

## **Minutes, Public Hearing of Zoning Board of Appeals Meeting held 12 June 2018**

The Regular Meeting of the Zoning Board of Appeals of Milford, CT, was held on Tuesday, 12 June 2018, 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 / ELECTION OF OFFICERS/ROLL CALL**

**Mr. Tuozzola** called the meeting to order at 7:00 pm. He noted the absence of Mr. Vaccino and asked **Ms. Ferrante** to serve as Secretary for the evening; he asked **Mr. Hirsch** to provide the 5<sup>th</sup> vote for the evening. **Mr. Tuozzola** asked for conflicts of interest for board members with any agenda items; none were raised.

**MEMBERS PRESENT:** Sarah Ferrante, William Soda, Joseph Tuozzola (Ch), Christine Valiquette

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

**MEMBERS/ALTERNATES ABSENT:** John Vaccino

**STAFF PRESENT:** Stephen Harris, Zoning Enforcement Officer; Meg Greene, Clerk, David Sulkis, City Planner

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

1. **1A Seaview Avenue.** MBP: 6/84/45. R-10. Sabato Fiano, Esq., for Laurel Sands Condominium, owner; Appeal of Cease and Desist order dated 8 February 2018 re: fence and hedgerow allegedly violating Sec 4.1.7 and 4.1.7.3.

Per request of the fence owner's counsel: Attorney Charles Willinger, of Willinger, Willinger & Bucci, PC, Bridgeport, this item was continued to the July ZBA meeting, pending possible settlement. **EXTENDED**

2. **273 Cherry Street.** MBP: 77/813/24. R-10. P. & D. Hunter, et al, applicants; Milford Cemetery Association, owner; Appeal the decision of the City Planner dated 16 April 2018.

**Douglas Guadiosi**, 63 Spruce Street, addressed the board. He and others handed out materials, including Site Plans and a multi-page binder. He referred to materials in the binder and to specific sheets in the site plans. He read regulatory documentation on expiration of site plan approvals. He said the plans in question were approved in 2001 and the approvals should have expired. He said there was a retaining wall in the As-Built drawings that was lacking in the original submitted plans. **Mr. Tuozzola** asked **Mr. Guadiosi** to provide a narrative to help the board follow the applicant's concerns. He directed the board to a photograph of the retaining wall in the binder. **Mr. Guadiosi** claimed there were no permits or engineered drawings for the retaining wall. He referred to an email from DPLU Director Joe Griffith referring to the retaining wall and the surrounding area. He read the cemetery's response, describing a swale and riprap apron, as well as the retaining wall. **Mr. Soda** and **Mr. Guadiosi** clarified the number of blocks above grade. **Mr. Guadiosi** then reviewed email exchanges with the Inland Wetlands Agency. He described changes to flooding after installation of the wall and related grading. He referred to topographic indicators on the site plans, stating that the earth had been manipulated to force the height of the fence to be acceptable. He said city officials had ignored the problem.

### **DISCUSSION**

**Mr. Tuozzola** asked for clarification of the type of activity occurring on a daily basis. **Mr. Guadiosi** said he didn't know exactly what was being done, but the activity level was loud and constant. A DPW truck was noted in a photograph. **Mr. Tuozzola** clarified the location of a wetland. **Mr. Hirsch** asked what the applicant wanted from the board. **Mr. Guadiosi** said the approval granted did not match the result. He said he had filed a complaint with the state building inspector which was said to be out of its jurisdiction. **Mr. Guadiosi** again stated that he thought the lot had been manipulated.

**Pamela Hunter**, 69 Spruce St, said she lived there for 22 years. She described the addition of the cemetery storage shed, the subsequent progress of adding to the grade, and the construction of the retaining wall. She said there is no view of the cemetery now, but rather a view of a commercial-looking area. She also said there is a great deal of noise and that

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there was enough composting being done that it should require a permit from DEEP, which she said had not been procured. She said composting creates volatile organic compounds that create a health problem and that composting is being done too close to her property. She said dirt is blowing onto the neighboring residential lots. She said her assessment had been decreased and attributed this to the cemetery activity. She asserted that there was a change of elevation introduced to the plans, and that allowing the change unfairly favored the cemetery. She said that the shed was not being used for storage, but as a maintenance garage. She said she had seen vehicles being washed there.

