

## **Minutes, Public Hearing of Zoning Board of Appeals Meeting held 10 December 2019**

The Regular Meeting of the Zoning Board of Appeals of Milford, CT, was held on Tuesday, 10 December 2019, 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**

**Mr. Tuozzola** asked for board member conflicts of interest with any agenda items; none were raised.

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

**ALTERNATES P/RESENT:** Michael Casey, Etan Hirsch

**MEMBERS/ALTERNATES ABSENT:** Gary Dubois

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

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

1. **63 Lincoln Avenue**, MBP 15/242/13B, R-12.5, Thomas Lynch, Esq., for Richard and Carol Cammarano, owners; Vary Sec. 6.4.2 to allow use of a non-conforming lot for construction of a single family residence.

**Attorney Lynch** addressed the board. He handed out photographs of the site as it appears today and copies of the decision from a 2014 court case, *Lesinski v. Milford ZBA*, which he said was relevant to this new application. He said Lincoln Avenue runs almost parallel to Naugatuck Avenue, in zone R-12.5, and consists of 2 ½ lots that appear on a 1915 map of "Devon Terrace". He said his clients live in a 3-bedroom ranch on the site, which they purchased in 1967. He said the lot at issue is #17, which is approximately 8500 SF in a zone with a minimum lot size of 12,500 SF. He stated that there had been an above-ground pool on the site, which is one of the structures that can create a merger under Section 6.4.2 of the regulations. He reviewed the history of *Lesinski v. ZBA*, which was originated in an Appeal of Decision given by then-Zoning Enforcement Officer Linda Stock. He said the case was heard by the Land Use Court in Hartford, resulting in the overturning of the ZBA's decision to uphold the ZEO's determination of a merger. He reviewed the history of an above-ground pool featuring an adjacent platform, affirming that it was installed in the mid 1970s and removed in the 1990s. He stated that the 6.4.2 regulation regarding mergers was not enacted until 1986, and therefore not in force in 1967 when the home was purchased, or in the 1970s when the pool was installed. He said that since there was no mechanism to merge the lots in the 1970s when the pool was installed, the merger could not be created after the fact in 1986 when the 6.4.2 regulation was enacted. Attorney Lynch further stated that there must be intent on the part of the landowner in order for a merger to take place. He said that the lot is 85' x 100' and therefore more conforming than many lots in near proximity that are closer to 5000 SF. He concluded by saying that there was no merger of the lots because there was no intent on the part of the owner to merge them and no regulation in place to require a merger when the pool was installed. He asked the board to recognize the lot as a nonconforming building lot.

**Mr. Soda** confirmed with Attorney Lynch that the lot was legally created per the 1915 map and that a house could have been built on it if there had never been a swimming pool.

**Mr. Tuozzola** clarified with Attorney Lynch that the platform for the pool was to secure a ladder for a slide for children entering the pool. Mr. Tuozzola asked if this case is any different from the previous presentation of 2010; **Attorney Lynch** said that there were no new circumstances except the court decision.

**Mr. Hirsch** discussed intent, verifying that is a state of mind; he asked how that meshes with a regulation. **Attorney Lynch** said a regulation takes intent out of play and they further discussed page 2 of the handout for the legal decision as it pertains to a lot merger. **Mr. Hirsch** asked what the client's intent was in 1975; **Attorney Lynch** said to provide a pool for their children.

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**Mr. Wolfe** clarified that the lot size is 55' x 100'.

**Attorney Lynch** said that if this lot is approved, he expects Department of Public Works Director Chris Saley will require a sewer connection and other improvements.

**Mr. Tuozzola** asked if there are wetlands on the lot; **Attorney Lynch** said that where the house would be situated is not a wetland.

**Mr. Hirsch** verified that the only structure on lot 17 was the swimming pool and platform.

**Ms. Ferrante** verified that if the lot were approved, the applicant would not be coming back for additional variances

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

### **FAVOR**

**Attorney Lynch** entered 2 letters of support into the record as well as 2 petition signatures.

### **OPPOSED**

An opposition email was submitted into the file by a neighbor.

**Alisa Simmons**, 62 Lincoln Avenue, said she lives directly across the street. She said the current neighbors are good people and that she and her husband don't have issues with the property being separated. She said they worry that this lot would be very close to the wetlands and there are many animals and birds there that would be harmed. She said she and other neighbors would like to see the lot given to the Milford Land Trust and not used for residential construction. She said there is a barricade at the end of the road with a 7 foot drop and that she does not see how the road can be extended for the proposed home without building the road up 7 feet. She said she and her neighbors love Lincoln Avenue and want to keep it as it is.

**Cheryl Capiali**, 234 Grinnell Street, said she was with the Milford Land Trust, which has property that abuts the proposed lot. She said the Land Trust is concerned about encroachment, which she stated is already happening in the area. She said the water levels are rising, so it is only a matter of time before it becomes a larger issue.

