

July 17, 2019

Zoning Board of Adjustment Meeting

Newcomb Community Center

Minutes Taken by Suzy Metzler

James Sharpton called the meeting to order at 7:05PM. Present were all Zoning Board of Adjustment members except Phil Duetsch: Jesse Garetson, James Sharpton, Ramon Reed, and Rodger Lull, and as well as non-voting member, Rand Makowski, Building Inspector & Sanitarian.

Corrections to the Minutes of the last Zoning Board Meeting, held on May 20, 2019:

1. James Sharpton said that the minutes state "Motion carried 6-0" but there are only 5 ZBA members, so that should read "Motion carried 5-0." (I do not know where in the minutes that was stated-SKM)
2. Ramon stated that at the top, after the call to order, the minutes should list all the ZBA members present. James Sharpton agreed.
3. In the next to the last paragraph on the first page of the minutes, Ramon stated that in the second sentence discusses the sign location in relation to the speed limit signs on State Street, it says "the 10th Street suggestion" but said that should be changed to "the 10th Street location."

Mr. Reed moved to approve the minutes as corrected, seconded by Jesse Garetson. A vote was taken and the vote was 4-0, approving the minutes.

Mr. Sharpton began discussion of the first order of business by pointing out that there is a typo in Mr. Reed's address on his Notification of Violation of Zoning Code. Instead of 724 State Street, it should show 704 State Street.

On the agenda is a report of zoning violation at the Thomas Kelly residence at 701 River Street, which has to do with individuals sleeping in a facility which was installed or placed, it was brought in 20 or more years ago. Mr. Kelly, at the podium, stated that the shed was put in place about 30 years ago.

Mr. Kelly stated that this should not be called a Kelly Complaint as is stated on the agenda, but rather a Ramon Reed Complaint.

Mr. Reed replied that this is not a complaint. Mr. Reed stated that he witnessed a violation of the Zoning Ordinance and he is reporting that to the Zoning Board of Adjustments.

Mr. Kelly stated that the agenda refers to it as "Thomas Kelly Complaint."

Zoning Board asked that the Secretary read the notification. ZBA Secretary Pro-Tem Suzy Metzler read the notification of violation and the applicable portions of the Zoning Code.

Thomas Kelly introduced himself, then thanked all who are serving at this meeting for their service through the years. Mr. Kelly stated that the short answer is that the residence on those lots at 701 River Street is closest to River Street, and there is a building in question which is not a residence and it is closer to the river. He stated that the building has been there for nearly 30 years and that each and every year during that period, it has had people sleeping in it periodically each and every year. So the activity that Ramon Reed photographed recently happened to include his daughter who is 26 years old. He stated that Mr. Reed was successful in documenting that someone may have slept in the building through taking photographs and documenting when lights went on and went off. Mr. Kelly stated that people have slept in the building each and every year for 30 years and will continue to do so periodically henceforth. As recently as this afternoon, Mr. Kelly's counsel told him that it is completely legal for people to sleep in the building.

In conclusion, he stated that he would get into some other violations, which happened to be Ramon Reed's long-standing violations in this town which adversely affect Mr. Kelly every day, for which Mr. Kelly states he has never filed a complaint regarding the violations of those town ordinances. He stated that his legal counsel further advised him this afternoon that should these complaints continue - this is the fifth one - the rest have been dismissed - his legal counsel stated that this is a pattern. Mr. Kelly's counsel referred to this as harassment and Mr. Kelly was advised to consider taking legal action against Board Member Ramon Reed should these continue. At this point in time, Mr. Kelly respectfully requests that the ZBA dismiss the complaint as the 2012 Zoning Code does not apply to the structure in question. Moreover, the activity which has been acknowledged and affirmed this evening is not limited to this structure but in fact it is well-known it occurs in numerous structures throughout the Town of Pitkin and has occurred for many years and we all expect it will continue to occur for many more years.