### **DISCUSSION**

**Mr. Tuozzola** said he visited the site and found it difficult to imagine the level of activity she was describing. **Ms. Hunter** said the noise was of a commercial nature. She said the wall was 10 feet from top to bottom. She said children play on it creating a safety hazard. **Mr. Soda** asked if site plan compliance could be achieved by removing a row of blocks.

**Dennis Black**, 57 Spruce St, presented photographs of what he sees from his back yard. He said dirt comes from the cemetery into his swimming pool.

**Dominic Cotton**, 60 Corona Drive, expressed disapproval of the retaining wall and how the process was handled. He said it affected property values.

### **RESPONSE**

**Mr. Sulkis** said that the point of the hearing is to appeal his decision. He reviewed the process of how Special Permits are granted by the Planning and Zoning Board. He said abutting properties can change and that there is no guarantee this will not happen. He said the most recent board approval was in 2015, and that the cemetery management had shown evidence of working to complete the project multiple times over the years. He noted that the cemetery predates Home Acres Road and other surrounding housing. **Mr. Tuozzola** confirmed that there were no major concerns expressed at the 2015 Planning and Zoning hearing. **Mr. Sulkis** reminded the board that if the public disagrees with a board action, there is statutory recourse that must be followed. **Mr. Soda** asked about conformity to the As Built and discrepancy with the photographs. **Ms. Ferrante** asked about activities not outlined on a plan. **Mr. Sulkis** said that as long as the changes don't violate the regulations, they are legal. He said the grading and location of the wall was shown on the plan.

**Mr. Guadosi** submitted a list of state regulations, against asserting that the Site Plans had expired. **Mr. Sulkis** said that if there is ongoing work, the plans don't expire. He said that updated plans had been submitted throughout the project. **Mr. Sulkis** stated that the local and state regulations don't necessarily mirror each other. He noted that the applicant was approved, despite the project taking a long time. **Ms. Hunter** said the project created a hazard.

**Mr. Soda** asked to leave the hearing open. **Mr. Tuozzola** agreed.

3. **606 Gulf Street**. MBP: 28/520/24. R-18., Kevin Curseaden, Esq., for Paul & Jean Tupper, owners; vary Sec 3.1.4.1 side-yd setback to 9.4' where 15' req.; 4.1.4, roof-eave proj. to 8.2 where 12' perm.; to build a breezeway between residence and garage.

**Attorney Curseaden** addressed the board. He said Ms. Tupper was present and the request was simple. He noted 3 letters of support from adjoining neighbors. He said the application hardship involved a narrow lot size. He described the project to connect the house and garage via a breezeway. He said the application of the principle structure to the former accessory structure necessitated the variance request.

### **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. After a short discussion, there were no issues in dispute, so he asked for a motion.

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**Mr. Soda** motioned to **approve**. **Ms. Ferrante** seconded. **Mr. Soda** supported the motion based on the hardship of the narrow lot; in accordance with submitted materials. The motion carried with **Mss. Ferrante** and **Valiquette**; and **Messrs. Hirsch, Soda, and Tuozzola** voting **with the motion**.

4. **20 South Street**. MBP: 49/604/5. R-5., Jason Digiandomenico., applicant, for Wilton Wright and Betsy Wright, owners; vary Sec 4.1.4, proj. to 0 where 4' perm.; to build a 3-season porch.

**Mr. Digiandomenico** addressed the board. He noted the issue of the patio not being documented at the previous meeting. He said the patio would be repaired. **Mr. Tuozzola** said the project had now been properly documented. **Ms. Ferrante** clarified that the patio was existing but that a deck with proper footings would replace a damaged slab in the same footprint.

### 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. After a short discussion, there were no issues in dispute, so he asked for a motion.

