



TOWN OF WINCHESTER ZONING BOARD OF APPEALS
Town of Winchester Town Hall, 338 Main Street
P. Francis Hicks Room – 2nd Floor
February 27, 2018 – 7:00PM
Regular Meeting Minutes

1. ROLL CALL:

Vice Chairman Mike DeClement called the meeting to order at 7:05PM.

Mr. DeClement noted that the following individuals were present in addition to himself: Neil Hunt, John Massicotte, and John Pollack and Alternates Phillip Allen, Richard Nalette and Hal Wilkes.

It was noted that Phillip Allen would be seated as the fifth regular member.

Also, present for this meeting was Zoning Enforcement Officer/Building Official Marc Melanson and the town's legal counsel Kevin Nelligan.

Mr. DeClement acknowledged the recent passing of Chairman Dave Villa. Mr. Villa served this community for many years and his presence will be missed.

2. EXPLANATION OF PROCEDURE:

Mr. DeClement explained that an approval from this Board requires four affirmative votes. He noted that applicants usually receive a disposition on the application the evening of the meeting. Mr. DeClement explained that the proceedings include the applicant's opportunity to provide information regarding the application, a chance for the Board to question the applicant and/or representative as well as closing comments by the applicant.

3. PUBLIC HEARINGS – VARIANCE APPLICATIONS & DECISIONS:

A. ZBA #18-5189 Special Permit – Location: 240 Perch Rock Trail Owner: Sandy Drive Three, LLC Applicant: Peter D'Addeo Proposal: Garage Updates and Expansion.

Mr. Melanson reported that this application has been withdrawn.

MOTION: Mr. Hunt, Mr. Allen second, to accept the withdrawal in the application of ZBA #18-5189 Special Permit – Location: 240 Perch Rock Trail Owner: Sandy Drive Three, LLC Applicant: Peter D'Addeo Proposal: Garage Updates and Expansion; unanimously approved.

B. ZBA#18-5190 Appeal from ZEO Decision Location: 182 Shore Drive Owner: Colleen and John Lucarelli Applicant: Colleen and John Lucarelli Proposal: Appeal from Zoning Enforcement Officer's Decision RE Zoning Permit Application.

Due to the infrequency by which this Board receives appeals from the decisions made by zoning enforcement officers, Town Attorney Kevin Nelligan was invited to provide a reminder regarding this Board's duties and responsibilities in hearing this matter. Attorney Nelligan reminded the Board that it is appropriate to accept documents as presented and should be entered into the record and explained that there is no cross-examination between parties. He noted that the

Board can and should ask questions. Attorney Nelligan explained that there really ought to not be public comment. He advised that he will neither present Mr. Melanson's case nor will he provide input on what finding this Board ought to make, in either upholding the decision or overturning the decision.

Attorney Francis Teodosio appeared before the Board regarding this application. He provided the certificate of mailing receipts that served to notice the abutting neighbors, within one-hundred (100') feet of the public hearing relative to this application. Additionally, Attorney Teodosio also verified that a sign providing notice of this meeting had been installed at the site that is the subject of this application. He provided photographs of the sign at the site.

Attorney Teodosio explained that should the ZEO decision be overturned, there shall be no changes to the outside structure of the dwelling as depicted in those photographs nor would there be any changes to the footprint of the house. He further explained that his clients are seeking to convert current attic space to a room, the space that occupies the area evident from the exterior of the premises just above the horizontal windows rising to the windows currently in the roof itself.

Attorney Teodosio explained that his clients are seeking to take this building which is a non-conforming use under the Zoning Regulations as it is 500 square feet, having received three variances granted, in 1992 and is legally non-conforming by virtue of a Certificate of Occupancy granted in 2013. He explained that his clients are seeking to convert a non-conforming use through the one exception as allowed by the Zoning Regulations that "...a structure which contains a permitted use but is otherwise non-conforming may be expanded or altered provided that no non-conformities are created or expanded..." but continues "...except that a second floor may be added an existing first floor utilizing the same footprint..." Attorney Teodosio reiterated that his clients are not seeking to change the footprint but instead requesting that the attic be converted to a second floor through that regulation.

Referencing a survey from that firmly establishes the footprint, Attorney Teodosio acknowledged that while it was not a sealed A2, he put it forth as a schematic to illustrate the footprint of the variances granted, noting that they are depicted in different colors making it easier to understand. He referenced the 2013 CO, designating the property as a single-family residence. Pictures of the basement were provided by Attorney Teodosio depicting the basement and passed for the Board members to review. Additionally, he submitted nineteen photographs, each marked "500" on the back, depicting the main floor of the home, which were also passed for the Board members to review. Finally, thirteen pictures, marked "Attic", were presented for the Board to review.

Attorney Teodosio noted that while the proposal is not to change the structure inside or outside, his clients would convert the windows if necessary pursuant to the Building Code.

Attorney Teodosio noted the reference to the denial of the 2003 ZBA application as justification for the denial of the ZEO. He explained that the denial was premised on nearly doubling the footprint and that his clients are not seeking to expand the footprint at all. Additionally, Attorney Teodosio noted that the historical perspective used in Mr. Melanson's denial pertain to more expansive proposals as well as former Zoning Regulations and that the array of regulations that now govern have been completely modified.

Attorney Teodosio noted that Connecticut's General Statutes require the Board to review the application, paying attention to the surrounding community ensuring that the proposal doesn't

harm the community as well as taking a concentrated look at the property that is subject to the appeal and make sure that fairness pertains.

