

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

ALTERNATES PRESENT: Joseph Tuozzola, Sr.

STAFF PRESENT: David Sulkis, City Planner, Emmeline Harrigan, Assistant City Planner; Rose Elliott, Clerk

The meeting was called to order at 7:00 p.m. Board member, Nanci Seltzer, recused herself from Item #1 on the agenda as she was on the Planning and Zoning Board when it was heard.

A. CONSIDERATION OF AGENDA ITEMS

1. **159 Merwin Avenue** (Zone R-7.5) Barry S. Zitser, attorney, for Milwood Properties, LLC, owner – appeal the decision of the City Planner in his order of letter dated April 13, 2009. Map 59, Block 739, Parcel 2.

Barry S. Zitser, attorney, submitted copies to the Board of the Assessor cards for the property and asked that they be marked Exhibit 1. He stated this property, along with the adjoining property at 141 Merwin Avenue, was purchased in 2003, by Charles J. Riether, trustee for owner, Frank Perrotti, for \$365,000. The property was then transferred to an entity, FPJ (Mr. Perrotti's initials) Investments, LLC, on the same day. It was subsequently transferred to Milwood Properties, LLC in 2004, of which Mr. Perrotti is the principal. The assessment has always been for commercial land and commercial building. When the property was purchased, it was being used as a storage warehouse. He submitted copies of a list of some of the people who were storing items in the storage facility when this property was purchased and their monthly rent amounts in 2003 (Exhibit 2). The property was continuously used as a storage warehouse from the time it was purchased to the present day. Proof of continued collection of storage rents was submitted to the Board (Exhibit 3). When the building was first purchased, there were broken windows and holes in the roof. Maintenance was needed on this building. He submitted copies of a picture showing the property as it looked in the 1930's (Exhibit 4). The repairs began in early 2004. The footprint of the building did not change and the repairs were maintenance repairs such as windows replaced and a new roof. There were no major structural changes. In the April 13, 2009 letter from Mr. Sulkis, he refers to 2 applications made to the Planning and Zoning Board. In 2004, Mr. Perrotti applied to add retail use to this building. The application was denied but the use of the building for storage continued and was never abandoned. He was then informed that all necessary permits were not pulled. Apparently, the contractor hired did not do what he was supposed to do. After being notified of this, Mr. Perrotti immediately ceased work on the property. Atty. Zitser submitted copies to the Board of repairs and their cost along with the percentage of the renovations done (Exhibit 5) and current photos of the building (Exhibit 6). The photos show that other than the walkway, there were no changes to the footprint of the building. No increase in the height, width or length. No physical structural changes were made to facilitate the cosmetic changes. The large windows were changed to a number of doors to preserve the option in the event that the 2004 petition to allow the additional use as a retail establishment was approved. John Ford, a professional engineer, inspected the building, reviewed the documents and rendered his

