

**ZONING BOARD OF APPEALS
Town of Clinton
54 East Main Street
Clinton, Connecticut 06413
860-669-6133**

MINUTES

Virtual Regular Monthly Meeting
March 17, 2021

Chairman George Doerrer, called the March 17, 2021 Virtual Regular Monthly Meeting of the Zoning Board of Appeals of the Town of Clinton to order at 7:00 p.m.

Members present: Chairman George Doerrer, Secretary Andrew Richards, Bertram Schmitz, Laurie Jaffe and Alternates: Tom Shultz and Dylan Walter (arrived at 7:06 p.m.)

Members absent: Dennis Irmscher and Alternate Maureen Noonan

T. Shultz was seated for Dennis Irmscher.

A. Richards read aloud the Legal Notice.

Also Present: Kari Olson, Town Counsel, Kathleen S. King, ZEO and WEO, applicants, agents and members of the public

1. **ZBA 21-000: 29 Maplewood Drive**, Lance F. & Deneen A. Hedge (Applicant & Owners). Application for Certificate of Variance of Section 26.10.14 (Ground Coverage) for an in-ground swimming pool & pool surround. Assessor's Map 45 Block 16. Lot 11. Zone: R-10

This public hearing is continued from the 2/17/21 ZBA meeting.

G. Doerrer read the List of Documents into the record. No one asked to have any of the documents read.

Lance Hedge, the applicant, presented. The CRAHD and Fire Chief reports have been received. The property is currently at 24% ground coverage. The variance would bring the amount of coverage to a little under 30%.

No one from the Board had any questions.

No one from the public wished to speak.

B. Schmitz MOVED to CLOSE the Public Hearing for ZBA 21-000: 29 Maplewood Drive, Lance F. & Deneen A. Hedge (Applicant & Owners). Application for Certificate of Variance of Section 26.10.14 (Ground Coverage) for an in-ground swimming pool & pool surround. Assessor's Map 45 Block 16. Lot 11. Zone: R-10. **L. Jaffe seconded the**

motion. Discussion: none. Voting in favor: G. Doerrer, A. Richards, L. Jaffe, B. Schmitz and T. Shultz. Opposed: none. **The motion carried, 5-0-0.**

2. **ZBA 21-001 & CAM:** Lot 194 East Road (vacant lot), Tim Willard (Contract Purchaser), Raisa Kukta (Owner). Application for Certificate of Variance of Sections 26.11.6 (Front Setback), 26.11.10 (Rear Setback), 26.11.14 (Maximum Ground Coverage) and Section 26.8.2 (Tidal Wetlands Buffer) to construct a 2-Bedroom Dwelling and Other Associated Improvements Including a Shed. Assessors Map 69 Block 66 Lot 194. Zone: R-10.

This public hearing is continued from the 2/17/21 ZBA meeting.

L. Jaffe spoke in response to a comment that was made after the 2/17/21 ZBA meeting questioning whether she could be impartial about this application. She said she lives about a quarter of a mile from the subject property. She is not a neighbor of this subject lot and has no pecuniary interest. She said when she spoke at the 2/17/21 ZBA meeting, she used the term “neighbor” broadly.

J. Wren presented for the applicant. This summary of the application was in addition to the detailed presentation that he gave at the 2/17/21.

J. Wren said CRAHD approval and Fire Chief approval have been received since the last meeting.

J. Wren showed the Coastal Site Plan prepared for Tim Willard, revised per Zoning Board of Appeal Comments dated 3/1/21. The shed has been eliminated. The portion of the neighbor’s driveway has been eliminated. It will be replaced with pervious material. The elevated a/c deck has been removed. This improved the front yard setback. This will be within the building envelope. The front and back porches have been reduced to make the setbacks more conforming. This also reduces the coverage to 20%. Therefore, a variance is no longer required for coverage. The house footprint generally is the same except that the raised a/c deck has been removed. The silt fence will be at the limit of grading. The distance to the silt fence has been increased to bring it farther from the wetlands. A five-foot wide native shrub buffer has been added to add a visual buffer and a physical barricade. That area between the property line and the marsh line will be allowed to return to normal native vegetation. Historically, this was maintained as lawn. Now it will not be. That encroachment into the buffer will be gone.

