

Minutes, Public Hearing of Zoning Board of Appeals Meeting held 12 January 2016

The Regular Meeting of the Zoning Board of Appeals of Milford, CT, was held on Tuesday, 12 January 2016, beginning at 7:00 p.m. in **CITY HALL AUDITORIUM, 110 RIVER STREET**, Milford, CT, to hear all parties concerning the following applications, some of which require Coastal Area Site Plan Reviews or exemptions.

MEMBERS PRESENT: Joseph Tuozzola (Ch), Howard Haberman (Sec), Sarah Ferrante, William Soda, John Vaccino

ALTERNATES PRESENT: Gary Dubois, Robert Thomas

MEMBERS/ALTERNATES ABSENT: Alison Egelson

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

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. Vaccino** seconded, and the vote was unanimous. **Mr. Tuozzola** was seated as chair and thanked the board for their votes. **Mr. Tuozzola** then nominated **Mr. Haberman** for secretary, **Mr. Vaccino** seconded, and that vote also was unanimous.

A. PLEDGE OF ALLEGIANCE / ROLL CALL

Mr. Tuozzola announced that he would recuse himself from the item concerning 240 Naugatuck Avenue. **Ms. Ferrante** said she would recuse herself from the item concerning 52 Pond Street. **Mr. Tuozzola** asked for conflicts of interest for board members with any agenda items; none were raised.

B. CONSIDERATION OF AGENDA ITEMS

1. **CONTINUE: 108 Beach Avenue** (R-7.5) Charles Willinger, Esq., attorney, for Leden Consulting Corp., owner; Sec. 9.2.1: Appeal the Decision of the Zoning Enforcement Officer in a letter req a variance to install a fence dated 3 September 2015; Map 60, Block 743, Parcel 2.
2. **CONTINUE: 108 Beach Avenue** (R-7.5) Charles Willinger, Esq., attorney, for Leden Consulting Corp., owner; Sec. 5.3.4.1 vary no. & location of signs; Sec. 5.8 vary flood hazard area; Sec. 4.1.7.3 vary installation of fence; Map 60, Block 743, Parcel 2.

Milford ZEO Stephen Harris read a letter into the recorded stating that he had agreed to withdraw his letter of September 2015, and that Attorney Willinger had agreed to lower the height of the proposed fence. This cleared the way for Item 2 to proceed.

Attorney Willinger confirmed that he was withdrawing the appeal.

Mr. Tuozzola asked Mr. Harris for additional background on the decision to withdraw his letter. **Mr. Harris** said his review of the newly submitted materials satisfied him that the ownership of the parcel B had been documented.

Attorney Willinger of Willinger, Willinger and Bucci, Bridgeport, reviewed the timeline of both matters before the board and the nature of the variance request. **Attorney Willinger** referred the board to his previously submitted booklet with evidence of public use of the property. He said such trespasses required posting of signs to designate the area as private property. He said the hardship was due to the unique nature of the property as rocky and adjacent to a public beach where confusion could arise. He noted documented support from the neighborhood.

DISCUSSION

Minutes, Public Hearing of Zoning Board of Appeals Meeting held 12 January 2016

Mr. Haberman confirmed that 6 signs were being requested. **Mr. Tuozzola** confirmed with Mr. Harris that only 1 sign with a maximum size of 9 sf in area could be posted without a variance. **Mr. Vaccino** clarified that the fence variance in the original request was no longer needed. **Mr. Soda** confirmed that no signs were to be posted on the fence.

FAVOR

None.

OPPOSED

Bill Coleman, 20 Blackall Road, distributed information to the board. He reminded the board of his remarks at the previous meeting where he had expressed concerns about the intentions of the applicants. He said he wished to address the nature of ownership, specifically regarding warranty deeds versus quit-claim deeds. He stated that the quit claim deed produced made the ownership of the parcel ambiguous. He referred to a map he had provided, saying that unlike Parcel 2 in the variance request, other parcels referenced by Attorney Willinger were tax parcels with map, block and parcel identifiers. He said beach behavior was a legitimate public and police issue and that bad behavior should be addressed, but that the legality of the parcel should be a matter for the courts, not the ZBA. Mr. Coleman showed board members sections of a 1930 book on historic Milford called Woodmont on the Sound. He noted that the board had asked about taxes. He said no tax identifiers existed for the parcel, so no taxes had been paid. He noted the size of the parcel called out on the survey submitted by Attorney Willinger and computed a tax bill for a parcel that size. He said the proposal before the board was intended to legitimize a real estate deal rather than grant a variance. He noted that the owner, Leden Consulting, was a business entity registered with NY State that had been dissolved in 1992. **Attorney Willinger** attempted to take the floor, but **Mr. Coleman** asserted that he had the floor. He said he had researched many monthly borough meeting minutes and no public hazard for the parcel had been referenced. He asked the board not to legitimize the request any further. He speculated that there might be some insurance concern but said this was not the proper remedy. He said the petition was from a nonexistent owner for a nonexistent parcel to prevent a nonexistent problem that was contrary to the public plan for the City. He said there was an interest in privatizing the beach and that the petitioners in favor were a small fraction of Woodmont's population. He questioned the use of borough stationery to express a warden's support.

