

**TOWN OF WALLINGFORD
ZONING BOARD OF APPEALS
AUGUST 17, 2009
REGULAR MEETING MINUTES**

A regular meeting of the Wallingford Zoning Board of Appeals was held Monday August 17, 2009 at 7:00 p.m. in Town Hall. Approximately 10 members of the public were in attendance.

CALL TO ORDER:

Chairman Knickerbocker called the meeting to order at 7:02 p.m.

Present were: Jeffrey Knickerbocker (Chairman), Robin Hettrick (Vice Chairperson), Andrew Barnett (Secretary), William Birney, Tom Wolfer (alternate), Ron Souza (alternate), Assistant Town Planner Kacie Costello and Recording Secretary Sonja Vining.

Absent: Alan Reed (alternate)

Chairman Knickerbocker announced that tonight's decisions would be published in the Record-Journal on Friday, August 21, 2009. The effective date of your variance will be Friday, August 21, 2009; the date a certified copy is recorded on the land records. The statutory 15-day appeal period will expire on Sunday, September 6, 2009. If you commence operations and/or construction during the appeal period, you do so at your own risk.

The next regular meeting of the Board will be September 21, 2009.

READING OF THE MEETING LEGAL NOTICE:

Chairman Knickerbocker read the beginning of the published Legal Notice.

Chairman Knickerbocker explained that first the public hearing notice for each application would be read, and then each applicant would come forward to explain his or her request. The Board would question the applicant and then receive comments for and against the application from the public. Then the public hearing would be closed and the Board would consider the application. Unless stated, all votes were roll-call votes.

Voting Members were Mr. Barnett, Ms. Hettrick, Mr. Knickerbocker, Mr. Birney and Mr. Wolfer.

Chairman Knickerbocker made a few announcements before the hearing began.

Application #09-036 - variance requests from Bracale for a height of 18 ft. 6 in. where a maximum of 10 ft. is allowed and a gross floor area of 660 sq.ft. where a maximum of 300 sq.ft. is allowed (Section 6.2.A.2), to construct a pool house at 13 Wayne Road. Zoned R-18 would not be heard this evening. That application will be continued to the September Meeting.

Application #09-040 – variance requests from Battiparano for a side yard of 12 ft. where a minimum of 20 ft. is required and a rear yard of 22 ft. where a minimum of 30 ft. is required, to construct an attached garage at 882 East Center Street. Zoned R-18 will not be heard until the September meeting.

Application #09-043 – variance request from Cappiello for a front yard of 19.5 ft. where a minimum of 75 ft. is required, to construct an attached garage at 1084 Clintonville Road. Zoned RU-80 has been withdrawn.

There has been a new application submitted by Cappiello #09-047 with a slight change. They are requesting that the fee be waived on the new application.

MOTION: **MS. HETTRICK TO WAIVE THE FEE FOR APPLICATION #09-047.**

SECOND: **MR. WOLFER**

VOTE: **UNANIMOUS**

#09-037 **DEVIT** – Special Exception for a customary home occupation (hair salon) (Section 4.4(B).F.4) at 348 Main Street. Zoned YLB

#09-038 **DEVIT** – variance for a side yard of 9 ft. where a minimum of 12 ft. is required (Section 5.1B), to construct an addition as part of a customary home occupation at 348 Main Street. Zoned YLB

Mr. Barnett, Secretary, read correspondence from Kacie Costello, Assistant Town Planner dated August 13, 2009, addressed to Jeffrey Knickerbocker, Chairman. (Att. 09-038A)

Presenting the application was Attorney Joan Molloy and the Applicant Lori Devit.

Attorney Molloy handed out a copy of the Assessor's card to the Commission Members. This house was constructed in 1950. Ms. Devit indicated that she has one customer at a time with a little bit of overlap. At this time she does not plan on having employees but if she decided to hire someone it would only be one person. The addition would mirror the design of the existing house to maintain the residential quality. After working with the engineer and the Planning Office they came up with a plan to allow two parking spaces along the side of the driveway parallel to the house. The residential parking would be to the rear of the house. The design of the entrance way is a result of DOT requirements. DOT indicated that the original driveway and curb cut has to be closed and the new 25-foot curb cut put in place as shown on the drawings.

Ms. Devit stated that the hours would be Wednesday through Saturday from approximately 10 a.m. – 7 p.m. She explained that the new design was done because parking is not allowed in the front of the building.

Kacie Costello, Assistant Town Planner recommended that if the Commission were to approve this application that it attach a condition of approval that the area in front of the house that is currently used for parking be removed and seeded except as shown on the updated plan.

