

## **AMENDED Minutes, Public Hearing of Zoning Board of Appeals Meeting held 10 February 2015**

The Regular Meeting of the Zoning Board of Appeals of Milford, CT, was held on Tuesday, 10 February 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**

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

**ALTERNATES PRESENT:** Alison Rose Egelson, Gary Dubois, Robert Thomas

**MEMBERS/ALTERNATES ABSENT:** None

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

**Mr. Tuozzola** called the meeting to order at 7:00 p.m. He asked for conflicts of interest for board members with any agenda items; none were raised.

### **B. CONSIDERATION OF AGENDA ITEMS**

1. **8 Bittersweet Ave** (R-5) Danielle Bercury, Esq., Attorney, for Jason Timko, owner; Sec. 9.2.1 Appeal the Decision of the ZEO re: Sec. 8.3 construction of dividing wall in garage without permits; Map 13, Block 134, Parcel 9

**Attorney Bercury**, of Harlow, Adams & Friedman, 1 New Haven Ave, addressed the board. She handed a packet to Ms. Greene containing an affidavit from her client, a letter from the neighbor at 12 Bittersweet regarding the dispute over the garage, and a 1937 deed. She stated that that use of the garage has long been divided between numbers 8 and 12 Bittersweet. She said the deed contained language describing the garage arrangement. She noted that there was damage after Storms Irene and Sandy, particularly to the portion serving #12. She said the owners of 12 Bittersweet want to demolish the garage to expedite a sale of the property, and that #12 is unoccupied. She said the issue was not encroachment but rather shared ownership. She said that the owners of #12 advised her client that they intended to demolish their portion of the garage; therefore Mr. Timko shored up an existing dividing wall in the garage so the entire structure wouldn't collapse due to partial demolition. She said it was their position that this action did not require a permit, that the wall was preexisting and that the dispute was a private one between property owners.

### **DISCUSSION**

**Mr. Tuozzola** confirmed that the garage was shared between 2 owners. **Attorney Bercury** said the original intent was to share it half and half, but a recent survey shows that her client's bay is somewhat smaller. She acknowledged legal ambiguity over who would own the portion of the garage containing the wall.

### **OPPOSITION**

**Barbara Ragozzine**, 146 Bittersweet, described past harmonious use of the garage, but said Mr. Timko rents the house to tenants and parking is a problem. She said the garage is structurally unsound. She described her understanding of the garage's ownership. She wondered that Mr. Timko could pull a permit because it was her impression that he doesn't own the garage. Her husband **Robert Ragozzine** agreed with her assessment.

### **ZEO RESPONSE**

**Mr. Harris** distributed copies of his violation letter, with supporting regulation text and a photograph of the wall inside the garage. He said he understood the complex history of the garage, but the regulation was clear. He cited the regulation that supports his contention that a building permit was required because the work done was substantial in nature. **Mr. Soda** asked if a permit was required to use plywood to do things like secure broken windows after a storm, because the photograph of the wall reminded him of this type of temporary protection. **Mr. Harris** said no permit was required for securing broken windows, but noted that the plywood wall was built 2 years after the storm damage occurred. **Mr. Tuozzola** confirmed that the board was only deciding whether the enforcement order was valid.

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### **REBUTTAL**

**Attorney Bercury** disputed statements made by Ms. Raggozine. Attorney Bercury said her client's intent was to shore up an existing wall in anticipation of half of the garage being demolished. She asked that time be granted for an attempt to secure the permit. She said the photo seems to show a new wall, but that in reality, the plywood was securing an old, existing wall. She noted the concerns of the neighbors about parking and street congestion. She said she would like to have the matter be carried over to allow time for more negotiation with the neighbor. She noted that client is the one who pays property tax to the City for the entire garage despite only having partial ownership of it. She said her client wasn't opposed to getting a permit. **Mr. Vaccino** asked why a permit was never sought, given the level of contention about the garage. **Attorney Bercury** noted that the wall was built in the spring 2014 and that it only became a matter of contention due to the subsequent sale listing of 12 Bittersweet. She said the intent was never to evade responsibility. She asked to table the matter until March.

### **BOARD DISCUSSION**

**Mr. Tuozzola** closed the hearing and the board considered Attorney Bercury's request to table the item. **Mr. Haberman** motioned to table. **Mr. Soda** seconded. The motion carried with **Ms. Ferrante** and **Messrs. Haberman, Soda, Vaccino** and **Tuozzola** voting **with the motion**.

