

## **Minutes, Public Hearing of Zoning Board of Appeals Meeting held 12 October 2021**

The Regular Meeting of the Zoning Board of Appeals of Milford, CT, was held on Tuesday 12 October 2021, beginning at 7:00 p.m. remotely, 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 pm. He advised that the first item, 22 Broad Street, had been postponed to November.

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

**ALTERNATES PRESENT:** Michael Casey, Etan Hirsch

**MEMBERS/ALTERNATES ABSENT:** Gary Dubois

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

### **CONSIDERATION OF AGENDA ITEMS**

- 1) **22 Broad Street** MBP 54/402/12; MCDD; Appeal the Decision of the City Planner/Zoning Enforcement Officer in accordance with the provision of section 9.2.1 regarding decision dated July 23, 2021, that ZEO had erroneously issued zoning permit and revoking permit a year after it was issued and substantial work performed in reliance on permit. **POSTPONED to 11/9 hearing**
- 2) **63 Riverside Drive** MBP 18/364/11A; R-12.5; Debbie Ann Levanti, appellant; Appeal the Decision, email dated 8/27/ 21 received 8/30/21.

**Ms. Levanti**, 69 Riverside Drive, addressed the board. She described frustration with responses to her complaints. She identified an email from the mayor's chief of staff. **Mr. Tuozzola** asked her to identify exactly what action she was appealing. She said her neighbor has erected a 15' wall in violation of Milford zoning regulations. She said the wall creates a hazard, should have required a Special Permit, and restricts her view. She cited additional reasons as to why the structure is detrimental to the environment and neighborhood. She claimed the neighbor at 63 Riverside had also raised the grade there, creating water runoff from 69 Riverside to her home at 63 Riverside. **Mr. Tuozzola** asked her to recount the city agencies she had originally complained to. She said she called Planning and Zoning without result. She said she also appealed to the police and the mayor's office. She listed other complaints about her neighbor's property, but **Mr. Tuozzola** asked to keep the focus on the fence. She said a concrete structure holding garbage cans was in #63's required front yard. She said an "animal house" had also been erected and that other concrete structures had been installed. **Mr. Hirsch** asked what **Ms. Levanti** wanted as a remedy from the board. She said the fence should be reduced, the previous grade restored, and other structures removed. **Mr. Soda** asked for detail about **Mr. Harris'** inspection. **Ms. Valiquette** asked how the height of the fence had been calculated. **Mr. Tuozzola** said only he saw a 6' high vinyl fence when he visited the site. **Mr. Wolff** asked for details on 2 vinyl fences that were placed in proximity to each other along the shared lot line.

At the conclusion of **Ms. Levanti's** remarks, **Mr. Tuozzola** asked **Mr. Harris** for comment. **Mr. Harris** said he visited **Ms. Levanti's** former neighbor several years ago when some earth had been added to level the property. Since the lot is not in a wetland, there was nothing in regulations to have forced removal of the fill at that time. He said that in this situation with the current neighbor, there is a cattery made of chicken wire and 2x4s on the opposite side of the house from **Ms. Levante**. He said the department had discussed the cattery and decided it was not subject to current regulations because it was more landscaping than structure and landscaping is not regulated by the zoning regulations. He expressed sympathy for **Ms. Levanti** because some of the items she objects to at 63 Riverside are unattractive, however, it was the decision of the department that none constituted a zoning violation. He said there is a sectional fence in the side yard which was noticed in a letter of violation. The neighbor removed it but then attached it to landscaping, which is also not a violation. He said the planters topped with screens can be moved, so they don't meet the definition of a fence. He noted that **Ms. Levanti's** application contained mention of a letter from Justin Rosen. He read it into the record. He noted the date of 8/27/21. **Mr. Harris** said **Ms. Levanti** had been notified of all decisions and that it was not clear exactly what decision she is appealing. The content of the letter read into the record is as follows:

## Minutes, Public Hearing of Zoning Board of Appeals Meeting held 12 October 2021

On Friday, August 27, 2021, 10:28:38 AM EDT, Justin Rosen <[jrosen@milfordct.gov](mailto:jrosen@milfordct.gov)> wrote:

