

TOWN OF EAST HAVEN, CT
ZONING BOARD OF APPEALS
MINUTES OF A REGULAR MEETING
MAY 18, 2017 7:00PM EAST HAVEN SENIOR CENTER

MEMBERS PRESENT: ROBERT FALCIGNO-CHAIRMAN
GEORGE HENNESSEY-VICE CHAIRMAN
CHARLES LANG
JOSEPH PORTO

MEMBERS NOT PRESENT: DONALD THOMAS

ALTERNATES PRESENT: VINCENT LETTIERI

STAFF PRESENT: JOSEPH ZULLO-ATTORNEY
CHRISTOPHER SOTO-ZEO
SUSAN IANNONE-CLERK

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MAY 25 2017

TOWN CLERK'S OFFICE
EAST HAVEN, CONN.

Stacy G. Mauro, CTC

TOWN CLERK

Chairman Falcigno called the meeting to order at 7:00 P.M. and introduced the members and staff present.

Charles Lang made a motion to approve the minutes from last month's meeting. Motion seconded by Joseph Porto. Motion carried unanimously.

APPEAL HEARING 13-21 (Court Remand)

APPELLANT: Nikki Whitehead; Property Concerned: 60 Brown Rd; *Appeal of Action of Z.E.O. Frank Biancur (Decision to legalized Garage: Release of Zoning Violation Lien & March 8, 2013 to Nancy Anderson & Wally Erikson)*

ZEO Soto stated that he was still compiling the record. Some information was added in that should not be part of the record due to copying problems. He requested the hearing be tabled until the next scheduled meeting.

Chairman Falcigno asked that there be a motion to table.

Charles Lang made a motion to table. Joseph Porto seconded the motion. Unanimous motion carried.

APPEAL HEARING 17-05

APPLICANT: Ralph Mauro; Property Affected: 519 Laurel Street: Zone LI-3, Map 330, Block 4219, Lot 001- *Appeal of Notice of Violation/Action of Z.E.O. (excavation/grading of topsoil, sand, and gravel)*

ZEO Soto stated he received a letter from the applicant's attorney requesting a continuance until the next regular meeting. They hired an engineer and would be submitting to Planning and Zoning.

There was discussion between Chairman Falcigno, ZEO Soto and Attorney Zullo as to the timing of when the applicant started the process and the 65-day rule. Attorney Zullo requested they table until the end of the meeting so that he could contact the applicant's council.

Chairman Falcigno asked that there be a motion table until the end of the meeting.

Charles Lang made the motion. Joseph Porto seconded the motion. Unanimous motion carried.

At the end of the meeting discussion resumed. Attorney Zullo stated he looked at the minutes from the April meeting and confirmed the public hearing was opened. Therefore it's allowed to be continued.

Chairman Falcigno commented that although there is a Cease & Desist (C & D) order there continues to be activity on the property. Attorney Zullo responded there are things that can be done to enforce the C & D. He also explained that his law firm is representing the appellant so he could only give procedural advice, but they could get alternate council. ZEO Soto stated the appellant came into his office and hired an engineer but did not get their application in on time to Planning & Zoning. He went on to explain that he issued the C & D, but when an appeal is made then they can't enforce the C & D.

Charles Lang made a motion to continue until next month. Joseph Porto seconded the motion. Unanimous motion carried.

APPEAL HEARING # 17-08

APPELLANT: One Barberry Real Estate Holding; Property Concerned: 1 Barberry Rd; *Appeal of Action of Z.E.O. (cease and desist order for the slashing of trees)*

Attorney Robin Pearson, Alter & Pearson, LLC, represented One Barberry Real Estate Holding LLC. She stated that her office and the town's attorney's office have been communicating and asked that Attorney Zullo talk about what suggestions he had on how the appeal should proceed. Attorney Zullo explained the Cease and Desist (C & D) order was issued for the slashing of trees only. After compliance visits were done the town issued a second C & D, which amended the first, to include stumping, disturbing the ground, etc. After he spoke with the appellant's council he concluded the second C & D superseded and negated the first. The timelines would now go off of the second C & D and requested a public hearing be set for June.

Attorney Steven Sosenky, had filed a letter on behalf of an interested party, noticed that Attorney Zullo had not mentioned a third C & D order filed on May 9. Attorney Zullo explained the third C & D was not for the slashing of trees but was for the quarrying and that the June hearing would address both. He further stated this was a stipulation on the record that concluded public hearing 17-08 and superseded and replaced by the new C & D.

