



TOWN OF WESTBROOK
ZONING BOARD OF APPEALS

866 BOSTON POST ROAD
WESTBROOK, CONNECTICUT 06498
(860) 399-3046 • FAX (860) 399-3092

MEETING MINUTES – ZBA PUBLIC HEARING – 24 FEBRUARY 2010

The Westbrook Zoning Board of Appeals met on Wednesday, February 24, 2010, 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 Hartford Courant* on 10 February 2010 and 17 February 2010.

Chairman Mark Damiani called the Hearing to order at 7:32 p.m. and introduced Board members to the public present at the Hearing. Members present were Chairman Mark Damiani, Vice-Chairman John Boehme, Eve Barakos, Bonnie Hall and Alternate Richard White. Also present was Administrative Secretary Janet L. Aiken.

Chairman Damiani read the procedures to be followed at the Hearing as well as the Legal Notice of the Public Hearing. The Chairman asked for a motion to change the order of the agenda as follows:

1. Application No. 0927
2. Application No. 0928
3. Application No. 10-04
4. Application No. 10-05
5. Application No. 10-02
6. Application No. 10-03

A motion was made by Bonnie Hall, seconded by John Boehme, to change the order of the agenda as noted. The motion carried unanimously.

The Chairman seated Richard White for George Rehberg at this time.

No. 0927 – Appeal of Darlene Santore, applicant; Pilots Point Marina, owner; Attorney Thomas A. Cloutier, agent. Property located at 631 Boston Post Road and identified on Assessor's Map 25 (formally) as Parcel S40 (formally). Request Reversal of ZEO's Order dated 10-06-09.

Chairman Mark Damiani read two letters from agent Attorney Cloutier into the record, one dated 2/5/10 and the other dated 2/24/10, the latter asking for an additional continuation of the Hearing for this Appeal to the March 24, 2010 meeting. Discussion among the Board members included the reasons behind the request (Route 1 setback location, completion of the site plan and signage variance). Review was taken of C.G.S. Section 8-7 and Board concerns over the time frame for extensions. After review and discussion, the members felt there was not enough time left for this application to be continued to its next meeting in March.

A motion was made by John Boehme, seconded by Richard White, to deny the request on the Appeal of the ZEO's Cease and Desist Order because of exhaustion of the extension timeframe. Members briefly discussed denying without prejudice but the

decision was not to add that wording to the motion. The vote was called and the motion carried unanimously.

No. 0928 – Appeal of Elaine Erwin Matulis, owner/applicant. Property located at 534 Seaside Avenue, HDR Zone. Identified on Assessor’s Map 15 as Parcel SF5. Variances requested from Zoning Regulation Section No. 4.33.06(b) of 10’ required, 5’ requested; Section No. 4.33.06(b) of 10’ required, 5’ requested; Section No. 4.33.06(c) of 35’ required, 24.85’ requested. Variances needed to replace existing structure within existing footprint. Also, CAM approval needed.

The ZEO had notified the Chairman by email that agent Attorney Cloutier formally withdrew this application due to the submission of Appeal Application No. 10-04.

No. 10-04 - Appeal of Elaine Erwin Matulis, owner/applicant; Attorney Thomas A. Cloutier, agent. Property located at 534 Seaside Avenue, HDR Zone. Identified on Assessor’s Map 15 as Parcel SF5. Variances requested from Zoning Regulation Section No.2.10.06 expansion of non-conforming structure, Section No. 4.33.06(b) east side yard setback to allow 5.4’ where 10’ is required, Section No. 4.33.06(b) west side yard setback to allow 5.4’ where 10’ required, Section No. 4.33.06(c) rear yard setback to allow 32.84’ where 35’ required. Variances needed to replace existing structure. Also, CAM approval needed.

Chairman Mark Damiani read a letter dated 2/24/10 from agent Attorney Cloutier into the record formally withdrawing this application as additional work has to be done on the septic leaching field necessitating moving the proposed location of the house some 15 inches, requiring new site plans to be drawn. The application and CAM will be resubmitted to the Board at a future point in time.

No. 10-05 – Appeal of Raymond and Janet Behr, owner/applicant; Gregg Fedus, Fedus Engineering LLC, agent. Property located at Lot 17 – Pointina Road. Identified on Assessor’s Map 28 as Parcel N12. HDR zone. Variance requested from Zoning Regulation Section No. 4.33.07 setback from tidal wetlands to allow 6.1’ setback where 50’ is required. Also, CAM approval needed.

