

# ZONING BOARD OF APPEALS

TOWN OF CLINTON  
54 East Main Street  
Clinton, Connecticut 06413

## SECOND AMENDED MINUTES

(As to ~~IWG-ZBA~~ 16-001)  
Regular Monthly Meeting  
January 20, 2016

In the absence of Chair Mark Richards Acting Chair George Doerrer called the January 20, 2016 Regular Monthly Meeting of the Zoning Board of Appeals of the Town of Clinton to order at 7:30 P.M. in the Green Room of the William Stanton Andrews Memorial Town Hall, 54 East Main Street, Clinton, Connecticut.

Members present: Secretary George Doerrer, Bertram Schmitz, Dylan Walter, Charles McEvoy and Alternate Jay Ciarleglio

Members absent: Chair Mark Richards and Alternate Dominic Morelli

Also present: Zoning Enforcement Officer Eric Knapp, applicants, applicants' agents and members of the public

Doerrer:

- Outlined the order of the meeting;
- Named Dylan as the Acting Secretary;
- Had Dylan read the Legal Notice of Public Hearing, Notice of Continued Public Hearing and Notice of Continued Public Hearing #2 into the record;
- Announced that ZBA 15-038 & CAM: 7 Loop Road has been continued to February 17, 2016; and
- Announced that ZBA 16-002 & CAM: 19 Groveway has been postponed to February 17, 2016.

**ZBA 15-011:** Lot 32, Groveway, Stephen Torrey: Request of Torrey for Clarification of Condition of Variance Granted for ZBA 15-011, Lot 32, Groveway, Torrey.

**Stephen Torrey** asked for a clarification of a condition of the approval deeming "electrical only". He has an antique car that needs a constant temperature. His contractor applied for a permit for an electric HVAC Unit; however, ZEO Knapp would not sign off on the building permit for the unit as it was for HVAC and not strictly electrical. He suggested the ZBA be consulted on the permit due to the condition imposed on the variance. Following a discussion between members, ZEO Knapp and Torrey regarding concerns that this could be the first step

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towards turning the structure into living space, Schmitz **MOVED** to allow an electric HVAC Unit to be installed in the garage associated with ZBA 15-011: Lot 32, Groveway, Stephen Torrey. Ciarleglio seconded the motion. Discussion: none. Voting in favor: Doerrer, Schmitz, Walter, McEvoy and Ciarleglio. Opposed: none. Abstentions: none. The motion was **carried**, 5-0-0.

**ZBA 15-038 & CAM:** 7 Loop Road. Up Doc Ventures, LLC (Applicant & Owner). Application for Certificate of Variance of Sections 25.10.8 (Setbacks Other Than a Front or Rear Setback): 2 requests; Section 25.10.14 (Maximum Ground Coverage) and 27.2.1 (Expansion of a Non-conforming Structure) for an attached garage with living space above. Assessor's Map 70 Block 67 Lot 19. Zone: R-10. **Extension Granted to January 20, 2016 To Close Public Hearing**

Public hearing continued to February 17, 2016

**ZBA 15-040:** 36 Killingworth Turnpike. Jeff Mastroianni (Applicant) Killingworth Turnpike, LLC (Owner). Application for Certificate of Variance of Section 24.1.32 to allow a restaurant/other food service establishment. Assessor's Map 42 Block 23 Lot 16. Zone: R-20. **Last Day to Open Public Hearing: January 22, 2016**

**Brad Cunningham**, partner with Jeff Mastroianni, read and submitted (**Exhibit A**) his prepared statement in support of the application.

**Michael Knudsen**, Property Owner, read from and submitted (**Exhibit B**) his prepared statement in support of the application, accompanied by photographs of the waterbody, and spoke about the hardship (the wetlands, shape of the property and the soils will not support sanitary septic systems needed to support residential development). He stated currently the customers are primarily served at a counter with some seating. The proposal is to serve primarily seated customers by a wait staff. Take-out will become the incidental use. They have received approval from the Connecticut River Area Health District. There will be no increase to the size of the building to accommodate this business.

**Jeff Mastroianni**, Applicant, submitted (**Exhibit C**) photographs of the interior of his unit along with a petition in favor signed by approximately 193 people.

**James Staunton**, 102 Pratt Road, a former wetlands officer in another town, was consulted concerning whether this site would support residential development. Zoning wise, 4 lots are allowed; however, due to limitations by health regulations and wetlands, only two lots could be developed for residential use.

Cunningham, Knudsen and Mastroianni addressed inquiries from the Board.

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Walter **READ** the List of Documents received from December 9, 2015 thru January 19, 2016. There was no request to have a document from the List read into the record.

