

MEMBERS PRESENT: Rich Carey, Howard Haberman, Thomas Nichol, Joseph Tuozzola

ALTERNATES PRESENT: Gary Dubois, John Vaccino

STAFF PRESENT: Kathy Kuchta, Zoning Enforcement Officer; Rose Elliott, Clerk

The meeting was called to order at 7:00 p.m. Chrmn. Tuozzola noted that Mr. Nichol was now a regular member of the Zoning Board of Appeals Board.

A. PLEDGE OF ALLEGIANCE

B. CONSIDERATION OF AGENDA ITEMS

1. **354 Woodmont Road cor. Quarry Road** (Zone ID) Discuss and act, if appropriate, on the following issues as set forth in the remand by the Superior Court in the matter of Side Step, Inc., et al vs. Board of Appeals, Superior Court, Judicial District of Ansonia/Milford, Docket No. CV 10-60045835:

- a. Determine the continued validity of the 2010 variance, based upon the finding that the action of May 11, 2010 is “voidable”, not “void”;
- b. Determine whether the principals or agents or ATGCKG Real Estate, LLC, had actual knowledge of the meeting of May 11, 2010, and, if so, whether actual notice constituted a waiver of the municipal notice requirement;
- c. Determine whether the issuance of the zoning permit on June 30, 2010, or the recording of both variances on the Milford Land Records, affects the ability of the board of Zoning Appeals to act upon any rescission motion; and
- d. Consider, assuming it follows the dictates of Roberts Rules of Order in its deliberations, the application of Parliamentary Procedure specifically with regard to the distinct meaning of the terms “rescind” and “reconsider.”

Attorney Matthew Woods, Trial Council for the City of Milford, told the Board that he is here this evening on remand from the Superior Court in a zoning appeal by Side Step, Inc. Paperwork was passed out to the Board. The Court has ordered a limited “do-over”, not of the entire variance application, but only certain issues concerning notice and procedure. The Board is obligated to comply with the remand order on pgs 15 & 16 of the decision. He began with a brief history of the appeal which involved units in a commercial shopping center condominium, Milford Business Center I. The condominium has twenty units. Units 3 & 4, are owned by Woodmont Business Park, LLC, one of the plaintiffs in this case. Side Step, Inc., the other plaintiff, does not have a lease but contemplates operation of a pizza restaurant with a liquor permit in those two units. Units 1 & 2 are owned by ATGCKG Real Estate, LLC. which operates the Keepers Gentlemens Club, with a café liquor permit. Sec. 5.5.4.1 of the Zoning Regulations requires 1,500 ft. separation distance between the public entrances of liquor permit establishments. Only 25 ft separates Units 1 & 2 from Units 3 & 4, so a variance was required to obtain a restaurant liquor permit. A variance was applied for by Side Step, Inc in 2008, and on May 13, 2008, was approved by the Board. Notice was published in the newspaper and no appeal was taken. Subsequently, there were difficulties in getting building permits and the variance lapsed under Sec. 9.2.2.4 of the Zoning Regulations. A second variance was applied for on April 19, 2010. A

