East Haddam

Zoning Board of Appeals

January 04, 2022

1. **Call to Order**
   The Regular Meeting of the East Haddam Zoning Board of Appeals was held on Tuesday, January 04, 2022, at 7:00 PM. The Chairperson being in the Chair and the Secretary being present.

2. **Attendance**
   J. Gregory Daigle, William Smith, Laurie Alt, Richard Fiala, Diane Quinn

   Absent: James Fennema

   Others Present: James Ventres, Land Use Administrator, Attorney Stephanie Antone, Attorney Scott Jezek, Mr. Vincent Aitoro, Mrs. Regina Aitoro, Attorney William McCoy and Mr. Ryan Hartman
   Diane Quinn read into record the Zoning Board of Appeals legal notices aloud.
   Land Use Administrator, Jim Ventres, stated one clarification for the record regarding the application. The property owner is Mr. Ryan Hartman and that the applicants are Mr. Vincent Aitoro and Mrs. Regina Aitoro.

3. **Public Hearing**

   A. **Appeal #1147 – 11 East Shore Drive, Ryan Hartman (property owner), Mrs Regina Aitoro and Mr. Vincent Aitoro (Applicants) to appeal the ruling of the Zoning Enforcement Official on the lot merger for 11 East Shore Drive. Pursuant to 8.1.2 of the Zoning Regulations. Assessor's Map 071, Lot 060, 058 & 106.**

Attorney Stephanie Antone provided the commission members with the certified mail receipt cards. She informed the members that she is here with Attorney Scott Jezek and their clients, Mr. & Mrs. Aitoro who live on 3 East Shore Drive. She presented a map and explained that the concern is that in between 11 East Shore Drive and 3 East Shore Drive is a five-foot proposed easement for water in favor of parcel B. She expressed that this should not be easement in favor of water access that if parcel B merged with 11 Shore Drive. She stated that parcel B is contiguous with 11 East Shore properties.
Attorney Antone explained that in between is a five-foot strip of land proposed for access to the lake is on her client's property which is 3 East Shore Drive. Merging the lots provides lake access to parcel B, and additional lake access through the easement would not be necessary. Merger of these properties provides lake access to labeled "Proposed private easement for access to lake in favor of proposed in

favor of parcel B". She explained that is why they are here because, the decision of the board impacts the rights of her client's property as to that five-foot proposed defense.

Jim Ventres, Land Use Administrator, presented the same map as Attorney Antone and explained the blue highlighted lots A & B and the lot highlighted in red are presently owned by Ryan Hartman

Then the ZBA members reviewed the maps and property locations with Attorney Antone.

Chairman, Gregory Daigle confirmed with Mr. Ventres that the appeal is to appeal the ruling of your decision on the lot merger of 3 East Shore Drive. Mr. Daigle asked Mr. Ventres to explain. Attorney Antone exclaimed that should be 11 East Shore Drive and not 3 East Shore Drive.

Mr. Ventres, Land Use Admistrator, noted that this why he labeled and highlighted the map. He feels that because this is an appeal of his decision that he would like to explain how those two blue lots came into the ZBA Commission. He said that the two blue lots came before the commission in 2011 and the board made the decision to allow the Herden's to re-combine all their lots to create lots A, B, and C. All would be non-conforming but, lot C ended up having the septic system on it for 3 East Shore Drive, and this was granted by the Zoning Board of Appeals.

Mr. Ventres also explained that was a separate created lots that Roger Nemergut PE and he testified that they could meet the public health code. The Zoning Board of Appeals granted a variance to allow that lots to occur and these lots was standing alone, at that point that is the "A" and "B" marked in blue.

Mr. Daigle asked Mr. Ventres to confirm that lot A and lot B have been merged with lot C.

Mr. Ventres corrected Mr. Daigle in saying, in 2010 lots C & B were merged and they then came in and requested a variance to the Zoning Board of Appeals to break it up into a building lot (Lot B), the lot with the garage and the septic system on it (Lot C). ZBA granted that variance. Mr. Ventres explained that the ZBA granted that variance on that stand alone lot and then Mr. Hartman came **along, living** across the road (the lot marked in red). Mr. Hartman lives on the water side and the little piece is on the other side of the road. Mr. Ventres questioned the applicants Attorney that one of the things that you're making claim to be that lot B and all the Hartman property should be merged.

Attorney Antone answered Mr. Ventres by stating that it should be merged with parcel B because, it is a non-confirming lot, and they are contiguous. So, it would require a merger under the Zoning Regulations.

