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

Regular Meeting Minutes – April 20, 2023

I. Roll Call and Pledge of Allegiance

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

Also in attendance: Joseph Budrow, Planning and Zoning Administrator/ZEO, and Jennifer Copolla, Assistant Town Attorney.

Meeting began at 7:14pm. Ms. Mison introduced the Board members present. The Pledge of Allegiance was recited. Ms. Mison described the process of the meeting.

Ms. Mison asked Mr. Budrow if there were changes to the agenda. Mr. Budrow stated that the minutes for March 16, 2023 were not ready to review. Also, Applications 23-03, 23-06, 23-11, 23-12 and 23-13 would not be heard due to various issues. Only 8 Morgan Terrace and 198 Beach Avenue were ready to be heard tonight.

Ms. Mison asked Attorney Copolla if Applications 23-06 and 23-11 could be set for a special meeting. Attorney Coppola said the agenda stated that the applications were on for the May 18 meeting. She said a special meeting can be scheduled later, but not earlier. She does not recommend going earlier than the 18th. She said they have to be concerned with the timelines. Ms. Mison said she thinks there will be a large audience. Attorney Copolla thinks scheduling an alternative location may be a good idea. She said if the Board thinks that there will be a lot of people, they will need to be heard. The applicant may not grant an extension. She doesn't want the Board to back themselves into a corner.

III. Public Hearings and Deliberation

Application No. 23-04 - on behalf of Ralph Mauro, 8 Morgan Terrace.

Attorney Fasano presented. He said everything was said at the last public hearing. He said that this is a preexisting, nonconforming lot, it has no other use unless it gets a Variance, they're asking for minimal variances and a reasonable use of the property. The elevator was eliminated.

Ms. Mison asked if anyone in the public was in favor.

She then asked if anyone was in opposition. She requested that no one repeat anything heard in the past.

Ms. Stephanie Sudikoff, of 7 Morgan Terrace, spoke. She said the case has been expensive. The judge found that the former panel of the ZBA was in error when they approved a prior application. That error cost a lot of money to correct. She said she asked Mr. Budrow to enter the August 20, 2020 meeting minutes into the record. She said that Judge Blue had the entire record of previous applications to make a decision.

Mr. Budrow verified that those minutes will go into the record.

Attorney Fasano introduced Mr. Mauro. Mr. Mauro said that the hearing took two years, and took 1 hour to be heard. He talked about Judge Blue. He said Judge Blue seemed rushed. He wanted to tell the ZBA what happened. After eight meetings, Judge Blue heard it for an hour.

Ms. Sudikoff asked Attorney Coppola a question. Attorney Coppola said she wanted to confirm if Ms. Sudikoff wanted to enter her materials she sent for this applicant's last application into this record. Attorney Fasano had no objections.

Ms. Leslie Jennings-Lax, of 7 Morgan Terrace, spoke. She thinks the record of the last application should be in this record. Attorney Coppola said they should ask the Board. It is their decision.

Ms. Jennings-Lax said it is important to have that in the record. She then said she wanted to address Mr. Mauro's statements on Judge Blue and the procedures involved. She said his recollections differ from hers. He said he could have appealed Judge Blue's decision and that was done, and denied. She said he had not just the testimony of the parties, but also the entirety of the four applications the ZBA had heard. He also had briefs by both counsels and that it took several months to review. She said Mr. Mauro's lawyer briefed the court. She said Attorney Coppola assembled a record of over 1,000 pages and all of it was before Judge Blue. She said it was res judicata to this issue. Mr. Mauro has shown no hardship. He has no sufficient standing to seek this Variance.

Ms. Mison asked if anyone else in the public wants to speak.

Mr. Mauro asked how Judge Blue could look at all those cases that he made a decision on that had nothing to do with this case.

Attorney Copolla said she reviewed the March meeting recording. She said that staff told her that the Board had questions for her. She said regarding res judicata and collateral estoppel, they are doctrines that the Court will decide and not for the Board to be concerned with. She said she could go into it but doesn't think it's necessary. There are other items she would address and asked if there were any questions.

She looked at her notes and commented on the issues she heard from the March recording:

She said she heard a lot about Verrillo. The reason why that case is relied upon by Judge Blue is because he was the trial court. It's good case law. It went to the Appellate Court level and he was affirmed. The basis on why he relied on the case was correct.

