

TOWN OF EAST HAVEN, CT
ZONING BOARD OF APPEALS
MINUTES – REGULAR MEETING
July 18 2019 - 7:00 P.M. – EAST HAVEN SENIOR CENTER

The East Haven Zoning Board of Appeals Commission held its' Regular meeting at 7:00 pm on **Thursday, July 18, 2019** at the East Haven Community Center, 91 Taylor Avenue in order to transact the following:

MEMBERS PRESENT: ROBERT FALCIGNO – CHAIRMAN
 JOE PORTO – VICE CHAIRMAN
 MICHAEL SMITH
 DONALD THOMAS
 DAVID GERSZ

ALTERNATES PRESENT:
 VINCENT LETTIERI

STAFF PRESENT: ALFRED ZULLO – ATTORNEY
 CHRISTOPHER SOTO - ZONING ENFORCEMENT OFFICER
 TEMPLE SMITH – CLERK
 SAL BRANCATTI – ECONOMIC DEVELOPMENT DIRECTOR

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

Last months' minutes – Donald Thomas makes a motion to table the minutes for approval until the next meeting. Michael Smith seconds. Roll Call Vote. All in Favor. Motion Carried.

APPEAL HEARING 19-31

APPELLANT: Nick Mingione; Property Concerned: 198 Beach Avenue; (*Zoning permit*)

Chris Soto states that they issued a notice of violation. An application was submitted to correct the items on the notice of violation so that is in process. Chris recommends that it gets tabled until the next meeting. Michael Smith makes the motion to table to the next meeting on August 15, 2019. Joe Porto seconds the motion. Roll Call Vote. All in Favor. Motion Carried

19-32

APPLICANT: Frank Kolb, Esq.; Property Concerned: 578 Thompson Ave., Zone R-1, Map 210, Block 2515, Lot 002 – *Install 7'x7' ramp from deck to pool.*

VARIANCE: Sched B; Sched B; Line 11: Maximum lot coverage 25% allowed, 31.9% requested.

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Frank Kolb Esq. states that when his clients' builder went for the permit there was no connection between the deck at the back of the house and the pool that was previously approved.

In Favor – None
Opposed – None

Bob closed public hearing 19-32 – Donald Thomas makes a motion to approve the variance. Michael Smith seconds the motion. Roll Call Vote. All in Favor. Motion Approved.

19-33

APPLICANT: Neveen Michael Nesheiwat & Afif Nesheiwat ; Property Concerned: 258 Cosey Beach Ave., Zone R-1, Map 030, Block 0114, Lot 005 – *Extension of deck, addition of 8x6.25 porch canopy stairs, and 3x3 pad, eliminate stairs and deck on east side of property, relocate stairs to interior of house, add 1.7 feet, to east side of house.*

VARIANCES: Sched B; Line 7: Street line setback 25' required; 21.1' proposed. Sched B; Line 8: Rear yard setback 20' required, 10.2' requested. Sched B; Line 12: Maximum floor area ratio from 50% to 55% requested.

Attorney Brian Stone submits Evidence 1 – ZBA Appeals Application.
Evidence 2 – Site Plan January 2012
Evidence 3 – Pictures Showing Conformity & Area

Attorney Brian Stone explains history of the past house that was taken down by the hurricane and the application request along with past and present foot print.

In Favor – None

Opposed – JoAnne DePalma 254 Cosey Beach Avenue – Concern; Stop order by DEEP and the town. A survey map dated 2012 they were going to rebuild and decided not to; how is the house built on a set of plans dated 2012 and a different house is being built. The DEEP had concerns about the property but the house was already erected and they said the town would need to do something now. The house is wider, and it shows greater on either side that makes no sense. Where the house is located; it states in the map that it is not in the tide line. I have pictures that look like it is in the tide line. My concern is that the house is supposed to be a two story house and is now a three story house.

Joanne hands a survey map to the board (not to the clerk) dated 2012.

