

Minutes, Public Hearing of Zoning Board of Appeals Meeting held 11 September 2018

The Regular Meeting of the Zoning Board of Appeals of Milford, CT, was held on Tuesday, 11 September 2018, 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 require Coastal Area Site Plan Reviews or exemptions.

A. PLEDGE OF ALLEGIANCE / ELECTION OF OFFICERS/ROLL CALL

Mr. Tuozzola called the meeting to order at 7:00 pm and asked for a moment of silence in honor of 9/11 victims and responders. He noted the resignation of Mr. Vaccino due to other commitments, thanking him for 7 years of faithful service. He nominated **Ms. Ferrante** to serve as the new ZBA Executive Secretary. **Mr. Soda** seconded and motioned to close nominations; Ms. Ferrante was elected unanimously.

Mr. Tuozzola asked **Mr. Hirsch** to provide the fifth vote. **Mr. Tuozzola** asked for conflicts of interest for board members with any agenda items; none were raised.

MEMBERS PRESENT: Sarah Ferrante, William Soda, Joseph Tuozzola (Ch), Christine Valiquette

ALTERNATES PRESENT: Gary Dubois, Etan Hirsch

MEMBERS/ALTERNATES ABSENT:

STAFF PRESENT: Stephen Harris, Zoning Enforcement Officer; Meg Greene, Clerk; David Sulkis, City Planner

B. CONSIDERATION OF AGENDA ITEMS

1. **273 Cherry Street.** MBP: 77/813/24. R-10. P. & D. Hunter, et al, applicants; Milford Cemetery Association, owner; Appeal the decision of the City Planner dated 16 April 2018.

Mr. Tuozzola stated that the all board members present had familiarized themselves with the appeal. He invited the applicant to review and summarize the application.

Pam Hunter, 69 Spruce Street, addressed the board. She said their intention was to simplify the previous presentation. She disputed that the amendment made to the Special Permit was a minor amendment, as asserted by Mr. Sulkis. She reviewed a list of 10 bullet-point items the applicants felt the board should take to address problems at the site. She also provided a set of drawings to the board. **Mr. Hirsch** asked if the board had the power to provide the remedies listed. **Mr. Tuozzola** said this question should be addressed to **Mr. Sulkis**.

Mr. Gaudiosi, 63 Spruce Street, presented copies of plans for the cemetery with highlighted areas. He read from what he described as the relevant regulations regarding site plan approvals. He reiterated that no retaining wall had been listed on the approved plans. He asserted that the period of time for the Special Permit had expired. He read from Mr. Harris' field report, stating that it was different from the approved plan. He also read emails from DPLU Director Joe Griffith and Inland Wetlands Officer MaryRose Palumbo which he said deviated from the approved plans. **Mr. Soda** noted the presence of recycling bins on the plans submitted by **Mr. Gaudiosi**, who stressed that there was no retaining wall indicated. **Mr. Soda** said he thought the photos were older because he had visited the site and arbor vitae were now growing higher than the wall. **Mr. Gaudiosi** said weeds had taken over the area. He said there was a discrepancy in the topography maps that didn't make sense because there had been significant elevation changes not indicated on them. **Mr. Tuozzola** asked for location clarification as to where the elevation was being raised. **Mr. Gaudiosi** asserted that pallets and stones were being dumped and that the elevation along his property had been raised 5 feet without authorization. **Ms. Valiquette** confirmed that the recycling bins are part of the retaining walls. **Mr. Soda** asked if there had been discussions with the cemetery; **Mr. Gaudiosi** said there had been some time ago, but the cemetery association had stopped responding to them.

Doug Hunter, 69 Spruce Street, said he had evidence of a negative impact on his property value, because his property

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tax revaluation went up 5%, but he appealed to the tax assessor and had his taxes reduced 10%. He said the argument he made for the reduction was that he now has an industrial park in his backyard.