Mr. Ventres exclaimed that the two parcels that are owned by Mr. Hartman are actually two parcels separated by a road, even though Mr. Weavers L.S. map states R.O.W. in the 2011 map. In 1951 the town went to a meeting and voted to accept it as a fifteen-foot road not as a fifteen-foot R.O.W. Mr. Ventres handed this document out to everyone.

Mr. Daigle asked if that was not changed on the map after the vote and discussed as a road.

Mr. Ventres said that it was not changed on the map. Mr. Ventres said the little piece may have been ended up being merged with the blue piece. Back in 1998 there were two lots that were side by side and he informed the property owner that they were merged. The owner disagreed with him, and she appealed his decision. She came before the Zoning Board of Appeals. She had a cottage on one lot that was side by side and she also had a vacant piece. Even though it was mowed with a walkway and it was all contiguous, the ZBA agreed with her that until an action was taken on that extra lot, that they were not merged yet because, they did not put a building on the property or try to sell it. They did not try to do an action.

Mr. Ventres stated that he was waiting to see what Mr. Hartman planned to do with this lot. He said that if an action occurred by Mr. Hartman that he would then move forward and question if this lot needs to be merged. Mr. Ventres explained that if Mr. Hartman had come to him and says that he was building a home on it, that at that point it would be a separate lot. If he came to me saying that he wanted to put a garage on the property, that he would have informed Mr. Hartman he would be merging the lots. Mr. Ventres stated that in his opinion, based on the law, that he can make an argument that with the little red lot and the blue lot has merged. He definitely cannot make the argument with the property across the road because, it is a road and based on past performance I let it be for a while.

Commission member, Mr. Richard Fialia asked Mr. Ventres if there is any concerns with the small piece of land marked in red.

Mr. Ventres told said that the lot is contiguous and could be the only one in his opinion that could legally be considered for merger. Mr. Ventres added that he does not see how the argument of folding the property across the road falls into place because, they are not contagious since there is a road.

Attorney Antone explained that because the two red lots together constitute the one piece of property or lot under the definition for Zoning Regulations. They would both be considered a lot or lots that are contiguous with that piece of proposed parcel B. It would be their argument, that they are contiguous and would be considered for zoning purpose to have merged. Nobody is looking at that small little red piece saying that is not part of 11 East Shore Drive and that it is still part of that property 11 East Shore Drive and benefits 11 East Shore Drive. She explained that the purpose of the merger is it would benefit the property and it would prevent further nonconformance on the property.

Commission member, Mr. William Smith, asked if there are two different owners. Attorney Antone answered that Mr. Harman owns the lot highlighted in red and the lots highlighted in blue and that her clients own the piece of property that is not highlighted on the map and is identified as the proposed parcel C.

Mr. Smith asked Mr. Ventres if there have been other lots in the town that have merged across roads. Jim said yes, only for zoning purposes and only when there is a facility that is necessary for the operation of it. If there is a well, septic system, or garage then a document is filed on the land records which merge the lots for zoning purposes.

Mr. Daigle asked about the status of the parcels.

It was noted by Mr. Ventres that parcel C was owned by the Aitoro's. That parcel A & B along with the res lots was owned by Mr. Hartman and that A & B where vacant, the little red lot was vacant and the red lot on the lake had a seasonal cottage on it.

Attorney Antone added that her clients want to merge the lots because they are contiguous parcels and the Zoning Regulations require that when someone has a non-conforming parcel and you own a parcel contiguous to it, it merges. So much is required to bring that property into conformance. Attorney Antone explained that lot C is her client's property and that's the reason for their appeal. The five-foot proposed easement is in favor of parcel B and if parcel B was to be merged and the properties highlighted in the blue and the red were to merge, then the property highlighted in blue is essentially part of waterfront property that would no longer have access to the proposed R.O.W. for access to the water. The argument is, once those properties are merged there is no need for an easement for water access, when you now have waterfront property. She also explained that she does not know if the proposed R.O.W. really exists.

Mr. Ventres commented that the reason for the appeal is for the merging of the property not that the easement is valid or not.

Attorney Antone said that what happens here impacts her client's property and that is the reason to be there before the Board. She noted the 5-foot easement is across her client's property.

William Smith stated that his understanding is that if they merge the properties highlighted in red and blue then there would be no need for the easement because the lots in blue would be waterfront property. He does not see the difference between the two properties highlighted in red and property C, as they are on both sides of the road.

