

TOWN OF EAST HAVEN, CT  
ZONING BOARD OF APPEALS  
MINUTES – REGULAR MEETING  
November 15, 2018 - 7:00 P.M. – EAST HAVEN SENIOR CENTER

MEMBERS PRESENT: ROBERT FALCIGNO – CHAIRMAN  
GEORGE HENNESSEY – VICE CHAIRMAN  
MICHAEL SMITH  
DONALD THOMAS  
JOSEPH PORTO – (Not Present)

RECEIVED FOR FILING  
NOV 30 2018  
TOWN CLERK'S OFFICE  
EAST HAVEN, CONN.

ALTERNATES PRESENT: VINCENT LETTIERI - (Not Present)  
DAVID GERSZ

*Stacy Gravano, CTC*  
TOWN CLERK

STAFF PRESENT: ALFRED ZULLO – ATTORNEY  
CHRISTOPHER SOTO – ZONING ENFORCEMENT OFFICER  
TEMPLE SMITH – CLERK

The East Haven Zoning Board of Appeals Commission held its' Regular meeting at 7:00 pm on **Thursday, November 15, 2018** at the East Haven Community Center, 91 Taylor Avenue in order to transact the following:

Chairman Falcigno called meeting to order at 7:00 p.m. Roll Call. A quorum was established.

Donald Thomas made a motion to approve the Minutes from previous meeting George Hennessey seconds. Roll Call Vote. All in Favor. Motion Carried.

Chairman Falcigno addresses the new 2019 meeting dates for review. Donald makes a motion to approve. Michael Smith seconds. All in Favor. Motion Carried.

**APPEAL HEARING # 18-23**

**256 and 266 Thompson Street:** *Appeal of Cease and Desist/Action of Z.E.O. (excavation/grading of topsoil, sand, and gravel)*

Attorney Zullo stated that he received a letter from the attorney of the petitioner asking for a 65 day extension. Donald Thomas motions for a continuance for 65 days. George seconds. Roll Call Vote. All in Favor. Motion Carried.

**APPEAL HEARING # 18-24**

**1 Barberry Road:** *Appeal of Cease and Desist/Action of Z.E.O. (excavation/grading of topsoil, sand, and gravel)*

Attorney Zullo stated that he received an email from the attorney of the petitioner asking for a 65 day extension. Donald Thomas motions for a continuance for 65 days. George seconds. Roll Call Vote. All in Favor. Motion Carried.

**APPEAL HEARING # 18-28**

**4 Suffield Place:** *Appeal of Action of Z.E.O. (zoning violation)*

Chris Soto states that there was a complaint that a business was operating out of a residential home. Chris drove by and there were work vans in the driveway which gave the impression there was a business in the home. The attorney for the case stated that is not the case and that they were parked there as he lives there.

Attorney William Cote states that he runs a cleaning business and he goes to customers, customers do not go to him. Attorney offers to show the board pictures of the inside of the garage.

Michael Smith asks Chris Soto if there is a rule regarding how many commercial vehicles you can have parked at a home. Chris states you can have one commercial vehicle parked at your residence not exceeding a weight rating of 6,000 lbs. Michael Smith states that however the complaint is that he is running a business in his home. Chris states correct.

Michael states he makes a motion to sustain Chris Soto's appeal. Donald seconds. Roll Call Vote. All in Favor. Motion Carried.

**18-29**

**APPLICANT:** Nicholas Mingione, Esq.; Property Concerned: 126 Florence Street, Zone R-2, Map 390, Block 5123, Lot 006 – *16x16 addition.*

**VARIANCE:** Sched B; Line 7: Street line setback 17' requested; 25' required.

Attorney Mingione states that they are seeking a street variance for a corner lot – 16x16 addition along a 6x16 deck off the rear addition. We are looking for an at most 8 foot variance or a 5 foot variance.

Michael Smith asks if the stairs are going to be closed off. Atty. Mingione states yes.

None Opposed. None in Favor. Public Hearing Closed. Donald Thomas makes a motion to accept the variance. Michael Smith seconds. Roll Call Vote. All in Favor. Motion Carried.

**APPEAL HEARING # 18-30**

**188 Beach Avenue: *Appeal of a building permit (to erect a dwelling).***

Patrick Rollin – 2 Minor Road, EH –

Attorney Zullo states that he would like to keep this organized and for Patrick to put on evidence what his standing is in terms of location and timing of why you believe you have the right to bring this appeal as the house is almost done.

Patrick states he has standing as abutting property owners (he believes is 8A1) but the notice for the building permit was posted in the New Haven Register on 10/3/18 – until that point had not received notice of the building permit to be issued. Therefore under town regulations we filed an appeal for the building permit. In that process we were notified by the tax assessor as larger than what was believed to be. Attorney Zullo asks is it your position of this board that you did not know the building permit was issued until you saw this publication. Patrick states that we believed it was being built without a permit issued. Attorney Zullo asks if he is telling the board that he had never seen the zoning file, building file, and never knew any of those permits were issued. Patrick states he had seen the zoning file and the building file we had not seen a permit issued inside we thought they were building the house without a permit. Attorney Zullo states you had never seen the building permit in the file. Patrick states no I had never seen the building permit in the file. Attorney Zullo asks how many times you have read the building file. Patrick states he thinks he had looked at it once. Atty. Zullo asks how many time have you looked at the zoning file. Patrick states once or twice. Attorney Zullo states that both Giovanna Berdesca and Roberta Delucia the secretary's states you were there at least two times a week in the building department between July and September and even taking picture of the documents with your phone. Are you saying that is not true? Patrick denies that he was there at least one to two times a week. He said that he was there but not as they say. Attorney Zullo hands a letter to the clerk to be read into the minutes ( see evidence 1 / 18-30). Patrick states that we did address that and you did say that it was not appealable. I still honestly say I did not see a building permit and yes I did take pictures of the plans and pictures in the zoning office. Atty. Zullo states you brought an action in civil court (see evidence 2 / 18-30) regarding a bunch of violations for sewer but you did not bring an action regarding building without a permit? Patrick states no we did not include that because we were not aware the building permit was not issued. Atty. Zullo so you want this board to believe that they erected this big house without a building permit and no one in town noticed? Patrick states that it is possible but if we knew it was without a permit do you not think we would have included it? Atty. Zullo asks did you not appeal the variance in superior court. Patrick states yes. Atty. Zullo asks did you not submit a verified petition to Intervene in December. Patrick states yes. Atty. Zullo states so you have done all these things and you want the board to believe that you did not believe or have any knowledge that there was a building permit. (evidence #3 / 18-30) Atty. Zullo hand evidence (#4 / 18-30) and reads the filing requirements. Atty. Zullo states that the board needs to decide whether or not this applicant has standing to bring this appeal.

