**TOWN OF WESTBROOK**
**ZONING BOARD OF APPEALS**

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# AMENDED MINUTES - ZBA PUBLIC HEARING – 23 April 2014

The Westbrook Zoning Board of Appeals met on Wednesday, April 23, 2014, 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 April 2014 and 16 April 2014.

Vice Chairman Bonnie Hall called the Hearing to order at 7:30 p.m. and introduced Board members to the public in attendance. Members present were Bonnie Hall, Vincent Neri, Eve Barakos, Devin Xenelis and Alternates Richard White and Nick Alaimo. Also present was Recording Secretary Category I, Janet L. Aiken and ZEO Nancy Rudek.

Vice Chairman Hall read the procedures to be followed at the Hearing into the record and notified those present that the order of hearing would be amended, with the first appeal being No. 14-09.

**No. 14-09** – Appeal of Frances Antonacci, owner; Thomas Froment, applicant/agent. Property located at 212 Magna Lane. Identified on Assessor's map 183 as Parcel 022. MDR zone. Variance requested from Zoning Regulations Section No. 4.23.06( b ) side yard setback to allow 1' where 15' required, for storage shed/generator enclosure combo. CAM exempt.

A letter of withdrawal was submitted by agent Thomas Froment at this time. Brief discussion was had between the Board, the agent and the ZEO concerning the deadline for the next meeting and the need to re-notify abutting property owners and payment for a new application.

**No. 14- 08 –** Appeal of David Foster, applicant/agent; Wilcox Fuel Inc., owner. Property located at 92 Essex Road. Identified on Assessor's map 177 as Parcel 001. IND zone. Variance requested from Zoning Regulations Section No. 2.10.06 extension of non-conforming uses and structures, to install two 30,000 gallon above ground propane tanks in Northeast section of property, expanding use of existing fuel storage facility started in 1965. CAM exempt.

Alternate Richard White was seated for this application.

David Foster from Wilcox Fuel was in attendance. He indicated that while his request for variance had been approved at the February meeting, it had come to his attention that a variance was also needed for expansion/extension of a non-conforming use of the property. He noted that the expansion was for the same use but for a different product and recapped for those present the February application. ZEO Rudek confirmed that if the variance was approved, it would then need to go to the Zoning Commission for a Special Permit. Additional questions came from the board including what happens if the propane tanks are over-filled (vapor would be released), combustibility (yes), distance from the railroad tracks (25 feet), transport (mostly by rail is the industry standard), and fencing. **Exhibit 1** was submitted – a synopsis of the previously submitted fire safety analysis for the project.

Speaking in favor of the application was Elaine Wells who also asked how high the fence would be for security. Speaking in opposition of the application was Robert Day, representing his wife Myra, an abutting property owner, who inquired if the site was located in wetlands, if the 10'Wx10'Hx40'long tanks could be buried, if his property values would decrease, and if there would be an increase in danger than what already exists. No letters had been received.

Mr. foster indicated that visibility of the tanks would be marginal from the road except for perhaps during the winter months, that burying the tanks would be a challenge due to size and being adjacent to

wetlands, and that the new tanks were smaller in size than what currently is installed on the site.

Additional Board questions included how often the Fire Department inspects the property (not often; maintenance is the critical factor), location of the wetlands (within 100' of the activity at the site), how high the tanks would be (22' including the stacks) and if the possibility of burying the tanks had been explored (no, mostly due to the wetlands/groundwater issue, making burying a challenge). Mr. Foster indicated that most tanks are above ground in the industry.

Board member Richards inquired of Mr. Day how long he and his wife had owned the property (40 years, plus/minus) and that they acquired title in the 1960s. Mr. foster indicated that the first tank appeared on the site in 1965.

The hearing closed at 7:52 p.m.

**No. 14-10** – Appeal of Michael J. and Paula M. Jurewicz, owners; Thomas Elliott AIA, applicant/agent. Property located at 15 Pioneer Road. Identified on Assessor's map 195 as Parcel 119. HDR zone. Variance requested from Zoning Regulations Section No. 4.33.06(a) front yard setback to allow 10' where 25' required (Riverview), and Section No. 4.33.06( c ) rear yard setback to allow 25' where 35' required (Old Mail Trail), to construct new two bedroom single family residence. CAM required.

Alternate Nick Alaimo was seated for this application.

Agent Tom Elliott, co-presenter Attorney Ed Cassella and the owners were present. **Exhibit 1** was submitted by Mr. Elliott – a recap of the site's history, exhibits to be presented, the requests before the board and hardship claimed. He indicated the proposed house would be 15' above the surrounding grade, that the prior Art Barden survey had been benchmark adjusted, and that the previous application had been denied due to the proposed septic system. He noted that the septic design by Dennis Hallahan has been approved by the town subject to submittal of the house plans.

