

TOWN OF WINDHAM, MAINE

Zoning Board of Appeals

Minutes

March 2, 2017

The ZBA convened at 7:02 p.m. on Thursday, March 2, 2017, at Windham Town Hall. Members present: Chair Person, Marjorie Govoni; Vice Chair, James Cobb; and Joanne Mattiace. Members absent: Fred Panico and Chuck Fleck. Also present were Steve LeBrun from the Code Enforcement Office and Town Attorney Kevin Haskins.

The meeting was called to order by Marjorie Govoni.

Approval of minutes, February 2, 2017: Motion made by James Cobb, seconded by Marjorie Govoni.

Vote: 2-0 (Joanne Mattiace abstaining).

Public Hearing

Brought back from the table

01-17 – Daniel J. Wright/Bryan Moore – Is requesting an appeal from an enforcement decision of a Code Enforcement Officer. Zone is VC (Village Commercial Zoning) Map 38, Lot 49 D-1, for 16 Depot Street.

Motion to bring back from the table: Motion made by James Cobb, seconded by Marjorie Govoni.

Vote: 3-0.

Marjorie Govoni noted that the appeal had been tabled previously because Mr. Wright was not available, but that both he and Mr. Moore were now present.

Marjorie Govoni requested that Mr. LeBrun summarize the current status of the appeal. Mr. LeBrun explained that the applicants had recently submitted a permit application for a change of use and that he is currently in the process of reviewing it.

Marjorie Govoni inquired as to why the appeal was before the Board if the applicants are in the process of applying for a permit to change the use of 16 Depot Street from commercial to residential and to bring the property into compliance with the ordinance.

Attorney Haskins explained that the Board does not have jurisdiction over the appeal. He explained that, pursuant to Section 1105 of the land use ordinance, the Board has jurisdiction over appeals from a decision of the Code Enforcement Officer, and that the decision of the CEO that would be relevant here for purposes of jurisdiction would be the Notice of Violation issued by Mr. LeBrun on December 12, 2016. That NOV explained that the condition in violation was that the use of the structure at 16 Depot Street had been changed from commercial to a residential without a permit. Attorney Haskins explained that the applicants are not challenging the NOV or the violation regarding the unpermitted change in use. Rather, Attorney Haskins

explained that the applicants are appealing a letter provided on December 19, 2016, by the Assistant Town Manager that summarized a number of code requirements that would need to be addressed in any subsequent application for a change in use permit. Attorney Haskins explained that the December 19 letter contains advisory information and is not a decision of the CEO. Attorney Haskins explained that because the applicants are not appealing a decision of the CEO, the appeal should be dismissed by the Board for lack of jurisdiction.

Mr. Moore conceded that the appeal does not concern the NOV and that the applicants did not intend to appeal the NOV. Mr. Moore conceded that the building was commercial and needed to be changed to a residential use. Mr. Moore explained that the appeal was filed to appeal the December 19 letter and the contents of that letter. Mr. Moore stated that he believes a solution with the CEO is close at hand and explained that he hoped to table the appeal.

Marjorie Govoni explained that it did not appear that the Board had jurisdiction over the appeal because there is no decision or denial of the CEO that the applicants are appealing.

James Cobb stated that he would agree to table the appeal if progress were being made on the application.

Marjorie Govoni offered that tabling the appeal would not be appropriate if the applicants are not appealing any denial made by the CEO.

Mr. Wright explained that although the Town extended the time for bringing the property into compliance until April 15, 2017, the Town did not extend the 30-day time period for filing an appeal of the NOV. Mr. Wright explained that the appeal was therefore filed to protect their right to appeal and come back to the Board.

Attorney Haskins explained that dismissing the appeal at this time would not prejudice the applicants' ability to come back to the Board if the CEO were subsequently to deny an application for a change of use permit, because that denial would be a decision of the CEO and would therefore be subject to appeal.

Marjorie Govoni explained that she did not believe the Board has jurisdiction over the appeal because the applicants are not appealing a decision of the CEO.

Motion to dismiss appeal: Motion made by Marjorie Govoni, seconded by James Cobb.

Vote: 3-0.

Motion to adjourn: Motion made by James Cobb, seconded by Joanne Mattiace.

Vote: 3-0.