

Minutes, Public Hearing of Zoning Board of Appeals Meeting held September 10, 2013

The Regular Meeting of the Zoning Board of Appeals of Milford, CT, was held on Tuesday, September 10, 2013, 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

B. ROLL CALL

MEMBERS PRESENT: Joseph Tuozzola (Ch), Howard Haberman (Sec), John Collins, John Vaccino

ALTERNATES PRESENT: Gary Dubois, William Soda, Robert Thomas

MEMBERS/ALTERNATES ABSENT: Richard Carey

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

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

Mr. Tuozzola asked for known conflict of interests for board members with any of the items on the agenda; none were raised. He announced that because Mr. Carey could not attend the meeting, **Mr. Thomas** would provide the fifth vote for the evening.

C. CONSIDERATION OF AGENDA ITEMS

1. **31 Second Ave Extension** (R-12.5) Ronald Borecki, owner; Vary 3.1.4.1 side-yd setback of 8' where 10, bldg area of 33.5% where 30% is perm to build a rear addition to a single family dwelling; Map 9, Block 68, Parcel 7

Ronald Borecki and **Amy Borecki**, 31 Second Avenue Extension, Milford, addressed the board. Ms. Borecki stated that the hardship is a non-conforming lot.

FAVOR

The Boreckis presented a letter of support.

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. Haberman motioned in favor of the application. **Mr. Vaccino** seconded. **Mr. Haberman** supported his motion by reason of hardship of the undersized lot, restricting approval to the exact plan submitted. The motion carried with **Messrs. Collins, Haberman, Vaccino, Thomas, and Tuozzola voting with the motion.**

2. **16 Village Rd** (R-5) Charles J. Willinger, Jr., Esq., attorney, for Silvia Davis, Clifford Davis, Diane Stango, and Real Link Holdings, LLC, of 116 Beach Avenue, appellants; Appeal the decision reflected in the 1/12/12 letter by the Assistant City Planner regarding proposed use of a single-family home. Map 60, Block 745, Parcel 17

Charles J. Willinger, Jr., Esq. of Willinger, Willinger & Bucci, 855 Main Street, Bridgeport, CT, addressed the board.

Attorney Willinger stated that he is a resident of Milford and was representing 4 residents in the immediate vicinity of 16 Village Road. He noted the presence of other neighbors. He said they were present to appeal a letter by Assistant City Planner (ACP) Emmeline Harrigan. He elaborated on the letter and provided background on BH Care, noting the intention to use 16 Village Road as a shelter for victims of domestic abuse. He said the appeal had nothing to do with the services provided by or reputation of BH Care, which he commended. He said the appeal was zoning-based only and that the issue at hand was whether the letter was issued properly. He asked the board that no special deference be shown to Ms. Harrigan's action regardless of her professionalism. He provided board members with an exhibit book.

Attorney Willinger reviewed each item provided in the exhibit book, beginning with Ms. Harrigan's letter of Jan 2012. He contested her assertion that the proposed use was not exceptional. He noted a vote by BH Care's board to abandon the project, but said the vote did not preclude the board introducing other social welfare programs at 16 Village Road, nor did the vote preclude selling the property to another entity that would propose the same use. He stated that Ms. Harrigan's

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letter created a dangerous precedent for all residential areas in Milford. He asked the board to sustain the appeal and revoke and rescind the letter. He said other non-profits will seize on the letter to erode the residential character of all neighborhoods.

He reviewed the definition of who has authority to act as a Zoning Enforcement Officer, saying the letter constituted a zoning permit. He stated that the appeal was timely and detailed the implications of publication versus non-publication as it affects timeliness. He said that in the absence of publication, timeliness begins with actual knowledge and that his clients first learned of the letter at a neighborhood meeting on July 24.

He described the history of the house including its use as a 5-person rooming house about 40 years ago. He reviewed a variance granted in 1976 for 2-family use in a 1-family zone, noting that the variance was approved with a condition of owner-occupation. He said that in 1997 the owner abandoned the rooming-house use, causing the property to revert to single-family use, as documented in a letter by then-ACP Peter Crabtree. He noted that the house has 2500 square feet, which he said was small for 15 people. He said BH Care bought the property the day before Ms. Harrigan's letter was issued. He referred to building permits, indicating that he was unable to view records. He said a modification had been requested to the sprinkler system and cited language in the modification request referring to a boarding house use. He said the state waived the sprinkler requirement despite state building code requirements for group homes with more than 4 up to 16 residents. He said this presented a risk to neighbors.

