

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

MINUTES FROM THE APRIL 2, 2018
PUBLIC HEARING AND REGULAR MEETING

Public Hearing/Regular Meeting held at The Orchard House, 421 Shore Drive, Branford, Connecticut. Called to order by Chairman, Walter Kawecki. The Secretary called the roll. Present at this meeting were Chairman Walter Kawecki, Secretary, Andi Hallier, and Regular Members, Carleen Davis, Robert Schwall and Tom Perretta. Also present were Alternate Members, Martin J. Hallier, Sr. and David Steinman. Since all five Regular Members were present, the Alternate Members were not seated for this Hearing/Meeting.

1. Public Hearing on Application 2018-2 re: 63 Little Bay Lane

After publishing Notice in *The Sound* on March 22, 2018 and again on March 29, 2018, pursuant to Connecticut General Statutes § 8-7d(a), The Board held a Public Hearing on Application #2018-2, 63 Little Bay Lane. The Secretary read the public Notice into the Record as follows:

“Notice is hereby given that the Short Beach Zoning Board of Appeals will hold a Public Hearing at 7:30 p.m. on Monday, April 2, 2018 at Orchard House, 421 Shore Drive, Branford, Connecticut to consider the following:

Application #2018-2, 63 Little Bay Lane. Requesting variances for the following:

Schedule A, section 5b – setback from rear property line from 6.1 feet to 6.1 feet whereas 20 feet is required, and section 5d (Reg. 3.28) minimum required setback from Long Island Sound from 7.8 feet to 9.8 feet where 25 feet is required.

Owner/Applicant: Frazier Bronson and Helen Wong.

Applicant’s plans and supporting material are on file for Short Beach at Branford Town Clerk’s Office.”

Applicant, Frazier Bronson then submitted, and Secretary Hallier accepted into the Record the Certificate of Mailing from the United States Post Office dated March 14, 2018, certifying, pursuant to Connecticut General Statutes § 8-7d(1) and the Rules of the Zoning Board of Appeals of Short Beach § VI(4), that the Applicants mailed Notice of this Hearing to all persons who own land adjacent to the land that is subject to the Hearing.

Mr. Barry Vener, an owner of property adjacent to 63 Little Bay Lane, stated for the Record that he did not receive said Notice from the Applicants. Upon inquiry from Secretary Hallier, Mr. Vener acknowledged that his presence evidenced his actual knowledge of the proceeding.

John Lambert, Esq., then commenced presentation of the Application on behalf of Mr. Bronson and Ms. Wong. Mr. Lambert initially requested that the Record of the Public Hearing held on the Applicants' last Application (#01-2017), which is currently under appeal in the Connecticut Superior Court, be incorporated into the Record of the current Application (#2018-2). Chairman Kawecky denied Mr. Lambert's request, stating that he did not feel it would be appropriate to do so given the Applicants' pending Appeal of the Board's decision on the prior Application.

Mr. Lambert then submitted into the Record the following: (1) a summary of recent cases regarding land use law; (2) a copy of the Honorable Judge Trial Referee, Edward R. Karazin's Opinion in Mayer-Whitman v. Zoning Bd. of Appeals of Stamford, No. FSTCV-16-6027735-S, 2016 WL 8135390 (Conn. Super. Ct., Dec. 29, 2016); (3) The Honorable Barbara M. Quinn's Opinion in Nejdl v. Town of Clinton Zoning Bd. of Appeals, No. MMX-CV-15-6014141-S, 2017 WL 1239453 (Conn. Super. Ct., Jan. 24, 2017); and (4) The Honorable Salvatore C. Agati's Memorandum of Decision in Kwesell v. East Haven Zoning Bd. of Appeals, No. NNH-CV-15-6056545-S, (Conn. Super. Ct., May 25, 2017). Mr. Lambert requested that the Board review and consider these decisions when ruling on the Application. He stated that they stand for the proposition that when an Applicant reduces nonconformity, he need not demonstrate hardship.

Mr. Lambert then introduced Mr. Bronson to speak in support of the Application. Mr. Bronson began by describing the damage the house sustained in Tropical Storm Irene and then in Hurricane Sandy. Mr. Bronson stated that the Applicants paid 60% of the costs to repair this damage, and that their residence is now categorized by FEMA as a distressed property. Mr. Bronson also noted concern regarding rising sea levels resulting from climate change, and the possibility of more storms as intense as Irene and Sandy were.

