

Minutes of Public Hearings of Zoning Board of Appeals Meeting held May 11, 2010

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

ALTERNATES PRESENT: Bill Evasick, Tom Nichol

STAFF PRESENT: Emmeline Harrigan, Assistant City Planner; Rose Elliott, Clerk

The meeting was called to order at 7:02 p.m.

A. CONSIDERATION OF AGENDA ITEMS

1. **46 Hemlock Drive** (Zone R-10) Gary Howden, appellant, for Kathleen Goldin, owner – request to vary Sec. 3.1.4.1 to allow a 7.9' side yard setback where a 10' setback is required (under construction). Map 41, Block 303, Parcel 21.

Gary Howden, 716 Wheeler Road, Monroe, builder for the owner, submitted a petition, copy of the original subdivision map of Peck Estates and a copy of the permit issued on October 8, 2009, to the Board. He said almost all the lots in the subdivision are rectangular in shape. He explained the hardship is the unusual shape of this lot, which narrows significantly from front to back and is unique to this parcel. The proposed variance is consistent with neighbor development and allows the owner reasonable use of her property. The present home, built around 1960, with an existing side yard setback of 7.9', does not conform to zoning requirements of a 10' side yard setback. The proposed addition will keep the same setback of 7.9'. A zoning permit for this addition, was approved by the Zoning Enforcement Officer in 2009 and work commenced. The plot plan used for the permit shows different distances than what the survey they obtained shows. The denial of the permit issued is unreasonable and creates a hardship.

Ms. Harrigan was asked for the history of the property by Ms. Seltzer and explained when someone applies for a permit, Staff relies on the plot plan submitted by the applicant. She noted a plot plan is not a survey by a licensed surveyor in the State of Connecticut. Sometimes the applicant is sent home to obtain dimensions and measurements needed to clarify information on the plot plan. It appears in this case, the former Zoning Enforcement Officer, Linda Stock, utilized existing maps on file for the original subdivision and assisted the owner in drawing up the plot plan. The office uses the best information available at the time and relies on the good faith efforts of the homeowner to confirm distances from property lines and usually it works. For this scope of work, a survey is not normally required. This is an unfortunate and unique circumstance where there was not enough information to be accurate. It is already under construction. The Board has to decide whether or not the applicant presented enough of a reasonable argument for hardship based on lot characteristics.

Chrmn. Katen noted while the survey shows the distance to the property line closer than what was shown on the plot plan, the setback will be the same as what is existing, 7.9'.

FAVOR:

Deborah Estok, 38 Hemlock Drive, said she is in favor of the application as the owner pulled a permit for the addition and relied on information supplied by the City to obtain the permit. An undue hardship is created by having the owner stop construction.

OPPOSED:

Nancy Petersen, 44 Ruth Ann Terrace, said her property backs up to the applicant and she is most affected by this variance request. She passed out photos to the Board and explained her backyard is very narrow. She is opposed because this addition is too close to the property line, will block her view, subject her property to more water runoff and will devalue her property.

REBUTTAL:

Gary Howden said the addition was built according to the plot plan associated with the permit issued by the City, which showed there was an 11.6' setback. They found out afterwards the map was not accurate and that's why they are here this evening.

The hearing was closed.

DISCUSSION:

Chrmn. Katen said this addition does not project past the existing non-conforming setback of the house and the shape of the lot does create a hardship. Mr. Carey added the applicant did bring the foundation in so it would not encroach any further than what is there now.

Mr. Carey made a motion to approve with Mr. Tuozzola seconding. The hardship is the odd shaped lot and the addition will not increase the existing non-conformity. The motion carried 4-1 with Messrs. Tuozzola, Carey, Haberman and Katen voting in favor and Ms. Seltzer voting against.

2. **72 Southworth Street** (Zone R-18) Kerrie & Jason Troy, owners – request to vary Sec. 3.1.4.1 to allow 7.10' side yard setback in lieu of 15' required. Map 63, Block 933, Parcel 16.

