

ZBA VARIANCE or APPEAL APPLICATION

WESTPORT ZONING BOARD OF APPEALS Tel: 203-341-1030 Fax: 203-454-6145

INSTRUCTIONS for APPLICANT: For Questions visit P&Z office Daily 9:00-11:30.

Complete pgs 1 & 2 then, REVIEW & COLLECT ALL materials listed on pgs 3&4.

When all is collected DROP OFF to P&Z OFFICE DAILY between 8:30 & 4:00.

After the STAFF REVIEW is complete, a Hearing Date will be set. Please Review pgs. 5&7.

Note: Commercial projects may require Architectural Review Board approval, If needed. You MUST submit ARB application BEFORE going to ZBA Hearing.

OFFICE USE ONLY

Application#: _____

Submission Date: _____

Receipt Date: _____

Fee Paid: _____

1. Property Address: 233 Hillspoint Road Zone: B
Commercial Property: or Residential:
2. Applicant's Name: 233 LLC E-Mail: ppires@cohenandwolf.com
Applicant's Address c/o Philip C. Pires, Cohen and Wolf, P.C., 1115 Broad Street, Bridgeport, CT 06604 Daytime Tel: 203-337-4122

NOTE: Below List Owner's Name (s) as appears on the DEED (No abbreviations) If more space needed submit list.

3. Property Owner's Name: Same as applicant E-Mail: _____
Property Owner's Address: _____ Daytime Tel: _____

4. Is this property on: a Septic System: or Sewer:
5. Is this property within 500 feet of any adjoining municipality? Yes No
6. Does this project involve the **demolition** of any **structures** that are **50 years old or more**? Yes No

7. Briefly Describe your Proposed Project: _____
See attached Exhibit 2.

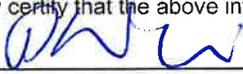
8. Will any part of any structures be demolished? No Yes - If Yes Attach a Demolition Plan:

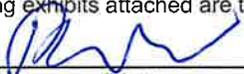
9. List each "**Regulation Section Number**" you are requesting a variance for: i.e. (Sec 6-2 = Set back)
See attached Schedule 1.

10. List any other variances that are requested to legalize any previous issues: i.e. (Sec 11-5 Coverage for existing shed)

11. List the **PROPERTY HARDSHIP(s)** or **REASON(s)** why this Variance or Appeal should be granted, stating clearly the exceptional difficulty **REGARDING YOUR PROPERTY**. Note: Financial Hardship will NOT warrant a variance approval see pg 5.
See attached Exhibit 2.

I hereby certify that the above information is correct and that the accompanying exhibits attached are true.

233, LLC
By: 
Applicant's Signature (If different than owner)
Philip C. Pires, Esq.
Its Attorney

233 LLC
By: 
Owner's Signature (Must be signed)
Philip C. Pires, Esq.
Its Attorney

TO BE COMPLETED BY OWNER/ APPLICANT

After all required materials are collected, DROP OFF to P&Z OFFICE DAILY between 8:30 & 3:00 ONLY.

BUILDING PLANS (TITLE) 233 Hillspoint Road
BY: Beinfeld Architecture PC DATE 3/27/20 NUMBER of PGS. 10
REVISED DATE _____ NUMBER of PGS. _____

SURVEY OR SITE PLAN (TITLE) Site Development Plan of 233 Hillspoint Road, Westport, CT
BY: B&B Engineering DATE 3/27/20 NUMBER of PGS. 2
REVISED DATE _____ NUMBER of PGS. _____

GROSS LOT AREA: 5,757 sq ft **NET LOT AREA:** *(less 80% wetlands or steep slopes):* 5757 sq ft

SETBACKS: Front / Side / Rear) (From Survey)
Existing: _____ / _____ / _____
Required: 20' / 7.5' / 25'
Proposed: 20' / 7.5' / 12.6'

FLOOR AREA / FAR:
Existing: _____
Allowed: N/A
Proposed: 2,479

COVERAGE: Building / Total (From Survey)
Existing: _____ / _____
Required: 15% / 35%
Proposed: 27.1% / 43.4%

PARKING:
Existing: _____
Required: 2
Proposed: 2

HEIGHT: In Feet / # of Stories
Existing: _____ / _____
Required: 30.3 / 2
Proposed: 29.9 / 2

SIGNS:
Existing: N/A
Required: N/A
Proposed: N/A

ATTIC / HALF STORY:
Existing: _____ / Proposed: _____

LANDSCAPING:
Existing: _____
Required: _____
Proposed: _____

CRAWL SPACE - CELLAR - BASEMENT:
Existing: _____ / Proposed: _____

NOTE: If you submit Revised Plans – You MUST SUBMIT A COVER LETTER listing **EACH CHANGE & 9 COPIES.**

REVISIONS FEE: Revised Plans, which require additional staff review ADDITIONAL FEE of HALF of original Appl. fee is **REQUIRED.**

Exhibit 1

Section 6-2.1.6: To allow new construction not in accordance with the regulations.

