
Zoning Board of Appeals Minutes 03/14/2018

MOTIONS

Town of Old Saybrook
Zoning Board of Appeals

NOTICE IS HEREBY GIVEN that the Zoning Board of Appeals of the Town of Old Saybrook at its Regular Meeting that was held on **Wednesday, March 14, 2018 at 7:00 p.m.** at the Town Hall, First Floor Conference Room, 302 Main Street, heard and decided the following appeals:

Seated for this evenings meeting and voting were the following members: Philip Broadhurst, Chairman, Robert McIntyre, Vice Chairman, Dorothy Alexander, Secretary, Adam Boyd, Kevin Danby and Catherine Purcell, alternate

Present: Kim Barrows, Clerk, Christina Costa, ZEO and Attorney Michael Cronin, counsel for the ZBA

Absent: Jacqueline Prast, alternate and Mark Velardi, alternate

The meeting was then called to order at 7:00 p.m. The following public hearings were conducted, as well as the decision making sessions. The meeting has been recorded and the following actions were taken:

The Chairman introduced the Board members who were seated for this evenings meeting. The five regular members were seated.

CONTINUED PUBLIC HEARING

17/18-23 - RLC Properties, LLC, seeks a variance of Par 10.7.1 & 10.7.2 (nonconformity enlargement/change); Par 41.6.3 (other line setback/20' required/1.9' proposed); Par 41.7.2 (building structure coverage/70% allowed/77.1 proposed) of the Zoning Regulations to permit the relocation of dumpsters, construction of a dumpster enclosure and a 716 s.f. addition at 225 Elm Street, Map 38/Lot 3, Industrial I-1 District, Coastal Area Management Zone.

The public hearing was continued from last month in order to get the documentation requested from the Building Inspector, Fire Marshal and DEEP. Mr. Wren, the agent for the applicant gave an overview of the history of the property. He also submitted a letter from Jack Lamb, Master Electrician dated March 5, 2018 stating that the electrical work was done to code. A letter from Charles C. Brown, P. E. of GNCB Consulting Engineers dated February 23, 2018 was also submitted for the record and in part stated "...addition structures are suitable for purpose and continued use." A Notice from the Fire Marshal, Pete Terenzi dated February 23, 2018 was in the file and stated "At the time of inspection, no code violations were identified. Certificate of approval recommended." The hardship was read into the record, last section of the "Executive Summary and Hardship" of the property which states "The building with all additions conforms to allowable building coverage. The total lot coverage exceeds the 70% allowable (existing non-conformity) but has been slightly reduced and is slightly more conforming. The newest addition violates the side yard setback hence the need for the requested variance. Based on the non-regular shape of the lot and the location of the existing building and parking and access drives, the addition could not be constructed in a more conforming location. The abutting property on that western side is the I-95 northbound on-ramp and is strictly non-access – there is no adversely affected private abutter by the requested variance. In many areas, there is zero required setback to a railroad right-of-way – effectively the same should apply in this case." Mr. Makowicki, the Old Saybrook Building Official told the Board that no permits were pulled for any of the structures. He also stated that if variances are granted, the applicant will need to take out permits for the structures.

The Board felt the applicant met all the conditions requested at the last meeting and made the following motion:

A **Motion** was made by K. Danby, seconded by R. McIntyre **GRANT with conditions** Application **17/18-23 - RLC Properties, LLC**. The additions, as placed are there due to the placement of the original building with I-95 on the sideyard, placement also allows a cohesive flow for the parking area, the new additions are more conforming and the proposal doesn't diminish public safety while being in harmony with the neighborhood. The conditions are as follows: 1) That a permit for all of the additions to the building on the property be applied for and obtained after the fact from the Old Saybrook Building Department, and all fees and/or penalties associated therewith be paid in full and a Certificate of Occupancy issued. 2) There are two additions to the property made after the applicant purchased the same for which the applicant has not requested variances. The applicant claims that said conditions have existed for a period of more than three years without any enforcement taken by the Town of Old Saybrook, and therefore, are considered to be legal variances under the provisions of Section 8-13a of the General Statutes of Connecticut. This determination shall be confirmed, in writing, by the Zoning Enforcement Officer of the Town of Old Saybrook, and/or the Zoning Commission of the Town of Old Saybrook. 3) That the Old Saybrook Fire Marshal inspect the subject property and certify in a written report that the same is in compliance with all relevant fire and safety laws applicable to said property. 4)

