

DRAFT
Zoning Board of Adjustment
Meeting Minutes
June 15, 2017

Members: Filipi, Handy, Wittenborg, Beede (alternate) and Wood (alternate)

Others Present: John Anderson for Ice House Point LLC, Paul Grasewicz, Susan Silverman, Selectman's representative, Dave White, abutter

Hearing continued from June 13th, 2017 on Ice House Point, LLC.

Construction permit #17-06 forwarded by the Board of Selectman for an equitable waiver for the construction of a deck within the 20 foot side setback and heard as ZBA case #04-17.

Chairman Filipi opened the meeting at 8 PM. He seated Susan Wood for Jack Ernst who has rescued himself.

Filipi raised the question of whether this property is subject to the New Hampshire Condominium legislation. Grasewicz said he believes that the Condominium plan was recorded in Registry of Deeds. Anderson said he did not believe that the condominium documents had been completed and recorded. Chairman Filipi said that whether or not the property is a condominium is not relevant to the Board's consideration in this case, but may be an issue for the Board of Selectman as it appears to be assessed and perhaps taxes as a condominium.

Mr. Anderson was asked when White notified him of the setback violation and he said that he did not know it until he got a call from Dave Streeter, the contractor, while the work was going on saying that there was a cease and desist order. At which point he said Streeter notified him stopped work and left the property,

Mr. White said that the bulk of the work was done when he became aware of the violation and was complete except from some of the decking and railings etc., and that he thought it took a few days for the Town to notify the owner.

Filipi questioned why Mr. Anderson had not taken the time to identify his boundaries on a waterfront property he had owned for 7 years particularly as the one acre site has two structures on it and the land is shared. He noted that there is quite a bit of engineering available in the file and that the boundary markers are quite prominent.

Mr. Anderson responded that he hired others to do that work but acknowledged that the responsibility for the violation was his.

Ms. Silverman said that there are contractors constantly cutting corners and sometimes not applying for the construction permit until after the work is done.

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Filipi stated that the Town had dropped the ball on this. An application for a construction permit under 129-39 of the Fitzwilliam Zoning Ordinance requires a “plan drawn to scale and prepared by a registered professional engineer or licensed land surveyor, as appropriate to the data..... showing ... the location and dimensions of all existing and proposed structures and the dimensions of all setbacks.” The construction permit in this case was issued without the required plan.

Filipi said that, once again, we are sitting in a hearing because of the lack of a building inspector.

It was noted that while the goal of the ZBA is to complete a hearing in one evening, the Board can not meet that goal if the documentary evidence is insufficient or if additional documentary evidence is presented at the hearing and members of the ZBA have not had an opportunity to review it. Handy stated that documentary material coming in had to come in a full week before the hearing, and each member, including alternates, should receive a copy.

Wittenborg again asked how much of the deck would have to be removed if the waiver is not granted. Grasewicz said it would be roughly half of the deck. Anderson said that the construction cost him \$27,000.

Filipi made a motion to vote on the mandatory findings for an Equitable Waiver of Dimensional Requirements. The motion was seconded and passed unanimously.

- a) That the violation was not noticed or discovered by any owner, former owner, owner’s agent or representative until after the structure in violation had been substantially completed ... *all Board Members agreed.*
- b) That the violation was not the outcome of ignorance of the law or ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner, or owner’s agent, or representative, but was instead caused by a good faith error either in measurement or calculation made by an owner or owner’s agent, or by error in ordinance interpretation or applicability made by a municipal official in the process of issuing a permit over which that official had authority.

The Board discussed this finding at length, questioning whether there was a “failure to inquire” and what impact it had on the situation since there was also a failure on the part of the municipal authority in that the plan required by the ordinance to accompany the application for a construction permit was not obtained and the Town no longer has a building inspector. The Board agreed that there was no direct evidence of bad faith on the part of the applicant. *The Board agreed unanimously.*

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- c) That the physical dimensional violation does not constitute a public or private nuisance, nor interfere with or adversely affect any present or permissible future uses of any such property, and; *The Board agreed unanimously citing the fact that the abutter is not visible from the area of the deck and vice versa.*
- d) That due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected. The Board agreed unanimously citing Mr. Anderson's testimony on the cost.

The Equitable Waiver of Dimensional Requirements is granted. Upon a motion to adjourn that was unanimous the Chairman adjourned the meeting at 9:11 PM.