

Minutes, Public Hearing of Zoning Board of Appeals Meeting held 10 May 2022

The Regular Meeting of the Zoning Board of Appeals of Milford, CT, was held on Tuesday 10 May 2022, beginning at 7:00 p.m., 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: Sarah Ferrante, Gary Montano, William Soda, Chris Wolfe, Joseph Tuozzola (Ch)

ALTERNATES PRESENT: Carmina K. Hirsch, Mike Smith

MEMBERS/ALTERNATES ABSENT: Gary Dubois

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

Mr. Tuozzola advised that applicants could state concerns about potential conflicts of interest for any board member. He also advised that Item 4, 201 Kings Highway, had been postponed per request of the applicant.

CONSIDERATION OF AGENDA ITEMS

1. **102 Melba Street** MBP 29/589/4A; R-5; Thomas Lynch, Esq., for Jose Tiago, owner; variance of Sec. 3.1.4.1. to allow building height of 38.5' where 35' permitted to allow flat roof design for addition to existing single-family residence.

Attorney Lynch, 63 Cherry Street, addressed the board. He said the changes being submitted with the current application differed greatly from the original application. He reviewed the February request and asked that the February and March meetings be included in the record for the current meeting. He said his client wishes to remodel the house and noted that the negative response from the board at previous meetings focused on the idea that an additional level of living space would result from this remodeling, specifically concerns about the potential for parties on the roof. He said after initial denials, his client went back to his architect to revise plans based on the board's reasonable objections. He said the client's main goal was to extend the roofline forward to cover the master bedroom and that the plans were substantially changed with railings or decking removed, just a contemporary roof that functions only as a flat roof with access to the roof via a hatchway for servicing the air conditioning units there. He referenced the original error in the calculation of the height of the roof when the 2 houses were built. He said the statute allows the board to grant a variance when there's a reduction in a nonconformity and that this change to a flat roof represents a reduction in the original nonconformity. He stressed that there is no plan to use the roof as a party deck. **Mr. Tuozzola** asked if the entire roof was being raised; **Attorney Lynch** said it was not, rather, the project was in keeping with the existing roof. **Mr. Soda** expressed doubts about the service hatch being too large for that use. He and Attorney Lynch discussed the presence of the hatch and how they were to be accessed at length. **Mr. Harris** reminded the board that, for the record, there is no longer a proposal for a rooftop stairway enclosure. **Mr. Soda** said the hatchway was oversized. **Attorney Lynch** suggested that conditions be added to prohibit use of the roof as living space. **Mr. Montano** confirmed with **Attorney Lynch** that the house is in the flood zone and was elevated.

Mr. Tuozzola asked if anyone wished to speak in favor of or in opposition to the application.

OPPOSED

Margaret Coyle, 104 Melba Street, said she was fine with a flat roof but was reluctant to trust that the design would be adhered to after the original design was incorrect.

Mr. Tuozzola asked for other public comment; hearing none, he started to close the hearing, but **Attorney Lynch** asked for permission to rebut the objection and he reopened the hearing.

REBUTTAL

Attorney Lynch said his client would accept the use of conditions or a restrictive covenant to ensure that the roof is never used as living space.

Mr. Tuozzola closed the hearing.

Mr. Wolfe motioned to approve with a second from **Mr. Montano**.

BOARD DISCUSSION

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Mr. Wolfe said a restrictive covenant would satisfy him but he would also like to add the condition of substituting a smaller weatherproof access to the roof. **Mr. Soda** was still against the project and felt granting the variance risked setting a precedent. **Mr. Tuozzola** said the house had always been nonconforming, but this project would reduce the nonconformity. **Mr. Montano** said he also favored deed restrictions and **Mr. Tuozzola** confirmed that the motion can include such conditions. **Mr. Soda** said he felt deed restrictions were not enforceable. **Ms. Greene** asked whether **Mr. Wolfe** should be asked if he wished to amend his motion. **Mr. Soda** recounted an instance where a deed restriction had not been enforced. **Ms. Ferrante** said she understood Mr. Soda's concerns, but she didn't think board votes should be predicated on an assumption that people would violate rules. **Mr. Tuozzola** asked Mr. Harris if it would be possible to leave hearing open. **Mr. Harris** said there were still 35 days to vote on the item, barring extensions.