requirement of a variance includes the placing of placards on the property, mailings to the owners within 200 feet and notice in the newspaper. The placards were placed on the property and notification published in the newspaper. Letters were sent out to the various neighboring property owners but not to any of the unit owners in the condominium or to the condominium association. On May 11, 2010, the Board unanimously approved the second variance and approval was published in the newspaper on May 14, 2010. The approval was recorded on the land records on June 30, 2010 and Side Step took a building permit out for some demo work on August 12, 2010. On July 27, 2010, Attorney Max Case, on behalf of ATGCKG, claimed his client had not received mailed notice of the variance application and therefore the variance approval granted was void. At a meeting on September 14, 2010, the Zoning Board of Appeals rescinded that approval and recorded the rescission on the land records on September 20, 2010. Side Step and the owner were never notified of the hearing that resulted in the rescission until after the fact. They then brought an appeal to the Superior Court and Judge Radcliffe sustained the appeal saying that the Board and the City Attorney's office made three mistakes. 1) Side Step and the owner of the unit were never notified of the September 14, 2010 hearing. 2) Based on an opinion of the Assistant City Attorney, the Zoning Board of Appeals determined the variance granted in May was void because of the defective mail notice. 3) The ZBA blurred the distinction between a reconsideration of the variance and a rescission of the variance. The first mistake necessitated this "do over" hearing where the parties were notified and are present tonight. The third mistake is covered by the detailed agenda of tonight's meeting. The judge specifically said the Board had to decide whether Roberts Rules of Order applied and if so, how they should be applied. Roberts Rules clearly apply per Sec. 2.55 and there is a distinction between reconsideration and rescission. A motion to reconsider can only be made on the day (or the day after) the vote was taken. That does not apply here. A motion to rescind is not in order if an action has already been taken, which cannot be undone. The judge has asked the Board to consider whether it can rescind the variance granted on May 11, 2010 based upon whether anything has occurred which cannot be undone. The Board has to decide tonight whether the principals or agents of ATGCKG had actual notice of the May 11, 2010 hearing and knew the hearing was going to be held for the variance and thereby waived the personal notice requirement. The Supreme Court has distinguished between two types of notice for zoning applications. One is called constructive notice. It is notice to anybody who might be aggrieved by the decision of the Board. The newspaper notice and the placard posted on the property are examples of this type of notice. The second type of notice is personal notice. That is the notice that wasn't given to the plaintiffs in this case; the letters that are required to be mailed. If there is a defect in the constructive notice, it cannot be cured. Whatever action the Board takes following the defective constructive notice is void. If there is a defect in the personal mailed notice, the Board can make a decision if the defect is waived. Judge Radcliffe has asked this Board to determine if ATGCKG Real Estate had actual notice of the May 11, 2010 meeting and if so, did that constitute a waiver of the personal mail notice requirement. The Board has to decide tonight, whether ATGCKG Real Estate had actual notice of the meeting, even though it never received the required mail notice and if so, whether ATGCKG, thereby waived that defect and allowed the Board to grant the variance. It is the burden of ATGCKG Real Estate to prove that actual notice was received and if there was a waiver of the defect of the mail notice.

Attorney Barry Knott, Knott, Knott & Dunn, 1656 Main Street, Stratford, said he represents Side Step LLC, P.O. Box 524, Stratford, CT, who was the original applicant for the variance. He referred to the folder of exhibits handed out to the Board members. A variance to allow a pizza restaurant with liquor was granted on May 13, 2008 (Exhibit 1). The approval was recorded on the land records on May 19, 2008 (Ex. 2). The Regulations at that time said if you didn't take out a building permit within 1 year, the variance was lost. That regulation was inconsistent with State law. His client was not aware of the State law and thought he had lost his variance approval according to the Zoning Regulations. He resubmitted a new application in April of 2010 for the same distance variance request, for a pizza restaurant with liquor. On May 11, 2010, that variance was granted and the approval recorded on the land records (Ex. 3 & Ex. 4). A building permit was applied for on June 30, 2010 (Ex. 5) and a building permit issued on August 12, 2010 (Ex. 6). A copy of Attorney Case's letter to Win Smith, raising the issue of failure of written notice to his client, ATGCKG Real Estate LLC., is Ex. 7. Atty. Case is correct - his client never did receive written notice of the hearing. As a result of Atty. Case's letter, the ZBA had a hearing on September 14, 2010 to reconsider the variance granted on May 11, 2010. Side Step appealed the decision made to rescind the approval to the Superior Court because they had never received notice of the September 14, 2010 hearing and were not given an opportunity to be heard. Judge Radcliffe rendered an opinion on September 2, 2011, sustaining the appeal and remanded the matter back to the Zoning Board of Appeals for further consideration. He referred to page 15 of the Court's decision and pointed out the wording on page 15 is the same wording as on the agenda listed as a,b,c,d. The Board needs to 1) determine the continued validity of the 2010 variance based upon the finding that the action of May 11, 2010 is voidable, not void and 2) whether the principals or agents had actual knowledge of the meeting of May 11, 2010 and if so, whether actual notice constituted a waiver of the municipal notice requirement. The issue is whether their failure to give ATGCKG written notice, rendered the prior approval void or voidable. He said what the judge was saying in his decision was that while personal notice may not have been given to ATGCKG, this defect could be deemed to have been waived if ATGCKG had actual knowledge of the public hearing and simply did not attend. The managing member of ATGCKG, Anthony Gallo, had actual notice of the May 11, 2010 ZBA hearing and chose not to attend (Ex. 9). There is a written statement (Ex. 10) from Mr. Arnold Peck which says he has owned, managed or controlled the entities that own most of the commercial units at 354 Woodmont Road. The letter also says he spoke to Mr. Gallo in May of 2008 about the plans for Side Step, Inc., as a prospective tenant of units 3 & 4. He also spoke with him again in May of 2010 and prior to the May 11, 2010 meeting and let him know the latest variance request was for the same use that was previously approved. As a result of those conversations, Mr. Peck knew Mr. Gallo was aware of the May 11, 2010 public hearing before the meeting took place. That resolves the issue of whether Mr. Gallo waived the personal notice defect. The 3rd item the Judge identifies as what the Board has to determine tonight is whether the issuance of the zoning permit on June 30, 2010 or the recording of both variances on the land records affects the ability of the ZBA to act on any rescission motion. He read (Ex.11) Sec. 36 of Roberts Rules of Order. The agenda item to reconsider the variance granted, was made about 4 months after the original motion to approve in May. It was not made the same day or the next day as is

