

Minutes, Public Hearing of Zoning Board of Appeals Meeting held 9 August 2016

The Regular Meeting of the Zoning Board of Appeals of Milford, CT, was held on Tuesday, 9 August 2016, 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 / ROLL CALL

MEMBERS PRESENT: Joseph Tuozzola (Ch), Howard Haberman (Sec), William Soda, John Vaccino

ALTERNATES PRESENT: Gary Dubois, Robert Thomas

MEMBERS/ALTERNATES ABSENT: Alison Rose Egelson, Sarah Ferrante

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

Mr. Tuozzola called the meeting to order at 7:00 p.m. He asked for conflicts of interest for board members with any agenda items; none were raised.

B. CONSIDERATION OF AGENDA ITEMS

1. **30 Wildwood Avenue** (R-5) Kevin Curseaden, Esq., for Kenneth Lesinsky, owner: On remand from the court, rehear Sec. 6.4.2 Lot Merger Appeal, M12, B123, P10.

Attorney Curseaden addressed the board and asked Mr. Harris if he wanted to present history about the action. Mr. Harris shared a summary of the file with Attorney Curseaden who said an aerial photo revealed the presence of a trampoline rather than a permanent pool. Attorney Curseaden said that based on the judge decision, he and his client had already acted to create the 6.4.2 lot. He said tonight's agenda item was an oversight in complying with the court's requirement to remand the item in a new hearing. He described activities of the tenants and neighbors.

Mr. Harris reviewed the packet of materials he had sent to the board, including a 2-page summary of the history of the lot(s). He directed the board's attention to a photograph that depicted an item on the lot that is not a pool, but rather a trampoline with its netting visible. He noted that the packet also contained a flyer from Cabelas with specifications for a pool. He concluded by saying that the opinion he now holds as current ZEO was that previous decisions about the lot having been merged were incorrect. He said it was his opinion that the lots had never, in fact, been merged.

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. Tuozzola also substituted **Mr. Thomas** for the absent Ms. Ferrante.

Mr. Soda motioned to overturn the decision of the ZEO. **Mr. Haberman** seconded. The motion carried with **Messrs. Haberman, Soda, Thomas, Vaccino, and Tuozzola** voting with the motion.

2. **226 Second Avenue** (R-10) Thomas Lynch, Esq., for Robert Dowling, owner of 227 Second Avenue; referenced property owner: Ted Krolkowski; Sec. 9.2.1: Appeal the Decision of the Zoning Enforcement Officer regarding permit issued at 226 Second Ave; scope of work does not comply with Sec. 6.2.3; M6, B82, P2.

Attorney Lynch addressed the board. He provided a handout of the property. He stated that the appeal was timely under constructive notice within 15 days of the permit being issued on June 2. He noted that the owner of 226 Second Avenue had received a side-yard variance the previous month, but said there should have been a variance required for the front yard as well. He noted file references deeming the house a 2-family. He said the addition represented an illegal

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expansion of a nonconforming use, referring to the work being done on the part of the property that faces Second Avenue. He said the addition was not a projection and only has a setback of 20.5'. He noted that when Mr. Soda questioned the lack of a front-yard variance last month, Mr. Harris said it was not required because of the Sec. 4.1.4.2 regulation regarding porches. Attorney Lynch showed photographs that indicated the replacement of a porch with a deck without reference to a date. He said you can't knock a porch down, create a deck, and then enclose that. He provided a second argument that the enclosure represents an expansion of a nonconforming use, because the house is a 2-family, not a single family use and therefore Sec. 4.1.4.2 doesn't apply to it. He referred to *Munroe v. Branford* regarding vertical expansion and its impact on surrounding structures. Attorney Lynch said there was no intrinsic right to a water view, but that there is a right to expect that zoning regulations will be respected.

Mr. Harris stated that all new construction on the house is within the existing footprint of the house. He said that in its decision on 6 Silver Street a few months ago, this ZBA took a vote that allowed vertical structure expansion without a variance. He said he considered the terms "porches" and "decks" to be generally interchangeable. He said he is convinced that the wraparound porches shown in photographs of the property existed long before 1948.

