

## **Minutes, Public Hearing of Zoning Board of Appeals Meeting held December 10, 2013**

The Regular Meeting of the Zoning Board of Appeals of Milford, CT, was held on Tuesday, December 10, 2013, 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 may have required Coastal Area Site Plan Reviews or exemptions.

### **A. PLEDGE OF ALLEGIANCE/ROLL CALL**

**MEMBERS PRESENT:** Joseph Tuozzola (Ch), Howard Haberman (Sec), Richard Carey, John Vaccino

**ALTERNATES PRESENT:** Gary Dubois, William Soda

**MEMBERS/ALTERNATES ABSENT:** John Collins, 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 announced that this was a session of the Zoning Board of Appeals, not to be confused with a Special Meeting of the Planning and Zoning Board scheduled for the next night. He said that because Mr. Collins could not attend the meeting, **Mr. Soda** would provide the fifth vote for the evening. He asked for known conflicts of interest for board members with any of the items on the agenda; none were raised.

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

1. **7 Point Beach Drive** (R-7.5) Carol Greunke, agent, for Orville Greunke, owner; Vary Sec. 3.1.4.1 front-yd setback to 13.12' where 20' req; 4.1.4 east-side proj to 2.5' where 4' perm, front-yd proj of 13.16' where is 16' perm. Map 30, Block 636, Parcel 3

**Ms. Laura Jubenville**, 209 Pond Point Avenue, addressed the board. Ms. Jubenville stated that her parents' house was badly damaged in Storm Irene and had been demolished. She said the hardship behind the variance request was that the house had to be moved 7' to avoid a more severe flood zone. She stated there would be no changes made to the size of the house. She said her parents want to return to neighborhood and live in the Point Beach house again.

#### DISCUSSION

**Mr. Tuozzola** confirmed that there is a big empty lot near the home.

#### 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** confirmed that the dimensions of the planned house would be the same, that the lot was narrow and small, and that the house was being moved out of from a more severe flood zone. **Mr. Harris** clarified that the move was taking essentially the same house from a VE-20 zone and putting it into an AE-12 zone.

**Mr. Haberman** motioned in favor of application. **Mr. Vaccino** seconded. **Mr. Haberman** supported his motion by reason of hardship of the small, narrow lot, exactly as stated in the record. The motion carried with **Messrs. Carey, Haberman, Soda, Vaccino** and **Tuozzola** voting **with the motion**.

2. **137 Milford Point Road** (R-5) Thomas Lynch, attorney, for Christine Timko owner; Vary Sec. 3.1.4.1 south-yd setback to 2.1' where 10' req, north-yd setback to 2' where 5' req; 4.1.4: south front-porch proj to 1.5' where 8' is perm, north proj to 2' where 4' is perm, north rear-deck proj to 2' where 4' is perm, south proj to 4.2' where 8' is perm; 3.1.1.1 density from 1-fam to 2-fam to reconstruct existing storm-damaged home. Map 6, Block 84, Parcel 43

**Attorney Lynch**, 63 Cherry Street, addressed the board. He said Ms. Timko was seeking the variance as a first step in a series of actions to repair damage from Sandy. He described the lot and house and noted the proximity to Laurel Beach and Laurel Sands Condominiums. He said there is much nonconformity on the existing site. He compared the project to others nearby. He noted that there are 2 houses on the property. He said Ms. Timko had moved into the smaller house after the storm. He said the larger house will be raised. He reviewed the existing survey and proposed

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plans. He compared the proposed size of the house with other new houses in the area, saying there would be no impact to condominium views. He provided additional detail about the plans. He said the lot is extremely narrow, but that side-yard nonconformities would not be increased. He noted letters of support from 7 neighbors including the adjacent property owner.

### **DISCUSSION**

**Mr. Haberman** confirmed that the house is 8' longer than the existing structure, that the width would be the same, and that the decking would cover the existing patio. **Mr. Tuozzola** confirmed that there are 2 houses on the property. He asked Mr. Harris to comment on the existing nonconformities, **Mr. Harris** said the property is currently existing non-conforming for density in a single-family zone. He said the owner wishes to take down 1 house to replace it and leave the other. He asked Attorney Lynch to explain the hardship with regard to density. **Attorney Lynch** referred to the mayor's proposed zone regulation changes. He noted that if not for the storm, Ms. Timko wouldn't have to ask for a variance. He said Ms. Timko's daughter would reside in the 2<sup>nd</sup> home. He noted some discussion with zoning staff. He reviewed instances of how appeals come before the board. **Mr. Tuozzola** discussed the increase in the size of the house and confirmed that there was 50% substantial damage in the larger dwelling. **Mr. Carey** noted that the main reason for the request is the density-of-use variance. **Mr. Vaccino** asked about the residency in both homes. He confirmed that the to-be-rebuilt house was originally built in 1920 and questioned a need to make it larger, if the goal is to replace what was there. **Mr. Soda** pointed out that a width increase existed.

