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Town of East Haven
Zoning Board of Appeals
East Haven Senior Center, 91 Taylor Avenue

Regular Meeting Minutes – March 16, 2023

I. Roll Call and Pledge of Allegiance

In attendance: Judy Mison, chair, John Wobensmith, vice-chair, David Gersz, Cindy Sparago, Chuck Page, Bridgett McCann (alternate) and Bill Carbone (alternate).

Also in attendance: Joseph Budrow, Planning and Zoning Administrator/ZEO.

Meeting began at 7:00pm. Ms. Mison introduced the Board members present. The Pledge of Allegiance was recited. Ms. Mison described the process of the meeting.

Ms. Mison asked Mr. Budrow if there were changes to the agenda. Mr. Budrow stated there were no changes and that the agenda showed that two applications were withdrawn.

II. Review and Action on Prior Meeting Minutes

Looking at the December 15, 2022 meeting minutes, Ms. Sparago noted a needed correction where it was stated that for Application 21-24, a condition was recommended by Mr. Budrow. Mr. Budrow admitted that he could not recall making any recommendation.

MOTION: Ms. Sparago made a motion to approve the meeting minutes of the December 15, 2023 meeting with the correction. Mr. Wobensmith seconded the motion. All were in favor. **Motion carried, 5-0.**

Looking at the January 19, 2023 meeting minutes, Mr. Wobensmith referred to page 6, last paragraph, saying that the word “approved” should be changed to “improved.”

MOTION: Ms. Wobensmith made a motion to approve the meeting minutes of the January 19, 2023 meeting with the correction. Mr. Page seconded the motion. All were in favor. **Motion carried, 5-0.**

MOTION: Ms. Wobensmith made a motion to approve the meeting minutes of the February 16, 2023 meeting. Mr. Page seconded the motion. All were in favor. **Motion carried, 5-0.**

III. Public Hearings and Deliberation

Application No. 22-27 was withdrawn.

Application No. 23-01 - on behalf of Ralph Mauriello, 60 First Avenue.

Ralph Mauriello presented.

He said he purchased the property one year ago. There are two dwellings on it. One is for his parents. Originally, he wanted to make the front porch bigger on their dwelling.

Ms. Mison asked if he'll live at the property. He said he'll live there. Mr. Budrow said the rear house was first granted a building permit. He asked Mr. Mauriello to share that process and why work was stopped. Mr. Mauriello said they were first improving a doorway. He said they were in the existing footprint.

Mr. Budrow said the cottage was a valid nonconforming use as a second dwelling. He explained what was being expanded. He said that when Mr. Mauriello was told that zoning approval was required, he was quick to respond.

There was discussion on the actual size of the expansion.

Ms. Mison asked if there were any other questions.

Ms. Sparago asked if the house was for sale. Mr. Mauriello answered that he will be living there. The For Sale sign will be removed upon contacting the realtor.

Ms. Mison asked if the cottage was for the parents when visiting. He answered 'yes.'

No one in the public spoke in favor or against the application.

MOTION: Ms. Sparago made a motion to close the public hearing. Mr. Wobensmith seconded the motion. All were in favor. **Motion carried, 5-0.**

Deliberation:

Ms. Mison stated that per Section 44.7, expansion of a nonconformity should not happen. Mr. Gersz agreed. Ms. Sparago said if he is living there, and then an ADA accommodation is needed, then he can come back. She agrees an enlargement can't happen.

MOTION: Ms. Sparago made a motion to deny **Application No. 23-01** due to Zoning Regulation Section 44.7 and stating he can come back at a time if and when he is moving in and needs accommodations for his parents. Mr. Wobensmith seconded the motion. All were in favor. **Motion carried, 5-0.**

Application No. 23-02 was withdrawn.

Application No. 23-03 – on behalf of Gloria Rispoli, 12 Smith Street.

Attorney Bernie Pellegrino presented.

He described the property at 12 Smith Street. The main house was built in 1986 and the cottage has been there since 1920.

Ms. Rispoli is looking to ask for permission to amend an unwritten condition on a 1986 Variance. The Variance is Exhibit B.

