

TOWN OF EAST HAVEN, CT
ZONING BOARD OF APPEALS
MINUTES – REGULAR MEETING
SEPTEMBER 21, 2017; 7:00 P.M. – EAST HAVEN SENIOR CENTER

MEMBERS PRESENT: ROBERT FALCIGNO – CHAIRMAN
GEORGE HENNESSEY – VICE CHAIRMAN
DONALD THOMAS
VINCENT LETTIERI - ALTERNATE
MICHAEL SMITH

MEMBERS ABSENT: JOSEPH PORTO

ALTERNATES PRESENT: DAVID GERSZ

STAFF PRESENT: ALFRED ZULLO – ATTORNEY
CHRISTOPHER SOTO –ZONING ENFORCEMENT OFFICER
TEMPLE SMITH – CLERK

Chairman Falcigno called to order at 7:00 p.m. A quorum was established. Chairman Falcigno asked for a motion to appoint a temporary clerk Temple Smith in addition would like to make a motion to appoint Temple Smith as permanent clerk. Donald Thomas made a motion. Michael Smith seconded the motion. All in Favor. Motion Carried. Chairman Falcigno made a motion to appoint Vincent Lettieri as a sitting member in the absence of Joseph Porto. Donald Thomas makes a motion. Michael Smith seconds the motion. All in Favor. Motion Carried. Chairman Falcigno asked if there were any errors or omissions in the minutes from the August 17, 2017 meeting. Michael Smith made a motion to accept the minutes. Donald Thomas seconded the motion. Unanimous motion carried.

APPEAL HEARING #13-21 (Court Remand)

APPEALLANT: Niki Whitehead; Property Concerned: 60 Brown Road; *Appeal of Action of Z.E.O. Frank Biancur (Decision to legalize Garage: Release of Zoning Violation Lien & March 8, 2013 to Nancy Anderson & Wally Erikson)*

Chairman Falcigno states that the public portion of this hearing is now closed. If there are any questions from the members or the Town Attorney has any input we can hear it now before we vote. Atty. Zullo states that he has submitted a Legal Staff Report that he would like to read. (See Attachment 1A). Atty. Zullo asks if anyone has any questions. There were none. Chairman Falcigno states that a determination has been made that in plain language of 8-13A does not create an upper boundary and the letters written by Frank Biancur dated February 16, 2013 and March 8, 2013 were incorrect. The board finds in favor of Nicki Whitehead in her appeal. There were no comments or questions from the board. Michael Smith made a motion. George Hennessey seconded. Roll Call Vote. All in Favor. Motion Carried.

APPEAL HEARING #17-05

APPEALLANT: Ralph Mauro; Property Affected: 519 Laurel Street: Zone LI-3, Map 330, Block 4219, Lot001—*Appeal of Notice of Violation/Action of Z.E.O. (excavating/grading of topsoil, sand, and gravel)*

Michael Smith makes a motion to accept. George Hennessey seconds. Discussion. Chairman Falcigno asks where does this stand and has this gone before P & Z ? Chris Soto states that he is before P & Z and has an active application and

P&Z has set a public hearing for it. As it stands the hearing closed on 8/17/17 which gives this board 65 days to render a decision and the board can table the decision until the next meeting. We have proposed a stipulated disposition and in the mean time I need to talk it over with Atty. Joe Zullo to get approval for that. We are requesting that you table the matter until next month where we should have a firm resolution. Donald Thomas makes a motion to table until next month. Michael Smith seconds the motion. Roll Call Vote. All in Favor. Motion Carried.

