

**Minutes of
ZONING BOARD OF APPEALS
April 1, 2019**

MEMBERS PRESENT

Mrs. Edmonds, Chairman
Mr. Mahoney, Secretary
Mr. Bilus
Ms. Rozel
Mr. Tashjian

MEMBERS ABSENT

ALTERNATES PRESENT

Ms. Walsh

ALTERNATES ABSENT

Ms. Cardon

Also in Attendance:

Lynn Brooks Avni, Town Planner

MEETING OPENED

At 07:01 p.m.

Chairman Edmonds 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 and read the call, as follows:

LEGAL ADVERTISEMENT

Thursday, March 21, 2019 | New Canaan Advertiser | A19

<p>STATE OF CONNECTICUT TOWN OF NEW CANAAN ZONING BOARD OF APPEALS</p> <p>NOTICE IS HEREBY GIVEN that the ZONING BOARD OF APPEALS of the Town of New Canaan will hold a Public Hearing on Monday, April 1, 2019 in the Board Room at Town Hall, 77 Main Street at 7:00 p.m. to hear the following application(s): 1. 129 Harrison Avenue – Zoning Variance – Upon application of David J. Rucci, Esq., Lampert, Toohey & Rucci, LLC, Authorized Agent for Martial and Carole Pabon, owners, for a Variance of Section(s) 3.5.E.3 to allow a property which is located in both the B Residence Zone and One Third Acre Zone to construct a pool 8’ from the rear property line in lieu of 15’ as required in the Third Acre Residence Zone (Map N, Block 60, Lot 619). 2. 229 Elm Street – Zoning Variance – Upon application of Stephen A. Finn, Wofsey, Rosen, Kveskin & Kuriansky, LLP, Authorized Agent for Stewart Realty Limited Partner, owner, for a Variance of Section 4.8.H and 4.9.B to allow a new rooftop condenser rack which was installed for Walter Stewart Markets in June of 2017. Due to other structures on the roof and installation requirements, the condenser is 1¼ inches taller than currently allowed in the Business A Zone. It is also located 5’ 9” from the edge of the building instead of 10 feet as set forth in Section 4.9.B.2.a in the Business A Zone located at 229 Elm Street (Map L, Block 18, Lot 844). Laura Edmonds, Chairman Dated: March 21, 2019</p>

- 129 Harrison Avenue** – Zoning Variance – Upon application of David J. Rucci, Esq., Lampert, Toohey & Rucci, LLC, Authorized Agent for Martial and Carole Pabon, owners, for a Variance of Section(s) 3.5.E.3 to allow a property which is located in both the B Residence Zone and One Third Acre Zone to construct a pool 8’ from the rear property line in lieu of 15’ as required in the Third Acre Residence Zone (Map N, Block 60, Lot 619).

Mr. David Rucci presented the variance application to allow a 12’ by 24’ pool in the rear lot of a One-Third Acre residence. The zoning history of the property was discussed by Attorney Rucci. The property is currently in both the B-residence zone as well as the one-third acre zone. The majority of the rear-yard is located in the one Third Acre-residence zone, where the rear and side yard setbacks are 15 ft for this portion of the property. The other portion of the property which is in the B Residence zone has rear and side yard setbacks of 8 ft, which limits usage of the rear property. Because the property is oddly shaped, the applicant would find more usable land in the B-residence to install the requested pool.

Attorney Rucci discussed the history of the house, which was at one time a two family, but now listed as a single residence with a smaller attached apartment. The previous

owner turned the house into a single family with accessory dwelling unit and terminated the HOA. When asked by the Board members if the attached guest house could be sold as a separate unit, Mr. Pabon explained that the unit could not be sold at present but could be rented. Currently the attached unit is used as guest quarters.

Neighboring residents have no issue with the pool, and in particular, the Reeds, who are most affected wrote a letter in favor of the proposal.

In addition to the installation of the pool, a fence and screening would be added as well as modifications to the existing terrace that will be made so that the terrace remains outside the setbacks.

The Public Hearing was closed on this Item.

It was at this time that Mr. Bilus recused himself from the Business discussion and vote of this application. Mr. Bilus was no longer seated and Alternate-member, Ms. Walsh was seated in his place.

The board members discussed the current irregular-shaped lot and how past zoning changes and a subdivision in 1952 contributed to the odd-shaped rear yard. The board members acknowledged that there was more usable space in the B-zone residence and less encroachment into the setbacks and neighboring properties.

Upon motion of Mr. Tashjian, and second of Ms. Rozel, the Board unanimously voted to approve the application with the following conditions:

That the screening to the east and south sides of the property be maintained, as shown on the Zoning Location Survey prepared and certified by RKW Land Surveying, dated February 27, 2019 and that screening be added along the western side and the rear corner of the house.

2. **229 Elm Street** – Zoning Variance – Upon application of Stephen A. Finn, Wofsey, Rosen, Kweskin & Kuriansky, LLP, Authorized Agent for Stewart Realty Limited Partner, owner, for a Variance of Section 4.8.H and 4.9.B to allow a new rooftop condenser rack which was installed for Walter Stewart Markets in June of 2017. Due to other structures on the roof and installation requirements, the condenser is 1¾ inches taller than currently allowed in the Business A Zone. It is also located 5' 9" from the edge of the building instead of 10 feet as set forth in Section 4.9.B.2.a in the Business A Zone located at 229 Elm Street (Map L, Block 18, Lot 844).

Attorney Steve Finn, for applicant Stewart Realty Limited partner, presented the application for a variance for an already-installed rooftop condenser rack atop Walter Stewart's market. The condenser rack is currently 5'9" from the edge of the roof, where zoning regulations require a 10' set back. Additionally, the height of the condenser is 1¾ higher than what is allowed in the Business A zone. The condenser was installed in 2017 during an interior and exterior renovation of the existing grocery store. The challenge of installation included other existing mechanical structures that limited the options for placement. The current positioning of the condenser was necessary so that the weight of the condenser could be distributed more could be installed on already existing supporting columns. The building is surrounded by parking lots and a rear wall that separates the grocery store from the neighboring residences on Seminary Street.

The board members questioned why the application was filed after the fact.. Attorney Finn and Architect Rick Hoag discussed the space limitations of on the roof (existing mechanical units as well as skylights) and stated they discussed the positioning issue with Brian Platz who agreed that the current position was the most logical.

The Public Hearing was closed on this Item.

The Board members went into the Business section of the meeting. There was discussion as to how applications submitted after the fact can create issues for the board members to properly assess a variance request or to propose an alternative remedy for the applicant to consider. The board members are put in a position to either accept an application or

deny the application in its entirety, causing any un-approved changes or additions to be undone.

The board did acknowledge it was a necessary ask and recognized that Walter Stewart's has been a significant part of the New Canaan community for more than 100 years, yet all applicants must heed the application process.

Upon motion of Mr. Tashjian, second of Mr. Mahoney, the Board unanimously voted to approve the application with the following conditions:

That it is screened with the sound proofing as depicted in the plans submitted by Frederick William Hoag, dated 3/6/19: Sheet WS.100 Titled South Elevation 1/8", Sheet WS.086.R03 Titled Partial Roof Plan and Sheet WS.089R02 titled Mechanical Sound Fence R-03.

Regular Meeting

3. Approve Minutes of March 4, 2019 Meeting.

Upon motion of Ms. Walsh and second of Mr. Bilus, the Board unanimously voted to approve the minutes of the 03/04/2019 meeting as amended.

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

None.

5. Adjournment.

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

LAURA EDMONDS, CHAIRMAN

LEGAL ADVERTISEMENT
(I WILL INSERT)