

Wallingford Zoning Board of Appeals

Monday, August 17, 2020

7:00 p.m.

DRAFT

Meeting Conducted Remotely through GoToMeetings

Minutes

Present: Chairman Joseph Rusczek; Secretary Louis Czerwinski; Commissioners Thomas Wolfer; Raymond Rys; Alternate: Bruce Conroy, Karen Harris; Amy Torre, Zoning Enforcement Officer.

Chairman Rusczek called the meeting to order at 7:00 p.m. The Pledge of Allegiance was recited.

Chairman Rusczek noted that tonight's decisions will be published in the Record-Journal on Friday, August 21, 2020. The effective date of your variance will be Friday, August 21, 2020; the date a certified copy is recorded on the land records. The statutory 15 -day appeal period will expire on Sunday, September 6, 2020. If you commence operations and/or construction during the appeal period, you do so at your own risk.

Voting members are Conroy/Harris (for Carmody), Wolfer, Czerwinski, Rys, and Chairman Rusczek.

PUBLIC HEARINGS

1. #20-014 - Variance Requests/Side Yard, Building Coverage, Accessory Apartment Area/Franceskino/20 South Side Drive

Mr. Czerwinski read the staff notes into the record. The applicant proposes a 12 ft. x 20 ft. addition to the rear of the property. The addition is proposed as an addition to the rear of an approved 720 sq. ft. Accessory Apartment. Said addition exceeds the maximum permitted area for Accessory Apartments. The addition has no means of entry/egress to the primary dwelling and therefore does not constitute a common living area. The proposed addition also necessitates a side yard setback of 9.45 ft. where 20 ft. is required and building coverage of 17.6% where a maximum of 15% is permitted. The property received Variance approval in 1985 for a side yard setback and building coverage in order to construct a two-room (bedroom and rec room), 24 ft. x 28 ft. addition. The 24 ft. x 30 ft. Accessory Apartment was subsequently constructed and located in said addition, receiving approval in 2011. This office cannot support the granting of these three additional variances for this property as there is no hardship associated. The variance request to exceed the maximum allowable area for an Accessory Apartment not only has an absence of hardship, but the expansion to an approved Accessory Apartment +/- 25 years after construction emphasizes the lack of viable hardship and history of non-compliance. If approved, the applicant would need to seek site plan approval for an Accessory Apartment of alternate size than approved in 2011. Also, there are site plans.

Kelly Franceskino, 20 South Side Drive, Wallingford, explained that the application is to add on to an existing accessory apartment that is occupied by her parents. They have found the space too tight due to the coronavirus and not being able to leave. They understood that they can add on 10ft x 12 ft based on the house calculations. They are looking to increase that a little. They will replace an existing 12x10 deck with a room and expand that two feet to the left and six feet to the right and then two feet deep. No protruding into unused space, it's in the garden area. The changing dimensions of the deck would still need the side yard setback. She explained that the height of the addition would be the same as the

existing apartment, tying into the existing roofline. This is similar to what other neighbors have done. It won't alter the character of the neighborhood.

Chairman Rusczek asked for an explanation of the hardship. Mrs. Franceskino replied that there isn't enough living space. Aside from being on a corner lot with angled sides, they will be losing space in the back. Chairman Rusczek explained that one of the stipulations they have to follow is hardship. He understands the concerns about her parents, but there is no hardship. Besides enlarging an addition already approved by variance is adding a variance to a variance, which is never good.

Mr. Conroy noted that normally he would say no but in the current times we may need to rethink the definition of hardship.

Mr. Czerwinski noted that he shares the Chairman's concerns, but that it's challenging.

Mr. Rys asked why they couldn't cover the existing deck. Mrs. Franceskino replied that that would get them to the maximum square footage, but they would still need the side yard setback. Mr. Rys agreed but indicated that it would be more acceptable. He asked for staff input.

Amy Torre, Zoning Enforcement Office noted that the side yard setback is still necessary. She also noted that this would be a building that close to the setback as opposed to a deck. She stated that there is a compliant way to have an accessory apartment providing more living space, not create a duplex. She stated that the variance would follow the land, so the legal grounds for a hardship relate to the land. She stated that she sympathized, but if adding 60 sq ft would be what would need to happen. The existing deck is too big to have a compliant accessory apartment. If approved it would need site plan approval from Planning and Zoning. So whether or not they are adding two extra feet or six in one direction does not make a difference because it would be beyond 780 sq ft. to enclose the existing deck.

Public Comment – none

Hearing no further questions or comments from the Board, Chairman Rusczek closed the public hearing and opened it up for discussion and possible action by the Board.

