

**EAST LYME ZONING BOARD OF APPEALS
PUBLIC HEARING AND REGULAR MEETING
Monday, NOVEMBER 30th, 2009
MINUTES**

A Public Hearing and Regular Meeting of the East Lyme Zoning Board of Appeals was held on Monday, November 30, 2009 at 7:30 PM at the East Lyme Town Hall, 108 Pennsylvania Avenue, Niantic, CT.

PRESENT: Bill Mountzoures, Chairman, Leo Mostowy, Craig Mason, Skip Saunders, Charles Ambulos, Alternate

ALSO PRESENT: Gerard Powers, Applicant

ABSENT: Tom Boguszewski, Secretary, Shawn McLaughlin, Alternate

1. Call Public Hearing to Order

Chairman Mountzoures called the Public Hearing to order at 7:30 PM. He noted that he had seated Charles Ambulos, alternate at the table this evening.

2. Read Notice of Public Hearing

Mr. Mountzoures asked Mr. Saunders, Acting Secretary to read the Notice of the Public Hearing:

Case No. 7-2009: Application of Gerard R. Powers for a variance of Section 7.3.3 and 7.3.4 for property identified in the application as 4 South Street Niantic, Connecticut. Parcel appears on the East Lyme Assessor's Map 17.1, Lot 39.

The Public Hearing notice was sent to the New London Day for publication on 11/18/2009 and 11/26/2009.

Mr. Mountzoures 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 asked that anyone speaking please stick to the subject matter of the application.

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

Gerard Powers, 4 South Street, Niantic, CT, applicant and owner said that he would give a history of the construction of his new home at 4 South Pine Street in the Pine Grove section of Niantic. There was an old house on the property that had a rear setback of 2.2 feet and aside setback of 3.3 feet and when he built a new house he met with Mr. Mulholland in July of 2008 and modified the new house design to conform to all of the zoning regulations. He constructed the new house and was issued a CO last December (2008). The outside property work was not done. This summer, he worked on the outside property and installed a patio on the outside of the house. He said that he got a letter from Joe Smith, the Building Official on the construction of the patio and stairway and retaining wall being built without a permit. He met with Mr. Smith who explained that the retaining wall made it such that it needed a building permit and some railings, etc. He then received a letter from Mr. Mulholland stating that it exceeded the lot coverage of 25%. He said that he did not know or think that a patio required a permit.

He noted a letter dated 10/7/09 from his adjoining neighbor, George Keeney of 20 Pleasant Street stating that he has no objections to it and that it looks like a fine piece of do it yourself work and blocks some headlights from shining in his yard.

He said that he also has a letter dated today, 11/30/09 from Thomas & Joanne Powers who live at 6 South Street who state that they have no problems with what has been done on the lot. This was entered as **Exhibit A.**

Mr. Saunders asked if the patio that pre-existed with the old house was in the same configuration as the one that has been built here.

Mr. Powers said that it was in a different area of the property and pointed it out on the map. (Attached)

Mr. Mason asked the elevation of the old patio – if it was flat on the ground or like this one.

Mr. Powers said that they were made of 1” thick flagstone blocks. This patio is at grade but the grade changes and that required the retaining wall.

Mr. Mountzoures said that he understood, in speaking with Mr. Mulholland that a patio has to be at grade and that what happened here is that it is above grade.

Mr. Powers said that he does not understand how the retaining wall makes the difference.

Mr. Mountzoures asked Mr. Powers if he had shown Mr. Mulholland, the Zoning Official a plan showing the elevation and how the patio was to be built.

Mr. Powers said no, as he understood that a patio did not need a permit so he did not. He added that he could not raise the house and that the patio was built in-line with the house.

Mr. Mostowy asked at what point during the construction of the patio he got the letter.

Mr. Powers said that it was when he was almost done and that actually the issue only arose due to water running into the road which caused Mr. Smith the building official to come out. When he did, he saw the patio and said that it needed a permit for the retaining wall and also some rails, etc.

Mr. Mountzoures asked Mr. Powers if he showed the patio on the original plans for the house when he submitted them.

Mr. Powers said no and added that he did not think that it was necessary and that no permit was required for a patio.

Mr. Mountzoures asked Mr. Powers if he had checked with Mr. Smith on the patio and if it needed a permit.

Mr. Powers said no and added that he did not think that it was necessary. He added that he is a Civil Engineer and he did not think that he needed a permit and that the only reason this issue arose was from the water running out into the road and he took care of that right away.

Mr. Mountzoures called for comments from the public in favor of the application –

Harold Hegelson, 7 High Street said that he was there speaking for himself and the Pine Grove Homeowners Association. He said that he has not heard of any complaints about the house.