No one from the public spoke in favor of the application.

Speaking opposed to the application were:

Todd Dumas, 344 Main Street. He asked to see a copy of the new parking sketch that was submitted to the Board. Mr. Dumas was given a copy of the sketch to look at. He indicated that at his condo association 5 out of 6 members oppose the application. Mr. Dumas pointed out that the existing garage is nonconforming and if this application is approved that nonconformity will be extended approximately 20 feet toward the street. He stated that the applicant does not have a hardship. There is sufficient frontage and width to the property to construct an addition somewhere else without having to request a variance. Mr. Dumas indicated that he does not object to the proposed use of the property however he thinks it is very important that the Board review the actual elevations to be sure the addition will maintain that residential look. He requested that the property be properly landscaped in the front and side of the property. Mr. Dumas asked if the sidewalk in the front of the property would be replaced.

Nicholas Burken a landowner at 344 Main Street agreed with everything the previous speaker said. He stated that this is a nonconforming land use and the applicant should have considered these issues before purchasing the property. He has concerns with the character of the neighborhood changing from a functional prospective. Mr. Burken was disappointed to see that the old tree on the site was taken down and he also has concerns with drainage in the area. He also brought up issues such as litter and noise. Mr. Burken asked that a mitigation plan be drafted to include some of those potential nuisances of the nonconforming land use.

Attorney Molloy doesn't see how this addition could be done without seeking a variance. She stated that there are a number of existing structures with the house. The logical place to put it is in the front. They will just be maintaining the line that is currently there. They did look at other options but they all seemed to be getting away from the residential character of the neighborhood. Attorney Molloy explained that the tree had to come down because that is where DOT said the entrance had to go. She stated that if the Board wants to see the plans it could break from this hearing for a few minutes to allow the Applicant to go home and bring back the plans. Ms. Devit stated that she believes that the sidewalk in front of the property will have to be replaced. Attorney Molloy stated that there is no formal plan for landscaping at this time. Normally that type of site work is not reviewed at the ZBA meetings. Ms. Devit asked that she be allowed to go home so she can show the Board that the front area is already landscaped.

MOTION: **MR. BARNETT TO PASS THE ISSUE UNTIL THE APPLICANT RETURNS.**

SECOND: **MS. HETTRICK**

VOTE: **ALL VOTING MEMBERS VOTED "YES" BY A VOICE VOTE.**

#09-039 LINNEN – Special Exception for total garage space of 1,152 sq.ft. (Section 4.2.D.1 and 4.1.D.7), to construct a 576 sq.ft. detached garage at 3 Kazersky Drive. Zoned RU-40

Mr. Barnett, Secretary, read comments from Kacie Costello, Assistant Town Planner dated August 13, 2009 addressed to Jeffrey Knickerbocker, Chairman. (Att. 09-039A)

Presenting the application were Mr. & Mrs. Linnen.

Chairman Knickerbocker stated that he would abstain from voting on this application.

Mr. Linnen stated that he would like to build a detached two-car garage. There is an existing attached two-car garage. The existing garage would remain a garage. Mr. Linnen would use the garage space for vehicles and lawn care items. There will be no commercial activity on the site. The existing driveway would be used to get to the new garage. The existing shed would be taken down.

Kacie Costello, Assistant Town Planner read from Section 9.1.J regarding standards for approving Special Exceptions.

No one from the public spoke in favor of or opposed to the application.

MOTION: **MS. HETTRICK, TO APPROVE.**

REASON: **BETTER USE OF THE PROPERTY WITHOUT ALTERING THE CHARACTER OF THE NEIGHBORHOOD.**

SECOND: **MR. WOLFER**

VOTE: **ALL VOTING MEMBERS VOTED "YES" BY A ROLL CALL VOTE AND THE SPECIAL EXCEPTION WAS APPROVED.**

#09-041 HILLINSKI – Special Exception for total garage space of 1,316 sq.ft. (Section 4.2.D.1. and 4.1.D.7), to construct an 832 sq.ft. detached garage at 74 Anderson Road. Zoned RU-80

Mr. Barnett, Secretary, read comments from Kacie Costello, Assistant Town Planner dated August 13, 2009 addressed to Jeffrey Knickerbocker, Chairman. (Att. 09-041A)

Presenting the application were Christopher and Susan Hillinski.

