

July 22, 2010

**MINUTES: THE ZONING BOARD OF APPEALS**, Town of Hamden, held a Public Hearing and Regular Meeting on Thursday, July 15, 2010 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 items were reviewed:

***Commissioners in attendance:***

Jeff Vita, Chair  
Wayne Chorney  
Fran Nelson  
Elaine Dove  
Bill Reynolds

***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 7:02 p.m., reviewed the agenda and meeting procedures, and the panel introduced themselves.

**A. Public Hearing**

- 1) **10-6397** 50 Belden Road, Requesting variance of the following: Section 220, Table 2.3 to allow a side yard of 10 ½ feet where 12 feet is required for an addition. R-4 zone,  
Kristen Klie, Applicant

Ms. Kristen Klie, Applicant, addressed the Commission and stated that the variance being requested is to allow a 10 foot side yard for an addition to the house. Mr. Nelson asked if the addition will be placed in a straight line off the back of the house and Ms. Klie said yes it would. Mr. Vita asked if the side yard is the only variance requested and Ms. Klie replied yes. Mr. Chorney asked what the addition would be and if it would be a single story. Ms. Klie stated that the addition would be a living room and will be a single story structure.

Mr. Vita asked if there were comments in favor or against and there were none.

The Public Hearing was closed

- 2) **10-6398** 216 Shepard Avenue, Requesting variances of the following: Section 220, Table 2.3 to allow a side yard of 0 feet where 15 is required for the construction of a carport. Section 570 & Section 830 to permit a fence 8 feet high where no more than 6 feet is permitted R-3 zone,  
Mihaela Aslan, Applicant

Ms. Mihaela Aslan, Applicant addressed the Commission and stated that she would like to build a carport because there is not enough space for a garage. She explained that she lives on a busy street and the driveway is small, and additional space is needed for visitors so that they do not have to park on the street.

Ms. Aslan would also like to put a fence up in the yard for her children who are small. The rear of the property is high and she would like to put up an 8 foot high fence for privacy. Ms. Masi, Zoning Enforcement Officer, said that the rear of the property is elevated higher and to screen them from the house located behind them the fence would need to be 8 feet. Mr. Vita asked if the proposal is to fence the entire yard. Ms. Aslan stated that the 8 foot high fence would only be placed at the rear of the property and the remainder of the fence would be only 6 feet high.

Ms. Dove asked if there were a garage on the property. Ms. Aslan explained that the existing garage is small and that they cannot put their minivan in it. She said that the driveway is sloped and it is hard to place the children into a car.

Ms. Dove asked how Ms. Aslan would integrate the design of the carport with the house and if the carport would have a flat roof which may not be particularly appealing to the neighborhood. Ms. Aslan explained that she and her husband are still looking at designs for a carport, but it would be appropriate to the design of the house. She said that they do not want a problem with water going into the neighbor's yard and are looking at carports with a sloped roof. If it is a flat roof they will put gutters on the side and integrate it with the existing system. Ms. Aslan said that she would be willing to take suggestions from the Commission because she wants it to be practical and aesthetic to the house and neighborhood. Ms. Dove asked if they can ask for designs to be submitted. The Commission discussed if a design can be a condition, and it was determined that they can ask for detailed plans, but they cannot ask for a specific plan to be used.

Mr. Chorney asked how wide the existing driveway is and does it include the proposed carport area. Ms. Aslan said that the driveway will be 23 feet wide in front of the garage and proposed carport. Mr. Nelson asked if it narrows down as it goes to the street. Mr. Chorney asked if there would be curb cuts made with the widening of the driveway. Ms. Masi explained to the Commission that the driveway is brand new pervious pavers and they are not proposing curb cuts or encroachment into the street.

Mr. Chorney asked why a garage could not be placed to the rear of the property. Ms. Aslan stated that safety would be an issue if the children are outside playing. Mr. Chorney said a hardship must be shown and asked how steep the slope is for the driveway. Ms. Masi said she did a site visit and it does not appear to her that there is another location to place a garage. Mr. Nelson asked if there are trees and steep slopes in the backyard. Ms. Aslan reviewed the property and said a garage would be more expensive which would require a foundation and there is a shed in the yard.

Mr. Vita stated that a letter was received from a neighbor indicating a concern that the construction of a carport would go onto their property. He asked Ms. Aslan if the property line is clearly defined. Ms. Aslan explained that there are trees located on the property line. Mr. Vita explained if a variance is granted the carport must be only on Ms. Aslan's property. Ms. Aslan said that the carport would not be placed on the neighboring property. Mr. Chorney said that with a zero lot line Ms. Aslan must be sure that she protects herself and neighbor. The Commission does not want something that cannot be built and would require a survey. Mr. Nelson asked if there were any survey pins on her property. Ms. Aslan said she only has found them in the rear yard. Mr. Nelson said it is critical that the property line is defined because if structure goes onto the neighboring property it would have to be moved. Mr. Vita asked what the proposed width of the carport would be. Ms. Aslan said it would be 10 feet wide. The Commission reviewed the proposed site plan and property line with Ms. Aslan. Ms. Dove asked why a carport is needed if the area has brick pavers. Ms. Aslan said that they would like protection from the trees.