Mr. Bronson stated that the Applicants have received a FEMA grant through the Town of Branford for flood mitigation. He went on to point out that in this new Application, he and Ms. Wong have attempted to strike a balance: instead of elevating the house on piers, the new design removes the first floor living space entirely, and replaces it with piers. As a result, the current design meets the 30' height restriction in Short Beach. Expansion on the west side (rear) of the house involves expansion of a portion of the second and third floor interior space, and removal a non-compliant first floor deck. Mr. Bronson stated that their design would make the property less non-conforming. He also averred that the proposed changes will make the residence substantially safer for its residents and their neighbors. Mr. Bronson acknowledged that FEMA has not approved the current design/construction proposal.

Chairman Kawecky inquired further about the expansion of the rest of the second floor of the residence on the western side. Mr. Bronson explained that they are attempting to regain some of the living space lost as a result of eliminating the first floor and deck by bringing the rest of the western half of the house out to 6.1 feet.

Applicant, Ms. Helen Wong then spoke in support of the Application. She reiterated Mr. Bronson's concerns regarding the damage to the residence that resulted from Storms Irene and Sandy, which she stated she saw on videotape. She said she is worried that water from another, similar storm, will destroy her house and the people in it. She noted that the location of the house is uniquely situated when compared to other properties nearby. In particular, she noted that during high tide cycles, the water pours into/onto their property because it sits lower than the others do, and the water is channeled by rocks that funnel storm waters directly onto their property.

Ms. Wong also emphasized the changes the Applicants have made to their previous Application. Specifically, she pointed out that their new plan retains the current peak elevation, which meets the Short Beach Zoning Regulations at 30'. The new design also reduces the size of the deck on the southern and western sides of the house. Their living area is also reduced. Ms. Wong said she understood her neighbors' concerns about their previous Applications, which proposed a 40' peak elevation, "because the house is already big, out of character with the neighborhood," and "people do not want to see a forty foot mansion" at this location. Ms. Wong also requested that the Board expedite its decision on the Application, because the Applicants still need to seek FEMA approval of the new design.

Upon completion of Ms. Wong's presentation, Chairman Kawecky noted that he received two emails in support of the Application, which he has not printed out, but intends to forward to Secretary Hallier so they will become part of the Record.

Public Comments

Mr. Alfred Bertoline of 137 Shore Drive spoke in favor of the Application. Mr. Bertoline noted that the Applicants have endured frequent storms of increasing severity, which have not only caused property damage, but have also raised concerns about personal safety. He believes their new plan mitigates these risks, and he urged the Board to approve the Applicants' new plan, which he characterized as "a reasonable compromise."

Ms. Lisa Bertoline, also of 137 Shore Drive, echoed her husband Alfred's sentiments and urged the Board to approve the Application.

Mr. Richard Jennings, of 109 Beckett Avenue stated that he can see the property at 63 Little Bay Lane from his home, and he noted that whenever the tide is high, he can see the water lapping at their front deck. In Mr. Jennings' opinion, this is a personal safety issue, and he expressed his hope that the Board would approve the Application.

Ms. Mary Nicolas, also of 109 Beckett Avenue, spoke in favor of the Application. She stated that the Applicants are great neighbors who really enjoy their property and want to remain in Short Beach. She said she hoped the Board would approve the Application and enable the Applicants to protect their property.

Mr. Barry Vener, of 61 Little Bay Lane voiced opposition to the Application. He stated that he did some research in the Branford Land Records, and noted that the Applicants do not have a mortgage on the property, and therefore, they are not required by a lender to carry flood insurance. He accused the Applicants of being “bad investors,” and argued that the reasons for the requested variances are financial in nature. Mr. Vener added that by expanding the second and third floors of the residence on the western side from a 20’ to a 6.1’ setback from the boundary in fact increases the nonconformity on that side. Mr. Vener also denied that there is a personal safety issue here, inasmuch as all Short Beach residents evacuate in advance of severe storms.

Finally, Mr. Vener stated that he had contacted Richard Verville, the Chief of the Hazard Mitigation Assistance Branch of FEMA, who confirmed that FEMA will not fund construction because there is an elevator included in the new design. Mr. Vener then submitted an email he received from Mr. Verville which indicates, “[t]he installation of an elevator in a home elevation using any FEMA funded mitigation program would be considered impermissible.” Secretary Hallier accepted this email into the Record.

Ms. Kerry Alexander of 66 Little Bay Lane, (the Applicants’ next-door-neighbor) stated that this proposal is an improvement over the Applicants’ last design. She also stated that she believes this is a safety issue not just for the Applicants, but for the neighbors as well. She requested that the Board grant the Application.

