

Minutes, Public Hearing of Zoning Board of Appeals Meeting held October 9, 2012

The Regular Meeting of the Zoning Board of Appeals of Milford, CT, was held on Tuesday, October 9, 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.

A. PLEDGE OF ALLEGIANCE

B. ROLL CALL

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

ALTERNATES PRESENT: John Collins, Gary Dubois, Robert Thomas

MEMBERS/ALTERNATES ABSENT: Richard Carey (arrived later)

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

Mr. Tuozzola noted **Mr. Carey's** initial absence and asked **Mr. Thomas** to vote in his place. **Mr. Tuozzola** announced that **Item 2, 60 James Street**, had asked for a postponement and would be heard next month. **Mr. Tuozzola** further stated that he would recuse himself from the first agenda item, and that during his absence **Mr. Haberman** would act as chairman and **Mr. Collins** would cast Mr. Tuozzola's vote.

C. CONSIDERATION OF AGENDA ITEMS

1. **210-216 Buckingham Avenue** (CDD-4) Attorney Winthrop S. Smith, Jr., for Donna Dutko, appellant/ owner; Appeal the decision of the Zoning Enforcement Officer (ZEO) to partially rescind a Cease and Desist Order in a letter dated 8/28/2012; Appeal the refusal of the ZEO to enforce Cease and Desist Orders in letters dated 7/26/2012 and 8/17/2012; Appeal the refusal of the ZEO to enforce use violations of the Special Permit, Site Plan Review, and zoning ordinances and regulations; all appeals regarding a garage/repair facility, and all appeals brought in accordance with Sec. 9.2.1.
210 Buckingham - Map 55, Block 545, Parcel 4
216 Buckingham - Map 55, Block 545, Parcel 5B

Attorney Winthrop Smith, with law offices at 9 Depot Street, Milford, addressed the board. He took the board point by point through a handout he distributed. Attorney Smith's Basis of Appeal, Table of Contents and schedules/exhibits referenced have been filed in the property folder at the Milford Planning and Zoning Office and are available for review. At the conclusion of his presentation, Attorney Smith asked that the board reverse the ZEO's 8/28 partial rescission of his Cease and Desist order, and that the ZBA order the ZEO to enforce his previous Cease and Desist letters.

DISCUSSION

Mr. Haberman asked if any board member had questions; none did. He then asked if anyone wished to speak in favor of the appeal. None did. **Mr. Haberman** asked if anyone wished to speak in opposition to the appeal.

OPPOSITION

ZEO Stephen Harris stated that he would address the points of the application. He said that the request to enforce the Cease and Desist letters of July 26 and August 17 had been filed after the 15-day appeal period specified in Section 9.2.1 had expired, therefore testimony relating to those letters was moot. Regarding the August 28 rescission letter, in which the previous order to remediate 210 Buckingham was waived, the ZEO stated that because paving of access drives does not require a zoning permit, there was no violation. Lots in that zone can be paved. The order to remove a container from 210 Buckingham was complied with. The site plan dated July 13, 2000, was in substantial compliance. The angled parking on the east side of the building was removed, with the owner promising to reseal the lot. He said the time to appeal issues related to the special

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permit and certificate of approval was late November of 2000, and that an appeal of a Planning and Zoning Board decision would go to court, not the ZBA. He noted that the Certificate of Approval of Location (CLA) for the car dealership was given 12 years ago and should have been appealed then.

Mr. Haberman asked to confirm that the earlier letters were irrelevant due to expiration. **Mr. Harris** said yes. **Mr. Haberman** asked to confirm that the issues raised in the August 28 letter had been addressed. **Mr. Harris** said the container and angled parking problems were in the original letter and had been resolved. Further questioning confirmed that the remaining issue was to reseal the parking lot where the angled stripes had been. The board also questioned Attorney Smith's contention that there had been a lack of enforcement, to which Mr. Harris replied that enforcement is discretionary and referred to a handout he provided. **Mr. Vaccino** asked Mr. Harris to walk the board through his interpretation of the site's history. **Mr. Harris** agreed to provide a brief overview. On November 8, 2000, the Planning and Zoning Board issued a special permit and site plan approval for a repair facility. Then on November 14, 2000, the then-chairman of the ZBA signed a DMV form K7, which all car dealers and repair facilities must give the state, establishing a used car dealer and auto repair use on the site. On November 17, 2000, a Certificate of Zoning Compliance for a used car dealership was approved. The then-chairman of the ZBA signed the K7 form without restrictions. In further dialog with the board Mr. Harris underscored his contention that the city had sanctioned the uses being made of the property and that the time to appeal was long over.

