

**THESE MINUTES ARE SUBJECT TO BOARD APPROVAL
AT THE NEXT ZONING BOARD OF APPEALS MEETING**

**Westbrook Zoning Board of Appeals PUBLIC HEARING MEETING MINUTES
Wednesday, August 28, 2019 at 7:30 p.m.
Mulvey Municipal Center – Multi Media Room
866 Boston Post Road, Westbrook, CT**

The Westbrook Zoning Board of Appeals met on Wednesday, August 28, 2019 in the Multi-Media Room of the Teresa Mulvey Municipal Center located at 866 Boston Post Road. Legal Notice of the Public Hearing was published in The Harbor News on August 15, 2019 and August 22, 2019.

Chairman Bonnie Hall called the Public Hearing to order at 7:30 p.m. and introduced Board members to the public.

Members present: Bonnie Hall, John Bech, Jack Boehme, and Alternate members Nick Alaimo and Eugenia Magill.

Absent: Devin Xenelis, Vincent Neri and Matthew Schenck

Also present was Recording Clerk Meryl Moskowitz.

Chairman Hall read the procedures to be followed at the Hearing into the record.

Chairman Hall stated for the record that Appeal 19-010, a Use Variance submitted by Ed Knight, 21-27 Essex Road, was withdrawn.

Alternate members Nick Alaimo and Eugenia Magill were seated to hear all Appeals. Chairman Hall read the Legal Notice.

No. 19-005 – Appeal of Vernon Lee, owner/applicant. Property located at 889 Toby Hill Road, further identified on Assessor's Map 121 as Parcel 002, RR zone. Variances requested from Zoning Regulations **Section No. 2.C.2.3** rear yard, 43.7' (house) where 50' is required, 25' (stairs) where 50' is required. After the fact variance for construction of garage with living space above, together with required staircase for direct egress.

B. Hall explained that of the items requested by the Board of the Applicant, the following items were submitted: color photographs, original building permit, assessor's card, and the measurement from stairs to rear property line. However, what was submitted to serve as plans of the interior were insufficient and not at all what the Board had requested.

Applicant Vernon Lee stated that they had received an email at 11:15 a.m. today (August 28) from Zoning Enforcement Officer Eric Knapp and have decided to take down the stairs, and replace the door with a window.

Christine Lee provided the email from Eric Knapp (Exhibit A). B. Hall read the email into the record, which stated that the space is not eligible to be considered for an accessory apartment, that the stairs shown are encroaching into the setback and must be covered, and that the ZBA Chair finds the floor plans submitted to be inadequate. E. Knapp, at the request of the Chair, advised the Applicant to withdraw the application and resubmit with complete architectural plans.

Mr. Lee confirmed that the space will not be built as an apartment, that he will remove the stairs, and put in a window. They would like to request a variance for the rear yard setback only.

B. Hall asked Applicant to clarify how the space will be used. Mr. Lee explained it will be an office. B. Hall referred to the building permit obtained by the Applicant and dated November 30, 2006 for addition of an office, noting she is unable to determine the square footage of the addition due to inadequate plans.

N. Alaimo stated he has no problem with the application as long as they are compliant, and that he believes a case can be made for hardship due to topography and where they are located.

J. Boehme stated that with the stairs removed, and the space no longer being used as living space, that removes the issue of 1,000 sq. ft or 30% of living space. What remains is the rear yard setback, which he states is self-induced. He is not sure it is that big of an issue.

E. Magill stated she doesn't see a problem, and asked if the addition was built 13 years ago and if it was inspected. Mr. Lee stated it has been inspected and that he has added on over the years.

J. Bech stated he had no questions.

B. Hall asked for public comment. She asked if anyone wished to speak in opposition, in favor, or neither opposed to nor in favor of the application. No one spoke. The Applicant had no further comments.

The Public Hearing closed at 7:57 p.m.

No. 19-014 – Appeal of George & Barbara Malina, owner/applicant. Property located at 16 Orchard Path, further identified on Assessor's Map 166 as Parcel 122-16, PRDD Zone. Variance requested from Zoning Regulations **Section No. 5.A.4.1.(a)(4)(b)**, modification of minimum building setback from MDR District Boundary, 41' requested where 50' required, to construct 14'x16' deck.

Barbara Malina stated they are requesting the deck because they have 11 to 12 stairs coming from the sun porch down to the patio and for health reasons they'd like to have the deck. A letter of support was submitted from the president of Hill Farm Homeowners Association to the ZBA. Mrs. Malina stated they received a letter of support from Valley Shore YMCA.

For clarification, Mrs. Malina circled her house on a printed copy of a Google map image, pointing out the neighboring homes with decks.

