

## **Minutes, Public Hearing of Zoning Board of Appeals Meeting held 11 August 2015**

The Regular Meeting of the Zoning Board of Appeals of Milford, CT, was held on Tuesday, 11 August 2015, 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 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 Mr. Dubois to vote in Ms. Ferrante's absence. He asked for conflicts of interest for board members with any agenda items; none were raised.

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

1. **53 Chatham Avenue** (R-7.5) Joseph Viscount, Jr., owner; Vary Sec. 5.16.3 to install an emergency back-up generator in the front yard of a home; Map 20, Block 224, Parcel 17.

**Mr. Viscount** addressed the board. He stated that he is a 100% disabled veteran and that his wife also has disabilities. He described adaptive technology in his home that requires uninterrupted electric power. He said his front yard is disable-accessible, but not his backyard, necessitating the placement of the generator.

#### **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 in favor of application. **Mr. Soda** seconded. **Mr. Haberman** supported his motion by reason of hardship of disability and the hardship of the lot, exactly per the submitted materials. The motion carried with **Messrs. Dubois, Haberman, Soda, Vaccino** and **Tuozzola** voting **with the motion**.

2. **990 Naugatuck Avenue** (HDD) Brian Stone, Esq., Attorney, for The Housatonic Terminal, LLC, appellant (Recycling, Inc., owners); Sec. 9.2.1: Appeal the Decision of the Zoning Enforcement Officer on 22 May 2015; Map 40, Block 300, Parcel 2.

**Attorney Stone**, Pellegrino Law, 475 Whitney Avenue, New Haven, asked for an extension, which the Board granted.

3. **105 Merwin Avenue** (R-7.5) Kevin J. Curseaden, Esq., Attorney, for P. Dreyer and K. O'Malley, owners; Vary Sec 3.1.4.1, side-yl setbacks as follows: east—4.9' where 10' req, west—3.5' where 5' req; 4.1.4: east stairs—1.7' proj where 8' perm, east eave—3.9' proj where 8' perm, west eave—2.5' proj where 4' perm for new single family home, Map 59, Block 795, Parcel 43.

**Attorney Curseaden**, Carroll, Curseaden and Moore, 26 Cherry Street, addressed the board. He confirmed that proper notice had been made. He handed out a set of documents concerning the history of the lot and structure relative to Milford zoning regulations, stating that both the lot and structure complied with requirements at the time the house was built. He described aspects of non-compliance with current regulations, FEMA flood mitigation requirements, state statutes, and building code. He said the hardships were the size and width of the lot, and the location of the structure in

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the VE/AE flood zones. He described variation in the city's topography and said there was unusual hardship due to this property's low elevation. He said the requested side-yard setbacks are smaller than the existing side-yard setbacks. He stated that granting the variance would not negatively impact the comprehensive zoning plan of the city. He read a letter of support from a neighbor and submitted it for the file. He presented the board with a draft motion of approval in hopes that if the variance were approved, the language would be more apt to survive an appeal.

### **DISCUSSION**

**Mr. Haberman** confirmed that there would be off-street parking. **Mr. Tuozzola** confirmed that the house would be more centered on the lot.

### **FAVOR**

The submitted letter referenced above expressed support for the project.

### **OPPOSED**

**John Walsh**, residing at 107 Merwin, said he also owns 106 and 109 Merwin. He stated his opposition. He submitted photographs to the board. He disputed the purchase timeframe and the value of the property. He noted that his property at 109 Merwin has deeded beach access that crosses 107, saying the proposed setback would narrow the access way. He said his view would be affected. He said he didn't understand the hardship or need to rebuild. He said the letter of support was based on misinformation. **Mr. Soda** referred to the survey and noted that the proposal actually increases the width of the right of way and that most of the right of way is already on Mr. Walsh's property.

### **REBUTTAL**

**Attorney Curseaden** said no minimum width was required for the deeded access. He said the house was being moving toward the beach, but that would not exceed that setback, noting that the drawback would be that the structure would be set further into the VE flood zone. He said the houses surrounding the property had been built with variances and submitted copies of them. Hardships underlying those variances were narrowness of the lot. He said there had been no misrepresentation of the project. He said the assessed value had only referred to the structure. **Mr. Soda** confirmed that new footprint was about 4.5'-5' longer than the previous house. **Attorney Curseaden** said Mr. Dreyer wanted to maintain good relations with his neighbors.

### **BOARD DISCUSSION**

**Mr. Soda** said the lot was extremely narrow but the house was only 20' wide. **Mr. Haberman** noted the reduced nonconformities. **Mr. Vaccino** felt the project was in character with the neighborhood. **Mr. Haberman** said to replace the existing house would require similar variances. **Mr. Vaccino** agreed and said the flood risk mitigation was positive.

