

**ZONING BOARD OF APPEALS
REGULAR MEETING
Final Minutes
October 10, 2023**

Stonington Police Station, 173 South Broad St., Pawcatuck, CT

The meeting was called to order at 7:00 PM.

Seated for the meeting were, Chairman James Kading, Nat Trumbull, Diana Lurie Boersma, Ray Dussault and Anthony Caporale for Jeff Walker. ZEO, Candace Palmer, was also present.

Administrative Review: None

1. New Business:

- a. **ZBA #23-12/CAM Steve & Sarah Malinowski (Katie Scanlon, Agent)** – Seeking a variance from ZR 7.7.8.3.2 to perform substantial improvement upgrades to an existing structure used as an oyster farm, hatchery, and associated office space. Property located at 30-32 Wilcox Road, Stonington, CT 06378. Assessors Map 157 Block 1 Lot 11; Zone RR-80/RC-120.
- b. **ZBA #23-13 Michael & Elizabeth Devine** – Seeking a variance from ZR 3.1.4.2 to reduce non-infringement zone from 100' to 13.8' in order to construct single family residence with attached garage, driveway, in-ground pool, and new septic system. Property located at 52 Brucker Pentway, Pawcatuck, CT 06379. Assessors Map 28 Block 1 Lot 3; Zone RC-120 / RA-40 Applies.

All new business was accepted and scheduled for public hearing on November 14, 2023.

2. Old Business:

- a. **ZBA #23-11 Berstev LLC** – Seeking a variance from ZR 5.1.1 to reduce the rear yard setback from 5' to 0' and increase the floor area ratio from 50% to 84% to construct a wood storage area and to cover existing smokers. Property located at 4 Roosevelt Avenue, Mystic, CT 06355. Assessors Map 174 Block 17 Lot 4; Zone LS-5. ***Rescheduled from 10/10/2023 to 11/14/2023***

Public Hearing:

- a. **ZBA #23-08 Jeffrey Muir / William R. Sweeney, Esq.** – Seeking a variance from ZR 5.1.1 to increase Floor Area Ratio from 20% to 22.5% in order to construct a 484 SF 2nd floor addition and install a 10' x 10' utility shed. Property located on 7 Robin Street, Pawcatuck, CT 06379. Assessor's Map 36 Block 6 Lot 11; Zone RA-20 / RA-15 Applies.

Attorney William Sweeney was present for the application. He submitted photos [exhibit 2] with a site plan to help show the current condition of the structure. He explained that the lot was a lot of record prior to zoning and was undersized for the zone and closer in size to the RH-10 zone which would have allowed for 25% GFAR. If it was held to the RH-10 zone, it would be compliant with all bulk requirements of the RH-10 Zone. The request is a modest request, fits into the neighborhood and will have no impact.

N. Trumbull questioned, if the shed was excluded, would they need a variance? It was determined that they would still need a variance.

There were no comments: in-favor, in-opposition or in-general. Public Hearing was closed.

Motion was made by R. Dussault to approve, stating the it was a reasonable request and a good use of the property. Second by D. Lurie-Boersma. Motion carried unanimously.

- b. **ZBA #23-09 Brian Stafford / William R. Sweeney, Esq.** – Seeking a variance from ZR 7.7.8.3.2 to lower the elevation of the bottom of the lowest horizontal member from 15ft to 14.4ft for a newly constructed single-family residence. Property located at 3 Roseleah Drive, Mystic, CT 06355. Assessor's Map 175 Block 1 Lot 1; Zone RC-120.

Attorney William Sweeney presented the application for the property owners. The application is CAM exempt, having already received a CAM application for construction of the single-family residence. They are requesting to retroactively approve the reduction of the required freeboard from 15' to 14.4' due to a subcontractor error. When the excavation occurred for the piers, unsuitable soils were removed from the holes and not all of the contractors were aware of the soil removal. The house was completely constructed and due to the discrepancy being so small in size, it was not picked up until the elevation certificate was completed.

