

CIVIC ASSOCIATION OF SHORT BEACH

ZONING BOARD OF APPEALS

P.O. BOX 2012

SHORT BEACH, CONNECTICUT 06405

MINUTES FROM THE OCTOBER 2, 2023 PUBLIC HEARING AND REGULAR MEETING

The CASB ZBA Public Hearing and Regular Meeting was held in-person at Orchard House, 421 Shore Drive, Branford. It was called to order at 7:30 by the Chair, Andi Hallier. Also present were Regular Member, Carleen Davis, and Alternate Members David Steinman and Martin Hallier, Sr. Absent were Regular Members Thomas Perretta, Barry Beletsky, and Patricia Hammel. The Chair appointed David Steinman as Acting Secretary.

Also present were Attorney Timothy Lee, counsel for Gerald Mastroangelo, CASB Zoning Enforcement Officer, David Perkins, CASB Board Member, Chris Collins, and Gerald Mastroangelo, owner of 269 Shore Drive. There were no members of the public present.

Continuance of Public Hearing on Application #03-2023

(Gerald Mastroangelo, 269 Shore Drive; Appeal of 9/21/22 Cease and Desist Order)

For the record, the Secretary read aloud the advertisement in The Sound publication for this Public Hearing:

The Zoning Board of Appeals of the Civic Association of Short Beach will hold a Public Hearing on Monday, June 5, 2023 at 7:30 p.m. at the Orchard House, 421 Shore Drive, Branford, Connecticut.

On the Agenda will be Application for Review of Action No. 03-2023 submitted by Gerald Mastroangelo, owner of 269 Shore Drive, Branford, Connecticut, Appeal of Civic Association of Short Beach Zoning Enforcement Officer's September 21, 2022 Cease and Desist Order regarding alleged conversion of a single-family dwelling for use by one (1) family to use by two (2) or more families in violation of Civic Association of Short Beach Zoning Rules and Regulations Sections 6.2.3 and 6.3.1.

Said Application is on file with and accessible to the public at www.shortbeach.org (click the "ZBA" Tab to view the materials). The Application is also on file with and accessible to the public at the Town of Branford Town Clerk's Office.

All persons attending this Hearing will have the right to be heard, and written communications will be received.

Conflict of Interest Poll

The Secretary polled the present ZBA Board Members and having no seeming conflicts of interest, the board continued the Public Hearing.

Applicant's Presentation

Attorney Lee discussed the timeliness of the Applicant's Appeal as compared to Superior Court case Cardwell v. ZBA. Mr. Lee provided a written response for the record. Mr. Lee discussed that in Cardwell, the applicant did not appeal the ZEO issuance of a September 30, 2009 Cease and Desist Order, but did actually appeal a July 9, 2010 request that the ZEO to rescind that Order. The ZEO denied the request to rescind the Order, the ZBA affirmed the ZEO decision on appeal, and the Superior Court upheld the ZEO's initial decision and deemed the Appeal was

untimely because Cardwell should have appealed the initial decision of the ZEO made September 30, 2009. Mr. Lee discussed that in this case, ZEO David Perkins issued a Cease and Desist Order on September 21, 2022 and that pursuant to Short Beach Regulations an appeal must be commenced within 60 days of issuance, to which Mr. Mastroangelo originally appealed by letter dated September 26, 2022 and by form on or about October 27, 2022. Mr. Lee discussed that since this Appeal was commenced within 60 days of the ZEO Order, the ZBA has jurisdiction to hear this Appeal.

The Chair discussed the timeline as including correspondence stating the intention to appeal the Cease and Desist Order to the former ZBA Chair dated September 26, 2022 and the initial Application Form 31 dated October 27, 2022. There was agreement that more appeals materials were submitted December 5, 2022, after the 60 day deadline.

The Chair discussed correspondence between Mr. Lee and the former Chair dated February 6, 2023 requesting a stay on the Appeal until April 3, 2023 in order for the Applicants to submit a complete Application, that on April 3, 2023 the ZBA accepted further Application materials even though the Application was still incomplete and beyond the 60 day point, and that on May 1, 2023 the ZBA accepted the Application as substantially complete pending the submission of the Warranty Deed, where upon a Public Hearing was scheduled for June 5, 2023. The issue of timeliness, being past the 60 day deadline was brought up at the June 5, 2023 Public Hearing where the Applicants then requested time to research and address the issue. Since there is no July Regular Meeting, the Applicants waived the 35-day hearing deadline and agreed to reconvene the Public Hearing on August 7, 2023. The attorney for the applicant asked that the August 7, 2023 Public Hearing be continued until October 2, 2023 due to a scheduling conflict.

There was discussion about Cardwell highlighting the 60-day deadline requirement to which Attorney Lee discussed that Cardwell was not relevant to the 60-day appeal deadline because Cardwell was about the appeal of a ZEO having made a wrong decision and that Mr. Mastroangelo's Appeal was complete and timely.

