The East Haven Zoning Board of Appeals Commission held its’ Regular meeting at 7:00 pm on Thursday, February 20, 2020 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
                  DAVID GERSZ

ALTERNATES PRESENT:  VINCENT LETTIERI - ABSENT

STAFF PRESENT:  LAND & USE ATTORNEY- JENNIFER COPPOLA
                  CHRISTOPHER SOTO - ZONING ENFORCEMENT OFFICER
                  TEMPLE SMITH – CLERK

Bob Falcigno open meeting at 7:00 p.m. – Roll Call (see above).
Michael Smith makes a motion to approve the minutes from the previous meeting. Joe Porto seconds. Roll Call Vote. All in Favor. Motion Carried.

Administrative Actions
  1. Accept/Approve of Minutes from the January 16, 2020 meeting.
     Michael Smith made a motion to approve the minutes. David Gersz seconded the motion. Roll Call Vote. All in Favor. Motion Carried.

  2. Re-Organization and Election of Officers.
     Bob Falcigno made a motion to Strike from agenda – this is done in March. Joe Porto seconded the motion. Roll Call Vote. All in Favor. Motion Carried.
Public Hearings

3. **APPEAL #19-44: APPELLANT:** Nicholas Mingione, Esq.; Property Concerned: 198 Beach Ave; *(Zoning Permit).*

Christopher Soto Z.E.O. stated that there was a request from Attorney Mingione to table this item and did receive an extension to do so. The 35 days are up today for the public hearing but there has been a request for an extension. Michael Smith makes a motion to continue 19-44 on the grounds that Attorney Mingione asked for an extension. Joe Porto seconded the motion. Roll Call Vote. All in Favor. Motion Carried.

Patrick Rowland calls point of order – is against the process in both October and November this board has had conversations about not being properly vetted and open and closes them and wears down the citizens on coming here to speak. You said specifically you would try to stop doing this and here we are again delayed again.

Bob Falcigno – it’s the applicant that is asking for the extension.

Patrick Rowland – the point is that it is the process is incomplete – open and closes, it is becoming exhausting. I addressing the repetitive of this which is concerning. I am addressing the transparency.

Attorney Jennifer Coppola states that we are only tabling the appeal but addressing the application. Attorney Mingione is not here to defend the applicant and I think your comments are going to agenda item number 5.

Chris Soto states that I think Patrick Rowland is mixing up different application before the board. I know Mr. Rowland is upset at the process but it is what the state statute allows.


Ralph Mauro – 172 Laurel Hill Road, Branford –

**Evidence 1** – addressing the state statute and contract of purchase and sale agreement about owning property proves he can be here.

Regarding the A-2 survey put together by his engineer – he heard people talk about low and high tide water mark – this is an A-2 survey I would not be able to be here tonight if I did not have an A-2 survey.

**Evidence 2** – Regarding regulations of proof of lot from 1936, 1955, 1966 current regulations, non-conformity sections, deed of lot and planning dictionary definition. Ralph Mauro clarifies public concerns the usages and regulations of a lot and what it could be used for.
Evidence 3 – Ralph Mauro shows the board the changes made to the pre-posed house plans based on the concerns of the board. You said the house was too big for the lot. This information is based off of the town assessors cards of the houses around the lot area 4 houses to the left, 4 houses to the right and 2 houses behind be - my lot coverage is 810 sq. ft. The average lot coverage of the 10 houses is 2,183 sq. ft. – I am less than half of everyone else. My living floor area is 1330 sq. ft. the other houses in the area (2 houses are smaller) the average is 1,920 sq. ft. My deck area is 180 sq. ft. the average is 814 sq. ft. in the other houses. So I have scaled the house down to bare bones. The house is now 1,330 sq. ft. the reduction was 700 square feet.

Evidence 4 - Ralph Mauro addresses variance requests – I am a FEMA compliance house. I am only asking a variance on one side of 5 feet 7 inches and I brought the house back 20 feet so I did not have to ask for a variance. I am asking for two variances – side line toward the right away and the other one is from the setback from the street line.

