

**Black Point Beach Club Association Zoning Board of Appeals
May 18th, 2021 Public & Regular Meeting Minutes**

Present:

Colleen Chapin, Chairman
Sally Cini
Arlene Garrow
Anita Schepker
Kim Craven, Alternate (Sat as a Regular Member)

Also Present:

Jim Allen, Zoning Commission Secretary
Thomas & Lynn Cherry, Applicant
Ted Harris, Attorney for the Applicant

A Public and Regular Meeting of the Black Point Beach Association Zoning Board of Appeals was held on Thursday May 18th, 2021 at 6:00 p.m. via teleconference.

I. Call to Order

Chairman Chapin called the Public Hearing of the BPBCA Zoning Board of Appeals to order at 6:04 p.m. and noted the teleconference is being recorded in its entirety and in accordance with the requirements of executive order 7B, issued by Governor Lamont, which allows for public meetings to held over teleconference.

II. Attendance and Establishment of Quorum

Ms. Chapin introduced the Commission members and noted a quorum was present; Kim Craven, Alternate, was sat as a regular Member for the evening in order to reach this quorum. Ms. Chapin noted a meeting notification was posted on the Black Point Beach Club website, posted on the Black Point Beach Club facebook page, and sent to abutting property owners within 50 feet of 12 Uncas Road.

III. Public Hearing

- a. Black Point Zoning Board of Appeals Case 2-2021 Application of Thomas and Lynn Cherry, request for a variance of setback requirements at 12 Uncas Road, Niantic, CT. Said parcel appears on the East Lyme Assessor's map 02.7, lot 9.**

Ms. Chapin reminded those in attendance, what constitutes a zoning hardship and turned the meeting over to the Attorney Harris so that he could detail the variance request his client is seeking. Mr. Harris of 351 Main Street, Niantic, referred to the site plan they submitted with the application package and said some of the following:

- The Cherry's have resided in East Lyme for many years and they're now downsizing to a smaller venue and Black Point Beach seemed like an ideal place to move to.
- This application is for a 9.75 foot side yard variance to allow the construction of a 300 square foot addition to the existing home.

- The proposed addition would have a basement and would also join the first floor, for a one floor room.
- The inside dimensions would be approximately 14 x 28; the overall dimension of the proposed edition is 15 x 20 with the additional room.
- The lot is approximately 8000 square feet.
- Part of the plan package is a rendering which shows the proposed edition.
- You can see that the addition is lower than the main house and is not bulky in appearance.
- It's attractive in terms of the facade of the house and doesn't overpower the neighborhood
- He believes there's a basis both in fact and law for the granting of this variance.
- One of the factors that is highlighted in their application process is the fact that the lot is surrounded on three sides by roads.
- He could not find any other lot within the association that was surrounded on three sides by roads.
- There are many lots that have frontage on two different roads but not three, so it is a unique property from that perspective.
- That uniqueness is also accentuated by the nature of Uncas Road.
- The side where the addition is proposed is a right-of-way wider than it is in any other location on Uncas Road.
- The addition would be 15 feet from the right-of-way and the closest distance from the addition to the paved area of the road is 20 feet.
- Typically in this area there would be a five foot shoulder along the roadway for the right-of-way and then the right-of-way would end.
- If you take the 20 and subtract the 5, you end up with a practical 15 foot setback.
- The right-of-way in this area is far wider than that- it's a right-of-way that will never be used.
- As a practical matter we need a variance because the right-of-way is defined wider than it would normally be defined within each association property.
- The existing coverage would be 20% and 35% would be allowable in this particular zone.
- We're not overburdening in terms of size or footprint on the lot itself.
- He'd like to refer to a couple Connecticut superior court cases which discuss the nature of a variance.
- The first involves an application to tear a home down and reconstruct the home.
- During that process they had to move it and required side yard variances.
- The Court first went through the basic law regarding variances in this context and determined that direct or unusual shapes or conditions of lots may form a basis for hardship.
- This supports the granting of a variance whereby reasoning of exceptional shape size or topography of a lot or other exceptional situation or condition of building or land, or practical difficulty or a necessary hardship would result to the owners of said lot from a strict enforcement of the regulations that variants may be granted.

