

**Black Point Beach Club Association Zoning Board of Appeals**

**October 19, 2019 Public & Regular Meeting Minutes**

Present:

Colleen Chapin, Chair  
Arlene Garrow  
Paul Pendergrast  
Sally Cini  
Marianne Neptin, Alternate (\*Sat as a Regular Member)

Staff Present: Mark Zamarka, BPBCA Attorney

A Public and Regular Meeting of the Black Point Beach Association Zoning Board of Appeals was held on Saturday, October 19, 2019 at 9:00 a.m. at the Black Point Beach Club Association Clubhouse located at 6 Sunset Avenue in Niantic, Connecticut.

**I. Call to Order**

Chair Chapin called the Public Hearing of the BPBCA Zoning Board of Appeals to order at 9:00 a.m.

**II. Attendance and Establishment of Quorum**

Ms. Chapin introduced the Commission members and noted a quorum was present.

**II. Public Hearing**

**Black Point Zoning Board of Appeals Case 3-2019 Application by Peter & Alice Baril, requesting a variance of setback requirements in order to expand alcove at 17 Sea View Avenue, Niantic, CT. Said parcel appears on the East Lyme Assessor's Map 05.15, Lot47.**

- Ms. Chapin noted the legal ad published in the New London Day Newspaper on October 9 and October 12, 2019 and read the public notice into the record.
- She noted the certificate of mailings were sent to abutting property owners within 50 feet of 17 Sea View Avenue, as determined by the East Lyme GIS Map.
- Ms. Chapin asked if anyone on the board had a conflict of interest and needed to recuse. No one indicated such a conflict.

1. Peter Baril of 17 Sea View came forward and shared:
  - The variance request is to fill in a 6'x7' gap to make east elevation one continuous plane.
  - The house and existing nonconformities pre-date the current zoning regulations.
  - The request is only to fill in for one story in height, consistent with the adjacent non-conforming portions of the house.
  - The first floor will be the primary living area in case of any future mobility issues.
  - The abutters at 15 and 19 Sea View Avenue endorse the request.
  
2. Attorney Theodore Harris, 351 Main Street, Niantic was in attendance representing the Baril's and offered additional justification for the granting of the Baril's variance request:
  - The existing house was built in 1950, the lot is original and predates the current regulations.
  - Lot does not have 60' of frontage which is the standard requirement for a conforming lot in Black Point.
  - The lot is 50'x100' and is considered sub-standard in terms of frontage and lot area.
  - Deducting 15' at each side for required setbacks only leaves 20' of house width which is currently substandard.
  - The requested variance will not extend the building beyond the plane of the current non-conformity on the east elevation.
  - When there is a transfer of a property that is nonconforming, the buyer has not made a self-created hardship. If the right of variance was available for the previous owner, the right of variance passes on to the subsequent owners. See *Judelson v. Town of Madison Board of Appeals* (2006); *Kulak v. Zoning Board of Appeals of the City of Stamford* (1981)
  - Changes in zoning regulations over time can be reason to give variance
  - Requests that are not inconsistent with the neighborhood should be considered. In Baril's neighborhood there are other homes close to side lot lines. See East Lyme GIS map of showing Sea View and Sea Breeze Avenues between East Shore Drive and Sunrise Avenue. Attorney Harris highlighted 6 lots showing buildings less than 15' from the side property lines.
  - Baril's request is generated because of changes in zoning. The lot has substandard width. Under CT law this request should be granted.
  
3. Alice Baril of 17 Sea View shared:
  - At a meeting on October 18, 2019, the Zoning Commission discussed considering amending the regulations for small lots.
  - Defining hardships is nebulous.
  - Black Point is becoming a year-round community.

5. Paul Pendergast – ZBA Member

- Asked if the zoning meeting referenced by Mrs. Baril was for Black Point. Mrs. Baril confirmed that it was.

Ms. Chapin read two letters of support into the record. These letters were from Thomas & Robin Meggars (15 Sea View Avenue) and Veronica Casey (19 Sea View Avenue).

6. Alice Baril of 17 Sea View:

- There is 30' between the Meggars' house and the Baril's house so that their house is not "on top of" another house.
- Alice stated that hardship is only one parameter for decisions.

