17-20

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

RECEIVED FOR FILING
OCT 0 6 2017
TOWN CLERK'S OFFICE
EAST HAVEN, CONN.
Stacy Gravino, CCTC
TOWN 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 and 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
Temple Smith, Clerk

Appeal Hearing #13-21
(Court Remand) 1A

STAFF REPORT
RE: NIKI WHITEHEAD REMAND HEARING

The board sits today in the roll of fact finder as well as the rendering of conclustions of law pursuant of statute or case law. I indicated in my initial brief at the Superior Court, that the issues here are very narrow and I believe that they still are. There are two documents in question, namely a letter from Frank Biancur attached as Exhibit A which refers to a release of lien document recorded on the land record which is also attached as Exhibit B. Ms. Whithead has taken the position that the letter is incorrect for two reasons. The first is that as to the issue of height the Zoning Enforcement Officer wrongfully relied on a legal opinion which cited the case we have been referring to as the Adamski case for the proposition that a statute of limitations under Section 8-13a had expired and that the Town is therefore estopped from enforcing the height restriction of the garage which is the subject of this appeal because the garage has become a legal nonconforming use.

her second position is that the blanket statement that the variance and Section 8-13a together resolve all of the problems relative to the garage and it is essentially in compliance with all zoning regulations.

The board's duty here is not to determine whether or not Frank Biancur acted properly in issuing these letters, although they do have the ability to question the events leading up to the issuance of these letters. Their roll, however, is to review the record, the evidence in the record, and to determine if, in fact, the evidence shows that the statements made in those letters are correct and that the letters were properly issued.

Mr. Biancur's letter indicates that he relied solely on the opinion letter by Attorney Charles Andre which indicated that the Adamski Case was controlling and that 8-13a

made this a nonconforming use. There is no evidence in the file as to any measurements of the height of the building showing the height is below 15 feet. The board's review as to height is therefore limited solely to their interpretation of the Connecticut General Statutes Section 8-13a.

The Court in the Adamski case indicated that their review of the legislative history led them to the conclusion that height was an upper boundary contemplated by the legislature when they enacted the statute. Judge Abrams, both on the record, during the appeal hearing and in his decision indicated that he believed that the Adamski case was incorrect as it failed to utilize the plain meaning rule which was established by congress in the year 1993. Specifically, the plain meaning rule requires that you look at the plain meaning of the words in the statute, not the legislative history when interpreting statutory provisions.

The petitioner has given the Board a copy of the Adamski case and the legislative history. She indicates that the Court in Adamski improperly relied on the legislative history in that there is no mention in the legislative history as to height being a upward boundary. It is further her position that the plain language reading of the statute clearly does not provide that height is an upper boundary that is subject to the provisions of Connecticut General Statute's Section 8-13a. The property owner has submitted a rebuttal brief indicating that they believe that the plain language rule was not in effect at the time that the garage was built or when Mr. Biancur made his decision. The date of enactment of the plain language rule was put into evidence and it indicated that it was approved on June 26, 1993, which was before Mr. Biancur issued his decision and slightly after the date that the garage was built.

The Adamski case is a Superior Court case that was never appealed. It was referenced in the tine case referred to in Judge Abram's decision although that reference

was not directly on point. However, Superior Court cases carry the least amount of weight, especially when as here, they do not refer to preexisting Appellate Court or Supreme Court decisions from either this state or other states.

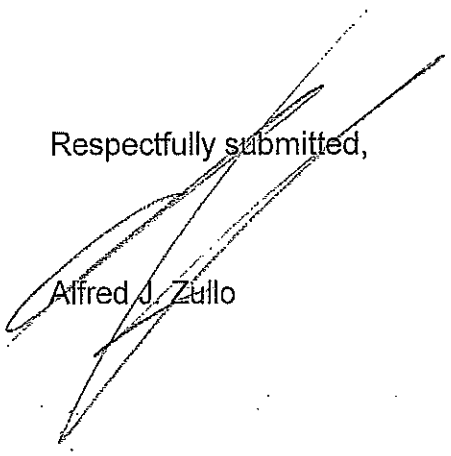
I would suggest that you employ a two part analysis here. The first part of your analysis is to look at the plain language of CGS 8-13a and to determine if you believe that the plain language of that statute creates height as an upward boundary. If it is your decision that height is not an upward boundary under the Statute, then I believe it would be appropriate for you to find that the letters that were written by Frank Biancur were not accurate and that the height issues remains a violation and the building is not a preexisting nonconforming use.

If you find that 8-13a does create an upper boundary, then the second part of your analysis would require you to determine whether or not the variance referred to in Mr. Biancur's letter and the effective 8-13a resolved all of the zoning problems relative to this property and that the garage is in zoning compliance as a non-conforming use. You would need to review the record relative to additional evidence presented by the petitioner as to other zoning issues regarding lot coverage, sidelines, etc., and the evidence, if any, in the zoning file to show that the garage satisfies all of the bulk standards for that zone. If you find that the record indicates that all of the bulk standards for the zone are satisfied, then you would rule against the petitioner. If you find that there is insufficient evidence in the file to support the statement made by Mr. Biancur that the property is essentially in zoning compliance, then you would sustain the petitioner's appeal.

I would urge you to read the statutes, the case and all of the information of the record carefully in making your decision. I would also urge you to have a complete discussion of these issues on the record and to make sure that any motion made relative

to your decision, contain all of the reasons relative to the motion being to avoid any problems on appeal.

Respectfully submitted,



Alfred J. Zullo

AJZ/mg

Universal Citation: CT Gen Stat § 8-13a (2013)

(a)(1) When a building or other structure is so situated on a lot that it violates a zoning regulation of a municipality that prescribes the location of such a building or structure in relation to the boundaries of the lot or when a building or structure is situated on a lot that violates a zoning regulation of a municipality that prescribes the minimum area of the lot, and when such building or structure has been so situated for three years without the institution of an action to enforce such regulation, such building or structure shall be deemed a nonconforming building or structure in relation to such boundaries or to the area of such lot, as the case may be. For purposes of this section, "structure" has the same meaning as in the zoning regulations for the municipality in which the structure is located or, if undefined by such regulations, "structure" means any combination of materials, other than a building, that is affixed to the land, including, without limitation, signs, fences, walls, pools, patios, tennis courts and decks.

(2) A property owner shall bear the burden of proving that a structure qualifies as a nonconforming structure pursuant to subdivision (1) of this subsection.

(b) When a use of land or building (1) is on a parcel that is fifteen or more acres, (2) is included in industry numbers 1795, 2951, 3272 or 4953 of the Standard Industrial Classification Manual, United States Office of Management and Budget, 1987 edition, (3) is not permitted by the zoning regulations of a municipality, (4) has been established and continued in reasonable reliance on the actions of the municipality, and (5) has been in existence for twenty years prior to July 8, 1997, without the institution of court action to enforce the regulations regarding the use, such use shall be deemed a legally existing nonconforming use and may be continued. Nothing in this subsection shall be construed to exempt such use from the requirements of the general statutes or of any other municipal ordinance.

(1967, P.A. 896; 1971, P.A. 388; P.A. 77-509, S. 8; P.A. 91-199; P.A. 97-296, S. 3, 4; P.A. 13-9, S. 1.)

History: 1971 act changed period after which nonconforming use established from five to three years; P.A. 77-509 substituted "such building shall be deemed a nonconforming building ..." for "such building location shall be deemed a nonconforming use"; P.A. 91-199 included as a nonconforming building a building situated on a lot that violates a zoning regulation which prescribes the minimum area of the lot; P.A. 97-296 added new Subsec. (b) re nonconforming land use, effective July 8, 1997; P.A. 13-9 amended Subsec. (a) by designating existing provisions as Subdiv. (1), adding provisions re nonconforming structures therein and adding Subdiv. (2) re property owner's burden of proof.

Appeal Hearing #17-18
17-20

Re: 1 Barberry Road, East Haven
Atty Alfred Zullo.

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ANSWERS TO QUESTIONS FROM MEETING OF AUGUST 17, 2017

1. Was Mr. Biancur tasked to do his due diligence to verify the validity of the letters he received before he wrote his letter.

If there was a request for a Certificate of Zoning Compliance, the Zoning Enforcement Officer would need to review the entire file and all of the facts and circumstances surrounding the property before rendering his opinion. In the present case, there is no such formal request or application and the triggering event for Mr. Biancur's letter is unknown. Mr. Biancur should have done significant due diligence before rendering such an opinion. The affidavit from George Mingione states conclusory facts with no supporting evidence. At a minimum his file should reflect that he actually called Mr. Mingione and spoke with him to get the facts relative to how Mr. Mingione obtained this personal knowledge as it clearly was not documented in the file. In addition, the letters are not affidavits and not under oath. Mr. Biancur should have looked to determine who the people were and to inquire as to whether or not they wrote the statements, the time period the statements covered and any other facts concerning the same. More importantly, Mr. Biancur should have reconciled these two items against the Town Attorney's letter that was in the file containing numerous facts which were contrary to the letters and affidavit.

2. Is blasting the only way to remove rock from a quarry and how far do the records show that there has been blasting going on re: permits.

Blasting is the most efficient way to remove rock from a quarry. The records of the fire department show that the earliest blasting permit was issued on March 7, 2008 to Pioneer Blasting.

3. Does blasting illegally make it a legal quarry?

I am going to refer you to the Pallman case which indicates that a municipality is not precluded from enforcing a zoning and fire regulation because one or more of its officers or servants has exceeded his authority by issuing a permit contravening the terms of such regulation.