The following residents spoke in favor of the granting of the variance:

**Kim Neri**, Shore Road, a resident;  
**William Fritz**, Sunnybrook Lane, as a resident;  
**Carl Neri**, 64 Groveway, a resident; and  
**Elliot Keating**, 12 Long Hill Road, a resident.

There being no further testimony or Board comments, it was the consensus of the Board that they had enough information to make an informed decision.

Schmitz **MOVED** to close the public hearing for ZBA 15-040: 36 Killingworth Turnpike, Jeff Mastroianni (Applicant) Killingworth Turnpike, LLC (Owner). Application for Certificate of Variance of Section 24.1.32 (Restaurants with incidental take-out) to allow a restaurant/other food service establishment. Assessor's Map 42 Block 23 Lot 16. Zone: R-20. Ciarleglio second the motion. Discussion: none. Voting in favor: Doerr, Schmitz, Walter, McEvoy and Ciarleglio. Opposed: none. Abstentions: none. The motion was **carried**, 5-0-0.

**ZBA 16-000**: 93 Shore Road, Leibert Real Estate LP (Applicant & Owner). Application for Certificate of Variance of Section 25.10.8 (Setback other than a Front or Rear Setback), 25.10.14 (Maximum Ground Coverage) and 27.2.1 (Expansion of a Non-conforming Structure) for replacement and expansion of a storm-damaged sunroom. Assessor's Map 79 Block 72 Lot 81. Zone: R-10.

**Richard Leibert**, an owner, presented the application for variances to replace and expand a sunroom damaged and deteriorated from multiple storms.

**Kevin Keeler** of Brady Built Sunrooms, explained the hardship that the topography of the site causes the house to sit very high. The sunroom serves as a buffer between storms and the residence. The expansion is requested because it will increase the buffering of the residence. It cannot go the full length of the house because of the need for a second egress (a safety issue). He referred to Page 6 of the brochure provided with the application for architectural details. He then addressed questions of the Board about the elevation of the deck;

Walter **READ** the List of Documents received thru January 19, 2016 into the record. There was no request to have a document from the List read into the record.

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**ZEO Knapp** advised that the variance for floor area is not needed. He noted that the deck itself does not constitute ground coverage because it is above six feet tall. The structure on the deck i.e. the sunroom does count towards ground coverage. The applicant does need a variance for ground coverage.

There being no testimony offered or further Board comments, the Board by consensus determined it had enough information to make an informed decision.

Schmitz **MOVED** to close the public hearing for ZBA 16-000: 93 Shore Road, Leibert Real Estate LP (Applicant & Owner). Application for Certificate of Variance of Section 25.10.8 (Setback other than a Front or Rear Setback), 20.10.14 (Maximum Ground Coverage), 25.10.15 (Maximum Floor Area) and 27.2.1 (Expansion of a Non-conforming Structure) for replacement and expansion of a storm-damaged sunroom. Assessor's Map 79 Block 72 Lot 81. Zone: R-10. McEvoy seconded the motion. Discussion: none. Voting in favor: Doerrer, Schmitz, Walter, McEvoy and Ciarleglio. Opposed: none. Abstentions: none. The motion was **carried**, 5-0-0.

Prior to the start of ZBA 16-001: 11 Nod Place, ZEO Knapp advised that the appeal (ZBA 15-039: 11 Nod Place, The Neri Corp.) is not going forward this evening.

**ZBA 16-001:** 11 Nod Place. The Neri Corp. Application for Certificate of Variance of Section 25.11.6 (Front Setback) and 26.1.4(m)(1) (Screening for Outside Storage) to allow contractor's outside storage of materials and equipment in the front setback. Assessor's Map 21 Block 7 Lot 2-3. Zone: I-2.

**Kimberly Neri**, agent for The Neri Corp., **WITHDREW** the variance request for fencing.

**K. Neri** then presented the request for a variance to allow the storage of construction materials and equipment within the front setback. She believed that an error was made on the prior decision of the Board denying the request to place construction materials (more specifically Jersey barriers) within the 50 foot front setback. She stated several times it was her belief that during the prior application discussion, Mark Richards, Chair, ZBA, agreed to allow her to relocate some concrete barriers onto the top of others that were already in place within the front setback. They would serve as a visual barrier.

She used photographs to show the location of the Jersey barriers. She noted that they are approximately 15 feet from the road, but only 6 feet from the property line as there is town property between the subject site and the road. She claimed the wetlands as the hardship (leaving only an area to the rear of the property available for a building and the area from the road to the building for the

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storage of materials and equipment) and the shape of the lot. She noted that the site has been used for a contractor's yard from the time they purchased it and that the locations of the barriers were approved by the former zoning and wetlands officer. She also noted that this road is zoned industrial and the use is permitted.

