

Minutes, Public Hearing of Zoning Board of Appeals Meeting held 14 March 2023

The Regular Meeting of the Zoning Board of Appeals of Milford, CT, was held on Tuesday 14 March 2023, beginning at 7:00 p.m. at 110 River Street, to hear all parties concerning the following applications, some of which may require Coastal Area Site Plan Reviews or exemptions.

A. PLEDGE OF ALLEGIANCE / ROLL CALL

Mr. Tuozzola called the meeting to order at 7:00 pm. He asked for comments from anyone present who felt a conflict of interest existed between an item to be heard and any board member. Hearing none, he advised that Ms. Ferrante was excused and asked **Ms. Hirsch** to act as board secretary and provide the 4th vote. He said Mr. Wolfe was also unable to attend and asked **Mr. Smith** to provide the 5th vote.

MEMBERS PRESENT: Gary Montano, William Soda, Joseph Tuozzola (Ch)

ALTERNATES PRESENT: Carmina Hirsch, Mike Smith

MEMBERS/ALTERNATES ABSENT: Gary Dubois, Sarah Ferrante, Chris Wolfe

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

B. CONSIDERATION OF AGENDA ITEMS

- 1) **143 Fourth Avenue** MBP 9/78/11 (Subdivision lot 143), George F. Martelon, Esq., for Brian Bannon, appellant (141 Fourth Avenue) Appeal the Decision in accordance with the provisions of section 9.2.1 regarding decision to issue certify a lot per 6.4.1 per request of June 3, 2022.
- 2) **143 Fourth Avenue** MBP 9/78/11, (Subdivision lot 143), George F. Martelon, Esq., for Brian Bannon, appellant (141 Fourth Avenue) Appeal the Decision in accordance with the provisions of section 9.2.1 regarding decision to issue certify a lot per 6.4.1 per request of June 3, 2022.
- 3) **143 Fourth Avenue** MBP 9/78/11, (Subdivision lot 144), George F. Martelon, Esq., for Brian Bannon, appellant (141 Fourth Avenue) Appeal the Decision in accordance with the provisions of section 9.2.1 regarding decision to issue certify a lot per 6.4.1 per request of June 3, 2022.

Chairman Tuzzola asked Attorney Martelon if he wished to present all 3 appeals together with 3 separate votes for each; this was agreeable.

Attorney Martelon, 184 Broad Street, addressed the board. He referred to an 1899 pre-zoning-regulation map, amended in 1901, that laid out the framework for Laurel Beach. He explained that over time, 143 Fourth Avenue was used as a single-family residence. He provided detail about the property and said that it was close to conforming to current R-10-zone lot requirements. He said that due to the house's demolition by fire, the current owner asked the Zoning Enforcement Officer to certify 3 lots for future building. Attorney Martelon described original lots. He said zoning regulations were not adhered to, listing several and explaining his reading of how they pertained to the lots that were certified. They were as follows: 1.1.3, regarding non-conforming lots; 2.5.4 regarding issuance of zoning permits for nonconforming lots; 3.1.4.1, regarding an inability of the 3 created lots to meet setbacks, and 6.4.1 regarding certification requirements. He asked the board to overturn the lot certification.

Mr. Tuozzola opened the hearing to public comment.

John Shanley, 225 3rd Avenue, said he is the chair of Laurel Beach Association. He shared a map and said there were 188 homes on the area it described. He said the amount of housing would increase to 338 if the 1901 map was used to certify all possible lots. He said allowing development of the 3 certified lots would create a public safety issue due to increased traffic and speeding as the parcel is on dangerous blind curve with a school bus stop. He noted there are no sidewalks or guardrails, and many children walk to school. He asked the board to overturn the ZEO's decision.

Paul Healey, 1a Seaview Avenue, Unit 3, said he had served on a prior board of managers for Laurel Beach Association, and that the association looks to maintain current levels of density and infrastructure. He shared a historical reference to the Ellesmere Hotel where he said density was reduced during a renovation. He said the current plan was not in the best interest of the community.

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Theodora DeRosa, 159 Fourth Avenue, said she and her husband helped the former resident of 143 Fourth when the house was on fire. She described her children and the neighborhood and said the corner was dangerous and that adding houses will increase risk.

Christine Valiquette, 10 Seaview Avenue, said the neighborhood is full of young children and that she is against the project.

Elyssa Brown, 219 Second Avenue, agreed with points made by the previous speakers.