7. Peter Baril of 17 Sea View:

- "Hardship" is a nebulous term. If that was the only reason zoning variances were allowed in Black Point, variances would only be granted for severe medical reasons.

8. Mary Cahill, 37 Indianola Road

- Mrs. Cahill spoke in support of Baril's appeal to even out the east elevation.
- Many years ago, zoning was rewritten so that houses would not be too close together. At that time they almost zoned out homes which were on smaller lots.
- Black Point is becoming a year-round community.
- Mrs. Cahill quoted from the Association Charter of 1931:

Section 3.

"The objects of said association shall be to provide for the improvement of the lands in said territory and for the health, comfort and protection and convenience of the inhabitants thereof. "

9. Liz Diachenko, 25 Sunrise Avenue

- Spoke in support of a variance for a very small space in order to improve the Baril's lives.

Following public comments, Ms. Chapin called for Board questions.

Mr. Pendergast questioned why someone would build a house with such an irregularity.

Ms. Garrow asked if the new home would be one or two levels. Mr. Baril said there would be a small upstairs but they would primarily live downstairs.

Ms. Neptin noted that a possible reason for the irregularity may have been a porch that was separated from the front part of the house.

Ms. Cini reported that she had asked for a variance for a landing to prevent water runoff. Her application was thrown out because it was deemed an unnecessary request and she was allowed to build the landing. She said that there were many reasons to allow a variance with hardship being only one reason.

Ms. Chapin commented on the large number of very small lots and the zoning regulations allow for continued use of pre-existing nonconforming lots. State statutes have a two-part test for determining variances:

- Does the request vary the plan?
- Is there a hardship uniquely affecting the land?

In the event that there is no physical hardship a variance would not be appropriate. She asked if the Baril's would consider shifting the existing non-conforming "porch" area to close the gap. Ms. Chapin noted that off-setting existing non-conformities such that there is a net decrease or no increase in non-conformity may help offset the hardship.

Mr. Baril stated that they considered some options but did not consider those options. He feels that this is an extremely small request. He feels that in time this issue will be moot.

Attorney Harris referred to other cases which look at how changes in regulations affect small lots. Because this request is so small this is part of the balance of the two-part test that Ms. Chapin referred to.

Ms. Chapin noted that different legal cases can present contrary results and referenced *Verillo vs Zoning Board of Appeals of the Town of Branford (2015)*.

Attorney Harris repeated that this request should be viewed in terms of the neighborhood impact.

Mr. Pendergast reflected that it would be poor judgement of the ZBA to turn this down.

10. Alice Baril of 17 Sea View:

- Mrs. Baril asked if the Black Point attorney (Mr. Zamarka) would be able to speak during the ZBA meeting where the request would be deliberated. Attorney Zamarka noted that he is considered staff in this case and thus could respond to questions by the Board as necessary.

**MOTION (1)**

**Mr. Pendergast moved to close the Public Hearing at 9:52 a.m.**

**Ms. Cini seconded the motion.**

**Motion carried, 5-0-0.**

**IV. Regular Meeting**

Ms. Chapin called the Regular Meeting to order at 9:54 a.m.

**MOTION (2)**

**Mr. Pendergast moved to approve the variance as requested for 17 sea view Avenue.**

**Ms. Garrow seconded the motion.**

**Black Point Zoning Board of Appeals Case 3-2019 Application by Peter & Alice Baril, requesting a variance of setback requirements in order to expand alcove at 7 Sea View Avenue. Niantic, CT. Said parcel appears on the East Lyme Assessor's Map 05.15, Lot 47.**

- Mr. Zamarka recommended discussion of the application before voting.
- Mr. Pendergast stated he would be voting in the affirmative on the basis of common sense.
- Ms. Cini referred to the Section IX.1.a of the BPBCA Zoning Regulations and she believes that the request is "is in harmony with their general purpose and intent, with due consideration for conserving the public health, safety, convenience, welfare and property values".
- Ms. Garrow is in agreement to allow the Baril's to use their home to meet their needs.
- Ms. Neptin agrees, especially considering new zoning regulations that are likely to be put into effect that would address this issue.
- Ms. Chapin does not think the request negatively affects the neighborhood but does not see a hardship and thus the two-part test is unfortunately not met.
- The votes were then cast:

**Yay: Ms. Cini, Ms. Garrow, Mr. Pendergrast, Ms. Neptin**

**Nay: Ms. Chapin**

**Motion passes: 4-1-0**

**Variance request is approved**

Ms. Chapin then proposed to add an agenda item to the meeting: Election of Chair

Ms. Cini nominated Ms. Chapin. She feels it is healthy to have differing perspectives on the board and Ms. Chapin has a wealth of knowledge about the topic.