J. Wren read a letter dated 5/9/2019 from Mike D’Amato, the Interim Zoning Enforcement Officer at the time. The letter said that the lot was grandfathered to be used as a buildable property. However, various variances would be required. The lot is less than the minimum lot size.

J. Wren shared an aerial photo of the existing neighborhood. The lots in the area have all been built on. This is the last pre-existing, non-conforming lot in the area. The proposed

home is equal to or smaller than the other homes in the neighborhood. J. Wren said he and the applicant feel this is a very modest size home for this lot.

There was discussion at the 2/17/21 ZBA meeting that this house was close to the road. The aerial J. Wren showed illustrates that the home is generally on the same line, not any closer to the road than some of the other neighboring homes.

The footprint of the proposed house is smaller than the other homes in the general area. Also, the proposed house is farther from the marsh than many of the others in the general vicinity.

There's no structure that could be placed on this lot without setback variances. Nothing can be built without variances. They are requesting the front, rear and tidal setback variances.

J. Wren talked about the hardship. He went through this in detail at the 2/17/21 ZBA meeting. The hardship is due to the size and shape of the lot and the proximity of the tidal wetlands. Almost 90% of the lot is consumed by restrictive setbacks.

J. Wren shared information about a court case in Westbrook, Scott vs. Westbrook Zoning Board of Appeals, 3/17/2017. There was a vacant lot, and variances were required to build on it. The ZBA approved it. The neighbor appealed it. The courts upheld the Westbrook ZBA's decision since the property was a pre-existing, non-conforming lot of record, and the request was reasonable. The lot was below the minimum lot size. The lot was similar to the subject lot of this application. J. Wren stated that the application is consistent with the Zoning Plan and is consistent with the Zoning Regulations. The court concluded that the home was reasonable and consistent with the general homes in the area. The hardship was due to the lot. The ZBA's conclusions were supported by the evidence. The absolute minimum size structure is not what is required.

G. Doerrler read the document list into the record.

The following documents were received after 3/16/21: letter of opposition dated 3/8/21 from David Brouillette of 2 Hammock Parkway, email dated 3/17/21 from Jeffrey Stillman stating opposition to the application, Report dated 3/17/21 from Fire Chief Brian Manware.

J. Wren addressed the points raised in the letter of opposition and the petition. He talked again about the similarities to this application and the court case Scott vs. Westbrook ZBA.

Timothy Willard, contract purchaser, stated that the right of way mentioned in the letter of opposition from David Brouillette is incorrect, and there is no right of way on the property.

G. Doerrler asked if anyone would like to speak in favor of the application.

Leslie Parcelli Kukta, spoke in favor of the application. She is the owner's daughter-in-law.

L. Jaffe asked J. Wren to state the hardship. He spoke about the 90% restrictive setbacks, the fact that the lot is a pre-existing, non-conforming lot of record. He also spoke about the similarity between this case and Scott vs. Westbrook ZBA, and how the court upheld the case.

B. Schmitz asked if this application is going before any other land use boards or commissions. It is going before the Planning and Zoning Commission for CAM (Coastal Area Management). There are no inland wetlands on the property, so the application is not going before the Inland Wetlands Commission.

Heather Fucci, 978 Main Street, Branford, the listing agent for the property, spoke in favor of the application and submitted a written letter of support.

Ashley Alvarado, with Coldwell Banker Realty, representing Timothy Willard, spoke in favor of the application and submitted a written letter of support.

Rosalie Zigmund, 18 Hammock Parkway, submitted an email in favor of the application.

Lynn Davis, 6 Hammock Parkway, submitted an email in favor of the application.

Jeffrey Stillman of 2 South Parkway asked about the height of the proposed structure. The existing ground is around elevation 7. Because of the FEMA A flood zone, the finished floor has to be at 12. The existing first floor of the house will be approximately 5-5 ½' above existing grade. There will be no second floor, so the height of the home will not be an issue. The maximum height allowed is 35'.

