

BLACK POINT BEACH CLUB - ZONING BOARD OF APPEALS  
NOVEMBER 22, 2016

PRESENT: Colleen Chapin, Chairman  
Anita Scheptin, Alternate  
Arlene Garrow  
Sally Cini  
Paul Pendergast

FILED

NOV 28 20 16 AT 1:00 AM/PM  
*Julian ATC*  
EAST LYME TOWN CLERK

ALSO PRESENT: Joyce Wojtas  
Kim Craven, Alternate  
Jim Fox, Chairman of the Zoning Commission  
Wilfred Fountain, member of the Board of Governors  
Cynthia Fountain  
Cheryl Colangelo, member of the Board of Governors  
Jodie Chase, Applicant, and John Duran  
Maureen Lowney, Secretary of the Board of Governors  
Mary Cahill, honorary ex officio of the Board of Governors  
Rachel Gaudio, Waller, Smith and Palmer  
Mark Zamarka, Waller, Smith and Palmer  
Steve Beauchene, Board of Governors and liaison to ZBA

**1. Call Public Hearing to Order**

Chairman Chapin called the Public Hearing to order at 6 p.m. Ms. Chapin asked if any members had a conflict of interest. Ms. Wojtas asked to be sequestered. Alternate Anita Scheptin was asked to be seated.

Ms. Chapin reported that during the Public Hearing, we will hear from Jodie Chase, the applicant, or her counsel.

The Zoning Enforcement Officer is unable to attend due to a medical issue. We have Zoning Board of Appeals counsel in attendance as well as the Zoning Commission Chair. Letter from Mr. Murray was read. This matter may need to be continued.

**2. Read Notice of Public Hearing**

**Case 1-2016 Application of Jodie T. Chase, for an appeal of an alleged error of the Zoning Enforcement Officer regarding 20 Woodland Drive, Niantic, Connecticut. Said parcel appears on the East Lyme Assessor's map 05.9, lot 12.**

Exhibit A Notice of the Public Hearing was published in the New London Day on November 9 and November 16.

Exhibit B Certificate of Mailing to property owners within 50' of 20 Woodland Drive, Niantic, Connecticut.

**Exhibit C** Application that alleges an error by the Zoning Enforcement Officer. A copy of the permit, site plan and legal description of the property, as well as letter issued to Ms. Chase dated October 18 from Mr. Murray. Ms. Chapin read letter denying the pergola that was constructed with a roof and ceiling fans. An appeal was received on October 27.

Ms. Chase of 20 Woodland Drive, Niantic, Connecticut stated her husband wishes to speak. Mr. Duran, her husband, asked if any correspondence was received from any neighbors that it be entered into the record. He stated he and his wife applied for a new home construction permit which consisted of a house plan 28' from an 18' X 30' patio. A patio is not required to meet the zoning setback requirements. We decided to add a privacy fence 10' off the paved road. We discussed the trellis at length which is 12' X 24' long and centered over the patio 3' from the house. It will be free standing. Mr. Murray described whether it met Zoning Regulations. There was no mention of a trellis in the Zoning Regulations. Mr. Murray requested an application and site plan and a \$45 fee, which we submitted on October 14. He issued a permit. He stated Mr. Murray and I discussed the trellis. The house, fence and the trellis were shown on the plan. Mr. Murray informed him he would be sending out the Zoning compliance. Mr. Murray called the next day and informed the applicants our trellis was not lattice. Mr. Duran reminded Mr. Murray he issued a permit, and the trellis was constructed according to the plan. Mr. Duran stated there is no definition in the Zoning Regulations of a trellis or pergola. Mr. Murray stated there was nothing he could do it was our of his control. Neither the Zoning Enforcement Officer or the Board can enforce regulations that do not exist. Mr. Murray stated he had extensive discussions with Mr. Murray, and we sent out the application on the trellis on October 15. He read from Connecticut law. He felt the time for Mr. Murray to object is when it was applied for. He read from a court ruling. Mr. Murray issued the permit on October 23, 2015. The fence and trellis were constructed as shown on the plan. A Certificate of Compliance must be granted if construction was in compliance.

Ms. Scheptin stated you went to court on this matter. She stated she is a lawyer and was on the Board of Governors. We have two issues to decide on: the Zoning Board of Appeals is to determine whether the trellis conforms with the granted permit, and if it would whether the Association has any legal basis to deny it. During the process of building the trellis did Mr. Murray have a conversation with the you? Ms. Chase stated when we requested the certificate of compliance, Mr. Murray informed them there was a problem.

Ms. Scheptin stated she was discouraged that as a community we are suing each other. There is a problem with the fact that we made a mistake.

Mr. Pendergast reported our Zoning Regulations do not describe a pergola or fan. When you discussed the structure with the Zoning Enforcement Officer you described what it looked like. In the application it is shown as 12' X 24' centered over the patio. He did not see a lot of difference between a trellis or pergola. Since there is no reference to

either one, my issue is that this has been 1 1/2 years ongoing, and it seems unfair, because it is our error.

Ms. Cini, who is an English Professor, understands that an error was made. She looked up the definitions of a trellis and pergola. They had different definitions. Ms. Garrow concurred that it was an error and needs to be corrected.

Ms. Chapin read letter from Andrew and Daren Gleick dated November 15 who live within 50' of the property and felt its a wonderful addition to the community. Ms. Chapin felt the Zoning Board of Appeals and Zoning Commission in general are not about taste and appearance.

