

Approved 2-24-16  
Bonnie Hall



MAR-01 '16 AM 08:58

**TOWN OF WESTBROOK  
ZONING BOARD OF APPEALS**

866 BOSTON POST ROAD  
WESTBROOK, CONNECTICUT 06498  
(860) 399-3046 • FAX (860) 399-3002

**MINUTES - ZBA REGULAR MEETING – 27 January 2016**

The Westbrook Zoning Board of Appeals met on Wednesday, January 27, 2016, in the Multi-Media Room of the Teresa Mulvey Municipal Center located at 866 Boston Post Road. Chairman Bonnie Hall called the Regular Meeting to order at 10:05 p.m. following a brief recess after the close of the public hearings. Members present were Chairman Bonnie Hall, Eve Barakos, Mark Damiani, Vincent Neri and Alternates Richard White, Nicholas Alaimo and Matt Diamond. Also present was Recording Secretary Category I, Janet L. Aiken.

**DECISIONS:**

**No. 15-019 - Appeal of Linda and Dave Hood, owners/applicants.** Property located at 60 Wangum Road. Identified on Assessor's map 188 as Parcel 057. HDR zone. Variance requested from Zoning Regulations Section No. 4.33.06(c) rear yard setback to allow 0.5' where 35' required and Section 2.10.06 extension/enlargement of non-conforming uses/structures, to build dormer increasing size of master bathroom area. CAM exempt. Opening of Public Hearing rescheduled from 12/9/15.

Alternate Nick Alaimo was seated for this application.

Discussion included the following:

The application was straight forward

No additional floor space on the second floor was needed

The cathedral ceiling space was to be used for the shower

Hardship was demonstrated – can't expand without creating additional nonconformities

A motion was made by Mark Damiani, seconded by Eve Barakos, to grant the variance as presented. The motion carried unanimously.

**No. 15-020 - Appeal of Keith Rich, owner/applicant.** Property located at 29 Pointina Road. Identified on Assessor's map 192 as Parcel 048. HDR zone. Variance requested from Zoning Regulations Section 4.33.06(b) side yard setback to allow 6' where 10' required, Section 4.33.06(c) rear yard setback to allow 27' where 35' required, and Section 4.33.06(c) rear yard setback to allow 20' where 35' required, and Section 2.10.06 extension/enlargement of non-conforming uses/structures, to build a 24' X 14' deck. CAM exempt. Opening of Public hearing rescheduled from 12/9/15.

Alternate Matt Diamond was seated for this application.

Discussion included the following:

The proposed deck is large in size

It is not needed for access or need

Hardship was not demonstrated

The deck not essential

Nothing unique as to the lot

Deck might improve the looks of the house

Deck could increase the value of the house

If the house in the future would have to be raised, the deck would be raised also

A motion was made by Vincent Neri, seconded by Eve Barakos, to deny the variance request due to lack of hardship.

For: Vincent Neri, Bonnie Hall, Eve Barakos, Mark Damiani

Opposed: none

Abstained: Matt Diamond

The motion carried.

**No. 15-021**– Amended Appeal of Sue K. Morris, Trustee, applicant; Edward M. Cassella, Esquire, agent. Property located at 119 Second Avenue. Identified on Assessor’s map 181 as Parcel 122. HDR zone. Variance requested from Zoning Regulations Section No. 4.33.06(b) side yard setback (West) to allow 3.7’ where 10’ required, Section No. 4.33.06(b) side yard setback (East) to allow 3.7’ where 10’ required, Section No. 4.33.08 maximum height requirement to allow 38.7’ where 35’ is maximum, and Section No. 2.10.06/2.10.07 change/replacement of nonconforming structure, to demolish existing house and replace with 4 bedroom year round dwelling. CAM required. Opening of Public Hearing rescheduled from 12/9/2015.

Alternate Richard White was seated for this application.

Discussion included the following:

- Plans showed a reasonable attempt to design the house
- The drainage issues in the neighborhood
- No grade change proposed
- A swale is to be created to satisfy neighbor (Bender) concerns
- Reduces existing nonconformities
- Structure height increase a concern
- Height increase close to 4 feet – precedent setting?
- Neighbor directly across the street is most impacted by height change but not opposed
- Applicants only asking for what they presently have
- Overshaw case is on point and sets the precedent
- Hazard mitigation is viable definition of hardship for both property & life *Pre Preservation*
- Proposal will reduce impervious surfaces on site
- Meets FEMA requirements
- Stipulation in place with neighbor to the West eliminating opposition

A motion was made by Richard White, seconded by Mark Damiani, to grant as presented along with the CAM application, and all of the supporting documents. The motion carried unanimously.

