

BOARD OF APPEALS , 2011 Meeting Minutes

Board Members Present: Shane O'Connor, Howard Aspinwall, Curtis Ruckey,
Robert Rosenberg, Alternate Lynn Mazza and
Alternate Daniel Merrigan

Town Staff Present: Temporary Town Planning Coordinator and Assistant Zoning and
Wetlands Officer John Szczesny

Chairman O'Connor called the meeting to order at 7:00 pm.

Board roll call was taken.

Chairman O'Connor seated Ms. Mazza for Board Member Lambert for all of the evening's
proceedings.

MINUTES:

Chairman O'Connor referred to the June 6, 2011 meeting minutes and asked for any corrections or changes. There were none. He then asked for a motion. Mr. Ruckey moved to accept the June 6, 2011 meeting minutes, as published. Mr. Rosenberg seconded the motion. All were in favor. The vote was 5 – 0, the motion was approved.

BILLS & CORRESPONDENCE:

None

OLD BUSINESS:

None

NEW BUSINESS:

- a. **Public hearing on Application #FY10-11-05, Owner: NQGQ Realty, LLC, Applicant: Unlimited Auto Sales & Detailing, LLC to modify the existing approval of Application #FY10-11-02 for a Motor Vehicle Dealer's License to allow repairs at the property located at 59 King Spring Road.**

Attorney Paul Smith addressed the Board on behalf of the applicant and distributed copies of the Board's original approval. He then pointed out that it was not a Variance approval; it was an approval for a Motor Vehicle Dealer's License. Attorney Smith stated that King Spring



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Road was an industrial area and that the property in question was owned by the Quagliaroliø who in turn leased their buildings out. He then noted that the applicant leased the two units in question from the Quagliaroliø.

Attorney Smith stated that the applicant had originally come before the Board seeking a Dealerø License so that he could sell vehicles at the various auto auctions, which all required that anyone buying or selling vehicles be a licensed motor vehicle dealer. He went on to say that the applicant had also gone before the Planning and Zoning Commission. He then noted that the applicant had asked both the Board and Planning and Zoning Commission for the following two conditions on their respective approvals: no sales of vehicles to the public, and no repairs would be done site. Attorney Smith stated that since receiving those two approvals they had met with representatives from the Motor Vehicle Department who informed the applicant that any Motor Vehicle Licensed Dealer area must have the capability to do repairs. He went on to say that the applicant had then gone back to the Planning and Zoning Commission and had received approval of an amendment to their original approval allowing the applicant to do repairs at the site on vehicles were owned by his business (no repairs to the public were allowed). He then distributed copies of the Planning and Zoning Commissionø approval letter.

Attorney Smith stated that the applicant did not intend on doing any repairs at his facility. He went on to say that the applicant had already contracted with someone else on King Spring Road to do all of his repairs to meet his licensing requirements. Attorney Smith then asked the Board to modify their prior approval in accordance with the letter from the Planning and Zoning Commission.

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

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

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

Chairman O’Connor asked for a motion regarding Application #FY10-11-05. Mr. Rosenberg moved to approve Application #FY10-11-05, Owner: NQGQ, Realty, LLC, Applicant: Unlimited Auto Sales & Detailing, LLC to modify the existing approval of Application #FY10-11-02 for a Motor Vehicle Dealer’s License to allow repairs at the property located at 59 King Spring Road. Mr. Ruckey seconded the motion with the caveat that the repairs be done within the facility’s building. All were in favor. The vote was 5 – 0, the motion was approved.

b. Public hearing on Application #FY10-11-06, Owner/Applicant: Terrence Lucas for an appeal of a decision of the Official Charged with Enforcement of the Zoning Regulations regarding the property located at 64 Bel Aire Circle.

No one was present for the hearing, therefore the Board moved on to the next item on the agenda.

c. Public hearing on Application #FY10-11-07, Owner/Applicant: Joseph and Melanie Oliveira for a variance for the property located at 18 Regina Drive to decrease the side yard setback to 8.0 feet, where 12 feet is required.

The following individuals were present:

- Joseph and Melanie Oliveira, the applicants;
- Attorney Edward McAnaney, representing MaryLou Tripp; and
- MaryLou Tripp, the Oliveiras neighbor.

