

ZONING BOARD OF APPEALS OF RIDGEFIELD

MINUTES OF MEETING

OCTOBER 2, 2006

NOTE: These minutes are intended as a rough outline of the proceedings of the Board of Appeals on Zoning of Ridgefield held on **October 2, 2006**, in the Public Meeting Room, Town Hall Annex, 66 Prospect Street, Ridgefield. They are not intended to replace verbatim transcripts of the meeting which may be obtained from the Administrator at cost.

The Chairman called the meeting to order at approximately 7:30 p.m. Sitting on the board for the evening were: Charles Creamer (Chairman), Charles Campbell (Vice President), Edward Odachowski, Henry Seemann and Glenn Smith. Mr. Pisanelli was also present for continued hearings.

Rotation of alternates: No new alternate was needed at this hearing. Thus the rotation for the next meeting will remain as follows: first, Mr. Escola; second, Mr. Stenko; third, Mr. Pisanelli.

The following petitions were continued from the September 11, 2006 meeting. (The September 18, 2006 meeting was cancelled.) They were heard by: Mr. Creamer, Dr. Seemann, Mr. Smith, Mr. Pisanelli and Mr. Odachowski. Mr. Stenko had heard the petitions presented on September 11, as an alternate sitting for Mr. Odachowski. However, Mr. Stenko was unable to attend this meeting. Mr. Odachowski listened to the tapes, read the minutes and files, visited the properties and thus continued hearing the petitions.

Appeal No. 06-066 – Petition of Ronald J. and Cecilia Shirk

Architect Jeff Mose and Attorney Robert Jewell continued to represent the applicants who were also present. All board members had visited or revisited the site at **165 Peaceable Street**, and had no additional questions of the applicants.

No-one appeared to speak for or against the petition and the hearing was concluded. The decision may be found in the end section of these minutes.

Appeal No. 06-065 – Petition of Pyramid Luxury Homes Joint Venture

Attorney Robert Jewell continued to represent the applicant. Joseph Mirra, Principal of Pyramid, was also present. All board members had visited the site at **19 Walnut Hill Road**.

Mr. Odachowski asked if the applicant had photographs of the garage that had been removed. Mr. Mirra had not, but stated that it had been a two-bay, low pitched garage on concrete slab, probably constructed during the period 1930-1940.

Mr. Odachowski also asked about the applicant's original plans for the property. Mr. Mirra said it was to refurbish the house and garage. The renovations would not meet the lot coverage but were not required to.

Mr. Odachowski asked why, knowing the coverage was going to be exceeded, the applicant had not requested a variance earlier. Mr. Jewell responded that when the foundation of the original home was found to be insufficient, his client had demolished the house and submitted plans for a new house smaller than the original. His client also

planned to renovate the garage, but could not do so. The footprint of the proposed new garage was the same as the original, but at a different location that met the setbacks. Mr. Jewell conceded that once his client had demolished the house, a variance would have been needed whether he had renovated the garage or constructed a new one. The coverage did not meet the RAAA requirements but could meet the RAA.

Mr. Smith asked when the house had been demolished. Mr. Mirra stated it was during August, 2005. Mr. Smith noted that if Mr. Mirra knew that the house plus garage had to conform to the coverage when the house was demolished, he could have built something that would conform. Mr. Smith noted that the house itself met the coverage.

In response to further questions, Mr. Jewell confirmed that had both the house and garage been renovated only, they could have maintained the 6.1% coverage. Once the house was demolished, the new house plus garage had to meet current coverage requirements, whether the garage was renovated or rebuilt.

Mr. Creamer asked again why the applicant had not applied for a variance in August 2005, and felt the applicant had created his own hardship. Mr. Jewell responded that the hardship arose from a 1.1 acre lot in a three-acre zone, which was not self-created. Mr. Creamer felt it became self-created once the applicant demolished the house.

Mr. Jewell believed that even absent hardship, the *Adolphson* case would allow the board to consider the variance because the setback nonconformity of the original garage was being reduced. He further noted that there had been no intent to abandon the garage because the applicant had an application for a permit pending.