calculations. In 2008, Dan Migliore, an expert consultant for Milwood, met with Mr. Sulkis to discuss the best way to add internal structures to the building to allow a greater segregation of the storage uses; to have a series of compartments. Atty. Zitser submitted copies to the Board of the minutes of the Planning and Zoning Board meeting of July 1, 2008 (Exhibit 7) and directed the Board to page 130 where it says Mr. Sulkis stated "This is an existing non-conforming property that goes back to the 1920's. The applicant is trying to make things better but it is ultimately up to the Board". As of July 2008, Mr. Sulkis considered this to be an existing, non-conforming property being used for storage. The applicant was not looking to change or expand the use, but to better segregate the existing use by building compartments which would separate one person's or one business' goods from another. This application was also denied. In January 2009, there was an abatement order issued by the Building Dept., noting since there was no building permit for those renovations back in 2004, the violation should be fixed. They tried to meet with Mr. Raucci of the Building Dept. to remedy the situation but there was no response from him. This determination by the Building Dept. was appealed to the Building Code Board of Appeals, where Mr. Migliore finally did meet and speak with Mr. Raucci. Mr. Raucci told him they were not looking to have the building torn down but recommended they submit an application for a building permit. With that direction, they withdrew the appeal and Mr. Migliore submitted an application for a building permit. Mr. Migliore met with Mr. Sulkis and was told by him that he is looking for the building to be torn down as he didn't consider it to be an existing, non-conforming use. He felt there was more than 50% reconstruction and enlargement of the building to make it a new building. He also believed the use had been abandoned at some unknown point in time. Atty. Zitser noted this belief must have happened sometime after 2008, since Mr. Sulkis recognized it as an existing non-conforming use at the July 1, 2008 Planning and Zoning meeting. To tear down this building, which is still being used for storage, would destroy the use of the property and its income making potential. A loss of hundreds of thousands to millions of dollars could be recognized; all because some contractor didn't obtain all the required permits. Mr. Perrotti has been trying to remedy the situation for almost four years. A letter from Mr. Sulkis dated July 21, 2008, (Exhibit 8) refers to "renovation and change of footprint to the subject building". Their architect, Ray Oliver, also reviewed the documents (Exhibit 9) and also believed this reconstruction did not come close to the 50% calculation that was found by Mr. Sulkis. To the best of Mr. Migliore's and Mr. Perrotti's knowledge, Mr. Sulkis has never been in and never requested to go in the building. Also, Mr. Sulkis has never asked for any invoices or documents of the cost for the renovations; so they have no idea what the basis of his 50% estimation is. Their engineer and architect have stated the renovations are nowhere near 50%. Atty. Zitser said that he himself attempted to find out the basis of Mr. Sulkis' 50% determination by writing him a letter dated May 14, 2009, (Exhibit 10), asking him for any and all documents which support the statement of his April 13, 2009 letter. Mr. Sulkis responded on May 20, 2009 (Exhibit 11) by attaching only a copy of Sec. 6.2.6 of the Milford Zoning Regulations and no other documentation explaining his 50% determination. Atty. Zitser informed the Board that there is a Supreme Court case that involves the Zoning Board of Appeals, Caserta vs. Zoning Board of Appeals of Milford, where they note that no special deference should be paid to a town official vs. any expert. Any person presenting a case before the Board should be given the opportunity to present their evidence in as full a way as possible. He then asked Mr.

Perrotti to verify that he hired a builder, expected the builder to obtain all required permits and has been attempting to remedy this problem.

Frank Perrotti, Jr., 305 Spruce Bank Road, Hamden, CT, said he thought the contractor had obtained all the necessary permits and apologized for not obtaining one. As soon as he was made aware of the problem, he ceased work immediately. He would like to be able to complete the project to generate a storage business.

John Ford, 570 Skiff Street, North Haven, verified that everything Atty. Zitser said is true. He calculated the percentages on that list from what he saw at the building and the invoices and letters he reviewed. He felt it was under 50% reconstruction.

Daniel Migliore, 75 Gateway, Hamden, said he first met with Mr. Sulkis in early 2007, with the idea to sustain the use of the property as storage. They worked very closely to craft a plan of how it would look on the interior and he was instructive on what they had to do on the exterior. This process continued in both meetings and dialogue for close to 1½ years. When the application went before the Board in early April, Mr. Migliore said he fully expected that with Mr. Sulkis' support, the project would be approved. To his surprise, it was not. After conversations with Mr. Sulkis, it became clear to him that David's intent and that of the Planning and Zoning office was to have this building demolished. They were pleased when the Building Dept. told them this was not the case. In this appeal, they would like the Board to reverse the letter of April 13, 2009, to direct the Planning and Zoning office to issue them a permit, to acknowledge that there has not been 50% or greater renovation to the building and it has continued to be used for storage.

Atty. Zitser referred to the Supreme Court case, Caserta vs. Zoning Board of Appeals, and read "that no one may be deprived of the right to produce relevant evidence or to cross examine witnesses produced by his adversary or to be fairly apprised of the facts upon which the Board is asked to act". He told the Board he would like the opportunity to ask questions of Mr. Sulkis. Atty. Zitser said Mr. Sulkis has made a determination and hasn't provided any support of it to himself or his client. He wants the opportunity to ask him the basis of his decision as they have no idea how this figure was arrived at and how he determined the storage use of this building was abandoned. All the evidence shows this use of storage was continuous. He asked for the opportunity to ask questions and cross examine Mr. Sulkis. The Supreme Court decision declares that is his right.

Chrmn. Katen explained the procedure of the meeting to Atty. Zitser. He added there would be no cross examination as this is not a court.

Mr. Haberman asked if there were any receipts that showed rental for storage for a continuous time to which Atty. Zitser answered Mr. Perrotti has a number of construction activities along with the restaurant so he has an extraordinary need for storage himself. He has been using the storage facility for his own businesses. He does not have receipts for that.

