

APPROVED ON 5/4/2021

TOWN OF EAST HAVEN ZONING BOARD OF APPEALS MINUTES OF REGULAR MEETING FEBRUARY 18, 2021

HELD VIA VIDEO CONFERENCE AND CONFERENCE CALL.

The meeting began at 7:02 p.m.

Attorney Jennifer Coppola stated that she is the Assistant Town Attorney for Land Use matters and Counsel to the Zoning Board of Appeals. The meeting will proceed a bit differently. Since the Board does not have a chairperson, the Board will take a vote for an Acting Chair.

When not speaking, please be muted as it interferes with the recordings of the proceedings which will be posted on the Town's website. This is a fully remote meeting via Zoom videoconference and conference call. The notice and the agenda were posted on the Town's website. Attorney Coppola went on to speak about the matters to be heard.

When speaking, please state your name for the record. Should a transcript of the proceedings be needed, it is important that that transcriptionist be able to identify who is speaking. It becomes very difficult when attorneys review transcripts where people are speaking over each other. So, be considerate of each other and do not speak over one another. This is important for the public who is listening as well. If anyone has an unusual last name, please spell it for the record.

Mr. Gersz has requested he would like to acknowledge Mr. Robert Falcigno, the former Chair of the Zoning Board of Appeals.

Mr. Gersz stated that he would like to thank Mr. Bob Falcigno for his knowledge and his twenty-plus years of service to the Town of East Haven ZBA.

Ms. Martin stated she seconded that. Mr. Falcigno has been invaluable. She thanked him for all he had done.

Attorney Coppola thanked Mr. Falcigno, a long-time chair of the ZBA.

Attorney Coppola stated that an Acting Chair would be selected. The Board will hold its election of officers at the March 2021 meeting, and it will be noticed on the agenda. She asked for the nomination of the Acting Chair.

Ms. Mison motioned to nominate Karen Martin as Acting Chair.

Attorney. Coppola asked if there were other nominations. Hearing none, she asked for a Board member to second the nomination.

Mr. Ginnetti seconded the motion. The Clerk, Sotonye Otunba-Payne, called the roll.

Mr. Gersz - Yes.

Ms. Martin - Yes.

Mr. Ginnetti - Yes.

Ms. Mison - Yes.

Mr. Lettieri - Yes.

Motion passed unanimously.

Ms. Martin thanked everyone for the honor bestowed upon her. She thanked everyone for attending the regular meeting of the Zoning Board of Appeals. All the regular members of the Board are present as follows: David Gersz, Joseph Ginnetti, Judy Mison, John Wobensmith and Mr. Lettieri is an alternate. The Clerk is Sotonye Otunba-Payne. Mr. Jonathan Bodwell, the Town Engineer, is also present.

Ms. Martin went to say that it is very important to state your name first when speaking and spell it if it is a little complicated. Please if not speaking, mute yourself. This meeting is being held via the Zoom videoconference and conference call. No in-person meetings are allowed at this time due to Governor Lamont's Order.

Sotonye Otunba-Payne, Clerk, called the roll for the Board as follows:

David Gersz - Present

Karen Martin - Present

Joseph Ginnetti - Present

Judy Mison - Present

Vincent Lettieri, Alternate - Present

John Wobensmith - Present (inadvertently omitted during the first roll call)

The following were also in attendance:

Jonathan Bodwell – Town Engineer.

Jennifer Coppola - Counsel to the Board.

II. Administrative Actions

1. Accept/Approve of Minutes from the January 7, 2021 Special Meeting

Mr. Gersz moved to accept the Draft Minutes of the January 7, 2021 Special Meeting. Said motion was seconded by Mr. Lettieri. Motion passed.

Attorney Coppola stated that the record should reflect that Mr. Wobensmith was not a member of the Board at that time. So, Mr. Lettieri seconding the motion is appropriate as he was at the January 7, 2021 meeting.

- 2 Accept/Approve of Minutes from the January 2021 Regular Meeting.

Ms. Mison moved to approve the Draft Minutes of the January 21, 2021 Special Meeting. Said motion was seconded by Mr. Gersz. Motion passed unanimously.

Ms. Martin asked Attorney Coppola if all the notice requirements had been met. Attorney Coppola replied that she did confirm that with the Staff.

III. Public Hearings

- 3 **APPLICATION #20-25-V AND C.A.M.:** Virginia Cellura Trust, Owner; Applicant: Leonard A Fasano, Esquire; Property Concerned: 62 Crosby Beach Avenue. Zone R-1, Map 030, Block 0219, Lot 001 - *Request to take an existing apartment above the garage and legalize it by making it comply with zoning. The garage apparently has been there since the early 1980s and recently it was determined to be illegal. The property has always been assessed as a 2-family dwelling.* **VARIANCE:** Schedule B; Line: 2; Minimum lot area per dwelling unit: 9,360 feet where 14,400 is required.

Attorney Leonard Fasano of Fasano, Ippolito, Lee & Florentine, New Haven introduced himself. He had not done a ZBA hearing in quite some time. Town Engineer Bodwell has already reviewed the C.A.M. application to determine it was fine. The structure already exists. There will be no new construction with this.

Attorney Fasano stated his client purchased the property in either 1999 or 1998. At that time the listing agreement indicated that there was a loft over the garage. When she bought it, there was a garage already built with a loft over the garage. It was already set up as a studio apartment which is what this listing said. This was from 1993, 1994, 1995. When she bought it, she thought it was an apartment. It has always been taxed that way.

When the hurricane came through, the Town, both state and federal governments went through the property and were cognizant of the apartment. It was recently, within the last six months, maybe longer than that now, that the Town said, upon inspection, that it was not an apartment approved by the Town. His client found out about this and the application was then filed.

