

Minutes, Public Hearing of Zoning Board of Appeals Meeting held 12 January 2021

The Regular Meeting of the Zoning Board of Appeals of Milford, CT, was held remotely on Tuesday, 12 January 2021, beginning at 7:00 p.m. via ZOOM®, 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

Mr. Tuozzola called the meeting to order at 7:04 pm. He reviewed guidelines for online public meetings. He asked **Mr. Hirsch** to vote for Mr. Wolfe. **Ms. Ferrante** indicated she would recuse herself from Item 3 and Mr. Tuozzola later asked **Mr. Dubois** to fill in.

MEMBERS PRESENT: Sarah Ferrante, Christine Valiquette, William Soda, Joseph Tuozzola (Ch)

ALTERNATES PRESENT: Gary Dubois, Etan Hirsch

ABSENT: Michael Casey, Chris Wolfe,

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

B. CONSIDERATION OF AGENDA ITEMS

- 1) **354 Woodmont Road** MBP 91/809/6BC0 1&2,3&4; ID, Jonathan Klein, Esq., for ATGCKG Real Estate, LLC, owner; Appeal the Decision of the City Planner, in accordance with the provisions of section 9.2.1 regarding the refusal to accept an application to expand the use of Keeper's Gentlemen's Club into the adjacent Unit #2 at 354 Woodmont Road, on 12.08.2020.

Attorney Klein, Parlatore Law Group, 60 Lyon Terrace, Bridgeport, addressed the board. He said he represented Keepers, Inc., not ATGCKG Real Estate. He said the appeal was of the City Planner's refusal to accept a permit application to expand the number of units occupied by the business in its current building. He said Mr. Sulkis had concluded that if the use is a pre-existing, nonconforming use, expansion of the use would not be zoning compliant. He said Mr. Sulkis also said a variance would not be available because such a variance was prohibited under other sections of the regulations. Attorney Klein asserted that the use is conforming and can expand into the adjoining units because adult-oriented uses, while not permitted in any zone in the city, are permitted when certain conditions are met. He read the conditions required for such businesses and said the existing location satisfied the distance requirements in the regulations. Attorney Klein said this makes it a conforming use. He further said that even if it were a legal nonconforming use, it was still permitted to expand into a portion of the same structure. He described the structure. He said a special permit or variance application should be available and the client would be prepared to apply for one.

REBUTTAL

Mr. Sulkis said the Keepers Gentleman's Club is a legal preexisting nonconforming use that wants to expand. He read section 6.2.1 of the regulations and said that unlike Attorney Klein, he interpreted it to mean that no expansion was possible unless the use was conforming and allowed in the zoning district. He said a preexisting, nonconforming use can only seek a variance when it would not be detrimental to community welfare, but 9 subsections detail why adult-oriented uses are detrimental to the community. He said the code path through the regulations explain why he was prohibited from accepting the application.

DISCUSSION

Mr. Hirsch asked about permitted uses and legal, pre-existing, nonconforming uses; **Mr. Sulkis** said permitted uses for each zone are listed in the regulations and that an adult-oriented establishment is not a permitted use in the ID zone. **Mr. Hirsch** asked if a regulation change application to allow the use would go to the Planning and Zoning Board; **Mr. Sulkis** said it could. **Mr. Hirsch** and **Attorney Klein** discussed Attorney Klein's interpretation of how a legal non-conforming use could be expanded and why he thinks the permit for an adult-oriented use should be accepted and processed. **Mr. Hirsch** asked if there were relevant case law; **Attorney Klein** said he had none found. **Mr. Tuozzola** asked how the use was originally granted; **Mr. Sulkis** said that was unclear, but several such uses once existed. He said some such businesses have closed, and there had been expanded restrictions in the regulations. **Mr. Soda** asked whether a new application for such a use would be allowed; **Mr. Sulkis** said nowhere he knows of. **Attorney Klein** and **Mr. Tuozzola** discussed language in the zoning regulations as to whether they require adult entertainment establishments to be regulated versus prohibited. **Ms. Ferrante** got clarification from Mr. Sulkis that the use is not banned but does not exist in the regulations. **Attorney Klein** said since it was a regulated use, not a banned use, his client should be able to apply. **Mr. Tuozzola** asked which board should get the application. **Attorney Klein** said he did not think the regulations had to be amended to apply. **Mr. Soda** and **Mr. Sulkis** discussed how these uses may have been established historically. **Mr. Hirsch** wondered if the City Attorney's Office could add insight on whether the use was conforming or not and whether a legal nonconforming use could be expanded. **Mr. Tuozzola** asked **Mr. Harris** for his opinion; Mr. Harris said that as a legal nonconforming use, the use can continue as it is, but not

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expand. He said that under Section 9, the use is deemed detrimental to the community, so no variance can be obtained. Finally, he said that the use is nonconforming because it is not allowed in the zone.

