

Minutes, Public Hearing of Zoning Board of Appeals Meeting held 10 March 2015

The Regular Meeting of the Zoning Board of Appeals of Milford, CT, was held on Tuesday, 10 March 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: Howard Haberman (Acting Ch), John Vaccino (Acting Sec), Sarah Ferrante, William Soda

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

MEMBERS/ALTERNATES ABSENT: Joseph Tuozzola (Ch)

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

Mr. Haberman called the meeting to order at 7:00 p.m. He announced that in Chairman Tuozzola's absence, he would act as Chairman; that **Mr. Vaccino** would act as Secretary; and that **Mr. Dubois** would be the 5th voting member for the evening. **Mr. Haberman** asked for conflicts of interest for board members with any agenda items; none were raised.

B. CONSIDERATION OF AGENDA ITEMS

1. **17 Gardner Avenue** (R-5) Rafael Amaya, Architect, for Kirsten Blando, owner; Vary Sec. 3.1.4.1 rear-ym setback to 10', 5-3/4" where 20' req to build new single family home; Map 27, Block 455, Parcel 9

Mr. Amaya of Amaya Architects, 284 Racebrook Road, Orange, addressed the board, saying that he was appearing on behalf of Ms. Blando and Bethany Biondi. He said the previous house on the lot was demolished after Storm Sandy. He described the proposed new house as being the same in size and appearance as the previous home, but elevated. He described the variance request.

DISCUSSION

Mr. Haberman confirmed that the previous house has the same basic nonconformity as the proposed house. **Mr. Vaccino** confirmed that the house had a slightly new orientation to straighten it with regard to the setbacks.

BOARD DISCUSSION

Mr. Haberman asked if anyone wished to speak in favor of or opposition to the application. Hearing none, he closed the hearing. **Ms. Ferrante** and **Mr. Soda** expressed approval. After a short discussion, there were no issues in dispute, so **Mr. Haberman** asked for a motion.

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

2. **158 Hillside Avenue** (R-5) Gernot Bruckner, agent, for Emily Gilmore, owner; Vary Sec. 3.1.4.1 south side-ym setback to 6.34' where 10' req to build new single family home; Map 59, Block 736, Parcel 5

Mr. Bruckner, 162 Hillside Avenue, addressed the board. He described the constraints of the lot, saying the hardship was an odd-shaped, narrow lot. He said the design aimed to minimize the variances needed.

DISCUSSION

Mr. Haberman confirmed that there was only one small variance required.

BOARD DISCUSSION

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

Mr. Haberman advised that he would recuse himself from the next 3 agenda items. He asked **Mr. Vaccino** to chair the meeting in his stead and **Mr. Dubois** to step in as secretary. He asked **Mr. Thomas** to provide the fifth vote for these items.

3. **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 30' where 40' req to build a single family home; Map 122, Block 904, Parcel 5-N

Attorney Lynch, 63 Cherry Street, addressed the board. He stated that he was representing April Culver. He asked that the variances for both lots be considered simultaneously. He said that to make his presentation as brief as possible he would ask that testimony and minutes from the December 2014 ZBA hearing be incorporated into the record of this month's meeting. **[NOTE: RELEVANT SECTION OF THE DECEMBER 2014 MINUTES APPEAR AS AN ADDENDUM TO THESE MINUTES.]** Attorney Lynch reviewed the application and events of the December meeting. He referred to comments made by Mr. Soda and Ms. Ferrante and the subsequent decision to deny without prejudice. Attorney Lynch noted an easement that ensures that the houses would actually be built 40' from the road despite being only 30' from the front lot lines. He also noted that the footprint of each house had been reduced in an effort to reduce the extent of the variance request. He said the adjustments would necessitate filling the wetlands more than the original plan, however this aspect of the plan would be presented to the Inland Wetlands commission for consideration. He said the wetlands constituted a legal hardship. He said he and his clients appreciated the board's comments and had revised the plans accordingly.

DISCUSSION

Mr. Soda confirmed that the plan was expected to feature colonial style homes.

FAVOR

Josip Francetic, 94 Housatonic Drive, said he supported the project. He shared his understanding of the intentions of the original owner Edward Kapusta. He expressed sympathy for the neighbors, but said the land was Mr. Kapusta's legacy.

OPPOSITION

Mary Ellen Magura, 144 Tanglewood Circle, provided a display of 5 homes in the area along with setback information. She stressed the information was new. She said the lots aren't properly sized for the proposed structures. She said a 4.1.8 variance would be required, but had not been requested.