He referred to a news interview with Roberta Cook, CEO of BH Care, where he said she described the intended use of the house. He referred to a BH Care webpage that describes services to victims and children. He said the emergency safe-house is a temporary and confidential refuge and noted that the residents would ultimately be placed elsewhere for transitional housing.

He said the issue before the board is whether use of a single family house in a single family zone by 15 unrelated, ever-changing people is permitted under zoning regulations. He said Ms. Harrigan's letter lacked clear standards and specifics. He said that according to Milford regulations, only 3 uses are permitted as of right in an R-5 zone: as a one-family, as a family daycare, and as a group home for a maximum of 4 disabled persons. He said any other use requires an application as a Special Use and reviewed what these applications involve. He cited the definition of a boarding house, saying BH Care called the property a boarding house. He said BH Care might have asked for a variance or applied for a Special Use as a public charitable institution, but that a conflict remained with the Plan of Conservation and Development; specifically, failure to preserve residential density.

He asked if use as a shelter was consistent with family use when defined as consisting of a "reasonable number of people." He said most municipalities numerically limit how many unrelated people can live in one household. He reviewed numbers used by surrounding cities and towns. He referred to a state statute that preempts city regulations on day care facilities, limiting residents to 6 people receiving services. He cited another requirement that unrelated people be committed to living as a single household. He said the BH Care residents would not meet this requirement.

He described Woodmont as a close community and said 15 people in a house would not be in harmony with the neighborhood. He referred to case law where single families were defined. He said considering BH Care residents to be one family would undermine the definition of all families. He referred to a relevant CT Supreme Court decision. He said he investigated BH Care's Ansonia facility's interactions with their local police department and reviewed the results. He speculated that a husband could discover the location of his wife's shelter and could then threaten neighbors. He referred to the proximity of homes in Woodmont and how that affects fire risks. He said property values would be affected. He referred to a letter from the Woodmont Board of Wardens and Burgesses agreeing with the appeal. He provided a petition with 196 signatures of residents opposed to the proposed use by BH Care. *[NOTE: These signatures can be viewed in the property address's zoning file.]*

Mr. Haberman confirmed that in Attorney Willinger's opinion, the ACP's letter was too vague, the proposed use would not fit the character of the neighborhood, and the definition of a family had not been met. **Mr. Collins** said the letter is at the crux of the board's decision.

Benjamin Danehy, 7 Chapel Street, said he is a real estate appraiser and addressed the board on the topic of external

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obsolescence, where external factors devalue property. He reviewed examples including mixing residential with institutional uses.

John Velky, 12 Village Rd., said the proposed use would adversely affect his property and that he would not have invested in it had he anticipated a nearby institutional use. He provided copy of voided a bldg permit from April 2012 where a building inspector found a change of use and scope.

Pat Delvecchio, 56 Mark St., said she spoke on behalf of many individuals in the auditorium. She asked them to stand. **Ms. Greene** asked that those standing write down their names and addresses for the record. *[NOTE: These names and addresses can be viewed in the property address's zoning file.]* **Ms. Delvecchio** expressed disapproval of the plan and said Ms. Harrigan's Jan 12 letter weakened zoning regulations.

Mr. Tuozzola called for a brief technical recess.

ACP Emmeline Harrigan addressed the board. She distributed copies of the Jan 12 letter and the City of Milford's regulatory definitions of what a single family zone is and what a family is. She said the appeal was of a letter she issued January 12th. She said it was the board's task to look at whether the letter she issued is consistent with the City of Milford's regulations specifically. She said the opinion she gave in the letter was not the same as issuing an order. She read the definitions. She reviewed the Tax Assessor's documentation reflecting occupancy of 1 family at the address. She noted that although references had been made to building code, enforcing building code does not come under the purview of the Planning and Zoning Office staff nor is it subject to review by the Zoning Board of Appeals. She corrected a statement by Attorney Willinger about the Zoning Enforcement Officer at the time of her letter's issuance. She noted that the BH Care proposal made no changes to the floor-plan at 16 Village Road except for making one bathroom handicapped-accessible.

Mr. Haberman asked if the definition of family was the main issue and whether 15 changing individuals living at the same address constituted a family. **Ms. Harrigan** said Milford regulations do not define the number of individuals, but state that these individuals must be living together in common. **Mr. Tuozzola** asked why BH Care would choose to use single family homes for its operations; **Ms. Harrigan** said that is their operational model.