Joseph Mirra stated that he had taken out a demolition permit after the foundation of the original house collapsed. He had moved the new garage to the rear of the property at the request of the adjoining neighbor. For him it was not ideal in that location but it was more conforming. In retrospect, he should have started with new plans when the house was demolished and put the garage underneath the house.

There was further discussion between Mr. Odachowski, Mr. Jewell and Mr. Smith concerning why the applicant had not applied for a variance a year earlier when it became apparent one was needed. Mr. Odachowski felt the applicant should have applied at that time.

Mr. Smith felt the board had been consistent in its decisions regarding new construction and he didn't think it would have granted the variance before the new construction started. This was now a backdoor approach.

Mr. Jewell responded that he had correspondence with Betty Brosius, Town Planner, and Richard Baldelli, ZEO in December 2005 re abandonment issues. His client had then applied for a variance for the garage on December 29, 2005, but withdrew that application when the adjoining neighbor intended to oppose. The applicant had worked things out with the neighbor and relocated the garage, and thus had filed the current application in August 2006.

Mr. Creamer asked what the consequences would be if the board denied the variance. Mr. Jewell responded that the house would not have a garage. Mr. Smith pointed out that, in fact, a smaller garage could be constructed and still meet the coverage regulations.

Mr. Jewell noted that the garage as proposed would probably be allowed if P&Z adopted the changes to its regulations currently under discussion. Mr. Creamer did not then see a hardship. Mr. Jewell felt the hardship was for his client to have to wait for possibly another three months.

Mr. Odachowski asked if, at the time of the house demolition, the applicant could have constructed a totally conforming garage. Mr. Jewell said he could, but the house would have been 179 sq. ft. smaller. Also, his client had not been aware he had a coverage problem until after he had demolished the house. Mr. Smith asked if it was a case of the applicant should pay attention to the regulations he was not meeting, or to the regulation he knew he was not meeting. Mr. Jewell stated that his client did not apply for a variance because he didn't know he had a problem, and this explained the time that elapsed between the house demolition and the filing of a variance application.

Mr. Creamer felt the applicant could construct a smaller garage now, and if the zoning regulations changed in three months time, then he could expand it at that time. Mr. Smith added that the applicant could construct a 20 by 20 ft. garage.

Mr. Jewell returned to the hardship of upzoning in this particular case, and the holding in *Adolphson*.

No-one appeared to speak for or against the petition and the hearing was concluded. The decision may be found in the end section of these minutes.

Appeal No. 06-067 – Petition of 27 West Lane, LLC

Attorney Robert Jewell continued to represent the applicant. Jeff Mose, architect for the project, and Gerald Roche, a member of 27 West Lane, LLC, were also present. All board members had visited the site at **27 West Lane**.

Mr. Creamer noted there was a shed on the property that was not shown on the maps presented to the board. Mr. Jewell said that the shed was actually in the accessway owned by the property to the rear.

Mr. Creamer also noted that the property had formerly had five garages that were removed after the property was divided. Gerald Roche responded that he had spoken to the former owners of the front parcel, Mr. and Mrs. Bacchiochi, who reported that there had been a three-bay garage that had not been used by the front apartment house.

Mr. Creamer noted that the house appeared to have been vacated. Mr. Roche advised that he was renovating the building and bringing it up to code. No-one was currently living in the building.

Mr. Odachowski asked if a very large maple tree in the location of the proposed garages would be removed. Mr. Mose said it would; there was no other available area. He did plan to save two copper beeches instead of the maple.

Mr. Creamer noted that there were apartments on the adjoining property and none had garages. Why did these apartments need them after 70 years?

Mr. Jewell felt cars would be parked there anyway, so why not provide shelter for them? Mr. Creamer pointed out that there might be two cars per unit, so only half would be covered.

Mr. Jewell stated that the hardship in this case came from the fact the use was established in the 1930s. This property was especially impacted by the retro-effect of the regulations. None of the immediate properties met the current zoning regulations. He felt the property was more suited to MFDD or R-5-1 status which allowed multiple dwelling units on a single property.

Mr. Odachowski asked if Mr. Jewell was arguing the rezoning of the property. Mr. Jewell said he was not arguing for the area to be rezoned; other properties in the area had uses that were not permitted in the RA zone.

