53 East Shore Drive
Niantic, CT 06357

October 20, 2020

James Fox, Chair
Zoning Commission
Black Point Beach Club Association
Niantic, CT 06357

Jim,

Due to technical difficulties with my personal ability to participate in the October 17, 2020 Public Hearing regarding potential changes to the Zoning Regulations, I offer this written summary of concerns for the record.

I know and understand that rules and regulations imposed on a community can be challenging to develop, implement, and enforce. There will never be a rule that makes 100% of the community satisfied. The current zoning regulations for Black Point are additionally challenged by their evolution over time. Thus, there are multiple instances where language is inconsistent, lacks clear specificity or at times is too specific and the overall intent can be lost. The Zoning Commission, with the guidance and knowledge of the ZEO, has spent considerable time cleaning up the regulations to make them more legal and to address concerns that are raised over time.

While the current batch of proposed changes is rooted in good intent, the implementation is confusing and concerning. This would be the ideal time to reiterate the need for a comprehensive plan for the community, understanding the values and desires of the community at large. Such a plan could result in an entirely new set of regulations that is drafted from a clean slate. Some of the challenge with the current recommendations is that they are being shoe-horned into an existing document – an exercise which is exposing other limitations that need to be addressed.

Below I articulate my concerns with the proposed changes. I think I understand the overall intent, but I see where the intent has been lost in the language or could be legally challenged, resulting in reactive modifications in the future.

Sliding Scale for Side Yard Setbacks

I suspect everyone with property within the Black Point Beach Club Association can appreciate the challenges associated with lots that were established in the late 1920s. Introducing a sliding scale for side setbacks can provide more flexibility to these narrower lots and I appreciate the underlying sentiment. Providing a scale that still limits lot coverage to 35% continues to value the overall open space availability to the community as a whole.

I do have a concern with the actual implementation of the scale. A quick survey of the GIS data for Black Point indicates that there are almost 200 lots that could generally be described as being less

than 80' wide.[1] While not well articulated in the recommended changes, it appears that lot width is measured at the front lot line and the front lot line is the street address of the property. As a result of these definitions, 15% of these narrow lots do not qualify for the relaxed setbacks because they are located at a corner and their street address corresponds to the longest dimension of the lot.

At the public hearing on October 17, 2020 the response seemed to be that "zoning isn't perfect" and these lots could still take advantage of the proposed allowance for increasing certain non-conformities by 20%.[2] While I understand that zoning regulations will not fully address all situations, I find this response disappointing.

The development and ongoing evolution of zoning regulations is not an easy task and it is admittedly imperfect. However, leaving 15% of properties out of the stated goal of achieving more flexibility to allow owners to more fully utilize their properties seems problematic.

A review of Zoning Commission minutes since the beginning of 2019 does not indicate that this disparity was recognized or discussed. As meeting minutes are a summary and not a transcript it is quite possible that this issue was discussed but no solution was found. To better understand the background, I am asking that the potential solutions to address this inequity be made available. Understanding the pros and cons about implementation of these solutions and how it was ultimately decided that these solutions were not viable should be part of the public record. This helps future iterations of the Zoning Commission understand past decisions.

Of course, in determining regulations, it may be considered excessive for a volunteer commission to review the potential impact on every property under its jurisdiction. Minutes from 2019, do make reference to an analysis report by one member. This report should also be made available to the public as it may help provide additional insight.

With respect to the option to extend an existing non-conformity for up to 20% of the current building's length, there are additional concerns.[3] While this may be a reasonable compromise on its surface, its implementation could also be problematic.

1. There is no definition of a building's length. Does it include porches, landings, decks, etc? And at what point is this length measured? At the center? At the longest point? Along the nonconforming setback?
2. The clause "of the current building's length" was added <u>within the public hearing</u> and thus may not have been fairly vetted and evaluated by the Commission.

---

[1] Left out of the calculation is an additional 7% of lots that have a "dogleg" shape or are located at a corner with a wide radius leaving the width determination uncertain. For the purposes of these calculations those lots with different widths at either end of the lot were counted simply as a narrow lot. It should be noted that the determination of the setbacks for these lots is uncertain and should also be clarified.

[2] Not all responses to comments were audible during the course of the hearing. Subsequent review of the recording of the hearing was similarly muffled.

[3] As a side note to the 20% extension of existing nonconformities, there are no time boundaries on this action. As written an owner could make an addition one year. Then another addition the following year. And again. And again …. Until the 35% overall lot coverage metric is reached. This seems like a situation of unintended consequences and will require detailed record keeping over time.

3. On a small lot, an existing house will likely be small. While 20% sounds generous, the math may be less than favorable. For example, a 40' long house would only net an 8' addition. In many cases, this will be far less than that afforded by the recommended scaled setbacks and my not constitute an equitable solution.