The property is right next to the condos at Victoria Beach. They share a common boundary. When Victoria Beach did their front reconstruction, his client's property was used to maintain the beach.

There's no reconstruction. The apartment has been there for years. There is no tenant occupying the space presently. Based upon the Town's position, his client did not want to get the Town upset and had not done anything with the apartment. They are looking to get back into compliance with the zoning laws and regulations of the Town.

Mr. Gersz asked if the apartment was set up with appliances for rental. Attorney Fasano replied in the affirmative and added that people had lived there over the years. Mr. Gersz asked if the owner wanted to continue to keep it as an illegal apartment. Attorney Fasano replied yes.

Ms. Mison asked if parking issues had arisen due to having a tenant. Attorney Fasano replied that there were no parking issues. Ms. Mison asked if was a shared driveway. Attorney Fasano replied that there is an easement that comes into play and there are parking spaces in the back that could fit three cars very comfortably. However, there has never been a parking issue.

Mr. Ginnetti asked about the number of rooms in the apartment. Mr. Fasano replied that it is a one-room apartment with a bathroom. Mr. Ginnetti asked if that part of the Town has sewers. Mr. Fasano replied yes.

Mr. Lettieri stated that he had lived in the Town for about 25 years. He had walked past the property many times and had never observed any problems with parking down there.

Mr. Wobensmith asked if any of the exterior walls, the garage, were attached to the main residence and asked if it was a co-joint unit. Attorney Fasano replied by saying that it is connected to the main house with a breezeway. The garage is attached to the back of the building. Mr. Wobensmith asked, so you would have to leave the garage area, walk along the breezeway to get into the main residence? Attorney Fasano stated he did not want to mislead the Board and did not know the precise answer to the question.

Ms. Mison asked if all the fire codes were up to date as it is above the garage. Attorney Fasano replied yes. When Mr. Bassett inspected the house, all were fine with one exception.

Mr. Gersz asked if the Town inspected everything including the electric, plumbing and the like to ensure all was done right. He asked if it had the double 5/8 on the ceiling so it would be fireproof to an extent. Attorney Fasano stated he was unsure. The original plan was from the '80s. So, he does not know if the garage was inspected for that construction. He can only

say that Mr. Bassett walked through there and it seemed to meet all the required conditions. Mr. Gersz said he wondered if the walls and electrical were kosher. Attorney Fasano replied that the electrical was inspected as it was being built as a studio. The appropriate permits were applied for then.

Ms. Mison asked if the permits were old permits or up-to-date permits for today's standards. Attorney Fasano replied that he did not know the precise answer to that other than to say when it was built permits were pulled in the '80s. He does not know what had changed and what has been grandfathered in.

Attorney Coppola indicated that in terms of the status above the garage there were a few things the Board had to keep in mind. With regard to the Zoning Regulations, if the Board looked at the permitted use table at Schedule A at page 24-3 of the Regulations, line item number two indicates (for R-1 properties) that a single detached dwelling unit for one family and not more than one, such dwelling per lot is permitted. That is the permitted use for R-1. In terms of attached or detached, she had not looked at the property. She thought she saw a photograph where the breezeway was actually exterior. She could be wrong about that. If that is something that is important for the Board, she suggested the Board leave the public hearing open to take a look at that.

Attorney Coppola said there are other regulations the Board should consider. If it is a detached garage, a private garage is defined in the regulations, 4.21, as *"an accessory building used only for the permitted storage of motor vehicles and/or as an accessory use for the occupant's private use. Detached garages shall not exceed fifteen ... feet in height."* So, this is the consideration, that it is detached. In terms of what the Board would be legalizing, the height is an issue as well.

Attorney Coppola added that Mrs. Pellegrino's comments as well as Town Engineer Bodwell's are part of the record. Mrs. Pellegrino provided the Board with everything. She makes the representation that in terms of documentation, there were the two zoning department files for the property, One is related to a prior variance application that got denied, and the other was for the zoning permit for the property. It indicates in the first paragraph that Mr. Jim Bassett, the Building Official, issued a notice of violation to the applicant on July 17, 2020. The notice of violation indicates that the space above the garage is storage only and that no zoning or building permits have been issued to convert the garage space in order for it to be used for dwelling purposes or for any portion of the residential structure at the property to be used as an accessory apartment, and that the building and zoning department recognizes the residential structure as a single, one-family residence.

Attorney Coppola stated that Attorney Fasano spoke to the Board about how the property has been assessed. Building and zoning only recognize it as a single, one-family residence based upon the documents that they had at the time. It is important for the Board to keep in mind zoning versus tax assessment. The assessor looks at improvements to the property. It does not mean that the assessor has any power whatsoever in terms of determining zoning and whether the use is permitted.

Attorney Coppola reiterated that the Board has the definition of accessory apartment as a portion of a dwelling at Section 4.2, as *“a portion of a dwelling and considered to be a separate dwelling unit and subject to the requirements of Schedule B”* which are the bulk standards. The Board also has the definition of accessory building at 4.4. If the garage is detached, the apartment is attached. An accessory building (garages are considered to be an accessory building) is defined as *“a building or structure located on the same lot as a principal building and devoted or intended to be devoted to an accessory use. Any portion of a principal building devoted to or intended to be devoted to an accessory use is not an accessory building.”* This takes the Board back to what is permitted use in the zone. It is for a single detached dwelling unit for one family and not more than one such dwelling per lot.

