



Town of Watertown Connecticut

Planning and Zoning, Zoning Board of Appeals,
Conservation Commission/Inland Wetland Agency
Watertown Government Municipal Center

61 Echo Lake Road
Watertown, CT 06795

Telephone: (860) 945-5266

Fax: (860) 945-4706

Website: www.watertownct.org

MINUTES ZONING BOARD OF APPEALS WATERTOWN, CONNECTICUT

PUBLIC HEARING

Griffin School LLC

26 Davis Street and 423 Main Street, Oakville, CT

Time: 7:30 P.M. (8:30 P.M.)
Date: Wednesday, October 26, 2011
Place: Watertown High School Lecture Hall
324 French Street
Watertown, Connecticut

1. Call Meeting to Order

Chairman, Mr. Enrico Sarandrea called the public hearing at 8:30 P.M.

2. Roll Call

Secretary, Mr. Phil Roger executed the roll call

Present: Chairman, Mr. Enrico Sarandrea
Secretary, Mr. Phil Roger
Mr. Jason Alldredge
Vice Chairman Mr. Chris Dupont
Mr. Gary Swingle

Absent: Ms. Joanna Abraham
Mr. Roger Mitchell
Mr. Ned Dalton

Also Present: Land Use Secretary, Mr. Chuck Bezio

Chairman, Mr. Enrico Sarandrea seated Mr. Gary Swingle for Mr. Roger Mitchell. Chairman, Mr. Enrico Sarandrea seated Mr. Jason Alldredge for Ms. Joanna Abraham. Chairman, Mr. Enrico Sarandrea read the ground rules into the record.

3. Hearing of Cases

Chairman, Mr. Enrico Sarandrea recused, himself from the Griffin School, LLC application.

C. Application #952 of Griffin School LLC for four variances of the Watertown Zoning Regulations concerning B-C Central Business Zoning District for construction of a CVS building at 26 Davis Street and 423 Main Street, Oakville, CT.

Recess or adjourn the public hearing must be closed by November 30, 2011 unless applicant grants an extension of time.

Vice Chairman Mr. Chris Dupont called the public hearing to order at 8:29 p.m. Secretary, Mr. Phil Roger read the legal notice into the record.

TOWN OF WATERTOWN
Legal Notice

The Zoning Board of Appeals of the Town of Watertown will hold a public hearing at 7:30PM on Wednesday, October 26, 2011 at the Watertown High School Lecture Hall 324 French Street, Watertown, CT to hear and act upon the following applications:

Application #952 of Griffin School LLC for the following 4 variances of the Watertown Zoning Regulations concerning B-C Central Business Zoning District to permit the redevelopment of the property for a CVS building at 26 Davis Street and 423 Main Street, Oakville, CT:

1. A variance of Section 31.5.4 concerning maximum 10 feet front yard setback for all new buildings
2. A variance of Section 35.7.5.a concerning screening of parking lots by 10 feet wide landscaped low ground berm or a four foot high hedge fence along the street line.
3. A variance of Section 35.7 .5.b concerning screening of service yards, refuse storage areas, and parking areas by trees, shrubs, lawns, ornamental fencing, walks, brick, stone, cobbles and gravel where appropriate.
4. A variance of Section 63.9.4 concerning parking within 10-foot of a side or rear property lines.

At this hearing interested persons and written communications will be heard. A copy of the application is on file in the Planning and Zoning Office, 61 Echo Lake Road, Suite, Watertown, CT.

Dated in Watertown, CT this 13th day of October 2011

Dated in Watertown, CT this 20th day of October 2011

Phillipe Roger, Secretary
Zoning Board of Appeals

Mr. Pilicy

Attorney Franklin Pilicy was present on behalf of the applicants and submitted into the record the domestic return receipt cards certifying the abutting property owners 150' had notified by certified mail of the variance application. The applicant also submitted into the record the notarized affidavit that the land use public hearing sign had been posted in the front of the property 10 days prior to the hearing as required. He submitted the following MEMORANDUM IN SUPPORT OF ZONING VARIANCE and reviewed it with the Board.

**MEMORANDUM IN SUPPORT
OF
ZONING VARIANCE**

To: Town of Watertown Zoning Board of Appeals

Re: 26 Davis Street and 423 Main Street
Oakville, CT
Owner: Griffin School LLC
Application #952 of Griffin School LLC for four variances of the
Watertown Zoning Regulations concerning B-C Central Business
Zoning District for construction of a CVS Building.

LEGAL ARGUMENT

Any municipality having a zoning commission must have a zoning board of appeals. (C.G.S. Section 8-5). It has been stated that the purpose of the zoning board of appeals is to keep the law running on an even heel. The essential purpose of the zoning board of appeals is to give elasticity in the application of the zoning regulations by granting variances so that they do not operate in an arbitrary or confiscatory and consequently unconstitutional manner.

