

Minutes, Public Hearing of Zoning Board of Appeals Meeting held July 10, 2012

The Regular Meeting of the Zoning Board of Appeals of Milford, CT, was held on Tuesday, July 10, 2012, 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 required Coastal Area Site Plan Reviews or exemptions.

Mr. Tuozzola called the meeting to order at 7:00 p.m.

A. PLEDGE OF ALLEGIANCE

B. ROLL CALL

MEMBERS PRESENT: Joseph Tuozzola (Chmn.) Howard Haberman (Sec.), William Evasick, Robert Thomas, John Vaccino

ALTERNATES PRESENT: John Collins, Gary Dubois

MEMBERS/ALTERNATES ABSENT: Richard Carey

STAFF PRESENT: Emmeline Harrigan, Assistant City Planner; Stephen Harris, Zoning Enforcement Officer; Meg Greene, Clerk

Mr. Tuozzola announced that **Mr. Thomas** would be filling in for **Mr. Carey**. **Mr. Tuozzola** asked for known board-member conflicts of interest with any item on the agenda; none were raised.

C. CONSIDERATION OF AGENDA ITEMS

Mr. Haberman noted that agenda item # 5, **0 Terrace Road**, had been withdrawn by the owners.

1. **990 Naugatuck Avenue** (HDD) appellant, for Recycling, Inc, owner; Appeal the decision of the Assistant City Planner, Section 9.2.1 regarding Cease and Desist Order dated March 20, 2012. Map 40, Block 300, Parcel 2

POSTPONED from 5/8/12 and 6/12/12 meetings

Attorney Diane Lord, of Willinger, Willinger and Bucci, PC, 888 Main Street, Bridgeport, addressed the board. **Attorney Lord** stated that the order of March 20, 2012 was nearly identical to 2 previous orders issued August 11 and 12 of 2011. They appealed those orders on September 13, 2011, but the board upheld the orders. She said there has been a subsequent appeal to Superior Court. She asked that in the interest of keeping discussion short, that the minutes, testimony and exhibits from the November hearing be incorporated into the present hearing.

Mr. Tuozzola agreed to this request and asked **Ms. Lord** to proceed.

Ms. Lord reiterated that her client disagrees with the order as the use of the property is ongoing, and the order is preempted by the CT Dept. of Energy and Environmental Protection (CT DEEP) under 22-a-208b of the CT General Statutes. She stated that the Board had the record from the prior hearing with all the exhibits, so she did not need to add to that.

Mr. Tuozzola asked if anyone wished to speak in favor of the appeal. Hearing none, **Mr. Tuozzola** asked **Ms. Harrigan** to speak in opposition to the appeal.

OPPOSITION

Assistant City Planner Emmeline Harrigan stated that for any new use or new structure, zoning permits must be obtained. The present use of 990 Naugatuck Avenue hasn't been permitted by the city, hence the

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cease and desist order was issued. There is unpermitted signage and the recycling activity being done onsite does not have permits. The last permitted use of the property was as a dog training facility. The site's waterfront proximity means that a Coastal Area Management review is also required. Therefore the city feels that permits must be obtained for the current use.

Mr. Tuozzola asked for questions from the board members.

Mr. Tuozzola asked if **Attorney Lord** wished to rebut.

REBUTTAL

Attorney Lord stated that as long as the other record was there, and that the board was aware that there was an unopposed decision by Judge Hiller in Superior Court stating that the facility can be used based on the permit issued by the CT DEEP, she did not need to make additional comments.

Mr. Tuozzola asked for further questions; none being posed, he closed the hearing.

DISCUSSION

Mr. Tuozzola asked whether the board wished to discuss anything; nothing was raised.

Mr. Tuozzola asked for a motion. **Mr. Evasick** motioned to deny the appeal. **Mr. Vaccino** seconded. **Mr. Evasick** supported his motion by reason of upholding the order of the Assistant City Planner.

Mr. Tuozzola asked for a vote. The motion carried with **Messrs. Evasick, Haberman, Thomas, Vaccino** and **Tuozzola** voting **with the motion**.