Attorney Coppola stated that this is a variance application. There were new members to the Board. She knew all had reviewed the Regulations. However, Section 51.7 is the provision of the Zoning Regulations that contains the findings that the Board is to make on a variance application. *“The findings of the Zoning Board of Appeals shall be fully described in detail, in the minutes of the Board. It shall be the policy of the Zoning Board of Appeals when exercising the power to determine and vary the standards or application of these Regulations to make the following findings: ... that conditions exist that especially affect the parcel of land for which the variance is sought, as a result of which conditions that a literal enforcement of these Regulations would result in exceptional difficulty or an unusual hardship; ... that these conditions do not generally affect the district in which the parcel is situated; ...that, for reasons set forth in the findings, the variance is necessary to relieve the exceptional difficulty or unusual hardship, and is the minimum variance necessary to accomplish such purpose and; ... that, the variance will be in harmony with the purpose and intent of these Regulations and will continue to conserve the public health, safety, convenience, welfare and property values.”*

Attorney Coppola implored the Board to remember to state its reasons for its actions for the benefit of the record. She stated that Attorney Fasano did not speak about hardship and that perhaps he should.

Mr. Gersz stated that on the application for zoning permit on page A-2, the description of proposal from September 23, 1986 says 24 x 30 attached garage, 10 x 22 breezeway. What do they mean by attached garage?

Attorney Fasano replied by saying that whatever was built was built with the plans approved by Planning and Zoning and the ZBA when they asked for the variance for the garage. There are detailed plans of the structure with the height included. It was built in accordance with that structure and signed off by the Town with respect to the garage and approved on May 10, 1990. All of that are not issues relative to what is before the Board today. The issue of the assessor was mentioned to indicate that the assessor assessed this as a two-family dwelling because it was approved by the Town. All listings with the Town indicate that it was a two-family dwelling. She is trying to legalize something that was thought to be a violation.

Attorney Fasano stated that the building is built. It exists. It is in an area that has a lot of multiple families. Victoria Beach is one side. Four Beaches is down the street. It would be in compliance and harmony with the neighborhood. Parking is not an issue for this particular place.

Mr. Wobensmith stated that at the bottom of the 1986 application for permit it should be noted under notes that approval and application is conditioned upon establishment of uses ... A zoning permit must be obtained from the zoning inspector prior to occupancy of the premises. And a zoning permit must also be obtained prior to change of use of the existing premises. According to the application it was approved as a garage, not as an apartment.

Attorney Fasano replied in the record it says that this space above the garage would not be rented to any other person. He wanted to be clear that this was on March 10, 1998. The prior owner stated the addition was going to be an art studio. It was converted to an apartment at some point. His client purchased as-is and thought it was an apartment and the Town had assessed it as an apartment.

Mr. Ginnetti asked Attorney Coppola if this could be tabled until the next meeting so that certain questions could be answered. The one that came to mind was the if someone will be living there, there has to be a firewall to the main building. Attorney Coppola stated that the variance approval is needed in order for the owner of the property to obtain a building permit. The Building Official will take care of that issue. This could be continued in order for the Board to view the property. Mr. Ginnetti added that he had driven by the property and it is aesthetically pleasing. However, safety has always been his concern. He would like to know if the building is up to date with the required codes.

Mr. Fasano stated he is more than agreeable to a postponement for Mr. Bassett to view the property and answer the Board's questions. He is in agreement that safety should be checked to ensure it is up to code.

Ms. Martin indicated the Board has no idea about the dwelling's safety. If the garage is higher than 15 feet, it is not good for the zoning area. It does not meet the requirements. She suggested that this be continued to get the Board's questions about safety answered.

Mr. Bodwell stated that he contacted DEEP about this particular application. It was their opinion that it would be considered a change of use because no work had been proposed whatsoever. Therefore, they have no guidance and no submittal to DEEP would be required. So, DEEP was of the opinion that if the Board decided to approve the variance, then the C.A.M. could be approved also.

Mr. Gersz stated that all have to be up to code. He agreed with Mr. Ginnetti. Mr. Wobensmith stated he was concerned with the actual construction whether or not it is an attached garage or a detached garage. If it is detached and there is someone living there and is not considered a dwelling and you are only permitted one dwelling on that lot, the owner cannot have two dwellings. Also, the property has been indicated as being a single family. If there is an apartment up there, will it be just for rent or for family usage? These all need to be answered to the satisfaction of the Board. Ms. Martin concurred.

Mr. Gary Brochu, 72 Cosey Beach Avenue, Unit 4. He resides a walking distance from the property. He sees this dwelling every day. Some of the facts presented are unclear. If one looks at the application, it states that the building lot is some 9,000 square feet. According to the Town's records it is 0.18 of an acre, according to the Town's records, which is 7,080 square feet, half of what the square footage of a lot has to be for it to have two units. There were representations made at the last meeting and in the written that this has been used as an apartment for some 40 years. The record and testimony shows it has been less than three years. Three years ago there was a variance where the issue was raised about the construction. Again, this is the documentation the Board has and has referenced. And in that documentation assurances were made repeatedly that it was storage only or perhaps a work studio. Based on the testimony of counsel, apparently, within a year or three of the construction being done, they immediately violated their assurances and put an apartment there and have been utilizing it. In fact, that particular dwelling has two apartments and they rent out to two different individuals.

When one looks at the Town's website for Planning and Zoning, there are two documents posted which both address this issue regarding additional

dwellings and how they are not allowed. And there is no such thing as in-law apartments. And there is no additional dwellings. It further notes that even if it is assessed as two units, that does not matter, as has been pointed out by the Town counsel previously.

His understanding from the discussions is whether an illegal apartment is safe as opposed to whether or not it should even be there. Given the timeline someone intentionally violated Town guidelines and installed an apartment and now to come back and say, well, it has been a while now so it's 2011 okay, particularly when one considers the area. As everyone knows, this is a particularly densely constructed and populated area in East Haven. There are multiple dwellings. If everyone is allowed to do additional apartments and dwellings, they are going to do that. So, the congested area will become unlivable.