Mr. Oliveira distributed copies of a letter from Tarun Sharma of 13 Regina Drive to the Board members. The letter stated that Ms. Sharma had no problem or concerns regarding the addition of a garage on the property located at 18 Regina Drive. Mr. Oliveira noted that Ms. Sharma lived across the street from him and was unable to attend the meeting that evening. He went on to say that the Conroyos who lived behind him had stated to him that they were in favor of his proposed garage addition and that they were supposed to attend the meeting that evening, but unfortunately something must have come up.

Mr. Oliveira stated that he had provided the Board with copies of his application which contained the reason for his hardship. He went on to say that he wanted to add to that information. He then explained that he and his wife had met with M&L Development in the spring/early summer of 2000 and chose their lot and the style of home, the Edgewood, to be built on that lot. In August of 2000, M&L Development provided the applicant with a raised-seal copy of the lot plan and footprint of the proposed home. Mr. Oliveira noted that he had provided a copy of those plans to the Board and that he had brought the original plans with him that evening. He went on to say that those plans showed 29.88 feet from the northwest side of his home to the property located to the north which was now 16 Regina Drive. He then explained that the home that they had planned to have built was a four bedroom colonial with a two-car garage and that before the home had actually been built they had asked M&L Development if they could add a bonus room above the garage and a family room that was attached to the house. Mr. Oliveira stated that M&L Development had provided them with a price for those additions and that due to the high cost they had decided to have it built but not finished (they planned to have it finished later on). He went on to say that they had also talked about adding a third bay to the garage, but that due to the high cost they had decided against it at that time. He then pointed out that, based upon the plans, they



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had put off having the third bay built at that time, because they knew they could do so at a later date (there was enough room shown on the plans to do so). Mr. Oliveira pointed out that since having their home built they had invested in the property by finishing the bonus room, installing an in-ground pool, stone walkway and sprinkler system. He then pointed out that most of those items were in the backyard behind the house and in the side yard.

Mr. Oliveira stated that he now wanted to add the third bay to his garage and after looking at his side yard envisioned doing so and making it a little deeper. He went on to say that he had then called David Place, a local builder in town, about building the third bay addition. Mr. Place had taken a look at the property and said that he thought that they could do what the Oliveira had wanted. He went on to say that Mr. Place had then asked them for a copy of the plot plans which they then gave to Mr. Place and told him that they had 29.88 feet on the side in which to build the addition. He explained that Mr. Place at that time had said it did not appear as though there was 29.88 feet or that if there was the neighbor's fence was over the property line, therefore Mr. Place had suggested that the Oliveiras go to the Town Hall to see what was on file. Mr. Oliveira stated that they had then talked with Planning and Zoning and that they had told them that they actually had 24.88 feet on that side which would require them to obtain a variance in order to build their proposed garage addition. He went on to say that after checking further they discovered that the true boundary line was 24.9 feet, which would still require them to obtain a variance.

Mr. Oliveira reiterated that there were some discrepancies between what they had on their plans from the builder and what was actually on file in the Town Hall; the foundation was located in two different places on the two plans. He went on to say that they would need a variance for 3.3 feet at the front corner of their home. He then noted that as they moved back on the property they would need less footage; right before the garage window a variance of only 2.6 feet would be needed and farther back (16.6 feet back from the front corner) they would not need a variance at all.

Mr. Oliveira commented that they believed that the proposed addition would add to the beauty of their home and to the neighborhood. In addition, they believed that it would add to the value of their home as well as their neighbors' homes. He then pointed out that if the garage were to be built 16.6 feet back from the front corner of the home in order to eliminate the need for a variance, it would go too far into the backyard and would not look aesthetically pleasing; it would look out of place. Mr. Oliveira noted that a detached garage would also look out of place, because all of the garages in the neighborhood were attached garages. He went on to say that a detached garage also might decrease the value of their and their neighbors' homes. In addition, they would incur additional costs to build a detached garage due to the existing walkway and sprinkler system having to be torn up in order to build a detached garage.

