

Minutes of Public Hearings of Zoning Board of Appeals Meeting held July 13, 2010

**MEMBERS PRESENT:** Rich Carey, Howard Haberman, Fred Katen, Nanci Seltzer, Joseph Tuozzola

**ALTERNATES PRESENT:** Bill Evasick, Tom Nichol

**STAFF PRESENT:** Emmeline Harrigan, Assistant City Planner; Kathy Kuchta, Zoning Enforcement Officer, Rose Elliott, Clerk

The meeting was called to order at 7:01 p.m.

Chrmn. Katen introduced the new Zoning Enforcement Officer, life long Milford resident, Kathy Kuchta.

## **A. CONSIDERATION OF AGENDA ITEMS**

1. **Alpha Street/Eels Hill Road** (Zone R-18) Stephen W. Studer, attorney, for Milford Heights, LLC, appellant, for United States of America, U.S. Coast Guard Finance, CTR, owner – appeal the decision of the City Planner in correspondence dated June 4, 2010 from City Planner denying a Certificate of Zoning Compliance. Map 69, Block 711, Parcel 17A.

**Postponed to August 10, 2010 meeting.**

2. **333 Naugatuck Avenue cor. Milford Point Road cor. Roswell Street** (Zone CDD-2) Millie Rizio, appellant, for Rizio Lar, LLC, owner – request to vary Sec. 5.3.5.1(1) to allow a 1.25' setback in lieu of 10' required for ground sign. Map 15, Block 239, Parcel 14.

**Millie Rizio**, 53 Skating Pond Road, Trumbull, said she is requesting a variance for a sign. If she placed this sign according to the regulations it would take up one of her parking spaces. Her parking is limited and she cannot afford to lose a space. The sign could be placed within the setback requirements at the corner of Milford Point Road and Naugatuck Avenue. However, this location is congested with a telephone pole, traffic signal lights, electrical cables and street signs. On the other side, at the corner of Roswell Street and Naugatuck Avenue, she is concerned that the illumination of the sign would disturb the neighbors in the residential properties there.

**Chrmn. Katen** confirmed the illumination would come from within to which Ms. Rizio stated the sign would be neon with florescent lighting on the interior.

**Mr. Tuozzola** asked if the post of the sign could be repositioned further back towards the driveway.

**Ms. Rizio** noted the picture of the sign the Board members were looking at wasn't completely accurate. In the picture, the sign company depicted the buffer strip larger than it actually is. She directed the Board to look at the survey, which showed the exact placement of the proposed sign.

**Ms. Harrigan** added the property line extends beyond the edge of the sidewalk and includes some of the grassy buffer.

**Ms. Seltzer** asked if there would be any up lighting to which Ms. Rizio answered no.

OPPOSED:

**Carol Martin**, 14 Roswell Street, said she lives across the street from the property. The proposed sign is to be 15' tall with several spaces for the tenants' names. The existing topography of the parking lot is about 2' above the road surface. She didn't understand why the sign had to be so big with so many slots for tenants, when the current restaurant takes up half of the space. She preferred a smaller sign which would be at eye level as you are driving by and less costly to the owner. The tenants and the neighborhood would find it less offensive. She informed the Board the owner has an agreement with the liquor store across the street to use their lot for additional parking. The loss of one of her parking spaces would not be a hardship.

REBUTTAL:

**Ms. Rizio** said the restaurant does take up 3 spaces, leaving 1 space for use by the owners and 1 other space available. The cost of installing this type of sign is expensive. If in a few years, the restaurant decides they want to leave and she has to rent the individual units, the cost for her to redo the sign would be very expensive. The building can hold 5 spaces which is why the sign has 5 spaces. Because of the proximity to the water, she would prefer not to put up a wooden sign that would be damaged by the salt water air and need to be replaced within a few months. This sign will look good for a long time and require little maintenance.

There was some discussion as to whether the correct zone was noticed for this property. It was discovered the correct zone was CDD-2 but felt the error would not affect the variance request.

