

**COVENTRY ZONING BOARD OF APPEALS
REGULAR MEETING MINUTES**

Tuesday, January 20, 2026

Town of Coventry, Conference Room B, 1712 Main Street Coventry, CT 06238
Hybrid & Zoom Teleconference

	MEMBER	PRESENT	ABSENT
REGULAR MEMBERS:	William Zenko, Chair		X (excused)
	Mike Gerrity, Vice Chair	X	
	Caroline Dowd, Secretary		X
	Peter DePaola		X (excused)
	Suzanne Haviland	X	
ALTERNATE MEMBERS:	Lisa Conant	X	
	Lorraine Funk	X	
	Robert Morin	X	

STAFF:	Heidi Leech, Planning Technician / Zoning Enforcement Officer
	Andrea Vassallo, Recording Secretary

1. CALL TO ORDER:

Mike Gerrity called the meeting to order at 7:00 PM.

2. ROLL CALL / MEMBER INTRODUCTIONS:

Lisa Conant, Lorraine Funk, and Robert Morin, Alternates, were seated.

3. READING OF LEGAL NOTICE:

L. Funk read into the record the Public Hearing Legal Notice for January 20, 2026.

4. EXPLANATION OF PROCEDURES:

M. Gerrity explained the meeting procedures to members of the attending public.

5. PUBLIC HEARINGS:

- a. **ZBA-25-17** – Request for a variance from Table 4.04A.b of the Zoning Regulations to authorize a previously constructed rear deck 39 feet from the rear property line when 50 feet is required at 710 Goose Lane in the GR-80 Zone; Owners Zachary Beauchesne & Erin Fish, Applicant: Zachary Beauchesne.

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Variance Application for a Previously Constructed Deck

The application before the Board involved a request for a variance from zoning regulations to permit a previously constructed deck at 710 Goose Lane, which was built 39 feet from the rear property line instead of the required 50 feet.

The applicant/homeowner, Zachary Beauchesne, explained that the deck was built without realizing the zoning requirements, as he was a first-time homeowner. Heidi Leech, Coventry Zoning Enforcement Officer (ZEO) stated that she became aware of the deck after a complaint from a neighbor. Upon further review of the building file, it was determined that the homeowner did not obtain any permits from building, zoning, health or wetlands to construct the deck.

A notice of violation was issued by the ZEO, H. Leech for the unpermitted structure. After receiving the NOV, the owner contacted the Land Use/Building office to attempt to permit the deck after the fact. During that process it was confirmed that the deck is within the rear setback. The homeowner obtained a Wetlands Permit from the Coventry Inland Wetlands Agency, permit WP-25-21. An initial review of the application/plans by the Building Official, Randy Heckman, determined there may be Building Code violations. The pier depth was not verified by inspection prior to filling and there is an exhaust vent on the deck that needs to be at least seven feet above the walking surface.

Town Staff Review Comments:

Leech, Heidi. Town of Coventry Land Use Office, January 20, 2026, ***Staff Guidance for Public Hearings, Town Staff Review Comments***, page 1:

- After some initial errors with the mailing to abutters and posting of the public hearing sign which required the continuance of the application, the legal notification requirements for the application were met. Public Hearing sign posted 1/9/2026.

Site Limitations

The applicant, Z. Beauchesne, expressed the desire to bring the property into compliance but explained there are restrictions on the property with an existing driveway on the northwest side of the property, excessive tree roots and wetlands to the north and west side of the property, the rear and side yards close to the existing house with no additional legal space to build on the south and east sides of the property, and the septic tank directly in front of the house.

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Z. Beauchesne stated that when they purchased the home there was an existing deck built off the second story constructed when the home was built by the builder. The new deck is connected by stairs and sits just above the ground.

Public Opposition

John Parks, a land use attorney from Enfield, CT, representing a neighbor, argued against the variance, stating that the hardship was self-created since the applicant built the deck without permits. J. Parks distributed supplemental materials to the ZBA including but not limited to:

- The property card for 710 Goose Lane,
- The existing foundation plan showing the deck taken from the variance application,
- Notice of Violation Letter dated July 17, 2025 for unpermitted structure, and
- Case law of similar Connecticut cases (e.g., East Lyme, Stafford) where self-created hardships led to denied variances.

J. Parks referenced legal precedents indicating that self-created hardships do not justify granting variances, emphasizing that the original homeowner had complied with zoning regulations when constructing the house 30 years ago.

J. Parks further stated that the Coventry ZEO issued a notice of violation and the applicant/homeowner had the right to appeal the notice of violation and did not.

Legal Considerations

The ZBA expressed concerns about the implications of granting a variance for a self-created hardship, and further discussed the implications of the attorney's arguments, considering the legal framework governing variances and the potential for an appeal if the variance were granted.

J. Parks stressed the law requires that hardship for a variance must not be self-created; here, the owner built the deck in violation, and the applicant did not perform due diligence to confirm the existing side and rear yard setbacks.

Applicant Options

M. Gerrity asked the applicant/homeowner how he would rectify the issue.

H. Leech stated that when she spoke to the applicant after issuing the NOV, she told him his only options were to apply for a variance or reduce the deck down to fit within the setbacks. She explained the need for a land-based hardship to support a

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variance. M. Gerrity asked if the applicant would be open to redesigning the deck to comply with existing setback requirements, obtain the proper zoning and building permits, therefore foregoing the need for a variance. Z. Beauchesne stated if it came down to the variance being denied, redesign, or remove the deck the applicant would prefer to remove the deck.