Chuck Fisher – 420 East Main Street – Branford – Criscuolo Engineering – Info is in one new plan. She is looking at the old plan height does not exceed 40 ft. max. It is not on either plan but can get the information. The 7.8 ft. set back on the old plan is pointing to the dotted out- line of the old plan now it is 10 all the way around. 2.2 ft. more narrow than the original house. On the 2012 plan 7.9 ft. side line that was pointing to a deck that was going to run along the Westerly side of the house and that deck on the new plan eliminated and why the percentage of coverage on the lot is decreased and only the maximum floor area that increased by 1% because of the stories. The tide line issue is that of when the time of the year she took the picture. ½ the year it will be above that line and the other ½ of the year it will be below that line. The mean high water is the average of the two tides between the lowest and highest points so the mean is 3.7 – not including storm surges just calm days. These are the numbers based on the DEEP.

Donald Thomas stated we would have never approved a three story house.

Chris Soto – cites a definition of a “story” and decided that this house is 4 stories with a walk up attic. You can use it for storage but cannot use it as additional living space only storage.

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Neveen Nesheiwat – 258 Cosey Beach Avenue – The attic is not finished because of the stop order. It is a walk up attic if the committee decided we cannot finish the attic we will not do so even though we were using it as an attic for storage. The first and second floors are not done as well.

Opposed – Nick Adamo – 103 Wooster Street, New Haven - If the attic is not being used is there some kind of height? Has a survey been done since that structure has been placed on the property?

Bob Falcigno – states that the height is restricted to 40 feet.

Michael Smith states that right now there is not proof that the house is 40ft.

Bob Falcigno states no but the Engineer is willing to submit that and we can table that until the proof is given.

Chuck states that it is an as built in address to the survey. The final as built will be submitted once they get the CO – right not it is just an as built – I can call Chris Soto in the morning. The proposed height is 39.5 ft. We are below the maximum and when we get our CO we have to prove the height or we will not get the variance.

Chris Soto states that the board needs to consider the site plan and the DEEP comments (Evidence 4 Letter) Chris instructs the board that there are 2 decisions one would be for the CAM, and the other one would be for the variances. Chris submits for the record - Evidence 4 – Letter from Paul Gionfriddo, PE to Kevin White Town of East Haven regarding a letter dated 6/29/19 from John Gaucher at the Bureau of Water Protection and Land Reuse regarding issues with the buildings foundation system. & Email from John Gaucher, Environmental Analyst III Land & Water Resources Division to Kevin White, and reads both on the record to the board. – Chris states that there is a history of the location of the building where the building already passed and gotten the CAM approval to move forward, there were changes made to the foot print of that building, what I gather from the letter we have three problems, the slab, the breakaway walls and the grade beams and a hand full of utility issues that need to be addressed – they need to moved and those things that need to be fixed. An engineer needs to certify that the slab will not shift, and they are saying it will not shift and they install flood vents so the breakaway walls will function and the grade beam will cause structural issues and the grade beam will remain or it will cause issues with the flow of flood waters. If you should approve the CAM - it should be done so with all the work stated in the last two paragraphs based on what John Gaucher is suggesting.

Atty. Stone stated that were working on those issues prior to the stop order.

Bob Falcigno closes Public Hearing 19-33.

Donald Thomas makes a motion to approve the CAM based on the engineering recommendations. Joe Porto seconded the motion. Roll Call Vote. All in Favor. Motion Carried.

Donald Thomas makes a motion to approve the variance based on the condition of not finishing the attic space and it is to be used for storage only. Joe Porto seconds the motion. Roll Call Vote. All in Favor. Motion Carried.

19-34

APPLICANT: Ralph Mauro; Property Concerned: 8 Morgan Terrace, Zone R-3, Map 010, Block 0003, Lot 015 – *Construction of new FEMA compliant, 2 bedroom, single family home.*

VARIANCES: Sched B; Line 7: Street line setback 43' required; 17' proposed. Sched B; Line 8: Rear yard setback 48' required, 25' requested. Sched B; Line 9: Side line setback 38' required, 5' requested. Sched B; Line 11: Maximum lot coverage of 20% allowed, 30% requested. Sched B; Line 12: Maximum floor area ratio 0.40 maximum, 0.52 requested. §25.4.4 Waiver of additional setbacks for narrow streets.

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Attorney Zullo recuses himself as he represents Ralph Mauro. If the matter continues there will be another lawyer here to represent the board.