Chairman Mark Damiani read a letter dated 2/24/10 from agent Gregg Fedus P.E. requesting an extension to the March 24th meeting. No reason for the request was indicated. Richard White was seated for George Rehberg. The applicants’ architect, Matt Williams was present and explained additional site plan work was needed on the septic plan, and the attorney for the applicants had a death in the family. Attorney Mike Cronin who was present in the audience for another application asked what the attorney’s name was and Matt Williams told him Attorney Ned Fitzpatrick. Several members of the Board said the extension would allow DEP to respond and further information gathered for the hearing.

A motion was made by Richard White, seconded by Mark Damiani, extending the application to the Board's March 24th meeting. The motion carried with four votes in the affirmative with John Boehme opposed.

No. 10-02 – Appeal of Brewer Pilots Point Marina, owner/applicant; Jack Colody, agent. Property located at 63 Pilots Point Drive and identified as Assessor's Map 14 as Parcel PP1. CB zone. Variances requested from Flood Zone/Zoning Regulation Section No. 5.04.01 and Section No. 5.04.06 b) 1 through b) 3. to vary required (1) foot above base flood elevation, to allow finished floor elevation to remain at 8.2' flood elevation. Variance request from flood-proofing structural requirements, thereby not requiring certification of standards by Registered Professional Engineer. Variances needed for proposed 2,000+/- sq.ft. building replacing 2 storage containers.

Richard White was seated for George Rehberg. Agent Jack Colody and Rives Potts were present for the application. The proposal is for a storage only building to replace current metal storage containers on the site to be used for support equipment including rigging used with the marina's travel lifts and crane, plus storage of slings, cables and support equipment including pressure washer and related DEP required wash water container equipment. No septic, office area or shop is proposed. Electricity will be installed for lights. Jack Colody testified that construction and construction methods have been approved by the building department and that the applicant has been to the Zoning Commission twice for review and approval. Extensive discussion ensued regarding flood elevations, water tight versus flood proof determinations, foundation proposed and building anchors. Chairman Damiani read building flood regulations and further questioned the applicants as to the building's flood worthiness, with the building floating away in a flood event. Jack Colody stated the proposed building would have a concrete slab foundation with weather-stripped fiberglass doors and the impossibility of making the building flood proof due to its below flood plain elevation. Rives Potts stated that all the buildings at the marina are below flood plain and that if the building floods, any boats and equipment would get wet, just as they do now. Jack Colody then stated that flood vents are provided for but do not show on the presented site plan, only on the construction drawings.

Speaking from the audience in favor of the plan was Thomas Elliott AIA who stated that with overhead doors as proposed it would be impossible, unrealistic and cost prohibitive to make the building water proof, allowing that the vents would allow water to flow in and out, and the anchors would secure the building to the foundation. Also speaking in favor was Tony Fastaia who stated the building would be an asset to the marina and Town. Ida Lagana also spoke in favor of the application. No one spoke in opposition.

A motion was made by Eve Barakos, seconded by John Boehme, to close the public hearing. The motion carried unanimously.

No. 10-03 – Appeal of Gertrude Y. Brown, owner/applicant; Thomas Elliott AIA, agent. Property located at 65 Second Avenue, HDR zone. Identified on Assessor's Map 28 as Parcel SF19. Variances requested from Zoning Regulations Section No. 4.33.06(b) east side yard setback to allow 1', where 10' is required, and Section No. 4.33.06(b) west side

setback to allow 5' where 10' is required. Variances needed to replace existing non-conforming structure within existing footprint. Also, CAM approval needed.

Agent Thomas Elliott AIA spoke for the applicants, Gertrude and Lou Brown who were also present. Lou Brown addressed the Board stating that they had owned the house since 1982 and having three children and eight grandchildren, the house has become a gathering point for the family. He and his family being committed to the area, he also a past president of the Stannard Beach Association, he stated that one of the grandchildren was confined to a wheelchair and the old house was not ADA compliant nor user friendly including doorways and the bathroom facilities. Tom Elliott presented the site plans and building plans for the structure pointing out that while presently non-conforming, the changes while not an exact footprint would be less non-conforming on the East and West sides of the structure. He also noted that there would be no change of use; that the structure has been and will be a year round residence. Further discussion centered on the proposed reinforced concrete foundation with crawl space and flood vents, the proposal being building code complaint for wind load and hold down requirements, that due to the current structure's age (1930's +/-) the rebuild would replace an otherwise 'band-aid' renovation approach, that the proposal including its maintenance free materials was in harmony with surrounding structures, and that the proposal is in harmony with the purpose and intent of the zoning regulations.

The accompanying CAM application was also reviewed. Tom Elliott stated silt fencing would be in place around the site and excess fill would be removed from the site. Also, any damage to any portion of the surrounding area including Avenue B would be reseeded or re-sodded. DEP approves the application as a conforming septic system would be installed while the existing one is not. The Chairman inquired as to the lot coverage. Tom Elliott stated the lot is 7,660 square feet with 25% coverage allowed. Currently the coverage is 18.94% and proposed is 20.7%.