- In this particular case the Court approved the requested variance to allow the removal of the home and the reconstruction of it.
- The basis for that variance was the shape of the lot itself because portions of it had been eroded.
- The other case involves a side yard variance based on a request to add a garage to an existing lot.
- In the case of exceptional difficulty or unusual argument, Courts have held that a variance may be granted if the literal enforcement of a regulation causes exceptional difficulty, or because of some unusual circumstance of the property to support the granting of a variance.
- The hardship must arise from a condition different in kind from that generally affecting properties in the same zoning district and must be imposed by conditions outside the property owner's control.
- This application effectively provides for the setbacks from the road that would normally be the case throughout the Black Point Beach Club Association.

Ms. Chapin noted that she hasn't received any correspondence in regards to their ZBA request.

Ms. Chapin called for Public Comment and there was none.

Jim Allen was in attendance as a representative of the Zoning Commission and commented that he concurs with Attorney Harris regarding the uniqueness of this particular property, and there is no other property in the association that has roads on three sides.

Thomas Cherry, one of the applicants, commented that their neighbors are aware of their plans and have no objection if it's approved.

Ms. Chapin called for Board questions and some of the following was discussed:

- Ms. Schepker asked for more information regarding the cases Mr. Harris cited.
- She said that the one she is reading says the variants must be shown not to affect substantially the comprehensive zoning plan and adherence to the strict letter of the zoning ordinance must be shown to cause unusual hardship not unnecessary to the carrying out of the general purpose of the zoning plan.
- She sees where he's talking about one niche but not two.
- One of the cases he referred to happened to be a commercial case in a residential zone.
- Mr. Harris said their appeal is based upon the nature of Uncus Road as it surrounds the property, in particular the curve that it's on and the additional width which is not used has created the issue but for the fact that you have three sides of roads and you have the wider road in front has created the issue.
- He said he tried to point out this is a practical matter and the substance and the purpose of the regulations has been met since we really are 15 feet from the roadway plus the typical right-of-way width that you would have of five feet along each side of the road.

- Kim Craven said she reviewed the GIS for Black Point properties and there are 5 that have roads on three sides- 56 Sea Spray, 34 Woodland, 38 Sea Crest, 33 Brightwater, and 92 East Shore Drive.
- She asked if the 10-foot buffer from the road to the homeowner's property line is Town road property that they're including in their measurements.
- Mr. Harris said if you take the roadway and add the 5 feet, you're still 15 feet from that point of the addition; although we don't meet the letter of the regulation, we meet the intent of the regulation.
- He added that the setback that is desired is within the association and although part of it is in the right-of-way, it's never going to be used.
- Ms. Craven said she worries about traffic, bicyclists and pedestrians.
- Mr. Harris said the difference between the right-of-way here and a typical right-of-way within Black Point is to show the addition will be what typically be 15 feet from the typical roadway.

Ms. Chapin noted that Dan Deknis joined the meeting at 6:36 p.m. and shared that he is the new alternate for the Zoning Board of Appeals.

The Board further discussed the appeal and some of the following was said:

- Ms. Chapin asked Mr. Harris if he happens to know the width of Uncas Road.
- She believes the right-of-way is reserved to the Town to widen the road if necessary and we can't assume that it will never be used; we've had situations such as Waterside Avenue where owners built into or close to the Town reserve and they had to demolish what was built.
- Mr. Harris said widening the road is unlikely because you wouldn't be widening the road only in one little location.
- Ms. Chapin replied that the Town Planner could actually put a stop sign there and make a formal turn.
- She asked how this hardship is impacting reasonable use of the property.
- Mr. Harris replied that the basis for the variance of the two cases he described and that the unique characteristics of the property limits its use, and creates a practical difficulty under case law in terms of doing anything more with the property.
- He detailed how the road is far wider in this area than anywhere else in that general vicinity.
- Ms. Schepker said she agrees with Ms. Chapin's comments regarding the road.
- She observed they want to go 9.75 feet into the setback which the zoning regulations don't allow.
- She said the property is unique but there are more than one unique pieces of property in Black Point.
- Ms. Chapin said the zoning commission over the past couple years has really looked at how to institute a little bit more flexibility into the regulations mostly to allow a little bit of wiggle room for the smaller lots.
- She added that their sliding scale of setbacks doesn't go all the way up to 80 feet; with that we're talking really about a 14-foot setback instead of a 15-foot setback.

