

## **Minutes, Public Hearing of Zoning Board of Appeals Meeting held 14 February 2017**

The Regular Meeting of the Zoning Board of Appeals of Milford, CT, was held on Tuesday, 14 February 2017, 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**

**Mr. Tuozzola** called the meeting to order at 7:00 p.m. He welcomed new board member **Benjamin Gettinger**. He asked **Ms. Huber-Happy** to substitute for Ms. Ferrante. He also asked for conflicts of interest for board members with any agenda items; none were raised.

**MEMBERS PRESENT:** Joseph Tuozzola (Ch), John Vaccino (Sec), Benjamin Gettinger, William Soda

**ALTERNATES PRESENT:** Jeanne Huber-Happy

**MEMBERS/ALTERNATES ABSENT:** Sarah Ferrante, Gary Dubois, Robert Thomas

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

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

1. **622, 624, 626 Gulf Street (MBP: 28/520/26)** R-18. Kevin Curseaden, Esq., attorney for GH Ward and Successors, owner;

Section of Zoning Regulations for Variance:

**Proposed Lot 1:**

Vary Section 2.5.4 to form new lot on lot already occupied by building.

Vary Section 3.1.1.1 to allow two single family detached residences on one lot.

Vary Section 2.5.5: Access width/frontage to 10' where 25' required;

Vary Section 3.1.4 side yard setback to 6' where 15' required.

**Proposed Lot 2:**

Vary Section 2.5.4 to form new lot on lot already occupied by building.

Vary Section 2.5.5: Access width/frontage to 10' where 25' required; Lot that may not be considered generally rectangular in shape.

**Attorney Curseaden**, Carroll, Curseaden, and Moore, 26 Cherry Street, addressed the board. He noted that he had submitted notification materials to Ms. Greene. He asked to make last month's proceedings part of the record. He provided handouts to the board and projected information for review. He said Mr. Ward was present and Mr. Shay, P.E., of Milone and MacBroom was also present. He said the application had been simplified. He said his client had incorporated some of the board's response into the modified application. He noted disagreements between himself and Mr. Harris in interpreting the regulations. He said it seemed the board's main concern was the undersized lots, being less than an acre where an acre is required. He said that concern had been addressed. He noted the support of many neighbors with a focus on preserving the narrowness of the access drive. He reviewed the specific requests in the variance application. He compared this request to the previous one to show a reduction in the variances requested. He presented most of the requests in table form. He presented an aerial view of the existing structures on the lot. He showed GIS imagery that displayed the access road. He showed a list of neighbors who had provided letters in support. He noted that the ZBA meeting's date conflict with Valentine's Day created difficulty for neighbors to attend. He showed a survey with a sewer easement documented. He said his legal argument is that the variance would reduce conformities. He said the hardship is in the topography of the lot with a drop-off in elevation. He said the property was unique in the neighborhood, zone, and city. He said the lot was created prior to zoning with the 3 structures being there since the early 20<sup>th</sup> century. He refuted the idea that the request is subdividing by variance. He cited the case of Vine, saying it provided a justification for the type of variances that would be needed to create a new lot. He proposed a theoretical question for Mr. Harris about a near-conforming rear lot and whether variances could be attached to it. He read a list of neighbors writing in support. He said he investigated Mr. Soda's idea of moving the houses; that Mr. Ward hired a

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consulting engineer who determined that moving the structures would be difficult and risky. He included a quit claim deed that described the right of way. He said he doesn't agree that accessory structures are in the front yard. He provided a definition of front yards from the regulations. He described the processes for providing access and creating subdivisions and discussed why these processes were not a part of this application.

### DISCUSSION

**Mr. Soda** asked to view the 1918 survey. He noted that there was a subdivision and asked when it was done. **Attorney Curseaden** wasn't sure when. **Mr. Soda** confirmed that originally there were 5 houses on the lot. **Attorney Curseaden** said one of the houses was once a barn.

### FAVOR

**Mr. Ward**, 622 Gulf Street, said he listened to the board's comments last month. He provided family history regarding the structures and shared anecdotes about the property. He said the neighbors were supportive. He said the access way had never been a problem.

