

RECEIVED FOR FILING
East Haven
DATE 03/16/2023 TIME 04:17 PM
TOWN CLERK'S OFFICE
EAST HAVEN, CONN

Lisa Butler
TOWN CLERK

**Town of East Haven
Zoning Board of Appeals**

Minutes for Regular Meeting
Held on Thursday, October 20, 2022
At East Haven Senior Center, 91 Taylor Avenue

I. Roll Call and Pledge of Allegiance

In attendance: Judy Mison, Chair, John Wobensmith, Vice-Chair, David Gersz, Cynthia Sparago, Charles Page, Bridget McCann (alternate), and William Carbone (alternate).

Also in attendance: Joseph Budrow, Planning and Zoning Administrator/ZEO and Jennifer Coppola, Assistant Town Attorney.

Meeting began at 7:05 PM. Ms. Mison introduced the Board members present. The Pledge of Allegiance was recited. Ms. Mison described the meeting process and requested that members of the public keep their comments to approximately seven minutes.

Mr. Budrow welcomed new members, Charles Page and William Carbone. He said that if the presenter for Applications 22-11 and 22-13 was not present when the application was reached, the hearing must be closed tonight, and the Board could wait to see if the presenter arrived later on or deny the application without prejudice. Also, due to a notice error regarding the setback, Application No. 22-20 was postponed to November.

II. Review and Action on Prior Meeting Minutes

MOTION: Mr. Wobensmith made a motion to approve the regular meeting minutes of June 16, 2022. Mr. Page seconded the motion. All were in favor. **Motion carried 5-0.**

MOTION: Mr. Wobensmith made a motion to approve the regular meeting minutes of August 25, 2022. Ms. Mison seconded the motion. All were in favor. **Motion carried 5-0.**

MOTION: Mr. Wobensmith made a motion to approve the special meeting minutes of September 8, 2022. Ms. Sparago seconded the motion. All were in favor. **Motion carried 5-0.**

III. Public Hearings and Deliberation

- 1a. **Application No. 22-11** – on behalf of Fasano, Ippolito, Lee and Florentine for **Caroline Road Properties, Inc., 3 Minor Road**, East Haven, CT, Assessor's Map 010, Block 0206, Lot 002, R-3 District, requesting variances to Sections 4.26.1, 4.26.5, 25.2, 25.3, 25.4, 25.4.3, 25.4.4, 25.10b, Schedule B, Lines 3, 8 and 9 of the East Haven Zoning Regulations to be able to build on a lot where a conforming minimum square, exclusive of wetlands, cannot fit, and to locate a single-family dwelling to a point 20 feet from a side property line where 48 feet is required, and to a point 48 feet from a rear property line where 58 feet is required, and to a point 10 feet from tidal wetlands where 25 feet is required. Also, to locate a deck to a point 9' 4" from a side property line where 48 feet is required, and to a point 36' 2" from a rear property line where 58 feet is required, and to a point 17 feet from tidal wetlands where 25 feet is required.

Applicant Attorney Leonard Fasano said that he had reached out to Attorney Mario Coppola, the presenter for these applications, a number of times and has not heard back from him. He said the Board should do as it pleased. Mr. Wobensmith read the second related application.

- 2a. **Application No. 22-13** - on behalf of Fasano, Ippolito, Lee and Florentine for **Caroline Road Properties, Inc., 3 Minor Road**, East Haven, CT, Assessor's Map 010, Block 0206, Lot 002, R-3 District, a request to approve an application for a Coastal Area Management Site Plan Review to locate a single-family dwelling within a flood zone and near beaches and tidal wetlands.

Ms. Mison asked the Board what they would like to do. Attorney Coppola suggested that Attorney Fasano come forward to make the same statement on the CAM application as he had on the variance application for the record and Attorney Fasano did so.

