

**APPROVED MINUTES
REGULAR MEETING
BROOKFIELD ZONING BOARD OF APPEALS
Monday, June 4, 2012- 7:00 p.m.
MEETING ROOM 133 – TOWN HALL 100 POCONO RD**

1. CONVENE MEETING

Present: Chairman M. Flynn, Vice Chairman C. Timmerman, G. Meyerle, Alternate and Voting Members where indicated N. Coppola and J. Brown

Absent: Secretary S. Wallman

Also Present: Zoning Enforcement Officer A. Dew, Recording Secretary D. Cioffi

Chairman Flynn convened the meeting at 7:00 p.m. and established a quorum of members. He then reviewed the policies and procedures that govern public hearings.

2. REVIEW MINUTES – 5/7/12 – Vice Chairman Timmerman moved to approve the Minutes of the May 7, 2012 meeting. G. Meyerle seconded the motion, and it carried 4-0-1, with N. Coppola abstaining.

3. REVIEW CORRESPONDENCE:

a. Minutes of other Boards and Commissions: Zoning Commission 4/26/12; Inland Wetlands Commission 4/23/12, 5/14/12; Planning Commission 4/19/12, 5/3/12, 5/17/12; Zoning Sub-Committee

b. Building Inspectors Report: May 2012 issue

No discussion/no motions.

4. PUBLIC HEARINGS – 7:00 p.m.

a. 1 High Ridge Road #201200355: Appeal of Zoning Enforcement Officer's decision (ph close date 7/9/12)

Alternate N. Coppola was a Voting Member for this item.

Attorney G. Cava, 73 Southbury Rd., Roxbury, CT, was present, on behalf of the applicants in the appeal, the Marciniaks and the Harrisons, who were also present. S. Trinkaus, Licensed Professional Engineer, 114 Hunters Ridge, Southbury, CT, was also present for the applicants. The qualifications of Mr. Trinkaus were submitted for the record.

Attorney Cava indicated that the appeal has been filed as a result of the issuance of a Certificate of Zoning Compliance per §242-703 of the regulations. Specifically, the appellants contend that the property is not in compliance with §242-401E, which prohibits the drainage of storm runoff in residential districts without an easement granted by the neighboring property.

Attorney Cava shared a map of the property (Marciniak Exhibit D) showing the original conditions at 1 High Ridge Road, explaining that at one time, it was part of a larger parcel consisting of Lots 1, 2 and 3. He added that the house was constructed in 1962.

P. Donohue arrived at 7:08 p.m.

Attorney Cava indicated that the house was purchased by the Harrisons in 1984 (on Marciniak Exhibit D delineated in yellow, impervious surfaces in green, and drainage structures in blue). He stated that the land slopes from south to north, and therefore, the storm water drainage flows from the south to the north, along the contours. He further noted a series of wetlands behind the property that takes drainage off of Beech Tree Road and Whisconier Road. Attorney Cava explained that the wetlands runs into a watercourse that runs into a head wall, and is then piped through an 18" pipe, that runs through the property. He added that there is another

drainage course that runs east, north and east again, where it meets the watercourse from the south, and drains to the 18” pipe. He also discussed a series of 12” pipes on the site. Attorney Cava stated that he believes that the house was constructed on a “fill platform”, and the 12” pipes were installed to keep the property dry.

Chairman Flynn inquired if the garage on the site was moved, and Mr. Harrison indicated that it was moved when the lot was split and the house was built.

Attorney Cava referred to and submitted Marciniak Exhibits A and B. He indicated that after the property was purchased by the Harrisons, there was a pool surrounded by stone blocks. The lot was then split, and a house was built on the lot, and the Marciniaks currently live there. The Harrisons sold the house at 1 High Ridge Road to S. Zaky at 2006, and it has since been conveyed to Affiliated Realty. Attorney Cava was not sure when this conveyance occurred.

Attorney Cava advised that a great deal of work has been done on the Affiliated Realty property, including: expansion around the pool; concrete; a retaining wall, close to common property line; and fill around the retaining wall, which he alleged has spilled on to the Marciniak property. He discussed the tendency of the 18” pipe to clog, and noted that when Mr. Harrison owned the property, he constructed small drainage swale along the pipe. Attorney Cava referenced Photos P13 and P14, and marked where there has been filling so that water cannot be directed out of the catch basin. He also delineated the wetlands areas on the map. Further, he submitted Photo P8 (showing what the land looked like after Mr. and Mrs. Harrison sold the property); and P9 (which shows Mrs. Harrison standing in the same spot where fill has been added). Attorney Cava indicated that recent rain has caused the fill to back up on to the property of Mr. Harrison. He contended that the development that has occurred on the site has resulted in flooding. He further submitted Exhibits Marciniak C and Marciniak D, and indicated that an additional neighboring property, owned by Mr. Tierney, has also suffered water damage.

Attorney Cava submitted an “Addendum to Appeal of Zoning Enforcement Officer”. He further advised that a wall has been installed inside the catch basin, and alleged that it has backed up over several properties, and is in danger of perforating the curtain wall of the Marciniak’s septic system. He added that the installation of the wall has been the subject of an enforcement action by the Inland Wetlands Commission, and that he was not allowed to speak at the Show Cause Hearing.

