

**EAST LYME ZONING BOARD OF APPEALS
PUBLIC HEARING AND REGULAR MEETING
MONDAY, JANUARY 9th, 2023
MINUTES**

A Public Hearing and Regular Meeting of the East Lyme Zoning Board of Appeals was held on Monday, January 9, 2023 at 7 PM at the East Lyme Town Hall, 108 Pennsylvania Avenue, Niantic, CT.

PRESENT: Steve Carpenteri, Chairman, Wayne Blair, Michael Strube, Alternate, Spencer Clapp, Alternate, Acting Secretary

ALSO PRESENT: Attorney Harris, representing applicant 69 Quarry Dock Rd
Attorney McNamara, Assisting representation 69 Quarry Dock Rd

ABSENT: John Smith, Larry Fitzgerald, Kevin Mace

1. Call Public Hearing to Order

Chairman Carpenteri called the Public Hearing to order at 8:15 PM. The Pledge was previously observed.

2. Read Notice of Public Hearing

Mr. Carpenteri asked Mr. Clapp to read the Agenda call of Case #3-2022 of the Public Hearing.

Case No. 4-2022: Application of Turner and Ruth Eren, Owner for a variance of the East Lyme Zoning Regulations Section 5.3.3 Setback for property located at 69 Quarry Dock Rd. Said parcel appears on the East Lyme Assessor's Map 22.1, Lot 9.

The Public Hearing notice was sent to the New London Day for publication on 12/28/2022 and 1/5/2023.

Mr. Carpenteri introduced the Board members and polled each for any conflict of interest. Hearing no conflicts of interest from the members, he explained the rules of the meeting, and noted that notices had been sent to the abutters.

Mr. Carpenteri then called for the applicant or their representative to make their presentation.

Attorney McNamara explained that the property was developed in the 1940's and that it is pre-existing non-conforming. In 2004 the old house was torn down and a new one replaced it in exactly the same location. They are seeking a 14 foot side yard variance to allow a fixed roof to be placed over an existing deck to afford shade during the summer months. The hardship was created when the regulations were enacted. The proposed roof is set back 16 feet from the northerly side yard and hence further than the established yard of 5.8 feet; hence the 14 foot variance. He cited case law with regard to the regulations.

Mr. Carpenteri asked if there were trees there and the applicant took them down which has caused the excessive sunlight.

Attorney Harris said that the predecessor may have cut down the trees. (See attached area and photos)

Mr. Clapp asked if there was any intention of closing it in once the roof was on.

Mr. Carpenteri called for any comments from the public -

Maria Wiedermann Moulthrop, 71 Quarry Dock Road said that she is a direct neighbor to 69 Quarry Dock Road. She passed out a narrative that she had prepared and pictures to the Board members. She then read her narrative into the record – **see attached pages and photos**. She noted that the original home was 1800 sf then it became 4000 sf and with the Eren's it is 8900 sf.

Mr. Carpenteri asked if the Board members had any further questions or comments –

Mr. Clapp asked what the distance is between the wall and where the proposed columns would go.

RECEIVED FOR RECORD
EAST LYME, CT
JAN 17 A 10:09
Carpenteri
W. Blair
M. Strube
S. Clapp
A. Harris
A. McNamara

Attorney Harris said that it is approximately 12' before the roof goes up.

Mr. Clapp said that in reading from their website, New Haven Awning has retractable awnings – why not a retractable awning that would create shade in the summer and allow light in the off season. Attorney Harris said that he would suspect that the wind coming from the water would be an issue. He added that the Judelson case approved a roof over an existing porch. Mr. Clapp said that under the regulations that an awning would provide the shade that you want and could also be retracted. He noted that the winds are coming from the southwest and not from the east in that area.

Mr. Strube noted that retractable awnings will automatically self-close when the weather is bad and they could potentially be damaged. By extending the roof you are going to be extending the footprint in non-compliance.

Hearing no further comments -

Mr. Carpenteri closed this Public Hearing at 8:43 PM.

Mr. Carpenteri said that they would now deliberate and make a decision on the application.

Mr. Carpenteri explained that the only comments that they can take now are from the applicant and only if they have technical questions that they need answered. He also informed the applicant that in the event that they wish to contest the decision that they have 15 days in which to appeal it to the Superior Court.

REGULAR MEETING

Mr. Carpenteri opened the Regular Meeting at 8:44 PM.