**Mr. Vaccino** motioned in favor of application. **Mr. Haberman** seconded. **Mr. Vaccino** supported his motion by reason of hardship of the size, shape, elevation, and narrow lot, exactly per the submitted materials. The motion carried with **Messrs. Dubois, Haberman, Soda, Vaccino and Tuozzola** voting **with the motion**.

4. **230 Cherry Street** (CDD-1) Thomas Lynch, Esq., Attorney, for Southington Wine, Inc., appellant; Sec. 9.2.1: Appeal the Decision of the Zoning Enforcement Officer for failure to revoke approval of subject parcel as location for package store liquor permit; Map 77, Block 825, Parcel G1.

**Attorney Lynch**, Lynch, Trembicki and Boynton, 63 Cherry Street, addressed the board. He stated that his client John Palumbo, the owner of Wine and Spirits Company, 177 Cherry Street, was present. He presented materials to the board and noted a letter containing a certified measurement of the distance from his client's liquor store to the new Total Wine and Liquor store. He said the distance between the stores violates the city's zoning regulations. He referred to documentation granting the liquor permit. He noted the completion of the building. He noted that his firm has also filed an injunction against opening the store, saying that administrative remedies must be exhausted before filing the suit,

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hence his appeal. He anticipated an argument that 230 Cherry Street would be characterized as a shopping center. He said shopping centers aren't defined in the zoning regulations. He stated that the planned structures were actually 3 freestanding buildings, noting that only one of the buildings had been constructed. He reviewed materials about the project and noted that they contain no references to a shopping center. He referred to the 1500' distance regulation, and the allowance of 1 permit per 40,000 sf. He said there is only 1 building on the site with 28,000 sf. He noted other revocations of liquor permits.

**Stephen Harris**, Zoning Enforcement Officer, City of Milford, addressed the board. He reviewed details of the proposed project. He referred to Attorney Lynch's letter, saying it incorrectly referenced a portion of the regulations. He said he did not respond to Attorney Lynch and stated that the lack of a response cannot be appealed. He described other shopping center configurations in the city. **Mr. Tuozzola** confirmed that when the appellant's liquor store proposal was approved, it considered part of a shopping center. **Mr. Soda** asked Mr. Harris to provide examples of similar shopping center configurations. **Mr. Tuozzola** confirmed that the Planning and Zoning Board had approved the plan for 230 Cherry Street without knowing which other retailers would be in the center.

### **REBUTTAL**

**Attorney Lynch** disputed Mr. Harris' interpretation of zoning regulation 5.5.3. He contrasted the project with other plazas containing multiple-tenant buildings, reasserting that the site is not a shopping plaza.

### **OPPOSED**

**Michael Lavelle**, Esq., Pullman and Comley LLC, 850 Main Street, Bridgeport, said his firm represented Total Wine and Liquor. He noted the presence of John Ceruzzi, developer, and of staff from Total Wine. He said that not rescinding a permit is not an appealable action and that an appeal can't be self-generated by sending a letter. He said the CT Supreme Court had settled this issue conclusively last year. **Attorney Lavelle** provided a shopping center definition, saying it is a set of stores with common parking under a single ownership or management. He said all the stores appear on the site plan and special permit, and that 5.5.5 doesn't require that the entire 40,000 sf complex be complete for the exception to apply. He said the State of CT has a 5-year window to complete development projects. He disputed the idea that buildings had to be contiguous to create a shopping center. **Mr. Soda** confirmed that parking for the entire site was not yet finished.

**John Ceruzzi**, 230 SR Cherry LLC, addressed Mr. Soda's question. He said the parking lot was not yet complete. **Mr. Soda** asked if the parking had to be complete for a Certificate of Occupancy to be issued, and was told this was not required. They discussed the similarities with Lowe's Plaza. **Mr. Ceruzzi** cited "shopping center" references in the submitted materials. He said construction was progressing according to plan and that ShopRite would open in April or May of 2016. **Mr. Vaccino** confirmed driveways run between Cherry Street and the Post Road, effectively sharing the lot among the stores.

### **REBUTTAL**

**Attorney Lynch** reaffirmed that even if there is a shopping center, regulation restricts granting liquor licenses to structures of 40,000 sf per liquor license. He said his client was being put into an adverse position during the period when there is less than 40,000 sf. He described the timeline to filing the appeal.

### **BOARD DISCUSSION**

**Mr. Tuozzola** closed the hearing. **Mr. Soda** asked about the permit to build ShopRite; **Ms. Greene** provided the rest of the file for him to review. **Mr. Haberman** said he thought the project was a shopping center. **Mr. Vaccino** felt the intention was to create a shopping center. **Mr. Soda** discussed information from the file. **Mr. Tuozzola** asked if the board wanted to make a motion or to continue to September. **Mr. Vaccino** motioned to uphold the decision made by the ZEO. **Mr. Haberman** seconded. The motion carried with **Messrs. Dubois, Haberman, Soda, Vaccino and Tuozzola** voting **with the motion**.

