

Minutes, Public Hearing of Zoning Board of Appeals Meeting held 13 February 2018

The Regular Meeting of the Zoning Board of Appeals of Milford, CT, was held on Tuesday, 13 February 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. Tuozzola called the meeting to order at 7:00 pm and announced that **Item 5** had been removed from the agenda. He welcomed new board member **Christine Valiquette** to the board. **Mr. Tuozzola** 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, Christine Valiquette

ALTERNATES PRESENT: Michael Casey, Gary Dubois, Etan Hirsch

MEMBERS/ALTERNATES ABSENT:

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

B. CONSIDERATION OF AGENDA ITEMS

1. **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.

Mr. Tuozzola noted that this item was left open last month and **Attorney Bercury**, Brenner, Saltzman & Wallman, LLP, New Haven, addressed the board. She noted receipt of an opinion from Assistant City Attorney Debra Kelly and materials from Attorney Kevin Curseaden. She said that, with all due respect to the Assistant City Attorney, the question posed by the board had not been addressed. **Attorney Bercury** said that Attorney Curseaden's response also felt short of answering the question. She said that although ZEO Harris' issuance of the permit was based on a lot line adjustment, the ZBA is allowed to assess any decision of the ZEO. She said that under CGS 8-6, the matter was properly before the board for consideration and that the appeal had been timely. She referred to the historic merger of the lots. She said the ZBA should insist on an answer from the Assistant City Attorney.

DISCUSSION

Mr. Soda asked about the mechanism for making the merger official, such that the Planning and Zoning (PZ) chairman would know it had occurred. **Mr. Soda** confirmed that the action would not have been recorded on the land records. **Attorney Bercury** said all materials had been submitted for staff and board review. **Mr. Tuozzola** reminded the board that other questions could be submitted to the City Attorney's office for more clarification. **Mr. Harris** reiterated that actions of the PZ Board are not the purview of the ZBA. He stressed that the only issue before the board was whether the permit was lawfully issued. **Attorney Bercury** also reiterated that the lot line adjustment was made by the PZ chair, not the PZ Board. **Mr. Tuozzola** asked to have CGS 8-6a read for the board, which **Attorney Bercury** did. She also quoted a case stating that the essential purpose of ZBA is to furnish some elasticity, saying any decision of the ZEO is subject to review by ZBA. **Mr. Hirsch** asked about limits to actions on appeals, confirming the 15 day response period and based on knowledge of the permit or publication of the permit. **Mr. Soda** said he felt that the ZEO acted properly, but that the Lot Line Adjustment was improper. He questioned whether the ZBA could review that PZ action. **Attorney Bercury** again asserted that no answer to the question of the ZBA had been given. **Mr. Harris** again asserted that actions of the PZ Board can only be appealed to the Superior Court, not the ZBA. He said that 40 Crabtree is a legal lot of record.

Mr. Tuozzola asked if another question could be asked of the City Attorney. **Mr. Soda** asked if the original question could be resubmitted. **Attorney Bercury** agreed to an extension to leave the hearing open.

Mr. Soda motioned to extend to March 15, **Ms. Ferrante** seconded, it passed unanimously. **Mr. Tuozzola** asked if one of the City Attorneys could attend the next meeting to help the board. **Mr. Harris** said he would pass along the request.

Minutes, Public Hearing of Zoning Board of Appeals Meeting held 13 February 2018

2. **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.

WITHDRAWN.

3. **19 Reed Street**. MBP: 44/412/17. SFA-10. Patricia Marciano, Applicant/Owner represented by attorney Thomas B. Lynch. Variance of section 3.2.4.1 to permit two-family dwelling on nonconforming lot.

Attorney Lynch, Lynch, Trembicki & Boynton, 63 Cherry St., addressed the board. He recalled for the board the previous applications and the variances previously requested. He said the owners reconsidered their options with their architect and submitted revised plans such that the addition could be done without variances. He said additional off-street parking was added based on board input. He said he felt the 2-family use had a history and that the hardship was due to imposition of a 1-family use when neighbors have 2-family uses.

