

**MEMBERS PRESENT:** Rich Carey, William Evasick, Howard Haberman, Joseph Tuozzola (Chrmn.)

**ALTERNATES PRESENT:** John Collins

**STAFF PRESENT:** Kathy Kuchta, Zoning Enforcement Officer; Rose Elliott, Clerk

**Secretary Howard Haberman** opened the meeting at 7:02 p.m. and then turned the meeting over to Kathleen Kuchta, Zoning Enforcement Officer.

## **A. RESIGNATION OF CHAIRMAN**

**Ms. Kuchta** read Chrmn. Fred Katen's resignation letter.

## **B. ELECTION OF NEW CHAIRMAN**

Alternate John Collins was appointed by Secretary Haberman for voting purposes. Ms. Kuchta asked the Board for nominations for Chairman. Mr. Haberman nominated Joseph Tuozzola with Mr. Carey seconding and the nomination carried unanimously.

**Chrmn. Tuozzola** thanked the Board members for their nomination. He added Fred Katen has served on the Zoning Board of Appeals for many years and has always been very fair with the applicants. He is a gentleman and a friend and he will be missed. He is relocating out of state with his wife Gladys and wished them good luck, good health and much happiness.

## **C. CONSIDERATION OF AGENDA ITEMS**

1. **Alpha Street** (Zone R-18) Stephen W. Studer, attorney, for John P. Horton, appellant, for Milford Heights, LLC, owner – appeal the decision of the City Planner in the interpretation and application of Sections 6.2.1 and 6.2.6 of the Milford Zoning Regulations to Alpha Street as per correspondence dated February 25, 2011. Map 69, Block 711, Parcel 17A.

**Stephen Studer**, attorney with Berchem, Moses & Devlin, 75 Broad Street, congratulated Chrmn. Tuozzola on the election. He added he has appeared before this Board for a great number of years and would echo Chrmn. Tuozzola's comments and sentiments with respect to Mr. Katen. He did a wonderful job as chairman and Chrmn. Tuozzola would be following in good footsteps.

He told the Board he would like to begin the public hearing and then ask the Board members to keep it open and continue the application to the September 13, 2011 meeting. He began by saying he doesn't believe the decision in February by the City Planner, David Sulkis is correct. The property, consisting of 3.95 acres, was purchased by the Federal government in the 1950's. Sixteen single family homes were built by the U.S. Army in 1957, to house families of servicemen and women then stationed at the Nike missile base. The base closed in the 1960's and the property transferred to the U.S. Coast Guard, who continued to use the homes for servicemen and women until approximately 2009. In 2010, the property was sold by the federal government to Milford Heights, LLC. Mr. Horton, has a contract to buy the property. Once the

government sold the property to a private entity, it became subject to Milford's Zoning Regulations and was issued a Certificate of Zoning Compliance for a legal, non-conforming use in August of 2010. Mr. Horton's plans are to renovate the homes and establish a condominium. In order to sell the homes, it must be known that they can be rebuilt in the event of a casualty. After requesting the ZEO's interpretation back in January, they were told the request should be directed to the City Planner. They did just that in February which resulted in the response letter from Mr. Sulkis dated February 25, 2011. Mr. Horton appealed that response in March to preserve his rights. Mr. Sulkis' letter also said he felt the process could be resolved by an application to the Planning and Zoning Board and Mr. Horton agreed. They have asked the Zoning Board of Appeals, on two occasions, to postpone hearing the appeal to allow the Planning and Zoning Board to act. There have been some delays but the process is now nearing an end. They have run out of extensions to give this Board. They are here this evening and required by statute, to open the public hearing, and at the suggestion of staff, ask to be continued to the September meeting. They anticipate the Planning and Zoning Board's decision to be rendered in August and believe their decision will allow them to withdraw the appeal to the ZBA. However, if the P&Z decision is unsatisfactory, they will be able to come before the ZBA in September.

