

## **Minutes, Public Hearing of Zoning Board of Appeals Meeting held 9 May 2023**

The Regular Meeting of the Zoning Board of Appeals of Milford, CT, was held on Tuesday 9 May 2023, beginning at 7:00 p.m. at 110 River Street, to hear all parties concerning the following applications, some of which may require Coastal Area Site Plan Reviews or exemptions.

### **A. PLEDGE OF ALLEGIANCE / ROLL CALL**

**Chairman Tuozzola** called the meeting to order at 7:00 pm.

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

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

**MEMBERS/ALTERNATES ABSENT:** Mike Smith

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

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

**1. 35 Thompson Street**, MBP 35/442/25; R-5; Anthony Mallozzi, owner, Vary Section 4.1.4 rear-yard projection to 4.1' where 20' permitted to construct a deck; front-yard projection to 0' where 8 permitted for front landing and steps.

**Mr. Mallozzi** addressed the board. He said the stairs were needed as an entryway to safely enter and exit the house. **Anthony Mallozzi, Sr.**, Mr. Mallozzi's father, thanked the board for holding the hearing open from last month.

**Mr. Tuozzola** opened the hearing to public comment. Hearing none, he closed the hearing and asked for a motion to approve.

**Mr. Soda** motioned to **approve**.

**Mr. Ferrante** seconded.

Discussion: **Ms. Ferrante** said she felt the request was reasonable and modest.

The motion **carried unanimously**.

**2. 71 Milford Point Road**, MBP 6/84/21; R-7.5; Amy Souchuns, Esq., for Brett Howell and Kathleen Rombach, appellants; Appeal the Decision of the Zoning Enforcement Officer in accordance with the provisions of section 9.2.1 regarding issuance of a zoning permit for the subject property at 71 Milford Point Road (Justin and Amy Falco, owners).

**Attorney Souchuns** addressed the board. She said that given Mr. Harris' obligation to determine compliance with zoning regulations, he improperly relied on insufficient information given to PZ board with respect to coastal management activities and to flood hazards. She maintained that contrary to the opinion expressed in a memo issued by Attorney Kevin Curseaden, the ZBA has jurisdiction because rather than the ZBA challenging a decision of the Planning and Zoning Board (PZB), the ZBA is challenging Mr. Harris' response to the same information received by the PZ Board. In Mr. Harris' case, he would respond to the information with respect to compliance with the zoning regulations and that Mr. Harris had the authority to determine that the information provided was insufficient. She encouraged the board members to review the copy of the Coastal Area Management application submitted with the appeal. She said there was nothing in the application to indicate an adverse impact on the coastal resources, but that dunes were adversely impacted. She handed out a memo from John Gaucher of CT Department of Energy and Environmental Protection indicating that dunes were missing from the site plan, which would also be the case for the information available to Mr. Harris. She shared photos of her client's property prior to Storm Sandy depicting the location of the dunes with their potential for flood mitigation. She also referred to a handout containing the definition of adverse impacts to coastal resources, which include degradation of beaches and dunes. She said that because the new house was moved 50 feet waterward compared to the previous house, the dunes were significantly excavated. She asserted that information indicating violations of the CAM regulations and flood hazard requirements were omitted from the materials submitted to the PZB and that if correct information was provided, the Planning and Zoning Board and ZEO Harris would have come to a different decision. She referred to submitted information from her client's 2012 CAM application to create a comparison with a complete submission.

**Zoning Enforcement Officer (ZEO) Harris** reviewed the timeline for the PZB approval, subsequent issuance of the permit, and submission of the appeal. He said the administration of a permit is a ministerial duty of the ZEO which does not allow him any discretion in whether to issue it or not. He referred to case law in support of his statement when the application conforms to regulations. He requested that the board uphold his decision and reiterated that the only issue before the board was whether the permit had been properly issued. **Mr. Tuozzola** confirmed that the site plan submitted to the PZB was approved on January 3. **Mr.**

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**Soda** confirmed that the ZBA has no authority to overturn a decision by the PZB. **Mr. Wolfe** asked if an appearance before the ZBA was prerequisite to petitioning the superior court; **Mr. Harris** said that decisions of the PZB must be contested in Superior Court.