He described the history. In 1986, a Variance was granted to reconfigure the lot lines so as to build the main house. He referred to map the Board has in their file but they said they didn't have it. He handed it out. He said the map was part of that Variance application. It showed a cottage and two barns to be removed.

He referred to notes written by the Board chairman as Exhibit E. Since then, one barn has been removed but the cottage and the other barn were not removed. A zoning permit was approved for the main house. A C.O. was granted with the cottage still there. The ZEO issued a Cease and Desist after visiting the property due to a complaint that there being a use as a boarding house on site. He noticed the cottage had to be removed and a third issue, that a deck was being built.

An appeal went to the Superior Court and the Appellate Court.

He said research was done and perhaps the buildings could be joined by a hallway. It would satisfy the court and it would meet the Zoning Regulations. He sees it as an acceptable solution. He said that Mr. Budrow and Attorney Coppola thought this should come back to the Board.

Ms. Mison asked Mr. Budrow if he had the map that was handed out. Mr. Budrow said it will be Exhibit H. Mr. Budrow said the 1986 survey is a legitimate survey, as the map handed out was only a portion of it.

Ms. McCann said there already was an Exhibit H. He responded that the map will be Exhibit I.

Mr. Gersz asked if both barns were removed. Attorney Pellegrino answered that a map said they would be. Exhibit E shows that the chair wrote one barn to be removed. Mr. Gersz did not want to make a decision without Attorney Coppola present.

Ms. Sparago said that the application stated that no previous Variances were granted for the property but that his write-up said there was. He acknowledged the application should have stated such. Ms. Sparago said one thing she wants Attorney Coppola's opinion on is, with the cottage being very close to the street and side line she needs to understand how that applies to a structure is to be removed.

Ms. Sparago told Attorney Pellegrino that a lack of knowledge is not a hardship by the courts. His response was that the condition was not written on the Variance. It's a justifiable lack of knowledge. He said a C.O. was given even with the cottage in place.

Ms. Mison said a map shows the property in a flood zone. She asked if he knew what part. He did not.

Ms. Sparago said she didn't know there was an appeal. She asked if he had any documentation. He said he will get it. She said Attorney Coppola sent them the original case.

Mr. Page asked what his client has done for 4 ½ years. Attorney Pellegrino said the issue went to the Appellate Court and there were ongoing discussions. Then, COVID happened. He said there were no efforts to remove the cottage. He said there was a transition from Attorney Zullo to Attorney Coppola, and there was the transition from Chris Soto to Mr. Budrow.

Ms. Sparago asked if his client was still renting the house. He answered, on and off.

Mr. Gersz asked if the court made the decision for us? Attorney Pellegrino said the Court made a decision. He is hoping this proposal, based on facts, the record not being clear, it can be permitted to exist. Mr. Gersz asked would the Court have decided differently if they knew all that. Attorney Pellegrino said the Court did not see a map with a solution. He said the Court did not agree with his argument. Mr. Gersz asked why should the Board? Attorney Pellegrino answered by stating they are proposing connecting two buildings and making one dwelling.

Mr. Budrow explained that there is a line of thought that "commonality" is a line of thought that where zoning and building codes have different meanings. He would require an enclosed breezeway.

Ms. Mison said at one point there was a Cease and Desist to demolish the cottage and it has been rented since.

Mr. Budrow said the location of the cottage is valid nonconforming and protected by State Statute. The use of the cottage is the issue. A breezeway must be conforming to the Regulations. The cottage location is protected.

Ms. Mison asked if there was anyone in the public in favor.

Ms. Sandra Stratman of 183 Morgan Avenue, said the concept of the breezeway was brought up. Her interpretation is that the breezeway would not conform. It was rejected due to the nature of the lot.

Mr. Budrow asked if the breezeway was discussed with the ZBA. She said it was a concept, not as part of an application.

Ms. Sparago told Mr. Budrow that there was a court case and meetings with staff. Then an appeal to the ZBA. She asked if she can get those records. He answered that he can find some past meeting minutes and look for other items.

