

Minutes, Public Hearing of Zoning Board of Appeals Meeting held 9 June 2020

The Regular Meeting of the Zoning Board of Appeals of Milford, CT, was remotely on Tuesday, 9 June 2020, beginning at 7:00 p.m. via ZOOM[®], 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 called the meeting to order at 7:23 pm. He reviewed guidelines for online public meetings. He asked Mr. Casey to vote for Mr. Soda and Mr. Dubois to vote for Ms. Ferrante.

MEMBERS PRESENT: Christine Valiquette, Chris Wolfe, Joseph Tuozzola (Ch)

ALTERNATES PRESENT: Michael Casey, Gary Dubois

MEMBERS/ALTERNATES ABSENT: Sarah Ferrante; Etan Hirsch; William Soda,

STAFF PRESENT: Joe Griffith, Director DPLU, Stephen Harris, Zoning Enforcement Officer; Meg Greene, Clerk

B. CONSIDERATION OF AGENDA ITEMS

1. **147 Terrace Road**, MBP 38/613/4E, R-12.5, Thomas Lynch, Esq., for Three S Properties LLC, owner; Vary Sec. 4.1.4 from 4' perm. to 10' provided to allow construction of new deck.

Attorney Lynch, 63 Cherry St, addressed the board. He said the proposed deck was on a lot created by a 4-lot subdivision of the Kerin estate, and that the lot looks toward Edgefield Avenue. He said all 4 houses are completed, referring to a survey by Codespoti Associates. He described the house and said it was a rear lot on the required acre size and that the location features extensive wetlands. He said the hardship was that the house had to be located exactly where it was built to meet all the setbacks, leaving no place for any other amenities such as a deck. He said the wetlands create a hardship but also ensure that no other residences can ever be constructed to the rear of the house, thus there is no impact to neighbors. He read a letter in favor of the variance from the following: Michael and Alyssa Lynch, 137 Terrace Rd; David and Cynthia Hliva; 141 Terrace Rd; and Anthony and Meghan Petrocelli, 139 Terrace Rd. **Mr. Harris** asked Attorney Lynch to address the mismatch of the language in the request versus what the survey shows. Attorney Lynch said the survey reflected the correct request and asked the board to approve with a condition that the approval be granted in accordance with the survey.

DISCUSSION

Mr. Tuozzola confirmed that there are woods and wetlands behind the house such that no development could occur there.

BOARD DISCUSSION

Mr. Tuozzola asked if anyone wished to speak in favor of or 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. Wolfe motioned to **approve**. **Mr. Casey** seconded. **Mr. Wolfe** based his motion on hardship of boundary wetland property and conditioned it to be located per the survey. The motion carried with **Ms. Valiquette** and **Messrs. Casey, Dubois, Wolfe** and **Tuozzola** voting **with the motion**.

2. **17 Maddox Avenue and 20 Scott Street** MBP 27/451/11, R-5, Kevin Curseaden, Esq., for Ish Anand, owner; Vary 3.1.4 Side yard setback on the northwesterly property line of 5' where 10' required.

Attorney Curseaden addressed the board. He said Dr. Robert McCloud, a neighbor, had asked for detail on material that

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was presented at the last meeting, which he proceeded to review. He said that unless use was abandoned, the right rebuild what was there persists. He cited a statute changed in 2017 which strengthened this right. He said his client never intended to abandon the 2-family use and with no intent to abandon, the 2-family use could persist. He listed some of the hardships. He said CT courts have ruled that if nonconformity is being reduced, this fact can be considered by the ZBA. He listed the conformity reductions to be achieved by the new design. He said the requested side-yard variance was not on the side abutting the neighbors who claim to be affected. He said that whether one or 2 structures were constructed, variances would still be required. He referred to and disputed submitted materials by Attorney Max Case. He said he had researched and submitted copies of variances for neighbors on East Broadway, saying many variances create an acknowledgement that hardships exist throughout the finger streets. He said his client planned to live in the house with his father in the other unit.

