

TOWN OF EAST HAVEN, CT
ZONING BOARD OF APPEALS
MINUTES OF A REGULAR MEETING
AUGUST 17, 2017 7:00PM EAST HAVEN SENIOR CENTER

MEMBERS PRESENT: ROBERT FALCIGNO-CHAIRMAN
 GEORGE HENNESSEY-VICE CHAIRMAN
 DONALD THOMAS
 JOSEPH PORTO
 MICHAEL SMITH

MEMBERS NOT PRESENT: NONE

ALTERNATES PRESENT: VINCENT LETTIERI

ALTERNATES NOT PRESENT: DAVID GERSZ

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AUG 24 2017

TOWN CLERK'S OFFICE

EAST HAVEN, CONN.

Stacy Grawins, CTC

TOWN CLERK

STAFF PRESENT: ALFRED ZULLO-ATTORNEY
 CHRISTOPHER SOTO-ZEO
 SUSAN IANNONE-CLERK

Chairman Falcigno called the meeting to order at 7:02 P.M. and after a roll call was taken he stated they had a quorum. He then asked if there were any Errors and Omissions in the minutes from the August 3, 2017 meeting. Donald Thomas made a motion to accept the minutes, seconded by Joseph Porto. Unanimous motion carried.

APPEAL HEARING #13-21 (Court Remand)

APPELLANT: Niki Whitehead; **Property Concerned:** 60 Brown Rd; *Appeal of Action of Z.E.O. Frank Biancur (Decision to legalize Garage: Release of Zoning Violation Lien & March 8, 2013 to Nancy Anderson & Wally Erikson)*

Chairman Falcigno stated he and the other members had not received a copy of the letter sent to Atty. Zullo from Attorney Rappleyea who represented Nancy Anderson and Wally Erikson. Atty. Zullo said to let them make their presentation then get a copy of the letter and make a decision at the next meeting.

Niki Whitehead, 9 Hilton Ave., handed out a packet for the record and to the board members. The packet included an analysis of the status of the garage, State of Connecticut Act Concerning Statutory Interpretation, analysis of 8-13a (text of Statute 8-13a including dictionary definitions of "boundaries of lot", "situated" and "location"; relationship of other statutes) under the Plain Meaning Rule (PMR) and an Act Concerning the Location of Structures which otherwise conform with local zoning laws. She then proceeded to explain the analysis of the Status of

Garage at 60 Brown Road which is the same since February 2013, when Mr. Biancur's decision, to present. She then talked about the packet she submitted last month that included the actions of Mr. Biancur. It included his letter from the spring of 2013 where he released the Notice of Violation and a zoning compliance letter that stated the garage was legal non-conforming. She was appealing the action to issue those letters. She explained the analysis chart previously handed out. It detailed the regulated aspects of the non-conformities (set backs, lot coverage, building size and height), category (location or bulk), source of the zoning regulations, other variances allowed/authority, as built status and compliance. Donald Thomas questioned if there are no drawings, then wasn't the height unknown? Ms. Whitehead said the Notice of Violation issued in 2004 by George Mingione listed the height as 19.6 ft.

She stated in order for Mr. Biancur to have determined the garage was legal non-conforming all the aspects would either had been compliant or had 8-13a applied. The superior court judge's decision pointed out the conduct of the hearing, that there was not enough substantial evidence to base the decision to consider the garage legal and the need to go through an exercise to see if 8-13a would apply. The plain meaning rule (PMR) is the required way to determine the meaning of a statute. The PMR was approved June 26, 2003 and effective October 1, 2003. Effective October 1, 2013 a provision was added that extended the protection of 8-13a to other structures and was not substantially amended with respect to garages.

Ms. Whitehouse referenced, from her packet last month, Judge Fuller's distinctions between different non-conforming uses and how he contrasted location category & bulk category. She thought Mr. Biancur strayed between the two categories when he attempted to construe 8-13a. There's a superior court case known as an Adamski that was tried but never appealed. Mr. Biancur relied heavily on it but it predated the PMR and went to the legislative level so it was not controlling.

Attorney Allan Rappelyea, 35 Market St., Poughkeepsie, NY, noted for the record, that it was near 7:45 and Ms. Whitehouse had been speaking since 7:10. He stated town records show the garage was completed in 2003-2004. Code enforcement officer's letter referred to height being the primary issue. In the hearing transcript from August 15, 2015 Ms. Whitehead acknowledged that the structure had been completed for 9 years. This appeal was remanded to determine if there was substantial evidence to reach the decision that was made. He referred to the letter of 12/15/04 from the ZEO that explains how to measure the height but the town has a different idea. Therefore, the applicant was confused. When this came before the board, prior to being remanded, the issue was if the building was covered by the statute. He suggested that it was. Time was issued after the board made their determination. The court that remanded this back stated that the Adamski decision was issued prior to the enactment of the PMR. He explained the board needed to make a decision on the status of the building at the time. Based on Adamski and on the statute he stated the building was covered by Connecticut statute.