REBUTTAL

Ray Oliver, architect, 3 Lafayette Street, said the Special Permit was issued in 2002. He listed the items that were built that affected the wetlands. He said the Special Permit was a continuing and that certain aspects of the project were phased in due to budgeting constraints. He said he had copies of all permits and that they were issued properly. He noted that a public hearing was held in 2015 where the Special Permit amendment was reviewed by the Planning and Zoning board and received unanimous approval. He said some of the controversy with the neighbors dated back to disputes involving an encroachment by the applicants. He described a tree removal and showed aerial photos that he said displayed changes made to cemetery property made by the neighbors. He said the retaining wall/storage bin was a structure and that the finished condition of the structure conforms to the As Built plans. He said the structure did not encroach into the setback or exceed the height regulation.

Max Case, Attorney, 57 Plains Rd, and Secretary of Milford Cemetery Association, said his experience of Mr. Sulkis is that he is careful in his decisions and does his research. He said he heard nothing that addressed the substance of Mr. Sulkis' April 2018 letter and that the City Planner's decision should be upheld.

Mr. Sulkis said his job was to compare the finished project to the approved plans and determine if the project was substantially compliant; and that this project was substantially compliant with the approved plans. **Mr. Tuozzola** confirmed the date of Mr. Sulkis' inspection. **Mr. Soda** asked Mr. Sulkis to clarify Mr. Oliver's remark about a continuous Special Permit; **Mr. Sulkis** said the cemetery necessarily has a continuous work cycle.

REBUTTAL BY APPLICANT

Mr. Gaudiosi reiterated that elevation changes were not indicated on the approved plans. He said the surveys had been manipulated and that he did not cut down a tree.

BOARD DISCUSSION

Mr. Tuozzola closed the hearing and asked for a motion. He noted that there had been much confusing disputation. **Mr. Soda** said he visited the site and didn't feel that activity on the site was out of line with the operation of a business. **Mr. Harris** reminded the board that the Zoning Board of Appeals cannot modify the actions of the Planning and Zoning Board.

Mr. Hirsch motioned to **uphold the decision of the City Planner**. **Mr. Soda** seconded the motion. The motion carried with **Mss. Ferrante** and **Valiquette** and **Messrs. Hirsch, Soda, and Tuozzola** voting **with the motion**.

2. **771 East Broadway**. MBP: 22/474/30. R-5, William Hamilla, agent, for Tara Kolakowski, owner; Vary Sec 3.1.4.1. east side-yd setback to 3.9' where 5' req., west side-yd setback to 4.1' where 10' req., Sec 4.1.4 front porch proj. to 4.4' where 8' perm., front deck proj. to 4.1' where 8' perm., east rear deck proj. to 3.9' where 4' perm., west rear deck proj. to 4.3' where 8' perm.; to construct new single family residence.

Richard Korolyshun, Esq., 10 Elizabeth St, Derby, presented Ms. Kolkowski's request, saying the property was damaged by storms and that the deck was on the original footprint. He said the request was to extend it for an additional 300 sf.

BOARD DISCUSSION

Mr. Tuozzola asked if anyone wished to speak in favor of or 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.

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Mr. Soda motioned to **approve**. **Ms. Ferrante** seconded. **Mr. Soda** supported the motion based on the hardship of the narrow lot; in accordance with submitted materials. The motion carried with **Mss. Ferrante** and **Valiquette** and **Messrs. Hirsch, Soda, and Tuozzola** voting **with the motion**.

- 3. 164 Meadowside Road.** MBP: 34/266/28. R-7.5, Marisa Engel and Andreas Engel, owners; Vary Sec 3.1.4.1. side-yd setback to 3' where 10' req. to construct garage attached to house.

Mr. Engel and Ms. Engel addressed the board. They said the lot had an irregular shape.

DISCUSSION

Ms. Ferrante confirmed no garage was currently on the property. **Mr. Hirsch** confirmed a 2-car garage was proposed.

FAVOR

Sara & Stephen Nierenberg, 160 Meadowside Rd, said they're the neighbors most affected and read 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. Soda motioned to **approve**. **Mr. Hirsch** seconded. **Mr. Soda** supported the motion based on the hardship of the irregular shape of the lot; in accordance with submitted materials. The motion carried with **Mss. Ferrante** and **Valiquette** and **Messrs. Hirsch, Soda, and Tuozzola** voting **with the motion**.

