PLANNER’S MEMORANDUM

July 2, 2020

To: ZBA Members
    K. Moynihan, First Selectman
    K. Devereaux, Selectman (via email)
    N. Williams, Selectman (via email)
    I. Bloom, Town Attorney (via email)

From: Lynn Brooks Avni, AICP, Town Planner/Sr. Enforcement Officer

Re: Zoning Board of Appeals Meeting Memo: July 6, 2020

There is one (1) new Public Hearing and two (2) continued.

The next meeting is scheduled for **August 3, 2020**. If you are unable to attend, please notify the office as soon as possible.

PUBLIC HEARING:

1. **54 Welles Lane** – Zoning Variance – Upon application of Altin Tirana and Jorida Banda, owner(s), for a Variance of Section(s) 8.1.G to allow an additional 530 square feet of building coverage which will be a detached covered patio, where the allowable coverage is 5,495 SF and the existing coverage is 5,925 SF and the proposed coverage will be 6,455 SF for property in the Two Acre Zone (Map 25, Block 11, Lot 125).

   **Discussion:**

   The subject property is located on Welles Lane, a dead-end road, with approximately ten single family dwellings, located off of Frogtown Road in the vicinity of Ponus Ridge Road, in a Two Ace Residential Zone. This parcel is located on the cul-de-sac on Welles Lane. The Noroton River runs in a north/south direction to the east of the site. According to the Town Assessor the subject property is approximately 2.15 Acres and is comprised of a single family residence, constructed in 2005 and containing 9,368 SF of livable space as well as a pool. The Applicants are proposing to construct a covered patio, with outdoor kitchen and seating area that will be approximately 530SF in size. Allowable building coverage on the parcel is 5,495 SF, the site currently has 5,925 SF of existing coverage and the proposed total coverage of the parcel would be 6,455 SF.

   In order to grant this variance, the Board must make a determination that a literal enforcement of the Regulations would result in an exceptional difficulty or an unusual...
hardship. Additionally, the hardship needs to be solely with the parcel of land that is the subject of this application and it is owing to conditions that especially affect this parcel and not generally the district.

<table>
<thead>
<tr>
<th>Coverage:</th>
<th>Allowed: 5,495 sq. ft.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Existing: 5,925 sq. ft.</td>
</tr>
<tr>
<td></td>
<td>Proposed: 6,455 sq. ft.</td>
</tr>
</tbody>
</table>

2. **171 Richmond Hill** – Zoning Variance – Upon application of Markaiser, LLC, owner(s), for a Variance of Section(s) 3.5.E and 7.1.B to allow for an expansion into the side yard setbacks, where 14.9 feet is provided in lieu of 25 feet required and where 22.9 feet is provided in lieu of 25 feet required, for property in the One Acre Zone (Map K, Block 16, Lot 614).

**Discussion:**

The subject parcel at 171 Richmond Hill Road is located near the intersection with Weed Street. The lot is comprised of a modest single family dwelling in the One Acre zone, despite the lot’s size being 8,913 SF. According to the Assessor’s records the house was constructed in 1940. Interestingly, the first four (4) lots on Richmond Hill Road near the intersection with Weed Street are zoned One Acre, though none of those lots actually comes close to complying with the requirements of the One Acre Zone. The house immediately to the east is the first lot in the B Zone on Richmond Hill Road. In reviewing the survey, one can see that the buildable lot area on the lot is quite small once the Once Acre Zone setbacks are shown. The existing two story house sits well into the existing eastern side yard setback and at its closest is 6.3 feet from the property line where 25 feet is required. Along the western side yard setback the attached garage sits 7.3 feet at its closest point where 25 feet is required.

The Applicant is proposing a modest two story addition that would follow the existing line of the house and would be approximately 14.9 feet from the property line where 25 feet is required along the eastern side yard setback. Additionally, a small addition and a covered porch in the front of the house along the western side will be slightly into the setback. It will be approximately 22.9 feet from the property line where 25 feet is required. It should be noted that if the property were in the B Zone the proposed addition would comply with the required eight (8) feet side yard setback for single family dwellings.