ZBA Discussion and Legal Requirements

Some members of the ZBA were unclear of the specific legal implications of granting a variance with a self-created hardship.

J. Parks, attorney for the neighboring party, stated that legal precedent was clear that the applicant’s self-created hardship cannot support the variance and it would be grounds to file an appeal if the variance was granted, he referred to the case law in the supplemental materials packet he previously presented to the Board.

The ZBA discussed continuing the hearing for legal consultation with the Town Attorney. H. Leech stated a special meeting may be needed due to the regulatory timeline, one extension was already granted, she will check the dates and schedule a special meeting if necessary.

MOTION: M. Gerrity **MOVED to EXTEND** the Public Hearing to the next Regular Meeting scheduled for Tuesday, February 17, 2026. L. Conant **SECONDED;**
MOTION CARRIED; 5:0:0

Yea	Gerrity, Haviland, Conant, Funk, Morin
Nay	0
Abstain	0

- b. ZBA-25-22** – Request for a variance from Table 4.04A.c of the Zoning Regulations to construct a 16-foot x 25-foot ADA accessible addition in the footprint of an existing deck resulting in a lot coverage of 17.825% when 15% is the maximum at 6 Midland Road in the LR Zone; Owner: Jeffrey Skinner, Applicant: Titan Construction.

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The applicant, Jeffrey Skinner, explained that a recently diagnosed medical condition would require single floor living and that an addition was necessary to accommodate his medical condition for accessibility.

Heidi Leech, Coventry Zoning Enforcement Officer stated that:

- Soil testing was performed by a certified soil scientist, and a stormwater mitigation plan was designed by a professional engineer to ensure compliance with zoning regulations. A PE stamped stormwater mitigation plan was provided to the Board in the application packet.
- A lot coverage variance of 2.825%, for a total lot coverage of 17.825%, is requested to construct a 16-foot by 25-foot addition to an existing single-family home in the footprint of an existing deck. This is a request for reasonable accommodation under ADA/FHA by a qualified individual; therefore, a land-based hardship is not required.

Town Staff Review Comments:

Leech, Heidi. Town of Coventry Land Use Office, January 20, 2026, **Staff Guidance for Public Hearings, Town Staff Review Comments**, page 2.

- Variance is sought for lot coverage for an addition as a reasonable accommodation under ADA/FHA by a qualified individual, therefore a land-based hardship is not required.
 - “Does the requested accommodation fundamentally alter a policy or regulation of local government or impose an undue financial or administrative burden on the municipality?” If it does not, the requested accommodation is deemed “reasonable.”
 - Proof of Certified Mailings and Public Hearing Sign postings received as required.
 - Soil testing was performed. Soil testing results and stormwater mitigation plan by Mark Peterson, PE received 1/15/2026 and handle necessary stormwater flow.

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The Board noted that this application was a reasonable accommodation under the ADA, which does not require a land-based hardship. No members of the public were present to oppose the application.

MOTION: M. Gerrity **MOVED** to **APPROVE** the request for a variance, ZBA-25-22, from Table 4.04A.c of the Zoning Regulations to construct a 16-foot x 25-foot ADA accessible addition in the footprint of an existing deck resulting in a lot coverage of 17.825% when 15% is the maximum at 6 Midland Road in the LR Zone with the finding that:

- 1) it **is** in harmony with the general purpose and intent of the zoning regulations, and
- 2) **will not** be contrary to the public interest.

The following circumstances are unique to the property and not the result of the actions of the applicant this is a request for reasonable accommodation under the Americans with Disabilities Act (ADA).

R. Morin **SECONDED; MOTION CARRIED; 5:0:0**

Yea	Gerrity, Haviland, Conant, Funk, Morin
Nay	0
Abstain	0

6. NEW BUSINESS/DISCUSSION:

- a. Approval of December 16, 2025, Meeting Minutes

MOTION: L. Conant **MOVED** to **APPROVE** the Regular Meeting Minutes from December 16, 2025. R. Morin **SECONDED; MOTION CARRIED; 5:0:0**

Yea	Gerrity, Haviland, Conant, Funk, Morin
Nay	0
Abstain	0

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- b.** Member Updates – S. Haviland asked to invite Mary Ann Hansen to the table to discuss the status of the appeal of the approval of ZBA-25-16. She said she understands there has been significant progress.
- H. Leech said that we cannot discuss pending litigation in a public meeting, only in Executive Session.
 - M. Gerrity agreed with H. Leech and said that the ZBA needs to be extra careful as a party named in the lawsuit.
 - H. Leech reminded members that their legal counsel, Attorney Reiser, advised ZBA members at the December meeting to cease all communication with all parties involved in the pending appeal, including Ms. Hansen.
 - S. Haviland said Ms. Hansen was allowed to read a statement at the Town Council meeting the night before so she didn't know why she couldn't here.
 - H. Leech said we can only control what happens at our meetings and we cannot discuss pending litigation. She invited Ms. Hansen to speak to her privately after the meeting if she would like to.

7. ADJOURN:

L. Conant **MOVED** to **ADJOURN** at 8:03 PM. R. Morin **SECONDED; MOTION CARRIED; 5:0:0**

The next regular meeting is scheduled for: **Tuesday, February 17, 2026, 7 PM**

Respectfully submitted by Andrea Vassallo, Acting Recording Secretary

Please see the minutes of subsequent meetings for approval of these minutes and any corrections hereunto.

