

Minutes of BPBCA ZBA April 10th, 2023, Public Hearing & Regular Meeting - 04/10/23

Date and time: 04/10/23 6:02 PM to: 04/10/23 7:23 PM

Present: Brooke Stevens, Brooke Stevens, Recording Secretary, Marianne Neptin, ZBA Member, Sally Cini, ZBA Member, Arlene Garrow, ZBA Member, Kim Craven, Alternate, Dan Deknis, ZBA Chair, Colleen Chapin, Alternate, Pat Kolosowski, Alternate, Jim Ventres, Zoning Enforcement Official

CC: Absent:., Anita Schepker, ZBA Member

Location: BPBCA Clubhouse, 6 Sunset Avenue, Niantic, CT, 06357

Link: <https://app.meetingking.com/meetings/396935>

Topics

1. Call to Order

Note Dan Deknis, ZBA Chair, called the Public Hearing of the BPBCA Zoning Board of Appeals to order at 6:02 p.m.; a quorum was present.

2. Public Hearing

2-1. Black Point Zoning Board of Appeals Case 1-2023, Application of Kevin Murphy for a request for a variance of setback requirements at 22 East Shore Drive, Niantic, CT. Said parcel appears on the East Lyme Assessor's map as 05.11 lot 70.

Note Mr. Deknis noted the legal ad for this item was published in the New London Day Newspaper on March 27th, 2023, and April 3rd, 2023, posted on the Black Point website, and filed in the Town Clerk's office. He added that abutting property owners within 50 feet of 22 East Shore Drive were notified by mail, and certification of the mailings has been received and is presented as Exhibit A, for the record.

Note See attached Exhibit A.

 [22 E Shore Dr - mailing verification.pdf](#)

Note Mr. Deknis asked each member of the Board to introduce themselves, and state if they can a conflict. No ZBA members had conflicts.

Note Ms. Craven was sat as a regular member for the evening.

Note Mr. Deknis reviewed the rules of a public hearing and noted that a hardship may not be self-created, and 4 affirmative votes are necessary to grant the variance request.

Note Mr. Deknis invited the Applicant to make their presentation, and Kevin Murphy from Pools by Murphy, came forward to represent the Applicant, and detailed the following:

They're here proposing a hot tub.

It's a little above and below ground.

The base is in the ground, but it will be raised up and out.

What they're seeking for this hot tub, or plunge pool, is a setback reduction from the seawall.

You require 25 feet, and they would like to go down to 10 feet.

They'd also like to go down to 4 feet on one side, and 8 feet on the other.

There's a grass edge around the pool and the stairs are not part of the structure, because they're removable.

Note The Board reviewed the proposed plans.

Note The Board looked at the schematic, and Ms. Garrow noted the stairs are going to reduce the setback as well.

Note Ms. Kolosowski asked how big the actual water area is and Mr. Murphy said 14x8.

Note Mr. Murphy said for pool permits, is the surface of the water that's measured, the Board explained it's reflective of the lot coverage, and Mr. Murphy said in that case, that adds a foot on each side of the plunge pool.

Note Mr. Deknis asked where the heater equipment and pump will be located, and Mr. Murphy replied that they will be in the setback, right on the side of the upper wooden deck.

Note Ms. Cini observed that with the walk area, the structure is actually 9x14 ft.

Note Ms. Craven inquired about the associated equipment, and Mr. Murphy said they'll be a typical pool pump, cartridge filter, and gas heater.

Note Ms. Craven asked about a shut off valve and Mr. Murphy replied that there is a built-in timer, which can be programmed digitally as the Homeowners wish.

Note Mr. Murphy said if they have safety concerns an emergency shut off switch can be installed by an electrician.

Note Ms. Garrow asked how big the pump equipment is and Mr. Murphy said it's a 3x6 ft footprint.

Note Ms. Craven asked if the water could overflow, and Mr. Murphy replied that would purely be an operator error, and there's no danger of overflow from the pump itself.

Note Ms. Craven asked if the property is in a flood zone and Mr. Murphy replied that the Applicant stated that only the corner of their property is in the flood zone.

