

Minutes, Public Hearing of Zoning Board of Appeals Meeting held September 9, 2014

The Regular Meeting of the Zoning Board of Appeals of Milford, CT, was held on Tuesday, September 9, 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), Howard Haberman (Sec), Richard Carey, William Soda, John Vaccino

ALTERNATES PRESENT: Gary Dubois, Sarah Ferrante, Robert Thomas

MEMBERS/ALTERNATES ABSENT:

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

Mr. Tuozzola called the meeting to order at 7:00 p.m. He announced that 99 Hillside Avenue and 81 Shell Avenue had withdrawn their applications. He asked for known conflicts of interest for board members with any of the items on the agenda; none were raised.

B. CONSIDERATION OF AGENDA ITEMS

1. **104 Waterbury Avenue** (R-5) James McElroy, agent, for Michael Zabinski, owner; Vary Sec. 3.1.4.1 front-yd 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

Attorney Kevin Curseaden, Carroll, Curseaden, and Moore, 26 Cherry Street, addressed the board. He stated the owner was present as well as Mr. McElroy, the project's architect. He stated that the property is landlocked and only accessible by a 10' right of way. He said there is no parking on Waterbury Avenue. He recounted how the home was damaged and destroyed by Storms Irene and Sandy. He said the hardships were the location, the landlocked nature of the property, and the location of a garage constructed by the previous owner in the right of way without a variance. He said the residents of 12 Waterbury park their car(s) in front of the garage. He said the lot was also undersized. He referenced an old deed that described the right of way; he interpreted its dimensions. He said the front yard had an unusual orientation. He handed out materials that included a letter of support, an assessors' map, existing site condition photographs, the deed, and a building department drawing of the garage, which was built in 1985. He described the plans for an elevated house and the parking constraints his client would encounter due to the location of the garage. He said any application would require zoning relief due to the parking difficulties he described.

DISCUSSION

Mr. Tuozzola confirmed that the garage at 12 Waterbury was legally on that property and that the position of the garage in relation to the right of way was an issue in the location of the structure.

FAVOR

Bill Eyre, 110 Waterbury Avenue, said he supported the project. He said he has similar parking and access issues with his elevated house. He said the project would improve the neighborhood.

Michael Zabinski, 104 Waterbury Avenue, read a letter of support from Christos Kantzas at 112 Waterbury Avenue.

OPPOSITION

Attorney Thomas Lynch, Lynch, Trembicki and Boynton, 63 Cherry Street, said his clients were John and Valerie Carter at 12 Waterbury Avenue. He said they opposed the project. He presented materials to the board that included a Vision Appraisal report. He compared the size of the previous house to the size of the proposed house. He said his clients didn't oppose granting zoning relief, but that the scale of the house was not appropriate. He described a previous application by Mark Pucci for a variance granted in 2012. He said he differed with Mr. Harris in his interpretation of Milford

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Regulation Section 9.2.2.4 regarding variance lapses. He stated that he arranged a meeting with Mr. Zabinski and his clients to try and reach a compromise, but nothing came of it.

REBUTTAL

Attorney Curseaden said the size of the house conformed to the lot percentage regulations and thus was irrelevant. He noted court cases that address 8-6(b) reiterating that variances run with the land, regardless of local variance expiration regulations. He noted that the house at 100 Waterbury was larger than Mr. Zabinski's proposal. He offered to provide case law documentation if desired. He revisited the issue of the driveway.

Mr. Haberman asked for clarification of the deck variance requests. **Mr. Vaccino** asked for Mr. Harris' opinion of 9.2.2.4. Mr. Harris said his assessment was that 9.2.2.4 is contrary to state law and that the previous variance is valid. **Mr. Vaccino** asked for clarification of the word "use."

BOARD DISCUSSION

Mr. Tuozzola closed the hearing. **Mr. Soda** asked Mr. Harris for setback information on garages in the R-5 zone. **Mr. Tuozzola** said the essence of the request was access to the house and whether it involved a hardship. **Mr. Haberman** said he felt that it did. **Mr. Tuozzola** asked Mr. Harris if the house was too big for the lot. **Mr. Harris** said the project didn't exceed lot coverage or building coverage. **Mr. Vaccino** said that even if the house were smaller, there would be no additional access.

