



**TOWN OF WESTBROOK  
ZONING BOARD OF APPEALS**

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**MINUTES - ZBA PUBLIC HEARING – 11 December 2013**

The Westbrook Zoning Board of Appeals met on Wednesday, December 11, 2013, 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 27 November 2013 and 4 December 2013.

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, John Boehme, Vincent Neri, Bonnie Hall, Eve Barakos and Alternates Richard White, Joshua Katz and Devin Xenelis. Also present was Recording Secretary Category I, Janet L. Aiken and ZEO Nancy Rudek.

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

**No. 13-22** – Appeal of Adam L. Schwartz, owner/applicant; Thomas Elliott AIA agent. Property located at 154 Second Avenue at Stannard Beach. Identified on Assessor's map 181 as Parcel 107. HDR zone. Variance requested from Zoning Regulations Section No. 4.33.06(a) front yard setback to allow 15.3' for deck and 23.5' for balcony where 25' required, Section No. 4.33.06(b) side yard setback to allow 10.0' for residence and 12.01' for deck where 15' required, Section No. 4.33.07 tidal wetlands buffer for residence to allow 37' where 50' required, and Section No. 2.10.07 replacement of existing non-conforming structure, to allow removal and replacement of existing residence to meet base flood elevations, and removal of existing shed, resulting in a reduction of site coverage of 881 square feet. CAM required. Public Hearing closed; Decision Continued to 12/11/13 Regular Meeting.

**No. 13-24** – Appeal of Glenn Salamone, owner/applicant; Attorney Edward M. Cassella, agent. Property located at 48 Tarpon Avenue. Identified on Assessor's map 189 as Parcel 113. HDR zone. Variance requested from Zoning Regulations Section No. 4.33.06(b) side yard setback to allow 5'0" where 10' required, Section No. 4.33.06(c) rear yard setback to allow 7'3" where 35' required, Section No. 4.33.07 tidal wetlands buffer to allow 13'9" where 50' required, and Section No. 11.00.05 building in tidal wetlands setback, to complete renovations of existing second floor, remove front entry porch and non-conforming shed, and construction of rear deck. CAM required. Continued from 11/13/13. Withdrawn.

**No. 13-29** - Appeal of Glenn Salamone, owner/applicant; Attorney Edward M. Cassella, agent. Property located at 48 Tarpon Avenue. Identified on Assessor's map 189 as Parcel 113. HDR zone. Variance requested from Zoning Regulations Section No. 4.33.06(a) front yard setback to allow 10'1" where 25' required, Section No. 4.33.06(b) side yard setback to allow 5'0" where 10' required, Section No. 4.33.06(c) rear yard setback to allow 7'3" (deck) and 13'3" (house) where 35' required, Section No. 4.33.07 tidal wetlands buffer to allow 13'9" (deck) and 19'9" (house) where 50' required, Section No. 11.00.05 building in tidal wetlands setback, and Section 2.10.06 extension/enlargement of nonconforming structure, to complete renovations of existing second floor, remove front entry porch and non-conforming shed, and construction of rear deck. CAM required.

Attorney Cassella was present for the applicant.

A Point of Order was raised by John Boehme. Since the last application had been denied and this new application was submitted within the six (6) month reapplication period, the applicant/agent had to present to the Board the significant changes made to the denied application in order for the Board to decide

whether or not it wanted to hear the revised application. Attorney Cassella agreed and presented to the Board the subject changes. An additional variance I sought for the front yard setback for the roof height increase, the rear deck has been substantially reconfigured so that it does not intrude any further into the tidal wetlands setback than the existing rear bump-out, the shed will be removed, the side porch entry area is to be removed and a newly revised "Plan B" site plan had been drawn to be submitted into the record.

A motion was made by Bonnie Hall, seconded by Richard White, to hear the application. The motion carried unanimously.

Attorney Cassella presented the newly revised application, entering into the record **Exhibit 1** three (3) exterior photos of the house, and **Exhibit 2**, an aerial view of the Tarpon Avenue area with seven (7) properties having rear decks against the tidal wetlands circled in red. Reviewing the history of the structure, he noted that it currently is a five bedroom two-family house with the second floor apartment access at the rear of the structure. Renovations include converting the house into a single family with four bedrooms. Proposed is raising the existing roof line a half story with dormers, a new entry on the South side, an elimination of the existing stairs and porch on the North side and reconfiguring the rear of the structure including a significant reduction (six feet) from the previously proposed deck size. The proposed deck now does not wrap around the rear nor does it extend past the existing rear bump-out. Ingress and egress details were reviewed; the mudroom now has proposed an exterior door both on the North and South sides of the house. **Exhibit 3** was submitted consisting of a list of the variance requests for "Plan B".

**Exhibit 4** was submitted, site and building plans "Plan B" entitled "page SP-1, Remediation Plans for Glenn and Christina Salamone, 45 Tarpon Avenue, Westbrook, Connecticut 06498", designed by Elm City Architects of 285 Notch Hill Road, North Branford, CT, dated 12/10/13. A deviation between the site plan tidal wetland setback (19'10") and the requested tidal wetland setback variance (19'9") was noted. Attorney Cassella agreed to the application and legal notice publication of 19'9" for the record.

Hardship was expressed as the lot having little or no buildable area (1 square foot more or less) if the Regulations were strictly applied.