B. Hall stated there is a letter to Valley Shore YMCA on behalf of the Applicant, from Kevin Jalili, design consultant with Creative Enclosures. She also stated that Health Department approval was received, dated July 30, 2019, and was reviewed for compliance. B. Hall read the Health Department approval memo, noting that it "must maintain 5' separation distance between deck and septic system, which includes the forced main which runs behind the building."

George Malina stated that the distance of the septic to the proposed deck is roughly 25 – 30 ft.

B. Hall read Zoning staff comments that state "all units on northerly side of Orchard Path send their septic by forced main around the end of the road and to the leaching area located southerly of the units." She added that Health Director Sonia Marino is evaluating how close the proposed deck will be passing to the pipes flowing between the Malina's unit and the property line to the east, and that the deck must be sized in such a way as to not endanger those forced main pipes. B. Hall clarified that if the Health Director finds the deck is too close, or not up to code, that the Health Director makes the final determination.

B. Hall asked if the deck is proposed to be on piers. Mr. Jalili submitted a brochure from Techno Metal Post (Exhibit A) to show the footing system. He stated the deck will be 25' away from the septic and is 6' 4" elevation. He also submitted deck plans (Exhibit B), dated 6/4/2019 by Creative Enclosures.

Board members stated they had no further comments. The Applicant stated they had no further comments. B. Hall stated for the record that no one was present in the audience for public comment.

The public hearing closed at 8:13 p.m.

Respectfully submitted,

Meryl Moskowitz
ZBA Recording Clerk

THESE MINUTES ARE SUBJECT TO BOARD APPROVAL AT THE NEXT ZONING BOARD OF APPEALS MEETING

**Westbrook Zoning Board of Appeals REGULAR MEETING MINUTES
Wednesday, August 28, 2019 immediately following Public Hearing
Mulvey Municipal Center – Multi Media Room
866 Boston Post Road**

The Westbrook Zoning Board of Appeals met on Wednesday, August 28, 2019 in the Multi-Media Room of the Teresa Mulvey Municipal Center located at 866 Boston Post Road. Legal Notice of the Public Hearing was published in The Harbor News on 15 August and 22 August 2019. Chairman Bonnie Hall called the Zoning Board of Appeals Regular Meeting to order at 8:13 p.m.

Members Present

Chairman Bonnie Hall, John Bech, Jack Boehme, and alternate members Nick Alaimo and Eugenia Magill.

Absent: Vice Chair Devin Xenelis, Vincent Neri and alternate member Matthew Schenck.

Also present was Recording Clerk Meryl Moskowitz.

Call to Order: Chairman Hall called the meeting to order at 8:13 p.m.
Alternate members Nick Alaimo and Eugenia Magill were seated to vote on all Appeals.

DECISION

No. 19-005 – Appeal of Vernon Lee, owner/applicant. Property located at 889 Toby Hill Road, further identified on Assessor's Map 121 as Parcel 002, RR zone. Variances requested from Zoning Regulations Section **No. 2.C.2.3** rear yard, 43.7' (house) where 50' is required, 25' (stairs) where 50' is required. After the fact variance for construction of garage with living space above, together with required staircase for direct egress.

B. Hall summarized that the Applicant at 889 Toby Hill Road is now looking to remove the stairs, replace the door with a window, and will not use the space as an apartment but as an office. They are asking for a variance for the 43.7' for the house in the rear yard setback only.

B. Hall read a portion of the email from Zoning Enforcement Officer Eric Knapp, to her, that stated that in the original application and zoning permit this was not to be used as an accessory apartment. She stated it continues to be the position of the Board that the Applicant cannot use it for an apartment.

B. Hall said that in looking at hardship, she sees it as self-induced, that the Applicant has come to the Board with not clean hands, that this has been going on for a year, and that the permit has been open since 2006.

E. Magill stated they are coming to us to ask for the variance for rear yard setback. B. Hall explained the Board has to look at the space the stairs go into, that is, the vertical encroachment.

J. Bech stated he would favor denying without prejudice so that the Applicant could come back with the correct information.

B. Hall stated that it was the Applicant's intention to ask for the apartment but they changed their mind based on the 11:15 a.m. email from ZEO Eric Knapp. She stated she favors giving the Applicant a shot at getting approval for the apartment, by providing what the Board is requesting, namely the architectural plans showing the dimensions of the living space.

For clarification J. Boehme read regulation 6.D.3.1, “that max floor area shall not exceed 1000 sq ft or 30% of the total area of the principal dwelling within which it is located, whichever is less.”

B. Hall said that it sounds like the Board would be willing to grant it if the Applicant showed what the space was with architectural drawings, and then the Applicant could get what he has built out.