Attorney Cava submitted a copy of the site inspection report, with attached photographs of the blockage in the pipe. He and his clients believe that the wall was constructed 2-3 days after their appeal of the wetlands permit was filed.

Attorney Cava advised that when the wetlands permit was granted, it contained construction sequencing. Because the IWC expressed concern regarding the fill and impact to neighbors; it decided that because the 12” pipe was being abandoned for the garage construction, a swale would have to be constructed to drain the area behind the pool and the house and take it to the 18” pipe. The IWC also required “notching” of the berm. Attorney Cava stated that the sequencing conditions of the March 26, 2012 approval were as follows: construct berm with the cuts in it; construct the swale; remove the debris, install the catch basin; and construct the garages.

Attorney Cava advised that Affiliated Realty’s attorney, R. Ghent, then filed a lawsuit against the Marciniaks and Harrisons, for draining onto his client’s property. Affiliated Realty also filed an application with the IWC to change the above sequencing to: installation of erosion control measures; removal of debris; construction of the garage; installation of catch basin and drainage.

Attorney Cava submitted a copy of: the IWC permit, a letter from Attorney Ghent, and the amended sequence.

The report of Mr. Trinkaus was submitted. Mr. Trinkaus reviewed his qualifications. He contended that the swale needs to be constructed first and stabilized with vegetation prior to construction of the garage. He indicated that the surface water will have nowhere to go and will result in ponding. Mr. Trinkaus inspected the site on May 14, 2012, and noted the blockage of the catch basin. He discussed the curtain drain on Mr. Marciniak's septic system and explained that the blocking of the pipe will result in surface water and the less than 18" vertical required by Health Code, and can cause premature failure of septic system.

Chairman Flynn inquired if the IWC approval called for drainage improvements regardless of the construction of the garage. Mr. Trinkaus indicated that the 12" pipe is being abandoned for the garage to be built over it, and it will be replaced by a swale. Attorney Cava pointed out that the 12" pipe is outlined in blue on Marciniak Exhibit B to be replaced by the swale outlined in yellow.

Attorney Cava reviewed that he filed an appeal, on behalf of his clients, of the April 9, 2012 approval of the second permit, which changed the sequencing. Following that, the 18" pipe was blocked; this was the subject of the Cease and Correct Order filed by the IWC. At a Show Cause Hearing on that Order, the IWC upheld the Order. A copy of the Cease and Correct Order, as well as an affidavit of Wetlands Enforcement Officer K. Daniel related to that violation.

Chairman Flynn reiterated that the Board is examining if the building permit was issued correctly. Attorney Cava indicated that he is appealing the issuance of the Residential Preliminary Zoning Approval signed by the ZEO on April 16, 2012, on the grounds that the property is not in compliance with the zoning regulations due to the drainage issues he alleges will be caused by the change in sequence approved by the IWC.

Attorney Cava read the regulation, which states that the following activities are prohibited in residential districts: "drainage, or storm water runoff onto neighboring properties unless a specific legal easement has been granted by the neighboring property owner, or otherwise allowable by appropriate town ordinance". He reiterated that the change in sequence, the blocked 18" pipe and the development at 1 High Ridge Road has caused water to enter his clients' property.

ZEO A. Dew was present. She advised that her review, after the IWC approval, included: set backs, percentage of building coverage, and any obvious zoning issues. She relied on the IWC approval for the drainage issues. ZEO Dew did note that the property owner at 1 High Ridge would have to submit an A2 survey upon completion of the construction. Chairman Flynn inquired of ZEO Dew if she felt the modified sequence of actions would cause runoff onto the neighboring site, and she advised she would defer to the experts. She further indicated that she would rely on the engineer's opinion and that of the IWC in signing off on the zoning permit.

J. Brown inquired why she felt the IWC found the sequence to be correct, and ZEO Dew advised she believes it was "in error". Chairman Flynn indicated that time deadlines associated with the sequence would be helpful.

Attorney Cava noted that sustaining the appeal of the ZEO would not overturn the wetlands permits. He further advised that when his client, Mr. Harrison, built the house at 22 Beech Tree Road, he did not fill the land. Additionally, he alleged that the owner of 1 High Ridge Road performed construction on his property and ignored the drainage issues, in violation of the zoning regulations and causing a potential health risk to his clients' septic system.

Mr. Trinkaus stated that the Marciniak's property is flat, but the wetlands are three to five feet lower. He indicated that the flow cannot be changed, nor should it be blocked, and that the property is not in compliance with the zoning regulations.

Attorney Cava added that the 18” pipe always flowed to the north, as that is the direction it is pitched.

Upon inquiry from Chairman Flynn, Attorney Cava advised that the IWC appeal has been filed in court. Chairman Flynn suggested that the Board members review the IWC meeting minutes.

J. Tierney, 22 Beech Tree Rd., was present. He submitted three photographs for the record and advised that his property is also affected. He described his understanding of the drainage. The photographs he submitted show the water damage caused by the blocked drains.

It was noted that photographs, P1-P15 were submitted for the record.

