

**THESE MINUTES ARE SUBJECT TO BOARD APPROVAL
AT THE NEXT ZONING BOARD OF APPEALS MEETING**

**Westbrook Zoning Board of Appeals PUBLIC HEARING MEETING MINUTES
Wednesday, June 26, 2019 at 7:30 p.m.
Mulvey Municipal Center – Multi Media Room
866 Boston Post Road, Westbrook, CT**

The Westbrook Zoning Board of Appeals met on Wednesday, June 26, 2019 in the Multi-Media Room of the Teresa Mulvey Municipal Center located at 866 Boston Post Road. Legal Notice of the Public Hearing was published in The Harbor News on June 13, 2019 and June 20, 2019.

Chairman Bonnie Hall called the Public Hearing to order at 7:34p.m. and introduced Board members to the public.

Members Present

Bonnie Hall, Devin Xenelis, Jack Boehme, and Alternate members Nick Alaimo and Eugenia Magill.

Absent: John Bech, Vincent Neri and Matthew Schenck

Also present was Recording Clerk Meryl Moskowitz.

Chairman Hall read the procedures to be followed at the Hearing into the record.

Alternate members Nick Alaimo and Eugenia Magill were seated to hear all appeals.

No. 19-008 – Use Variance requested by Kevin Matthews, applicant; 986 Essex Road Nominee Real Estate Trust, owner. Property located at 986 Essex Road, Building 1, first floor, further identified on Assessor's Map 149 as Parcel 001, LDR zone. Use Variance requested for personal service, single-chair barber shop.

Kevin Matthews, applicant, stated the lot is non-conforming, pre-existing commercial building in the LMD district, and was formerly the location of a printer, known as the Penny Saver. He requests a Use Variance to have a portion of the property use as a one chair barbershop, with one employee, which he states would be a less non-conforming use. Also, permitting approvals have been received from the Building Department, Fire Marshal and Health department. He stated he would like to utilize the space for the betterment of the community, and that the hardship is the size and non-conformity of the space.

Chairman Bonnie Hall noted that in 2015 the Board denied a use variance for a 1-bedroom residential unit.

B. Hall asked that in view of available alternative locations in town, why is this location necessary for the barbershop? Mr. Matthews submitted letters of support signed by eight neighbors (Exhibit A). He stated he believes there is a need in this specific area for the barbershop.

Mr. Matthews cited section 12.22.01 A, B, C, & D, which B. Hall clarified is for a variance, and that he needs to meet the threshold of 12.22.03, use variance, which she read into the record:

No use variance shall be granted merely because the permitted uses, (a) result in a particular

difficulty or (b) provide less than the highest or best return to the owner. The Zoning Board of Appeals may, upon application by the owner, grant variances authorizing otherwise prohibited uses if the applicant makes an affirmative showing that:

- a) In view of the available alternatives within the town, the public interest would be best served by permitting such use at the proposed location; and
- b) The public interest cannot reasonably be served by location of such use in a zone in which it is permitted.

Exhibit B, Zoning Regulations, was submitted into the record.

B. Hall stated Mr. Matthews must prove to the Board he can't have this business in another location in an approved zone. Mr. Matthews stated due to the small, tight parcel, none of the permitted uses would fit in this existing space and that he is trying to make it usable for the town, less non-conforming, so that it doesn't remain vacant and an eyesore.

There was discussion about the zone being an LDR zone but that a previous Board denied that residential use.

B. Hall asked for public comment.

Speaking in favor was resident Jim Crawford, who also serves on the Economic Development Commission. He stated he believes a barbershop would be an attractive alternative, and a benefit to that particular neighborhood.

Speaking in opposition was:

Malory Barlow, 958 Essex Road. She stated concerns with cars parking late into the night, cars and people coming throughout the day, litter, and property value.

Robert Smelings, 1015 Essex Road stated concerns with parking and accidents.

B. Hall read into the record a letter in opposition from resident Heidi Wallace, dated June 26, 2019.

Mr. Matthews clarified that parking is not done perpendicular to Essex Road but rather parallel, and anticipates six striped parallel parking spaces. For clarification he drew the parking spaces on the site map.

B. Hall asked if anyone wished to speak neither in favor nor in opposition. There was no comment.

The public hearing closed at 8:16pm.

No. 19-010 – Use Variance requested by Ed Knight, owner/applicant. Property located at 21-27 Essex Road, further identified on Assessor's Map 176 as Parcel 120, CTC zone. Use variance requested for residential use on ground floor of commercial building in CTC zone.

Vincent Stella, architect, representing the owner, requested a Use Variance for one residential unit on the ground floor of a commercial building, in the location of the former Westbrook Deli. B. Hall stated for the record that the Legal Notice is correct.

