

**Town of Stonington
Zoning Board of Appeals
Regular Meeting
Minutes – Final
June 12, 2012**

Chairman David Rathbun called the Zoning Board of Appeals meeting to order at 7:05 p.m. Members in attendance were David Rathbun, David Rezendes, Lynn Conway, Neil Canavan, Matthew Berger and alternate Virginia McCormack. Jack Guyol and Fred Deichmann were absent. Also in attendance was Land Use Enforcement Officer, Candace Palmer filling in for Zoning Official Joseph Larkin. Virginia McCormack was seated at 7:08 p.m. Neil Canavan was seated at 7:10 p.m.

Mr. Rathbun explained the procedures to get a variance and the definition of a hardship. Ms. Conway read the call for the public hearings.

Public Hearings:

ZBA #12-03 Old Mystic Fire District – Seeking a variance from ZR 5.1.1 bulk requirements to reduce the rear yard setback from 40' to 10' and expand existing gross floor area by 240 s.f. for the installation of a 12' x 20' fire department storage shed. Property located at 21 No. Stonington Rd., Old Mystic. Assessor's Map 166 Block 1 Lot 2. Zone RA-20.

This application was withdrawn by the applicant.

AAP 12-04 Richard C. Fiore - Request ZBA overturn the Zoning Enforcement Officer's Cease & Desist #11-124. Property located at 27 Moss St., Pawcatuck. Assessor's Map 4 Block 3 Lot 23. Zone RH-10.

Mr. Berger recused himself and Neil Canavan was seated.

Attorney Tom Collier and property owner Richard Fiore were present for this application.

Candace Palmer submitted the following items as exhibits and distributed them to the applicant and the Board members.

Exhibit #15 - Minutes from the Planning and Zoning meeting on February 19, 1985

Exhibit #16 – Section 2 – Zoning Enforcement Procedures

Exhibit #17 – Memorandum from Keith Brynes dated June 12, 2012

Exhibit #18 – Letter to Richard Fiore from Candace Palmer dated May 29, 2012

Exhibit #19 – Correspondence from R. Birmingham dated September 2, 1987

Exhibit #20 - Electrical inspection list

Ms. Palmer investigated the procedures used in 1985 to track correspondence and permits. She spoke with Ruth Hoffman who did not recall communicating to Mr. Fiore that his property was approved. Ms. Hoffman also confirmed that letters were not tracked in those days. Ms. Palmer submitted a letter from Robert Birmingham to Ruth Hoffman former ZEO dated Sept. 2, 1987 as Exhibit #19.

Ms. Palmer stated she spoke with a staff member who worked at the Town Hall until 1978 and confirmed that there was not a process in place back then to track permits and correspondence. The only documentation was a list of electrical inspections which Ms. Palmer submitted as Exhibit #20. The list submitted includes 4 references to Richard Fiore for property at 27 Moss St. There is no clarification on what was found during three electrical inspections in 1983.

Attorney Collier spoke on behalf of the application. Both he and Mr. Fiore stand by their statement that Mr. Fiore believed he had been approved for 6 units and 6 meters. They stated that they had spoken to CL&P who they claim said a permit would not have been given if the work was not approved.

They distributed a letter dated 1/29/85 from Ruth Hoffman which prompted this search for old documents (previously submitted as Exhibit #13). They distributed copies of two Planning & Zoning meeting minutes.

The March 19, 1985 minutes were submitted as Exhibit #21. The March 7, 1985 meeting minutes were submitted as Exhibit #22. There was no mention in either of the meeting minutes of the six units being an issue. Mr. Collier reported that the Fire Marshal stated that records were lost when the town re-organized and moved away from having one fire marshal. Mr. Collier submitted an email from the current fire marshal in response to a letter sent by Mr. Collier as Exhibit #23. Mr. Collier also submitted as Exhibit #24 a letter from his paralegal recounting a conversation with the fire marshal on procedures at the time the first inspection was done. Mr. Fiore stated he remembered that George Brennan completed the original inspection in 1983. Mr. Rathbun asked Mr. Collier if he checked with Mr. Brennan since he is still a fire marshal in Mystic and Stonington Borough. Mr. Collier responded that he had not. Ms. Conway asked if all 6 electrical boxes were replaced by CL&P. Mr. Fiore responded that it looked like they had done them all. Mr. Rezendes asked what would be left to repair if this application is overturned. The applicant responded that they have the fire code issues to fix.

Public Comments: None
General Comments: None.

Chairman, Rathbun closed this public hearing.

Ms. Conway asked if it would be a problem if Mr. Fiore waited to fix the fire code issues until the ZBA rendered a decision at the July meeting.

