

**IN THE MATTER OF
JASON CRONSHAW**

*** BEFORE THE TOWN OF DENTON**

*** BOARD OF APPEALS**

v.

*** Appeal No. BOA-20-001**

TOWN OF DENTON

*** * * * ***

MINUTES, FINDINGS OF FACT, CONCLUSIONS AND DECISION

The Board of Appeals held a public hearing on Monday, July 13, 2020, at 6:30 p.m., at the Denton Town Office to consider an application for appeal of Jason Cronshaw (hereinafter, “Mr. Cronshaw” or the “Applicant”), from the decision of David Renshaw (hereinafter, the “Building Code Official”) dated March 27, 2020, pursuant to the Town of Denton Code Chapter §38-2.9(B).

Board members present were Chairman, Troy Livingstone, Florence Doherty, and Harry Wyre. Also present was counsel for the Board, Lyndsey Ryan, and Administrative Aide, Donna Todd. The Applicant, Mr. Cronshaw, was present, along with his attorney, Anne Ogletree. The Denton Town Attorney, Chris Drummond, was also present and representing the interests of the Town of Denton. Members of the public were also present.

I. PROCEDURAL HISTORY – ALLEGATIONS OF ERROR

The Applicant is the owner of property located at 109 S. Sixth Street, Denton, Maryland 21629 (the “Property”). The Applicant purchased the Property on January 15, 2020. Sometime in early 2020, the Applicant requested that the Denton Department of Planning and Codes issue a building permit for the Property and conduct inspections. On March 27, 2020, the Denton Building Code Official sent the Applicant a letter denying his request to issue a building permit and conduct an inspection. In the letter, the Building Code Official advised the Applicant that he was required to install automatic sprinkler systems in the structure located on his Property because the value of the renovations completed to the structure totaled more than 50% of the assessed value of the Property. Section 38-8(A) of the Denton Town Code states, “[i]n addition to the provisions of the International Residential Building Code, all new one- and two-family dwellings shall be equipped with an interior automatic sprinkler system.”

Section 38-8 of the Denton Town Code further states,

- C. The requirements herein shall not apply to the following:
- (1) To the rebuilding, refurbishment, renovation, or alteration of a residence in existence as of the effective date of this section unless such existing structure is razed and replaced by a new principal structure or is renovated to such extent that the renovations exceed 50% of the assessed value at the time of permit application.

On April 27, 2020, the Applicant submitted a letter to the Building Code Official noting an appeal to his decision that the Applicant is required to install sprinklers in the structure on his Property. On May 13, 2020, the Applicant filed an application to appeal the decision with the Denton Board of Appeals. Specifically, the Applicant alleges the Building Code Official erred in determining that the renovations completed on the structure on the Property exceed 50% of the assessed value of the Property.

II. SUMMARY OF PROCEEDINGS AND ARGUMENTS OF COUNSEL

Board Member Livingstone opened the hearing, and the Board members introduced themselves. After introductions, Ms. Doherty made a motion to nominate Mr. Livingstone as the Chairman of the Board. Mr. Livingstone seconded the motion and all were in favor. Ms. Doherty made a motion to nominate Ms. Shull as the Vice Chairman of the Board. Mr. Livingstone seconded the motion and all were in favor.

The Board was present to hear Application No. BOA-20-001, an allegation of error appealing the decision of the Denton Building Code Official. Ms. Doherty read the legal advertisement into the record which noted that the hearing was advertised in the *Times Record* on June 24, 2020 and July 1, 2020, and that the property was posted and that the neighboring properties were notified. The legal notice of appeal states,

The Applicant, Jason Cronshaw, has filed a notice of appeal to the Denton Board of Appeals pursuant to Denton Town Code § 38-2.9(B). The Applicant is seeking an appeal from the Building Code Official decision for the requirement to add a sprinkler system to the improvements for property located at 109 South Sixth Street as required per Denton Town Code Denton Town Code § 38-8(A).

At the conclusion of the introduction of the application, Mr. Drummond, present on behalf of the Town of Denton, made a motion to dismiss the appeal for failing to timely file the appeal. Specifically, Mr. Drummond made a motion that the Board dismiss the appeal as the notice of

appeal, by way of letter from Anne Ogletree, dated April 27, 2020, was filed more than twenty (20) days after the Applicant received the decision from the Building Code Official that the Property required the installation of an automatic sprinkler system. Mr. Drummond pointed the Board to Denton Town Code §38-2.9.B. Mr. Drummond stated that Denton Town Code §38-2.9.B. states, “[t]he application for appeal shall be filed, in writing, on the form obtained from the Building Official within twenty (20) days after the notice of violation was served.” Mr. Drummond stated that pursuant to that Section of the Code, the Applicant was required to appeal the Building Code Official’s March 27th letter within twenty (20) days.

Anne Ogletree, the Applicant’s attorney, asked to speak in response to Mr. Drummond’s motion to dismiss. The Board permitted Ms. Ogletree to respond to the motion. Before hearing from Ms. Ogletree, Mr. Livingstone asked the Applicant when the Building Code Official’s decision was sent. Mr. Drummond responded that the letter was mailed on March 27th. Ms. Ogletree agreed. Ms. Ogletree then addressed the Board and said that the Governor of the State of Maryland declared a State of Emergency due to the COVID-19 pandemic on March 5, 2020. She said that the State of Emergency put everything and everyone on hold. She explained that she, like many individuals, was trying to navigate the Governor’s Orders and what actions were permissible and not permissible. Then, she said, on March 30th, the Governor issued the Stay at Home Order. During this time, Ms. Ogletree said that she was not certain whether lawyers were permitted to work in their offices, or whether they were also required to stay home.

