

TOWN OF EAST HAVEN, CT
ZONING BOARD OF APPEALS
MINUTES – REGULAR MEETING
March 15, 2018 - 7:00 P.M. – EAST HAVEN SENIOR CENTER

MEMBERS PRESENT: ROBERT FALCIGNO – CHAIRMAN
GEORGE HENNESSEY – VICE CHAIRMAN
DONALD THOMAS
JOSEPH PORTO
MICHAEL SMITH - ABSENT

ALTERNATES PRESENT: DAVID GERSZ
VINCENT LETTIERI - ABSENT

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

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

The East Haven Zoning Board of Appeals Commission held its' Regular meeting at 7:00 pm on **Thursday, March 15th** the East Haven Community Center, 91 Taylor Avenue in order to transact on the following:

Last meetings minutes were approved. George Hennessey motioned to accept. Joe Porto seconded. All in Favor. Motion Carried.

Bob states that he is going to hear first 18-11 and 18-12 first. Skip Thomas makes a motion to go out of order. Joe Porto seconds. All in Favor. All in Favor.

18-11

APPLICANT: Patricia Iovieno: 205 Morgan Avenue, Zone R-3 Map 010, Block 0202, Lot 005, – *Build a 12x14 deck off the rear of the house.*

VARIANCE: Schedule B, Line 8: Rear setback 30' required, 22' existing, 10' will exist after deck built, Requesting relief of 20'.

Patricia Iovieno and David Bowling – David reads Item 7 from application pertaining to hardship – to close to rear property line on existing non- conforming lot.

None Opposed and None for the Applicant. Bob Falcigno states Public Hearing 18-11 is closed. Skip Thomas motions to approve variance due to the hardship of a non-conforming pre- existing lot. David Gertz seconds. Roll Call Vote. All in Favor. Motion Approved. Bob Falcigno states that the application has a 15 day statutory time limitation for appeal. You also must prior to construction you have to see the Zoning Officer for a construction permit.

18-12

APPLICANT: Lothrop Associates LLP Architects; Property Affected: 19 Palmetto Trail, Zone R-1, Map 030, Block 0214, Lot 021, Reference Schedule B; Section 25 of the Zoning Regulations. *Property line on west (street) side of property revised to show its correct location per as-built survey.*

VARIANCE: Sched B; Line 7: Side setback 25' required 6.4' as built.

Zoning Officer Chris Soto states that there is a correction – it not a side set back but a front yard setback – it is correct on the application but incorrect on the agenda.

Vince LaSanti from Lathrop Associates states that in the process of closing out the project we discovered there was a survey error contrary to the original site plan. This variance is to correct that area in a previously approved variance. None Apposed None in Favor. Bob Falcigno states Public Hearing 18-12 is closed. Skip Thomas makes a motion to approve the variance in order to correct the survey error. Joe Porto seconds the motion. Roll Call Vote. All in Favor. Motion Carried.

18-08

APPELLANT: Niki Whitehead; Property Concerned: 60 Brown Rd; *Appeal of Action of Z.E.O. Christopher Soto (Preliminary zoning approval for modification of garage at 60 Brown Road. Work described as slight reduction of existing garage to limit of 24'x 24'; reduction of height of building not to exceed 15' above slab).*

Nikki Whitehead states she would like to put into the record her standing on bringing this to an appeal and is based on CT State Statue 8-7. She owns property which abuts the property in question. Nikki owns 60 Brown Road and hands out a copy of her deed and legal notice of appeal. (Deed entered into the record as Exhibit A and Copy of Legal Notice entered into the record as Exhibit B) There is a time frame of appeal from the legal notice on the decision made by Mr. Soto and Nikki wanted to establish her appeal as timely and that is covered under CT State Statue 8-7 as well 30 days from the date of publication. Nikki wanted to note that the notice states 15 days for the appeal and that is incorrect it is 30 days and she wanted to establish standing on that. Mr. Soto provided documents on his decision. I have documents to provide tonight (evidence given to the board – not documents for the record per Attorney Zullo) that is proof of my appeal. Nikki states that we have not taken in account that this garage is not a uniformed 24x24 building which had approval for 24x24 it does not fall under a single approval, I am considering it as two separate components. The first component has the foot print of the ground it's a certain size of a garage it has its own zoning trail. The second one is the upper level platform that has if own zoning record it was approved to relieve a particular hardship where you could not access that second level directly from the ground behind the garage because of the grade change. That platform is designed to cover a gap and allow for safe access to the second level. Point A is that we need to distinguish the two that they have their own zoning records that they were never approved by a 24x24. My second point is that the Zoning Enforcement Office never took into account that fact that it is 2 components here, but his authority is very limited when he is approving a zoning permit. He is looking in compliance with zoning regulations, any existing variances, or any conditions on variance. I am alleging that his authority was exceeded because the new proposal requires that we reallocate excess square footage from the platform to the basic garage. You're taking one component and moving over to the other one. My allegation is that reallocation is not possible under zoning review. My third allegation is that moving that excess from the platform across to the ordinary garage would actually allow for a larger footprint for the ordinary garage and that the zoning conditions on the prior permits are not allowed. These are the basic claims that I am making.