Mr. Hillinski would like to build a 26-foot x 32-foot detached garage that will be used for the storage of lawn mowers and lawn equipment and one vehicle. He would have an area for wood and metalworking. There would also have a small potting area. There would be no commercial use on the property. The existing trees will remain in place. The garage would be approximately 35 feet from the edge of the ROW.

No one from the public spoke in favor of or opposed to the application.

MOTION: **MS. HETTRICK, TO APPROVE.**

REASON: **BETTER USE OF THE PROPERTY WITHOUT ALTERING THE CHARACTER OF THE NEIGHBORHOOD.**

SECOND: **MR. WOLFER**

VOTE: **ALL VOTING MEMBERS VOTED "YES" BY A ROLL CALL VOTE AND THE VARIANCE WAS APPROVED.**

#09-042 McGuire – variance for 49 parking spaces where a minimum of 82 spaces is required and a building height of 40 ft. where a maximum of 30 ft. is allowed, to construct a third story addition to the building at 2 North Main Street. Zoned CA-6

Mr. Barnett, Secretary, read comments from Kacie Costello, Assistant Town Planner dated August 13, 2009 addressed to Jeffrey Knickerbocker, Chairman. (Att. 09-042A)

Presenting the application were Attorney Joan Molloy and the Applicant John McGuire.

Attorney Molloy stated to the Board that she is withdrawing the portion of the application for the height variance on this site. The Board would only be voting on the parking portion of the application. Attorney Molloy submitted a packet of materials before she began her presentation. This property is located in a CA-6 zone, which permits commercial and office uses. She pointed out on the map that she provided where the CA-6 zone extends. Properties in the CA-6 zone are only required to have 6,250 sq.ft. to be a legal conforming lot. Many of these properties have little or no parking. This zone requires that offices and similar commercial space have one parking space per every 250 sq.ft. of floor space. In 2005 Wallingford adopted a Plan for Conservation and Development. Attorney Molloy read from the copy of a page from the Towns Plan for Conservation and Development. She indicated that there was a parking study done in 2004. She referred to a number of pages from that study. Attorney Molloy pointed out that the highest occupancy rate for any block in the entire day was block 3 as shown in her documentation. The subject property is in block 3. This block was shown to have a 61% occupancy rate over the course of the day. Attorney Molloy submitted the block 3 required and existing parking calculation, and the parking space occupancy rate by time and location. Attorney Molloy stated that it is clear from the study that the parking lot always has space available. She noted that the town has leased a portion of this parcel for public property for over 40 years. She stated that in the down town area there is public parking and private parking and there is a good mix and sharing going on. Attorney Molloy submitted a copy of the latest plan for shared parking with the Town of Wallingford.

The building currently has 6,864 sq. ft. on the first and second floors. Mr. McGuire is interested in adding a third floor to relocated his insurance business. Currently the building has several tenants. If the third floor were allowed Mr. McGuire would have twenty employees come to the site. Based on the numbers for all of the existing tenants and his proposed third floor there is currently enough parking. Attorney Molloy concluded in saying that she feels there is sufficient parking on the property for the uses that are proposed. She stated that the downtown area is unique with all of the shared parking. If the Board were to grant the variance for parking the Applicant would go ahead and move forward with the application to put a third floor on the building. Attorney Molloy made it clear that the Applicant could not do that before coming back before this Board for approval for a height variance.

Ms. Hettrick commented that she couldn't remember a time when someone had come in seeking to add space and have the parking forgiven. Her concern is figuring out how there is hardship in the land or facility that would allow her to approve this variance. Attorney Molloy stated that the client could only expand in one direction. The needs of his business require that he relocate so the logic is that he uses his own building. She indicated that this could be done without requiring additional parking because there is sufficient parking based on the towns own investigation. Attorney Molloy made it clear that with this approval the Board would not be approving the height variance or the expansion all they would be doing is telling the Applicant that he has overcome the parking problem.

Mr. McGuire gave some history on the building stating that it used to be a four-story building. He is just looking to bring it back to what it was before. He would like to make it three story not four story. Mr. McGuire believes it would fit well with the look of the neighborhood. He is just looking to bring all of his employees together into one place, which is what his original intent was.

Ms. Hettrick and Attorney Molloy reviewed the numbers provided in the parking study for the town. The bottom line is that only 61% of the 125 spaces are being used during the time frame of 10 a.m. through 6 p.m.

Kacie Costello, Assistant Town Planner, stated that she is not sure it is appropriate to approve new building space parking reductions in a piece meal fashion. She is concerned that if this is approved the Board may find themselves seeing these applications all up and down the street.

