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Town of East Haven  
**Zoning Board of Appeals**

Regular Meeting Minutes – June 15, 2023

East Haven Senior Center, 91 Taylor Avenue

**I. Roll Call and Pledge of Allegiance**

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

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

The meeting began at 7:00pm. Ms. Mison introduced the Board members present. The Pledge of Allegiance was recited. Ms. Mison described the process of the meeting.

Mr. Budrow said the May meeting minutes were not ready. He also said he was not sure if Application 23-03 had closed and recommended moving it down on the agenda. He said the applicant for Application 23-12 requested the hearing not be closed and to be continued to the July 20 meeting. Application 23-14 requested to not have the public hearing opened and to continue the opening of the hearing to the July 20 meeting.

The attorney for the third application on the agenda was not present at this time of the meeting.

**II. Review and Action on Prior Meeting Minutes**

There were no meeting minutes to approve.

**III. Public Hearings and Deliberation**

**Application No. 23-15 – on behalf of Elsa Carrasco, 95 Main Street.**

Ms. Carrasco appeared with her son, Alvaro Renados. He said that the desired space in the attic was for an office. He said the roof needs to be replaced and thought raising it higher would be a good thing.

Ms. Mison said it looks like they have other space for a garage, or another area. Mr. Renados answered that they don't have a garage and that the attic height was not good. He said the roof height increase would be even.

Ms. Mison verified that they couldn't put the office anywhere else. He answered that the best location is by raising the gable part of the roof and it was more sensible for them.

Mr. Gersz agreed with what Ms. Mison was saying. Ms. Sparago added that a hardship was needed from the land. She said the lot is very large. An existing deck could be enclosed and converted.

Ms. Mison said they don't have a land-based hardship. Mr. Renados said this part of the house was already in the setback area. He said, as for the flat part of the house, that would require a second story there. That would be more laborious, expensive and time-consuming.

Mr. Elias Najjar, of 10 Deborah Lane, spoke in opposition to the application. He said their house was a 2-family home and that they're looking to make it a 3-family home. He said they don't follow any rules as they are doing work on the house without permits. He said he is against the proposal.

Ms. Mison verified that he had an issue with an apartment being put in. Mr. Najjar said the downstairs is big and that only Mr. Renados and his mother live there. He added that when the father visits there is a large commercial truck in the driveway.

There were no other comments from the public.

Mr. Renados responded by saying his neighbor is disrespectful. He said he trespasses and that this is a boundary dispute. Mr. Renados said he knows nothing of a commercial vehicle. He feels the neighbor is not truthful and this his comments are due to a boundary dispute.

**MOTION:** Ms. Sparago made a motion to close the public hearing for Application 23-15. Mr. Wobensmith seconded the motion. All were in favor. **Motion carried, 5-0.**

**Deliberation:**

Ms. Mison said there is not a hardship. Mr. Wobensmith felt there were other areas to consider. Ms. Sparago asked if the variance request was for the dormers and the roof height. Mr. Budrow answered that it was for both.

**MOTION:** Ms. Mison made a motion to deny Application 23-15. She referenced Zoning Regulation Section 51.7 stating there is no hardship. She referred to Regulation 51.7.1 also. Mr. Gersz seconded the motion. All were in favor. **Motion carried, 5-0.**

**MOTION:** Mr. Wobensmith made a motion to continue the hearing for Application 23-12 to the July 20 meeting. Ms. Sparago 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.**

Ms. Sparago stated that she is recusing herself from sitting for this application. She said that she sat for the previous hearing for this property and the applicant was not concerned. She felt her decision was fair. Ms. Sparago moved to the audience.

Attorney Leonard Fasano presented. He said nothing has changed to the outside of the house. He said this is about the use of the second floor. The original application done by his office stated "Single floor beach residence." He said it was an error and that it wasn't he that filled it out. He said the meeting minutes, on page 9, reflect that the motion by the Board chairman stated as a first condition of approval "single family, single story" and a second condition being that something should be done about the shed in the back. He said the plans that were submitted showed a second floor. The discussion was all about a single-story structure. He said the main concern at the hearing was that it was going to be a two-family home.

Attorney Fasano said that the permit signed off by everyone shows the use of the second floor, just like a cape. He said, then, zoning took the opinion that it had to be a single floor residence and issued a Cease and Desist. He handed out a copy. At the time of the Cease and Desist, construction had begun. It was agreed that the second floor would not be used. With construction materials on site, they didn't want it outside during the winter. He said no appeal was taken because it was felt to deal with the issue later. He said the motion made by Chairman Falcigno that the proposed house be single-family, single story. The motion was made three times. He said he had the decision of the ZBA transcribed by himself. He handed out a print-out. Attorney Coppola said that the recording is online. She offered to play it.