Attorney R. Ghent was present, on behalf of Affiliated Realty, and contended that none of the drainage on either property is natural; and if there is a zoning issue, it is due to the water being discharged from the Marciniak property (from the south, at a higher elevation), to the north, to the High Ridge Road property. Attorney Ghent again read the language of the regulation which discusses drainage or storm water runoff onto neighboring properties.

Upon inquiry from Chairman Flynn, there was discussion regarding the natural flow of water, and the fact that the grades on the properties have been altered. Attorney Ghent referenced a map filed by Mr. Harrison in 2002 with an as-built of the existing conditions that does not show an 18” pipe. He noted that the current site plan, prepared by Land Data Engineers, shows the 18” pipe, which Attorney Ghent advised has been in the ground since 2006, but was not installed by Mr. Zaky or Affiliated Realty. Attorney Ghent stated that Mr. Marciniak did not reserve any rights in the deeds to drain. The Land Data Engineers’ study indicates that the 18” pipe handles only 5% of the flow from the south, but due to the swale maintenance, water is coming out of the pipe and flooding the 1 High Ridge Road property. The Land Data Engineers’ report was submitted for the record.

Chairman Flynn inquired what the purpose of the wall that was placed in the pipe was, and Attorney Ghent indicated it was to prevent the 1 High Ridge Road property from being flooded. He advised it was part of the IWC permit application, and that he would supply the Board with a copy of it. *S. Zaky was present,* and presented a copy of the application. Attorney Ghent reviewed the work that his client has done at the site, acknowledging that most of it was done without a pre-construction permit.

Marciniak Exhibit A was submitted for the record.

Upon inquiry from Chairman Flynn, Attorney Ghent stated that the intention of the permit was to fill the 266 square feet adjacent to the patio. He indicated that the IWC agreed because they understood that over the years the track of land had been filled and altered. Attorney Ghent advised that his client wanted to put a berm with a “relief point” to protect the cap to the well. Attorney Cava contended that the 18” pipe has been there since the construction of the house in 1962. Attorney Ghent referred to S. Rapp’s map from 1984 which shows a swale. He reiterated that there is nothing on the proposed plan for the garage constructive that is in violation of zoning regulations. This map (entitled, “Map prepared for Alan Harrison and Candace G. Harrison dated May 14, 1984”) was submitted for the record.

Attorney Ghent reviewed the outstanding litigation and appeals that have been filed related to the drainage issues. He also noted that in the past, his client has consulted with Mr. Trinkaus, and advised that he will bring a copy of that report prior to next month’s meeting.

Attorney Cava suggested that if the Board members listen to the recording of the March 26, 2012 IWC hearing, at the 1 hour, 29 – 30 minute mark, the IWC indicated it did not want water backing up on to the neighboring property. Attorney Cava also referenced the April 9, 2012 IWC meeting.

Attorney Cava advised he has seen no evidence of grade changes to the Marciniak property. He discussed the limited rights of property owners to repel water, if it is being repelled to drainage or a stream. He also noted that in the deed from the Harrisons to the Zakys (Map 884) there is a reference that it is “subject to notes and conditions that appear on the map”. Attorney Cava will check the map and provide the proper reference to the Board, and sent it to Land Use so that Attorney Ghent will have the opportunity to review it as well. Attorney Cava referenced a Connecticut appellate court case regarding incorporation of maps into deeds.

S. Zaky, 1 High Ridge Road, was present, and he discussed a map that shows that the water is flowing from the catch basin to the head wall, and the conditions are different now. He advised that S. Rapp showed how the water was flowing out of the pipe on his map. Attorney Cava indicated that Mr. Trinkaus will testify on this topic at next month’s meeting.

Vice Chairman Timmerman moved to continue the Public Hearing re: 1 High Ridge Road, #201200355: Appeal of Zoning Enforcement Officer’s Decision, at 8:42 p.m., to next month’s regularly scheduled meeting. G. Meyerle seconded the motion, and it carried unanimously.

- b. 51 Candlewood Shores Road #201200354: Variance requested: §242-402A – 9’ structure to center of road for front steps (ph close date 7/9/12)**
 - 1. Map titled “Proposed Sanitary Disposal System Plan” prepared by Arthur Howland & Assoc. dated 9/4/08 – sheet SDS.1
 - 2. Map of “Elevations” prepared by Joseph Crocco Architects dated 7/27/09 – sheet A-3

Alternate J. Brown was a Voting Member for this item.

J. Morra, Property Owner, 51 Candlewood Shores Road, was present. Chairman Flynn and Board member N. Coppola indicated that they drove by the property. Mr. Morra advised that when he purchased the lot and the plans that the plans and the septic were approved. He indicated that the front steps that are the subject of this application are on the approved plans.

Mr. Morra continued that when he visited the Land Use Office to discuss extending the roof over the steps, he was advised that the steps were in violation.

Chairman Flynn inquired of ZEO Dew if there were approved plans in the building file, and she indicated that the previous ZEO approved the foundation plan only, but that a plan with the steps were in the building file.

No one was present to speak in favor of the application.

B. Lohnman, President, Candlewood Shores Tax District was present, and spoke in opposition to the application. He reminded the Board that the Tax District is unique in that the property sizes are small, and because there are still 50-60 lots that have not yet been developed, there must be strict enforcement of zoning regulations.

