

Minutes, Public Hearing of Zoning Board of Appeals Meeting held April 8, 2014

The Regular Meeting of the Zoning Board of Appeals of Milford, CT, was held on Tuesday, April 8, 2014, 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 may have required Coastal Area Site Plan Reviews or exemptions.

A. PLEDGE OF ALLEGIANCE / ROLL CALL

MEMBERS PRESENT: Joseph Tuozzola (Ch), Howard Haberman (Sec,) Richard Carey, William Soda, John Vaccino

ALTERNATES PRESENT: Gary Dubois, Sarah Ferrante, Robert Thomas

MEMBERS/ALTERNATES ABSENT:

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

Mr. Tuozzola called the meeting to order at 7:00 p.m. He asked for known conflicts of interest for board members with any of the items on the agenda; none were raised.

B. CONSIDERATION OF AGENDA ITEMS

1. **49 Chester Street** (R-7.5) Warren Field or Christopher Field, agents for Molly Rentals, LLC, owner; Vary Sec. 3.1.4.1 east side-ym setback to 3.7 where 5' req, and west side-ym setback to 3.6' where 10' req; 4.1.4 west eave proj to 2.6' where 4' perm and east eave proj to 2.7' where 8' perm to construct a new house. Map 38, Block 536, Parcel 13

Thomas Lynch, Esq., Lynch, Trembicki and Boynton, 63 Cherry Street, addressed the board. He provided background on the Fields' recent purchase of the property through foreclosure. He described the existing dwelling and the new one proposed for the lot. He detailed the requested variances for the side yards. He said neighbor Richard Piselli described the lot as the last undeveloped property on Chester Street. Attorney Lynch said development of the property would be consistent with the neighborhood, but that due to the nonconformity of the lot, any development would require a variance. He noted a slight reduction in the existing nonconformity. He said Buddy and Chris Field were available to answer questions. He provided a picture of the proposed home. He said the hardship was the nonconforming lot.

DISCUSSION

Mr. Tuozzola confirmed that the house would be centered on the lot and that the garage would be preserved.

OPPOSITION

Richard Piselli, 201 West Main Street, said he owns an abutting residence. He said he thinks the project is a good thing for neighborhood, but objects to the 3.5' side-yard setback near his lot. He said he'd like to see the 5' setback preserved on his side, leaving 10' between the two houses.

REBUTTAL

Attorney Lynch said he spoke to Mr. Piselli before the hearing. Attorney Lynch said he thought the difference between the variance requested and 5' setback is minimal.

BOARD DISCUSSION

Mr. Tuozzola closed the hearing. After a short discussion, there were no issues in dispute, so he asked for a motion.

Mr. Vaccino motioned in favor of application. **Mr. Haberman** seconded. **Mr. Vaccino** supported his motion by reason of hardship of the narrow lot and reduction in existing nonconformity, exactly as stated in the record. The motion carried with **Messrs. Carey, Haberman, Soda, Vaccino** and **Tuozzola** voting **with the motion**.

2. **66 Elaine Road** (R-7.5) Richard Smagala, agent, for Patrick O'Malley and Bernadette O'Malley, owners; Vary Sec. 4.1.4 front-ym projection to 13.4' where 16' perm for a new front porch. Map 30, Block 639, Parcel 17

Richard Smagala, architect, 10 Unity Drive, Monroe, presented the board with photos of the house and drawings of the

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proposal, then addressed the board. He stated that the O'Malleys have been improving the home since purchasing it. He said they considered adding to the rear of the house, but rejected the idea due to the topography and wetlands. He said the current entryway was difficult to use, and that the owners would like to add a covered porch to reduce exposure to the elements. He described the request as being the minimum needed to make the porch useful.

DISCUSSION

Mr. Tuozzola confirmed that the chain link fence would be removed. **Mr. H** confirmed that the existing porch was about 4' deep now and would be 6'.

BOARD DISCUSSION

Mr. Tuozzola asked if anyone wished to speak in favor of or opposition to the application. Hearing none, he closed the hearing. After a short discussion, there were no issues in dispute, so he asked for a motion.

