

APPROVED ON 10/7/2020

**Town of East Haven
Planning and Zoning Commission Minutes
September 2, 2020 Regular Meeting**

The East Haven Planning and Zoning Commission held a regular meeting on Wednesday, September 2, 2020 at 7:00 PM via ZOOM videoconference and conference call to conduct the following:

Chairman DeMayo called the meeting to order at 7:00 p.m.

Staff Present-Jonathan Bodwell, Town Engineer and Assistant Town Attorney, Jennifer Coppola.

Attorney Coppola gave introductory comments for the protocol of these meetings being held via videoconference and conference call. The recording of these meetings will be found under the Minutes and Agendas link on the Town's website. Attorney Coppola stated that item #8 "Discussion of and Action on Motion to Withdraw Administrative Appeal: 180 and 242 Strong Street" will be removed from the agenda at the request of counsel and requested that the agenda be amended to add the enforcement action for 662 Coe Avenue cease and desist order to the agenda under New Business.

1. Roll Call

5 Members-Quorum Present (Asid, DiSilvestro, Tarducci, Shaul, and DeMayo)

Chairman DeMayo entertained a motion to amend the agenda to add the cease and desist order for 662 Coe Avenue dated August 28, 2020 to the agenda.

Commissioner DiSilvestro made that motion.

Commissioner Tarducci seconded the motion.

Roll call-All in favor. None opposed. No abstentions.

662 Coe Avenue cease and desist order was added to the agenda.

2. Administrative Actions

1. Accept/Approve of Minutes from the July 8, 2020 meeting.

Commissioner Asid moved to accept the minutes.

Commissioner DiSilvestro seconded the motion.

Voice vote-All in favor. None opposed. No abstentions.

Approved

3. Public Hearings

2. Public Hearing # 1: Amendments to Zoning Regulation Changes – (Adoption of entire Zoning Regulations).

Commissioner Asid moved to table the public hearing.

Commissioner Shaul seconded the motion.

Voice vote-All in favor. None opposed. No abstentions.

Tabled

3. **Public Hearing # 2 20-01-Z: 49, 57 & 63 Coe Avenue:** Application for a Zone Change: – (R-1 to PDD). Request to create a Planned Development District in accordance with the requirements of Section: 26.2.4.4. Owner/Applicant AG&L Properties, LLC.

Chairman DeMayo recognized Attorney James Segaloff who stated that several months ago the Commission approved a 55+ older non-assisted 1 bedroom, 20 units on a parcel less than 2 acres, prior to that it had to be more than 2 acres. The Commission approved 26.1 of the Regulations to establish a PDD within the shoreline area of less than 2 acres. This track of land falls within those parameters. DEEP has already weighed in on this project.

Chairman DeMayo asked if these were market rates.

Attorney Segaloff indicated that the units are condos.

Chairman DeMayo recognized Jim Pretti, Criscuolo Engineering, Branford, CT. Mr. Pretti described the plan, there will be two buildings with a gap between, parking underneath, elevator in each building, and 25 parking spaces for the 20 units. The site will include concrete patio area and PVC vinyl fencing. Also, included is a grass area and landscaping to decrease any runoff, lighting will be under the building so as not to cause light reflecting on the abutting properties, plantings of ornamental perennials, and trees along the sidewalk.

Chairman DeMayo recognized Architect Robert Mangino who stated he met with the Fire Marshal and Building Official to review the plans. These units are ADA compliant and include a sprinkler system; they meet the requirements for 55+ units.

The Chairman called for comments in favor of the application with no response. The Chairman then called for comments in opposition to the application.

Niki Whitehead, 7 Hilton Avenue asked the Chairman what the ground rules are for presenting full comments to the Commission; whether she can request the public hearing remain open, go over the exhibits she submitted and why she included them, and submit her more lengthy comments in writing. This is the first time the plan is being presented to the Commission and she has extensive comments.

Chairman DeMayo asked Attorney Coppola to weigh in on Ms. Whitehead's request that the public hearing remain open for receipt of her written comments. Attorney Coppola stated that Ms. Whitehead has indicated that she does have extensive comments along with her narrative that she wants as part of the record. The Commission should hear from Attorney Segaloff on her request. If the Commission were meeting in person, it would take in Ms. Whitehead's written comments. Request to submit comments by noon the day before the meeting is to comply with Executive Order 7B. It does not mean people cannot submit during a meeting. Documents taken in during a meeting are being posted with the other meeting materials online.

Attorney Segaloff believes that it is unfair to leave the public hearing open and that Ms. Whitehead had enough time to submit her written comments.

Chairman De Mayo instructed Ms. Whitehead that she has 15 minutes to go forward with her presentation and if the Commission continues the hearing, then she can submit written comments.