2. **254 Melba Street** (BD) Anthony Avallone, Esq., appellant, for Scott Griffin; Appeal the 3/26/2012 zoning approval of the Zoning Enforcement Officer in accordance with Section 9.2.1 for a tenant-fit-up for a liquor store. Discovery on 5/10/12. Map 39, Block 542, Parcel 2

Mr. Tuzzola reminded the board that 254 Melba Street was tabled at the last meeting, and that the board would just be voting on the item. He asked **Mr. Harris** to define a tenant fit-up.

Mr. Harris reiterated that the hearing was closed at the last meeting. He defined a tenant fit-up as when a business wants to occupy a space and customize it to a new use. He stated that it was a routine activity. **Mr. Tuzzola** asked if there were further questions from the board about what a tenant fit-up is. **Mr. Haberman** asked if there were any reason not to provide it a tenant fit-up in this case. **Mr. Harris** said no, that tenant fit-ups are generic in nature.

Mr. Tuozzola asked for a vote. **Mr. Haberman** motioned to deny the appeal and uphold ZEO's issuance of the zoning permit. **Mr. Evasick** seconded. The motion carried with **Messrs. Evasick, Haberman, Thomas, Vaccino** and **Tuozzola** voting **with the motion**.

3. **35 Thompson Street** (R-5) Peter Crabtree, agent, for Gail Murray, applicant; Vary Sec's 3.1.4.1 & 4.1.4:
Front-yd fm 10' to 3.9'; Eave proj. fm 8' to 3.3'; Proj. paved landing fm 8' to 1'
Side-yd fm 5' to 3.66'; Eave proj. fm 4' to 3'; Proj. gas meter fm 4' to 2.1'
Rear-yd fm 20' to 3.66'; Eave proj. fm 16' to 3; Proj. hatchway fm 16' to 1.1'
Vary Sec. 4.1.5:**Rear-yd** paved patio fm 4' to 1.3'; CAM received. Map 35, Block 442, Parcel 25

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Attorney Danielle Bercury of Harlow, Adams and Friedman, P.C., 1 New Haven Avenue, Milford, spoke on behalf of property owner Gail Murray and Ms. Murray's partner Basil Young. She reminded board members of their vote to deny without prejudice Ms. Murray's previous request at the May ZBA meeting. She stated that new plans had been drafted to address some concerns of the board and neighbors. She stated that **Mr. Peter Crabtree** would review specifics of the revised plans. She stated that the property is in an R-5 zone and is a rear lot accessed through an easement and that the lot presented a hardship, as it consists of 1875 square feet compared to the 5000 square feet that would exist in a conforming lot. She stated that the present 80-year-old structure is deteriorating and unsalvageable for reconstruction. She also noted that given the size of the lot, the owner couldn't build the current house without a variance. She noted that unlike the last application, the new proposed structure does not require a variance for building area, that the house is under the city's height restrictions, and that the request is now limited to side-, front-, and rear-yard requirements. She stated that the setback requests include some reductions in the site's nonconformity. She said the site's aesthetics will be improved by running utilities underground, that the structure is more pleasing than the present house and that steps were taken to minimize privacy issues for the neighbors.

Mr. Tuozzola noted that **Attorney Danielle Bercury** stated that the current structure is already nonconforming; he asked if she knew a percentage for how much more conforming the proposed structure would be. She answered that there were slight increases in the front and rear setbacks, but that the plan tried to use the existing footprint, within reason.

Mr. Peter Crabtree, 64 Stanley Street, New Haven, spoke next. He reintroduced photos from the May meeting. He described each photo by number: 1=easement, 2=side-yard setback for the existing home, 3=foundation damage, 4=a view of 33 Thompson Street, 5=rear yard, 6=rear yard with back of house, 7=a nearby house with 3 stories.

Mr. Crabtree showed a diagram with crosshatching depicting the reduced setback and coverage from the previous request. The next diagram showed the shape of the proposed house's layout compared with the existing house. He noted that the proposed design was similar to the 1930 footprint, but squared off jogs and irregularities in the shape of the footprint. He stated that the area where the biggest footprint adjustment occurs will be invisible to neighbors once it's built.

Mr. Crabtree said that this plan addressed the gas and water utilities for 35 Thompson Street that run across 33 Thompson Street by placing them under the right-of-way easement. He also submitted information on other variances granted on Thompson Street in the past.

