

## **ZONING BOARD OF REVIEW MINUTES**

**Tuesday, March 23, 2021 Meeting 7:00 pm**

**VIRTUAL – Convened at 7:00 PM via the ZOOM Remote Meeting Platform**

Present: Richard Land, Chairman; Christopher Mulhearn, Vice-Chairman, Jody Sceery, Melody Alger, Barry Golden and David Collier (Alternate).

Staff: Lea Anthony Hitchen, Assistant Town Planner, Carole Malaga, stenographer, and Michael Ursillo, Legal Counsel.

Mr. Land, Chair of the Board, called the meeting to order at 7:00 PM and introduced the members and staff present. He then read the Board's procedures into the record. Each person addressing the Board will first state his or her name and address for the record. The applicant and his or her legal representative will present the case and witnesses may be called to testify. Such testimony must be relevant to the application. Expert witnesses will be sworn in and there will be no prejudgment as to the expertise of any witness. Pictures, diagrams and other documents given to the Board as evidence will be appropriately marked as exhibits and will be retained by the Board for the record. Upon completion of the applicant's presentation all other persons wishing to offer evidence in favor of the application may then do so one at a time. Following that all persons wishing to offer evidence against the application may then do so one at a time. It is asked that comments are confined to the zoning matter being heard and that repetitive remarks are avoided. Cross examination or rebuttal may be allowed if the Board feels it would be appropriate and useful. All questions from the floor will be directed through the Chair only. After all relevant facts have been heard the Chair will call for a motion; the Board will then discuss the motion and the Chair will call for a vote. During the discussion among voting Board members, the Board will not accept any new and further testimony unless it is specifically requested by a Board member. The Board will make every attempt this evening to render a decision. The written decision will be recorded in the Town Clerk's Office as soon as possible following the approval of the minutes of the meeting.

**Zoning Board of Review Hearings – 7:00 PM**

1. **Pamela Unwin-Barkley** for property owned by **John and Andrea O'Connor** and located at 93 Prospect Street; Map 74 A.P. 2 Lot 191 (Zoned Residential, R-10). The Applicant seeks a Dimensional Variance from Chapter 260 of the Town Code; Zoning Ordinance, Table 2 – Dimensional Regulations by Zone, specifically from the North Side Yard Setback. The petition requests to replace the existing detached garage and construct a new 1,432 s.f. foot print on the first floor consisting of an attached two bay garage, guest room and workshop on the first floor with additional living space on the second floor. The Applicant is requesting between 8.1'-10' of relief where a 15' side yard setback is required. **(Continued from the February 23, 2021 ZBR meeting.)**

Mr. Land informed the public that the submitted zoning application for 93 Prospect Street had been withdrawn by the Applicant.

2. **Hill & Harbor Design+Build** representing **Rosario Navarro & Brian Inocencio** for property located at 47 Melrose Street; Map 85 A.P. 001 Lot 248 (Zoned Residential, R-10). The Applicant seeks a reconsideration of an original October 27, 2020 decision of the Zoning Board of Review wherein variances were granted specifically for a 13' side and 7' rear setback in order to construct a 20'x28' two-story addition onto the east side of the home. The Applicant requires additional dimensional relief from Chapter 260 of the Town Code, Zoning Ordinance, Table 2 – Table of Dimensional Regulations by Zone, specifically from the East Side Yard Setback. The petition requests to convert a window to an entry door with stairs/structural features that will extend another three (3) feet into the east side setback.

Mr. Paul Vespia of Hill & Harbor Design+Build represented the property owners, being Rosario Navarro and Brian Inocencio of 47 Melrose Street. Mr. Vespia noted the Historic District Commission approved the modification at their February meeting which included a side door entrance for an in-law apartment which will be located on the first level of the

structure. He explained his client will need relief for the side line setback in order to be able to construct a stairway to the side door for the first level.

Mr. Land inquired if there was any other alternative location to install the door. Mr. Vespia commented there is no other location due to the current floor plan. He asserted the client wanted to have a separate entrance specifically for guests without having to walk through the primary residence. Mr. Vespia explained he did not think it was appropriate to locate the door on the front elevation due to visual purposes and tried to make it still appear like a single-family home as opposed to a two-family residence.

