

Minutes, Public Hearing of Zoning Board of Appeals Meeting held February 14, 2012

The Regular Meeting of the Zoning Board of Appeals of Milford, CT was held on Tuesday, January 10, 2012, beginning at 7:00 p.m. in the 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.

Mr. Tuozzola called the meeting to order at 7:01 p.m.

A. ROLL CALL

MEMBERS PRESENT: Howard Haberman (Secretary), Joseph Tuozzola (Chairman)

ALTERNATES PRESENT: John Collins, Gary Dubois, John Vaccino

MEMBERS ABSENT: Richard Carey, William Evasick

STAFF PRESENT: Kathy Kuchta, Zoning Enforcement Officer; Phyllis Leggett, Meg Greene, Clerks

B. PLEDGE OF ALLEGIANCE

Mr. Tuozzola stated that **Mr. Dubois** would fill in for **Mr. Carey**, and **Mr. Collins** for **Mr. Evasick**. He asked for comment on board-member conflicts of interest; none were raised.

C. CONSIDERATION OF AGENDA ITEMS

1. **7 Dogwood Place cor Eastern Parkway** (R-7.5) Rebecca A. Saria, owner - Vary Section 11.2 to 624 sf in lieu of 518 sf allowed to replace existing garage. CAM received. Map 14, Block 27, Parcel 16

Rebecca Saria, owner, stated that she has three children and that her existing garage is dangerous. She wants to demolish and replace it with a 2-car garage to house her vehicle, a vintage car and other equipment and tools. She distributed photos that were entered into the record. She noted that the footprint of her house is small relative to the property and that the proposed garage was only 100 sq ft larger than the current one. She said the property still allowed ample area for her children to play in and would remain visually appealing for the neighborhood. **Mr. Tuozzola** asked whether the planned garage would sit more to the center of the property. **Ms. Saria** showed him a drawing that confirmed this. **Mr. Haberman** asked if the current concrete pad would be removed. **Ms. Saria** said the pad and a tree stump would be removed.

Given no comments in favor or opposition, the hearing was closed.

DISCUSSION

Mr. Haberman stated that a hardship exists because the footprint of the house is small. He noted that the setbacks would not be affected. **Mr. Collins** questioned the setbacks. **Ms. Kuchta** confirmed that the plan meets them.

Mr. Haberman made a motion to approve. **Mr. Vaccino** seconded. The motion carried unanimously with Messrs. Collins, Dubois, Haberman, Tuozzola and Vaccino voting.

2. **11 Point Beach Drive** (R-7.5) Thomas Lynch, Esq. Appeal of Assistant City Planner re:denial of request for 6.4.2 certification. Map 30, Block 636, Parcel 4

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Thomas Lynch, Esq., 63 Cherry Street, Milford, said his client has new information to present and asked to table the application to avoid a new application fee. **Mr. Haberman** made a motion to table the item. **Ms. Kuchta** asked that the request be postponed rather than tabled, so a new fee could be collected because the request must be re-noticed by the city and the cost of publication exceeds the fee. **Mr. Haberman** withdrew his motion to table. No motion is required to postpone. **Mr. Lynch** will reapply.

3. **30 Wildwood Avenue cor Church Street** (Zone R-5) Thomas B. Lynch, attorney, for Kenneth and Lisa Lesinsky, owners, appeal the decision of the Zoning Enforcement Officer in her denial of request for lot certification per Sec. 6.4.2 of the Zoning Regulations. Map 12, Block 123, Parcel 10.

Thomas Lynch, attorney with Lynch, Trembicki and Boynton, 63 Cherry Street, recalled his presentation of a request at the September 2011 board meeting and restated lot information about the property.

Mr. Tuozzola asked Mr. Lynch if he was here to present the variance or to question the Zoning Enforcement's Officer's decision not to review the request for 6.4.2 certification.

