

TOWN OF STONINGTON

Department of Planning/Zoning Board of Appeals

152 Elm Street

Stonington, Connecticut 06378

(860) 535-5095 • Fax (860) 535-1023



DATE: 5/11/2021

TO: Stonington Zoning Board of Appeals AMENDED

FROM: Candace L. Palmer

RE: **ZBA #21-05 Jennifer & Daniel Wilson**– Seeking a variance from ZR 5.1.1 to reduce Side Yard setback from 10' to 1.5' to construct a pergola with privacy fence. Property located on 2 Plover Lane, Mystic. Assessor's Map 176 Block 2 Lot 7; Zone RA-20.

Proposal: Reduce the required sideyard setback from 10 ft to 1.5 ft for construction of a pergola and privacy fence over an existing deck.

Zone information:

RA-20/RA-15 "These zones are for areas that have been previously developed as single-family house lots and which should be maintained as such to preserve the character of the Town."

ZR 5.1.1				
	REQUIRED	EXISTING	PROPOSED	VARIANCE
Side Yard	10'	2.5' ±	1.5'	8.5'



Yard, Required. "Open and unobstructed ground area of the lot extending inward from a lot line for the distance specified in the Regulations for the district in which the lot is located. The following items are exempt from the yard requirements: Permitted free-standing signs; landscaping; lighting fixtures; fences; flagpoles; ornamental wells; ornamental retaining walls; tennis and basketball courts; driveways; arbors; mailboxes; gravel; stones; grave stone; and off-street parking areas."

Yard, Required Side. "A required yard extending along a side lot line from the required front yard (or from the required yard extending along the full length of the rear lot line between the side lot lines."

Hardship Claimed:

"We are seeking a zoning variance to reduce the side setback of our property, the border between 2 Plover Lane and 1 Seagull Lane, from 10 feet to 1 ½ feet. The hardship reason for this request is a lack of privacy resulting from construction at 1 Seagull Lane, and the proximity of the existing deck to our property line.

We are seeking this variance to build a pergola over our existing side deck with a side privacy panel that would help to regain the privacy that has been lost as a result of recent construction at 1 Seagull Lane. The existing side deck is located within the side setback, approximately 2 ½ feet from the property line at its closest point. The house itself sits just about at the 10ft line (please see attached A-2 survey).

Prior to the changes made at 1 Seagull, the land between the two houses consisted of mature evergreens, ivy, and a very large deciduous tree (see photos). These have all been removed as part of the construction at 1 Seagull, leaving no barrier between the two properties. Having privacy is of great importance to us as our enclosed outdoor shower, which is the shower we use to bathe all summer, is located on this deck. In addition to how awkward and uncomfortable it is to enter and exit the shower now that all the trees have been removed, I am also extremely concerned that my neighbor plans to install numerous security cameras on his new home, and I do not want my children, my family or my guests to be exposed.

This pergola and privacy panel will allow a privacy screen in a very tight space, while also providing an esthetically pleasing appearance to all who can see it. This structure would also help to shield the view of the newly constructed cement retaining wall from our deck, our backyard, and the water.

