

Minutes, Public Hearing of Zoning Board of Appeals Meeting held March 13, 2012

The Regular Meeting of the Zoning Board of Appeals of Milford, CT was held on Tuesday, March 13, 2012, 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 7:10 p.m.

A. ROLL CALL

MEMBERS PRESENT: Joseph Tuozzola (Chmn), Howard Haberman (Secy), Richard Carey, William Evasick, John Vaccino

ALTERNATES PRESENT: John Collins, Gary Dubois, Robert Thomas

MEMBERS ABSENT: None

STAFF PRESENT: Emmeline Harrigan, Assistant City Planner; Kathy Kuchta, Zoning Enforcement Officer; Meg Greene, Clerk

B. PLEDGE OF ALLEGIANCE

Mr. Tuozzola announced that the recording equipment was not working and explained that there would not be *verbatim*s available if anyone's item was appealed. He asked if anyone would like to table their item until next month's agenda. He announced that the hearing would proceed until another clerk arrived to work on the recording equipment, at which time there would be a recess.

C. CONSIDERATION OF AGENDA ITEMS

1. **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

Attorney Lynch began his presentation with an overview of the property's history to underscore that the Gagliardi/Giovanelly family had always viewed that the empty lot at 11 Point Beach Drive as an investment, once it was no longer needed to accommodate large family gatherings. He used the term "land bank." He stated that the owners knew that erecting permanent structures would merge the lot and that the owners would never take that action.

Attorney Lynch introduced a memorandum written to the Zoning Board of Appeals by **Assistant City Planner Emmeline Harrigan, AICP**, dated March 13, 2012, with the subject line: LOT #115 ADJACENT TO 11 POINT BEACH DRIVE – REQUEST FOR 6.4.2. In the memorandum, Ms. Harrigan stated that the property had been merged by the presence of a storage shed. She provided aerial photographic evidence that the shed had been in place during the period 2004 to 2007.

Mr. Tuozzola called a recess at approximately 7:25 to address technical difficulties with the recording system. The recording equipment could not be repaired, so the hearing resumed at approximately 7:55 with real-time notes being taken by the ZBA clerk on a laptop computer.

Attorney Lynch resumed his examination of Ms. Harrigan's decision. He referred to the 2004 revision of Section 6.4.2 which tried to tighten language on how adjacent lots could be legally merged or not. He referred to Subsection (d) which states that a merger occurs if a vacant lot contains non-temporary structures used in conjunction with the adjacent lot. He referenced the examples listed in the

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subsection: storage shed, garage, tennis court, swimming pool, barbeque facility, patio, etc. He then referred to Ms. Harrigan's letter with, aerial photos of the property attached, dated between 2004-2007. He noted that a white structure is evident in the southwest corner of the empty lot, with three views of the structure taken from directly overhead, from the west and from the east. He stated that Mr. Gagliardi would shortly describe the structure as a temp tent with no foundation and no footings, which was used by the Gagliardi family for outings, parties, and other family functions. He provided family photographs of outings with no evidence of the shed and at times when the structure could have been viewed on aerial photos. He stated that the structure was not a storage shed.

Attorney Lynch referenced a letter dated December 27, 2011, that he has sent to **Zoning Enforcement Officer Kathy Kuchta**. He stated that in the letter he asked Ms. Kuchta for a certification to recognize the parcels (11 Point Beach, Developers Lots 114 and 115) as legal non-conforming lots in accordance with Section 6.4.2 of the Milford Zoning Regulations. He stated that he didn't get a response from Ms. Kuchta, but that Ms. Harrigan had responded. Attorney Lynch questioned whether Ms. Harrigan was the appropriate official to address the issue as state statute refers such matters the Zoning Enforcement Officer; that in some cases the Assistant City Planner or City Planner can act for the Zoning Enforcement Officer, but court cases have upheld that this can only be done when no Zoning Enforcement Officer is available. He contended that he didn't get a response from the proper official.

Attorney Lynch provided a handout to address an appeal in 2000 to the ZBA of the 6.4.2 variance that had been previously granted to the Giovanellys. That appeal was brought before the Zoning Board of Appeals in August of 2000. His handout provided meeting minutes for the portion of the 2000 hearing that dealt with the lot adjacent to 11 Point Beach Drive. He recounted events leading up to the appeal—that a placard was posted stating that a 6.4.2 variance had been granted for the empty lot, and that the neighbors became upset, so an appeal was brought to reverse the 6.4.2. He stated that the appeal approved at the 2000 hearing was subject to then-current zoning regulations, which stated that use of the property was a sufficient basis to merge the lots. He then provided a handout with relevant pages from the 2004 Zoning Regulations book documenting current regulations, where simple usage does not cause a merger. He also maintained that the Giovanelly family was not properly notified of the 2000 appeal. He reviewed Subsection (d)'s definition of non-temporary structures.