Kim Cravin of 46 East Shore stated our Zoning Regulations refer to a terrace and patio. Ms. Chapin stated the patio came with the house, and we are discussing a structure over the patio.

Jim Fox, Chairman of the Zoning Commission and resident of 22 Sea Breeze Avenue, reported in our Zoning Regulations it clearly defines what a structure is. He read from the regulations. He added everyone is fully aware that what has been erected is clearly a structure. We do not regulate patios. If a pole is placed in the ground, it is a structure. The permit states the cost of it is \$1,000. Mr. Duran stated Mr. Murray directed me to send in the application with a \$45 fee, which is what he sent.

Ms. Scheptin agreed in our regulations you need a permit for a structure. We made a mistake. You did not find out about it until you put up the structure. The judge said we have to decide whether or not it conforms to the granted permit and whether or not we can deny certification. Our chance to deny it was at step 1. I am sorry that money, time and effort was spent on it. She did not feel as a community it was handled well. Ms. Scheptin added we were aware that the structure was in the setback. Mr. Duran stated he and his wife went to Mr. Murray in good faith. He looked at it as a landscape accoutrement. He asked for a plan and requested a \$45 application fee.

Ms. Chase reported we are in the real estate development business. Her husband has built homes for 40 years. We live in a fish bowl. We would not want to do anything that was not in compliance. We understand the setbacks. Ms. Chapin stated she assumed you have read the Zoning Regulations which state that any structure not noticed earlier in the regulations shall be constructed so that it meets the setback requirements for dwellings. Ms. Chase stated at no time was the trellis considered a structure. We relied on Mr. Murray. We gave him all pertinent information, and he granted the permit. At no time did we consider it a structure.

Ms. Scheptin stated Mr. Murray said you could do it, and he approved it. Ms. Cini stated the only word I heard was a trellis and that is not a trellis. Mr. Pendergast stated there are many different types of trellises that you would call a structure. The difference between a trellis and pergolas is a moot point.

Mark Zamarka who is from the law firm that represents the Black Point Beach Club stated a lot has been brought up about time lapses that have occurred. The applicants chose not to appeal to the Zoning Board of Appeals but filed a lawsuit instead. The people on behalf of the Association were plaintiffs. He agreed it is irrelevant whether it is a trellis or pergola. This particular structure is within the setbacks. There has been much testimony by both applicants as to what the Zoning Board of Appeals approved or disapproved. He felt this Public Hearing should be continued until Mr. Murray is able to give his side of the story.

Ms. Schepter read from the judge's decision. She felt we are as much at fault on the delay as Ms. Chase and Mr. Duran. Somebody should have talked to Ms. Chase and Mr. Duran. Mr. Zamarka stated if the appeal had been made to the Zoning Board of Appeals, we would have been here one year ago. Mr. Pendergast stated in reading Mr. Murray's letter, it does not talk about a trellis or pergola. Mr. Duran stated the reason he filed a lawsuit is we have been living in another place and trying to get into our house. We could not move into our home. A lawyer felt it was a clear zoning estoppels case. We have spent many thousand of dollars to defend it. We want it to be settled so we can move into our house which is within our permit.

Ms. Cini stated we made a mistake. In the process we don't have Mr. Murray here. She did not feel we are doing the fair thing without hearing Mr. Murray's side.

Ms. Chapin stated this is an opportunity to hear from the Zoning Board of Appeals to motion for a continuance to a time when Mr. Murray can represent himself.

Ms. Schepter felt all that matters are the factual documents we have in front of us. She read from the court that they have an estoppels argument. We have a permit issued on October 23, 2015 which allowed them to build it. We have a photo of what was approved. We need to determine if they acted in good faith and whether or not we have a legal basis to deny them.

**MOTION (1): Mr. Pendergast moved to close the Public Hearing at 6:55 p.m. Seconded by Ms. Schepter. (5-0) Unanimous.**

## **REGULAR MEETING**

**Black Point Zoning Board of Appeals Case 1-2016 Application of Jodie T. Chase, for an appeal of an alleged error of the Zoning Enforcement Officer regarding 20 Woodland Drive, Niantic, Connecticut. Said parcel appears on the East Lyme Assessor's map 05.9, lot 12.**

Ms. Chapin called the regular meeting to order at 6:56 p.m.

Ms. Schepter felt we need to make sure this does not happen again. We have to live with this mistake, because it is the right thing to do. The Zoning Enforcement Officer admitted he made a mistake.

She felt we have to accept it and whatever they built so far stands, and we need to make a statement that this is not a precedence. Clearly a mistake was made. Ms. Cini agreed we made a mistake and have to live with it.

**MOTION (2): Ms. Schepter moved to accept the appeal of the applicants and that a Certificate of Compliance is to be issued to the homeowners. Seconded by Mr. Pendergast. (5-0) Unanimous.**

It was felt going forward we will be working in the community in the future to avoid these errors.

The Chairman stated we need to appoint a Secretary.

**MOTION (3): Ms. Schepter moved to adjourn the November 22, 2016 Meeting of the Black Point Beach Club Zoning Board of Appeals at 7 p.m. Seconded by Ms. Garrow. (5-0) Unanimous.**

Respectfully submitted,

Frances Gheri, Pro-Tem