

Memorandum

To: Members, Zoning Board of Appeals

From: Amanda Trianovich, Deputy Director

Date: October 28, 2024, revised November 5, 2024

Re: Variance & Coastal Site Plan Appl. #ZBA-24-00579, 238 Hillspoint Road

Address: 238 Hillspoint Road

ZBA #: ZBA-24-00579

Zone: Residence B district

PID #: E04023000

Owner: 238 HILLSPPOINT LLC

Applicant: Tanner White Architects



Source: Google Street View, dated June 2023

Variance Proposal

The applicant has requested relief from:

- §6-2.1.6 Non-conforming new construction
- §14-4 Setbacks for Residence B District
- §14-6 Building and Total Coverage for Residence B District
- §32-8.3.2 Grading within 5 feet of the lot line

The applicant is proposing to construct a new 2-story single-family dwelling with mechanical units in the setbacks and over in Building and Total Coverage and to find consistency with Coastal Area Management Regulations.

Additional proposed improvements include a new driveway, a second-story balcony at the rear, a rear patio with retaining walls, drainage systems, and grading within 5 feet of the property line which exceeds the Town of Westport's Excavation and Fill regulations.

To construct the rear patio the applicant proposes to cut into the existing hillside and stabilize the site with retaining walls. This does not represent excessive cut/fill as illustrated below:

$\text{Lot area (3,712 SF)} \times 50\% \text{ Coverage (0.175)} = 649.6 \times 10 = 6,496 / 27 = 240.6 \text{ cubic yards of cut/fill allowed; a total of 150 cy of cut/fill is proposed.}$

The Site Development Plan prepared by Kousidis Engineering, LLC revised on 10/3/24 depicts an incorrect excavation and fill calculation as it is based on 25% coverage and not 35% coverage. If the Variance and Coastal Site Plan is granted the applicant shall submit a revised Site Plan depicting the correct calculation.



Conceptual Rendering of the proposed single-family dwelling as depicted in the Architectural Plans prepared by Tanner White Architects rev. 10/3/24

Hardship Offered by Applicant

Preexisting non-conforming lot and steep slopes.

Property Description/Background

238 Hillspoint Road is a nonconforming 3,712 SF lot located in the Residence B (6,000 SF) zoning district. The current house was constructed sometime in the 1920, predating the Westport Zoning Regulations which were adopted on 9/8/1930.

The property is located to the west of Hillspoint Road adjacent to Old Mill Beach. The section of beach across from the property is owned by the Town of Westport and any construction activity or parking of vehicles related to this project is strictly prohibited in this area.

The property lies within the Coastal Area Management (CAM) boundary and 33% of the lot lies within the 100-year flood zone, designation AE 13' on Panel #09001C0551G. There are 343 SF of steep slopes and no wetlands on site.

The property is outside of the Waterway Protection Line Ordinance (WPLO) boundary and is serviced by public water and sanitary sewer. There appears to be no record of 238 Hillspoint Road having sought a Variance or Special Permit/Site Plan approval in the past.

DATA TABLE (Requested Variance marked in **Red**)

A Grading Variance is required as the applicant proposes grade changes within 5' of the property lines to the south and the northwest of the proposed dwelling.

Revisions to the application were completed by P&Z Staff and approved by the applicant.

	Existing	Proposed	Required/Allowed
Gross Lot Area:	3,712 SF Non-conforming Lot	Same	6,000 SF
Net Lot Area:	3,438 SF	3,592 SF (Reduction of 193 SF steep slopes)	N/A
Building Coverage:	796 SF (23.2%)	1,230 SF (34.2%) Increase of 434 SF	538.8 SF (15%) Based on the proposed Net Lot area.
Total Coverage:	1,626 SF (47.3%)	1,690 SF (47%) Increase of 64 SF	1,257.2 SF (35%) Based on the proposed Net Lot area.
Setbacks:			
Front:	27.2'	20'	20'
Sides:	0' & 6'	7.6' & 7.7'	7.5'
Rear:	4'	17' (Mechanical Units)	25'
Height and Stories:	1-Story Height unknown	2-Stories 26'-11 7/8" Height	2-Stories 27.2' Height*
Flood Zone Standards: AE 13	Not FEMA Compliant.	Finished First Floor: 18.41' with proper flood venting.	First floor is located at EL 14' (BFE +1) with proper flood venting**

*§6-3.3 permits building height for principal buildings may be increased by up to an additional five feet; (Maximum of 31') for an existing or new structure located within the Special Flood Hazard Area specifically, when such structure is proposed have its first finished floor elevated to at least the Base Flood Elevation has no basement or cellar below the BFE and in the AE Zone is designed to be fully compliant with §31-11.5.2 (Elevated Buildings).