### **FAVOR**

**Mr. Lynch** read the names on 7 letters of support, which are available for review in the Zoning Office file folder.

### **OPPOSITION**

**Attorney Robert Kolesnik**, 49 Leavenworth Street, Waterbury, said he represented David Plaskon, 1A Seaview Avenue, Unit 1. Attorney Kolesnik said Mr. Plaskon objects to the project. He said a large number of variance requests were on the application. He questioned the preexisting multi-family use. He reminded the board that an unusual hardship is required to grant a variance and that the hardship cannot be self-imposed. He said no legal hardship is connected to the lot and that it was not an unusual lot compared with the neighboring properties. He said that the applicant wishes to expand a preexisting nonconforming use. He said any storm damage could be repaired without doubling the size of the house. He said the most egregious variance request was on the waterfront side of house with the addition of 20' 1<sup>st</sup> and 2<sup>nd</sup> floor decks that extend to the seawall. He asked what that had to do with storm damage. He said his client's residence is north of the property and that his view would be completely obscured. He challenged the 2' side yard setbacks and speculated that the proximity is so tight that windows would be restricted from opening out. He questioned parking issues. He said a density variance was not justified by a legal hardship. He questioned whether a CZC existed and questioned the timing and necessity of a Site Plan Review and Coastal Area Management Review.

**Jim Kauders, Unit 10, Laurel Sands Condominiums**, said his view would be severely restricted by the addition of decks and it would affect the value of his home.

**Joan Spoerndle, 1A Seaview Avenue, Unit 2**, said the building was too large. She emphasized the obstruction of views and property value associated with the loss of views.

**Cherie Reichgut, 1A Seaview Avenue, Unit 14**, voiced similar concerns and added concerns about the seawall.

**David Plaskon, 1 Seaview Ave, Unit 1**, said the house was too big. He said he would not have a problem if the house was in the same footprint.

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**Paul Healy, 1 Seaview Ave, Unit 3**, said the proposed change was dramatic and that there was no hardship. He reviewed the history of the site. He said it was a gross expansion of a nonconforming use. He said the property has been in use since Irene. He said the project had an unnecessary increase in size with no parking provided.

### **REBUTTAL**

**Attorney Lynch** said that the houses were built in 1920 prior to zoning regulations. He said variance request was the 1<sup>st</sup> stage of zoning approval process. He said the variances requested were consistent with other rebuilding and remodeling being done in the area. He stressed that the density and side yards are the only variances being requested. He said his client was willing to reduce the scope of the deck, but noted that Milford zoning regulations do not guarantee views. He rebutted Mr. Healey's comments but saying the size of the Laurel Beach condominium could also be seen as too dense a use. **Attorney Lynch** submitted photos of the condominiums, which were shared with **Attorney Kolesnik**.

### **BOARD DISCUSSION**

**Mr. Tuozzola** closed the hearing.

**Mr. Haberman** said he supports a homeowner's right to rebuild, but becomes concerned when expansion occurs.

**Mr. Carey** agreed and said other requests that added even a small amount of area had been denied by the board.

**Mr. Vaccino** agreed, performing calculations that indicated an increase in size that troubled him.

**Mr. Carey** motioned to deny due to lack of hardship and the expanded nonconformity. **Mr. Haberman** seconded. The motion carried with **Messrs. Carey, Haberman, Soda, Vaccino** and **Tuozzola** voting **with the motion**.

3. **0 Westmore Road: M-30/B-613A/L-34 & 37** (R-12.5) Thomas Lynch, attorney, for Field and Son Builders LLC, owner; Vary Sec. 3.1.4.1. front-ym setback to 18' where 30' req, side-ym setback to 5' where 10' req ; 4.1.16.2 construct bldg w/in 25' of a wetland. Map 30, Block 613A, Parcel 34 & 37

**Attorney Lynch** addressed the board. He stated that the submitted plans were for a single family residence on the last lot in a 5-lot subdivision. He said that though the house is in an R-12.5 zone, comparable nearby properties are in R-7.5 or R-5. He said the lot presented a classic example of a hardship, and referred to the recent OConnell v. ZBA ruling, noting that this board's variance decision was upheld by the courts and cited the presence of wetlands. He said that withholding a variance would constitute a confiscatory action because the land is a legal building lot. He said previously built houses have not caused a problem in the adjacent wetlands. He noted that even if a variance were granted, the Inland Wetlands Agency would also review the proposal.

Owner **Warren Field, PO Box 269, Milford**, said all previously built lots conform to R-12.5 setbacks. He said several neighbors had signed a statement of support.

