Board Members Present: Curtis Ruckey, Peter Lambert, Douglas Glazier, Robert Rosenberg, Michael Russo and Daniel Merrigan

Town Staff Present: Jennifer Rodriguez, Planning Coordinator and Assistant Zoning and Wetlands Officer

Curtis Ruckey called the meeting to order at 7:00 pm.

Board roll call was taken.

MINUTES:

Mr. Ruckey referred to the April 2, 2012 meeting minutes and asked the Board members and staff for any comments or corrections. There were none. Mr. Ruckey asked for a motion. Mr. Glazier moved to approve the April 2, 2012 meeting minutes, as published. Mr. Lambert seconded the motion. All were in favor. The vote was 5 – 0, the motion was approved.

BILLS & CORRESPONDENCE:

There were none.

OLD BUSINESS:

There was none.

NEW BUSINESS:

Chairman Ruckey suggested that they move Item 6.c on the evening’s agenda to before Item 6.a. He then asked for a motion. Mr. Rosenberg moved to move Item 6.c on the evening’s agenda to before Item 6.a. Mr. Lambert seconded the motion. All were in favor. The vote was 5 – 0, the motion was approved.

Chairman Ruckey recused himself from the public hearing, because there was a potential conflict of interest. He then asked Mr. Rosenberg to be the Acting Chairman for the hearing.

Mr. Rosenberg requested that anyone who wished to comment on the application address the Board only and that they should state their name for the record before doing so. He then reiterated that no comments should be addressed to the audience; all comments must be directed to the Board. He went on to say that Board members could ask any questions that they wanted.
during the public hearing. Mr. Rosenberg reminded everyone who was going to speak during the hearing to speak into the microphone, because the meeting was being recorded in order to prepare accurate meeting minutes.

c. Public hearing on Application #FY11-12-11. Owner/Applicant: Mahmoud Hussein for a variance for the property located at 492 Spring Street to reduce the parking lot setback to 2 feet, where an approved plan requires 10 feet, and to increase the impervious surface percentage to 95%, where 79.2% was approved.

Attorney Chris Kervick addressed the Board on behalf of the applicant, Mahmoud Hussein, and stated that they were seeking two variances for one specific issue. He went on to say that Mr. Hussein was the owner/operator of H&M Giant Grinder and that he had been in business for close to 40 years. Attorney Kervick noted that Mr. Hussein currently leased the space where he operated his business, but that he had purchased 492 Spring Street a few years prior with the idea of one day moving his business to that location.

Attorney Kervick stated that 492 Spring Street was an unusually sized lot for the zone, which was Business 1. He then pointed out that the current required size for a Business 1 lot was 50,000 square feet with 200 feet of frontage and 250 minimum feet in depth. He went on to say that the lot in question was less than half of the required size; it was about 24,400 square feet, with 100 feet of frontage and 150 feet in depth. Attorney Kervick noted that the small dimensions of the property had made it very difficult for the applicant to develop the site.

Attorney Kervick commented that in the past the Board had recognized the difficulty in developing such a small Business 1 lot and had granted a variance to increase the impervious coverage from 66% to 79.4% as well as a variance in the number of required parking spaces.

Attorney Kervick stated that the current issue had not come to light until it came time to actually pave the parking lot. He then referred to the As-built that had been submitted to the Board members and stated that the issue was between the parking spaces that faced the building and those that faced the street. Attorney Kervick stated that the drive aisle on the plan showed 29.22 feet, but that that was not really what they had to work with. He then pointed out that that drive aisle was the only way to access the back of the building and that delivery trucks would be unable to do so when vehicles were parked in the parking spaces.

Attorney Kervick referred to the photographs that he submitted earlier in the evening and described them as follows:
Photo 1 - Two vehicles (one standard size pick-up truck and one extended cab pick-up truck) parking in the spaces as they currently existed with cones placed under each of their bumpers (the distance between those cones was 23 feet).
Photo 2 ñ Basically the same photo, but from a little different angle showing the arrow indicating where the access point to the rear of the building was.

Photo 3 ñ A cone placed 8 feet from the curb and a second cone placed 8 feet from the first. When vehicles were placed there it reduced the drive aisle to 14 feet.

