

Minutes, Public Hearing of Zoning Board of Appeals Meeting held 14 November 2023

The Regular Meeting of the Zoning Board of Appeals of Milford, CT, was held on Tuesday, 14 November 2023, beginning at 7:00 p.m., 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 advised that Item 1 had been postponed. He asked **Ms. Hirsch** to vote as the 5th member in Mr. Wolfe's absence.

MEMBERS PRESENT: Sarah Ferrante, Gary Montano, William Soda, Joseph Tuozzola (Ch)

ALTERNATES PRESENT: Gary Dubois, Carmina K. Hirsch

MEMBERS/ALTERNATES ABSENT: Mike Smith, Chris Wolfe

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

CONSIDERATION OF AGENDA ITEMS

1. **72 Westport Place** MBP 85/924/1H; R-30; Thomas Lynch, Esq. for James Cottrell, owner; Vary 3.1.4.1: south setback from to 7' where 15' req. for addition. East setback to 5' where 10' req. for Accessory Structure. 4.1.1.1: Front-yard setback to 25' where 40' req. for pool. 4.1.4: Front-porch projection to 5.8' where 4' permitted. 4.1.4: Rear deck projection to 6.3' where 4' permitted. 4.1.5: Terrace projection to 8.9' where 15' permitted in front yard. Survey, Codespoti & Associates, 7/25/23, revised 9/20/23. **POSTPONED**
2. **11 Mont Street** MBP 70/739/40; R-5; Brenda Kirtopoulos, agent, for Anna DelFranco, owner; Vary Sec. 3.1.4.1 front-yard setback to 2' where 8' required to convert porch to living space; vary 4.1.4. rear-yard projection to 3.5' where 16' permitted to construct rear porch/steps; survey by J. Codespoti, dated 9/7/23.

Ms. Kirtopoulos, Building Concepts, 302 East Main Street, Stratford, addressed the board. She reviewed the property characteristics and noted that the porch had been enclosed at an unknown length of time. She said hardship was meeting the front and rear setbacks to enclose the existing porch and convert it to living space. She stressed that the footprint and height would be unchanged. She said existing footings would be used and the front door would remain unchanged. She said the plan would not have a negative impact on neighbors. She said the rear variance would decrease the nonconformity.

DISCUSSION

Mr. Tuozzola confirmed with the applicant that the porch would be incorporated into the house. Mr. Soda asked why a variance was needed. **Mr. Harris** said it was due to the difference in requirements between 4.1.4 vs 3.1.4.1.

BOARD DISCUSSION

Mr. Tuozzola asked if anyone wished to speak in favor of or in opposition to the application; hearing none, closed the hearing and asked for a motion.

Ms. Ferrante moved to **approve** the request to vary 4.1.4. rear-yard projection to 3.5' where 16' permitted to construct rear porch/steps; survey by J. Codespoti, dated 9/7/23.

Mr. Soda seconded.

Discussion: **Ms. Ferrante** said she felt the renovation was reasonable and included a decrease in the nonconformity.

The motion passed with Mss. Ferrante and Messrs. Dubois, Montano, Soda, and Mr. Tuozzola voting with the motion.

3. **185 Rogers Avenue** MBP 36/416/12; R-5; John and Claudia Lynch, owners; Vary Sec. 3.1.4.1 side-yard setback to 2.6' where 5' required for addition; survey by R. Plain, dated 3/4/22, rev. 10/17/23.

John Lynch, 185 Rogers Avenue, addressed the board. He said the house had only 1-story and was very small. He then described the proposed improvements, which he characterized as modest. **Mr. Ferrante** confirmed that the size of the addition was 20 sf.

DISCUSSION

Mr. Tuozzola confirmed that the side-yard nonconforming setback was being extended.

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BOARD DISCUSSION

Mr. Tuozzola asked if anyone wished to speak in favor of or in opposition to the application; hearing none, closed the hearing and asked for a motion.

Ms. Ferrante moved to approve the request to vary Sec. 3.1.4.1 side-yard setback to 2.6' where 5' required for addition; survey by R. Plain, dated 3/4/22, rev. 10/17/23.

Mr. Soda seconded.

Discussion: **Ms. Ferrante** said she thought the request was reasonable due to the narrow lot and the extension of the existing house.

The motion passed with Ms. Ferrante and Messrs. Dubois, Montano, Soda, and Mr. Tuozzola voting with the motion.

4. **46 Marshall Street** MBP 63/934/11; R-18: Established Contractors, LLC, owner; Vary Section 3.1.4.1 side-yard setback to 9.75' where 15' required for addition; survey by F. D'Amico, 10/19/23.

William McCallister, 255 Nemergut Drive, Stratford, addressed the board. He said wanted to add space to the master bedroom.

DISCUSSION

Mr. Ferrante confirmed the survey showed the proposed addition.

BOARD DISCUSSION

Mr. Tuozzola asked if anyone wished to speak in favor of or in opposition to the application; hearing none, closed the hearing and asked for a motion.

Ms. Ferrante moved to approve the request to vary Section 3.1.4.1 side-yard setback to 9.75' where 15' required for addition; survey by F. D'Amico, 10/19/23.

Mr. Soda seconded.

Discussion: **Ms. Ferrante** said she felt it was a reasonable request.

The motion passed with Mss. Ferrante and Messrs. Dubois, Montano, Soda, and Mr. Tuozzola voting with the motion.

5. **187-189 Hillside Avenue** MBP 59/795/69; Kevin Curseaden, Esq., for R-5; S. Anand, owner; Appeal the Decision of the Zoning Enforcement Officer and Chief ZEO in accordance with the provisions of section 9.2.1 regarding 10/3/23 decision to revoke 2-family Certificate of Zoning Compliance.