Mr. Lynch gave the history of this appeal and asserted that new information obtained in July confirmed that the pool in question was not a permanent structure—that a product brochure indicated an inflatable pool. Mr. Lynch felt that this information would allow Ms. Kuchta to reconsider her April denial of the request for 6.4.2 certification and wanted to present the information in the September board meeting, but the request was tabled to allow time for an opinion from the City Attorney on the procedural issue of whether the Zoning Officer's denial could be reconsidered in light of new information after the 15 day appeal period that began in April. Mr. Lynch decided that because the wait for an opinion from the City Attorney could take several months, he would withdraw the application and attempted to reinstitute the whole process. When the request was denied by the Zoning Enforcement Officer again on January 15th, he filed an appeal within 15 days of that date and was put on the agenda for tonight. So in sum, Mr. Lynch stands by the presentation he made in September, which proves that the pool in question was not a permanent structure and would not prevent certification of the property. He felt that the September discussion leaned in favor of the merits for not merging the two lots. However, the procedural question arose.

Mr. Haberman confirmed that the procedural issue Mr. Lynch referred to was that the 15-day waiting period had passed from the original Zoning Officer's decision. **Mr. Lynch** agreed, but said that he wanted to void the procedural issue by withdrawing the request and reapplying. **Mr. Haberman** stated that from the Board's perspective, this was a continuance of consideration of the request for the third time, not a restarting of the process. **Mr. Lynch** recalled that the original request had been denied by Linda Stock in 2006, but that since that time, Mr. Lesinsky (owner) had been able to find the product brochure through the manufacturer of the pool that the tenant had on the property. He stressed that the pool didn't have a gravel base or plumbing. This was the basis of his September argument. He withdrew to get around the procedural argument and re-filed.

Mr. Tuozzola felt the process was repeating again. **Mr. Lynch** stated that there had never been an appeal of the Zoning Officer's decision taken to the board before. He handed out additional copies of the pool brochure and restated his position questioning whether the Zoning Officer's decision was proper. He also shared an affidavit from the tenant stating that the pool was only in place for a day and a half. He added that when Linda Stock (previous Zoning Officer) inspected the site, she noted a depression in the grass that indicated an above-ground pool had been there and instituted the merger. He asserted that common sense dictates that there had been no merger and that the property could be certified under Section 6.4.2.

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Mr. Vaccino questioned how the pool could create a depression in the ground if it was only up for a day and a half. **Mr. Lynch** replied that the tenant signed the affidavit.

OPPOSITION

Ms. Kuchta referred the board to the contents of their packets for this request, which documented letters from Attorneys Mager and Lynch and Zoning Officer responses. Ms. Kuchta's decision was not to review the request for certification for the third time. When Linda Stock inspected the property, she found a pool on it and determined the lots were merged, per Sec. 6.4.2. She read the section. She also referred the board to a GIS flyover photograph taken in 2005-2006 that showed the presence of a pool. She indicated that the letter from Mr. Lynch did not request an appeal, but stated that she had two weeks to reconsider her decision given to Attorney Mager in April or that he would appeal her decision. She said Mr. Lynch did not submit any new information to her or contain a new package. The letter just demanded that she "redecide what you decided in March." She reiterated that the 15-day appeal process is based on state statutes and that every effort is made to be fair, but that an appellant has 15 days from the actual decision or notice of the decision. She reiterated her presentation before the September board, specifying that the amount of time the pool was on the lot is irrelevant; it still merged the lots. Further, the City Attorney advised that "a request for a reconsideration of denial that is filed outside the appeal period does not reactivate the appeal period from the original denial." She stated that the new 6.4.2 request Mr. Lynch submitted was identical to Mr. Mager's previous requests with no new evidence submitted. She stressed that such requests are "time-barred;" that you can't keep coming back for a new appeal period, and that this matter has already had two appeal periods, which were not done in a timely manner.

Mr. Haberman asked for clarification of what Mr. Lynch requested. **Ms. Kuchta** said that Mr. Lynch tried to reactivate an appeal period by setting out two weeks to reconsider a decision made four months prior. The owners could have come to the board within 15 days and said, "We think she's wrong." They did not, nor did they when the identical request was made to Linda Stock three years before.

Mr. Vaccino asked that Sec. 6.4.2 be reread. **Ms. Kuchta** did so.

Mr. Haberman stressed that the issue at hand was that timelines weren't met. **Ms. Kuchta** reiterated that the appeal process was not followed.

REBUTTAL

Mr. Lynch said that when he made his request in June, there was new information that affects a decision, it changes the merits of the case and that, with due respect, someone viewing a GIS photo could not determine if something on a property is or is not permanent. He contends that the pool was a temporary structure. He argued that the merits of the new information outweigh the procedural issue and provides the right to make a new request.

