



**TOWN OF WESTBROOK
ZONING BOARD OF APPEALS**

866 BOSTON POST ROAD
WESTBROOK, CONNECTICUT 06498
(860) 399-3046 • FAX (860) 399-3092

MINUTES - ZBA PUBLIC HEARING – 27 August 2014

The Westbrook Zoning Board of Appeals met on Wednesday, August 27, 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 13 August 2014 and 20 August 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 Vincent Neri, Devin Xenelis and Alternates Richard White, Mindy Gordon 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 noted for the record that a request had been received from Agent Joe Wren to delay the opening of the public hearing for Appeal #14-25, 2 Brittney Lane, until the Board's next meeting on 9/24/14.

No. 14-16 – AMENDED Appeal of Wyatt & Heidi Teubert, owners/applicants; J W Flower Architects, agent. Property located at 209 Salt Island Road. Identified on Assessor's map 182 as Parcel 112. HDR zone. Variance requested from Zoning Regulations Section No. 4.33.02 lot area to allow 1,638 sq. ft. where 15,000 sq. ft. required, Section No. 4.33.03 frontage to allow 25.80' where 80' required, Section No. 4.33.05 max coverage to allow 64.6% where 25% max allowed, Section No. 4.33.06(a) front yard setback to allow 1.48' to deck where 25' required, Section No. 4.33.06(b) side yard setback (West) to allow .04' where 10' required, Section No. 4.33.06(b) side yard setback (East) to allow 1.28' where 10' required, Section No. 4.33.06(c) rear yard setback to allow 0' where 35' required, and Section 2.10.06 extension/enlargement of non-conforming uses/structures, to raise existing house to meet FEMA standards and construct decks as shown on the proposed plans. CAM required. Opening of public hearing held over from 5/28/14 to 6/25/14 to 7/23/14 to 8/27/14.

Alternate Richard White was seated for this appeal.

Attorney Ed Cassella addressed the Board for the applicant. Gregg Fedus P.E. from Fedus Engineering LLC, Mystic, Jeffrey W. Flower from J W Flower Architects of Essex and Old Lyme, and Charles Brown, a structural engineer from Old Saybrook were also present as well as the property owners. The site was described as being very small (.04 acre) located at the South end of Salt Island Road. **Exhibit 1** consisting of 12 photocopies of pictures spanning from the 1938 hurricane to the last major storm event showing storm damage to the site and the structure were entered into the record. **Exhibit 2**, Westbrook, Connecticut, Natural Hazards Mitigation Plan Update, 2014, prepared for Westbrook Planning Commission prepared by Lower Connecticut River Valley Council of Governments located in Essex, Connecticut, draft dated 6/16/14 consisting of 12 pages, was also entered into the record at this time by Attorney Cassella.

The proposal is to raise the structure built in 1900 to meet current FEMA standards with the addition of front and side additions consisting of an outside stairway for access and an elevated deck over an existing patio. Distances from all property lines were reviewed with Attorney Cassella defining the retaining wall as a structure noting that at mean high tide the water laps at the wall. The front setback (water side) is 0'. Storm Sandy caused major damage with the oil tank and furnace rupturing causing a HazMat situation. Accordingly, the proposal includes moving mechanicals to the second floor. Due to the Zoning Regulations requirements, any work proposed to the nonconforming site and structure would require variances of some kind creating a hardship. Acknowledging the neighbors' deck concerns as to size and location, Attorney

Cassella indicated that the outside stairway to the deck was necessary for egress and safety.

Architect Flower reviewed the proposed building plans noting two floors exist consisting of 6 bedrooms and 5 baths, with two floors proposed and the elimination of 1 bedroom and bath. Several windows will be changed out, the structure re-sided with new front and North walls, and the addition of an elevator. The site located in a V14 zone, proposed is building to 16' to the lowest beam, with breakaway walls. The elevator accessed from the garage also has breakaway walls and will automatically return to the first floor should power be interrupted. The existing chimney and existing front entry will be removed with the entry relocated to the side. He noted that the elevator is not considered an egress and that the existing basement stairs are not to code, thereby discounting them as an egress also. He also noted that according to FEMA rules and the house assessed at \$107,000, no more than half of the assessment (\$53,500) can be expended for renovations without full renovation to FEMA standards. To date, the applicants have expended an estimated \$200,000 in costs. The raised house will sit on piers and an alternate deck plan **Exhibit 3** was entered downsizing the deck to 4' sides with a convex center curve of 7'. The revised deck would be 6-8" thick, as narrow as possible and be cantilevered to limit obstruction of the neighbors' view as much as possible. **Exhibit 4**, a 1 page detail of variances sought, **Exhibits 5 and 6**, artist renderings of proposed front, rear and sides, and **Exhibit 7**, 6 pages of photos showing the subject property and neighboring structures, were entered into the record. A tandem two car garage is proposed under the raised house.