G. Doerrer asked if anyone would like to speak in opposition to the application.

David Brouillette of 2 Hammock Parkway spoke in opposition to the application. He said he felt aesthetically, the facade didn't match the rest of the neighborhood due to the position of the home on the lot and that the home looks like "an industrial building." He is very concerned about the tidal wetlands. He made an offer on the land in 2018. He said at that time he offered \$50,000.00, which at that time, was more than the value of the land. He also said he was mistaken about the right of way on the property, which he wrote about in his letter of opposition. He said he wants to preserve the tidal marsh. That's his motivation for his opposition to this application.

J. Wren said he'd like to rebut D. Brouillette's comments. He said aesthetics are not part of the request for variances, but he did review the architectural.

J. Stillman asked if a future owner could make the home any larger. Any size increase would have to go before the Zoning Board of Appeals.

B. Schmitz asked whether the property was bought for retirement or for the owners' own use.

Timothy Willard said he did not buy the house for investment. He said he and his wife bought the property for a home for retirement.

A. Richards MOVED to CLOSE the Public Hearing for ZBA 21-001 & CAM: Lot 194, 0 East Road (vacant lot), Tim Willard (Contract Purchaser), Raisa Kukta (Owner). Application for Certificate of Variance of Sections 26.11.6 (Front Setback), 26.11.10 (Rear Setback), 26.11.14 (Maximum Ground Coverage) and Section 26.8.2 (Tidal Wetlands Buffer) to construct a 2-Bedroom Dwelling and Other Associated Improvements Including a Shed. Assessors Map 69 Block 66 Lot 194. Zone: R-10. **L. Jaffe seconded the motion.** Discussion: none. Voting in Favor: G. Doerrler, A. Richards, L. Jaffe, B. Schmitz and T. Shultz. Opposed: none. Abstentions: none. **The motion carried, 5-0-0.**

B. Schmitz MOVED to MOVE ZBA 21-003: 20 Indian Drive, Omarr Allam (Applicant) Ora Capital Group LLC. (Owner). Application for Certificate of Variance of Section 26.11.14 (Maximum Ground Coverage) for an in-ground swimming pool and pool surround. Assessor's Map 56 Block 63 Lot 62. Zone R-10, **to #3 on the ZBA meeting agenda. L. Jaffe seconded the motion.** Discussion: none. Voting in Favor: G. Doerrler, A. Richards, L. Jaffe, T. Shultz and B. Schmitz. Opposed: none. Abstentions: none. **The motion carried, 5-0-0.**

- 3. ZBA 21-003: 20 Indian Drive,** Omarr Allam (Applicant) Ora Capital Group LLC. (Owner). Application for Certificate of Variance of Section 26.11.14 (Maximum Ground Coverage) for an in-ground swimming pool and pool surround. Assessor's Map 56 Block 63 Lot 62. Zone: R-10.

J. Davis from Davis Pool represented the applicant. He said they are going to remove the existing driveway, and they're going to remove a deck and a porch to reduce coverage. With these changes, the lot coverage will remain the same. The overall lot coverage will be a decrease from what's existing.

B. Schmitz asked about potential pool back flow. J. Davis said it would go out through a waste line.

G. Doerrler read the list of documents into the record.

No one asked for any of the documents to be read into the record.

No one from the public wished to speak for or against this application.

B. Schmitz MOVED to CLOSE the Public Hearing for ZBA 21-003: 20 Indian Drive, Omarr Allam (Applicant) Ora Capital Group LLC. (Owner). Application for Certificate of Variance of Section 26.11.14 (Maximum Ground Coverage) for an in-ground swimming

pool and pool surround. Assessor's Map 56 Block 63 Lot 62. Zone: R-10. **L. Jaffe seconded the motion.** Discussion: none. Voting in Favor: G. Doerr, A. Richards, L. Jaffe, B. Schmitz and T. Shultz. Opposed: none. Abstentions: none. **The motion carried, 5-0-0.**