Mr. Powers presented five photos of the patio, for the record to the Board dated 11/30/09. These were entered as **Exhibit B**.

Peter Powers, 2 Colonial Drive, East Lyme said that he is Gerard's brother and that he helped him on this project. He said that he personally never knew that they needed a permit for a patio as it is considered landscaping and that is what this was. He said that he is a builder and would not have let his brother build it without a permit if they thought that they needed one.

Mr. Saunders read the letter dated 10/7/09 from George Keeney of 20 Pleasant Street into the record. This was entered as **Exhibit C**.

Mr. Saunders read a letter dated 9/22/09 from Mr. Mulholland, Zoning Official into the record regarding his review of Mr. Powers' proposal to construct a patio on his property - noting that the R-10 zoning district lot coverage allowance is 25% and that the application lot coverage calculation of 2072.75 sq. ft. is over what the lot size can handle. The application was denied. This was entered as **Exhibit D**.

Mr. Mountzoures asked Mr. Powers how this had gone back to Zoning.

Mr. Powers said that in May 2008 he received the permit for the house and that in August of 2009 he got a letter from Joe Smith regarding the need for a permit for the patio and also citing the drainage issues and the need for a retaining wall. He went in and filed a permit and that is how Mr. Mulholland saw it and sent the letter.

Mr. Mountzoures asked if there were any other questions from the Board members or if the applicants had anything further to add.

Hearing none –

Mr. Mountzoures said that he would now close the Public Hearing.

Mr. Mountzoures closed this Public Hearing at 8:10 PM.

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

Mr. Mountzoures 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 to appeal it to the Superior Court.

REGULAR MEETING

Mr. Mountzoures opened the Regular Meeting at 8:11 PM.

Case No. 7-2009: Application of Gerard R. Powers for a variance of Section 7.3.3 and 7.3.4 for property identified in the application as 4 South Street Niantic, Connecticut. Parcel appears on the East Lyme Assessor's Map 17.1, Lot 39.

Mr. Mountzoures called for discussion.

Mr. Mason asked if they knew the retaining wall setback requirements as if the retaining wall is okay, then everything inside it would not affect the lot coverage.

Mr. Mountzoures said that the Building Official has stated that a permit is necessary and that makes it a structure and that they are there to determine the lot coverage issue.

Mr. Mostowy said that he finds that while ignorance of the law on the part of the applicant is not excusable that he also finds that it is the negligence on the part of Mr. Smith and Mr. Mulholland who, if they are doing their job and driving by this everyday should have communicated this to the applicant at an earlier time.

Mr. Ambulos said that his opinion is that both the lack of knowledge on the part of the applicant and the lack of diligence on the part of the officials still does not allow them to ignore the lot coverage issue.

After much discussion on how to formulate a motion, the following motion was made:

Mr. Saunders said that he would make a motion.

****MOTION (1)**

Mr. Saunders moved to approve in the Application of Gerard R. Powers for a variance of Section 7.3.3 and 7.3.4 and to grant a 4.6 foot rear setback on the north side and to approve a variance of the 25% lot coverage to permit a patio and retaining wall in the same configuration as it exists now and as depicted in the photos (Exhibit B) and plan (both attached) for property identified in the application as 4 South Street Niantic, Connecticut. Parcel appears on the East Lyme Assessor's Map 17.1, Lot 39.

Mr. Mostowy seconded the motion.

Mr. Saunders said that the reason for the variance is that during the construction activities there was a lot of conversation back and forth which caused confusion that lead the applicant to feel that a permit was not needed for the patio. It is also noted again, that the patio as it exists today may only exist in its' current configuration.

Mr. Mountzoures called for a vote on the motion.

Vote: 5 – 0 – 0. Motion passed.

Mr. Saunders noted to Mr. Powers that there is a 15 day appeal period in which anyone can appeal this decision.

Mr. Mountzoures asked if anyone had any other business –
Mr. Saunders said that he wished to give them his formal letter of resignation, dated 11/28/2009 from this Board effective tomorrow as he will be retiring and will be spending many months of the year in another part of the country. He thanked everyone and said that it has been enjoyable.

Mr. Mountzoures noted that he and Mr. Saunders have served together off and on various Boards for some 20 years now. He thanked him for being an asset to them.

Mr. Mountzoures called for a motion to adjourn.

ADJOURNMENT

****MOTION (2)**

Mr. Mason moved to adjourn Case #7-2009 of the East Lyme Zoning Board of Appeals at 8:45 PM.

Mr. Ambulos seconded the motion.

Vote: 5 – 0 – 0. Motion passed.

Respectfully submitted,

Karen Zmitruk,
Recording Secretary