

Minutes, Public Hearing of Zoning Board of Appeals Meeting held 11 April 2023

The Regular Meeting of the Zoning Board of Appeals of Milford, CT, was held on Tuesday 11 April 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

Ms. Ferrante called the meeting to order at 7:00 pm and announced that Mr. Tuozzola was unable to attend, so she would chair the session. She asked **Ms. Hirsch** to act as board secretary and provide the 4th vote. She noted that Mr. Wolfe was also unable to attend and asked **Mr. Smith** to provide the 5th vote except for the first item when **Mr. Montano** would recuse himself and **Mr. Dubois** agreed to provide the 5th vote.

MEMBERS PRESENT: Sarah Ferrante, Gary Montano, William Soda

ALTERNATES PRESENT: Gary Dubois, Carmina Hirsch, Mike Smith

MEMBERS/ALTERNATES ABSENT: Chris Wolfe, Joseph Tuozzola (Ch)

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

B. CONSIDERATION OF AGENDA ITEMS

1. 94 Edgewater Place MBP 45/513/40 (R-12.5), Max Case, Esq., for Christopher McKenna, appellant (24 Rose Street) Appeal the Decision in accordance with the provisions of section 9.2.1 regarding Certificate of Zoning Compliance issued to Tona, LLC, for the property located at 94 Edgewater Place (aka 0 Edgewater Place).

Attorney Case, 185 Plains Road, addressed the board. He overviewed the appeal, saying it was filed 2/10/23 regarding a failure to place a sign on the property and a failure of the owner's attorney to file an opinion letter concerning several lots under Section 6.4 of the Milford Zoning Regulations (MZR). He presented documentation identifying Gary Montano as the owner of 94 Edgewater Place. He said that although Mr. Montano, who serves on the Milford Zoning Board of Appeals (ZBA) had recused himself, assurance was needed that no other board member has discussed the appeal with Mr. Montano since July 2021, and if any had done so, he asked for their recusal(s). No board members indicated they had any such discussion with Mr. Montano. Attorney Case then said the appeal was properly filed on the proper form and that the ZBA has authority to conduct *de novo* hearings to evaluate evidence independent of staff advice. He said that members of the ZBA should interpret MZR language based on its usual meaning, and in particular, Article 6 should be read narrowly because the community has an interest in limiting nonconformities. He said that his client owns property at 24 Rose Street across from 94 Edgewater Place. He said 94 Edgewater Place consists of 4 lots—lots 41-44—which were created in June 1924 from a 1923 map known as Walker Manor. He noted that the lots had no zoning requirements until zoning regulations were introduced in 1930. He said that the original dimensions of the lots were 10'x100' and the narrowness of the lots indicated an intended use as boat slips. He reviewed ownership transactions and said that the 4 lots were assembled into 1 parcel. He said that contrary to information presented to the Planning and Zoning Board on 4/5/22, the parcels were in use. He referred to an electrical permit and an Inland Wetland Agency (IWA) driveway permit. He provided evidence of amenities on the lots, including a patio, ramps, and a canopy. He said there was a process under Section 6.4.1 to deal with nonconforming lots in a 12.5 zone that provides for lot certification but that the process attaches conditions that must be met. He said they had not been met, but if even they had been, a large poster must be displayed, and an affidavit filed documenting satisfaction of the conditions. He said no documents were found in Planning and Zoning Office records. He said that under Section 6.4.3, if properties are vacant, they can be combined, and lot certification can be issued. He said the term "vacant" is not defined in MZR, and that if no definition is provided, the customary definition should be used. He read the Merriam Webster definition of vacant as "not put to use," but that the lots were in use. He reviewed sections relevant to Certificates of Zoning Compliance (CZC) and asserted that the issuance of a CZC is required for an existing nonconforming use as well as a prerequisite for all subsequent activity. He asked the board to uphold the appeal and said the applicant filed a request to stop construction of the house. He also asked that the entire file in the Planning and Zoning office and the MZR be made part of the record.

Ms. Ferrante asked Zoning Enforcement Officer Harris to present his rebuttal. **Attorney Case** disputed that it was Mr. Harris's turn to make remarks, but **Ms. Ferrante** said this board was accustomed to the order of presentation she had just initiated.

Zoning Enforcement Officer (ZEO) Harris said that the appeal was before the board improperly because the ZBA has no authority to overturn Planning and Zoning Board (PZB) approvals. He said such appeals can be made to the Superior Court. He also said that one of the assertions made in the application—that a Certificate of Zoning Compliance was issued—was factually false. He said that for these two reasons alone, the board should deny the appeal. He further said that the complaint regarding the posting of a sign made

