

Minutes, Public Hearing of Zoning Board of Appeals Meeting held 12 April 2017

The Regular Meeting of the Zoning Board of Appeals of Milford, CT, was held on Wednesday, 12 April 2017, 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

Mr. Tuozzola called the meeting to order at 7:01 p.m. **Mr. Vaccino** noted that items 2 and 3 would be heard in May. **Mr. Tuozzola** asked for conflicts of interest for board members with any agenda items; none were raised.

MEMBERS PRESENT: Joseph Tuozzola (Ch), John Vaccino (Sec), Benjamin Gettinger, William Soda

ALTERNATES PRESENT: Gary Dubois, Jeanne Huber-Happy

MEMBERS/ALTERNATES ABSENT: Sarah Ferrante

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

B. CONSIDERATION OF AGENDA ITEMS

1. **622, 624, 626 Gulf Street (MBP: 28/520/26)** R-18. Kevin Curseaden, Esq., attorney for GH Ward and Successors, owner;

Section of Zoning Regulations for Variance:

Proposed Lot 1:

Vary Section 2.5.4 to form new lot on lot already occupied by building.

Vary Section 3.1.1.1 to allow two single family detached residences on one lot.

Vary Section 2.5.5: Access width/frontage to 10' where 25' required;

Vary Section 3.1.4 side yard setback to 6' where 15' required.

Proposed Lot 2:

Vary Section 2.5.4 to form new lot on lot already occupied by building.

Vary Section 2.5.5: Access width/frontage to 10' where 25' required; Lot that may not be considered generally rectangular in shape.

Attorney Curseaden, Carroll, Curseaden, and Moore, 26 Cherry Street, addressed the board. He noted the presence of Mr. Ward and that there had been 2 previous visits to the ZBA about the variance request. He said he wanted to stress the importance of the access way. He noted the support of the neighbors. He noted that the Powerpoint® slides he provided were already part of the record. He provided new information on comparable access ways to lots on West Rutland, Wolf Harbor Road, Forest Road, and Ford Street. He said many of these projects were done based on Site Plan Reviews rather than variances. He stressed that he doesn't agree with Mr. Harris' interpretation of the pertaining regulation. He asked that Mr. Ward be permitted to address the board as well. **Mr. Tuozzola** confirmed that the property can be accessed from the Gulf Street side as well.

Mr. Ward said his project had been revised to incorporate the board's concerns and that the neighbors support the project. He said the driveway had been used since the late 1800s. He said he personally could attest that access to the property had not been a problem since the 1950s. He said he wanted to complete the project while he could still assure that the land would be used properly.

DISCUSSION

Mr. Soda confirmed that each of the 3 lots would be over an acre in size. **Attorney Curseaden** provided additional data from the survey. **Mr. Gettinger** asked to see Section 2.5.5 and said he interpreted it not to mean a dedicated driveway. He asked if Attorney Curseaden was aware of case law; **Attorney Curseaden** was not aware of any, but he speculated that the intention of 2.5.5 may have been to be more restrictive, whereas implementation seemed to have evolved as more permissive toward shared access.

Minutes, Public Hearing of Zoning Board of Appeals Meeting held 12 April 2017

Mr. Harris reiterated the distinction between a subdivision with a private road versus access to a rear lot. He reminded the board that 9.2.2 gives authority to grant a variance for a lot, but that a variance can't be granted until the lot is created. **Mr. Soda** asked Mr. Harris to comment on whether 9.3.1.1 conferred the ability to create a lot. **Mr. Harris** said State Statute restricts lot creation to the Planning and Zoning Board. **Attorney Curseaden** stated that the application's intent was not to create a lot, but to grant a variance to an existing lot. He provided a definition of "private" from Black's Law Dictionary, saying that the definition only distinguishes it from "public," rather than conferring exclusive use.

FAVOR

Joe Blichfeldt, 650 Gulf St, said he supports the project.

John DeGrand, 36 Eveningside Dr. said he supports the project.

BOARD DISCUSSION

Mr. Tuozzola asked if anyone wished to speak in opposition to the application. Hearing none, he closed the hearing. **Mr. Soda** said there was difficulty in accessing the lot from the Gulf Street side. **Mr. Gettinger** said he doesn't have a problem with the application and that it satisfied the requirements for a variance. Support of the neighbors was stressed. **Mr. Tuozzola** noted that the project would move to the Planning and Zoning Board for additional review.

