

Minutes, Public Hearing of Zoning Board of Appeals Meeting held 8 March 2016

The Regular Meeting of the Zoning Board of Appeals of Milford, CT, was held on Tuesday, 8 March 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.

A. PLEDGE OF ALLEGIANCE / ROLL CALL

MEMBERS PRESENT: Howard Haberman (Acting Ch), William Soda, John Vaccino (Acting Sec)

ALTERNATES PRESENT: Gary Dubois, Robert Thomas

MEMBERS/ALTERNATES ABSENT: Joseph Tuozzola (Ch), Alison Rose Egelson, Sarah Ferrante

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

Mr. Haberman called the meeting to order at 7:00 p.m., noting that he was acting in the vacationing Mr. Tuozzola's stead. **Mr. Vaccino** assumed Mr. Haberman's usual role of ZBA Executive Secretary for the evening. **Mr. Dubois** and **Mr. Thomas** voted in the absence of Mr. Tuozzola and Ms. Ferrante. He asked for conflicts of interest for board members with any agenda items; none were raised. The board decided to hear Item 4 first, due to the probable length of the 108 Beach Avenue presentation.

B. CONSIDERATION OF AGENDA ITEMS

1. **CONTINUED: 0 Westmoor Road** (R-12.5) Thomas Lynch, Esq., attorney, for Sharlene Adams, owner; Sec. 2.5.5 vary to allow private driveway to access lots certified per Sec. 6.4.2 in lieu of municipally acceptable street; Map 30, Block 644, Parcel 5.

FIRST CONTINUANCE GRANTED.

2. **NOTE—THIS ITEM WAS HEARD AFTER 32 FIELD COURT: 108 Beach Avenue** (R-7.5) William Coleman; Sec. 9.2.1: Appeal the Decision of the ZEO to withdraw his decision letter of 3 September 2015 requiring a variance to install a fence, and withdrawing finding of his ZBA Memo of 8 December 2015. Map 60, Block 743, Parcel 2.

Mr. Coleman addressed the board. He stated that he wished to speak in a neighborly, respectful way and that he didn't want to cause the Micceri family hardship. He said he put a sign on the property to stir raise neighborhood awareness about the meeting. He said he thought the neighborhood reaction was respectful and that 940 people expressed concern about the fence via an online petition. He noted that in a previous meeting, the issue of parcel ownership had been addressed and that taxation issues were deemed irrelevant to zoning issues. He said he wanted to point out errors in substantive fact about the petitioner and the survey. He said no petitioner with standing existed because Leden Consulting was dissolved in New York State in 1992. He also said that the survey was inaccurate due to erroneous assignment of the Mean High Water mark. He asserted that there are two land masses, not one, and that the outermost land mass is an island that belongs to the state. He shared a map with the board in support of his statement. He said there were also errors in process. He referred to a meeting on 8 January 2016 with the DPLU Director and Attorney Willinger at which time Mr. Harris withdrew his decision about the fence variance. Mr. Coleman said a public hearing required that both sides be heard, and that the modifying the plan in a private meeting created a process error by preventing discussion. He noted that Mr. Harris' retraction was based on the fence being shortened from 36" to 35" and Mr. Coleman doubted that this change made a fundamental difference in whether a fence should be considered a structure. He spoke about how zoning regulations embody community values and referred to regulations that prohibit fences on the Long Island Sound. He referred to a flood mitigation rule that precludes shrub rows; the latter clearly not being structures, yet they were deemed dangerous as potential projectiles in a storm and therefore unacceptable. He said the intent of the regulation is to maintain open vistas and to avoid accumulation of debris. He referred to an earlier letter written by Mr. Harris and agreed that the fence would become a projectile that could damage other buildings.

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DISCUSSION

Mr. Soda asked Mr. Coleman to produce documentation on the dissolution of Leden Consulting, which Mr. Coleman did.

Stephen Harris, ZEO, reviewed his participation in the events of the applications.

DISCUSSION

Mr. Soda asked if the document of corporate dissolution means the applicant doesn't exist. **Mr. Harris** said the owner or the owner's agent must file the application, but that he can't speak to the legality of a corporation's standing as it is a legal question.

REBUTTAL

Mr. Coleman said he tried to bring up this issue and others in the public hearing but the private meeting precluded him doing so in the public hearing.