Ms. Levanti,

The City's Zoning Enforcement Officer, Stephen Harris, sent you an e-mail dated February 23, 2021, informing you that the vinyl fencing tied to the Arborvitae at 63 Riverside Drive and the privacy screening attached to planters were not zoning violations and that it was consistent with the City's policy to not investigate and take action on the cat house. Accordingly, any violation noted in the NOV dated July 13, 2020 had been abated. It is not typical for a party to file an appeal of a determination that a violation has been abated. That said, the process for filing an appeal is very straightforward and can be found with a few clicks on the City's website – Zoning Board of Appeals Applications. I have explained the process to you in our many telephone conversations as well as in writing in an e-mail to you dated October 8, 2020. The Appeal Application itself clearly states that an appeal must be filed within 15 days of any order, requirement or decision. Mr. Harris' "decision" to abate the previously-noticed violations at 63 Riverside Drive was made following his October 21, 2020 field inspection. Any appeal of that "decision" would had to have been filed on or before November 5, 2020. Because Mr. Harris e-mailed you on February 23, 2021 informing you of the status of the NOV, it could be argued that the appeal clock started to tick as of that date and thus an appeal would had to have been filed by March 10, 2021. To date, no such appeal has been filed.

By an email dated June 10, 2021 you acknowledged receipt of the Appeal Application. Again, that application clearly states that an appeal must be received within 15 days of the decision. The fee for filing an appeal is \$510.00. The fee takes into account a portion that is remitted to the State as well as fees to cover advertising and the public hearing. There is no mechanism for a fee waiver at this time. (The appeal process is also set forth in the City's Zoning Regulations (Section 9.2.1), which are likewise available on the City website). The appeal applications should be delivered to the Zoning Office in the Parsons Government Complex, 70 West River Street, which is located on the first floor. Discussing an appeal with the appropriate City official is not required in order to file an appeal. Generally speaking, the six copies of plans is only called for in certain types of appeals (for instance, in the event an appellant is seeking a variance). However, you must include six copies of any documentation you are relying upon in support of your appeal.

Please be advised that while we cannot refuse to accept an Appeal Application, should you choose to file an appeal it would be the recommendation of the Zoning Enforcement Officer to the Zoning Board of Appeals to deny the appeal based upon its untimeliness.

Lastly, I would like to address your comment that the "Chairman of P&Z Appeals" attended "over 2" visits to 63 Riverside Drive in connection with inspections on behalf of the Zoning office. The Chairman of the Planning and Zoning Board is Jim Quish. The Chairman of the Zoning Board of Appeals is Joseph Tuozzola. I have been assured by each of these gentlemen that they have not been present for any zoning inspection that has occurred on either 63 or 69 Riverside Drive, nor have they visited either property for any reason. Mr. Harris, who drives a clearly-marked City of Milford vehicle and displays a City of Milford ID Badge, conducted all of his inspections on these properties by himself.

## Minutes, Public Hearing of Zoning Board of Appeals Meeting held 12 October 2021

Respectfully, the City has gone above and beyond in providing you with documentation per your Freedom of Information requests as well as information that runs beyond that which the City is required to furnish. I do not see any benefit to setting up any meeting with the Mayor and I consider this matter closed. Again, if you wish to pursue an appeal of Mr. Harris' "decision," you may do so at your own risk given that the appeal period has long expired.

Best,

Justin

Justin M. Rosen

Chief of Staff

City of Milford

### BOARD DISCUSSION

**Mr. Soda** asked if bracing was apparent when Mr. Harris visited the site. **Mr. Harris** said it were not, but if the planters had since become immovable, he could consider them structures; that if the planters are now set into the ground like a fence post would be, it would change their nature. **Mr. Soda** noted that since the appeal period had expired, there is no appeal possible. **Mr. Tuozzola** asked if the meeting could be continued to allow Mr. Harris to inspect again to see if the facts on the ground had changed. **Mr. Hirsch** said that if Mr. Harris had seen violations, he would have issued a Notice of Violation to 63 Riverside. **Mr. Tuozzola** said the main issue was whether the fence was temporary or permanent, but the other items mentioned must be shown to be in violation. **Mr. Wolfe** observed that the department had reviewed the other items, but no violations were identified. **Mr. Harris** reviewed the board's choices for action: uphold, overturn, or modify. **Mr. Tuozzola** said he wanted more information and asked for a motion to hold the hearing open.

