

Minutes of Public Hearings of Zoning Board of Appeals Meeting held April 12, 2011

MEMBERS PRESENT: Rich Carey, Howard Haberman, Fred Katen, Nanci Seltzer, Joseph Tuozzola

ALTERNATES PRESENT: T. Nichol, John Collins

STAFF PRESENT: Kathy Kuchta, Zoning Enforcement Officer, Rose Elliott, Clerk

The meeting was called to order at 7:01 p.m.

A. CONSIDERATION OF AGENDA ITEMS

1. **45 James Street** (Zone R-5) Thomas B. Lynch, attorney, for Susan Ashelford, owner – request to vary Sec. 3.1.4.1 side yard setback to 4.5' in lieu of 5' required and vary front yard setback to 9.3' in lieu of 10' required to allow existing dwelling to remain according to Sec. 6.2.6. CAM required. Map 27, Block 455, Parcel 24.

Thomas Lynch, 63 Cherry Street, attorney, said the variance is to allow the owner to continue the renovation and reconstruction of her single family residence. She purchased the 725 sq. ft. home, built in 1925, in 1999. Last April, Ms. Ashelford started the process of renovation by raising the house to the flood level elevation, AE-elevation 15. The second stage of the renovations requires variances. The parcel consists of two non-conforming lots that have not been merged. The house was raised, keeping the same setbacks that existed prior to the raising. If more than 50% renovations are being done, a variance is required to allow the house to remain. A second story will be constructed on top of the existing house. If approved, they would still need to go before the Planning and Zoning Board with a CAM application. The variances they are asking for are very small.

Ms. Seltzer asked about the recreational vehicle in the backyard.

Susan Ashelford, 45 James Street, said she lived in it last summer when they were elevating the house and she will be living there again for the next phase of construction.

Mr. Carey confirmed they are doing more than 50% renovation and need a variance to allow the house to remain to which Atty. Lynch said that was correct.

Atty. Lynch submitted paperwork and a petition in favor of the application to the Board.

There being no one to speak in favor or opposition the hearing was closed.

DISCUSSION:

Chrmn. Katen reiterated the footprint of the house would remain the same and the variance is only to allow the house to remain. He added, if approved tonight, the applicant would still need to go to Planning and Zoning and their plans distributed to the other City Departments before being heard by the Planning and Zoning Board.

Mr. Carey made a motion to approve with Mr. Haberman seconding for all the reasons stated. The motion carried unanimously with Ms. Seltzer, Messrs. Carey, Tuozzola, Haberman and Katen voting in favor.

2. **Alpha Street** (Zone R-18) Stephen W. Studer, attorney, for John P. Horton, appellant, for Milford Heights, LLC, owner – appeal the decision of the City Planner in the interpretation and application of Sections 6.2.1 and 6.2.6 of the Milford Zoning Regulations to Alpha Street as per correspondence dated February 25, 2011. Map 69, Block 711, Parcel 17A.

Postponed to the June 14, 2011 meeting.

3. **757 East Broadway** (Zone R-5) Thomas B. Lynch, attorney, for Robert E. Hoxie, Jr., owner – request to vary Sec. 3.1.4.1 front yard setback to 3.8' (2.8' to overhang) in lieu of 10' required; vary Sec. 3.1.4.1 side yard setback to 5' (4' to overhang) in lieu of 10' required and side yard setback to 5.1' (4.1' to overhang) in lieu of 5' required to construct single family residence. CAM required. Map 26, Block 474, Parcel 25.

Thomas Lynch, 63 Cherry Street, attorney, said the existing house was built in 1915, with 1,700 sq. ft., and was purchased by the Hoxie's in 2000. He passed out paperwork to the Board. The owners want to take down the existing house and construct a new one in its place. The proposed house would be 2,400 sq. ft. and would not be infringing on the neighborhood. The existing non-conformities of the house exceed what the proposed house would have. Currently, the house extends over the street line and the first seven feet of the house stick out into the road. The side yards currently have a greater encroachment than the side yards for the proposed house. An application that reduces a non-conformity is grounds for approval from the Board. The proposed house was designed by the architect keeping in mind the neighbors' views. The Board might wonder why they are asking for a front yard setback when they could just move the house back. If they did that, they would infringe upon their neighbors' view of Long Island Sound. As proposed, the waterward side of all the houses would be uniform. The non-conformities would be reduced and the new home would be in character with the neighborhood.

Mr. Nichol didn't think the proposed house would infringe on the neighbors' views if it were pushed back 5' because a deck is to the rear of the house and the neighbor could look over the deck. If it were the house itself, than that would be different. Also, the proposed deck would be 5' closer to the Sound and afford a better view to the owners.

Atty Lynch agreed the owners' view would be better but the neighbors' views would be blocked.

Mr. Nichol again disagreed saying the neighbors would be able to look over the deck.

Atty. Lynch added if the owners were to entertain guests on the deck, the guests would block the view to which Mr. Nichol noted it might block some of the view but the house would be more conforming that what was being proposed.

Mr. Carey said the application as proposed would keep the uniformity of the houses on the Sound side.

Chrmn. Katen added the non-conformity of the existing house would be reduced.

Ms. Kuchta said in 1975, this property was granted a variance to vary the front yard setback from 10' to 2'. Technically, when a variance is granted, the variance remains on the land records. What they are proposing to do is far more compliant than what they can do because of the approved variance.

FAVOR:

Ken Esposito, 759 East Broadway, the neighbor directly next door, said he is in favor of the application and feels the owners would build a beautiful home and raise their family there.

There being no one to speak in opposition the hearing was closed.

DISCUSSION:

Ms. Seltzer said she appreciates the reduction in non-conformity, however, she thought the side yard variances were too much. She felt the homes were so close and the area so dense, that she could not approve the application. Ms. Kuchta said during her training classes, while reviewing case law, she learned that whenever a non-conformity is being reduced, you are

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supposed to consider it as a hardship for approval. Ms. Seltzer said they are reducing the non-conformity of the front yard, but that was approved for a variance in 1975. What is proposed is too close to the neighbors. Mr. Carey said they are not making the side yard any more non-conforming.

Mr. Carey made a motion to approve with Mr. Tuozzola seconding. The variance request significantly reduces the non-conformity. The motion carried 4-1 with Messrs. Carey, Tuozzola, Haberman and Katen voting in favor and Ms. Seltzer voting against.

B. TABLED ITEMS

C. OLD BUSINESS

D. NEW BUSINESS

E. STAFF UPDATE

Ms. Kuchta told the Board the application for the fence on 767 East Broadway will be reheard next month and Alpha Street was postponed. Mr. Tuozzola noted this was the second time the Alpha Street application was postponed and wondered if they were working with the City Planner. Ms. Kuchta said Alpha Street began prior to her becoming the Zoning Enforcement Officer and only knew the property was formerly used as military housing and now it doesn't conform to the current regulations. Emmeline and David have been more involved with the property than she. Chrmn. Katen wondered if 767 East Broadway was just delaying the process and if yes, what could be done to stop it. Ms. Kuchta said they are within their sixty-five days and Atty. Studer had already appealed both the upholding of her decision and the denial of the variance request to Superior Court. She added she had met with Atty. Studer and they discussed new options for the variance.

F. ACCEPTANCE OF MINUTES FROM MARCH 8, 2011 HEARING

The minutes were accepted unanimously.

G. ACCEPTANCE OF APPLICATIONS FOR MAY 10, 2011 HEARING

The meeting was adjourned at 7:38 p.m.

Attest:

Rose M. Elliott,
Clerk ZBA