

Minutes, Public Hearing of Zoning Board of Appeals Meeting held August 14, 2012

The Regular Meeting of the Zoning Board of Appeals of Milford, CT, was held on Tuesday, August 14, 2012, 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 required Coastal Area Site Plan Reviews or exemptions.

Mr. Tuozzola called the meeting to order at 7:00 p.m.

A. PLEDGE OF ALLEGIANCE

B. ROLL CALL

MEMBERS PRESENT: Joseph Tuozzola (Chmn.) Howard Haberman (Sec.), William Evasick, Gary Dubois, John Vaccino

ALTERNATES PRESENT: John Collins

MEMBERS/ALTERNATES ABSENT: Richard Carey, Robert Thomas

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

Mr. Tuozzola announced that **Mr. Dubois** would fill in for **Mr. Carey**. **Mr. Tuozzola** asked for known board-member conflicts of interest with any item on the agenda; none were raised.

C. CONSIDERATION OF AGENDA ITEMS

1. **72 Southworth Street** (R-18) Stephen Rogers, applicant, for Jason Troy and Kerrie Troy, owners. Vary Sec. 3.1.4.1 side-yard setback to 7.10' where 15' is required to extend master bedroom. Map 63, Block 933, Parcel 16

Mr. Rogers, of 184 West Main Street, Milford, spoke on behalf of **Jason Troy and Kerrie Troy** of 72 Southworth Street. **Mr. Rogers** described the project. **Mr. Tuozzola** asked if a previous variance had been granted. **Mr. Rogers** said yes; the new variance pertained to raising the roofline.

Mr. Tuozzola asked if the board had questions; there were none. He asked if anyone wished to speak in favor of or in opposition to the appeal; none did. **Mr. Tuozzola** closed the hearing.

DISCUSSION

Mr. Evasick asked for clarification on the previous variance. **Mr. Haberman** said it was granted in May 2010 for an addition on the front corner. This variance added a floor to that. **Mr. Haberman** asked if the addition permitted by the previous variance had been constructed. **Mr. Rogers** said no.

Mr. Haberman motioned to approve the variance. **Mr. Vaccino** seconded. **Mr. Haberman** supported his motion by reason of the original variance having been approved with hardship shown at that time and that this variance would allow completion of the project. The motion carried with **Messrs. Evasick, Haberman, Dubois, Vaccino** and **Tuozzola** voting **with the motion**.

2. **37 Point Beach Drive** (R-7.5) Marsha Magun, owner. Vary Sec. 4.1.4 projection of steps into side yard of 3.5' where 2' is allowed. CAM received. Map 30, Block 635, Parcel 2

Marsha Magun and Terry Magun, of 37 Point Beach Drive, Milford, stated their names and addresses for the board, as well as that of **William Profetto**, their building contractor, of 245 Bittersweet Road, Orange.

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Ms. Magun stated that they had raised their house after Tropical Storm Irene and that their proposed front stairway would be over the setback line. **Mr. Profetto** said if the stairs are built according to plan, they would be only 27-28" wide. Therefore they asked to build the stairs perpendicular to the house, which was how the original stairs were positioned. If built this way, they would be about a foot short of meeting the setback. He stated that if granted, the stair could be over 5' wide and 64" out from stoop. He said he was worried about how his customers could get into the house in an emergency or to move furniture. **Mr. Tuozzola** asked **Mr. Harris** for clarification of the diagram. **Mr. Profetto** referenced an elevation drawing with the proposed stairs. **Mr. Magun** showed the chairman drawings from prior to elevating the house. He noted that the house was raised 4 feet to 11.1. Further discussion identified an issue with the roofline of front porch; that if the stairs came straight out, they could be made as wide as the porch.

Mr. Evasick asked why the Maguns were not widening the stairs per the current plan to match the width of the deck, which could be done by right. **Mr. Profetto** stated that the roof is already built and would have to be extended to match it. **Mr. Evasick** said this should have been considered before building. **Mr. Profetto** said he had disputed that point with the architect, but the work proceeded.

Ms. Magun added that they had been out of the house for 10 months and that the architect said it could be built as drawn. **Mr. Evasick** expressed sympathy for their plight as well as other citizens with that same experience. He discussed details of dwelling egress with the **Maguns** and **Mr. Profetto**.

Mr. Tuzzola stated that the board lacked a drawing of how the proposed stair would be. He said the situation was unfortunate, but that the board wasn't required to provide a variance because of a mistake on the plans.

