

## **AMENDED Minutes, Public Hearing of Zoning Board of Appeals Meeting held 8 December 2015**

The Regular Meeting of the Zoning Board of Appeals of Milford, CT, was held on Tuesday, 8 December 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, Alison Rose Egelson

**MEMBERS/ALTERNATES ABSENT:** 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 for conflicts of interest for board members with any agenda items; none were raised. He noted that a vote was scheduled for 12 Francis Street under Old Business but Attorney Curseaden requested postponement until the January meeting. The request was moved, seconded and passed unanimously.

### **B. CONSIDERATION OF AGENDA ITEMS**

1. **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 in a letter req a variance to install a fence dated 3 September 2015; Map 60, Block 743, Parcel 2.
2. **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.

**Attorney Willinger** of Willinger, Willinger and Bucci, Bridgeport, addressed the board. He submitted the variance notification materials. He asked that both items be joined for the purposes of presentation. **Mr. Tuozzola** stated that the variance would be contingent on the outcome of the appeal. **Attorney Willinger** agreed and began to review his original presentation. He said ZEO Harris's questioning the legality of Lot 2 led the board to a vote to deny without prejudice while requesting proof of ownership. **Attorney Willinger** asked that the October testimony be incorporated into the December record. He submitted a copy of a land use case with a ruling on continuing a hearing. He returned to the argument he made about Section 11 of the Milford Zoning Regulations with regard to frontage. He reviewed his interpretation of Section 4.7 and reiterated that fences are not structures. He agreed that the "No Trespassing" signs would require variances. He reviewed the content of the binders passed out at the October meeting. He stressed that the Parcel 2 property is unique in several respects and that its location tends to invite trespassing. He said the parcel's location near a public beach was sufficient condition for granting a variance. He said the variance would be consistent with the City's Plan of Conservation and Development. He noted a petition in support and the Borough of Woodmont's warden's letter of support. He revisited the challenge to ownership of Parcel 2 and reviewed attachments to Mr. Harris' October handout where Mr. Harris referred to a deed that did not call out Parcel 2. Attorney Willinger said on the next page of the land records, Parcel 2 was cited as being created at the same time as Parcel 1. He handed out copies of a title search referencing Parcel 2. He noted that the title searcher determined that Parcel 2 was held in an unbroken chain of title from 1900 until 1977 when Attorney Willinger's clients obtained titled to it. He handed out a deed to a neighboring parcel held by Joseph and Delores Hannon (110 Beach Avenue) with a reference to land between the road and the water. He said the lots were created in 1896 with the creation of the road. He stated that this evidence proved that his clients own Parcel 2. He referred to Sec. 5.8.4.8.2 regarding good and sufficient cause to grant the variance, which he said was required to stop trespassing on the property. He reserved the right of rebuttal.

### **DISCUSSION**

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**Mr. Tuozzola** noted that the parcel referenced as belonging to the Hannons was eroded. **Attorney Willinger** noted the presence of the Hannons and invited them to comment. He said other nearby homeowners formerly had similar parcels which they had conveyed to the City to avoid liability. **Mr. Soda** asked about taxes being paid on the property. **Attorney Willinger** said no separate taxes were assessed on the small parcel. **Mr. Soda** asked how much land the tax office says is specific to the property. **Attorney Willinger** said the tax issue was irrelevant. **Mr. Tuozzola** asked why no police action had been taken. **Attorney Willinger** said in the past police action was requested, but there had been no resolution of the problem and the trespassing was becoming intolerable. **Mr. Soda** asked if the area had a beach patrol. **Attorney Willinger** said yes, but avoiding confrontations were why the owners wanted private property signage.

### **FAVOR**

**Joe Hannon**, 110 Beach Avenue, said he supported the proposal. He said he owns the adjacent seawall and sidewalk. Regarding the eroded piece of land questioned by Mr. Tuozzola, Mr. Hannon said if property was restored to pre-Irene levels, it could be reclaimed as a lot, but that he had chosen not to do so.

**Delores Hannon**, 110 Beach Avenue, noted that the public beach sign had been removed by the Borough. She said she thought the sign had created confusion. She said the police responded to problems in the area a number of times, but unless the police were convinced it was private property, they were reluctant to act. She conceded that the area is good for fishing, but that there is a public area for fishing.

### **ZONING ENFORCEMENT OFFICER**

**ZEO Stephen Harris** asked the board to keep the hearing open until January to allow him to review the new information presented by Attorney Willinger.