**John DeGrand**, 36 Eveningside Dr. said he supports the project.

**Joe Blichfeldt**, 650 Gulf St, said he supports the project.

### OPPOSED

**Mr. Harris** said Sec. 2.5.5 requires access per lot, rather than shared access. He maintained that the accessory structures are in fact in the front yard. **Mr. Soda** asked Mr. Harris whether shared driveways were permitted. **Mr. Harris** said he had not been asked about a shared driveway between 2 rear lots, but such driveways may have been created long ago.

### REBUTTAL

**Attorney Curseaden** said he did not read private access as requiring a dedicated driveway per house. He and **Mr. Harris** discussed it.

### BOARD DISCUSSION

**Mr. Soda** said he read the engineer's report and identified points of disagreement with it. He said having 2 houses on one lot was problematic for him. **Mr. Tuozzola** asked for the board's options for a vote or other action, which Mr. Harris provided. **Ms. Huber-Happy** felt the vote should be deferred. **Mr. Vaccino** wanted to deliberate further. **Mr. Soda** suggested leaving the hearing open.

**Mr. Soda** motioned to **leave the hearing open until next month**. **Mr. Vaccino** seconded. The motion carried with **Ms. Huber-Happy** and **Messrs. Gettinger, Soda, Vaccino, and Tuozzola** voting **with the motion**.

2. **229 Bridgeport Avenue (MBP: 18/200/13)** CDD-2. Dan Rizzo, agent for Devon Investments, LLC, owner; Vary Sec. 5.5.4.2 tavern and café liquor lic. reg. to allow location of café closer than 1500'; nearest permittee is Bridgeport Flyer, 249 Bridgeport Avenue.

**Mr. Rizzo**, 229 Bridgeport Avenue, addressed the board and produced his notification papers. He said he was trying to avoid building an interior wall to separate anyone under 21 from the area where liquor would be served. He said the site has been extensively remodeled. He said 20% of his sales are from food versus alcohol. He said he wanted the restaurant to build community in the neighborhood. **Mr. Tuozzola** asked why their thinking had changed about the liquor license. **Mr. Rizzo** said there was confusion about whether the remodeling met the state requirements and that during the project it became clear that a café license would be better than a restaurant license. He discussed with **Mr. Soda** some conflicting exchanges with 2 state liquor agents. He clarified that if the interior wall was required, the total

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interior space of 1600 would be divided into about 770 sf of restaurant area and 900 sf of bar area. **Mr. Tuzzola** asked about the business and was told the original goal was a mix of selling 60% food/40% liquor, but in practice the business model changed and was successful, so they didn't want to tamper with it. **Mr. Vaccino** clarified that the wall is separate from the variance request. **Mr. Harris** said that Milford was unique in regular liquor license types versus restaurant uses. He said the use has been the same as it ever was, but because the owners wanted to change the license type to café, the regulations require a greater distance. **Mr. Rizzo** pointed out a similarity to a previous café license heard by the board. **Mr. Gettinger** asked Mr. Harris about unintended consequences. **Mr. Harris** said that under a café permit for local zoning regulation would have to keep a hot kitchen, similar to Stonebridge. **Mr. Rizzo** said his partner was a chef with a goal of improving the menu. **Mr. Vaccino** asked for the hardship which Mr. Rizzo did not provide.

### BOARD DISCUSSION

**Mr. Tuozzola** asked if anyone wished to speak in favor of or opposition to the application. Hearing none, he closed the hearing. **Mr. Soda** noted the long history of the establishment and the hardship of it being built too close to the existing restaurant. **Mr. Gettinger** agreed. **Mr. Vaccino** was troubled by lack of a legal hardship being given.

**Mr. Soda** motioned to **approve**. **Mr. Gettinger** seconded. **Mr. Soda** supported his motion by reason of hardship of previous proximity to another restaurant. The motion carried with **Ms. Huber-Happy abstained**. **Mr. Vaccino voted against**. **Messrs. Gettinger, Soda, and Tuozzola voting with the motion, but the motion failed** with only 3 votes.