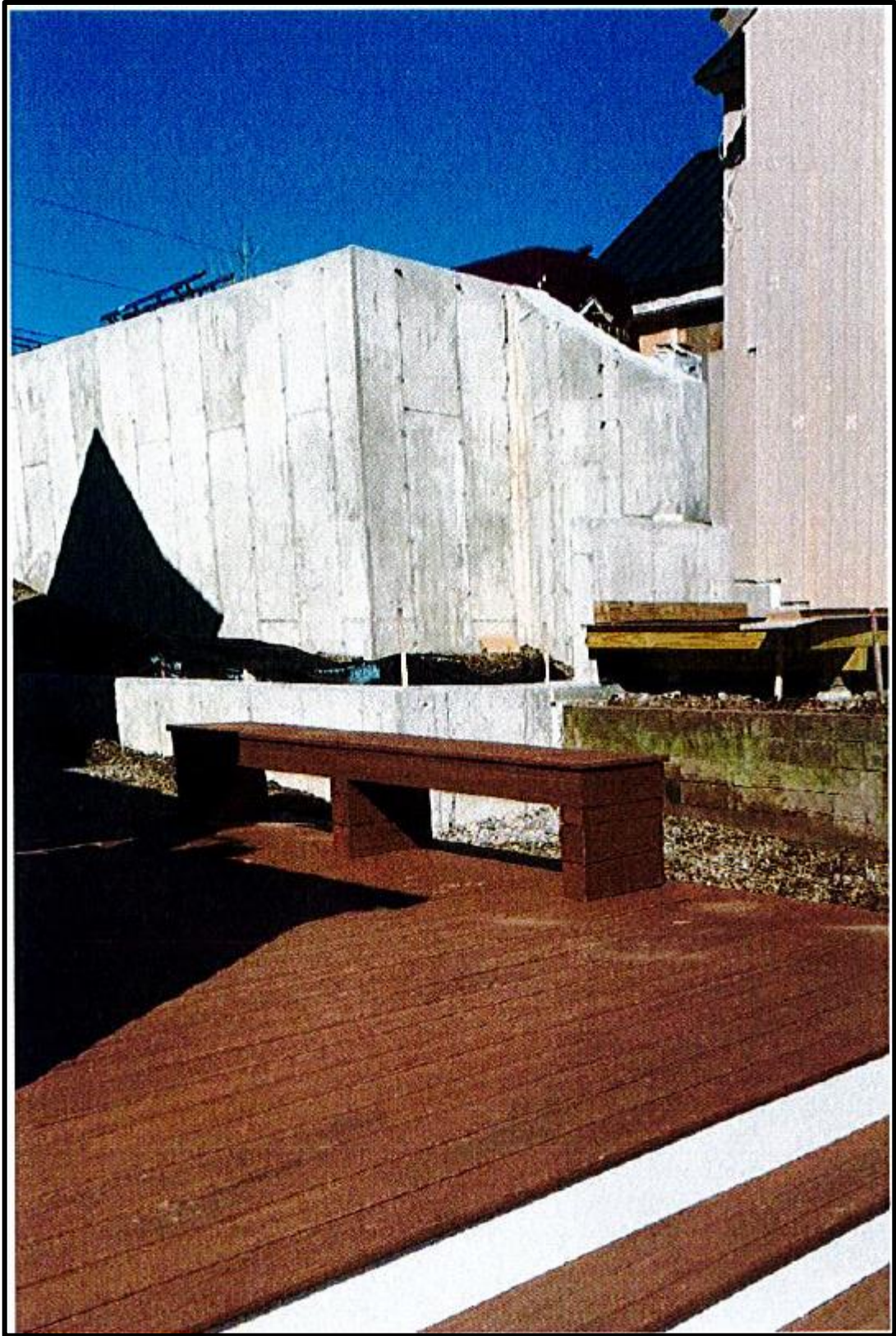
I have attached photos that show the area before construction at 1 Seagull and now after, to represent the reason for this hardship. I have also included a photo of a pergola similar to what we are seeking a variance to do."

CURRENT: All trees removed, no Privacy for showering, and view of new cement wall:



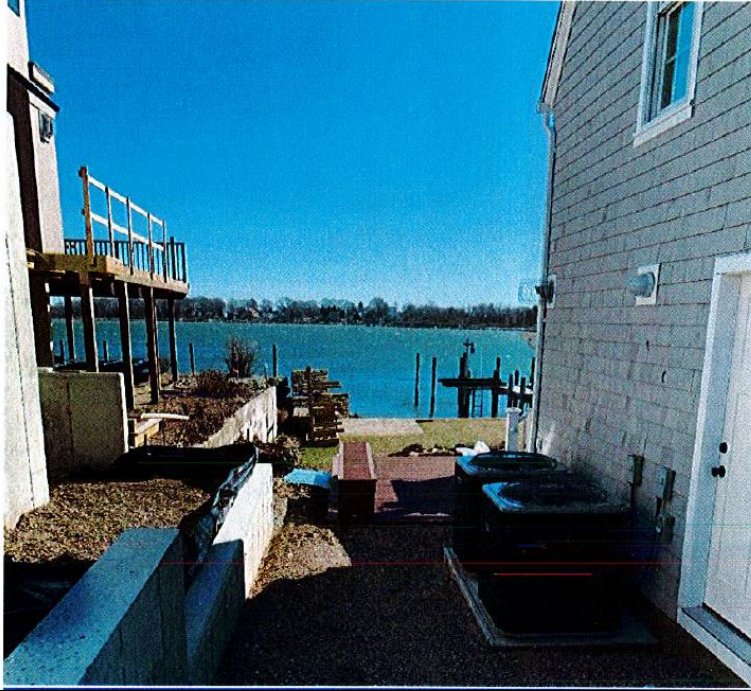
BEFORE: Natural Privacy Before construction at 1 Seagull:





SIDE SETBACK:

Per our A-2 survey completed fall 2020 (included in application), the side of the house (shown) rests approx. at the 10ft setback, with the existing deck extending beyond that. Currently there is approx. 2 ½ ft from the corner of the deck to the property line (increasing slightly as you approach the water).