Section 6-3.1: To reduce the setback from the rear property line for a structure on a nonconforming lot from 25' to 12.6' (presently approved for 10').

Section 14-4: To reduce the setback for a structure from a rear lot line from 25' to 12.6' (presently approved for 10').

Section 14-6: To increase the total coverage from 35% to 43.4% (presently approved for 44%) and to increase the total building coverage from 15% to 27.1% (presently approved for 27.7%).

Exhibit 2

The Applicant seeks variances as set forth in Exhibit 1 in order to obtain approval to complete the construction of a single family residence at 233 Hillspoint Road (the “Application”).

As the Board is aware, the Applicant previously sought and obtained variances from these same sections of the Regulations in order to demolish the existing nonconforming structure and construct the new single family home (ZBA Appl. #7629). In that application, the Board found unusual hardship from the application of the Zoning Regulations to the subject property because of the “small non conforming lot” and the “odd shaped lot.” The variances obtained in the approved variance application greatly reduced the nonconformity of the site and were necessary to allow the construction of a new single family home on the property. The variances sought in the Application further reduce the nonconformities of the site as follows:

	Required	Original Nonconforming Structure	Approved Variance Application	Current Variance Application
Section 6-3.1	25’	0’	10’	12.6’
Section 14-4	25’	0’	10’	12.6’
Section 14.6	Total Coverage: 35% Total Building Coverage: 15%	Total Coverage: 89.9% Total Building Coverage: 31%	Total Coverage: 44% Total Building Coverage: 27.7%	Total Coverage: 43.4% Total Building Coverage: 27.1%

Thus, the Application increases the rear setbacks at the site, reducing the project’s nonconformity with the Zoning Regulations. This increase is due to the change in the plans from

the larger rear spiral staircase in the approved variance application to the new, smaller rear stair landing in the Application.

The change in the proposed total coverage is due to two changes: 1) the depiction of the front entry has been correct to show 92 square feet (reduced from 120 feet). The original depiction of 120 square feet in the approved variance application was a drafting error. And, 2) a step was removed from the front stairway down to the ground level, resulting in a coverage reduction from 9 square feet on the approved variance application to three square feet on the Application.

As with the approved variance application, the location of the proposed house increases the front setback to ensure its conformity with the Zoning Regulations, and no variance of the front setback is required. Similarly, the requested variance of Section 14.6 for total coverage and total building coverage in the Application are slightly reduced compared to the prior variance application, again, moving the project closer to conformance with the Zoning Regulations.

Other than the variances set forth in Exhibit 1 regarding coverage and the rear setback, the completed single family residence will conform with all other aspects of the applicable provisions of the Zoning Regulations.

As this Board is also aware, based on the variances approved by the Board in ZBA Case #7629, the Applicant submitted plans to the Planning and Zoning Department (the “Department”) for permit review. On November 26, 2018, the Department issued a Zoning Permit (Permit #42345) approving the Applicant’s plans. Relying on the Department’s approval of the plans and the issuance of the Zoning Permit, a building permit was obtained, and construction of the site proceeded. Construction progressed for in excess of a year until the

Town issued an Order to Cease & Desist dated December 20, 2019, citing “§45-2 Construction not in compliance with approved plans.” As the Board is aware, the Applicant timely appealed the Order to Cease and Desist to this Board (ZBA Case #7773) (the “Appeal”). The Appeal is presently pending.¹

The Applicant is aware that the rear staircase as constructed deviated from location of the staircase shown in the plans as approved in the Zoning Permit and as set forth in the approved variance application. As constructed, the rear staircase was relocated from the rear of the structure (as shown in the Zoning Permit plans and the approved variance application) to the left side of the home. The staircase, as relocated, was not within the side setback, and therefore, the Applicant perceived that it was suitable to relocate the staircase in this manner because no side setback variance was required. The Applicant has addressed this discrepancy by relocating the staircase to the location set forth in the approved variance application. In addition, the Applicant has developed a complete Landscape Architecture Plan to fully describe the site conditions, which is submitted as part of this Application. The prior approved variance application did not include a Landscape Architecture Plan. It only included a site development plan which noted certain site features but did not design them.

The current variance request meets the requirements established in Connecticut General Statutes § 8-6(a)(3) because 1) the variance does not substantially affect the Comprehensive Zoning Plan, and 2) adherence to the strict letter of the zoning regulations causes hardship that is unnecessary to carrying out the general purposes of the zoning plan. Grillo v. Zoning Board of

¹ For the convenience of the Board, a copy of the Appeal is filed herewith as Exhibit 3. Attached to the Appeal are copies of the Cease & Desist, the recorded variance from ZBA Case. 7629, and the Planning and Zoning Permit Review and approval. The Applicant notes that the current variance application is submitted without any waiver of its rights under the Appeal. However, the granting of the current variance application would obviate the need for the Applicant to pursue the Appeal further.