MOTION: Mr. Wobensmith made a motion to move Application Nos. 22-11 and 22-13 to the end of the agenda. Ms. Sparago seconded the motion. All were in favor. **Motion carried 5-0.**

- 3a. **Application No. 22-14** - on behalf of Maggie Fletcher, **8 Hilton Avenue**, East Haven, CT, Assessor's Map 110, Block 1124, Lot 005, R-1 District, requesting variances to Sections 25.1 (Schedule B, Line 7), 25.4.4 and 44.7 of the East Haven Zoning Regulations to be able to raise the height of a portion of an existing house that is 10.7 feet from the street line to a height of 17 feet, 10 inches, and an open front porch that is 5 feet from the street line to a height of 12 feet, each within the 35' front yard setback area.

Ms. Mison recused herself from sitting on the application and seated herself in the public area. Ms. McCann was seated in her place. Mr. Wobensmith became the temporary Chair of the Board for the application and Attorney Coppola reminded

the Board that new member, Charles Page, was seated as a regular member on the application.

Attorney Fasano presented the application and approached the Board with a display board. He readied to hand out documents to the Board which were to be marked as Exhibits while Mr. Budrow asked Attorney Coppola a question about Zoning Regulations Section 51.9, a Regulation that states the Board did not have to reconsider the same or virtually the same variance application unless there has been a substantial or unusual change in conditions, etc. Attorney Coppola read paragraph three (3) of Section 51.9 into the record and asked Mr. Budrow to share his thoughts. Mr. Budrow pointed out that the prior application had been approved and that the Regulation relates to prior denial of an application. Attorney Coppola agreed and expounded on the reasons for same.

Attorney Fasano gave some background on the property. He said the neighborhood was built in the 1920s and 30s. The homes were built as cottages/bungalow style. He handed out Exhibits 1 and 2. He said this is an old subdivision that predated zoning. There were no building codes. He referenced Exhibit 3 as included on display board and handed out to the Board.

He says they are back due to that addition of a Zoning Regulation needing a variance due to Section 25.4.4 and a difference in the height of the proposal. He showed a picture of what the property looks like (marked and distributed as Exhibit 4) and described the condition of the house. He also noted for the record that he was providing Niki Whitehead, who was present at the hearing, with a copy of all the Exhibits.

Attorney Fasano submitted Exhibits 5, 6, 7, and 8 which he stated showed deterioration of the house. He said he would soon introduce an architectural design expert, and submit an email from the Town Building Official, Jim Bassett. He began to talk about the roof of the front portion of the house. He said there was rot and poor construction that have caused the current unsafe conditions, including on the inside as well as the outside. He advised there was noncompliance with the Building Code and identified various issues. He stated there were insufficiencies that they wanted Mr. Bassett to see. He submitted another exhibit. Attorney Fasano stated that he sent a letter to Mr. Bassett after they met with him at the property and received an email back. Attorney Fasano said that Mr. Bassett mostly agreed with him about the roof, that it was unsafe, but thought the walls could be shaped up. Attorney Fasano said that they could go with either a hip roof or a gable roof but the front wall was not load-bearing. He said the front portion of the house is nonconforming and that joining a hip roof to a gable roof would cause a roof line issue.

Mr. Gersz asked for clarification of the proposal. Attorney Fasano said the gable roof design is the way to go and Mr. Helske will answer questions. He explained Exhibit 17.

Attorney Coppola told Attorney Fasano he had marked all of his Exhibits 1 through 11 and 13 through 18 but he did not have an Exhibit 12.

Attorney Fasano point out that the letter by Michael Helske, the applicant's architectural designer from Spindrift Design of Guilford, had been marked as Exhibit 15. Mr. Helske addressed the Board. He said there is confusion. He said a hip roof design in the front will not match up with a gable roof in the back as it will cause an irregular interior design. He said the front nonbearing wall would not support a hip roof because weight would be coming down on it. So they decided to use a scissor truss design.