Note Ms. Craven asked if he consulted the town to see if they would approve it, and Mr. Murphy said no, this is the first step.

Note Mr. Deknis asked if the sea wall slopes back at all and Mr. Murphy said the slope is on the beach property.

Note Mr. Deknis and Ms. Craven asked where the lot line is, and the Applicant, Paul Vignati, said at the bottom of the stairs, on the beach, but he doesn't know exactly where the bottom of the stairs is, because they're covered by the beach.

Note Mr. Murphy said the property line is 10 ft beyond the wall.

Note Ms. Cini said she sees that the pool is 15 ft from property line on the north side, but she doesn't see a measurement on the south side.

Note Mr. Murphy said the distance on the south side is definitely more than the required 15 ft.

Note Mr. Deknis asked if there is a basement, and Sue Vignati, the other Applicant, said it's a crawlspace, and the two propane tanks will be located on the side.

Note Ms. Cini asked about the property line as it goes down to the beach. She said it matters if their property line is at the bottom of the retaining wall, and she noted that she doesn't see a measurement of the distance coming up with the retaining wall down into the beach, so she doesn't know what it adds to their footage.

Note Mr. Murphy replied that it's roughly 8 ft.

Note Mr. Deknis asked about the decibel rate of the equipment and Mr. Murphy said it's very quiet, and the equipment is actually called whisper flow.

Note After reviewing the plans, Ms. Cini said in total from their deck to the bottom, they have 16 feet, and are going to need to use 9 ft, for the plunge pool.

Note Ms. Cini said zoning says they need 25 ft and Mr. Deknis added that no equipment can be on the front lawn.

Note Mr. Murphy said he can bring the equipment back and make sure it's 25 ft away, at a minimum.

Note The Board and Applicant further discussed the variance.

Note Ms. Cini said from the deck to the bottom of the wall is 24 feet, so they're actually asking for an 8 ft variance.

Note Mr. Deknis called for public comment, and noted no written correspondence was received.

Note Steve Beauchene of 20 East Shore came forward and offered the following remarks:
He's glad that they found that the property line was where they measured from and not the sea wall, if it goes another 8 to 10 ft water ward from where the seawall is.
It did show on the diagram that was submitted to the Zoning Board of Appeals, that the property line is on the waterward side.
He thinks it'd be a great addition.
In looking at a lot of the maps, he found that there are quite a few pools on the water that are within that 25 ft setback, but obviously, the rules could have changed over time.
It almost seems like it has been accepted as a matter of course, and he'd be in favor of it.

Note Mr. Deknis said there are 3 on East Shore Drive.

Note Sean Brosseau of 19 East Shore Drive said he lives across the street from the Applicant and doesn't see any problems with this request.

Note Mr. Deknis asked if anyone wished to speak against the variance request, and there were no comments.

Note Mr. Deknis called for any neutral comments and John Cellino of 60 East Shore Drive asked what the height is and Mr. Murphy said it's 18 inches from the existing ground level, so essentially chair height.

Note There were no further public comments.

Note Mr. Ventres, the ZEO, said the following:

The Applicant thought it was 10 ft, but the setback is 25 feet from the property line, which is the total of the slope for this map.

There's a drill hole so the property line is at the toe of the slope, so we're good there, that's the property line, and it's not the retaining wall.

The pool now is 9x14 ft.

Previously it was going to be exceeding the 35% lot coverage.

It was going to be 35.3% and now, you're at 35.5%.

It's minuscule, but your regulations include buildings, structures, decks, and includes pools.

The lot is 58.7 feet wide, so it fits in the reduced side yard calculation.

The side yard allows this to be up to 10 feet away.

The house and the deck are 9.9, which is 9 ft 9 in.

To make it more conforming this pool could slide 4 ft to the north.

It would be then 18 feet from the toe of the slope.

On the longest side it would be requesting 7 yards, and if you split it over, you'd be requesting a ten-yard variance to make it fit, because it's on that angle.

Instead of 4 ft and 8 ft, you're at 10 ft and 18 ft.

The Zoning Board of Appeals has the right to approve or deny or modifying a regulation.

