

# BLACK POINT BEACH CLUB ASSOCIATION

Application to the Black Point Beach Club

Zoning Board of Appeals

Theodore A. Harris, Agent for

1. Applicant Thomas C. Cherry, Jr. & Lynn H. Cherry Phone (860) 739-6906

Address 351 Main Street, Niantic, CT 06357

2. Owner Thomas C. Cherry, Jr. & Lynn H. Cherry Phone (860) 912-7858

Address 3 Applewood Commons, East Lyme, CT 06333

3. Street Address of affected property 12 Uncas Road

4. Zone R12 Assessor's Map No. 02.7 Lot No. 9

5. Properties within fifty (50) feet of ANY lot line (attach additional if necessary)

a. Name See attached Address \_\_\_\_\_

b. Name \_\_\_\_\_ Address \_\_\_\_\_

c. Name \_\_\_\_\_ Address \_\_\_\_\_

d. Name \_\_\_\_\_ Address \_\_\_\_\_

e. Name \_\_\_\_\_ Address \_\_\_\_\_

6. Is affected property within 500 feet of Town Line? Yes \_\_\_\_\_ No X

7. Application relates to (check appropriate items):

X Request for variance of following section(s) of zoning regulations Section V, 1 f 2

\_\_\_\_ Alleged error in Zoning Official's action under section \_\_\_\_\_

8. If variance requested, describe exceptional difficulty or unusual hardship on which request is based. If error alleged, explain basis for allegation (See instructions (d) and (e)). Attach additional details if necessary.

See attached

9. Has any previous variance request or appeal relative to this property been filed with Board of Appeals?

No X Yes \_\_\_\_\_ Specify date \_\_\_\_\_

I hereby certify that the above information is true and correct to the best of my knowledge, and I authorize the members of the Zoning Board of Appeals to inspect the property in question.

Signed By: Thomas C. Cherry, Jr. & Lynn H. Cherry Date 3/10/2021  
Theodore A. Harris, Agent

**IMPORTANT: Ten copies of the completed application form (original and nine copies) must be submitted to the Chair or the Secretary of the Zoning Board of Appeals by mail (Black Point Beach Association, Zoning Board of Appeals, P.O. Box 715, Niantic, CT 06357). The application must be accompanied by Ten (10) copies of the Zoning Official's action, ten (10) copies of the complete legal description of the property, a cashier's check in the amount of \$450.00 made payable to "The Black Point Beach Club Association," and any additional information that may be appropriate.**

**This space reserved for Zoning Board of Appeals**

Date application received \_\_\_\_\_ Appeal No. \_\_\_\_\_

Date of Hearing \_\_\_\_\_ Action \_\_\_\_\_

**BLACK POINT BEACH CLUB ASSOCIATION  
APPLICATION TO THE BLACK POINT BEACH CLUB  
ZONING BOARD OF APPEALS**

Re: Thomas C. Cherry, Jr. and Lynn H. Cherry

5. Properties within fifty (50) feet of ANY lot line (attach additional if necessary)
  - a. Maria Allegro, 9 Uncas Road, Niantic, CT 06357
  - b. Susan A. Gesualdi & Donna M. Gesualdi, 174 High Valley Drive, Canton, CT 06019
  - c. Judith M. Halleran, 11 Uncas Road, Niantic, CT 06357
  - d. Estate of Salvatore V. Lagana & Estate of Jeanne C. Lagana, 306 Robins Avenue, Newington, CT 06111
  - e. W. Alasdair B. Macphail & Edna R. Macphail, 21 Bond Street, Niantic, CT 06357
  - f. Thomas & Julia Magnuson, 422 North Royal Street, Alexandria, VA 22314

**THOMAS C. CHERRY AND LYNN H. CHERRY  
12 UNCAS ROAD, NIAN TIC, CONNECTICUT  
NARRATIVE**

This is an Application for a street frontage side yard variance to allow the construction of a small addition to a home located at 12 Uncas Road, Niantic, Connecticut. The lot is slightly non-conforming in size, and suffers from a significant disadvantage because it has road frontage on three (3) different sides, and the existing placement of the home leaves no ability to build an addition. The requested variance is to allow a proposed addition to the home, to provide internal recreational space. The combination of the existing home and addition is well within the allowed coverage, in fact, it is fifteen (15%) percent below the thirty-five (35%) percent which would be allowed pursuant to the Regulations. Hence, the requested variance would not result in an overbuilding of the lot itself.

The three (3) sided street frontage, and irregular shape (for example, 52.4 feet along the westerly boundary of Uncas Road, and the opposite lot line is 103.6 feet) combined with the preexisting location of the home, results in the Zoning Regulations impact on the lot significantly more onerous than lots otherwise situated. It is this unique configuration that creates the hardship and necessitates the within request for a variance.

