

## Minutes, Public Hearing of Zoning Board of Appeals Meeting held 10 January 2023

The Regular Meeting of the Zoning Board of Appeals of Milford, CT, was held on Tuesday 10<sup>th</sup> of January, 2023, beginning at 7:00 p.m. at 110 River Street, 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. Harris** called the meeting to order at 7:04 pm and announced the election of officers. **Ms. Ferrante** nominated **Mr. Tuozzola** for chairperson, **Mr. Montano** seconded, and the vote was unanimous. **Mr. Tuozzola** was seated as chair and nominated **Ms. Ferrante** for Board Secretary. **Ms. Hirsch** seconded, and that vote was also unanimous.

**MEMBERS PRESENT:** Joseph Tuozzola (Ch), Sarah Ferrante, Gary Montano, Chris Wolfe

**ALTERNATES PRESENT:** Gary Dubois, Carmina Hirsch, Mike Smith

**MEMBERS/ALTERNATES ABSENT:** William Soda (excused)

**STAFF PRESENT:** Stephen Harris, Zoning Enforcement Officer; Susan LaFond, DPLU Administrative Assistant

### **B. CONSIDERATION OF AGENDA ITEMS**

- 1) **114 Merwin Avenue**, MBP 59/737/15, R-7.5, Kevin Curseaden, Esq., for Peter Dreyer, appellant (112 Merwin Avenue) Appeal the Decision in accordance with the provisions of section 9.2.1 regarding decision to issue a zoning permit date 7/21/22 for the construction of a single-family house in violation of zoning regulations. HELD OPEN FROM DECEMBER 13, 2022.

**Chairman Tuozzola spoke.** This item was left open from the December meeting. **Ms. Ferrante** chaired for that application, and he would like her to continue as chair. **Ms. Hirsch, Mr. Smith, Mr. Montano,** and **Mr. Dubois** were also present at last month's hearing and were asked to continue.

**Chairman Tuozzola** recused himself and left the room.

**Atty. Curseaden** spoke. He appreciates the Board's consideration in leaving the hearing open. He watched the tape and was able to listen to the recording. He addressed some comments he heard. Summary is that appeal is of the issuance of the zoning permit; claim is **Mr. Harris** issued the permit improperly per Section 5.8 of the Milford Zoning Regulations that states if you bring in fill to a property in the flood zone, you must go to the PZ Board for approval for either a Site Plan Approval or Special Permit. He referenced his December 10<sup>th</sup> letter. Fill was brought in; the amount of fill or when the fill was brought in does not matter. Last question was should the permit have been issued (is there a PZ Board approval as required by the regulations)? The answer is no; therefore, the permit should not have been issued. He stated he made the same argument at his appeal in April. At that time, the ZBA decided the applicant was not in compliance with the City Engineers drainage letter and the Board held up that appeal. There was never a subsequent application or approval by the Planning and Zoning Board. He is appealing a different issue this time. He does not question whether **Mr. Mooney** overworked the permit. **Mr. Mooney** built what he said he would build, and that is not the appeal. The appeal is that the permit should not have been issued in the first place because Planning and Zoning approval was never given. The remedy is that the applicant goes before the Planning and Zoning Board under Section 5.8 to obtain the proper approvals to fill. The reason for the regulation is that you are not to increase flooding on a neighbor's property when developing your property.

The City Engineer has been satisfied but that is irrelevant, because the City Engineer's drainage approval is based on whether you are increasing the runoff from your property; not whether you are blocking drainage from another property. Does the 12-18 inches of fill and retaining wall on the property line cause an issue? The property at 112 Merwin Avenue did drain across the property at 114 Merwin Avenue until fill was used and the retaining wall was put up. There are ongoing conversations toward a global solution. Currently the appeal is that **Mr. Harris** should not have issued the permit without Planning and Zoning approval.