Case No. 4-2022: Application of Turner and Ruth Eren, Owner for a variance of the East Lyme Zoning Regulations Section 5.3.3 Setback for property located at 69 Quarry Dock Rd. Said parcel appears on the East Lyme Assessor's Map 22.1, Lot 9.

Mr. Carpenteri called for discussion on the application.

Mr. Carpenteri said that he had mixed thoughts on this as the pre-existing non-conforming in this instance presents somewhat of a gray area.

Mr. Clapp noted that he is a member of Save the River Save the Hills and that they seek to preserve the character of the river and that while this may have been a small house way back when it is now a McMansion and this is requesting to expand the roof line further towards the river and there is an open porch on the other side of the property. He said that he does not see a hardship as this is a personal preference.

Mr. Blair said that he does not see a hardship here, it is a preference and there is no demonstrated hardship. Mr. Strube agreed that there is no hardship and noted that an awning could be considered. Mr. Carpenteri asked if they were ready to make a motion.

****MOTION (1)**

Mr. Clapp moved to DENY the Application of Turner and Ruth Eren, Owner for a variance of the East Lyme Zoning Regulations Section 5.3.3 Setback for property located at 69 Quarry Dock Rd. Said parcel appears on the East Lyme Assessor's Map 22.1, Lot 9.

Mr. Blair seconded the motion.

Reason for denial – No demonstrated hardship.

Vote: 4 – 0 – 0. Motion passed.

ADJOURNMENT

Mr. Carpenteri called for a motion to adjourn.

****MOTION (2)**

Mr. Clapp moved to adjourn Case #4-2022 of the East Lyme Zoning Board of Appeals.

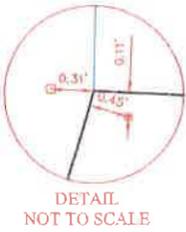
Mr. Strube seconded the motion.

Vote: 4 – 0 – 0. Motion passed.

