

Minutes of Public Hearings of Zoning Board of Appeals July 8, 2008

**MEMBERS PRESENT:** Richard Carey, Howard Haberman, Fred Katen, Ed Mead, Nanci Seltzer

**ALTERNATES PRESENT:** Charles Montalbano

**STAFF PRESENT:** Peter W. Crabtree, Assistant City Planner; Rose Elliott, Clerk

The meeting was called to order at 7:00 p.m.

## **A. CONSIDERATION OF AGENDA ITEMS**

1. **180 Melba Street** (RMF-16) Stephen W. Studer, attorney, for Milford Arms, LLC, owner – appeal the decision of the City Planner in correspondence sent dated April 15, 2008. Map 38, Block 533, Parcel 1.

**Postponed to August 12, 2008 hearing.**

2. **248 Milford Point Road** (Zone R-10) Michael O'Bymachow, appellant, for Karen O'Bymachow, owner – vary Sec. 4.1.4 to allow a 14' front yard projection setback where 21' is allowed to construct canopy over front steps. CAM received. Map 9, Block 76, Parcel 3.

**Michael O'Bymachow**, 248 Milford Point Road, said he is proposing to put a canopy over his front steps. The house was built around the 1920's. The canopy will provide protection for the steps in the winter. There is no landing, only a series of steps.

**Chrmn. Katen** confirmed they were not encroaching into the setback anymore than the stairs already are to which Mr. O'Bymachow stated the existing steps are 13' from the street; what he is proposing will be 14' from the street.

**Ms. Seltzer** asked if all the steps would be covered.

**Mr. O'Bymachow** answered no.

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

## **DISCUSSION:**

**Chrmn. Katen** stated the canopy is just covering the steps, not infringing on the setback anymore than the existing steps already are.

**Mr. Carey** made a motion to approve with Ms. Seltzer seconding. The reason for approval is this will not project any further than the existing steps and will alleviate the safety hazard in the winter. The motion passed unanimously with Ms. Seltzer, Messrs. Carey, Haberman, Mead and Katen voting.

3. **47 Wilson Street** (Zone R-10) Valerie Wagner, owner – request to vary Sec. 11.2 to allow 528 sq. ft. accessory structure where 391 sq. ft. is permitted. Map 64, Block 930, Parcel 24.

**Valerie Wagner** and John Wagner, 47 Wilson Street, said they are replacing an existing, 506 sq. ft. structure, that is falling down. They are proposing to replace what is there and add an additional 22 sq. ft. The house predates zoning.

**Chrmn. Katen** asked Mr. Crabtree if he had any comments.

**Mr. Crabtree** stated it was pretty straightforward.

**Ms. Seltzer** asked what the height was to which Mr. Wagner said 14'.

**Chrmn. Katen** said it appeared they were close to the State property in the rear of their lot.

**Ms. Wagner** said there is 25' to 30' to the State property.

**Mr. Wagner** said the current garage is 20'x24' and the proposed would be 22' x24'.

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

#### DISCUSSION:

**Chrmn. Katen** said the existing garage looks like it is going to fall down any minute. The proposed garage will be 22 sq. ft. larger. The fact that the house was built prior to zoning represents the hardship. Mr. Mead added you can't force the homeowner to add on to the house to meet the setback requirement and the lot is big enough to accommodate the garage.

**Mr. Mead** made a motion to approve with Ms. Seltzer seconding. The reason for approval is the proposed garage will be only 22 sq. ft. larger than the existing garage. The house predates zoning. The motion carried unanimously with Ms. Seltzer, Messrs. Carey, Haberman, Mead and Katen voting.

4. **12 Broad Street** (Zone MCDD) Thomas B. Lynch, attorney, for Forever Realty, Inc., owner – request to vary Appendix B, Signage, General 2) and Specific 2) to allow two 16 sq. ft. signs to remain where none are allowed. Map 54, Block 402, Parcel 10.

**Attorney Lynch**, 63 Cherry Street, said he represents the owners and operators of Peter Pan Pizza Restaurant, Pat and Ed Smith. He added he did not feel he had to file this application but was doing so because there is currently a civil action brought by the City against his clients. He was retained to represent the Smiths in Court and this variance application. His clients purchased the restaurant in 1996 and the signage in question has been in existence for more than ten years. This is non-conforming signage that pre-dates the current Zoning Regulations. He said the Regulations were adopted for the MCDD zone to maintain uniformity and increase the esthetic nature of the downtown area. His clients have operated this restaurant long before these Regulations were adopted. He spoke of a previous application before the Board where the applicant wanted to replace the existing sign for her salon on Gulf Street. The Board took the position that this constituted the removal and the replacement of the sign. In a case such as that, Planning and Zoning can

insist that the applicant comply with the new Regulations. This is not the same. In speaking with Attorney Anger of the City Attorney's office, it was thought that by obtaining a variance to allow these signs to remain, the case would be resolved. He spoke of the verbiage of Appendix B. This restaurant is a mom and pop operation. They drive here from Bridgeport every morning and make pizzas and grinders. The current signage draws people into their business. This application is not to remove or enlarge the signs, but to allow the signage to remain.