Since, he lives here and parks his car literally adjacent to their property, he feels he can speak to the parking issues. Parking in the winter is not that big a deal. However, parking when the winter is over is a huge deal. They are renting two apartments in that unit in addition to the people who live there. There is virtually no space for parking. They use the parking for Victoria Beach condo, visitor parking, along that area.

More to the point, this is an illegal use. Approving this is sanctioning people to ignore Planning and Zoning in East Haven.

Ms. Martin said Mr. Brochu spoke about two apartments. Are there two apartments over the garage or just one?

Mr. Brochu replied that there are two apartments with outside entrances, both have stairs. There is one over the apartment which has separate stairs that the Board is discussing. There is also another apartment with a separate outside entrance that goes to the second floor of the home. Two apartments are being rented there. Ms. Martin said they were addressing the one above the garage. Ms. Martin agreed with Mr. Brochu when he said if it is illegal, it's illegal.

Mr. Doug Macdonald, Vice President of the Victoria Beach Condo Association introduced himself. He appreciated the comments that Mr. Brochu passed on as his comments were very thorough. Mr. Brochu has a front-row seat to the ongoing activities. After one of the hurricanes the owner of the property took him into the garage and showed him some cracks. He believed that it was attached. It was his understanding that the first unit of the house is occupied as well as the second floor of the dwelling. There is a unit over the garage. This makes it a three-family dwelling. The Board can start with what the utility feeds into the property are. This should give some indication of what is going on there. He knows that the property was

put up for sale and the deal fell through and this is what has propelled this application.

Mr. Wobensmith said the number of the electrical meters would not matter much if they are renting the apartments with all the utilities included. It's still a matter of renting an apartment. Mr. Macdonald asked if prior leases were part of the application in terms of use of the premises.

Ms. Mison asked if this dwelling had impacted Mr. MacDonald living at Victoria Beach which abuts it. Mr. Macdonald said the vehicles that go to the said house go over their property which means that they add to the wear and tear of the pavement. The pavement is not in good shape at the moment. In addition the Condo just expended over \$6,000 on the landscaping at the entrance to where the premises would be. However, they have never chipped in to it. The condo has 56 units and it bears an awful lot of financial responsibilities. They are determined as an association to keep the property upright and good looking regarding the landscaping, etc. As Mr. Brochu alluded to, parking does become an issue in the summertime. Mr. Macdonald stated that he had no issues with the owner of the said property as she keeps the premises aesthetically except for what he had mentioned.

Attorney Fasano stated that with respect to the second stated apartment, it is not an apartment. There is a note in the file by Ms. Pellegrino that it opens up to the regular part of the house and there was no rent involved. It is used by a live-in person who helped take care of the family, does their accounting, a family member/close friend. There is no one there now. So it is not a rental space as it opens up into the main house. Ms. Martin stated that the Board is not looking at that as it was beyond what the Board was there for that night.

Attorney Fasano stated that they were not denying it is an illegal use. That is why they were before the Board. It was an unknown illegal use to the owner. This is the reason for the variance. He would be happy to have Mr. Bassett, if he is so inclined, take a look and report back to Madam Chair, Attorney Coppola and himself his findings.

Mr. Gersz made a motion to deny Application #20-25-V and C.A.M. because of illegal activity on the property. Said motion was seconded by Mr. Wobensmith.

David Gersz - Deny, because of the illegal use of the property.

Karen Martin - Deny, due to many years of illegal use of the property.

Joseph Ginnetti - Deny, to the variance. He would have liked to see something to go ahead and move this to a future date. However, he concurred with what his two fellow members have voted.

Judy Mison - Deny. It is her opinion that it has a negative impact on the area according to the variances and findings. It has a negative impact given the way it is being used as opposed to being used the way it should be used.

John Wobensmith - Deny, based upon the illegal apartment usage and violation of the numerous Zoning Regulations regarding use of the property.

The motion to deny passed unanimously.

Attorney Fasano thanked the Board for its time.

- 4 **APPEAL #21-01: APPELLANT:** Nicholas Mingione, Esquire; Property Concerned: 198 Beach Avenue (Cease and Desist Order).

Attorney Coppola stated that request for continuance was made by Attorney Nicholas Mingione.

Ms. Gersz motioned to continue the Appeal #21-01, Appellant, Nicholas Mingione, Esquire to a future date. Said motion was seconded by Ms. Mison.

Karen Martin - Yes.

David Gersz - Yes.

Joseph Ginnetti - Yes.

Judy Mison - Yes.

John Wobensmith: Yes.

The motion to continue passed unanimously.

- 5 **APPEAL #20-12:** Appellants: Pat Rowland and Lisa Kwesell; Property Concerned: 188 Beach Avenue (Issuance of Zoning Permit).

Attorney Coppola stated that this was as continuation of a public hearing that was opened on September 17th, 2020. There is a different Board sitting at this time. There are three new members to the Board, Ms. Judy Mison, Mr. Joseph Ginnetti and Mr. John Wobensmith. They all received all copies of record items that were submitted including some things that were submitted today as well. They have had an opportunity to review the application and all the exhibits that were offered on the first night of the public hearing. They also, at her request, did review the recording. The recording was made available to them. She confirmed with all of them that they did review everything. The Board did receive some additional documents from Attorney Votre. Those were distributed to the Board and the appellants and their counsel. She wanted to note that for the record. There were two cases as well as the full copy of the Memorandum of Decision in the Kwesell v.

East Haven ZBA case that were submitted. There was a portion of that case that was submitted as an exhibit previously. Attorney Kenneth Votre submitted the entire copy of it as well as the order of the Appellate Court on the petition for certification that was filed.

