

## **Minutes, Public Hearing of Zoning Board of Appeals Meeting held May 8, 2012**

The Regular Meeting of the Zoning Board of Appeals of Milford, CT, was held on Tuesday, May 8, 2012, 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 required Coastal Area Site Plan Reviews or exemptions.

**Mr. Haberman** called the meeting to order at 7:00 p.m. He asked for known board-member conflicts of interest with any item on the agenda; none were raised. Mr. Haberman introduced new Zoning Enforcement Officer Stephen Harris.

### **A. PLEDGE OF ALLEGIANCE**

### **B. ROLL CALL**

**MEMBERS PRESENT:** Howard Haberman (Acting Chmn.), Richard Carey (Acting Sec.), William Evasick, John Vaccino

**ALTERNATES PRESENT:** John Collins, Gary Dubois, Robert Thomas

**MEMBERS ABSENT:** Joseph Tuozzola (Chmn.)

**STAFF PRESENT:** Emmeline Harrigan, Assistant City Planner; Stephen Harris, Zoning Enforcement Officer; Meg Greene, Clerk

**Mr. Haberman** asked **Mr. Collins** to fill in as the fifth voting member in Mr. Tuozzola's absence. Mr. Carey acted as Secretary.

### **C. CONSIDERATION OF AGENDA ITEMS**

#### **1. 11 Point Beach Drive (R-7.5) Appeal of section 6.4.2 land certification, Map 30, Block 636, Parcel 4**

**Attorney Joseph Barnes**, 8 North Street, Milford, and **Dr. Brete Moran, appellant**, 10 Point Beach Drive, Milford, addressed the board. **Attorney Barnes** noted that he'd argued this same matter in a ZBA hearing in August 2000. He distributed packets to review with the board. He noted that later in the presentation, several neighbors would speak about issues of merger by use via a deck attached to the house and a shed. He reviewed photographic evidence of the existence of the shed and deck. He noted a photograph of the deck prior to Hurricane Irene, still attached, and then after the storm, detached. He noted posts that had once supported the deck and remained in the ground after it was swept away.

He referenced a 1926 map of the property with 2 lots numbered 114 and 115, and noted that old deeds often refer to lots on that no longer exist. He then referred to a 1952 deed of 11 Point Beach Drive to Evio Giovanelli referencing only 1 lot. He noted that the width of the properties added up consistently for merging the 2 lots into 1. In 1985, Mr. Giovanelli applied for permits to make changes to the property and he referenced setbacks based on one merged lot, as documented by a survey. Further, Mr. Giovanelli reapportioned a 1.7-ft piece of Lot 113 at that time. The new sized lot of 74 feet plus 1.7 feet is the size of the lot today. Attorney Barnes reviewed permitting documentation for the completed project based on 1 lot. In 1992, Mr. Giovanelli transferred the property to the Giovanelli family trust. In documenting the transfer, Mr. Giovanelli referenced 3 lots subdivided into 1 lot. Attorney Barnes noted that in 2000 the property was deeded to Paul Gagliardi with a 1-lot legal description and that if the parties had wished to secure the property as 3 separate lots, they could easily have deeded them as individual lots. Attorney Barnes noted that in 2000 Mr. Gagliardi came to the ZBA with a map showing 2 lots at 15 and 11, where the nonconformity of the variance request was exacerbated by reversing the earlier 1.7-ft property adjustment. Neighbors came to this ZBA hearing on June 8, 2000, where Mr. Pierce saw that this change constituted a

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re-subdivision and refused it. The request was resubmitted to the ZBA and Attorney Barnes also represented the neighbors at this meeting. He referred to the August 8 ZBA action which recognized the merger of the 2 lots into 1 lot. Attorney Barnes summed up by saying the property had been determined to be merged by use, that the property's deed described 1 lot, and that a re-subdivision of the property had occurred via the 1.7 ft adjustment.

**Dr. Moran** said he has resided at 10 Point Beach for 50 years, that he had personally seen a permanent storage structure and a deck on the lot, and that the property had always been treated as 1 lot.

**Mr. Haberman** asked if there were other structures on the lot beside the deck and shed. **Dr. Moran** said he had seen non-permanent things like swing-sets.

**Mr. Haberman** asked if the deck existed prior to Irene. **Dr. Moran** said yes, but that the storm ripped it away from the house.

**Mr. Haberman** asked **ZEO Harris** whether the fact that the property was described as 1 lot on a deed constituted a merger. **Mr. Harris** said that he's not a lawyer, but that there is nothing in the zoning regulations that speaks directly to that point, so in and of itself, that might not merge the lots.