Dr. Seemann asked what changes had occurred since the lot had been split in 1997. Garages had not been seen as a necessity at that time. Mr. Mose felt the demographics had changed. Mr. Creamer challenged the response, and suggested perhaps Mr. Jewell should have the P&ZC adopt regulations concerning apartments and garages.

Mr. Roche stated that he had owned the property for three months. He actually needed 13 parking places for this use and would be expanding the back lot. He preferred to have five spaces inside the garages, and 8 outside, which would be more upscale. He had discussed his project with the abutting neighbors who had no objections. He planned plantings to protect one of the neighbors.

Mr. Jewell reviewed the proposed coverage and noted that the Historic District Commission would also have jurisdiction over the garages.

No-one appeared to speak for or against the petition and the hearing was concluded. The decision may be found in the end section of these minutes.

Appeal No. 06-068 – Petition of Christina Hart

Attorney Robert Jewell continued to represent the applicant. Carl Hart also represented his wife who was the property owner. All board members had visited the site at **22 Ridgecrest Road**.

Mr. Odachowski noted that the plans did not show the deck on the house. Mr. Hart advised that he had received a separate permit to construct the deck, and this had been after he had filed the survey with the board.

Mr. Jewell stated that the hardship came from the undersized lot and upzonings. There had been an error made by the builder but he was not claiming this as a hardship. He felt the violations were *de minimis*. Mr. Hart noted that the setback violation was less than a foot and ran only 2 ft. along the side of the garage. He exceeded the FAR by 76 sq. ft.

Mr. Smith asked if the property had been staked. Mr. Hart said the corners of the house and the setbacks had been staked, and he didn't know how the error had happened. Perhaps a stake had been kicked. Mr. Smith stated that he was especially critical of professionals in the industry who built to within a tenth of a foot of what was allowed. Although the applicant had used part of the existing foundation, the corner of the garage within the setback area was new. However, the violations were minimal.

Mr. Jewell noted that most of the other houses in the area had smaller setbacks. Mr. Creamer confirmed that he had also made that observation on his property visit. He also felt the 76 sq. ft. additional FAR would not be perceived.

Mr. Smith asked about the width of the garage. Mr. Hart said it was 22 ft; he had kept it to the minimum to meet the setbacks. Mr. Hart had also discussed his plans with all the abutting neighbors who had no objections.

No-one appeared to speak for or against the petition and the hearing was concluded. The decision may be found in the end section of these minutes.

The following petition was continued from the July 31, 2006 meeting. It was heard by Mr. Creamer, Mr. Campbell, Mr. Odachowski, Dr. Seemann and Mr. Smith.

Appeal No. 06-051 - Petition of JMF Realty, LLC

The applicant was represented by Attorney Robert Jewell. All board members had visited the site at **665 Danbury Road**.

Mr. Jewell felt the issue was less complicated now than when it had been discussed in July. He agreed with the memo prepared by the board's attorney, Pat Sullivan, on the issue of abandonment of variances, and his client was willing to abandon the earlier variance. The state right of way was getting closer and closer to his client's property; 15 years earlier the sign would have met the setback requirements. His client could now put up, as of right, a sign 10 ft. tall that met the setbacks; he was requesting instead a sign that was 5 ft. 8 inches tall that would not meet the setbacks but would fit with the signs for other businesses along the highway.

Mr. Creamer felt the application was premature; he could not judge the impact of the sign while Route 7 was still under construction.

Mr. Campell asked for clarification of Mr. Jewell's earlier statement. Mr. Jewell explained that his client essentially had two front lines: one the deeded right of way from the state, and the other a state easement line. The sign he was requesting would be 10 ft. from the deeded right of way, and 7 ft. from the easement line. Assuming the deeded right of way line was the property line, he was asking for a 5 ft. variance. Mr. Campbell asked if Mr. Jewell had discussed with the ZEO which line he would use for setback purposes. Mr. Jewell had not.

Ms. Tippet pointed out that the board's attorney, Patricia Sullivan, had indicated that a verbal statement that an applicant was willing to abandon a variance was insufficient. There had to be a written, signed affidavit to that effect that the board could file on the land records. Mr. Jewell did not have such an affidavit but said he would be willing to get one after the new variance issued. There was discussion whether such action would be appropriate.