Shower Door

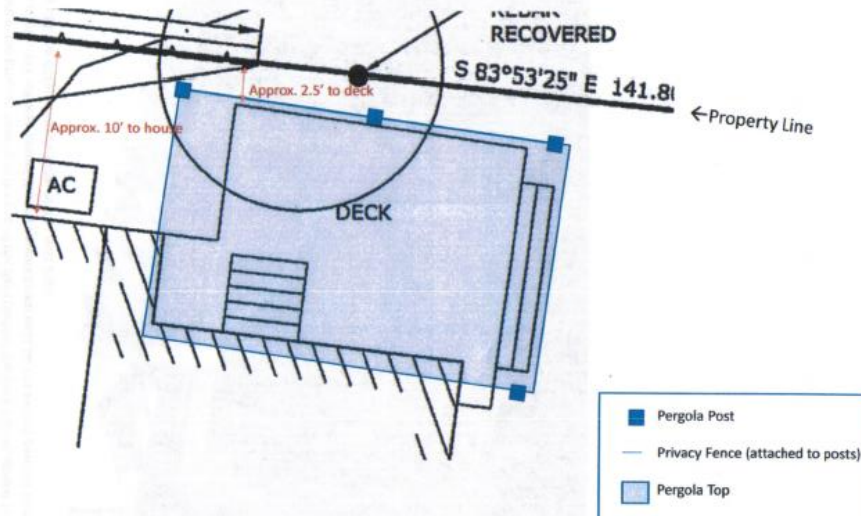


PERGOLA: Pergola Example with privacy Screen

We are seeking a variance to install a pergola with privacy panels over the existing side deck. Following is a representation of what we are seeking a variance to do. The posts will be placed into cement footings located in the ground, directly at the end of the deck (behind the deck bench), similar to how it is done in this photo. We will also ensure the top pergola beam ends do not extend past the posts as in this picture by utilizing different beams that end at post ends.



Location of Proposed Pergola over existing side deck:





Correspondence in Favor:

- Tes Aklilu & Negest Retta – 207 Mason's Island [previous owner of 1 Seagull Ln.]

"This letter is to express our support for Dan and Jenn Wilson's variance request to construct a pergola over their existing deck at their property located at 2 Plover Lane.

As a neighborhood resident, and former owners of the property next door at 1 Seagull Lane, we can attest to the close proximity and lack of privacy between the homes, especially considering the recent removal of mature trees and the newly built concrete retaining wall by the new owners.

We believe that a pergola, similar to the sample image, will not only provide them with the additional privacy they seek, but will in fact be a lovely addition to the property and add to the overall charm of our neighborhood. We are invested in seeing updates to surrounding properties that beauty and maintain the charm of Mason's Island, and each and every one of the Wilson's updates to their home over the years have consist done that,

Jenn and Dan or thoughtful homeowners and have been wonderful neighbors to our family. They have made wonderful contributions to both their home and our community, and we have no issue whatsoever with their proposed plans."

- Bruce & Katherine Burge – 4 Osprey Lane

"We are the owners of 4 Osprey Lane, an "L-shaped" lot which fronts Osprey Lane, but with the northern boundary of our parcel having frontage along Plover Lane, in the area between 1 Plover Lane and 3 Plover Lane. The subject property is located diagonally across the street from us.

We received the variance notice and are 100% in support of what the Wilson family would like to construct!! The design plan looks great, is harmonious with the neighborhood, and hopefully will provide some privacy from the expanded structure next door which has now created a hardship for the Wilsons given the mature trees that their neighbor elected to remove."

- Brian Robinson & Jay LeClaire – 3 Chippechaug Trail

"We are aware of the application for a zoning variance at 2 Plover Lane in Mystic, CT and we have no objection to the pergola in its proposed location.

Our neighbors at 2 Plover Lane have continued to improve this property since they purchased it, and they have consistently made such improvements while staying true to the charming character of the neighborhood."

- Charles Beebe – 3 Seagull Lane

"I am aware of the application for a zoning variance at 2 Plover Lane in Mystic, CT, and I support the Wilson's request to install a pergola with privacy panel in the proposed location.