Attorney Pearson expressed her only concern that she did not want to give up any rights they had under the first C & D. She stated the stipulation should include the ZEO withdraw the first C & D. Attorney Zullo explained the second C & D referenced the first. Therefore it amended and withdrew the first C & D. Attorney Pearson was in agreement.

Attorney Sosenky stated that the board should agree to withdraw the initial C & D but did not see the need to do that and that it should remain on the record.

Attorney Zullo suggested that the record should show that the second C & D superseded the first but that they retained their rights from the filing of the first. Attorney Pearson and Attorney Sosenky agreed.

Attorney Sosenky stated that the neighbors said activity still existed on the property even though there are state and town C & D orders. He questioned shouldn't the town be enforcing the orders. Attorney Zullo commented he had been in contact with the appellant's counsel and that the residents should expect to see some activity as they dismantled machinery and performed erosion control. He suggested the ZEO visit to the property to see if the activity exceeded what they expected and take appropriate action if necessary.

Attorney Sosenky stated that the state DEEP had also issued a C & D order and questioned that it's being violated and that there should be plan in place approved by the department in Hartford before the town allowed any activity take place.

Attorney Zullo stated he was unaware of the state C & D and would take a copy of it if provided.

Attorney Pearson responded her client respected the C & D orders, stopped operations, closed things down with the exception of securing the site, had not violated the orders and had always cooperated with the town. She too was not aware of any state C & D order. She requested the hearing be kept open. Attorney Zullo agreed to keep the hearing open and continue to the June meeting.

Chairman Falcigno said they needed a motion to keep open public hearing 17-08 and continue next month. Charles Lang made the motion. Joseph Porto seconded. Unanimous motion carried.

17-09

APPLICANT: Denise Lecroix; Property Affected: 4 Sibley Lane (AKA 23), Zone R-3, Map, 050, Block 0402, Lot 002, - *Raising & moving forward existing home, replace foundation, remove and replace decks, add stairs.*

VARIANCE: Sched B; Line 8: Rear setback 30' required 2.6 existing; 2.7 proposed. Line 9: Side setback 20' required, 3.8 existing, 5.0' proposed (north) 20' existing, 16.6 proposed (south). Line 11: Lot coverage 25.3 existing, 35.3 proposed.

Rebecca O'Neill stated Denise Lecroix was present but her attorney was stuck in traffic. Chairman Falcigno requested a motion be made to table until the end of the meeting. Charles Lang made the motion. Joseph Porto seconded. Unanimous motion carried.

Discussion resumed at the end of the meeting. ZEO Soto stated the application was amended to reduce the amount of lot coverage. The board has been provided with a new map and the changes requested for the variances.

Attorney Thomas Crosby, Crosby Law firm, represented Denise Lecroix. He explained the property is in a FEMA area and needs to be elevated. The board previously granted a variance in 2013 because of severe storms it had to be elevated. It is a non-conforming building and lot. After discussion with the builder, it was decided it would be better to move the house forward for the footing because of ledge and so it would be away from the tidal wetlands. Proposal is the same as last time, but it removed the proposed new shed and the stairs in the back. The new map clarifies the variances to the application. The hardship is the current zoning regulations can't accommodate the FEMA regulations without the variances. ZEO Soto read an email from the state that had no comments on the CAM.

In favor:

Opposed to:

John Miessau and Joseph MacDonald own the adjoining property. Mr. Miessau stated the prior variance was approved by the Frank Biancur but the applicant failed to notify the neighbors and he thinks this is why they are back here. Chairman Falcigno stated they were back because there were questions about the existing and the proposed sheds. Mr. Miessau said the new plan increases the lot coverage and impacts the non-conformity, falsely implies a hardship, it does not address the existing shed, fails to address encroachments (shed, planters, etc.) on his property. He offered to sell her the 30' needed for the setback prior to the last meeting. He stated she was not in negotiations to purchase as she stated at the last meeting. He thought she was trying to sway the boards' approval. She denied their offer to sell the land, that she is not moving the shed off his property and that he has to pay the taxes. He stated that there is work (skylights, siding, interior work including electrical without a licensed electrician) currently being done without permits. She wants to move the house 10' forward, but then construct a 10' deck on the back so it will increase the lot coverage and non-conformity. He explained Sibley Lane is a private road and in the summer months only and public in winter. In the summer they put a fence that blocks the road. Chairman Falcigno asked who plows the road and where the mailboxes are. Mr. Miessau replied the town plows and the mailboxes are across the street. They made a deal with public works to plow and they put millings down. He further stated that they have the room to move the house forward more than 10' without needing a variance and by doing so that it would help the rear setback needed and give them room to move the encroaching shed off his property.