C.G.S. Section 8-6 provides the specific powers and duties of a zoning board of appeals:

The authority of the zoning board of appeals to grant variances is governed by section 8-6(a)(3) of the General Statutes. Section 8-6(a)(3) allows the board to vary the application of the zoning ordinance or regulations, consistent "with their general purpose and intent and with due consideration for conserving the public health, safety, convenience, welfare and property values solely with respect to a parcel of land where owing to conditions especially affecting such parcel but not affecting generally the district in which it is situated, a literal enforcement of such bylaws, ordinances or regulations would result in exceptional difficulty or unusual hardship so that substantial justice will be done and the public safety and welfare secured.

The existence of the variance power recognizes that zoning regulations which permits some uses of land and limit or prohibit others will adversely affect individual property rights in some cases, and variances furnish elasticity in application of the regulations so they do not operate in an arbitrary or confiscatory and therefore, unconstitutional manner. REID V. ZONING BOARD OF APPEALS OF TOWN OF LEBANON, 235 Conn. 850, 855, 670 A.2d 1271, 1274 (1996), quoting this text: FLORENTINE V. TOWN OF DARIEN, 142 Conn. 415, 425, 115 A.2d 328, 332 (1955). Without authorization to a board of appeals or some similar agency to grant variances, it would be difficult, if not impossible, to keep the law "running on an even keel" and to prevent attacks upon the constitutionality of the zoning ordinance. Id. At 855, 670 A.2d at 1274. SERVICE REALTY CORPORATION V. PLANNING AND

ZONING BOARD OF APPEALS OF TOWN OF GREENWICH, 141 Conn. 632, 635, 109 A.2d 256, 258 (1954). “A board of appeals is indispensable to the zoning process both from the constitutional and the practical standpoint.” **FLORENTINE V. TOWN OF DARIEN, 142 Conn. At 425, 115 A.2d at 332.**

This requires the hardship to be unique, which means that it must be more than and different from the restriction imposed by the zoning regulations on other properties in the area. The statute does not allow a variance to be granted where it would be inconsistent with a general purpose and intent of the zoning ordinance or would adversely affect public health, safety and welfare, or property values in the district.


Under some circumstances uncertainty as to the proper application of a zoning regulation may create an unnecessary hardship which would justify the granting of a variance. **SHELL OIL V. ZONING BOARD OF APPEALS OF TOWN OF BLOOMFIELD, 156 Conn. 66, 70, 238 A.2d 426, 428 (1968);** **LEVEILLE V. ZONING BOARD OF APPEALS OF TOWN AND CITY OF MERIDEN, 145 Conn. 468, 472, 144 A.2d 45, 47 (1958) (uncertainty as to zone boundary).**

The applicant for a variance must show that because of some peculiar or unique characteristic of his property, the strict application of the zoning regulation produces an unusual hardship, as opposed to the general impact which the regulation has on other properties in the zone. **BERLANI V. ZONING BOARD OF APPEALS OF TOWN OF PLAINVILLE, 160 Conn. 166, 170, 276 A.2d 780, 782 (1970);** **BELKNAP V. ZONING BOARD OF APPEALS OF TOWN OF EASTON, 155 Conn. 380, 383, 232 A.2d 922, 924 (1967).** In a proper case the location of the property, its unusual soil conditions, topography and drainage problems may make it unsuitable for residential use and allow a variance for a nonresidential use. **PIKE V. ZONING BOARD OF APPEALS OF TOWN OF HAMPTON, 41 Conn.App. 270, 274, 624 A.2d 909, 911 (1993), citing this text.** **GOLDREYER V. BOARD OF ZONING APPEALS OF CITY OF BRIDGEPORT, 144 Conn. 641, 645, 136 A.2d 789, 791 (1957).**

“When a zoning board of appeals acts on a variance, most cases conclude that it acts in a quasi-judicial capacity.” **See Id.; citing NIELSON V. ZONING BOARD OF APPEAL OF CITY OF HARTFORD, 152 Conn. 120, 123 (1964).** “Other cases indicate that it acts in an administrative capacity.” **See Id.; citing ROCCHI V. ZONING BOARD OF APPEALS OF TOWN OF GLASTONBURY, 157 Conn. 106, 111 (1968).** “In order for a zoning board of appeals to grant a variance under C.G.S.A. § 8-6(a)(3), **two conditions** must be met: (1) the variance must be shown not to substantially affect the comprehensive zoning plan, and (2) adherence to the strict letter of the zoning ordinance must be sworn to cause unusual hardship unnecessary to the carrying out of the general

purpose of the zoning plan.” See Id.; citing GRILLO V. ZONING BOARD OF APPEALS OF CITY OF WEST HAVEN, 206 Conn. 362, 368 (1988).

GRIFFIN SCHOOL LLC

By:  _____
Franklin G. Pilicy
Its Attorney

Mr. Pilicy

He explained that this project is for a new CVS building to be located at the corner of Main Street and Davis Street. The applicant has received unanimous support from the Town Council, Planning and Zoning Commission and the Economic and Development Commission. Several of the deed restrictions that were put in place at the time the building was sold were removed unanimously by the Counsel. The property is unique because it has frontage on four streets. There is an existing town road that encroaches onto this property. We want to take the encroachment and convey that back to the town in order to eliminate the encroachment. By doing this we need a variance on the westerly side of the building.