Chairman Sharpton asked if anyone had any questions or comments. Mr. Garetson said that his comment is that this is frivolous, and for Mr. Reed to act as a member of the ZBA, Mr. Garetson does not believe that Mr. Reed is the Zoning Enforcement Official. Mr. Garetson stated that in Section 19 there a procedure outlined whereby the notification of zoning violation should be in writing and sent to the person violating the code by certified mail with return receipt, and he asked if this had been done. Mr. Sharpton answered that no, this had not been done yet. Mr. Garetson asked why this wasn't done before tonight's meeting. Mr. Sharpton replied that the next morning, he had gone

over to talk to Mr. Kelly and Mr. Kelly said that since he is here and has some comments to make, that he would come here. Then depending on the decision that the board makes, the Board will have to decide if they want to proceed. He stated that then Mr. Kelly has the right to appeal to the Board of Trustees and then at that point the Town Attorney would be advised. But if the issue is dismissed tonight, that will be the end of it.

Mr. Reed stated that his viewpoint was stated in his letter. He believes that Mr. Kelly, he believes, is wrong in saying his property does not have to comply with the zoning code.

At this point, Mr. Kelly said that that is incorrect - at no time did he say that his property does not apply to the zoning code. He says that is not what his said. Mr. Reed said he was sorry, that was what he thought he had heard.

Mr. Kelly stated that the building in question, the non-conforming structure that is the non-residence "does not apply to the 2012 Zoning Code." Mr. Reed replied that he thinks that the code DOES apply to this structure - it's not in conformance with the 2012 Zoning Code.

Mr. Garetson asked, "What is a non-complying property?" Mr. Reed asked him what he meant by that. Mr. Reed said that he did not say that it is a non-conforming property, but that the activity observed is in violation of Section 6, Application, and Section 17, of the 2012 Zoning Code. That is the current code that we operate under.

Mr. Garetson stated that 30 years ago that building had nothing to do with the 2012 ordinances. Mr. Reed replied that it doesn't matter. Mr. Garetson said, so that building is non-compliant. Mr. Reed said no. He said if Mr. Garetson would read what he had written in his notice, he would see that he is not saying that the building is non-compliant, it's the USE that is not in compliance. The use that Mr. Reed observed is not in compliance in these two sections of the current Zoning Code - "shall not be occupied."

Mr. Sharpton said he wanted to ask Mr. Kelly a question. He asked Mr. Kelly - "Where did you get the building, and who did you talk to about the positioning of the building on the property. It was my understanding that the mayor at that time had visited with you or you had visited with the mayor...is that a true statement, or not?"

Mr. Kelly stated that the matter was that the structure was built outside of Pitkin. It was brought to Pitkin when Mr. Kelly's brother owned the property and it is Mr. Kelly's recollection that Ms. Lull was the mayor at that time.

Mr. Kelly said that it wasn't himself but his brother. Mr. Sharpton asked if Mr. Kelly was aware that his brother made arrangements or talked to the mayor.

Mr. Kelly stated that the matter was discussed with the mayor and the resolution was that the building was legally placed on the property in its current location. He stated that his brother and wife and daughter and their two young sons actually slept in the building many times each year that they owned the property. Mr. Thomas Kelly acquired the property in 2003, he stated. This only speaks to the past use, Mr. Kelly said, that has occurred annually for nearly 30 years. Mr. Reed documented nothing new, he said.

Mr. Reed stated that the fact that it is nothing new does not make it in compliance. He stated that he had never observed it before or he would have reported it at the time. It is still a violation. The building is not an approved habitable building. Whether it has been used that way in the past, he can't speak to, because he said he has not ever observed it being used that way.

Mr. Kelly questions how many similar complaints have been filed in the past 30 years about other structures. Given that this is the first complaint lodged against this structure, he doesn't know if there is any record of similar complaints in Pitkin of non-conforming structures where occasionally company spent the night. Mr. Kelly submitted that there have not been very many such complaints and that there will not be very many going forward.

