

## **Minutes, Public Hearing of Zoning Board of Appeals Meeting held 11 October 2022**

The Regular Meeting of the Zoning Board of Appeals of Milford, CT, was held on Tuesday 11 October 2022, 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**

**Ms. Ferrante** advised that Chairman Tuozzola, Mr. Smith, and Mr. Dubois were excused, and she would chair the meeting. She said Item 3 (114 Merwin Avenue) had a request for postponement until the November meeting; she opened 114 Merwin Avenue and tabled it until next month. She asked **Ms. Hirsch** to act as Executive Secretary and provide the 5<sup>th</sup> vote for the evening.

**MEMBERS PRESENT:** Sarah Ferrante, Gary Montano, William Soda, Christopher Wolfe

**ALTERNATES PRESENT:** Carmina K. Hirsch

**MEMBERS/ALTERNATES ABSENT:** Gary Dubois, Mike Smith, Joseph Tuozzola (Ch)

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

### **CONSIDERATION OF AGENDA ITEMS**

1. **230 Old Gate Lane**, MBP 79/811/8A, ID; Jesse Langer, Esq., for Bridge Haven Ford Truck Sales, Inc, owner; Request for approval of location in accordance with Section 9.2.4 of the Milford Zoning Regulations.

**Jesse Langer, Esq.** Updike Kelly & Spellacy, PC, New Haven, addressed the board. He said John Schmitz of BL Companies was present. He reviewed the existing Gabrielli business and its desire to expand in Milford. He reviewed features of the plan approved by the Planning and Zoning Board in September. He overviewed the zoning of the area and its environs.

**John Schmitz**, Project Manager, BL Companies, Meriden, briefly reviewed the site plans included with the application.

**Ms. Ferrante** asked if any wished to speak in favor or opposition. Seeing none, she closed the hearing.

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

2. **25 Shell Street**, MBP 45/510/85, R-12.5; Thomas Lynch, Esq., for Sea Shell, LLC, owner; Vary Section 6.2.1 to allow renovation and enlargement of structure devoted to a non-conforming residential use with no increase in unit count.

**Attorney Lynch**, 63 Cherry Street, addressed the board, noting the presence of his client Margaret Striker, principal of Sea Shell, LLC. He said she and her family had a long history of real estate development and that she wished to enhance and enlarge a legal nonconforming structure. He drew analogies to other actions taken by the board to expand nonconforming projects, particularly one on Maddox Avenue, which later went to court. He said he felt a variance might not even be required because the number of units would not change, but the department disagreed, hence his application. He said the existing building is dilapidated and would be replaced by a new building that would meet building code and FEMA flood mitigation requirements. He said that because these conditions would be reversed, a legal hardship could be construed. He shared the elevations, noting that the large lot size would not be excessively covered. He implied that one large structure could be preferable to a possible alternative where four lots might be created featuring four new houses. He argued that placing the new building is less disruptive to the aesthetic of the neighborhood and noted post-Storm Sandy rebuilding usually featured much larger homes. He reviewed the floor plan with its various units on each floor. He said the project would house permanent residents of condominiums rather than transient renters. He said his client met with neighbors and made compromises about the garage, which had drawn opposition. He said his client would remove the garage and replace it with surface parking. He read into the record a petition of 21 close-proximity neighbors in support.

**Mr. Soda** asked for details on the increased size of the structure. **Mr. Wolfe** asked how the parking spaces might be configured after eliminating the garage. **Mr. Montano** confirmed with Attorney Lynch that there would be no height increase. **Ms. Striker** visited the podium to describe the different unit configurations. **Ms. Ferrante** asked for clarification of hardship. **Attorney Lynch** said reducing nonconformities have been found by courts to constitute a hardship justification. He said the building and its use predated Milford zoning regulations, making it legal nonconforming. He read section 6.2.6 of the regulations and shared his interpretation that it allows enlarging a legal nonconforming use. **Ms. Hirsch** said her reading of the regulation limited rebuilding rights to the existing

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footprint. **Attorney Lynch** and **Ms. Ferrante** discussed making the building FEMA compliant with Ms. Ferrante noting that flood mitigation requirements come from the federal government.

**Ms. Ferrante** asked for public comment.

FAVOR—Previously mentioned petition with 21 signatures.

### OPPOSED

**Margorie Schansky, Esq.**, spoke on behalf of her clients Robert and Deborah Fuchs. She said variances are meant to be sparingly granted and meet the following conditions when they are: first, variances should not substantially affect goals of conservation and development and second, a legal hardship must exist. She said an increase in bedrooms means an increase in the number of people residing at the property and would drive enlargement of the building. She said FEMA compliance is important but not a zoning construct and that any of the accommodations required by building code, fire code, or flood mitigation are not zoning-related. She said maximizing use of one's property is not a hardship. She referred to Verrillo v. Branford ZBA, underscoring the need for sparing use of variances. She stressed that the size and scale of the proposed project was excessive. She cast doubt on the garage removal.

