

ZONING BOARD OF APPEALS
June 3, 2013 Meeting Minutes

Board Members Present: Curtis Ruckey, Howard Aspinwall, Robert Rosenberg, and
Douglas Hamilton

Town Staff Present: Patrice Carson, Town Planning Consultant

Curtis Ruckey called the meeting to order at 7:03 pm.

Board roll call was taken.

MINUTES:

Chairman Ruckey referred to the May 6, 2013 meeting minutes and asked for any corrections or changes. There were none. He then asked for a motion. Mr. Hamilton moved to accept the May 6, 2013 meeting minutes, as published. Mr. Rosenberg seconded the motion. All were in favor. The vote was 4 – 0, the motion was approved.

BILLS & CORRESPONDENCE:

None

OLD BUSINESS:

None

NEW BUSINESS:

- a. Continued public hearing on Application #FY12-13-12, Owner: Mahmoud Hussien, Applicant: Frank Borawski, P.E. for a variance for the property located at 492 Spring Street to reduce the buffer to 6 feet, where 25 feet are required, and to reduce the minimum lot area from 24,437.16 square feet to 29,437.16 square feet, where 50,000 square feet are required; and a variance for the property located at 498 Spring Street to reduce the side yard to 2 feet, where 15 feet are required, to reduce the rear yard from 102.98 feet to 2 feet, where 40 feet are required, to increase the maximum building coverage from 11% to 22%, where 20% is the maximum allowed, and to reduce the minimum lot area from 10,000 square feet to 5,000 square feet, where 50,000 square feet is required.**

Chairman Ruckey stated that typically there were five Board members present. He then explained that they could move forward with the public hearing, but that any vote would have to be unanimous. He then asked the applicant if he wanted to move forward with the public hearing that evening or if he wanted to wait until the following month's meeting to

proceed. Frank Borawski replied that he wanted to move forward with the public hearing that evening with only the four Board members present.

Frank Borawski, P.E. of 4 Whitfield Heights, Avon, CT addressed the Board and stated that both of the lots in question were existing nonconforming lots located on Spring Street. He went on to say that the lot that the restaurant was located on was 100 x 150 feet and that the lot with the house on it was 50 x 200 feet. Mr. Borawski stated that they were proposing to extend the restaurant lot in order to improve the parking for that restaurant and that in doing so would also improve the site's drainage and landscaping. He then noted that the Business Zone in which the lot was located did not require the buffer that was being proposed. He went on to say that currently there was only a fence line where they were proposing a tree line should the variances be approved.

Mr. Borawski submitted two letters from Howard Robtoy of 17 Leslie Street and Ahmad Alomari of 496 Spring Street. Both letters were as follows:

"I have reviewed the plans for H & M restaurant and Mo Hussien's house lot. I have no issues with the new lot configuration and am in favor of this application."

Mr. Borawski noted that he could carve out 2% of the property that was being proposed to go from the house lot to the restaurant lot and keep that 2% with the house lot in order to bring the maximum coverage to below the required 20% maximum. He went to say that that would allow them to require one less variance.

Mr. Borawski stated that their proposal would improve the restaurant lot and would make the house lot a little worse. He then noted that the house lot was a rear lot that was accessed by a common driveway that ran along side the market. He went on to say that they would be making a bad situation for the restaurant a little better by just cutting away part of the house lot's backyard.

Mr. Hamilton pointed out that in doing so they would also be creating another nonconformity with regard to the shed and its close proximity to the proposed new property line. Mr. Borawski confirmed that that was correct.

Chairman Ruckey asked if anyone was currently living in the house in question. Mr. Borawski replied that there was currently no one living in the house. A member of the public then stated that the house was a rental property.

Mr. Hamilton commented that he was trying to figure out what the hardship was other than the hardship that was self-created. Mr. Borawski stated that the two lots were very small. He then noted that he had not been involved with the project when it went before the Planning and Zoning Commission for its original approval. Mr.

Hamilton stated that he had read the minutes from the meeting at which the project was originally approved and that it seemed as though the building had been built oversized therefore creating the hardship. Chairman Ruckey pointed out that the Board did not need to address the history of the site; they only needed to address the variances listed on the application before the Board that evening.

Chairman Ruckey stated that he did not understand how the proposal and requested variances would improve the two lots which were both already nonconforming. Mr. Hamilton commented that it would be better for one of the lots, but worse for the other. He went on to say that it would negatively impact the property value of house lot as well as the values of the adjacent lots on Leslie Street. Mr. Borawski reiterated that the house lot was already a nonconforming lot with a shared driveway. He went on to say that, if they were to remove a piece of the house lot, it really would not affect that residential lot, but that it would improve the restaurant lot.