APPEAL HEARING #17-18

APPEALLANT: One Barberry Real Estate Holding; Property Concerned: 1 and 99 Barberry Road; *Appeal of Cease and Desist/Action of Z.E.O. (amended cease and desist order for the slashing of trees)*

Michael Smith made a motion to accept. Donald Thomas seconded. Discussion. Chairman Falcigno stated that public hearing is closed. Atty. Zullo stated that the last meeting he asked the board read the cases that were given of which 4 of them were from the Smith Street appeal 2 of them, one was from the petitioner and one was from the Z.E.O and then I asked you if there were any questions that you wanted me to answer at the next hearing. I have the answers and have a copy for the record (see attachment 2A). Atty. Zullo reads Legal Staff Report (see attachment 2B)

Chairman Falcigno states that all the facts that were presented here boil down had he applied for special exception and the regulations that we have do not have any quarry regulations he could have put in an application for a variance specifically in the zoning and planning it would have been a two - fold thing and he could have come before this board and all this stuff would have went away based on a decision by this board. Letters don't mean a thing unless you do the process. Michael Smith states that he does not think that this is an existing non-conforming use; I don't think there was a quarry there in the 50's or 60's of when these letters supposedly appeared at town hall. Would I like to see the man go to work, and the tax dollars come into the town yes, but is he doing it legally that's the question. Donald Thomas states that he thinks that Biancur's letter is horse hockey and I don't feel we have to abide by it and the property owner should not have leaned on this and vested so much money that is on him. I don't believe that the property owner has proved that we are not causing hardship to them drastically. I don't think we have to abide by the estoppable as well. Michael Smith asks if he can come in and ask for a special exception now. Atty. Zullo states that he can make his application for special exception and apply for a variance take the position like they have taken here as pre-existing and non- conforming. He can make application in the special exception regulations that do not apply to quarry for specific things. He can make an application to vary those regulations limiting certain things such as storing, stock piling etc. Chairman Falcigno recommends that the applicant file for special exception and also at the same time file for a variance and this way here when the special exception comes before us, if he comes before us the town now will be able to regulate whatever he does up there. I would also like to recommend based on all the facts and evidence that the case and appeal of the property owner be denied until the special exception and variance application is before us. Roll Call Vote. All in Favor. Motion Carried.

APPEAL HEARING #17-20

APPEALLANT: One Barberry Real Estate Holding; Property concerned: 1 and 99 Barberry Road; *Appeal of Cease and Desist/Action of Z.E.O (excavation/grading of topsoil, sand and gravel)*

Donald Thomas makes a motion. Michael Smith seconds. Discussion. Donald Thomas makes a motion that all 17-18 be applied into 17-20. Roll Call Vote. All in Favor. Motion Carried. Donald Thomas makes a motion to deny 17-20 request of appeal. Michael Smith seconds. Roll Call Vote. All in Favor. Motion Carried.

APPEAL HEARING # 17-29

APPEALLANT: Louise Share; Property Concerned: 400 Bradley Street; Appeal of Notice of Violation/Action of Z.E.O. (Establishment of two dwelling units in a LI-2 zone)

Chris Soto states that this appeal was withdrawn by applicant.

17-31

APPLICANT: 149 Old Turnpike Road. LLC (Rick Mangione); Property Affected: 4 Caroline Road, Zone R-3, Map 020, Block 0010, Lot 008, - *Removal of existing house and decks, construction of new FEMA compliant house, deck and associated appurtenances.*

VARIANCE: (For complete description see application) Shed B; Line 2: Minimum lot area, Sched B; Line 7: Street line Setback (per 25.4.3 and 25.4.4), Sched B; Line 9: Side property line setback (per 25.4.3). Sched B; Line 11: Maximum Lot Coverage (per 44.7 and 44.11)