Mr. Soda motioned to **approve**. **Mr. Gettinger** seconded. **Mr. Soda** supported his motion by reason of hardship of the irregular shape and topography of the lot and the restriction of the access way, exactly per the submitted materials. The motion carried with **Messrs. Dubois, Gettinger, Soda, Vaccino, and Tuozzola** voting **with the motion**.

2. **36 Roselle Street (MBP: 43/304/62)** CDD-1. Peter Stark, Esq., for Marilyn Drew, owner; Sec. 9.2.1: Appeal the Decision of the Zoning Enforcement Officer regarding a Cease and Desist Order dated 1 February 2017.

Mr. Vaccino noted that the item was postponed.

3. **3 Clinton Street (MBP: 71/756/5)** R- 7.5. Scott Mundy, agent for Kathy Walker, owner; Vary Sec. 3.1.4.1 rear-ym setback to 3.1' where 20' req., side-ym setback to 3.1' where 5' req., front-ym setback to 17.9' where 20' req.; 6.3.2 to expand a non-conforming structure; all to build addition

Mr. Vaccino noted that the item was postponed.

4. **148 Clark Street (MBP: 53/305/1)** CDD-1. Debra Bourt, owner; Vary Sec. 3.16.4.2(2) front-ym setback for accessory structure to 9' where 20' req.; 4.1.7.1 fence height in front-ym to 6' where 3' perm.

Ms. Bourt and her son **Stephen Bourt** addressed the board. She noted that the property has 3 front yards. She described the issuance of a Special Exemption to keep goats and chickens, as well as honeybees via state permission, which allowed her to create a small family farm. She described the need for the shed. She said the higher fence was needed to keep her animals calm due to traffic and other nearby noise.

DISCUSSION

Mr. Tuozzola confirmed that the fence would run from the driveway to the back of the property and to the Clark Street side. He asked what type of fence; she said she planned to install a fence made of planks with limited visibility. **Mr. Tuozzola** noted some of the items on the property could be moved, optimizing the site's usage. **Mr. Soda** discussed

Minutes, Public Hearing of Zoning Board of Appeals Meeting held 12 April 2017

options in moving the outbuildings. **Ms. Bourt** said all the sheds are on foundations, making them difficult to move. **Mr. Vaccino** asked if the size of the shed could be reduced. **Ms. Bourt** said she was trying to respect the 20' setback. **Mr. Vaccino** stressed that he would like to reduce the nonconformity. **Ms. Bourt** said she wished to use the same building design. She said she needed to store 15-20 bales of hay. **Mr. Soda** suggested widening the shed instead.

FAVOR

Mr. Bourt said development in the area had diminished privacy for the small farm, requiring the higher fence.

OPPOSED

Ms. Greene noted 4 emails in opposition had been received, one of which was anonymous.

BOARD DISCUSSION

Mr. Soda said he didn't have a problem with the fence, but thought there might be revisions possible in the shed variance request. **Mr. Vaccino** asked about the location of the fence. **Mr. Harris** clarified that the fence would not be in a required 25' line-of-sight street corner. **Mr. Soda** confirmed that one part of the request could be approved but not the other.

Mr. Soda motioned to **approve only the fence request**. **Mr. Vaccino** seconded. **Mr. Soda** supported his motion by reason of hardship for the fence due to lot shape; his reason for denial of the shed was due to availability of space for a reconfigured shed, exactly per the submitted materials. The motion carried with **Messrs. Dubois, Gettinger, Soda, Vaccino, and Tuozzola** voting **with the motion**.

5. **229 Bridgeport Avenue (MBP: 18/200/13)** CDD-2. Thomas Lynch, attorney, for Devon Investments, LLC, owner; Vary sec. 5.5.4.2 distance between liquor permit establishment to less than 1500 ft. to allow café permit in lieu of existing restaurant liquor permit.