Jenn & Dan have been wonderful neighbors who consistently maintain their property, making all improvements in harmony with the esthetics of the neighborhood. They have been visually overrun by the newly erected cement walls and structure at 1 Seagull Lane, hence, we request you support their variance to provide some privacy and relief from this "hardship".

- John A. Kizskiel II – 1 Plover Lane / *"I am a 26-year resident of Mason's Island, residing at 1 Plover Lane. I write to encourage you to vote in favor of the variance sought by Jenn & Daniel Wilson reducing the side yard setback to construct a pergola with privacy fence. The Wilsons have been visually overrun by the adjacent property to the north which has created an atmosphere resembling a world war II era bunker and renovations which have made the Wilson property almost uninhabitable. No one should have to endure this abuse. Although it may be legal, the construction adjacent to the Wilson property is certainly an architectural nightmare. The Wilsons deserve relief from this "hardship". Please support the Wilson variance."*

- Amy Estabrook – 3 Mallard Rd.

"I am aware of the application for a zoning variance at 2 Plover Lane in Mystic CT. and I support the Wilson's very reasonable and minimalist request to install an attractive pergola with privacy panel in the proposed location.

I've been living across from Jenn & Dan for the past couple of years. They have been wonderful neighbors who consistently maintain their property, making all improvements in harmony with the esthetics of the

neighborhood. I've been deeply dismayed for both the Wilsons and the entire neighborhood that the new owner of 1 Seagull has both physically and visually imposed their unsightly (and seemingly interminable construction project) upon us all. The newly erected imposing bare cement walls are suitable architectural elements for perhaps a concentration camp or to enclose large zoo animals, but look unsightly in a coastal New England residential neighborhood. The newly created landscape is not at all in keeping with the architectural language and overall aesthetic of the neighborhood and in addition shows a total disregard for the Wilson's space and design sensibilities. They have been visually overrun by the new construction at 1 Seagull Lane, thus I request you support their variance to provide a modicum of privacy and relief from this visual monstrosity."

- Lynne & Jim Wilson (no relation) – 4-6 Seagull Lane

"We are residents of Mason's Island, residing at 4 Seagull Lane. We are neighbors of the Wilson's. We are writing to inform you of our 100% support of the variance sought by Jenn and Daniel Wilson to reduce the yard setback in order to construct a pergola and privacy fence. We ask you to vote in favor as well.

The improvements the Wilson's have made to-date on their property have been tasteful, in keeping with the neighborhood and shoreline view and considerate of the neighboring properties. We are confident the proposed pergola and privacy fence will be the same. The design plan is great and harmonious with the neighborhood and will enhance the aesthetic.

While it may be legal, the renovations to the adjacent property and the removal of the mature trees have created an unsightly view for the Wilson's. The Wilson's request is a very small ask when you consider how their property and lifestyle has been negatively impacted by the renovations.

Please support the variance. If you have any further questions, please feel free to contact us."

- Heather M. Campbell – 205 Mason's Island Rd.

"I am writing in support of the application made by Jenn and Dan Wilson for a zoning variance at 2 Plover Lane, Mystic CT. I support the Wilson's to install a pergola with a privacy panel in the proposed location. Jenn & Dan Wilson are wonderful and thoughtful neighbors. They take their responsibility for maintain their property very seriously. They consistently take into account, when making improvements, how their improvements impact the esthetics of the neighborhood. They wish to create a harmonious setting.

There is a colossal 'visual impact' made by the newly constructed concrete walls and structure at 1 Seagull Lane. The Wilson's plan before you will not improve only their views, it will improve the views from the water and surrounding properties. Respectfully, I ask the Members of the Zoning Board to support Jenn and Dan Wilson's request for a variance providing some privacy and relief to themselves and the neighborhood from the "hardship" of the concrete walls and structure at 2 Plover Lane."

Todd Mannarino – 6 Plover Lane

"We are in favor of the variance for the pergola and privacy panel that is before the Board of Appeals. It is understood that it would create privacy from the neighbors to the north of Dan and Jen's property an in addition add privacy for the property owner that is directly to the north at 1 Seagull. The design is attractive and works well with the charm of the home and the street.

Jen and Dan have been great neighbors and have always been improving the home to better the area. The wall structure that was constructed is right on the property line and is intrusive because of the tight lot lines, in addition the wall is extremely close to the house structure as well. The pergola and privacy panel is a must have for quality of life and would provide relief an hardship from the wall structure."

- Jonathan C. Shockley – 4 Plover Lane

"I am aware of the application for a zoning variance at 2 Plover Lane in Mystic, CT and I support the Wilson's request to install a pergola with a privacy panel in the proposed location.

