

# CIVIC ASSOCIATION OF SHORT BEACH

## ZONING BOARD OF APPEALS

P.O. BOX 2012

SHORT BEACH, CONNECTICUT 06405

### **MINUTES FROM THE JULY 3, 2023 SPECIAL 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 Carleen Davis and alternate members Martin Hallier, Sr. and David Steinman. Absent were regular members Patricia Hamell and Thomas Peretta.

#### **Public Hearing on Applications 01-2023 and 02-2023:**

Stuart P. & Rebecca K. Rosenberg, 14 Rockland Park: Appeal of July 12, 2022 Cease & Desist Order (No. 01-2023); and Appeal of December 12, 2022 CASB Denial of Application for Building Permit; and/or Application for Variance of Zoning Regulations (No. 02-2023)

#### **Conflict of Interest Poll**

Present members were polled and attested to no conflict.

#### **Applicant's Presentation**

Attorney Christopher Eddy presented on behalf of Stuart and Rebecca Rosenberg, homeowners at 14 Rockland Park. The Rosenbergs were not present at tonight's meeting. David Provencher was also present on behalf of the applicants. ZEO David Perkins was also in attendance.

Mr. Eddy submitted a Memorandum dated May 23, 2023 citing dates pertaining to the application process and how that relates to the cease and desist and subject matter jurisdiction. He discussed the initial ZEO cease and desist being issued July 12, 2022 and an email exchange between Attorney John Casey (Attorney for applicants) and ZBA Chair Kawecky dated September 8<sup>th</sup>, 2022 notifying the chair that an appeal has been submitted. Mr. Eddy noted that this was 58 days from the date of the cease and desist. The initial application was delivered via Fedex September 9<sup>th</sup>, 2023.

He discussed that on October 3<sup>rd</sup>, 2022 the ZBA held a regular meeting and determined the application was incomplete and Chairman Kawecky notified Mr. Casey via email that it was denied without prejudice for incompleteness. At the November 7<sup>th</sup>, 2022 regular meeting of the ZBA, it was determined the application was incomplete and again denied without prejudice.

He discussed email communication with the Chair on November 8<sup>th</sup> asking about the process for refile including the deadline date to do so and he discussed a telephone conversation between the two on November 15<sup>th</sup>, 2022 where the Chair confirmed to Mr. Eddy that it was his understanding that the applicants had another 60 days from the original filing date of September 9<sup>th</sup>, 2022 to refile without prejudice due to incompleteness.

Further, on December 4<sup>th</sup>, 2022, Chairman Kawecky picked up hard copy material from the Rosenberg residence that contained everything that was asked and at the December 5<sup>th</sup> ZBA meeting the appeal was received for review. At the February 6<sup>th</sup>, 2023 the appeal was accepted (there is no January meeting) and a public hearing was

scheduled for March 6<sup>th</sup>, 2023. Then on February 14<sup>th</sup>, via email, Mr. Eddy requested that the ZBA hear the appeal together with the cease and desist appeal. On February 16<sup>th</sup>, 2023 Acting Chair Andi Hallier agreed.

Mr. Eddy discussed that there doesn't have to be a specific filing deadline, that the applicants were told by Chair Kawecki that they had 60 days and that they complied. He cited *Pinchbeck v. Guilford ZBA* emphasizing that when a zoning regulation says 'without prejudice' when an application is denied, it doesn't lose subject matter jurisdiction.

There was discussion about an incomplete application with a request for a stay of action being delivered to the ZBA on day 59 (September 9, 2022) of the cease and desist deadline and that it seems like a placeholder. Further, that at the ZBA November 7<sup>th</sup>, 2022 meeting, concern was raised that the cease and desist appeal time had already expired, that it's on record that the dismissal without prejudice not be construed as a waiver of a 60 day appeals period, and that the board or it's Chair may not have the authority to extend the 60 day regulation regardless of the stay of action. The Chair mentioned that the ZBA is waiting for outside legal counsel on this issue which maybe one of first impression.

Mr. Eddy discussed zoning regulations as to the ZBA being able to deny an application without prejudice due to incompleteness mentioning that because there is this provision, applicants have the right to refile and in doing so, make the request for a stay of action moot. Also, that there would be no reason to do a completeness review within the 60 day period if the board lost jurisdiction.

The Chair discussed "without prejudice" language in the regulations, that the ZBA and it's regulations don't want to deny a public hearing on the application merits, and that at a public hearing, the issue of untimeliness of filing was open for discussion.

