

Minutes, Public Hearing of Zoning Board of Appeals Meeting held July 8, 2014

The Regular Meeting of the Zoning Board of Appeals of Milford, CT, was held on Tuesday, July 8, 2014, 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 may have required Coastal Area Site Plan Reviews or exemptions.

A. PLEDGE OF ALLEGIANCE / ROLL CALL

MEMBERS PRESENT: Joseph Tuozzola (Ch), William Soda, John Vaccino

ALTERNATES PRESENT: Gary Dubois

MEMBERS/ALTERNATES ABSENT: Howard Haberman (Sec), Richard Carey, Sarah Ferrante, Robert Thomas

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

Mr. Tuozzola called the meeting to order at 7:00 p.m. He said the board only had a quorum present, therefore to approve any application heard that night, all 4 members would have to vote in favor. He said that in light of this, applicants could postpone having their application heard. He announced that Agenda Items 2 and 5 had already decided to postpone, and he asked if anyone else wished to opt out. Hearing none, he said **Mr. Vaccino** would act as Secretary in Mr. Haberman's absence, and that **Mr. Dubois** would provide the fourth vote for the evening. He asked for known conflicts of interest for board members with any of the items on the agenda. Only Attorney Christopher Carveth came forward with a disclosure, saying he had represented Mr. Vaccino in a prior unrelated legal matter. Neither Mr. Carveth nor Mr. Vaccino felt a conflict existed.

B. CONSIDERATION OF AGENDA ITEMS

1. **4 Bridgewater Avenue cor. Broadway** (R-5) Ted Cline, agent, for CKH Industries, owner; Vary Sec. 3.1.4.1 front-ym setback to 4.1' where 10' req; 6.3.2 expand non-conforming structure; 6.2.1 expand non-conforming use, all to build a 3-season, enclosed sun-porch. Map 13, Block 138, Parcel 9

Mr. Tuozzola questioned the display of placards. **Mr. Cline** said he had photos of the placards on site. Mr. Cline stated that he works for CKH Industries, 520 Temple Hill Road, New Windsor, NY. He said the hardship was that the home was on a non-conforming corner lot and that the room would only fit on the Bridgewater side of the property and the room would be elevated to the 2nd floor.

DISCUSSION

Mr. Soda confirmed the dimensions.

FAVOR

Rebecca Mastrone and **Carl Mastrone**, 4 Bridgewater Avenue, said they supported their project.

OPPOSITION

Lisa DiStefano and **Sam DiStefano**, 2 Bertrose Ave, said they live across street, and opposed the project due to an obstruction of their view. She said the house was bought for the view.

REBUTTAL

Mr. Cline said a view remained due to the house's location on the lot. **Mr. Soda** asked why the room couldn't go in the front corner. **Mr. Cline** said the area Mr. Soda suggested was near the garage. **Mr. Soda** asked to see elevation drawings, which Mr. Cline provided. **Mr. Vaccino** asked to see the photos from the **DiStefanos**, which they provided; they were circulated to the board. **Mr. Tuozzola** closed and then reopened the hearing to allow **Mr. Cline** to examine the DiStefano's photos, which **Mr. Harris** said was his legal right. He made no further comment, as the hearing had been closed.

BOARD DISCUSSION

Mr. Tuozzola asked for discussion. **Mr. Soda** asked to hear the hardship, which **Ms. Greene** read from the minutes, namely a nonconforming corner lot. **Mr. Vaccino** asked Mr. Soda to clarify what was said regarding the location discussion. Mr. Soda said there was a gravel drive with 2 garage doors in that area. **Mr. Vaccino** said any structure there would disturb desirable parking space. **Mr. Vaccino** noted the deck as a potential location. **Mr. Dubois** agreed. **Mr. Tuozzola** asked for a motion.

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Mr. Vaccino motioned in favor of application. **Mr. Dubois** seconded. **Mr. Vaccino** supported his motion by reason of hardship of the nonconforming corner lot and to preserve parking, in accordance with submitted materials. The motion carried with **Messrs. Dubois, Soda, Vaccino** and **Tuozzola** voting **with the motion**.