Mr. Tuozzola said that if the aerial photo shows a pool, no matter for how long, the board would need to determine if the property was merged. **Mr. Lynch** reiterated that a merger exists when a permanent structure is on the property, not the blow up pool that was there. **Mr. Haberman** said that it comes down to the intent as to whether the pool was permanent.

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Kevin Liscinski, the owner of 30 Wildwood Avenue, asserted when Mr. Mager told him about the pool, he went to see it and it had been taken down. He asserted that the depression in the ground is not where the pool was. He asserted that the pool was 8' round and very temporary.

Mr. Tuozzola asked for further questions and for in-favor-of or opposed comment; none was offered, so the hearing was closed.

DISCUSSION

Mr. Collins said he was concerned that there was a procedure and timeline that wasn't followed. He was concerned about setting a precedent that allowed appellants to circumvent the appeals process.

Ms. Kuchta asserted that the vote should be on whether to have her review the certification Mr. Lynch recently sent in or review the information Mr. Lynch submitted and to issue him a decision again that would allow him to appeal in 15 days. But she asserted that the board can't give Mr. Lynch a 6.4.2; the board's decision must be to say whether she should review the request again and agree with Mr. Lynch's appeal or decide that she does not have to review it again.

Mr. Tuozzola asked for a motion and whether everyone understood what the board was voting on. **Mr. Haberman** said a motion to deny the appeal or to have the Zoning Enforcement Officer review it again. He then made a motion to deny the appeal. **Mr. Collins** seconded. The motion carried unanimously with Messrs. Collins, Dubois, Haberman, Tuozzola and Vaccino voting.

Mr. Lynch expressed confusion as to whether Mr. Haberman's motion to deny the appeal would allow him to make a new application. **Mr. Tuozzola** said the board was upholding the decision of the Zoning Officer, but asked Ms. Kuchta if Mr. Lescinsky could reapply. Ms. Kuchta said the decision implied that Mr. Lescinsky could not reapply. **Mr. Lynch** was still confused as to whether Mr. Haberman's motion denied the appeal but still would allow a future appeal to be determined on the merits. **Mr. Haberman** said his intention was to preclude reviewing the decision again.

4. 115 Melba Street thru Beachland Avenue (R-5) Thomas Lynch, Esq., Anthony Vitelli, Jr. owner – request to vary section 3.1.4.1 side yard setback to 5' in lieu of 10' required; vary section 3.1.4.1 rear yard setback to 4' in lieu of 20' required; vary section 4.1.4 to 4' in lieu of 0' projection allowed to replace existing dwelling. (CAM required) Map 29, Block 587, Parcel 42.

Thomas Lynch, Esq. representing Anthony Vitelli, co-owner of the property said Mr. Vitelli owns the property with his sister. Mr. Lynch provided Mr. Vitelli's credentials as a citizen and educator in Milford. He described differences between the old house (built in 1910, 1250 SF) to the proposed house (2300 SF). The garage will remain. The existing house was more than 50% damaged in TS Irene and the basis of hardship is that the lot is very narrow. The entire property is 3800 SF. Mr. Lynch stressed that Mr. Vitelli's attempts to conform to required setbacks and elevations, while proximity to the shoreline as compared with the other houses nearby. Mr. Lynch noted that a Coastal Area Management application will be submitted to the Planning and Zoning Board.

IN FAVOR OF

Mike Donegan, 123 Beachland Avenue, said the new structure will improve on the 1910 because it will address current hurricane threats. He felt the house will be set back more to benefit the neighbors' waterviews.

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There was no one to speak in opposition. Mr. Tuozzola closed the hearing.

DISCUSSION

The board felt that the new house plans conforms to the property size and respects codes and neighborhood issues. Ms. Kuchta praised the plan for moving the house from a VE-13 zone into an AE-10 zone.

Mr. Haberman moved to approve. **Mr. Vaccino** seconded. The motion carried unanimously with Messrs. Collins, Dubois, Haberman, Tuozzola and Vaccino voting.

5. **47 Milesfield Avenue** (R-5) Moshe and Ahuva Munzer owners – request to vary section 4.1.4 rear yard projection to 8’ in lieu of 4’ allowed for 2nd floor deck. (CAM Required) Map 28, Block 572, Parcel 4.

The applicants gave letters of support to the Chairman.

