

RECEIVED FOR FILING
East Haven
DATE 08/01/2022 TIME 9:20AM
TOWN CLERK'S OFFICE
EAST HAVEN, CONN
Lisa Batten
TOWN CLERK

Town of East Haven
Zoning Board of Appeals

Regular Meeting Minutes – July 21, 2022 - SUBJECT TO APPROVAL

I. Roll Call and Pledge of Allegiance

In attendance: Judy Mison, chair, John Wobensmith, vice-chair, David Gersz, Cindy Sparago and Bridget McCann.

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

Meeting began at 7:10pm. The Pledge of Allegiance was recited.

Mr. Budrow stated that the 3 Minor Road applications will not be heard due to Notice issues. Ms. Mison seated Ms. McCann for Mr. Coyle (absent.)

II. Review and Action on Prior Meeting Minutes

The June meeting minutes were not available for comments.

The April 21, 2022 meeting minutes were addressed. Ms. Sparago had a number of comments:

- She referred to Application 22-03 and stated that she and Mr. Gersz asked how much higher the final house would be. The applicant said “four feet.”
- She referred to Application 22-01, she had asked if the nonconformity was going to be addressed in a future update of the Zoning Regulations. The answer was, “yes.”
- She referred to the deliberation portion for the same application and wanted to add that she was in favor of the Variance request because she was told the nonconformity will be addressed.
- Within the text of the Application 22-04 hearing, “Momauguin” was spelled incorrectly.
- She mentioned that within the text of the hearing for Application 22-06, 2020 ZBA chair, Mr. Falcigno, conditioned an approval that the house has to be “single story, or floor, not single family.”
- She ended by stating that at an April hearing for Application 22-06, Ms. Karen Martin spoke. Her words need to be in the record.

Ms. Sparago reminded Mr. Budrow that the corrected minutes of March, 2022, were still not on the Town website.

The May meeting minutes were discussed. Ms. Sparago had the following comments.

- Regarding Application 22-07, there was discussion on ZR Section 25.4.10.1 and whether accessory structures also had to be 50 feet from a street line. She felt the regulation intended that.
- Later in the minutes of the same application, where it says “vote or deny”, it should be “vote or approve.”
- She stated that the deliberation session could be left open.

Mr. Wobensmith had the following comments:

- There was a motion to close the hearing, not the application.
- Regarding Application 22-07, Ms. Sparago wanted the “structure” back 50 feet.
- There was a typo regarding “if” instead of “of.”
- Regarding Application 22-08, there was a motion to close the hearing, not the application.

Ms. Mison explained the process of the meeting and told people in the audience that they will get three minutes to either speak for, or oppose an application.

III. Public Hearings and Deliberations

Application 22-10 - on behalf of Frank Capone, 164 Foxon Road

Mr. Frank Capone presented. He gave a brief history of the property. Past developers wanted to develop strip malls. He bought the property and subdivided it into three lots. He created two residential properties and received a Variance to create one mixed use property. He stated the original Variance had contingencies. He stated that, years ago, Attorney Michael Albis helped research the property and found that the Town approved all changes in use that have occurred since the original Variance. He would like to attract the kind of businesses his neighbors do. He showed the Board examples of correspondence that showed that Town officials approved various improvements through the years. Mr. Capone gave the Board various pieces of correspondence from past Town officials that related to the property.

Mr. Budrow gave the Board a document that he put together showing a chronologic history of the property. It detailed when the property received zoning permits for various uses. The Planning and Zoning Commission received the document as well. The Commission gave a favorable comment for this modification as there was an extensive permitting history and Mr. Capone’s continuous requests for permits.

Ms. Sparago asked what the specific modification is. It was explained that the original Variance was for two offices and two apartments. No retail. Mr. Budrow explained the issue Mr. Capone was facing. There was discussion about examples of various use types. It was noted that the application was not clear with regard to what exactly was requested. Mr. Budrow answered that the agenda showed what Mr. Capone's modification was for.

There were more questions for Mr. Capone. Ms. Sparago shared a housekeeping item, a concern about the vagueness of the application. There was some follow-up discussion.

