

## Wallingford Zoning Board of Appeals

Monday, September 20, 2021

7:00 p.m.

Robert F. Parisi Council Chambers  
Town Hall – 45 South Main Street

### Minutes

**Present:** Chairman Joseph Rusczek; Vice-Chair Raymond Rys; Board Members: Thomas Wolfer; Samuel Carmody; Karen Harris; and Amy Torre, Zoning Enforcement Officer.

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

Voting members are Carmody, Wolfer, Harris, Rys, and Chairman Rusczek.

Chairman Rusczek noted that tonight's decisions will be published in the Record-Journal on Friday, September 24, 2021. The effective date of your variance will be Friday, September 24, 2021; the date a certified copy is recorded on the land records. The statutory 15-day appeal period will expire on Sunday, October 10, 2021. If you commence operations and/or construction during the appeal period, you do so at your own risk.

### **PUBLIC HEARINGS**

#### **1. #21-017 – Variance Request/Benhaven, Inc./50 North Plains Highway**

Chairman Rusczek read the staff notes into the record. The applicant requests a side yard of 19.2 ft. where 25 ft. is required to construct a 30 ft. x 100 ft., 2-story addition at 50 North Plains Highway in an I-40 District. The proposal requires Wetland approval as per Memorandum from Erin O'Hare dated July 2, 2021. Following the determination from the ZBA, the Applicant will need also to proceed with Planning and Zoning for site plan modification. The proposed addition requires variance with respect only to the southern corner of the building due to the parcel shape and building orientation.

John Baldino represented Benhaven, which has headquarters at 187 Half Mile Boat Road in North Haven. He explained that this is one of their two school properties in Wallingford and they need to expand for more classrooms. This is a school for autistic children and the need is growing.

Chairman Rusczek asked if the addition is on the southwestern side and is going to be 30 ft x 100 ft. Mr. Baldino replied yes, it will be towards the wetlands area. Chairman Rusczek asked if there was no other location for this addition. Mr. Baldino replied that due to the age group (high school), topography, and the driveway on the opposite side. He noted that they can't go to the front or the back, so this is the only spot. Chairman Rusczek asked if that is their hardship. Mr. Baldino replied yes.

Mr. Wolfer noted in the additional correspondence from Erin O'Hare, the Environmental Planner, that the bioretention area is eliminated by this new construction. He asked where it will be moved to. Mr. Baldino replied that when they have the approval to go forward, they will move it. He stated that his understanding of rain gardens is that they are just in front and on the back. The ones on the back will move toward the south and east. There are two on that side and one would be moved to another space we have on that property. Mr. Wolfer asked why they haven't submitted plans yet. Mr. Baldino apologized and stated that he didn't know he needed it at this point. Winterbourne Land Services

provided the survey and recommendations. His understanding was that if they are approved for the variance, then they come up with the design of the building and involve the civil engineer. Mr. Wolfer asked if they had to have something on paper to submit to Erin O'Hare? Mr. Baldino stated that he is here representing what they want to accomplish. The surveyor and engineer gave him the protocol to follow. They suggested don't spend money on architecture and civil engineering if the project is not going forward. Mr. Wolfer asked if Ms. O'Hare has to sign off first. Ms. Torre replied that we are strictly looking at the location of the building to be appropriate within the setback to grant the variance. They will have to go through Inland Wetlands for approval, then from there to Planning and Zoning. Our purview is strictly the determination of the location of the building. They will need that approval before they proceed to the other approvals.

Hearing no public comment, Chairman Rusczek closed the public hearing and called for discussion and possible action.

