

Minutes of February 1, 2016 Meeting of the Civic Association of Short Beach Zoning Board of Appeals.

Present: Norma Bennun, John Elgee (secretary), David Steinman, Walter Kawecki.

Meeting called to order at 7:31 P.M.

David Steinman announced that Tom Horrigan had resigned and we needed to elect a temporary chairman to chair this meeting. John Elgee made a motion and it was seconded by Norma Bennun to elect Dave Steinman as temporary chairman and motion was passed unanimously (Marty Hallier did not vote).

Dave Steinman announced that Marty Hallier was replacing Tom Horrigan as a fifth member of the board at this meeting.

Minutes: Motion was made by John Elgee to accept the minutes from the January 4, 2016 meeting and was seconded by Marty Hallier as written. Motion passed.

New Business: Application # 2015-2. Applicant John Clifford 214 Main St. Hartford, CT. 06106, Owner Nancy Clifford 51 Beckett Ave. Short Beach, CT. 06405.

Requesting variances for the following:

Schedule A

Section 7.3 Height. From 30.7 feet to 39.6 feet where 30 feet is maximum allowed.

Section 7.4 (5A). Setbacks. From street, 10.2 feet where 20 feet is required.

Section 7.4 (5D). Setbacks. From Long Island Sound. 25 feet to less than 25 feet where 25 feet is required.

Section 7.4 (5E). Setbacks. From critical resources. 25 feet to less than 25 feet where 25 feet is required.

Section 7.4 (5F). Setbacks. From side or other property. 5.2 feet where 10 feet is required.

Section 7.5 (6). Building lot coverage. 40% where 30% is maximum allowed.

Section 7.5 (7). Total floor area as a percentage of lot area. From 55.3% to 63.3% where 50% is maximum allowed.

7.5 (8). Maximum aggregate lot coverage. From 81.0% to 80.1% where 75% is maximum allowed.

Discussion: Dave Steinman asked if everyone was prepared for discussing this application or would anyone want us to table this to a future date. All agreed we could move ahead with our

discussion. Walter Kawecki asked what the format would be and Martin Hallier explained we should discuss the application before we voted on any motion.

Norma Bennum stated that she had concerns about the hardship of this case. Said she might vote for a 4 foot increase in the building height but not an almost 9 foot increase in height. She said that an increase of that amount would not be the minimum required.

Marty Hallier stated that reg. 10.3.3 requires that “the variance ***** is the minimum necessary to accomplish such purpose”. He also stated we have to define the term hardship of this case.

John Elgee asked why we were being asked to approve variances for nonconformities that have been in effect since the building was last remodeled. Martin Hallier said we have no record of these variances being previously approved so the Zoning Board had to include them in the application.

Martin Hallier asked, has a hardship been demonstrated, or was the site unique? Said that the FEMA flood map shows the whole area has the same problem.

Walter Kawecki added as a New Englander he doesn't want to change the area, and that we have a duty to keep the same conditions that do not affect the general district the parcel is located in.

Martin Hallier stated that all of zone B is affected by these conditions.

Walter Kawecki added that he was concerned that if we allow these changes New Yorkers might come in and want to make changes, and further that more arbitrary decisions might make for more similar requests in the future.

Norma Bennum added that the Fema request to raise the height 8.9 feet instead of 4 feet was not a requirement but a reason to receive a grant of money.

Walter Kawecki questioned whether not allowing certain changes might cause people to move out or sell their properties.

Martin Hallier added that the Connecticut Land Use handbook does not recognize FEMA standards to be requirements but only recommendations.

Dave Steinman stated that the VE district needs to be addressed by the CASB Zoning Board, Conn. Housing Dept., Town of Branford and FEMA.

John Elgee added that in the Verrillo case (presented at the 1/4/206 hearing) it cited Ward vs ZBA (Supra, 153 Conn. 144-45) which basically states “that major variances granted to a particular area with similar conditions is in fact rewriting zoning regulations”. He stated the ZBA cannot change zoning regulations.

Martin Hallier questioned whether the conditions on the property before the ZBA were unique, said these conditions affect all properties in the area and the hardship was self created by applying for and being granted a variance by the Flood Erosion Control Commission in 1988.

John Elgee again referred to the Verrillo case which cited the Komondy vs ZBA (127 Conn App. 669, 678, 16 A3D 741-2011) which said in part, "An applicant therefore bears the burden of establishing, on the record of the proceeding before the ZBA, that the claimed hardship is peculiar to its property and not one present in the zoning district".

Dave Steinman added that FEMA regulations are not mandatory and that the hardship is monetary and self imposed. He asked that the applicant go back to the Zoning Board and that we could not go to 39 foot height against our regulations.

Martin Hallier stated that towns have not addressed the questions of increased storms. Also mentioned that two houses granted variances for increased height (67 Little Bay Lane and 53 Beckett Ave.) were not in the VE zone and both had made their houses less nonconforming. He wanted to make a motion that the hardship was not unique, was self created by the variance granted to the Flood Erosion Control Commission and that no legal hardship had been demonstrated.

Walter Kawecki questioned why a variance granted almost 30 years ago was germane to the present discussion. He also asked whether we could refer this appeal back to the Zoning Board.

Martin Hallier said we could not because the applicant was appealing a decision of the Zoning Board to us.

Dave Steinman stated that this hardship was self created and financial and that at the January hearing it was clear the applicant was seeking this variance in order to receive a FEMA grant.

Walter Kawecki added he thought that in not allowing a variance if there was subsequent further storm damage incurred by the homeowner then that might be considered confiscatory on our part.

Norma again reiterated that the hardship was a financial one.

Dave Steinman again added that this problem should be revisited by the Zoning Board especially the question of VE zones and he could not approve this request. He also cited the state of New Jersey where the legislature overrode the local municipalities and changed certain parts of all zoning laws.

Martin Hallier made a motion to deny all requested variances of this application because no hardship had been demonstrated and the FEMA guidelines cited do not qualify for this. The motion was seconded by John Elgee and passed unanimously.

John Elgee informed Mr. Clifford that he would mail him by certified mail his application denial and the decision would be posted as a legal notice in the local paper, The Sound within 15 days. The denial will also be posted at the Short Beach Post Office as well as at the Short Beach Union Church.

Mr. Clifford questioned the board, "all 39 houses up will be denied"?

Old Business: Martin Hallier brought up the question of whether the ZBA could seek legal advice without asking the CASB to allow them to.

Fran Clark (CASB clerk) stated that the ZBA had to ask the CASB permission to seek legal advice.

Martin Hallier presented and read a statement approved by the ZBA in April of 2007 which was also approved by the CASB that the ZBA could seek legal advice without the approval of the CASB, but must inform the CASB that they were in fact going to seek legal advice (copies attached).

After much shouting back and forth Dave Steinman stated the ZBA would seek legal advice when needed and merely inform the CASB that they were doing so.

Martin Hallier said he would try to average out the ZBA expenses for the preceding three years so that we might find out what ZBA expenses were so that we might adjust our application fees to cover those expenses.

Fran Clark asked that she receive two completed copies of all applications acted upon by the ZBA so that she might have one copy for CASB records and one copy for the ZEO. John Elgee said he would supply her with two completed copies in the future.

The question of charging a fee for application of form 31 to the ZBA was addressed. It was decided that since no fee had been charged in the past we should not charge any fee in the future.

Correspondence: None

Bills: None.

Walter Kawecki made a motion which was seconded by John Elgee to adjourn. Motion approved unanimously. Meeting adjourned at 9:12 P.M.

Submitted,

John Elgee

ZBA Secretary