Attorney Crosby explained when the town put the gas lines in they made an arrangement to plow the road. It is a private road he believes is owned by his client and why they assert their ownership once a year. The board shouldn't be listening to someone trying to exhort someone to buy something. This is a real hardship, not implied. Property is in a storm surge area and must be raised per FEMA regulations.

ZEO Soto explained if the encroachments have nothing to do with the variances then it does not concern the board. If they could do with less decks then there would not be a hardship requiring the variances. Sibley Lane is not an accepted town road. There is a town ordinance that prohibits the building inspector from issuing permits. He recommended tabling until the town legal department can look into more. Attorney Zullo recommended an extension of 35 days since the public hearing had already been opened. Attorney Crosby agreed to provide a letter of waiver regarding the 65 days. Attorney Zullo said he would be in touch with Attorney Crosby. John Miessau stated that there would be no hardship if the house would be moved forward. Attorney Zullo stated his analysis will be only about 6-27 and it may be that they won't be able to move the house at all but does not know that yet. They may have opened a can of worms for everyone on Sibley Lane. He also recommends tabling.

Charles Lang made a motion to table. Joseph Porto seconded the motion. Unanimous motion carried.

APPEAL HEARING # 17-11

APPELLANT: John and Lorraine Esposito; Property Concerned: 35 Phillip Street; *Appeal of Action of Z.E.O. (inoperable, unregistered, motor/commercial vehicle)*

Jackie Esposito, daughter of John (Jack) Esposito explained they were here last month but photos were needed of the interior of the vehicle. She stated the truck was not a commercial vehicle, was under 6,000 lbs., was registered, was operable and had been on the property for 40 years.

ZEO Soto stated the exterior does not appear as a camper. He took pictures of the interior that consisted of a bed and camping stove which are not attached to the vehicle.

Chairman Falcigno questioned if a car could be made into a camper. Mr. Esposito said he made a camper out of a walk in van. ZEO Soto stated he does not know what the state requirement is to call something a camper and that this vehicle was an old laundry truck.

Charles Lang commented he had seen many vehicles like this turned into campers. Doesn't see a problem with it. He questioned why have antiques plates and instead of camper plates. Jackie Esposito responded the insurance was cheaper. Mr. Esposito said the DMV changed the classification of the vehicle from camper to motor home.

Chairman Falcigno questioned how many vehicles on the property and asked about a truck. Jackie Esposito stated her father had one car and the camper. ZEO Soto clarified the truck was an enclosed trailer.

Jackie Esposito stated again the vehicle was sited for being a commercial but it is not based on the weight being under 6,000 lbs. and that the VIN # is what DMV uses to determine what type of vehicle it is. She did not understand why this is an issue.

ZEO Soto stated there had been no complaints. He had noticed the vehicle when he drove by.

Attorney Zullo questioned if the state had ever been inspected it as a homemade trailer. He looked up the definition of DMV motor home that defined a vehicle that provided living quarters and amenities that are permanently attached. He explained that the vehicle does not meet the

requirements to be classified as commercial and even though the state defined it as a motor home it may not be since nothing inside is attached. He advised to uphold the appeal.

In favor: none

Opposed to: none

Chairman Falcigno closed hearing 17-11.

Charles Lang made a motion to uphold the appeal. Joseph Porto seconded the motion. Unanimous motion carried.

17-13

APPLICANT: Sal Raffone; Property Affected: 36 Vera Street, Zone R-1, Map, 140, Block 1424, Lot 013, – *Addition of second floor.*

VARIANCE: Schedule B; Line 7: Street line setback (Vera Street Side) 25' required, 6.9 proposed, 25' required 1.4 proposed (Hilda Street Side)

Sal Raffone stated he wanted to create a second story on the structure using the same foundation and existing setbacks. The corrected dimensions were 21' x 29' not 25' x 30' to the plans zoning board has on file.