Mr. Rys: Motion to approve application #20-014/Franceskino/20 South Side Drive. Variance request for Accessory Apartment of 960 sq. ft. where approval for 720 sq. ft. Accessory Apartment exists and a maximum of 780 sq. ft. is permitted to construct an addition to the Accessory Apartment at 20 South Side Drive as shown on Proposed Plot Plan, land of Kelly and Anthony Franceskino, dated June 10, 2020, revised July 30, 2020, and submitted plans/pictures received July 30, 2020, subject to the site plan approval by planning and zoning, if approved.

Mr. Czerwinski: Second

Vote: Conroy – yes to approve; Wolfer – yes to approve; Rys – no to approve; Czerwinski – no to approve; Chairman Rusczek – no to approve.

The variance has been denied.

Mr. Rys: Motion to approve variance request for building coverage of 17.6% where 16.3% exists and maximum 15% is permitted to construct an addition at 20 South Side Drive as shown on Proposed Plot Plan, land of Kelly and Anthony Franceskino, dated June 10, 2020, revised July 30, 2020, subject to the site plan approval by planning and zoning, if approved.

Mr. Czerwinski: Second

Vote: Conroy – yes to approve; Wolfer – yes to approve; Rys – no to approve; Czerwinski – no to approve; Chairman Rusczek – no to approve.

The variance has been denied.

Mr. Rys: Motion to approve variance request for side yard of 9.45 ft. where 13.49 ft. exists and 20 ft is required to construct an addition at 20 South Side Drive as shown on Proposed Plot Plan, land of Kelly and Anthony Franceskino, dated June 10, 2020, revised July 30, 2020, subject to the site plan approval by planning and zoning, if approved.

Mr. Czerwinski: Second

Vote: Conroy – yes to approve; Wolfer – yes to approve; Rys – no to approve; Czerwinski – no to approve; Chairman Rusczek – no to approve.

The variance has been denied.

2. #20-015 – Special Exception/Garage Area/Soli/1431 Tuttle Avenue

Mr. Czerwinski read the staff notes into the record. The applicant requests a Special Exception of 1,993 sq. ft. of garage area where 841 sq. ft. exists and a detached 1,152 sq. ft. garage is proposed. The Board should clarify use(s) for the 1,152 sq. ft. additional garage area. This office also notes that the total garage area proposed is approximately equivalent to the living area of the dwelling, which raises questions concerning whether the garage is subordinate to the primary use or the reverse! This office would also suggest ensuring that a height maximum of 15 ft. for a detached garage be a condition of approval regarding any additional detached garage area the Board may consider. Mr. Czerwinski noted site plans dated March 27, 2020.

Joseph Soli, 1431 Tuttle Avenue, explained his application. He currently has a two-car garage and three vehicles. His current garage is full. He is proposing the two-car detached garage for the 3rd car, as well as the lawn tractor, snow blower, yard tools, and the car hauler/trailer for his 1971 El Camino. He knows he should not be parking the trailer on his property. The El Camino is stored in the trailer. He explained that the house was built in the 1940s for the son of the Tuttle family and is behind one house but in front of another.

Chairman Rusczek asked if he would be doing commercial work out of the garage. Mr. Soli replied that it would be for storage only.

Ms. Harris asked where the trailer would be kept. Mr. Soli replied that he wants to put it in one of the garage slots with one other vehicle which should leave room for his snowblower, etc. Ms. Harris asked for confirmation that all three vehicles would be kept in the garages. Mr. Soli confirmed that this will provide storage for things that are currently in the yard.

Mr. Czerwinski asked if there was a house behind his property. Mr. Soli replied that he's off to the left, behind the front house and the other one is off to the right and set back. The house behind him is 1435 Tuttle Avenue.

Public Comment – none

Hearing no further questions or comments from the Board, Chairman Rusczek closed the public hearing and opened it up for discussion and possible action by the Board.

Mr. Wolfer: Motion to approve application #20-015 Special Exception Request for total garage area of 1,993 sq. ft. to construct a 1,152 sq. ft. detached garage as shown on Limited Location/Property Survey, Land of Joseph Soli, dated March 27, 2020, revised April 9, 2020, and submitted rendering received July 15, 2020, subject to:

Conditions:

1. Gable Roof, as depicted, not to exceed 15 ft. height maximum
2. Comments of the Health Department received July 10, 2020

Mr. Rys: Second

Vote: Conroy – no to approve; Wolfer – yes to approve; Rys – yes to approve; Czerwinski – yes to approve; Chairman Rusczek – yes to approve.

The variance has been approved.

3. #20-016 – Variance Requests/Side Yard and Building Coverage/Cavallaro/66 Cooper Avenue

Mr. Czerwinski read the staff notes into the record. The applicant requests a side yard of 9.7 ft. where 9.7 ft. exists and 20 ft. is required plus building coverage of 20.35% where 16.7% exists and a maximum of 15% is permitted to construct a 360 sq. ft. addition and deck at 66 Cooper Avenue in an R-18 District. The subject property is non-conforming with respect to lot area (+/- 50% of required 18,000 sq. ft.), side yard(s) and front yard setbacks, and building coverage as it predates the inception of zoning. The applicant is proposing an expansion to the rear of an existing 9.7 ft. setback by 25 ft. to allow 15 more ft. for the addition and 10 ft. for the deck. The addition of 360 sq. ft. of building increases the coverage by 3.6%. In addition, the site plans dated June 9, 2020.

