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Town of East Haven
Zoning Board of Appeals
East Haven Senior Center, 91 Taylor Avenue

Regular Meeting Minutes – January 19, 2023

I. Roll Call and Pledge of Allegiance

In attendance: Judy Mison, chair, John Wobensmith, vice-chair, David Gersz, Cindy Sparago, Chuck Page, Bridgett McCann (alternate) and Bill Carbone (alternate).

Also in attendance: Joseph Budrow, Planning and Zoning Administrator/ZEO and Attorney Lou D'Agostine, Ciulla and D'Onofrio, LLP.

Meeting began at 7:00pm. Ms. Mison introduced the Board members present. The Pledge of Allegiance was recited. Ms. Mison described the process of the meeting.

Ms. Mison asked Mr. Budrow if there were changes to the agenda. Mr. Budrow stated that the meeting minutes for December were not ready. Also, Application No. 22-20 for 67 Minor Road is postponed. He then requested that Applications 22-26 and 22-27 be bumped up on the agenda.

II. Review and Action on Prior Meeting Minutes

MOTION: Ms. Sparago made a motion to approve the September 17, 2022 meeting minutes. Ms. Mison seconded the motion. All were in favor. **Motion carried, 5-0.**

Ms. Sparago referred to the October 10 meeting minutes. On page 3, in a big paragraph in the middle, "shaped up" should be "shored up." She added that she felt that meeting minutes are a legal record. She read a portion of the minutes. Mr. Budrow replied that the minutes are a context and not a transcript. Ms. Sparago understood and said some things could be cut out.

MOTION: Mr. Wobensmith made a motion to approve the October 20, 2022 meeting minutes. Ms. Mison seconded the motion. All were in favor. **Motion carried, 5-0.**

III. Approval of 2023 Meeting Schedule

MOTION: Mr. Wobensmith made a motion to approve the 2023 Meeting Schedule. Ms. Mison seconded the motion. All were in favor. **Motion carried, 5-0.**

IV. Public Hearings and Deliberation

MOTION: Mr. Page made a motion to amend the agenda and to move Applications 22-26 and 22-27 higher. Ms. Wobensmith seconded the motion. All were in favor. **Motion carried, 5-0.**

Application No. 22-26 – on behalf of Jesrael E. Garzon, 836 Foxon Road.

Mr. Garzon presented. He wants to establish a barber shop at the property.

Ms. Mison confirmed the shop was at 836 Foxon Road. Mr. Page asked how long Mr. Garzon was there. Mr. Garzon answered, “Six months.”

Mr. Wobensmith shared that the Planning and Zoning Commission gave a favorable comment.

Ms. Mison asked if there is enough parking. Mr. Garzon said ‘yes.’ Ms. Sparago asked what the timeframe was for rezoning the property. Mr. Budrow answered that the summer was the goal.

There was no public comment.

MOTION: Mr. Wobensmith made a motion close the public hearing for **Application No. 22-26**. Ms. Mison seconded the motion. All were in favor. **Motion carried, 5-0.**

Deliberation:

MOTION: Ms. Sparago made a motion to approve **Application No. 22-26** for the reasons in the staff memo. Mr. Wobensmith seconded the motion. All were in favor. **Motion carried, 5-0.**

Application No. 22-27 - on behalf of Ron Johnson, 210B Cosey Beach Avenue.

Mr. Johnson presented. He said he addressed concerns from the last meeting. The neighbor’s site lines are not affected. He described to the Board the architect’s rendering. He referred to a second-floor expanded area to fit a bathroom and laundry area. He reached out to the Fire Marshal and there is no concern regarding fire truck access. He referred to a video he was hoping to show. Mr. Budrow was working on that. Mr. Johnson felt that going up was a good plan and the weather was scary.

Mr. Budrow said that the TV was new and will try hard to get the video going. The video showed big waves during a storm event. Mr. Johnson described how crashing waves affect the property. He described where a grill, a fire bowl and wicker furniture are kept. Ms. Mison asked what happens when a building is placed there and about water displacement. Mr. Johnson replied that water comes around both sides of the house. The property has taken water before and people deal with it.

Ms. Mison asked if others in the area get water. Mr. Johnson replied that a neighbor had a shed issue and then lost heat. Another neighbor lost a sale.