ZEO Stephen Harris addressed the board, noting that his comments pertain to all 3 lots. He said that effective 5/21/2021, the Planning and Zoning Board repealed the merger provision of Section 6.4.2, then on 7/15/2022 enacted a moratorium certifying lots created prior to Subdivision Regulations. On 6/6/2022, prior to moratorium, an application was submitted to certify the 3 lots (Lot 143, 144, and 145) that comprise 143 Fourth Avenue. He noted that the lots appear on the 1901 map. He said a review of the land records yielded no deed restrictions from certifying the parcels as developer lots. No record was found of the 3 lots being consolidated into one. Mr. Harris shared screenshots of the permit application with its date of 6/3/2022, as well as the 1901 map and closeups of 3 lots on the map, the map name, and the map recording date. He shared a letter from owner's attorney certifying that the lots are not encumbered, a copy of the deed transferring the properties with meets and bounds descriptions and the boundary around 143. He pointed out the boundary encircling the 3 lots on a GIS map. He said that unless the lots are consolidated, they remain independent lots forever. He stated that the lots of record were created in 1901, and the issue before the board isn't whether they can be developed or if the traffic will be impacted. He said the only issue before the board is whether lots were legally created lots of record. **Mr. Soda** and Mr. Harris discussed the boundaries of each of the 3 lots and what is being conveyed in the deed. **Mr. Harris** said that before fire destroyed the house, the house merged the lots based on the old merger regulation, but that regulation was repealed. He made a distinction between a boundary of ownership versus a legal lot of record and that a boundary of ownership can contain several legal lots of record. Discussion ensued about nonconforming uses, structures, and lots. Mr. Harris said that section 6.2 is nongermane, and that what the owner wants to do with lots is just speculation. He stressed that the issue before board is whether the lots are legal lots. **Ms. Hirsch** and Mr. Harris discussed the 1901 map, lot sizes, and the legal framework dictating that all of lots depicted still exist unless they were consolidated. **Mr. Harris** described a historical scenario where a couple might buy multiple lots with an eye toward building a house, then using extra lots for their children to build homes. He said it is easy to assume that a house on a parcel of land consists of one lot, but it's not necessarily true. **Mr. Tuozzola** and Mr. Harris noted that the underlying lot configuration can be researched in a title search.

Attorney Kevin Curseaden addressed the board, saying he represents the current property owner. He said that he executed the lot certifications for the 3 lots. He reviewed the workings of the old merger regulation 6.4.2, noting that after it was deleted by the Planning and Zoning Board, a window of time opened with no merger rule to replace it. An unintended consequence of that deletion was that no regulation governed the pre-1930 subdivision lots, many of which were undersized. He said that few of the old lots comply with current regulations but reminded the board of the difference between lot regulations and subdivision treatment of lots. Attorney Curseaden said that after the 6.4.2 regulation was rescinded, many lot certifications were submitted, and negative feedback started coming from the community. He said the Planning and Zoning Board then placed a moratorium on lot certifications that is still in effect. He said this application for these 3 lot certifications was filed before the moratorium went into effect and was just one of many applications that were filed. He noted that in the future when the board creates new rules for merger, the regulation is unlikely to allow this type of certification due to community concerns. He stressed that the issue at hand was whether ZEO Harris determined that these were legal lots of record during the time period when that way allowed. He described how many or most of the old lots cannot conform to construct a house under current requirements and that there is no plan to build 3 houses on the 3 lots. He described the process his client has followed to consolidate the lots, and then determine if setbacks can be met. If the setbacks can't be met, the next step would be to apply for a variance. He stressed that this is the beginning of a longer process. He said the vetting process for the lots started in June of 2022 and featured long deliberations in the Department of Permitting and Land Use. He explained why section 6.4.1 doesn't apply in the absence of section 6.4.2. He said a separate letter in October certified the lots based on research that they were legal lot of records. He said he took the necessary steps as have other land use attorneys. He said the next step, if the ZEO's decision is upheld, is lot consolidation into 1 or 2 lots. He said that would occur under the auspices of the Planning and Zoning Board, where legitimate concerns about public safety can be reviewed.

Mr. Shanley, chair of the Laurel Beach Association, asked to make another comment, which the chair allowed. He compared total lots on 1901 map and disputed the timeliness of the application versus the moratorium.

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Attorney Curseaden said that after he filed the application in June, imposition of the moratorium changed the application process up through the October approval. **ZEO Harris** noted that once an application is submitted, the applicant isn't precluded from making modifications to it.

Chairman Tuozzola closed the hearing for all three items and said a separate vote would be taken for each one.

Ms. Hirsch motioned to **uphold the decision of the Zoning Enforcement Officer**. **Mr. Montano** seconded.

Discussion: **Mr. Soda** described possible future building limitations. **Ms. Hirsch** asserted that the issue before the board was a matter of law. She said the decision to be made was whether 3 lots were legally created and that speculating beyond that decision is premature. She said there were further tests in place before any plans could be approved and while she was happy to hear community concerns, she stressed that the matter at hand is a point of law, and that the ZEO must comply with the law. **Chairman Tuozzola** agreed that the board's task was to determine if the lots exist.

An amended motion was made by **Ms. Hirsch** to uphold the decision of the ZEO regarding Item 1. It was seconded by **Mr. Montano**. The motion **carried unanimously**.

A new motion was made by **Ms. Hirsch** to uphold the decision of the ZEO regarding Item 2. It was seconded by **Mr. Montano**. The motion **carried unanimously**.

