

Minutes, Public Hearing of Zoning Board of Appeals Meeting held 13 January 2015

The Regular Meeting of the Zoning Board of Appeals of Milford, CT, was held on Tuesday, 13 January 2015, 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.

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

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

ALTERNATES PRESENT: Gary Dubois, Alison Rose Egelson

MEMBERS/ALTERNATES ABSENT: Robert Thomas

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

Mr. Harris called the meeting to order at 7:00 pm and announced the election of officers. **Mr. Haberman** nominated **Mr. Tuozzola** for chairperson, **Mr. Vaccino** seconded, and the vote was unanimous. **Mr. Tuozzola** took charge of the meeting. **Mr. Vaccino** then nominated **Mr. Haberman** for secretary, **Mr. Tuozzola** seconded, and that vote also was unanimous.

Mr. Tuozzola announced that the open board seat formerly occupied by Richard Carey had been filled by mayoral appointment. He congratulated Ms. Ferrante on beginning her 5-year term. He also announced that an open alternate position had been filled by appointment. He then welcomed and congratulated Alison Rose Egelson on her appointment to a 5-year-term as a board alternate. He asked for board member conflicts of interest with any agenda items; none were raised.

B. CONSIDERATION OF AGENDA ITEMS

1. **726 East Broadway cor. Cooper** (R-5) Michael Lynch, Esq., Attorney, for Biagio Alfonso, owner; Vary Sec. 9.2.3(1) use to allow serving wine and beer in existing restaurant; Map 22, Block 457, Parcel 5

Attorney Lynch, 63 Cherry Street, addressed the board. He provided background information on businesses at this address as well as its current use known as The Greek Spot. He said that since the use was legal nonconforming, the variance request did not create an expansion of the existing nonconformity. He stressed that his clients lived near the restaurant and were members of and invested in the East Broadway community. He said the restaurant was seasonal and that wine and beer would be an accompaniment to the current menu. He stated that customers had requested beer and wine service with meals and that the restaurant would not become a drinking establishment.

DISCUSSION

Mr. Tuozzola confirmed that there was no café permit involved. **Attorney Lynch** further stated that there would be no spirits served.

OPPOSITION

Michael Calabro 723 East Broadway said he opposed the project. He recounted the history of the site and various uses. He said most of the restaurant's activity now takes place as an outdoor eating. He said serving alcohol would promote the idea that public drinking would be allowed near the beach, that partying would be encouraged, and that the music would be an annoyance. He said street parking would be negatively affected.

Raymond Lee 718 East Broadway said he opposed the project. He said he has investment property and family on East Broadway. He said the area is very nice and that he and his wife felt the safety of the neighborhood would be affected.

Susanna Lee 716 East Broadway said she opposed the project. She said the smell of cooking in the restaurant is annoying. She agreed that street parking is a big problem.

Barbara Wickham 741 East Broadway said she opposed the project. She said the area is a single family zone and that there would be more traffic and pedestrian safety problems.

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Michael Mecca 749 East Broadway read the statutory definition of hardship and said the variance request did not meet the definition. He said the zone was not mixed use and property values could be affected.

Robert Vercellone 715 East Broadway handed out photos to illustrate his remarks. He said he opposed the project. He said there was no valid hardship and that granting the variance could set a bad precedent. He said the original Greek Spot was a “mom and pop” business. He read a regulation on prohibition of alcohol near various other uses. He said the street had limited visibility. He stated that he was concerned with trespassing onto his property by intoxicated persons. He said he disagreed with the establishment placing painted cinderblocks to mark restaurant parking.

Tara Vercellone 715 East Broadway referred to a similar situation in Fairfield with adverse results. He said her son’s bedroom faced to the restaurant. She cited concerns about drinking near a school bus stop.

REBUTTAL

Attorney Lynch reemphasized that there would be no bar in the restaurant—that some customers just want to order wine or beer with their meals. He said his clients wanted to upgrade the restaurant. He noted that no restaurant can allow legally liquor to leave its premises under any circumstances. He said per the restaurant’s lease The Greek Spot closes at 8:00 pm and he reiterated that the owners also have small children and live nearby. **Mr. Tuozzola** asked for a diagram of how many seats are outdoors. **Attorney Lynch** did not have a diagram, but said there are about 10 tables, which are at least partially enclosed by landscaping. **Mr. Vaccino** asked for the hardship. **Attorney Lynch** said that lack of the variance prevented the owners from making the best and highest use of the property. **Mr. Soda** asked what would be done if patrons began drinking without ordering food. **Attorney Lynch** said the serving of alcohol is always done at the restaurateur’s discretion and he or she can refuse to serve patrons. **Mr. Soda** asked about the idea of bringing your own alcohol. **Attorney Lynch** said “BYOB” would not be consistent with the type of state license his clients want. **Mr. Vaccino** asked about security procedures in the event of disorderly patrons. **Attorney Lynch** said any business owner must call the Milford Police Department in the event of an incident that threatens public safety or if patrons refuse to leave the premises.

