

## ZONING BOARD OF APPEALS – REGULAR MEETING MINUTES

**Thursday, March 16, 2023 - 6:30 P.M.**

MEETING HALL, MEMORIAL TOWN HALL,  
52 LYME STREET, OLD LYME, CT

### **I. Meeting called to order at 6:30 PM**

### **II. Roll Call**

**Present:** Nancy Hutchinson (Chair), Kip Kotzan (Vice Chair), Steve Dix, and Alternates Rod Clingman and Kathleen Tracy

**Absent:** Stephanie Mickle and Russ Fogg

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

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

### **III. Public Hearing (Voting Session after Public Hearing)**

Prior to the opening of the Public Hearing, the Chair noted two changes to the agenda:

**Case 23-04 – Lisa Barall-Matt, 33 Seaside** has consented to delay the opening of that case until the April 20, 2023 ZBA meeting, and **Case 23-07 – Christopher & Kira King, 14 Sea View Road** has been withdrawn.

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 23-04 – Lisa Barall-Matt, 33 Seaside**, request variances to allow tear down of existing structure and construct a structure that is more compliant. **The applicant has consented delay the opening of the Public Hearing to the April 20, 2023 ZBA meeting.**

**Case 23-05 – Louis P. & Nancy A. Rossi, 22 Massachusetts Road**, request variances to allow a shed larger than 100 square feet within the setback areas in the rear of the property.

This is a non-conforming structure a non-conforming R-10 lot. The question was raised whether the rear of the property, where the proposed shed would be located, extends into in the AE-11 Flood Zone. The applicants are requesting variances to Sections **8.8.11 – Max- Building/Structure Area** (max. 25% of lot area), **8.8.12 – Max Ground coverage** (max. 30% of lot area), Section **7.1c(ii)**, which limits the size of a shed that

can be located as close as five feet from the rear and side boundary lines as being no more than 100 square feet and 10 feet in height.

However, as the applicants are proposing a shed exceeding 100 square feet (136 sq ft), the ZEO has determined **that instead of 7.1c(ii)**, the more appropriate variances would be to Sections **8.8.8** – Min. Rear Setback (30 ft required), **8.8.9** – Min. Side setback (12 ft required). The Chair noted that the current Assessors Card indicates that a variance to **8.8.10** – Max. Floor Area (max. 25% of lot area) may also be required.

Attorney Michael Cronin, representing the applicants, presented the application for a shed to be used for storage. During the discussion, Attorney Cronin presented an older zoning survey of the property with the shed location drawn-in by the applicants, which ZEO/LUC Knapp agreed was adequate, in lieu of obtaining a new property survey.

After discussion with the Board, Attorney Cronin submitted an official request for continuation of the hearing to review the application and prepare an updated plan for the Board to review.

After Attorney Cronin submitted the request for extension, he submitted **Exhibit A**, 8 letter of support from neighbors.

The Chair opened the hearing for public comments.

Mr. Joseph Minkos of 25 Massachusetts Rd. spoke in support of the application.

Mr. Mike Minkos of 17 Ridgewood Rd. spoke in support of the application.

No other public comments.

A **Motion** was made by K. Kotzan, seconded by K. Tracy to **CONTINUE the Public Hearing for Case 23-05 – Louis P. & Nancy A. Rossi, 22 Massachusetts Road to the April 20, 2023 Regular Meeting, Meeting Hall, Memorial Town Hall, 52 Lyme Street, Old Lyme CT.**

**Voting in favor:** N. Hutchinson, K. Kotzan, S. Dix, K. Tracy, and R. Clingman.

**Opposed:** none; **Abstaining:** none. The motion **passed** unanimously, 5-0-0.

**Case 23-06 – Connecticut Audubon Society, Inc., 100 Lyme Street**, request variances to create two ADA-accessible outdoor classrooms on expanded deck space along the side of property.

This is a non-conforming structure on a conforming RU-40 lot located in the Conservation Zone and Coastal Boundary overlay districts, but the proposal has been determined to be exempt from a Coastal Site Plan Review. The variances requested are to Sections **8.8.9** – Min. Side setback (12 ft required), **9.3.1** – No enlargement of non-conforming structure unless enlarged portion complies with regulations. Also requested were variances to Sections **7.4.3** and **7.1d**, which denote that the proposal must comply with Section 8 setback requirements.

