

Minutes, Public Hearing of Zoning Board of Appeals Meeting held 11 January 2022

The Regular Meeting of the Zoning Board of Appeals of Milford, CT, was held on Tuesday 11 January 2022, beginning at 7:00 p.m. remotely, to hear all parties concerning the following applications, some of which require Coastal Area Site Plan Reviews or exemptions.

A. PLEDGE OF ALLEGIANCE / ROLL CALL/ELECTION OF OFFICERS

Mr. Harris called the meeting to order at 7:00 pm and announced the election of officers. **Mr. Soda** nominated **Mr. Tuozzola** for chairperson, **Mr. Wolfe** seconded, and the vote was unanimous. **Mr. Tuozzola** was seated as chair and nominated **Ms. Ferrante** for Board Secretary, who could not attend the meeting but had notified Mr. Tuozzola that she would accept the position. **Mr. Soda** seconded, and that vote also was unanimous. **Mr. Tuozzola** asked **Mr. Dubois** to act as the 4th voting member and to be secretary for the meeting. He greeted new alternate members **Carmina Hirsch** and **Mike Smith**. He welcomed **Mr. Dubois** back to the board as he accepted a new term. He asked **Mr. Smith** to act as the 5th voting member.

MEMBERS PRESENT: Chris Wolfe, William Soda, Joseph Tuozzola (Ch)

ALTERNATES PRESENT: Gary Dubois, Carmina K. Hirsch, Mike Smith

MEMBERS/ALTERNATES ABSENT: Sarah Ferrante

STAFF PRESENT: Stephen Harris, Zoning Enforcement Officer; Meg Greene, Clerk

CONSIDERATION OF AGENDA ITEMS

Note: The chairman moved item 1 to the end of the meeting due to a delay in the presentation.

- 1. 70 Christine Terrace** MBP 108/835/40, RA; Chris Russo, Esq., for David Cruz, owner; Vary Sec. 3.1.1.7 and 3.1.1.7(17) to permit accessory apartment on non-conforming lot, allowing lot size of 42,209 sf where 43,560 sf required.

Attorney Russo, Russo & Rizio, LLC, 10 Sasco Hill Road, Fairfield, addressed the board. He described the request for an accessory apartment, referring to the site plan, and saying that Christine Terrace consists almost entirely of 1-acre lots. He said Mr. Cruz's lot is the only one that is not a full acre, being just short of the required square footage. He said the s-shape of the road created an oddly shaped parcel. He noted that the rest of the neighborhood could have an accessory apartment by right and that the accessory apartment is otherwise compliant with the regulations. He said Mr. Cruz's mother-in-law intends to occupy the accessory apartment, satisfying the requirement that the occupant be related by blood, marriage, or legal adoption. He described the practice of renewing the agreement every 3 years as a safeguard to reviewing the current occupant. **Ms. Hirsch** asked how many family members lived in dwelling currently; homeowner **David Cruz**, said 6 relatives lived in the home.

Mr. Tuozzola asked if anyone wished to speak in favor of or in opposition to the application.

OPPOSED

Pete McSherry and **Karen McSherry**, 49 Christine Terrace, objected to the application, saying the property was too small to accommodate the request. **Ms. McSherry** said she feared an eventual conversion to an Airbnb short-term rental unit and that she also objected to the presence of multiple vehicles on the property.

REBUTTAL

Attorney Russo said the Cruz family sought the same right all property owners on Christine Terrace now have; to add an accessory apartment. He said that since the neighborhood is zoned single-family, no precedent is being set by allowing a use already permitted in a single-family zone. He said that the building size is conforming and that per the regulations, the principal owner will reside in main part of dwelling with the understanding that the apartment cannot be rented to a third party. He noted that his client's parents could live with them now, but that Mr. Cruz wishes to give his in-laws more privacy by adding a separate kitchen. He noted that without a kitchen, having his in-laws residing with him is zoning compliant. He said that a zoning violation can be issued if a rental is made to a non-family member or if a separate access to the accessory apartment is added. He referred to that portion of the regulation mandating removal of kitchen facilities if the house is sold or if occupants no longer need the subordinate unit. He underscored that the regulations provide protections and that a hardship exists due to the irregular lot.

REBUTTAL of Rebuttal

Ms. McSherry said a precedent would be set for permitting an accessory apartment on a nonconforming lot. **Mr. McSherry** said Mr. Cruz was aware of size of lot when he purchased it. He asserted that Mr. Cruz is running a roofing and siding business out of the house, that large commercial vehicles are parked on property, and that Mr. Cruz's employees are living on the property.

