

## **Minutes, Public Hearing of Zoning Board of Appeals Meeting held December 9, 2014**

The Regular Meeting of the Zoning Board of Appeals of Milford, CT, was held on Tuesday, December 9, 2014, 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), Richard Carey, William Soda, John Vaccino (seated later)

**ALTERNATES PRESENT:** Gary Dubois, Sarah Ferrante, Robert Thomas

**MEMBERS/ALTERNATES ABSENT:** None

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

**Mr. Tuozzola** called the meeting to order at 7:00 p.m. He announced that Mr. Vaccino would arrive sometime after the start of the meeting and that Ms. Ferrante would vote during Mr. Vaccino's absence. Mr. Tuozzola also said that Mr. Haberman would recuse himself from the first two agenda items and that Mr. Thomas would provide the fifth vote for those requests. Mr. Tuozzola announced that the last agenda item, **35 Thompson Street**, would be moved to the top of the agenda and asked Attorney Lynch to address the board. Attorney Lynch opened the item and asked that it be postponed, which was allowed. Mr. Tuozzola asked for known conflicts of interest for board members with any of the items on the agenda; none were raised.

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

1. **0 Tanglewood Circle (across from 150 Tanglewood Circle)**(R-A/cluster to R-18) Thomas Lynch, Esq., Attorney, for April Culver, owner; Vary Sec. 3.1.4.1 to 20' where 40' req to build a single family home; Map 122, Block 904, Parcel 5-N

**Attorney Lynch** provided handouts to the board. He stated that his remarks would apply equally to both Tanglewood parcels. He said he wished to address both agenda items at the same time, but that Mr. Harris advised that procedural rules required each item be called separately. Attorney Lynch asked that all his comments be made part of the record as applicable to both parcels, and Mr. Tuozzola allowed it. Attorney Lynch introduced Ms. Culver and Bob Wheway of Codespoti Associates. He stated the 2 lots were part of the Rustic Acre subdivision created in 1980. He noted that the two properties' lot lines were adjusted in 1987 to accommodate septic system considerations. He provided additional background on the land development in that area. He outlined the concept of cluster developments, saying that cluster developments ensure that the same number of buildable lots will be available on equivalent tracts of land despite development obstacles like wetlands. He noted that to make this adjustment possible in cluster developments, the usual zoning setback and size guidelines are "clustered down" to a smaller zone. He referred to the handouts noting in particular a letter written by Ms. Culver. He reviewed the proposed plan in detail. He noted that a large portion of each lot contains wetlands and the goal of the plans was to limit the amount of fill used to make the lots buildable. He referred to similar variance requests based on similar hardships, including one where a recent Milford ZBA variance approval was upheld in Superior Court. He noted that the Inland Wetlands Agency would need to review the plans, but that the request fit the definition of hardship for variances.

Robert Wheway, Licensed Professional Engineer, Codespoti & Associates, 504 Boston Post Road, Orange, presented details on the engineering aspects of the project. He noted approval from the City's Health Department. He said the goal was to present the project to the Inland Wetlands Agency with a minimized amount of fill.

### **DISCUSSION**

The board had no questions at that point.

### **FAVOR**

**Mr. Tuozzola** asked if anyone present wished to speak in support of the project; none did.

### **OPPOSITION**

**Bruce Jackson**, 8 Westminster Rd, said he opposed the project. He said the surrounding properties were similar, so no variance was needed. He said it would be detrimental to the neighborhood.

**Joan Caginello**, 17 Westminster Court, said she opposed the project because it would change the character of the neighborhood. She said others complied with the regulations and no exception was needed.

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**Ken Dademo**, 48 Candlewood Circle, said he opposed the project and no buildings should be put on the lots. He said it would hurt property values.

**Bill Caginello**, 17 Westminster Court, noted that the 2 lots weren't developed by the original developer because they were too wet and houses built there would be out of character with the other houses.

**Don Lydicksen**, 173 Tanglewood Circle, provided handouts and expressed concerns about the size of the lots. He shared his interpretation of how the setback changes would affect the neighborhood. He cited several regulations that he felt the project would violate. He cited a concern about runoff rainwater.

**Barry Davis**, 137 Tanglewood Circle, questioned the lot line adjustments and size of the lots. He asked for comment by **Attorney Lynch** or **Mr. Harris**. He said the lots had wetlands when purchased, discussed potential considerations of the Inland Wetlands Agency, and said the size of the houses could be reduced to increase the front yard setback.

