

BUILDING CODE BOARD OF APPEALS

MINUTES

DECEMBER 5, 2019

A meeting of the Building Code Board of Appeals was held on Wednesday, December 5, 2019 at the Conway Town Office in Center Conway, NH, beginning at 5:00 pm. Those present were: Chair, John Colbath; Vice Chair, Andrew Chalmers; Luigi Bartolomeo; Steven Steiner; Richard Pierce; Planning Director, Thomas Irving; and Planning Assistant, Holly Meserve.

PUBLIC MEETING

A public meeting was opened at 5:00 pm to consider a **MOTION FOR REHEARING** requested by **MOUNTAIN TOP MUSIC CENTER** in regards to §23-4, §23-14, §23-15 & §23-17 of the Conway Building Construction Code **to appeal the Building Inspector's issuance of a building permit to Matthew Donarumo** at 46 Main Street, Conway (PID 265-44). Notice was published in the Conway Daily Sun.

Shawn Bergeron of Bergeron Technical Services; and David Pandora, Building Inspector, were in attendance. Mr. Colbath asked the Board how they would like to proceed. Mr. Bartolomeo suggested going through Mr. Bergeron's letter [attached] dated November 13th, 2019.

Mr. Colbath read bullet #1. Mr. Bartolomeo stated Mr. Bergeron is alleging that this is one of things that makes the ruling unlawful and unreasonable. Mr. Bartolomeo stated Mr. Irving did explain this to the Board at the beginning of the hearing; is it stipulated anywhere that it must be noticed as the Building Code Board of Appeals. Mr. Irving stated if you look at the top of the notice it says Zoning Board of Adjustment and Building Code Board of Appeals; they are both listed.

Mr. Colbath read bullet #2. Mr. Bartolomeo stated the applicant himself provided tons of building code citations; it was not that we were at a loss or lacking information. Mr. Chalmers asked if it is not legal for us to not have had a building code book provided to us for that meeting. Mr. Irving stated the Board was provided with each and every section of the Town code that was listed on the appeal; the sections listed on the application were §23-4, §23-14, §23-15 and §23-17 and each were attached to the Board's packets. Mr. Bartolomeo stated we did have them.

Mr. Colbath read item #3. Mr. Bartolomeo asked Mr. Pandora how many applicant's for residential building permits come in with all the code stuff ahead of time; how common is it that an application for a residential building permit comes loaded with all the code stuff that it has to meet. Mr. Pandora answered very seldom. Mr. Chalmers asked does it ever happen. Mr. Pandora stated for residential we sometimes get complete plans from builders, but we don't require plans for residential.

Mr. Chalmers asked if it is the builder's sole responsibility for code compliance. Mr. Pandora answered in the affirmative and stated it is the contractor's responsibility to build to the code because the State of New Hampshire has adopted that code.

Mr. Bartolomeo stated he doesn't remember the "the board's expressed acceptance"; he doesn't remember expressing that, does anybody else. Mr. Chalmers answered in the negative.

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Mr. Steiner asked Mr. Pandora if they have complied to anything. Mr. Pandora stated they have done sheetrock, they have double sided the interior wall facing the Majestic, they have double sided the ceilings and stairways, and we are working on egress windows; they are coming along slowly. Mr. Steiner asked if it was fair to say that they are working with the Town and complying. Mr. Pandora stated so far, they are, and if they don't, we will stop them.

Mr. Chalmers stated there is no occupancy in there. Mr. Pandora agreed. Mr. Bartolomeo stated he is certain he has his eye on this quite closely. Mr. Pandora agreed.

Mr. Colbath read bullet #4. Mr. Bartolomeo stated the criteria to grant a rehearing is usually a technical error or new information; he doesn't see where this rises to either of those. Mr. Chalmers stated he agrees with Mr. Bartolomeo, it doesn't seem germane to being either new information or something that wasn't available during the meeting.

Mr. Colbath stated he thinks it is an unfortunate lack of communication the way it is written. Mr. Bartolomeo stated he doesn't think Mr. Pandora is under any obligation to share that information with the abutter. Mr. Colbath stated he would agree.

