

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, 26 August 2020  
via ZOOM

The Westbrook Zoning Board of Appeals met on Wednesday, 26 August 2020 via ZOOM. Legal Notice of the Public Hearing was published in the Harbor News on 12 August 2020 and 19 August 2020.

Chairman Bonnie Hall called the Public Hearing to order at 7:31 p.m. and introduced Board members.

**Members Present:**

Chairman Bonnie Hall, Vice Chair Devin Xenelis, Vincent Neri, Jack Boehme, John Bech, Alternate Members Eugenia Magill and Scott Hartzell.

**Absent:** Alternate Member Matthew Schenck.

Also present was Recording Clerk Karen Amendola.

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

**No. 19-015** – Appeal of Laura and Robert Zarotney, owners/applicants, Robert L. Doane, P.E., L.S., agent. Property located at 56 Indian Trail, further identified on Assessor's Map 188, Parcels 039, HDR Zone. Variances requested from Zoning Regulations: Parcel 1, Map 188, Parcel 039 (0.11 acres): Section 2.C.2.1 front yard setback, 25' required, 17.6' requested; Section 2.C.2.2, side yard setback, 10' required, 2.0' feet requested; Section 2.C.2.3, rear yard setback, 35' required, 0.5' requested; Section 2.C.3.1, building coverage, 25% required, 32.5% requested. Variance requested to tear down and rebuild residence. CAM required.

Agent Bob Doane told the Board that the client is proposing to tear down the existing residence and build a new residence compliant with current flood standards, new sanitary system. There are currently 40 steps up to the existing house that will be cut down to 15. These steps are considered a structure. The applicant is requesting four variances. The property is very unique in that it is comprised of three parcels separated by a strip of association land, and a road. The existing house has a deck that spans association property. The proposed new home would eliminate a significant non-conformance and bring the deck onto the property. The proposal reduces an existing side yard non-conformity by bringing the existing steps onto the property. The town sanitarian has approved the proposed sanitary system. The steps would need to be over the sanitary system. Mr. Doane stated that the existing topography of the property and the fact that there are 3 separate parcels add to the hardship. Mr. Doane stressed that the proposed design meets current Flood Hazard standards in the zoning regulations.

Chairman Hall asked the Board if there were any questions for Mr. Doane. V. Neri asked which plan showed the existing conditions. Mr. Doane referred him to the site plan dated Rev. 2/28/20 in the upper right hand corner.

Chairman Hall said that there are only 8 ½" x 11" sized house plans in the file. Mr. Doane stated that the plan dated 1/22/20 is the current plan and shows the exterior. The interior plans were only provided on small prints. Mr. Doane was not advised by Zoning that large prints were required. There is currently a 3 bedroom, 1 1/2 bath house with a basement. The proposed house will have a walk out basement lower floor that will have flood vents, non habitable with a one car garage. B. Hall asked where mechanicals will be located. Mr. Doane stated they will be on the second floor or above. B. Hall questioned the height of the proposed residence and Mr. Doane advised that it will be less than 35'.

Chairman Hall asked if the deck is not part of the lot coverage. Mr. Doane replied that he believes it is. B. Hall asked for the actual lot coverage with the house. B. Hall asked if there will be a loft on the third floor. B. Doane said that it is open over the living area. B. Hall inquired as to the ceiling height in the loft and how it is

accessed. Mr. Doane responded that you access through a full set of stairs and the ceiling height is 8'. B. Hall asked Mr. Doane to confirm that the dimensions of the proposed home would be 48' x 32'.

V. Neri asked what the change in coverage is. Mr. Doane said that the coverage is existing is 19.2%, proposed is 32.5%. Because the deck spans adjacent property, the existing coverage is less. The existing deck is 320 sq. ft. The proposed deck is 480 sq. ft. Mr. Doane stated the coverage on the lot is only increasing by 650 sq. ft. and that is significant because it is on a 4,800 sq ft. parcel and that is part of the hardship. If the property was one parcel, they would not have to request variances. D. Xenelis asked why that is not an option to make parcels one. B. Doane said that Indian Trail separates one parcel, and association land separates the other two.

D. Xenelis referred to plans that indicate rear yard existing is zero and asked Mr. Doane to confirm that is because of the deck on the association property. D. Xenelis asked if the property is owned by the association or is a right of way. Mr. Doane stated that it is owned by the association.