Mr. Haberman motioned in favor of application. **Mr. Carey** seconded. **Mr. Haberman** supported his motion by reason of hardship of the small, landlocked lot with limited parking, exactly per the submitted materials. The motion carried with **Messrs. Carey, Haberman, Soda, Vaccino** voting **with the motion**, and with **Mr. Tuozzola** voting **against the motion**.

2. **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; 4.1.4 roof eave to 4.5' where 8' perm, front roof eave to 24' where 26' perm, all to build new single family home. Map 25, Block 218, Parcels 9, 10

Attorney Lynch, Lynch, Trembicki and Boynton, 63 Cherry Street, addressed the board. He noted the presence of Greg Fields of BAMF Homes. He referred to a previous application in 2009. He stated that the Way Street projects were certified 6.4.2 lots and all were approved. He said the application was the same as 2009, but that the previous application placed the structure too close to the wetlands. He said Mr. Field now wished to move the house away from the wetlands and that the wetlands proximity represented a classic hardship.

DISCUSSION

Mr. Vaccino clarified that the house was the same as in 2009.

BOARD DISCUSSION

Mr. Tuozzola closed the hearing. After a short discussion, there were no issues in dispute, so he asked for a motion.

Mr. Carey motioned in favor of application. **Mr. Haberman** seconded. **Mr. Carey** supported his motion by reason of the project being the same as previously approved but with additional protection of the wetlands, exactly per the submitted materials. The motion carried with **Messrs. Carey, Haberman, Soda, Vaccino** and **Tuozzola** voting **with the motion**.

3. **350 Wolf Harbor Road** (R-A) James Crandley, agent, for Dolores Crandley, owner; Vary Sec. 3.1.4.1 side-ym setback to 19.7' where 25' req for to connect existing garage to proposed addition. Map 114, Block 905, Parcel 2

Mr. Crandley, 48 Blue Jay Drive, Northford, addressed the board. He stated that his mother Dorothy would like to put an accessory apartment in her home. He said the apartment would attach an existing garage to the house, thus making

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the setbacks harder to meet. He said the hardship was an unsafe condition presenting a risk to his mother.

DISCUSSION

Mr. Vaccino confirmed that attaching the garage created the difficulty.

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. Vaccino motioned in favor of application. **Mr. Haberman** seconded. **Mr. Vaccino** supported his motion by reason of hardship of attaching an existing garage, exactly per the submitted materials. The motion carried with **Messrs. Carey, Haberman, Soda, Vaccino and Tuozzola voting with the motion.**

4. **99 Hillside Avenue** WITHDRAWN

5. **62 Carrington Avenue** (R-12.5) Kevin Curseaden, attorney, for John Miller and Nila Williams, owners; 3.1.4.1 side-yd setback to 4' where 10' req; 4.1.4 eave proj to 3' where 8' perm for addition to single family home. Map 45, Block 513, Parcel 19

Attorney Curseaden, Carroll, Curseaden and Moore, 26 Cherry Street addressed the board. He presented notification materials to the chairman. He stated that hardship was that the lot was long and narrow and featured 2 front yards.

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. Vaccino motioned in favor of application. **Mr. Soda** seconded. **Mr. Vaccino** supported his motion by reason of hardship of the narrow lot and no further encroachment of the setback, exactly per the submitted materials. The motion carried with **Messrs. Carey, Haberman, Soda, Vaccino and Tuozzola voting with the motion.**

6. **283 ½ First Avenue** (R-10) John O'Connell, owner; Vary Sec. 4.1.4 deck proj to 13.79' where 21' perm to add deck to single family home. Map 9, Block 83, Parcel 10

Mr. O'Connell, 283 ½ First Avenue, addressed the board. He stated that his wife, daughter, and several neighbors were present. He reviewed the dimensions of the lot and structure. He said the hardship was that the property is a through lot and the location of the deck presented the only practical space to use.

