

## Minutes, Public Hearing of Zoning Board of Appeals Meeting held March 11, 2014

The Regular Meeting of the Zoning Board of Appeals of Milford, CT, was held on Tuesday, March 11, 2014, 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 may have required Coastal Area Site Plan Reviews or exemptions.

### **A. PLEDGE OF ALLEGIANCE / ROLL CALL**

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

**ALTERNATES PRESENT:** Gary Dubois, Robert Thomas

**MEMBERS/ALTERNATES ABSENT:** Sarah Ferrante, Richard Carey (*NOTE: Mr. Carey was seated after the 1<sup>st</sup> agenda item.*)

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

**Mr. Tuozzola** called the meeting to order at 7:00 p.m. He announced that pending Mr. Carey's arrival, **Mr. Thomas** would provide the fifth vote. He asked for known conflicts of interest for board members with any of the items on the agenda; none were raised.

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

1. **25 Pearl Street** (R-5) Douglas DiCamillo, agent for Joseph Gaudett and Diane Gaudett, owners; Vary Sec. 4.1.4: rear deck to 3.8' where 4' perm; front deck to 5.8' where 8' perm; front deck (nor. corner) to 3.5' where 8' perm; Sec. 6.3.2 expand nonconforming structure, all to elevate existing house in place and add new decks. Map 22, Block 459, Parcel 29

**Douglas DiCamillo**, 115 Richards St, Monroe, addressed the board. He stated that the house must be raised and that the owners wished to add new decks and stairs, creating a non-conformity.

### DISCUSSION

**Mr. Tuozzola** confirmed the configuration of the decks. **Mr. DiCamillo** said the hardship for the rear deck was that if the rear deck was not expanded, the backyard could not be used. He said the placement of the stairs was meant to streamline access to the house after elevation. **Mr. Vaccino** asked **Mr. Harris** to confirm the rear setback; **Mr. Vaccino**, **Mr. Haberman**, and **Mr. Soda** questioned Mr. DiCamillo further about the stair placement. **Mr. DiCamillo** said putting the stairs in the rear yard would interfere with access to the garage and necessitate walking all around the house for access. **Mr. Soda** asked if the stairs could be moved to the other side of the house and the deck enlarged by extending it into the backyard, rather than widening it.

### BOARD DISCUSSION

**Mr. Tuozzola** asked if anyone wished to speak in favor of or opposition to the application; hearing none, he closed the hearing. He noted that all board members seemed to agree about the rear deck and stair placement. **Mr. Vaccino** said he thought the plans should be altered to reduce variance requests due to lack of hardship. **Mr. Haberman** sited the rear deck specifically. **Mr. Soda** asked if all variances can be granted except one. **Mr. Haberman** questioned Mr. Harris about splitting a motion to approve all requests but one, and whether the rejected request could be denied without prejudice so the homeowner could return with a modified request sooner than the normal 6-month waiting period. **Mr. Harris** described the various actions the board could take.

**Mr. Haberman** split the motions. His first motion was to approve the front deck and its north corner as proposed, to elevate the house in place. **Mr. Vaccino** seconded. **Mr. Haberman** said the reason for approval was the hardship of the narrow lot. He then made a separate motion to deny the rear deck as proposed. **Mr. Vaccino** modified the motion to deny without prejudice. **Mr. Thomas** seconded. **Mr. Haberman** supported his motion by reason of no hardship shown. Both motions carried with **Messrs. Thomas, Haberman, Soda, Vaccino and Tuozzola** voting **with the 1<sup>st</sup> motion and with the 2<sup>nd</sup> motion**.

