

**TOWN OF KENT
ZONING BOARD OF APPEALS**
41 Kent Green Boulevard
P.O. Box 678
Kent, CT 06757

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2016 APR 18 A 9 50

BY *Donna Hayes*
TOWN CLERK

APRIL 12, 2016 REGULAR MEETING MINUTES

The Town of Kent Zoning Board of Appeals held a regular meeting on April 12, 2016 at 7:00 p.m. in the Kent Town Hall.

1) Call to Order and Roll Call

Mr. DiPentima called the meeting to order at 7:00 p.m.

Board Members Present: Anthony DiPentima, Chairman; Anne Bisenius, Nick Downes, Edward Hoffman, Daniel Murray, John Noneman, Mike VanValkenburg

Staff Present: Donna Hayes, Secretary/Clerk

2) Appointment of Alternates(s) to Voting Status.

Mr. DiPentima elevated Ms. Bisenius and Mr. Noneman to voting status.

3) Acceptance or Revision of Agenda

Ms. Bisenius moved to accept the agenda as filed. Mr. Hoffman seconded and the motion carried unanimously.

4) Reading and Approval of Regular Meeting Minutes of December 8, 2015.

Mr. VanValkenburg moved to approve the Regular Meeting Minutes of December 8, 2015, as written. Mr. Downes seconded and the motion carried unanimously.

5) Recess Meeting. Convene Hearing:

The meeting recessed and the hearing convened at 7:02 p.m.

5.1. Application #01-16, Kent Coffee for Kevin Hart & Quarter Mile Co., LLC, 45 North Main Street, relief from sections 18.4.2., 18.4.3., 17.6.4 and 17.6.5.a., Map 19 Block 15 Lot 14.

Ms. Sharon Songal presented the application to the Board. She explained that she had applied to the Planning & Zoning Commission for a change of use for the Bank of America bank from financial institution to bakeries, delicatessens, ice cream parlors, coffee shops and similar floor retail and serving establishments. During that review, the Commission noted that the change of use would warrant compliance with the new zoning regulations. Due to the age of the building, it would not be possible to be in compliance with the regulations as they are now written. The Commission approved the change of use with the condition that a variance be obtained.

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Ms. Hayes explained that the current building does not meet the current regulations with regard to buffer areas around the building and along the driveway on the northerly side of the building and screening of those areas to any residential properties.

Mr. DiPentima asked if it would be possible to add screening along the northern border of the building and Ms. Songal replied that there is no room.

Mr. Hoffman commented that there is a change of use to the building, but that change only affects the interior of the building; there would be no change to the footprint or exterior of the building.

Mr. DiPentima asked why a strict adherence to the regulations is required when the applicant is not expanding a non-conforming use.

Mr. VanValkenburg asked if we had heard back from the adjoining landowners. Ms. Hayes replied that she had not received any information back and Ms. Songal added that the neighbor to the north, Ms. Ackerman, had received her letter and had no comments.

Mr. DiPentima asked if the Planning & Zoning Commission had added any caveats to the approval and Ms. Hayes replied that it was a straight approval.

5.2. Application #02-16, Daniel and Darcy Frisch, 0 Kent Hollow Road, relief from Section 14.4.1, non-conforming structure, Map 16 Block 24 Lot 14.

Mr. Jared Stein was present to address the Board. Ms. Hayes gave Mr. DiPentima an email from the property owners which he then read into the record.

Mr. Stein explained that the variance was for a 4' addition to the back of the garage to store mechanical equipment needed to convert the storage/loft area of the garage into living quarters. It would also provide storage for cars and a boat owned by the property owners which could not be stored at the main house across the street.

Ms. Hayes explained that there had been a lot line revision approved for this lot in order to install the septic system needed to convert the garage to living quarters. She asked Mr. Stein why it was necessary to add a three story 4' addition to the back of the house. Mr. Stein replied that when they renovated the main house across the street, they did not include any basement area because of the wetlands. This eliminated any storage capabilities at the main house.

Mr. DiPentima asked what the hardship was. He explained that in order to approve a variance, there must be a hardship. He said that he understands that if it wasn't for the historical non-conformity of the building, the applicant would not be before them and that they were not asking for relief from the front yard setback. Mr. DiPentima also commented that the expansion would only be happening in the rear of the building.

Mr. Hoffman noted that there was another barn on the property across the street.

Mr. Downes stated that he sees the hardship. Mr. DiPentima then read the following from the 6th Edition of the *Connecticut Zoning Boards of Appeal*: "A local Zoning Board has the power to grant a variance under General Statutes 8-6(3) where two basic conditions are satisfied: (1) the variance must be shown not to affect substantially the comprehensive plan, and (2) adherence to the strict letter of the zoning ordinance must be shown to cause unusual hardship, unnecessary to carrying out of the general purpose of the zoning plan." Mr. Hoffman said that he was having a hard time understanding what the hardship is. Mr. DiPentima agreed. Mr. Stein said that he was having trouble with it also and would assume it would be lack of space. Mr. DiPentima asked Mr. Stein what he

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thought would happen if the variance was not granted. Mr. Stein said that he did not know. Mr. Hoffman commented that there is enough property to add a garage or another structure on the other side of the street. Mr. Stein said that there are a lot of wetlands and steep slopes on that property. Ms. Bisenius commented that they should be not looking at this as one parcel since they are two separate lots.