Respectfully submitted,

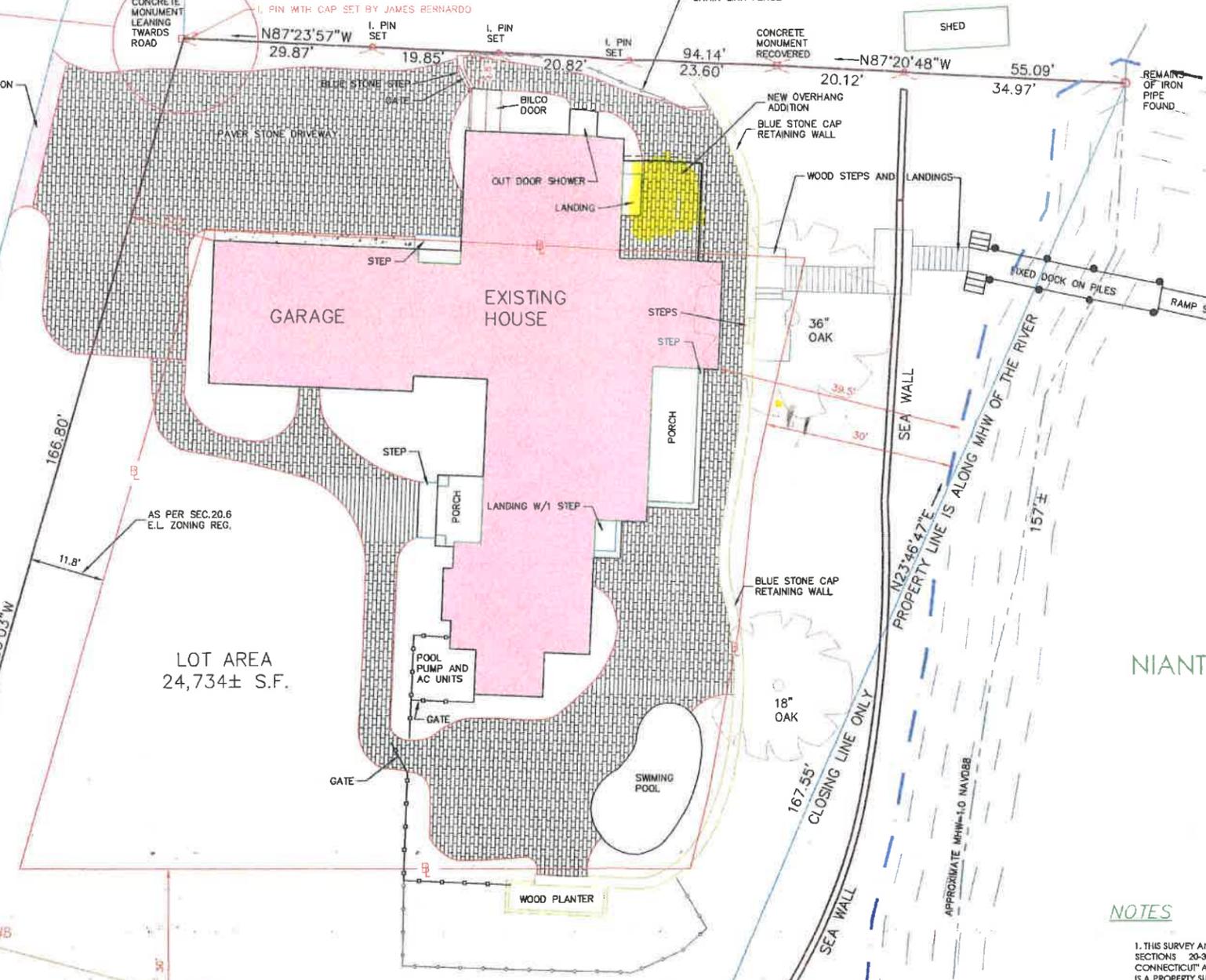
Karen Zmitruk,

Recording Secretary



DETAIL NOT TO SCALE

N/J
Maria Moulthrop
Vol. 945 Pg. 398



QUARRY DOCK ROAD

LOT AREA
24,734± S.F.

NIANTIC RIVER

LEGEND

- IRON PIPE RECOVERED
- IRON PIN RECOVERED
- IRON PIN SET (10/18/2017)
- MERESTONE RECOVERED
- CONNECTICUT HIGHWAY MONUMENT RECOVERED
- DRILL HOLE RECOVERED
- BUILDING LINE
- WATER LINE
- UTILITIES (PHONE, ELEC., CABLE TV, ETC.)
- UTILITY POLE
- STONE WALL
- WIRE FENCE
- TREE LINE / LIMITS OF CLEARING
- WF #11 WETLANDS FLAG

ZONING COMPLIANCE CHART

ZONE = RU40		
	REQUIRED	PROVIDED
MINIMUM LOT SIZE	40,000 S.F.	24,734± S.F. *
MINIMUM FRONTAGE	150 FT.	166.80 FT.
MINIMUM FRONT YARD	11.8 FT. **	13.7 FT.
MINIMUM SIDE YARD	30 FT.	5.8 FT. *
MINIMUM REAR YARD	30 FT.	39.5 FT.
MAXIMUM BUILDING COVERAGE	15 %	15.0 % ***
MAXIMUM BUILDING HEIGHT	30 FT.	22± FT.

* PREEXISTING NON CONFORMING.
** AS PER SECTION 20.6 OF THE E.L. ZONING REGULATIONS
*** INCLUDES NEW OVERHANG ADDITION

NOTES

- THIS SURVEY AND MAP HAS BEEN PREPARED PURSUANT TO THE REGULATIONS OF CONNECTICUT STATE AGENCIES SECTIONS 20-300B-1 THROUGH 20-300B-20 AND THE "STANDARDS FOR SURVEYS AND MAPS IN THE STATE OF CONNECTICUT" AS ADOPTED BY THE CONNECTICUT ASSOCIATION OF LAND SURVEYORS, INC. ON SEPTEMBER 26, 1996. IT IS A PROPERTY SURVEY BASED PARTIALLY ON A DEPENDENT RESURVEY CONFORMING TO HORIZONTAL ACCURACY CLASS A-2 AND IS INTENDED TO SHOW THE PROPERTY BOUNDARIES, AND EXISTING IMPROVEMENTS.
- REFERENCE IS MADE TO THE FOLLOWING DEEDS ON FILE IN THE TOWN OF EAST LYME LAND RECORDS:
WARRANTEE DEED FROM CLARA S. PULSIFER TO MARY G. CLOSE AND ANNE REARDON DATED: APRIL 8, 1947 AND RECORDED IN VOLUME 46 PAGE 181.
- REFERENCE IS MADE TO THE FOLLOWING SURVEY MAPS ON FILE IN THE EAST LYME LAND RECORDS:
A. PROPERTY TO BE CONVEYED TO CLYDE MANWARING & CAMELLA C. MANWARING QUARRY DOCK ROAD EAST LYME CONNECTICUT BY C. BANNING SCALE 1"=30' DATED 12-28-34
B. "PERIMETER & TOPOGRAPHIC SURVEY PREPARED FOR RICARDO OCHOA" LOCATED AT 69 QUARRY DOCK ROAD, DATED 6-18-00 REV THRU 2-19-02 BY J. ROBERT PFANNER & ASSOCIATES P.C.
C. "PROPERTY SURVEY PROPERTY OF MARIA MOULTHROP FOR PROPERTY LOCATED AT 71 QUARRY DOCK ROAD TOWN OF EAST LYME COUNTY OF NEW LONDON CONNECTICUT DATED MAY 2, 2016 PREPARED BY JAMES BERNARDO LAND SURVEYING.
D. WETLANDS SHOWN AS FLAGGED BY DONALD J. FORTUNATO IN 2000 AS SHOWN ON SURVEY MAP "B" REFERENCED ABOVE

