

Minutes, Public Hearing of Zoning Board of Appeals Meeting held 13 October 2015

The Regular Meeting of the Zoning Board of Appeals of Milford, CT, was held on Tuesday, 13 October 2015, 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

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

ALTERNATES PRESENT: Gary Dubois, Alison Rose Egelson

MEMBERS/ALTERNATES ABSENT: Sarah Ferrante, Robert Thomas

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

Mr. Tuozzola called the meeting to order at 7:00 p.m. He asked **Mr. Dubois** to stand in for Ms. Ferrante and also asked for board member conflicts of interest with any agenda items; none were raised.

B. CONSIDERATION OF AGENDA ITEMS

1. **12 Francis Street** (R-7.5) Kevin Curseaden, Esq., attorney, for Antoinette Voll, owner; Sec. 9.2.1: Appeal the Decision of the Zoning Enforcement Officer dated 24 August 2015; Map 6, Block 84, Parcel 2.

Attorney Curseaden submitted a letter prior to the meeting stating that in order to allow parties to discuss and resolve issues in full; he wished to open the hearing and to hold it open until the November ZBA meeting.

DISCUSSION

The board granted the request by unanimously approving a motion made by **Mr. Haberman**, seconded by **Mr. Vaccino**.

2. **79 Brooklawn Drive** (R-18) Allan F. Peck, agent, for Alan Moody, owner; Sec. 3.1.4.1 vary rear-ym setback to 17' where 30' req to build 2-story addition to add living space and a 1-bay garage for a single family home; Map 101, Block 809, Parcel 89.

Mr. Alan Moody, 79 Brooklawn Dr., addressed the board. He described his house and a need for additional living space and storage.

DISCUSSION

Mr. Tuozzola confirmed that the plan contained a third garage. **Mr. Tuozzola** asked for the hardship, which Mr. Moody said was a lack of living space and a new need to accommodate more members of his family. **Mr. Soda** asked for more detail on the floor plans, including access to living space over the garage and whether living space could have been added to the other side of the property, avoiding the need for a variance. **Mr. Vaccino** confirmed the dimensions of the garage with the proposed living space above it, and then compared it to the size of the existing garage. **Mr. Moody** described how the rooms would be used. **Mr. Harris** suggested that an accessory apartment might administratively solve many of the problems he described. **Mr. Moody** withdrew the variance request.

3. **108 Beach Avenue** (R-7.5) Charles Willinger, Esq., attorney, for Leden Consulting Corp., owner; Sec. 9.2.1: Appeal the Decision of the Zoning Enforcement Officer dated 3 September 2015; Map 60, Block 743, Parcel 2.

Attorney Willinger of Willinger, Willinger and Bucci, 855 Main Street, Bridgeport, addressed the board. He stated that Item 4 was dependent on the outcome of Item 3. He said the Micceri family owned the property and that the family wished to put signage and a fence on the property. He said he disagreed with the number of variances ZEO Harris said were required. He distributed materials outlining history of the property. He described creation of Beach Avenue and its relationship to preexisting lots. He referred to an administrative order from the City setting a standard for maintaining