Mr. Vita asked for comments in favor of the application and there was none. Mr. Vita asked for comments against the application:

Ms. Luz Brent, 208 Shepard Avenue, addressed the Commission and stated that she is concerned with the water that could collect and come onto her property. She would like a survey done so that the property line could be determined. Mr. Vita asked Ms. Brent if her house was to the left of the applicants when facing the house and Ms. Brent said yes. Mr. Vita asked Ms. Brent if the driveway is elevated and Ms. Brent said yes and it is paved. Ms. Masi said that where the carport would be placed are impervious pavers. Ms. Aslan said that the border is higher and would not allow water to go onto the Ms. Brent property. Mr. Vita asked if the carport will have a peak or flat roof because the neighbor is concerned with water going onto the neighbor's property. Ms. Aslan said that there will be gutters. Mr. Chorney asked Ms. Masi if the applicant would have to go to the Planning and Zoning Commission. Ms. Masi explained that it would not go before the Planning and Zoning Commission, but would have to be reviewed by the Town Engineer. She also said that the zoning regulations state that the applicant would have to show how the water would be contained on their property. Ms. Dove stated that she would like to see a plan that shows the actual carport and that would help to determine that the water would be kept on the property. Ms. Aslan said that her husband would be constructing the carport.

Mr. Lee said that if it is the will of the Commission to see a more detailed plan then the public hearing can be left open, if not then the public hearing should be closed.

Mr. Vita advised Ms. Aslan that she could submit detailed drawings. Ms. Masi advised the Commission and the applicant that they do not meet in August so the public hearing would be continued to September. Mr. Lee explained that the public hearing must be closed within 35 days, unless the Applicant agrees to an extension on record until the September meeting. Ms. Aslan agreed to keeping the public hearing open until the September 16, 2010 meeting.

Mr. Chorney advised Ms. Aslan that she should meet with Ms. Masi and show her the detailed plans prior to the next meeting. Mr. Kops explained that the plans should also show the water drainage for the carport and where the water will flow to. Ms. Aslan said that the existing water drains through an underground system to the street and that they would do the same thing for the carport. Mr. Vita said that the plans should also show the dimensions of the carport and its location. Mr. Chorney said that if the variance is approved the applicant would have to show the structure on the final plans. Ms. Aslan said they are also going to extend the mud room on their home and asked if this could be included or if they need a separate application. Ms. Masi said it should be included in the plans and variance request because the mud room would encroach into the side yard.

Mr. Vita stated that the Public Hearing would be continued until the September 16, 2010 meeting.

- 3) 10-6399** 1378 & 1380 Shepard Avenue, Requesting a variance of the following: Section 520.8.1.a, to allow natural resource removal, re-grading and filling of 1,140 cubic yards, exclusive of that earthwork falling within the area delineated by the footprint of an approved structure, not part of a site development that is essential to an application that requires Site Plan and/or Special Permit approval for the purposes of providing access to two approved building lots. Zone M, John Rossotto, Applicant

Mr. Nelson stated that he is friends with Mr. Rossotto but this would not impede his decision regarding this application.

Mr. Bob Brown, Brown and Associates, submitted to the Commission pictures (exhibit 1) of the property. He explained that the southern parcel is known as 1378 Shepard Avenue and the northern parcel is 1380 Shepard Avenue. There is 50 foot access area and each lot would have a 25 foot access strip. Mr. Brown reviewed the delineated area where 1,140 cubic yards of material was removed. He said that there was grading done and brush removed to surface clear the area. He reviewed with the Commission the pictures (exhibit 1) that had been submitted.

Mr. Brown explained that Mr. Rossotto is asking for a variance because he had removed the fill without getting a zoning permit. Mr. Vita asked Mr. Tim Lee, Assistant Town Attorney why this would come before the ZBA and not go before the P&Z Commission. Mr. Lee explained that the regulation states that over a certain amount of excavating it must be part of a development plan and a housing development plan must be submitted. Mr. Lee explained that Mr. Rossotto does not have a development plan for the houses and he is asking for a variance to waive the requirement in the regulation that a development plan is necessary for excavation. If the Commission grants the variance Mr. Rossotto must then go to the P&Z Commission with a Special Permit & Site Plan application. Ms. Holly Masi, Zoning Enforcement Officer, explained to the Commission that this application is the result of an enforcement action because Mr. Rossotto has already done the work without a permit. Mr. Lee explained that if the ZBA grants the variance, Mr. Rossotto would still need to receive a Special Permit and then a zoning permit before any further work can be done on the property.