Mr. Vaccino reviewed the 3-minute rule for public comment.

Gary Davis, 137 Tanglewood Circle, referred to 9.2.2.2 which requires that variances provide only the minimum deviation from regulations to allow reasonable use of the land. He said the requests were arbitrary. He said Ms. Culver wants to sell the lots, not to build homes. He said no application had been made to the Inland Wetlands Agency, so no review of potential impacts had been made. He discussed aspects of the clustering down of the prevailing zone and how proposed septic system installation was a factor in the size of one of the lots. He said the hardship was self-inflicted and reviewed Statute 6-8 on this issue. He reviewed content in a letter by Ms. Culver to the ZBA submitted in December. He submitted copies of his remarks.

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Sharon Clark, 108 Tanglewood Circle, provided handouts for the board. She noted that the applications had received conditional Health Department approval, saying there were discrepancies between surveys given to the Health Dept reflected the required 40' setback versus those submitted to the ZBA that reflected the variance request. She said soil tests were also incorrectly conducted.

Mr. Harris noted that the viability of septic system is not in the ZBA's purview, only the setback variance.

Donald Lydixsen, 173 Tanglewood Circle, reviewed board comments. He said the revised plan will result in more environmental impact to the site. He referred to surveys included in the previous handout. He said lot coverage was not been significantly reduced. He said the amount of wetlands destroyed would be a permanent loss. He said wetlands would also be temporarily disrupted. He said the revised survey did not show wetlands. He said his property was next to lot 28 and would be adversely impacted by the effects of construction activities.

Mr. Harris noted that wetlands impacts are the purview of the Inland Wetlands Agency.

Karen Zaneski, 150 Tanglewood Circle, referred to the Culver letter and discussed Ms. Culver's current residence in Florida. She (Ms. Zaneski) referred to a section in the packet provided earlier which featured the original deed and said Ms. Culver would have known about potential drawbacks to developing the Tanglewood properties due to her (Ms. Culver's) experience as a realtor. She referred to a handout documenting a realtor's code of ethics. **Mr. Vaccino** asked what connected this information to the variance request. **Ms. Zanecki** said she thought Ms. Culver had prior knowledge that the property could not be developed. **Mr. Vaccino** reminded Ms. Zaneski of the 3-minute limit for comments. **Ms. Zaneski** said that given what Ms. Culver knew, Ms. Culver should have asked for her money back on the properties rather than develop them.

John Shanley, 188 Tanglewood Circle, was concerned with "cluster zoning." He felt that this created a "designed neighborhood." He discussed hypothetical precedents.

The following persons said they agreed with previous comments and were opposed to the variances:

Diane Lydixsen, 173 Tanglewood Circle

Joan Cagginello, 17 Westminster Court

Pat Campanero, 105 Tanglewood Circle

Karen Smith, 16 Westminster Court

John Mudrick, 158 Tanglewood Circle

Bill Cagginello, 17 Westminster Court

Joe Badowski, 200 Tanglewood Circle

Steve Varholak, 41 Old Country Lane

Mimi Mudrick, 158 Tanglewood Circle

Tina Gage, 102 Tanglewood Circle, also stated that her husband **Tyrone Gage** was opposed.

Sharon Betz, 192 Tanglewood Circle, also stated that her husband **George Betz** was opposed.

REBUTTAL

Attorney Lynch addressed Mr. Davis comments about the lot line adjustment. He noted that the Planning and Zoning Board approved it and therefore there is no question that these are 2 legal building lots. He addressed Ms. Clark's objections, noting that proposed setbacks have no bearing on septic plan applications to the Health Department. He said the setback was to minimize impact to wetlands. He said the comments of a personal nature to Ms. Culver did not merit a response.

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BOARD DISCUSSION

Mr. Vaccino closed the hearing and asked for comments. **Ms. Ferrante** said the residents made compelling comments, but that their arguments do not come under ZBA jurisdiction. **Mr. Vaccino** agreed. He noted that the setback and footprint reductions had been incorporated. **Mr. Soda** noted that adjustments had been made. He reiterated that only the front setback was at issue. **Mr. Vaccino** said there would be consideration of the wetlands in the right venue. He asked for a motion.

Mr. Harris reminded the board that that any motion would require 2 separate votes.

Ms. Ferrante confirmed that other boards and commission requirements would be considered separately.

