



**TOWN OF WESTBROOK
ZONING BOARD OF APPEALS**

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MINUTES - ZBA PUBLIC HEARING – 14 November 2012

The Westbrook Zoning Board of Appeals met on Wednesday, November 14, 2012, 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 31 October 2012 and 7 November 2012.

Chairman Mark Damiani called the Hearing to order at 7:32 p.m. and introduced Board members to the public in attendance. Members present were Mark Damiani, Bonnie Hall, Eve Barakos, John Boehme and Vincent Neri. Also present was Recording Secretary Category I, Janet L. Aiken.

Chairman Damiani read the procedures to be followed at the Hearing.

No. 12-22 - Appeal of Elaine Erwin Matulis, owner/applicant; Edward M. Cassella, Esquire, agent. Property located at 534 Seaside Avenue. Identified on Assessor's map 189 as Parcel 028. HDR zone. Variance requested from Zoning Regulations Section No. 4.33.06(b) side yard setback, to allow 5.49' where 10' required; Section No. 4.33.06(b) side yard setback, to allow 5.49' where 10' required; Section No. 4.33.06(c) rear yard setback, to allow 29.81' where 35' required; and, Section No. 2.10.06 extension/enlargement of non-conforming structure, to allow removal of existing structure and rebuilding a two bedroom house in substantially the same location with a shift of the existing footprint 4.5' to the south. CAM approval required.

Attorney Ed Cassella, professional engineer Pat Benjamin, Durham, and Michael Klein from Environmental Planning Services, West Hartford, were present for the applicant, as well as the applicant, Elaine Erwin Matulis.

Attorney Cassella reviewed the variance application as well as the CAM, noting the differences between this application and the one brought before the Board in 2011 that was denied: 2 bedrooms vs. 3 bedrooms, a 4.5' shift of the structure to the South vs. 9', less intrusion by the proposed addition and deck on the beach side of the property, and slight reduction of the current non-conforming side setbacks and rear setback. The code compliant septic system proposed is the smallest designed system as there is no design for a 1-bedroom house. Attorney Cassella submitted into the record **Exhibit 1** Memorandum In Support of Application of Elaine Erwin Matulis, **Exhibit 2** case law *George C. Mead vs. Zoning Board of Appeals of the City of Stamford, et al*, **Exhibit 3** letter dated 9/8/09 from Charles C. Brown P.E. of Gible Norden Champion Brown consulting engineers, Old Saybrook, regarding the structural evaluation of the existing house, and **Exhibit 4** letter dated 11/14/12 from Attorney Elton B. Harvey III of Baillie & Hershman P.C. West Hartford, regarding a title search and examination of the title to the property held in the applicant's name.

Attorney Cassella also noted that a successful quiet title action recently took place through the court establishing the applicant's ability to access the property on Seaside Avenue. He further noted that talks between the applicant and a neighboring property owner broke down with regard to the possible purchase of additional property to allow a code compliant septic system to be installed without moving the structure 4,5' forward. He also noted that the parties had met on-site 10/17/12 with senior coastal planner Mary-beth Hart from the Office of Long Island Sound Programs concerning placement of the septic system and dune disturbance caused by the proposed activity. While either rear or front location of the proposed system was viable, after the discussions it was decided by the applicant to locate the system to the rear of the property to be less affected by future storm (i.e., Hurricane Sandy) and the flooding susceptibility of the front (water

side) of the property particularly with regard to the new flood map zone designations taking effect early 2013.

Elevations of the structure's floors and the narrowness of the lot were reviewed. Hardships noted were side setback requirements that if complied with would result only with the allowance of a 15' wide structure, the change in the Zoning Regulations after the property purchase by Ms. Matulis where a variance application was necessary to do a vertical expansion of a non-conforming structure (Section 2.10.06), and the location of coastal resources on the lot that do not affect most of the properties in the HDR zone.

Attorney Cassella also took exception with DEEP's opinion regarding the health and safety of retaining a seasonal residence versus creating a year round one in that the majority of the storm season also coincides with summer residents living and visiting the shoreline area.

Pat Benjamin reviewed the proposed code compliant system noting that placement of the system with its inherent separation distances necessitate moving the house 4.5' forward. He noted that the current system presently discharges directly into the brackish groundwater delivering and dispersing high levels of nitrogen and bacteria. He also noted that the 2-bedroom design is the smallest design available as none exists for a one-bedroom structure. Further, this engineered system is the most efficient and much smaller in size that what had been previously proposed in earlier applications.