Evidence 5 – Zoning Regulations of the Town of East Haven – Ralph Mauro goes through the Town of East Haven Zoning Regulations due to the concerns from the public regarding that there was something else you could do with this lot other than build a house. Ralph Mauro goes through permitted uses of what can be done and not done to satisfy the public. Ralph shows what you can do is put a farm stand and grow vegetables and explains that you can put up a 5 foot house (shows a board with a print out of a sample of what a 5 foot house would look like) but you cannot even do that because the of ceiling height so you cannot even do that. So the hardship here is that you can do nothing with this lot except a garden.

Evidence 6 – Section 23 – R3 Zone – Ralph explains what an R3 zone is. See 23.4 In order for a board to grant a variance the variance had to be created by the zoning regulation themselves.

Ralph Mauro stated that they sent copies of the CAM Report to John Goucher however what he said was that we came in with a lesser encroachment on the shoreline. His review was that it was less evasive. Chris Soto reads John Gouchers comments into the record; “The proposed revision produced a project foot print we have no comments to amend any prior comments however the proposed changes clearly reduced the impact to the regions appear to be consistent with requirements to flood hazard area” Ralph Mauro states that you have all seen the report; we went my every regulation possible; we are the only lot on this whole shore that is compliant to that area. The other lots have rocks and walls and these rocks and walls FEMA does not want. They want the beach to stay as it is. They actually asked us to lower the house in the front, they wanted us to lower 1 foot lower than the road, there is a 5 foot pitch in the slab from the front of the slab to the back of the slab and the reason they did that is so when the water comes in has some where to go. The garage is going to have blown- out walls so the water can come in and go back out. We are going to be the only compliant house down there and does not constrict the water.
Evidence 7 – 1936 Regs – Zoning and Building Regulations – to address Michael Smith’s questions about a good questions that no one could answer so I went back to look it up. In 1936 they said you can have a 30 inch wide projection, in 1967 it said 1 foot – when I had seen this I went to Chris about this as there was not a clear answer so what I did was. I walked the neighborhood and every house old and new have projections. The projections we did on this house we minimized them. (Ralph shows markup board. We have a projection on the front entrance for rain protections, then we have a projection around the top to make the house look nice only 1 foot and then another projection on the garage end around 30 inches. We incorporated a bit of everything around the neighborhood but compliant with the neighborhood.

Ralph Mauro addresses Bob Sands concerns regarding the property line to the right of way area to the beach. Ralph stated that he added a fence around the house to vary that line.

Ralph also requests some deliberation on this consideration to absorb everything I gave you. I believe I proved my hardship that this lot is a preexisting lot and if this lot is not granted there nothing you can do with the lot. In some of the case laws I have read and what the judges look at, a judge looks at what you guys do both way and they base it on the law.

Evidence 8 - Presentation Boards

Public Comment

In Favor;
None

Opposed;

Stephanie Sudikoff – 7 Morgan Terrace, East Haven – Evidence A – showing high tide levels and concerns regarding tide line survey. Regarding lot coverage the numbers were values not percentage of lot coverage – does not believe they were accurate. Regarding hardship issue, the sale is subject to approval and if that is the case and if that contract has not been executed how is it a hardship, therefore there could be other options such as a handicap beach access. As a property owner across the street, I do have a lot of concerns about the impact it will have on water flow and the flooding in my yard. Lastly there was no CAM report available in Town Hall this week so whatever private notes or conversations Mr. Soto has had with the folks in Hartford they were not available for review for anyone else to take a look at prior to this meeting.

Chris Soto states that Mr. Goucher responded on February 19th at 2pm, the CAM application itself was there we get the comments from DEEP.