Mr. Ventres explained that one of the differences is because, when it came to ZBA in 2011, Mr. & Mrs. Herden owned waterfront property. In the 1960's or 1970's they gained approval to build a garage across the road and install a septic system. Therefore, forcing the merger of the two, as three were structures and facilities across the street. In 2011 Mr. Herden had Roger Nembergut PE put together a map and it was presented to the Zoning Board of Appeals to request a variance. The Zoning Board of Appeal's did grant this. Therefore, lot C is merged because there were facilities across the road.

Commission member Mrs. Alt noted that there were no plans before Mr. Ventres at this time for the blue lots.

Attorney Antone read aloud section 8.1.2 of the Zoning Regulations, she feels proposed parcel B could not be built on or sold aside from part of a merger. She stated that 8.1.2 of the Zoning Regulations states that they shall be deemed a single parcel for zoning purposes and that the purpose of 8.1.2 is to prevent nonconformity.

Attorney William McCoy introduced himself as the attorney for Mr. Hartman and addressed the Zoning Board of Appeals members. He explained that he believes there are simple solutions to this. He also stated that the ZBA's authority comes from the State Legislation and that the State Legislation states that you can make decisions on variances and the appeal from a town zoning enforcement officer of a ruling by that person in which the person has been aggrieved.

Attorney McCoy also stated that he does not think Mr. Ventres made an order or a ruling to be appealed. He said that the merging of these lots is not within the Zoning Board of Appeals authority. He added; the ZBA's concern is to simply deal with a decision that Mr. Ventres may or may not have made. If he did not make a decision, then there is simply nothing before them to hear. Also, the merging does not include property across the road. Those are not contiguous properties. The only agreement is that they would have to merge that small red lot with the lots highlighted in blue that is contiguous. He explained that ZBA does not have the authority to determine what the Zoning Regulations say. The Zoning Board of Appeals has the authority to issue variances if deemed appropriate, and/or to hear appeals from Mr. Ventres decisions, and, he has not made one. Also, the Zoning Board of Appeals has nothing to hear as there is nothing that impacts your authority as a Zoning Board of Appeal at this point. You have had prior decision on an order Mr. Ventres actually made in 1995 that states, the issue of merger is not something that you deal with unless and until, there is a proposed activity and there is no proposed activity either.

Attorney McCoy explained further that for all these reasons that this application should be denied. Primarily because, the Zoning Board of Appeals does not have jurisdiction over it. Also, it is premature at best. He argues the concept that they are aggrieved because they need to get rid of that five-foot strip and this five-foot strip is not within ZBA's jurisdiction either. Whatever right either of these two parties must that five-foot strip has to be determined by the Superior Court. Attorney McCoy explained that he is not trying to say this to be insulting and he needs to clarify that this matter is not within the ZBA's authority. He also inquired on whether Mr. Ventres has even issued an order at this point.

Mr. Daigle questioned that Mr. Ventres has not made a decision but, is abiding by the Zoning Regulations which state, when a lot is purchased, next door to that lot, they automatically merge if the first lot in not conforming, and you when you purchase additional land, they merge to bring them into conformity. Mr. Ventres confirmed Mr. Daigle's explanation of the Zoning Regulations regarding this matter.

Attorney McCoy informed Chairman Gregory Daigle that the Zoning Board of Appeal's cannot hear this matter if it is not an appeal of Mr. Ventres' decision.

Mr. Ventres also explained that there are two matters here. One is variance and the other is to hear when someone says that they do not agree with him. These are the only two times that ZBA can hear a matter. Mr. Ventres mentioned that he received a letter via email on October 26, 2021 from Jezek & Barbi's office in reference to the property of Mr. Hartman merging of parcels. It was a request from Attorney Jezek & Barbi's office as to whether these parcels are merged. He said that he also had a

telephone conversation with their office and explained that he would not make a decision regarding a merger until an action occurs due to past rulings. He then received an email asking him to confirm his verbal statement in a letter. He told them yes, he would, and it is correct. Mr. Ventres added that he intended to wait to see what Mr. Hartman wants to do with his land.

Mr. Ventres explained that the road separates the lots, and that road is a legal road. Also, there are no documents on file that combines them and says that they are one lot per zoning and there are no facilities across the road. He stated, in his opinion is that little piece gets merged with the blue lot but not the cottage because, there is a road.

William explained that parcel C already abuts the red lot and the big red lot and that C is separated by the road.

Attorney Antone said parcel C is her client's property.

Mr. Ventres said the difference is that it is not an easement, it is a road and on the opposite side is the septic and the garage for the house and that is the action.

Commission member, Richard Fiala explained that more importantly, the merger of the applicant's property across the road was done voluntarily, so they could do the development they did. In this matter there are no intentions of development.