Attorney Mingione and Jim Pretti from Criscuolo Engineering - Atty. Mingione states that for clarification we had retracted our original application to suffice a neighboring property and moved the house closer to the right of way. The new application is reading that we are asking for 5 feet on both sides we are actually asking 5 feet on one side and 13 feet on the other. If we need to amend the application we will do so after hearing our presentation and leave the public hearing open if need be to make a formal amendment to the application, however our maps do reflect the variances of the proper location of the building. Mr. Pretti explains on the map the foot print square footage of the lot and the history of the square footage. We are proposing a 2 bedroom single family home – lower level parking, breaking away walls and all FEMA Compliance. This had gone to CAM review and there were some replies of things to change from John Gaucher and we have readjusted based on his comments.

Bob Falcigno asks who is the right of way owned by. Jim states that he believes that it is owned by several people in the area for right of way.

David Gersz asks how many square feet is the house. Jim states 1200 square feet for each floor and there are 2 floors so 2400 square feet.

Michael Smith asks on the deed – together with the right of way for foot passage over a strip land not less than 20 feet running easterly from Morgan Avenue – where is that?

Jim shows on a map where that is.

Atty. Mingione reads an enactment & law 8-26a subsection 2 subsection A. (regarding not needing to conform as the town of east did not have zoning regulations until 1936 and the property is older than that prior to Zoning Regulations that were not established as of yet) Basically we do not need permission because this lot was prior to any set regulations. If denied a variance request – if prevented – it is this board taking eminent domain rendering it useless as it does have a valid use that is why we pointed out 8-26a and trying to be completely upfront with the board. I am just being upfront with the board even though we don't have to. We have a pre-existing non- conforming lot established back in 1922. Atty. Mingione shows on the map that all except one house is non-conforming as it was built at the time prior to the regulations. We are allowed that same opportunity. If the board finds that we have not sufficed a hard ship then the FEMA compliance is sufficient enough to satisfy that hardship.

Donald Thomas states it does not mean you cannot build a house if we deny this – just means you cannot build a “BIG” house.

Atty. Mingione – I do not understand that we are the smaller of the foot printed houses in the area and the neighbor is 1700 as well as encroaching on our side lot.

David Gersz states why do you need a 2400 sq. ft. house?

Atty. Mingione –it is not an unreasonable square footage house. We are the smaller of the houses along this line. We are asking for the variance and quite frankly we do not have to- but we are.

Ralph Mauro corrects everyone and states that it is 2,000 square feet not 2400 sq. feet

Bob Falcigno – has there ever been a dwelling since 1922?

Atty. Mingione – stated no there has been no prior dwelling.

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Opposed – Marjorie Shansky Esq. – 61 East Grand Avenue, New Haven
Representing Laura Goldstein of 12 Morgan Terrace– Atty. Shansky hands out a hand delivered letter to the ZBA board as well as reads it – Evidence submission A. (See Attached).

Opposed – Stephanie Sudikof – 7 Morgan Terrace – states that she feels this variance is extreme to meet less than 15 percent of the current requirements. The coastal report states that construction would do work from the non- water side of the property and based on the narrowness cannot see how this can be done without it being destructive and not interrupting traffic, the mess and the noise will be unbearable and disruptive and my property values will be severely impacted having this in front of me. I do not understand how he can claim a hardship if this property is not even his yet.

Opposed – Michelle Dupree – 175 South End Road – I walk by there with my dogs and this is the one spot where I in a wheel chair can see the water. It occurred to me last year that this would be a good piece of land to purchase not to construct a house but to construct a way to enjoy the beach area. I contacted Page Taft and looked it up it was \$150,000 and never received a call back. I figured the intent was to get the adjoining properties to buy it. Clearly there are other uses for this property that is more consistent with the zoning regulations.

Opposed – Michelle Benivegna – 20 South Street – currently the street to the point are beyond repair and the flooding. This is extremely frustrating. Having a house of this size cannot withstand the already failing infrastructure. The increased traffic will just cause further damage. Until the town decided to address these issues I cannot support this proposal. The lot size and FEMA compliance I pay flood insurance and you want to live in the Point build a nice quaint house and pay the flood insurance. Also there are no abandoned houses in the Point as stated by the board. Is there an attic in this house? Are we in a similar situation with this house and can something be stipulated like the last applicant?

