

Minutes, Public Hearing of Zoning Board of Appeals Meeting held 10 October 2017

The Regular Meeting of the Zoning Board of Appeals of Milford, CT, was held on Tuesday, 10 October 2017, 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 / ROLL CALL

Mr. Tuozzola called the meeting to order at 7:00 p.m. He asked for conflicts of interest for board members with any agenda items; none were raised. He asked Mr. Dubois to vote in Mr. Gettinger's place. He announced that the 1st agenda item had asked for an extension.

MEMBERS PRESENT: Joseph Tuozzola (Ch), John Vaccino (Sec), Sarah Ferrante, William Soda

ALTERNATES PRESENT: Gary Dubois, Etan Hirsch

MEMBERS/ALTERNATES ABSENT: B. Gettinger, Jeanne Huber-Happy

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

B. CONSIDERATION OF AGENDA ITEMS

1. **100 Gulf Street (MBP: 55/816/2)** LI. Melissa Marter, appellant. Sec. 9.2.1: Appeal the Decision of the Zoning Enforcement Officer regarding a Cease and Desist order dated July 11, 2017. **Postponed**
2. **220 Oronoque Road (MBP: 74/929/4)** R-30. Dana L. Markovics, owner; variance of sec. 3.1.4.1, side yard setback of 15' where 20' required to construct a one-story addition.

Peter Crabtree, 63 Stanley Street, New Haven, addressed the board. He said the project was for a small kitchen extension, then described it. He said that despite the large size of the lot, the house was built in the 1950s close to the road reducing the front-yard setback. He said there was a major change in grade on the lot. He said he had a letter of support from the closest neighbor.

DISCUSSION

Ms. Ferrante noted that the addition was consistent with the rest of the house.

FAVOR

Eugenia Etter, 228 Oronoque Road, a long-time neighbor, sent a letter expressing support. It was read by Dana Markovics, owner.

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**. **Ms. Ferrante** seconded. **Mr. Soda** supported his motion by reason of hardship of the position of the house on the lot, exactly per the submitted materials. The motion carried with **Ms. Ferrante** and **Messrs. Dubois, Soda, Vaccino**, and **Tuozzola** voting **with the motion**.

3. **44 Warren Street (MBP: 37/563/11A)** R-5. Paul Meals, owner; variance of sec. 3.1.4.1, side yard setback of 0' where 4' is required to construct a storage shed.

Mr. Meals, 44 Warren St., addressed the board. He said he wanted a shed to store sporting equipment and that his lot is landlocked. He described the shed, its proposed construction, and its approximate size.

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DISCUSSION

Mr. Vaccino questioned the dimensions of the shed. **Mr. Harris** said the irregular construction of the shed may be slightly different from what was originally proposed, but the revised shed was actually smaller than the original request. **Mr. Soda** clarified the distance from the lot line. **Mr. Vaccino** asked why the shed had to be so large; **Mr. Meals** said he has no basement or garage for storage.

OPPOSED

Dennis Hrabchak, 45 Creeland Avenue, said he abuts the applicant's lot and opposed the project. He said the applicant should have understood the limitations of the lot when he purchased it recently. He said there was no hardship and that he thought the board lacked the authority to expand a nonconformity.

REBUTTAL

Mr. Meals said he doubted the shed would adversely affect his neighbor. **Mr. Soda** suggested centering the shed on the lot.

BOARD DISCUSSION

Mr. Tuozzola also asked if anyone wished to speak in favor of the application. Hearing none, he closed the hearing. **Ms. Ferrante** expressed reservations about size of the shed, saying the setback encroachment could be reduced.

Mr. Soda motioned to **deny**. **Mr. Vaccino** seconded. **Mr. Soda** supported his motion by reason of lack of a hardship. The motion carried with **Ms. Ferrante** and **Messrs. Dubois, Soda, Vaccino, and Tuozzola** voting **with the motion**.

4. **51 Harley Road (MBP: 92/706B/4)** R-10. Shauna & Wayne Garrison, owners; variance of sec. 3.1.4.1, front yard setback of 19' where 25' is required to construct an attached 2-car garage with master suite above.

Mr. Garrison, 51 Harley Rd., addressed the board. He described the project and said the hardship was the corner lot. He said the project would expand the house by one car-width.

