

ZONING BOARD OF APPEALS – REGULAR MEETING MINUTES

Thursday, April 20, 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), Kip Kotzan (Vice Chair), Stephanie Mickle, Steve Dix, and Alternates Kathleen Tracy and Rod Clingman

Absent: Russ Fogg

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

III. Continued 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; and, for Coastal Site Plan Review applications, to address CT-DEEP comments.

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. - *Public Hearing continued from March 16, 2023 ZBA Meeting.*

Seated for this continued case: N. Hutchinson, K. Kotzan, S. Dix, R. Clingman, K. Tracy

This is a non-conforming structure on a non-conforming R-10 lot. The applicants have revised their application and are now requesting two variances to **Sections: 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 and **8.8.11** – Maximum Building/Structure Coverage (max. 25% of lot area); however, as the applicants are proposing a shed exceeding 100 square feet, 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). During the last meeting, the question was also raised as to whether a variance was also needed to Section **8.8.10** – Max. Floor Area (max. 25% of lot area).

Presenting the application were Attorney Michael Cronin and Mr. Louis Rossi with comments from Ms. Nancy Rossi. Attorney Cronin noted immediately that he filed an additional revision to the application after he discussed computation of coverage with ZEO/LUC Knapp. The newly revised application now included a request for a variance to Section 8.8.10, but did not request variances to Sections 8.8.8 and 8.8.9, instead of 7.1.c(ii), per ZEO/LUC Knapp's memo.

After extensive discussion, Chair Hutchinson suggested the applicant further amend the application to either request variances to Section 8.8.8 and 8.8.9 or reduce the size of the proposed shed so that variances to Sections 8.8.8 and 8.8.9 are not needed.

In further discussion of legal hardship, Attorney Rutkowska noted that legal hardship cannot be personal to the applicant and reiterated it must be a hardship associated with the property.

After further discussion, Attorney Cronin requested, in writing, a continuation to the **May 18, 2023 Regular ZBA Meeting**.

IV. Public Hearing (Voting Session after Public Hearing)

Seated for remaining cases: N. Hutchinson, K. Kotzan, S. Mickle, S. Dix, K. Tracy

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's representative, Attorney Cronin, consented, in writing, to delay the opening of the hearing to the **May 18, 2023 Regular ZBA Meeting**.

Case 23-10 – Wasyl and Sharon Szeszakow, 26 Hough Road, request variances to remove existing 1-story structure and reconstruct a 1.5 story structure in a more conforming location.

This is a non-conforming structure on a non-conforming R-10 lot. The variances requested are to **Sections:8.8.7** – Min. Street Setback (25 ft required), **8.8.9** – Min. Side setback (12 ft required).

Presenting the application were Architects Geri and David Deveaux, representing the applicants. The Deveauxs presented the proposed site plan. Mr. Deveaux noted that they pulled in the side setbacks with the new design and Ms. Deveaux noted that the second floor is completely conforming.

Ms. Deveaux said the design will be conforming in height and in floor area, there will be a reduction in building coverage and total lot coverage is more compliant. Ms. Deveaux presented the main floor plan. Mr. Kotzan asked about the driveway and Ms. Deveaux confirmed it will not be paved.

Ms. Deveaux noted the design complies with floor area, building coverage, reduces front and side yard non-conformities, plus parking will be kept off the street. Ms. Deveaux noted the applicants will remove the asphalt on the driveway and it is specified in the plans.

Ms. Deveaux had one letter of support from neighbor Tom DeMuis of 30 Hough Rd.

Chair Hutchinson opened the hearing for public comments. No comments from the public.

A **Motion** was made by S. Mickle, seconded by K. Tracy, to **CLOSE the Public Hearing for Case 23-10 – Wasyl and Sharon Szeszakow, 26 Hough Road.**

Voting in favor: N. Hutchinson, K. Kotzan, S. Mickle, S. Dix, 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 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 reasons for **GRANTING** the variances prior to making a motion:

1. No new increase in non-conformity plus reduction in pre-existing non-conformity.
2. Improves Health and Safety and fits the character of the neighborhood.
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 S. Dix, seconded by K. Kotzan, to **GRANT** the requested variances **Sections 8.8.7 and 8.8.9** to remove existing 1-story structure and reconstruct a 1.5 story structure in a more conforming location per the plot plan prepared by Deveaux Architects and dated February 9, 2023 and the floor plans and elevations prepared by Deveaux Architects and dated January 19, 2023 and stamped and signed by the ZBA Chair.

Voting in favor: N. Hutchinson, K. Kotzan, S. Mickle, S. Dix, K. Tracy;

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

Case 23-11 – William G. Bassett, 79 Connecticut Road, request variances to lift the existing home to comply with FEMA requirements.

This is a non-conforming structure on a non-conforming R-10 lot located in a VE-14 Flood Zone and abuts the Three Mile River, which is a navigable tidal watercourse with associated tidal wetlands. The variances requested are to **Sections: 8.8.6** – Max Height (24 ft Max), **8.8.7** – Min. Street Setback (25 ft required), **8.8.9** – Min. Side setback (12 ft required), **4.3** - no Building or Structure shall extend within less than fifty feet of any Tidal Watercourse or associated Tidal Wetlands, **9.3.1** – No enlargement of non-conforming structure unless enlarged portion complies with regulations.

Presenting the application were Attorney Bill Sweeny, Land Use Attorney in New London CT., and Ms. Sabrina Foulke, Architect with Point One Architects in Old Lyme. Mr. Bassett was also present for the hearing.

Attorney Sweeney stated that the variances requested are due to the FEMA VE-14 flood zone requirements. The applicants need to lift the house above the base flood elevation (BFE).

Attorney Sweeny presented **Exhibit A**, three photographs of the current residence.