Chairman Falcigno calls for a motion as to whether or not the applicant has any standing to bring this appeal before the Zoning Board of Appeals. Donald Thomas seconds the motion.

**Donald Thomas** – no standing – does not believe that the town did not issue a permit.

**Bob Falcigno** – no standing – does not believe that a house could be erected without anyone noticing and not having a building permit to do so for 10 months.

**Michael Smith** – no standing – does not believe that there was anyway a house could be built without a building permit or someone noticing.

**George Hennessey** – no standing – believes permit was issued.

**David Gersz** - no standing – believes permit was issued and he knew about it.

Chris Soto also adds that not at any single point in time has he come into our office and stated they are building without a permit. He has been in office that many time and did not see a building permit that has been sitting in the file since January. In all the conversation we have had and my staff not once did he bring up the idea about a building permit until today? In fact in March I was contacted by his attorney and was told back then that the permits had been issued and was told he had lost standing.

Bob Falcigno makes a motion the appellant has not standing. Donald seconds the motion. Roll Call Vote. All in Favor. Motion Carried.

Bob Falcigno closes public hearing. Bob Falcigno makes a motion to deny appeal. Michael Smith seconds due to lack of standing. Roll Call Vote. All in Favor. Motion Carried.

#### **18-31**

**APPLICANT:** Richard Zacks & Rene Ruotolo; Property Concerned: 7 Osmond Street, Zone R-1, Map 150, Block 1812, Lot 003 – *Gabled roof over patio.*

**VARIANCE:** Sched B; Line 7: Street line setback of 18' requested; 25' required.

Richard Zacks states that it is a gabled roof over patio, living on a corner lot not able to meet setbacks. None in Favor.

None Opposed.

Bob Falcigno Closes Public Hearing. Bob motions for an acceptance of the variance. Michael Smith seconds. Roll Call Vote. All in Favor. Motion Carried.

#### **18-32**

**APPLICANT:** Stefan and Eugenia Jarosz; Property Concerned: 356 Cosey Beach Avenue, Zone R-3, Map 020, Block 0111, Lot 009 – *Walkways.*

**VARIANCE:** Sched B; Line 8: Rear setback of 30' required; 8' and 4' requested. Sched B; Line 9: Side yard setback of 20' required; 13' requested.

Stefan Jarosz reads above request for variance.

None in Favor

None Opposed

Bob Falcigno closed Public Hearing. Michael Smith makes the motion to accept the variance. Donald seconds. Roll Call Vote. All in Favor. Motion Carried.

**18-33**

**APPLICANT:** Jesse A. Langer, Updike, Kelly & Spellacy, PC; Property Concerned: 202 Cosey Beach Avenue, Zone R-1, Map 030, Block 0115, Lot 009 – *Re-approval of constructed cantilevers.*

**VARIANCE:** Sched B; Line 9: Side yard setback 10' required; 26" requested.

Jesse Langer on behalf of Alan Greenberg – Jesse reads line 7 on application. To be clear the request is for the existing cantilevers. Atty. Zullo states that for just some background information they got the original variance after a hurricane and built with the cantilevers and got cited for violating the original terms of the original variance. They came back here and put an application for variance to legalize the variance. The board granted it with a fine. The condition of the variance was that they pay the fine. The board revoked the decision. They then brought a subsequent application to put that variance back in place and there was some objection from the neighborhood. So this was self-imposed in violation of the citing. Jesse Langer stated that the additional variance was for the deck and not the cantilevers. Chris Soto states that there were; 88-59 – granted with condition to not exceed the footprint, 93-029 the cantilevers had been built, and was withdrawn without prejudice; then in 95 there was variance with the cantilevers was granted with the condition of the \$750 fine and they only paid \$375. In 2002 after it had been rescinded it came back to the ZBA and that application was denied. Jesse Langer – good faith was shown by making a partial payment. This variance was originally granted. Donald Thomas states that they did not adhere to the variance rules to begin with 23 years later. Jesse Langer states they are talking about a \$750 fine and some of that was paid. Donald Thomas states but it was not paid. David Gersz states that they are building a house like this and they could afford \$375 more dollars? Donald Thomas states that they actually violated twice once when they went beyond the foot print and the second time when they did not pay the fine.

In favor -

Ann Reynolds – 206 Cosey Beach Ave. Has no objection if they leave the cantilevers the way they are.

Opposed – None

Bob Falcigno closes public hearing.

Bob makes a motion to deny the application. Donald Thomas seconds the motion based on a self-imposing condition. Roll Call Vote – All in Favor. Motion Carried.

**18-34**

**APPLICANT:** RPL Real Estate, LLC; Property Concerned: 58 Oregon Avenue, Zone R-2, Map 070, Block 0714, Lot 005 – *Addition*.

**VARIANCE:** Sched B; Line 9: Side yard setback 7.7' requested; 15' required.

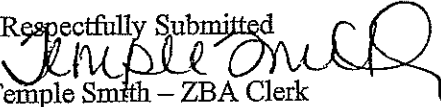
Atty. Mark Vehessicco – (Chris Soto tells the board that the client is a close personal friend of his and if the board feel he needs to rescind himself just let him know) states that the house is on a corner. Built a deck all the inspections were fine once the survey was done unknown to his client showed 15.6 feet and the setbacks were not met.

In Favor of - None

Opposed – None

Bob Closes Public Hearing. Bob motions for the request be approved. Michael Smith seconds. Roll Call Vote. All in Favor. Motion Carried.

Bob makes a motion to adjourn. Michael Smith seconds. All in Favor. Motion Carried.

Respectfully Submitted  
  
Temple Smith – ZBA Clerk

To whom it may concern:

I Linda Boleky residing at 40 Oregon Ave am  
in support of the new home built at 58 Oregon Ave, East Haven, CT 06513.

Comments:

We live next door to the new housing and  
it is beautiful compared to what we  
had to live next door to before.