**Mr. Rys: Motion to approve application 21-017 Variance Request for a side yard setback of 19.2 ft. to construct a two-story, 30 ft. x 100 ft. addition as shown on Improvement Location Survey Depicting Proposed Building Addition on Land of Benhaven, Inc. 50 North Plains Highway dated 6/1/2021 and plans/rendering received 6/18/21, subject to:**

1. **Comments from the Health Department received September 13, 2021,**
2. **Comments from the Water and Sewer Division dated July 8, 2021, and**
3. **Comments from the Environmental Planner dated July 2, 2021.**

**Mr. Carmody: Second**

**Vote: Carmody – yes to approve; Wolfer – yes to approve; Harris– yes to approve; Rys – yes to approve and Chairman Rusczek – yes to approve.**

The variance request is approved.

**2. #21-019 – Variance Request/Siddiqy/68 North Turnpike Road**

Chairman Rusczek read the staff notes into the record. The applicant seeks to expand a non-conforming use where no expansion is permitted to permit an after-the-fact parking lot expansion and outside vehicle storage area at 68 North Turnpike Road in a DD-40 District. The property was granted Special Permit Approval and Site Plan Approval in September 2003. The original Use was non-conforming (gas/service station/repair facility predates the inception of zoning and is not permitted in a DD-40 Zone). Zoning Regulations do not permit changing one non-conforming Use to another non-conforming Use except by Special Permit when the change is to a non-conforming use less objectionable. In this particular case, the Special Permit and accompanying Site Plan were eliminating the repair facility, maintaining the service station, and changing the repair component to the permitted use of retail (convenience store). Special Permit/Site Plan was approved with specified conditions of approval and accompanying specific site elements.

In August 2020, this office received numerous complaints from the property manager and property owners abutting to the rear of stormwater being diverted to their properties as a result of expanded impervious surfaces (parking area). A Site Visit on 8/20/21 with Town Engineer, Alison Kapushinski confirmed all landscaping with exception of the southeast strip of the parcel and been removed and replaced with cement and stone covering >75% of the parcel. U-Haul vehicles are also stored in required parking for rental. In April 2021, the property manager of the abutting property provided pictures of recurring drainage/storage issues persisting. Final notice of violation was issued as the property owner

had not restored the site as per the Special Permit/Site Plan approved. The property owner seeks a Use Variance to permit expansion of the parking lot and the storage of vehicles following Cease and Desist Order to remove, restore and remediate. There is no apparent hardship other than self-created, for financial gain and as a result of numerous violations. Furthermore, though the parking area has been expanded and reconfigured coupled with the addition of vehicle storage in required parking proves the parking requirement for the site is insufficient and requiring additional variance not sought. This office cannot support granting this Use Variance Request and recommends the Board seriously consider the facts and deny the request (Section 9.1.H.1, Wallingford Zoning Regulations, enc.). In addition, there is correspondence from the Planning & Zoning Commission; the Dept of Engineering, and the Abutting Property Owner.

Faran Siddiqy of Branford explained that he purchased the property in January of 2020 and the business was dead due to Covid. He explained that he made the driveways in the back due to damage to the tank area from people parking there. He stated that that was the approved parking area. He blocked the area so no one could park there. He referred to the notes he provided explaining everything that happened.

Chairman Rusczek asked how the property got from the approved site plan to the stone and expanded parking and concrete was poured. This is a violation of what was approved three and is causing water runoff to your neighbor. Mr. Siddiqy asked for proof that there is water running off his property. Chairman Rusczek noted the photos submitted. He explained that according to the Planning Office, he is in violation of what was approved in 2003. Mr. Siddiqy stated that he needed the parking lot. Chairman Rusczek stated that he understood but that it is not approved for zoning. Mr. Siddiqy stated that he didn't know that at the beginning. He didn't know he had to get approval for a change in the driveway. He now understands that he can't make any changes without approval. Chairman Rusczek stated that he is at this meeting because no changes were made to correct the problem. You are not approved for the U-Haul trucks and the extra driveway in the back. Mr. Siddiqy stated that he didn't know he was bothering someone. Chairman Rusczek noted that he was given a Cease and Desist order and no corrections have been made. Mr. Siddiqy stated that he did that correction to not touch the previous one even though they use my land. Their garage is in my land portion. He removed that and it is now only the approved 12 car parking spaces. The exit driveway will still be there because they cannot come back from the same way as before because it's not wide enough.