**Mr. Haberman** asked if anyone wished to speak in favor of the appeal.

### **IN FAVOR OF**

**Jerry Helming, 12 Point Beach Drive**, referred to documents he already submitted for the hearing to the Planning and Zoning office. He stated that the documents substantiated merger by use. He discussed the presence of a shed, which had been described as a tent at the March ZBA hearing. He also referred to aerial photographs submitted by the Assistant City Planner at that meeting. He provided copies of 12 notarized affidavits attesting that a shed had been on the property and should have merged the property into 1 lot, as well as photographs that he described as showing the rigid roofline of a shed, not a tent. Mr. Helming stated that a large deck had been constructed on the lot in the spring of 2011 and that the deck covered about 1/3 of the empty portion of the lot. He estimated that the deck was about 20-24 ft long. He also noted footings left behind after the deck was swept away by Hurricane Irene. He stated that one summer there had also been an above-ground pool. He stated that in 2000, the ZBA had ruled that 11 Point Beach was a merged lot.

**Mr. Carey** asked Mr. Helming whether, apart from the aerial photos, he'd actually witnessed a shed on the property. **Mr. Helming** said he had as had the other neighbors who submitted notarized affidavits.

**Mr. Haberman** asked if anyone else wanted to speak in favor of the appeal. Hearing none, he asked for anyone speaking in opposition.

### **OPPOSITION**

**Attorney Thomas Lynch**, 63 Cherry Street, Milford, representing Paul Gagliardi, stated that he brought the new appeal because after 2000, the city tightened zoning-regulation language on how nonconforming, adjacent lots could be merged through use. He stated that old deeds and permit applications are not relevant, the issue being whether or not the property had been merged by use. He cited regulation 6.4.2 and handed out copies of the text, which talks about specific instances of property uses that create a merger. He handed out copies of plot plans showing the deck referenced by the neighbors highlighted in yellow. He reiterated that no permanent shed was on the property and referred to this ZBA's consideration of the evidence at the March hearing. He stated that property had been used for family functions, which he

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substantiated with photographs and which he stated does not merge the lots per the regulations. He stated that the deck had been built to cover an area under a grill where concreted had deteriorated. He stated that the deck's size was 12ft by 12 ft and didn't encroach on other lot. Attorney Lynch acknowledged that the neighbors are unhappy, but said Mr. Barnes bears the burden to prove the lots are merged, and that merger of lots does not occur by combining lots through a deed or a permit unless you're building a house that goes over the property lines of both lots.

**Mr. Vaccino** asked whether a permit had been pulled for the deck which would indicate its size. **Attorney Lynch** said no.

**Paul Gagliardi**, 687 Gulf Street, Milford, stated that he would not have come before the ZBA if not for the hurricane that destroyed the house, which had been occupied by his son. Since he has to rebuild, he said he wanted to go for the 2 lots. He affirmed that the deck was meant as a place to put his son's grill. He stated that a small pool and swings were once on the property and that his son planted shrubbery for privacy that caused problems with the neighbors' views. He said that whether he ultimately put 2 houses or 1 big house on the lot, the situation with the neighbors was unfortunate.

**Mr. Haberman** asked if there had ever been a shed on the property. Mr. Gagliardi said that to his knowledge, no. He said he spent part of the year in Florida, but he was only aware of non-permanent structures like swings and tents.

**Mr. Haberman** asked if the concrete footings in the photographs were for the deck and whether they encroached on the empty lot. **Mr. Gagliardi** said none of it encroached on the other lot. Mr. Gagliardi said the 1.7 ft referenced by Mr. Barnes referred to an area needed for an air conditioning unit.

**Mr. Haberman** asked if the area required for the air conditioning unit changed the property line for the adjacent lot. **Mr. Gagliardi** said no.

**Mr. Haberman** asked if anyone else wished to speak in opposition to the appeal. Hearing none, Mr. Haberman requested comments from the Zoning Enforcement Officer.

**Mr. Harris** cited Section 6.4.2.3(e) and read the regulations. He said they mean that if a deck is built with or without permitting, and the deck does not require a variance, there is no evidence of a lot merger. However, if the deck would have required a variance to meet regulations, this would provide evidence of a merger.

**Mr. Haberman** asked if Attorney Barnes wished to rebut.

**Attorney Barnes** said that with reference to the 12x12 ft deck, the survey plans submitted in 1985 were not related to air conditioning, but to an addition. Attorney Barnes stated that the plans required the applicant to certify that the property was a double lot, and that the 1.7 ft was needed as a re-subdivision. Attorney Barnes said he also would have cited Subsection E, referenced by Mr. Harris.