**Chrmn. Tuozzola** asked for a motion to continue the meeting to September as the applicant requested and also because Mr. Sulkis was not in attendance.

**Mr. Haberman** made a motion to continue this item to the September 13, 2011 meeting with Mr. Carey seconding. The motion carried unanimously with Messrs. Evasick, Haberman, Carey, Collins and Tuozzola voting.

2. **767 East Broadway** (Zone R-5) Stephen W. Studer, attorney, for Irene Buckley & Ann Marie Mockler, owners – request to vary Sec. 4.1.7.3 to permit existing 3' high open, metal fences to remain between the rear wall of the principal dwelling and Long Island Sound. CAM received. Map 22, Block 474, Parcel 28.

**Postponed.**

3. **30 Wildwood Avenue** (Zone R-5) Thomas B. Lynch, attorney, for Kenneth & Lisa Lesinsky, owners – appeal the decision of the Zoning Enforcement Officer in her denial of request for lot certification per Sec. 6.4.2 of the Zoning Regulations. Map 12, Block 123, Parcel 10.

**Postponed to September 13, 2011 meeting.**

4. **55 Claremont Circle** (Zone R-12.5) David Fernandez, owner – request to vary Sec. 3.1.4.1 rear yard setback to 19' in lieu of 25' required to allow existing pool to remain. Map 58, Block 713, Parcel 575.

**David Fernandez**, 55 Claremont Circle, said 15 years ago, he purchased his house with the existing deck and pool. On December 26, 2010, a wind storm brought a tree down onto his roof and upper and lower decks. While applying for a permit to rebuild,

he discovered how the pool was drawn on the plot plan was different than what was actually built. He just wants to rebuild it and legalize it to make it correct.

**Chrmn. Tuozzola** confirmed the pool was currently 19' to the property line where 25' is required to which Mr. Fernandez said that was correct.

**Mr. Carey** noted it was existing when the property was purchased. He asked if the hardship is the placement of the house and the shape of the lot.

**Mr. Fernandez** said yes.

**Mr. Evasick** asked if any consideration was given to decreasing the size of the deck and moving the pool.

**Mr. Fernandez** said he didn't know where he would put the deck.

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

#### DISCUSSION:

**Mr. Haberman** said it was only 6' over the setback line and the applicant did not cause the problem but inherited it. He agreed with Mr. Carey and felt the request was reasonable. Mr. Evasick added he didn't have a problem with it. Chrmn. Tuozzola said there is no house on the property behind this one and felt it would be unfair to ask the applicant to move the pool. If Mr. Fernandez was ever to replace the pool, we could make that a condition to have the pool relocated correctly. Mr. Evasick asked Ms. Kuchta if the pool was removed, could it be put back where it was. Ms. Kuchta said once a variance is approved, it is recorded on the land records and stays with the land. Technically, Mr. Fernandez could detach the pool and would only need to keep 5' from his rear property line and 4' from the side property line. Mr. Evasick confirmed a condition could be added to the approval stating if the pool were replaced, it had to meet the current setback requirements. Ms. Kuchta said that could be done.

**Mr. Carey** made a motion to approve with Mr. Haberman seconding. The hardship is the odd shaped lot, placement of the house and the existence of the pool when the house was purchased. Mr. Evasick added he would like a condition placed on the approval that if the pool is replaced, it has to be placed in accordance with the existing Zoning Regulations. Mr. Carey said the applicant is putting in a new pool and didn't think the motion needed to be amended. Mr. Evasick said the applicant could detach this pool and move it within 5' of the rear property line and 4' of the side property line. After consideration, he withdrew his request to add a condition to the motion.

Mr. Carey restated the motion and it carried 4-1 with Messrs. Carey, Haberman, Collins and Tuozzola voting in favor and Mr. Evasick voting against.

