

Minutes of Zoning Board of Appeals Meeting Held November 18, 2024 at 7:00 PM at Killingworth Town Hall.

1. Call to Order and Seating of members

The Zoning Board of Appeals meeting for November 18, 2024 was called to order at 7:00 PM. Members present and seated were Brian Young, Bruce Dodson, Cheryl Fine, Ben Charney, Mark McCormick. Alternate Bill Joyce was also present. Others present included Attorneys Sylvia Rutkowska, Mark Branse and Ken McDonnell.

Chairman Young explained the process of the meeting. Young read the Consideration of Application into the record for application dated 7/3/24.

2. Public Hearing and Consideration of Application

Consideration of Application (dated 7/3/24) – Jack B. Coy LLC, P. O. Box 644, Killingworth, CT 06419 (owner) and Attorney Sylvia Rutkowska, Arch Law Group, LLP as applicant, Location of property Roast Meat Hill Road, Map 28, Lot 59A, for appeal of decision of the Zoning Enforcement Officer per letters dated June 5th and June 26th, 2024 as this is a pending subdivision and the site cannot be altered until such time as the mylar and deeds are filed, or the subdivision is rescinded.

Attorney Rutkowska explained this application noting both these appeals were her clients. She also noted Mike Berkun was also present. She also noted she represents a lot of boards, commissions and ZEO'S and thanked the Board for its time.

It was noted these appeals have been around for a while and she was hoping to be able to avoid this meeting but wasn't quite there yet. She has requested a lot of continuances and thanked the Board for that. There were two different appeals which Attorney Branse also submitted a letter which will be addressed conveying his opinions.

It was also noted there were various documents associated with the appeal and from Linda, 20 pages for the first appeal.

The first appeal involves the 3 sheds and changing the structure on the property to a dwelling. There was an original subdivision that was approved by P&Z with conditions. That subdivision is void at this point. There is a concern with the condition.

The starting point for the first appeal is for 3 sheds and dwelling from subdivision. The 3 sheds don't require a building permit. No building permits, no coverage issues. Unfortunately these were tethered to the subdivision application. The sheds were approvable separate from the subdivision. Also an application was submitted to convert a building on the property to a small dwelling. Separate from the subdivision.

Applicant came in to get permits but got push back. Robin told him he could not go forward while the subdivision application was pending. Attorney Rutkowska noted they submit that is incorrect and will explain. She noted her client was trying to work with the process. Rutkowska read letter of June 5th into the record. The second paragraph was the heart of what was being discussed. The ZEO made her decision that the applications for the sheds and dwelling could not go forward. Branse agrees because of pending subdivision.

This was a subdivision already granted with a condition of deeding Open Space to the Town. The issue was the conveyance of the Open Space. The Town wanted a conservation deed to the town. The sheds had nothing to do with that and could be granted. ZEO made a determination that this could not go forward. Attorney Branse submitted a letter citing a specific case. He indicated ZEO had no authority to do that under the State statute. Attorney Rutkowska stated this was a final decision. This decision by the ZEO stopped everything. Her clients application was rejected. She further noted this was an appeal and the ZBA has jurisdiction but its an incorrect decision. The June 26th letter is a repeat of the June 5th letter stating the sheds cannot go forward because there is something pending.

Attorney Branse reviewed his June 25th letter to the ZEO where she sought his advice. He cited the facts. There may have been a disconnect. He noted one cannot ask for permits for any use or building or structure without subdivision approval. If the sheds and the conversion were with the subdivision, then we would not be here. These were independent applications. Our application didn't rely on the subdivision approval.

May 8, 2024 – zoning permits for 3 new sheds and application for conversion. These applications were not reliant on the subdivision approval. These should have proceeded by the ZEO. The application should not have been stopped. Her determination is wrong and Branse's letter supports that. The sheds are tiny little sheds, no where near anything. These should have been granted and didn't even need a building permit. ZEO determined this could not go forward without subdivision approval which is incorrect.

Mike Berkun reviewed both application plans. These applications went to both wetlands and P&Z. He wanted to proceed with his own dwelling. There is nothing in the subdivision regs that you can't go forward if the subdivision is frozen. He reviewed the lots on the map as well as the lot coverage. Attorney submitted lot calculations. The coverage chart submitted at tonight's meeting was not part of the packet submitted by the ZEO. Attorney had approvals from wetlands for the 3 sheds and conversion. The shed locations were on the map. Berkun reviewed what submitted in the package. It was also noted septic system approval had been received from CRAD along with wetlands approval for changing existing building to a house.

Attorney Rutkowska noted the subdivision condition tainted everything. Berkun should satisfy the condition and then go forward. The town wouldn't accept the filing of the mylars. At that point, it became very complicated. The conditions and the subdivision had to take a back seat. Attorney McDonnell asked what the plans for relief were. Rutkowska noted they are appealing the ZEO's decision as it was incorrect.