required by Roberts Rules of Order. It was untimely and invalid when it was made in September of 2010. A motion to rescind can be made at any time and would still be timely now unless, something was done in furtherance of the original approval that cannot be undone. His position is the recording of the two approvals on the land records and the issuance of the building permit represents things that were done that cannot be undone. Therefore, it is too late to rescind the approval. For the 4th item, the judge points out a review of the records indicates the terms rescind and reconsider were used as synonyms. The wording on the agenda for the September 14, 2010 hearing, said "reconsideration of variance" (Ex. 13), while the legal notice of the action taken said "rescinded" (Ex. 14). You cannot notice an item on the agenda as one thing – reconsideration, and then do something else – rescind. So because Mr. Gallo had actual knowledge of the May 11, 2010, there is no defect in the original decision. It was too late to reconsider the approval under Roberts Rules. Neither a motion to reconsider nor a motion to rescind was appropriate as the applicant had taken steps in furtherance of the approval, by the recording of the approvals on the land records and by taking out a building permit. These variances are permanent and irrevocable.

OPPOSED:

Attorney Max Case, 57 Plains Road, passed out paperwork (affidavits by his clients, Tony & Carol Gallo, members of ATGCKG, LLC, and Peter Bonaventure, unit owner) to the Board. He noted his clients signed sworn affidavits as opposed to the statement submitted by Mr. Peck. The Gallos' affidavits made it clear that at no time did anyone ever advise ATGCKG Real Estate, that these hearings were going to take place. So ATGCKG did not waive its right to notice. It couldn't waive its right to notice because it didn't know about it. That was the primary item Judge Radcliffe directed the Board's attention to. This is a condominium with separate unit owners. Mr. Bonaventure owns 4 units and his affidavit said the same thing. He never received a notice, not in 2008 and not in 2010.

Mr. Nichol asked if Mr. Gallo was difficult to reach to which Atty. Case said documents 9 & 10 show his mailing address in Florida as where he can be reached.

Mr. Haberman confirmed Mr. Gallo clearly states in his affidavit that he never had a conversation with Mr. Peck prior to the May 11, 2010 hearing.

Atty. Case said Mr. Gallo said it under oath.

Mr. Vaccino confirmed there is no individual that acts as property manager and asked how often Mr. Gallo came to CT.

Atty. Case said there is no property manager and Mr. Gallo had not been in CT in some time as his wife is in poor health.