Leslie Jennings-Lax – 7 Morgan Terrace, East Haven – it my understanding that while this was denoted as a lot for purposes of pre-zoning regulations property – per the comments provided by Stephanie you can see that the water clearly is different then what has been represented in the survey. At 72 feet you are in the water and if that is the case you are under the 4,000 square feet requirement to build a dwelling.
pursuant to 44.4. I have a difficult time understanding how a structure could be built then and the impact that it would have on the surrounding areas. Mr. Mauro noted the other houses prior to FEMA made them non-compliant but it could be that the beach is not eroded in that area and that the topography had changed significantly in this area since the 1988 values that are being used and relied on tin the surveys in respect to marine values and evaluation and to ignore that and grandfather in a lot that is buildable lot – this is a lot that has always been empty and retained a value that has beach and dune grass and never had a structure on it. Those prior uses do not provide it to be a buildable lot.

Robert Sands – East Haven Land and Trust, President – 501 Thompson Street, East Haven – I appreciate the comments from Mr. Mauro to be concerned about the right away and be delineated. Its only 5 feet from the house and the main entrance is on that side so the entry way of the fence is going to critical and to walk in there and feel like you are walking to Mr. Mauro’s front door. There is a retaining wall on the opposite side, there are monuments depicting that entry way and a monument at the end so there is not confusion as to where the land exists. For the safety and enjoyment for that public access stays clearly defined.

Chris Soto asks Bob Sands is this deed right access or public access. Bob Sands states only deeded access for the record.

Ralph Mauro states;

Regarding the survey – the survey came about because it is a point that FEMA issued – it’s not where the water is or where it goes, if FEMA thought that line had to come back they would have brought it back- they didn’t – the reason the line has not changed as I have done some research on it, you would think it would erode and go out, but because it is in a cove the sand comes in and if you walk that beach especially on the other end you will see it brings in this much sand and other stuff from the water. Just right around the corner at Lighthouse beach they have me come every year to push sand with a bulldozer back out to the water - so it seems to me the this is the reason why that point has not changed. It has to do with the actual marking FEMA gave them and pipes that were found from the original 1924 of all the points. This is an A2 survey and let me tell you no one is going to put their name on something that is not licensed to do it.

Regarding the contract and the hardship – the contract has nothing to do with the hardship; I gave you guys that because someone brought it up and I wanted to make sure that it were clear that I had a fair contact and a right to be here per the statues.

Regarding the drainage – I have a copy of the drainage – that road has no drainage on that particular side. Right now the water runs down and runs into the right away, I nothing to do with the drainage. When I am there with the consensus of the 39 people who this right away that will be improved. There was a woman here last time that said she would like to build a structure to bring her wheel chair up on the platform she would like to build. Based on the variance you cannot do that either, so if there anything you can think of to do with that lot tell me because I would like to hear it. I did extensive research and could not find anything else you can do with it.
Regarding the CAM Report – we filed the CAM report with the Town Hall during the time of the application. Whatever the State does or not we have no control over that. John Goucher was not concerned because there is less impact then there was before.

Michael Smith – has anyone noticed if there is a 3/4 inch cable still here.

Wayne Benome - (inaudible address – did not sign in) 61 year resident of Morgan point. The cable is still there.

Michael Smith asks Mr. Mauro if it will impact him in anyway. Ralph Mauro states no because it sits 10 feet back from where the house is. Michael Smith states he spent a lot of time at that beach and there was never really any sand it was all rock and the cable was exposed. I know the area well and the only concern I have is that at high tide and someone wants to walk that right of way and takes a right to walk down that beach are they standing in water.

Ralph Mauro states he walks that beach every day and 90% of the time he goes down there the water is very far away from where the house is going to be. During the highest full moon tide, if you go past that rock wall to the end of that jetty you can walk that jetty. To tell you the truth people can walk right through my yard I don’t really care I just would like to live down there and I love that place. I can understand what Mr. Sands is saying I will do whatever he would like to be done in order to help comply. But if someone walks in front of my house to the beach I don’t care. This is tight knit community and I can understand the compassion and would not be this persistent if I did not want to live there and do what it takes to make everyone happy. I also understand the construction, I am going to work as fast as I can to get in and out of there – 3 months and I am out and in there to live and that is it.