A new motion was made by **Ms. Hirsch** to uphold the decision of the ZEO regarding Item 3. It was seconded by **Mr. Montano**. The motion **carried unanimously**.

- 4) **4 Crown Street**, MBP 35/418/11; R-5; Peter Lupoli and Carrie Lupoli, owners; Vary Section 3.1.4.1 rear-yard setback to 5.1' where 20' required to construct attached garage.

Attorney Thomas Lynch, 63 Cherry Street, addressed the board. He introduced the owners and reviewed the history of the application, including its denial in January due to the size and height of attached garage. After the denial, Attorney Lynch said he was retained and made some suggestions. He said he thought his clients did a good job revising their plans to address board concerns. He noted that with recent Planning and Zoning Board regulation changes, an attached garage or portion thereof could be used as an accessory dwelling unit, but his client would not do so. He said the survey shows that the attached garage space occupies the same footprint as the existing garage, although attaching it via the breezeway makes it subject to the house's setbacks. He shared an proposed elevation of the project. He thanked the board for waiving the usual 6-month waiting period before allowing another request to be heard. He said the new garage design featured only one double-hung window and the roofline had been cut in half. Dormer out the side. Due to size of lot and corner placement of lot, creates a hardship. No other place for garage.

Mr. Soda and **Ms. Lupoli** discussed that the height of the first floor is 9' and that the structure has no transom windows, just decorative copper siding. **Mr. Tuozzola** was assured that the area over the garage will just house an office, not a bathroom and bedrooms as with the January plans.

OPPOSED

Maureen Meade, 1055 East Broadway, said the new house lines her entire backyard, that she is losing sunlight, and the structure dwarfs her house. She shared a photo from her backyard. **Ms. Hirsch** and **Ms. Meade** discussed the latter's concerns with **Ms. Meade** acknowledging that the house was not as big but still blocks light and any view of the neighborhood.

Ed Meade, 1055 East Broadway, said their property was overwhelmed the new house. He said the garage seems excessively large and he was upset to have lost their view of Crown Street. **Mr. Harris** confirmed for the board that the new house was in the original footprint.

Attorney Lynch noted that the new garage is attached to the house by a 4' breezeway, but without attachment, a variance would not be needed. He stressed that the area above the garage was never intended as 2nd dwelling unit. **Mr. Soda** confirmed that the house has a total sf of 2600 and 4 bedrooms.

Ms. Hirsch read submitted correspondence in opposition from Stephen Wing.

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With no further public comment forthcoming, Chairman Tuozzola closed the hearing and asked for a motion to approve.

Mr. Smith motioned to **approve**. **Mr. Montano** seconded.

Discussion: **Mr. Soda** said he had driven by the house, and it is very large. He felt the plan still had room for improvement.

The motion to approve failed **Ms. Hirsch** and **Mr. Smith** voting in favor, and **Mssrs. Montano, Soda, and Tuozzola** voting against.

- 5) **143-163 Boston Post Road**, MBP 43/331/2,3,14-15; CDD-1; Thomas Lynch, Esq., for EAB Trust Milford, LLC, Request for approval of location in accordance with Sec. 9.2.4 of the MZR for a new car dealer.

Attorney Thomas Lynch, 63 Cherry Street, addressed the board. He explained the procedural nature of the application.

Chairman Tuozzola asked if anyone wished to speak in favor of or in opposition to the application. Hearing none, he closed the hearing.

Mr. Soda motioned to **approve**. **Mr. Montano** seconded. The motion carried unanimously with **Ms. Ferrante** and **Messrs. Montano, Smith, Soda, and Tuozzola** voting with the motion.

- 6) **206 Second Avenue**, MBP 9/81/1; R-10; Sean Connery, owner, Vary Section 4.1.4 projection of 9.7' where 21' permitted to construct a 10'x24' wood deck.

Larry Doyle, 539 Plains Rd, addressed the board. He said the request was for a deck off the back of the house. **Ms. Hirsch** asked for a hardship; **Mr. Soda** volunteered that a corner lot generally creates a hardship situation.

Mr. Soda motioned to **approve**. **Mr. Montano** seconded.

Discussion: **Mr. Soda** noted that including the city right-of-way, the deck will be almost 20' away from the street.

The motion carried with **Ms. Hirsch** and **Messrs. Montano, Smith, Soda, and Tuozzola** voting with the motion.

C. NEW BUSINESS - None

D. OLD BUSINESS - None

E. STAFF UPDATE - None

F. ACCEPTANCE OF MINUTES FROM HEARING 14 FEBRUARY 2023: Approved unanimously.

G. ACCEPTANCE OF APPLICATIONS FOR 11 APRIL 2023 HEARING: **Mr. Montano** advised that an appeal of decision regarding property he owns was submitted to be heard in April and that he would recuse himself.

Adjournment was at **8:43 PM**.

Attest: M.E. Greene, Clerk, ZBA

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.**