

CIVIC ASSOCIATION OF SHORT BEACH
ZONING BOARD OF APPEALS
P.O. BOX 2012
SHORT BEACH, CONNECTICUT 06405

MINUTES FROM DECEMBER 5, 2016 REGULAR MEETING

Meeting held at The Orchard House, 421 Shore Drive, Branford, Connecticut. Called to order by Chairman, Walter Kawecky at 7:30 p.m. Roll called by the Secretary, Andi Hallier. In addition to the Chair and Secretary, present were Regular Members, Robert Schwall, Carleen Davis and Tom Perretta, and Alternate Member, Martin J. Hallier, Sr. David Steinman, the other Alternate Member of the Board, was not present for this meeting. Members of the public, Ms. Helen Wong and Mr. Frazier Bronson were also in attendance.

1. Receipt of New Applications for Appeal

Ms. Helen Wong and Mr. Frazier Bronson, of 63 Little Bay Lane, submitted an Application to the Board for an appeal of the Civic Association of Short Beach's denial of their request for variances of its Zoning Regulations. The Chair moved to accept this Application conditionally, but advised Ms. Wong and Mr. Bronson that prior to final acceptance, he would review the Application for completeness and compliance with the Board's Manner of Filing, and consult with legal counsel concerning the location of right(s) of way noted on the Applicants' surveys. Mr. Perretta seconded the Chair's Motion for conditional approval of said Application, pending the Chair's consultation with the Board's attorney. The Motion carried unanimously upon voice vote thereafter.

2. Minutes

The Chair made a motion to approve the draft minutes from the Board's November 7, 2016 Annual Meeting. Mr. Perretta seconded the Motion. The Minutes were approved as drafted unanimously upon voice vote.

3. Old Business

The Board resumed discussion of proposed amendments to the "Rules of the ZBA of Short Beach." The Chair circulated a copy of the proposed rule changes, which were discussed *seriatim*.

At the outset, The Chair again noted his general incorporation of inclusive, gender-neutral terms throughout the Rules (*e.g.*, where once the Rules read "him," they now read "him/her."). No further discussion was held regarding this general amendment.

appointed *by the regular members of the Zoning Board of Appeals,*” thereby conforming with the language of Conn. Gen. Stat. §8-5 (changes italicized). Ms. Hallier confirmed that Conn. Gen. Stat. § 8-5 provides that the “board by vote of its regular members shall *elect* a chairman from among its members” Hearing no further discussion on the matter, the Chair revised the proposed amendment to Section I to track this statutory language. As amended, Section I would read: “[a] Chairman shall be *elected by the regular members of the Zoning Board of Appeals.*” (changes italicized).

The Chair then proposed the addition of language under Section I of the ZBA Rules which would afford the Board’s Chairman the ability to appoint an Acting Chairman in the event of his/her unavailability. As amended, the 7th sentence in Section I would read as follows: “If the Chairman shall be absent from a meeting, *the Chairman may appoint a temporary acting Chairman. If the Chairman does not appoint a temporary acting Chairman,* a member shall be elected by a majority of the regular members of the ZBA to be acting Chairman.” (changes italicized). Hearing no further discussion, the Chair moved on to the next proposed amendment.

Brief discussion was then held regarding the reference to the “Court of Common Pleas” contained in Section II. Ms. Hallier, an attorney by profession, confirmed that the reference is anachronistic, as Connecticut’s trial courts were once known as the Courts of Common Pleas, but have long-since been known as Connecticut’s “Superior Courts.” Hearing no further discussion on this point, the Chair proposed revising this Section II so that it makes reference to the Superior Court, rather than the Court of Common Pleas, and hearing no further discussion, moved on to the next proposed revision to the ZBA Rules.

The Board then discussed amendment of Section IV of the ZBA Rules, pertaining to the conduct of Board meetings; the proposed amendment involves deletion of the following italicized language: “All regular meetings shall be open to the public with the exception of executive sessions *following the hearing of applications.*” The impetus behind this proposed change is to enable the Board to hold Executive Sessions at any point during its meetings, and not just at the *end* of said meetings. The first sentence of Section IV would eliminate the superfluous language and read, simply: “All regular meetings shall be open to the public with the exception of executive sessions.” No further discussion was held regarding this proposed change.

Under Section VI(1), pertaining to the “Manner of Filing Appeals,” the Chair suggested that appeals of reviews of action, and not just appeals for variances, should be included in the appeals process. Section VI(1), as revised, would read as follows: “All applications for an Appeal for a Variance *or Appeal For a Review of Action* shall be contained in the official form adopted by the Zoning Board of Appeals for that purpose. . . .” (changes in italics). As currently drafted, Section VI(1) does not explicitly provide for an appeal of a “review of action.” No further discussion was held on this item.