DISCUSSION

Mr. Soda said he thought the definition of a porch versus a deck is that a porch requires a roof while a deck does not. Some discussion ensued.

REBUTTAL

Attorney Lynch referred to the architect's description on the plans for 226 Second Avenue, noting that the architect referred to the to-be-enclosed structures as decks. He noted that the photographs show a porch rather than a deck. He said that decks had replaced the porches and that the 4.1.4.2 regulation is limited to porches.

OPPOSED

Ted Krolikowski said he was not extending his house past his neighbor's. He said he is partially disabled and needs the elevator. He disputed that there was a deck being enclosed. He said he needed space for mechanicals and for eventual wheelchair access.

BOARD DISCUSSION

Mr. Tuozzola asked if anyone wished to speak in favor of the application. Hearing none, he closed the hearing. **Mr. Vaccino** felt that no change in the footprint meant there was no expansion in the non-conformity. **Mr. Haberman** had been concerned that a change from a porch to an elevator meant a change in use, but was reassured it was not. **Mr. Soda** said he had a problem with the expansion and the definition of a porch. **Mr. Soda** said an elevator could be put inside the house to create better use of space.

Mr. Haberman motioned to uphold the decision of the ZEO. **Mr. Thomas** seconded. The motion carried with **Messrs. Haberman, Thomas, Vaccino, and Tuozzola** voting **with the motion** and **Mr. Soda** voting **against the motion**.

At this point in the meeting, Mr. Tuozzola advised that the order of the agenda would be modified to allow item 7 to be heard next. Please see Item 7 for those proceedings. Published agenda order resumed after Item 7 was settled.

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3. **1191 New Haven Avenue** (R-12.5) Thomas Lynch, Esq., for Cathy Kitko and Arthur Viola, owners; Sec. 2.5.5 vary rear lot width to 126' where 150' req, subject to re-subdivision approval from Planning & Zoning Board per CT Gen. Stat. Sec. 8-26 for construction of single family residence; M70, B713B, P50.

Mr. Soda recused himself and **Mr. Dubois** was asked to replace him. **Attorney Lynch** addressed the board. He stated that his client Ms. Lutz was present. He described the Appeal of Decision of the City Planner last month. He said he consulted the City Planner and City Attorney. He noted the neighbors' desire to see the lot used for a single family home. He reviewed the history of the property. He noted that the frontage requirement was in dispute and was asking for the lot width to be varied. He noted that the area requirement of the lot is 5 times bigger than it must be. He said he was asking for the variance of the front lot line, not the subdivision rules.

DISCUSSION

Mr. Haberman said he felt there was a hardship with the land.

FAVOR

Joel Gorkowski, 15 Kerry Court, had photos of the property that he shared with the board. He said it was a beautiful property and would be suitable for a single family house.

Scott Barnett, 1202 New Haven Avenue, said he knew the Lutzs, that they would be good neighbors, and that the plans were the highest and best use.

Joe McGarry, 55 Village Road, said he was in favor of the variance.

Alexander Pazsak, 1181 New Haven Avenue, said he was in favor of the variance.

Jay Barone, 274 Chapel Street, sent an email in support of the variance that Attorney Lynch read.

BOARD DISCUSSION

Mr. Tuozzola asked if anyone wished to speak 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. Vaccino motioned to approve. **Mr. Haberman** seconded. **Mr. Vaccino** supported his motion by reason of hardship of the irregular lot, exactly per the submitted materials. The motion carried with **Messrs. Dubois, Haberman, Thomas, Vaccino**, and **Tuozzola** voting **with the motion**.

4. **691 East Broadway** (R-5) Dan Orth, agent, for Pom Choon Kim & Victor Ng, owners; Sec. 4.1.4 vary north deck proj to 4'11" where 8' perm, AC platform to 1'11" where 8' perm; M22, B474, P7.

