

ZBA Minutes 09/28/09

Contributed by Lisa Fellows-Weaver
Wednesday, 16 December 2009

Zoning Board of Adjustment

Minutes

September 28, 2009

Official as of October 26, 2009

Chairman Bruce Farr calls the meeting to order at 7:00 p.m.

PRESENT: Chairman Bruce Farr, Vice-Chairman Roy Pender, Robert Bailey, Tom Lavigne, Nona Holmes, Alternates Jean Lane and Doug Pollock, Board Administrator Linda Smith, and Board Secretary Lisa Fellows-Weaver.

VOTING MEMBERS: Chairman Bruce Farr, Vice-Chairman Roy Pender, Tom Lavigne, Bob Bailey, and Nona Holmes.

MINUTES:

Nona Holmes makes a motion, second by Roy Pender, to approve the minutes of August 24, 2009, as written. Motion passes unanimously.

Ms. Smith introduces Curtis Naleid who has expressed an interest in becoming an alternate member. Mr. Naleid states that he is a builder, has met with many zoning boards and is familiar with the process as well as what is required as a member.

Case #09-06: Ryan Lamey, 7 Cove Way. Map 108; Lot 72. Applicant is seeking an appeal to an administrative decision of the building inspector relative to Section X, Article A from the Building Officials and Code Administrators Builders Code (B.O.C.A.) as amended in the Northwood General Ordinances to permit a 20'x40' metal framed carport which the ICC Code Chapter 4 Section R403 requires frost protection of freestanding accessory structures with an area of 600 sq. ft. or less of light framed construction.

Ryan Lamey is present. Mr. Lamey states that he appreciates the board members for visiting the property and requests that Mr. Pollock sit in as a voting member. Mr. Farr replies that he believes that all members are familiar with the area.

Mr. Farr asks if the intent is to appeal the decision of the building inspector due to the fact that the rest of the application was completed for a request for a variance. Mr. Lamey explains that he is not asking for a variance as he does not need a variance. He states that the proposed carport is 800 sq. ft. and meets all setback requirements. He explains that code requirements have changed and frost walls are now required. He adds that he feels that this process would be in the best interest for the property and he is proposing to build the building in one section rather than having two smaller buildings, front to back, which would be permitted and he would not need to meet with the board. Mr. Lamey states that he is disagreeing with the BOCA codes.

Mr. Lavigne refers to the building inspector's remarks, which states that he is not able to approve the accessory structure for a frost wall; however, will permit two smaller buildings but they cannot be tied together. Mr. Lavigne adds that if the two smaller buildings were being proposed Mr. Lamey would not need to be here. Mr. Lamey agrees and adds that he respects the code and builds in the code; however, the code is now affecting this style of building with carports, which is not the intent of the law. He adds that he modifies the buildings to make the styles more aesthetically pleasing. In addition, Mr. Lamey states that another reason for this style of a building is that the canvas style carports with poles deteriorate within 8 years, fall apart, hold a lot of humidity, and are not environmental friendly when it is time to dispose of them. He notes that with the proposed style, the metal can be recycled, the unit can be moved, it does not violate the earth, and is a floating structure as it is designed to be a temporary structure. Mr. Lamey states that the width of the structure is a good fit for this area. He states that the alternative is to shrink wrap the boats and is in the best interest or a good use of the environment. He states this building will protect assets and be more aesthetically pleasing to the property.

Mr. Lavigne reads RSA 676:5. Mr. Farr asks if Mr. Lamey disagrees that he violates the code with the building. Mr. Lamey states that he violates 200 sq. ft. He states he is building the carport in one piece and that a carport is a temporary structure not proposing a permanent structure. He adds that he would not be able to have a frost wall as it would violate the water line and there is a lot of ledge in this area. Mr. Lamey adds that he is not sure if he meets the code or not.

Mr. Pender states that the law quoted by Mr. Hickey is Section 403 and extensive. He adds that the BOCA code went out of business in 2000 although the town adopted the BOCA code in 2005 via general ordinances. Mr. Pender states that the state law refers back to the international residential code. Mr. Pender is not sure as to which section of 403 Mr. Hickey is referring to.