Mr. Budrow started a second video. Mr. Johnson described what was being seen. Ms. Sparago stated what she was seeing concerns her as he is proposing 320 square feet of building and displacing occurs. Water will be pushed to neighbor's yards. She feels a Coastal Area Site Plan Review is required and Board has one chance to get this right. Although the Town Engineer called this a minor addition, she said Attorney Coppola said the Board could make a motion to require a CAM application. She asked Mr. Budrow if they could make the motion. He asked Attorney D'Agostine if he agreed with Attorney Coppola's opinion. Attorney D'agostine agreed with it. Mr. Budrow confirmed that the Board wanted to vote to require a CAM application. He said they should state that they want it to go to the State. He then talked about what compensatory storage is and that he wasn't sure if shoreline towns required it.

Ms. Sparago told the applicant that the property is in a coastal area. There was discussion about displacement of water. Mr. Johnson was concerned about the decision.

Ms. Sparago said she kept looking at the drawing and that 6 1/2 feet is tight and the scale of the car is concerning. He can't get into the garage without going over the neighbor's property. This has to be addressed. Mr. Johnson said he is working on it. He said the town allowed the house to go there. Now access is an issue? Ms. Mison said an easement would be good. Ms. Sparago said to keep moving on the easement issue while the CAM was moving.

MOTION: Ms. Sparago made a motion to require a Coastal Area Management Site Plan Review application and this it be referred to DEEP. Mr. Gersz seconded the motion. All were in favor. **Motion carried, 5-0.**

MOTION: Mr. Wobensmith made a motion to continue the public hearing for **Application No. 22-27** to the February 16, 2022 regular meeting. Ms. Mison seconded the motion. All were in favor. **Motion carried, 5-0.**

Mr. Budrow said he will need to ask Mr. Johnson to sign an extension for 28 days. Ms. Mison asked if 28 days is long enough for DEEP to comment. He replied that it can be.

The Board took a 5-minute break.

Application No. 22-21 - on behalf of Ralph Mauro, 8 Morgan Terrace.

Attorney Leonard Fasano presented.

He said the lot is an existing lot and the Board is familiar with the property. He submitted Exhibit A, a map showing the Morgan Point area with yellow highlights.

He submitted an Exhibit B, a map from South End Development showing 300 lots. He said it is a cool history. He showed a 1922 map and referred to a 1924 map that created Morgan Point.

He said zoning started in 1916 in New York City, and 1925 in Connecticut. East Haven first had zoning regulations in 1936 and revised in 1956. He said the Morgan Point lots were created before East Haven had zoning.

Attorney Fasano handed out maps that came from a fold-out map that were to be matched up against each other. He said records in East Haven go back to the 1920s. At that time there was a three-person Board of Selectmen. He said this is how these lots were created in 1922 and 1924. He said under the nonconformity regulations, lots over 4,000 square feet can be built on. This subject property is over that.

Attorney Fasano said this lot has a history in front of the Zoning Board of Appeals. In 2019, a proposal was denied. An appeal was taken and it is still pending. It was agreed that a smaller house would be proposed. In 2020, that case was put on hold.

In 2020, a Variance was approved for a house at the property. An appeal was taken and Judge Blue reversed that decision by the Board feeling the Board's decision was in error.

He referred to a civil case and referred to a "cert." It's something "sent up there" asking for a case to be reviewed. He said the Appellate Court was not interested in hearing the case and then he talked about judicial things. He said Judge Blue's decision did not have justifiable reasons. He said that Judge Blue said that a Variance could not be granted if the property was smaller. He opined on the Judge Blue decision and then mentioned an Archibald case. He referred to a 1988 case relating to a property at 68 Morgan Avenue where a request was made to make a lot buildable. He handed out Exhibit D.

Attorney Fasano referred to many lots not meeting zoning. He said Statute 8-2 says zoning changes are a taking when they zone out properties. Here, an R-2 zone became an R-3. In 1924, the map showed 340 lots. Many were developed prior to zoning. Many since. He then handed out an item that related to Variances granted in the past.

He introduced his client, Mr. Ralph Mauro. He described his proposal.

Attorney Fasano described the right-of-way that exists to the east of this property. He called it a fee interest right of way for neighbors. He said the currently proposed house is farther from this right-of-way than the proposed house in 2019. It is now 12 feet. He said the proposal comports with the comprehensive zoning of the neighborhood. There are many different-sized properties in the area.