Before the applicant presented the application, ZEO/LUC Knapp stated that Sections **7.4.3** and **7.1d** are not needed, only Section **8.8.9** is required in this application. The applicant agreed to modify the application.

Attorney Michael Cronin, Jr., representing the applicants, and Mr. Russel Learned of Centerbrook Architects presented the application. The applicants would like to create an outdoor ADA accessible space. The applicants received a letter of support from the adjacent neighbor, Pamela Hamilton of 106 Lyme Street.

Chair opened for public comment. No public comments.

A **Motion** was made by S. Dix, seconded by R. Clingman, to **CLOSE the Public Hearing for Case 23-06 – Connecticut Audubon Society, Inc., 100 Lyme Street.**

**Voting in favor:** N. Hutchinson, K. Kotzan, S. Dix, K. Tracy, and R. Clingman.

**Opposed:** none; **Abstaining:** none. The motion **passed** unanimously, 5-0-0.

The Chair reviewed the rules for deliberations: Only voting members may participate in deliberations; 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 potential **Reasons for GRANTING** the variances prior to making a motion:

1. This is a reasonable ADA accommodation to allow a permitted use of the property.
2. In context of the slope of the property, this is the minimum request to allow for the ADA accommodation of a permitted use of the property.
3. In harmony with the intent and purpose of the Zoning regulations and it is supported by the adjacent neighbor.
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 K. Tracy, seconded by K. Kotzan, to **GRANT** the requested variances to **Sections 8.8.9 and 9.3.1** to allow creation of two ADA-accessible outdoor classrooms on expanded deck space along the side of property per the plot plans prepared by Sommer Hill Civil Engineers and Land Surveyors, P.C. and dated December 15, 2022 and the floor plans and elevations prepared by Centerbrook Architects and Planners, LLP, and dated December 15, 2022, and stamped and signed by the ZBA Chair.

**Voting in favor:** N. Hutchinson, K. Kotzan, S. Dix, K. Tracy, and R. Clingman.

**Opposed:** none; **Abstaining:** none. The motion **passed** unanimously, 5-0-0.

**Case 23-07 – Christopher & Kira King, 14 Sea View Road**, request variances to allow tear down of existing 1- story dwelling and construct a new 2- story dwelling where 1 ½ stories are permitted. **This application has been withdrawn.**

**Case 23-08 – Bruce & Kelly Gustine, 7 Breen Avenue**, request variances to allow construction of an addition to the existing single-family home.

This is a non-conforming structure a non-conforming R-10 lot. The variances requested are to Sections: **8.8.8** – Min. Rear Setback (30 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),

**9.3.1** – No enlargement of non-conforming structure unless enlarged portion complies with regulations.

Attorney Brendan Sharkey, representing the applicants, and Architect David Noe with 360 Design Plus presented the application. Attorney Sharkey noted that the current space inside the house is tight and the applicants would like to “future proof” the house to accommodate possible physical limitations as they get older.

Attorney Sharkey noted the applicants are reducing non-conformities by replacing a large shed with a more conforming shed and removing a non-conforming outdoor shower.

Chair Hutchinson questioned the need for the extra square footage dedicated to the porch and noted the application would be more favorable if the porch size was reduced. After some discussion with the Board members, the applicants discussed removing the porch from the proposed design.

Attorney Sharkey stated there are letters of support from the following: Patricia Matthews of 8 Old Colony Rd; Richard J. Kingston of 12 Old Colony Rd (both abutting neighbors); and Old Colony Beach Club.

Attorney Sharkey stated the applicants agreed to the following conditions of approval: The applicants replace the 97 SF porch with a 5' x 5' covered landing. They also agreed to submit an updated site plan with an updated zoning table.

