

**TOWN OF EPPING, NEW HAMPSHIRE**  
**ZONING BOARD OF ADJUSTMENT**

**Wednesday November 18, 2009**

**PRESENT:** Dave Mylott, Bob Jordan, Paul Brown, Mike Yergeau; Alternates Patrick Pagnani & Robert Silva; Secretary Phyllis McDonough.

**CALL TO ORDER:** Chairman Mylott called the meeting to order at 7:00 P.M., and appointed Pagnani to sit in Nowe's seat.

**ROCKET TRUST – KERRI MARSHALL, TRUSTEE** – Chairman Mylott read notice of an Appeal from an Administrative Decision, relating to the interpretation and enforcement of the Residential Building Codes. Parcel is located at 70 Red Oak Hill Lane, as seen on (Tax Map 003 – Lots 031), in the Rural Residential Zone.

Kerri Marshall, Peter Mahar, and Paul Nichols, carpenter came before the Board. Marshall explained there was some uncertainty of what code the Town has adopted as the code that was cited in the violation has not been adopted by the Town.

Marshall noted she believes the code that Kramer refers has not been adopted by the Town. Kramer explained the State adopted the code and the Town has to follow the state codes. Marshall explained the State Fire Marshall has indicated that there is no problem with the windows.

Marshall explained they purchased the property on approximately July 1, 2009 and at that time they immediately secured the permits that were required. Marshall informed the Board the property was in absolutely deplorable condition with the windows all boarded up, the doors padlocked shut, and when the jury went to the property they were not allowed to go through the house because it was not safe. Marshall explained after receiving permission from the Town on their renovations, they proceeded to repoint the chimneys, replace the septic, repair the foundation and rotted siding and sills.

Marshall explained replacement windows of the same size as the previous windows were purchased and were on site almost from the onset and had been in the requisite rooms awaiting installation and were immediately installed to allow light to come into the rooms.

Marshall explained Kramer inspected the property on many occasions for plumbing, electrical, masonry, foundation, hearing system, and insulation inspection. Marshall noted after all the inspections Kramer informed them that the replacement windows upstairs were insufficient and no mention of the windows were ever mentioned by Kramer. Marshall informed the Board that the Town does not require a permit for replacement windows. Marshall stated if told about the windows they would have returned the windows before they were installed, and have now been advised they need to install larger windows. Marshall explained in order to accommodate the building inspector they would have to change the entire look of the house and would be cost prohibitive.

Mahar stated he feels this is unreasonable as this was brought to their attention at the last moment and if known ahead of time they could have repaired the existing windows. He noted they have bent over backward to be accommodating.

Nichols explained the issue with the windows is the egress and explained he followed the 2009 IRC, and when he changed windows he followed all the energy codes. He noted that Kramer stated they have done more than 50

percent and wants him to follow new construction codes in an old house.

Chairman Mylott asked if they agree, at this point of construction, that it's exceeded 50 percent. Mahar stated this is not new construction. He stated the floor plan of 1<sup>st</sup> and 2<sup>nd</sup> floor is unchanged. He stated other than the bathroom there was a wall they had to change. He stated this is a house from the 1700's. Nichols explained all the exterior walls are pre-existing. Mahar explained they did change half of the foundation because of the wall that crumbled.

Yergeau asked if the windows higher than 25 feet off the ground. Nichols stated they are not.

Chairman Mylott questioned if Nichols considered the size of the windows as part of the project with the fire codes. Nichols reiterated he followed all existing codes and were only doing repairs...The Chairman questioned if the article 310.1, 11 and 12 were applicable based on the fact that this is a remodel as opposed to a reconstruction and with that doesn't feel the codes are applicable. Mahar answered that is correct.

Kramer explained in terms of the inspection he did not notice the windows until he did the electrical inspection, and his concern at that time was about life safety. He explained Article 310.11 is a life safety rule has been there long before the code was. Kramer noted the information from the State Fire Marshal goes through all the rules:

**What about existing buildings?**

- N.F.P.A.101, chapter 4.6.2.... "Where another provision of this code exempts a previously approved feature..... (1) The area is being modernized, renovated, or otherwise altered. (2) A change of occupancy has occurred, provided that the feature's continued use is approved by the authority having jurisdiction.".... .....for the purpose of this bulletin...." N.F.P.A. 1, chapter 10.3.2 ..... "Existing buildings that are occupied at the time of adoption of this code shall remain in use..... (a) the occupancy classification remains the same and (b) **no condition deemed hazardous to life or property exists that would constitute and imminent danger.**"

Kramer explained he then told the owners and the contractor he's not comfortable with the size of the windows and directed them to the Zoning Board.

Chairman Mylott questioned Kramer in regards to whether this is new construction or a remodel if he agrees or disagrees with this. Kramer explained the bulletin sent out by the State Fire Marshall is not law but a strong recommendation. Kramer stated that the windows do not meet the parameters in this house are 22 3/8 x 13 in one room, 18 1/4 x 19 26 3/8 x 19 and do not meet the minimum measurements. Kramer explained on the two windows that are side by side, only needs to be one window that meets the requirement on the two windows.