**Mr. Carey's** arrival was acknowledged and he was seated to vote on the next item. Mr. Tuozzola thanked Mr. Thomas.

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2. **16 Village Road** (R-5) Mary E. Stickley, owner; Vary Sec. 4.1.4: 2<sup>nd</sup> fl balcony to 4.4' where 8' perm; 1<sup>st</sup> fl steps to 2' where 8' perm; Sec 3.1.4.1 to reconfigure shed roof to gable on front of house; Sec. 6.3.2 expand nonconforming structure. Map 60, Block 745, Parcel 17

**Peter Crabtree**, 64 Stanley St, New Haven, addressed the board. He provided background on building characteristics in the Borough of Woodmont, noting that many older multi-families had formerly been tourist rentals. He said the house was built in 1910 prior to the adoption of zoning regulations, when the lot was part of a business district. He said that the lot conforms to current zoning size regulations, but that the house was built close to the street. He reviewed the house's elevations and the proposed roof changes. He noted that the sidewalk tapers off and the house is wedged between two houses that were built later. He said the hardship was in the location of the house. He shared photographs showing a neighboring home protruding further toward the street than 16 Village Road. He said the deck was an important amenity for the homeowner because the property only afforded a limited view of Long Island Sound; however, the proposed narrow deck that would allow them to enjoy the view. He reemphasized that the hardship was a house in an old neighborhood that never met current regulations.

### **DISCUSSION**

**Mr. Tuozzola** confirmed that roofline change would stay within house's current footprint and that existing side steps would be removed. He questioned the location of the front porch and confirmed that it would only be present along a short portion of the home. **Mr. Crabtree** said the deck wouldn't obstruct neighbors' views. **Mr. Haberman** confirmed that deck would be small, on the second floor in the center of the house. **Mr. Soda** reviewed with Mr. Crabtree how the side door, landing, and railings would change. **Mike Stickley**, 16 Village Road, said the door was still on the plans because it would have to be retained if variance was not granted. However, if the variance was granted, the door would be removed and replaced by a window.

### **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. Vaccino** noted that the improvements would make the house more visually appealing, but wanted to confirm hardship exists due to tapering of street and pre-zoning frontage of the house on street. **Mr. Haberman** noted that the location of the driveway was a factor in the location of the front entrance.

**Mr. Haberman** motioned in favor of application. **Mr. Carey** seconded. **Mr. Haberman** supported his motion by reason of the hardship of the location of the house on lot, exactly as stated on the survey. The motion carried with **Messrs. Carey, Haberman, Soda, Vaccino** and **Tuozzola** voting with the motion.

3. **230 Cherry Street through lot to Boston Post Road** (CDD-1) John Knuff, Esq., attorney, for SR 230 Cherry Milford, LLC & BVS 5401 Investors, LLC , owners; Vary Sec. 5.4.3.1 to permit a gas station within 0' of a residential zone where 300' req. Map 77, Block 825, Parcel 61

**John Knuff, Esq.**, of Hurwitz, Sagarin, Slossberg & Knuff, LLC., 147 Broad Street, addressed the board. Attorney Knuff stated that the proposal was for the site of the former Showcase Cinemas, a parcel consisting of about 10.85 acres. He noted that the gas station is a permitted use in the zone. He said notices of the variance were posted on February 25; he submitted photos to the chair, along with proof of other required notifications. He said the variance being requested for the gas station was just the 1<sup>st</sup> step in redeveloping the site, which has been vacant for 10 years. He said he would provide detail on the developer, the project, and how the gas station fits into the larger plan. He noted that developer has taken on other challenging properties and made them productive, citing Ryder Park and the old Jai Alai space that is now Lowes. Attorney Knuff described the plan to relocate ShopRite at western end of the site, as well as to add another retailer facing Cherry Street. He said no tenant has yet been identified for that store. He said a small restaurant would face the Boston Post Road, and a gas station would be added that was associated with the ShopRite grocery store in similar fashion to Costco and Stop and Shop. He noted that a substantial amount of landscaping would create a 46' wide to buffer on the boundary with Sunnyside Court. He reiterated that the variance request is just a 1<sup>st</sup> step, because the project would still need review by the Planning and Zoning Board. He noted that ShopRite's marketing manager was present if needed for questions. Attorney Knuff emphasized that the gas station would conduct no auto repairs, but only have gas dispensers and a kiosk to support gas sales. He reviewed the applicable regulation, noting that most neighbors of the site are in the CDD-1 zone and that the portion of the parcel containing the gas