FAVOR

Mr. Garrison submitted a letter of support from the neighbor in the lot behind him, **Keith Doyle**, 26 Columbia Drive.

Ed Abbazia, 19 Columbia Drive, said there were many similar additions in the area and he supported the project.

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**. **Ms. Ferrante** seconded. **Mr. Soda** supported his motion by reason of hardship of the corner lot, exactly per the submitted materials. The motion carried with **Ms. Ferrante** and **Messrs. Dubois, Soda, Vaccino, and Tuozzola** voting **with the motion**.

5. **103 Hawley Avenue (MBP: 60/745/11)** R-5. Joseph M. Hannon for Richard Carey, owner; variance of sec. 3.1.4.1, side yard setback of 2.35' where 5' required to construct a one-story addition.

Mr. Hannon, 110 Beach Ave., addressed the board along with **Mr. Carey**. **Mr. Hannon** provided a handout of the proposed addition. He described the Carey's long-term residence in the house and said that as the couple had aged; a 1st floor bathroom was needed to deal with ambulatory issues. He said the lot's shape is challenging. He said neighbors gave support to the project, as did the Borough of Woodmont.

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Mr. Carey reiterated that climbing stairs is more challenging now, and that he had support from neighbors.

FAVOR

Mr. Hannon submitted 22 postcards from neighbors expressing support as well as a letter from the Borough of Woodmont.

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. Vaccino** seconded. **Mr. Soda** supported his motion by reason of hardship of the irregular lot, exactly per the submitted materials. The motion carried with **Ms. Ferrante** and **Messrs. Dubois, Soda, Vaccino,** and **Tuozzola** voting **with the motion**.

6. **37 Park Avenue and 44 Naugatuck Avenue MBP: (16/148/5A)** R-5 & CDD-2. Kevin Curseaden, attorney, for 42 Naugatuck Avenue Properties, LLC, owner; variance of sec. 3.1.4.1: Front yard setback from 10' required to 5'; West side yard setback from 10' required to 4.3' (existing); Building area % from 75.1% existing to 80.4% where 45% permitted; Lot coverage from 93.2% existing to 93.9% where 65% permitted. Section 4.1.4: Front yard eave projection from 8' permitted to 4'; West side eave projection from 8' permitted to 3.3'; East side eave projection from 4' permitted to 0.3'. All to construct a storage garage attached to the existing building.

Attorney Curseaden, Carroll, Curseaden, and Moore, 3 Lafayette St., addressed the board. He introduced Matt Pastir and Susan Patrick. He reminded the board that he had presented a proposal on the property in June. He said the new request was reduced, noting a previous concern about stairway egress. He said there was now pedestrian access on the lot with a covered walkway. He reviewed the proposed Site Plan and showed an artist's rendition. He showed Google Earth aerial views of the through lot. He pointed out that the edge of the existing garage was recessed compared to nearby structures. He said the request was consistent with the placement of most structures in the area. He shared a subdivision map showing how the original parcel and buildings were joined and zoned as if for business. He speculated that the change to splitting off part of the lot and making it a residential area may have been a scrivener's error. He said the existing garage is about 3.8' off the westerly property line. He said the building was not square due to its age. He read 3 letters of support; the writers are listed first under "FAVOR" below.

DISCUSSION

Mr. Soda confirmed that the garage was in an R-5 zone. He expressed concern that a commercial truck will be parked in a residential zone. He speculated that a use of a box truck might set a precedent for future commercial use of the site with a use that may be less residentially-friendly. **Mr. Harris** said section 3.1.3.8 limits the size of commercial trucks parked in residential areas to a ¾-ton truck. **Mr. Soda** said the proposed truck would exceed that weight. **Ms. Ferrante** expressed concern about increased lot coverage and whether there was a hardship. **Mr. Vaccino** said most lots in the area are small. He asked **Mr. Harris** about the legal standard; Mr. Harris said the lot had to be unique within a zone.

FAVOR

Michael Lynch, Esq., Chairman of the Milford Economic Development Commission, sent a letter of support.

Mike Amoratis, Alfa Pizza, 54 Naugatuck Avenue, sent a letter of support

Gary Dangle, Backroom Bakery, 17 Broadway, sent a letter of support

Dana Marcus, 40 Park Ave, said he lives directly across the street from the garage and said it would be an aesthetic plus for the street. He said it would encourage care of area properties.