Jason Troy, 72 Southworth Street, said he is requesting a variance for a 16'x16' dining room addition on the left front side of the house. He submitted letters of support from his neighbors and told the Board he has a growing family, loves the neighborhood and school system and doesn't want to move. He added this addition will not extend past the existing part of the house on either the side or front yards.

Mr. Tuozzola confirmed he was just squaring off the house to which Mr. Troy said yes.

Mr. Haberman asked what the hardship was.

Mr. Troy said there is an attached apartment on the rear side and this will help to incorporate that in the future into an in-law setup.

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Ms. Harrigan clarified they had a pre-existing, non-conforming separate apartment that didn't meet the accessory apartment guidelines. With this addition, it will be better incorporated into the single family residence per the Zoning Regulations.

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

DISCUSSION:

Ms. Seltzer noted this item is no different than the item just before the Board. Chrmn. Katen said they are just squaring off the house and would make the accessory apartment more conforming.

Mr. Tuozzola made a motion to approve with Mr. Carey seconding. They are squaring off the house and there is no opposition from the neighbors directly affected by it. The motion carried 4-1 with Messrs. Tuozzola, Carey, Haberman and Katen voting in favor and Ms. Seltzer voting against.

3. **354 Woodmont Road cor. Quarry Road** (Zone ID) Thomas B. Lynch, attorney, for Side Step, Inc., appellant, for Woodmont Business Park, LLC, owner – request to vary Sec. 5.5.4.1 Restaurant permit location from 1,500' to 25'+/- to allow additional restaurant in shopping center. Map 91, Block 809, Parcel 6BC.

Thomas Lynch, 63 Cherry Street, submitted paperwork to the Board and informed them, Richard Urban, president of the applicant, Side Step, Inc., was present in the audience. He reminded the Board a variance was granted for these Units, #3 & #4, in 2008 for the same application. They are looking to vary the Liquor Regulations under the zoning requirements for spacing between liquor permits. The restaurant permit requested would be for a pizza restaurant. After approval was given in 2008, plans were drawn for fit-up and given to the Building Dept. for review. The plans were given back with comments, changes were made and the plans were given back to the Building Dept. This went on for months and suddenly the variance had expired. The applicant was under the impression that applying to the Building Dept. rather than the issuing of a permit by the Building Dept., within the one year period, satisfied the Zoning Regulations.

Chrmn. Katen confirmed there were no changes.

Mr. Tuozzola asked why an extension was not asked for to which Atty. Lynch said it just slipped through the cracks.

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

DISCUSSION:

Chrmn. Katen noted this was a re-approval and there were no changes.

Ms. Seltzer made a motion to approve with Mr. Haberman seconding. The reason for approval is it is a re-approval and there are no changes. The motion carried unanimously with Ms. Seltzer, Messrs. Tuozzola, Carey, Haberman and Katen voting.

4. **462 Oronoque Road** (Zone LI) Thomas B. Lynch, attorney, for Oronoque Road, LLC, appellant, for Michael DeDonato Trust, owner – request to vary Sec. 2.5.5 to allow 15' wide access to rear lot where 50' is required. Map 74, Block 928, Parcel 18.

