

## Minutes, Public Hearing of Zoning Board of Appeals Meeting held 14 July 2020

The Regular Meeting of the Zoning Board of Appeals of Milford, CT, was held remotely on Tuesday, 14 July 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 7:01 pm. He reviewed guidelines for online public meetings. He asked Mr. Dubois to vote for Mr. Wolfe, Mr. Hirsch to vote for Ms. Valiquette, and Mr. Casey to vote for Mr. Soda on Item 2. He said Item 1 will be moved to August.

**MEMBERS PRESENT:** Sarah Ferrante; Etan Hirsch; William Soda, Joseph Tuozzola (Ch)

**ALTERNATES PRESENT:** Michael Casey, Gary Dubois

**MEMBERS/ALTERNATES ABSENT:** Christine Valiquette; Chris Wolfe

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

### B. CONSIDERATION OF AGENDA ITEMS

1. **40 Lawrence Avenue**, MBP 28/578/20, R-5, Kevin Curseaden, Esq., for Kevin Tilton, owner; Appeal the Decision of the Zoning Enforcement Office, Sec 9.2.1 regarding Notice of Violation dated June 12, 2020, re: concrete in front yard, and determination of violation of Sec. 4.1.5 of the MZR. **POSTPONED BY APPLICANT**
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 to 7.5' where 10' required

**Attorney Curseaden**, 3 Lafayette St, addressed the board. He said the application followed a denial without prejudice last month. The previous application asked for a 5' side-yard setback variance and the current requested approval of a 2.5' side-yard setback variance. He said the previous application accommodated parking for 4 cars under the house, but now only would fit 3 cars. He reminded the board that the 2-family designation was not part of the request. He referred to a memo listing the hardships associated with the lot. He said CT case law allows consideration of reducing nonconformities when considering a variance request and this application does that, including providing parking and deepening the front yard setback on Maddox Street.

**Mr. Tuozzola** asked for public comment.

FAVOR -None.

#### OPPOSED

**Evdoxia Picarazzi**, 15 Maddox Avenue, said the owner knew the nature of the property prior to buying it. She said she objects to the size and nature of the 2-family house or as 2 separate townhomes. **Mr. Tuozzola** asked if **Mr. Harris** could address her concerns. **Mr. Harris** said the use of the lot is as a legal 2-family. **Attorney Curseaden** said nothing had been approved yet, except the 2-family use. He said there had been an original plan for 2 structures because legal frontage only exists on the Maddox Avenue side.

**Attorney Max Case**, 185 Plains Rd, representing Mr. McCloud, said the legal notice was defective because Ish Anand filed the application instead of Sachin Anand, who is listed as the owner. He said he disagreed with Mr. Griffith's decision to allow the 2-family use. He said the board should be mindful of the zoning regulations' prohibition against enlarging and/or moving nonconformities. He said the nonconforming use was abandoned when Mr. Anand demolished and didn't reinstate the previous structures. He said the application shows a substantial increase in space, height, and coverage. He said the property owner to the south would be affected. He said the claim that the house was to be used by Mr. Anand's family was irrelevant. He agreed that other variances had been granted on Maddox and Scott, but when they were granted, they resulted in a single family home. He said the claimed hardships of lot size and having no frontage on Scott Street were self-created. He asserted that a house could be built to conform to the setbacks. He cited other cases that allowed for decrease of nonconformity, but said this application increased several nonconformities. He said the parking requirement for a 2-family house is 4 cars, whereas the current plan only provides 3 spaces.

**Mr. Tuozzola** asked Mr. Harris to address the 2-family use permission and the nonconformities raised by Mr. Case. **Mr. Harris** said the 2-family use could persist. **Attorney Curseadan** clarified that the two Anands were father and son and acting as partners on the

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project. He said the 2-family use had been established. The 2 attorneys disputed the assertion that the application was defective.

