

ZONING BOARD OF APPEALS – REGULAR MEETING MINUTES

Thursday, February 16, 2023 - 6:30 P.M.
MEETING HALL, MEMORIAL TOWN HALL,
52 LYME STREET, OLD LYME, CT

I. Meeting called to order at 6:31 PM

II. Roll Call

Present: Nancy Hutchinson (Chair), Stephanie Mickle (Acting Secretary), Russ Fogg, and Alternates Rod Clingman and Kathleen Tracy

Absent: Kip Kotzan (Vice Chair) and Steve Dix

Also present: Eric Knapp, Land Use Coordinator/ZEO; Amy Huot, ZBA Clerk

Seated: N. Hutchinson, S. Mickle, S. Dix, K. Tracy, and R. Clingman

III. Public Hearing (Voting Session after Public Hearing)

At the opening of the Public Hearing, the Chair reminded applicants of the need to present evidence that an unusual and unnecessary hardship exists based on strict application of zoning regulations due to some peculiar condition of the property itself and that the condition does not generally affect other properties in the district; whether any reduction in legal pre-existing non-conformity is proposed; the evidence that the variances requested are in harmony with the intent and purpose of the zoning regulations and the comprehensive plan of zoning, the evidence that the requested variances are the minimum necessary to alleviate the unusual hardship and allow reasonable use of the property.

Case 23-01 – 30 Old Colony Road, LLC, 30 Old Colony, request variances to allow reconstruction of an existing, nonconforming two-family home to create a single-family residence. The variances requested are to Sections: **8.8.5** – Max Stories (1.5 stories max.), **8.8.7** – Min. Street Setback (25 ft required), **8.8.9** – Min. Side setback (12 ft required), **8.8.10** – Max. Floor Area (max. 25% of lot area), **8.8.11** – Max- Building/Structure Area (max. 25% of lot area).

Attorney Brendan Sharkey, representing the owners of the property and Architect Dave Noe presented the application. Atty Sharkey described the current structure and noted that there is no instance where they are proposing an expansion of a non-conformity or introducing a new non-conformity. They are either maintaining or reducing the existing non-conformities.

Architect Dave Noe presented the site plan to the Board. Mr. Noe stated that non-conforming sheds will be removed, thereby eliminating one pre-existing non-conformity. Atty Sharkey stated they are eliminating three existing non-conformities entirely and they are reducing existing non-conformities for building coverage, front setback, and side yard setback.

Atty Sharkey noted that the property is 80 years old and is non-compliant with current codes. Mr. Noe stated the existing staircase is non-compliant and the existing house pier has no

footings plus the house has undersized framing in general. Atty Sharkey closed by noting they have created a design that will bring the house up to code, reduce the number of kitchens, number of bedrooms, and will be a better fit for the neighborhood.

There are 7 letters of support from the following neighborhood residents: Jason Mindy of 25 Old Colony Rd; Joe and Carla Meucci of 33 Old Colony Rd; Douglas Whalen of 41 Old Colony Rd; Anthony Camilleri of 10 Broughel Ave; Cartiera Gavino of 31 Old Colony Rd; Chester Wojtaszek of 27 Old Colony Rd. and Stanley Livingston of 24 Old Colony Rd. There were no letters in opposition.

Ms. Mickle questioned if the proposed landing on the north side of the house is permeable. Mr. Noe stated the plan is to replace existing deck with pervious pavers with a smaller footprint than currently existing, and the deck on the Broughel Rd side will be permeable.

The Chair opened the hearing for public comment. No comments from the public.

A **Motion** was made by K. Tracy, seconded by R. Clingman, to **CLOSE the Public Hearing** for Case 23-01 – 30 Old Colony Road, LLC.

Voting in favor: N. Hutchinson, S. Mickle, R. Fogg, R. Clingman, K. Tracy. **Opposed:** none; **Abstaining:** none. The motion **passed** unanimously, 5-0-0.

The Chair reviewed the rules for deliberations: only voting members may participate in deliberation; no new information to be introduced after close of public hearing; and members may ask Staff procedural questions.

The Board discussed the evidence presented during the public hearing, potential conditions of approval, and agreed on the Reasons for **GRANTING** the variances prior to making a motion:

1. Reduction of legal pre-existing non-conformities; results in a net reduction in non-conformities.
2. The plan allows reasonable use of the property.
3. Aligns with intent and purpose of zoning regulations, as it improves health and safety and code compliance, as well as more compliant with zoning regulations.
4. In character with the neighborhood and supported by the neighbors.
5. The evidence presented during the public hearing and the reasons articulated by the board within the public hearing or voting session.

ZEO/LUC Knapp stated that the proposed terrace must be permeable because it was not included in their ground coverage when Ms. Mickle questioned if a permeable terrace should be made a condition.

