

Subject to Approval

**ZONING BOARD OF APPEALS
REGULAR MEETING MINUTES
Jan. 14, 2020**

The public hearing and regular meeting of the Madison Zoning Board of Appeals was conducted Tuesday, Jan. 14, 2020, at 7 p.m. in Meeting Room A at Madison Town Campus.

MEMBERS PRESENT

Chairman Ned Moore, Vice Chairman Thomas Kelty, and Commissioners Jason Brown, Richard Gilbert, and William Piggott.

MEMBERS ABSENT

None.

ALTERNATES PRESENT

Dennis Crowe.

OTHERS PRESENT

Zoning Enforcement Officer John De Laura; Director of Planning and Economic Development David Anderson; MCTV taped the meeting.

Chairman Ned Moore called the public hearing and regular meeting of the Madison Zoning Board of Appeals to order at approximately 7 p.m., introduced the board and reviewed procedures; by state statute, four votes are needed to approve applications, and a simple majority is not sufficient. The legal notice, as published, was read into the record. Agenda items were taken in the order prescribed in the minutes.

8229. 4 Boston Post Road. Map 44, Lot 57. Commercial District. Owner/Applicant: Yarde Realty Company. Request to vary the Madison Zoning Regulations as follows: Sec. 6.1.3(e) to allow front yard of 2.0 ft. where 20 ft. is required for retaining wall; Sec. 6.1.3(c) to allow side yard of 8.2 ft. where 20 ft. is required for retaining wall, and 12.2 ft. where 20 ft. is required for boardwalk piling; and Sec. 2.17 to allow building 20.3 ft. from the Critical Coastal Resources where 50 ft. is required.

Professional Engineer Joseph Wren presented four exhibits: **EXHIBIT A**, Tenney Property letter than was returned by the United States Postal Service (USPS); **EXHIBIT B**, Morris letter that was returned by the USPS; **EXHIBIT C**, the original copy of the certificate of mailing received from the USPS; and **EXHIBIT D**, a photo of the sign that was posted announcing the Zoning Board of Appeals public hearing. Mr. Wren reviewed the history of the site. In the late 60s, the state Department of Transportation (DOT) made plans to replace the bridge and relocate Route 1 adjacent to 4 Boston Post Road. In 1970, DOT replaced the bridge, moved Route 1, and in the process took the privately owned property by eminent domain. Since 1970, the site has been vacant with no public access to the water. This project wants to bring back the use of the site that had been taken away through eminent domain, and those uses had included a marina,

a restaurant, a residence, and a fish market. Mr. Wren stated that in 2016, Michael Barnes, property owner, applied for and received approvals from the state Department of Environmental Protection (DEEP) and the Army Corps of Engineers to construct a 45-slip marina, allowing him to retain fill when the marina was built. Mr. Wren gave a detailed presentation of the project's plans, which include a DEEP preferred use of a davit with a retaining wall to move boats into the floating dock and out of the water. The davit and retaining wall were seen by DEEP as a better, cleaner, and more sensitive to the environment way to move the boats, according to Mr. Wren. For the proposed building, which in the plans show the multiple uses of marina, retail space, restaurant, and a residential unit, the slab elevation has is around 11 feet, because the entire site is in the flood zone, and the building is set at its minimum elevation, as required by the Federal Emergency Management Agency (FEMA), according to Mr. Wren. This elevation supports Americans with Disabilities Act (ADA) access, he stated. The existing elevation of the site is around 4.5 feet, a driveway will be brought up to the building with a gentle slope, and there will be crushed stone to the south, in three layers, according to Mr. Wren. In the northeast corner of that stone area is the trash enclosure; all parking meets Madison zoning regulations, and there will be a new septic system, a feature that was also a prior use on site. Four exhibits presented were Williams Architects renderings of the finished project, known as East River Landing Marina, from four different views, all in color: **EXHIBIT 1**, East River Landing Marina, view looking east; **EXHIBIT 2**, East River Landing Marina, view down Boston Post Road; **EXHIBIT 3**, East River Landing Marina, view looking northeast; and **EXHIBIT 4**, East River Landing Marina, view looking east. In addition, presented with the color renderings were several photos of the site as it had looked in the past, prior to the eminent domain action, and those photos comprise **EXHIBIT E**. Mr. Wren showed and reviewed landscaping plans and presented **EXHIBIT 5**, John Cunningham's landscaping plans; he also presented a colored site plan of the water's edge, known as **EXHIBIT 6**. Mr. Wren gave a detailed explanation of the grading that will be done on site, stating that when completed, the site will have three inches of stone on top of 12 inches of crushed stone to collect storm water runoff; infiltration systems have been created, as well, and there is low density development of the site, in the form of native vegetative buffers and swales. Catch basins and pipes are not being use, so there are no discharges into the land or water, and no erosion is expected, because there are not any steep slopes around the parking lot, Mr. Wren stated. Regarding the variances, the hardship is the fact that the parcel is bound by the East River to the west, and tidal wetlands marsh to the east and south; the north side is bounded by the state highway, Mr. Wren stated. The property is located in a FEMA AE flood zone, so the building must be constructed appropriately to meet FEMA regulations, according to Mr. Wren. The proposed retaining wall, davit, boardwalk, and building would not be able to be built elsewhere on the site, and reduced setbacks to navigable waters are necessary to promote water dependent uses, Mr. Wren stated. DEEP did send a Land and Water Resources Division (LWRD) Coastal Site Plan review letter to the Planning and Zoning Commission, the Zoning Board of Appeals and Director of Planning and Economic Development David Anderson, dated Jan. 14, 2020, in which it offered suggestions on the plans for the "45-slip small boat marina, with a 1,684 square foot apartment, restaurant and marina office/storage, significant fill proposed—four to five feet over grade for entire upland site, new septic, boardwalk, drive, parking, and associated improvements." Mr. Wren stated that the DEEP permit is valid to 2021, although the permit stated that construction had to start in 2019; regarding the 2019 construction start, the DEEP LWRD letter states that as long as the Coastal Site Plan Review "process to