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. Soda motioned to **uphold the decision of the City Planner. Ms. Valiquette** seconded. The motion carried with **Mss. Ferrante** and **Valiquette**, and **Messrs. Soda, Hirsch** and **Tuozzola** voting **with the motion**.

- 2) **59 Hillside Avenue** MBP 49/724/2, R-5, Thomas Lynch, Esq., for Nicholas Aquilina, owner; Vary Sec. 3.1.4.1 side-yard setback to 8.3' where 10' req.; 4.1.4 south projection to 5.1' where 8' permitted for first floor walkway with railings.

Attorney Lynch, 63 Cherry St, addressed the board. He reviewed the history of the application. He said plans were amended to incorporate board comments at the previous meeting. He asked that the comments of the December meeting be incorporated into this record. He reviewed litigation from a previous variance application and said the proposed house meets height regulations, which was the litigated issue. He argued that the lot is narrow and because it is next to a city park, there is a sufficient buffer. He said the prior garage would be removed and the placement of the house reduces previous nonconformities.

BOARD DISCUSSION

Mr. Tuozzola asked if anyone wished to speak in favor of the application; none did.

OPPOSED

Wendy Drost, 64 Hillside Ave, said she and her husband spoke at the last meeting. She said there was no real hardship, and a smaller home could be built. She said remarks about neighbors not wanting any house to be built at all were incorrect. She said the prospective buyers know how big the lot is and that the home should be built to conform with the regulations. She said she felt rebuilding a previous home after a natural disaster is understandable, but not a new nonconforming home. **Mr. Tuozzola** noted that many variances have been granted on that street.

Paul Drost, 64 Hillside Ave, agreed that there is no hardship. He said the notice on the street was put up on Thursday and that no letter was mailed to abutters. He said the 2-car garage seemed to be requiring the nonconforming width of the house.

Denise Worozilcak, 46 Hillside Ave, said she agreed with previous comments. She felt the house was being built for speculation.

It was noted that 3 more opposition letters were received via email.

REBUTTAL

Attorney Lynch said the addresses of the objectors indicated that they lived across the street, suggesting that their concerns were that their water views were going to be impacted. He said his clients were going to live in the house.

Mr. Tuozzola closed the hearing. He noted that this was the 5th time the ZBA had heard an application for the property and stated that he thought this application was the most reasonable. **Mr. Hirsch** was concerned that homes keep getting closer to each other on the shoreline. **Mr. Soda** noted that this variance differed from a previously granted variance by a matter of inches. **Ms. Ferrante** said the house conforms on the side with a neighbor.

Mr. Soda motioned to **approve** based on the narrowness of the lot. **Ms. Valiquette** seconded. The motion carried with **Mss. Ferrante** and **Valiquette**, and **Messrs. Hirsch, Soda**, and **Tuozzola** voting **with the motion**.

- 3) **56 Commodore Place** MBP 45/512/8, R-10, Thomas Lynch, Esq., for James and Linda Wilson, owners; Vary sec. 4.1.4 rear-yard projection to 7.1' where 20' permitted to construct porch addition to existing residence.

Attorney Lynch, 63 Cherry St, addressed the board. He reviewed the granting of a previous permit to attach the house to the garage. He displayed elevations of the screened porch off the breezeway. He said the hardship is based on the existing structure already

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being in the setback. He said, porch will be less encroaching than the garage and that the proposed location is the logical place for the structure.

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. Soda motioned to **approve**. **Mr. Hirsch** seconded. The motion carried with **Ms. Valiquette**, and **Messrs. Hirsch, Soda, Dubois** and **Tuozzola** voting **with the motion**.

C. NEW BUSINESS-None.

D. OLD BUSINESS-None.

E. STAFF UPDATE-None.

F. ACCEPTANCE OF MINUTES 8 December 2020 and 17 December 2020: Approved unanimously.

G. ACCEPTANCE OF APPLICATIONS for 9 February 2021 hearing: One application was submitted so far.

Adjournment was at 8:17 PM.

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