

## **Minutes, Public Hearing of Zoning Board of Appeals Meeting held 12 July 2016**

The Regular Meeting of the Zoning Board of Appeals of Milford, CT, was held on Tuesday, 12 July 2016, 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

**ALTERNATES PRESENT:** Gary Dubois, Robert Thomas

**MEMBERS/ALTERNATES ABSENT:** Alison Rose Egelson

**STAFF PRESENT:** Stephen Harris, Zoning Enforcement Officer; Meg Greene, Clerk; David Sulkis, City Planner

**Mr. Tuozzola** called the meeting to order at 7:00 p.m. He asked for conflicts of interest for board members with any agenda items; none were raised. He said that Item 1 had been withdrawn, and that Item 6 would be moved forward to allow City Planner Sulkis to address the board earlier. Mr. Tuozzola also noted that 30 Wildwood (New Business) had been rescheduled to August.

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

1. **62 Hawley Avenue** (R-5) Charles Willinger, Esq., for 60 Hawley Ave, LLC; referenced property owner: K. Procino; Sec. 9.2.1: Appeal the Decision of the Director of Land Use regarding the Zoning Permit issued to "Procino Kenneth K" on 24 Feb 2016 concerning property located at 62 Hawley Avenue; M71, B766, P4.

Prior to the meeting, **Attorney Diane Lord** notified Planning and Zoning Office staff on behalf of **Attorney Willinger** that the appeal had been withdrawn.

2. **(Originally Item 6) 1191 New Haven Avenue** (R-12.5) Jeffrey Gordon, for Cathy Kitko and Arthur Viola; Sec. 9.2.1: Appeal the Decision of the City Planner re: Sec. 2.5.5 lot access and rear lot that the minimum width and lot dimensions require a "square" fit within the proposed lot boundary; M70, B713B, P50.

**Mr. Soda** recused himself. **Mr. Thomas** took his place for voting. **Mr. Gordon** of Codespoti Associates, 263 Boston Post Road, Orange, addressed the board. He stated that he represented the owner and contract purchaser. He said he took issue with the requirement that the parcel form a square rather than simply meet dimension requirements. He said he had previously done rear lot development and subdivisions and had not encountered an interpretation like this. He submitted a letter for the record from former City Planner Peter Crabtree. He referred to regulations in the Towns of Orange and Greenwich that refer to geometric shapes and provided copies of the texts. He said CT Land Use Law doesn't use superfluous language. He said he had discussion with staff and City Counsel about the irregular nature of lots. He provided illustrations of existing irregular lots. He said the parcel in question is a 1.5 acre lot in an R-12.5 zone. He detailed aspects of the lot. He showed a proposed citing of a house on the rear lot. He also showed sample overlays of various geometric forms fitting into the space that could theoretically create a rear lot.

**Peter Smith**, 294 Gulf Street, said David Sulkis had made a mistake. He asked the board to consider that a single family home would be preferable to an 8-30g affordable housing development on the property, which might be an alternative outcome. He said the owners were considering building their retirement home on the lot.

**David Sulkis**, City Planner, said the application did not have supporting documentation on the decision, creating a defect in the application. He said the City Attorney's office supported his interpretation of the regulation and that if a regulation isn't clear, case law has found that what has applied in a consistent way defines how the regulation is implemented. He said he reads the lot-width definition as being the horizontal distance when measured parallel to the

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street line. He said if measured by the definition, the lot's width is only 128', making the interpretation of geometric shapes irrelevant. He said the survey submitted to support the application was neither stamped nor signed as required by regulations.

### **DISCUSSION**

**Mr. Tuozzola** confirmed that the proposed use of the property was for a single family home and the area was 200' x 347'.

### **REBUTTAL**

**Mr. Gordon** argued that the dimensions were close to being parallel with the street line. He said he had received correspondence from Mr. Griffith where he discussed the use of 90 degree angles to define the space. He said the surveys were valid, invoking his authority as president of the company. He said he wasn't given guidance about what variance was needed. He revisited his earlier arguments about dimensions. He added that he had consulted the previous Milford City Planner who served for 38 years and that the previous City Planner agreed with his (Mr. Gordon's) interpretation.

