

**TOWN OF HADDAM
 ZONING BOARD OF APPEALS
 PUBLIC HEARING/MEETING
 HADDAM TOWN HALL
 21 FIELD PARK DRIVE, HADDAM, CT
 THURSDAY, 28 MAY 2015
 UNAPPROVED MINUTES
*Subject to Approval by the Commission***

ATTENDANCE

X	Thomas Berchulski
X	Margo Chase-Wells
A	Marjorie W. DeBold, Vice Chairman
X	Robin Munster, Chairman
X	Jen O'Neal, Secretary
A	Mary Hickish, Alternate
X	Helen Reeve, Alternate – Seated
X	Kenneth Wendt, Alternate
X	Liz West Glidden, Town Planner
A	Jim Puska, Zoning Enforcement Officer
X	Bunny Hall Batzner, Recording Clerk

1. Call to Order

Mrs. Munster, chairman, called the meeting to order at 7:42 p.m.

2. Attendance/Seating of the Alternates

Attendance was taken and all regular members and alternate member, Mrs. Reeve, were seated.

Mrs. Munster read the Legal Notice, as printed in the Middletown Press, into the record; and explained the public hearing/meeting process to the public.

3. PUBLIC HEARING

A Variance to Section 10 of the Haddam Zoning Regulations, to Allow an Earth Materials Operation in the Gateway Conservation Zone at the Midway Marina located on River Road and Shown on Assessor's Map 48, Lots 38 and 40

Scott Davidson, applicant, was present.

Mrs. Glidden reported that the marina, located in the Gateway Zone, is seeking to remove 28,000 cubic yards of material. Mrs. Glidden explained that the regulations deem the removal of 300 cubic yards of material an earth materials operation; that earth materials operations are not allowed in the Gateway Zone (Section 10); and that anything within the zoning code can be varied which the applicant is requesting. Mrs. Glidden stated the variance has been deferred to the Gateway Commission who addressed this matter at their April meeting and have submitted a letter offering no objection.

Mrs. Glidden reported that the applicants are looking to remove earth material for the purpose of flattening out an area for boat storage and that the Davidsons did this once in 2007 at which time they received a special permit from P&Z. Mrs. Glidden also reported that if the requested variance is approved, the Davidsons will need to go before P&Z for a special permit.

Mrs. O'Neal asked if in 2007, the applicants needed to go through ZBA prior to going to P&Z. Mrs. Glidden stated that they didn't go through ZBA because the Gateway District hadn't been formed yet.

Mrs. Chase-Wells asked why Gateway approved the request if an earth material operation is not allowed in the Gateway Zone. Mrs. Glidden stated that the Gateway Commission offered no objection probably due to a marina being a unique business that has to be in the Gateway District and Gateway has a history of approving this type of activity for marinas because they are a business that relies on water.

Mrs. Reeve asked how many additional boats the applicants will be able to accommodate in the new area if approved. Mrs. Glidden responded that it would be a question for the applicant. Mrs. Reeve revised her question by asking if the proposed area would be the same size as currently exists or smaller or larger. Mrs. Glidden stated it would be a small portion of the existing marina.

Mr. Davidson submitted into the record the Certificates of Mailing, a mailing list, and copies of the letter sent to seven (7) neighbors (Exhibit A).

Mr. Davidson answered Mrs. Reeve's question by stating that the proposal will add 15 to 20 percent flat space and the area will hold approximately 20 additional boats. Mr. Davidson stated that the marina is currently crowded and moving the boats around with the equipment can be challenging.

Using an aerial map, Mrs. O'Neal pointed to a red outlined semi-circle area and asked if the shaded area is the only green area. Mr. Davidson stated yes. Mrs. Glidden clarified by stating that part of the green area will be removed. Mrs. Glidden stated that the removal of material is proposed from Lot 40 and grading to prevent steep slopes will occur on Lot 38. Mrs. O'Neal asked if the intention is to remove all the area that is non-treed and sloping from the red markings within the treed area. Mr. Davidson pointed out the new and old slope areas. Mrs. Chase-Wells asked what type of material will be removed. Mr. Davidson stated mostly sand, gravel, and fill. Using two (2) photos (on file in the Land Use Office), Mr. Davidson pointed out the area in question noting that a large portion of the hill will be removed.