4. Do we have to find that there is non-conforming use and how long a time limit as to contesting it?

Generally the finding of a non-conforming use is done in conjunction with an application for a variance or for a certificate of zoning compliance under 52.6 of the zoning regulations. In the present case, you did not have such a proceeding or application taking place. You have a letter of opinion given by your zoning enforcement officer which was published. There was no application nor has there been a proceeding which was appealable. Technically, a party could have appealed that opinion as published in the paper but none did so. However, the question before this Board is whether that letter represented an order or finding that was appealable pursuant to the

statute which became non-appealable after publication and the expiration of the appeal period.

Whether or not you need to make a finding that the property is a non-conforming use, will depend on how you decide the effect of the Biancur letter. If you find that it does not comply with the Statute, this will require you to determine if there has been substantial evidence in the record to show that there is a pre-existing non-conforming use. Remember this appeal also requires that you determine whether or not the evidence supports the issuance of a cease and desist order. The requirement that the activity be regulated and the finding that the regulation can be performed under the Town's Special Exception Provisions.

Alfred Zullo

From: Chuck Licata
Sent: Monday, September 11, 2017 12:29 PM
To: 'Alfred Zullo'
Subject: RE: Barberry Road

Hi Al the earliest I can find is March-7-2008 The Blasting company was Pioneer blasting

1 Barberry/400 Totoket rd NB

Chuck Licata
Assistant Chief – Deputy Fire Marshal
East Haven Fire Department
200 Main Street
East Haven, CT 06512
203-627-2023

From: Alfred Zullo [mailto:azullo@zulloandjacks.com]
Sent: Sunday, September 10, 2017 1:10 PM
To: Chuck Licata <CLicata@easthavenfire.com>
Subject: Barberry Road

Chuck

At the last hearing the board asked if I could find out the date of the earliest blasting permit issued for the Barberry road Quarry. Could you check your records and let me know.

Al z

Please note that we recently upgraded our e-mail system and my new e-mail address is azullo@zulloandjacks.com. Please update your records as my old addresses will stop working after 3/31/2013.

Attorney Alfred J. Zullo
Zullo, Zullo and Jacks, LLC
83 Main Street
East Haven, CT 06512
Tel.: (203) 467-1411
Fax: (203) 468-2792
Web: www.zulloandjacks.com

transmission in error, please promptly notify the sender by reply e-mail or by telephone at (203) 467-1411, and then delete and destroy all electronic and paper copies of this transmission. Thank you.

Appeal Hearing 17-18
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LEGAL STAFF REPORT
1 Barberry Road, East Haven, Connecticut Appeal

This is an appeal from the actions of the Zoning Enforcement Officer relative to cease and desist orders dated April 21, 2017 and May 9, 2017. The order dated April 21, 2017 was issued for the violation of 31.1 of the East Haven Zoning Regulation for actions at the property without a temporary special exception in place. The notice referred to the removal of tree stumps, their roots and the disturbance of the soil beneath and around the tree as well as the large rocks being observed rolling down the face of a large hill towards the road and on occasion even onto the road itself.

The May 9th cease and desist order again refers to Section 31.1 and to the previous cease and desist orders of February 17, 2017 as amended April 21, 2017. This cease and desist order instructed the property owner to apply for a special exception and set certain conditions by which the applicant may resume its operations, to include but not be limited to sediment and erosion control measures, a general permit for the discharge of storm water associated with industrial activities, and such other measures that were necessary to ensure that no further rock sliding occurs.

The property owner appealed all of the cease and desist orders and by stipulated disposition, the Town and the property owner agreed that the appeals to the April 21 and the May 9 cease and desist order would be dispositive of all of the issues to avoid duplication of effort.

The petitioner presented several grounds why the actions of the Zoning Enforcement Officer could not be supported by the facts as well as existing law.

The petitioner first indicates that the letter from Frank Biancur dated November 10, 2014 indicating that the property was a pre-existing non-conforming use is now the

law of this case, because it was published pursuant to Connecticut General Statues Section 8 – 3(f) and subsequently recorded on the land records. It is their position as well as their expert's position that because no interested party filed an appeal relative to that published letter, the property is now deemed a pre-existing non-conforming use which cannot be attacked collaterally or otherwise. They have also alleged that there was no basis for the cease and desist letters and that they were politically motivated, not supported by the facts surrounding the inspections and the record, and that the Town knew about the quarry operation for a period of time and took no steps to regulate it.

They have also taken the position that the Town is barred by the doctrine by municipal estoppel, as a result of the letter from Frank Biancur, and the issuance of blasting permits. They further allege that the property owner relied on this letter to his detriment and that the Town cannot make "an about face" and decide arbitrarily to pose other rules or sanctions.

They have also argued the Town's action is an unconstitutional taking of property without compensation. They have placed numerous exhibits in the record relative to their position and referred to case law to further support their rendition of the facts in this matter. They further have introduced the testimony of two experts, namely Attorney Robert Fuller and Attorney Timothy Hollister to support their interpretation of the law as applied to the facts in this case.

Lastly, the petitioner through his attorney and his legal experts have argued that even if they are wrong, the Town does not have the ability to regulate them, as the Town has no quarry regulations and that the Town's special exception ordinance simply

cannot be used to regulate a quarry as it specifically prohibits the type of digging and excavation required to operate a quarry.

The Zoning Enforcement Officer through his attorney has offered evidence to refute the claims of the plaintiff. He has produced the criminal record of Frank Biancur the Zoning Enforcement Officer who issued the letter of November 14, 2014 relative to what he believes are questionable circumstances surrounding the issuance of that letter. He has argued that the letter was not a letter generated by and in accordance with Connecticut General Statute's Section 8-3(f), and therefore the letter is not binding on the Town of East Haven.

He has also produced evidence in contradiction to the claim that the cease and desist notices were politically motivated to include pictures and films of the activity taking place on the property as well as the Zoning Enforcement Officer's notes and phone complaints from other parties that showed a significant increase in the size and scope of the quarry operation. The Zoning Enforcement Officer's attorney has further taken the position that the Town has the right to regulate all non-conforming uses under its police powers and has cited the property owner's own expert to support that proposition. The Zoning Enforcement Officer's counsel has further taken the position that the property owner and his experts has failed to take into account the provisions of Section 31.5.13 of the Town's Special Exception Regulations.

The property owner has rebutted indicating that the reliance on Section 31.5.13 is misplaced citing the MacKenzie case I gave to you at the last meeting. They put on additional evidence in their rebuttal where they admitted that the Town does have the

right to regulate use activities for public health and safety reasons, but that absent quarry regulations, this Town simply does not have the ability to do so.

This Board sits today in a different capacity than it normally does when it is hearing applications to vary regulations relative to property and uses. You are sitting in your capacity to hear appeals from an order or requirement or decision of the ZEO pursuant to our regulations and Connecticut General Statutes Section 8-6. In doing so, you are to make a determination of the issues before you without deference to the actions of the ZEO. You are sitting in the role of a fact finder who is to interpret the ordinances, statutes and cases which apply to the activities in question and to apply those laws to the facts to determine, if the cease and desist orders are warranted as a result of the alleged activity and to decide if necessary such other issues that have been presented relative to those cease and desist orders as set forth by the property owner.

In reviewing the record before you, you will be reviewing the evidence submitted by the parties to support their position. Statements by the attorneys for the property owner and the ZEO, do not constitute evidence. Their statements are oral argument relative to the positions taken on behalf of their respective clients, which you can consider in reviewing the actual evidence.

The reports and testimony of the experts, however, do constitute evidence, and it is this Board's job to decide what weight, if any, is to be given to that expert's testimony. In considering that testimony, the Board also has the right to take into account that the experts are paid for by the proponents using the expert testimony and that the expert's testimony is meant to support the proponent's position, not detract from it.

The testimony of the property owner, the Zoning Enforcement Officer and any other witnesses including the members of the public are also evidence that this Board can consider. Out of court statements proposed by either the property owner or the Zoning Enforcement Officer are technically hearsay, and in a court, hearsay would only be allowed under specifically enumerated circumstances. The rules of evidence that apply to matters litigated in court do not apply to you. You have the ability to hear out of court statements and to apply whatever weight you think is appropriate to those statements. In doing so, you have the right to question why the party proposing hearsay evidence would prefer to do so rather than to bring the person in to the proceeding to testify before the Commission and to be subject to questioning by both the Board and the opposing party.

Affidavits and letters are also hearsay evidence. Affidavits are sometimes used by courts for very limited circumstances such as putting public documents into evidence, or establishing liquidated debts which can be readily calculated for the convenience of the Court. Those rules also do not apply here, and you do have the right to consider any such affidavit, writings, letters or otherwise from other parties, and you have the right to decide what weight you wish to assign to them.

In addition to testimonial evidence, there is documentary evidence consisting of the documents that have been placed into the record as well as the pictures and films that were placed into evidence depicting the property and the activity that has taken place on the property.

It is this Board's job to weigh all of the evidence that has been presented by both of the parties as well as the general public in making a determination on the appeal by the property owner in this matter.

The property owner's case has several parts. I would suggest that the first analysis that you undertake involves the letter by Frank Biancur and the property owner's position that the letter as issued by a Zoning Enforcement Official establishes a pre-existing non-conforming use which cannot be attacked after publication pursuant to Connecticut General Statutes Section 8-3(f).

I have attached the language of Section 8-3(f) for your convenience. You need to review this statute in accordance with the plain language rule to determine if the plain language of the statute applies to the facts in this case. Specifically, the statute indicates that no building permit or certificate of occupancy shall be issued for a building use or structure subject to the regulations of a municipality without certification or writing by the official charged with the enforcement of such regulations that such building, use or structure is in conformity with such regulations or is a valid non-conforming use under such regulations. The section goes on to indicate that the official shall inform the applicant for any such certification that such application may provide notice of such certification by either 1. Publication or newspaper having substantial circulation such as municipality, statement, certification, position; or 2. Any other method provided by local ordinance.