Attorney Sweeney explained the *Osbourne v. Zoning Board of Appeals* which was similar in circumstance but the error was committed by a surveyor. The surveyor was a subcontractor who had no direct contractual relationship with the property owner, so the error could not be seen as a self-created hardship. This variance request is similar because the framers who failed to check the elevation prior to construction, were subcontractors of the general contractor. The property owner explored the possibility of trying to increase the height of the piers but due to the location in a hurricane area, it was not feasible due to wind load, and pivot point.

Town Staff requested interpretation from Diane Ifkovic, CTDEEP adviser for FEMA compliance as to how approval of the variance would affect the town CRS rating. She wrote back that because it is higher than the BFE of 14', it will not affect the town's rating.

The Board discussed the possibility of setting precedence, but determined that applications were considered on a case-by-case basis.

Atty. Sweeney discussed intent to game the system and stated that his client was not aware of the error. His client was not rewarded from the building be constructed below the DFE. He has less building and higher insurance as a result of the error.

Public Comment:

In Favor: None

Opposed: None

General Comments:

Dennis Regan – 1 Solon Ave, Mystic CT – Stated that most of his concerns had been addressed by the presentation. He explained the loss of CRS status in 2015 and was concerned about losing the CRS designation of level 7.

R. Dussault made a motion to approve for discussion Seconded by N. Trumbull. R. Dussault cited the *Osbourne* case, no harm to neighbors and contractor error.

D. Lurie-Boersma expressed concerns regarding storms and potential damage. She would like to see something in the record from a structural engineer and there was no reasonable feasible way to remediate. Nothing you could actually see when driving by.

A. Caporale – In agreement that this was a horrible situation, not sure if not gaining anything is persuasive.

R. Dussault wants to have new construction addressed moving forward, he noted lack of harm and not seeing this as a self-created hardship and does not believe that this has set a precedent.

R. Dussault made a motion to approve the application based on this being an error by an independent contractor is not a self-created hardship. He would like a stipulation: "If Substantial Improvement or Substantial Damage occurs then reconstruction must conform to current FEMA standards."

Seconded by N. Trumbull.

Motion passed Unanimously.

ZBA #23-10 Josepine Mineo – Seeking a variance from ZR 3.1.4.2 to reduce the non-infringement area from the required 100' to 18' in order to construct an in-ground swimming pool and patio. Property located at 42 Harborview Terrace, Stonington, CT 06378. Assessors Map 104 Block 5 Lot 5; Zone RM-20 / RC-120.

Attorney Sweeney presented the application for the property owners. He stated that the application was exempt from CAM review and submitted photos of the proposed location of the pool and patio [exhibit 2]. He discussed the split zone and the location of the house above the steep embankment of Lamberts Cove. Atty. Sweeney discussed the limitations of the non-infringement area which took up most of the back yard. The only area acceptable has a new septic system and this left the only available area in the lawn where the pool is being proposed. The lawn area is already at 18 feet and this is a modest sized pool. Pools are an accessory use allowed as of right.

Discussion from the Board ensued. Could there be a possible setback reduction from the top of slope. This was a reasonable accessory use and could they approve something less than what was requested. They discussed the size of the patio and a possible reduction in the area between the pool and as the deck, as well as surrounding the pool.

Motion made by R. Dussault and seconded by D. Laurie-Boersma to approve with stipulations:

1. Edge of patio to be reduced from required 100' to 29'
2. Edge of pool reduced from required 100' to 31'.

Motion Approved unanimously.

Review of meeting minutes: 9/12/23 - Motion to approve by A. Caporale, seconded by R. Dussault. D. Lurie-Boersma abstained. Motion approved 4/1/0

Adjournment: D. Lurie-Boersma made a motion to adjourn the meeting, seconded by N. Trumbull, Motion passed unanimously. The meeting was adjourned at 9:33 PM.



James Kading, Chairman