Mr. Tuozzola asked when the property was purchased and if the letters from October 31, 2003 were sent out after the purchase of the property.

Atty. Zitser said the property was purchased on October 7, 2003 and immediately transferred to FPJ Investments and the letters were sent out later that month.

Mr. Mead asked if the storage area was being rented out at this moment.

Atty. Zitser said they can't do anything at this moment because of the failure to get the Building permit, the abatement order from the Building Dept. and the notice of violation from Mr. Sulkis.

Mr. Mead asked if there were any permits ever taken out since Mr. Perrotti purchased the building to which Atty. Zitser said not for the early 2004 renovations.

OPPOSITION:

David Sulkis said he first became involved with the property in March of 2004 when he received an order from the Mayor's office to go to the site along with the Fire, Building, and Health Depts., as they had received word of a "crater" on the Merwin Avenue side of this building. It turned out the hole was dug in the public right of way, for utilities to be put in for the dilapidated garage on the property. There were no permits issued from our office. A short time after that, in early April sometime, he didn't have the specific date, he did go into the building, he believed with the Fire Marshall, where he observed what appeared to be a significantly renovated building. He saw a newly poured concrete floor that had utilities popping out into 6 or 7 compartmentalized units, new roof joists, new roof, utilities running through the floor, metal studs for partitions, and new doors and windows, so individual access could be gained for the individual store fronts. He did not gain access to the office portion of the building. He submitted to the Board, a plan titled Sheet A-1, 159 Merwin Avenue, which the applicant submitted for their first application, stamped received April 5, 2004. It was a proposed floor plan, and said this is what he saw on his inspection. There was a new porch along the front of the building with extended roofline over it and new electrical service with spaces now for 4-6 electrical meters. A significant amount of work had been done without any permits. When the applicant applied for their first application, they were told verbally not to proceed with any further work until the application before the Planning and Zoning Board was adjudicated. However, they continued to work. There is an order in the file from Peter Crabtree, dated May 19, 2004, stating construction is continuing without a zoning permit. Mr. Sulkis explained to the Board that the statement he made during the second application before the Planning and Board, "This is an existing non-conforming property that goes back to the 1920's. This applicant is trying to make things better" is true. He is talking about the property, not the use. When he walked through this property in 2004, there wasn't any storage taking place, it was a construction site. They were preparing this building for a commercial purpose. It is located in a residential zone. He did meet with Mr. Migliore but it is not for him to say whether something would be approved, it is up to the Planning and Zoning Board and the Board denied it. The building is an existing non-conforming property. They went for two public hearings and Mr. Migliore, there for the second one, never produced any evidence that this was leased out for storage. Testimony heard here tonight said it was a storage facility with broken windows, broken doors and a leaky roof. It is hard to believe that people were utilizing this facility and paying for it. The letter I sent to Mr. Migliore, dated April 13, 2009, spelled out if you build something and you don't have permits, and you can't get the permits, the use goes away. They did a significant amount of work, the dollar amount of which doesn't mean anything because this is a land use issue. He had no choice but to issue the letter. They have gone before the Planning and Zoning Board twice and are welcome

to come back with a third application. Until they can come back with something that is approvable, he cannot issue any permits.

Mr. Haberman asked Mr. Sulkis if it was just by looking at the property that he came up with the 50% calculation to which Mr. Sulkis said he saw a whole new floor poured, all new roof joists, new roof, all new utilities, an expansion of the utilities and the only part that may have been original was some of the exterior of the walls. Everything on the inside had changed. The walkway and the overhang were also new. He added we always consult the Building Dept. before we make an over 50% reconstruction judgement.

Mr. Mead asked if the storage facility was in a residential zone and the restaurant was in a commercial zone.

Mr. Sulkis answered they were both in a residential zone. He added when you have a non-conforming property, you cannot expand the non-conformity or change the use to make it more non-conforming. If the restaurant were storing things there, that would probably be fine. Once you start renting spaces out in that building it becomes a commercial storage facility, which needs Planning and Zoning Board approval.

