

**APPROVED AMENDED MINUTES
REGULAR MEETING
BROOKFIELD ZONING BOARD OF APPEALS
Monday, August 6, 2012 – 7:00 p.m.
MEETING ROOM 133 – TOWN HALL 100 POCONO RD**

1. CONVENE MEETING

Present: Chairman M. Flynn, Vice Chairman C. Timmerman, Secretary S. Wallman, G. Meyerle, Alternate and Voting Members where indicated J. Brown and N. Coppola (arrived at 7:04 p.m.)

Absent: P. Donohue

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

Chairman Flynn convened the meeting at 7:02 p.m. and established a quorum of members. He then reviewed the policies and procedures that govern public hearings.

2. **REVIEW OF MINUTES – 7/9/12 – Vice Chairman Timmerman moved to approve the Minutes of the July 9, 2012 meeting. G. Meyerle seconded the motion, and it carried, 4-0-1, with Secretary Wallman abstaining.**

3. **REVIEW CORRESPONDENCE:**

- a. Minutes of other Boards and Commissions: Zoning Commission 6/28/12, 7/12/12; Inland Wetlands Commission 6/25/12, 7/7/12 special, 7/9/12; Planning Commission 7/12/12; Zoning Subcommittee
- b. Building Inspectors: July 2012 Issue
- c. CT Federation of Planning & Zoning Agencies Quarterly Newsletter: Summer 2012
- d. Citation: Affiliated Realty, LLC VS Brookfield Zoning Board of Appeals, Inland Wetland Commission, Zoning Commission, Alice Dew (Zoning Enforcement Officer), Katherine Daniel (Wetland Enforcement Officer), Brianna Marciniak and Matthew Marciniak – dated 7/27/12

No discussion/no motions.

4. **PUBLIC HEARINGS – 7:00 P.M.**

- a. **273 Whisconier Road (Brookfield Craft Center) #201200581: Variance requested - §242-306C(2)(a) – 10’ structure to center of road; §242-306F(2) – extra roadside sign (ph close date 9/10/12)**

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

J. Deegan, Board of Trustees, and B. Drillick, Brookfield Craft Center, were present. The variance relates to a request for an additional sign. Chairman Flynn advised that he has reviewed the location, and the members of the Board are familiar with the Craft Center. Mr. Deegan

indicated that two signs are necessary because of the curve in the road. There was discussion regarding the steep topography at the site. Additionally, there are safety and parking concerns.

Upon inquiry from Vice Chairman Timmerman, there was discussion regarding the original and current sign, and it was noted that it is difficult to see the current sign due to the presence of the trees.

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: 273 Whisconier Road (Brookfield Craft Center) #201200581: Variance requested - §242-306C(2)(a) – 10’ structure to center of road; §242-306F(2) – extra roadside sign, at 7:10 p.m. Secretary Wallman seconded the motion, and it carried unanimously.

b. 1 High Ridge Road #201200579: Appeal of enforcement decisions made by Zoning Commission/ZEO on the following files (ph close date 9/10/12)

Vice Chairman Timmerman read the legal notice dated 201200579, Appeal of Enforcement Decisions of Zoning Commission and ZEO regarding files #201200372; 201200370; 201200374; and a complaint regarding 22 Beech Tree Road, #201200536.

1. File #201200372 –

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

ZEO Dew referenced a photograph in the file of the tent/garage on property; showing that the vinyl siding has been shredded. The structure violates Zoning Regulation Section 242-401D(2)(a), as it is not permitted, and is no longer usable for the purpose intended. The Zoning Commission has agreed that the structure is a violation.

Dr. Zaky, 1 High Ridge Rd., was present, and advised that the structure is “in a state of disrepair” and he is awaiting a new cover. He was advised that by Chairman Flynn that the structure is not allowed without a permit, regardless of the presence of a cover. Chairman Flynn read the aforementioned regulation.