Mr. Crabtree asked for questions. **Mr. Evasick** reviewed details from the previous meeting comparing differences between the existing and proposed structures. He noted that there is currently a footprint of 761 square feet, with 837 square feet proposed, times 3 floors of living space, tripling the square footage of house. **Mr. Crabtree** said if all variances were eliminated, the footprint of the house would be 300 square feet. He handed out a sketch and noted that 900 square feet is the minimum required livable space, so there would have to be 3 stories regardless. He noted that the square footage for one 837-square-foot floor included a workshop, so the actual living space is less than 837 per floor. **Mr. Evasick** asked how much total square footage would result if the house was rebuilt in the identical footprint with 3 stories of living space. **Mr. Crabtree** said it would be 2283 square feet.

Mr. Vaccino asked Mr. Crabtree exactly what changes were made from last to this time. **Mr. Crabtree** said the building coverage was reduced to a conforming 44.7% and that deck area had been eliminated, but that everything else is nearly identical.

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Mr. Haberman asked Mr. Crabtree to confirm that the previous plan had the building squared off in the same corner; **Mr. Crabtree** replied yes.

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

IN FAVOR OF

Mr. William Petrie, of 30 Thompson Street, stated that he had documented his approval of the project.

Mr. Tuozzola asked if anyone wished to speak in opposition to the appeal.

OPPOSITION

Mark Del Franco, of 308 Mariner's Walk, stated that he represented the interests of the condominium complex community. He said the community had aesthetic and privacy concerns about the project and urged rejection.

Attorney Diane Lord represented Lynn Symko of 33 Thompson Street. She stated that Ms. Symko's property nearly abuts the front door of the 35 Thompson Street. She stated that in the previous Murray application, there was an increase in size requested of 365%, whereas now the requested increase is 320%. She stated that the 10' right-of-way is not big enough for emergency vehicle access. She said there is no legal hardship because a small building on small lot does not constitute a legal hardship. She stated that variances should be granted sparingly and that the hardship described for 35 Thompson Street was self-created. She further stated that the city's regulations do not permit expansion of a nonconforming structure. She submitted a petition submitted against the proposal and signed by 8 residents of Thompson Street.

Mr. Tuozzola asked for clarification of the right-of-way access. **Attorney Lord** said the right-of-way was deeded. She submitted a photo noting that the fence in the photo isn't on property line and that the driveway looks bigger than it is.

Ms. Linda Beckinsale, of 107 Mariners Walk, was also opposed.

Mr. Joe Copagna, 39 Thompson Street, stated that he felt a 2-story house would be ok, but that property values would be reduced if the structure is too tall.

Ms. Marian Maltese-Museka, 39 Thompson Street, stated that the project would decrease property values and that 3 stories is too high.

Mr. Leo Meyer, 15 Thompson Street, said the plans are out of keeping with rest of street, that it is too large, and too high. He compared it to another nearby tall structure with a bell tower that he said looks like Quasimodo should be in it.

Mr. Tuozzola asked if the representatives for Ms. Murray wished to rebut.

REBUTTAL

Ms. Bercury noted the project does not require a height variance and that challenging aesthetic issues from Mariner's Walk is questionable because the condominium is quite a distance away. She reiterated that the lot is undersized and that most speakers do not have this type of hardship. She stressed that the owners can't rebuild without a variance. The issue of shrinking the house to its original footprint represents

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construction challenges, per Mr. Crabtree. She stated that the easement was known before the owner of 33 Thompson Street bought the property. She stressed that changes were made to address privacy concerns and that the front and back yard are more conforming under the revised plan.

Mr. Crabtree passed out copies of plans shown on the flipchart.

Mr. Tuozzola asked Mr. Harris if any house could be built while meeting the setbacks, if the variance was denied.

Mr. Harris confirmed that no house could be built without a variance because the lot is small.

Mr. Crabtree emphasized that despite a comment about fencing, the only basis used for calculating the setbacks were property lines. He stated that there is less than 600 square feet of living space on the 1st floor. He addressed the emergency vehicle concerns saying that equipment such as fire hoses could stretch from the curb to the house. He said that he didn't understand the condominium owners' concerns because of how far apart the two properties are. He presented a locus map. **Mr. Tuozzola** asked Mr. Crabtree to point out Mariner's Walk on the map, which Mr. Crabtree did.