Attorney Lynch provided an additional handout which contained the tax assessor's records for the 1980 evaluation and for the current assessment printed on January 11, 2011. He referred to sections of the documents where he had circled sections showing no outbuildings, only references to the principle dwelling. He stated that there had never been a tax assessment made for a shed on the property.

Attorney Lynch also provided other GPS websites photography. He provided copies of online photography from the "bing" website with yellow highlights indicating the area where a structure is shown on Ms. Harrigan's aerial photographs. On the "bing" photographs, no structure appears in the area. He provided hard copies of photographs from the University of Connecticut Aerial Photography Index, from 1990 and 1995 showing no structure in the area. He provided hardcopy of a 2010 Google map showing no structure in the area.

Attorney Lynch concluded his presentation by providing photographs from a family gathering held in 2009 where the same area of the property is visible. There is a child's small slide in the area. He stated that other photographs of same area revealed no indentation or sign of a foundation. He stated that the Gagliardi/Giovanelly family had born the burden of showing that the family kept the property with the intention of using it for an investment and that it would be incredible for the family to ruin all

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possibilities of selling the lot. He reiterated that the family kept the property as a “land bank,” so it could be sold at a later time, that the property had been maintained with the intention of developing it, that the property was too valuable for the family to have done anything to merge the lot.

Mr. Lynch asked Stephen Gagliardi to state whether there had ever been a shed on the property, but **Zoning Enforcement Officer Kathy Kuchta** asked for a moment to address the statement made by Mr. Lynch about her failure to respond to his letter of December 27, 2011. She stated that she has been retired as of December 31, 2011, and is currently serving as Zoning Enforcement Officer on a temporary basis until her replacement can be hired. Therefore, she has been advised by the City Attorney to give any 6.4.2's, violations, or permits that may be appealed to the Assistant City Planner. After reviewing the file and finding that another appeal had been previously filed for this property, she felt that an appeal was possible and asked Ms. Harrigan to review it.

Stephen Gagliardi then spoke. He stated that he had lived at 11 Point Beach Drive for 10-11 years and that there had never been a shed on the property. He stated that his family and neighbors often had parties and events on the property where tents were used, but that his uncle was aware of the restriction against permanent structures that would merge the lots and would not have allowed it. He referred to a kitchen renovation for which permits had been pulled and said that a tradesman had kept his trailer on site for approximately one month. He stated that his uncle owned an old-fashioned canvas circus-style tent that was often used for outdoor family functions.

Mr. Tuozzola asked where the tent went.

Mr. Gagliardi stated that use of the tent depended on the weather. He allowed that smaller children's items such as sandboxes might have been kept on the lot, but these were not permanent structures. He stated that his uncle had served on the city's Zoning Board of Appeals in the late 1980s and he wouldn't have allowed permanent structures on the lot.

Mr. Haberman asked if the neighbors would attest to this.

Mr. Gagliardi said no.

Mr. Tuozzola asked if Mr. Lynch had anyone else who wished to make a statement.

Attorney Lynch said that he did not and Mr. Tuozzola invited Ms. Harrigan to defend her decision.

Ms. Harrigan handed out printed materials that included her original refusal to grant the 6.2.1. variance, some aerial photographs, and a memorandum with additional aerial photographs attached. She described the lot in question—Lot 115, non-conforming lot the property owners of 11 Point Beach Drive. She described the process of determining whether lots can be used for development and referred to the Section of the Zoning Regulations that trigger a merger of lots. She read Section 6.2.1 (d) stating that one such trigger is when the vacant lot contains some non-temporary structure or improvement used in relationship with the adjacent house lot, e.g., storage shed, garage, tennis court, swimming pool, barbecue facility, patio, etc.

