

TOWN OF EAST WINDSOR ZONING BOARD OF APPEALS

REGULAR MEETING

**Monday, December 6, 2021
7:00 p.m.**

Meeting available via remote ZOOM Teleconference
Meeting ID: 714 897 1799

Meeting Minutes

**** These Minutes are not official until approved at a subsequent meeting****

Zoning Board of Appeal

Jose Giner, Chairman
Nolan Davis, Vice Chairman
Mystica Davis
Dan Noble
Steve Smith
Kurt Kebschuell

ATTENDANCE: Zoning Enforcement Officer Ruthanne Calabrese hosted the remote meeting. Chairman Jose Giner, Vice Chairman Nolan Davis, Regular Member Mystica Davis, Regular Member Steve Smith, and Alternate Commissioner Kurt Kebschull were present at the Call to Order

ABSENT: Regular Member Dan Noble.

GUESTS/SPEAKERS signing in to teleconference remotely: All Zoning Board of Appeal Members noted above; Attorney Joseph Flynn, representing Mark O'Neill d/b/a Hamlet Homes, LLC; Mark O'Neill; Rick and Laurie Zitkus, and Recording Secretary Peg Hoffman

I. TIME AND PLACE OF MEETING:

Chairman Giner called the December 6, 2021 Regular Meeting of the East Windsor Zoning Board of Appeals to Order at 7:06 p.m. via remote access..

II. ESTABLISH QUORUM:

Chairman Giner noted the Board has established a quorum with four Regular Members and one Alternate Member present remotely at the Call to Order. Chairman Giner noted Alternate Member Kebschull will participate as a voting member this evening..

**TOWN OF EAST WINDSOR
ZONING BOARD OF APPEALS
Regular Meeting – December 6, 2021
ZOOM Teleconferenc
Meeting ID: 714 897 1799
MEETING MINUTES**

III. PLEDGE OF ALLEGIANCE:

Chairman Giner led the Board in the Pledge of Allegiance.

IV. New Hearings CONTINUED HEARING: ZBA #2021-04: Application of Hamlet Homes, Mark O'Neill, for variance request of 45.8 feet where 50 feet is required per section 401 of East Windsor Zoning Regulations: 18 Jessie Lane. (Map 050 Block 82 Lot 002-12) Zone R-3

Chairman Giner noted this is a Continued Public Hearing, rather than a New Public Hearing as identified. He noted the Legal Notice for this Application was read at the previous meeting.

Chairman Giner read the description of this Item of Business, and noted he read the Minutes from the November meeting.

Chairman Giner requested Zoning Enforcement Officer Calabrese report what's occurred since the previous meeting.

Zoning Enforcement Officer Calabrese reported she has met with Mark O'Neill and Attorney Flynn regarding measuring the distance of the dwelling from the property line. Chairman Giner indicated it appeared that it had been measured from the property line, which is the correct approach.

Attorney Flynn described the property as Lot #12 in the Harvest View Estates Subdivision; 22 of the lots have already been built and closed on. They are requesting a variance request of 4.2 feet on the front yard setback. To support his presentation Attorney Flynn has submitted several "exhibits", including 2B which will be the primary exhibit for discussion, as well as exhibit 4, which addresses drainage issues, and exhibits 5A, 5B, and 5C which show the house location on the lot.

Attorney Flynn suggested there are three components to their presentation. The first is the zoning setback; the second is the flooding problem which is particular to this lot, and the third, which is a document from the Planning Office provided by Staff at the time Mr. O'Neill was constructing the lot.

Attorney Flynn referenced exhibit 2A, which shows the current set back of 45.8 feet from the southeast corner of the constructed foundation to the property line. Attorney Flynn indicated they contend that the 4.2 foot difference doesn't create any public health or safety concerns. Because this home has been constructed on a cul-de-sac with minimal

**TOWN OF EAST WINDSOR
ZONING BOARD OF APPEALS
Regular Meeting – December 6, 2021
ZOOM Teleconferenc
Meeting ID: 714 897 1799
MEETING MINUTES**

traffic, and, as shown through exhibits 5A through C, there are no sight distance issues created by the topography, or the driveway.

Attorney Flynn further contends the requested variance doesn't affect the intent of the POCD of the Town. They feel the public health and safety, and the property values, will be preserved by the minimal nature of the variance.

Attorney Flynn suggested the hardship related to the variance request for Lot #12 is the extent of the water and flooding which occurs on this lot. Attorney Flynn suggested a yard drain was installed to contend with the water flow from the adjacent lot.

Attorney Flynn offered a final component of his presentation is the ministerial estoppel.

Chairman Giner indicated it wasn't the role of the ZBA to rule on the legal estoppel. Attorney Flynn suggested he's putting that on the record to show that there is a real issue and the people within the Planning Department at that time knew there was a water issue on the lot.

Chairman Giner felt the request for the variance was straight forward; he asked if any of the ZBA Members had comments?

ZBA Member Smith suggested this is a different presentation than was made last month. He questioned where the property line is? Zoning Enforcement Officer Calabrese identified a location on the exhibit map. ZBA Member Smith suggested that wasn't the property line as discussed at the previous meeting; if the location of the pins are as identified that makes more sense than at the road.

Chairman Giner queried the remaining ZBA Members for comments; no one requested to speak.

Chairman Giner asked if anyone from the public wished to comment.