Ms. Dana Walker of 177 Morgan Avenue said the reality is that the house will never be a single-family residence. She said it's a low-rent boarding facility and the property is blighted. The house was never completed and she described unfinished conditions. She feels this is a way to keep it a boarding house.

Ms. Michelle Minter of 12 Smith Street said the conditions are not as described by Ms. Walker. She said the cottage is beautiful. She said there is some wrap near a slider. She doesn't park wherever she wants and no one parks on Smith Street. There are no weeds.

Ms. Mison asked how long she has lived there. Ms. Minter answered three months and is month to month. She added that the cottage is from the 1920s and should be saved.

Mr. Budrow said that Smith Street is not a Town Road. Ms. Walker said it was a city street and is an access to her driveway. She said it is a maintained road.

Attorney Pellegrino said he is fine with going to next month. He also said it would be interesting to know if a Cease and Desist was issued for the other barn that's on the plan and not removed. It might be relevant to the interpretation of this plan with the issuance of the Variance from 1986 with no conditions other than written notes by the chairman that mention "a barn" to be removed and barn has been removed with two buildings still existing with no enforcement action to other barn and property owner.

MOTION: Ms. Sparago made a motion to continue the public hearing to April 20. Mr. Page seconded the motion. All were in favor. **Motion carried, 5-0.**

Mr. Gersz asked Mr. Budrow about building code and if the connection can be done. Mr. Gersz said Attorney Coppola, who he respects, made a statement that it's being thought about by the State but if it not in codes officially, it can't be done. Mr. Budrow said that Attorney Coppola didn't say it was being thought about by the State, she said that in various municipalities around the State it is thought about differently, that commonality is a philosophy of thought. Commonality will be treated on a department by department basis. Ms. Sparago told Mr. Gersz that she asked Attorney Coppola regarding two applications tonight and accessory dwelling units, the Board must rule on how things are today, and not look down the 'pike.

Application No. 23-04 - on behalf of Ralph Mauro, 8 Morgan Terrace.

Ms. Sparago stated she wanted previous records to be incorporated in to this record. Mr. Budrow said he'll have to get the application numbers.

Attorney Fasano said he was handing out Exhibits 1 through 23. He said that have seen them before. He also gave out Exhibit 24. He said the lots were created in a 1924 subdivision. Zoning came in in 1936. One hundred 36 lots at 4,000 square feet. He said the Application in 2019 was denied and is still in Superior Court. A 2020 Application was approved by this Board. The neighbors appealed. Judge Blue reversed the Board. He pointed out that in Exhibit 24, he read from the decision.

Attorney Fasano said that Judge Blue didn't know East Haven and the history. He said Judge Blue was critical in not granting the Variance. That Judge Blue did the ZBA's job

since they didn't state the reasons and there is no record for him to review. Attorney Fasano said that the Judge said 'no' to the Variance because he had nothing to go on.

Attorney Fasano referred to a 1988 case that was #7 in the first packet. The case to the East Haven ZBA and the decision was based on no hardship shown. A Judge Hodgeson overturned the decision stating there was a hardship stating that if a house can't go on a lot, then the lot has no value.

Attorney Fasano referred to the Application they had in front of the ZBA a couple of months back. The argument was that it was too big. He said they heard the response and returned with a smaller house similar to the one approved in 2020 but with two changes. An elevator was added, as well as a staircase. He said the stairs are shown on the site plan, but not on the architectural. He said architectural were not required, only the footprint is. The ZBA is approving "the skin of the zoning."

Attorney Fasano said the use conforms to the Comprehensive Plan. The property is similar to many properties in the area. He talked of hardship. The lot is a pre-existing, nonconforming lot, a legal lot. The question is, what can they build that is a minimum variance? The proposed house is 19' x 40'. He referred to Exhibit 8, showing many Variances granted in the past. He says they are back with a lot smaller house with a staircase and elevator added. He said relieving flooding issues is not his clients problem. A catch basin was installed and is helping.

Mr. Gersz asked how much smaller this house was from the house in the previous application. Mr. Mauro said the last house was 2,000 to 2,200 square feet. Ms. Mison said it was 2,400 square feet. Mr. Mauro said the current house is 1,500 square feet.