Board questions included if the existing house is seasonal or year round (year round), the apparent encroachment onto Salt Island Road (the road had been private until the Town paved and took it over causing the encroachment), if the stair risers are to be left open (if closed, will be breakaway also), stair construction (steel), if lattice work is proposed around the mechanical area (possible, but reduces air flow), Fire Department access to shut off electric in an emergency (location of meter to remain where it presently is), and if outside shower will be removed (no, to remain where it is).

Gregg Fedus P.E. presented the CAM application and site design. Due to the small size of the lot, a very limited triangular envelope exists for a building footprint. Also reviewed were the revised deck plans, that would extend 3.5' over the existing patio area. No excavation is proposed under the house nor are the piers excavated down but rather drilled/screwed. The CAM had been reviewed by the Zoning Commission as well as OSLIP. He also noted several existing setbacks have been made less nonconforming. Silt fencing is proposed on the beach side and house sides with additional hay bales should a storm approach. When asked if fill is required, he indicated that fill is required to get the basement up to grade but will be under 100 cubic yards and will be in a controlled setting. The oil tank is to be removed from the basement and an alternative heat source used. The CAM was presented as consistent with all applicable coastal policies.

The Board asked about the revised deck plan to which Attorney Cassella indicated was dated 6/2/14 and submitted during the hearing (Exhibit 3) and showing a front setback of 4.98' instead of 0'. Identified for the record, **Exhibit 8**, revised site plan for the scaled down deck, was entered with Gregg Fedus drawing in the 4.98' setback, dated and signed.

Structural engineer Charles Brown reviewed the plans for lifting the house to the new elevation. He further reviewed the V zone wave action, sand scouring, the 40' steel pilings and concrete piers, and concrete footing system. He also reviewed the hydraulic jacks and steel beams used to lift the house that will consist of 2 to 4 steel beams running back to front with possible additional cross beams for stability.

Wyatt Teubert spoke thanking the board for hearing the application and considering his requests.

Speaking from the audience in favor of the application was Manny Peres of 240 Salt Island Road.

The following form letters were read into the record in favor of the application;

1. David Drew, 199 Salt Island Road, stamped received 5/20/14, form letter;
2. Robert F. Simpson, 5 Gerard Avenue, stamped received 5/20/14, form letter;
3. Kama Einhorn, 205 Salt Island Road, stamped received 5/20/14, form letter;
4. Robin and Phil Sarrantonio, no given address, uncertain date, form letter;
5. Karl Seitz, 226 Salt Island Road, uncertain date, form letter;
6. Manny and Fern Peres, 240 Salt Island Road, postmarked 5/29/14, form letter;
7. Joan Hodson, 224 Salt Island Road, uncertain date, form letter;

8. Tom Hayes, 212 Salt Island Road, uncertain date, form letter; and,
9. Thomas Hayes, 212 Salt Island Road, with attachment, postmarked 5/30/14;
10. Robert and Lynette Simpson, 5 Gerard Avenue, dated 6/14/14;
11. Kama Einhorn, 205 Salt Island Road, dated 6/24/14;
12. Ann Mazer, President of Middle Beach Association, dated 5/27/14;
13. John Hodson, 224 Salt Island Road, dated 6/15/14;
14. Gordon J. Sansone(sic), no given address, no given date, form letter.

Speaking from the audience in opposition of the application;

