

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

MINUTES FROM THE APRIL 3, 2023 MEETING

Roll Call

Meeting held in person at Orchard House, 421 Shore Drive, Branford. Called to order 7:35 by Acting Chair Andi Hallier. Also present was regular member Carleen Davis. Chair sat alternate members Martin Hallier Senior and David Steinman to complete quorum. Chair designated Mr. Steinman as acting secretary. Regular members Walter Kawecki and Tom Perretta were not present.

Public Hearing on Applications 01-2023 and 02-2023

A public hearing was held for presentation and statement. Application #01-2023 (14 Rockland Park) Stuart P. & Rebecca K. Rosenberg Appeal of Zoning Enforcement Officer's July 12, 2022 Cease and Desist Order in conjunction with Application #02-2023 (14 Rockland Park) Stuart P. & Rebecca K. Rosenberg Appeal of the Civic Association of Short Beach denial of building permit for stone patio and retaining walls on the premises at 14 Rockland Park. Denial was decided at the December 12, 2022 meeting of the Civic Association of Short Beach (CASB).

The secretary read the published public notice highlighting variances requested per the Civic Association of Short Beach's Zoning Rules and Regulations to said stone patio and retaining walls at 14 Rockland Park.

The variances requested include:

Section 7.4, Schedule A Line 5(b): permit a minimum rear yard setback of 0.65 feet, where 20 feet is required;

Section 7.4, Schedule A Line 5(f): permit a minimum westerly side yard setback of 0 feet, where 10 feet is required;

Section 7.4, Schedule A Line 5(f): permit a minimum easterly side yard setback of 0 feet where 10 feet is required;

Section 7.4, Schedule A Line 5(d): permit minimum distance of 11.91 feet from the mean high water line of Long Island Sound where 25 feet is required;

Section 7.4, Schedule A Line 5(e): permit a minimum distance of 6.37 feet from Critical Coastal Resources where 25 feet is required;

Section 8.5.5(2): permit retaining wall 0 feet from side or rear property line where 15 feet is required; and

Section 8.5.5(4): Permit retaining walls used to create terrace a minimum distance of 0 feet apart where 10 feet is required.

The Chair confirmed application hard copies were available at the Town Clerk's office.

The Chair confirmed receipt of proof of the applicants mailing of notice to abutting landowners.

Presentation, Statements and Questions

John Casey, attorney for the applicants, opened the presentation. Mr. Casey submitted original certificates of mailing for the record and introduced those present - applicants Stewart and Rebecca Rosenberg, architect David Provencher and Attorney Christopher Eddy.

Mr. Casey discussed this appeal being about overturning the CASB zoning decision of December 12, 2022 and in doing so would moot the cease and desist issued July 12, 2022 and the applicable variances. Mr. Casey emphasized how the Rosenbergs have worked diligently to get this resolved since becoming aware of the conflict over a year ago.

Mr. Casey requested, and Chair agreed, that this public hearing be continued at the next ZBA regular meeting May 1, 2023. This would allow the applicant's structural engineer to present/testify. The Chair and applicants agreed that since there would be a continuation, tonight's presentation and public comments would conclude by 9:30pm. This would allow the board to address old business on the agenda.

Mr. Casey asked if the record from the zoning commission was transmitted to the ZBA. The Chair acknowledged not receiving a transmittal. The Chair acknowledged not receiving a transmittal of record of the denial. The Chair acknowledged the ZBA understands the basis for the decision based on minutes and application.

Mr. Casey discussed applicant's denial based on 1) it is not a terrace and therefore not exempt from setback regulations and 2) that the retaining wall is too close to wall at 18 Rockland Park. Per reg 8.5.5(4) Mr. Casey discussed that if there were other reasons for denial, those should have been included in the written decision from the zoning board. Further - that the zoning board decided that 8.5.5 does not apply because this is a structure and not earth moving.

Mr. Casey discussed that the ZBA should decide whether the appeal of the cease-and-desist order was correct or not based on the zoning board decision, and that if correct, whether the applicants should be granted a building permit, and variances not apply.