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DISCUSSION

Mr. Soda said he visited the site and that there were 4 vehicles labeled "Cruz Roofing" there. **Mr. Cruz** said the other vehicles were temporarily parked and would be moved to a warehouse in Bridgeport at 54 Wallace Avenue. **Mr. Harris** said a complaint about the vehicles or business was a separate issue to the variance application. **Mr. McSherry** said 2 large commercial vehicles have been parked on lot for over a year. He said he felt that if a violation existed, a variance should not be granted. **Ms. Hirsch** asked if inspections are routinely done as part of the 3-year renewal process; **Mr. Harris** said they are not required by the regulations. **Attorney Russo** said that the applicant will allow dwelling to be inspected as a condition of approval. **Mr. Smith** noted that if the existing lot had 2000 more square feet, the accessory apartment would be permitted as of right. **Mr. Soda** and **Mr. Harris** discussed the threshold for creation of an accessory apartment and noted that a dwelling unit must have a bathroom and kitchen combination. **Mr. Wolfe** and **Attorney Russo** read and discussed the definition of accessory apartment kitchen facilities. **Mr. Harris** read the regulations dealing with lot requirements pertaining to accessory apartments.

Attorney Russo said no violation had been issued on the property and that the matter was separate from variance application. He said that if board were more comfortable waiting to see that construction vehicles would soon be removed, his client would be happy to continue to next hearing to allow an inspection.

Mr. Soda motioned to **continue the item to the February 8th meeting**. **Mr. Wolfe** seconded. The motion carried with **Messrs. Dubois, Smith, Soda, Wolfe** and **Tuozzola** voting **with the motion**.

2. **144 Meadow Park Drive** MBP 76/917/38A; R-10; Alejandro Lezama, owner; Vary Sec. 3.1.4.1. side-yard setback to 3' where 10' permitted for addition.

Mr. Lezama addressed the board. He described the reasons he wished to get the variance. **Mr. Tuozzola** discussed the placement of the addition with **Mr. Lezama**, who compared the design to others in the neighborhood.

Mr. Tuozzola asked if anyone wished to speak in favor of or in opposition to the application.

FAVOR

Mr. Lezama said 3 letters of support from abutting neighbors had been submitted in favor of his request.

Mr. Tuozzola closed the hearing and asked for a motion.

Mr. Soda motioned to **approve** based on the submitted materials. **Mr. Smith** seconded. The motion carried with **Messrs. Dubois, Smith, Soda, Wolfe** and **Tuozzola** voting **with the motion**.

3. **34 Governors Avenue**, MBP 66/825/5; R-12.5; Thomas Lynch, Esq., for Adam Cormier, owner; Sec. 9.2.1, Appeal the Decision of the Zoning Enforcement Officer for the issuance of a zoning permit for addition to residence and accessory building.

Attorney Lynch, 63 Cherry Street, addressed the board. He described the history of the zoning permit issued 11.23.21, displaying the permit's language and the plans associated with it. He said his client was specifically appealing the size of the garage, not the entire permit. He reviewed the noticing requirement for filing an appeal, using photographs to assert that the appeal was timely. He noted that most of the current board had been present during the July 2021 variance request at the address. He said he reviewed the minutes and had been present at the July meeting himself, due to another matter. He said the board denied the application without prejudice, resulting in redesigned plans submitted to the Zoning Office in October for an over-the-counter permit. He said the revised plans featured a smaller addition to the residence, but approximately the same size garage as the original request. He noted that the building coverage measurement on the survey submitted in December included the dimensions of the house and existing and proposed garage footprint. He asserted that the garage is nearly double the size allowed by section 11 of the zoning regulations, with the definition of an accessory building: that such a building must not exceed 50% of the principal structure. He said the zoning office had no right to issue the permit for the garage.

DISCUSSION

Mr. Soda said that as a Milford-based builder, he had been instructed since 1989 to build garages to the 50% definition limit.

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ZEO RESPONSE

Mr. Harris said departmental discussion decided that the percentage limit was not binding because it was described in a definition rather a regulation.

DISCUSSION

Mr. Tuozzola and **Mr. Soda** agreed that if an instruction appears in the regulation book, it applies as a regulation. **Mr. Smith** asked about the frequency of the updates to the regulation book; **Mr. Tuozzola** said that definition had not changed in recent updates. **Mr. Soda** said that if application of the definition should be changed, the regulation should be changed, and such change had to be passed by the Planning and Zoning Board. **Attorney Lynch** underscored that all regulation change should be made via the Planning and Zoning Board.

Attorney David Pite, 1948 Chapel Street, New Haven, representing Ms. Paisley, spoke against the appeal. He disputed that the appeal was timely. He said the permit was displayed on 11/23/21 and agreed that definitions were not regulations. He said the square footage reference in the 50% calculation consisted of the entire square footage of the house, so if the total square footage of the house were calculated, the proposed garage conforms to 50% of that. He said in 2021, four accessory structures exceeding 50% of the ground floor footprint were permitted. He said the board should uphold the issuance of the permit because his client had acted on the issuance of the permit and had poured foundations. He urged the board to dismiss the appeal.

Ms. Paisley presented her research of 39 recently permitted garage applications that exceeded the 50% definition. She said she felt singled out.