There was discussion about the Application's completeness. Attorney Lee discussed that the information requested wasn't necessary for their Appeal and that they submitted the Appeal with the original approval letter from the ZEO in 2020 and State Building Code interpretation provided by a Town of Branford Building official. The Chair discussed that this supplemental material was not requested by the ZBA.

A Board Member discussed whether the Applicants referred to the Manner of Filing for application material and whether they submitted everything at the October 4, 2022 meeting. Attorney Lee discussed having submitted a letter on September 26, 2022 appealing the decision to which he was told to submit the Application in October 2022. He mentioned that a site plan wasn't necessary in this case since it wasn't a setback issue and that he thought a complete Application was submitted.

Attorney Lee discussed that it was unfair for the ZBA at its December 2022 Meeting to deem the Application as incomplete after the 60 day deadline. He mentioned that the Warranty Deed was requested and what impact it may have on a decision.

There was discussion as to whether the Board was prejudiced by a failure to include a Warranty Deed in the Application material. The Chair mentioned that the Deed was the last thing submitted and it may be a matter of timeliness and not prejudice.

Attorney Lee discussed having a timely Appeal to overturn the ZEO Cease and Desist Order that should be heard by the ZBA.

There was further discussion about the Cardwell case and whether it stands for the proposition that the 60 day appeal period is mandatory. Attorney Lee discussed that wasn't applicable in this case because Cardwell applied to the ZEO's decision not to rescind the Cease and Desist Order and not the decision in the issuance of the original Order. There was discussion about not finding additional case law referring to the 60 day appeal time limit.

There was discussion about how this Appeal is not a prejudice issue but is a subject matter jurisdiction issue. Attorney Lee discussed that this Appeal should have been dismissed at the December 5, 2022 Meeting if this Board felt it was past 60 days. The Chair discussed that timeliness in this case may be distinguishable because the Applicants asked the ZBA to table action. Timeliness, subject matter jurisdiction, and a 60-day mandatory appeal deadline were concerns brought up on record during the past meetings regarding this case.

There was discussion that subject matter jurisdiction was a new issue for this Board.

There was discussion that on May 1, 2023 the Application was accepted as substantially complete, that Attorney Lee did provide requested supplemental material (Warranty Deed) and a Public Hearing Commenced June 5, 2023.

Next, there was discussion about the merits of the Application. Attorney Lee discussed that Mr. Mastroangelo was not in violation of Zoning Regulation 6.2.3 and did not convert a single family dwelling into use by more than one family as cited in the ZEO Cease and Desist Order. He cited an official from the Branford Building Department deeming the property a single family dwelling. He discussed that there is no evidence to suggest the structure is used by two or more families. He discussed that Branford Building Officials determine whether a structure is single or multi-family based on egress, windows and construction, and the Short Beach Civic Association regulates setbacks and usage. The Town Building Official, he said, determined this to be a single family dwelling

In terms of use, the Chair inquired whether the Town Official applied Short Beach Zoning Regulations when defining single and multifamily dwellings, pointing out that the Conditional Permit granted was for a bonus room over a garage, and specifically provided that the bonus room was not to be used as a separate dwelling unit. Attorney Lee discussed there being no evidence of a second family currently living on the site. The Chair inquired whether someone was still living there in the new bonus room as disclosed at the previous Hearing. Mr. Mastroangelo confirmed that a friend with health challenges had been living on site during renovations of his own home, but has since moved out of Mr. Mastroangelo's bonus room.

The Chair requested that ZBA Member Davis review the audio recording of the Board's June 5, 2023 Public Hearing, since she was absent from that Meeting, so she will be prepared to participate in discussion of the merits of the Application at the Board's November 6, 2023 Annual Meeting.

Attorney Lee noted that there is a distinction between the Building Code and the Short Beach Zoning Regulations. Given such, he discussed that the Town Building Official governs whether a structure is single or multi-family and that status is determined from Building Code and is not a Zoning determination. Further, he described Zoning Regulation 3.10 as not instructive on this issue of dwelling unit determination.

In closing, Attorney Lee asserted that he didn't think the Applicant violated Short Beach Zoning Regulations, and that the language of Regulations 6.2.3 and 6.3.1 combined with the opinion of the Branford Building Inspector confirms that this is a single family house. Attorney Lee discussed that should the house be used as a multifamily in the future then this would be an issue for the ZEO and as of now, that is not the intended use.

Mr. Mastroangelo discussed that the ZEO had not visited the site during the year of ongoing construction, that there are no separate utilities, separate doorbells or mailboxes, and that this is simply an addition with a common entrance where he and his wife use additional appliances.