Dr. Zaky contended that the structure has been there for over three years and is exempt from the regulation’s purview under Connecticut General Statute Section 8-13a. He indicated he has proof of the age of the structure, however, he does not have it with him tonight. ZEO Dew advised that Dr. Zaky has not submitted any documentation demonstrating that the structure is pre-existing.

G. Meyerle inquired of Dr. Zaky what he wishes to do with the structure, and Dr. Zaky advised that he would like to repair it. He further stated that it has been in disrepair for approximately six months.

Chairman Flynn inquired why Dr. Zaky did not bring the documentation, as he has been through this enforcement procedure with the Zoning Commission already, and Dr. Zaky advised he did

not bring any information because he “knows” the Board’s decision is going to be “pre-determined”.

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: Appeal of enforcement decision made by Zoning Commission/ZEO on the following file: #201200372, at 7:18 p.m. G. Meyerle seconded the motion, and it carried unanimously.

2. File #201200370:

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

ZEO Dew reported that the violation relates to debris and material in the front yard that is not permitted. The material would be allowed in the side or rear yard, as long as it is densely screened. ZEO Dew referenced a photograph in the file, and advised that the material includes pool stairs and a slide, and several pallets. A complaint was lodged by the neighbor because it can be seen clearly from that property at 22 Beech Tree Road. The Zoning Commission agreed that it is a violation.

Dr. Zaky contended that “a majority of pallets have been used”, and that the building materials are in the side and rear yards and have been fenced and screened. ZEO Dew advised that the fencing is partially solid screening, but the remainder is “deer fence”.

Vice Chairman Timmerman inquired of ZEO Dew if the violation relates to the crack in the pool, and she advised that only as the pool stairs were part of an old pool. When Chairman Flynn noted the longevity of the presence of the building materials, Dr. Zaky stated that he cannot finish the work because of the Cease and Desist Orders that have been issued.

There was discussion regarding the information presented to the Zoning Commission.

Dr. Zaky advised that the slide and parts of old pool are not broken; therefore, they are not debris. Upon inquiry from Chairman Flynn, ZEO Dew pointed out what were parts of the old pool. She has been unable to inspect the material because she has been prohibited from the property without the owner’s permission.

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

G. Cava, Attorney, 73 Southbury Rd., Roxbury, CT, was present on behalf of the Marciniaks. He expressed his concern regarding the location of the storage of materials, advising that it is in the middle of a drainage area installed by original builder. He further advised that it is causing drainage problems. He suggested that it be placed behind the wall in the pool enclosure rather than in the middle of on-site drainage.

Vice Chairman Timmerman moved to close the Public Hearing re: Appeal of enforcement decision made by Zoning Commission/ZEO on the following file: 201200370, at 7:27 p.m. Secretary Wallman seconded the motion, and it carried unanimously.

3. File #201200374 -

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

ZEO Dew advised that this violation relates to lights shining from 1 High Ridge Road, onto 22 Beech Tree Road. The light is mounted on Dr. Zaky's garage, and is approximately 20' from property line.

Upon inquiry from Chairman Flynn, Dr. Zaky advised that the light was pre-existing and has been there since the garage was built, which pre-dates zoning regulation. He further stated that it is on a motion sensor. Dr. Zaky advised he has proof that the garage was built in 1992. Attorney Cava noted that the property was purchased from Mr. Alan Harrison. *Mr. Alan Harrison was present*, and indicated that the garage was previously a shed, and did have lights on it, but they were broken. Dr. Zaky purchased the property in 2006. Mr. Harrison advised that the lights shine straight into his son-in-law's bedroom window, and they are not on a motion sensor, but stay on throughout the night.

Map ID G12//011// (2 pages) was entered for the record.

There was discussion regarding the history of the lights on the property.

Attorney Cava reiterated that the light has nothing to do with the recreational vehicle at 22 Beech Tree Road, and Dr. Zaky has presented no evidence of the light's installation.

ZEO Dew advised that the Superior Court, Small Claims, agreed that the Citation and fines related to the light, in the amount of \$1,600.00, were properly issued.

