

## **Minutes, Public Hearing of Zoning Board of Appeals Meeting held January 8, 2013**

The Regular Meeting of the Zoning Board of Appeals of Milford, CT, was held on Tuesday, January 8, 2013, 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 required Coastal Area Site Plan Reviews or exemptions.

**MEMBERS PRESENT:** Joseph Tuozzola, Howard Haberman, Richard Carey, John Vaccino

**ALTERNATES PRESENT:** John Collins, Gary Dubois, Robert Thomas

**MEMBERS/ALTERNATES ABSENT:** None

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

**Zoning Enforcement Officer Stephen Harris** called the meeting to order at 7:00 p.m.

### **A. PLEDGE OF ALLEGIANCE**

### **B. ELECTION OF OFFICERS**

**Mr. Harris** stated that the meeting would begin with the election of officers. **Mr. Haberman** nominated **Mr. Tuozzola** to serve as chairman for 2013. **Mr. Vaccino** seconded the motion. There were no other nominations for chairman and **Mr. Tuozzola** was elected unanimously. The meeting was turned over to Chairman Tuozzola who thanked the commissioners for asking him to represent them once again.

**Mr. Tuozzola** asked for nominations for the 2013 Board Secretary. **Mr. Carey** nominated **Mr. Haberman**. **Mr. Vaccino** seconded the nomination. There were no other nominations for secretary and **Mr. Haberman** was elected unanimously.

**Mr. Tuozzola** asked for known board-member conflicts of interest with any item on the agenda; none were raised. **Mr. Tuozzola** announced that **Mr. Collins** would be seated as a voting member for the evening, given that **Mr. William Evasick** completed his service on the board in December.

### **C. CONSIDERATION OF AGENDA ITEMS**

#### **1. 9 Maddox Avenue**

(R-5) Peter Crabtree, consultant, for Patrick Devine, owner; Vary Sec. 3.1.4.1 and Sec. 4.1.4 as listed below to construct a new single-family, 2-story dwelling; Map 27, Block 406, Parcel 3

1. Side Yard, right side: 8.3' where 10' required.
2. Side Yard, left side: 3.8' & 4.2' where 5' is required.
3. Rear Yard, 16.8' where 20' is required.
4. Projections:
  - a. Front Yard: 4' where 8' is permitted.
  - b. Deck, right side: 2.7' where 8' is permitted.
  - c. Deck, rear: 10.7' where 16' is permitted.
  - d. Eave, right side: 6.7' where 8' is permitted

**Mr. Crabtree**, 63 Stanley Street, New Haven, addressed the board. He introduced **Mr. Devine** as the owner/contractor of the property. **Mr. Crabtree** referenced Assistant City Planner Emmeline Harrigan's Substantial Damage Estimate (SDE) letter stating that the property had sustained 92.3% damage in Storm Sandy. He distributed packets that included a copy of Ms. Harrigan's letter and an aerial photo of the area. He noted that most homes in the neighborhood were built in the 1920s, prior to zoning regulations, which accounted for the very small lot sizes. He stated that due to the amount of damage, if the structure is to be rebuilt, it must be elevated to meet the property's flood risk of AE9. He said that the plan is to elevate the house even higher—to 13 feet—but to do so in an aesthetically pleasing way. He displayed drawings of the

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project, showing the planned finished exterior appearance of the new ground elevated floor. He stated that the plan is to turn a 1-story home into a 2-story home with parking underneath, but that current building codes require increasing to the structure's footprint to accommodate space for 2 cars. He referred to the survey, stating that the backyard has been slightly increased from the original lot. He noted that a variance to add a porch to the property was granted in 2002. He also stated that the plan included squaring off the back of the house. He reviewed typical lot sizes and a lack of front yards in surrounding neighborhoods and said that to meet the required front-yard setback would actually disrupt prevailing appearance of the street. He noted a parking easement that cannot be changed. He invited Mr. Devine to discuss storm damage.

**Patrick Devine, 24 Devine Place, Milford**, formerly of **9 Maddox Avenue** described the near-complete destruction of his home and its contents, noting that the 2002 porch was the only thing that secured the house on the lot because the structure was split and pushed off its foundation.

**Mr. Crabtree** pointed out a photo with a wrack line, underscoring the high level of the floodwater. He also noted that a letter of support had been submitted by the neighbor directly behind Mr. Devine's property.

