

Minutes, Public Hearing of Zoning Board of Appeals Meeting held 11 July 2023

The Regular Meeting of the Zoning Board of Appeals of Milford, CT, was held on Tuesday 11 July 2023, 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

Mr. Tuozzola advised that Item 4 had been withdrawn. He asked **Ms. Hirsch** to vote as the 5th member in Mr. Soda's absence.

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

ALTERNATES PRESENT: Gary Dubois, Carmina K. Hirsch, Mike Smith

MEMBERS/ALTERNATES ABSENT: William Soda

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

CONSIDERATION OF AGENDA ITEMS

1. **Francis Street**, MBP 6/84/2; R-7.5; Kevin Curseaden, Esq., for Antoinette Voll and Joseph Voll, appellants; Appeal the decision of the Zoning Enforcement Officer in accordance with the provisions of section 9.2.1 regarding April 20, 2023, Notice of Violation and related decision that there is a violation of Sections 5.7.2, 5.7.6.6, 5.8.6.6, 5.8.6.7 of the MZR.

Attorney Curseaden, 3 Lafayette Street, addressed the board. He asked that the item be tabled to the next meeting to allow for further negotiations. The chair allowed it.

2. **25 Eighth Avenue**, MBP 9/102/9; R-7.5; Robert Maslan, Esq., for S. Swan, Laurel Beach Assoc. and E.T. Krolikowski III, appellants; Appeal the decision of the Zoning Enforcement Officer in accordance with the provisions of section 9.2.1 regarding Certificate of Zoning Compliance for Use of Land or Building, Certifying each of the existing developer lots, Lot #'s 23, 24, 25 and 26 as shown on Maps R-33 and F-580 are legally nonconforming lots of record.

Attorney Maslan addressed the board. The chair noted that Attorney Maslan had submitted documents earlier in the day and asked if the documents were to be reviewed as a part of the presentation or represented new materials that the board had not been able to consider. **Attorney Maslan** said it was both. He noted the presence of his client, Mr. Krolikowski, and Laurel Beach Association President Mr. Shanley. He reviewed the substance of the appeal he presented in June. He described the property and modern zoning requirements of the parcel noting that the lots certified by Zoning Enforcement Officer (ZEO) Harris did not conform to them. He said the board has jurisdiction despite ZEO's statement in June that the ZBA cannot interpret or enforce a restrictive deed. He said his clients have standing and were assigned enforcement privileges because they such privileges by the documentation and due to proximity to the property. He reviewed the restrictive covenant, saying it showed an intent to merge the lots under common merger law and asserting that the board can interpret such mergers. He said the intention for the parcel was that it be considered one parcel for all purposes and for all time. He said this is evidence of common law merger. He said the declaration was given to the Doyles when they purchased the property. He referred to papers from 1973 belonging to the prior owner that showed measurements taken of the 3 parcels together. He said no map is required for a common law merger. He said under Milford Zoning Regulations, ownership of adjacent property was sufficient to merge the lots and once lots are merged, they can't be separated. He said a section of 25 Eighth Avenue was conveyed to an adjacent lot. He said that in the posted regulations, it was not obvious that Section 6.4.2 had been repealed, but that this repeal also revoked the ZEO's ability to issue permits for substandard lots. He said repealing 6.4.2 did not eliminate all mergers. He said the current moratorium on lot certifications experienced a lapse due to defects in a motion by the Planning and Zoning Board and that there is no regulatory or statutory authority for ZEOs to issue lot certifications, only permits and Certificates of Zoning Compliance. He said the certification decision was inappropriate and not binding. He said his appeal was timely due to advertising of the lot certification. He said this parcel's appeal-of-decision was different to a previous application heard by the ZBA about lot certifications. He said a variance or a re-subdivision or a free split could create lots but this lot certification doesn't apply. He added that a historical assumption about 1929 town planning regulations is incorrect in that they only apply to road plans and the platting of lands, not lot creation. He said the town plan commissions were responsible for reviewing street layouts, but did not have jurisdiction to approve subdivisions. He said he included 2 cases in the latest submitted materials that illustrate this concept. He cited a Milford case wherein the CT Supreme Court reversed a local decision and mentioned that the first real subdivision regulations went into effect was no sooner than 1954. He said this action created Planning and Zoning Boards with the authority to define lots. He referred to cases cited by Attorney Curseaden, saying none include a declaration of merger and they were therefore not relevant.

