

Minutes, Public Hearing of Zoning Board of Appeals Meeting held 10 May 2016

The Regular Meeting of the Zoning Board of Appeals of Milford, CT, was held on Tuesday, 10 May 2016, beginning at 7:00 p.m. in **CITY HALL AUDITORIUM, 110 RIVER STREET**, Milford, CT, to hear all parties concerning the following applications, some of which require Coastal Area Site Plan Reviews or exemptions.

A. PLEDGE OF ALLEGIANCE / ROLL CALL

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

ALTERNATES PRESENT: Gary Dubois

MEMBERS/ALTERNATES ABSENT: Alison Rose Egelson, Robert Thomas

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 conflicts of interest for board members with any agenda items; none were raised.

B. CONSIDERATION OF AGENDA ITEMS

1. **6 Silver Street** (R-5) William Ziebell, owner; Sec. 9.2.1: Appeal the Decision of the Director of Land Use regarding Permit Z-15-798. Map 27, Block 454, Parcel 4&5.

This item was held open in April. See relevant section of the April minutes appended to the end of this agenda item.

Attorney Lynch, 63 Cherry Street, addressed the board. He asked that the minutes of the previous meeting be added to the record for this meeting. He invited Attorney Curseaden to present information and retained the right of rebuttal.

Attorney Kevin Curseaden, 26 Cherry Street, stated that there would also be comments from Joseph Griffith, DPLU Director. He handed out material pertaining to jurisdictional matters. He said that the 6 Silver Street appeal was filed too late, referring to a time in 2008 when he (Attorney Curseaden) made the same argument for constructive notice and the then-ZBA board said that it would only recognize the 15-day appeal period as beginning from the date of the permit's issuance, not from the time the appellant became aware of the permit (notice received). He referenced minutes from the 2008 hearing. He asked that the board decide on timeliness after Mr. Griffith's comments prior to deciding about the matter on the merits.

Attorney Lynch asked to specifically rebut Attorney Curseaden's timeliness argument prior to the board making a decision on it. **Mr. Tuozzola** agreed. **Attorney Lynch** said state law takes precedence over the preferences of the city's 2008 ZBA board. He said the CT Supreme Court addressed this specific issue in the precursor case to the Munroe case he referenced in his April ZBA meeting handout, namely *Munroe v. ZBA of the Town of Branford*. He said in a decision rendered 6 August 2002, written by then Chief Justice Tyco Sullivan, ruled on whether the appeal period begins from the permit's issue date or via constructive notice. He said without constructive notice, it would be possible for someone to take out a permit, then not act on it for the 15-day appeal period to circumvent objections to the project. He said the case determined that unless notice of the permit is published in a legal notices section of a newspaper, the date of the notice is constructive notice. He read from the decision, noting that the court had accepted the plaintiff's interpretation of Section 8-7, allowing an aggrieved party to appeal from the date of constructive notice. He returned the floor to Attorney Curseaden.

Attorney Curseaden reiterated that he made the same argument to ZBA in 2008 and the board stood on its own 30-year precedent. He urged consistency. **Mr. Soda** asked for clarification of the term "notice." He asked how neighbors would be aware that a permit was issued. **Attorney Curseaden** noted that he advised his clients to publish notices if the client anticipates controversy.

Minutes, Public Hearing of Zoning Board of Appeals Meeting held 10 May 2016

Director of Department of Permitting and Land Use Joseph Griffith addressed the board. He said he wanted to clarify that no building permit was issued for 6 Silver Street yet, although the zoning permit was issued. He said there were issues with building code requirements and proximity to property lines. He estimated that 95% of building permits are not issued within 15 days of the issuance of the zoning permit. He said the Building Inspection department had up to 30 days to reject an application, so it could be the case that it would take more than 15 days from the issuance of a zoning permit for a neighbor to see building activity start. He reviewed titles he had garnered starting with his hire in June 2013: DPLU Director, Building Official (September 2013), Chief Zoning Enforcement Officer (February 2014 via mayoral memorandum). At this point, **Attorney Curseaden** interrupted, stating that if the Director was going to go into the merits of the case, the jurisdictional issues should be decided. **Mr. Tuozzola** said the matter was not at issue at this time.