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private beaches and said that was difficult for the Micceri family to comply with the order due to trespassing on the property by the public. He directed the board to a series of photographs illustrating camping and other activities on the site. He said the photographs also showed the terrain on the site. He said dogs were walked on the property with no clean up. He said children were often unsupervised there and that consumption of alcoholic beverages had occurred. He said trespassers were typically not neighbors. Some photos showed a pizza delivery. He said litter resulted. He showed trespassers using the Micceri family's driveway. He said much of the inappropriate activity occurs at night. He said the pictures were date-stamped in 2014 because the packet had been prepared early in 2015; he then provided more recent photos. He showed an example of a trash bag filled by the family in an attempt to care for the property. He said the activity affected the whole neighborhood. He said that the family had attempted to ask intruders to leave to no avail. He said the family was exposed to liability by the behavior of trespassers. He showed photographs of people riding bicycles on the rock. He said the City of Milford could be exposed to a lawsuit for failing to warn that the property is private. He showed a sample of the type of "No Trespassing" sign the family wishes to post. He referred to the doctrine of fundamental fairness and used a case in Stonington to illustrate how the doctrine had been applied. He noted the use of fences on Trumbull Avenue and Gulf Beach. He provided a portion of the Milford Zoning Regulations to the board, saying Mr. Harris was incorrect in his interpretation of them. He referred to a description of lot frontage and provided his interpretation of how it applies to the lot at 108 Beach Avenue. He referred to the definition of rear lot lines. He referred to the definition of fences and walls and said that a zoning permit was not required if the fence is in the front yard and doesn't exceed 3'. He referred to the definition of a structure and said that fences less than 3' are not considered structures. He said no approval should be required to construct the fence that the family wishes to install.

He said that if the board agrees with Mr. Harris, a variance would be required to place signs. He described the legal requirements for discerning a hardship. He said the property was unique and met the standard for a hardship. He reiterated his arguments and submitted a petition of support from neighbors with 52 signatures. He also submitted 26 letters of support. He submitted another copy of a portion of the Milford Zoning Regulations regarding exemption from the Coastal Area Management approval. He said it pertained to signs and fences less than 3' high. He referred to a section that provided for variances being granted with "good and sufficient cause."

DISCUSSION

Mr. Soda noted that the majority of photos showed a sign indicating that the area was a Borough of Woodmont public beach. **Attorney Willinger** said the public beach was around the corner. **Mr. Tuozzola** asked for proof of ownership of the property. **Attorney Willinger** said the deeds and survey were proof. He submitted a memorandum for a case defining the owner of land abutting the Sound possesses land to be defined as extending to the mean high water mark. He also referred to a 1978 case regarding a property in Woodmont which held that the public doesn't have an easement over the property by use or adverse possession. **Mr. Tuozzola** and **Mr. Haberman** asked whether taxes were being paid on Lot 2. **Attorney Willinger** said taxes were being paid, but he didn't know whether they were allocated by parcel.

Stephen Harris, ZEO, gave his response. He said examination of the evidence doesn't support the notion that Parcel 2 is a legal lot of record. He provided a handout and reviewed its contents. He read deed information about meets and bounds dating back to the late 19th century and noted the absence of references to any land extending into LI Sound. He referred to a 1925 Sanborn map that did not incorporate a portion of the land extending into LI Sound. He referred to a 1947 deed with language that described the house lot and an area extending into the Sound, but said there is no record of the latter parcel being approved by the City. He said Milford's Subdivision Regulation was enacted in 1929 requiring that lots be created by the Planning and Zoning Board. He said this parcel was created by deed in 1947, therefore it could not be a legal lot of record, and therefore no such parcel exists. He said there is no decision to appeal and renders moot the variance application.

REBUTTAL

Attorney Willinger disputed Mr. Harris' findings and said he would have brought the opinion of a title examiner had he expected Mr. Harris' argument. He said Beach Avenue split the property in the 19th century, creating Parcel 1 and Parcel

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2. He said Mr. Harris' analysis did not carry as much weight as a licensed surveyor's documentation. He said the 40-year use of the property by the family would as a last resort provide for adverse possession. He asked to continue the hearing until next month to produce certification of title to the property.

ZEO Harris said Attorney Willinger had not submitted any information that proves the parcel is a legal lot of record. He said the surveyor's documentation was a factor that led him to research the legality of the lot.

FAVOR

Raquel Bonessi, 83 Beach Avenue read a letter from her husband, Borough of Woodmont Warden Edward Bonessi. The letter expressed support for Micceri family.

Ellen Austin, 14 Village Rd, said her family had been in the area since 1956 and her husband was a previous borough warden. She said the rock was shale, breaks off easily, and could be dangerous. She said storms had removed much of the rock.

