

PLANNING AND ZONING BOARD MINUTES FOR MEETING HELD TUESDAY 5 MARCH 2024, 7:00 PM

The meeting of the Planning and Zoning Board came to order at 7:00p.m.

A. PLEDGE OF ALLEGIANCE AND MOMENT OF SILENCE

B. ROLL CALL

Members Present: J. Agnese, B. Anderson, J. Alling, E. Hirsch, B. Kaligian, M. Macchio, J. Quish, R. Satti, M. Zahariades

Not Present: J. Mortimer

Staff: D. Sulkis, City Planner; M. Greene, Rec. Sec'y

Chairman Quish opened the meeting, saying he would move the 277 West Avenue application ahead of 104 Edgewater as a courtesy in anticipation of public comment on the latter.

C. NEW BUSINESS

VOTE BY MAY 9, 2024

69 Melba Street (Zone R-5) Petition of Anthony Denorfia for a Coastal Site Plan Review to construct a single-family dwelling on Map 29, Block 587, Parcel 24, of which Deborah Denorfia is the owner.

Mr. Denorfia, Southington, addressed the board. He said the single-family house on the lot was originally built as a summer cottage and winterized. He described the lot and its proximity to the seawall. He said he wanted to meet all zoning regulations and would not require variances. He described drainage on the lot and stressed that all departmental approvals were given. He said his engineer, Jim Sakonchick, PE, was present for questions.

Mr. Sulkis read his administrative summary which was consistent with the presentation with no adverse coastal impacts anticipated. He said the house plan must be updated to comply with Building Code.

Chairman Quish asked for a motion.

Mr. Satti moved to approve as presented the petition of Anthony Denorfia for a Coastal Site Plan Review to construct a single-family dwelling on Map 29, Block 587, Parcel 24, of which Deborah Denorfia is the owner.

Second: Mr. Hirsch seconded.

Discussion: None.

Vote: Motion carried unanimously.

D. PUBLIC HEARINGS

CLOSE BY MAY 9, 2024; VOTE BY JUNE 13, 2024

277 West Avenue (Zone R-12.5) Petition of Thomas Lynch, Esq. for Re-Subdivision to create a second building lot at Map 032, Block 336, Parcel 8, of which Custom Homes and Improvements, LLC is the owner.

Attorney Lynch thanked the board for rearranging agenda and introduced his client. He said the lot was the remaining parcel from a 1961 subdivision and that the proposed re-subdivision would essentially divide the lot. He said the existing house was built around 1920 and will be remodeled, with a new 2400 sf colonial planned for the new lot. He said the plan was zoning compliant and described the orientation of utilities for the new house. He said all departments have provided approvals with the original plan reflecting changes required by the City Engineer. He said stormwater calculations for entire property were to come. He said he anticipated that an approval motion would be subject to acceptance of the final plan by City Engineer Greg Pidluski. He said he would submit an appraisal prior to filing the map on land records to calculate the required 10% contribution to the city's Open Space fund.

Mr. Sulkis said all re-subdivisions must be approved by the Planning and Zoning Board. Prior to reading his summary, Mr. Sulkis spoke to Attorney Lynch directly to advise that he (Mr. Sulkis) forgot to document that under the subdivision regulations, all utilities must be placed underground. **Attorney Lynch** agreed to modify the plan so that the electrical service will be placed underground, saying it should be made a condition of approval. **Mr. Sulkis** then read his administrative summary which was consistent with the presentation. He advised that any approval be conditioned on the City Engineer's letter of 3/1/24.

Mr. Satti asked Mr. Sulkis to explain the fee-in-lieu-of-Open-Space (OS) process for the benefit of new board members. **Attorney Lynch** said that under the Subdivision Regulations, an applicant must dedicate an area of 10% as usable OS for public recreation. In lieu of that, particularly when the subdivision area is small, the regulations also allow an applicant to contribute to the city's OS fund, 10% of the value of the land divided from the property.

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Chairman Quish opened the meeting to public comment; seeing none, he closed the hearing and asked for a motion.

Mr. Satti moved to approve with the following modifications the petition of Thomas Lynch, Esq. for Re-Subdivision to create a second building lot at Map 032, Block 336, Parcel 8, of which Custom Homes and Improvements, LLC is the owner.

Conditions of Approval:

- 1) The applicant shall make a payment in-lieu-of an open space donation.
- 2) The applicant shall submit a stormwater drainage plan that is satisfactory to the City Engineer.
- 3) Electrical utilities shall be installed underground (*added to motion with Mr. Satti's approval*)

Second: Mr. Zahariades seconded.