Attorney Fasano went through his transcript. He said the intent of the Variance was for a single-family, single-story building in keeping with the neighborhood and the second story was shown as livable space. He said everyone signed off on the inconsistencies. He said he doesn't know why a Cease and Desist was issued that stated it was not in compliance with the Variance. He said all they are asking to do is use the second floor. A zoning definition is keeping this from happening. He said zoning saw the plans. He then said he sees Mr. Falcigno in attendance.

Mr. Gersz stated that he was told when an attic in a Cape Cod is finished, it's a second story. He said there are hundreds of Cape Cods like this.

Attorney Fasano said the volume of the building was discussed in the past and that the upper space was small but to be lived in. He said that Mr. Bassett (Town building official) had no problem with it but zoning did. Attorney Coppola read the definition of STORY from the Zoning Regulations Section 4.3.9.

Mr. Gersz commented on an 8-foot wall. Dormers make two stories. Ms. Mison commented that finished space relates to what Attorney Coppola just read. Mr. Budrow said that the 2020 application did not show an attic, but two floors. They showed a livable area. The Zoning Board of Appeals adhered to the application. He said the building code might require a minimum height requirement for what a story is.

Attorney Fasano believes the committee felt that the second story was to be used. There was no question that the plans showed it. He said there is no question Mr. Soto saw it. He said there is no question the zoning officer at the time okayed it. The intent of the committee was they'll let the 2<sup>nd</sup> floor be used. The second floor was reflected through the process. He said it makes sense to approve this.

Ms. Mison said there was discussion about single story and single floor. The final vote was single story. Attorney Fasano said the last motion was "single floor." Attorney Coppola said it was on page 10 of the minutes and that the recording can be heard.

Ms. Mison asked if the Board had any questions. Mr. Carbone asked if things changed because building materials were on site with winter coming. Attorney Fasano said a permit was revoked and the materials were already there. It was decided to comply with the permit and deal with the issue later. Mr. Carbone asked why there was repeated stopping and starting. Attorney Fasano said the Cease and Desist was not issued by Mr. Budrow, but by Ms. Pellegrino.

Mr. Gersz asked if someone could explain what went down back then. Mr. Budrow answered that a zoning permit was approved in 2020. It was revoked by the same official. A previous Cease and Desist was appealed by Attorney Mingione. That appeal led to the 2020 zoning permit that was later revoked. Mr. Gersz asked why the Cease and Desist was issued. Mr. Budrow answered that the original permit was granted to remodel the house. That proposal went beyond the scope of the work and a Cease and Desist was issued. An appeal was taken and that ran out of time. Another permit was submitted to relocate the house and that led to an application to the Zoning Board of Appeals as Application No. 20-20V.

Mr. Gersz said that he has converted second stories. He said there are hundreds of cases where people don't know they are stories. He was looking for a legal answer.

Mr. Vizziello said the original permit application stated one story building with plans. The terminology was incorrect. He said Mr. Falcigno asked Attorney Mingione, "What's the terminology of a one-story building?" He answered "It's already a one-story building." They thought because the attic space was being used as living space, it wasn't considered a story. Mr. Vizziello agreed it is a 2-story home and if Attorney Mingione wrote "two-story" he would not be here. Attorney Fasano reiterated that the plans showed what they showed.

Mr. Gersz said it was obvious that the second story was to be used. Attorney Coppola said the file was here with the Cease and Desist. She said it stated that a zoning permit was being revoked. Attorney Coppola read the letter sent to Mr. Vizziello from Ms. Pellegrino.

Ms. Mison asked if there were any more questions from the Board. She then asked if anyone in the public had any comments. Mr. Gersz wanted to hear from Mr. Falcigno and asked him to come up.

Mr. Bob Falcigno said the intent of the Board was to approve a single-family, single-story house. He wondered if there was a stenographer error. The print showed the second floor. It's a one-family house. His assumption was that Mr. Vizziello wanted to build a one-family house. He asked Mr. Budrow for verification of what the original work was on the original house. Mr. Falcigno said everyone has a second floor. He said people with Cape Cods would finish the second floors when they had the money. He asked if all those houses are illegal? Mr. Budrow answered that zoning allows for the conversion of attics to living space. Here, there wasn't a stenographer error. The application itself said "single story." The ZEO's job is to make sure an applicant states exactly what they want. Mr. Gersz said he is still confused. Mr. Falcigno said Mr. Vizziello wanted a single-family. He said there was no outside staircase.

Mr. Carbone said he was confusing 'single-story' with 'single-family.' Mr. Falcigno said there is no outside staircase or a 2<sup>nd</sup> meter. Mr. Carbone said they are talking about a single-family home with bedrooms upstairs. Mr. Budrow said that if one listens to the 2020 recordings no one ever mentions the second story until Attorney Mingione talked about it at the end.