Chris Soto states that there has been a lot of continuance reference along with two previous applications for this site and comments during the public hearing he suggests that it would be wise to incorporate those comments from previous hearing into this record as well. He recommends the two previous variance applications Mr. Mauro made – the one that was denied and rejected an the one proceeding that one should be incorporated into the record and there was a third application that was made and withdrawn by the applicant and we are looking to incorporate that one as well.

Ralph Mauro states he has handed in a sheet of previous and current applications and variance requests.

Jennifer Coppola suggests that it be wise to incorporate all records into this record. No motion is necessary if the public requests it.

John Miessau – 19 Hampton Road, East Haven – clarifies that he owns the marina at 60 Old Town Highway my old service cable for power is that cable; the light keeper at the light house cut that cable and dragged that cable out. I think it is important that the first two people that spoke as well also put bids in to buy that property $100,000 and they were not accepted. I was just curious that all these years that that lot sat vacant how has it been taxed? Has it been taxed as a building lot? Or excess residential acreage? Was there a discount on that lot because it was not buildable? I am neutral on this I just want the applicant gets a fair shake on this piece or property.
TOWN OF EAST HAVEN, CT
ZONING BOARD OF APPEALS
MINUTES – REGULAR MEETING
February 20, 2020 - 7:00 P.M. – EAST HAVEN SENIOR CENTER

Ralph Mauro directs to Bob Sands – when I walk that beach every day and walk to the other side, and the fence is 3 feet away from the house. I am never going to say anything to anyone. I gave the board a copy of the accessor’s card, and it has been taxed as a building lot.

Leslie Jennings-Lax – 7 Morgan Terrace, East Haven – I just wanted to comment in response to Mr. Mauro. If I heard correctly Mr. Mauro indicated at high tide the house is 10 feet from the water. If the rear lot is defined by the mean high water line, and the proposed set back according to his plan is 30 feet from the mean high water line or rear lot, then it seems we are about 20 feet over and into the water as to the actual mean high water line I concerned, which would be that this is a lot that is less than 4,000 square feet.

Michael Smith asks what was the name of the surveyor company that did this.

Leslie Jennings-Lax – just the neighbors going out there doing the measuring.

Christopher Soto states that Jim Prete prepared the survey for Mr. Mauro and the CAM application as well the pictures we have entitled 8 Morgan Terrace August 4, 2019 those are submitted by the residences. Evidence A.

Daniel Jewiss – 93 Morgan Avenue, East Haven – I am new to the neighborhood, this is the type of beach that is taking on shells and stone. One of the reasons I moved to that neighborhood was for the easy access to just walk around there with a paddle board. Now my concern is that this type of beach is actually not losing sand but taking on more sand and shells and if a structure is built there and not going to have anywhere for that to go but to that right away. Which is another problem we have at the other right away is that there are so many shells there it is hard to walk.

Ralph Mauro addresses the high water line – that is not what determines a high water line it is determined by FEMA at the point of that water – we don’t make up that number. Anyone can make up a number that means nothing it is what FEMA tell you it is at the high tide mark. As far as the right away, if funny how people come out to talk about the right away but I never see anyone down there cleaning the right away or doing anything to it. I see three people down there as I walk that beach every day. I never see anyone picking up a piece of paper or cleaning it or anything on that beach except myself. Also I never see anyone making any improvements to the right of way.

Bob Falcigno seeks counsel’s opinion to table as she is new to the board and give her the opportunity to give her opinion on this. Chris Soto states that the board is typically use to hearing all the CAM, application and public comments together, on our action tonight you are considering the variance application which has a standard of hardship and make a determination on the CAM application and public comment consideration. So there are two, variance where you determine hardship and the CAM under environmental – so when you make a motion you need to table the variance and the CAM.