REBUTTAL:

Atty. Knott said Mr. Peck's statement referred to the 2008 variance in the paragraph Atty. Case noted. The next paragraph refers to the 2010 variance and the language indicates he spoke to Mr. Gallo before the meeting.

The hearing was closed.

DISCUSSION:

Chrmn. Tuozzola said the Board has to determine whether or not ATGCKG knew of the variance application. Mr. Haberman said the determination by the Board whether proper notice was given is specific to the May 11, 2010 hearing. Mr. Carey thought it was hard to imagine someone owning a property and have it exist without knowing anything about it. There had to have some conversation or knowledge because there were two separate variances issued for the property. Mr. Haberman said the Board has to decide on a few things; whether proper notice was given and whether or not the Board's rescinding of the variance approval was valid or not based on Roberts Rules. Personally, he would side with the people who signed the affidavits. He felt proper notice was not given and these people had no way of knowing about the hearing. The rescission of the variance would be mute if notification wasn't given. Ms. Kuchta said another consideration would be the zoning regulation that said the variance would expire in one year which didn't comply with State Statutes. State Statutes say once a variance is granted it remains with the land. The first variance in 2008 should have never been voided out just because they didn't get the building permit in 12 months. Mr. Haberman said the Board could not rescind anything at the September meeting because the approval was always in place. The applicant didn't need to apply for a variance at the May 11 2010 meeting because the first approval in 2008, stayed with the land. Ms. Kuchta said the Zoning Regulations at that time said the approval expired after 12 months if you had not taken out a building permit. So while at the time it was done correctly, it wasn't the correct thing to do. Mr. Haberman asked if the Board determined proper notice was not given, could the applicant re-apply? Ms. Kuchta said they have been granted two variances already. She noted all the names of the people to notify on the Assessor's list, all live in CT. There was also a placard posted on the property. She thought someone who worked there could have notified the owner a liquor permit variance was being requested. She said there were a lot of different ways of looking at it. Mr. Haberman said he has tenants and they don't tell him a lot of things. Mr. Carey said in his opinion the original variance granted in 2008 is what stands. The second variance was not necessary because the original approval stays with land and should never have been rescinded. Whether or not they received notice for the 2010 variance is mute because the original variance was granted and recorded and that should stand.

Mr. Carey made a motion to uphold the original variance granted in 2008 because the other one was issued in error. Mr. Haberman disagreed saying the May 11th variance was not done in error. Mr. Carey said it was done in error because the Board's decision was made from misinformation given to the Board by the City Attorney. Chrmn. Tuozzola asked why the applicant came back to which Mr. Carey said the applicant thought the variance had expired but the approval stays with the land. Mr. Vaccino said the Board's understanding at that time was that the applicant needed to be reheard. So even though that understanding was in error, this Board or the people who were on it at that time, acted in accordance to what they thought they needed to do. He thought that was a valid determination. Mr. Carey said the Board then acted in the same way they acted in 2008. Once a variance is granted it stays with the land, you can't just take it away. Mr. Vaccino asked if they had proper notice the first time to which Mr. Haberman said in 2008 they did.

Mr. Carey repeated his motion to uphold the original 2008 variance approval with Mr. Haberman seconding. The motion carried 4-1 with Messrs. Carey, Haberman, Nichol and Tuozzola voting in favor and Mr. Vaccino voting against.

2. 12 Harborside Drive cor. George Street (Zone SFA-10) Charles Kreitler, owner – request to vary Sec. 11.2 “Accessory Building” to construct 912 sq. ft. garage in lieu of 622 sq. ft. allowed. CAM required. Map 55, Block 502, Parcel 1.