Best Regards,

Linda Boleky  
(Print Name)

Linda Boleky  
(Signature)

11/14/18  
(Date)

To whom it may concern:

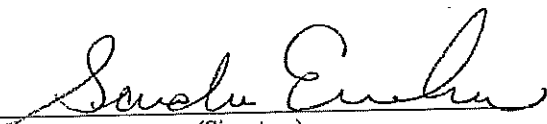
I Sandra Enders residing at 230 Oregon Avenue am  
in support of the new home built at 58 Oregon Ave, East Haven, CT 06513.

Comments:

The house was redone in very good taste,  
It came out beautiful and I have  
no problem with the house in the neighborhood

Best Regards,

Sandra Enders  
(Print Name)

  
(Signature)

11-14-2018  
(Date)



To whom it may concern:

I Sue Schutten residing at 27 Oregon Ave am  
in support of the new home built at 58 Oregon Ave, East Haven, CT 06513.

Comments:

Definitely an improvement. Glad to see it!

Best Regards,

Susan M. Schutten  
(Print Name)

Susan M. Schutten  
(Signature)

11/14/18  
(Date)

To whom it may concern:

I Maria Rosemond residing at 19 Oregon Ave am  
in support of the new home built at 58 Oregon Ave, East Haven, CT 06513.

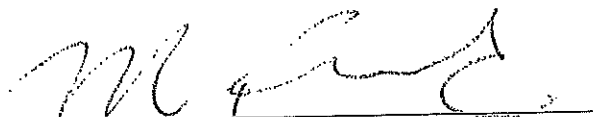
Comments:

Major change, it's a beautiful  
newse. it should be sold.

Best Regards,

Maria Rosemond  
(Print Name)

11/14/18  
(Date)

  
(Signature)

~~11/14/2018~~

To whom it may concern:

I David Dymarek, Jr residing at 41 Oregon Ave am  
in support of the new home built at 58 Oregon Ave, East Haven, CT 06513.

Comments:

The house came out great. Good Luck!  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Best Regards,

D. Dymarek, Jr  
(Print Name)

D. Dymarek  
(Signature)

11/14/2018  
(Date)

To whom it may concern:

I Teddy residing at 55 Oregon Ave am

in support of the new home built at 58 Oregon Ave, East Haven, CT 06513.

Comments:

I love the home that is built and look forward  
to meeting my new neighbors.

Best Regards,

Teddy

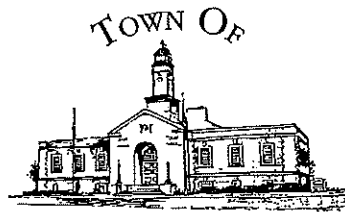
(Print Name)

Teddy

(Signature)

12/10/18

(Date)



EAST HAVEN

#1 18-30

ZBA-11/15/18

BUILDING DEPARTMENT

JAMES A. BASSETT

Building Official

November 15, 2018

**Sent Via: Hand Delivered**

East Haven Zoning Board of Appeals  
250 Main Street  
East Haven, CT 06512  
Attention: Chairman

Re: **Zoning Appeal No. 18-30**  
**188 Beach Avenue**  
**East Haven, CT**

Dear Mr. Chairman:

It is my understanding that the appellants in this matter have indicated that they did not have notice that a building permit was approved on the property of 188 Beach Avenue, until such time as they saw a posting in the New Haven Register on October 3, 2018. I find this representation very difficult to believe.

The building permit was issued in January of 2018. Since that time there has been significant work done on the property including four months of site work and three months of construction work. There have been construction workers on site on a regular basis and the structure is almost complete. I find it very hard to believe that the appellants in this matter did not have constructive knowledge or actual knowledge that both a building permit and a zoning permit was issued.

If you have any questions regarding the same, please do not hesitate to give me a call.

Very truly yours,

James Bassett  
Building Inspector



See other side for instructions

- ☐ "X" if amount, legal interest or property in demand, not including interest and costs is less than \$2,500.
- ☐ "X" if amount, legal interest or property in demand, not including interest and costs is \$2,500 or more.
- ☒ "X" if claiming other relief in addition to or in lieu of money or damages.

# 2 18.30

ZBA 11/15/18

TO: Any proper officer, BY AUTHORITY OF THE STATE OF CONNECTICUT, you are hereby commanded to make due and legal service of this Summons and attached Complaint.

Address of court clerk where writ and other papers shall be filed (Number, street, town and zip code) (C.G.S. §§ 51-346, 51-350) <b>235 Church St. New Haven CT 06510</b>		Telephone number of clerk (with area code) ( )	Return Date (Must be a Tuesday) <b>Sept 25, 2018</b> Month Day Year
<input checked="" type="checkbox"/> Judicial District <input type="checkbox"/> Housing Session	<input type="checkbox"/> G.A. Number	At (Town in which writ is returnable) (C.G.S. §§ 51-346, 51-349) <b>New Haven</b>	Case type code (See list on page 2) Major: <b>P</b> Minor: <b>90</b>

For the Plaintiff(s) please enter the appearance of:

Name and address of attorney, law firm or plaintiff if self-represented (Number, street, town and zip code) <b>LISA KWESELL, 2 MINOR RD, EAST HAVEN CT 06512</b>		Juris number (to be entered by attorney only) <b>N/A</b>
Telephone number (with area code) <b>(203) 623-3784</b>	Signature of Plaintiff (if self-represented)	

The attorney or law firm appearing for the plaintiff, or the plaintiff if self-represented, agrees to accept papers (service) electronically in this case under Section 10-13 of the Connecticut Practice Book.	<input type="checkbox"/> Yes <input type="checkbox"/> No	Email address for delivery of papers under Section 10-13 (if agreed to)
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Number of Plaintiffs: **1** Number of Defendants: **4** ☐ Form JD-CV-2 attached for additional parties

Parties	Name (Last, First, Middle Initial) and Address of Each party (Number, Street, P.O. Box, Town, State, Zip, Country, if not USA)	
First Plaintiff	Name: <b>LISA KWESELL</b> Address: <b>2 MINOR ROAD, EAST HAVEN CT 06512</b>	P-01
Additional Plaintiff	Name: Address:	P-02
First Defendant	Name: <b>Jennifer DeVecchio</b> Address: <b>9 Mill Pond Close, Milford, CT 06460</b>	D-01
Additional Defendant	Name: <b>Joseph DeVecchio</b> Address: <b>9 Mill Pond Close, Milford, CT 06460</b>	D-02
Additional Defendant	Name: <b>TOWN of East Haven</b> Address: <b>250 Main St, East Haven, CT 06512</b>	D-03
Additional Defendant	Name: <b>Greater New Haven Water Pollution Control Authority</b> Address: <b>260 EAST ST NEW HAVEN CT</b>	D-04