Mr. Farr, as an individual, states that he feels that putting two buildings together is not the best idea; however, it meets the code. He adds that he does not feel qualified to interpret the BOCA code. He states that the building inspector and applicant agree that the BOCA code is being violated, then the applicant must prove that the BOCA code should not apply. He states that this will be a tough measure to meet.

Mr. Farr states that he would like to have the building inspector here to explain why there must be a frost wall. Discussion ensues regarding another meeting and the interpretation of the R403. Ms. Smith notes that the building inspector is on vacation at this time and Mr. Farr replies that he had wished that the building inspector had requested a continuance of this case. Ms. Smith adds that she did speak with an assistant regarding if he would be attending and he said no.

Mr. Lamey states that he should have researched the rule better and objected to Mr. Hickey and now the project will be held up.

Mr. Pender reads R403.1, R meaning residential code, which describes structures meeting requirements to withhold various loads. He notes that he has not found anything specific to 600 sq. ft. yet.

Curtis Naleid, in the public audience, notes that this is not a residence and should not be referred to in the residential code; it should be referenced in the building code. Mr. Pender notes that the residential code was referenced by the building inspector and he asked if the residential code apply to this building.

Mr. Farr states that he would like Mr. Hickey to attend and Mr. Lavigne makes a motion, second by Mr. Bailey, to continue this case until the next regular meeting and requests that a member of the building department be present. Discussion is held regarding another date so to not hold up the applicant. Mr. Farr suggests October 13. Mr. Lamey states that the waiting is not acceptable; the building is on order and will be in within the next few weeks. He states that he has tried to do the right thing here and may end up cutting the building in half. He states that he would like to request a refund of costs for the application. Ms. Smith asks if the board would consider an assistant attending on October 13 if Dave Hickey should not be available. Mr. Farr prefers Mr. Hickey be present as this is an appeal to Mr. Hickey's decision.

Mr. Lamey states that he has done these buildings before and Mr. Hickey is familiar with his work and these buildings. He states that the rules have changed; however, he does not believe the rule was intended for carports.

Mr. Pender states to clarify Mr. Naleid's previous comment relative to classifying the carport under building or residential codes; this is classified under the residential code as this is a carport, which comes under accessory structures. Mr. Pender asks at what point does it say that we need to add footings. He adds that he personally does not see a problem with what the proposal is; however, he does not have any information to base this on at this time.

Ms. Smith states that this is a request to an appeal from Mr. Hickey's decision. She explains that this is different in the fact that it is based on the codes, which does not allow the board to make the determination of the five criteria. This is based on if the building inspector was correct or if he may have erred in his decision. Ms. Smith states that Mr. Hickey has stated to her that there is a problem with the building permit application, which is why he has denied the application as he is in agreement with the language within the code and the frost wall is necessary.

Mr. Pender asks for diagrams or drawings from the manufacturer. Mr. Lamey replies no. Mr. Pender reads section R104.10 and states that if there is an engineer's stamp on the manufacturer's drawing and it states that footings are not required, the building inspector may be able to accept that.

Mr. Lavigne amends the motion, second by Mr. Bailey, to continue the case to October 13 and to instruct the board administrator to see if Dave Hickey and the applicant are available; if not, continue the case to the regular monthly meeting, October 26. Mr. Farr recommends that drawings be provided substantiating why the code does not apply. Motion passes unanimously; 5/0.

Request For Motion for Re-Hearing: Case #09-05: Berry Surveying and Engineering, applicant for Mark Lopez, retail space, Rochester Rd. Map 234; Lot 7-2.

Chris Meyer, abutter who submitted the rehearing request, is present. Also present is Chris Berry of Berry Surveying and Engineering representing the applicant and realtor Sandy McPhee who is representing the property owner.

Mr. Farr explains that a motion for rehearing has been provided to the board by abutter KimChris Properties. He notes

the process of granting a rehearing and the reasons that the board should consider re-hearing the case. Ms. Smith explains that a request has also been received from Mr. Berry (representing the original applicant Mark Lopez) requesting a retraction of the ZBA's decision from September 28 to grant the variance. Ms. Smith states that the applicant is requesting the board to withdraw the decision of the board (variance) as it is now not needed. Chairman Farr states he does not feel that the board can accept the request to retract or withdraw the variance; that the board needs to re-hear the case to do so.