Attorney Coppola stated as a matter of housekeeping, that the hearing in September was very long. She was not present. Town Attorney, Michael Luzzi, was present. She had reviewed everything. She just wanted to encourage the appellants and their counsel as well counsel for the affected property owners and the affected property owners themselves to please just try to be succinct and concise and narrow the issues for the Board. There was a lot of information received. We need not go through every exhibit. It is important to get a summary of what the claims are by each side and the response to those claims so that the proceedings can be efficient.

The parties disagree about the jurisdictional issue. She recommended that each side speak to that first. She would like to comment on that and give her opinion on this as the Board's counsel at the end.

Her role as the Board's counsel is to provide guidance when asked by the Board. Her role is not to help either side. She tries to be very cautious about that in the statements she makes. There are four affected property owners. We need to hear from them. However, this is a public hearing. So, we want to leave time to hear from interested members of the public and from the Board members and to have the Board members' questions answered. She will reserve her questions to the very end. The Town Engineer has reviewed everything and he has comments as well. It will serve everyone well if the issue of jurisdiction is tackled first.

Attorney John Lambert, counsel for the appellants, spoke. This is an appeal from Chris Soto, the Zoning Enforcement Officer, who gave an opinion that the house that was built complied with Zoning Regulations and granted the variance that was upheld by the court. The ZEO's opinion is not entitled to any deference. The appellants are aggrieved by the ZEO's decision because of the proximity, but also the conjectures affect them including the flooding in the question of whether the house needed C.A.M. and building code. His clients timely appealed the decision of the ZEO. Five months have gone by and the Board has three new members. He would like Mr. Rowland to state what the issues are in two or three minutes.

Ms. Martin stated that Mr. Rowland had spoken extensively at the last hearing. She wondered if he could summarize what he is seeking in under five minutes.

Mr. Rowland stated he resides at 2 Minor Road. As Attorney Lambert noted, they are abutting property owners of the requested appeal that they

have filed. One of their principal contentions is that all should follow the same rules and regulations and should be held to the same set of standards. They believe the A-2 survey relied upon by Chris Soto to sign and approve the certificate of occupancy is wrong. Part of his submissions showed that there was a sewer bump in one location when there is not. More importantly, there are a great many errors that include no measurements of the deck, the side, conformity of the setbacks, the location of various items and the stairs on both sides, the water side, etc. This deals with not only the construction and seal of the house but also speaks directly to the C.A.M. They lost the court case. They are not in dispute as to what variances exist on this parcel.

The question is in the A-2 survey. It does include lot coverage, the lot coverage percent or ratio, the height of the roof, the topography of the ground, the parking of the front yard including hard packed gravel. And there is no variance for a narrow road and what the dimensions to the road are. There are no dimensions measuring the side and rear setback, the dimensions to the setback to their house or to the ocean which also affects the C.A.M. In summary the A-2 survey cannot be relied on. He had repeatedly asked for an independent engineer to sign off on this and to have the Board direct that to be part of the remediation.

The *Anatra* court case requires that any approval that went through a ZBA and subsequent approval by the court requires that the footprint remains the same as what was submitted. The decks clearly are not the same and the stairs are not the same. The flood regulations were referenced as part of the rationale for the variance which mandate that the foundation be properly anchored. And the foundation is not properly anchored and properly built or constructed.

On the west side of the house is a shower, a gas main. There is a heat stove on the first floor of the house that abuts into it. Now, there is a path with stones which also identify as a patio or other structure because they are not natural and they are packed down. That gives rise to there being activity in the five-foot right of way that is prohibited.

On the east side there are large rocks including a blockage of a four-foot right of way but there are also additionally lights that project three feet into the right of way that are not in conformity. The driveway on the north side of the house is heavy, compacted gravel with complete coverage of the entire area, essentially impervious gravel through the entire area. On the waterside of the deck, the deck is too big and extends beyond the footprint and beyond the footprint of the original C.A.M. application. It's likely into the coastal hazards and the A-2 survey did not address that. The waterside front vents are also greater than one foot above elevation. He had submitted pictures that clearly show that. This puts their house at great risk and peril when the

eventual flooding and water comes and creates a problem. This needs to be repaired. There are also dunes and landscaping removal of much sand soil and material that are all prohibited, not only as part of the application but as part of the town regulations and zoning.

Lastly, the last time they spoke about the application of 6-27. The law has been in place for over 50 years. The parcel should never have been converted to a year-round house and they've known about it since before the construction. He brought it to the attention of both the Town, the attorney, and the courts. The Board can override what the wrongs the Town had done.

Attorney Kenneth Votre stated that he was representing the DelVecchios. He had Mr. Greg Fedus present who will be asked questions. This Board does not have the jurisdiction to deal with all or the majority of the issues that have been raised by the appellants. First, variances were granted. It went up on appeal to the Superior Court. It was appealed and they lost. His clients' variances were upheld.

Any issues dealing with the approval of the variances are no longer on the table. That is not before the Board. In addition, when the building permit was issued, Mr. Rowland he appealed from that. That was dismissed because it was untimely. So, the granting of the building permit, the granting of the variance are off the table. That's been done. It's been adjudicated. It's been argued for years. It is done.

All that's before the Board is the issue of the signoff of the Zoning Enforcement Officer at the time of the issuance of the certificate of occupancy. Mr. Rowland's concerns about what he thinks the building was or was not, how it was done, whether it was done properly is not within the Board's jurisdiction. The Board's issue is only the zoning approval.

The reason he didn't think the zoning approval was before the Board either is because this appeal was not an appeal to the Superior Court where abutting property owners have an automatic standing in order to bring that action. This is under section 8-7. It's an appeal from the action of the Zoning Enforcement Officer. In order to bring that appeal, you have to be an aggrieved person. The definition of aggrievement for purposes of that appeal is what's called a classical test for aggrievement. Mr. Rowland has said that all should abide by the rules. This is not jurisdiction. That is matter of general interest. He is not the property owner who would have an appeal right had the zoning signoff not been granted. His interests are that of a next-door neighbor. He has not established that either.

