



**TOWN OF WESTBROOK
ZONING BOARD OF APPEALS**

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MINUTES - ZBA REGULAR MEETING - 27 OCTOBER 2010

The Westbrook Zoning Board of Appeals met on Wednesday, October 27, 2010, in the Multi-Media Room of the Teresa Mulvey Municipal Center located at 866 Boston Post Road.

Chairman Mark Damiani called the Regular Meeting to order at 8:15 p.m. Board members present were Chairman Mark Damiani, John Boehme, Bonnie Hall, Eve Barakos and Alternate Richard White. Also present were Administrative Secretary Janet L. Aiken and Board Attorney Michael Wells. Alternate Richard White was seated for the duration of the meeting.

Decisions:

No. 10-13 - 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 Regulations Section No. 4.33.07 setback from tidal wetlands to allow 10.0' where 50' required. CAM approval needed. APPLICATION CONTINUED from 9/22/10. Public Hearing closed 10/27/10.

Upon the question addressed to him as to procedure from the chairman, Board Attorney Michael Wells addressed the Board and referring to the Appellate Court Vine case, that the Board had to first determine whether this application sought the same relief as the prior denied application. If it did not, the Board would make its decision as it normally would. If however the relief was found to be substantially the same, the Board could still decide on the application's merits, citing in the Vine decision that the board made inquiry into the changes made, that there was a change in the property line boundary, et cetera.

John Boehme questioned Attorney Wells as to the 6-month rule where an application once denied, could not be presented to the board for a 6-month period. Attorney Wells suggested that if the Board had been leaning in that direction, that it should have stated that from the beginning of the application's presentation in August, and to do so now would risk a reversal upon appeal. He further recommended the Board examine the substantive issues of the application.

Copious discussion was done by the members over the issue of whether there had been a substantial change from the last application. Richard White felt that the change from a 6.1 foot tidal wetland setback to 10 feet, plus a decrease in the structures square footage, was substantial, plus the storm water management plans had been revised now receiving approval from the Town's consulting engineer.

Bonnie Hall agreed with his assessment.

John Boehme inquired as to the change in square footage. It was determined that the original plans showed 849 square feet and the new proposal showed 807 square feet, a decrease of 42 square feet.

The Chairman summarized for the members that the relief sought was the same, a variance from the tidal wetlands setback, however there has been presented a change in conditions and additional information not previously submitted.

The members questioned the issue of septic approval prior to a decision being made. Attorney Wells stated that the Board had no jurisdiction over the matter.

Richard White inquired into the 'public health and safety' mandate in the zoning regulations.

Bonnie Hall inquired if the statements made by neighboring property owners could be considered even though they were not expert testimony. Attorney Wells stated that all statements could be considered and that the only weight in the testimony would be that which the Board gives.

The Board further discussed the matters of nonconforming and buildable v. nonbuildable. The Chairman stated that the lot must be a building lot as it's a separate parcel of property and it's being assessed and tax on par with the neighboring lots. Richard White stated that it definitely was a nonconforming lot to current zoning regulations standards however when it was originally laid out on the original Pointina subdivision map, predating zoning, and signed off by at the time by the Town, giving evidence of intent to develop the land establishing a community in that area.

As to Question 1 – is this application seeking the same relief as the first:

A motion was made by Richard White, seconded by Mark Damiani, that the Board found Application 10-13 requests essentially the same relief as denied Application 10-05, but that the present application has been substantially revised.

For: Mark Damiani, Bonnie Hall, Eve Barakos, Richard White

Opposed: John Boehme

The motion carried.

As to the merits of the application, Attorney Wells stated that as an existing nonconforming lot, it only needs the variance being sought, furthering that it was created prior to zoning, therefore grand fathered in.

Chairman Damiani stated that a literal enforcement of the zoning regulations in this case would be impossible, rendering the lot useless.

Bonnie Hall stated it might possibly result in a confiscatory situation. The Board members noted that this was the only vacant lot in the Pointina development.