Mr. Wendt asked how many trucks loads will be required to remove the material. Mr. Davidson stated that each truck will hold 18 cubic yards. Mrs. O'Neal asked how long the process will take to remove material from beginning to end of project. Mr. Davidson stated approximately two (2) months and they would like to do it during the off season (summer) either this year or 2016. Mrs. Reeve asked if they would like to have it done by the end of the season. Mr. Davidson stated yes.

Mrs. O'Neal noted that the Gateway Commission stipulated in their letter that they would like two conditions – 1) material be removed from site and 2) stabilize the slope with vegetation as soon as possible. Mrs. O'Neal asked Mr. Davidson if that was his intention in the two (2) month span. Mr. Davidson stated yes, and that by the end of September the area would need to be graded and hydro-seeded. Mr. Davidson also stated that crushed stone will be applied to the level area. Mrs. Glidden stated those conditions can be added to the motion with it going one step further that the area be hydro-seeded prior to the parking of boats. Mr. Davidson stated that he didn't have a problem with that.

Mrs. O'Neal asked if the proposed tree line is the use of existing trees and not the planting of new trees. Mr. Davidson stated that they do not plan on planting new trees and noted that the tree line will be a good 60 feet off the road from the top of the slope. Mrs. O'Neal asked if the 60 feet was from the closest part of the proposed tree line. Mr. Davidson stated that it's from the edge of the pavement. Using a larger map, Mr. Davidson pointed the area out noting that the map appears to show 40 feet, but believes it to be 60 feet.

Mrs. O'Neal asked if the Board needed to address hours of operation. Mrs. Glidden stated the Board needs to make a determination based on hardship and compliance with the Plan of Conservation and Development (POCD). Mrs. Glidden also stated the hours of operation, trips per day, etc., will be addressed by P&Z; however, if this was something the Board wanted to address, they could include conditions.

Mr. Wendt stated that a rough calculation of trips would be over 1500 and within a two (2) month period approximately 25 trips per day.

Paul Doolan, who was with the Holts, stated that the area around the proposed project is residential and that any other project that may have been before or existing in another location has no bearing on this matter. Mrs. Munster agreed.

Mr. Davidson stated that in regards to the truck count, during their operation in 2007 they had 50 trucks per day.

Mrs. Munster asked Mr. Davidson if he plans to have the work completed this season. Mr. Davidson stated yes. Mr. Davidson requested they be given a year and one-half to complete the project if they are unable to do so this summer. Mrs. O'Neal asked if a variance expires. Mrs. Glidden stated that the variance would be good for five (5) years.

Mr. Berchulski asked how this project compares in scope to the 2007 project. Mr. Davidson stated that the 2007 project was 40,000 cubic yards and this one is 30,000 cubic yards. Mrs. Munster asked Mr. Davidson to point out the 2007 project area. Using the map, Mr. Davidson pointed the area out.

Mrs. Reeve asked if the 2007 ruling was made before the marina existed as this may be relevant as to understanding why the ruling was made. Mrs. Reeve asked if the regulation was against excavating in general or was it to stop any kind of construction. Mrs. Glidden stated the purpose of the regulation was to discourage individuals along the shoreline from having lavished terraced lawns and removing all the trees and vegetation as the mission of the Gateway Commission is to protect the view from the river. Mrs. Glidden also stated that she did not believe this would be visible from the river. Mr. Davidson agreed and using the map pointed out the river and hills on both sides of the tracks.

Mr. Berchulski asked the duration of the 2007 project. Mr. Davidson stated approximately three (3) months and was done over the course of the summer.

Mr. Wendt stated that it would be worth viewing the site as it's difficult to look at the pictures and visualize a three (3) dimensional situation.

