

CIVIC ASSOCIATION OF SHORT BEACH

ZONING BOARD OF APPEALS

P.O. BOX 2012

SHORT BEACH, CONNECTICUT 06405

MINUTES FROM THE JUNE 5, 2023 REGULAR MEETING

The CASB ZBA regular meeting was held in person at Orchard House, 421 Shore Drive, Branford. It was called to order at 7:30 by Acting Chair Andi Hallier. Also present was Regular Member Tom Perretta, new Regular member Patricia Hammel, alternate members Martin Hallier, Sr. and David Steinman. Absent were regular members Walter Kawecki and Carleen Davis. The Chair confirmed with Ms. Hammel that she has reviewed rules of the zoning board, regulations, forms and manner of filing of the ZBA.

Public Hearing on Applications 01-2023 and 02-2023

The Chair discussed communications with counsel for the Rosenbergs. It was decided that since Ms. Davis was absent, and since the applicants were not comfortable with Ms. Davis attending tonight virtually, and since the original quorum was therefore not fulfilled, there should be a special meeting July 3, 2023 to continue the public hearing and include the original quorum of Andi Hallier, David Steinman, Carleen Davis and Martin Hallier Sr. The applicants submitted confirmation to extend the 35-day statutory period.

Public Hearing on Application 03-2023

Moving forward with the public hearing for application 03-2023 269 Shore Drive, roll call was taken again and present members attested to having no conflicts of interest.

The secretary read the advertised purpose of tonight's presentation and 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.

Attorney Al Ippolito began the presentation on behalf of the applicant. Pertaining to the cease-and-desist, Mr. Ippolito discussed multiple dwelling units being defined as above or adjacent to each other, and that the bonus room at 269 Shore Drive is neither – it is part of one building. And the building has a single entrance.

Mr. Ippolito cited Connecticut State Building Code and the email questions to the Town of Branford Building official that were submitted in the application and how the number of bathrooms, kitchens and appliances don't define a separate dwelling unit and that the homeowner expanded on the great room a bit to lend to beach house and summertime fun use.

Discussion was then held regarding the conditional permit issued citing the bonus room was not to be used as a dwelling unit, and that ZBA regulations 3.9 define a dwelling unit as any group of rooms located within a residential building forming a habitable unit with facilities for living, sleeping, cooking and eating by one family; with “family” defined in regulation 3.1 as being one or more persons related by blood, marriage or adoption as well as guests, domestic servants or a group of not more than four persons, such as roommates, living together. Mr. Ippolito discussed that the bonus room is not a separate dwelling unit and if someone were to use the described facilities as such, it doesn’t necessarily distinguish the facilities as a dwelling unit and that the intended use is for gratuitous guests.

The Chair inquired if the bonus room was currently occupied. Mr. Mastroangelo acknowledged that a friend had been staying there temporarily.

Mr. Ippolito discussed that per Town of Branford zoning regulations, the town would likely issue a Certificate of Occupancy and that this ZBA should consider Connecticut State Building Code in its decision and not deem it to be a two-family residence.

Further, he agreed with the Chair’s question that Short Beach zoning regulations and definitions apply to this parcel as to

A question was raised whether the plans submitted to the Zoning Board for a bonus room showed sleeping, cooking and other facilities. It was discussed that facilities were not reflected in the building plans and that this was one open plan above a three-car garage without a separate sleeping room and with freestanding fold-up murphy bed.

One board member noted the listed building estimate of \$70,000 was amended to \$128,000.

Next, David Perkins, CASB Zoning Enforcement Officer who issued the cease-and-desist presented. A presentation package, including interior photos, was submitted to the board. He discussed that dwelling units and single-family determination was a zoning concern and not a building regulation concern and citing Connecticut General Statute 8-3F, that a Certificate of Zoning Compliance be issued prior to a Certificate of Occupancy because the state understands the distinct differences between zoning and building regulations.

Mr. Perkins discussed characteristics of a two-family dwelling with a single entryway and that in this case, once inside that entryway into a foyer/mudroom, each living area had its own entrance to a complete dwelling. One could take a left and enter the complete primary dwelling unit or one could take a right and enter into another complete unit thus deeming it an accessory dwelling unit.

Further, Mr. Perkins discussed the conditional approval permit, filed at the town clerk’s office, stating that the bonus room is not to be occupied as a separate dwelling unit. He further noted that the building application cites the bonus room as a loft over a three-car garage with a full bath and that there is no mention of a kitchen, or a washer and dryer.

Mr. Perkins discussed that the structure at 269 Shore Drive, by building code definition, has two dwelling units; a dwelling unit being a room or rooms in a residential building, forming a single habitable unit with facilities for living, sleeping, cooking and eating by one family. Also, he discussed it fits this definition regardless of egress. He acknowledged that many houses have two kitchens accessible within a single dwelling unit.

Mr. Perkins discussed the original plan showing doors to a deck, but instead, a kitchen counter was built in its place. He highlighted the interior photos. He confirmed, when asked, that neither he nor the Town of Branford ever issued a Certificate of zoning compliance on the new structure.

There was discussion about the original setbacks being nonconforming but grandfathered and that there is a single garage area with three garage doors. When asked, Mr. Perkins stated that this case was not typical use of a bonus room and is being used as a dwelling unit.

Mr. Ippolito discussed how the design intended to bring the two buildings together, the mudroom, the second kitchen location and how the ZBA should consider building code pertaining to zoning regulations.

The Chair discussed the concern that there is somebody currently living in the dwelling without a Certificate of Occupancy. There then was discussion that the Town of Branford building official said that if it was up to him, he would issue the Certificate of Zoning Compliance, but the project needs to comply with Short Beach regulations.