REBUTTAL

Attorney Willinger said Ms. Harrigan was misreading regulations and being guided by structure rather than use. He disputed that a household would be created. He said building code was relevant because that documentation referred to a boarding house. He said the letter was a decision and an order. He said it undermines the integrity of all residential zones.

REBUTTAL

Ms. Harrigan said that Milford zoning regulations were the central issue.

BOARD DISCUSSION

Mr. Haberman said he had trouble understanding how a shelter was not a special use. **Mr. Vaccino** said that occupancy by 15 individuals may or may not be a reasonable number, assuming all were committed to the household, but that it would be difficult for such a household to be in harmony with the neighborhood or maintain the property, given their short stay. **Mr. Collins** said he believed the residents would share the common goal of staying safe and alive, but thought 15 people is too high a number of inhabitants even for a blood-related family. He said that harmony in the neighborhood might be disrupted by comings and goings at the shelter. He said "not in my backyard" is a common problem, but that wasn't for the board had to decide. He said he felt conflicted, but that the issue for him was the technical definition of a single family use. **Mr. Tuozzola** said that the absence of a number of residents and challenges to harmony with the neighborhood were problematic. **Mr. Thomas** agreed, noting that the short amount of time spent at the house would make it hard to develop relationships with neighbors.

Mr. Tuozzola asked for a motion. **Mr. Harris** reminded the board that the options for action were to reverse, uphold or modify the order.

Mr. Vaccino motioned to reverse the letter of the Assistant City Planner. **Mr. Haberman** seconded. The motion carried with **Messrs. Collins, Haberman, Vaccino, Thomas, and Tuozzola** voting with the motion.

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3. **0 Warfield Ave** (LI) Timothy J. Lee, agent, for CBS Outdoor, LLC, owner; Vary Sec. 9.2.3.(1) Permit a use not allowed in the zone; Sec. 6.2.1 Reconstruct a nonconforming structure; Map 23, Block 344, Parcel 4

Timothy Lee, Esq., of Fasano, Ippolito and Lee, 388 Orange Street, New Haven, addressed the board. Attorney Lee reviewed the history of the billboard since 1963. He submitted copies of the original permits into the record. He noted that zoning regulations had since prohibited billboards in that area. He said the sign is near the Moses Wheeler Bridge and because the bridge had been renovated and raised, the sign can't be seen as well, if at all, by passing motorists. He said CBS had worked hard with neighbors and submitted letter of support. He said neighbors liked the idea of raising the sign out of their line of sight. He said it was a net positive for his client and the neighborhood.

DISCUSSION

Mr. Tuozzola asked Mr. Harris about regulations on nonconforming uses. There was a difference of interpretation between **Mr. Harris** and **Attorney Lee** regarding whether having a sign in one part of town implies that it can or cannot be posted elsewhere. Attorney Lee noted that the sign already exists and that by raising and improving the sign, neighbors benefit from not having to look at the back of a 1960s cast iron billboard. He said the sign base will be reduced and that CBS Outdoor has agreed to do landscaping to increase screening it. **Mr. Vaccino** confirmed that hardship was the bridge for obscuring the existing nonconforming sign.

FAVOR

Mr. James Fourtin, 24 Warfield Avenue said the character of the neighborhood was mixed use. He said he sees the back of the sign every day and it is an eyesore. He said he would welcome it being updated.

BOARD DISCUSSION

Mr. Tuozzola closed the hearing. **Mr. Haberman** said that the non-conforming use could be moved to a zone where it conforms. **Mr. Vaccino** said he felt the regulations prohibit the use. **Mr. Collins** said it could be left as is, but he respected the neighbor's remarks and didn't like the idea of letting the sign fall into disrepair.

Mr. Collins motioned to approve the request based on improving the existing sign. There was no second. **Mr. Vaccino** motioned to deny. **Mr. Haberman** seconded. **Mr. Vaccino** supported his motion by reason not having a valid hardship. The motion carried with **Messrs. Haberman, Vaccino, Thomas, and Tuozzola** voting **with the motion**. **Mr. Collins** voted against the motion.