Ms. Whitehead indicated she's trying to find the best way possible to adequately and expeditiously submit her comments. This is not a simple submission to the Commission. This is the first time this has been made available to the public for input after continuances by the applicant. It is the first planned development application with the brand new exception. This is the first time an application has come in under that carved out regulation. This application has taken that exception to the extreme. Therefore, she would like her comments on the record as she needs more than 15 minutes. Also, she requested to give written comments to the Commission tomorrow. She also pointed out that the Commission cannot schedule a public hearing/vote on an incomplete application and there have been changes made; it is part of your PDD regulation, no approvals to an incomplete application. Her request still stands to leave the public hearing open and receive the written comments.

Chairman DeMayo agreed to accept written comments from Ms. Whitehead tomorrow.

Attorney Segaloff believes this is a complete application. Mr. Soto previously raised DEEP response not having been received but that has been received.

Chairman DeMayo recognized Lorena Venegas, 73 George Street, who lives close to the development. The public hearing notice that is on the site at this time indicates the public hearing meeting date as August 5, 2020. The applicant at no time went to the site to notice this public hearing and I also asked the neighbors who abut the property if they received written notice from the applicants for this public hearing and they had not. She believes this regulation was changed in the eleventh hour of a meeting in November and the Chairman even commented that this might open up Pandora's Box with regard to development. Attorney Segaloff cancelled this public hearing several times and she would like to be apprised of all the information; such as security cameras, emergency vehicles, snow removal, and the height of the buildings.

Chairman DeMayo recognized Joseph Deko, Town Council Chairman. Mr. Deko has some concerns, one of which is privacy for those that live on George Street. This building will be looking into the yards and homes behind the building. He disagrees with Attorney Segaloff's comments that all the neighbors were happy with the plan. In fact, they all were concerned over the size of these buildings and asked they be downsized with fewer units and they disregarded those concerns as well. He also asked what the required parking would be for 55+.

Attorney Segaloff believes it is one space per unit and Mr. Pretti agreed.

Attorney Coppola reviewed the Regulations.

Mr. Deko indicated he is concerned with the parking because one space is hard to live with and he does not want to see this building sitting empty if parking is an issue. The parking was a concern when Cosey Beach Association spoke to the developer prior. He also questioned where visitors would park.

Attorney Coppola could not locate a regulation which permits one parking space per unit for the application. She cited requirements of Section 42 of Regulations.

Mr. Mangino the architect believes 55+ allow for one space per unit citing Hemingway Avenue project.

Chairman DeMayo recognized Patrick Rowland, 2 Minor Road, whose first concern is that this is only about half an acre and if they were not to use that new regulation they would only be building approximately 5 units. Secondly, what's the height of these buildings; he does not believe the setbacks are met based on the height. When is it okay to fit more into less! In the minutes of November 2019, Mr. Segaloff indicated there is no place that meets the criteria and one month later he submitted these plans. This change to the PDD is a problem because of all the parcels along the shore it can apply to; these types of developments will be popping up. How many parcels are you opening Pandora's Box to. The board is under no compulsion to approve 20 units. You approved in November up to 20 units for 2 acres not for half an acre.

Attorney Segaloff stated that the only time the plan was deemed incomplete was by Mr. Soto who was waiting for comments from the DEEP. With regard to the parking it is one per unit, which they more than meet. It's a development for elderly that everyone would agree is needed.

Chairman DeMayo asked Attorney Segaloff why he did not go to the Zoning Board of Appeals for this approval.

Attorney Segaloff stated that a use variance has a much more demanding standard at the Zoning Board of Appeals.

Chairman DeMayo indicated you must have thought that this Commission was the point of least resistance because with ZBA you have to prove a hardship. He further stated he does not believe this Commission was fully apprised of the potential problems with this text change that two neighbors could get together and build 20 units on a half an acre along the shoreline district.

Commissioner Shaul does not feel comfortable voting on this, he feels he's too naive to understand the potential. One thing that does bother him is how close the buildings are to the abutting property owners.

Commissioner Tarducci had some questions for Attorney Segaloff. First, are these rental or condos, are they age restricted, and have we clarified the parking regulation?

Attorney Segaloff stated he believes they are condo units that will be 55+.

Commissioner Tarducci questioned one parking space per unit.

Attorney Coppola stated she does not believe that is correct, she looked at various regulations, and does not know what regulation the applicant is relying on. They will have to identify the regulation.

Commissioner Asid agrees with the residents and when approving this regulation she believes they were led down the garden path. Also, if Ms. Venegas is correct about the

notice posted at the site by the applicant, she is in favor of keeping the hearing open so that the public could attend.

Commissioner DiSilvestro disclosed that he was previously employed at the firm who represented the buyer and the seller for this site and will abstain from any action going forward.

