

## **Minutes, Public Hearing of Zoning Board of Appeals Meeting held 13 June 2023**

The Regular Meeting of the Zoning Board of Appeals of Milford, CT, was held on Tuesday 13 June 2023, beginning at 7:00 p.m. at 110 River Street, to hear all parties concerning the following applications, some of which may require Coastal Area Site Plan Reviews or exemptions.

### **A. PLEDGE OF ALLEGIANCE / ROLL CALL**

**Chairman Tuozzola** called the meeting to order at 7:00 pm. He announced that item 2 had been postponed per applicant request. He asked Mr. Smith to vote for Mr. Wolfe.

**MEMBERS PRESENT:** Sarah Ferrante, Gary Montano, William Soda, Joseph Tuozzola (Ch)

**ALTERNATES PRESENT:** Gary Dubois, Mike Smith

**MEMBERS/ALTERNATES ABSENT:** Carmina Hirsch, Chris Wolfe

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

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

1. **125 Ridgewood Drive**, MPB 49/614/3; R-10; Kevin Curseaden, Esq., for IA Construction, LLC; Vary Sec. 3.1.4.1—southerly side-yard setback to 5' where 10' required to construct a new attached garage to existing house.

**Mr. Tuozzola** reminded the board that this item had been closed in May. He asked board members if they had thoughts to share prior to a vote.

**Mr. Montano** motioned to **approve**.

**Ms. Ferrante** seconded.

Discussion: **Mr. Soda** said he thought the application lacked a hardship. **Mr. Montano** thought an approval might improve drainage. The motion **failed** with **Ms. Ferrante, Mr. Montano, and Mr. Smith voting with the motion and Mr. Soda and Mr. Tuozzola voting against the motion**.

2. **12 Francis Street**, MBP 6/84/2; R-7.5; Kevin Curseaden, Esq., for Antoinette Voll and Joseph Voll, appellants; Appeal the decision of the Zoning Enforcement Officer in accordance with the provisions of section 9.2.1 regarding April 20, 2023, Notice of Violation and related decision that there is a violation of Sections 5.7.2, 5.7.6.6, 5.8.6.6, 5.8.6.7 of the MZR. **POSTPONED TO JULY PER APPLICANT**

3. **25 Eighth Avenue**, MBP 9/102/9; R-7.5; Robert Maslan, Esq., for S. Swan, Laurel Beach Assoc. and E.T. Krolikowski III, appellants; Appeal the decision of the Zoning Enforcement Officer in accordance with the provisions of section 9.2.1 regarding Certificate of Zoning Compliance for Use of Land or Building, Certifying each of the existing developer lots, Lot #'s 23, 24, 25 and 26 as shown on Maps R-33 and F-580 are legally nonconforming lots of record.

**Attorney Maslan** addressed the board. He said John Shanley, president of the Laurel Beach Association, was also present. He reviewed the appeal of the issuance of the 4 lot certifications and overviewed the status of the revocation of the 6.4.2 merger regulation and the moratorium that followed. He noted current minimum lot configurations. He said that it was late in the day when he became aware of a large submission of materials by Attorney Kevin Curseaden and the memorandum written by Zoning Enforcement Officer Stephen Harris and said he'd not had time to review them. He was insistent that a merger had been created, not just a restrictive covenant, and that the appellants had the ability to enforce it. He read a declaration that was recorded on the land records by the owners of the premises of 25 Eighth Avenue stating that it was to be considered one parcel for all purposes. He said the Laurelton Beach Association had standing to enforce the merger. He said the intent to merge the properties was in the listing. In addition to the declaration, he had presented zoning documents from a prior owner dating to 1973 including a diagram of the merged single lot, saying it also was evidence of intent to merge the lots. He said he understood that 6.4.2 had been repealed, and asked where the authority is for an owner of 4 abutting lots to apply for a zoning permit. He presented his interpretation of 6.4.1 and said this situation was different. He said when the Planning and Zoning Board repealed 6.4.2, they removed the ability to pull a zoning permit for a nonconforming lot without applying to the ZBA for a variance. He one of the lots is different than it was from 1901 to 1940 because a deed in 1976 conveyed a portion of it. He said this was another reason to reverse the ZEO's decision. He said section 2.6 says that if an owner has a nonconforming lot, they have 5 years to build on it before having to make it a conforming lot and the 5 years have long passed as the property was first zoned in the 1920s. He said as a point of law, merger can be accomplished by an owner's conduct and intent to merge. He described 2 instances of this intent and conduct. He said once lots

## **Minutes, Public Hearing of Zoning Board of Appeals Meeting held 13 June 2023**

have merged, they can't be unmerged and that this has been established in case law. He said if conforming lots can be created, a re-subdivision can be done, but since the ZEO is not a planner, he cannot subdivide lots.