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no reference to what portion of regulations imposed the requirement. He said that site plan approvals do not require a public hearing. He displayed the PZB approval letter addressed to Attorney Kevin Curseaden, showing that the issue had already been decided. He asserted that as ZEO, he has no choice but to issue a permit after the board acts. He displayed plans, a survey, lot consolidation documentation, detailed architectural documentation, a photo of the Walker Manor map on file in the City Clerk's Office, and a map highlighting the 4 lots. He noted that the map had been created prior to Milford's subdivision and zoning regulations. He said that the question before the board is not to decide if these parcels are lots of record because that issue has already been resolved by the PZB and that the ZBA can't revisit a decision of the PZB. He summed up by saying the appeal is factually defective and he respectfully asked for the board to deny it. **Mr. Soda** commented that in his experience, a CZC isn't issued until a structure is finished. **Mr. Harris** agreed that new construction documents are issued as follows: Certificates of Building Compliance, then CZCs, then Certificates of Occupancy. He noted that the merger rule isn't applicable, saying that 6.4.1 is not germane because it concerns a standalone lot, whereas there are 4 lots at issue here.

FAVOR

Christopher McKenna, 24 Rose Street, provided the board with several documents and photographs relating to the site. said that Edgewater Place was accepted by city in 1993. He reviewed lot sizes and submitted a 9/15/22 letter from the city engineer that listed 9 issues with the application before the board, including drainage. He noted a subsequent letter from the city engineer dated 4/1/23 that rescinded his recommendations, citing a stipulated agreement from a 1993 dispute about access to boat slips. He submitted more materials, including the approval by the PZB, which referred to making satisfying the city engineer's letter a condition of approval. He asked who would be responsible for the road. He shared photos regarding the disputed access, which he asserted was for access to boats, not a with a view toward houses being built on the lots. He displayed area photos of recent flooding as well as flooding that occurred during Storms Irene and Sandy. He showed property uses in recent years and conversed with **Ms. Hirsch** about items on the lot and possible changes in drainage due to development.

Regina Sirico, 61 Wilbar Avenue, distributed documents to the board regarding previous use of the lots and neighbors' awareness of the project. She indicated the appeal was filed within 15 days of installation of the first piling on the site. She said open structures were the only ones previously on the lots. She pointed out differences she perceived among lot sizes, titles, surveys and other documents. She questioned the plans for and construction of pilings and whether they are in the setback. She said the project was not in keeping with neighborhood and is concerned that more houses will follow. She also shared concerns about impacts to natural resources, curbs and aprons, and loss of green space versus hardscape. She said she expected a stop work order and that the only permit issued was for the foundation. She said there are 78 homes in the affected area. She expressed concern about flood zones, roof runoff, and setback encroachment. **Ms. Hirsch** questioned the timeline of increased flooding.

Mark Lofthouse, 56 Wilbar Avenue, said he watched the PZB proceedings on Milford Government Access Television website. He said he was concerned about the lack of questioning by the city engineer. He said he understood that the city was concerned about adding the road and had heard that more houses were going to be built. He suggested that applicant's connections gave him special consideration. He said flooding has occurred frequently with hazards up to Harborview Avenue.

Dave Sirico, 61 Wilbar Avenue, said he agreed with previous comments and supports the appeal.

Linda Gwodzik, 41 Rose Street, said the lots always had been slips and docks with no houses.

Catherine Gibb, 56 Harborview Avenue, said she supports the appeal.

Nancy Follini, Harborview Avenue, expressed concern about flooding into her yard.

Susan McKenna, 24 Rose Street, said the previous use fit character of the neighborhood and harbor community. She expressed concern about the coastal environment.

Joe Newman, 23 Wilbar Avenue, said he supports the appeal.

Marty Juliano, 35 Wilbar Avenue, said he supports the appeal.

Marty Reed, 30 Harborview Avenue, said the lots should be used for boaters, not housing.

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Sean Peterkin, 45 Harborview Avenue, said he supports the appeal.

Andrew Geitman, 28 Wilbar Avenue, said he supports the appeal.

OPPOSED

Attorney Kevin Curseaden, 3 Lafayette Street, said he took the 94 Edgewater Place plan through their 1.5-year application process. He reviewed the legal notice postings and website noticing for the Inland Wetlands phase of the project and the Coastal Area Management (CAM) phase of the project. He emphasized that the PZB review of the plan did not require a public hearing per the regulations. He reviewed the required publications made in the Milford Mirror newspaper. He noted that there had been comments regarding favoritism, but that the facts are that the 1993 stipulated judgment confirmed Edgewater Place's status as a public right-of-way (ROW) and records indicated that some neighbors did not want the road to be widened or curbs introduced. He said the road is made of gravel and is 15' into the lawn area of Rose Street. He said the stipulated judgement stated that Edgewater Place should stay a public ROW, but if neighboring property owners wanted to improve it, they could do so at their own expense; otherwise, there would be no requirement to improve it. He said the referenced city engineer's letter was in preparation for the IWA meeting and other comments were removed due to plan revisions that address his concerns. He said the applicant did not want the road improved. He noted that he had submitted 13 attachments via email to the board showing diligent following of the approval process. He noted that docks had been replaced with CT Department of Energy and Environmental Protection (DEEP) approval. Attorney Curseaden said several engineers were involved in the project and that John Wicko was the architect. He said the applicant worked with staff to comply with all requirements and hired all the professionals needed to be sure that all the correct steps were taken. He said that when the PZB hears an application, it must be zoning and CAM compliant. He said the city planner also lists any concerns, such as setback issues, that must be corrected for zoning compliance. He said there was no requirement to post a sign on the property, but if it had been required, he would have done so. He underscored that no one submitted any CZC, which was what the appeal is based on because CZCs are issued at the end of the inspection process. He noted that the city attorney had reviewed the practice of issuing CZCs, and that the city no longer issues them except in conjunction with Certificate of Occupancy, as there can be liability associated with CZC issuance. He underscored that there was no improper influence in the application. He said that members of the community can sit on land use boards and still have projects approved. He said he and the applicant had worked hard over a 1.5-year period to get approvals for the plans. He said the city planner determined the nature of the lots at the beginning of the process with the DEEP review of docks. He said neighbors may be frustrated with rules currently in effect, but that all rules that exist were followed.