2. **104 Waterbury Avenue** (R-5) James McElroy, agent, for Michael Zabinski, owner; Vary Sec. 3.1.4.1 front-ym setback to 5' where 10' req; 4.1.4 eave to 1' where 8' perm, deck to 5' where 8' perm, and rear proj to 13.9' where 16' perm; all to build new single family home. Map 13, Block 136, Parcel 2... **POSTPONED**
3. **22 Page Street** (R-10) Amilcar Samper-Perez, owner; Vary Sec. 3.1.4.1 side-ym setback to 3.4' where 10' req to connect existing garage to house via new addition. Map 19, Block 232, Parcel 11

Mr. Samper-Perez addressed the board. He stated that he wished to add to his existing kitchen and connect previously built parts of the home.

DISCUSSION

Mr. Tuozzola confirmed that most of the structure was already in place.

BOARD DISCUSSION

Mr. Tuozzola asked if anyone wished to speak in favor of or opposition to the application. Hearing none, he closed the hearing. After a short discussion, there were no issues in dispute, so he asked for a motion.

Mr. Soda motioned in favor of application. **Mr. Vaccino** seconded. **Mr. Soda** supported his motion by reason of hardship of the pre-existing conditions, in accordance with submitted materials. The motion carried with **Messrs. Dubois, Soda, Vaccino** and **Tuozzola** voting **with the motion**.

4. **326 West Main Street aka 321 West Main Street** (CDD-2) Thomas Lynch, attorney, for 321 BPR, LLC, owner; Vary Sec. 5.5.4.2 to allow café liquor permit within 1500' of another permit. Map 53, Block 307, Parcel 3

Attorney Lynch addressed the board. He stated that the café use was preexisting, and that his clients have signed a lease intending to extend that use. He clarified that the unit number is 333 Boston Post Road, and was formerly known as the TopSide Café. He said the café was given a liquor permit by the state and reviewed the process for getting such a permit. He noted a disagreement he'd had with Mr. Harris about this type of permit, with Mr. Harris saying that a liquor permit is granted to an individual, not a site. Attorney Lynch said that Joey C's Bar and possibly Gusto's Restaurant were within 1500 feet of his clients' proposed café. He compared the justification for this variance application to the Stonebridge variance he obtained from the board in 2013. He offered to provide minutes from the May 2013, underscoring that a café permit would help prevent underage drinking, which was what his current clients want to do by keeping anyone under 21 years of age off the premises. He said there would be a staffed kitchen, so it would essentially be restaurant, but that the café permit would help keep underage drinkers out. He said the owner of Joey C's had no objection.

DISCUSSION

Mr. Tuozzola confirmed with **Mr. Harris** that the only permit in the address's zoning file was a restaurant permit. **Attorney Lynch** referred to the 5.5.4.1 and 5.5.4.2 regulations. **Mr. Harris** said some zones in the city could have those regulatory distances waived, but for restaurant permits only. **Mr. Vaccino** asked if there as anything in writing from Joey C's owner; nothing was produced.

FAVOR

None.

OPPOSITION

Louis Delillo, 22 Peck St, said he was concerned about hours of opposition. He said the property owner had not cared for the property well. He asked if a day care center existed in the larger office/retail complex when the liquor permit was first issued. He said he thought a pediatric medical project was going into an abutting space. He said he was concerned with owner, not tenants.

Joyce Marlow, 353 West Main, asked where the dumpsters would go, as their presence creates early morning noise. She also questioned co-location with the day care and potentially a pediatric group.

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Scott Marlow, 353 West Main, said he was also concerned with the hours of operation and whether there would be live music. He asked if the back door would be open. Like the others, he said he was not so much opposed to as questioning the project.

REBUTTAL

Attorney Lynch said the planned hours were 11AM-11PM most nights and on Fridays and Saturday 11AM-2AM. He said the tenants had no control over the dumpster operation. He described the entrance location and said that bar, café, and restaurant uses are permitted in the CDD-2 zone. **Mr. Vaccino** thought the crux of the argument was having a type of permit that helps control access to the premises by underage drinkers. **Attorney Lynch** confirmed that the site had been vacant for 1 year, but that a restaurant use had existed there for the last 30+ years.