Attorney Branse representing the ZEO noted it was our position that this Board does not have jurisdiction over this appeal. The June 5th letter states this cannot go forward until the subdivision is finalized. As of August 7th the subdivision became void. No more subdivision. Berkun has submitted another application for next month. Previous applications are dead.

Another appeal application was submitted at this meeting. The subdivision is now gone. It was noted the ZEO could not approve sheds until wetlands approval is received. ZEO needs to see plan and where the flood plains are and where the pond is relative to the sheds.

Ruling on the subdivision is no longer needed. ZBA has no jurisdiction. ZEO can't rule on this at this time so its not a final decision. Not appealable. Branse noted this application is now dead. ZBA lacks jurisdiction. ZEO can't make a decision.

Rutkowska noted the interpretation is that while something is pending, there can be no decisions. This process is unfair to Mr. Berkun. He doesn't have permits for the sheds or the conversion. We need to establish things on the record. We need a decision as to whether the ZEO is correct.

Berkun noted the ZEO held the wetlands application intentionally and subsequently it was determined no wetland application was needed. Branse noted there was no wetlands approval for the dwelling, nothing for the sheds. He noted the subdivision expired August 7th.

Attorney Rutkowska noted not waiving anything. Her client is entitled to file another subsequent application. No claim that ZEO made an incorrect decision.

Shed applications were submitted May 6, 2024. This whole application process has been unfair to her client. Still no permits for sheds. No building permit required. Sheds are an as of right activity. Can't approve without wetlands approval. Rutkowska noted this is an incorrect interpretation, should be overruled. Branse noted they did not go to the wetlands for a ruling. Branse also noted the applicant can reapply if he wants to now that the subdivision is gone.

ZEO checked wetlands. Wetlands Chair said they have to come before them. He would not go. The conversion is moving forward. Waiting for paper work from building official. As of right activity, does not require a permit. Subdivision gone.

Branse noted if it is determined that the sheds are an agricultural use, that is made by the wetlands commission. And they haven't made that determination.

3. Public Hearing and Consideration of Application – Jack B. Coy LLC, P. O. Box 644, Killingworth, CT 06419 (owner) and Attorney Sylvia Rutkowska, Arch Law Group, LLP as applicant, Location of property Roast Meat Hill Road, Map 28, Lot 59A, for appeal of decision of the Zoning Enforcement Officer per letter dated July 10, 2024 that the change to subdivision he requested was considered a Resubdivision which would require a public hearing and not a modification.

Chairman Young read the Consideration of Application for the 2nd appeal into the record. There was a letter dated July 10, 2024.

Attorney Rutkowska noted the ZEO made the determination this was a Resubdivision. The issue was with the condition as to what the conveyance document was going to be. It was to be a document deeded to the Town. The Town would not accept the deed to the town. The basis being this is not a Resubdivision but a change in the map regarding

the Open Space. The time clock has been running, but the ZEO's letter said the time had run out and the Town wouldn't accept it.

The applicant would have to submit another application in order to go forward. Attorney Branse noted he was asking the Board to rule that the ZEO was wrong. There is no subdivision officer. ZBA does not have jurisdiction over this. Attorney Rutkowska noted the only reason we are here is because determinations are wrong.

Berkun noted he can file a new subdivision application any time and he wants this on the record.

ZEO noted the applicant filed applications for sheds and he was told he had to go to Wetlands.

Chairman Young noted this was coming to the end of the public portion of the meeting.

Attorney McDonnell stated he understood the first appeals was not going forward. He wasn't sure that was enough in the record to discuss the decision.

Attorney Rutkowska noted the letters they are appealing don't say incomplete, they say can't go forward because of the Resubdivision. Letter does not say its incomplete.

Closing the public portion of this meeting at 8:30 PM.

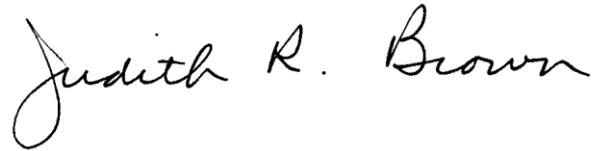
Motion by Charney, second by Fine, to deny first application, 7/3/24 pertaining to sheds on the location. Not sure the ZBA has authority. Young stated application was not complete. UNANIMOUSLY APPROVED FOR DENIAL, Joyce abstained. MOTION PASSES.

Motion by Young, second by Fine, to deny second appeals pertaining to August 8th subdivision appeal. Young noted all dates have passed. It seems like it is a dead issue at this point. UNANIMOUSLY APPROVED FOR DENIAL. MOTION PASSES.

It was noted there is a new application for December 16th for the sheds.

4. Adjournment

Motion by Charney, second by Joyce, to adjourn at 8:35 PM. UNANIMOUSLY APPROVED.

A handwritten signature in cursive script that reads "Judith R. Brown". The signature is written in black ink on a white background.

Respectfully submit

Judith R. Brown, Recording Secretary