## Notice to Each Defendant

1. YOU ARE BEING SUED. This paper is a Summons in a lawsuit. The complaint attached to these papers states the claims that each plaintiff is making against you in this lawsuit.
2. To be notified of further proceedings, you or your attorney must file a form called an "Appearance" with the clerk of the above-named Court at the above Court address on or before the second day after the above Return Date. The Return Date is not a hearing date. You do not have to come to court on the Return Date unless you receive a separate notice telling you to come to court.
3. If you or your attorney do not file a written "Appearance" form on time, a judgment may be entered against you by default. The "Appearance" form may be obtained at the Court address above or at [www.jud.ct.gov](http://www.jud.ct.gov) under "Court Forms."
4. If you believe that you have insurance that may cover the claim that is being made against you in this lawsuit, you should immediately contact your insurance representative. Other action you may have to take is described in the Connecticut Practice Book which may be found in a superior court law library or on-line at [www.jud.ct.gov](http://www.jud.ct.gov) under "Court Rules."
5. If you have questions about the Summons and Complaint, you should talk to an attorney quickly. The Clerk of Court is not allowed to give advice on legal questions.

Signed (Sign and "X" proper box) 	<input checked="" type="checkbox"/> Commissioner of the Superior Court <input type="checkbox"/> Assistant Clerk	Name of Person Signing at Left <b>KEVIN P. SMITH</b>	Date signed <b>8-23-18</b>
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If this Summons is signed by a Clerk:

- a. The signing has been done so that the Plaintiff(s) will not be denied access to the courts.
- b. It is the responsibility of the Plaintiff(s) to see that service is made in the manner provided by law.
- c. The Clerk is not permitted to give any legal advice in connection with any lawsuit.
- d. The Clerk signing this Summons at the request of the Plaintiff(s) is not responsible in any way for any errors or omissions in the Summons, any allegations contained in the Complaint, or the service of the Summons or Complaint.

For Court Use Only	
File Date	
Docket Number	

I certify I have read and understand the above:	Signed (Self-Represented Plaintiff) <b>Lisa Kwezell</b>	Date <b>8/23/18</b>
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Return date \_\_\_\_\_

LISA KWESELL

Vs.

Superior Court  
Judicial District  
of New Haven at  
New Haven

\_\_\_\_\_, 2018

JENNIFER DELVECCHIO

JOSEPH DELVECCHIO

TOWN OF EAST HAVEN

GREATER NEW HAVEN WATER POLLUTION CONTROL AUTHORITY (GNHWPCA)

### Verified Complaint

FIRST COUNT - Trespass and Action for injunction to enjoin connection of an existing sewer pipe across the property of the Plaintiff to the primary main located in front of #2 Minor Road.

1. The plaintiff LISA KWESELL ("Kwesell") is an individual residing in East Haven, Connecticut.
2. The Plaintiff LISA KWESELL is the owner of a house and house lot in East Haven, commonly known as 2 Minor Road which abuts the defendant DelVecchio's property.
3. The defendant, Jennifer and Joseph DelVecchio are a married couple residing in Milford, CT.

4. The defendant, DelVecchios, are the record owner of a house and house lot on the beach in East Haven, Connecticut commonly known as 188 Beach Avenue which abuts the plaintiff's property.
5. The defendant has a deeded 12 foot right of way across the southerly boundary of the plaintiff's property for purposes of travel by foot or vehicle in order to access their property.
6. Upon information and belief based upon communications with the GNHWPCA, the defendant's contractors, and others, the prior sewer connection for the defendant passes under the property of the plaintiff.
7. Upon information and belief the defendant is intending to reconnect this existing sewer pipe to the main located in the street in front of 2 Minor Road.
8. The right of way relied upon for the defendant to access their property at 188 Beach Avenue does not give rise to underground access for utilities.
9. The existing sewer pipe falls outside the metes and boundary of that 12 foot right of way and even if the right of way were to include underground rights, the pipe is not within that 12 foot pathway and should not be reconnected.
10. The lining, use, reconnection or other passage of sewage or other matter via a pipe across the plaintiff's property would constitute continued and constant trespass without license or permission.
11. Upon information and belief, the existing old sewer pipe is almost 40 years old, does not meet current size standards, is already in need of repair and is not suitable for use.
12. The water service and the gas service to the defendant's property at 188 Beach Avenue travel across another abutter's property (Appuzzo and others - located at 186 Beach Avenue).



13. The existing sewer pipe is perilously close to the foundation support of the plaintiff's property at 2 Minor Road and continued use or the reconnection of the sewer to the main puts the plaintiff's property in immediate and continuous risk of peril.
14. During demolition of the previously existing house at 188 Beach Avenue, the defendant's contractors did recklessly sever existing gas and water mains causing great harm and cost to both utilities - even though the utility mains were properly marked on all engineering maps and "call before your dig" markers were in place.
15. The likelihood that similar indifference by the defendants to the plaintiff's property should prevent the existing pipe from being reconnected; as any future repairs or leaks repaired with the attention to detail shown on their demolition, a leak, or other incident requiring repair would be catastrophic for the plaintiff.
16. Due to the elevated nature of the plaintiff's home which was constructed on piers hammered into the soft sandy soils, any damages or excavation required on the improperly sited and located old pipe would be exacerbated by the topography and extremely close proximity of the existing pipe to the piers supporting the plaintiff's home at 2 Minor Road.
17. Other options exist for the defendant to obtain access to the sewer main other than via connecting to the existing pipe across the plaintiff's property.
18. The defendant and agents and contractors have been knowledgeable that the existing pipe was not within the right of way and needed to be relocated or connected to

the main in some other fashion since before the replacement home construction was commenced.

19. The plaintiff has no adequate remedy at law.

SECOND COUNT - action to limit the access across the 12 foot right of way to limit an expansion of the dominant use.

Paragraphs 1-18 of the First Count are hereby incorporated as Paragraphs 1-18 of the Second Count as if fully set forth herein.

