

**Zoning Board of Appeals**  
**MINUTES**  
**7:00 PM Monday, April 06, 2015**  
**Zoning Board of Appeals Meeting - April 6, 2015**

**1) Convene Meeting**

Chairperson C. Timmerman convened the meeting at 7:03 p.m. and established a quorum of members. He then reviewed the policies and procedures that govern public hearings.

Present: Chairman C. Timmerman, Vice Chairman N. Coppola (arrived at 7:05 p.m.) J. Eagan, G. Meyerle, Alternate and Voting Members L. Bibbo and L. Ruschmeyer

Absent: P. Murphy

Also Present: Recording Secretary D. Cioffi

**2) Review Minutes:**

G. Meyerle moved to approve the Minutes of the March 3, 2015 meeting. J. Eagan seconded the motion, and it carried, 3-0-2, with L. Bibbo and L. Ruschmeyer abstaining.

**3) Review Correspondence:**

[no item]

a) Minutes of other Boards and Commissions:  
No discussion/no motions.

b) New Appellate Decision on Variances e-mailed from E. McCreery – handed into Land Use by A. Dew  
At the end of deliberations, at 8:35 p.m., there was discussion regarding an email from Attorney Edward McCreery III to ZEO Dew dated March 3, 2015. The email from Attorney McCreery discussed a recent Appellate court decision, AC36196 - *Verillo v. Zoning Board of Appeals*.

Board members discussed the need for applicants to prove hardship that is unique to their land. There was discussion regarding non-conforming lots, applications that improve the neighborhood and/or keep the houses similar, and applications that involve Americans with Disabilities Act requirements.

There was also discussion regarding a letter to Mr. Timmerman from F. Cavalea, Director, Candlewood Shores Tax District, dated March 26, 2015, disagreeing with a decision on a variance for 32 Candlewood Shores Rd. There was additional discussion regarding hardship and the role of percentage of impact as a consideration.

No motions.

**4) CONTINUED PUBLIC HEARINGS - 7:00 p.m.**

[no item]

**5) 17 Long Meadow Hill Rd #201500022: Variance requested: §242-402A – 45' structure to left side line to install a ground based Solar Array (ph close date 6/9/15 – 65 extension days granted)**

Tabled.

**6) PUBLIC HEARINGS - 7:00 p.m.**

[no item]

a) 9 Signal Hill Rd #201500145: Variance requested: §242-402A – 20.9' structure to left side line, §242-402A – 4.4' building separation for a 2 car garage (ph close date 5/10/15)  
*L. Bibbo was a Voting Alternate for this matter.*

*W. and J. Vitetta, 9 Signal Hill Rd. were present.* Mr. Vitetta advised that he had previously received approval for variance in 2013, and when the garage was built, it was determined by an A2 survey that the setback was over the approved measurement by 1.5 feet. There was discussion regarding the previous variance. Chairman Timmerman noted that the structure cannot be seen from the road. Copies of photos of the structure were submitted for the record, and reviewed by the Board members. Mr. Vitetta stated that surveys of the property were completed before and after the construction.

*Frank Cerreno, 2 Cannon Rd., was present, and spoke in favor of the application. No one was present to speak in opposition to the application.*

**J. Eagan moved to close the Public Hearing for 9 Signal Hill Road, #201500145, at 7:10 p.m. L. Bibbo seconded the motion, and it carried unanimously.**

b) 10 Dingle Brook Rd #201500155: Variance requested: §242-202 – definition of lot to build a new home while occupying the existing home (ph close date 5/10/15)  
*L. Ruschmeyer was the Voting Alternate for this item.*

*Gordon and Kerilynn Halas, 10 Dingle Brook Rd., were present.* Mr. Halas advised that the proposal is to build a new

house behind the current home, and then demolish the latter. A survey was completed. It was noted that this will be a temporary variance, and a bond will be set in place to ensure the demolition occurs. When the house is demolished, the variance will no longer be necessary. The demolition is planned for November, after a Certificate of Occupancy for the new house is obtained.