Charlie Kreitler, 12 Harborside Drive, said they are requesting a variance for the construction of a new garage. The accessory building can only be 50% of the footprint of the house. Their small house creates an unreasonable limitation on the project. They have a growing family and badly need the additional space for storage. They plan to remove two existing and unattractive structures that are too close to the property line and encroach into the setbacks. The new garage would be located in approximately the same location as the two existing structures and would comply with all other setback requirements. In 2008, extensive renovations were done while trying to maintain the historically correct form of the building. They would continue with the same approach with the garage construction. The large tree next to the carport would be kept. They would remove one of two paved driveways and replace it with either stone or permeable pavers. The immediate neighbors have expressed their support and there is a letter in the file from one other neighbor, also in support. Their family needs the space and the neighborhood would benefit from the approved appearance.

Chrmn. Tuozzola asked about the area on the map to be quit claimed from the neighbor to which Mr. Kreitler said they are in the process of working with Allan and Dottie Dodd, their neighbors, to clarify the possession line is actually the property line. Their surveyor, Scott Mundy, is in the process of filing the paperwork for that. They have an agreement with the Dodds.

Duo Dickinson, 94 Bradley Road, Madison, said wherever the line ends up being, the proposed garage would be built in accordance with the setbacks.

Chrmn. Tuozzola asked why such a large garage was needed.

Mr. Kreitler said they are reducing the amount of coverage on the lot.

Mr. Haberman asked if this is just a garage to which Mr. Kreitler said they have three cars. He added this garage will allow them to reclaim a partially finished attic for living space that is currently filled with stuff.

Chrmn. Tuzzola said the Board needs to know where the garage would be, the size and what the setbacks would be.

Mr. Dickinson said the size of the building wouldn't change and the setbacks wouldn't change. The only thing that might change would be the coverage but it would still be compliant.

Mr. Carey said the Board is not being asked to grant a variance for the setbacks but a variance for the size of the accessory building.

FAVOR:

Alan Dodd, 14 George Street, said the piece of property to be quit claimed goes from 0" to 18" wide. It's a very skinny piece of pie and the survey will answer the question of

the property lines. These two existing structures are ugly and terrible. He and his wife have had to look at this falling down garage and falling down carport since 1972. They are happy the owners want to build a nice garage and are 100% in favor.

Robert Stanton, 135 New Haven Avenue, said he is in favor of the variance. The owners have done a wonderful job on the house and it would be for the betterment of the neighborhood. His garage is about the same size as what is being proposed and it would not be out of character with the neighborhood.

There being no one to speak in opposition the hearing was closed.

DISCUSSION:

Mr. Carey said the hardship is the size of the house. Mr. Vaccino wondered what the size of the garage could be. Mr. Carey said they could have a 622 sq. ft. garage without a variance. Chrmn. Tuozzola said the neighbors don't have a problem with it.

Mr. Carey made a motion to approve with Mr. Vaccino seconding. The motion carried unanimously with Messrs. Carey, Haberman, Nichol, Vaccino and Tuozzola voting.

3.701 North Street (Zone RA) John Knuff, attorney, for Harris Stone, owner – request to vary Sec. 3.1.4.1 rear yard setback to 5' in lieu of 50' required and side yard setback to 10' in lieu of 25' required to create Lot #4 of proposed subdivision. Map 107, Block 801, Parcel 27, 27B, 28.

Attorney John Knuff, 147 Broad Street, passed out paperwork to the Board. The overall parcel consists of 6.999 acres located in an RA zone. The Orchards Golf Course is located to the north and to the east. The vast majority of the surrounding property would not be developed. The remaining abutter, Mr. Monde, is located to the south and has submitted a letter in support. He asked that the existing house be allowed to remain in its current configuration. They are seeking the variances in order to save and maintain an existing house and barn in a proposed subdivision. The parcel is part of the old Platt Farm and the current residence combines the original house and a barn that serviced the farm. Mr. Stone has converted the former barn space into an art studio. The subdivision proposes six lots, all of which would be conforming to the subdivision regulations. The only part that would be non-conforming are the setbacks for the parcel that would contain the existing home, lot 4. No current property owner would be affected by the variances. The subdivision could be created without the variances by simply taking down the house but they would prefer to allow the existing house/barn/art studio to remain as a reminder of the parcel's history. The hardship is the historic nature of the house which is unique to this parcel and to remove it would deprive the owner of the reasonable use of his land.

