



ZONING BOARD OF APPEALS

*Minutes

Monday, November 29, 2010

**Approved with Amendments

Attendance: Chairman Matt Schaefer (7:11pm), Peter Leavitt, Mary Picavet, Elden Lingwood and Larry Murch.

Absent: Sheila Philipot.

Staff: Chris Hanson, Code Enforcement Officer; Phil Saucier, Town Attorney; Jeff Kalinich, Department of Environmental Protection (DEP); and Danielle Loring, Recording Secretary.

Other: Paul Borriello, Paul Cochran, Patricia Cochran, and Mary Frances Gagne.

Due to the fact that Chairman Matt Schaefer was absent, Peter Leavitt asked for nominations for an Interim Chair.

MOTION: Mary Picavet motioned to accept Peter Leavitt as Interim Chair. Seconded by Elden Lingwood.

VOTE: APPROVED, 3/0/1 (Abstention, PL).

1. **Call to order:** Interim Chairman Peter Leavitt called the meeting to order at 7:06pm and a quorum was declared.
2. **Approval of previous minutes:**
 - a) **February 22, 2010**
Could not approve because not all members, whom were at the meeting, were present.
 - b) **April 26, 2010**

MOTION: Elden Lingwood motioned to accept the minutes for the April 26, 2010 meeting as submitted. Seconded by Mary Picavet.

VOTE: UNANIMOUS APPROVAL, 4/0

3. **Public Hearings:**

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a) Administrative appeal by Paul Borriello for a Notice Violation received for shoreland activities at 78 Deep Cove Rd (Map 059, Lot 020).

Mr. Leavitt read the purpose of Mr. Borriello's appeal and asked if there was anything that he wanted to add. Mr. Borriello declined. Mr. Leavitt then clarified that the purpose of Mr. Borriello's application was an Administrative Appeal for the Notice of Violation that he received from Code Enforcement Officer (CEO), Chris Hanson. Mr. Borriello agreed.

Mr. Leavitt then asked if there was anyone who was for or against the project who wanted to speak and no one came forward. Mr. Leavitt then asked that Mr. Hanson give a history of the project leading to the issuance of the violation. Mr. Hanson explained that he got involved in October of 2009, when he was notified by DEP of violations to Raymond's Shoreland Zoning Ordinance and the State of Maine's Water Protection Act.

Mr. Hanson continued that after a site walk on October 7, 2009, violation letters were sent on the 8th, 9th and 10th. He said that he later met with Mr. Borriello with his lawyer, Richard Brant, as well as Jeff Kalinich on February 3, 2010. At the time, they came up with a restoration plan and Mr. Borriello agreed to sign a Consent Agreement, which had not happened. Since that time, Mr. Hanson has been collecting photographs from neighbors, DEP and Portland Water District (PWD). After investigating into the matter, he found that there were no permits pulled from the Town, which was the reason behind violation #2 in his letter. The other violations were those that were DEP violations.

Matt Schaefer arrived at 7:11pm and Mr. Leavitt deferred the Chair to him. Mr. Schaefer asked the applicant and council if there were any issues with him accepting the role as Chair from this point forward and both had no issues. Mr. Schaefer asked Mr. Hanson to give review of the information covered.

Mr. Hanson presented a PowerPoint presentation that demonstrated the progression of construction from 1992 to the 2009. He pointed out property that was constructed that were considered, by definition, structures and would require permits that would have been denied. The only documentation that was received by the CEO office were copies of DEP's Permit By Rule (PBR) forms that start back to 1997 to fix weathered walls.

Mr. Schaefer wanted to know which of the five violations, in Mr. Hanson's Notice of Violation dated September 1, 2010, were within **the Board's jurisdiction. Mr. Hanson replied that #2 was the only violation that was a violation of Raymond's Ordinances, but as a CEO, it was his job to point out all violations because he had been sworn in by the State. The notice was a joint enforcement with DEP. Mr. Schaefer wanted to know what actions were a violation that led to #2. Mr. Hanson responded that it was the lack of permit applications that was the problem. In

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terms of the issues with DEP, Mr. Hanson clarified that it was bringing in fill to create land masses; creating a sandy beach; and enlarging the wall, rather than just repairing it, as the PBR specified. Mr. Hanson specified that structures were any construction that would provide support or shelter for persons, property or animals. The Ordinance also requires that any activity that included structures have a permit.

Mr. Schaefer asked Mr. Kalinich if he had anything to add to the case and he responded that he was not prepared to make a presentation but he would be happy to answer any questions that they may have. Mr. Schaefer then gave the public the opportunity to speak but no one came forward.

Mr. Borriello approached the Board and gave a history of the work that he had been done to the property. He explained that all work had been done in the 1990's, which was documented by both PWD and the DEP, as well as frequent visits from **Raymond's CEO.

In response to the consent agreement, Mr. Borriello felt that it was a standard narrative and that Raymond and the DEP were not accepting his proposals. He said that he could not comment on the dates and times that individuals came to inspect the property because he was not keeping records of that. He was under the assumption that each organization was keeping those records, but apparently had not been. He knew that 1997 was the height of the building period and was when individuals were frequenting the most often.

Mr. Schaeffer wanted to know if there was anything that Mr. Borriello wanted to reiterate from the photographs. Mr. Borriello stated for the most part that the pictures were as Mr. Hanson had stated but what they were calling rip rap is what he considered walls and he got permits to rebuild them. Mr. Schaeffer just wanted to be clear that if Mr. Borriello had anything to address in the photographs that he should do so at that point and Mr. Borriello, again, declined.