BOARD DISCUSSION

Mr. Tuozzola closed the hearing. **Mr. Haberman** said he was concerned by the lack of support in the neighborhood. **Mr. Vaccino** agreed. **Mr. Haberman** said the restaurant is a nice place and that he would visit it, but he noted that he didn’t have to live next door to it. **Ms. Ferrante** was also concerned by the level of opposition. **Mr. Haberman** said he felt the rationale for asking for the use variance was based more on convenience than hardship. **Mr. Vaccino** said he did not see a hardship.

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

2. **753 East Broadway** (R-5) Ron D’Aurelio, Architect, for Carmen Stefano, owner; Vary Sec. 3.1.4.1 front-ym setback to 5.5’ where 10’ req, to 4 stories where 3 stories perm; 4.1.4 north eave to 4.4’ where 8’ perm, west eave to 2.6’ where 8’ perm, front stairs to 0.5 where 8’ perm to built addition to a legal 2-family dwelling; Map 22, Block 474, Parcel 24

Mr. Aurelio, 42 Cherry Street, addressed the board. He said the hardship was a preexisting nonconforming lot. He said house was a legal nonconforming 2-family residence. He said the application also incorporated zoning relief from a previous variance allowing an expansion of the nonconforming use. He said the current cumulative cost of improvements and repairs would trigger the 50% requirement to elevate. He discussed the elevation requirements. He said there would be parking added to the lot where none exists now. He described the challenge of moving the front stairs onto the lot. He said another design goal was to keep the house out of the VE (wave action) flood zone. He said the current units will remain in the same place they currently occupy. He discussed the use of the mansard roof. He reviewed with the board a panoramic image he had provided to show how the house will look beside the adjacent houses.

DISCUSSION

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Mr. Tuozzola asked Mr. Harris on the current thinking on stories. **Mr. Harris** said the Planning and Zoning Board is reviewing number of stories currently permitted in the regulations. He confirmed that the proposed height of this structure is less than 35'. **Mr. Soda** asked Mr. Harris whether a walk-up attic was allowed to exceed 50% of the floor below it. **Mr. Harris** said a prior variance had already expanded the living area.

FAVOR

Damian Pasqua, 758 East Broadway, said he supported the project, but that he wanted to be sure the walkway is preserved, as he didn't see it on the plans.

BOARD DISCUSSION

Mr. Haberman said the plan looked to be well thought out and the parking addition would be a benefit. **Mr. Tuozzola** said the adjacent houses were of a similar size. **Ms. Ferrante** was pleased by respect for height and lot coverage. After a short discussion, there were no issues in dispute.

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

3. **33 Melba Street** (R-5) Dave Salerno, agent, for O.M.D.P, owner; Vary Sec. 3.1.4.1 front-ym to 4' where 10' req; 4.1.4 front eave to 3' where 8' perm to build 2-story addition; Map 29, Block 587, Parcel 11

Mr. Salerno, 77 Canoe Brook Road, Trumbull, addressed the board. Mr. Salerno stated that the existing house would be torn down and replaced with a more conforming house. He said the hardship was that the lot is undersized and that the house should be moved further from the VE zone. He said the house would blend well with the neighborhood and there would be parking underneath. He reviewed the reductions in nonconformities based on working closely with ZEO Harris to minimize the variance request.

DISCUSSION

Mr. Vaccino confirmed that the stairs were inside. **Mr. Haberman** confirmed that 2 cars would fit underneath.

BOARD DISCUSSION

Mr. Tuozzola 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 the hardship of the lot and non-expansion of nonconformities, exactly per the submitted materials. The motion carried with **Ms. Ferrante** and **Messrs. Haberman, Soda, Vaccino** and **Tuozzola** voting **with the motion**.

4. **83 Overton Avenue cor. Surf** (R-10) Danielle Bercury, Esq., Attorney, for R.M. Skinner Enterprises, Inc., owner; Vary Sec. 3.1.4.1 rear-ym setback to 11' where 25' req; 4.1.4 side-ym proj to 3.5' where 2' perm to build single family home; Map 35, Block 440, Parcel 27

Attorney Bercury of Harlow, Adams & Friedman, PC, 1 New Haven Ave, addressed the board. She provided the variance notification materials to Ms. Greene. **Attorney Bercury** stated that existing house had to be demolished and noted the hardship of the corner lot. She noted the conforming side yard and reviewed the variance request details. She said the new home would be moved out of the flood zone.

BOARD DISCUSSION

Mr. Tuozzola closed the hearing. After a short discussion, there were no issues in dispute, so he asked for a motion.

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

C. OLD BUSINESS

- i. **0 Tanglewood Circle (across from 150 Tanglewood Circle)**(R-A/cluster to R-18) Thomas Lynch, Esq., Attorney, for April Culver, owner; Vary Sec. 3.1.4.1 to 20' where 40' req to build a single family home; Map 122, Block 904, Parcel 5-N

Mr. Tuozzola closed the hearing on this item in December's meeting. Due to the presence of only 4 board members and/or alternates who had heard **Attorney Lynch's** presentation in December, he asked that both Tanglewood items be postponed until the February meeting. His request was granted.