Mr. Land asked about the distance between the existing back of the garage on the abutter's property and the side of the proposed stairway. Mr. Vespia noted the lot lines are a little skewed from what is exact but there will be about ten (10) feet.

Mr. Land questioned if any existing vegetation will be removed. Mr. Vespia asserted some trees have already been removed and the property owner is considering installing a six-foot cedar fence for privacy but the fence has not yet been vetted by the HDC.

Mr. Land asked if it was possible to design the stairs to only go back to the rear of the house to make it more inconspicuous. Mr. Vespia acknowledged that he wanted to provide the owner with the ability easy access to both the front and rear portions of the house but if the Board is inclined to only allow the stairs to face the rear he can have that incorporated.

Both Atty. Ursillo and Ms. Hitchen opined that any modification the ZBR imposes will require the Applicant to return to the HDC for their approval.

With no more additional comments from the Board members, Mr. Land opened the hearing for public comments. No member of the public was present to speak in favor or object to the application.

Motion to approve the application as submitted by Ms. Alger with condition the interior first floor connecting door way to the in-law remain (the door cannot be removed). Seconded by Ms. Sceery.

Mr. Land pointed out the Staff report does not recommend approval of the application for several reasons which he understands.

Mr. Vespia noted if the side entry door is approved the intent is to close off an existing connecting internal door to the main house to the in-law unit. Ms. Hitchen verified the in-law unit and principal residence have to communicate with one another; by not having the internal connecting doors essentially makes the project a two-family dwelling. Mr. Land commented that if the Board is going to approve the application the inside connecting door has to remain.

Mr. Land commented that this is the second time the subject property has come before the ZBR in several months; he hopes it does not become a trend as it is difficult to approve relief as being the least relief necessary in one instance then returning and requesting additional relief – he found it to be a little disingenuous although realizes sometimes circumstances change; he just hoped it was not a trend going forward. Having reviewed the application and respecting the Planning Staff's view Mr. Land understood the desire to have a separate entrance for the in-law. He did not see the request as impairing the subject property nor the abutting property in any meaningful way as it is next to the side of a garage. Mr. Land said he was in favor of the application as it meets the standards and was a modest modification to the original request for relief.

Mr. Land commented that he finds the application to satisfy the applicable standards, those being:

The hardship from which the applicant seeks relief is due to the unique characteristics of the subject land and not the general characteristics of the surrounding area.

The hardship is not the result of any prior action by the applicant and does not result primarily from the desire for greater financial gain.

Granting the request will not alter the general character of the surrounding area or impair the purpose or intent of the Zoning Ordinance or Comprehensive Plan.

The relief to be granted is the least relief necessary.

The hardship suffered by the owner if the variance is not granted shall amount to more than a mere inconvenience.

VOTE: Mr. Mulhearn: YES, Mr. Golden: YES, Ms. Sceery: YES, Ms. Alger: YES, and Mr. Land: YES (5 – 0 in favor of the motion).

- 3. DiBiase Associates, Inc.** for property owned by **Sam Sisters Realty Company, LLC** located at 5707 Post Road; Map 45 A.P. 11 Lot 75 (Zoned Commercial Highway, CH). The Applicant seeks a Dimensional Variance under Chapter 260 of the Town Code, Zoning Ordinance; Article VI, Off-Street Parking Regulations, Section 20, Required Off-Street Parking Spaces. The Dimensional Variance is required because the Applicant seeks to open a restaurant at the subject property and the change of use necessitates relief since there is insufficient parking spaces to accommodate the proposed ninety-eight (98) indoor seats and thirty-two (32) permanent outdoor seats.

Attorney Elizabeth Noonan of Adler Pollock & Sheehan represented the applicant, being 5707 Hospitality Inc. dba Providence Oyster Bar II. Atty. Noonan stated the property is located at 5707 Post Road and the request is for a dimensional variance regarding parking. Also present with her was Frank DiBiase who manages the Atwells Restaurant Group, Glenn Fontecchio, architect for the redevelopment, and Christine DiBiase, an associate at AP&S as well as sister to Frank DiBiase.

