

Minutes, Public Hearing of Zoning Board of Appeals Meeting held 12 April 2016

The Regular Meeting of the Zoning Board of Appeals of Milford, CT, was held on Tuesday, 12 April 2016, 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: Joseph Tuozzola (Ch), Howard Haberman (Sec), Sarah Ferrante, William Soda, John Vaccino

ALTERNATES PRESENT: Gary Dubois, Robert Thomas

MEMBERS/ALTERNATES ABSENT: Alison Rose Egelson

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

Mr. Tuozzola called the meeting to order at 7:00 p.m. He advised the audience that the appeals for 255 West River Street and 62 Hawley Avenue had been rescheduled. He asked for conflicts of interest for board members with any agenda items; none were raised.

B. CONSIDERATION OF AGENDA ITEMS

1. **41 Melba Street** (R-5) Dave Salerno, agent, for Brian Lee, owner; Sec. 4.1.4 proj. of 1.84' where 8' perm. to increase deck to 4'x23' instead of previously approved deck; Map 29, Block 587, Parcel 15.

Mr. Salerno, 77 Canoe Brook Road, Trumbull, addressed the board. He stated that the hardship was the small size of the lot. He described the deck extension being requested. He said that even with the changes to the deck, the house would be further from the Sound. He said the original plan for spiral staircases on the deck proved problematic. He explained that he had constructed a prototype deck staged to 16' to show neighbors what the deck would be like, but that it would be removed if it were not approved. He provided photographs of the prototype deck.

DISCUSSION

Mr. Tuozzola confirmed that the stated hardship was that the lot was small and narrow. **Mr. Soda** confirmed that the upper deck would protrude another 2 feet. **Mr. Vaccino** confirmed that the stairs would not go to the second level. **Mr. Tuozzola** confirmed that the lot formerly had 2 houses.

BOARD DISCUSSION

Mr. Tuozzola asked if anyone wished to speak in favor of or opposition to the application. **Mr. Soda** felt the replacement of the stairwell was a safety feature. **Mr. Vaccino** said he was conflicted about the validity of the hardship. **Mr. Soda** said the deck also provided an egress.

Mr. Soda motioned in favor of application. **Mr. Haberman** 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. Haberman, Soda, and Tuozzola** voting **with the motion** and **Mr. Vaccino** voting against the motion.

2. **32 Field Court** (R-5) Rafael Amaya, architect, for Saul Englander and Patricia Englander, owners; Sec. 3.1.4.1 east front-ym setback to 4.09 where 10' req; 4.1.4 east deck to 0.34' where 8' perm, east deck & stairs to 4.26' where 8' perm to construct a new single family home; Map 28, Block 574, Parcel 6.

Mr. Amaya, 284 Racebrook Road, Orange, addressed the board on behalf of the CT DOH and the Englanders. He reviewed details of the extensive storm damage to the home. He noted that the old home could not sustain elevation for flood mitigation. **Mr. Tuozzola** asked Mr. Amaya to zero in on the changes made since last month. **Mr. Amaya** noted **Mr. Soda's** observation last month that the stairs could be moved closer to the house, which was reflected in the revised

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plan. He said the hardship was a small lot with 2 front yards.

DISCUSSION

Mr. Soda confirmed that the finished measurement on the side walkway deck would be 3' and that the hardship was the corner lot.

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. Soda** expressed satisfaction with the changes from last month.

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

3. **255 West River Street** (CDD-1) Danielle Bercury, Esq., for 255 West River LLC; Sec. 9.2.1: Appeal the Decision of the Director of Land Use regarding 23 Feb 2016 revocation of zoning permit issued by Zoning Enforcement Officer, Map 76, Block 918, Parcel 26.

Attorney Bercury advised prior to the meeting that she wished to reschedule this item until May.

4. **12-16 Orland Street** (R-5) Donald Persett and Susan Persett, owners; Sec. 3.1.4.1 vary side-ym setback to 3.6' where 4' req. to rebuild garage on same footprint. Map 29, Block 564, Parcel 3.

Mr. Persett addressed the board. He stated that the garage has deteriorated over time and should be replaced. He described the problem of moving the garage as it would restrict access to the backyard. He said they want to update what they have. **Mr. Tuozzola** confirmed the issues with the placement of the garage. **Mr. Haberman** confirmed that the garage would be the same size and it currently is.

BOARD DISCUSSION

Mr. Tuozzola 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. **Ms. Ferrante** and **Mr. Soda** noted that the garage would be exactly the same.

