

**MEMBERS PRESENT:** Rich Carey, Bill Evasick, 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.

**A. PLEDGE OF ALLEGIANCE**

**B. CONSIDERATION OF AGENDA ITEMS**

1. **354 Woodmont Road** (Zone ID) Discuss and act, if appropriate, on rescinding action taken November 9, 2011 and further 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 Zoning Appeals, Superior Court, Judicial District of Ansonia/Milford, Docket No. CV 10-6004583S:

- a. Determine the continued validity of the 2010 variance, based upon the finding that the action of May 11, 2010 is “voidable”, not “void”;
- c. Determine whether the principals or agents of 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;
- d. 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 Appeals to act upon any rescission motion; and
- e. 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”.

**Chrmn. Tuozzola** stated this first item is a re-hearing of an application presented last month. The Board members in attendance at that meeting were Messrs. Carey, Haberman, Nichol and Vaccino, and they would be the members voting on the application this evening. He informed the people who would be speaking that no new evidence may be entered into the record, only review of previous evidence presented to the Board.

He added in order to proceed, the Zoning Board of Appeals must correct the voting error made at the November 9, 2011 meeting and rescind their decision that the variance of 2008, remain in effect because variances run with the land and do not expire. The variance of 2008 remains rescinded for improper notice.

**Mr. Haberman** made a motion to rescind the decision of the Zoning Board of Appeals made at the November meeting and rescind the variance of 2008 for improper notice with Mr. Carey seconding. The motion carried unanimously with Messrs. Vaccino, Carey, Haberman, Nichol and Tuozzola voting.

**Matthew Woods**, Trial Council for the City of Milford, reminded the Board that on remand by Superior Court Judge Radcliffe’s decision, the Zoning Board of Appeals needs to re-examine the rescission of the variance of September 14, 2010. The reason being the successful applicant of the variance was not notified that the Board was going to consider revoking the variance approval. As a result of that violation of due process, at the November meeting, the Board gave the applicant as well as the neighbor an opportunity to present evidence and argument as to whether or not the 2010 variance

should or should not be declared invalid. The issue is whether or not the adjoining neighbor knew about the variance hearing in May of 2010 and failed to show up at the hearing, thereby waiving the defect in the written notice. All the neighbors within 200 feet were notified except the occupants or owners of the condominiums in question. The Board heard evidence from Attorney Knott that his client spoke to the owners of the adjoining unit and informed them of the hearing. The Board also heard evidence from Attorney Case that the owners did not have notice of the hearing. The Board has to decide which version to accept. If you determine there was no actual notice to the adjoining owner, the mailed notice defect remains and the variance should be rescinded. If it is determined the owners did know about the hearing and chose not to attend, you can find that they waived the defect and the variance can be upheld. Another item instructed by Judge Radcliffe for the Board to consider is between the time the variance was granted on May 11, 2010 and when it was rescinded by this Board on September 14, 2010, whether there was any change in circumstances that would prevent the Board from rescinding. The Board must determine whether the recording of the variance on the land records and the issuing of a Building permit were a sufficient change in circumstances, that it would be unfair and inequitable to reverse the variance granted. In summary, if the Board determines the owners did not know about the May 11, 2010 meeting and there was no substantial change in circumstance after the variance was approved, then the Board could rescind the variance. If the Board determines either the owners knew about the hearing and waived the defect in notice or even if they didn't know about the hearing, but there was a substantial change in circumstance after the variance was granted, then the Board should not rescind the variance.

**Attorney Barry Knott**, 1656 Main Street, Stratford, passed out paperwork to the Board to which Chrmn. Tuozzola asked if it were the same evidence passed out at the last hearing to which Attorney Knott stated it is the same with the exception of Exhibit 10. Chrmn. Tuozzola repeated the Board would not be accepting any new evidence entered into the record. The Board would only allow a brief summation of what was discussed at the last meeting. Atty. Knott reminded the Board a variance was granted for a pizza parlor with liquor on May 13, 2008. The variance was recorded on the land records. A year went by and the applicant, Side Step Inc., thinking the variance was null and void because of the passage of time, applied for another variance for the exact same thing in May of 2010 and was approved. It was recorded on the land records in June and a Building permit issued. In August of 2010, Attorney Case sent a letter to the City Attorney stating his client, the managing member of ATGCKG Real Estate, Anthony Grillo, had never received written notice of the hearing. Because of that letter, the variance was rescinded in September 2010. However, because Side Step Inc. did not receive notice of the September hearing, an appeal was filed and tried by Judge Radcliffe. Atty. Knott admitted that Mr. Grillo was not sent written notice of the variance hearing. He stated according to the law and Judge Radcliff in his decision, if Mr. Grillo was told about the hearing prior to the meeting and chose not to attend, then he waived his right to the personal notice by having actual notice and choosing to do nothing about it. Mr. Peck's statement submitted at last month's meeting stated he had a conversation with Mr. Grillo in May of 2008 about the 2008 variance. That conversation was a telephone call by Mr. Grillo to Mr. Peck to find out what the variance was for that was just approved. Two years later, the same application is being heard again and Mr. Peck gets another call from Mr. Grillo asking what the upcoming hearing was about. Mr. Peck tells him it was for the exact same thing they were approved for two years ago. Mr. Grillo had actual knowledge of the meeting before the meeting. They have no issue with the affidavits submitted by Atty. Case from Mrs. Grillo and Mr. Bonaventura.