Ms. Harrigan reviewed the aerial photographs she had provided from the University of Connecticut's Magic system and from the City of Milford's Geographic Information System (GIS). She stated that with one exception, all the photographs are taken during a narrow window of time in early spring, when trees

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are in their “leaf off” stage, providing better visibility of property. She stated that she didn’t research photographs back to 2000, when the previous ZEO had approved a prior 6.4.2., which was later overturned, but that she had researched as much aerial evidence as she could since 2000. She listed and dated the photographs and indicated their sources. She drew attention to the only summer photograph, which appeared in the University of Connecticut website as being taken in 2006. It is taken from a side view and while it’s difficult to tell exactly what is shown, there is a large structure with a pad set in front of it. Given this evidence and 6.2.1 regulations, she advised Mr. Lynch in her letter of January 12, 2012 that in her judgment, the lots had been merged. She stated that photographs dated prior to 2000 were not relevant to this review because they were covered in the prior Zoning Board of Appeals review. She stated that based on the photographic evidence, there had been a shed on the property for 2-3 years. She also stated that the tax assessment information was not reliable in the matter of a shed because unfortunately people do not always apply for the appropriate permits. She stated that there are 18,000 residential parcels in the city of Milford and just 1 Zoning Enforcement Officer, who can’t be expected to seek out non-permitted activity. She stated that tax assessments provide information, but not requirements.

Mr. Tuozzola asked if there were questions for Ms. Harrigan.

Mr. Evasick stated that while Ms. Harrigan deemed the structure to be a shed, he could not tell whether or not it was based on the photographs provided. He found it significant that there was no application for a permit and no record of a shed on the tax assessment.

Ms. Harrigan emphasized that the structure was not something small or a child’s plaything if it was visible from a plane.

Mr. Evasick asked if there had been an inspection when Ms. Harrigan issued her denial.

Ms. Harrigan stated that she had inspected the property post-Tropical-Storm-Irene and saw nothing on the site then; that she was not arguing that there had been a shed in 2010. **Ms. Kuchta** stated that she had done an inspection prior to turning the file over in December and that she did not see a shed. Ms. Harrigan stated that she was at 11 Point Beach Drive to take photos of the storm damage to the entire neighborhood on August 29, 2011, and there had been no shed.

Mr. Haberman commented that many people leave tents up year-round, and that even if it were left up for a long time, a tent is still a tent, in his view.

Ms. Harrigan stated that she determined the structure to be a shed, not a tent, based on the side photograph showing a pad in front.

Mr. Haberman stated that he has seen pads in front of tents, but that tents are not permanent structures, no matter how long they’re up.

Ms. Harrigan stated that the structure was clearly evident for a 2-3 year period and was evident in the spring and winter, not just summer when it might be used for family functions.

Mr. Haberman stated that he could not tell if it’s a tent or a shed from the photos.

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Mr. Carey agreed that no matter how long it's up, if it's a tent, it is non-permanent and would need a foundation to be considered a shed.

Ms. Harrigan argued that the extra lot was needed for the adjacent address to fully function as a single family residence, and that the lots had been merged through usage.

Mr. Carey asked if there was a place in the regulations where it states that if a temporary structure is in place for some period—say, a day, week or month—that it becomes a permanent structure. He stated that “temporary” means something that can be put up or removed at any given time.

Ms. Harrigan emphasized that the structure had been up for two or three years.

Mr. Carey stated that a tent is a tent.

Ms. Harrigan stated that Section 6.4.2 only allows certain activities on a vacant lot that would not “merge” the lots, such as mowing grass, raking leaves, and occasional recreational pursuits. She stressed that long-term structures merge vacant lots.

Mr. Evasick stated that he thought the argument was about semantics and that no one could really tell what the structure was.

Ms. Harrigan stated that Section 6.4.2 sets clear guidelines for the use of an adjacent, non-conforming vacant lot, and that the use of this lot by the adjacent property doesn't fall under the exemption. She reiterated that the lot had been merged by usage.

Mr. Vaccino said he was aware of multiple cases where property was merged by use. He was convinced by the photography that the structure had been on the property for a significant amount of time. The apparent concrete pad was evidence that the structure was not temporary. He stated that a lot of evidence suggested that the structure had been used in conjunction with the adjacent property for a significant amount of time.

Mr. Tuozzola asked for any other questions or comments; hearing none, he invited Attorney Lynch to rebut.