Atty. Noonan explained the subject property, formerly Sweet Twist, is now under a purchase and sales agreement with the Applicant. It is a unique property in that it has three frontages on Post Road (zoned Commercial Highway), Eugene Street to the rear (zoned Residential, R-10) as well as on Grand View Avenue (zoned Planned Development) adjacent to St.

Elizabeth's. The intent is to develop a second oyster bar in the neighborhood and repurpose the existing building. Atty. Noonan noted in the present state the Applicant can have the restaurant seats with the existing parking as it is nonconforming parking. What the Applicant is looking to do is add permanent outdoor seating which necessitates the variances. She asserted previously the matter was heard by the E.G. Town Council concerning the liquor license to which there were no objectors to that liquor license and it was granted contingent upon the ZBR approval; if the ZBR denies the relief the liquor license will be limited to the 98 indoor seats. Atty. Noonan explained the restaurant will not have any entertainment as the Applicant is fully aware there are neighbors behind the property and are sensitive to noise issues. The Atwells Restaurant Group runs several restaurants and are also a family run business who are looking to bring the Providence Oyster Bar experience to the East Greenwich neighborhood and for that reason the dimensional relief is needed.

Atty. Noonan noted the current building size is 5,200 s.f. with a lot size of 33,000 s.f. With regard to the number of seats, a total of 71 parking spaces will be required and there are 52 spaces on the site therefore the Applicant is requesting 19 spaces of relief. She asserted the outdoor seats will be in the front with essentially no changes to the balance of the property. The lot coverage is already extremely high at 90 percent which is nonconforming and the intent is to not increase the pavement coverage any more than it exists. While there may be some rearrangement of landscaping for the outdoor seating it will be replaced in total; we do not intend to go over the existing nonconforming lot coverage.

Atty. Noonan stated she and the Applicant have reviewed the Planning Staff's report – in regard to fencing – the Cumberland Farms is an adjacent property owner with hours of 5AM to midnight. The Applicant is more than willing to match Cumberland Farm's fence on the Eugene Street side property as a buffer. The hours of the establishment: the kitchen will close at 10PM on Thursday – Sunday and stay open until 11PM on Friday and Saturday. She reiterated the restaurant will not have an entertainment license as the owner is sensitive to the abutting neighbors. Atty, Noonan noted there will be a dumpster which will be emptied during normal business hours

in order to not disturb the neighbors. As for deliveries, these will be made to the property during the normal working day between 10AM to 5PM.

Mr. Glen S. Fontecchio, a registered professional architect who has been working with the DiBiase family for over 15 years, has assisted in development of many of their other restaurant and hotel properties in the state. Mr. Fontecchio discussed the proposed restaurant narrative – the restaurant with the exception of the exterior seating will sit within the existing building footprint. There will be no additional patron entrance to the rear of the property as there is an existing emergency egress doorway and service doorways that will be maintained. To the exterior of the property facing Post Road the proposal includes eight (8) “4-top” tables which will seat 32 individuals with the closest table to the far curb on Eugene Street being over 200 feet being significantly away from those residences coupled with the existing building in between the tables and the dwelling units. Mr. Fontecchio confirmed the dumpsters will properly be enclosed and contained per the Town ordinance.

Mr. Land questioned to know where the vegetation will be relocated if there is any modification to the landscaping. Mr. Fontecchio explained the existing front is a mix of plantings and paved areas. He admitted he has yet to design the actual layout of tables but noted the tables will be within the existing paving where he needs to shift paving and/or planting he will make sure it works out to be a net zero balance as the Applicant does not want to return to the ZBR for additional relief.

Mr. Golden queried why the dumpster is located in a corner close to the abutting neighbors. Atty. Noonan pointed out the former tenant also had their dumpster in the same location and that is where it has always been; with the fence to be installed the thought was that location would be appropriate. Mr. Golden noted that location is about as close to the neighborhood as one can get and wondered if there would be any odors emanating from the dumpster.

Atty. Noonan pointed out the Staff Report notes the dumpster has to be a sealed container specific for odors and swill which will not emanate from the

dumpster and it cannot leak. She said the Applicant has every intent of complying with the ordinance.