Kevin Cavallaro, 61 Sylvan Hills, East Haven, represented the owners. He stated that they have a relatively small house of 600 or 700 sq. ft. They recently retired and bought this house and intend to take care of the grandchildren while their parents are working. It's a small house and crowded. They like to spend time outside but it's relatively muddy and/or buggy at certain times of the year. They are looking for more room to move around and also to have a deck.

Chairman Rusczek asked about the hardship. Mr. Cavallero replied that they are getting older and the ground is occasionally muddy and unstable. The house is small and they need more space. Chairman Rusczek noted that the non-conforming lot is a problem. This has to do with the way the house is on the property and the land.

Mr. Czerwinski asked when the house was purchased. Mr. Cavallero replied probably about a year ago.

Ms. Harris asked if there were wetlands nearby causing the muddy yard. Mr. Cavallero replied that there were no wetlands. Ms. Harris asked if there is a cause for the muddy yard in such a dry year. Mr. Cavallero replied that part of the plan is to add in drainage. He stated that the yard slopes up towards the back. Chairman Rusczek noted that Burke Heights Drive is behind the house and higher than Cooper Avenue.

Mr. Rys asked if there is already something in the area of the planned addition. Mr. Cavallero stated that there is a deck that is just built into the dirt that is partly rotted. He noted that it is not covered.

Public Comment – none

Hearing no further questions or comments from the Board, Chairman Rusczek closed the public hearing and opened it up for discussion and possible action by the Board.

Mr. Czerwinski noted that he understands that the yard slopes and suggested landscaping might help with the drainage.

Mr. Rys: Motion to approve application #20-016 Cavallaro/66 Cooper Avenue. Side Yard Setback of 9.7 ft. where 9.7 ft exists and 20 ft. is required to construct an addition and deck as shown on Limited Property/Boundary Survey, Land of Michael and Maryann Venditto, dated June 9, 2020, and front elevation rendering submitted and received July 16, 2020.

Mr. Wolfer: Second

Vote: Conroy – no to approve; Wolfer – yes to approve; Rys – no to approve; Czerwinski – no to approve; Chairman Rusczek – no to approve.

The variance is denied.

Mr. Rys: Motion to approve Building Coverage of 20.35% where 16.7% exists and maximum 15% is permitted to construct an addition and deck as shown on Limited Property/Boundary Survey, Land of Michael and Maryann Venditto, dated June 9, 2020, and front elevation rendering submitted and received July 16, 2020.

Mr. Wolfer: Second

Vote: Conroy – no to approve; Wolfer – yes to approve; Rys – no to approve; Czerwinski – no to approve; Chairman Rusczek – no to approve.

The variance is denied.

4. #20-017 Variance Request/Use/Atlas One, LLC/100 Center Street

Mr. Czerwinski read the staff notes into the record. The applicant is requesting a Variance Approval to locate office/medical office use at ground-level, street-facing on two streets where ground-level, street-facing office use is a permitted use, but only when not located within 50 ft. of the ground-level, street-facing side of any building/structure in the TC Zone. Offices/Medical Offices (such as Applicant's current location) in the TC Zone located at ground-level, street-facing are permitted and may continue provided they were located accordingly pre-dating the inception of the TC Zoning Regulations. The applicant submitted essentially the equivalent Variance request in January 2020 which was subsequently withdrawn. The applicant is proposing a ground level, street-facing Medical Office within 50 ft. on both streets. The applicant has re-submitted many documents/correspondence from that withdrawn application as well as additional "exhibits" with this application #20-017, received on July 16, 2020. The applicant has not demonstrated any undue hardship to support the granting of Variance Approval. Hardship appears self-created. Furthermore, the proposal to amend the relevant text/regulation would be the proper avenue for relief.

The applicant has submitted several exhibits of petitions, primarily from patients giving testimony to the Applicant's character, the services provided, and the benefit of said services within the community. The value of this service provider to the clientele or community is not disputed but is completely irrelevant to the issue of hardship relative to the property. Other exhibits such as the Contract of Sale, Warranty Deed, and Title Insurance are also not directly related to the presence of a use-based hardship associated with this property.