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Mr. Harris deferred to Attorney Curseaden.

Attorney Curseaden said he represented the owner/lot certification applicant. He asserted that this case was exactly the same as another recently brought before the ZBA. He referred to many conversations with staff since the repeal of 6.4.2, saying he had personally guided approximately 25-30 certifications through Milford's process. He said the regulations are interpreted by staff and the board and that the City Attorney stated that the city has the authority to certify lots. He noted that last month the ZEO read into the record the City Attorney's Office conclusion that the ZBA has no ability to adjudicate deed covenants and restrictive covenants. Attorney Curseaden said merger is a decision that is made by boards through CT General Statute 8-6. He said the board has no authority to do so—that authority is reserved for judges of the CT Superior Court. He said the owners should have filed a lot consolidation map signed by the City Planner or Chair of the Planning and Zoning Board. He reviewed part of his previous submission and added remarks in response to Attorney Maslan's most recent comments. He referred to the public act that increased the powers of Milford to subdivide in 1929. He said one of the lots is protected as well as certified by ZEO.

ZEO Harris stressed the main point at issue is that the ZBA has no authority to adjudicate a private deed restriction.

Attorney Maslan said that sometimes regulations can be in place for a long time but until a court validates them, they may not be binding. He said the declaration was no different than reading a map and the declaration showed the intent to merge.

BOARD DISCUSSION

Mr. Tuozzola closed the hearing and asked for a motion.

Mr. Wolfe said he suspected the case was bound for court and motioned to **uphold the decision**. **Mr. Montano** seconded. The motion carried with **Mss. Ferrante** and **Hirsch** and **Messrs. Montano, Wolfe** and **Tuozzola** voting **with the motion**.

3. **128 Beach Avenue**, MBP 60/743/11; R-7.5; Thomas Lynch, Esq., for Mervyn Klein, owner; Vary Section 4.1.1.1 proposed pool front-yard setback from Blackall Road to 15' where 20' required.

Attorney Lynch, 63 Cherry Street, addressed the board. He reviewed the previous requests. He said his client eliminated one request by removing a pool equipment shed and while they maintained the size of the pool, it had been moved further out of the setback. He said these 2 compromises to the plan modified it. He reminded the board of the email in support last month.

DISCUSSION

Mr. Tuozzola asked about the dimensions of the patio. **Attorney Lynch** said it was approximately 30' x 14'. He said the new residence itself was fully zoning compliant and that Blackall Road has virtually no traffic.

BOARD DISCUSSION

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

Ms. Ferrante motioned to **approve**; **Mr. Wolfe** seconded.

Discussion: **Ms. Ferrante** said she saw no hardship given the oversized lot. **Mr. Tuozzola** realized that Mr. Wolfe had been absent for the discussion last month and asked **Mr. Smith** to vote this item. **Mr. Smith** said that given that the neighbors were not objecting, he did think that the through-lot presented a hardship.

The motion failed with **Ms. Hirsch** and **Messrs. Smith** and **Montano** voting **with the motion** and **Ms. Ferrante** and **Mr. Tuozzola** voting **against the motion**.

4. **1534 New Haven Avenue**, MBP 82/780/3; R-7.5; Kevin Curseaden, Esq., for Family Trust of James Francis Kennedy III and Joyce Estelle Kennedy, appellants; Appeal the decision of the Zoning Enforcement Officer in accordance with the provisions of section 9.2.1 regarding decision to approve K-7 form for used car dealership on site when no approvals for used car dealership exist.

WITHDRAWN

5. **40 Morehouse Avenue**, MBP 30/639/12; R-5; Thomas Lockwood, Cheryl Quinlan, owners; Vary Section 4.1.4.3 to allow front deck where such deck is not permitted because it's not the minimum allowed.

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Attorney Curseaden, 3 Lafayette Street, addressed the board. He said he had represented the buyers in the sale of this property, so was familiar with it. He said the house had to be elevated, that there are wetlands and a drainage easement at the rear of the property. He said the lot is undersized and that provision is made to access the house after it is elevated without the need of a variance. He said the request was for a deck that stretched across the whole house but without a variance, it would only be 2' deep, which is restrictive for maneuvering around the entry door.

Cheryl Quinlan addressed the board. She said she had cooperated fully with the city to elevate the house and bring it into compliance. She noted that several neighbors had emailed in support. She said a family member had a disability that might make it difficult for that person to get in and out of the house.