Thomas Lynch, 63 Cherry Street, submitted paperwork to the Board. He reminded the Board this application was before them in February and there was some question as to whether proper notice was sent and after speaking with the Assistant City Attorney, is back before the Board this evening. The property consists of 15 acres of land that hasn't been utilized by the Barrett family since they took title to the property in 1972. There has been a constant legal battle going on between them and the adjacent property owners, the Perry family. The lawsuit was brought by the Barretts to try to establish a legal right of way through the property of the Perry farm to have access to Oronoque Road because by title, the property is landlocked. There was an easement conveyed together with the property but there was no delineation of what that access way was. The Barretts thought they had a roadway established there that was 40' wide and felt by prescriptive use over a period of time, this granted them certain rights to maintain the 40' right of way. The Perry family made attempts to block that access way. Based upon the facts the court found through testimony given and examination of the property, determined the Barretts had a legal right to a 15' passway. This is their only access to the property. At this time the applicant is seeking to have a parking/staging area for car dealerships. He wants to have a parking lot which is a permitted use in the LI zone. Without any driveway access to this property, they cannot use it for anything. So the variance is to vary the access requirement of the Zoning Regulations from 50' to 15'. If approved here, the next step would be to go before the Planning and Zoning Board for Site Plan approval. There is a legal hardship, not self-imposed. The hardship is created by the deed and by the Court decision and without a variance, the applicant cannot use the property. It creates a confiscatory situation and creates the right to seek a variance.

Mr. Haberman asked if this was ordered by the Court; why is the applicant here before the Board.

Atty. Lynch explained the Court has established a 15' right of way, but the property is still subject to Zoning Regulations, which call for a 50' right of way.

Ms. Harrigan said the Court clarified the contract between two private property owners and the terms of the easement.

Mr. Tuozzola asked Atty. Lynch why he thought this Board had the right to make the decision to allow passage on property the applicant doesn't own to which Atty. Lynch said under the Zoning Regulations, the 50' requirement doesn't speak to whether it's through fee simple ownership or an easement. Legally, the Barretts have the right to access Oronoque Road through a 15' easement.

OPPOSITION:

Danielle Bercury, attorney with Hurwitz, Sagarin, Slossberg & Knuff, 147 Broad Street, and resides at 162 Melba Street, is here on behalf of Maria and Andy Macri. Maria's mother's estate is the current owner of the adjacent property, being referred to as the

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Perry Farm. They believe that notice provided by the applicant is insufficient under the Zoning Regulations. Sec. 9.3.3.2 states notice must be sent to the owners within 200' of the property of which a variance is requested. Notice was only given to owners within 200' of 462 Oronoque Road. The variance requested is for the right of way or easement located on 534 Oronoque Road. The mailings, notice and application itself are insufficient as they do not properly identify the property that is the subject of this application. It is their concern that the applicant is not being candid with the Board in providing a minimal site plan and identified the use as an off-street parking lot. This use is almost always accessory to another primary use. The burden is on the applicant to demonstrate how safety will not be impacted by the requested variance. The applicant should prove that the requirement of a 50' access is unnecessary to carry out the general plan.

Maria Macri, 534 Oronoque Road, owner of the adjacent property and is very opposed to the variance. The map shows a driveway apron, which extends way beyond the 15' right of way and is infringing on her property. The present right of way is gated and according to the Court decision, she is entitled to have a gate to protect her farmland. The new driveway opening proposed would be about 75' across and feels that would invite trespassers to drive or walk onto her farmland. They have livestock, volunteer helpers including disabled students from a local school and this would endanger part of their livelihood. She disagreed with Atty. Lynch's description of a constant legal battle. The Barretts sued her grandparents in 1978 over the right of way and the Barretts lost. If approved the runoff from that right of way, located at the top of the hill, would run right onto her organic vegetable field. If it were used as a parking lot, drippings from the vehicles would contaminate the well water. She submitted photos to the Board showing the land is pristine. A former use of the land by the Barretts was the dumping of construction demolition materials. Her grandmother did block Mr. Barrett with her tractor from leaving once, until he promised not to dump anything there again.