Mrs. O'Neal asked if elevated storage has been considered. Mr. Davidson stated that it's good for smaller boats; however, they plan to store 40 foot boats and they don't go into rack storage. Mr. Berchulski stated he felt the Gateway Commission would have a problem with elevated storage. Mr. Wendt stated that there aren't many small boats on site. Mr. Davidson stated that they cater mainly to 20-40 foot boats and winter storage is more an average of 30 plus feet. Mrs. Reeve asked if larger boats come to the marina. Mr. Davidson stated that they are limited in the size by their travel lift in what they can pick up (40 foot max.)

Rowan Monnington, 47 River Road, stated that he lives directly across from the proposed excavation site. Mrs. O'Neal asked Mr. Monnington to point out his property (Lot 37-1-8) on the aerial map. Mr. Monnington stated that he's not opposed, in general, to most businesses expanding; however, what is being proposed is what was previously excavated in 2007 and the area is all woods. Mr. Monnington explained that in 2007, no one in the neighborhood was notified of the project and that in the time he left for and came home from work, the woods were gone and also noted the extent of the dust and truck traffic at the time. Mr. Monnington stated that from his house to the flat ground on Mr. Davidson's property is approximately 100 feet or more. Mr. Monnington further explained that the buffer zone from the 2007 project was not planted until just recently (Saturday, 23 May 2015) and only a portion of it was planted with approxi-

mately 20 – one (1) foot arborvitaes. Mr. Monnington noted that if these had been planted in 2007, they would be 10-20 feet tall. Mr. Monnington stated that there is no tree line on the 2007 project area and that the wind that comes up from the river into the neighborhood. Mr. Monnington also stated that the 2007 project area was residential properties that Mr. Davidson managed to get converted without notifying the neighbors; and now he's proposing to change a recently acquired residential property into commercial. Mr. Monnington believes this will devalue his property as well as that of his adjoining neighbors and that neighbors up the street have no border across the street.

Using the aerial map, Mr. Monnington pointed out the commercial property proposed to be excavated and the treed residential property proposed to be graded. Mr. Monnington stated that once this work is completed, he may be able to see the river which could mean additional taxes charged to his property. Mrs. Glidden stated that Lot 40 is commercial and Lot 38 is residential.

Mr. Doolan stated that according to the 2007 minutes Lots 40 and 39 were granted commercial status; and as Mr. Monnington has indicated, and Mr. Holt has communicated to him, without any notification and not allowing for the parties to contest the actions in 2007. Mr. Dolan reviewed conditions of the 2007 approval noting that an abatement was to be done, the Heise property was not to be touched or trees removed, and the restoration of trees was supposed to be completed at the time as well as a bond provided if not in compliance. Mr. Doolan stated that the Board has received testimony that compliance was not completed or at least the attempt until last week and the applicant is requesting more. Mr. Doolan stated that when the Board views the site, they will see that the vegetation on site is naturally growing. John Paul Bongiovanni, a neighbor, provided photos showing the area of the recently planted buffer zone. Mrs. O'Neal asked when the photos were taken. Mr. Bongiovanni stated that the photos were taken in April just prior to the April meeting which was canceled. Mr. Monnington stated that the photos show no buffer and that if the Board were to look over the edge they would look into a 100 foot hole which is where the boats are stored.

Mr. Monnington voiced concern over the potential for commercial property being across the street from him as well as the potential for additional lots to be zoned commercial, the docks to expand further down the river, a new driveway to the marine, etc. Mr. Monnington also stated that his issue is the initial excavation project as the project went beyond what was proposed and is surprised that the Gateway Commission approved this matter.

Mrs. Reeve asked Mr. Monnington if this proposal will change the value of his property. Mr. Monnington stated yes, it will lessen his property. Mr. Monnington also stated that the entire area was all residential at one time and is now being turned into commercial. Mr. Doolan stated that the only commercial zone had been the original (Lot) 41 property and now there are four other properties being wrapped into that commercial zone. Mrs. O'Neal asked Mrs. Glidden if Lot 38 was residential. Mrs. Glidden responded yes. Mr. Doolan stated that 16 Snyder was the only portion that was originally commercial. Mrs. O'Neal asked if the owner of that property was present. Mr. Monnington and Mr. Doolan responded that Mr. Davidson owns the property.