Mr. Soda motioned to keep the hearing open. **Ms. Ferrante** seconded. The motion carried with **Ms. Ferrante** and **Messrs. Montano, Soda, Wolfe** and **Tuozzola** voting with the motion.

2. **114 Merwin Avenue** MBP 59/737/15; R-7.5; Kevin Curseaden, Esq., for Peter Dreyer, owner; appeal the decision in accordance with the provisions of Sec. 9.2.1 regarding decision to issue a zoning permit dated 3/29/22 for the construction of a single-family house in violation of the zoning regulations and City Engineer's drainage concerns.

Mr. Tuozzola remarked as a preface to the presentation that the board had received a great deal of information submitted today.

Attorney Curseaden, 3 Lafayette Street, addressed the board. He acknowledged that the submitted information was voluminous and that he didn't expect the board to vote if it wasn't ready. He reviewed the question of the timeliness of the submission, noting that the zoning permit being challenged had been issued in March. **Mr. Harris** allowed that the appeal was timely. **Attorney Curseaden** said that his client owned 112 Merwin and 104 Merwin, noting that 112 Merwin is a vacant lot. He said his client has no concerns about a house being built at 114 Merwin, but that his client's property has experienced increased flooding since construction started there. He contended that this flooding could be addressed by complying with an Inland Wetlands Agency (IWA) permit which references a 2021 letter from the City Engineer saying that an acceptable drainage plan had yet to be submitted. He said his client contends that the wetlands approval should not have been granted and further, that a zoning permit requires a valid IWA approval as a prerequisite. He said he held numerous conversations with **Mr. Harris** on the subject by phone and email, which were in the submitted materials. He said that when the house's foundation was constructed, large concrete blocks and fill were added that had not been part of IWA approval. He said that the owner/builder/developer, **Mr. Mooney**, promised to resolve the drainage plan before the project was complete, but that this had not happened. He said the final elevation of the structure is still an unknown, that drainage on the site had been altered, and that the elevation and grade could change. He referenced the zoning regulation that triggers IWA review. He said it was his position that blocks should be considered structures and subject to site plan review. He reviewed other materials he submitted and the issues he had cited with the issuance of the permit. He said that there can be pressure applied to DPLU to issue a Certificate of Occupancy (CO), which might result in a CO being issued in error. He said **Mr. Mooney** acknowledged that he brought in fill and that in IWA meeting minutes, he said he'd address it later. He referenced a photo purporting to show flooding that has increased since concrete blocks were brought on site. He said the blocks were structures and therefore subject to site plan review. He urged that the open issues be addressed sooner rather than later.

Mr. Soda asked if there had been a complaint to the IWA, and if so, can there be a stop work order? **Mr. Tuozzola** confirmed that the project had not come before the Planning and Zoning board. **Ms. Hirsch** noted that much of **Attorney Curseaden's** argument seemed to be based on differences between the IWA plans from 2020 versus 2022; she wondered if there could be a comparison drawn up of those differences and whether the hearing could be held open to allow consideration of them as well as the other material just submitted. **Mr. Wolfe** and **Attorney Curseaden** discussed the nature and timing of the foundation permit in 2020 versus the zoning permit for framing used in March of this year. The problem is not with the framing per se, but that the drainage issues remain unsatisfied. **Mr. Tuozzola** asked what was being sought. **Attorney Curseaden** said he thinks house can be built but is asking for the zoning permit to be rescinded until the builder complies with the IWA approval and City Engineer's drainage plan—he is asking the board to overturn the Zoning Enforcement Officer's decision to issue a zoning permit due to noncompliance with the IWA permit. **Mr. Soda** remarked that the email chain submitted for board review dates to May or June of 2020; there have been requests for information for a long time. **Attorney Curseaden** said the foundation sat unimproved for a long time, then the blocks were brought onsite, then the fill. There was further discussion of the location and purpose of the blocks and whether the IWA needs to approve them being allowed on the site.

Mr. Tuozzola asked if anyone wished to speak in favor of or in opposition to the application; no one came forward.