DISCUSSION

ZEO Harris clarified that the depth of the landing can be 4' to the width of the house and that the regulations allow minimal stairway access even if the stairway projects inside the setback. He said staff determined that spanning the width of the house was not minimal. **Ms. Ferrante** asked what minimal would be in this case. **ZEO Harris** said if the deck spanned only half the house, he would have approved it.

Attorney Curseaden said the request was modest.

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.

Ms. Ferrante motioned to **approve** based on the small size of the lot. **Mr. Montano** seconded. The motion carried with **Ms. Ferrante** and **Hirsch**, and **Messrs. Montano, Wolfe** and **Tuozzola** voting **with the motion**.

6. **10 Fourth Avenue**, MBP 9/73/3; R-10; Stephen and Pamela Moore, owners; Vary Section 3.1.4.1 side-yard setback to 6.7' where 10' required for garage expansion.

Mr. Moore addressed the board. He said the side setback variance was needed to widen the garage as part of a larger renovation which was otherwise compliant. He said the property line is not perpendicular to the street and narrows as it approached their house. He said he had received 4 messages of support, most importantly from the direct abutter, but also from the next closest 3 neighbors.

DISCUSSION

Ms. Ferrante confirmed that the back of the expansion is zoning compliant. **Mr. Moore** said he would have to add a jog in the wall to fit the parcel if the request was denied. **Mr. Montano** confirmed that 2 cars could be parked off street with the variance granted.

BOARD DISCUSSION

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

FAVOR

Pat Corcoran, 235 Third Avenue, said he is the adjacent neighbor and confirmed that he submitted a letter in favor.

Mr. Tuozzola, hearing no opposition, closed the hearing and asked for a motion.

Ms. Hirsch motioned to **approve** based on the small size of the lot. **Mr. Montano** seconded. The motion carried with **Ms. Ferrante** and **Hirsch** and **Messrs. Montano, Wolfe** and **Tuozzola** voting **with the motion**.

7. **87 Bayshore Drive**, MBP 28/566/3; R-7.5; Amy Berkowitz, owner; Vary Section 4.1.4 front-yard projection to 11.5' where 16' permitted for new front deck and stairs.

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Ms. Berkowitz addressed the board. She described the project as correcting an irregularly shaped deck, squaring it off at 7' and adding 2 more steps in the front yard.

BOARD DISCUSSION

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

Mr. Montano motioned to **approve** based on the small size of the lot. **Ms. Hirsch** seconded. The motion carried with **Ms. Ferrante** and **Hirsch** and **Messrs. Montano, Wolfe** and **Tuozzola** voting **with the motion**.

8. **783 East Broadway**, MBP 22/474/35; R-5; Thomas Lynch, Esq., for Julie Porzio, owner; Vary Section 3.1.4.1 side-yard setbacks to 3.1' each side where 5' and 10' required; 4.1.4 side projections to 3.1' each side where 4' and 8' permitted; Section 6.3.2 expansion of nonconforming structure all to construct a new residence with deck.

Attorney Lynch asked for a 5-minute recess to confer with an audience member and his client; the chair granted it. After the recess, he introduced his clients and reviewed the request for the deck and eaves as well as for expanding a nonconforming structure. He said the house has been used seasonally but his client now wishes to live there full-time. He compared the project to a nearby project that required similar variances. He said the existing house was 1100sf on a lot of 4600sf. He described the existing setbacks and said the proposed plan centered the new 19' wide house. He said the hardship was the small lot size. He referred to Joe Rousseau's design as adding living space above plus an elevator. He said the height is conforming and the plan was consistent with development in the area. He referred to the recess, saying a neighbor wanted assurances that that the length of the house would not exceed the neighbor's. He said the Planning and Zoning Board would be reviewing a Coastal Area Management Site Plan.

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. Montano** offered to recuse himself, but it was determined that it was unnecessary.

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

- A. NEW BUSINESS** - None
- B. OLD BUSINESS** - None
- C. STAFF UPDATE** - None
- D. ACCEPTANCE OF MINUTES FROM 13 JUNE HEARING:** Approved.
- E. ACCEPTANCE OF APPLICATIONS FOR 8 AUGUST HEARING:** **Ms. Greene** advised that two appeals and a variance had come in.

Adjournment was at **8:25 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