**Mr. Tuozzola** asked if Attorney Maslan would prefer to hold open the hearing, given the lateness of the submission by Attorney Curseaden. **Mr. Soda** said he would prefer like to hear all testimony at the same time. **Mr. Harris** asked to allow all parties to have their say at this hearing; that the position of the property owner and City should also be heard now, because only the appellant's attorney had been heard thus far.

Mr. Harris read a prepared statement as follows:

**MEMORANDUM** of June 13, 2023

### **SUMMARY OF FACTS & PROCEDURAL HISTORY:**

1. On May 21, 2021, the Planning and Zoning Board repealed sec. 6.4.2 "Use of Non-Conforming Lots when Applicants or Predecessor Own/Owned Adjacent Land".
2. On July 15, 2022, the Planning and Zoning Board enacted a moratorium on lot certification. The moratorium expired November 30, 2022.
3. On March 31, 2023, prior to enactment of a second moratorium, an application to certify lots 23-26 at 25 Eighth Ave. was received (PL-23-0025) with the following documents in support thereof:
  - a) Warranty Deed dated September 21, 2016, and recorded September 29, 2016, in Volume 3701, Page 402 of the Milford Land Records;
  - b) City of Milford, Connecticut. Assessment Parcel Map, Parcel ID 398, Address 25 Eighth Avenue, dated December 2021;
  - c) Amended Map of High Wood, Laurel Beach, Milford, Conn. May 1925, on file in the Milford City Clerk's Office as Map #R33; and
  - d) Second Amended Map of High Wood, Laurel Beach, Milford, Conn., March 1930, on file the Milford City Clerk's Office Map #F580.
4. On April 4, 2023, the Planning and Zoning Board enacted a second moratorium concerning lots created prior to the adoption of subdivision regulations that do not conform to current regulations. This moratorium expires August 31, 2023.
5. On April 20, 2023, upon review of Application #PL-23-0025 and documents submitted in support thereof, Certificates of Zoning Compliance were issued for lots 23-26 at 25 Eighth Ave.
6. On May 8, 2023, the property owner placed a legal advertisement in the New Haven Register noticing the issuance of Certificates of Zoning compliance.
7. On May 18, 2023, an Application to the Zoning Board of Appeals was received appealing the issuance of the Certificates of Zoning Compliance for Use of Land or Building, certifying each of the existing developer lots, Lots #23, 24, 25 and 26 as shown on Maps R-33 and F-580 are legally nonconforming lots of record, together with the following documents in support thereof:
  - a) Declaration of Merger of Lots dated September 20, 2016, and recorded September 29, 2016, in Volume 3701, Page 398 of the Milford Land Records; and
  - b) Application for Approval of Zoning Compliance dated October 3, 1972.
8. The appeal was timely filed.

### **CITY'S POSITION:**

#### **1) DOCTRINE OF MERGER:**

Traditionally, under the Doctrine of Merger, contiguous lots owned by the same entity may merge into a single lot either by operation of law (local regulation or ordinance) or by use (use of lots indicates owner's intent to consolidate them into a single unit).

On May 21, 2023, the Milford Planning & Zoning Board repealed sec. 6.4.2 (merger by use). The Milford Zoning Regulations do not have merger by operation of law. As such, the City does not have a merger rule and thus the lots in question are not considered merged and may be certified as legal pre-existing lots of record.

In support of their appeal, Appellants provided a Declaration of Merger of Lots ("Declaration") dated September 20, 2016, and recorded September 29, 2016, in Volume 3701, Page 398 of the Milford Land Records. The Declaration provides as follows:

Lots 23, 24, 25, and 26, on the Plan of High Wood, Laurel Beach, Milford, Ct, as amended by Map of March 1930, less the premises conveyed by Warranty Deed of August 25, 1976 at Volume 862, Page 273 of the Milford Land Records are hereby declared merged and that their individual existence as separate parcels of land as shown on said Map referenced above is hereby terminated, extinguished and of no further legal effect for all purposes. As such, the subject property shall be used as the location for one single family residential dwelling and a swimming pool, if one is installed at any point in the future, from this day forth.