The hearing was closed.

DISCUSSION:

**Mr. Haberman** said it is always good when you can prevent parking on neighborhood streets, even if is only one car. The only other place to put the sign is in the parking space. Ms. Seltzer disagreed saying this is more of an urban street and was originally approved by the Planning and Zoning Board because parking is allowed on the street.

**Mr. Haberman** made a motion to approve with Mr. Tuozzola seconding. There is no other place to put the sign other than in a parking space, creating the need to park in the street. Mr. Tuozzola added the lighting is not part of the variance request or review. The motion carried 4-1 with Messrs. Tuozzola, Carey, Haberman and Katen voting in favor and Ms. Seltzer voting against.

3. **41 Deerfield Avenue cor. Field Court** (Zone R-5) John Wicko for Donald J. & Christine Montano, owners – request to vary Sec. 3.1.4.1 to allow .95' side yard in lieu of 5' required; 7' front yard setback in lieu of 10'; 5.8' front yard in lieu of 10' required. CAM received. Map 13, Block 135, Parcel 7.

**Christine Montano**, owner, 41 Deerfield Avenue, **John Wicko**, architect, 50 Broad Street. Mr. Wicko told the Board the existing residence is located in an AE-12 flood zone. Its current first floor elevation is at 8.5', which is not compliant with FEMA requirements. Because of repeated flooding and damage, FEMA is requesting the house be raised in its location. The owners are also constructing an addition and a deck. The hardship is the property is pre-existing, non-conforming with square footage of 3,621 sq. ft. where 5,000 sq. ft. is required. The width is 30.87' where 70' is the requirement and the house is also located on a corner. The porch will be extended along the front of the house on the Deerfield Avenue side. As a result of the raising of the house, more stairs were required which project farther into the setback than the 20% allowed. The proposed stairs were turned to go down the side of the house rather than the front of the house. Ms. Montano passed out photos to the Board. The other part of the variance request is for the corner of the existing stoop with is encroaching into the setback. All other setbacks can be met for the addition.

**Mr. Haberman** confirmed the variance requests are for the two corners of the house on the Deerfield Avenue side to which Mr. Wicko said that was correct. Mr. Haberman added the existing right corner of the house is encroaching into the setback and will remain while the left side is where the proposed stairs will go for access to the house. Mr. Wicko answered in the affirmative.

There being no one to speak in favor or opposition the hearing was closed.

#### DISCUSSION:

**Ms. Seltzer** noted her concern was for the rear portion of the lot, where the neighbors' garages are located to which Mr. Carey reminded her the rear deck does not require a variance. Mr. Haberman again stated the variance request for the left side of the house is needed for access to the house and the right side is existing and cannot be changed per FEMA regulations.

**Mr. Carey** made a motion to approve with Mr. Haberman seconding. The hardship is the house is in the flood plain and must be raised on the same footprint to comply with FEMA regulations. The motion carried 4-1 with Ms. Seltzer, Messrs. Carey, Haberman and Katen voting in favor and Mr. Tuozzola voting against.

4. **35 Ward Street cor. Rogers Avenue** (Zone R-5) Lorri DiBattisto, appellant, for Donald James, Jr., owner – request to vary Sec. 3.1.4.1 to allow 5.0' front yard in lieu of 10' required for 2 story addition and .87' in lieu of 10' front yard and 12.3' in lieu of 20' rear yard to convert barn and connect to single family residence. CAM received. Map 36, Block 415, Parcel 6.

**Ms. Seltzer** noted she did not see the placard posted on the property.

**Ms. Harrigan** asked Ms. Battisto if she could attest to the placard being posted.

**Lorri DiBattisto**, 29 Hartford Avenue, Granby, answered she could not as she only provided the placards to the homeowner for posting. She was unaware they had not been posted.