**Mr. Montano** asked if the appellant is asking for the applicant to go to the Planning and Zoning board for approval, having the zoning permit revoked. **Atty. Curseaden** confirmed. **Ms. Ferrante** had questions regarding Section 5.8.3 excerpt which specifically calls out "below the regulatory flood protection elevation." She referred to a survey showing the flood zone appearing to be quite a distance from the flood zone. She asked where exactly the fill was placed. **Atty. Curseaden** said it appears fill was put throughout the property. He directed **Ms. Ferrante** to Section 5.7.3 which states no fill with any earth products within 25' of a flood hazard area. **Ms. Ferrante** asked whether fill was placed within 25' of the flood hazard area, or not. **Atty. Curseaden** said yes it was and referenced a berm at the back of the property. **Mr. Wolfe** asked if the at grade driveway height is the same at both properties and if not how far off are they? **Atty. Curseaden** said his client's engineer has been to the site multiple times and there has been flooding in that area for a significant time. His client's flooding has become worse since the adjoining property was filled and the retaining wall built. The City Engineer typically requires single family houses to be elevated above the flood zone, so the garage is above the BFE. He believes the height difference may be 18". **Mr. Wolfe** asked if previous drainage comments are satisfied; **Atty. Curseaden** said they were. **Atty. Curseaden** stressed, the City Engineer's report is about increased runoff from 114 Merwin Avenue and does not necessarily address blocking drainage from an adjacent property. **Mr. Wolfe** projected that with the retaining wall, **Atty. Curseaden's** client now needs relief. **Atty. Curseaden** said they are working on a 3-lot solution for the long term; however, his client's elevation vs. **Mr. Mooney's** property shows his client's property was able to drain more onto **Mr. Mooney's** property prior to bringing in the fill.

**Mr. Harris** addressed the chair. He responded to **Atty. Curseaden's** remarks. Concerning fill; the City Engineer likes the garage surface to be 18" above the crown of the road. He stated Section 5.7.4.1 is exemptions to the fill regulations, that allow for minimal amounts of fill in relation to projects that have received a building permit. Planning and Zoning staff determined this was the minimum amount of fill. The City Engineer is satisfied with the drainage report that 114 Merwin Avenue will not increase runoff on to neighbors' property. Per Section 5.8.3 Special Permits are not automatically required for single family home construction. To bring in a single-family new home construction in a flood zone for a Special Permit has never been done. Special Permit in a flood zone would only be required if the home is within 25' of Mean High Water or another feature mentioned in Section 4.16. The fill is exempt under Section 5.7.4.1.

### OPPOSED

**Atty. Lynch** spoke. He said this appears to be a domino effect on this stretch of Merwin Avenue which gathers water on a regular basis. **Atty. Curseaden's** client's property was draining onto **Mr. Mooney's** property previously. His client required a Zoning permit and had plans reviewed by the City Engineer and Inland Wetlands Agency. The appeal last spring caused **Mr. Mooney** to revise his plans and resubmit. They were then certified by the City Engineer. **Atty. Lynch** said there are a multitude of legal remedies which **Atty. Curseaden** is either following or may follow. There is a civil action in Superior Court filed by **Atty. Curseaden** claiming water has traversed unreasonably from 114 Merwin Avenue onto his client's property. This will be determined by expert testimony. What the Board has heard over the past

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four months is based on the single issue of whether **Mr. Harris** had the authority to issue the Zoning permit. The City Engineer certified the drainage provided by the Site Plan is adequate to service the retention of stormwater drainage on the property so it will not affect other properties. There has been water that has accumulated on **Atty. Curseaden's** client's property, but no determination it is runoff from **Atty. Lynch's** client's property. An engineer from Codespoti Associates performed a review of the property and found the tidal floodgate on the Surf Village Condominiums is corroded and rusted and may be the reason for the water collecting on **Atty. Curseaden's** client's property. **Atty. Lynch** said the simple solution is to allow **Atty. Curseaden's** client the same opportunity to bring fill to his own property to correct the issue. **Atty. Lynch's** client cannot sell a million-dollar home until this issue is resolved. **Mr. Harris** was right in issuing the permit.

**Ms. Ferrante** asked if there was anyone who would like to speak in favor. None.

**Ms. Ferrante** asked if there was anyone who would like to speak in opposition.

**Cal Mooney**, owner of 114 Merwin Avenue, spoke. He clarified that the lot was previously a parking lot, completely impervious. Now the drainage is 33% greater than it was prior to his build. He installed a biofiltration berm to restrict water and purify it as it enters the wetlands. Also, his property was always higher than 112 Merwin Avenue by about 9". He put the retaining wall up to direct the water directly to the wetlands and not to the adjacent property.