Mr. Griffith resumed discussion of the 2014 appointment as Chief Zoning Enforcement Officer, saying it gave him authority over decisions of zoning enforcement staff. He said in July 2014, the mayor appointed him Flood Plain Administrator. He said he relied on zoning and building inspection staff input. He said all permits and inspection approvals display his signature as Chief Zoning Enforcement Officer.

He said he was at the meeting to discuss the appeal of permit Z-15-798 and that he said he had viewed Attorney Lynch's remarks via video from the April ZBA meeting. He said his understanding was that the focus was on Section 6.2.1, which deals with expansion of a nonconforming use and Section 6.3.1, expansion of a nonconforming structure. He noted that Attorney Lynch had already read the regulations at the previous meeting. He said that Section 6.2.1 exempts single family residences. He read the regulation:

6.2.1 Enlargement, Extension or Alteration: No non-conforming use of land shall be enlarged, extended, or altered, and no structure or part thereof devoted to a non-conforming use shall be enlarged, extended, constructed, reconstructed, or structurally altered, except in changing the use to one which is allowable in the Zoning District in which such use is located; except in the case of single family homes. No non-conforming use of a structure shall be extended to occupy land outside such structure or space in another structure.

He said Section 6.3.2 talks about the enlargement, extension, and alteration of non-conforming structures. He read the regulation:

6.3.2 Enlargement, Extension or Alteration: Structures failing to meet any requirement of these Regulations other than use, including lack of required parking or loading spaces, shall not be enlarged, extended, or altered, if the result would be an increase in non-conformity.

He said there were precedents in the department's interpretation of these regulations. He said he had reviewed these regulations with the City Attorney and gotten a verbal confirmation regarding the application. He discussed whether *Munroe v. Branford* was applicable to this appeal. He said Attorney Lynch stated that Branford and Milford zoning regulations were the same, but Mr. Griffith asserted that there were significant differences. He said Branford didn't distinguish between nonconforming uses and nonconforming structures, whereas Milford separates them. He said the City Attorney's opinion would pertain in the issue. He said that consistent with his April memo to the ZBA, which was read into the record last month, this application deals with a single family residence, albeit one of two on the same lot. He discussed zoning permits had recently been issued for 2 Scott Street where an accessory structure had been converted into a dwelling. He said both buildings were required to do flood mitigation. He said both were demolished, elevated, and renovated. He said permits were withheld on the second structure until its use was brought into compliance. Regarding 6.3.2 and the extension and enlargement of a nonconforming structure, he said the rationale was that the proposed addition to the building would not change the non-conformity because the existing nonconforming setback would not change. He said it was consistent with historic permits such as two at 10 Silver Street where a building permit was issued to add a second story in 1993. In 2013 at the same address, a permit was issued to extend the overhang into the setback without a variance. He said height regulations had changed that would affect 6 Silver. He read revised section 4.1.4.3 (revision as of 9/2013):

Minutes, Public Hearing of Zoning Board of Appeals Meeting held 10 May 2016

4.1.4.3 General Regulations: Notwithstanding the provisions of ARTICLE VI, Section 6.3 of the Regulations, a zoning permit may be issued to allow the height of an existing dwelling in an area regulated under the provisions of Section 5.9, Flood Hazard and Flood Damage Prevention, to be increased along with minimal stairway/landing extensions when said dwelling does not conform to required yards caused by the adoption of zoning regulations, subsequent to the dwelling's construction. However, such dwelling may not be relocated on the lot without a variance, if required. Building height shall follow the height regulations of the applicable zone.

He said the previous regulations made specific reference to the requirement for elevating the building, whereas the new regulation allows for a height increase without distinguishing whether it is due to a second story addition or space under the building. He said the permit would have to be issued based on this revision. He said this concluded his summary and offered to answer questions. **Mr. Tuozzola** asked if, in the two examples Mr. Griffith provided from Silver Street, both involved putting an addition on the house that involved going 'straight up.' **Mr. Griffith** said they did.

