

**ZONING BOARDS OF APPEALS
NOVEMBER 30, 2010
PUBLIC HEARING**

Charles Marino called the meeting to order at 6:30 P.M. with the following in attendance:

Charles Marino, Chair	Steven S. Macary, ZEO
Arlene Schwartz-Regan, Vice-Chair	Sheryl Kimiecik, Secretary
Basiliza MacCalmon, Secretary	Public – 12
Edward Rachuba	
David Cronin, Alternate	

1. Charles Marino took attendance, appointed David Cronin as a regular voting member and noted there was a quorum.
2. **VOTED:** Unanimously on a motion by Arlene Schwartz-Regan and seconded by Basilza MacCalmon to approve the October 26, 2010 meeting minutes with corrections.
3. **PUBLIC HEARING APPEAL # 1938** – Kevin Ploski seeks a variance of section 44 alcoholic beverages 44.1.3 of the Naugatuck Zoning Regulations for a package store for property located at 5 Meadow St.

Charles Marino read the public notice into the record. Basilza MacCalmon read Appeal # 1938 into the record. Steve Macary noted that the application was complete. Kevin Ploski of 17A Terry Rd, Prospect Ct., submitted a letter to the Commission requesting a variance and read it into the record. Charles Marino asked if any other business would be in that location. Dennis Marchetti, 12 Hine St., Seymour Ct., property owner of 5 Meadow St., said that there would only be a couple of offices upstairs. He said that he thought the business would compliment the area. Charles commented that it looks like there are three doors. Mr. Marchetti said that there would be a double door and a single door so that there would be access from two different locations, and there would be a side door to service the upstairs.

Charles Marino asked for public comment.

Maria Paiva, owner of Paivas Liquors, 161 Rubber Ave, Naugatuck, said she is within 1500 ft. of 5 Meadow St. and she strongly opposed Appeal #1938. Roger Paiva, son of Maria Paiva, said that there are already a number of businesses where alcoholic beverages are stored, sold, or exchanged for consumption within 500 ft according to section 44.1.1 (of the regulations). He added that there are nine liquor stores in Naugatuck that are all along the main corridors, and he asked how many more liquor stores Naugatuck could support. He said that there are two elementary schools within walking distance from this location such as Salem Elementary School and St. Francis Elementary School as well as a play ground. Mr. Macary replied that Salem School doesn't apply because it is Borough owned property and it was measured and is out of the distance as well as St. Francis. He also said that the restaurants that were mentioned are for people to go in and sit down and have a drink, and this is just to buy and go home. Salvatore Bosco, 119 Krodell Rd., said that he has been a resident for 71 years and spoke in favor of the Appeal. He said regarding the fact that there are a great many foreclosures and many people not paying taxes in town that it would spur up some more business. Attorney Richard Smith, 25 Old Rt. 37, New Fairfield Ct. representing Rosa LLC who owns and operates Mt. View Plaza Wines and Liquor located at 727 Rubber

Ave, opposed the Appeal. He submitted a memorandum to the Commission and said that in order to grant a variance a hardship must be found and there is no hardship that has been presented this evening. He said that the courts have dealt with this issue on a number of cases and whether it is proper to grant a variance just because the restriction the town has imposed in terms of having one liquor store within a certain distance of another you still have to find a hardship and financial burden or financial loss doesn't apply and doesn't allow the board to grant a variance based on that. Self help or self imposed hardship is not a reason. Personal difficulties with the property or personal consequences, no matter how compelling they may be, are not relevant in terms of granting a variance. He said that the only factor important for this board is whether this particular property really has no other use as a result of that, a variance is warranted. He cited some of the quotes from the memorandum. He said that if there are other uses as there are in this situation then a variance should not be granted, and for all those reasons and those set forth in the memorandum, there is no justification for a variance to be granted. Steve Macary asked the Commission to take a couple of minutes to read over the memorandum. Kevin Ploski said that the regulations were not written to restrict competition, and the Lawyer (Mr. Smith) represents a liquor store that's not even close to this location, his own concern is not about distance. These regulations were written a long time ago to prevent clusters in downtown areas. He said that also in the past this variance has been granted because there are other stores in town that exist within the 1500 ft rule without any hindrance or unnecessary problems from them coexisting together. He gave D & D as an example, when it was on the corner of North Main and City Hill and it was granted a variance to move to Big Y. Richard Smith said that a financial gain or loss is not a relevant consideration in granting a variance, and the fact that this Board has granted other variances in similar situations is also not relevant, reason being that a variance applies only to that particular property. Edward Rachuba said that the 1500 ft rule on liquor stores shouldn't be followed, and that as far as location to other liquor stores it is not on the same street. He said he thinks it is stifling competition and the only time it should be followed is if bars are next to schools. Arlene asked how long this regulation has been on the books. Steve replied that it was probably in the Charter back in 1958. Arlene said that she has been reading that they want to change it. Steve said that the Zoning Commission is in the process of rewriting the regulations and amending this. Arlene said that this regulation is the hardship and that it is archaic. Charles Marino said that it is a hardship because anyone would be hard pressed to open up an establishment serving alcohol without being 3, 5, or 1500 ft of another one, and Naugatuck needs to start going into the 21st century. David Cronin said that the liquor stores have to stay within competitive price. He said that he likes the off street parking with this and it will improve cosmetics of Meadow St. along with bringing in a tax base. He said that he read in the paper that the State of Connecticut is going to lower distance between establishments. Charles Marino said that it looks like one way or another in 2011 that Naugatuck will com into the 21st century with downtown Naugatuck starting to be redeveloped and there is going to be more competition. He said that rather than to deny this application only to have it overturned sometime during the summer of 2011 that the ZBA should open that door to the Planning Commission. He said that he didn't think the Board should give the appearance that it wants to hold back what Naugatuck wants to do downtown. Arlene said that she sticks with her thought that the hardship is that the regulations are archaic. Richard Smith said that the regulation in and of itself can't be a hardship and for tonight's hearing there has been no evidence presented that there is a hardship to this property other than the fact that it could create more competition. He said that the books are filled with cases just like this all of which have said that it is not a hardship and he asked that the Board to deny the application. Arlene said that she stands corrected