Marshall noted that the bulletin from the State is only a guideline and stated that the guidelines "should be used", not "shall be used."

Kramer explained in the commentary from IRC goes through a whole explanation that a fireman needs 20" width and 24" height.

Jordan questioned Kramer if when renovating the windows and the existing windows were not touched would this discussion be before the Board. Kramer answered no; although once it's touched they own it.

Pagnani asked Kramer in his estimation what the opening would be when cleaned out. Kramer stated the width would be the same the height would be doubled.

Jordan noted in this age of energy efficiency if the windows are going to be upgraded, the historic value of the house will be lost and he feels the applicants were doing an energy upgrade. He explained life safety is his

concern also, but feels the means of egress is reasonable.

Mahar explained if they were told up front in good faith the windows were even iffy they would have just replaced the sash and would not be before the Board. The Chairman stated that Kramer explained he never saw the windows. Mahar reminded the Chairman of all the inspections Kramer visited the property for.

Kramer explained when the owners said during the inspections Kramer was at he never mentioned the windows. Kramer explained he had no need to check the windows until he was at the electric inspection when they gutted the house.

Chairman Mylott thanked Kramer.

Brown thanked Kramer for doing his job, but in his opinion this is a historical house and felt Kramer should have made them repair the windows but not replace them and feels they have the right to do this as long as it doesn't change the exterior.

Chairman Mylott noted he is very reluctant to override the Code Enforcement Officer as he is there to enforce codes and make decisions for the town especially when it comes to life safety and feels with that it would bring a risk to the Town.

Pagnani stated he agrees there is a safety concern and that Kramer was only doing his job. He explained when looking at the numbers of the windows does not see that they meet code requirement.

Marshall explained that the Board has the right to overturn Kramer's decision

Jordan moved, Yergeau seconded the motion to grant the appeal to reverse the decision of the Code Enforcement Officer on the dimensions of the windows, as the Town does not require a permit for replacement windows, and that any problems with the windows would fall back on the property owners and contractor. This does not fall within the concerns and under the jurisdiction of the building inspector to make a judgment on his decision to allow the windows to exist as dimensionally proportioned as they are. The motion carried 3 – to – 2, with Mylott and Pagnani against the motion.

Chairman Mylott noted to clarify the motion made by Jordan is to reverse the decision of the Code Enforcement Officer to require the applicant to replace the windows.

Brown noted his judgment was made on this being a historical building.

**ADAM & LISA KAGAN** -- Chairman Mylott read notice for a Variance concerning Article II Section 3.2 Lot Dimensions and Setback Requirements. Parcel is located at 25 Hickory Hill Road, as seen on (Tax Map 027 – Lot 047), in the West Epping Commercial Zone. Abutters present: Carl Howard, Water View Farm Realty Trust.

Adam Kagan and Dick Fisher came before the Board to explain the proposal. Kagan explained he would like to put a mobile home on his lot for in-law use.

Chairman Mylott noted the front setback is 50 feet with a minimum frontage of 200 feet in that zone.

Fisher explained there is 200 feet of frontage on Hickory Hill Road and approximately 300 feet of frontage on Route 101.

Brown asked how many acres on this site. Kagan responded approximately 1- 1/3 acres.

Chairman Mylott explained his concern as a second home under the ordinance supplemental use regulations 3.11 which allows only one home on the property. The Chairman noted if this were an in-law apartment it would fall under one set of rules, and if a duplex it would fall under a different set of rules. The Chairman explained if looking to have two homes on the same piece of property it would require subdividing the lot and informed Kagan he does not have enough acreage to do that.

Yergeau explained the only way this could be done would be to have an accessory dwelling unit that would have to be attached.

Abutter Carl Howard noted he has no problem with the request.

Chairman Mylott explained the Board cannot say it's alright to give a variance on setbacks if it's not a permissible use. He noted, if granted, the Code Enforcement Officer could not give permission to have two houses on the same lot where there is only one house allowed.

Fisher asked if the structures were joined by a deck and kept all setbacks what would be the objection other than density. Jordan explained it would still be a density issue.

Brown moved, Jordan seconded the motion deny the variance on the density issue. The motion carried unanimously.

**MINUTES OF JUNE 17, 2009 FOR SIGNATURE** – The minutes were duly signed.

**APPROVAL FOR PAYMENT FROM ATTY. LAPOINTE \$1,600 – RE: West Epping Water Co.**

Chairman Mylott explained this bill was for payment on an application that came into the Zoning Board. The Chairman stated he was very pleased with Attorney LaPointe's letter to the Board on a very confusing matter.

Pagnani moved, Jordan seconded the motion for to pay the bill. The motion carried unanimously.

**ADJOURNMENT**: Jordan moved, Pagnani seconded the motion to adjourn at 8:10pm. The motion carried unanimously.

**APPROVAL NOTIFICATION: November 18, 2009 - Minutes of June 17, 2009 were duly signed duly signed.**

Respectfully submitted,

Phyllis McDonough,  
Zoning Board of Adjustment Secretary