Attorney Curseaden continued his remarks. He said Mr. Griffith reviewed many of the regulations that he (Attorney Curseaden) had planned to go over. He referred to his handout and said that he thought some part of the appeal was based on the notion that the Director of Permitting and Land Use lacks authority to issue zoning permits. He referred to the February 2014 memo from the mayor's office. He also discussed the assessor's records regarding the existence of two separate lots at 6 Silver Street. He noted that when the houses were constructed in 1920, no subdivision regulations existed in the City as they were not created until 1929, with zoning regulations created in 1936. He said that the first Milford zoning map issued in 1930 shows the area of the current houses as a business district. He said his research of the zoning regulations recognize but do not comment further on the existence of more than one single family residence on one lot. He speculated that prior to regulation, the two houses might have been owned by different owners. He said he could not find tax assessment cards earlier than the 1960s. He reiterated Mr. Griffith's comments on Section 4.1.4.3. He said regardless of what Section 6.3 says, if a structure is in a flood damage prevention area, the height can be increased. He said the court cases cited by Attorney Lynch pertained to variance applications and that this application was an appeal, not a variance. He referred to his handout where differences in regulations between Branford and Milford regulations were laid out. He reiterated the Milford exception in cases of single family homes and the height variation supported in flood zones, noting there was no language regarding elevation with regard to height increase in that section. He provided the chart for Section 3.1.4.1. and said the structure conforms to height restrictions. He asked that the appeal be denied.

REBUTTAL

Attorney Lynch said there was never an intention to question Mr. Griffith's authority to issue the zoning permit. He said the question was whether the property improvements could be permitted without a variance. He asked the board to focus on the language in the Munroe case which talked about the effect the regulations had on the situation. He noted that 10 Silver Street was his client's property and that his client was required to have a variance to obtain the permits needed to do the improvements, and that the variance he requested was denied. He referred to 41 Melba Street where a variance had been required and asserted the similarities to the Silver Street situation. He reasserted the relevance of both a nonconforming use and a nonconforming structure. He referred to the packet he submitted to the board in April and that the judge was clear that the enlargement of a nonconforming structure required a variance even if the enlargement was strictly upwards, not with an expansion of the footprint. He said the board had heard many such variance requests each month. He said the board had been adamant about not expanding the nonconforming use at 41 Melba Street and yet Mr. Poxon received a permit over the counter for the same request. He said with all due respect to Mr. Griffith, what was done was not right. He asked the board to overturn the decision made to issue the permit. He stressed that the application was timely and jurisdiction was proper. He said that with all due respect to Attorney Curseaden, if this board did something in 2008 that flies in the face of a Supreme Court ruling, it did not take precedence.

Mr. Tuozzola confirmed with Attorney Lynch that the improvements at 10 Silver Street involved an expanded footprint as well as building upward. **Attorney Lynch** asked Mr. Zeibell to address the board.

Zeibell

Minutes, Public Hearing of Zoning Board of Appeals Meeting held 10 May 2016

Mr. Ziebell, 10 Silver Street, provided details on his past variance application history. He said after Storm Sandy, he had to raise the house, but that he made accommodations such that any new construction met the setbacks. He said the upstairs improvement had to be scaled back 2" or he was told he would need a variance. He said he respected the setbacks. He said he wasn't trying to prevent a neighbor from raising his house because he understood the difficulty of that project; that he was still not back in his own house after 3 years. He said he wanted justice because if he would have needed a variance, it should be required of the neighbor.

Mr. Soda asked Attorney Lynch about what Mr. Griffith said regarding single family dwellings being exempt from nonconforming. **Attorney Lynch** said he did not see the word "exempt," but rather "except." He said he read that regulation differently and gave an example: if you have a single family house on the Post Road in Devon, and you want to convert it to a commercial use, you can't do it.