Doerrer inquired of ZEO Knapp his position. ZEO Knapp advised from listening to the audio that it was clear that the previous variance request to place materials in the front setback was denied. K. Neri stated there was no reason to deny the request. ZEO Knapp advised that the applicant still needs to go before the Planning and Zoning Commission for a special permitexception. He advised the Board must judge this request on its merits.

Several members noted that during the prior variance request there was concern for the barriers not being visually pleasing and the location. Because M. Richards was not present this evening, some members were inclined to continue the public hearing to the February meeting. ZEO Knapp advised they could continue the public hearing or close it and have the members absent listen to the audio.

Walter **READ** the List of Documents received through January 19, 2016 into the record. There was no request to have a document from the List read into the record.

**Carl Neri**, 64 Groveway, spoke in favor of the granting of the application. He noted that the ZBA chairman recommended what to do with the Jersey barriers. When the motion was made, it became distorted. The barriers are temporary. They come and go as needed for Department of Transportation projects and used for safety and for barriers to keep materials away from travel ways.

**Willie Fritz**, Sunnybrook Lane, Clinton, noted that outside storage is regulated; however, this use has been in existence for 15 years. Now it is considered a violation. He did not know why. The use is approved in the zone the site is located in.

**James Staunton**, 102 Pratt Road, as a former wetlands officer, noted that there are other conditions where developers would not impact wetlands by storing equipment in the wetlands. The wetlands are a reasonable hardship. The storage of these materials will not affect the wetlands.

**Michael Milano** spoke in opposition to the granting of the variances, noting that the Jersey barriers are not being used and have not for many years, he sold the company the lot as a lot with an approval for a building, residential property does

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about this site, the hardship claimed is a self-inflicted hardship, the current zoning enforcement officer has brought actions against other businesses on this road in response to complaints from other property owners on the road, the Zoning Board of Appeals disregarded the neighbors when they allowed materials and equipment to be in the side setbacks, and he urged members to listen to the audio of the first variance.

Rebuttal:

**C. Neri** disagreed with M. Milano's statements. The Jersey barriers are temporarily there and will move in accordance with project needs. The initial barrier(s) protect the wetlands. Other businesses on the road store materials and equipment in locations visible from the road and they should be allowed to do so too.

**K. Neri** stated they did business with John Milano when they purchased the property. She named businesses and property owners in support of their request for a variance. They have stored their materials and equipment in accordance with an approval from former Zoning Enforcement Officer Thomas Lane. No neighbors have voiced objections to them about the location of the barriers. Her hardship is the curve of the lot.

**M. Milano** stated he believed a seated member of the ZBA for this application has a conflict of interest and should recuse. He also stated that the businesses the applicant mentioned in favor of the project are customers of the applicant.

**K. Neri SUBMITTED** the following documents:

1. Exhibit A – June 16, 2015 letter in favor from V.I.P. Supply, Inc.;
2. Exhibit B – June 15, 2015 Letter in Favor from Brasile;
3. Exhibit C – June 15, 2016 Letter in favor from M.D. Hesel;
4. Exhibit D - Aerial Photograph dated September 29, 2014
5. Exhibit E – Photograph of Jersey Barriers – undated; and
6. Exhibit F – partial site plan for "Saddlebrook".

Schmitz **MOVED** to **CONTINUE** the public hearing to February 17, 2016 for ZBA 16-001: 11 Nod Place. The Neri Corp. Application for Certificate of Variance of Section 25.11.6 (Front Setback) and 26.1.4(m)(1) (Screening for Outside Storage) to allow contractor's outside storage of materials and equipment in the front setback. Assessor's Map 21 Block 7 Lot 2-3. Zone: I-2. McEvoy seconded the motion. Discussion: none. Voting in favor: Doerrer, Schmitz and McEvoy. Opposed: Ciarleglio and Walter. Abstentions: none. The motion was **carried**, 3-2-0.

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**ZBA 16-002 & CAM:** 19 Groveway, Robert & Darlene Goldenthal (Applicants & Owners). Application for Variance of Section 25.10.8 (Setback Other than a Front or Rear Setback) and 27.2.1 (Expansion of a Non-conforming structure) for a replacement residence. Assessor's Map 86 Block 72 Lot 137. Zone: R-10.