They do take issue with Mr. Grillo's affidavit. He said Judge Radcliffe, in light of the fact that the Board on two separate occasions granted a variance to the subject property, said it must be mindful of the general rule that states that a Zoning Board of Appeals may not reverse itself unless a change of circumstances intervenes which materially affects the merits of the case. He ended by saying a) Mr. Grillo had notice of the meeting and b) something was done in furtherance of that variance that cannot be undone. The recording on the land records and the issuance of the Building permit are things that cannot be undone. If the Board still cannot decide what to do, it should follow the Judge's advice and be consistent in what it does. It would be consistent to allow the variance to stand because the Board has granted it twice already.

**Attorney Max Case**, 57 Plains Road, representing ATGCKG Real Estate LLC, said he objected strongly to any new evidence presented by Atty. Knott this evening. The Board needs to determine whether or not there was actual notice of the May 11, 2010 hearing. He reminded the Board that he submitted three affidavits by two members of ATGCKG Real Estate, swearing that neither in May of 2008 nor May of 2010, did they have any idea these hearing were taking place. Mr. Peck had the same opportunity to give the Board an affidavit at the last meeting, but he did not, he just gave a statement. There is no question the members of ATGCKG had no notice and no opportunity to waive notice. They didn't waive their right to come here, they just didn't know. Had they known, they would have been at the meeting and argued strenuously against the approval of the variances. The Building permit was issued to an applicant known as Escapades of CT Inc., to which there is no connection at all to this application. The permit application was signed by a Dean Moccia, an individual who also has no connection to this application. There is no information as to whether anything was even done with this Building permit. The variance was filed on the land records but the variance should have never been granted because of improper notice. In summation, there was no notice, no waiver of notice and no information to show that there has been a substantial change in position by the applicant.

The hearing was closed.

#### DISCUSSION:

**Chrmn. Tuozzola** said the Board has to decide whether proper notice was given. Mr. Haberman repeated there were three signed affidavits submitted saying the owners didn't receive notice and one statement from Mr. Peck saying he had mentioned it to the owners at some point. He could only conclude there wasn't proper notice. Mr. Vaccino agreed with Mr. Haberman. His only question was regarding substantial change in condition. He wondered if it were in the Board's jurisdiction to invalidate a Building permit and was that a substantial change. The Board continued their discussion.

**Mr. Haberman** made a motion to rescind the variance approval for 2010 because of improper notice and by evidence of no record of any mailing and the affidavits submitted at last month's meeting by Atty. Case. Mr. Nichol seconded the motion. The motion carried unanimously with Messrs. Vaccino, Carey, Haberman, Nichol and Tuozzola voting.

2. **Baldwin Street cor. Lenox Avenue** (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 355.8 sq. ft. allowed to replace existing garage. CAM received. Map 19, Block 11, Parcel 1.

**Andrew Flanagan**, land surveyor, 29 Carriage Path Drive, said the variance request for the front yard setback is because the two original subdivisions created in 1907 and 1909, misaligned Lenox Avenue by about 5 feet. In 1958, the town did a taking from the Lewczak property and at that time reduced the width of the property, which creates this problem with the setback of the garage. The second request for a larger garage size is because of the very small footprint of the existing house, 711 sq. ft. The variance is being requested for a larger sized garage to allow for storage and for security. The owners have had two instances where Mr. Lewczak's work van has been broken into resulting in a loss in excess of \$12,000 worth of equipment. He is an independent siding contractor and needs to store his vehicle at his home and wants to store it in a garage with his ladders and scaffolds on top of, as well as work equipment in the vehicle. Mr. Flanagan added he had four letters in favor of the application, two from the adjoining property owners and two from neighbors across the street.