Delores Hannon, 110 Beach Avenue, spoke in support of the family and commended their efforts to care for the property. She said there was increased inappropriate behavior in recent times. She said she had taken part in research of the land after the storms. She said this had convinced her that the property is privately owned.

Phil Vetro, said he was a 4th district alderman and a former Planning and Zoning Board member. He said he agreed with Attorney Willinger's interpretation of the fence regulation. He said he had also heard many complaints about inappropriate behavior by people from outside the neighborhood.

Jackie Honek, 102 Beach Avenue, said there was supposed to be no parking, unloading or loading on Beach Avenue, but that cars stop and launch boats and fishing gear. She said it was creating a dangerous situation.

Joe Hannon, 110 Beach Avenue, said he understood Mr. Harris' position, but expressed support for the application.

OPPOSED

Mary Chisarik, 51 Village Road, said she opposed the fence, not the family. She said she appreciated the family's position, but said that a nearby sign claims the property for the Borough of Woodmont. She expressed doubt that the fence would deter the behavior described. She said she felt the issue was one of enforcement, not zoning. She expressed concern about restrictions against people enjoying a beautiful open area.

Bill Coleman, 20 Blackall Road, said he worked as a public official in Bridgeport and commended Mr. Harris for his research. He said he saw the issue in terms of restricting broader access to the beach and felt that the demographic of people using the area was influencing the issue. He said there are plenty of remnant properties along the Sound. He said the public right of way had existed since 1896. He said the financial impetus to reduce liability is inconsistent with the definition of hardship as applied to variances. He said the real issue was privilege and class. He said he had sympathy for cleaning up the beach. He said there was a need for clarification, but that the issue was land use and protecting the public trust.

REBUTTAL

Attorney Willinger said he agreed that the fence wouldn't keep people out, but that it could reduce liability. He disputed Mr. Coleman's reference to demographics and that the fence would not deny the public trust. He said that he had reviewed Mr. Harris' submittal while other comments were being made. He rebutted Mr. Harris' interpretation. He reiterated his characterization of the lot's front and rear lines. He said the board should help the neighbors and should consider the support of the neighbors.

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BOARD DISCUSSION

Mr. Tuozzola closed the hearing. **Mr. Haberman** said he appreciated that there is an enforcement issue on the property, but that he was not convinced that it's a legal lot of record. **Mr. Tuozzola** said he wanted documentation of title. **Mr. Vaccino** said he was troubled by the lack of proof as to whether the property was private or public. He said he wanted to take up Attorney Willinger up on his offer to produce more evidence. **Mr. Soda** said the survey provide less detail than other surveys seen by the board. **Mr. Harris** reminded the board that the hearing was closed when **Attorney Willinger** rose and asked for continuing the hearing with the sole purpose of determining ownership of the lot.

Mr. Vaccino motioned to **deny without prejudice**. **Mr. Soda** seconded. **Mr. Vaccino** supported his motion by reason of ambiguity of ownership. The motion carried with **Messrs. Dubois, Haberman, Soda, Vaccino** and **Tuozzola** voting **with the motion**.

4. **108 Beach Avenue** (R-7.5) Charles Willinger, Esq., attorney, for Leden Consulting Corp., owner; Sec. 5.3.4.1 vary no. & location of signs; Sec. 5.8 vary flood hazard area; Sec. 4.1.7.3 vary installation of fence; Map 60, Block 743, Parcel 2.

See previous item.

5. **52 Laurel Avenue** (R-5) Sandra Cohen, owner; Sec. 4.1.4 vary balcony proj to 4' where 2' perm; Map 13, Block 146, Parcel 8

Sandra Cohen, 41 Eveningside Drive, addressed the board. She stated that her request was modest. She said the hardship was that her lot was a little more than half the size of an R-5 zone. She noted that her lot and building size percentages were under the limit.