Secretary Wallman inquired of Dr. Zaky why he continues to leave the light on, and Dr. Zaky advised that he "has an issue with his (Mr. Harrison's) RV ... why does he continue to". Dr. Zaky also referenced the presence of two video cameras on the Marciniak's house. Mr. Harrison advised that he is videotaping the property.

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: Appeal of enforcement decisions made by Zoning Commission/ZEO on the following file: #201200374. Secretary Wallman seconded the motion, and it carried unanimously.

4. 22 Beech Tree Road – Complaint – File #201200536 –

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

ZEO Dew advised that the complaint, filed by Dr. Zaky, relates to the presence of the RV without screening, and debris. She further stated that there is not a regulation that addresses the need to screen a vehicle in a designated drive. Dr. Zaky reiterated his contention that the RV is not a vehicle, as he believes that Mr. Harrison lives in it. Dr. Zaky indicated that he videotaped Mr. Harrison living in the vehicle last week, and that the Board could request that video from Mr. Harrison.

Attorney Cava reviewed that the Zoning Commission and the ZBA have already determined that Mr. Harrison is not occupying the vehicle, the vehicle has not been present for 180 consecutive

days, and it is parked on a designated drive. Additionally, the Zoning Commission has also found that there is no debris on the property at present. Attorney Cava stated that there was part of a pool fence, but it came from Dr. Zaky's property, and Mr. Marciniak removed it.

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

Dr. Zaky advised that he has evidence to support his claim, and it will be presented in the Superior Court action.

Secretary Wallman moved to close the Public Hearing re: Appeal of enforcement decisions made by Zoning Commission/ZEO on the following file: 22 Beech Tree Road – Complaint – File #201200536, at 7:42 p.m. Vice Chairman Timmerman seconded the motion, and it carried unanimously.

- c. 51 Candlewood Shores Rd. #201200621: Variance requested – §242-402A – 4' structure to center of road for front steps (ph closed 9/10/12)**

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

J. Morra, 51 Candlewood Shores Rd., was present.

Chairman Flynn polled the Board members regarding their opinions on whether this application was significantly different from the applicant's prior application. The Board members unanimously agreed that it was and decided to hear the application.

Mr. Morra presented a plan that turns the steps. The application was modified to reflect the legal notice, and initialed by the applicant.

Vice Chairman Timmerman reviewed the applicable regulation.

N. Caron was present, and spoke in favor of the application. Chairman Flynn referenced her letter of July 12, 2012, also signed by other neighbors in support of the application.

Chairman Flynn advised Ms. Caron that there are no approved drawings, as she stated in her letter. ZEO Dew clarified that the previous ZEO received a foundation plan. Chairman Flynn explained the approval process to Ms. Caron as it relates to the Zoning Commission and the Building Department.

J. Nasi, 57 Candlewood Shores Rd., was present, and spoke in favor of the application.

V. Pence, 57 Candlewood Shores Rd., was present, and spoke in favor of the application.

Chairman Flynn explained that the Zoning Commission and the ZBA are two different entities.

B. Lohan 72 North Lake Shore Dr., President, Candlewood Shores Tax District, was present. He stated that the applicant has not demonstrated hardship that would necessitate ZBA granting variance. He questioned the applicant/builder's lack of understanding of the regulation.

J. Berger, 63 Candlewood Shores Rd., was present. He reviewed the developments in septic technology, noting that it has increased the ability to build on many lots in the Candlewood

Shores. He questioned whether this application is different than the previous one, and advised he does not feel there is a genuine hardship. Mr. Berger advised he is requesting that the current regulations for the zone be enforced.

N. Caron pointed out that the variance is not the rule, but "the exception to the rule".

Mr. Lohan noted the importance of builders following the regulations because the lots are so small.

Mr. Berger pointed out that financial reasons do not qualify for granting a hardship.