Neither the enabling statutes nor the Milford Zoning Regulations authorize the Zoning Board of Appeals to adjudicate private deed restrictions.

#### **2) MORATORIUM REGARDING SECTION 6.4.**

The Appellants state "[t]he Planning & Zoning Board has placed a moratorium on Section 6.4 of the Zoning Regulations. The moratorium will remain in effect until August 14, 2023... there was no legal basis for the Zoning Enforcement Office to issue the Certificate of Zoning Compliance."

## Minutes, Public Hearing of Zoning Board of Appeals Meeting held 13 June 2023

A moratorium concerning lot certification was enacted by the Planning & Zoning Board on July 15, 2022, and expired on November 30, 2022. Thereafter, on April 24, 2023, a second moratorium was enacted by the Planning and Zoning Board concerning lot certification. The second moratorium will expire on August 30, 2023.

On March 31, 2023, after expiration of the first moratorium and prior to enactment of a second moratorium, an Application PL-23-0025 requesting certification was received.

No moratorium was in place when Application PL-23-0025 was received.

### 3. CERTIFICATE OF ZONING COMPLIANCE - 1972

The Appellants state "[o]n or about October 3, 1972, a prior owner of 25 Eighth Avenue filed an Application for Approval of Zoning Compliance...That application included a drawing that characterized the subject property as a single parcel, with a side yard measurement ... the drawing confirmed the merge of the previous 'development lots.'...Notably, Section 6.4.2(3B)€ of the Zoning Regulations provides that such a characterization merges the parcel into a single lot."

Sec. 6.4.2 did not exist in 1972. Furthermore, Sec. 6.4.2 was repealed May 21, 2021.

### CONCLUSION:

1. The Zoning Board of Appeals does not have the authority to adjudicate private deed restrictions;
2. The application requesting lot certification was received subsequent to the repeal of Sec. 6.4.2 and during the window of time when there was no moratorium on lot certification in place;
3. The Application for Approval of Zoning Compliance dated October 3, 1972, and subsequent Certificate of Zoning Compliance issued June 14, 1973, are not evidence of merger as Sec. 6.4.2 had not been enacted at that time.

For the reasons set forth herein I respectfully request the Board uphold the issuance of Certificates of Zoning Compliance for lots 23-26 at 25 Eighth Ave.

Stephen Harris, C.Z.E.O.  
Zoning Enforcement Officer

He inserted a statement not in his memorandum, adding that the plan reference of 1972 is not a survey and does not tell its provenance. He said it was a zoning application to add on to a garage and that it does not indicate anywhere that it is a lot-merger.

He added that Attorney Maslan had referenced section 6.4.1 as being operative, but Mr. Harris countered that whereas 6.4.2 involved multiple lots, 6.4.1 refers to a single lot surrounded by parcels owned by others, therefore it is not germane.

**Mr. Soda** asked if this appeal was based on the same issue underlying an appeal the board recently heard for 143 Fourth Avenue, when the ZBA agreed that it had no jurisdiction; **Mr. Harris** said that was correct. **Mr. Smith** asked why, if the ZBA has no jurisdiction, the application was accepted. **Mr. Harris** said any aggrieved party can appeal any decision of the ZEO.

**Attorney Curseaden** said he would be content to reserve his time for next month.

The Board voted unanimously to continue to July.

**4. 20 Hanover Street**, MBP 22/458/7; R-5; Hlias Kourtikas, owner; Vary Section 3.1.4.1 west side-yard setback to 5' where 10' required; 4.1.4 west-side deck projection to 5.34' where 8' required, all to construct single-family residence.

**5. 22 Hanover Street**, MBP 22/458/7; R-5; Hlias Kourtikas, owner; Vary Section 3.1.4.1 west side-yard setback to 5' where 10' required; 4.1.4 west-side deck projection to 5.25' where 8' required, all to construct single-family residence.

**Mr. Tuozzola** stated the board would hear both items at once but take separate votes.

**Attorney Lynch**, 63 Cherry Street, addressed the board. He reminded the board of neighborhood objections to the rear deck. **Mr. Soda** confirmed a 3' reduction had been made to the rear deck such that they now measured 7'x 20'.

## **Minutes, Public Hearing of Zoning Board of Appeals Meeting held 13 June 2023**

**Mr. Tuozzola** opened the hearing to public comment.

**Tim McFadden**, 10 Cooper Avenue, said he abuts the properties and is in favor of the project.

With no other requests to be heard, **Mr. Tuozzola** closed the hearing and asked for a motion to approve.