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station is actually 400' from the abutting residential zone. He said that because the entire parcel must be considered when requesting the variance, the distance had to be represented as 0'. He said that the statute on gas stations had been enacted between 1959 and 1974, when gas stations produced more objectionable noise and fumes. He said the requested gas stations would be very different than those of that era and that the station is on a parcel that is actually 20 times bigger than the required size of normal gas stations. He referred to the attachment submitted with the variance request and additional detail provided on it. He said the hardship was the restriction of reasonable use as an unobtrusive gas fueling facility.

### DISCUSSION

**Mr. Tuozzola** confirmed details about the location of the gas pumps.

### OPPOSITION

**Theresa Bellamy**, 49 Sunnyside Court, said that while she prefers to abut a responsible business rather than an empty lot and that while she commended the efforts made to interact with Sunnyside neighbors, she was concerned about the dangers of underground gas storage. She said the variance request is not specific enough in keeping the tanks as far from the residential zone as possible and she was also concerned about truck traffic. She requested a physical barrier or high masonry fence. **Mr. Tuozzola** advised that concerns other than the gas station distance variance will be heard by the Planning and Zoning Board.

**Patty Deno**, 93 Sunnyside Court, agreed with Ms. Bellamy.

### REBUTTAL

**Attorney Knuff** said dangers from tank explosions are mitigated by the modern design of underground tanks, advising that the project engineer would address the technical issues of this design. He rebutted the idea that the variance is too broad by noting that if the Planning and Zoning Board issues a Special Permit, any change to it, including the location of the pumps, would require a subsequent amendment application to the Planning and Zoning Board. He said that to move the pumps closer to the residential area also doesn't make sense from a marketing perspective since the Boston Post Road is where traffic will flow most efficiently for use of the station. He said that he and the development team had invited the residents of Sunnyside Court to meet for an information session. He shared a positive email from one from an attendee. He said there is a fence included in the buffer strip.

**John Mancini**, of BL Companies, 355 Research Parkway, Meriden, CT, said his company has worked on similar large-scale projects such as Costco, BJ's and Stop and Shop. He said that kiosk fueling facilities are designed now with rumble strips around the edges to provide access to a catch basin with a holding tank for potential fuel spills, which can then be dealt with using a hazmat procedure. He said tanks in the ground are double-lined, with the inside liner containing electronic meters to gauge any signs of stress or potential leaks. He said metering data is recorded at the kiosk, and then passed to monitoring equipment in the store. He said the requirements are in the current building code and designers cannot deviate from them.

### BOARD DISCUSSION

**Mr. Tuozzola** reviewed the salient points of the presentation. **Mr. Vaccino** noted that the size of lot is 20 times larger than the required minimum size of normal gas station. **Mr. Haberman** said that if the use of the gas-fueling kiosk isn't expanded and remains located as proposed, he doesn't see a problem. **Mr. Carey** reiterated the involvement of the Planning and Zoning Board to address other concerns raised.

**Mr. Haberman** motioned in favor of application with conditions as follows: The use shall be limited to dispensing of gasoline, with no increase in said use, and location of gas dispensers will not change to encroach any closer to the abutting residential neighborhood, as documented on the application survey. **Mr. Carey** seconded. The motion carried with **Messrs. Carey, Haberman, Soda, Vaccino** and **Tuozzola** voting with the motion.

**Mr. Tuozzola** called a short recess to give the board members time to review regulations pertaining to the 4<sup>th</sup> agenda item.