Photo 4 ñ The same as the previous photo, but with a vehicle parked in between to show just how narrow the drive aisle was.

A brief discussion took place and it was clarified that the photographs showed how the drive aisles would be according to what had been approved by the Town.

Mr. Rosenberg clarified that the parking lot had already been paved at 95% when it had been approved for only 79.2%. Attorney Kervick stated that that was correct.

The original plans were reviewed and it was clarified that they were drawn up by the firm hired by the applicant.

Mr. Lambert suggested that the parking space lines be put in at an angle and that that would provide more space for the drive aisle. The discussion continued and Attorney Kervick stated that the spaces by the building were already at an angle and that if they were to angle the spaces on the road side they would lose a parking space. He then noted that they had already received a variance to reduce the required number of parking spaces.

Photo 5 ñ Standing in the western most entrance to the property looking onto the lot. The curbing was right on the property line and the parking lot started two feet off of that.

Attorney Kervick pointed out that at Casey’s Market, next door to the property in question, the curbing was right at the street line (there was no setback).

Mr. Rosenberg commented that a real concern of his was the fact that the applicant had paved the lot before coming to the Board for a variance.

Attorney Kervick referred to Section 13.01 of the Regulations which laid out certain things that the Board must find in order to grant a variance. He went on to say that one of those things was “there are certain circumstances or conditions that are peculiar to such land.” He then noted that the Board had previously made that determination because they had already granted a variance for the lot in question. Mr. Rosenberg pointed out that just because the Board granted a variance in the past did not set precedence for them to do so again.

Attorney Kervick referred to Section 13.01 of the Regulations again and noted that another thing that the Board must find in order to grant a variance was “strict application of the
regulations would deprive the owner of reasonable use of the lot. He went on to say that he did not know how the applicant could operate a working parking lot if he were to push everything back another 8 feet.

Attorney Kervick referred to Section 13.01 of the Regulations once more and noted that another of the things that the Board must find in order to grant a variance was "variance is in harmony with the general purpose of Zoning Regulations and will not be detrimental to public health and safety." He then noted that the variance would actually enhance public safety, because without it the drive aisle would be virtually inaccessible. In addition, without the variance the tight quarters of the parking lot would increase the possibility for fender-benders in the parking lot.

Attorney Kervick referred to the next three photographs in the series of photos that were submitted illustrating the field of vision up and down the street. He went on to say that Town Engineer Steele had raised some sight line issues, but that he just did not see any issues as illustrated by the photographs.

A discussion regarding the various photographs took place and it was pointed out that there appeared to be a mathematical error on the plans.

Mr. Glazier referred to the sight line issue and commented that the landscaping would need to be kept under 2 feet tall in order to keep the sight line clear. Attorney Kervick stated that the Planning and Zoning Commission had addressed that and the landscaping needed to be changed in order to receive the Certificate of Occupancy.

Mr. Lambert stated that he was concerned about the parking lot being so close to the street, especially in the winter months when roads were plowed. He then asked who was going to take responsibility for damage that might be done to any vehicles parked in those parking spaces when the roads were plowed and the snow was pushed upon onto those parking spaces (there would be no snow shelf). Attorney Kervick acknowledged that it was a concern, but then commented that putting cement stops in each parking space might help keep the vehicles a little farther back from the street. He went on to say that Public Works Director Lappen had had similar snow concerns regarding the vegetation in that area as well. Attorney Kervick then stated that that was less of a concern, because of the very low ground cover vegetation that would be planted in that area.

Mr. Glazier suggested possibly placing a parking restriction on those parking spaces during a heavy snow storm. Attorney Kervick stated that that would certainly be reasonable; such a restriction would also help to protect the Town if someone were to park there during a storm and their vehicle was damaged, the Town would not be liable.
Attorney Kervick concluded his presentation and reiterated that the lot in question was extremely small for a Business zone. He also stated that the applicant would be open to any conditions or restrictions that the Board chose to impose.

Mr. Rosenberg asked for any public comments in favor of the application.

Mr. Rosenberg asked for any public comments in opposition to the application.