Mr. Morra reviewed his submission of documents after the purchase of the property, and reiterated his belief that the plans were approved, and noted that he was unaware of the issue until he looked into extending the overhang.

Vice Chairman Timmerman moved to close the Public Hearing re: 51 Candlewood Shores Rd., #201200621: Variance requested - §242-402A – 4’ structure to center of road for front steps, at 8:00 p.m. G. Meyerle seconded the motion, and it carried unanimously.

The plans for the stairs were entered into the record.

- d. 366 Federal Road (Healthy Weighs, LLC), #201200631: Variance requested - §242-305C(1) – Two (2) existing spaces abutting Old New Milford Rd. are not contiguous to a drive for Off Street Parking Size & Construction; §242-305C(3) – Two (2) existing spaces abutting Old New Milford Rd. are not contiguous to a drive for Ingress/Egress; §242-305C(4) – 6.56’ Aisle Width-South parking area, §242-305C(4) – 17.3’; §242-305C(6) – Allow Parking closer than 25’ to front lot line for Parking Setbacks – 25’ from lot line; §242-305C(6) – 7.97’ Parking Setbacks – 10’ separation strip; §242-305C(10) – No lighting – Existing/Non-Conforming for lighting; §242-305G – No Loading (Existing/Non-Conforming) for Loading Areas; §242-306 – 3 Existing/Non-Conforming signs; §242-501 – 12,355 sq. ft. lot area; §242-501C(3) – structure in 25’ front yard buffer for Front Yard Buffer; §242-501C(3)(c) – structure in 25’ front yard buffer for Use of Front Yard; §242-501E(1)(b) – 61.41’ for Front Yard Setbacks-Commercial; §242-501J(3)(a) – Reduction in street side landscape buffer for Perimeter landscaped Area – Street Side Buffer; §242-501J(3)(a) – no berm for Perimeter Landscaped Area-Berm; §242-501J(3)(c) – 7.97’ Reduction in building separation strip dimension; Allow structure and overhang in Separation Strip for Building Separation Strips; §242-501J(1)(e)(1) – 5.16’ Reduction in landscaped end islands dimensions; elimination of required end island planting (south end of ex. Building) for Parking Lot Areas – End Islands; §242-602G(3)(g) – 7.56’ for Traffic Access-Driveway Entrance; §242-602G(3)(j) – Two (2) existing access drives, one via Federal Road and one via Old New Milford; Additional access via 2 existing spaces to remain along Old New Milford Road for Traffic Access-Driveway Connection for an addition to the existing building (ph close date 9/10/12)**

- 1. Map titled "Main & Lower Level Floor Plans" prepared by Architecture Design Alliance dated 7/18/12 – drawing #ZBA-1

- Second Floor Plan & Elevations” dated 7/18/12 – drawing #ZBA-2
- 2. Map titled “Property & Topographic Survey” prepared by CCA, LLC dated 5/15/12 – Sheet 1 of 1
- 3. Map titled “Zoning Location Survey” prepared by CCA, LLC dated 7/18/12 – sheet C1
- 4. Letter from Pastor P. Morgan dated 07/20/12 Re: Notice of Application for Healthy Weighs

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

Attorney C. Cuggino, Chipman & Mazzucco, 39 Old Ridgebury Road, Danbury, CT, was present, with her client, J. Conner, Principal, Healthy Weighs, and A. Adams, Registered Landscape Architect, CCA, 40 Old New Milford Rd. Attorney Cuggino submitted the certified mail receipt cards for the file.

Attorney Cuggino advised that the application relates to an addition. The use of the building will be for professional offices, for sales and services for personal care, by Dr. Conner. A. Adams reviewed the existing structure, parking and access. The applicant is proposing an additional 961 square feet to the current 964 square feet. The architectural plans were reviewed. Sewer and water service will exist at the site.

Ms. Adams advised that all of the variances being requested are pre-existing and non-conforming. Chairman Flynn pointed out that the variances are not in excess of the plan that is being submitted.