Mr. Gersz asked if this is the same house as three years ago. The answer was that it is not changed.

Ms. Sparago said it was the first house, not the approved house. She said the first house was 1,300 square feet and this one is 2,000 square feet. Mr. Gersz asked why not keep the house the same as the approved one.

Attorney Fasano said Mr. Mauro is an extraordinarily talented guy in many ways. The record presented in 2019 probably was not his strongest talent. Not sure if the record is a good one. Attorney Fasano feels that building a record for a larger house is one he could sustain. He said that Mr. Mauro did not talk about the 1936 Regulations or 4,000 square foot lots. He also didn't bring up the 1922 and 1924 maps, or bring up the 1988 decision.

Mr. Mauro said if this gets denied they want to take an appeal on it. Attorney Fasano responded that they are just being honest.

Mr. Mauro said that #56 was approved and didn't meet the Regulations. It was 3,600 square foot lot.

Mr. Gersz verified that the previously-approved house was smaller than the first denied house and it is odd that now this proposal is larger. He asked if it will fly. Mr. Mauro thinks it will. Mr. Gersz said he would approve a smaller house. Mr. Mauro said Boards change.

Ms. Sparago asked a question about the 1922 map. She mentioned a brief where Attorney Coppola stated that the map was not approved by a Commission. The property was not protected by Statute. Attorney Fasano said they don't waive certain facts. He then brought up the Poirier case. He said he wrote that law which resulted from the case.

A discussion ensued on various scenarios. There was discussion on land value.

Ms. Mison asked what year Mr. Mauro bought the property. Mr. Mauro answered, "2020."

Mr. Budrow asked if a presented map was a larger version of Exhibit A. It will need to be added to the record since it was being presented.

Mr. Mauro said that the Zoning regulations allow nonsensical things on such lots.

Ms. Sparago said she considered Zoning Regulation 51.7.3 and that a minimum variance necessary is to be considered. She questioned 2,000 square feet and an elevator. Attorney Fasano replied that if this not the minimum, they can decrease the requested variance. They'll accept that. He said that East Haven has the most beautiful shoreline and that it has to be protected. Mr. Mauro said this house is a minimum compared to other houses.

Ms. Mison questioned the enlargement from the prior-approved house. Mr. Mauro said that the denied house was never heard in court. He asked if the Board would like to see a smaller house proposal. Mr. Gersz said the approved house would please him.

Ms. Sparago said the thing she wrestles with the most is it was determined there was no hardship. She said Judge Blue made a reference to various cases. She said Mr. Mauro's hardship was no different than the prior 5 Pequot Street application.

Attorney Fasano could not stress enough the 1988 decision by the ZBA. The Judge overruled. Yet, Judge Blue upheld the same issue and it was unfair. He's now a retired Judge and they won't take controversial cases that are run-of-the-mill. He said Judge Blue has been there a long time.

Mr. Budrow verified that two maps that were displayed need to be entered into the record.

Ms. Mison asked if there was anyone in the public who was in favor. No one spoke. She asked if there was anyone here who were opposed to the proposal. She said each person would get a 5-minute limit to speak.

Ms. Stephanie Sudikoff of 7 Morgan Terrace spoke. She referred to items she submitted via email. She said tonight was rehashed material and was not a forum to talk about Judge Blue. She said there was no unique hardship. She said Mr. Mauro uses the property to park an RV, shower and storing fishing equipment.

Mr. Budrow said that Ms. Sudikoff's emailed materials were sent to the Board on November 7th before he knew that Attorney Fasano was Mr. Mauro's legal counsel. He will get the materials to Attorney Fasano.

Mr. R.J. Collins of 8 Morgan Terrace said the property was altered in 1942 when a portion was sold to a neighbor. Now, the lot is a campground. He said the property is not being used as it should be.

Ms. Georgia Liebert of 18 Hampton Road said she reviewed the plans and said the home is a 3-story and closer to 2,400 square feet. She said the property is already approved

without permission and the pavement causes water accumulation on the road and leads to erosion. She said the neighbors have deeded beach rights and that these rights have enhanced values to area properties. She said this construction will negatively affect property values and the quality of life there. 2019 saw three denials and that 2020 was the smallest proposal. She is confused why this is still being discussed. She wonders if the applicant thinks he can wear down the Board. She wonders if there are personal connections that the public doesn't know about that can be leveraged.