Mr. Leavitt spoke and said that when he did a site walk in 2003, things appeared differently from when they did at the most recent site walk in 2010. Mr. Leavitt pointed out that not all of the most extensive work had not been done in the 1990's because the walls were not as extensive as they were at the 2010 site walk. Mr. Borriello disagreed with Mr. Leavitt's statement.

Mr. Schaefer asked if the CEO office had any documentation of the visits made to Mr. Borriello property. Mr. Hanson responded that there were no records, prior to him being employed, indicating site visits had taken place. The only permits on file were a porch addition, roof expansion, a garage and a foundation, as well as the Permit By Rule documents from the DEP. Mr. Hanson continued that he had spoken with Jack Cooper, who had visited the site with him this past summer and he had said that extensive work had happened since his last visit. Mr. Cooper had told him that he had not issued a Notice of Violation because he did not have the documentation to support it, such as the photographs. Mr. Schaefer stated that **the Board could

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not use statements regarding what Mr. Cooper may have said because he was not available for comment and that was hearsay.

Mr. Leavitt asked if it was the act of pulling a permit that triggered the Code Enforcement Officer to investigate into a property and Mr. Hanson confirmed.

Mr. Saucier told the Board that their primary responsibility was to determine only matters surrounding item #2 from the violation letter. This was concerned with what structures were built, whether they needed a permit, and if a permit was applied for and granted. Mr. Schaefer wanted to know what sections of the ordinance dealt with obtaining permits and clarified that the pictures submitted were from 1992, 1995, 1997, and 2009. Mr. Lingwood read the definition of "rip rap" from the Town's ordinance and compared that to the wall structures that Mr. Borriello had built containing mortar. The Board clarified that Permit By Rule documents were filed for in 1996, 1997, 1999 and 2003 all for the same wall repair. Mr. Borriello confirmed that each application was a continuation from the last. Mr. Hanson said that even if that was the case, only a certain percentage of repair was allowed, not expansion.

Mr. Schaefer commented that photographs clearly show that construction had taken place and the timeline in which it had occurred. He continued to state that it was clear that there were walls constructed, as well as other permanent structures. He asked council if one motion would suffice in this matter and Mr. Saucier agreed that one would as long as it stated whether the actions of the CEO were or were not contrary to the provisions of the ordinance.

MOTION: Matt Schaefer made a motion that the Board find that the action of the CEO issuing a violation was not contrary to the specific provisions of the ordinance. Seconded by Peter Leavitt.

VOTE: UNANIMOUS APPROVAL, 5/0

DISCUSSION: Mr. Saucier said that he would complete a Finding of Fact and send it along to the Board for approval. Mr. Schaeffer agreed and said that it would be presented at the December 27, 2010 meeting, but advised Mr. Borriello of the time constraints in order to file an appeal with the Superior Court. Mr. Borriello said that he would wait for the Finding of Fact before filing.

b) Paul & Patricia Cochran of 56 Whittemore Cove Road (Map 067, Lot 003) are requesting a setback reduction.

Mr. Cochran explained that he and his wife had bought a camp in 2004 off Whittemore Cove Road and they were looking to expand the camp. He said that they were making every effort not to disturb the lake and had measures in place to minimize the impact.

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Mr. Leavitt wanted to know if one or both of the sheds on the property were less than 20' from the side boundary line. Mr. Cochran responded that he was not sure because the first shed was built with the house and that they swapped it out for the newer shed, which was built around the existing trees. Mr. Leavitt was concerned with making a nonconforming lot even more nonconforming. He stated that the intentions of the setbacks were to stop people from walling in the lake, but the proposed construction would not cause **that effect.

Mr. Leavitt wanted to know what it would take to move the shed to make the lot conforming. Mr. Cochran responded that he would have to remove the roof or cut down the tree. Mr Hanson said that he was given some power to override the ordinance if it was for practical purposes, like preventing a tree from being cut down. The Board agreed that taking that route was the best option and that any issues would be addressed by the CEO when he went for his inspections.

Mary Frances Gagney, 68 Whittemore Cove Rd, spoke in favor of the project stating that the Cochran's were always making strides to protect the lake and prevent runoff. Mr. Schaeffer read a letter from an abutter in support of the project. Mr. Hanson also agreed that the Cochran's were keeping the best interest of the lake in mind when designing their addition. Mr. Lingwood wanted to make sure that the addition to the porch would not create more traffic and Mrs. Cochran clarified that they were not adding an additional access point to the porch, but were leaving it as it was.

MOTION: Matt Schaeffer made a motion to approve the proposed setback if they included a drip edge on the building. Seconded by Larry Murch.

VOTE: UNANIMOUS APPROVAL, 5/0

4. Code Enforcement Officer Update- Chris Hanson

Mr. Hanson updated the Board about issues that his office was currently dealing with including violations for both Mr. Borriello and Paul White. He continued that the office was currently working to create permits and associated applications for Commercial Building and Change of Use Permits. He said that this was all in an effort to make Raymond more business friendly while helping to keep track of the flow of businesses and keep them in compliance. He mentioned that he had seen an increase in the number of building permits and figured that it would slow down as it got colder.

5. Adjournment

MOTION: Larry Murch motioned to adjourn. Seconded by Peter Leavitt.

VOTE: UNANIMOUS APPROVAL, 5/0.

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Matt Schaefer adjourned the meeting at 8:57pm.

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