5. **85 Shell Avenue** (Zone R-7.5) Ron D'Aurelio, appellant, for Norene Z. Foster, owner – request to vary Sec. 3.1.4.1 side yard setback to 5.2' in lieu of 10' required for addition. Vary Sec. 4.1.5 "Paved areas" for side yard projection to 0' in lieu of 4' required for "Paver" sidewalk and side yard projection to 2' in lieu of 4' required to allow (21'x3') sidewalk extension. CAM received. Map 27, Block 444, Parcel 2.

**Ron D'Aurelio**, 42 Cherry Street, architect, passed out paperwork to the Board. He stated currently, the house sits 3' from the property line as a result of a variance granted in 1981. They are removing the current garage and deck. The garage is rundown and will be replaced with a new garage with living space above. The house itself recently (2007) underwent a major renovation. The structure conforms to all the zoning and flood regulations. The majority of the addition is on the same footprint as the old garage was and the existing deck. The first variance is to allow the structure to be built within 5.2' of the property line. Secondly, to allow a sidewalk addition with pavers between the proposed structure and the retaining wall to the west side. Thirdly, on the east side of the property there is a sidewalk from the rear of the lot and they are proposing to extend it to the driveway, using concrete pavers. The sidewalk is currently 2' off the property line.

**Chrmn. Tuozzola** confirmed the existing garage is coming down and they are proposing putting pavers across the front of the property from one side to the other to which Mr. D'Aurelio said yes and added the street has very limited parking.

**Chrmn. Tuozzola** noted what was being proposed would be more conforming than what is existing.

**Mr. D'Aurelio** said they are not only moving away from the street, they are moving more to the center of the property.

**Mr. Haberman** asked if the addition would be three stories and the main house two stories?

**Mr. D'Aurelio** said they were not touching the main house, but the main house would be a step down.

**Mr. Haberman** confirmed there would be a mudroom behind the garage to which Mr. D'Aurelio said that was correct and also an entryway.

**Mr. Carey** asked Ms. Kuchta if a variance was needed for pavers.

**Ms. Kuchta** said not for the driveway. For the sidewalk and just to be on the safe side since landscaping should be 1'-4' from the side property line. However, driveways can go right to the property line.

FAVOR:

**Randy Frank**, 71 Shell Avenue, said she was in favor. There was no reason not to be in favor of it and she was happy he was able to do it.

**Roger Pocock**, 60 Shell Avenue, said it would be an improvement to the neighborhood.

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

DISCUSSION:

**Mr. Haberman** said while he understood that the coverage of the lot would be 36%, it would still be a big house; 72' long with the addition. Mr. Evasick confirmed it still met the regulations to which Ms. Kuchta said that was correct.

**Mr. Evasick** made a motion to approve with Mr. Carey seconding. The reason for approval is there doesn't appear to be a density problem with the neighbors. The

proposed addition meets with the majority of the zoning requirements. The motion carried unanimously with Messrs. Evasick, Carey, Haberman, Collins and Tuozzola voting.

6. **71 Shell Avenue** (Zone R-7.5) James R. Denno, appellant, for Shelly & Randy Franks, owners – request to vary Sec. 3.1.4.1 side yard setback to 6’6” (4’6” to overhang) in lieu of 10’ required and side yard setback to 4’6” (2’6” to overhang) in lieu of 5’ required, for third floor addition. CAM received. Map 27, Block 444, Parcel 6.

**Randy Frank**, 71 Shell Avenue, said she has lived there with her husband for 15 years. They both love Milford very much and are invested in the community. They want to be able to continue to live here. The house is one of the smallest houses on the street and is located on an extremely narrow, 30’ wide, non-conforming lot. Up to now, the house has worked for them. However, because of her husband’s health issues, he is unable to climb the stairs; and an elevator needs to be installed. The design of the renovation will maximize the space within the footprint of the house and be esthetically pleasing to the neighbors. They will add a floor and move the rooms that the elevator will displace to the new floor. A 12” roof overhang is the only thing that would be going beyond the footprint for gutters and a drainage system. She spoke with many of the neighbors and everyone has been extremely supportive. Letters of support were submitted to the Board from the neighbors on both sides of her property.