Rick Mangione – 581 North Main Street, Seymour, Ct.(owner of the property) Chuck Fisher - Criscuolo Engineering LLC, 420 East Main Street Bldg. 1, Suite 9, Branford Ct. Charles Fisher states that the CAD has been approved by Kevin White. The CAM report email I can forward to you tomorrow morning. This is an existing non-conforming house and lot and it does not comply with FEMA the new home will be elevated above the VE14 Zone plus 1 foot of free board. The lot is 5,315 sq. ft. 20,000 sq. ft. are required. This house was originally constructed in 1935. It needs some rehab. We would like for section 25, schedule b, line 2 a reduction in the square footage of the total required minimum lot standards. Secondly, sec 25, B7, we would like relief from the additional setback for height and narrow streets and we would like to ask for the new home 4.A for the stairs to get to the FEMA required home 2.3 and a second story balcony that will be in 2.1 of the street line. Right now a lot of the stuff on the home has encroached out to the public right of way which will now be removed and it will become more compliant. Also on the East side of the property, in the front asking for 5.9B to the structure 2.5b to the stairs which requires so many stairs to get up the second floor. (This will be a floating slab for foundation) The lot coverage is basically staying the same so the difference is somewhat of a wash. The percentage of coverage is now 33% what is allowed is 40%; we are going up to 40% not exceeding 40. We are not asking for variance for the height except for section 25.4.3 for the height for the additional setbacks.

Chris Soto states that they had discussions with DEEP and they took whatever action needed to be taken down there and an email was sent to Gerry, Kevin Whites secretary.

Daniel Caroloni – 8 Caroline Road, East Haven. I own the property adjacent to it and I think what this gentleman is doing to the house will be great improvement to the neighborhood as it is in disarray.

Michael Smith makes a motion to accept the CAM report. George Hennessey seconded. Roll Call Vote. All in Favor. Motion Carried.

Donald Thomas makes a motion to approve the variance. Michael Smith seconds. Roll Call Vote. All in Favor. Motion Carried.

17-32

APPLICANT: Stephen A. Falcigno; Property Affected: 429 Cosey Beach Avenue, Extension, Zone R-3, Map 020, Block 0110, Lot 011, - *Expand Air Conditioning Platform*.

VARIANCE: Sched B; Line 7: Street line setback 25' required 19' proposed.

Chairman Falcigno states that there is no conflict of interest there is no relation.

Stephen Falcigno states that his hardship is that the property is a corner lot and he has two front yards creating a situation that there is not enough set back from the street. Item #7 on the application states "The property being encumbered by two front yards the setback requires 25 feet without two front yards the requirement is 10 feet and after due that fact we are asking for a 6 foot setback."

Michael Smith makes a motion to accept. George Hennessey seconded. Roll Call Vote. All in Favor. Motion Carried.

17-33

APPLICANT: Denise Lacroix; Property Affected: 4 Sibley Lane (AKA 23), Zone R-3, Map 050, Block 0402, Lot 002, - *Raising of existing home, replace foundation, remove and replace decks, add stairs*.

VARIANCE: Sched B; Line 8: Rear setback 2.6 ft. existing, 2.6 proposed. Line 9: Side setback, 3.8 ft. existing 3.8 proposed (north) 20.1' existing, 17.6 proposed (south). Line 11: Lot coverage 25.3% existing, 28.8% proposed.

Thomas Crosby Atty., 23 Boston Street, Guilford, CT representing Denise Lacroix.

We are here applying for a number of variances. We are here to keep the house in exactly the same spot. This application is a request to allow us to elevate the house to FEMA requirements. This is a nonconforming lot. The property is subject to a storm surge area. We want to raise the house to 16 feet. The rear setbacks are 2.6 feet now and will be 2.6 feet when we raise the house. The side set back is 2.8 now and will be 2.8 when we raise the house. The house is going straight up, the only thing changing the lot coverage is as you can see it is 25.3 % now and will be 28.8 % because we have to put stairs to get up to the deck. We are here asking for a variance for the lot coverage. We want to install a new flood resistant foundation, already have CAM approval, and at least 1 or 2 applications going and there is indication that there are no new CAMS needed. We have our neighbors who have written letters in support (see attached 3A).

