

CIVIC ASSOCIATION OF SHORT BEACH

ZONING BOARD OF APPEALS

P.O. BOX 2012

SHORT BEACH, CONNECTICUT 06405

MINUTES FROM THE AUGUST 7, 2023 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 Acting Chair and Regular Member 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 Christopher Eddy, counsel for Stuart and Rebecca Rosenberg, CASB Zoning Enforcement Officer, David Perkins, CASB Board Member, Chris Collins, and Claire Shubik, owner of 18 Rockland Park, Branford, and her counsel, Attorney Michael Cretella.

Executive Session

Executive session was held regarding subject matter jurisdiction as applied to Application Nos. 01-2023 and 02-2023.

Continuance of Public Hearing on Application 03-2023 – Gearald Mastroangelo, 269 Shore Drive; Appeal of 9/21/22 Cease and Desist order.

The Chair discussed that Application 03-2023 will be continued per Mr. Mastroangelo's counsel's request. The Public Hearing will be continued to the Board's next Regular Meeting, scheduled for October 2, 2023. Mr. Mastroangelo's counsel provided written consent to a continuance of the 35-day statutory deadline for the Board to complete the Public Hearing on this Application. The Chair will make related counsel's request dated August 7, 2023 a part of the Record on Appeal.

The ZEO brought forth a Point of Order regarding discussion of the timeline of the Application to which the Chair confirmed that the Applicants provided two days' notice for the extension request and that the Application will be heard on October 2, 2023.

Deliberation of Applications 01-2023 and 02-2023 – Rebecca and Stuart Rosenberg (14 Rockland Park) Appeal of Cease and Desist, CASB denial of Application for building permit, and Application for variances

The Chair mentioned Attorney Eddy's submission of a Memorandum regarding subject matter jurisdiction for the record. After polling for conflict of interest, and hearing none, deliberation began with discussion about subject matter jurisdiction and the ZBA's authority to hear and decide this Appeal based on timeliness of filing.

The Chair discussed advice received by the ZBA's legal counsel being in favor of the Applicants' timeliness of appeal of the July 12, 2022 Cease and Desist Order thus giving the ZBA authority to hear and decide this appeal. Further, that the Application was submitted at the October 3 2022 Meeting and was denied for incompleteness without prejudice at the November 7, 2022 Meeting, thus restarting the 60-day appeal period.

A Board Member questioned and discussed the application dates – that the Application was accepted on November 7, 2022, and therefore the Appeal period expired 60 days later on January 5, 2023. Further, the Applicants submitted an application to the ZBA at the December 5, 2022 Meeting and no apparent action was taken to accept

it. The Chair discussed that there was no January 2023 Board Meeting, that this appears to be an issue regarding application submission versus application acceptance timing, that this Board will be proceeding based on submission dates, and that the February 6, 2023 Meeting was the time and place of application acceptance.

A motion was made and unanimously approved affirming that the Appeal of the July 12, 2022 Cease and Desist Order was filed in a timely manner and that the ZBA has subject matter jurisdiction to hear and decide whether or not to decide the merits of the Appeal of that Order.

The Chair discussed four concepts under consideration moving forward.

First, there was discussion about the ZEO Cease and Desist Order addressed to the Applicants.

A motion made, seconded and unanimously approved that the ZEO Cease and Desist Order of July 12, 2022 was not issued in error, and that the Applicants' construction of the terrace/patio and retaining walls was undertaken without a building permit and in violation of section 2.1 of the Zoning Regulations.

Next, there was discussion about the Zoning Commission's denial of the Applicants' request for a building permit on the basis that the structure was a "patio," not an "unroofed 'terrace'", and therefore not exempt from setback requirements contained in Zoning Regulations section 7.4. Further, the Regulations do not define the terms "patio" or "terrace," that the Applicants argued that the structure is a terrace, that the Applicants used the terms "patio" and "terrace" interchangeably, and that expert testimony supported the conclusion that the structure is, architecturally and structurally, a "terrace," and not a "patio." Also, since there is no clear definition of either term in the Regulations, the Regulations should be construed liberally, and in favor of the Applicants.

A Member discussed the term "patio" being used throughout the Application and current Survey, and yet the Applicants didn't change and use the term "terrace" in their Application after the Zoning Commission denied their Application for a building permit.

A motion was made, seconded and unanimously approved deeming the structure as a terrace, and not a patio. Therefore, per regulation 7.4.3, the structure is exempt from the setback requirements outlined in Zoning Regulation section 7.4.