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RESPONSE FROM THE ZONING ENFORCEMENT OFFICER

Mr. Harris began his response, noting that the project had happened in fits and starts. He said that when the department learned that framing had begun at the site, the builder was reminded to get permits for this site, being that multiple projects were going on by the same builder in the same area at the same time. He said the house is still being framed today and that the project was an over-the-counter permit application with no board approval required. **Mr. Tuozzola** reviewed with Mr. Harris the nature of over-the-counter permits—that they don't need variances, site plan reviews, or special permits. **Mr. Harris** discussed the nature of the site and noted that the IWA review of the project because of location. He said a new wetlands mitigation plan was added in March 2021. He said that not every project gets a CO even after the City Engineer's concerns are addressed. He reviewed a survey dated 3/29/22, highlighting the area of the wetlands mitigation berm. He pointed out the location of the concrete blocks on a survey. He said the plan called for water to drain into the street and back into the mitigation berm with no drainage directed to the side yard areas, in fact, he said the concrete blocks prevents such drainage toward Attorney Curseaden's client's house. He said drainage will be addressed prior to the issuance of a CO and that the IWA required a bond to ensure that the wetlands mitigation plan is enacted. **Mr. Soda** ascertained that the bond value was \$7030. He and Mr. Harris discussed the location of the blocks along part of the western side of lot, with Mr. Harris saying that from a zoning perspective, the blocks did not amount to a retaining wall and were a landscaping feature. Mr. Soda asked if it was normal to issue a zoning permit without a City Engineer's signoff; **Mr. Harris** said that on this type of project, it is normal. He said that if a Special Permit or Coastal Areal Management review is required, the City Engineer must sign off in advance, but not for an as-of-right permit like this one. Mr. Harris reiterated that for a CO to be issued, the IWA and City Engineer must sign off. He and Mr. Soda discussed the contention that a CO can be issued in error; Mr. Harris said this simply doesn't happen. **Mr. Soda** asked if letters can be added to file to assure IWA and City Engineer approval; **Mr. Harris** said this can be done. There was further discussion of the bonding amounts for the four projects being developed by Mr. Mooney, all of which required wetlands mitigation plans and that after initial approval, subsequently a new mitigation plan was approved to supersede previous plan. **Mr. Harris** said city's position is that the zoning permit was issued in good faith, is legal, and will be closed out in the normal fashion—and if the builder doesn't satisfy the City Engineer's concerns, there will be no CO. **Mr. Tuozzola** confirmed with Mr. Harris that sidewalk and apron permits are installed. **Mr. Montano** confirmed that there are 4 building lots associated with this project. **Mr. Harris** respectfully asked board to uphold his decision to issue the permit.

REBUTTAL

Attorney Curseaden contended that the old subdivision lots underlying the project could have been reviewed as a whole, which would have triggered a coastal area site plan review. He said that the wetlands mitigation plan is not a substitute for original IWA approval. He disagreed that the permit should have been issued over the counter and said he doesn't understand why Mr. Mooney doesn't have to provide an acceptable drainage plan. He said the IWA lacked information about fill and that the blocks were not part of original IWA review. He said the delay in addressing the drainage plan should result in rescission of zoning permit.

Mr. Soda expressed concern was that City Engineer had been asking for a drainage plan since June of 2021.

Mr. Tuozzola asked if anyone wished to speak in favor of or in opposition to the application. Hearing none, he closed the hearing.

BOARD DISCUSSION

Mr. Wolfe received clarification that the choices before the board were to uphold, overturn, or modify the decision to issue the zoning permit. **Ms. Ferrante** said she doesn't want to delay further, but the board had no reasonable opportunity to read the large volume of materials submitted earlier that day. **Ms. Hirsch** asked for a comparison of IWA permit versus mitigation plan. **Mr. Wolfe** wondered if postponing the vote would result in a construction delay; **Ms. Ferrante** noted that if the zoning permit is in place, nothing is held up unless the board changes it.

Ms. Ferrante motioned to postpone the vote until next month to provide more time to review the newly submitted materials, which would still allow board discussion and voting. **Mr. Wolfe** seconded. The motion passed with **Ms. Ferrante** and **Messrs. Soda, Wolfe** and **Tuozzola** voting **with the motion**, and **Mr. Montano** voting **against the motion**.