Mr. Melanson then addressed the Board referencing copies of documents he has provided relative to the history of this site contained in a series of packets. Mr. Melanson reviewed each document, explaining the relevance of each. He referenced a June, 1992 application, #2437, to construct a year-round single-family residence, later withdrawn by the applicant because an A2 survey was requested. Mr. Melanson then reviewed a July, 1992 application, #2442, which was essentially the same application, later modified by the applicant in consultation with the Board as demonstrated in excerpts from the Minutes from that time. The resulting approval at that time was for a 500-square-foot seasonal cottage. Mr. Melanson explained that the variance was granted with the restriction that it be a 500-square foot-three-season cottage, and not for permanent residence. Mr. Melanson referenced a copy he included in this packet of the variance as well as a copy of the variance that was recorded on the Land Records.

Continuing to describe and explain the items contained within the packet in support of his decision, he noted that page 3 of Packet 3 contained the definition from 1992 of a seasonal cottage, reading "...a detached structure which is intended by design for human occupancy by single family for seasonal or recreational use and not for permanent residence connected to a safe water supply with sewage disposal in accordance with applicable regulations, having a minimum floor area of 500 square feet. A seasonal cottage shall not be occupied for more than a total of thirty days between October 1st and May 1st...".

He continued with the definition of floor area. He described a subsequent application seeking a two-story house that was denied as the Board at the time deemed the proposal too large. Mr. Melanson noted that the foundation permit was granted in January, 2006, after this application was sought for a larger footprint. Referring to the copies of documents provided to this board, Mr. Melanson pointed out that as a result of his building plan review done at the time in which he questioned the loft space depicted, the then homeowner revised his submittals.

Mr. Melanson described the Modification to the Variance in Application #07-5006 for decks which was subsequently withdrawn and then resubmitted. It was noted that this second application was denied in September, 2007.

Mr. Melanson maintained that the only way a variance can be modified is through an application to do so. He indicated that just because Zoning Regulations may subsequently permit a desired use, a legally non-conforming use that was secured through a variance can only be modified through an application to modify.

With respect to a Certificate of Occupancy, Mr. Melanson, who also functions as the Town's Building Official, noted that there is no differentiation between a seasonal cottage and year-round residence with both being considered "single-family residence".

Mr. Melanson noted that he had submitted the definition of "seasonal cottage" that remains as a definition under the current zoning regulations, but does not define a size. He noted that there is no prohibition to the installation of sheetrock in an attic and in this case, it just could not be used for living space.

Attorney Teodosio questioned the previous definition of a seasonal cottage. It was noted that it indicated that a seasonal cottage had a minimum, and not maximum, of 500 square feet.

Attorney Teodosio noted that his clients are not seeking to change the dwelling from a seasonal cottage to a year-round cottage.

The audio from the Zoning Board of Appeals September 25, 2007 meeting was also submitted.

Attorney Teodosio requested, and was granted, a brief consultation with Attorney Nelligan.

Attorney Teodosio explained that he was seeking at this meeting, the Board to grant the zoning permit as submitted, opining that it would be extremely wasteful to re-notice his client's neighbors for another meeting and that the proposal has already been described.

Mr. Melanson explained that what the attorney had requested this Board to overturn his decision to deny the zoning permit which would then increase the amount of living space at this property. He noted that he had advised them earlier that they ought to be applying for a modification of variance.

Attorney Teodosio noted that the current Zoning Regulations do not distinguish non-conforming uses from uses that are allowed through a variance. He explained that it just reads non-conforming use.

The public portion of the meeting was concluded at 7:58PM.

Discussion ensued among the Board members.

Mr. Pollack questioned how the status of the property would not automatically change from seasonal cottage to year-round residence when increasing the size of the square footage as currently proposed. Attorney Nelligan noted it would in effect void that part of the previous variance. Mr. Hunt pondered whether this would become automatic. Mr. DeClement shared that upon initially seeing the Certificate of Occupancy, he at first thought that it had automatically converted the dwelling to a year-round residence but through the testimony received, now understands the differentiation.

MOTION: Mr. Allen, Mr. Hunt second, that the Zoning Board of Appeals uphold the decision of the Zoning Enforcement Officer based on the clear precedent of the variance granted in '92 and the necessity of that being amended by a further variance application; unanimously approved.

4. APPROVAL OF MINUTES – JANUARY 23, 2018:

MOTION: Mr. Massicotte, Mr. Allen second, to approve the January 23, 2018 Minutes; unanimously approved.

It was noted that next month's agenda ought to include *Discussion on Application Fees*.

5. BILLS PRESENTED:

None.

6. CORRESPONDENCE:

It was noted that the Council of Governments is once again hosting their Land Use Academy Training sessions with the first one scheduled for Tuesday, March 6, 2018 from 6:30PM to 8:00PM, *Legal Requirements & Procedures in Land Use Decision Making* at their location at 59 Torrington Road, Suite A-1 in Goshen. Additionally, a second session is scheduled for

Tuesday, March 27, 2018 from 6:30PM to 8:00PM, *Basics of Reading Site Plans*, at the same location.

7. OTHER BUSINESS:

A. Election of Officers.

Discussion ensued on the vacancy of a regular member after the death of Mr. Villa. It was noted that his death results in only four members to be considered for officer positions. Consideration was given as to whether the Election of Officers ought to be postponed until after such time that the Board of Selectmen have had the opportunity to appoint an additional regular member.

MOTION: Mr. Hunt, Mr. Allen second, to withhold election until a new regular member has been seated; unanimously approved.

8. DISCUSSION WITH ZONING ENFORCEMENT OFFICER:

It was noted that a memorial service for Dave Villa has been scheduled for Saturday, March 3, 2018 from 4:00PM to 7:00PM at the VFW located at 114 Colebrook River Road in Winsted.

9. ADJOURNMENT:

MOTION: Mr. Hunt, Mr. Pollack second, to adjourn at 8:17PM; unanimously approved.

Respectfully submitted,

**Pamela A. Colombie
Recording Clerk**