

**MINUTES OF PUBLIC HEARING
HELD BY THE ZONING BOARD OF APPEALS
LINCOLN CENTER HEARING ROOM
MARCH 25, 2009**

MEMBERS PRESENT: James Stevenson, Chair
Kathleen Maffe, Vice Chair
Albert Gionet, Secretary (recused for application #2397)
Robert Schneider
Mark Connors

ALTERNATES PRESENT: Edward Slegeski
Paul Harnois (sitting for application #2397)
Armando Darna

ALSO PRESENT: James Davis, Zoning Enforcement Officer
Renata Bertotti, Senior Planner
Ginger MacHattie, Recording Secretary

The Chair opened the Public Hearing at 7:00 p.m. The Secretary read the legal notice for the application when the call was made.

FREDERICK J. LEA – application #2395 – request a variance to Article II Section 1.03.05(a) to allow a 10' high fence (6' permitted) at 176 & 176A Gardner Street, Rural Residence zone.

Fred Lea, 176 Gardner Street, explained that he owns the last farm in his neighborhood and one of the last farms in Manchester. He has applied for a grant for critter fence, which has to meet the U.S. Government Standards; there is little leeway in the specifications of the standards. According to studies, this is the type of fence that works. If the Zoning Board of Appeals does not grant his request for a variance he will not receive the grant. His property is overrun with deer and other wildlife and without fencing he stands to lose crops. The farm is his family's business. He has restored the house he lives in and does not want anything installed that will be an eyesore.

In response to some questions from Ms. Maffe, Mr. Lea said his is a produce farm and that he has lived there for ten years. There are 14 – 20 deer that come out at night and eat the crops.

In response to a question from Mr. Gionet, Mr. Lea said that fencing acts as a deterrent to groundhogs. The USDA also suggests running a short strand of electric wire low on the fence to help keep them out.

In response to a question from Mr. Schneider, Mr. Lea explained that he applied for a grant from the Department of Agriculture. If he is chosen to receive the grant, it will pay for 90% of the fence. The grant is for a beginning farmer, described as farming for zero to 10 years, who has had problems with critters. Mr. Lea said he had applied for a permit through the Department of

Environmental Protection for hunting but was denied the permit because he does not have enough land.

In response to some technical questions from Mr. Schneider, Mr. Lea said that the 10' height request is due to a requirement of the grant. The total perimeter will be 1,800'. Studies have shown that deer can jump close to 10' high.

Mr. Stevenson asked if Mr. Lea had any issues with the condition that fencing be made of woven materials since any variance will go with the land. This will prevent other types of fencing in the future. Mr. Lea had no problem with that condition.

Chairman Stevenson invited anyone wishing to speak in favor of or in opposition to the application to come forward.

Barbara Chapman, 9 Cantone Circle, said she is not against the fence and enjoys the farmland near her home. Her main concern is the 10' height, which seems awfully high and she is afraid it will give the appearance of a prison yard. She understands that the height requirement is the only way to get the grant.

Bill Turull, 312 Oakland Street, owns the Garden Center on Oakland Street and has had to call the State regarding major problems with deer even though his center is on a busy street like Oakland. He said that Mr. Lea would not be able to farm without the fencing he is requesting.

Mr. Lea explained that when the developer was proposing the 55+ community adjacent to his property, he had requested a change in buffer materials because the original plan was to surround the property with white pine, which can grow quite tall. This would present a problem because vegetables cannot grow in the shade. The developer amended the plan and changed the buffer to arborvitae, which is a lure for deer. Mr. Lea said he does want good neighbors and he wants to be a good neighbor.

In response to a question from Mr. Connors, Mr. Lea said he has just less than 4.5 acres of land.

Mr. Connors said that without the fencing farming is not an option. He pointed out that the land could be developed and neighbors would be looking at the backs of houses.

Edward Kalowski, 352 Hackmatack Street, said he grew up on Oakland Street in Beechwood Apartments and remembers a lot of deer around the apartment complex. If Mr. Lea needs a 10' fence to farm he believes the Board should grant his request.

Marilyn Stavnitsky, 160 Gardner Street, is Mr. Lea's immediate neighbor and she has absolutely no objections to the fence and she directly faces the proposed fence.

Ms. Bertotti said that Town staff has reviewed the application and the only remaining question is the sightline. When the fence is installed, prior to issuing a Certificate of Occupancy, the Building Department will need to confirm that the fence will not create a sightline issue, she explained.