**Attorney Curseaden**, 3 Lafayette Street, said he agreed with Mr. Harris. He said the avenue of recourse for objection is Superior Court. He reiterated that if the plans conformed to the PZB-approved plan, the permit must be issued. He reviewed relevant case law. He said the application process his client pursued was long; that it started in summer 2022 and included incorporating changes per the city engineer. He noted required publication of the application, meetings, and outcomes. He said the Inland Wetlands Agency raised soil and erosion control issues, which were addressed by the applicant. He said the board had the evidence and the expertise to evaluate the plans. He referred to a CT DEEP letter showing that application to the state was not required. He said the new house is zoning-, building-, and National Flood Insurance Program-compliant. He said the appeal deadline was not met.

### **Public Comment**

#### **FAVOR:**

**William Brennan**, 51 Milford Point Road, said that when he was constructing his house, he was told by Planning and Zoning that he could not build past seawall. He said there was a cut in the sea wall and he feared damage to adjacent property. *(NOTE: This comment was made prior to Mr. Harris's rebuttal.)*

#### **OPPOSED:**

**Mr. Falco** addressed the board, saying he thought context was needed. He said there had been a past variance application by the appellants. He said he reviewed the original survey with ZEO Harris, discussed it further with DPLU Director Joe Griffith, and learned that he could move the house closer to Long Island Sound. He said this created the possibility of adding more off-street parking in his front yard. He stressed that multiple iterations of his plans were discussed with the Department of Permitting and Land Use (DPLU) and the city engineer. He said he was convinced that the real issue was Mr. Howell's view. He said the applicants had groomed the beach on their own property. He said he had fully complied with the erosion control requirements.

#### **FAVOR:**

**James Hill**, 8 Sand Street, said the property was about 100 feet away from his property, that he considered himself an environmentalist, and that he thought the appeal should be denied. He said he rebuilt his house after Sandy, feared that he would elevate the house and someone would try to block rebuilding.

**David Ivanovich**, 25 Marsh Street, said he supports the project, appreciates reducing parking problems, and that all homeowners in the area can be seen moving sand and planting grass.

### **REBUTTAL**

**Attorney Souchuns** said she had a question for Mr. Harris. She said she understood that he had reviewed zoning compliance for Section 5.8 of the regulations; he said he reviewed the proposal against all the zoning regulations. She then asked that page 4 of 9 of the submitted CAM application be displayed. While Mr. Harris located the image, **Mr. Soda** asked why Attorney Souchuns thought the ZBA had jurisdiction. She said that if the application was complete and had properly identified the coastal resources and flood hazard issues involved, she would agree with Attorney Curseaden and not challenge a PZB decision. She said the issue was the inaccuracy of the submission to the PZB and Mr. Harris, which prevented the assessment of compliance with Sections 5.8 and 5.12. She referred to Part II A of the applicant's Coastal Management application and read its terms. She then read the text of the application which stated that the only disturbance would be demolition of the house. She referred to the handout she had provided earlier from DEEP indicating that one of the coastal resources is beaches and dunes and that the applicant's response made no mention of dunes or the removal of sea grass. She noted language that referred to no aquatic, rather than coastal resources, saying the application should identify how all resources are impacted, whether temporary or permanent. She said that nowhere on the application was the dune would be removed identified. She said the lack of this information would be why the ZBA has jurisdiction over the matter, and for that reason she asked the board to uphold the appeal. She said that if the ZBA overturns the permit, the Falcos can revisit the PZB with corrected application. Soda and Attorney Souchuns then discussed in more detail these jurisdictional issues and the building practices that disrupt a construction area in order to build a house. There was further discussion of the circumstances under which the ZEO must perform ministerial functions, with Attorney Souchuns asserting that permits can only be issued if plans conforms to both PZB-approved plans and to the regulations. **Mr. Montano** asked if the dunes can be repaired. Attorney Souchuns said the applicants proposal places the house on the dune, so plan must be modified.

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In his final rebuttal, **Mr. Harris** underscored that if the PZB grants site plan approval, it means that the plans were vetted, and his role is to grant ministerial approval.

**Mr. Tuozzola** closed the hearing.

**Ms. Soda** motioned to **uphold the decision of the Zoning Enforcement Officer**. **Mr. Montano** seconded.

**Discussion:** **Mr. Soda** said his assessment was that the appeal was exactly like the one heard last month, where the ZBA had no jurisdiction. **Mr. Wolfe** said he thought the CAM could always be improved but agreed that the ZBA has no jurisdiction. The motion **carried unanimously**.

**3. 354 Woodmont Avenue** MBP 91/809/6BC0, 1-9 and 6BC1, 1-9; (ID), Jonathan Klein, Esq., for Milford Business Center I Association, Inc., appellant; Appeal the Decision in accordance with the provisions of section 9.2.1 regarding Notice of Violation, Section 3.11.1 and 3.11.2.