REBUTTAL

Attorney Lynch reread the 6.4.2 regulations. He reiterated that there are 4 or 5 things that constitute a merger, and those things do not include overflow parking for parties. He stated that no matter how often you have a party, it doesn't constitute a merger. He contended that Ms. Harrigan had denied the request not based on family parties or because the lot was used in conjunction with such events, but that her letter relied on the existence of a temporary structure. He referred to Ms. Harrigan's documentation, specifically the back of page 3, where he cited language about the use of the photography. He asked to read the text into the record. The title of the document is:

CtECO/Connecticut Environmental Conditions Online
Maps and Geospatial Data for Planning, Management Education and Research
SUBTITLE: 2004 Orthophotography
USE LIMITATIONS:

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Unlike other statewide aerial surveys of Connecticut that cover a single time period, the 2004 aerial survey is actually a mosaic of photography from three different years. Mostly from the spring of 2004, photographs taken *[sic]* during the spring of 2000 and 2005 were introduced to improve image quality. The date of the photography varies depending on the area observed. Some areas observed may include photography from more than one year and it may not be readily apparent unless obvious differences can be observed. For example, a new residential development may appear on a more recent photo and not on an earlier photo and not on an earlier photo adjacent to it. Depending on the extent of the change over time, there may or may not be an obvious difference between areas of older and newer photography. As a reference to photo dates, a photo index for the 2004 statewide aerial survey is available that includes a photo center-point location with the date for each photograph used in the aerial survey. This photo index is available from the Connecticut Department of Environmental Protection.

Attorney Lynch said this passage indicates that the photograph doesn't show what was on the property at the time, that it was not a snapshot of the lot at the time. He also stated that in a photograph on page 4, Ms. Harrigan drew a red arrow to indicate the structure, and that on page 6, the structure appears to be located in the middle of the property rather than in the corner of the property. He asked how the structure could be permanent if it could be seen in 2 different spots at 2 different times on the lot.

Mr. Tuozzola asked if there were additional questions or comments. Hearing none, he closed the hearing. He stated that the central issue to decide was whether there had been proof presented of a merger.

Mr. Collins said that in examining the photographs, he didn't see evidence of the structure being moved. He said that even his own experience of 35 years in the building trades was not helping him feel sure whether the structure was a shed or a tent. He was concerned that Stephen Gagliardi stated that there was never a shed or anything like it on the property, but it seemed that there was something there in 2006. He stated that if a structure was there with a ramp in front of it for an extended period of time, it's not temporary, whether the intent was to merge the lots or not.

Mr. Tuozzola asked for a motion.

Mr. Evasick made a motion to overturn the Assistant City Planner's decision to refuse the 6.4.2 variance.

Mr. Carey seconded.

The motion carried with **Messrs. Carey, Evasick, Haberman and Tuozzola voting with the motion**, and **Mr. Vaccino voting against the motion**.

2. 30 Parkland Place (R-10) Gina Amenta, appellant for Gina and John Amenta, owners - Vary Section 3.1.4.1 front-yard setback to 14.5' in lieu of 25' required (12.5' for 2 stairs) and 18' in lieu of 25' required for bay window. CAM received. Map 39, Block 606, Parcel 9.

Ms. Amenta stated that that the request was to replace their existing porch with a new porch and to replace an existing picture window with a bay window. She stated that the existing porch was in a state of disrepair, that the landing is small, and that they want to expand the landing for increased safety. The

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Amentas provided photographs of their porch and corresponding porches and setbacks of their neighbor's homes.

Ms. Amenta stated that their hardship was that their property is a non-conforming lot. She stated that the design was as compliant as possible because it would only increase the size of the porch from 57 square feet to 63 square feet. She stated that the bay window will require concrete footings, would extend 2 feet out from the side of the house, whereas the existing picture window is set back 10 feet from the property line.

Mr. Tuozzola asked if structural work was required.

Ms. Amenta stated that the cement is cracked and will be removed, and that the new landing will have a slate top and 2 stairs. She stated that the existing stairs are uneven and dangerous; that the new stairs would be safer.

Mr. Tuozzola asked for confirmation that the stairs would stay the same.

Mr. Haberman asked if the reason for the increased square footage was due to a larger deck, not just due to the size of the new steps and landing.

Ms. Amenta answered yes, that the deck itself would be about 7 square feet larger.

Mr. Tuozzola asked whether the posts would stay the same when the landing changes.

Ms. Amenta answered yes.

Mr. Tuozzola asked for any other questions, and for anyone speaking in favor of or in opposition to the request. Hearing none, he closed the hearing.

Mr. Haberman said he thought a hardship existed because repair was required and a small increase in size was not a big issue.

Mr. Vaccino said the front landing was consistent with the rest of the neighborhood and saw no problem with it.