**No. 15-022** – Appeal of Michael and Mary Kay Marino, owners/applicants; Thomas Elliott AIA, agent. Property located at 27-2<sup>nd</sup> Avenue. Identified on Assessor’s map 180 as parcel 081. HDR zone. Variance requested from Zoning Regulations Section No. 2.10.06 extension/enlargement of non-conforming uses/structures, Section No. 4.33.06(a) front yard setback to allow 2.4’ where 25’ required, and Section No. 4.33.06( c ) rear yard setback to allow 11.2’ where 35’ required, for vertical expansion removing partial second floor of existing structure and adding full second floor and unfinished attic within existing footprint. CAM required.

Alternate Nick Alaimo was seated for this application.

Discussion included the following:

- Vertical expansion
- Square footage change small
- No effect on footprint
- Removal of upper deck creates less nonconformity
- Eliminates spiral staircase hazard – safety issue & code compliance

A motion was made by Bonnie Hall, seconded by Eve Barakos, to grant the variance with the CAM. The motion carried unanimously.

**No. 15-023** – Appeal of James Vitali, applicant; JEV Investments LLC, owner; George Cotter, agent. Property located at 7 Hogan Road. Identified on Assessor’s map 180 as parcel 059. HDR zone. Variance requested from Zoning Regulations Section No. 4.33.06(a) front yard setback to allow 14’ (house) where 25’ required, Section No. 4.33.06(b) side yard setback to allow 2.5’ (house) and 2.0’ (access platform) where 10’ required, Section No. 4.33.06( c ) rear yard setback to allow 8.6’ (house) and 3.7’ (access platform) where 35’ required, and Section No. 2.10.06/2.10.07 enlargement of nonconforming structure, for vertical expansion and replacement of existing structure

in same footprint. CAM required.

Alternate Richard White seated for this application.

Discussion included:

- Sufficient testimony as to condition of property
- Per GIS map overlay needs to raise and no building options
- Neighbor objection (Bransfield) – need two entrances
- Deck needed to access raised structure
- Objections small for necessary hazard mitigation
- Applicant has demonstrated hardship
- Bedrooms reduced from 5 to 4
- House to remain seasonal
- Good plan presented
- President of association desires aesthetically pleasing design

A motion was made by Richard White, seconded by Vincent Neri, to grant the variance and CAM as presented. The motion carried unanimously.

#### **Minutes:**

A motion was made by Eve Barakos, seconded by Mark Damiani, to approve the minutes of the 11/10/15 public hearing. The motion carried unanimously.

A motion was made by Eve Barakos, seconded by Mark Damiani, to approve the minutes of the 11/10/15 regular meeting. The motion carried unanimously.

#### **Bills:**

A motion was made by Mark Damiani, seconded by Richard White, to approve the bill from Janet Aiken for \$610.00. The motion carried unanimously.

A motion was made by Matt Diamond, seconded by Mark Damiani, to approve the bill from WB Mason for \$11.99 for a new nameplate. The motion carried unanimously.

A motion was made by Matt Diamond, seconded by Bonnie Hall, to approve the bill from Richard White for \$36.10 for tuition/attendance of a conference on 11/6/15 'legal issues in the age of climate adaptation'. The motion carried unanimously.

A motion was made by Richard White, seconded by Mark Damiani, to approve the bill from Gould, Larson, Bennet & McDonnell PC for \$750. The motion carried unanimously.

A motion was made by Mark Damiani, seconded by Eve Barakos, to approve the bill from the Hartford Courant for \$483.15. The motion carried unanimously.

#### **Election of Officers:**

A motion was made by Vincent Neri, seconded by Eve Barakos, to nominate Bonnie Hall as Chairman and Mark Damiani as Vice Chairman for 2016. The motion carried unanimously.

**Correspondence:** To be reviewed at the next meeting.

**Other Business:** none

A motion was made by Matt Diamond, seconded by Eve Barakos, to adjourn. The motion carried unanimously.

The meeting adjourned at 10:54 p.m.

Respectfully Submitted,

*Janet L. Aiken*

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

(ONE (1) CD was recorded for the 1/27/16 Public Hearing & Regular Meeting and filed with the Town Clerk's Office).

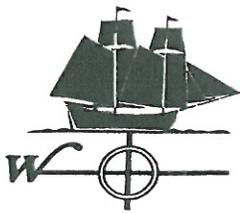
*Janet L. Aiken*

Janet L. Aiken, Recording Secretary Category I

2/1/16

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ZONING BOARD OF APPEALS**

866 BOSTON POST ROAD  
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(860) 399-3046 • FAX (860) 399-3092

**MINUTES - ZBA PUBLIC HEARING - 27 January 2016**

The Westbrook Zoning Board of Appeals met on Wednesday, January 27, 2016 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 21 January 2016 and 24 January 2016.

