

**Zoning Board of Appeals**  
**REGULAR MEETING**  
**Final Minutes**  
**September 13, 2011**

Chairman Rathbun called the meeting to order at 7:04 p.m. In attendance were Matt Berger, Jack Guyol, David Rezendes, Neil Canavan and Lynn Conway. Fred Deichmann was absent. ZEO Joe Larkin was absent. ZEO Candace Palmer was present. Attorneys Rich Cody and Richard Messier were present. Matt Berger, Jack Guyol, Lynn Conway and David Rezendes for the meeting

**Old Business Deliberations:**

**ZBA #11-10 Catherine Moffett** – Seeking a variance from ZR 5.1.1 front yard setback from 30' to 4' for an existing shed. Property located at 5 Allyns Alley, Mystic. Assessor's Map 177 Block 7 Lot 9. Zone RA-20 .

Mr. Rezendes made the motion to deny. Mr Guyol seconded. The Commission members did not find a hardship. The motion to deny was unanimous.

**ZBA #11-13 Peter Watrous Carpentry LLC** – Seeking a variance from ZR 5.1.1 to reduce side yard setback from 75' to 25' and reduce the non-infringement area from 100' to 35' for the construction of a single family residence. Property located at Clarence Ave., Pawcatuck. Assessor's Map 10 Block 3 Lot 1 Zone RC-120.

Mr. Rezendes made the motion to deny. Mr. Berger seconded. Commission members felt the lot was too small and nothing had changed since original purchase of the property. There was no hardship. The motion to deny was unanimous

**New Business:**

**ZBA #11-15- John & Betsy Perkins-** Seeking a variance from ZR 5.1.1. to reduce rear yard setback from 3.4' to 0' for the installation of a maintenance catwalk. Property located at 43 East Shore Road, Stonington, Assessor's Map 154 Block 1 Lot 1 Zone RC-120.

**ZBA #11-16 Erik and Janet MacPeek-** Seeking a Variance from ZR 5.1.1 bulk requirements to reduce the front yard setback and expand the non conforming structure from 5' to 28.7' for construction of a 5' x 27' deck with railing across front entryway. Property located at 19 Latimer Pt. Rd., Stonington. Assessor's Map 154 Block 1 Lot 1 Zone RC-120.

**AAP#11-17 Mark A. Tebbets.** Request ZBA revoke the Zoning Enforcement Officer's issuance of Zoning Permit #11-180 ZON to EOF Realty. Property located at 595 Greenhaven Rd., Pawcatuck. Assessor's Map 8 Block 1 & 2 Lot 1 & 1. Zone RA-20.

**ZBA #11-18 Kurt & Elizabeth Hansen-** Seeking a variance from ZR 5.1.1. to reduce the front yard setback from 40' to 33.7' and the rear yard setback from 15' to 10' for a proposed addition. Property located at 68 Pequotsepos Rd. Mystic. Assessor's Map 150 Block 1 Lot 3. Zone RA-40.

Ms. Conway made the motion to schedule the new applications for public hearing at the October 11, 2011 meeting. Mr. Rezendes seconded. The motion was unanimously approved.

**Public Hearings Continued:**

Chairman Rathbun recused himself. Mr. Rezendes became acting Chairman. Seated for this application were Neil Canavan, Matthew Berger, Lynn Conway, David Rezendes and Jack Guyol.

**ZBA #11-11- Thompson Wyper & Carol Holt.** – Seeking a variance from ZR 2.7 minimum lot area, ZR 2.8. undersized lots (adjacent) ZR 2.9 undersized lots (other); to allow property to have buildable status

under RH-10 guidelines. Property located at 57 Bolder Ave. Stonington. Assessor's Map129 block 16 Lot 4, Zone RM-20.

Frederick Gahagan, attorney representing the O'Boyles, supplied the Board with information they had requested at the last meeting regarding past case history. Acting Chairman Rezendes closed the public hearing.