**Annie Crane**, 4 Scott St, said her father Steve Yetter (owner of 4 Scott) was concerned about runoff flooding, as was her mother. She said they was also concerned about parking and traffic.

**Robert McCloud**, 16 Scott Street, read Debi McGinley's (10 Scott Street) letter of opposition into the record. He stated that Mr. Anand filed an adverse possession lawsuit with the goal of creating a parking lot on the wetlands. He provided his view of the lawsuit brought against him by Mr. Anand. He also asserted that construction debris had been left in defiance of an order from the Inland Wetlands Officer. He said the dimensions of the home had been greatly increased in the new design. He speculated that the units would be used as beach rentals.

### REBUTTAL

**Attorney Curseaden** said there had been many assertions made, but little relevant information given. He said the previous litigation cited was irrelevant. He said the lot present valid hardships. He said a single-family home would also require a side-yard setback variance or the house would only be 15' wide. He said the Anands would confirm that ownership of the property is in the form of a partnership. He said the reason he had researched and referenced other variances on the street was to show that similar hardships were validated for neighbors. **Attorney Case** said the board created an application form that required the property owner to sign off and that there is a checkbox for the owner in case they wish to designate an agent and this was not checked. Per Mr. Tuozzola's request, **Mr. Harris** shared the details of the application and said the mean high water line is typically used as the rear lot line for these types of applications. **Attorney Curseaden** said the rear yard setback had been made more conservative than had been the case with the previous structures.

**Ms. Ferrante** confirmed that the house is approximately 22.5' wide on Maddox Ave.

**Steve Yetter**, 4 Scott St, said he was concerned about drainage.

**Tomasia Yetter**, 4 Scott, expressed concerns about flooding.

**Attorney Curseaden** said the City Engineer had approved the plans as submitted to Inland Wetlands Commission.

### BOARD DISCUSSION

**Mr. Tuozzola** closed the hearing and there being no further board discussion, asked for a motion.

**Mr. Hirsch moved to deny. Ms. Ferrante seconded. The motion failed with Ms. Ferrante and Mr. Hirsch voting with the motion; Mr. Casey, Mr. Dubois and Mr. Tuozzola voted against the motion.**

**Mr. Casey motioned to approve. Mr. Dubois seconded. The motion failed with Mr. Casey, Mr. Dubois and Mr. Tuozzola voted with the motion; Ms. Ferrante and Mr. Hirsch voted against the motion.**

**Both motions failed and thus the application was denied.**

A 5-minute recess was called.

3. **1 Paris Street** MBP 49/716/6, R-5, Stephen & Carla van der Merwe, owners; Vary Sec 4.1.4 setback of 5'3" where 8' is permitted for spiral staircase.

**Sean Bowler**, 44 Lindley, Rd, Trumbull, addressed the board. He described the spiral staircase and its location on the house. He said the project would not negatively affect the neighbor's view. He described the upmost deck as being accessible only through living space. He said such staircases are in use elsewhere in the neighborhood. **Mr. Tuozzola** asked why the stairway couldn't be enclosed into the deck; **Mr. Bowler** said it would eliminate use of the first floor deck.

### DISCUSSION

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**Mr. Tuozzola** asked for a hardship; **Mr. Bowler** let **Stephen van der Merwe**, owner, comment, who said there would be additional egress in an emergency. **Mr. Hirsch** said the application, as written, didn't reflect a concern for safety. **Mr. Soda** reminded the board that the hardship cited is supposed to run with the land, not the structure or occupants. He discussed details of the project with **Mr. Bowler** that would avoid asking for a variance.

### 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. Hirsch** motioned to **deny**. **Mr. Soda** seconded. The motion carried with **Ms. Ferrante** and **Messrs. Dubois, Hirsch, Soda** and **Tuozzola** voting **with the motion**.