Applicant Rebecca Rosenberg presented next. Mrs. Rosenberg described the history of the property and former property owners. Mrs. Rosenberg described the original fence along the western boundary as rotted, poorly constructed and holding back a large amount of fill.

Mrs. Rosenberg described incidences over time related to the danger presented by the steep slope and fill. One incident involved her grandson hurting his ankle after stepping into a sinkhole in the fill. Another described her sister accidentally falling down slope. She said it became restrictive to use by her elderly mother who lived on site.

Mrs. Rosenberg told how they had been on a wait list for work with a stonemason. Mrs. Rosenberg discussed that construction began at the beginning of 2020 while Mr. and Mrs. Rosenberg were in Covid quarantine. She thought Town Hall might have been closed during this time She said neighbors were aware of construction and excavation. She stated that stone mason named Arsan(*sp*) told her that construction was allowed.

Discussion was held regarding the date that the site photos were taken by Mrs Rosenberg's daughter. Mrs. Rosenberg thought they were taken before April 1, 2020.

Mrs. Rosenberg discussed that for almost two years, work had continued without any indication of a problem until receiving notice from Zoning Enforcement Officer stating that paperwork for the work permit had never been submitted to CASB zoning. She said stone contractor Arsan met with ZEO Perkins. Arsan (*sp*) told Mrs. Rosenberg by phone that after this meeting, he determined he would not be able to resolve this matter, that this was very involved and to maybe get a project manager. All equipment was removed from property and the contractor and workers have not since returned.

Shortly thereafter, she hired Architect David Provencher to act as project manager, Attorney John Casey, surveyor Ryan Thompson and structural engineer Tim DeBartolomeo to help remedy the situation.

Mrs. Rosenberg stated that she and Mr. Rosenberg thought they were doing the right thing by correcting a dangerous situation and had hired a reputable firm that would take care of all aspects of this project.

Mr. Steinman asked if the contractor was licensed and insured and if he indicated or mentioned that this would be a permitting situation and had this contractor had experience working along Long Island Sound. Mrs. Rosenberg indicated that she had taken a copy of the contractor's driver's license and that she had previous experience working with him.

The Chair asked if the property was surveyed before work commenced. Mrs. Rosenberg stated that the contractor was working from a property survey from 2000. Mrs. Rosenberg said that at one point there was an architect and a surveyor (husband/wife team) taking measurements on site on behalf of contractor Arsan and that there is a photo of this activity.

Attorney Casey submitted copies of a letter from Mrs. Rosenberg's sister describing past safety concerns and injury.

David Provencher, Architect of Shore Design presented next. He specializes in waterfront design and land use. He said that they needed to determine what processes and permits should have been completed in this case. The applicants now have a survey. Additionally, the Branford Assistant Town planner cited applicants were exempt from needing a flood plain coastal site plan and approval from the district health department was not necessary. This left the need for a building permit from the town and zoning approval from the CASB as necessary requirements for remedy.

Mr. Provencher described the 14 Rockland Park parcel as landlocked and surrounded by 22 Rockland Park to the west, 18 Rockland Park to the east and 30 Rockland Park to the south which is held in common by the three parcels. Mr. Provencher mentioned working with the most recent survey that was submitted to the ZBA. He described to property as over an acre, running long north to south in layout and included a multistory residence.

In acknowledging a question by the Chair, Mr. Provencher discussed that the current wall encroaches 1.6 feet over the property line on the west side onto 22 Rockland and encroaches 1.35 feet over the property line on the east side onto 18 Rockland. It showed that the wall partially overlaps on the east and west sides and the overlap portions narrow down the lines.

He described how on the east side there is a short section of true retaining wall that abuts the Shubiks' wall at 18 Rockland Park, described as scalloped, and the remaining length of the wall towards the north described as filled garden that is up against existing wall along the 18 Rockland Park side. On the western boundary, he described the structure as entirely wall. Mr. Provencher acknowledged that this wall did partially encroach the Lewis property at 22 Rockland Park.