Mr. Sharpton, Chair, stated that at this meeting there can be an exchange between whoever shows up as the audience and the board.

Mr. Garry Winget stated that when he was the Building Inspector, the Certificate of Occupancy was one of the most abused compliance issues in the Town of Pitkin. He stated that it is a fairly common thing for those who gradually build a home, to gradually get it better and more livable. Mr. Winget said that he and the other co-inspector had a discussion of whether a couple of the properties should be forced to get a renewal of the building permit since they had been working on their building for more than a year. He stated that if the town is going to enforce a Certificate of Occupancy, the town could really make a lot of money for the town doing that. He stated that there are a significant number of houses that are not done that people have lived in, and this has happened not just overnight, but for several years.

Cory Nasso asked that in the board's consideration of how they are going to handle this issue, how does the board intend to handle all the other houses in town that have no Certificate of Occupancy but people occupy them periodically. He said that this should definitely be part of this decision because the board would be setting a precedent with how you handle this property tonight. To apply it to Mr. Kelly one way and not to apply it to all the other houses in town that have no Certificate of Occupancy or final inspection, doesn't quite seem to be the application of rules fairly.

Mr. Reed asked if he could comment. He said (a) this is not a house that we are referring to and (b) there was never any building permit issued for it, or at least there is not any record of it that he has been able to find.

Cory Nasso said, so if there is no building permit issued for a property, or no record of it, then you can't inhabit it, or you can't use it.

ZBA member Rodger Lull stated that no, that's not correct, nowhere in the Zoning Code does it say that.

Cory Nasso read from a section J of the zoning code which addressed building permits, Certificate of Occupancy and final inspection requirements. Cory Nasso asked if someone buys a house that is 30 years old and has no building permit, no final inspection and no Certificate of Occupancy, is the ZBA going to recommend to the Board of Trustees that they ask for a cease and desist on any use of that property? Mr. Lull stated that it is grandfathered in and that he lives in a house that was built and lived in for 30 years before he moved into it. Cory Nasso stated that he didn't see how the Zoning Board of Adjustment could prosecute Mr. Kelly on this issue.

Zoning Board member Jesse Garetson stated that this notification of violation is frivolous. He stated that this is frivolous, a waste of our time, and not to benefit of Pitkin and all the residents of Pitkin.

Mr. Garetson and Mr. Reed had some words, then Mr. Garetson asked where Mr Reed's LP tank is. Mr. Reed stated that his propane tank is located 7th Street. Mr. Garetson asked if Mr. Reed has a variance allowing for his propane tank to be located on State Street and stated that his own propane tank has to be located on his own property. Mr. Reed asked, "says what?" Mr. Reed said that Mr. Garetson is calling his original notification of violation "frivolous" which he thinks is pretty irresponsible for a member of the Zoning Board of Adjustments, and it means that Mr. Garetson thinks the Zoning Code frivolous, and accusing Mr. Reed of something without any basis.

There was some yelling from the audience. A comment from Kandy Nasso was that when someone has lodged a complaint they need to recuse themselves from any discussion of the complaint, and asked if Mr. Reed should have to recuse himself from this discussion. Kevin Brophy commented that he also feels the same way that Mrs. Nasso feels. Mr. Sharpton said that he did not feel there was reason for Mr. Reed recuse himself.

Chris Nasso requested that the ZBA in light of the comments Mr. Kelly made about potential zoning violations on Mr. Reed's property to review or inspect that and if there are zoning violations on his property, give him an opportunity to correct those or make a recommendation to the Board of Trustees to remove Mr. Reed from the Zoning Board of Adjustments.

Mr. Sharpton thanked Chris Nasso for his comments. Chris Nasso said he didn't want it to be just a comment, he wants Mr. Sharpton to think about it and give him an answer, maybe discuss it tonight at this meeting. Mrs. Kandy Nasso stated, he (Reed) can violate but he (Kelly) can't. Mr. Chris Nasso said everyone in the room feels the same way and that Mr. Reed has caused enough problems for this town.