Michael Klein submitted **Exhibit 5** letter dated 11/12/12 from Environmental Planning Services - Wetland, Biological and Soil Services – and reviewed the report for the Board concerning the CAM application. Referring to the attached aerial map, he noted there were large areas of fragmented dune habitat along the beach area along Seaside Avenue due to recreational activities, pedestrian walkways and storm activity. He noted that at the subject location, the dune was actually growing in size due to deposited sand due to storm activity, stating in the most recent storm event approximately 1 foot of sand had been added to the dune height. The letter included remediation measures to be taken stabilizing the dune area recently disturbed and for the future due to any construction disturbance, including restorative planting of vegetation (i.e., native American beach grass and others) on the dune and creating a living linear barrier of vegetation along the area of disturbance due to the proposed construction. He further recommended that any sand deposited by Hurricane Sandy between the existing dune area and the existing structure, be moved back to the apex of the dune. A further recommendation was made for construction of a split rail fence or post & rail fence along the existing pathway to the beach, to deter and confine future widening of the path and disturbance of the dune area. Mr. Klein also defined "coastal dune" as being both sand and vegetation.

Applicant Elaine Erwin Matulis spoke and reviewed for the Board the owner history of the site beginning in 1936 when purchased by the Holiday family up to her purchase in 2009. She noted the breakdown in recent negotiations to purchase 11 feet of property from the Atwood's to allow for the construction of the septic system without having to relocate the existing house. She also noted that the house had always been a 2-bedroom structure existing at the time of her purchase. She stated that subsequent to 1936, the original 60' by 70' property had been subdivided creating a 60' by 35' lot, but that due to sand deposits over time, the lot now measured 188' by 35'. **Exhibits 6-1, 6-2 and 6-3**, photos of the property, were submitted at this time by Ms. Matulis

While Ms. Matulis reviewed the quiet title action, the Board noted that it was not its concern, the Chairman reading into the record a portion of a letter from the Board's attorney, Michael Wells, dated 5/12/10, wherein the parameter of the Board's decision did not include consideration of a private ROW dispute. The Board inquired as to the overall height of the proposed house noted as being 34.8'. Mary-beth Hart's emailed communication dated 10/18/12 was read into the record. Note was made of an error in that communication where she states the proposed house is a 3-bedroom structure. The proposed square footage of the house was noted proposed at less than 1,800 square feet. Mechanicals are proposed to be located in the garage elevated 1 foot above zone 14 criteria, or 4 feet above current 100-year flood level. Remedial dune plantings will be undertaken seasonally.

Speaking in favor of the application were the applicant's children, Amy, Jessica and Todd as well as her husband, John.

Speaking in opposition were –

Richard Whiting of 528 Seaside Avenue, who read a prepared statement into the record;

Warren Porter of 548 Seaside Avenue;

Rayona Hobbs of 520 Seaside Avenue, reading a prepared statement into the record and submitting 3 photos marked **Exhibits 7-1, 7-2 and 7-3, Exhibit 8** Zillow property listing for 534 Seaside, and **Exhibit 9 Green Falls Associates LLC vs. Zoning Board of Appeals pf the Town of Montville, et al** and accompanying commentary.

The Chairman read the following 2 letters into the record opposed to the application:

Letter dated 11/14/12 from Attorney Scott Jezek attorney for the Atwood’s;

Undated letter mailed 11/7/12 from Mary Ellen Argersinger.

Rebuttal comments were made by Pat Benjamin who stated there was no such thing as a 1 bedroom septic system, and that the CAM application with its proposed code compliant system was beneficial to the surrounding properties. He also noted that the Regulations allowed up to 35’ in height for a structure so the proposal was not out of character for the area.

Elaine Erwin Matulis testified that there were 3 houses recently built on Seaside Avenue across the street from her property that were 3,000 plus square feet in size. She also cited lot size as a hardship in that in order to construct a code compliant septic system, either additional property had to be added (the breakdown of the Atwood negotiations) or the house had to be moved forward 4.5’.

Michael Klein stated that the beach area had increased over time, re-addressing the concerns in Mary-beth Hart’s communication. He further noted that this was a different application before the Board than in the past, stating no significant alteration was being proposed.

Pat Benjamin stated that Mary-beth Hart encouraged the applicant to exhaust all possible avenues to place the septic system on the North side of the house rather than the South side.

Richard Whiting re-addressed stating that the septic could be placed on the South side/beach side of the property thereby is negating the need for a rear setback variance and movement of the structure 4.5’ forward.

Rayona Hobbs rebutted saying the 3 large houses built on Seaside were not in scale with the rest of the surrounding seaside cottages.

The hearing closed at 9:41 p.m.

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 11/14/12 Public Hearing & Regular Meeting and filed with the Town Clerk’s Office).

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

11/18/12
Date Submitted