Andrew Macri, 534 Oronoque Road, submitted a map to the Board. It showed what a large residential area surrounds the site as opposed to the map submitted by Atty. Lynch, which gives the impression that the area is empty and unused. The 15' wide right of way from Oronoque Road is insufficient for traffic, especially trucks. Incoming and outgoing trucks could not pass one another without trespassing onto the adjacent farmland. It could also make travel on Oronoque Road hazardous, as incoming trucks would have to wait on the road until an outgoing truck exited. A nearby hill would prevent oncoming traffic from having sufficient warning of vehicles stopped on the hill. He thought, according to the Zoning Regulations, rear lots had to have their own access roads or driveways. The property owner bought this land knowing this was the only access, which makes any hardship, self-imposed. They operate their farm by organic and sustainable principles of agricultural practices. Development could endanger their farming methods. Currently, the entire 13 acres or so is wooded and any clearing, digging, filling or paving could cause flooding, erosion and runoff onto the farm fields as they are down slope from the right of way and the entire lot. Any vehicles or materials there could allow toxic materials to run onto their farmland and contaminate their crops that they grow and sell. The applicant is not asking for a variance of their property, they are asking for a change of Rivercrest Farm property, as they own the right of way. He asked the Board to deny the application so as to avoid a situation such as the one at 990 Naugatuck Avenue, also owned by the Barretts. This

proposal would greatly detract from the residential nature of the neighborhood. It would be bad for the farm, bad for the neighborhood and bad for the City.

Kathy Kobishyn, 26 Pond Street, vice-president of and representing the Milford Garden Club, said they took a vote today to express their support of the Macri's in their desire to keep Rivercrest Farm a pristine, organic farm in Milford. They oppose the potential to have a huge parking lot or dumping site in the middle of the farm. She hoped the Board would help in keeping Rivercrest Farm a special place that is dedicated to growing food and educating the young and the old about a way of life that is fast passing us by.

Bill Poutray, 25 Willow Street, chairman of the Milford Conservation Commission, said 13 acres is roughly 11 football fields, which is a lot of impervious surface. The topography of the land begins steeply, levels off next to the fields of the organic farms and then, even more steeply, terminates at the bottom of the hill, which is a capped landfill. It is important to consider the effects of both the easement and the possible erosive effects of water rushing down this impervious surface to the capped landfill just above the Housatonic River. The applicant should show there is a plan in place to manage this runoff whether it be berms, sewers or drains.

Bob Miller, 141 Cornfield Road, said he is opposed to anyone taking anyone else's land and noted there doesn't seem to be a plan here. No development should be approved without fully understanding the impact to hundred of families.

Barbara Milton, 32 Elm Street, read parts of Sections 9.2.2 and 9.2.2.3 of the Zoning Regulations regarding variances.

Carl Johnson, 439 Oronoque Road, said he lives less than 100' from the access road and never received notice. He believes it is a quality of life issue for the neighborhood.

Tim Chaucer, 104 Hawley Avenue, said the Zoning Regulations exist to protect the homes and the neighborhoods and should this variance be granted, it would have a significant impact on this organic farm and the neighborhood.

Gaeton Andretta, 63 Austin Road, said the proposal would create a hazard to Rivercrest Farm and destroy the pleasant residential, almost rural, character of the neighborhood.

Betsy Peterson, 54 Florence Avenue, said she is a volunteer field hand at the farm and would not want to see anything happen to change the area. It is a wonderful place and invited the Board members to come to the farm.

Richard Platt, 132 Platt Lane, asked the Board who has the hardship? It seemed to him that Rivercrest Farm had the hardship, not the applicant. The farm has an asphalt plant across the street and this property behind them. They are surrounded on at least two sides by possible encroachment on their activities. There are very few farms left in Milford and by buying a landlocked property, he felt this was a self-inflicted hardship.

Larry McNellis, 44 River Highlands Drive, informed the Board that directly across the street from this area is a bus stop where 34 kids stand every morning. The Board needs to be aware of this before any decision is made.

Bill Petremont, 40 Cornfield Road, wondered how such a large variance request could even be considered. He couldn't understand why someone would want to put a parking lot in the middle of a farm.

Dave Guernsey, 423 Oronoque Road, said he was not notified by mail either. He didn't know how someone could take more of something that didn't belong to them.

Ann Berman, 77 Pelham Street, said we need to be a more sustainable society and the City needs to protect every inch of farmable land.