Richard White noted that there appeared to be evidence of teardowns and rebuilds in the neighborhood within 2 feet of the tidal marsh. He further noted that the storm water management plan in the CAM actually reduced the runoff from the undeveloped lot into the marsh because of its downward slope, further noting DEP's letter of 4/28/10 contained concerns but no prohibitions, noting the use of the word 'recommends'.

Bonnie Hall stated that the variance requested is the minimal variance in order to develop the lot and conform to the other residences in the area.

Eve Barakos brought up the differences in the second to last paragraph between the April letter and the July letter from DEP, noting inconsistencies.

John Boehme brought up the differences in the Town's consulting engineer's letters of 7/23/10 and 8/24/10, where the storm water management issues had been 'addressed'.

A motion was made by Bonnie Hall, seconded by Richard White, to grant the variance and accompanying CAM application, with the Board finding the following:

1. the variance requested is the minimum variance necessary for the development of the lot and construction of the proposed residence, consistent with other residences in the subdivision;
2. the applicant has demonstrated sufficient hardship;
3. the lot has been determined a pre-existing lot;
4. there are no other practical uses for the property, and to not allow a residence to be constructed would be tantamount to confiscation;
5. the property is unique in that there are no other undeveloped lots in the subdivision; and,
6. the application as proposed, will have minimum impact on the tidal wetlands in that the storm water management plan will result in decreased flow of water into the tidal marsh from what currently exists at the undeveloped lot due to its downward slope, these findings concurred with Westbrook's consulting engineers who approved the revised plan.

On the motion:

For: Mark Damiani, Bonnie Hall, Eve Barakos, Richard White

Opposed: John Boehme

The motion carried.

A motion was made by Mark Damiani, seconded by Eve Barakos, to reorder the agenda, bringing 'any other business' first, followed by minutes, bills and correspondence. The motion carried unanimously.

Attorney Wells reported to the Board that he had been approached by Attorney Cloutier, attorney for the appellant in the Seaside Avenue lawsuit for mediation of the appeal instead of a trial. While Attorney Wells stated there were merits to it, one being more timely and not having to hear another application, one of the major negatives was that once an agreement was reached, it would go back to the Board for its approval, then to the judge for signing, thereby disallowing any public input (ie., public hearing), and the decision could not be appealed. Richard White inquired if a public hearing could be held on the mediation matter. Attorney Wells said that the mediation rules are silent on the matter. It was decided by consensus of the Board, not to mediate the Matulis lawsuit.

Minutes:

A motion was made by Bonnie Hall, seconded by Richard White, to approve the minutes of the 9/22/10 Public Hearing. The motion carried unanimously.

A motion was made by Bonnie Hall, seconded by John Boehme, to approve the minutes of the 9/22/10 Regular Meeting. The motion carried unanimously.

A motion was made by Mark Damiani, seconded by Richard White, to approve the minutes of the 9/27/10 Site Walk. The motion carried unanimously.

Bills:

A motion was made by Mark Damiani, seconded by Bonnie Hall, to approve a bill from Ciel, Inc. for \$216.00. The motion carried unanimously.

A motion was made by Bonnie Hall, seconded by Richard White, to approve a bill from the Hartford Courant for \$411.00. The motion carried unanimously.

A motion was made by Bonnie Hall, seconded by John Boehme, to approve a bill from consulting Town engineers Woodard and Curran for \$1,091.25. The motion carried unanimously.

A motion was made by Bonnie Hall, seconded by Richard White, to approve a bill from Gould, Larson, Bennet, Wells & McDonnell P.C. for \$1,725.00. The motion carried unanimously.

A motion was made by Bonnie Hall, seconded by Richard White, to approve a bill from Board secretary Janet Aiken for \$929.06. The motion carried unanimously.

A motion was made by Bonnie Hall, seconded by Mark Damiani, to adjourn. The motion carried unanimously. The meeting adjourned at 9:45 p.m.

Respectfully Submitted,

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

(THREE (3) micro cassette tape was recorded for the 10/27/10 Public Hearing & Regular Meeting and filed with the Town Clerk's Office).

Janet L. Aiken, Administrative Secretary

10/28/10
Date Submitted