Chairman Bonnie Hall called the Public Hearing to order at 7:31 p.m. and introduced Board members to the public in attendance. Members present were Vice Chairman Mark Damiani, Vincent Neri, Eve Barakos, and Alternates Richard White, Nick Alaimo and Matt Diamond. Also present was Recording Secretary Category I, Janet L. Aiken.

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

**No. 15-019** - Appeal of Linda and Dave Hood, owners/applicants. Property located at 60 Wangum Road. Identified on Assessor's map 188 as Parcel 057. HDR zone. Variance requested from Zoning Regulations Section No. 4.33.06(c) rear yard setback to allow 0.5' where 35' required and Section 2.10.06 extension/enlargement of non-conforming uses/structures, to build dormer increasing size of master bathroom area. CAM exempt. Opening of Public Hearing rescheduled from 12/9/15.

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

Alternate Nick Alaimo was seated.

Carlos Castillo presented for the applicants. The application is for enlarging the <sup>second</sup> first floor bathroom, removing the bathtub and replacing it with a walk-in shower necessitating raising the roof into a dormer. No change to the footprint of the house is proposed. Linda Hood was present explaining that she could no longer get in or out of a tub. Kirk Bradshaw of C & C Nexum was also present and asked what the rules were for a variance. The Board read Section 12.22.00 of the Regulations including subsections A, B and C, regarding the need of hardship for the granting of a variance. Mr. Castillo was asked if the peak line would remain the same (yes) and what the current square footage of the house was (1290). He was also asked if the house could be expanded to accommodate the request (no). Mr. Castillo went on to say that the lifting of the roof was the only way but that it would be within the confines of the existing cathedral ceiling.

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

The hearing closed at 7:41 p.m.

**No. 15-020** - Appeal of Keith Rich, owner/applicant. Property located at 29 Pointina Road. Identified on Assessor's map 192 as Parcel 048. HDR zone. Variance requested from Zoning Regulations Section 4.33.06(b) side yard setback to allow 6' where 10' required, Section 4.33.06(c) rear yard setback to allow 27' where 35' required, and Section 4.33.06(c) rear yard setback to allow 20' where 35' required, and Section 2.10.06 extension/enlargement of non-conforming uses/structures, to build a 24' X 14' deck. CAM exempt. Opening of Public hearing rescheduled from 12/9/15.

Alternate Matt Diamond was seated for this application.

Mr. Rich presented his request for a 14 x 24 pressure treated deck. He explained that the house had been built in 1958 and that he had removed the existing bushes to accommodate the new deck.

Alternate Richard White questioned certain dimensions noted on the site plan specifically that of the rear yard setback. After brief discussion, it was determined that the site plan dated received by Land Use on 11/6/15 should reflect a distance of 20 feet and not 27 feet due to a ~~Scriber's~~ error. Member Mark Damiani

Scribers

noted for the record that the lot was at an angle so that it made sense to have two different dimensions.

The applicant noted that the West side of the lot was 41 feet and that the deck is proposed for the road side. **Exhibit 1** was submitted for the record (photo). The Board asked if the property to the East was a Right-of-Way (yes). Mr. Rich further noted for the record that the proposed deck would be 4 feet high off the ground. The Chair asked if the deck could come out further from the house thereby reducing its width (no). Mr. Rich explained that the leaching field was in the driveway noting further that the propane tank would have to be moved.

The Board questioned the issue of hardship. The applicant stated that he lived in a very tight residential neighborhood and with the Regulations and building code, you need a variance for everything.

The Chair inquired if the proposed deck would need a step up. Mr. Rich stated that it would and possibly would require two steps.

With regard to the submitted photo, Alternate White asked if it was taken looking South (yes), what was toward the North (Pointina Road), East (easement) and that it was the NW corner that had the 27 foot measurement (yes). Mr. White further asked if the property was in a flood hazard area (yes), what precautions have been taken and if the property had ever flooded in the past (yes). When asked how the deck would be secured, the applicant stated it would be lagged into the house, stainless steel plates would be used, tubes would be at a depth of 3 feet with cones at the bottom so as to not 'pull out'.

No one from the audience spoke in favor or against the application.

The hearing closed at 7:55p.m.

