

To: Old Saybrook Zoning Board of Appeals

From: Matthew J. Okeefe

Re: 44 Willard Ave

Appl No. 23/24-22C

Date: April 15, 2024

The Applicant wishes to address a concern raised by a Board member at the Commissions public hearing as it relates to Section 68.1.2.B.9 of the regulations.

The proposed activity is occurring on a lot which is located within 50' of a tidal wetland.

The existing deck attached to the existing residence is approximately 44' feet from the boundary of the tidal wetland. The proposed renovation would replace an existing balcony with a new balcony built over the existing deck which would at the corner closest to the tidal wetland extend 8.65 inches into the tidal wetland setback. The entire encroachment into the tidal wetland buffer would be approximately 2 square feet and since it is on the second floor would be approximately 19' above sea level.

The proposed activity does increase the existing non conforming maximum building coverage which is 21.0% both before and after the renovations. The proposed activity will increase the maximum gross floor area from 19.4% to 21.0% which is within the required 40% floor area as required in Zone A.

Section 68.1.2.B.9 of the regulations creates a 50' setback from the tidal wetlands with certain exceptions. One of those exceptions is set forth in Section 68.1.2.B.9.(h) excepts a

“vertical expansion, modifications or additions above a pre-existing legally non-conforming structure located within the fifty-feet (50') if a tidal wetland when excavation/grading is not required and the existing structure remains intact and is not rebuilt.”

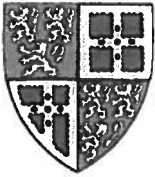
The proposed activity fits the exception stated in the regulations.

Even if the proposed activity did not fit within the regulations, the Applicant submits that the proposed activity would be consistent with the intent of the regulations. The Applicant notes that the Commission approved an application for a variance on property next door to the subject property at 56 Willard Avenue (20/21-12C) on November 12, 2020.

Copies of the minutes of the meeting are attached hereto. In that application, the Commission allowed for an addition to permit the construction of a 379 s.f. addition that was located within 48.9 feet of the tidal wetland. Notably, this application does not create or increase a non conforming use, does not involve the installation of a new foundation or require grading and is farther from the tidal wetland than the previously approved application.

To require the applicant to reduce the size of the proposed rebuilt balcony would create a hardship to the Applicant. The Applicant respectfully requests that the Commission approve the application.

Matthew J. OKeefe



TOWN OF OLD SAYBROOK
Zoning Board of Appeals

*Robert J. McIntyre, Chairman
Kevin Danby, Vice Chairman
Dorothy T. Alexander, Secretary
Jacqueline Prast
Alfred Wilcox*

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Alternate Members
*Vacant
Charles Gadon
Brenda Dyson*

**MINUTES
REGULAR MEETING
November 12, 2020 at 6:00 p.m.
Virtual Zoom Meeting**

I. CALL TO ORDER

Chairman McIntyre called the meeting to order at 6:00 p.m.

II. ROLL CALL

Members

Robert McIntyre
Dorothy Alexander
Jacqueline Prast
Alfred Wilcox
Charles Gadon
Brenda Dyson

Attendant Staff

Sarah Makowicki, Recording Clerk

III. CONTINUED PUBLIC HEARING

- A. 20/21-07C Michael & Carol Ann Fedele** seek a variance of Par 9.1 (requirement for accessory building/same or contiguous lot as principal use/allow as accessory to 36 Beach Rd. E); Par 24.5.1 as amended by Par 68.1.2B4 (narrow street setback/35' required/35' proposed); Par 68.1.2.B.9 (tidal wetlands setback/50' required/35' proposed) of the Zoning Regulations to permit the construction of a 1,346 s.f. two story garage at 35 Beach Road East, Map 12/Lot 105, Residence A Zoning District, Coastal Area Management Zone, AE-12 Flood Zone. The applicants additionally seek a variance of Par 10.7.1 & 10.7.2 (non-conformity enlargement/change) and Par 24.5.3 (other line setback/15' required/9.2' proposed to west and 4.3' proposed to east) to permit the construction of a 283 s.f. addition at 36 Beach Road East, Map 12/Lot 129, Residence A Zoning District, Coastal Area Management Zone, VE-14 Flood Zone.