Mr. Gersz asked how much square footage the approved house in 2020 had. Mr. Mauro said the same, except for the elevator.

Mr. Gersz asked Mr. Budrow for his thoughts. Mr. Budrow said he strongly disagrees with Attorney Fasano and that he believes the elevator is an expansion of a nonconformity and has to be seen visually because aesthetics relate to protecting property values. Without the elevator and stairs on the elevations, the hearing should be left open so the Board can see how they look.

Attorney Fasano disagreed. He said architectural are not required.

Mr. Gersz said the elevator and the stairs extend into areas not approved in 2020. He asked Mr. Mauro how the elevator will handle storms. Mr. Mauro said it will due to bedrock being 6 feet down.

Mr. Wobensmith asked a number of questions about the existing concrete pad on the property, the freestanding wall and the other improvements. Mr. Mauro said the concrete pad was 5" thick and was temporary. It would be removed when the house was built. Mr. Mauro said the pad did not need a zoning approval. Regarding the walls, Mr. Budrow stated that a zoning approval was not required and he wanted to know if the walls were okay with the Town Engineer. It was determined that the walls were not a flood plain

issue. This just left DEEP to make a decision. Mr. Mauro said he received a street excavation approval, as well as approvals for the sewer connection and the water hookup. Ms. Sparago asked Attorney Fasano, if he thought this Board was charged with the same as the Board in the Verillo case. Attorney Fasano answered, the ZBA has to find that the proposal fits the Comprehensive Plan. He said Mr. Mauro did the application by himself. He said when the Board made their decision, there was no link to that. He said the cases Judge Blue picked out, and things he said, were interesting.

Ms. Sparago referred to a letter and Attorney Fasano said it was from him. It is not in tonight's submission. Ms. Sparago referred to a Harris case not being used in the Judge Blue decision yet Attorney Mingione used the same case to argue for his case. Attorney Fasano said those are just notes and not a part of the second packet.

Mr. Wobensmith referred to Judge Blue finding the three stated hardships as not cognizable. Attorney Fasano said he was curious as to why he uses the Verillo case. He said he referred to the Archibald case, then backs off that case after citing it. He said Judge Blue is looking, then said no one is looking at sand and rock in the application, so he brings up the Bible quote. They didn't use it as a hardship at all. He said it is not in the record.

Attorney Fasano said people have the right to use their property. He said the Judge predetermined what the outcome of the case was. If the Board gave the reasons, he would have reversed the decision.

Mr. Mauro said not one lot down there meets the Zoning Regulations.

Ms. Sparago says she has questions for legal counsel. Regarding 8-26a, she understands the lot has to be approved by a Zoning Board to be afforded protections as a building lot. Attorney Coppola stated in a brief that the Statute does not apply to their lot.

Attorney Fasano said they are not arguing that. He referred to the Pouriet case and described its outcome. He said they're just stating that their lot is legal, nonconforming.

Ms. Sparago referred to Mr. Mauro's current use of the lot. Attorney Fasano said it would be difficult to approve anything on a nonconforming lot unless there is a wetland, an outcrop or a mountainous feature.

Ms. Sparago asked what hardship that is peculiar are they claiming. Attorney Fasano said they can't build a 5-foot wide house. 20 feet wide is reasonable. She said 18 to 20 feet wide could be reasonable but the elevator comes to 25 feet.

Mr. Mauro said what is allowed by right is a farm stand. Is that reasonable? A five-foot wide, 30-foot tall farmstand?

Ms. Sparago said they are asking them to overturn a judgement where a Judge couldn't find a hardship. Attorney Fasano said Judge Blue is not from East Haven and doesn't know the history. The ZBA is made up of local people.

Mr. Page said he keeps going back to Judge Blue's decision. He said there is no hardship. Attorney Fasano said they (the Board) isn't overruling him. He said that Judge Blue didn't have anything to go on.

Ms. McCann said she will treat each application on its own merit. She can't look at each Variance ever given. Just because the guy down the street got a Variance is not the way to make decisions.