Michael Smith makes a motion to continue the public hearing for further review by an attorney to include the CAM application and variance application 20-02 and 20-03. Roll Call Vote. All in Favor. Motion Carried.

Chris Soto states that the applicant is not here and has requested to table to next month. If you have not opened the public hearing the public cannot speak tonight. The applicant has requested as the CAM report is not ready yet.

Michael Smith makes a motion to table 20-03 to next month’s due to the CAM report not being ready. Roll Call Vote. All in Favor. Motion Carried.

6. APPLICATION #20-02-CAL: APPLICANT: David and Sally McDermott; Property Concerned: 104 Frontage Road. Application for Automobile Dealers or Repairer’s License.

Attorney Robert DePhock representing David and Sally McDermott – Evidence 1 – Application as well as 2009 Applications and Approvals of other sites and past approvals of McDermott – Attorney DePhock give his overview of McDermott and a history of approvals for McDermott and lets the board know what their role and boarders are in on deciding this application. Explains that this is a display lot and will only be used as a display lot with no repair, services and all final contacting in other building and not here. There will be 1 employee at this location. Shows board of the public parking area and car display areas. The attorney again explains general statues 14.5 and explains it’s a display lot for 30 vehicles only and no adverse effect on traffic conditions and less then what was there before.

David Gersz asked if the wetlands be protected. Attorney DePhock states they have gone through the process and the wetlands will not be affected – See Evidence 2 email from Kevin White – Town Engineer.

Michael Smith asks how many vehicles will be there and will parking be a concern? Attorney DePhock states that currently there will be 30 vehicles displayed and they still have to do a site plan and will then address any concerns about parking at that time.

David Gersz states how will you determine how many public parking spaces will they be reserved to park in? Attorney DePhock states that we will determine as they retain services of Criscuolo Engineering. We will be going to site plan application in a month and can be addressed then and will have a firmer answer.

Bob Falcigno asks if they have done anything with the State for egress. Attorney DePhock in my narrative I have attached an email Evidence 3 - Amy Martinez is permitting access and we are in the process of purchasing that property.

In Favor – None
Opposed – None

Chris Soto states to make it clear the narrative said it was this board that gave the approval it was not it was P&Z at that time and the statue was changed. They are also showing 39 spots on that site and marked out and that leaves you 32 cars for display, and noted the criteria for review….the prevue is the effect on public travel and a significant issue and an impact on those factors there. The approval was given with some conditions from P & Z on July 1st 2009 for 104 Frontage Road application specifically number 8. Even in that approval there was concern with traffic coming in and out of the site. That should be something you folks consider.

Attorney DePhock states that is something that we will consider and in a month we will be coming before you with a site plan.

Chris Soto state that they will be going before P & Z not before you so they should be proving to you that no one is going to get injured coming in or out of the property for the site to move forward.

Discussion is had between the board regarding the egress and the position of the parking of the vehicles for sale.

Kevin Sympothy – General Manager of McDermott – we have no reason to park there and can comply with the conditions and can control people from not parking there.

David Gersz makes a motion to approve the site plan with conditions that a letter to Planning & Zoning that the spaces along the public highway entrance side will not be shown and there will not be parking of vehicles on the left hand side of the parking lot so the public can enter the highway safely. Michael Smith seconds the motion. Roll Call Vote. All in Favor. Motion Carried.

Notice - Chris Soto states that there was correspondence sent by the Town of North Branford to Ms. Gravino Town Clerk regarding application 20-20-3 - 4 Virginia Road, North Branford - See Evidence 1 – this came to East Haven because it comes within 500 feet of the town line.

Michael Smith makes a motion to adjourn at 9:02 p.m. Joe Porto seconds the motion. Roll Call Vote. All in Favor. Motion Carried.

Respectfully Submitted by:

Temple Smith – ZBA Clerk