3. **574 Milford Point Road** MBP 15/051/5A; R-12.5; Benjamin and Patricia Kovacs, owners; variance of Sec. 11.2 Accessory Building of 1064 sf where 775 sf permitted to construct detached garage.

Ms. Kovacs, addressed the board. She said they would like to build a 3-car garage. **Mr. Soda** details of the door placement, saying there would be more than an average garage door opening. **Mr. Tuozzola** asked what the hardship is; **Mr. Kovacs** said the space was needed for an oversized pickup truck. **Mr. Soda** advised that applicants that a hardship must be associated with the land. **Mr.**

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Montano asked if the garage and house can be attached; **Ms. Kovacs** said there would not be enough room on corner lot. She said the yard slopes. **Mr. Soda** suggested attaching the garage with a breezeway such that no variance is needed and other variations. **Mr. Wolfe** said the plan could be modified not to require a variance. **Mr. Soda** said that plenty of options existed, but no hardship.

BOARD DISCUSSION

Mr. Tuozzola asked if anyone wished to speak in favor of or in opposition to the application; hearing none, he closed the hearing and asked for a motion.

Mr. Wolfe motioned to **approve**. **Ms. Ferrante** seconded. The motion failed with **Ms. Ferrante** and **Messrs. Montano, Soda, Wolfe** and **Tuozzola** voting **against the motion**.

4. **201 Kings Highway** MBP 59/737/15; R-7.5; Keith Ainsworth, Esq., for Peter Dreyer, owner; appeal the decision of Building Official and Zoning Enforcement Officer in accordance with the provisions of Sec. 9.2.1 regarding decision to allow construction to commence without a building permit and failure to certify that the construction on a 65'x15' inground pool within the VE zone meets all requirements of the State Building Code at subject site. **POSTPONED**
5. **85 Milford Point Road** MBP 06/084/24; R-7.5; Kevin Curseaden, Esq., for George and Rosa Holler, owners; vary Sec. 3.1.4.1 front-yard setback to 3.1' where 20' required and easterly side-yard setback to 4.7' where 5' required to construct an attached garage addition.

Attorney Curseaden, 3 Lafayette Street, addressed the board. He distributed materials. He described the lot as being created prior to zoning regulations but said it had been changed by beach action. He said natural resources on the site limited the area that was buildable. He reviewed zoning regulations in force when the lots were created and their effect on the placement of houses today. He said the current house was built or remodeled in 1970 and resembled many other properties with garages or sheds on the street. He said the house was elevated in 1998 on piers with no parking underneath, and that this was not how such an elevation would be done today. He said that his clients, the Hollers, elevated it further in 2021 but left the piers in place, which meant there was still no parking underneath. He said the single-family house use is consistent with the addition of a 2-car garage and that other zoning requirements were met. He described the hardship as the presence of natural resources that should not be disturbed, the location in the flood zone, and that the lot is narrow for the zone. He said the plan is to park 2 cars in the garage with an attachment to principal structure. He shared an updated site plan showing pavers to accommodate maneuvering cars out of the tandem parking configuration. He said several legal hardships ran with the land and referred to historical documents and a neighboring garage close to the street. **Mr. Tuozzola** asked about living space above the garage; **Attorney Curseaden** said the space would become a workout studio. **Mr. Soda** commented that the elevated breezeway connection was a clever design. **Mr. Wolfe** confirmed that the garage's 2nd floor would not have a kitchen, just a bathroom.

BOARD DISCUSSION

Mr. Tuozzola asked if anyone wished to speak in favor of or in opposition to the application. No comments were offered, so he closed the hearing and asked for a motion.

Mr. Wolfe motioned to **approve**. **Mr. Soda** seconded. The motion carried with **Ms. Ferrante** and **Messrs. Montano, Soda, Wolfe** and **Tuozzola** voting **with the motion**.

- A. **NEW BUSINESS** - None
- B. **OLD BUSINESS** - None
- C. **STAFF UPDATE** - None
- D. **ACCEPTANCE OF MINUTES FROM 12 APRIL 2021 HEARING**: Approved.
- E. **ACCEPTANCE OF APPLICATIONS FOR 14 JUNE 2022 HEARING** Couple appeals, a variance

Adjournment was at **9:09 PM**.

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: M.E. Greene, Clerk, ZBA