**Ms. Harrigan** suggested the item be tabled for next month to allow for proper posting.

**Mr. Haberman** made a motion to table the item with Mr. Carey seconding. The motion carried unanimously with Ms. Seltzer, Messrs. Tuozzola, Carey, Haberman and Katen voting.

5. **28 Tower Street** (Zone R-12.5) Thomas B. Lynch, attorney, for Janice David, owner – request to vary Sec. 2.5.5 to allow a lot of 34,445 sq. ft. in lieu of 43,560 sq. ft. required for a rear lot. Map 53, Block 306, Parcel 45.

**Thomas Lynch**, 63 Cherry Street, told the Board the owner, Ms. David, resides in Brunswick, ME. She is looking for the variance to allow a subdivision of the existing property, consisting of 1.1 acres of land in an R-10 zone. The survey shows there would be a rear lot of 34,450 sq. ft., where 43,560 sq. ft. is required. It is an unusually shaped lot created by deed. This parcel is located in an area of mixed zones. The two properties to the west are in an R-7.5 and the properties across the street are located in an R-10. He submitted paperwork to the Board, showing he represented Mike Saley in 1999 with a variance request to do basically the same thing. Mr. Saley had purchased the former water tower property and requested to divide the property, which was approximately 19,000 sq. ft., into two lots of 9,300 sq. ft. each, which was approved. The difference in square footage is very minor from what is required to what is being proposed. It still would be far in excess of what is required for zones in close proximity. A legal hardship exists here because individual zoning property owners have the right to develop the property to its highest and best use. The imposition of the Zoning Regulations on this rear property create a situation where the owner is at a hardship because they cannot utilize their property and develop it in a manner that is consistent with other property owners in close proximity.

**Mr. Haberman** confirmed the parcel would be for one building lot.

**Atty. Lynch** answered in the affirmative and added the line of trees in front of the property would create a natural buffer that would hide the house from view from Tower Street.

**Mr. Haberman** noted the trees acting as a buffer on West Main Street as well as Tower Street would remain to which Atty. Lynch said that was correct.

**Atty. Lynch** added the houses on West Main Street appear to be about 250' between the houses and this property. This will not have any impact or imposition on the neighborhood.

#### OPPOSITION:

**Tina Atilho**, 40 Tower Street, said the area is very crowded in the back and she wondered how this would affect her property. Would a nice buffer be put up or would she be looking at the house and the neighbors?

**Chrmn. Katen** said the applicant would still need to go before Planning and Zoning.

**Ms. Harrigan** clarified that if this is approved this evening, there are requirements within the Subdivision Regulations, but there are no requirements for buffer landscaping. The Zoning Board of Appeals can condition their approvals.

**Gary Wilhelm**, 48 Tower Street, has lived there for 27 years and asked if there could only be a one family home built there and what the maximum square footage could be.

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**Ms. Harrigan** told him it could only be a one family and said the size would be limited based on the R-12.5 zoning requirements.

**Mr. Wilhelm** continued that Mr. Collucci built a large house next to him and it had to be a minimum of one acre. He asked what changed from then to now?

**Ms. Harrigan** answered one acre is the minimum standard for a rear lot by the Zoning Regulations. The applicant is before the Zoning Board of Appeals tonight to ask to allow something smaller than the minimum standard.

**Kim Wilhelm**, 48 Tower Street, asked, as the adjacent property owners, why weren't they approached to sell their lot, 28A, which would make this lot a full acre. How can the applicant be allowed to build there?

**Ms. Harrigan** again said the applicant is requesting a variance be granted to allow them to build there, but that doesn't necessarily mean the Zoning Board of Appeals has to grant the request. The Board makes a determination as to whether or not there is a finding of hardship based on the information presented this evening.

**Ms. Seltzer** asked if that was the reason they were here this evening, to sell their property to which the Wilhelms' said that was not their intent.

**Theresa Holloway**, 34 Tower Street, she is the adjacent neighbor to 28 Tower Street. She told the Board there is very little property between her bedroom wall and the driveway next door. She wondered how the easement would affect her property.