DISCUSSION

Mr. Tuozzola said he thought that the house was further toward the street than many others on the street. **Mr. Haberman** confirmed that the house was new construction and expressed concern that the deck could have been accommodated in the initial design preventing the need for a variance. **Mr. Soda** asked if the deck was an afterthought. **Ms. Cohen** said she had photos of neighboring decks that were comparable, but only in electronic form.

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. Haberman** said the design should have accommodated the balcony from the start. **Mr. Vaccino** said he was troubled by granting a variance to fix an error in judgment rather than accommodate a hardship.

Mr. Haberman motioned in favor of application. **Mr. Soda** seconded. **Mr. Haberman** supported his motion by reason of hardship of the small lot, exactly per the submitted materials. The motion failed with **Messrs. Haberman, Soda,** and **Dubois** voting with the motion and **Messrs. Vaccino** and **Tuozzola** voting **against the motion**.

6. **62 Hawley Avenue** (R-5) Ken Procino, owner; Sec. 3.1.4.1 vary west side-yd setback to 1.8' where 4' req, rear-yd setback to .03' where 5' req, 71.8% lot coverage where 65% req; Sec. 11.2, accessory bldg to 59% of house footprint where 50% is req; Map 71, Block 766, Parcel 4

Mr. Procino, 62 Hawley Avenue, addressed the board. He shared photographs of the house to show how the garage would be positioned. He described the small, non-conforming lot. He said the house would conform to the style of the neighborhood.

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Jerry Fiorentino, 60 Hawley Avenue, said he didn't necessarily oppose the application, but questioned whether a Woodmont Borough right of way created a front yard and the need for more of a setback. He said questioned the size of the garage.

DISCUSSION

Mr. Vaccino said if the garage size would be reduced, it would eliminate some of the variance requests.

Mr. Procino asked if he could reduce the size of the garage to 27'x23' leaving 4' of space on each side.

Mr. Tuozzola asked Mr. Harris for guidance on how to allow Mr. Procino to revise his request. **Mr. Harris** said it could be denied without prejudice. Mr. Vaccino said he'd like to see a reduction in the number of variances being requested.

Mr. Tuozzola confirmed that the shed would be removed and replaced by pavers and a walkway. **He** confirmed that no permission would be required to use ROW by the borough? Mr. T said the only thing he took issue with was the size of the garage, which seemed large. Mr. Soda said 24' wide is a standard 2-car garage.

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 deny without prejudice. **Mr. Soda** seconded. **Mr. Vaccino** supported his motion by reason of allowing the applicant to consider the objections of the board. The motion carried with **Messrs. Haberman, Soda, Vaccino** and **Tuozzola** voting **with the motion**.

7. **151 Hillside Avenue** (R-5) Robert Potter, agent, for Martha Goldman, owner; Sec. 3.1.4.1 vary west side-ym setback to 3.1' where 5' req, east side-ym setback to 3.1' where 10' req; Map 49, Block 795, Parcel 80

Attorney Thomas Lynch of Lynch, Trembicki and Boynton, 63 Cherry Street, addressed the board, explaining that he had been retained to present the application for contract purchaser Robert Potter. He stated that the lot was legal and nonconforming, but one of the smallest he had seen. He used the locus on the survey to show how small it is relative to surrounding properties. He said a cottage on the lot was destroyed by Storms Irene and Sandy. He said the new house would be centered on the lot. He said the design of the house might not be to everyone's taste, but that aesthetics were not the purview of the board. He reviewed the floor plan. He said it was a reasonable request with a clear hardship. He noted that side-yard nonconformity was reduced.

DISCUSSION

Mr. Soda confirmed the small size of the lot. **Attorney Lynch** compared the living area it provided with that of a condo.

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

OPPOSED

Ms. Greene noted 2 submissions in opposition provided prior to the meeting.