Residence first floor elevation is just about 8' above mean sea level. The applicant will be lifting the existing house out of the flood plain and onto piers, increasing the height of the structure.

Attorney Sweeney noted variances 8.8.7 and 8.8.9 are requested because they are currently existing and section 4.3 restricts new buildings within 50', but this is the same building with piers. This variance was referenced out of an abundance of caution per Attorney Sweeney. Also being requested are variances to Sections 8.8.6 to 9.3.1.

Attorney Sweeney claimed that elevating the existing house to become FEMA Compliant is a significant reduction in overall non-conformity. Chair Hutchinson questioned whether the applicants are reducing a pre-existing non-conformity since the zoning regulations do not require the current structure to be FEMA compliant, and noted the Board has been advised that a legal alternative to hardship is the minimum needed for the structure to become FEMA compliant. Attorney Sweeney agreed with that statement as well.

ZBA Attorney Rutkowska noted that you get to the same place either way and that the case law has looked at FEMA compliance in a variety of different ways.

Ms. Foulke presented a site plan of the residence. The existing footprint will stay the same as it is today with stairs included to accommodate the height. Ms. Foulke noted there will be parking underneath the house.

Chair Hutchinson asked why the applicants are not moving the house over a bit to make it less non-conforming. Attorney Sweeney noted the engineering challenges to moving an existing house laterally, and Attorney Rutkowska noted that this is the quintessential FEMA case.

Mr. Dix asked about the surface under the house. Ms. Foulke noted it would be dirt. Chair Hutchinson asked about a condition as to make it pervious. Attorney Sweeney and Ms. Foulke noted the building code will not allow impervious surface and consented to making it a condition that no impervious surface will be used.

After discussion about lattice and breakaway walls under the structure, Attorney Rutkowska suggested the applicants mark updates made during the meeting onto the "proposed grade level plan", and denote it **Exhibit B**: The maximum extent of the lattice shown.

Exhibit C: National Flood Zone map of the area submitted by Attorney Sweeney.

Attorney Sweeney entered **Exhibit D**: Excerpt from Plan of Conservation and Development.

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

A **Motion** was made by K. Tracy, seconded by K. Kotzan, to **CLOSE the Public Hearing for Case 23-11 – William G. Bassett, 79 Connecticut Road.**

Voting in favor: N. Hutchinson, K. Kotzan, S. Mickle, S. Dix, 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 agreed by the applicant, and potential Reasons for **GRANTING** the variances prior to making a motion:

1. Minimum required to meet FEMA compliance.
2. Improved Health and Safety.
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. Kotzan, seconded by S. Dix, to **GRANT, with conditions**, the requested variances to **Sections 8.8.6, 8.8.7, 8.8.9, 4.3 and 9.3.1** to allow raising of the existing home to comply with FEMA requirements per the site plan, floor plans, and elevations prepared by Point One Architects and dated March 2, 2023 and stamped and signed by the ZBA Chair. The **conditions** are: 1) No impervious surface will be installed underneath the dwelling, and 2) limit breakaway lattice as depicted on Exhibit B.

Voting in favor: N. Hutchinson, K. Kotzan, S. Mickle, S. Dix, K. Tracy.

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

- Appeal of ZEO Discontinue/Cease and Desist Order for 258-260 Shore Rd – Received and Public Hearing scheduled for May 18th
- No other new cases to be received
- The other public hearing scheduled for the May 18th ZBA meeting is 40 Pond Rd. It was received in March but scheduled for May due to missing LLHD approval, which was received April 13th.

2) Chair Update – process improvement documents for review

Per the motion made at the last meeting: “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.”

Chair Hutchinson drafted proposed revisions to several ZBA process documents, as well as created a new calendar for the remaining of 2023. They were reviewed first by Eric Knapp, our LUC and ZEO, and then by Sylvia Rutkowska, our ZBA Attorney, yesterday. Feedback was incorporated, and the following documents are ready for ZBA review:

- Revised Residential Variance Application Guide
- Revised ZBA Variance application
- Revised Variance Process Overview
- New ZBA Calendar, with support table re: legal timeline compliance
- Updated ZEO Appeal Form – incorporates LUC/ZEO suggestions

A **motion** was made by K. Tracy, seconded by S. Mickle, to **APPROVE** the ZBA Process documents discussed today as amended.

Voting in favor: N. Hutchinson, K. Kotzan, S. Mickle, S. Dix, K. Tracy.

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

b. Old Business - none

c. Correspondence and Announcements – none

d. Executive Session – added to agenda

A **motion** was made K. Kotzan, seconded by K. Tracy, to **open** an **executive session** to hear an update on litigation from ZBA Attorney at 9:30 PM.

Voting in favor: N. Hutchinson, K. Kotzan, S. Mickle, S. Dix, K. Tracy.

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

A **motion** was made by K. Tracy, seconded by S. Mickle to **close the executive session** at 9:50 PM.

Voting in favor: N. Hutchinson, K. Kotzan, S. Mickle, S. Dix, K. Tracy.

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

e. Meeting Minutes – ZBA Regular Meeting – March 16, 2023

A **Motion** was made by K. Kotzan, seconded by S. Dix, to **Approve** the **March 16, 2023** ZBA Meeting Minutes.

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

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

V. Adjournment

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

Voting in favor: N. Hutchinson, K. Kotzan, S. Mickle, S. Dix, K. Tracy.

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

The meeting was adjourned at 9:52 PM.

Respectfully submitted,

Amy Huot, Clerk

The next Regular Meeting of the Zoning Board of Appeals is on
Thursday, May 18, 2023 at 6:30 PM, in the Meeting Hall,
Memorial Town Hall, at 52 Lyme Street, Old Lyme, CT