DISCUSSION

Mr. Soda said that the revised plans were well done and resembled a single family home. **Attorney Lynch** said a Certificate of Appropriateness was granted by the Historic Commission in January.

FAVOR

None.

OPPOSED

Ms. Greene noted 2 letters of opposition had been received.

Maria Henley, 31 Reed Street, said the lot was still too small for a 2-family home and created a non-conformity.

Michael O'Grady, 32 Reed Street, said he was opposed due to the small, narrow nature of Reed Street and the undersized lot relative to the use. He said he didn't want to lose a tree, as required. He said the driveway would reduce on-street parking.

Mr. Tuozzola asked if any of the objectors had viewed the revised plans. **Mr. O'Grady** said he had.

Ms. Ferrante noted the previous use as a 2-family. She asked if prior 2-family use had negatively impacted the neighborhood in the past.

Mr. O'Grady said snow removal and emergency vehicle access were problematic.

Mr. Soda noted that even if the home were maintained as a single family, the addition could be done by right.

Alexander Adrian, 3 Reed Street, said the charm of the neighborhood would be compromised. He asserted that density issues would come with higher occupancy. He shared concerns that the home would not be owner-occupied. **Mr.**

Tuozzola asked the speaker not to share personal details about the owners. **Mr. Adrian** said that owners who live in their homes have a high stake in maintaining the neighborhood.

Brian Morgan, on behalf of his mother **Helen Morgan**, 23 Reed Street. He said his mother had concerns similar to the previous speaker. **Mr. Hirsch** clarified that 23 Reed Street was a single family home.

REBUTTLE

Attorney Lynch stressed that his clients intend to move into the house after renovating it. **Mr. Soda** confirmed that it was built as a 2-family in the 1870s, with 2 bedrooms downstairs and one upstairs.

BOARD DISCUSSION

Mr. Soda said the last hearing featured concerns about side-yard setbacks and parking. He noted that these concerns had been addressed.

Minutes, Public Hearing of Zoning Board of Appeals Meeting held 13 February 2018

Mr. Soda motioned to **approve**. **Ms. Ferrante** seconded. **Mr. Soda** supported his motion by reason of hardship of loss of the previous use. The motion carried with **Ms. Ferrante** and **Messrs. Hirsch, Soda, Dubois, and Tuozzola** voting **with the motion**.

4. **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.

Attorney Lynch, Lynch, Trembicki & Boynton, 63 Cherry St., addressed the board. He noted that Managing Member Edward Fedor was present. He said Milford Jeep was a long-standing, family-owned business. He said this was the first step in the administrative process, followed by review by the PZ Board, to move parking. He said the property had formerly been a motor inn, and that cars were currently being stored on site there. He said the applicant wanted approval for an installed fence on the rear portion of the property. He said 8' fences were approved in the LI and ID zones and were typical for car dealerships, but that they aren't allowed in CDD-5. He noted that some neighbors also expressed a desire for a buffer, which he pointed out on the plans as the lot abuts a residential zone.

DISCUSSION

Mr. Tuozzola confirmed that the security wire was part of the fence, and that it would not be barbed wire and would be see-through. **Attorney Lynch** added that a landscaped buffer would block the view of the fence. **Ms. Ferrante** confirmed that the fence was already installed and this variance would allow it to stay. **Mr. Harris** confirmed that the same survey had been submitted to both ZBA and PZ. **Mr. Soda** discussed with **Mr. Fedor** the nature of the fence and shared security issues with the abutting Costco store.

OPPOSED

Frank Tomaszek, 124 Tumblebrook Drive, expressed concern about the appearance of the fence and the proposed wire. He expressed distress that many trees had been removed resulting in an increase in noise and dust. **Mr. Soda** discussed specifics of the fence.