A question was raised that based on the foyer and inside doorway entrances, why this would be considered a separate dwelling unit. Mr. Perkins discussed that since there is no common foot traffic pattern that would integrate one family living together, then this would be considered a separate dwelling unit. In addition, in-law apartments, which are not permitted per Short Beach zoning regulations, would have a common relationship to the primary dwelling unit traffic.

There was further discussion that the Town of Branford allows in-law and accessory apartments and that there are certain to be violations where in-law and accessory apartments exist in Short Beach. [I don't understand what this means...]

There was discussion about the outside decks and how they connect the two structures further making it one house. Also, the bonus room has its own deck on the west side of the structure.

Next, the builder Anthony Thompson of Plans Ahead LLC spoke about 'gray' areas in a project and how a project can change plans to as-built, and at one point the plan showed separate egress and access from the garage. He discussed laundry rooms, bathrooms and such individually are not prohibited and that there is no 'bedroom' as mentioned. He said that since the covid pandemic, his customers are creating more independent living and working spaces within existing dwellings. He discussed this is not a separate dwelling unit because there is no sleeping room.

Mr. Thompson acknowledged when asked that there was no bathroom, laundry facility or kitchen on the building architectural plan submitted by Plans Ahead, LLC for this application. He also acknowledged that item number four on the conditional approval provided that the bonus room is not to be occupied as a separate dwelling unit.

A board member noted that the Conditional Site Plan Approval called for construction of an 842 sq. ft. garage and a 778 sq. ft. bonus room loft, but the Applicant's Application for Residential Building Permit sought to build an 850 sq. ft. garage and 787 sq. ft. bonus room; a slight overage. Mr. Thompson discussed that is what is built.

The applicants were asked to clarify why this is not considered a separate dwelling unit. Mr. Ippolito discussed that this is based on interpretation of regulations and should not be based on conclusions brought up by the ZEO. He discussed that separate entrances define a separate dwelling unit and that foot traffic in this structure could flow from one part to the other – that this is a guest room that has no separate entrance, utilities, mailbox, or doorbell.

There was further discussion and agreement about room configuration and how one could enter, take a right, shut the door, and be in a single habitable unit (studio apartment configuration) where cooking, cleaning, washing and such could be done without ever having to leave.

There was discussion that, with or without a door to the bonus room, this is different from the ZEO's description, where some dwellings have multiple facilities.

Next, the Chair commented about the Civic Association of Short Beach voting to opt out of certain state affordable housing requirements; specifically, permitting accessory dwelling units, made effective January, 2022 due to the dense population of Short Beach, and asked why this bonus room should be allowed here and therefore throughout the district, when the CASB just opted out.

Next, Mr. Ippolito and Mr. Perkins discussed that there were three or four houses in Short Beach that Mr. Perkins has seen where there are multiple kitchens in single family dwelling. Mr. Perkins acknowledged that these kitchen areas could accommodate a sleeping configuration, but that there was a common entryway with no dividing mud room or foyer where one could live without walking through the other space.

Next, Tony Thompson discussed why the house is structured this way and how the entrance to the single vestibule allows one to enter the main house without having to enter through the bonus room from the garage and then cross it to get to the main house. He discussed how this design, including a kitchen and closet, is a common practice and that it has never been considered a separate living area with building officials.

Next, there was discussion about intent and the homeowner's intended use of the bonus room, which moved to discussion including Mr. Perkins, about the conditions attached in the filed permit being there as a safeguard for preventing the bonus room from becoming an additional dwelling unit. There was further discussion about how the plans changed, including originally having and then eliminating a separate entrance to the bonus room from the garage.

There was discussion was held about section 3.11 defining this as a two-family or two-dwelling house and how one could enter either a common or separate entryway.

Next, the Chair discussed the cease-and-desist order issued September 21, 2022 and that applicants have 60 days to make an appeal, that this appeal was initiated October 27, 2022, and that on February 6, 2023, Attorney Lee requested of ZBA Chair Kawecki that the application to be tabled until the April, 2023 ZBA meeting. Since it is June 5th and beyond sixty days post issuance, this board may no longer have subject matter jurisdiction. The Chair cited Cardwell v. Town of Granby. The applicants submitted written consent to a 35-day continuance of the public hearing while the issue of subject matter jurisdiction is investigated. The Chair noted correspondence with Mr. Lee dated May 24, 2023 about requesting a warranty deed which he provided to the application package.

A motion was made and seconded to close the public hearing.

After a five minute break, the meeting resumed with roll call and Chair Hallier, Mr. Hallier, Mr. Perretta, Ms. Hamill and Mr. Steinman were present.

New Applications:

None

Minutes

A motion was made and minutes of the May 5, 2023 were unanimously accepted.

Old Business:

The Chair discussed correspondence with Attorney Christopher Eddy (Application 01- 2023 and 02-2023) dated June 5th, 2023 regarding Ms. Davis's inability to attend tonight's hearing. The applicants consented to a continuance and a special meeting of the ZBA to be held July 3th, 2023.

The Chair discussed submission of a bill for advertising in the Sound which she submitted to Fran Clark on the CASB.

New Business

A motion was made and accepted for the Chair request to consult with legal counsel regarding subject matter jurisdiction in cases 01-2023, 02-2023 and 03-2023.

Discussion was held regarding access to forms on the website as being difficult. Also that Manner of Filing form 31 was inaccessible and its current wording confusing, citing 'two months' instead of '60 days' as listed in the rules. A motion was made and accepted to modify form 31 to say '60 days' instead of 'two months. A motion was made and accepted to add to this matter to the agenda and Mr. Steinman agreed to correct the issues.

Adjournment:

A motion was made and unanimously approved to adjourn.

Respectfully submitted,

David Steinman, Acting Secretary
Short Beach Zoning Board of Appeals