Mr. Creamer felt Mr. Jewell should withdraw the current application and re-apply once the roadwork had been finished. Mr. Campbell felt that in fairness to the applicant, board members should hold a straw poll to give Mr. Jewell an idea whether he should continue or re-apply. Although some board members did not indicate how they were leaning, it became clear that at least two members would not be voting in favor, and so Mr. Jewell withdrew the application.

The following new petition was heard by Mr. Creamer, Mr. Campbell, Mr. Odachowski, Dr. Seemann and Mr. Smith:

**Appeal No. 06-072 – Petition of Siburtek LLC,
Agent for Agnes and Alfred Sancharico**

James Sandy represented the applicants, together with Chris Siburn, member of Siburtek LLC. Mr. and Mrs. Sancharico were also present. The request was for an addition to the Sancharico home at **29 Craigmoor Road South.**

Mr. Siburn read a statement explaining the application and the hardships claimed. The house currently had a large deck at the front of the house along the lake. This would be removed entirely and a portion of its area replaced with an addition that would square up the front of the house. The peaks and rooflines had been kept low to ensure that no part of the addition would obstruct neighbors' views of the lake.

Mr. Sandy added that the setback variance requested was only for the roofline change. There would be no additional encroachment; in fact, there was a reduction of 0.9 ft. Because of the small (0.26 acre) property, FAR and coverage variances were also needed – the house predated the FAR and coverage requirements and already exceeded them.

Mr. Sandy noted that the adjoining property was the same size as the Sancharico lot and had been given variances in 1992 to increase its size and add a second floor. He provided the board with photographs of the adjoining property which showed a house considerably larger than the Sancharico house including the proposed addition. Board members requested copies of the variance and plans approved in 1992.

In terms of hardship, Mr. Sandy noted that the house had been constructed in 1956 and there had been multiple changes in the regulations. The current proposal would decrease the impervious surface by 200 sq. ft. The hardships found in 1992 continued to apply today. This house used to have a view of the lake but this was partially blocked by the variances approved by the board for the adjoining property. Bumping out the front wall by 8 ft. would restore some of that view.

Mr. Siburn reviewed the plans for the board. Mr. Smith asked if the roof would be demolished. Mr. Siburn noted that a portion of it would be, and in some areas the pitch would be slightly steeper. The house, however, would remain a one-storey building.

Board members wished to visit the site. No-one appeared to speak for or against the petition and the hearing was continued to October 16, 2006.

The board voted the following actions:

PETITION OF PYRAMID LUXURY HOMES JOINT VENTURE
PROPERTY LOCATED AT 19 WALNUT HILL ROAD
APPEAL NO. 06-065

REQUESTED: a variance of Section 401.0E(1), lot coverage, to construct a detached garage with greater lot coverage than permitted; for property in the RAAA zone located at **19 Walnut Hill Road.**

DATES OF HEARINGS: September 11 and October 2, 2006

DATE OF DECISION: October 2, 2006

VOTED: To Deny a variance of Section 401.0E(1), lot coverage, to construct a detached garage with greater lot coverage than permitted; for property in the RAAA zone located at **19 Walnut Hill Road.**

VOTE: To Grant: 3 To Deny: 2

 In favor Opposed
 Odachowski,Pisanelli, Creamer, Smith
 Seemann

The board voted this action for the following reasons:

1. No unusual hardship was presented that would justify the grant of the variance requested in this case.
2. Any hardship claimed was self-created in that the applicant chose not to modify his plans to meet the zoning regulations when the former house was razed and a variance became necessary.