### **REBUTTAL**

**Mr. Sulkis** said that the tenure of the former City Planner was not relevant. He reiterated the requirement for the frontage to be parallel to the front yard.

### **REBUTTAL**

**Mr. Gordon** argued that the tenure was a rebuttal to Mr. Sulkis' comment about precedents being used to define regulatory interpretation.

**Mr. Tuozzola** said the board needed the official plans to make a determination. **Mr. Gordon** suggested that the item could be tabled pending provision of the official plans. **Mr. Tuozzola** asked for comments in favor of the application.

### **FAVOR**

**Katherine Lutz**, 56 Platt Street, said she was the potential buyer and that the lot was level, large, dry, and very desirable. She said Mr. Griffith gave her a decision based on a 150'x150' square. She said she had researched rear lots in Milford and found several that did not meet the requirements. She said she disagreed with the interpretation and that the department gave her mixed messages.

**Mr. Tuozzola** confirmed that Ms. Lutz had an email containing Mr. Griffith's comments that contradicted Mr. Sulkis' remarks. **Mr. Sulkis** said the email thread discussed what should be done. **Ms. Lutz** said the email she was referencing was not that email thread.

**Phil Vetro**, 10 Carmen Road, said he thought ZBA's purpose was to evaluate exceptions, and that the lot could be considered an exception because it did not measure 150' by 150'.

**Joel Gorkowski**, 15 Kerry Court, said the neighborhood was charming and that a single family home would fit in well.

**Alex Pazsak**, 1181 New Haven Ave, said he has no problem with a house being built on the rear lot. He said he feared affordable housing development on the lot.

**Jay Barone**, 274 Chapel St, said he favored a single family home on the lot. He said there was too much high density development.

**Mr. Harris** advised that speculation on affordable housing is not part of the appeal.

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**Ms. Lutz** said she had found the email and read it into the record:

**From:** Joseph Griffith <jgriffith@ci.milford.ct.us>  
**Date:** June 21, 2016 at 11:55:10 AM EDT  
**To:** Jeff Gordon <JGordon@codespoti.net>, "kolutz@romesmithlutz.com">  
**Cc:** David Sulkis <DSulkis@ci.milford.ct.us>, "Stephen H. Harris" <shharris@ci.milford.ct.us>  
**Subject:** **1191 New Haven Avenue Rear Lot**

Dear Jeff:

Pursuant to the preliminary submission on 5/23/16 of the rear lot subdivision at 1191 New Haven, this office has consistently interpreted Section 2.5.5 of the Milford Zoning Regulations (MZR) to limit the creation of rear lots to those which consist of one or more acres and which possess a 150' lot width and 150' lot depth with end points contiguous and at 90 degrees.

Accordingly, your site plan dated 4/25/16 and received 6/16/16 is deemed non-compliant with MZR 2.5.5.

Joseph D. Griffith, Director  
Department of Permitting and Land Use  
City of Milford  
203-783-3374

**Hume Merritt**, 1205 New Haven Avenue said he supports a single family development.

**Joel Gorkowski**, 15 Kerry Court, said his property is pie-shaped but still holds a home adequately.

**Jill Gyger**, 61 Sparrowbush, said she supports a single family home on the lot.

### OPPOSED

No one spoke in opposition.

### BOARD DISCUSSION

**Mr. Tuozzola** said there wasn't enough information and asked for a motion to table. **Mr. Sulkis** asked what information was required. **Mr. Haberman** said the application needed supporting documentation.

**Mr. Harris** said since hearing is being held open, the applicant or anyone else can submit any new information desired, including the signed and sealed drawings.

**Mr. Haberman** motioned to table. **Ms. Ferrante** seconded. The motion carried with **Ms. Ferrante** and **Messrs. Haberman, Thomas, Vaccino, and Tuozzola** voting **with the motion**.