The purchase of the property in 2019 without any inquiry regarding the zoning for the property has led to the seeking of a Variance Approval post-closing. The Town of Wallingford's Current Zoning Regulations are and were available, on The Town of Wallingford's website. The Planning Office is also staffed and accessible Monday thru Friday 9 AM - 5 PM. Searching the internet via any search engine yields sites with most views, not necessarily the accurate resource. The Site Plan submitted and the architectural features of the building are irrelevant to the Variance Request regarding Use. The interior floor plan identifying the proposed medical office space identifies 2,379 sq. ft. of medical office space where 5,375 sq. ft. of first-floor area exists and 2,023 sq. ft. of second-floor area exists. With 7,398 sq. ft. of GFA, the ability to identify a compliant location of 2,379 sq. ft. of office space exists. Choosing not to comply for preference, convenience or financial reasons does not constitute a hardship.

In summary, since no hardship has been demonstrated, this office cannot support the granting of Variance as presented. This office would recommend that the Applicant consider an alternate compliant location within the building for the medical office use, or applying for a regulation change from the Planning and Zoning Commission.

Mr. Czerwinski also noted the following correspondence for the record: Memorandum dated August 11, 2020, from Janis Small, Corporation Counsel to Members of the Zoning Board of Appeals; Minutes of the Wallingford Planning and Zoning Commission Special Meeting Workshop Format of Tuesday, February 4, 2020; correspondence dated August 6, 2020, from Mike Glidden, CMF, CZEO to Wallingford Zoning Board of Appeals; correspondence dated July 20, 2020, from Cara Simmons; correspondence dated July 13, 2020, from Joe Simmons to Town of Wallingford;

Edward Marcus and Mark Bergamo of the Marcus Law Firm, 275 Branford Road, North Branford, represented the applicant, Dr. Tracy Malton of 167 Stonehedge Lane, Guilford. Atty. Markus asked if the exhibits that were submitted with the application were satisfactory. Chairman Rusczek acknowledged receipt. Dr. Malton explained that she has a Chiropractic practice at 3 Hall Avenue. She purchased 100 Center Street from Bank of America on or about January 14, 2020. She was represented by Counsel, John Patrucco of 30 Butler Street in Meriden. She was unaware that there is normally a zoning compliance paragraph in commercial transactions so was unaware of the zoning change. This is shown in the exhibits that she asked to be marked into the record, with the application marked as Exhibit A1. The Warranty deed eliminates any claim against the seller relative to zoning and title policies. The survey is part of the record and shows that whoever performed it failed to bring the title to date and refers to dates before the existing zoning regulations enactment. Dr. Malton stated that the hardship was created by others. Nowhere in the process did anyone let her know that she needed a variance before she could use the property. There was negligence by others. She wants to find a resolution where everyone comes out okay. She tried to do the right thing. She was told she was good to go but the survey was done before the zoning change. She noted that her realtor did a Google search but only found the old regulations. She noted that she looked again recently and still only found the old regulations. The survey map that was used at the closing is dated June 5, 2018, with zoning information from June 12, 2018, and attested to by the surveyor on June 14, 2018. The survey was certified to her as the buyer and further certified to the Bank of America who was the ultimate successor to the Wallingford Bank and Trust that the designation was CA6 commercial. She stated that this is not a self-created hardship. It is clearly a hardship created by the negligence or fault of others. She stated that her attorney submitted a memorandum of law supporting the hardship supported by case law. She noted the ADA and the right to the availability of medical services. She noted that putting an elevator in the building is financially overwhelming and not practically doable. She offered a compromise designed by Mr. Lazarus shoeing her intent to be cooperative with the town. In the plan, half the first floor would be

used for her office and half for other currently approved uses. Her entrance would be from the back of the building. If the regulations are read on a literal basis, the building is non-compliant. She noted that in the current zoning regulations a veterinarian could use the space but a chiropractor cannot. In this compromise proposal, only a small portion of the front of the building would be non-compliant.

Allen Jacobs, Realtor of 130 Winthrop Road, Guilford explained his qualifications and experience with zoning regulations. He stated that he helped Dr. Malton look for an appropriate property. He explained how they Googled the Planning and Zoning site before they made an offer. The site appeared to allow a wellness center use. They were surprised that the zoning had changed. He understood that the Town knew they had the incorrect information on their website and claimed it was still there. He stated that this caused the hardship for Dr. Malton. It is clear in the documentation that the surveyor relied on old information. He noted that there was no communication from the town on the change in zoning and asked the Commission to grant Dr. Malton's request.

Steven Lazarus, architect, Lazarus, and Sargeant, 50 North Main Street, Wallingford shared a proposal making the proposed use be as close as possible to what is allowed by zoning regulations and to minimize or eliminate the impact of a variance while respecting the architectural gem. He noted his proposal is based on the assumption that the 50-foot setback from Williams Street is not an issue since the Planning and Zoning Commission has indicated an interest in eliminating the side street setback requirement for corner lots. He focused on the 50-foot setback from Center Street for office use and showed the extent of the non-allowed use within the 50-foot setback. He noted that all other areas in the plan comply with the regulation. He noted that the intent of the regulation is to maximize allowed uses in areas with storefront windows and entrances to generate pedestrian activity. A strict interpretation would require 2,792 sq ft of allowed uses in the 50-foot setback from Center Street. The plan provides 1,684 sq. ft. of that required area. The front windows are too high to view the interior. He proposed that the best way to comply with the spirit of the regulation would be to provide allowed uses at or adjacent to both entry doors. This is important for this building where all the parking is in the rear and the rear entry will be the most active. His proposal shows more than enough allowed uses in total to compensate for the medical office use within the 50-foot center street setback. The proposed plan actually provides more allowed use area adjacent to the entries than would be required under strict adherence to the regulation. He noted that the proposed use is for medical office, not for typical office use.