THESE PLANS ARE THE SOLE PROPERTY OF J. ROBERT PFANNER & ASSOCIATES P.C. AND HAVE BEEN PREPARED SOLELY FOR THE OWNER ON THIS SITE. ANY REPRODUCTION OF THESE PLANS WITHOUT WRITTEN PERMISSION FROM J. ROBERT PFANNER & ASSOCIATES P.C. MAY BE AN INFRINGEMENT OF THE FEDERAL COPYRIGHT ACT.

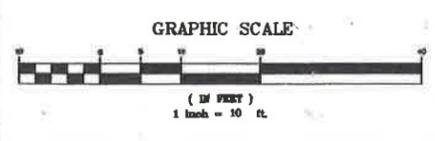
DRAWN BY: RDP		DATE: OCTOBER 19, 2017	
NO.	DATE	DESCRIPTION	BY
2	3/28/22	NEW ADDITION SHOWN	JRP
1	10/24/17	FENCE ENCROACHMENT REMOVED AND NEW FENCE LOCATION SHOWN	RDP

J. ROBERT PFANNER & ASSOCIATES, P.C.
CIVIL ENGINEERS & LAND SURVEYORS

37 GRAND STREET NIANTIC, CONNECTICUT 06357
TEL. 860-739-6216 FAX 860-739-0693

THIS SURVEY CONFORMS TO A CLASS A-2 SURVEY AND TO THE BEST OF MY KNOWLEDGE AND BELIEF IS SUBSTANTIALLY CORRECT AS NOTED HEREON (SEE NOTE 1).

J. ROBERT PFANNER, CONNECTICUT P.E. LS No. 0442



TITLE:
PROPERTY SURVEY
PREPARED FOR
RICARDO & NINA OCHOA

LOCATION: 69 Quarry Dock Road - Niantic, Connecticut

SHEET NUMBER
1 OF 1
170.32-4.DWG

1/9/23 Case 4-2022 EPA submitted by applicant



BEFORE



AFTER



BEFORE



AFTER

Maria Wiedermann Moulthrop
71 Quarry Dock RD Niantic CT

Narrative Response to Eren Application Narrative to the Zoning Board of Appeals

My name is Maria Wiedermann Moulthrop, I live at 71 Quarry Dock Rd with my family, and abut 69 Quarry Dock Rd.. I am here tonight to ask you to uphold the 2021 East Lyme Zoning Regulation 5.3.3, by denying the requested side yard variance by the Erens at 69 Quarry Dock Rd. This request for a new structural addition of a roof for an already pre-existing non-conforming structure only compounds its non-compliance with the East Lyme Zoning Board Regulations Section. 5.3.3 . In addition, the applicant has failed to demonstrate "hardship" based on Connecticut Statutes and law.

The narrative supporting the Application to East Lyme Zoning Appeals submitted by the Erens states that a side yard variance is needed in order to build a new permanent roof for shade on the Northeasterly side of their property within the 30 feet of 71 Quarry Dock Rd Zoning Board Regulations section 5.3.3 . The proposed permanent structure, roof, is to be added over a stone paver patio as seen in the application pictures, not a deck as stated in application narrative. This permanent roof will add to the already established home on a non-conforming lot. The hardship stated in the Erens' application is due to lack of shade in the summer months, change in zoning regulations making a lot non-conforming and the pre-existing location of the home do not meet the standards of hardship *Verrillo v. Zoning Board of Appeals of Branford*, 155 Conn. App. 657, 111 A.3d 473 (2015).

