



**TOWN OF WESTBROOK
ZONING BOARD OF APPEALS**

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MINUTES - ZBA PUBLIC HEARING – 24 June 2015

The Westbrook Zoning Board of Appeals met on Wednesday, June 24, 2015, 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 11 June 2015 and 17 June 2015.

Chairman Bonnie Hall called the Hearing to order at 7:31 p.m. and introduced Board members to the public in attendance. Members present were Eve Barakos, Mark Damiani and Alternates Richard White, Nick Alaimo and Mindy Gordon. Also present was ZEO Nancy Rudek and Recording Secretary Category I, Janet L. Aiken.

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

No. 15-09 – Appeal of Ian Sprigg, applicant/agent; Dan McCall, owner. Property located at 28 Pequot Road. Identified on Assessor's map 195 as Parcel 026. HDR zone. Variance requested from Zoning Regulations Section No. 4.33.06(c) rear yard setback to allow 13' where 35' required, Section No. 4.33.07 tidal wetlands buffer to allow 18.6' where 50' required, Section No. 11.00.05 reduction or waiver of tidal wetland setback requirement, Section No. 2.10.06 extension or enlargement of non-conforming uses and structures, and Section No. 2.10.07 replacement of non-conforming structures, to build 18' X 6' deck extension plus landing and rebuild stairs. CAM exempt.

Alternates Nick Alaimo and Mindy Gordon were seated for this application.

Alternate Richard White recused himself citing a conflict of interest.

Chairman Hall read an undated letter from the applicant wherein he states he failed to notify abutting property owners within the required time frame, asking to delay the hearing until July and requesting a waiver of any additional fees.

Board discussion included the need to refer the application to the Harbor Management Commission (hereinafter HMC) for review, that the HMC was not meeting in July, that the ZEO delivered the application to the HMC on its meeting night on 6/23/15 with no action taken, when the time clock might start running, and that the application was incomplete.

A motion was made by Bonnie Hall, seconded by Mindy Gordon, to place the application on the August agenda. The motion carried unanimously.

A motion was made by Mark Damiani, seconded by Nick Alaimo, to charge the applicant additional fees particularly with regard to re-advertising, and have the applicant re-file the application for August. The motion carried unanimously.

No. 15-10 – Appeal of Bonnie Plass, applicant; Myrna Zube & Donald Perring, owners; Jonathan Einhorn, agent. Property located at 89 Norris Avenue. Identified on Assessor's map 176 as Parcel 113. CD zone. Variance requested from Zoning Regulations Section No. 4.44.05 exceptions to minimum yard requirements – kennel (front) to allow 40' where 75' required, Section No. 4.44.05 exceptions to minimum requirements – kennel (NE side) to allow 35' where 75' required, and Section No. 4.44.05 exceptions to minimum requirements – kennel (SW side) to allow 25' where 75' required for dog training facility. CAM exempt.

Alternates Nick Alaimo and Mindy Gordon were seated for this application.

Jonathan Einhorn was present for the applicant. Attorney Einhorn stated that this was a classic hardship case, further noting that the closest regulation for a dog training facility was that for a kennel which

the proposal request was not. His client, Bonnie Plass, trained with Cesar Millan in California, and would only be training one to two dogs a week on premises with no "kennel" per se. No changes are proposed to the existing house. Further noted was that the zone allowed much more aggressive uses. The property which was owned by the applicant's grandmother is currently an eyesore with extensive weeds, limbs and downed trees in the property's rear. Property owners Zube and Perring are the applicant's mother and uncle respectively, and that the applicant intends to live in the house with her own three dogs.

Board questions included difficulty in identifying and finding a hardship as the property could be used as is and is currently rented out as a residence. Attorney Einhorn stated that the lot could not accommodate a 75' setback as required by the Regulations. Mr. Plass spoke indicating the only addition to the property would be possibly a fence.

The Board additionally inquired why the applicant didn't go to the Zoning Commission first for site plan review and Special Permit which if approved would bolster the applicant's request for a variance. Attorney Einhorn indicated the Land Use Office had guided him in his present course of action, and that originally he had leaned toward applying for a Use Variance instead.

Ms. Plass spoke indicating that she would be picking up and delivering back home and dogs being trained on the premises which raised a question regarding the indicated parking spaces on the plan. Again the Land Use Office suggested noting a parking area due to the crowded beach area. Ms. Plass also indicated she felt the proposed activity was more like a home office/in-home business activity. No boarding or breeding activities are proposed, and should any dog need to be housed overnight, it would be indoors with her and her pets.

Returning to the argument of whether the ZBA or Zoning Commission should have been applied to first, Attorney Einhorn noted that with the applicant's three dogs on premises, any additional dog or dogs for training would increase the number of animals to 'more than three' which according to the Regulations defines a kennel, which is why they were before the ZBA.

Speaking from the audience in favor of the application was Charles Williams, the neighbor at 79 Norris Avenue who indicated he had spoken at length with Ms. Plass and saw the development as positive and not detrimental to the area.

In opposition was Attorney Jeff Borak, representing Spencer Landing (formerly Old Clinton Road condos) and the residents at #8, #7, #9, #10, #11 and the members of the board. Attorney Borak noted the current use and structure were conforming, that there were other permitted uses for the property other than a kennel, that there was no undue hardship referring to the recent Verrillo decision, that the Zoning Commission had added the definition of kennel in 2003 and that a petition to change that regulation could be made to that Commission if you didn't like it, and that the only permitted use with different setback requirements was that of a kennel so the Zoning Commission must have had a reason for that. Attorney Borak also inferred there was an economic stake in the approval for Mr. Williams residing at 79 Norris Avenue because of the easement granted for access to 89 Norris Avenue.

In rebuttal, Attorney Einhorn took exception to the charge of economic gain from the easement in favor of 89 Norris Avenue, that the proposal was not for a classic 'kennel' and that the applicant had no interest in any accessory building.

Continued questioning by the Board included involvement of third party owners (not unusual at all), the need for any additional parking at all (virtually none), the driveway (considerable work needed as site slopes down with a well in area), where current parking was located (street), how long the easement has been in existence (since way before Williams owned the property next door), and if the easement would be modified if approached to do so (no, per Mr. Williams).

Charles Williams of 79 Norris Avenue also testified further refuting any ulterior motive for supporting the proposal, that the easement runs with his property, and that it only grants access to the garage at 89 Norris, further noting no changes or modifying paperwork is proposed or will be entertained.

Attorney Borak spoke re-stating no hardship existed for the variance request and that the applicant was 'stuck' with the definition of 'kennel'.

The hearing closed at 8:21 p.m.

Respectfully Submitted,
Janet L. Aiken
Janet L. Aiken, Recording Secretary Category I
Westbrook Zoning Board of Appeals

(THREE (3) cassettes were recorded for the 6/24/15 Public Hearing & Regular Meeting and filed with the Town Clerk's Office).

Janet L. Aiken
Janet L. Aiken, Recording Secretary Category I

6/29/15
Date Submitted