Mr. Monnington stated that Mr. Davidson has acquired the property from the initial owner (now deceased) who had a problem with the Davidsons 2007 project and had requested a buffer be installed on his border which was planted. Mr. Doolan stated that the Davidsons are asking to go another 150 yards to the right which will require the removal of existing trees.

Mrs. Reeve asked if the Davidsons owned the Blue Oar and the land beyond it. Mr. Doolan and Mr. Monnington stated they didn't know if they owned it. Mrs. Reeves stated their proposal may be the only way for them to enlarge their boat yard. Mr. Doolan stated that he doesn't know the purpose of the application. Mr. Monnington stated that this would be the direction to expand his existing yard. Mr. Monnington also stated that the Essex Stream Train has been working on the tracks that run along the area which Mr. Davidson has to keep clear and that he also has rental properties. Mr. Doolan stated that he doesn't know if the Davidsons have to keep the tracks clear as the only one who has the ability to cross the tracks, install fences, and to block access is the owner at 16 Snyder (authorized in their 1981 deed).

Mr. Doolan stated that his argument for Mack Holt and his wife is that the residential property cannot be relocated. Mr. Doolan also stated that the issue that the Holts may be able to see the water is inaccurate because in the spring/summer there's a tree buffer and in the winter there are stored boats. Mr. Doolan asked the reason for the application – 1) to remove dirt or 2) to have a place to store more boats. Mr. Doolan proposed that instead of purchasing the Heise property they should have purchased the old sand pit without interfering with anyone's property.

Mr. Monnington stated that his concerns are that the property will be deemed commercial which is directly across from a whole neighborhood which is now becoming a large boat storage area. Mr. Monnington stated that if the area is going to be excavated he wants a serious buffer installed. Mr. Monnington stated that he's surprised that Gateway approved the proposal and suggested the Board view the site.

Mr. Doolan stated the applicant doesn't have access to the town's common right-of-way; and that the one person being harmed by this proposal will be Mr. Holt.

Mrs. O'Neal asked Mr. Davidson if a retaining wall right at the property line before Lot 38 was an option so as not to grade into the residential property. Using the map, Mrs. O'Neal showed Mr. Davidson the area she was asking about. Mr. Wendt stated that the elevation changes promptly. Mr. Davidson stated that the boat yard is 40 feet from the top of the hill and that a retaining wall would be impossible.

Mr. Doolan stated that he believes a survey needs to be seen in regard to the area not being seen from the water way. Mr. Doolan discussed the difficulties with the deeds and requested that a decision not be made tonight to allow for further due diligence. Mrs. Glidden stated that when the Davidsons made their application there was some confusion in regard to the Gateway and ZBA hearings and that the Davidsons posted and did a mailing for the Gateway hearing rather than ZBA.

Mrs. Chase-Wells asked if the Board needs to address the issues (lack of notification and delay in planting buffer) from the 2007 project. Mrs. Glidden stated that was a P&Z matter; however, the Board can create their own conditions. Mrs. Chase-Wells asked if anything from 2007 has any bearing on the present application and the Board's decision. Mrs. Glidden stated that the 2007 P&Z decision and the items not completed in a timely manner have no bearing on the Board's decision. Mrs. Glidden stated that the Board's decision is based on compliance with the POCD and a hardship. Mrs. Chase-Wells stated that she's wondering why nothing was done in eight (8) years.

Mr. Doolan stated that he's wondering if the P&Z's decision may not have any bearing on ZBA's decision; however, the approval is issued by the Town of Haddam indicating that the applicant needs to comply or cease and desist. Mr. Doolan also stated that the applicant didn't comply and finds it ridiculous to grant approval on another similar matter. Discussion returned to there being no notification given to the public and the lack of compliance pertaining to the 2007 project and decision.