In support of their position, the property owner has put on evidence consisting of Mr. Biancur's letter and the proof of publication. They argue that the quarry has been in

operation on the property for a significant period of time and that Mr. Biancur was correct in his conclusion that it is a pre-existing non-conforming use.

The counsel for the Zoning Enforcement Officer has called into question the legitimacy of the letter by indicating that there is no triggering event that resulted in the generation of this letter. There was no zoning permit application pursuant to 52.3 et seq. of the Town of East Haven Zoning Regulations or request for a certificate of zoning compliance.

He asserts that the letter was not issued in accordance with Zoning Enforcement Officer's duties as set out in Section 52.6 and points out his credibility issues as set forth in his Federal indictment. He further points out that the Statute requires some type of an application and that it refers to an applicant. He indicates that the Zoning Enforcement Officer's file shows no source as to why it was generated. He further points out that there is a legal opinion from the Town attorney in the Zoning file indicating that it does not appear that this property is a non-conforming use and instructing the Zoning Enforcement Officer to respond to Attorney Mingione who requested such a determination in writing that this was the case and to have them apply for a special exception. In addition, he has produced a letter from Mr. Biancur to Attorney Mingione per the town attorney's instruction that the property was not a con-conforming use and requesting that they apply for a special exception. He further questioned the timing of the publication which occurred a significant period of time after the letter was issued and the fact that no formal proceeding was pursued which would allow the Town or any other interested party to know that a publication was being made that set up an appeal right such as the notices and decisions that are regularly

published in the Courier which goes to every household in East Haven not the New Haven Register.

The property owner's counsel has countered that the letter was carbon copied to Town officials. However, the Board should consider that neither of those Town officials were called to give testimony in this case and to confirm they received copies.

In addition, the property owner's attorney has taken the position that the action of Frank Biancur cannot be collaterally attacked as the actions were performed in accordance with his duties and Connecticut General Statute Section 8-3(f). He has given you some cases to support his position that this letter by Frank Biancur cannot be collaterally attacked. Those cases, however, are differentiated from the case at hand, as they all involved applications to a Board or Commission that were subsequently ruled on and then published in accordance with the statute. Here the letter published, was issued by the Zoning Enforcement Officer, without a formal application being made. In addition, I have confirmed that there was no application fee submitted relative to the issuance of that letter. You have the right to question whether or not, Mr. Biancur was acting in the scope of his authority as authorized by Section 52 and specifically 52.3 of the Town's Zoning Regulations and the statute and whether or not the writing itself satisfies all of the requirements of the CGS 8-3(f). If you find that it does, then the property owner is correct. If you find that the letter by Frank Biancur does not comply with the plain language of this statute, then the property owner's claim that this is an established pre-existing non-conforming use that cannot be attacked is without merit.

As to the claim that the Zoning Enforcement Officer's actions were performed for political reasons, the property owner in his rebuttal, and not during his case in chief,

testified as to certain statements that were made to him over a period of time by parties that were not brought in to testify at the appeal.

The Zoning Enforcement Officer's attorney put on evidence showing the activity on the site that was taking place including pictures of a boulder that had rolled down into the road and the other rocks that have rolled down the hill. He also introduced the Zoning Enforcement Officer's notes from his file which memorialized his actions through and including the issuance of the Zoning Enforcement letter violations. He introduced messages which confirmed that complaints were made relative to the quarry. Mr. Soto also testified as to the events that lead up to the issuance of the orders. The property owner has prepared a chart which separate the phone messages which involved the property from those which do not.

When considering whether or not this matter was politically motivated, this Board needs to look at the facts from the evidence before them. If you find that the evidence supports the position that the Zoning Enforcement Officer's actions were made solely to protect the public health and safety interests of the Town, then that issue becomes moot. If you find that the Zoning Enforcement's Officers were politically motivated, then you can use that finding relative to your analysis of the other claims by the property owner relative to the Biancur letter, the claim of municipal estoppel and the claim of unconstitutional taking of property.

Petitioner's attorney argued that even if they are incorrect as to all of their allegations regarding the issuance of the cease and desist order, that the Town has no ability to regulate his client and that they were taking their own steps to address public health and safety concerns.

In making your decision, you can consider not only the evidence that was put before you relative to this issue, but the other evidence relative to the property owner's own actions in erecting the burm and the erosion fencing and applying for appropriate state permits after the notices were issued.

As to the issue of municipal estoppel, I have given you some cases to review that were used in the Smith Street case where that property owner also claimed municipal estoppel. To support a claim of municipal estoppel, the Courts have indicated that there are two essential elements that are necessary to be shown by the property owner. First, that the party against whom estoppel is claimed must do or say something calculated or intended to induce another party to believe that certain facts exist and to act on that belief and secondly the other party must change its position in reliance on those facts thereby incurring some injury. The courts have indicated that this doctrine should only be invoked with great caution only when the resulting violation has been unjustifiably induced by an agent having authority in such matters and only when such special circumstances make it highly inequitable or oppressive to enforce the regulations.

The property owner in this case needs to prove, pursuant to existing case law, that:

1. An authorized agent of the municipality had done or said something calculated or intended to induce the party to believe that certain facts existed and to act on that belief.
2. The party had exercised due diligence to ascertain the truth and not only lacked knowledge of the true state of things, but also had no convenient means of acquiring that knowledge; 3. The party had changed its position on reliance on those facts; and 4.

The party would be subjected to a substantial loss, if the municipality were permitted negate the act of its agents.

In the case before you, the property owner has indicated that he relied on the letter by Frank Biancur and on the opinion that it created a non-conforming use which could not be attacked and that he would have the right to operate his quarry operation. He also indicated that his being forced to stop operations has cost him millions of dollars. However, other than his statements that it has cost him millions of dollars, no documentary evidence was put into evidence as to actual financial loss. His statements that he had to lay people off and remove equipment from the site do not support the claim of substantial financial loss. There was no physical evidence whatsoever relative to financial loss.

In addition, I provided you with a copy of a case citing Cortiz which indicated that the purchase price is not evidence of significant loss without actual evidence to show that the entire investment would be lost or that the property had no further value.

Lastly, I have given you a copy of the Pallman case which indicates that a municipality is not precluded from enforcing a zoning or fire regulation by the fact that one or more of its officers for service has exceeded his authority by issuing a permit contrary to the terms of such regulation and not withstanding that the holder of the permit had proceeded to run it to its detriment before the municipality seeks to enforce the regulation against him.

No other evidence was put on by the property owner as to what due diligence he took to determine the status of the property. He did not apply for a certificate of zoning compliance or a certificate of use prior to purchasing the property. There is no evidence

as to whether or not he or his legal staff reviewed the zoning file and there is the question as to why neither he or his legal team failed to consider the letter written by the Town attorney directing Mr. Biancur to respond to the letter from Mr. Mingione indicating that the property is not a pre-existing non-conforming use and the letter written to Attorney Mingione by Frank Biancur indicating the same.

The Board has the ability to consider all of the evidence in the zoning file relative to whether or not the statements made in the letter from Mr. Biancur were even true. Four of the five items considered as affidavits are simply typed letters signed by individuals. There is no evidence that the signators and affiant Mr. Mingione wrote the letters or affidavit or even knew the contents when they were signed. In addition, none of them including Mr. Mingione were brought into this proceeding to testify as to their personal knowledge as to why the property has been a quarry operation for a period of time that predates our zoning regulations.

You have the ability to question Mr. Biancur's reliance on an aerial map that is not contained in the zoning file and is refuted by the aerial maps that were put on by the Zoning Enforcement Officer depicting the property as farmland in the same period of time. You may also consider the testimony of the numerous adjoining land owners who came in and talked about the farm activities that took place during the time they were owners of the property.

In addition, the property owner further had notice that the property was being taxed as farmland at the time that he purchased the property, and for some reason, the seller of the property subsequently filed an application to continue that tax use which was then revoked by the property owner.

The property owner has a very high burden here. Your job is to decide whether or not he has supplied you with substantial evidence to support his position as to all of the elements of collateral estoppel.

As to the issue as to whether or not the actions of the Town act as an unconstitutional taking of property, you will need to determine from the record if, whether or not the Town's right to enforce their regulations to protect public health and safety issues, deprives the property owner's right to legally use the property. You should review the cease and desist orders when making that determination. The cease and desist orders in this case merely ask that the property owner apply for a special exception. The property owner's argument that the requirement of the petitioner to apply for a special exception would act as an unconstitutional taking would require that this Board make a finding that the exercise by the Town of their right to regulate activities for public health and safety reasons were unreasonable and interfered with his right to use the property as authorized under existing law. They have cited cases which indicate that regulatory actions which abrogate the pre-existing use status of a property are illegal. You must decide if, in fact, the Town has the right to regulate the property and in doing so, whether it's regulations abrogate petitioners status, if any, as a pre-existing nonconforming use.

The last issue you must consider is whether the Town has the ability to regulate the activity as a non-conforming use or otherwise. The property owner's position changed in the rebuttal, his attorney indicating that if the Town simply enacted quarry regulations as he advised them to do, then they would have no issues relative to regulation. They admitted that the Town's police powers give them the right to regulate

uses for public health and safety. He went on to contradict the claim by the Zoning Enforcement Officer's attorney claiming that Section 31.5.13 of the East Haven Zoning Regulations ordinance is an illegal clause under the MacKenzie case, and that therefore the Board has no ability to regulate his client's activity.