The reason there is no jurisdiction here is the zoning approval is done. The building permit is done. Mr. Rowland has not established he has aggrievement because there's no evidence before you.

Mr. Fedus provided the testimony through questioning by Attorney Votre that he is of Fedus Engineering in Mystic, Connecticut. They were the consulting civil engineers and land surveyors for the DelVeechios. They provided services for the site plan, coastal site plan and for the variance application. They oversaw the construction of the home and provided an improvement location survey as required by East Haven. This was submitted. There were a couple of revisions, some easements were added and stairs relocated that were out of conformance with the original variance application and reissued a second revision to the improvement location survey.

The A-2 survey was prepared by his firm. Mr. Fedus went through what it entailed to produce the A-2 survey. The A-2 survey was prepared according to professional standards as it was reviewed and certified by a land surveyor, Anthony Hendricks, who is a licensed land surveyor in the State of Connecticut.

The building as well as the deck on the rear were all in conformance as well the height that was approved on the coastal site plan and the variance site plan. The original site plan that was approved by the ZBA shows a zoning table with all those improvements. The improvement location survey, they did not provide a zoning table per say. It's not generally required. The issues at hand, the two variances, both side yards, there's dimensions indicated on the plan as well as the front yard setback to the stairs which is actually a little bit larger than what was previously approved at the variance level. The height is also on there.

The front yard did not require a variance. There were two revisions. The stairs did extend out past what was shown on the variance site plan. So, now it's a little bit greater than that. The stairs were rebuilt. There were no changes made to the actual decks. The only concern the ZEO had were the stairs and those were remedied. Mr. Fedus stated his conclusion that the house was built per the approved plans.

Regarding the issues that Mr. Rowland raised regarding the drainage and issues about the construction of the building, the building meets the FEMA requirements such as flood venting, the finished floor above the base flood elevation, and there are now mechanicals on the lower level. So, those are the big three you can visually see. They were all done in compliance. The crucial part of flood venting is the interior of the building, not really the exterior. It's really to get water out of the structure. It is critical that they are not more than a foot off the concrete floor or the concrete slab. The typical foundation failures are not when water is going into the structure; it's when water is leaving the structure. The flood venting does allow water to

leave at a rate that will prevent failure of the structure. It's a typical foundation on an A-E zone with proper flood venting at the right elevation.

The footprint of the building is in compliance with zoning approvals from variance application through building permit to the final certificate of occupancy. The square footage of the building is consistent with zoning approval also. They recently verified the footprint.

Mr. Fedus stated that they provided an improvement location survey that showed all the improvements that were built. They were reviewed by the Zoning Enforcement Officer and approved.

Mr. Fedus stated that he had been in the business since 1987. He took off to be a builder for a little while and then went back to it. Most recently, with Fedus Engineering since 2005. He is licensed in the State of Connecticut, License No. 21231. He was in the building business from about 1998 to 2005-ish. In the last 15 years he had been involved with probably over 100 construction projects with homes near the shoreline that were either being renovated or rebuilt to comply with the FEMA regulations. They have 20 active projects presently. He is thoroughly familiar with FEMA requirements. This building has been properly constructed to the FEMA requirements in his opinion and to the East Haven zoning requirements.

Mr. Bodwell, Town Engineer, said he did not have the opportunity to be the engineer on site. He is a licensed engineer. He agreed with Mr. Fedus. He knew that DEEP suggested that the property structure be built more to a V zone which is more a restricted zone than the A-E zone that the building is sitting in. It appeared to him that they took that suggestion because they raised the first floor elevation up to 16.2 which is much higher than the required elevation. In his opinion, it looks to him that they went above what the requirements were at the suggestion of DEEP. The variances were for 5.26 and 4.2 and the setbacks were greater than that. He had no problems with the previous statements.

Mr. Rowland said there were functional and real mistakes in the A-2 Survey Attorney Coppola offered to share the improvement location survey on the screen.

Ms. Martin asked if Mr. Rowland had an engineer as he had spoken about getting an independent engineer. Mr. Rowland replied that he spoke with an engineer who indicated to him that clearly neither the back deck nor the front deck have the square footage. Mr. Fedus said they changed the location of the stairs in the back. After Mr. Soto asked them to make modifications, they made modifications. Mr. Rowland replied that he would posit that those modifications were not sufficient. He would also posit that the gas line

on the west side of the house and the shower on the west side of the house are not on the survey. This information is inaccurate and incomplete.

Ms. Martin stated that they heard a lot during the last hearing on this matter. They would take what he has said today into consideration.

Attorney Lambert said he wanted Ms. Martin to ask the question that Mr. Rowland said because the variance was given to reduce nonconformity only. Mr. Rowland had said that there is a gas meter that increased the nonconformity and there is a shower as well. These questions are relevant to Mr. Fedus' credibility. Attorney Lambert said is there a meter that is increasing the nonconformity on his plan? Is there a shower that increases its nonconformity on the west side too? He is entitled to cross-examine Mr. Fedus. Ms. Martin stated that they would add the gas line and shower to the things they will consider.

Mr. Gersz said the Board should vote. Mr. Ginnetti said he agreed with Mr. Gersz regarding Mr. Rowland having an engineer. Mr. Ginnetti indicated he read through everything as best he could and watched the video today. There was a conflict in some of the submissions made regarding year-round use versus summer use on documents. However he was ready to go ahead and move forward. Ms. Mison stated she was ready to go ahead and vote and had no comments.

Ms. Martin talked about 6-27 houses being only seasonal use. She wondered who determined that and which houses are they exactly.