She said there was a statement made during the presentation about there being no collective reasons for a denial and there having to be a search of the record. She has encouraged them in the past to have collective reasons for a denial. She said Judge Blue didn't do anything wrong. She said the law dictates he review the Board's decision. He didn't go rogue. He followed the law. She was concerned that the record showed he acted inappropriately and that's not the deal. Reasons need to be given for an action. If there are collective reasons for a decision, then the Court searches the record.

She said there was back and forth about variances and that they need to be granted sparingly. The Board has to go by the Regulations and the standards. She will read through the findings they have to make.

She said, as a housekeeping matter, regarding the previous records of applications, she wanted to verify that those applications were numbers 19-25, 19-34, 19-38 and 20-02. The previous application, if they incorporate it, they have to make it clear they want it in the record. She said, if there is an appeal here, she has to return the record to the Court and she needs to be clear what she is returning. She said the Board did receive the records of the four applications via email from her.

She said there was a comment that if you can't use a property for a house, it has no value. Attorney Fasano may want to talk more about that.

She said regarding Statute 8-26a, this Statute was argued in a prior application that went through litigation. It was argued as an alternative. She said she heard Attorney Fasano say that it's their position that they comply with the nonconformity section of the Regulations regarding nonconforming lots. She said they should look at this Section before deliberating on this matter.

She stated that the applicant has indicated tonight that he will forego the elevator.

She said there was a statement made about comprehensive planning. She said it was said that the judge didn't know enough about East Haven. She said a comprehensive plan is the Zoning Regulations. A certified copy of the Regulations was returned to the Court.

Attorney Coppola said there was a statement about Judge Blue predetermining the matter. She said, often, predetermination is used against an agency like a ZBA, a Planning and Zoning Commission or an Inland Wetlands Commission. She's not here to opine about Judge Blue. She warned the Board about the statements made and she had no concerns about Judge Blue.

She then went on to read Zoning Regulation Section 51.7 and the four findings that followed.

She mentioned how Mr. Wobensmith read a part of the Court decision. She commented on Judge Blue's reference to sand. Judge Blue asked herself and Attorney Nick Mingione what was the basis for a hardship. She said Attorney Mingione brought up sand. That is why it ended up in the decision. It wasn't pulled out of thin air. The reference to sand was made because that was the claim that was put forth by Attorney Mingione. This was important.

She also mentioned, as a housekeeping matter, there was a Petition for Certification and it was denied. She also clarified that originally, neighbors appealed the decision of the Board, and also the decision of the ZEO.

Mr. Gersz said he has never seen a hearing that is going on right now. He had a back and forth with Ms. Jennings-Lax.

Attorney Fasano responded, agreeing that res judicata and collateral estoppel is a law argument, and that in front of the Board is an application for a Variance. He asked, does a nonconforming property deserve a minimum variance to allow the use of the property? He would argue that one has a right to build on a property. He thinks anything less is a taking. The request fits the comprehensive plan, fits what has been allowed in the area and is a minimal use of the property.

Ms. Sparago asked if his client has considered building a much smaller house. Attorney Fasano went to his client to ask that question. The answer was that a smaller house was not economically feasible.

Mr. Gersz said there needs to be common sense.

Mr. Mauro said that the Regulations do not allow a 700 square foot house. Dwellings must be 900 square feet minimum.

Ms. Sparago said to Attorney Copolla that they keep hearing that this property was not approved by a Commission. Attorney Copolla said that Attorney Fasano was pointing at Section 44 of the Regulations. On the previous application, there were three arguments. Statute 8-26a was one of them.

Attorney Copolla went to Regulation 44 and read Section 44.3. She said there was a previous argument that there was compliance with the nonconforming lot section.

Attorney Fasano said they are not arguing Statute 8-26a. Regarding the nonconforming lot, they have the right to build. Most importantly, is that they meet the 4,000 square foot minimum.

Ms. Sparago read Regulation 44.11.1, "The use, building or other structure shall conform to all other requirements of these Regulations." She asked Attorney Coppola if that means no other variances? Attorney Coppola responded, saying that Regulations have nuances in wording, which she finds interesting.

Attorney Fasano responded.

Mr. Budrow stated that minimum lot size can involve larger lots as well. Some nonconforming lots have enough land to build. Here, the focus is on 4,000 square feet. Regulation 44.11.1 appears to be geared to all-sized nonconforming lots.

Attorney Fasano said they have the lot area. A Variance is still required to build. If a lot does not have the minimum lot size it needs a Variance to build. Mr. Budrow responded by saying a lot of record does not require a Variance to propose something.

Attorney Fasano said that Statute 8-2 states that a preexisting lot has a Constitutional right to be used in a minimal way for a practical purpose.

