

## **Minutes, Public Hearing of Zoning Board of Appeals Meeting held 11 December 2018**

The Regular Meeting of the Zoning Board of Appeals of Milford, CT, was held on Tuesday, 11 December 2018, beginning at 7:01 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 conflicts of interest for board members with any agenda items; none were raised. He asked Mr. Hirsch and Mr. Casey to vote.

**MEMBERS PRESENT:** Sarah Ferrante, Joseph Tuozzola (Ch), Christine Valiquette

**ALTERNATES PRESENT:** Michael Casey, Gary Dubois, Etan Hirsch

**MEMBERS/ALTERNATES ABSENT:** William Soda

**STAFF PRESENT:** Stephen Harris, Zoning Enforcement Officer; Meg Greene, Clerk; David Sulkis, City Planner

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

- 1. 0 Rock Lane.** MBP 92/705/1K. LI, Joseph Kubic, Esq., for Joseph Arpino and Carol Arpino, owners; Sec 9.2.1. Appeal the Decision of the Zoning Enforcement Officer in a letter of violation dated 2 October 2018. **POSTPONED**
- 2. 162 Kings Highway.** MBP 60/740/1. BD, Oscar Parente, Esq., for Robert Harrington and Daryl DiPaulo, appellants, regarding lot of Anastasia Blake, owner; Sec 9.2.1. Appeal the Decision of the City Planner in a free split letter dated 18 September 2018; applicants became aware of the letter on 22 October 2018.

**Attorney Kim Coleman, 112 Broad Street**, addressed the board. She reviewed the issue of the lot width, which she had verified by measuring it. She felt that the ZBA does have jurisdiction to overturn the City Planner's decision, based on her review of the statute and regulations. She provided a handout of a section of the statute. She described the process she used to try and research the definition of a free split. She described her interpretation of Attorney Curseaden's letter regarding the free split. She asserted that a covenant exists that predates zoning and defines the lot in question as being too small for a free split. She expressed concern about future uses of free splits and a lack of definition about them in the regulations and statute.

**Mr. Tuozzola** said he appreciated her arguments, but asserted that the ZBA does not have jurisdiction and also that the appeal was not timely.

#### **IN FAVOR OF THE APPEAL**

**Barbara Wagner, 29 Clinton Street**, read a letter from Edward Bonessi, Warden of the Borough of Woodmont, which stated that the plan represents a health and safety hazard and that the Woodmont Board requested a denial.

**Kate Harrington, 160 Kings Highway**, said the lot had always contained a single family home and that was sufficient. She reviewed her husband's monitoring of the project, saying he had based his assumptions on being told it was to be advertised as a subdivision. She expressed frustration and felt that her husband was misdirected.

**Tina Martin, 157 Kings Highway**, said she felt the project would harm the charm and character of the borough.

**Delores Hannon, 110 Beach Avenue**, said she felt the neighborhood should have been notified. She felt there was too much development in a flood-prone area.

**Mr. Tuozzola** said the comments would have been appropriately directed to the Planning and Zoning Board, not the ZBA. He said the issue was confined to the appeal.

**Raquel Bonessi, 83 Beach Avenue**, said there had never been any other use than residential on the lot. She said the structure would be built on the lot line.

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### OPPOSED

**Attorney Kevin Curseaden, 3 Lafayette Street** addressed the board. He noted that his client was out of town due to previous commitments. He asked that all submitted materials be put into the record as well as the contents of the Planning and Zoning file. He reviewed the statute defining subdivisions. He said no one likes to tell a board that it does not have the authority to do something, but stressed that the only venue for appeal would have been the Superior Court.

Attorney Curseaden said the ZBA cannot hear appeals of decisions of the Planning and Zoning Board, or of the City Planner when the City Planner is not acting as a ZEO, as in this case. He said that when City Planner David Sulkis was confirming the "Free Split," he was making an administrative determination that the lots qualified for a "free Split" under the State Statute CGS §8-18, and that he was not interpreting or enforcing Milford's Zoning Regulations.

He also stated that the appeal is time-barred. He said notice of the City Planner's decision was published in the New Haven Register on 9/18/2018 and provided a copy.

### RESPONSE BY CITY PLANNER

**Mr. Sulkis** addressed the board. He said the applicant had a legal right to ask for the free split. He said Attorney Coleman's characterization that he had "slipped in a free split" was untrue. In response to Attorney Coleman's comment that she could not locate the appeals statute on free splits, he said the statute that sends an issue to the Superior Court was Section 8-28.

### BOARD DISCUSSION

**Mr. Tuozzola** emphasized that the board had no jurisdiction and said that it would not have been normal practice for the City Planner to have called abutters personally.

### BOARD DISCUSSION

**Mr. Hirsch** said that as an attorney himself, he felt the proper venue to challenge the decision was the Superior Court. **Ms. Ferrante** expressed concern about future free splits. **Mr. Tuozzola** said the only issue before the board was the appeal. **Mr. Hirsch** motioned to **uphold the decision of the City Planner**. **Mr. Casey** seconded. **Ms. Ferrante** and **Messrs. Casey, Hirsch, and Tuozzola** voted **with the motion**. **Ms. Valiquette** voted **against the motion**.