As a note, the Erens' enclosed their existing porch in 2021 which had a permanent roof over the porch, with doors between it and the main floor. The porch was renovated and added to the first floor living space. In the fall of 2022, the Erens clear cut all their Oak trees on the Easterly side, Niantic River side, that offered shade. Finally, the Erens already put the roof posts in early Spring 2022, prior to their request of a variance Appeal in early fall of 2022. see Moulthrop provided pictures.

The *Verrillo* case is instructive in this case although, In supporting the Superior Court's overturning of the granting of a variance at the Town level, the Court said:

The case law is replete with instances in which an applicant predicated its claim of hardship on a desire to expand an existing nonconforming structure for what our appellate courts have characterized as personal considerations, such as the desire to obtain more space or to modernize an antiquated building. It long has been held that "disappointment in the use of property can hardly constitute practical difficulty or unnecessary hardship within the meaning of a zoning law or regulation." *Berkman v. Board of Appeals on Zoning*, 135 Conn. 393, 399-400, 64 A.2d 875 (1949). In *Garibaldi v. Zoning Board of Appeals*, 163 Conn. 235, 238, 303 A.2d 743 (1972), our Supreme Court held that "a variance is properly granted only where there is a showing before the zoning board of appeals that the hardship caused by the application of zoning regulations relates to the property for which the variance is sought and not to the personal hardship of the owners thereof." The court further explained that "a variance is not a

ERBA
Case
4-2022

Submitted and read into record
by MS. Moulthrop
w/ pictures attached 1/9/23

personal exemption from the enforcement of zoning regulations. It is a legal status granted to a certain parcel of realty without regard to ownership. It is for this reason that the rule is well established that the financial loss or the potential of financial advantage to the applicant is not the proper basis for a variance. . . . Similarly, it is also well established that self-inflicted hardship which arises because of individual actions by the applicant will not provide a zoning board of appeals with sufficient reason to grant a variance. . . . 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." (Citations omitted.) *Id.*, 239-40. For that reason, "[t]he situation of any particular owner is irrelevant" to the determination of whether a hardship exists. *Hyatt v. Zoning Board of Appeals*, supra, 163 Conn. 382.

Verrillo at 691-92.

The applicants face no hardship in the use of their home. They bought a structure that did not have a porch roof over the exterior stone paved patio. The lack of the roof over an exterior portion of their home does not impact their ability to live there, their safety, their access or any other important need. It seems they seek a variance to increase the non-conformity of their property for their comfort and convenience when sitting outside. That is not a legal hardship that would support the issuance of a variance.

Noting the removal of trees: When the applicants removed the trees on the east side of their house, they altered the amount of shade provided. To the extent they lack shade now, there is an element of self-inflicted hardship. Presumably the applicants wanted to improve their sight lines. That they negatively effected the shelter provided to their house is also not a hardship that would support the granting of a variance as it is self inflicted..

The applicants seek to avoid a disappointment in the use of their land, not an actual hardship. Accordingly, there is no basis for the requested variance, since there is no evidence supporting that a lack of shade is a hardship. Providing a side yard variance for a roof would increase the extent of the non-compliance which is contra to Connecticut law.

On page two of the Erens application, where they indicated what variance they sought, the application explains applicants should understand that the terms "exceptional difficulty" and "unusual hardship" refer to the ability and practical use as it conforms to the towns zoning regulations. They, Do NOT refer to an owner's inability to fulfill a purely personal wish." Additional shade for an outside patio is merely a personal wish.

The Erens' narrative cites several Connecticut cases, but they do not support their request for the following reasons.

1. *Judelson v. Town of Madison Board of Appeals*, Docket No. CV054012433S, 2006 Conn. Super. LEXIS 2124 (Super. July 14, 2006)

In this case cited by the Erens, a variance was approved by the Court for renovating an already existing structure, mostly in-kind. Of note, the variance for the replacement of an existing porch roof did not increase the footprint. *Id.* at *22. There was no expansion of the footprint of the home based on the

roof replacement, which is factually distinct from the present application. The proposed addition by the Erens is not in-kind renovations, but a new structural addition which significantly increases the extent of the home's non-conformance.