Ms. Adams reviewed in detail the variances that relate to the two front yards, access, parking, aisle width, and separation strips. Some of the variances make the property more conforming, and the proposal will also upgrade the handicapped accessibility. Ms. Adams indicated that the application is not adding any lighting to the parking area. Ms. Conner stated that the business has been there for 16 years, and lighting has not been a problem and is not a safety concern.

Ms. Adams further advised that the plan does not propose a loading area, and that requires a variance. The applicant is also proposing three signs. An additional variance relates to lot area. Ms. Adams reviewed the variance request for a front yard buffer strip. Attorney Cuggino indicated that the applicant is being conservative in its request of a variance under Section 242-501C(3), as the Zoning Commission has not allowed anything within the 25-foot buffer historically. Chairman Flynn advised the applicant’s representatives that the Board tries to avoid granting unnecessary variances. He indicated he would allow the applicant to return, if necessary, with a request for the Zoning Commission’s interpretation of the regulation.

Ms. Adams then reviewed the variances that relate to the location of a concrete pad, the landscaped buffer, traffic access, parking and driveway access.

The calculation for the lot area was corrected on the application.

Attorney Cuggino referenced a letter in support of the application from the pastor of the neighboring First Assembly of God dated July 20, 2012. Dr. Conner advised that she also

received telephone calls in support of the application from the nearby YMCA and Dr. Pellegrino on behalf of the tenants of 60 Old New Milford Rd.

The statement of hardship was read by Attorney Cuggino, noting that the property is unique and undersized, and the latter factor has been recognized as a valid hardship in Connecticut courts.

Chairman Flynn inquired further regarding the variance requests that relate to Sections 501C(3) and 501C(3)(c), and it was acknowledged by the applicant's representatives that they may not need those variance.

W. Conner was present, and spoke in favor of the application. A. Harrison, 22 Beech Tree Road, was present, and spoke in favor of the application.

Vice Chairman Timmerman moved to close the Public Hearing re: 366 Federal Road (Healthy Weighs, LLC) #201200631, Variances as listed above. Secretary Wallman seconded the motion, and it carried unanimously.

A recess was taken from 8:41 p.m. to 8:48 p.m.

DELIBERATIONS

- a. 273 Whisconier Road (Brookfield Craft Center) #201200581: Variance requested - §242-306C(2)(a) – 10' structure to center of road; §242-306F(2) – extra roadside sign (ph close date 9/10/12)**

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

Vice Chairman Timmerman moved to approve 273 Whisconier Road, #201200581: Variance requested - §242-306C(2)(a) – 10' structure to center of road; §242-306F(2) – extra roadside sign. Secretary Wallman seconded the motion. Motion carried unanimously. Variance approved. Reason: Topography and odd lot shapes for both variances.

- b. 1 High Ridge Road #201200579: Appeal of enforcement decisions made by Zoning Commission/ZEO on the following files (ph close date 9/10/12)**
1. File #201200372 –

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

Vice Chairman Timmerman moved to uphold the enforcement decision made by the Zoning Commission/ZEO and deny the appeal for #201200372. Secretary Wallman seconded the motion, and it carried unanimously. Decision upheld; appeal denied. Reason: The appellant did not present any proof that the structure was present for three years or more, and subject to Connecticut General Statutes Section 8-13a.

2. File #201200370:

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

Vice Chairman Timmerman moved to uphold the enforcement decision made by the Zoning Commission/ZEO and deny the appeal for #201200370. G. Meyerle seconded the motion. Motion carried unanimously. *Decision upheld; appeal denied.* Reason: No evidence was presented to support a decision contrary to that of the Zoning Commission/ZEO.

3. File #201200374 -

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

Vice Chairman Timmerman moved to uphold the enforcement decision made by the Zoning Commission/ZEO and deny the appeal for #201200374. G. Meyerle seconded the motion, and it carried unanimously. *Decision upheld; appeal denied.* Reason: No evidence was presented to show that the light was there prior to the Zoning regulations.