Chuck Rockwell, 28 Mark Street expressed opposition.

Daniel German, 114 Beach Avenue, said that without reiterating all that Mr. Coleman had said, he agreed with the issues raised. He said the property was used by the public and that he would hate to see that use denied.

REBUTTAL

Attorney Willinger said that none of the speakers had raised any zoning issues. He took issue with Mr. Coleman's characterization of the aspects of the proposal as being fraudulent. He said 100 years worth of deeds had been submitted and said that they had not all been quit claim deeds. He said ownership was not being questioned. He said experts supported the legality of the parcel's ownership and taxes were not an issue to be considered. He submitted additional documents into the record that listed 16 parcels in the area where 8 parcels were comparable to the disputed Parcel 2, noting that they had been conveyed to the City of Milford, leaving 8 parcels in private hands. He said the Tax Assessor may have commingled the parcels. Attorney Willinger computed a per-acre tax payment. He said someone would get hurt on the parcel. He said Mr. German would not have objected if he had to look at people using the parcel inappropriately. **Mr. Soda** asked for clarification of information given about the taxes paid on 108 Beach Avenue. **Mr. Tuozzola** insisted that the taxes were relevant. **Mr. Harris** commented that tax matters don't figure in zoning matters.

BOARD DISCUSSION

Mr. Tuozzola closed the hearing. **Mr. Haberman** asked if the legality of the parcel was separate from taxes; **Mr. Harris** said it was. **Mr. Soda** confirmed that only 1 sign could be posted without a variance. Mr. Soda said one sign should be sufficient. **Mr. Vaccino** asked if one maximum-sized sign would be preferable to Mr. Soda. **Mr. Haberman** said smaller

Minutes, Public Hearing of Zoning Board of Appeals Meeting held 12 January 2016

signs would be more attractive, but questioned whether 6 were really needed. **Mr. Vaccino** asked if a new number of signs could be proposed; **Mr. Harris** said he didn't think the nature of the application could be changed. **Mr. Tuozzola** asked for a motion.

Mr. Soda motioned to deny the application. **Mr. Haberman** seconded. **Mr. Soda** supported his motion by reason of lack of a hardship. The motion failed with **Ms. Ferrante** and **Mr. Vaccino** voting against the motion and **Messrs. Haberman, Soda, and Tuozzola** voting **with the motion**.

3. **751 East Broadway** (R-5) Thomas Lynch, Esq., attorney, for Nicholas Macero, owner; Sec. 3.1.4.1 vary west side-yd setback to 5.2' where 10' req; 4.1.4 east side-yd proj to 1.8' where 8' perm, and 1.6' where 8' perm for landing/stairs and deck, 4.1.4 west side-yd proj to 5.3' where 8' perm for front and rear deck; to relocate and elevate existing home. Map 22, Block 474, Parcel 23.

Attorney Lynch addressed the board. He stated that his clients wished to raise the house. He reviewed the setbacks and said that the house would be repositioned. He said the narrow lot created a hardship. He said the nonconformity of the front yard would be reduced. He said floor plans and elevations were available but that little would change on the house. He noted it was a reasonable size. He noted the presence of the owners and that they owned the Greek Spot, a neighborhood restaurant.

DISCUSSION

Mr. Soda confirmed that there would be a parking spot underneath.

FAVOR

Michael Mecca, 749 East Broadway, expressed support due to off-street parking and being positioned to avoid the flood danger. **Mr. Vaccino** and **Attorney Lynch** discussed Mr. Mecca's location with reference to the stairs variance.

Rob Versellone, 715 East Broadway expressed support.