1. Attorney Christopher J. Smith of Shipman & Goodwin LP, Hartford, Connecticut, representing the Costas, neighboring property owners at 213 Salt Island Road for 50 years, objecting to the deck in any form, that the applicants purchased the property in 2012 and knew what they were buying at that time, that the seawall was an existing structure in the front setback, that the terrace is not a structure according to the Regulations, cited the Moon case in Madison, the deck having an adverse impact on his clients, questioned the legal standards of hardship, that the deck was not required for access nor required by FEMA, a side door currently exists, outside stairs unnecessary since basement stairs exist, Costas view would be blocked 25-35% , and claimed additional terrace space would be created under the house for parties. **Exhibit 9** was entered being a bound, blue covered booklet containing photos and copies of documents. When asked by the Board if the Costas had deeded view rights Attorney Smith said 'no';
2. Attorney Tom Cronan of Madison, representing the Carlsons, neighboring property owners, agreeing with Smith's argument, noting inconsistencies in the proposed plans, existing and proposed window alignment (Jeff Flower explained that schematic plans were being presented and that construction are to follow if approved for permits), questioned the utilities platform, the space under the house and the elevator, no hardship for the deck, that only the minimum request to alleviate hardship should be granted, the street side encroachment, the Moon case, and Vine v. ZBA North Branford;
3. Lucy Carlson, 207 Salt Island Road, entering **Exhibit 10** into the record consisting of 13 photos; Board questions included how the HazMat situation happened (oil tank not anchored and became buoyant, falling over in basement, hitting basement items), if there was a deeded easement for common walkway between the houses (yes), and if she had a deck on her house(yes, third floor, set in).

Attorney Cassella rebutted testimony including Mr. Flower's presentation of the interior basement stairway not up to code and is used for convenience, not necessity and that the Costas have a large lot with substantial multiple views.

Attorney Brown noted that he believed the subject structure had been built between the neighboring properties after they had been built.

Attorney Cassella noted that if variances were not granted for property owners to upgrade their homes, no redevelopment would be possible as it is all convenience renovation if Regulations were to be taken with a narrow view. He further noted that uniqueness and hardship are not limited to any specific site but rather an entire district and that the standard of reasonableness should be applied. As proposed, reduction of nonconformities and included and that the proposed access via the stairway and deck is more compliant than what presently exists on the Costa side of the property. He further stated what is being proposed is proactive and a positive action, that there are no view rights, that a reduced deck plan has been proposed, and that the only place to have the stairs without further encroachments is the SW corner, further noting the proposal was consistent with the Town's Plan of Development. Brief discussion was undertaken regarding the rise and run of the stairway steps, and if the deck could be a landing instead of a deck for access. A question was made as

to where a landing would be sufficient for furniture and appliance movement further noting the proposed elevator was a passenger and not freight equipment

The hearing closed at 10:17 p.m. and a brief recess was called.

The public hearing portion of the meeting reconvened at 10:25 p.m.

A motion was made by Richard White, seconded by Mindy Gordon, to schedule a special meeting for either 9/2/14 or 9/3/14 at 7:30 p.m. room subject to availability for the purpose of discussion and possible rendering of decisions on the applications. The motion carried unanimously.

No. 14-20 – Appeal of Michael J. and Paula M. Jurewicz, owners/applicants; Thomas Elliott AIA, 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 4.33.06(c) rear yard setback (West) to allow 10’ where 35’ required, to construct new 2 bedroom single family residence. CAM required.

Opening of public hearing held over from July 23, 2014.

Alternate Mindy Gordon was seated for this application. Alternate Richard White recused himself from hearing the application.

Agent Thomas Elliott and Attorney Ed Cassella were present for the applicants. Mr. Elliott entered into the record **Exhibit 1**, synopsis of the application. Citing the fact that this lot is bordered by three (3) streets, the lot having three (3) front setbacks and one (1) rear setback as determined by the ZEO, it is located in an AE11 flood hazard zone in an area prone to flooding. A new engineered septic system has been approved and the application is scaled down from previously requests by square footage and number of bedrooms. Proposed is a new year round cottage with its lowest habitable floor at 14’, complying with FEMA standards, having 2 stories with 790 square feet on each (1580 total) and a non-habitable walkup attic for storage and mechanicals, not for future expansion. **Exhibit 2**, a 2 page map of the lots in the area showing front line setbacks in ‘red’ and percentage of lot coverage in ‘blue’ was entered into the record. The average lot coverage calculated on the map is 19.16% (25% maximum) while the proposal is less at 19.8%.

Attorney Cassella entered **Exhibit 3** into the record, “Memorandum in Support of Application of Michael J. and Paula M. Jurewicz” dated 8/27/14. (A typo on the first page, last line, was corrected from “1500 s.f.” to “1580 s.f.”). Attorney Cassella noted that this application proposed less lot coverage, an increase in one of the side yard distances, a decrease in bedrooms from 3 to 2 bedrooms, and a code compliant septic system on site. He noted that the lots were subdivided out in 1942 prior to zoning, and that many area lots were nonconforming in size. He also noted that this particular lot has an additional hardship by having 3 fronts and 1 rear thereby have no envelope for development if zoning setbacks are strictly applied. The house has been designed as small and reasonable as possible, with piers and breakaway walls.

