



**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 - 23 March 2011**

The Westbrook Zoning Board of Appeals met on Wednesday, March 23, 2011, 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 9 March 2011 and 16 March 2011.

Chairman Mark Damiani called the Hearing to order at 7:35 p.m. and introduced Board members to the public in attendance. Members present were John Boehme, George Rehberg, Bonnie Hall, Mark Damiani, Eve Barakos and Alternates Richard White and Vincent Neri. Also present were Administrative Secretary Janet L. Aiken and ZEO Nancy Rudek.

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

With regard to Application No. 11-04, appeal of David and Nora Luszcz, property at 15 Shore Lane, the Chair noted for any public attending, that a letter had been received from the applicants and their attorney requesting the hearing be held over to the April 27, 2011 meeting of the Board.

**No. 11-01** - Appeal of Karen M. And Peter S. Oliver, applicant/owner; Attorney Edward M. Cassella, agent. Property located at 6 Wangum Road. Identified on Assessor's Map 188 as Parcel 69. HDR Zone. Variance requested from Zoning Regulations Section No. 4.33.06(b) to allow side yard setback of 5.9' where 10' required, and Section No. 2.10.06, enlargement of a nonconforming structure. CAM exempt. HELD OVER FROM 2/23/2011

Alternate Richard White recused himself from this application citing a conflict of interest.

Attorney Ed Cassella was present for the applicant and made the presentation to the Board. The project consists of tearing down the existing house and re-building a 2-story cape in basically the same location, same footprint. A deck is proposed on the West side (septic side) with a slightly larger front entry. Attorney Cassella stated on the record that the site is actually two lots, the house on one and the septic on the other, and proposed merging them together into one.

Builder Bill Zdon spoke regarding the existing cinder block foundation which possibly may need to be cement filled with re-bar, and the need for a new front stairs as the current ones are separating from the house foundation. He noted that the plan was to use the existing foundation for the new structure.

**Exhibits #1A and 1B** were submitted for the record, photos of the house and property.

Hardship claimed was topography of the house lot which has a significant slope on one side, and a row of mature hemlocks. Also claimed was the location of the relatively new 100% compliant septic system, located 15' from the existing as well as proposed structure.

**Exhibit #2**, Westbrook online map showing the two lots, was submitted for the record.

No one from the audience spoke in support of or against the application.

Read into the record were the following letters in support of the application:

§ letter dated 2/1/11 from Doris Sanstrom of 204 Boston Post Road;

§ letter dated 1/11 from Vivian Rasemus of 2 Riverview Road;

§ letter dated 1/20/11 from Sharon White of 25 Riverview Road;

§ letter dated 1/11 from Charles Smedick of 10 Wangum Road;

§ letter dated 1/11 from David Mongillo of 5 Wangum Road;

§ letter dated 1/11 from Bonnie Palmieri of 15 Riverview Road;

§ letter dated 1/15/11 from Bonnie and Richard Daly of 24 Riverview Road.

From the Board, John Boehme asked about the existing driveway and difficulty accessing the same due to traffic conditions. The applicant, Peter Oliver, stated that he has to back into the driveway from the road. Since there is some room on the lot at that location for a possible turnaround, it was noted as being possible. Bonnie Hall inquired into the existing garage which was noted on the record as also being planned to be located in the lower level of the structure under the proposed house.

The Chair closed the hearing at 7:52 p.m.

**No. 11-02** - Appeal of Elaine Erwin Matulis, applicant/owner; Attorney Edward M. Cassella, agent. Property located at 534 Seaside Avenue. Identified on Assessor's Map 189 as Parcel028. HDR Zone. Variance requested from Zoning Regulations Section No. 4.33.06(b) to allow side yard setback (West side) of 5.4' where 10' required, Section No. 4.33.06(b) to allow side yard setback (East side) of 5.4' where 10' required, and Section No. 4.33.06(c) to allow rear setback (North) of 34' where 35' required. CAM approval needed. CONTINUED FROM 2/23/2011.