Laura Marcus, 40 Park Ave, also expressed support.

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Heidi Lang, owner of the 42 Naugatuck/37 Park property and Susan Patrick's direct neighbor, said the project reflects the influence of Ms. Patrick on the Walnut Beach area, that Ms. Patrick supports the community.

Frank Smith, 232 Second Ave, said that Ms. Patrick was a conscientious person trying to support the tenets of Milford's Plan of Conservation and Development. He said he understood the concern about a truck in the R-5 zone, but said he remembered when the subject property was a Post Office with many trucks parked there. He said the project will compliment the resurgence of Walnut Beach.

Kim Thompson, 6 Stowe Ave, said Ms. Patrick is community-minded and aesthetically sensitive to the neighborhood.

Margaret Giannotti, said her shop, Artfish 42 at 44 Naugatuck Avenue, is in front of the building in question. She said many commercial trucks are on Park Avenue, but this will provide a way to store Ms. Patrick's Walnut Creamery truck safely while improving the neighborhood. She said Ms. Patrick embodies the spirit of the area and supports non-profits.

Elizabeth Wright, 20 South St, said she used to own a business in the area and reviewed many historic change theres over the years. She characterized previous development of the area as haphazard, but said the now neighborhood wants to support healthy economic development.

Scott Thompson, 6 Stowe Ave, said Walnut Creamery is an asset to the neighborhood.

Marty Lippman, 77 East Broadway, dismissed mixed zoning concerns.

Christina Pritchard, 22 Naugatuck Ave, said she owns a business in the neighborhood and supports the project.

Susan Patrick, owner of Walnut Creamery and the truck in question, said the back of the building will continue to be residential. She said during the summer season the truck must be parked outdoors and she wants to secure it.

OPPOSED

Joe Garbus, 60 Park Avenue, said a commercial truck was too big for the area. He was concerned that a future business would not be respectful of the character of the residential street.

REBUTTAL

Attorney Curseaden displayed a survey indicating where the commercial/residential delineation is. **Mr. Soda** confirmed that the abutting building was completely in the commercial zone and supports a commercial use. **Attorney Curseaden** said he believed the entire area should have been commercially zoned.

BOARD DISCUSSION

Mr. Tuozzola closed the hearing. **Mr. Soda** expressed support for the garage design and business, but was concerned that in the future a business owner would disturb the neighborhood. **Ms. Ferrante** was uncomfortable with the scope of the request. **Mr. Vaccino** said he wanted to deliberate on the project.

Mr. Soda motioned to **table the vote to the next meeting**. **Mr. Vaccino** seconded. The motion carried with **Ms. Ferrante** and **Messrs. Dubois, Soda, Vaccino, and Tuozzola** voting **with the motion**.

7. **86 Red Root Lane (MBP: 114/905/16A)** RA. Thomas B. Lynch, attorney, for Peter Romick, owner; variance of sec. 3.1.1.4 to allow property to be utilized for farm use on a 2.03 acre parcel where 3 acres are required.

Attorney Lynch, Lynch, Trembicki, and Boynton, 63 Cherry St., addressed the board. He said the request was to vary a definition in the regulation regarding the size of a farm. He provided a history of the property. He said the land has been utilized as a farm since 1967 and that the owners wish to sell produce at a simple farm stand with no advertising. He said that the Zoning Regulations were amended in 1972 to define a farm as having 3 acres. He said a farm use at the address predates the regulation amendment. He referred to a copy of the survey from 1977 provided by the sellers to the current owners. He referred to the owner's sketch of a chicken coop, storage area near an existing barn, a duck house, and a parking/garage area. He said the owners live on the property and want to expand production of eggs and fruit.

DISCUSSION

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Mr. Tuozzola confirmed that this request was part of a process to be recognized by the State of Connecticut as a farm. He confirmed that limiting farm stand sales to items produced on the property could be a condition of approval. **Attorney Lynch** referred to Orange Zoning Regulations with a limitation similar to what Mr. Tuozzola proposed. **Ms. Ferrante** asked for a distinction between a working farm and a garden; **Attorney Lynch** said there was no standard clarification. **Mr. Harris** read the Milford Regulations' definition. There was discussion of whether 3 acres was arbitrary. **Mr. Soda** asked if banning roosters could be a condition; **Mr. Harris** said the regulations already prohibit them.

