

## **Minutes, Public Hearing of Zoning Board of Appeals Meeting held 10 October 2023**

The Regular Meeting of the Zoning Board of Appeals of Milford, CT, was held on Tuesday, 10 October 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 6 had been postponed.

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

**ALTERNATES PRESENT:** Gary Dubois, Carmina K. Hirsch

**MEMBERS/ALTERNATES ABSENT:** Mike Smith

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

### **CONSIDERATION OF AGENDA ITEMS**

1. **23 Pearl Street**, MBP 22/459/1; R-5; R. Nicola, Esq./R. Kelly, Esq., for Mark and Toni Piazza, appellants; Appeal the Decision of the Zoning Enforcement Officer in accordance with the provisions of section 9.2.1 regarding issuance of a Notice of Violation dated 6/28/23 demanding removal of deck and removal of improvements to rear building.

**Attorney Ryan Kelly**, 799 Silver Lane, Trumbull, addressed the board. He said the appeal was in response to a notice of zoning violation dated 28 June 2023. He said his clients purchased the home 2 weeks prior. He reviewed the history of the CT General Statute 8-13a which says that if a structure that is not zoning compliant has been situated for 3 years without municipal action, it can remain. He said 2 structures were at issue—a deck and a shed. When asked by **Mr. Tuozzola**, he said the variance request for the deck was because it is in the setback. He offered to provide the text of the statute; **Mr. Soda** asked for a copy. **Attorney Kelly** said the fact that the deck and shed have been taxed for years indicates that the city was aware of the structures.

**ZEO Harris** displayed relevant documents as he read the following into the record:

#### **SUMMARY OF FACTS & PROCEDURAL HISTORY:**

1. *On June 11, 2002, the ZBA denied a request for a deck but approved a request to keep a shed.*
2. *A review of City records did not return either permits or approvals for the deck or improvements to the shed.*
3. *On May 22, 2023, a field inspection showed a deck had been constructed between the house and rear shed and that the shed had been improved with new flooring, sheetrock, lighting, and a kitchen, minus the stove.*

#### **CITY'S POSITION:**

1. *The Zoning Board of Appeals denied the construction of the deck. Therefore, it should not have been built.*
2. *The improvements to the shed should not have been made without a permit or approval.*
3. *The Appellant claims the deck and shed are protected under CGS 8-13a. Assessor's records show the shed was built in 1915, prior to the adoption of zoning in 1930. It is therefore considered existing nonconforming as to its location and may continue. The deck was constructed at some time after the 2002 variance request to construct it was denied.*

#### CGS 8-13a reads, in relevant part:

**"Sec. 8-13a. Nonconforming buildings, structures and land uses.** (a)(1) When a building or other structure is so situated on a lot that it violates a zoning regulation of a municipality that prescribes the location of such a building or structure in relation to the boundaries of the lot... and when such building or structure has been so situated for three years without the institution of an action to enforce such regulation, such building or structure shall be deemed a nonconforming building or structure..."

*The plain language of CGS 8-13a does not protect a structure specifically denied a variance to be built. To claim otherwise would turn variance denials on their head.*

*CGS 8-13a does not protect interior improvements to a building without a permit.*

#### **CONCLUSION:**

1. *A variance to construct the deck was denied.*
2. *The deck was illegally constructed after the variance denial.*
3. *The plain language of CGS 8-13a does not protect structures denied a variance and does not protect interior renovations to buildings performed without a permit.*

*For these reasons I respectfully ask the Board to uphold the Notice of Violation.*

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**Mr. Soda** asked if the outbuilding had a bathroom; ZEO Harris said he was unable to enter it, so he did not know. **Mr. Soda** asked about the size of the shed; **Attorney Kelly** said the shed was a little over 400sf. **Mr. Tuozzola** confirmed that none of the violations had come up prior to the real estate transaction. **Mr. Soda** confirmed that the closing date was in mid-June prior to receipt of the violation letter. **Ms. Ferrante** asked how the issue came to ZEO Harris's attention; he said violations typically begin with a complaint by a 3<sup>rd</sup> party, but he could not recall the specifics in this instance. **Mr. Wolfe** asked if there was a foundation under the deck, it was unclear.

**Attorney Kelly** said he found no mention of variances or interior remodeling in the statute. He said there was an issue of fairness since the violation pertained to what a previous owner did 20 years ago. He said clients wanted to work toward a zoning compliant resolution and possibly attach the shed to the house and convert it to living space. He said he thought the statute with its 3-year limit was designed to protect people against this type of thing. He understood that there was a concern that the shed would be used as an accessory apartment but there was no intent to do so.

**Ms. Hirsch** commended the applicants for being open to working with the city to resolve the problem. She confirmed with Attorney Kelly that the previous owner had resided at the property since 1985. She said that when the ZBA specifically denies an application, it shouldn't be possible to build a structure anyway and hope it isn't discovered. **Mr. Wolfe** asked about due diligence in a municipal search and was told that a title search typically researches violations and open permits. He confirmed that the deck was built in 2002. **Ms. Ferrante** expressed surprise that the variance denial failed to come up in a municipal search.