Commissioner Asid moved to continue the public hearing.

Commissioner Shaul seconded the motion.

Roll call vote-4 in favor (Asid, Tarducci, Shaul, and DeMayo). None opposed. 1 abstention (DiSilvestro).

Public Hearing Continued/Remains Open

4. Old Business

4. Amendments to Zoning Regulation Changes – (Adoption of entire Zoning Regulations). No Action Necessary
5. **#20-01-Z: 49, 57 & 63 Coe Avenue:** Application for a Zone Change: – (R-1 to PDD). Request to create a Planned Development District in the requirements of Section: 26.2.4.4. Owner/Applicant: AG&L Properties, LLC. No Action Necessary

V. New Business

6. **Enforcement Action: 21 Foxon Road:** Discussion on possible resolution to enforcement action related to clear cutting of Town owned property.

Attorney Coppola stated that the Town had received complaints about some activity at 21 Foxon Road on Town property that was part of a 1960's development. This was dedicated open space provided for that development. Acting Town Engineer Jonathan Bodwell is in the meeting. Provided in the meeting materials was the approved plan for the open space and a large portion of this open space was clear-cut. There were a couple of property owners involved as well as a contractor. Staff and counsel wanted to make the Commission aware of this because it is not just one individual actor involved in this situation and their intent is to bring the violators in and decide what the resolution is going to be and the Town Engineer will be making a recommendation with regard to this issue.

Determination Under Review/No Action Necessary

7. Enforcement Action: 662 Coe Avenue. Cease and Desist Order.
Attorney Coppola explained that a cease-and-desist order was issued August 28, 2020, to Leonard Inzitari who is the principal of Paradise Alley Professional Wrestling LLC. The order was for the use taking place at 662 Coe Avenue. This is a typical cease and desist order in terms of its facts. This is a CB-2 zoned property. The use they are putting property to, a wrestling studio use, is not a use that is allowed in that zone. More specifically, it concerns the adult oriented business or entertainment regulations contained in the use list at 29a and the definitions at Sections 36.2.1 and 36.2.9 for “adult oriented business” and “adult personal service establishments.” The definition of “adult personal service establishments” states: “an establishment, club, business, by whatever name designated, which offers or advertises or is equipped or arranged so as to allow a

person, while clothed, nude or partially nude to provide personal services for an individual of the same or opposite sex on an individual basis in an open or closed room and which excludes minors by virtue of age. Such services or activities include, but are not limited to, massages, body rubs, alcohol or lotion massages or body rubs and other similar treatments; as well as modeling studios, wrestling studios and individual theatrical performances.” The Regulation was originally adopted as Section 46 in December of 1997 and when the Regulations were readopted it became Section 36. The definition includes modeling studios, wrestling studios, and theatrical performances being identified as adult establishments. Attorney Coppola spoke with Mr. Inzitari who argued his business is not pornographic. It is ‘80s wrestling. There is no blood, chair throwing, violence, or vulgarity. He has options to respond to order -could find another location, pursue a variance, pursue a text amendment - but the language is not good language and does not go to what he is trying to do at the property. . Attorney Coppola recommended that the Commission vote to stay the cease and desist order and authorize her to propose amendments to the Regulation because the issue is going to come up again.

Chairman DeMayo is in agreement with all that Attorney Coppola stated and believes the Commission should stay the order and amendments should be prepared.

Commissioner DiSilvestro moved to stay the Order and have Attorney Coppola prepare amendments to be presented to the Commission.

Commissioner Tarducci seconded the motion.

Roll call vote-all in favor. None opposed. No abstentions.

Motion approved.

8. Action in Accordance with Court Judgment: 92, 100, 110, 118, 126, 180, and 242 Strong Street: Action in accordance with Court Judgment entered in Autumn View LLC, et al. v. East Haven Planning and Zoning Commission (Docket No. NNH-CV13-6043869-S).

Attorney Coppola acknowledged applicants’ counsel Timothy Hollister. There were two separate lawsuits involving the parties, Autumn View LLC, Statewide Construction and Vicki Imperato versus. the East Haven Planning and Zoning Commission. One lawsuit was brought in 2013 appealing denials of affordable housing applications for the addresses noted in the agenda. The other lawsuit was filed in 2016 with regard to the conditional approval of a PEFD site plan application for 180 and 242 Strong Street. The 2013 lawsuit involved applications to amend the Zoning Regulations to add a new affordable housing district, to rezone the properties to the new district, and for site plan approval.

Attorney Hollister provided all the relevant documents for this action item which are part of the meeting materials for tonight’s meeting and are available for viewing on the Town’s website. Attorney Coppola explained the documents that were provided and posted.

