



TOWN OF OLD LYME

www.oldlyme-ct.gov

Zoning Board of Appeals

52 Lyme Street • Old Lyme, CT 06371

Tel. (860)-434-1605 Fax. (860)-434-5636

ZONING BOARD OF APPEALS – REGULAR MEETING MINUTES

Thursday, January 18, 2024 - 6:30 P.M.

MEETING HALL, MEMORIAL TOWN HALL,
52 LYME STREET, OLD LYME, CT

I. Meeting called to order at 6:30 PM

II. Roll Call

Present: Nancy Hutchinson (Chair), Kip Kotzan (Vice Chair), Stephanie Mickle, Steve Dix, Russ Fogg (Secretary), and Alternates Kathleen Tracy, Brian Cole, and Michaelle Pearson

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

III. Continued Public Hearings (Voting Session after Public Hearing)

At the opening of the Public Hearing, the Chair reminded applicants of the need to present the 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; the evidence that the variances requested are the minimum necessary to alleviate the unusual hardship and allow reasonable use of the property; 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; for Coastal Site Plan Review applications to please address CT-DEEP comments and for applications referred to other Town of Old Lyme experts, including the Town Engineer, to please address comments provided.

- a. **258-260 Shore Road, Appeal by property owner**, 258-260 Shore Road LLC, Cease and Desist Order for multiple residences in C-30 zoning district. The application was withdrawn by the applicant.
- b. **Case 23-15C: 43 Brighton Road** - to allow construction of a new addition and deck and the reconstruction of the roof structure of existing house, with associated Coastal Area Management permit application. Cellar foundation will be added, and the existing chimney will be removed as will the existing shed and ramp.

Mr. Joe Wren submitted a request in writing, on behalf of the applicant, to withdraw this application during the meeting.

IV. Public Hearing (Voting Session after Public Hearing)

Seated: N. Hutchinson, K. Kotzan, S. Mickle, S. Dix, R. Fogg

- a) **Case 23-14: 109 Mile Creek Rd** - to allow construction of an addition to the eastern side of the existing house located on an RU-40 lot. – opening of public hearing was delayed from Nov 16, 2023 ZBA regular meeting. This is a non-conforming structure on an RU-40 lot. The variances requested are to **Sections: 8.8.7:** Min. Street Setback (50 feet required) and **9.3.1:** No enlargement of non-conforming structure unless enlarged portion complies with regulations.

Mr. Joe Wren, PE of Indigo in Old Saybrook, presented the application. Mr. Wren stated that the 1800's farmhouse was on a larger property that has been subdivided. Mr. Wren noted that to create a floor layout that will function as the owners need, the addition will be placed on the East side of the house making the placement partially within the front setback while the existing house is already placed in the front setback. Mr. Wren noted the proposed addition is not introducing a new non-conformity nor is it making an existing non-conformity worse.



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Chair Hutchinson noted that the Ledge Light Health District (LLHD) approval was conditioned on moving the septic tank and the addition does not expand into the area of the property subdivision. Mr. Wren stated the tank is being replaced however, when the property was subdivided and the line was created between the two properties, the existing leaching system was over the subdivision line when it was created. Mr. Wren noted per the LLHD approval, the leaching system will remain as is, but the septic tank will be replaced. Mr. Wren suggested that they (the applicants) comply with LLHD requirements as a condition of approval.

Mr. Kotzan asked about the placement of the addition and if there was another area better suited for it. Mr. Wren stated that the kitchen must be expanded, which makes the placement of the addition unsuitable in any other location. Chair Hutchinson noted that the topography could also prohibit the placement of the addition in another location as well.

Mr. Wren noted the architect redesigned the deck so that it was the minimum necessary for use and a shed will be removed although it is not an illegal pre-existing shed.

The Chair opened the hearing to public comment. There were no public comments made.

A **Motion** was made by K. Kotzan, seconded by S. Mickle, to **CLOSE the Public Hearing for Case 23-14: 109 Mile Creek Rd.**

Voting in favor: N. Hutchinson, K. Kotzan, S. Mickle, S. Dix, R. Fogg. **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 or the ZBA Attorney procedural questions.