2. *Kulak v. Zoning Board of Appeals*, 184 Conn. 479, 440 A.2d 183 (1981)

In this case the applicant sought to build a non-conforming house on a vacant building lot which had been approved prior to the existence of the Town's zoning regulations. It does not appear it would have been possible to build a conforming house on the lot. factually, it is totally different from the application at hand and offers no support for the application.

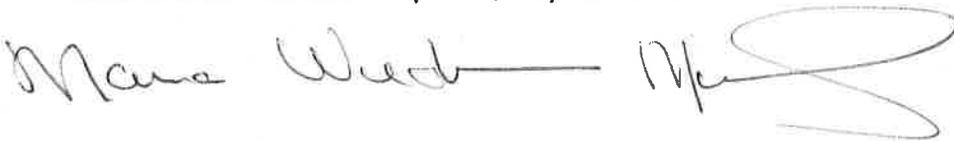
Accordingly, there is no basis for the requested variance. There is no evidence supporting the existence of a hardship that would justify the East Lyme Zoning Board of Appeals to grant the variance. A side yard variance for the roof would increase the extent of the home's non-compliance. When the home was purchased, the applicants knew there was no roof shading the exterior patio. There is no legal basis to grant their mere wish for "More shade in the summer months".

In summation, the Erens chose to incorporate an existing open finished porch with a roof into the main floor living space of their home, and clear cut the Oak trees on the Easterly side that provided shade. In doing this they denied themselves of a shaded porch, this does not meet the *Verrillo* standards for hardship. (The "hardship" of wanting shade to replace trees that they cut down can simply be accommodated by a retractable awning not a permanent structure that can easily be turned into another enclosed porch add to their house.), The cases cited by the Erens do not support "hardship" due to lack of shade in the summer months, or hardship due to change in zoning regulations, making a lot non-conforming in the pre-existing location. The applicants fail to demonstrate "hardship" based on Connecticut State Statutes and case law.

By granting this variance sets a precedent that opens the door to many similar appeals. On behalf of the residents and taxpayers of East Lyme, I ask you to deny this appeal; and uphold East Lyme Zoning Regulations 5.3.3

I would like to thank you for taking the time to hear Variance Request 4-2022 69 Quarry Dock Rd and allowing me the opportunity to respond to the request.

Sincerely,
Maria Wiedermann Moulthrop 71 Quarry Dock Rd Niantic.