Mr. VanValkenburg said that he considers this pre-existing non-conforming and the current condition does not work for the homeowner. He continued that the Board has granted variances similar to this in the past. Mr. Murray said that there was no way for the building to be moved and that he does not find the addition excessive. Ms. Bisenius commented that the goal of the Board is to move toward no non-conformities and that it seems to her that they are moving in the opposite direction and that she finds no compelling reason to approve the application. It was noted that this has been done in the past to which Ms. Bisenius replied that they were compelling issues. Mr. Murray said that the addition would be in the rear and Ms. Bisenius asked why does it have to be larger. Mr. Murray replied that he did not know. Ms. Bisenius said that she was playing devil's advocate and that if the structure is not habitable as it is, she could understand the need for the addition. Her recommendation was that the application be tabled and that the owner appear before them with a clearer hardship.

Mr. DiPentima pointed out that the non-conformity in the front of the property and not in the rear and that the owner purchased property in the rear of the building to help bring the structure into conformity. Ms. Bisenius said that she agreed that the addition would not be injurious but still does not agree with the hardship. The application lists their wishes ... not their hardship.

6) Close Hearing. Brief Recess

The hearing closed at 7:36 p.m. There was no brief recess.

7) Reconvene Meeting. Action on Appeal(s) Heard

The meeting reconvened at 7:36 p.m.

Mr. DiPentima moved to approve Application #01-16, Kent Coffee for Kevin Hart & Quarter Mile Co., LLC, 45 North Main Street, relief from sections 18.4.2., 18.4.3., 17.6.4 and 17.6.5.a., Map 19 Block 15 Lot 14 as there will be no structural changes. Mr. VanValkenburg seconded and the motion carried unanimously.

Mr. VanValkenburg moved to approve Application #02-16, Daniel and Darcy Frisch, 0 Kent Hollow Road, relief from Section 14.4.1, non-conforming structure, Map 16 Block 24 Lot 14. Ms. Bisenius seconded.

During discussion Mr. VanValkenburg said that he considers this application pre-existing, non-conforming and that the Board has approved similar applications and used Treasure Hill as the most recent example. He continued that this application was not that much different. He continued by saying that he would be more concerned about sleeping 7' from the highway. Mr. Downes asked if convenience and common sense could be a hardship. Mr. VanValkenburg said that the current configuration of the structure does not work for the landowner. Mr. Downes agreed. Ms. Bisenius agreed but according to the regulations, the Board must be presented with a compelling hardship to increase the non-conformity. Mr. DiPentima said that the Board approved an application on Cobble Lane where the Town had to adjust the road. Mr. VanValkenburg said that a variance was granted to the small house on Route 341 where the homeowner added a second story. Mr. DiPentima said that the addition would not affect anyone and would not affect the character of the neighborhood but would want a lot more substance on the hardship. Mr. Hoffman suggested that the applicant should come back and explain what the hardship was. Both Ms. Bisenius and Mr. DiPentima agreed.

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Mr. DiPentima asked Mr. Stein if he understood what the Board was looking for. The Board then gave Mr. Stein some additional information that would explain what information was required by the applicant. Mr. DiPentima further explained that the hardship cannot be personal in nature and that the Board needs objective criteria.

Ms. Bisenius said that she is not opposed to the concept but does not feel that a true hardship has been established.

Mr. VanValkenburg withdraw his motion.

Ms. Bisenius moved to continue Application #02-16, Daniel and Darcy Frisch, 0 Kent Hollow Road, relief from Section 14.4.1, non-conforming structure, Map 16 Block 24 Lot 14 to allow Mr. Frisch to provide the Board with his explanation of the hardship. Mr. DiPentima seconded and the motion carried unanimously.

8) Old Business

No action taken.

9) New Business

No action taken.

10) Communications

10.1. Financial update – July – February, 2016.

No action taken.

10.2. *Connecticut Federation of Planning and Zoning Agencies Quarterly Newsletter*, Winter 2016

Mr. DiPentima referred the Board to an article on the front page of the newsletter entitled “Disappointment Does Not Equal Hardship”. He said that this applied to one of the applications discussed at this meeting. Mr. DiPentima said that the Board should read these carefully as they provide very important information.

10.3. Resignation of Susan West, Alternate

Mr. DiPentima accepted the resignation of Susan West due to medical issues and asked Ms. Hayes to contact the Board of Selectmen about appointing a replacement.

11) **Executive Session. Pending Litigation: Mauri v Town of Kent, Docket No. LLI-CV-14-6009906-S in Litchfield Superior Court. Discussion of strategy and negotiations with legal counsel.**

Mr. DiPentima moved to go into Executive Session. Pending Litigation: Mauri v Town of Kent, Docket No. LLI-CV-14-6009906-S in Litchfield Superior Court. Discussion of strategy and negotiations with legal counsel at 7:49 p.m. Mr. Hoffman seconded and the motion carried unanimously.

The Board came out of Executive Session at 8:09 pm.

12) Open session involving discussion and possible action.

No action taken.

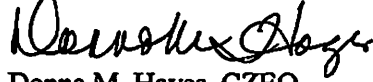
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13) Adjourn

Ms. Bisenius moved to adjourn at 8:10 p.m. Mr. Noneman seconded and the motion carried unanimously.

Respectfully submitted,



Donna M. Hayes, CZEO
Secretary/Clerk

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