Mr. Haberman said there is another option. You don't have to develop lot 3 so you wouldn't need the variance for the rear yard setback and you wouldn't have to tear down the house. You don't have to develop lot 1 and so a variance wouldn't be required there either. You would then have 4 lots instead of 6 lots. Or you could tear down the house and have six lots.

Atty. Knuff said the owner's intent is to subdivide the property and sell it. He has a buyer for the house lot. Taking down the house makes the lot conform to the zoning regulations at the loss of a structure that has history in the City of Milford.

Mr. Vaccino asked how old the structure was to which Atty. Knuff, after checking with the owner, said the best guess is it is from 1860 or 1870.

OPPOSED:

Richard Platt, 132 Platt Lane, said he doesn't understand the hardship. He has lived in this neighborhood all of his life and for the most part, the house was not connected to the barn. All the rest was added by the applicant. It appeared to him that the structure that comes too close to the property line is part of the barn, not the house. If there is an encroachment problem, they could take down part of the barn. He said the house was built around 1860 and he passed out paperwork to the Board. He wondered about the three lots to the rear that do not appear to have frontage on the road and asked if that was allowed.

Chrmn. Tuozzola said tonight the Board would just be looking at the variance request. It would still need to go before the Planning and Zoning Board for the subdivision itself.

REBUTTAL:

Atty. Knuff said the barn was not added by the applicant but a connection between the barn and the original residence was added. So the barn they are trying to save and the barn that is located in the rear setback is part of the original construction dating back to the mid-nineteenth century. Sec. 9.2.2 allows you to vary the strict application of the regulation if it would deprive the owner of the reasonable use of land or building involved. Little practical benefit would be gained by removing all or some of the residence.

The hearing was closed.

DISCUSSION:

Mr. Haberman said it is an old structure and they would like to preserve it. If approved however, it should be stipulated that it is only for this structure. Chrmn. Tuozzola said the hardship was stated but the hardship is also being created. Mr. Carey said they haven't created the hardship because the house is there. Chrmn. Tuozzola said they could reconfigure the plan or not have the rear lot. Mr. Carey said but then they wouldn't be able to develop their property like someone else could. If they tear the house down, they could get 6 lots – if they don't tear the house down, they could get 4 lots. Mr. Vaccino said they are trying to create lots for an economic benefit to themselves and that is not a hardship.

Mr. Vaccino made a motion to deny with Mr. Nichol seconding. The motion carried 4-1 with Messrs. Haberman, Vaccino, Nichol and Tuozzola voting in favor and Mr. Carey voting against.

4. **5 Gulf Pond Lane** (Zone R-10) Bruce Blake, owner – request to vary Sec. 3.1.4.1 rear yard setback to 10.4' in lieu of 25' required for existing residence to remain and construction of addition. CAM received. Map 37, Block 588, Parcel 10.

Bruce Blake, 5 Gulf Pond Lane aka 5 River Edge, is a 1.699 acre property with a main house that was constructed circa 1911 and a rear house that was renovated from a carriage house also built in 1911, but renovated in the 1920's. In June of 1975, he and his wife purchased the property from the estate of Wilbur Evans, who had planned on creating a small development called River Edge Estates. The engineering maps show a truncated sewer line that ends on Gulf Pond Lane that is noted to River Edge Estates. That line has not been extended to River Edge but is scheduled as an in-fill projected for 2012. They would like to continue to live there in their retirement years. In 2006, surveyor Scott Mundy, was hired to draw up an accurate survey to start the process of designing and building a suitable retirement home. His daughter and her family would live in the family home and an addition would be built to the existing rear lot house for himself and his wife. An architect was hired in 2009, to plan the extension to the house in the rear that would accommodate one story living. In February of 2011, the City Planner suggested the property could be split into two lots for the two homes, if Gulf Pond Lane was extended 30' and an accessway provided. This accessway would be designed to be not only a driveway but a location for the necessary utilities. Within the last month, it was discovered that what was thought to be the side yard was in fact the rear yard. A variance is being requested to leave the one hundred year old structure where it is and to build the addition. It is needed to keep the existing line of the house and to leave as much of the yard open for a play area for the grandchildren.