Appeals for the City of West Haven, 206 Conn. 362 (1968); Adolphson v. Zoning Board of Appeals of Town of Fairfield, 205 Conn. 703 (1988). The first part of the test is met because the variances are consistent with the other uses in the area. As recognized by the Board in the approved variance application, the project resulted in the demolition of a nonconforming structure as to size, location, and use, and replacing it with a single family home that eliminated the nonconformity as to use and greatly reduced the nonconformities as to size and location on the site. Moreover, the Application further reduces those nonconformities.

With respect to hardship, the hardship arising from the characteristics of the property is the same in the Application as it was in the approved variance application. As determined by the Board, the property as a “small non conforming lot” and an “odd shaped lot” created a hardship. The variances sought in the Application, like those previously granted, alleviate that hardship.

The Board’s prior decision to grant the variances on this basis is well-supported by Connecticut law. For example, it has been held by the Connecticut Supreme Court that where a property is a valid nonconforming lot regarding lot area, hardship is established for purposes of the granting of variances with regard to coverage. Here, the parcel is located in a Residence B Zone and is a legally protected preexisting nonconforming lot with respect to lot area, comprising 5,757 square feet when the requirements of the zone presently establish a minimum lot area of 6,000 square feet. Similarly, where a lot is nonconforming as to current shape requirements or is unusual in its configuration, the Connecticut Supreme Court has found sufficient hardship to grant a variance with respect to setbacks. Scobie v. Idarola, 155 Conn. 22 (1967); Kelly v. Zoning Board of Appeals of Town of Hamden, 21 Conn. App. 594 (1990); Dolan v. Zoning Board of Appeals of Town of Fairfield, 156 Conn. 426 (1968).

Moreover, the reduction or elimination of zoning nonconformities associated with the proposed construction of a single family dwelling are another legal and independent basis that supported the Board's first variance approval and also support approval of the Application. *See Vine v. Zoning Board of Appeals*, 281 Conn. 553 (2007); *Adolphson v. Zoning Board of Appeals*, 205 Conn. 703 (1988); *Stancuna v. Zoning Board of Appeals*, 66 Conn. App. 565 (2001); *Hescock v. Zoning Board of Appeals*, 112 Conn. App. 239 (2009); *Giarrantano v. Zoning Board of Appeals*, 60 Conn. App. 446 (2000). The Application further reduces the nonconformities at the site with respect to building coverage, total coverage, and rear setback, and accordingly, this additional basis is met.

Finally, because of the issuance of the Zoning Permit, and the Applicant's subsequent reliance on that Zoning Permit in development of the site, equitable estoppel may provide a separate, independent basis on which this Board may grant the Applicant the variances sought herein.² It is well-established that equitable estoppel has been applied to municipalities in the enforcement of zoning laws to prevent the enforcement of zoning regulations under certain circumstances. Generally, estoppel requires that the party against whom estoppel is claimed must do or say something calculated or intended to induce another party to believe that certain facts exist and to act on that belief, and the other party must change its position in reliance on those facts, thereby incurring some injury. *Bloom v. Zoning Bd. of Appeals of City of Norwalk*, 233 Conn. 198, 204-205 n.6 (1995). Here, the Applicant relied to its detriment on the issuance of the Zoning Permit in developing the property. The Applicant has also incurred substantial

² Our Supreme Court has not yet determined whether equitable estoppel may support a variance. *See Bloom v. Zoning Bd. of Appeals of City of Norwalk*, 233 Conn. 198, 205 n.8 (1995) ("The issue of whether the doctrine of equitable estoppel may be invoked to support a variance is not before us and we leave it for another day.").

loss, including, but not limited to, additional carrying costs, construction costs, and professional fees, which are ongoing and growing.

In sum, the current variance application should be granted because at least the same hardship exists to grant the Application as existed to support the Board's approval of the approved variance application. In fact, the Application further reduces the nonconformities at the site. In addition, the completion of the single family residence is consistent with the Town's Comprehensive Zoning Plan, will be consistent with the character of the neighborhood, and will benefit the neighborhood and the Town.

Appeal

ZBA VARIANCE or APPEAL APPLICATION

WESTPORT ZONING BOARD OF APPEALS Tel: 203-341-1030 Fax: 203-454-6145

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Note: Commercial projects may require Architectural Review Board approval, If needed. You MUST submit ARB application BEFORE going to ZBA Hearing.