Ms. Ogletree said that the COVID-19 pandemic should be grounds for the Board to waive the strict interpretation of Denton Town Code §38-2.9.B. requiring the filing of an appeal within twenty (20) days. Mr. Livingstone asked for the date that the Applicant filed his appeal. Ms. Ogletree responded that the appeal was filed, by way of letter to the Building Code Official, on April 27th. Ms. Ogletree then asked the Board to permit her to present the application regardless of whether the Applicant’s appeal was timely filed.

Mr. Livingstone said that he understands the constraints caused by the COVID-19 pandemic. He asked if the Denton Town Office was closed at any time during the State of Emergency. Don Mulrine, Town Administrator, responded that the Town Office was not closed during the State of Emergency.

Mr. Livingstone stated that there were extenuating circumstances due to COVID-19 that may have caused a delay. Ms. Doherty said that the Board is tasked with giving citizens a hearing when they feel they have been wronged. However, Ms. Doherty said that even given the pandemic, it may not be unfair to say that the Board will not hear the application. Mr. Drummond again stated that the Town's position is that the application should be dismissed for failure to timely file an appeal.

Ms. Ryan said that the issue is one of jurisdiction, mainly timeliness of the appeal, it was appropriate for the Board to consider the motion to dismiss before receiving evidence on the underlying appeal. Ms. Ryan advised that Denton Town Code §38-2.9.B. mandates a twenty (20) day time period for filing an appeal based on a claim that the true intent of the Code or the rules adopted have been incorrectly interpreted. Ms. Ryan further advised that Denton Town Code §38-2.9.C. specifically states, "[t]he Board shall have no authority to waive requirements of this code." Ms. Ryan advised that aside from action by the Town of Denton during the COVID-19 pandemic permitting the waiver or extending certain deadlines, the Denton Town Code does not permit the Board to waive the strict requirements of the twenty (20) day timeframe to appeal.

Ms. Doherty asked Mr. Mulrine if the Town adopted any legislation to extend or waive provisions of the Town Code or deadlines for submission of certain applications. Mr. Mulrine stated that the Town of Denton did not adopt any legislation as a result of the Governor's State of Emergency. He further stated that the Town maintained normal operations Monday through Friday from 8:00 a.m. to 4:00 p.m. He stated that most staff continued to work at the Town Office but those that were not in the office continued to work remotely. He stated that the Planning Office, Town Office, Finance Office, and Administrative Offices continued to operate as usual. Ms. Ogletree asked the Board to hear the application even if they find they have no jurisdiction over the matter. Ms. Doherty responded that the Applicant provided a complete application packet that contained sufficient evidence.

Mr. Livingstone stated that he did not believe that the Board had jurisdiction to consider the appeal as it was filed more than twenty (20) days from the date the Building Code Officials decision was received and, therefore, is untimely. Therefore, Mr. Livingstone made a motion to grant the Town's motion to dismiss on the basis of jurisdiction due to the fact that it was not timely

filed. The motion was seconded by Mr. Wyre. Ms. Doherty opposed the motion but the motion passed by a 2-1 vote. Ms. Ryan advised that an appeal could be filed within thirty (30) days from the date the written opinion was issued. There being no further business, the meeting was adjourned at 6:52 p.m.

III. APPLICABLE PROVISIONS OF THE TOWN CODE

By Ordinance No. 673, adopted on June 5, 2015, and amended by Ordinance 703 on November 7, 2019, the Town adopted the 2018 International Residential Code for One- and Two-Family Dwellings as the Town of Denton Residential Code for One- and Two-Family Dwellings, which is codified with local modifications, in Chapter 38 of the Denton Town Code. Under Section 38-2.9, a person has the following right to appeal to the Board of Appeals:

113.3 Limitations on authority. Any application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this code do not fully apply, or an equally good or better form of construction is proposed. The Board shall have no authority to waive requirements of this code

Section 38-2.9.B. of the Denton Town Code provides that an “application for appeal shall be filed, in writing, on the form obtained from the Building Official *within 20 days* after the notice of violation was served. (emphasis added).

IV. FINDINGS AND CONCLUSIONS

The Board finds that the Town Code does not give the Board of Appeals jurisdiction to hear this appeal as it was not timely filed. As set forth above, the Board only has the authority granted to it by the Town Code and the Land Use Article of the Maryland Annotated Code.

The Applicant filed this appeal pursuant to Denton Town Code § 38-2.9. Town Code § 38-2.9.B. provides that an application for appeal must be filed within twenty (20) days after the notice of the violation was served. The Applicant filed his appeal on April 27th, thirty (30) days from the date the decision of the Building Code Official was issued on March 27th. Therefore, the Board of Appeals lacks jurisdiction to hear the appeal as it was not timely filed.

ATTEST:


Lyndsey Ryan, Board of Appeals Attorney

DENTON BOARD OF APPEALS:


Troy Livingston, Chairperson


Harry Wyre, Member


Florence Doherty, Member