Angelo D'Aleo addressed the Board and stated that he and Regina Graziani were the owners of 482 Spring Street which abutted the lot in question. He went on to say that he was opposed to the granting of the variance for the following reasons:
- the safety of the citizens of the town
- the entering and exiting of the parking lot;
- the respect owed to the neighboring property owners; and
- the lack of respect for the Town's laws.

Mr. D'Aleo pointed out that when a paving crew comes out to do a job, they didn't just come out with the trucks and start paving; they would come out and mark the site first. He then commented that the paving crew would have known that it was not going to work on that first day that they came out to do their measurements and mark the site. He went on to say that the Town had laws and regulations that needed to be followed, otherwise anyone could he just go ahead and build a three car garage, for instance, too close to someone's property and then go to the Town and tell them that they were only going to use the first two bays and not use the third bay. Mr. D'Aleo stated that no matter what the applicant did with the parking spaces and cement stops, the pavement was still going to exist there.

Mr. Rosenberg asked Mr. D'Aleo what the safety concern was that he had referred to. Mr. D'Aleo replied that he had safety concerns regarding entering and exiting the neighboring properties. He then submitted some photographs showing how poor the line of sight was for someone trying to exit his property's parking lot when vehicles were parked in the parking spaces by the street on the property in question. Mr. D'Aleo pointed out that the property in question was actually about two to three feet higher in elevation than his property and that with vehicles parked in those street side parking spaces it was like looking at a 9 foot high wall when trying to pull out of his parking lot.

Mr. D'Aleo stated that tractor trailers and large trucks were constantly making deliveries to H & M and that there was no way that a tractor trailer was going to get in and out of the parking lot in question, especially with any vehicles parked in the lot.

Mr. D'Aleo stated that the applicant currently rented the business space from him. He went on to say that the applicant had twelve to fourteen years to find out that he had a problem and, in fact, the parking lot had been put in over eight months ago. He then pointed out that
the applicant also owned another lot in the rear which could be used to help solve the problem. Mr. Rosenberg stated that they were not there that evening to discuss any of the applicant’s other properties.

Mr. D’Aleo stated that, if the Town were to grant the variance after the fact, what would prevent anyone else from doing whatever they wanted and then simply going to the Town to ask for forgiveness. He then commented that it was much easier to ask for forgiveness than it was to ask for permission. Mr. D’Aleo reiterated that it had been a safety issue and that there was plenty of time to correct it and do the right thing.

First Selectman Steve Wawruck addressed the Board and stated that he was business friendly. He went on to say that variances were typically requested prior to construction, not after; the issue should have been discussed before the building and parking lot was put in place. He then asked if the property had been developed according to the original plan that was presented to the Planning and Zoning Commission. Mr. Wawruck referred to the requested variance from 10 feet to 2 feet and stated that it posed a couple of issues. Allowing parking right up against the road was a line of sight problem, especially with the difference in elevation that was previously mentioned. Mr. Wawruck referred to rights-of-way and noted that if the parking lot was allowed to go to within two feet of the road bed it would negate any future expansion of sidewalks on that side of the road. He then stated that the Town’s staff had spent countless hours trying to come up with solutions and guide the Board in making their decision. He went on to say that taxpayers’ dollars had been spent and that the Board should read what the staff had written and listen to what they had to say. Mr. Wawruck then concluded by saying that it was a public safety hazard.

Regina Graziani of 42 Spring Street addressed the Board and stated that she was partners with Mr. D’Aleo in the abutting property. She then referred to the basis for granting a variance which would be an unusual hardship. She went on to say that if there were a hardship than the applicant had created it himself. Ms. Graziani noted that there was a plan that had been approved with a 10 foot setback and that the issue should have been corrected at the time that it was identified so that it could have been corrected. She went on to say that the 2 foot setback was a safety issue for her property. She then referred to the curb stops and stated that they would disintegrate over time. Ms. Graziani reiterated that it was a real safety issue for everyone.

Attorney Kervick stated that the cement curb stops would absolutely solve the problem that Mr. D’Aleo had shown a photograph of with regard to the trucks tail end sticking out over the road. Mr. Rosenberg commented that he did agree with some of the points that were made with regard to the cement curb stops disintegrating and/or getting hit and pushed out of
place over time. Attorney Kervick pointed out that the type of curb stops that he was talking about were poured concrete and affixed to the ground. He then reiterated that the curb stops would address all of Mr. D'Aleo's concerns.