**Attorney Klein 1057 Broad Bpt** addressed the board. He said on 3 March 2023, a notice of zoning violation was sent to his client stating that 6 shipping containers were found on this lot, and that storage of these containers is prohibited. He provided background, including conversations with ZEO Harris meant to clarify that the items on the lot were not shipping containers, but storage containers. He said the containers were to store furniture and other items associated with the businesses in the units. He said the use is permissible with site plan approval using storage sheds and that this accessory use is described in the regulations. He said other properties in the area have similar storage vessels and that the containers are ubiquitous throughout the city. He asserted that use of storage containers is subordinate and customary and that they do not require screening on all sides. He said ZEO Harris said that a storage shed would be acceptable, but noted another section which refers to residential contexts. He asserted that there is no rational reason that a container is more or less acceptable than a shed. Ms. Hirsch asked for photos and Mr. Harris displayed them. **Mr. Soda** asked how stacked containers can be accessed for storage. He opined that the lot looked like a scrap yard and asked how it was possible to know what is in them. **Attorney Klein** said that the issue before board is presence of containers.

**Mr. Tuozzola** asked Zoning Enforcement Officer Harris to present his rebuttal.

**Zoning Enforcement Officer (ZEO) Harris** said that the city has never issued permits for containers. He said that if this was an industrial site, the use might be incidental and customary, but the site is a plaza with a gentlemen's club, restaurant, and other non-industrial uses, despite its zoning. He said containers are not customary and incidental to the uses in the plaza. He said he had discussed alternatives with Attorney Klein, and that he was happy to work with him toward a solution.

### **REBUTTAL**

**Attorney Klein** said he could find 11 other places in the surrounding area with the same types of containers. He asserted such containers were nothing unusual.

**Ms. Ferrante** and Mr. Harris discussed how he investigates and documents violations. **Mr. Harris** said he could find violations all day, but he's responded to this one because he saw it during a tenant fit-out inspection. **Ms. Ferrante** said a photograph looked as if the stacked containers' height exceeded the height of the building; Attorney Klein said it was due to the angle of the photo and no height violation was mentioned in the notice. **Attorney Klein** asked the board to overturn, with conditions to clean up the site.

**Mr. Tuozzola** closed the hearing.

**Mr. Soda** motioned to **uphold the decision of the Zoning Enforcement Officer**. **Mr. Montano** seconded.

**Discussion:** **Mr. Soda** said he thought the ZEO acted appropriately. The motion **carried unanimously**.

Due to the length of the presentations, the chair called a brief recess from 8:41 to 8:45

**4. 232 Melba Street**, MBP 39/542/38A; BD; Daniel Kardos, owner; Vary Section 5.5.1.2 to allow less than 300' from a public park; Section 5.5.4.2 to allow less than 1500' from another tavern, café, hotel, or restaurant.

**Attorney Curseaden** addressed the board. He said the site is near the Fire Engine Pizza restaurant and a liquor store. He said that his client, Chef Dan Kardos, wishes to open a restaurant that can serve alcohol. He reviewed the distance requirements between

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establishments serving liquor. He contended that the playground designation is in dispute and that the liquor permit at Fire House Pizza has not yet been issued. He said the restaurant would help revitalize the plaza, which is a unique property in that it is a BD (business district) zone, which is rare.

**Mr. Soda** motioned to **approve**.

**Mr. Montano** seconded.

**Discussion:** Several board members noted that a liquor permit can be crucial to the success of a restaurant and therefore the request was reasonable.

The motion **carried unanimously**.

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

**Attorney Lynch** addressed the board, introduced his client, and reviewed the previous versions of the application. He displayed a drawing showing the progression of garage plans beginning with one that featured bedroom and office areas over the garage to one that featured an office space above the garage to the current proposal that featured no living space above the garage. He said the current plan is for a generic 2-car attached garage with no improved space above. He noted that the garage height was 14' to the midpoint, which is a foot lower than required for a detached garage. He also noted that a 2-car garage will reduce street parking.

**Mr. Soda** asked if a condition can be attached to the approval to restrict the garage's height; **Mr. Harris** said it could be. **Attorney Lynch** said his client would accept the condition.

**Mr. Tuozzola** opened the hearing to public comment. Hearing none, he closed the hearing and asked for a motion to approve.