Mr. Oliveira referred to the previous Board meeting and read the following comments that had been made by Ms. Tripp's attorney at that meeting:

öThe regulations require that there be special circumstances/conditions that apply to the land for which the variance is being sought. Those circumstances/conditions needed to be particular to the property in question. The strict application of the regulations would deprive the applicant of a reasonable use of his land or buildings and that the granting of a variance was necessary for that reasonable use. There must be some type of hardship that would require that a variance be granted. They must show a hardship. The hardship cannot be self-created. That the real issue is that it should not be granted unless there is hardship and lastly that Mr. Oliveira had purchased his home knowing that that was the case, therefore it did not constitute a hardship.ö

Mr. Oliveira stated that they believed that there was a hardship based upon the mismarking of the foundation location that was provided to them by the builder. He went on to say that if they had known about the mismarking earlier they may have built the garage when the home had originally been built.

Mr. Oliveira distributed copies of the State Appellate Court Decision, Osborne vs. Zoning Board of Appeals of the Town of Guilford, which talked about the same hardship as they had presented that evening (the foundation had been mismarked). He then also noted that the building line went back 40 feet, because they were on a cul-de-sac.

Mr. Oliveira asked that the Board approve their variance request. He then reiterated that the hardship was the mismarking of the foundation and the cul-de-sac having pushed back the building line

Chairman O'Connor asked the Board members for any questions. Mr. Rosenberg asked why the garage needed to be 16 feet, why it could not be dropped down to 12 feet and then forget the variance. Mr. Oliveira replied that they needed the 16 feet to fit the cars, lawnmower and the lift that they intended to store in the garage; their plan was to place one car on the lift and store the second car underneath it. Mr. Ruckey clarified that Mr. Oliveira was looking at long term storage of a vehicle. Mr. Oliveira stated that that was correct. Mr. Oliveira then submitted photographs of their home and the neighborhood. Melanie Oliveira pointed out that they would not finish the bonus room over the garage addition; they would use that space to store their collectible cars. Mr. Oliveira explained that they had inherited a car from his father and had bought a newer car, both of which they were currently paying storage on. He went on to say that the addition of the garage would allow them to store both vehicles on their property. He then noted that they would not be working on the cars at all and that the existing spotlight on the side of the garage would no longer be there.



Mr. Oliveira stated that they had attempted to talk to their neighbors to show them where the building was actually going to be and how it was going to look, but that they were totally against it. He then reiterated that they had tried to be neighborly about. Mrs. Oliveira commented that they really wanted to keep it aesthetically nice for the neighborhood. She then pointed out that they could build the garage addition 16 feet back, without a variance, which the neighbors would then see from their deck. She went on to say that they would prefer to build the garage as proposed so that it would not look like an addition, but would flow naturally as part of the original home.

Chairman O'Connor asked the Board members for any further questions. They had none.

Chairman O'Connor asked for any public comments in favor of the application. There were none. It was then noted that a letter of support from one of the applicant's neighbors had been submitted earlier in the evening.

Chairman O'Connor asked for any public comments in opposition to the application. Attorney Edward McAnaney addressed the Board and stated that he represented MaryLou Tripp in objection to the application. He then submitted copies of a memo to the Board members and Mr. Szczesny. Attorney McAnaney commented that there had been nothing new that was presented that evening. He went on to say that the Oliveiras' desire to have an additional garage was not sufficient to make out a hardship under the law of Connecticut. He pointed out that the Oliveiras had claimed that they had always wanted to add a third garage bay, but that that did not make it a hardship. He went on to say that the fact that the Zoning Regulations required and provided for a setback was what governed. Attorney McAnaney stated that in order for a variance to be granted by the Board, the Board must find that the reasonable use of the property was restricted or diminished by the failure to get a third garage. He then noted that that was not the case; it was a single-family residential zone in which the Oliveiras had a home that complied with the Zoning Regulations and that they already had two garages attached to it, therefore to say that the absence of a third garage deprived them of a reasonable use of their property was not true. Attorney McAnaney stated that the financial concerns of the Oliveiras was not a reason to grant the variance, nor was their desire to store two vehicles.

Attorney McAnaney stated that although the Oliveiras presented a survey showing the house in a different location, the survey on file with the Town was the survey that governed and that showed the actual distance between the corner of the Oliveiras' home (including the garage) and the property line which was 24.87 feet. He went on to say that the fact that the Oliveiras relied upon the incorrect survey did not rise to the level of a hardship. He then reiterated that the Oliveiras had a reasonable use of their property.