- ii **0 Tanglewood (across from 150 Tanglewood Circle)**(R-A/cluster to R-18) Thomas Lynch, Esq., Attorney, for April Culver, owner; Vary Sec. 3.1.4.1 to 20' where 40' req to build a single family home; Map 122, Block 904, Parcel 5-P

Mr. Tuozzola closed the hearing on this item in December's meeting. Due to the presence of only 4 board members and/or alternates who had heard **Attorney Lynch's** presentation in December, he asked that both Tanglewood items be postponed until the February meeting. His request was granted.

- iii **35 Thompson Street** (R-5) Thomas Lynch, Esq., Attorney, for Gail Murray, owner; Vary Sec. 3.1.4.1 front-
yd to 3.3' where 10' req, rear-
yd (dwelling) to 4' where 20' req; 4.1.4 front-
yd (eave) proj to 3.3' where 8' perm, 3rd story deck proj to 3.7' where 16' perm, rear-
yd (hatchway) proj to 2.1' where 16' perm, (window well) proj to 1.8' where 16' perm; 4.1.5 (paved patio) to 2' where 4' req to build a single family home; Map 35, Block 444, Parcel 25

Attorney Lynch, 63 Cherry Street, addressed the board. He provided reference materials. He stated that he had opened this agenda item in December. He described the background of previous ZBA applications, including a court decision that reversed a July 2012 ZBA decision on the address. He said Peter Crabtree, zoning consultant, would review the revised plans for the house. He said the most recently proposed structure was somewhat smaller, but essentially the same design as the previously approved plan. He reviewed the disrepair of the current house. He referred to the opposition of neighbor Lynn Simko, and noted that Ms. Simko remained opposed. He referred to the decision of Judge Sequino, who noted that a hardship exists. He said Ms. Murray wants to build a 3-story house, and that this height does not require a variance. He reviewed reductions in nonconformities versus expansion of nonconformities in the service of building a reasonably sized house.

Peter Crabtree, 64 Stanley Street, addressed the board. He discussed the size of the lot and the challenges of the project. He noted treatment of utilities. He said the setback requests do not, for the most part, affect any neighbors. He noted the reduction in variance requests.

Attorney Lynch reiterated that setbacks exist to create space between neighbors. He said a 45' distance already exists between the house and the neighbors.

DISCUSSION

Mr. Vaccino noted that the footprint was being squared off.

OPPOSITION

Attorney Diane Lord of Willinger, Willinger and Bucci, PC, 855 Main Street, Bridgeport, CT said she represented Lynn Simko, 33 Thompson Street, who opposes the project. She reviewed her client's experience of the project. She said the court found that the structure was nonconforming. She disagreed with Attorney Lynch's interpretation of the court ruling. She said adding height adds to nonconformities. She said it was out of character with the neighborhood.

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Lynn Simko, 33 Thompson Street, said she was opposed to the application. She provided photographs showing the proximity of the Murray house to her own. She said her property value would be negatively affected. She said the board abused its discretion in granting the variance.

Edward Nelson, 289 Burnt Plains, said Ms. Simko's house's market value would drop significantly if the Murray house was constructed as planned. He disputed comments of the board in previous hearings. He noted adverse possession proceedings against neighbors.

Renee Head, 24 Thompson, said she felt the rear variance would negatively impact the wetlands. She noted the right to repair and improve property, but felt the project was overkill. She urged compromise.

Zbigniew Dmowski, 29 Thompson, said he objected to the height of the proposed home and that it impacted his privacy.

REBUTTAL

Attorney Lynch reiterated that the house conforms to height regulations. He disputed the real estate value assessments offered. **Mr. Haberman** confirmed that the square-off was the only expansion of the footprint, in addition to the Bilco door. **Mr. Vaccino** asked why there was no appeal of Judge Sequino's ruling. **Attorney Lynch** said he wasn't the attorney for Ms. Murray at that time and couldn't address that question. **Mr. Harris** answered **Mr. Haberman**, confirming that even if the house were built on the existing footprint, a variance would be needed. **Mr. Vaccino** reiterated this with **Mr. Harris** that if the same house were to be rebuilt from scratch, this would require variances. **Mr. Harris** confirmed that the judge ordered that the ZBA decision be reversed. **Attorney Lynch** said the application was a new one, that the house is 2' shorter than the height restriction required and that no side-yard variances were needed.

BOARD DISCUSSION

Mr. Haberman reviewed the ideas behind their previous decision. He said the height was not part of the decision. He said he still thinks they have a hardship. Ms. F noted that the height was not a factor.

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

D. NEW BUSINESS

Mr. Soda asked if building elevations could be submitted with variance applications. **Mr. Harris** said he would be sure they are provided in the future. Mr. Harris recommended that board members attend the Land Use Law conference on 21 March. **Ms. Greene** said she would process applications and fees. She also reviewed 2015 materials provided to the board.

E. STAFF UPDATE

F. ACCEPTANCE OF MINUTES FROM DECEMBER 9, 2014, HEARING

G. ACCEPTANCE OF APPLICATIONS FOR FEBRUARY 10, 2015, HEARING

The meeting was adjourned at 8:56 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