Discussion: None.

Vote: Motion carried with Messrs. Agnese, Anderson, Alling, Hirsch, Kaligian, Quish, R. Satti, and Zahariades voting with the motion and **Mr. Macchio** voting against the motion.

CLOSE BY APRIL 25, 2024; VOTE BY MAY 30, 2024

104 Edgewater Place (Zone R-12.5) Petition of Kevin Curseaden, Esq. for a Coastal Site Plan Review to construct a single-family dwelling on Map 045, Block 513, Parcel 39, of which Brenton C. Artz is the owner.

Attorney Curseaden, 3 Lafayette Street, addressed the board and introduced architect John Wicko, professional engineer Ron Wassmer, and soil scientist Alexander Wojtkowiak (Wm Kenny Assoc). He said his client, Mr. Artz, couldn't attend. He said he would address the legal issues of the application and Messrs. Wassmer and Wicko would review the project plans. Attorney Curseaden said he began exploratory work on the project in the spring of 2023 and proceeded with an application to the Inland Wetlands Agency (IWA). He noted the frequency with which the board reviewed Coastal Area Management (CAM) applications, then reviewed the history of the property. He said a subdivision map created the property prior to the instantiation of Milford's 1929 subdivision regulations and that the lot is considered legal preexisting nonconforming. He stressed that what is important is how Milford has regulated legal, non-conforming structures. He noted that Attorneys Green and Laske had described the lot as 5 undersized subdivision lots, but Milford doesn't treat old subdivision lots that way. He said a map was filed showing the property as one lot as of 2004 and noted that lots can be merged under both the current and previous versions of the Milford Zoning Regulations' (MZR's) merger regulation 6.4.2. He said his client purchased the property around 2004-06 and obtained building permits for a 3-season gazebo constructed across 4 of the 5 lots, thereby merging them into one lot per Milford regulations at that time. He said he reviewed the status of the lot with Mr. Sulkis prior to assembling the design professional team, and Mr. Sulkis agreed that it was a legal building lot. He said the argument made by Attorney Green against the legality of the lot was comparable to a requirement for lot certification. He further referenced Map AB2927, dated 2004, as well as an April 2022 board approval of an application for 94 Edgewater which he felt set a precedent. He said both applications were treated in a manner consistent with how Milford interprets the regulations. He said he has done all due diligence in considering requirements made by the City Engineer, CT DEEP (John Gaucher), City Planner Sulkis, and Zoning Enforcement Officer Stephen Harris. He said he saw no evidence presented about claims of degrading scenic views and vistas and natural erosion patterns, and that he interpreted such views as being available to the public such as Charles Island, not as part of a residential lot. He cited case law regarding developed harbors because it is not pristine. He said all submitted photographs depict a fully developed harbor with fishing, single family homes, and Spencer's Marina. He said there is no storm water treatment on the current property and the structure is not FEMA-compliant, whereas the house will have both these features. He said the City Engineer had found the plan to be compliant and filed 4 reports, where he reviewed and approved it. He said an address has been assigned to the property since June of 2004. He said that IWA, zoning, and building permits were issued for the driveway and cabana. He said the original lots might have been intended for use as docks, but this doesn't preclude a change of use—several of the lots could have been combined to build a house. He stressed that all houses in the subdivision were built on several combined lots. He said an argument by Attorney Green seemed meant to keep the property in a permanent state of 5 small lots, but zoning rules at the local and state level encourage movement toward creating a more conforming lot. He said that because this plan was not for a re-subdivision, the resulting lot doesn't have to conform. He said the intent is to build a single-family house in a single-family zoned neighborhood. He said that single-family homes are usually exempt from CAM review except within a certain distance of a coastal resource. He said the obligation of the board is to determine whether it complies with the zoning regulations and the CAM requirements. He said CAMs are not normally public hearings, but this one was made so. He said no variances were required and no adverse impacts were demonstrated. He said referral had been made to the Milford Harbor Management Commission (HMC), which is not part of the CAM statute, but part of another statute to see if the proposal is consistent with the Harbor Management Plan. He said the application had been forwarded for review by the HMC, whose next meeting is 3/21. He said he anticipated a favorable review as the project is not inconsistent with Harbor Management Plan. He asked the board for questions.