Mr. Frank DiBiase III, the second generation of the Atwells Restaurant Group said the biggest accomplishment in this business is being a good neighbor as he has been in this business for a number of years and is following in the footsteps of his father. With regards to the dumpster, the dumpster is emptied typically three times per week in order for odors and food not to linger; he has a great relationship with the dumpster company at the other restaurant locations. More specifically all foods and liquids go into tied plastic bags which are transferred into the dumpster. It is his intention to locate the dumpster in the best spot for staff so bags are not dragged across the asphalt as well as optimizing the number of available parking spaces. He disclosed the intent is to get the dumpster as close to the building and away from the neighbors to make it easier for staff to handle. Mr. DiBiase asserted that he talked to Mr. Fontecchio about relocating the dumpster closer to the building and we believe there is room to do so. He added being a family business the emails received are checked every day – if there are suggestions as to how the business operates he would like to know about it and will respond.

Mr. Fontecchio commented that there does appear to be adequate space adjacent to the building near the loading door for the dumpster which will be ideal for the restaurant operation.

Ms. Alger stated the primary objection she assumes is fear of the need for parking will ultimately result in spillover parking on residential streets. She asked if there has been any thought of mitigating that potential outcome because that is a source of the objections.

Mr. DiBiase pointed out that as everyone is aware the East Greenwich downtown Main Street is very busy and there is a parking problem. He believes the parking lot at the subject location has more than enough space; if he finds a valet company is needed than one would be brought in but again the intent is to manage the establishment with the spaces provided. He added the relief is specific for the outdoor seating to which those seats will not be used during the winter months.

Atty. Noonan noted that while she was not volunteering the valet service it may be appropriate if the level of service get busier on the weekends. Again, it is not the goal to have vehicles parking on residential streets.

Mr. Land questioned if there were to be an approval could there be a condition to have some form of study, particularly during the summer months, to determine whether anyone is parking on the residential streets. Atty. Ursillo commented the Board can make it a condition upon approval; a contract with a valet company and the contract will need to be provided to the Zoning Enforcement Officer.

Mr. Land was hesitant to make that requirement considering there is a vast amount of parking to begin with as this could potentially be a summer month issue. Additionally, the Applicant does not relief for the indoor seats but only for the outdoor seats – to compel a valet service seems a bit too much but was sensitive to the off-street parking because neighbors in the downtown area neighborhoods have complained about restaurant patrons and valet companies parking on residential streets and he did not want the same situation to arise here.

Mr. DiBiase pointed out the outdoor seating has become a huge variable these days due to COVID-19. As a restaurant owner he has been thinking about how staff can park off-site, possible at a nearby location – these are strategies that he has used at different restaurant locations to relieve the parking issues which is a smart business practice. Mr. DiBiase said he cannot guarantee they will need a valet service or make that investment but he will do his best to make everyone happy in the neighborhood.

Mr. Land questioned if there could be any sort of sound barrier installed to enclose the outdoor seating area to contain the potential noise from traveling into the neighborhood. Mr. Fontecchio said he would have to analyze the area to make sure any barrier would not interfere with the nearby handicapped parking spaces.

Ms. Christine DiBiase, Associate with Adler Pollock & Sheehan, noted of all the restaurants and hotels the DiBiase family owns and manages they have never had any complaints from abutters or municipalities.

Mr. Fontecchio said he has worked with Frank DiBiase II and Frank DiBiase III who are both modest and old-fashioned business people and understand happy neighbors are good customers. They bend over backwards for all of their businesses to make sure that their neighbors are happy and their customers are happy. Mr. Fontecchio added the DiBiase men will never come out and say it because they are restrained but he has worked with them for a long time and they genuinely take care of their customers.

Ms. Alger wanted to ensure that there will be an installed fence on Eugene Street, the dumpster will be moved and properly enclosed and the existing landscaping will not be reduced in any amount. Atty. Noonan was absolutely amenable to the conditions.

With no further questions from the Board Mr. Land opened the hearing to the public.

There were no public comments in favor of the application.

Mr. Nicholas Sangster of Eugene Street said he did not oppose the project but was not sold on the parking, specifically with the staff parking and parking during the summer months as there seems to be no definite plan for keeping vehicles off of the street.

Atty. Ursillo commented there could be signs installed on the subject parking lot that say “no on street parking” although he admitted he was not sure how that could be enforced. Atty. Ursillo also pointed out that any on-street signage regarding no parking would have to be approved by the Town Council.

