

TOWN OF EAST HAVEN, CT
ZONING BOARD OF APPEALS
MINUTES – REGULAR MEETING
April 19, 2018 - 7:00 P.M. – EAST HAVEN SENIOR CENTER

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

ALTERNATES PRESENT: DAVID GERSZ
 ABSENT - VINCENT LETTIERI

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

The East Haven Zoning Board of Appeals Commission held its' Regular meeting at 7:00 pm on **Thursday, April 19, 2018** at the East Haven Community Center, 91 Taylor Avenue in order to transact the following:

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

Joseph Porto made a motion to approve the Minutes from previous meeting. George Hennessey seconds. Roll Call Vote. All in Favor. Motion Carried.

18-10 Continued From February 15, 2018

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).*

Attorney Zullo makes a reminder to the board that they are sitting here today to determine if the actions of the Zoning Enforcement officer were proper. The applicant will present their testimony you can ask questions and she can respond; the enforcement officer will present his testimony; open to the floor; the applicant can then make further rebuttal as well as the Zoning Enforcement Officer and the property owner.

Chairman Falcigno states that he is putting on the record a disclosure about going on the property and made no decisions and did not take talk to anyone nor did he enter the property. He did ask the neighbor if he could trespass to view 60 Brown Road. Chairman Falcigno asks Nikki Whitehead as well as Mr. Prince if they felt they had any problem with what he did or he should recuse himself let him know now. Neither the property owner nor Nikki Whitehead had a problem with it. Nikki did state that she asked if he would disclose to the commission as well to her what his findings were. Chairman Falcigno states that all he did was asking the neighbors permission to view the staircase from his property and made no decisions or spoke with anyone. His findings were that Mr. Prince made an enclosure on the side of the house between him and Mr. Tucker (the neighbor), he could not view the staircase as to if it were there or not as he did not go on Mr. Prince's property, nor was Chairman Falcigno able to see in a window. There is an addition to the side of the house and whatever is in the enclosure he did not have the privilege of seeing.

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Nikki Whitehead 68 Brown Road – states that she has brought evidence to place into the record.

Evidence Submission A – Appeal of 60 Brown Road – Appeal form provided/Summary of Decision/Explanation of Appeal.

Nikki explains the process of presentation; allegation, appeal, and decision by Mr. Soto – Zoning Enforcement Office.

Nikki states in failing to recognize the increase in non-conformity as governed by section 44 of the East Haven Zoning Regulations. The results of the proposed creation of the two story addition in the guides of the enclosed stair well within the existing foot print and volume of the existing porch. The allegation is the issue of non-conformity and an increasing of non-conformity was not addressed in Mr. Soto's decision making in my allegation. In failing to recognize and address the extension of lower river-front deck to allow access from the basement level to the two-story addition. This extension of at least 5 feet in a northerly direction is in conflict with the approval of the previous variance 03015 which allowed retention of the already greatly expanded lower deck but only as-built based on the so called innocent purchaser defense rather than the traditional grounds for hardship. It's actually more like 10 feet now that I have seen the plans.

The open porch is in non-conformity location of the structure – (see Section 1 of packet – map) house is on the right side, north side it says steps which are the beginning of the open porch and continues to the right of the river – measurement 1 foot distance between the two (setback) clearly a non-conformity.

Evidence Submission B – Full Sized Map

Evidence Submission C – Loren Young Munroe ET AL v. Zoning Board of Appeals of the Town of Branford

Evidence Submission D – Victor Anatra ET AL v. Zoning Board of Appeal the Town of Madison

Nikki states that the full sized porch is non-conformity with respect to structure. Our regulations for non-conformity are covered by section 44 – it means that if you are in a situation that meets these reasons it would be legitimate. Nikki goes through an explanation and the process of how non-conformity comes to be coupled with case law back-up as well as utilizing maps for explanation of appeal of non-conformity.