Discussion ensued about what information would be required. **Mr. Tuozzola** ended discussion for the item. **Mr. Haberman** said the application should be complete and submitted properly. **Mr. Gordon** listed documents he thought had been submitted.

3. **(Originally Item 2) 226 Second Avenue** (R-10) Ted Krolikowski, owner; Sec 4.1.4 vary front-yd proj to 11.5' where 21' perm and rear-yd proj to 19' where 21' is perm to construct 2<sup>nd</sup> fl deck; M6, B82, P2.

**Mr. Krolikowski** addressed the board. He stated that he wanted to extend a balcony, but would not extend it past the edge of the house.

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### **DISCUSSION**

**Mr. Tuozzola** confirmed with Mr. Harris that the balcony was on the Seaview Avenue side. The applicant said the hardship was the corner lot. **Mr. Soda** asked why no variance was needed for work on the front of the house. **Mr. Harris** referred to a regulation that says if an open porch exists on the 1948 field card; it can be enclosed as of right. He said the house was built in 1908 prior to zoning. **Mr. Harris** asked to refocus on the variance request. **Mr. Tuozzola** confirmed that the balcony is on the 2<sup>nd</sup> floor with no exterior access.

### **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 about the balcony being flush with the house, **Mr. Vaccino** asked if a hardship existed in being denied a balcony. **Mr. Tuozzola** asked for a motion.

**Mr. Soda** motioned to approve the appeal. **Mr. Ferrante** seconded. **Mr. Soda** supported his motion by reason of hardship of the corner lot, exactly per the submitted materials. The motion carried with **Ms. Ferrante** and **Messrs. Haberman, Soda, Vaccino, and Tuozzola** voting **with the motion**. **Vaccino** voted **against** the motion.

4. **(Originally Item 3) 7 Pond Street** (R-12.5) Chris Cranos, owner; Sec. 4.1.4 vary side-yd proj to 3.2' where 8' perm, front-yd proj to 11.74' where 26' perm to build porch; M44, B407, P5.

**Ms. Ferrante** recused herself. **Mr. Dubois** took her place for voting. **Mr. Cranos** addressed the board. He passed out elevations and floor plans. He said he bought the house last summer at auction. He said it was in significant disrepair but because of the historic district designation, he did not want to demolish it, but wanted to restore it historically. He described discoveries during the renovation and unique features. He said front and wraparound porches are typical in the neighborhood, with 13 of 17 homes featuring them. He submitted sample photos. He said he found flashing during restoration that indicated a previous porch in the exact place he would like to add his proposed porch. He said the house was close to front and side property lines, built in 1868. He said the variance was needed to bring back the history of the house. He said the hardship was the placement of the house on the lot versus the historic restoration. He said when he presented the plan to the Historic District Commission (HDC), he was granted a certificate of historic appropriateness.

### **DISCUSSION**

**Mr. Tuozzola** confirmed that the neighborhood did have many similar examples. **Mr. Vaccino** said he appreciated in-depth description of the hardship.

### **FAVOR**

**Arthur Paulson**, 10 Pond Street, said he was vice chairperson of HDC and reported on the commission's decision. He said the commission doesn't consult zoning regulations when making its decisions, but the commission was impressed with house as a whole and that the house had been neglected for some time. He said the front of the house once had a balcony in front of the center window. He said the commission was pleased with the plan. He noted a neighbor with an objection.

**Mark Caplow**, 42 Pond Street, said he approved the HDC's efforts to keep the neighborhood beautiful. He said the house had been blighted. He said he used to mow the lawn of the property for the sake of the neighborhood. He said he admired the efforts of the current owners to enhance the house.

**Victor Ferrante**, 82 Pond Street, said that Sarah is his daughter. He said he respected giving variances in a sparing way, but that the house predates zoning and should be restored to its prior status.

**Justine Ferrante**, 82 Pond Street, said the porch would be an enhancement to the neighborhood.

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**Nick Veccarelli**, 60 Pond Street, said the house looks like it needs a front porch and commended work on the house.