Mr. Helske further explained the design and construction details. Mr. Gersz asked Mr. Helske questions regarding these details and Mr. Helske responded.

Attorney Fasano stated this is a pre-existing, nonconforming structure that needs to be repaired. It is unsafe and rotting. They feel a gable roof is the way to go. He says the ZBA cannot approve an increase in nonconformity unless there is an unsafe condition(s) that requires it. He said the expansion is air, not useable space. There is no personal gain.

Mr. Budrow told the Board that the previous application was presented by Ms. Fletcher and her fiancée. It was approved. He said that Ms. Niki Whitehead reminded the Board that the variance request was not for an expansion of footprint, but for going upward within a setback area. He said a hip roof was not discussed. Attorney Fasano agreed it was a vertical expansion. He was corrected by the Board that a hip roof was previously discussed.

Attorney Fasano showed an image of what a gable roof would look like and submitted an Exhibit.

Ms. Sparago verified the stated reduction in nonconformities were to be the soffit, bow window, and the front porch.

Mr. Wobensmith asked about the question before the Board.

Mr. Gersz asked why the applicant was not proposing a 5 pitch roof.

Attorney Coppola referenced Mr. Wobensmith's comment. She read Zoning Regulation 44.6 ("Repair") from the "Nonconformity" Section of the Zoning Regulations. She stated that Attorney Fasano told the Board that there is both an increase in nonconformity and a decrease in nonconformity. She advised Attorney Fasano that she believed he needed to reconcile that section for the Board.

Attorney Fasano answered that the ZBA does not need to hear about the repair of a nonconforming structure. He agreed the increase in height required a variance.

Attorney Coppola asked if the request was the minimum variance necessary to address the hardship. He said yes, given the nature of the building, that is why Mr. Helske was present, and what was being proposed was the least amount of work on the nonconformity that they could propose to make it comply with the Building Code.

Mr. Gersz and Mr. Helske talked about architectural design options. Ms. Sparago asked if Mr. Gersz has seen the property in the back and that the two floors do not match, and she thinks that is why they need to create the headroom because the ceilings do not match. Mr. Gersz wanted to make sure a minimum height is requested because space is tight.

Ms. Sparago asked what the height difference is between a hip roof and a gable roof is. The answer given by Mr. Helske, Attorney Fasano, and Mr. Gersz was "The same." Mr. Gersz offered a further explanation and stated the reason for the common rafter was to take the load off the wall.

Mr. Wobensmith wanted to know the difference in height between the proposed roof and the approved roof from the previous application. Mr. Helske said, "Two feet." He clarified that they had measured from floor to ridge. He said staff measured from ground to ridge. Attorney Fasano said there is no structural difference. Mr. Wobensmith confirmed with Mr. Helske that there would be no difference from what was originally granted. Mr. Gersz also confirmed that all they were doing was common rafters and gable instead of the hip and not changing the peak.

Attorney Fasano entered another Exhibit. Attorney Coppola said it will be exhibit 12. Mr. Helske made further comments in response to comments made by Ms. Sparago.

Attorney Fasano reminded the ZBA that the proposal is to make the roof safe and that there are reductions in some nonconformities. He said the topography in the rear is also an issue. He said if there are no other questions, he is finished with the applicant's presentation.

Mr. Wobensmith asked if there anymore questions. Mr. Gersz wanted to hear from the public.

Mr. Budrow told the Board that the original approval was for a height of 16 feet, 7 inches and that the new plan showed 17 feet, 10 inches. He heard someone say earlier there was no height increase. Board members commented. Attorney Fasano wanted to be clear, they measured from the 1st floor. The Regulations say to measure from the ground. Mr. Budrow said he measured both house drawings from the same point. There was discussion of the difference in submissions and plans. Mr. Budrow said the Spindrift plans changed from the time of the first ZBA-approved plan.