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. Soda motioned to **approve**. **Mr. Vaccino** seconded. **Mr. Soda** conditioned his motion to approve by banning sale of outside produce and banning roosters. The motion carried with **Ms. Ferrante** and **Messrs. Dubois, Soda, Vaccino,** and **Tuozzola** voting **with the motion**.

8. **14 Southern Parkway (MBP: 14/21/5)** R-5. Thomas B. Lynch, attorney, for Colleen Kranz, owner; variance of sec. 3.1.4.1 rear-yard setback to 0' where 5' required; side-yard setback to 0' where 4' required to allow accessory structure to remain.

Attorney Lynch, Lynch, Trembicki, and Boynton, 63 Cherry St., addressed the board. He described how his client's husband built the tiny, well-appointed outbuilding to give his wife an uplifting place to recover from chemotherapy treatments. Attorney Lynch said the husband was unaware of the setback requirements. He described the placement of the structure and the need to legalize it prior to a sale of the property. He and Mr. Harris simultaneously recalled a possible alternative to a variance via CGS 8-13a, namely that if a structure has stood unchallenged for 3 years or more, it became legal. **Mr. Soda** confirmed with Attorney Lynch that the encroachment onto other's property could be handled by a license arrangement with neighbors.

FAVOR

Tony Salamanca, 15 Mayflower Pl, former neighbors, said the structure was special.

Cindy Salamanca, 15 Mayflower Pl, said the little building seemed to support Ms. Kranze's healing. She said the uniqueness and meaning of the structure deserved preservation.

Nicole Dorso, 488 Orange Ave, another former neighbor said her mother who still resides there, felt the structure was an asset to the neighborhood.

OPPOSED

Douglass DeGroff, 23 South Kerema, said he was concerned about losing property. **Attorney Lynch** clarified that there is no encroachment on his property and no direct abutment. He dropped his opposition.

BOARD DISCUSSION

Mr. Soda clarified that the structure is on footings and can't be moved. **Mr. Tuozzola** closed the hearing. **Mr. Harris** referred to CGS 8-13a regarding legalization of an unchallenged structure by operation of law; **Mr. Soda** asked him to read the statute to the board.

Mr. Harris told the board it could reopen the meeting to hear more information. **Mr. Soda** motioned to reopen, **Mr. Vaccino** seconded, and the hearing was reopened. **Mr. Soda** motioned to **table** with a second from **Mr. Vaccino**. Both motions carried unanimously.

9. **12 Broad Street (MBP: 54/402/10)** MCDD. Jack Gonsalves, agent, for Tom Vitale, owner; variance of sec. 5.5.4.2 café permit within 1500' of existing permit.

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Attorney Lynch, Lynch, Trembicki, and Boynton, 63 Cherry St., addressed the board. He provided a handout. He said the owners wished to sell the old Milford Green Pizza but had decided to reopen with a new business model. He reviewed the dichotomy between the state liquor statutes and the Milford regulations. He said a café permit versus a restaurant permit provided more control over underage drinking. He said this site already had a liquor permit for 15 years, but is in 1500' proximity of other liquor permittees.

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 to **approve**. **Mr. Soda** seconded. **Mr. Vaccino** supported his motion by reason of hardship, exactly per the submitted materials. The motion carried with **Ms. Ferrante** and **Messrs. Dubois, Soda, Vaccino, and Tuozzola** voting **with the motion**.

B. OLD BUSINESS-None

C. NEW BUSINESS

354 Woodmont Road, Units 7-8 (MBP 91/809/6BC0) ID. As prerequisite to by Superior Court: Thomas Lynch, Esq., to present a stipulation to the ZBA decision on 11 July 2017 regarding Incas Peruvian Restaurant, contract purchaser/Arnold Peck, owner; Vary Sec. 5.5.4.1 to allow restaurant liquor permit location within 1500 ft of existing permit location.

Mr. Harris described the stipulation—essentially that Incas operate as a restaurant with a service bar, not a seating bar. **Mr. Soda** motioned to approve the stipulation, **Mr. Vaccino** seconded; the motion carried unanimously.

D. STAFF UPDATE-None

F. ACCEPTANCE OF MINUTES 8 August 2017: Approved.

G. ACCEPTANCE OF APPLICATIONS for 14 November 2017 hearing; 2 continuances were noted.

Adjournment was at 9:28 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