Mike Glidden, 29 Pomeroy Avenue, Wallingford read from his letter dated August 6, 2020. "As a former Chairman of the Board, I know the subject of hardship needs to be investigated, discussed, and found in order of granting of a variance." He offered some of the points of his letter for consideration. He stated that we've heard about the change of regulations that were effective August 17, 2018, which made Dr. Malton's current business non-conforming. The change in regulations morphs into the strict application of the regulations which creates a hardship for her. Now that her current location doesn't meet the regulations, limits her ability to expand. He added that he is the Vice President of the Connecticut Association of Zoning Officials and has been a professional planner for 15 years. He disagreed that purchasing a property like this and getting bad legal advice is a self-created hardship. He pointed out that the regulations allow service establishments. The regulations are permissive in nature, meaning if a term is stated, it is allowed. If a term is not stated the term is not allowed in the zoning district. He noted that Dr. Malton's business is a personal service although we want to call it a medical use. Unfortunately, the regulations do not define service establishments. The regulations point to the American Heritage Dictionary, and he shared the definitions of Service and Establishment. He stated that a service establishment is a place of residence or business where work is

done for others as the occupation or business. That's permitted as of right. He stated that the strict application of the regulations creates a hardship and restricts trade. He stated that from an ADA perspective Dr. Malton serves clients who are part of a protected class. Putting this use on the second story conflicts with that. He noted that the ZBA has to go with 8-6 of the general Connecticut State Statutes. One of the things in the authority of the board in granting the variance is determining that the variance is in harmony with the surrounding district. He read into the record the intent of the Town Center Zoning District from the regulations. "The purpose is to encourage the development and redevelopment of the entire Town Center as an area, vibrant, pedestrian-friendly, commercial destination with strong supportive institutional and residential components while building off and promoting Town Center character." He interpreted this to mean we are looking for businesses that do not impact the pedestrian experience as they're walking down Center Street. There are no expansions of this building. Nothing is changing substantively that would interfere with this intent. The granting of this variance would be in harmony with the Town Center Zoning District. In his professional opinion, there is a clear demonstration of hardship. He urged the Board to approve the variance.

Atty. Marcus stated that in most commercial transactions there is a zoning compliance paragraph, which was not provided in this case. The warranty deed and title policies have disclaimers that don't help the applicant if the variance is not granted. There is no mortgage on the property. The hardship is created by the negligence of others. He noted the Memorandum of Law that was submitted. He mentioned the ADA and the need for first floor services. He noted that if the Bank of America had retained the title, they would have obtained a hardship. He gave examples of case law showing the applicant steps into the shoes of the Bank of America. The applicant did everything a prudent buyer would do including obtaining a survey, title insurance, and the like. Unfortunately, they have the wrong information on them. Does the applicant pay the price for someone else's error? He stated that case law says no. Having the applicant amend the text regulations, as suggested, would place a substantial inequitable burden on the applicant. He stated that proper inquiries were made by the applicant but not followed through by the professionals hired to do the conveyance and title. He stated that the hardship is clearly demonstrated. The bottom line is that the second floor looks good on paper but in reality is not realistic for her business. He quoted case law. "Board of Zoning appeals and granting a zoning variance must be one that originates in the zoning ordinance and rises directly out of the application of the ordinance to circumstances or conditions beyond the control of the party involved" Lawrence & Memorial Hospital vs ZBA 22 Connecticut app. "The purchase was not made with knowledge that the regulation existed where the hardship is created by the enactment of the zoning ordinance and the owner of the hardship for the variance a subsequent purchaser has the same right for the sake of evidence and if that request is supported in law you're entitled to step into the shoes of your predecessor in total. Kulak vs. ZBA 184 Connecticut 479. "Plaintiff did not perform any act which caused the hardship it now faces. The hardship is one that originated in the zoning ordinance and arises directly at the application of the ordinance. The circumstances beyond the control of the plaintiff." Aiten vs ZBA 18 Connecticut. "The Supreme Court in each then a zoning board of appeals grant a variance only when two basic requirements are satisfied. 1. The variance must be shown not to affect substantially the comprehensive zoning plan. 2. Adherence to strict ... the zoning ordinance must be shown to cause unusual hardship unnecessarily for the carrying out of the general purpose of the zoning. Inherence to it would cause unusual hardship. ...(inaudible)... because of the peculiar characteristic of the property strict application of the zoning regulation produces an undue hardship" Keser vs. ZBA 218 Connecticut 428. In order not to grant the variances you are going to be required to make a finding that the applicant knowingly and willingly put herself in the position that she is in, mainly creating her own hardship. Given the facts and that the applicant did what a prudent real estate buyer does, he urged the Board to do the right thing.