Deanna Jacobs, 14 Darina Place, said she likes to support local businesses and goes to the farm to buy her vegetables and flowers over going to a place like Lowe's. People should be considered first over bureaucracy. To put a parking lot in the middle of a farm without knowing what was going to be there is a scary thought. It didn't seem to be the way things should work.

Martin Hallett, 10 River Highlands Drive, said his house is directly across from the entrance and he has a hard time mowing his lawn without being hit by a car and feels if an access road were put there it would be very unsafe. It would be difficult for every person trying to come in and out of River Highlands from Oronoque Road. They are located right at the top of the hill and thought a stop sign should be put there. He said the trucks should be made to go around back through Bic and come up the industrial area. It is unbelievable they want to have an entrance for trucks to come through that area.

Carolyn Alling, 29 Rivercliff Drive, said she buys her vegetables from the farm and is trying to teach her children about all the wonderful things that happen on a farm. It is ridiculous to her that someone would buy a piece of land knowing that there is a 15' right of way and then say I can't use my land because of this hardship. She is a biologist and knows that everything has to go somewhere and you can't just ignore that fact. Where is the snow going to go when it gets plowed in the winter? When there is runoff, where is going to go? It's either going to go into the dump that they fought so hard to get closed down and erode that or onto the organic farm. Nature can't absorb everything we do.

James Patterson, 514 West River Street, an alderman within the farm's district, said he didn't see how fire trucks would be able to access the 15' right of way and as a tractor trailer driver, knows that a car carrier would have a hard time on the road. They are very low to the ground and if they access this piece of property using Plains Road they will have a problem with the railroad tracks and if they come in on Oronoque Road they will have a problem cresting the hill. It would be a very difficult situation either way. Also, because diesel fumes go right into the ground and not into the air, there will be contaminants in the ground.

Ms. Harrigan added there is a question of proper notice for this application. She did speak with Atty. Lynch about it and was told he met with Assistant City Attorney, Cindy Anger, before she left employment with the City. Unfortunately, the Planning and Zoning office didn't receive any memorandum from her. We may need to get clarification from the City Attorney's office. Secondly, we may also need to get clarification as to whether or not this is a private means of access. This is an easement, it is not owned fee simply. There is a fine line here between what should be reviewed by the Planning and Zoning Board vs. what should be reviewed by the Zoning Board of Appeals.

REBUTTAL:

Atty. Lynch said most of the concerns raised were regarding the issue of use, runoff, and maintenance of the farm. These are all issues that would be brought before the Planning and Zoning Board as part of a Site Plan review. He urged the Board not to lose focus of what the variance request was for - to vary the 50' requirement for an access way to a rear piece of property in a LI zone. That is it. What the applicant

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intends to do on that property is in conformity with the zone. Unfortunately, the farm is located next to a piece of property that is zoned industrial. We first have to get a variance of the access requirement and then go to the Planning and Zoning Board with a Site Plan review. The property was purchased in 1952. There were no Zoning Regulations such as these for this area of town in 1952; it was all farmland. The owner of the property back in 1952, thought he had a 50' wide driveway. The Court delineated what the access way was through examination of the property and issued a written opinion in 1978. The property owner has owned this property for sixty years and is asking the Board to allow him to utilize the property. Without this variance, he will not be able to do this. All the other concerns would be part of an application to the Planning & Zoning Board.

The hearing was closed.

DISCUSSION:

Ms. Seltzer said her concern is there is not a hardship. Mr. Carey agreed with Atty. Lynch in that the Board doesn't have to consider what is going on the property. However, the Board does have to consider the fact that there was a Court case and the Court's decision was for a 15' right of way. It would be ridiculous for this Board to give them a variance and in all good conscious, he could not vote to allow a 15' access way to a light industrial use. Mr. Tuozzola thought maybe this item should be tabled and the City Attorney could make a decision on it. His concern was the passing through the property that's not theirs. Chrmn. Katen agreed and added it is not as simplistic as Atty. Lynch says it is. It behooves us to do this the proper way. He thinks the best thing to do would be to get clarification from the City Attorney.