Attorney Copolla stated that the argument is not Statute 8-26a, and the lot must conform to Section 44.

Mr. Page asked, when the lot was first drawn up, it was 50 feet wide. Now it is 45 feet wide. In 1923, it has changed. Attorney Fasano said they are not making the 1923 argument.

Mr. Mauro said, in 1947, the lot size was altered. He said 45-foot lot width was required at that time.

Attorney Copolla said the property deed is in the exhibits. Mr. Budrow said it was Exhibit 25. Attorney Copolla reminded the Board that there was no motion made to incorporate the previous applications.

MOTION: Ms. Sparago made a motion to incorporate the records of Applications 19-25, 19-34, 19-38, 20-02 and 22-21. Mr. Page seconded the motion. All were in favor.
Motion carried, 5-0.

Attorney Copolla called for any final comments. Ms. Mison also called for final comments.

MOTION: Mr. Wobensmith made a motion to close the public hearing. Mr. Page seconded the motion. All were in favor. **Motion carried, 5-0.**

Deliberation:

Mr. Gersz said he is in favor of the house. He wants the elevator off. It fits nicely on the lot and that engineers said it was right.

Mr. Page said he was not in favor. The Court system is there for a reason. He said Judge Blue said there wasn't a hardship. He alluded to Sections 51.7.1 and 51.7.3 ending that a 3-story house is not a minimum variance.

Ms. Sparago said she is also a no vote. She said this Board was in court and the decision was overturned. There was no unique hardship. She questioned why the neighbors face having to challenge again. She said Mr. Mauro was turned down the first time he went a before the Board. At that time, he did not own the property. He purchased the property anyway. She sees no unique hardship. She alluded to Section 51.7.3 and there not being a minimum variance requested. She then requested that Attorney Copolla draft a Motion after getting the Board's feeling, so that all bases are covered.

Attorney Copolla said that is something that she can do. She wants to hear the direction they are going in.

Ms. Mison said she'll vote against due to no unique hardship, it's not to current codes and per Section 51.7.3, there is no minimum variance.

Ms. Sparago mentioned Zoning Regulation 44.11, and this proposal does not meet that.

Mr. Wobensmith said it has been stated that this proposal complies to the minimum variance. He doesn't see it. The minimum floor area is 900 square feet in an R-3 zoning district. In three sets of site plans, the smallest house was 1,150 square feet. He doesn't think that's minimum. He finds it rather excessive. He referred to Zoning Regulations 51.7.2 and 51.7.3.

Mr. Budrow wanted to clarify that Mr. Page called the house a 3-story house. Mr. Budrow said he determines the house as a 2-story house. The lower level is not a basement by definition. Also, with regard to minimum square feet required, he said Mr. Wobensmith made a reference to "dwelling units" and Mr. Budrow wanted to make sure what he meant was "dwelling." Mr. Budrow then read the definition of "Story."

Attorney Copolla asked what kind of Motion the Board would like drafted. She said a motion to continue the deliberation will need to be made. Ms. Mison said they will need a Motion for a denial.

MOTION: Ms. Mison made a motion to continue the deliberation for **Application 23-04** to May 18. Mr. Wobensmith seconded the motion. All were in favor. **Motion carried, 5-0.**

Application No. 23-05 (CAM) - on behalf of Ralph Mauro, 8 Morgan Terrace.

Attorney Copolla reminded the Board that Coastal Area Site Plan Reviews have different standards to consider.

Attorney Fasano said the application has been reviewed by the Town Engineer and by DEEP. He has no comment and is agreeable to any conditions.

Ms. Mison asked if anyone has comments. Mr. Budrow said that any comments should be focused on coastal resources.

Ms. Sparago shared her concerns that the CAM application is not adequately submitted. Attorney Fasano responded that DEEP looks at the plans. They know the topography and the tides. He said it doesn't matter what's in the application. They know the dunes, the topography and the grass.

Ms. Sparago said the Board has to look at the application. Attorney Fasano agreed with that, they have that authority. DEEP looks at the plans. He can have an engineer attend, if this is continued.

Ms. Sparago read Section 2a from the CAM application. She said that building on the shoreline is sensitive to various conditions. Attorney Fasano responded that he knew of seasonal conditions but didn't know of any restrictions to build based on time of year. He said that is impossible to handle.

Ms. Sparago said the answer to one question was to build a single-family home. Attorney Fasano said the plans are attached and that DEEP knows how to look at a plan. She then referred to Section D1 and the question regarding adverse impacts. She referred to the adjacent beach area. She said she thinks the whole property is beach area. Mr. Mauro said

that the State meant the CL line down. Ms. Sparago said that that is not what it says. Mr. Mauro responded saying the application is old. He couldn't believe that she questions her own Town Engineer and DEEP. They are very detailed.