Ms. Sparago asked for a structural clarification. Mr. Gersz said he felt this proposal was for aesthetics. He thought a hip roof would work and does not like the change of height. He stated the way to go was to knock it down and build it back up.

Mr. Wobensmith asked what the height of the basement was. The response given was 6 feet, 8 inches. There was a further exchange between Mr. Wobensmith and Mr. Gersz. He asked if there were any more questions. Ms. Sparago said she was still waiting for an answer to her question.

Mr. Helske asked what the original drawing was. Mr. Budrow asked if he should go retrieve the file for the prior application from Town Hall. Mr. Gersz continued to talk about proper construction techniques, why the application was submitted, etc. Ms. Sparago asked what the difference was between this application and the previous.

MOTION: Mr. Wobensmith made a motion for recess at 8:05 PM. Ms. Sparago seconded the motion. All were in favor. **Motion carried 5-0.**

Mr. Budrow went to Town Hall to obtain the file for the previous application. He left at 8:05 PM and returned at 8:16 PM at which time the Board returned to public session. He told the Board that the approved roof height was 16 feet, 4 inches from grade to the roof peak. There was back and forth among the Board members and Attorney Fasano.

Attorney Fasano said they thought measuring that way was to code. The first sketch (first application) did not show the first floor. He had proposed bringing in fill but Mr. Budrow said no. Mr. Helske said he had to assume what the grade was when he drew plans for the Building Department.

Ms. Sparago asked if the structure tonight is the same structure as before the Board the first time. The response was in the affirmative.

Residents in favor were asked to speak:

Ms. Judy Mison clarified she was not sitting on the Board for the application. She said the house was in disrepair and that she and her husband would welcome improvements to this property to have something nicer to look at and to benefit property values.

Mr. Wobensmith stated there were letters submitted in support and identified the authors of the letters for the record. Ms. Sparago said she had another letter naming the authors and also referred to a letter submitted on the previous application.

Residents opposed to the application were asked to speak.

Ms. Niki Whitehead said she has sight lines to the property from hers. She wanted to point out that Attorney Fasano is trying to establish a hardship based on the structural information being shared. The hardship found before was that the structure was too close to the street. She said from a legal perspective, the existence of a nonconformity cannot be used as a hardship to expand that nonconformity. Now, they are trying to get a legitimate hardship into the record due to structural information.

She stated she received two emails that morning one from Mr. Budrow and one from Attorney Coppola. They forwarded an email from Attorney Fasano that shared the information/materials related to the application presented to the Board tonight. There was a colloquy going on between Mr. Budrow (Zoning Official), Mr. Helske, and Attorney Fasano. She said there was a sudden and consequential shift in focus by the applicant. She said it was a shift away from the bedrock principals which govern the granting of variances which are all facets of hardship, the effect on the comprehensive zoning plan, limiting relief to the minimum necessary, and treatment of nonconformities. This shift was unexpected. She had conversations with the applicant's team and none of it was mentioned. She said she hoped the Board would agree it would be beneficial for everyone to allow sufficient time to digest the new materials and allow her extra time to seek expert advice to understand the applicant's submissions. She hoped for more time as tonight was the first night that the applicant presented, and the information was dropped on her that day. She also commented on the application timeline, when the submission was made, applicant's intentions, etc.

Mr. Wobensmith called for additional comments from the public in opposition and there was no response. He asked Attorney Fasano if he had anything else to add. Attorney Fasano said the variance seeks to comply with the Plan of Conservation and Development, it is a residential lot and the request fits in the character of the neighborhood. He said Ms. Whitehead lives across the street on a property that slopes very far down. He said at the first meeting, the property owner expressed why they needed a new roof. Having Mr. Bassett visit the property was to see what the Building Code would say. The applicant has a hardship and they talked about the hardship.