A discussion is held regarding the process and Chairman Farr states that the board still needs to re-hear the case and he adds that the fees will still need to be paid. Mr. Farr states that the board can decide to rehear the case based on new information or if the board made an error in judgment, at that meeting a request could be made by the original applicant (Lopez) to withdraw the decision of the board (September 28). Chairman Farr asks about the status of the original approval once a request for rehearing is agreed by the board. Ms. Smith states that a rehearing puts a hold on the issuance of a permit until the board decides on the request for rehearing. Ms. Smith states it is her understanding that the approved variance exists until it is changed. Ms. Smith adds that the existing decision stands until a new decision is made. In addition, Ms. Smith states that it is her understanding no action can be done without a public hearing.

Mr. Pender makes a motion, second by Mr. Lavigne, to rehear Case 09-05, at the board's next regularly scheduled meeting, (October 26) based on receipt of a request of Mr. Berry in the request for rehearing. Mr. Farr adds to the motion the information in the request for rehearing from abutter Mr. Meyer for KimChris Properties, who has noted that he is not in support of the applicant's original request as well as an issue with receipt of the abutter's notification. Mr. Farr asks how long advanced notice is for abutters notifications. Ms. Weaver replies that the state statute requires a notice be sent out to abutters 5 days before the meeting. She explains that for this case the abutter's notifications were written on August 13, mailed out August 14, with certified receipts being returned to the town hall on August 15. The meeting was held on August 24.

Discussion ensues relative to the process of a rehearing application. Mr. Farr states that the affect of the motion on the floor is to begin with a rehearing at the board's next scheduled meeting for case 09-05. The case will begin again and the board reviews all evidence again to see if the board should be granting a variance. Mr. Farr asks for the applicant and the abutters to be notified again. Ms. Smith states that the board's typical procedure is that the person requesting the motion for rehearing pays for the re-notification fees. Mr. Lavigne states that the person who is requesting the rehearing should be responsible for all necessary fees and Mr. Pender agrees that this would be KimChris Properties. Mr. Pender states that his motion is to grant KimChris Properties the opportunity for a rehearing. Motion passes unanimously; 5/0. Ms. Smith adds that all fees will need to be provided by October 1.

Budget

A current expenditure is provided along with a proposed spreadsheet for discussion for 2010. Ms. Smith explains the information provided and notes her recommendations for a reduced budget. Specific lines are reviewed and Mr. Farr asks about revenue for the board. Ms. Smith states that she will contact the finance administrator for a revenue report as typically this is not available until November. Further discussion is held regarding staff salaries and Ms. Smith explains that salaries are not included within this department.

41913 ZONING BOARD OF ADJUSTMENTS	2009	2010 ADOPTED	DEPT RECOMMEND
100-41913-320 LEGAL ZONING BD	\$5,000.00		\$5,000.00 LEVEL
100-41913-330 CONTRACTED SERVICES	\$600.00		\$500.00 REDUCED
100-41913-550 PRINTING/ADVERTISING	\$1,000.00		\$700.00 REDUCED
100-41913-620 SUPPLIES ZONING BD	\$500.00		\$400.00 REDUCED
100-41913-625 POSTAGE ZONING BD	\$1,600.00		\$1,000.00 REDUCED
100-41913-690 EQUIPMENT ZBA	\$350.00		\$350.00 LEVEL
100-41913-820 TRAINING ZONING BD	\$300.00		\$300.00 LEVEL
TOTAL 41913			
ZONING BOARD OF ADJUSTMENTS	\$9,350.00		\$8,250.00 REDUCED

Mr. Farr notes that he appreciates the reduction and the presentation. Mr. Bailey makes a motion, second by Mr. Pender, to adopt the proposed budget, as presented. Motion passes unanimously; 5/0.

Correspondence

All correspondence is reviewed.

Ms. Smith explains that the State of NH has changed some rules of the board for granting variances, effective January 1, 2010. She states that the board has previously had counsel visit with the board for explanation of new RSA's and asks if the board would like this appointment to occur again. The board requests to review the information provided and further discuss a meeting with counsel at the October meeting.

Adjournment

Mr. Pender makes a motion, second by Mr. Lavigne, to adjourn at 8:13 p.m. Motion passes unanimously; 5/0.

Respectfully submitted,
Lisa Fellows-Weaver
Zoning Board Secretary