*R. Perry, 105 N. Lakeshore Dr., was present, and spoke in favor of the application. No one was present to speak in opposition to the application.*

**J. Eagan moved to close the Public Hearing re: 10 Dingle Brook Road, #201500155, at 7:16 p.m. Vice Chairman Coppola seconded the motion, and it carried unanimously.**

- c) 43 Mist Hill Dr #201500157: Variance requested: §242-402A – 6' structure to center of road, §242-402A – 25' structure to rear lot line, §242-402A – 2' structure to right side line and §242-402A – 1% of lot coverage for a bedroom addition, new front porch, shed and bedroom extension (ph close date 5/10/15)  
*L. Bibbo was a Voting Alternate for this item.*

*R. and J. Keith, 43 Mist Hill Dr., were present.* R. Keith explained that they are seeking to add bedroom space to the house. The application also includes plans for a shed for the back of the house. Chairman Timmerman reviewed that the required dimension is 62.2', so the request is 6' off of the standard setback, and 3' off of the previous variance. Mr. Keith advised that the hardship for the shed location relates to the presence of the septic and a hill on the property. Chairman Timmerman also noted that the lot was upzoned at some point. Mrs. Keith discussed the need for larger bedrooms, and Chairman Timmerman explained to her that the hardship has to be related to the land. Vice Chairman Coppola inquired if an A2 survey was done for the previous variance, and it was noted that only the plan is in the file. Chairman Timmerman explained that any time a variance within 10% of the lot setback is asked for, an A2 survey is necessary. Mr. Keith noted that the community wells are behind the lot.

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

**G. Meyerle moved to close the Public Hearing re: 43 Mist Hill Drive, #201500157, at 7:25 p.m. L. Bibbo seconded the motion, and it carried unanimously.**

- d) 16 Horseshoe Dr #201500160: Variance requested: §242-402A – 22.6' structure to left side line, §242-402A – 4.5' structure to right side line, §242-402A – 21,691 sq. ft. lot area, §242-402A – 3.9% of lot coverage and §242-402A – 41.6' lot width for a house addition (ph close date 5/10/15)  
*L. Ruschmeyer was a Voting Alternate for this item.*

*R. Posthauer, PE, CCA, 40 Old New Milford Rd., was present.* He reviewed that the existing house is on a small lot. He pointed out that the sanitary system is in the middle of the remainder of the lot, so the applicant is looking to put an addition towards rear and right side. Mr. Posthauer also noted a one-car garage on the right. He stated that the proposed location of the kitchen "works with the flow of the house". Chairman Timmerman stated that the proposal does push to the rear and the right, and keeps it away from requiring a left variance. Mr. Posthauer indicated that the health code has recently changed regarding distance from the septic. The elevations of the proposed addition were reviewed.

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

Secretary Eagain read letters in the file from the abutting property owners in favor of the application, from: 1) W. Dufour, 61 Elbow Hill Rd., dated 2/12/15; 2) T. Emro, 185 & 187 Candlewood Lake Rd., dated 2/12/15; 3) L. Dostilio, 14 Horseshoe Dr., dated 2/12/15; 4) J. Kennedy, 61 Elbow Hill Rd. dated 2/12/15.

Upon inquiry from G. Meyerle, Mr. Posthauer stated that the hardship relates to the size of the lot, and the locations of the septic and the existing house.

**J. Eagan moved to close the Public Hearing re: 16 Horseshoe Drive, #201500160, at 7:32 p.m. N. Coppola seconded the motion, and it carried unanimously.**

- e) 105 North Lake Shore Dr #201500163: Variance requested: §242-402A – 2.5' structure to center of road, §242-402A – 7.8' structure to right side line, §242-402A – 2.5% of lot coverage for stairs to front door, deck landing and patio (ph close date 5/10/15)  
*L. Bibbo was a Voting Alternate for this item.*

*R. Pratt was present on behalf of the Perry's.* He explained the issues of damage at the site. He noted that a cost-effective solution would involve switching a landing to a small wood deck platform, and move the masonry wall. Mr. Pratt pointed out that a staircase will be rebuilt, and made to follow the grade, and he is requesting a concrete paver patio, along with some buffer plantings. He noted water problems in the front. Chairman Timmerman pointed out that if the patio is at grade, it is not considered a structure. The landing is within the setback but will require a permit. There was discussion regarding demolition and rebuilding processes. G. Meyerle inquired regarding the material for the wall, and Mr. Pratt advised it is a landscape tie. N. Coppola inquired how far the existing concrete comes out, and Mr. Pratt advised it is the same distance as what is being proposed.