J. Berger, 63 Candlewood Shores, Board of Director, CSTD, was also present. He also spoke in opposition to the variance. He advised that there is no hardship, and stated that the property owner should have done due diligence with regard to what was allowed for the property.

It was noted that the height of the house did comply with the 30’ height limitation.

Mr. Berger also indicated that he found the design of the steps to be unattractive, and that the proposed house will block the sunshine of the downhill neighbor.

Vice Chairman Timmerman inquired if the steps could be turned in another direction, and Mr. Morra advised that they could not. Mr. Morra also advised that the steps are not complete, and will be more attractive when they are done.

Chairman Flynn indicated he would like to see the Building Department file to see what was submitted and what was approved. He suggested that the applicant return next month with a plan that is something less intrusive to the setbacks.

Mr. Morra added that he has done all of the construction himself and the footings for the steps go down as far as eight feet. There was discussion regarding using stone to finish the stairs.

Mr. Berger advised that the plan that was signed off by the previous ZEO, B. Schappert, was the “sanitary systems plan”.

Vice Chairman Timmerman moved to continue 51 Candlewood Shores Road, #201200354: Variance requested: §242-402A- 9’ structure to center of road for front steps, at 9:00 p.m., to next month’s regularly scheduled meeting. G. Meyerle seconded the motion, and it carried unanimously.

- c. **84 Riverford Road #201200411: Variance requested: §242-402A – 35’ structure to left side line, §242-402A – 35’ structure to right side line for an incline elevator to the lake** (*ph close date 7/9/12*)

1. Map of site for track to run the incline elevator received in Land Use 5/11/12
2. Letter from Scott and Deborah Taylor to Zoning Board of Appeals dated 5/22/12 Re: 84 Riverford Road Variance Request

Alternate N. Coppola was a Voting Member for this item.

D. Gatehouse, Northeast Representative for Marine Innovations, 90 Longview Road, Port Washington, New York, was present on behalf of the property owners, and submitted literature on the proposed incline elevator. He explained that at present, the property owners, Mr. and Mrs. Capanna, are unable to access their waterfront, which is 330 feet from the top of the hill to the water’s edge. The proposed incline elevator system will be 230 feet long. The electric system rides on two rails, four feet apart, and utilizes 2” galvanized steel tubing every 10 feet. The carriage unit moves at the speed of 70 feet per minute. Mr. Gatehouse advised that the system meets the ASME national elevator codes.

Antonio Capanna, Property Owner was present. He explained the difficulties that he and his wife have accessing the waterfront and utilizing their boat.

Mr. Gatehouse advised that the system leaves less of a footprint than stairs. Additionally, because it runs on an electric motor, noise is not an issue. The current stairs are stone, and because moss has grown on them, they are slippery.

No one was present to speak in favor of, or in opposition to, the application.

Vice Chairman Timmerman read a letter dated May 22, 2012, from Scott and Deborah Taylor, 25 Deerfield Road, expressing strong opposition to the application, noting that it will jeopardize their privacy, violate the serenity of the lake, cause noise concerns, and negatively affect their property value.

Chairman Flynn explained that the impact on the neighbors must be considered. Additionally, he noted that the applicants must demonstrate a hardship that is unique to the property within the zoning district.

Mr. Gatehouse advised that he was at the site today, and noted the thickness of the woods. Further, he explained that the color of the unit could be natural, or green.

M. O'Hara, 204 Candlewood Lake Road, was present, and noted that like the opposing neighbor, the Capannas pay steep property taxes.

Chairman Flynn advised that because of its location on the ground or if it was a wall that is at least six feet high, the incline elevator would be considered a structure.

There was additional discussion regarding the need to have a basis in law to grant the variance.

Vice Chairman Timmerman moved to close the Public Hearing re: 84 Riverford Road, #201200411: Variance requested: §242-402A – 35' structure to left side line, §242-402A – 35' structure to right side line for an incline elevator to the lake, at 9:14 p.m. N. Coppola seconded the motion, and it carried unanimously.

- d. **18 Maple Tree Road #201200412: Variance requested: §242-308G – 10' structure to left side line for an above ground swimming pool** (*ph close date 7/9/12*)

- 1. Map of pool location handed into Land Use 5/10/12

Alternate J. Brown was a Voting Member for this item.

D. Gonda, 18 Maple Tree Road, was present. Chairman Flynn indicated that he inspected the site today. Mr. Gonda explained that he would like to install an 18 foot round pool, at this proposed location, due to the location of the septic and pump chamber.

Mr. Gonda noted that his property is a corner lot, with two front yards. Trees provide privacy from the road.

No one present to speak in favor of the application, nor was anyone present to speak in opposition.

Vice Chairman Timmerman moved to close the Public Hearing re: 18 Maple Tree Road, #201200412: Variance requested: §2420397G – 10' structure to the left side line for an above ground swimming pool, at 9:17 p.m. He then rescinded his motion, and read two letters related to the application.

A letter from the neighbors, Ms. Piel and Mr. Gray, 16 Maple Tree Road, in favor of the application, was read. Additionally, a letter from E. Laverty, 7 Maple Tree Road, in favor of the application, was read.