Mrs. Torre explained that as a result of the stormwater violation, she worked with the Town Engineer and visited the site. The property slopes to the rear. She saw some sort of cement and assorted materials covering the entire property where grassy landscaped areas were identified in 2003. She stated that she issued a notice of violation at that time and noted that the applicant has been quite responsive. She explained that the gas station would not be permitted today in that zone. In 2003 the owner got a special permit and added the convenience store which moved the property more to conformity. The specific site plan shows landscaped areas that have all been removed. They also saw rental trucks in the identified parking. The expansion of the parking lot is an expansion of the nonconforming use. The map provided by the surveyor shows gravel and decorative stone. The specific conditions in 2003 included maintaining the grassy areas. A new owner has to subscribe to those special permit conditions. The complainant came back in April resulting in the issuance of another violation. She stated that unfortunately, the only remediation is to remove the impervious and restore it as it was approved. Also, he needs to eliminate the vehicle storage as there is no outside storage capability on the site. She noted that he complied with that and has removed the vehicles.

Mr. Carmody asked how many use violations and landscaping violations. Mrs. Torre replied that it all falls under Use. Basically, he has expanded the site elements, such as the parking lot, which expands the use. He is using the property in a non-conforming manner. Mr. Carmody asked for one to expand the use is this the only avenue they would have, to come to the ZBA. Mrs. Torre replied that the regulations say any non-conformity can be changed to be less objectionable use. The only recourse is to restore the property as per the approved detailed site plan. Mr. Carmody clarified that since 2003 the property has become more non-conforming and there has been no action by the applicant to rectify the situation until this evening. Mrs. Torre stated that the property was in compliance until 2020. The grass was removed after ownership changed.

Chairman Rusczek asked the applicant why they should grant the variance. Mr. Siddiqy replied there was no business. They started the U-Haul because there were no customers. Chairman Rusczek noted that this is outside of the regulations to have the U-Hauls and to expand. Mr. Siddiqy replied that his customers are happy that he has the U-Haul. Chairman Rusczek replied that it is not allowed in the regulations for the zone that you are in. Mr. Siddiqy asked how it is hurting someone. Chairman Rusczek replied that the neighbor behind was harmed. Mr. Siddiqy noted that he removed all the stones and there is only parking there for four cars. The new map mentions that and how much stuff is for water is staying on his property.

Hearing no public comment, Chairman Rusczek closed the public hearing and called for discussion and possible action.

**Mr. Rys: Motion to approve application 21-019 a Variance Request to expand non-conforming use by expanding parking area and adding vehicular storage as shown on Site Plan prepared for One Stop Properties, LLC, 68 North Turnpike Road, dated 7/25/21, subject to:**

1. **Comments from the Health Department received September 13, 2021,**

**Ms. Harris: Second**

**Vote: Carmody – no to approve; Wolfer – no to approve; Harris – no to approve; Rys – no to approve and Chairman Rusczek – no to approve.**

The variance is denied.

**3. #21-020 – Variance Request/Moutinho/952 North Farms Road**

Chairman Rusczek read the staff notes into the record. The applicant seeks a front yard of 49.6 ft. where 50 ft. is required for a 663 sq. ft. single-story addition to the rear of the attached garage at 952 North Farms Road in an RU-40 District. The Applicant has erected the addition in 2019 without Zoning Approval. The Zoning Location Survey was obtained in 2019 prior to applying for a Building Permit identifies the requirement for a setback variance approval. Though the request is for less than 1 foot, approval is sought after the fact and should have been sought prior to construction.

**4. #21-021 – Special Exception Request/Moutinho/952 North Farms Road**

Chairman Rusczek read the staff notes into the record. The applicant seeks a Special Exception Approval for a garage area of 2,331 sq. ft. where 932 sq. ft. exists and 1,018 sq. ft. is permitted to erect a 1,399 sq. ft. detached garage at 952 North Farms Road in an RU-40 District. The garage has already been constructed and though located properly on the parcel, no Building Permits were obtained, nor was a Special Exception Approval sought.