Mr. Pendergast asked if all members needed to vote on this noting that one member and two alternates were not in attendance.

Ms. Chapin stated that it may take an extended time to get all members together and determining the Chair should be an annual activity.

**MOTION (3)**

**Ms. Cini moved to confirm Ms. Chapin as Chair.**

**Ms. Neptin seconded the motion.**

**Motion carried, 5-0-0.**

**Ms. Chapin will continue to serve as Chair of ZBA.**

Additional discussion

Ms. Cini observed that applicants should be reminded that appeals require 4 votes to pass. With a Board of 5 members, that requires a 4-1 vote. If there is a hearing with 4 members, that will require a 4-0 vote.

Mr. Pendergast is interested in further exploration of the concept of hardship.

Ms. Chapin will look for training opportunities for the board.

**MOTION (4)**

**Ms. Garrow moved to close the meeting at 10:20am.**

**Ms. Cini seconded the motion.**

**Motion carried, 5-0-0.**

Cheryl Colangelo

Acting Recording Secretary



**FALKENSTEIN, MEGGERS, PAUL & ROBINSON, P.C.**

*Attorneys at Law*

Stanley Falkenstein †  
Robin S. Murdock-Meggers  
Julia Morris Paul †  
Thomas A. Robinson

† Also admitted in New York

Paul R. Marte, of Counsel

113 East Center Street  
Manchester, CT 06040-5243  
phone (860) 649-2865  
(860) 649-5278  
fax (860) 649-2073  
(860) 645-8207  
www.113law.com  
lawyers@113law.com

July 15, 2019

Colleen Chapin, Chairperson  
Black Point Beach Club Association  
Zoning Board of Appeals  
P.O. Box 715  
Niantic, CT 06357

RE: 17 Seaview Avenue – Variance Request

Dear Ms. Chapin,

My husband, Tom Meggers, and I live adjacent to 17 Seaview, on the easterly side, at 15 Seaview Avenue. Our neighbors, Peter and Alice Barile, are applying for a variance for an area comprising of 56 square feet on the easterly side of their property, referred to as an 'alcove' area. We have no objection to construction in this area, and in fact, believe that allowing this area to be constructed would enhance the new dwelling.

If you have any questions please feel free to contact me.

Very truly yours,

Robin Murdock-Meggers

Veronica Casey

30 Bokum Road  
Apt. 164  
Essex, CT 06426

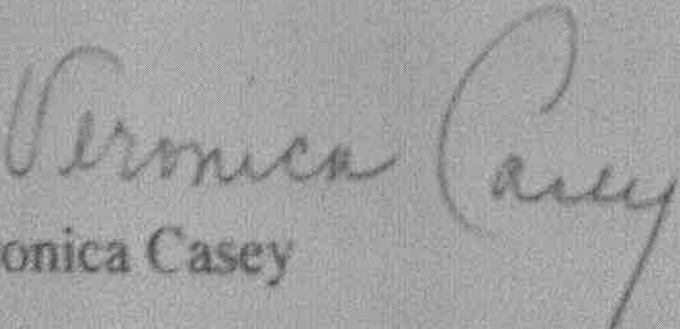
October 13, 2019

Black Point Beach Club Association  
Zoning Board of Appeals  
P.O. Box 715  
Niantic, CT 06357

Regarding the variance for 17 Sea View Avenue:

My summer home (19 Sea View Avenue) is next door to 17 Sea View Avenue. The Barils are requesting a variance to expand the alcove on the east side of their property. I have no objection to this variance.

Sincerely,

  
Veronica Casey