Mr. Tuozzola asked for further questions; none being posed, he closed the hearing.

DISCUSSION

Mr. Evasick asked Mr. Harris to reiterate that if the house were rebuilt on existing footprint and went up 3 stories, only a yard variance would be needed. **Mr. Harris** said yes. **Mr. Evasick** asked if the square footage of 1st floor meet regulatory requirements. **Mr. Harris** said yes, the minimum square feet required on the ground floor is 625.

Mr. Haberman stated that he thinks the proposed plan was very close to rebuilding in the original footprint, but with the corners squared off. **Mr. Evasick** said that lack of square corners isn't a hardship. **Mr. Collins** pointed out that the foundation is deteriorating and that the house will become unlivable if not replaced.

Mr. Tuozzola asked for further comments, hearing none, he asked for a motion.

Mr. Haberman motioned to approve. There was no second for the motion.

Mr. Vaccino requested more discussion. He reiterated that the height of the project isn't in dispute. He said that squaring off a section of the house that can't be seen did not seem problematic. He stated that he saw a hardship with the property and noted that the owner made allowances to make it more conforming.

Mr. Collins stated that the house is 80 years old, and that the owner is willing to tear down what's there and put up a reasonably nice looking house. He said this warrants consideration. He did not see the owners as trying to flip their home. He noted that using underground utilities is a considerate step. He dismissed the emergency vehicle argument.

Mr. Evasick said he would grant any variance to rebuild on identical footprint, given that the living space would still be increased 3 times. He did not see the foundation layout as a true obstacle to building.

Mr. Collins asked if he could second the original motion as a non-voting member, but this was not possible. **Mr. Haberman** motioned to approve again. **Mr. Vaccino** seconded the motion. **Mr. Haberman** supported

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his motion by reason of hardship in the size of the lot. The motion carried with **Messrs. Haberman, Thomas, Vaccino** and **Tuozzola** voting **with the motion**, and **Mr. Evasick** voting against the motion.

4. **30 Oakland Avenue** (R-7.5) William Jacobacci, applicant; Vary Sec. 3.1.4.1 front-yard to 19.7' where 20' is required; side-yard to 3' where 5' is required to construct a 2-car garage. CAM received. Map 28, Block 566, Parcel 17

Mr. William Jacobacci, 30 Oakland Avenue, addressed the board. He stated that he was requesting a variance on his side-yard setbacks and front-yard setback to build a 2-car garage with a master bedroom. He said he needed the variance because his existing lot is nonconforming and that he is trying to square off an existing corner of his house within the requested setback variance.

Mr. Tuozzola asked Mr. Jacobacci to confirm that the proposed garage is 24 x 24, which Mr. Jacobacci did. **Mr. Tuozzola** asked if the garage would be even with the house, or if the top of the garage is where variance is needed. **Mr. Jacobacci** said the front yard needed a variance and the side-yard variance would square the garage off with existing house.

Mr. Haberman asked if a garage could be built without a variance. **Mr. Jacobacci** said it could.

Mr. Vaccino asked if the entire length of house had been granted a variance. **Ms. Harrigan** and **Ms. Greene** pulled the file on the house. **Mr. Jacobacci** said he believed the entire house had been moved from Bayshore Drive at one time. After examining the file, **Mr. Harris** stated there was no previous appeal on record.

Mr. Tuozzola asked if anyone wished to speak in favor of the appeal.

IN FAVOR OF

Mr. Edward Earl Garlick, III, 26 Oakland Avenue, stated that he is Mr. Jacobacci's next-door neighbor. He said Mr. Jacobacci had coordinated plans with him to avoid impacting his views of the water. He said that the existing home's construction is a hodge-podge and that the garage would be a benefit to neighborhood in his opinion. He noted that there are other 2-car garages in the vicinity of his property.

Mr. Vaccino asked if Mr. Garlick lived next to where garage will be built; **Mr. Garlick** said yes.

Mr. Tuozzola noted a letter of support from **Mr. Louis Picarello**, 83 Bayshore Drive.

Mr. Tuozzola asked if anyone wished to speak in opposition to the appeal.

Mr. Tuozzola asked for further questions; none being posed, he closed the hearing; no one responded.