Chairman Rusczek noted that these two applications will be heard at the same time since it is the same address but voted on separately.

Rosalind Page, a professional land surveyor with Winterbourne Land Services, 604 Center Street, presented for the owner Marcelo Moutinho of 952 North Farms Road. She stated that the applicant received a building permit in 2019 for the 653 sq. ft. addition. It was signed off by P&Z, the Health Department, and Inland Wetlands Watercourses. Apparently, there was a miscommunication, He handed in a map and building plans and it didn't get picked up that he needed a variance. She stated that they are here to apply for the variance after the fact.

Chairman Rusczek clarified that they applied and got the building permit and no one said he had to go to Planning and Zoning. Mr. Moutinho replied that did go talk to the Town Planner and received the permit. He thought he was ready to go.

Mrs. Torre explained what she knows. The applicant came to the office and there was a discussion regarding the garage which is part of the special exception request. There were no known violations and no permits for the garage. During that discussion, it was noted on the survey map that accompanied the building permit for the addition that a variance was still needed, even if it was only a few inches. It was presented that a discussion occurred with the previous Town Planner that it was small. It still should have happened. It was perhaps the interpretation of a small variance request. One corner is half a foot or less.

Chairman Rusczek stated that this is still a big no-no. He understands that it seems like a miscommunication possibly from the Planning office and the permit was allowed.

Mr. Carmody asked if the survey was done prior to the building permit. Ms. Page replied yes. Mr. Carmody asked if they knew about the 6 inches? He stated that he recalls discussing variance for a foot or less.

Ms. Page continued with the presentation of the garage that is to the rear of the property. She noted that there were no building permits taken out. She spoke to the three components for granting a special exception. Regarding the size and intensity of the use and harmony with the development in the area, this is an oversized lot in an RU-40 zone and is a semi-rural area. Neighboring lots have similarly sized accessory buildings so this is not out of keeping for the neighborhood. Regarding the nature of the use not be hazardous to the character of the area, the use will primarily be for personal storage of a boat, truck, and yard maintenance equipment. It will not be a traffic hazard. Lastly, regarding the location and height, it will not impact the use of the neighbor's properties. This particular use will not impair the use of neighbor's properties and there are similar-sized structures in the neighborhood.

Chairman Rusczek asked how the applicant ended up in this situation. Mr. Moutinho apologized and replied that he didn't know he needed to apply. He started building the garage a couple of years before he applied for the addition to the house. Chairman Rusczek asked for confirmation that it will be used for personal storage. Mr. Moutinho said yes.

Mrs. Torre explained that when the property owner came to the Planning and Zoning Department, it was to discuss truing up the structures in the yard. They discussed correcting what wasn't done before for the garage. The property owner wanted to do what was necessary to make sure everything was correct.

Chairman Rusczek stated that the applicant came to the office asking for forgiveness of his own accord. It was not due to a violation. Mrs. Torre concurred.

Ms. Harris asked how long ago the garage was built. Mr. Moutinho replied that he started it four years ago and it is still not finished. It doesn't have doors yet. Ms. Harris asked him what made him come to the office. Mr. Moutinho replied that he found out when he did the addition that he made a mistake. Ms. Harris asked how long ago the addition was done. Mr. Moutinho replied two years ago, he is ready now for the certificate of occupancy.

Chairman Rusczek asked if he started with a pole barn. Mr. Moutinho replied yes, originally. Eventually, he put sides on it. Chairman Rusczek noted that often people don't see a pole barn as a garage since it doesn't have doors.

Mr. Carmody clarified that the 1399 square feet is for the garage. Mrs. Torre clarified that the Special Exception would be required for a total garage area over 1018. This includes what exists and what they are proposing. He had 932 already and he's looking to erect 1399. Mr. Carmody clarified that he is seeking approval for the 1399 sq. ft. that has already been erected. Mr. Moutinho concurred.