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

5. **28 Field Court** (R-5) Nancy Rogers, owner; Sec 4.1.4 east deck proj. to .6' where 8' perm.; west deck proj. to .9' where 4' perm. to construct a deck for single family home. Map 28, Block 574, Parcel 4.

Peter Crabtree, 64 Stanley Street, New Haven, addressed the board. He stated that the property was damaged by the last 2 storms and the owner wished to elevate the home. He submitted materials documenting recent variances granted for similar projects. He drew attention to the hurricane windows that the owner wishes to preserve. He said the seawall in front of the house creates wave action that could penetrate doors on the water side.

DISCUSSION

Mr. Tuozzola confirmed that the deck would go right up to the lot line. **Mr. Soda** asked about the configuration of the deck, noting that there were reductions that could be made that would still meet building code. **Mr. Soda** and **Mr.**

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Crabtree discussed options, including denying without prejudice. They discussed the merits of sliding glass doors facing the water. **Mr. Vaccino** questioned the need for a wraparound deck where none existed before. **Mr. Crabtree** said it would replace a concrete patio that surrounded the house and that the owner preferred not to recreate the patio.

OPPOSED

Susan Reardon, 26 Field Court, said she has lived there 30 years. She noted that they had surveys done. She said she is raising her house as well. She said they hadn't asked for variances. She said the decks would be right on the property line and that the new windows would affect privacy.

REBUTTAL

Mr. Crabtree said the side deck was for access and people would not be spending time there.

BOARD DISCUSSION

Mr. Tuozzola asked if anyone wished to speak in favor of the application. Hearing none, he closed the hearing. **Mr. Tuozzola** said the deck was way too big for the property. **Mr. Soda** suggested several proposals to reduce the size of the house and to eliminate privacy concerns.

Mr. Soda motioned to **deny without prejudice**. **Mr. Vaccino** seconded. The motion carried with **Ms. Ferrante** and **Messrs. Haberman, Soda, Vaccino, and Tuozzola** voting **with the motion**.

6. **6 Silver Street** (R-5) William Ziebell, owner; Sec. 9.2.1: Appeal the Decision of the Director of Land Use regarding Permit Z-15-798. Map 27, Block 454, Parcel 4&5.

Attorney Lynch, Lynch, Trembicki and Boynton, 63 Cherry Street, addressed the board. He passed out exhibits for reference to the board and to Mr. Harris. He stated that his clients were present and owned 10 Silver Street. He said the issuance of the permit violates Sec. 6.2 of the Zoning Regulations. He said he would cite a recent state appellate court decision that exactly matches the issues that must be considered at 6 Silver Street and illustrates the procedure one should follow when seeking to expand a nonconforming structure or a non-conforming use. He said in this instance, both nonconformities are present. He said the structures at 6 Silver and 800 East Broadway occupy one parcel. He said this situation not only presented the same issues that the appellate court considered in the Branford case, but that he (Attorney Lynch) had also presented three variance applications to the ZBA in 2015 for 41 Melba Street making the exact same types of requests. He described the proposed project at 41 Melba Street. He stated that those variance applications were denied by this board. He said the two situations (41 Melba Street and 6 Silver Street) are identical due to the expansion of not only a nonconforming use but of nonconforming structures. He read Section 6.2 into the record:

6.2.1 Enlargement, Extension or Alteration: No non-conforming use of land shall be enlarged, extended, or altered, and no structure or part thereof devoted to a non-conforming use shall be enlarged, extended, constructed, reconstructed, or structurally altered, except in changing the use to one which is allowable in the Zoning District in which such use is located; except in the case of single family homes. No non-conforming use of a structure shall be extended to occupy land outside such structure or space in another structure.

He noted the presence of 2 homes in a single family zone, creating a nonconformity. **Mr. Tuozzola** asked about the map showing both homes. **Mr. Harris** noted the survey in the file. **Ms. Greene** offered to circulate the survey, but **Attorney Lynch** said he could proceed verbally. He discussed the nature of the site and noted that he had included the assessor's sheets in the packet he had distributed showing that the structures were built prior to adoption of zoning regulations. He described the lot nonconformities. He reviewed the circumstances of the issuance of the permit. He said the proposed project featured a second story addition to the rear house, expanding a nonconforming structure in violation of Section 6.2.1. He said Section 6.2.4 provides the option to apply for a variance. He read 6.2.4 into the record:

6.2.4 Variance: Notwithstanding Sections 6.2.1, 6.2.2 and 6.2.3, a Variance shall be granted in accordance with ARTICLE IX, SECTION 9.2.2 Variances to extend, enlarge, or alter any legal non-conforming lot, structure or use.