**Karen Zaneski**, 150 Tanglewood Circle, said she did not think the cases cited by Attorney Lynch were relevant. She said her father had been an engineer with the City and that he showed her maps when she bought her property, saying they should not be developed. She said there would be damage to adjacent property if houses were built there. She asked Mr. Harris if lot line adjustments were reviewed by a board; he said they are done administratively. She called the maps into question.

**Gayle Slossberg**, 14 Honeysuckle Lane, cited the state statute defining hardship for ZBA consideration, namely that exceptional difficulty or unusual hardship must be demonstrated. She referred to cases where a hardship was shown to be different in kind from neighboring properties. She showed a GIS map with elevations of the property and the presence of wetlands throughout the entire area. She said that financial consideration was not a hardship factor and referred to "purchase with knowledge" law, such that when a claim of hardship arises from an applicant's voluntary act, the ZBA can reject it.

**George Betz**, 192 Tanglewood Circle, shared details on about an addition he made to his property where he had to revise his plan to respect a front-yard setback.

**Sharon Clark**, 108 Tanglewood Circle, asked why the property couldn't be sold to the City as open space.

**John Shandley**, 188 Tanglewood Circle, said the owner's motive was profit and the neighbors shouldn't have to experience devalued property as a result.

**John Mudrick**, 158 Tanglewood Circle, noted that all other houses are more than 40' off street and this setback was integral to the quality of the neighborhood.

**Mary Ellen Magura**, 144 Tanglewood Circle, said she is a teacher and that she teaches youngsters about fairness requiring that everyone follow rules.

**Karen Smith**, 16 Westminster Court, said she moved to the neighborhood for its beauty and space. She said had stretched to afford a house there, so she wanted the neighborhood to stay the same.

**Jeremy Betz**, 122 Tanglewood Circle, said he grew up in the neighborhood and that children used the front yards to play, so the setbacks should be maintained for safety.

**Tina Gage**, 110 Tanglewood Circle, said she opposed the project for previously stated reasons.

**Pat Campanaro**, 105 Tanglewood Circle, read a letter by Diana Niko, 236 Tanglewood Circle. The letter referred to maps of the property and cited unusual disclaimers.

**Mimi Mudrick**, 150 Tanglewood Circle, also said she opposed the project for previously stated reasons.

At this point, **Mr. Tuozzola** passed out copies of the Niko handout for board members to review.

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**Elizabeth Roy**, 50 Autumn Ridge Road, said she and her husband **Dennis Roy** also opposed the project for previously stated reasons.

**Mr. Tuozzola** accepted another set of handouts for board members to review.

### **REBUTTAL**

**Attorney Lynch** disputed several contentions made by those in opposition. He reiterated the hardship claim. **Mr. Soda** confirmed that petition would be made to Inland Wetlands as well. He asked Attorney Lynch to clarify the submitted map. **Attorney Lynch** said there had been confusion on the lot line adjustment. He described the series of events that led to the map of record being submitted and a discrepancy on the lot description. **Mr. Soda** confirmed that if a house were built without a variance, it would have to be located further into the wetlands.

### **BOARD DISCUSSION**

**Mr. Tuozzola** closed the hearing. He noted that most of the properties in the neighborhood are at least 40' from the front lot line.

**Mr. Soda** noted that the 10' City Right-Of-Way makes the effective front setback 30' from the curb. **Mr. Tuozzola** reminded attendees that one of the Zoning Board of Appeals' missions is to protect reasonable use of the property.

**Mr. Soda** moved to table the item until next month. **Mr. Carey** seconded. The motion carried with **Ms. Ferrante** and **Messrs. Carey, Soda, Thomas** and **Tuozzola** voting **with the motion**.

2. **0 Tanglewood (across from 150 Tanglewood Circle)**(R-A/cluster to R-18) Thomas Lynch, Esq., Attorney, for April Culver, owner; Vary Sec. 3.1.4.1 to 20' where 40' req to build a single family home; Map 122, Block 904, Parcel 5-P

**Mr. Thomas** read the request. Mr. Harris advised that the item should be opened, all comments on Item 1 incorporated by reference **Attorney Lynch**, 63 Cherry Street opened item 2 and asked that all comments made on item 1 be incorporated into item 2, except if any comment was exclusive to either item. None were, so Attorney Lynch acted as recommended.

**Mr. Soda** moved to table the item until next month. **Mr. Carey** seconded. The motion carried with **Ms. Ferrante** and **Messrs. Carey, Soda, Thomas** and **Tuozzola** voting **with the motion**.