Mr. Schneider asked if there are any other similar situations in Town where farms need tall fencing such as this. Mr. Davis said there was one farmer that installed fence with barbed wire and electrical fencing.

Mr. Schneider asked if the Board could put a condition on the approval that no other fence could be put up.

Ms. Bertotti suggested it might be safer to grant the request on the merits of what the fence is supposed to do. That way, if there is another type of fence available in the future that looks better or requires less maintenance, it can be installed.

There being no further public comment, the hearing on this item was closed.

CONCORDIA LUTHERAN CHURCH – application #2396 – request a variance to Article II Section 1.00.02(4) to eliminate the required fence along a portion of the north property line at 40 Pitkin Street, Residence A zone.

Michael Dion, 27 Tania Drive, is the Construction Manager for the additions taking place at Concordia. He explained that in the plan approved two years ago there was to be fencing along the northern property line as required in the zoning regulations for buffers. Mr. Dion is requesting that requirement removed. The fencing will disturb parking and snow storage and the neighbors use the church's parking lot for spillover parking. The applicant has approached both property owners and they are in favor of not having a fence. Mr. Dion submitted letters from the Carriage House Condominiums and from the residents of the duplex.

In response to a question from Mr. Schneider, Mr. Dion explained that the evergreen trees delineate property the church sold.

Ms. Bertotti stated there are no outstanding staff comments.

Chairman Stevenson invited anyone wishing to speak in favor of or in opposition to the application to come forward. There being no public comment, the Chairman closed the public hearing on this item.

RICHARD M. EATON – application #2397 – request a variance to Article II Section 4.01.01 to reduce the front yard setback to 12' (25' required) at 584 North Main Street, Residence A zone.

Mr. Gionet recused himself from this application and Mr. Harnois sat in his place.

Richard Eaton, 584 North Main Street, explained that his house was built in the 1800s and sits very close to the road. When the bridge was widened over the Hockanum River, 5' of land was taken and that created even less of setback land to the house. The addition he is requesting would be 12' from the Town line. The original portion of the house is 11' from the line. The Town requested through a letter that he finish siding his house which prompted this application for a variance. He would like to put a new entrance on his house and side the entire building. He will use 5/8 fire rated sheetrock. Mr. Eaton apologized for the amount of time the siding project has taken.

In response to questions from Ms. Maffe, Mr. Eaton said he has been at this address for 18 years. One structure is a garage that was used for band rehearsal. Mr. Eaton said he has not submitted a building application yet, but has submitted a zoning application.

In response to a question from Mr. Schneider, Mr. Eaton said he envisioned this entrance years ago and didn't finish the siding because he was planning to build the entrance.

Mr. Schneider suggested granting the variance with a condition of a time limit to complete the work. Mr. Eaton said he has until May 17 to get the siding done, and then he will apply for a second mortgage, which will provide enough money to complete the rest of the project.

In response to a question from Mr. Schneider, Mr. Eaton said the work would be hired out and siding will be put onto the garage as well.

Ms. Bertotti said there are no outstanding staff comments.

Mr. Davis stated that the existing house is already in the front setback area.

Chairman Stevenson invited anyone wishing to speak in favor of or in opposition to the application to come forward. There being no public comment the hearing on this item was closed.

RISHIMA & PRIYAL, LLC – application #2398 – request a variance to Article IV Section 7.02.02 and to Article IV Section 7.02.03 and Article IV Section 8.06 to change existing use to permit sale of alcoholic liquors under package store permit, at 276 Oakland Street, Residence A zone.

Attorney Barry Botticello represented the applicant, Koresh (Mike) Patel who operates the convenience store at 276 Oakland Street. The applicant purchased the property in December of 2006 and has continued to operate the store while renovating the outside and working on the inside. The renovations have not resulted in an increase in size. The first floor is 3,956 square feet and there is storage in the attic and basement. If the applicant is granted the variance the property will contain a package store (1,800 square feet), a convenience store (1,240 square feet) and a Laundromat (735 square feet). The convenience store currently has a beer permit but a variance is needed to obtain a liquor permit for the package store.