Extensive discussion took place regarding the ROW and Avenue B, with concerns expressed as to maintenance access and building damage. Lou Brown stated he had spoken with the current association president who indicated the project was fine as the Brown's agreed to restore any damage to the Avenue B ROW upon completion of construction. Bill Wrang, the neighbor on the East side of the proposal and also abutting Avenue B ROW spoke in support of the application. While several members of the Board expressed the need for an agreement between the property owners for the right to enter upon the ROW for maintenance and construction, it was determined by other members that the ZBA had no jurisdiction to place a requirement upon a third party.

Nancy Rudek ZEO also present inquired as to the proposed roof pitch and run-off. Tom Elliott stated the pitch was at a 12/12 pitch and that any runoff is quickly absorbed by the sandy soil. When asked about any grade changes, he stated there was for handicapped ramp considerations. Parking was noted as being along Second Avenue where it has always been.

Speaking in favor of the application was Bill Wrang who stated the house had been there since 1936 and needed structural and safety updating as his did. Ron Wyman spoke in support stating it should be built right, improving the tax base and neighborhood. Two letters in favor of the application were read into the record: dated

2/5/09(sic) from Diane and Ralph Smalley and 2/17/10 from M. Jackson Webber. No one spoke in opposition.

The Board suggested to the applicants and those present that a written maintenance easement agreement should be made between all parties for the ability to access Avenue B ROW for the future and future owners of the properties when and if they change hands. The Board recommended to the Chairman that an opinion be asked of ZBA Attorney Michael Wells on the issue. It was noted that in the past such documents of permission during construction have been requested from applicants but not into perpetuity.

A motion was made by Mark Damiani, seconded by Richard White, to close the public hearing. The hearing closed at 9 p.m.

The public hearing portion of the meeting was closed at 9 p.m.

Respectfully Submitted,

Janet L. Aiken, Administrative Secretary
Westbrook Zoning Board of Appeals

(THREE (3) micro cassette tapes were recorded for the Public Hearing & Regular Meeting and filed with the Town Clerk's Office)

Janet L. Aiken, Administrative Secretary

Date submitted



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MEETING MINUTES – ZBA REGULAR MEETING – 24 JANUARY 2010

Chairman Mark Damiani called the Regular Meeting of the Zoning Board of Appeals to order at 9 p.m. Members present were Chairman Mark Damiani, Vice-Chairman John Boehme, Eve Barakos, Bonnie Hall and Alternate Richard White. Also present was Administrative Secretary Janet L. Aiken.

DECISIONS:

No. 10-02 – Appeal of Brewer Pilots Point Marina, owner/applicant; Jack Colody, agent. Property located at 63 Pilots Point Drive and identified as Assessor's Map 14 as Parcel PP1. CB zone. Variances requested from Flood Zone/Zoning Regulation Section No. 5.04.01 and Section No. 5.04.06 b) 1 through b) 3. to vary required (1) foot above base flood elevation, to allow finished floor elevation to remain at 8.2' flood elevation. Variance request from flood-proofing structural requirements, thereby not requiring certification of standards by Registered Professional Engineer. Variances needed for proposed 2,000+/- sq.ft. building replacing 2 storage containers.

Alternate Richard White seated for George Rehberg. Further discussion and explanation of the flood regulations was done. As presented the proposal was not in compliance. As an accessory building, the proposed structure had to allow for water passage or be designed by a registered professional engineer which it has not. It was restated by the members that the construction drawings purportedly showing the flood vents had not been submitted to the Board for review.

A motion was made by Mark Damiani, seconded by Richard White, to approve the application:

1. Site Plan – Lift Well Building, property of Pilots Point Marina Inc, 63 Pilots Point Drive (Southyard), Old Saybrook, Connecticut, dated 1/7/10, scale 1" = 10', page 1 of 1, Godfrey-Hoffman Associates LLC, Professional Land Surveyors and Consulting Engineers, 26 Broadway, North Haven, CT 06473 (203) 239-4217, and
2. Elevations & Floor Plans, Pilot's Point Marina, Westbrook, Connecticut, dated 9/24/09, 10/18/09, rev. 1/20/10, pages A-1 to A-3, Craig A. Laliberte architect, 27 Oakledge Drive, Ivoryton, Connecticut 06442, (860) 767-4993,

with the stipulation that flood vents be installed per FEMA and zoning regulations, and also as represented by the applicant as being shown on the

construction drawings, to be reviewed by the appropriate agencies and/or individuals for compliance. The motion carried unanimously.

