

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

MINUTES FROM THE APRIL 5, 2021 MEETING AND PUBLIC HEARING

Meeting held remotely via Google Meeting (<http://meet.google.com/xph-sfed-hqs>). Called to order by Chairman, Walter Kawecki.

1. Commencement of Public Hearing on Application No. 01-2021

The Chairman announced the commencement of the Public Hearing on Application No. 01-2021 to vary the application of sections 7.5 and 7.6 of the Zoning Regulations of the Civic Association of Short Beach as they pertain to the premises located at 257 Shore Drive, Short Beach, Connecticut, brought by premises owners, Robert and Patricia Deschamps.

2. Roll Call

At the Chairman's request, Secretary Hallier called the roll. Present at this Hearing were Chairman Kawecki, Secretary Hallier, and Regular Members, Carleen Davis and Thomas Perretta. Also present were Alternate Members, David Steinman and Martin Hallier, Sr. The Chairman seated all six Board Members for purposes of the Hearing.

3. Conflict of Interest Poll

At the Chairman's request, the Secretary polled the Board Members for conflicts of interest with respect to the pending Application No. 01-2021. All of the Board Members confirmed that they have no conflicts concerning said Application.

4. Notice of Public Hearing Made Part of the Record on Appeal

At the Chairman's request, the Secretary read the Notice of Public Hearing on Application No. 01-2021, as published in *The Sound* on March 21, 2021 and April 1, 2021 into the record.

The Zoning Board of Appeals of the Civic Association of Short Beach will hold a Public hearing on Monday, April 5, 2021 at 7:30 p.m. on the Google Meet video conferencing platform. Google Meet credentials as follows:

ZBA Google Meet Hearing at:

Meet.google.com/xph-sfed-hqs

Join by telephone:

(US) +1 612-279-8559 (PIN: 861358956)

On the Agenda will be Application for Variance(s) No. 01-2021, Robert & Patricia Deschamps, 257 Shore Drive, Branford, Connecticut.

Schedule A:

Line 7: Total Floor Area from 892 sq. ft. (29.3%) to 2163 sq. ft. (71.2%);

Line 9: Minimum Ground Floor Area from 736 sq. ft. to 536 sq. ft.
Sections 7.5 and 7.6.

The Secretary confirmed that copies of the two Notices of Public Hearing that were published in *The Sound* have been made part of the Record on Appeal. The Secretary noted that this Notice was also posted on the Civic Association of Short Beach’s website on March 19, 2021 and remains posted there through the present time.

5. Certificate of Mailing of Notice of Hearing on Application to Abutting Land Owners

The Chairman confirmed receipt of the requisite proof that the Applicants sent Notice of this Hearing on their Application, via certified mail return receipt requested to all abutting land owners. The Secretary confirmed that this Certificate would be made part of the Record on Appeal.

6. Presentation, Statements and Questions

a. Applicants’ Presentation

Timothy Lee, Esq., an attorney with the law firm of Fasano, Ippolito, Lee and Florentine, commenced the presentation on behalf of the Applicants, Robert and Patricia Deschamps. Attorney Lee began by noting that the Applicants worked with their project engineer, Tony Thompson of Plans Ahead, LLC to redesign the proposed structure so as to eliminate the need for a height variance, which was one of the Board’s primary concerns with their previous Application, which the Board denied. Attorney Lee indicated that the Applicants were no longer requesting a variance of the Zoning Regulations’ thirty-foot height restriction, but that they are seeking variances with respect to total floor area and minimum ground floor area, given the atypically small lot size, which measures slightly more than 3000 square feet (where 4500 square feet is the minimum required lot size).