That the sewage disposal system be inspected and approved by the Connecticut River Area Health District (CRAHD). 5) That site plan approval for the project be filed by the applicant with the Old Saybrook Zoning Commission, and be approved by it. 6) That the applicant secure a permit for approval of the project from the Old Saybrook Inland Wetlands and Watercourses Commission and 7) That the documentation referred to above shall be filed with and approved by the Old Saybrook Zoning Board of Appeals or its Chairman. No further discussion and a vote was taken: In favor: P. Broadhurst, D. Alexander, R. McIntyre, A. Boyd, K. Danby Opposed: None Abstaining: None The motion passed unanimously. 5-0-0

A separate Motion was made for the CAM application as follows:

A **Motion** was made by P. Broadhurst, seconded by R. McIntyre to Approve the Coastal Site Plan Review Application for **17/18-23 - RLC Properties, LLC** because it is consistent with all applicable coastal policies and includes all reasonable measures to mitigate adverse impacts. No discussion and a vote was taken: In favor: P. Broadhurst, D. Alexander, R. McIntyre, A. Boyd, K. Danby Opposed: None Abstaining: None The motion passed unanimously. 5-0-0

PUBLIC HEARINGS

17/18-22 - 602 Boston Post Road, LLC/Mercury Fuel, appeal of the Zoning Enforcement Officer's Cease & Desist Order dated December 12, 2017 for property located at 602 Boston Post Road, Map 40/Lot 50, Shopping Center Business B-2 District.

Discussion and deliberation on the appeal of the Zoning Enforcement Officer's Cease & Desist Order dated December 12, 2017 this evening. Mr. Dinino, the owner of Mercury Fuel was represented by Attorney Richard Carella from Updike, Kelly & Spellacy who was appealing the Cease & Desist Order issued by Christina Costa the Zoning Enforcement for a flashing sign on property located at 602 Boston Post Road which violates the Old Saybrook Zoning Regulations. Zoning Enforcement Officer, Christina Costa represented herself at the hearing.

Attorney Carella stated the price sign is stationary and does not meet the definition of flashing. Attorney Carella had a flash drive video of the actual sign and how it changes the price of the gas. The flash drive is part of the record. Each Board member watched the video and there was a slight change for the price, i.e. toggling every 5 seconds. The sign was approved by the Architectural Review Board on September 12, 2016. Ms. Costa stated the Architectural Review Board is only advisory, not regulatory. The Certificate of Zoning Compliance was then signed off on by Ms. Costa. Nowhere in either the Architectural Review Board minutes or on the Certificate of Zoning Compliance form did it mention that the sign would toggle. Once the sign was installed, the Chairman of the Zoning Commission called Ms. Costa to state that there was a "flashing" sign at 602 Boston Post Road. After that the Cease & Desist was sent out. Attorney Carella asked about cost for replacing signs, Mr. Dinino stated \$7,000 to \$10,000. Attorney Carella read the definition of "flashing" from the Regulations. Interpretation of is it stationary? The Cargill Quick Lube v. Town of Putnam case was discussed, it was found that the sign in that case was not "flashing" but "changing". Attorney Carella stated that his client is not trying to skirt the regulations. Ms. Costa used the "Henny Penny" sign as an example of what she assumed the sign would look like when she signed the Certificate of Zoning Compliance. Ms. Costa stated she did not sign off on a sign that "toggled". The November 11, 2016 Building Permit didn't state that the sign would toggle either. Mr. Dinino stated that his gas station has been there since 1996. The Department of Consumer Protection requires that if there are two prices for gas [cash and credit prices] the owner needs to display them. Ms. Costa stated she does not review content. Ms. Costa asked if Mr. Dinino could switch the sign out with a conforming sign from another location. Mr. Dinino didn't think he could since other towns had different regulations. Ms. Costa asked if changing every 5 seconds was a safety concern. She also mentioned that with the Cargill case, the Town of Putnam did not have a definition of flashing in its Regulations. Attorney Carella stated again that his client did what he needed to do and was not trying to get something thru. He stated again the sign is not "flashing". R. McIntyre stated he has worked in the lighting industry for 25 years and he states this sign is not "flashing" but "changing". The Board had lengthy discussion about how a lot of mistakes were made and if a variance is needed, Attorney Cronin stated since it is prohibited, you can't go for a variance. D. Alexander asked what they were working towards, was it to uphold the ZEO's decision based on the information shed had at hand which was less than complete. Further discussion with respect to "changing/flashing" and "flashing on and off intensity" and then the following motions were made:

A **Motion** was made by R. McIntyre, seconded by A. Boyd to **remove the Cease & Desist Order dated December 12, 2017, Application 17/18-22 - 602 Boston Post Road, LLC/Mercury Fuel** because of the evidence that the sign does not flash based on watching the video shown to the Board by Attorney Carella. The change is subdued and the definition of flashing is not being met by this lighting. No discussion and a vote was taken. In favor: R. McIntyre, A. Boyd Opposed: P. Broadhurst, K. Danby Abstaining: D. Alexander The motion failed to pass. 2-2-1

A **Motion** was made by D. Alexander, seconded by P. Broadhurst to **UPHOLD the Zoning Enforcement Officer's Cease & Desist Order dated December 12, 2017, Application 17/18-22 - 602 Boston Post Road, LLC/Mercury Fuel**. No discussion and a vote was taken. In favor: D. Alexander, P. Broadhurst Opposed: R. McIntyre, A. Boyd, K. Danby Abstaining: None The motion failed to pass. 2-3-0

A **Motion** was made by R. McIntyre, seconded by A. Boyd to **remove the Cease & Desist Order dated December 12, 2017, Application 17/18-22 - 602 Boston Post Road, LLC/Mercury Fuel** based on the fact that the definition that is within the Zoning

Regulation states that one of the factors is that it has to be intensity changing and in fact with this light there is absolutely no change in intensity as it is changing from one price to the other. For that reason I think the Regulation does not support that it is a flashing sign. Discussion: K. Danby, why are we doing this a third time. Attorney Cronin stated we need for affirmative votes. P. Broadhurst read the definition of flashing sign “any sign for which its illumination by some artificial source of light is not maintained as stationary”. R. McIntyre stated that the determination was the definition of stationary meant moving around. K. Danby “like Kentucky Fried Chicken with the bucket moving around.” A. Boyd agreed. P. Broadhurst “flashing not constant in intensity or color saturation variables of more than 10 minutes”. A. Boyd stated that it would be like a neon sign with bright colors which would be in intervals of every 10 minutes. P. Broadhurst i.e. “getting away from the Las Vegas effect”. A. Boyd mentioned the part of the definition that states “Flashing sign does not include a sign, or any portion of any sign, displaying only some combination of date, time, temperature, or game score as a flashing sign for the purpose of these Regulations.” Those signs change and are usually in white light which could be considered a toggle sign that changes but not in intensity. This is a one color light [red] toggling from one thing to the next displaying its message, just like the fuel sign. No further discussion and a vote was taken. In favor: P. Broadhurst, D. Alexander, R. McIntyre, A. Boyd, K. Danby Opposed: None Abstaining: None The motion passed unanimously. 5-0-0

17/18-25 -Toni M. Raecek, seeks a variance of Par 24.5.1 as modified by Par 68.1.2B(4) (narrow street setback/35’ required to Beachwood/14.69’ proposed) of the Zoning Regulations to permit the construction of a 666 s.f. two story addition at 42 Atlantic Drive, Map 4/Lot 185, Residence A District, Coastal Area Management Zone.