Michael Horbal, LS, 52 Main St, Seymour, submitted a letter from **Eleanor Jane Duplesse**, trustee for 153 Hillside Avenue, authorizing him to speak on her behalf. He said she felt her property would be devalued, her views blocked, that there was increased potential for storm damage and higher noise levels, and that her privacy would be compromised. He said she had an easement on part of 151 Hillside. Mr. Horbal said there were inaccuracies in the submitted survey. **Mr. Soda** discussed a measurement with Mr. Horbal, who said the chart on the survey was incorrect. He said the survey didn't show the easement. **Mr. Harris** said the survey showed rights of way on either side of the

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house. **Mr. Horbal** said the survey submitted by Mr. Potter was defective. He then questioned legal notification; **Ms. Greene** produced postal documentation of the mailing.

Ronald Anderson, 147 Hillside Avenue, said he demolished and rebuilt his property after Storms Irene and Sandy. He said no allowance was being made to prevent damage to his house during building of the proposed new home. He described aspects of rebuilding his house required by FEMA flood mitigation rules, arguing that they made it more susceptible to construction damage. He said he didn't see how construction could be done in such a small space. **Mr. Soda** asked for clarification on the timing of the demolition and construction of each home.

REBUTTAL

Attorney Lynch defended the quality of the survey. He reiterated the hardship of the lot. He rebutted the other objections.

BOARD DISCUSSION

Hearing none, he closed the hearing. **Mr. Soda** said he thought the best job that could have been done had been done.

Mr. Haberman motioned in favor of application. **Mr. Soda** seconded. **Mr. Haberman** supported his motion by reason of hardship of the small lot, exactly per the submitted materials. The motion carried with **Messrs. Dubois, Haberman, Soda, Vaccino** and **Tuozzola** voting **with the motion**.

8. **306 High Street** (R-12.5) Joseph Kubic, Esq., attorney, for Brian Skinner, owner; Sec. 11.2 vary OTHER TERMS – "BUILDING ACCESSORY" to permit construction of a 768 sf 2-car garage when principle bldg is 1280 sf; Map 65, Block 310, Parcel 7

Attorney Kubic, Harlow, Adams and Friedman, 1 New Haven Avenue, addressed the board. He stated that the variance was unusual due to the regulation being part of a definition. He read and submitted letters of support from abutting neighbors. He reviewed the history of the property and its division into #302 and #306. He said that given the state of the previous house, his client decided that rebuilding rather than renovating made more sense. He said the footprint of the new house was very close to the original footprint. He submitted photographs showing the proximity of the house to the apartment building. He reviewed the plans for the garage and submitted an elevation drawing. He noted an issue of privacy from the apartment building. He said the request was not much bigger than what he would be entitled to by right and that the owner wished to keep the house small, rather than enlarge it to permit the garage to be built by right.

DISCUSSION

Mr. Vaccino said that the garage was more to shield the backyard privacy. **Mr. Haberman** appreciated that the owner was trying to keep the house small and in conformity with the rest of the neighborhood.

BOARD DISCUSSION

Mr. Tuozzola asked if anyone wished to speak in favor of or opposition to the application. Hearing none, he closed the hearing. **Mr. Haberman** said keeping the house small preserved the integrity of the neighborhood.

Mr. Haberman motioned in favor of application. **Mr. Soda** seconded. **Mr. Haberman** supported his motion by reason of keeping the house in conformity with the rest of the neighborhood, exactly per the submitted materials. The motion carried with **Messrs. Dubois, Haberman, Soda**, and **Tuozzola** voting **with the motion** and **Mr. Vaccino** voting **against the motion**.

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- B. OLD BUSINESS: Ms. Greene** noted that 990 Naugatuck was being appealed.
- C. NEW BUSINESS: None**
- D. STAFF UPDATE: None**
- F. ACCEPTANCE OF MINUTES FROM 8 SEPTEMBER 2015 HEARING: Approved**
- G. ACCEPTANCE OF APPLICATIONS FOR 10 NOVEMBER 2015 HEARING**

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