Mr. Griffith asked to revisit comments on 10 Silver Street. He said that the 2nd floor front setback was conforming, but on the west side, the new addition encroached on the side-yard setback.

Mr. Soda acknowledged and thanked Mr. Griffith for improvements to the Building Inspection Permitting process. He asked about the pull-down stairs on the zoning permit. **Mr. Griffith** said the regulations had been changed regarding habitable higher stories and that provision was eliminated and that the permit could be amended to have a stairway instead. **Attorney Curseaden** said the area was loft storage that might be used for living space eventually.

Mr. Harris reminded the board that after public comments were finished, the applicant gets the last word. **Attorney Lynch** declined to comment further.

Mr. Tuozzola asked for any further comments, hearing none, he closed the hearing.

BOARD DISCUSSION

Mr. Soda reminded the board of an application they had heard for a property at the corner of Oakland and Welches Point Road with an old garage converted to living space, saying he felt it was an analogous situation that required a variance. **Mr. Haberman** said the matter before them boiled down to whether the board agrees with Mr. Griffith's interpretation of Sections 6.2.1 and 6.3.2. He said he had no reason to dispute Mr. Griffith's interpretation. He said if Munroe v. Branford could be shown to apply to Milford regulations, then he might dispute the director's interpretation, but said he hadn't seen enough to make that determination.

Mr. Haberman motioned to deny the appeal and uphold the decision. There was no second and a new motion was required. **Mr. Vaccino** said he wanted to discuss 41 Melba because there were 2 houses on the lot where the improvement encroached on the setback, but that having 2 houses on the lot created a component of nonconformity. He asked to be reminded whether the main reason for that application was expansion into the setback. **Mr. Haberman** said the issue was usually if the footprint was exceeded. **Mr. Tuozzola** said the discussion was about whether a variance was needed. **Mr. Soda** said he felt this application needed a variance. He said that if no variance had to be requested, the people surrounding the project could not speak out on the project and that by just issuing the permit, the whole hearing process was being taken away.

Mr. Soda motioned to overturn the Director of Land Use decision; reason being: a variance was needed. **Ms. Ferrante** seconded. The motion failed with **Ms. Ferrante** and **Messrs. Soda and Tuozzola voting with the motion and Messrs. Haberman and Vaccino voting against the motion.**

*****START OF INCORPORATED APRIL MINUTES FOR 6 SILVER STREET*****

.....
6 Silver Street (R-5) William Ziebell, owner; Sec. 9.2.1: Appeal the Decision of the Director of Land Use regarding Permit Z-15-798. Map 27, Block 454, Parcel 4&5.

Minutes, Public Hearing of Zoning Board of Appeals Meeting held 10 May 2016

Attorney Lynch, Lynch, Trembicki and Boynton, 63 Cherry Street, addressed the board. He passed out exhibits for reference to the board and to Mr. Harris. He stated that his clients were present and owned 10 Silver Street. He said the issuance of the permit violates Sec. 6.2 of the Zoning Regulations. He said he would cite a recent state appellate court decision that exactly matches the issues that must be considered at 6 Silver Street and illustrates the procedure one should follow when seeking to expand a nonconforming structure or a non-conforming use. He said in this instance, both nonconformities are present. He said the structures at 6 Silver and 800 East Broadway occupy one parcel. He said this situation not only presented the same issues that the appellate court considered in the Branford case, but that he (Attorney Lynch) had also presented three variance applications to the ZBA in 2015 for 41 Melba Street making the exact same types of requests. He described the proposed project at 41 Melba Street. He stated that those variance applications were denied by this board. He said the two situations (41 Melba Street and 6 Silver Street) are identical due to the expansion of not only a nonconforming use but of nonconforming structures. He read Section 6.2 into the record:

6.2.1 Enlargement, Extension or Alteration: No non-conforming use of land shall be enlarged, extended, or altered, and no structure or part thereof devoted to a non-conforming use shall be enlarged, extended, constructed, reconstructed, or structurally altered, except in changing the use to one which is allowable in the Zoning District in which such use is located; except in the case of single family homes. No non-conforming use of a structure shall be extended to occupy land outside such structure or space in another structure.