Mr. Provencher presented with photos describing the new structure as terrace, property borders, planters built into the wall abutting 18 Rockland, and the old stone masonry bulkhead along 30 Rockland and the view of 22 Rockland border. He showed and described pre-work images. These highlighted northeast views from 30 Rockland showed the downward slope of 14 Rockland and the terrace at 18 Rockland. He described the slope as 50 to 75%, very steep, and not suitable for any activities. Another pre-work image facing southwest showed the bulkhead at 30 Rockland.

In acknowledging a question by the Chair, the applicants confirmed that the property was in the same condition in 2020 as it was when purchased in 2005.

Mr. Provencher showed and described more pre-work images highlighting and including the 18 Rockland Park terrace wall, exposed bedrock leading to Long Island Sound, the old timber retaining wall and fence along the western property line of 22 Rockland Park, where a lot of the original fill was placed up against.

Mr. Hallier asked about the height of the original wall. Mr. Rosenberg recalled the wall being at least six feet tall.

Mr. Provencher showed images of the current, post-work condition described as an unroofed terrace. Highlighted were images including before and after photos along the property lines and various points of view including the old wooden deck off the house. When asked by the Chair, Mr. Provencher confirmed the new terrace was 1954 square feet, the new wall's fill and planting beds are over onto 18 Rockland Park, and that this is new construction.

Mr. Provencher discussed that to achieve reasonable and safe use of the property, make it maintainable, and address the steep slope, a retaining should be built, backfilled, and include a finished, safe, flat top.

He discussed that the CASB zoning denial was because the new structure is not a terrace and therefore not eligible for setback exemptions. He noted the different topography along western 22 Rockland Park line.

He discussed the terms 'patio' and 'terrace', and how they are often used interchangeably in the international building code, including the terms patios, terraces, courtyards, verandas, walkways and even balconies. He cited the Town of Westport's zoning regulations defining terrace and patio together and one in the same and the Branford Assistant Town Planner referring to this project as a terrace in preparation of the coastal site plan exemption.

Starting to describe Connecticut State Building Code released October 2022, the Chair asked Mr. Provencher to cite 2020 code that applied at the time of construction. Mr. Provencher stated they needed to confirm that there weren't any changes and that the state adopted 2021 international building code and that this code defines a terrace explicitly as a relatively level, step constructed in the face of a graded slope for drainage and maintenance purposes. He cited Architecture: Form, Space, and Order, a professional reference, defining terrace as a raised level with a vertical or sloping front or sides faced with masonry or turf or the like, especially one of a series of levels rising above another.

Mr. Provencher discussed how 'patio' is not clearly defined in building codes and architectural references, but citing current building code, exemptions can apply to sidewalks, driveways and on-grade concrete and masonry patios not more than 30 inches above the adjacent grade and not over any basement or story below that is exempt.

The Chair asked if the patio at 14 Rockland Park met the definition as on-grade concrete or masonry and not more than 30 inches above adjacent grade. Mr. Provencher replied that it does not. Mr. Hallier asked why this was being discussed. Mr. Casey replied that the CASB zoning called this a patio, and therefore doesn't benefit from setback exemption, and they were trying to show that this is not a patio but is a terrace and therefore exempt from setback regulations allowing building up to the property lines.

Mr. Provencher cited the Merriam Webster definition of patio as a recreation area that adjoins its dwelling, is often paved and adapted to outdoor dining.

Mr. Provencher continued presenting with visual aids showing how terraces can be sloped to create a level transition to a slope. Photos provided by the homeowners show various stages of on-site construction and material.

Mr. Casey mentioned that the applicant's structural engineer will give a presentation at the next meeting regarding safety. Mr. Casey discussed the denial decision, and that the zoning board and cease and desist order didn't address regulations in 8.5, setbacks, material, and joint applications therefore making them unapplicable, and how now it comes down to 'terrace versus patio' definitions.