4. **871 East Broadway** (R-7.5) Thomas B. Lynch, Esq., attorney, for Sandra R. Cooper, owner; Vary Sec. 5.8.6.2 and 5.8.13.1 for addition to single fam home at flood elev of 10.7' where FEMA req is 13'; Map 27, Block 475, Parcel 15

Thomas B. Lynch, Esq., of Lynch, Trembicki and Boynton, 63 Cherry Street, addressed the board. **Attorney Lynch** handed out copies of the relevant regulations. He stated that the variance related to an addition to be built at the same level as the existing house. He said Ms. Cooper owned the property since 1995 and that the lot is long, narrow, and relatively large. He said the house is set back from the high tide mark and was not substantially damaged by Storms Irene and Sandy, with no insurance claims filed. He reviewed the features of the house. He noted that Ms. Cooper works out of her home and has adopted a young child and that the addition was needed to accommodate these needs. He noted that no setbacks were at issue. He reviewed the 5.8 regulations, which he said set up a different standard of review—that the project did not require proof of hardship, but only needs to demonstrate that the proposed addition would not affect health and public safety.

DISCUSSION

Mr. Tuozzola asked if raising the house had been considered as opposed to doing the addition. **Attorney Lynch** said that the cost was very high to elevate and because there was no storm damage, Ms. Cooper decided not to do so. **Mr. Tuozzola** said that the property being in a flood zone fact was problematic for him. **Mr. Haberman** asked if the addition could be elevated. **Mr. Harris** said that new construction must be elevated, but that the addition may or may not need to be elevated depending on whether the 50% Substantial Improvement threshold was crossed. **Attorney Lynch** said such a design would disrupt the flow of the existing house, which did not require elevation, that the addition would be added on the side of the house that is away from the water, and that the 5.8.1 standards had been met. **Mr. Vaccino** asked about the square footage of the addition in relation to the house. **Mr. Collins** confirmed that the addition would be at the same level if the variance

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were granted, and steps would be required without the variance. **Mr. Thomas** said he thought there was a danger of materials being swept away in a flood condition.

BOARD DISCUSSION

Mr. Tuozzola closed the hearing. **Mr. Vaccino** said he was glad the property wasn't substantially damaged in the last 2 storms, but noted that many other properties were. He said the flood standards are created to safeguard property and there was no guarantee that future storms would not cause damage. He said he would hate to be part of a decision to allow a structure to be built below a mandated level and then see the structure destroyed or damaged. He said he would prefer to see the addition raised. **Mr. Tuozzola** agreed.

Mr. Vaccino motioned to deny the application. **Mr. Thomas** seconded. **Mr. Haberman** supported his motion by reason of maintaining integrity of FEMA guidelines. The motion carried with **Messrs. Collins, Haberman, Vaccino, Thomas,** and **Tuozzola** voting **with the motion**.

Mr. Tuozzola called for a 1-minute technical break for recording purposes.

5. **55 Alden Pl** (R-7.5) Roger Poole and Barbara Poole, owners; Vary Sec. 3.1.4.1 side-yd setback to 7.2' and 7.4 to construct a 2-car garage; Map 34, Block 266, Parcel 2

Roger Poole and Barbara Poole, 55 Alden Place, addressed the board. Mr. Poole said he would like to remove his detached garage and replace it with an attached garage and a 3-season porch. He said the hardship was a small, nonconforming lot with an irregular shape.

DISCUSSION

Mr. Tuozzola confirmed the size of the garage. **Mr. Vaccino** confirmed that the new garage reduced the side yard nonconformity. **Mr. Haberman** confirmed that 2 cars will be parked there. **Mr. Vaccino** confirmed that the garage will only be 1 story high.

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 the application. **Mr. Haberman** seconded. **Mr. Vaccino** supported his motion for reasons of reducing the nonconformity, restricting approval to the exact plan submitted. The motion carried with **Messrs. Collins, Haberman, Vaccino, Thomas,** and **Tuozzola** voting **with the motion**.

6. **159 Hillside Ave** (R-5) Wayne S. Garrick, architect, for Steven Held, owner; Vary Sec. 3.1.4.1 side-yd setback to 4.5' where 10' req, rear-yd setback to 19.4' where 20' is req; Sec. 4.1.4 to 13.5' where 15' is perm for single fam home. Map 49, Block 795, Parcel 77

Wayne S. Garrick, AIA, architect, 291 Whitney Avenue, New Haven, addressed the board. Mr. Garrick noted that Mr. Held was away on family business, but that the site design consultant was present. He stated that the structure was damaged during Storm Irene, and then Storm Sandy further damaged the home to a level of more than 50%. He said the owners considered lifting the house, but decided new construction would be more prudent. He noted that the present house had much nonconformity and that the planned house would reduce this substantially. He said the first floor elevation would be well above the base flood elevation. He described the variance requests. He said the hardship was the existing nonconforming lot.

