

**Minutes of
ZONING BOARD OF APPEALS
November 2, 2009**

MEMBERS PRESENT

Mrs. Yanicelli, Chairman and Secretary Pro Tem
Ms. Miller
Mr. Moylan
Mr. Ziotas

MEMBERS ABSENT

Mr. Barfuss, Secretary

ALTERNATES PRESENT

Mr. Engel
Mr. Ramirez

ALTERNATES ABSENT

Mr. Socci

Also in Attendance:

Steve Kleppin, Town Planner/Sr. Enforcement Officer

**MEETING OPENED
At 7:30 p.m.**

Chairman Yanicelli 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 would 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 and read the call, as follows:

LEGAL ADVERTISEMENT

Also published in the New Canaan News Review
18A NEW CANAAN ADVERTISER, NEW CANAAN, CONN., THURSDAY, OCTOBER 22, 2009

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, November 2, 2009 in
The Board Room of the Town
Hall at 7:30 p.m. to hear the
following applications:
1. Upon application of Kay
Parker Jex, Esq., Kay Parker

Jex, LLC, Authorized Agent,
for 117 Elm Place, LLC,
owner, 117 Elm Place, for a
Variance of Section 3.5.C.1.e
to allow an interior lot served
by an accessway, for property
in the One-Third Acre
Residence Zone (Map M
Block 233 Lot 98).
2. Upon application of
David DiPanni, owner, 22
Urban Street, for a Variance
of Section 6.5.B.2.a to allow
a retaining wall to be built
on the east side property line

not to exceed four feet in
height, for property in the B
Residence Zone (Map S Block
93 Lot 78).
HANDICAP ACCESS
DURING MEETING:
Please notify the Planning
& Zoning office in advance
if wheelchair accessibility is
required.
FRANK BARFUSS,
Secretary
October 16, 2009
10-22
10-29

1. 117 Elm Place, LLC, owner, 117 Elm Place

Upon application of Kay Parker Jex, Esq., Kay Parker Jex, LLC, Authorized Agent, for 117 Elm Place, LLC, owner, 117 Elm Place, for a Variance of Section 3.5.C.1.e to allow an interior lot served by an accessway, for property in the One-Third Acre Residence Zone (Map M Block 233 Lot 98).

Kay Jex, Kay Parker Jex, LLC, presented the application and provided additional maps for review. Ms. Jex stated that the subject property is eight lots, three fronting on Elm Place and five fronting on a private road known as Fairfield Court. The plot plan showed three private roads, two off which were built: Selleck Place and Orchard Lane. Fairfield Court was never built. The property was bought in 1964 and configured into four lots, three fronting on Fairfield Court and one on Elm Place. Presently, there are only four lots that are over an acre. The request is for a variance for a restriction against interior lots in the one third acre zone, because the only way to develop the lot is to divide it in half. Ms. Jex read a statement into the record and explained that the hardship is that the lot is the largest in the one third acre zone, the regulations have changed with regard to density, and development of the one lot would result in a structure much larger than the

neighboring houses. Were it not for the density regulation, the property owners could construct the road and develop the four lots. Present regulations were not in effect when Woodland was developed or when the property was purchased in 1964. If the lot is split in half, there will be a shortage on the front side, and the variance would result in two long lots. The property owners, Mr. and Mrs. Barnes, wish to develop Fairfield Court into four lots, but it isn't practical to build a road to service one interior lot.

Edward Mellick, Mellick & Sexton, P.C., stated that he represents Mr. and Mrs. Graham, 18 Autumn Lane, adjacent to what would be the new lot. Mr. Mellick disputed the hardships presented by the applicant, pointing out that the result could be just as much of a coverage increase with two smaller new structures as with one larger one. With two lots, coverage could increase 1,570 square feet. In total, each new lot could be 3,200 square feet in total floor space. Mr. Mellick submitted a letter from Caroline McCallum, 2 Autumn Lane, who was not in favor of the application.

Michael Belmonte, 513 Main Street, pointed out that if an access road is approved, he could also subdivide his property, as this would provide him access as well. Increased roadways and more property development will increase drainage problems, as there is already a steep hill on that end of the property. Matt Stichnoth, 137 Elm Place, opposed the application and expressed his concern with flooding issues. Betty Boshneck, 35 Old Norwalk Road, also had concerns with flooding and additional impact on the Five Mile River. David Lynch, 26 Autumn Lane, spoke in opposition to the application.

