

**APPROVED MINUTES
REGULAR MEETING
BROOKFIELD ZONING BOARD OF APPEALS
Monday, August 5, 2013 - 7:00 p.m.
MEETING ROOM 133 – TOWN HALL 100 POCONO RD**

1. CONVENE MEETING

Chairman M. Flynn convened the meeting at 7:04 p.m. and established a quorum of members. He then reviewed the policies and procedures that govern public hearings.

Present: Chairman M. Flynn, Vice Chairman C. Timmerman, G. Meyerle, Alternate and Voting Member S. Harding

Absent: Secretary S. Wallman, Alternate N. Coppola

Also Present: Recording Secretary D. Cioffi

2. REVIEW MINUTES - 7/1/13

Vice Chairman Timmerman moved to approve the Minutes of the July 1, 2013 meeting. G. Meyerle seconded the motion, and it carried unanimously.

3. REVIEW CORRESPONDENCE:

- a. **Minutes of other Boards and Commissions: Zoning Commission 6/13/13, 6/27/13, 7/11/13; Inland Wetlands Commission 6/24/13, 7/8/13; Planning Commission 6/20/13, 7/11/13; Zoning Sub-Committee**
- b. Legal Briefings for Building Inspectors: June 2013, July 2013

No discussion/no motions.

4. PUBLIC HEARINGS – 7:00 p.m.

- a. **28 Twilight Lane #201300635: Variance requested: §242-402A – 4.5’ structure to center of road for front concrete steps to a proposed new single family residence (ph close date 9/8/13)**
 - 1. Map titled “Septic System Design” prepared by CCA, LLC dated 12/14/07 revised thru 6/21/13 – sheet 1

R. Posthauer, CCA, P.E., 40 Old New Milford Rd., was present. The variance is for a new construction on a small lot, with a minimum two-bedroom sanitary system. The variance being requested is for the front steps. Mr. Posthauer indicated that the hardship is the size of the land and the requirements of the health code. Chairman Flynn inquired if there would be an overhang above the steps. The property owner, *Joe Patry, 28 Twilight Lane, was present.* Chairman Flynn explained that the overhang cannot exceed the amount requested by the variance, and Mr. Patry advised the overhang would not extend any farther than the steps. The exact size of the lot (.17 acres in a quarter-acre zone) was noted. G. Meyerle inquired regarding the drainage, specifically, the recharger, and Mr. Posthauer explained to the Board members how it works.

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

Vice Chairman Timmerman moved to close the Public Hearing for 28 Twilight Lane, #201300635, Variance requested: §242-402A – 4.5’ structure to center of road for front

concrete steps to a proposed new single family residence, at 7:10 p.m. S. Harding seconded the motion, and it carried unanimously.

Mr. Patry signed the consent form to be heard before a four-person Board, and this was entered into the file.

- b. 4 & 16 Elbow Hill Road #201300634: Variance requested: §242-501 – 19’ building height and §242-502 D(2) h(3) – 2,000 square feet for a new boat storage building (ph close date 9/8/13)**
1. “Site Plan” map prepared by CCA, LLC dated 5/24/13 – sheet S1

M. Rogg, 227 Candlewood Lake Road, and R. Posthauer, CCA, 40 Old New Milford Rd. were present.

Mr. Rogg signed the consent form to be heard before a four-person Board.

There was lengthy discussion regarding the history of the building height regulation and the changes over the years in the height allowance. Chairman Flynn indicated that he reviewed the most recent change that took place in April 2012, from 50 feet to 30 feet. He advised that the rationale behind the change was to correct an error. Mr. Posthauer went over the changes prior to the April 2012 change. There was discussion regarding previous variance requests for this site, and it was noted that there was a taking of some of the property by the State that made the lot narrower. Mr. Rogg discussed his desire to construct an indoor boat storage building and the issues with the lot being in an aquifer protection zone. He and Mr. Posthauer discussed the Pharmco approval and the modifications made to that building.

Mr. Rogg advised that he went through the regulation change application process for the 4 & 16 Elbow Hill Road site. He noted his disappointment regarding the change in height allowance under Section 242-501. He discussed the options for square footage and boat storage occupancy he proposes for the site.

G. Meyerle inquired regarding the hardship. Mr. Posthauer advised that the State taking created some of the steep slopes. He and Mr. Rogg discussed the limitations of building at the north and south sides of the site.

Chairman Flynn advised that the Board has never given a height variance and indicated that approval might be construed as spot-zoning. He further explained that the hardship has to be related to the land. R. Posthauer disagreed that it would be spot zoning; and that approval would set a precedent. Chairman Flynn suggested that the Zoning Commission would be the more appropriate venue for addressing this request.