4. **ZBA 21-002: 28 East Walk**, Jay L. Gershman (Applicant) Jay L. & Nancy B. Gershman (Owners). Application for Certificate of Variance of Sections 26.11.6 (Front Setback), 26.11.8 (Setback Other Than a Front or Rear Setback) – 2 requests; 2.11.10 (Rear Setback), 26.11.14 (Maximum Ground Coverage), 26.11.15 (Maximum Floor Area) and 29.2 (Expansion of a Non-Conforming Structure) for additions and renovations to an existing residence. Assessor's Map 70 Block 67 Lot 121. Zone: R-10.

Gregg Fedus, P.E., represented the applicant. He reviewed the site plan. They are adding 2 dormers, one on the NW corner and one on the SW corner and a small deck in front. There is a code complying septic system approved by the CT River Area Health District. They are requesting variances for some existing non-conformities. The deck requested is a modest sized deck. The overall ground coverage will be reduced. The patio will be pervious. They are exempt from CAM. The footprint will not be increased. This will be a modest second floor addition. The hardships are the pre-existing, non-conforming lot and reducing the overall ground coverage. The front yard setback is no longer being requested.

L. Jaffe asked if the applicant would consider reducing the maximum floor area. G. Fedus said the applicant is just trying to make room upstairs with a modest addition. They are not adding any additional bedrooms. G. Fedus said he would ask his applicant. His application would not make financial sense to build it any smaller.

G. Doerr read the list of documents into the record. No one wished to have any of the documents read aloud. The CRAHD approval, dated 3/17/21, was read.

T. Shultz asked if there were any objections to the application by any neighbors. The Land Use Office has received no comments for or against the application.

G. Doerr asked if Association approval was required. G. Fedus said the applicant will need Association approval.

No one wished to speak in favor or in opposition to the application.

B. Schmitz MOVED to close the Public Hearing for ZBA 21-002: 28 East Walk, Jay L. Gershman (Applicant) Jay L. & Nancy B. Gershman (Owners). Application for Certificate of Variance of Sections 26.11.6 (Front Setback), 26.11.8 (Setback Other Than a Front or Rear Setback) – 2 requests; 2.11.10 (Rear Setback), 26.11.14 (Maximum Ground Coverage), 26.11.15 (Maximum Floor Area) and 29.2 (Expansion of a Non-Conforming Structure) for additions and renovations to an existing residence. Assessor's Map 70 Block 67 Lot 121. Zone: R-10. **A. Richards seconded the motion.** Discussion: none. Voting in

Favor: G. Doerrerr, A. Richards, L. Jaffe, B. Schmitz and T. Shultz. Opposed: none.
Abstentions: none. **The motion carried, 5-0-0.**

Deliberations:

B. Schmitz MOVED to APPROVE ZBA 21-003: 20 Indian Drive, Omarr Allam (Applicant) Ora Capital Group LLC. (Owner). Application for Certificate of Variance of Section 26.11.14 (Maximum Ground Coverage) for an in-ground swimming pool and pool surround. Assessor's Map 56 Block 63 Lot 62. Zone: R-10. **L. Jaffe seconded the motion.** Discussion: none. Voting in Favor: G. Doerrerr, A. Richards, L. Jaffe, T. Shultz and B. Schmitz. Opposed: none. Abstentions: none. **The motion carried, 5-0-0.**

B. Schmitz MOVED to APPROVE ZBA 21-000: 29 Maplewood Drive, Lance F. & Deneen A. Hedge (Applicant & Owners). Application for Certificate of Variance of Section 26.10.14 (Ground Coverage) for an in-ground swimming pool & pool surround. Assessor's Map 45 Block 16. Lot 11. Zone: R-10. **A. Richards seconded the motion.** Discussion: none. Voting in favor: G. Doerrerr, A. Richards, T. Shultz, and B. Schmitz. Opposed: L. Jaffe. **The motion carried, 4-1-0.**