20. Upon information and belief and based upon communication from the town engineers and building department, the defendants intend to use the dwelling currently under construction as a year round residence in violation of town ordinances and the intent of the original deed providing access to the property across the driveway of the plaintiff.
21. The EAST HAVEN Town Regulations (6-27) preclude a home from being constructed which does not have frontage on a town road.
22. Beach Avenue is not a public town road and, as such, 188 Beach Avenue does not have frontage on a public road.
23. The property located at 188 Beach Avenue is only accessible to Minor Road via a right of way across 2 Minor Road and a right of way is specifically excluded as frontage under town regulation 6-22.
24. Further, town regulation 6-27(b) mandates that no conversion of a summer only dwelling be made into a year round home. The town should be prevented from issuing an annual or year around certificate of occupancy.
25. The right of way providing access to the defendant's property solely contemplated that access

during a limited portion of the year as the use and design of the home then constructed on 188 Beach Avenue was of the nature of a summer home and not designed nor used for year round use.

26. The increase of traffic in both quantity and duration is a prohibited expansion of the dominant use of the right of way.

27. The plaintiff has no adequate remedy at law.

THIRD COUNT - Action for injunction to enjoin defendant from using set back space north of their home as parking in violation of Town Regulations and to restrict the volume and frequency of automobile (and other vehicular) traffic.

Paragraphs 1-27 of the First and Second Counts are hereby incorporated as Paragraphs 1-27 of the Third Count as if fully set forth herein.

28. On or about June 18, 2015 Defendant applied for several zoning variance and was granted (via subsequent court case NNH-CV-156056545) several variances to construct a new dwelling on the defendant's property.

29. The plans submitted to the town engineer include a stair and access-way on the northerly side of the home which encroaches into the required setback and the deck from which the stairs emanate is not conforming with the plans submitted to the court in the above-referenced case.

30. The plans submitted to the town engineer include a deck on the north side of the home that is not within the footprint of the preexisting home as required by the specific provisions of the court case.

31. The variances granted to the defendant do not include a variance which would allow construction into this encroachment area.
32. The variances granted to the defendant do not include additional setback variance for each additional foot of width that the street in front of the home is lacking (25.4.4) which contribute to the congestion in the narrow spaces of the abutting property.
33. The variances granted to the defendant do not include or provide for an expansion of the size of the deck on the northerly side of the home.
34. The plans as submitted to the building department also include a deck and balcony on the water side (southerly) of the home which also do not conform to the previous home foot print as required by the above-captioned court case.
35. It is possible to design access to the house, the waterside deck, and the balcony all without violating these provisions as mandated by the above-captioned court case.
36. The plans also include parking in the setback area as prohibited by town zoning regulation 25.8.3.
37. Allowing additional parking in the setback zone would not only violate the zoning regulations, it would also result in increased use of the right of way which was not originally contemplated and, as a result, is also an unlawful expansion of that dominant use.

FOURT COUNT - Action for injunction to enjoin defendant from improperly completing landscaping, drainage, construction which could cause damages to the defendant's home and to seek repair and restoration of same.

Paragraphs 1-37 of the First, Second, and Third Counts are hereby incorporated as Paragraphs 1-37 of the Fourth Count as if fully set forth herein.

38. Upon information and belief and based upon plans and construction currently under way the defendants do not intend to conform to the original approved plans for the grading and other topography surrounding the home and the result will be increased rainwater directed at the plaintiff's house and property.
39. Upon information and belief and based upon a review of said plans, the construction of the proposed dwelling would flood and otherwise damage the plaintiff's property and the current state is already leading to increased runoff and flooding on the plaintiff's property.
40. Upon information and belief the existing home as currently constructed fails to meet the flood regulations of 9-76(3) with respect to required anchoring.
41. The flood regulations were specifically referred to in the above-captioned court case approving the construction and the court contemplated full and complete compliance with all pertinent regulations.
42. The town has consistently failed to apply such regulations to the review of the construction of the defendant's dwelling. Therefore, the town can't be relied upon to properly enforce the rulings of the court as they have already proven to ignore

Return date \_\_\_\_\_

LISA KWESELL

Vs.

Superior Court

Judicial District

of New Haven at

New Haven

\_\_\_\_\_, 2018

JENNIFER DELVECCHIO

JOSEPH DELVECCHIO

TOWN OF EAST HAVEN

GREATER NEW HAVEN WATER POLLUTION CONTROL AUTHORITY (GNHWPCA)

### Verification of Complaint

I hereby certify that I, Lisa Kwesell, the Plaintiff in the above-captioned action, have personal knowledge of the facts set forth in the foregoing Verified Complaint and to the best of my knowledge, the facts contained therein are true and accurate.



LISA KWESELL

State of Connecticut:

: SS. New Haven

County of New Haven:

On this, the 23<sup>d</sup> day of August, 2018, before me, the undersigned notary, personally appeared Lisa Kwesell, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, who made solemn oath under the penalty of perjury that the above statements are true and accurate to the best of her knowledge and belief, and that the execution of this instrument is her free act and deed.

In witness whereof, I hereunto set my hand.

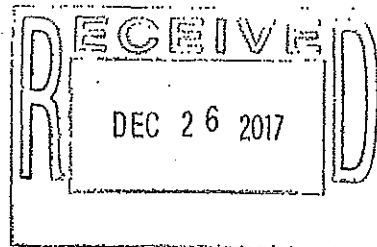
A handwritten signature in black ink, appearing to read "Maxd", with a long horizontal line extending to the right.

Commission of the Superior Court, Notary Public. My  
commission expires November 30, 2019

Mr. Chris Soto, Zoning Enforcement Officer  
East Haven, CT 06512

December 22, 2017

RE: 188 Beach Avenue  
MBL - 010 0106 009  
Owner DelVecchio



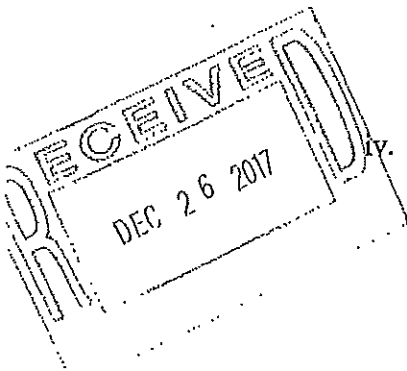
### Verified Petition to Intervene

Under Connecticut State General Statute 22a-19, I hereby apply and seek status as an intervenor in the case of wetlands approvals, review of the conditions, zoning permit review, Coastal Area Management (CAM) approval and possible related sanctions which may be levied because of the current environmental conditions at the above-captioned property. This letter is sworn and attested by an notary/officer of the court below.