OFFICE USE ONLY

Application#: 777 B
Submission Date: 1/2/20
Receipt Date: 1/7/20
Fee Paid: \$0 Appeal

- 1. Property Address: 233 HILLSPPOINT ROAD Zone: B
Commercial Property: [] or Residential: [x]
2. Applicant's Name: 233 LLC E-Mail: jffallon@snet.net
Applicant's Address: c/o JOHN F. FALLON, ESQ. 53 SHERMAN ST. FAIRFIELD, CT Daytime Tel: 203-256-3247

NOTE: Below List Owner's Name (s) as appears on the DEED (No abbreviations) If more space needed submit list.

- 3. Property Owner's Name: 233 LLC E-Mail: jffallon@snet.net
Property Owner's Address: c/o JOHN F. FALLON, ESQ. 53 SHERMAN ST. FAIRFIELD, CT Daytime Tel: 203-256-3247

- 4. Is this property on: a Septic System: [] or Sewer: [x]
5. Is this property within 500 feet of any adjoining municipality? Yes [] No [x]
6. Does this project involve the demolition of any structures that are 50 years old or more? Yes [] No [x]

7. Briefly Describe your Proposed Project: THIS IS AN APPLICATION PURSUANT TO C.G.S SECTION 8-6 AND SECTION 46-3.1 OF THE WESTPORT ZONING REGULATIONS TO REVERSE AN ORDER TO CEASE AND DESIST DATED DECEMBER 20, 2019. (ATTACHED HERETO)

8. Will any part of any structures be demolished? No [] Yes [] - If Yes Attach a Demolition Plan:

9. List each "Regulation Section Number" you are requesting a variance for: i.e. (Sec 6-2 = Set back)
SEE #7, ABOVE

10. List any other variances that are requested to legalize any previous issues: i.e. (Sec 11-5 Coverage for existing shed)
SEE #7, ABOVE

11. List the PROPERTY HARDSHIP(s) or REASON(s) why this Variance or Appeal should be granted, stating clearly the exceptional difficulty REGARDING YOUR PROPERTY. Note: Financial Hardship will NOT warrant a variance approval see pg 5.
SEE SCHEDULE A (ATTACHED)

I hereby certify that the above information is correct and that the accompanying exhibits attached are true.

Applicant's Signature (If different than owner)
233 LLC

Owner's Signature (Must be signed)
233 LLC

If the applicant is unable to obtain the signature of the property owner, a letter of authorization by the property owner must be submitted.



**TOWN OF WESTPORT
PLANNING & ZONING DEPARTMENT**

Town Hall, 110 Myrtle Avenue
Westport, CT 06880
Phone (203) 341-1030, Fax (203) 454-6145
www.westportct.gov

December 20, 2019

Peter Nisenson
PEN Building Company
46 Post Road East
Westport, CT 06880

RE: **233 Hillspoint Road
Cease & Desist
Zoning Violation per Sec. 45-2 and 45-3**

Cease and Desist

Dear Mr. Nisenson:

The enclosed Cease & Desist (C&D) is hereby issued and will be recorded on the Land Records of the Town of Westport for 233 Hillspoint Road, for construction of a new single family residence (reference zoning permit #42345) not in compliance with plans approved by the Zoning Board of Appeals.

Furthermore, be advised that if you do not cease construction IMMEDIATELY, you will become subject to the penalties described in the attached Order. For each day the violation continues, such penalties may include a daily fine of up to two hundred fifty dollars (\$250.00), as well as a civil penalty of up to two thousand five hundred dollars (\$2500.00). If the violation continues this office may institute an action in Superior Court seeking civil fines to correct the violation. In such proceedings, you may be responsible for paying the Town's litigation costs, including attorney's fees.

If you have any questions, please contact me immediately.

Sincerely,

Cindy Tyminski, AICP
Deputy Director of Planning and Zoning

Attachment
CERTIFIED MAIL/RRR

G:\Pnz_off\ZEO H\Hillspoint Road 233 Cease and Desist Letter 12-20-19.doc



TOWN OF WESTPORT
PLANNING & ZONING DEPARTMENT
Town Hall, 110 Myrtle Avenue
Westport, CT 06880
Phone(203) 341-1030, Fax (203) 454-6145

December 20, 2019

Peter Nisenson
PEN Building Company
46 Post Road East
Westport CT 06880

Re: Revoking of Zoning Permit #42345 for 233 Hillspoint Road

Dear Mr. Nisenson:

Please be advised that zoning permit #42345 issued for the construction of the new single family residence on the property located at 233 Hillspoint Road is hereby

Revoked

due to the work not in compliance with the plans approved by the Zoning Board of Appeals. Work on this project is to stop immediately and not to resume until proper approvals are obtained.

Approval from the Zoning Board of Appeals (ZBA) and the Planning and Zoning Commission (P&ZC) will be required before work at the site can resume. A new zoning permit is required after the approvals from ZBA and P&ZC are obtained.

Sincerely,

A handwritten signature in black ink, appearing to read "Cindy Tyminski", is written over a horizontal line.