PETITION OF RONALD J. AND CECILIA SHIRK
PROPERTY LOCATED AT 165 PEACEABLE STREET
APPEAL NO. 06-066

REQUESTED: a variance of Section 402.0E(1), lot coverage, to allow additions with greater lot coverage than permitted; for property in the RAA zone located at **165 Peaceable Street.**

DATES OF HEARINGS: September 11 and October 2, 2006
DATE OF DECISION: October 2, 2006

VOTED: To Grant, with Condition, a variance of Section 402.0E(1), lot coverage, to allow additions with greater lot coverage than permitted; for property in the RAA zone located at **165 Peaceable Street.**

VOTE: To Grant: 5 To Deny: 0
In favor Opposed
Creamer, Odachowski, -0-
Pisanelli, Seemann, Smith

CONDITION:
This action is subject to the following condition which is an integral and essential part of the decision. Without this condition, the variance would not have been granted:

The variances shall apply only to the existing house, and the additions shall be constructed exactly as shown on plans and drawings presented to the board and made part of this decision.

The board voted this action for the following reasons:

1. Changes in the zoning ordinance after the property was vested, combined with changes in State Statutes (8-26a) in 2004, have created an unusual hardship and practical difficulty for this property that justifies the grant of the variance requested in this case.
2. The board earlier denied a variance for larger additions on this property and made suggestions as to how the increase in coverage could be lessened. The applicant complied with the board’s suggestions so that the current application is substantially different from the last, and the increase in coverage now requested is minor.
3. The unique shape and design of the house which, given the current lot coverage requirements, would not be constructed today, exacerbates the hardship.
4. The proposal is in harmony with the general scheme of development and is not contrary to the public health, safety or welfare.

PETITION OF 27 WEST LANE, LLC
PROPERTY LOCATED AT 27 WEST LANE
APPEAL NO. 06-067

REQUESTED: a variance of Section 403.0E(1), lot coverage, to allow the construction of a 5-car detached garage that will exceed the permitted lot coverage; for property in the RA zone located at **27 West Lane.**

DATES OF HEARINGS: September 11 and October 2, 2006
DATE OF DECISION: October 2, 2006

VOTED: To Deny a variance of Section 403.0E(1), lot coverage, to allow the construction of a 5-car detached garage that will exceed the permitted lot coverage; for property in the RA zone located at **27 West Lane.**

VOTE: To Grant: 0 Deny: 5
In favor Opposed
-0- Creamer, Odachowski, Pisanelli
Seemann, Smith

The board voted this action for the following reasons:

1. No unusual hardship was demonstrated that would justify the grant of the variance requested in this case.
2. Any hardship that might exist was self-created. The property contained multiple garages prior to the decision to divide it into two parcels in 1997, leaving the garages on the rear lot.

PETITION OF CHRISTINA HART
PROPERTY LOCATED AT 22 RIDGECREST DRIVE
APPEAL NO. 06-068

REQUESTED: variances of Sections 402.0F, FAR, and 402.0G, setbacks, to allow a building under construction to remain that does not meet the required FAR and setbacks; for property in the RAA zone located at **22 Ridgecrest Drive.**

DATES OF HEARINGS: September 11 and October 2, 2006
DATE OF DECISION: October 2, 2006

VOTED: To Grant, with Condition, variances of Sections 402.0F, FAR, and 402.0G, setbacks, to allow a building under construction that does not meet the required FAR and setbacks; for property in the RAA zone located at 22 Ridgecrest Drive.; for property in the RAA zone located at **22 Ridgecrest Drive.**

VOTE: To Grant: 5 To Deny: 0
In favor Opposed
Creamer, Odachowski, -0-
Pisanelli, Seemann, Smith

CONDITION:
This action is subject to the following condition which is an integral and essential part of the decision. Without this condition, the variance would not have been granted:

The variances shall apply only to the existing house. The additions shall be constructed exactly as shown on plans and drawings presented to the board which are made part of this decision.

The board voted this action for the following reasons:

1. The setback encroachment in this case is less than one foot, and runs only for short distance on one corner of the garage. The FAR exceeds the requirements by only 76 sq. ft. In view of the foregoing, the undersized property represents an unusual hardship in this case that justifies the grant of the variances requested.
2. As the requests are *de minimis*, there will be no adverse impact on the surrounding properties. The board noted that the setbacks maintained by this house are greater than those of most other homes in the immediate area, and thus the proposal is in harmony with the general scheme of development in the area.

As there was no further business before the board, the Chairman adjourned the hearing at approximately 10:05 pm.

Respectfully submitted,

Marjorie Tippet
Administrator