Mr. Satti confirmed with Attorney Curseaden that the application was finalized prior to its first hearing on 2/6 and that materials filed since then are in response to Attorney Green. Mr. Satti asked for clarification of continuances which Mr. Sulkis and Attorney

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Curseaden provided. **Mr. Sulkis** stressed that the public hearing was opened at the last meeting. **Mr. Satti** asked for further details on the involvement of HMC and Attorney Curseaden's interpretation of the board's responsibilities when reviewing CAM applications. Additional discussion centered on 30 Edgewater Place, which Mr. Wassmer later attested was not part of the original subdivision.

Ron Wassmer, PE, 158 Research Dr., continued the presentation, saying he was the land surveyor and site engineer for stormwater management, erosion control, and the CAM application. He read most of the CAM application into the record and provided details on stormwater management, infiltration to remove pollutants, and flood resilience, saying that best practices were used and that the plan was developed in collaboration with municipal and state government. He said it has little potential for erosion or sedimentation and poses little risk to wildlife or tidal wetlands. He said he foresaw little to no impact on air, water, or other natural resources from the project. He stressed that the IWA reviewed and approved the plan, including the stormwater treatment and erosion plan. He noted that the City Engineer reports and recommendations are part of the file. He noted that Milford's City Engineer was part of the team that updated the statewide stormwater plan.

John Wicko, architect, 58 Prospect, reviewed plans for the proposed house. He said existing structures on site will be removed with the wooden retaining wall, gravel drive, and wood fence to be retained. He said the building footprint meets all setbacks, that the mechanicals will be elevated, and that lot and building coverage requirements were also met. He reviewed the foundation plan, saying it meets flood mitigation requirements. He noted an elevator to the first and second floors and reviewed the floor plans. **Mr. Wicko**, **Mr. Hirsch**, and **Chairman Quish** discussed specific details about the dormers and area calculations.

Mr. Sulkis read his administrative summary, which was consistent with the presentation. He said the property has been taxed as a single lot since at least 1980. He said a 2008 survey submitted on the land records showed a single lot in its current configuration. He said no adverse impacts on coastal resources were anticipated. He said CT DEEP required that newly placed fill located at each of the downspouts and in the parking area be tested after compaction to confirm that their hydraulic connectivity meets the recommendations of the 2004 CT storm quality manual and fall between .3 and 5 inches per hour, which would be made part of the drawings and required for issue of a permit. He said the plan was substantially compliant with the MZR. **Mr. Hirsch** was assured that no easements exist on deed or title and that members of the public do not use the gazebo as it is on private property with no public facilities. **Attorney Curseaden** said he received materials from Attorneys Green and Laske that referenced a deed restriction to the old lot 49 but said that deed restrictions are different from easements and are outside purview of Planning and Zoning Board. He said deed restrictions must have someone with a right to enforce and that even if the referenced area was deed-restricted, it's part of a 10' setback on the site plan. He said an old deed restriction between 2 previous owners would have no validity regardless. **Mr. Zahariades** read the deed restrictions for lot 49, saying it was to be used for a dock or private boathouse and no other purpose. Discussion ensued about the nature and enforceability of deed restrictions. **Attorney Curseaden** stressed that they don't affect zoning regulations or the CAM act and that he had gotten confirmation of the same from the City Attorney's Office (CAO) while working on a previous shorefront application.

Chairman Quish asked for a short recess.

Linda Laske, Esq., Green and Gross Law Offices, Bridgeport, addressed the board. As a point of order, she said her client Christopher McKenna, who lives across the street from 94 Edgewater, spoke at last meeting and she asked to incorporate his prior comments into the record, which Chairman Quish allowed. She asked to allow Mr. McKenna to speak.

Christopher McKenna, 24 Rose Street, said he opposed the CAM. He referred to original maps of Walker Manor dated 1924 and shared a packet featuring 5 deeds with deed restrictions along the harbor that he said were intended to be boat slips. He described the old map, streets, and structures on it saying ten-foot-wide lots were not designed to be occupied by a building. He asked the board to evaluate the original map and intention. He said the Planning and Zoning Office was not following its own regulations and the nonconforming lots were not properly reviewed. He urged the board to deny the application.