The Mackenzie case involved a special exception and zone change application in the Town of Monroe whereby the applicant did not comply with the parking and landscaping provisions of the Monroe ordinance. The P&Z Committee in that case used a similar clause that allowed them to either waive or vary the various requirements in their special exception and zoning regulations on a case by case basis.

The Court found that any such clause in a special exception ordinance which allows a Planning and Zoning Commission to arbitrarily vary its own regulations on a case by case basis was an illegal clause and sustained the appeal.

In making your decision as to this issue, you need to look at the plain language of 31.5.13. If you find that the clause allows the P& Z Commission to arbitrarily vary its regulations when an applicant before them simply cannot satisfy all of the requirements in their special exception regulation, then you must find that 31.5.13 is illegal.

If you find that 31.5.13 does not give the Board the arbitrary right to vary the Town's regulations, then you could find that the Town has the ability to regulate the use under this clause. You need to look at the plain language of that regulation to determine if there is any limiting language put on the P&Z as to the scope of its use.

If you find that Section 31.5.13 is an illegal clause, that by itself does not constitute a finding, that the Town has no ability to regulate activities that simply do not fit into their special exception regulations such as the petitioner. The Court in the

MacKenzie case gives you the direction you need to look to if you make the finding that the clause is illegal. The MacKenzie case indicated that the Planning and Zoning Board had no ability to vary the Town's regulations, and further went on to indicate that the only board that is authorized by statute to vary a Town's Zoning regulations, is this Board, the Zoning Board of Appeals. In accordance with Connecticut General Statutes and Section 51.2.3 of the Town of East Haven zoning regulations, this Board has the authority to vary the Town's special exception regulation when it is necessary to apply to a use that was simply not contemplated by the regulation. It was alleged that there are no quarry regulations in the East Haven Zoning Regulations and 51.2.3 allows the Board "to determine and vary the application of these regulations ...with respect to a parcel of land where, owing to conditions especially affecting such parcel but not affecting generally the district which it is situated, a literal enforcement of these regulations would result in exceptional difficulty or unusual hardship."

This Board routinely gets variance applications that are submitted in conjunction with an application filed with the Planning and Zoning Commission. The property owner has always had the ability to apply for a special exception for this property with a contemporaneous filing of a variance of the special exception regulations in compliance with the cease and desist order but chose not to do so.

The Town has no need to enact quarry regulations as quarries are not allowed under its regulations now nor will they for policy reasons be allowed to in the future. However, the Town's regulations do give a property owner with a non-conforming use the ability to submit to regulatory action by the Town in accordance with the Town's

regulations, when such regulations are to be used for uses that were not contemplated when the regulations were enacted through the variance process.

I have previously given you some cases which included cases relied on by both of the parties. I would urge you to look at all of the evidence carefully and to review your notes and the meeting minutes. I would also urge you to discuss the issues fully on the record and that whatever motion you ultimately make as well as those claims by property owners you believe need to be resolved and state the reasons for your decision on the record. When formulating your decision you should also address those issues raised by the petitioner such as pre-existing non-conforming use, the effect of the publication of the Biancur letter and the doctrine of municipal estoppel. The appeal before you requires you to determine whether or not a cease and desist order is necessary to protect public health and safety concerns as to the current use of this property and whether or not the petitioner needs to file an application for a special exception under the Town's regulations so the Town can regulate the use.

Respectfully submitted,

Alfred J. Zullo, Esquire
The Law Offices of Zullo, Zullo & Jacks, LLC
83 Main Street
P.O. Box 120748
East Haven, CT 06512
Telephone: (203)467-1411
Juris No. 419171

STATE OF CONNECTICUT FORM M-29, REVISED 5/2014

PRESCRIBED BY THE COMMISSIONER OF THE DEPARTMENT OF AGRICULTURE

APPLICATION TO THE ASSESSOR FOR CLASSIFICATION OF LAND AS FARM LAND

Declaration of policy: it is hereby declared that it is in the public interest to encourage the preservation of farm land, forest land and open space land in order to maintain a readily available source of food and farm products close to the metropolitan areas of the state, to conserve the state's natural resources and to provide for the welfare and happiness of the inhabitants of the state [and] that it is in the public interest to prevent the forced conversion of farm land, forest land and open space land to more intensive uses as the result of economic pressures caused by the assessment thereof for the purposes of property taxation at values incompatible with their preservation as such farm land, forest land and open space land.

FILE A SEPARATE APPLICATION FOR EACH PARCEL. PLEASE PRINT. COMPLETE ALL SECTIONS. SEE REVERSE SIDE OF THIS FORM. ATTACH ANY ADDITIONAL PAGES.

☑ NEW APPLICATION ☐ UPDATE APPLICATION (EXCEPTED TRANSFERS ONLY) ATTACH EXPLANATION ☐ ACREAGE CHANGE ATTACH EXPLANATION ☐ USE CHANGE ATTACH EXPLANATION

NAME OF ALL OWNERS	MAILING ADDRESS
One Barberry Real Estate Holdings LLC	218 Foxon Rd East Haven CT

CONTACT PERSON'S NAME	CONTACT PERSON'S TELEPHONE NUMBER	CONTACT PERSON'S E-MAIL ADDRESS
MARK DILWORTH	203 410 3819	MARK@DFGElectric.com

TYPE OF FARMING OPERATION	EQUIPMENT USED IN THE FARM OPERATION	TOTAL GROSS INCOME DERIVED FROM FARM OPERATION
CORN	TRACTORS & PLANTERS	FOR COWS (owned)

PROPERTY LOCATION: 1 BARBERRY Rd

TOTAL ACREAGE THIS PARCEL THIS TOWN ONLY: 30.12

	OWNER'S ACREAGE ESTIMATE THIS TOWN ONLY	ASSESSOR'S ACREAGE ESTIMATE	ASSESSOR'S USE VALUE PER ACRE	USE ASSESSMENT
TILLABLE A: Excellent (shade tobacco and ball and burlap nursery, crop land)				
TILLABLE B: Very good (binder tobacco, vegetables, potatoes, crop land)				
TILLABLE C: Very good, quite level (corn silage, hay, vegetables, potatoes, crop land)	1.12	1.12	670	750
TILLABLE D: Good to fair, moderate to considerable slopes (hay, corn silage, rotation pasture, crop land)				
ORCHARD: Well-maintained trees for the purpose of bearing fruit				
PERMANENT PASTURE: Grazing for livestock, not tilled land	10	10	140	1400
WOODLAND: Woodland in a farm unit				
WASTELAND: Swamp/ledge/scrub	10	10	40	400
TOTAL	21.12	21.12	TOTAL	2550

PLEASE ATTACH A SKETCH OF YOUR FARM SHOWING THE LOCATION AND NUMBER OF ACRES IN EACH FARM USE

OWNER'S AFFIDAVIT (ALL OWNERS MUST SIGN)

I DO HEREBY DECLARE under the penalty of false statement that the statements made herein by me are true according to the best of my knowledge and belief, and that I have received and reviewed § 12-504a through 12-504e, inclusive of the Connecticut General Statutes concerning a potential tax liability upon a change of ownership or use of this property.

OWNER'S SIGNATURE	DATE SIGNED	OWNER'S SIGNATURE	DATE SIGNED	OWNER'S SIGNATURE	DATE SIGNED
[signature]	5/10/16				

ASSESSOR'S VERIFICATION SECTION

ACQUISITION DATE	DATE RECORDED	VOLUME/PAGE	MAP/BLOCK/LOT	TOTAL ACREAGE	TOTAL ACREAGE CLASSIFIED
3/14/16	3/14/16	2471/0171	610-7344-001	30.12	21.12

APPLICATION APPROVED: ☑ YES; AS NOTED ABOVE ☐ NO; REASON: _____

[signature] ASSESSOR

9/1/16 DATE

ASSESSOR'S CERTIFICATE - EAST HAVEN, CONNECTICUT
FARM LAND (DECLASSIFIED)

CT. General Statutes
Sec. 12-504a

OWNER OF RECORD MAILING ADDRESS	LOCATION OF PROPERTY MAP BLOCK PARCEL	TOTAL NUMBER OF ACRES	NUMBER OF DECLASSIFIED ACRES	DATE OF DE-CLASSIFICATION	EXPIRATION DATE FOR CONVEYANCE PENALTY
What TF 218 Foxon Road East Haven, CT 06512	1 Barberry Road East Haven, CT **610 7344 001**	39.2	9.0	10/1/2014	N/A

Dated this 10th day of October, 2014

Michael J. Milici, C.C.M.A. II, SPA

Subscribed and sworn to before me
this 10 day of October 20 14

Stacy Graziano
Signature of Notary Public

Date Commission Expires
Stacy Graziano

STACY GRAZIANO NOTARY PUBLIC CONNECTICUT
My Commission Expi
February 28, 2015

State of Connecticut
Form M-29, Rev. 9/02

Prescribed by the Commissioner
of the Department of Agriculture

APPLICATION TO THE ASSESSOR FOR CLASSIFICATION OF LAND AS FARM LAND

Declaration of policy: It is hereby declared that it is in the public interest to encourage the preservation of farm land, forest land and open space land in order to maintain a readily available source of food and farm products close to the metropolitan areas of the state, to conserve the state's natural resources and to provide for the welfare and happiness of the inhabitants of the state [and] that it is in the public interest to prevent the forced conversion of farm land, forest land and open space land to more intensive uses as the result of economic pressures caused by the assessment thereof for purposes of property taxation at values incompatible with their preservation as such farm land, forest land and open space land.

Please print. File a separate application for each parcel. Complete all appropriate sections, attaching additional sheets if necessary. See reverse for additional filing information and section to be completed if farm land is leased or rented.