Attorney Votre said it is a very difficult question to answer as the Town has had some inconsistent dealings with this. This property has been a permitted all-year residence for 40 years. It was sold and advertised as a full-use property. The zoning approval is for full use. The building permit is for full use. And the certificate of occupancy is for full use. This is not before the Board.

Ms. Martin asked about footings. Mr. Fedus said there were footings and traditional concrete foundation. Ms. Martin asked about the depth of the footings. Mr. Fedus replied by saying 42 inches for frost protection. Ms. Martin asked about the stairs on the back side of the house. It appeared that they were going into the setback. They should be made differently so they are not going into the setback. Mr. Fedus replied that they are exactly where they were shown on the site plan for the variance application.

Mr. Gersz stated that the stairs were shortened to their platform because they were not right and they were corrected. So, that problem was taken care of.

Mr. Rowland did not say this in September nor tonight and states it as still a problem. Mr. Rowland said it is still a problem. Mr. Rowland said they were shortened but not enough.

Attorney Coppola shared a document, Exhibit 23 from the September 17, 2020 public hearing, submitted by Mr. Rowland's, which were from a court case. Mr. Rowland asked Mr. Fedus if the stairs looked like that. Mr. Fedus said he is unsure of the drawing which is a photocopy of a portion of one of his drawings is the accurate depiction of what was approved. Ms. Martin asked how the Board would know what was approved. Mr. Fedus said the correct document presented will contain all the information.

Mr. Wobensmith indicated that having reviewed all of the information regarding the September 17, 2020 meeting and listening to questions and presentation so far that evening, he did not have any questions at that time. Attorney Coppola asked if he did listen to the audio recording for the meeting. Mr. Wobensmith replied that he did. He listened to the complete audio recording from that meeting. Ms. Mison stated that she did watch the video of the last meeting as well.

Attorney Coppola spoke about Mr. Rowland's position regarding Ordinance Section 6-27. She thought that Attorney Lambert should address it as it was unclear, the applicability of the Ordinance, given the comments by the Chair.

Attorney Coppola shared the screen and said she thought Mr. Ginnetti was questioning something. Mr. Ginnetti stated it was Exhibits 17 and 18. The 1982 assessor's card. In the note it says year round. Exhibit 17 shows under land value computations seasonable water, as Mr. Rowland had stated. These two pages were represented to be from a 1982 assessment record but they do have a notation of the owner of record from 1985 as well. They indicate land value computations seasonal water, but in Exhibit 18 in the notes it says year round.

Attorney Lambert said he would like to defer to Mr. Rowland because he has lived there for many years. There have been two or three owners. Attorney Lambert stated he would like to address the issue of aggrievement. The proximity of Mr. Rowland's property is itself not an aggrievement. However, it is wrong to say the Board shares the same concerns as Mr. Rowland does. The Board does not live next to the increased nonconformity. The appellants' property interests are at stake here.

Mr. Rowland for the entire time they have lived there the Rosatos never used the house as a winter residence. The contention that this home was regularly used is a falsity and misstatement. As he mentioned earlier, 6-27 requires there to be access to the road. They should not have been able to build the home. It should have remained the summer cottage that it was.

Mrs. DelVeechio stated that she and husband purchased the property in August of 2014. To speak to the winter situation, she knows for a fact, and neighbors who live on both sides of her and a few doors down, that Patricia Rosato wintered in Florida. However, Ralph Rosato did indeed reside at 188 Beach Avenue in the winters. He actually provided water to 198 Beach Avenue, his sister's house. When they purchased the home, there was a heat tape on the water line that went from the sand up into the house. There was a woodburning stove. Mr. Jim Bassett attested to the fact that the home was a year-round home and that the assessor's card is actually not the Bible. It's the property card. And he has the property card which says that 188 Beach Avenue is actually indeed a year-round home. The houses to her right are all seasonal cottages and do not have water. The home to her left is a year-round home, but they do not have water at all.

Mrs. DelVeechio said when the water company went on to turn up the water full-time service, as things were shut off during construction, Mr. Rowland threatened the water company employees that if they turned on her water, he was going to cut the pipe. The reason why the water is off of the water use is because the water company did not want to contend with the residents of 2 Minor Road. The company wanted them to have water. The company has an easement. That was the fix that they came up with. Yes, there was a water main break. That is absolutely correct. But there is water running through the house 365 days a year.

Mr. Gersz asked about the stairs. Mrs. DelVeechio said the initial drawing were preliminary drawings. She had not seen the picture since 2015. This has been going on for this long. It was just an illustration from the designer Tony Thompson. She did not believe that they ever moved forward with that design in any of the filings with the Town. It was just a drawing that got mixed up in the middle of all of this. The reason it could not be built that way is because Mr. Rowland and Ms. Kwesell erected a fence to minimize the amount of access they had to their home. So, if the stairs were the other way, they would not have been able to get into their property because the fence left them with a 10- or 12-foot opening. The fence is blocking the full right of way that she was supposed to have. So, the stairs had to move in order for her to get to her house. Currently, they cannot access their property through the driveway. They access other properties to her house because she cannot fit her car through as a result of the fence the appellants erected.

Mrs. DelVecchio pleaded with the Board to make this end. This harassment had been going on for a long time. They want to live on their property and enjoy it. She hoped that the Board would see this to a close.

Attorney Votre stated that 6-27 is not an issue as the property had been used as a full-time residence for some time. Secondly, that would have been dealt with at the building permit stage. It has been dealt with it.

Mr. Fedus added that Exhibit 21 displayed earlier is not the approved plan. Like Mrs. DelVecchio stated it is as sketch that conveniently the title block was cut off and all pertinent information was absent. There was a slew of information submitted. That was not the approved plan.