Mr. Magun said the original plans were approved by the Zoning and Building departments and that he and **Mr. Profetto** met with **Mr. Harris** who helped him fill out the variance.

Mr. Haberman asked Mr. Harris if the board can vote without accurate diagrams. **Mr. Harris** said the board could approve with a condition that the applicant provide a scale drawing of new steps, or they could table the request until a drawing was provided.

Mr. Collins noted that property owners are required to use the most conforming option available.

Ms. Magun said she personally took the original plans to the building department where they were reviewed at length and stamped. She didn't understand why the too-narrow stairs were not noticed then.

Mr. Tuozzola asked if anyone wished to speak in favor of or in opposition to the appeal; no one did. **He** closed the hearing.

DISCUSSION

Mr. Evasick said he didn't see a hardship because an architect designed 28"-wide stairs. He stated that the deck could be widened without going into the setback, regardless of whether the roof had to be widened. **Mr. Haberman** agreed in principle, but felt that the difficulties TS Irene-damaged homeowners deal with outweighed the importance of denying an 18" variance. **Mr. Tuozzola** had reservations about voting on something without an actual plan of what was proposed.

Mr. Evasick motioned to deny based on failure to meet the hardship requirement. **Mr. Vaccino** seconded. **Mr. Dubois** and **Mr. Haberman** voted against the motion. The motion carried with **Messrs. Evasick, Vaccino** and **Tuozzola** voting **with the motion**.

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3. **463 Gulf Street** (R-12.5) John Wicko, applicant, for Mary Davis, owner. Vary Sec. 3.1.4.1 front-yard to 18' where 30' is required. Map 36, Block 519, Parcel 16

Architect John Wicko of 50 Broad Street, Milford, spoke on behalf of property owner **Mary Davis**, 463 Gulf Street, Milford. **Mr. Wicko** distributed drawings to clarify the complete project. He described specifics about the site and noted that the lots are narrow in the harbor-side area of Gulf Street. He said the existing structure has 1 ½-stories linked by a one-story connector to a 2-story garage. He noted the hatching denoting the requested setback variance areas. He said they were keeping the 1 ½ story house, but changing the roofline and detailed how the appearance of the house would change. He noted that the house was built in an orthogonal manner which projected into the setback, which is an inherited issue, and that the variance request does not increase the nonconformity. He noted that an additional hardship is the triangular front yard created by the shoreline. He said there would be no footprint increase and that the structure would stay at a story and a half. He noted that they were just asking to legalize the existing nonconformity which is longstanding.

Mr. Tuozzola asked if anyone wished to speak in favor of or in opposition to the appeal; no one did. **He** closed the hearing.

DISCUSSION

Mr. Tuozzola asked the board for discussion; none was forthcoming. **Mr. Vaccino** motioned to approve the variance. **Mr. Haberman** seconded. **Mr. Vaccino** supported his motion by reason of confirming the existing nonconformity of the lot. The motion carried with **Messrs. Evasick, Haberman, Dubois, Vaccino** and **Tuozzola** voting with the motion.

4. **182 Milford Point Road** (R-12.5) Peter Melien, attorney, for SDM, LLC; TCD, LLC; Ralph Roballey; owners. Vary Sec. 3.1.4.1 front-yard to 20.5' where 30' is required; rear-yard to 15.4' where 25' is required to construct a single family dwelling. CAM received. Map 6, Block 85, Parcel 1

Attorney Peter Melien of Tobin and Melien Law Firm, 670 Post Road, Madison, spoke on behalf of property owners SDM, LLC; TCD, LLC; Ralph Roballey, 182 Milford Point Road, Milford. **Attorney Melien** noted for the record that he had just submitted to the ZBA clerk the affidavit, sample letter, and the original receipts for notice letters. He said he represented the owners, each of whom owns an undivided 1/3 interest in the property. He said the contract purchaser **Mr. George Wiles**, 5 Sand Street, and surveyor/engineer **Mr. Joseph Codespoti**, 504 Boston Post Road, Orange, CT, also would give information and answer questions.

Attorney Melien stated that Mr. Wiles and Mr. Codespoti had initiated contact with the CT Department of Energy and Environmental Protection (DEEP); that agency also has jurisdiction over the project. **Attorney Melien** stated that the property is a pre-existing legal nonconforming lot with an area of 11,688 square feet, that it has frontage on Milford Point Road of 134' and abuts the Housatonic River marshlands/tidal wetlands. He said that if the variance was granted, the parties will still need approval from the Planning and Zoning Board and CT DEEP. He said the contract purchaser is also the architect of the proposed structure and wishes to address the board as well.