**Mr. Haberman** answered the access to the rear lot is not before the Board. The applicant meets the requirements needed in order to have that 25' wide access way.

**Susan Volanth**, 165 Clark Street, said there is no hardship. The owner doesn't care what happens to the neighborhood, she inherited the property and lives in Maine. This variance would negatively impact the neighborhood. It would devalue the property, cause the removal of a lot of trees, overcrowd the area and increase traffic on a street that has a lot of children. The survey doesn't show all the trees that will need to be cut for the easement; many more than the two the attorney said. There are at least 6 trees that will need to come down that are as tall as the house and some 20' higher than the house. She submitted a petition of 31 names in opposition of the application.

REBUTTAL:

**Atty. Lynch** told the Board the applicant grew up in Milford and her family has owned this property for 60 years. They have every right to use their property to its highest and best use. No one likes to see change. There were other opportunities for the applicant to pursue denser applications before the Board but decided not to pursue them. She is looking to receive a variance to build one, single family house on a piece of property that is nearly an acre in size.

The hearing was closed.

DISCUSSION:

**Chrmn. Katen** said the only concern before this Board is a 34,000 sq. ft. lot which is less than what is required, but still more than the minimum requirement in an R-12.5 zone. Mr. Haberman noted the real question is whether there is a hardship and whether it poses any adverse effect to the neighborhood. Ms. Seltzer asked Ms. Harrigan what was the hardship stated on the application. Ms. Harrigan read from the

application. Mr. Tuozzola said this lot is 3 times the size of neighboring lots. They are proposing one house and he didn't think it would affect the neighborhood. Chrmn. Katen agreed and added it comes down to the hardship. Mr. Haberman said he would feel better if the Board could stipulate buffers to make it seem like it wasn't adding to the density of the neighborhood.

**Mr. Carey** made a motion to approve with Mr. Tuozzola seconding.

**Ms. Seltzer** amended the motion to add that only one single family dwelling could be built there and nothing else. Mr. Haberman added the motion should also include that there are natural buffers such as trees and shrubbery planted, on both Tower Street and West Main Street. The Board first voted on the motion to add the amendments, which carried unanimously with Ms. Seltzer, Messrs. Tuozzola, Carey, Haberman and Katen voting. The motion to approve the variance then carried unanimously with Ms. Seltzer, Messrs. Tuozzola, Carey, Haberman and Katen voting.

6. **7 Waterbury Avenue** (Zone R-5) John Wicko for William Sembiente, owner – request to vary Sec. 3.1.4.1 to allow 12.8' rear yard setback in lieu of 16' (to projection) for rear balconies and to allow 14.6' rear yard setback in lieu of 16' (to projection) for rear hot tub at elevation 11.1. CAM received. Map 13, Block 135, Parcel 7.

**Bill Sembiente**, owner, **John Wicko**, architect, 50 Broad Street, passed out paperwork to the Board. The current lot is non-conforming with 3,985 sq. sf. where 5,000 sq. ft. is required and that is one of the hardships for the rear deck and the hot tub. The lot depth is also less than the requirement of the R-5 zone at 45.5' where 70' is required. The plans are to raise the existing house and to reduce the lot coverage area from 80% to 55%. They are trying to continue the trend of the neighbors before them by pushing the mass of the house back and off the public right of way and introduce balconies and porches to lighten the overall confining feeling of the street. They are asking for an additional 3.2' to project into the rear yard for the second and third floor balconies and 1.9' for the hot tub. The hardships are the lot size and the depth of the lot.

**Ms. Seltzer** confirmed they were demolishing the existing house and building a new house to which Mr. Wicko said that was correct and added the existing shed would also be removed.

**William Sembiente**, owner, added they couldn't get a Certificate of Occupancy for the existing house because it is being heated with gas space heaters along with other non-conforming building code items.