Coventry Zoning Board of Appeals

Variance Application

710 Goose Lane

ZBA-25-17

Prepared by:

Attorney John H. Parks

139 Hazard Ave.

Bld. 2 Ste. 7

Enfield, CT 06082

860-749-0797

John@jhparkslaw.com



Town of Coventry, CT

Property Listing Report

Map Block Lot 02-16

PID 1951

Building # 1

Section #

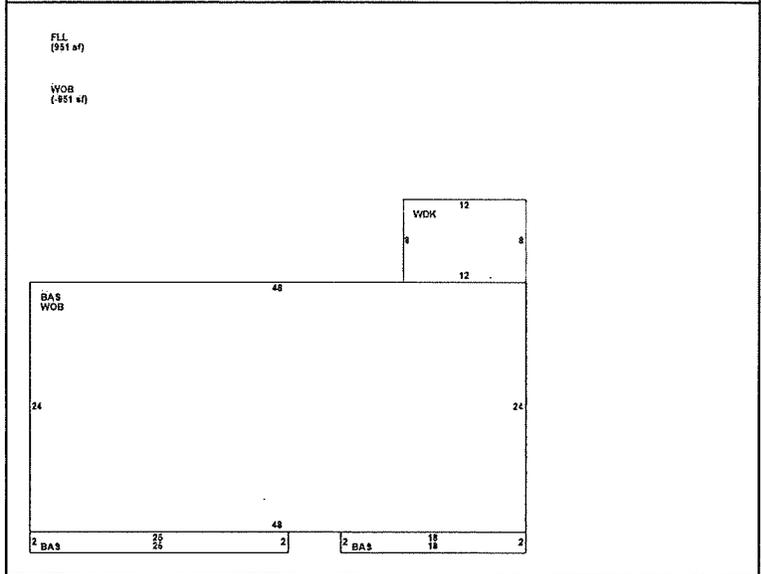
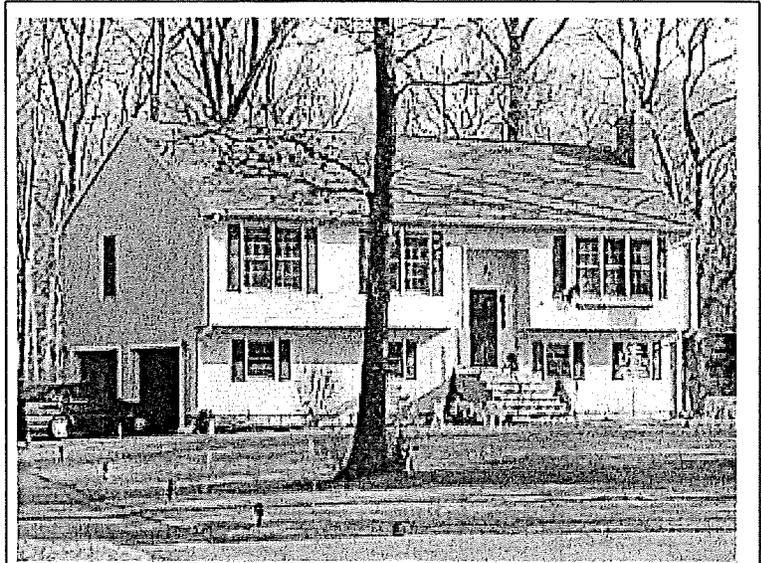
List #

R02051

Property Information

Property Location	710 GOOSE LN
Owner	BEAUCHESNE, ZACHARY
Co-Owner	FISH, ERIN
Mailing Address	710 GOOSE LN COVENTRY CT 06238
Land Use	101 Single Family
Land Class	R
Zoning Code	GR80
Census Tract	

Street Index	
Acreage	1.38
Utilities	Septic /
Setting/Desc	Rolling
Additional Info	