BOARD DISCUSSION

Mr. Tuozzola closed the hearing and asked for discussion or a motion. **Mr. Vaccino** said revitalizing the site was a good thing and agreed that liquor permits are assigned to individuals. **Mr. Tuozzola** said he hoped those under 21 years of age are kept out of the facility. **Mr. Soda** said he felt the café permit was appropriate. **Mr. Dubois** agreed, based on the ability to control access by minors. **Mr. Vaccino** asked if he could add a condition to the motion; he was told he could.

Mr. Vaccino motioned in favor of application with the condition of keeping under-21-year-olds out of the café. **Mr. Soda** seconded. The motion carried with **Messrs. Dubois, Soda, Vaccino** and **Tuozzola** voting **with the motion**

5. **21 Beacher Road** (R-10) Thomas Lynch, attorney, for Two Ninety-Six, LLC, owner; Vary Sec. 3.1.4.1 side-ym setback to 4' where 10' req; 4.1.4 eave to 1' where 8' perm to build new single family home. Map 39, Block 606, Parcel 15... **POSTPONED**
6. **27 Way Street** (R-12.5) Thomas Lynch, attorney, for BAMF Homes, LTD, owner; Vary Sec. 3.1.4.1 side-ym setback to 5.5' where 10' req, front-ym setback to 24.9' where 30' req to build new single family home. Map 25, Block 218, Parcels 9, 10

Attorney Lynch addressed the board. He stated that Mr. Field of BAMF Homes had just arrived and would like to **postpone**. The chair allowed it.

7. **67 Anchorage Drive** (R-12.5) Christopher Carveth, attorney, for Karen Dorney and Michael Dorney, owners; Vary Sec. 3.1.4.1 front-ym setback to 27.8' where 30' req for addition to a single family home. Map 45, Block 510, Parcel 84

Attorney Carveth addressed the board. He stated that Mrs. Dorney's family bought the house in 1952. He said the garage extension and additional living space would be similar to the existing streetscape. He described the expansion as minimal and modest. He said the hardship was the non-conforming lot, which is 10% below current zoning requirements.

DISCUSSION

Mr. Tuozzola confirmed that the façade would be the same.

BOARD DISCUSSION

Mr. Tuozzola asked if anyone wished to speak in favor of or opposition to the application. Hearing none, he closed the hearing. After a short discussion, there were no issues in dispute, so he asked for a motion.

Mr. Soda motioned in favor of application. **Mr. Dubois** seconded. **Mr. Soda** supported his motion by reason of hardship of the undersized lot, in accordance with submitted materials. The motion carried with **Messrs. Dubois, Soda, Vaccino** and **Tuozzola** voting **with the motion**

8. **7 Beach Avenue** (R-12.5) Max Case, attorney, for Davida Pepe, owner; Vary Sec. 3.1.4.1 front-ym setback to 16.3' where 30' req to build a new elevated single family home. Map 82, Block 784, Parcel 5

Attorney Case of Jacoby and Case, 57 Plains Road, addressed the board. He noted the presence of the Pepes and their architect. He said the previous variance application had 2 requests, now there was 1. He noted the discussion of parking at the last hearing and distributed new materials, including photos. He said the plan was substantially revised and handed out printed material to describe the amended project. He provided photos depicting parking problems on July 3rd. He said there is only 1 parking space on the property now, and that the hardship was the narrow lot, created in 1900 before regulations. He said lots across the street were R-5,

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unlike his clients' 12.5 designation. He said the clients had deep roots in the community and that they tried to be considerate of their neighbors.

Jaime Millard of Michael Greenberg Associates described the proposed replacement of the old home with a new home that avoids the VE flood zone. He said the lot dictated a narrow house. He said the Pepes didn't want an overpowering "McMansion" style house and that they used a lower height profile than is permitted, so the views of neighbors would be maximized. He referred to elevation drawings showing the garage.