David Royston: Agent for the applicant notified board of a draft conservation, easement and use restrictions document that establishes use of the two properties.

Sarah Makowicki: Notified D. Royston that the materials were not received in time to disperse to the board members.

A. Wilcox: Asked that the application be continued to allow time for the board to review the materials.

Michael Cronin discussed ability to join two properties together. Explained to board that a discission could not be enacted to combine the properties on the ground. The properties can be combined for zoning purposes, but need to get a variance for the two lots separately.

Michael Fedele agreed to a continuance of the application.

R. McIntyre opened the public hearing.

There were no comments from the public.

R. McIntyre closed the public hearing.

MOTION to CONTINUE 20/21-07C Michael & Carol Ann Fedele seek a variance of Par 9.1 (requirement for accessory building/same or contiguous lot as principal use/allow as accessory to 36 Beach Rd. E); Par 24.5.1 as amended by Par 68.1.2B4 (narrow street setback/35' required/35' proposed); Par 68.1.2.B.9 (tidal wetlands setback/50' required/35' proposed) of the Zoning Regulations to permit the construction of a 1,346 s.f. two story garage at 35 Beach Road East, Map 12/Lot 105, Residence A Zoning District, Coastal Area Management Zone, AE-12 Flood Zone. The applicants additionally seek a variance of Par 10.7.1 & 10.7.2 (non-conformity enlargement/change) and Par 24.5.3 (other line setback/15' required/9.2' proposed to west and 4.3' proposed to east) to permit the construction of a 283 s.f. addition at 36 Beach Road East, Map 12/Lot 129, Residence A Zoning District, Coastal Area Management Zone, VE-14 Flood Zone. On the ground that the board did not have all the materials to make an informed decision. **MADE:** A. Wilcox; **SECONDED:** D. Alexander; **VOTING IN FAVOR:** R. McIntyre, D. Alexander, J. Prast, C. Gadon, A. Wilcox; **OPPOSED:** NONE **ABSTAINING:** NONE; **APPROVED:** 5-0-0.

IV. PUBLIC HEARINGS

- A. 20/21-10C Bonnie J. Sherwood seeks a variance of Par 10.7.1 & 10.7.2 (non-conformity enlargement/change) and Par 24.6.2 (structure coverage/20% allowed/24.7% proposed) of the Zoning Regulations to permit the construction of a 1,366 s.f. addition to connect garage to house which includes a second story living space above the garage as well as two decks at 35 Sea Crest Road, Map 4/Lot 242, Residence A Zoning District, Coastal Area Management Zone.

Charles Gadon made it known that his wife works for the Sherwood's Agent, Ed Casella, but is able to remain impartial on the decision of the application.

E. Cassella agent for the applicant presents the application to the board on the proposed connection of the existing garage to the main house in order to accommodate the needs of Mrs. Sherwood who uses a wheelchair. There is also an accessory apartment that they would like to add on top of the garage, the apartment meets all zoning regulations. The applicants seek a variance on the hardship that the existing house does not allow for safe, easy access out of the house for Mrs. Sherwood's wheelchair. Applicant is also willing to remove shed from property to reduce the coverage by 119 ft² and will also eliminate a non-conforming structure.

C. Gadon discussed the need for the deck and overhang on the accessory apartment.

E. Casella presented three letters of support by abutting property owners.

A. Wilcox discussed how he felt that the project could be designed in a matter than would reduce the non-conformities on the property than what was proposed. ADA compliance is not enough of a factor to allow for such non-conformities on the property.

R. McIntyre opened the public hearing.

There were no comments from the public.