The CAM application was reviewed as well as the Board's previous concern about its ability to vary the Zoning Regulations, including an apparent conflict between Sections 11.00.05 (50 foot tidal wetland setback) and 4.33.07, further noting the Board could vary any section of the Regulations with few exceptions. Board counsel had recently issued an opinion on the subject.

Questions from the Board included whether or not the shed would be removed (yes); if the proposed activity was only renovations or a tear-down (renovations only); location of the mechanicals (unknown however at the hearing for the withdrawn application it was stated that the mechanicals would be removed to the second floor); cost of the renovations and whether or not it will exceed 50% of the structure's value (if under 50%, FEMA regulations would not have to be adhered to – the ZEO would be addressing that issue in her office); and, means of egress (two through the mud room).

Attorney Cassella also noted with regard to the mechanicals location that with the increased one-half story height, there would be plenty of space for placement. The finished height of the house is proposed to be 33'1".

Speaking from the audience in favor of the application was Barbara Surwilo of 56 Tarpon Avenue, and her daughter Lisa Dunnery of the same address.

No one spoke against the application.

Attorney Cassella finished his presentation agreeing that no machinery used for the renovation will be within 5' of the tidal wetlands, and that the proposal had no adverse impact on coastal resources.

The hearing closed at 8:05 p.m.

**No. 13-30** – Appeal of Michele R. Weinberg, applicant; Pilot's Point Marina, owner; Attorney H. Brian Dumeer, agent. Property located adjacent to 54 Captains Drive. Identified on Assessor's map 184 as Parcel 130. CB zone. **USE** Variance requested from Zoning Regulations Section No. 4.65.01 minimum lot size to allow 7,170 sq. ft. where 15,000 sq. ft. required, Section No. 4.65.04(a) front yard setback to allow 4' where 20' required, Section No. 4.65.04(b) side yard setback to allow 3.9' where 10' required, and Sections No.

4.63.14 (accessory use), 4.63.15 (accessory building), 2.40.02 (interpretation of words not defined), 2.40.03 (accessory building), 8.01.01 (accessory buildings or uses), 8.01.02 (no accessory building/structure shall be constructed), and 8.01.03 (location of such accessory building), to allow an accessory use and structure (swimming pool and hot tub) on a lot without a principle use or structure. CAM exempt.

Attorney Dumeer was present as well as Stuart J. Fairbank P.E. from Angus McDonald Gary Sharpe & Associates Inc.

Attorney Dumeer noted that the subject property is a buffer area between residential development and Pilot's Point Marina. A concrete pad and generator with conduits to the adjacent 54 Captains Drive currently exist on the lot. While the lot is sizable, there is limited space for the proposed 18' x 36' pool and hot tub due to the shape of the lot, riprap embankment and cedar trees the parties are desirous to retain.

There was discussion and examination of the provided GPS mapping stemming from question whether this lot is separate or a part of the total Pilot's Point Marina development. The property description was compared to the map and it was decided that the site was a separate parcel. Also questioned by the Board was whether the application was for a variance, or a use variance.

Attorney Dumeer stated that the lot was subject to a perpetual easement dated May 1999 from Pilot's Point to the property owners of 54 Captains Drive and submitted the easement as **Exhibit 1**. The Board reviewed the easement and its language, and the Chairman read a portion of the same into the record. Attorney Dumeer noted that title to the land would remain with Pilot's Point but that the improvements of the pool and hot tub would be the property of 54 Captains Drive.

Alternate Richard White inquired as to the location of any tidal wetlands on or adjacent to the site. Stuart Fairbank stated there was tidal water only, no wetlands. Also noted was that the site was located in a special flood hazard zone.

The Board further inquired whether the pool facilities would be for residential use only or if it would be made commercial for public use in the future. Other questions included if a CAM application was appropriate (no per State Statutes and Zoning Regulations); what the specific hardship was for the request (configuration of the lot, location of the generator, and location of the cedar trees); if a variance could be granted for something you do not own; and whether the pool could go somewhere else on the property.

Stuart Fairbank noted that the house located at 54 Captains Drive was a rebuild of one destroyed by fire in recent past and there were also underground utilities which limit construction locations. It was noted by the presenters that Pilot's Point does not wish to have a house on the lot and that it sees the proposed accessory use as reasonable.

Richard White inquired whether the current owner of 54 Captains Drive negotiated the easement (it was negotiated by a predecessor in title) and whether the current owner was aware of the easement at the time of purchase. He further inquired why property values for neighboring properties was included with the application and whether there was specific intent for providing the same. Attorney Dumeers stated it was part of the neighboring properties information from the Town and that he was not going to delete information from Town records.

ZEO Nancy Rudek indicated that if approved, the pool would have to undergo flood hazard review due to the pool's size (648 square feet). If under 400 square feet no review would be necessary. Board members indicated it was not the Board's purview to design and recommend changes.

Bonnie Hall questioned the use variance reading into the record Zoning Regulations Section 12.22.03. Mark Damiani asked if the number and breadth of the variance request was the minimum needed and if there was enough available space to lessen the variances requested.

No one from the audience spoke for or against the application.

A letter in favor of the application was read into the record from Rives Potts of Pilot's Point Marina dated 11/14/13.

The hearing closed at 8:59 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 12/11/13 Public Hearing & Regular Meeting and filed with the Town Clerk's Office).

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

13/17/2013  
Date Submitted