Attorney Laske said the lot is not zoning compliant and the plan will have adverse impacts on coastal resources including views. She said there is no evidence that legally existing subdivision lot approved by a planning commission after subdivision regulations were adopted. She asserted that the Walker Manor map defines preexisting parcels, not lots, saying lots are for building, and parcels are not. She said there is no clear right to automatically use them for building. She said she would hand out a 1994 Stratford ZBA appellate court case finding that a vacant lot cannot automatically be used for a building without a preexisting building use. She said that even if the lot is legal, the existing use is for boating. She said that if the applicant wishes to change the use, a variance would be required due to the undersized nature of the lot. She said a new boating use would require a Special Permit. She said the plan proposed both a residential and boating use. She said that although the board does not consider private property rights, with

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plot plans recorded prior to zoning regulations, implied covenants and restrictions based on the layout of the lots. She said in this case, she would argue that all lot owners would have a right to enforce these covenants and restrictions as boat lots.

Chairman Quish asked for other public comment.

Joe Newman, 23 Wilbar Avenue, agreed that the parcels were never intended for single family homes. He said the proposed design is out of scale with the neighborhood and that such projects change the character of Milford. He said that from various points around the harbor, the property can be seen from public areas. He said that storms regularly flood Edgewater Place.

Regina Sirico, 61 Wilbar Avenue, said that in the past 3 rainstorms, water level rise to the stormwater drains. She called the project a bad idea.

Amy Konowicz, 73 Wilbar Avenue, cor. Edgewater, said she recalled a 2004 denial of a residential permit. She said she was surprised the plan includes an elevator and garage. She confirmed several feet of water in rainstorms.

Linda Gwozdzik, 41 Rose Street, said the property was always boat-related and the house was inappropriate for the neighborhood. She confirmed flooding in the area.

Alison McKenna, 24 Rose Street, said she opposes the plan and confirmed flooding.

Mr. McKenna used historical examples to support his contention that the proposed lots were undersized for building houses. He offered to share photos to document flooding in the area.

Attorney Laske read a definition for legal nonconformity, saying they consisted of uses or structures in place when regulations were adopted. She said CGS 8-2 requires that zoning regulations allow continuance of existing uses and structures but said it does not address lots. She said she found no evidence that the lots were designed or used for residential use. She cited a case where the court held that for an existing use to be legally nonconforming, the premises must be known in the neighborhood as being used for a given purpose based on the adaptability of the land for that purpose and employment of it within that purpose. She asserted that the lots were vacant lots as of 1930 with aerial photos from 1930s to recent years showing only boating purposes. She said deed restriction was submitted to show as specific lot was used for boating and accessory structures. She said the Walker Manor map is not a subdivision, so the parcels don't have nonconforming rights. She read a section from a court decision saying that recording a map prior to zoning regulations doesn't exempt a nonconforming lot from subsequent zoning regulation. She asserted that the lots had to have been used for as house lots to be protected, but if the lots are "irrevocably" committed to a use, the statute doesn't protect nonconforming, undeveloped lots.

Chairman Quish wished to allow Attorney Curseaden to rebut at this point but allowed Attorney Laske several more comments. She referred to several revisions of the Milford Zoning Regulations, saying they supported the idea that nonconformities only apply to buildings and uses, not lots. She reviewed portions of MZR Sections 11 and 6 pertaining to nonconforming lots that existed at the time regulations were created. She said allowing combination of small parcels to be treated as a lot without satisfying lot requirements violates the uniformity rule to treat all land in a zone the same way. She disputed Mr. Sulkis's comments that a plan being substantially zoning compliant was sufficient and said the plan must be fully compliant. She said the fact that the harbor is a developed area doesn't imply that it is a resource that shouldn't be protected against new development. She said the existence of an address for the parcels is not relevant. She said the fact that the lots were never combined lots historically proved her point.

Rebuttal

Attorney Curseaden responded to Mr. Zahariade's question on the deed, noting that it applies to lots 49 and 50 and has no bearing on all the other lots. He noted that no engineer from those in opposition was present to challenge the applicant's engineer's findings, and no professional opinion was submitted on flooding. He said if permission to build houses were based on flooding, the earlier CAM for 69 Melba Street would not have been approved but that such houses must meet flood mitigation rules. He asserted that because that CGS8-26a doesn't apply and that historically the MZR has been applied to old lots such that if you can comply with setbacks and other regulations in a zone, you can develop the lot. He said that under either section 6, lots can be consolidated. He recounted how the lots were already deemed merged due to having a structure on the lot due to issuance of a building permit for the gazebo. He said all requirements were met to prove the lot is a legal building lot. **Mr. Zahariades** asked about MZR 6.1.4's requirement for the issuance of the Certificate of Zoning Compliance (CZC) prior to construction. **Mr. Sulkis** advised the use on the lot was conforming and that permits were issued based on this lot's designation as a single lot. He said the logic as to why 6.1.4 doesn't apply here is that thousands of such lots exist throughout the city—perhaps half the lots in the city—especially along the