R. McIntyre closed the public hearing.

MOTION to DENY 20/21-10C Bonnie J. Sherwood seeks a variance of Par 10.7.1 & 10.7.2 (non-conformity enlargement/change) and Par 24.6.2 (structure coverage/20% allowed/24.7% proposed) of the Zoning Regulations to permit the construction of a 1,366 s.f. addition to connect garage to house which includes a second story living space above the garage as well as two decks at 35 Sea Crest Road, Map 4/Lot 242, Residence A Zoning District, Coastal Area Management Zone. On the grounds there is no hardship. **MADE:** by A. Wilcox; **SECONDED:** by D. Alexander; **VOTING IN FAVOR:** A. Wilcox, D. Alexander; **OPPOSED:** J. Prast, C. Gadon, R. McIntyre; **ABSTAINING:** None; **DENIED: 2-3-0.**

MOTION to APPROVE 20/21-10C Bonnie J. Sherwood seeks a variance of Par 10.7.1 & 10.7.2 (non-conformity enlargement/change) and Par 24.6.2 (structure coverage/20% allowed/24.7% proposed) of the Zoning Regulations to permit the construction of a 1,366 s.f. addition to connect garage to house which includes a second story living space above the garage as well as two decks at 35 Sea Crest Road, Map 4/Lot 242, Residence A Zoning District, Coastal Area Management Zone. On the grounds of a hardship of ADA considerations. With the contingency that the shed be removed from the property and a note from a Doctor explaining Mrs. Sherwood's needs be presented to the board. **MADE:** by R. McIntyre; **SECONDED:** by J. Prast; **VOTING IN FAVOR:** J. Prast, C. Gadon, R. McIntyre; **OPPOSED:** A. Wilcox, D. Alexander; **ABSTAINING:** None; **DENIED: 3-2-0.**

B. 20/21-11C Michael Mendoza seeks a variance of Par. 10.8.2 (non-conformity-lots/use, building, structure must comply with all other regulation requirements/non-conforming lot width and area proposed) and Par 68.1.2.B9 (tidal wetland setback/50' required/22.7' proposed) of the zoning regulations to permit the demolition of existing house and construction of a new 2,339 s.f. house with attached garage, portico with stairs, landscaped wall, rear porch and deck at 9 South View Circle, Map 15/Lot 13, Residence A Zoning District, Coastal Area Management Zone.

Joe Wren agent for the applicant presents to the board how the new structure proposed would be more conforming to the restrictions on the lot. Mr. Wren explains the need for the variance on the hardship of the property not having sufficient buildable land because of the tidal wetland setbacks.

Denise Von Dassel the architect goes over the design and new FEMA flood compliant structure that is proposed.

R. McIntyre opened the public hearing.
There were no comments from the public.
R. McIntyre closed the public hearing.

MOTION to APPROVE 20/21-11C Michael Mendoza seeks a variance of Par. 10.8.2 (non-conformity-lots/use, building, structure must comply with all other regulation requirements/non-conforming lot width and area proposed) and Par 68.1.2.B9 (tidal wetland setback/50' required/22.7' proposed) of the zoning regulations to permit the demolition of existing house and construction of a new 2,339 s.f. house with attached garage, portico with stairs, landscaped wall, rear porch and deck at 9 South View Circle, Map 15/Lot 13, Residence A Zoning District, Coastal Area Management Zone. On the grounds of a hardship of the tidal wetland setbacks do not allow reasonable use of the land. **MADE BY:** A. Wilcox **SECONDED:** C. Gadon; **VOTING IN FAVOR:** D. Alexander, R. McIntyre, J. Prast, C. Gadon, A. Wilcox; **OPPOSED:** None; **ABSTAINING:** None; **APPROVED: 5-0-0**

C. 20/21-12C John Notar-Francesco seeks a variance of Par 10.7.1 & 10.7.2 (non-conformity enlargement/change); Par 24.6.2A (Gateway Conservation Zone structure coverage/15% allowed/18.6% proposed); Par 58.2.1 (riparian buffer setback Gateway Conservation Zone/100' required/48.9' from tidal wetlands to proposed); Par 58.6 (setback Gateway Conservation Zone/100' required/48.9' from tidal wetlands to addition proposed) of the Zoning Regulations to permit the construction of a 379 s.f. addition at 56 Willard Avenue, Map 24/Lot 94, Residence A Zoning District, Gateway Conservation Zone, Coastal Area Management Zone.

A. Wilcox recuses himself from the application hearing.

B. Dyson is seated.

J. Wren agent for the applicant presents to the board the application for a 15 x 25 addition on to the existing structure. Mr. Wren explains that the variance is needed on the hardship that the property is located in the Gateway District with a 15% coverage, and no matter where the addition is placed on the property a variance would be needed.