A letter dated February 8, 2018 from Attorney Edward Cassella, attorney for the Applicant, Toni M. Raecek requesting the Zoning Board of Appeals to open the public hearing on March 14, 2018 and continue to the April 11, 2018 Regular Meeting.

A **Motion** was made by P. Broadhurst, seconded by K. Danby to **OPEN and CONTINUE** Application **17/18-25 -Toni M. Raecek** to the April 11, 2018 Regular Meeting, First Floor Conference Room Town Hall. No discussion and a vote was taken: In favor: P. Broadhurst, D. Alexander, R. McIntyre, A. Boyd, K. Danby Opposed: None Abstaining: None The motion passed unanimously. 5-0-0

17/18-26C - Sally A. Yoselevsky, seeks a variance of Par 10.8.2 & 10.8.3 (non-conforming lot size/12,500 s.f. required/8,870 s.f. proposed); Par. 24.3.4 (minimum width along building line/100’ required/52.2’ proposed) of the Zoning Regulations to permit modification of the lot line to transfer 2510 s.f. from 26 Sea Lane to 30 Sea Lane and construction of a 450 s.f. addition at 30 Sea Lane, Map 1/Lots 2 & 4, Residence A District, Coastal Area Management Zone.

The public hearing closed this evening. The applicants are proposing to complete a lot line modification which increases the amount of land on 30 Sea Lane and decreases the amount of land on 26 Sea Lane. In addition, the Applicants are proposing to construct a conforming two-story addition on 30 Sea Lane, approximately 22.7’ x 9.8’. The application brings 30 Sea Lane more into conformity with the Regulations and 26 Sea Lane remains compliant or non-conforming with respect to all setbacks. The hardship in this instance is the numerous reductions in nonconformities which justify the decrease in lot area for 26 Sea Lane. For example, 30 Sea Lane existing has 6,360 s.f., much less than the required 12,500, and will be increased to 8,887 s.f. Also the existing structure is located 9.8 feet off the side yard setback and the new side yard setback will be conforming for the house, including the addition proposed. Finally, the coverage for 26 Sea Lane is existing 31.7% and will be reduced to 27.7%. Following the lot line modification, 26 Sea Lane will remain compliant with all western setbacks, will remain compliant with coverage and gross floor area and will have adequate room for a code-compliant replacement septic system.

A **Motion** was made by D. Alexander, seconded by R. McIntyre to **GRANT Application 17/18-26C - Sally A. Yoselevsky**. The proposal is a huge improvement to what currently exists, it is consistent with the neighborhood and will improve everyone’s situation in the surrounding area. Also the **Coastal Site Plan Review Application is approved** as well because it is consistent with all applicable coastal policies and includes all reasonable measures to mitigate adverse impacts. No discussion and a vote was taken. In favor: P. Broadhurst, D. Alexander, R. McIntyre, A. Boyd, K. Danby Opposed: None Abstaining: None The motion passed unanimously. 5-0-0

17/18-27C - Paula S. Kay, seeks a variance of Par 10.7.1 & 10.7.2 (nonconformity enlargement/change); Par 24.5.1 as modified by Par 68.1.2B(4) (narrow street setback/30’ required /25’ proposed to step & 27.8’ proposed to entry); Par 68.1.2b9 (tidal wetland setback/50’ required/30.1’ proposed to shed/21.9 proposed to sunroom, LP tanks & AC) to permit the construction of a 79 s.f. covered entry, 279 s.f. deck & stairs, 152.5 s.f. sunroom, 96 s.f. shed, and 18 s.f. AC pad at 87 Cypress Road, Map 4/Lot 47, Residence A District, Coastal Area Management Zone.