**Mr. Haberman** asked for further questions; none being posed, he closed the hearing.

**Mr. Evasick** asked staff to confirm that no permit was pulled for the deck; this was confirmed by Ms. Harrigan. Mr. Evasick said he was still not convinced a shed had ever stood on the property.

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**Mr. Haberman** replied that there definitely was a deck and footings for a deck, even though its size is in dispute. He stated that despite the other deeds and permits, it was unclear whether the property was merged by them. He noted that the board could make a decision on the appeal, or could table the issue to get opinion from the city attorney.

**Mr. Carey** said it appeared that the lots were merged by the previous owner. He was concerned that the board's last decision about the shed was based on aerial photos, whereas 12 residents had now provided sworn affidavits stating that it was a shed. He stated that this creates a "he said, she said" situation, but that he was leaning toward the idea of the existence of a shed. He suggested the board table the issue and ask the city attorney for an opinion.

**Mr. Haberman** asked for other comments.

**Mr. Collins** asked **Ms. Harrigan** and **Mr. Harris** to confirm that if a deck encroaches on the other lot such that it would require a variance, a merger would be created, even if the deck was illegal. They indicated that this was correct.

**Mr. Collins** noted that the deck highlighted in the survey provided by Attorney Lynch went right up to the lot line and would have required a variance. He further noted that everyone agrees that there was a deck, and not a small deck for a grill, but a deck close enough to property line to require a variance if the owner had applied for a permit to build it.

**Mr. Haberman** asked for further comments.

**Mr. Vaccino** agreed that the deck is the most compelling argument for merger, but he didn't want to trivialize the 12 notarized letters when the owner didn't have an affidavit to say it didn't exist.

**Mr. Haberman** asked for comments, hearing none, he asked for a motion.

**Mr. Collins** motioned in favor of appeal. **Mr. Carey** seconded. **Mr. Collins** supported his motion by reason of the deck proving that lots were merged by usage, and that the merger by usage was further supported by letters from the neighbors about a shed.

**Mr. Haberman** asked for a vote. The motion carried with **Messrs. Carey, Collins, Vaccino** and **Haberman** voting **with the motion** and **Mr. Evasick** voting **against the motion**.

2. **35 Thompson Street** (R-5) Vary Section 3.1.4.1 front-yard setback to 4' (3.3' to eave) in lieu of 10' required; side-yard setback to 3'8" (3' to eave) and AC unit 6" (+/-) setback in lieu of 10'; rear-yard to 3'8" (3' to eave) in lieu of 20' required; building area to 58% in lieu of 45%. CAM received. Map 35, Block 442, Parcel 25

**Mr. Crabtree**, 64 Stanley Street, New Haven, represented the Murrays. He referred to maps provided with the application of the existing and proposed homes. He provided a history of the lot. He noted that the lot only has 1800 square feet to work with, not counting the right-of-way. He provided photographs with different views of the current house and showing foundation deterioration. He noted that the proposed house is 30.1 ft to its midpoint and therefore within the permitted height regulations. He stated that the plan had approval from Inland Wetlands. **Mr. Crabtree** provided a spreadsheet comparing the setbacks of the 2 maps. He stated that while it would be technically possible to meet the setbacks on the lot, the livable

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area would fall short of the minimum required, so a variance is inevitable. He shared a letter of support from a neighbor at 29 Thompson Street.

**Mr. Haberman** asked for details about the location and identity of the neighbors, and also asked if the foundation size of the proposed house would be increased, which compounds the non-conformity.

**Mr. Crabtree** stated that the area of increased size was in the least objectionable part of the lot, with the nearest structure being a garage.

**Mr. Evasick** asked for clarification on whether replacing the 1<sup>st</sup> floor in the footprint of the existing house would require 3 setbacks. **Mr. Crabtree** stated that it would.

**Mr. Collins** asked if the existing house is on a slab. **Mr. Crabtree** confirmed with the owners that there isn't a crawl space.

**Mr. Haberman** asked if anyone wished to speak in favor of the application. Hearing none, he asked if anyone wished to speak in opposition.

### **OPPOSITION**

**Attorney Tom Pucci, Jr.**, 285 Congress, Bridgeport, representing **Lynn Symko**, 33 Thompson Street, noted that variance applicants are required to show hardship. He stated that since people are living in the existing home, there must be a certificate of occupancy, and the true condition of the home is an unknown. He said that replacing the home with an expanded structure doesn't meet the definition of a legal hardship. He said that Ms. Symko supports renovating the structure within its current footprint, but the proposed house represents an enormous expansion in a place where small lots have small houses. He also noted that the only access to the home is via a 10-ft right-of-way on Ms. Symko's property that would not support a great deal of traffic. He said that if the Murrys are allowed to increase home three-fold, Ms. Symko's views would be almost completely obstructed. He said that even if the existing home were ready to fall down, it could be replaced with minor variances; but the owners are asking a lot.