He noted the presence of 2 homes in a single family zone, creating a nonconformity. **Mr. Tuozzola** asked about the map showing both homes. **Mr. Harris** noted the survey in the file. **Ms. Greene** offered to circulate the survey, but **Attorney Lynch** said he could proceed verbally. He discussed the nature of the site and noted that he had included the assessor's sheets in the packet he had distributed showing that the structures were built prior to adoption of zoning regulations. He described the lot nonconformities. He reviewed the circumstances of the issuance of the permit. He said the proposed project featured a second story addition to the rear house, expanding a nonconforming structure in violation of Section 6.2.1. He said Section 6.2.4 provides the option to apply for a variance. He read 6.2.4 into the record:

6.2.4 Variance: Notwithstanding Sections 6.2.1, 6.2.2 and 6.2.3, a Variance shall be granted in accordance with ARTICLE IX, SECTION 9.2.2 Variances to extend, enlarge, or alter any legal non-conforming lot, structure or use.

But he noted that in September 2013 the Planning and Zoning Board had changed the word "shall" to "may."

He referenced the case of Verrillo v. ZBA, Town of Branford, where it was ruled that any expansion of nonconforming structures without a clear hardship that relates to the property itself is illegal. He said that a variance application was required, regardless of what the outcome of such a variance request might be. He said that to issue the permit was, unfortunately, illegal. He also referenced the 2003 case of Munroe v. ZBA, Town of Branford. He stated that his clients live at 10 Silver Street and had been injured by the issuance of the permit. He referenced page 5 of Judge Dupont's decision where she notes that a second story addition is not negligible and can affect neighboring property values. He asked that with all due respect to Mr. Griffith, the decision of the Land Use Director be overturned.

Mr. Tuozzola invited the Land Use Director to speak on the appeal. **Mr. Griffith** had provided a statement to be read by **Mr. Harris**, which is incorporated here:

"The Department of Permitting and Land Use's decision is being appealed for its application of Milford Zoning Regulation 6.3.2 which states:

6.3.2 Enlargement, Extension or Alteration:

Structures failing to meet any requirement of these Regulations other than use, including lack of required parking or loading spaces, shall not be enlarged, extended, or altered, if the result would be an increase in non-conformity.

Historically, the interpretation of this Regulation has been such that a zoning permit may be issued in connection with a non-conforming structure if the specific non-conformity is not being impacted. For example, a house that is non-conforming as to a setback may be elevated or vertically expanded provided the non-conforming setback is not further encroached.

Minutes, Public Hearing of Zoning Board of Appeals Meeting held 10 May 2016

Specifically, in the case of 6 Silver Street, the non-conformity is created by the location of the existing structure's proximity to the property line, and its encroachment into the setbacks required by table 3.1.4.1 of our zoning regulations. The proposed work, a second story addition built on the existing exterior walls, does not propose changing the existing distance from the property line, and thereby does not change the existing non-conforming setback, and therefore does not increase the non-conformity."

*Joseph D. Griffith, Director
Department of Permitting and Land Use
City of Milford
203-783-3374*

REBUTTAL

Attorney Lynch said the addition is clearly both a nonconforming structure and a nonconforming use. He said Mr. Griffith's language stands in direct contradiction to the judgment of *Munroe v. ZBA, Town of Branford*, that is, that a vertical enlargement of the structure, even if there is no change in the footprint, creates an enlargement of the structure and is thus illegal.

DISCUSSION

Mr. Tuozzola said he felt a variance was needed and that he wanted to consider leaving the hearing open as he would like to question Mr. Griffith. **Mr. Soda** said he saw the parallel to the Melba Street project and felt a variance was needed. **Ms. Ferrante** agreed that other requests for additions of second stories had required variances. **Mr. Harris** said that if the board wished to leave the item open, discussion should wait until the next meeting.