Ms. Sparago commented on the existing property conditions with regard to garbage pails left in front that appear to be constantly in front. Mr. Capone answered he would improve the situation. She then asked if he would consider laying out new gravel to help improve the appearance of the lot. He answered that he could get some processed stone.

There was no public comment.

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

Deliberation: Mr. Budrow pointed out that he agreed the application was vague but reminded the Board that a Statement of Use that was attached to the application was very clear as to what was requested.

Mr. Gersz stated that the current uses are what they are. Changes in the future will have to be addressed. The Board agreed that any change to the requested uses will require future action by the Board. The term "retail" was discussed.

Mr. Wobensmith shared that the request be stated as 4 apartment units as single-family dwellings and two commercial, non-retail businesses. Also, to make the property more amenable to the neighborhood with regard to the garbage location and the parking lot. There was discussion on the trash being up in front of the property. The Board could condition that an enclosure be installed for the trash containers. Mr. Budrow read some potential conditions. Landscaping was added as a requirement with the parking lot improvement. Ms. McCann asked if the Town can do better to oversee the permitting and making sure the Variance is adhered to. Mr. Budrow answered that the Town will do its best. Ms. Sparago asked if a condition can be added to give 90 days to make the improvements. The answer was 'yes.'

Attorney Coppola confirmed that the Modified Variance shall be put on the land records and memorialized that way.

MOTION: Mr. Wobensmith made a motion to amend the original Variance that was granted to allow four single-family apartments and two commercial non-retail businesses

with additional conditions. And within 90 days, the property will be made amenable with an enclosure for the trash and the parking lot being landscaped and laid with fresh stone. Ms. Sparago seconded the motion. **All were in favor. Motion carried, 5-0.**

Application No. 22-03 – on behalf of Richard Vizziello, 198 Beach Avenue

Attorney Leonard Fasano presented. He mentioned that the recording from June may have had issues. He restated the history of the previous 2020 request for a Variance. An application was submitted with plans that showed two stories. Bedrooms were shown in an attic space. A zoning permit and a building permit were later issued. A Cease and Desist was later issued by former Assistant ZEO Ellen Pellegrino. Attorney Fasano said he was here to discuss this issue further. He was hoping the Board will remove the condition of only allowing a single story. There was discussion on what a “story” is. He feels the Board knew the intent of the original application but misunderstood the request. He said there was a mistake on everyone’s part. He read the definition of “story” from the East Haven Zoning Regulations. He stated that, in May, he volunteered to submit a CAM report for the Board but was now going to withdraw that because the request tonight was for interior work, not for anything outside that would trigger a CAM application for CT DEEP. He spoke to an official at DEEP to confirm. There was discussion on the driveway that is in place today. Attorney Fasano stated that Town Engineer Bodwell said the material used for the driveway “was okay.” Attorney Fasano then explained what a CAM application was.

Attorney Fasano restated that a zoning permit was initially approved. There was discussion about a second story. He stated that three stories are allowed by right. Mr. Gersz said that if there was a request to add another story it would have been controversial in that area. Mr. Gersz asked that capes with living space above the first floor are two stories? The answer was “yes.”

Mr. Budrow clarified some comments made earlier. He said that the 2020 Variance application stated single story beach residence (Ms. Sparago corrected him that it said “single floor”) and was submitted with site plans that showed a two-story structure. The first mistake was made prior to the application submission. The presentation by Attorney Nicholas Mingione was clearly focused on the house location. The only comment on the house layout was during his final comment when he stated the house would be shortened and the house would be a single story. The follow-up zoning permit was submitted for a single-story house with the same plans that went to the ZBA. It was approved by Ms. Pellegrino. She had to revoke that permit and issue a Cease and Desist because the floor plans showed two proposed stories. When Mr. Budrow started his job, he had to address the existing Cease and Desist and required a new zoning permit with plans showing a second story that showed no rooms, just attic space. He said the confusion started before the 2020 Variance application was ever submitted.

