
Zoning Board of Appeals Minutes 05/09/2018

MINUTES 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, May 9, 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, Kevin Danby, Jacqueline Prast, Alternate, Mark Velardi seated for Adam Boyd

Present: Chris Costa, Zoning Enforcement Officer, Meryl Moskowitz, Recording Clerk

Absent: Catherine Purcell, Alternate

The Chairman introduced the Board members who were seated for this evenings meeting. The four regular members (Broadhurst, McIntyre, Alexander, Danby) and one alternate (Velardi) were seated.

The following public hearings were conducted, as well as the decision making sessions. The meeting has been recorded and the following actions were taken:

PUBLIC HEARINGS

P. Broadhurst read a letter from Joe Wren representing the applicants Frederick and Mary Beth Marinelli asking that the Public Hearing for 17/18-33C be continued to the June 13, 2018 meeting of the Zoning Board of Appeals.

A **Motion** was made by P. Broadhurst, seconded by McIntyre to continue the opening of the public hearing for application **17/18-33C Frederick J. and Mary Beth Marinelli**, to the next regularly scheduled meeting of the Zoning Board of Appeals, on June 13, 2018, Old Saybrook Town Hall, 1st Floor Conference room at 7:00pm. A vote was taken. In favor: P. Broadhurst, R. McIntyre, D. Alexander, K. Danby, M. Velardi. Opposed: none. Abstained: none. The motion passed unanimously, 5-0-0.

17/18-32C Derrick Gibbs, seeks a variance of Par 10.7.1 & 10.7.2 (nonconformity enlargement/change); Par 24.5.3 (other line setback/15' required/11' to the rear deck stairs and 8.8' to the rear deck proposed); and Par 24.6.2 (building structure coverage/20% allowed/ 24.1% proposed) of the Zoning Regulations to permit construction of two 14.06 s.f. landings with stairs to the front and a 100 s.f. deck with two 14.06 s.f. landings to the rear at 6 Tucker Road, Map 18/Lot 80, Residence A District, Coastal Area Management Zone.

Professional Engineer Joe Wren, representing the Applicant and property owner Derrick Gibbs, reviewed the application, which proposes to build a 10' x10' deck and stairs at the rear, south facing side of the house. He stated he based the current site plan on a sketch that was previously drafted by Town staff as part of the Alvarado application of 2015. J. Wren submitted a revised site plan dated May 2, 2018. He stated the existing coverage is 19%, proposed is 24.1%. With the enlarged deck, the increase in coverage is 1.3% greater than what was allowed on the aforementioned sketch. M.Valardi noted the plan that J.Wren was presenting from was different from the map submitted in the application with the variance. Mr. Wren responded that the front stairs were revised since the application was submitted to address relocation of the electric meter as a result of Eversource requirements to connect the power.

Zoning Enforcement Officer Chris Costa noted that the steps that were proposed on the administratively approved Certificate of Zoning Compliance allowing for the elevation of the house that is currently under construction are not what is being proposed on the revised site plan dated May 2, 2018. The relocated stairs as shown on the new plan were not approved administratively and were not a part of the variance application being reviewed.

J. Wren read the hardship into the record, namely that the existing lot is legally non-conforming with 92.1% of the lot consumed by restricted setback areas, and that the proposed deck will be more conforming to other yard setbacks than the pre-existing deck (which has been removed).

The Chairman opened the floor to comments. Speaking in opposition was Attorney John Bennet, representing Patricia Foster of 8 Tucker Road, adjacent on the east side of the applicant's property. He refuted that there is a hardship citing the case of Verrillo v. Zoning Board of Appeals, 155 Conn. App. 657, 716 (2015) and noted that reasonable use is not the basis for a hardship or granting of a variance, that the reasonable use standard does not apply, nor is an existing non-conformity the basis of granting a variance.