Attorney Melien stated that the lot was created in 1944 with a 2-story, single-family home, which existed until a fire destroyed it in May 1973. The lot has been vacant since then. The proposed construction is an 1800 square-foot single family house. He stated that zoning relief would be required to build anything on the lot; that the hardship arose from the natural shape and topography of the lot due to its proximity to the wetlands. He noted that DEEP wanted the proposed house moved closer to the road; otherwise the front-

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yard setback would not be required. The deed boundaries described on site plan do not delineate the rear-yard boundary for zoning purposes. Instead, DEEP and Milford regulations require that measurement be made from the mean high water mark due to the wetlands.

Attorney Melien reminded the board of the legal definition of a hardship, and that the board can grant variances where the variance granted doesn't affect the comprehensive zoning plan and where strict adherence to the regulations would cause hardship to carrying out the general purpose of the zoning plan. He said hardship must involve depriving the owner of the use or value of the lands. He said this lot presented a textbook definition of hardship, that there would be no negative impact on the comprehensive plan, that the house fits into plan and character of the neighborhood, and that the house is undersized in comparison to other homes in the neighborhood. He said that not allowing the owners to rebuild would deprive them of use and value of the land and that to conform to the regulations would reduce the house to nothing. He noted that adjacent homes have a history of seeking similar zoning relief and that virtually no houses meet the current 30' front-yard setbacks.

Mr. George Wiles stated that he lives around corner from the from subject property. He said he was motivated to pursue all the board and agency permissions because the view is spectacular and the presence of phragmites indicated buildable land. The proposed home is small and very narrow (22' wide) with a simple floor plan. The ground floor has no living space. The methods conform to state building codes for coastal construction and FEMA regulations. The 1st finished floor is one room with a kitchen/dining/living area and deck. The second floor has 2 bedrooms, a studio, and mechanical equipment room. The exterior facing Milford Point Road was designed to allow neighbors to maintain their view. The aesthetic of house is toward them with limited glass for privacy. There are marsh views with windows. He designed it for zero energy in hopes of taking it mostly off the grid. He described it as a bungalow with great view.

Mr. Haberman asked about the contract purchase agreement. **Attorney Melien** said the sale is subject to zoning approvals of the ZBA, P&Z Board and DEEP. **Mr. Vaccino** asked for clarification of the apparent setback line on the drawing. **Mr. Harris** said the 15.4' setback is from the mean high water mark. **Mr. Evasick** asked Attorney Melien why the series of permit requests was starting with the ZBA. **Attorney Melien** said that DEEP and the Planning and Zoning Board procedures state that ZBA approval must come first, followed by requests to the P&Z Board and CT DEEP.

Mr. Evasick asked about a previous variance request that was denied, appealed and denied in court. **Attorney Melien** said 20 years ago there was a variance requested for an entirely different project with no DEEP input required. **Mr. Collins** asked about the size of the house that burned. **Attorney Melien** said he had read the initial zoning application for the house, but there was no reference to its size. He said that in the court decision 20 years ago, the 1944 house was described as having 2 stories. **Mr. Wiles** speculated that based on 1944 building trends, the house was probably about 1600 square feet. He noted that aerial photos taken in 1956 show another structure like a shed. **Mr. Evasick** asked Attorney Melien about the permits taken out 20 yrs ago, and whether there were DEP regulations then. **Attorney Melien** said there was no DEP involvement; he speculated that tidal wetlands may not have been as well defined then, and perhaps the deed line had been used instead of the mean high water mark. He reiterated that his opinion was based only on what he read from the record.

Mr. Tuozzola asked if anyone wished to speak in favor of the appeal; no one did.

OPPOSITION

Mr. Jack OConnell, 283 1st Avenue, said he lives directly across street from the property and he opposes any building there. He noted the presence of his wife Mary Ann, John and Jennifer O'Connell, Vinnie and

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Patty Lesko, Stacy Herbert, Julie Levin, Victor Savitsky, and Anita Sati. He said they thought variances on the property were settled in 1996 by the CT Appellate Court, when it sustained ZBA denial of variances in the Jasper case. He said he does not think there is a hardship now, then or now.