David Rucci, Rucci, Burnham, Carta & Carello, LLP, stated he represented the Lynch's, who live to the west & south of the property. Mr. Rucci stated that much of the intent of the new regulations was to limit in-town density. He further stated that at numerous Planning and Zoning Commission meetings this was expressed and that was the precipitous for the new density regulations. He also stated that he did not believe there was a hardship and a perceived "near economic loss" cannot be a hardship. Other development such as a tennis court or pool could be constructed. He cited the "*Dupont*" case stating this would be a self-created hardship because you cannot divide the lot. He asked Mr. Kleppin if Moody and O'Brien provided calculations regarding the slopes. Mr. Kleppin stated that Moody & O'Brien provided a letter but no calculations.

Kevin Taylor, 129 Elm Place, stated that he prefers that the property contain one single-family home and was not agreeable to a rear lot. Janice Bouton, 539 Main Street, read a letter of opposition into the record, which spoke to drainage and flooding issues. Claudia Weber, 523 Main Street, stated that a request for a rear lot in this area was denied by the Planning and Zoning Commission in 1999. Carol Graham, 18 Autumn Lane, commented on the benefits of the property remaining a single lot.

Ms. Jex addressed some of the comments made in opposition of the application. Theodora Barnes Dierks, applicant, stated that this was not a financial issue and that she and her family cared about neighbors concerns.

Upon motion of Ms. Miller and second of Mr. Moylan, the Board voted 3-2 to continue the Public Hearing to December 7, 2009. Mr. Ramirez stated that the parcel is unique and the decision important, but because of the terrain it was difficult to figure out where the division was. It was suggested that the property be staked, delineating wetlands and determining exactly where the division will occur.

After further discussion as to continuance and why the hearing was being continued the Board decided that nothing would be gained from continuing the Public Hearing. Upon motion of Ms. Miller and second of Mr. Moylan, the Board voted unanimously to close the hearing and continue the discussion of the application at the December 7, 2009 meeting, in closed session.

2. David DiPanni, owner, 22 Urban Street

Upon application of David DiPanni, owner, 22 Urban Street, for a Variance of Section 6.5.B.2.a to allow a retaining wall to be built on the east side property line not to exceed four feet in height, for property in the B Residence Zone (Map S Block 93 Lot 78). The Public Hearing was closed on this Item.

David DiPanni, applicant, stated that the wall that he is planning on building was to be constructed to prevent water from washing out material from his property. The wall will start at one foot high and will steadily increase to four feet high at the rear of his property. Mr. DiPanni provided photographs and stated that James McLean, Hill Street, was in favor of the application.

Mr. Engel was seated for Mr. Barfuss.

Upon motion of Mr. Moylan, second of Mr. Engel, the Board unanimously voted to approve the application.

Regular Meeting

3. Approve Minutes of September 14, 2009 Meeting

The Board unanimously voted to approve the minutes of the September 14, 2009 Meeting.

4. Other matters as may properly come before the Board.

The Board unanimously approved the 2010 ZBA Meeting Schedule.

5. Adjournment

There being no further business to come before the meeting, the Board unanimously voted to adjourn at 9:35 p.m.

CARROLL YANICELLI, Chairman and Secretary Pro Tem

LEGAL ADVERTISEMENT

Also published in the New Canaan News Review

12A NEW CANAAN ADVERTISER, NEW CANAAN, CONN., THURSDAY, NOVEMBER 12, 2009

TOWN OF NEW CANAAN
ZONING BOARD
OF APPEALS
NOTICE IS HEREBY
GIVEN that the ZONING
BOARD OF APPEALS of the
Town of New Canaan after
a Public Hearing held on
Monday, November 2, 2009
duly adopted the following

resolutions. Approved applications
become effective upon
the filing of a copy thereof in
the office of the Town Clerk.
RESOLVED, application
of David DiPanni, owner, 22
Urban Street, for a Variance
of Section 6.5.B.2.a to allow a
retaining wall to be built on the

east side property line not to
exceed four feet in height, for
property in the B Residence
Zone (Map S Block 93 Lot 78)
is approved.
FRANK BARFUSS,
Secretary
November 6, 2009
11-12