DISCUSSION

Mr. Tuozzola discussed that the request in more detail. He confirmed that the rear deck was elevated. **Mr. Garrick** described the engineering of the elevation. **Mr. Vaccino** asked if Mr. Garrick had tried to make the deck conform. **Mr. Garrick** said the deck had been reduced considerably from its current form and that if the deck were smaller, it would be hard to use.

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BOARD DISCUSSION

Mr. Tuozzola asked for anyone speaking in favor or in opposition and heard none, so he closed the hearing. After a short discussion, there were no issues in dispute, so he asked for a motion.

Mr. Haberman motioned in favor of application. **Mr. Thomas** seconded. **Mr. Haberman** supported his motion by reason of hardship of the nonconforming lot and that the overall nonconformity was being reduced, restricting approval to the exact plan submitted. The motion carried with **Messrs. Collins, Haberman, Vaccino, Thomas, and Tuozzola** voting **with the motion**.

7. **52 Warren St** (R-5) Paul Scian, agent; for Isabella Schroeder, owner; Vary Sec. 4.1.4 front proj of 4.82' where 7' is perm for 1st and 2nd story porch. Map 37, Block 563, Parcel 16

Paul Scian, 100 Halifax Street, Mahway, NJ, addressed the board. Mr. Scian stated that the home had an existing nonconformity, that the current porch was both an eyesore and unsafe. He said the proposed project would enhance the house and neighborhood as well as become safer.

DISCUSSION

Mr. Tuozzola confirmed that the house was on a corner and about 115 years old. **Mr. Haberman** confirmed details about the porch and that the porch wouldn't exceed its current footprint.

BOARD DISCUSSION

Mr. Tuozzola asked if anyone wished to speak in favor of or opposition to the application; hearing none, he closed the meeting. After a short discussion, there were no issues in dispute, so he asked for a motion.

Mr. Haberman motioned in favor of the application. **Mr. Thomas** seconded. **Mr. Haberman** supported his motion by reason of the nonconforming lot, restricting approval to the exact plan submitted. The motion carried with **Messrs. Collins, Haberman, Vaccino, Thomas, and Tuozzola** voting **with the motion**.

8. **27 Morehouse Rd** (R-5) Charles Roy, agent, for Judy Harrigan, owner; Vary Sec. 4.1.4 front-yd proj to 5' where 7' is perm by prior variance to elevate existing house. Map 30, Block 638, Parcel 22

Charles Roy, contractor, 111 Marino Street, addressed the board. Mr. Roy stated that the lot is nonconforming, that the house was fire-damaged last fall, and that the owner wants to replace the current front porch.

DISCUSSION

Mr. Haberman confirmed that the house will remain in the same footprint. **Mr. Collins** noted that only the foundation remains now. **Mr. Tuozzola** confirmed that the house will be further elevated to meet current flood zone risks. **Mr. Vaccino** confirmed that the variance request deals with previous nonconformity.

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 the application. **Mr. Haberman** seconded. **Mr. Vaccino** supported his motion by reason of not increasing an existing nonconformity, restricting approval to the exact plan submitted. The motion carried with **Messrs. Collins, Haberman, Vaccino, Thomas, and Tuozzola** voting **with the motion**.

9. **292 Forest Rd** (R-30) Donald DeZenzo, owner; Vary Sec. 3.1.4.1 side-yd setback to 19.3' where 20' req for second story addition. Map 57, Block 833, Parcel 8A

Donald DeZenzo, 292 Forest Road, addressed the board. Mr. DeZenzo stated that his was adding a second floor over the existing footprint, with a hardship of an existing, nonconforming lot and that he required a very small variance.

BOARD DISCUSSION

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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. Haberman motioned in favor of the application. **Mr. Vaccino** seconded. **Mr. Haberman** supported his motion by reason of the small nonconforming lot, restricting approval to the exact plan submitted. The motion carried with **Messrs. Collins, Haberman, Vaccino, Thomas, and Tuozzola** voting **with the motion**.

10. **Motion to table Item # 10: 35 Thompson Street** (R-5) discussion of Superior Court, Memorandum of Decision in Docket # AAN CV 12-6010905 dated August 15, 2013 and take action in accordance therewith until such time as all appeal periods have expired.

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

D. OLD BUSINESS

There was none.

E. NEW BUSINESS

There was none.

F. STAFF UPDATE

G. There was none.

H. ACCEPTANCE OF MINUTES FROM AUGUST 13, 2013, HEARING

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

H. ACCEPTANCE OF APPLICATIONS FOR OCTOBER 8, 2013, HEARING

Mr. Harris reported 1 application so far.

The meeting was adjourned at 9:58 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
Clerk, ZBA