

Minutes, Public Hearing of Zoning Board of Appeals Meeting held 7 November 2016

The Regular Meeting of the Zoning Board of Appeals of Milford, CT, was held on Monday, 7 November 2016, 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 require Coastal Area Site Plan Reviews or exemptions.

A. PLEDGE OF ALLEGIANCE / ROLL CALL

MEMBERS PRESENT: Howard Haberman (Acting Ch), John Vaccino (Acting Sec), Sarah Ferrante, William Soda

ALTERNATES PRESENT: Robert Thomas

MEMBERS/ALTERNATES ABSENT: Joseph Tuozzola, Gary Dubois

STAFF PRESENT: Stephen Harris, Zoning Enforcement Officer; Meg Greene, Clerk

Mr. Haberman called the meeting to order at 7:00 p.m. He asked for conflicts of interest for board members with any agenda items; none were raised. He asked Mr. Thomas to provide the 5th vote for the evening. He also asked the board to allow Attorney Curseaden to move his presentation to the beginning of the agenda as a professional courtesy.

B. CONSIDERATION OF AGENDA ITEMS

4. **25 Snow Apple Lane (MBP: 58/712/4A)** R-10. Kevin J. Curseaden, agent for Joseph C & Christina Salzillo, owners. Section 3.1.4.1. Side yard setback of 4' where 10' required to construct an attached garage.

Attorney Curseaden, Carroll, Curseaden and Moore, 26 Cherry Street, addressed the board. He provided photographs of the property and letters of support from 7 neighbors. He said that the topography and shape of the lot restricted the position of the garage. He noted the requirements for meeting the garage setback. He noted the presence of the owners and said that they would be available for questions.

DISCUSSION

Mr. Vaccino confirmed that the shed would stay in place. Discussion ensued about the request for a 2-car garage rather than a 1-car garage.

BOARD DISCUSSION

Mr. Haberman 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. **Mr. Soda** supported his motion by reason of hardship of size of the lot, exactly per the submitted materials. The motion carried with **Ms. Ferrante** and **Messrs. Haberman, Soda, Thomas**, and **Vaccino** voting **with the motion**.

1. **273 Cherry Street (MBP: 77/813/24)** R-5. Section 9.2.1. Pamela A. Hunter & Douglas Hunter. Appeal of decision. Structure on Milford Cemetery Association Property.

Ms. Hunter, 69 Spruce Street, addressed the board. She noted that three neighbors were making the appeal without an attorney. She described a storage shed and a retaining wall/recycling bin built on property that abuts Spruce Street by Milford King's Highway Cemetery. She said the wall was 10 and ½ feet tall. She handed out a packet with photographs of the wall as well as other relevant documentation. She noted the dates on the photographs. She said that what was built did not reflect the approved plans. She said the wall did not appear to be engineered as required by the 2012 Building Code. She said she understood that a swale has been built. She stated that wildlife she previously saw in the area has disappeared. She said she hoped the board would order that the wall be removed. She said she and her husband were away for 4 days and the wall was erected in that timeframe despite the overall project having proceeded slowly since

Minutes, Public Hearing of Zoning Board of Appeals Meeting held 7 November 2016

April.

DISCUSSION

Mr. Haberman asked the board if there were questions for Ms. Hunter. Hearing none, he asked if anyone wished to speak in favor of the application.

FAVOR

Douglas Guadiosi, 63 Spruce Street, said the wall was directly behind his property. He presented the board with a drawing of what he said had been proposed for the project and stated it was nothing like what had been built. He asked what materials are to be recycled and by what method. He was concerned that debris would scatter into his yard and that there would be odors from the process. He said there would be no designed drainage. He said there was a parking lot that was oversized for the cemetery and was originally proposed to be gravel, but he now understood would now be covered with asphalt. He expressed concern about the structural integrity of the wall. **Mr. Soda** asked about the size of the bins before they were relocated. **Mr. Guadiosi** said they were about 8' tall when they were on the back edge of the cemetery. He said management told him the bins would stay there and not be seen. He said he had been told there would only be a swale and arbor vitae trees. **Mr. Soda** asked if the neighbors had tried to contact cemetery management; **Mr. Guadiosi** said phone calls were not being returned. He said the neighbors had been contacted by an attorney who asked them to provide an easement for electricity, but that the attorney and cemetery management never mentioned a wall. He said construction created noise and a mess all summer and then the wall was erected suddenly.

