance of the following: Section 740 to permit 4 spaces where 15 are required for office use. Zone B-2.  
Tri-Con Construction Managers, LLC, Applicant.

Tabled at the request of the applicant.

- 6) **09-6370** 965 Prospect Street, Requesting a variance of the following: Section 424.b. To allow a 20 foot rear yard where 40 feet is required for the construction of a deck. Zone R-4.  
Jack Millea, Applicant

Mr. Jack Millea, applicant, addressed the Commission and stated that the owner of the home, Helen Moore, is wheelchair bound. She would like to have access from the rear kitchen door onto a deck and a handicap ramp. The hardship is that 5-6 years ago the zone was changed to reduce the density in the area, and not allow the lots to be split. Mr. Nelson asked if the ramp was included in the setback. Mr. Millea advised it was not and was told it is not relevant to the setback. Mr. Nelson said that the ramp is an ADA issue and is exempt. Mr. Chorney stated that it should show on the plan. Mr. Millea said the width of the ramp will be four feet and the deck is 22 feet by the 12 feet. Mr. Millea stated he can add the ramp to the plans. Mr. Chorney asked when the zone changed. Ms. Masi explained that the zone changed in 2003 and made some of the existing homes none conforming. Mr. Chorney asked how the ramp dimensions fit in. Mr. Kops explained that handicapped ramps are allowed in the front of a home. He is not sure if ramps located in the rear of the home are exempt. He asked if the 20 feet Mr. Millea is asking for to the ramp or the deck proper. Mr. Millea explained that the 20 feet to the deck. Ms. Masi reviewed the regulation for a handicapped ramp. Mr. Nelson asked when the deck was put in. Mr. Millea said the deck is non-existing and the owner would like one built. The Commission discussed with Mr. Millea the size of a deck that allows the use of a wheelchair. The Commission reviewed the change of the zone that prevented the lots from splitting and some of the lots became legally non-conforming.

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

The Public Hearing closed at 8:42.

## **B. Regular Meeting**

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

#### **09-6365**

Mr. Nelson made the motion to approve the request for the variances. Mr. Walsh seconded the motion. Mr. Nelson stated that the hardship is that the lot is narrow, and the applicant is not asking for an over sized garage. Mr. Nelson said that it would be a one car garage with storage. Mr. Vita stated that the motion should be specific and state no water. The Commission discussed the motion. Mr. Vita asked Mr. Nelson if he would like to revise his motion. Mr. Nelson stated he would revised the motion and add a condition that read: One car garage and one door, no kitchen, no water, no habitable space. The motion passed unanimously.

#### **09-6367**

Mr. Nelson made the motion to approve the request for the variance and the following condition: The approval is for bank use only. Mr. Reynolds seconded the motion. The motion passed unanimously.