A review of the site location was then presented noting that the lot borders on three streets, with Old Mail Trail flooding regularly. Mr. Elliott further indicated that the property owner had chosen the address of 15 Pioneer Road instead of one on Old Mail Trail due to the flooding issue.

Using a map of the area, Mr. Elliott visually indicated the front setbacks of houses on Lots 124, 123, 119 at the North end of Riverview, on the West side, and Lots 122, 137 and 140 also at the North end, but East side of Riverview, plus Lots 117, 118 and 140 at the North end of Old Mail Trail. Mr. Elliott further indicated that properties to the South of Old mail Trail were waterfront, with none conforming to the required 35' setback. While Mr. Elliott and Attorney Cassella indicated the map would be entered as an exhibit, it was not given to the Board.

As for the proposed house, if the Regulations for setbacks were adhered to, the building envelope on the lot would be 250 square feet, a hardship and inconsistent with the surrounding properties. **Exhibit 2** Caltabiano v. Town of Westbrook Zoning Board of Appeal, et al was submitted into the Record by Attorney Cassella wherein a similar situation existed wherein the site Walgreen's is presently situated on also bordered three roads and would have had only a 400 square foot envelope to build on if the Regulations had been strictly adhered to, the Court finding the envelope unreasonable.

The house is Flood Zone AE11 compliant. The height of the house which is under 35' is driven by FEMA Regulations. Reinforced concrete piers, break away walls, flood vents and soft cuts are proposed. The first floor living area will consist of a kitchen, living room, eating area and half bath. The second floor consists of two bedrooms, one with a master bath, and an extra full bathroom, with the third floor attic area containing utilities and storage only, with a peak height of 7'4". The total square footage of the house as proposed is 790 square feet, slightly larger than a 2-car garage. Lot coverage for the proposal is 19.8%.

A storm water maintenance plan is proposed resulting in less runoff than what currently exists with the vacant lot.

Copious discussion then ensued between the Board, agent, Attorney Cassella and the ZEO concerning setbacks and whether the lot was a corner lot or a through lot. The ZEO interprets the Regulations as this lot having 3 fronts and 1 rear, while the agent and co-presenter sees 2 rear, one side and 1 front setback. Mr. Elliott read in total Section 2.40.65 into the record concerning rear lot lines, in which it

reads the owner has the option as to which is the front yard line. **Exhibit 3**, copy of a site map for 177 Mohican Road E, was submitted by Tom Elliott showing that lot as fronting on three roads and was subject of a recent variance application which was granted, said map labeled as 2 rear, 1 front and 1 side line. Consistency was questioned if two lots with the same configuration would be treated differently. Attorney Cassella indicated that the key point is whether the Western lot line should be considered a rear or side yard. It is his and Mr. Elliott's contention that the subject lot is a through lot, not a corner lot, based on interpretations of the Regulations. Dependent on the lot's determination as corner or through, one of the variance requests could be eliminated but the building envelope would be zero. **Exhibit 4**, copy of page 2-11 of the Regulations covering Sections 2.40.60 through 2.40.67c was submitted, and described as contradictory by the presenters. Mr. Elliott asked that the hearing be kept open for the corner v. through lot status to be established. Discussion further ensued as to whether the legal notice could be "amended" for the change in variance requests with re-notice to abutters or if a new application had to be submitted.

Review of the CAM was straight forward with silt fences proposed, and the septic being fully code compliant. Storm water management consists of ground infiltrators, there would be no adverse impact on resources and no stockpiling of materials will occur, soil being removed from the site.

No one from the audience spoke in favor of the application.

Speaking against the application was Attorney Peter Evans representing Joyce Narden of 12 Old Mail Trail and Constance Marion O'Brien of 12 Pioneer Road, urging further review by Zoning because of the new construction, Ms. Narden losing sunlight due to the proposed construction, that the previous 12/06 application had been denied due to lack of hardship and that there was no material change from that proposal to this, with little change in the house size. He further objected to the possibility of the notice being amended, that the board had no jurisdiction in the matter, burden of proof is on the applicant to show material change, further suggesting that the application be withdrawn and resubmitted.

Elaine Brink of Mohican Road stated years ago the owners had several properties "bunched together" and that at the time of the 2006 application, it was determined that the lot was too tiny and the proposal of a house was not appropriate.

