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

Regular Meeting Minutes – May 15, 2023

I. Roll Call and Pledge of Allegiance

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

Also in attendance: Joseph Budrow, Planning and Zoning Administrator/ZEO, and Jennifer Coppola, Assistant Town Attorney.

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

Ms. Mison asked Mr. Budrow if there were changes to the agenda. Mr. Budrow answered that the Robinson Aviation application was withdrawn. He then asked the Board to move **Application No. 23-12** to Item 2a on the agenda.

MOTION: Ms. Mison made a motion to move **Application No. 23-12** to item 2a on the agenda. Mr. Page seconded the motion. All were in favor. **Motion carried, 5-0.**

II. Review and Action on Prior Meeting Minutes

Ms. Mison said she saw a typo in the March 16 meeting minutes. “Ms.” Wobensmith should be “Mr.” Wobensmith. Ms. Sparago said on page 3, she wants inserted that she asked Attorney Pellegrino about page 3 of his application that if the property was vacant, could the existing structure be built today. She sees setback issues. Next, she said on page 4, when she quoted Attorney Coppola, “not to rule on how things are today, but on what exists in the law today.” Then, on page 5 at the very bottom, she said Attorney Fasano said that Judge Blue should not have used the Harris case.

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

In the April meeting minutes, Ms. Sparago stated that **Application No. 23-09** was not heard that night. Mr. Budrow said it was withdrawn.

MOTION: Mr. Page made a motion to approve the meeting minutes of April 20, 2023. Mr. Gersz seconded the motion. All were in favor. **Motion carried, 5-0.**

Ms. Mison spoke to the audience and described the process of the meeting.

III. Public Hearings and Deliberation

Application No. 23-13 - on behalf of Ed Lopez, 72 Pond Street.

Mr. Perez presented. The lot line revision is to correct an issue that has been there for fifty years. This proposal would result in matching the existing Assessor maps. The properties can't be sold with the current situation. He feels this is a minimum variance request.

Ms. Mison asked some questions related to the lots.

Mr. Budrow described the current property encroachments and that this proposal eliminates them. Nonconformities are reduced.

Ms. Sparago asked if we had anything from the property owner at 48 Pond Street since that property is getting smaller. Mr. Perez said #48 was getting larger. He represents #72 Pond Street. Ms. Sparago expressed concern about not having something from #48. Mr. Perez had a letter from them and read it. He submitted it into the record. Mr. Budrow said it was from the estate of Lucy Pagano.

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 said both sides are in agreement. Mr. Page said things get settled now. Ms. Sparago said it corrects an old issue. Ms. Mison said she's in favor due to Zoning Regulation 51.7.3 and 51.7.4. It brings some harmony and good.

MOTION: Ms. Sparago made a motion to approve Application No. 23-13. She said there is a hardship with the lot line and that the situation is unique. It's a minimum variance request. Mr. Page seconded the motion. All were in favor. **Motion carried, 5-0.**

Application No. 23-12 – on behalf of Joe Di Cicco, 292 Cosey Beach Avenue.

Mr. DeCicco approached the Board.

Ms. Mison asked why he wanted stairs outside. He said the inside stairs are not to code. His feet are too long. She asked if they can be rebuilt to code. He said if they were rebuilt they would end up in the first bedroom.

Mr. Budrow explained the difference between the site plan that was first mailed to the Board, and the new site plan that replaces it. This new site plan is correct. There isn't a rear yard setback issue but a lot coverage issue is now part of the proposal.

Mr. DiCicco described the current access to the house. He confirmed that the external staircase would have an access door. Ms. Mison asked if he would live there. He said ‘yes.’ She asked if it would be an Air-BnB. He said “no.”

Mr. Budrow explained why the proposal did not need a CAM or had to be to FEMA standards. Mr. DiCicco said they may raise the house anyway. Ms. Sparago told the applicant that they aren’t supposed to approve enlargements of a nonconformity. She said the Board is to look at land-based hardships and not one that is interior of the house. He said he wasn’t claiming a land-based hardship.

There was no public comment.