N. Alaimo stated for the record that he is disappointed in the Town and with the incompleteness of the application.

There was discussion about if the floor space is greater than 1,000 ft can the Applicant apply for a variance. B. Hall stated the Applicant is not applying for an accessory apartment and cited 6.D.2.5 Accessory Apartment general requirements, according to CGS 8-6A “the provisions of Section 6.D shall not be varied by the Zoning Board of Appeals.” She stated the Board cannot vary anything to do with Accessory Apartments.

J. Bech made a motion to deny without prejudice so that the Applicant can return with the correct information. The motion was seconded by J. Boehme.

Discussion

J. Boehme stated that by making a motion to deny without prejudice the time frame is not violated, and the clock starts over.

The motion was amended to included a statement of fact: that the application is denied without prejudice so that Applicant can reapply with architectural plans of the interior, and formally apply for the stairs and living space above.

A **MOTION** made by J. Bech and seconded by J. Boehme to **DENY WITHOUT PREJUDICE** Appeal 19-005 so that Applicant can reapply with architectural plans of the interior, and formally re-apply for the stairs and living space. Voting in favor: B. Hall, J. Bech, J. Boehme, and N. Alaimo. Abstaining: E. Magill. The motion passed 4-1. (Magill abstaining)

J. Boehme clarified that the Applicant will need to re-advertise. Regarding the stairs, he noted that the Advertisement states distance of 25', which differs from the distance of 23.7" to rear property line, shown on the plans dated August 13, 2019.

No. 19-014 – Appeal of George & Barbara Malina, owner/applicant. Property located at 16 Orchard Path, further identified on Assessor's Map 166 as Parcel 122-16, PRDD Zone. Variance requested from Zoning Regulations **Section No. 5.A.4.1.(a)(4)(b)**, modification of minimum building setback from MDR District Boundary, 41' requested where 50' required, to construct 14'x16' deck.

N. Alaimo stated the hardship is the topography of the land, with the lot being an irregular shape, and slanting. He finds the deck would be in harmony with the neighborhood.

B. Hall stated the hardship is they have the forced main pipe, with the irregular shape lot, and the constraints posed by the topography, adding that all the units on the northerly side have their septic passing behind the Applicant, and they have to have a separation distance from the pipe, which is a huge hardship.

E. Magill stated she sees the hardship with the land.

J. Boehme feels there is a hardship and that Applicant has no other options to place the deck, and understands why they would want a deck going out from the main floor, rather than taking stairs down to the patio.

J. Bech agrees the hardship is with the the land, the pipe, and it being an over 55 community.

A **MOTION** made by B. Hall and seconded by J. Bech to **GRANT** Appeal 19-014 based on hardship of the

topography of the lot, and the constraints posed by the forced main septic pipes. The motion passed unanimously.

MINUTES

A **MOTION** by J. Bech and seconded by J. Boehme to accept the Public Hearing Meeting Minutes of 26 July 2019 with changes: to state that the Chairman read an email from Ed Knight regarding Appeal No. 19-010 and withdrawing his Use Variance; and to include in the motion “a measurement from stairs to rear property line.” The motion passed unanimously.

A **MOTION** by J. Boehme and seconded by J. Bech to accept the Regular Meeting Minutes of 26 July 2019 amended to state under “Decisions” that Appeal 19-010 was withdrawn by the Applicant. The motion passed unanimously.

BILLS

A **MOTION** by J. Bech and seconded by E. Magill to approve the invoice from Shore Publishing in the amount of \$72.00 for legal notices. The motion passed unanimously.

A **MOTION** by J. Bech and seconded by J. Boehme to approve payment of \$301.27 to Meryl Moskowitz for clerk duties June-July 2019. The motion passed unanimously.

CORRESPONDENCE

Regular meeting minutes of the Zoning Commission, July 23, 2019, and regular meeting minutes of the IWWC of August 6, 2019.

OTHER BUSINESS

B. Hall commented that she sent a letter to the Chair of the Zoning Commission stating the ZBA's dissatisfaction with Zoning Enforcement Officer Eric Knapp. She has not received a response. N. Alaimo stated he would like to send a letter to the entire Zoning Commission reiterating B. Hall's letter.

J. Boehme commented that new Zoning regulations were received, but without a cover page showing the revision date. Members agreed that a cover page is needed that shows the dates of all amendments. The clerk is to email ZEO E. Knapp to request a cover page, as well as cover pages with all future new regulations.

B. Hall introduced new ZBA recording clerk Karen Amendola to the Board.

ADJOURNMENT

A **MOTION** to adjourn at 9:17 p.m. by J. Bech and seconded by E. Magill. The motion passed unanimously.

Respectfully submitted,

Meryl Moskowitz
ZBA Recording Clerk