Attorney Case stated that design would be in harmony with neighborhood, referring to photos of garages closer to road than the proposed one. He referred to a chart detailing features of houses within 200' of the applicants' address. He said the house is midway between sizes of surrounding homes. He referred to houses previously remodeled and rebuilt. He submitted letters of support from neighbors.

DISCUSSION

Mr. Tuozzola confirmed that height is 27' and said that he felt last month's board suggestions were incorporated. **Mr. Vaccino** asked for exact the differences and the architect described how the side-yard setback requests were eliminated.

FAVOR

Several letters of support were submitted for the project.

Mark Schpero, 11 Beach Ave, referred to his family's residence on the street and said he supported the style and substance of the project. **Stephen Pepe** said his team tried to address the board's concerns.

OPPOSITION

Attorney Thomas Lynch, 63 Cherry Street, said he represented Naomi Rottman, and referred to her late husband's judgeship and role as Milford City Attorney. He said Mrs. Rottman raised her concerns at the previous meeting. He said he hadn't heard a legal hardship identified that would merit changing a 2400 sf house to a 3500 sf home. He said the house would run 60' in length along property. He said he respected Attorney Case but that Mr. Case failed to make the case for a hardship. He said only 2 parking spaces were required by regulation. He said the garage was unnecessary and the VE zone would not be impossible to build in.

REBUTTAL

Attorney Case said other larger garages were nearby. He said parking changes were made to address expressed board concerns. He said there is a hardship due to the house predating zoning regulations. He said the Pepes respect Mrs. Rottman and the late judge. He said they asked for a discussion with her after the last meeting, but she did not respond.

BOARD DISCUSSION

Mr. Tuozzola closed the hearing. He said he thought the house fit on the lot and that other aspects of the plan were also sensible and resonated with the board's comments. **Mr. Soda** and **Mr. Vaccino** agreed.

Mr. Vaccino motioned in favor of application. **Mr. Soda** seconded. **Mr. Vaccino** supported his motion by reason of hardship of the pre-zoning lot and a reduction in the prior plan's non-conformities, in accordance with submitted materials. The motion carried with **Messrs. Dubois, Soda, Vaccino** and **Tuozzola** voting **with the motion**

9. **1 Hoyt Street through lot to Buckingham** (R-7.5) Alan Lynn, owner; Vary Sec. 4.1.1.1 for accessory structure in front yd; 4.1.1.4 for accessory structure to be less than 8' from house for 15' round, above-grnd, swimming pool. Map 38, Block 558, Parcel 79

Mr. Lynn addressed the board, along with his daughter Alexa, who presented photos to the board. He stated that Alexa would be the prime user of the pool. He said the hardship was the nature of the lot.

BOARD DISCUSSION

Mr. Tuozzola asked if anyone wished to speak in favor of or opposition to the application. Hearing none, he closed the hearing. After a short discussion, there were no issues in dispute, so he asked for a motion.

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Mr. Vaccino motioned in favor of application. **Mr. Soda** seconded. **Mr. Vaccino** supported his motion by reason of hardship of the 2-front-yard lot, in accordance with submitted materials. The motion carried with **Messrs. Dubois, Soda, Vaccino** and **Tuozzola** voting with the motion.

10. **117 Beachland Avenue** (R-5) Kevin Curseaden, attorney, for Fannie Mae, owner; Vary Sec. 3.1.4.1 front-ym setback to 0.8' where 10' req, rear-ym setback to 0.9' where 20' req, bldg height to 40.7' where 35' req, 4 stories where 3 perm, lot coverage of 75.1% where 65% is permitted; 4.1.4 front steps to 0.3' where 8' perm, front deck to 5.5' where 8' perm, rear deck to 1.4' where 16' perm; for elevation of a single family home. Map 29, Block 587, Parcel 41

Attorney Curseaden addressed the board. He stated that the variance request language had an inaccuracy—that he represented David Candelora, the contract purchaser, not Fannie Mae, although he confirmed that Fannie Mae has no objection to the application. He said the variances were needed to remediate the house's encroachment of a property line. He said elevating the house would provide an opportunity to rotate it and get it back within the lot lines. He said the hardship was the size and shape of the lot, its elevation, and the location of the existing structure. He submitted a Milford Health Department Notice of Violation on the property. He said as part of the purchase, the health code violation would be resolved. He noted talks with the City Attorney's office to abate the violation.