In order to grant this variance, the Board must make a determination that a literal enforcement of the Regulations would result in an exceptional difficulty or an unusual hardship. Additionally, the hardship needs to be solely with the parcel of land that is the subject of this application and it is owing to conditions that especially affect this parcel and not generally the district.

**ADDENDUM**

At the request of the Board, the Applicant has had the plans drawn by a professional architect and they are posted on the Town web site.
3. **Appeal of Order** – David Markatos and Jennifer Holme, owners of 1328 Smith Ridge Road, appeal the issuance of a Zoning Permit issued to Grace Farms Foundation Inc. on February 15, 2019 for the renovation of existing storage space into office, garage and storage space in the West Barn located on the Grace Farms property at 365 Lukes Wood Road (Map 41, Block 38, Lot 77).

**Procedure to Appeal**

This application is an appeal of the issuance of a zoning permit, building permit and certificate of occupancy with respect to Building Permit 19-154. Pursuant to Sect. 8.3.B of the Zoning Regulations and in accordance with CGS 8-7 an appeal may be taken to the Zoning Board of Appeals (ZBA) by any person who is aggrieved and where it is alleged that there is an error in any order, requirement or decision made by the Zoning Inspector. Further this section notes that there are four application requirements 1) the application to appeal needs to be filed with the Commission or the Zoning Inspector and must specify the grounds for the appeal; 2) the appeal shall be taken within 15 days of the issuance of the order by the Zoning Inspector; 3) The Board may require that the appellant in the appeal pay a fee; 4) The Board may require the filing of a survey, prepared by a land surveyor, if in their opinion such survey is relevant to the interpretation of the order, requirement or decision made by the Zoning Inspector.

This application is an appeal of the administrative approval of a zoning permit dated February 15, 2019 as well as the issuance of the building permit and the certificate of occupancy by the Chief Building Official. The Zoning Permit was issued in conjunction with Building Permit 19-154 and it was for “partitioning current garage space to provide three (3) additional offices, one (1) open office and kitchenette, one (1) closed garage area and one (1) overhead storage loft. Total room count is six (6) in an already existing space.” These proposed changes were relative to the west barn office renovation. According to the Building file, the permit was submitted on February 14, 2019, the Zoning Permit was signed off on February 15, 2019 and the building permit was issued on March 8, 2019. The Certificate of Occupancy was issued on May 9, 2019.

**Merits of the Appeal**

It should be noted that the Zoning Board of Appeals (ZBA) only has jurisdiction over the Zoning Permit. The Building Official has jurisdiction over the issuance of a Building Permit and a Certificate of Occupancy. Sometimes individuals question whether a decision of the building official is appealable to the Zoning Board of Appeals. CGS 8-6 notes that when the Building Official also serves in the capacity of Zoning Enforcement Officer a decision made by said building official with regard to compliance with the Zoning Regulations is appealable to the ZBA. Conversely, if the Building Official’s decision is in regard to compliance with the State Building Code or a non-zoning code violation then the decision is not appealable to the ZBA. In New Canaan the Chief Building Official oversees the issuance of building permits and certificates of occupancy with respect to compliance with the State Building Code. The Town Planner serves as the Sr. Enforcement Officer with respect to zoning and conformance with the Zoning Regulations. Therefore based on
the Statute it is clear that the Applicant’s appeal should technically only be an appeal of the issuance of a Zoning Permit by the Town Planner/Sr. Enforcement Officer. With this in mind let’s focus on the Zoning Permit only.

According to CGS 8-6 it notes that under §CGS8-3(f) “neither a building permit nor a certificate of occupancy can be issued without a written certification from the zoning enforcement officer that the proposed structure conforms to the zoning regulations or is a valid non-conforming use.” The Zoning Permit is an administrative permit that serves to notify the Building Official that the building plans as proposed comply with the Zoning Regulations and that a Site Plan or Special Permit application are not required before the Commission or that a variance is not required prior to the issuance of a building permit. In this instance the Town Planner in 2019 made a determination that the building permit application and plans submitted in support of building permit 19-154 did not require further review by Planning and Zoning. Based on the evidence in particular the Special Permit/Site Plan approval what was proposed in the building permit application was in conformance with the Regulations and the Special Permit/Site Plan for the site. Specifically, in said Special Permit/Site Plan approval the Commission in its wisdom spelled out 25 findings and 100 conditions of approval that it believed would mitigate any negative impacts on the neighborhood in general and the neighbors in particular with respect to Grace Farms Foundation’s use of its property at 365 Lukes Wood Road. Additionally, Building Permit 19-154 is essentially a renovation of existing space and no footprint expansion was proposed.