require in-depth water water-dependent use components are assured as primary initial components to be constructed first, or otherwise fully committed to, that will should [sic] satisfy the DEEP permit condition.” Mr. Wren clarified statements made in the letter and corrected factual errors about the project’s plans; furthermore, any DEEP LWRD recommendations made, he addressed as already being a part of the plans in the same or similar forms that DEEP LWRD recommended, and those that are not in the plans can be accommodated. For the most part the marina, once completed, will not provide access to the general public; those who use the restaurant, the marina, the apartment, and any retail space on site will have access to the property’s features, he explained. A Natural Diversity Data Base (NDDDB) study, done in 2016, was noted in the DEEP LWRD letter as being expired, and the DEEP LWRD letter recommended that the property owner make a request to DEEP for another NDDDB study—the 2016 study noted two endangered species, a sparrow and a shrew—according to Mr. Wren. Mr. Barnes has retained a wildlife biologist, expected to visit the site Thursday, Mr. Wren stated, so the results of that survey and whether there are any endangered species on the property, may be submitted to the Planning and Zoning Commission. If there are any shrews on site, Mr. Wren stated that mitigation efforts will be established to protect the endangered species. Low impact development consists of stone infiltration trenches, very dense vegetative plants, and modest slopes, leading the developers to believe the drainage will be effective, according to Mr. Wren. Landscaping includes trees and shrubs, a flat landscape slope, silt fence, 12-inch coconut coir logs, which naturally degrade over time, in the course of three to five years, 1,060 new handpicked and native plants, a five-foot grass buffer, and vegetative buffers, all of which offer a lot of controls for infiltration, according to Mr. Wren. In terms of fill, the DEEP LWRD letter states that plans are for 9,200 cubic yards of fill on site, Mr. Wren stated, but that amount has been reduced to 7,900 cubic yards of fill, adding that most of the recommendations regarding the Coastal Area Management Act and Coastal Site Plan Review have been addressed. Letters were also received from the Madison Land Conservation Trust and the Conservation Commission, which Mr. Wren addressed. He stated that no boat work will take place on site; it will be strictly prohibited for a private boat owner to do any such work. Mr. Barnes stated that he is legally required to have a pump out facility for the marina, but there will not be any large size boats using it; most boats would be about 15 feet in length. Properly licensed people may take care of the boats, but not normal boat owners, according to Mr. Wren. In its Jan. 14, 2020 letter to the Zoning Board of Appeals, the Conservation Commission stated that while it is generally opposed to filling and having retaining walls for new development in the coastal zone, the proposed marina is located on the site of a historic marina and will provide additional public access to the natural resources of Madison and Long Island Sound. It also stated that the location of the proposed retaining wall will allow for the construction of a boat davit to provide boat put-in and take-out, without the construction of a ramp into the water. A boat launch ramp would create a direct path for storm water and pollution to enter the river, while the davit and retaining wall, with the proposed swale, will reduce potential pollution and storm water discharge by infiltrating storm water from the impervious parking areas, the letter stated. The fill and retaining wall will also allow for ramps and walkways to be constructed over the tidal marsh an intertidal zone at heights that will not impact the growth of natural vegetation, the letter stated. While the Conservation Commission was also initially opposed to locating the building within the Critical Coastal Resources setback, the letter stated that centering the building in the upland outside of that setback could require additional fill. Therefore, placing the building in an area already being

filled to support the davit, boardwalk, and dock structures will help to minimize environmental impact on the site and Long Island Sound ecosystems, the letter stated. Overall, the Conservation Commission letter stated, that due to the history of the site and its previous uses, as well as the proposed water dependent use providing access to natural resources, the proposed variances may be acceptable, Mr. Wren stated. Architect Matthew Williams spoke about the design of the building and its marina, barn-like style, as well as its positioning on site. The footprint of the building is slightly smaller than the original footprint, Mr. Wren stated; it was less than 1,800 square feet, and this building is slightly under that. In addition, the retaining wall was an essential part of the permit approval of the marina; it supports the davit, it also supports the fill for the davit, and for the building to be FEMA compliant, with access to the parking lot. Zoning Board of Appeals commissioners sought clarification on the variances and additional information about the parking plans at the marina, as well as the design of the boardwalk. Chairman Ned Moore opened the public hearing to questions from the public, but those questions related more to the role of the Planning and Zoning Commission in the application process and not specifically to the variances before the Zoning Board of Appeals.