REBUTTAL:

Atty. Zitser again stated that he should have the right of cross-examination, claimed that right and requested the right again. He said Mr. Sulkis referred to the building as dilapidated but it was being used. He said Mr. Sulkis walked into this building once. He didn't say for how long or identify the names of the people he walked in with nor did he say he inspected the building fully. There were electrical wires that were brought in and a small portion of the floor, 10'x15', where there was concrete. There are holes in buildings when you are replacing doors and windows. There is some concrete that needs to be poured when you are bringing in electricity. But if you look at the percentages prepared by Mr. Ford and Mr. Oliver, who had greater access and have been there for longer periods of time, multiple times, their testimony took into consideration everything that was done. Mr. Sulkis did not say what standards or rules he relied on. We have produced evidence by an engineer looking at it from a structural way, a value way and from the cost of the renovations. None of these come close to the number that Mr. Sulkis came up with. He walked into a hole for an unspecified amount of time five years ago, then suddenly in 2009, five years later, he says the use has changed. Mr. Perrotti and Mr. Migliore have said the use never changed. In the minutes referred to earlier, Mr. Sulkis says he was just referring to the building and not to the use but that doesn't make sense because he says "to make it better". "It better" is being referenced as a storage facility. What more could it be? Mr. Sulkis said it was an existing non-conforming property and properties have use. If this was not being used for the continuous use of a storage facility than what happened in 2005? There was no determination by Mr. Sulkis or any Building official that there was an unlawful non-conforming use of this building. What happened in 2006 and 2007? In 2008, Mr. Sulkis had communication with Mr. Migliore in an attempt to remedy this situation and to pursue the continuation of this use by adding compartments. There hasn't been any work done since the first half of 2004. It was not until April 13, 2009, that anyone was under the opinion that this facility was not being used as a storage facility.

Mr. Ford, Mr. Perrotti and Mr. Migliore verified Atty. Zitser's representations to the Board. Atty. Zitser again asked for the opportunity to cross-examine Mr. Sulkis to

which Chrmn. Katen said this was not a court. Chrmn. Katen also added the paperwork submitted to the Board shows nothing regarding the electrical.

Atty. Zitser replied that the electricity has not been completed and turned on. It is part of the building and listed within the total estimated work. It is the electrical conduits that are in it. There are no electrical wires in the conduits as of this date. He then asked for a ruling on his renewed request to cross-examine Mr. Sulkis.

Chrmn. Katen asked him how many times he would have to answer that question.

Atty. Zitser asked if the Board could ask some questions of Mr. Sulkis as to whether or not the impact of his order leaves any choice but to destroy the property. He also asked if they would have another opportunity to come back and continue this hearing. He stated Mr. Sulkis has left it unclear and never taken advantage of the opportunities and their requests to meet to clarify his order and find out what they could do. They would like to have another opportunity after they meet with Mr. Sulkis to come back here and pursue this hearing.

Chrmn. Katen said after the hearing they could contact the office and request anything they wanted.

After conferring with his partner, Atty. Zitser said he thought there would be another opportunity for a hearing.

Chrmn. Katen said they could contact the office tomorrow. They would need to decide what they wanted to do after the outcome of this hearing.

The hearing was then closed.

DISCUSSION:

Mr. Carey said he assumed the engineers who made testimony regarding the 50% renovations were experts. There was no evidence presented on how the 50% was calculated other than that Mr. Sulkis looked at it. There is nothing in the Regulations that say how to determine the 50% and that is an issue. Chrmn. Katen said this is the way it has been always been done. All of this construction was done without any permits. Mr. Mead agreed there were no permits issued and any contractor knows things have to be inspected by a Building inspector. Mr. Sulkis said the applicant has been denied twice by the Planning and Zoning Board. Even if this Board approved it, they would still have to go back before the Planning and Zoning Board. Mr. Haberman said he was not sure about the 50% without seeing it himself but he was not convinced it was used continuously as a rental storage use. Their own tenants may have had their own items in there.

Mr. Carey made a motion to deny the appeal and uphold the decision of the City Planner with Mr. Mead seconding. The use was denied by the Planning and Zoning Board so Mr. Sulkis had no choice but to issue the letter. The motion carried unanimously with Messrs. Mead, Haberman, Carey, Tuozzola and Katen voting.

2. **99 Eastern Parkway** (Zone R-10) Daniel Blanchet, appellant, for William & Nancy Marquis, owners – request to vary Sec. 3.1.4.1 side yard setbacks from 10' to 9.4' and 9.9' to perform over 50% reconstruction. CAM required. Map 14, Block 25, Portion of Parcel 8.