Ms. Sparago then went to page 8 and 9 of the application and stated there were items not checked, or listed as "not applicable." She feels the Board needs to be able to determine that. Attorney Fasano responded by talking about degradation of the land. He said DEEP looks at this with technical eyes. Their review is different than laymen. He referred to himself as a layman. He thought there should be a healthy dialogue with DEEP.

Ms. Mison asked if there were other questions from the Board.

Attorney Coppola asked if there was Statutory time left. Mr. Budrow said that extension time was available for the applicant. Ms. Sparago said that wasn't necessary.

Ms. Mison asked if there was anyone in the public who would like to comment.

Ms. Leslie Jennings-Lax, of 7 Morgan Terrace, spoke. She said that it has been presented that DEEP reviews the CAM and that the ZBA has a ministerial role. She said this is not their role. She drew attention to July, 2020 when John Gaucher wrote to Chris Soto regarding the ZBA's responsibility. She read some standards. She said the beach is the main coastal resource. She cares less about the view and more about the beach. She cares about the flooding. The property looks different today. She said there used to be dune grass and where shells washed up. There have been significant changes. He paved the beach and has dredged and dug up the property. DEEP has reprimanded Mr. Mauro for fill and other beach issues. She said she can't say that approving the CAM will improve things. There is more flooding now. She said Mr. Mauro doesn't care what is his land or the Right of Way. She asked the Board to consider the harmful effects of the CAM Report.

Attorney Fasano responded by saying that is exactly what DEEP looks at. He said people think that "what's yours is mine."

MOTION: Mr. Wobensmith made a motion to close the public hearing for **Application 23-05**. Ms. Mison seconded the motion. All were in favor. **Motion carried, 5-0.**

Attorney Copolla told the Board that they are continuing the decision on the Variance, they can do the same for the CAM.

MOTION: Ms. Mison made a motion for Attorney Copolla to draft two motions for the Board to consider. Mr. Wobensmith seconded the motion. All were in favor. **Motion carried, 5-0.**

Ms. Sparago told Attorney Copolla that, when drafting the Motion, she has a problem with Zoning Regulation Sections 46.4.2, 46.4.3 and 46.4.4 and the completeness of the CAM.

Attorney Copolla asked if there were any other comments. She reminded them that they made a motion to draft Motions to approve, and to deny the CAM. She recommended they continue the deliberation.

Mr. Gersz said of the CAM isn't right, let's get the engineers here. Ms. Sparago asked if he thought they should have another engineer come in. He answered that the Town Engineer should come in.

Attorney Copolla recommended that the Board reopen the public hearing and they can hear from Mr. Bodwell. And perhaps the applicant's engineer, as well.

MOTION: Mr. Wobensmith made a motion to reopen the public hearing for **Application No. 23-05**. Mr. Gersz seconded the motion. **All were in favor. Motion carried, 5-0.**

Attorney Copolla said the applicant needs to agree to extend and that Attorney Fasano is talking to his client.

Attorney Fasano said they will not have their engineer present if they are going to deny the application. Mr. Gersz said that is why they should have the Town Engineer. Attorney Fasano said they will grant the extension.

Attorney Copolla said they need to continue the Application 23-05 so that they may hear from Mr. Bodwell. She told the Board that Attorney Fasano has signed the extension form to continue the hearing to May 18.

MOTION: Ms. Sparago made a motion to take a 5-minute break. Mr. Gersz seconded the motion. **All were in favor. Motion carried, 5-0.**

Application No. 23-10 – on behalf of Leonard Fasano for Susan Vizziello, 198 Beach Avenue.

Attorney Fasano asked if they would continue the application.

Attorney Copolla said, as a matter of housekeeping, there was a question related to Zoning Regulation Section 51.9. She read the Regulation and stated it is beyond six months that a prior application has been heard.

Mr. Page asked for copies of the prior record since he was not on the Board at the time.

MOTION: Mr. Wobensmith made a motion to continue the opening of the public hearing for **Application No. 23-10**. Ms. Mison seconded the motion. **All were in favor. Motion carried, 5-0.**

There was a question if the next meeting could start earlier. Attorney Copolla said that was not a good idea. Mr. Budrow stated that the Robinson Aviation timelines are Statutorily compliant.

IV. Adjournment

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

Joseph Budrow
Planning and Zoning Administrator
Town of East Haven