FAVOR

Jessica Hall, 86 Platt Lane, said she grew up and has family in Woodmont, never misses Woodmont Day, participates in activities in the neighborhood. She said she started a petition and in 5 days collected 970 signatures. She said the petition was sorted by town, if the signers were former residents.

Carla Wyle, 1144 Racebrook Rd, Woodbridge, former resident, voiced support for logic in definition of fence, asked for balance between private property and misuse issues.

Patty Stoughton, 64 Alexander Road, Milford, said the shoreline is a value that the fence would obscure.

Barbara Genovese, 19 Belmont Street, said she has lived in Woodmont for 30 years. She underscored that no fences are or should be allowed on LI Sound due to danger during storms. She said this fence would set a precedent.

Kristopher Seluga, 156 Clark Hill Road, said shoreline access should be preserved. He said Milford provides limited access but is better than many neighboring communities. He said he uses the area frequently and that if this fence is built, other fences are likely to be built. He said the outer island should be considered public property, not private. He said the state of CT limits liability of private owners who allow beach access. He said littering and camping is prohibited regardless of ownership.

Martin Kelly, 163 Beach, said he became aware of issue from Coleman's signs and the petition. He said he agreed with the arguments made.

Sloan Gorman, 330 Merwin Avenue, said she takes frequent walks past the area and saw the sign about the fence. She said she is happy when she sees people relaxing and enjoying the shore. She asked that the area be preserved as it is.

Patricia Cucuzza, 265 New Haven Avenue, said she came to Milford during WWII due to the charm of the city. She noted that some of the development harmed Milford's beauty and felt the fence was included in the negative trend.

Salem Estrella, 8 Belmont Street, said she walks, kayaks, and runs where the fence will be. She said she has lived in the Anchor Beach area for years and her daughter grew up here. As a Spanish speaker, she offered to respectfully help and educate anyone who isn't English speaking and doesn't use the area properly.

Heika Severine, 6 Belmont, expressed support for Mr. Coleman.

Jenny Depino, 22 Barber Lane, West Haven, said she saw the beach issue on Facebook. She said she has visited this area for years because of its beauty. She said she thought she was like a lot of people in that she will never personally be able to afford a shorefront house, but she would experience being prohibited from visiting this beach as a personal loss. She argued that there are better ways to handle the litter and similar problems than putting up a fence. She said she spoke for people who don't live in Milford but enjoy this beach.

Ted Wirth, 28 Clinton Street, commended Mr. Coleman's arguments. He said he walks beach frequently, saw the ZBA meeting signage, but was confused about what was being requested. He expressed concern that beach users of Hispanic descent were being targeted for exclusion. He described personal milestones such as weddings that had occurred on the area to be fenced off and expressed sympathy for people who could no longer revisit. He urged the board to consider alternatives to a fence.

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Dan German, 114 Beach Avenue, expressed respect for the neighbors, appreciation for the board, public comments, and Mr. Coleman's remarks. He displayed photos of the tree on Milford Magazine's cover.

Josh Gold, 4 Chapel Street, thanked Mr. Coleman for his presentation. He urged board to reconsider.

Mark Leiberman, 24 Cornflower Drive, thanked the board and Mr. Harris for their work. He thanked Mr. Coleman for educating him. He said he is a business owner in Milford and that he also became a resident of Milford 12 years ago due to the charm of the city's green and shoreline. He said he hoped not see a fence on the beach.

OPPOSED

Charles Willinger, Esq., thanked the board and staff. He said he represented the Leden Consulting Corp. and the Misseri family. He asked to incorporate the minutes and record of 13 October 2015 and 12 January 2016 into this meeting's record. He said most of the night's speakers were coming from a place of emotion caused by Mr. Coleman's self-admitted "mischief" of posting signs that Attorney Willinger characterized as misinformation. He expressed concern about disparaging comments regarding his clients, corruption, and abuse of process. He said the board was charged with making a decision as to whether the zoning officer is correct, and urged that the board not be swayed by emotionalism. He said he believed Mr. Coleman's appeal was flawed and Mr. Harris' position was correct as a matter of law. He began reviewing aspects of the matter at hand. **Mr. Haberman** reminded Attorney Willinger that 3 minutes were allotted to all speakers. **Attorney Willinger** objected and asked that his objection be put on the record. He reviewed the timeline. He disputed Mr. Coleman's evidence. He asserted ownership. He distinguished between shoreline fences in front yards versus backyards, citing Section 4.1.7 of Milford regulations and Section 5.3.4.1 permits one sign. He asserted that his client had an absolute right to erect the fence and one sign. He said Mr. Harris' 8 January 2016 letter was correct. He asserted that Mr. Coleman's appeal of this letter was not timely. **Mr. Haberman** asked for a summary. **Attorney Willinger** again raised objection, noting that the chair was not giving him 5 more minutes.