**Mr. Haberman** noted that the proposed house expands 4 ft on Ms. Symko's side, and that the proposed height is within the regulation and that the board had no jurisdiction in that matter.

**Attorney Pucci** asked about a circular area labeled stockpile on the proposed plan for the record.

**Ms. Harrigan** offered to speak in general terms for the Inland Wetlands Officer who was not present to explain the stockpile requirements. Ms. Harrigan noted that the stockpile is just an area for excavated soil. If no permission is granted for the stockpile, the dirt must be trucked off site.

**Attorney Pucci** reiterated his argument that hardship had not been shown because the home hadn't been destroyed such that replacement was required; the home would be replaced solely to be enlarged. He added that his client, Lynn Symko, would like to read a letter of opposition into the record.

**Lynn Symko**, 33 Thompson St, Milford, read letter the following letter and provided hardcopy:

*Dear Zoning Board of Appeals,*

*My name is Lynn Symko and I have owned my house for 12 years at 33 Thompson St. and I am opposing the application that has been submitted by Gail Murray of 25 Thompson St.,*

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*My property is directly in front of 35 Thompson St. Gail is requesting this variance to build a large house that will be very close to my backyard. This application fails to meet the legal hardship, this is a self-created hardship. The driveway to access her house is part of my lot and there is a right of way agreement in our deeds. This was granted many years ago with the understanding that a small house with 1 bedroom would typically have only 1 or 2 vehicles. A large house will increase the number of potential occupants which would increase traffic and number of vehicles parked in my driveway.*

*When she purchased the property she had knowledge of the Wetlands behind her lot and she also knew how small the house and lot were. Any reasonably person should have realized that the property wasn't suitable for the proposed expansion.*

*Approval of this variance will adversely impact me for a number of reasons:*

- *Huge overbearing structure*
- *Impedes on my Privacy*
- *Blocks Light from my property. No garden, grass and sunbathing.*
- *Use of the right away [sic] could triple traffic which wasn't the intent. It was only intended for a small house.*
- *Overburden on a small lot*
- *Diminish the fair market value on my property.*

*I'm sure upon review of the plans and hearing the concerns from myself and neighbors at the May 8<sup>th</sup> hearing, you will agree that this cannot be approved. I look forward to speaking with you at that time.*

*Sincerely,  
Lynn A. Symko*

Ms. Symko also read parts of an opposition letter from **Diana and Zbigniew Dmowski** of 29 Thompson Street, stating that the lot is too small and the structure will encroach on neighboring houses' privacy, creating a lack of sunlight and devaluing their property.

**Mr. Joseph Capagna**, 39 Thompson Street, addressed the board indicating that he was revoking his earlier letter of support and now opposed the project.

**Ms. Jean Kaluzynski**, 34 Thompson Street, spoke in opposition, saying she lives across from the driveway in question. She said that the driveway is about wide as the aisle in the hearing room and that no heavy machinery would be able to pass through it.

**Mr. Haberman** asked if other opposition should be heard. He read an email from **Ms. Gail Rosenthal**, Mariner's Walk, into the record:

I am responding to the notice from Gail Murray that she has requested a zoning variance for proposed alternations to her property situated at 35 Thompson Street, Milford, Ct.

I strongly oppose the proposed alternations which she proposes! Our properties directly abut Ms. Murray's property. I reside at Mariners Walk. Her proposals would reduce the already minimal setbacks from a minimum of 10 feet required to only four feet and from a minimum of twenty feet to less than four feet. The purpose of the zoning laws is to provide neighbors with assurances that their peace and quiet will be unreasonably infringed upon.

Thank you for your consideration of my views.

Gail Rosenthal

**Mr. Edward Nelson**, 33 Thomson Street, submitted a signed petition with 12 signatures in opposition to the project.

**Mr. Haberman** asked if Mr. Crabtree wished to rebut.

### **REBUTTAL**

**Mr. Crabtree** said that Attorney Pucci's argument about the house having a certificate of occupancy, given the house's age, is not pivotal to getting a variance. He stated that the hardship is having only have 1800 sq ft of property to work with. The only issue for the board, as he saw it, is how much is enough? He stated

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that the Murrys are willing to take decks off house to make it more conforming. He stated that Ms. Symko's house has a 50 ft rear yard, so he can't see how it affects her. He noted that not having a stockpile would result in using smaller equipment to take soil out. He noted that the warranty deed has no restriction on the number of bedrooms, so this is not a reasonable objection. He stated that he could not see how a big house devalues neighborhood property, when the existing house in its current state probably devalues the property more. He stated that the letter from Mariners Walk seemed unreasonable to him because it is over 100 feet away.