Cindy Tyminski, AICP
Deputy Director of Planning and Zoning

cc: Steve Smith, Building Official

TOWN OF WESTPORT
ORDER TO CEASE & DESIST
ZONING VIOLATIONS
Planning and Zoning Commission

DATE: 12/20/19

TO: Peter Nisenson, PEN Building Company, 46 Post Road East, Westport, CT 06880

PROPERTY ADDRESS: 233 Hillspoint Road, Westport, CT 06880

PURSUANT TO THE AUTHORITY VESTED IN ME BY THE ZONING REGULATIONS OF THE TOWN OF WESTPORT, CONNECTICUT, YOU ARE HEREBY ORDERED AND DIRECTED IMMEDIATELY BY RECEIPT OF THIS ORDER TO DISCONTINUE WORK PER THE FOLLOWING VIOLATIONS OF THE ZONING REGULATIONS OF THE TOWN OF WESTPORT:

§45-2 Construction not in compliance with approved plans

§45-3 Construction not in compliance with approved plans

PENALTIES

Pursuant to §8-12 of the Connecticut General Statutes, the owner or agent of any building or premises where a violation of any provision of such regulations has been committed or exists, or the lessee or tenant of an entire building or entire premises where such violation has been committed or exists, or the owner, agent, lessee or tenant of any part of the building or premises in which such violation has been committed or exists, or the agent, architect, builder, contractor or any other person who commits, takes part or assists in any such violation or who maintains any building or premises in which any such violation exist, shall be fined no less than ten dollars nor more than one hundred dollars for each day that such violation continues; but, if the offense is willful, the person convicted thereof shall be fined not less than one hundred dollars nor more than two hundred and fifty dollars for each day that such violation continues or imprisoned not more than ten days for each day such violation continues or both; and the Superior Court shall have jurisdiction of all such offenses, subject to appeal as in other cases. Any person who, having been served with a Cease & Desist (C&D) for any such violation and fails to comply with such order immediately after such service or continues to violate any provision of the regulations made under authority of the provisions of this chapter specified in such order shall be subject to a civil penalty not to exceed two thousand five hundred dollars (\$2,500.00) payable to the treasurer of the municipality. You have a right to appeal this Order to the Zoning Board of Appeals of the Town of Westport in accordance with Connecticut General Statutes §8-7.


Cindy Tyminski, AICP, Deputy Director of Planning and Zoning
Town of Westport, CT

12/20/19
Date

SCHEDULE A

On May 16, 2018 the Zoning Board of Appeals granted variances with respect to the property located at 233 Hillspoint Road (ZBA Case #7629) to allow for the construction of a new single family dwelling. (See Exhibit A, attached) The variances pertained to Sections 6-2.1.6, 6-3.1, 14-4 and 14-6 of the Regulations. The Board approved a reduction in the rear lot line setback from 25 feet to 10 feet. The then existing rear property line setback was zero so that the proposal reduced that then existing nonconformity. Similarly a variance was granted allowing for an increase in total lot coverage to 44% and total building coverage to 27.7%. This again represented a significant reduction in the then existing nonconformities where the total coverage on the property was 89.9% and the total building coverage was 31%. 233 LLC subsequently received Coastal Site Plan approval from the Planning and Zoning Commission in July of 2018.

In accordance with the approvals from the Zoning Board of Appeals and Planning and Zoning Commission the property owner subsequently submitted plans to the Planning and Zoning Department for permit review. On November 26, 2018 the Department issued a Zoning Permit (Permit #42345) with respect to said plans. (See Exhibits B & C, attached). In accordance with and in reliance upon the issuance of the Zoning Permit a building permit was obtained and construction in accordance with the plans as approved by the Department proceeded for well over a year until the Cease and Desist order hereby appealed was issued on December 20, 2019.

It is well settled in Connecticut that where a zoning permit is duly issued in accordance with zoning regulations it cannot be revoked after reliance. Town of West Hartford vs. Rechel, 190 Conn. 114 (1983). Where

a zoning permit is duly issued by an agent acting within the scope of their duties and the property owner in good faith relies upon said issuance the municipality is estopped from later attempting to revoke the duly issued permit. Town of West Hartford, supra at 124. The municipal estoppel doctrine above referenced has particular application when the property owner would be subjected to a substantial loss if the municipality is allowed to negate the acts of it's agent. Dornfried vs. October Twenty-Four, Inc., 230 Conn 622 (1994); Cortese vs. Planning and Zoning Board of Appeals of Town of Greenwich, 274 Conn. 411 (2005).