The Board discussed the evidence presented during the public hearing, potential conditions of approval, agreed by the applicant, and potential **Reasons for GRANTING, with conditions**, the variances, prior to making a motion:

1. Unusual Hardship: The location of this historic house exists significantly into the front setback.
2. Minimum variance to address hardship and allow reasonable use: The addition is not further encroaching on the existing setback.
3. Agreed conditions of approval: The applicant to meet the Ledge Light Health District requirements.
4. In harmony with intent and purpose of Zoning Regulations: The road right-of-way is so wide, the goal of having the house a certain distance from the street is still being met. It is an improvement overall in health and safety and the applicant is removing a shed structure on the property.
5. 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 R. Fogg, seconded by K. Kotzan, to **GRANT with conditions** the requested variances to **Sections 8.8.7** and **9.3.1** to allow per the site plan prepared by Indigo Land Design and dated Sept 6, 2023 and the floor plans and elevations prepared by Design by The Jonathans, LLC and dated Sept 6, 2023 and stamped and signed by the ZBA Chair. The **conditions** are: The applicant to meet the Ledge Light Health District requirements.

Voting in favor: N. Hutchinson, K. Kotzan, S. Mickle, S. Dix, R. Fogg. **Opposed:** None; **Abstaining:** None. The motion **passed** unanimously, 5-0-0.

b) **Case 24-01 – 1 Town Woods Rd.**, to allow for demolition of current house and construction of a new 1-1/2 story, four-bedroom house and workshop. This is a conforming R-10 lot with the proposed dwelling to be located in Special Flood Hazard Area Zone A. The variance requested is to **Section 8.8.6** – Maximum Height (24 feet allowed).



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Attorney Michael Cronin of Old Saybrook and Mr. Dave Wiese, applicant, presented the application. Architect Greg Laliberte and Mr. Seamus Moran, P.E., were also present.

Attorney Cronin gave a brief overview of the structure and property and noted that the original structure is a non-compliant two-story house in a 10000 SF zone. Attorney Cronin commented that the septic system is built to accommodate four bedrooms but the existing house contains five bedrooms. Attorney Cronin stated there is also a workshop shed plus another shed currently existing on the property. Attorney Cronin said the applicant would like to remove the existing structure and build a new house. Chair Hutchinson noted the assessor's report states that the house has four bedrooms.

Attorney Cronin noted that the building of a larger structure will demand more height as opposed to a smaller structure and the flood plain zone requirement pushes the lower floor to be elevated, making the structure even taller. Chair Hutchinson noted the house is above Base Flood Elevation (BFE), to which Mr. Wiese agreed. Mr. Wiese noted the first floor will need to be elevated to push the basement one foot above the BFE and to be able to house the mechanicals. Mr. Wiese noted the design will elevate the new house above the existing house to get the mechanicals to fit underneath the house in a three-foot crawlspace.

Mr. Craig Laliberte noted the house was designed to be as conforming as possible. However, the builder informed him that some of the duct work was not going to work in the house per the initial design. Mr. Laliberte commented that to put useable ducts in place, the applicant is requesting the elevation increase to hold the ductwork under the house. Mr. Laliberte also noted that the roof pitch must be a little steeper for environmental safety reasons than what is allowed in the 24-foot height that is allowed by the zoning regulations. Mr. Laliberte noted the design is the minimum to meet FEMA requirements. Mr. Laliberte further stated that the builder suggested two feet of additional height in the roof structure are needed to allow the correct roof pitch to be achieved. Mr. Laliberte noted the house is conforming in every other way. Mr. Wiese stated the lot is two acres and the house will not be taxing the land or blocking the view of the neighbors. Mr. Wiese said they would like to comply with the flood elevations and install a maintenance-free roof.

Chair Hutchinson noted the applicants are taking the current house from two stories to a new design of 1.5 stories.

Mr. Wiese noted that they will be taking the current septic out and replacing it with a much larger septic.