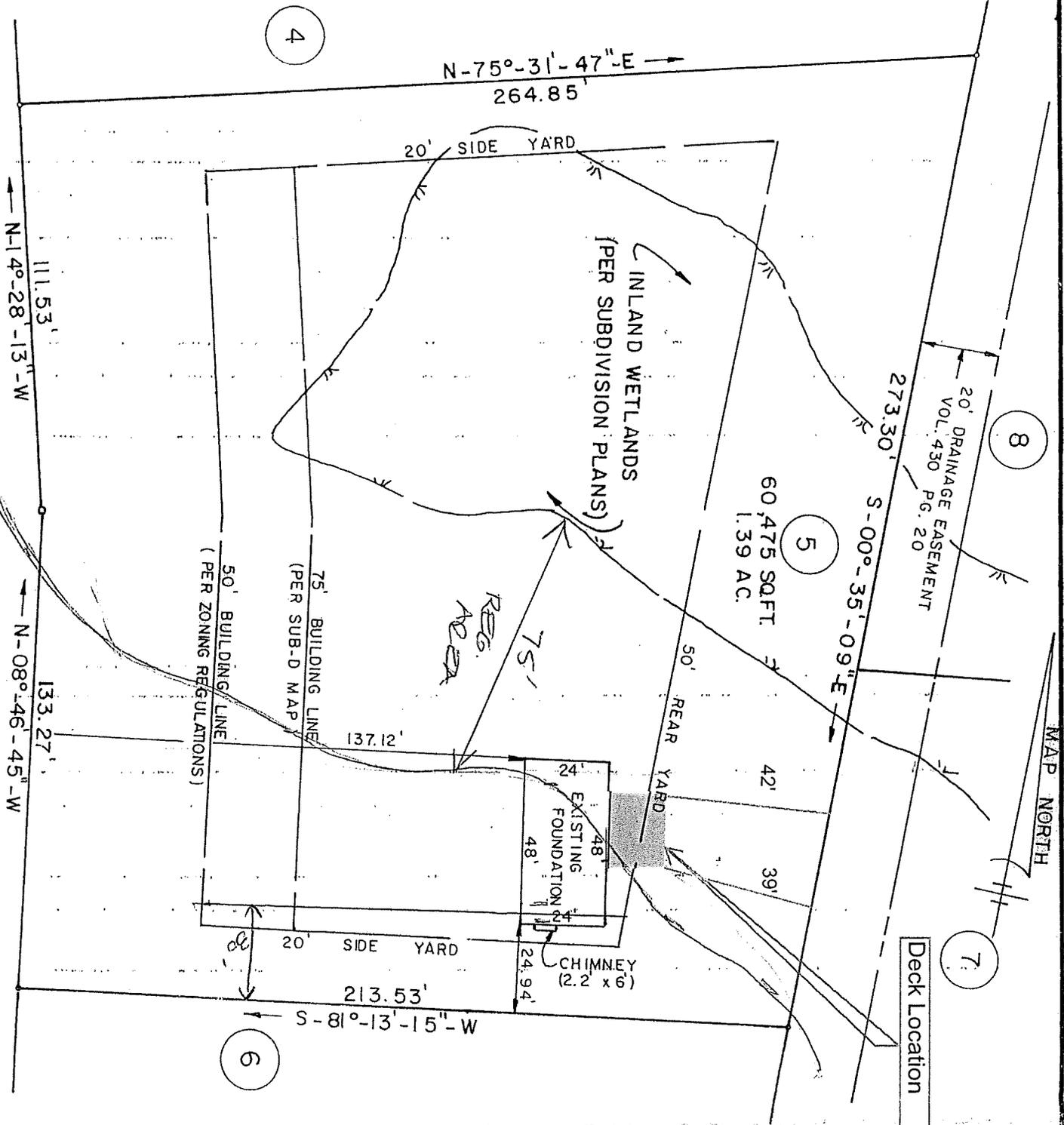


Primary Construction Details

Year Built	1996
Stories	1
Building Style	Raised Ranch
Building Use	Residential
Building Condition	A
Interior Floors 1	Vnl Linoleum
Interior Floors 2	Carpet
Total Rooms	5
Basement Garages	
Capacity	1
Building Grade	Avg +

Bedrooms	3 Bedrooms
Full Bathrooms	2
Half Bathrooms	0
Extra Fixtures	0
Bath Style	Average
Kitchen Style	Average
Roof Style	Gable
Roof Cover	Asphalt Shingl
AC Type	Central
Fireplaces	

Exterior Walls	Vinyl
Exterior Walls 2	NA
Interior Walls	Drywall
Interior Walls 2	NA
Heating Type	Hot Water
Heating Fuel	Oil
Sq. Ft. Basement	
Fin BSMT Quality	
Extra Kitchens	



20' DRAINAGE EASEMENT
VOL. 450 PG. 20

Deck Location

60,475 SQ. FT.
1.39 AC.

EXISTING FOUNDATION
CHIMNEY (22' x 6')

75' BUILDING LINE (PER SUB-D MAP)
50' BUILDING LINE (PER ZONING REGULATIONS)

20' SIDE YARD

50' REAR YARD

20' SIDE YARD

MAP NORTH

TOGETHER WITH DRAINAGE EASEMENT VOL. 560 PG. 79.

NOTE: THIS PARCEL CONSISTENT WITH REGULATIONS REQUIRES WETLANDS SUBSEQUENT PLANS

BEING LOT 5 ON A PLAN OF THE GROVE APPLICABLE TO THE GROVE APPLICABLE CONN. FUSS & O'NEILL DATE 2-17-87 SCALE

TO THE BEST OF MY KNOWLEDGE AND BELIEF THIS SURVEY IS CORRECT AS NOTED ACCORDANCE WITH STATE OF CONNECTICUT ASSOCIATION OF LAND SURVEYORS

THE TYPE OF SURVEY IS INTENDED TO BE A RESPECT TO THE ASSOCIATION OF LAND SURVEYORS

BOUNDARY DETERMINED BY THIS SURVEY IS RECORDED SUBDIVISION MAP ESTABLISH THE PH

THIS SURVEY CONFIDENTIAL TO SUCH FACTS AS NOT VALID WITHOUT

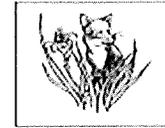


APPLICANT BUILT NEW DECK WITH NO BUILDING OR ZONING PERMITS-NOTICE OF VIOLATION

ZEO Notice of Violation



Town of Coventry



Land Use Office
1712 Main Street • Coventry, CT 06238
Planning • Zoning • Wetlands • Economic Development • Conservation
Phone: 860 742-4062 Fax: 860 742-4059 Web: www.coventry-ct.gov

July 17, 2025

Via First Class and Certified Mail:

7018 2290 0001 7697 1794

Zachary Beauchesne
Erin Fish
710 Goose Lane
Coventry, CT 06238

Re: Notice of Violation, Unpermitted Structure in the rear setback – 710 Goose Ln, Coventry

Dear Mr. Beauchesne & Ms. Fish:

My name is Heidi Leech. I am the Zoning Enforcement Officer for the Town of Coventry. It has come to the attention of the Town of Coventry that in 2024 a previously existing 8-foot by 12-foot deck on the rear of your home was replaced and enlarged. A quick check of the Building/Land Use records shows that no permits were pulled for this construction project. I am writing to formally notify you that this is a violation of Coventry Zoning Regulations Section 7.01.02.