Name of Owner(s): WHAT T. F

Property Location: 1 Barberry Rd (Number & Street) | East Haven (Town) | CT (State) | 06512 (Zip Code)

Mailing Address: 400 Totoket Rd (Number & Street or P.O. Box) | North Ford (Town) | CT (State) | 06472 (Zip Code)

Check appropriate box: ☑ New Application ☐ Ownership Change ☐ Acreage Change ☐ Use Change

Total acreage of land: # 39.2 (Acres) Portion in actual use for farming / agricultural operations: # 39.2 (Acres)

Is total acreage located wholly within this town? ☐ YES ☑ NO If NO, name of other town: North Branford

Total gross income derived farm operation *(Need not be majority of income)*: $

Type of farming operation (e.g., dairy, vegetable, horse, etc.) dairy

Equipment used in the farm operation:

Enter number of acres in each land class below and attach a sketch of your farm land to this application, showing the number of acres in each such class. Assessor will complete Items 3 and 4 if application is approved.

1 Land Classes	2 # Acres	3 Use Value	4 Use Assessment
Tillable A - Excellent (Shade Tobacco and Ball and Burlap Nursery, Crop Land):			
Tillable B - Very Good (Binder Tobacco, Vegetable, Potatoes, Crop Land):			
Tillable C - Very Good, Quite Level (Corn Silage, Hay, Vegetables, Potatoes, Crop Land):			
Tillable D - Good to Fair, Moderate to Considerable Slopes (Hay, Corn Silage, Rotation Pasture, Crop Land):			
Orchard - Well Maintained Trees for the Purposes of Bearing Fruit:			
Permanent Pasture -- Grazing for Livestock, Not Tilled Land:	10	160	1120
Woodland – Woodland in a Farm Unit:			
Wasteland - Swamp / Ledge / Scrub:	29.20	120	2450
TOTAL ELIGIBLE ACRES:	39.20		
	TOTAL CLASSIFIED USE ASSESSMENT:		3570

Owner's Affidavit

I DO HEREBY DECLARE under penalty of false statement that the statements made herein by me are true according to the best of my knowledge and belief, and that I have received and reviewed §12-504a through §12-504e, inclusive of the Connecticut General Statutes concerning a potential tax liability upon a change of use or sale of this land.

DATED: 11/1/10 /S/ [signature]

DATED: /S/

Assessor's Verification Section

Acquisition Date: 3/22/08 Map / Block / Lot: 610-7344-001 Total Acreage: 39.20 Acreage Classified: 39.20

Vol. / Page: 1920 / 315 Date Recorded: 3/22/08

Application approved: ☑ YES ☐ NO Reason for denial:

/S/ [signature] Assessor 11/22/10 Date

OVER

(f) No building permit or certificate of occupancy shall be issued for a building, use or structure subject to the zoning regulations of a municipality without certification in writing by the official charged with the enforcement of such regulations that such building, use or structure is in conformity with such regulations or is a valid nonconforming use under such regulations. Such official shall inform the applicant for any such certification that such applicant may provide notice of such certification by either (1) publication in a newspaper having substantial circulation in such municipality stating that the certification has been issued, or (2) any other method provided for by local ordinance. Any such notice shall contain (A) a description of the building, use or structure, (B) the location of the building, use or structure, (C) the identity of the applicant, and (D) a statement that an aggrieved person may appeal to the zoning board of appeals in accordance with the provisions of section 8-7.

SECTION 52: ADMINISTRATION

52.1 **ZONING ENFORCEMENT OFFICER:** The Planning and Zoning Commission shall appoint a Zoning Enforcement Officer, and duly appointed Deputies to work under his/her direction who shall have the authority and responsibility to enforce the provisions of these Regulations in accordance with any administrative rules and procedures as may be established by the Commission. Said Zoning Enforcement Officer and any designated Deputies shall be directly responsible to the Commission to carry out his/her/their duties, according to Law, and under such rules that the Commission may adopt. No Zoning Permit and/or Certificate of Use and Occupancy may be issued unless signed by the Zoning Enforcement Officer and/or his/her designated Deputy.

52.2 **ENFORCEMENT:** The Zoning Enforcement Officer and/or Deputy may cause any building, structure, place, premises, sign or use to be inspected and examined; and to order, in writing, the remedying of any condition found to exist in violation of any provision of these Regulations. The owner, agent lessee, tenant, architect, builder or contractor of any property, building or premises or any part thereof, in which a violation has been committed or exists shall be considered the violator and shall be subject to penalties in accordance with Section 8-12 of the Connecticut General Statutes; the provisions and penalties prescribed in these Regulations or any other "reasonable action" designed to restore such building, structure, place, premises, sign or use to compliance with these Regulations.

Any Official having jurisdiction may institute an action, proceeding or remedy to prevent the unlawful erection, construction, alteration, conversion, maintenance or use of a building, structure or land; or to restrain, correct or abate such violation, or to prevent any illegal act, conduct, business or use in or about such premises or land.

52.3 **ZONING PERMIT APPLICATION:** Applications for a Zoning Permit shall be submitted to the Zoning Enforcement Officer for his/her review and approval. Every application for a Zoning Permit shall be accompanied by such information and exhibits as are required herein, or such additional information, including other plans, drawings, statements and data as may be required by the Zoning Enforcement Officer in order that the proposal may be adequately and accurately interpreted and evaluated as to its conformity with the provisions and intent of these Regulations. For proposed construction involving only interior or use alterations, or alterations with no enlargement or extension of an existing building or structure, the Zoning Enforcement Officer may waive the submission of the required plot plan. For the purpose of this section, the terms "zoning permit" and "Certificate of zoning compliance" are synonymous.

52.3.1 Submitted applications for a zoning permit shall be accompanied by a plot plan and/or site plan, drawn to scale, on a sheet not to exceed 24" x 36"; at a scale of one [1] inch equals forty [40] feet and certified "substantially correct" by a licensed Civil Engineer or Land Surveyor, based on a Class A-2 survey, not more than 15 years old and showing the following information as the date of the application:

52.3.1.1 Name of the applicant and the owner of record.

52.3.1.2 Property's street address, the Assessor's map and parcel number from the Assessor's [field] card.

52.3.1.3 North point, graphic scale and date.

52.3.1.4 Lot area; dimensions, radii and angles or bearings of all lot lines.

52.3.1.5 The size and location of all existing buildings or structures and/or additions; including dimensions, floor area, ground coverage and minimum floor elevations, uses, all fences, walls and terraces.

52.3.1.6 All setback lines and dimensions of actual setbacks of all buildings and structures.

52.3.1.7 The location, area and dimensions of all parking areas, loading areas, driveways, curb cuts, easements and rights-of-way and other access thereto, spot elevations at appropriate locations.

52.3.1.8 Existing and proposed landscaping and exterior lighting locations;

52.3.1.9 Existing and proposed contours at two [2] foot intervals, at minimum, in areas proposed to be disturbed by construction;

52.3.1.10 The location of municipal water or well lines, sewer lines or septic tanks, leaching fields and reserve areas, high pressure gas lines and high tension transmission lines.

52.3.1.11 The location of all storm drainage and drainage lines on the property;

52.3.1.12 The location, dimension and height of all signs and other facilities and improvements subject to the provisions of these Regulations;

52.3.1.13 The location of waterbeds, watercourses, swamps, inland and/or tidal wetland boundary lines , and flood prone areas with delineated channel encroachment lines, high tide lines, twenty five [25] and one hundred [100] year flood lines and floodway boundary lines.

52.3.1.14 When an application is located in a flood prone area, include existing and proposed site grades, contours, base flood elevation data, top of foundation elevations, finished floor elevations;

52.3.1.15 A Sediment and Erosion Control [S&E] Plan pursuant to these Regulations.

52.3.2 Building Plan: The application shall be accompanied by an architectural drawing of all new buildings or alterations at a scale of not less than one [1] inch equals eight [8] feet, and showing the following information:

52.3.2.1 Name of the applicant and the owner of record

52.3.2.2 Property street address

52.3.2.3 All exterior wall elevations, indicating floor heights, and overall building height

52.3.2.4 Numerical scale and date;

52.3.2.5 Building floor plans indicating existing and proposed usage, interior floor and/or patron floor area

52.3.2.6 Architectural rendering of the exterior of the proposed structure and/or addition.

52.3.3 **Modify and/or Delete Submission Requirements:** The Zoning Enforcement Officer may modify or delete any of the requirements for a zoning permit, provided that the information required is inappropriate or overly excessive to the particular application; and that the omission of such information will not impair or prejudice the Zoning Officer's determination as to the applications conformity to the to the Zoning Regulations

In instances where the proposal is for a minor addition and/or modification to a residential dwelling or an accessory structure, the Zoning Enforcement Officer may allow a "hand drawn", scaled plot plan as long as the property owner assumes the liability for the accuracy of the document.

52.3.4 **Special Plans:** In addition to the requirements set forth in this section, and where required by Article III of these Regulations, the zoning permit application shall be accompanied by required site plans, architectural plans and other plans [lighting, landscaping, erosion control] and drawings meeting the standards set forth therein. Site and building plans, incorporating all of the information required to be shown on said plan drawings specified in sections 52.3.1 and 52.3.2 may be substituted for said drawings.

52.3.5 **Fees:** Each application for a zoning permit shall be accompanied by a fee as determined from a schedule of fees adopted by resolution of the Commission and posted in the Planning and Zoning Office.

52.3.6 **Additional Information:** The Zoning Enforcement Officer/Administrator may further require such other information as may be necessary to determine compliance with the intent and purpose of these Regulations, such as total lot coverage calculations, floor area ratios, etc.