Mr. Stella explained that there are issues with pedestrian and vehicular circulation, and with parking. With a residential unit, he believes vehicular and pedestrian access would improve, as would safety issues. He stated residential mixed use meets the goals of the town center.

Exhibit A, a sketch, was submitted into the record.

B. Hall stated that no apartments are allowed on the first floor in the center of town, in the CTC zone, and asked the applicant why a use variance should be allowed. She reminded the applicant that the Board looks at the land and why a use variance should be granted where it is not allowed by Zoning.

There was a discussion about parking. Mr. Stella explained that parking for the proposed residence would be in the municipal lot. Mr. Ed Knight, property owner, stated that to his knowledge there is a written agreement with the town for parking in the municipal lot.

Nick Alaimo stated he wants to see the agreement. B. Hall stated on the record that parking for residential use is not grandfathered in.

Devin Xenelis clarified that the stated hardship is that the applicant wants to improve the safety aspect. D. Xenelis expressed that the safety aspect could be improved with sidewalks yet remain a commercial use.

Jack Boehme also expressed that he would like to see the agreement between the owner and the Town for municipal parking, and suggested the hearing be continued so that the owner could provide the agreement to the Board.

A **MOTION** made by D. Xenelis and seconded by J. Boehme **TO CONTINUE** the hearing to the July 24, 2019 meeting with the stipulation that the applicant provide the parking agreement related to parking in the municipal lot, as well as any other parking arrangement consistent with the application. The motion passed unanimously.

No. 19-011 – Appeal of Linda Pencz, owner/applicant; Joe Wren, agent. Property located at 17 Brookside Avenue East, further identified on Assessor's Map 182 as Parcel 168, HDR zone. Variances requested from Zoning Regulations **Section No. 2.C.2.1** front yard to allow 14.2' where 25' required; **Section No. 2.C.2.2** side yard to allow 1.4' where 10' required; **Section No. 2.C.2.3** rear yard to allow 9.5' where 35' required; **Section No. 2.C.3.1** building coverage to allow 32% where 25% required; **Section No. 8.D.3.2** enlargement of a non-conforming structure; and **Section No. 8.D.3.4** expansion of a non-conforming structure. Variances needed for second floor addition with gable roof, eaves and gutters, and shed.

Joe Wren, P.E., representing the owners, explained that the owners propose a second floor expansion of their seasonal cottage and would remain within the footprint of the existing house. Architect Denise Von Dassel, and owner Robert and Linda Pencz were also present.

Mr. Wren explained that the home has been in the family since 1954 and will remain a two bedroom seasonal cottage. An attached shed is proposed to be removed and replaced with a detached shed, that is slightly larger and less than 200 sq ft.

Mr. Wren read the hardship into the record, stating that the property is entirely consumed by minimum yard setbacks so that any proposed work would require a variance. Also, he stated the the house was

built circa 1940, prior to adoption of zoning regulations.

The application is exempt from CAM.

Exhibit A, a page of photographs, was submitted into the record.

Architect Denise Von Dassel reviewed plans, explaining plans for expansion of the second floor, while keeping one bedroom on the first floor, removing closets and putting in a staircase. The home is constructed on piers, and there is no crawl space nor storage.

E. Magill, N. Alaimo and D. Xenelis stated they had no further questions.

J. Boehme asked about flood zone and if the proposed work is less than 50% of the home value. Ms. Von Dassel stated that the house will be FEMA compliant.

B. Hall asked about the shed and why it is not proposed to be larger and attached to the house.

J. Wren explained that doing so would make the house more non-conforming by making the principal structure closer to the property line, rather than having a minor accessory structure. The detached shed would be more conforming to the rear yard setback and more conforming for the septic.

B. Hall asked for public comment. No one spoke in favor, no one spoke in opposition; and no one spoke neither in favor nor in opposition to the application.

Owner Linda Pencz stated that the cottage has been in the family for 55 years and that they would like to continue to be seasonal residents, and that due to the small size, vertical expansion made sense. She added that she has spoken to surrounding neighbors and they are supportive.

The public hearing closed at 9:08pm.

No. 19-012 – Appeal of 33 Old Mail Trail, LLC, owner/applicant; Ed Cassella, agent. Property located at 33 Old Mail Trail, further identified on Assessor's Map 195 as Parcel 107, HDR zone. Variances requested from Zoning Regulations **Section No. 2.C.2.3** rear yard to allow 28.5' where 35' required; **Section No. 2.C.3.2** height to allow 36.5' where 35' required; **Section No. 8.D.3.2** enlargement of a non-conforming structure; and **Section No. 8.D.3.4** expansion of a non-conforming structure. Variances needed to construct new house and elevate per FEMA requirements. **CAM** required.

