

Minutes, Public Hearing of Zoning Board of Appeals Meeting held 9 January 2018

The Regular Meeting of the Zoning Board of Appeals of Milford, CT, was held on Tuesday, 9 January 2018, 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 / ELECTION OF OFFICERS/ROLL CALL

Mr. Harris called the meeting to order at 7:00 pm and announced the election of officers. **Mr. Soda** nominated **Mr. Tuozzola** for chairperson, **Mr. Vaccino** seconded, and the vote was unanimous. **Mr. Tuozzola** was seated as chair and thanked the board for their votes. **Mr. Soda** then nominated **Mr. Vaccino** for Board Secretary, **Ms. Ferrante** seconded, and that vote also was unanimous. After the election, **Mr. Tuozzola** stated that **Items 1 and 3** had requested a postponement and would be heard in February. He asked for conflicts of interest for board members with any agenda items; none were raised.

MEMBERS PRESENT: Joseph Tuozzola (Ch), Sarah Ferrante, William Soda, John Vaccino

ALTERNATES PRESENT: Gary Dubois, Etan Hirsch

MEMBERS/ALTERNATES ABSENT: Michael Casey

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

B. CONSIDERATION OF AGENDA ITEMS

1. **1A Seaview Avenue.** MBP: 6/84/45. R-10. Section 9.2.1. Appeal of Cease and Desist Order concerning height of fence along Westerly side of property. Applicant/Owner: Laurel Sands Condominium.

Postponed.

2. **40 Crabtree Lane.** MBP: 12/62/2. R-7.5. Section 9.2.1. Appeal of zoning permit dated 10/24/17. Applicant: Danielle Bercury for Robert Farakos. Owner: RMF Builders, LLC.

Attorney Bercury, Brenner, Saltzman & Wallman, LLP, New Haven, addressed the board. She described the issuance of the zoning permit based on the consolidation of a lot by a PZ board in 2016. She said that all the materials pertaining to the lots in question should be incorporated into the record. She referred to a map called Laurel Manor with the lots highlighted, noting that they were part of preexisting nonconforming lots. She said the neighborhood always had concerns about the development of these lots. She reviewed the 6.4.2 merger of the lots, noting that then-ZEO Peter Crabtree had certified the lots with signs posted. She said the neighbors then submitted evidence that the lots had been part of another lot and had been treated as such by the owners, therefore merging them. She said Mr. Crabtree changed his mind and declared them merged in a memo. She said an appeal was made to the ZBA in 2001 with additional testimony about the merged nature of lots. She said neighbors subsequently assumed that the lots were no longer building lots and that everything submitted to ZBA was also submitted to the Planning and Zoning Board. She said the ZBA decision was not appealed, but 15 years later the applicants submitted an application for a Lot Line Adjustment essentially dismissing the ZBA determination. She said the PZ chairman accepted the request which did not require a need to advertise or otherwise notice the action. She stated that the map was signed by the PZ chairman, and this action was advertised in the NH Register, an advertisement which the neighbors did not see. She said Mr. Harris issued a zoning permit based on the lot consolidation by the PZ chairman. She said it was her clients' position that the lots were not eligible under 6.4.3 for merger. She cited Section 2.3.1 of Subdivision Regs allows chair to do Lot Line Adjustments or Consolidations when such actions do not create new lots. She asserted that this action did in fact create a new lot. She asked to allow neighbors to testify about the disruptive nature of the development due to not only constructing a house but converting a paper street to a public right of way.

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FAVOR

Robert Farakos, 35 Deerfield Avenue, said that the lots should not have been converted into a building lot. He questioned lack of notification. He said property values, quality of life, and open space would be adversely impacted.

Colin Strong, 25 Deerwood Avenue, said he was the newest member of the neighborhood and he was told by the selling realtor that the paper road and lots would never be developed. He said he would never have bought the house if he had known otherwise.

Gerald Sheehan, 46 Crabtree Lane, said he had received paperwork from the City indicating that the lots were not buildable and that there had been a shed on the property, merging the lots. He expressed concern for the neighborhood and wildlife in the area.

Fred Paladino, 15 Whitney Ave, said he had visited the Planning and Zoning Office twice to discuss the matter with Mr. Harris. He said the neighbors had not received correct information. **Mr. Tuozzola** tried to confirm when he contacted Mr. Harris.

Robert Secondi, 27 Deerwood Ave, said he purchased his home in 2010. He said he spoke to Mr. Crabtree when he wanted to put up a fence and was told the lot was not buildable.

OPPOSED

Mr. Harris, ZEO, said the only issue before the board tonight was whether the zoning permit was issued legally. He asserted that the testimony tonight had historical value but was not relevant. He referred to the lot consolidation map and the address of 40 Crabtree Lane with the map/block/parcel. He referred to the advertisement of the PZ action without an timely appeal. He said the ZBA had no authority to vet the actions of the PZ Board, and that the lot was a legal lot of record because PZ approved a lot consolidation. In light of all this, the zoning permit was lawfully issued. He reiterated that this was the only issue before the board tonight. **Mr. Soda** remarked that using this method of creating a building lot seemed “sneaky” to him.