Mr. Moran noted that approval from the LLHD was received prior to the meeting and he will email it to the ZBA in the morning.

Mr. Moran said the applicants are replacing the existing home and both sheds with a new home, which will be further away from Roger's Lake to the north than the existing structure. Mr. Moran commented that the utilities must go on the first floor and there is a height restriction of 1.5 stories. Mr. Moran noted that the flood zone is elevation 38.8 feet and by adding another foot to raise the floor above BFE, the utilities cannot be placed below 39.8 feet. Chair Hutchinson questioned whether the 39.8 feet was correct for this zone. Mr. Moran confirmed the elevation is not the 100-year flood elevation and the FEMA recognized flood elevation is 38.8 feet. Mr. Moran noted the finished floor will be at an elevation of 42 feet.

Mr. Dix noted that the only other issue is the roof: what makes a safe roof and how does that affect the height.

Mr. Laliberte stated he consulted with a structural engineer and the roof pitch is designed for snow safety purposes. Mr. Laliberte further stated they are adding minimum height to make the structure conforming and safe.

Mr. Moran noted there are other non-conformities, but those are FEMA and health and safety related. Mr. Moran stated the septic will be replaced with a conforming septic on the property outside of the flood elevation.



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Mr. Moran said there is a reduction in impervious coverage by eliminating the paved driveway and replacing it with pervious walkways and pavers. Mr. Moran also noted there are stormwater management improvements being proposed.

Mr. Moran said the proposed pickleball court will be an impervious surface that has been included in the impervious surface coverage.

Attorney Cronin stated there were two letters that the ZBA received in support of the application. Ms. Mickle read them to the Board and the public.

The Chair opened the hearing for public comment. There were no comments from the public.

Attorney Cronin submitted return receipts for the mailings for ZEO/LUC Knapp.

A **Motion** was made by K. Kotzan, seconded by S. Dix, to **CLOSE the Public Hearing for Case 24-01 – 1 Town Woods Rd.**

Voting in favor: N. Hutchinson, K. Kotzan, S. Mickle, S. Dix, R. Fogg. **Opposed:** None; **Abstaining:** None. The motion **passed** unanimously, 5-0-0.

The Chair stated the rules for deliberations are the same, and the Board discussed the evidence presented during the public hearing, potential conditions of approval and potential **Reasons for GRANTING** the variances prior to making a motion:

1. Unusual Hardship: The structure will be made FEMA compliant and the roof elevation is to meet structural building codes.
2. Proposed reduction in legal pre-existing non-conformity: The existing structure has two stories and the new structure will be 1.5 stories.
3. In harmony with intent and purpose of Zoning Regulations: Installation of the water management system will improve the structure environmentally. There is an improvement in health and safety because a new septic system will be installed and the structure is becoming FEMA compliant.
4. 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 variance to **Section 8.8.6** to allow for demolition of current house and construction of a new 1-1/5 story, four-bedroom house and workshop per the site plan prepared by H+H Engineering Associates and dated 11/7/2023 and the Elevations and Floor plans prepared by Craig Laliberte, Architect, and dated October 30, 2023 for the main dwelling and November 2, 2023 for the workshop, and stamped and signed by the ZBA Chair.

Voting in favor: N. Hutchinson, K. Kotzan, S. Mickle, S. Dix, R. Fogg. **Opposed:** None; **Abstaining:** None. The motion **passed** unanimously, 5-0-0.

V. Regular Meeting

a. **Old Business** - none

b. **New Business**

1) Receipt and Setting of Public Hearings for New Applications

- a. 54 Ridgewood – reconstruct and elevate single-family dwelling in VE flood zone within 50 feet of tidal waters and tidal wetlands, with Coastal Site Plan Review application.
 - i. Incomplete application submitted Dec 7, 2023. Updated application submitted Jan 8, 2024.