The Chair then proposed another amendment of Section VI(1), the ZBA’s Manner of Filing, to include a change in the time limit within which an Applicant may bring an

appeal to the ZBA from “two (2) months,” to the more precise “sixty (60) days.” Mr. Hallier took issue with the wording of this section, to the extent that it provides that an Applicant may bring an appeal to the ZBA . . . “after *the denial* of an Application for a Zoning Permit by the Executive Board of the Civic Association of Short Beach.” Mr. Hallier suggested that the words “the denial of” be replaced with “an action on an Application” Mr. Hallier pointed out that this language would permit appeals of other decisions of the Civic Association when acting in its capacity as Short Beach’s Zoning Commission. Incorporating the revisions suggested by both the Chair and Mr. Hallier, as amended, the second sentence of Section VI(1) would read: “An appeal shall be taken to the ZBA within *sixty (60) days after an appealable action* by the Executive Board of the Civic Association of Short Beach.” (changes italicized). No further discussion was held on this proposed amendment.

The Chair then raised the proposed change to the Section VI(2) of the ZBA Rules, which would delete the specified dollar amount of the filing fee for appeals, thereby alleviating the need for the Board to revise this Section each time it decides to change the amount of the fee. A grammatical change was also made, changing the indefinite article in “a Filing Fee,” to the definite, “*the Filing Fee.*” As amended, this provision would read: “Twelve (12) copies of the Application (Form 30) and Schedule A Information (Form 30A) with original signatures of the applicant (or agent) and the owner shall be submitted, together with *the Filing Fee.*”

With regard to the documentation an Applicant must submit to the Board in support of his/her Application under Section VI(3), the Chair proposed the following:

(1) Subsection 3.1 to require the Applicant to submit twelve (12) copies of *all pages of current deed* for subject property.” The intent of this change is to clarify, for the Applicant, that the first and last pages of the current deed to the property will not suffice. No further discussion was held on this change.

(2) repeal of this subsection, and replacement with the language tracking Section 20-300b-1, et seq. of the Regulations of Connecticut State Agencies. After discussion, the Board distilled the following proposed language to replace current Section VI(3)(1): “*Twelve (12) original copies of a Property and Boundary Survey, dated after 8/13/96 and conforming to Sec. 20-300b[-1, et seq.] of the Regulations of Connecticut State Agencies, [as amended,] and each bearing the original signature and seal of a Connecticut licensed surveyor [sic] such survey to include, but not be limited to: Title block, north point, numeric and graphic scale, location map, seal and signature of the preparer and signature, street address, assessor’s map, block and lot number, and all revision dates; Boundaries of the property certified to a State of CT Class A-2 Survey Standard (Effective 8-5-98); and Location of all existing buildings, additions, structures, walls, fences, property size, frontage, septic system and landscaping.*”

Ms. Hallier agreed to review the Regulations of Connecticut State Agencies in order to determine whether the Board could make this particular section’s

language more user-friendly for the Applicant. Further discussion regarding the proposed changes to this section then segued into discussion of the proposed change to Section VI(3)(6).

Section VI(3)(6) currently requires an Applicant to submit twelve (12) A-2 Survey-compliant copies of a Plot Plan drawn to scale in support of his/her Application. The Chair proposed an amendment to subsection 3.6.a, which would require said Plot Plan to include, "Dimensions and area of the lot, including apparent, *graphically represented* width of all abutting street rights-of-way and all other easement[s] and rights-of-way of record, *including any easements and rights-of-way in dispute.*" (proposed changes italicized). The Chair averred that these changes are intended to clarify for the Applicant what information the Board requires the Plot Plan to include.

Mr. Hallier suggested that the language regarding abutting street rights-of-way, easements, rights-of-way of record and easements and rights-of-way in dispute should be incorporated into subsection 3.3, since one need not be a surveyor in order to draw up a Plot Plan, and surveyors themselves may, and often do, simply note by reference the existence of such rights-of-way/easements in the Notes on their Property and Boundary surveys, without representing them graphically. Mr. Hallier further pointed out that as drafted, subsection 3.6.a does not require a Plot Plan to have any degree of accuracy or precision, leaving the Board without sufficient information on which to base a decision, and exposing the Board to potential litigation. Ms. Hallier agreed to draft new proposed language for subsections 3.3 and 3.6 for the Board's consideration, upon completion of her review and analysis of Regs. Conn. State Agencies §20-300b-1, et seq.

The Chair then took up the proposed change to Section VI(4), which would reduce from twenty (20) to fourteen (14) the number of days prior to the Public Hearing on an Application that the Applicant must notify abutting landowners by certified mail regarding the Hearing. Mr. Bronson noted that the Board's current Manner of Filing provides for a fourteen (14) day notice period. Mr. Hallier pointed out that this provision of the ZBA Rules initially provided for a 14-day notice period, and the ZBA amended the Rule to extend the period to 20 days in order to afford time for the United States Postal Service to deliver said notice(s). Ultimately, the Chair suggested that the Board approve the change to fourteen (14) days, with the understanding that, if needed, the Board can revisit this provision and adjust it accordingly in the future.

The Chair then moved to table the remainder of the Board's discussion of proposed ZBA Rules changes in order to address the scheduling of a Public Hearing on Ms. Wong and Mr. Bronson's Application for variances with respect to their property at 63 Little Bay Lane. Ms. Hallier seconded this Motion. The Board then voted unanimously to table discussion of the amendments to the ZBA Rules and took up the issue of scheduling the Public Hearing on the 63 Little Bay Lane Application.