The public hearing closed this evening. The proposal is to replace the existing sunroom, deck and stairs (within nearly the same footprint) to enhance safety and aesthetics. Also proposed is the installation of an 8’ x 12’ shed on a crushed stone base within the 50’ tidal wetland buffer. Two above ground LP tanks may be placed on the north side of the swelling if the owner chooses to convert to or add gas appliances. A covered entryway is proposed to be constructed at the main front house entrance to enhance aesthetics and functional utility. The hardship is that the existing lot is legally non-conforming since it is less than 20,000 s.f. but

more than 12,500 s.f. (lot area is 13,472 s.f.). The house was constructed in 1979 prior to the current tidal wetland setback regulations. Due to settlement issues with the existing sunroom, the owner is replacing the sunroom on nearly the same footprint and no closer to the tidal wetland to enhance safety and aesthetics. Given the present location of the house, garage and sunroom, the sunroom has to be replaced in its current location which is within the 50' tidal wetlands setback. Cypress Road is a narrow street (ROW width = 40' in the vicinity of the front entry), this expands the front yard setback to 30' from 25'. In an e-mail from Marcy Balint, DEEP dated March 12, 2018 it states "We generally support maintaining tidal wetland setbacks wherever possible for new construction. We acknowledge the shed is on a relatively flat land more than 30 feet away from the resource. If the full 50 foot setback cannot be accomplished, we recommend a minimal width upland riparian buffer area along the tidal wetland to add further resource protection." Ms. Kay the applicant stated that she has many plantings in this area for the birds so that will not be an issue.

A **Motion** was made by K. Danby, seconded by R. McIntyre to **GRANT Application 17/18-27C - Paula S. Kay**. As described at the beginning the hardship was stated that strict enforcement of the Zoning Regulations would create an additional hardship. The replacements are almost the same as what already exists on the property, the proposal is in harmony with the neighborhood and doesn't pose a threat to health and safety. The topography where the shed is to be placed is such that it will not be visible to the neighbor. Also the **Coastal Site Plan Review Application is approved** as well because it is consistent with all applicable coastal policies and includes all reasonable measures to mitigate adverse impacts. No discussion and a vote was taken. In favor: P. Broadhurst, D. Alexander, R. McIntyre, A. Boyd, K. Danby Opposed: None Abstaining: None The motion passed unanimously. 5-0-0

REGULAR MEETING

Minutes: A **Motion** was made by K. Danby, seconded by A. Boyd to approve the January 10, 2018 Regular Meeting Minutes of the Zoning Board of Appeals. No discussion and a vote was taken: In favor: P. Broadhurst, D. Alexander, R. McIntyre, A. Boyd, K. Danby Opposed: None Abstaining: None The motion passed unanimously. 5-0-0

A **Motion** was made by D. Alexander, seconded by P. Broadhurst to approve the February 14, 2018 Regular Meeting Minutes of the Zoning Board of Appeals. No discussion and a vote was taken: In favor: P. Broadhurst, D. Alexander, R. McIntyre, A. Boyd, Opposed: None Abstaining: K. Danby The motion passed. 4-0-1

Adjournment: A **Motion** was made by K. Danby, seconded by A. Boyd to adjourn the March 14, 2018 Regular Meeting of the Zoning Board of Appeals. No discussion and a vote was taken: In favor: P. Broadhurst, D. Alexander, R. McIntyre, A. Boyd, K. Danby Opposed: None Abstaining: None The motion passed unanimously. 5-0-0 The meeting was adjourned at 9:30 p.m.

Philip Broadhurst, Chairman

**THE NEXT SPECIAL MEETING OF THE ZONING BOARD OF APPEALS IS
THURSDAY, MARCH 22, 2018 AT 7:00 P.M.,
FIRST FLOOR CONFERENCE ROOM**

**THE NEXT MEETING OF THE ZONING BOARD OF APPEALS IS
WEDNESDAY, APRIL 11, 2018 AT 7:00 P.M.,
FIRST FLOOR CONFERENCE ROOM**