Vice Chairman Timmerman moved to close the Public Hearing re: 18 Maple Tree Road, #201200412: Variance requested: §2420397G – 10' structure to the left side line for an above ground swimming pool, at 9:18 p.m. G. Meyerle seconded the motion, and it carried unanimously.

- e. **19 Gereg Glen Road #201200418: Variance requested: §242-310D(4) & §242-402A – 9' structure to rear lot line; §242-310D(4) & §242-402A – 10' structure**

to right side line for a new home (*ph close date 7/9/12*)

1. Map titled “Zoning Location Survey Showing Proposed House Location” prepared by CCA, LLC dated 5/11/12 – sheet 1 of 1

Alternate N. Coppola was a Voting Member for this item.

D. and J. Storrs, Property Owners, were present. Mr. Storrs indicated that the hardship for this variance relates to the soil and the Connecticut Health Code. He referenced the above map from CCA, and advised that Town Sanitarian Paul Avery is also aware of the change. The proposed plans reviewed, as well as the original house. The proposal is to move the house back to accommodate the septic trench. Mr. Storrs advised it cannot be moved forward because of footing drains.

Upon inquiry from Chairman Flynn, Mr. Storrs advised there is no change in size of the proposed house.

Mr. Storrs discussed that he was unable to put a deck on the house, so he was going to put a stone patio on the site. However, a potential buyer indicated he wanted a deck and screened in porch.

Upon inquiry from Chairman Flynn, Mr. Storrs stated that he did not believe the change would impact the neighbors. The Assessor’s Map was reviewed, and the houses on Flax Hill and the conservation subdivision were noted.

No one was present to speak in favor of the application.

S. Rak, 17 Flax Hill Rd., was present and spoke in opposition. He reviewed the plans, and noted that the applicant’s proposal will move the house closer to his property line, without any barriers or coverage.

Chairman Flynn indicated he would like to see the proposal staked out so that the Board members can inspect the property and view the impact to the abutters.

R. Nichols, 19 Flax Hill Rd., was also present and spoke in opposition to the proposal. He also noted the lack of coverage; pointing out that the property is sloping and is very visible.

The Assessor’s map was submitted for the file.

J. Correnti, 15 Flax Hill Rd., was present. He confirmed the lack of coverage for Mr. Rak’s yard, and questioned the hardship and whether there was an alternate location on the site. He advised that where the house is being proposed will provide the highest elevation.

S. Sullivan, P.E., CCA, 40 Old New Milford Rd., was present. He reviewed the original soil testing from 1999 and 2011. Mr. Storrs added that the location was moved in conjunction with discussion with P. Avery.

Mr. Storrs advised the property owner at 19 Flax Hill Road that there is a dead tree on that property that he would like cut down. He further agreed to stake the site.

Vice Chairman Timmerman read a letter from A. Wolshak and L. Shivey, 17 Gereg Glen Rd., indicating that they do not object to the structural changes, but requesting that all further site work be stopped until there is a contracted homeowner. They advised that for six years, work on the site has interfered with their enjoyment of their home. Photographs were attached.

Mr. Storrs advised the Board that he did have a buyer for the site, however, the buyer withdrew his/her interest as of June 1, 2012. Since the application was submitted on May 16, 2012, Mr. Storrs decided to still proceed.

Vice Chairman Timmerman moved to continue 19 Gereg Glen Road, #201200418: Variance requested: §242-310D(4) & §242-402A – 9’ structure to rear lot line: §242-310D(4) & §242-402A – 10’ structure to right side line for a new home, at 9:35 p.m., to next month’s regularly scheduled meeting. Mr. Storrs advised that he cannot move the proposed location of the house, as the septic has been installed. He noted it is within the setbacks. Mr. Rak inquired if the original proposed area is not being considered, and Chairman Flynn advised him that the property owner has the right to build within the setbacks. Mr. Rak contended that there were already variances, and Chairman Flynn explained that there were approvals by the Planning and Zoning Commissions, but not the Zoning Board of Appeals. One variance was granted in the subdivision at the corner lot. Mr. Storrs clarified the requested variances for P. Donohue. Motion carried unanimously.

Chairman Flynn advised Mr. Storrs to contact ZEO Dew when the property has been staked.

- f. 6 Music Hill Road #201200422: Variance requested: §242-402A- 32’ structure to center of road for an addition (ph close date 7/9/12)**
1. Map titled “Improvement Location Survey” prepared by Lewis Associates dated 4/20/12 revised 5/15/12

Alternate J. Brown was a Voting Alternate for this item.

T. and C. Worden, Property Owners, were present, with C. Stikes, Architect, 34 Farview Rd. Mr. Worden explained that he would like to put improvements to the existing house, including an addition for a master bedroom, a covered entry porch addition, and two-car garage. Mr. Worden reviewed the measurements from the front and center line of the road.

The hardship relates to the pre-existing, non-conforming structure, and the center of the road way is not the center of the right-of-way.

Chairman Flynn inquired of Mr. Stikes if he believed that the plan accurately reflects the center of the road, and Mr. Stikes advised that it did. Chairman Flynn explained that the Board uses the center of the road for measurements.