OPPOSED

Attorney Case referred to his submitted documents. He reviewed the legislative history of abandonment to show the intention of the legislature when the statute was created, citing language about “the same or similar structure.” He said the impetus of the act was to reduce the ability of Zoning Enforcement Officers to create expensive court battles. He said the demolition permits were evidence of intent to abandon the previous use. He said the property was nonconforming and provided a definition and a reference to expansion of non-conforming uses. He said last month he made a case for the new owner enlarging the existing use including footprint, height and lot coverage. He said a claim of hardship is subject to the knowledge he should have had knowledge of the nature of the structures. He said whether he planned to live there with his family was irrelevant because hardships run with the land. He referred to the strip of land as the subject of a lawsuit regarding title to the strip of land and he dropped the suit. He said other may have gotten variances around the area, but those variances resulted in single family houses, not a 2-family house. He granted that reductions in non conformities may be considered in lieu of a hardship. He referred to a Milford ZBA court case where the hardship was deemed to be self-created. He rebutted to several cases cited by the applicant that resulted in a judgment that nonconforming uses cannot be enlarged. He said there was no hardship, the cases cited don’t support the reasoning, and the nonconformities eliminated don’t offset the lack of hardship.

Mr. Casey asked about abandonment of nonconforming use with reestablishment.. what is reestablishment? Case said a 2 family house in a different location implies abandonment of 2 separate use formerly on the property. He said the houses could have been left intact and rebuild in kind with the existing nonconformity persisting.

Robert McCloud, 16 Scott Street, showed a drawing indicating the demolished houses. He said there never had been access to the property from Scott Street. He said the applicant attempted adverse possession of a state-owned strip of property featuring wetlands. He described aspects of the negotiated sale. He said wetlands restrictions had been violated and there was construction debris and an illegally parked construction machine in the wetlands area. He said the applicant could have rebuilt the existing houses to preserve the use. He described incidents and negotiations during the purchase of the property. He disputed several aspects of Attorney Curseaden’s remarks. He showed a photograph showing flooded areas where the proposed house was to be built. He said he tries to keep the land viable on his own property.

Evdoxia Picarazzi, 15 Maddox Avenue, said she knew the abutting property to her lot would be developed when she bought her home, however she did not expect a big 2-family home.

REBUTTAL

Attorney Curseaden said the variance request was for a side-yard variance. He referred to staff to underscore that the one or two family use was not at issue. He said the side-yard variance was on the opposite side of the house from the opposed parties. He said legal action about an abutting parcel to his client’s property was not an aggressive action, but was done to determine ownership of the parcel. He said the lot was 30’ wide and a side-yard variance would be needed for any structure built on it. He asked staff to comment on the persistence of the 2-family use. He disputed that

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unethical matters were part of the problem but rather it was relations between the neighbors that were clearly a problem. **Mr. Harris** said the use was a legal 2 family. **Mr. Tuozzola** asked how the project could be made zoning compliant, but **Mr. Harris** said it was not the board's place to design for the applicant. **Mr. Harris** reviewed the options for decisions that the board could take, noting that all the setbacks were defined and had to be observed. **Mr. Wolfe** asked Attorney Curseaden to review the side-yard setback regulations, which he did. **Mr. Tuozzola** confirmed that the previous houses would have been closer to neighboring property lines.

BOARD DISCUSSION

Mr. Tuozzola asked if anyone wished to speak in favor. Hearing none, he closed the hearing. **Ms. Valiquette** asked if conditions could be imposed. **Mr. Tuozzola** said the board could deny without prejudice to allow for new plans to be submitted. **Mr. Wolfe** agreed that a very narrow house would be problematic. **Mr. Tuozzola** asserted that a 2-family house can be built.

Ms. Valiquette motioned to **deny without prejudice** to allow the applicant to resubmit another plan. **Mr. Wolfe** seconded. The motion carried with **Ms. Valiquette** and **Messrs. Dubois, Wolfe** and **Tuozzola** voting **with the motion** and **Mr. Casey** voting **against the motion**.

C. NEW BUSINESS- None.

D. OLD BUSINESS-None

E. STAFF UPDATE-None

F. ACCEPTANCE OF MINUTES 12 May 2020: Approved.

G. ACCEPTANCE OF APPLICATIONS for 14 July 2020 hearing.

Adjournment was at 8:44 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:

Meg Greene
Clerk, ZBA