Mr. Carbone referred to an interior staircase and asked of the stated staircase tonight is external. Mr. Mauro said it was. Mr. Carbone asked if it goes to a main viewing level. Mr. Mauro said it does. Mr. Carbone said the lot is small and stated the elevator and stairs could be moved.

Mr. Mauro and Attorney Fasano said the elevator and stairs will be removed. They will come out.

Ms. Mison said this hearing will be continued and asked if there was anyone in the public in favor. There were not. She asked if there was anyone in opposition.

Ms. Leslie Jennings-Lax, of 7 Morgan Terrace spoke. She said Judge Blue had to search the entire record and that he heard all that was said tonight. He had a basis to make a decision. Mr. Wobensmith said Exhibit 24 was a consolidated Memorandum of the decision.

Ms. Jennings-Lax said that Judge Blue had all of the prior records. It still came down to seeing no hardships.

Ms. Stephanie Sudikoff of 7 Morgan Terrace spoke. She said she appealed the 2020 decision. After fourteen months, a decision was made in September, 2021. No hardship was found. The ZBA erred. She said she paid a lot of legal fees and that she shouldn't have to spend another similar amount.

Ms. Sparago said she came across a lengthy number of articles that were about the mean high water line. She asked for an explanation.

Ms. Sudikoff said they measured 90 feet from the street. One time, she was under water at 90 feet. Ms. Jennings-Lax referred to NAV-88 and those are to be updated every 20 years. Changes have occurred. A GPS system is now in the works. There was one time his lot was in the water and thus under 4,000 square feet. She said, based on where the debris line is, no way this is a 4,000 square foot lot.

Mr. Budrow added that Mr. Mauro's property line is 6 feet from the street edge. That is where the measuring should start. The site plan shows two lines. Flood waters will bring water past the CJL.

Ms. Jennings-Lax handed Mr. Budrow the letter she read. He said that it will be Exhibit A.

Mr. Matt Leiber of 18 Hampton Road said the applicant relentlessly keeps coming back. What is the ZBA to do and what is the hardship? He didn't hear one. He said Mr. Fasano said the shoreline is a treasure so why build out every square inch? He said the Constitution doesn't give the right to build a house. There are other uses that can go there.

Mr. RJ Connors of 13 Morgan Terrace spoke. He said there is a bathroom on site and asked if it should be permitted. He said this property is not pre-existing as it has been owned many years.

Mr. Budrow reminded Ms. Sparago to make a motion incorporating prior records.

Attorney Fasano said his professionals have measured everything.

MOTION: Ms. Sparago made a motion to incorporate all information, including audio and meeting minutes for Application No. 22-21 from January, 2023. Also, to incorporate the records of Application Nos. 19-25, 19-34, 19-38 and 20-20. Mr. Wobensmith seconded the motion. All were in favor. **Motion carried, 5-0.**

MOTION: Mr. Wobensmith made a motion to continue the public hearing to April 20. Ms. Sparago seconded the motion. All were in favor. **Motion carried, 5-0.**

Application No. 23-05 (CAM) - on behalf of Ralph Mauro, 8 Morgan Terrace.

Mr. Budrow read the response from DEEP into the record. He said John Gaucher, who has been the official reviewing this property from the beginning, stated that the proposal is in conformance with the Coastal Area Management Standards and requests a condition that a chain link fence, as shown on the plan, be installed to catch wind-swept debris.

Attorney Fasano had nothing to add.

MOTION: Mr. Wobensmith made a motion to continue the public hearing to April 20. Ms. Sparago seconded the motion. All were in favor. **Motion carried, 5-0.**

Application No. 23-06 was not being discussed tonight.

Application No. 23-07 – on behalf of Leonard Fasano, Esq. for Lauren and David Biller, 174 Beach Avenue.

Attorney Len Fasano presented. He said the property was previously approved for a Variance. Tonight, he presents a change. The property owner wants a third-floor deck. The deck would be accessed from inside the house. He referred to handouts he distributed that showed different views. He described another change where there would be a covered in-set walkway from the front of the house to the rear. He showed a drawing showing the reduced house profile.