A **Motion** was made by R. Fogg, seconded by S. Mickle, to **GRANT** the requested variances to Sections **8.8.5, 8.8.7, 8.8.9, 8.8.10, and 8.8.11** to allow reconstruction of an existing, nonconforming two-family home to create a single-family residence per the plot plans, elevations and floor plans prepared by *360 Design Plus, LLC* dated January 4, 2023, and stamped and signed by the ZBA Chair.

Voting in favor: N. Hutchinson, S. Mickle, R. Fogg, R. Clingman, K. Tracy **Opposed:** none; **Abstaining:** none. The motion **passed** unanimously, 5-0-0.

Case 23-02 – Gregory Hancock, 29 and 31 Connecticut Road, (31 Connecticut Road also known as 22 Shore acres), requests a variance to allow construction of a new proposed dwelling. This is a reconfigured vacant R-10 lot within an AE11 flood zone. The variance requested is to Section **8.8.6 – Max Height (24 ft Max)**.

Attorney Mark Zamarka, representing the applicants, stated the applicants would like to amend the application to change the variance requested from **section 8.9.6** to **section 8.8.6**.

Atty Mark Zamarka presented the application with Atty Tim Bleasdale, Mr. Seamus Moran, Project Engineer, and Mr. Gerry Karpuska, Architect.

Atty Zamarka stated the house is on a sloping lot and in a FEMA flood zone. He noted they need a height variance, so the house is out of the flood zone and up to, or just slightly above, the street level so there are no flooding issues.

Chair Hutchinson noted it was also approved by the Inland Wetlands Commission.

The Chair asked for clarification that the lowest level will not be a basement, which is not allowed in the flood zone. Mr. Karpuska clarified it is not a full basement, will not be habitable space, and will be used for storage. He did note there is a deck above the flood zone.

Exhibit A: New drawing to show the side elevation of the street and the house and show the storage area.

Exhibit B: Updated Deed to the property with new lot lines.

Mr. Moran presented the site plan to the Board. Mr. Karpuska confirmed it is 1.5 stories, but Mr. Clingman expressed concern about the height. Mr. Karpuska noted the design meets all the regulations, except height. The Board questioned the design team about the height and view from the street, and the applicants confirmed the roof will not look 33 ft high from the front.

Atty Bleasdale stated a legal basis to grant the variance could be a 2019 CT Supreme Court case that says that the Board can approve a variance for new construction for a structure that would otherwise be compliant by right except for the need to meet code or FEMA requirements. The Chair also noted per the ZBA Attorney the Board can grant a variance if it is the minimum necessary to meet FEMA compliance, as an alternative to regular hardship. She noted the applicants also have the hardship of the sloping property.

The Chair opened the hearing for public comment. No public comments.

A **Motion** was made by K. Tracy, seconded by R. Fogg, to **CLOSE the Public Hearing** for Case 23-02.

Voting in favor: N. Hutchinson, S. Mickle, R. Fogg, R. Clingman, K. Tracy. **Opposed:** none **Abstaining:** none. The motion **passed** unanimously, 5-0-0.

The Board discussed the evidence presented during the public hearing, potential conditions of approval, and potential **Reasons for GRANTING** the variances prior to making a motion:

1. Unusual Hardship: Topography of the lot and the minimum required to meet FEMA compliance.
2. Compliant in all ways except for the height which is required for FEMA compliance.
3. It fits in the character of the neighborhood.
4. The evidence presented during the public hearing and the reasons articulated by the board within the public hearing or voting session.

A **Motion** was made by R. Fogg, seconded by K. Tracy, to **GRANT** the requested variance to Section 8.8.6 to allow construction of a new dwelling per the site plan prepared by H+H Engineering Associates and dated January 3, 2023 and the elevations and floor plans prepared by Gerry Karpuska and dated January 11, 2021 and stamped and signed by the ZBA Chair.

Voting in favor: N. Hutchinson, S. Mickle, R. Fogg, R. Clingman, K. Tracy. **Opposed:** none; **Abstaining:** none. The motion **passed** unanimously, 5-0-0.

Case 23-03 – Kurt and Laura Nelson, 21 Ridgewood Road, request variances to allow a 5' x 6' Bilco hatchway to provide exterior access to the cellar. This is an additional variance requested to a proposal approved by the ZBA in December 2022 (**Case 22-26**). The variance requested is to Section **8.8.8**: Min. Rear Setback (30 ft required).

Mr. Joe Wren, P.E. and Ms. Laura Nelson, owner, presented the application. Craig Laliberte is the Architect. Mr. Wren noted this was a house that was granted variances by the ZBA during the December ZBA meeting. ZEO/LUC Knapp had raised a question about a Bilco during that meeting and the applicant thought it was a good idea to add one.