Attorney Ed Cassella was present for the applicant and made the presentation to the Board. **Exhibit #1**, a simpler, scaled down version of the site plan, was submitted into the record and to the members. Shown on the site plan was the existing location of the house and the proposed location of the house with new addition, with the addition shown as being 104.4' from the mean high water mark of Long Island Sound. **Exhibit #2** was also entered into the record being 2 pages of 4 photographs of the subject house.

Attorney Cassella requested that any public discussion be limited to the variance requests and the CAM application, acknowledging the existence of peripheral issues surrounding easements, et cetera.

Discussing hardship, Attorney Cassella stated the house could not be built in the same location due to the location of the new 100% compliant septic system, citing coastal resources concerns. He noted the initial application showed the septic system being located on the front side (beach/water side) of the property but due to concerns stated by CT DEP Office of Long Island Sound, it was moved to the rear (street side) now necessitating a 9.17' shift of the house

location. He further stated that with the rebuild, existing nonconformities are being reduced by a total of 10' with the side yard distances increased from 5.2' to 5.4'.

Attorney Cassella also noted that the imposition of the Zoning Regulations for the HDR district on a 35 foot wide lot was also a hardship, stating that the lot albeit narrow also contained 6,000 square feet, sizable for beachfront lots. He also noted that compared to the prior application, while the new footprint added 80 square feet in 2 areas, it also reduced the square footage by 300 square feet. He further noted that as proposed, the project fit into and was compatible the surrounding Seaside Avenue area as a whole.

With regard to the CAM application, the current residential use will remain a residential use. As for impact during development and construction, **Exhibit #3**, a report dated 1/24/11 from Eric Davison, biologist and professional wetland scientist of Environmental Planning Services located in West Hartford, CT was submitted into the record. Attorney Cassella further noted that the beach side addition had been reduced by 3 feet (or 15%) from the prior application. Referring to the last letter from Mary-beth Hart of DEP, note was made that less adverse impact would occur with the new septic system, replanting/restoring any disturbed vegetation, possible use of rope fencing to delineate pedestrian walkways, and that FEMA requirements would be met with the construction of the new structure.

Pat Benjamin CE of Bascom & Benjamin LLC, 360 Main Street, Durham, CT presented the proposed subsurface sewage disposal system plan. He reviewed soil testing noting the rear location for the septic system was 18 to 24" higher than the beach side previously proposed as a possible location. To facilitate optimum aeration of the septic, a low pressure soil-air pump system is proposed. Silt fencing would be placed around the perimeter of the lot, and an outlet to grade could be provided for roof water runoff.

Biologist Eric Davison reviewed his report with the Board concerning beach and dune plants and animals. He noted that the dune vegetation was worn out due to pedestrian walkways, categorizing plant growth in the first 10' from the existing house non-native beach rose and the next 10' in the sand dune as having sparse vegetation with the next 10-15' being natural dune area. Due to the conditions of the dune, in his opinion the dune would not provide certain dune functions, ie., rare bird habitat (plovers, et cetera). Noting that some rare plant community exists, the dune was fragmented, close to residential development and consistent with other neighborhood use and condition. Degradement was due mainly to unregulated uses and activities, suggesting orange fencing during development to delineate activity location, and the placement after development of a 'living barrier' of beach plum or bayberry to prevent further disturbance and degradation. The Chair asked where the plantings would be proposed wherein Mr. Davison suggested just behind the limits of construction, and at the apex of the dune sparseness to thicken up vegetation with some shrub species and to curtail wind erosion. Further discussion took place regarding the types and location of such plantings as none were shown on the presented plans. Oversight of the plans was also discussed with ZEO Nancy Rudek agreeing to oversee the project and submitting a report on the activity. Mr. Davison agreed include the plantings on the plans and work with the ZEO.

The Chair also inquired as to pedestrian walkways over the property. Applicant Elaine Matulis stated there was a 4' ROW from the rear yard to the water specifically for the use of the

Atwoods living at 536 Seaside Avenue. She also noted there was a smaller walkway down the center of her lot to the water.