4. **80 Windy Hill Road cor. Innsbruck Street** (R-12.5) Carrie Campbell, owner; Vary Sec. 3.1.4.3(3) to 5 hens, 2 ducks, 1 rooster where 5 hens are permitted. Map 32, Block 302, Parcel 27

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**Carrie Campbell**, 80 Windy Hill Road, addressed the board. She said her family got 5 chickens, 2 ducks and a rooster a year ago and that she was asking permission to keep all of the fowl as they have become family pets. She noted that her oldest child has an anxiety disorder and has benefited from interactions with these pets. She produced 2 letters of support from neighbors. She stated that the birds are properly cooped such that they don't make noise. She said the rooster crows only sporadically and that the neighborhood dogs probably bark more. She stated that the birds do not make noise at night. She said the hardship was that the birds were acquired prior to the zoning regulation change that reduced the number of chickens permitted.

### DISCUSSION

**Mr. Tuozzola** consulted Mr. Harris about the regulation change. **Ms. Campbell** said that when she got the poultry, she was allowed up to 20 fowl, but only had the 8 birds. **Mr. Harris** said that the zoning change was approved 27 December 2013.

### FAVOR

**Ali Chaudhari**, 47 Waltrop (?) Street, stated that he had noted an improvement in the child affected by an anxiety disorder as a result of having the birds as pets. When **Mr. Tuozzola** asked if all the birds were needed to help the child, **Ms. Campbell** said her children interact with all the animals. She added other neighborhood children also enjoy visiting the chickens and ducks.

As previously noted, there were 2 letters of support submitted by neighbors.

### OPPOSITION

**Mr. Tuzzola** noted a submitted email in opposition.

**Mike Zavalko**, 25 Innsbruck Road, said he opposed the project. He provided photos of what he said were vehicles and an abandoned boat on Ms. Campbell's lawn. He said she had no regard for her neighbors. He produced a petition with 17 signatures in opposition. He complained of noise, animal smell, and said the ducks stopped traffic if they wander into road.

### REBUTTAL

**Ms. Campbell** said there was no smell as the coops were cleaned properly. She said she didn't want to upset her neighbors. She said that the rooster's crowing doesn't start early in the morning as it's kept in an enclosed box, and that the neighbor who was in opposition is too far away to hear noises from her property. She said she doesn't let the fowl out of the coop until 8:30, and that when it's dark, they don't make noise. **Mr. Vaccino** asked Ms. Campbell how she became aware of the change in the poultry regulations. She said she had received a letter from Mr. Harris.

### BOARD DISCUSSION

**Mr. Tuozzola** expressed concern that an exception to the new regulation may set a precedent. **Mr. Haberman** echoed this concern noting that Ms. Campbell would be permitted to keep some of the birds. **Mr. Carey** asked Mr. Harris if it mattered that Ms. Campbell had her animals prior to the regulation changes. **Mr. Harris** could not provide a judgment on this because the hearing had been closed. **Mr. Soda** asked Mr. Harris if grandfathering applied. **Mr. Harris** said the keeping of animals isn't a use per se, so it can't be grandfathered, except in the case of a farm. **Mr. Tuozzola** acknowledged the difficulty of losing pets, but said the new rules must be respected.

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

### **C. OLD BUSINESS**

There was none.

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### **D. NEW BUSINESS**

**Mr. Harris** said the draft By-Laws will be reviewed by City Attorney. Mr. Harris also drew the board's attention to a binder distributed before the meeting began—copies of an overview of Connecticut Zoning Regulations and case law. He asked all board members to review it when time permits.

### **E. STAFF UPDATE**

**Mr. Harris** reported that the Planning and Zoning Board had approved changes to regulation 6.2 and 6.3 concerning nonconforming structures. He said the change will take effect on March 24<sup>th</sup>.

### **F. ACCEPTANCE OF MINUTES FROM FEBRUARY 11, 2014, HEARING**

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

### **G. ACCEPTANCE OF APPLICATIONS FOR APRIL 8, 2014, HEARING**

**Mr. Harris** reported 3 possible applications.

The meeting was adjourned at 8:28 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