

**BLACK POINT BEACH CLUB - ZONING BOARD OF APPEALS
PUBLIC HEARING AND REGULAR MEETING
Friday, MAY 7th, 2010
MINUTES**

A Public Hearing and Regular Meeting of the Black Point Beach Club Zoning Board of Appeals was held on Friday evening, May 7, 2010 at 4 PM in the Black Point Beach Association Clubhouse located on 6 Sunset Avenue in Niantic, CT.

PRESENT: Bill Willetts, Chairman, Paul Bollo, Secretary, Phil Hagaman,
Joyce Wojtas

ALSO PRESENT: Attorney Harry Heller, representing the applicant

ABSENT: Paul Pendergast, Anita Schepter, Alternate

1. Call Public Hearing to Order

Chairman Willetts called the Public Hearing to order at 4:00 PM.

2. Read Notice of Public Hearing

Mr. Willetts asked Mr. Bollo, Secretary to read the Notice of Public Hearing:

Case No. 1-2010:

1. Application of Ronald J. and Jean T. Giannamore for a variance of the Black Point Zoning Regulations Sections V 1A(c) and VI 7a(i) to allow an expansion of the non-conformity of the second story in connection with a tear down and replacement of their non-conforming dwelling at 18 East Shore Drive, Niantic, CT. The property is further identified on East Lyme Assessor's Map 5.11, Lot No. 68.

Mr. Willetts said that this notice was published in The New London Day.

Mr. Willetts presented the certificates of mailing for the record; this was entered as **Exhibit A**.

3. Introduction of Zoning Board of Appeals members

Mr. Willetts asked the Board Members to identify themselves for the audience. The members did so.

4. Poll ZBA Members for conflicts of interest –

Mr. Willetts polled the Board members for any conflicts of interest – hearing none – he noted to the applicant and the audience that they would need four votes in favor for the appeal to be granted.

Mr. Willetts then asked the applicant to present his case.

Attorney Harry Heller of Heller, Heller & McCoy, place of business 736 Norwich-New London Turnpike, Uncasville, CT said that he is representing the applicants Ronald & Jean Giannamore. He explained that 18 East Shore Drive is waterfront property and that the property was previously improved with a single family residence that was demolished and is now in the process of being replaced with a new residence. Per the regulations the application is for a variance of the side yard setback provision and the non-conforming bulk regulation to add a 'chase' (that is marked by an 'X' on the plans) in order to add some second floor space to install an elevator for access to that living space. He submitted the architect's design showing the side and front elevations within the dwelling for the extension upward to the second floor and tying it into the roofline. This was entered as **Exhibit B**. He also submitted **Exhibit C** – photos of the previous house on the property prior to it being torn down and he assured them that Mr. Mullen confirmed that it is within the previous footprint which was also non-conforming.

He continued that in reviewing the Black Point zoning regulations that Section 6 regarding non-conforming uses – buildings and lots in paragraph 7A it states that a non-conforming extension shall not be enlarged vertically or horizontally which he maintains allows for ambiguity. He said that he sees it as referring to not encroaching any further into a setback – whereas this is a vertical expansion extension in an area that does not exceed the horizontal non-conformity. He noted that there are two ways to read the regulation and that is the reason why they have applied for a variance rather than against Mr. Mullen's decision.

Attorney Heller said that the reasons for the hardship are two: It is a validly existing non-conforming lot and was validly improved with a structure that filled much of the lot and the construction of the new home did not allow for the installation of the elevator; it is in conformance with the comprehensive plan throughout the community. He submitted two Supreme Court Cases (Lavelle v. CT 1958 and Shell Oil Co. v. CT 1968) which were entered into the record as **Exhibit D**. These two cases cite that such ambiguity / uncertainty of the regulation creates a hardship. Regarding the property being in harmony with the neighborhood, he presented photos of the home – **Exhibit E** - from the various directions (N-S-E-W) showing that the house already blocks the water so it would have no different effect and in moving south down the street, it would never block anyone's view of the water that is not already blocked. He said that the chase is 12 sq. ft. from the first floor to the second floor and tied into the roofline. He submitted that this fits the test and that the proposal is in harmony with the district and that there is a hardship with the narrowness of the lot and the contradictory/ambiguous reading of the regulation.

Mr. Willetts said that he assumes that the elevator was not in the original design.
Attorney Heller said that was correct.

Mr. Hagaman asked why it was not in the original design plans.
Attorney Heller said that it was an after thought.

Mr. Willetts called for anyone from the public who wished to speak in favor of this application –
Hearing no one –
Mr. Willetts called for anyone from the public who wished to speak in opposition to this application –

Subbash Gopal, 16 East Shore Drive asked if the new house comes closer to either side than the previous one.

Attorney Heller said that the dotted line on the plan is the original footprint and that it does not go outside of it and in some instances is inside of it.