Mr. Soda motioned in favor of Item 3. **Mr. Thomas** seconded. **Mr. Soda** supported his motion by reason of hardship of the wetlands, exactly per the submitted materials. The motion carried with **Ms. Ferrante** and **Messrs. Dubois, Soda, Thomas,** and **Vaccino** voting **with the motion**.

4. **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 30' where 40' req to build a single family home; Map 122, Block 904, Parcel 5-N

Mr. Soda motioned in favor of Item 4. **Mr. Thomas** seconded. **Mr. Soda** supported his motion by reason of hardship of the wetlands, exactly per the submitted materials. The motion carried with **Ms. Ferrante** and **Messrs. Dubois, Soda, Thomas,** and **Vaccino** voting **with the motion**.

Mr. Harris asked for a 5 minute technical recess for video-recording, which **Mr. Vaccino** provided.

5. **33 Chetwood Street** (R-5) Laura Downs, owner; Vary Sec. 3.1.4.1 east side-yd setback to 4' where 5' req, west side-yd setback to 9' where 10' req, rear-yd setback to 9.1' where 20' req; 4.1.4 front deck proj to 4.3' where 8' perm, west deck proj to 1' where 8' perm to build single family home; Map 29, Block 456, Parcel 47

Ms. Downs, 75 Maple St, addressed the board. She thanked the board for last month's comments and described the reduction in variance requests, including eliminating all coverage requests. She said she hoped the modified plan would satisfy the board. The board had no questions for her.

BOARD DISCUSSION

Mr. Vaccino closed the hearing. **Mr. Soda** expressed approval. **Ms. Ferrante** appreciated the lot coverage corrections as did **Mr. Vaccino**. After a short discussion, there were no issues in dispute, so he asked for a motion.

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

Mr. Haberman was reseated as Acting Chairman; **Mr. Vaccino** was reseated as Acting Secretary after he thanked Mr. Thomas.

6. **45 Cooper Avenue** (R-5) Albert Strazza, Esq., Attorney, for Aviel Suarez and Marina Mitos, owners; Vary Sec. 3.1.4.1 west side-yd setback to 5' where 10' req to build new single family home; Map 59, Block 736, Parcel 5

Attorney Strazza, 883 Blackrock Turnpike, Fairfield, CT addressed the board. He described the variance and the project. He said the hardship was the narrow lot. He said the owners intended to use it for their primary home.

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DISCUSSION

Mr. Haberman confirmed that the existing nonconformity would be reduced.

BOARD DISCUSSION

Mr. Haberman 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 hardship of the narrow lot, reduced nonconformities, exactly per the submitted materials. The motion carried with **Ms. Ferrante** and **Messrs. Dubois, Haberman, Soda, and Vaccino** voting **with the motion**.

7. **44 Greenfield Road** (R-7.5) Richard Piselli, agent, for Selena Piselli and Sean Filkins, owners: Vary Sec. 3.1.4.1 north side-yd setback to 2.87' where 5' req to connect detached garage to house to via new enclosed breezeway; Map 59, Block 736, Parcel 5

Mr. Piselli, 201 West Main Street, addressed the board. He provided elevation drawings. He said he was presenting the variance on behalf of his daughter and son-in-law. He said the garage previously conformed, but once attached to the house would need a variance.

DISCUSSION

Mr. Haberman confirmed that the existing garage would be used and that the breezeway would provide a passageway to it. He said the roofline would be changed to attach to the breezeway.

BOARD DISCUSSION

Mr. Haberman closed the hearing. **Mr. Vaccino** and **Ms. Ferrante** agreed that the nonconformity was preexisting. After a short discussion, there were no issues in dispute, so he asked for a motion.

Mr. Vaccino motioned in favor of application. **Ms. Ferrante** seconded. **Mr. Vaccino** supported his motion by reason of not expanding the footprint of the garage, exactly per the submitted materials. The motion carried with **Ms. Ferrante** and **Messrs. Dubois, Haberman, Soda, and Vaccino** voting **with the motion**.

8. **38-40 Naugatuck**

Mr. Lesinsky, 96 Good Hill Road, Oxford, addressed the board on behalf of Ms. Patrick and Mr. Antonio Delise, proprietor of the liquor store. He presented a letter of support from the priest and Board of Trustees of the church within the 300' radius of the store. Mr. Lesinsky said he had been involved in many projects which had recently helped to revitalize the Walnut Beach neighborhood and that this project was of the same nature.

DISCUSSION

Mr. Haberman confirmed that the portion of the store that would expand away from the church but remains within the 300'.