Mr. Tuozzola made a motion to table the item and turn it over to the City Attorney for his legal opinion with Mr. Haberman seconding. Ms. Harrigan also clarified that the Board is asking for an opinion on whether legal notice was done properly. The motion carried unanimously with Ms. Seltzer, Messrs. Tuozzola, Carey, Haberman and Katen voting.

5. **52 Stowe Avenue cor. Devonshire Road** (Zone R-5) Thomas Ettorre, owner – request to vary Sec. 3.1.4.1 to allow a 14' front yard setback in lieu of 20' required. CAM required. Map 13, Block 107, Parcel 76.

Thomas Ettorre, 52 Stowe Avenue, passed out photos to the Board. His hardships are he is a corner lot with two front yards and also the placement of the house on the lot. Many of the front yard setbacks within the neighborhood are at the 10' setback. The addition would be for an attached two car garage, allowing access from the kitchen.

Chrmn. Katen asked if the portable garage would be taken down along with the shed to which Mr. Ettorre answered in the affirmative.

Ms. Seltzer asked about having a one car garage to which Mr. Ettorre said a two car garage would add more resale value than a one car garage and he does have two vehicles he would like to garage.

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Chrmn. Katen noted a variance would still be required for a one car garage.

Mr. Haberman confirmed it would be a one story addition.

Mr. Ettorre said yes.

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

DISCUSSION:

Ms. Seltzer said she wanted to discuss the possibility of having a one car garage. The applicant said part of his reason for asking for a two car garage was for resale value. The Board is not here to make properties more marketable. Having two front yards is a hardship but there is a lot of area being used in the front yard and she has concerns regarding views and traffic. Chrmn. Katen said the proposed garage will have a greater setback than the shed and the portable garage will be taken down. He didn't feel there was an issue.

Mr. Tuozzola made a motion to approve with Mr. Carey seconding. The hardship is it's a corner lot and will still be 14' from the property line. The motion carried unanimously with Ms. Seltzer, Messrs. Tuozzola, Carey, Haberman and Katen voting.

6. **345 Housatonic Drive** (Zone R-7.5) Brian A. Lema, attorney, for Julia Arvan, owner – appeal the decision of the Assistant City Planner in her April 8, 2010 letter regarding a 6' tall fence installed to the rear of the house. Map 14, Block 32, Parcel 2.

Brian Lema, attorney, with Berchem, Moses & Devlin, 75 Broad Street, passed out material to the Board. He said the order sent by the Assistant City Planner, Emmeline Harrigan, alleged the fence was erected in violation of Sec. 4.1.7.3. They feel the Assistant City Planner's interpretation and application of that particular section of the Regulations was in error. The homeowner installed three, six foot sections of stockade fencing along her boundary line. Her property is located along the salt marsh on the Housatonic River. It is their position that this particular section of the regulations does not apply to this property because this property does not abut Long Island Sound. He explained the materials he passed out. If the Assistant City Planner is interpreting this regulation to apply to any waterfront property, it is not supported by the language of the regulations. The regulation reads "In the case of any yard which abuts Long Island Sound only...." It would not apply to properties that abut the Housatonic River, the Wepawaug River, etc. If Planning and Zoning would like to extend that regulation to other properties, it is within their power to adopt such a policy. As it is now, it doesn't apply to this property.

OPPOSITION:

Emmeline Harrigan, Assistant City Planner, passed out paperwork to the Board including Sec. 4.1.7.3 and an email from former Zoning Enforcement Officer, Linda Stock. She explained a lot of times, the Zoning Regulations are not black and white. There is a history of precedent in terms of the way a Zoning Regulation has been applied. Prior to her issuance of this violation order, she consulted with Linda Stock,

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the former Zoning Enforcement Officer, who very clearly said, as stated in the email, the properties along the Housatonic River, as well as any other tidal river, have been considered part of Long Island Sound. That's the way, the ZEO has applied the regulation in the past and that's the way she, as the Assistant City Planner, will apply the regulation. There is precedent for this order. The United States Environmental Protection Agency considers Long Island Sound an estuary and a place where salt water mixes with fresh water. The Housatonic River is brackish twelve miles inland which starts just south of the Derby dam. The aerial photo supplied shows the salt marsh right behind the property and tidal marsh at the foot of this property.