Attorney Coppola said the Board had heard from Mr. Fedus and Mr. Bodwell. The board has heard some additional information from Mr. Rowland and Mrs. DelVecchio that is not uniform information. She recommended that the Board decide if it wanted anything additionally from anyone in terms of submissions or inspection.

Ms. Martin stated she had questions such as emergency vehicles and the easement. She asked about whether there was room for emergency vehicles to go past where the road ends. She asked if it was legal. She said Mr. Rowland said there was a shower added. She asked if that was legal. She asked if it was legal to have outside shower. She also wanted Attorney Coppola's opinion on jurisdiction.

Attorney Coppola said aggrievement is one thing. This is a type of decision that was made that is appropriately before this. Her opinion is it absolutely is. For the new folks on the Board, there has to be zoning approval for the certificate of occupancy to issue. It's different than a zoning permit because there is a zoning permitting process. All counsel agree that the decision of whether or not to issue zoning approval for certificate of occupancy purposes, that decision is appealable to the Zoning Board of Appeals. She had identified that as being unclear based upon what the Board had in front of it. The court will determine aggrievement.

Attorney Votre stated that 8-7 requires aggrievement for purposes of this appeal. This Board ultimately has to decide aggrievement.

Attorney Coppola stated that she had asked for clarification regarding 6-27 as it speaks to the building permit process. The appellants have brought up issues about noncompliance with the plan. They have made statements with regard to impacts. They are two separate issues.

Mr. Gersz asked about the as-built for this property. That is the improvement location survey from July of 2020. The copy was provided to the Board. The approved site plan was from June of 2015.

Attorney Coppola asked if this was so Mr. Gersz could compare the as-built with the plan. Mr. Gersz said yes. Attorney Coppola said that was why she asked if there was anything else the Board wanted to see. She did not believe either side provided the Board with that.

Mr. Fedus replied that he had the site plan. The ZEO, when he got their improvement location survey, was looking at that and referring to the approved site plan to make the determination that it was in conformance. As for the shower, it is not a shower enclosure. It's a closet coming out of the side of the house. Mr. Gersz said that there are many of those around beaches. Everybody uses them.

Mr. Fedus stated they would never have a faucet around the side of a house nor a fitting coming out. The gas meter shown on their improvement location survey is exactly where it should be. They would have added whatever information the ZEO wanted to see. This exactly what was approved and what was built. There is no difference between where the stairs ended up on the front and the back. There is no difference in the decks. The requirements for flood venting are all there. It is exactly what was approved.

Attorney Coppola stated that the Board has to give reasons for its actions. If the Board felt it did not want additional information, then the public hearing could be closed. The Board could choose not to deliberate. It could postpone deliberation.

Mr. Martin stated she would like to continue the matter and give each one time to inspect the property.

Attorney Coppola said the Board was close to using the 90-day limits per Governor Lamont's Executive Order. Ms. Martin said she was okay with two weeks. Mr. Gersz said the licensed professionals had given their opinions. He wanted to see the as-built regarding the stairs. He wanted a vote on this.

Ms. Martin stated that Mr. Fedus had indicated he had both drawings. He asked what Mr. Fedus said about the stairs. Mr. Fedus stated the stairs were built per the approved plan. The ZEO had the plans. He was the one who informed them the stairs were out of conformance. Exhibit 21 had nothing to do with this project.

Mr. Fedus went through the two drawings and explained what he did with the stairs. It is the right pitch for the building permit.

Mr. Gersz motioned to deny Mr. Rowland's request on the basis that the Board has had two engineers come forward. Mr. Rowland came with nobody but his own expertise. Mr. Kenneth Votre had convinced him somewhat too. He has experience in laying out houses and the like and he does not know what else he would do if he was sent to the location to inspect the premises. The house is up. The Board does not have the right to tell the

property owners to take the house down. Mrs. DelVecchio stated that this had been going on for a very long time. She has two young children.

Mr. Wobensmith stated that based on all that he has seen including the documentations and the presentations here tonight and the three hours the Board had spent on this, he agreed that the Board should vote on it tonight. Ms. Mison stated that the Board could vote on it then.

Mr. Gersz withdraw his motion as the public hearing had not closed yet.

Ms. Mison motioned to close the public hearing. Said motion was seconded by Mr. Wobensmith.

Karen Martin - Yes.

David Gersz - Yes.

Joseph Ginnetti - Yes.

Judy Mison - Yes.

John Wobensmith - Yes.

Motion to close the public hearing passed unanimously.

Mr. Gersz motioned to uphold the decision of the Zoning Enforcement Officer of the Town of East Haven. Said motion was seconded by Ms. Mison.

Karen Martin - Yes, to uphold ZEO's decision because she believed that it had been proven that there is no reason to deny. They have heard from a couple of licensed engineers and attorneys. They have seen exhibits that show that the property had been approved for year-round use since the '80s.

David Gersz - Yes, to deny the appeal because of the comments by the two state licensed engineers and everything else that was said tonight. He was making the right decision.

Joseph Ginnetti - Yes, to uphold the decision made in the motion by Mr. Gersz for basically the reasons that he listed, the information that came forth tonight as well as delving deeper into the information he received on the September 17, 2020 meeting.

Judy Mison - Yes, to deny the appeal. She agreed that after hearing all of the information especially from the engineers that she felt comfortable with letting this be done.

John Wobensmith - Yes, to deny the appeal and uphold the decision of the ZEO based upon all the exhibits and presentations from everyone and the information received.

Motion passed unanimously.

Mr. Ginnetti moved to adjourn. Said motion was seconded by Mr. Wobensmith. The motion to adjourn passed unanimously.

The Board adjourned at 10:15 p. m.

Respectfully Submitted,

Sotonye Otunba-Payne