2. **41 Melba Street** (R-5) Dave Salerno, agent, for Brian Lee, owner; Vary Sec. 3.1.4.1 north side-ym setback to 1.84' where 10' req; 4.1.4 north eave to 1' where 8' perm to build new single family home; Map 29, Block 587, Parcel 15

**Attorney Thomas Lynch**, of Lynch, Trembicki and Boynton, 63 Cherry Street, addressed the board. He stated that his clients had taken the board's advice on two prior applications and decided to build one home on their lot. He described the size and narrowness of the lot and the storm damage sustained by the property. He reviewed the existing conditions. He said his clients would like to demolish the two existing structures and build one single 2400sf single family house centered on the lot. He said there was one variance request for the northerly side of the property, which would essentially allow the existing placement of the structure to continue "as is" on that side.

### **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. Vaccino** motioned in favor of application. **Mr. Soda** seconded. **Mr. Vaccino** supported his motion by reason of reducing nonconformities and heeding the advice of the board, exactly per the submitted materials. The motion carried with **Ms. Ferrante** and **Messrs. Haberman, Soda, Vaccino** and **Tuozzola** voting **with the motion**.

3. **25 James Street** (R-5) Ellen Buchanan, owner; Vary Sec. 4.1.4 front (east side) to 4' where 8' perm and front (west side) to 5' where 8' perm for front deck; Map 27, Block 455, Parcel 30

Ms. Buchanan addressed the board. She described her original plan which had previously been approved by the board, but said she had since applied for a Hazard Mitigation Grant. She said a condition of obtaining that grant required that her house preserve the original door and windows as historic, forcing her to change her original design and request a new variance.

### **DISCUSSION**

**Mr. Tuozzola** confirmed that the grant required a change in the staircase. **Mr. Vaccino** asked for a copy of the historic preservation requirement in writing, which Ms. Buchanan provided. He read aloud the grant language.

### **BOARD DISCUSSION**

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**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. **Ms. Ferrante** seconded. **Mr. Haberman** supported his motion by reason of hardship of the small lot combined with accommodating the state historic commission requirement, exactly per the submitted materials. The motion carried with **Ms. Ferrante** and **Messrs. Haberman, Soda, Vaccino** and **Tuozzola** voting **with the motion**.

4. **33 Chetwood St** (R-5) Laura Downs, owner; Vary Sec. 3.1.4.1 east side-yd setback to 3' where 5' req, west side-yd setback to 8' where 10' req, rear-yd setback to 9.1' where 20' req, lot cov. of 77.7% where 65% perm/bldg cov. of 47.8% where 45% perm; 4.1.4 front deck proj to 4.3' where 8' perm, west deck proj to 0' where 8' perm, rear deck proj to 9.1' where 16' perm to build single family home; Map 29, Block 456, Parcel 47

**Mr. Haberman** recused himself from this item. His vote for this item was assigned to **Mr. Thomas** who also read the request for the record.

**Ms. Downs** addressed the board. She stated that the hardship was a small nonconforming lot with a structure in a problematic preexisting position. She said off-street parking would be added under the house. She said she was surrounded by the marsh and sometimes water covered all her property. She said the City owned abutting property, so neighbors would not be impacted. She said the house would be in character with the rest of the neighborhood.

### **DISCUSSION**

**Mr. Tuozzola** expressed concern about the number of variances being sought, particularly the lot and building coverage requests. **Ms. Downs** said she thought the deck created most of the coverage issues. **Mr. Soda** asked for clarification of a handwritten revision on the plans, which **Mr. Harris** provided. **Ms. Ferrante** expressed concern about the width of the house due to parking. She noted that the board has seen applications where a well designed 20' house provided parking underneath. **Mr. Soda** agreed. **Mr. Vaccino** advised that the board could provide an opportunity for her to scale down the house and address the board's reservations.

### **FAVOR**

**Cathy Chicos**, 20 Chetwood, said she and her husband supported the project, because it would be an improvement, especially given how hard hit Chetwood Street was by the storms.

**Bill Chicos**, 20 Chetwood, said his house is 18' wide and felt the wider footprint of the Downs' design was more practical.

### **BOARD DISCUSSION**

**Mr. Tuozzola** closed the hearing. **Mr. Soda** felt the coverage requests were too high. **Mr. Vaccino** said the property improvements were welcome, but the board was charged with being fair to all. After a short discussion, the board decided the owners should be given a chance to come back with revisions.

**Mr. Soda** motioned to **deny with out prejudice**. **Mr. Vaccino** seconded. The motion carried with **Ms. Ferrante** and **Messrs. Haberman, Soda, Vaccino** and **Tuozzola** voting **with the motion**.