4. 22 Beech Tree Road – Complaint – File #201200536 –

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

Vice Chairman Timmerman moved to uphold the enforcement decision made by the Zoning Commission/ZEO regarding 22 Beech Tree Road, #201200536. G. Meyerle seconded the motion, and it carried unanimously. *Decision upheld/appeal denied.* Reason: No evidence presented contrary to the decision of the Zoning Commission that the vehicle is parked in a designated drive.

c. 51 Candlewood Shores Rd. #201200621: Variance requested – §242-402A – 4’ structure to center of road for front steps (*ph closed 9/10/12*)

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

Vice Chairman Timmerman moved to approve 51 Candlewood Shores Rd., #201200621: Variance requested - §242-402A – 4’ structure to center of road for front steps. Secretary Wallman seconded the motion. Motion carried unanimously. *Variance approved.* Reason: Topography/steepness in the front yard.

d. 366 Federal Road (Healthy Weighs, LLC), #201200631: Variance requested - §242-305C(1) – Two (2) existing spaces abutting Old New Milford Rd. are not contiguous to a drive for Off Street Parking Size & Construction; §242-305C(3) – Two (2) existing spaces abutting Old New Milford Rd. are not contiguous to a drive for Ingress/Egress; §242-305C(4) – 6.56’ Aisle Width-South parking area, §242-305C(4) – 17.3’; §242-305C(6) – Allow Parking closer than 25’ to front lot line for Parking Setbacks – 25’ from lot line; §242-305C(6) – 7.97’ Parking Setbacks – 10’ separation strip; §242-305C(10) – No lighting – Existing/Non-Conforming for lighting; §242-305G – No Loading (Existing/Non-Conforming) for Loading Areas; §242-306 – 3 Existing/Non-Conforming signs; §242-501 – 12,355 sq. ft. lot area; §242-501C(3) – structure in 25’ front yard buffer for Front Yard Buffer; §242-501C(3)(c) – structure in 25’ front yard buffer for Use of Front Yard; §242-501E(1)(b) – 61.41’ for Front Yard Setbacks-Commercial; §242-501J(3)(a) – Reduction in street side landscape buffer for Perimeter

landscaped Area – Street Side Buffer; §242-501J(3)(a) – no berm for Perimeter Landscaped Area-Berm; §242-501J(3)(c) – 7.97’ Reduction in building separation strip dimension; Allow structure and overhang in Separation Strip for Building Separation Strips; §242-501J(1)(e)(1) – 5.16’ Reduction in landscaped end islands dimensions; elimination of required end island planting (south end of ex. Building) for Parking Lot Areas – End Islands; §242-602G(3)(g) – 7.56’ for Traffic Access-Driveway Entrance; §242-602G(3)(j) – Two (2) existing access drives, one via Federal Road and one via Old New Milford; Additional access via 2 existing spaces to remain along Old New Milford Road for Traffic Access-Driveway Connection for an addition to the existing building
(ph close date 9/10/12)

Vice Chairman Timmerman moved to approve 366 Federal Road, #201200631, as stipulated, as written up in legal and on the agenda. Secretary Wallman seconded the motion. The difficulty of the lot and the improvement of the building proposed were noted. The variances address existing setbacks. The Board is only approving the variances that are necessary to construct the building that has been presented in the application.

Chairman Flynn moved to amend the motion to approve those variances that are necessary to build the building and addition that have been submitted for the record and presented. Vice Chairman Timmerman seconded the motion. Motion carried unanimously.

Vote on amended motion also carried unanimously.

Variances approved. Reason: Shape of the lot, two front yards, and topography.

- 5. Tabled Items: None.
- 6. New Business: None.
- 7. Informal Discussion: None.

- 8. Adjourn: Vice Chairman Timmerman moved to adjourn the meeting at 9:00 p.m. Secretary Wallman seconded the motion, and it carried unanimously.

*****Next meeting Scheduled for September 10, 2012*****