Richard White inquired as to regulation of the dune area and if vegetation could be replaced by replanting. Eric Davison stated that it could be replanted to restore, similar to the activity currently taking place further up the beach. Impact area was again reviewed. Suggested plantings included American beach grass, Beach Plum and Northern Bayberry. Mr. Davison suggested leaving area around the dwelling itself to facilitate maintenance. The Chair a portion of page 3 of Mr. Davison's report into the record.

Vincent Neri inquired as to the existing and proposed footprint of the house and the location of the proposed 500 square foot disturbed area, asking for a breakdown between the structure itself and development activity, which was noted by the engineer as being 35% +/-.

Jan Bradford of Home Design Services reviewed the proposed architectural plans. Vincent Neri asked what the proposed extension square footage was. Ms. Bradford indicated the proposed addition was 16 x 14' and 3 stories high, with the second and third floors being cantilevered.

Chairman Damiani asked about the interior, specifically the alcove area and kitchen plan. Bonnie Hall inquired as to the building's elevation and if the first floor had breakaway capability. Ms. Bradford indicated the elevation was 10.5' and that there were panels in the foundation as well as smart vents proposed. No basement is proposed but there would be a crawlspace. Richard White asked what the maximum height of the structure was, and the Chair inquired if any grade changes were proposed. Ms. Bradford stated the height was 34.8' and the engineer stated no grade changes were proposed.

John Boehme asked for clarification of the setback issues.

With no further questions at this time from the Board, the Chair opened the hearing for public comment. No one spoke in favor of the application. Speaking in opposition of the application were the following:

§ Richard Whiting of 528 Seaside Avenue read a prepared statement dated 1/23/2011 previously submitted and made part of this record, which also included a copy of DEP's 4/28/10 letter from Mary-beth Hart regarding the previous application No. 10-04. Attorney Cassella asked through the Chair when Mr. Whiting's house had been built, what its square footage was, whether or not it was year round, if during the conversion from seasonal to year round if the house had been a tear down and when the septic system had been upgraded, adding that not all the lots in the area were the same size and dimension. Mr. Whiting took exception to being asked about his own property stating the house proposed was too big for the lot and that its development would harm the dunes' growth which had been steadily increasing over the years.

§ Rayona Hobbs of 520 Seaside Avenue also spoke against the application reading a previously submitted, prepared statement into the record, also dated 1/23/11. Attached to the statement were 2 photos and comments, also part of the record.

§ Mary Ann Atwood of 536 Seaside Avenue read a statement dated 3/23/11 into the record from herself and her husband Kenneth, and was submitted as **Exhibit #4**. Ms. Atwood further took exception to the replanting proposal stating she did not want

prickers or bushes adjacent to the access ROW which could potentially affect her deeded access to the beach.

§ Attorney Scott Jezek, representing the Atwoods, spoke to the Board concerning the finding of hardship and the need for specific findings, further stating his opinion the purported hardships stated by the applicant were self-imposed and self-created. He further noted that there was no reason why the existing structure couldn't be made year-round with an upgrade to the existing sewerage system, submitting as **Exhibit #5** the 2002 CT Superior Court Memorandum of Decision in Giramonti et al v. Zoning Board of Appeals, et al referring to it was a case on point with this application occurring in the Town of Old Lyme. Richard White asked if the case had gone to appeal and Attorney Jezek said he did not know.

§ Craig Szymanski of Seaside Avenue paraphrased a previously submitted letter stating he owns 2 lots, one with a seasonal cottage and the other vacant. He stated he feared a precedent being made with the potential of McMansions being built ruining and eliminating the beach, that he has seen birds and animals in the dunes area, that his septic application for a 2 bedroom year round residence had been denied 7-8 years ago due to lack of room. Richard White inquired if he had considered rebuilding as Mr. Whiting had done.

Speaking again, Richard Whiting said that the purpose of zoning was to protect. He further acknowledged that there were no view rights.