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

3. 41 Richard Street cor. Virginia Street (R-5) Shaun Bennett, owner – Vary Section 11.2. to 576 SF in lieu of 333.7 SF allowed to construct garage. Vary Section 3.1.4.1 front-yard setback to 7' in lieu of 10' required to construct garage with 2nd floor workshop. CAM received. Map 30, Block 638, Parcel 1.

Mr. Bennett said he is a builder with a commercial vehicle and that he is now renting a garage while facing major costs for repairing storm damage. He said that while he was making repairs, he wanted to use this as an opportunity to get his work vehicle off the street.

Mr. Vaccino asked what the nature of the hardship was.

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Mr. Bennett said that he needs a place to garage his vehicle at his home. He stated that the garage is 24 by 24 feet and not oversized, but he needs to park a large pickup truck in it. He uses the truck for moving debris and storing tools. He said he currently has a garage, but it has no door and he can't keep a vehicle in it.

Mr. Tuozzola asked if Mr. Bennett planned to take down the existing garage. He noted that the house itself is small.

Mr. Haberman noted that needing space for a commercial vehicle isn't a hardship; that the hardship has to be connected to the property itself.

Mr. Carey said the hardship was the size of the house.

Mr. Bennett agreed that the placement and size of the house restricts his ability to have a normal sized-garage.

Mr. Haberman asked if there would be a second story on the garage.

Mr. Bennett said no.

Mr. Evasick asked how many commercial vehicles were involved.

Mr. Bennett said 1.

Mr. Evasick noted that commercial vehicles can't be stored on the street. He asked if there was to be any commercial use of the garage.

Mr. Bennett said it would only be for storing a commercial vehicle.

Mr. Tuozzola noted that Mr. Bennett would not be running a business out of the garage, just storing a vehicle.

Mr. Evasick asked if there would be a workshop over the garage.

Mr. Bennett said that he no longer planned to put the workshop over the garage, but would have one in his house instead.

Mr. Evasick asked if all Mr. Bennett's tools would be stored in his truck.

Mr. Bennett said that all his tools would be in his vehicle.

Mr. Evasick asked if any ladders or other job-related things would be stored outside the garage.

Mr. Bennett said no.

Ms Kuchta reminded Mr. Bennet that the variance had included construction of a 2nd floor workshop over the garage.

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Mr. Bennett said he planned to raise the house to add the workshop below.

Ms Kuchta asked Mr. Bennett if he wanted to amend the variance to eliminate the 2nd floor garage.

Mr. Bennett said he did; that he would use the 2nd story of the garage for storage.

Ms Kuchta asked the board to consider the variance without the 2nd floor workshop.

Mr. Tuozzola asked if there were additional questions or comments. Hearing none, he closed the hearing.

Mr. Carey moved to approve the variance without the workshop, the hardship being that Mr. Bennett's house is small, so he needs a decent-size garage on the property, and that the request meets all other regulations. He noted that the workshop would not be included. **Mr. Vaccino** seconded. The motion carried with **Messrs. Carey, Haberman, Tuozzola and Vaccino voting with the motion, and Mr. Evasick voting against the motion.**

4. 103 East Rutland (R-A) John Paul Richardson owner – Vary Section 3.1.4.1 side-yard projection to 10.9' in lieu of 25' required and 7' in lieu of 25' required to construct addition. Vary Section 6.2.4 to allow existing structure to remain at 5.9' side-yard setback in lieu of 25' required and 18' front-yard setback in lieu of 50' required for greater than 50% improvement. Map 85, Block 915, Parcel 1A

Mr. Richardson stated that he wants to put a 3-bedroom addition to his home to provide room for his growing family. He does not want to move as he likes where he lives and likes his neighbors.

Mr. Tuozzola noted that the property has a long backyard but that the proposed work is near the front of the lot.

Mr. Richardson stated that a variance to do the same addition had been approved in 1974, but the previous owner had never done the work.

Mr. Haberman asked if the existing house would be renovated.

Mr. Richardson said no, there would just be the addition off the back.

Mr. Carey said the hardship was evident in the placement of the house on the lot; that there was plenty of property, but the house was squeezed in the front.

Mr. Haberman asked if there was a house on the side of his lot.

Mr. Richardson said there was a house on one side and the Milford Connector is on the other, about 30 feet from his house.

Mr. Tuozzola asked if there were additional questions or comments. Hearing none, he closed the hearing.