Chairman Rusczek thanked Dr. Malton for her investment in Downtown Wallingford. He noted that when she presented to the Board in February, it was recommended that she go to the Planning and Zoning Commission to request a zoning regulation change. He asked why she didn't. Atty Marcus replied that they discussed the options and felt they should see this variance application through. They advised Dr. Malton to complete the application and get a decision before reexamining.

Chairman Rusczek stated that the Board can't legally grant the variance due to the hardship issue. He stated that the applicant needs to go to the Planning and Zoning Commission to get a variance. He stated that he understood that Planning and Zoning are considering making changes to the zoning regulation. The recommendation of the Zoning Board of Appeals is to go to Planning and Zoning.

Mr. Conroy stated that the Planning and Zoning Commission missed the boat on this particular thing and if we can push the issue by granting the variance, then he will support it. We can show that zoning needs to change. He believes her hardship is clear.

Mr. Wolfer referenced Exhibit J, the Memorandum of Law, page 3. It reads: "It should be clear at this point that this is not, and let that be repeated, it is not a self-created hardship. It is anything but that. This is a hardship clearly created by the negligence of others." He asked who the "others" are. Atty. Marcus replied he believes that the counsel that she used should have been able to locate the existing zoning regulations. Mr. Wolfer clarified a few more points in the exhibit, page 4, and asked who is being referred to in the sentence "We received a certified survey". Atty. Marcus confirmed that it is Dr. Malton. Mr. Wolfer asked for clarification that the realtor, Mr. Jacobs, found only the old regulations. Atty. Marcus confirmed that.

Ms. Harris stated that she agreed that this is an issue for the Planning and Zoning Commission and thanked Amy Torre for the detailed write-up and the applicant for their tremendous input. She stated that she has been a patient of Dr. Malton. She asked Dr. Malton if she asked if it was her original lawyer's first commercial real estate transaction. Dr. Malton said not to her knowledge.

Mr. Czerwinski thanked the counselors and Dr. Malton for a very thorough presentation. He asked for clarification that someone inferred that the zoning regulations are incorrect on the website. Atty. Marcus replied that the webpage that Mr. Jacobs found was the old regulation and it is still there. Mr. Czerwinski noted that Google is not reliable and the assumption was made that it was the most up to date. Dr. Malton showed her search that came up with the Wallingford Zoning Regulations effective September 20, 1985. This is from the Wallingford P&Z website on the Town Zoning Regulations page. She downloaded the 239 pages of the 1985 regs. Mr. Czerwinski asked staff were the regulations amended before the purchase, what is the town's responsibility to be up to date on the website, and what is the responsibility of the buyer. Amy Torre, Zoning Enforcement Officer replied that the Town regulations were last amended in total in 1985. She noted that from the town website if you go to the pertinent section, the amended dates show and that the current regulations are available on the website. She noted that the amended regulations were available on the website since before the applicant purchased the building. Mr. Czerwinski stated that it looks like they didn't look at the amendments. Ms. Torre verified that the amendments were available on the town website since they were amended. Mr. Czerwinski agreed with the Chair that this issue needs to go to the Planning and Zoning Commission.

Mr. Rys stated that he agrees that this belongs with Planning and Zoning. He asked if it was the attorney's responsibility to look up the zoning on a property before the closing. Atty. Marcus replied

that in all the closings his firm has done, checking the land records and checking the zoning is expected. It appears the prior counsel only checked the land records. Mr. Rys asked if the argument should be with the town or with her prior counsel. Atty. Marcus replied that they are not arguing with the Town, but soliciting the Town's support to get Dr. Malton into the building that she has invested in. He noted that they would like support from this Board before going to Planning and Zoning.

Chairman Ruscezk stated that he appreciates Dr. Malton's investment and believes she's going to be a good asset to the downtown area but believes she needs to go in front of the Planning and Zoning Commission for an amendment change.

Dr. Malton stated that when she first approached Planning and Zoning, staff told her it would take less time to go to the Zoning Board of Appeals than asking Planning and Zoning for a change to regulations. She noted that she is 8 months into the process and still looking at another six months or more while paying taxes on the property.

Public Comment

Bruce Somers, 1 Lincoln Drive, Wallingford, stated that he has been a resident for 6 years and loves this town. He is a patient and business associate of Dr. Malton. He noted that lower Center Street is extremely underutilized and needs a boost like this business.