Mike Schumann, 119 Home Acres Avenue, said there were "mafia blocks" on his side of the property at a level of two or three rows high, but that they were overgrown and not noticeable. He said he now saw a big pile of dirt. He echoed the concerns about smell and said he was worried about the nearby wetlands.

Ms. Hunter made an additional comment, saying there were trees that had been destroyed. She said they expected tombstones, but not a commercial-looking area at the edge of their property. She said there had been clear-cutting of trees with unknown environmental impact.

James Derosiers, 149 Corona Drive, said his house faces a large building in his backyard which is bad, but the block wall is even worse.

Nelson Ponzius, 39 Spruce Street, said he lived nearby, said the block wall was a blight on the neighborhood.

OPPOSED

Stephen Harris, ZEO, addressed the board. He addressed technical aspects of the appeal. He said the application was defective because it didn't identify who the appeal was being brought against. He said another technical problem was that the Planning and Zoning Board granted a Special Permit that was recorded 3/13/2015 and no appeal appeared to have been brought to Superior Court within 15 days of that action, as required by statute. He said that in his opinion, the Zoning Board of Appeals (ZBA) has no jurisdiction in a Planning and Zoning Board decision. He said the reason the blocks are so tall is due to the grade of the cemetery versus the neighboring lots. He described a deviation to the original plan of the wall due to proximity to the wetlands. He said in other respects, the approved plans were adhered to. He said the appellants were asking good questions, but the questions should have been raised during the Planning and Zoning (P&Z) Board's consideration of the Special Permit. Some discussion of P&Z meeting notification ensued. He maintained that the ZBA cannot act on anything approved by the P&Z board. **Mr. Soda** asked for clarification of the difference in height on either side of the wall. **Mr. Vaccino** asked if Inland Wetlands Officer was aware of the plan. **Mr. Haberman** said as he understood it, the ZBA has no jurisdiction to hear an appeal of the Planning and Zoning Board decision because the appeal should have been made to Superior Court. **Mr. Harris** respectfully asked that the ZBA deny the appeal.

REBUTTAL

Minutes, Public Hearing of Zoning Board of Appeals Meeting held 7 November 2016

Douglas Guadiosi, 66 Spruce Street, said the grade has risen 8.5'. He provided photographic and video evidence of flooding his backyard prior to installation of the swale. **Mr. Harris** noted for the record that the video was of water runoff for a rain vent. **Mr. Guadiosi** said the previously responsive cemetery management had become unresponsive to the nearby residents. **Mr. Soda** confirmed that a right-of-way for electricity had been given but not for a wall. He and **Mr. Guadiosi** discussed the photograph of the wall and backfill that was brought in. He showed a photograph of the swale. **Mr. Guadiosi** said the wall was 8.5' tall by about 100' long.

Ms. Hunter commented again, maintaining that **Mr. Harris** gave her to understand that the ZBA was the process for redress. She said he came quickly to inspect the wall, that she thought he told her this was the process to pursue. She said she felt upset. She said Inland Wetlands Officer MaryRose Palumbo had discussed the situation with her at length. She said she couldn't believe the P&Z Board would ever approve the plan as it was being implemented. She said 74" of fill had been added in place of the preexisting gentle slope. She said cemetery management stopped returning phone calls a month ago, and that she wanted the P&Z Office and IWA to explain what happened.

2nd REBUTTAL

Mr. Harris said the project was not finished and that he expected changes to address the water runoff and plantings. He said Inland Wetlands concerns were not the purview of the ZBA. He said he told **Ms. Hunter** that an appeal could be made. **Ms. Ferrante** asked what the P&Z notification process should have been. There was a discussion of direct and constructive notice. **Ms. Hunter** described her understanding of using constructive notice and said no legal advice had been sought.

Mike Schumann, 119 Home Acres Avenue, asked if recycling created a zoning issue near a residential area.

Douglas Guadiosi, 66 Spruce Street, said the space provided for trees is not adequate. He asked who was responsible for maintaining the trees.