**Mr. Soda** motioned to **approve with the condition that a second floor cannot be added to the garage**.

**Mr. Montano** seconded.

**Discussion:** **None**.

The motion **carried unanimously**.

**6. 20 Hanover Street**, MBP 22/458/7; R-5; Hlias Kourtikas, owner; Vary Section 3.1.4.1 west side-yard setback to 5' where 10' required; 4.1.4 rear deck projection to 13.3' where 16' required; west-side deck projection to 5.34' where 8' required, all to construct single-family residence.

**Attorney Lynch** addressed the board. **Mr. Tuozzola** asked that both items be presented at the same time. **Attorney Lynch** introduced his clients as owners of the Greek Spot Restaurant and noted that they also reside on East Broadway. He said they plan to demolish a small cottage on the properties and build 2 houses on 2 nonconforming lots where the lot certification applications were filed prior to the lot certification moratorium currently in effect. He said side yard variances were needed to build two 2000sf houses where the top level of living space is 28', with no living space on the 3<sup>rd</sup> floor. He said the houses could be built as of right with a taller, narrower house. He submitted a petition in approval of the plan. Discussion ensued about the height of the house versus the 3<sup>rd</sup> floor of living space.

### **OPPOSED**

**John Cooper**, 15 Hanover Street, said he approved of the side variance, but has a problem with the rear variance. He said houses are already back-to-back. He also expressed concern about potential use as an Airbnb.

**Wilson Chicos**, 20 Chetwood Street, agreed with side variance and thinks the plan will look nice, but also has a problem with rear variance. He said his house abuts the marsh where there are phragmites fire risks.

**Michelle Coppola**, 25 Cooper Avenue, said she didn't received notice until Thursday of last week and then spoke with Attorney Lynch. She said her back yard is only 4' deep, so she is most impacted. She said she will lose privacy and was concerned about fires, loss of habitat for wildlife, noise, and loss of natural light.

**Attorney Lynch** said the comments related to the rear decks were noted, and the decks could be shortened as well as arbor vitae could be planted for privacy. He asked the chair to hold the hearing open to revise the plans. **Mr. Soda** said if the deck plans were being revisited, he would appreciate clarification on the roof pitch as it relates to the height of house.

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**Mr. Tuozzola** asked for a motion to hold 20 Hanover Street and 22 Hanover Street open.

**Mr. Soda** motioned to **hold 20 and 22 Hanover Street open until next month.**

**Ms. Ferrante** seconded.

Discussion: **None.**

The motion **carried unanimously.**

**7. 22 Hanover Street**, MBP 22/458/7; R-5; Hlias Kourtikas, owner; Vary Section 3.1.4.1 west side-yard setback to 5' where 10' required; 4.1.4 rear deck projection to 13.3' where 16' required; west-side deck projection to 5.25' where 8' required, all to construct single-family residence. **HELD OPEN (See previous item.)**

**8. 171 Wilcox Road**, MBP 46/588/40; R-5; Wendy Stowell, owner; Vary Section 4.1.4 front-yard projection to 19' where 21' required to construct porch.

**Edwin Michaud**, 171 Wilcox Road, addressed the board and reviewed the request. Discussion of the potential hardship ensued. **Ms. Ferrante** did not see one and suggested a shorter, 6-foot porch.

**Mr. Tuozzola** opened the hearing to public comment. Hearing none, he closed the hearing and asked for a motion to approve.

**Mr. Soda** motioned to **approve.**

**Mr. Montano** seconded.

Discussion: **Mr. Soda** said the request was modest. **Ms. Ferrante** felt there was no hardship.

The motion **carried. Messrs. Montano, Soda, Tuozzola, and Wolfe** voted **with the motion; Ms. Ferrante** voted **against the motion.**

**9. 63 Stowe Avenue**, MPB 16/146/16; R-5; Pierot Badio, owner; Vary Section 3.1.4.1 front-yard setback to 3.5' where 10' required to build 33'x24' addition.

**Mr. Badio** addressed the board. He said the hardship was the odd shape of the lot and a lack of parking. He said the current house only has one bedroom and the garage is needed for parking. **Mr. Soda** asked for elevations, which **Mr. Harris** shared. He reviewed the floor plans and clarified that the 3<sup>rd</sup> floor is for storage.

**Mr. Tuozzola** opened the hearing to public comment.

FAVOR

**Stephanie Badio**, 63 Stowe Avenue, said the shape of the lot and lack of parking were hardships.

With no other comments forthcoming, **Mr. Tuozzola** closed the hearing and asked for a motion to approve.