As far as the accessory equipment, they can be no closer than 5 ft from the property line.

They didn't really answer the question about uniqueness of the property but setbacks for pools are generally put in place where the peace and tranquility of the neighbor, in this case, one is the Association owned access point, and the other is the Association owned beach.

So, there's a there is uniqueness with the property and the fact that it is bound by two sides, and it'd be conforming to Mr. Beauchene's property to the north.

The variance they're requesting is to the beach.

Note Mr. Deknis asked how long the filter pump runs and Mr. Murphy replied 4 to 6 hours but is as quiet as they come. He further explained that it has one small multicolor light and an automatic retractable cover.

Note Ms. Craven inquired about safety and Mr. Murphy said it would support 4 adults across the cover. She asked if they plan to keep it covered when not in use, and the Applicant confirmed that they do.

Note Ms. Cini asked how deep the water is and Mr. Murphy said 3 ft.

Note Ms. Craven asked if the Applicant would be willing to move it over, and the Applicant replied in the affirmative.

Note Ms. Neptin asked about the equipment that will be used, and if there's any chance of disrupting the retaining wall. Mr. Murphy said it will be hand done, and Ms. Vignati said she will be home during the day and can make sure any tools or vehicles used, are in her driveway.

Decision MOTION (1)

Mr. Deknis moved to close the Public Hearing portion of the April 10th, 2023, BPBCA ZBA Meeting at 6:49 p.m.

Ms. Garrow seconded the motion.

Motion carried, 5-0-0.

3. Regular Meeting

3-1. Black Point Zoning Board of Appeals Case 1-2023, Application of Kevin Murphy for a request for a variance of setback requirements at 22 East Shore Drive, Niantic, CT. Said parcel appears on the East Lyme Assessor's map as 05.11 lot 70.

Note Mr. Deknis said they will now open the Regular Meeting and deliberate.

Note The Board considered the variance request, discussed it with Mr. Ventres, and some of the following comments were made:

Mr. Deknis said the new information has presented this in a different light.

Mr. Ventres said it will be 18 ft at its farthest point and 10 ft at its closest point.

Mr. Ventres said it's on an angle, if it slides over, it will gain some distance from the property line, and it's .5% over the 35% lot coverage maximum.

Ms. Garrow asked what the hardship is, she doesn't know that it was established.

Ms. Neptin said the configuration of the lot makes it difficult to sort things out.

Ms. Craven said that far into the setback is a big ask, and Ms. Kolosowski agreed.

Mr. Deknis said the pool would fit the requirements if they moved the deck instead.

Decision MOTION (1)

Mr. Deknis moved to approve the variance of Black Point Zoning Board of Appeals Case 1-2023, Application of Kevin Murphy for a request for a variance of setback requirements at 22 East Shore Drive, with the modification of moving it 4 feet to the north, giving it 18 feet on the north side, 10 feet on the south side, and with an additional .5% Lot coverage, resulting in a variance of 15 ft at its closest point.

Ms. Garrow seconded the motion.

Motion failed 1-4-0.

Vote-

Ms. Garrow: Nay based on the lack of hardship.

Ms. Cini: Nay on the grounds of hardship and large size of the requested variance.

Ms. Crave: Nay based on the extra feet requested and lack of hardship.

Ms. Neptin: Yay based upon the shift of 4 ft north, which fits the description submitted.

Mr. Deknis: Nay based on the lack of hardship.

4. Any Business on the Floor, if any by the Majority Vote of the Commission

Note There was none.

5. Adjournment

Decision MOTION (2)

Ms. Neptin moved to adjourn the April 10th, 2023, Regular Meeting of the BPBCA ZBA Meeting at 7:23 p.m.

Mr. Deknis seconded the motion.

Motion carried, 5-0-0.

Note Respectfully Submitted,
Brooke Stevens, Recording Secretary

Next Meeting

Meeting title: [Bpbca zba april 20th, 2023, public hearing & regular meeting](#)
Date and time: 04/20/23 06:00 pm to: 04/20/23 06:58 pm
Location: BPBCA Clubhouse, 6 Sunset Avenue, Niantic, CT, 06357