Applicants are constructing a new residence and asking for a variance to expand the rear deck from 4’ to 8’ with a house built to all the zoning specifications with no other variances. They will remove existing garage and shed. The hardship is that the property is a nonconforming lot of 3500 SF in a 5000 SF zone. Property floods, so it is impractical to store grill, table, etc, on ground floor; had photos to document flooding. Currently spending summers, want to live year-round now and need the space of the larger deck.

No one spoke in favor.

OPPOSITION

Steve Stefan, 30 Westland End Avenue, stated that there is no hardship because the building lot was empty and the extra space could have been incorporated into the original plans. He stated that because the deck is 12’ off the ground, it does not provide privacy. He provided 2 letters of opposition from other neighbors who share his concern. The house has a big deck in the front and the deck he opposes would be in his backyard. The house’s height already exceeds that of neighboring house, so it’s already “overpowering,” and does not need to be more so. **Mr. Tuozzola** stressed that no other part of the house is non-conforming, so the opposition should be limited to the deck variance. Mr. Stefan also expressed concern that if the lot is too covered, drainage from flooding will affect his property.

REBUTTAL

Mrs. Munzer stated that the neighbors have the same height and sight lines as the proposed deck. She said the have a fence and that the appellants also plan to erect a fence around the property. She said there is no way to cook on a deck on the ground floor due to flooding; they and neighbors have lost a great deal of personal property to floods. **Mr. Munzer** said the new deck will be on the first floor, which is itself about 8’-10’ off the ground; that the property has been surveyed and all the as-builts house plans have been approved with no variances needed.

Mr. Haberman asked the appellants to restate the hardship.

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Mr. Munzer stated that he wished to take the grill off ground level and put it on the deck; that a 4' deck would not be big enough or safe enough for this purpose. **Mr. Haberman** said that the owners would have known this before designing the house.

Mr. Tuozzola closed the hearing.

DISCUSSION

Mr. Vaccino felt no hardship existed. **Mr. Haberman** felt the owners should have planned for the deck ahead of time. **Mr. Collins** saw the property today and noted that the house next door has a deck on the second floor. He does not think that the neighboring deck extends more than 5-6 feet, that the houses line up perfectly, and that to deviate from this would stretch the boundaries.

Mr. Vaccino motioned to deny the additional four feet for the deck construction. **Mr. Haberman** seconded. The motion carried unanimously with Messrs. Collins, Dubois, Haberman, Tuozzola and Vaccino voting.

6. **104 Waterbury Avenue** (Zone R-5) Mark Pucci, appellant, for Michael Singaliese, owner – request to vary Sec. 3.1.4.1 rear yard setback to 13.9' in lieu of 20' required to replace existing structure. CAM received. Map 13, Block 136, Parcel 2.

Mark Pucci, 42 Summit Avenue, Milford, noted that he came before the Board last month for almost the same variance, but has reduced the request to a 13'9" setback, exactly where the house now sits; the house must be demolished due to Hurricane Irene damage. He noted that the owner plans to demolish the nonconforming garage and construct a new single-family home that complies with flood regulations.

Ms. Kuchta expanded on the changes Mr. Pucci requests and noted that this plan is more conforming than the previous plan.

Given no comments in favor or opposition, the hearing was closed.

Mr. Vaccino said he appreciates when applicants come back after a denial and make more conforming designs. **Mr. Tuozzola** agreed, saying that the board appreciates when people are willing to work to make a plan better instead of just asking for more.

Mr. Haberman made a motion to approve. **Mr. Collins** seconded. The motion carried unanimously with Messrs. Collins, Dubois, Haberman, Tuozzola and Vaccino voting.

7. **29 Baldwin Street cor. Lenox Avenue** (Zone R-7.5) Leszek and Joanna Lewczak, owners – request to vary Sec. 11.2 to 670 sq. ft. in lieu of 355.8 sq. ft. allowed to replace existing garage. CAM received. Map 19, Block 11, Parcel 1.

Andrew Flanagan, 29 Carriage Path North, introduced himself as the land surveyor who prepared the map, speaking on behalf of the Leszeks. He said they have reduced the square footage of the plans previously submitted to replace the existing garage, but still making them large enough to accommodate both garages. The hardship is that the primary unit is only 711 SF, making the lot coverage 22%, when 60% is allowed. Even with the larger garage, the coverage is only 41%. ensuring the security of the two

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vans, which were broken into in 2009 and 2011; police reports submitted. High traffic area on a corner lot exposes the vans to possible theft by passing vehicles and the owners want to park vans side by side. He submitted photos.