**Mr. Hirsch** motioned to **approve**. **Ms. Ferrante** seconded. **Mr. Hirsch** supported the motion based on the hardship of the structure predating zoning, in accordance with submitted materials. The motion carried with **Mss. Ferrante** and **Valiquette**; and **Messrs. Hirsch, Soda, and Tuozzola** voting **with the motion**.

5. **30 Orchard Road**. MBP: 39/609/7. R-10., Paul Duh for CT Houses LLC, owner; vary Sec 3.1.4.1 front-ym setback to 12' where 25' req.; 4.1.4, proj. to 8' where 21' perm.; 6.2.3 expansion of a nonconforming structure to build an addition.

**Mr. Duh** addressed the board. He submitted handouts to the board with elevations and floor plans. He said the project involved converting an existing 3-season porch to year-round living space. **Ms. Ferrante** confirmed the winterization of an existing space.

### FAVOR

**Cathy Cowper**, 37 Orchard Street, said there are a variety of houses on the street and that she thought the project would look good.

### OPPOSED

**John Tartaglio**, 34 Orchard Street, said he lived next door and opposed the request due to lack of a hardship. He said there is space in the back yard to expand the living space. He said it would set a precedent. He presented a petition with 15 signatures. **Mr. Soda** asked if Mr. Tartaglio was aware of the addition on the rear.

**Mark Riba**, 3 Parkland Place, wanted to know if the variance request was specific enough regarding the use. He asked for a clarification of expanding a nonconformity. **Mr. Harris** said approvals are tied to submitted materials. **Mr. Soda** clarified with Mr. Harris that current department policy permits that vertical expansion.

### REBUTTAL

**Mr. Duh** said a variance had been granted to a person who was now opposing his request.

### BOARD DISCUSSION

**Mr. Tuozzola** closed the hearing. After a short discussion, there were no issues in dispute, so he asked for a motion. **Ms. Valiquette** wondered if the issue of the property being a "flip" for economic gain was part of the problem. **Ms. Ferrante** felt the request was minimal and mostly already existent. **Mr. Hirsch** said he viewed the primary motive as profit.

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**Mr. Soda** motioned to **approve**. **Ms. Ferrante** seconded. **Mr. Soda** supported the motion based on the hardship of a need to use the existing footprint; in accordance with submitted materials. The motion carried with **Mss. Ferrante and Valiquette**; and **Messrs. Soda, and Tuozzola** voting **with the motion**. **Mr. Hirsch** voted **against the motion**.

6. **183 Point Beach Drive**. MBP: 30/613/38. R-7.5. Thomas Lynch, Esq., for Two Ninety-Six, LLC, applicant; R. & N. Surace, owners; Sec 3.1.4.1: Vary Lot 1 area of 6126sf and lot 2 area and of 6514 sf to allow re-subdivision appl. to Planning and Zoning Board for 2 single family dwellings where high water line has shifted from 1927 map.

**Attorney Lynch** addressed the board. He noted the presence of Engineer Ron Wassmer, and contract buyers Angelo Lisi and Greg Field. He said the application presents hardships that could be demonstrated using engineering survey standards. He said that a 1974 survey of an abutter as well as other documents associated with the property showed far greater lot depth than is available now. He said the lost depth accounted for the lots dropping from 2 conforming original lots, to 2 nonconforming lots that have lost area due to erosion. He asserted that the property had been subdivided already. He referred to a 1974 abutter survey that showed a change in the high tide mark. He showed 3 other 4000 sf certified lots on the street. **Mr. Tuozzola** confirmed that the existing house was built in 1959, merging the lots. **Attorney Lynch** stated that the original subdivision was in 1927, predating zoning regulations. **Mr. Tuozzola** referred to the impropriety of subdividing lots by variance. **Attorney Lynch** said the original lots were eligible for subdivision, but asserted that the reduction in the lot size was due to movement of the mean high water mark. **Mr. Harris** was consulted and he offered an opinion that the board could not grant variances for lots that had not yet been created. **Attorney Lynch** reminded the board of having granted a variance to a rear lot application last year. **Mr. Soda** confirmed that a seawall would prevent further erosion of the lot size by the force of water.