Chairman Knickerbocker stated that he is finding it hard to see a non-economic hardship. Attorney Molloy stated that the Applicant is not doing this to save money, if anything he will be spending a lot of money. This site is nonconforming as far as parking because the regulation imposes one parking space per 250 sq. ft. of floor area and gives no recognition to the unique nature of parking in the downtown area. The building was built in 1887 and has been functioning well. Chairman Knickerbocker pointed out that the Applicant is asking the Board to increase the nonconformity when it is the job of this Board to decrease nonconformity. He stated that there is a fully viable economic use for this building that has been in use non-stop since 1887 so he does not see any hardship for this building in the downtown area. Attorney Molloy feels that regulations are not designed to freeze a building in perpetuity for a use or a physical layout. Times change and it is not uncommon for people to come in to modify their buildings in one way or another. Attorney Molloy stated that she has tried to present evidence to show that there truly is sufficient parking in this area. On paper it is nonconforming but it is a functioning area with sufficient parking.

No one from the public spoke in favor of or opposed to the application.

MOTION: MR. KNICKERBOCKER, TO DENY

REASON: NO HARDSHIP SHOWN – ECONOMIC HARDSHIP ONLY

SECOND: MR. BARNETT

VOTE: MR. WOLFER – NO, MR. BARNETT – YES, MS. HETTRICK – NO, MR. KNICKERBOCKER – YES, MR. BIRNEY – NO AND THE MOTION DID NOT PASS.

MOTION: MR. WOLFER, TO APPROVE.

REASON: ECONOMIC INCREASE IN THE AREA.

SECOND: MS. HETTRICK

VOTE: MR. WOLFER – YES, MR. BARNETT – NO, MS. HETTRICK – YES, MR. KNICKERBOCKER – NO, MR. BIRNEY – YES AND THE MOTIO DID NOT PASS.

Chairman Knickerbocker announced that the Board would now go back to Application #09-037 and #09-038.

Attorney Molloy thanked the Board for its accommodation. Ms. Devit presented photos of the existing house from the side where the addition is proposed. The photos showed that the front has been landscaped. The front of the proposed addition would be finished with the same stone facing as the existing house. There will be a bay window installed on the side of the house and the stone facing will continue around that side. Attorney Molloy allowed the abutting neighbors to look at the photos presented by Ms. Devit. A photo of the opposite site of the house was shown including landscaping. Ms. Devit presented sketches prepared by her contractor showing the dimensions and the look of the proposed addition. She also presented a list of other items included in the project such as using the same shingles, same color siding, etc.

Kacie Costello, Assistant Town Planner explained to the Board that a salon is an allowable customary home occupation in this zone. This proposal complies with all of the restrictions for a customary home occupation. There are up to two additional employees allowed in this case but the Board could put a restriction on it if it chooses. Attorney Molloy indicated that at this time there is no employees proposed but at most the addition would fit only one additional employee.

Mr. Dumas complimented the Applicant for doing significant landscaping with a nice patio. He approves of the new parking configuration that was proposed tonight. He stated that if the Board feels comfortable approving the location and the architecture is going to be in conformance with staff level review then he would not be opposed to the application.

MOTION: MS. HETTRICK, TO APPROVE APPLICATION #09-038

REASON: **BETTER USE OF THE PROPERTY WITHOUT ALTERING THE CHARACTER OF THE NEIGHBORHOOD.**

SECOND: **MR. BARNETT.**

VOTE: **ALL VOTING MEMBERS VOTED "YES" BY A ROLL CALL VOTE AND THE VARIANCE WAS APPROVED.**

MOTION: **MS. HETTRICK, TO APPROVE APPLICATION #09-037**

SECOND: **MR. BARNETT**

VOTE: **ALL VOTING MEMBERS VOTED "YES" BY A ROLL CALL VOTE AND THE SPECIAL EXCEPTION WAS APPROVED.**

APPROVAL OF MINUTES:

July 20, 2009 – Regular Meeting

Ms. Hettrick made a motion to approve the Minutes of the July 20, 2009 – Regular Meeting as submitted. The motion was seconded by Mr. Wolfer and passed unanimously

ADJOURNMENT:

Ms. Hettrick made a motion to adjourn the meeting. The motion was seconded by Mr. Wolfer and passed unanimously.

The meeting adjourned at approximately 8:23 p.m.

Respectfully submitted,

Sonja Vining
Recording Secretary
Wallingford Zoning Board of Appeals

Attachments: 09-038A, 09-039A, 09-041A, and 09-042A