Attorney Ed Cassella, representing the applicant 33 Old Mail Trail LLC, explained that variances are sought to reconstruct the home, elevate it to above FEMA base flood elevation, and re-configure the rear deck and stairs. Also present was Felicia Cuomo and architect Bill Sapienza.

Mr. Cassella explained that the owner had sought variances in January 2018 to add a third floor. This new application involves a tear down and rebuild, bringing it more into conformity than the current structure. According to Mr. Cassella only the rear deck would not be compliant. The deck has been shifted so it is no longer in the side yard setback. 28.5' is requested for the deck steps, where 35' is required. Additionally, in order to have 8' ceiling heights on the first floor and to elevate above FEMA requirements, the Applicant is requesting a height variance to allow 36.5' where 35' is required. The property is at a low elevation and slopes, resulting in an average grade of 5.5'.

According to Mr. Cassella, part of the hardship is due to the sloping nature of the lot, that if not for the slope, they wouldn't need a variance, but due to the slope they have to use the average grade.

He stated they have decreased the house from what had been approved, that coverage has decreased 2%, and asked the Board to consider the reductions in coverage and in non-conformities as a basis for granting the requested variances. He added that there is a CAM, and that the house will be elevated to FEMA requirements, and that it is currently not in compliance with FEMA.

Exhibit A, a list of variances, 2018 & 2019, was submitted into the record.

Architect Bill Sapienza emphasized that they would like to have 8' ceilings, that 7.6' is a bit low, and allowed that if they had to accept 7.6' they would.

Mr. Cassella submitted a letter of support, Exhibit B, dated March 2, 2019 from abutting neighbor to the west Nicholas Rut of 27 Old Mail Trail.

E. Magill asked about the 2018 application. E. Cassella stated the height variance request of 41' was not approved.

B. Hall noted for the record that no one was present to speak for or against the application.

J. Boehme asked if other homes in the neighborhood were taller. Felicia Cuomo, owner, stated that there are other 3-story homes but did not know the heights.

N. Alaimo asked if the topography is part of the hardship for height. Mr. Cassella responded 'yes', due to the sloping nature, and that elevating above FEMA is a further reduction of non-conformity.

The public hearing closed at 9:22pm.

Respectfully submitted,

Meryl Moskowitz
ZBA Recording Clerk

THESE MINUTES ARE SUBJECT TO BOARD APPROVAL AT THE NEXT ZONING BOARD OF APPEALS MEETING

**Westbrook Zoning Board of Appeals REGULAR MEETING MINUTES
Wednesday, June 26, 2019 immediately following Public Hearing
Mulvey Municipal Center – Multi Media Room
866 Boston Post Road**

The Westbrook Zoning Board of Appeals met on Wednesday, June 26, 2019 in the Multi-Media Room of the Teresa Mulvey Municipal Center located at 866 Boston Post Road. Legal Notice of the Public Hearing was published in The Harbor News on 13 June and 20 June 2019. Chairman Bonnie Hall called the Zoning Board of Appeals Regular Meeting to order at 9:22pm.

Members Present

Chairman Bonnie Hall, Vice Chair Devin Xenelis, Jack Boehme, and alternate members Nick Alaimo and Eugenia Magill. Also present was Recording Clerk Meryl Moskowitz.

Absent: John Bech, Vincent Neri and alternate member Matthew Schenck.

Call to Order: Chairman Hall called the meeting to order at 9:22pm.

Alternate members Nick Alaimo and Eugenia Magill were seated to vote on all applications.

DECISION

No. 19-008 – Use Variance requested by Kevin Matthews, applicant; 986 Essex Road Nominee Real Estate Trust, owner. Property located at 986 Essex Road, Building 1, first floor, further identified on Assessor's Map 149 as Parcel 001, LDR zone. Use Variance requested for personal service, single-chair barber shop.

B. Hall stated there was both support and opposition to this application.

D. Xenelis stated his concern and that he didn't get a good idea of what is going on, was not clear how the use variance could go with one portion of the building and not the whole building, so that in theory the whole place could be a barber shop. He also stated concerns about the parking and lack of detail about the parking in the plans.

E. Magill stated she did not understand the hardship.

J. Boehme expressed concern that a commercial use had been abandoned, and that now the Board is being asked to approve another commercial use.

B. Hall stated the applicant has to show the hardship, that there's no other place in all of town they could place the barbershop.

D. Xenelis stated he doesn't see the hardship, that the barbershop has to go in this location and no where else, he did not hear that argument.

N. Alaimo stated he believes this is not an appropriate spot, that there's testimony of a lot of car accidents, and there are other tenants on that property. He asked what is to prevent expansion of the barber shop or more commercial use?