Attorney McCoy explained that the road is clearly what divides those parcels and prevents the merger. It has no benefit to them at all and that the bottom line is that ZBA does not have the authority to hear this since Mr. Ventres has not ordered anything nor made a ruling of any sort to appeal.
Attorney Antone handed out documents pertaining to what she says that Mr. Ventres did, which in her opinion was, make a decision under Connecticut General Statues. She stated she would argue that this was a decision on his behalf. She handed out a copy of this document.

Attorney McCoy said it was a decision that impacted the property owner without notice to the property owner. Attorney McCoy again stated that this matter ultimately is not about merging, and it is ultimately about the five-foot R.O.W. and that the real matter has nothing to do with merger of the lots and everything to do with trying to eliminate that five-foot strip R.O.W. which you clearly have no authority to do so. For the record Attorney McCoy explained that the is a letter that was written on September 24, 2021 by the office of Jezek & Barbi and signed by Attorney Stephanie Antone, providing that if Mr. Hartman released that easement that they would not oppose any matter that he brough before this commission. He gave the copy of the letter to Chairman Daigle for the record.

Attorney Antone explained that it does not matter if this matter is about a R.O.W or not and that the ZBA is here to enforce the Zoning Regulations and the Zoning Regulations say that there would be a merger. She provided Mr. Daigle with a document summarizing this and their position.

Attorney McCoy stated for the record; that he thinks that the board is wandering in dangerous territory dealing with that easement at all as; they do not have any authority on this matter**.**

Chairman, Mr. Daigle stated realizes that the board does not have authority and he is just looking for a solution.

Attorney McCoy added that the easement was provided by the prior owner and is not an easement of necessity. He explained there is no ruling on mergers based upon your prior precedent which states, unless and until there is action taken that a merger does not occur.

Board member William Smith again asked Mr. Ventres that the reason they were there was because Mr. Ventres ruled the lots were not merged and that Attorney Antone asked them to be merged. The blue and the red lots.

Chairman Daigle noted that the two sections of red lots are separated by a road.

Attorney Antone stated the two red parcels are one lot for tax purposes as one piece of property. The two red lots are one parcels.

Mr. Ventres stated for the record that Mr. Hartman owns one parcel identified as lot 71, lot 58 and a little piece is identified by the assessor as lot 71, parcel 106. The assessors program shows them as two separate pieces.

Chairman Daigle asked if lot A & B could be merged.

Mr. Ventres said not unless the roadway between them was released or if a house was built on one and a garage on the other, then they would be merged for zoning purposes.

Again, Chairman Daigle asked if you owned a nonconforming lot on one side of the road and a lot on the other side of the road are they merged?

Mr. Ventres stated no unless did something like place a well or septic across the road and needed a building or health district permit.

Attorney Antone discussed a memo from 1998 discussion from Attorney Mark Branse, regarding sections 5.58 and 5.55 of the zoning regulations which require merger of the blue and red parcels.

For the record, Attorney William McCoy stated Mr. Branse offered an opinion but, your decision was contrary to that. Mr. Branse put that opinion forward and you as a commission went in another direction and that is the precedent.

Mr. Daigle asked if there were any other questions or comments from the Board. He at this time opened the hearing to the public.

Mr. Ventres noted there were no comments from the public.

Mr. Ventres said that in 1998, if you owned contiguous lots adjacent to each other and if there are several lots that do not add to an acre, that are in a row together, that under the regulations, these lots were considered merged. At that time in 1998, the ZBA took the opinion that an action had to occur in order to merge parcels. Therefore, if you have a lot located one side of the road and another lot located on the other side of the road, an action must occur before you are able to get the zoning approval needed to merge the lots. There is a provision in the Zoning Regulations that allows you to merge the lots that are across the road. Mr. Ventres said that in his opinion that if you follow the regulations of the town that the little lot identified as 71-106 and lot B should be merged but, to make the claim that the one across the road which has a different map and lot that is separated by a road not a R.O.W should not be merged.

Attorney Antone said the red lots were merged since the little red vacant lot is used for parking for the larger red cottage lot.

He also added that the lot with the cottage stood alone until 1968 or so when the little lot was sold. The little parcel is not part of the original deed so you cannot state that they came from the same parcel. Therefore, the Assessor recognizes it as two separate parcels.

Mr. Daigle asked Attorney Antone what pain this is causing her client to suffer.

Attorney Antone explained that if the proposed parcel B were sold or developed separately and there is not a merge, then when it is developed separately there's on a five-foot easement going across her client's property.