G. Meyerle inquired about moving the front steps, and Chairman Timmerman pointed out they are within the setback and not part of the proposal. The steps on the side exist, so the variance will be recorded but will not be new. There was discussion regarding that if a chair can be placed on something, it is classified as lot coverage. *R. Perry, 105 North Lake Shore Dr., was present, and noted the dangerous nature of the current stairs.*

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

**L. Bibbo moved to close the Public Hearing re: 105 North Lake Shore Drive, #201500163, at 7:43 p.m. N. Coppola seconded the motion, and it carried unanimously.**

- f) 54 Obtuse Rd No #201500164: Variance requested: §242-402A – 10' structure to center of road, §242-402A – 10' building separation for a new house (ph close date 5/10/15)  
*L. Ruschmeyer was a Voting Alternate for this item. L. Bibbo recused himself from this matter.*

*A. Garzi was present on behalf of the Cerreno's.* Mr. Garzi stated that the hardship was created when the wetlands regulations were changed in April 2009, to include the slope in the calculations of distance to a regulated area. He advised that the applicant is looking to put house within 10 feet of setback. He presented a map of the existing neighborhood, to show that the request would be in line with the existing neighborhood. Mr. Garzi also showed a 10' variance for a distance away from an existing barn/garage present on the site since the late 1960's.

Chairman Timmerman inquired if the applicant has spoken with the Fire Department regarding the building separation concern and access. Mr. Garzi advised that the applicant has not, noting that the building is located in the wetlands. Mr. Cerreno advised that there is access off of Merwin Brook. Mr. Garzi indicated that the building could be pushed another 5' but it would still require a setback, and would be closer to the septic, which is in the only location possible. It was noted there is an Artesian well on the site.

The zoning of the site was stated to be an R80 zone. It was noted that the property owner has to have a first-floor bedroom due to health issues. N. Coppola pointed out the ledge. G. Meyerle inquired what the barn was being used for, and the property owner advised it would be for storage.

There was discussion regarding attaching the garage with a breezeway to solve the building separation issue. It was noted it is a one-car garage and reiterated that it is in the wetlands.

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

**G. Meyerle moved to close the Public Hearing re: 54 Obtuse Road North, #201500164, at 7:56 p.m. J. Eagan seconded the motion, and it carried unanimously.**

#### DELIBERATIONS

*L. Bibbo was a Voting Alternate for this matter.* J. Eagan moved to approve 9 Signal Hill Rd., #201500145, as advertised. L. Bibbo seconded the motion. G. Meyerle noted it was a measurement accident. The garage cannot be seen, and this application is a modification of the previous variance. Motion carried unanimously. *Variance granted. Reason:* For the same reasons as the original variance; this is an as-built, for construction variances that happen.

*L. Ruschmeyer was a Voting Alternate for this item.* J. Eagan moved to approve 10 Dingle Brook Rd., #201500155, as advertised. Vice Chairman Coppola seconded the motion. J. Eagan moved to amend the motion to approve 10 Dingle Brook Rd., #201500155, based on the plans submitted in the application, and then prior to the issuance of a permit, that the property owner post a bond that is commensurate with the cost of demolition of the house, to ensure that there is money to demolish the old house, and the value of the bond will be determined by a good faith estimate, by the contractor that will demolish the house. This will be resolved with the Zoning Enforcement Officer, and that the applicant get a demolition permit prior to getting a Certificate of Occupancy for the house. G. Meyerle seconded the amended motion. Vote to amend the motion, and on the amendment to the motion was unanimously in favor. *Variance granted. Reason:* Temporary variance that will cease to exist when the house is demolished.