**Mr. Haberman** confirmed the request was to approve a garage almost twice the size of the existing garage to keep his business vehicle in, in a residential zone. He asked what the hardship was?

**Mr. Flanagan** said the hardship is the size of the footprint of the existing house and the security issue of the van sitting outside in plain sight. There are also lawn items and kids toys that Mr. Lewczak would like to store in the garage. There is no storage inside the house. He restated that when the City realigned Lenox Avenue with curbs, they took a 4.7'x 25' triangular piece of land from the owners.

**Mr. Evasick** asked if the applicant operated the business out of the house to which Mr. Flanagan answered he did not. Mr. Flanagan submitted the letters to the Board.

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

#### DISCUSSION:

**Mr. Haberman** said he had a concern with approving a garage that would be almost twice as big as the house for the storage of business equipment in a residential zone. He understood the house was small and the lot was decreased in size. Mr. Vaccino stated he did not see the placard posted when he visited the property. Mr. Flanagan informed the Board of the two locations where he had posted the placards. Mr. Nichol asked if a smaller garage had been considered to which Mr. Flanagan said the owners have two cars and a lot of stuff to store. Mr. Tuozzola said he didn't see a problem. It is a residential area but is also a heavily traveled street.

**Mr. Nichol** made a motion to approve based on the size of the footprint of the house with Mr. Carey seconding. The motion failed to carry 3-2, with Messrs. Nichol, Carey and Tuozzola voting in favor and Messrs. Evasick and Haberman voting against.

**Mr. Haberman** made a motion to deny with Mr. Evasick seconding. The denial is because of the request for commercial use and no hardship shown. The motion failed to carry 3-2 with Messrs. Haberman, Evasick and Nichol voting in favor and Messrs. Carey and Tuozzola voting against.

3. **71 Melba Street** (Zone R-5) Kevin Curseaden, attorney, for K.R. Robinson Company, Inc., owner – request to vary Sec. 11.2 Definition of Crawl Space to 4'6" in lieu of 4' allowed for flood elevation compliance. Vary Sec. 3.1.4.1 rear yard setback to 8' (7' with overhang) in lieu of 20' required for principal structure; 2' in lieu of 20' required for first floor deck; 2' in lieu of 20'

required for second floor deck; 4' in lieu of 20' required for third floor deck. CAM received. Map 29, Block 587, Parcel 25.

**Attorney Kevin Curseaden**, 26 Cherry Street, passed out paperwork to the Board. He told the Board this lot is one of a few if not the only vacant lot on Melba Street. The lot was purchased in 1970. The property to the east is owned by a trust that is related to the K.R. Robinson family and was where Mr. Robinson's family spent the summers. The hardships are the width of the lot, 40 feet wide where 50 feet is required; the elevation of the lot and the location of the lot in two flood zones. In order to comply with the flood zone regulations, the house has to be at an elevation of 14 feet. To comply, the house has to be raised 4.6'. The Planning and Zoning Regulations limit the height of a crawl space to 4 feet. The hardship arises from the definition of a crawl space. The proposed house is to be even with the other houses on the seawall. Most houses on the shoreline have the property line going to the mean high water mark. This is not the case here. The proposed placement of the house would fall in line with the existing houses and would be fully compliant to all other zoning and flood requirements.

**Ken Robinson, Jr.**, 20 Hickory Lane, Woodbridge, said he is looking to build the family summer residence there. His mother owned the adjacent property at 69 Melba Street and his father purchased this property. All the houses are very close to the edge of the seawall. The lot is very narrow and if they had to keep the house back the 20 feet, the house would be well behind the other houses and that would eliminate the view. The value of any coastal property is in the access to the water and the view. They just want to be able to stay in line with the other houses.

**Chrmn. Tuozzola** noted the lot is vacant so the house could be built to be fully conforming. He asked for the hardship to be restated to which Atty. Curseaden said he did not know for a fact that the house could be built to be totally conforming. He added there is also a right of way on Melba Street that they have to comply with. The actual hardship is the property is 10' narrower than what is required. He added a practical difficulty is the rear yard is L.I. Sound. He is just asking to build in line with the other houses.

**Mr. Haberman** said the fact the other houses have been built at the edge of the seawall is not a hardship to this property. If there is the ability to build a house that is conforming to the regulations, even if it may be a small lot, it should be done.

**Atty. Curseaden** noted again the hardship is the width of the lot and they are only asking for 2' for the deck and 8' for the house. To require the applicant to set the house back 20' would not be in line with other variances that have been granted in that neighborhood in the past 5 years.