No. 10-03 – Appeal of Gertrude Y. Brown, owner/applicant; Thomas Elliott AIA, agent. Property located at 65 Second Avenue, HDR zone. Identified on Assessor’s Map 28 as Parcel SF19. Variances requested from Zoning Regulations Section No. 4.33.06(b) east side yard setback to allow 1’, where 10’ is required, and Section No. 4.33.06(b) west side setback to allow 5’ where 10’ is required. Variances needed to replace existing non-conforming structure within existing footprint. Also, CAM approval needed.

Board members noted that no expansion was proposed, and that it would be less non-conforming than at present. The proposal was in conformance with Flood Regulations and zoning, the new septic had been approved by the Sanitarian and parking remained as is. No one spoke in opposition and it was an improvement to the neighborhood. It was further noted that while a maintenance agreement between neighboring parties would be optimum, the Board had no purview to require the same; that in the future if differences occur, it would be a private matter between affected parties. While several members differed in opinion on this matter, testimony had been given on this application that there was no issue regarding maintenance accessibility.

A motion was made by Mark Damiani, seconded by Richard White, to approve the application as presented:

1. Site Development Plan, Scale 1” = 10’0”, Residence of Gertrude Y. Brown, 65 Second Avenue, Stannard Beach, Westbrook, CT, dated 12/7/2009, rev. 1/7/2010, rev. 1/27/2010, pages S1, A1-A7, Thomas Lee Elliott, Architect, 274 Chittenden Hill Road, Westbrook, Connecticut 06498 (860) 399-6359, and,
2. Septic System Design Plan, Scale 1” = 10’0”, Residence of Gertrude Y. Brown, 65 Second Avenue, Stannard Beach, Westbrook, CT, dated 12/7/2009, rev. 1/7/2010, page S2, Thomas Lee Elliott, Architect, 274 Chittenden Hill Road, Westbrook, Connecticut 06498 (860) 399-6359

and to approve the CAM application, as the hardship was a pre-existing non-conforming lot and structure, there was limited placement of the structure due to the installation of a new Public Health Code septic system and that as proposed it met the Federal Flood Elevation and State of Connecticut Building Code. The motion carried unanimously.

The Regular Meeting recessed at 9:20 p.m. and was called back to order at 9:25 p.m.

MINUTES -

A motion was made by Mark Damiani, seconded by John Boehme, to approve the Public Hearing minutes of 27 January 2010, with the change on page 2, last paragraph, seconded line from bottom, “of the entry” to “if the entry”. The motion carried unanimously.

A motion was made by Mark Damiani, seconded by Bonnie Hall, to approve the Regular Meeting minutes of 27 January 2010 with the change on page 1, heading, “27 January 2020” be changed to “27 January 2010”. The motion carried unanimously.

BILLS –

A motion was made by Mark Damiani, seconded by Bonnie Hall, to approve the bill from Board secretary Janet Aiken, for 15 ¼ hours of work through 2/23/10. The motion carried unanimously.

A motion made by Mark Damiani, seconded by Richard White, to approve a bill from Gould Larson Bennet Wells & McDonnell dated 2/4/2010 for \$225.00 for the Bergmann appeal, and 2/4/2010 for \$300.00 for return of record review in the Captain Stannard House appeal, totaling \$525.00. The motion carried unanimously.

A motion was made by John Boehme, seconded by Bonnie Hall, to approve a bill from Hartford Courant, for \$381.20 for legal advertisements. The motion carried unanimously.

CORRESPONDENCE –

1. 2/2/10 from Town Clerk Joan S. Angelini, requesting Commission/Board Member Updates
2. 2/23/10 Zoning Commission Agenda
3. 1/19/10 Conservation Commission minutes
4. 12/15/09 Conservation Commission corrected minutes
5. Zoning Commission Legal Notice re 2/23/10 PH on Proposed Amendments to the Zoning Regulations
6. ZEO report dated 2/16/10 from Nancy Rudek;
7. 2/24/10 email from Attorney Mark Branse to ZEO re proposed non-conforming lot regulation

Board members requested a clarification from Board Attorney Michael Wells of extension timeframes. The Chairman will email the request to have for future applications.

Bonnie Hall reported attending the Town’s Communication Presentation to enhance communication between boards, commissions and employees.

A motion was made by Mark Damiani, seconded by John Boehme, to adjourn. The motion carried unanimously. The meeting adjourned at 9:40 p.m.

Respectfully Submitted,

Janet L. Aiken, Administrative Secretary

(THREE (3) micro cassette tapes were recorded for the Public Hearing & Regular Meeting)

Janet L. Aiken, Administrative Secretary

Date submitted