Mr. Haberman asked if there were two lots there already to which Mr. Blake said he has gone to Planning & Zoning and they have approved the split but he still needs the variance. There are two houses on one lot and has been that way for years.

Ms. Kuchta, in answer to Chrmn. Tuozzola's question, said Mr. Blake received approval at the last Planning & Zoning meeting for a subdivision. Mr. Blake was required to extend Gulf Pond Lane to River Edge and thereby creating direct access from Gulf Pond Lane into both properties, thus creating frontage on the lots and the need for the variance on the rear yard setback which Mr. Blake thought was his side yard.

Chrmn. Tuozzola asked how long the house would be with the addition.

Mr. Blake said just inside 100'.

Chrmn. Tuozzola asked if any consideration was given to moving the addition into the front yard to which Mr. Blake said he was trying to leave as much of the front yard open as he could.

OPPOSED:

Daniel Eckert, 115 Wilcox Road, said he was against the proposed addition and thought it should comply with the Zoning Regulations. He had concerns with drainage, his privacy and his views. The open space and the natural beauty were two of the reasons he bought his home here and wanted to raise his family there. This large structure would deter from these features.

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Victoria Stillings, 39 Morehouse Avenue, was opposed to the variance request. When requesting subdivision approval, it should not be tied to a variance request a week later. Even though it needs a variance for the existing home, it should not be approved for the addition. There is no hardship for the addition, as there is plenty of land to build the addition and still meet the setback requirements.

REBUTTAL:

Mr. Blake said the property is located in an R-10 zone but consists of 1.699 acres. He is not building cluster housing or making small building lots.

The hearing was closed.

DISCUSSION:

Mr. Nichol thought because of all the land available, the addition should be moved so it would be more compliant. Mr. Haberman agreed the addition should be reconfigured. Mr. Vaccino asked if there needed to be one decision for the existing structure and one for the addition to which Ms. Kuchta said the Board could split the motion - one for the addition and one for the existing house. Or the Board could grant the whole request or deny the whole request. Mr. Carey added the Board could also deny it without prejudice so it could be reconfigured. Mr. Haberman thought splitting the motion would be best.

Mr. Carey made a motion to deny without prejudice with Mr. Haberman seconding. The motion carried unanimously with Messrs. Carey, Haberman, Vaccino, Nichol and Tuozzola voting.

5. **21 Richard Street** (Zone R-5) Philip Y. Zaichuk & Elizabeth L. Stocker, owners – request to vary Sec. 3.1.4.1 side yard setback to 2.15' in lieu of 4' required to repair or replace existing garage. CAM received. Map 30, Block 638, Parcel 8.

Elizabeth Stocker, 21 Richard Street, said she and her husband purchased the home in 1989 and in 2005 the house was lifted. The house was not damaged by Storm Irene, however, their garage was. The garage has been in existence since 1928 and they would like to repair it or if need be, rebuild it. The footprint of the garage would remain the same along with the potting shed attached to the side of the garage. Because it exists within the setbacks, they need a variance to repair it. Their hardship is the narrowness of the lot.

Chrmn. Tuozzola asked if the shed would be kept to which Ms. Stocker answered it is all one structure.

There being no one to speak in favor or opposition, the hearing was closed.

DISCUSSION:

Mr. Carey said there was no problem as the footprint would remain the same.

Mr. Haberman made a motion to approve with Mr. Nichol seconding. The hardship is the size of the property and the structure that is existing. They are only repairing what is currently there. The motion carried unanimously with Messrs. Carey, Haberman, Nichol, Vaccino and Tuozzola voting.

6. **99 Melba Street** (Zone R-5) Thomas B. Lynch, attorney, for James A. and Denise A. Secondi, owners – request to vary Sec. 3.1.4.1 side yard setback to .8' in lieu of 4' and front yard setback to 1.5' in lieu of 10' required to repair existing garage. Vary Sec. 3.1.4.1 to 1.5' in lieu of 4' required to repair existing shed. CAM required. Map 29, Block 587, Parcel 33.