Next, there was discussion about the retaining walls of the structure being less than a minimum of ten feet apart, in violation of Zoning Regulation section 8.5.5(4). The Board agreed that the requirement of the slope was met - being one foot of rise for three feet of horizontal difference. There was agreement that the walls used to create this terrace are at a minimum of ten feet apart as prescribed in Regulation section 8.5.5(4). After discussion about the new retaining wall being less than ten feet away from an existing sea wall at neighboring 18 Rockland Park, there was agreement that the Regulation as written was ambiguous in addressing adjacent property walls or structures and therefore the Regulation should be construed liberally, and in favor of the Applicants.

A motion was made, seconded and unanimously approved that the Zoning Commission erred in its ruling that the structure violates Zoning Regulation section 8.5.5(4) because portions of the retaining wall are not ten feet away from the adjacent retaining wall at 18 Rockland Park.

Last, there was discussion that the Applicants do not appear to require variances, because the structure is a terrace and therefore exempt from the setbacks set forth in Zoning Regulation section 7.4, and the structure meets the requirements contained in Zoning Regulation section 8.5.5(4). It has been established that the new structure encroaches property at 18 and 22 Rockland Park. A Board Member expressed concern that expert testimony confirmed a real safety hazard could be created if the encroachment issue is resolved as the Applicants have proposed, and/or if this issue is not addressed and resolved between homeowners at 14 and 18 Rockland Park. The Chair discussed that the encroachment is a separate property rights issue and not before the ZBA. The Board Member also expressed concern about the change of the overall landscape of the area and that this process is difficult because this Board is bound by the Zoning Regulations as written. The Chair discussed that the ZBA found that the ZEO was not in error in issuing the Cease and Desist Order, that the Zoning Commission was in error to the extent that it found that the structure violates the Zoning Regulations, and that it is beyond the scope of this Board to address the encroachment issue.

A motion was made, seconded and unanimously approved that the structure meets the requirements of Zoning Regulations sections 7.4 and 8.5.5(4), and therefore the Board need not reach the merits of their Application for variances. The Chair recognized the abutting east and west property encroachment.

A motion was made and seconded to close the deliberation on Application Nos. 01-2023 and 02-2023.

Regular Meeting

New Applications

None

Minutes

A motion was made, seconded and unanimously approved to accept the minutes of the June 5, 2023 regular meeting.

A motion was made, seconded and unanimously approved to accept the minutes of the July 3, 2023 special meeting.

Old Business

The Chair discussed how Manner of Filing Using Form 31 refers to both 'two months' and '60 days' and at the last meeting it was proposed that it be changed to both referring to "60 days."

A motion was made, seconded and unanimously approved that the revision to Manner of Filing Using Form 31 to say "60 days" instead of "two months." The Chair noted that the Acting Secretary has already submitted the revised Form 31.

Bills & Correspondence

The Chair discussed entering into the record correspondence in connection with Application No. 03-2023 from Attorney Timothy Lee representing Mr. Mastroangelo at 269 Shore Drive regarding his request of tabling tonight's hearing until the next regular scheduled Meeting on October 2, 2023.

The Chair discussed receiving correspondence to the CASB Chairman from ZBA Chairman Walter Kawecki tendering his resignation.

New Business

Discussion was held regarding how to proceed with the new ZBA Chair appointment. A Point of Order was brought forth by CASB ZEO, David Perkins to confirm that the CASB Executive Board appointed Barry Beletsky as a Regular Member to the ZBA at its last Meeting. In attendance, Dave Peterson also brought forth a Point of Order to clarify that the ZBA Board Members, not the CASB, should vote for its officers when a vacancy occurs.

After further discussion a motion was made, seconded and unanimously approved to elect Andi Hallier to serve as ZBA Chair until the November 6²⁰²³ ZBA Annual Meeting and officer elections.

There was discussion about the potential for an applicant to come before the ZBA time after time with an incomplete application in which case a denial with prejudice would be appropriate along with a six month wait before reapplying versus a denial without prejudice and a thirty-day waiting period in order to provide any missing material. There was further discussion that any acceptance or denial should only occur in a public Meeting per state statute; that the Chair or other Board Members can only accept, review materials, or deny with or without prejudice at their public Meetings.

There was discussion and the Acting Secretary was reminded that draft minutes from this board need to be posted publicly at least a week before the next scheduled Meeting.

Adjournment

A motion was made, seconded and unanimously approved to adjourn at 8:35pm.

Respectfully submitted,

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