**Mr. Carey** asked if when his clients bought the restaurant the signs were there to which Atty. Lynch, after conferring with his clients, said Mrs. Smith put the signs up after they bought the business in 1996.

**Chrmn. Katen** asked if permits were pulled to put the signs up.

**Atty. Lynch** stated he did not believe permits were taken out.

**Chrmn. Katen** asked what, after all these years, prompted the variance and court case.

**Atty. Lynch** said Mr. Crabtree sent a letter requesting the signs be removed. He added in speaking with Mr. Sulkis, what really prompted it was a complaint from a neighbor.

**Mr. Crabtree** verified it was complaint driven and added his letter was to get the owners to come into the office to obtain a permit or apply for a variance. When that didn't happen, the City Attorney's office was asked to take legal action.

**Atty. Lynch** said if the owners came in for a permit, they would have to comply with the current Regulations.

**Mr. Haberman** verified the signs in question were just the two hanging signs to which Atty. Lynch answered in the affirmative.

**Mr. Haberman** continued that the removal of these two hanging signs would not deny the business owners advertisement of their business. The Peter Pan sign would still be there.

**Atty. Lynch** said his clients believe that one of the signs that advertises barbeque chicken brings in a lot of people that otherwise wouldn't know they sold barbeque chicken. He added the pictures he submitted to the Board show there are numerous other businesses downtown, such as Dunkin' Donuts and Subway, whose signs far exceed the square footage allowed in the Regulations and that of his clients. Mr. Sulkis also mentioned the distance these two signs hang down could infringe on the 7' height requirement. Another of the pictures shows a downtown business that has all kinds of things hanging from the canopy. His clients' signs do not create anymore of a safety issue than those items.

**Mr. Haberman** asked if all these other illegal signs downtown have also received violation letters.

**Mr. Crabtree** stated if someone has to spend thousands of dollars on a sign, they will obtain a permit. If they are only spending hundred of dollars, they will just put it up. The problem is the City has to spend hundred of dollars of its own resources to go after the sign violators. Consequently, the City is always behind in sign enforcement. You could have a full time employee work on signs alone. Because of the nominal value of the signs, people tend to put them up without permits and it becomes as much of a problem to get them to comply as the people who put up an addition on their house without a permit. The procedure is exactly the same.

**Atty. Lynch** said no one knows what the signage Regulations were in 1996. These hanging signs could have been fine back then.

**Ms. Seltzer** said the signs are not drawing the people in, their food is drawing the people in. She asked if the applicant would consider making a new sign that meets the Regulations to which Atty. Lynch said no.

**Mr. Mead** asked Mr. Crabtree how the wording changed for signage when the Regulations were changed in 2003. Also, was the City going to make existing signs conform to the new Regulations or wait till the existing signs were replaced.

**Mr. Crabtree** answered the Central Business District, as it was called then, allowed 10% of the face of the building for the portion that you rent.

**Ms. Seltzer** asked when something is "grand fathered in" to which Mr. Crabtree answered it has to be "open and notorious" and explained what that meant.

**Chrmn. Katen** said the bottom line is these signs were put up without a permit.

**Atty. Lynch** stated the Regulations were changed. He added his clients might be willing to consider changing the lettering or the look of the two signs, if there is something esthetically unappealing about the signs. If the same signs were allowed to remain, but just repainted or changed.

**Ms. Seltzer** stated that was not what she was asking and explained what she had meant.

OPPOSED:

**Joe Hebert**, owner of Hebert Jewelers, 14 Broad Street, stated he is a board member of Milford Progress, Inc. They have hired an outside consultant to do a signage study to work with the Planning and Zoning office to come up with new regulations that would help to stabilize and improve the esthetics of downtown Milford. The initial complaint regarding the signs came from MPI. There were also complaints sent in for 2 and 4 Broad Street, Personas Mortgage. When a major renovation was done at Peter Pan Pizza, the signs in question were taken down. As a neighbor, he approached the owners and asked them to keep the signs down. His request was refused. He is here tonight because of the ongoing desire to beautify downtown. The applicants have adamantly refused to adhere to his personal request, the request from Milford Progress, Inc. and the City's attempt to get them to comply. They have had a couple of years to comply, with the first letter from MPI being sent in Sept. of 2005 or 2006. No permit was pulled. They are not even sure if the signage was legal under the old Regulations, prior to 2003. Renovations were done and the signs were taken down and put back up after the new Regulations were in effect. There are also neon signs that are not allowed. He is strongly opposed to the granting of the variance.

**Susan Shaw**, 39 Point Beach Drive, owns a business downtown and opposes the variance. She said the Plan of Conservation done in 2002 speaks specifically about the downtown area. It is important to understand that the businesses downtown are eclectic and need to look different and have a different feel. When some of the more egregious signage violations are looked at, where people have not only not pulled permits but have not listened to their neighbors, or the best interest of the people around them, you are undercutting what is at the core of the downtown business area. She asked that the Board deny the application and not let this business set

the standard for what downtown Milford signage will be or what businesses can get away with.