Ms. Sparago asked Attorney Coppola if the Board could consider a structural hardship or if they could only consider the land. Attorney Coppola answered the question and again stated that Attorney Fasano had made a specific argument regarding Zoning Regulation 44.6 that there was an increase in nonconformity and a decrease but initially he said the increase was specifically for purposes of making the structure safe and repairs. She invited Attorney Fasano to come forward and confirm and also asked whether he agreed to give Ms. Whitehead more time to

offer public comment. He answered that he needed to ask his client. He consulted with his client and answered that the applicant believes she has put on the evidence she needs to get a variance and they have done the due diligence and that if the Board asked for more time, they would allow for more time.

Mr Wobensmith asked Ms. Whitehead if she wanted to make any comment. Ms. Whitehead said she was not asking for a particular timeframe and had not asked for a month and the Board could decide. She also told the Board that the house features stated as decreasing in size were really projections that were exempt from setback requirements. To the extent that they are exempt from setback requirements, they are not a nonconformity.

MOTION: Ms. Sparago made a motion to close the public hearing. Mr. Gersz seconded the motion. All were in favor. **Motion carried 5-0.**

3b. Discussion and possible decision on **Application No. 22-14** - on behalf of **Maggie Fletcher, 8 Hilton Avenue.**

Ms. McCann said they are not changing anything from the past approval, they are just readjusting the measurements. Ms. Sparago said Attorney Fasano made his case based on Zoning Regulation Section 44.6 with the claim of needing to repair the home. She still believes the land presents a hardship due to the steep decline in back. She also referenced the reduction in nonconformities and that a minimal variance is being sought. Mr. Gersz referred to the proposal as being an aesthetic improvement. Mr. Page said he listened to everything and sees no real changes to what was previously approved. Ms. Sparago added that Ms. Fletcher has waited long enough, and the Board discussed the delay in the process. Mr. Wobensmith felt tonight's presentation showed a hardship and there was no real difference from the previous approval.

MOTION: Ms. Sparago made a motion to approve Application No. 22-14 based on Zoning Regulations Section 51.7.1 that the structure of the land presents a hardship with the way it flows back so far and so quickly in the back, Section 51.7.3 as the variance requested is the minimum necessary to alleviate that hardship, and Section 51.7.4 as the proposal is in harmony with the Regulations and will conserve public safety and property values. Mr. Page seconded the motion. All were in favor. **Motion carried 5-0.**

4a. **Application No. 22-19** – on behalf of **Ronique and Kacey Wright, and Dorett Thomas, 21 Wood Terrace**, East Haven, CT, Assessor's Map 580, Block 6831, Lot 004, R-4 District, requesting variances to Sections 25.1 (Schedule B, Line 9), 25.4.10.2, 25.4.13.3 and 25.4.13.6 of the East Haven Zoning Regulations to be able to locate a 12' x 23' above-ground pool to a point 8 feet from a side property line where 15 feet is required, 6 feet from the house foundation where 15 feet is required, and to a point 57 feet from a street line where 75 feet is required. Also,

to allow a deck to a point 2 feet from a side property line where 25 feet is required.

*** This request has been revised. The swimming pool has been eliminated, and the deck has been reduced to a rectangular 20' x 25' structure to a point 5 feet from the same side property line.

Ms. Mison returned to the Board and took over conduct of the meeting as Chair.

Mr. Wright presented. They had heard the concerns and drastically reduced the proposal.

Ms. Mison said she had not seen the rear yard and confirmed that the deck could not be located in the rear. Mr. Wright said the slope of the yard, the rocks and erosion prohibit that location. He said there was only enough soil for grass to grow and that the side yard was flat. She asked how high the deck would be from the ground to the top of the railing. The response given was approximately 90 inches.

Mr. Gersz asked if the deck could go up to 8 feet from the property line instead of the proposed 5 feet as it seemed tight over there. Ms. Sparago said she would like to see 10 feet. Mr. Budrow verified that the deck proposal would then be 17' x 25'. Mr. Gersz said there was no fence at the side property line and it seemed tight over there. Mr. Wright was willing to agree to a 17' x 25' deck.