### **DISCUSSION**

**Mr. Haberman** confirmed that there is 80' between the proposed house and previously constructed homes. **Mr. Vaccino** confirmed that house will be same size and style as other homes on the street.

### **FAVOR**

**Attorney Lynch** provided documentation of support for the project from 48, 54, and 58 Westmoor.

### **OPPOSITION**

**Mr. Tuozzola** noted that 2 letters of opposition had been submitted, both from residents Atwater Street.

### **BOARD DISCUSSION**

**Mr. Tuozzola** closed the hearing. **Mr. Vaccino** agreed with Attorney Lynch's assessment of hardship. After a short discussion, there were no issues in dispute, so **Mr. Tuozzola** asked for a motion.

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**Mr. Vaccino** motioned in favor of application. **Mr. Haberman** seconded. **Mr. Vaccino** supported his motion by reason of hardship of the size and orientation of the lot, exactly as stated in the record. The motion carried with **Messrs. Carey, Haberman, Soda, Vaccino** and **Tuozzola** voting **with the motion**.

4. **6 Bayshore Drive** (R-5) Cheryl Warren and Kim Warren, owners; Sec. 9.2.1 Appeal the decision of the ZEO regarding fence on yard that abuts Long Island Sound. Map 29, Block 516, Parcel 3

**Ms. Cheryl Warren**, 6 Bayshore Drive, addressed the board. She said she was first advised that the fence was illegal in 2010. She reviewed for the board the correspondence between herself and the prior ZEO. She noted that the fence separated her property from the Calf Pen Meadow River and that the fence is intended to warn people of a sharp change to a lower grade. She said the river has a strong current in that area. She referred to the mayor's proposed changes to regulations regarding grandfathering and expressed support for this idea. She agreed that the previous fence was damaged over 50%.

### **DISCUSSION**

**Mr. Tuozzola** asked if the fence is ever underwater. **Ms. Warren** said the fence is not, but the groin beyond the fence is often underwater. **Mr. Tuozzola** confirmed that the fence was reinforced and strong; **Ms. Warren** said it was and that at the time she had it repaired, she thought the fence's legality was grandfathered in. **Mr. Tuozzola** confirmed that there were other fences in the neighborhood. **Mr. Haberman** confirmed that the fence is an open wooden style that wouldn't prevent someone from crossing it, although **Ms. Warren** said it provided a visual cue of a change in the landscape.

### **OPPOSITION**

**Mr. Harris** provided a handout with regulatory background. The text had a regulatory definition of fences and included language prohibiting them on the Sound. He said he had consulted with Building Inspection to confirm that the fence wasn't required in that location by building code, which typically regulates safety issues. He confirmed that his predecessor had grandfathered the fence previously. He showed a photo from Civil Air Patrol. He pointed out a progression of photos of the storm depicting the fence's destruction. He noted that there was indeed a safety issue, but said recourse to address this issue existed; that Ms. Warren could apply for a Special Permit for the fence. **Mr. Vaccino** clarified that the fence had to be rebuilt as it was over 50% destroyed by Storm Sandy.

### **BOARD DISCUSSION**

**Mr. Tuozzola** closed the hearing. **Mr. Haberman** said he sympathized with Ms. Warren's safety concern, but was satisfied that the Planning and Zoning Board could address the problem. **Mr. Vaccino** said he agreed that the ZBA wasn't the proper venue to resolve the problem, even though the safety issue is a legitimate concern. After a short discussion, there were no issues in dispute, so **Mr. Tuozzola** asked for a motion.

**Mr. Haberman** motioned **to uphold the ZEO's decision**. **Mr. Vaccino** seconded. **Mr. Haberman** supported his motion by reason of the ZBA not being the proper channel to address the issue. The motion carried with **Messrs. Carey, Haberman, Soda, Vaccino** and **Tuozzola** voting **with the motion**.

5. **23 Platt Street** (R-7.5) Robert Stevens, owner; Vary Sec. 3.1.4.1 to 8.25' where 10' req; 4.1.4 (stairs) to 5.26' where 8' is perm, (porch) to 10.15' where 16 perm, (front stairs) to 9.14' where 16' is perm ' is perm to build new dwelling. Map 30, Block 639, Parcel 39

**Robert Stevens**, 24 Old Farm Road, Woodbridge, CT, addressed the board. He stated that the side-yard variance was no longer required. He said none of his plans would interfere with neighboring views of the Sound, but rather that he is trying to make the best use of a small lot. He noted that his surveyor misread a data-point, and pointed out to the board that the backyard is not 35' but 40'.

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### **DISCUSSION**

**Mr. Haberman** confirmed that the existing house was being raised. **Mr. Tuozzola** asked whether Mr. Stevens' request, if granted, was sufficient to proceed with the current plans. **Messrs. Haberman** and **Vaccino** reviewed details of the plan with Mr. Stevens.