Mr. Gersz asked a question about accessing the second story from outside. There was discussion on what future owners of this property could do, such as a potential accessory

apartment. Attorney Fasano stated that the original site plans showed two stories. Ms. Sparago said the 2020 Board should have requested accurate plans. She then mentioned that break-away walls were stated as being installed. She mentioned that the basement was a story. She stated that by not installing break-away walls there was a basement created and the ceiling of the basement is more than 5 feet above the ground level. Attorney Fasano stated they could have gone with break-away walls or vents. He said the building official approved the vents.

Attorney Coppola mentioned that accessory apartments are not allowed in East Haven (they were mentioned earlier). She shared that there was no appeal taken after the 2020 Variance was granted. And, there was no appeal taken on the Cease and Desist issued by Ms. Pellegrino. She finally wanted the ZBA to not lose sight that there is someone who wants to be an intervenor and he might be in the audience.

Ms. Mison asked if there were more questions for Attorney Fasano. He submitted a letter that showed the neighbors to the left and right were not opposed to the request.

Ms. Sparago asked why the applicant never appealed the 2020 Variance when it was clear that the approval was for a single floor. Attorney Fasano answered that the plans spoke for themselves and there was a misunderstanding. He said he wasn't a part of that application. Attorney Fasano stated that there wasn't an intent to go with a one-story home.

Mr. Wobensmith said he listened to a recording of a hearing in 2020 and said the application was for a single-floor structure and there were no objections or corrections made about it. He said he received a schematic of a plan that shows nothing on the second floor and that it was from a hearing in October, 2020. He asked, between May, 2020 and October, 2020, when did the second floor become presented as empty space? Mr. Budrow stated that the building code and zoning regulation view a story differently.

Mr. Wobensmith read the definition of story from the zoning regulations. He said an attic cannot be considered a story. Mr. Budrow shared some history of how the house was approved by a zoning permit in late 2020. That zoning permit was revoked and when he started in March, he was able to approve a new zoning permit when a floor plan of the house showed an empty second floor and labeled as attic. He said before March. There was always two stories shown on all floor plans submitted prior. Attorney Fasano said there was lumber at the site and they wanted to be able to keep the project going. He said it was understood that the second story could not be lived in.

Mr. Wobensmith reiterated that in 2020 there was a single-floor house proposed, there were no objections or corrections, then in October, 2020, there were plans submitted with no living area shown on second floor, so that the project can continue, and in March, 2021, a zoning permit was submitted for the "construction of dwelling with attic (without dwelling unit) in accordance with Variances received shall be single story."

Attorney Fasano responded that the March zoning permit was submitted so they could keep going. Mr. Wobensmith responded asking if the March application was submitted with the intent to build out the second story. Attorney Fasano said the attic area is just space. There was an intent to go back to the ZBA. He said no one is going to see it. There was a mistake. It is an admirable thing to come back to the ZBA. Nothing changes and no one will see a difference.

Ms. Sparago said the Board could require the house look like a single-story house. Attorney Fasano said they couldn't do that. He said no officials said anything about the submitted map and everyone believed what was shown on the map is what was intended. Mr. Gersz said people felt it was going to be a one-story house. He said it is like a cape-style house on the outside. The owner can look out at the ocean upstairs. Attorney Fasano said there needs to be context and the March zoning permit was submitted due to financial reasons. He shared there isn't a hardship and there is a condition based on logic. He said the beach down there is a gold coast, the most beautiful beach on Long Island Sound.

Mr. Budrow asked Attorney Fasano about the driveway. He said the driveway was never on a previous site plan but is on a recently-submitted as-built site plan. He asked if there was even an approval for it. He said Mr. Vizziello's engineer, Greg Fedus, never saw a plan that had a driveway shown on it.

Mr. Wobensmith asked if there could be a 5-minute break.

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

Ms. Mison started the meeting back up and welcomed Mr. Rowland to the front for 5 minutes. Mr. Rowland said he didn't want to belabor his intervenor status as he spoke about it last month. He wanted to show that the construction was a danger to the environment and that gave him a seat at the table. He referred to a Kevin Zavoy letter that confirmed that heavy equipment was damaging dunes and beach areas. He referred to Ms. Sparago mentioning that Commissioner Falcigno, in 2020, conditioned the Variance as a single-floor but he really said single-floor and single-family. He referred to a case called Rispoli v. East Haven ZBA. He said he lost his view toward Morgan Point due to the new house at 198 Beach Avenue. He referred to the 1998 Cumberland Farms v. Groton case. He wanted the Board to understand that the Cease and Desist was issued prior to the second floor being constructed. He referred to a 1999 case called Black v. Zoning Board of Appeals, Colchester.