Mr. Falcigno asked if the house received a C.O. Mr. Budrow said he believes Mr. Bassett issued a C.O. Mr. Budrow added that when he started working in East Haven, he knew the most recent permit was revoked. He worked with Attorney Mingione to submit a new zoning permit application with floor plans that showed the upstairs was not to be used as living space. Mr. Falcigno asked if that was on record. Mr. Budrow read what was proposed on the most recent zoning permit application.

Ms. Mison thanked Mr. Falcigno for sharing his thoughts. She asked if there was anyone in the public.

Ms. Linda Mellilo, a realtor with Houlihan/Lawrence, said she sold the property as a 3 bedroom, 1 ½ bath. The closing was October 1, 2018. She can't understand why they can't have a have a finished room. They have done nothing but improve the property.

Karen Martin, of 15 Oak Grove Road, said she has no issue with the property. She said the second story was to be 6 feet high and be attic space. She said that Attorney Coppola offered to play a recording and hoped they would listen. At the 56-minute mark it will show that Attorney Mingione said it was a one-family, one-story house. The is what the ZBA came away with and approved. She thinks he has to go back to square one and ask for what he wants.

Ms. Mison asked the Board if they had listened to the 2020 recording.

Attorney Fasano said he wasn't there in 2020. He said plans showed an 8.1 foot second story. The intent was a 2-story and his client should be allowed to use the space.

Patrick Rowland, of 2 Minor Road, said the question isn't one-family, two-family or external staircase. It's a beautiful house. The real question is what was approved and what was built. He referred to Ms. Pellegrino revoking a permit and there being a second structure on the lot.

Mr. Wobensmith made a motion to close the public hearing. Mr. Budrow said there should be a motion to add the records of four applications to this record. Those applications were Numbers 19-31, 20-03, 21-01 and 22-06. He added to have the March, 2021 zoning permit added. Attorney Fasano added that there is a letter in one of the files where neighbors were in support of using the second floor.

**MOTION:** Mr. Wobensmith made a motion to incorporate the records of Application Nos. 19-31, 20-03, 21-01 and 22-06. Also, the approved March, 2121 zoning permit. Ms. Mison seconded the motion. All were in favor. **Motion carried, 4-0.**

The Board started to discuss the matter when Mr. Wobensmith asked if everyone has seen all the previous records and seen the submitted floor plans. Mr. Carbone said he had not.

Attorney Copolla needed to pause the meeting in order to speak with Attorney Fasano. She returned to her seat and requested the Board reopen the public hearing so that Mr. Carbone may have an opportunity to review the record items.

**MOTION:** Ms. Mison made a motion to reopen the public hearing for Application 23-10. Mr. Wobensmith seconded the motion. All were in favor. **Motion carried, 4-0.**

**MOTION:** Mr. Wobensmith made a motion to continue this public hearing to the July 20 meeting. Ms. Mison seconded the motion. All were in favor. **Motion carried, 4-0.**

Mr. Budrow said the applicant for Application 23-14 requested that the opening of the hearing be continued to July 17.

**MOTION:** Mr. Wobensmith made a motion to continue the opening of the public hearing for **Application No. 23-14** to the July 20 meeting. Ms. Mison seconded the motion. **All were in favor. Motion carried, 5-0.**

Attorney Coppola confirmed that the public hearing for Application 23-03 was closed at the May meeting.

Mr. Budrow requested that Application 23-16 be heard prior to the deliberation on Application 23-03.

**Application No. 23-16 – on behalf of Attorney Timothy Lee for Joseph and Brandee McHale, 126 Morgan Avenue.**

Mr. Budrow said that the Town Engineer reviewed the application and that because the proposal was going upward, and not outward, a CAM was not required due to no impact on coastal resources. Also, the first floor was above the base flood elevation. Also, there were no inland wetlands in the area.

Attorney Tim Lee presented. He introduced Brandee McHale. He said the house was purchased in January, 2023, with an intent to relocate here with their family. They want

to add a second story. He said they're just going up. The hardship is that the lot is nonconforming and the house is nonconforming. He listed off 15 properties on Morgan Avenue and Morgan Terrace that were all two-story homes.

Attorney Lee displayed house renderings. He said the McHales will be moving into the house.

Ms. Mison asked if they live there now. Attorney Lee said they live in New Jersey at the moment. She asked if they plan on selling their house in New Jersey. Attorney Lee said they plan on selling the house and moving here to this house.

Mr. Gersz confirmed that this proposal is only to go upward and that there will be no external staircase. Attorney Lee conformed on both.