In the present instance an authorized agent of the town and its Zoning Department reasonably and correctly determined that the plans as submitted were in substantial compliance with those approved by both the Zoning Board of Appeals and Planning and Zoning Commission. The plans submitted were consistent with the variances that were granted in that the rear yard setback is maintained at 10% and indeed the coverage allowed under the variance of 27.7% is actually reduced to 27.6%. The property owner after following all requirements of the Department with respect to the issuance of the Zoning Permit materially acted in reliance upon the issuance of the Zoning Permit in building a new house that is substantially completed. 233 LLC would be subjected to an extreme and substantial loss if the Cease and Desist Order is not reversed as the Department is now attempting to negate the acts of its duly authorized agents. See Cortese, supra at 418; Bauer vs. Waste Management of Connecticut, Inc., 234 Conn. 221 (1995); Conservation Commission of Town of Fairfield vs. Red XI, LLC, 119, Conn.App 377 (2010).

For all of the reasons as above referenced it is respectfully requested that this Board reverse and vacate the Cease and Desist order and purported revocation of Zoning Permit #42345 dated December 20, 2019.

233 LLC

A handwritten signature in black ink, appearing to read "John F. Fallon", written over a horizontal line.

BY: JOHN F. FALLON, ESQ.,
IT'S ATTORNEY

EXHIBIT A

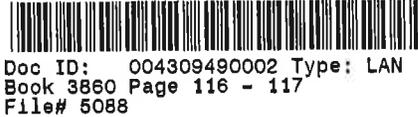


**Town of Westport
ZONING BOARD OF APPEALS**

Town Hall, 110 Myrtle Ave Room 203
Westport, CT 06880 Tel: 203-341-1030 Fax: 203-454-6145

May 16, 2018

233 LLC
c/o John F. Fallon, Esq.
53 Sherman Street
Fairfield, CT 06824



Doc ID: 004309490002 Type: LAN
Book 3860 Page 116 - 117
File# 5088

RE: ZBA CASE #7629

ADDRESS: 233 Hillspoint Road

OWNER OF PROPERTY: 233 LLC

Dear Mr. Fallon:

This is to certify that at the work session of the Zoning Board of Appeals held on May 8, 2018, upon a motion made by Mr. Deverin and seconded by Mr. Hood, the Board voted 4 – 1 (Ezzes, Deverin, Hood, Newman) in favor to **GRANT** your request for a variance (Wong) opposed and the following resolution was adopted:

RESOLVED: ZBA Appl. #7629 by 233 LLC, c/o John F. Fallon, Esq. for property owned by 233 LLC, c/o John F. Fallon, Esq. for a variance for setbacks and coverage for a new single family dwelling to be consistent with the Coastal Area Management Act **is hereby GRANTED WITH CONDITIONS**, for property located in a Residence B zone, PID #E04107000.

Zoning Board of Appeals found the following unusual hardship from the application of the regulations to the subject property:

- **Small non conforming lot**
- **Odd shaped lot**

This variance was granted subject to the following condition

- **Non conversion agreement to be filed on the land records**
- **Vegitative buffer along the length of the rear to protect Long Island Sound**
- **Sidewalk to be retained**

The above being **GRANTED** in accordance with Site Development Plan of 233 Hillspoint Road Westport, Connecticut prepared for PEN Building Company, prepared by B&B Engineering, dated 3/2/18, revised 3/23/18, one (1) page; Plans titled 233 Hillspoint Road, Westport, CT, 06880 prepared by Beinfield Architecture, PC, dated 3/15/18, ten pages, (10) A0.00, A0.10, A0.11, A0.12, A0.13, A1.00, A1.10, A1.20, A1.30, A1.40.

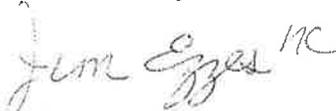
The structure cannot be demolished unless it has been specifically requested on the application.

This variance application is granted upon the condition that all construction and site improvements shall be in strict accordance with the plans and other documents submitted and any statements or representations made by the applicant or agent on the record. Any deviation from such documents or representations shall require further review and approval from the Board.

This variance needs to be filed with the Town Clerk before you can obtain either a Zoning or a Building permit.

The project must be conducted in conformance with the approved plans.

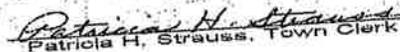
Yours Truly,



Jim Ezzes, Chairman
Zoning Board of Appeals

Certified Mail:

Received for Record at Westport, CT
On 05/31/2018 At 9:58:22 am



Patricia H. Strauss, Town Clerk



EXHIBIT B

PLANNING & ZONING PERMIT REVIEW

PERMIT STATUS:
Approved
 PERMIT MODIFIED
 No

PROPERTY ADDRESS 233 HILLSPPOINT ROAD
TENANT ADDRESS
Master Permit ID 5330
GIS ID E04107000
PERMIT NUMBER 42345
ZONING DISTRICT B
Permit Type New Single Family
 Residence

Applicant Name	Peter Nisenson	Owner Name	Gilbert Cohen
Applicant Address	136 MAIN STREET	Owner Address	233 HILLSPPOINT ROAD
Secondary Address		Secondary Address	176 East 71st St, NY NY 10012
Applicant Phone	203-822-8206	Owner Phone	203-856-0572
Email Address	peter@penbuildingcompany.com	Email Address	gibby@wawcompany.com