Maryann Somers, 1 Lincoln Drive, Wallingford, added that access to Dr. Malton's current business location is difficult for some patients due to the stairs. To be able to park in back and walk directly into the office would be a benefit.

Erin Benham, 41 South Main Street, Wallingford, noted that moving Dr. Malton's business will enhance the area. She noted that she and her husband purchased the American Legion building, so she understands zoning regulations. She believes the request should be allowed and everyone would win.

Betsy Gonzalez, 64 Sweet Birch Drive, Meriden, stated that she is a patient of Dr. Malton who has problems with stairs. She asked the Board to grant the variance.

Joseph Simmons, 12 Carter Trail, Wallingford, stated that he submitted a letter. He asked if there is minimum square footage for a building to be considered retail use. He noted that Dr. Malton is also a retailer. Mrs. Torre replied that the issue is not about the permitted use, but that it is not within the 50 feet ground-level, street-facing rule. She noted that retail is allowed but this application is not for retail, but a medical office. Retail can be on ground-level, street-facing. The application is for a medical office, street-facing, ground-level. There is no issue with the square footage.

Atty. Marcus stated that it is almost unanimous that the Board would like to see Dr. Malton in that space. He suggested that one solution would be to grant the variance so they can move forward and they will commit to applying for the change in regulations. Chairman Ruscezk stated that the problem is that there is no hardship. Atty. Marcus stated that they disagree. Chairman Ruscezk reiterated the Board's February recommendation to go to Planning and Zoning.

Hearing no further questions or comments from the Board, Chairman Ruscezk closed the public hearing and opened it up for discussion and possible action by the Board.

Mr. Wolfer highlighted some items from the memorandum from Corporation Counsel, Janis Small for the record. "Number 2. While admirable, the support of the applicant's clients is not relevant to the legal test applicable to the granting of a variance." He also read a quote from case law: *Verrillo v ZBA*, 155 Connecticut in 2015. "A variance is not a tool of convenience, but one of necessity...They are not to be granted when a reasonable use already is present, or plainly is possible under the regulations, but an owner prefers otherwise." He also read from number 6, "Nowhere in the materials submitted by the Applicant is there an explanation as to why the Planning Department was not directly consulted. Further reliance on a Google search is legally insufficient." And finally, "The claim of lack of knowledge of the zone change is not legally sufficient to create an undue hardship. The regulation was enacted properly."

Mr. Czerwinski stated that he feels for the applicant and agreed the situation stinks, but stated that she needs to go to the Planning and Zoning Commission.

Mr. Rys stated that he feels sorry that she was not advised right but she needs to go to Planning and Zoning.

Mr. Rys: Motion to approve application #20-017/Atlas One, LLC/100 Center Street. Variance request to allow office use ground-floor, street-facing on two streets where office use must be located 50 ft. from ground-level, street-facing as shown on submitted first-floor plan prepared by Lazarus and Sargeant dated July 6, 2020.

Mr. Wolfer: Second

Vote: Conroy – yes to approve; Wolfer – no to approve; Rys – no to approve; Czerwinski – no to approve; Chairman Rusczek – no to approve.

The variance is denied.

Chairman Rusczek noted that Bruce Conroy had to leave, so Karen Harris will be voting in his place.

5. #20-018 Variance Requests/Non-Conforming Use, Front Yard Setback, Side Yard Setbacks/Cardona/1179 South Broad Street

Mr. Czerwinski read the staff notes into the record. The applicant proposes to add a vertical addition and front porch to the dwelling located at 1179 South Broad Street in a CB-40 Zone. Residential Use in a Commercial Zone is a non-conforming Use for the zone and any expansion is not permitted, requiring variance request. The front porch that is proposed is 6 ft. x 38 ft. (the width of dwelling), reducing the front yard setback to 47.9 ft. from 53.9 ft. where 50 ft. is required. The vertical addition of the existing footprint expands two non-conforming side yard setbacks; one of 19.6 ft. and one of 16.8 ft. where 20 ft. is required for each. The existing parcel is non-conforming for lot area, use, and side yard setbacks.

Anthony Cardona, 1179 South Broad Street, Wallingford, explained that he is looking to add a second story to the house and add a six-foot front porch. The front porch would be mostly cosmetic. The house was built before being zoned CB40. The hardship is due to that and the septic right behind the house, so he can't go outward.

Chairman Rusczek noted that the non-conformity is a hardship.

Public Comment – none

Hearing no further questions or comments from the Board, Chairman Rusczek closed the public hearing and opened it up for discussion and possible action by the Board.

Mr. Rys: Motion to approve application #20-018/Cardona/1179 South Broad Street. Variance request for front yard of 47.9 ft. where 53.9 ft. exists and 50 ft. is required to construct a front porch as depicted on the Zoning Location Survey of the property prepared for Anthony Cardona dated June 11, 2020, as well as submitted building elevation plans received July 17, 2020.

