

## **ZONING BOARD OF APPEALS**

### **REGULAR MEETING**

#### **Final Minutes**

**March 8, 2022**

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

Present for the meeting were James Kading, Jeff Walker, Nat Trumbull, Alternate Diana Lurie Boersma, and Alternate James Stanton. Zoning Enforcement Officer Candace Palmer was also present. Absent Mark Mitsko and Raymond Dussault.

Seated for the meeting were James Kading, Jeff Walker, Nat Trumbull, Diana Lurie Boersma (seated for Mark Mitsko), and James Stanton (seated for Ray Dussault).

The meeting was called to order at 7:00 p.m. at the Stonington Police Station.

#### **New Business:**

**ZBA#22-03 David T. Bessette** – Seeking a variance from ZR 5.1.1 to increase Floor Area Ratio from existing 0.049 to 0.055, reduce Side Yard setback from 75' to 12' & 72' and reduce Non-Infringement Area from 100' to 35' to construct a 16' x 24' gazebo. Property located on 18 Stewart Rd., Pawcatuck. Assessor's Map 11 Block 1 Lot 6; Zone RC-120.

The application was received and scheduled for public hearing April 12, 2022.

#### **Public Hearing:**

**ZBA #21-12 & CAM Mark S. & Brenda L. Mitsko (William R. Sweeney, Esq.-Agent)** – Seeking a variance from ZR 5.1.1 to reduce lot frontage from 300' to 0' and reduce side yard setback from 75' to 25' and ZR 3.1.4.2 to reduce the non-infringement area from 100' to 37' to construct a single-family residence. Property located on Old Stonington Road, Stonington. Assessor's Map 153 Block 1 Lot 3A; Zone RC-120. *Continued from 2-8-22 per applicant's request.*

Attorney William Sweeney, attorney for the applicant, presented the application. Mr. Sweeney stated that the owners of the lot Brenda and Mark Mitsko have asked him to represent them as Mark Mitsko is a regular member of the Board and was not present at the meeting. The applicant is requesting three variances for the land locked lot. The parcel is seven acres in size, located behind the Mystic Flooring Building and Sailor Ed's, land locked without frontage on Old Stonington Road. The parcel pre-dates zoning. The property has two 25-foot easements for access to the property. One easement exists through tidal wetlands and would not be able to be used for access. The second is through the Mystic Flooring Center parking lot. The lot is zoned RC-120 which requires a 100' setback to the wetlands. There is a significant amount of wetlands on the property that creates a very narrow developable area. The easement leads to that buildable envelope. The proposed home has been located in the narrow area without encroaching on the non-infringement area. The applicant is requesting a variance for frontage as there is currently none and would be needed for any development. The second is for a variance for the non-infringement area to construct access to the home, which will be the only construction in the area. The last variance is for the side yard setback to request 25 feet rather than 75 feet to allow development in the developable portion of the lot. There is a conservation area on the neighboring parcel which provides screening and buffer to the next lot over which has the Big Y Shopping Center. There are no direct residential neighbors to the property outside the mixed-use Mystic Coastal Flooring building. Per CT Statutes, property owners are entitled to reasonable use of their property. Mr. Walker

asked about the square footage which is about 1950SF. The access is through the parking lot and there is an area staked out for the drive to the property. Mr. Stanton asked about pushing the access to the edge of the property. Mr. Sweeney explained that it would bring it too close to the wetlands and the easement has been clearly defined in the title. The driveway will go through the upland review area requiring wetlands approval. Ms. Lurie Boersma asked if they would be able to develop the property more in the future. Mr. Sweeney explained they could condition it in approval, but they would need to come back for any additional variance.

Public Comment in Favor:  
None.

Public Comment Against:

Alan Contillo, owner of Mystic Coastal Flooring stated he is not opposed to the development of the land but would like to speak about impact to his property. He runs a floor covering business on the first floor and they have four residential units on the second floor, they also have approved two additional phases of development. He is mostly concerned with the applicant needing to dig up the access to install utilities to the property because it would severely disrupt his business and his residents. He asked the commission to consider impact to his property.

General Comment:  
None.