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Attorney McAnaney referred to Section 225.A of the Zoning Regulations which referred to driveways. He then stated that those regulations stated that no driveway shall be located within 10 feet of the property line. He went on to say that based upon what was being proposed the driveway would have to be within 10 feet of the property line. Mr. Ruckey pointed out that further in that Regulation it stated that if there were a garage, a driveway would be allowed within 10 feet of the property line. He then reiterated that the applicant was not looking for a driveway, they were looking for a garage. He then thanked Attorney McAnaney for pointing it out and reassured him that the Board was already aware of the Regulation.

Attorney McAnaney stated that the issue was reasonable use and whether or not the applicant was denied that reasonable use of their property. He then pointed out that whether or not other variances had been issued to other properties was immaterial. Attorney McAnaney again reiterated that the issue was reasonable use and whether or not there was a hardship.

Chairman O'Connor asked the Board for any questions. They had none.

Chairman O'Connor asked for any further public comments. Mr. Oliveira commented that he wanted correct Attorney McAnaney, it was 24.9 feet and that that had come from the Town. Attorney McAnaney stated that he had gotten his figure from the Town as well. Mr. Szczesny stated that there were two plans on file. Attorney McAnaney stated that those surveys were what governed not the survey that the Oliveiras had in their possession.

Chairman O'Connor pointed out that if the applicant chose to they could build a detached garage 5 feet from the property line with a driveway right along the property line. Attorney McAnaney commented that that had come up at the previous meeting and that he had since taken a look at Section 220.C of the Regulations. He went on to say that after doing the calculations he came up 41%, but that there was a 25% occupancy requirement/limitation; therefore the applicant could not build a detached garage because the percent of coverage would be in excess of that 25% specified in the Regulation.

Chairman O'Connor asked for a motion regarding Application #FY10-11-07.

The Board members took some time to review the application and all of the information that had been presented. Mr. Rosenberg then asked the applicant, if he were to build the garage, if there would be windows on the right side of that garage. Mr. Oliveira replied that it would most likely just be a wall, because he had no need for a window on that side. A brief discussion followed. Mr. Ruckey clarified that the applicant had already investigated 12 feet and that it was not an option. Mr. Oliveira stated that that was correct; it would not allow for the lift to be installed (the lift was about 14.3 feet).

Mr. Ruckey asked Mr. Szczesny if there was anything that restricted installation of mechanical devices (such as the lift) in a building that was attached to a residential building. He then commented that the lift could be looked upon as something that was somewhat commercial. Mr. Szczesny replied that, as long as the applicant would not be doing any repairs, it would be fine. Mr. Oliveira pointed out that the lift was removable.

Mr. Ruckey addressed Attorney McAnaney and Ms. Tripp and stated, with regard to the Zoning Regulations, that initially a builder would look at those Regulations in order to make sure that when they were building they built within the code desired for the Town. He went on to say that people came before the Board looking for them to make a prudent decision whether it was good for the Town, good for the community or good for them individually for that particular property. Mr. Ruckey then stated that he appreciated that they had brought it to the Board's attention for a second time, but that what upset him was that he knew that there was a burning issue that was not coming forward to the Board. Mr. Ruckey commented that originally he had not seen a written hardship, but that on the current application before the Board he did see one.

Mr. Ruckey moved to approve Application #FY10-11-07, Owner/Applicant: Joseph and Melanie Oliveira for a variance for the property located at 18 Regina Drive to decrease the side yard setback to 8.9 feet, where 12 feet is required. It is not a permit to build; the applicant would still have to go to the Town's Building Official for all of the necessary permits. Mr. Aspinwall seconded the motion. All were in favor. The vote was 5 – 0, the motion was approved.

- d. Public hearing on Application #FY10-11-08, Owner/Applicant: Mike Godden for a variance for the property located at 67 Cornwall Drive to install an in-ground swimming pool on a corner lot within the side yard closest to the street, which occupies more than 20% of the required rear yard.**

Michael Godden of 67 Cornwall Drive addressed the Board and stated the reason for his variance request was because his neighbor did not want him to install his pool where he had originally intended to install it. He explained that the pool would have been 14 feet from his neighbor's bedroom windows. In addition, the digging required to install the pool would disturb some of the neighbor's yard and the irrigation system.