**Mr. Soda** motioned to **hold the item open**. **Ms. Ferrante** seconded. The motion carried with **Mss. Ferrante** and **Valiquette**, and **Messrs. Soda, Wolfe** and **Tuozzola** voting **with the motion**.

- 3) **37 Botsford Avenue** MBP 13/107/126; R-5; Alexis Fernandes, owner; Vary Sec. 3.1.4.1 east side-yard setback to 5.2' where 10' req.; 4.1.4 rear deck proj. to 5.2' where 8' perm.

**Ms. Fernandes** addressed the board. She said she bought the property planning to remodel and elevate the house but was persuaded to demolish it as it was not structurally sound. She said she wanted to raise the house to comply with FEMA flood mitigation and to center the house on the lot with parking provided underneath. She said off-street parking was desirable because Botsford Avenue is narrow with much on-street parking.

### DISCUSSION

**Mr. Tuozzola** confirmed that the house would be moved further back on the lot than the former house. He asked if anyone wished to speak in favor of the application

### FAVOR

## Minutes, Public Hearing of Zoning Board of Appeals Meeting held 12 October 2021

**Fred Munk**, 35 Botsford Avenue, said he was the neighbor most affected by any change and that he said he supported the plan. He added that he was concerned about his driveway access. **Mr. Harris** said any easement would be a matter to be resolved between both property owners.

### BOARD DISCUSSION

**Mr. Wolfe** asked for more details. **Ms. Valiquette** asked about the elevation as she had noted that it would be the first raised house on the street. There was discussion of a height restriction. **Mr. Harris** said he didn't think it was possible for the board to engage in these types of tradeoffs because the regulations already have a height restriction specified, that this project complies, and that he was not sure that it's in the board's purview to negotiate reductions in height restrictions. **Mr. Soda** asked about previous conditions on motions made by the board. **Mr. Harris** said if a developer offered a to limit an approval with a condition that forgoes a zoning regulation that a project complies with, the board could act on it. **Mr. Soda** and **Mr. Harris** further discussed the attachment of conditions to motions. **Ms. Ferrante** said the variance itself could be denied, but the regulations already cover the height of the structure from average grade. She said conditions should relate to what is being requested.

**Mr. Tuozzola** asked if anyone wished to speak in opposition to the application; none did.

**Mr. Wolfe** motioned to **approve**. **Ms. Soda** seconded. The motion carried with **Mss. Ferrante** and **Valiquette**, and **Messrs. Soda, Wolfe** and **Tuozzola** voting **with the motion**.

- 4) **18 Norwood Avenue** MBP 39/605/3A; R-10; Thomas Lynch, Esq., attorney for Three S Properties, LLC, owner; Vary Sec. 4.1.4 rear deck proj. to 15' where 21' perm

**Attorney Lynch**, 63 Cherry Street, addressed the board. He introduced Buddy Field, who is one of the owners. He described the variance request for the rear deck. He said construction had begun on the residence and that a variance had been filed for a wider house to create a more colonial style home versus a tall, narrow house. He said a petition was filed by 40 members of the neighborhood in opposition, so he had advised withdrawing the request. He noted that Mr. Field knew the regulations when he bought the property, but that the request was only to attach a reasonably sized deck. He said the hardship was the narrow lot and that the rest of the building complied with setbacks. He said the adjacent residence at 26 Norwood had a more extensive encroachment into the setback. He said that the construction was in character with the neighborhood.

### DISCUSSION

**Ms. Ferrante** confirmed measurements from the lot line of the deck and house. **Mr. Soda** asked about deck measurements and where the water view was.

***Pasquale Civitella**, 746 East Broadway, attended the meeting for another item, but asked to confirm that the session was online, which the chair did.*

**Mr. Tuozzola** asked if anyone wished to speak in favor of or in opposition to the application.

### OPPOSED

**Mark Ryba**, 3 Parkland Place, said his house was behind 18 Norwood. He said he thought there was a deck request in a previous variance application. He drew attention to a petition in opposition submitted the morning of the hearing and asked that it be made part of the record. **Ms. Greene** confirmed receipt of the petition. **Mr. Ryba** said the hardship was self-created and that the neighboring property configurations were irrelevant. He referred to a court decision to that effect. He said variance hardships could not be personal in nature and felt this request was personal.