Ms. Sparago asked if he is aware of the 8 Morgan Terrace history. The McHales need a unique hardship and theirs is not unique. Attorney Lee said he didn't agree with all of Judge Blue's logic. He feels they have a hardship.

Ms. Sparago quoted something from the Verillo case. Attorney Lee answered that the proposal here is different from 8 Morgan Terrace. That property is vacant land. This property is not. He said the ZBA should determine if the use is consistent with others in the area. He entered a list of properties with assessor information for each one.

Ms. Mison asked if anyone on the Board had anymore questions. She then asked if anyone in the public who would like to speak for or against.

Danny Kay, of 122 Morgan Avenue, said he doesn't see a hardship. He said he looked at the house 10 years ago and felt it was too small. Buying a small house is not a hardship. He said the McHale's house is 9 feet from his. The neighboring first floor is equal to his second floor. The rendering he has seen shows their house will be higher than his and thus blocking his view of New Haven Harbor and cast shade on his property. He thought this was going to be a vacation home for them. He handed out some photographs and ended by stating they have no hardship.

John Douglas Graham, of 117 Morgan Avenue, said this property has no unusual hardship. The current home has been there for 60 years. He said a hardship can't be created by an appellant. Buying a small house is not a hardship. It is a self-created one. He said he'll lose his narrow view of the water. He talked about floor area ratios and the elevation of the property. He also said a variance should be a minimum variance. He then read a statement from his girlfriend. He submitted it into the record as well as a photograph.

Mr. Alvaro Renados, 95 High Street, spoke because he saw a number of similarities with this application to his. This is an increase almost twice the size of the house and he only wanted to go up 4 feet. Their only reason given was that the house was built that way. An approval would be unfair to him. A 4-foot change for him would not affect anyone. This is a drastic change versus his minor one.

Attorney Lee responded. He appreciates the concern of the neighbors. He said the McHales are very nice people and will be a great addition to the neighborhood. He said Mr. Kay lives in a 3-story house and this proposal is to go to a 2<sup>nd</sup> story house. Mr. Kay's house increased in the past. Homes along the shore are close together. Many of the requested variances relate to preexisting conditions.

Attorney Lee said the size of the house is consistent with the zoning regulations. He did the floor area math and thinks he is under 40%. He said he understands Mr. Renados' disappointment. That request differs from the McHale's request as his neighborhood is different. He asks the Board to approve the variance request.

Mr. Kay responded and stated that there is no hardship or unusual circumstance. Their variance requests are significant.

Mr. Graham said his floor area math had the floor area ratio over 50%.

Mr. Budrow said the lot area is shown on the land survey. The Regulations define FLOOR AREA and there are exemptions. He found none on the second floor. Attorney Lee responded with his numbers.

**MOTION:** Ms. Sparago made a motion to close the public hearing for **Application No. 23-16**. Ms. Mison seconded the motion. **All were in favor. Motion carried, 5-0.**

**Deliberation:**

Mr. Gersz says this is very similar to a previous application. Ms. Mison sees no land-based hardship. Ms. Sparago said that disappointment with a property is a personal hardship, not of the land. Mr. Wobensmith, Mr. Gersz and Mr. Carbone also did not see a hardship.

**MOTION:** Ms. Sparago made a motion to deny **Application No. 23-16**. Ms. Mison seconded the motion. **All were in favor. Motion carried, 5-0.**

**MOTION:** Mr. Wobensmith made a motion for a 2-minute break. Ms. Sparago seconded the motion. **All were in favor. Motion carried, 5-0.**

**Application No. 23-03 – on behalf of Gloria Rispoli, 12 Smith Street.**

**Deliberation:**

Ms. Mison opened the deliberation for Application 23-03. She said there is no land-based hardship. Ms. Sparago said the court case brought up four issues and Attorney Pellegrino did not bring up anything new for the Board. She added that neighbors complained about noise and parking. She feels that property values are affected.

Mr. Carbone asked if the cottage will be allowed to stay. Mr. Budrow responded by saying that if the application is denied, the existing condition is still in effect and the cottage has to be removed.



**MOTION:** Ms. Mison made a motion to deny **Application No. 23-03**. She referred to Zoning Regulations 51.7.1 and 51.7.3 as there is no unusual hardship and this is not a minimal variance request. Ms. Sparago added a reference to Section 51.7.4 that the proposal is not in harmony with the neighborhood. Attorney Coppola said that Cindy was amending the motion. Mr. Wobensmith seconded the original motion. **All were in favor. Motion carried, 5-0.**

#### **IV. Adjournment**

Mr. Wobensmith made a motion to adjourn the meeting at 9:21 PM. Mr. Gersz seconded the motion. **All were in favor. Motion carried 5-0.**

Joseph Budrow  
Planning and Zoning Administrator  
Town of East Haven