Ms. Ferrante confirmed that the plan was approved by the Inland Wetlands Agency and the city engineer, that no variances had been requested, and that all required notices were properly published. She confirmed with Attorney Curseaden that notices in the newspaper were all that was required because the project did not require a special permit, just a site plan. Mr. Soda asked about the lot certification; Attorney Curseaden said the city planner determined that the lots were preexisting nonconforming lots. He noted that the city has many undersized lots, but if owners can meet setback and other zoning requirements, a permit must be issued. He noted that the lot has been taxed as a building lot in a residential zone. He said if the application were for a subdivision, a new lot would have to meet current regulations, but existing lots can be combined for development if setbacks in their zone can be met. He added that different pilings used during construction were approved by the Building Inspection department.

OPPOSED

Attorney Case said zoning changes must be made by the P&Z Board and that the City Attorney cannot change CZC issuance rules. He expressed consternation that no discussion of Section 6.4.1 was held, which he said describes the process for dealing with nonconforming lots. He again asserted that the proper process was not followed.

A previously heard speaker wished to be heard again, but the chair did not allow it. A petition to overturn the decision was accepted.

Ms. Ferrante closed the hearing.

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

Discussion: **Ms. Hirsch** expressed appreciation of the public's comments and concerns. **Mr. Smith** also stated that he was sympathetic to concerns, noting that the shoreline community has experienced severe storms exacerbating complex problems with sea level rise. He said that despite this, the board is compelled to examine the evidence. He noted that the community has the option to avail itself of the courts in the matter. **Ms. Ferrante** agreed and said she lives on the harbor as well, but that the issues raised were not under the jurisdiction of the ZBA because the ZBA cannot hear an appeal of a Planning and Zoning Board decision.

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She said other avenues to appeal exist. **Mr. Soda** also agreed that the ZBA has no authority in the matter, noting that citizens also have a right to submit regulation changes if they are dissatisfied with them through their Planning and Zoning Board representatives. The motion **carried unanimously**.

2.) 12 Deerfield Avenue, MBP 28/575/18; R-5; Charles McEntee, owner; Vary Section 4.1.4 projection to 4.5' where 8' permitted to construct front porch with steps.

Mr. McEntee addressed the board. He said there was a small landing outside his front door which is getting harder for his wife and him to navigate as they age. He said the proposal would extend the landing along front of the house with stairs extending out. He said the plan will maintain the look and feel of the Bayview neighborhood; the goal is to improve access to the home.

Ms. Ferrante opened the hearing to public comment. Hearing none, she closed the hearing and asked for a motion to approve.

Mr. Soda motioned to **approve**.

Mr. Montano seconded.

Discussion: **Ms. Ferrante** said she felt the request was modest.

The motion **carried unanimously**.

3.) 35 Thompson Street, MBP 35/442/25; R-5; Anthony Mallozzi, owner, Vary Section 4.1.4 rear-yard projection to 4.1' where 16' permitted to construct a deck; front-yard projection to 0' where 8' permitted for front landing and steps.

No one appeared to present the request and **Ms. Ferrante** asked **Mr. Harris** what the board's options were. He said the board could act on the submitted materials or hold the hearing open until May. Board members agreed that they preferred to do the latter.

Mr. Smith motioned to **hold the hearing open**.

Mr. Montano seconded.

Discussion: **None**.

The motion **carried unanimously**.

C. NEW BUSINESS - None

D. OLD BUSINESS - None

E. STAFF UPDATE - None

F. ACCEPTANCE OF MINUTES FROM HEARING 14 MARCH 2023: The minutes were approved as follows: motion by Mr. Smith; second by Mr. Montano. Motion passed with Mss. Ferrante and Hirsch and Messrs. Montano, Smith, and Soda voting in favor.

G. ACCEPTANCE OF APPLICATIONS FOR 9 MAY 2023 HEARING: Ms. Greene noted at least 3, one of which is an appeal.

Adjournment was at **8:58 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.**