Mr. Haberman motioned in favor of application. **Mr. Carey** seconded. **Mr. Haberman** supported his motion by reason of hardship of the lot with wetlands in the back, exactly as stated in the record. **Mr. Vaccino** moved to amend the motion to include a condition for removal of the fence. **Mr. Haberman** restated the motion and **Mr. Vaccino** seconded. The motion carried with **Messrs. Carey, Haberman, Soda, Vaccino and Tuozzola** voting **with the motion**.

3. **25 Deerfield Avenue** (R-5) Jeffrey Attolino, agent, for Catherine Gettinger, owner; Vary Sec. 6.3.2 to expand nonconforming structure; 3.1.4.1 side-yr setback to 3.93 where 5' req to add 2nd story addition. Map 28, Block 587, Parcel 15

Jeffrey Attolino, 5 Mill Pond Close, addressed the board. **Mr. Attolino** stated that the project plans aimed to extend a variance granted in 1995 to add a bath and bed on 2nd floor. He said the plan was to go up and not increase the current footprint.

BOARD DISCUSSION

Mr. Tuozzola asked if anyone wished to speak in favor of or opposition to the application. Hearing none, he closed the hearing. After a short discussion, there were no issues in dispute, so he asked for a motion.

Mr. Vaccino motioned in favor of application. **Mr. Haberman** seconded. **Mr. Vaccino** supported his motion by reason that this variance merely extended the previous one granted and did not increase the footprint, limiting the approval to the specifications exactly as stated in the record. The motion carried with **Messrs. Carey, Haberman, Soda, Vaccino and Tuozzola** voting **with the motion**.

4. **41 Melba Street** (R-5) Thomas Lynch, Esq., Attorney, for Brian Lee, owner; Vary Sec. 3.1.4.1 east side-yr setback 2.87' where 10' req; 4.1.4 east deck to 2.5' where 8' perm; 3.1.1.1 density to allow 2 dwellings in single family zone; all to construct 1 new dwelling. Map 29, Block 302, Parcel 27

Thomas Lynch, Esq., Lynch, Trembicki and Boynton, 63 Cherry Street, distributed floor plans and elevations, and then addressed the board. He introduced Mr. Lee. He noted the storm damage in the area. He described the two houses on the lot, saying they are anomalous to other dwellings in that area because the smaller cottage is closer to the water. He described the proposed house, noting that it would be centered on the lot and consist of 1600 sf. He described the floor plan. He said administrative approval processing would include Planning and Zoning and DEEP presentations because the house would be within 15' of the shore. He said the plan was consistent with other properties on the street. He noted the narrowness of the lot and said that any house would require variances. He said it would meet VE FEMA guidelines. He said lot coverage was not an issue.

DISCUSSION

Mr. Tuozzola asked about lots in that area with 2 houses, **Attorney Lynch** said Mr. Lee researched 11 properties with 2 houses in the vicinity. **Mr. Tuozzola** referred to the new regulations on structures damaged by natural events. **Attorney Lynch** said he

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thought the ZBA should still review applications for reasonableness. He said that to rebuild the 600 sf building would not be reasonable. **Mr. Tuozzola** asked **Mr. Harris** for clarification on demolishing and rebuilding as it related to the new regulations. **Mr. Harris** said the pertinent regulation is 6.2.6, Restoration for Legal Nonconforming Uses. He said that because there are 2 dwellings on the lot, it qualifies as a nonconforming use. He said the regulation doesn't apply in this case because the proposal is to knock down the existing house and build a different house, whereas for 6.2.6 to apply, the demolished dwelling must be rebuilt "as is," and then elevated. **Mr. Haberman** confirmed that the regulation does not allow for the proposed project. He confirmed that the Lees are living in the small structure and want to move into the proposed one. **Attorney Lynch** said the plan for the other house was eventual use as a guest house. **Mr. Haberman** asked if razing the 2 houses and rebuilding just one house had been considered. **Attorney Lynch** said he wasn't sure, but that the other existing home was in pretty good shape and of a reasonable size.

