

# Memorandum

**To:** Members, Zoning Board of Appeals  
**From:** Michelle Perillie, AICP; Planner/CFM  
**Date:** June 8, 2020  
**Re:** Coastal Site Plan Review, ZBA-20-00305, 233 Hillspoint Road

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## BACKGROUND

The site is located in the Res. B zoning district and is serviced by town sewer and the public water supply. The gross lot area is 0.132 acres (5,757 square feet) and the property is partially within the 100-year flood zone (AE 13 and VE 14). This is a pre-existing non-conforming lot with respect to lot area, where the requirements of the zone establish a minimum lot area of 6,000 SF.

The site is was previously occupied with a commercial structure that was used as a restaurant (Positano's) for many years, which is a non-conforming use in this residential zone. In the past a court stipulated restriction has been placed on this property that disallows any future commercial use on this site. Single family residential is a permitted use in the Residence B zone.

On May 8, 2018 the Zoning Board of Appeals (#7629) found that the property had unusual hardship resulting from being a small, non-conforming and "odd shaped" lot and granted relief from the rear yard setback (20 feet) to 8.5 feet, building coverage (15% maximum) to 27.7% and lot coverage (35% maximum) to 44%. The Zoning Board of Appeals (#7629) made the following conditions on their approval:

- A. "Non-conversion agreement to be filed on the Land Records.
- B. Vegetative buffer along the length of the rear to protect Long Island Sound.
- C. Sidewalk to be retained".

The Planning and Zoning Commission approved a Coastal Site Plan approval (18-035) on 7/26/18 for the following improvements:

- A. Demolition of the existing, non-conforming commercial structure in a residential zone.
- B. Redevelopment of the site with a single-family dwelling that lies approximately 85 feet from Mean High Water Line (MHWL) and the entire structure lies within the AE13 flood zone. The first finished floor was proposed at El. 17'.

233 Hillspoint Road is located within the Coastal Area Management Boundary, as defined by C.G.S. §22a-94; therefore a CAM review is required in accordance with C.G.S. §22a-109 and the *Town of Westport Zoning Regulations* §31-10.

§31-10.6 of the Zoning Regulations requires that a CAM Site Plan application be filed for any use, activity or project as defined in §22a-105(b) of the CAM Act, which is proposed to be located either wholly or partially within the Coastal Boundary. §31-10.6.3 of the Zoning Regulations identifies the proposed construction of a new single-family residential building is not exempt from requiring a CAM review as the proposed activity is occurring within 100 feet of coastal resources and within 200 feet of the Mean High Water Line.

The applicant obtained a zoning permit on 11/26/18 and construction began. The applicant is now requesting approval for modifications to the plans to complete the construction.

The applicant is now proposing the following changes:

1. Modification to the foundation by removal of solid foundation walls, replacing them with concrete piers and breakaway walls;
2. Removal of the retaining walls near the front stair since in the absence of foundation walls it was not possible fill the area to create a raised landing; and
3. Modifications to the front stair to change material from masonry to wood staircase with more steps because the staircase now has to go down to grade (as opposed to the raised landing).

### **ZBA PROPOSAL**

The applicant has requested relief from:

- New Construction (§6-2.1.6)
- Setbacks for Non-Conforming Lots (§6-3.1)
- Setbacks in Res. B district (§14-4)
- Coverage in the Res. B district (§14-6).

### **COASTAL RESOURCES**

The applicant has noted that following coastal resources are present on site or within the influence of the project: General Resources, Beaches and Dune and Coastal Hazard Area.

According to the Cahn, Inc. Map, the following additional coastal resources have been identified as either on site or within influence of the project: Shellfish Area, Intertidal Flats, and Tidal Wetlands.

The coastal resources are defined in *Connecticut Coastal Management Manual* and are included below for convenience:

**General Resources** are defined as coastal waters of the state, their natural resources, related marine and wildlife habitat and adjacent shorelands, both developed and undeveloped, that together form an integrated terrestrial and estuarine ecosystem.

*Coastal Hazard Areas* are defined as those land areas inundated during coastal storm events of subject to erosion induced by such events, including flood hazard area as defined and determined by the National Flood Insurance Act.

*Beaches and Dunes* are dynamic areas abutting coastal waters that are characterized by sand, gravel or cobbles. Beaches and dunes provide critical nesting habitat for some shore birds and unique habitats for plant species and communities.

*Intertidal flats* are rich sources of and reservoirs for nutrients providing valuable feeding areas for invertebrates, fish, shore birds and significant shellfish habitat.

*Shellfish Concentration Areas* support an important source of food, provide recreational shell fishing opportunities, and provide employment through the shellfish industry.