52.4 **REFERRALS and REVIEW:** The Zoning Enforcement Officer/Administrator shall review all applications for completeness and adequacy. When an application for a zoning permit may only be approved after the approval of a site plan, subdivision plan and/or special exception, or any other required Commission action as specified in these Regulations, such

application and accompanying maps; plans and other data shall be promptly referred to the Commission. It shall be the responsibility of the Zoning Officer/Administrator to coordinate the Commission's plan review process, to request additional information from the applicant on behalf of the Commission and to maintain the Commission's record of actions and decisions under these Regulations.

52.5 **PRIOR APPROVALS:** It shall be the sole responsibility of the applicant to determine what additional local, state and/or federal approvals are necessary in conjunction with the proposed activity. The Commission and/or the Town staff assumes no responsibility for the determination of need, or the failure to obtain such approvals. Such prior approvals shall include, but not be limited to [where applicable]:

52.5.0.1 Inland Wetland and Watercourses approval

52.5.0.2 D.E.P. approvals

52.5.0.3 Regional Water Company approval

52.5.0.4 F.A.A. [Federal Aviation Administration] approval

52.5.0.5 Regional Health District approval

52.5.0.6 W.P.C.A. [Water Pollution Control] approval

52.5.0.7 Zoning Board of Appeals [variances] approval

52.5.0.8 Town Engineer [grading, drainage, sewer design] approval

52.5.0.9 State D.O.T. [Department of Transportation] and S.T.C. [State Traffic Control] approval

52.5.0.10 Sedimentation and Erosion Control Plan approval

52.5.1 Endorsement: All such required approvals shall be duly noted on the final, approved plan of record; including any separate engineering, sediment and erosion control and/or building plan as applicable. Any such plan should include the date of the particular approval and the identification of the approving official, as applicable.

52.6 **APPROVAL and ISSUANCE:** The Zoning Enforcement Officer/Administrator and/or duly authorized deputy shall approve and issue a zoning permit and/or a certificate of zoning compliance for the use or occupancy of any land, building or structure in accordance with the provisions of section 52.1 and, when it has been determined that all of the requirements of these Regulations have been met. No zoning permit and/or certificate of zoning compliance shall be considered issued unless it is signed by the Zoning Enforcement Officer/Administrator or authorized Deputy. Within ten [10] days after notification by the applicant that the premises are ready for occupancy, the Zoning Official shall issue or deny the certificate of zoning compliance. The following additional requirements shall apply to the issuance of zoning permits and/or certificates:

52.6.1 **Staking:** In instances of new construction the Zoning Officer/Administrator may delay issuing a zoning permit until the applicant has accurately placed stakes or markers on the subject lot, indicating the location of the proposed construction. Said official may further require the applicant to place stakes or markers on the lot, indicating the location of one or more of the lot lines. Said official may further require the placement of stakes or markers to be made and certified by a licensed land surveyor.

52.6.2 **Measurement[s] Verification:** Prior to the commencement of construction above the foundation, the applicant may be required to submit a certified "as-built" plan to the zoning official within fourteen [14] days after the completion of foundation footings, columns, piers or walls for verification of setbacks for any new, detached building or structure on a lot.

By request of the applicant, and concurrence by the zoning official, the required "as built" submission may be deferred and required prior to the issuance of a certificate of zoning compliance.

52.6.3 **Inland Wetland:** No Zoning Permit shall be issued until such time as the Inland Wetland and Watercourse Commission, has approved any necessary permits, or has indicated that a permit from that agency is not necessary and/or required.

52.6.4 **Other Permits:** The issuance of a Zoning Permit and/or a Certificate of Zoning Compliance shall not be construed to constitute compliance with any other regulation, ordinance or law; nor to relieve the applicant from his/her responsibility to obtain any permit thereunder. The zoning official is authorized to withhold issuance of a zoning permit and/or compliance certificate until any such known permit has been applied for, approved and obtained by the applicant.

52.7 **ZONING PERMIT, TIME LIMITS and RENEWALS:** A zoning permit issued, shall terminate and become null and void one [1] year from the date of issuance unless the use or work authorized by said permit has been established and a zoning permit has been issued.

52.8 **INSPECTIONS:** The Zoning Enforcement Officer and/or a duly authorized Deputy is authorized to inspect, or cause to be inspected, any building, structure or premises to determine compliance with these Regulations. No zoning permit and no certificate of zoning compliance shall be issued until such time as the Zoning Officer has determined the building, structure or premises and use thereof conforms to these Regulations.

52.9 **ORDERS:** The Zoning Enforcement Officer and/or a duly authorized Deputy may revoke any Zoning Permit in case of any false statement and/or representation of fact on the application, maps, plans or statements of intended use on which said permit was based.

Said Zoning Enforcement Officer/Deputy may further issue orders to "Stop Work" if the use of land, buildings and other structures, or the construction, re-construction, extension, enlargement, moving or structural alteration of a building or other structure is not being carried out in compliance with these Regulations; the aforesaid Zoning Enforcement

Officer/Deputy shall withdraw such Order when there is compliance with these Regulations. The Zoning Enforcement Officer/Deputy is authorized to order, in writing, the remedying of any condition found to be in violation of these Regulations.

52.10 TEMPORARY CERTIFICATE: Upon certification by the applicant that the public health and safety will not be impaired, and there will be compliance with all other laws pertaining to health and safety, the Zoning Enforcement Officer may issue a Temporary Certificate of Zoning Compliance having a duration of not more than 4 months, and renewable for only one additional 4 month period for the temporary use of land, buildings and other structures.

52.11 RECORDS: The Zoning Enforcement Officer shall keep records of all fees, all applications, zoning permits and certificates, all written complaints of any violation of these Regulations, all inspections made under these Regulations and all notices of violation served and the action taken thereon.

52.12 VIOLATIONS and PENALTIES: Any person, firm, corporation or any other entity who shall violate any provisions of these regulations shall be subject to the prosecution and penalties in accordance with the General Statutes of the State of Connecticut, Chapter 124, Section 8-12; as may, from time to time, be amended.

The proper authorities of the Town of East Haven or any person, firm, corporation or other entity may institute any appropriate action or proceedings to enforce, enjoin, correct or abate any violation of these Regulations, as may be authorized by Law.

52.13 ADMINISTRATIVE POLICIES and PROCEDURES: The Commission may, from time to time, by resolution, adopt certain administrative rules, policies and procedures for the administration and enforcement of these Regulations; including, but not limited to:

52.13.1 Administrative zoning forms and notices

52.13.2 Procedures to be followed and reports and notices to be issued by the Zoning Office; and

52.13.3 Detailed design criteria to guide in the preparation and review of Site Plans.

3A

Joseph L. Giordano
2 Old Town Highway
East Haven, CT 06512

September 18, 2017

Re: Denise LaCroix
4 Sibley Lane
East Haven, CT 06512

To Whom it May Concern:

I live on Old Town Highway adjacent to Sibley Lane. I have been Denise LaCroix's neighbor for more than 15 years.

Like many residents in Morgan Point, Denise has experienced damage and heartache to her lovely property due to storms over the years but more recently due to Hurricane Irene and Superstorm Sandy. I wholeheartedly support Denise's quest to elevate her home as to prevent further damage to it by future storms. It will allow her to have peace of mind. It will also be an improvement to the immediate neighborhood.

Over the past several years, the Town of East Haven has allowed numerous neighbors on Sibley Lane, Old Town Highway and on other neighborhood streets to lift their homes. I encourage the town representatives to now also approve Denise's request to elevate her home.

Sincerely,

Joe Giordano

Joe Giordano

√ c: Denise LaCroix

To Whom it May Concern: 9.5.17

I am Writing this letter on behalf of Denise LaCroix and her need to have her house raised. This is NOT only a desire it is a necessity when living down by the water to preserve and protect the property that you have worked so hard for.

It is unconscionable to deny her the ability to save her home.

In the wake of all the recent property loss and devastation it makes sense to protect the "American Dream" of a decent place to live and thrive.

Thankyou for your time and consideration in this matter.

Sincerely

George + Paula McBurnett
84 Old Town Highway
E.H. CT

To whom it may concern,

We have lived at 5 (aka) 27 Sibley Lane since March of 1981. We think it's a wonderful idea that Denise LaCroix wants to raise her house after hurricane's Irene & Sandy Sibley Lane was hit very hard and a lot of damage was done. She has all our love and blessings that this will happen.

Sincerely,

Robert & Julia LaCroix

5 Sibley Lane

East Haven CT 06512

3A

Wayne and Amber Krasnow
14 Sibley Lane
East Haven, CT 06512

September 12, 2017

~~*To Whom It May Concern:*~~

Re: Denise Lacroix
4 Sibley Lane (aka 24)
East Haven, CT 06512

This letter is to confirm that we have no issues with Denise Lacroix raising her house located at 4 Sibley Lane, East Haven.
We actually recommend it.

Thank you,

Wayne Krasnow
Amber Krasnow

To Whom it May Concern,

I am writing in regards to the property at 4 Sibley Lane (aka 23) East Haven, CT.

I have lived on Sibley Lane since 1981. For the past decade the tides have raised. Our high tide now is that of a moon tide back then.

The water is constantly behind and to the side of my house also.

Knowing this I have absolutely no problem with the existing houses on the street being raised.

Sincerely,

Carole Latella

Carole Latella
1 Sibley Lane (aka 11)
East Haven

9/20-17-33 4A

I. INTRODUCTORY STATEMENT

I am a member of Lighthouse Marina, LLC which abuts the property to 4 (aka 23) Sibley Lane. I am submitting this document to the Board which presents facts and issues concerning the Applicant's request for variances.