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

A **Motion** was made by R. Clingman, seconded by S. Dix, to **CLOSE the Public Hearing for Case 23-08 – Bruce & Kelly Gustine, 7 Breen Avenue.**

**Voting in favor:** N. Hutchinson, K. Kotzan, S. Dix, K. Tracy, and R. Clingman.

**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 agreed by the applicant, and potential **Reasons for GRANTING** the variances prior to making a motion:

1. In lieu of standard hardship they are proposing reductions in legal pre-existing non-conformity that adequately offset the proposed increases of non-conformities.
2. Minimum necessary to make reasonable use of the property.
3. In line with the intent and purposes of the zoning regulations, it is supported by two neighbors and the Old Colony Beach Association, and it fits with 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 K. Tracy, seconded by S. Dix, to **GRANT with conditions** the requested variances to Sections **8.8.8, 8.8.10, 8.8.11**, and **9.3.1** to allow construction of an addition to the existing single-family home per the architectural site plan, floor plans and elevations prepared by 360 Design Plus, LLC and dated February 13, 2023 as

amended per the conditions stated below, and stamped and signed by the ZBA Chair. The **conditions** are: replace the 97 SF porch with a 5' x 5' covered landing, and submission of the revised plan with updated zoning table to be stamped and signed by the ZBA Chair.

**Voting in favor:** N. Hutchinson, K. Kotzan, S. Dix, K. Tracy, and R. Clingman.

**Opposed:** none; **Abstaining:** none. The motion **passed** unanimously, 5-0-0.

#### IV. Regular Meeting

##### a. New Business

##### 1) Receipt and Setting of Public Hearings for New Applications

**40 Pond Rd** – reconstruct 1 of 2-dwellings on non-conforming R10 lot in VE-13 Coastal High Hazard Area, with a Coastal Site Plan Review Application – currently missing LLHD approval. Application scheduled for the **May 18<sup>th</sup> 2023** Regular ZBA Meeting.

**26 Hough Rd** – remove existing 1-story structure and reconstruct a 1.5 story structure in more conforming location. Application scheduled for the **April 20<sup>th</sup> 2023** Regular ZBA Meeting.

**79 Connecticut Rd** – raise existing home in VE-14 Coastal High Hazard Area. Application scheduled for the **April 20<sup>th</sup> 2023** Regular ZBA Meeting.

##### 2) Chair Update

###### Suggested trainings:

UConn CLEAR and FEMA training on NFIP basics. Board members please inform ZEO/LUC Knapp of classes they attend so he may keep track of the hours.

###### Discuss potential process improvements:

Board recommends updating the guidelines to applicants advising them that the application submitted must be **complete**, or risk either a delay in the scheduling of the Public Hearing or a denial without prejudice. To allow adequate time for review, the Board discussed setting a deadline for submitting the **complete** application two weeks prior to the ZBA Meeting to receive and set the public hearing.

A **motion** was made by S. Dix, seconded by K. Kotzan, to update the guidelines to the applicant that a complete application must be submitted two weeks prior to the application being received. The Chair will work with the Land Use Coordinator to develop a process for implementation to be reviewed and approved by the Board.

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

The Board also agreed to revise the ZBA Process such that the ZEO/LUC Review Memo can replace the ZEO-generated Zoning Table, as the Review Memo provides comments on the zoning table submitted by the applicant. The ZEO/LUC would only generate a zoning table if and when needed.

The Board agreed that it would like to receive scanned copies of the complete applications (including any related letters and referral comments received after application submission) emailed, as a group, at least a week prior to the Public Hearing. This will help avoid confusion and allow adequate time for the Board to review the applications and visit properties.

The Board agreed to reduce the number of Assessor's cards that need to be submitted with a complete variance application to the most recent card and the one prior, instead of all Assessor's cards back to 1960.

**b. Old Business** - none

**c. Correspondence and Announcements** - none

**d. Meeting Minutes – ZBA Regular Meeting Minutes – Feb 16, 2023**

A **Motion** was made by K. Tracy, seconded by R. Clingman to **Approve** the **Feb 16, 2023** ZBA Meeting Minutes.

**Voting in favor:** N. Hutchinson, K. Tracy, and R. Clingman. **Opposed:** none; **Abstaining:** K. Kotzan, S. Dix. The motion **passed** 3-0-2.

**V. Adjournment**

A **Motion** was made by R. Clingman, seconded by K. Kotzan, to adjourn the Meeting.

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

The meeting was adjourned at 8:40 PM.

Respectfully submitted,

Amy Huot, Clerk

The next Regular Meeting of the Zoning Board of Appeals is on  
**Thursday, April 20, 2023 at 6:30 PM, in the Meeting Hall,**  
Memorial Town Hall, at 52 Lyme Street, Old Lyme, CT