BOARD DISCUSSION

Mr. Tuozzola asked if anyone wished to speak in opposition to the application. Hearing none, he closed the hearing. After a short discussion, there were no issues in dispute, so he asked for a motion.

Mr. Vaccino motioned in favor of application. **Mr. Soda** seconded. **Mr. Vaccino** supported his motion by reason of orientation and narrowness of the lot, exactly per the submitted materials. The motion carried with **Ms. Ferrante** and **Messrs. Haberman, Soda, Vaccino and Tuozzola** voting **with the motion**.

4. **52 Pond Street** (R-12.5) Kevin Curseaden, Esq., attorney, for Lore Higgins, owner; Sec 3.1.4.1: front setback to 23.5' where 30' req, southeast side-yd setback to 7.2 where 10 req, northwest side-yd setback to 8.75 where 10' req; 4.1.4: front to 22.5' where 24' perm, southeast side overhang to 6.2' where 8' perm, northwest side overhang to 7.75' where 8' perm, for new garage; Map 44, Block 404, Parcel 18A.

Mr. Tuozzola asked **Mr. Thomas** to fill in for Ms. Ferrante as she recused herself. **Attorney Curseaden** addressed the board. He noted that Ms. Higgins, the owner, and Jim Denno, the designer, were present. He submitted notification materials. He said the original house predated zoning and was legal/non-conforming. He described aspects of the house and lot. He said the lot was narrow with jogs and was smaller than other lots in the area. He noted its presence in the historic district and the constraints this categorization put on the designer. He said the owner could have gone straight back within the setbacks, but she rejected this option due to its impact on neighbors' views. He described how the addition would minimize expansion to the existing lines of the house. He said the owner would provide living space for her mother in the house and additional parking would be desirable.

Minutes, Public Hearing of Zoning Board of Appeals Meeting held 12 January 2016

DISCUSSION

Mr. Tuozzola confirmed that there were neighboring views of the harbor.

OPPOSED

Bob McKendrick, 48 Pond Street, read a letter of objection to the size of the addition. **Mr. Soda** asked if Mr. McKendrick was aware that the owner could go further back by right. **Mr. McKendrick** said space could be added to the other side instead of the side abutting his property.

Kathy Gage, 47 Pond Street, said the houses were already very close together in the area. She expressed concern about the notification.

REBUTTAL

Attorney Curseaden reiterated that much of the project consisted of squaring the house off and was being done by right. He said notification mailings were done properly. He noted a need to satisfy the ZBA and Historic Commission.

BOARD DISCUSSION

With no further comment forthcoming **Mr. Tuozzola** closed the hearing. **Mr. Haberman** said most of the proposed addition was being done by right and that the addition basically occupied the same footprint as the current house. **Mr. Soda** noted that the owner could choose to build the house much further into the backyard by right; he felt the request was moderate.

Mr. Haberman motioned to approve. **Mr. Soda** seconded. **Mr. Haberman** supported his motion by reason of hardship of the size and shape of the lot, exactly per the submitted materials. The motion carried with **Messrs. Haberman, Soda, Vaccino, Thomas** and **Tuozzola** voting **with the motion**.

5. **240 Naugatuck Avenue** (CDD-2) MKC Club, Inc, owner; Sec 5.5.1.2 distance regulation to 201' where 300' req. for private club; Map 15, Block 54, Parcel 9F.

Mr. Tuozzola recused himself and asked **Mr. Dubois** to vote in his place. **Mr. Haberman** assumed the role of chair and **Mr. Vaccino** read the request.

David Sell addressed the board with Knights of Columbus board member **Richard Morelli** also introducing himself. **Mr. Sell** said the private club wanted to move the liquor license from their previous location on Bridgeport Avenue to the Naugatuck Avenue property, but that the new location was within 300' of a school. He noted that the current owner has a liquor license in the same nonconforming location and that the private club would reduce the number of potential customers being served alcohol at the site. He also noted that the club's hours of operation would not overlap with school hours.

DISCUSSION

Mr. Vaccino confirmed with Mr. Harris that the liquor license was only difference in the use was that the new owners would run a private club instead of a restaurant. **Ms. Ferrante** confirmed that a new liquor license was required for the club, even though a license previously existed on the site.

BOARD DISCUSSION

Mr. Haberman asked if anyone wished to speak in favor of or opposition to the application. Hearing none, he closed the hearing. After a short discussion, there were no issues in dispute, so he asked for a motion.