DISCUSSION

Mr. Tuozzola confirmed that the house's 40.7' height was due to a widow's walk. **Attorney Curseaden** said the house was being elevated 13'+1' per FEMA requirements.

FAVOR

David Candelora, 1 Sherman Ave, New Haven, said he supported the project and that the house would be raised 7.5' **Mr. Tuozzola** asked if the height could be reduced and how much the house had to be elevated. **Mr. Harris** interpreted the survey as saying that the house would probably need to go up 7' to meet FEMA's Base Flood Elevation. He said the tower had to be reduced to bring it under the city's 35' height restriction. **Mr. Candelora** said he'd like to keep the house, but knew it was asking for a lot.

OPPOSITION

Anthony Vitelli, 115 Melba Street, asked if the applicants are the owners. He said Irene made the house uninhabitable per the Building Department, as they had with his (Mr. Vitelli's) house. He said the nonconformity would be expanded. He noted that he wasn't allowed to have a finished 4th floor. He objected to the height. He said he had to follow rules, but respected them. He said the house's condition was horrible and lifting it could damage his (Mr. Vitelli's) house.

Michael King, 108 Melba Street, objected to expanding the nonconformities and to the house's proximity to the street.

Mary Louise Vitelli, 115 Melba Street, read a letter written by **Michael Donegan**, 123 Beachland Avenue, a neighbor and Milford firefighter, who asked Ms. Vitelli to read his letter as he was on duty at the firehouse that night. He said the variance was a contingency for buying the house. He said the house was just a damaged wainscoted cottage. He said there were no permits taken out for parts of the house and pointed out a lack of other inspection documents. He felt the hardship was only economic. **Ms. Vitelli** said she also opposed the project.

REBUTTAL

Attorney Curseaden said he had previously noted that Platinum Homes, LLC, is the contract purchaser, whereas Fannie Mae is the owner of record. He said there was a blight lien on the property and understood the neighbors' concerns, but the plan was to address the issues raised. He noted that experienced professionals would be involved in the project. He said the house would be rotated away from the street. He agreed that the house had neglected, but said a replacement house would require almost as many variances as the existing house. He said variances were needed throughout the neighborhood for most projected. He said Platinum Homes had not been responsible for the house falling into disrepair. He noted that other boards would review the proposed plan if the variances were approved.

BOARD DISCUSSION

Mr. Tuozzola said he was concerned with the height; **Mr. Vaccino** agreed. He said he had trouble understanding the changes between the existing and proposed surveys. **Mr. Harris** provided a copy of the existing conditions survey and reviewed it with Mr. Vaccino. **Mr. Vaccino** said the other variances were close to what the lot was previously like. He thought it would be appropriate to

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replace what they had before. **Mr. Soda** said 2 decks overlooked the water. **Mr. Tuozzola** suggested a motion to deny without prejudice, so the height could be revisited. **Mr. Dubois** agreed. **Mr. Tuozzola** asked for a motion.

Mr. Vaccino motioned to deny without prejudice to let the applicant address the height problem. **Mr. Soda** seconded. The motion carried with **Messrs. Dubois, Soda, Vaccino** and **Tuozzola** voting **with the motion**.

C. OLD BUSINESS

There was none.

D. NEW BUSINESS

None.

E. STAFF UPDATE

None.

F. ACCEPTANCE OF MINUTES FROM JUNE 10, 2014, HEARING

Mr. Vaccino moved they be accepted; the motion carried unanimously.

G. ACCEPTANCE OF APPLICATIONS FOR AUGUST 12, 2014, HEARING

Mr. Tuozzola said the three postponed might be included next month. **Ms. Greene** reported one new application received.

The meeting was adjourned at 8:53 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