CGS 8-7 notes that when deciding an appeal from a zoning enforcement decision the ZBA can quite literally step into the shoes of the zoning enforcement officer and it goes even further and states that the ZBA may make any decision in its review of the appeal that the zoning enforcement official may have made initially. CGS 8-6 notes that a Zoning Enforcement Officer must issue a Zoning Permit if the applicant meets the Zoning Regulations. Bearing all this in mind let’s step into the shoes of the zoning enforcement officer and review the record with respect to the issuance of the Zoning Permit. The Special Permit granted by the Planning and Zoning Commission on September 26, 2017 approved three (3) principal uses at the site, a) religious institution, b) philanthropic and eleemosynary institutions and c) clubs and organizations.

In Finding 12 The record of the 2013 application indicates that the parking capacity might one day be increased beyond the 226 spaces on the site. Parking is a key factor in managing the level of activity at the site. As part of the 2013 application Grace Farms Foundation pledged to maintain off-site parking (in Vista-NY) and operate a shuttle bus service for overflow activity. The PZC finds that this off-site parking arrangement continues to be necessary to manage traffic and the level of activity at the site.”

Based on the plain text of Finding 12 it is apparent that the Planning and Zoning Commission recognizes that controlling the number of parking spaces on site is a key component in managing the level of activity at the Grace Farms site.

Building Permit 19-154 requests permission for interior renovation of already existing space on the property. It is almost akin to a business that has three (3) people working at a
counter in a large open space with fifteen foot ceilings and requesting to renovate the space to allow for three (3) cubicles and a loft storage space within the existing footprint. Another example might be a single family home that is constructed in the side yard setback. Let’s imagine that the kitchen is the room that is in the setback, if you planned to make no changes to the existing footprint of the building and were only proposing interior changes to the functionality of the kitchen—say new cabinets, moving the refrigerator and the stove— you would not return to the ZBA for a variance. The interior renovation to improve the functionality of the kitchen did not change the fact that the kitchen is already in the setback. Similarly, the renovation of the already existing space did not change any of the already approved activities at the site, rather it allowed for better functionality of the site. In fact the Zoning Inspector noted on the Zoning Permit that this was an application for “interior renovation, storage space to office space, no expansion of building interior.” No expansion of any building on the site was proposed and no operational changes for the site were proposed.

The Appellant also notes that the Zoning Permit was not completed correctly as staff checked the box that indicated there was no Special Permit granted to subject property. It should be noted that the Applicant indicated that the current and proposed use of the property is “philanthropic and eleemosynary institution per Special Permit.”

Generally when applicants appear before Planning and Zoning they submit plans, plats, maps, reports and other necessary documentation that help bolster support for their respective application. Once the Application receives zoning approval from the Commission they submit a building permit application to construct, renovate, demolish, etc. a building on a specific site. The building permit requires the applicant to clearly delineate through plans, maps, reports and documentation that what is proposed is in compliance with the CT State Building Code. The Building Code governs, plumbing, mechanical, construction, renovation, rehabilitation etc of buildings and structures. As part of the building permit review process the application, plans and other supporting documentation are circulated to the Health Department, Inland Wetlands and Planning and Zoning for their respective reviews. When Planning and Zoning formally acknowledges that a building permit is in compliance with New Canaan’s Zoning Regulations, staff issue a Zoning Permit.

The Planning and Zoning Commission has jurisdiction on the use and activities at the site. If the proposed use of the site or the activities at the site are not changing there would be no venue to send the applicant back to the Commission. No modification to the Special Permit is requested with respect to the interior renovation.

ADDENDUM
Staff issued the Zoning Permit because we believed it complied with the Special Permit Resolution dated September 26, 2017.