Mr. Doolan questioned the addresses being used on the application - mailing address 16 Snyder and operation address 56 River Road – as well as the zoning – indicated as commercial when it's residential (56 River Road). Mr. Doolan stated that the operation is intended on Lot 40 and not for 56 River Road. Mr. Monnington stated that the grading will need to be done on 56 River Road. Mr. Doolan also stated that after the gravel is removed from Lot 40 he'll have to strip off what's in the residential area to slope it onto Lot 40.

Mrs. Munster stated that a site walk needs to be scheduled. A brief discussion followed in regard to the time frame to notice a site walk.

SITE WALK – Monday, 1 June 2015, 6:00 p.m.

Mr. Bongiovanni asked if the hearing will be extended to allow the public to speak. Mrs. Munster stated yes. Mr. Bongiovanni, 37 River Road, stated that he understands business; however, he's concerned about sand blowing through the area, the removal of trees, and the relocation of wildlife into the residential areas due to the removal of trees. Using additional photos, Mr. Bongiovanni showed the Board what

he can see from his property. Mr. Bongiovanni stated that he would like to see preventive measures installed to protect the neighborhood from the dust and wind.

MOTION: Margo Chase-Wells made a motion to continue the public hearing to 25 June 2015. Jen O'Neal second. Motion carried unanimously.

Discussion followed in regard to rescheduling the hearing/meeting sooner due to a couple of Board members being unavailable for the regularly scheduled 25 June 2015 hearing/meeting. The Board decided to continue the public hearing/meeting to Monday, 15 June 2015, 7:30 p.m. As this will be a special meeting only the Davidson application will be scheduled. Mrs. Glidden explained the site walk process/protocol.

Mrs. O'Neal asked if she could ask questions. Mrs. Glidden stated questions may be asked at the site walk and hearing. Mrs. Batzner stated that a motion had been made/approved to continue the hearing, therefore, no further discussion could be held at this time.

Public hearing continued to Monday, 15 June 2015.

A Variance to Section 6.3 B of the Haddam Zoning Regulations to Allow a Detached Accessory Apartment on a Lot with Less than two (2) Acres for Property Located at 154 Burr Road and Shown on Assessor's Map 60 Lot 12.

Mrs. Glidden reported that she had received an email from Jon Todzia, applicant, requesting that the public hearing be postponed until Thursday, 25 June 2015.

Mrs. Munster and Mrs. O'Neal reported that they will not be in attendance at the 25 June 2015 hearing/meeting. A brief discussion followed in regard to seeing who else may not be able to attend.

4. PUBLIC MEETING

A Variance to Section 10 of the Haddam Zoning Regulations, to Allow an Earth Materials Operation in the Gateway Conservation Zone at the Midway Marina located on River Road and Shown on Assessor's Map 48, Lots 38 and 40

Scott Davidson, applicant, was present.

Item continued until Monday, 15 June 2015.

A Variance to Section 6.3 B of the Haddam Zoning Regulations to Allow a Detached Accessory Apartment on a Lot with Less than two (2) Acres for Property Located at 154 Burr Road and Shown on Assessor's Map 60 Lot 12.

At the applicant's request this item postponed until Thursday, 25 June 2015.

5. Approval/Correction of the Minutes

MOTION: Ken Wendt made a motion to approve the 26 March 2015 minutes as submitted. Margo Chase-Wells second. Motion carried unanimously.

6. Open Discussion

None.

7. Adjournment

MOTION: Margo Chase-Wells made a motion to adjourn. Jen O'Neal second. Motion carried unanimously.

The meeting was adjourned at 8:50 p.m.

Respectfully Submitted,

Bunny Hall Batzner

Bunny Hall Batzner
Recording Clerk

A special meeting has been schedule for Monday, 15 June 2015 to hear the Midway Marina application.

The next regular meeting is scheduled for Thursday, 25 June 2015.