4. **75 Hillside Avenue** MBP 49/724/6, R-5. Milos Novotny for Samuel & Louise Blaney, owners; Vary Sec. 3.1.4.1 setback of 3.5' where 4' is req. for 3 concrete planters

**Samuel Blaney** addressed the board. He said he'd made a 6" mistake in positioning planters. He said the planters were to prevent salt water from killing his plantings. **Mr. Soda** confirmed that the planters are fixed in place.

### 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. Hirsch** motioned to **approve**. **Mr. Soda** seconded. **Mr. Hirsch** based his motion on hardship of the salt water intrusion. The motion carried with **Ms. Ferrante** and **Messrs. Soda, Dubois, Hirsch** and **Tuozzola** voting **with the motion**.

5. **174 Wolf Harbor Road** MBP 113/908/2, R-A, John Barrera, owner; Vary Sec. 3.1.4.1 setback to 7' where 15' is req to install pool

**John Barrera** addressed the board. He said he and his wife wished to put in a pool. He said the position of a septic tank, leaching fields, and a forested area on the lot limits the options for placement of the pool.

### 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. Soda** motioned to **approve**. **Mr. Ferrante** seconded. **Mr. Soda** based his motion on the hardship of the placement of the septic system. The motion carried with **Ms. Ferrante** and **Messrs. Soda, Dubois, Hirsch** and **Tuozzola** voting **with the motion**.

6. **185 Kings Highway** MBP 59/795/6, R-7.5, Patti & Alan Masarek, owners; Vary 3.1.4.1 side-yard setback to 3.6' where 5' req

**Wayne Garrett**, AIA, 291 Whitney Ave, New Haven, addressed the board. He said the garage extension was to enable the wife to access the house while coping with an increasing level of disability. He said accessibility would be provided from the garage to the proposed elevator to provide shelter from the elements. He described considerations for adding the elevator in the most efficient manner possible.

### FAVOR

**Mr. Garrett** referenced a submitted letter of support from 181 King's Highway. **Mr. Tuozzola** confirmed notification of abutters.

### 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.

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**Mr. Soda** motioned to **approve**. **Mr. Hirsch** seconded. The motion carried with **Ms. Ferrante** and **Messrs. Dubois, Hirsch, Soda** and **Tuozzola** voting **with the motion**.

7. **35 Fenway North** MBP 43/433/7, R-7.5. Jeff Hatfield, owner; Vary 4.1.4 side-yard setback to 13.6' where 21' req. to construct rear deck

**Peter Crabtree**, 64 Stanley Street, New Haven, addressed the board. He described the history of the house, which predates zoning. He described existing improvements to the house and a right of way between the rear portions of properties on Fenway. He said that over time the neighborhood had usurped the land from the old right of way, which did not seem to serve any function as an easement or access way. He said no utilities are present or drainage such as a swale is provided by the narrow parcel. He said the proposed deck is invisible from the street, and the hardship is that the right of way affects only certain houses.

### DISCUSSION

**Mr. Hirsch** asked why a patio couldn't be built. **Mr. Crabtree** said accessing the patio would be difficult, given the layout of the house and lot. **Messrs. Soda** and **Tuozzola** discussed the right of way creating confusion about the rear lot line.

### 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. Soda** motioned to **approve**. **Ms. Ferrante** seconded. The motion carried with **Ms. Ferrante** and **Messrs. Soda, Dubois** and **Tuozzola** voting **with the motion**. **Mr. Hirsch** voted **against the motion**.

- C. **NEW BUSINESS-** **Ms. Ferrante** asked for the hardship comment to be filled in when accepting applications. **Mr. Harris** said the application must be accepted, but the board could consider the completeness of the application. **Mr. Griffith** reviewed the requirements of the Executive Order.
- D. **OLD BUSINESS-**None.
- E. **STAFF UPDATE-**None.
- F. **ACCEPTANCE OF MINUTES** 9 June 2020: Approved unanimously.
- G. **ACCEPTANCE OF APPLICATIONS** for 11 August 2020 hearing.

Adjournment was at 9:32 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