Ms. Nancy Swanson of Chestnut Drive noted she and neighbors hear noise all summer long; noise is a concern even though she realizes the Applicant is not requesting an entertainment license. She also pointed out the traffic light is an egress point for the restaurant and the neighborhood has become a cut through to the west side of Town.

Mr. Land confirmed he and the Board members were in receipt of objection letters from Diane Bassett of 95 Eugene Street, Ernest Giuliani of 25 Grand View Road, and Rosa and Donald Anderson of 36 Misty Oak Drive.

Mr. Land asked if there was a way to add a curb cut to direct traffic towards the light thereby cueing vehicles away from the neighborhood. Mr. Fontecchio said he was an architect, not an engineer and would not presume he knew the answer to that but was aware that Post Road was a state road making it more complicated in terms of PAPs (physical alteration permits) and procedures for modifications adjacent to state roads. He pointed out as an intersection with a light he sympathizes with the residents living in the neighborhood but finds it endemic of the type of road it is not just of the subject property.

With no further comments Mr. Land asked for a motion.

Mr. Mulhearn moved to approve the application as presented subject to an appropriate installation of fencing along the Eugene Street side of the property and an appropriate enclosure and suitable dumpster being installed on the property to minimize any odor or any other nuisance to the neighboring community.

Seconded by Ms. Sceery.

Mr. Land stated he was very concerned about the neighborhood and concerned vehicles will be traveling in the neighborhood but he did not want to impose restrictions that the Board had no way of monitoring and/or managing and he finds the sometimes requirements are sometimes imposed then there is no way to police them which becomes pointless and did not want to do in this case. Mr. Land found the Applicant has demonstrated a need; any restaurant user is going to ask for an outdoor accommodation due to COVID-19 which he finds as a reasonable use. He asked the Applicant to consider installing signs indicating that there is no parking in the neighborhood and in some way in the context of communications with customers to make it clear that parking is not permitted on residential streets. Separately he asked that the Town Planner contact the Town Council to install signs in the neighborhood that indicate no parking/

parking for residents only as a further deterrent for patrons to using the neighborhood other than for reasonable travel. Lastly, not a condition, he asked the Applicant to be creative in persuading customers to not using the neighborhood as a cut through considering the Applicant has indicated they want to be a good neighbor.

Mr. Land noted based on the current circumstances in the restaurant industry and overall economy he finds the standards have been satisfied, those being the following:

The hardship from which the applicant seeks relief is due to the unique characteristics of the subject land and not the general characteristics of the surrounding area.

The hardship is not the result of any prior action by the applicant and does not result primarily from the desire for greater financial gain.

Granting the request will not alter the general character of the surrounding area or impair the purpose or intent of the Zoning Ordinance or Comprehensive Plan.

The relief to be granted is the least relief necessary.

The hardship suffered by the owner if the variance is not granted shall amount to more than a mere inconvenience.

In the context of running the business, Mr. Land asked Mr. DiBiase to “police the neighborhood,” meaning to make sure people are not parking on the street and if they are then he would ask to follow through with the commentary regarding providing a valet service in order to control the parking.

Atty. Noonan clarified that her client would be willing to install the signs.

Atty. Ursillo was uncomfortable with the requisites Mr. Land suggested and pointed out his suggestions should become conditions of approval and asked the motion should be changed to reflect Mr. Land’s recommendations.

Mr. Mulhearn said he was not comfortable making the installation of signage a condition of approval for reasons Mr. Land articulated – 1. From a policing standpoint it is near impossible to do, 2. It places an undue burden on the Applicant to the extent that patrons do not comply; it puts the Applicant in harms way unnecessarily. It should be treated as a request, not a condition.

VOTE: Mr. Mulhearn: YES, Mr. Golden: YES, Ms. Sceery: YES, Ms. Alger: YES, and Mr. Land: YES (5 – 0 in favor of the motion).

Mr. DiBiase appreciated the Board and Town Staff for being so helpful from the employees at Town Hall to the meetings as it is such a relief compared to working in other municipalities.