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cement walls and structure at 1 Seagull Lane; hence, I request you support their variance to provide some privacy and relief from this 'hardship'."

- John & Jill Vichi – 2 Osprey Lane

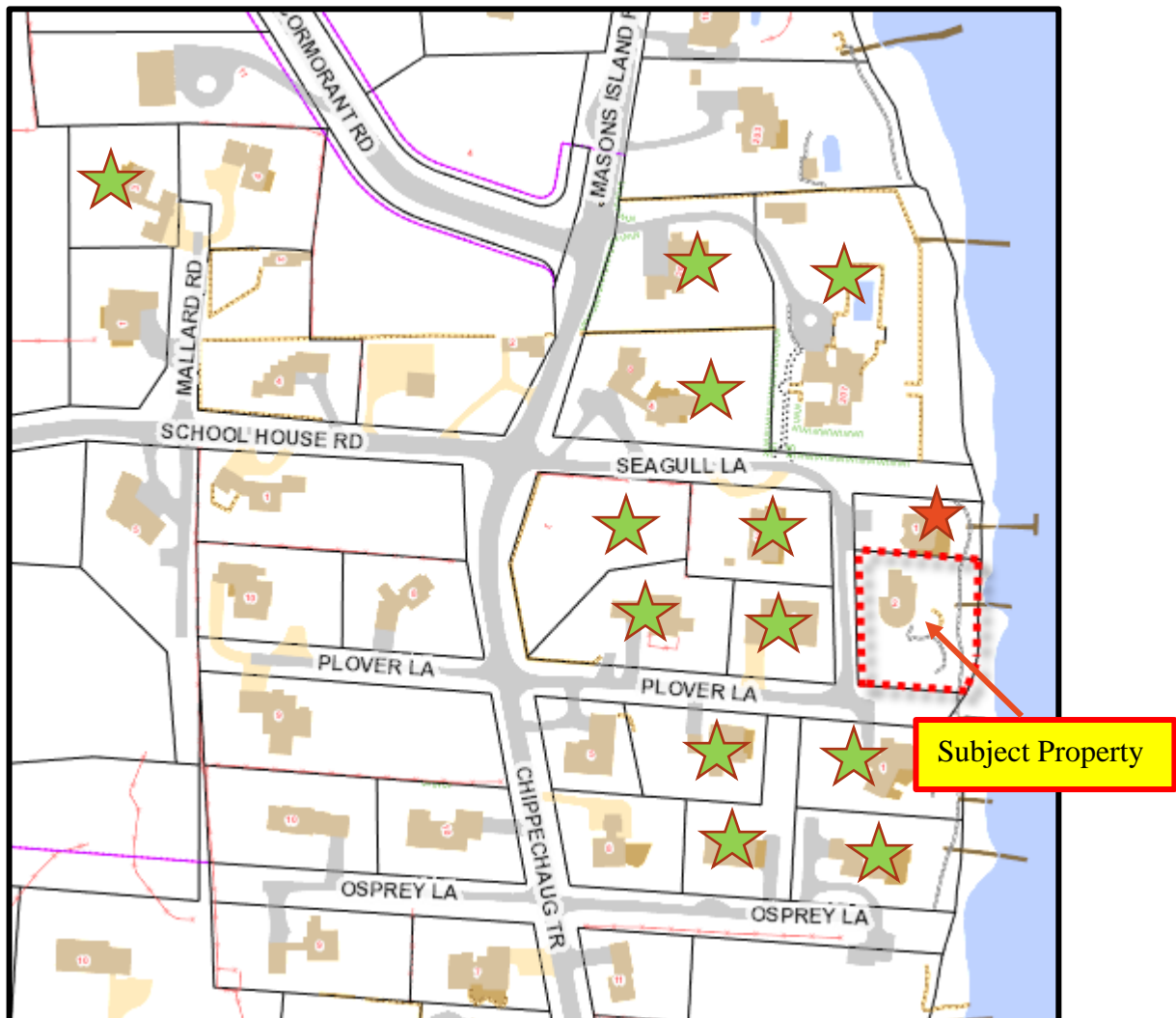
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Jeanne & Charles Rollins – 3 Plover Lane

"We are aware of the application for a zoning variance at 2 Plover Lane in Mystic, CT, and we support the Wilson's request to install a pergola with privacy panel in the proposed location.