*Tidal Wetlands* are areas of high nutrient and biological productivity that provide detrital products forming the base of the food web in Long Island Sound. Tidal wetlands provide habitat, nesting, feeding, and refuge areas for shorebirds; serve as a nursery ground for larval and juvenile forms of many of the organisms of Long Island Sound and of many estuarine-dependent oceanic species and provide significant habitat for shellfish. Tidal wetlands also improve water quality by trapping sediments, reducing turbidity, restricting the passage of toxics and heavy metal, decreasing biological oxygen demand (BOD), stabilizes shorelines and buffers erosion.

### **Flood Zone:**

The site is located entirely within the 100-year Flood Line, which also delineates the boundary of the Coastal Flood Hazard Areas. This site is located in the Coastal Zone AE 13 and VE 14 on the FEMA F.I.R.M. Maps, Community Panel 09001C0551G. The dwelling is entirely in the AE 13 zone.

The proposal includes demolition of the existing commercial structure and construction of a new two-story house with unfinished living space on the lower level. The applicant has filed a non-conversion agreement for the ground floor that was filed on the land records prior to the issuance of the zoning permit. The lower level will then not count as a story and can be used for storage parking and access to the first floor living space. The proposed plans appear to show compliance with the flood zone compliance.

### **Sediment and Erosion Controls:**

Temporary sediment and erosion controls are shown including construction anti-tracking pad and a stock pile area. The silt fencing is backed with hay bales along the entire property.

### **Vegetated Buffer:**

The Department of Energy and Environmental Protection, Office of Long Island Sound Fact Sheet on Vegetated Buffers suggests that *“large buffers (e.g. 100 feet or greater in width) provide the best protection for water quality by buffering temperature changes and improving control of erosion, sedimentation and pollution. However, even a narrow buffer (15 to 30 feet in width) can be effective under certain conditions.”*

Some of the important benefits of vegetated buffers are that they:

- Protect resources from adjacent development by reducing the adverse effects of human activities on natural resources including wetlands and surface waters by acting as filters to intercept and absorb nutrients, sediment and other pollutants carried in storm water runoff from fertilized lawns and landscaping where pesticides are applied.
- Slow down runoff, which both reduces erosion and allows silt and other suspended solids to settle out before they reach a receiving water body or wetlands.
- Provide an area for infiltration, thereby reducing volume of runoff.
- Bacteria and pathogens from pet wastes are trapped within the buffer, are decomposed and thereby preserve water quality.

A condition of the Zoning Board of Appeals approval required the applicant provide a buffer along the Long Island Sound boundary of the property. Vegetated buffers of at least 15' wide have previously been recommended for single family home construction. The buffer should consist of native salt tolerant plantings and should be maintained in order to intercept and absorb nutrients and prevent contaminants from reaching the adjacent coastal resources.

**Recommendation:** Staff suggests that the planting buffer should be at least 8-10 feet which is less than what is generally required for a residential dwelling directly on coastal resource.

Staff recommends that the southern (seaside) portion of the planting beds provide a double or staggered hedge row of the shrubs they have proposed (bayberry, chokeberry and clethra) be installed as these plants will protect the site the most during the winter when the herbaceous perennials they have

proposed will die back in the winter. The herbaceous perennials and sedge can be planted on the house side of the planting bed. Staff recommends using only native and salt tolerant plants in this planting.

## **CONCLUSION**

The Westport Zoning Board of Appeals may find that this project is consistent with the policies identified in Section(s) 22a-92(b) (1) and 22-a-92 (b) (2) of the Coastal Area Management Act; that it will not adversely affect adjacent Coastal Resources identified in Sections 22-93 (a) (7) of said Act if the following recommendations are implemented:

1. Non-conversion agreement to be filed on the Land Records.
2. Vegetative buffer along the length of the rear to protect Long Island Sound.
3. Sidewalk to be retained.

**Prior to Zoning Permit.** The applicant should submit the following prior to issuance of a Zoning Permit for the proposed work:

1. Final approval from DPW Engineering for revised grading and drainage.
2. Proof of filing a non-conversion agreement on the Westport Land Records.

### ***Available in the File:***

- *Coastal Resources map prepared by Cahn, Inc. for the Town of Westport's participation in the CAM program, Section*
- *Existing Conditions Survey, prepared by Bryan Nesteriak, dated 1/30/20*
- *Landscape Plan, prepared by Michael D'Angelo, dated 4/7/20*
- *Site Plan, prepared by Bryan Nesteriak, dated 3/23/18, revised 3/27/20*
- *Building Plans, prepared by Beinfield Architecture, dated 7/73/18, revised 3/27/20*