At the Chairman’s request, Mr. Rogg reviewed the 10,000 and 12,000 square foot options and the water storage capacity for each. He indicated that the State code for boat storage is 12,000 square feet. Chairman Flynn inquired what the hardship would be for the 10,000 square footage request, and Mr. Rogg advised his only option is to lengthen the building. Mr. Posthauer stated that this option offers better protection for Town’s water supply because it is fewer levels, therefore, fewer boats and more water storage. G. Meyerle inquired if the applicant could design a building with the 30’ height restriction. Mr. Posthauer stated he would need the additional 2,000 square feet.

Mr. Rogg submitted a letter dated August 5, 2013, that explains his rationale. He also shared copies of photographs of buildings similar to what he is proposing. Upon inquiry from Vice Chairman Timmerman, Mr. Rogg stated that the Candlewood East boat storage building is 35 feet high, but is in a different zone.

P. Donohue, Indian Trail, Brookfield, CT, retired engineer, was present, and spoke in favor of the application. He discussed the increase in height allowances for warehouse buildings, citing improved fire protection. Mr. Donohue stated that the applicant’s proposal will capture water. He indicated that lower height warehouses are less likely to attract tenants. Mr. Donohue further noted that area municipalities allow up to sixty foot high warehouses. Chairman Flynn reiterated that the more proper venue for this discussion would be the Zoning Commission.

D. Plante, 32 Elbow Hill Road, was present, and spoke in opposition to the application, citing the preservation of the Town’s open space/green belt, the design of the building, the slope at the site that would add to the appearance of height, and the loss of scenic setting in the area. He also noted the residential nature of the area, and the role of 20 Elbow Hill Road to the proposal. His letter was submitted for the record.

JoAnne Bonefant, 36 Elbow Hill Rd., was present and spoke in opposition to the application. There was discussion regarding the height of the Candlewood East building, and the 20 Elbow Hill Road parcel. She recommended that the building should be “spread out”, rather than up.

John O’Malley, 35 Elbow Hill Rd. was present and spoke in opposition to the application.
N. Moore, 35 Elbow Hill Rd., was also present, and spoke in opposition to the application.
Sokol Haxhinasto, Kellie Lane, was present, and spoke in opposition to the application, citing his concern that more commercial characteristics may be asked for, as well as safety and traffic concerns (school buses and boat storage trailers).

Mr. Posthauer stated that he felt the above safety and traffic concerns would not be an issue as boat trailers would not back onto the road.

Vice Chairman Timmerman moved to close the Public Hearing for Variance requested: §242-501 – 19’ building height and §242-502 D(2) h(3) – 2,000 square feet for a new boat storage building, at 7:52 p.m. G. Meyerle seconded the motion, and it carried unanimously.

- c. **12 Pocono Ridge Road #201300663: Variance requested: §242-402A – 41’ structure to center of road for a deck** (*ph close date 9/8/13*)
 - 1. “Zoning Location Survey” prepared by Brautigam Land Surveyors, P.C. dated 11/30/12

Attorney M. McGetrick, White St., Danbury, CT, was present, on behalf of M. and E. Valentine, and advised that his clients would prefer to be heard before a full Board. This matter will be opened at the September 9, 2013 meeting.

- d. **108 North Lake Shore Dr #201300661: Variance requested: §242-402A – 2’ structure to rear lot line, §242-402A - .7% of lot coverage for a deck modification and landscaping** (*ph close date 9/8/13*)
 - 1. “Property & Topographic Survey” prepared by CCA, LLC dated 12/16/12 – sheet 1 of 1

2. “South & East Elevations” prepared by Partners Stoll & Stoll Architects dated 6/17/13 – sheet A5
 - “North & West Elevations” dated 6/17/13 – sheet A6
3. “Map Cover Sheet – List of Drawings” prepared by Studer Design Associates, Inc. dated 6/20/13
 - “Existing Conditions / Demolition Plan” dated 6/20/13 – sheet LA-1
 - “Site / Layout Plan” dated 7/17/13 – sheet LA-2
 - “Grading / Sediment And Erosion Controls Plan” dated 6/20/13 – sheet LA-3
 - “Planting Plan” dated 6/20/13 – sheet LA-4
 - “Landscape Lighting Plan” dated 6/20/13 – sheet LA-5
 - “Site Details” dated 6/20/13 – sheet LA-7
 - “Construction Notes And Specifications” dated 6/20/13 – sheet LA-7

N. Edelson, Property Owner, and Mr. Studer, Studer Design Associates, 27 Governor St., Ridgefield, CT, was present.

Mr. Edelson signed the consent form to be heard before a four-person Board.