There are only two potential locations for the proposed addition, one being Uncas Road, the other being Bond Street, as the existing home is approximately ten (10') feet from the Easterly boundary, and there is a home on the adjoining parcel which is virtually on the property line. Both practical locations would have required a variance in order to construct an addition, as the existing setback is currently larger on that side. In addition, as identified on the plan, there is a substantial landscaped area between the lot line and the paved street line resulting in an **effective setback of twenty (20') feet from the actual street**, after the addition is constructed, which as a practical matter, exceeds the setback requirement if measured from the actual street. In all other respects, the proposed addition would meet the zoning requirements for the Black Point Beach Club. As the Plan reveals, the actual Zoning setback for the proposed addition would be 5.25 feet, leaving a requested variance of 9.75 feet.

Hardship. The hardship has been created by the unique three (3) street sided configuration of this lot, and its irregular shape. As noted, the impact of this unique configuration is to reduce or eliminate any opportunity to make a meaningful addition to the home. The fact that, with the addition, the parcel would remain significantly below coverage would certainly indicate that it is not the size of the lot, but rather the impact of three (3) road side yard/front yard, and irregular shape which impacts this lot in a fashion not otherwise felt by others in the district. As if to emphasize the uniqueness of this application, it appears that there is no other lot within the BPBC jurisdiction, with road frontage on three sides.

Our courts have indicated that unique features of the lot can form the basis for hardship, and hence, for a variance. One court expressed it as follows:

“[A] board may grant a variance with respect to parcels of land owing to conditions especially affecting such parcel, but not affecting generally the district in which it is situated, and literal enforcement of such bylaws, ordinances or regulations would result in exceptional difficulty and ...unusual hardship, and substantial injustice will be done and the public safety and welfare will not be secured”. Horace vs. Zoning Board of Appeals 85 Conn. App. 162, p 165-66 (2004).

Here, condition of this lot fronting on three (3) different streets with an irregular shape has created the hardship, which is unlike the impact of the Regulations generally in the district.

Accordingly, it is respectfully asserted that (i) there is legal hardship affecting this lot; and (ii) the grant of the variance will not have a negative impact on the neighborhood, nor with respect to public safety.

SCHEDULE A

that certain piece or parcel of land, with the buildings and improvements thereon, situated in the Town of East Lyme, County of New London, State of Connecticut, and being Lot Nos. 1192 and 1193 of Plan 2 of the Black Point Beach Club Property as the same is laid out into building lots and plans filed for reference April 3, 1931, with the Town Clerk of the Town of East Lyme. Said lots are more particularly described as follows:

Lot #1192

Bounded Northerly 40.6 feet by Uncas Road; Easterly 103.6 feet by Lot No. 1191; Southerly 41 feet by Bond Street; Westerly 87.8 feet by Lot No. 1193.

Lot #1193

Bounded Northerly 35 feet by Uncas Road; Easterly 87.8 feet by Lot No. 1192; Southerly 41.6 feet by Bond Street; Westerly 52.4 feet by Uncas Road; and Northwesterly on a curve 28.7 feet, more or less, by Uncas Road.

Together with the rights and privileges and subject to the conditions, limitations and restrictions contained in the Warranty Deed of The Shore & Lake Corporation to Harry J. Parker, recorded in the East Lyme Land Records in Volume 34, Page 269.

Being the same premises conveyed to the herein Grantor by virtue of a Deed dated 4/8/10 in Volume 846, Page 520 of the East Lyme land records.

The herein Grantee assumes and agrees to pay all taxes coming due and payable to the Town of East Lyme.

VOL: 1010 PG: 642  
INST: 000009028

RECEIVED FOR RECORD  
Apr 24, 2019 11:26:45A  
Karen Miller Galbo  
TOWN CLERK  
EAST LYME, CT

02.7 3  
ALLEGRO MARIA  
9 UNCAS RD  
NIANTIC, CT 06357

02.7 9  
CHERRY THOMAS C JR &  
3 APPLEWOOD COMMONS  
EAST LYME, CT 06333

02.7 20  
GESUALDI SUSAN A &  
174 HIGH VALLEY DR  
CANTON, CT 06019

02.7 2  
HALLERAN JUDITH M  
11 UNCAS RD  
NIANTIC, CT 06357

02.7 21  
LAGANA SALVATORE V EST &  
C/O DENNIS ONEILL  
NEWINGTON, CT 06111

02.7 1  
MACPHAIL W ALASDAIR B &  
21 BOND ST  
NIANTIC, CT 06357

02.7 10  
MAGNUSON THOMAS & JULIA  
422 N ROYAL ST  
ALEXANDRIA, VA 22314