Chairman Tuozzola granted **Attorney Pite** permission to question **Mr. Harris** who reiterated that the department's interpretation was that definitions don't rise to the level of regulations. **Mr. Soda** referred to a variance request heard by the board in 2020 to allow a garage to exceed 50%, which was denied without prejudice. **Mr. Smith** asked if the square footage of just footprints was used in calculating building coverage including all accessory structures, which was confirmed.

Attorney Lynch submitted to the clerk via email photos evidencing a lack of a permit display. He cited *Monroe v. Branford ZBA*, 2002, as the seminal case for timeliness based on constructive notice due to foundation work. He said this legal precedent meant the appeal falls within parameters of timeliness in this case. He disputed that the definition required interpretation because it was very clear. He said the regulation's intent was to relate the size of an accessory building to the size of a principal structure. He said the definitions are integral to the regulations.

Attorney Pite said that zoning notice was posted but Ms. Paisley was advised that only the building permit must be displayed, so she removed it. He reread the Accessory Building definition, saying that because the word "footprint" was in parentheses, it was not relevant.

Ms. Paisley said the survey reflected the plan's conformity with building coverage. She said the examples she identified were germane. She said the backhoe was delivered 12/3 and digging started 12/4 and that the appeal was not timely. She said the zoning permit was displayed 11/23 and that she was advised that only the building permit must be displayed.

REBUTTAL

Attorney Lynch said the survey submitted with the variance application in July did not show building coverage. He said he stood by his earlier comments. He said longstanding interpretation calculates garage footprint limits at 50% of the principal structure.

BOARD DISCUSSION

Mr. Tuozzola asked if anyone wished to speak in favor of or in opposition to the application; hearing none, he closed the hearing.

Ms. Hirsch said she could see where the definition created ambiguity and expressed support for the department's ability to interpret the regulations. **Mr. Soda** agreed that the regulations should be clarified and reiterated that as a builder in Milford, he'd personally experienced many applications of the definition. **Mr. Smith** agreed that confusion existed about the "definition of definitions" and that there were conflicting historical precedents.

Mr. Tuozzola asked for a motion.

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Mr. Soda motioned to rescind the zoning permit regarding the garage. Upon being reminded of the usual appeal language consisting of overturning versus upholding a decision, he motioned to **overturn the decision of the Zoning Enforcement Officer. Mr. Smith** seconded. The motion carried with **Messrs. Dubois, Smith, Soda** and **Tuozzola** voting **with the motion. Mr. Wolfe** voted **against the motion.**

4. **14 Linwood Street** MBP 32/354/3; R-12.5; Kevin Curseaden, Esq., for Oronoque Custom Builders, LLC, owner; Vary Sec. 4.1.4 projection setback to 15.5' where 21' permitted to construct a deck.

Mr. Tuozzola asked that both items 4 and 5 be presented together. **Attorney Curseaden**, 3 Lafayette Street, agreed but requested that votes be taken separately. **Mr. Soda** recused himself. **Mr. Tuozzola** asked **Ms. Hirsch** to vote in place of Mr. Soda.

Attorney Curseaden, 3 Lafayette Street addressed the board. He described the creation of the lots using an old subdivision map. He said all setback requirements were met for the house, but the developer was requesting the variance for decks off each house to make them more livable. He said the notices were sent to abutters.

DISCUSSION

Mr. Tuozzola expressed satisfaction with the central positioning of each house on the lots.

BOARD DISCUSSION

Mr. Tuozzola asked if anyone wished to speak in favor of or in opposition to the application; hearing none, closed the hearing and asked for a motion.

Mr. Smith motioned to **approve** conditioned on the submitted materials. **Mr. Wolfe** seconded. The motion carried with **Ms. Hirsch** and **Messrs. Dubois, Wolfe, and Tuozzola** voting **with the motion.**

5. **16 Linwood Street** MBP 32/354/4; R-12.5; Kevin Curseaden, Esq., for Oronoque Custom Builders, LLC, owner; Vary Sec. 4.1.4 projection setback to 15.5' where 21' permitted to construct a deck.

Mr. Smith motioned to **approve** conditioned on the submitted materials. **Mr. Wolfe** seconded. The motion carried with **Ms. Ferrante** and **Messrs. Dubois, Wolfe, and Tuozzola** voting **with the motion.**

- A. **NEW BUSINESS** – Mr. Harris said the City Attorney's Office would provide a zoning "primer" for the board next month. He said that a Connecticut Conference of Municipality training webinar was available January 20th and urged all to register for it.
- B. **OLD BUSINESS** - None
- C. **STAFF UPDATE** - None
- D. **ACCEPTANCE OF MINUTES FROM 14 DECEMBER 2021 HEARING:** Approved by those in attendance (Dubois, Soda, Tuozzola, Wolfe)
- E. **ACCEPTANCE OF APPLICATIONS FOR 8 FEBRUARY 2022 HEARING**

Adjournment was at 9:28 PM.

Any other business not on the agenda to be considered upon two-third's vote of those 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, PRIOR TO THE MEETING IF POSSIBLE.**

Attest:

M.E. Greene, Clerk, ZBA