Hearing no public comment, Chairman Rusczek closed both the public hearings and called for discussion and possible action.

**Mr. Rys: Motion to approve application 21-020 a Variance Request for front yard setback of 49.6 ft. to construct a 663 sq. ft. addition to dwelling at 952 North Farms Road as shown on Zoning Location Survey, Map Depicting Existing House and "As-Built" of New Addition, Land of Marcelo Moutinho 932 North Farms Road dated August 19, 2019, subject to:**

1. Comments from the Health Department received on September 13, 2021.

**Mr. Carmody: Second**

**Vote: Carmody – yes to approve; Wolfer – yes to approve; Harris - yes to approve; Rys – yes to approve and Chairman Rusczek – no to approve.**

The variance is approved.

**Mr. Rys: Motion to approve application 21-021 a Special Exception Request for garage area of 2,331 sq. ft. to construct a 1,399 sq. ft. detached garage at 952 North Farms Road as shown on Zoning Location Survey, Map Depicting Existing House and "As-Built" of New Addition, Land of Marcelo Moutinho 932 North Farms Road dated August 19, 2019, subject to:**

1. Comments from the Health Department received on September 13, 2021.

**Mrs. Harris: Second**

**Vote: Carmody – no to approve; Wolfer – yes to approve; Harris – yes to approve; Rys – yes to approve and Chairman Rusczek – yes to approve.**

The special exception is approved.

**5. #21-022 – Variance Request/Tufano/1451 Durham Road**

Chairman Rusczek read the staff notes into the record. The applicant is requesting a front yard of 29.8 ft. where 29.8 ft. exists and 75 ft. is required to reconstruct and vertically expand a residential dwelling unit at 1451 Durham Road in an RU-80 District. This application is a duplicate of the one submitted and

denied by the ZBA in April of 2021 (#21-002). The applicant has exhausted the Appeal period for the April 19, 2021, ZBA decision to deny.

Comments from the April 19, 2021 Meeting still apply:

The application is after the fact and a result of Zoning and Building Code violations issued in January 2021. The applicant was the former owner of the property as well as the builder through 12/21/2020. This office was advised of the building code violations (no proper building permits, no proper licensure, failed inspections and no Certificate of Occupancy issued) to determine any companion zoning violations. The dwelling was constructed in 1948, pre-dating zoning (non-conforming) and entirely located in the front setback. The dwelling is permitted to remain yet the expansion of non-conformity requires Variance Approval. Construction was completed, the property was sold, and the dwelling is currently occupied which is in violation.

As a result of the April Variance denial, coupled with inactivity toward remediation since, a Cease and Desist Order was issued July 1, 2021. The property owner has elected to attempt the exact same Variance Request in a final effort to remediate. The applicant was advised that the ZBA is not obligated to hear the same request for the same variance for a period of 6 months following the decision by the ZBA or a court (Section 9.1.M Wallingford Zoning Regulations, enc.). The property also remains occupied with no Certificate of Occupancy issued by the Building Official.

There is no hardship with regards to this application as it is being sought to correct a series of violations deliberately pursued (Section 9.1.H.1, enc.). There is correspondence from the zoning office and the health department.

Chairman Rusczek announced that he would allow her to explain the situation without voting on whether to re-hear the application.

Sara Tufano, 1451 Durham Road, explained that she purchased the house from the contractor who was doing the work, and the first time she saw the house the dormer was there. This was in September of 2020. She decided to buy the house and assumed the builder was doing what he had to do. She has made the effort to have everything up to code and the violations fixed. The HVAC is currently being done. She stated that she had no way to know it was not done. The property was pretty much completed when she closed on it. When she bought the house she started receiving letters from the Town regarding the violations. She explained that she was the realtor for the sale.