Mr. Jeffrey Clark, of 86 Harbor Street, Branford (not a Short Beach resident), lived at 50 Little Bay Lane as a child and experienced severe storms personally in the 1950s. He stated that 63 Little Bay Lane is in a location of extreme hardship due to the risk of flooding. He urged the Board to approve the Application, stating that the hardship here is not only financial, but a matter of personal safety.

Ellen Carucci, owner of adjacent property located at 67 Little Bay Lane, spoke in favor of the Application. She stated that the Applicants are wonderful neighbors, and that their new Application appears to satisfy the concerns voiced by residents in response to their previous Application. She and her husband, Will Tracy, fully support the granting of the Application.

Ms. Patti Feraro, of 175 Shore Drive, stated that she and her wife, Donna Chenette, wholeheartedly support the Application. She stated that they believe the proposed improvements to the residence at 63 Little Bay Lane are necessary to protect the safety of the home, its occupants, as well as the other homes and residents in the neighborhood.

Donna Chenette, of 175 Shore Drive, also spoke in support of the Application. She stated that she and her wife, Patti Feraro have been through the storms Irene and Sandy, and have witnessed the damage the residence at 63 Little Bay Lane sustained first hand. She also expressed the opinion that the Applicants have made appropriate changes to their original plan in order to accommodate the objections raised by residents, and that this Application should be granted for safety reasons.

Mr. David Peterson then raised a Point of Order, inquiring as to the purpose of the sign-in sheet circulated among the Hearing attendees. Chairman Kawecky explained that the sheet was circulated among the attendees so that those who wished to take a position on the Application would be given an opportunity to be heard.

Ms. Maureen Vener, of 61 Little Bay Lane, spoke in response to a suggestion made by Mr. Jeffrey Clark to the effect that all of the houses in this particular, low-lying area of Short Beach will someday be raised due to rising sea levels. Ms. Vener wanted to point out that not all of the property owners in this area have the financial means to do so, and therefore did not agree that the raising of all of the houses was necessarily an eventuality, as Mr. Clark posited.

Finally, Martin J. Hallier, Sr., of 96 Highland Avenue, posed some questions to the Applicants. First, he asked if the proposed elevator shaft would exceed the height of the existing peak elevation. Mr. Bronson confirmed it would not. Mr. Hallier, and then Chairman Kawecky also asked Mr. Bronson to clarify whether the plans submitted to the Board have been approved by FEMA, and Mr. Bronson confirmed that they have not.

Mr. Vener then submitted a second email, this one received from Diane Ifkovic, an Environmental Analyst at the Connecticut Department of Energy and Environmental Protection pertaining to the installation of elevators in FEMA-funded elevations. Secretary Hallier accepted this submission into the Record.

Following the public comment portion of the Hearing, Attorney Lambert resumed his presentation to the Board. He emphasized that the cases he submitted into the Record support the proposition that the Applicants need not prove hardship, because they are reducing the residence's non-conformity with Short Beach's Zoning Regulations. He noted that this is not a case where the Applicants want to add something or make a bigger house. Rather, this is a situation where the Applicants are attempting to mitigate a flood hazard. Attorney Lambert went on to state that "there is a societal need to change things," and argued that these Applicants have done their best to maintain and/or reduce the residence's non-conformities.

At this point in the proceedings, Chairman Kawecky entertained a Motion to Adjourn the Public Hearing on Application #2018-2. Secretary Hallier moved to adjourn. Mr. Perretta seconded Secretary Hallier's Motion, which carried unanimously thereafter via voice vote, and the Public Hearing was adjourned.

2. Receive New Applications for Appeal

No applications for appeal were submitted to the Board at this meeting.

3. Minutes

Mr. Perretta moved to approve the Minutes from the Board's March 5, 2018 Regular Meeting, as drafted and submitted by Mr. Steinman, who served as Secretary at that meeting in Ms. Hallier's absence. Mr. Schwall seconded the Motion to approve the Minutes. The Motion carried unanimously thereafter.

4. Executive Session

The Board then went into Executive Session to discuss the status of the litigation concerning the Board's decision as to Application #01-2017, regarding 63 Little Bay Lane.

5. Old Business

None.

6. Bills and Correspondence

Chairman Kawecky confirmed that he would forward the two emails he received in

7. New Business

None.

8. Adjournment

Chairman Kawecky entertained a Motion to Adjourn the Meeting. Secretary Hallier moved to adjourn, and Ms. Davis seconded the Motion, which then carried unanimously upon voice vote.

Respectfully submitted,

Andi Hallier, Secretary
Civic Association of Short Beach Zoning Board of Appeals