**Mr. Tuozzola** thanked **Ms. Ferrante** and **Mr. Thomas** for voting and seated **Mr. Vaccino** and **Mr. Thomas**.

3. **11 Warfield Street** (LI) Thomas Lynch, Esq., Attorney, for XLO Reality, LLC, owner; Vary Sec. 3.10.2.3 lot area to .38 acre (16,695 sf) where 1 acre req, and Sec. 5.4.2.1 lot width of 52' where 100' req to use existing site as a vehicle repair garage/auto body repair facility; Map 23, Block 344, Parcels 1, 1A

**Attorney Lynch**, 63 Cherry Street addressed the board. He introduced Mr. Dulin and his son. Attorney Lynch said Mr. Dulin wished to expand the family business and purchase the Warfield property. He described the property and the regulation being requested for varying—the minimum lot size of 1 acre. He said the hardship was that all other major auto-body shops in Milford only 1 occupy an acre. He stated that all auto-body work will be done inside the building in an industrial zone on noise-free equipment. He said one abutter was the MetroNorth railway corridor, creating a buffer to non-industrial properties. He said recent case law doesn't allow Planning and Zoning Boards to waive regulations as had been past practice. He described the parking space calculation that would permit reduction in the parking requirement due to an old lease that he would title search if the property were purchased by his client.

### **DISCUSSION**

**Mr. Tuozzola** confirmed which parcels were to be purchased. **Mr. Vaccino** confirmed that only auto-body work would be done on site without needing the oil tanks required by a service station. He also confirmed that the existing building would be used.

### **FAVOR**

**Chris Saley**, 19 Marsh St, said he supported the project and that Mr. Dulin had been an ethical businessperson and a good community citizen in Devon.

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**Michael Zahornacky**, 37 Warfield Street, XLO Realty, listed properties he owns in the area. He said he had developed the building and supported Mr. Dulin and the project because it would offer employment and improvements to the neighborhood.

### OPPOSITION

**Joanne Warner**, 4 Warfield Street, said her parents built a home in the neighborhood. She said she opposed the project due to noise and disruption.

**Mike LaFrancois**, 10 Warfield Street said he opposed the project and that the project would not be good for the neighborhood or safety.

**James Fournin**, 24 Warfield Street, said the industrial and residential zones abut each other and the quality of life would be degraded. He read a letter written by his wife also in opposition.

### REBUTTAL

**Attorney Lynch** said there was no way to change the fact that the neighbors abut an industrial zone. He said truck traffic would be reduced because of the new use. He referenced parking.

### BOARD DISCUSSION

**Mr. Vaccino** asked for the hardship to be repeated. **Attorney Lynch** said the logic of the regulation related to service stations and would be mitigated by a buffer strip. **Mr. Haberman** confirmed that the use would be limited to the variance request. **Mr. Haberman** expressed sympathy for the neighbor's concerns, but there's the issue of a mixed zone, but noted that something industrial will move in regardless. **Mr. Soda** and **Mr. Vaccino** had concerns about the request use description including an auto repair. **Mr. Harris** noted that the board could attach a limit.

**Mr. Carey** motioned in favor of application with the condition of limiting the use to auto-body repair only. **Mr. Soda** seconded. **Mr. Carey** supported his motion by reason of the use being less intrusive to the neighbors. The motion carried with **Messrs. Carey, Soda, Vaccino** and **Tuozzola** voting **with the motion**. **Mr. Haberman** voted **against** the motion.

4. **59 Hillside Avenue** (R-5) John Turek and Donna Weaver, owners; Vary Sec. 3.1.4.1 south side-yp to 8.46' where 10' req, 4 stories where 3 req, 39.5' in height where 35' allowed; 4.1.4 south deck-stairs to 4.4' where 8' perm, gen platform to 1.2' where 4' perm to build a single family home; Map 49, Block 724, Parcel 2

Ms. Weaver introduced her husband and architect addressed the board. She stated that the house became unsafe after the storms. She said they had amended the plan so the generator would not need a variance due to a neighbor's objection. She said the hardship was the requirement to elevate the house and the challenge of taking it from a VE zone into an AE zone. She referred to a grant program that would require higher elevation than they had planned and the steep elevation of the grade around her home. She said their prime consideration was safety and storm-proofing. She said she disagreed that the plans showed a 4<sup>th</sup> floor because the attic space was so small and used for mechanical purposes. She said the long, narrow lot and need for wind calculations by a structural engineer created additional constraints on the design. She said widening the house would strengthen it and that steel girders would be used as well. She reviewed the design in detail.