Attorney Botticello explained that his client applied for a variance in 2007 and was denied. After that he applied for a zone change and was denied. That led to the Planning Department undertaking a study of zoning in the area, which generated the Oakland Street Corridor Report. During a neighborhood meeting held in conjunction with the study, the majority of residents in the area felt that the zoning should not be changed. A minority of those present at the meeting were people speaking in support of his client and a package store at 276 Oakland Street. Most people at the neighborhood meeting felt that changing the zoning could result in business development that could change the character of the neighborhood. Attorney Botticello presented a petition signed by 194 people in support of this variance. Granting of the variance would not affect the comprehensive plan of development because Oakland Street is already a major arterial road.

Attorney Botticello noted Mr. Davis' concerns about increased traffic and said he does not expect an increase in traffic. Most people that would patronize the establishments would live in the area or drive on Oakland Street on a daily basis. Attorney Botticello gave examples of similar businesses in Manchester. Oakland Street is already a very busy street. A liquor store at this location would be convenient for the neighbors. Attorney Botticello stated that his client has exhausted every possibility available to make changes to his business and urged the Zoning Board of Appeals to grant this variance.

In response to some questions from Mr. Gionet, Attorney Botticello stated that the whole building is 3,950 square feet. The convenience store will be between 1,240 and 1,250 square feet; the package store will be 1,800 square feet; and the Laundromat will be 735 square feet. The Laundromat will have 16 washers and 13 dryers. Storage for these businesses will be in the attic and basement and all businesses will have separate entrances and walls and entrances to each other inside the establishments.

In response to questions from Mr. Schneider, Attorney Botticello explained that the Laundromat space is "roughed out" and the applicant can put the Laundromat in without approval from the Zoning Board of Appeals.

In response to a question from Ms. Maffe, Attorney Botticello stated that the convenience store currently has a permit for the sale of beer, but will not be selling beer if the liquor store is approved.

In response to a question from Mr. Gionet, Mr. Botticello said that there is a large parking lot at 270 Oakland Street and all spaces need to be striped.

Chairman Stevenson invited anyone wishing to speak in favor of or in opposition to the application to come forward.

Diane Fields, Tudor Lane, has known the owner, Mike, since he took over the store. She said that even if there were cars parked in every parking space on this property it still would not impact traffic on Oakland Street. Ms. Fields has been a resident in the area since 2001 and has known the other owners of this business. Mike has improved the store's appearance and is a responsible owner. He took the property that was an eyesore and improved the appearance.

Bill Turull, 312 Oakland Street, has a business that adjoins the applicant's and spoke in favor of granting the variance. He has lived on Oakland Street his entire life and has seen it change immensely. He believes the traffic situation is due in large part to the multi-family units in the area. There was a package store on Oakland Street at one time. Mr. Turull requests the applicant keep the building and parking area neat and clean.

Ted Bidwell, 112 Baldwin Road, spoke in favor of the applicant. Any small business owner today needs to diversify to survive especially during these tough times. There have been a lot of improvements to the building. Mr. Bidwell stated the owner needs an opportunity to grow his business.

Donna Taylor, Beechwood Apartments, has lived here since 1987 and is in favor of the application. Ms. Taylor does not believe there will be any increase in the amount of traffic and

since there is a lot of families in the area a Laundromat would be helpful, especially if they cannot drive or do not have a vehicle.

Jack Lupinas, Rachel Road, said that it has been nice to come down Oakland Street and see the applicant's building and all the improvements made. Mr. Lupinas stated that he believes the applicant should be given an opportunity for him to better himself since he has invested so much in the improvements. Mr. Lupinas does not believe traffic will increase significantly since it will be just local people using the businesses.

Edward Kalowski, 352 Hackmatack Street, lived at the Beechwood Apartments for 22 years and has seen the changes made to this store. It is in better condition than it has ever been before and it has better products than ever before.

Mr. Davis verified that there would be no doors allowing for access from one unit to another within the building. Mr. Botticello said he does not believe the liquor control would permit that kind of access. Mr. Patel agreed there would be no access between units.

Ms. Bertotti stated that the Town's Traffic Engineer had asked that the parking lot be marked and the applicant has already indicated on the record that the parking spaces will be striped.

Mr. Davis stated that whether or not this variance is approved, in order to obtain a Certificate of Occupancy, the applicant must stripe parking spaces.

In response to a question from Mr. Gionet, Mr. Stevenson explained that the applicant has testified that the package store will be 1,800 square feet; in the approval the Board can state that size as a condition.

There being no further public comment, the Chair closed the public hearing on this application.