Mr. Tuozzolo questioned the height of garage, relative to the size of vans. **Mr. Flanagan** replied that the height would be under 15', which is compliant for accessory structures. The door is larger, but the height and roof pitch are consistent.

Given no comments in favor or opposition, the hearing was closed.

DISCUSSION

Ms. Kuchta noted that it's against zoning regulations to park commercial vehicles on residential property, but also noted that this in itself creates a hardship for blue-collar workers who must take their work vehicles home with them because they're on call. However, she noted that the proposed garage requires a variance because the footprint of the existing home is so small.

Mr. Haberman felt there was room and that the garage wouldn't look awkward with the changes made since last month. **Mr. Tuozzola** said he'd visited the site and that the corner is very busy. He had no problem with the proposed changes.

Mr. Haberman a motion to approve. **Mr. Vaccino** seconded. The motion carried unanimously with Messrs. Collins, Dubois, Haberman, Tuozzola and Vaccino voting.

8. **71 Melba Street** (Zone R-5) Kevin Curseaden, attorney, for K.R. Robinson Company, Inc., owner – request to vary section 3.1.4.1 rear yard setback to 12' (11' to overhang) in lieu of 20' required for principal structure. CAM received. Map 29, Block 587, Parcel 25.

Mr. Curseaden, of Carroll, Curseadan, and Moore, 26 Cherry Street, introduced his client Kevin Robinson, President of K.R. Robinson. He noted that last month they requested 5 variances, but that they had reduced this to 1 variance for an overhang that eliminated the porch previously requested. He provided the original documents certifying the notification of mailing, having dropped off copies to Planning and Zoning earlier in the day. He also provided a copy of a variance received by Mr. Robinson's father in 1971, which was never built.

Mr. Tuozzola noted that this was basically the same variance being requested now and if so, the original was still in effect. **Mr. Curseaden** replied that the building permit was to have been pulled within a year of the variance, but it was never pulled and that the variance was never recorded on the land records. The other reason he was before the board was that the revised request moved from the VE to the AE zone, making the project more compliant.

Mr. Tuozzola praised the compromise of the new design.

Given no comments in favor or opposition, the hearing was closed.

Mr. Vaccino a motion to approve. **Mr. Haberman** seconded. The motion carried unanimously with Messrs. Collins, Dubois, Haberman, Tuozzola and Vaccino voting.

D. TABLED ITEMS

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121 Melba Street cor. Beachland Avenue (Zone R-5) Vahida Vohra, owner – request to vary Sec. 3.1.4.1 side yard set back to 3.3' in lieu of 5' required to construct 8' x 14' 2 story addition. CAM received. Map 29, Block 548, Parcel 2.

Ms. Vohra stated that the proposed addition is short of the normal 5' setback. She said she was single when she bought the property, but was now married with a 3-year-old daughter and wanted to add a bathroom and a bigger eating area. She said affected neighbors had come in support of her request.

Mr. Vaccino asked for confirmation of the placard posting, which Mr. Tuozzola provided.

IN FAVOR OF

Dr. and Mrs. Hara, 127 Melba Street, live next door and had no problems with the plan, that is will be a nice addition to the house.

DISCUSSION

Mr. Haberman noted that this is a small lot with a small request. He saw the hardship and had no problem with the request. He moved that it be granted. **Mr. Collins** seconded. The motion carried unanimously with Messrs. Collins, Dubois, Haberman, Tuozzola and Vaccino voting.

E. OLD BUSINESS

None existed.

F. NEW BUSINESS

None was presented.

G. STAFF UPDATE

The chairman introduced the new recording secretary Meg Greene.

H. ACCEPTANCE OF MINUTES FROM JANUARY 10, 2012 HEARING

The minutes were accepted unanimously.

I. ACCEPTANCE OF APPLICATIONS FOR MARCH 13, 2012 HEARING

Mr. Tuozzola noted that 11 Point Beach had been postponed and would be heard. Ms. Kuchta said she had received 1 request already and that 3 or 4 would be coming in, with more anticipated. She noted the deadline of February 24th.

Mr. Tuozzola asked for a motion to adjourn and the meeting ended at 8:34pm.

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