Mr. Czerwinski: Second

Vote: Harris – yes to approve; Wolfer – yes to approve; Rys – yes to approve; Czerwinski – yes to approve; Chairman Rusczek – yes to approve.

The Variance is approved.

Mr. Rys: Motion to approve Variance request for side yard of 16.8 ft. where 16.8 ft. exists and 20 ft. is required to construct a vertical addition as depicted on the Zoning Location Survey of the property prepared for Anthony Cardona dated June 11, 2020, as well as submitted building elevation plans received July 17, 2020.

Mr. Czerwinski: Second

Vote: Harris – yes to approve; Wolfer – yes to approve; Rys – yes to approve; Czerwinski – yes to approve; Chairman Rusczek – yes to approve.

The Variance is approved

Mr. Rys: Motion to approve Variance request for side yard of 19.6 ft. where 19.6 ft. exists and 20 ft. is required to construct a vertical addition as depicted on the Zoning Location Survey of the property prepared for Anthony Cardona dated June 11, 2020, as well as submitted building elevation plans received July 17, 2020.

Mr. Czerwinski: Second

Vote: Harris – yes to approve; Wolfer – yes to approve; Rys – yes to approve; Czerwinski – yes to approve; Chairman Rusczek – yes to approve.

The Variance is approved.

Mr. Rys: Motion to approve Variance request expansion of non-conforming use (residential) in a CB-40 District (Commercial) where no expansion is permitted to construct a vertical addition and front porch as depicted on Zoning Location Survey of the property prepared for Anthony Cardona dated June 11, 2020, as well as submitted building elevation plans received July 17, 2020.

Mr. Czerwinski: Second

Vote: Harris – yes to approve; Wolfer – yes to approve; Rys – yes to approve; Czerwinski – yes to approve; Chairman Rusczek – yes to approve.

The Variance is approved.

6. #20-019 Variance Request/Lot Area/86 North Lane

Mr. Czerwinski read the staff notes into the record. The applicant requests a Variance Approval to reduce a non-conforming lot in area from 17,267 sq. ft. to 15,200 sq. ft. where 18,000 sq. ft. is required (R-18 Zone) in order to revise the lot line between the properties of 86 North Lane and 4 North Lane. The property owners seek to resolve a property line dispute by the transfer of a portion of the parcel at 86 North Lane to the parcel at 4 North Lane. Both lots are non-conforming regarding lot area. The

regulations do not permit reductions to a lot area unless it is to create conformity. The proposed Jot line revision will be decreasing the non-conforming lot area for the adjoining lot at 4 North Lane.

Jason Stevenson, 52 Wills Street, Milford, representing Edin Mujkanovic of 86 North Lane, explained the application which is for a reduction in lot size from about 2,000 sq ft. The lot in question, 86 North Street is not conforming to start with. This variance is being sought in connection with a boundary line discrepancy between 86 North Lane and the adjacent property of 4 North Lane. Hardship is due to incorrect surveys done in 2004 in connection with the construction of the home at 4 North Lane. The boundary between the properties was inadvertently moved about 16 feet over and encroaches on the property of 86 North Lane. They are looking for approximately 2067 ft to be transferred from 86 North Lane to 4 North Lane. This doesn't affect any structures or physical characteristics of either property. The physical border of shrubbery and trees will remain as is. This conveyance helps 4 North Main in compliance with the zoning regulations and improves the side yard setback. It also increases 4 North Lane from about 8,000 sq. ft. to approximately 10,200 sq ft. If not granted the parties would need to go to Superior Court for with an Adverse Possession action to get recognition of the new boundary line. Mr. Stevenson thanked Mrs. Torre for her assistance.

Public Comment – none

Hearing no further questions or comments from the Board, Chairman Rusczek closed the public hearing and opened it up for discussion and possible action by the Board.

Mr. Czerwinski: Motion to approve application #20-019/Jason Stevenson, Esq. of Wiggin & Dana, LLP/86 North Lane. Variance request to allow a reduction in lot area, creating an increase in non-conformity in order to transfer a portion of the lot where an increase to existing non-conformity is prohibited, as depicted on Property/Boundary Survey, Boundary Line Agreement 86 North Lane and 4 North Lane dated June 1, 2020.

Mr. Wolfer: Second

Vote: Harris – yes to approve; Wolfer – yes to approve; Rys – yes to approve; Czerwinski – yes to approve; Chairman Rusczek – yes to approve.

The Variance is approved.

CONSIDERATION OF MINUTES

Mr. Czerwinski: Motion to accept the minutes of the Monday, July 20, 2020, regular meeting.

Mr. Wolfer: Second

Vote: Unanimous to approve

Chairman Rusczek noted that he will not be in attendance at the August meeting.

ADJOURNMENT

Mr. Rys: Motion to Adjourn at 9:30 pm.

Vote: Unanimous to approve

Respectfully submitted,
Cheryl-Ann Tubby
Recording Secretary