This application will be on the July 10, 2012 agenda as an Old Business item.

Mr. Berger was seated at 7:50 p.m. Mr. Canavan was unseated and left the meeting.

ZBA #12-05 Carole Clark – Seeking a variance from ZR 5.1.1 bulk requirements to reduce the front yard setback from 30' to 19' for construction of an additions to a single family residence. Property located at 2 Lamberts La., Stonington. Assessor's Map 100 Block 1 Lot 8. Zone RM-15.

Applicant is requesting a reduction in the front yard setback requirement from 30' to 19'. Ms. Palmer read her staff report into the record. Mr. Rezendes asked if the house will move any closer to the street. Ms. Clark responded that it will not but it will be expanded upward.

Public Comments: None
Chairman Rathbun closed the public hearing.

A motion was made by Mr. Rezendes and seconded by Ms. Conway to approve this application. The house is a pre-existing, non-conformity. There is no increase in the building footprint with this approval. The variance was approved with a 4-1 vote. Mrs. McCormack, Ms. Conway, Mr. Rathbun and Mr. Rezendes voted to approve. Mr. Berger voted to deny the variance.

ZBA 12-06 Julie A. Olson - Seeking a variance from ZR 3.1.4.2 buffer requirements in an RC-120 zone to waive the 100' non-infringement area requirement to allow for the creation of a stone wall to prevent or diminish erosion of the land caused by boat wakes. Property located at 159-161 River Rd., Pawcatuck. Assessor's Map 6 Block 4 Lot 20. Zone RC-120

Representing this application was the property owner Julie Olson and Mr. Keith Nielson, civil engineer.

Ms. Palmer stated she had received a complaint of a stone wall structure being built on the property at 159-161 River Road in Pawcatuck. Ms. Olson stopped the construction immediately when asked to by Ms. Palmer the Wetlands Enforcement Officer. Mr. Nielson explained that he is here to try to rectify a mistake he made by starting work without first getting approvals. The stone wall was being built to resolve erosion issues and protect this property from high tide and boat wake. Over the years, high tide and boat wake has caused the loss of 25 feet of land due to erosion. Mr. Nielson further stated that the only way to protect the property is with a stone wall due to natural changes in tide. The hardship is that the boat traffic is destroying their property. Mr. Nielson stated that 90% of the yard is at risk for erosion. Mr. Nielson clarified that the wall would not cause any damage it would only protect the property from high tide. Mr. Nielson said the lifespan of the wall would be 50 years.

Public Comments: Erica Hall spoke in favor of the stone wall being built.
Opposing Comments: None

General Comments: Mr. Nielson added that there are issues for RC-120 zone and submitted photos showing the exposed wall due to erosion and loss of land.
Chairman Rathbun closed this public hearing.

A motion was made by Ms. Conway and seconded by Mr. Rezendes to approve the application.

Discussion: Mr. Berger stated that he found Mr. Nielson's testimony quite helpful and well informed but not sure if it meets the definition of hardship to justify a variance. Ms. McCormack was inclined to approve the application because she sees the hardship even though the house is not in jeopardy. Mr. Rathbun felt strongly that the Board should be consistent with these type of decisions because an applicant in similar situation was denied and had to remove their wall. Mr. Rezendes questioned the hardship and Ms. Conway felt it was a very compelling application and the unique feature of this property was the turn in the river putting this property in jeopardy and saw it as a hardship. Also since DEEP will not allow any other solutions. Ms. Conway felt the wall was a last resort. The applicant would have preferred plantings but DEEP said no. Lynn Conway made a motion to approve, Dave Rezendes seconded, the motion failed – 3-2.

Roll Call: Mr. Rezendes-Approve, Mr. Rathbun-Deny, Ms. Conway-Approve, Ms. McCormick-Approve, Mr. Berger-Deny.

New Business:

AAP #12-07 Alliance Energy, LLC - Request ZBA overturn the Zoning Enforcement Officer's denial of Zoning Permit #12-045. Property located at 87 West Broad St., Pawcatuck. Assessor's Map 3 Block 21 Lot 3. Zone LS-5.

Mr. Rezendes recommended scheduling the public hearing for this application on August 14, 2012. The Board agreed to that public hearing date.

Review of meeting minutes: The Board recommended waiting until the next meeting in July to vote on the minutes of May 8, 2012.

Adjournment: A motion was made by Ms. McCormack and seconded by Ms. Conway to adjourn. Chairman Rathbun adjourned the meeting at 8:50 p.m.



Lynn Conway, Secretary