**Enclosed area measured from exterior face in accordance with FEMA Technical Bulletin 01, Requirements for Flood Openings in Foundation Walls and Walls of Enclosures, March 2020.

Excavation & Fill Application Required?	No.
P&Z Site Plan/Special Permit Required?	No.
Is this Application eligible for a Site Plan Waiver per §43-5.2?	N/A
Is Architectural Review Board Required?	No.
Is Coastal Area Management Site Plan Required?	Yes, per §31-10.6.3

Summary of Variance Review

§46-3.2 states, *“The Zoning Board of Appeals shall determine and may vary the application of the zoning regulations in harmony with their general purpose and intent and with due consideration for conserving the public health, safety, convenience, welfare and property values solely with respect to a parcel of land where owing to conditions especially affecting such parcel but not affecting generally the district in which it is situated, a literal enforcement of such zoning regulations would result in exceptional difficulty or unusual hardship, so that substantial justice will be done and public safety and welfare secured; provided, however, that in no case may a variance be granted which permits a commercial use in a district in which such use is not otherwise allowed by these regulations, including the extension of a non-conforming commercial use.”*

Coastal Site Plan Analysis

This property lies within the Coastal Area Management Boundary, as defined by C.G.S. §22a-94, and therefore, a CAM review is required in accordance with C.G.S. §22a-109 and the Town of Westport Zoning Regulations §31-10.2 (Location) and §31-10.5 (Coastal Site Plan Requirements).

§31-10.6.3 of the zoning regulations requires CAM Site Plan review as the proposed new single-family house is within two hundred (200) feet of the Mean High-Water Line (MHWL) and one hundred (100) feet of tidal wetlands and beaches.

Brian Steinhauer from Coastal-Lux has noted that the following coastal resources are present on site or within the influence of the project: Coastal Hazard Area, Beaches & Dunes, Coastal Waters, Estuarine Embayments, Nearshore Waters, Offshore Waters, and Tidal Wetlands.

According to the [Cahn, Inc. Map](#), the following coastal resources has been identified as either on and/or adjacent to the site: Beaches & Dunes, Coastal Flood Hazard Area, Intertidal Flats, Modified Bluffs & Escarpments, Shellfish Area, and Shorelands. While the Cahn, Inc. Map does not depict Tidal Wetlands within the influence of the project, Westport’s Town GIS located the coastal resource 80’ from the lot. The coastal resources are defined in the Connecticut Coastal Management Manual and are defined as follows:

General Coastal Resources: *“Coastal Resources” means that 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.*

Beaches and Dunes: *“Beaches and Dunes” are beach systems including barrier beach spits and tombolos, barrier beaches, pocket beaches, land contact beaches and related dunes and sandflats. In general, beaches are dynamic areas abutting coastal waters that are characterized by sand, gravel or cobbles. Often, in the winter the beach profile is steeper and more narrow than in the summer.*

Beaches and dunes provide critical nesting habitat for some shore birds and unique habitats for plant species and communities. They act as a buffer to coastal flooding and erosion and dissipate wave energy. Beaches and dunes provide recreational opportunities, including fishing, swimming, sunning, hiking and sight-seeing. They are areas of scientific and educational value. Dunes and dune ridges act as reservoirs for sand supply to beaches.

Coastal Flood Hazard Areas: *“Coastal Hazard Areas” are statutorily defined as those land areas inundated during coastal storm events or subject to erosion induced by such events, including flood hazard areas as defined and determined by the National Flood Insurance Act, as amended (U.S.C. 42 Section, 4101, P.L. 93-234) and all erosion hazard areas as determined by the Commissioner.*

Coastal hazard areas encompass most other important coastal resources, can serve as flood storage areas, and provide numerous open spaces and recreational opportunities. They are, by their nature, hazardous areas for structural development, especially residential type uses. This resource is located on and adjacent to the site.