ZEO Soto explained the change in dimensions does change the variances requested but the applicant would need to provide a corrected map for permits. The location change of the stairs and landing would need to shown on the map and would change the variances requested.

Sal Raffone clarified he was looking to relocated the entrance so it was not on either of the street sides of the structure.

Chairman Falcigno questioned why not take down and rebuilt the house. Sal Raffone stated the hardship was financial to do that.

In favor: none

Opposed to:

Jack Lindsay, 37 Vera Street, questioned if two entrances/exits are needed. Mr. Raffone explained that windows count. Mr. Lindsay stated he would like to see the house moved back in line with the neighboring houses. He expressed his safety concerns since there are no sidewalks and the house is so close to the road.

Gerry Lindsay, Jack's wife, also expressed the safety concerns because cars coming around the corner can not see around the house and a second story would make things worse.

Robert Wetmore, 31 Vera Street, also agreed with the Lindsay's concerns. He said it's a dangerous corner and that cars drive fast and can't see around house. In the past, the house had been hit by passing vehicles.

Michael Laudano, 4 Vernon Street, asked if anyone from the town had been out to inspect the property to see if it would be feasible to put a second story on the building. He is a former retired construction worker and does not think this house with its stone foundation could support a second story. He had been in the house and said the floorboards are rotted out and it should be condemned.

Ralph Cappola, 3 Vernon Street, questioned what the town would do if Mr. Raffone backs out of purchasing the house.

Attorney Zullo explained the owner died, taxes stopping being paid and it was forwarded to his office for tax foreclose. They realized the town did not have an interest in taking the property so they thought it was a good idea to revitalize it by getting someone to buy it. They sent three other house flippers who where not interested. If Mr. Raffone does not buy it, then the town can foreclose and take ownership but that will take significantly more time. The town appointed an attorney to negotiate a price for the house. As far as lowing the price of the house to make it more cost effective to rebuild, Attorney Zullo assumes that the price took into consideration the taxes and interest that need to be paid first.

Chairman Falcigno closed hearing 17-13.

Chairman Falcigno asked for a motion to approve the variances with the condition that an updated map would be provided.

Charles Lang made a motion to approve. Joseph Porto seconded the motion. Unanimous motion denied the approval.

17-14

APPLICANT: Rafael Amaya; Property Affected: 211 Morgan Avenue, Zone R-3, Map 010, Block 0202, Lot 003, – *Raise home, replace foundation and slab, new piers and reconstruct deck and stairs.*

VARIANCE: Schedule B; Line 7: Street line setback 46' required, 6.9 proposed, 25' required 2.33 proposed. Line 11: 20% Lot coverage allowed, 36.8% proposed.

Applicant did not appear. ZEO Soto suggested they table until the end of the meeting. He believes the applicant intended to withdraw his application but needs it in writing.

Chairman Falcigno requested a motion be made to table until the end of the meeting. Charles Lang made the motion. Joseph Porto seconded. Unanimous motion carried.

At the end of the meeting discussion resumed. ZEO Soto explained the applicant failed to notify his neighbors and was instructed to withdraw the application. He never came in his office to do so.

Chairman Falcigno closed hearing 17-14.

Chairman Falcigno requested a motion be made to deny without prejudice. Charles Lang made the motion. Joseph Porto seconded. Unanimous motion carried.

17-15

APPLICANT: Standard Petroleum Co.; Property Affected: 667 Coe Avenue, Zone LI-2, Map, 160, Block 1715, Lot 007, – *Redevelopment of existing motor vehicle service station for new station.*

VARIANCE: Schedule B; Line 7: Street line setback 50' required, 7 proposed.

John Felice, Licensed Land Surveyor, representing Standard Petroleum. Post approval plans, after being inspected by the construction manager, determined the canopy was too close to the building and want to relocate it further away. The hardship is the lot is undersized for the zone and they want to get it redeveloped. The canopy would be moved a little bit closer to the road. No significant change to the coastal site. The existing canopy overhangs the property line.

In favor: none

Opposed to: none

Chairman Falcigno closed hearing 17-15.

Charles Lang made a motion to accept. Joseph Porto seconded the motion. Unanimous motion carried.