Postponed to February 17, 2016

**Deliberation and Decision:**

- **ZBA 15-038:** 7 Loop Road, Up Doc Ventures, LLC and
- **ZBA 15-038 CAM:** 7 Loop Road, Up Doc Ventures, LLC

Both Continued to February 17, 2016

**Deliberation and Decision:** ZBA 15-040: 36 Killingworth Turnpike, Mastroianni

Following the synopsis of the public hearing by Doerrer, Schmitz **MOVED** to grant as requested ZBA 15-040: 36 Killingworth Turnpike, Jeff Mastroianni (Applicant) Killingworth Turnpike, LLC (Owner). Application for Certificate of Variance of Section 24.1.32 (Restaurants with incidental take-out) to allow a restaurant/other food service establishment. Assessor's Map 42 Block 23 Lot 16. Zone: R-20, the hardship proven being the pre-existing food service, the shape of the land and the site, although in a residential zone, is not suitable for residential development. It is noted that the entity will be going from primarily a take-out/counter food service to a sit-down restaurant with the take-out food service incidental to the sit-down restaurant. There will be no changes to the exterior of the structure with this change of use and there is adequate parking. Walter seconded the motion. Discussion: none. Voting in favor: Doerrer, Schmitz, Walter, McEvoy and Ciarleglio. Opposed: none. Abstentions: none. The variance was **carried**, 5-0-0.

**Deliberation and Decision:** ZBA 16-000: 93 Shore Road, Liebert Real Estate LP

Following the synopsis of the public hearing by Doerrer, Schmitz **MOVED** to grant as requested ZBA 16-000: 93 Shore Road, Leibert Real Estate LP (Applicant & Owner). Application for Certificate of Variance of Section 25.10.8 (Setback other than a Front or Rear Setback), 20.10.14 (Maximum Ground Coverage), 25.10.15 (Maximum Floor Area) and 27.2.1 (Expansion of a Non-conforming Structure) for replacement and expansion of a storm-damaged sunroom. Assessor's Map 79 Block 72 Lot 81. Zone: R-10, the hardship proven being the applicant is replacing a storm-damaged structure, the topography and safety issues (which puts the residence higher off the ground and makes it subject to wind damage) and the narrow lot. The expansion is minimal at 50 square feet. Walter seconded the motion. Discussion: none. Voting in favor:

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Doerrer, Schmitz, Walter, McEvoy and Ciarleglio. Opposed: none. Abstentions: none. The variance was **carried**, 5-0-0.

**Deliberation and Decision:** ZBA 16-001: 11 Nod Place, The Neri Corp.

Public hearing continued to February 17, 2016

**Deliberation and Decision:**

- **ZBA 16-002:** 19 Groveway, Goldenthal and
- **ZBA 16-002 CAM:** 19 Groveway, Goldenthal

Both postponed to February 17, 2016

**Hearing: Appeal of Decision of Zoning Enforcement Officer Knapp**

- **ZBA 15-039:** 11 Nod Place, The Neri Corp. (Appellant). Appeal of Order to Discontinue Issued by Zoning Enforcement Officer Eric Knapp. The appellant will have the right to contest the validity of the zoning enforcement officer's action. Assessor's Map 21 Block 7 Lot 2-3. Zone: I-2 **Stay granted to January 20, 2016**

**ZEO Knapp** advised an agreement has been reached between the parties to stay this matter at this time.

**Deliberation & Decision on Appeal of Zoning Enforcement Officer Decision**

**ZBA 15-039:** 11 Nod Place, The Neri Corp.

Agreement reached. No decision at this time.

**ZBA Minutes**

- **December 9, 2015 Annual Meeting**
- **December 9, 2015 Regular Monthly Meeting**

Schmitz **MOVED** to accept and approve as presented the Minutes of the December 9, 2015 Annual Meeting and the December 9, 2015 Regular Monthly Meeting. Walter seconded the motion. Discussion: none. Voting in favor: Doerrer, Schmitz, Walter and McEvoy. Opposed: none. Abstentions: none. The motion was **carried**, 4-0-0. Ciarleglio was not eligible to vote.

**Old Business/New Business.** A thank you letter to Amandeep Singh was approved.

**Correspondence/Bills.** None.



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**Additions to Agenda:** February 17, 2016

- ZBA 15-038 & CAM: 7 Loop Road, Up Doc Ventures, LLC
- ZBA 16-002: 11 Nod Place, The Neri Corp. and
- ZBA 16-002 & CAM: 19 Groveway, Goldenthal

**Chair's Comments:** none.

There being no further business, Schmitz **MOVED** to adjourn the meeting. Walter seconded the motion. Discussion: none. Voting in favor: Doerrer, Schmitz, Walter, McEvoy and Ciarleglio. Opposed: none. Abstentions: none. The motion was **carried**, 5-0-0. The meeting was **adjourned** at 9:30 P.M.

Respectfully submitted,  
*Sherry Lee Hynes*  
Sherry Lee Hynes, Clerk

E-mail: Town Clerk  
Website  
Board of Selectmen