DISCUSSION

Mr. Haberman confirmed that the deck exists and was built without variances or permits. **Mr. O'Connell** confirmed this, apologized and stated that he knew he had to pull permits to legalize the deck. **Mr. Haberman** asked for what was to the west of the house and what the distance was, which was confirmed to be 26'. **Mr. Tuozzola** asked for clarification of an apparent quid pro quo arrangement for a neighbor with a DEEP application.

FAVOR

Vin Lesko, 286 First Avenue, said he supported the project.

Patti Lesko, 286 First Avenue, said she supported the project.

OPPOSITION

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Attorney Peter Melien, Tobin & Melien, 670 Boston Post Road, said he represented George Wiles and Barbara Wiles, contract purchasers of 182 Milford Point Road, said they opposed the project. He reiterated that the deck was already built. He said no hardship existed. He referenced regulations 9.3.1 and 9.2.2.2 and elaborated on the nature of exceptional difficulty and unusual hardship. He suggested that Mr. O'Connell knew permits were required. He referred to a previous appeal brought by Mr. O'Connell to Superior Court.

REBUTTAL

Mr. O'Connell said he presented the board with photos of the deck and hadn't tried to hide it. He said the hardship was the through lot. He said the deck could only be built where it had been built. **Mr. Haberman** asked for the circumstances of Mr. O'Connell's application. **Mr. O'Connell** said there had been a complaint of work without permits. He confirmed that the deck was 9'x8'. To legalize the deck, he'd have to take off 7.2', leaving him with a 2' deck. **Mr. Vaccino** asked if a deck previously existed and was made larger. **Mr. O'Connell** said previous plans reflected a landing that was expanded. **Mr. Soda** asked when the house and deck were built. **Mr. O'Connell** said the house was built in 2006 and the deck built in the last few months.

BOARD DISCUSSION

Mr. Haberman said there was a hardship due to the through lot and any deck would require a variance, but he noted that procedure had not been followed. **Mr. Vaccino** agreed, but said it was necessary to evaluate the project as though it had yet to be built. He said hardship was inherent in the lot, but that a deck isn't a necessity. **Mr. Tuozzola** said the deck probably would have been approved if an application had been made before the project was begun.

Mr. Haberman motioned in favor of application. **Mr. Carey** seconded. **Mr. Haberman** supported his motion by reason of hardship of the through lot, exactly per the submitted materials. The motion **failed** with **Messrs. Carey, Haberman, Soda** voting **with the motion** and **Mr. Vaccino** and **Tuozzola** voting **against the motion**.

7. 81 Shell Avenue **WITHDRAWN**

8. 35 Richard Street (R-5) William Myers, owner; Vary Sec. 4.1.4 south deck proj to 3.5' where 8' perm, east deck proj to 2.5' where 4' perm to add deck to single family home. Map 30, Block 638, Parcel 3

Mr. Myers addressed the board. He stated that the decks provided access to the garage with the house being elevated. He said the hardship was the need to access the garage.

FAVOR

Shaun Bennett, 31 Richard Street, said he supported the project due to the scarcity of parking in the area and the need to extend the garage. He said the deck widths of all adjacent houses are flush with the sides of the house.

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. Vaccino motioned in favor of application. **Mr. Haberman** seconded. **Mr. Vaccino** supported his motion by reason of staying within the existing footprint, exactly per the submitted materials. The motion carried with **Messrs. Carey, Haberman, Soda, Vaccino** and **Tuozzola** voting **with the motion**

C. **OLD BUSINESS**

There was none.

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D. NEW BUSINESS

Ms. Ferrante will attend the upcoming Land Use Academy training session being presented by UCONN/CLEAR. **Mr. Carey** asked if the by Planning and Zoning was currently reviewing how to handle conflicts between local regulations and state statutes. **Mr. Harris** said that it is under discussion.

E. STAFF UPDATE

There was none.

F. ACCEPTANCE OF MINUTES FROM AUGUST 12, 2014, HEARING

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

G. ACCEPTANCE OF APPLICATIONS FOR OCTOBER 14, 2014, HEARING

Mr. Harris reported nothing as yet.

The meeting was adjourned at 8:32pm.

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