Section 7.01.02 Permits Required - No land use shall be established or substantially changed and no building or structure shall be used, erected, constructed, moved, enlarged, or altered, in whole or in part, until a zoning permit, site plan approval, or special permit has been issued by the Commission or its authorized agent.

A comparison of aerial photography between April 2024 and October 2024 shows significant enlargement of the rear deck. Additionally, reviewing your Foundation As-Built Plot Plan and aerial photos I was able to determine that the deck projects into the 50-foot required rear yard setback in violation of Coventry Zoning Regulations Table 4.04.A.b Dimensional Requirements for the GR-80 Zone.

This notice is a courtesy to encourage you to contact our office to bring your property into compliance with Zoning Regulations. In addition to Zoning, you will need to speak to the Building Official, Wetlands Agent and Sanitarian to obtain any other required permitting.

If you do not contact me and begin the process to bring your property into compliance with the Zoning Regulations within 14 days of receiving this notice, additional enforcement actions will be taken. This notice is appealable to the Coventry Zoning Board of Appeals, and subject to such penalties as are provided by law.

Sincerely,

Heidi A. Leech

Heidi A. Leech
Planning Technician/Zoning Enforcement Officer
hleech@coventry-ct.gov

cc: Randy Heckman, Building Official
Lindsay Beutler, Environmental Planner/Wetlands Agent
Glenn Bagdoian, Sanitarian Eastern Highlands Health District



April 2024 Nearmap Image



April 2025 Nearmap Image

such buildings by new structures possessing architectural compatibility in terms of scale and style with remaining historic structures located on the property. No Redevelopment Plan shall be approved unless it substantially preserves the historic elements of the affected properties.

- c. Parking Residential: Off-street parking shall be provided at a ratio of no less than two (20 spaces per dwelling unit. The Commission shall determine the total residential parking requirement, taking into account opportunities for shared parking and available public parking areas adjacent to the site. Parking required for all non-residential uses shall be governed by these Regulations.

Section 6.14.07 Permitted Uses

Any uses in the Village Residence Zone or Gateway Zone may be allowed, either separately or as mixed uses, in an IHO District.

ARTICLE VII - ADMINISTRATION AND ENFORCEMENT

Section 7.01 General Provisions

Section 7.01.01 Authority of Commission

The provisions of these Regulations shall be administered and enforced by the Coventry Planning and Zoning Commission. The Commission may delegate certain powers and duties to an agent, but any such delegation shall not be deemed to deprive the Commission of the ability to exercise such powers or duties independently in the event the Commission determines that it would be appropriate to do so. In the event the Commission has not appointed an agent to act on its behalf, or if the appointed agent is unavailable, the Chairman, or the acting Chairman if the Chairman is unavailable, may act as the agent for the Commission in matters of enforcement or in any other matters in or on which an agent would be authorized to act under these Regulations. The Commission shall not modify, reverse or rescind any order issued by its authorized agent; any person receiving such an order and seeking modification, reversal or rescission must appeal to the Zoning Board of Appeals. However, the Commission may issue an order in circumstances in which its designated agent has refused, declined or failed to do so.

Section 7.01.02 Permits Required

No land use shall be established or substantially changed and no building or structure shall be used, erected, constructed, moved, enlarged, or altered, in whole or in part, until a zoning permit, site plan approval, or special permit has been issued by the Commission or its authorized agent.

Section 7.02 Zoning Permit Requirements

Section 7.02.01 Applications

Applications for zoning permits shall be filed with the Commission or its authorized agent on a form provided by the Commission. If the applicant is not the owner of the property on which the activity is proposed, the relationship of the applicant to the owner shall be described on the application form. The original and one copy of each application shall be submitted. If the application involves the construction of a new structure, the exterior alteration of an existing structure (not including painting, siding, or similar cosmetic changes to the surface of a structure), the alteration (grading, excavation, or filling) of any land, the application shall be accompanied by two (2) copies of a site plan, containing the requirements described in Section 7.02.02 of these Regulations. The Zoning Agent may also require the submission of a site plan in any situation in which he or she determines that a site plan would be helpful in determining the conformity of an existing or proposed building, structure or use to these Regulations. (Revised- Effective 08/01/11)

Section 7.02.02 Site Plans

Except as provided below, zoning site plans shall be based upon and include a Class A-2 survey prepared by a land surveyor licensed to practice in the State of Connecticut. The survey and plans shall contain the embossed seal and original signature of the land surveyor, and shall show:

- a. All revision dates and necessary definitions and legends, and the true scale of the survey, in which one inch (1") shall be equal to no more than forty feet (40');
- b. The direction of true north.
- c. The actual shape and dimensions of the lot to be used; provided, however, that if the lot is substantially larger than the area to be developed, the Commission or its authorized agent may allow the applicant to submit a zoning plan showing the lot as an insert on the map at a scale in which one inch (1") shall be equal to no more than one hundred feet (100').
- d. The exact size and location on the lot of existing and proposed buildings, structures, and off-street parking and loading areas.
- e. The location of all required setbacks or yard lines, and of all easements.
- f. A computation of lot and building coverage.
- g. The location and name of all Town or State streets, roads, or highways that pass through or adjoin the lot or, if no such street, road, or highway passes through or adjoins the lot, the entire route of vehicular access to the lot from such a street, road, or highway.
- h. The location of all existing and proposed driveways. Provide driveway sight lines at intersections with existing and proposed streets. (Revised Effective 06/15/12)
- i. The location of all existing or proposed water supplies (either by well or community water supply) and sewage disposal facilities (including primary and reserve leaching areas) showing precise