Mr. Haberman said there was a clear hardship with the property because it's extremely narrow and the house was placed at the narrowest spot. Just about anything would require a variance.

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

5. **190 Broadway** (R-5) Roxanne Sessions, appellant, for Roxanne and Donald Sessions, owners – Vary Sec. 3.1.4.1 side-yard setback to 3' in lieu of 5' required for 2' overhang. CAM received. Map 13, Block 132, Parcel 15.

Mr. Sessions stated that they are building an energy-efficient home and want to increase an overhang to shade windows. With a 1 foot overhang, they are right at the setback, but they want to increase the overhang to 2 feet to increase energy efficiency.

Mr. Tuozzola asked if the foundation was already in.

Mr. Haberman noted that building is already in progress.

Mr. Tuozzola asked if there is a beach accessway to the left of the house, and to confirm that there is no structure there.

Mr. Sessions said yes.

Mr. Evasick wondered if the additional overhang was an afterthought that their architect should have considered earlier.

Mr. Sessions said they were applying for an energy efficient rating and has talked to a consultant who suggested increasing the overhang.

Mr. Tuozzola asked what would be on the other side.

Mr. Sessions said the overhang is the same on the other side, but it complies with the setbacks.

Mr. Tuozzola asked if there were additional questions or comments. Hearing none, he closed the hearing.

Mr. Evasick said he didn't see a hardship, but rather a design afterthought. He thought it should have been better thought out. He agreed that there would be very little effect on their neighbors.

Mr. Haberman noted that even a builder might not pick up a detail like that. He said that energy costs are themselves a hardship now, so such a small variance seemed fine to him.

Mr. Vaccino asked Mr. Sessions to confirm that the overhang did not affect the neighbors. Mr. Sessions confirmed it.

Mr. Collins asked if the 1-foot would really impact energy efficiency.

Mr. Sessions said it would, especially in summer.

Mr. Collins thought that not getting the energy efficiency rating was a hardship of sorts.

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Mr. Carey said there was a hardship due to the width of the lot.

Mr. Evasick agreed with Mr. Carey.

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

6. 50 Milford Point Road (R-7.5) LeeAnn Varasconi, owner – Vary Sec. 3.1.4.1 rear-yard setback to 4.2' in lieu of 25' required for 2nd flr deck of elevated dwelling. CAM received. Map 6, Block 88, Parcel 14.

Ms. Varasconi's husband, **Mr. Zigler**, stated that the proposed deck will replace a deck that is about the same size and has been on the property for at least 20 years. He stated that the lot is non-conforming and that they want to replace what they have.

Mr. Tuozzola asked if the deck was raised or on the ground.

Ms. Varasconi said raised.

Mr. Vaccino said he'd visited the site and wanted to know if this plan was for the ground floor deck, or the 2nd floor deck.

Ms. Varasconi said there are 2 decks, one up and one on the ground. The top deck was to be replaced and extended the width of the house.

Mr. Zigler said the hardship is that their property has no outdoor space other than the deck.

Ms. Kuchta said the variance was written for the deck on the second floor and that they would have to remove the illegal ground floor deck. To clarify, she stated that they are asking for a variance for 1 rear deck on the second floor.

Mr. Haberman asked if the 2nd floor deck would be removed.

Mr. Evasick asked Ms. Kuchta if the ground floor deck has a permit.

Ms. Kuchta said the situation was very confusing for these new owners. The previous owners came in for permits, and were granted permits for the 2nd floor front and side deck and rear stairs, but denied the rear decks. The new owners thought they were permitted the rear decks, so they are currently trying to replace the rotting decks that they thought were ok. She stated that the file is confusing and that the new owners are trying to legalize everything and in doing so, they are removing the first floor deck. If the board votes to approve the 2nd floor rear deck, it should be contingent on removing the illegal rear ground-floor deck.

Ms. Varasconi said they would come back for another variance if they wanted to do the ground floor deck again.

Mr. Carey said he didn't see a problem with the elevated deck because it remains within the envelope of the house and doesn't increase the non-conformance.

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Ms. Varasconi provided letters of support from neighbors.

Mr. Tuozzola asked if there were additional questions or comments in favor of or opposed to the request. Hearing none, he closed the hearing.

Mr. Vaccino said he visited the site and agrees that the hardship is the small lot without much area outdoors.

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

7. **108 Waterbury Avenue** (R-5) James F. McElroy, appellant, for Diane Davenport, owner – Vary Sec. 3.1.4.1 rear-yard setback to 10' (9' to overhang) in lieu of 20' required to construct new residence from TS Irene. CAM received. Map 13, Block 135, Parcel 5.

