

ZONING BOARD OF APPEALS
TOWN OF BRANFORD
BRANFORD, CONNECTICUT 06405
MINUTES

The Branford Zoning Board of Appeals met Tuesday January 21, 2025 at 7:00 p.m. via Zoom technology to conduct Public Hearings on the following applications.

Commissioners Present: Jim Sette (Chairman), Steve Sullivan, Lenny Tamsin, Don Schilder ,Robert Harrington
Commissioners Absent: Rich Falcigno, Dave Laska

Staff Present: Evan Breining (Ast. Town Planner), Jane Ellis (Zoning Enforcement Officer),
Michelle Martin (Clerk)
Also, Attorney W. Aniskovich

Chairman Sette reviewed the public hearing procedures.

New Business:

25/1-1 Kevin Genda & Karen Yavasavage (Applicants & Owners)
(D11-000-011-00012 R3) 24 Wakefield Road
Var. Sec.8.1.C.3 To allow the enlargement of an existing nonconforming structure for the construction of a minor extension to the existing garage.

J. Pretti (Criscuolo Engineering) represented the applicant and reviewed the application. He explained this project is a minor addition to the garage. He displayed and reviewed the site plan and noted the hardship was The odd shape of the lot line.

**Chairman Sette closed the public hearing and made a motion to grant the variance and noted it be consistent with the site plan and documentation on file.
Lenny Tamsin seconded the motion which passed unanimously.**

The board asked a few questions.
PUBLIC INPUT: No one spoke.

Old Business:

24/12-2 Corey Berrios (Applicant & Owner) (B10-000-11-00009 R4) 19 Glendale Place
Var. Sec. 3.4.A.5 Front setback of 21.13 feet where 30 feet is required for a home addition.

The applicant (Corey Berrios) spoke and explained this application is for a home addition. He reviewed the site plan and answered a few questions.
PUBLIC INPUT: No one spoke.

**Chairman Sette closed the public hearing and made a motion to grant the variance and noted it be consistent with the site plan and documentation on file.
Bob Harrington seconded the motion which passed unanimously.**

24/12-3 Vincent Federico (Applicant)
Nancy Tomassini (Owner) (D10-000-006-00010 R3) 15 Etzel Road
Var. Sec.6.13.C.3 To allow a retaining wall in excess of 3 feet in height and closer than 3 feet from the property line.

J. Pretti (Criscuolo Engineering) represented the applicant and reviewed the site plan, explaining that this is a new house. It is an odd shape lot, and they found out construction they were told that they needed additional flood vents. Regrading of the land adjacent to the flood vents and associated retaining wall was installed without permits.

He noted there are parts of the wall that are higher than 3 feet due to the grade. The ZEO inspected it and noted it doesn't comply, so they are asking for a variance for the wall. He then displayed photos.

The commissioners asked some questions.

Nancy Tomassini (property owner) spoke and said the abutting neighbor Tom was very concerned about his shrubs. She offered to replace them if they died. She also noted she installed a beautiful fence as well. She was concerned that if the wall had to be removed, that the neighbor's yard would erode and destroy their property.

The board discussed this and asked a few more questions.

It was noted that the hardship was a lack of frontage, and the topo dictated the house placement.

PUBLIC INPUT:

1. Vincent Federico- He owns the adjoining property. He is in favor of this application noting it is needed to make room for the parking space as well as the other items that were just discussed.

**Chairman Sette closed the public hearing and made a motion to grant the variance.
Don Schilder seconded the motion which passed unanimously.**

The board then took a 5-minute recess from 8:03 pm to 8:08 pm

Appeal of a Notice of Violation- 38 Howard Ave.

Chairman Sette asked Bob Harrington to chair the last item on the agenda.

Mr. Harrington noted that Attorney Aniskovich was present as well as the ZEO (Jane Ellis) and Attorney Marjorie Shansky who is representing the people who are appealing the notice of violation. Also present was Attorney Keith Ainsworth who is representing the Appellees.

Bob Harrington asked Jane Ellis (ZEO) to give some background on the notice and the appeal.

E. Breining noted that there is a request for an intervener status, and he believes that this needs to be acted on first.

Attorney Shansky disagreed with the sequence of this, and it doesn't take precedence over the substance of the appeal.