**No. 15-021**– Amended Appeal of Sue K. Morris, Trustee, applicant; Edward M. Cassella, Esquire, agent. Property located at 119 Second Avenue. Identified on Assessor's map 181 as Parcel 122. HDR zone. Variance requested from Zoning Regulations Section No. 4.33.06(b) side yard setback (West) to allow 3.7' where 10' required, Section No. 4.33.06(b) side yard setback (East) to allow 3.7' where 10' required, Section No. 4.33.08 maximum height requirement to allow 38.7' where 35' is maximum, and Section No. 2.10.06/2.10.07 change/replacement of nonconforming structure, to demolish existing house and replace with 4 bedroom year round dwelling. CAM required. Opening of Public Hearing rescheduled from 12/9/2015.

Alternate Richard White was seated for this application.

Attorney Cassella presented the application to the Board stating Joe Wren was the project's engineer and Peter Springsteel was the project architect.

The focus structure in the application had been built in 1890 is on the South side of Second Avenue and has been in the family's name for 40 years. The existing garage on the site was the subject of a previous variance and is not part of the present application. The site is located in an AE13 flood zone with a 5-6 range in elevation. The Nathans live to the West of the property with the Benders to the East. After discussions with the neighbors, the application was amended to center the new house on the lot thereby creating a new side yard setback of 3.7' on each side. A walkway on the West side of the house will be for pedestrian traffic to the beach. Pervious pavers will be used on site and no storm water impact is expected.

Architect Peter Springsteel reviewed the house design. The height variance requested is 38.7', almost 3 feet above what is the maximum height in the Regulations. Hardship includes the small size of the lot and its location in a flood zone, and as proposed, reduction of the nonconformities.

Attorney Cassella referred to Hesscock(sic) v. ZBA Stonington where the reduction of nonconformities was sufficient for the granting of a variance, and further referred to Overshore v. ZBA Madison which concerned a height variance. The existing house is two and a half stories and the proposed rebuilt structure is two and a half stories. Because of FEMA Regulations the new structure must be higher than 14' resulting in the height variance request. The lot sits in a low area and while it is not unique to the neighborhood, it is unique in the HDR zone.

Joe Wren, PE, noted the existing house is a seasonal cottage with 4 bedrooms, and that it was built in 1890. The detached garage was rebuilt in 2000. The new house will be year round also with 4 bedrooms, with a 26 square foot increase in size. The front yard is flat and a new septic system is proposed. There

exists a raised terrace area to the beach which will remain. The new structure will be raised 14' to the first floor of habitable area. The CAM application was reviewed and the Town's storm water regs do not apply because the increase in the impervious lot coverage is only 192 square feet and not 200 square feet or more.

Peter Springsteel re-addressed the height issue noting the overall height increase was kept to a minimum as best as possible, including a 7.8' ceiling on the second floor and 8.4' on the first floor. A gable shingle style roof will be used.

Questions from the Board included if the bedrooms were larger than what presently exists (not really), if the house was damaged in the last 2 storms (yes and repaired), if the damage exceeded 50% of the market value (yes) and if what was proposed was for hazard mitigation for the future(yes).

The Overshore case was submitted into the record as **Exhibit 1**. Brief discussion of the Hesscock case took place at this time. The Board inquired as to where the a/c units will be located (on the roof), the height of the 3<sup>rd</sup> floor (7' at the lowest with 11' at the ridge front to back), if flood vents will be installed (yes to equalize water pressure), heat source (no oil tank/gas heat), driveway material (pervious material), and if there was any way to reduce the height of the building (no, not without losing the 3<sup>rd</sup> floor due to building code).

Speaking in favor from the audience of the application was:

- George Dallas of 120 Second Avenue, and
- Stephen Mason of 99 Second Avenue.

Speaking in opposition was:

- Sharon Bender of 123 Second Avenue.

In answer to some of the concerns expressed, Joe Wren indicated he preferred no gutters be installed rather leaving the drip edge where the water can flow through the vents and go under the house. The subject of rain barrels was brought up but it was noted they are unsightly and you would need many of them. The Board inquired if the past storm water measures put into place between Bender and the subject site by the residents, would be put back in place and maintained (yes), if the grade will be raised (no), if the presenters were confident no flooding onto other properties would occur (yes), and if swales on both sides of the site will be installed (yes).