Attorney Coppola explained that Judge Berger issued two decisions in the affordable housing appeal which decisions are part of the posted meeting materials. She explained where to find these documents on the Town’s website and then explained what happened in the courts.

Attorney Coppola read part of the Judge Berger’s decision on remand dated 7/24/2017:

In sum, Autumn View's site plan appeal is sustained. The record indicates that Autumn View satisfactorily complied with Jacobson's concerns regarding the substantive water management modifications. Additionally, the commission failed to comply with the mandatory review process of § 8–30g(g) and has not sustained its burden of proof under the statute. Specifically, the commission's decision on remand is not supported by sufficient evidence in the record. There is not even a theoretical possibility of harm articulated by the commission. See River Bend Associates, Inc. v. Zoning Commission, Even if there were and assuming arguendo that storm-water management is a substantial public interest, a review of the record does not indicate how the commission's denial on remand is necessary to protect the public interest, how the public interest outweighed the need for affordable housing, or that the public interest could not be protected by changes to the plan.

Nevertheless, Autumn View has agreed to be bound by the conditions expressed in Jacobson's December 8, 2016 letter.... as it acknowledged in footnote 8 of its brief on remand. Therefore, Autumn View's site plan as revised to December 8, 2016, is remanded to the commission for approval consistent only with these conditions. Insofar as the remand of the appeal as to the proposed zoning district and accompanying zone change may be involved herein, the appeal as to these applications is likewise sustained.

Attorney Coppola advised that the Commission has never acted in accordance with the Judge's decision on remand and the Commission must act on the Judge's decision by law. She then provided a recommended motion to approve and offered some further explanation of the applications and the process.

Attorney Hollister stated this has been a long process but it has been resolved. This development will be 98 single family homes on 17 acres, 29 of those homes will be preserved for affordable housing for persons with an annual income of between \$40,000 and \$75,000, and the remaining 69 will be sold at market rate. The recommendations by the Commission's engineer Mr. Jacobson will be part of the plan. The Town Engineer, Mr. Bodwell, will receive a final set of plans as to what is going to be built including these recommendations for his review and approval. The Granniss Lake Homeowners' Association has requested, through their counsel Attorney Parese, that the homeowners in this new development make a monetary contribution either monthly or yearly for the maintenance of Granniss Lake and his client is considering that request in good faith.

Mr. Bodwell confirmed with Attorney Hollister that the roads in the development will be private roads and the standards in the Mixed Income Housing District text amendment will govern.

Attorney Hollister also confirmed that the Town Engineer has authority to approve the final plans.

Commissioner Tarducci indicated he would be abstaining from the vote.

Commissioner Asid asked a question regarding facilities for the units.

Commissioner DiSilvestro made the following motion:

I hereby make a motion to approve the following applications, which approvals have been directed by The Honorable Marshall K. Berger, Jr. in his December 23, 2014 and July 24, 2017 decisions in the matter of Autumn View, LLC, et al. v. East Haven Planning and Zoning Commission bearing Docket No. HHD-CV13-6043869:

1. Plaintiffs' application to amend the East Haven Zoning Regulations to create a Mixed Income Housing District (MIHD) in accordance with the resubmitted draft amendments to the Zoning Regulations dated March 27, 2013;
2. Plaintiffs' application to rezone the properties at 92, 100, 110, 118, and 126 Strong Street from R-3 to MIHD and 180 and 242 Strong Street from PEFD to MIHD; and
3. Plaintiffs' site plan application for the aforesaid properties revised through December 8, 2016 with the conditions of approval contained in Geoffrey L. Jacobson's December 8, 2016 correspondence to Alfred J. Zullo, Esquire, which does include the Town Engineer confirming the development's compliance with Mr. Jacobson's correspondence.

Commissioner Asid seconded the motion.

Roll call vote-4 In favor (DiSilvestro, Asid, Shaul, and DeMayo). None opposed. 1 abstention (Tarducci)

Motion carried

Approved

9. Discussion of and Action on Motion to Withdraw Administrative Appeal: 180 and 242 Strong Street: Discussion of and action on proposed Motion to Withdraw administrative appeal of Autumn View LLC, et al. v. East Haven Planning and Zoning Commission (Docket No. NNH-CV16-6061972-S). The public may comment on this agenda item. Withdrawn

V. Correspondence

10. **#20-09-S: 12 Baer Circle:** Application for a Modified Site Plan: – Request to expand an existing loading dock for existing permitted use. Zone: LI-2. Owner/Applicant: Frank A. Marino c/o Snack House, LLC
Administrative Approval by ZEO

Commissioner Asid moved to adjourn.

Commissioner DiSilvestro seconded the motion.

Voice vote-all in favor. None opposed.

Meeting adjourned at 9:18 p.m.

Respectfully submitted,

Roberta A. DeLuca
Commission Clerk