

DRAFT  
Zoning Board of Adjustment  
Meeting Minutes  
January 10, 2017

DRAFT	_____
APPROVED AS WRITTEN	_____
APPROVED AS AMENDED	_____

**Members:** Steve Filipi, Gretchen Wittenborg, Bob Handy, Jack Ernst, Chad Beede, Cathy Davis, Carmen Yon

**Others Present:** Susan Silverman, Selectmen's Representative, Lawrence and Nancy Vincent, David Mark, Shelley Mozier, Joni Mastro

**7:00 PM Public Hearing continued:** Larry (Lawrence and Nancy) Vincent application for a Special Exception to construct an attached accessory dwelling on property located at 175 NH Route 119 West, Residential and Historic Districts.

Filipi convened the meeting at 7:04 PM. David Mark introduced himself as a contractor who has been hired by Larry Vincent to represent him to resolve a situation involving construction without permits on his property at 175 Route 119 W. Mark said that he has had some years of experience in code enforcement and support of a ZBA in Merrimack NH and that he will be speaking for the Vincents. He is now a contractor, living in West Swanzey and has known Larry Vincent for some years. David Mark requested that the Board consider his client's request to amend the application to a Special Exception for a Duplex which is allowed by special exception in a residential zone.

Filipi demurred on the grounds that there are existing code enforcement issues between the Vincents and Fitzwilliam's Board of Selectmen. Mark stated that in order to obtain a construction permit which had not been obtained before

construction began the Vincents require a special exception since the Board cannot, as he stated, grant a special exception for an accessory unit as the additional unit already built within the garage/workshop exceeds the area limit for accessory units by about 1000 square feet. He said further, that the Board of Adjustment should not have accepted an application for a special exception that it could not grant and that to do so implied that the Board could grant the relief requested. Filipi said that in a small town applications are occasionally presented that are incomplete and that the errors and insufficient information are frequently resolved one way or the other by continuing a hearing until sufficient information is provided or the application is denied. Filipi said that the fact that a hearing was scheduled on the application in question has no implications.

Mark said that the ZBA can only adjudicate the use of the property under the Fitzwilliam Zoning Ordinance and that it may not inquire further or impose conditions. Both Filipi and Wittenborg referenced 127-41 of the Zoning Ordinance and read sections of 127-41F relating to conditions, safeguards and limitations that the Board may impose as it deems appropriate.

Handy asked Mark if the tenants were still occupying the residential unit that has been built into the former workshop and garage. Mark replied that they were, as the notice from the Selectmen gave a date of January 13<sup>th</sup>, 2017 (note: the Cease and Desist Order itself does not appear to give a date of January 13) for the removal of the tenants. Wittenborg asked Mark when the tenants had begun occupancy. Mark declined to answer. It was noted that a question directed to Joni Mastro (Vincent's niece) as to how many children were in the unit, as Vincent had told the Board on a previous occasion that there

were three, but Mastro said that in fact there are four children, all hers.

Mr. Vincent approached Mr. Mark to say that the tenants were no longer living in the unit.

Mark stated that some sheet rock in the unit is up but that there are no doors in the unit and some of the work is unfinished.

Filipi said that if the Board were to grant a Special Exception at some point in the future based on an appropriate application it would likely require the installation of the planned new septic system prior to the issuance of an occupancy permit.

Silverman referenced a Cease and Desist Order issued by the Board of Selectmen dated December 19, 2016 and served on the applicant requiring that the tenants occupying the second unit (1860 square feet, plus or minus) in the garage workshop vacate the premises.

Silverman gave a report on the visit of Nancy Carney from the Fire Department and a member of the Fitzwilliam Police Department which occurred shortly after Christmas. She said that the tenants were still living in the unit when Carney arrived, and that she found a variety of problems including no egress from the second floor and general safety concerns.

A discussion began about the possible need for a legal opinion as to the ability of the Board to grant a Special Exception should an application for a duplex be presented and it was suggested by Wittenborg that the question be addressed again should such an application actually be filed.

Handy made a motion to deny the application for an Accessory Unit. Filipi asked him to hold that motion while he continued a discussion with Mark who asked that the applicant be permitted to withdraw his application. Filipi then made a Motion to allow the withdrawal of the application which was seconded and voted in the affirmative.

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Filipi asked for comments on the minutes of the meeting of October 25, 2016. There were none other than his own, in paragraph 7 on page 2 of the minutes following a semi-colon in line 2 starting with the words "Paul Grasewicz will oversee." Filipi read the words, saying the language in that paragraph is inconsistent with the conditions articulated on page 3 of the minutes and gave Wittenborg the handwritten amendment to replace the inconsistent language. A Motion was made to approve the Minutes of October 25, 2016 as Amended. It was seconded and approved unanimously by the Board.

Ernst made a Motion to adjourn which was seconded and approved unanimously. Filipi adjourned the meeting at 8:20 PM.