Residential Projects:		Commercial Projects:	
New House Yes	Swimming Pool No	New Building No	Signage No
Addition No	Tennis Court No	Building Addition No	Excavation and Fill No
Interior Renovations No	Other No	Interior Renovations No	Site Changes No
Accessory Structure No		Restaurant Patio Permit No	Temp Zoning Permit
Specify Other		Retail to Retail No	Other No
		Specify Other	

Existing Property Uses restaurant

Project Description

For construction of new FEMA Compliant single family residence, over coverage, approved by ZBA in case #7629, and P&Z Commission for CAM Site Plan in appl. #18-035 with associated flood vents, drainage, grading, patio, landscape buffer,. Non-conversion Agreement recorded on land records, lower level to be used for limited storage only and must comply to "unfinished living area" definition in Westport Zoning Regulation, Sec. 5.

Sanitary Service Type Sewer Septic Health Dept Approval Date

ZBA Case No 7629 ZBA Approval Date 5/8/2018

P&Z Comm Approval No 18-035 Approval Date 7/26/2018

Title of Survey Site Plan	Site Development Plan		
Prepared By	Bryan Nesteriak	Prepared Date 3/2/2018	Rev Date 9/13/2018

Title of Building Plans	233 Hillspoint Rd		
Prepared By	Bruce Beinfield	Prepared Date 10/9/2017	Rev Date 9/17/2018
Number of Pages	10		

Property Address 233 HILLSPOINT ROAD

Permit Number 42345

Lot Area Calculations: Gross Lot Area 5,757.00 ft ² sq Net Lot Area 5,757.00 ft ² sq		Subtract 80% for: Steep Slopes No Wetlands No		Substantial Improvement No 1/2 Market Value of Building	
Building Coverage: Allowed 15 Proposed 27.7		Total Coverage: Allowed 35 Proposed 43.9		Average Existing: Grade 8.70 ft	
Setbacks: Allowed Front 20.00 ft Side 7.50 ft Rear 25.00 ft Proposed Front 20.00 ft Side 7.50 ft Rear 12.00 ft				Stories: Height: Allowed Proposed	
Signage: Wall Sign No Allowed Proposed Free Standing No Allowed Proposed			Parking Spaces: Required 2.00 Provided 2.00		

Prior Approvals Health/Sewer No _____ Conservation WPLO/IWW/Aquifer Yes <u>9/28/2018</u> Drainage/Grading/Driveway Yes <u>11/26/2018</u> Flood Zone Yes <u>AE 13/ VE 14</u> Floodway No _____		Prior Approvals ZBA Variance Number Yes For <u>7629 cov sb</u> P&Z / ARC Yes For <u>18-035</u> Flood Erosion Board No For _____ Historic District Commission No For _____ Other _____	
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ALL ITEMS WITH A "YES" OR CHECKED BELOW ARE REQUIRED FOR A ZCC

Foundation As-Built Survey Req'd BEFORE framing Yes	Final Construction Cost No	ZCC Required Yes
Final As-Built Survey, incl. but not limited, to: Yes	Owner Authorization Yes	
Topography / Grading Yes	Elevation Certificate Yes	Construction must meet Flood Plain Regulations Yes
Final Building Height Yes	Floor Elevations No	All conditions of P&Z and /or ZBA must be adhered to Yes
Subsurface Structures Yes	Parking Spaces No	Lot to remain single family use with one kitchen Yes
Cellar or Basement Calcs No		Sediment & Erosion Controls Yes
Final P&Z Dept. Inspection Yes	Attic No Half-story confirmation by Architect No	Sediment & Erosion Control MUST BE Installed & Maintained through construction until lot is stabilized. Yes
Final Health Dept. Inspection / Approval. No	Final Conservation Dept. Inspection / Approval No	Excavated materials cannot be used to change the approved gradings and drainage. Yes
Final Engineering Inspection / Approval: Drainage / Grading / Sewer / Driveway Yes	Final Engineering Yes	All Building, Structures, Patios, and all mechanical Equip. incl. A/C Condensers, Pool Equip, and generators must meet all setbacks. Yes
Drainage required Yes Sewer Required Yes	Grading Required Yes Driveway Yes	Work cannot exceed the scope of this permit and must be built to conform to approved building plans and survey/site plans above. Yes
Lot to be stabilized prior of zoning inspection. Yes	Public Act 03-144 explained to applicant. Yes	

Conditions of Approval

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- Permit Void If:**
1. Work or activity not commenced within 1 yr of the date of issuance.
 2. Construction authorized not completed within 2 yrs of the date of issuance.

Failure to comply with the conditions of approval of this permit shall constitute a violation of the Regulations.