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

Deliberation:

Ms. Mison referred to Zoning Regulation 44.7. Ms. Sparago said if a house is ugly, its not a hardship. Mr. Gersz asked if the existing staircase was a legal staircase. Mr. Budrow said the fire marshal does not inspect single-family homes. There was discussion about the stairs. Ms. Mison said they would need to know if the inside stairs were to code. The application should be continued to next month.

MOTION: Ms. Sparago made a motion to reopen **Application No. 23-12**. Mr. Page seconded the motion. All were in favor. **Motion carried, 5-0.**

MOTION: Ms. Sparago made a motion to continue the public hearing for **Application No. 23-12** to June 15 and wanted to hear from the Town Building Official regarding the interior stairs. Ms. Mison seconded the motion. All were in favor. **Motion carried, 5-0.**

MOTION: Ms. Mison made a motion to take a 10-minute break. Mr. Wobensmith seconded the motion. All were in favor. **Motion carried, 5-0.**

The meeting resumed. Attorney Coppola was now present.

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

Attorney Pellegrino presented. He said he had submitted photographs. Attorney Coppola confirmed that they were sent via email and that the Board received them that morning. She also shared the property’s history of appeals. She then handed Mr. Budrow the photos and a letter from Ms. Rispoli for the record.

Board members said they did not receive any photos. Attorney Pellegrino handed out the photos and the letter.

There was discussion on what is “justifiable lack of knowledge.” Attorney Coppola said that the Board should look at the proposal with fresh eyes. Mr. Gersz said that allowing this could open a can of worms.

Attorney Coppola talked about harmony and asked Mr. Budrow if the idea of adding the breezeway is harmonious. He answered that, if approved, a zoning permit can be conditioned to require the cottage and house look alike.

There was discussion on the total living area of the two dwellings. There was discussion about Ms. Rispoli buying the current issue without knowing it was there. Ms. Rispoli spoke to the Board and said several nearby properties have rental units.

Attorney Coppola reminded the Board to look at the Findings within the Regulations. This is a Variance application and she didn't want them going off track.

Mr. Budrow gave the Board an update on the property's lot coverage per his calculations.

Ms. Sparago asked again if the cottage location was protected. Attorney Pellegrino answered that it is legally non-conforming.

Attorney Coppola said they should focus on the issue here and she didn't want to give an opinion on an issue that is not central to the matter because she felt that it might move them in some way.

Ms. Mison said she doesn't see a land-based hardship.

Ms. Patricia J. Lincoln of 21 Apple Way, Madisonm spoke. She supports Ms. Rispoli's proposal. She called her a hard-working and conscientious neighbor. She used to rent the cottage. Mr. Budrow asked if she knew of the condition put on the 1986 Variance, She answered that she did not.

Ms. Sandy Stratman of 183 Morgan Avenue spoke. She had questions. She wanted to know if tonight's application only related to 12 Smith Street.

Bob Bishop spoke. He said he spoke to Mr. Dibenedet, the builder of the main house, yesterday. He referred to a map and two property visits by former Zoning Enforcement Officer, Chris Soto. Mr. Bishop told the Board that the building never had to be taken down. He then said that four nearby properties had two structures on them and were smaller than 12 Smith Street.

Michelle Minter 12 Smith Street, spoke. She currently rents the cottage. She agreed that there were rental units on nearby properties. She said the cottage was a historical structure. She also agreed that the Board should be looking at this with fresh eyes.

Attorney Pellegrino responded and asked if there was ever an enforcement action against the two barns. Mr. Budrow asked if one of the barns was on the current 183 Morgan Avenue property. One barn had been removed.

Mr. Budrow asked Attorney Pellegrino about the map that Mr. Bishop referenced. He answered that the ZBA chair made a notation on a different map. Mr. Budrow asked Ms. Stratman if there was ever an enforcement against the barn on her property. She said 'no.'

Mr. Carbone read from the submitted exhibits from Attorney Pellegrino. Attorney Coppola reminded the Board to focus on the items they need to and not the issuance of a C.O. on the new house.

MOTION: Mr. Page made a motion to close Application No. 23-03. Mr. Wobensmith seconded the motion. All were in favor. **Motion carried, 5-0.**

Deliberation:

Mr. Gersz repeated that he is uncomfortable making a decision when materials are submitted the same night.