4. **Graze on Main, LLC** for property owned by **JCT Properties, LLC** located at 58 Main Street; Map 085 A.P. 001 Lot 055 (Zoned Commercial Downtown, CD-1). The Applicant seeks a Dimensional Variance under Chapter 260 of the Town Code, Zoning Ordinance; Article VI, Off-Street Parking Regulations, Section 20, Required Off-Street Parking Spaces. The Dimensional Variance is required because the Applicant seeks to expand the business to include ten (10) indoor and twenty (20) outdoor seats. There is insufficient on-site parking for the proposed thirty (30) seats. The petition requests 100 percent relief from the referenced provision.

Ms. Elyse Pare, owner of Graze on Main, LLC stated she has a small 550 square foot charcuterie shop which she opened the week of Thanksgiving and runs with her partner who is there full time while she is there on the weekends. Ms. Pare noted she is requesting to expand the business to include ten (10) indoor and twenty (20) outdoor seats so the outdoor grassy area can be utilized on the side of the building.

Due to COVID-19 conditions there are no set shop hours noted Ms. Pare, instead everything is coordinated on pre-order pickups. She added the intent is not to create a night-life atmosphere with the outdoor space or the indoor space. The indoor space will mostly be used for daytime lunch and the pickup location but wanted to use the outdoor space just in case people want to enjoy a charcuterie board during nice weather. Considering there is very

little grass on Main Street Ms. Pare asserted she wanted to take the opportunity to use the available grass to her advantage.

After reviewing the application Mr. Land confirmed the establishment will not be a nighttime use of the outdoor seating. Ms. Pare said that is correct.

Mr. Land questioned if the Board can condition upon approval on the limitations considering the biggest problem the Board often faces regarding parking downtown is in the evenings which starts at 6PM to 11PM it is nearly impossible to find parking and in every application with the exception of two the Board has required a valet. If he was going to consider granting relief without a valet service Mr. Land wanted to have specific parameters around that as it would be treated in a different way than generally treating other businesses – simply the desire for consistency.

Atty. Ursillo recommended the best assurance is to have a valet present outside of that or the Board could use as a condition of granting the relief being requested set a time period although it would be better if it was consensual with the Applicant.

Mr. Land asked Ms. Pare if it was acceptable with her to having time limitations around the requested relief such that 100 percent relief from 11AM to 6PM, anytime after 6PM requires a valet service for example.

Ms. Pare said it would be something she is open to although it is not ideal considering the business is fairly new. She pointed out the property owner of 58 Main Street also just recently purchased 16 Main Street which also has multiple parking spaces and has never seen either parking lots filled so she would hate to limit her license in case she holds a special event and/or wants to stay open to 7PM and not be in compliance with a particular license requirement although the intent is to not have a 10PM charcuterie hangout. She simply would not want to limit it entirely going forward but if that is what it will take she was fine with the condition.

With no further questions from Board members Mr. Land opened the hearing to the public. No members from the public to speak in favor or object to the application.

Mr. Land asked for a motion.

Ms. Sceery motion to approve the application as submitted with the condition the parking relief will be granted from 11AM to 7PM (100 percent

parking relief during this time period). If the Applicant decides they want further relief to operate beyond this time period they will have to return to the Zoning Board of Review. Seconded by Ms. Alger.

Mr. Land felt it was a reasonable way to manage the parking issues for a different type of use while not overly burdening the Applicant with a valet service that may be completely unnecessary

VOTE: Mr. Mulhearn: YES, Mr. Golden: YES, Ms. Sceery: YES, Ms. Alger: YES, and Mr. Land: YES (5 – 0 in favor of the motion).

### **Zoning Board of Review Business**

1. Minutes: Review/action on the following sets of minutes:
  - a. October 27, 2020 meeting
  - b. November 24, 2020 meeting
  - c. January 26, 2021 meeting

Motion by Ms. Sceery to approve the October 27, 2020 and November 24, 2020 minutes as drafted. Seconded by Mr. Mulhearn. Approved 6 – 0.

January 26, 2021 minutes tabled to the following month.

Motion to adjourn by Mr. Mulhearn. Seconded by Mr. Golden. Approved 6–0.

Zoning Board of Review meeting adjourned at 8:30 pm.

Minutes respectfully submitted by:

Lea Anthony Hitchen,  
Assistant Town Planner

For more information, please refer to the recording available in the Planning Department.