DISCUSSION

Attorney Lynch, 64 Cherry St, addressed and distributed information to the board. Prior to Attorney Lynch's presentation, **Mr. Tuozzola** asked about the rule for hearing a request prior to the 6-month waiting period. **Mr. Harris** said the board could rehear the item at its discretion. **Attorney Lynch** noted that he had made a minor but important amendment to the variance request. Attorney Lynch reviewed the previous denial by the board. He described the upgrading of the restaurant that his clients were undertaking. He said the hardship really involved the dichotomy between state and city liquor regulation. He noted previous requests he had presented to the board for other locations. He reiterated that the café license justification is not to avoid the expense of building a wall, but that the type of license changes the requirement for having a separate dining room and bar and that the café license was more consistent with the proposed use of this site. He noted that the prior owner had a restaurant permit. He said a café permit helps restrict by minors. He said the state statutes speak to different permit types rather than distance regulations reflected in the local zoning regulations. He reviewed the difference in the food service requirements between a café and restaurant. He noted letters of support from nearby liquor permit holders John Miranda of Pit Stop Café and Denis Kokenos, of the Bridgeport Flyer, the latter being the permit holder most affected.

DISCUSSION

Mr. Vaccino asked to clarify the hardship; **Attorney Lynch** said the use was affected, but that it turned on a technicality. **Mr. Soda** confirmed that the change would keep minors out of the bar.

BOARD DISCUSSION

Mr. Tuozzola asked if anyone wished to speak in 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.

Minutes, Public Hearing of Zoning Board of Appeals Meeting held 12 April 2017

Mr. Gettinger motioned to **approve**. **Mr. Soda** seconded. **Mr. Gettinger** supported his motion by reason of hardship of inconsistencies between state and local liquor regulations, exactly per the submitted materials. The motion carried with **Messrs. Dubois, Gettinger, Soda, Vaccino, and Tuozzola** voting **with the motion**.

6. **45 Norwood Avenue (MBP: 49/604/15)** R- 10. Matthew Martino, agent for Michael Rose, owner; Vary Sec. 4.1.4 front-yd proj to 18' where 21' perm.

Mr. Martino, 16 Beacher Rd, New Haven, addressed the board. He said the existing porch was nonconforming.

DISCUSSION

Mr. Vaccino asked for a hardship. **Mr. Martino** said permits issued in 1986 created a nonconformity. He reviewed the survey with **Mr. Soda**.

BOARD DISCUSSION

Mr. Tuozzola asked if anyone wished to speak in favor of or in 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 to **approve**. **Mr. Gettinger** seconded. **Mr. Soda** supported his motion by reason of hardship of the position of the house on the lot, exactly per the submitted materials. The motion carried with **Messrs. Dubois, Gettinger, Soda, Vaccino, and Tuozzola** voting **with the motion**.

7. **904 East Broadway (MBP: 27/447/1)** R-5. Robert Tobin, architect, for Howard Diamond and Eden Diamond, owners; Vary Sec. 3.1.4.1 east side-yd setback to 2.45 where 5' req.; 4.1.4 west side-yd deck proj. to 1.72 where 8' perm., east side-yd deck proj. to 2.51 where 4' perm.; 6.3.2 expansion of non-conforming structure.

Mr. Tobin, 115 Wigwam Rd, Stratford, addressed the board. He noted that he had applied for a variance in December, which was denied without prejudice. He noted the narrowness of the lot and that the house was being elevated to mitigate flood risk. He noted that Ms. Diamond would require special accommodations in the future and that the plan needed to reflect this. He said his clients had chosen to limit the expansion on the second floor to address the board's concerns. He said this required a reduction in the size of the existing house. He said this also reduced the number of variances needed.

DISCUSSION

Mr. Tuozzola confirmed that the variance requests had been reduced.

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 to **approve**. **Mr. Vaccino** seconded. **Mr. Soda** supported his motion by reason of hardship of the narrowness of the corner lot, exactly per the submitted materials. The motion carried with **Messrs. Dubois, Gettinger, Soda, Vaccino, and Tuozzola** voting **with the motion**.

8. **35 Thompson Street (MBP: 35/442/25)** R- 5. Winthrop Smith, Esq., attorney for Gail Murray, owner; Vary section 3.1.4.1 set backs as follows: Front yard set back from 10' to 3.8, Rear yard set back from 20' to 3.1', Side yard set back

Minutes, Public Hearing of Zoning Board of Appeals Meeting held 12 April 2017

from 5' to 4.4', Other side conforms; Vary section 4.1.4 projections: Front yard 2' projection allowed. 8' distance to front yard property line required; 3.2' provided, Easterly side yard (conforms); Rear yard 4' projection allowed. 16' to rear yard property line required; 2.4' provided to eave; 1.6' provided to window well/bubble, Westerly side yard 1' projection allowed. 4' distance to side property line required. 2.4' provided. Note: Gas meter and all window well projects 2'.