Mr. Hallier inquired about 8.5 not being mentioned. It was determined that a zoning letter dated February 10th, 2022 to the applicants referring to 8.5 should be included in the application which Mr. Casey would provide per the Chair's request. He meanwhile read the zoning board's letter and the cease and desist order out loud for the record.

Asked by the Chair if he agreed that ZEO did not rely on 8.5.5 in the cease and desist order, Mr. Casey said no, that there were communications from the ZEO that cited the regulation (8.5.5) and that he can provide the communications to the record. He discussed that since the applicants were denied a zoning permit for specifically not being a 'terrace', the appeal is asking for the structure to be defined as a terrace and therefore doesn't have to comply with setbacks and the cease and desist order.

Mr. Steinman inquired about the current structure's encroachment on properties to the east and west. Mr. Casey explained that railroad ties previously encroached on the west border and the current homeowners at 22 Rockland Park don't object to the encroachment. On the east border, Mr. Casey discussed that the encroachment was necessary for safety reasons and that it is on record that the applicants agree to fix this

encroachment. Asked by the Chair if this proposal to fix the encroachment is before us, Mr. Casey said the ZBA might not have jurisdiction because it is a private issue. Mr. Casey discussed that the applicants relied on their contractor, that workers were seen staking the ground presumably in compliance with ‘some sort of survey’, and that neighbors did not complain during two years of construction. Also that the applicants became aware of the encroachment based on the new survey which was conducted after receiving February 2022 letter from Zoning board and before the July 2022 cease and desist order.

Mr. Casey again confirmed, when asked by Mr. Steinman, that there is no application with the CASB zoning board to remedy the encroachments because it is part whole ‘terrace’ situation. He agreed with the Chair’s statement that there could be a gap causing a potential safety hazard if the encroachment on the east is corrected.

Mr. Hallier asked Mr. Casey if regulation 7.4.3 applies to terrace exemption because of the wall height based on survey. Mr. Casey said the necessary retaining walls and unroofed terraces have no height restrictions.

Mr. Steinman discussed the question of moving forward without a clear remedy for encroachment. Mr. Casey advised upholding the appeal, define the work as a terrace thus mooted setback requirements, and to include the need for the correction of the encroachment in the decision. The Chair questioned whether approval of appeal would be approval of encroachment. Mr. Casey discussed that encroachment would be a private issue if a permitted terrace were built and ended up over the property line. Discussion was held that the ZBA doesn’t have the authority to approve an existing structure that encroaches on other parcels and concerns itself with matters of land. Discussion was held regarding zoning regulation interpretation. Mr. Casey discussed how they should be interpreted in the way they are written and in the least restrictive way.

Discussion was held regarding the overturning of a cease and desist order – that a cease and desist can be overruled if it is incorrect on facts or law or shows abuse of discretion or authority. Discussion was held whether the ZBA has discretion to modify a cease and desist referring to the order of the removal of the existing structure. It was agreed that a cease and desist order was usually a clear decision. Mr. Casey mentioned working with ZEO Perkins prior to receiving the cease and desist in an effort to create a zoning application that would address the situation.

Ms. Davis seconded a motion by the Chair to move to the public comments.

Public Statements

Attorney Michael Cretella, representing Claire Shubik owner of 18 Rockland Park and part owner of 30 Rockland Park presented next. He discussed that the ZBA can modify a decision, partially or in whole, made by the ZEO and the zoning board, that the Shubiks historically have accessed 30 Rockland by way of the corner of 14 and 18 Rockland, and that since the patio was built, historical, agreed on access to 30 Rockland has been restricted for the Shubiks, with law enforcement being called to uphold for trespass.