FAVOR

Joe Bacchus, 60 Park Ave, said he was the Walnut Beach Association president and that he strongly supported the project. He said the area looked the best it had in a long time. He said he knows Fr. Maroney personally and agrees with his support of the project.

Mr. Haberman noted that the letter from Fr. Maroney was in favor of and had no objections to expansion of Seaside Wine and Spirits.

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Mike Amoradis, Alfa Pizza, 54 Naugatuck Avenue, said he approved of the expansion. He said in 1980 there were 3 package stores in the area and there was no impact on parishioners at the church.

Tina Fritchard, 85 Broadway, fellow business owner, said she supported the project.

BOARD DISCUSSION

Mr. Haberman 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 not increasing the nonconformity, exactly per the submitted materials. The motion carried with **Ms. Ferrante** and **Messrs. Dubois, Haberman, Soda, and Vaccino** voting with the motion.

C. OLD BUSINESS

D. NEW BUSINESS

E. STAFF UPDATE

F. ACCEPTANCE OF MINUTES FROM 10 FEBRUARY 2015, HEARING

Mr. Soda noted a correction: namely that he was originally in favor of Tanglewood. **Mr. Vaccino** moved they be approved as corrected; the motion carried unanimously.

G. ACCEPTANCE OF APPLICATIONS FOR 14 APRIL 2015, HEARING

The meeting was adjourned at 8:31 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.

ADDENDUM:

PRESENTATION AND COMMENTS ON 0 TANGLEWOOD PROPERTIES HEARD AT ZBA MEETING ON 9 DECEMBER 2014

- A. 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

Attorney Lynch provided handouts to the board. He stated that his remarks would apply equally to both Tanglewood parcels. He said he wished to address both agenda items at the same time, but that Mr. Harris advised that procedural rules required each item be called separately. Attorney Lynch asked that all his comments be made part of the record as applicable to both parcels, and Mr. Tuozzola allowed it. Attorney Lynch introduced Ms. Culver and Bob Wheway of Codespoti Associates. He stated the 2 lots were part of the Rustic Acre subdivision created in 1980. He noted that the two properties' lot lines were adjusted in 1987 to accommodate septic system considerations. He provided additional background on the land development in that area. He outlined the concept of cluster developments, saying that cluster developments ensure that the same number of buildable lots will be available on equivalent tracts of land despite development obstacles like wetlands. He noted that to make this adjustment possible in cluster developments, the usual zoning setback and size guidelines are "clustered down" to a smaller zone. He referred to the handouts noting in particular a letter written by Ms. Culver. He reviewed the proposed plan in detail. He noted that a large portion of each lot contains wetlands and the goal of the plans was to limit the amount of fill used to make the lots buildable. He referred to similar variance requests based on similar hardships, including one where a recent Milford ZBA variance approval was upheld in Superior Court. He noted that the Inland Wetlands Agency would need to review the plans, but that the request fit the definition of hardship for variances.

Robert Wheway, Licensed Professional Engineer, Codespoti & Associates, 504 Boston Post Road, Orange, presented details on the engineering aspects of the project. He noted approval from the City's Health Department. He said the goal was to present the project to the Inland Wetlands Agency with a minimized amount of fill.

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DISCUSSION

The board had no questions at that point.

FAVOR

Mr. Tuozzola asked if anyone present wished to speak in support of the project; none did.

OPPOSITION

Bruce Jackson, 8 Westminster Rd, said he opposed the project. He said the surrounding properties were similar, so no variance was needed. He said it would be detrimental to the neighborhood.

Joan Caginello, 17 Westminster Court, said she opposed the project because it would change the character of the neighborhood. She said others complied with the regulations and no exception was needed.

Ken Dademo, 48 Candlewood Circle, said he opposed the project and no buildings should be put on the lots. He said it would hurt property values.

Bill Caginello, 17 Westminster Court, noted that the 2 lots weren't developed by the original developer because they were too wet and houses built there would be out of character with the other houses.

Don Lydicksen, 173 Tanglewood Circle, provided handouts and expressed concerns about the size of the lots. He shared his interpretation of how the setback changes would affect the neighborhood. He cited several regulations that he felt the project would violate. He cited a concern about runoff rainwater.

Barry Davis, 137 Tanglewood Circle, questioned the lot line adjustments and size of the lots. He asked for comment by **Attorney Lynch** or **Mr. Harris**. He said the lots had wetlands when purchased, discussed potential considerations of the Inland Wetlands Agency, and said the size of the houses could be reduced to increase the front yard setback.