OPPOSED:

**Cheryl Biros**, 74 Melba Street, said she wasn't necessarily opposed but did want to know exactly what was being built across the street from her.

**Chrmn. Tuozzola** explained the variance request. Ms. Kuchta noted there was no easement shown on the plans.

**Atty. Curseaden** explained he was talking about the street right of way, not a right of way on either side of the property.

The hearing was closed.

DISCUSSION:

**Mr. Evasick** said a house could be built on the property that would be conforming to the regulations.

**Mr. Carey** made a motion to deny as there was no hardship shown. The lot is vacant and a house could be built without any variances. It seemed the only hardship being shown was a financial hardship. Mr. Haberman seconded the motion and it carried unanimously with Messrs. Carey, Haberman, Evasick, Nichol and Tuozzola voting.

4. **218 West River** (Zone R-12.5) Michael D. Apatow, owner – request to vary Sec. 3.1.4.1 front yard setback from 30' in lieu of 25.2' provided to allow 50% improvement on existing residence according to Sec. 6.2.6. Map 65, Block 314, Parcel 28.

**John Wicko**, architect, 50 Broad Street, said the owner is looking to make improvements to the rear of the existing house. The house was built in 1890, prior to zoning regulations, and is non-conforming as it exists. He passed out paperwork to the Board. Out of 10 houses in the area, 7 are at this same proximity to the front yard setback. The character of the house would be maintained and be consistent with the houses in the area. The hardship is the placement of the house on the lot and the fact that the lot is long and narrow, with 74' width where 80' width is required, in existence prior to zoning regulations.

**Mr. Haberman** confirmed they are just here because the existing house is non-conforming and because of the over 50% renovation rule to which Mr. Wicko said that was correct.

DISCUSSION:

**Mr. Haberman** said he had no problem with it, they are just asking to keep what they already have. The house is non-conforming as it exists. The hardship is the placement of the house on the lot. Chrmn. Tuozzola agreed.

**Mr. Haberman** made a motion to approve with Mr. Carey seconding. The hardship is the placement of the already non-conforming house on the lot. The motion carried unanimously with Messrs. Carey, Haberman, Evasick, Nichol and Tuozzola voting.

5. **15 Wall Street** (Zone R-7.5) Patricia Attolino, appellant, Anthony & Sandra Evangelista, owners - appeal the issuance of a Planning and Zoning Permit by the Assistant City Planner for construction of a single family home, on November 1, 2011. Map 71, Block 773, Parcel 5.

Postponed.

6. **264 Broadway cor. Hauser Street** (Zone R-7.5) Anna Lamorte, owner – request to vary Sec. 4.1.4 projection into side yard to 1'4" in lieu of 1' allowed for 2 exit steps to remain. CAM 10/20/09. Map 9, Block 130, Parcel 17A.

Postponed.

7. **49 Wilbar Avenue cor. Walker Street** (Zone R-5) Valerie White, appellant – request to vary Sec. 3.1.4.1 side yard setback to 8.2' (7.2' to overhang) in lieu of 10' required for 2<sup>nd</sup> floor addition. Vary Sec. 3.1.4.1 accessory structure to 1.5' in lieu of 4' required for side yard and 1.5' in lieu of 5' required for rear yard to repair or replace existing garage. CAM received. Map 45, Block 513, Parcel 4.

**Valerie White**, 230 Hattertown Road, Monroe, architect, passed out paperwork to the Board. She said the house, built in 1925, pre-exists zoning, and just barely meets the lot requirement of 5,000 sq. ft. The owner is looking to add onto the small house. The hardship is the lot is a

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corner lot. The scale of the new addition is very diminutive and will be in character with the rest of the house. Also, the garage needs some renovations and because it is pre-existing non-conforming, a variance is needed to allow it to remain. She passed out a petition signed by neighbors in favor of the application to the Board.

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

DISCUSSION:

**Mr. Haberman** said he didn't have an issue with the application. The lot is a corner lot.

**Mr. Haberman** made a motion to approve with Mr. Nichol seconding. The hardship is the lot is a corner lot. The motion carried unanimously with Messrs. Carey, Haberman, Evasick, Nichol and Tuozzola voting.

8. **5 Gulf Pond Lane aka 5 Riveredge Drive** (Zone R-10) Thomas Lynch, attorney, for 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 19.7' in lieu of 25' required for construction of addition. CAM received. Map 37, Block 588, Parcel 10.