### DISCUSSION

**Mr. Vaccino** commended Ms. Weaver for presenting the information gamely. **Mr. Haberman** acknowledged centering the house and the difficulties of the lot. **Chun Huy Yung**, architect, 57 Driscoll Rd, Branford, discussed aspects of the plan with **Mr. Haberman**. **Mr. Soda** questioned the shed roof and how it affected the height. He described a potential workaround, which was disputed by Ms. Yung and Ms. Weaver.

### OPPOSITION

**Trisha Page**, 60 Hillside Avenue, said she opposed the project due to lack of a hardship.

**Harvey Armel**, 63 Hillside Avenue, said he mostly supported the plan, but the generator was a problem. He said he was concerned about the proposed wind turbine as well.

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**Adam Lavarski**, 60 Hillside Avenue, cited state statutes and said he reviewed the plans and has a problem with the height and story requests. He asked about procedure for special permits and the ZBA. Mr. Harris said the wind turbine was a new structure in the flood zone and therefore needed a Special Permit.

**Mr. Tuozzola** noted 2 other letters submitted in opposition.

### REBUTTAL

**Ms. Weaver** described items that would be eliminated from their project without the height variance. She said the slope of their grade is extreme. She said their chief concern was safety. **Mr. Soda** described his reconfiguration and offered encouragement.

### BOARD DISCUSSION

**Mr. Tuozzola** closed the hearing. He expressed concern about the height. He suggested denial without prejudice. **Mr. Haberman** clarified that the generator change would not prevent the board from considering the item for a vote. He said the height was his only serious concern, not even the 4<sup>th</sup> floor. **Mr. Vaccino** agreed.

**Mr. Vaccino** motioned to deny without prejudice. **Mr. Haberman** seconded. The motion carried with **Messrs. Carey, Haberman, Soda, Vaccino** and **Tuozzola** voting **with the motion**.

**Mr. Tuozzola** called for a short recess.

5. **28 Plymouth Court** (R-5) EH Home Remodeling, agent, for Ellen Liskov, owner; Vary Sec. 3.1.4.1 west side-yd to 2.1' where 10' req to build 2-story addition; Map 65, Block 822, Parcel 12

Ellen Liskov addressed the board. She stated that she wanted to expand her home and that her hardship was the small irregular lot. She said it would be a safety feature to connect the existing garage to her house.

Agatha Hernandez, 24 Hoover St, said she supported the project.

### BOARD DISCUSSION

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

6. **20 Bridgewater Avenue** (R-5) Scott Mundy, agent, for William Orange Mortgage Co., owner; Vary Sec. 4.1.4 rear deck to 10.5' where 16' perm to build elevated single family home; Map 13, Block 139, Parcel 1

Mr. Mundy, 300 Pepes Farm Rd, addressed the board. He stated that the hardship was a narrow lot.

### DISCUSSION

**Mr. Tuozzola** confirmed that the house hadn't been built yet. **Mr. Haberman** confirmed that there would be parking underneath.

### BOARD DISCUSSION

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

7. **35 Thompson Street** (R-5) Thomas Lynch, esq, attorney, for Gail Murray, owner; Vary Sec. 3.1.4.1 front-yd to 3.3' where 10' req, rear-yd (dwelling) to 4' where 20' req; 4.1.4 front-yd (eave) proj to 3.3' where 8' perm, 3<sup>rd</sup> story deck proj to 3.7' where 16' perm, rear-yd (hatchway) proj to 2.1' where 16' perm, (window well) proj to 1.8' where 16' perm; 4.1.5 (paved patio) to 2' where 4' req to build a single family home; Map 35, Block 444, Parcel 25: **TABLED**

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### **C. OLD BUSINESS**

There was none.

### **D. NEW BUSINESS**

Mr. Tuozzola noted that Mr. Carey's term was ending and that Mr. Carey had served on the Zoning Board of Appeals for 15 years. He thanked Mr. Carey for his service.

### **E. STAFF UPDATE**

There was none.

### **F. ACCEPTANCE OF MINUTES FROM NOVEMBER 12, 2014, HEARING**

**Mr. Haberman** moved they be accepted; the motion carried unanimously.

### **G. ACCEPTANCE OF APPLICATIONS FOR JANUARY 13, 2014, HEARING**

The postponed items were expected.

The meeting was adjourned at 10:07 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