Evidence:

The ordinary garage – the first variance in 2003 that allowed to be built in the front yard – the applicant received a variance to build an 18x24 ft. garage in the front yard set -back. They wanted a 24x28 and it was reduced to 18x24 at the request by the applicant. There are two possible reasons for that: 1 –it would exceed the block coverage allowed or 2 – the board may have been interested in keeping the bulk low. This was uncontested – It was approved with a condition to amend the paper work to with the reduction of size and the board chose to cover this transaction by making a condition on the variance 18x24 15ft. high max.

Proof – section 1 – transcript of that hearing to get first variance of garage. Atty. Asking to reduce size.

The first page of memorandum of decision by the court where another aspect of that application went into an appeal in the courts. Decision the plaintiff not contesting the decision of the garage. It has not relevance.

You will find in Mr. Soto package under that variance you will find the application of the variance where it states they want 24x28 which is not what they ended up getting or requesting. The second page – says the garage says the garage should be 18x24x15. 18x24 was what was approved and that was a condition of that variance.

The second section of proof – 2004 Zoning Permit – They then applied for a zoning permit.

Bob Falcigno states that Mr. Soto was not the Zoning Enforcement Officer then- he's the fourth one since this time line.

Mr. Soto states he does not have a copy of that Zoning Permit. Bob asks since 2003 all of this has been going on is there anything in the record that someone sent a letter of violation? Atty. Zullo states that is not what you are here to do all you need to do is let Nikki present her case and Mr. Soto present his case and let others speak, then you can ask questions.

Mr. Soto states that seeing it is not in his record; section 2 – 2004 Zoning permit signed by George Mingone and letter dated Sept. 13, 2004 should be in his record and his intent to be in there and apologizes.

Nikki states she put in hers so there was no gap. This section is designed to establish evidence that there was the first sign of trouble on how the applicant was looking at his variance.

Zoning permit application asks for attached garage 24x20 – so we have strayed already. As a result of that I sent a letter to the Zoning Enforcement Officer questioning what had been approved. Mr. Mingone responded his letter is in that section. He put a note on the bottom of zoning permit application that stated "Variance on file garage size as per ZBA meeting" Nikki states of course we don't know that was. He also stated that the applicant of agent Mr. Erickson who was never an owner of that property was contacted of the condition of size. Mr. Erickson agreed that ZBA had limited the size of the garage to 18x24 an indicated that garage would be built to size of the Zoning Board of Appeals. This notation shows that they agreed to stay within the limits.

The third section I have ; The moment of Violation; the garage was being built bigger than allowed. Notice of Violation in section 3; this covers height and size. The new application and new owner is bringing the garage to compliance with height so we will only discuss size. The size of the garage; second page makes is clear that they have exceeded the overall size from 18x24 to 24x24. Mr. Mingone states that he not ordering the work to stop but states if he is not in compliance he will bring legal action and there will be a problem getting a variance. He suggests at this early stage that this be remediated. Hence the Notice of Violation. (Photograph at the time of violation taken by Mr. Mingone)

There was an attempt by Mr. Biancur to get rid of the Notice of Violation. Nikki appealed it and was successful. None of this appears in Mr. Soto's record. What this established is that the garage was not being built to compliance.

Section 4 in packet – 2012 – The owners of this garage needed another variance and asked for a variance of lot coverage for the garage extension (overhang) . Mr. Soto included the application for the variance – this was characterized as a 6 ft. x 24 ft. extension as an upper level access. The platform you see is designed for safe access for the upper level of the garage and that is how it is characterizes on the map and application. The map was never amended and still shows as 24x28 and is being represented as a 6x24 platform for safe access backside of the garage. That variance was approved and is Mr. Soto's package. This variance was intended to legitimize an as built 6x24 ft. extension to the existing garage and was being represented as a safety hardship.

Nikki includes a brief from the court case referencing page 6 and page 7.

Nikki includes the court appeal.

The court's opinion was that this board was fully justified for granting a variance for the platform based on the need for safe access.

Nikki states that there are no approvals for a 20x24 garage; there are separate approvals going through separate zoning and court tracks.

Current Zoning Application in Mr. Soto's packet – the new owner wants to bring things into conformity and wants to make things right, however; in terms of the height violations the intent is clear to bring the garage to 15 ft. There was an application prior to this one stating he was going to bring into conformity and then demoing and rebuilding a 4 ft. section

to move the foot print toward the street. That was by taking 4ft from the platform and moving it over to the ordinary garage. You will notice the application was withdrawn. What it established was that we never had a 6ft platform in the first place we had a 4 ½ ft. platform. It is the beginning of uncovering of what was there in the first place if we had an "as Built". There was never an updated as built. What that means is that the board and the court were mis-lead in believing there was a 6 ft. platform when there never was.

