

**EAST LYME ZONING BOARD OF APPEALS**  
**PUBLIC HEARING AND REGULAR MEETING**  
**MONDAY, November 1st, 2010**  
**MINUTES**

Nov 5 20 10 at 10 AM PM

*Esther B. Williams*

EAST LYME TOWN CLERK

A Public Hearing and Regular Meeting of the East Lyme Zoning Board of Appeals was held on Monday, November 1, 2010 at 7:30 PM at the East Lyme Town Hall, 108 Pennsylvania Avenue, Niantic, CT.

**PRESENT:** Bill Mountzoures, Chairman, Craig Mason, Acting Secretary, Leo Mostowy, Charles Ambulos, John Smith, Alternate

**ALSO PRESENT:** Mihkel & Mary Poola, Applicants  
 Joe Smith, Chief Building Official

**ABSENT:** Tom Boguszewski, 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 John Smith, Alternate, at the table this evening.

**2. Read Notice of Public Hearing**

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

Mr. Mason, Acting Secretary read the following:

**Case No. 5-2010: Application of Mihkel & Mary Poola for a variance of Section 4.3.3 for property identified in the application as 5 North Beechwood Road, Niantic, CT. Said parcel appears on the East Lyme Assessor's Map 23.0, Lot 66.**

The Public Hearing notice was sent to the New London Day for publication on 10/21/2010 and 10/29/2010.

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 the presentation.

Mary Poola, applicant explained that when Mr. Smith, the Building Inspector did an inspection that he noticed that the stairs were out of the setback. She said that the lot is pre-existing, non-conforming and that it is a challenging lot to work with under the R-40 regulations. They hired the proper people and received an approved permit for the work and no one noticed that the plans had n steps on them. They put the steps on the house so that there would be a means of entry and egress and that while it is a technicality, she does not think that anyone could notice the difference of the 2.5 feet. There was no intent here but rather an unfortunate series of events that occurred.

Mr. Mountzoures asked if this also involved the front stairs.

Mr. Poola said yes, that was correct, the front stairs are also out in the setback and were not on the plans.

Mr. Mountzoures said that it would have to be a hardship --

Mr. Poola said that they had no knowledge of this and that unfortunately all of the parties signed off and then it was noticed.

Ms. Poola again stated that the lot is very challenging as it is to work on and that she does not feel that they have done anything but to improve the property values in the neighborhood by taking a very messy lot and cleaning it up and putting a house on it.

Mr. Mountzoures asked if there were any members of the public who wished to speak in favor, against or neutrally on this application –

Diane Swan, 7 North Beechwood Ave. said that she lives in one of the properties near this one and that while the house is a nice little cape; the issue is to place blame where it belongs. She said that Mr. Poola lived at 12 Darrow's Ridge Rd. and that a letter was sent on 2/12/2010 from Mr. Smith to them asking about the front steps and the back deck. On 2/17/2010 the Winthrop Group stated that there would be Precast steps in the front. A subsequent letter from Mr. McCammon, Sanitarian states in item #12 that they are showing a deck and steps but they are not shown on the site plan and they need to be so indicated. However, that has never been rectified on any plans on file. On 3/1/2010 Mr. Smith asked for information from the Winthrop Group requesting again the front deck and rear landing specs. She said that all of this communication came across peoples' desks and yet people say that they know nothing about it. Who is watching who here – this lot has been in existence since the early 1960's so documentation is saying otherwise that people did know.

Mr. Mountzoures asked if the letters were sent to the applicant or to the architect.

Ms. Swan said that they were sent to both of them – on 2/10/2010 directly to Mr. Poola – item #7 asks that they provide plans and the answer came back from the Winthrop Group. She added that they still are not finding any dash lines on the plan which is how they were supposed to be indicated. She added that as a neighbor and a very long time resident of East Lyme that she just hopes that people's positions within the Town of East Lyme do not dictate how these things happen. She said that she has also been in contact with Mr. Poola and has a video log of issues that took place during construction regarding the silt fencing and other things.

Ms. Poola said that she and her husband Mike have a great deal of respect for the people and that she does not think that they have received any special treatment. She clarified that they hired an architect and a builder and assumed that all of Mr. Smith's concerns had been met and that is what is being assumed here. She said that she does not think that this type of infraction is of a detriment to anyone or to the neighbors. It happened; the step in the back is a modest one. She submitted plans dated 1/14/2009 that have steps and that were entered as **Exhibit A**.

Mr. Ambulos noted that the plans state that they are not for construction.

Joe Smith, Chief Building Official said that the final plans that the building department approved are not for zoning purposes as he is not the Zoning Official and he does not act in that capacity. He looks at the plans according to the building code and his plan review is done for building code only. The zoning review is done by Bill Mulholland who has been here for over 20 years. He said that he asked for plans for the rear deck and was told that there was no deck – only stairs on the rear and then he got a call in July for piers for a rear deck and he told them that there is no rear deck – only stairs and that if they were making changes that they would have to see the Zoning Official for any changes as it is the zoning regulations that deal with setbacks. At this same time in July he told the Zoning Official about the deck issue. He said that he only found out about this a week or so ago that there are front steps and a rear deck and still, it is not a building issue. He said that he brought everything to the proper people's attention when it was brought up in July. Also, Kathy from the Winthrop Group is not a zoning person but rather a building official. The building permit was approved when all of the requested items were met. He said that the stairs are not on the site plan.