- 4. 74 Hawley Avenue.** MBP: 71/764/2. R-5, Joseph Borer, agent for John Borer, owner; Vary Sec 4.1.1.4. Accessory structure located in front yard.

John Borer addressed the board. He said the lot has 2 front yards and that other houses use the access road to provide a way into their garages. **Mr. Soda** recalled that a similar approval had been granted on the same road.

BOARD DISCUSSION

Mr. Tuozzola asked if anyone wished to speak in favor of or 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. Soda motioned to **approve**. **Ms. Ferrante** seconded. **Mr. Soda** supported the motion based on the hardship of the 2 front yards; in accordance with submitted materials. The motion carried with **Mss. Ferrante** and **Valiquette** and **Messrs. Hirsch, Soda, and Tuozzola** voting **with the motion**.

- 5. 11 Point Beach Drive.** MBP: 30/636/4. R-7.5, Paul Fonseca, owner; Vary Sec. 3.1.4.1, height from 35' to 39' to construct a new single family residence.

Mr. Fonseca introduced his architect and landscape architect.

Abigail Adams, landscape architect, 30 Rocky Hill Road, New Fairfield, addressed the board. She described the site including the flood zones. She reviewed the survey, noting that the house would be located in the AE zone.

Laura Newell Juan, architect, 248 Main Street, Danbury, said the flood mitigation rules placed the first finished floor at

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10'. She described ceiling heights and said they were attempting to meet the height, but that the pitch of the roofline diminished the aesthetics required to be in keeping with the neighborhood. **Mr. Soda** and **Ms. Newell Juan** discussed technical details. **Mr. Harris** said he was unaware of new FEMA regulations on freeboard. **Mr. Tuozzola** stressed that the board would be reluctant to set a height precedent. **Ms. Valiquette** asked about various room heights.

BOARD DISCUSSION

Mr. Tuozzola asked if anyone wished to speak in favor of or 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. Soda motioned to **deny**. **Ms. Ferrante** seconded. **Mr. Soda** supported the motion due to not wishing to set a precedent; in accordance with submitted materials. The motion carried with **Mss. Ferrante** and **Valiquette** and **Messrs. Hirsch, Soda, and Tuozzola** voting **with the motion**.

6. 124 Beach Avenue. MBP: 60/743/10. R-7.5, Thomas Lynch, Esq., for Frederick Serra, owner; Vary Sec. 3.1.4.1, front-yd (Blackall Rd) setback to 5.3' where 20' req. to construct addition.

Attorney Lynch addressed the board. He noted the presence of owners Fred Serra and Lisa Serra. He said the house was built in 1910 with 8 bedrooms and 6 baths. He said the request was to locate a garage on one of 2 city streets and that other properties in the area had garages directly on the street line. He said the proposed addition would have a tandem, 2-car garage. He said the house had been in disrepair and his clients were excited to buy and renovate it.

OPPOSED

Barbara Wagner, 29 Clinton Street, read a letter in opposition to the application from Borough of Woodmont's Warden Ed Bonessi citing lack of a hardship and potential increases in flood risk. **Mr. Soda** asked for clarification on the objection.

REBUTTAL

Attorney Lynch said there might have been confusion about the nature of the request. He said the plans were available in the Planning and Zoning office.

BOARD DISCUSSION

Mr. Tuozzola asked if anyone wished to speak in favor of 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. Soda motioned to **approve**. **Ms. Ferrante** seconded. **Mr. Soda** supported the motion based on the hardship of the 2 front yards; in accordance with submitted materials. The motion carried with **Mss. Ferrante** and **Valiquette** and **Messrs. Hirsch, Soda, and Tuozzola** voting **with the motion**.

7. 16 Westmoor Road. MBP: 30/644/5. R-12.5, Thomas Lynch, Esq., for RM Skinner Enterprises, Inc, owner; Vary Sec. 3.1.4.1, front-yd setback to 16.4' where 30' req., side-yd setback to 4' where 10' req. to construct a single family residence.