I believe I am now entitled to participate in all discussions and review of all activity with respect to remediation and settlement of claims against the property - as they relate to environmental and pollution remediation.

1. The subject property is currently in the process of applying for a certificate of zoning appropriateness, permit for demolition, construction permit and related administrative activity.
2. These processes likely involve conduct which has or which is reasonably likely to have, the effect of unreasonably polluting, impairing, or destroying the public trust in the air, water, and other natural resources of the state in the following ways as informed, inter alia, by expert consultants retained by the intervenor and by actions previously taken by various parties to this intervention.
  - a. The original application for CAM was submitted expressly with the contention that the property sustained substantial damages by "superstorm sandy" which is patently untrue and has not been proven by submission of any evidence in support. On the contrary, significant evidence conflicting this assertion was submitted in a case on the Zoning Board, but additional information is available that was not submitted in the original zoning hearing so it is not now part of the record. But it does exist. The home was inspected prior to purchase and an insurance inspector performed a post hurricane damage evaluation and adjuster report which also show the house was perfectly habitable and supports the contention that the homeowner performed the illegal renovations on an otherwise worthy house.
    - i. Providing false information in the application of a CAM immediately renders such approvals null and void.
    - ii. Providing false information in the application of a zoning appeal immediately renders such zoning approvals null and void.
    - iii. As I understand it, the homeowner has continued to maintain home insurance for a non-damaged "livable" house - not a totally destroyed

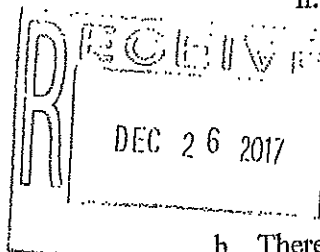




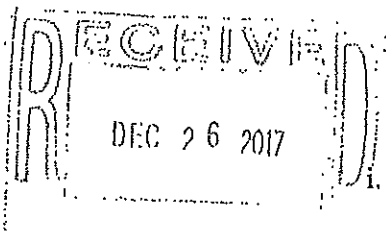
home that isn't inhabitable. I reasonably believe that failing to notice the insurance company constitutes insurance fraud. The homeowners have also continued to use the house during the intervening period of time from the illegal partial demolition until now.

iv. Similarly, I believe that the homeowner has failed to notify the mortgage company on the same grounds (that the house is destroyed) which would also constitute materially false information and is a violation of the deed and mortgage note and, as such, is likely also in violation of fraud statutes for misrepresentation of material information to the bank. This is also in direct contravention of the inspection and notices required under the HUD loan process supported by a home inspection prior to closing.

1. It is impossible to argue on one hand that the house was destroyed by superstorm sandy but fail to hold that truth (sic) out to the remainder of the world. One side of the coin is perjury and the other is failure to notify – neither of which are positive outcomes.
- b. The original application of CAM included the statement that the property will be constructed on the same footprint, yet the preliminary designs submitted on December 12, 2017 clearly show that the proposed house design exceeds the footprint in many respects.
- c. The plans as submitted on December 12, 2017 exceed the original plan of 1,288 footprint by some 55 square feet ( $52 \times 25'10'' = 1,343$ ).
  - i. Doubling this increase to the second floor results in a total square foot plan of 2,686 which is larger than the existing home of 2,664 and is a direct contravention of the statements made on the record that the house would be smaller in size and footprint than the existing house.
- d. The proposed house is also located 8 feet closer to water than the *non-existent* deck – so, even if the deck was there (which it isn't and isn't grandfathered – but even if it was) the proposal is *still* 8 feet *closer* to the water at a minimum. And maybe even closer yet – see item N, below.
- e. The "Juliet balcony" on the plans as submitted is also larger than the existing second floor deck by 6 inches. The deck currently on the waterward side of the house extends only 4' from the house – not the proposed 4'6".
- f. The northerly deck (on the non-water side) is also much larger than the existing deck by approximately 2 feet deeper (existing is 8x14, proposed is 8x16, plus 4x4 where the ac unit is located).
  1. Note that the footprint is also not on or matching the existing footprint, either.
- g. The proposed construction project includes regulated activity (excavation, fill, erection of structures, etc.) within the boundaries and affecting the area known as wetlands – and as such requires a specific permit from the Inland Wetlands Commission and also must meet rigid standards under state Statutes under Chapter 440 – 22a-28, and subsequent as required by Zoning Regulation 25.10.
  - i. Furthermore, Zoning Regulation 52.6.3 requires that the Inland Wetland Commission sign off on the project prior to commencing any activity (including demolition!) in the wetlands areas of the beach.



- ii. There is no discussion or mention of how the proposed construction plans on building a foundation and related structures without disturbing the approximately 150-200 cubic yards of beach sand and dunes that would need to be illegally excavated from the dune/beach in order to construct the house as presented.
  - 1. Note, there are no provisions in the state or local code which allows for any excavation on the tidal dunes.
- h. There is a setback requirement from Tidal Wetlands of 25 feet for which a variance has not currently been granted and is required prior to construction in the Tidal Wetland area (Zoning Regulation 25-10b). The sand dunes are part and parcel of this feature and clearly meet the state definition of wetlands and protected dunes.
  - i. Furthermore: "there shall be no construction and/or development, and/or land disturbance such as grading, filling, cutting or the removal of native vegetation within this setback area."
    - 1. There has been prior vegetation removal which is clearly a violation(s) that have already been reported to the Town Engineer and to DEEP on several occasions.
- i. Under Zoning Regulation, 21-5, any excavation in a Flood Plain District requires a site plan review and approval by the Zoning Commission (not the Board of Zoning Appeals). This review has not yet occurred and no construction or demolition can occur absent this review.
- j. The Zoning Regulations require that "a Zoning permit shall automatically be rendered null and void (emphasis in the original) if there are any... erroneous or false information uncovered on the Zoning Procedural Application after said Zoning Permit has been issued."
  - i. The proposed construction exceeds the existing footprint in several material ways, and
  - ii. The original application indicated that the property was damaged by "Superstorm Sandy" which it was not and no credible evidence to support this contention has been submitted to the Town Engineer.
  - iii. Both of these two false hoods require the permit to become null and void.
- k. Under Zoning Regulation 25.4.3, an additional setback is required which has not currently been granted.
- l. Under Zoning Regulation 25.4.4, an additional setback is required which has not currently been granted.
- m. The proposed replacement property is in violation of Zoning Regulations under 44.10 as while there are existing variances as provided by the ZBA, many other attributes do not qualify and, as such, the proposed replacement property fails to conform to 44.10.
- n. The proposed construction uses an old A2 survey that is patently incorrect as to the distance to the mean high water mark. There have been numerous storms which have substantially modified the shoreline. Prior to even the beginning of review of a plan – long before the acceptance of a plan and issuing a zoning permit and a building permit, that appropriate distance(s) to the water need to be verified and attested by a licensed surveyor under Zoning Regulation 53.2.1