Mr. McElroy described plans for the replacement house. He noted that the street has no parking, so he is providing a garage with 2 guest parking spaces. The new house's elevation conforms and he is bringing the house further back from the flood-line, while keeping the footprint similar to the old house. He said the attached garage will have bedrooms above. Moving the house in this way also provides more space between Ms. Davenport and her neighbors. The orientation has changed due to renaming of the streets in the area.

Mr. Tuozzola noted that the house was pulled 4' back from the water and 10'8" back from the neighbor.

Mr. McElroy provided a letter from the next-door neighbor in support of the plan. **Mr. Walter William Eerie** spoke, saying he had no objection to the setback change.

Mr. Tuozzola asked if there were additional questions or comments in favor of or opposed to the request. Hearing none, he closed the hearing.

Mr. Carey said the plan was a little less conforming than before but the owner has a right to rebuild a house that will weather future storms better.

Mr. Evasick noted that this plan doesn't stretch any boundaries. He commended that it had a low-impact, best-use design.

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

8. **20 Bridgewater Avenue** (R-5) Mark Pucci, appellant, for Catherine DeVito, owner – Vary Section 3.1.4.1 front-yard setback to 6.5' in lieu of 10' required and rear-yard setback to 6.9' in lieu of 20' required to replace TS Irene-damaged house. CAM received. Map 13, Block 139, Parcel 1.

Mr. Pucci described the proposed house that would replace the one condemned after Hurricane Irene. The plan is to rebuild the house on the same footprint, add a 2-car attached garage in line with the house and slide the house back to meet the rear yard setback. The hardship was that the lot is very small, the house was totally destroyed. The owner is proposing making the house more storm resistant by raising it to VE14 feet with flood venting, where it is now at AE10.

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Mr. Haberman asked if there would be living space over the garage.

Mr. Pucci said yes.

Mr. Vaccino said he visited the site and had trouble finding the house; he asked if it is just to the right of number 16. He did not see a placard.

Mr. Pucci said it was the house to the right and that he had placed a placard, but people have been removing them. He said he'd photographed it and sent a digital copy to the Zoning Enforcement Officer.

Mr. Tuozzola said he'd seen the placard.

Mr. Pucci described the location of the lot and said that the city address (as opposed to the USPS address) is 88 Shorefront.

Mr. Tuozzola asked Ms. Kuchta to describe the difference between VE and AE elevations.

Ms. Kuchta explained the VE (velocity elevation) and AE (aerial elevation) coding: VE indicates moving water and more potential damage from waves during a storm, whereas AE indicates rising water. She indicated where the VE/AE line was shown on the map of the property. She said the house will be moving back 13.5' toward the AE line. While the house can't be moved entirely out of the VE line, to put most of the structure out of the VE area is wise.

Mr. Tuozzola asked if the living area is larger.

Mr. Pucci said the room over the garage is 18 by 20 feet, less the roof pitch. He thought it would add up to about another 300 square feet.

Mr. Tuozzola said this was consistent with other structures in the area.

Mr. Pucci added that the proposed house is not on stilts; it is on concrete footings and piers and will sit 4 feet higher than it did before the storm.

Ms. Kuchta added that Mr. Pucci will still have to go before the Planning and Zoning Board for a full CAM review to discuss structural issues. The Planning and Zoning Board will have the final determination as to whether this meets the CAM standards.

Mr. Tuozzola asked if 16 Waterbury is a similar plan.

Ms. Kuchta added to the question by asking Mr. Pucci to confirm that the garage is underneath the house.

Mr. Pucci said yes the plans are similar and the garage is attached.

Mr. Evasick noted that the new house sits in the same footprint with a small increase in living area that constitutes a bonus room.

Mr. Haberman asked if the house would be longer.

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Mr. Pucci said the house meets the setback.

Mr. Evasick asked Ms. Kuchta if she thinks the ZBA will see more instances of moving houses away from the VE zone.

Ms. Kuchta said yes, people were just starting to receive their insurance checks and that the board should start receiving more reviews in the flood zone areas.

Mr. Evasick asked if the homes were mostly destroyed by being in a VE zone.