Mr. Haberman asked who should receive complaints if plans deviate from what was approved. **Mr. Harris** said the plans could be inspected in the P&Z Office. **Mr. Guadiosi** said the plans were inadequate information.

BOARD DISCUSSION

Mr. Haberman said he really felt for the residents' concerns, but he restated that the ZBA has no jurisdiction over another board. **Ms. Ferrante** expressed concerns again about notice. **Mr. Vaccino** echoed **Mr. Haberman's** observation. **Mr. Soda** suggested a meeting with the City Planner to determine whether notice had been given. **Mr. Haberman** asked for a vote.

Ms. Ferrante Ms. Ferrante motioned to **approve the appeal**. **Mr. Soda** seconded. **Ms. Ferrante** based her motion of lack of notice. The motion failed with **Ms. Ferrante** and **Mr. Soda** voting in favor and **Messrs. Haberman, Thomas, and Vaccino** voting against the motion.

2. 197 Seaside Avenue (MBP: 35/430/42) R-12.5. Van Hartley, owner/applicant. Section 3.1.4.1 side yard of 6.9' where 10 required. Section 6.3.2 expansion of nonconforming structure for kitchen addition.

Mr. Hartley addressed the board. He said he wanted to enclose a porch already connected to an existing kitchen pantry.

BOARD DISCUSSION

Mr. Haberman 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.

Minutes, Public Hearing of Zoning Board of Appeals Meeting held 7 November 2016

Mr. Vaccino motioned to **approve**. **Mr. Soda** seconded. **Mr. Vaccino** supported his motion due to not increasing the nonconformity, exactly per the submitted materials. The motion carried with **Ms. Ferrante** and **Messrs. Haberman, Soda, Thomas,** and **Vaccino** voting **with the motion**.

3. **31 Sycamore Road (MBP: 25/207/83)** R-10. Michelle Zulawski, owner/applicant. Section 3.1.4.1 East setback of 4.2' where 5' required. Section 4.1.4 East projection of 3.9' where 4' required for construction of second garage bay.

Dave Quatrella, Esq., Bai, Pollock, Blueweiss & Mulcahey, PC, 2 Corp Dr, Shelton, addressed the board. He asked Ms. Greene to describe a scrivener's error in the first published notice of the variance, which she did. **Ms. Greene** said the second notice had been corrected. He submitted a petition of support from neighbors with addresses noted. He said his client was a first-time homeowner and the hardship was that the garage could not accommodate a modern vehicle. He said the property was legal nonconforming. He said the Gallos were the neighbors most impacted by the garage and were here to speak in support. He noted previous variances granted on the street for similar reasons.

DISCUSSION

Ms. Ferrante confirmed that the Gallo's garage was of comparable size. **Mr. Vaccino** confirmed that no living space would be above the garage. He asked about the need for a double garage when most neighbors had a single car garage. He confirmed that the hardship was a nonconforming lot and that the garage will not fit a modern car.

FAVOR

Phyllis Gallo, 25 Sycamore, said she was familiar with the old garage and supported the plan.

Michael Zulawski, 12 Timothy Drive, North Haven, said a fireplace in the existing garage created an obstruction to parking a car there. He said the garage should be replaced.

BOARD DISCUSSION

Mr. Haberman 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. Soda motioned to **approve**. **Ms. Ferrante** seconded. **Mr. Soda** supported his motion by reason of hardship of the size of the lot, exactly per the submitted materials. The motion carried with **Ms. Ferrante** and **Messrs. Haberman, Soda, Thomas,** and **Vaccino** voting **with the motion**.

B. OLD BUSINESS-None

C. NEW BUSINESS-None

D. STAFF UPDATE- Mr. Harris and Ms. Greene said there would be a draft 2017 calendars for the board to review, including a version with fewer meetings. Ms. Greene noted that Ms. Egelson had resigned from the board due to family commitments.

F. ACCEPTANCE OF MINUTES FROM 10 OCTOBER 2016 HEARING; Minutes were approved.

G. ACCEPTANCE OF APPLICATIONS FOR 13 DECEMBER 2016 HEARING. Mr. Harris said one application was discussed so far.

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