J. Boehme said that the new plan shows two bedrooms. Mr. Doane replied that the third floor, which is listed as loft, would be the third bedroom. Mr. Doane commented that the Assessor's Card lists the residence as three bedrooms. Chairman Hall asked if that was provided in the application, and Mr. Doane replied no.

Chairman Hall asked Mr. Doane to discuss the CAM application. Mr. Doane replied that the property is in the CAM zone, but not waterfront. The parcel that is waterfront is not connected to this parcel. Mr. Doane stated that the proposed project meets residential zone, meets the health code, will have no adverse impacts on the coastal flood hazard area because they meet flood standards. Mr. Doane also commented that the applicant is requesting activity that has been allowed on other neighboring lots. He said that this application is in accordance with current development standards and will have no adverse impacts on coastal resources. Mr. Doane has submitted CAM application. Chairman Hall asked if any fill would be brought in. Mr. Doane said no fill would be brought in, the property will be cut down and that is how they are eliminating a portion of the stairs. B. Hall asked the Board if they had any questions regarding the CAM. The Board members stated that they had no copies of the CAM in their application documents but had an understanding based on Mr. Doane's comments.

Speaking in Favor of the application:

- 1) John and Gretchen Rossi of 35 Mohawk Road. Mr. Rossi commented that they have reviewed the plans in detail with the owners and are happy with what they see. They are in favor of the applicants going forward.

Speaking in Opposition of the application:

- 1) Thomas Conboy, 56 Menunketesuck. He commented that he was puzzled by what's being presented and that the proposed house will increase the footprint by 80%. Mr. Conboy's understanding is that the second parcel is all marshland and unbuildable. He is also concerned about creating a garage and driveway on a narrow street with respect to traffic.
- 2) Sheila and Gordon Rossignol, 46 Indian Trail. They live next door to the applicant. Mrs. Rossignol spoke of their concerns about so much dirt being removed next to their septic system leaving a 6'-8' drop off. She also mentioned that they have a 200 year old oak tree, and they don't want it harmed by removing that much of the hill. Mrs. Rossignol is hopeful that this can be resolved and wanted a guarantee that her septic system will not be disturbed.

Chairman Hall asked Mr. Doane to address those concerns. Mr. Doane stated to Mr. Conboy that he understands that people can't build on tidal wetlands. The marsh parcel is 6,756 sq. ft and when added to the 4, 878 sq. ft of house parcel, divided by coverage, it is 14% coverage which is allowed. He stated that if it was one parcel, the applicant would not need coverage variance. Mr. Doane said that the majority of neighbors have garages under

and this gives the ability to move vehicles off Indian Trail, which is a very narrow roadway and enhances traffic movement.

Mr. Doane replied to the Rossignol's concerns that the retaining wall will be 3 feet from the property line. If they uncover any roots from the oak tree, they will handle with care and also would like to keep the tree alive.

V. Neri asked B. Doane to explain the 80% coverage. Ken Butterworth, Town Moderator, was called in for assistance with Zoom at this point. Mr. Doane stated that they are not getting to 80% coverage, just the difference in coverage. He said that it is important to note that all they are trying to do is go to a 1,200 ft. coverage, a 48' x 32' house, which is a normal sized, 3BR house that matches the neighborhood.

V. Neri asked Mr. Doane what the net increase is. Mr. Doane replied that the coverage includes the house, deck, and the stairs. V. Neri asked Mr. Doane to address the concerns regarding the septic system. Mr. Doane stated that the sanitary system should be 10 feet from the property line, so it should be 13 feet from the retaining wall.

V. Neri asked Mr. Doane to identify reduction in non-conformities. Mr. Doane replied the deck over the property line.

J. Boehme asked what the retaining wall will be made of. Mr. Doane stated concrete.

At this point Mark McCarthy joined the Zoom meeting and requested to speak. Mark and Allison McCarthy, of 64 Indian Trail, spoke in favor of the application. They have reviewed the plans and said they are probably the most impacted neighbor. They believe the applicant has a solid proposal, good details, and that it will enhance their street.

Sheila Rossignol requested to speak. She stated that looking at their A2 survey the tree is entirely on their property. Mrs. Rossignol also said she still has concerns about their septic system. Mr. Doane said that he stands corrected regarding the tree. He said that the applicant will not be grading over the property line so their septic system will not be touched.

Chairman Hall asked other people on the Zoom meeting to unmute their microphones if they would like to speak and none did.