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But he noted that in September 2013 the Planning and Zoning Board had changed the word “shall” to “may.”

He referenced the case of Verrillo v. ZBA, Town of Branford, where it was ruled that any expansion of nonconforming structures without a clear hardship that relates to the property itself is illegal. He said that a variance application was required, regardless of what the outcome of such a variance request might be. He said that to issue the permit was, unfortunately, illegal. He also referenced the 2003 case of Munroe v. ZBA, Town of Branford. He stated that his clients live at 10 Silver Street and had been injured by the issuance of the permit. He referenced page 5 of Judge Dupont’s decision where she notes that a second story addition is not negligible and can affect neighboring property values. He asked that with all due respect to Mr. Griffith, the decision of the Land Use Director be overturned.

Mr. Tuozzola invited the Land Use Director to speak on the appeal. **Mr. Griffith** had provided a statement to be read by **Mr. Harris**, which is incorporated here:

“The Department of Permitting and Land Use’s decision is being appealed for its application of Milford Zoning Regulation 6.3.2 which states:

6.3.2 Enlargement, Extension or Alteration:

Structures failing to meet any requirement of these Regulations other than use, including lack of required parking or loading spaces, shall not be enlarged, extended, or altered, if the result would be an increase in non-conformity.

Historically, the interpretation of this Regulation has been such that a zoning permit may be issued in connection with a non-conforming structure if the specific non-conformity is not being impacted. For example, a house that is non-conforming as to a setback may be elevated or vertically expanded provided the non-conforming setback is not further encroached.

Specifically, in the case of 6 Silver Street, the non-conformity is created by the location of the existing structure’s proximity to the property line, and its encroachment into the setbacks required by table 3.1.4.1 of our zoning regulations. The proposed work, a second story addition built on the existing exterior walls, does not propose changing the existing distance from the property line, and thereby does not change the existing non-conforming setback, and therefore does not increase the non-conformity.”

*Joseph D. Griffith, Director
Department of Permitting and Land Use
City of Milford
203-783-3374*

REBUTTAL

Attorney Lynch said the addition is clearly both a nonconforming structure and a nonconforming use. He said Mr. Griffith’s language stands in direct contradiction to the judgment of Munroe v. ZBA, Town of Branford, that is, that a vertical enlargement of the structure, even if there is no change in the footprint, creates an enlargement of the structure and is thus illegal.

DISCUSSION

Mr. Tuozzola said he felt a variance was needed and that he wanted to consider leaving the hearing open as he would like to question Mr. Griffith. **Mr. Soda** said he saw the parallel to the Melba Street project and felt a variance was needed. **Ms. Ferrante** agreed that other requests for additions of second stories had required variances. **Mr. Harris** said that if the board wished to leave the item open, discussion should wait until the next meeting.

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Mr. Soda motioned to leave the hearing open and requested that **Mr. Griffith** attend. **Ms. Ferrante** seconded. The motion carried with **Ms. Ferrante** and **Messrs. Haberman, Soda, Vaccino, and Tuozzola** voting **with the motion**.

7. **209 Second Avenue** (R-10) Steve Keedle, architect, for Frances Marsillio, owner; Sec. 3.1.4.1 vary side-yd setback to 6.4' where 10' req., Map 9, Block 81, Parcel 19.

Mr. Keedle addressed the board. He described the project.

DISCUSSION

Mr. Tuozzola confirmed that an existing porch would be enclosed. **Mr. Keedle** provided a photograph showing the space the owner would like to enclose. **Mr. Keedle** said the hardship is a narrow, non-conforming lot.

BOARD DISCUSSION

Mr. Tuozzola 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. Soda motioned in favor of application. **Mr. Haberman** 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. Haberman, Soda, Vaccino** and **Tuozzola** voting **with the motion**.

8. **62 Hawley Avenue** (R-5) Charles Willinger, Esq., for 60 Hawley Ave, LLC; Sec. 9.2.1: Appeal the Decision of the Director of Land Use regarding the Zoning Permit issued to "Procino Kenneth K" on 24 Feb 2016 concerning property located at 62 Hawley Avenue; Map 71, Block 766, Parcel 4.

Attorney Willinger via **Attorney Diane Lord**, advised that this item would be rescheduled in May.

B. OLD BUSINESS

C. NEW BUSINESS

D. STAFF UPDATE

F. ACCEPTANCE OF MINUTES FROM 8 MARCH 2016 HEARING were accepted unanimously.

G. ACCEPTANCE OF APPLICATIONS FOR 14 JUNE 2016 HEARING

The meeting was adjourned at 8:13.

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