Looking at the photographs shows the overhang and the second two shows the 6ft platform that is actually 4 ft.

Today's application in Mr. Soto's package – we have an application that has been approved which I am appealing. On 12/8/17 Mr. Soto gave approval for a slight reduction of existing garage to the limit of 24x24 and a reduction of height. That refers to that it is not an even 4 ft. On the platform it actually 4 ½ ft. which is evident from the plans that were submitted. They are proposing on taking 6 inches to make it 4 ft. that is the slight reduction and the limit of 24x24 I am questioning as there not being such a thing as a limit of 24x24. We have two separate zoning approval tracks. The garage and the platform. Please see the plans – the except from the survey; it has the garage in the same location; they are removing 6 inches from the platform side. They are saying the whole thing is 24x24 which his true. The plans – you will see EO1 and EO2 and they are the existing plans; in addition to the survey these plans are helpful. (Nikki reviews the drawings plans and surveys with the board)

Answers to Appeal on continuation sheet;

The decision failed to take into account that the existing garage had to be treated as two separate components. The second component is permitted to relieve safe access. No approvals have ever been given for a single structure.

The authority granted to Mr. Soto when he determines compliance was exceeded; he reallocated the 2 extra feet that had been approved where the court and the board had been misled – there was never a 6ft platform. You only need 4ft. to satisfy the hardship. It was reallocated to the upper level platform to the ordinary garage overhang; the overhang remains in violation.

By allowing the 24x24 foot print it created a violation of the 18x24 limit.

Consideration; its only 2 feet so maybe you could overlook that – the deviation of zoning regs it does not have a place in the task that you now have to look at the evidence to come to a conclusion. It's actually 11% on the 18 feet so it is significate. The condition of a variance is something that needs to be considered. Maybe bringing the height in compliance is huge. The preliminary approval should not have been approved.

Chris Soto states that his record he provided the board outlines his decision making process that is why he excluded some the things he excluded, it had no bearing on the decisions of this process. You have sections of regulation to look at – sections 2 permits and violations. In 2003 there is a permit for variance application; the application was for 24x28. The attorney realizes that being at 24x28 would require them to ask for an additional variance so they conceded to make it 18x24. There is a letter from Atty. Zullo with regard to the variance. In 2004 a zoning permit application to construct a garage 24x20; you will see a note from Mr. Mingone that the garage needs to be 18x24. There was notice of violation where ZEO Mingone that the garage was 24x24. Appears what happened that in 2012 Nancy and Wally come in to apply to legalize a 6 x 24 ft. garage extension to cure a violation. That extension is given to them that variance also requested a ramp from the garage to the dock – all in variance application. The application today is to bring the garage into conformance to a 15ft height and to limit the size to 24x24. In my mind I see it as the board granted a garage that was 18x24 feet and the previous owners build a garage that is 24x24 from ZEO Mingone and they come in to legalize it. The applicant comes in to make it legal. Ms. Whitehead contests that we should deal with them separately. I see it as in the same way as you would deal with a house addition, your house is 18x24 and you add on it; the overall lot coverage is going to be 24x24. In this case we approved it; it was 24x24 in the same location at the same size. Ms. Whitehead is going to argue that the size and the bits pieces of the 24x24 were misrepresented to the board. Based on that is why I gave them my approval. They are keeping the same overall size and saw fit to give them the approval. The overhang we have already included into the portion of the building. There is not increase. The 2 feet are not being moved they are already there per the application 12-020.

Opposed to the Appellant & In favor of Mr. Soto

Attorney Eisenhandler – representing Brian Prince; it appears there is no objection to the height requirement. This has always been a 24x24 structure and the owners are looking to make it useful and there is no foot print changing here. The only issue is the ZEO used his discretion to approve the application. I think the board should approve and support the ZEO.

Clerk Temple Smith answers as to how the exhibits will be submitted;

Exhibit A – Deed

Exhibit B – Legal Notice

Exhibit C- Appeal

Exhibit C; Section 5 – Photographs inserted

Exhibit D – Maps

Skip Thomas states that the overhang looks to be about 2ft. or 2.6 that mean that on the back deck or safety access that must have been 4 ft. it looks like on the proposed drawing when you move the wall forward the 2 ½ ft. you are pushing 6 ft. out the back and not 4. Atty. Eisenhandler states the overall size will be 24x24; Skip states it shows that but it does not add up when you look at the plans. (Skip consults with ZEO Chris Soto)

Chris Soto states look at map A101B – you will see on the end is some sort of retaining wall. The picture Ms. Whitehead gave you shows the bottom foundation with an interior wall highlighted in green and the exterior top wall which is red the space in between there is your 2 ½ ft. On the other end of the structure is the safety access. The overhang is staying the same. Skip states he understand he was looking at the retaining wall.