Table 4.04A. Dimensional Requirements

	Min. Lot Area (square feet) ¹	Min. Lot Frontage/Width	Min. Front Yard	Min. Side Yard	Min. Rear Yard	Max. Bldg. Height	Min. Setback from river	Max. Lot Coverage (%)		
a. GR-40	40,000	150	50	20	50	40	N/A	20		
b. GR-80	80,000	200	50	20	50	40	N/A	15		
c. LR	40,000	150	20	15	20	40	N/A	10 ³		
d. R/A	80,000	200	50	30	100	40	150	10		
e. VR	10,000	100	10*	10*	10*	40	N/A	30		
f. VG	7,000	75	10*	10*	10*	--	N/A	80		
g. VC	3,000	30	0 min 10 max.	0	0	--	N/A	90		
h. C/A	40,000	150	50	See fn.4	15	See fn.4	30	See fn.4	40	60
i. C	See fn.2	See fn. 2	50	See fn.4	15	See fn.4	30	See fn.4	40	60
j. RD	40,000	200	50	See fn.4	25	See fn.4	50	See fn.4	60	60
k. NC	40,000	150	50	See fn.4	25	See fn.4	30	See fn.4	40	60
l. PO	40,000	150	50	See fn.4	15	See fn.4	30	See fn.4	40	60

¹ Minimum lot areas shown in this table must be increased in accordance with Section 4.04.03 for lots that do not have frontage on a road meeting current Town standards. In addition, lots used for multi-family dwellings in the GR and VR zones must have 1.5 times the minimum lot area shown above. Lots used for farms in the C/A Zone must have twice the minimum lot area shown above.

2. Minimum lot area and frontage for lots abutting Connecticut Route 44 (Boston Turnpike) shall be 200,000 square feet and 500 feet, respectively, except as provided in Sections 4.04.02 and 4.04.03. Minimum lot area and frontage for all other lots shall be 40,000 square feet and 150 feet, respectively.

3. May be increased to 15% in accordance with Section 4.04.06.

4. When compliance with the Coventry Design Guidelines for Commercial Development is required in the C/A, C, RD, NC, PO Zones, Yards (Setbacks) on existing lots may be reduced at the Commission's discretion, utilizing the Site Plan Review Standards, found in Section 7.02.07 as criteria, to allow for septic systems, wells, and/or to acknowledge other natural or historic features.

* May be further reduced to the average applicable yard or setback of adjoining lots with existing structures.

Citation: Bee v. Black Point Beach Club Zoning Board of Appeals (Conn. Super. 2003) 

Court: Connecticut Superior Court

Parties: Just Bee, LLC v. Black Point Beach Club Zoning Board of Appeals et al.

Page 1

Just Bee, LLC v. Black Point Beach Club Zoning Board of Appeals et al.

564026.

**Superior Court of Connecticut, Judicial District of New London, at
New London. Filed July 1, 2003.**

Decided July 1, 2003.

MEMORANDUM OF DECISION

D. Michael Hurley, JTR.

The plaintiff **Just Bee LLC** (applicant), appeals from the decision of the **Black Point** Beach Club zoning board of appeals (board) denying its variance application.¹

BACKGROUND

The applicant is the owner of the residential property at issue which is located at 3 Waterside Avenue, East Lyme, Connecticut. (Return of Record [ROR], Exhibit 1.) The following facts are agreed to by the parties. On or about May of 2002, the applicant built a deck off of the property facing Waterside Avenue without first obtaining a zoning permit. The applicant then submitted a zoning permit application to the **Black Point** Beach Club Association on June 17, 2002, which was denied. On June 25, 2002, the applicant was served with a cease and desist order.² *2

2

The applicant subsequently filed a variance application to the board on September 3, 2002. (ROR, Exhibit I.) The applicant requested two variances. (*Id.*) First the applicant requested that the board designate the portion of the property abutting Waterside Avenue to be the back yard and claimed that the hardship was based on common usage and access on East Shore Drive as the front yard rendering the Waterside Avenue side the rear yard. (*Id.*) The second variance requested by the applicant was from the twenty-foot setback requirement found in the **Black Point** Beach Club regulations. (*Id.*) The applicant claimed that it suffered from a hardship created by the irregular shape of the property and that the existing stone deck was already in violation of the regulations needing immediate repair. (*Id.*)

The board held a public hearing and denied the appeal on October 12, 2002. (ROR, Exhibit 6.) The applicant subsequently appealed the board's decision to the Superior Court on November 8, 2002.

JURISDICTION

Appeals to the Superior Court from a zoning board of appeals decision are governed by General Statutes § 8-8. "There is no absolute right of appeal to the courts from a decision of an administrative agency. Appeals to the courts from administrative [agencies] exist only under statutory authority. Appellate jurisdiction is derived from the statutory provisions by which it is created, and can be acquired and exercised only in the manner prescribed." (Citations omitted; internal quotation marks omitted.) *Brookridge District Assn. v. Planning & Zoning Commission*, 259 Conn. 607, 611-12, 793 A.2d 215 (2002).