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- ii. Complete application received Jan 11, 2024. Public hearing scheduled for Feb 15, 2024
- b. 7 Mile Creek – elevation and enlargement of existing dwelling within AE-11 flood zone.
 - i. Incomplete application submitted Jan 10, 2024 without applying for LLHD approval, and Inland Wetlands Commission approval on-going.
 - ii. Receive today. Await scheduling of Public Hearing until next meeting
- c. 205 Mile Creek: Expansion of classrooms and parking at Mile Creek School, with Coastal Site Plan Review application
 - i. Complete application submitted Jan 11, 2024.
 - ii. Receive today. Schedule Public hearing for Feb 15, 2024.
- d. 21 Brookside: Vertical expansion to create a full half story within existing footprint.
 - i. Application submitted Jan 11, 2024. LLHD review on-going.
 - ii. Schedule Public hearing for Feb 15, 2024.
- e. 302 Mile Creek: Sunroom addition
 - i. very incomplete application submitted ~ Jan 4, 2024
 - ii. Receive today. Await scheduling of Public Hearing until next meeting.
- f. 58 Billow Rd Appeal of ZEO decision:
 - i. Appeal submitted Jan 17, 2024
 - ii. Schedule appeal to be heard Feb 15, 2024.

Ms. Mickle informed the Board she will be absent for the March, 2024 ZBA Regular Meeting.

Ms. Susan Fogliano, newly elected to the Board of Education, asked to confirm the application for the Mile Creek expansion project was received and complete. Chair Hutchinson confirmed the application is received and the public hearing is scheduled for February 15, 2024.

2) Chair Update

- a. Welcome new Alternates: Michaëlle Pearson and Brian Cole
- b. Update on required training: 4 hrs total, 1 hr on affordable housing

Chair Hutchinson discussed the required training for members: Current members have two years to get their four hours of training, new members have one year from the date they were appointed. ZEO/LUC Knapp said he will send an email with details and include a spreadsheet with the training status for each ZBA member.

3) Election of Officers

A **Motion** was made by R. Fogg, seconded by S. Mickle, to **Approve** the following slate of officers:

Chair: Nancy Hutchinson

Vice Chair: Kip Kotzan

Secretary: Russ Fogg

Voting in favor: N. Hutchinson, K. Kotzan, S. Mickle, S. Dix, R. Fogg. **Opposed:** None; **Abstaining:** None. The motion **passed** unanimously, 5-0-0.

c. Correspondence and Announcements - none

d. Meeting Minutes – ZBA Regular Meeting Minutes – Oct 19, 2023

A **Motion** was made by S. Mickle, seconded by K. Kotzan, to **Approve** the Oct 19 2023 ZBA Meeting Minutes.



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Voting in favor: N. Hutchinson, K. Kotzan, S. Mickle, S. Dix, R. Fogg. **Opposed:** None; **Abstaining:** None. The motion **passed** unanimously, 5-0-0.

Mr. Dix recommended that the Board create guidance for the Zoning Commission, specifying that FEMA requirements that affect structure height should not necessarily need to be seen by the ZBA. Mr. Dix noted that if it is a simple elevation issue, then a case could be built so that the applicants do not need to go before the ZBA. Chair Hutchinson said a meeting could be scheduled to discuss any other subjects that also fit these criteria as well, then the ZBA can make collective suggestions for changes. The Board agreed that a Special meeting will be scheduled for this discussion.

ZEO/LUC Knapp recommended the Board review the underlying regulations to see if updates are needed for those subjects where the ZBA is seeing the same issues repeatedly.

VI. Adjournment

A **Motion** was made by S. Mickle, seconded by S. Dix, to **adjourn** the Meeting.

Voting in favor: N. Hutchinson, K. Kotzan, S. Mickle, S. Dix, R. Fogg. **Opposed:** None; **Abstaining:** None. The motion **passed** unanimously, 5-0-0.

The meeting was adjourned at 8:15 PM.

Respectfully submitted,

Amy Huot, Clerk

The next Regular Meeting of the Zoning Board of Appeals is on
Thursday, February 15, 2024 at 6:30 PM, in the Meeting Hall,
Memorial Town Hall, at 52 Lyme Street, Old Lyme, CT