Mr. Soda motioned to leave the hearing open and requested that Mr. Griffith attend. **Ms. Ferrante** seconded. The motion carried with **Ms. Ferrante** and **Messrs. Haberman, Soda, Vaccino, and Tuozzola** voting **with the motion**.

*****END OF INCORPORATED APRIL MINUTES FOR 6 SILVER STREET*****
.....

2. **0 Tanglewood Circle** (R-A cluster to R-18) Thomas Lynch, Esq., for April Culver, trustee; Sec. 3.1.4.1. front-ym setback to 20' where 40' req. to construct single family residence; Map 122, Block 904, Parcel 5-N.

Attorney Lynch, 63 Cherry Street, addressed the board. He stated that in representing his client, some of the information would be repetitive from 2014, but had to be revisited. He noted that Lot 28 is a legal building lot and that there had been a lot line adjustment with Lot 29. He said this application was similar, but both lots were approved by the ZBA in 2014 with a 30' setback. He noted his previous arguments to preserve wetlands. He circulated a map depicting the previous request. He said the map submitted tonight has a 25' setback. He said the hardship was the existence of wetlands on the property. He said he also needed Inland Wetlands Agency (IWA) approval and that an engineered plan was submitted to IWA in the fall of 2015. He said that after 6 IWA public hearings, a denial was issued for this lot. The IWA commission denied the plan because there would be wetlands filled to build the house. Outside agency review had no objection. On April 6, 2016, IWA denied Lot 28. IWA said in the denial that the applicant could investigate alternatives with less wetland impact, a reduced or moved footprint, and decreased proximity to wetlands. He submitted minutes from the IWA meeting with highlighted comments from commissioners saying that they denied Lot 28 because of plans to fill of a small area of wetlands. He said that creates a textbook zoning hardship. He said he had submitted many variance applications, although most of the variances granted would not stand up in court. However, this application would be a textbook case in that it's germane to the land itself. He said the house would be reasonably sized and that there would be no fill required for construction of the house. He said this respects the property and that his client is entitled to develop it. He noted a copy of the assessor appraisal of the value. He said if the project is denied, it would represent an illegal confiscation of the lot. He noted that with the roadway easement, the house would be 30' from the road.

Minutes, Public Hearing of Zoning Board of Appeals Meeting held 10 May 2016

DISCUSSION

Mr. Vaccino asked if wetlands exist on other properties in the subdivision. **Attorney Lynch** said wetlands wouldn't have affected development of the other properties because the subdivision was created in 1980 and the IWA wasn't created until the 1990s.

FAVOR

None.

OPPOSED

Gary Davis, 137 Tanglewood Circle, submitted a page that summarized the neighborhood concerns and reviewed the history of neighborhood reaction to the variance requests. He reviewed the items listed. He said there was an intention of financial gain by the applicant. He said the house would be smaller and closer to the street than other properties in the neighborhood and injurious to the neighborhood. He said he lives next to Lot 29 and that a swale runs through these properties. He said two lots could be combined and just one house built. He said there is a lawsuit pending with Lot 29. He said deed restrictions required 1500 sf of living space. He said it would be difficult to determine the minimum variance needed to satisfy the inland wetlands. He asked Mr. Haberman why didn't recuse himself at this meeting when he did recuse himself at the previous meetings. **Mr. Haberman** answered that after speaking to staff, he realized that probably shouldn't have recused himself at the earlier meetings because although he has friends in the neighborhood, he has no financial connection to the matter.

Diana Nytko, 236 Tanglewood Circle, asserted that spot zoning was approved in March 2015 by the board, 'a change from RA cluster 30 to R-18 with a 40' setback.' She said the board acted arbitrarily and violated Section 9.2.2.3. She said 95 houses were built to current regulations in the subdivision and these houses didn't request a variance. She said Section 7.1.3.1 was being violated. She said there was no hardship due to denial of reasonable use of property and that granting the variance would alter the essential character of the locality. She described her perceptions of the owner's motivations in purchasing the property. **Mr. Tuozzola** advised that the ZBA doesn't have the authority to change zoning regulations, only the Planning and Zoning Board can do that.