- 3. 47 Cherry Street.** MBP 66/817/16. RO, Dena Liberman, for MD Acquisitions LLC, owner; Vary Sec 5.3.4.1 ground-sign setback to 4' where 10' req.

**Ms. Liberman** addressed the board. She described her purchase and restoration of the building. She said the office was going to be participating in the real estate business and that signage should be improved. She said she had researched other signs on the street. She described her proposed ground sign and referred to a photograph. She said there is a beautiful copper beech tree that would obstruct the sign. **Mr. Hirsch** asked for a hardship; **Ms. Liberman** said her business lacks visibility enjoyed by other businesses along the street. She said the building, sidewalk, driveway and plantings are squeezed onto a narrow lot. **Ms. Ferrante** asked for comparisons with other similar signs; **Ms. Liberman** cited Harmony Place and MetroStar, noting that those signs were as close as 2' to the front lot line.

### FAVOR

**Thomas Lynch**, 63 Cherry St, said he owns his building, his ground sign is about 3' off the sidewalk, and the copper beech tree creates the hardship. He expressed support for the application.

### BOARD DISCUSSION

**Ms. Ferrante** motioned to **approve**. **Ms. Valiquette** seconded. The motion carried with **Mss. Ferrante and Valiquette** and **Messrs. Casey, Hirsch, and Tuozzola** voting **with the motion**.

- 4. 296 Broadway.** MBP 9/130/11. R-7.5, Michael Brewi, owner; Vary Sec 3.1.4.1. northeast side-yp setback to 2.9' where 5' req; to construct attached garage.

**Mr. Brewi** addressed the board. He described the side yard variance needed to put a garage on a very narrow parcel with limited parking.

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### **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.

**Mr. Hirsch** motioned to **approve**. **Ms. Ferrante** seconded. **Mr. Hirsch** supported the motion based on the hardship of the lot; in accordance with submitted materials. The motion carried with **Mss. Ferrante** and **Valiquette** and **Messrs. Casey, Hirsch**, and **Tuozzola** voting **with the motion**.

- 5. 16 Ross Street.** MBP 66/813/22. CDD-1, effective 12/17/18. Thomas Lynch, Esq., for J. E. Rogers, owner; Vary Sec. 3.16.4.2(4) buffer strip adjacent to res. zone 20' req. to 5' prov.; Sec. 5.14.6.5 landscape buffer from 6' req. to 0' prov.; Sec. 5.14.6.6, 10' buffer req. to 5' prov.; Sec. 5.14.6.7 landscape area, 4' req. to 0' prov.; Sec. 5.14.6.8 landscape area, 5' req. to 0' provided.

**Attorney Lynch**, 63 Cherry St, addressed the board, noting the presence of the manager of the Russell Speeder Car Wash and the owner of the property set to be sold to the carwash. Attorney Lynch reviewed the status of the application to date. He described the site and the traffic problems due to volume at the business. He reviewed the approval granted by the Planning and Zoning Board. He said the lanes approaching the car wash would be extended and an area currently used for detailing would be removed from the site. He noted that there would be a 5-foot buffer with a stockade fence between 16 Ross Street and 20 Ross Street. He said the buffer would be smaller than usually permitted but the stockade fence would enhance the division. He said that the variances would generally legalize what's there and alleviate the traffic problem.

**Mr. Tuozzola** invited the public to speak.

### **OPPOSED**

**Poppy Sidarweck**, 26 Ross Street, said she was confused by the notification or lack thereof about the Zone Change. She expressed concern about the parking use for the dental office. She said car wash customers sometimes assume Ross Street is not a public street.

### **REBUTTAL**

**Attorney Lynch** said cars were parked on Ross Street for detailing; that would be eliminated and should reduce the congestion.

**Gilbert Santiago**, 38 Ross Street, agreed that access was frustrating, he asked for clarification. **Attorney Lynch** reviewed the site plan with Mr. Santiago. He stressed that eliminating the detailing will reduce or eliminate the backups on Ross Street.

### **BOARD DISCUSSION**

**Mr. Tuozzola** closed the hearing. **Mr. Hirsch** expressed concern about notification issues. **Ms. Ferrante** said she thought the traffic issues would be alleviated.

**Mr. Hirsch** motioned to **approve**. **Ms. Ferrante** seconded. **Mr. Hirsch** supported the motion based on alleviating a safety hazard; in accordance with submitted materials. The motion carried with **Mss. Ferrante** and **Valiquette** and **Messrs. Casey, Hirsch**, and **Tuozzola** voting **with the motion**.

**C. OLD BUSINESS**-None

**D. NEW BUSINESS**- **Ms. Ferrante** asked for a clarification of notification ; **Mr. Sulkis** explained how it differed from the ZBA.

**E. STAFF UPDATE**-None

**F. ACCEPTANCE OF MINUTES** 12 November 2018: Approved.

**G. ACCEPTANCE OF APPLICATIONS** for 13 November 2018 hearing.

Adjournment was at 8:23 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:

Meg Greene  
Clerk, ZBA