Chairman Rusczek clarified that she didn't pull the file on the property at Town Hall. Ms. Tufano replied that this was a contractor that she trusted. She didn't expect to be in this position and is trying to make it right. She explained that the building violations have all been cleared except for the HVAC which is being done now. Chairman Rusczek noted that back in April, no one showed up so the application was denied with the option to reapply.

Mrs. Torre explained that the violation was initiated by the building department due to someone purchasing the property to flip. The property predated zoning so is non-conforming and could be rebuilt in kind. The contractor pulled some building permits but erected more than the building permit allowed with the dormer. There were also some other strictly building issue violations. He did not receive a certificate of occupancy. He was told no one could occupy it due to HVAC concerns and work being done without proper licensure. Mrs. Torre was advised of the expansion and any companion zoning violations. She issued a notice of violation. The builder was the applicant in April. Since then Ms. Tufano purchased it. Ms. Tufano was the property owner in April, but the builder was still that applicant. He did not show up for the ZBA meeting in April. There is still no certificate of occupancy but that is not a ZBA issue. Mrs. Torre stated that she advised the property owner that the variance had already been

denied and that the ZBA is not required to hear this application again but offered the option to reapply. This is an identical application.

Chairman Rusczek asked if the builder was in violation and knew was in violation when he sold the property. Mrs. Torre replied that the property was in active violation and the builder/owner was aware.

Ms. Tufano stated that she was not aware that there were issues. The builder told her that he had done all the proper documentation. She is now trying to comply.

Mr. Rys asked if she used an attorney for the purchase. Ms. Tufano answered yes, one that does real estate all the time. She stated that she could have done a municipal search but didn't think to do so. Mr. Rys asked if the attorney should have done that. Ms. Tufano stated that she held money in escrow due to some outstanding items, but had no idea there were permit problems when the property transferred in December.

Mr. Carmody asked when she purchased the property. Ms. Tufano reported that she saw the house in September of 2020 and closed on December 21, 2020. Mr. Carmody asked if she was aware that the board denied the application in April of 2021. She stated that she was aware of the April meeting but the builder told her that he would attend the April meeting. Mr. Carmody asked if she knew she had until May 9, 2021, to appeal the decision. Ms. Tufano stated that she was not aware.

Ms. Harris asked when she occupied the house. Ms. Tufano replied as soon as she closed. Ms. Harris asked if Ms. Tufano clears the last of the violations will she get her certificate of occupancy. Mrs. Torre noted that she can't speak from the building code perspective. She replied that from the zoning perspective there was no due diligence. The application is the same, the applicant is different but the owner is the same as in April. The applicant was advised in a meeting with the Town Planner and Mrs. Torre that the recourse needs to be an appeal in court. She clarified that the property owner of record is the applicant. She noted that the property is what's in violation, not the individual. Ms. Tufano stated that she is trying to make it right. She stated that the builder pulled the variance application on her behalf when she bought the property. Ms. Harris asked Ms. Tufano if she was aware of the application. Ms. Tufano stated that she wasn't aware until after the closing.

Hearing no public comment, Chairman Rusczek closed the public hearing and called for discussion and possible action.

**Mr. Wolfer: Motion to approve variance 21-022 for 1451 Durham Road. Variance Request for front yard of 29.8 ft. to reconstruct a residential dwelling unit with vertical addition as shown on Improvement Location Survey prepared for Rizzo Construction, dated 1/25/2021, and plans received August 12, 2021, subject to:**

1. **Comments from the Health Department received on September 13, 2021.**

**Ms. Harris: Second**

**Vote: Carmody – no to approve; Wolfer – no to approve; Harris – no to approve; Rys – no to approve and Chairman Rusczek – no to approve.**

The variance is denied.

**6. #21-023 – Variance Request/Executive Auto Group dba Executive Kia/1164-1174 North Colony Road**



Chairman Rusczek read the staff notes into the record. The applicant seeks a Variance for a rear yard of 39 ft. where 50 ft. is required to construct an addition for vehicle service bays at 1164-1174 North Colony Road in an RF-40 District. The site is an existing Automobile Dealership (Executive Kia) seeking to expand the vehicle service area. The applicant will be following ZBA determination with the application for Site Plan Approval from Planning and Zoning Commission. The proposed addition does not impede traffic flows on-site, nor alter identified parking or parking requirements.