### REBUTTAL

**Atty. Curseaden** reiterated the question is not the drainage or flow from 114 Merwin Avenue. The issue is whether the permit was issued based on the regulations, and whether his client's drainage has been blocked by the fill and creation of the retaining wall.

### BOARD DISCUSSION

**Mr. Smith** said it sounds like the owner of 114 Merwin Avenue has followed the rules and worked with the City and obtained the proper permits, and that **Mr. Harris** was aware of the fill being nominal as defined by the regulations.

**Ms. Ferrante** believes **Mr. Harris** was aware of exceptions to the fill, assessed it as zoning compliant, and issued the permit.

**Mr. Montano** contended the PZ Board should have issued a Site Plan approval to bring the fill in and believes the appeal should be approved.

**Mr. Montano** motioned to overturn the decision. **Ms. Hirsch** seconded. Motion failed with **Mss. Ferrante and Hirsch** voting against the motion, **Messrs. Smith and Wolfe** voting against and **Mr. Montano** voting for the motion.

**Chairman Tuozzola** returned to his seat at the board.

- 2) **4 Crown Street**, MBP 35/418/11; R-5; Peter Lupoli and Carol Lupoli, owners; Vary Section 3.1.4.1 rear-yard setback to 5.1' where 20' required to construct attached garage.

The chair asked **Ms. Hirsch** to vote as an alternate in place of **Mr. Soda**.

**Peter Luponi** spoke. He advised his wife's name is **Carrie (Caroline)**, not Carol. House has existing garage which is not structurally sound. They wish to move it inbound from the property lines but connect it to the house.

**Chairman Tuozzola** confirmed terms of the variance. Asked if garage would be larger and it will. It will be moved back to sit in line with the house and be connected to the house.

**Ms. Ferrante** asked how much closer to the property line the new garage will be. **Mr. Luponi** shared an elevation and photo of home and garage. **Mr. Harris** confirmed the original garage to be removed is 4' from the lot line and the proposed garage will be 6' 3" from the line. **Ms. Ferrante** asked to see elevation drawing a second time and noted the new garage would have a second story.

**Mr. Montano** asked if the property was in a flood zone; applicant stated no.

**Mr. Smith** asked if the variance was only for distance. Applicant confirmed.

**Mr. Wolfe** asked if the new home was permitted; applicant confirmed. Garage reconstruction was not included in that permitting. Applicant stated they were not aware the garage was not structurally sound until after the house construction began. The garage will be attached to the main house by breezeway and includes a second-floor office and full bath. Heat will be separate from the main house via a split unit. Applicant did not know SF of the original house. He advised new home is approximately 2700 SF. **Mr. Wolfe** asked if floorplans are available. We have only received a survey. **Mr. Wolfe** asked where egress was from the second floor. Breezeway stairs are the access per the applicant.

**Ms. Ferrante** asked why the applicant requires a second floor to the garage and noted that is a lot of property that close to the property line. The applicant said this will be their primary residence and they have 2 daughters and a guest living with them.

**Ms. Hirsch** asked the applicant to articulate a hardship. Applicant responded that to create the garage construction they were required to come before the board. He believes it is the distance of the garage from the property line.

**Chairman Tuozzola** asked if anyone wished to speak in favor of or in opposition to the application.

### OPPOSED

**Maureen Mead** 1055 East Broadway. The side of her house faces the back of this house, The new house is very large, and the attached garage will cause her to lose sunshine and breeze from the water, and the whole side yard will be house/construction. The property is only 5' from her property line.

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Applicant declined to rebut.

Chairman Tuozzola closed the hearing.

**Mr. Montano** asked what the lot coverage is including the proposed garage. **Mr. Harris** said lot coverage appeared to be well under 65%, though not stated on the survey.

### DISCUSSION

**Ms. Ferrante** feels it is a lot of structure so close to the property line. While this would move the garage 2' closer, it increases the height a whole story. She said the space did not feel necessary because if the house required more SF, the space would be connected to the home.