Mr. Ruckey asked Mr. Godden, if he had installed the pool in that original location, if it would have been within the Regulation. Mr. Godden replied that he believed that it would have.

Mr. Ruckey asked Mr. Szczesny if the 10 foot from the foundation requirement was for structural reasons. Mr. Szczesny replied that it was part of the Zoning Regulations, but that he did not know why. He then noted that the 10 foot separating distance did not just apply to pools, it applied to any structure.

Chairman O'Connor asked the applicant if he had looked into different size pools. Mr. Godden replied that his fear with an above ground pool was that if it were to ever let go, it would flood his basement. Therefore, he wanted to go with an in-ground pool and that the smallest size that they made was a 12x24 foot pool.

A brief discussion regarding the two sets of the stairs to pool took place.

Mr. Rosenberg asked Mr. Godden if he would be opposed to pushing the pool back 3 feet and eliminating one set of stairs. Mr. Godden replied that he would rather not, but that he would do so if it were required. Mr. Rosenberg explained that the Board always asked for alternatives to a variance and that pushing the pool back 3 feet was an alternative. He went on to say that he was basing his request to eliminate one set of stairs on other pools that he had seen which typically only had one set of stairs. Mr. Godden stated that he could eliminate one set of stairs and push the pool over, but that he would still only have 9 feet and not the required 10 feet.

Mr. Ruckey asked what was on the back side of that part of the house. Mr. Godden replied that it was his son's bedroom. Mr. Ruckey then asked if they could turn the pool sideways. Mr. Godden replied that it would then run along Halfway House Road. He went on to say that ideally he would like it in back of the house so that they could sit on the patio and watch the kids in the pool; he did not want the pool around the corner of the house. Mr. Ruckey commented that he wanted to see 9 feet; he would like to see the pool moved. Mr. Aspinwall pointed out that the 10 foot requirement applied more to buildings. Mr. Ruckey commented that his issue with the 6 feet and a pool was that kids had been known to jump from buildings, windows, etc. into pools. He went on to say that 9 or 10 feet would be less tempting for them to do so. Mr. Ruckey commented that he felt that they could continue further toward the road since it was the applicant's side yard. Mr. Godden stated that he had drawn it up as presented that evening because he thought that he had to keep the distance on the other side of his house the same as well. He went on to say that he would actually prefer to push the pool a little closer to Halfway House Road.

Chairman O'Connor asked the applicant what kind of fence he would be installing. Mr. Godden replied that he already had a 6 foot stockade fence and that he would just have to add a fence between the pool and the patio.



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The discussion continued further and it was agreed that the hardship was that the property was a corner lot. It was also noted that even if the pool were pushed closer to Halfway House Road a variance would be required because of the two front yards and the 40 foot setback required for them.

Mr. Godden stated that the pool that he would be installing was not made of concrete; it would be a steel wall pool that could be removed in future.

Mr. Ruckey moved to approve Application #FY10-11-08, Owner/Applicant: Mike Godden for a variance for the property located at 67 Cornwall Drive to install an in-ground swimming pool on a corner lot within the side yard closest to the street, which occupies more than 20% of the required rear yard understanding that it will be within the 40 foot front yard on Halfway House Road and within 6 feet from the foundation of the house. Mr. Rosenberg seconded the motion. All were in favor. The vote was 5 – 0, the motion was approved.

Chairman O'Connor stated that the fact that the applicant was on a corner lot lended itself to his application.

- b. Public hearing on Application #FY10-11-06, Owner/Applicant: Terrance Lucas for an appeal of a decision of the Official Charged with Enforcement of the Zoning Regulations regarding the property located at 64 Bel Aire Circle.**

The applicant still was not present.

Mr. Aspinwall moved to deny Application #FY10-11-06, Owner/Applicant: Terrance Lucas for an appeal of a decision of the Official Charged with Enforcement of the Zoning Regulations regarding the property located at 64 Bel Aire Circle and uphold the decision made by the Officer Charged with Enforcement of the Zoning Regulations. Mr. Ruckey seconded the motion. All were in favor. The vote was 5 ó 0, the motion was approved.

Mr. Ruckey moved to adjourn the meeting. Mr. Rosenberg seconded the motion. All were in favor. The vote was 5 – 0, the meeting was adjourned at 8:05 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.