Attorney Keith Ainsworth noted his clients Dr, Nori and Stephen Diaz Romero (abutting neighbors) are the interveners. He then explained why they are intervening.

Mr. Harrington noted a notice of violation was issued to the owners of 38 Howard Avenue by the ZEO and that party is represented by Attorney Shansky. Attorney Ainsworth represents the abutting property owners. He then asked Attorney Ainsworth a few questions regarding the interveners. What are his clients gaining by intervening in this matter? They discussed this a bit.

He asked Attorney Aniskovich if he felt the party had the right to intervene in this and he replied by citing the statute pertaining to interveners.

Attorney Shansky then noted that the Zoning Board of Appeals does not have jurisdiction over the issues that Attorney Ainsworth has raised in his petition. So, there is no reason for the ZBA to entertain a petition to intervene.

Attorney Ainsworth replied to her comments with information from the Zoning Regulations which he cited. He also noted he is in support of the ZEO notice of violation.

Attorney Shansky noted she submitted a letter to the zoning office today saying that the notice of violation has nothing to do with the environment so the board should proceed to discuss the notice only.

Attorney Aniskovich added a few comments.

Attorney Shansky repeated there is no place for an environmental intervener in these proceedings.

Attorney Ainsworth disagreed.

Bob Harrington noted the board should vote whether to allow intervener status or not. He then asked the board members for any comments. They all agreed to allow the intervener.

Bob Harrington made a motion to allow the intervener.

Jim Sette seconded the motion which passed unanimously.

The ZEO (Jane Ellis) spoke next, giving an overview of events.

She said on April 21, 2023 she sent a cease-and-desist notice to 38 Howard Avenue. She had been notified by a neighbor that there had been some activity there. She went out and looked at the property and noted there was no approval for the grading and the retaining wall that was built. There was also earth removal and there were no engineered drawings submitted to the office.

She noted the prior October, the property owners came into the office to talk about what they may want to do, and she and the Asst town planner had advised them that they would need to get a survey as well as engineered drawings. They did not follow thru, so she was not aware of any activity. When she went out with the IW director, she saw they started work with no approvals. So, she issued a cease-and-desist notice informing them not to do any more work until they contacted the zoning office to discuss what they wanted to achieve. She noted that they then had multiple interactions with the Inland Wetland Dept and then she received documentation from Attorney Ainsworth that her cease-and-desist notice was being appealed. After some time and the case going to court, she followed up with another notice on June 28, 2024, which referred to the previous cease and desist letter. It was then decided that the best course going forward was to require the owners of 38 Howard Avenue (Kim McCabe & Charles Watts) to put everything back to the prior state to the best of their ability. This would entail them removing the wall, regrading and applying for the necessary permits.

The board asked the ZEO a few questions.

Bob Harrington briefly summarized the sequence of events that Jane Ellis just spoke of.

Attorney Marjorie Shansky then spoke, noting she disagreed with the ZEO statements. She noted that her clients Kim McCabe and Charles Watts, along with the Engineer, Jim Pretti, were present. Also, Attorney Kevin Walsh (he represents her clients in the civil litigation) was present. She then stated her reasons why she disagreed with the Zoning Enforcement Officers' comments. Then, she read a sentence from the ZEO letter which referred to the IW Commission. Attorney Shansky stated the outcome of the many Inland Wetlands hearings was a permit. The substance of the permit is changing the wall to 3 feet in height which requires no zoning permit. She mentioned that the IW commission also approved the grading work.

Also, she noted that they are constrained by a restraining order so no work can be done now until the court approves. It is their intention to change the height of the wall as soon as the court will allow them to do so. And she stated that she has submitted a special exception application for the grading (sec 6.8) in her July 2024 submission, which would remedy the notice of violation.

She asked that this item be tabled pending relief from the court which is currently pending.

Also, an item to be noted is that the PZ Commission has several zoning regulation changes on its agenda for the upcoming February 6 meeting. One of the items in this packet of zoning changes is a change to amend section 6.8 for grading. The proposed change would change the rule from 100 feet from a wetland to 25 feet.

She wanted to mention that when her clients came into the PZ office in the fall, it was to discuss a possible garage, not a wall as previously mentioned.