DISCUSSION

Mr. Haberman and **Mr. Vaccino** asked Mr. Harris whether a variance would be needed if the garage were moved, because it is attached to the house and the house is nonconforming. **Mr. Harris** confirmed that the variance would be needed regardless.

Mr. Tuozzola asked for further comments, hearing none, he asked for a motion. Realizing that Mr. Evasick had left the room, Mr. Tuozzola called a recess for a moment until Mr. Evasick returned.

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Mr. Evasick motioned in favor of appeal. **Mr. Haberman** seconded. **Mr. Evasick** supported his motion by reason of the dwelling won't infringe on neighbors.

Mr. Tuozzola asked for a vote. The motion carried with **Messrs. Evasick, Haberman, Thomas, Vaccino** and **Tuozzola** voting **with the motion**.

6 **0 Calf Pen Lane** (R-10) Joan Brockenberry, appellant; Appeal lack of notification of issuance in accordance with Sec. 9.2.1; Map 46, Block 529, Parcels 3,2

Attorney James Cordone, law office in Trumbull CT, addressed the board representing Mrs. Brockenberry. Attorney Cordone reviewed the background of the appeal. He noted that the Zoning Enforcement Officer issued 6.4.3 approval for a building lot on April 11, 2011. He presented copies of the permit to the board.

Mr. Harris reminded the board that the issue at hand was to decide if the appeal being brought by Mrs. Brockenberry was timely; that it was brought before the board within the 15-day appeal period.

Attorney Cordone thanked Mr. Harris for his guidance and stated that he wished to provide background on the case.

Mr. Tuozzola also stated that the appeal period for the ZBA is 15 days and that if an appeal isn't placed within that timeframe, the board can't hear it.

Attorney Cordone stated that if he were allowed to make his presentation, the board would see that proper notice had not been given to Mrs. Brockenberry or her neighbors.

Mr. Tuozzola asked Attorney Cordone to define proper notice, asking if a letter would have to be sent to Mrs. Brockenberry, given that notice was posted in newspaper. He consulted Mr. Harris.

Mr. Harris stated that the permittee noticed in the newspaper on January 31, 2012 after getting the permit on January 27. Therefore the appeal period started when the permit was posted in newspaper on January 31, 2012.

Mr. Tuozzola said Attorney Cordone could make a short presentation.

Attorney Cordone stated that on Apr 11, 2011, a permit was issued by zoning office. Mrs. Brockenberry saw a sign posted as required by Section 6.4. She filed an appeal on April 29, 2011. Similar actions occurred in 1999 and 2007. Both times the board stood with Mrs. Brockenberry saying that the parcel was not a valid building lot. On June 14, 2011, Mrs. Brockenberry again saw another attempt to create a building lot. She also intended to fight the development at the ZBA hearing on June 14, 2011, but the application was withdrawn. In January of 2012, no sign or written notice was given to Mrs. Brockenberry when a prospective purchaser got a ZEO signature on a map stating that a subdivision existed as of 1936 under CT Statute 8-24a, and that there were 2 building lots there now. He presented a copy of both documents to the board.

Mr. Harris reiterated that the issue before the board is whether the appeal period expired for January 27, 2012, permit, which was published January 31, 2012.

Mr. Tuozzola agreed this was the real issue and said that Attorney Cordone might be make a good argument, but the fact remains that the board doesn't have jurisdiction once the appeal period has expired.

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Attorney Cordone stated he respected Mr. Tuozzola's position, but wanted to have the record reflect the issue of Mrs. Brockenberry's appeal, where she believed proper notice wasn't given.

Mr. Tuozzola restated that the board could not hear the appeal.

Attorney Cordone reiterated that a sign wasn't posted per regulation 6.4 for a nonconforming lot, and that this type of signage triggered Mrs. Brockenberry's previous appeals. He stated that she could not be expected to look for the sign-off of a map and one notice published for one day in a January newspaper.

Mr. Harris stated that this was an unusual case where CT Statute Section 8.26a governs, not Milford regulations. He reiterated that the issue at hand was the timeliness of the appeal.

Attorney Cordone reviewed CT Statute 8.26a and said he didn't dispute that the statute applies. Rather, he disputed how Milford applied it and asked that right be done by Mrs. Brockenberry.

Mr. Tuozzola restated that he would abide by Mr. Harris's clarification of the issue before the board.