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5. **53 Warfield Street** (LI) Kevin J. Curseaden, Esq., Attorney, for GNN Realty, LLC, owner; Vary Sec. 3.10.2.3 to 22,949+/- sq ft (~.53 acre), where 1 acre req for vehicle repair and svcs; Map 23, Block 344, Parcel 10.

**Attorney Curseaden** addressed the board. He stated that the request was heard by the board 6 months ago and denied. He described the history and use of the property. He said the state statutes had changed since original building proposal. He provided documents approving the garage use by various previous city officials, saying they show clear intention of the building being used as a garage. He said the hardship was that the lot was undersized for the required use. He described conversations with the DPLU director disagreeing with the ZEO. He said the highest and best use of the property would be for the use proposed. He referred to the 11 Warfield ZBA decision for comparison. **Mr. Tuozzola** asked for clarification of the process for signature on the K-7 form and variances in general. **Attorney Curseaden** noted that the request would still have to go to the Planning and Zoning Board for a Special Permit; he cited an earlier approval by that board under different rules.

**Dave Young**, 53 Warfield, noted his military service and that of his wife. He said he wants to expand the business and can't at his current address, also in Milford.

### FAVOR

**Christopher Lickteig**, 76 Wooster Street, spoke in favor of the application. He said he lives and works in the neighborhood and hated to see a building go into disrepair for lack of an intended use.

### BOARD DISCUSSION

**Mr. Soda** said he visited the site 3 times and saw other neighboring sites doing similar work. He noted that there was no opposition being expressed. **Mr. Vaccino** and **Mr. Haberman** also noted lack of opposition. **Mr. Soda** said the industrial uses preceded the residential use in the neighborhood.

**Mr. Soda** motioned in favor of application. **Mr. Soda** supported his motion by reason of the size of the lot and its configuration for the proposed use, and that there was no opposition. No second was forthcoming, so Mr. Soda withdrew his motion. **Ms. Greene** provided the file to the board to research but noted that the file would not contain minutes. **Mr. Vaccino** noted that other conforming properties could likely be located for the use. **Mr. Soda** said the site was well suited to the use by design. **Mr. Soda** resubmitted his motion. **Mr. Vaccino** seconded. **Mr. Soda** based his approval on the hardship of the size of lot, suitability for the use, and lack of opposition. The motion carried with **Messrs. Dubois, Haberman, Soda, Vaccino and Tuozzola** voting **with the motion**.

6. **24 Coolridge Road** (R-5) Catherine Kopchak, owner; Vary Sec. 3.1.4.1 side-yd setback to 4.4' where 5' req for addition; Map 30, Block 634, Parcel 10.

**Jeff Jannke, AIA**, Quisenberry, Arcari, Farmington, addressed the board. He described the project as being part of the Sandy rehabilitation project. He provided details of the project.

### 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. Vaccino** motioned in favor of application. **Mr. Soda** seconded. **Mr. Vaccino** supported his motion by reason of not increasing nonconformities, exactly per the submitted materials. The motion carried with **Messrs. Dubois, Haberman, Soda, Vaccino and Tuozzola** voting **with the motion**.

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7. **25 Eastern Parkway** (R-5) Kenneth McNary and Nancy McNary, owners; Vary Sec. 3.1.4.1 side-yd setback to 6.8' where 10' req for mudroom addition; Map 14, Block 22, Parcel 3.

**Ms. McNary** addressed the board. She shared a sketch of the proposed mudroom and described the need for it based on how the family enters and exits the home from the driveway.

### **DISCUSSION**

**Mr. Vaccino** confirmed the setbacks with **Mr. Harris**.

### **FAVOR**

**Ken McNary**, 25 Eastern Parkway, said he was in favor.

### **BOARD DISCUSSION**

**Mr. Tuozzola** asked if anyone else 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 in favor of application. **Mr. Soda** seconded. **Mr. Haberman** supported his motion by reason of hardship of the narrow lot, exactly per the submitted materials. The motion carried with **Messrs. Dubois, Haberman, Soda, Vaccino** and **Tuozzola** voting **with the motion**.

**B. OLD BUSINESS:** None

**C. NEW BUSINESS:** None

**D. STAFF UPDATE:** None

### **F. ACCEPTANCE OF MINUTES FROM 14 JULY 2015 HEARING**

**Mr. Vaccino** provided a correction to the minutes, then motioned to accept as amended. The motion carried unanimously.

### **G. ACCEPTANCE OF APPLICATIONS FOR 8 SEPTEMBER 2015 HEARING**

**Mr. Tuozzola** noted that 990 Naugatuck would be heard. **Mr. Harris** said an appeal of decision of the DPLU Director had also been received.

The meeting was adjourned at 9:39 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