Attorney Lee noted that the structure that is currently located on the premises does not conform with the Zoning Regulations in a number of respects, and that the Applicants’ proposal would reduce and/or eliminate several existing nonconformities. Attorney Lee referenced his February 4, 2021 correspondence, submitted into the Record an Appeal, and cited to a recent decision of the Connecticut Superior Court, JML Properties, LLC v. Branford Zoning Board of Appeals (July 30, 2020) in support of the proposition that a Zoning Board of Appeals may grant a variance if the application proposes the elimination or reduction of other existing nonconformities. Attorney Lee went on to point out that the Applicants’ proposal in this case eliminates existing nonconformities, including the front and rear yard setbacks, the setback from Long Island Sound, the setback from Coastal Resources, and the side yard setbacks. Attorney Lee argued that the proposed Application would result in a net decrease in nonconformities, which under the Court’s decision in JML Properties, would form an independent basis for granting the requested variances. Attorney Lee further argued that the Board should grant the requested variances under the traditional hardship analysis, because the Applicants’ lot size in well below that required under the Zoning Regulations, and the existing structure is located in the VE Flood Zone.

Tony Thompson of Plans Ahead, LLC, the Applicants’ project engineer, then presented an overview of how he worked with the Applicants to revise their proposal from that previously submitted to the Board. He explained that the new proposed structure would be located outside of the VE Flood Zone, which requires slight elevation of the structure. The lower level would be a concrete slab, and no utilities can be placed below that level. The

new proposal also reduced the structure's ceiling height by roughly one foot, enabling the Applicants to comply with the Zoning Regulations' thirty-foot height restriction, and reducing the side yard setbacks so that the new structure would be farther from the structures adjacent to it. In addition, the plan honors the setback from Shore Drive, and affords the requisite space for parking. Finally, Mr. Thompson noted that the proposed structure would be in harmony with the character of the neighborhood.

Attorney Lee went on to state that the Applicants' are confronted with hardships particular to this under-sized parcel, including its proximity to Long Island Sound, and that the Application would bring the structure into compliance with current FEMA Regulations by moving it out of the VE Flood Zone. Finally, he reiterated that the Application's reduction and/or elimination of nonconformities with respect to front, side and rear yard setbacks forms an independent basis for the granting the requested variances.

At that point, one of the Board Members asked Attorney Lee to expound upon the ways in which the proposal would reduce or eliminate existing nonconformities. Attorney Lee explained that the new structure would conform to the twenty-foot front yard setback requirement, while the current structure is nonconforming at 16.4 feet from Shore Drive. The proposal would also eliminate the current nonconformity with the 20-foot rear yard setback, since the new structure would be 25 feet one inch from the rear property line, whereas the current structure is located 16.4 feet from the rear property line. In addition, the current structure is located 19.5 feet from Long Island Sound, while the proposed structure would be 25 feet one inch from The Sound. Finally, Attorney Lee noted that the current structure does not conform with the Zoning Regulations' six-foot side yard setback (it is currently located at 4.1 feet from the side property line), while the proposed structure would be conforming at 6.4 feet.

Another Board Member posed a question regarding the elevation of the property, noting a concern about potential drainage issues onto adjacent properties and/or Shore Drive. The Board Member wanted to know about the existing elevation of the structure, and whether the elevation would change when the new house is built. Mr. Thompson addressed this issue by explaining that he did not expect that the contours or grade of the parcel would be significantly different once the new house is constructed. He stated that the plan is to keep the current grade as close as possible to pre-construction elevation. He also noted that if roof runoff from the new structure were to flow onto adjacent properties, infiltrators would be installed to collect the first inch of rain water, as required under the Building Code. The Board Member then asked the Applicants to review Zoning Regulations section 8.5.9, and to advise as to whether the proposal would comply with that section.

The Board Member then asked why the proposed structure included permanent stairs leading to the attic, when use of a pull-down stair leading to the attic would result in a reduction of the structure's total floor area (one of the requested variances at issue). Mr. Thompson explained that the attic is intended not only to house the utilities, but also for storage, in what is a relatively small structure at 500 square feet.

b. Public Statements

A member of the public who lives on Glen Street expressed concern about potential runoff and/or flooding on Shore Drive if the Application were approved and the new residence built. He also expressed concern about the size of the new structure in comparison to the existing structure, and that the new structure would obstruct his view of Long Island Sound from the second floor of his home on Glen Street.

