

Moved by Wesley "Skip" Robinson
Seconded by Judy Vennell
Passed unanimously

The Crescent Beach Association Zoning Board of Appeals, having considered the factors pursuant to Section 6 of the Bylaws, Ordinances and Regulations of the Crescent Beach Association and Section 8 of the Connecticut General Statutes, written and oral information provided by the appellants, information received from the public and the Commissioners' knowledge of the area finds:

- 1) the subject property is an irregular "V" shaped property situated at the easterly intersection of Bay View and Ocean Avenues and slopes downward in a direction generally from north to south;
- 2) the subject property originally comprised three separate parcels of land as identified and described in warranty deed from Letender et. al. to Kasey, Inc. recorded at Vol. 175, Page 326 Town of East Lyme land Records, and as shown on a map entitled "PLAN OF BUILDING LOTS AT WHITE BEACH OWNED BY THE BAPTIST SEA-SIDE RESORT ASSOCIATION AND OTHERS, DATED 1895 AND PREPARED BY C.E. CHANDLER, NORWICH, CONNECTICUT;
- 3) a multi-tenant structure currently exists on the subject property and is presently used as a seasonally restricted boarding house A/K/A "The Elms Hotel";
- 4) The Elms Hotel offers approximately 28 rooms for rent in season and 15 rooms in off season as a result of a Settlement Agreement with the Crescent Beach Association;
- 5) an adequate number of parking spaces is not provided for The Elms Hotel guests which causes hotel guests to park their vehicles on surrounding neighborhood streets thereby depriving neighborhood residents and guests of street parking in their neighborhoods;
- 6) the territory of Crescent Beach is designated as a residential district permitting a single family dwelling structure per lot use;
- 7) "The Elms Hotel" is an existing non-conforming structure and nonconforming use in the Crescent Beach territory single family residential district;
- 8) Applicants propose to raze the existing non-conforming structure erected on the subject property;
- 9) Applicants propose to reconfigure the resulting vacant property into three (3) building lots designated as Lot 1, Lot 2 and Lot 3 as shown on the map titled DATA ACCUMULATION PLAN PREPARED FOR ROBERT BARBARO, by J. Robert Pfanner & Associates, dated December 27, 2013;
- 10) Lot 1 is a corner lot as defined in the CBA Zoning Regulations as is represented to be 6,814 square feet in area; Lot 2 fronts on Ocean Avenue and is represented to be 4,389 square feet in area; Lot 3 fronts on Bayview Avenue and is represented to be 4,961 square feet in area.

11) the respective area of Lots 1, 2 and 3 do not meet the 7,500 square foot requirement of section 2.4.1 of the CBA Zoning Regulations;

12) the frontage of Lot 3 is represented to be 50 feet;

13) the frontage of Lot 3 does not meet the 75 foot frontage requirement of section 2.4.2 of the CBA Zoning Regulations;

14) Applicants submit that providing a 75 foot frontage on Lot 3 would create a lot that is triangular in shape with the center of the lot where a dwelling structure would be located having a significant right-to-left elevation change. Applicants submit the proposed configuration plot plan for Lots 1, 2 and 3 create more traditional shaped lot forms and addresses the elevation issue of Lot 3 with a 75 foot frontage in a prudent manner. The configuration of Lot 3 with a 75 foot frontage would create an unusual hardship beyond the control of the Applicants.

14) the proposed Lot 3, 50 foot frontage on Bayview Avenue is consistent with the 50 foot or less frontage of existing lots along Bayview Avenue as shown on the Town of East Lyme Assessor's Map 11.4;

15) the area of Lots 1, 2 and 3 approximate the area of the lots in the Crescent Beach territory, typically 5,000 square feet or less as shown on Assessor's Map 11.4, 8.1 and 8.2, and consistent with the lots along Bayview Avenue; there is precedent from this Board to grant variance(s) in the territory of Crescent Beach for lots having 5,000 square feet or less.

16) the rear set back on Lot 1 is represented to be 7 feet between the proposed garage and the rear property line;

17) the rear set back on Lot 3 between the proposed garage and the rear property line does not meet the 10 foot set back requirement of section 2.4.3 and 2.4.4 of the CBA Zoning Regulations; It appears from the proposed plot plan of Lot 3 that there is sufficient room to reconfigure the proposed house and proposed garage to meet the required 10 foot rear set back requirement and therefore denies the request for a 7 foot setback;

18) Lots 1, 2, and 3 are represented to provide off street parking;

19) Section 5 of the CBA Zoning Regulations empowers the CBA Zoning Board of Appeals to grant special exceptions subject to such reasonable conditions, restrictions and safeguards as may be deemed necessary by the Board for the purpose of protecting the health, safety, and general welfare of the community.

20) The Connecticut Case Law recognizes that "nonconforming uses should be abolished or reduced to conformity as quickly as the fair interest of the parties will permit---[in] no case should they be allowed to increase." "The accepted method of accomplishing the ultimate object is that, while the alien use is permitted to continue until some change is made or contemplated, thereupon, so far as is expedient, advantage is taken of this fact to compel a lessening or suppression of the nonconformity".

21) The Connecticut Case Law also recognizes in cases in which an extreme hardship has not been established, the reduction of a nonconforming use to a less offensive prohibited use may constitute an independent ground for granting a variance, “[t]hat a variance will eliminate a nonconforming use constitutes independent grounds for sustaining the granting of a variance.”

22) Applicants proposal to reconfigure the subject property into 3 (three) lots with conforming use single family residential structures eliminates the existing nonconforming structure and nonconforming use of the subject property is consistent with the surrounding neighborhood and furthers the purpose of the CBA Regulations of protecting the health, safety and general welfare of the Crescent Beach community.

Therefore for at least the above reasoning and other information of record, the Appeal #14-01 of Jude T. Cleary, 25-27 Ocean Avenue, Niantic, CT 06357 and Robert Barbaro, 10 Pickett Avenue, Wallingford, CT 06492, request for variance of Sections 2.4.1 and 2.4.2 of the Crescent Beach Association Zoning Regulations for property on Assessor’s Map No. 11.4, Lot 219, on 25-27 Ocean Avenue, Niantic, CT is granted in part as to the 3 (three) lot configuration for the subject property and denied in part as to the 7 (seven) foot rear setback on Lot 1 with the following stipulations;

- 1) The applicants return to the Board for review of the proposed structures to be built upon the proposed Lots 1, 2 and 3.
- 2) The height of the proposed structures on Lots 1, 2 and 3 do not exceed the height of the existing nonconforming structure that is to be razed, and to preserve visual water views of neighboring residences to the extent that such visual water views may currently exist.
- 3) Trees, shrubs and other decorative plantings be selected to be low growing to preserve visual water views of neighboring residences to the extent that such visual water views may currently exist.