### **FAVOR**

**Joan Stevens**, 23 Platt Street, said she supported the project.

### **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. Haberman** motioned in favor of application. **Mr. Vaccino** seconded. **Mr. Haberman** supported his motion by reason of hardship of the small lot, exactly as stated in the record, while expressing support for building within the same footprint. The motion carried with **Messrs. Carey, Haberman, Soda, Vaccino** and **Tuozzola** voting **with the motion**.

6. **516 Boston Post Road** (CDD-1) Fayeze Ghaly, agent, for Cholewinski Trust, owner; Vary Sec. 6.2.1 Enlarging a non-conforming use; 5.4.2.2 Above-ground fuel tanks w/more than 275 gal.; 5.4.3.1 Gas station use w/in 300' of a res zone; 5.4.2.1: 13,113 sf lot where 22,000 sf is req. Map 64, Block 921, Parcel 9

**Mr. Ghaly** addressed the board. He reviewed his requests for changes to a gas station at the address. He said that although the Zoning Enforcement Officer said the 4 submitted requests were required for Mr. Ghaly's plans, he (Mr. Ghaly) thought only the first was needed. He said the gas station had been located at the same address since 1965. He said the state fire marshal approved the location of the tank.

### **DISCUSSION**

**Mr. Tuozzola** said the main issue was the size of the lot. He and Mr. Ghaly discussed the relative safety of propane and gasoline. Mr. Tuozzola said that while the business idea might have potential, the lot is too small for it, and the residential area was too close. He asked Mr. Ghaly to describe a hardship. Mr. Ghaly said propane is cleaner for the environment.

### **FAVOR**

**Mr. Pete Battaglio, Hocon Gas, 6 Armstrong Road, Shelton, CT**, said the project was forward-looking, met all fire codes, and that there would be training. He said there would be safety barriers and that the location was good. He said there are 5 such stations and their safety standards are very high.

**Mourad Boulas**, (address not given) said he was the 2<sup>nd</sup> partner in this project. He said he uses propane in his home, noting a state limit for residential use, not commercial. He said the size of the proposed propane tank had been reduced substantially to mitigate even a slight hazard. He said the project had been progressing for the past 2 years and was trying to promote the project. He referred to the propane safety track record in California since 1992. He said there were 7 propane fueling stations in CT for private fleets. He said one benefit was the opportunity to educate the public about propane. He said a certified attendant would pump the fuel and only during operating hours.

### **BOARD DISCUSSION**

**Mr. Tuozzola** asked if anyone wished to speak in opposition to the application. Hearing none, he closed the hearing. **Mr. Haberman** expressed concern about the size of the lot for the proposed use. He was also worried about traffic congestion in the area. **Mr. Vaccino** said he saw the business value, but that the hardship had not been defined.

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**Mr. Haberman** motioned to deny the request. **Mr. Vaccino** seconded. **Mr. Haberman** supported his motion by reason of no hardship being proved, exactly as stated in the record. The motion carried with **Messrs. Carey, Haberman, Soda, Vaccino** and **Tuozzola** voting **with the motion**.

7. **140 Bittersweet Avenue M-13/B-134/L-1** (R-5) Christopher Saley, owner (under contract w/L. Pannone); Vary Sec. 3.1.4.1 rear-ym setback to 7.6' where 20' req to elev existing home. Map 13, Block 134, Parcel 1

**Mr. Saley** addressed the board. He stated that the home would be raised to mitigate risk in a VE-15 flood zone and that the lot-line-encroaching garage would be removed. He said the proposal would make the home less nonconforming overall.

### **DISCUSSION**

**Mr. Tuozzola** confirmed that the plan would be further evaluated by the Planning and Zoning Board, as well as a requiring a CAM review. **Mr. Vaccino** confirmed that there would be no living space above the proposed 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 in favor of application. **Mr. Haberman** seconded. **Mr. Vaccino** supported his motion by reason of hardship of the narrow lot, exactly as stated in the record. The motion carried with **Messrs. Carey, Haberman, Soda, Vaccino**, and **Tuozzola** voting **with the motion**.

### **C. OLD BUSINESS**

There was none.

### **D. NEW BUSINESS**

There was none.

### **E. STAFF UPDATE**

**Mr. Harris** reported that they were still awaiting a vote by the Planning and Zoning Board regarding regulation changes. **Ms. Greene** reported that **Mr. Harris** had received his CZEO Certification from the Connecticut Association of Zoning Enforcement Officers.

### **F. ACCEPTANCE OF MINUTES FROM NOVEMBER 12, 2013, HEARING**

**Mr. Haberman** moved they be accepted; the motion carried unanimously.

### **H. ACCEPTANCE OF APPLICATIONS FOR JANUARY 14, 2013, HEARING**

The meeting was adjourned at 9:17 p.m.

*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, ZBA Clerk