The Public Hearing closed at 8:48 p.m.

**No. 20-002** - Appeal of Westbrook Elks Lodge #1784, owners/applicants. Property located at 142 Seaside Avenue, further identified on Assessor's Map 183, Parcel 070, MDR Zone. Section 2.B.1, Permitted Uses in MDR Zone. Variance requested to expand time limits imposed on the use of outdoor pavilion granted in Application ZBA 18-002. Existing variance limits use of outdoor pavilion from Memorial Day to Labor Day each year. Proposed variance would limit use from May 1 to October 31 each year.

Don Harger, member of the Westbrook Elks Board of Directors, stated that their hardship in limited time usage is a serious decrease in earnings of money for charities. Usually the Elks donate \$100,000 - \$150,000 to charities. This year the Elks have had to deny six requests for weddings in May. Mr. Harger stated that the Elks would like to extend usage from all of May to the end of October. Chairman Hall asked Mr. Harger to state their hardship. Mr. Harger said their hardship is an inability to raise money for charity.

Chairman Hall stated that there are no sitting board members that are Elks members. She asked Mr. Harger if while extending usage timeframe, they still would not have heat. Mr. Harger replied that there would be no heat, only electricity.

Chairman Hall asked the Board for their questions. V. Neri asked what the original usage dates were. Mr. Harger replied from Memorial Day to Labor Day. D. Xenelis wanted to confirm that no structures or enclosures were

being added. Mr. Harger replied none. J. Boehme commented that the request would expand usage by three months and asked about how many additional events will the Elks hold. Mr. Harger stated that it would be hard to say, probably will be used in 2021. J. Boehme mentioned Section 9.H on page 249 of the Zoning Regulations and asked if that would be applicable. Chairman Hall responded the Zoning Enforcement Officer did not apply this section and it was not triggered by this application.

Chairman Hall asked for public comment.

No one spoke in favor of this application.

Speaking in Opposition were:

- 1) Mary Lou Walker, 94 Seaside Avenue. Ms. Walker stated that she was opposed to the approval of the application in perpetuity. She felt that due to a hardship claim based on COVID-19, the extension should be limited to the duration of COVID-19 rather than to perpetuity. Ms. Walker stated that even if the extension is approved there will be challenges based on the number of people allowed to gather during COVID-19. Mr. Harger responded that the Elks can't allow more than 90 people inside, which is half of their capacity. He said lack of use because of the time constraint and lack of ability to raise money is the Elks' hardship, not based on COVID-19.
- 2) Nell Walker, of 94, Seaside Lane. She questioned if any of the sitting Board members were related to members and or former members. Chairman Hall responded that one Board member is a former Elk member. Ms. N. Walker asked that it be included in the minutes the number of members that have family that are Elk members. She stated that her question is a standard conflict of interest question, a screener, extent of relationship looking at spouses, parent/child, members in same household. Ms. N. Walker pointed out Section 9.H.1.4 disqualifying Board members. J. Boehme pointed out that Section she was referring to was on page 246. Chairman Hall stated that she was comfortable with the Board continuing to hear the application. She asked N. Walker if there was any further opposition. N. Walker said that she heard from the Elks agent different bases for request modification, conflict about COVID-19, not about COVID-19. She stated that Mr. Harger's original testimony was COVID-19 as rational. Ms. Walker said that a requirement of his application was that he needed an accurate, detailed plan for the Board's review. She believes his current rational for modification is incorrect.

D. Xenelis commented that as a Board member, Ms. N. Walker was getting to the Board's ability to hear a case. He asked if N. Walker was saying the application is invalid. D. Xenelis believes that based on the way it was presented, it was not an issue of the application.

Ms. Mary Lou Walker addressed the Board. She stated that their concern is significant with the usage going from summertime usage to adding nearly three months. She said she believes the applicant is changing overall use in purpose from the original intended purpose.

D. Harger responded to the COVID-19 remarks by saying that this application was filed in February, before COVID-19 started, it has nothing to do with COVID-19. He agreed to never use space heaters or any other heat.

Chairman Hall asked the Board members if there were any additional questions. V. Neri responded that he doesn't believe this is a change in use, just in time frame and that the Elks are continuing with the way it was approved. D. Xenelis asked Mr. Harger how long have the Elks been on that property. Mr. Harger responded since the 1950s.

The Public Hearing closed at 9:17 p.m.