



BOARD OF APPEALS MEETING MINUTES

Wednesday March 28, 2018

Town Hall Meeting Room

6:30 p.m.

Call to Order

Pledge of Allegiance

Introduction of Board Members

Russell Gagner; Ron Vigue; John Campbell; Diane Morrill; Pat Boisvert

Staff Members Present:

Joe Rousselle, Code Enforcement Office; Phil Saucier, Town Attorney

Approval of Minutes

- Wednesday February 28, 2018

Motion: Ron Vigue motioned to approve the minutes as presented.

Second: Diane Morrill

Mr. Gagner requested when a motion passed or failed, that the minutes clearly indicate what that means for either meeting or failing the hardship standard.

VOTED – 5-0 in favor

Motion Passed

In favor: Ron Vigue; John Campbell; Diane Morrill; Ken Poirier; Pat Boisvert

Opposed: None

Abstain: None

Public Hearing

- Request to revisit Board of Appeals decisions on Hardship Standards. Rebecca Lapierre Portland Street (R72-5).

Rebecca Lapierre, the prospective buyer of 513 Portland Street, made her case for the Hardship Standards. Ms. Lapierre stated that the building has been on the market since May of 2016, with only several units that are occupied. Ms. Lapierre stated a residential use would be better than the building sitting idly.

Motion: Russell Gagner motioned to revisit the Board of Appeals decision.

Second: Ron Vigue

VOTED – 0-5 in favor

Motion Failed

In favor: None

Opposed: Ron Vigue; John Campbell; Diane Morrill; Ken Poirier; Pat Boisvert

Abstain: None

Russell Gagner stated that his vote opposed was because no new information was provided from last meeting, Mr. Vigue concurred.

- Administrative Appeal of Code Enforcement Officer's Decision – Philip Lemay
 - RE: Building Permit Issued at 183 Cranberry Meadow Rd. (R-37, 10)

David Pierson introduced himself as the attorney of the Lemays. Mr. Pierson reiterated the ordinance at the time did not permit demolition and construction of a new building. Mr. Pierson stated that reconstruction is not a repair and according to the Land Use Ordinance, a variance would have been required before a permit could be granted.

David Goldman introduced himself as the attorney for Rose Ellia. Mr. Goldman stated the ordinance allows modernization. Mr. Goldman pointed out a note in the dimensional requirement which has a provision to reduce the setback requirement by a percentage of the non-conformity of the lot size.

Mr. Pierson stated the building was not a modernization or repair.

Chairman Gagner summarized the Board of Appeals' process. The Town Attorney, Phil Saucier, advised the Board to discuss three arguments brought up by Mr. Pierson and Mr. Goldman. The first issue is whether or not the ordinance allowed for demolition and reconstruction. The second issue is determining what the side set back is. The third is to compare to a case in the Maine Supreme Court that was heard in 2017 which used similar language to the Berwick's Land Use Ordinance. The Board discussed details of the three topics.

Mr. Pierson stated that it is not clear if a piece of the building remained in the 2017 case, therefore it distinguishes that case from their case, and should not be compared. Mr. Goldman responded by stating no case will have the same two facts.

Motion: Russell Gagner motioned that the improvement/moderation/repair was allowed in the ordinance including the raising and replacement of the building.

Second: John Campbell

VOTED – 4-1 in favor

Motion Passed

In favor: Ron Vigue; John Campbell; Diane Morrill; Russell Gagner

Opposed: Pat Boisvert

Abstain: None

Ron Vigue stated section 6.6 grants the Code Enforcement Officer the purview to make the decision he made without having to go to the Board of Appeals. Russell Gagner said his interpretation is the notes are to go along with the Dimensional Requirement table.

Motion: Pat Boisvert motioned that a variance was not required for the dimensional requirements.

Second: Ron Vigue

VOTED – 5-0 in favor

Motion Passed

In favor: Ron Vigue; John Campbell; Diane Morrill; Russell Gagner; Pat Boisvert

Opposed: None

Abstain: None

Phil Saucier recommended to the Board to decide if the standard was met, according to note six.

Motion: Russell Gagner motioned that the project meets side setback as established in Section 6.3 including note six.

Second: Pat Boisvert

Pat Boisvert summarized the dimensional requirements of the property as prescribed in the non-conformance section in the Land Use Ordinance. Ms. Boisvert stated the side setback is set back more than what is required, meeting the requirement.

VOTED – 5-0 in favor

Motion Passed

In favor: Ron Vigue; John Campbell; Diane Morrill; Russell Gagner; Pat Boisvert

Opposed: None

Abstain: None

Phil Saucier recommended to the board to review the submission requirements.

Joe Rousselle stated the application was complete. Mr. Pierson asked the Board to look at Section 9.2. Mr. Goldman requested the Board to look specifically at 9.2.B.1. Mr. Pierson explained what the CEO did or did not do is irrelevant because the case is heard De Novo.

Motion: Russell Gagner motioned that the application had sufficient information to render a decision in according with Section 9.2.B.1.

Second: Ron Vigue

VOTED – 5-0 in favor

Motion Passed

In favor: Ron Vigue; John Campbell; Diane Morrill; Russell Gagner; Pat Boisvert

Opposed: None

Abstain: None

Motion: Ron Vigue motioned that the appeal be denied.

Second: Russell Gagner

VOTED – 5-0 in favor

Motion Passed

In favor: Ron Vigue; John Campbell; Diane Morrill; Russell Gagner; Pat Boisvert

Opposed: None

Abstain: None

Adjournment

Motion: Ron Vigue motioned to adjourn

Second: Diane Morrill

VOTED – 5-0 in favor

Motion Passed

In favor: Russell Gagner; Ron Vigue; John Campbell; Diane Morrill; Pat Boisvert

Opposed: None

Abstain: None

Minutes prepared by Town Planning Technician James Bellissimo, for consideration at the Berwick Board of Appeals next meeting

Signed as Approved by the Board

Russell Gagner, Chair

Date