Next, ZEO David Perkins discussed how a Zoning Permit is issued before a Building Permit, and he described how Zoning Regulations differ from the Building Code. He discussed that the Zoning Permit issued to Mr. Mastroangelo by the Civic Association of Short Beach explicitly stated that the intended bonus room was not to be occupied as a separate dwelling unit, that a Zoning Permit - not a Building Permit - would designate the intended number of dwelling units, and that Building Code does not refer to 'two-family houses'. He discussed that building officials see a structure as either a 'single' or 'multiple' dwelling unit and that an in-law apartment is viewed under Building Code as a single family structure. Under Zoning Regulations however, it would be construed as a multiple dwelling unit thus subject to different egress, Fire and Building Code requirements compared to a single dwelling designation. He discussed that matters of zoning include accessory dwelling units, in-law apartments and such, and that in this case it is two separate dwelling units. He described how the entry way layout gives the ability to enter separate dwelling units. He discussed that it was built with the ability to be used as a dwelling unit including a full kitchen, appliances, fireplace and Murphy bed, and that one could live privately for

extended periods. He discussed that if one side is separate and lockable from the other, then it is a multiple dwelling unit.

A Member asked Mr. Perkins if there were any homes with similar characteristics in the District. Mr. Perkins mentioned there are houses with two kitchens – most likely canning kitchens. The Member referenced a home on Clark Avenue that has a great room over the attached garage with a possible common entry to which Mr. Perkins mentioned it having single family designation. Mr. Perkins also described a home on Glen Street having a common entry hallway with access to a kitchen on either side, but there were no doors between.

In rebuttal, Attorney Lee discussed that a zoning violation could occur in the future at 269 Shore Drive but currently there is no violation, that the Branford Town Building Official determined the structure at 269 Shore Drive to be a single family dwelling per Connecticut State Building Code, that Short Beach Zoning Regulations aren't instructive or helpful for defining the number of dwelling units, and that the Regulations cited by the ZEO on the Cease and Desist Order address usage of the property, but that there is no evidence the property is being used as a two-family house.

There was discussion between Mr. Mastroangelo and Mr. Perkins about statements made by the ZEO seeming to be prejudicial, and that at the Zoning Permit approval meeting it was discussed that the bonus room was not to be used as another dwelling unit.

Attorney Lee reiterated that the language of the Regulations shows that the Applicant has done nothing wrong and that he appreciated the ZEO's concern that at some point in the future the property could be converted into a two-family house, but that is not the current situation and that Mr. Mastroangelo should not be punished for a future scenario.

A Board Member asked Attorney Lee about the application process. There was discussion about past Chair Kawecky having not given advice to Attorney Lee about any application material that would or would not be required outside the guidance of the Manner of Filing Form 31. Attorney Lee discussed having made the determination that certain material was not necessary to the Board in making factual determination.

Public Statements

There were no members of the public present and no public statements.

Communications Made & Received Made Part of Record

The Chair discussed entering Attorney Lee's October 2, 2023 Memorandum regarding timeliness as part of the Appeal record.

Public Hearing Adjournment & Recess

A motion was made, accepted and unanimously approved to adjourn the Public Hearing on Application No. 03-2023 and to reconvene and deliberate the appeal at the Board's Annual Meeting on November 6, 2023.

Regular Meeting

New Applications

None

Minutes from August 7, 2023 Public Hearing and Regular Meeting

A motion was made, seconded, and unanimously approved to accept the minutes from the August 7, 2023 Public Hearing and Regular Meeting.

Old Business

There was discussion about addressing changes to the Rules of the ZBA. The Chair discussed tabling the issue and making it an agenda item at the next Meeting.

Bills & Correspondence

The Chair discussed entering Attorney Lee's October 2, 2023 correspondence regarding the timeliness issue on Application No. 03-2023 as part of the Record on Appeal, and noted that there was an error at the end of the first paragraph where the date "September 30, 2019" should actually be "September 30, 2009."

The Chair discussed submittal of personal receipts for reimbursement including \$17.06 for certified postage related to Application Nos. 01-2023 and 02-2023 as well as receipts for \$4 parking and \$17.06 for certified postage related to Application No. 02-2023. Also submitted to the CASB clerk was a bill to the Civic Association from Shore Publishing for \$135.25 related to Application Nos. 01-2023 and 02-2023.

New Business

1. Welcome of new Member Barry Beletsky was put on hold since he was not present.
2. The Chair discussed mandatory state land use training certification. This certification is to be completed before December 31, 2023 by every ZBA Member and the Chair would collect certification forms at the January 2024 Regular Meeting. Related links and certification forms and materials were forwarded to the ZBA Members.

Adjournment

A motion was made, seconded, and unanimously approved to adjourn.

Respectfully submitted,

David Steinman, Acting Secretary, Short Beach Zoning Board of Appeals