Attorney Kervick referred to the issue regarding tractor trailers accessing the site that was brought up by Mr. D'Aleo and stated that tractor trailers would never be able to access the lot in question, even if it were built to the plan's specifications. He went on to say that since Mr. D'Aleo had brought up the fact that the applicant currently leased space from him, he would like to note that since Mr. D'Aleo purchased the property he had raised the applicant's rent by 40%. Mr. Rosenberg stated that that was irrelevant. Attorney Kervick disagreed and stated that Mr. D'Aleo had a vested interested in keeping the applicant from moving into his new location; he would lose the rent that he currently collected from the applicant.

Attorney Kervick noted that many comments had been made as to why the applicant had not addressed the issue sooner, and noted that even if the applicant had brought it up sooner nothing would have changed; they would still be dealing with the same issues.

Mr. Rosenberg stated that one of the biggest issues was the fact that it was that the paving had been done before the applicant came to the Board. He went on to say that he found it hard to believe that the company hired to pave the parking lot came out in one day with their equipment and paved the lot; they must have come out to take measurements and calculations before ever bringing their equipment out to do the actual job. Attorney Kervick commented that the Board had to deal with what was currently before them; they could not deny an application simply because they were angry at how it was done. He reiterated that even if the applicant had come before the Board earlier they still would be faced with the same problems and lack of solutions.

Attorney Kervick stated that the argument that had made that the Town would not enforce the rules that it set forth, was not an argument. He went on to say that it was unfair to say that the Town would not do the task that it was assigned to do; if conditions of approval were set the Town would enforce them.

Attorney Kervick referred to the line of sight issues that were raised and stated that just saying there was a line of sight issue did not make it true. He went on to say that the photographs that he presented showed that the line of sight issues did not exist.

Attorney Kervick referred to the comment that had been made that the applicant had created the hardship himself and stated that that was not true. He went on to say the problem existed; the applicant created a problem by not coming before the Board sooner to ask for approval, but the problem still existed.
Mr. Glazier clarified that the curb was two feet from the road and that the original plans showed it at 10 feet. Attorney Kervick stated that the curb was two feet from the property line with another three to four feet to the travel portion of the road; it was actually about six feet from the travel portion of the road. Mr. Glazier asked, if the applicant were to follow the plans as they had been approved, how much farther back would the curb have to go. Attorney Kervick replied that it would have to be another eight feet back. Mr. Glazier clarified that if they were to move the curb back the eight feet they would then be in compliance with the plans. Ms. Rodriguez stated that that still would not be in compliance with the plans. Attorney Kervick acknowledged that they still would not meet the approved impervious coverage requirement. Ms. Rodriguez noted that they also would not have the landscaped strip that was required or the quality that the townspeople would expect. The discussion continued and Mr. Glazier pointed out that the eight feet of pavement could be torn up. Attorney Kervick stated that if they were to do so they would then not have enough room for vehicles to back in and out of the parking spaces nor would there be enough room for emergency vehicles to maneuver around the site. Mr. Russo commented that, if the original plan, which he felt was suspect, created a hardship, why was it accepted and who had drawn up the plan. He went on to say that both options were no good and suggested that the applicant go back to their design engineer. He then stated that it was not the Board’s position to offer design and/or engineering options. The discussion then continued briefly.

Mr. Rosenberg asked if the property had been developed according to the approved plan before the paving. Attorney Kervick replied that he felt that that was not an appropriate question, because they were only before the Board that evening for the issues listed on their application. Mr. Rosenberg stated that it was appropriate, because if it was not developed according to the approved plans then the applicant may have created their own problems/hardships. Attorney Kervick stated that the as-built plan had been submitted to the Town, reviewed by the Town Engineer, who had come up with a list of about eight issues that needed to be addressed (the location of the building was not one of those issues). He went on to say that two of the issues raised by the Town Engineer were the impervious coverage and the distance from the road which were the two issues that the applicant had brought before the Board.