Ms. Kuchta said the wave action had probably caused most of the damage. If they are condemned and need full replacement, most of them will require a variance. If they were destroyed less than 50%, they would not need a variance per FEMA. She said the ZBA will see more of these types of variances where people are trying to be as flood compliant as possible, but that's also being looked at by another board for a CAM review. The plans have to meet CAM standards even after a variance has been granted.

Mr. Evasick thought that if the homes can be moved back, even at the expense of a setback, it's basically a better choice.

Mr. Tuozzola asked for anyone speaking in favor of or in opposition of the plan. Hearing none, he closed the hearing.

Mr. Haberman felt the request was reasonable and added that the garage will get cars off the street.

Mr. Evasick agreed and felt that a hardship exists.

Mr. Carey said that the footprint was the key issue, living space aside.

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

9. **16 Bridgewater Avenue** (R-5) Mark Pucci, appellant, for Michael Forino, owner – Vary Section 3.1.4.1 front-yard setback to 3.7' in lieu of 10' required and rear-yard setback to 7.9' in lieu of 20' required to replace TS Irene-damaged house. CAM received. Map 13, Block 139, Parcel 3.

Mr. Pucci said the plan for this address follows a similar scenario to 20 Waterbury, that the house is 2 houses over. The plan again slides the house as far back on the lot as possible. It takes a detached garage that is currently over the property line and removes it. Part of the lot is also in the VE14 zone, and the house will look almost identical to the one at 20 Waterbury.

Mr. Tuozzola asked for confirmation that that the garage would be under the unit displacing the detached garage. Mr. Pucci said yes. Mr. Tuozzola asked about the empty lot between the two houses, and Mr. Pucci said that lot belongs to another homeowner in the area. Mr. Tuozzola asked if there would be another variance coming in for that lot and Mr. Pucci said that in his opinion, it was definitely a building lot. Mr. Tuozzola asked Ms. Kuchta if there was an issue of any property being landlocked and Ms. Kuchta said no.

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Mr. Pucci said that a right of way gives access to #16.

Mr. Tuozzola asked if there were additional questions or comments in favor of or opposed to the request. Hearing none, he closed the hearing.

Mr. Haberman thought this was a reasonable request to rebuild and the same as for the last property.

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

10. 8 Point Beach Drive (R-7.5) James Attolino, Jr, appellant, for James Maroney, owner – Vary Section 3.1.4.1 side-yard setback to 3.8' in lieu of 5' required to existing foundation and 4.8' to rear-deck and 3.7' to proposed 2nd flr balcony and vary Section 3.1.4.1 front-yard setback to 5.5' in lieu of 10' required for proposed front deck. CAM received. Map 30, Block 637, Parcel 1.

Mr. Attolino stated that the property had sustained more than 50% damage and that the proposed plan did not increase the current footprint. He described the destroyed house as an old beach cottage that had been converted to year-round use. The old rear addition of the house didn't meet modern framing requirements. They want to raise the house, but demolition of the rear addition would be required to do so. The hardship is a non-conforming lot and storm damage. There would be a new first floor and parking underneath.

Mr. Tuozzola asked if the front projection was in line with a nearby brick house.

Mr. Attolino showed photographs from the corner of Virginia Street to Elaine Road. Out of 7 or 8 houses shown, only 1 had no front projection. He submitted the photographs to the hearing.

Mr. Haberman asked if the plan called for the same footprint, but raised.

Mr. Attolino said there was an increase of about 30 square feet with the new foundation, but the 1st floor is still within the setback on the Virginia Street side.

Mr. Tuozzola asked if there were additional questions or comments in favor of or opposed to the request. Hearing none, he closed the hearing.

Mr. Haberman said the small lot and the location of the lot was a hardship, and a variance was needed.

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

D. OLD BUSINESS

None existed.

E. NEW BUSINESS

None was presented.

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F. STAFF UPDATE

The chairman introduced and welcomed new alternate board member Robert Thomas. The members who signed up to attend the University of Connecticut training session on March 31 in Stamford and were car-pooling with Meg made a plan to meet in the Parsons parking lot at 7:00 AM.

G. ACCEPTANCE OF MINUTES FROM FEBRUARY 14, 2012 HEARING

The minutes were accepted with the following corrections: Mr. Vaccino was incorrectly listed as an alternate when he is a full member. A date reference in the first paragraph incorrectly read "January 10" instead of "February 14."

H. ACCEPTANCE OF APPLICATIONS FOR APRIL 10, 2012 HEARING

None were presented.

Mr. Tuozzola asked for a motion to adjourn and the meeting ended at 9:49pm.

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