Michael Finley, 428 State Street, said that those sitting on the backside of the table (the Board) should set an example. He asked that everyone on the ZBA must live under the same rules. He demanded to have an answer. James said that yes, all of the ZBA members must live under the same rules and if anyone sees a violation of the zoning code, they need to report the violations.

Cory Nasso stated that almost everyone in town has zoning violations. Mr. Sharpton said that this is true and many in the audience have a zoning violation. Cory Nasso asked who the zoning enforcement official is - Mr. Sharpton stated that as far as he knows, the Town Board of Trustees have not yet appointed a zoning enforcement official. Cory stated that the other part of this is that whenever the zoning enforcement official determines that there has been a violation of the zoning code, they must notify the violator in writing by certified mail with return receipt and this board did not do that, so Cory Nasso claimed that the ZBA has not even followed their own zoning code. Mr. Sharpton said that they have notified Mr. Kelly, but Cory pressed on saying that they had not done what the code says. Mr. Sharpton explained this is why the Zoning Board is trying to clean up the zoning code. Cory Nasso said that this doesn't inspire much faith in the Zoning Board.

Discussion of various citizens' zoning violations. Mr. Sharpton said he did not think that we needed to be pointing fingers at each other.

Rodger Lull said that this violation reported is not going to hold up in court. He says that our zoning code is not clear enough to hold up in court and it needs to be made explicit enough so that people can understand it. He says the code was written for new construction, as a building guide, it is good for set-backs, location of wells, etc. but how buildings are occupied is not spelled out. He went on a bit about camping on private property. Rodger says that we need to notify people of what the rules are. Much discussion between Rodger and Ramon. More discussion.

Mr. Reed thinks that the code does say that a building has to have a bathroom, kitchen, etc. and septic system. Mr. Lull says it does not state that directly.

Mr. Makowski asked if the property, the subject of the violation notification, has a septic system. The property with the building in question does not have a

septic system. Whoever stays in it runs up to the other cabin that Mr. Thomas Kelly owns at 629 River Street to use the bathroom when they are staying in the building.

Mr. Garetson stated that we are picking and choosing - and discriminating between one property owner and another. Mr. Garetson said if we don't treat everyone the same way, the citizens lose faith in the Zoning Board of Adjustment.

Cory Nasso stated that he was not saying that we should not enforce the zoning code, but that he was saying that the zoning code needs to be enforced fairly.

Mr. Reed asked if Cory had a suggestion of how to do that. Cory Nasso replied that it sounded to him like that is Mr. Reed's job. Mr. Reed thanked him.

ZBA member Rodger Lull asked if these people were camping, and said that if they were, they should have gotten a camping permit, saying that we do issue those. Mr. Sharpton commented that we don't issue camping permits to his knowledge. We do allow camping for a restricted time period on a property that has an inhabitable structure on it. Mr. Sharpton said that it is Ordinance #3, Series 2013. Mr. Lull again asked if that is what he needed, a camping permit, and Mr. Sharpton again stated that you don't have to get a camping permit. The camping ordinance, Mr. Chris Nasso pointed out, applies to improved property, not unimproved. Mr. Cory Nasso stated that you can camp up to 30 days in a month or 40 days in a quarter on an improved property. He said that this whole thing of you have to get a camping permit or you can't camp, that isn't true either. Mr. Sharpton stated that we don't issue camping permits.

Mr. Sharpton asked Mr. Kelly if he represents your building or the people using it as "camping?" He asked if Mr. Kelly would call it camping. Mr. Sharpton gave a definition of camping as basically staying in tents, and other facilities that represent camping, using sleeping bags. He said that the campers are responsible for cleaning up their mess.

