

**Minutes of  
ZONING BOARD OF APPEALS  
February 5, 2007**

**MEMBERS PRESENT**  
Mrs. Yanicelli, Chairman  
Mr. Barfuss, Secretary  
Mr. Moylan

**MEMBERS ABSENT**  
Mrs. Davis  
Mr. Novy

**ALTERNATES PRESENT**  
Mr. Socci  
Mr. Engel  
VACANCY

**ALTERNATES ABSENT**

Also in Attendance:  
Steve Kleppin, Town Planner/Sr. Enforcement Officer

MEETING OPENED  
At 7:00 p.m.

Mrs. Yanicelli, Chairman, explained to those members of the public present how the proceedings would be conducted, and that discussion and possible decision on each public hearing item will be held after the public hearing on each item.

**PUBLIC HEARING**

The Chairman then called the Public Hearing to order in the Town Hall Board Room. The Board seated Mr. Socci and Mr. Engel and then read the call, as follows:

**LEGAL ADVERTISEMENT**

NEW CANAAN ADVERTISER, NEW CANAAN, CONN., THURSDAY, JANUARY 25, PAGE 10A  
2007

STATE OF CONNECTICUT  
TOWN OF NEW CANAAN  
ZONING BOARD  
OF APPEALS  
NOTICE IS HEREBY GIVEN  
that the ZONING BOARD OF  
APPEALS of the Town of New  
Canaan will hold a Public Hearing  
on Monday, February 5, 2007, in  
the Board Room of the Town Hall  
at 7:00 p.m. to hear the following  
application:  
1. Upon application of Michael  
Franco, Authorized Agent for BCM  
Realty Partnership, owner, Sunrise  
Avenue Lot G21, for a variance of  
Sections 3.5.D.1 and 3.5.E.2 to allow  
a side yard setback of 8 feet in lieu  
of the required 15 feet and coverage  
of 1,530 square feet (31%) in lieu of  
the maximum allowed coverage of

1,250 square feet (25%), for property  
in the A Residence Zone (Map K  
Block 10 Lot G21). Continued from  
January meeting.  
2. Upon application of Michael  
J. Franco, Authorized Agent for  
William E. Tiani, et al., owners,  
64 Sunrise Avenue Lot G20, for a  
variance of Sections 3.5.D.1 and  
3.5.E.2 to allow a side yard setback  
of 8 feet in lieu of the required 15  
feet and coverage of 1,530 square  
feet (31%) in lieu of the maximum  
allowed coverage of 1,250 square  
feet (25%), for property in the A  
Residence Zone (Map K Block 10  
Lot G20). Continued from January  
meeting.  
3. Upon application of Edward  
Mellick, Authorized Agent for  
Thomas J. and Colleen Baldwin,

owners, 340 Turtle Back Road, owners,  
for a variance of Sections 3.5.E.3  
and 3.7.B.7 to allow an existing  
swimming pool to be located 27.9  
feet and the pool equipment to be  
located 29.8 feet from the side property  
line rather than the required 35  
feet, for property in the Four Acre  
Residence Zone (Map 28 Block 32  
Lot 76).  
HANDICAP ACCESS DURING  
MEETING:  
Please notify the Planning &  
Zoning office in advance if wheelchair  
accessibility is required.  
FRANK BARFUSS,  
Secretary  
01/19/07  
1-25  
2-1

**I. Variance Applications:**

**1. BCM Realty Partnership, owner, Sunrise Avenue, Lot G21**

Upon application of Michael Franco, Authorized Agent for BCM Realty Partnership, owner, Sunrise Avenue Lot G21, for a variance of Sections 3.5.D.1 and 3.5.E.2 to allow a side yard setback of 8 feet in lieu of the required 15 feet and coverage of 1,530 square feet (31%) in lieu of the maximum allowed coverage of 1,250 square feet (25%), for property in the A Residence Zone (Map K Block 10 Lot G21). Continued from January meeting.

Attorney Franco reviewed the facts presented at the January meeting and reviewed the procedure, noting in particular that the issues regarding the proposed second floor setbacks must go before the Planning and Zoning Commission for a special permit and, therefore, would not be presented at this meeting. He then raised the issue of hardship saying the up zoning that created a non-conforming lot on which one could not reasonably construct a house created a classic hardship. He cited three similar cases where the Board had allowed 8-foot setbacks and addressed the possibility of having one large home constructed on the property. He discussed the issue of whether there are legally two lots or one. Mr. Kleppin advised that the issue of lot merger is not before the Board since the Town Attorney has provided an opinion regarding this. Cam Hutchins of 61 Sunrise Avenue, spoke in opposition. He addressed the issues of lot merger, neighborhood attitude toward variances, density, loom factor, precedent cited by Attorney Franco, and building size and coverage. Attorney Franco offered a rebuttal saying the Board must protect the legal rights of applicants.