David Noe the architect goes over the plans that include an ADA compliant bathroom designed to age in place.

J. Wren presented the board with four letters of support from abutting property owners.

C. Gadon comments that the proposed addition would be well within the 15% coverage restrictions if the tidal wetland were included in the coverage area.

R. McIntyre opened the public hearing.

There were no comments from the public

R. McIntyre closed the public hearing.

MOTION to APPROVE 20/21-12C John Notar-Francesco seeks a variance of Par 10.7.1 & 10.7.2 (non-conformity enlargement/change); Par 24.6.2A (Gateway Conservation Zone structure coverage/15% allowed/18.6% proposed); Par 58.2.1 (riparian buffer setback Gateway Conservation Zone/100' required/48.9' from tidal wetlands to proposed); Par 58.6 (setback Gateway Conservation Zone/100' required/48.9' from tidal wetlands to addition proposed) of the Zoning Regulations to permit the construction of a 379 s.f. addition at 56 Willard Avenue, Map 24/Lot 94, Residence A Zoning District, Gateway Conservation Zone, Coastal Area Management Zone. On the grounds of hardship of the addition is well within the 15% coverage of the Gateway District if you do not include the tidal wetlands that are on the property. **MADE BY:** C. Gadon; **SECONDED:** J. Prast; **VOTING IN FAVOR:** R. McIntyre, C. Gadon, D. Alexander, B. Dyson; **OPPOSED:** None; **ABSTAINING:** None; **APPROVED: 5-0-0**

D. 20/21-13 Jeffrey Canavan seeks a variance of Par 10.7.1 & 10.7.2 (non-conformity enlargement/change) and Par 23.6.1A (Gateway Conservation Zone structure coverage/15% allowed/19.3% proposed) of the Zoning Regulations to permit the construction of a 766 s.f. inground pool including coping, 29 s.f. deck addition and 165 s.f. cabana at 40 North Cove Road, Map 31/Lot 16-2, Residence AA-2 Zoning District, Gateway Conservation Zone, Coastal Area Management Zone.

B.Dyson is no longer seated. A. Wilcox is seated in her place.

J. Wren agent for the applicant presents application to the board for the proposed pool that is handicap accessible for use by disabled daughter. The proposed coverage would be 19.3% under the District A restrictions of 20% coverage. Mr. Wren explains that the variance is needed on the hardship that the property falls within the Gateway District and the 15% coverage and has four easements on the property.

J. Wren presents letter from the Gateway Commission that is in favor of this application. There are also two letters in favor from abutting property owners.

R. McIntyre opened the public hearing.

There were no comments from the public.

R. McIntyre closed the public hearing.

MOTION to APPROVE 20/21-13 Jeffrey Canavan seeks a variance of Par 10.7.1 & 10.7.2 (non-conformity enlargement/change) and Par 23.6.1A (Gateway Conservation Zone structure coverage/15% allowed/19.3% proposed) of the Zoning Regulations to permit the construction of a 766 s.f. inground pool including coping, 29 s.f. deck addition and 165 s.f. cabana at 40 North Cove Road, Map 31/Lot 16-2, Residence AA-2 Zoning District, Gateway Conservation Zone, Coastal Area Management Zone. On the grounds that the hardship created by being in the Gateway Conservation Zone and having to comply with the 15% coverage, because the proposed coverage is on the opposite side of the house in relation to the visibility to the water, there is no effect on the Gateway Conservation Zone. **MADE BY:** A. Wilcox; **SECONDED:** J. Prast; **VOTING IN FAVOR:** R. McIntyre, D. Alexander, J. Prast, C. Gadon, A. Wilcox; **OPPOSED:** None; **ABSTAINING:** None; **APPROVED: 5-0-0**

E. **20/21-14 Duncan & Christine Downie** seek a variance of Par. 10.8.2 (non-conformity-lots/use, building, structure must comply with all other regulation requirements/non-conforming lot width and area proposed) and Par 24.6.2A (Gateway Conservation Zone structure coverage/15% allowed/19.9% proposed) of the Zoning Regulations to permit the demolition of existing house and construction of a 2,183 s.f. house including attached garage and porch, 288 s.f. inground pool including coping, 38 s.f. a/c unit and pool equipment pad and 21 s.f. landing at 12 Old South Cove Road, FKA South Cove Rd. # 2, Map 23/Lot 58, Residence A Zoning District, Coastal Area Management Zone, Gateway Conservation Zone.