Chairman Damiani inquired of Mr. Whiting what he felt was the extent of view intrusion from the proposal. After checking the map and Mr. Whiting stated the neighbor to the West would lose 'sunrises'.

Bonnie Hall made inquiry as to various deed restrictions. It was determined to be a private matter between parties and not one for the Board to take up.

The Chair at this time read in part a letter from Board counsel, Attorney Michael Wells, sent to the Board at the time of the previous application for this property. The information contained in the letter covered what the Board was authorized to take up and consider.

Mary Ann Atwood spoke again inquiring if any other opposition letters had been received. The Chair read the following into the record:

- § letter dated 1/26/11 from M. E. Argersinger of 542 Seaside Avenue;
- § letter dated 1/31/11 from The Porter Family of 548 Seaside Avenue;
- § letter dated 1/19/11 from Richard Kaylor;
- § letter dated 1/20/11 from Kathleen Pfaff (Kaylor) of 534 Seaside Avenue;
- § letter dated 1/20/11 from Aileen M. Kaylor.

The applicant, Elaine Matulis, spoke concerning the last three letters read into the record stating that the easement(s) issues were being cleared up and that perhaps there was some confusion on the part of the writers as to the proceedings currently being held by the Board.

Readdressing the Board, Mr. Benjamin again reviewed the proposed septic system from the CAM application perspective, noting that the local officials were more stringent than State.

Ms. Matulis stated that she purchased the house as a 2 bedroom, with 5 rooms total.

Attorney Cassella submitted **Exhibit #6A-E**, copies of 5 field cards from the Assessor's Office, of similar homes having similar square footage to the proposed within the project's location.

**Exhibit #7**, an aerial map taken of the area in 1980, marked to show the 2011 mean high water mark as it currently exists versus what it was in 1980, was submitted by Richard Whiting in support of his concern of activity within the dune area.

Richard White inquired into the recorded restrictive covenant and agreed with Attorney Wells' opinion, noting it was outside of the Board's scope of consideration being a deed enforcement action.

Speaking again from the audience, Richard Whiting voiced concern about the ability of equipment to get around the property for construction purposes without traversing over neighboring properties as had initially been done for preliminary testing of the site. The Chair again stated it was not within the Board's purview to consider access.

Speaking again from the audience, Mary Ann Atwood stated she disagreed with Ms. Matulis' description of the residence as being a 3 bedroom. The existing structure was a bath house containing changing rooms for years. She stated there was a newly installed window downstairs with a bed, formerly a mud room, and that it is a one bedroom house, staged for the Board for its site walk. Richard White stated for the record that none of the members went inside the house as claimed.

Speaking from the audience again, Richard Whiting stated the assessor's card was correct stating it was a one bedroom house.

The applicant, Elaine Matulis, vehemently refuted the testimony given by Ms. Atwood and Mr. Whiting stating when she began looking at the house 3 years ago, while she was told the downstairs had been used years ago as changing stalls, a captain's bed with underneath drawers was there and it was advertised as a 2 bedroom house.

With no more comment from the audience or Board members, the Chairman closed the hearing at 10:07 p.m.

**No. 11-04** - Appeal of David and Nora Luszcz, applicant/owner; Thomas Elliott AIA, agent. Property located at 15 Shore Lane. Identified on Assessor's Map 13 as Parcel SF8. HDR Zone. Variance requested from Zoning Regulations Section No. 4.33.06( c ) to allow rear setback of 22' where 35' required, Section 4.33.06(b) to allow side yard setback (East) of 4' where 10' required, and Section No. 2.10.06, enlargement of a nonconforming structure. CAM exempt. HELD OVER FROM 2/23/2011.

See above; held over to 4/27/11.

The public hearing portion of the meeting was closed at 10:07 p.m.

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

(FOUR (4) micro cassette tape was recorded for the 3/23/11 Public Hearing & Regular Meeting and filed with the Town Clerk's Office).

Janet L. Aiken  
Janet L. Aiken, Administrative Secretary

3/25/11  
Date Submitted