Tom Elliott addressed the storm water management system that will be in ground with no additional runoff. Silt fencing will be employed, no grade change is proposed, no materials will be stored on-site rather will be trucked away, and a dumpster will contain construction material debris.

The Board had no questions regarding the CAM application.

Speaking in favor of the application from the audience were:

1. Elaine Wells, 24 Pioneer Road;
2. Harold G. Guidotti, 83 Riverview Road;
3. Peter Costanzo, 28 Beach Way;
4. Nicholas Ruet, 27 Old Mail Trail; and,
5. Cindy Beaulieu, 77 Riverview Road.

Letters in favor read into the record were from:

1. Carmelo Mazzotta, 33 Old Mail Trail, stamp dated received 7/16/14; and, form letters from-

2. Donald & Irene Carlsen 8 Pioneer Road, dated 8/24/14;
3. Cindy and Matt Beaulieu, 77 Riverview Road, dated 8/24/14
4. Steven Garofalo, 43 Riverview Road, dated 5/23/14;
5. Sue M. Corripetes, 24 Old Mail Trail, dated 4/30/14;
6. Peter Costanzo, 28 Beach Way, dated 7/3/14;
7. Ronald Sadowsky, 25 Beach Way, dated 7/8/14;
8. Peter Ludd, 55 Riverview Road, dated 5/28/14;
9. Robert W. Woodstock, 3 Old Mail Trail, dated 5/28/14;
10. Elaine A. Wells, 24 Pioneer Road, dated 8/22/14;
11. Nicholas Reut, 27 Old Mail Trail, dated 6/25/14;
12. Robert and Rose Marie Cugliari, 4 Mohican Road W., dated 7/20/14;
13. Deborah and David Goodman, 31 Beach Way, dated 6/30/14;
14. J. Ruggiero, 30 Pioneer Road, dated 6/25/14;
15. Bruce J. Dowd, 43 Beach Way, dated 8/9/14;
16. Richard W. and Delores D. Daly, 1 Mohican Road W., dated 6/25/14; and,
17. Gregg Bromley, 52 Sunrise Road, stamped received 7/23/14.

Speaking from the audience in opposition were:

1. Raymond Froscio, 74 Riverview Road, reading a statement into record from himself and Joan Froscio and submitted as **Exhibit 4**;
2. Joyce Narden, 12 Old Mail Trail, also reading a statement into the record and submitting it as **Exhibit 5**;
3. Peter Evans Esquire representing Joyce Narden and Constance O'Brien of 12 Pioneer Road;
4. Nick Munchi, 12 Old Mail Trail; and,
5. Jay Bernadino, 36 Pioneer Road.

Letters read into the record in opposition were from:

1. Constance M. O'Brien, 12 Pioneer road, dated 8/26/14;
2. Judith Cacase, no Westbrook address given, dated 8/4/14;
3. Peter B. and Margaret R. Vincent, 64 Old Mail Trail, dated 8/26/14;
4. Elia V. and Joseph B. Chepaitis, 16 Uncas Road, dated 8/27/14;
5. Lynda Dyson, 54 Mohican Road E., no date given;
6. Rosemarie and Thomas Cristofaro, 8 Old Mail Trail, dated 8/25/14;
7. Phyllis J. Pallett-Hehn, 90 Riverview Road, dated 8/24/14;
8. Mark Wojcicki, 122 Riverview Road and 35 Mohican Road W., dated 8/26/14; and form letters/petitions from-
9. Girin Munshi, 12 Old Mail Trail, dated 8/27/14;
10. Sherwood T. Bottwell Jr., 42 Mohican Road E., dated 8/24/14;
11. Robert and W. Russell, 40 Uncas Road E., dated 8/24/14;
12. Jonathan Russell, 50 Mohican Road E., dated 8/24/14;
13. Betty Weber, 41 Mohican Road E., dated 8/24/14;
14. Caroline Wojcicki, 354 Mohican Road, dated 8/23/14;
15. Elaine Brink, 11 Mohican road, dated 8/24/14;
16. David C. Clark, 38 Uncas Road, dated 8/24/14;
17. Joan W. Froscio, 74 Riverview Road, dated 8/24/14;
18. Lynda P. Dyson, 54 and 62 Uncas Road E., dated 8/27/14;
19. Margaret R. and Peter B. Vincent, 64 Old Mail Trail, dated 8/24/14;
20. Stephen P. and June M. Donnelly, 59 Old Mail Trail, dated 8/24/14;
21. Elizabeth Barrientas, 12 Sachem Road, dated 8/24/14;

22. Maureen and Thomas Scott, 63 Old Mail Trail, dated 8/24/14; and,
23. Jane M. Lacy, 53 Mohican Road E., dated 8/24/14.