### OPPOSED

**Mike Casey**, 3 Pond Street, said the structure would be 3.2' away from his lot line. He said 11 months of renovation had gone on already and that while he appreciated the owner's efforts, he didn't see a hardship. He said there is 40' on the other side of the house and 60' to the rear for additions. He said there will be an adverse impact on his view of neighborhood and that the front of the house would be too close to the street.

**Dana Casey**, 3 Pond Street, said she loves what they're doing to the house, but the porch will be too close to her property. She said backing out of driveway will be difficult with reduced visibility. She said the plan could be reduced.

### REBUTTAL

**Mr. Cranos** said he respected all the comments being made, but said the porch was open air, would only be 7 inches above ground level and therefore doesn't require railing, so visibility should not be affected.

**Mr. Casey** rebutted, saying that porches end up being closed in.

**Mr. Cranos** said he had no intention of adding square footage of the house. He said he had already demolished a screened-in porch that was in the back of the house. He said the HDC would prevent screening. **Mr. Vaccino** asked about the alternative of not doing a wraparound porch. **Mr. Cranos** said he was trying to stay consistent with neighborhood and that the old flashing helped him decide what the nature of porch should be.

### BOARD DISCUSSION

**Mr. Soda** and **Mr. Tuozzola** discussed approval with a condition that the porch cannot have railings or be screened in.

**Mr. Soda** didn't think there would be a bad visibility problem. **Mr. Vaccino** said it appears there was a porch in the past.

**Mr. Soda** motioned to approve with the condition that it remain an open porch with no rails, walls, or screens of any type. **Mr. Haberman** seconded. **Mr. Soda** supported his motion by reason of hardship of the position of the house relative to the property line, exactly per the submitted materials. The motion carried with **Messrs. Dubois, Haberman, Soda, Vaccino**, and **Tuozzola** voting **with the motion**.

5. (Originally Item 4) 274 First Avenue (R-10) Deborah Wittes, owner; Sec. 4.1.4 vary 2<sup>nd</sup> fl rear deck projection to 7' where 21' is permitted; M6, B83, P3A.

**Ms. Wittes** addressed the board. She said this house her year-round home and that she loves the location. She said living space is on the second floor. She said the existing deck is only 4' wide and unusable. She said she wanted to extend the deck to the width of the house and extend it. She said the hardship was the small lot.

### DISCUSSION

**Mr. Tuozzola** confirmed that stairs were part of the plan, but **Ms. Wittes** said they could be dropped. He confirmed with **Mr. Harris** that the projection would extend to within 7' of the rear lot line. **Mr. Soda** confirmed that the request added 12' to the current 4'. **Mr. Haberman** asked why the deck needed to be so large. **Ms. Wittes** said she would need a variance for anything they attempted, so she wanted to ask for more living space. **Mr. Tuozzola** wondered about potential for use of the lot behind this one. **Ms. Wittes** discussed the neighboring area and explained why adding a house behind her lot was unlikely. **Mr. Soda** confirmed that the house is 15' wide and the lot line is 25' from the rear of the house.

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### **BOARD DISCUSSION**

**Mr. Harris** confirmed that the house now is maximized the lot's buildable area for **Mr. Vaccino**. **Mr. Haberman** said he could understand the size of the deck because the house is only 15'x20'.

**Mr. Soda** motioned to approve the appeal. **Ms. Ferrante** seconded. **Mr. Soda** supported his motion by reason of hardship of the narrow lot and narrow house and small lot, exactly per the submitted materials. The motion carried with **Ms. Ferrante** and **Messrs. Haberman, Soda, Vaccino, and Tuozzola** voting **with the motion**.

6. **(Originally Item 5) 9 Marsh Street** (R-5) Cedar Properties, LLC, owner; Sec. 3.1.4.1 vary front-ym setback of 8' where 10' req to construct new house; M6, B87, P18.