**Mr. Soda** motioned to **approve.**

**Mr. Montano** seconded.

Discussion: **Mr. Soda** said the lot was a hardship with its unique shape. **Ms. Ferrante** agreed.

The motion **carried unanimously.**

**10. 125 Ridgewood Drive**, MPB 49/614/3; R-10; Kevin Curseaden, Esq., for IA Construction, LLC; Vary Sec. 3.1.4.1—southerly side-yard setback to 5' where 10' required to construct a new attached garage to existing house.

**Attorney Curseaden** addressed the board. He noted that the lot is undersized on the Morningside map and unique in that it has imperious coverage of 68%. He said the plan is to remove all pavement from the backyard, enclose the garage, and use the enclosed, unfinished space for storage. He said the hardship is the size of the lot and the history of the original lots. He noted that reducing existing nonconformities are also a hardship. He said if approved, the plan is to build a garage and reduce the lot coverage to 48 %. He noted that the parcel was originally 2 lots on the old maps. **Mr. Montano** clarified that the garage was one-car; discussion ensued on reducing the size of the garage, but ultimately **Mr. Soda** said a 14' wide garage is not unreasonable to accommodate the doors.

**Mr. Tuozzola** opened the hearing to public comment.

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### OPPOSED

**Lisa Jovinelli**, 35 Little Pond Road, noted a submitted petition in opposition. She said the house already has a garage and expressed concern about water runoff and fire hazard due to the proximity of homes in the neighborhood. She said she was concerned about her insurance and sightlines.

**Laura Erlacher**, 462 Pond Point and co-owner of 141 Ridgewood Drive, said she shares the same concerns.

**Ron Jovanelli**, 35 Little Pond Road, said he was also opposed.

### REBUTTAL

**Attorney Curseaden** said safety concerns are regulated by the building codes and that decreasing impervious surface usually decreases runoff. He said there are legal hardships with the lot and that his client was willing to stipulate to a single story garage and replace hardscape with sod or some other pervious surface. Ms. Hirsch said she approves of restricting the garage height.

Since no further public comment was forthcoming, **Mr. Tuozzola** closed the hearing. **Mr. Soda** said he preferred to vote on the matter next month, which the rest of the board supported.

**11. 73 Ocean Avenue**, MPB 12/104/18; R-7.5; Kevin Curseaden, Esq., for IA Construction, LLC; Vary Sec. 4.1.4–rear-yard setback of 16' where 21' permitted to construct a new deck.

**Attorney Curseaden** addressed the board, saying the property was undersized and that his client wished to build a rear deck. Ms. Ferrante and Mr. Soda discussed deck size and that house is being rehabilitated.

### OPPOSED

**Dennis O'Grady**, 59 Grant Street, said he felt there was any hardship was self-created and if the owner wants a bigger deck, the solution is to build a smaller house. He said there are too many variances. **Mr. Tuozzola** clarified the role of the ZBA in land use.

**Erik Smith**, 2 Glenwood Avenue, described the construction and that he also thought the hardship was self-created. He expressed concern about a lack of privacy.

**Attorney Curseaden** said hardships are legal ones that run with the land and can support a variance request. **Mr. Soda** asked if the foundation had been expanded; it had. He said the deck could be replaced by a patio and didn't see a hardship. **Ms. Ferrante** referred to a subdivision map of the surrounding area prior to lot subdivision. **Mr. Wolfe** confirmed that this lot was created prior to the lot certification moratorium. **Ms. Ferrante** said the board has long debated whether a lot being undersized for its zone constitutes a hardship. **Attorney Curseaden** said case law supports the concept.

**Mr. Tuozzola** asked for public comment; hearing none, he closed the hearing and asked for a motion to approve.

**Mr. Wolfe** motioned to approve.

**Mr. Montano** seconded.

Discussion: **Mr. Soda** said he felt there was no hardship.

The motion **failed** with **Messrs. Wolfe** and **Montano** voting with the motion and **Ms. Ferrante**, and **Messrs. Soda** and **Tuozzola** voting against the motion.

**C. NEW BUSINESS** - None

**D. OLD BUSINESS** - None

**E. STAFF UPDATE** - None

**F. ACCEPTANCE OF MINUTES FROM HEARING 11 APRIL 2023:** Approved by unanimous vote.

**G. ACCEPTANCE OF APPLICATIONS FOR 13 JUNE 2023 HEARING:** None.

Adjournment was at **10:11 PM**.

Attest: M.E. Greene, Clerk, ZBA

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.**