Attorney Curseaden, 3 Lafayette Street, addressed the board. He said he would review his submitted exhibits and talk about case law regarding difficulties in determining intent which was shy CGS 8-2 was revised several years ago. He said he researched and reviewed Sanborn maps and the original 1890s-era map indicating 2 houses on the site until the 1960s when one was demolished but the remaining house was a 2-family use as evidenced on assessor field cards he submitted. He referred to an email from an expert saying the statute saying that even a long lapse in implementing a use doesn't negate it. Attorney Curseaden stressed that an affirmative intent must be expressed to abandon or not reestablish a use. He said the property was still taxed as 2-family and being used as a single family with an accessory unit now, after the previous 2-family house was demolished in 2016. He reviewed submitted exhibits showing that there was a previous Certificate of Zoning Compliance (CZC) for a 2-family house, that his client bought the house based on it being listed as a 2-family, and that the property has 2 addresses. He reviewed the evidence he had submitted, including a September 2024 CZC by Mr. Harris agreeing that the property was a zoning-compliant 2-family house. He stated that his client, whom he worked with in researching the property's purchase, had no reason to suspect that the property was anything other than a 2-family use—the change in classification only came up after Mr. Anand purchased the property. Attorney Curseaden read from the revised 8-2 statute: "Such regulations shall not provide for the termination of any nonconforming use solely as the result on non-use for a specified period of time without regard to the intent of the property owner to maintain that use. Such regulations shall not terminate or deem abandoned a nonconforming use, building, or structure unless the property owner of such use, building or structure voluntarily discontinues it an such discontinuance *is accompanied by an intent not to reestablish such use, building, or structure and the demolition or destruction of the use, building, or structure shall not by itself be evidence of the property owner's intent to not reestablish such use, building or structure.*" [emphasis added by Attorney Curseaden] He said that after Mr. Anand began rehabbing the house as a 2-family, he thereafter received a determination from Joseph Griffith (DPLU Director) that because it was demolished, the use was abandoned. He drew a comparison about the difficulty of enforcing

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regulations where a Zoning Enforcement Office (ZEO) must interpret an owner's intent. He argued that different intentions can be inferred by different enforcement individuals at different times, which is why the statute was change. He said that use abandonment should be put on land records, but there was nothing to that effect discovered during the title search to indicate the property was no longer a 2-family use. He said he respectfully disagreed with ZEO Harris and Director Griffith. He summarized the previous points he had made that all records confirmed a 2-family use, saying it is a property rights issue.

Mr. Tuozzola confirmed that the house was classified as a single-family-plus-accessory-unit in 2016. **Ms. Ferrante** confirmed that even though the demolition was in 2016 and the statute was changed in 2018, it still applied retroactively in this case. She also discussed demolition under the old version of the statute without written intent. She also learned that one set of utilities is currently in use. **Mr. Soda** confirmed that demolition doesn't terminate the use without written confirmation. There was discussion of an old practice where people would leave a wall standing to preserve a nonconforming setback, but that practice is unnecessary to preserve a use. Attorney Curseaden reiterated that he doesn't think one person should interpret another's intent never to reestablish the use. He allowed that confusion exists about tax classifications versus zoning use classifications. **Mr. Tuozzola** felt that if a single-family use was intended, the owner would be inclined to change the tax assessment. Attorney Curseaden said owners may not understand the implications of changing the way the property was used, but there must be written intent to abandon a use. There was discussion of the way the property is metered. He noted that in another purchase and development, Mr. Anand was asked to put his intention to reduce density in writing.

Mr. Harris read the city's position statement into the record. **Ms. Ferrante** asked to see the document on the display screen. She, **Mr. Soda**, and Mr. Harris discussed whether advertising a property for sale is a necessary step to abandon or resume a nonconforming use, as well as how to interpret an ADU and abandonment intent. **Ms. Hirsch** confirmed that when the 2016 permit was approved, the city determined that a 2-family dwelling became a 1-family dwelling. She referred to the statute Attorney Curseaden referenced as clearly stating that demolition alone doesn't show intent. **Mr. Harris** noted that the language was added in 2018. **Ms. Hirsch** countered that the same owner had later marketed it as a 2-family, saying that would seem to remove any intent to abandon the use.

Attorney Curseaden said the discussion illustrated to what degree intent is speculative. He said the property was a 2-family use for 110 years, so if the owners wanted to initiate a single-family use, they probably would have asked the tax office to reduce their tax burden. He said the reasoning behind changing the statute was to eliminate demolition as an expression of intent. He said many attorneys put intentions on land records, and that he has counseled people to do this under various circumstances.

Mr. Tuozzola asked if anyone wished to speak in favor of or in opposition to the application; hearing none, closed the hearing and asked for a motion.

Ms. Ferrante moved to ***overturn the decision of the Zoning Enforcement Officer*** in accordance with the provisions of section 9.2.1 regarding 10/3/23 decision to revoke the 2-family Certificate of Zoning Compliance.

Mr. Montano seconded.

Discussion: **Ms. Ferrante** said she could see both sides but believed more evidence showed an intent to maintain the 2-family use.

The motion passed with Ms. Ferrante and Messrs. Dubois, Montano, Soda, and Tuozzola voting with the motion.

A. NEW BUSINESS - None

B. OLD BUSINESS - None

C. STAFF UPDATE - None

D. ACCEPTANCE OF MINUTES FROM 10 OCTOBER HEARING: Approved unanimously.

E. ACCEPTANCE OF APPLICATIONS FOR 12 DECEMBER HEARING: **Ms. Greene** commended the board for completing its training.

Adjournment was at **8:11 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