Chairman Falcigno then asked if there was anyone who wanted to speak.

In favor: none

Oppose to: none

Ms. Whitehead stated that the PMR was in effect as of 10/1/03 and Mr. Biancur should have availed himself to it. Mr. Biancur concentrated on height but the notice of violation included

size/coverage. Those elements would have to be included when Mr. Biancur used 8-13a and by the board tonight. The scope of the statute 8-13a is limited to set backs, but height and size would deviate from it. The statute can only mean relief from set back regulations. Adamski had been decided when Mr. Biancur made his decision but the PMR was also in place. The PMR was not in place when Adamski was decided. Adamski did not have the benefit of the PMR. Adamski was a Superior Court decision and does not control what the board should do. She stated the board is not bound by the legal opinions they receive. The Tine decision was made a month after Mr. Biancur wrote his letter. The garage does not fall under the scope of 8-13a so it doesn't matter how long the building has been there. She asked that Mr. Rappleyea refrained from characterizing her and her actions as footnoted in the judge's decision.

Atty. Rappleyea then stated that all the issues Ms. Whitehead referred were not in the original violation. The only two issues were the height and the size.

Ms. Whitehead responded that Mr. Rappleyea was limiting her appeal. She was appealing Mr. Biancur's letters.

Chairman Falcigno closed hearing #13-21.

Donald Thomas made a motion to table until next months meeting. Joseph Porto seconded the motion. Unanimous motion carried.

APPEAL HEARING #17-05

APPELLANT: Ralph Mauro; Property Affected: 519 Laurel Street; Zone LI-3, Map 330, Block 4219, Lot 001- *Appeal of Notice of Violation/Action of Z.E.O. (excavation/grading of topsoil, sand, and gravel)*

ZEO Soto explained there is an application pending with P & Z to correct the violations.

Chairman Falcigno asked if there was any public comment, but there was none. He then closed hearing #17-05.

Donald Thomas made a motion to close #17-05. Joseph Porto seconded the motion. Unanimous motion carried.

Donald Thomas made a motion to table until next months meeting. Joseph Porto seconded the motion. Unanimous motion carried.

APPEAL HEARING # 17-18

APPELLANT: One Barberry Real Estate Holding; Property Concerned: 1 and 99 Barberry Rd; *Appeal of Cease and Desist/Action of Z.E.O. (amended cease and desist order for the slashing of trees).*

Atty. Zullo stated there was a voluminous amount of information he needed to read and would also like the board to read. He passed out copies of similar cases, a case that Atty. Alter relied on and a case Atty. Conway relied on for them to read.

Donald Thomas asked with respect to Mr. Biancur's letter, was he tasked with doing his due diligence to the verify the validity of the letters he received before he wrote his letter?

Michael Smith asked if blasting is the only way to remove rock from the quarry? He questioned the timing of the permits that had been issued? How far back do the records show that there has been blasting going on?

Chairman Falcigno questioned if the non-conforming has been established, then is there a time limit as to contesting it?

Atty. Zullo responded that he would answer these questions at next month's meeting.

Donald Thomas made a motion to table until next month's meeting. Joseph Porto seconded the motion. Unanimous motion carried.

APPEAL HEARING # 17-20

APPELLANT: One Barberry Real Estate Holding; Property Concerned: 1 and 99 Barberry Rd; *Appeal of Cease and Desist/Action of Z.E.O. (excavation/grading of topsoil, sand, and gravel).*

Donald Thomas made a motion that discussion from 17-18 be applied to 17-20 and to table until next month's meeting. Joseph Porto seconded the motion. Unanimous motion carried.

17-26

APPLICANT: Rafael Amaya; Property Affected: 211 Morgan Ave, Zone R-3, Map 010, Block 0202, Lot 003, -- *Lift house, including demolition of existing foundation & basement concrete slab, construction of new concrete piers & reconstruction of surrounding deck and stairs.*

VARIANCE: Schedule B; Line 6: Height 40' max allowed, 40'.5 proposed. Schedule B; Line 7: Street line setback 46' required, 2.33 proposed. Schedule B; Line 11: 20% lot coverage allowed, 36.8% proposed.

Rafael Amaya, Architect, office located at 284 Racebrook Rd., Orange, CT. He was there on behalf of the owners Neil & Karen Price. The house was damaged by super storm Sandy in 2012. The foundation was cracked and the wrap-around porch was misplaced. The FEMA restoration guidelines require that the house be raised. They proposed to demolish the existing block and set the house on concrete reinforced piers. No alterations to the existing house.