Joe Wren agent to the applicant presented the application to the board of the proposed new structure with a coverage of 19.9%, that is under the District A 20% restrictions. Mr. Wren explained that the variance is needed on the hardship of the property is located in the Gateway District with a 15% coverage restriction and existing house is not FEMA or health department compliant.

ED Casella agent for the applicant explained that the proposed structure will be FEMA compliant, it will eliminate and existing setback non-conformity, and replace a septic that does not meet health code.

J. Wren addressed the board on the matter of the letter of opposition by the abutting proper owner Shepard. Mr. Wren explained the precautions that are being made to mitigate the amount of runoff from the proposed structure to the property. He believes the runoff will be equal to or less than the existing structure and property composition.

J. Wren presented a letter of approval from the Gateway commission.

R. McIntyre opened the public hearing.

There were no comments from the public.

R. McIntyre closed the public hearing.

MOTION to APPROVE **20/21-14 Duncan & Christine Downie** seek a variance of Par. 10.8.2 (non-conformity-lots/use, building, structure must comply with all other regulation requirements/non-conforming lot width and area proposed) and Par 24.6.2A (Gateway Conservation Zone structure coverage/15% allowed/19.9% proposed) of the Zoning Regulations to permit the demolition of existing house and construction of a 2,183 s.f. house including attached garage and porch, 288 s.f. inground pool including coping, 38 s.f. a/c unit and pool equipment pad and 21 s.f. landing at 12 Old South Cove Road, FKA South Cove Rd. # 2, Map 23/Lot 58, Residence A Zoning District, Coastal Area Management Zone, Gateway Conservation Zone. On the grounds of the hardship of being in the Gateway Conservation Zone and having to comply with the 15% coverage even though the lot is more than 400 ft from the waters of South Cove, the proposed structure eliminates several existing non-conformities, will be FEMA and health code compliant.
MADE BY: A. Wilcox; **SECONDED:** C. Gadon; **VOTING IN FAVOR:** D. Alexander, R. McIntyre, J. Prast, C. Gadon, A. Wilcox; **OPPOSED:** None; **ABSTAINING:** None;
APPROVED: 5-0-0

V. REGULAR BUSINESS

- A. New Business – NONE**
- B. Minutes**

MOTION to AMEND the September 9, 2020 Regular Meeting Minutes as presented. MADE BY: R. McIntyre; SECONDED: D. Alexander; VOTING IN FAVOR: R. McIntyre, D.Alexander, J. Prast, A. Wilcox, C.Gadon; OPPOSED: None; ABSTAINING: None; APPROVED 5-0-0.

- C. Correspondence & Announcements – Board discussed reading the letters from abutting property owners into the record. There will be a concerted effort in the future to read all letters of correspondence into the record.**
- D. Committee, Representative & Staff Reports – None**

VI. ADJOURMENT

MOTION to ADJOURN the November 12, 2020 Regular Meeting of the Zoning Board of Appeals at 9:50 p.m.; MADE: R. McIntyre; SECONDED: C. Gadon; VOTING IN FAVOR: R. McIntyre, D.Alexander, J. Prast, A. Wilcox, C.Gadon; OPPOSED: None; ABSTAINING: None; APPROVED: 5-0-0.

Respectfully submitted,

Sarah Makowicki, Recording Clerk

NEXT REGULAR MEETING
Wednesday, December 9, 2020 at 6:00 P.M.
Town Hall, 1stFloor Conference Room, 302 Main Street, Old Saybrook, CT
If the COVID19/Corona Virus State of CT Public Health Emergency remains effective, a dial in public meeting may be held. Check our website one week in advance for dial in information at
Town of Old Saybrook Zoning Board of Appeals or
Subscribe to www.oldsaybrookct.org for electronic delivery of land use agendas.