Attorney McCoy addressed the board for the record and stated, this is exactly what he referred to which is, you are being asked to determine the validly of an easement when you do not have the authority to do so. You have no rights to make determinations about that easement at all. Also, to your question of what harm this brings, the answer is, there is no harm, this is a vacant parcel. Attorney McCoy also stated that Mr. Ventres has said on a number of occasions that you the ZBA members have ruled less and until there is some type of action being taken, Mr. Ventres is not going to get involved in any merger. To be clear this appeal is allegedly an appeal of a decision by Mr. Ventres and your decision must be if he is correct or incorrect.

Attorney Antone spoke up saying there is a decision by Mr. Ventres that they disagree with Mr. Ventres decision and that the Zoning Regulations require those two parcels of land to be merged.

Mr. Ventres read aloud a portion of the letter from Jezek & Barbi's Office dated October 22, 2021. "Per our telephone conversation on October 22, 2021, you stated your position that 11 East Shore Drive and part (or all) of the Additional Land have not been merged. Further, you stated that you will not effectuate a merger of the property unless requested by Mr. Hartman based on his proposed use of the Additional Land and whether such use would require merger, such as making

11 East Shore Drive a year-round property or placing a garage for use by 11 East Shore on the Additional Land."
Mr. Ventres stated that there is no action here and he is abiding by history. This is based on this Commissions previous actions on nothing has happened yet, you cannot pull the trigger on it.

The Commission discussed the matter further and reviewed the documents and maps once again. Chairman Gregory Daigle asked if there are any further questions or comments.

Mr. Ventres noted the commission can not act on the easement.

Attorney Anton said that if they waited on an action then Mr. Hartman can the sell the property or do something else first which is prohibited under regulation 8.1.2. The issue is that the property could be sold or put into a different name.

Mr. Ventres informed everyone that lot B is an approved lot by the Zoning Board of Appeals as a non-conforming lot and it already has standing that it is a separate lot. A single-family home can be put on both parcel A and parcel B separately. He said lots A & B could support a single-family home The road between them is owned by the association of the Leo Hungerford subdivision which never formed an association, and the roadway is owned by the property owners of the subdivision.

Attorney Scott Jezek informed the board that he does not think that they have any choice but to merge these lots because the board needs to enforce the Zoning Regulations. He said the road does not separate the properties and the town did not take ownership of the roadway.

Attorney McCoy explained that for the record, it is important that everyone realizes that the road was added to the town highway system, it is not a private parcel of land anymore. It is accepted as part of the highway system.

Mr. Ventres confirmed this and stated that he did hand out the documents referring to this matter.

Attorney Jezek disagreed and stated that this not accurate.

Mr. Ventres explained that it was accepted in 1951 town meeting.

Attorney Jezek said that you will not find a deed anywhere where a resident conveyed their interest to the town of East Haddam on East Shore Drive.

Commission member, Laurie alt said that East Shore Drive has been voted in as a scenic Road.

Attorney McCoy explained that in the Subdivision Regulations that the developer conveys the roadway to the town as part of the subdivision process, it is not the way all the roads have been setup in all towns in the state of Connecticut. Any road in a subdivision gets deeded over to the

town and the town owns the soil underneath that road. The State of Connecticut is an old state, they do not necessarily own the dirt but, they do accept the obligation to maintain those roadways.

Attorney Antone said if they don't own the dirt then the lots are merged, the red parcels are to be merged.

The commission discussed the history and location of the properties with Mr. Ventres once more.

Motion: *Commission member, Laurie Alt made a motion to close the public hearing portion of the review; Seconded by Richard Fiala; with all voting in favor and unanimously approved.*

Motion: *Commission member, Laurie Alt made a motion that the board members are in agreement with the Zoning Enforcement Officer, Mr. Ventres, decision not to merge the properties because at this time there in no action proposed or planned for the lots of the separate lots with regard to Appeal #1147 – 11 East Shore Drive, Ryan Hartman (property owner), to appeal the ruling of the Zoning Enforcement Official on the lot merger for 11 East Shore Drive. Pursuant to 8.1.2 of the Zoning Regulations. Assessor's Map 071, Lot 060, 058 & 106. Seconded by William Smith; with all voting in favor and unanimously approved.*

4. Minutes

Motion*: Commission member, William Smith to accept the November 02, 2021, minutes as presented, seconded by Laurie Alt; with all in favor and unanimously approved.*

5. **Bills**
No bills.

6. **Adjournment**

Motion: *Commission member, Diane Quinn made a motion to adjourn the meeting. Seconded; William Smith; with all in favor and unanimously approved.*

Meeting adjourned at 8:23 pm.

Respectfully submitted,
Susan Magri