J. Bennett explained that the administrative permit that was granted to the previous owner in 2016 was based on the presumption that the existing deck to the rear of the building would be removed. He further cited the Verillo case noting that "a variance is not a tool of convenience nor of necessity" and he sees no necessity for a 10'x10' deck, nor is the applicant's desire to enhance his property a basis for hardship, nor does the voluntary act of the applicant create a hardship. The ZBA is not to create non-conformities. He further

stated that this property is not unique, that many of the lots in the neighborhood are small. The previously permitted three foot wide stairway provides the applicant the means to access the property.

Justin Duffy, resident of 4 Tucker Road, spoke against the application, reporting runoff generated by the construction at 6 Tucker Road caused flooding in his driveway, under the house and to the opposite side of the house. He asked that the Town engineer review the site prior to further approval by the ZBA of any construction plans, to ensure that run-off issues are remediated and that any proposed construction does not cause further run-off issues on his property.

Patricia Foster, resident of 8 Tucker Road stated that the rear deck was constructed two years prior to Hurricane Sandy, and that it was less than three years old.

A **Motion** was made by R. McIntyre, seconded by D. Alexander to close the Public Hearing, made at 8:50pm. A vote was taken. In favor: P. Broadhurst, R. McIntyre, D. Alexander, K. Danby, M. Velardi. Opposed: none. Abstained: none. The motion passed unanimously, 5-0-0.

A motion was made to grant the application and discussion followed. D. Alexander commended the applicant for the good work he has done on the property. She reminded the Board they are to consider not just the Applicant but all the residents of the Town for whom the Board works and is inclined to view this as a self-created hardship and does not see any basis for hardship. R. McIntyre stated his concern for safety and views the raised deck as more safe than having to go up and down stairs to a lower level deck. P. Broadhurst stated that there are hundreds of lots of this size in town, all of which are non-conforming. The question is what use is the Board going to allow people to have on these non conforming lots? The Board can't deny people the reasonable use of their lot, and that they need to decide in each case if the request is reasonable.

A **Motion** was made by K. Danby and seconded by R. McIntyre to **grant** Application **17/18-32C Derrick Gibbs** per the revised site submitted May 9, 2018. The hardship is that it is more conforming than the previously approved plan, and more compliant with the FEMA, flood, and zoning requirements. A vote was taken: In favor: R. McIntyre, A. Boyd, C. Purcell, J. Prast. Opposed: D. Alexander. Abstaining: None. The motion passed 4-1-0.

A **Motion** was made by K. Danby, seconded by R. McIntyre to approve the **Coastal Site Plan Review Application** because it is consistent with all applicable coastal policies and includes all reasonable measures to mitigate adverse impacts. A vote was taken: In favor: R. McIntyre, A. Boyd, C. Purcell, J. Prast. Opposed: None. Abstaining: D. Alexander. The motion passed 4-0-1.

Minutes: A **Motion** was made by D. Alexander, seconded by M. Velardi, to approve the April 11, 2018 Regular Meeting minutes and the April 17, 2018 Special Meeting Minutes of the Zoning Board of Appeals, as presented. No discussion and a vote was taken: In favor: P. Broadhurst, R. McIntyre, D. Alexander, K. Danby, M. Velardi Opposed: None. Abstaining: None. The motion passed unanimously, 5-0-0

Adjournment: A **Motion** was made by K. Danby, seconded by M. Velardi to adjourn the May 9, 2018 Meeting of the Zoning Board of Appeals. No discussion and a vote was taken: In favor: P. Broadhurst, R. McIntyre, D. Alexander, K. Danby, M. Velardi Opposed: None. Abstaining: None. The motion passed unanimously, 5-0-0. The meeting was adjourned at 9:00 p.m.

Phillip Broadhurst, Chairman

**THE NEXT MEETING OF THE ZONING BOARD OF APPEALS IS
WEDNESDAY, June 13, 2018 AT 7:00 P.M.
FIRST FLOOR CONFERENCE ROOM**

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