Intertidal Flats: *“Intertidal Flats” are very gently sloping or flat areas located between high and low tides composed of muddy, silty and fine sandy sediments and generally devoid of vegetation.*

Intertidal flats serve as rich sources of and reservoirs for nutrients. Intertidal flats provide valuable feeding areas for invertebrates, fish, and shorebirds and significant shellfish habitat. Intertidal flats are sinks for toxic materials where they are generally sequestered in the finer sediments, thereby contributing to improved water quality. Intertidal flats also provide: recreational opportunities including shellfishing, fishing and wildlife observation; buffers for storm energy’ and are areas of scientific and educational value.

Modified Bluffs & Escarpments: *“Bluffs and Escarpments” are naturally eroding shorelands marked by dynamic escarpments or sea cliffs which have slope angles that constitute an intricate and dynamic balance between erosion, substrate, drainage, and degree of plant cover.*

Bluffs and escarpments are a significant sediment source for other features such as beaches and dunes. They provide valuable wildlife habitat and support unique plant communities and species. They reduce the impact of coastal flooding by dissipating wave energy. In some instances they can provide recreational opportunities and scenic vistas if such uses can be designed to protect the resource from disturbance.

Shellfish Area: *“Shellfish Concentration Areas” are actual, potential or historic areas in coastal waters, in which one or more species of shellfish aggregate. Many shellfish concentration areas provide harvest opportunities for personal consumption or by Connecticut’s aquaculture industry.*

Shellfish concentration areas provide habitat for several species of shellfish, contribute to the diversity of benthic life, and provide sources of food for shorebirds, lobsters and other marine life. Shellfish concentration areas support an important source of food, provide recreational shellfishing opportunities, provide economic opportunities for the shellfish industry, and provide employment through the shellfish industry.

Shorelands: *“Shorelands” are those land areas within the coastal boundary exclusive of coastal hazard areas, which are not subject to dynamic coastal processes and which are comprised of typical upland features such as bedrock hills, till hills, and drumlins. In general, shorelands are not located with coastal flood or erosion hazard areas and contain no tidal wetlands, beaches and dunes or other sensitive resources.*

Shorelands function as immediate sources of upland runoff contributing to coastal drainage, serve as immediate sources of upland sediments, provide scenic vistas, and have high development and redevelopment potential.

Tidal Wetlands: “Tidal Wetlands” are “those areas which border on or lie beneath tidal waters, such as, but not limited to banks, bogs, salt marshes, swamps, meadows, flats, or other lowlands subject to tidal action, including those areas now or formerly connected to tidal waters, and whose surface is at or below an elevation of one foot above local extreme high water; and upon which may grow or be capable of growing some plant species.

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.

Flood Zone: Located in the front of the lot, the site is partially within the bounding limits of the 100-year Flood Line, designation AE 13' as shown on Panel #09001C0551G (effective 7/8/13) of the FIRM maps. The first floor of the proposed house will have a finished floor elevation of 18.41', which is 5.41' higher than the adjacent flood zone (AE 13). All mechanical equipment is to be elevated at least 1 foot above the base flood elevation.

Sediment and Erosion Controls: The proposed anti-tracking construction entrance and silt fencing should be installed prior to the commencement of construction and remain in place until the lot is stabilized which will help to limit possible sediment movement into the coastal resources. The stockpile area should also be surrounded by silt fencing in order to be consistent with CAM policies.

Stormwater Management: The Connecticut Coastal Management Manual encourages storm water management systems which provide that the volume of runoff generated by the first one inch of rainfall is retained on-site and that the post-development runoff rates and volumes do not exceed pre-development runoff and volumes. CAM policies encourage a reduction in impervious cover adjacent to coastal waters and other sensitive coastal resources.

As described in the Drainage Analysis prepared by Kousidis Engineering, LLC dated 9/18/24:

“The proposed development will increase the amount of impervious area to this site. With the installation of the proposed stormwater retention systems, the original flow patterns will be maintained and the requirement for water quality volume will be met. The proposed design incorporates stormwater treatment to control pollution and provide groundwater recharge capacity. The implementation of these techniques and the overall site design layout will result in a finished project that will minimize sediment and erosion impacts during construction and will have no adverse impacts to adjoining properties upon completion.”

In the Town Engineering comments dated 10/21/24, “The storm water drainage system as depicted on the plans substantially complies with the Town of Westport Engineering Department Drainage Standards.”

This is consistent with CAM policies.