Ms. Rutherford

Shannon E. Rutherford a Senior Project Manager at Vanasse Hangen Brustlin, Inc. located at 54 Tuttle Place, Middletown, CT 06457-1847, she submitted into the record a revised list of variances. She reviewed the following revised list of variances with the Board.

Revised List of Variances:

1. Section 31.5.4 Design Requirement

Section 31.5.4 The maximum front yard setback for all new buildings shall be 10 feet.

Variance Required. The building as located on the preliminary plan exceeds the maximum front yard setback of 10 feet. The positioning of the building allows for a traditional traffic pattern and circulation around the building that is familiar and comfortable for customers. It also allows the ADA accessible parking spaces to be placed in close proximity to the front door:

2, Section 35.7.5 General Landscape Requirement

Section 35.7.5 In addition to landscaping requirements of Section 70, the following landscaping standards are required:

- a. Parking lots shall be screened from the street by a) ten (10) foot wide landscaped low ground berm or b) a four (4) high hedge fence. Such screening shall be located along the street line.
- b. Service yards, refuse storage areas, and parking areas shall be screened to preserve the street-scape in the neighborhood. Such screening shall include trees, shrubs, lawns, ornamental fencing, walks, brick, stone, cobbles and gravel where appropriate.

Variance Required. Planting of a hedge row that will grow to a 4-ft height will be provided along Main Street and Davis Street, excepting the areas near the driveways that are needed to maintain appropriate sight distance. The plants at the time of plantings will be 3ft in height. Planting of a hedge row along Yale Street and Jeffrey place will be limited as the proximity of

the retaining walls to the street line will limit the room available for the planting. A 6-foot chain link fence with privacy slats or evergreen like woven material will be provided along the top of the retaining wall to provide screening of the site and act as a safety measure along the top of the wall. A variance will be required for no landscaping being provided along 170 feet of the Yale Street frontage as measured from the current Jeffrey Street property line. The balance of the frontage along Yale Street will include a hedge row that will grow to a 4-ft height, similar to what is proposed along Main Street and Davis Street. A variance will be required for no landscaping being provided along the entire frontage of Jeffrey place. Jeffrey Place has the added burden of needing to maintain the sight distance at the intersection, which will limit plantings near Davis Street, and the deeding of approximately 2,100 sf of property in order to provide the needed right-of-way for Jeffrey Place.

3. Section 63.9.4 No parking within 10-ft of a side or rear property line.

Section 63.9.4 No parking area or portion thereof, including parking spaces, driveways and access aisles, shall be located within 10 feet of any side or rear property line except for shared driveways and shared access aisles between adjoining properties.

Variance required. The side and rear lot line, as discussed with the Assistant Zoning Officer, is limited to the 'internal lot line' shared with the adjoining property to the west along Main Street. The parking setback is exceeded at 3 different areas: 1) at the Main St drive aisle into the site by 1 foot; 2) at the 3 parking spaces near the front of the store by 5 feet+/-; and 3) at the portion of the drive aisle that leads from the front of the store towards the west side of the building by 2 feet+/- . All measurements are to the back of curb, providing a conservative measurement and the width of green space being provided. The 1 foot encroachment at the driveway entrance is to provide a uniform 18-foot driveway width in from Main Street, to facilitate a fluid entry from the site from Main Street. The 5-ft encroachment for the parking field near the front door is needed to maintain the minimum parking count for the CVS to effectively operate, and is directly related to the need to push the site forward to accommodate the encroachment from Jeffrey Place. The 2-ft encroachment along the access drive from the front of the store to the west side of the store is needed to effectively accommodate the large delivery vehicles and emergency vehicles. This is also directly related to the need to push the site forward to accommodate the encroachment from Jeffrey Place.

Ms. Rutherford

A new retaining wall will be installed along Yale Street as part of this project. We will provide a 4' hedge along the frontage of Main and Davis Street. We cannot put hedge along Jeffery Place but we will put a 6' chain link fence. There is a portion of Yale Street that we can add hedge to the frontage. The remaining portion of Yale Street there will be a guide rail and chain link fence. For clarification purposes these revision I am submitting should be the one that is used for the record for this application as opposed to the previous versions that have been submitted.

I do not believe it is in the Board's or the applicant's best interest to close the public hearing and vote on this application this evening.

Mr. Dupont

Anyone from the public who wishes to speak for or against this application? Is there anyone from the public who wishes to speak for or against this application? Is there anyone from the public who wishes to speak for or against this application? Hearing no objections can I please have a motion?

MOTION: Mr. Gary Swingle moved to have a site walk on 11/12/11 and to continue the public hearing to the next regularly scheduled meeting on 11/16/11.

SECOND: Vice Chairman Mr. Chris Dupont.

VOTE

AYES:

Secretary, Mr. Phil Roger; Mr. Jason Alldredge; Vice Chairman
Mr. Chris Dupont; Mr. Gary Swingle.

NAYS: None.

MOTION UNANIMOUS PASS T 4-0.

Chairman, Mr. Enrico Sarandrea was reseated.

Attest:

Chairman, Mr. Enrico Sarandrea
Zoning Board of Appeals