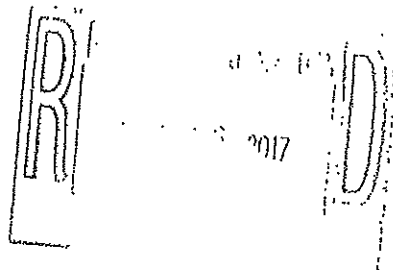
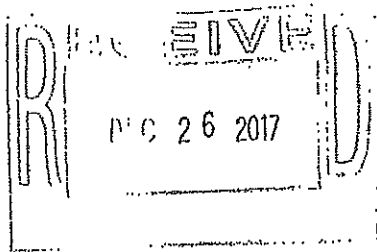


- Note, this also results in the lot size and percent coverage ratios from being in compliance. The new house must be compliant in all respects not covered by the Zoning Board appeal – lot coverage, footprint, etc. none of which are met in the proposed plans dated December 12, 2017
- o. The enclosed survey fails to denote several key utility features – including a gas line and a water line that actually bifurcate the existing plot plans as required by 52.3.1.10
    - i. Furthermore, the location of those gas and water lines require relocation and approvals prior to demolition or other activity on the property.
    - ii. The survey is also not signed under seal by Fedus and appears to be a cut and paste job over a prior survey without validating or verifying the underlying details – including the distance to the water on the waterward side of the proposed house.
  - p. The proposed house plans submitted December 12, 2017 contain a basement that is in violation of the lowest floor standard – a basement area is required to be above the Base Flood Elevation (BFE). Per Flood Regulation 9-41, "...the lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area is not considered a building's lowest floor. (emphasis provided). Thus – according to the definition in the Flood Regulations, the lowest floor is not compliant with Flood Regulation 9-78(a)(1).
  - q. The minimum floor (elevation) requirements are also not met under the Zoning Regulations 3.7.1 whereby: "The land adjacent to, and within 10 feet of any building... shall be graded to an elevation of 11.0 feet based on a mean sea level"
  - r. The proposed house as laid out on the drawings is impossible to construct and remain in compliance given the grade and elevations – the 12 BFE is less than 6 feet above the dune sand at the northerly end of the home and the garage door appears to be approximately 8 feet to the grade.
    - i. Thus, the approach and all the "driveway" area would need to be graded down and excavated which is patently prohibited.
    - ii. Also note, the grade of the slab on the garage will also require a full foot of taper from front (waterward) to the north – to achieve the required  $\frac{1}{4}$ " per foot of taper to allow water to exit the basement – not technically impossible, but very difficult to accomplish and will require an extremely thick floor and substructure – which can't be externally sourced material filled in on top of the existing sand base.
  - s. The proposed house plans include a deck on the waterward side of the house when in fact no such deck exists now (nor was it present at the time of the original application and appeal – see the 2014 "Criscuolo survey where it is marked "remains of deck foundation..." and replacing a deck that has already been removed is not permitted under the coastal regulations nor the zoning regulations.
  - t. The construction of a new deck is in violation of coastal regulations as the area waterward of the subject property is also a known and verified piping plover habitat.

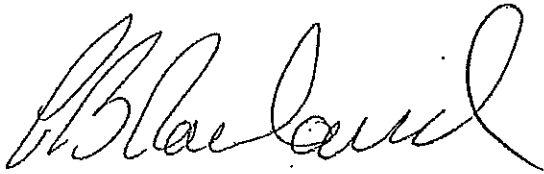
- u. The proposed construction documents submitted December 12, 2017 do not contain an analysis of the projected costs, damaged property, and related supporting documentation or materials under Flood Regulations 9-69(1)(e).
- v. The state has, on more than one occasion included the strong recommendation that new construction in the coastal jurisdiction conform to VE construction methods.
- i. Therefore, it is incumbent upon the proposed construction drawings to prove conclusively that there is no risk of additional environmental damages which might result – that would contradict the state's earlier admonishment.
- w. The ZBA in approving the variances per the original ZBA application, failed to articulate an approval of the CAM and failed – in violation of its own regulations – to put that approval in writing. The result is that there is no record of the review of the cam, the coastal implications and no acknowledgement that the proposal meets the current environmental regulations (which it doesn't).
- x. The existing property is grandfathered under zoning and related regulations but any new modifications must conform to the current flood (and zoning) regulations and the expansion of construction into the dune area waterward of the existing footprint is a violation of Flood Regulation 9-53.
- y. The proposed construction documents as submitted on December 12, 2017 are not certified by a professional engineer or architect as required under Flood Regulations 9-67 (especially as it pertains to increases in flood heights or velocity relative to Flood Regulations 9-34(1), (3), (4), & (5) and 9-76(1) whereby a new solid foundation parallel to the beach specifically won't increase scour or other damages in the event of a beach breach or wave crest.
- z. The proposed construction documents as submitted on December 12, 2017 do not contain a certification by a professional engineer that the foundation and constructions methods are designed to be properly anchored according to Flood Regulations 9-76(3), (13), & (14) paying particular attention to the phrase in (14): "new construction or substantial improvements involving an increase in footprint of the structure, are prohibited unless the applicant provides certification by a registered professional engineer demonstrating, with supporting hydrologic and hydraulic analyses performed in accordance with standard engineering practice, that such encroachments shall not result in any (0.00 feet) increase in flood levels (base flood elevation)." REPEATED again in substantially similar wording under Flood Regulation 9-78(d).
- aa. The existing regulations require that a new construction be certified as not having an environmental impact – and the construction of a solid foundation will likely cause additional scour and other adverse effects.
- bb. After reviewing the available license look up system on the State of CT Consumer Protection website, it appears that the plans submitted have been drawn by an person without proper credentials – neither an architect, engineer, or even a licensed new home contractor. Absent the proper licensing which appears to not exist, the documents have zero validity and cannot be relied upon to allow the construction of a new home - especially in a coastal jurisdiction as required 33.11.6 (and related).