Mr. Studer explained that the variances relate to lot coverage (a decrease of an existing non-conforming coverage) and a setback. He referenced sheet LA-2, and described the portions of the existing coverage that would be eliminated and reallocated. Mr. Studer advised that the hardship relates to the slope of the property to house, and the house to the lake. Additionally, the rear property line is the 440 line. Photographs of the site were submitted for the record. Mr. Studer indicated that First Light Power Company has been consulted. He added that the objective is to have a safe egress from the main living level of the house. He pointed out the two foot setback request on the plans. The request will be to encroach on the 440 line, rather than a neighbor. Mr. Studer submitted a copy of the Revised Shoreline Management Plan dated June 30, 2009, from First Light to the Federal Energy Regulatory Commission, which was adopted by Brookfield. Mr. Studer reiterated that the hardship is the topography, the placement of the house relative to the property line, the occupants’ need and function. He discussed Amendment 4 that recognizes the smallness of the lots in that area.

In summary, Mr. Studer stated that the request is not out of character with the neighborhood, the shoreline, and that there are genuine hardships related to the land.

No one was present to speak in opposition to the neighborhood, nor was anyone present to speak in opposition.

Vice Chairman Timmerman moved to close the Public Hearing for 108 North Lake Shore Drive, #201300661: Variance requested: §242-402A – 2’ structure to rear lot line, §242-402A - .7% of lot coverage for a deck modification and landscaping, at 8:09 p.m. S. Harding seconded the motion, and it carried unanimously.

A brief recess was taken from 8:09 p.m. to 8:13 p.m.

DELIBERATIONS

- a. **28 Twilight Lane #201300635**: Variance requested: §242-402A – 4.5’ structure to center of road for front concrete steps to a proposed new single family residence (*ph close date 9/8/13*)
1. Map titled “Septic System Design” prepared by CCA, LLC dated 12/14/07 revised thru 6/21/13 – sheet 1

Vice Chairman Timmerman moved to approve 28 Twilight Lane, #201300635, Variance as advertised. He noted that the house will be the same as those near it. S. Harding seconded the motion, and it carried unanimously. *Variance granted. Reason: The lot size; and the request is in keeping with the neighborhood.*

- b. **4 & 16 Elbow Hill Road #201300634**: Variance requested: §242-501 – 19’ building height and §242-502 D(2) h(3) – 2,000 square feet for a new boat storage building (*ph close date 9/8/13*)
1. “Site Plan” map prepared by CCA, LLC dated 5/24/13 – sheet S1

Vice Chairman Timmerman moved to approve 4 & 16 Elbow Hill Road, #201300634, Variance as written on the agenda and advertised. Chairman Flynn stated that he felt the appropriate venue for this issue is the Zoning Commission. S. Harding seconded the motion. Chairman Flynn noted that the ZBA has never given a height variance before, and he does not feel this property could be differentiated from others. He acknowledged the comments of Mr. Donohue and deferred them to the Zoning Commission. Chairman Flynn continued that the use cannot determine the hardship. With regard to the variance related to the square footage request, the Board did not feel it would impact the zone. The hardship for this request relates to the loss of land due to the State taking. S. Harding did not feel that allowing the square footage increase “out” would be as intrusive as the variance request “up”. Chairman Flynn further noted that the setbacks would still be met.

Vice Chairman Timmerman moved to amend his motion to allow the variance for 2,000 square feet, Section 242-502D(2)h(3). G. Meyerle seconded this motion. Motion to amend carried unanimously. The vote on the amended motion also carried unanimously. *Variance approved. Reason: Narrowness of the lot.*

- c. **12 Pocono Ridge Road #201300663**: Variance requested: §242-402A – 41’ structure to center of road for a deck (*ph close date 9/8/13*)
1. “Zoning Location Survey” prepared by Brautigam Land Surveyors, P.C. dated 11/30/12

This matter will be opened at the September 9, 2013 meeting.

- d. **108 North Lake Shore Dr #201300661**: Variance requested: §242-402A – 2’ structure to rear lot line, §242-402A - .7% of lot coverage for a deck modification and landscaping (*ph close date 9/8/13*)
1. “Property & Topographic Survey” prepared by CCA, LLC dated 12/16/12 – sheet 1 of 1
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- “Site Details” dated 6/20/13 – sheet LA-7
- “Construction Notes And Specifications” dated 6/20/13 – sheet LA-7

Vice Chairman Timmerman moved to approve 108 North Lake Shore Drive, #201300661: Variance requested: §242-402A – 2’ structure to rear lot line, §242-402A - .7% of lot coverage for a deck modification. S. Harding seconded the motion. Chairman Flynn stated that the request makes some of the nonconformity more conforming. G. Meyerle noted that the “neighbor” being affected is the lake. Vice Chairman Timmerman pointed out that the patio is being moved to the other side. Motion carried unanimously. *Variance granted.* Reason: Reduces the nonconformity, and slopes/topography.

5. Tabled Items: None.

6. New Business: None.

7. Informal Discussion: None.

8. Adjourn: Vice Chairman Timmerman moved to adjourn the meeting at 8:20 p.m. S. Harding seconded the motion, and it carried unanimously.

****Next meeting Scheduled for September 9, 2013****