This is now the sixth time the Applicant has filed for variances before this Board since April, 2017. Since the June, 2017 meeting Applicant and her attorney have continually misrepresented to the Board that they were purchasing extra property from Lighthouse Marina to drastically reduce their nonconformity and undue hardship.

Given this misrepresentation, the current Application now appears to be one of first impression compared to all previous variances the Board has granted during the past five years related to raising a house in East Haven per FEMA flood zone regulations. Never before has an applicant affirmatively represented to the Board that it was in agreement to purchase extra land to minimize the nonconformities, and then back out of the purchase deal for no valid reason, and then come back to the Board for set-back variances based on the hardship that the lot is too small and non-conforming. Contrary to the allegations of Applicant's attorney, the extra land owned by Lighthouse Marina is in fact still available for purchase **without any conditions.**

In sum, since Applicant and her attorney have repeatedly represented they were purchasing this land (and the money was paid in the trust account), and the land is still available without any conditions, then it cannot be said that Applicant has minimized her non-conformity and has an existing hardship as depicted on her current Application.

Myself and my other LLC members would like to submit the following for consideration by the Board and be placed into the record. We greatly appreciate the Board's anticipated thorough review of this submission. I have tried to make this as concise and succinct as possible out of respect for the Board's time as well as the other persons' present at the meeting.

As detailed below, the core reason we do not believe this Application should be granted is due to the unique circumstance where Applicant has previously come to this Board representing that she has agreed to purchase land which will minimize the non-conformity at issue. Yet, all these representations to purchase extra land to minimize the non-conformity were not true. Instead, it now appears that the Applicant used these misrepresentations in order to be assured that we did not object at the previous meetings, which in turn would help them be certain the Board would grant the variances without need to purchase the property.

The Board should not tolerate such behavior, nor should the Board be swayed to use its discretion to grant the variances in light of how the facts herein mesh with the relevant laws applied to granting variances.

Applicant's May ZBA meeting. There are no other permits that have been issued on Applicant's house since Sandy or Irene. As such, like the other houses on Sibley Lane, there is no appearance or evidence of any substantial damage to Applicant's house.

In October, 2013 we purchased the property known as 72 Old Town Highway which is a parcel of land that abuts the rear of 5 houses on Sibley Lane, including the Applicant's.

Since 2013 the Applicant applied numerous times for variances related to her plan to raise and move her existing home. Highlights from the applications, Board Meetings and communications with Applicant's attorney are outlined below.

2013 - Application & Minutes

According to September 2013 Minutes,

"Proposal to raise existing house and decks to FEMA standards. Redesigning of decks due to the raising of the home, however footprint of home will stay as is."

VARIANCE: Section 44 Nonconforming Lot, Schedule 'B' Line #8 reduction of rear setback from required 30 ft to 10 feet (20 ft reduction) due to elevated deck. Schedule 'B'

Side Yard Setbacks Line #9 reduction of South side setback from required 20 ft to 15 ft (5 ft reduction) due to the deck and stairs."

The Application included a map which indicated that the existing shed was on the property. Applicant also indicated that CAM approval was not required.

March, 2015 - Application

Applicant submitted a new application to raise existing single family dwelling at 4 Sibley Lane. Variances required: Line 1, 2,3,4,8,9,11

Application did not indicate any CAM.

Not listed in Board Minutes and not clear if was ever granted.

April, 2017 – Application & ZBA Meeting Minutes

Applicant submitted variance application for "Raising & moving forward existing home, replace foundation, remove and replace decks, add stairs." Applicant requested variances for Line 8,9,11.

Applicant read her hardship stating that the dwelling is in a storm surge area and "must" be raised according to FEMA regulations. Applicant also claimed that existing building and set backs are non-conforming to the current zoning regulations.

June 8, 2017 - Letter from Crosby

Mr. Crosby sent a letter agreeing the terms of Ms. LaCroix purchasing our property and settling the encroachment issues. Mr. Crosby wrote " Ms. La Croix is willing to accept the above amount [$15,000] as a settlement and purchase transfer as long as the fence is immediately removed from her property by Lighthouse Marina, LLC and documentation of the transfer of the piece of land to Ms. La Croix is memorialized on the land records."

June 15, 2017 - Crosby Communications & ZBA Meeting

Mr. Crosby sent an email to the Board explaining a withdrawal of the application due to the purchase of the land. Mr. Crosby stated that "Ms. La Croix has agreed to purchase a 30 foot disputed strip of land behind her house which will change the variances requested."

In an email to me, Mr. Crosby again confirmed "My client is getting the $15,000.00 together and should have funds to close next week. I am pretty sure she will want the fence removed after the closing of title and payment of the purchase price is completed."

At the meeting, the Board accepted the motion for withdrawal without prejudice

June 23, 2017 – Communications with Crosby

Mr. Crosby emailed us a revised plan showing the additional land which his client was to purchase. Mr. Crosby stated "Please let me know if your client will not object to the plan so we can proceed with the purchase of the 30 feet."

We had no objections.

Mr. Cosby followed up this email stating that "My client delivered a bank check for $15,000 to my office yesterday. She also dropped off some plans. I am working on getting a PDF copy from the surveyor so I can email then to you."

I thereafter spoke with Mr. Cosby and indicated to him that we would need a purchase agreement, deed, drawing or survey and related settlement agreement to close on the property. He indicated he would draft these documents.

July 18, 2017 – Letter from Crosby

Mr. Crosby did not prepare a purchase agreement and deed as the parties contemplated. Instead he sent us a Letter of Intent which conditioned the purchase on the granting of the variances.

I responded to this Letter of Intent clarifying some of the issues of what needed to be drafted and I also informed Mr. Crosby that Lighthouse Marina would wait to close until we concluded an unrelated easement issue

The minutes further indicated that "Chairman Falcigno says there are things on the map that are questionable, but he would rather hear it once he knows they own the property and it has been conveyed, he says he will keep the public hearing open but he can't justify asking the members to vote on something that someone else still owns, he won't do that."

Finally according to the minutes "Attorney Crosby says that is fair enough and they will come back with that..."

Attorney Zullo, then took advantage of this scenario to push to Board to consider the application and give the Applicant input in any other outstanding issues (without our objections).

Again it is also important to note that my partners present at the meeting did not voice any objections as we were in agreement in principle to sell additional property to the Applicant.

Also, Mr. Crosby does not complain of our condition of not completing the transaction until the unrelated easement was completed.

July 26, 2017 Correspondence from Crosby

Mr. Crosby wrote a letter acknowledging that "The ZBA was not willing to grant a variance for conditions shown on property which Denise La Croix does not yet own." Mr. Crosby stated that "My clients cannot agree to condition their purchase upon your clients obtaining a utility easement from some other "residence on Sibley Lane."

Yet, Mr. Crosby once again only gave us a Letter of Intent and failed to proceed with a proposed purchase agreement and deed as I had requested and the Board instructed.

July 27, 2017 Email to Crosby

I sent email to Mr. Crosby stating: "So it was my understanding that moving forward, we would be getting the actual purchase agreement, settlement agreement and survey as well as getting the necessary lot line adjustments submissions for the town for changing our respective parcels. It was my understanding that after the meeting, your client would be completing the purchase prior to the next meeting."

Mr. Cosby failed to respond.

August 7, 2017 – Emails with Crosby

"Tom, I have heard nothing back from you after I respond to your July 26th email on July 27th. Once again, I wanted to see where you are with getting us purchase agreement, survey/lot line adjustments for filing with the town, as well as the settlement agreement. With the next meeting coming up on August 17th, and the Board clearly not willing to grant a variance until this transaction is completed, we should get this moving asap. If not, please confirm you will be postponing your appearance at the next until this is all completed. Please advise."

agreement, survey and/or property descriptions for the lot line revisions and settlement agreement/release.

Also, as I previously informed you, at this point none of these purchase related documents would be conditioned on the utility easement we are simultaneously seeking to clarify concerning 5 Sibley Lane.

With no documents or any indication that your client actually intends to proceed with this transaction as indicated to myself and the Zoning Board, I will assume there is no transaction forthcoming and you will be seeking a variance based on the original plan.

As such, my partners will no longer abstain from having any objections or requesting a denial of your application for a variance at tonight's Zoning Board meeting.

Of course, should you want to provide us with the necessary documents to consummate the transaction as you and I have previously discussed, we will gladly work with you towards completing this before the next meeting.

Please let me know how you intend to proceed tonight so I can inform my partners."

After numerous calls and texts, Mr. Crosby finally texted 30 minutes prior to the meeting indicating he was withdrawing his Application. He then failed to respond to my texts asking if he was appearing at the meeting, thus causing my partners to have to attend.

A true and correct copy of this email is attached hereto as Exhibit 1.

August 17, 2017 ZBA Meeting Minutes

"ZEO Soto explained the applicant had requested the board withdraw their application without prejudice until they can come back with a new application.

Donald Thomas made a motion to deny without prejudice. Joseph Porto seconded the motion. Unanimous motion carried."

The minutes are unclear as to whether the motion requesting to withdraw was denied without prejudice.

August 24, 2017 Email to Crosby

"Tom,

I have written and called you several times with no response. I am writing you again to inform you that we have received a response from Robert LaCroix with regard to our existing utility easement over his property. As you know, this has nothing to do with our transaction with Denise, it was just prior business we wanted to conclude before finalizing Denise's purchase.

"...So once again, for further clarity and just to be certain, please be advised that at this point that we are no longer negotiating anything with Robert LaCroix and this is not a term of any Purchase Agreement with Denise LaCroix.

With that said, it is also clear from the Minutes that the Board has informed you multiple times now you that your last plan would not be approved until the purchase of our land was completed. As such, it is pointless for you to simply insist that we enter into a letter of intent as this will get you nowhere at the next meeting. In fact, I would think that your ignoring the repeated mandates by the Chairman would irk the Board. That is your business.