**Mr. Soda** motioned to **approve 20 Hanover**.

**Mr. Montano** seconded.

Discussion: **None**.

The motion **carried unanimously**.

**Mr. Soda** motioned to **approve 22 Hanover**.

**Mr. Montano** seconded.

Discussion: **None**.

The motion **carried unanimously**.

**6. 14 Loomis Street**, MBP 19/203/13; (R-10), Thomas Lynch, Esq., for 14 Loomis, LLC, owner; Vary Section 5.1.9 to allow parking area to serve Doyle Funeral Home, located at 3 Loomis Street in a residential zone.

**Attorney Lynch**, 63 Cherry Street, addressed the board. He introduced his clients and provided background on the funeral home, which is 3<sup>rd</sup>-generation, family owned. He said parking has been a major problem for the business because onsite parking only supports 22 cars. Therefore during any sizable services, parking spills onto the street, creating disruption for the neighbors. To address the problem, the funeral home purchased a nearby dilapidated home with the intention of clearing the lot and using it for parking. However, it was deemed better for the residential use to be maintained under section 5.1.9. He explained the details of the regulation, noting that the parcel at 14 Loomis Street is in a residential zone whereas the parcel at 5 Loomis is in a CDD-1 zone. The house at 14 Loomis will be maintained as a residence but will also provide 24 more spaces. He acknowledged that a Site Plan Review will also be required. He said a use variance under 5.1.9 allows residential zones to have a use not permitted there if such use will not be detrimental to public safety and welfare. He said public safety would be enhanced by avoiding heavy parking on a narrow residential street and reemphasized that the residential use will be maintained. He said the original idea was to apply for a zone change, but that his clients were sensitive to neighbor concerns that in the future any type of commercial use could appear on the parcel.

**Mr. Tuozzola** opened the hearing to public comment.

FAVOR

**Randy Jackson**, 97 Loomis Street, attested to parking problem creating traffic and safety issues on his street.

**Hlias Kourtikas**, 743 East Broadway, said as a small business owner, he knows about parking problems and expressed his support.

With no other requests to be heard, **Mr. Tuozzola** closed the hearing and asked for a motion to approve.

**Mr. Soda** motioned to **approve**.

**Ms. Ferrante** seconded.

Discussion: The board felt there was a clear hardship, and the solution presented a great compromise.

The motion **carried unanimously**.

**7. 128 Beach Avenue**, MBP 60/743/11; R-7.5; Thomas Lynch, Esq., for Mervyn Klein, owner; Vary Section 4.1.1.1 proposed pool front-yard setback from Blackall Road to 12.5' where 20' required, and proposed pool equipment storage front-yard setback to 7.0' where 20' as part of new residence construction.

**Attorney Lynch**, 63 Cherry Street, addressed the board. He said his clients recently purchased the property at Anchor Beach and hired Peter Cooper who was able to design a new house to be constructed within the setbacks. He said the application was to vary 4.1.1.1 to put an accessory structure within the setback, noting that the property was a through-lot to Blackall Street. He provided

## **Minutes, Public Hearing of Zoning Board of Appeals Meeting held 13 June 2023**

more detail about the 3300sf house and the proposed pool on the westerly side of property. He said the hardship is 2 front yards. He referred to an email in support from abutters. **Ms. Ferrante** and **Mr. Harris** discussed what is required to allow an accessory structure in a setback; Mr. Harris read the regulation 4.1.1.1. **Mr. Soda** confirmed that the pool will have required fencing and that the pool equipment will have fencing and privacy landscaping.

**Peter Cooper**, architect and landscape architect, Ramsey, NJ, said the pool's length was to allow laps and that it will be barely visible with an evergreen buffer on Blackall and the side yard. **Mr. Tuozzola** asked if the pool could be made smaller. **Mr. Cooper** said his client wasn't present for consultation, but possibly. Discussion ensued about the size and location of the pool, the proximity of pool equipment to the pool, whether a hardship existed, and if neighbors' comments had been received. (There were none.)

**Mr. Tuozzola** asked the board if they wished to leave the hearing open or vote it. The consensus was to continue the item.