Mr. Eddy discussed having filed on time to which the Chair commented that the application (November 7<sup>th</sup>, 2022) which was incomplete and denied without prejudice, had already expired. Mr. Eddy discussed that the application completeness didn't matter because the 60 day appeal period was now reset and in effect going forward at that point in time. He discussed the scenario of the ZBA receiving an application the day after a regular meeting starting the clock – how the ZBA at it's next regular meeting would review it for completeness, and then possibly two months later denies the application for incompleteness thus running out the clock.

The Chair discussed that the ZBA Manner of Filing specifically outlines what an applicant needs to submit, and that items including an A-2 survey and warranty deed, weren't included as requested. Mr. Eddy discussed how some things weren't relevant to this application, like parking spaces, and that there were communication on these matters with the ZBA prior to submitting the applications. He discussed not receiving notice on missing materials, and regardless of completeness, an appeal was filed within 60 days confirming subject matter jurisdiction.

There was discussion about denying an application without prejudice due to missing material and the potential to deny an application with prejudice due to persistent refileing.

Mr. Eddy formally requested the ZBA have five members review the record and vote on the appeal.

He discussed the order of voting decisions as first being the appeal of the cease and desist. Second being the appeal of the CASB Executive Board decision. Lastly, the application for variance. He cited Connecticut General Statute 8-6a which requires the ZBA to vote on the two appeals before considering the application for variance. As such, he discussed that if the ZBA were to decide that the executive board was wrong because this is a 'terrace' and not a 'patio', then the appeal for the cease and desist order would be moot and the application for variance moved.

There was discussion and agreement that the cease and desist order and Executive Board denial would be decided before the application for variance.

Mr. Eddy summarized by discussing that this is a terrace and not a patio. David Provencher (present at this meeting) and Tim DeBartomoleo have made presentations to this point. He discussed that the applicant's terrace, by definition, was exempt from setback regulations per section 7.4.3 of the Short Beach Zoning Regulations. He also discussed portions of the new retaining wall being less than ten feet away from the retaining wall at 18

Rockland Park, that there is no danger of collapse because those portions are built on bedrock, and that section 8.5.5 of the Zoning Regulations is not relevant to the retaining walls at 14 and 18 Rockland Park. Lastly, Mr. Eddy discussed that prior to the work done, that portion of the lot was unsafe, had a slope of over fifty degrees, was difficult to maintain, and that people had fallen down it in the past. He discussed that the ZBA should grant a variance because the structure is a terrace and therefore exempt from setback regulations.

**Public Statements**

Next, Attorney Michael Cretella spoke on behalf of the homeowners of 18 Rockland Park. He discussed that it isn't clear that the structure is defined as a terrace versus a patio based on Building Code regulations which cite structures with less than a 30 inch rise being a 'patio' and thus exempt from the code. He discussed the retaining walls being less than ten feet apart and that regardless of an engineer's testimony that it is safe on bedrock, there is no exemption described in the Zoning Regulations. Last, he discussed that simply having a slope on a portion of a property is not a hardship and that this was a self-created hardship inherited by the applicants from the previous landowner at 14 Rockland Park. He encouraged the ZBA to uphold the ZEO's cease and desist order.

Mr. Eddy rebutted by discussing that the applicants submitted expert testimony and there was no expert testimony submitted countering the definition of 'terrace'. He also discussed the appellate court saying: when interpreting zoning regulations, that when you have an interpretation of language that is permissible, restrictions upon the use of lands are not to be extended by implication. Doubtful language will be considered against rather than in favor of a restriction. He said this means when you have a conflicting interpretation, it should be decided in favor of the landowner rather than in favor of a restriction.

There being no further questions or comments, the Chair discussed the ZBA having within 65 days to render a decision and that the ZBA would deliberate at the next regular meeting scheduled August 7th, 2023 if so moved.

**Communications Made & Received Made Part of Record on Appeal**

Mr. Eddy provided the ZBA with hard copies of Memorandum dated May 23, 2023 from Attorney John Casey illustrating the application timeline, email communications with the ZBA, and proof of document shipping.

**Public Hearing Adjournment**

A motion was made and seconded to adjourn this public hearing.

**Adjournment:**

A motion was made and unanimously approved to adjourn.

Respectfully submitted,

David Steinman, Acting Secretary  
Short Beach Zoning Board of Appeals