Mr. Lambert clarified that they were talking about six parking spaces out in front of the building. Attorney Kervick stated that that was correct. Mr. Lambert noted that they could bring the pavement back to meet the requirements and have room to parallel park three vehicles which would mean only losing three parking spaces. Attorney Kervick stated that there was an approved variance to get to the current number of parking spaces. He went on to say that the Board would have to grant another variance in order to reduce the number of parking spaces again. The discussion then continued briefly.
Mahmoud Hussein, the applicant, addressed the Board and stated that he was allowed twelve parking spaces on the original plan and that now the Board wanted to take away three more spaces. Mr. Lambert again pointed out that the applicant’s engineer had messed up when preparing the plans. The discussion again continued briefly.

Mr. Rosenberg asked the Board members for any further comments or questions. Mr. Glazier asked if parking was allowed in the back of the building. Attorney Kervick replied that it was not allowed; from the property line to the building, for whole width, was a required fire lane.

Mr. Rosenberg asked Ms. Rodriguez for any comments. Ms. Rodriguez stated that many of the comments listed in her report had already been mentioned that evening. She went on to say that the current plan did meet the Regulations. She then noted that the curb stops would not address the issue of impervious coverage. Ms. Rodriguez stated that it was existing as a violation and that it also did not allow for any landscaping or improved line of sight, it would not prevent encroachment to the right-of-way. She went on to say that she believed that the people of Windsor Locks wanted something that was going to look more tidy and attractive rather than more pavement with a curb. Ms. Rodriguez pointed out that the Planning and Zoning Commission had renewed the permit, but that it was currently expired; it was existing as a violation. She went on to say that it could immediately be enforced and that that should be incentive enough to correct the situation. She then commented that she did not think that a variance should have to be granted.

Mr. Glazier clarified that there would be nothing stopping the applicant from tearing up the pavement, moving the curb back, reconfiguring the parking spaces and meeting the requirements. Ms. Rodriguez stated that that was correct.

Mr. Rosenberg asked the Board members for any further comments or questions. They had none.

Mr. Rosenberg asked for a motion to accept Application #FY11-12-11. There was no motion. Mr. Rosenberg stated that since no motion to accept the application had been made, the application was denied. Mr. Rosenberg then asked for the Board’s reasons for not making a motion to accept the application. Mr. Lambert stated that he needed to go by what the Town’s professionals had presented to the Board with regard to public safety. He went on to say that not enough of a hardship was shown. Mr. Rosenberg clarified that the reason that no Board members had made a motion to accept the application was for safety concerns. The Board members stated that that was correct. Mr. Glazier stated that the photographs that Mr. D’Aleo had presented...
were a fine example of what could happen with the bed of a pickup truck out in the roadway in addition to blocking the line of sight. He went on to say that the applicant could reconfigure/reconstruct in order to meet the requirements of the plans.

Mr. Ruckey resumed his role as Chairman and noted that Mr. Merrigan had arrived at the meeting.

b. Public hearing on Application #FY11-12-09, Owner/Applicant: Wayne and Alison Kulas for a variance for the property located at 20 Preston Road to construct a deck 18 feet from the rear property line, where 25 feet is required.

Wayne Kulas of 20 Preston Road addressed the Board and stated that he wanted to construct a 16 foot deep deck off the back of his house. He went on to say that his lot was oddly shaped, basically an L-shape; the depth was only 34 feet 10 inches. He then noted that in order to construct a deck without a variance it could only be 9 feet 10 inches in depth.

Chairman Ruckey asked where the “L” was on the drawing. Mr. Kulas replied that it was on the left. Mr. Ruckey then asked if it was a corner lot. Mr. Kulas replied that it was on a curve. He then submitted the entire subdivision plan so that the Board members could see how the lot was configured. Mr. Ruckey clarified that it would be just a deck without an overhang. Mr. Kulas stated that that was correct. Mr. Ruckey then asked if it would be attached to the house. Mr. Kulas stated that it would be attached to the house.

Mr. Lambert asked if the odd shaped lot was the hardship being presented. Mr. Kulas stated that that was correct.