Mr. Soda was reseated. **Ms. Choon Kim** addressed the board. She stated that her request was to extend the walkway and described their desire to access the front deck. She detailed aspects of the plan. **Mr. Orth** discussed the property's Base Flood Elevation and said the air conditioner platform had to be elevated.

DISCUSSION

Mr. Tuozzola confirmed that the AC platform was 10' high. He asked why the platform had to be 10' long. **Ms. Choon Kim** said it was for service access. **Mr. Soda** said 4' provides adequate service access for an air condition. He wanted a restriction on the length of the platform added to any approval as well as a limit of 42" imposed on the width of the planned walkway, as had been done with other similar recent projects.

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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. Soda motioned to approve with conditions of 42" walkway with a 3'x4' jut for the AC. **Mr. Vaccino** seconded. **Mr. Soda** supported his motion by reason of hardship of the narrow lot, exactly per the submitted materials. The motion carried with **Messrs. Haberman, Soda, Thomas, Vaccino, and Tuozzola** voting **with the motion**.

5. **860 West River Street** (DO-25) Natalie Scherbaum, owner; Sec. 3.1.4.1(3) vary to permit keeping of poultry in DO-25 zone; M6, B83, P3A.

Ms. Scherbaum and Mr. Brian Scherbaum addressed the board. Mr. Scherbaum stated that they live in a residential area that was somehow zoned as office space. He said he has plenty of room for the chicken coop he wants.

DISCUSSION

Mr. Tuozzola asked Mr. Harris for clarification of the zoning and confirmed with the owners that there would be 6 chickens and no rooster.

BOARD DISCUSSION

Mr. Soda asked **Mr. Harris** how many hens were allowed, who replied that 10 hens based on the abutting RA zone. **Mr. Vaccino** asked if conditions had to be attached to limit roosters. After hearing no one in favor or opposed, and after a short discussion, there were no issues in dispute, so **Mr. Tuozzola** asked for a motion.

Mr. Vaccino motioned to approve with conditions of no more than 10 hens and no rooster. **Mr. Soda** seconded. **Mr. Vaccino** supported his motion by reason of hardship of the non-residential zoning assignment. The motion carried with **Messrs. Haberman, Soda, Thomas, Vaccino, and Tuozzola** voting **with the motion**.

6. **1080 Bridgeport Avenue** (CDD-3) Theresa Britton, agent, for Altama, LLC, owner; Sec. 5.4.2.1 vary to permit lot size of 20,847 where 22,000 req for auto repair and used car sales; M43, B488, P10A.

Winthrop Smith of Dey, Smith, Steele, LLC, 9 Depot Street, addressed the board. He stated that the parcel was the old Wayne Tire shop. He said a trust that owned the property now. He said the request was to allow a preexisting use to continue.

DISCUSSION

Mr. Haberman confirmed that the primary use was likely to be car sales, with no gasoline sales.

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. Haberman motioned to approve. **Mr. Vaccino** seconded. **Mr. Haberman** supported his motion by reason of hardship of the small lot, exactly per the submitted materials. The motion carried with **Messrs. Haberman, Soda, Thomas, Vaccino, and Tuozzola** voting **with the motion**.

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7. **20 Wilson Street** (R-10) Stanley Surel, owner; Sec. 3.1.4.1 vary east side-yd to 9.01' where 10' req for addition; M64, B930, P17.

Christine Surel addressed the board. She stated that she and her husband are lifelong residents. She said her mother will move in to help with their 4 adopted special-needs children. She described the issues the children have. She described how the addition will enable her children to progress.

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. Soda motioned to approve. **Mr. Haberman** seconded. **Mr. Soda** supported his motion by reason of hardship of disability. The motion carried with **Messrs. Haberman, Soda, Thomas, Vaccino, and Tuozzola** voting **with the motion**.

B. OLD BUSINESS

C. NEW BUSINESS

D. STAFF UPDATE

F. ACCEPTANCE OF MINUTES FROM 12 JULY 2016 HEARING Mr. Vaccino

G. ACCEPTANCE OF APPLICATIONS FOR 13 SEPTEMBER 2016 HEARING

8:28

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