CONNECTICUT CVS PHARMACY, LLC – application #2399 – request a variance to Article IV Section 13.06.01.01 to install a 140 sq. ft. building sign on the south side (100 sq. ft. permitted) and a 128 sq. ft. building sign on the east side (100 sq. ft. permitted) of the CVS Pharmacy building at 245 Middle Turnpike West, General Business zone.

Attorney Coleman Levy represented the applicant, Levy Properties, LLC, which is constructing a free standing 12,900 sq. ft. CVS and a free standing 2,268 sq. ft. Dunkin' Donuts. The applicant is seeking an increase in the allowable signage by 40 square feet on the Middle Turnpike side of the building, and by 28 square feet on the Broad Street side of the building. Attorney Levy stated that the zoning regulations are unfair concerning large size signs. The CVS building is 86' from Board Street and 80' from Middle Turnpike; signs are limited to only 100 sq. ft. Three signs are required for the CVS building. One "CVS/Pharmacy" is 90 sq. ft., another advertises "24 hours" and is 25 sq. ft., and a third sign reads "drive through pharmacy" and is 13 square feet. Attorney Levy stated that if the signs were for three different stores, they would be in compliance. The largest sign is still less than 100 square feet. Standard signage for CVS is 180 square feet. The company has used its best efforts to reduce the signage and meet the regulations. If the application is approved, it will be in harmony with the general intent of and not impair the integrity of the regulations. If the application is not approved, it will create a hardship. The variance will have no adverse effect on the character of the neighborhood.

In response to a question from Mr. Schneider, Mr. McCoy of Poyant Signs stated he is responsible for the signs of CVS stores in the northeast and explained the importance of each sign in communicating what the store offers.

In response to a question from Mr. Schneider, Attorney Levy stated that stores in Wethersfield and Hartford were granted the 170-180 square foot signage, and Farmington, which is a smaller store, was granted the 140 square foot signage. Attorney Levy explained that quite a bit of money was spent on this establishment and smaller signs would be out of balance with the size of the building. He stated that the applicant cooperated with the Planning and Zoning Commission in regards to the design of the buildings. The hardship is that the applicant is trying to make first class changes to the shopping center.

Mr. Stevenson asked the applicant why the signs cannot be changed to fit within the 100 square foot regulation. Attorney Levy explained that the signs would be too small. If there were five stores at this location, then 420 square foot of signage would be allowed. Mr. Stevenson responded that there is only one store at this location.

There was further discussion between Mr. Stevenson, Attorney Levy, Mr. Schneider, and Mr. McCoy about the various ways the signs could be reduced and the reasons that would not be plausible because of the CVS Corporation's requirements.

Attorney Levy stated that the issue is the three sq. ft. per linear foot is a hardship. All that his applicant is asking for is 40 square feet, which would make the total amount of signage less than standard for the national company with a national branding image. His applicant has taken an old shopping center and invested \$6 million; he hopes the Board will see the relevance of the request before them.

In response to Mr. Stevenson's question about an electronic message board, Attorney Levy stated that it would not ribbon. All other signage meets the code requirements; the only issues of concern are the 6 signs on the CVS building.

In response to a question from Mr. Harnois, Attorney Levy stated that there will be entrance and exit signs by the street, as permitted by the zoning regulations. Mr. McCoy added that the directional signs are not for advertising; they are for safety.

Ms. Bertotti stated that Town staff has no technical comments. One comment pertained to directional signs but not to the variance. She corrected a statement made earlier by the applicant; the CVS building is 72' from West Middle Turnpike, not 80' as stated earlier.

In response to a question from Mr. Schneider, Mr. Davis stated that there are grocery stores with an abundant amount of signs and that this regulation did not go into effect until 2002.

In response to a question from Mr. Stevenson, Mr. Davis stated that he would have to research the old condition regarding the limited drive through hours for the Dunkin Donuts.

Chairman Stevenson invited anyone wishing to speak in favor of or in opposition to the application to come forward. There being no public comment, the Chair closed the public hearing portion of the meeting at 9:08 p.m.

I certify these minutes were adopted on the following date:

Date

James Stevenson, Chair

**NOTICE: THE CASSETTE TAPE RECORDING OF THIS PUBLIC HEARING CAN
BE HEARD IN THE PLANNING DEPARTMENT.**

OFFICIAL TAPE NO: 506, 507

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