Nikki Whitehead states that in terms Chris Soto; he was not aware of the extent of to the extent of the 6 x 24 foot lot coverage variance was dependent on the hardship of safe access to the second story of the garage. When someone applies for variance they have to show hardship to approve the variance. There is a lot coverage regulation and the garage was going to exceed that. The court found that the board had not property articulated the hardship. The court is then bound to search the record to find if there was a hardship. Mr. Soto was not privy to that and the court was clear that they have searched the record. What they found as a hardship was only the need for safe access as there is a drop off. It's not Mr. Soto's fault as there was a deception and he was not made privy to that. The fact that they did not build a 4 ft. platform does not give them the right to put 2 more feet to put where ever they want. You cannot say there was a hardship for another two feet to put wherever they want. The variance does not encompass the overhang.

Skip Thomas asks Nikki Whitehead; are you saying because the hardship is gone they don't need to get the second floor and it does not belong there anymore? Nikki states no. Skip asks are you saying that the 2 feet is not part of the garage. The overhang in the front? Nikki states as part of the structure? Skips states is the structure 24x24? Nikki states it depends on what...Skip asks again is the structure 24x24? Nikki states everything that built there is 24x24. Skip asks Atty. Zullo did the court say the structure was 24x24? Atty. Zullo states in the court they approved the variance and how they got there is irrelevant to your decision because you don't get litigate it before this board. Skip states he is trying to get Chris's reason for picking...Atty. Zullo states it says to legalize a 6x24 garage extension he does not get to break it down. Skip asks Nikki would you say the building is one building? Nikki states can I just address...Skip asks again would you say the building is one building? It's one building right? The building is one building you cannot break it into two parts not matter how hard you try. Nikki states I don't want to be complicated about this...Atty. Zullo states it's a yes or no question. Nikki states as Atty.Zullo will know there are definitions to buildings and it gets complicated. Atty. Zullo states can you answer yes or no. Nikki states Yes. Atty. Zullo asks if anyone has anything else to say. Nikki says she does, Atty. Zullo states you answered the question. Nikki states that Atty. Zullo refers to the legalize the 6x24 extension; no one in the application, brief to the court or the court decision, no one ever believed that it was an overhang. It was an extension based on a hardship not an overhang.

Chris Soto states to the board that you have options; you can uphold my decision, you can modify my approval, we can go back to square one, or uphold the appeal.

Atty, Eishenhandler states this is not about a variance we are here to determine whether or not the ZEO acted properly we are not here to re-enact ancient history or courts decisions 6 years ago. Just the set of facts that the structure is 24x24 and reducing the height at the request of Ms. Whitehead. I ask the court to uphold the decision of the ZEO.

Bob Falcigno states public hearing 18-8 is now closed.

Atty. Zullo states what is before is the review of the zoning officer's case. You weigh the evidence you are not bound by the courts evidence. The applicant is asking you to do is relitigate the variance that was appealed is to legalize that structure to a 24x24 structure. She is saying that the legalization was approved by misrepresenting themselves. That might be true but that happens. They got their opportunity to go to court. You don't get to relitigate. The information that is in the file is what the zoning enforcement officer has to rely on. Whether you think the evidence that is put before you is enough and that he did not have access to it relevant then you can uphold her application but she is relying on two things. One she wants you to see this as two different structures, and two she is asking you to look at the court record and maybe they did not tell you all the truth. It was before the court and no one from the other side brought that up and they had their opportunity to do that.

Skip states Chris Soto made the best judgement. Skip makes a motion to deny the appeal to uphold the ZEO decision based on the evidence placed in front of me based on the court's decision. Joe Porto seconds.

Bob Falcigno - YES

Joe Porto- YES

Skip Thomas – YES

David Gertz – YES

George Hennessey – YES

18-10

APPELLANT: Niki Whitehead; Property Concerned: 60 Brown Rd; *Appeal of Action of Z.E.O. Christopher Soto (Zoning permit for alteration and expansion of existing porch. The proposed work is described as to build an enclosed stairwell to basement within the existing footprint and volume of existing porch).*

Atty. Eisenhandler states that due to the late hour his client has no problem with continuing this item until next month.

Bob Falcigno makes motion to continue the application of 18-10 to next month's meeting

Skip Thomas makes a motion to continue the application 18-10 to next month. Joe Porto seconds.

Roll Call Vote, All in Favor. Motion Carried.

George Hennessey makes a motion to adjourn at 9:12 p.m. Donald Thomas seconds the motion. All in Favor. Motion Carried

Respectfully Submitted,

Temple Smith, Clerk