The existing elevations and the proposed revisions to the bathroom and porch were reviewed.

No one was present to speak in favor of the application, nor was anyone present to speak in opposition.

Vice Chairman Timmerman noted that the house was built before zoning, and Chairman Flynn noted its location in proximity to the cul-de-sac.

Mr. Stikes inquired regarding the scope of the work that could be done, and Chairman Flynn advised that he can do work within the parameters of what has been advertised.

Vice Chairman Timmerman moved to close the Public Hearing re: 6 Music Hill Road, #201200422: Variance requested: §242-402A – 32’ structure to center of road for an addition, at 9:52 p.m. G. Meyerle seconded the motion, and it carried unanimously.

- g. 204 Candlewood Lake Road (Candlewood East Marina) #201200423:
Variance requested: §242-501C(2) – 70’ structure to left side line; §242-501C(2) – 95’ drainage/utilities; §242-501C(2) – 70’ building/structure; §242-501C(2) – 70’ parking; §242-501C(2) – 90’ septic system; §242-501C(2) – 90’**

well; §242-501C(2) – 90’ fire tank; §242-501C(3)(c) – front yard loading to demo existing building / parking and rebuild building, parking and utilities in 100’ buffer (*ph close date 7/9/12*)

1. Map titled “Zoning Location Survey Showing Proposed Improvements” prepared by CCA, LLC dated 5/10/12 – sheet 1 of 1

- “Property & Topographic Survey” dated 3/9/12 revised 5/10/12 – sheet 1 of 1

Alternate N. Coppola was a Voting Member for this item.

S. Sullivan, PE, CCA, 40 Old New Milford Rd., was present. He reviewed the property, zoning and location information. Mr. Sullivan indicated that the property sits in an R40 zone, although it is not used for residential purposes. The footprint of the proposed building will make it more conforming. The property (building, parking and use) is currently pre-existing and non-conforming. The proposed structure does not meet the residential set back, so the request is for 70 feet. The parking is being relocated and that requires a 70 foot variance. Other variances relate to drainage, septic, well, and fire tank. The last variance is for front yard loading, which is a pre-existing condition and seasonal boat storage.

Mr. Sullivan referenced a sketch that shows the building to be removed; the existing pavement that will be removed, and the proposed building. He added that any improvement to the marina would require a variance, and the changes that are proposed will make the property more conforming, will not be detrimental to the surrounding neighbors, and will reduce the impervious surfaces.

T. Kokoris, Architect, was present. He reviewed the building design, which will reduce the non-conformity and have a residential quality. He noted the revisions to the service building. The architectural, colored renderings were shared with the Board members, and submitted for the record.

No one present to speak in favor of the application, nor was anyone present to speak in opposition.

M. O’Hara, Sr. was present, and advised he is trying to improve facility.

Mr. Kokoris added that the current building is not accessible.

Vice Chairman Timmerman moved to close the Public Hearing re: 204 Candlewood Lake Road, (Candlewood East Marina) #201200423: Variance requested: §242-501C(2) – 70’ structure to left side line; §242-501C(2) – 95’ drainage/utilities; §242-501C(2) – 70’ building/structure; §242-501C(2) – 70’ parking; §242-501C(2) – 90’ septic system; §242-501C(2) – 90’ well; §242-501C(2) – 90’ fire tank; §242-501C(3)(c) – front yard loading to demo existing building / parking and rebuild building, parking and utilities in 100’ buffer, at 10:02 p.m. G. Meyerle seconded the motion, and it carried unanimously.

h. 57 Meadow Brook Road #201200426: Variance requested: §242-402A – 2% of lot coverage for a deck (*ph close date 7/9/12*)

1. Map titled “Property Survey” prepared by CCA, LLC dated 10/6/03 – sheet 1 of 1

Alternate J. Brown was a Voting Member for this item.

C. Goodsell, Property Owner, was present, and discussed her plans to build a deck off of the pool. She indicated that her house sits in an R80 zone, and the property is non-conforming.

No one was present to speak in favor of the application. No one was present to speak in opposition.

P. Donohue moved to close the Public Hearing re: 57 Meadow Brook Road, #201200426: Variance requested: §242-402A – 2% of lot coverage for a deck, at 10:04 p.m. Vice Chairman Timmerman seconded the motion, and it carried unanimously.

5. CONTINUED PUBLIC HEARING:

- a. 49 Mist Hill Drive #201200277: Variance requested: §242-402A – 4’ structure to center of road for an addition of a 2 car garage (ph close date 6/11/12)**

Alternate N. Coppola was a Voting Member for this item.

Attorney W. Donaldson, was present on behalf of the property owner, F. Aguyo, who was also present.

There was discussion regarding the prior variances requested, and a review of the Minutes of those meetings. Chairman Flynn reviewed the prior variances: 9/11/06 (a proposal that was denied); 4/9/07 (a “more reasonable” proposal that was granted). Chairman Flynn noted that after that variance was granted, Mr. Aguyo added on to the house and exceeded the variances (referencing a letter from prior ZEO W. Schappert dated 2/11/09). Subsequently, at the 11/2/09 ZBA meeting, Mr. Aguyo appeared due to the fact that he exceeded the variances. At that time, the Board granted a 1.4 foot to the left side line, and 1.5% lot coverage, for a garage. This is the fourth proposal Mr. Aguyo has brought to the Board.