A letter dated 12/3/15 from Carol and Harvey Robbin, 100 Second Avenue, was read into the record. The hearing closed at 9:01 p.m.\

**No. 15-022** – Appeal of Michael and Mary Kay Marino, owners/applicants; Thomas Elliott AIA, agent. Property located at 27-2<sup>nd</sup> Avenue. Identified on Assessor's map 180 as parcel 081. HDR zone. Variance requested from Zoning Regulations Section No. 2.10.06 extension/enlargement of non-conforming uses/structures, Section No. 4.33.06(a) front yard setback to allow 2.4' where 25' required, and Section No. 4.33.06( c ) rear yard setback to allow 11.2' where 35' required, for vertical expansion removing partial second floor of existing structure and adding full second floor and unfinished attic within existing footprint. CAM required.

Alternate Nick Alaimo was seated for this application.

Thomas Elliott presented the application to the Board. **Exhibit 1** was submitted into the record, being a 2 page overview of the application. **Exhibit 2-4** consisting of 3 letters in favor of the application were also submitted. Chairman Hall read the letters into the record –

- Darcey Collins of 58 Chapman Avenue, dated 1/27/16
- James and Maureen Mallozi of 15 Second Street, dated 1/21/16
- Kendra Richards of 53 Chapman Avenue, dated 1/5/16.

Mr. Elliott stated there would be no change to the existing footprint, the site is serviced by public water, 3 bedrooms currently exist, the lot is fully nonconforming in that applying the required setbacks to the front and rear would cause them to overlap each other through the structure, ceiling height in the house is not up to code, and the interior spiral staircase is not safe for access to the second half story and is illegal. The spiral

staircase will be replaced by a code compliant stairwell. The house was built in 1920. The bedroom ceiling height is not to code as well. Hardship was stated as being illegal and not up to code ceiling height, spiral staircase, and a nonconforming lot.

Board questions included whether the deck was to be covered (yes) and its size and location (open deck with railing located at the corner of the house and carved into the volume of the house 6'x7'), and if there was no change to the footprint (yes).

The CAM application was reviewed. No storm water plan is included, the existing septic is fine and no grade change proposed, and no site work on the structure is proposed.

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

The hearing closed at 9:20 p.m.

**No. 15-023** – Appeal of James Vitali, applicant; JEV Investments LLC, owner; George Cotter, agent. Property located at 7 Hogan Road. Identified on Assessor's map 180 as parcel 059. HDR zone. Variance requested from Zoning Regulations Section No. 4.33.06(a) front yard setback to allow 14' (house) where 25' required, Section No. 4.33.06(b) side yard setback to allow 2.5' (house) and 2.0' (access platform) where 10' required, Section No. 4.33.06( c ) rear yard setback to allow 8.6' (house) and 3.7' (access platform) where 35' required, and Section No. 2.10.06/2.10.07 enlargement of nonconforming structure, for vertical expansion and replacement of existing structure in same footprint. CAM required.

Alternate Richard White was seated for this application.

George Cotter presented the application to the Board. The structure was built in 1920 and is nonconforming. After beginning work on the structure and raising it as flood damage was greater than 50% of value, it was discovered that it was only the fireplace that anchored the structure in place, that the studding was a hodgepodge of 2x4s, 4x6s, 12" on center, 18" on center and not up to code in any way. It was decided at that point to take the structure down to the first floor and build up. The same footprint will be used. The roof line may be reduced/modified because of the 2' overhang. The number of bedrooms will be reduced from 5 to 4. The bay window was eliminated on the street side (North). There is a 20' ROW for beach access. A small rain garden exists on the SW side of the site. No parking is allowed on Hogan Road. Hardship was stated as being a building requirement for a safe structure, being a nonconforming lot, and having a structurally sound structure.

Board questions included what the height of the building was (31.10') and the loss of character of the structure during the rebuild. Mr. Collins noted that a dormer could be added on the stretch of roof shown on the plans. He also noted that trusses were placed to the outside walls. The CAM application was reviewed. No fill is proposed and no change in grade will occur.

Jim Vitali spoke to the Board explaining that the structure was a real mess when the studs were exposed and when work began, because the entire house was anchored to the fireplace chimney, the roof fell and the outer walls buckled almost pan-caking the structure.

No one from the audience spoke in favor of the application.

Speaking in opposition was Jim Bransfield of 7Marvin Drive to the South of the site, expressing displeasure of the access deck that could be seen from his kitchen window. Andy Calderone of 81 Chapman Beach Road expressed concern if the redone structure was not in line with the others in the area. He also asked if it would remain seasonal (yes) and inquired into the septic (to be improved).

The hearing closed at 10:00 p.m. and a brief recess was called before convening the Board's Regular Meeting.

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 1/27/16 Public Hearing & Regular Meeting and filed with the Town Clerk's Office).

*Janet L. Aiken*

Janet L. Aiken, Recording Secretary Category I

2/1/16

Date Submitted