Christopher Juliano, licensed land surveyor and professional engineer at 405 Main Street, Yalesville, presented for the applicant, Executive Auto Group. He explained that they are looking to expand their facility by adding 3 or 4 more service bays. The only possible place to do so is in the northeast corner. He explained why no other location would work. The hardship is the odd-shaped building, parallel to the roadway but the property isn't. There are grade issues and the second building that is on an island.

Chairman Rusczek asked if they were just squaring up the building. Mr. Juliano replied yes and that corner is paved, so there will be no additional impervious surface or parking will be added. There is no public or customer parking there. Chairman Rusczek clarified that there would be no impact on parking. Mr. Juliano replied that that is correct.

Mr. Carmody clarified that there would be no increase in parking. Mr. Juliano replied yes, this area is currently not striped for parking and they are not taking any parking away. Mr. Carmody asked if this application has to go to the Planning & Zoning Commission for site plan approval. Mrs. Torre replied yes.

Hearing no public comment, Chairman Rusczek closed the public hearing and called for discussion and possible action.

**Mr. Wolfer: Motion to approve application 21-023 a Variance Request for Executive Auto Group dba Executive Kia/1164-1174 North Colony Road, according to the submitted plans, subject to:**

- 1. Comments from the Health Department received on September 13, 2021.**

**Mr. Carmody: Second**

**Vote: Carmody – yes to approve; Wolfer – yes to approve; Harris – yes to approve; Rys – yes to approve and Chairman Rusczek – yes to approve.**

The variance is approved.

#### **7. #21-024 – Variance Request/Throm/1064 North Farms Road**

Chairman Rusczek read the staff notes into the record. The applicant seeks a Variance approval for front yard setbacks of 14 ft. and 26 ft. where 60 ft. is required for two proposed additions; to erect a covered 6 ft. x 50 ft. front porch to the dwelling and a 24 ft. x 94 ft. addition with attached garage at 1064 North Farms Road in and IX District. The site is used residentially and as a farm predating the inception of zoning. The property also abuts the RU-40 District and is the first property within the IX District. The applicant seeks purchase of the property, to continue using residentially, and expand dwelling. The proposal includes the removal of 4 deteriorating outbuildings. The existing dwelling is situated entirely within the front yard requirement for the IX District necessitating Variance(s) for any expansion including vertically.

Elizabeth and Brian Throm, for the property at 1064 North Farms Road, presented. The house is non-conforming due to the way it sits on the property. They have a family of six and want an addition to the small house, setback farther than the house sits now. Unfortunately, it predates zoning. The existing

garage is falling apart so it will be removed. Several sheds will also be removed. There is one chicken coop that is structurally sound so it will remain and be cleaned up. The application includes a larger front porch. The house is close to the street.

Chairman Rusczek referred to the drawing and asked if the garage and other three structures will be removed. Mrs. Throm replied that only the chicken coop will remain. Chairman Rusczek noted that the addition is on the side and along the driveway.

Ms. Harris asked how long they have owned the property. Mrs. Throm replied that they are looking to purchase it but the sale is contingent on the approval of this application.

Hearing no public comment, Chairman Rusczek closed the public hearing and called for discussion and possible action.

**Mr. Rys: Motion to approve application 21-024 a Variance Request for front yards of 14 ft. and 26 ft. to construct addition with attached garage and covered front porch as shown on Property of Wallace B. Kroeber, 1064 North Farms Road, dated 4/10/85, and plans received August 25, 2021, subject to:**

1. Comments from the Health Department received September 13, 2021, and
2. Removal of 4 outbuildings as depicted on the submitted plan for 1064 North Farms Road.