**Walter and Shelia Delmonte**, 5 Parkland Place, said they were opposed to the application.

**Barbara Troy**, 37 Norwood Avenue, said she opposed more construction in Morningside.

**Richard Jagoe**, 1 Morningside Drive, said he preferred the house be built without any variances and there was no hardship.

### REBUTTAL

**Attorney Lynch** agreed that a deck projection was requested previously, per Mr. Ryba's remark. He said he understood that the board has tried to be reasonable and responsive to neighborhood concerns.

## Minutes, Public Hearing of Zoning Board of Appeals Meeting held 12 October 2021

### BOARD DISCUSSION

**Mr. Wolfe** asked Attorney Lynch for detail on the location of the deck. **Mr. Soda** asked how high above grade the deck was. **Mr. Harris** said patio had to be 4' from the lot line. **Mr. Hirsch** said he counted 18 people on the petition. **Ms. Ferrante** noted that a patio with stairs was an alternative to the deck. **Mr. Hirsch** agreed with Ms. Ferrante.

**Mr. Tuozzola** closed the hearing.

**Ms. Ferrante** motioned to **deny**. **Mr. Soda** seconded. The motion carried with **Mss. Ferrante** and **Valiquette**, and **Messrs. Soda** and **Tuozzola** voting **with the motion**; **Mr. Wolfe** voted **against the motion**.

5) **14 Hanover Street** MBP 27/458/6; R-5; Thomas Lynch, Esq., attorney for Kenneth Esposito, owner; Vary Sec. 3.1.4.1 east side-yard setback to 5' where 10' req

**Attorney Lynch**, 63 Cherry Street, addressed the board. He noted that attendance of Mr. Esposito. He said the variance request was straightforward for a minimally sized lot. He said he discussed with Mr. Harris that a variance for a rear deck would not be included in the application. He said the lot was 30' wide, making it difficult to build a reasonably sized house. He reviewed floor plans. **Mr. Harris** noted that most of the deck was recessed into the house.

### DISCUSSION

**Mr. Tuozzola** asked if anyone wished to speak in favor of or in opposition to the application.

### OPPOSED

**Beverly Newell**, 10 Hanover St, said she was concerned about development's effect on the natural environment. She expressed concern about notification of abutters and the placement of the placard and said she was opposed.

**Pasquale Civitella**, 746 East Broadway, also expressed strong opposition. He said he felt the abutters were not given enough time to review the application due to the Monday holiday.

**Mr. Soda** noted that the board could hold meeting open. **Mr. Hirsch** noted that Mr. Civitella has already made up his mind so wondered why more time was needed for research. **Mr. Tuozzola** asked Mr. Harris to address confusion about whether 1 or 2 lots exist. **Mr. Harris** said that creations of the lots predated 1929 subdivision regulations, that the property is a lot of record, and is buildable. He noted the elimination of a merger rule by the Planning and Zoning Board earlier this year, which further underscores the right to build on any lot of record. **Mr. Tuozzola** gave **Attorney Lynch** an opportunity to comment. He described submission of proof of abutter notification to **Ms. Greene**, who confirmed that she had received the appropriate documentation. **Mr. Soda** thought it advisable to leave the hearing open. **Mr. Hirsch** felt this was unfair to the applicant. **Attorney Lynch** noted for the record that the house at 10 Hanover is the same width as the width that his client is applying for. There was further discussion on the validity of the existence of 2 building lots.

**Mr. Soda** motioned to **leave the hearing open**. **Mr. Wolfe** seconded. The motion carried with **Ms. Ferrante** and **Valiquette**, and **Messrs. Soda**, **Wolfe** and **Tuozzola** voting **with the motion**.

- A. NEW BUSINESS** – None.
- B. OLD BUSINESS** – None.
- C. STAFF UPDATE** – None.
- D. ACCEPTANCE OF MINUTES FROM 14 SEPTEMBER 2021 HEARING:** Approved unanimously.
- E. ACCEPTANCE OF APPLICATIONS FOR 9 NOVEMBER 2021 HEARING**

Adjournment was at **9:13 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:

M.E. Greene, Clerk, ZBA