Ms. Mison asked if there any more questions. She then asked if there is anyone there in favor of the proposal. After no one approached she asked of there was anyone opposed.

Ms. Rosanne Fabrizio said she remembers the stated hardship from the last meeting and that neighbors deal with similar issues. She says the proposal is too close and that her insurance company has concerns. She is concerned that a swimming pool will follow. She said in the neighborhood most side yards are open and this deck would be too close.

Attorney Coppola cautioned the Board that they should not be concerned about what might occur in the future. Mr. Budrow added that since the swimming pool was now removed from the proposal, Zoning Regulations Section 25.4.10.2 is not in play.

Mr. Wright said the revisions are drastic from the original. He has listened and wanted more.

MOTION: Ms. Sparago made a motion to close the public hearing. Mr. Wobensmith seconded the motion. All were in favor. **Motion carried 5-0.**

4.b Discussion and possible decision on Application No. 22-19 – on behalf of **Ronique and Kacey Wright, and Thomas Dorett, 21 Wood Terrace.**

Mr. Gersz said he was happy with the proposal. Mr. Wobensmith said the 17' x 25' dimension was good. Ms. Sparago says she sees a hardship based on rocks, slope and erosion but wants the deck 10 feet from the property line. She says a deck brings people together and noise occurs. She thought the encroachment was too much and wants a 15-foot width. Attorney Coppola stated that the applicant agreed to a 17' x 25' reduction. The hearing would have to be reopened to ask the applicant if he would agree to go to 15' x 25'.

MOTION: Ms. Mison made a motion to reopen the public hearing for Application No. 22-14. Mr. Wobensmith seconded the motion. All were in favor. **Motion carried 5-0.**

Mr. Budrow told Mr. Wright that he will need four approvals and it looked like Ms. Sparago was not favoring his proposal. Ms. Sparago said she wanted the deck to 15 feet in width at the rear. He was willing to say "yes" but would like to offer an adjustment to allow the shape of the deck to change so that the entire side of the deck was parallel to the property line at a distance away of 10 feet. After some clarifications, it was clear what was agreed to.

There was an attempt to close the hearing when Ms. Fabrizzio asked a question. She was assured the current proposal would not allow the deck to be closer than 10 feet to the property line at any point.

MOTION: Mr. Wobensmith made a motion to close the public hearing. Ms. Sparago seconded the motion. All were in favor. **Motion carried 5-0.**

Mr. Wobensmith agreed with the condition of staying 10 feet away.

MOTION: Ms. Sparago made a motion to approve Application No. 22-14. She stated her reasons were there was a land-based hardship, the request was the minimum variance needed and that the proposal was in harmony with the neighborhood. She added a condition that at no point shall the deck be closer than ten (10) feet from the side property line. Mr. Wobensmith seconded the motion. All were in favor. **Motion carried 5-0.**

Mr. Wobensmith addressed the first two applications on the agenda. Attorney Fasano said there has been no change in the situation.

Mr. Patrick Rowland stated he was vehemently opposed to the proposal. He said that many people who had left earlier also were opposed to a 4-story house.

MOTION: Mr. Wobensmith made a motion to close the public hearing for Application No. 22-11. Mr. Gersz seconded the motion. All were in favor. **Motion carried 5-0.**

MOTION: Mr. Wobensmith made a motion to close the public hearing for Application No. 22-13. Ms. Mison seconded the motion. All were in favor. **Motion carried, 5-0.**

MOTION: Mr. Wobensmith made a motion to deny Applications No. 22-11 and 22-13 without prejudice. Mr. Page seconded the motion. All were in favor. **Motion carried 5-0.**

IV. Adjournment

Ms. Sparago made a motion to adjourn the meeting. Mr. Wobensmith seconded the motion. **All were in favor. Motion carried 5-0. The meeting adjourned at 9:15 PM.**