**8. 21 Tremont Street**, MBP 27/451/10; R-5; Thomas Lynch, Esq., for Beth Vogler, owner; Vary Section 3.1.4.1 side-yard setback to 8.8' where 10' required, rear-yard setback to 16.3' where 20' required to construct addition; vary 4.1.4 side projection to 1.78' where 8' required for proposed deck, and rear-yard projection to 11.5' where 16' required for proposed generator platform.

**Attorney Lynch**, 63 Cherry Street, addressed the board. He said Mary Vogler, Beth's sister, was present. He said the application was to construct an addition and generator platform. He introduced John Wicko, architect, to review plans. Attorney Lynch referred to a memorandum from Beth Vogler detailing her purchase of the property in 2001, and then the problems she had encountered since Superstorms Irene and Sandy. He noted the small lot, that the original structure was destroyed, and that a new elevated house with parking underneath was now in place. She then learned she has a disability requiring adaptive measures at the house and hired Mr. Wicko to add accessibility features. He said the hardship is the narrow lot, and pointed out that no impact to neighboring houses would be created since she was requesting a side-yard variance on marsh side of the lot on a dead end.

**John Wicko**, AIA, 58 Prospect Street, said the house has been under construction since Sandy and that he was brought in to design elevator and other renovations. He said the side deck has been enlarged slightly to fit a table and chairs and that the physical extension for elevation access is in the same footprint as the current deck. He said flood hazard mitigation required elevation of the air conditioning compressor and generator, that egress was added and steps to the parking area. He said the elevator will reach to the 2<sup>nd</sup> floor bedrooms.

**Mr. Tuozzola** opened the hearing to public comment. Hearing none, he closed the hearing and asked for a motion to approve.

**Mr. Soda** motioned to **approve**.

**Mr. Ferrante** seconded.

Discussion: **Mr. Soda** felt the design was good. **Mr. Montano** noted that the marsh would prevent future expansion.

The motion **carried unanimously**.

**9. 1201 Boston Post Road**, MBP 89/812/40A A; SCD; Daniel Sloan, agent, for CT Post Limited Partnership c/o Centennial Real Estate Management, owner; Vary Section 5.18.(1) event duration of 14 days to extend duration of operation from 6/1/23 to 9/4/23 (96 days).

**Erin Sloan** addressed the board. She said she wished to extend a temporary permit for a children's bounce house-style installation past its current July expiration date until early September.

FAVOR

**Ken Sturbo**, general manager of the CT Post Mall, said he was pleased to see numerous positive comments on social media about the installation and that Funbox represented a great summer use for the back parking lot.

**Mr. Tuozzola** opened the hearing to public comment. Hearing none, he closed the hearing and asked for a motion to approve.

**Mr. Soda** motioned to **approve**.

**Mr. Ferrante** seconded.

## **Minutes, Public Hearing of Zoning Board of Appeals Meeting held 13 June 2023**

Discussion: **Mr. Tuozzola** said he was in favor of helping the Post mall.  
The motion **carried unanimously**.

**10. 66 Erna Avenue**, MBP 43/304/17; CDD-1; Raymond Paier, agent, for Colon Industries, LLC, owner; Vary Section 4.1.7.4 to allow an 8' fence in the CDD-1 zone.

**Mr. Paier**, PE, LS, Westcott and Mapes, 142 Temple, NH, addressed the board. He introduced Mr. Colon. He said the request for an 8' security fence in CDD-1 zone was made due to expansion of this use because an approval of the original fence hadn't had located in the file. He said his client needed to secure coatings equipment and prevent vandalism. **Mr. Tuozzola** confirmed with Mr. Paier that the new 8' fence would not have barbed wire; but rather be a 8' chain link fence with a camera for additional security. **Mr. Montano** confirmed that the area is primarily commercial, not residential.

**Mr. Tuozzola** opened the hearing to public comment. Hearing none, he closed the hearing and asked for a motion to approve.

**Mr. Soda** motioned to **approve**.

**Mr. Montano** seconded.

Discussion: The board felt the request was a reasonable one for safety and security.  
The motion **carried unanimously**.

**C. NEW BUSINESS** - None

**D. OLD BUSINESS** - None

**E. STAFF UPDATE** - None

**F. ACCEPTANCE OF MINUTES FROM HEARING 9 MAY 2023:** The board inadvertently forgot to approve the May minutes.

**G. ACCEPTANCE OF APPLICATIONS FOR 11 JULY 2023 HEARING:**

Adjournment was at **8:48 PM**.

Attest: M.E. Greene, Clerk, ZBA

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.**