Ms. Harrigan commented that Section 6.4.2 pertained to lots predating Milford's zoning regulations. She said that what existed with CT Statute 8-26 was a subdivision that was adopted after the zoning regulations were in place, and that the two regulations are different things. She stated that Section 6.4.2 doesn't apply to the 8-26 zoning permit issued.

Attorney Cordone disputed this because the language of Section 6.4.2 says that the present owners or predecessors in title can't have illegally created the lot. He said the only way a lot is legally created is by subdividing it. He said the January zoning permit sign-off determined that a legal lot existed under 8-26.

Mr. Harris reminded the board that the merits of the issuance of zoning permit weren't the issue; that the time to bring the concerns was within the 15-day appeal period.

Mr. Tuozzola restated that the appeal was not presented with the 15-day appeal period; therefore the board can't vote on it or change anything. He said that Emmeline Harrigan had stated the facts about the regulations and that despite Attorney Cordone disputing them, Mr. Tuozzola's assessment was that the board had to observe the 15-day time period.

Attorney Cordone said he assumed the full board would vote on the 15-day time period.

Mr. Tuozzola asked staff for clarification; whether he could dismiss the appeal.

Mr. Harris said he did not believe there was an issue to vote on.

Attorney Cordone said that in fairness to the neighbors and family members in attendance, given that a fee was paid, and given that Mrs. Brockenberry had retained representation, there should be a vote.

Mr. Tuozzola restated that the board could not act on an appeal that filed beyond the 15-day period. He said that he had to dismiss the appeal and end the discussion.

Attorney Cordone said that because the meeting was a public hearing, people can speak in favor of or in opposition to the matter, and then the board could still decide to vote that the appeal period had expired.

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Mr. Tuozzola said that course of action would result in sharing of opinions, but the outcome would be the same—the board does not have jurisdiction and that he stood by his decision to dismiss the appeal.

At this point, members of the audience began commenting out of turn. Mr. Tuozzola repeatedly stated that the hearing was over. It took several minutes for the auditorium to clear.

C. OLD BUSINESS

Mr. Evasick stated that after last month's meeting, he did extra research on the storm damaged deck on East Broadway where a variance had been requested. The board allowed the owner to replace it, but Mr. Evasick felt the deck was built without a city permit, encroached on setbacks of property lines and neighbors. He suggested that every time the board hears a variance for the shoreline, Mr. Harris advise whether a permit was taken out. Mr. Evasick inquired about a statute that allows illegal structures to become legal after 3 years. **Mr. Harris** said he believed that 3 years was correct and that he would be happy to look through the files of each agenda item and make relevant notes. He added that there was no record or when the deck in question was built, so it may not have been illegal. **Ms. Harrigan** commented that if the deck was removed in entirety, the 3-year statute would no longer apply. **Mr. Evasick** said his request was particularly for storm-damaged structures, that he thought it was important to know if proper bldg permits pulled for the original structure. **Mr. Harris** said he could go through files and write a zoning permit history for each address as well. **Mr. Tuozzola** said it was a point well taken.

D. NEW BUSINESS

None was raised.

E. STAFF UPDATE

Mr. Harris noted that Planning and Zoning had welcomed a new clerk, Taft Clark, who formerly temp'ed in Building Inspection. Taft replaced Barbara Brown who had moved from Planning and Zoning to supporting Inland Wetlands.

F. ACCEPTANCE OF MINUTES FROM JUNE 12, 2012 HEARING

Mr. Vaccino moved that minutes of the last meeting be accepted; **Mr. Haberman** seconded, and the motion carried unanimously.

H. ACCEPTANCE OF APPLICATIONS FOR AUGUST 14, 2012 HEARING

Mr. Harris said none had been submitted yet.

The meeting was adjourned at 8:38 p.m.

Any other business not on the agenda, to be considered upon two-third's vote of those present and voting.

ANY INDIVIDUAL WITH A DISABILITY WHO NEEDS SPECIAL ASSISTANCE TO PARTICIPATE IN THE MEETING SHOULD CONTACT THE DIRECTOR OF COMMUNITY DEVELOPMENT, 203-783-3230, PRIOR TO THE MEETING IF POSSIBLE.

Attest:

Meg Greene
Clerk, ZBA