**Mr. Tuozzola** reaffirmed the only variance is for the rear projection.

**Mr. Wicko** said that was correct.

**Chrmn. Katen** asked why the hot tub had to be there and why there is a separate variance request for it.

**Mr. Wicko** said that through discussions with staff that it would be appropriate to separate the two for clarity.

**Chrmn. Katen** said there didn't seem to be a hardship.

**Ms. Seltzer** wondered why they needed a hot tub.

**Mr. Wicko** said it is something the owners wanted. It is on their wish list.

**Mr. Sembiante** told the Board he and his wife have been looking for about one and ½ years for a piece of property in between Stamford, where he works and North Branford, where his wife works. They finally found this property and had always wanted either an inground pool or a hot tub. They knew they were not going to be able to have the pool because of the size of the lot but hoped that since this was going to be their dream home, where they would spend the rest of their lives, they could at least have the hot tub.

**Mr. Haberman** asked Ms. Harrigan if after the hot tub is no longer there, could the applicant then make it an extension of the deck?

**Ms. Harrigan** said the variance is only for what is granted, the hot tub.

There being no one to speak in favor or opposition the hearing was closed.

#### DISCUSSION:

**Mr. Haberman** had no problem with it. Ms. Seltzer added not having a hot tub was not a hardship.

**Mr. Tuozzola** made a motion to approve with Mr. Carey seconding. The reason for approval is the applicant did an excellent job of placing the house on the lot and thought the hot tub was a minimal issue. The motion failed to carry 3-2 with Messrs. Carey, Haberman and Tuozzola voting in favor and Ms. Seltzer and Chrmn. Katen voting against.

7. **31 Pond Street** (Zone R-12.5) James R. Denno for Ann & John Doolittle, owners – request to vary Sec. 3.1.4.1 to allow 2.7' (1.2' to overhang) in lieu of 10' side yard required. CAM required. Map 44, Block 408, Parcel 6.

**John Doolittle**, owner, said they are asking for a variance to build a garage. They have lived in the house since 1992 and the structure they've called a garage, has never had a car in it. It is not big enough. They are looking to erect a two story addition to the home. The first floor would be a two car garage with living space on the second floor.

**Jim Denno**, designer of the project, 93 Sunnyside Court, asked the Board to look past the overhang and look at the actual building setback, which is 3.9' from the side property line and 2.7' in the rear. The 1.2' figure of the variance request includes the overhang.

**Chrmn. Katen** confirmed this would be a 2 story structure to which Mr. Denno answered in the affirmative.

**Chrmn. Katen** asked what was going to be on the second floor.

**Mr. Denno** said an office/studio with a toilet and sink.

**Mr. Seltzer** asked if the plans were presented to the historic district.

**Mr. Doolittle** said on June 9<sup>th</sup>, he presented the plans to the South of the Green Historic Commission and it was unanimously approved.

**Mr. Haberman** asked if the existing garage meets the setback requirements.

**Mr. Denno** said it does meet the requirements.

**Mr. Haberman** said that by moving the garage forward and creating the two story addition, a non-conformity is being created to which Mr. Denno agreed. Mr. Denno

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added the location of the current garage makes it very difficult for the owners to use because of the corner of the house.

There being no to speak in favor or opposition the hearing was closed.

#### DISCUSSION:

**Chrmn. Katen** said it is an unusually shaped parcel due to the tapering of the lot to the rear, creating the hardship. Ms. Seltzer said it is very close to the property line. Mr. Haberman said bringing the garage forward and attaching it to the house creates the non-conformity. The existing garage can be reconstructed.

**Ms. Seltzer** made a motion to approve with Mr. Carey seconding. The hardship is the shape of the lot. The motion carried unanimously with Ms. Seltzer, Messrs. Tuozzola, Carey, Haberman and Katen voting.

The Board took a recess from 8:45 p.m. to 8:51 p.m.

#### B. TABLED ITEMS

1. **462 Oronoque Road** (Zone LI) Thomas B. Lynch, attorney, for Oronoque Road, LLC, appellant, for Michael DeDonato Trust, owner – request to vary Sec. 2.5.5 to allow 15' wide access to rear lot where 50' is required. Map 74, Block 928, Parcel 18.