Mr. Vita asked where the material that was removed was placed to prepare the driveway. Ms. Masi said that it was stockpiled on the side of the property. Mr. Vita asked what the process would be if the variance is approved. Mr. Lee explained to the Commission if they grant the variance he must go to the IWC and then the P&Z Commission. Mr. Nelson asked what would happen if the variance is not granted. Mr. Lee explained that he would have to submit a development plan. The Commission further discussed with Mr. Lee and Ms. Masi the process necessary for Mr. Rossotto to be properly permitted to complete the work to create the access to the two lots. Ms. Masi explained that Mr. Chorney said that Mr. Rossotto must show hardship, and the hardship he is stating is self imposed, and that he would have to show a development plan to the IWC and the P&Z Commission before receiving their approvals.

Mr. John Rossotto, 30 Funaro Road, addressed the Commission and stated that there are no wetlands on the parcel. There is an intermittent stream on another property that runs in the winter and is within 200 feet of his property line. Mr. Rossotto said that he cleared 50 feet of driveway so that the realtor can access the property with prospective buyers. This would also allow the room needed to run the utilities. Ms. Masi explained that utilities would be put in after a zoning permit is received and a performance bond is posted. Mr. Rossotto said he did not know a performance bond was needed for a residential property. Ms. Masi explained that a bond is necessary because there would be removal of material that could cause a disturbance that may not be stabilized and the Town needs assurance to that the work would not affect the neighboring properties.

Mr. Vita asked Mr. Rossotto why he did not want to submit a development plan. Mr. Rossotto said that he does not intend to put houses on the property, but he would like to sell the property. Mr. Vita said that the plan would show what he would like to do with the property and if he did not build the house within a certain amount of time the permit would expire. Mr. Lee said that the plan would show where the houses would be. Mr. Chorney said the plan would just be an idea of where the houses would be placed. Mr. Rossotto explained that each lot is over one acre and he would not know where a buyer would want to place the houses. Ms. Masi said that the plan would have to show if the driveway would be paved or gravel and what is needed for a driveway apron. The plan would allow a determination to be made for a bond. Ms. Masi explained the Town Engineer would need a complete set of plans and they would be needed to properly issue a permit and to bond it. Mr. Vita asked if it were to be approved Mr. Rossotto would then need plans to get a zoning permit. Ms. Masi explained if the ZBA grants a variance Mr. Rossotto would have to go to the P&Z Commission for a special permit and IWC. Mr. Lee said that P&Z would look at the drainage plan to determine the drainage caused by the excavation and they would need a de facto plan to determine what is needed.

Mr. Nelson asked Mr. Lee if the ZBA grants the variance what Mr. Rossotto would have to do. Mr. Lee stated if the variance is granted Mr. Rossotto would still need to go to IWC with a plan, and then it would go to P&Z with a plan. The Commission further discussed with Mr. Lee and Ms. Masi the need for plans that would show the excavation work and the drainage plans needed for IWC and the P&Z Commission.

Mr. Rossotto reviewed and submitted a plan (exhibit 2) to the Commission that shows the lot line revision that had been approved. Mr. Chorney asked if it is a three lot sub-division and Mr. Rossotto said it was approved for two

lots. Ms. Masi explained that the lot split was approved in 2007. Mr. Rosso said that he is being taxed for two building lots.

Mr. Vita asked Mr. Rossotto to explain what the hardship is. Mr. Rossotto said that he must have 25 foot wide access for each parcel to bring in the utilities. Mr. Vita said that the regulation Mr. Rossotto would like the variance for was self created because he did the work before getting the proper permits. Mr. Nelson asked if a hardship is needed and Mr. Kops said yes. Mr. Rossotto said that the realtor needs access to the lots to show them and brush needed to be cleared to allow potential buyers to walk up to the properties. Mr. Chorney said that he had done a site visit and feels that the clearing was extensive and was cleared right to the top of the bank that is located at Old Coach Highway. Mr. Rossotto disagreed and reviewed with the Commission what had been cleared from the property. Ms. Masi said that the properties have been cleared and there is still exposed soil. She sent a letter to Mr. Rossotto that states her concerns and the need to stabilize the area. Mr. Rossotto said he has been doing what was asked of him to stabilize the area.

Mr. Vita asked for comments in favor of the application there was none. Mr. Vita asked for comments against the application:

Ms. Eunice Hoffman, 180 White Drive, addressed the Commission and stated that she is the owner of 1390 & 1392 Shepard Avenue. She said her understanding is that an approved building lot must have less than 400 feet of driveway and Mr. Rossotto says he has two buildable lots. She feels that one lot would have more than 400 feet of driveway. Mr. Vita said the two lots have already been established. Mr. Lee said the issue of whether he can build a house with more than the allowed driveway length would be a separate variance. Ms. Hoffman stated that Mr. Rossotto has created his own hardship by his own doing and has admitted to doing so. Ms. Hoffman said that it has created hardship for her property and he has done work in Hamden and knows the zoning regulations. Ms. Hoffman said that Mr. Rossotto has not advised them of his intentions for his properties and the work done has affected her.