Mr. Cretella discussed that the ZEO cease and desist letter is accurate and correct. Mr. Cretella discussed that setbacks in 7.4 should apply to this patio because regulations only exempt necessary retaining walls or unroofed terraces and that a 2000 square foot patio terrace retaining wall system was not necessary on a parcel that had an existing back deck for decades allowing expansive views of the Long Island Sound. He discussed section 8.5.5(2) and how the existing retaining walls are too close, within 15 feet of side or rear lines and per 8.5.5(4) the retaining walls bumped up together, are less than 10 feet apart and that there is a retaining wall five to six

feet tall within 10 feet of the bulkhead retaining wall creating a safety hazard. That less than 10 foot distance creates more pressure on the lower walls. Mr. Cretella discussed that 8.5.9 should apply because fill resulted in a higher elevation than specified. Mr. Cretella discussed patio building code not to exceed 30 inches and how that may not be accurate. Mr. Cretella agreed to resume statements at the public hearing May 1st, 2023.

Kenneth Longfield, maintenance contractor at 14 Rockland testified about the back yard previously being unsafe and dangerous due to steep slope when it came to mowing, trimming and care.

Handouts for appeal record included a letter from Sandra Holmes, the sister of applicant Rebecca Rosenberg, which spoke to the preexisting safety hazard and injury. Attorney Michael Cretella submitted a handout highlighting the points of his presentation which cites zoning regulations, case law, and a four point synopsis for denial.

The Chair announced the public hearing would resume Monday May 1, 2023 at 7:30 here in this room.

The Chair entertained a motion to adjourn the public hearing which was moved by Mr. Hallier and seconded by Ms. Davis

Regular meeting

After a 5 minute recess, the Chair called to order the regular meeting for April 3, 2023.

Minutes

The Chair pointed out two typo errors that the secretary agreed to correct on the draft minutes. A motion to approve minutes was made by Mr. Hallier and seconded by Ms. Davis.

Old Business

The appeal of ZEO cease and desist order, citing violation of zoning regulations 6.2.3 and 6.3.1, dated September 21, 2022 by applicant Gerald Mastrangelo at 269 Shore Drive. Attorney Timothy Lee and Mr. Mastrangelo were present. The Chair discussed that Chairman Kawecki reported at the February meeting that he was working with the applicant to help complete the application, which was tabled until tonight's meeting.

Mr. Lee discussed that Chairman Kawecki requested a survey map and that the applicants have an 'as built' map and the approval for the addition to submit. There was discussion and Mr. Lee agreed to provide copies of the ZEO conditional permit from October 2020, Town of Branford building permits, and coastal site plan. There was discussion about form 30A being included in application and it was deemed unnecessary because this application is a use appeal, and that the square footage and parcel boundaries haven't changed – that the merits of this application are dwelling usage; single versus multifamily per 6.3.1. Mr. Steinman inquired about interior photo evidence be provided in the application and Mr. Lee discussed that it wasn't necessary because photos would be presented by applicant's architect.

Discussion was held regarding application timing. The Chair pointed out that if the application is accepted at the May 1, 2023 meeting, and since there is no July 2023 meeting, then there could be potential statute timing constraints if the public hearing and vote isn't completed at June 2023 meeting.

The Chair entertained a motion to accept the application tonight. Discussion was held and all members agreed that the process felt rushed. No motion was made.

The Chair requested the applicants provide 12 copies of the application as was discussed this evening. These could be dropped at the acting Chair's residence. Application acceptance and a June 5, 2023 public hearing could be scheduled at the May 1, 2023 meeting.

Bills and Correspondence

The Chair discussed submitting for the record correspondence from Attorney Cretella related to applications 01-2023 and 02-2023. The Chair also incorporated the letter from Rebecca Rosenberg's sister, Sandra Holmes, into the Record on Appeal on Applications 01-2023 and 02-2023.

New Business

Mr. David Peterson spoke favorably about the ZBA website and links to archived agendas and minutes. There was discussion about the readability of the site being difficult.

Adjournment

The Chair entertained a motion to adjourn which was made by Mr. Hallier and seconded by Ms. Davis. All members in favor.

Respectfully submitted,

David Steinman, Acting Secretary
Short Beach Zoning Board of Appeals