The Public Hearing was closed on this Item.

#### Regular Meeting on this Application

After discussion the Board requested additional information. Upon motion of Mr. Socci and second of Mr. Barfuss, the members voted unanimously to continue the matter pending written information from Attorney Jarboe regarding the issue of lot merger.

### **2. William E. Tiani, et al., owners, 64 Sunrise Avenue, Lot G20**

Upon application of Michael J. Franco, Authorized Agent for William E. Tiani, et al., owners, 64 Sunrise Avenue Lot G20, for a variance of Sections 3.5.D.1 and 3.5.E.2 to allow a side yard setback of 8 feet in lieu of the required 15 feet and coverage of 1,530 square feet (31%) in lieu of the maximum allowed coverage of 1,250 square feet (25%), for property in the A Residence Zone (Map K Block 10 Lot G20). Continued from January meeting.

Attorney Franco presented this Item along with Item 1. (See discussion above.)

The Public Hearing was closed on this Item.

#### Regular Meeting on this Application

The Board discussed this Item along with Item 1, and determined that it needs additional information. Upon motion of Mr. Socci and second of Mr. Barfuss, the members voted unanimously to continue the matter pending written information from Attorney Jarboe regarding the issue of lot merger.

### **3. Thomas J. and Colleen Baldwin, owners, 340 Turtle Back Road**

Upon application of Edward Mellick, Authorized Agent for Thomas J. and Colleen Baldwin, owners, 340 Turtle Back Road, owners, for a variance of Sections 3.5.E.3 and 3.7.B.7 to allow an existing swimming pool to be located 27.9 feet and the pool equipment to be located 29.8 feet from the side property line rather than the required 35 feet, for property in the Four Acre Residence Zone (Map 28 Block 32 Lot 76).

The Board heard this presentation prior to Items 1 and 2. Attorney Mellick explained that in reviewing the as-built the homeowner discovered that the pool contractor had mislocated the swimming pool, and that the homeowner had no prior notice of the contractor's error. Attorney Mellick compared the present situation to the 78 Devonwood Lane application heard by the Board in May of 2006. He presented a letter from an adjoining neighbor saying the neighbor does not object.

The Public Hearing was closed on this Item.

Regular Meeting on this Application

The Board discussed methods of avoiding this type of problem. Upon motion of Mr. Barfuss and second of Mr. Moylan, the members voted unanimously to grant the variance.

**REGULAR MEETING**

**4. Approval of Minutes**

Upon motion of Mr. Barfuss and second of Mr. Socci, the Board voted unanimously to approve the minutes of the January 8, 2007 Meeting.

Upon motion duly made, the Board voted unanimously to approve the minutes of the January 9, 2007 Special Meeting, as amended to correct the listing of absent and present members.

**6. Other Matters as may properly come before the Board**

- a. Special Meeting Public Hearing is scheduled for Wednesday, March 7, 2007, at 7:00 p.m. for discussion and feedback on the proposed changes to the June 18, 2005 Zoning Regulations.

**7. Adjournment**

There being no further business to come before the meeting, the Board unanimously voted to adjourn at 8:30 p.m.

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Mr. Barfuss, Secretary

**LEGAL ADVERTISEMENT**

NEW CANAAN ADVERTISER, NEW CANAAN, CONN., THURSDAY, FEBRUARY 15, PAGE 10A 2007

STATE OF CONNECTICUT	become effective upon the	to be located 27.9 feet and the
TOWN OF NEW CANAAN	filing of a copy thereof in the	pool equipment to be located
ZONING BOARD	office of the Town Clerk.	29.8 feet from the side property
OF APPEALS	1. RESOLVED, application	line rather than the required 35
NOTICE IS HEREBY GIVEN	of Edward Mellick, Authorized	feet, for property in the Four Acre
that the ZONING BOARD OF	Agent for Thomas J. and Colleen	Residence Zone (Map 28 Block
APPEALS of the Town of New	Baldwin, owners, 340 Turtle Back	32 Lot 76) is hereby approved.
Canaan after a Public Hearing	Road, owners, for a variance of	FRANK BARFUSS
held on Monday, February 5,	Sections 3.5.E.3 and 3.7.B.7 to	Secretary
2007 duly adopted the following	allow an existing swimming pool	2-15
resolutions. Approved applications		