OTHER OPPOSITION TO THE APPEAL

Attorney David Slossberg of Hurwitz, Sagarin, Slossberg and Knuff, 147 North Broad Street, Milford, spoke in opposition to the appeal on behalf of his client, the Brunneaus of 210-216 Buckingham Avenue. He introduced his colleague Amy Souchins. He said that Mr. Harris had laid the issues out succinctly and that his client, but for the issue of sealing, are in compliance. He said the Brunneaus had twice scheduled the sealing, but it had been prevented by rain. He said he wanted to set the record straight and reviewed the history of the business, noting that Roberts had operated in city for 20 years, originally on Cherry Street. He stated that prior to the move to Buckingham Avenue and at the time of the special permit being issued, the business included towing, repair and used car sales. He noted a letter of recommendation from the Milford Fire Chief about Roberts, that Roberts was a family business employing 18 employees, and that the Brunneaus did not deserve to be portrayed as bad people. He said when they bought the 216 property, it had zoned for industrial use. By the time they bought the adjacent property at 210, it had been rezoned to CDD1, but the Brunneaus did not know this. When they received the ZEO's letters, they came to the law office, where they were advised to comply, which they did. He summed up that the Brunneaus were operating the business as they have done for last 12 years, that only the last letter was before the board, and that the ZBA should deny the application.

There being no other opposition speakers, **Mr. Haberman** asked if **Attorney Smith** wished to rebut.

REBUTTAL

Attorney Smith said the ZEO had picked through the facts and refused to enforce the earlier Cease and Desist letters when they were in effect despite calls from Attorney Smith asking for enforcement. He said that a location approval had been given in 2000, not a use variance, which the ZBA cannot grant. He said the Planning and Zoning Board has continuing jurisdiction over any violation to strict compliance with uses. He stated that complaints had been made 12 years ago, and that the city had not made a response. He said the relationship between Donna Dutko's parents and the Brunneaus had always been strained, and that when the expansion of use occurred in 2011, Donna Dutko went to the Planning and Zoning Office the next day to complain. He said his client was only asking the Brunneaus to do what they said they would do, and comply with their site plan.

Mr. Haberman closed the hearing. He emphasized that the parameters before the board were to decide whether the August 28 letter has been complied with.

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BOARD DISCUSSION

Mr. Vaccino noted that there had been a lot of discussion, but there were only finite issues that the ZBA is able to vote on. **Mr. Tuozzola** asked for further comments. Hearing none, he asked for a motion. **Mr. Vaccino** motioned to uphold the decision of the ZEO. **Mr. Thomas** seconded. The motion carried with **Messrs. Collins, Haberman, Vaccino** and **Thomas** voting **with the motion** and **Mr. Evasick** voting **against the motion**.

2. **60 James Street** (R-5) Attorney Kevin J. Curseaden for Dennis Warren and Tracy Warren, appellants/owners; Appeal the Cease and Desist Order of the Assistant City Planner in a letter dated 9/13/2012 regarding garage alterations in accordance with Sec. 9.2.1. Map 27, Block 456, Parcel 20

POSTPONED

3. **20 Bayshore Drive** (R-5) Attorney Thomas B. Lynch for Gina V. Badalamenti, owner; Vary Sec. 3.1.4.1 side-yard setback to 6.2' where 10' is required, for relocation and renovation of existing residence. CAM required. Map 29, Block 585, Parcel 6

Mr. Tuozzola noted Mr. Carey's arrival and that Mr. Carey would be voting on this item.