Mr. Vinnie Lesko, 286 1st Avenue, said he also lives directly across from the lot and that it and the road near it floods to 2' during full moon high tides. He noted that road barriers are placed there by police department, fire department or him at such times. He said pools of water collect in front of lot as it's the low point in road. He said maps provided by the applicant show a ditch that comes to edge of street line, that it is part of high water boundary line, and the marsh water exits onto roadway and can't drain back. He indicated issues with the sight line around a bend in the road near the property. He said a storm in April 2007 created water levels 8' above the road.

Mr. John O'Connell, 384 1st Avenue, said he also lives across the street from the lot. He said tidal surges happen monthly and last 2-3 days, during which time it's impossible for 911 responders to get to the house.

Mr. Jack OConnell, felt there would be an adverse effect on neighboring property values due to loss of views. He noted that the current owners owed 12 years of back taxes and felt it would be unfair for them to be tax-delinquent while asking for special consideration. He also asked if all environmental issues had been addressed. He noted that he found no soil science reports in file to say whether site is buildable.

The following individuals added their opposition to the variance request:

Ms. Jennifer O'Connell, 384 1st Avenue, **Ms. Patty Lesko**, 286 1st Avenue, **Ms. Anita Sati**, 255 1st Avenue, **Ms. Maryann O'Connell**, 283 1st Avenue, **Mr. John O'Rourke**, 261 1st Avenue, **Ms. Julianna Levin**, 200 Milford Point Road, **Ms. Stacy Herbert**, 280 1st Avenue, **Mr. Victor Savitsky**, 260 1st Avenue

Mr. Tuozzola asked if **Attorney Melien** wished to rebut.

REBUTTAL

Attorney Melien stated that the decisions from 20 years ago don't pertain due to new circumstances, and that the Supreme Court decision stated that applicant could have built a smaller house, but that variance was for a larger house. He said that despite comments about flooding and public safety, the only relevant concern is existence of hardship as it relates to the lot and setbacks. He said the issues raised may be legitimate concerns for the Planning and Zoning Board's Coastal Area Management Review or for DEEP, but they cannot be considered by this board for this application. He noted that his clients owed taxes of \$70,000, which have accrued because Mr. Jaser died 10 years ago and his probate is still pending, and that the 3 heirs have tried to deal with the property unsuccessfully for 10 years. He noted that the Tax Assessor has the property listed as a building lot, but the estate is still open, so no revenue has derived from the property, making the heirs unable to pay the taxes. He stated that the back taxes will be paid at closing, if the sale is successful.

Mr. Haberman asked who owns the property now. **Attorney Melien** said it was willed to 2 LLCs that would be distributed to Mr. Jaser's 3 children. **Mr. Haberman** asked if DEP restrictions were unknowns at the time of setting up the inheritance; **Attorney Melien** said that was correct. **Mr. Tuozzola** closed the hearing.

DISCUSSION

Mr. Haberman asked Mr. Harris if the property is a legal building lot, even though a variance is needed to build anything on it. Mr. Harris said this was correct. **Mr. Tuozzola** reiterated that the board was only looking only at the criteria for a variance now, and that if approved, the Planning and Zoning Board and

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DEEP will scrutinize the other issues. **Mr. Vaccino** said by his calculations, if the setbacks were observed, it would result in a 5'-wide house.

Mr. Tuozzola asked for a motion, but none was made. **Mr. Vaccino** initiated more discussion. He stated that there was clearly a hardship, and that owners didn't have prior knowledge that building on the lot would be restricted by subsequent regulations. **Mr. Haberman** noted that he knows the area and knows about the flooding, but that's for other boards to consider.

Mr. Vaccino motioned to approve the variance. **Mr. Haberman** seconded. **Mr. Vaccino** supported his motion by reason of characteristics of the lot and the inability to build without a variance. The motion carried with **Messrs. Haberman, Dubois, Vaccino and Tuozzola** voting with the motion. **Mr. Evasick** voted against the motion.

5. **39 Baker Street** (R-7.5) Scott Monfore, owner. Vary Sec. 3.1.4.1 side-yard to 2.0' where 4' is required; rear-yard to 2' where 5' is required. Map 24, Block 388, Parcel 13

George Cotter, 2091 Highland Avenue, Cheshire, CT stated that he had a surveying business and was there with **Mr. Scott Monfore** and **Ms. Ellen Monfore**, 39 Baker Street, Milford. **Mr. Cotter** stated that there was a pre-existing garage and both the house and garage dated to 1926. He described the lot as having 5000 square feet and the surrounding area as having unclear property lines and many privacy fences. He said the hardship was that they tried to repair the existing garage, but there was termite damage, so they had to reconstruct. He provided photos of the garage. He also noted that 33 neighbors signed a letter from Ms. Monfore where she explained their situation and asked for their support for trying to bring lot more into conformance. He said their request was to reconstruct the garage so Mr. Monfore can park his work vehicle there and eliminate the shed because the garage would provide storage area. He noted that if they built according to the regulations, there wouldn't be enough room to put the truck into garage. **Mr. Cotter** said the hardship really is that the lot is 50'x 100' with a residence and accessory uses, and only 30' of rear yard.