Dick Austin, 14 Village Road, said it's been proven that the parcel is private property. He said he has lived and been involved in the borough for many years. He said the fence will underscore that this parcel is private property. He said there was public access to the Mean High Water Mark. He said outsiders are destroying the property.

Nancy Austin, 14 Village Road, said she grew up playing on the rocks, but knew it was private property. She said people no longer respect that it is private property. She said public access to the area beyond the Mean High Water mark exists.

BOARD DISCUSSION

Mr. Haberman closed the hearing. He said he appreciates the emotion involved in this, but also is that this is private property. He said he noted that errors of process, fact, and interpretation were compellingly presented by Mr. Coleman, but the issue is difficult, he (Mr. Haberman) is not an attorney, and that the board relies on Planning and Zoning staff.

Mr. Vaccino echoed the sentiments expressed by the chair, said he appreciated the public's comments, but underscored that ZBA decisions must follow zoning regulations which must be applied consistently. **Mr. Soda** questioned the dissolution of Leden Consulting and whether it can petition for the property.

Mr. Soda motioned to overturn the ZEO decision because corporation was dissolved. The motion failed due to no second. **Mr. Vaccino** motioned to uphold the ZEO decision. **Mr. Thomas** seconded. The motion carried with **Messrs. Dubois, Haberman, Thomas, and Vaccino** voting **with the motion** and **Mr. Soda** voting **against the motion**.

3. **41 Melba Street** (R-10) Dave Salerno, agent, for Brian Lee, owner; Sec. 4.1.4 proj. of 1.84' where 8' perm. to increase deck to 4'x23' instead of previously approved deck; Map 27, Block 587, Parcel 15.

POSTPONED.

4. **NOTE—THIS ITEM WAS HEARD FIRST: 32 Field Court** (R-5) Rafael Amaya, architect, for Saul Englander and Patricia Englander, owners; Sec. 3.1.4.1 east front-ym setback to 4.09 where 10' req; 4.1.4 east deck & stairs to 0' where 8' perm to construct a new single family home; Map 28, Block 574, Parcel 6.

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Mr. Amaya, of Amaya Architects, 284 Racebrook Rd, Orange, addressed the board. He stated that he was representing the CT Department of Housing on behalf of Saul and Patricia Englander. He said the Englanders had owned the home since 1979. He described storm damage to the Englander's property. He submitted before and after photographs to the board. He said elevating the structure was not a viable option, so a new home was required. He described the project in detail and said the footprint and floor plan were very similar to the original house.

DISCUSSION

Mr. Haberman asked why the steps were offset from the house such that they were right on the property line. **Mr. Soda** confirmed that the side deck was about 4' and asked if it could be 3' as building code allows. **Mr. Amaya** referred to the full set of drawings to review the existing conditions. **Mr. Vaccino** confirmed that the deck was longer than the previous house. **Mr. Soda** and **Mr. Amaya** discussed narrowing the deck to avoid having the variance at 0.

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.

Mr. Vaccino noted that the board was charged with reducing nonconformity. **Mr. Soda** motioned to deny without prejudice to allow time to revise the deck to be more conforming. **Mr. Vaccino** seconded. The motion carried with **Messrs. Dubois, Haberman, Soda, Thomas, and Vaccino** voting **with the motion**.

- B. OLD BUSINESS**
- C. NEW BUSINESS**
- D. STAFF UPDATE**
- F. ACCEPTANCE OF MINUTES FROM 9 FEBRUARY 2016 HEARING 8:54**
- G. ACCEPTANCE OF APPLICATIONS FOR 10 MAY 2016 HEARING**

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