Mr. Gersz asked what she meant by that. Ms. Liebert replied that maybe there is leverage. Mr. Gersz said he hopes she has facts. She replied that she didn't and that she's just asking the question. She then said if one has enough money and connections, you get your way. She feels these are questions that the neighbors are asking. They don't understand why they are constantly asking this. She said Mr. Mauro understood, after being denied in 2019, why he was denied. She said Attorney Fasano has tried to confound us with legalese and she hopes the fatigue will not lead to a wrong decision. She said there is no legal hardship.

Ms. Leslie Jennings-Lax of 7 Morgan Terrace spoke. She brought up collateral estoppel and it being the crux of what's in front of the Board. It's a concept where if something is in front of a court it can't be relitigated. A decision is made and you move on. Mr. Gersz asked if they have the right to ask for a variance again. Ms. Jennings-Lax said they have the right to ask but the belief is barred. They can't be barred from submitting an application. She said they can't submit the same 2019 proposal as it hasn't been decided yet in court. The issue of hardship was decided by Judge Blue. The issue of practical compensation was decided by Judge Blue. She said that the Appellate Court did not want to look at his decision. Going through this over and over would wreak havoc on the judicial system. It would upset the finality of judgements. She said we shouldn't be here. If approved, they would appeal. The Town would have to prove again. This is nonsensical. She said there were changes to the landscape. She also had issues with the lot measurements.

Anne McGuire of 52 South Street spoke. She said she bought the ugliest house but wanted the beach rights. She is intimidated and scared. She is begging the Board not to approve the application. She said the Board has an obligation to keep them safe.

Attorney Fasano responded. He said the flooding there began when land was filled in the past. He sees no connection to the water on Morgan Terrace. As for collateral estoppel, it's not what was said. He said similar proposals can't be heard within six months. He said the right-of-way is a right to pass. He said he has not read anything that Mr. Budrow has received earlier today. He asked that the hearing be continued to the March meeting.

Ms. Sparago asked if he was presenting a new hardship that Judge Blue has not heard. Attorney Fasano said he did not do an analysis of the Regulations. He said the hardship is

that the lot meets the comprehensive plan and the area around it restricts the use of land one has the right to ask for relief to use the property in compliance with zoning law. The hardship is textbook. He said the lot is a pre-existing nonconforming lot and there is a right to build per the Constitution, Statute 8-2 and the Regulations. Strict application of the zoning law prohibits use on the property.

Ms. Sparago questioned the word “build.” There’s no right to build on the property.

Mr. Budrow said based on all that has been submitted it is assumed this will be continued. He brought the record items of previous applications 19-25, 19-34, 19-38 and 20-20 to be made part of the record. He said the Board would need to vote on whether to add these records to be incorporated in to this record.

Attorney Fasano said he has the right to object, but since those records are public record, he has no objection.

MOTION: Ms. Mison made a motion to incorporate Applications 19-25, 19-34, 19-38 and 20-20 into the record and that they get copies in advance of the next meeting. Mr. Gersz seconded the motion. All were in favor. **Motion carried, 5-0.**

MOTION: Ms. Mison made a motion to continue the hearing to February 16 so that the Board can digest the new submissions. Ms. Sparago asked if there was still time. Mr. Budrow confirmed there was time. Ms. Mison asked if there were new materials that the submission be in advance. Mr. Wobensmith seconded the motion. All were in favor. **Motion carried, 5-0.**

Application No. 22-22 - on behalf of Ralph Mauro, 8 Morgan Terrace, East Haven, CT, Assessor’s Map 010, Block 0003, Lot 015, 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 a beach.

Mr. Budrow said there were no comments from DEEP yet.

Attorney Fasano had no comments at this time.

There were no public comments.

MOTION: Ms. Mison made a motion to continue the hearing to April 16. Mr. Wobensmith seconded the motion. All were in favor. **Motion carried, 5-0.**

V. Adjournment

Mr. Gersz made a motion to adjourn the meeting at 9:19 PM. Mr. Page seconded the motion. **All were in favor. Motion carried 5-0.**

Joseph Budrow
Planning and Zoning Administrator
Town of East Haven