In rebuttal, Tom Elliott stated that the septic proposed has complied with the current State DEEP Health Code compliance requirements where in 2006 there were none, this issue is not under the jurisdiction of the ZBA, one has to look at facts and not emotions, the project request is in line with what exists in the neighborhood, it meets FEMA requirements and complies with height requirements. Attorney Cassella cited density issues, the location being in an AE11 flood hazard zone and the future flood insurance costs all will eventually be subjected to if not compliant with FEMA regulations, the proposed storm water management system to mitigate effects, that it is the Regulations creating the hardship, and to deny the variance would be tantamount to constitutional taking. It was also noted that the lot was laid out prior to zoning in 1942 and that the applicants purchased it as a building lot, shown on Town records as such.

The Board having no additional questions, the hearing was closed at 12 midnight.

No. 14-24 - Appeal of Thomas and Susan Bransfield, owners/applicants; David M. Royston, Esquire, agent. Property located at 10 Beach Court. Identified on Assessor's map 181 as Parcel 109. HDR zone. Variance requested from Zoning Regulations Section No. 4.33.05 building coverage to allow 31.4% where 25% required, Section No. 4.33.06(a) front yard setback to allow 17' where 25' required, Section No. 4.33.06(b) side yard setback to allow 3.8' where 10' required (SE – stair), Section No. 4.33.06(b) side yard setback to allow 1.9' where 10' required (deck), Section No. 4.33.07 tidal wetland to allow 37.5' where 50' required, Section No. 4.33.06(c) rear yard setback to allow 31' where 35' required, Section No. 2.10.06 expansion of non-conforming structure (E/S stair only), and Section No. 2.10.07 request to reconstruct/replace non-conforming structure. CAM required.

Alternate Richard White returned to the meeting. Alternate Mindy Gordon was seated.

Attorney Royston was present and entered **Exhibit 1** into the record, site location map from the Town. He explained that the house was built in 1930 and purchased in 1974. A review of the variance requests was done, and he noted that significant interior damage had occurred to the property from Super Storm Sandy in 2012. Planned is an upgrade to the existing septic and the seasonal house will remain seasonal with the same number of bedrooms. The house will conform to FEMA standards and will be in the same general location on the lot, offset in conformity to neighboring structures. A reduction in the number of nonconformities is as proposed and no further extension into the front yard setback will occur. The structure's footprint is to be reduced and the existing shed to the rear currently on the property line into the wetlands will be eliminated.

Richard Stout from Point One Architects in Old Lyme reviewed the architectural plans for the Board. The first floor will contain 840 square feet and the second floor 740 square feet, for a total of 1580. The structure will be raised 9' and sit on piles with no solid walls (will be breakaway) with possible lattice work covering the lower space and open risers on the stairs. An 8' deep deck is also proposed at the rear. Hardship was delineated as being a pre existing nonconforming lot with the structure built in 1930 prior to zoning. As presented it meets all standards and is consistent with the comprehensive plan of development.

The CAM application was reviewed with the only coastal resource feature noted being the tidal wetlands. A small amount of fill is required for the septic upgrade and silt fencing will be employed.

Speaking from the audience in favor of the application was Irene Nichols, 19 Beach Court. No one spoke in opposition.

Letters in favor of the application were read into the record from:

1. Tom and Susan Bransfield, 10 Beach Court, dated 8/8/14; and,
2. Memo from ZEO Nancy Rudek testifying to a telephone call in favor from Pete Black who lives across the street from the Bransfields.

There being no further questions from the board, the hearing was closed at 12:20 a.m.

No. 14-25 – Appeal of Alan and Deborah Ringers, Trustees, owners/applicants; Joe Wren P.E., agent. Property located at 2 Brittney Lane. Identified on Assessor’s map 120 as Parcel 12. LDR zone. Variance requested from Zoning Regulations Section No. 8.00.03 to permit 1,000 square foot detached residential accessory apartment. CAM exempt.

Opening of public hearing delayed until September 24, 2014 meeting.

Respectfully Submitted,

Janet L. Aiken

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

(THREE (3) digital CD disks was recorded for the 8/27/14 Public Hearing & Regular Meeting and filed with the Town Clerk’s Office).

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

9/1/14
Date Submitted