

CITY OF LACONIA
Building Code Board of Appeals
5:00 PM City Hall - City Hall - Armand A. Bolduc Council Chamber
Draft Minutes

2/12/2019 - Minutes

1. CALL TO ORDER

Planning Director Dean Trefethen called the meeting to order at 5:17 pm

2. ROLL CALL

Assistant Planner Robert Mora called the roll with the following members present: Peter Stewart, Robert Durfee and Gregg Selesky

3. STAFF IN ATTENDANCE

Planning Director D. Trefethen and Assistant Director R. Mora

4. RECORDING SECRETARY

Robert Mora

5. ELECTION OF OFFICERS

Planning Director D. Trefethen told the new board that the first thing to be done is to elect a chair. R. Durfee nominated P. Stewart and G. Selesky seconded. With no objections or discussions, Peter Stewart voted in as chair of the Building Code Board of Appeals.

6. REQUEST FOR ADMINISTRATIVE APPEAL

6.1. BC2018-0001 - 674 Elm Street

Applicant: Ethan Wood of Patrick Wood Law office representing Mallard Cove Condominiums association spoke. First he thanked the board, then explained the appeal. The applicant is appealing an administrative decision from the Laconia Code Chapter 1119-10, 11 & 16, specifically citing a violation from the International Property Maintenance Code 2006 sections 101.3, 103.1, 104.3, 104.4, 301.1 & 301.2. Atty E. Wood handed out a package to the board. In conversations with Planning Director D. Trefethen, there is some desire on the part of the City to permit the person who brought this to the City's attention to be present. With no objection to that, he asked the board as initial matter to determine whether or not this board has jurisdiction to hear the appeal and if so, they would ask for a continuance until Mr. Brown be in attendance to voice his concerns. If not, the appeal ends. He would like to explain why the board wouldn't have the jurisdiction, unless Planning Director D. Trefethen would like to hold off on that until Mr. Brown is present. Planning Director D. Trefethen thinks the argument can be made with the present board and without the complainant present.

The argument regarding the jurisdiction: This violations finds its root in the code as adopted and the specifics that have been adopted as part of that. The materials handed out explains the argument and Atty E. Wood explained that the City of Laconia has not adopted the International Property Maintenance Code of 2006 which is where the violation exists. The important thing to remember regarding jurisdictional arguments is the board has jurisdiction granted under the enabling statutes under both state level and city level. The board only has jurisdiction to hear things that have been granted to the board, either by council or the NH Legislature. With regard to that, the specific argument that the board doesn't have jurisdiction, is found in a reading of page two of the Laconia Code. A side notes is the International Property Maintenance Code appears in section three of section 110 and differs in language of the first two sections where specific codes are adopted. He went on to read the

codes. The contention is that the Laconia Ordinance has not adopted the International Property Maintenance Code and if the City hasn't adopted, then the board has no jurisdiction to hear the appeal.

Planning Director D. Trefethen handed the board a packet. The city disagrees with the opposition. He went over the handout. Legal Counsel states that the intent of Council was to adopt the International Property Maintenance Code and in the minutes from that meeting show the adoption of the state building code which includes the codes and standards. Planning Director D. Trefethen stated that the International Property Maintenance Code has been used throughout the years to enforce property maintenance issues throughout the city and been to court under that provision multiple times without any challenge to the code. Chair P. Stewart asked if the opinion of the city attorney that the city has adopted the code and Planning Director D. Trefethen said yes. Section 199-10 does adopt all the ICC codes. Atty E. Wood noted to keep in mind regarding interpretation of statutes is what the NH Supreme court has said which is "It's not the prerogative of the judicial entity to add words that not in the code" and the board, as sitting in this situation as a quasi-judicial entity, determine whether or not the board has jurisdiction. It's not the prerogative of the judicial entity to review what the legislative body might have said or add language that city council did not explicitly include. Regard to that, there is no explicit adoption to the International Property Maintenance Code. Planning Director D. Trefethen noted that if there is doubt on part of the board, the board can table the decision and request official legal opinion for the next meeting.