Mr. Colbath read bullet #5. Mr. Bartolomeo asked if Mr. Pandora was under any obligation to have shared this before the meeting. Mr. Bartolomeo stated Mr. Bergeron kind of forced the issue by bringing the case before the Board in the first place and then Mr. Pandora responded and addressed every single one of Mr. Bergeron's concerns. Mr. Chalmers asked Mr. Pandora is it true where Mr. Bergeron is alleging that the requirements of the residential building code cannot be implemented in this structure. Mr. Pandora answered in the negative.

Mr. Colbath read bullet #6. Mr. Pandora stated it is the same method they used next door; what we have to do is come up with the correct water flows. Mr. Pandora stated it is an antifreeze system; he mandated that they use a rated antifreeze for sprinkler systems. Mr. Bartolomeo asked when you say next door, does he mean the theater building. Mr. Pandora stated that is to shoot toward the theater building; they used a dry system on the Mountain Top Music building.

Mr. Bartolomeo stated if the abutter is burning down, he is sprinkling the theater to save the theater. Mr. Pandora answered in the affirmative. Mr. Bartolomeo stated and when Mr. Bergeron says "it is unknown how this suggestion provides any compliance". Mr. Pandora stated it complies the same way they do; they have wood siding and sprinklers. Mr. Steiner stated in reverse if that building is on fire, they are shooting to save next door. Mr. Pandora stated that is correct.

Mr. Colbath read bullet #7. Mr. Pandora stated the antifreeze he wanted them to use is not listed under 13.D.; and, it is not a listed system, it is a specialty system. Mr. Pandora stated he listed 13.R. because it did incorporate the listed antifreeze. Mr. Bartolomeo stated it sounds like nitpicking because the truth is you are recommending a measure that protects both buildings which is what everyone wants here. Mr. Pandora stated we can recommend more stringent, but we can't do less.

Mr. Pierce asked if it is a recommendation or a requirement. Mr. Pandora stated it is a requirement if they use the sprinkler system; if they can't get the water supply, they are going to have to treat the outside of the walls. Mr. Chalmers asked has Chief Solomon been involved in any of this. Mr. Pandora stated he has asked Chief Solomon if he would do final inspections with him and he has agreed. Mr. Pandora stated Chief Solomon will be involved, especially toward the end of it.

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Mr. Colbath read bullet #8. Mr. Bartolomeo stated that is neither a technical error or new information. Mr. Chalmers stated he is the appointed building inspector for the municipality; that is the end of it. Mr. Bartolomeo stated he is asking if the Town Building Inspector is qualified to do building inspections. Mr. Pierce stated that seems to be a selectmen question.

Mr. Colbath stated as a Selectmen you would have to closely define certified to him. Mr. Chalmers stated he has been appointed by the municipality as the building inspector. Mr. Colbath stated if he is not certified it is probably because it cost a lot of money to become certified which the Town is not willing to spend, but that is just a guess. Mr. Bartolomeo stated he has tons of credentials. Mr. Pierce stated the question of whether he is or not is irrelevant. Mr. Chalmers stated he is the Town's Building Inspector.

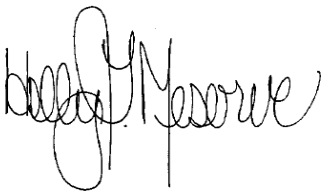
Mr. Chalmers stated the grounds for granting a rehearing is that there has to be new information or something that was not provided. Mr. Irving stated it is a technical error or if there is information that existed, but was not available. Mr. Irving stated if information became available after a decision, if that information did not exist. Mr. Chalmers asked like the subsequent letters. Mr. Irving stated correct. Mr. Irving stated any information that was produced subsequent to the Board's decision didn't exist at the time; so, it wasn't a matter of they couldn't get it, it didn't exist. Mr. Irving stated that is his interpretation, the Board can deal with it however they want.

Mr. Bartolomeo made a motion, seconded by Mr. Steiner, to grant the applicant's Motion for Rehearing. Mr. Colbath asked for Board comment; Mr. Bartolomeo stated the Board gave Mr. Bergeron a fair hearing, going through his bullet points one-by-one and discussed them. Mr. Bartolomeo stated he fails to see where any of them rise to the technical error or information unavailable at the time of the first hearing. Mr. Pierce stated he thinks there is enough smoke; it doesn't hurt to do it. **Motion defeated with Mr. Bartolomeo, Mr. Steiner, Mr. Chalmers and Mr. Colbath voting in the negative and Mr. Pierce voting in the affirmative.**

Mr. Bergeron asked the next step in the appeal process. Mr. Colbath stated since the rehearing has not been granted the applicant has the opportunity to go to Superior Court. Mr. Bergeron stated with all due respect he believes you will find that incorrect, this does not go to Superior Court. Mr. Bergeron stated he will direct the Board to House Bill 710 that was signed into law by the Governor in June or July.