**Mr. Haberman** asked about side-deck stairway: if it included a doorway and if so, why wasn't it on the front or back. **Mr. Crabtree** said it was an egress door to the deck. **Mr. Tuozzola** asked for detail about the ground floor. **Mr. Crabtree** described concrete engineering that will support the structure. **Mr. Tuozzola** confirmed that there will be breaks in the foundation, that the structure will be 10' from the street, and that all decks and porches are on the 2<sup>nd</sup> floor. Mr. Tuozzola also confirmed with Mr. Harris that the variance application asked for everything required by the changes in the house's footprint. **Mr. Crabtree** restated the hardship of a pre-zoning regulation street with small, nonconforming lots.

**Mr. Tuozzola** asked if anyone wished to speak in favor.

### IN FAVOR OF

**Lois Fagan, 856 East Broadway**, said the number of empty houses on the street was distressing. She said the rebuilding plan is welcome.

**Lee Cook, 15 Tremont Street**, said he supports project; it is reasonable and necessary.

**Linda Taylor, 10 Maddox Avenue**, said she lives across the street and misses the Devines. She said the post-Sandy neighborhood feels abandoned, and that she personally saw the damage as it occurred to the Devine's home. She said she and her husband also wrote a letter of support for the project.

**Mr. Tuozzola** asked if anyone wished to speak in opposition; hearing none, he closed the hearing.

### DISCUSSION

**Mr. Haberman** said that varying 2 feet to remove 2 cars from street parking was a good tradeoff. He also approved of decreasing the nonconformity in the rear yard. He said the entire request seemed reasonable.

**Mr. Vaccino** agreed.

**Mr. Haberman** motioned in favor of appeal. **Mr. Carey** seconded. **Mr. Haberman** supported his motion by reason of the hardship of lot size and the desirability of removing parked cars from the street. The motion carried with **Messrs. Carey, Collins, Haberman, Vaccino** and **Tuozzola** voting **with the motion**.

2. **105 Wolf Harbor Road** (R-A) George Romer and Judith Romer, owners; Vary Sec. 3.1.4.1 side-yard setback to 17.5' where 25' is required for construction of garage; Map 113, Block 914, Parcel 17A

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**Mr. Romer, 105 Wolf Harbor Road**, addressed the board. He stated that his hardship in adding the garage is that his property is constrained by septic leeching fields and underground utilities. He said that attaching the garage to house is most practical option. He said the garage would be professionally built, wouldn't upset neighborhood aesthetic, or affect public safety. He shared a photo of his driveway showing cones indicating where addition would be located. He noted that the driveway that would be used for the garage was already paved. **Mr. Tuozzola** asked for details on the location of the septic and utility areas. **Mr. Haberman** and **Mr. Vaccino** confirmed that this would be a third bay that will attach to the existing 2-bay garage. **Mr. Romer** stated that many of his neighbors have 3-car garages.

**Mr. Tuozzola** determined that no one wished to speak in favor of or in opposition and closed the hearing.

### DISCUSSION

**Mr. Vaccino** asked if hardship really exists in this case. **Mr. Haberman** said the stated hardship was that he can't put it anywhere else due to underground elements. **Mr. Tuozzola** asked if the survey should document the location of underground constraints to construction or is the applicant's word sufficient evidence. **Mr. Harris** said the board can decide what constitutes reliable evidence of an applicant's claim. **Mr. Tuozzola** noted that the lot still has a lot of property where a garage could be built by right. **Mr. Collins** said it's harder to establish hardship because having a 3<sup>rd</sup> garage bay doesn't seem like a necessity. **Mr. Carey** noted that other houses in the area do have 3 car garages, but **Mr. Vaccino** countered that the other houses may not have needed a variance to add the 3<sup>rd</sup> bay. **Mr. Haberman** said there is a distinction between hardship and convenience.

**Mr. Collins** moved to deny the application due to a lack of a demonstrated hardship. **Mr. Vaccino** seconded. The motion carried with **Messrs. Carey, Collins, Haberman, Vaccino** and **Tuozzola** voting **with the motion to deny**.

3. **42 Field Court** (R-5) Joseph Hannon, Jr., contractor, for William Newbauer, III, owner; Vary Sec. 3.1.4.1 and Section 4.1.4 as listed below for elevation of single-family residence; Map 28, Block 573, Parcel 4
  - a. West side setback of 4.9' where 5' required.
  - b. West side stair projection to within 1.6' where 4' is permitted.
  - c. East side yard of 8.9' where 10 required.
  - d. East side stair/deck projection to within 4.94' where 8' is permitted.