**Justin Falco**, 9 Marsh Street, addressed the board. He stated that the house was damaged in Superstorm Sandy and needed to be elevated. He said in 2013 he got a rear-yard variance to move the house back. He said he then learned about a grant and that applying for the grant put the elevation project on hold for 2 years. He said the grant was then denied. He said there was confusion about whether the architectural element he wanted to add to the front of the building was part of the structure, which would require a variance, or a projection, which wouldn't require a variance. He said the variance he was now requesting should have been included when he applied for the original variance, had he understood the distinction then.

### **DISCUSSION**

**Mr. Tuozzola** discussed aspects of the previous variance. He clarified that the house was going to be demolished and rebuilt. **Mr. Falco** said the previous variance was approved, but that he mistakenly thought the detail now requested was allowed by right. **Mr. Falco** submitted a drawing. **Mr. Harris** clarified that the detail was not a projection.

### **FAVOR**

**David Ivanovich**, 25 Marsh Street, supported the demotion and rebuilding to enhance the neighborhood.

**James Hill**, 8 Sand Street, said his house is 60' from property, that he rebuilt his house as well, and that he felt the request was reasonable.

### **BOARD DISCUSSION**

**Mr. Tuozzola** asked if anyone wished to speak in 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. V** said it was a mistake and there is a hardship with the lot. **Ms. Ferrante**

**Mr. Soda** motioned to approve the appeal. **Mr. Vaccino** seconded. **Mr. Soda** supported his motion by reason of hardship of the small lot, exactly per the submitted materials. The motion carried with **Ms. Ferrante** and **Messrs. Haberman, Soda, Vaccino, and Tuozzola** voting **with the motion**.

7. **687 East Broadway** (R-5) Thomas Lynch, Esq., for Maria Vita; Sec. 3.1.4.1 vary front-ym setback to 3' where 10' req; south side-ym setback to 4.9' where 10 req; 4.1.4 vary south proj to 0.3' where 4' perm for stairs and deck; M22, B474, P6.

**Attorney Lynch** of Lynch, Trembicki, and Boynton, 63 Cherry Street, addressed the board. He distributed copies of a variance granted in 2012. He noted that his client was present: contract purchaser Tom McKiernan. Attorney Lynch described the project as typical of East Broadway. He said his client was working with John Wicko, architect. He said one nonconformity would be reduced by moving the house back 3'. He said the previous deck went around the house, but

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this one maintained a 5' north setback along with a 4.1' distance along the south. He said the decks extend the same distance as the abutters. He noted that a 1200 sf cottage had been destroyed. He said Mr. Wicko was still working on elevations, that there would be parking underneath the house, mechanicals on the 3<sup>rd</sup> floor, and the house would only feature a small living space. He said the hardship was the narrowness of the lot.

### **DISCUSSION**

**Mr. Soda** confirmed that stair width was 4'6" and wondered why the stairs were so wide. He said other similar applications have been encouraged to reduce the width of the stairs since the requested stairs exceed building code requirements.

### **OPPOSED**

**Suzanna Li**, 691 East Broadway said the project would block her house's view. **Mr. Harris** noted that zoning doesn't regulate views.

### **REBUTTAL**

**Attorney Lynch** said Ms. Li has a 0' setback on back of her house, whereas his client's request isn't extreme and that he is removing the deck that abuts Ms. Li's house.

### **BOARD DISCUSSION**

**Mr. Tuozzola** asked if anyone wished to speak in favor of 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 to approve with condition of reducing the width of the stairs and walkway to 42" to the rear deck on the west side of the house. **Mr. Haberman** seconded. **Mr. Soda** supported his motion by reason of hardship of the narrow lot, exactly per the submitted materials. The motion carried with **Ms. Ferrante** and **Messrs. Haberman, Soda, Vaccino**, and **Tuozzola** voting **with the motion**.

**B. OLD BUSINESS** None.

**C. NEW BUSINESS 30 Westwood** was rescheduled.

**D. STAFF UPDATE** None.

**F. ACCEPTANCE OF MINUTES FROM 14 JUNE 2016 HEARING** passed unanimously.

**G. ACCEPTANCE OF APPLICATIONS FOR 9 AUGUST 2016 HEARING** included the tabled appeal.

The meeting was adjourned at 9:07

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