

**East Hampton Zoning Board of Appeals
Regular Meeting
October 4, 2010
Town Hall Meeting Room
7:00 P.M.**

Approved Minutes

1. **Call to Order:** Chairman Nichols called the ZBA Meeting of October 4, 2010 to order at 7:00PM.

Members Present: Chairman Charles Nichols, Don Martin, and Vincent Jacobson, Brendan Flannery, and Linda Dart

Alternate Members Present: Lori Wilcox, Robert Hines, and Tom Keegan

Absent:

Staff Present: Planning, Zoning & Building Administrator James Carey.

2. **Seating of the Alternates:**

3. **Legal Notice:** Mr. Carey read the legal in for the record.

4. **Approval of Minutes.**

- a. **September 13, 2010 Regular Meeting:**

The minutes of the September 13, 2010 meeting were approved with the correction of Item 9. Adjournment: Mr. Martin moved to adjourn the ZBA meeting. The motion carried unanimously.

5. **Appeal of the Decision of Zoning Enforcement Officer regarding a fence to remain at its current location per Section No. 6.1 of the East Hampton Zoning Regulations M04A/B45A/L20-CZone**

Mr. Carey reported that this item was continued from the last regular meeting to give Mr. Angelico an opportunity to state his case as his attorney was unable to attend the September 13th meeting.

Attorney Mike Dowley was before the ZBA to discuss this agenda item. Mr. Dowley stated this is an appeal of a decision by Mr. Carey. The issue is the fence that was placed on the property. This fence was engineered and built by a licensed person and is properly stable. The claim that this was the exact fence that was denied by the Planning and Zoning Commission is incorrect. There was a 3 phase plan presented to the P&Z which Mr. Angelico withdrew. Attorney Dowley stated the site plan application that Mr. Angelico filed to actually use the beer garden and was contained in the zoning file as number 14, stating Planning & Zoning Application for 83 N. Main Street, Angelico's Lakehouse Beer garden expansion for a commercial site plan modification dated April 4, 2006, which does show the fence. At the time that Mr. Angelico had decided to build the fence he called Mr. Carey and had the discussion regarding an 8' fence requiring a building permit. Unaware of the State Building Code change Mr. Angelico constructed the fence without a permit. Once it was brought to the attention of Mr. Angelico a building permit was pulled. Attorney Dowley stated that none of the complainants are within 100' of the property therefore are not aggrieved parties. There was discussion on section 28.1.D6 entitled Landscaping of the East Hampton Zoning Regulations.

Mr. Flannery stated that he listened to the recordings from the last meeting and realized this was not closed to the public for comment due to the matter of not hearing from Mr. Angelico or his attorney, however they did hear from the other side for comments. Mr.

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Flannery would like to request this be opened back to the public for comment, however not to hear what has already been previously stated to the board.

Mr. Tamarro, 27 Lake Boulevard, stated this is about a property owner that went before the Planning and Zoning and was denied twice. Mr. Flannery objected to Mr. Tamarro's testimony, stating that as previously stated, the ZBA would like to only hear anything new and Mr. Flannery would welcome it to be heard. Mr. Tamarro read into the record the current Building Permit that the Building Department uses. Mr. Tamarro expressed his concerns on the fence not meeting building setbacks.

Mr. Flannery asked Mr. Carey for clarification on the grade and if it is taken into consideration that on the back of this site there is over 10' elevation change from the front to the back, or to the West of the property there is about a 5' drop into the parking lot? Mr. Carey stated this is a difficult matter, and as Mr. Dowley mentioned, although not specifically stated, the installation was for privacy and sound attenuation, including berms, fences, and plantings, in conjunction with each other or by themselves. Mr. Carey stated he did not consider the installation of the berm to be a change in grade per say. Mr. Carey was under the belief, and remains under the belief that the fence complies with our Zoning Regulations in the location where it was installed and therefore a permit was granted.

Linda Dart asked if after tonight there could be clarification as to whether berms or fences are considered one unit. Mr. Carey stated this is an issue we need to explore and will speak with the Planning and Zoning Commission.

Fran Klein, 12 Belvue Street, stated for clarification the case that Ms. Klein brought before the ZBA had nothing to do with sound attenuation it was regarding a nonconforming lot. Ms. Klein also responded to the statement pertaining to noise, the neighbor that lives within 100' feet made a comment that yes at times the noise is better, however Ms. Klein suggested checking into the police records. She has called on numerous occasions since the fence was installed.

Mr. Flannery moved to close the public portion of this hearing. The motion was seconded by Mr. Martin. The motion carried unanimously.

Mr. Martin moved to accept the decision of the Zoning Enforcement Officer, James Carey on this case, and allow the fence to remain. Mr. Flannery added he supports Mr. Martins motion, and if you listen to the Zoning Commission's meeting, their concern was that the ZBA make sure that the facts and proceedings are considered of the Zoning Commission in the decision. Mr. Flannery would like to add to this motion that those were considered and the ZBA supports the Zoning Officer to be compliant with the regulation. The motion was seconded by Mr. Jacobson.

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DISCUSSION: Ms. Dart asked about the traffic concern that was mention at the last meeting and suggested adding to this motion taking back the berm a little bit. Mr. Carey stated that when the matter of visibility did come before the P&Z it was forwarded to the traffic authority and they found there was not a problem with regard to site lines. The ZBA did not amend the motion to include this criteria.

The original motion carried 4-1-0, with Ms. Dart opposed.

6. Old Business: None

7. Communications: None.

8. New Business: None

9. Adjournment

Mr. Flannery moved to adjourn the ZBA meeting. The motion was seconded by Mr. Jacobson. The motion carried unanimously. Meeting Adjourned: 7:27PM

Respectfully Submitted

**Kamey Peterson
Recording Secretary**