2021 shows brand new enclosed porch

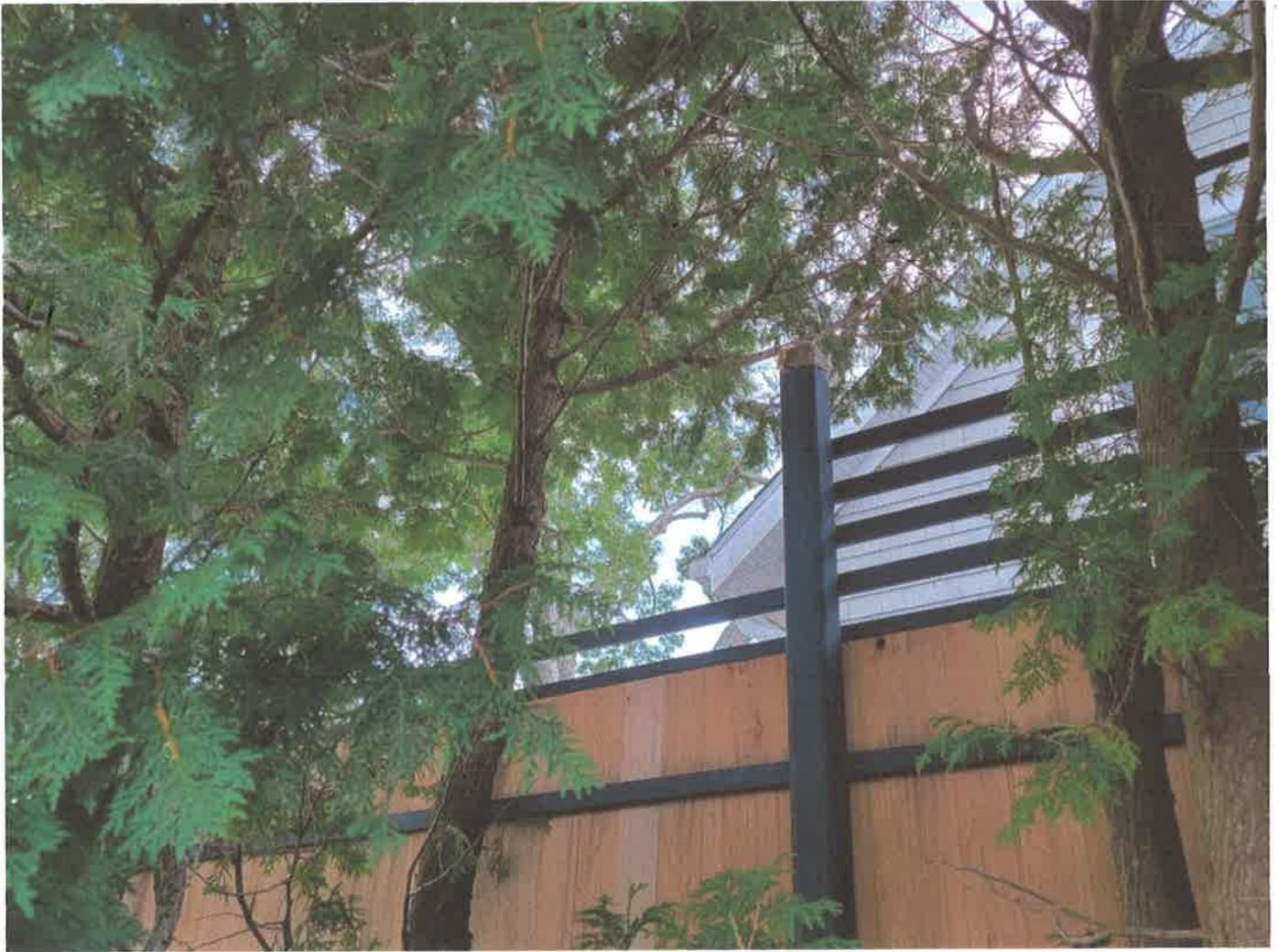
to left shows
open porch w/roof
over it

(No Subject)

From: Maria Moulthrop (maria.moulthrop@yahoo.com)

To: maria.moulthrop@yahoo.com

Date: Monday, January 9, 2023 at 06:10 PM EST



M

[Sent from Yahoo Mail on Android](#)

wrought iron
2' above



Late summer 2022

Owners of Contiguous Properties: (attach additional sheets if necessary)

(A) Name: Maria Wiedermann Moulthrop

Mailing Address: 71 Quarry Dock Road, Niantic, C T 06357

(B) Name: Steven P. Marenakos & Margot T. Marenakos

Mailing Address: 65 Quarry Dock Road, Niantic, CT 06357

(C) Name: _____

Mailing Address: _____

(D) Name: _____

Mailing Address: _____

Application relates to (check appropriate item):

Request for Variance of Section(s) 5.3.3 of East Lyme Zoning Regulations.
Applicants should understand that the terms "exceptional difficulty" and "unusual hardship" refer to the ability or practical use of property in a manner that conforms to the town's zoning regulations. They DO NOT refer to the owners inability to fulfill a purely personal wish. An "exceptional difficulty" or "unusual hardship" can't be economic or personal and must be unique to the subject property. The Board is not permitted to approve variances, which, in effect, constitute a personal license to violate the zoning ordinance.

Alleged error in Zoning Official's action under Section Number _____
When an applicant enters an appeal charging the zoning official with an error, a detailed explanation of the basis of the allegation must be attached to this form.

Approval of location of Gas Station or Motor Vehicle Business.
Applications seeking approval of a proposed location for a Gas Station or Automobile Dealer's or Repairer's Business must be accompanied by the appropriate Department of Environmental Protection or Department of Motor Vehicles form.

I hereby certify that the above information is true and correct to the best of my knowledge and authorize the Zoning Board of Appeals' members to inspect the property in question.

Signed:  Dated: 10/17/2022

IMPORTANT: Applicant must execute this form and submit it to the Chairman or Secretary of the Zoning Board of Appeals, together with NINE COPIES EACH OF THE FOLLOWING:

1. _____ DENIAL FROM ZONING OFFICIAL
2. _____ APPLICATION FULLY COMPLETED
3. _____ \$360.00 APPLICATION FEE TO "TOWN OF EAST LYME"
4. _____ COPY OF DEED
5. _____ COPY OF ASSESSOR'S MAP
6. _____ LETTER FROM APPLICANT DESCRIBING HARDSHIP
7. _____ SITE PLAN REQUEST AND ANY OTHER DOCUMENTATION BEING SUBMITTED