**Chrmn. Katen** reminded the Board that this item was tabled at the last meeting to allow for the City Attorney's review and to provide the Board with an opinion.

**Ms. Harrigan** said on behalf of the Board, she had asked the City Attorney's office whether or not they felt based on the application, that proper notice had been given. The Zoning Regulations require that notice is given to owners of land within 200 feet of the property on which the variance is requested. This variance included a 15' easement, which is not owned by the property owner but is part of the application. The City Attorney's office did find that notice should have been given from that 15' easement area; so notice was not properly given.

**Chrmn. Katen** added he understands it to say the Board does not have all the information it needs to make a wise decision because of the complications it could have on everyone in the neighborhood.

**Mr. Carey** noted the City Attorney's comment on notice was only one point they commented on. They also commented that the Board could consider the request to allow the 15' easement as an access way, as a public safety issue. He agreed it would present a danger and he would vote against the variance.

**Ms. Seltzer** said the neighbors were concerned about the danger of vehicles entering and exiting the easement, especially with the vehicles being larger than just cars. There wasn't anything presented to the Board to inform them of the possible hazards. She felt this information is something that would and should affect the Board's decision.

**Mr. Carey** disagreed saying the Board was given information by the applicant. It is clearly obvious that it would be used for travel by larger vehicles on the easement, which would not be safe. This is why it should be denied.



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**Ms. Seltzer** made a motion to deny with Mr. Carey seconding. The reason for denial is all the neighbors were not notified and the Board does not have all the correct information as to how this would impact the safety of the neighborhood. The motion carried unanimously with Ms. Seltzer, Messrs. Tuozzola, Haberman, Carey and Katen voting.

**C. OLD BUSINESS**

**D. NEW BUSINESS**

**E. STAFF UPDATE**

**Chrmn. Katen** asked who should be notified to ensure there is air conditioning during the meetings.

**Ms. Harrigan** thought that a request could be made to the Mayor's office. She also suggested contacting Building maintenance.

**Ms. Seltzer** again felt the Board members need to get more information in their packets and not the night of the meeting.

**Chrmn. Katen** said there needs to be better communication between the new Zoning Enforcement Officer, the Assistant City Planner and himself.

**Ms. Harrigan** informed the Board the budget for postage for the Zoning Board of Appeals is slim. This was probably based on the history of the packets sent being very condensed. She said If the Board wants everything ahead of time, we would need to request more money to do so.

**Chrmn. Katen** said emails could be sent out to the Board members informing them to come into the office to pick up the packets.

**Ms. Seltzer** wondered why the smaller paperwork couldn't be scanned and emailed to the Board to which Ms. Harrigan noted there isn't a scanner in Planning and Zoning. Ms. Harrigan suggested rather than trying to decide what to send, that we either mail you everything or continue to mail you a condensed packet.

**Mr. Haberman** said the Board members could come into the office to review the files prior to the meeting.

**Chrmn. Katen** thought the packets should remain the same and if there was additional information, the Board members could come and pick it up.

**Ms. Seltzer** wondered how she would pick up her packet when she works in Greenwich.

**Chrmn. Katen** said it would be worked out.

**E. ACCEPTANCE OF MINUTES FROM MAY 11, 2010 HEARING**

The minutes were accepted unanimously.

**G. ACCEPTANCE OF APPLICATIONS FOR AUGUST 10, 2010 HEARING**

**H. EXECUTIVE SESSION**

The Board members went into Executive Session at 9:03 p.m. and returned at 9:24 p.m.

1. **34 Milford Point Road** – Settlement Discussion.

**Chrmn. Katen** stated the Board has unanimously voted to accept the stipulated agreement as presented by the Assistant City Attorney.

The meeting was adjourned at 9:25 p.m.

Attest:

Rose M. Elliott  
Clerk - ZBA