**Ron Wassmer**, PE, 158 Research Dr, submitted materials to the board including a 1927 map and photographs of beachfront at the site. He reviewed the original subdivision map, noting the position of the high water line (aka mean high water mark). He said CT determines the mean high water line at about halfway between low and high tides. He reviewed the photographs. He said the change was due to avulsion [*defined as the sudden separation of land from one property and its attachment to another, especially by flooding or a change in the course of a river*], in this case, a rapid erosion of shoreline due to storm wave action. He reviewed major storms in recent memory. He said the photographs gave evidence that the mean high water mark were a result of the storms.

**Attorney Lynch** stressed that 40x 140 foot lots that meet most criteria for conformity. He asserted that legal hardship exists and is associated with the land.

**Dave Shepard**, 180 Point Beach, said he wasn't necessarily opposed, but was concerned that 2 houses would block the view. **Attorney Lynch** said the 2 houses would be 2 stories with a height of about 25'. They discussed setbacks. **Mr. Tuozzola** confirmed sf of 2400.

### BOARD DISCUSSION

**Mr. Tuozzola** asked if anyone wished to speak in favor of 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. Hirsch** motioned to **approve**. **Ms. Ferrante** seconded. **Mr. Hirsch** supported the motion based on the hardship of the erosion; in accordance with submitted materials. The motion failed with **Mss. Ferrante and Messrs. Hirsch and Soda**, voting **with the motion**; but **Mr. Tuozzola** and **Ms. Valiquette** voting **against the motion**.

7. **17 Gardner Avenue**. MBP: 27/455/9. R-5. Paul Friia, owner; Vary Sec 3.1.4.1 rear-yard setback to 10.48' where 20' req to construct a single family dwelling.

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**Mr. Friia** addressed the board. He reminded the board that 3 variances were requested last month along with 2 deck projections. He said he had reduced the requests to just one in the rear yard. He said the shallowness of the lot continued to be the hardship.

### 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. Hirsch** motioned to **approve**. **Mr. Soda** seconded. **Mr. Hirsch** supported the motion based on the hardship of the shallow lot; in accordance with submitted materials. The motion carried with **Mss. Ferrante** and **Valiquette**; and **Messrs. Hirsch, Soda, and Tuozzola** voting **with the motion**.

**8. 247 Broadway.** MBP: 12/179/3. R-5. J. Anderson, agent, for Yu-Len Fung, owner; Vary Sec 3.1.4.1 side-yd setback to 4.9' where 5' req, rear-yd setback to 4.6' where 20' req, front-yd setback to 5.3' where 10' req., rear-yd setback of 4.1' where 20' req. construct a mudroom connecting garage to house.

**Mr. Anderson** addressed the board. He supplied 3 letters of support. He said the hardship was that the setbacks for the garage changed when it was attached to the primary structure. **Mr. Hirsch** said the request was for safety purposes.

### OPPOSED

**Marylyn McManis**, 23 Fairwood Ave, asked to see drawings or photographs to understand the request. **Mr. Tuozzola** reviewed the request for it with her. **Mr. Harris** said any prior application for the property is non-germane to the current request and Ms. McManis could review the plans with him in the Planning and Zoning Office at her convenience.

### BOARD DISCUSSION

**Mr. Tuozzola** asked if anyone wished to speak in favor of 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. Soda** motioned to **approve**. **Ms. Valiquette** seconded. **Mr. Soda** supported the motion based on the hardship of the size of the lot; in accordance with submitted materials. The motion carried with **Mss. Ferrante** and **Valiquette**; and **Messrs. Hirsch, Soda, and Tuozzola** voting **with the motion**.

**B. OLD BUSINESS**-None

**C. NEW BUSINESS**-None

**D. STAFF UPDATE**-None

**E. ACCEPTANCE OF MINUTES** 8 May 2018: Approved.

**G. ACCEPTANCE OF APPLICATIONS** for 10 July 2018 hearing.

Adjournment was at 10:07 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:

Meg Greene  
Clerk, ZBA