Commissioner Jason Brown made the motion to close the public portion of the meeting; it was seconded by Commissioner Richard Gilbert and unanimously approved.

Vote to close the public portion of the meeting passed, 5-0-0.

IN FAVOR: Chairman Moore, Vice Chairman Thomas Kelty, and Commissioners Brown, Gilbert, and William Piggott.

OPPOSED: None.

ABSTAINED: None.

During Zoning Board of Appeals discussion, it was found by Commissioner Gilbert that the project's plans are definitely in harmony with the Madison Plan of Conservation and Development. Commissioner Brown discussed the merits of the variances, finding the site's property line close to the road as a hardship; a variance of two feet where 8.2 feet is required for the retaining wall, which supports the davit, which appears to be acceptable, since no neighbors will be affected; and stated that the location of the building provides the most economic use of fill, as well as the most conservative use of fill, in order to bring the building up to FEMA standards for elevation. Commissioner Gilbert proposed that the legal hardship for the variances is the shape of the property. Vice Chairman Thomas Kelty stated that the applicants have gone to great extent to mitigate any environmental problems. In addition, the location and shape of the parcel creates a hardship for anything that is worth doing on the property; structures and features in the plans may be moved around, but they will still be out of compliance, according to Vice Chairman Kelty. Therefore, the location and design of the property creates a hardship, Vice Chairman Kelty stated, adding that the hardship is the lay of the land. There are only a few places where these structures can be placed to make the property work and not hurt the environment, Vice Chairman Kelty stated.

Commissioner Brown made the motion to approve the following variances, as presented: Sec. 6.1.3(e) to allow front yard of 2.0 ft. where 20 ft. is required; Sec. 6.1.3(c) to allow side yard of 8.2 ft. where 20 ft. is required and 12.2 ft. where 20 ft. is required for boardwalk

piling; and Sec.2.17 to allow building 20.3 ft. from the Critical Coastal Resources where 50 ft. is required, with the hardship being that the shape of the property is unique, and allowing it to serve as a marina requires these structures to be located where they are placed in the plan. That motion was seconded by Vice Chairman Kelty and unanimously approved.

Vote to approve the variances as presented passed, 5-0-0.

IN FAVOR: Chairman Moore, Vice Chairman Kelty, and Commissioners Brown, Gilbert, and Piggott.

OPPOSED: None.

ABSTAINED: None.

Commissioner Brown made the motion to approve the Coastal Site Plan as presented, finding it consistent with the goals and policies of the Coastal Management Act of Connecticut; it was seconded by Commissioner Gilbert and unanimously approved.

Vote to approve the Coastal Site Plan as presented passed, 5-0-0.

IN FAVOR: Chairman Moore, Vice Chairman Kelty, and Commissioners Brown, Gilbert, and Piggott.

OPPOSED: None.

ABSTAINED: None.

Election of Officers

Commissioner Brown nominated Ned Moore as chairman and Thomas Kelty as vice chairman of the Zoning Board of Appeals; it was seconded by Commissioner Gilbert and unanimously approved.

Vote to approve Ned Moore as chairman and Thomas Kelty as vice chairman passed, 5-0-0.

IN FAVOR: Chairman Moore, Vice Chairman Kelty, and Commissioners Brown, Gilbert, and Piggott.

OPPOSED: None.

ABSTAINED: None.

Approval of 2020 Schedule of Meetings

Commissioner Brown made the motion to approve the 2020 schedule of meetings; it was seconded by Commissioner Piggott and unanimously approved.

Vote to approve the 2020 meetings schedule passed, 5-0-0.

IN FAVOR: Chairman Moore, Vice Chairman Kelty, and Commissioners Brown, Gilbert, and Piggott.

OPPOSED: None.

ABSTAINED: None.

Approval of minutes: Dec. 10, 2019

Commissioner Piggott made the motion to approve the Dec. 10, 2019 minutes as submitted; it was seconded by Commissioner Brown and unanimously approved.

Vote to approve the Dec. 10, 2019 minutes passed, 5-0-0.

IN FAVOR: Chairman Moore, Vice Chairman Kelty, and Commissioners Brown, Gilbert, and Piggott.

OPPOSED: None.

ABSTAINED: None.

Adjournment

Commissioner Gilbert made the motion to adjourn at 9:30 p.m.; it was seconded by Commissioner Brown and unanimously approved.

Vote to adjourn at 9:30 p.m. passed, 5-0-0.

IN FAVOR: Chairman Moore, Vice Chairman Kelty, and Commissioners Brown, Gilbert, and Piggott.

OPPOSED: None.

ABSTAINED: None.

Respectfully submitted,
Marlene H. Kennedy
Clerk