Mr. Garetson made a motion to disregard this complaint or whatever it is. Mr. Lull wanted to amend the motion. Mr. Garetson doesn't want to send it to the town board or our town attorney. Mr Lull said to amend the motion, he would like it to say that they do not want to turn this over to the Town Board or the Town Attorney.

Mr. Makowski said that as long as it's a temporary use, that nobody will live in it.

Mr. Sharpton asked if it is okay with Mr. Garetson if Mr. Lull amends the motion.

Mr. Lull would like to dismiss this notification of violation. He says he does not have an opinion on this issue that works. Mr. Sharpton said that we have a motion and a second to dismiss this complaint of a violation. A vote was taken. Mr. Reed voted against the motion, all the rest voted for this dismissal of the notification of violation. The motion carried and the notice of violation as stated was dismissed.

Mr. Nasso asked if he can obtain a Certificate of Occupancy for his home at 1132 State Street. Mr. Sharpton answered yes, that he needs to get with the Building Inspector, Rand Makowski. Mr. Nasso asked if Mr. Sharpton has a Certificate of Occupancy and Mr. Sharpton said, no, he does not have a Certificate of Occupancy. Mr. Sharpton explained the problem with Mr. Nasso's home which caused the certificate of occupancy not to be issued. A beam and post needs to be added under the balcony in order for Nassos to be able to get a Certificate of Occupancy.

Kandy said that Mr. Sharpton said that the Nassos have a violation. This is the first that Nassos have heard about any violation. Mr. Sharpton said he did not want to get into it and doesn't hold anything against anyone in this Town.

Marie Rossmiller said she keeps hearing about people going around hiding in the weeds and taking pictures. She asked if that is considered harassment? Mr. Sharpton does not know.

Mr. Sharpton said that this business has been handled and we are moving on to Old Business, which is zoning code revisions.

Section 14, Nonconformance.

Mr. Sharpton asked for any comments on (a). It bothers Rand and Jesse that the words "conforming and non-conforming" are thrown together - Jesse says the first 5 words should be removed. Mr. Reed says that when this was originally written, there were still a lot of nonconforming lots. He suggests removing the words "or used" - so that it reads A. Non-conforming lots may be built upon only with the approval of the Board of Zoning Adjustment. There was consensus among all ZBA members.

Mr. Lull went back up to the first paragraph of Section 14. Discussion. Under discussion was the statement that "this code allows the continuation of such uses and structures, but not to permit enlargement."

Discussion. Ramon Reed proposed, as the second sentence of the first paragraph: "This code allows the continuation of such uses and structures." The third sentence will be removed. The fourth sentence is left as is.

B. Lot Conformance: Discussion. In particular discussion was about when there are 5 lots that are subdivided into 2 and 3 lots. Ramon says that the county as process called "lot clustering," they have to fill out a form, it goes to the Board of County commissioners for approval, then it is filed with the clerk & recorder's office. Ramon has the form from the county and will put one together for Pitkin. Rodger Lull says it won't work very well in Pitkin. Rodger says it's a way to save on taxes. Discussion. Ramon says this would make it so the town has more control. Rodger does not like the idea. Ramon says that the county requires contiguity - could not have an alley between 2 lots on each side of the alley (to abandon the alley).

Rodger Lull states that none of this will hold up in court because Pitkin doesn't have things together.

Jesse Garetson made a motion that 14.B. is left as is. Rodger Lull thinks that added to that should be that "unless the owner gets a variance from the ZBA." Others said that there is a section on variances. James Sharpton seconded the motion. A vote was taken, 3 to 1.

Much discussion.

Jesse Garetson suggested that the Board add to 14. C.: 4. Any foot-print increase that would increase non-conformity will require a variance by the Zoning Board of Adjustment.

The ZBA considered 14.C. Discussion. It was after 9PM and James Sharpton felt we would not be able to complete Section 14 tonight.

James Sharpton adjourned the meeting at 9:35 p.m.