Mr. Thompson addressed these questions, noting that the proposed structure's roof would be pitched toward Long Island Sound, as opposed to the roof on the current structure, which is pitched in the opposite direction. He indicated that it will be much easier to manage rain water runoff this way. Mr. Thompson also noted that he does not believe that the new structure would obstruct the water views from across Shore Drive. In fact, he stated that the water views from the opposite side of Shore Drive might actually be improved, since the new structure would not be as wide as the existing structure. Attorney Lee agreed, noting that the footprint of the new house would be significantly smaller than the existing structure, which would provide more surface area on the lot to accommodate on-site drainage, and might improve the view from the opposite side of Shore Drive. Finally, Mr. Deschamps advised that his adjacent neighbor plans to demolish the garage located on his premises, which might also improve the water view from the opposite side of Shore Drive.

c. Communications Received and Made Part of the Record on Appeal

Attorney Lee requested that his February 4, 2021 correspondence and attached case law be made part of the Record on Appeal. The Chairman agreed, and the Secretary confirmed that said correspondence and the annexed case law would be included in the Record.

7. Public Hearing Recess

The Chairman announced that the Public Hearing would stand in recess until the Board's next regularly scheduled Meeting on May 3, 2021. Civic Association of Short Beach Zoning Enforcement Officer, David Perkins, speaking as a member of the general public, and not in his official capacity, requested that the Board not recess the Public Hearing until the Board's next Meeting, and instead proceed to deliberate and render a decision on the Application. The Chairman noted that Mr. Perkins, in his official capacity as Zoning Enforcement Officer, would be tasked with issuing a final Certificate of Occupancy to the Applicants in the event the Board decided to grant the requested variances, and therefore he did not feel it was appropriate for Mr. Perkins to be commenting either in favor of or against the Applicants' requests. The Chairman then recessed the Public Hearing until May 3, 2021.

8. Regular Meeting

The Chairman then called to order the Board's Regular Meeting.

9. Approval of the Minutes from the Board's March 1, 2021 Meeting

The Chairman entertained a Motion to approve the Minutes from the Board's March 1, 2021 Meeting as submitted by the Secretary. Mr. Hallier moved to approve the Minutes, and Ms. Davis provided a second, after which the Minutes were approved.

10. Old Business

The Chairman noted that since Mr. Schwall resigned from his position as a Regular Member of the Board effective March 1, 2021, there are now two vacancies on the Board, one Regular position and one Alternate position. He asked the Board Members for recommendations of eligible individuals in Short Beach who might be willing to serve on the Board. One of the Board Members suggested that Richard Shanahan might be willing to serve as a Member of the Board, and offered to reach out to him.

Mr. Steinman also noted that the Board is missing Minutes from some Board Meetings that were held in 2012-2013, when former Member, John Elgee, served as Secretary, and he requested permission to reach out to Mr. Elgee in an attempt to obtain copies of those Minutes for posting on the Civic Association website. The Chairman asked Mr. Steinman to reach out to Mr. Elgee and attempt to obtain the missing Minutes.

11. Bills and Correspondence

No new bills or correspondence were submitted at this Meeting.

12. Old Business

The Chairman brought up the issue of a lack of conformity between the Applications for submission to the Civic Association and the Zoning Board of Appeals, and stated that he would contact Chris Collins, of the Civic Association, regarding the Civic Association's progress in revising its Application to conform with the Zoning Board's Application (Form 30A).

One of the Board Members inquired as to whether there would be any follow-up with Mr. and Mrs. Deschamps regarding his question about drainage and compliance with Zoning Regulation section 8.5.9. Another Board Member suggested that the Chairman reach out to the Applicants' counsel, Attorney Lee, for additional information on that issue. The Chairman agreed to do so, noting that since this remains an open issue, it was appropriate for the Board to recess, rather than conclude, the Public Hearing on the Application.

13. Adjournment

Hearing no further comment from the Board, the Chairman then entertained a Motion to Adjourn the Meeting. The Secretary moved to adjourn, and Mr. Hallier provided a second, after which the Motion carried unanimously, and the Meeting was adjourned.

Respectfully submitted,

Andi Hallier
Secretary

Zoning Board of Appeals
Civic Association of Short Beach