Mr. Ambulos asked when the shovel hit the dirt on the foundation.

Mr. Smith said that the first inspection on the foundation was done on 4/30/2010.

Ms. Swan asked if that was the first time that he was on the property.

Mr. Smith said that he was there many months before when the test holes were dug. However; the first foundation inspection was done on 4/30/2010.

Laurel Jonason, 10 Foxcroft Rd. said that they are rear abutters to this property. She submitted a letter (**Exhibit B**) and five pictures (**Exhibit C**) of the subject property site showing rock piles and water run-off to

her property. She said that in spite of the statement that this was a lot that was a mess of rocks, that two 18-wheelers were filled with lumber when this property was cleared. They did not mind at all looking at the woods. It is regrettable that the size of the lot was an issue and it is problematic that the Zoning Official did not catch the fact that there were no stairs on the plan. She explained that the pictures that she took show water running towards her property as that is where the water drains to. While there was a rock pile put there to catch the water, there is a limited area of run-off and the pictures were taken showing the water pooling towards their home. When the pictures were taken there was only insignificant rainfall so heavy rainfalls would be worse. The rear patio door of the house is also worrisome as if the three foot variance is allowed; they could add to that and cause further damage. She said that they are requesting that if this is allowed that there is an attachment to the deed stating that they will never allow a larger structure than what is already there now.

Mr. Smith said that regarding the two items for the front and rear steps and the stormwater run-off that he has had concern with the water run-off as it is going to run downhill. The building code is silent on stormwater and only states that the area is to be graded so as to not cause a hazard. What ever is decided here this evening does not close the case on the stormwater and they can always call him and he will go out and address it.

Ms. Jonason said it is not separate, if they allow the three foot variance, they must restrict it to a small area or the area that is built now so that it cannot be added upon or extended closer to their property.

Ms. Poola said that by no means do they mean any hardship to the neighbors. This is an unfortunate oversight of the builder and the steps are what is at issue here. She said that when they found out that there was an issue that they came for a variance like others would have had to do. She said that they consider this a serious series of unfortunate events.

Ms. Swan, 7 North Beechwood asked for clarification on which builder they are referring to. Ms. Poola said that they are referring to Pierce Hall and Ed Dumas was their contractor on the site.

Ms. Swan asked who Norm Wood was as it states that he did the wall. Ms. Poola said that he did the excavation.

Ms. Swan asked for clarification on the date of the plan that was used for approval.

Mr. Mountzoures read Mr. Mulholland's letter, dated October 19, 2010 into the record stating that the site plan reviewed was dated September 16, 2009.

Ms. Jonason asked about the decision for zoning being based on plans dated September 16, 2009 and other dates given for plans.

Mr. Smith said that the Zoning Official needs to look at all of the information submitted as he is looking at location, height and other items that he, as the building official does not get involved in.

Ms. Swan noted that the warranty deed dated 6/16/2009 stated that all aspects of line restrictions etc. would be followed.

Mr. Mountzoures asked if there were any other comments from the Board –  
Hearing none –

Mr. Mountzoures closed this Public Hearing at 8:23M.

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 applicants 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. Mountzoures opened the Regular Meeting at 8:24M.

**Case No. 5-2010: Application of Mihkel & Mary Poola for a variance of Section 4.3.3 for property identified in the application as 5 North Beechwood Road, Niantic, CT. Said parcel appears on the East Lyme Assessor's Map 23.0, Lot 66.**

Mr. Mountzoures called for discussion on the application.

Mr. Mason said it is still not really clear to him where the steps fell off the plans and the house was allowed to be built without steps. It would be nice to have the Zoning Official here to hear from him how he could have missed the steps and what they now could do about it.

John Smith said that he would guess that they could say that the oversight has created the problem although it would be nice to have more information on the times and dates and how this went on for this amount of time.

Mr. Ambulos agreed with John Smith and added that unfortunately the house is now built and they really could not ask that it be taken down and decreased in size for the steps and back deck.

Mr. Mostowy said that the whole area has been a history of a tangled mess down there. The house is built and has to have entrance and egress somehow and the 2.5' and 3' that they are requesting should be nothing for them.

Mr. Mountzoures said that they heard enough tonight that there are a lot of errors here on the parts of numerous parties – the applicant, engineer, zoning and that he feels that the applicant may have contributed to the hardship but did not create it.

John Smith said that he would be in favor of granting the variance with the understanding that the stormwater is a separate issue.

Mr. Mountzoures said that is understood and that the size of the variance would be restricted to what is currently there with the conditions that it never be enlarged or covered over, etc. He asked if they were ready to make a motion.