### **BOARD DISCUSSION**

**Mr. Tuozzola** closed the hearing. **Mr. Soda** motioned to keep the hearing open until next month. **Mr. Haberman** seconded. The motion carried with **Ms. Ferrante** and **Messrs. Haberman, Soda, Vaccino** and **Tuozzola** voting with the motion.

3. **12 Thompson Street** (R-5) John Quick, owner; Sec 3.1.4.1 side-<sup>1</sup>/<sub>4</sub> setback to 3.1' where 5' req. for new garage; Map 35, Block 441, Parcel 21.

**Mr. Quick** addressed the board. He said the lot was very narrow and that he had staged the logistics of getting in and out of his proposed garage using cones. He stated that his neighbors were in favor of the project and that he wanted to preserve as much of his backyard as possible. He said the shed was to be removed and the garage used for storage.

### **DISCUSSION**

**Mr. Haberman** confirmed that the garage would be connected to the house and that the garage would have no second floor, just storage space. **Mr. Soda** asked about rotating the garage to the street. **Mr. Quick** said this would require backing out of the driveway. He noted that cars were often parked tightly on the street, making it difficult to back out. **Mr. Vaccino** asked how many neighbors had garages. **Mr. Quick** said 4 houses used a setup similar to what he proposed, plus a few others with straight driveways. **Mr. Tuozzola** discussed other placements. **Mr. Quick** noted the tapering of lot.

**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** motioned in favor of application. **Mr. Soda** seconded. **Mr. Haberman** 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.

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4. **47 Turnor Avenue** (R-7.5) John Bagwell and Mardele Bagwell, owner; Sec 3.1.4.1 side-yr setback to 2.9' where 5' req. to construct 2 bedrooms, entryway, full bath; Map 12, Block 66, Parcel 21.

**Mr. Bagwell** addressed the board. He stated that the house is currently 700 square feet and that he has 2 small children and needed space.

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

5. **990 Naugatuck Avenue** (HDD) Stephen Bellis, Esq., attorney, for Recycling, Inc., owner; Sec. 9.2.1: Appeal the Decision of the Zoning Enforcement Officer dated 27 October 2015; Map 40, Block 300, Parcel 2.

**Attorney Bellis** of The Pelligrino Law Firm, New Haven, addressed the board. He stated that the violation related to asphalt millings had been created by road work and that there was a junk car violation. He referred to the prior use of the site as a salvage operation and that the articles referenced as being in violation by Mr. Harris were actually consistent with the use. He said Judge Hiller's decision found that local zoning laws are preempted by the Solid Waste Act. He provided photos in support of a claim that the cars cited on the lot were part of an art project. He noted the presence of Darlene Chapdelaine, who handed out information binders. He referred to a map that was dated August 13, 1913. He said the property had ongoing litigation and asked to incorporate the minutes of the July ZBA hearing. He asked the board to hear testimony from Ms. Chapdelaine. **Mr. Tuozzola** asked whether permission was given to the dump millings at the site. **Attorney Bellis** said a contractor hired by the City of Milford created the millings.

**Darlene Chapdelaine**, 86 Lake Rd, Dayville, reviewed a 2009 CT DEP handout that defined the clean fill regulatory process for millings. She said asphalt millings aren't regulated by local municipalities and were brought to the site to repair the existing driveway. She said Judge Hiller's decision exempts the material, that the millings came from a Milford project, and that the use of them is consistent with goals for reuse and recovery of construction material. She said she had explained the use of the millings to Mr. Harris. She referred to Section 7 regarding solid waste management. She said fuel tanks on the site are regulated by CT DEEP and had been part of her previous operation. She said the millings don't pose a hazardous waste threat. She said the site had the same use since 1913.

**Attorney Bellis** referred to Mr. Barrett's affidavit regarding the preexisting nonconforming use since 1913 and stated that the state preempts local regulations. He said the photos don't show a hazardous condition. He said he didn't know why an action was required.

**ZEO Harris** referred to a handout he provided. He said CT DEEP revoked the operating permit at the site, so references to what is permitted there were moot. He said the signed and notarized application was dated 16 days after the appeal and was not timely. He said no evidence had been submitted that uses were legally established. He said nonconforming uses could not be allowed to increase. He referred to the legal definition of abandonment and said the applicant hadn't demonstrated that a nonconforming use ever existed, and further, if it had existed, it has long been abandoned.

### **DISCUSSION**

**Mr. Tuozzola** asked for clarification of what the owner was required to do. **Mr. Harris** referred to his order. **Mr. Soda** confirmed that the use is not legal and even if it were, had been abandoned. **Mr. Harris** walked the board through the

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order's reference to the regulation. **Mr. Soda** confirmed that the millings were both piled and spread out. **Mr. Harris** described his understanding of how the millings were delivered. **Mr. Haberman** asked if the timeliness of the application made the whole exercise irrelevant. **Mr. Soda** commented that the area looks like a junkyard in the photos.