8. 20 Westmoor Road. MBP: 30/644/5A. R-12.5, Thomas Lynch, Esq., for RM Skinner Enterprises, Inc, owner; Vary Sec. 3.1.4.1, front-yd setback to 16.4' where 30' req., side-yd setback to 4' where 10' req. to construct a single family residence.

Attorney Lynch said he would present the 2 items in one presentation; **Mr. Tuozzola** agreed but said the board would take 2 votes. **Attorney Lynch** described the location and nature of the lots that front on an unimproved section of Westmoor Road. He reviewed the certification of the lots by previous Zoning Enforcement Officer Linda Stock. He

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reviewed an appeal to the ZBA, which was redirected to the Planning and Zoning Board to create a private driveway; then to the Board of Aldermen, which also approved a plan for a private driveway to access the 2 lots without an improvement or paving requirement for Westmoor Road. In return, he said his client was made responsible for providing services such as snowplowing and trash collection. He said the road will never be developed due to proximity to the marsh. He said Ms. Adams was under contract to sell the lots to Mr. Skinner, who plans to develop 2 Nantucket style houses on them. Attorney Lynch reviewed the elevations and floor plans. He said the goal of a setback is to create a reasonable buffer around structures and prevent them being too close to the road. He said the houses have well engineered plans regarding drainage and flooding, and that flooding must be expected in the area due to it being in a flood zone. He said the houses will enhance the neighborhood.

OPPOSED

Tyler Lewis, 11 Earle Street, said he knew the history of the property and it set a precedent for not abiding by the rules. He said the houses were too big and would affect privacy. He was concerned about proximity to the wetlands.

Barbara Lewis, 11 Earle Street, said she also opposed the project.

REBUTTAL

Attorney Lynch noted that the development of the lots was approved with conditions by Inland Wetlands. He said the plan did not ask for any variances to the rear yard that abuts the Lewis property.

BOARD DISCUSSION

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

For 16 Westmoor Road: **Mr. Soda** motioned to **approve**. **Mr. Hirsch** seconded. **Mr. Soda** supported the motion based on the hardship of the lot size; in accordance with submitted materials. The motion carried with **Mss. Ferrante** and **Valiquette** and **Messrs. Hirsch, Soda, and Tuozzola** voting **with the motion**.

For 20 Westmoor Road: **Mr. Soda** motioned to **approve**. **Mr. Hirsch** seconded. **Mr. Soda** supported the motion based on the hardship of the lot size; in accordance with submitted materials. The motion carried with **Mss. Ferrante** and **Valiquette** and **Messrs. Hirsch, Soda, and Tuozzola** voting **with the motion**.

9. 26 Ward Street. MBP: 36/416/6. R-5, John Gallagher, owner, Vary Sec. 3.1.4.1, side-yr setback to 4.3' where 5' req for an addition.

Mr. Ward and Ms. Ward addressed the board. Mr. Ward said they want to use a portion of the wraparound front porch to square off and enclose it in the existing footprint for living space. They said the house's footprint would not change and the integrity of the house would be maintained.

OPPOSED

Brigitte Lange, 13 Ward Street, said she opposed the plan due to loss of views.

REBUTT

Ms. Ward said no views would be changed.

BOARD DISCUSSION

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

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Mr. Soda motioned to **approve**. **Ms. Valiquette** seconded. **Mr. Soda** supported the motion based on the hardship of the small lot; in accordance with submitted materials. The motion carried with **Mss. Ferrante** and **Valiquette** and **Messrs. Hirsch, Soda, and Tuozzola** voting **with the motion**.

B. OLD BUSINESS-None

C. NEW BUSINESS-None

D. STAFF UPDATE-None

E. ACCEPTANCE OF MINUTES 12 June 2018: Approved.

G. ACCEPTANCE OF APPLICATIONS for 14 August 2018 hearing.

Adjournment was at 9:27 PM.

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