

## Minutes, Public Hearing of Zoning Board of Appeals Meeting held 9 June 2015

The Regular Meeting of the Zoning Board of Appeals of Milford, CT, was held on Tuesday, 9 June 2015, 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 (arrived after voting had concluded)

**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 announced that **533 West Avenue** would be rescheduled due to an inaccuracy in the address advertised and that the correct address for the variance request was **553 West Avenue**. He asked if anyone saw conflicts of interest for board members with any agenda items; none were raised. He asked Mr. Thomas to vote in Mr. Vaccino's absence.

### **B. CONSIDERATION OF AGENDA ITEMS**

1. **553 West Avenue** (DO-25) Brian Stone, Esq., Attorney, for Grillo Services, LLC, appellant, with consent of Kingdom Life Christian Church owner; Sec. 3.6.4.2 Vary side-ym setback to 15' where 200' req, 60.25' where 200' req. for recycling operation; Map 42, Block 335, Parcel 1. **RESCHEDULED**
2. **59 Hillside Avenue** (R-5) Thomas Lynch, Esq., Attorney, for John Turek and Donna Weaver, owners; Vary Sec. 3.1.4.1 south side-ym to 8.46' where 10' req, 4 stories where 3 req, 39.5' in height where 35' allowed; 4.1.4 south deck-stairs to 4.4' where 8' perm, to build a single family home; Map 49, Block 724, Parcel 2.

**Attorney Lynch**, of Lynch, Trembicki and Boynton, LLC, 63 Cherry Street, addressed the board. He handed out reference materials. He stated that this variance request was essentially the same as that made in December, though he was not involved with the initial request. He said he had discussed the project with DPLU Director Joseph Griffith and that the Planning and Zoning Board Rules Subcommittee has been reconsidering the number of stories permitted by the regulations. He said the proposed house would replace the one destroyed by Storm Sandy. He said the design was consistent with the rest of the neighborhood. He discussed the average grade of the property and the FEMA flood mitigation elevation requirements. He said the lot's topography presented a hardship. He said the documents he provided would demonstrate that the hardship necessitated a height variance. He noted that the lot coverage nonconformity had been eliminated. He said the proposed residence would be more centered and eliminates a shed and garage. He compared the slope in the grade of the property to a gully, saying it created a 5-foot height penalty. He referred to other communities' methods for measuring height with consideration being made for the hardship presented by flood mitigation requirements through the use of the FEMA Base Flood Elevation in the height calculation. He referred to a house at 165 Hillside Avenue where he said he measured the estimated height of the building and it exceeded the height limit. He said his client's house would not be out of character with the height of the other houses. He noted Mr. Soda's suggestions from the December regulation, saying they were problematic due to wind load.

### DISCUSSION

**Mr. Soda** clarified his previous comments about the roof and disputed Attorney Lynch's conclusion about wind load. **Mr. Tuozzola** asked how the height was calculated for 165 Hillside. **Mr. Tuozzola** noted that the new application was substantially the same as that presented in December. **Attorney Lynch** said he didn't think the hardship had been articulated last time. He said he wasn't asking for a change in the height, but in the way the height was calculated using mean average grade. He said precedents were being set in other towns and that his clients' house was destroyed in the

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storm. **Mr. Haberman** said many houses in the area faced the same issue. **Mr. Tuozzola** asked Mr. Harris to comment on the height regulations. **Mr. Harris** said elimination of the 3-story rule would be considered by the board, but that current measurements use the current methodology.

### **OPPOSITION**

**Trisha Page, 60 Hillside**, said she was against granting a height variance.

**Adam Lavarski, 60 Hillside**, cited the statute saying hardships cannot incorporate any financial aspect. He said he thought the lot would be overbuilt for financial gain.

**Paul Ross, 64 Hillside**, said the house could be made to conform to zoning. He said he found discussions about theoretical zoning changes irrelevant. He said he wanted to avoid precedent for others.

**Mr. Tuozzola** reported that he had received 4 written statements of opposition, the majority of which were specifically objecting to the height variance request.

### **REBUTTAL**

**Attorney Lynch** said his main argument was that the lot's topography meets the statutory definition of a hardship and should be sufficient to grant a variance. He disputed that the lot would be overbuilt.

### **BOARD DISCUSSION**

**Ms. Ferrante** said the lot was not that different from others in the area. **Mr. Haberman** said the Zoning Board of Appeals was not charged with amending regulations and disapproved of setting a precedent. **Mr. Soda** agreed, saying the contours on the adjacent lot are similar. He expressed sympathy for the owners, but didn't feel he could support the request. **Mr. Tuozzola** said it was a new house and therefore adjustments to the plan could make it more conforming. **Mr. Haberman** raised the possibility of doing a partial approval or deny without prejudice. **Mr. Soda** asked if a partial approval could be granted. **Ms. Ferrante** expressed concern about granting a partial approval. **Mr. Harris** advised that the board has the power to deny without prejudice as often as desired.

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

**B. OLD BUSINESS: 8 Bittersweet Avenue** was withdrawn.

**C. NEW BUSINESS:** None.

**D. STAFF UPDATE:** None.

**F. ACCEPTANCE OF MINUTES FROM 12 MAY 2015 HEARING:** **Mr. Haberman** moved to accept; the motion carried.

**E. ACCEPTANCE OF APPLICATIONS FOR 14 JULY 2015 HEARING:** Staff noted the rescheduled 553 West variance request and an Appeal the Decision of the ZEO for 990 Naugatuck Avenue.

The meeting was adjourned at 7:40 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