### **REBUTTAL**

**Attorney Bellis** produced a receipt for payment with the application dated 10 November, saying it indicated timeliness. He produced affidavits from Mr. Barrett and Ms. Chapdelaine affirming continuing use. He said the use is under appeal. He produced a letter from ZEO Harris permitting use as a recycling facility. He read a regulation dealing with recycling that included a reference to a junkyard. **Mr. Soda** asked how the site can be called a recycling facility if the permit has been revoked. **Ms. Chapdelaine** described jurisdictional issues as she understood them. She said the Hiller ruling is the only authority that pertains.

**Mr. Vaccino** asked when the last time business activity actually occurred on the site. **Attorney Bellis** said the permit is under appeal and activity can't be conducted. He said the owners' intention was not to abandon the use.

**ZEO Harris** responded to new information. He noted that the Certificate of Zoning Compliance that **Attorney Bellis** referenced had been rescinded. He said determination of the legal status of the permit is with the courts, not the ZBA.

**Mr. Tuozzola** asked the board if anything else was needed before the hearing was closed. **Mr. Vaccino** asked about decorating the cars and whether that was a form of recycling. **Mr. Tuozzola** said there was a difference between the art cars and the junk cars. **Mr. Vaccino** asked if there is a body shop now. **Mr. Tuozzola** said the heart of the matter was whether the state or city had standing to make a judgment.

**Mr. Tuozzola** closed the hearing. **Mr. Haberman** said the decision hinged on whether the use had been abandoned. Short of tangible proof of continued recycling, Mr. Haberman said he was inclined to believe that the use had been abandoned. **Ms. Ferrante** agreed.

**Mr. Haberman** motioned uphold the ZEO. **Mr. Vaccino** seconded. The motion carried with **Ms. Ferrante** and **Messrs. Haberman, Soda, Vaccino** and **Tuozzola** voting with the motion.

6. **751 East Broadway** (R-5) Thomas Lynch, Esq., attorney, for Nicholas Macero, owner; Sec. 3.1.4.1 vary west side-yd setback to 5.2' where 10' req; 4.1.4 west side-yd proj to 1.8' where 8' perm, and 1.3' where 8' perm for landing/stairs and deck to relocate and elevate existing home; Map 22, Block 474, Parcel 23.

**Attorney Lynch** asked that the board postpone this item to allow for changes to the proposed plans. The board granted his request.

7. **11 Waterview Landing** (R-12.5) Robert Virgalla and Becky Virgalla, owners; Sec 3.1.4.1 front-yd setback to 11.9' where 30' req; 4.1.4 north side-yd proj to 7.1' where 8' perm for upper deck and screened-in porch, and front-yd proj of 11.5' where 25' perm for front landing; Map 09, Block 67, Parcel 18.

**Mr. Virgalla** addressed the board. He stated that his architect, Ted Dembroski, was present to answer any questions. He described his relationship with Milford and his issues with the house he and his wife purchased. He provided handouts and described the proposed changes to the house. He said the home was originally on Deerwood Avenue where a marine business existed, that the land was later developed as housing, and that a road was added. He provided surveys to show how the road's cul de sac changed the lot's size and compromised the original setbacks. He said the zone was also changed, requiring deeper setbacks. He said the house was for retirement and that he wanted to accommodate safety features. He described the proposed change to the side-yard setback. He said the existing noncompliant pool

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would be replaced with a smaller conforming pool.

### **DISCUSSION**

**Mr. Soda** confirmed that the original zone of the house was changed and that setbacks were affected by the road. **Mr. Haberman** confirmed that the square footage of the lot was 11,000, slightly under the conforming lot. **Mr. Soda** confirmed that the screen porch was being rebuilt in the same footprint.

### **FAVOR**

**Ms. Greene** noted that she had received 2 emails in support.

### **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. Vaccino** motioned in favor of application. **Mr. Soda** seconded. **Mr. Vaccino** supported his motion by reason of hardship of the lot, exactly per the submitted materials. 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**

Mr. Harris noted that Ms. Greene had been named the Mayor's Employee of the Month. Ms. Greene thanked Mr. Harris and the board for their kind wishes and noted that the Planning and Zoning Office staff is a great team.

### **E. ACCEPTANCE OF MINUTES FROM 11 NOVEMBER 2015 HEARING**

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

### **G. ACCEPTANCE OF APPLICATIONS FOR 12 JANUARY 2016 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