G. Doerrerr MOVED to APPROVE ZBA 21-002: 28 East Walk, Jay L. Gershman (Applicant) Jay L. & Nancy B. Gershman (Owners). Application for Certificate of Variance of Sections 26.11.6 (Front Setback), 26.11.8 (Setback Other Than a Front or Rear Setback) – 2 requests; 2.11.10 (Rear Setback), 26.11.14 (Maximum Ground Coverage), 26.11.15 (Maximum Floor Area) and 29.2 (Expansion of a Non-Conforming Structure) for additions and renovations to an existing residence. Assessor's Map 70 Block 67 Lot 121. Zone: R-10. **A. Richards seconded the motion.** Discussion: none. Voting in Favor: G. Doerrerr, a. Richards, L. Jaffe, T. Shultz and B. Schmitz. Opposed: none. Abstentions: none. **The motion carried, 5-0-0.**

Kari Olsen, Town Counsel, announced that she was at the meeting if the Board had any questions. She said the ZBA can put reasonable conditions on their variances. She suggested that the Site Plan presented be incorporated into the approval. If the applicant wanted to change the plan presented, they would have to come back to the ZBA again.

B. Schmitz MOVED to APPROVE WITH CONDITIONS ZBA 21-001: Lot 194, East Road (vacant lot), Tim Willard (Contract Purchaser), Raisa Kukta (Owner). Application for Certificate of Variance of Sections 26.11.6 (Front Setback), 26.11.10 (Rear Setback), 26.11.14 (Maximum Ground Coverage) and Section 26.8.2 (Tidal Wetlands Buffer) to construct a 2-Bedroom Dwelling and Other Associated Improvements Including a Shed. Assessors Map 69 Block 66 Lot 194. Zone: R-10 per the "Coastal Site Plan prepared for Tim Willard, East Road, Map 69, Block 66, Lot 194, revised 3/1/2021 per the Zoning Board of Appeals comments" with the following conditions: the variances granted be limited to the Site Plan submitted, a 5-foot wide native shrub buffer be placed at the edge of the property adjacent to the tidal marsh and an EAS box (Emergency Access System) be installed. **A. Richards seconded the motion.** Discussion: none. Voting in Favor: G. Doerrerr, A.

Richards, B. Schmitz, T. Shultz. Opposed: L. Jaffe. Abstentions: none. **The motion carried, 4-1-0.**

G. Doerrer **MOVED to APPROVE CAM 21-001: Lot 194, East Road (vacant lot)**, Tim Willard (Contract Purchaser), Raisa Kukta (Owner). Application for Certificate of Variance of Sections 26.11.6 (Front Setback), 26.11.10 (Rear Setback), 26.11.14 (Maximum Ground Coverage) and Section 26.8.2 (Tidal Wetlands Buffer) to construct a 2-Bedroom Dwelling and Other Associated Improvements Including a Shed. Assessors Map 69 Block 66 Lot 194. Zone: R-10 as it is consistent with all applicable coastal policies and includes all reasonable measures to mitigate adverse impacts. **T. Shultz seconded the motion.** Discussion: none. Voting in Favor: G. Doerr, A. Richards, B. Schmitz, T. Shultz. Opposed: L. Jaffe. Abstentions: none. **The motion carried, 4-1-0.**

5. Bills & Correspondence

There were no new bills or correspondence.

6. Minutes:

- February 17, 2021 Virtual Special Meeting
- February 17, 2021 Virtual Regular Meeting

B. Schmitz MOVED to accept and approve as submitted the Minutes of the February 17, 2021 Virtual Special Monthly Meeting and the minutes of the February 17, 2021 Virtual Regular Meeting. L. Jaffe seconded the motion. Discussion: none. Voting in Favor: G. Doerr, A. Richards, L. Jaffe, B. Schmitz and T. Shultz. Opposed: none. Abstentions: none. **The motion carried, 5-0-0.**

7. Old/New Business

There was no Old or New Business.

8. Chairman's Comments

G. Doerr had no Chairman's comments.

9. Adjournment at 9:27 p.m.

Respectfully submitted,

Kathleen S. King, Zoning and Inland Wetlands Enforcement Officer