Ms. Seltzer asked where the fence is located to which Atty. Lema said the lot depth is 180' plus an additional 63' down to the creek. The fence is only three, eight foot sections of stockade fence, totalling 24' and probably only extends a third of the way down the lot.

Mr. Tuozzola asked what the purpose of the three section fence was.

Atty. Lema said it provides some privacy to the owner when she uses her back deck so she would not be literally confronted by her neighbor. There were neighborly issues.

Ms. Harrigan, in answer to a question from Ms. Seltzer clarified the Zoning Regulations clearly state that you cannot have any fencing beyond the rear elevation of the house. So with reviewing the regulations and utilizing the precedent that this is a Long Island Sound adjacent property, she found it was not in compliance with the Zoning Regulations

Atty. Lema said there might have been a history of application within Planning and Zoning but the regulations do not state that. If the Planning and Zoning Board wants to, they can adopt a regulation that states this but they haven't done so yet.

FAVOR:

John Verbeek, 341 Housatonic Drive, said the three pieces of fence do not disturb the view of the people next door. He said he has been in his backyard many nights and heard the people next to this woman abuse her by yelling at her and calling her names. For some type of privacy and her own sanity, she put up these three pieces of fence. She specifically didn't put the fence farther down her property so as not to block her neighbor's view.

Mr. Carey wondered who determined the Housatonic River is part of Long Island Sound. He asked how that determination could be made without some legal interpretation.

Chrmn. Katen noted it sounds like the previous Zoning Enforcement Officer, Linda Stock, had applied it that way in the past; that is the precedent.

Ms. Harrigan added that CAM applications include a lot of properties adjacent to the Housatonic River. It is part of Milford's coastline and part of Long Island Sound.

The hearing was closed.

DISCUSSION:

Mr. Haberman said the Regulations should be changed. Chrmn. Katen agreed and noted that the applicant could have put up more sections of fence and applied for a variance with the same argument but only put three sections up. If there is abuse, the police should be called. Ms. Seltzer said her interpretation is this is not Long Island Sound and she didn't have a problem with the three sections of fence. Mr. Evasick said there appears to be a longer fence there, to which Ms. Harrigan said the chain link fence was likely there prior to 2005. Mr. Carey still felt the issue was whether it is Long Island Sound or not. There are definitions included in the Zoning Regulations and if the Planning and Zoning Board wants to define exactly what Long Island Sound is they can do so. He did not think the Housatonic River should be considered Long Island Sound.

Mr. Carey made a motion to approve the appeal and overturn the decision of the Assistant City Planner with Ms. Seltzer seconding. The motion carried 4-1 with Ms. Seltzer, Messrs. Tuozzola, Carey, Haberman voting in favor and Katen voting against.

B. TABLED ITEMS

1. **23 Hillside Avenue** (Zone R-5) Michael Mastriano, owner – request to vary Sec. 3.1.4.1 for 0.3' rear yard setback in lieu of 20' required. CAM required. Map 49, Block 716, Parcel 3.

Withdrawn.

- C. OLD BUSINESS**
- D. NEW BUSINESS**
- E. STAFF UPDATE**

F. ACCEPTANCE OF MINUTES FROM APRIL 13, 2010 MEETING.

The minutes were approved unanimously.

G. ACCEPTANCE OF APPLICATIONS FOR JUNE 8, 2010 MEETING.

The meeting was adjourned at 9:08 p.m.

Attest:

Rose M. Elliott
Clerk - ZBA