Attorney Kevin Curseaden, of Carroll, Curseaden and Moore, 3 Lafayette Street, said he represented the current owner of the property who had succeeded in getting the lot consolidation approved. He said that by statute and regulation, Mr. Harris had no choice but to issue the zoning permit. He said there was confusion about the original lot creation and that the original lot widths were different. He said there was no requirement to post signs or notify neighbors other than the newspaper notice.

REBUTTAL

Attorney Bercury rebutted the idea that the ZBA has no jurisdiction. She referred to ZBA minutes and asserted that the Wrights didn't appeal the decision in 2001, but waited 15 years to collaterally attack the original decision of the board. She encouraged the board to consult the City Attorney.

Mr. Soda asked how, if lots were merged in 2001, could the lot lines be adjusted later. **Mr. Harris** reiterated that the only issue before the board was whether the zoning permit was legal. He said that once a lot of record exists, it exists. He said an action of the PZ Board can only be appealed to Superior Court, not the Zoning Board of Appeals.

Attorney Bercury said the action was not by the PZ Board, only by the chair, and that the applicant published a decision in the paper, leaving no opportunity for the public to speak about the matter. She asserted that the procedures in 2001 were documented. She said the PZ chair's actions were improper.

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BOARD DISCUSSION

Mr. Soda asked if the board wanted to consult the City Attorney to ask how a lot line could be adjusted on lots that no longer existed because they were merged in 2001. After further discussion, the board said it wished to ask the applicant for an extension to formulate any further questions, which **Attorney Bercury** said would be acceptable. **Mr. Soda** confirmed Ms. Greene's phrasing of his question for the record.

3. **1698 Boston Post Road & 0 Boston Post Road.** MBP: 109/804/10 & 109/804/12B. Variance of section 4.1.7.4 to permit 8' high fence where 6' permitted. Applicant: Thomas B. Lynch for 1698 Boston Post Road, LLC., owner.

Postponed.

4. **117 Hawley Avenue.** MBP: 60/742/9. BD-1. Variance of section 3.8.4.1, lot depth of 78' where 80 required. Applicant: Thomas B. Lynch for Anthony Capodicci, owner

Attorney Lynch, Lynch, Trembicki & Boynton, 63 Cherry St., addressed the board. He introduced his client who wishes to develop the property. He noted that the application had been withdrawn the previous month due to a request for subdivision of the lot, which must be handled by the PZ board. He said his client wants to have 2 conforming lots but that there is a 1.5' shortage in lot depth. He noted that the house was across the street from "downtown" Woodmont. He said it allows for mixed use on 2000 sf lots.

DISCUSSION

Mr. Tuozzola confirmed that the lot was currently conforming and expressed concern that a nonconforming lot would be created. He noted that the PZ board would have to handle the subdivision. **Mr. Tuozzola** noted that one building could hold multiple families. **Attorney Lynch** said his client would prefer to build lower density structures. **Ms. Ferrante** asked about the creation of conforming versus nonconforming lots. **Mr. Harris** read into the record the definition of lot depth from the regulations. He expressed concern about discussing hypothetical situations. **Mr. Tuozzola** asked for a hardship; **Attorney Lynch** said it was the irregular shape of the lot. **Mr. Vaccino** noted the existence of a currently conforming lot. **Mr. Harris** clarified that in the BD-1 zone, one or 2-family homes were allowed.

BOARD DISCUSSION

Mr. Tuozzola asked if anyone wished to speak in favor of or opposition to the application. Hearing none, he closed the hearing. After a short discussion, **Mr. Tuozzola** asked if the group found a hardship. **Mr. Soda** asked for setback requirements, which **Mr. Harris** read, clarifying that side yards could be 0 or 4 feet because it's a business district. **Ms. Ferrante** said she didn't like approving hypothetical actions that require approvals from other boards. **Mr. Vaccino** wondered about the ultimate use of the lot.

Mr. Vaccino motioned to deny. **Mr. Soda** seconded. **Mr. Soda** supported his motion by reason of lack of hardship. The motion carried with **Ms. Ferrante** and **Messrs. Dubois, Soda, Vaccino, and Tuozzola** voting with the motion.

5. **107 Melba Street.** MBP: 29/587/36. R-5. Variance of section 3.1.4.1, West SY of 4.6' where 10' req., East SY of 3.1' where 5' req., Section 4.1.4, West eave projection to 2.6' where 8' permitted, East eave projection to 1.1' where 4' permitted, East deck projection to 0' where 4' permitted, West front deck projection to 4.6' where 8' permitted, East front deck projection to 3.1' where 4' permitted, West rear deck projection to 4.6' where 8' permitted, East rear deck projection to 3.1' where 4' permitted, all to construct a new single family dwelling. Applicant: James Denno for Craig Southard, owner.