**Mr. Hannon, 110 Beach Avenue, Milford**, and **Mr. Newbauer, 244 Galloping Hill Road, Fairfield, CT**, began to address the board, but **Mr. Tuozzola** asked for a moment to ask Mr. Harris for a clarification on whether a request could be heard again before 6 months had passed. **Mr. Harris** said the state statute allows the board to hear a request more than once at the board's discretion. **Mr. Tuozzola** said that in this instance, the plan reflected many changes and that he approved of hearing the request again.

**Mr. Newbauer** thanked the board for hearing his new request due to the fact that this is a seasonal house, and a long delay would mean loss of use of the property.

**Mr. Hannon** said he may have been overzealous in the previous application, and that he and the Newbauers had consulted with their surveyor and the Zoning Enforcement Officer to reduce the number of requests in the present application. He noted that the city required that the home be elevated due to storm damage and that while doing so, the Newbauers wished to move the house further away from water and elevate it even higher than the FEMA requirement. To move the house, the plan proposes attaching it to the existing garage, thereby gaining 8 additional feet of distance from the water. Mr. Hannon discussed the

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variance requests in detail, pointing out requests to legalize existing nonconformities and those that will be caused as a side effect of elevating the house. He noted that the application had dropped all requests on the waterside of the house and that the current plan does not ask to increase the overall lot coverage percentage. He said the hardship is based on being required to raise the building and the need to move away from the water to reduce the chance of future damage. **Mr. Newbauer** added that Storm Irene resulted in loss of use of the home, and that Storm Sandy did comparable damage to it. He said he thinks that moving the house up and back will reduce risk of future damage.

**Mr. Vaccino** asked why the lot coverage of 69% coverage didn't require a variance. **Mr. Harris** said the variance was not needed because it's an existing condition that isn't affected by the proposal. There was further discussion to clarify the hardship.

**Mr. Tuozzola** asked if anyone wished to speak in favor. He noted the submission of 15 postcards with no objection to the plan. He asked for opposition; hearing none, he closed the hearing.

### **DISCUSSION**

**Mr. Carey** said that the number of requests were greatly reduced from last time and that the new request addressed many of the board's concerns. **Mr. Tuozzola** agreed. **Mr. Vaccino** said he appreciated being walked through new variance requests versus existing variance requirements. **Mr. Haberman** motioned to approve based on the hardship of the lot's configuration, **Mr. Vaccino** seconded. The motion carried with **Messrs. Carey, Collins, Haberman, Vaccino and Tuozzola** voting with the motion.

4. **131 Hillside Avenue** (R-5) Richard Miller, designer, for Susan Calash/131 Hillside LLC, owner; Vary Sec. 3.1.4.1 side-yard setback to 7.3' where 10' is required; front-yard setback to 16' where 20' is required; front-yard stair projection to within 11.7' where 16 is permitted; for construction of single-family residence. Map 49, Block 795, Parcel 87

**Mr. Richard Miller, 42 Pauline Avenue, West Haven**, addressed the board. He introduced John Calash, owner of 131 Hillside Avenue. Mr. Miller said the property is nonconforming and undersized, creating a hardship as the owners attempt to reconstruct and elevate a home with a 63% substantial damage estimate after Storms Irene and Sandy. He noted that a porch has been ripped off the home and that the first floor must be entirely rebuilt. He stated that twice during the month of December, apart from the 2 major storms already noted, heavy onshore winds and high tides splashed water up on the 2<sup>nd</sup> floor and left a starfish stuck to a window. He said this illustrated the concern Mr. Calash has to protect himself and his family; he also noted that the Calashes have been out of the home for 85 days. Mr. Miller said that lifting the house allows it to be moved away from seawall and out of the VE flood zone. He said that the plan is to center the structure on the lot and improve setback conformity while moving the house away from highest risk flood zone. He noted that the existing deck will be removed and revert to a porch. He stated that at a planned square footage of 1700, the house is still small. He said the elevation will be slightly higher than the flood risk designation when the house is placed on piers to allow parking underneath. Hillside Avenue has parking only on 1 side of the street, so the garage will help alleviate congestion. He noted that houses on the street often have front property lines on the street and that the houses are not a uniform distance from street. **Mr. Calash** added that he wishes to make the house safe for his wife and himself in their retirement.

**Mr. Tuozzola** asked if anyone wished to speak in favor.

### **IN FAVOR OF**

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**Michael Greene, 133 Hillside Avenue**, said he approves of the plan and appreciates that the Calashes have consulted with their neighbors about the plan.

**Mr. Tuozzola** asked if anyone wished to speak in opposition; hearing none, he closed the hearing.

### DISCUSSION

**Mr. Tuozzola** praised the request for focusing on safety while introducing conformity improvements.

**Mr. Haberman** motioned in favor of appeal. **Mr. Vaccino** seconded. **Mr. Haberman** supported his motion by reason of the hardship of the size of property. The motion carried with **Messrs. Carey, Collins, Haberman, Vaccino** and **Tuozzola** voting **with the motion**.