Daniel Blanchet, 172 Gulf Street, stated the work would be a complete renovation of their single family home. It would include total reconstruction of the interior, new siding, windows, 2nd story rear dormer, new rear deck and off-street parking for 2 cars. The hardship is the setback requirements were different when the house was built and because of the 50% reconstruction they are asking for this variance to allow the house to remain as is.

Ms. Seltzer asked how the deck played into the proposal to which Mr. Blanchet said they were constructing a deck but the deck would not be outside the setback requirements.

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

DISCUSSION:

Chrmn. Katen said the house was built in 1941 and there were different setback requirements at that time. They are just short of the setback requirement and he didn't see a problem with it.

Mr. Carey made a motion to approve with Mr. Haberman seconding. The existing footprint of the house is not changing and it is a .6' variance request. The motion carried unanimously with Ms. Seltzer, Messrs. Mead, Haberman, Carey and Katen voting.

B. TABLED ITEMS

1. **90 Heenan Drive** (Zone CBDD) Leo P. Carroll, attorney, for 90 Heenan Drive, LLC, owner – appeal the decision of the City Planner to rescind a Certificate of Zoning Compliance. Map 91, Block 807, Parcel 2.

DISCUSSION:

Chrmn. Katen reminded the Board they requested the City Attorney's office give their opinion on a couple of items. One item was if it were possible for the City Planner to rescind a previously issued Certificate of Zoning Compliance and the City Attorney's office said yes it was. They also said there was no time limit in which to do so. The parcel of land is conforming. Ms. Seltzer disagreed. She referenced the Regulations, saying 10 acres is required and the site is not 10 acres. Mr. Haberman added he had wondered whether the Certificate issued by Mr. Crabtree was correct. He felt it was a conforming lot and could be developed in compliance with the Regulations. It may not be developed in the way someone may want to develop it but it can be developed. Mr. Carey agreed. He added he had wondered about the amount of time that had passed but again in the opinion of the City Attorney's office, the Board could not use the passage of time as a reason to approve the appeal; only a court could do that. Chrmn. Katen said the City Attorney's office said it is a conforming lot. Mr. Crabtree gave a conforming piece of property a non-conforming Certificate of Zoning Compliance; it can't be both. The Board continued to discuss the item. Ms. Seltzer added she is very frustrated that the City Attorney's office couldn't get this opinion to the Board any earlier.

than today. They should have been able to have time to review this before the meeting. She felt if the applicant represented to Mr. Crabtree they wanted to build a trailer park which is a single family cluster housing development then the site is non-conforming to what they wanted to do. It is up to the Planning and Zoning Board to inform the applicant they could not build a trailer park there. Mr. Carey stated Mr. Sulkis said Mr. Crabtree ruled in error and he agreed with Mr. Sulkis. Chrmn. Katen said it is a conforming lot, it meets all the requirements and you can build single family houses on it.

Mr. Haberman made a motion to deny the appeal and uphold the decision of the City Planner with Mr. Carey seconding. He stated the Certificate of Zoning Compliance was issued in error. It is a conforming lot and can be developed in compliance with existing Zoning Regulations. The motion carried 4-1 with Messrs. Carey, Haberman, Mead and Katen voting in favor and Ms. Seltzer voting against.

D. OLD BUSINESS

E. NEW BUSINESS

1. **50 Greer Circle** – Letter received from James Lancaster, architect, for Christina Ruenhorst, owner, with request for a re-hearing.

Christina Ruenhorst, owner, 50 Greer Circle, along with James Lancaster, architect, said they have revised the plans to incorporate the changes made to the proposed addition in response to the Board's denial on June 9, 2009.

Chrmn. Katen confirmed she had made revisions to the plans to which Ms. Ruenhorst answered in the affirmative.

Mr. Carey made a motion to approve the request for re-hearing with Mr. Haberman seconding. The motion carried unanimously with Ms. Seltzer, Messrs. Carey, Haberman, Mead and Katen voting.

F. STAFF UPDATE

G. ACCEPTANCE OF MINUTES FROM JUNE 9, 2009 MEETING.

The minutes were approved unanimously.

H. ACCEPTANCE OF APPLICATIONS FOR AUGUST 11, 2009 MEETING.

The meeting was adjourned at 9:12 p.m.

Attest:

Rose M. Elliott
Clerk - ZBA