FAVOR

Robert Stevens, 49 Melba Street, said he supported the project because it was an improvement to the property and that the neighbors prefer owner-occupied homes. He noted the FEMA compliance reducing risk to other structures in the area.

Stanley Washuk, 46 Melba Street, sent an email to Attorney Lynch, stating that he is in favor of the project.

BOARD DISCUSSION

Mr. Tuozzola asked if anyone was opposed to the application; hearing none, he closed the hearing. He asked the board to reread the new regulations that the application sought to vary, which they did. **Mr. Vaccino** stated that the proposed house had to stay the same unless the variance was granted. He asked **Mr. Harris** if the project could be rebuilt within the existing footprint under the new regulation but build up. **Mr. Harris** asked board members to refer to the new regulations in front of them for guidance. **Mr. Tuozzola** asked **Mr. Harris** to clarify the difference between Sections A and B of the new regulation. **Mr. Harris** said Section A dictated that one nonconforming use can't be expanded, extended or transformed into a different non-conforming use. He said Section B says you can use the same footprint; he added that Section C says it must comply with the flood zone rules. **Mr. Haberman**, **Mr. Soda**, and **Mr. Harris** discussed the regulation further, confirming that the structure could be rebuilt exactly and elevated.

Mr. Carey motioned to deny the application. **Mr. Vaccino** seconded. **Mr. Carey** supported his motion by reason of no hardship shown. The motion carried with **Messrs. Carey, Haberman, Soda, Vaccino** and **Tuozzola** voting **with the motion**.

5. **137 Milford Point Road** (R-5) Thomas Lynch, Esq., Attorney, for Christine Timko, owner; Vary Sec. 3.1.4.1 south setback to 3' where 10' req, north setback to 2' where 5' req; 4.1.4 front proj to 3' where 8' perm, north side-yp proj to 2' where 4' perm, south side-yp proj to 5.2' where 8' perm; 3.1.1.1 density to allow 2 dwellings in single family zone. Map 6, Block 84, Parcel 43

Thomas Lynch, Esq., Lynch, Trembicki and Boynton, 63 Cherry Street, addressed the board. He said he wanted to provide comment on the last time 137 Milford Point Road came before the board, after which he requested that this item be tabled until next month. He said he felt the intention of the regulations was let owners of large "livable houses" rebuild exactly without coming to the ZBA for variances. He said he was part of the original public discussion. He said the regulations were adopted to avoid extra expenses for properties wiped out in the storm. He said his 2 clients requests are different because they want to bring their houses into conformity with their neighborhoods and build reasonable single family dwellings. He said he filed the applications to vary the new regulations in a reasonable manner via the ZBA. He said there should be a mechanism to rebuild reasonable structures.

Mr. Tuozzola replied that these lots have 2 houses and the requests were adding more density and nonconformity. He said the City is trying to let people rebuild what they have, not knock down a house to build a bigger house. He said a bad precedent would be set.

Attorney Lynch said every structure in the R5 and R7.5 zones would require a variance to rebuild and that's what the new regulations were meant to fix. **Mr. Tuozzola** said the board tries to be fair, but if they start changing rules, anything goes.

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Mr. Tuozzola asked for a motion to table. **Mr. Soda** motioned to table the request; **Mr. Haberman** seconded; the motion carried by voice vote.

C. OLD BUSINESS

There was none.

D. NEW BUSINESS

There was none.

E. STAFF UPDATE

Mr. Harris reported that the City Attorney would finish reviewing the ZBA ByLaws and they will be ready for May.

F. ACCEPTANCE OF MINUTES FROM MARCH 11, 2014, HEARING

Mr. Vaccino moved they be accepted; the motion carried unanimously.

G. ACCEPTANCE OF APPLICATIONS FOR MAY 13, 2014, HEARING

There were none reported thus far.

The meeting was adjourned at 7:53 p.m.

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