Section 8-2 of Chapter 124 of the Connecticut General Statutes is the enabling legislation for Zoning Commissions. This section states (in part):

> "Such zoning commission may divide the municipality into districts of such number, shape and area as may be best suited to carry out the purposes of this chapter; and, within such districts, it may regulate the erection, construction, reconstruction, alteration or use of buildings or structures and the use of land. All such regulations shall be uniform for each class or kind of buildings, structures or use of land throughout each district, but the regulations in one district may differ from those in another district,…"

As proposed, it is possible that the implementation of sliding setbacks based on both lot width and street address may not pass the uniform application of the regulations. The proposed changes to the regulations should be reviewed by an attorney with broad experience in land use law in Connecticut to ensure that the proposed implementation does not unnecessarily expose the Association to financial liability in the future. Whether or not there have been documented issues faced by one example town in the state may not constitute sufficient due diligence on this point.

Accessory Buildings

An additional area of concern for the proposed zoning regulations centers on accessory buildings. The Zoning Commission has discussed the sizing of accessory buildings and developed size-based definitions. However, there continues to be reliance on the terminology related to structure names and elements that can prove problematic. Connecting overall height of these structures to their building names would seem to invite issues.

For example, the definition of a gazebo could easily apply to a car port or a pergola or an arbor, etc. Technically, a cabana is a structure that does not necessarily have a required association with a pool. What is the argument for distinguishing a "cabana" from a "pool cabana"? If a shed's definition includes shelter for pool equipment, how is a shed different from a pool cabana? And what is so compelling about a "pool cabana" that warrants an additional 2' of height over the other named accessory buildings of shed and gazebo?

Simplifying the regulations that will allow for

one dwelling plus either

one accessory structure greater than 160 square feet and one accessory structure less than 160 square feet

or

two accessory structures each less than 160 square feet

- all while occupying no more than 35% of a lot – might be one way to alleviate the issue of semantics with respect to structure name and still meet the intent of allowing for structures in addition to the dwelling. Admittedly, there may need to be additional tweaking, but the point is that some of the language may be more sustainable over time if the focus is on the size attributes, not the design attributes.

For what it is worth, further defining these square foot metrics as something like "overall building footprint inclusive of any roof overhangs" would further clarify the measurement.

Finally, it may be prudent to review the setback language for these accessory structures. It seems that gazebos have no setback requirements. Similarly, carports, pergolas, arbors, etc. would also seem to have no setback requirements. Sheds have setback requirements linked to their footprint and height. Pool cabanas have a fixed setback regardless of size. Sheds and garages have size dimensions within the accessory building section of the document. Size dimensions for pool cabanas and gazebos are contained in the definitions section.

Cupolas

It is unclear why this particular building element is called out specifically in the proposed regulations, but having observed Zoning Commission discussions in August and September of 2020, it appears that this discussion is directly related to the height of accessory structures.

There are at least three points of concern with the language regarding cupolas.

1. Are cupolas a specially designated architectural element that are specifically allowed on buildings? Is the intent to thus exclude other roof mounted elements that may serve as decorative frippery or serve a function? For example, a roof deck or a clerestory monitor can provide both form and function to a building. Cupolas also originate as a functional element, yet the size requirements are based on design aesthetics, not functional requirements.
2. What is the purpose of including cupolas in the proposed regulations? Are building heights calculated inclusive or exclusive of this element?
3. Are cupolas limited to accessory buildings? While it seems that cupolas are detailed under accessory buildings, the language states that a cupola may be constructed on any structure. This may be intentional, or it may be an artifact of presenting changes separately from the zoning regulations and thus it is unclear how the proposed changes will actually be woven into the overall document.

If there are height limitations for accessory buildings, why not state them simply and in conjunction with their footprint? For example, a structure less than 160 sf shall be no taller than Y' from the ground to the uppermost point of the structure and be located no less than X' from the side yard setbacks. Obviously, one would add language related to the front and rear setbacks as appropriate.

For the purposes of height calculations, weathervanes and lightning protection could be excluded as their overall volume is minimal and the stated point of height restrictions is to retain some level of overall viewsheds. This type of language then ignores the type of roof (gable, gambrel, shed, hip,

flat, etc.) and allows the owner to include a feature sized for functional purposes (e.g., ventilation, light, etc.) and not just decorative purposes.

Incorporating requirements that appear to be related solely to design aesthetics may be beyond the purview of zoning regulations. Design guidelines have their place in some districts, but Black Point does not qualify as such a district.

It is the intent of the above to highlight areas of concern that may impact effective and efficient application of these proposed changes. I recognize that there is a tremendous amount of work that goes into these revision cycles and my observations and comments may be seen as too critical. Sometimes it takes someone with a fresh set of eyes and a different perspective to highlight issues. Sometimes these are legitimate issues. Sometimes these issues were already deliberated and found to be of no concern.

Ultimately, the regulations with the proposed changes appropriately woven into the base document should be reviewed by legal counsel.

Thank you for your consideration.

Colleen Chapin

colleen.chapin@gmail.com
617-620-0120

cc: Black Point Beach Club Board of Governors