ZEO Soto read an email from John Goucher, from the state, to Jerry Tramontano, the administrative assistant to the town engineer, and it stated he had no comments to the CAM report.

Atty. Zullo stated the property is located in a flood zone and therefore subject to the 50% rule.

In favor: none

Oppose to:

Mary Judith Paes, 5 Old Town Highway, East Haven, CT, expressed concern over the effect these variance would have on her property value. She also pointed out that the architect's rendering of the position of her house was incorrect. She asked that the board require the Price's to move their shed that moved 4' on her property after the flooding. She also said that if they were allowed to raise the decks, then she would have concerns about her privacy.

Karen Price, 211 Morgan Ave., stated the shed has not moved since they moved in. The deck was there when her house was lower, so would be not different if raised. They have a right to be safe. She's excited to see all the houses in the area improved.

Neil Price, Karen's husband, explained they had a horrible time after the flood. He and his wife would not do anything to invade their neighbor's privacy. They just want to live there safely by having the house raised.

Michael Smith questioned the location of the front stairs. Mr. Amaya explained the stairs were situated for easier access to the driveway for Mr. Price's 92 year old mother.

Donald Thomas asked about moving the shed. Mrs. Price stated the shed was moved back to its original spot. ZEO Soto said the shed should be included in the lot coverage. Mr. Amaya responded that it wasn't and would therefore increase the lot coverage by a small percentage. Ms. Paes questioned the moving of the shed. Atty. Zullo explained it was not the job of this board to make a decision about the shed, but that it was a civil matter between the she and the other property owners.

Chairman Falcigno closed 17-26.

Donald Thomas made a motion to approve the variance. Joseph Porto seconded the motion.
Unanimous motion carried.

17-28

APPLICANT: Denise Lacroix; Property Affected: 4 Sibley Lane (AKA 23), Zone R-3, Map 050, Block 0402, Lot 002, – *Raising of existing home, replace foundation, remove and replace decks, add stairs.*

VARIANCE: Sched B; Line 8: Rear setback 30' required, 32.6 existing, 22.7 proposed. Line 9: Side setback 20' required, 3.8 existing/proposed (north) 20.1' existing, 16.9 proposed (south). Line 11: Lot coverage 21.6 existing, 28.4 proposed.

ZEO Soto explained the applicant had requested the board withdraw their application without prejudice until they can come back with a new application.

Donald Thomas made a motion to deny without prejudice. Joseph Porto seconded the motion.
Unanimous motion carried.

APPEAL HEARING # 17-29

APPELLANT: Louise Share; Property Concerned: 400 Bradley Street; Appeal of Notice of Violation/Action of Z.E.O (Establishment of two dwelling units in a LI-2 zone.)

Atty. Zullo stated this matter had been resolved by way of negotiation between the homeowners' attorney and the town. He recommended it be tabled.

Michale Smith made a motion to table. Joseph Porto seconded the motion. Unanimous motion carried.

17-30

APPLICANT: Greater New Haven Water Pollution Control Authority; Property Affected: 986 Thompson Street, Zone R-5, Map 610, Block 7239, Lot 001, -- *Install 20 KW diesel standby generator 18" above ground level, on 59X36 pad.*

VARIANCE: Sched B; Line 7: Street line setback 40' required, 11' proposed. Line 8: Rear setback 40' required, 10 proposed.

Chairman Falcigno recused himself since he's a member on the Board of Directors at GNHWPCA.

Donald Thomas made a motion to seat Vincent Lettieri. Joseph Porto seconded the motion. Unanimous motion carried.

Gabe Varco, 40 Hillside View Rd., Northford, CT, Director of Finance and Administration for the GNHWPCA, addressed the board. He explained the variance was needed to put a standby generator on the pump station as required by FEMA. The issue goes back to 2005 when there was a mix up with how the documentation carried forward when the property transferred. They are still trying to resolve this and would not do anything until it was. He said the variance could be approved with the contingency that this would be resolved.

ZEO Soto explained when the lot was created it was a tiny parcel. Any mechanical units would have the same issue. He clarified what Mr. Varco had requested is that a lot line revision that was not fully executed, would be the contingency.

Debbie Johnson, 119 Thompson Street, asked if it's a standby similar to what's on North High Street and if any trees would be cut down/removed. Gabe Varco replied the generator would be in case of lost power and wasn't sure if trees were being taken down, but if so any debris would be removed. ZEO Soto explained the generator would go inside the existing fence area.

Chairman Falcigno closed 17-30.

Donald Thomas made a motion to approve. Joseph Porto seconded the motion. Unanimous motion carried.

Donald Thomas made a motion to adjourn the meeting. Joseph Porto seconded the motion. Unanimous motion carried.

Chairman Falcigno adjourned the meeting at 9:17 PM.

Respectfully submitted,

Susan Iannone
Clerk