3. **20 Camden Street (MBP: 24/397/5)** R-5. Irisel DeJesus, agent for Mony Tith, owner; Vary Sec. 3.1.4.1: north side-yd setback to 3' where 5' req.; vary Sec. 6.3.2 Expansion of Non-Conforming Structure, to construct a 2-story 10.5' x 24' addition.

**Ms. DeJesus**, 8 Huntington Turnpike, Bridgeport, addressed the board. She said her clients could not attend, but that she had provided the elevations requested at the January meeting.

### DISCUSSION

**Mr. Soda** asked why the clients weren't in attendance. He expressed doubt that the work the owners sought to legalize had been done 7 years ago. **Mr. Vaccino** said it also looked brand new to him. **Mr. Harris** said the timing of the addition wasn't relevant. **Mr. Tuozzola** asked Mr. Harris for guidance. **Mr. Harris** said a hardship unique to the property must be provided. **Ms. DeJesus** admitted there was no hardship. **Mr. Harris** said if the unpermitted work didn't get a variance, it would have to be removed in order to resolve the setback encroachment.

### 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 to **deny**. **Mr. Vaccino** seconded. **Mr. Soda** supported his motion by reason of no hardship being given. The motion carried with **Ms. Huber-Happy** and **Messrs. Gettinger, Soda, Vaccino, and Tuozzola voting with the motion**.

4. **9 Dixon Street (MBP: 37/520/)** R- 7.5. Joseph Hannon, agent for Domenic Testani, owner; Vary Sec. 4.1.4 front-yd proj. to 7.4' where 16' perm. to build new porch.

**Mr. Hannon**, 110 Beach Avenue, addressed the board. He described the project. He said the family would like to enjoy a front porch on the house. He said the house was built in the 1920s and that the plan would maintain the current line of the house. He produced postcards in support and a letter from the wardens of the Borough of Woodmont.

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### DISCUSSION

**Mr. Tuozzola** confirmed that the house had been remodeled and said it would add to the nonconformity. He confirmed that the hardship was the house predating hardship.

### 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. **Mr. Soda** said the original position of the house presented a hardship. **Mr. Vaccino** said he appreciated the plan for staying in the footprint of the house. After a short discussion, there were no issues in dispute, so **Mr. Tuozzola** asked for a motion.

**Mr. Soda** motioned to **approve**. **Ms. Vaccino** seconded. **Mr. Soda** supported his motion by reason of hardship of the position of the house, exactly per the submitted materials. The motion carried with **Ms. Huber-Happy** and **Messrs. Gettinger, Soda, Vaccino, and Tuozzola** voting **with the motion**.

5. **81 Morningside Drive (MBP: 39/616/4)** R-10. David Minter, agent for Dan Rubino, owner; Vary Sec. 4.1.4 front-yd proj. to 4.4' where 21' perm. to build new portico.

**Mr. Minter**, 33 Lancaster Drive, Beacon Falls, addressed the board. He introduced Mr. Rubino.

**Mr. Rubino**, 81 Morningside, said the front entryway is very steep and that he wants to replace and create a safe, reasonably sized landing. He said the hardship was that the house was preexisting and nonconforming, and that the topography presented a challenge.

### DISCUSSION

**Mr. Tuozzola** confirmed that a roof was being requested over the step.

### 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. Soda** motioned to **approve**. **Ms. Vaccino** seconded. **Mr. Soda** supported his motion by reason of hardship of the position of the house on the lot, exactly per the submitted materials. The motion carried with **Ms. Huber-Happy** and **Messrs. Gettinger, Soda, Vaccino, and Tuozzola** voting **with the motion**.

**B. OLD BUSINESS**-None

**C. NEW BUSINESS**-Mr. Tuozzola reminded the board that he would be away for the March meeting. He asked Mr. Vaccino to chair the meeting and Ms. Ferrante to act as secretary in announcing the variance requests.

**D. STAFF UPDATE**-None

**F. ACCEPTANCE OF MINUTES FROM 10 JANUARY 2017 HEARING**; Minutes were approved.

**G. ACCEPTANCE OF APPLICATIONS FOR 14 MARCH 2017 HEARING**.

Adjournment was at 8:30.

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