**Nancy Herman**, 33 Shell Avenue, said she lives adjacent to the property and that she originally intended to speak about her objection about the parking garage but she was satisfied with its removal.

**Jerry Swirsky**, 36 Shell Avenue, said the historic character of the neighborhood would be jeopardized by the project. He said he had a problem with the garage and welcomed its proposed removal from the plan.

**Robert Fuchs**, 17 Shell Avenue, said he supported removing a garage he characterized as industrial. He said the number of HVAC units would likely be noisy. He said he supported rectifying the current residence, but felt the proposed design was outsized. He favored a compromise and said he supported other work Ms. Striker had done in the neighborhood. He felt there was no real hardship. **Mr. Soda** asked if Mr. Fuchs preferred 4 houses to one larger structure; **Mr. Fuchs** said he didn't know.

**Ann Greenstone Blake**, 5 Riveredge and co-owner of 33 Shell Avenue, said she supports positive change to neighborhood but was opposed to this plan.

**Kenna Hagen**, 40 Shell Avenue, urged board to require a revised application removing the garage or make a conditional approval.

**Nancy Popcock**, 60 Shell Avenue, said she agreed with several of the previous speakers and felt a revision should be submitted.

**Dan Welby**, 28 Shell Avenue, said the neighborhood was charming and felt the plan was of a massive size that would add traffic, noise, and light trespass. He said he wanted to see improvement, but this plan was excessive.

**Daniel Howarth**, 18 Shell Avenue, said the neighborhood is quiet and wanted to see a revision.

**Patricia Campanelli**, 49 Shell Avenue, said her family had a long history in the neighborhood. She said she had also opposed the garage and thought the current property was an eyesore that should be improved but felt this project's scale was too large.

**Ms. Ferrante** asked for a bedroom count which **Ms. Striker** discussed. Ms. Striker said the original number of units was 13 or 14 which had been reduced over time to 9. She stressed that her family has also lived in the area for over 100 years and that she is a stakeholder in the nature of the neighborhood. She said she never wanted the garage, but it was a response to a required number of parking spaces that seemed excessive to her. She said she was willing to remove the garage and would welcome the removal as a condition of approval. She stressed that more space was needed to create a building-code compliant building and stated that the new bedroom count is 20. **Ms. Hirsch** discussed the required parking space count. There is no current required parking count today due to the building predating zoning regulations.

**Attorney Lynch** acknowledged that most variance applications do not meet the strict requirements of legal hardship, but many examples of compromise with this board exist. He stressed that a condition of approval to remove the garage could be added. He said he felt the building was reasonably sized, given the lot. **Mr. Soda** asked if enough parking would be available without the garage and if **Ms. Striker** would consider downsizing the building to allow for more surface parking; **Attorney Lynch** said not at this time.

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Discussion ensued about the twice-denied Maddox case, with **Mr. Harris** providing background on the matter, though he stated that the analogy was not germane to the current application. One of the items in the case was taking down 2 cottages and replacing it with a 2-family house with a bigger footprint, the court upheld that this was not an expansion. **Attorney Lynch** said the DPLU office changed the policy based on this outcome. **Mr. Soda** noted that an enlargement was part of the Maddox Avenue project.

**Ms. Ferrante** closed the hearing.

### BOARD DISCUSSION

**Mr. Wolfe** said he found it difficult to envision the site plan changes to accommodate the number of surface parking spaces that might be needed. **Mr. Harris** said it would be up to the applicant to calculate and propose the number of required parking spaces in the absence of the garage. **Ms. Hirsch** noted that reducing the size of the building would leave room for more parking. **Ms. Ferrante** said she felt that the garage wasn't the real issue; it's the enlargement. She stated that the board's responsibility is to decide if enough of a hardship exists to grant the variance and that she didn't see a hardship. **Mr. Soda** said he saw room to downsize the building and supported removal of garage. He felt that increasing the building's square footage from 7500 to 12500 is a lot. **Ms. Ferrante** noted that the hearing open could be held open. **Mr. Soda** was skeptical of creating enough parking under a condition of approval and suggested a vote.

**Mr. Wolfe** motioned to **approve**. **Mr. Soda** seconded. The motion failed with **Mss. Ferrante** and **Hirsch** and **Messrs. Montano, Soda,** and **Wolfe** voting **against the motion**.

3. **114 Merwin Avenue**, Kevin Curseaden, Esq., for Peter Dreyer, appellant (112 Merwin Avenue) Appeal the Decision in accordance with the provisions of section 9.2.1 regarding decision to issue a zoning permit date 7/21/22 for the construction of a single-family house in violation of zoning regulations. **(POSTPONED BY APPLICANT)**.

4. **9 Little Pond Road**, MBP 39/618/6A, R-10; Sachin Anand, owner; Vary 3.1.4.1 easterly rear-yard setback to 17.4' where 25' required to construct a "structure" over basement access stairs.