Mr. Bergeron stated he wanted to see what the Town's position was on that. Mr. Bartolomeo asked this past June or July. Mr. Bergeron stated that is correct. Mr. Irving stated he is not sure that is the Town's position; that was a question that was asked to and answered by the Chair of the Building Code Board of Appeals.

Meeting adjourned at 5:25 pm.
Respectfully Submitted,



Holly L. Meserve
Planning Assistant

19-34

RECEIVED

BERGERON

TECHNICAL SERVICES LLC



Town of Conway
Zoning Board of Adjustment
1634 East Main Street
Center Conway, NH 03813

NOV 14 2019

TOWN OF CONWAY

P.O. Box 241
North Conway, New Hampshire 03860

November 13th, 2019

Dear Chairman Colbath,

Please accept this letter as a motion requesting a rehearing by the Conway Zoning Board of Adjustment, acting as the Building Code Board of Appeals, per the requirements of New Hampshire RSA 677:2. On behalf of my client, Mountain Top Music, owner of property identified by the Town of Conway as PID 265-44, we request a rehearing of the matter presented to the board under Case No. 19-24 be scheduled based on the following:

The decision reached by the board is unlawful and unreasonable as:


- ① • The public notice for the meeting did not stipulate the board would be acting on this matter in the capacity of the building code board of appeals and the board was not made aware of this until this was explained by the Town Planner to the members at the beginning of the hearing.
- ② • There was no building code related information provided to the board by the Town's Building Inspector nor was there a code book provided to the board for reference.
- ③ • The board's expressed acceptance to rely solely upon the builder to be responsible for code compliance is unreasonable as the builder's responsibility for code compliance cannot be verified without the town having required the submission of code information as required by the International Residential Code. Such information was not a part of the project file (town's records) at the time of the initial appeal nor is the required information part of the project file (town's records) at this time.
- ④ • At the October 16th hearing Inspector Pandora was asked by the board "if he is telling the board that everything in this letter has been addressed"? Mr. Pandora answered in the affirmative. Mr. Pandora was asked "if that information had been shared with Mr. Bergeron"? Mr. Pandora answered in the negative.
- ⑤ • After the meeting, specifically in a letter from Inspector Pandora to Mr. Bergeron dated October 17, 2019, Mr. Pandora explains how the fire safety concerns that had previously been expressed by Bergeron are going to be addressed however, the methods described do not comply with the requirements of the 2009 International Residential Code and in fact cannot be implemented. A copy of this letter dated October 17, 2019 from Mr. Pandora to Bergeron Technical Services is attached. This information was not available before the September 16th meeting nor was any support information provided to either Bergeron or the board at the meeting or previous to the meeting.
- ⑥ • In a letter of October 25, 2019 from Inspector Pandora to the property owner and the contractor, Inspector Pandora describes how to accomplish the fire protection requirements of the exterior wall separating the two buildings including a suggestion "or supplying exterior sprinklers to this portion of the building". It is unknown how this suggestion provides any compliance with the requirements of the International Residential Code.
- ⑦ • In the same letter of October 25, 2019, Inspector Pandora references sprinkler antifreeze requirements from the National Fire Protection Association (NFPA) Standard "13R". NFPA 13R is not the appropriate sprinkler system standard for this structure and the appropriate standard, NFPA 13D does not provide support or information related to the installation Inspector Pandora describes.

- 8 • During the hearing Mr. Steiner asked Mr. Pandora "if he is certified to do all these inspections"? Mr. Pandora did not answer that very important question.

Based on the above items I respectfully request that another public hearing be scheduled to fully consider actions that need to be implemented by the Town of Conway to assure protection of my client's property and adequate safety to the occupants of the structure that is being reconstructed under Building Permit 11235 dated August 15, 2019.

Thank you and please contact me with any questions.

Respectfully,
Bergeron Technical Services


Shawn G. Bergeron, Sr.
Manager

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ENCLOSURES – Town of Conway letters dated September 10th, October 17th, October 24th and October 25th.

Cc: file
Client