4. New Business

a. Approval of 2017 ZBA Meeting Schedule

Prior to discussion of scheduling of the Public Hearing on the 63 Little Bay Application, the Chair circulated among the Board Members for their review and approval a schedule of its meetings for the 2017 calendar year. The Chair pointed out that the first Monday in January, 2017 (January 2, 2017) is a holiday. He suggested that in order to hold a meeting in January, and to accommodate the 63 Little Bay Lane Applicants, the Board should meet on Tuesday, January 10, 2017 (Monday, January 9, 2017 was not considered as an option, because the Civic Association of Short Beach's regular monthly meeting was already scheduled for that evening). The Chair moved that the Board accept the proposed 2017 Meeting Schedule as drafted. Ms. Davis seconded the Motion and it carried unanimously thereafter on voice vote.

b. Scheduling of Public Hearing on 63 Little Bay Lane Application

Based upon the approval of the 2017 Meeting Schedule, the Chair then moved, pending final approval of their Application, to hold a Public Hearing on Ms. Wong and Mr. Bronson's Application with respect to 63 Little Bay Lane on Tuesday, January 10, 2017, at the Orchard House, 421 Shore Drive, Branford, Connecticut at 7:30 p.m. Mr. Perretta seconded the Motion, and it passed unanimously.

3. Old Business - Continued

Further Discussion re Changes to ZBA Rules

The Board then resumed discussion of the proposed changes to the Board's Rules, and the Chair proposed the addition of the following italicized language to Section VII(7), which, as amended, would read:

“Applications are to be submitted to the ZBA, at a ZBA meeting. Only complete applications accompanied by the filing fee and all required documents, collated together, may be submitted to the ZBA.

Application[s] will be reviewed for completeness and accuracy in accordance with Section 10.2.3 of these rules.¹

¹ 10.2.3 provides: “The powers and duties of the Zoning Board of Appeals include the following: . . . To determine and vary the application of these Regulations in harmony with their general purpose and intent and with due consideration for conserving the public health, safety, convenience, welfare and property values solely with respect to a parcel of land where, owing to conditions especially affecting such parcel but not affecting generally the district in which it is situated, a literal enforcement of these Regulations would result in exceptional difficulty or unusual hardship, so that substantial justice will be done and the public safety and welfare secured.”

Applications deemed complete and accurate will be formally accepted at the next regular meeting of the ZBA, at which time the date(s) for a public hearing will be set.”

The intent behind the addition of this new language is to clarify for the Applicant that Applications must be complete upon submission, and that s/he should not expect approval of his/her Application at the meeting at which s/he submits it, since it must be reviewed for completeness and accuracy prior to formal acceptance. The new provision also puts the Applicant on notice of when s/he can expect formal approval of the Application, assuming it is complete and accurate as submitted; to wit: at the Board’s next regular meeting. Finally, the provision assures the Applicant that a date for a Public Hearing on his/her formally-accepted Application will be set at that same, next regular meeting of the Board.

The Chair’s final proposed Rule change was the addition of the following paragraphs to Section VII:

8. *Public hearings shall be scheduled to commence within sixty-five days after formal acceptance of an application for appeal.*
9. *The period for public hearing shall be completed within thirty-five days after such hearing commences.*
10. *All decisions on such matters shall be rendered not later than sixty-five days after completion of such hearing.*

All of these additional provisions serve to put the Applicant on notice of the statutory time limits by which the Board is bound pursuant to Conn. Gen. Stat. § 8-7d.² No further discussion was held regarding these additions.

The Chair then made a Motion to approve the revisions described above as a package, with the caveat that the Board may revisit them at its discretion, and/or pending Ms. Hallier’s review of section 20-300b-1, et seq. of the Regulations of Connecticut State Agencies and further comment and discussion regarding the language contained in Sections VI(3)(3) and VI(3)(6), as noted above. Mr. Peretta seconded the Chair’s Motion to approve the Rule changes as discussed. The Motion carried unanimously and the revisions are now incorporated into the ZBA Rules, effective December 5, 2016.

5. Bills and Correspondence

None.

² Conn. Gen. Stat. § 8-7d provides, in relevant part, that, “(a) In all matters wherein a[n] . . . appeal must be submitted to a . . . zoning board of appeals under this chapter, . . . and a hearing is required or otherwise held on such . . . appeal, such hearing shall commence within sixty-five days after receipt of such . . . appeal and shall be completed within thirty-five days after such hearing commences. . . . All decisions on such matters shall be rendered not later than sixty-five days after completion of such hearing . . . The . . . applicant may consent to one or more extensions of any period specified in this subsection, provided the total extension of all such periods shall not be for longer than sixty-five days, or may withdraw such petition, application, request or appeal.” (emphasis added).

6. **Adjournment**

The Chair moved to adjourn the meeting. Ms. Davis seconded the Motion, which was thereafter approved by voice vote, and the meeting was adjourned.

RESPECTFULLY SUBMITTED,

Andi Hallier, Secretary
Short Beach Zoning Board of Appeals