*L. Bibbo was a Voting Alternate for this item.* J. Eagan moved to approve 43 Mist Hill Dr., #201500157. L. Bibbo seconded the motion. G. Meyerle noted there is nothing in the back except for the community water supply. There was discussion regarding the proposed shed and the width of the lot, which is non-conforming. Chairman Timmerman reviewed the zoning table in the regulations, and noted that the lot width is 150' not 125'. G. Meyerle inquired regarding the hardship. Chairman Timmerman noted it is related to the upzoning of the lot, and the fact that the house pre-dates the zoning regulations. Additionally, the location of the septic qualifies as a hardship. Chairman Timmerman reiterated that the lot size is non-conforming and pre-dates zoning. L. Bibbo inquired how close the shed could be to the septic, and Vice Chairman Coppola advised it is 10'. Vice Chairman Coppola also pointed out that there was no opposition to the application. Motion carried unanimously. *Variance granted. Reason:* Upzoning, undersized lot, and the septic location causing shed to be placed toward the back.

*L. Ruschmeyer was a Voting Alternate for this item.* J. Eagan moved to approve 16 Horseshoe Dr., #201500160, as advertised. Vice Chairman Coppola seconded the motion. Chairman Timmerman noted the narrowness of the lot, and the manner in which it shifts to the right. It was noted that the reserves for the septic are on the right. It was further pointed out that the house is non-conforming. There was discussion regarding the different zones in the area. Chairman Timmerman suggested the possibility of reducing the request to make it more in line with R7 zone requirements. There was discussion regarding the neighbors, and the wall. G. Meyerle moved to amend the motion to reduce the structure to

the left side to 21.2', instead of 22.6'. J. Eagan seconded the motion to amend. Motion to amend carried unanimously. Vote on amended motion also carried unanimously in favor. *Variance granted.* **Reason:** Pre-existing, non-conforming undersized lot, narrowness of lot, and the location of the septic.

*L. Bibbo was the Voting Alternate for this matter.* J. Eagan moved to approve 105 North Lake Shore Dr., #201500163, as advertised. L. Bibbo seconded the motion. Chairman Timmerman noted that the removal of impervious portions mitigates some of the proposed plans. It was noted that the right side, the pre-existing stairs, and the remainder of the areas are at grade. There was discussion regarding the retaining wall and whether it counts as a structure. Motion carried unanimously. *Variance granted.* **Reason:** The right side line is for a pre-existing stair, the front setback is for pavers at grade, and the lot coverage, because any pavers on the patio are offset by the pervious pavers on the plan.

*L. Ruschmeyer was the Voting Alternate for this matter.* J. Eagan moved to approve 54 Obtuse Rd No, #201500164, as advertised. G. Meyerle seconded the motion. Chairman Timmerman noted that the presence of wetlands pushes proposed activity to the front, there is ledge on the left, and the barn on the right. He stated he is not in favor of knocking the barn down. G. Meyerle pointed out the issue of the space between the garage and the house, and Chairman Timmerman advised that the change in the wetlands location causes the hardship. There was discussion regarding access for the fire department. G. Meyerle advised that the intent of the Zoning regulations related to separation requirements was to make neighborhoods look nice. The plans were further reviewed. G. Meyerle suggested that the house be moved to allow for more space between the garage and the house. He suggested 15', and questioned the hardship. Chairman Timmerman noted that the hardship is the existing structure and the wetlands. G. Meyerle indicated he believes the house should be built on the existing law. There was additional discussion regarding the house's design. Motion carried, 4-1, with G. Meyerle opposing. *Variance granted.* **Reason:** Wetlands in the back, constraining the house to the front, and the ledge on the left constraining the house on the right and the septic system. The Board encouraged the applicant to do whatever possible to move the house away from the barn, for visual aesthetics.

**7) Tabled Items:**

None.

**8) New Business:**

None.

**9) Informal Discussion:**

The Board had a detailed and lengthy discussion in regards to Item 3.b. on the need for valid hardships, and what constitutes a hardship.

**10) Adjourn**

**L. Bibbo moved to adjourn the meeting at 8:59 p.m. Vice Chairman Coppola seconded the motion, and it carried unanimously.**