Chairman Flynn noted that the 11/2/09 Minutes specify that the only thing that was being considered was the left side variance, and that he recalled there was no discussion beyond that.

Attorney Donaldson indicated that his review of those Minutes revealed a discussion of the left side variance, and the 1.5% lot coverage *for a two-car garage*. He referenced a map reviewed at the 11/2/09 meeting.

Upon inquiry from Board member G. Meyerle, it was noted that the garage has not yet been built. Vice Chairman Timmerman recalled that there was discussion regarding the two-car garage, but not as it related to getting an additional four feet to the right, but rather to the left, without the porch.

Attorney McDonald indicated that after consulting Town Counsel, his client is making the additional 5 foot request which he contends did not make the public record at the 11/2/09 meeting. The current application is for a four foot variance, in addition to the five feet that has already been granted.

No one was present to speak in favor of the application, nor was anyone present to speak in opposition.

Vice Chairman Timmerman moved to close the Public Hearing re: 49 Mist Hill Drive, #201200277: Variance requested: §242-402A – 4’ structure to center of road for an addition of a 2-car garage, at 10:15 p.m. G. Meyerle seconded the motion, and it carried unanimously.

- b. 27 Huckleberry Hill Road #201200307: Variance requested: §242-402A – 25’ structure to right side line, §242-402A – 20’ structure to left side line for a shed (ph close date 6/11/12)**

Alternate J. Brown was a Voting Member for this item.

S. Turco, 27 Huckleberry Hill Road, was present. Chairman Flynn reviewed that there was an error in the application last month. He further advised that he visited the site.

The Board noted last month’s testimony, as well as the reasonableness of the application.

No one was present to speak in favor of the application, nor was anyone present to speak in opposition.

Vice Chairman Timmerman moved to close the Public Hearing re: 27 Huckleberry Hill Road, #201200307: Variance requested: §242-402A – 25’ structure to right side line, §242-402A – 20 structure to left side line for a shed, at 10:17 p.m. N. Coppola seconded the motion, and it carried unanimously. Motion carried unanimously.

A recess was taken from 10:18 p.m. to 10:23 p.m.

DELIBERATIONS

- a. 1 High Ridge Road #201200355: Appeal of Zoning Enforcement Officer’s decision (ph close date 7/9/12)**

This matter was continued to the July 9, 2012 meeting.

- b. 51 Candlewood Shores Road #201200354: Variance requested: §242-402A – 9’ structure to center of road for front steps (ph close date 7/9/12)**

1. Map titled “Proposed Sanitary Disposal System Plan” prepared by Arthur Howland & Assoc. dated 9/4/08 – sheet SDS.1
2. Map of “Elevations” prepared by Joseph Crocco Architects dated 7/27/09 – sheet A-3

This matter was continued to the July 9, 2012 meeting.

- c. 84 Riverford Road #201200411: Variance requested: §242-402A – 35’ structure to left side line, §242-402A – 35’ structure to right side line for an incline elevator to the lake (ph close date 7/9/12)**

1. Map of site for track to run the incline elevator received in Land Use 5/11/12
2. Letter from Scott and Deborah Taylor to Zoning Board of Appeals dated 5/22/12 Re: 84 Riverford Road Variance Request

Alternate N. Coppola was a Voting Member for this item.

Vice Chairman Timmerman moved to approve 84 Riverford Road, #201200411: Variance requested: §242-402A – 35’ structure to left side line, §242-402A – 35’ structure to right side line for an incine elevator to the lake, at 9:14 p.m. N. Coppola seconded the motion. Chairman Flynn stated that the applicant did not prove a hardship related to the land, and the impacted neighbor has objected in a letter. Chairman Flynn acknowledged the narrow access, but reiterated that there is no basis in law. The remainder of the property is usable. There was discussion regarding the steps, whether the potential for litigation should be taken into account of the Board’s decision, and other alternatives. Motion failed, 3-2, with Chairman Flynn and Vice Chairman Timmerman voting against the motion. Variance denied. Reason: Hardship not proven.

- d. 18 Maple Tree Road #201200412: Variance requested: §242-308G – 10’ structure to left side line for an above ground swimming pool (ph close date 7/9/12)**

1. Map of pool location handed into Land Use 5/10/12

Alternate J. Brown was a Voting Member for this item.

Vice Chairman Timmerman moved to approve 18 Maple Tree Road, #201200412: Variance requested: §2420397G – 10’ structure to the left side line for an above ground swimming pool. J. Brown seconded the motion. Chairman Flynn noted that the neighbors are in favor of the application, and Vice Chairman

Timmerman added that the property has two front yards. Motion carried unanimously. *Variance approved.* Reason: Two front yards.

- e. **19 Gereg Glen Road #201200418: Variance requested: §242-310D(4) & §242-402A – 9’ structure to rear lot line; §242-310D(4) & §242-402A – 10’ structure to right side line for a new home** (*ph close date 7/9/12*)
 - 1. Map titled “Zoning Location Survey Showing Proposed House Location” prepared by CCA, LLC dated 5/11/12 – sheet 1 of 1

This matter was continued to the July 9, 2012 meeting.