**Jim Denno**, 93 Sunnyside Court, designer, reiterated they are not expanding the footprint. The variance is for the extra foot on the overhang, which has a lot of architectural value and gutters and a basin in the front yard. The height of the house would still be 7’- 8’ lower than the neighbor’s house. They are only asking for 12” on either side.

**Chrmn. Tuozzla** asked Ms. Frank to restate her hardship to which she said the lot is an unusually narrow, non-conforming lot. He asked if she was the owner when the variance was granted for the front of the house. Ms. Frank answered yes, and added there was no porch and her husband had a hard time getting in and out of the house.

**Ms. Kuchta** added the applicant also has an ADA hardship that has to be considered along with the hardship of the land.

FAVOR:

**Nancy Pocock**, 60 Shell Avenue, said Ms. Frank’s husband can barely walk and it is very difficult for him to get up the narrow stairs. They need the elevator. She hoped the Board would approve it.

**Arnold Foster**, 85 Shell Avenue, said he and his wife have seen the project and think it would enhance the neighborhood and is needed for their family.

**Joe Liscinsky**, 933 East Broadway, said it is only 12” on each side. He thought it was a good project.

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

**DISCUSSION:**

**Mr. Evasick** said he didn't see a problem with it. The proposed work is being done on the original footprint. The architecture would suffer if the eaves weren't projected as proposed. Mr. Haberman said he had no problem either as there was definitely a hardship. The design looked good and the house is not as high as it could be. They would also be adding a drainage system. Chrmn. Tuozzola noted his only concern was the closeness to the neighbors, but if the neighbors are in favor, then he didn't see a problem.

**Mr. Haberman** made a motion to approve with Mr. Carey seconding. The hardship is the narrow, undersized lot. The motion carried unanimously with Messrs. Evasick, Carey, Haberman, Collins and Tuozzola voting.

**D. TABLED ITEMS**

**E. OLD BUSINESS**

**F. NEW BUSINESS**

**1. 274 Broadway** – Request of Carmine Perri, attorney, for P.J. Moore, owner – to be reheard prior to the six months waiting period.

**Carmine Perri**, attorney, Bishop Jackson & Kelly, 472 Wheelers Farms Road, said he is before the Board to request to be reheard on an application that appeared before the Board in June. During that application they requested three variances. One was for improvement of a front walkway, which was approved. Another was a second floor balcony in the rear which was objected to by a neighbor. Third was a shower and deck connecting the shower which was denied by a 3-2 vote. They would like to be reheard for the two items denied. After the denial, they met with the neighbors from 272 Broadway, and agreed to a reduction of the length of the balcony. In addition, the length of the deck connecting the shower would also be reduced.

The Board members recalled the previous application.

**Atty. Perri** reminded the Board that they could move the balcony to the center or to the other corner as of right but are trying to move it as far away as possible from the neighbor.

**Mr. Carey** made a motion to approve the request for rehearing with Mr. Haberman seconding. The motion was unanimously carried with Messrs. Evasick, Carey, Haberman, Collins and Tuozzola voting.

**G. STAFF UPDATE**

**H. ACCEPTANCE OF MINUTES FROM APRIL 12, 2011 HEARING**

The minutes were accepted unanimously.

**I. ACCEPTANCE OF APPLICATIONS FOR SEPTEMBER 13, 2011 HEARING**

Minutes of Public Hearings of Zoning Board of Appeals Meeting held August 9, 2011

**Ms. Kuchta** noted the September agenda could include the continuation of Alpha Street; Atty. Studer is ready with 767 Broadway; the appeal of 30 Wildwood will be heard along with the rehearing of 267 Broadway.

The meeting was adjourned at 8:08 p.m.

Attest:

Rose M. Elliott  
Clerk ZBA