Construction Cost 783,000.00 Permit Fee \$3,132.00 ZCC Fee \$75.00 State Fee \$60.00 Total \$3,267.00 Fee Paid Yes

Zoning Official Laurie Montagna

Signature Laurie Montagna

Applicant Signature [Signature]

Issued Date 11/26/2018 1:37:53 PM

Please take a few minutes to offer your feedback at www.westportct.gov/landusesurvey Your answers will be kept confidential.

EXHIBIT C

		(Sum of Line 6 & 7)	
9	WETLANDS/SLOPES REDUCTION	0.8 x LINE 8	=
10	BASE LOT AREA (Lines 1, Minus Line 5 and Line 9)		= 5,7
MAXIMUM LOT AREA COVERAGE CALCULATION			
11	BASE LOT AREA (Copied from line 10, above)	= 5,757 SF	
12	SQUARE FEET OF TOTAL COVERAGE		= 2,53
13	LINE 12 DIVIDED BY LINE 11 FOR A PERCENTAGE		= 43.9
14	SQUARE FEET OF BUILDING COVERAGE		= 1,59
15	LINE 14 DIVIDED BY LINE 11 FOR A PERCENTAGE		= 27.7
SINCE LINE 13 AND LINE 15 IS GREATER THAN THE PERCENTAGE FOR MAXIMUM PI COVERAGE WITHIN THE ZONING DISTRICT, THE COVERAGE REQUIRES A VARIANCE.			

New

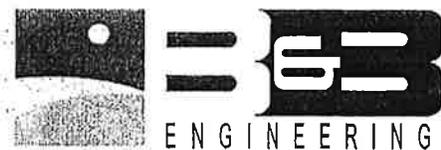
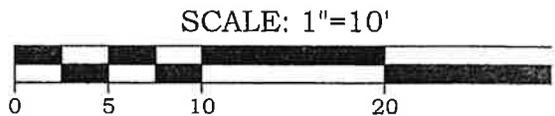
SFR

PLANNED FOR	DATE	SIGNATURE	REFERENCE
DEPARTMENT			
HEALTH			
INSPECTION			
ENGINEERING			
P&Z	4/26/18	<i>[Signature]</i>	

RECEIVED
SEP 28 2018
WESTPORT P. & Z. C.

No.	Date	REVISION DESCRIPTION
5.	9/26/2018	REVISED PER P&Z COMMENT
4.	9/13/2018	MISCELLANEOUS REVISIONS
3.	7/2/2018	SOIL EROSION & SEDIMENT CONTR
2.	5/9/2018	PLANTING AND WALKWAY REVI
1.	3/23/2018	REVISED REAR SETBACK DIMEN

EXISTING GRADE	PROPOSED AVERAGE GRADE																
$ADE = \frac{\sum(A...G)}{(7)}$ $= 8.7'$	<table border="1"> <thead> <tr> <th>POINT</th> <th>GRADE</th> </tr> </thead> <tbody> <tr><td>A</td><td>7.7</td></tr> <tr><td>B</td><td>8.1</td></tr> <tr><td>C</td><td>8.9</td></tr> <tr><td>D</td><td>9.0</td></tr> <tr><td>E</td><td>9.2</td></tr> <tr><td>F</td><td>9.2</td></tr> <tr><td>G</td><td>9.0</td></tr> </tbody> </table> $AVE. GRADE = \frac{\sum(A...G)}{(7)}$ $= 8.7'$	POINT	GRADE	A	7.7	B	8.1	C	8.9	D	9.0	E	9.2	F	9.2	G	9.0
POINT	GRADE																
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E	9.2																
F	9.2																
G	9.0																
PROPOSED	<p>NOTES:</p> <p>1. ALL POINTS TAKEN 10' FROM PROPOSED HOUSE LOCATION.</p>																



39 New
Seymour
P: (203)
F: (203)
www.b

Land Surveying, Professional Engineering & Land Use Consultant

PLANT	BOTANICAL NAME	SIZE	QUANTITY
	GERANIUM MACULATUM	1 GAL.	16
	CAREX PENSYLVANICA	1 GAL.	15
PLANTER	ASTER NOVAE-ANGLIAE	1 GAL.	10
PLANTER	PHLOX DIVARICATA	1 GAL.	16
	MYRICA PENSYLVANICA	3 GAL.	10
	ARONIA ARBUTIFOLIA	2 GAL.	10
	CLETHRA	3 GAL.	4

SITE DEVELOPMENT PLAN
OF
233 HILLSPPOINT ROAD
WESTPORT, CONNECTICUT
PREPARED FOR
PEN BUILDING COMPANY
46 POST ROAD EAST
WESTPORT, CONNECTICUT 06880

TO THE BEST OF MY KNOWLEDGE AND BELIEF THIS MAP IS SUBSTANTIALLY CORRECT AS NOTED HEREON.



Date 3/2/18

Scale

Job No.

Drawing No.