Chris Soto – ZEO - states that they are disagreeing with the non-conformity. In our office we interpret that if you have a roof, a deck and space between and you are putting up a wall that is something that is allowable. When we received the application from his design professional it was my understanding that the stairs already existed going down and that the stairwell that was being enclosed was an already existing stairwell. It was explained to them that if the stairwell existed you would be in conformity if the stairwell already in its' space.

Chairman Falcigno asks Chris Soto when the owner came in to obtain the permit what was the extent of the work that the permit was for. Chris states that in speaking with the architect and the owner they were going to enclose stairs that already existed. The site plan and the application it stated to enclose the existing stairs. In the conversation that I had with them I stated if you are creating space that cannot happen. Ms. Whitehead is alleging that there is an expansion on part of the lower deck which was not part of the permit. Ms. Whitehead is also alleging that there is an alliteration and enlargement that is nonconforming. Our office has traditionally accepted alterations to enclose space that already exists, so completing that wall or enclosing it is in conformity as it was already existing. We took that application under that premises.

Brian Prince – 60 Brown Road – Mr. Prince states that there is no way to get to the basement from the inside of the house.

The only entrance to the washer and dryer is from the outside. Mr. Price spoke with the Engineering, Chris and architecture out of Branford and received approval from Engineering to have the plans submitted to put a permit in. The

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building inspector was on-site and signed off on everything and we kept in within the foot print and have not expanded the deck downstairs. We were very clear on what we were going to do to enclose the stairs to down stairs to make the house functionable to get to go downstairs to do laundry. As far as I am concerned we went by what we said by design.

Donald Thomas asks if the stairs are still there the ones in front of the house away from the river. Mr. Prince states not those are gone. Donald Thomas asks were there stairs there on the other side of the house. Mr. Prince states no. We were very clear in stating that we were going to put stairs down in the basement.

Donald Thomas asks Chris Soto if altered is in our regs. Chris states into the record, In our right an enlargement under section 44.7 enlargement no non-conforming use of land shall be enlarged extended or altered of no building other structure or part thereof devoted to a non-conforming use shall be a large extended construction, constructed or reconstructed or structurally altered, except where the result of such use to reduce or eliminate the non-conformity. No non-conforming use of a building or other structure shall be extended to occupy land or such building or other structure and no non-conforming building structure shall be enlarged, extended, constructed, re-constructed or altered with the result being increase in non-conformity.

Chairman Falcigno states if you look at the picture there are no stairs so the permit that was issued they asked to enclose a staircase that was not there, I feel they mislead you to close something that is not there. Chris Soto agrees.

Mr. Prince states the whole intent of the permit was to enclose stairs going down to the basement. No way did we mislead saying we were enclose other stairs.

Chairman Falcigno states there was miscommunication as to how the permit for what the permit would contain that he issued. Not saying anyone is at fault. The permit was issued erroneously.

Mr. Prince states to get architectural plans drawn up and to present those with the permit process it makes it pretty clear as to what your intentions are and what you are going to build. You have to take plans into consideration when you are making the permit. How can we be more clear when we paid an architect to draw a foundation plan, how to do all these thing and show a stairwell clear as day going down to the basement so all the drawing presented to Zoning. You have all the information that you need to draw a permit. No one is trying to hide anything here.

Chris Soto states that we looked at the initial map with the architect I was quite clear that you can do this with existing space and I was under the impression that it was. So if I have plans showing things being enclosed I was under presumption that they were and I stated several times it can only be done if the existing space already resides. At this point he would need to come back for a variance.

No rebuttal from Nikki Whitehead.

Chairman Falcigno states public hearing is closed.

Chairman Falcigno recommends that somewhere along the line the lack of communication exists. I recommend that the appeal is upheld and that the permit is vacated. Mr. Prince has the opportunity to come in a request a variance for what he has done to solve this problem.

Donald Thomas motions to uphold the appellants appeal. Michael Smith seconds the motion. Roll Call Vote. All in Favor. Motion Carried.

Michael Smith makes a motion to adjourn at 8:30 p.m. Donald Thomas seconds the motion. All in Favor. Motion Carried.

Respectfully Submitted, - Temple Smith - Clerk