Abutter Mark Wojcicki, owner of 122 Riverview and 35 Mohican Road W, indicated he had no notice of the hearing and found out about it through a telephone call from a neighbor. It was determined that a notice had been mailed out to 95 Hickory Hill in Kensington instead of #94. He further indicated that this was his fourth time coming to a hearing concerning past applications, submitting **Exhibit 5** aerial survey of Connecticut 1934 photograph 03041, and copy of a town's GIS map of the area, and referring to the maps indicated marshland exists under Pioneer Road, severe flooding on Old Mail Trail and safety concerns regarding children activities (bikes, skate boarding) around the site's blind corner. Exhibit 6 was submitted, a letter from the Grove Beach Terrace Association to the Town of Westbrook Traffic Commission dated 5/4/03, that discusses the neighborhood's concerns of traffic control on Old mail Trail and Riverview Road. While in general opposition, Mr. Wojcicki requested that should the board grant the variance, that conditions be placed regarding no trees or shrubs being planted along the roads inhibiting sight lines, and requiring grass only. He noted further that granting of the variances might create a precedent as there was another lot in the same area that had the same circumstances as the subject site.

Joyce Narden of 12 Old Mail Trail read her 2 page letter of opposition into the record citing diminished air and sun if the house was built.

Attorney Evans stated the application notice situation was not a 'no harm no foul matter' and Attorney Cassella noted that Mr. Wojcicki had received notice albeit verbally and was present, indicating addresses where provided by the town.

The following letters in opposition were read into the record: Peter B. and Margaret R. Vincent of 64 Old mail Trail, dated 4/22/14; Rosemarie and Thomas Cristofaro of 8 Old Mail Trail dated 4/23/14; Phyllis J. Pallett-Hehn of 90 Riverview Road dated 4/21/14; Constance M. O'Brien of 144 River Road dated 4/23/14.

The following letter in support of the application was read into the record: email from Janet Brownstein of 111 Riverview Road to Land Use dated 4/23/14.

Attorney Cassella rebutted a comment made stating that each application is considered and weighed separately on its own merits and that a precedent would not be set. Mr. Elliott stated the house is very small and the Regulations allow 25% lot coverage while this application proposes 19.8%. He also noted that it was the FEMA regulations that was driving the height of the proposed structure.

A formal request for continuance of the public hearing was made at this time to the Board's next meeting in May so that the applicants and agents could examine and decide whether to withdraw the current application and refile, or continue forward with the current application. A motion was made by Vincent Neri, seconded by Devin Xenelis, to continue the public hearing to May 28, 2014. The motion carried unanimously.

The public hearing was recessed until May 28, 2014.

**No. 14-11** – Appeal of Westbrook Realty Inc., owner/applicant; Robert L. Doane Jr., agent. Property located at 516 Boston Post Road. Identified on Assessor's map 189 as Parcel 177. CB zone. Variance requested from Zoning Regulations Section No. 4.65.04(a) front yard setback, to allow 0.0' where 20' allowed; Section No. 4.65.04( c ) rear yard setback, to allow 1.7' where 20' required; and Section No. 4.65.04(a) front yard setback, to allow 3.2' where 20' required, to maintain existing storage container on existing slabs adjacent to property line. CAM required.

Richard White was seated for the application.

Agent Robert Doane was present. The property is adjacent to Bill's Seafood and was last known as Humphrey's. Both sites are owned by Westbrook Realty. Mr. Doane described the site as another with 3 fronts and 1 rear. The request repositions the existing container storage trailer and is considered permanent because it will be there for more than 90 days, referring to Section 8.13. Its dimensions are 8'x7'x40' and is presently over the property line. The CAM review indicates no harm to any shore lands and a portion of the proposed site is located in a flood plain under FEMA regulations, however the proposed location of the trailer is outside of the flood zone. The size of the trailer exempts it from flood requirements. No vehicle access is proposed once in place. Screening of the trailer was reviewed as possibly extending the stockade fencing or perhaps using plantings to shield the one foot of the trailer height that is above the 6' stockade fencing. The ZEO and agent will determine the best solution at the time of relocation at the ZEO's discretion, referring to Section 8.13.5. It was further noted that if a fence over 6' was desired, that the applicant would have to return to the Board with another application. Hardship was explained as there being no site location that meets zoning requirements.

Review of the CAM showed no grading, placement of the trailer on existing slabs, no construction activities, and no adverse impact to the surrounding area. No flammables and only dry goods are to be stored in the trailer, and no power will be provided. The Board asked if the trailer was presently permit approved and Mr. Doane replied that it was not, and that the owner wanted to make it legal. Alternative storage areas including use of the vacant restaurant space was discussed. Mr. Doane indicated that the owner did not wish to use the vacant building in the hopes that it might be used as a restaurant at some point.

There was no one in the audience to speak for or against the application. No letters had been received. **Exhibit 1** was submitted, a copy of page 6-9 of the Regulations showing Sections 8.12.02 through 8.14.06.

The hearing closed at 9:46 and a brief recess was called.

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

(ONE (1) digital CD disk was recorded for the 4/23/14 Public Hearing & Regular Meeting and filed with the Town Clerk's Office).

*Janet L. Aiken* 4/28/14
Janet L. Aiken, Recording Secretary Category I Date Submitted