**Mr. Wolfe** believes the applicant would be aware whether the existing 2 car garage was sound or not when the construction of the house was considered.

**Ms. Hirsch** said with no articulated hardship it is hard to approve this. She believed the homeowner could consider coming back to the Board after removing the second story.

**Mr. Wolfe** motioned to approve. **Mr. Montano** seconded. The motion failed unanimously with **Mss. Ferrante and Hirsch** voting against the motion and **Messrs. Tuozzola, Montano, and Wolfe** voting against the motion.

- 3) **849 East Broadway**, MBP 17/475/8, R-7.5, Thomas Lynch, Esq., for David and Nancy Campbell, owners; Vary Section 3.1.4.1, northerly side-yard setback to 1' where 5' required and southerly side-yard setback to 3.3' where 10' required to construct single-family home

**Attorney Lynch** spoke, He advised the Board that David and Nancy McDonald are in attendance. Application will allow them to construct a new residence on this 7500sf lot, which has been in Nancy's family since 1936. Formerly a beach cottage; they want to improve and construct a reasonably sized house for their full-time residence. He stated the main point is that the application is to construct a new residence with exact same setbacks as current house. Plan is to move house backwards which will create 2 additional off-street parking spaces in addition to the two spaces provided in the garage area. Current house is 20'x39' cottage built in 1910. New house will be compliant with all FEMA regulations. He submitted Building and floor plans but without the projection system working he had just one set of plans to pass to the board. Home is a Nantucket style façade and rooflines. Lower level will be elevated area for car parking; 1<sup>st</sup> floor living space will have a large living/family room with kitchen and pantry. 2<sup>nd</sup> floor will have one master and 2 additional bedrooms, with two full baths. 3<sup>rd</sup> level will be unfinished attic space. Many other houses along east Broadway are far larger than this house. The house will have a rather extensive rear yard even with the new house. The new house will be 20'x60' with no deck. His clients discussed the design with their neighbor, Ms. Doolittle, as she did not want to infringe on her view toward Milford Harbor. 2400 sf 2 floor house is well within reasonable size. He asked the application to be approved without the full set of plans. The hardship exists with existing side yard setbacks.

### DISCUSSION

**Mr. Montano** said minutes show **David and Nancy Campbell**. **Atty. Lynch** advised the last name is **McDonald** not **Campbell**. **Atty. Lynch** advised it was a scrivener's error. He also clarified **Edna Cleveland** is **Ms. McDonald's** mother and owner of the property.

**Mr. Wolfe** asked if the 3<sup>rd</sup> floor would remain unfinished. He asked for height. **Atty. Lynch** advised the eaves will be about 7' and 8-9' at center. House will be serviced by elevator to all 3 floors.

**Chairman Tuozzola** asked if there is a public walkway on the left. **Atty. Lynch** said yes. The variance closest to the property line is bordered by that walkway.

**Chairman Tuozzola** asked if anyone wished to speak in favor of or in opposition to the application.

Hearing none, the hearing was closed.

### DISCUSSION

**Mr. Wolfe** asked **Mr. Harris** if this was an undeveloped lot what the setbacks would be. **Mr. Harris** commented that the setbacks would be 5' on one side and 10' on the other.

**Mr. Montano** motioned to approve. **Ms. Hirsch** seconded. The motion carried unanimously with **Mss. Ferrante and Hirsch** voting with the motion and **Messrs. Tuozzola, Montano, and Wolfe** voting with the motion.

- 4) **28 West Avenue**, MBP 31/302/3, R-12.5; Thomas Lynch, Esq., for James and Jasmine Coulson, owners; Vary Section 4.1.4 front-yard projection to 17.3' where 26' is permitted to construct front porch addition.

**Attorney Lynch** spoke. Client **James Coulson** is present. Request is to vary Section 4.1.4 setback regulation. His clients want to perform a major renovation including a front porch. He circulated a rendering of the proposed property. Clients bought house in 2021 and it is approximately 800 sf, built in 1949. Many homes built on small lots and expanded in that neighborhood. The newer zoning regulations have affected this area. Preexisting location of house precludes a porch anywhere else. Home will still have 21' setback from the road. He asked the Board to refer to the survey and deed line for property. He said the West Avenue Street line and deed line show

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a gap. Many homes in Milford have driveways which go into the City right of way. Technically this is a variance primarily because of the curving deed line 6' behind pavement on West Avenue. There will be ample front yard.

