

**A. Call to Order** was at 7:02 pm.

**B. Roll Call:** E. Hirsch, B. Kaligian, J. Quish / STAFF: D. Sulkis, S. Harris, M. Greene

**C. Topic for discussion:** 22-9 Proposed changes to article VI, Section 6.4.2 use of Nonconforming Lots when Applicants or Predecessor Own/Owned Adjacent

**Chairman Quish** reviewed the changes in merger regulations and their unintended consequences. He said he asked Adam Tecza, the POCD consultant, for information on how other towns and cities handle merger regulations. He asked that the group review a memo from Kevin Curseaden regarding state statute 8-26a. Mr. Sulkis summarized 8-26a this way: for subdivisions approved after November 1929, if the subdivision appears on the land records, and there is a map, and the land has not been developed in the ensuing years, under 8-26a, the lot can be developed without conforming to today's regulations. Mr. Quish said he and Attorney Curseaden read 8-26a differently, as having an ability to incorporate current setback requirements. Mr. Hirsch asked if there is a way to merge lots using operation-of-law, noting that the language proposed by Attorney Curseaden is not an operation-of-law methodology. Mr. Harris said he read the proposed language as being essentially the same method as the old 6.4.2 regulation, providing a way to develop parcels without merging them. Mr. Quish said he favored adding language to require a Special Permit and a public hearing.

Discussion ensued about how various numbers of lots might be merged and whether one or more conforming lots could be created with the "leftover" non-conforming land that persist as a separate lot. Mr. Hirsch suggested making mergers subject to board approval. Mr. Quish added that there could be consideration made of health and safety concerns. Mr. Harris said that you can't allow a board to make decisions arbitrarily because a standard is needed, and regulations create that standard. Mr. Sulkis said that the only town currently using a Special Permit as part of its regulation of nonconforming lots is Trumbull where, if lots are contiguous, before subdividing them, they are automatically merged. Mr. Quish said he did not want to emulate Trumbull, but still thought the process could use a Special Permit requirement. Mr. Quish advocated for use of a Special Permit with a public hearing to include the community and eliminate previous merger-by-use issues.

Mr. Hirsch, an attorney himself, asked Mr. Kaligian, who is also an attorney, for his opinion. Mr. Kaligian said he favors merger-by-operation-of-law due to its clarity of enforcement. He thought the number of people who would be unhappy with the practice would be very small. He agreed that the previous method of merger-by-use is an enforcement nightmare and saw no need for a special permit if all regulations are met—the application would simply be approved.

Mr. Quish said he doesn't want to put a burden on staff, the board, or the courts. Mr. Hirsch recalled hearing complicated cases trying to prove or disprove merger-by-use during his time on the Zoning Board of Appeals. Further discussion of ownership as it pertains to merger ensued between Mr. Hirsch and Mr. Quish. Mr. Hirsch noted that the goal of the merger process is to reduce the number of nonconforming lots. He wondered if merger-by-operation-of-law would remove the board's authority to grant Special Permits.

Mr. Sulkis emphasized that if merger by operation-of-law is adopted, applications will either conform to the regulations or not, so he questioned the point of a Special Permit—what exactly would it do? Mr. Hirsch proposed an example of 4 small lots of 2000 square feet each. Mr. Sulkis narrowed the example to the R-5 zone. In an R-5 zone, under merger-by-law, at least 3 lots would be combined to make a conforming lot. There was discussion of the leftover lot coming under Special Permit review or using some other permit track. Mr. Harris asked why, if a lot was legally created, a Special Permit was needed. He noted many examples of small "leftover" single lots in Laurel Beach, which were still legally created despite their nonconforming size.

Further discussion ensued about possible variations on lot merger and creation scenarios and the potential resulting complaints. Mr. Harris noted that, by statute, the ZBA can't create lots so they can't change the size of a lot. He stressed that any "leftover," unmerged lots-of-record already exist legally. Mr. Sulkis said that the leftover lots can still be developed. Mr. Harris said the available choices are merger-by-operation-of-law, by use, or no merger regulations at all. Mr. Quish asked about creating lots that are less undersized in an absolute way, for example, if 4 lots of 8000 sf exist in an R-5 zone, split the difference to make 2 nonconforming lots of 4000 sf. Mr. Harris said this constituted an ad hoc re-

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subdivision, essentially making a subdivision outside the subdivision rules. Mr. Sulkis said the board can't create lots that don't meet the zoning regulations.

Mr. Quish said he wants to have a discussion with the full board and a public hearing because he is not satisfied with merger-by-law. Mr. Hirsch said merger-by-use, or no merger regulations, are the other alternatives. Mr. Sulkis suggested a vote by the full board on the regulation proposed by staff, because presenting proposed language to the full board and to the public provides a chance for both to react to something specific. He expressed concern that if the subcommittee takes no action, the issue could stagnate. He said that if the board doesn't like the staff recommendation, they can vote it down.

**Mr. Kaligian** moved to bring the staff recommendation to the full board. **Mr. Hirsch** seconded the motion, which passed unanimously. Mr. Quish asked that the item be placed on the 6 June agenda.

**D. Member suggestions for proposed amendments:** None.

**E. Minutes** from 1/4/2023 were approved unanimously.

**F. Adjournment** was at 7:53.

Attest: M.E. Greene