Vegetated Buffer: The Office of Long Island Sound Program Fact Sheet for Vegetated Buffers, by the Connecticut Department of Environmental Protection states the following,

“Buffers protect resources from adjacent development by reducing the adverse effects of human activities on natural resources including wetlands and surface waters. They protect water quality and temperature, control erosion and trap sediment, protect and provide wildlife habitat, reduce the effects of flooding, reduce the potential for direct human disturbance of sensitive resources, and maintain aesthetic diversity and recreational value. A buffer provides a mosaic of interdependent functions. Installation of a buffer area can also lessen lawn maintenance requirements by reducing the area of manicured landscape.”

The Department of Energy and Environmental Protection (CT DEEP) 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.”*

A vegetated buffer is not proposed, and staff determined that a vegetated buffer is not required pursuant to §31-10.7.3 as the property does not directly abut natural or coastal resources.

Summary of Coastal Review

The coastal site plan review concludes the application may be considered consistent with the goals and policies of the CAM act.

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 with the following recommendations:

1. The proposed anti-tracking construction entrance and silt fencing should be installed prior to commencement of construction and remain in place until the lot is stabilized which will help to limit possible sediment movement into the coastal resources.

Process Considerations

The application will be reviewed at a remote public hearing of the Zoning Board of Appeals. The Town of Westport provides access to the public hearing in real-time, by live stream on the Town's [website](#), and by broadcast television on Optimum Government Access Channel 79 and Frontier Channel 6020. Additionally, anyone can join the remote meeting by accessing the meeting link published on the agenda one week prior to the meeting. Meeting agendas are available at www.westportct.gov on the [“Meeting List and Calendar”](#) web page.

This is a two (2) part approval process therefore two (2) separate votes are required:

1. **Variance:** The Board shall grant or grant with modifications if the Variance application is in harmony with the Zoning Regulations and due consideration was taken for conserving the public health, safety, convenience, welfare, and property values. If exceptional difficulty or unusual hardship(s) were not proven, the Board shall deny the Variance as submitted.
2. **Coastal Site Plan:** The Board shall approve, approve with modifications, or deny the Coastal Site Plan when determining if the application is consistent with the goals and policies of the CAM act.

Prior to issuance of a Zoning Permit, if the Variance is granted and the Coastal Site Plan approved, the applicant shall:

- File the resolution on the Land Records; and
- Submit a revised Site Development Plan depicting correct Excavation & Fill Calculations and additional silt fencing shown around the stockpile area; and
- Obtain Engineering Department approval.

Department Comments:

Engineering Department:	<p>Comments submitted by E. Gill dated 10/21/24, state the drainage, floodplain, and S&E controls, all substantially comply with the Town of Westport Standards. A grading Variance is required due to the grading 5' from the property line.</p> <p>Mr. Gill states, <i>"While the granting of these variances is at the discretion of the Board, we find no issues in our review that would preclude such action."</i></p> <p>In Mr. Gills comments, he states Flood & Erosion Control Board (F&ECB) approval is required. P&Z Staff reached out to the Town Engineer and the Conservation Department to seek clarity, and it was determined that F&ECB approval is NOT required for the development of this lot.</p> <p>The full set of comments can be seen here.</p>
Conservation Department:	<p>There are no inland wetlands or watercourses on site, and the property is outside the WPLO jurisdictional boundary.</p> <p>Colin Kelly, Conservation Director submitted comments dated 10/17/24 stating, <i>"...IWW regulations and the WPL Ordinance hold NO jurisdiction on the above-reference property."</i></p> <p>The full set of comments can be seen here.</p>

Available in the File and on the Website [here](#):

- Variance Application, revised 10/18/24
- Coastal Site Plan Application prepared by Brian Steinhauer, Coastal-Lux, dated 9/18/24
- Improvement Location Survey prepared by Land Surveying Services, LLC dated 7/31/24
- Zoning Location Survey prepared by Land Surveying Services, LLC revised 11/5/24
- Site Development Plan prepared by Kousidis Engineering, LLC revised 10/17/24
- Drainage Analysis prepared by Kousidis Engineering, LLC dated 9/18/24
- Architectural Plans prepared by Tanner White Architects dated 9/23/24 revised 10/3/24
- Conservation Department Comments, 10/17/24
- Town Engineering Comments, 10/21/24
- CAHN Inc. Map Depicting Coastal Resources