from a legal point of view. Edward Rachuba said that we are talking about two different things here and you really can't have a physical hardship in this kind of case when you have someone trying to open a business which fits all of the zoning regulations except for the 1500 ft. rule which is very old and will take competition away. He said you can open any other kind of business and why should there be a problem with a package store when you can take the product home with you and he thinks the hardship is the regulation itself. Richard Smith said that it raises a lot of questions as in other cases and the regulations cannot be a hardship and it may be something Naugatuck wants in the future but that's a different hearing.

VOTED: Unanimously on a motion by Edward Rachuba and seconded by David Cronin to grant Appeal # 1938.

4. PUBLIC HEARING APPEAL #1939 – Holly Yenkelun of 152 Scott St. will seek a variance of section 43.6 of the Naugatuck Zoning Regulations, to sell approximately 5000 square feet of property to a neighbor.

Charles Marino said that the Appeal will be tabled until December 28, 2010 at 6:30 P.M. Basilza read an email from Attorney Zehnder asking to continue the variance application until next month.

5. PUBLIC HEARING APPEAL # 1940 – Jason M. Dasilva, of 91 Andrew Mountain Rd., will seek a variance of section 24.1, 5.2, 5.3 and section 43.6.0, of the Naugatuck Zoning Regulations. Basilza read Appeal # 1940 into the record. Edward Rachuba recused himself from this application. Charles Marino said that the application is really incomplete. He said that it doesn't say what they are planning to do. Steve submitted a map and application information to the Commission. Commission Chair Charles Marino called a ten minute recess at 7:14 P.M.

Commission Chair Charles Marino called the meeting back to order at 7:18 P.M.

Steve said that these lots were built prior to the zoning regulations coming into effect. He said that there are four or five lots in a row that are all under the 30,000 sq feet and every lot out there does not need set backs. Zoning came in and changed it to an R30 zone, put some set backs in and made the property non-conforming. Al Janeiro, of Custom Drawings, representing Jason DaSilva, said that the zone line itself crosses the property very close to the front of the property. He said that it is registered in the Assessors Office as an R30 and explained the variance they are going for. Steve explained that the rear setback is going to be 3 ft, a 27 ft variance, and on the sides 20 ft are needed, and the only thing that they don't have is the rear setback. He said that the lot was created prior to the zoning regulations and are not concerned about the frontage. He said that they are basically going for a rear setback variance of 27 ft.

Charles Marino asked what is in the back. Al Janeiro replied that it is all woods.

Public Comment:

Barb Kidel, 103 Andrew Mountain Rd, said that she doesn't understand the side lines. Steve explained that the set backs. Barb asked if a surveyor could come. Steve said that the applicant would have to submit an A2 survey of the property. Barb asked if she could have a survey so that she could at least know her property lines. Steve said that he can't make them pin the property. He said that they are not encroaching on her land. He offered to go out and walk it through with her and give a rough idea. Barb said that would be great. Charles Marino said that ZBA is not supposed to take

a piece of property that is non conforming and make it more non conforming, so there is a piece of property that is non conforming and the applicant is coming forward with a proposal of an addition that is conforming, so how does that effect us. Steve replied that under section 41 it says that you can take a piece of non conforming property and make it conform but you cannot add to the non conforming structure. He said the property is non conforming because the borough made it that way in 1958 with the zoning regulations. He said that the addition they are putting on is conforming except for the rear because he needs a 27 ft. variance. Steve said that there is a second scenario and ask Mr. Janeiro to explain. Al Janeiro said that Mr. Dasilva is willing to sell some of the property to his son to make it conforming.

VOTED: Unanimously on a motion by David Cronin and seconded by Basilza MacCalmon to Grant Appeal # 1940.

7. There were no additional items added to the agenda.
8. **VOTED:** On a motion by David Cronin and seconded by Edward Rachuba to adjourn the meeting at 7:40 P.M.

RESPECTFULLY SUBMITTED: Basiliza MacCalmon, Secretary/sk