**Mr. Anand** addressed the board, reminding them that this was a follow-up application to the previous month's approval. **Mr. Harris** summarized the presentation regarding the enclosure over the steps approved last month. **Mr. Anand** asked for questions.

### DISCUSSION

**Mr. Montano** confirmed that the enclosure was needed to protect form the elements.

**Ms. Ferrante** 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.

### BOARD DISCUSSION

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

5. **5 Beach Avenue**, MBP 82/784/6, (R-12.5) Kevin Curseaden, Esq. for Charles Smith and Karen Smith, owners; Vary 3.1.4.1 front-yard setback to 27.5' where 30' required with 3' front-yard setback existing to attach garage to house.

**Mike LoBuglio A.I.A.**, Newtown, addressed the board. He described the project of attaching the house to the garage with a mudroom. **Mr. Harris** displayed the front and side yard setbacks. **Ms. Ferrante** confirmed the setback locations on the survey. **Mr. Harris** confirmed that the garage was existing nonconforming. **Mr. Wolfe** confirmed that the garage housed 2-cars with storage above. **Ms. Ferrante** asked if a variance would be needed to add another floor to the garage; **Mr. Harris** said none would be required. **Mr. Soda** supported attaching a condition to prevent this.

**Ms. Ferrante** 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.

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### BOARD DISCUSSION

**Mr. Soda** motioned to **approve with a condition to restrict the garage to remain one story**. **Ms. Hirsch** seconded. The motion carried with **Mss. Ferrante** and **Hirsch** and **Messrs. Montano, Soda,** and **Wolfe** voting **with the motion**.

6. **6 Clinton Street**, MBP 71/760/7, (R-7.5) Rick Mangione, owner; Vary 3.1.4.1 rear-yard setback to 13.4' where 20' required to add a bay to existing attached garage.

**Mr. Mangione** addressed the board. He described the corner lot and its constraints. He described a deck that was in danger of collapse that would be removed, and its footprint incorporated into the proposed garage. He said he wished to provide a grass buffer in the area between his house and his neighbor's rather than building a detached garage in close proximity there.

### DISCUSSION

**Mr. Soda** said

**Ms. Ferrante** asked if

**Ms. Ferrante** 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.

### BOARD DISCUSSION

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

7. **74 Essex Drive**, MBP 92/704/8a, Kevin Fallon and Erin Fallon, owners; Vary 3.1.4.1 side-yard setback to 6.5' where 10' required to construct a 2-story garage addition with in-law behind on first floor and common living space above.

**Ms. Fallon** addressed the board. She said the proposed design was consistent with the look of the neighborhood. She described the placement of the in-law apartment behind the new proposed garage. She said her neighbors supported the project. **Ms. Ferrante** asked if the project could be reduced to avoid requiring the variance. **Ms. Ferrante** discussed the possibility of preserving the existing garage. **Ms. Fallon** referred to a drain behind the property that restricted building area.

**Ms. Ferrante** asked if anyone wished to speak in favor of or in opposition to the application.

**Ms. Greene** referred to a letter of opposition submitted the day of the meeting; **Mr. Harris** displayed it. **Ms. Ferrante** asked **Mr. Harris** to read it into the record, which he did. **Mr. Fallon** joined the discussion disputing that the proposed project could impact the drainage problem described as excess ground water flows downhill on the opposite side of the lot.

**Ms. Ferrante** asked for clarification about a drain in the back of the house that prevented the in-law apartment extending further.

**Ms. Fallon** described the considerations. **Ms. Hirsch** confirmed that the single story to be added above garage is a bedroom. **Ms. Ferrante** and **Mr. Soda** discussed the possibility of reducing the width of the garage to 22' as a condition of approval. **Mr. Wolfe** said he disliked reducing the size of the in-law, which was already well under the square foot maximum for such units. Discussion ensued about possibly modifying the design to reduce the request. **Ms. Hirsch** cautioned the board about granting variances without true hardships.

**Ms. Ferrante** closed the hearing and asked for a motion.

### BOARD DISCUSSION

**Mr. Soda** motioned to **approve with a condition to reduce the width of the garage from 24' to 22' featuring a single 18' door (with the discussed concern being reducing the side-yard variance request from 6.5' to 8.5' where 10' is required)**. **Mr. Wolfe** seconded. The motion carried with **Mss. Ferrante** and **Hirsch** and **Messrs. Montano, Soda,** and **Wolfe** voting **with the motion**.

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- A. NEW BUSINESS**
- B. OLD BUSINESS**
- C. STAFF UPDATE**
- D. ACCEPTANCE OF MINUTES FROM 13 SEPTEMBER 2022 HEARING**
- E. ACCEPTANCE OF APPLICATIONS FOR 9 NOVEMBER 2022 HEARING—Ms. Greene** indicated several applications were being made for November.

Adjournment was at **8:59 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