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shoreline. He said that if a CZC were required in each instance, every lot that is undersized or doesn't comply with the setbacks would require a new CZC whenever any new use was requested, or any new permit was issued. **Attorney Curseaden** added that in a previous case, that regulation was interpreted to mean that a CZC, if required, would be issued prior to a Certificate of Occupancy. He said that **Mr. Zahariades** made a good point but that in current DPLU practice, the Zoning Compliance Review written by the Zoning Enforcement Officer functions as a CZC. He attested that Mr. Harris and Mr. Sulkis are very strict in their reviews of zoning compliance. **Mr. Sulkis** said he uses the term "substantially" zoning compliant so he can add additional requirements as needed. He used as an example the earlier application at 277 West Avenue.

Rebuttal of rebuttal

Attorney Laske said she still thought the case she cited was on point because there was no approved subdivision map and a lot on just any map could not be used for a house. She said the gazebo is a structure not a dwelling and that changing uses can be done by variance in a public hearing to address impacts. **Mr. McKenna** said he agreed with Mr. Zahariades and the Planning and Zoning Office staff should do their jobs.

Rebuttal of rebuttal of rebuttal

Attorney Curseaden read article 6.2, enlargement: *No non-conforming use of land shall be enlarged, extended, or altered, and no structure or part thereof devoted to a non-conforming use shall be enlarged, extended, constructed, reconstructed, or structurally altered, except in changing the use to one which is allowable in the Zoning District in which such use is located; except in the case of single family homes.* He asserted that the lot is a building lot which has been issued building permits and can be used for permitted uses as long as setbacks and coverage and height requirements are met. A use variance is not required. He read the definition of a legal nonconforming lot: *Any lot legally existing in accordance with the then applicable regulations which has been made non-conforming by subsequent adoption of zoning regulations or amendments thereof. Such a lot may not be conforming to the present zoning district regulations for any prescribed lot requirements, such as lot area, width or depth.* He said the lots existed when regulations were created and by various means, became a single lot.

Mr. Satti asked about the upcoming application review by the Harbor Management Commission (HMC). Discussion ensued about how an HMC approval might or might not affect the vote by the Planning and Zoning Board. **Mr. Sulkis** said if the HMC approved, there would be no effect on a Planning and Zoning Board vote, but if the HMC denied the application, the Planning and Zoning Board would have to approve the application by 7 votes.

Chairman Quish thought the vote should be deferred until after the HMC review, and the board's own review of submitted materials. **Mr. Sulkis** said he was instructed to remind the board that the application before them was a Coastal Area Management Site Plan Review, not a review of the property's history. He said he would report on the HMC vote.

Mr. Kaligian moved to close the public hearing.

Second: Mr. Agnese seconded.

Discussion: None.

Vote: Motion carried unanimously.

- E. **OLD BUSINESS—Chairman Quish** advised that time on future agendas will be created to allow the full board to identify ideas for further research and review by the Regulation Subcommittee.
- F. **LIAISON REPORTS—Mr. Satti** noted that the next SCRCOG meeting is Thursday of the following week.
- G. **SUBCOMMITTEE REPORTS—Chairman Quish** advised that David Fink, a consultant for affordable housing, had shared information at the Regulation Subcommittee meeting which was available via minutes and MGAT video. **Mr. Satti** commended Chairman Quish's leadership and suggested the board might reassess excluding detached structures from ADUs. Discussion ensued on taking a more assertive approach to developers where the city could be actively identifying properties. Noting Mr. Anderson's background in affordable housing, Chairman Quish invited him to share documents and studies. Links to the subcommittee meeting video and a recent round table discussion by a housing task force group will be provided by Mr. Sulkis.
- H. **APPROVAL OF MINUTES—2/20/2024** minutes were approved unanimously.
- I. **CHAIR'S REPORT** – None.
- J. **STAFF REPORT** - None.
- K. **ADJOURNMENT** was at 9:47.

Attest: M.E. Greene

New Business, not on the Agenda, may be brought up by a 2/3's vote of those Members present and voting.

ANY INDIVIDUAL WITH A DISABILITY WHO NEEDS SPECIAL ASSISTANCE TO PARTICIPATE IN THE MEETING SHOULD CONTACT THE DIRECTOR OF COMMUNITY DEVELOPMENT, (203) 783-3230, FIVE DAYS PRIOR TO THE MEETING, IF POSSIBLE.