**Mr. Tuozzola** thanked Mr. Thomas and called **Mr. Haberman** back to read the next item and vote.

5. **41 Lawrence Ave thru lot to First Ave** (R-5) Christopher Motasky, agent, for JMO Properties, owner; Vary Sec. 3.1.4.1 south side-yd setback to 4' where 5' req; 4.1.4 south side-yd proj to 2.6' where 4' perm to build addition to single family home; Map 28, Block 580, Parcel 5

**Mr. Motasky**, 14 Country Club Drive, Seymour, addressed the board. He said he wished to move his family to Milford and that he and his wife have ties to the neighborhood. He said they were asking to increase the size of the home by

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putting a sunroom on the back. He said the hardship was the small lot with 2 front yards. He said he tried to minimize the requests and keep the house in character with the neighborhood.

### **DISCUSSION**

**Mr. Vaccino** confirmed the dimensions of the sunroom. **Mr. Motasky** shared an elevation drawing to clarify that the request was for one floor.

### **BOARD DISCUSSION**

**Mr. Tuozzola** closed the hearing. **Mr. Haberman** noted the value of the elevation drawings in helping the board better understand the project. After a short discussion, there were no issues in dispute.

**Mr. Vaccino** motioned in favor of application. **Mr. Soda** seconded. **Mr. Vaccino** supported his motion by reason of no enlargement of nonconformity, exactly per the submitted materials. The motion carried with **Ms. Ferrante** and **Messrs. Haberman, Soda, Vaccino** and **Tuozzola** voting **with the motion**.

6. **53 Warfield Street** (LI) Kevin J. Curseaden, Esq., of Carroll, Curseaden and Moore, LLC, 23 Cherry Street, Attorney, for GNN Realty, LLC, owner; Vary Sec. 3.10.2.3 to 22,949+/- sq ft (~.53 acre), where 1 acre req for vehicle repair and svcs; Map 23, Block 344, Parcel 10

**Dave Young**, All Ford Svc and Repair, addressed the board. He stated that Attorney Curseaden was out of town. He said he had a letter from DPLU Director Joseph Griffith about the use of the site and submitted it to the board. **Mr. Tuozzola** asked Mr. Harris to comment on Mr. Griffith's letter. **Mr. Harris** said the interpretation of the regulation expressed in the letter was incorrect. Mr. Harris said the location has never had an approval.

### **DISCUSSION**

**Mr. Haberman** asked about the current use and confirmed that a portion is a tax office, the rest is vacant. **Mr. Tuozzola** noted that the variance requires a change in the lot coverage. **Mr. Soda** ascertained that Mr. Young had already bought the property. **Mr. Harris** noted that the application must follow a 2-stage process that requires review by the Planning and Zoning Board.

### **BOARD DISCUSSION**

**Mr. Tuozzola** closed the hearing. **Mr. Haberman** noted the resemblance to the previous Warfield request and said he didn't see the hardship. He said the size of the lot was the hardship, but the location of the business was a choice.

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

## **C. OLD BUSINESS**

**Mr. Tuozzola** allowed **Mr. Haberman** and **Mr. Vaccino** to recuse themselves and seated **Mr. Dubois** and **Mr. Thomas**, who heard the original Tanglewood Circle presentation by Attorney Lynch.

- 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

### **BOARD DISCUSSION**

**Mr. Soda** said he was originally supportive of the projects, but that the postponement gave him a chance to think about it. He said he had come to believe there is room for improvement by downsizing the proposed houses. **Ms. Ferrante** said there is a right to develop one's land, but she agreed with Mr. Soda's assessment and would welcome revisions.

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**Mr. Soda** motioned to **deny without prejudice**. **Ms. Ferrante** seconded. The motion carried with **Ms. Ferrante** and **Messrs. Dubois, Soda, and Thomas** voting **with the motion**. **Mr. Tuozzola** voted against the motion.

- 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

The board reprised the vote: **Mr. Soda** motioned to **deny without prejudice**. **Ms. Ferrante** seconded. The motion carried with **Ms. Ferrante** and **Messrs. Dubois, Soda, and Thomas** voting **with the motion**. **Mr. Tuozzola** voted against the motion.

**D. NEW BUSINESS**

**Mr. Tuozzola** reminded the board that he will be away for the March meeting. He asked Mr. Haberman to act as chair and Mr. Vaccino to act as secretary.

**E. STAFF UPDATE**

There was none.

**F. ACCEPTANCE OF MINUTES FROM JANUARY 13, 2015, HEARING**

**Mr. Vaccino** moved they be accepted; the motion carried unanimously.

**G. ACCEPTANCE OF APPLICATIONS FOR MARCH 10, 2015, HEARING**

Staff noted that an application for Gardner Avenue has been received.

The meeting was adjourned at 8:17 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