Mr. Wren stated the approved house has a cellar and they have asked for a Bilco hatchway to allow exterior access to the cellar, which would eliminate the need for exterior storage or a shed on the property. He noted a variance for rear yard setback is needed, although it is an improvement from the existing rear yard setback is today. Mr. Wren stated there is no opposition from the neighbors and there are three letters of support from: John, Susan and Beth Kelly of 23 Ridgewood Rd., Timothy and Barbara Braatz of 19 Ridgewood Rd., and James. W. Kerley of 18 Massachusetts Rd.

The Chair opened the hearing for public comment. No public comments.

Mr. Clingman asked if the terrace is permeable. Mr. Wren stated they are contemplating a terrace and it would be permeable.

A **Motion** was made by S. Mickle, seconded by R. Clingman, to **CLOSE the Public Hearing** for Case 23-02 – Kurt and Laura Nelson, 21 Ridgewood Road

Voting in favor: N. Hutchinson, S. Mickle, R. Fogg, R. Clingman, K. Tracy. **Opposed:** none; **Abstaining:** none. The motion **passed** unanimously, 5-0-0.

The Board discussed the evidence presented during the public hearing, and potential **Reasons for GRANTING** the variances prior to making a motion:

1. In the context of **Case 22-26**, there is reduction of existing non-conformities.

2. Enhances reasonable use of the property and avoids the need for additional storage structures. Within the character of the neighborhood and supported by the neighbors.
3. The evidence presented during the public hearing and the reasons articulated by the board within the public hearing or voting session.

A **Motion** was made by K. Tracy, seconded by R. Fogg, to **GRANT** the requested variance to Section 8.8.8 to allow the addition of a 5' x 6' Bilco hatchway to provide exterior access to the cellar per the site plan prepared by Indigo Land Design, LLC and dated January 17, 2023 and the foundation plan prepared by Craig A. Laliberte, Architect, and dated January 6, 2023, and stamped and signed by the ZBA Chair.

Voting in favor: N. Hutchinson, S. Mickle, R. Fogg, R. Clingman, K. Tracy. **Opposed:** none; **Abstaining:** none. The motion **passed** unanimously, 5-0-0.

Case 23-04 – Lisa Barall-Matt, 33 Seaside, request variances to allow tear down of existing structure and construct a structure that is more compliant. **PUBLIC HEARING TO OPEN THURSDAY, MARCH 16, 2023.**

IV. Regular Meeting

a. New Business:

- Election of Officers:
 - Nomination for Chair: **Nancy Hutchinson**
 - Nomination for Vice Chair: **Kip Kotzan**
 - Nomination for Secretary: **Russel Fogg**

A **Motion** was made by S. Mickle, seconded by R. Clingman, to **Approve the nominated officers.**

Voting in favor: N. Hutchinson, S. Mickle, R. Fogg, R. Clingman, K. Tracy. **Opposed:** none; **Abstaining:** none. The motion **passed** unanimously, 5-0-0.

- Receipt and Setting of Public Hearings for New Applications:
 - 22 Massachusetts Rd – proposed storage shed
 - 100 Lyme St – create 2 ADA-accessible outdoor classrooms
 - 14 Sea View Rd – tear down and reconstruct dwelling
 - 7 Breen Ave – addition to single-story home

The public hearings for these cases are scheduled for the **March 16th ZBA meeting.**

- **Chair Update – 2023 Required Training:**

Board members must take four hours of training and one hour must be related to affordable housing. The hours must be completed by December 2023. Please communicate training taken/to be taken to ZEO/LUC Knapp.

b. Old Business - none

c. Correspondence and Announcements - Petition to amend the Regulations to include updated outdoor lighting standards, Petitioner, Connecticut River Gateway Commission. Hard copies of the petition were provided to Board members.

d. Meeting Minutes – ZBA Regular Meeting Minutes – Dec 7, 2022

A **Motion** was made by S. Mickle, seconded by R. Clingman, to **Approve** the **December 7, 2022** ZBA Meeting Minutes.

Voting in favor: N. Hutchinson, S. Mickle, R. Clingman, K. Tracy. **Opposed:** none;
Abstaining: R. Fogg. The motion **passed**, 4-0-1.

V. Adjournment

A **Motion** was made by R. Fogg, seconded by K. Tracy, to adjourn the Meeting.

Voting in favor: N. Hutchinson, S. Mickle, R. Fogg, R. Clingman, K. Tracy. **Opposed:** none;
Abstaining: none. The motion **passed** unanimously, 5-0-0.

The meeting was adjourned at 7:44 PM.

Respectfully submitted,

Amy Huot

The next Regular Meeting of the Zoning Board of Appeals is on
Thursday, March 16, 2023 at 6:30 PM, in the Meeting Hall,
Memorial Town Hall, at 52 Lyme Street, Old Lyme, CT