17-16

APPLICANT: Criscuolo Engineering, LLC, Property Affected: 444 Short Beach Road, Zone LI-2, Map, 130, Block 1616, Lot 004, – *Certificate of Approval for Location.*

Chuck Fisher, Criscuolo Engineering, represented Mr. Arduini to get approval for an auto repair facility permit. The State of Connecticut requires them to get a permit from the town of the operating facility. There is a dealer next door, but their business will be repair only.

Chairman Falcigno stated he was under the impression that Mr. Arduini was only going to work on antique cars and not an auto repair shop.

ZEO Soto stated this was not represented as a commercial auto repair business but rather for private use when they came to Planning & Zoning. The board should be looking at what the standards are for a commercial auto repair business such as is there enough parking. Mr. Arduini stated he would be doing general auto repair and wants to eventually work on antique and European autos.

ZEO Soto then questioned how many bays would be used for repairs and the use of the rest of the building. Mr. Arduini responded one bay and the rest rented to contractors or storage. ZEO Soto then discussed the zoning requirements for the number of parking spots needed and compared it the site plan that was submitted for the property. He determined that a total of 19 parking spaces would be needed. ZEO Soto suggested to the board that if they approve then it should be with the condition that no more than 13 customer vehicles in approved parking spaces is allowed. This condition would go on the Certificate of Location and DMV will know about it.

Emilio Arduini asked if this approval would be based on the full auto repair. ZEO Soto confirmed it would be with the conditions. Emilio Arduini said for him to buy the property and when he first came to Planning & Zoning it was for auto repair, not dealer. Attorney Zullo stated he would like to see the property developed but he is not happy with the misrepresentation to

P & Z in regards to their use intended, but he does support ZEO Soto's recommendation about the conditions. Charles Lang expressed concern about who would rent the other bays and how the conditions would be enforced. ZEO Soto stated in the course of business he would deal with complaints and was comfortable that the conditions could be enforced.

In favor: none

Opposed to: none

Chairman Falcigno closed hearing 17-16.

Charles Lang made a motion to accept with the conditions that a maximum of 13 vehicles be in approved outdoor parking spaces. Joseph Porto seconded the motion. Unanimous motion carried.

17-17

APPLICANT: Kathleen Pyne; Property Affected: 6 Demeter Drive, Zone R-2, Map, 430, Block 5231, Lot 016, – *Addition of sunroom.*

VARIANCE: Schedule B; Line 8: Rear property line setback 25' required, 18.4 Proposed.

Kathleen Pyne explained she was requesting the variance to put a sunroom off the back. She confirmed that she notified her neighbors. She also read the hardship that the deck is off the mudroom and the unique size of the backyard requires a variance.

In favor:

Kathleen Pyne read a letter from the back neighbor who did not oppose the sunroom.

Opposed to: none

Chairman Falcigno closed hearing 17-17.

Charles Lang made a motion to accept. Joseph Porto seconded the motion. Unanimous motion carried.

SEE VOTING

VOTING:

13-21 Tabled

Falcigno - yes
Hennessey - yes
Porto - yes
Lang - yes
Lettieri - yes

17-05 Continued

Falcigno - yes
Hennessey - yes
Porto - yes
Lang - yes
Lettieri - yes

17-08 Continued

Falcigno - yes
Hennessey - yes
Porto - yes
Lang - yes
Lettieri - yes

17-09 Tabled

Falcigno - yes
Hennessey - yes
Porto - yes
Lang - yes
Lettieri - yes

17-11 Upheld

Falcigno - yes
Hennessey - yes
Porto - yes
Lang - yes
Lettieri - yes

17-13 Denied

Falcigno - no
Hennessey - no
Porto - no
Lang - no
Lettieri - no

17-14 Denied Without Prejudice

Falcigno - yes
Hennessey - yes
Porto - yes
Lang - yes
Lettieri - yes

17-15 Approved

Falcigno - yes
Hennessey - yes
Porto - yes
Lang - yes
Lettieri - yes

17-16 Approved With Conditions

Falcigno - yes
Hennessey - yes
Porto - yes
Lang - yes
Lettieri - yes

17-17 Approved

Falcigno - yes
Hennessey - yes
Porto - yes
Lang - yes
Lettieri - yes

A motion was made by Charles Lang to adjourn, seconded by Joseph Porto.

Voice vote: all in favor-none oppose-none abstain. Motion carried.

Chairman Falcigno adjourned the meeting at 9:40 PM.

Respectfully submitted,

Susan Iannone
Clerk