Mary Ellen Magura, 144 Tanglewood Circle, said the owner would not compromise because she knew the land she bought had wetlands. She said wetlands should not be compromised. She said the neighborhood would be negatively affected and that combining the two lots would preserve wetlands. **Mr. Tuozzola** asked that the speaker stay on the merits of the case. The speaker said the neighborhood had compromised enough.

Mimi Mudrick, 158 Tanglewood Circle, said she moved to her home because of the zoning regulations. She said her home is 90' from the property line. She said the project would negatively impact the neighborhood.

Donald Nytko, 236 Tanglewood Circle, said 25 years ago a former mayor lived close to the property in question. Said he tried to create 2 nonconforming lots, but was denied. He said people who buy into certain neighborhoods expect exclusivity. He said the neighboring homeowners would experience hardship if the variance was granted.

Joan Cagginello, 17 Westminster Court, said her home is 100' setback from road. She said she and her husband were in their house for 30 years and had seen the neighborhood expand and that the neighbors had never contested any other new homes. She noted that the IWA walked the property several times. She asked the ZBA to do the same.

George Komoroski, 173 Tanglewood, said the project would be detrimental to all abutters. He said construction could affect his pool. He said a septic system would be on the property line and could cause a problem. He said the hardship was self-inflicted. **Mr. Tuozzola** asked the speaker to clarify whether a neighborhood association exists for the Rustic Acres subdivision; he was told there was no association, just deed restrictions

Minutes, Public Hearing of Zoning Board of Appeals Meeting held 10 May 2016

Mike Magura, 144 Tanglewood Circle, said he supports the statements of his neighbors.

Karen Staneski, 150 Tanglewood Circle, said she was concerned with what would happen if blasting was used during construction and there could be lawsuits. She said it would change the character of the neighborhood.

John Mudrick, 158 Tanglewood Circle, said neighborhood is unique and that setbacks are deep.

Darlene Frost Davis, 137 Tanglewood Circle, said she supports statements made by her neighbors.

Linda Badowski, 200 Tanglewood Circle, said her house is 90' front setback and asked for denial of the request.

Steve Varholak, 41 Old Country Lane, said he has a 54' front setback and that agreed he with his neighbors.

REBUTTAL

Attorney Lynch said it clearly is a lovely neighborhood and that his client would love to have a 50' setback, but that the wetlands create a legal hardship that prevents a deep front setback. He said his client wants to build a single family house in a single family neighborhood. He said it wasn't as if she was proposing a multi-family development. He said the size of the house was consistent with the regulations drafted by the developer in the 1980s. He said he worked on the declaration restrictions and that the information provided by one speaker was not correct. He said the IWA never proposed combination of the lots. He said there are 2 legal building lots. He said other lots hadn't required variances to build because they did not contain wetlands whereas these lots do. He said he had provided the IWA's reasons for denial and that this application addresses those reasons.

Mr. Tuozzola confirmed that Lot 28 has a 30' setback with a larger house and that the only issue was the extra 10'.

Mr. Soda asked whether a 12x12 patio, now proposed for the side, would be pushed back. **Attorney Lynch** said the septic system means that the house is situated in the only feasible way as proposed.

BOARD DISCUSSION

Mr. Tuozzola said the question was of 10'. He said people typically want the neighborhoods to remain the same, but this is not always possible. **Mr. Soda** noted that the applicant bought 2 legal and approved building lots and had a right to develop them.

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

3. **255 West River Street** (CDD-1) Danielle Bercury, Esq., for 255 West River LLC; Sec. 9.2.1: Appeal the Decision of the Director of Land Use regarding 23 Feb 2016 revocation of zoning permit issued by Zoning Enforcement Officer, Map 76, Block 918, Parcel 26.

Attorney Bercury notified the Planning and Zoning Office staff that the appeal has been withdrawn.