Attorney Smith, 9 Depot Road, addressed the board. He said his clients had lived at the property for 20 years. He said the house was nonconforming but preexisting with deeded beach access rights. He said the house needed repair and reviewed the structure's problems. He noted that variances for the property had been litigated twice and that his clients were trying to incorporate the findings of the court. He said the proposed house is in the footprint of the existing house. He said he wouldn't be requesting the variance except for the need to demolish it and rebuild.

Mr. Soda confirmed that the current house is one story but the new house would be three stories. **Attorney Smith** said the court's rejection was based on the fact that the location of the building was changed. **Mr. Soda** asked for a justification for adding 2 stories instead of perhaps 1. **Attorney Smith** said there was no variance required for height. **Mr. Tuozzola** asked for more clarification from Mr. Harris, who said the new house did not sit exactly on the footprint of the old one, although it was close. **Mr. Soda** asked for a copy of the last decision. He asked Mr. Harris for clarification; **Mr. Harris** read from the zoning regulations, Sec 6.3.2. Mr. Harris said that if the board wants to review the previous decisions, the hearing could be held open to allow the board to review them. **Attorney Smith** emphasized that this application is different from the previous two.

Mr. Crabtree, 64 Stanley St., New Haven, reviewed that history of the variances. He described the design challenges of the project. He said the height should not be an issue. He referred to an extremely narrow lot on Hillside Avenue where height was not made an issue. He handed out a panoramic photograph showing the site's proximity to other houses. He said the gas lines and utilities currently run under the neighbor's property. **Mr. Tuozzola** asked for clarification of driveway ownership. **Mr. Crabtree** said it was easement and that legal cases established a right to access.

FAVOR

Basel Young, 35 Thompson Street, said he has lived there since 1997, that he was a disabled veteran, that he and Ms. Murray are both retired, and that his daughter needs a place to stay to help care for them as they age.

Gail Murray, 35 Thompson Street, said this was intended as her retirement home, and that she wants space for her daughter.

Jack Soldi, 80 Sigwin Dr, said he supported the project.

OPPOSED

Tracy Falcigno, 33 Thompson Street, said she owns abutting property. She said she bought it in July 2016 and that a variance application that was nearly identical to the current one was approved by ZBA and then the approval was overturned by the Judge Hiller due to lack of legal hardship. She raised issues of privacy and proximity. She said the proposed home was nearly 2200 sf, tripling the current house's size. She said she doesn't want to permit excavation of the easement.

Lynn Simko, 289 Burnt Plains Rd, former owner of 33 Thompson, reviewed the prior court proceedings. She said an approval would make a travesty of the legal process.

Edward Nelson, 289 Burnt Plains Rd, reiterated what Ms. Simko said. He said he was sure that there was no 2200 sf house sitting on a 1800 sf lot in Milford or probably elsewhere. He stressed the increase in the nonconformity. He said the applicants desire for more living space is not a hardship.

Minutes, Public Hearing of Zoning Board of Appeals Meeting held 12 April 2017

Zbigniew Dmowski, 30 Sharon Court, Shelton, said he owns the property next door at 29 Thompson Street and wishes to retire there. He is opposed to the project.

REBUTTAL

Attorney Smith said the variances were for side yards. He said the previous court denial was due to the board improperly approving the variance. He said the application was different. **Mr. Gettinger** quoted the Hiller decision saying the right to rebuild isn't the same as a need for more living space. **Attorney Smith** said the circumstances were different. **Mr. Crabtree** emphasized that the footprint was the same. He said he saw other 3-story homes on Thompson Street. He said the property was further away from other 3-story homes.

BOARD DISCUSSION

Mr. Tuozzola closed the hearing. **Mr. Gettinger** said he wished he could grant the variance, but said that he had to refer to the court's opinion. He said he didn't see a difference from the previous variances.

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

B. OLD BUSINESS-Mr. Harris said the owner of 36 Roselle is making progress clearing the site.

C. NEW BUSINESS-None

D. STAFF UPDATE-None

F. ACCEPTANCE OF MINUTES FROM 14 FEBRUARY 2017 HEARING: **Ms. Huber-Happy** pointed out a typo to be corrected. Minutes were approved as corrected.

G. ACCEPTANCE OF APPLICATIONS FOR 9 MAY 2017 HEARING. The return of Clinton St was noted.

The meeting adjourned at 9:17.

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