Josephine Cianci, 22 East Shore Drive asked about the sliding door on the back of the house to nowhere.
Mr. Willetts cautioned that does not have anything to do with this application.
Attorney Heller said that it would remain that way with a railing in front of it.

Wilfred Fountain 31 Whitecap said that since the hydraulic lift is there – does the DEP have to approve it.
Mr. Willetts said that item is irrelevant to this application.
Attorney Heller said that he did not mind answering and that there are specifics that require consumer protection and licensing with the State.

Mary Lou Weidl, 22 Indianola Rd. said that this item was discussed at the zoning meeting and that there is a pending application with the Town for an elevator. She asked if there is a patio for this or a first floor structure.

Mr. Hagaman said that he has an elevator in his home for future use and that they pour a pad for it.

Barbara Johnston, 35 Sea Crest Ave. submitted a copy of the original footprint for the record as she feels that it has been changed. The footprint is according to Vision 2006. This was entered as **Exhibit F**. She said that there was also an architect from Mystic who stated that the house was increasing by 200 sq. ft. and the footprint on Vision is totally different from the plan. She said that she also does not think that it is in harmony with the neighborhood and that it looks awful next to the little house on one side of it. She questioned the deck to the water side and if it was increased in size. She urged them to deny this application.

Mr. Bollo said that he would like to take them back to the hardship and the two prongs – the first being the possibility of reading the zoning regulations in two ways – he asked Attorney Heller to take them through that again.

Attorney Heller said that the language of 7A was read by Mr. Mullen to prohibit Mr. Giannamore's proposal and that he is saying that the language was meant to prevent an extension of an existing structure that does not encroach on the setbacks and that vertically you have a pre-existing non-conforming structure. He submitted that as an equally plausible reading of the regulation.

Mr. Bollo asked Attorney Heller if he had said that they may have been able to put it in a different area except for the location of the geo-thermal system.

Attorney Heller said that the geo-thermal system was there first and therefore this could not go there.

Mr. Bollo asked about the second prong.

Attorney Heller said that the pre-existing non-conformity limits severely the ability to construct. It is not the 48' lot that is unique but the relationship of the prior building to the lot that is unique.

Mr. Willetts asked if there aren't other lots in the area that are the same and face the same issues.

Mr. Beauchene, 20 East Shore Drive said that he could confirm Ms. Johnston's Vision submittal as the house over the last 50 years has grown larger and been added onto considerably.

Mr. Willetts said that while he understands where they are coming from that is not an issue before this board at this time.

Ms. Wojtas said that she would like to make it clear that the permit was issued for the dwelling as it exists and that the variance is for the 12 sq. ft. extension for the elevator shaft.

Attorney Heller said that is correct and added that it would be in harmony with the neighborhood.

Mr. Willetts asked if there were any other questions or comments regarding this application –
Hearing none –

Mr. Willetts closed this public hearing at 4:50 PM.

REGULAR MEETING

Mr. Willetts opened the Regular Meeting for Case No. 1-2010 at 4:51 PM.

Case No. 1-2010:

1. Application of Ronald J. and Jean T. Giannamore for a variance of the Black Point Zoning Regulations Sections V 1A(c) and VI 7a(i) to allow an expansion of the non-conformity of the second story in connection with a tear down and replacement of their non-conforming dwelling at 18 East Shore Drive, Niantic, CT. The property is further identified on East Lyme Assessor's Map 5.11, Lot No. 68.

Mr. Willetts noted that they could take no further public comment on the application.

He then said that he is not sure of the 'not understanding the zoning regulation language' as it is very clear and in the past they have always asked that there is evidence of extreme hardship and he just does not see it here.

He called for comments from the members.

Ms. Wojtas said that she wanted to state with respect to the footprint that the plans that were received were stamped by a licensed architect and that if they were not true then the architect has done himself a great disservice whereas the Vision plans are not done by engineers or architects as they do not employ them.

****MOTION (1)**

Mr. Bollo moved to DENY the Application of Ronald J. and Jean T. Giannamore for a variance of the Black Point Zoning Regulations Sections V 1A(c) and VI 7a(i) to allow an expansion of the non-conformity of the second story in connection with a tear down and replacement of their non-conforming dwelling at 18 East Shore Drive, Niantic, CT. The property is further identified on East Lyme Assessor's Map 5.11, Lot No. 68.

Ms. Wojtas seconded the motion.

Mr. Bollo stated that the reason for denial is that no sufficient hardship was proven.

Vote: 4 – 0 – 0. Motion passed.

There being no other business before the BP Zoning Board of Appeals Mr. Willetts called for a motion to adjourn the meeting.

ADJOURNMENT

****MOTION (2)**

Mr. Hagaman moved to adjourn the May 7, 2010 meeting of the Black Point Beach Club Zoning Board of Appeals at 4:58 PM.

Mr. Bollo seconded the motion.

Vote: 4 – 0 – 0. Motion passed.

Respectfully submitted,

Karen Zmitruk,
Recording Secretary