D. Xenelis stated that the only commercial use in the area is the Westbrook auto body and he doesn't see the need for more commercial use. There was discussion about the January 2015 denial for a use variance for a one bedroom residential unit.

A **MOTION** made by D. Xenelis and seconded by N. Alaimo to **DENY** the application as presented, based on lack of hardship. The motion passed unanimously.

No. 19-010 – Use Variance requested by Ed Knight, owner/applicant. Property located at 21-27 Essex Road, further identified on Assessor's Map 176 as Parcel 120, CTC zone. Use variance requested for residential use on ground floor of commercial building in CTC zone.

This application is continued and will be opened at the July 24, 2019 meeting.

No. 19-011 – Appeal of Linda Pencz, owner/applicant; Joe Wren, agent. Property located at 17 Brookside Avenue East, further identified on Assessor's Map 182 as Parcel 168, HDR zone. Variances requested from Zoning Regulations **Section No. 2.C.2.1** front yard to allow 14.2' where 25' required; **Section No. 2.C.2.2** side yard to allow 1.4' where 10' required; **Section No. 2.C.2.3** rear yard to allow 9.5' where 35' required; **Section No. 2.C.3.1** building coverage to allow 32% where 25% required; **Section No. 8.D.3.2** enlargement of a non-conforming structure; and **Section No. 8.D.3.4** expansion of a non-conforming structure. Variances needed for second floor addition with gable roof, eaves and gutters, and shed.

D. Xenelis stated that this is a clear cut case of hardship, that the applicant is expanding use in the most minimal way possible.

B. Hall agreed, stating she felt that hardship was demonstrated.

E. Magill and N. Alaimo concurred.

J. Boehme stated he agrees and made a motion to approve as presented.

A **MOTION** made by J. Boehme and seconded by D. Xenelis to **GRANT** the application as presented. The motion passed unanimously.

No. 19-012 – Appeal of 33 Old Mail Trail, LLC, owner/applicant; Ed Cassella, agent. Property located at 33 Old Mail Trail, further identified on Assessor's Map 195 as Parcel 107, HDR zone. Variances requested from Zoning Regulations **Section No. 2.C.2.3** rear yard to allow 28.5' where 35' required; **Section No. 2.C.3.2** height to allow 36.5' where 35' required; **Section No. 8.D.3.2** enlargement of a non-conforming structure; and **Section No. 8.D.3.4** expansion of a non-conforming structure. Variances needed to construct new house and elevate per FEMA requirements. **CAM** required.

J. Boehme stated he has no issues, that the applicant is improving the structure by making it more non-conforming.

D. Xenelis stated he has no issues, that it is an improvement, and finds the request for 8 ft ceiling height, which is a standard, to be reasonable.

B. Hall stated that the lot is challenging and that the applicant has improved the structure by raising it to FEMA standards and making it a home they can live in, and with minimal variance requests. She stated she was impressed that the Applicant came before the Board with another drawing showing an alternative height.

E. Magill clarified the height and noted that no neighbors stated opposition.

B. Hall stated she sees the hardship, and the need to elevate per FEMA.

A **MOTION** made by B. Hall and seconded by J. Boehme to **GRANT** with the CAM the application as presented based on hardship having been met, that due to the shape of the lot and all the constraints, the Applicant has taken great care to work within the confines of this irregular lot such that only three small variances are requested. The motion passed unanimously.

MINUTES

A **MOTION** by D. Xenelis and seconded by E. Magill to accept the Regular Meeting Minutes of 22 May 2019 as presented. Voting in favor: B. Hall, D. Xenelis, J. Boehme, E. Magill; Abstaining: N. Alaimo. Opposing: none. The motion passed 4-1-0.

BILLS

A **MOTION** by B. Hall and seconded by E. Magill to approve payment of \$25.58 to W.B. Mason for two name plates. The motion passed unanimously.

A **MOTION** by J. Boehme and seconded by D. Xenelis to approve payment of \$210.00 to Shore Publishing. The motion passed unanimously.

A **MOTION** by D. Xenelis and seconded by N. Alaimo to approve payment of \$249.99 to Meryl Moskowitz for clerk duties May-June 2019. The motion passed unanimously.

CORRESPONDENCE

Regular meeting minutes of IWWC, June 4, 2019 and regular meeting minutes of the Zoning Commission, May 28, 2019

OTHER BUSINESS

The Chair welcomed new member Jack Boehme.

ADJOURNMENT

A **MOTION** to adjourn at 9:44pm by D. Xenelis and seconded by E. Magill. The motion passed unanimously.

Respectfully submitted,

Meryl Moskowitz
ZBA Recording Clerk