Ms. Carson stated that, if the variances were approved, the house lot would be 5,000 square feet in size. She then asked if there were any other 5,000 square foot lots in the area. Mr. Borawski replied that there were not. Mr. Hamilton also replied that he did not believe that there were any other residential properties that size in the area.

Ms. Carson clarified that there were two homes surrounding the property in question. Mr. Hamilton stated that that was correct. He went on to say that although Spring Street was all Business zoned, Leslie Street was Residential.

Mr. Aspinwall stated that he did not see a hardship other than a self-imposed hardship. Mr. Borawski again stated that their hardship was the size of the lots.

Chairman Ruckey stated that the applicant was asking the Board for variances for a couple of lots and that those variances would improve nonconformities on one lot, but would create some other nonconformities on the other lot. He then commented that it would be a trade-off. Mr. Ruckey went on to say that the Board needed to consider what the requested variances would do to the properties in question as well as what they would do to the other properties nearby.

Chairman Ruckey stated that the applicant would have a parking lot 6 feet from the adjacent backyard. He then commented that he was not sure if that would be in harmony with that residence even though the residence was located in a Business Zone. Mr. Borawski pointed out that that residence currently had a parking lot on the other side of their property. He went on to say that they were proposing a line of trees in order to completely block the parking lot from view.

Chairman Ruckey asked the Board members for any questions. Mr. Rosenberg asked what was between the garage and the parking lot. Mr. Hamilton replied that there would be 2 feet 4 inches. Mr. Borawski also replied that there would be roughly 2 to 3 feet. Mr. Rosenberg commented that he had concerns with regard to snow removal; where would they put the snow in that area and how would it affect the garage? Mr. Borawski replied that they would probably have to lose a couple of parking spaces during the winter season in order to plow the snow into them.

Chairman Ruckey clarified that Mr. Borawski was not the owner of the properties in question. Mr. Borawski stated that that was correct; he was not the owner. Mr. Ruckey then asked Mr. Borawski if he had any financial interest in the properties. Mr. Borawski replied that he did not.

Mr. Hamilton commented that snow removal would become an issue on the side of the restaurant building as well. Mr. Borawski pointed out that they had already gone through a plowing season on that property.

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

Chairman Ruckey addressed the members of the public present that evening and asked them to make their comments to the Board only. He also asked them to state their name and address for the record before speaking to the Board.

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

Chairman Ruckey asked for any public comments in opposition to the application.

Angelo D'Aleo of 482 Spring Street, owner of the abutting property addressed the Board and stated that the proposal would create a whole list of problems including safety. He explained that tractor trailers currently could not come in and out of the restaurant property; they had had police cruisers at the site having to stop traffic for the tractor trailers, as well as having to move customer vehicles out of the way. Mr. D'Aleo stated that tractor trailers entered the lot and then realized that they had no way to get out without having to drive on the current dirt area which on the proposed site plan is the gray area. He then referred to the map and the 11foot 9 inch drive aisle and stated that a tractor trailer would not be able to make that turn. He went on to say that if the tractor trailer was indeed able to make that first turn it would never be able to make the one behind the building.

Mr. D'Aleo stated that they had had a big problem this past winter with regard to snow plowing. He went on to say that they had filled the entire back lot of the property with snow.

Mr. D'Aleo stated that his biggest problem was that H&M was currently only utilizing part of the restaurant, the portion that had only 12 seats. He then explained that the other portion of the restaurant was currently closed and that it had 36 to 40 seats in it. Mr. D'Aleo commented that, although, adding additional parking sounded like a good idea, it would actually cause more problems. He explained that once the additional parking was provided Mr. Hussien would probably open the remaining portion of the restaurant providing more seating than even the additional parking would be able to accommodate which would make the situation even worse. He went on to say that once the remaining portion of the restaurant was opened Mr. Hussien would also need additional employees resulting in the need for additional employee parking as well. Mr. D'Aleo warned that for insurance reasons, if Mr. Hussien's employees or customers parked in his lot, they would be ticketed and/or towed. He went on to say that he had already had incidents involving Mr. Hussien's customers who had parked in his lot.

Mr. D'Aleo concluded by stating that all of these issues should have been addressed 12 to 15 years prior when the original project went before the Town's various Boards and Commissions for approval.

Regina Graziani of 42 Spring Street addressed the Board and asked where the hardship was. She went on to say that they appeared to be self-imposed hardships. Ms. Graziani commented that the Town had worked hard to come up with its current Zoning Regulations for a reason and that in order for the applicant to receive the requested variance they would have to disregard those Zoning Regulations. She then stated that the proposal would not give the Town anything good, it did not respect the Town's regulations or uphold the integrity of those regulations.