So, the commissioners were aware, she submitted 10 letters of support to the PZ office for her clients that were submitted by neighbors,

She requested that the commission continue this item in view of the upcoming pz regulation change on its February 6 agenda.

Attorney Keith Ainsworth spoke next saying he is representing Sophia Noori and Stephen Diaz Romero. He started by saying the construction of the wall has altered the water pattern on the site. He noted that just because the property owners at 38 Howard received an Inland Wetland permit, that permit only deals with

wetlands impacts.

Bob Harrington asked him a few questions which he answered.

Attorney Ainsworth said a permit was required for the grading work that was done, which they did not get. If they had, that would have caused the grading to be reviewed so that it would ensure that the project did not increase flooding. They did in fact increase flooding which the court stated. He said the ZEO order is rational. Taking the wall down and building it correctly makes sense. The homeowners at 38 Howard Avenue created this problem since the wall did not go thru the proper process.

He also submitted the cross complaint to the PZ office. They are denying that they caused the flooding issue, but the court disagreed. He displayed some photos. He also stated that the zoning regulations say the wall should not be built on the property line, and some parts of the walls are on the neighbor's property. Also, there is a tarp over their entire yard to prevent water from flooding his client's basement. He agreed that the best course of action is to make them start from the beginning.

He then spoke of how they violated a prohibition to excavate a rock face. This action would prevent them from getting a permit.

Attorney Shansky replied to some of his comments. She then briefly spoke of the setback for the wall. Bob Harrington asked a few questions, and they reviewed the section referring to this in the zoning regulations.

Attorney Ainskovich added a few comments to this discussion noting this section in the regulations were not changed even though an interpretation of this was discussed years ago by the PZ Commission.

Attorney Shanksy requested that this item be continued.

Attorney Walsh gave a few brief comments noting there is no further water flowing next door. This issue has been resolved with the plastic tarp.

But, noted that removing the wall may cause more issues. The request tonight is to be allowed to bring the wall to 3 feet in height. Also, the court did not order the wall to be removed .

PUBLIC INPUT:

1. Sofia Noori- 34 Howard Avenue- She is the adjoining neighbor. She believes this wall is damaging their property. She went to town hall to ask about fence rules. She noted that the judge from court said the best remedy was to remove the wall. Lowering the height of the wall will not correct this . She wants it removed since it wasn't built correctly.
2. Rep. Tom Keefe- (RTM District 3 rep) He has never spoken to M. Shansky. He asked whose property the wall was on. Bob Harrington replied.
3. Maureen Moore said, why have rules and regulations if they aren't followed?
4. Eric Banson-38C Brocketts Point Rd & 40 Brocketts Pt Rd.- He noted he gets permits for his work. He said keeping the wall in place may cause further damage.
5. Sara Suiter- she couldn't unmute to speak.
6. Kevin Walsh- Added a few comments , noting the court is monitoring all actions on this site.
7. Donald Remillard- He is in support of the appeal. He said the zoning board should be working with Inland Wetlands . It is a contentious situation.
8. Laura Troidle- 22 Howard Ave.- She supports Charles Watts & Kim McCabe. The wall made the property look nicer. There was no malcontent to the neighbor.

Attorney Keith Ainsworth addressed some of the public comments.

Attorney Shansky added a few comments

Bob Harrington noted all made some good points. He asked Attorney Ainsworth if he agreed to wait until the next meeting to make a decision in order to have time to consider all the issues and he agreed.

Bob Harrington then asked the board if they could decide this at the February meeting but not everyone was able to attend that meeting. They decided to discuss this and make a decision at this meeting.

Bob Harrington gave an overview of the facts that were presented.

Bob Harrington closed the public hearing.

The commissioners discussed this at length and the final consensus was they uphold the ZEO notice of

violation.

The commissioners voted and these are the results:

Bob Harrington said he makes the motion to approve the notice of Violation and deny the appeal.

Don Schilder agreed to approve the notice of violation and deny the appeal.

Jim Sette agreed to approve the notice of violation and deny the appeal.

Steve Sullivan agreed to approve the notice of violation and deny the appeal.

Lenny Tamsin agreed to approve the notice of violation and deny the appeal.

Other Business:

Approval of December 17, 2024 meeting minutes- Approved

The meeting adjourned at 11:20 pm.