

Minutes, Public Hearing of Zoning Board of Appeals Meeting held 10 November 2015

The Regular Meeting of the Zoning Board of Appeals of Milford, CT, was held on Tuesday, 10 November 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), Sarah Ferrante, William Soda, John Vaccino

ALTERNATES PRESENT: Gary Dubois, Robert Thomas

MEMBERS/ALTERNATES ABSENT: Alison Rose Egelson

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

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.

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 addressed the board. He reviewed the history of the property and provided materials in support of his presentation, including stamped building plans and the approved site plan. He noted Joseph Voll's presence, though the property is in Mrs. Voll's name. Attorney Curseaden reviewed a previous variance and a permit from 2007 and provided details about how the house was to be constructed. He said construction on the house was completed in 2008. He referred to letters from then Assistant City Planner Emmeline Harrigan and City Planner David Sulkis revoking a portion of the site plan approval. Attorney Curseaden said there was an appeal attempted at that time. He said the Planning and Zoning Board upheld the revocation, it was litigated, and the City prevailed. He said that the current decision of the Zoning Enforcement Officer (ZEO) had come after no action on the site since 2008. He said the City had waited too long to issue this enforcement order. He referenced state statute, regulations, the principle of estoppel, the doctrine of laches, and case law. He argued that procedures for board review were incorrectly followed, and that approved and permitted activity was later revoked. He discussed the handouts he had provided.

DISCUSSION

Mr. Tuozzola asked how the enforcement order had come about in 2015. **Attorney Curseaden** described a series of events including a complaint. **Mr. Soda** asked if the house was complete and asked whether it had a Certificate of Occupancy (CO). **Attorney Curseaden** said it was complete, but no CO had been issued.

Joseph Voll, 17 Colonial Drive, Monroe, said he bought the house in 1997 with plans to use it for a retirement home. He said a storm in 2006 created a requirement that the house be raised, but instead he hired professionals to build a new house. He said all work was approved except the pool and that a complaint to the CT Department of Energy and Environmental Protection triggered an inspection by Ms. Harrigan, who said the deck must be removed. He said that when he submitted the construction plans, Coastal Resource information was not required. He asserted that the project hadn't harmed coastal resources. He described the costliness of the deck. He said building inspections were satisfied, but not zoning. He asserted that he had done all he was supposed to do. **Attorney Curseaden** clarified enforcement of coastal resource practices over the past 10 years. **Mr. Soda** confirmed that the zoning office approved the site plan.

ZEO Harris addressed the board. He said that everything just presented had already been heard and decided by the courts. He noted that he had given Ms. Greene a full copy of the court document for the record. He said that bringing the appeal was an attempt to re-litigate a settled matter, which should have been taken to the Appellate Court, but had not been. He referred to Sec. 8.8 and 8.9 setting out requirements for COs. He said since the house was not in

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compliance with the zoning regulations, there could be no CO. He said CGS 8-13a did not apply because the conformity with a setback was not at issue. He said 2 reasons existed to uphold his decision. First, the Superior Court found the revocations of the Coastal Area Site Plan and associated zoning permit to be valid. Second, the owner had not complied with the Enforcement Order issued in 24 August 2015. **Ms. Ferrante** asked why the matter had come up now. **Mr. Harris** said he had been asked by the City Attorney's Office to determine the status of the property and whether it was in compliance with the Court's order. **Mr. Tuozzola** confirmed that the date of the court decision was 20 August 2012. **Mr. Haberman** confirmed that enforcement activity is not time-limited.

REBUTTAL

Attorney Curseaden asked to review the handout provided by ZEO Harris. He said an attempt was made to appeal the lower court's decision but was denied. He said the building permit was never revoked. He said the court didn't revoke the zoning permit, only a portion of the Site Plan. He disputed ZEO's interpretation of 8.13a. He said there had been no enforcement action in 7 years. He said the enforcement action did not enforce the court judgment and wondered why a new enforcement action had been undertaken over 3 years after the court decision.

BOARD DISCUSSION

Mr. Tuozzola asked if anyone wished to speak in favor of or opposition to the application. Hearing none, he closed the hearing. He wondered why the action wasn't appealed in Superior Court. **Mr. Haberman** said there was a court judgment with no time limit set for enforcement.

Ms. Ferrante motioned to continue the matter until the December hearing. **Mr. Soda** seconded. The motion carried with **Ms. Ferrante** and **Messrs. Haberman, Soda, Vaccino** and **Tuozzola** voting **with the motion**.