5. **67 Pelham Street** (R-7.5) Donald Hutchinson, owner; Vary Sec. 4.1.1.1 to reconstruct garage on existing concrete slab footprint inside front-yard setback; Map 29, Block 548, Parcel 9A

**Mr. Hutchinson** addressed the board. He presented the board with updated drawings of the garage. He reviewed the subdivision of the property in the early 2000s, noting that the house is over 100 years old and that the old garage may have been about the same age. He said he is asking for permission to rebuild a similar garage in exact spot where the previous one was crushed by a fallen pine tree. He stated that his hardship is that there is no other place to put a garage without a variance or without interrupting the traffic pattern around the property. He said that the garage design is essentially the same except for the roof, which provides a better shape for storage. He presented other details of the design.

**Mr. Tuozzola** discussed the previous garage with Mr. Hutchinson. He asked Mr. Harris to confirm the presence of another garage on the property and to clarify existing regulatory limits on the number of garages permitted on a lot, which **Mr. Harris** did. **Mr. Vaccino** confirmed that the space above the garage would only be used for storage. **Mr. Harris** clarified a change made to the garage drawings, which he requested after consulting with other zoning staff about the regulations.

**Mr. Tuozzola** determined that no one wished to speak in favor or in opposition and closed the hearing. After a short discussion, there were no issues in dispute, so he asked for a motion.

**Mr. Vaccino** motioned in favor of appeal. **Mr. Haberman** seconded. **Mr. Vaccino** supported his motion by reason of the hardship of the lot size and that the structure was being replaced without expansion. The motion carried with **Messrs. Carey, Collins, Haberman, Vaccino** and **Tuozzola** voting **with the motion**.

6. **74 Hawley Avenue** (R-5) John Borer, contractor, for Joe Borer, owner; Vary Sec. 3.1.4.1 for side-yard setback to 7.4' where 10' is required for addition to rear of house; deck projection to within 2.5' where 8' is permitted. Map 71, Block 764, Parcel 2

**Mr. John Borer**, 4 Alling Street, Woodbridge, CT, addressed the board. He described the requested changes, noting that current house projects 2 feet into the setback and that the owner wishes to square off this area. He stated that the owner wants to re-deck the existing nonconforming porch. He said the hardship is the narrow lot. **Mr. Tuozzola** clarified the plans for the porch and demolition area with Mr. Borer.

**Mr. Tuozzola** asked if anyone wished to speak in favor of the appeal.

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### **IN FAVOR OF**

**Richard Borer, 78 Hawley Avenue**, said he supported the plan and noted that the requested changes are very consistent with other homes on street and that the narrow lot presents a hardship.

**Mr. Tuozzola** determined that no one wished to speak in opposition and closed the hearing. After a short discussion, there were no issues in dispute, so he asked for a motion.

**Mr. Vaccino** motioned in favor of appeal. **Mr. Carey** seconded. **Mr. Vaccino** supported his motion by reason of the hardship of the lot width. The motion carried with **Messrs. Carey, Collins, Haberman, Vaccino** and **Tuozzola** voting **with the motion**.

### **D. OLD BUSINESS**

None was raised.

### **E. NEW BUSINESS**

**Mr. Harris** said language on the expiration of variances in some ZBA paperwork was in conflict with the state statute, which asserts that variances do not expire once recorded on the land records. **Mr. Tuozzola** was reminded of the earlier discussion on the precedent of waiting for 6 month before re-hearing variance applications that had been denied. He asked **Mr. Harris** for clarification on both topics. **Mr. Harris** offered to prepare a set of notes on important statutory issues regarding variance applications. He also advised that he is in the process of drafting ZBA bylaws based on various ones around the state, which will be reviewed by the City Attorney and the Board. **Mr. Tuozzola** expressed appreciation for the effort and a desire to have such guidelines.

### **F. STAFF UPDATE**

**Mr. Harris** noted that **Planning and Zoning Clerk Taft Clark** was now a valued permanent staff member, having completed his probationary period.

### **G. ACCEPTANCE OF MINUTES FROM DECEMBER 11, 2012 HEARING**

**Mr. Carey** moved they be accepted; the motion carried unanimously.

### **H. ACCEPTANCE OF APPLICATIONS FOR FEBRUARY 13, 2013 HEARING**

**Mr. Harris** said one application had been received.

The meeting was adjourned at 8:28 p.m.

*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