Attorney Thomas Lynch, 63 Cherry Street, said the owners have owned the property since 2002. It is located in the Bayview Beach section which was hard hit during Storm Irene. There are 4 or 5 residences that were completely destroyed. The owners would be taking down the existing house and rebuilding a new one. They are here tonight for variances for the garage and the shed. The garage has been there since the 1920's and the shed for at least 40 or 50 years. The lot is narrow. Both structures would be repaired or replaced. The family also owns the neighboring lot so it would not be a problem to keep the shed where it is located. There would be no expansion of either existing structure.

Chrmn. Tuozzola asked if the house was going to be rebuilt and raised, why not put the garage under the house.

Atty. Lynch said they want to have the maximization of the two levels for living space. Also, the elevation from the street to the house wouldn't allow for a garage under. There is a considerable elevation change of about 8'.

Chrmn. Tuozzola noted the shed looks like it is brand new. He wondered if the shed could be moved away from the property line and whether a permit was pulled for it.

James Secondi, 99 Melba Street, said the shed was constructed by them a number of years ago. The garage has been there since at least 1964. Since they would be doing more than 50% reconstruction, all non-conforming structures must be made conforming. There was no permit pulled for the shed. The parking is very limited on Melba Street, so they are trying to maximize the parking area on their lot.

Mr. Nichol asked if the shed could be moved behind the garage.

Mr. Secondi said there is a large tree about 3' away from the garage. He added he put the shed close to the property line because he is the owner of the neighboring property and so as not to intrude on the neighbors on the other side.

Mr. Carey said he didn't have a problem with the garage but he did have a problem with the shed. There was no permit pulled for it and just because they own the property now, doesn't mean they couldn't sell it tomorrow.

Mr. Vaccino asked the dimensions of the shed to which Mr. Secondi said 8'x10'. He asked if there were any thoughts to altering the size of the garage to add some storage space.

Mr. Secondi answered no, they were just looking to simply repair the exterior of the garage – the interior is fine.

There being no one to speak in favor or opposition, the hearing was closed.

DISCUSSION:

Mr. Vaccino said there has to be somewhere else to put the shed. Chrmn. Tuozzola said the Board could split the motion.

Mr. Carey made a motion to split the motion with Mr. Nichol seconding. The motion carried unanimously.

Mr. Carey made a motion to approve the garage with Mr. Haberman seconding. The motion carried unanimously with Messrs. Carey, Haberman, Vaccino, Nichol and Tuozzola voting.

Mr. Carey made a motion to deny the shed with Mr. Nichol seconding. The reason for denial is the shed never received a permit and there is no hardship. The motion carried unanimously with Messrs. Carey, Haberman, Vaccino, Nichol and Tuozzola voting.

7. 29 Baldwin Street cor. Lenox Street (Zone R-7.5) Andrew J. Flanagan, appellant, for Leszek and Joanna Lewczak, owners – request to vary Sec. 3.1.4.1 front yard setback to 16.9' in lieu of 20' required and vary Sec. 11.2 to 728 sq. ft. in lieu of 708.3 sq. ft. allowed to replace existing garage. CAM required. Map 19, Block 11, Parcel 1.

Postponed to December 13, 2011.

C. TABLED ITEMS

Ms. Kuchta said the one item on Baldwin Street would be heard in December.

D. OLD BUSINESS

E. NEW BUSINESS

F. STAFF UPDATE

G. ACCEPTANCE OF MINUTES FROM OCTOBER 11, 2011 HEARING

The minutes were accepted unanimously.

H. ACCEPTANCE OF APPLICATIONS FOR DECEMBER 13, 2011 HEARING

Ms. Kuchta said there are three variance applications and one appeal of the Assistant City Planner for the December meeting so far.

The meeting was adjourned at 9:36 p.m.

Attest:

Rose M. Elliott
Clerk ZBA