2. **62 Hawley Avenue** (R-5) Ken Procino, owner; Sec. 3.1.4.1 vary rear-yd setback to 0.3' where 5' req, 49.29% bldg coverage where 45% req; Sec. 11.2, accessory bldg to 52.87% of house footprint where 50% is req; Map 71, Block 766, Parcel 4.

Mr. Procino addressed the board. He stated that he had reduced his variance request per the board's suggestions. He said the rear setbacks of neighboring properties were similar to what he was asking to do.

DISCUSSION

Mr. Soda commended Mr. Procino for taking the board's advice.

FAVOR

Jim Ferate, 5 Wall St., said the neighborhood would be improved by this project and that the owner had been considerate of the community.

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

3. **743 East Broadway** (R-5) Matthew Ranado, Martinez Couch Assoc., for Kenneth Keane and Ann Keane, owners; Sec. 3.1.4.1 vary front-yd setback to 9.4' where 10' req, to 4-stories where 3 stories perm; Map 22, Block 474, Parcel 20.

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Richard Couch of Martinez Couch Assoc., Rocky Hill, addressed the board. He stated that Ann Keane was present. He said the property had damage during Storm Sandy and that the house would be elevated to mitigate flood risk. He said the elevation would create a 4th story as finished space. He noted that the front yard provided the only location for an elevator accommodation. He said the information packet included variance history. He said the hardship was the need to elevate the house due to flooding and that the front yard setback request was supported by a medically required elevator accommodation.

DISCUSSION

Mr. Tuozzola confirmed that the height would be 33.7 when raised and that no garage would be provided underneath. **Mr. Haberman** confirmed that the footprint would not be changed. **Mr. Soda** asked if the elevator could come into the first floor. **Mr. Couch** said there would be a loss of living space and that there were constraints imposed by the funding program. **Mr. Soda** confirmed that the house was in both an AE and VE flood zone. **Mr. Vaccino** confirmed that the elevator would only go up to the existing 2nd floor.

FAVOR

Ann Keane, 743 E Bway, said she was having more difficulty climbing steps and knew the house required elevation.

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

4. **691 East Broadway** (R-5) Dan Orth, agent, for Poh Choon Kim and Victor Ng, owners; Sec. 4.1.4 vary north deck/stair to 4.11' where 8' perm to extend deck on north side down entire length of bldg and deck; Map 22, Block 474, Parcel 7.

Dan Orth, 36 North Hill Rd, North Haven, addressed the board. He stated that the request was to extend the stairs and deck from the back of the house to the front. He said the access might be needed in an emergency.

DISCUSSION

Mr. Soda confirmed that the house was under construction and that the walkway would be 4' wide.

Mr. Tuozzola confirmed that there is a special permit exists to build the house on the site plan and that if the variance is approved, the modification will have to be reviewed by the Planning and Zoning Board. **Mr. Soda** confirmed that the front and back stairs would be 4' wide. **Mr. Soda** asked why the stairs needed to be that 4' wide when this is not required by the building code. **Mr. Harris** said the Special Permit allowed the structure to come within 25' of mean high water.

FAVOR

Poh Chung Kim, 691 East Broadway, said the plan was to raise the original house, but they since decided to rebuild. She said the prior approval would not be changed. She said the plan revision added an extra egress. **Mr. Haberman** said the service could be provided but not with so much width. **Mr. Tuozzola** discussed the issue of hardship. **Mr. Haberman** wanted to know the width of the previous house. Ms. Greene provided the previous plan. The board noted an increase in the width of the house. **Mr. Harris** asked to see the Special Permit file which Ms. Greene also provided.

Susanna Li, 716 East Broadway, said neighboring homes have similar structural features.

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BOARD DISCUSSION

Mr. Tuozzola asked if anyone wished to speak in opposition to the application. Hearing none, he closed the hearing. **Mr. Haberman** said he didn't want to set a precedent. He said he thought the request was for a convenience, and did not reflect a hardship. **Mr. Soda** agreed that adding width to the living space was sufficient.

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

B. OLD BUSINESS

C. NEW BUSINESS

D. STAFF UPDATE

E. ACCEPTANCE OF MINUTES FROM 13 OCTOBER 2015 HEARING

Mr. Haberman voted to accept; the motion passed unanimously.

F. ACCEPTANCE OF APPLICATIONS FOR 8 DECEMBER 2015 HEARING

Staff noted 3 applications thus far.

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