**Mr. Vaccino** asked for the existing home's lot coverage area to compare it with the requested variance.

**Mr. Crabtree** said that because the new house's footprint was larger, the old house's coverage was lower, but he didn't have the percentage at hand.

**Mr. Evasick** noted that even if the house were rebuilt on the existing footprint, the square footage would be tripled while complying with the height restrictions.

**Mr. Haberman** closed the hearing.

**Mr. Carey** noted that the house could be moved forward on the lot to be made less nonconforming on one side. He stated that he thinks the proposal is just too big.

**Mr. Evasick** agreed with Mr. Carey. He stated that he hope neighbors understand the height requirement is not at issue and the Murrys have a right to build to that regulation. However, he would be more disposed toward granting a variance if the new structure stayed within the current footprint.

**Mr. Haberman** stated that he saw a hardship; that if they didn't want to replace the dwelling, but had to repair over 50%, they would still need variances. He agreed with Mr. Carey that the house could be more centered, but his greatest concern is increasing the site's nonconformities. He agreed with Mr. Evasick that if the proposed house occupied the same footprint, he would have no real issue with it. He reviewed the board's options: to can vote in favor, against, or to deny the project without prejudice for reconsidered with modifications.

**Mr. Evasick** moved to **deny without prejudice**, based on a failure to present a clear and concise hardship.

**Mr. Carey** seconded, with **Mssrs Evasick, Vaccino, Carey** and **Haberman** voting with the motion, and **Mr. Collins** voting against.

### **C. OLD BUSINESS**

There was none.

### **D. NEW BUSINESS**

**Mr. Evasick** asked Ms. Harrigan for a status on the anticipated surge in permitting for homes with storm damage.

**Ms. Harrigan** said that based on what she's seen, people are still arguing with their insurance companies. She said she anticipates seeing more applications to both the ZBA and the Planning and Zoning Board, but even after insurance payments, designing the projects will take several months. She estimated that around 45 properties exceeded 50% damage. Because Milford participates in the National Flood Insurance Program, rebuilding requires that structures be flood compliant through elevation or replacement. Foundations must be designed by an engineer, and the construction is complicated, meaning more time.

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**Mr. Evasick** asked if the city had addressed properties that will be condemned or deemed an eyesore.

**Ms. Harrigan** stated that there has been a period to allow shoring up and boarding up, but if a property is left exposed and is dangerous, the liability is with the property owner. Now, 9-10 months after the storm, if a blight situation exists, the health department must start action, and she is not sure that department is ready to start fining homeowners.

**Mr. Evasick** asked if the city is seeing abandonment of properties.

**Ms. Harrigan** stated she assumes some property owners may eventually need to walk away, but noted that there are still 800-sq-ft cottages in Milford that reached the 50% substantial damage mark quickly. If people must elevate them and if it costs \$65K to elevate a structure worth \$80K, they have a tough choice to make.

**Mr. Evasick** commented that the board should expect this issue to be around for a long time.

**Ms. Harrigan** noted that while comparisons with New Orleans after Katrina are extreme, even several years out, there has been little build-back of housing stock there. She noted that because of National Flood Insurance Plan participation, Milford needs to show over time that claims are reduced because structures are being taken out of harm's way.

**Mr. Evasick** asked whether there is a process to be taken if neighbors feel a structure is blighted and if a master list of such properties exists.

**Ms. Harrigan** said that she and a building inspector have looked at about 140 properties for substantial damage based on owner requests, but the department isn't staffed to take on additional inspections. She stated that neighbors can call the Health and Building Departments if a property seems unsafe and vacant.

### **E. STAFF UPDATE**

**Mr. Haberman** again welcomed new **Zoning Enforcement Officer Stephen Harris**.

### **F. ACCEPTANCE OF MINUTES FROM APRIL 10, 2012 HEARING**

**Mr. Carey** moved they be accepted; the motion carried unanimously.

### **H. ACCEPTANCE OF APPLICATIONS FOR JUNE 12, 2012 HEARING**

**Mr. Harris** said he had looked at one so far.

The meeting was adjourned at 9:00 p.m.

*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