Atty. Zullo states that this property has the same issue as the Kweslow (sp) case that went out to you. Subject to the 50% in a flood area. You are required to raise the town has adopted these rules the 50% rule on purpose to promote raising the houses in the flood zone. That in itself has been found as a hardship. Based on our regulations and requirements we won that case. I want you all to understand that.

Joseph McDonald – 123 Bailey Road, North Haven, CT – I own and am one of the partners of the property adjacent to Denise Lacroix. Lighthouse Marina 4 Sibley Lane, East Haven, Ct. I would like to a statement that I would like to submit on the record. (See attachment 4A) This is a summary of events that has led up to where we are now. It was prepared by another partner of the marina he wanted me to submit.

Atty. Zullo addresses line 2 regarding “Does Zullo Law firm need to recuse itself from these proceedings?” Atty. Zullo states that he does know Atty. Crosby but on a professional level and nothing more. Atty. Crosby states that he did call Atty. Zullo once to discuss some purchase of land but other than that it is again on a professional level.

Atty. Zullo states he has read most of this and it is just about a sale of a piece of property that broke down. John Miessau – one of the property owners, asked Atty. Zullo if he was going to recuse himself. Atty. Zullo stated he will not. Atty. Zullo explains again due to the 50% rule FEMA regulates that they raise their house, and our regulations support that, very simple. John states that there is a 17 page document that states a lot of other information that needs to be read.

Chairman Falcigno states that we can take it for the record because of the FEMA requirement we are under mandate that after x amount of dollars is spent we have to approve it. You have the right to appeal it.

John states there is a 17 page document written by an attorney and he has not given you the opportunity (Atty. Zullo) to digest those documents yet he wants to push you to a decision.

Atty. Zullo states I asked them to read the whole thing. Chairman Falcigno states he will take the application and request that we get the opportunity to digest these documents.

Chris Soto states this boards sole objective per state statue is to find a hardship or not by reading all the documents before you today. If there is reason to show there is not a hardship in the 17 page document then that’s what you need to be reading for. Chairman Falcigno states but I need time to read it. Chris states but your task is to find no hardship in those 17 pages.

Joseph McDonald asks say there is a hardship you still have to abide by zoning regulations correct? Chairman Falcigno states yes that is why they are here for the variance. Michael Smith states we also have to go by FEMA regulations as well. Atty. Zullo is going to mail everyone the case regarding the FEMA regulations and how the judge ruled so you can clearly understand what is required. Michael Smith states that anything prior to this application is done that this application is regarding raising the house per FEMA anything prior to 8/18 had nothing to do with this. John states with all due respect in moving forward it is an incomplete application when you look at the map and look at the application they are not reflecting the same thing. In 2015 they also came before the board this time the state was involved the state laid down a totally different application, 13 they were they asked for line 8 and 9 schedule B. 15 they asked the state lines 1, 2, 3, 4, 8, 9, and 11 and we are here in 17 and there is no mention at all for line 1, 2, 3, or 4. Chris Soto said they don’t need all of that these folks are here because they will increase their lot coverage and a depth that is already at 2.6 feet will require variance or whatever that lineation is increases slightly for that setback and that is in the application. The deck in the front is in the setbacks, the deck in the front increases the lot coverage on the property that triggers the variance request. The deck in the rear appears to be slightly larger to accommodate the running stairs that along the side of the house. That expansion of that deck in the rear will require a variance those are the two variances that are needed for this property. Application is complete.

John states it is incomplete. The chairman asked the applicant where are the dimensions on the deck. There are still not dimensions on the deck. In 2015 an addition was being raised at that point and the state reduced the size of the rear deck to accommodate that rear house so there is no reason today that we to further nonconformity and allow them to put a bigger deck on the back of the house when it can be accessible from a smaller deck.

Chairman Falcigno recommends to table to next month so we can absorb all this information.

Michael Smith makes a motion. Donald Thomas seconds.

Roll Call Vote. All in Favor. Motion Carried.

Respectfully Submitted,

Temple Smith, Clerk

