

WESTHAMPTON ZONING BOARD OF APPEALS
MINUTES FOR SPECIAL MEETING OF SEPTEMBER 26, 2017
109 NORTHWEST ROAD

The meeting was called to order at 7:48PM. Members present: L. Aloisi, Chair; S. Morigan, Clerk; J. Kelsey; W. Parks, and W. Tracy. Members absent: none. Alternate present: S. St. Marie. Guests present: C. Whipple, D. Berson, J. Powers, M. Powers, G. Curtis, T. Quinlan, T. Fondakowski, B. Seney, B. McCloud, P. Silvernail, M. Hathaway, A. Kellogg, and E. Rickey.

Mr. Berson, attorney for Ms. Kellogg, began the discussion by stating that he had filed an appeal of the Building Inspector's Stop Work Order only to preserve Ms. Kellogg's appeal rights and that they did not intend to pursue the appeal.

He stated that they were here not on the old building permit, but rather were seeking a new one. He stated that the ZBA has the right to make a baseline finding on whether or not there has been an abandonment of a previously existing structure. He stated that Town Counsel agreed with him on the law and that the finding could be made at a regular meeting and did not require a hearing.

A ZBA member pointed out that the ZBA is here to apply the Zoning Bylaws.

Much discussion ensued about the direct consultation with Town Counsel. Mr. Quinlan stated that he asked the Select Board for permission to contact Town Counsel, and that his consultation with Town Counsel was approved. Mr. Quinlan stated that he had sent Town Counsel's opinion that a variance was required to Mr. Berson. Mr. Quinlan did not bring Town Counsel's opinion to either the Select Board or the ZBA prior to sending it on to Mr. Berson.

The ZBA then asked to see a site plan for 109 Northwest Road. Various members noted that both the proposed septic tank and the foundation were located in the setback. Mr. Berson stated that the question was whether the modular home of Amber Kellogg was less non-conforming than the previous mobile home on the site. ZBA members noted that there was now a rectangular item on the site plan. The surveyor noted that she had determined the approximate location of the original structure from Assessors' Field Data Card and Google Earth data from September 18, 2011. Mr. Berson stated that the Kellogg family had always intended to re-construct on the lot.

At this point, a ZBA member mentioned that a variance should be required.

Various members felt that the ZBA should make a determination the night of the meeting that a building permit should issue, that the new structure was not detrimental to the neighborhood, that there was no malicious intent, and that no variance was required.

Mr. Tracy moved, and Mr. Aloisi seconded, the following motion: I move that the ZBA issue a finding that current situations and conditions do not justify the extension of time before a decision is made. Discussion ensued.

It was noted that the previous ZBA decision found that Mr. Miller's reliance on the single-lot exemption was an improper justification for issuing a building permit. Members stated that if the lot is still non-conforming, the ZBA could vote at the meeting.

Members also pointed out that to vote at this point to issue a building permit was to compound an error. If Ms. Kellogg had met with the ZBA at any time, or at least prior to installing her foundation, the ZBA could have worked with her about what kind of procedure was needed.

Mr. Quinlan expressed his opinion that a variance was required. Discussion ensued regarding the lawyers negotiating how to handle 109 Northwest Road and not working with the ZBA.

Mr. Berson said that the Town Counsel agreed with him on the law, although he had no written answer back from her to that effect. A ZBA member expressed the opinion that the purpose of the meeting - a finding, rather than simply a sign-off, as Ms. Kellogg had requested when she asked for a special meeting with the ZBA - did not give adequate notice to abutters of the actual question to be discussed.

Mr. Berson then presented a building permit, dated 8/7/13, and issued for removal of a mobile home, to the ZBA.

Mr. Tracy then withdrew his previous motion, and Mr. Aloisi, who had seconded the motion, agreed with the withdrawal. Mr. Tracy made a new motion, seconded by Mr. Kelsey, as follows: Based on the evidence presented by the Kelloggs and their counsel, it has always been the intention to have a home on this property, and since the proposed layout (and new foundation) is less non-conforming than the previous structure, we approve a finding that the Building Inspector can issue a new building permit as applied for.

Discussion ensued. A guest mentioned that zoning law is not based on intention, that impartiality is required by the law, and that this lot is conforming and does not meet the required legal setbacks. The guest asked whether the Town Counsel had issued an opinion on this plan. It was noted that the last communication from Town Counsel was that a variance was required.

Mr. Berson stated his client was willing to wait or seek a variance. He also noted that Town Counsel cannot opine on the facts. He offered to wait until Town Counsel had responded to him, but that the second non-conformity (besides frontage) had never been addressed.

A vote was taken on the motion, and the vote was 3 for the motion and 2 against. Therefore, the motion failed. Mr. Aloisi then advised Ms. Kellogg to seek a variance.

A question was raised by a guest as to the appeal of the Stop Work Order. Mr. Berson stated that that appeal was withdrawn, and that his client would be seeking a variance.

Mr. Kelsey moved, and Mr. Parks seconded the motion, to adjourn the meeting. The vote was unanimous in favor of adjournment, and the meeting adjourned at 9:20PM.

Respectfully submitted,

Shirley P. Morrigan
Clerk