- She said people try to offset a non-conforming with some pre-existing non-conformity-in this case a little bit of corner of the building on the right-hand side that kind of sticks out into the setback.
- Ms. Chapin said she suspects that was done when they had 10 foot setbacks in the 70s and Mr. Harris responded that the house dates back to 1976.
- She asked if Mr. Harris is familiar with the Varillo versus Branford appeal case and explained it deals with reasonable use of the property where someone had a small seasonal cottage and wanted to tear it down 50 years later to make a bigger house.
- Their zoning restricted the size and on appeal, the Court determined that it had a reasonable use.
- Ms. Chapin noted we have a case on each side of the spectrum.
- Ms. Schepker explained how use of the word “shall” means absolutely while “may” means you can go either way.
- Ms. Chapin said they’re asking for a significant variance of the setback and she’s struggling to understand how this road being a road as opposed to somebody’s lot makes any difference.
- Ms. Schepker referenced the case law Mr. Harris cited and observed that you have to meet two conditions and one of those conditions is that the variance must be shown not to affect substantially the comprehensive zoning plan.
- Mr. Harris responded that it does meet this condition.
- Ms. Schepker said if we stipulate to the fact that the lines and setbacks are accurate, you’re going into the setback 9.75 feet, which she is also struggling with.
- Mr. Harris said they’re 15 feet from what would typically be the right- of- way and they’re still not occupying that property; the purpose of the setbacks is to keep properties away from the road and in this case it would be that same distance that you would typically see from the road.
- He said in regards to the cited cases, hardship was found in the shape of the lot.
- Ms. Garrow said we are becoming more and more of a year-round community and have to consider having ample room for winter plowing and two vehicles passing each other.
- She said we don’t know if that land will be taken to accommodate school buses and garbage trucks, so that prospect should be considered.
- Ms. Craven asked for clarification of the structure measurements.
- Ms. Chapin said she wants to make sure it's on the record that they’re in agreement that Uncas is two roads for this purpose and there’s a clear front and 20-foot setback, and a clear side and 15-foot setback.

There were no further questions or comments.

MOTION (1)

Ms. Chapin moved to close the public hearing at 7:08 p.m.

Ms. Schepker seconded the motion.

Motion carried, 5-0-0.

IV. Regular Meeting

Ms. Chapin called the Regular Meeting to order at 7:08 p.m.

Ms. Chapin said she understands what has been presented, where they're perceived large setbacks they would like to take advantage of, but she hasn't heard how this negatively impacts reasonable use of the property.

Ms. Cini said she read over the application a couple times and visited the site but wants to clarify that regardless of how people want to vote, the Applicant is seeking a variance of almost 10 feet into the setback.

Ms. Garrow said she wants to clarify that the the corner lot is to the front and the side and Ms. Chapin discussed how the plan that was submitted made a lot of sense in terms of the layout but that they can only work with the regulations they have before them.

MOTION (1)

Ms. Chapin moved to approve the application of Thomas and Lynn Cherry, for a setback variance of nine feet nine inches into the 15 foot side yard setback resulting in a net of 5 feet 3 inches of setback.

Ms. Schepker seconded the motion.

Vote:

Nay-

- 1. Ms. Chapin voted to deny the variance request; she is not seeing a hardship impacting reasonable use of the property**
- 2. Ms. Schepker voted to deny the variance request for the same reasons Ms. Chapin articulated; we've seen a clear plan and it's going into the setback by more than 9 ½ feet. She doesn't see that the hardship impacts reasonable use of the property nor does she see how we fit into the hardship category.**
- 3. Ms. Garrow voted to deny the variance request for the same reasons Ms. Chapin and Ms. Schepker articulated.**
- 4. Ms. Cini voted to deny the variance request because the size of the variance request is too large.**
- 5. Ms. Craven voted to deny the variance request because she doesn't see a hardship, and thinks it would bring them too close to the buffer line of the Town if they ever choose to expand the road.**

Motion carried, 5-0-0.

Ms. Chapin said the variance request is denied and they have 15 days to appeal this decision with the Superior Court. She said she is sure there is disappointment all around and is sorry they are unable to accommodate their request. Mr. Harris and Mr. Cherry thanked the Board for their time.

V. Adjournment

MOTION (2)

Ms. Chapin moved to adjourn the Regular Meeting of the Zoning Board of Appeals at 7:23 p.m.

Ms. Garrow seconded the motion.

Motion carried, 5-0-0.

Respectfully Submitted,

Brooke Stevens,
Recording Secretary