If you want to move forward with the transaction as you have represented to the Board and per the material terms as you have outlined, then once again I implore to you that we will need to have a Purchase Agreement, Deed conveyed and recorded and other related documents completed. I have asked you for this since July.

I know you have voiced concern over what happen if you purchase the land and the variances are still denied. I offered solutions to this scenario, yet you have failed to comment on them. Again, if you actually received $15,000 in your trust account as represented (which I now seriously doubt every occurred), we are willing have you maintain these funds in trust after the transaction and conveyance until you have received approval (and appeals period pass) according to the prior plan you submitted (with small changes mentioned by the Board). If there is no approval, we will agree to unwind the agreement and deed transfer..."

Mr. Crosby's only response was that he was out of the office and only had limited access to emails.

A true and correct copy of this email is attached hereto as Exhibit 3.

<u>September, 2017 ZBA Meeting Application</u>

Despite being offered the additional land for the price and terms offered by Applicant (and without any conditions), Applicant and attorney Crosby have decided to ignore the Board's last instructions to not come back until purchase of the land was complete, conveyed and recorded.

Instead, Applicant has submitted an old plan based on the drastic nonconformities and setbacks which she could have avoided with the additional land. Likewise, the current application is incomplete in that we are uncertain about size of stairs, the decks, whether the partial portion of the shed is accounted for and is missing Lines 1,2,3,4 requests that were previously made in prior application.

The Connecticut Supreme Court has interpreted C.G.S. §8-6 to authorize a zoning board of appeals to grant a variance only when two basic requirements are satisfied; (1) the variance must be shown not to affect substantially the comprehensive zoning plan, and (2) adherence to the strict letter of the zoning ordinance must be shown to cause unusual hardship unnecessary to the carrying out of the general purpose of the zoning plan. *Fleet National Bank v. Zoning Board of Appeals*, 54 Conn. App. 135, 140 (1999) (emphasis supplied). A mere economic hardship or a hardship that was self-created, however, is insufficient to justify a variance; *Krejpcio v. Zoning Board of Appeals*, 152 Conn. 657, 662 (1965).

Connecticut Court courts have routinely reinforced the overwhelming hurdle between a landowner and its request for a variance relief; "The requirement that an applicant seeking a variance must establish the existence of a hardship peculiarly affecting its property 'is a fundamental one in zoning law ... .' *Ward v. Zoning Board of Appeals*, 153 Conn. 141, 143 {1965); see also *Hyatt v. Zoning Board of Appeals*, 163 Conn. 379, 382 {1972) {§8-6 'clearly directs the board to consider only conditions, difficulty or unusual hardship peculiar to the parcel of land which is the subject of the application for a variance'); *Plumb v. Board of Zoning Appeals*, 141 Conn. 595, 600 (1954) ('[t]he hardship must be one different in kind from that imposed upon properties in general by the ordinance'). An applicant's burden with respect to the hardship requirement, therefore, is twofold, as it must establish both the existence of a "sufficient hardship" and that "the claimed hardship is ... unique .... " *Franciniv. Zoning Board of Appeals*, 228 Conn. 785, 787 {1994)."

Here, the Applicant cannot meet her burden of hardship for multiple reasons. The most compelling is the fact that she represented to the Board that she was purchasing property to reduce her non-conformity and has now reneged on this purchase for no valid reason. The extra land is still available, with no conditions or contingencies, all terms are agreed upon and the money has been delivered to Mr. Crosby.

2. **The Applicant's Self-Created Hardship is Not Recognized Under Connecticut Law as a Legitimate Basis for Variance Relief.**

The Application maintains that an extreme variance to the 30 foot rear yard set-back requirements and lot area are necessary because her lot is nonconforming.

Yet, in May, 2017 the Applicant had agreed to purchase additional 30 foot portion land which would have drastically minimized these non-conformities. As detailed above, on multiple occasions Mr. Crosby has informed the Board that the purchase price was agreed upon and he even proposed a new plan indicating the new minimized variances based on this purchase. Reducing the nonconformities not only reduced Applicant's hardship, but it also resolved the party's encroachment differences.

While there was one term to the agreement to purchase the land which Mr. Crosby would not agree, this condition was removed long ago. Starting in early August and through to

Here, all Applicant has to do is purchase the additional land and her hardship is reduced to the largest extent possible. This would not even be an economic hardship to her as she has already repeatedly indicated she was ready, willing and able to purchase the additional land.

In addition, Applicant has previous been willing to reduce the lot non-conformities by moving the house forward in her recent April and May Applications. Yet, now, Applicant is recanting on this concession and demanding the Board acquiesce to her and her attorney's personal whim.

Under the facts and legal standards, the Application for this variance must be denied.

3. Contrary to the Applicant's Claims, the House Did Not Sustain Storm Damage That Necessitated Compliance With FEMA Requirements

Applicant has repeatedly represented to the Board on all her applications that her hardship stems in part to mandatory compliance with the FEMA standards. Yet, contrary to the Applicant's assertion that the house "must be raised to FEMA standards," the FEMA standards (codified by East Haven) which mandate that a person come into compliance have not been triggered in this incomplete Application.

Critically, there is no evidence in the Application that the storm damage to the Applicant's house met or exceeded the FEMA flood zone "Substantial Damage" or "Substantial Repairs" thresholds for mandatory conformity to its requirements. In sum, these threshold mandate that damage or repairs have been incurred for 50% or greater of the market value. Yet, there has been no submission on the value of any repairs or the current value of the property. Moreover, to the extent that any are submitted at the hearing, they would be objectionable as the assessed price of the home is not accurate given the work performed on the house which has not been factored in to the Town's current assessment.

Given that the threshold of damage or repairs to Applicant's house (or the market value) have not been established in the Application, the mandatory undue hardship of the need to raise the house due to FEMA cannot act as a valid unusual circumstance or undue hardship required to grant a variance. Again, the structures on or immediately around Sibley Lane were not affected as drastically as other areas of East Haven. As such, most have not been raised to date.

In *Sullo v. Zoning Board of Appeals*, 2010 WL 2681804, Superior Court, J.D. New London, CV 08-4008685, May 4, 2010 (Purtill, JTR}, the plaintiff appealed a decision of the Old Lyme zoning board of appeals that had denied his request for variances in order to demolish and reconstruct his legally nonconforming structure that was in deteriorated condition in a flood zone. The Court stated:

> "Plaintiffs problem here is not caused by the zoning regulations or the FEMA code, but by his desire to tear down the building and reconstruct a new structure at a cost which

The clear implications here is that the current plans and application are incomplete and seemingly increasing the nonconformity. The Connecticut Courts have held that "nonconforming uses should be abolished or reduced to conformity as quickly as the fair interest of the parties will permit-[i]n no case should they be allowed to increase." *Adolphson v. Zoning Board of Appeals*, 205 Conn. 703, 710 (1988) see also, *Bauer v. Waste Management of Connecticut. Inc.*, 234 Conn. 221, 243 (1995) ("a nonconforming structure cannot be increased in size in violation of zoning ordinances, i.e., nonconforming additions may not be made to the nonconforming structure").

Thus, given the strict nature of variances, the current application must be denied due to the apparent increase in lot coverage and other nonconformities.

5. **Other Issues To Be Considered By The Board**

Unknown Measurements / Coverages / Issues

- Incomplete measurements of decks
- Not measurements for existing or proposed stairs
- No request for variance lines 1,2,3,4 as had previously requested (2015)
- Include shed in lot coverage?
- Previously included shed on entire property in 2013, why not included now?
- Concerns over new foundation and no mention of grading/soil – neighbor concerns about runoff, elevation, etc.
- Size of foundation
- Unable to review CAM
- Any DEEP implications due to adverse impacts to coastal resources by alteration of the existing foundation?

Inconsistent Plans / Applications

- Current Application does not match map – not indicate removal of stairs
- Prior approved plan in 2013 included entire shed on property and had different measurements
- CAM. approval and Coastal Site Plan Review with DEEP was for different plan.
- New foundation on current Application
- May 8, 2011 – removed a proposed shed, had house moved forward
- June, 2017 - revised house location
- August, 2017 - removed rear deck,

For all of the reasons indicated above, we do not feel it is appropriate for the Board to grant the variances. Given this is the sixth time applying for this matter since May, it would be suitable for the Board to deny this Application.

Respectfully Submitted,

Lester Winograde

Lester Winograde
Lighthouse Marina, LLC

From: Lester Winograde <lesterwinograde@verizon.net>
To: tom <tom@crosbylawfirmllc.com>
Subject: Sibley Lane
Date: Thu, Aug 17, 2017 8:39 am

Tom,

I have reached out to you several times now with no response. As I have told you multiple times since the last Zoning Board meeting, we are still awaiting the proposed purchase agreement, survey and/or property descriptions for the lot line revisions and settlement agreement/release.

Also, as I previously informed you, at this point none of these purchase related documents would be conditioned on the utility easement we are simultaneously seeking to clarify concerning 5 Sibley Lane.

With no documents or any indication that your client actually intends to proceed with this transaction as indicated to myself and the Zoning Board, I will assume there is no transaction forthcoming and you will be seeking a variance based on the original plan.

As such, my partners will no longer abstain from having any objections or requesting a denial of your application for a variance at tonight's Zoning Board meeting.

Of course, should you want to provide us with the necessary documents to consummate the transaction as you and I have previously discussed, we will gladly work with you towards completing this before the next meeting.

Please let me know how you intend to proceed tonight so I can inform my partners. Thanks,

Lester

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