Mr. Evasick asked if the existing structure was damaged and asked how far off the existing footprint the new garage would be. **Mr. Cotter** said the old structure had termite damage, no foundation but a slab, and the garage was settling. He stated that the new garage was no closer to the rear yard or side yard than the old one, but that the old one didn't conform either. **Mr. Evasick** asked when construction of the new garage started and if a permit was pulled. **Mr. Cotter** said it began last fall with the plan being for repair, so no permit was pulled. He stated that they understand the need to clear the nonconformity. **Mr. Evasick** asked Mr. Harris if a cease and desist had been issued. **Mr. Harris** said the office first became aware of the issue when the applicant came in for a variance. Mr. Harris said he visited the site today and that work has been stopped. **Mr. Collins** said he accepted that the Monfores acted with good intentions and when they realized the scope of the project, they applied for the variance and would apply for a permit. **Mr. Evasick** asked if the new garage used the same footprint. **Mr. Monfore** said the original garage was 14'x20', while the new one is 13' x 24 and they clarified that the additional 4' were added toward the house. **Mr. Collins** noted that a retroactive building inspection was needed; **Mr. Cotter** said the structure was "way overbuilt," but will go through the inspection process. **Mr. Tuozzola** asked if the Monfores planned to remove both the shed and pool and if the deck would be modified to accommodate the new garage. **Mr. Cotter** said that the shed would be removed, the pool would be moved to meet a setback requirement that didn't exist when the pool was installed, and that the deck would be modified.

Mr. Tuozzola noted the folder of papers in favor of the project. He noted an anonymous letter of opposition, but declined to read it as some aspects were inappropriate. He asked if anyone wished to speak in favor of or opposition to the appeal; no one did. He closed the hearing.

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DISCUSSION

Mr. Vaccino said they hadn't encroached on the setbacks that were here initially. **Mr. Haberman** noted that the extension was only about 3' in total, and that they were generally making the lot more conforming. **Mr. Collins** noted that the old garage was in serious disrepair.

Mr. Evasick moved to approve, the hardship being a need to replace a dilapidated garage. **Mr. Vaccino** amended the motion to attach conditions that the shed be removed and the pool relocated. **Mr. Haberman** seconded. The motion carried with **Messrs. Evasick, Haberman, Dubois, Vaccino** and **Tuozzola** voting **with the motion**.

C. OLD BUSINESS

There was none.

D. NEW BUSINESS

Mr. Evasick wanted an update on storm damage; **Mr. Harris** will ask Emmeline Harrigan and report back.

Mr. Tuozzola remarked that at 182 Milford Point Road, the placard notification had been attached to a tree and that it was hard to see. In another location, the placard was in a window. **Ms. Greene** said she gives the applicant both verbal and written instructions, but will stress placard visibility. **Mr. Evasick** asked about helping people fill out appeals. **Mr. Harris** said people can be confused about what regulations they're asking to vary and in those cases, he helps. **Ms. Greene** noted that the previous ZEO also routinely helped fill out applications. **Mr. Evasick** didn't want people to think that having the office help fill out the application will result in a favorable outcome. **Mr. Harris** said he always tells applicants that the board acts on the application, and that he is only there to help them accurately ask for what they really want to do.

E. STAFF UPDATE

Mr. Harris noted that **Taft Clark** had moved to the Planning and Zoning from the Building Inspection Office.

F. ACCEPTANCE OF MINUTES FROM JULY 10, 2012 HEARING

Mr. Haberman moved that minutes of the last meeting be accepted; **Mr. Vaccino** seconded, and the motion carried unanimously.

H. ACCEPTANCE OF APPLICATIONS FOR SEPTEMBER 11, 2012 HEARING

Mr. Harris said none had been submitted yet, but the trend has been toward last-minute applications.

The meeting was adjourned at 8:58 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
ZBA Clerk