### DISCUSSION

**Ms. Ferrante** asked about the original house and if the garage is an addition. **Atty. Lynch** responded yes. The only variance is the front porch. The porch is 5' deep.

**Mr. Montano** asked if there is a 5-7'slope from the front to back yard. **Atty. Lynch** said yes that is why there is a retaining wall.

**Chairman Tuozzola** asked if anyone wished to speak in favor of or in opposition to the application.

Hearing none, the hearing was closed.

### BOARD DISCUSSION

**Chairman Tuozzola** indicated that while the structure almost doubles in size, the lot can accept that increase. The only variance is the front porch.

### Hearing closed

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

- 5) **120 West Avenue**, MBP 32/353/1, R-7.5; Nelson and Antonia Gomes, owners; Vary Section 3.1.4.1, west front-yard setback to 15.5' where 20' required to build an attached garage.

**Antonia Gomes** spoke. Her husband could not be present. Their hardship is the triangle shape of their lot. They are asking for a variance to build a 2-car garage with a room on top.

### DISCUSSION

**Chairman Tuozzola** said property is very unusual, big in size but a corner lot.

**Mr. Wolfe** asked if above garage would be a bedroom and bath with stairs into the main house. Applicant confirmed.

**Ms. Ferrante** asked if addition is just the garage and floor above. Applicant confirmed.

**Chairman Tuozzola** asked if anyone wished to speak in favor of or in opposition to the application.

Hearing none, the hearing was closed.

### BOARD DISCUSSION

**Ms. Ferrante** said the garage is not excessively large, with an extremely unreasonably shaped lot. There is nowhere else to put it.

**Chairman Tuozzola** said the Board always looks for hardship and this is a true hardship.

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

- 6) **34 Virginia Street**, MBP 30/640/6, R-5; Abel Alvarez, owner; Vary Section 4.1.4 front-yard projection to 5' where 8' permitted for a generator deck.

**Mr. Avel Alvarez** spoke. The property is a narrow corner lot. He wants to install a generator because he is concerned about extended power loss. The generator requires a platform.

**Chairman Tuozzola** asked if this was exclusively for a generator. **Mr. Alvarez** confirmed.

**Mr. Montano** finds the platform to be very large. He asked where the air conditioning compressor was. The applicant responded it is on the opposite side of the home. The applicant advised the home is in a flood zone and the AC compressor is at the proper elevation on the other side of the house. **Mr. Montano** built houses for his family and said that usually the compressor for AC and generator goes on one platform.

**Mr. Wolfe** asked if there is a man door from the house to the platform to service the generator. **Mr. Alvarez** said no, the generator would be accessed via a ladder.

**Mr. Alvarez** said his electrical contractor explained he must have room to separate the generator from the rest of the deck and allow technicians to work around it.

Chair asked if there were any other questions.

**Chairman Tuozzola** asked if anyone wished to speak in favor of or in opposition to the application.

Hearing none, the hearing was closed.

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### **DISCUSSION**

#### **BOARD DISCUSSION**

**Chairman Tuozzola** has driven by the house and said the platform location does not impact anything.

**Mr. Wolfe** motioned to approve. **Mr. Montano** seconded. The motion carried unanimously with **Mss. Ferrante** and **Hirsch** voting with the motion and **Messrs. Tuozzola, Montano, and Wolfe** voting with the motion.

**C. NEW BUSINESS** – **Chairman Tuozzola** congratulated **Mr. Soda** on his reappointment. **Ms. Hirsch** was congratulated on her reappointment Chair has been away for several months and thanks **Ms. Ferrante** for chairing. Thanked alternates and appreciates their efforts.

**D. OLD BUSINESS** - None

**E. STAFF UPDATE** - None

**F. ACCEPTANCE OF MINUTES FROM HEARING 13 DECEMBER 2022:** Approved. **Mr. Wolfe** motioned to approve.

Adjournment was at 8:21 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:

S. R. LaFond, Administrative Assistant, DPLU