Aggrievement

"Pleading and proof of aggrievement are prerequisites to the trial court's jurisdiction over the subject matter of a plaintiff's appeal." *Jolly, Inc. v. Zoning Board of Appeals*, 237 Conn. 184, 192, 676 A.2d 831 (1996). An owner of property that is the subject of an application to the zoning commission is aggrieved. *Winchester Woods Associates v. Planning & Zoning Commission*, 219 Conn. 303, 308, 592 A.2d 953 (1991). The applicant alleges that it is aggrieved because it is the owner of the real property involved in this appeal. (Appeal, P1.) In the present

appeal, the applicant provided copies of the deed to the property at the trial on May 2, 2003. (Plaintiff's Exhibits A, B.) Accordingly, the applicant is aggrieved.

*3

3

Timeliness and Service of Process

An "appeal shall be commenced by service of process in accordance with subsections (f) and (g) of this section within fifteen days from the date that notice of the decision was published as required by the general statutes." General Statutes § 8-8(b). Subsection (f) further provides that "service of legal process for an appeal under this section shall be directed to a proper officer and shall be made by leaving a true and attested copy of the process with, or at the usual place of abode of, the chairman or clerk of the board, and by leaving a true and attested copy with the clerk of the municipality." General Statutes § 8-8(f).

The record contains a copy of the notice of the board's decision was published in the New London Day on October 18, 2002. (ROR, Exhibit 3.) On November 1, 2002, this appeal was commenced by service of process upon the chairman of the board, and the clerk of the town. Accordingly, the court finds that this appeal was commenced timely by service of process upon the proper parties.

SCOPE OF REVIEW

"When a zoning agency has stated its reasons for its actions, a court should not reach beyond those stated purposes to search the record for other reasons supporting the [board's] decision . . . Rather, the court should determine only whether the assigned grounds are reasonably supported by the record and whether they are pertinent to the considerations which the authority was required to apply under the zoning regulations . . . The principle that a court should confine its review to the reasons given by a zoning agency . . . applies [only] where the agency has rendered a formal, official, collective statement of reasons for its action. It does not apply to mere utterances of individual members of the agency." (Citations omitted; internal quotation marks omitted.) *Harris v. Zoning Commission*, 259 Conn. 402, 420, 788 A.2d 1239 (2002). In the present case, the board failed to articulate a basis for its decision.

When the board fails to articulate the reasons for its actions, the court must search the entire record to find a basis for the board's decision. *Grillo v. Zoning Board of Appeals*, 206 Conn. 362, 369, 537 A.2d 1030 (1988); *Parks v. Planning & Zoning Commission*, 178 Conn. 657, 662, 425 A.2d 100 (1979). "The Superior Court's scope of review is limited to determining only whether the board's actions were unreasonable, arbitrary or illegal." *R&R Pool & Patio v. Zoning Board of Appeals*, 257 Conn. 456, 470, 778 A.2d 61 (2001). "The burden of proof to demonstrate that the board acted improperly is upon the party seeking to overturn the board's decision." (Internal quotation marks omitted.) *Francini v. Zoning Board of Appeals*, 228 Conn. 785, 791, 639 A.2d 519 (1994).

DISCUSSION *4

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"The authority of a zoning board of appeals to grant a variance under General Statutes 8-6(3) requires the fulfillment of two conditions: (1) the variance must be shown not to affect substantially the comprehensive zoning plan, and (2) adherence to the strict letter of the zoning ordinance must be shown to cause unusual hardship unnecessary to the carrying out of the general purpose of the zoning plan . . . It is well settled that the hardship must be different in kind from that generally affecting properties in the same zoning district . . . (Citations omitted; internal quotation marks omitted.) *Francini v. Zoning Board of Appeals, supra*, 228 Conn. 790. "If, however, the hardship arises from a voluntary act on the part of the applicant, the board does not have the authority to grant a variance . . . The board is under no duty to extricate an applicant from a self-created hardship . . . The hardship which justifies a board of zoning appeals in granting a variance must be one that originates in the zoning ordinance . . . and arises directly out of the application of the ordinance to circumstances or conditions beyond the control of the party involved." (Citations omitted; internal quotation marks omitted.) *Archambault v. Wadlow*, 25 Conn.App. 375, 381, 594 A.2d 1015 (1991).

A. Whether the Board Properly Denied the Variance Application Requesting That the Front Yard of the Property Be Designated East Shore Drive.

The applicant argues that the board's decision denying the variance application was unreasonable, arbitrary and illegal. The applicant argues that substantial evidence was presented at the hearing indicating that East Shore Drive instead of Waterside Avenue was treated as the front yard and, therefore, a variance should have been granted. The board refutes the applicant's contentions stating that the property has always been designated as 3 Waterside Avenue. The board further supports its position by stating that as the building sits today, it is in compliance with the front yard setback requirements found in the regulations and would not be in compliance if East Shore Drive was deemed the front yard.

The record supports the board's decision. The applicant purchased the property with the knowledge that the address was 3 Waterside Avenue, indicating that the front yard was that side which faces Waterside Avenue. (Plaintiff's Exhibits A, B.) The applicant now wishes the front yard faced East Shore Drive. "Hardships in such instances as these do not arise from the application of zoning regulations, per se, but from zoning requirements coupled with an individual's personal needs, preferences and circumstances. Personal hardships, regardless of how compelling or how far beyond the control of the individual applicant, do not provide sufficient grounds for the granting of a variance." *Garibaldi v. Zoning Board of Appeals*, 163 Conn. 235, 239-40, 303 A.2d 743 (1972). The board's decision is reasonably supported by the evidence in the record.