Kristen Ireland of 494 Spring Street addressed the Board and stated that her property was one of the three abutting properties. She went on to say that she agreed with Mr. D'Aleo's earlier comments about the parking issues; no one could make it around the lot. Ms. Ireland then referred to the snow removal issue and stated that during the past winter they had plowed their snow onto her fence.

Ms. Ireland referred to the site map and asked if the side yard for the lot with house on it was behind the garage. A brief discussion took place and the Board clarified where the side and rear yards were for the lot and noted that the applicant was asking for variance for both the side and rear yard.

Ms. Ireland asked if the building depicted on the site map represented the current existing home that included an addition or if it was the original home. A discussion then followed regarding whether or not the building on the site map included the additions to the home and how far from the property line that building actually was. Mr. Borawski stated that he

believed that the footprint of the building on the site map included the additions to the home and that the building was 7 feet from the property line. Ms. Ireland questioned the accuracy of that and Mr. Borawski offered to follow her back to her home that evening after the meeting to take a look at it and possibly re-measure the distance from the building to the property line.

Mr. D'Aleo addressed the Board again and commented that although the Board had said in the past that any ruling that they made did not set precedence, he felt as though it would. If all of the requested variances were approved, people would see what the applicant was allowed to do and they would want to be able to do similar things by reducing lot sizes, paving more areas, etc. Mr. D'Aleo stated that the regulations were in place for a reason and then questioned what good those regulations would be if the Board were to approve all the variances being requested. He then warned that, if all of the variances were granted, it could open up a "whole can of worms" with others coming forward looking for similar variances.

Mr. Borawski stated that he had not created the lots, they were existing lots. He went on to say that the turning radius and traffic flow being proposed would be much better than what was currently in place and that that was why Dana Steele, the Town Engineer, was in favor of it.

Mr. Borawski pointed out that Mr. Hussien could open the remaining, larger portion of his restaurant at any time; he did not need the additional parking to do so, it had already been approved.

Chairman Ruckey closed the public input portion of the public hearing.

Chairman Ruckey commented that he did get the idea of what the applicant was trying to do, but that he did not like that it was all self-imposed.

Mr. Hamilton stated that if the two lots were not owned by the same individual, the owner of the individual lot with the house on it would probably be against what was being proposed. He went on to say that the proposal would affect the residences located on Leslie Street. He then commented that he somewhat agreed with the comments made earlier that evening regarding setting precedence. Mr. Hamilton stated that there was too much being asked for and that he did not see a hardship that was not self-imposed.

Mr. Rosenberg stated that he had a problem with the existing 90% coverage on the lot; let alone what the applicant was asking for with his variances.

Mr. Aspinwall stated that he did not see any hardship other than what had been self-created.

Chairman Ruckey asked for a motion regarding Application #FY12-13-12. He then noted that all motions made by the Board had to be in favor of an application. No motion was made by the Board members. Mr. Ruckey stated that since no motion was made, the application was denied. He then thanked Mr. Borawski for his time and for explaining the aspects of his proposal to the Board.

A discussion followed regarding Board procedures and Ms. Carson stated that the Board needed to make a motion in favor of the application, second that motion and then take a vote. She explained that at that point the Board members could either vote for or against the motion in favor of the application.

Chairman Ruckey asked for a motion regarding Application #FY12-13-12. Mr. Rosenberg moved to approved Application #FY12-13-12, Owner: Mahmoud Hussien, Applicant: Frank Borawski, P.E. for a variance for the property located at 492 Spring Street to reduce the buffer to 6 feet, where 25 feet are required, and to reduce the minimum lot area from 24,437.16 square feet to 29,437.16 square feet, where 50,000 square feet are required; and a variance for the property located at 498 Spring Street to reduce the side yard to 2 feet, where 15 feet are required, to reduce the rear yard from 102.98 feet to 2 feet, where 40 feet are required, to increase the maximum building coverage from 11% to 22%, where 20% is the maximum allowed, and to reduce the minimum lot area from 10,000 square feet to 5,000 square feet, where 50,000 square feet is required. Mr. Hamilton seconded the motion. The following discussion then took place. Mr. Hamilton stated that he did not believe that the applicant had shown a hardship. He went on to say that the applicant was not only requesting changes, but was self-imposing additional nonconformities. Mr. Ruckey commented that the applicant was requesting multiple variances and creating more nonconformities. The vote was zero in favor and four opposed. The motion failed, the application was denied.

Mr. Hamilton moved to adjourn the meeting. Mr. Rosenberg seconded the motion. All were in favor. The vote was 4 – 0, the meeting was adjourned at 8:07 pm.

Respectfully submitted,

Diane Ferrari
Recording Secretary

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.