**Mr. Carmody: Second**

**Vote: Carmody – yes to approve; Wolfer – yes to approve; Harris – yes to approve; Rys – yes to approve and Chairman Rusczek – yes to approve.**

The variance is approved.

**8. #21-025 – Variance Request/Masella/363 North Cherry Street Extension**

Chairman Rusczek read the staff notes into the record. The applicant seeks a side yard setback of 15.5 ft where 25 ft. is required to construct a 32 ft. x 32 ft. storage garage/building at 363 North Cherry Street Extension in an I-40 District. The parcel is currently non-conforming in area and use (residential) predating zoning. The applicant seeks to erect a 32 ft. x 32 ft. detached storage garage in the rear of the property. Such storage buildings/garages are permitted buildings and use in the Industrial Zones. The property owner also owns an abutting parcel at 357 North Cherry Street Extension and erected the same size/use structure in 2009 on that parcel. The applicant seeks to “mirror” the building size and location on the lot as was constructed at 357 North Cherry Street Extension. The side yard setback request is for a boundary separating the owner’s two lots. The parcel abuts the railroad to the rear and thus has no setback requirement to the rear. The parcel is undersized for the zone. The request for side yard variance approval, however, does reduce the non-conformity of use of the property.

Stephen Masella, 750 North Farms Road, explained that they will keep everything inside the tree boundary and will keep everything uniform.

Chairman Rusczek asked what the garage is for. Mr. Masella replied it will be used for the storage of cars, a truck, and furniture. Chairman Rusczek asked if it will look like the neighboring property. Mr. Masella distributed photos of the garage he built in 2009. Chairman Rusczek asked if the photos are exactly what it will look like. Mr. Masella said yes, the exact image and dimension.

Ms. Harris asked for a clarification on the staff comment: ‘request for side yard variance approval, however, does reduce the non-conformity of use of the property’. She asked if this will reduce the non-

conformity. Mrs. Torre apologized that the notes were not clear. She explained that the non-conformity of use is being reduced, not relative to the side setback. The use is moving more toward conformity. The setback is the only thing in question. What he's proposing to use the garage for would be allowed.

Hearing no public comment, Chairman Rusczek closed the public hearing and called for discussion and possible action.

**Mr. Wolfer: Motion to approve application 21-025 a Variance Request for side yard of 15.5 ft. to construct a 32 ft. x 32 ft. garage/storage building as shown on Site Plan, Land of Stephen and Deborah Masella, 363 North Cherry Street Extension, dated April 2, 2019, subject to:**

- 1. Comments from the Health Department received on September 13, 2021.**

**Mr. Carmody: Second**

**Vote: Carmody – yes to approve; Wolfer – yes to approve; Harris – yes to approve; Rys – yes to approve and Chairman Rusczek – yes to approve.**

The variance is approved.

#### **CONSIDERATION OF MINUTES**

**Mr. Rys: Motion to accept the minutes of the Monday, July 19, 2021, Wallingford Zoning Board of Appeal meeting as submitted.**

**Mr. Harris: Second**

**Vote: Unanimous to approve**

Chairman Rusczek noted the Freedom of Information requirements memorandum from Atty. Small to make sure everyone had received it.

Mr. Wolfer noted an article in the CT Federation of Planning & Zoning Quarterly Newsletter. It states that we will be changing the requirements by law for accessory apartments, recreational cannabis, affordable housing, outdoor dining, and parking spaces. He asked if these were the responsibility of this Board or Planning & Zoning. Mrs. Torre replied that Planning and Zoning and the Town Planner are addressing these. She added that we can opt-out of certain portions of the new legislation. She noted that Planning and Zoning have already addressed the cannabis law and prohibited it in all zones.

#### **ADJOURNMENT**

**Mr. Wolfer: Motion to adjourn the September 23, 2021 meeting at 8:45 pm.**

**Vote: Unanimous to approve**

Respectfully Submitted,

Cheryl-Ann Tubby

Recording Secretary