**Attorney Thomas Lynch**, 63 Cherry Street, reminded the Board the applicant was before the Board last month. The application was denied without prejudice, to allow the plans to be reworked and brought back to the Board. They are here this evening with a new application. This is a very large piece of property located at the end of Gulf Pond Lane. The Blakes' have owned the property since 1975. There are two existing residences on the property, both built in 1911. The rear house, known as the cottage house, was renovated in 1920. The Blakes' have lived in the front house, which consists of 2500 sq. ft. The applicants have received approval for a subdivision of the property. The new plans have been changed to increase the rear yard setback 9' and decrease the variance request. The existing rear house, the carriage house, has been in existence for more than three years, as is considered legal, non-conforming. He passed out copies to the Board members of State Statute 8-13a.

**Chrmn. Tuozzola** noted it was nice to see the applicant listened to the Board's concerns and addressed them.

FAVOR:

**Ben Lebov**, 22 Riveredge Drive, said he has seen the plans and he hoped the Board would approve the application.

**Chrmn. Tuozzola** noted there was a letter of opposition in the file.

The hearing was closed.

**Mr. Carey** made a motion to approve with Mr. Haberman seconding. The Board had concerns which the applicant addressed and the application should now be approved. The motion carried unanimously with Messrs. Evasick, Nichol, Haberman, Carey and Tuozzola voting.

9. **28 Way Street aka Waverly Street** (Zone R-12.5) Warren Field, Jr., owner – request to vary Sec. 3.1.4.1 side yard set back to 5' (3.5' to overhang) in lieu of 10' required. Map 25, Block 217, Parcel 7 & 15.

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**Attorney Thomas Lynch**, 63 Cherry Street, passed out minutes and photos from the December 2009 meeting, where the application was for six lots on Way Street. They were all certified as legal, non-conforming lots, as part of a subdivision from 1925, known as Prospect Lawn. The street is a paper street and is being developed now through the construction of these houses. This property was purchased after the 2009 meeting. He said a house could be built on this lot, albeit a narrow, three story house. Their argument, based upon the narrowness of the lot, is that a two story, 2,000 sq. ft. house would be more esthetically pleasing to the neighborhood than a three story, narrow house. The hardship exists because the lot is non-conforming and pre-dates zoning. This is a reasonable request and will not infringe on the area.

FAVOR:

**Jim Wary**, 155 Harrison Avenue, said he would rather see a two story house than a three story house on the lot.

The hearing was closed.

DISCUSSION:

Mr. Haberman said the two story house would be better and more appealing for the neighborhood.

**Mr. Haberman** made a motion to approve with Mr. Carey seconding. The hardship is the size of the lot. The motion carried unanimously with Messrs. Carey, Haberman, Evasick, Nichol and Tuozzola voting.

**10.1585 Boston Post Road** Thomas Lynch, attorney, for Quartet Food Service, LLC, owner – request to vary Sec. 5.5.5 to allow second restaurant liquor permit in shopping center containing 40,742 sq. ft. in lieu of 60,000 sq. ft. required. Map 100, Block 805, Parcel 13.

**Attorney Thomas Lynch**, 63 Cherry Street, said the restaurant opened in 2007. The owners are not asking to allow them to have a full liquor permit but are only asking for a variance to allow them to serve beer and wine. He submitted to the Board members a letter in favor of the application, from the owner of Conti's Restaurant. He said the current zoning regulations regarding liquor, limits trade. His client runs a great business and the only person who would benefit from the current liquor regulations, is the other restaurant in the same shopping plaza and that owner has signed a letter in favor of the variance request.

The hearing was closed.

DISCUSSION:

**Chrmn. Tuozzola** said he didn't see a problem and asked Ms. Kuchta if she had anything to add to which she said the State Liquor Commission has their regulations but allows the City to regulate the distance. Mr. Vaccino wondered if the Board was putting themselves in a position for future applications. Chrmn. Tuozzola said this is a small business that is trying to make it in a tough economy. Ms. Kuchta said the Milford Zoning Regulations allow for multiple liquor establishments in shopping centers with at least 40,000 sq. ft., such as the Milford Market Place. However, this is a smaller shopping center.



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

**C. TABLED ITEMS  
D. OLD BUSINESS  
E. NEW BUSINESS**

**Mr. Evasick** asked if the Board was still scheduled for training in the spring to which Ms. Kuchta said sign ups haven't begun yet but she would let the Board know.

**F. STAFF UPDATE**

**Ms. Kuchta** said there was one application so far for January.

**G. ACCEPTANCE OF MINUTES FROM NOVEMBER 9, 2011 HEARING**

The minutes were accepted unanimously.

**H. ACCEPTANCE OF APPLICATIONS FOR JANUARY 10, 2012 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:

Rose M. Elliott  
Clerk ZBA