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

**Mr. Wolfe** moved to *uphold the decision of the Zoning Enforcement Officer* in accordance with the provisions of section 9.2.1 regarding issuance of a Notice of Violation dated 6/28/23 demanding removal of deck and removal of improvements to rear building.

**Mr. Montano** seconded.

**Discussion:** **Mr. Soda** said he felt the city was aware of the structures and agreed that there was an issue of fairness involved. **Ms. Ferrante** said the zoning office can't be expected to police whether people are doing what they were specifically told they can't do. **The motion passed with Ms. Ferrante and Messrs. Tuozzola, Wolfe voting with the motion.**  
**Messrs. Soda and Montano voted against the motion.**

2. **170 Broadway** MBP 13/132/07; R-5; Kevin Curseaden, Esq., for 170 Broadway, LLC, owner; Vary sec 3.1.4.1, westerly side-yard setback to 3' where 10' required; 4.1.4 westerly side-yard deck projections to 1.5' where 8' permitted, all for newly elevated single-family home in accordance with the submitted materials and Site Plan Codespoti & Associates, 8/4/20, revised, 6/7/23.

**Mr. Tuozzola** said this item was closed in September and was before the board for a vote only. He asked **Ms. Hirsch** to vote for Mr. Soda who was absent. **Mr. Tuozzola** then asked for a motion.

**Ms. Ferrante** moved to *approve with conditions* the request to vary sec 3.1.4.1 westerly side-yard setback to 3' where 10' required. 4.1.4. vary westerly side yard projection to 1.5' where 8' permitted for deck projections to construct a new single-family dwelling in accordance with the submitted materials and Site Plan Codespoti & Associates, 8/4/20, revised, 6/7/23.

Conditions: The westerly side-yard setback to 3' where 10' required is approved, but the westerly side-yard projection to 1.5' where 8' permitted is denied.

**Ms. Hirsch** seconded.

**Discussion:** **Ms. Ferrante** said she appreciated the effort to reduce flood risk by moving the structure further from the water, but thought the amount of deck requested was excessive, hence her condition.

**The motion carried with Mss. Ferrante and, Hirsch and Messrs. Montano, Tuozzola, Wolfe voting with the motion.**

3. **819 East Broadway**, MBP 27/474/50-A; R-10; Kevin Curseaden, Esq., for Jason Garelick, owner; Sec. 3.1.4.1 North side yard to 5' where 10' required. 4.1.4: Northerly projection to 3.5' where 8' permitted. 4.1.4: Southerly projection of 1.7' where 4' permitted. Survey Paul Stowell, 9/29/23.

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**Attorney Curseaden**, 3 Lafayette Street, addressed the board. He introduced his client. He said the site was a preexisting 3900 sf nonconforming lot with a house built around 1920, prior to zoning regulations. He said the lot was much longer now than when it was created due to sand redistribution. He said if he elevates the structure, stairs can be extended without a variance, but since this would be a new house, that exemption doesn't apply. He said the width of the lot is a hardship and because the plan reduces an existing nonconformity, that can also be incorporated into a hardship consideration. He said the most important nonconformity is making the house compliant with FEMA flood mitigation rules. He said the proposed house would be 20' wide if variances are approved and that Milford's interpretation of the regulations also created a hardship due to the ability to add floor restricting the ability to change the structural footprint.

**Ms. Hirsch** asked if the property is to be used as an investment or a primary residence; **Attorney Curseaden** said the latter. **Mr. Montano** asked about a previous application. **Attorney Curseaden** said the previous plan was to add on to an old structure, but his client decided to build a new house instead. He submitted more letters of support.

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

### PUBLIC COMMENT

Gloria Lanna, 823 East Broadway, said she lives next door, has no objection to the plan, and that they are wonderful neighbors.

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

**Ms. Ferrante** motioned to **approve** the request to vary Sec. 3.1.4.1 North side yard to 5' where 10' required. 4.1.4: Northerly projection to 3.5' where 8' permitted. 4.1.4: Southerly projection of 1.7' where 4' permitted. Survey Paul Stowell, 9/20/23. Plans, Mingoello & Associates Architects, LLC, 7/5/23.

**Mr. Soda** seconded.

**Discussion:** **Mr. Soda** said he did not have a problem with the application.

**The motion carried with Ms. Ferrante and Messrs. Montano, Soda, Tuozzola, Wolfe voting with the motion.**

4. **59 Harvest Lane** MBP 120/906/3; R-A; Thomas Lynch, Esq. for Dennis Murray, owner; Vary sec. 3.1.4.1. southerly side-yard setback to 10.5' where 15' required; 6.3.2 to allow expansion of non-conforming structure, to construct master bedroom addition to single family dwelling in accordance with the submitted materials and Survey James A. Dennison, 3/16/23. Plans, JMR, 4/6/23.