Karen Zaneski, 150 Tanglewood Circle, said she did not think the cases cited by Attorney Lynch were relevant. She said her father had been an engineer with the City and that he showed her maps when she bought her property, saying they should not be developed. She said there would be damage to adjacent property if houses were built there. She asked Mr. Harris if lot line adjustments were reviewed by a board; he said they are done administratively. She called the maps into question.

Gayle Slossberg, 14 Honeysuckle Lane, cited the state statute defining hardship for ZBA consideration, namely that exceptional difficulty or unusual hardship must be demonstrated. She referred to cases where a hardship was shown to be different in kind from neighboring properties. She showed a GIS map with elevations of the property and the presence of wetlands throughout the entire area. She said that financial consideration was not a hardship factor and referred to "purchase with knowledge" law, such that when a claim of hardship arises from an applicant's voluntary act, the ZBA can reject it.

George Betz, 192 Tanglewood Circle, shared details on about an addition he made to his property where he had to revise his plan to respect a front-yard setback.

Sharon Clark, 108 Tanglewood Circle, asked why the property couldn't be sold to the City as open space.

John Shandley, 188 Tanglewood Circle, said the owner's motive was profit and the neighbors shouldn't have to experience devalued property as a result.

John Mudrick, 158 Tanglewood Circle, noted that all other houses are more than 40' off street and this setback was integral to the quality of the neighborhood.

Mary Ellen Magura, 144 Tanglewood Circle, said she is a teacher and that she teaches youngsters about fairness requiring that everyone follow rules.

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Karen Smith, 16 Westminster Court, said she moved to the neighborhood for its beauty and space. She said had stretched to afford a house there, so she wanted the neighborhood to stay the same.

Jeremy Betz, 122 Tanglewood Circle, said he grew up in the neighborhood and that children used the front yards to play, so the setbacks should be maintained for safety.

Tina Gage, 110 Tanglewood Circle, said she opposed the project for previously stated reasons.

Pat Campanaro, 105 Tanglewood Circle, read a letter by Diana Niko, 236 Tanglewood Circle. The letter referred to maps of the property and cited unusual disclaimers.

Mimi Mudrick, 150 Tanglewood Circle, also said she opposed the project for previously stated reasons.

At this point, **Mr. Tuozzola** passed out copies of the Niko handout for board members to review.

Elizabeth Roy, 50 Autumn Ridge Road, said she and her husband **Dennis Roy** also opposed the project for previously stated reasons.

Mr. Tuozzola accepted another set of handouts for board members to review.

REBUTTAL

Attorney Lynch disputed several contentions made by those in opposition. He reiterated the hardship claim. **Mr. Soda** confirmed that petition would be made to Inland Wetlands as well. He asked Attorney Lynch to clarify the submitted map. **Attorney Lynch** said there had been confusion on the lot line adjustment. He described the series of events that led to the map of record being submitted and a discrepancy on the lot description. **Mr. Soda** confirmed that if a house were built without a variance, it would have to be located further into the wetlands.

BOARD DISCUSSION

Mr. Tuozzola closed the hearing. He noted that most of the properties in the neighborhood are at least 40' from the front lot line.

Mr. Soda noted that the 10' City Right-Of-Way makes the effective front setback 30' from the curb. **Mr. Tuozzola** reminded attendees that one of the Zoning Board of Appeals' missions is to protect reasonable use of the property.

Mr. Soda moved to table the item until next month. **Mr. Carey** seconded. The motion carried with **Ms. Ferrante** and **Messrs. Carey, Soda, Thomas** and **Tuozzola** voting **with the motion**.

B. 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. Thomas read the request. Mr. Harris advised that the item should be opened, all comments on Item 1 incorporated by reference **Attorney Lynch**, 63 Cherry Street opened item 2 and asked that all comments made on item 1 be incorporated into item 2, except if any comment was exclusive to either item. None were, so Attorney Lynch acted as recommended.

Mr. Soda moved to table the item until next month. **Mr. Carey** seconded. The motion carried with **Ms. Ferrante** and **Messrs. Carey, Soda, Thomas** and **Tuozzola** voting **with the motion**.

Mr. Tuozzola thanked **Ms. Ferrante** and **Mr. Thomas** for voting and seated **Mr. Vaccino** and **Mr. Thomas**.

END OF ADDENDUM

Attest:

Meg Greene
Clerk, ZBA