Rebuttal:

Mr. Sweeney explained that adjudication of the easement is a civil matter and outside the jurisdiction of the Board. Mr. Sweeney explained that they are committing to work with the property owner to find a date that works for both parties and does not see it taking more than a day with the proper planning. Without access to the property, the owner would be denied reasonable use of their property.

Mr. Kading closed the public hearing.

Mr. Walker moved to approve the application, seconded by Ms. Lurie Boersma. The commission discussed the need for access to the property. The vote was taken, all in favor 5-0. Motion approved.

**ZBA #22-01 Kenneth & Martha Donovan (Mark Comeau-Agent)** – Seeking a variance from ZR 5.1.1 to increase Floor Area Ratio from existing 0.31 to 0.35 to construct a 155 sq. ft. addition and internal access stairs to main first floor. Property located on 5 James Street, Stonington. Assessor's Map 129 Block 3 Lot 9; Zone RM-20 (RH-10 applies).

Mark Comeau, project architect, presented the application. The lot is undersized and follows RH-10 regulations. The home was raised because it was in the flood zone. An elderly parent is having difficulty entering the property via external stairways and decks. They are proposing to move the access to be interior to allow for better and safer access to the home, therefore losing some use of their home so they would like to enclose one of their decks which would increase the FAR. Mr. Donovan stated they have received two letters of support from neighbors (Exhibits 2 and 3). Mr. Donovan read the letters into the record. Ms. Lurie Boersma stated the proposed enclosure would be consistent with the neighborhood. Mr. Comeau stated that structure is in the v-zone and currently does not have any ground level internal egress to the space for safe access. Mr. Comeau explained the lot is very undersized for zone it is in and has very little space as it is.

Public Comment:  
None.

Mr. Kading closed the public hearing.

Mr. Walker moved to approve the application, seconded by Ms. Lurie Boersma, all in favor 5-0. Motion approved.

**ZBA #22-02 AG Trust, LLC (Sergio F. Cherenzia, P.E.-Agent)** – Seeking a variance from ZR 5.2.1 to reduce Front Yard setback on Harry Austin Drive from 50' to 44.8' to construct a third-floor balcony. Property located on 40 Masons Island Road, Mystic. Assessor's Map 160 Block 4 Lot 4; Zone M-1.

Sergio Cherenzia, project engineer, presented the application. The project meets all bulk requirements with the exception of a third-floor balcony. Mr. Cherenzia reviewed the history of the lot. The project has received a special use permit for the building. One of the balconies facing Harry Austin Drive extends 5.2 feet into the front yard setback. The balcony has been constructed and was extended during construction phase, which was discovered during the as-built survey. The hardship is that it is undersized and a pre-existing non-conformity based on the superior court ruling. In addition to being undersized, the lot has frontage on two roads causing them to need to conform to front yard setback although it is the side of the building. Harry Austin Road provides access to the YMCA and one other project. If it were treated as a side yard, the setback would be 25 feet. Septic and drainage systems pinned the building to the back corner of the buildable area. The balcony is a significant architectural feature of the building. Mr. Cherenzia presented photos (Exhibit 2). The balcony railing is wire and you can see through the rail. Mark Comeau, project architect explained that it was his computer error that caused the balcony to be pulled out and was not caught before construction. The balcony was originally intended to meet the setback, but there was an error with the consistency of the site plan submission. The site is housing a medical spa and they don't see significant use of the area or impact to the neighbors.

Public Comment:  
None.

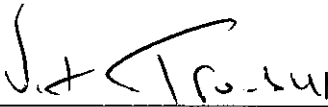
Mr. Kading closed the public hearing.

Mr. Walker moved to approve the application, seconded by Ms. Lurie Boersma. The vote was taken 5-0. Motion approved.

Minutes:

Mr. Trumbull moved to approve the minutes as amended to include a withdrawn application, seconded by Mr. Walker, all in favor 5-0. Motion approved.

Mr. Trumbull moved to adjourn, seconded by Ms. Lurie Boersma, all in favor 5-0. The meeting adjourned 8:24 p.m.

  
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Nat Trumbull, Secretary