Jenn & Dan have been wonderful neighbors who consistently maintain their property, making all improvements in harmony with the esthetic of the neighborhood. They have been visually overrun by the newly erected cement walls and structure at 1 Seagull Lane; hence, we request you support their variance to provide some privacy and relief from this 'hardship'."





Correspondence in Opposition:

- Candice Georgiadis – 1 Seagull Lane - **SEE ATTACHED LETTER FROM ATTORNEY MARK BRANSE**

Staff Comment:

Background:

1. On July 8, 2020, the Wilson's filed an encroachment complaint against the property owners at 1 Seagull Lane for installing a retaining wall 1"-2" over the property line onto the Wilson's property. It was determined by Staff and the Town Attorney that the wall was considered landscaping and not part of the zoning permit approval for the construction activities at 1 Seagull Lane. This is considered a civil matter between the two parties.
2. On November 20, 2020 a complaint was filed from the property owners at 1 Seagull Lane regarding the expansion of an existing seawall on the Wilson's property.
The complaint was forwarded to CTDEEP, as they have jurisdiction over Seawalls. CTDEEP inspected the site and determined that there was dual jurisdiction over the seawall. CTDEEP issued a Notice of Violation. The Wilsons complied with the Notice, removing various stones from the wall and subsequently CTDEEP closed the violation.
The stones that were placed landward of the CJL of 2', in the Towns jurisdiction are allowed to remain while the property owner works towards compliance. The property owner is currently in the process of a CAM application. I spoke with Keith Neilson of Docko Inc., on April 7th, the field work has been completed and they are in the process of drafting the CAM application.

Staff is making the Board aware of the ongoing issues with the neighbors, but is advising that any decision tonight should not be affected by the dispute.

3. According to the Town's tax cards, the deck was constructed somewhere between 1994 and 2002, no permits could be located. Its location is protected per State Statute [C.G.S. 8-13a]

Sec. 8-13a. Nonconforming buildings, structures and land uses. (a)(1) When a building or other structure is so situated on a lot that it violates a zoning regulation of a municipality that prescribes the location of such a building or structure in relation to the boundaries of the lot or when a building or structure is situated on a lot that violates a zoning regulation of a municipality that prescribes the minimum area of the lot, and when such building or structure has been so situated for three years without the institution of an action to enforce such regulation, such building or structure shall be deemed a nonconforming building or structure in relation to such boundaries or to the area of such lot, as the case may be. For purposes of this section, "structure" has the same meaning as in the zoning regulations for the municipality in which the structure is located or, if undefined by such regulations, "structure" means any combination of materials, other than a building, that is affixed to the land, including, without limitation, signs, fences, walls, pools, patios, tennis courts and decks.

Suggested motion to Approve: Motion is made to approve application #21-05 for a variance from ZR 5.1.1 to reduce Side Yard setback from 10' to 1.5' to construct a pergola with privacy fence.

1. Approval of the variance would not adversely affect the public health, safety, welfare, and value of the surrounding properties.

Suggested motion to Deny: Motion is made to deny application #21-05 for a variance ZR 5.1.1 to reduce Side Yard setback from 10' to 1.5' to construct a pergola with privacy fence.

1. Denial of the variance requested would not prevent the applicant from reasonable use of his property in conformance with the regulations.

PROVING HARDSHIP

The applicant, or his/her agent, must plead a hardship before the ZBA. A hardship is defined as a peculiar or unique feature of a particular piece of property that prevents a landowner from making a reasonable use of their property in conformance with the existing zoning regulations. A hardship has nothing to do with personal circumstances of the landowner. The fact that an owner might be able to make more profitable use of the land if it were not for the Zoning Regulations does not equate to hardship. Proof of a true hardship is a legal requirement for ZBA to grant a variance.

APPLICANTS MUST DEMONSTRATE:

- The hardship required for the Variance must be one that originates in the Zoning Regulations.
- Circumstances relating to soil conditions, irregular shape or topography of the property for which the Variance is being sought.
- Such circumstances specifically affect the property but do not affect generally the zoning district in which the land is located.
- Owing to such circumstances, a literal enforcement of the provisions of the Regulations would incur substantial hardship to the property owner.
- The desired relief may be granted without substantial detriment to the public good and without nullifying or substantially detracting from the intent and purpose of the Regulation or from the intent of the district in which the Variance is being sought.

RECOGNIZED HARDSHIPS DO NOT INCLUDE:

- Self-created hardship (including a desire to subdivide a property into additional lots).
- Financial / economic benefit or loss to the property owner.
- A personal hardship such as health problems, age, etc.
- A claim of increased tax revenues for the municipality.