### **REBUTTAL**

**Attorney Lynch** said there will be no encroachment on to the existing Land Trust property. He said the application is to recognize a legal building lot, and that any improvement required by the Public Works Director will be met. **Ms.**

**Valiquette** asked why the barricade was in place; **Attorney Lynch** suspected it was due to the placement of the trees in the area, but the paper road extends past that point.

### **BOARD DISCUSSION**

**Mr. Tuozzola** closed the hearing.

**Mr. Hirsch** was concerned about whether there was intent to merge. **Mr. Wolfe** said continuance of the road would be more aesthetically pleasing than the guardrails. **Mr. Soda** said he was on the fence and concerned about other people coming out against it.

**MOTION:** **Ms. Valiquette** initiated a motion to deny, which did not receive a second. **Mr. Soda** asked if the item could tabled. The motion to deny was been withdrawn. All agreed to **table**.

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2. **367 Bridgeport Avenue**, MBP 24/205/14, CDD-2, Thomas Lynch, Esq., for Morningstar of Trumbull, owner; Vary Sec. 5.5.4.2 to allow café liquor permit within 1500' of another permit location for existing restaurant.

**Attorney Lynch** addressed the board. He stated that his clients were not present because they are working, as they also have a restaurant in Trumbull. He said their Milford restaurant is at the former location of a Dunkin' Donuts, where they performed interior renovations. He said customers have been asking for alcoholic drinks with their meals. He stated that the only affected party would be the Pit Stop Café across the street, which is a bar, unlike his client's restaurant. He said his clients would like to have a café permit to serve beer, wine, and liquor with no separate bar area. He said the variance is required based on the nature of this permit location.

### **DISCUSSION**

**Mr. Tuozzola** confirmed that the restaurant is currently BYOB. **Ms. Valiquette** confirmed the name of the restaurant ("I Love Pho").

### **BOARD DISCUSSION**

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

**MOTION:** **Ms. Valiquette** moved to approve. **Mr. Soda** seconded. The motion carried with **Mss. Ferrante** and **Valiquette** and **Messrs. Soda, Wolfe** and **Tuozzola** voting **with the motion**.

3. **249 West Avenue**, MBP 32/336/10, R-12.5, Brian Coddington, agent, for Terry and Pat Smethurst, owners; Vary Sec. 3.1.4.front-ym setback to 14.7' where 30' req. for 2-story addition; 4.1.4 deck to 14.8 where 26' perm.

**Mr. Coddington** addressed the board. He stated that he is a builder and Milford resident. He said 249 West Avenue is a very narrow and deep corner lot requiring a variance. He said his clients are not trying to get closer to the front of the lot, but wish to change the cape to a colonial and build back 16'.

### **DISCUSSION**

**Mr. Tuozzola** noted that this is an existing nonconforming structure, and that the additions would be to the rear, adding to the nonconformity. **Ms. Valiquette** acknowledged it is a big lot. **Mr. Hirsch** confirmed that the concern is the lot being narrow and a corner. **Mr. Wolfe** confirmed that Mr. Coddington is a neighbor to the property at 259 West Ave.

### **BOARD DISCUSSION**

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

**MOTION:** **Mr. Soda** motioned to **approve**. **Ms. Valiquette** seconded. **Mr. Soda** based his motion on the narrowness of the lot. The motion carried with **Mss. Ferrante** and **Valiquette** and **Messrs. Soda, Wolfe** and **Tuozzola** voting **with the motion**.

4. **347 Welchs Point Road**, MBP 38/558/78, R-7.5, Todd Nass, owner; Vary Sec. 3.1.4.front-ym setback to 18' where 20' req. for addition.

**Mr. Nass** addressed the board. He asked to approach with an updated location survey which includes a triangle at the front of the property where the driveway will be. He said he and his wife wished to downsize and keep all rooms on one floor. He indicated a portion of the property was quit-claimed and said he wants to build an addition that encroaches on

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the rear setback to allow for a bathroom and a small dressing/sitting area.

### **DISCUSSION**

**Mr. Tuozzola** confirmed there is only one variance. **Mr. Hirsch** verified that the existing driveway will be removed, that the new driveway will be constructed on Welch Point Road, and the size of the extension to the home. **Mr. Tuozzola** verified the addition will be for a shower/dressing/sitting area.

### **FAVOR**

**Kathy Nass** said she is in favor.

### **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.

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

**C. NEW BUSINESS**-None.

**D. OLD BUSINESS**-None

**E. STAFF UPDATE**-None

**F. ACCEPTANCE OF MINUTES** 12 November 2019: Approved.

**G. ACCEPTANCE OF APPLICATIONS** for 14 January 2020 hearing: Currently just the one tabled from this evening.

Adjournment was at 7:47 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:

Susan LaFond

Administrative Assistant, Dept. of Permitting and Land Use

ME Greene, ZBA Clerk [editing]