*B. Whether the Board Properly Denied the Variance Application *5 5*
Requesting Relief from the Twenty-Foot Set Back Requirement.

The applicant argues that the board acted unreasonable, arbitrary and illegal when it denied the applicant's request for a variance from the twenty-foot setback requirement. The applicant asserts that the variance should have been granted because the way the regulations apply to their parcel of land "strict enforcement of the setback regulations would permit absolutely no deck or similar structure off the east end of the [applicant's] dwelling under any circumstance." (Applicant's Brief p. 30.) It claims that this is not a self-created hardship. The board counters this argument claiming that the hardship is self-created.

The record demonstrates that Section V of the **Black Point** Beach Club Association zoning regulations provide that all dwellings must be constructed within twenty feet from the front lot lines and fifteen feet from all other lot lines. (ROR, Exhibit 5, p. 7.) The deck presently sits "virtually on the property line." (ROR, Exhibit 6, p. 14.) At the hearing, the applicant admitted that it built the deck prior to obtaining a building permit and prior to finding out where the property line extended to. (*Id.*, p. 12, 15.) The applicant then applied for the variance seeking relief from the setback requirements. (ROR, Exhibit 1.) At the hearing, the board asked the applicant why it could not build or move their deck to the north side of the house to comply with the zoning regulations. (*Id.*, p. 15.) The only response given to this question was by an unidentified man stating "if we did put a deck on that side that would severely hamper the playing area not **just** for children but for the whole neighborhood." (*Id.*, p. 18.)

"The hardship which justifies a board of zoning appeals in granting a variance must be one that originates in the zoning ordinance . . . and arises directly out of the application of the ordinance to circumstances or conditions beyond the control of the party involved." (Internal quotation marks omitted.) *Kaeser v. Zoning Board of Appeals*, 218 Conn. 438, 445, 589 A.2d 1229 (1991). In the present case, the placement of the deck is not beyond the control of the applicant in that the applicant need only move the existing deck to the north side, thereby eliminating the hardship and complying with the zoning regulations. The board's decision is reasonably supported by the evidence in the record.

C. Whether the Board Properly applied the setback requirements to the deck in controversy.

The applicant lastly states that the setback requirements found in section five of the regulations do not apply to decks because a deck is not a dwelling, therefore, the applicant is entitled to a zoning permit and does not require a variance from such requirements. The board asserts that a deck is considered part of a dwelling and is, therefore, subject to the setback requirements. *6 6

Section V of the **Black Point** Beach Club Association zoning regulations pertains to front and back yard setback requirements. In particular § V(1B) provides. "exterior landings and stairways to exterior doors . . . shall be consistent with the

following requirements, and no further deviation from such setback areas shall be permitted unless expressly authorized by variance granted by the zoning board of appeals . . ." The court finds that the board properly interpreted the regulations when deciding that the deck, an exterior landing, is subject to the setback requirements.

CONCLUSION

Based upon the foregoing reasons, the applicant's appeal is dismissed.

¹ The board is named as a defendant in this action as well as the following individuals: Kay Tubridy, **Black Point** Beach Club Association secretary, Robin Meggers, chairmen to the board of governors, and the East Lyme town clerk.

² The applicant appealed both the denial of the zoning permit and the issuance of the cease and desist order to the board, whose decision was later appealed to this court (docket no. CV 02 0563472) and consolidated with this action (docket no. CV 02 0564026).

SELF-CREATED HARDSHIP – CONNECTICUT ZBA EXAMPLES THAT ALIGN WITH CONNECTICUT LAW

East Hartford, CT

- “The exceptional difficulty or unusual hardship cannot be because of something you did – e.g., putting up a building without a permit.”
- Link: <https://www.easthartfordct.gov/zoning-board-of-appeals/pages/zba-variance-information>

Newington, CT

- “A hardship cannot result from putting up a building without a permit.”
- Link: <https://www.newingtonct.gov/DocumentCenter/View/172/Zoning-Board-of-Appeals-Variance-Application-Form-PDF>

Granby, CT

- “Self-created hardship ... the simple fact of having constructed work without realizing the work was illegal is typically not satisfactory for a variance.”
- Link: <https://www.granby-ct.gov/DocumentCenter/View/1462/What-is-a-Hardship>

Thompson, CT

- “A hardship must not be created by the applicant or a predecessor in title.”
- Link: <https://ecode360.com/38470773>

Fenwick, CT (Borough)

- “Self-created hardship cannot justify a variance.”
- Link: <https://www.boroughoffenwick.com/zoning-board-of-appeals>

Woodbury, CT

- “Self-created hardship cannot justify a variance.”
- Link: https://woodburyct.org/vertical/Sites/%7B59751637-3DF2-41D3-B20A-866E470B1D1D%7D/uploads/ZBA_Application_2017.pdf

COVENTRY TOWN ATTORNEY COMMENTS ON SELF-CREATED HARDSHIPS

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“Coventry Town Attorney Ken Slater of Halloran and Sage

*Slater went over variances and hardships in greater detail. Hardships must be unique to the property. Economic hardship or financial advantage cannot be considerations for variance. Variances must occur from circumstances beyond the applicant’s control. **Self-created hardships don’t support a variance.** It is the burden of the applicant to show proof of practical difficulty or unusual hardship.”*