Ms. Hoffman submitted pictures (exhibit 3) that show her property, surrounding properties, and the work that has been done on Mr. Rossotto's property. Mr. Nelson asked Ms. Hoffman if Mr. Rossotto had done work on her property. Ms. Hoffman said that Mr. Rossotto has gone onto her property and advised him she would call the police. She said that he was doing work to create a berm and change the flow of the water. The water now goes down along the berm of her driveway and into the street. Ms. Hoffman reviewed the pictures with the Commission and explained the work that Mr. Rossotto has done on his property and hers. She also explained the problems that are occurring on her property because of the work Mr. Rossotto has done. Ms. Hoffman said that if Mr. Rossotto continues to do the work on his property he may create problems for the wetlands. She said that Mr. Rossotto continued to do work after he was told to stop by the Planning Office, and created erosion on her property which he should be made to correct.

Mr. Michael Giovanni, Co-owner of 1390 Shepard Avenue, addressed the Commission and stated that Mr. Rossotto said that he was only going to make an access route but he dug six feet down. Everything that Mr. Rossotto has done was without going through the proper procedures and he will continue to do so unless he is forced to stop. Mr. Giovanni said the only reason Mr. Rossotto put in the request for the variance is because Ms. Masi forced him to stop.

Mr. Dan Hoffman, 180 White Drive, addressed the Commission and is concerned with what the ZBA Commission will do because Mr. Rossotto has done the work without the permit.

Ms. Virginia Rossotto, 30 Funaro Road, addressed the Commission and stated that she understands her husband did the work without a permit. She said that Ms. Hoffman has been talking about water on her property. Ms. Rossotto said Ms. Hoffman installed a pipe in the ground that went onto her property and over to their neighbor's yard. Ms. Rossotto said that Ms. Hoffman's house in the rear has gutter down spouts that are directed down and buried into her property. Ms. Rossotto said that Ms. Hoffman helped create the water problem.

Mr. Rossotto said that Ms. Hoffman and Mr. Giovanni piped the water onto his property and pumped their basement water out and directed it onto his property. Mr. Rossotto said that he made the grade so that he could access his property and the water they would normally get stays on their property. Mr. Rossotto said that Ms. Hoffman and Mr. Giovanni's brother sold him the property.

Mr. Giovanni stated that the natural flow is that water goes downhill and explained how the water in the area flows between the properties. Mr. Giovanni objects to Mr. Rossotto putting a berm that stops the natural flow of the water going downhill.

Mr. Vita closed the public hearing.

The public hearing closed at 8:05

## **A. Regular Meeting**

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

#### **10-6397**

*Mr. Nelson made the motion to approved the Application 10-6397. Mr. Reynolds seconded the motion.* Mr. Nelson said that the applicant is requesting a minor addition to her home that is following the line of the house and is not encroaching into the set back or side yard. *The motion passed unanimously.*

#### **10-6399**

*Mr. Nelson made the motion to approve the Application 10-6399 for discussion purposes. Mr. Vita asked for a second to the motion and there was none.*

Mr. Vita asked for a new motion.

*Ms. Dove made the motion to deny the Application 10-6399. Mr. Chorney seconded the motion.* Ms. Dove stated that Mr. Rossotto did create his own hardship and is in violation of the zoning regulations. She said to grant a variance a hardship must be shown. Ms. Dove feels that there is no fine severe enough to make Mr. Rossotto not continue to violate zoning regulations, and he is not innocent and naive, and he is capable of knowing that he needs a permit. Ms. Dove said that the neighbors have been very lenient for many months and that the ZBA does not approve of this kind of behavior and they are here to make sure that the zoning regulations are being followed. Mr. Chorney said that no hardship has been shown.

Mr. Vita, Mr. Chorney, Ms. Dove and Mr. Reynolds voted in favor of the motion. Mr. Nelson voted against the motion. The motion passed 4-1-0.

### **b. Approve Minutes of June 17, 2010**

Mr. Reynolds made the motion to approve the minutes of June 17, 2010. Ms. Dove seconded the motion. The motion passed unanimously.

### **c. Old Business**

There was none

### **d. New Business**

Mr. Vita stated there will be no meeting held in the month of August. Mr. Vita asked Ms. Masi what the old location for IHOP is going to be. Ms. Masi said that she has not received an application for a zoning permit and future plans for the location are unknown. .

**e. Adjournment**

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

*The meeting adjourned at 8:20 p.m*

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