**Attorney Lynch**, 63 Cherry Street, addressed the board. He introduced his client, saying the goal was to enlarge the master bedroom. He said the Harvest Lane subdivision was created in the 1970s and he originally suspected it was part of a cluster development but found no evidence of that. He said the lot is nonetheless undersized for an R-18 zone. The lot is narrow and tapers so no good alternative exists for the expansion. He referred to Joe Rousseau's floor plans and called it a reasonable request.

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

**Ms. Ferrante** moved to **approve** the request to vary sec. 3.1.4.1. southerly side-yard setback to 10.5' where 15' required; 6.3.2 to allow expansion of non-conforming structure, to construct master bedroom addition to single family dwelling in accordance with the submitted materials and Survey James A. Dennison, 3/16/23. Plans, JMR, 4/6/23.

**Mr. Soda** seconded.

**Discussion:** **Mr. Soda** and **Mr. Wolfe** said they had no problem with the request.

**The motion carried with Ms. Ferrante and Messrs. Montano, Soda, Tuozzola, Wolfe voting with the motion.**

5. **5 Clinton Street** MBP 71/756/6; R-7.5; Thomas Lynch, Esq. for Irit and Jonathan Perkins, owners; Vary sec. 3.1.4.1 west setback to 3' where 5' req. for elevator; rear setback of 4.9' and 23.8' where 25' req. for addition/elevator; bldg. area to 41.1% where 40% permitted; lot coverage to 63.3% where 60% permitted; sec. 4.1.4 rear projection to 18.2' where 21' permitted for deck; sec. 6.3.2 expansion of nonconforming structure. Survey, Codespoti and Associates, 5/18/23, revised 8/16/23. Plans, A.J. Duchon Architect, 2/23, revised 8/1/23.

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**Attorney Lynch**, 63 Cherry Street, addressed the board. He said despite its several elements, the request was modest. He said the lot is 3000 sf and referred to the survey to show differences between the existing and proposed structures. He said an old garage had been removed and an existing deck that extends to the property line will also be removed. He said the proposed addition would occupy some of the current deck area. He described the reconfiguration of the floor plan, and noted that the addition would reduce the nonconformity of the deck. He said the request was reasonable and that nonconformities have been reduced. He noted receipt of 12 letters of support from neighbors, including the 2 neighbors most affected by the addition.

**Mr. Tuozzola** and **Attorney Lynch** discussed how the deck and garage might have gotten so close to property line. **Attorney Lynch** said the plans only adds 276 sf to the building area. **Mr. Soda** asked if the deck predated 2020 and was told the architect estimated the deck to be 20 years old, whereas the garage was built in 1930.

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

### PUBLIC COMMENT

**Rick Mangione**, 6 Clinton Street, said he had no objection to the plans.

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

**Ms. Ferrante** motioned to **approve** the request to vary sec. 3.1.4.1 west setback to 3' where 5' req. for elevator; rear setback of 4.9' and 23.8' where 25' req. for addition/elevator; bldg. area to 41.1% where 40% permitted; lot coverage to 63.3% where 60% permitted; sec. 4.1.4 rear projection to 18.2' where 21' permitted for deck; sec. 6.3.2 expansion of nonconforming structure. Survey, Codespoti and Associates, 5/18/23, revised 8/16/23. Plans, A.J. Duchon Architect, 2/23, revised 8/1/23.

**Mr. Soda** seconded.

**Discussion:** **Mr. Soda** noted the presence of the nonconforming deck on a 2009 site plan, **Ms. Ferrante** said the lot is very small relative to nearby lots.

**The motion carried with Ms. Ferrante and Messrs. Montano, Soda, Tuozzola, Wolfe voting with the motion.**

6. **72 Westport Place** MBP 85/924/1H; R-30; Thomas Lynch, Esq. for James Cottrell, owner; 3.1.4.1: south setback from to 7' where 15' req. for addition. East setback to 5' where 10' req. for Accessory Structure. 4.1.1.1: Front-yard setback to 25' where 40' req. for pool. 4.1.4: Front-porch projection to 5.8' where 4' permitted. 4.1.4: Rear deck projection to 6.3' where 4' permitted. 4.1.5: Terrace projection to 8.9' where 15' permitted in front yard. Survey, Codespoti & Associates, 7/25/23, revised 9/20/23.

**POSTPONED**

- A. NEW BUSINESS** - None
- B. OLD BUSINESS** - None
- C. STAFF UPDATE** - None
- D. ACCEPTANCE OF MINUTES FROM 13 SEPTEMBER HEARING:** Approved.
- E. ACCEPTANCE OF APPLICATIONS FOR 14 NOVEMBER HEARING**

Adjournment was at **8:25 PM**.

Attest:

M.E. Greene, Clerk, ZBA

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.**