Mr. Jim Denno, 93 Sunnyside Court, addressed the board. He said the clients were present. He said the overall intention was to demolish and replace the existing home with the same width but to lengthen it and move it forward. He reviewed details of the design.

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DISCUSSION

Mr. Tuozzola confirmed that the old house was 2400 sf and the new would be around 2800 sf. Mr. Denno noted that much of the concrete in the current house would be removed. **Mr. Tuozzola** said he was concerned with the number of variances requested. **Mr. Soda** asked if adjusting the stairs could reduce the number of variances. **Mr. Denno** agreed, consulted the owners, and reported that they were open to the suggestion.

FAVOR

Craig Southard spoke about how long the house had been in their family, saying they wished to start flood mitigation.

BOARD DISCUSSION

Mr. Tuozzola 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. Vaccino motioned to **deny without prejudice**. **Mr. Soda** seconded. The motion carried with **Ms. Ferrante** and **Messrs. Dubois, Soda, Vaccino, and Tuozzola** voting **with the motion**.

6. **12 Parkland Place**. MBP: 39/606/6. R-10. Variance of section 4.1.4 front yard deck projection to 17' where 21 is permitted. Applicant: Xtreme Home Improvements, LLC for James & Patricia Yaffe, owners.

Mr. Matt Martino addressed the board. **Mr. Harris** requested additional copies of the building plan, which **Mr. Martino** provided. He said the design featured a deck with a water tank underneath because grade of the property creates a slip hazard.

DISCUSSION

Mr. Vaccino asked for the hardship of the lot. **Mr. Martino** said it was using the property as intended. He said there had been loss of a view due to nearby construction.

FAVOR

Mr. Yaffe said the design was unobtrusive and there would be no obstruction of the view of other homes. He said he had lost his view due to a variance granted to a neighbor.

OPPOSED

Mark Ryba, 3 Parkland Pl, said he lives diagonally across from the property. He said he had not been able to view plans on file per the notification letter in the Planning and Zoning office. **Mr. Tuozzola** provided a short recess to allow Mr. Riba to review the plans provided by Mr. Martino. **Mr. Riba** said he wanted the board to deny the application. He said an older home was demolished on the lot in 2010. He described previous variances granted for the current structure with the denial of a change to the front-yard setback. He said the area was very dense and maxed out on the lots. He said there is currently a deck and patio attached to the house. He said he didn't understand why there was no side-yard setback required for a deck. He said the hardship on the application was not compelling, asserting that the deck was for a view of the water, not to address a hardship. He said he was concerned with setting a precedent. He said a 4'x10' deck could be constructed on the front of the house without a variance. **Mr. Soda** noted that houses on each side projected further than the proposed plan.

Debbie Shiavone, 18 Parkland Pl, submitted photos of the property. She said she had researched the 2010 variance application and was convinced there was no hardship and that it would negatively impact the neighborhood.

REBUTTAL

Mr. Yaffe said the builder applied for the earlier variances, not him.

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Mr. Tuozzola closed the hearing. He asked **Mr. Harris** to summarize the previous variance. **Mr. Soda** clarified the plan for the grade and rain guard system.

Mr. Vaccino motioned to **deny**. **Mr. Soda** seconded. **Mr. Vaccino** supported his motion by reason of lack of a hardship. The motion carried with **Ms. Ferrante** and **Messrs. Hirsch, Soda, Vaccino,** and **Tuozzola** voting **with the motion**.

7. **38 Milford Point Road.** MBP: 6/88/12. R-7.5. Variance of section 3.1.4.1 rear yard setback to 16' where 25' is required for building addition. Applicant: James Alicki for Joe Casey, owner.

Mr. James Alicki, 190 Anderson Ave, addressed the board. He said there was an existing rear deck that he wished to enclose to utilize as kitchen space. He said he didn't wish to change the existing footprint.

DISCUSSION

Mr. Tuozzola confirmed that the deck conversion to enclosed space created the need for a variance.

BOARD DISCUSSION

Mr. Tuozzola asked if anyone wished to speak in favor of or 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. Vaccino** seconded. **Mr. Soda** supported his motion by reason of hardship of shallow depth of the lot, exactly per the submitted materials. The motion carried with **Ms. Ferrante** and **Messrs. Hirsch, Soda, Vaccino,** and **Tuozzola** voting **with the motion**.

B. OLD BUSINESS-None

C. NEW BUSINESS-None

D. STAFF UPDATE-Ms. Greene asked for reaction to email plans with only Mr. Soda requesting advanced print copy. She asked the board to suggest a methodology for collecting questions.

E. ACCEPTANCE OF MINUTES 12 December 2017: Approved.

G. ACCEPTANCE OF APPLICATIONS for 13 February 2018 hearing; postponements were noted.

Adjournment was at 9:08 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