Attorney Thomas Lynch, of Lynch, Trembliky and Boynton, 63 Cherry Street, Milford, addressed the board. Attorney Lynch distributed elevation drawings and noted the presence of Gina Badalamenti and her husband. He said Ms. Badalamenti and her mother owned the property. He stated that he was presenting a simple variance request related to a TS Irene renovation, which typically required legalizing preexisting nonconformities, then an appearance before the Planning and Zoning Board for a Coastal Area Management site plan approval. He noted that the home is in the Bayview section of town, was constructed in 1915, and is a legal nonconforming 2-family house with a 3rd dwelling unit in the garage. He said the current residence will be the same size as the renovated one; that the plan is to lift and center the house, install breakaway walls, and elevate it to 15 feet. He said the garage living unit would be eliminated, but the 2-family use will be preserved. He said the hardship was the position of the home on the lot. He referred to elevations done by architect Jim Denno, noting the Nantucket style. He reiterated that the request was very straightforward and that there would be a less-than-50% renovation to the house.

DISCUSSION

Mr. Tuozzola confirmed that only one variance was being requested, and that granting it would reduce the nonconformity. **Attorney Lynch** added that the neighbor on the side that is now very close to the existing home is in favor of the variance. **Mr. Haberman** asked how the units are units connected; Attorney Lynch said by a breezeway.

IN FAVOR OF/OPPOSED

Mr. Tuozzola asked if anyone wished to speak in favor of the appeal. Attorney Lynch said he would provide Mr. Delito's letter of support. **Mr. Tuozzola** asked if anyone wished to speak in opposition; none did.

BOARD DISCUSSION

After several favorable remarks, **Mr. Evasick** motioned in favor of appeal. **Mr. Haberman** seconded. The motion carried with **Messrs. Carey, Evasick, Haberman, Vaccino** and **Tuozzola** voting **with the motion**.

4. **19 Hauser Street** (R-5) James F. McElroy, architect, 26 Hauser St. for Michael D'Angelo, owner; Vary Sec. 3.1.4.1 side-yard setback to 3.7' where 5.0' is required, side-yard setback to 7.6' where 10' is required; Vary Sec. 4.1.4 side projection to 2.7' where 4.0 is allowed, side projection to 6.6' where 8' is allowed, and front projection to 6.1' where 8' is allowed, for addition to single family residence. Map 12, Block 179, Parcel 17

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Mr. James F. McElroy, 26 Hauser Street, Milford, addressed the board. He described the existing house and said the owner would like to add a 3rd story over the existing footprint. He said the hardship is the size of the lot and the location of the house; that it predates current zoning. He said the addition would be used to add a master bedroom suite and attic, that the style was in keeping with the area and that his client has lived in the home for many years, loves the neighborhood, but needs more space. He said going up provides water-views and breezes from Wildemere beach as well.

BOARD DISCUSSION

Mr. Tuozzola asked if the house is now 2 stories; **Mr. McElroy** said yes and referred to a dotted line on the drawing to indicate the current height of the house. **Mr. Tuozzola** confirmed that the current footprint uses the variances needed for the added 3rd story and attic. **Mr. McElroy** also noted the slightly larger front-yard projection for the front door. He shared photos of the existing house. **Mr. Vaccino** asked about a tree in the front yard. **Mr. McElroy** said they are working with the contractor to try and spare it.

IN FAVOR OF/OPPOSED

The owners provided a set of letters of support from neighbors. No one spoke in opposition.

BOARD DISCUSSION

After several favorable remarks, **Mr. Haberman** motioned in favor of appeal. **Mr. Vaccino** seconded. **Mr. Haberman** supported his motion by reason of the nonconforming lot and that the house does not increase the nonconformity. The motion carried with **Messrs. Carey, Evasick, Haberman, Vaccino** and **Tuozzola** voting **with the motion**.

C. OLD BUSINESS: None

D. NEW BUSINESS: None

E. STAFF UPDATE

Mr. Harris said the Planning and Zoning Office is using the Milford Mirror for legal notices instead of the New Haven Register. He reported that a new intern may work on a project involving TS Irene-affected properties.

F. ACCEPTANCE OF MINUTES FROM SEPTEMBER 11, 2012 HEARING

Mr. Carey moved they be accepted, **Mr. Vaccino** seconded, and the motion carried unanimously.

H. ACCEPTANCE OF APPLICATIONS FOR NOVEMBER 12, 2012 HEARING

Mr. Harris noted the postponed **60 James Street** appeal.

The meeting was adjourned at 8:28 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