They are here as a matter of respect but he disagrees that he had to come back as the changes are a matter of right.

Attorney Fasano said a neighbor, Mr. Traester is here. He had a list of conditions to be agreed too before he was okay with the changes. Attorney Fasano read the list of conditions.

Ms. Mison asked Mr. Budrow if he had all of the exhibits. He said he had 7 items from Attorney Fasano, the list of conditions submitted earlier from Mr. Traester, and the two items handed to the Board showing the previously-approved house profile and site plan.

Ms. Sparago asked Attorney Fasano if he had anything with measurements. Mr. Gersz said overall, nothing is changing.

Mr. Budrow said a new house was previously approved and had a rectangular shape. He said when Mr. Biller came to his office to ask about a change in the plan, he (Mr. Budrow) felt that the Board should see the change because of a previous issue with a deck and that it was thought decks bring noise. He felt it was something that had to be discussed.

Mr. Wiliam Traester of 176 Beach Avenue spoke. He said he hopes the list of conditions read by Attorney Fasano is on the record on behalf of himself, his wife and the McCoskeys. He referred to Condition 6, where a retaining wall was to be installed by the Billers but it wasn't stated in writing. Attorney Fasano was agreeable to that.

Ms. Mison asked of there was anyone else in the public who wanted to speak. There wasn't anyone.

MOTION: Mr. Wobensmith made a motion to close the public hearing. Ms. Mison seconded the motion. All were in favor. **Motion carried, 5-0.**

Deliberation:

Ms. Mison said she was fine with the change as far as the owners put in the retaining wall. Mr. Wobensmith agreed.

Ms. Sparago had a concern related to Zoning Regulation Section 51.7.4. The deck is on a level with the neighbor's bedrooms. She was told the proposed deck was above the roof line.

Ms. Mison said there is a lessening of the house mass. She didn't see Section 51.7.4 as a problem.

MOTION: Mr. Wobensmith made a motion to approve Application No. 23-07 based on the house was previously-approved, the owners will agree to construct the mentioned retaining wall, as requested, and that all conditions read into the record were part of the decision. Mr. Page seconded the motion. All were in favor. **Motion carried, 5-0.**

Mr. Budrow asked the Board to make a motion regarding Application No. 23-06 to continue the opening of the public hearing.

MOTION: Mr. Wobensmith made a motion to continue the opening of the public hearing for Application No. 23-06. Ms. Mison seconded the motion. **All were in favor. Motion carried, 5-0.**

Application No. 23-08 - on behalf of Leonard A. Fasano, Esq. for 356 Main Street, LLC., 356 Main Street

Attorney Fasano presented. He said his client, Lou Gambardella, was here but had to leave at 9:30 to care for his mom. He has owned Red Jack for over 30 years. He had a partner. Lou was the mechanic and the partner was the business contact person. There was a falling out and Lou was not getting correspondence. The license lapsed.

In 2021, Mr. Gambardella started the process of trying to get the license back. He works six days a week, all day.

There was discussion regarding the conditions at the property. Mr. Gersz asked about the presence of oil tanks on site. Mr. Budrow shared that the site manager at Village Condominiums hopes that the shared property line area will be cleaned up.

Ms. Sparago asked if a timeline for clean-up can be conditioned on the approval. Attorney Fasano said here, they are an arm of the State. They can ask the ZEO to issue an order to clean the place. There was discussion on cleaning up the property.

Ms. Jasmine Reyes spoke. She said Lou loves the place and just needs an inspiration to get the place under control.

MOTION: Ms. Sparago made a motion to close the public hearing. Mr. Wobensmith seconded the motion. **All were in favor. Motion carried, 5-0.**

MOTION: Ms. Sparago made a motion to approve Application No. 23-08. Mr. Page seconded the motion. **All were in favor. Motion carried, 5-0.**

IV. Adjournment

Mr. Page made a motion to adjourn the meeting at 10:08 PM. Ms. McCann seconded the motion. **All were in favor. Motion carried 5-0.**

Joseph Budrow
Planning and Zoning Administrator
Town of East Haven