**Ann Mayer**, 50 Prospect Street, business owner in downtown Milford, asked the Board to look at the standards that have been set and to look for equity across the board for all the businesses downtown. Retail business is facing severe hardships and they are all trying to make Milford a better place to live.

**Tom Beirne**, 55 Bayshore Drive, stated he was an Alderman when they passed this Regulation in 2003. It was hoped that the business owners downtown would conform to the Regulations whether they had signs up already or not because when the downtown area is beautified and brought up to code, presenting a better picture to the public, it will increase business for everyone. They are in the process of working with the UI and telephone company to have the cables put underground. It is the hope the downtown business people will work with them and agree to do it the way they would like it to be done.

#### REBUTTAL:

**Atty. Lynch** said we all want the downtown to look as good as it could look. All these businesses are working to try to make it better. He asked the Board not to lose sight of the legal issue that there was a change in the Regulations. This change went into effect some 6 or 7 years after his clients' signs went up. These were non-conforming signs. They are asking for, as part of resolving the current litigation, a variance to allow these existing signs to remain.

The hearing was closed.

#### DISCUSSION:

**Ms. Seltzer** said it is her opinion that the bottom line is a permit was never taken out in 1996.

**Chrmn. Katen** said the applicant has had many opportunities to get the proper permits. We are all on board for the beautification of downtown and if every sign on Broad Street has to come before this Board or any other Board, then that is what should happen. It went up without a permit, whether it was legal or not then, and they have had from then to now to come in and find out what it takes to become compliant. The applicant has avoided the issue and now they are in court. Mr. Mead commented on the statement made by Mr. Hebert that during Peter Pan's renovations, which took place after the new Regulations went into effect, the signs were taken down. He said at that point they lost their case. They needed to come in for a permit or abide by the new Regulations. Ms. Seltzer asked Mr. Crabtree if the office will be going after every storefront downtown that doesn't meet the Regulations to which he answered the office could use a full time person to do nothing but signs. He is retiring in a week. He repeated this is complaint driven. If this needs to be done for every sign in Milford, they are going to have to hire people to do it. It is that big a problem. Chrmn. Katen added so the problem comes up when someone complains and that's what they are doing here tonight.

**Ms. Seltzer** made a motion to deny with Mr. Mead seconding. The reason for denial is the original signage in 1996, did not have the proper permits and when the signs were down for reconstruction, permits were again not sought to re-install them. The motion carried 4-1 with Ms. Seltzer, Messrs. Mead, Haberman, and Katen voting in favor and Mr. Carey voting against.

5. **63 Boylston Street cor. Westfield Road** (Zone R-10) David Warzel, owner – request to vary Sec. 3.1.4.1 front yard setback from 25' to 11.6' to construct 2 car attached garage. Map 41, Block 303, Parcel 23B.

**David Warzel**, 63 Boylston Street, said they live on a corner lot and there is no other place on the property to build a two car garage. There is a drainage easement across the front of the property. His hookup to the sewer is in the rear yard, and he doesn't want to build on top of that. The only way is to attach the garage to the side of the house and they need a variance to do that. There are two sheds that will be removed on the property and the fence and trees will be coming down.

**Chrmn. Katen** asked if there would be living quarters above the garage to which Mr. Warzel answered there would not be. Half of the garage would be for his classic car and the other half would be for a little workshop area and storage for lawn mowers and bikes. He added they were moving everything away from the property line.

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

#### DISCUSSION:

**Chrmn. Katen** said there is no area on the lot that can be built on without applying for a variance. Mr. Montalbano asked the height of the garage to which Mr. Warzel answered it would be only 17' or 18' high. Mr. Montalbano said there is no driveway to the garage and asked if it is only a storage garage. Chrmn. Katen asked where the driveway would be put to which Mr. Warzel answered he would like to put it off of Westfield Road. Mr. Crabtree said they couldn't put one on Boylston Street because they would be too close to the corner. It would have to be put off Westfield Road.

**Mr. Carey** made a motion to approve with Mr. Haberman seconding. The reason for approval is there is no other place this garage can be placed on the property. The motion carried unanimously with Ms. Seltzer, Messrs. Carey, Haberman, Mead and Katen voting.

#### **B. TABLED BUSINESS**

#### **C. OLD BUSINESS**

#### **D. NEW BUSINESS**

1. 130 Fourth Avenue – request for an extension of time.

**Mr. Crabtree** stated the owner was in the office and they have been trying to obtain a building permit since February.

**Mr. Carey** made a motion to approve an extension of time for one year with Mr. Haberman seconding. The motion carried unanimously with Ms. Seltzer, Messrs. Mead, Haberman, Carey and Katen voting.

**E. STAFF UPDATE**

**Chrmn. Katen** reminded the Board that this was Peter's last Zoning Board of Appeals meeting. The Board thanked him for his help and wished him well on his retirement.

**F. ACCEPTANCE OF MINUTES FROM JUNE 10, 2008 MEETING.**

The minutes were approved unanimously.

**G. ACCEPTANCE OF APPLICATIONS FOR AUGUST 12, 2008 MEETING.**

The meeting was adjourned at 8:10 p.m.

Attest:

Rose M. Elliott  
Clerk - ZBA