Mr. Budrow stated that someone who wants intervenor status must prove that a proposal is a threat to pollute the air, land or water. He said Mr. Rowland brought up asphalt millings that were used to construct a driveway. This situation is a violation of the 2020 site plan. Town staff can address this situation prior to a Certificate of Occupancy being issued for the house. Mr. Rowland had mentioned there was damage to beach and dunes. Mr. Vizziello had told Mr. Budrow, when on site, that he did not damage any land areas.

Mr. Rowland spoke up to say that the Kevin Zavoy letter addressed that. Mr. Budrow said he told Mr. Vizziello that there are site plan issues that need to be addressed. Mr. Rowland's pleading mentioned activity within 25 feet of tidal wetlands. Mr. Budrow stated that no previous site plans showed any labeled tidal wetlands.

Mr. Budrow stated that in his opinion, the pleading was more aimed at 2020 issues that have not been reeled in by the Town. He said the current application for adding the second floor was not a threat to the environment and that the intervenor status isn't valid. The second story is not a threat to the air, land or water.

Ms. Mison asked if there was a C.O. issued on the house. The answer was "no." Ms. Sparago asked what exactly is a C.O.? The answer was that it is a document that allows a resident to be able to live at a house full-time.

Attorney Fasano spoke. He said he spoke to John Gaucher at the DEEP and asked if there were any violations at the property. He said the answer was "no"

Ms. Mison said Mr. Rowland had valid issues but not pertinent to tonight. Ms. Sparago spoke and had issues with the development of the site and referred to the letter by Kevin Zavoy letter. She said she saw the damage to the beach and dunes. She was dismayed that the Town allowed it and had no confidence the Town will oversee the continued development of the site. She shared that the intervenor status does not relate to the requested Variance. Mr. Gersz said that Mr. Rowland is fighting hard down there and feels that he has a right to be heard. Ms. Mison said it sounded like the Board was thinking there wasn't a feeling that Mr. Rowland should have an intervenor status.

Mr. Budrow shared that Town Staff will work to get the property into compliance.

Mr. Wobensmith didn't see a reason to have Mr. Rowland have an intervenor status because the reasons were not related to the current application. Ms. Mison and Ms. Sparago agreed. Ms. McCann also was going to vote no.

MOTION: Ms. Mison made a motion to approve Mr. Rowland as an intervenor. Mr. Gersz seconded the motion. **Motion did not carry, 1-4.**

Ms. Mison asked if there was anyone among the public who would like to speak. Mr. Fred Cofrancesco submitted aerial photos of the area of 198 Beach Avenue and spoke. He mentioned that there was never a driveway east of the old house. He mentioned he had hoped the new house would not be moved eastward so close to his property. He had hoped that the cottage would be removed. It wasn't. Now, a driveway is within the side setback, his buffer area. He mentioned the removal of a buffer. He mentioned that when he bought his property there was a water line across his property to 198 Beach Avenue.

Ms. Mison asked if anyone had anything to say. There was no public comment.

Mr. Budrow said the public hearing had to be closed tonight. The Board had 35 days to vote on the application.

Attorney Fasano made a final statement.

Attorney Coppola was asked if she had anything to add. She did not.

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

Ms. Mison shared that she would like to use the 35 days to go over the materials and think of potential conditions.

Mr. Budrow said that in the mean time there would be work on getting the property into compliance with the 2020 site plan.

Attorney Coppola said that the hearing is closed and new materials cannot be brought in.

MOTION: Mr. Wobensmith made a motion to continue the deliberation of the application to the next meeting so the Board can further review the information. Ms. Mison seconded the motion. **Motion carried, 4-1.**

IV. Adjournment

Ms. Sparago made a motion to adjourn the meeting at 10:08pm. Mr. Wobensmith seconded the motion. **All were in favor. Motion carried 5-0.**