BOARD DISCUSSION

Mr. Soda motioned to **approve with conditions of providing black matching slats in the chain link, a maximum height 8', no "arms" being attached above the fence, and no wire on top**. **Ms. Ferrante** seconded. The motion carried with **Ms. Ferrante** and **Messrs. Hirsch, Soda, Dubois, and Tuozzola** voting **with the motion**.

5. **1062-1064 East Broadway**, MBP: 35/421/5. R-5. Vipulkumar Ghandi, Applicant, represented by attorney Thomas B. Lynch. Owner, Dennis Spillarece Family Trust. Use Variance of section 3.1.1 to permit a liquor store.

Attorney Lynch, Lynch, Trembicki & Boynton, 63 Cherry St., addressed the board. He handed out sketches of the proposed floor plan. He said his client owns the Food Fare Market, which previously had a liquor license since the 1940s. He said the establishment was a convenience store. He said his client had a beer sales license, but wanted to apply to the State Department of Consumer Protection to convert a portion of the store into a liquor store. **Attorney Lynch** said there were only 2 other liquor stores within a 2-mile radius. He submitted a petition signed by 65 members of the Fort Trumbull neighborhood in support of Mr. Gandhi's application. He said the hardship was dichotomy between state and local liquor regulations.

DISCUSSION

Mr. Soda confirmed that the entire store was a legal nonconforming grocery store with a beer permit. He confirmed that the proposed changes would be internal to the store. **Attorney Lynch** said his client would face additional scrutiny from the state liquor commission and the Milford Building Inspection department.

BOARD DISCUSSION

Minutes, Public Hearing of Zoning Board of Appeals Meeting held 13 February 2018

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**. **Ms. Ferrante** seconded. **Mr. Soda** supported his motion by reason of no opposition and previous grandfathered use. The motion carried with **Ms. Ferrante** and **Messrs. Hirsch, Soda, Dubois, and Tuozzola** voting **with the motion**.

6. 80 Surf Avenue, MBP: 27/472A/42. R-10. Skinner Enterprises, Inc., Applicant, represented by attorney Kevin Curseaden. Owner, JJV, LLC. Variance of section 3.1.4.1, front yard setback of 6.3' where 25' required. Section 4.1.4, deck projection to 6.3' where 21' permitted, eave projection to 5' where 21' permitted. All to build a new single family dwelling.

POSTPONED

7. 34 Orchard Street. MBP: 39/609/8. R-10. Xtreme Home Improvements, applicant for John Tartaglio, owner. Variance of section 3.1.4.1. Side yard setback of 2.8' where 10' req. to construct an enclosed handicapped entrance to the house.

Mr. Matthew Martino, Xtreme Home Improvements, addressed the board. He reviewed the variance request.

DISCUSSION

Mr. Tuozzola confirmed that the homeowner needed wheelchair access due to the conversion of a bedroom into a garage. **Mr. Hirsch** confirmed that no neighborhood objections exist. **Ms. Ferrante** asked if living space was being lost, **Mr. Martino** noted an addition to the rear to add space being done by right. He said Mr. Tartaglio's family was growing.

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.

Ms. Ferrante motioned to **approve**. **Mr. Soda** seconded. **Ms. Ferrante** supported his motion by reason of hardship of narrowness of the lot, exactly per the submitted materials. The motion carried with **Ms. Ferrante** and **Messrs. Hirsch, Soda, Dubois, and Tuozzola** voting **with the motion**.

B. OLD BUSINESS-None

C. NEW BUSINESS-None

D. STAFF UPDATE-None

E. ACCEPTANCE OF MINUTES 9 January 2018: Approved.

G. ACCEPTANCE OF APPLICATIONS for 13 March 2018 hearing. Mr. Tuozzola noted that 80 Surf, 40 Crabtree, and 1 Seaview would return.

Adjournment was at 8:30 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