Opposed – Leslie Jennings Lax – 7 Morgan Terrace – I did not realize that the reference to the depth of the lot the 90 feet was a reference to 1922. The rear line runs along the mean water mark which is part of the public trust and call agree it is far higher now than 1922 so what was a 90 foot deep lot is no longer a 90 foot lot. I don't think this is a lot that is under the 4,000 sq. foot building requirement. There are many other uses that can be made of this lot. Under regulation 44113 the lot must be at least less than 4,000 square feet. The site plan makes reference to the mean water line, the mean water line is from 1988 prior to storms Irene and Sandy those storms changed the topography of the area, and means that lot has moved forward. This is not a buildable lot for zoning regulations. Mr. Mauro has made note through council that the neighbors have used this lot and has been done for 15 years we have an adverse possession issue.

Opposed – Paul Whendal – 125 Morgan Avenue – Stated Opposed.

Opposed – RJ Connors – 13 Morgan Terrace- Issues regarding flooding and CAM report please consider.

Opposed – Roberta Zampano Siepold – 159 Morgan Avenue – has had enough of people building what they want to build and the town allowing it. Would like to see the Zoning Board not pass houses that are not breaking the law – a yellow house in Morgan Point built 4 stories high – it went to court and the court said that there was not anything they could do about it as it was already built. Agrees with what everyone else has said as well.

Opposed – Linda Martin – 145 Morgan Avenue – Mainly for the ecological effect.

Atty. Mingione regarding 4411.1 you must meet is all the requirements of the zoning regulations – if you are a non-conforming lot you do not need to conform to those regulations. The statement of hardship – the size is the hardship. We do not want to get into a tit for tat but it is difficult for the applicant to sit here and have the owner of a 1700 sq. ft. house call your 1200 sq. ft. house a monstrosity and twice mention looming over their property as they are encroaching on our property. If you don't want us looming on your property then get off our property that would be our suggestion. It is a little disingenuous of the owners of 12 Morgan Terrace to bring up lot coverage when in 1987 they were before this board and received a variance for lot coverage of about 50% - we are well below 50%. With regards to 7 Morgan Terrace there

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was a mention of construction equipment in their front yard, let me draw your attention to the assessors map, 7 Morgan Terrace is in the street there is no front set back- if we are worried about things in our front yard we have to take our property the way it is as well. You cannot force an owner to push back their house away from yours. Also regarding paying higher flood insurance in lieu of raising our house this if fresh construction that is going in there – there are FEMA in place that we have to abide by. Regarding adverse possession claim – the one thing that was left out of that was permitted use, this is an open permitted use left open by the old owners. If you have a permitted use you have in no way shape or form an adverse possession.

Jim Bette – comment about poor roads – I agree but it is a town issue. The questions about the attic there is no attic it is open space. The depth of the lot – we surveyed the property in Nov 2013 mean high water is set by elevation at the time of the survey it was 90 feet on one side and 93 feet on the other side. The original was 85 on one and 100 on the other in 1922. The square footage is based on the current survey the 4,000 min is not an issue. The FEMA maps are just a bench mark from 1988.

Atty. Mingione stated that an applicant can request a lesser variance and does not have to give notice and willing to keep the public hearing open to adjust the notice if the board sees fit.

Donald Thomas – asks about the height of the house.

Jim Bette states – 38.8 on our site plan

Donald Thomas asks what is the difference between the height of the house of what you said and it's 45 6 foot ridge.

Jim states what he is showing is the elevation.

Pat Melillo – 5 Pequot – who did the survey to say its 90 feet. Have you been to the property do you think there is 90 feet from the road to the high water mark? I would like to see proof of 90 feet there is no way there is 90 feet not even close! Get a ruler and go to the lot!!

Bob Falcigno states that Jim is the engineer.

Jim states that the A-2 survey was done in November and is confident that the numbers are correct.

Bob Falcigno is recommending that we leave the public hearing open as there is a lot to information to absorb tonight.

Donald Thomas makes a motion to leave the public hearing open until the next meeting which is August 15, 2019.

Michael Smith seconds the motion. Roll Call Vote. All in Favor. Motion Carried.

Michael Smith makes a motion to adjourn the meeting at 9:35 p.m. Joe Porto seconds the motion. All in Favor. Motion Carried.

Respectfully Submitted;
Temple Smith
ZBA Clerk