- cc. The construction of a new home that replaces a prior non-conforming house must conform in all respects to the current regulations (but for any approved variance provided by the ZBA) and the proposed house fails in many respects to conform to current regulations that are not covered by variance. To wit:
- i. New construction lot coverage may not use the dunes or other water resources in the calculation of the coverage. The result is that the new coverage calculation results in a much higher lot coverage as a result of the proposed construction.
  - ii. New construction is prohibited on any dune or water resource
  - iii. The property is encumbered by a 4 foot right of way and this right of way may not be included in the set back or lot coverage percentage calculations. The result is that a new house would dramatically increase the lot coverage over the previous home.
3. The proposed construction is situated on a non-conforming lot without frontage on a road of any sort and, as such, is restricted under 6-27(b) from converting the existing summer cottage to a year round residence and it appears as though the contemplated construction is for a year round residence in direct violation of the provisions under 6.27.
- a. Note that while the field card indicates the presence of a fireplace, it was removed (with all insulation and other weather saving features) during the unpermitted (and, consequently, illegal) demolition project in the fall of 2014. Because this was done without a permit, they cannot be reversed and the house cannot be converted to a year round home under the 6.27 rubric.
  - b. Also, note that the original house was only a one bathroom home and expanding the number of baths is also prohibited in the context of converting a summer only cottage to a year round house.

Cc: Joseph Zullo, Town Attorney  
Stacy Gravino, Town Clerk (for Wetlands commission and Mayor's office)  
Kevin White, Town Engineer  
James Basset, Town Building Official  
Diane Ifkovic, State DEEP  
Kevin Zavoy, State DEEP



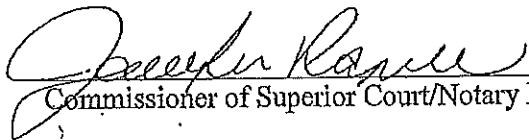
This application (and letter) makes specific verified allegations of unreasonable impairment of natural resources, the unreasonable destruction of wetland buffers and tidal dunes; thus, the undersigned party intervene in any and all proceedings henceforth relating to 188 Beach Avenue upon the filing of this Verified Notice of Intervention and request notice of any and all meetings relating to said property.



Patrick Rowland

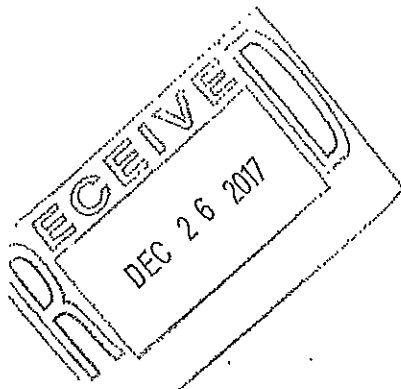
State of Connecticut  
County of New Haven

On this 22 day of December 2017, personally appeared Patrick Rowland and made an oath to the truth of the matters contained in the foregoing application before me.



Commissioner of Superior Court/Notary Public

*My Commission Expires*  
*March 31, 2018*



# Connecticut General Statutes 8-7 – Appeals to board. Hearings. Effective date of exceptions or variances; filing requirements

Current as of: 2016 | [Check for updates](#) | [Other versions](#)

The concurring vote of four members of the zoning board of appeals shall be necessary to reverse any order, requirement or decision of the official charged with the enforcement of the zoning regulations or to decide in favor of the applicant any matter upon which it is required to pass under any bylaw, ordinance, rule or regulation or to vary the application of the zoning bylaw, ordinance, rule or regulation. An appeal may be taken to the zoning board of appeals by any person aggrieved or by any officer, department, board or bureau of any municipality aggrieved and shall be taken within such time as is prescribed by a rule adopted by said board, or, if no such rule is adopted by the board, within thirty days, by filing with the zoning commission or the officer from whom the appeal has been taken and with said board a notice of appeal specifying the grounds thereof. Such appeal period shall commence for an aggrieved person at the earliest of the following: (1) Upon receipt of the order, requirement or decision from which such person may appeal, (2) upon the publication of a notice in accordance with subsection (f) of section 8-3, or (3) upon actual or constructive notice of such order, requirement or decision. The officer from whom the appeal has been taken shall forthwith transmit to said board all the papers constituting the record upon which the action appealed from was taken. An appeal shall not stay any such order, requirement or decision which prohibits further construction or expansion of a use in violation of such zoning regulations except to such extent that the board grants a stay thereof. An appeal from any other order, requirement or decision shall stay all proceedings in the action appealed from unless the zoning commission or the officer from whom the appeal has been taken certifies to the zoning board of appeals after the notice of appeal has been filed that by reason of facts stated in the certificate a stay would cause imminent peril to life or property, in which case proceedings shall not be stayed, except by a restraining order which may be granted by a court of record on application, on notice to the zoning commission or the officer from whom the appeal has been taken and on due cause shown. The board shall hold a public hearing on such appeal in accordance with the provisions of section 8-7d. Such board may reverse or affirm wholly or partly or may modify any order, requirement or decision appealed from and shall make such order, requirement or decision as in its opinion should be made in the premises and shall have all the powers of the officer from whom the appeal has been taken but only in accordance with the provisions of this section. Whenever a zoning board of appeals grants or denies any special exception or variance in the zoning regulations applicable to any property or sustains or reverses wholly or partly any order, requirement or decision appealed from, it shall state upon its records the reason for its decision and the zoning bylaw, ordinance or regulation which is varied in its application or to which an exception is granted and, when a variance is granted, describe specifically the exceptional difficulty or unusual hardship on which its decision is based. Notice of the decision of the board shall be published in a newspaper having a substantial circulation in the municipality and addressed by certified mail to any person who appeals to the board, by its secretary or clerk, under his signature in any written, printed,

typewritten or stamped form, within fifteen days after such decision has been rendered. In any case in which such notice is not published within such fifteen-day period, the person who requested or applied for such special exception or variance or took such appeal may provide for the publication of such notice within ten days thereafter. Such exception or variance shall become effective upon the filing of a copy thereof (A) in the office of the town, city or borough clerk, as the case may be, but, in the case of a district, in the offices of both the district clerk and the town clerk of the town in which such district is located, and (B) in the land records of the town in which the affected premises are located, in accordance with the provisions of section 8-3d.