Rick Zitkus, representing himself and his wife Laurie, indicted they're hoping the Board is about to approve the variance request tonight. They have been waiting patiently to close on the home. Hopefully Mr. O'Neill has given the Board the information they need.

Chairman Giner again queried the Board for comments; no one raised any questions.

Chairman Giner called for a motion to close the Public Hearing.

**TOWN OF EAST WINDSOR
ZONING BOARD OF APPEALS
Regular Meeting – December 6, 2021
ZOOM Teleconference
Meeting ID: 714 897 1799
MEETING MINUTES**

MOTION: To CLOSE THE PUBLIC HEARING on ZBA #2021-04: Application of Hamlet Homes, Mark O'Neill, for variance request of 45.8 feet where 50 feet is required per section 401 of East Windsor Zoning Regulations: 18 Jessie Lane. (Map 050 Block 82 Lot 002-12) Zone R-3.

Nolan Davis moved/Mystica Davis seconded/DISCUSSION: None

VOTE by a show of hands:

In Favor: Nolan Davis/Mystica Davis/Steve Smith/Jose Giner/Kurt Kebschull
(No one opposed/No abstentions)

Chairman Giner called for a motion of approval.

MOTION: To APPROVE the request for a variance as presented and for the reasons stated on the record for ZBA #2021-04: Application of Hamlet Homes, Mark O'Neill, for variance request of 45.8 feet where 50 feet is required per section 401 of East Windsor Zoning Regulations: 18 Jessie Lane. (Map 050 Block 82 Lot 002-12) Zone R-3.

Smith moved/Nolan Davis seconded/DISCUSSION: Chairman Giner suggested the variance seems to be minimal. The house is there; he questioned if they could have been seen with a foundation As-Built. Given the information presented it doesn't seem that it will impact anything.

VOTE by a show of hands:

In Favor: Nolan Davis/Mystica Davis/Steve Smith/Jose Giner/Kurt Kebschull
(No one opposed/No abstentions)

Mr. O'Neill thanked the Board for their approval.

Chairman Giner left the meeting at 7:34 p.m.; Vice Chairman Nolan Davis took over the chair of the meeting.

V. OTHER BUSINESS:

1) Election of Officers

Vice Chairman Davis questioned if the Board would like to vote on the officers tonight or delay the vote until the next meeting? Zoning Enforcement Officer Calabrese noted this agenda item has been carried over from meeting to meeting for the past year; if the Commission chooses to vote at the next meeting the vote should be taken early in the meeting.

**TOWN OF EAST WINDSOR
ZONING BOARD OF APPEALS
Regular Meeting – December 6, 2021
ZOOM Teleconference
Meeting ID: 714 897 1799
MEETING MINUTES**

Vice Chairman Davis questioned if the only open position is the Board's secretary; Zoning Enforcement Officer Calabrese concurred. Vice Chairman Nolan suggested nominating Commissioner Smith as Secretary and retaining the current Chair and Vice Chair. He asked if anyone had any other nominations? No one proposed any other nominations. Vice Chairman Davis questioned if the Board would like to vote tonight, or postpone until the next meeting?

MOTION: To NOMINATE Jose Giner as Chairman, Nolan Davis as Vice Chairman and Steve Smith as Secretary of the Zoning Board of Appeals.

Mystica Davis moved/Kebschull seconded/DISCUSSION: None

VOTE by a show of hands:

**In Favor: Nolan Davis/Mystica Davis/Steve Smith/Kurt Kebschull
(No one opposed/No abstentions)**

2) 2022 Meeting Date:

Vice Chairman Davis noted the meeting schedule before the Commission proposed meetings on the first, or second, Monday of each month. He questioned if any of the members had problems with the schedule as proposed? No one opposed the 2022 meeting schedule presented.

Vice Chairman Davis requested a motion for approval.

MOTION: To ACCEPT the 2022 Meeting dates for the ZBA Meetings

Kebschull moved/Smith seconded/DISCUSSION: None.

VOTE by a show of hands:

**In Favor: Nolan Davis/Mystica Davis/Steve Smith/Kurt Kebschull
(No one opposed/No abstentions)**

VI. PUBLIC PARTICIPATION:

Vice Chairman Davis asked if anyone else from the public would like to speak? No one requested to be heard.

VII. APPROVAL OF MINUTES:

A. November 8, 2021:

**TOWN OF EAST WINDSOR
ZONING BOARD OF APPEALS
Regular Meeting – December 6, 2021
ZOOM Teleconferenc
Meeting ID: 714 897 1799
MEETING MINUTES**

Vice Chairman Davis questioned if anyone had any comments, or edits, to the Minutes for November 8, 2021 as presented? No one requested any changes.

Vice Chairman Davis called for a motion of approval.

MOTION: To APPROVE the Minutes of the Zoning Board of Appeals dated November 8, 2021 as presented.

Smith moved/Kebschull seconded/DISCUSSION: None.

VOTE by a show of hands:

**In Favor: Nolan Davis/Mystica Davis/Steve Smith/Kurt Kebschull
(No one opposed/No abstentions)**

VIII. ADJOURN:

MOTION: To ADJOURN the meeting at 7:41 p.m.

Kebschull moved/Smith seconded/DISCUSSION: None.

VOTE by a show of hands:

**In Favor: Nolan Davis/Mystica Davis/Steve Smith/Kurt Kebschull
(No one opposed/No abstentions)**

Respectfully submitted

Peg Hoffman, Substitute Recording Secretary, East Windsor Zoning Board of Appeals