- f. **6 Music Hill Road #201200422: Variance requested: §242-402A- 32’ structure to center of road for an addition** (*ph close date 7/9/12*)
 - 1. Map titled “Improvement Location Survey” prepared by Lewis Associates dated 4/20/12 revised 5/15/12

Alternate J. Brown was a Voting Alternate for this item.

Vice Chairman Timmerman moved to approve 6 Music Hill Road, #201200422: Variance requested: §242-402A – 32’ structure to center of road for an addition. N. Coppola seconded the motion. The acreage and house location were reviewed, and it was noted that it is a pre-existing, non-conforming property. It was further stated that half of the property is on the cul-de-sac, which makes the property unique. Motion carried unanimously. Variance approved. Reason: Odd centering of the road; the proposed addition is an improvement, and safety is also improved with the overhang.

- g. **204 Candlewood Lake Road (Candlewood East Marina) #201200423: Variance requested: §242-501C(2) – 70’ structure to left side line; §242-501C(2) – 95’ drainage/utilities; §242-501C(2) – 70’ building/structure; §242-501C(2) – 70’ parking; §242-501C(2) – 90’ septic system; §242-501C(2) – 90’ well; §242-501C(2) – 90’ fire tank; §242-501C(3)(c) – front yard loading to demo existing building / parking and rebuild building, parking and utilities in 100’ buffer** (*ph close date 7/9/12*)
 - 1. Map titled “Zoning Location Survey Showing Proposed Improvements” prepared by CCA, LLC dated 5/10/12 – sheet 1 of 1
 - “Property & Topographic Survey” dated 3/9/12 revised 5/10/12 – sheet 1 of 1

Alternate N. Coppola was a Voting Member for this item.

Vice Chairman Timmerman moved to approve 204 Candlewood Lake Road, (Candlewood East Marina) #201200423: Variance requested: §242-501C(2) – 70’ structure to left side line; §242-501C(2) – 95’ drainage/utilities; §242-501C(2) – 70’ building/structure; §242-501C(2) – 70’ parking; §242-501C(2) – 90’ septic system; §242-501C(2) – 90’ well; §242-501C(2) – 90’ fire tank; §242-501C(3)(c) – front yard loading to demo existing building / parking and rebuild building, parking and utilities in 100’ buffer. P. Donohue seconded the motion. Chairman Flynn noted that the applicant is making the site more conforming and reducing the impervious surface. Motion carried unanimously. Variance approved. Reason: Lot is more conforming, improves the neighborhood, and reduces impervious surfaces.

- h. **57 Meadow Brook Road #201200426: Variance requested: §242-402A – 2% of lot coverage for a deck** (*ph close date 7/9/12*)
 - 1. Map titled “Property Survey” prepared by CCA, LLC dated 10/6/03 – sheet 1 of 1

Alternate J. Brown was a Voting Member for this item.

Vice Chairman Timmerman moved to approve 57 Meadow Brook Road, #201200426: Variance requested: §242-402A – 2% of lot coverage for a deck. G. Meyerle seconded the motion. Chairman Flynn noted the upzoning and shape of the lot. Motion carried unanimously. *Variance approved.* Reason: Upzoning.

5. CONTINUED PUBLIC HEARING:

- a. **49 Mist Hill Drive #201200277: Variance requested: §242-402A – 4’ structure to center of road for an addition of a 2 car garage (ph close date 6/11/12)**

Alternate N. Coppola was a Voting Member for this item.

Vice Chairman Timmerman moved to approve 49 Mist Hill Drive, #201200277: Variance requested: §242-402A – 4’ structure to center of road for an addition of a 2-car garage, at 10:15 p.m. N. Coppola seconded the motion. Vice Chairman Timmerman noted that no hardship was demonstrated, and that this application is not different than that filed in 2006. Additionally, the lot coverage variance granted in November 2009 was sufficient to accomplish the applicant’s needs. Chairman Flynn noted that the Board has been reasonable with the applications filed for this property. Motion failed, 0-5. *Variance denied.* Reason: No hardship proven, and the request was not reasonable.

- b. **27 Huckleberry Hill Road #201200307: Variance requested: §242-402A – 25’ structure to right side line, §242-402A – 20’ structure to left side line for a shed (ph close date 6/11/12)**

Alternate J. Brown was a Voting Member for this item.

Vice Chairman Timmerman moved to approve 27 Huckleberry Hill Road, #201200307: Variance requested: §242-402A – 25’ structure to right side line, §242-402A – 20 structure to left side line for a shed, at 10:17 p.m. J. Brown seconded the motion. Chairman Flynn noted the reasonableness of the request, and the two front yards on the property. Motion carried unanimously. *Variance approved.* Reason: Two front yards and it would be difficult to place the structure anywhere else on the site.

6. TABLED ITEMS: None.

7. NEW BUSINESS: None.

8. INFORMAL DISCUSSION: None.

9. ADJOURN - N. Coppola moved to adjourn the meeting at 10:42 p.m. Vice Chairman Timmerman seconded the motion, and it carried unanimously.

****Next meeting Scheduled for July 9, 2012****