MOTION: Mr. Gersz made a motion to continue the deliberation of Application No. 23-03 to the June 15 meeting. Mr. Wobensmith seconded the motion. **Motion carried, 4-1.**

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

Attorney Coppola handed the Board members a requested Motion for Denial.

MOTION: Mr. Wobensmith made a motion to deny Application No. 23-04. Mr. Page seconded the motion. Mr. Wobensmith read from the Motion for Denial. Per Zoning Regulation Section 51.7.1, the applicant did not establish that conditions exist that especially affect the parcel of land for which the requested variances are sought, as a result of which conditions, that a literal enforcement of the Zoning Regulations would result in exceptional difficulty or an unusual hardship. Also, per Section 51.7.3, the applicant has not established that the requested variances are necessary to relieve an exceptional difficulty or unusual hardship and are the minimum variances necessary to accomplish such purpose. And, per Section 51.7.4, the requested variances are in harmony with the purpose and intent of the Zoning Regulations. **Motion carried, 4-1.**

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

Attorney Coppola told the Board that Mr. Bodwell is present for taking questions. She also said that Attorney Fasano had notified her that he would not be attending.

Town Engineer, Jonathan Bodwell, introduced himself.

Ms. Sparago shared her concern about CAM applications not being treated with the importance that she feels they should. She hopes the ZBA can see the applications before they go to the State. She then referred to page 8 where “coastal waters” isn’t checked. She read a definition of “coastal waters.” Mr. Bodwell said the property line is the mean high tide line. They had a discussion about tide lines. He said the High tide line was at 2.8 feet and the CJL was at 4.5 feet. He then read the DEEP definition of “coastal waters.”

Ms. Sparago then referred to page 9 and “adverse impacts.” The proposal shows a concrete slab and pilings. The applicant answered “n/a” regarding adverse impacts. She asked how that could be and if the beach would be degraded. He said that DEEP reviewed the plans and have been to the site.

Ms. Sparago referred to another section of the CAM application. Mr. Bodwell said that DEEP's response is similar to his. The structure will be raised and that water will flow through it and flow out. There is no degrading of the flow pattern.

RJ Connors of 13 Morgan Terrace spoke. He said the property has changed due to erosion. He is against this proposal. He asked who will enforce the State's judgement to get the property back to its original state. Attorney Coppola said that Mr. Mauro has the right to propose site development. She said the court decision did not give further orders for the property.

Stephanie Sudikoff of 7 Morgan Terrace spoke. She asked why there is no CAM for the patio area?

Ralph Mauro of 155 Morgan Avenue spoke. He said he met with John Gaucher (DEEP) last week. Mr. Mauro said the zoning regulations allow him to bring in 300 yards of sand. He said the house is designed the way DEEP wants it. There is a 6" pitch. He then referred to a sand-moving activity nearby.

MOTION: Mr. Wobensmith made a motion to close the public hearing for **Application No. 23-05**. Ms. Mison seconded the motion. All were in favor. **Motion carried, 5-0.**

Mr. Wobensmith made a motion to deny **Application No. 23-05**. Attorney Coppola reminded him to state the reasons for denial per Section 46 of the Zoning Regulations. Mr. Wobensmith withdrew his motion.

MOTION: Ms. Sparago made a motion to deny **Application No. 23-05** based on Regulation 46.5.2 as the proposal will have adverse impacts on coastal resources. Mr. Wobensmith seconded the motion. **Motion carried, 3-2.**

Application No. 23-10 – on behalf of Leonard Fasano for Susan Vizziello, 198 Beach Avenue.

The applicant was not present. Attorney Fasano had requested that the hearing not be opened tonight.

MOTION: Ms. Mison made a motion to continue the opening of the public hearing for **Application No. 23-10** to the June 15 meeting. Ms. Sparago seconded the motion. **All were in favor. Motion carried, 5-0.**

IV. Adjournment

Mr. Wobensmith made a motion to adjourn the meeting at 9:57 PM. Mr. Gersz seconded the motion. **All were in favor. Motion carried 5-0.**

Joseph Budrow
Planning and Zoning Administrator
Town of East Haven