Chairman Ruckey asked the Board members for any comments or questions. Mr. Glazier clarified that the regulations required that a deck be 25 feet from the property line. Both Mr. Kulas and Ms. Rodriguez stated that that was correct. Mr. Glazier then asked if there was a reason why the 16 foot depth could not be reduced to possibly 12 feet, making it closer to meeting the regulation. Mr. Kulas stated that the 16 feet would allow them to have a table and chairs as well as enough room for their small child to have some room to play.

Mr. Lambert then asked if he could go 24 x 14 feet. Mr. Kulas replied that he had a window on the back of his garage and the oil tank fill pipe was located on the northwest corner of the house.

Mr. Glazier asked Mr. Kulas if he had spoken to the property owner behind his property at 39 Gaylord. Mr. Kulas stated that he had spoken with his neighbor and that he had no problem with his proposed deck. He then noted that that neighbor was also present that evening.
Chairman Ruckey asked for public comments in favor of the application.

Paul Rucci of 39 Gaylord Road addressed the Board and stated that he had worked together with Mr. Kulas in scoping out that deck. He went on to say that he had no problem with the deck being constructed; it would not affect him at all.

Chairman Ruckey asked Mr. Rucci how far his house was from his property line. Mr. Rucci replied that it was approximately 100 feet.

Chairman Ruckey asked for any public comments in opposition to the application. There were none.

Chairman Ruckey asked the Board members for any further comments. They had none.

Chairman Ruckey asked for a motion regarding Application #FY11-12-09. Mr. Lambert moved to approve Application #FY11-12-09, Owner/Applicant: Wayne and Alison Kulas for a variance for the property located at 20 Preston Road to construct a deck 18 feet from the rear property line, where 25 feet is required. He went on to say that the reason for granting the variance was because of the odd shape of the lot. Mr. Glazier seconded the motion. All were in favor. The vote was 5 – 0, the motion was approved.

b. Public hearing on Application #FY11-12-10, Owner/Applicant: Michael Godden for a variance for the property located at 67 Cornwall Drive to construct an addition 22 feet from the front yard property line at Halfway House Road, where 40 feet are required.

Mike Godden of 67 Cornwall Drive addressed the Board and stated that he wanted to add onto the side of his home. He then explained that his home was on a corner lot, therefore it was considered his front yard. He went on to say that they would like to have another child and needed to use their bedroom for the child, therefore they would be adding on a new master bedroom.

Chairman Ruckey asked Mr. Godden if he had considered going up with the addition. Mr. Godden replied that he had considered it, but that there were no other homes in his neighborhood that had a second floor. Mr. Ruckey then asked how close to the street on Cornwall they were. Mr. Godden replied that they were currently 36 feet from the building line on Cornwall.

Chairman Ruckey asked Ms. Rodriguez what the requirement was for a side yard. Ms. Rodriguez replied that she believed that it was 12 feet; 15 feet at the most.
Mr. Lambert clarified that the addition as well as the roof line would be flush with the house. Mr. Godden stated that that was correct. Mr. Lambert then asked if there would be any overhang. Mr. Godden replied that there would not.

Mr. Russo clarified that the hardship was that there were two front yards. Mr. Godden stated that that was correct.

Chairman Ruckey asked the Board members for any comments or questions. They had none.

Chairman Ruckey asked for public comments in favor of the application. There were none.

Chairman Ruckey asked for public comments in opposition to the application. There were none.

Chairman Ruckey asked for a motion regarding Application #FY11-12-10. Mr. Glazier moved to approve Application #FY11-12-10, Owner/Applicant: Michael Godden for a variance for the property located at 67 Cornwall Drive to construct an addition 22 feet from the front yard property line at Halfway House Road, where 40 feet are required. Mr. Russo seconded the motion. All were in favor. The vote was 5 – 0, the motion was approved.

Mr. Russo moved to adjourn the meeting. Mr. Lambert seconded the motion. All were in favor. The vote was 5 – 0, the meeting was adjourned at 8:53 pm.

Respectfully submitted,

Diane Ferrari
Recording Secretary

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THIS IS A DRAFT

Please check the following month’s meeting minutes for official approval of these minutes and any amendments or corrections that were made.