4. **62 Hawley Avenue** (R-5) Charles Willinger, Esq., for 60 Hawley Ave, LLC; Sec. 9.2.1: Appeal the Decision of the Director of Land Use regarding the Zoning Permit issued to "Procino Kenneth K" on 24 Feb 2016 concerning property located at 62 Hawley Avenue; Map 71, Block 766, Parcel 4.

Minutes, Public Hearing of Zoning Board of Appeals Meeting held 10 May 2016

Attorney Diane Lord notified Planning and Zoning Office staff on behalf of Attorney Willinger that the appeal has been deferred to June.

5. **28 Field Court** (R-5) Nancy Rogers, owner; Sec 4.1.4 east deck proj. to 1.6' where 8' perm. to construct a deck on a house to be elevated in place. Map 28, Block 574, Parcel 4.

Peter Crabtree, 64 Stanley Street, New Haven, addressed the board. He stated that the revised plan featured elimination of the deck on the side that neighbors objected to and that there was now a 5' setback.

DISCUSSION

Mr. Soda asked why the back deck had not been altered to reflect a walkway. **Mr. Crabtree** said he did not design the plan.

OPPOSED

Susan Reardon, 26 Field Court, said the lots were narrow. She said the stairs were still on her side and that no other house in the area has access on both sides. She said the Rogers rent the house out and that having an entrance on her side of the house infringes on her privacy. She said a desire to have doors on both sides of the house doesn't represent a hardship. **Mr. Soda** confirmed the house was rented. **Mr. Harris** pointed out that the extended stairs are granted by right. He said the rental issue was irrelevant.

FAVOR

Frank Rogers, 28 Field Court said the stairway on the left is larger and needed because the door on the other side of the house is restricted in size.

REBUTTAL

Mr. Crabtree said access on both sides of the house can be seen on similar properties. **Mr. Soda** said a 3' wide walkway meets building code requirements and that he considered 5' excessive if a variance is being requested.

BOARD DISCUSSION

Mr. Soda said he wanted to approve but also wanted to add a condition of reducing the walkway to 3'6" on the east side of the house.

Mr. Soda motioned to approve with the conditions of limiting the width of the eastside walkway to 3'6" and moving the stairs to abut the house. **Mr. Haberman** seconded. **Mr. Soda** supported his motion by reason of hardship of the narrow lot, exactly per the submitted materials. The motion carried with **Ms. Ferrante** and **Messrs. Haberman, Soda, Vaccino,** and **Tuozzola** voting with the motion.

6. **839 East Broadway** (R-7.5) Melodye Grant Bucci, owner; Sec 4.1.4 north side-yd proj. to 5.4' where 8' perm. to construct a deck for single family home. Map 27, Block 475, Parcel 7.

Ms. Bucci, 839 East Broadway, addressed the board. She stated that she recently replaced an old deck in the rear of her home. She said she wanted to add a 2nd floor deck. She distributed a photo.

DISCUSSION

Mr. Tuozzola confirmed that it was difficult to move furniture or other items into the house. **Mr. Soda** confirmed that there were no stairs, just a balcony.

Minutes, Public Hearing of Zoning Board of Appeals Meeting held 10 May 2016

FAVOR

Ms. Bucci submitted an email from an abutting neighbor.

BOARD DISCUSSION

Mr. Tuozzola asked if anyone wished to speak in 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 to approve. Mr. Soda seconded. Mr. Vaccino supported his motion by reason of not increasing nonconformity and the existence of a narrow lot, exactly per the submitted materials. The motion carried with Ms. Ferrante and Messrs. Haberman, Soda, Vaccino, and Tuozzola voting with the motion.

B. OLD BUSINESS

C. NEW BUSINESS

D. STAFF UPDATE

F. ACCEPTANCE OF MINUTES FROM 12 APRIL 2016 HEARING: The minutes were accepted.

G. ACCEPTANCE OF APPLICATIONS FOR 14 JUNE 2016 HEARING: Potential continuances were noted.

The meeting was adjourned at 9:31.

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