Minutes, Public Hearing of Zoning Board of Appeals Meeting held 12 January 2016

Mr. Vaccino motioned in favor of application. **Mr. Soda** seconded. **Mr. Vaccino** supported his motion by reason of the previous license, exactly per the submitted materials. The motion carried with **Ms. Ferrante** and **Messrs. Haberman, Soda, Vaccino** and **Dubois** voting **with the motion**.

6. **20 Cooper Avenue** (R-5) John Cutsumpas, agent, for Gail Trez, Jack Trez, owners; Sec. 3.1.4.1 vary northwest side-yd setback to 4.5' where 10' req; 4.1.4 east side-yd proj to 5.5' where 8' perm, for deck/stairs on a new single family home. Map 22, Block 459, Parcel 8.

Lou Maldonado, Northrop Architects, Hartford, CT, addressed the board. He submitted notification materials. He stated that the house had been damaged in storm Sandy beyond repair and would be rebuilt to conform with flood mitigation rules.

DISCUSSION

Mr. Haberman confirmed that the plan provided parking under the house.

BOARD DISCUSSION

Mr. Tuozzola asked if anyone wished to speak in favor of or opposition to the application. Hearing none, he closed the hearing. After a short discussion, there were no issues in dispute, so he asked for a motion.

Mr. Soda motioned in favor of application. **Mr. Vaccino** seconded. **Mr. Soda** supported his motion by reason of hardship of the narrow lot, exactly per the submitted materials. The motion carried with **Ms. Ferrante** and **Messrs. Haberman, Soda, Vaccino** and **Tuozzola** voting **with the motion**.

7. **162 Beach Avenue** (R-5) Joseph Kubic, Esq., for David Yanik, owner; Sec. 4.1.4 vary proj to 5.5' where 8' perm to construct a carport. Map 60, Block 740, Parcel 23.

Attorney Kubic addressed the board. He distributed materials about the application, noting that Mr. Yanik could not be present due to a conflict. He reviewed documentation about the site and said that the owner wanted to construct a carport, but discovered that there wasn't enough room without a variance. He demonstrated that there wasn't enough room to put the carport or garage elsewhere.

DISCUSSION

Mr. Haberman confirmed that there would be gutters. **Ms. Ferrante** asked for more information on the hardship. **Attorney Kubic** said that the location of the house was the problem.

BOARD DISCUSSION

Mr. Tuozzola asked if anyone wished to speak in favor of or opposition to the application. Hearing none, he closed the hearing. After a short discussion, there were no issues in dispute, so he asked for a motion.

Mr. Haberman motioned in favor of application. **Mr. Soda** seconded. **Mr. Haberman** supported his motion by reason of hardship of the narrow lot, exactly per the submitted materials. The motion carried with **Ms. Ferrante** and **Messrs. Haberman, Soda, Vaccino** and **Tuozzola** voting **with the motion**.

VOTING ON OLD BUSINESS AGENDA ITEM

12 Francis Street (R-7.5) Kevin Curseaden, Esq., attorney, for Antoinette Voll, owner; Sec. 9.2.1: Appeal the Decision of the Zoning Enforcement Officer dated 24 August 2015; Map 6, Block 84, Parcel 2.

Minutes, Public Hearing of Zoning Board of Appeals Meeting held 12 January 2016

Mr. Tuozzola asked for material to refresh the board's memory of the information presented in November. A variety of technical measures were attempted to try and replay audio from the hearing, but without success. **Mr. Soda** reviewed his recollection of the presentation with comments from **Mr. Haberman** and **Ms. Ferrante**. **Mr. Harris** said the board was empowered to overturn, uphold or modify the appeal. **Ms. Ferrante** said the board could not consider the merits because that was not the proper focus of the ZBA in this case. **Mr. Tuozzola** said he thought the board was struggling with the court order.

Mr. Haberman motioned to uphold the ZEO decision. **Mr. Vaccino** seconded. The motion carried with **Ms. Ferrante** and **Messrs. Haberman, Soda, Vaccino and Tuozzola** voting with the motion.

B. OLD BUSINESS

C. NEW BUSINESS

D. STAFF UPDATE

E. ACCEPTANCE OF MINUTES FROM 8 DECEMBER 2015 HEARING

Mr. Soda provided a correction to a remark attributed to him. The minutes were accepted as amended.

G. ACCEPTANCE OF APPLICATIONS FOR 9 FEBRUARY 2016 HEARING

The meeting was adjourned at 9:45 p.m.

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:

Meg Greene
Clerk, ZBA