**ZBA #11-12 – Carol Holt** – Seeking a variance from ZR 2.7 minimum lot area, ZR 2.8 undersized lots (adjacent), ZR 2.9 undersized lots (other); to allow property to have buildable status under RH-10 guidelines. Property located at Hampton St., Stonington. Assessor's Map 129 Block 16 Lot 4, Zone RM-20.

**PUBLIC COMMENT IN FAVOR:** Claire Warren urged the Commission to allow the Wyper/Holts to buy back the 10 foot parcel. David Hopkins, adjacent land owner had no objection to this variance application and felt the Wyper/ Holts had a hardship.

**PUBLIC COMMENT IN OPPOSITION:** Marissa Vallillo of 5 Hampton Ave., stated that she and her husband fully researched their property before purchasing it. Mrs. Vallillo said she & her husband had made absolutely sure they would be able to build a new house if they raised the existing house at time of purchase. She felt the applicants should have done their due diligence prior to purchasing the property.

Attorney Gahagan submitted maps and deeds which were accepted as exhibits. He stated before ZR 2.9 could be applied to this lot, a variance from ZR 5.1 bulk requirements is necessary. The relief requested is inappropriate since it is not within the Board's legal jurisdiction to grant a variance from ZR 2.9 without a variance for ZR 5.1. He reviewed the two events that brought the lot into non-conformity. The applicant has not presented enough information to the Board regarding the impact of the plan on the neighborhood as a whole. Attorney Gahagan stated there is a drainage easement across the lot that had not been included on the site plan for the application. This easement is in favor of the O'Boyles. He listed numerous reasons for denying the variance based on the hardship being self created.

Mrs. O'Boyle discussed threats from Mrs. Holt in 2006 to cut off the drainage pipe. She claimed that fill had been brought into the property.

**REBUTTAL:** Mr. Wyper presented rebuttal information for his wife, Carol Holt. He presented a letter to the Board regarding the last meeting. He stated that there was no contact with the Vallillos regarding the property status. He also addressed many issues that were raised in public comment section. They are only seeking a variance that would permit them to work within the Zoning Regulations for the RH-10. Mr. Berger asked if they had conducted a title search on both properties. Mr. Wyper stated that they bought the property believing it was a buildable lot. But now a lot of money is being spent to preserve someone else's view across the lot. Mr. Berger asked what the hardship was. Mr. Wyper stated that "the interpretation of the zoning regulations resulted in no buildable utility". He cited a court case that stated lot line adjustments shall not fatally damage the status of the lot.

Chairman Rezendes closed the public hearing.

#### **Deliberations & Decisions:**

#### **ZBA #11-11- Thompson Wyper & Carol Holt**

Mr. Berger made the motion to deny the application. Ms. Conway seconded. Mr. Berger did not believe the applicant presented a hardship. The motion to deny was unanimous for the following reasons:

1. No valid hardship exists that is unique to the site.
2. The variance requested is not in harmony with the general purpose and intent of the Regulations (that non-conforming structures not be enlarged).
3. Denial of the variance requested would not prevent the applicant from reasonable use of his property in conformance with the regulations.

**ZBA #11-12 – Carol Holt**

Mr. Berger made the motion to deny the application. Ms. Conway seconded. Mr. Guyol stated it is reasonable for a person coming to the Town for guidance that they should be able to rely on the guidance from the Town official. Mr. Berger referenced the Court's opinion that Mr. Larkin's letter to the previous owner prior to sale cannot be relied upon other than an advisory opinion.

The motion to deny was passed 4 to 1. Roll Call: Mr. Guyol-approve, Mr. Rezendes-deny, Ms. Conway-deny, Mr. Berger-deny, Mr. Canavan-deny. The reason for denial is that the hardship was self created by the prior owners.

**Adjournment:** Mr. Guyol made the motion to adjourn. Mr. Berger seconded. The motion was unanimously approved.



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Neil Canavan, Secretary