### **\*\*MOTION (1)**

**Mr. Mostowy moved to APPROVE the Application of Mihkel & Mary Poola for a variance of Section 4.3.3 for property identified in the application as 5 North Beechwood Road, Niantic, CT with the following conditions: the front Precast stairs are to be 5'w x 5'6"l; the deck and stairs off the rear of the house are to remain at 3.74'w x 12'11"l and neither the front stairs or rear deck and stairs are ever to be expanded upon, covered or enclosed in any way. Said parcel appears on the East Lyme Assessor's Map 23.0, Lot 66.**

**Mr. Ambulos seconded the motion.**

Mr. Ambulos said that the reason for this decision is because the house has already been built and no variables can ever be added to what exists today.

Mr. Mountzoures called for a vote on the motion.

**Vote: 4 – 1 – 0. Motion to APPROVE passed.**  
**Against: Mr. Mason**

## ADJOURNMENT

Mr. Mountzoures called for a motion to adjourn.

## ADJOURNMENT

**\*\*MOTION (2)**

**Mr. Mason moved to adjourn Case #5-2010 of the East Lyme Zoning Board of Appeals at 8:47 PM.**

**Mr. Mostowy seconded the motion.**

**Vote: 5 – 0 – 0. Motion passed.**

Respectfully submitted,

Karen Zmitruk,  
Recording Secretary

Exhibit 'B'

Alan S and Laurel F Jonason  
10 Foxcroft Rd  
Niantic Ct 06357

To: The Town of East Lyme Zoning Board of Appeals:

This letter is in response to Case 5-2010 Application of Mihkel and Mary Poola for variance of Section 4.3.3 for property identified as 5 North Beechwood Road, Niantic Ct. (on Assessors Map 23.0 lot 66. We are the abutting property owners on what is now the back side of the property in question.

It is with some irony that we read of the hardship that the zoning and said property present to the Poolas. This hardship was inherent in their poor choice of a very small lot That the town agreed to the construction of any kind no less a house of this size is certainly questionable. To now discover that the house is in fact too big to comply with the current zoning to allow appropriate access to the house is regrettable. That the town building inspector if not the builder could not note the oversight of entry to the house on the plans is problematic.

The rear of the property has been regraded from its original state to now have a downward slope towards our land in spite of our multiple protests to the town and builders. Added to that the house gutters only drain on the upper side of the house, which then runs down the back side of the house creating more runoff towards our property. There is very limited area for runoff from this property to absorb before collecting on our lot. We have already had some pooling of water with limited rainfall. The addition of a pile of rocks at the lower end of the property to collect water is laughable, as the water does not significantly flow that way but rather towards us.

Our concerns regarding water flow are not resolved. The said request for a zoning variance requests a 3-foot variance at the rear of the property. The fact that at the rear exit in question there is a fairly large patio style door suitable for a deck not just a rear set of stairs is worrisome. We have no significant objection beyond those stated for a set of stairs and landing at this rear approach to the house. Our concern is that the rear 3-foot variance request is not specific and could allow a deck the entire length of the house and beyond which would further limit the absorption of water before it reaches us. This addition could add to the already existing potential to do us harm for which we intend to hold the town, builders and owners responsible.

We therefore strongly request that if the town decides to allow this variance that it restricts the size of the rear structure to the dimensions already built with an attachment to the deed that will never allow a larger structure.

Sincerely.

Alan S Jonason      Laurel F. Jonason



Exhibit B

ZBA 11/1/10 Attachment - submitted



↓ 3.74'w

↓ 12'11" L

(Rear of house  
(deck))

1 of 5 photos  
Exhib. 7-C

Attachment - submitted 11/1/2010 ZBA

# Town of

P.O. Drawer 519  
Zoning Department



# East Lyme

108 Pennsylvania Ave  
Niantic, Connecticut 06357  
(860) 691-4114  
Fax (860) 691-0351

TO: File

FROM: William Mulholland, Zoning Official *WM*

DATE: October 19, 2010

RE: Zoning Compliance/New Dwelling  
5 North Beechwood Rd

The newly constructed single family dwelling located the address referenced above was approved by Zoning on February 11, 2010. The subject property is zoned RU-40.

The subject of this variance application is a request for relief from the requirements of Section 4.3.3 (setbacks) of the zoning regulations. This section requires a front yard setback for lots created prior to November 1, 1973 of 40' and 20' for all other setbacks. Since this lot qualifies for the above noted setbacks they are the subject of this variance application.

The site plan reviewed for this project is an A-2 Survey performed by Gerwick-Mereen, LLC, of Waterford, CT dated September 16, 2009. The plan for zoning purposes essentially delineates the property lines, proposed building foot print and setbacks. It recently came to light that the front and rear landings/steps were not on the site plan used to approve the construction. As a result of this finding a Certificate of Zoning Compliance cannot be issued for the completed building due to the encroachment of the front and rear landings/steps into the front and rear setbacks. Should the applicant be successful in obtaining a variance for the encroachments a Certificate of Zoning Compliance would be issued.

*Attachment ZPA 11/1/10*

*Read into  
Record*