Board discussion:

G. Selesky noted that it does say in the motion "above listed ICC codes" and looking at the list the ICC code is the electric code. He asked if the ICC code rep all the codes or just the electric code? Atty E. Wood's understanding that that the International Code Council is the entity that promogate the codes. The International maintenance code is also a code as well as the building codes. G. Selesky because it does state the "above listed ICC codes" and a prescient was set and the city has been using the code, his position is with the City. He is conscientious towards the intent of the language as opposed to the law of the language. Atty E. Wood feels the intent isn't important but what is actually in the language because it could be intended to do something, but if nothing is done then the intent is irrelevant. This a violation, which means there are criminal penalties, and if the city doesn't have the specific code adopted, he would contend that the city is violating the rights of the association with regard to what can be expected as far as the potential violations to which would be subject. G. Selesky is unsure of what the complaint is about but if it's stated in pointed out as all the ICC codes, he feels the complaints lies within the codes and the precedent is that the city has acted on it in the past.

R. Durfee noted that one of the arguments is that the state has adopted the IBC and in the language they specifically list what other ICC codes without out the specific property maintenance code. As a municipality can adopt other codes as well as what the states adopts. He feels the city adopted the code when they listed it along with the other state codes. He differed to Chair P. Stewart if the legal opinion is needed before moving forward.

Chair P. Stewart noted that this is over his head and would like to get input from the city attorney as to whether or not the code is in fact adopted. R. Durfee agreed. Planning Director D. Trefehen will get something from the city attorney. There was a property in the Weirs in terrible condition and the city enforces the property maintenance code and been to court. As result, the city has taken over the property. Generally action is done a on a complaint basis. Atty E. Wood added suggested review if there was a different ordinance in violation.

Motion to table the matter to obtain an opinion from legal counsel at the next meeting, to be determine date and time made by G. Selesky, R. Durfee seconded. All voted in favor.

6.2. BC2018-0002; 37 Leighton Ave South; building permit #BP2018-00337-2-RN

Applicant: Terri Bouchard, the property owner spoke. She explained that her and her husband were building a new home and were mindful of the note in the builder's resource guide that homes over 3000 sq ft need a sprinkler system for fire protection. The square footage is 2862 on their house but when the city was doing the measure, a breezeway was included which is not interior space. The addition of the

breezeway would bring the total to 3022 sq ft.

Deputy Chef Charlie Roffo spoke. Nov 16 he received the building permit sign off with plans for a single family dwelling. During his review the space is calculated and looked at the breezeway plans. Plans show doors and windows therefore counted as enclosed space. There are three concerns from the City's aspect: whether the breezeway would be included in the calculations, the fact that primary egress for the master bedroom is over the breezeway and concern about the fire safety aspect of that and the plans submitted show a future basement fitout. The concern about that is there is no control on when that future will come. If the space is completed, that bring the calculation close to 4000 sq ft. He is not concerned about the breezeway if the porch is screened. The main issue is the egress from the master bedroom and the status for the basement construction.

Chair P. Stewart clarified that the first concern about the egress from the master bedroom, if the house was shown to be less than 3000 sq ft, agreed with the calculation, would not be an issue and C. Roffo said that is not an enforceable issue. The basement issue is a future concern. C. Roffo said its ambiguous as to what is the future. When the fire dept gets to buildings close to the 3000 sq ft mark, the situation has to be dealt with retroactively. Because of being in the submittal, it had to be considered as part of the construction process.

There was clarification of the calculations. The 3022 sq ft includes the breezeway. Chair P. Stewart asked if anywhere in the ordinance does it define gross square footage. Planning Director D. Trefethen handed out the section. T. Bouchard noted that the builder's reference guide and that code contradict each other. The guide specifically says not including basements and it also doesn't say not including unfinished basements. The exclusion of the garage only shows up in the guide and not in the ordinance. The ordinance does not include attics, garages or unfinished basements. When the ordinance was adopted at the initial public hearing, there was a concern from the builders. When ranch style houses, they almost double and the builders felt it was unfair. Council amended the proposal to make sure unfinished basements wasn't included as part of the living space. The fire dept's concerns with this plan is that it shows living space. R. Durfee wanted C. Roffo to go over what specific areas were included in his calculators and was told the breezeway was included, does not include the unfinished basement. Does include the first and second floor and not include the vehicle part of the garage, but does include the habitable space above. The breezeway is 160 sq ft and without will be 2862 total sq ft. The 2862 includes the space above the breezeway.

Chair P. Stewart asked C. Roffo if they were under the 3000 sq including the breezeway, and a new plan was submitted without the finished basement shown, would he be ok with that and answered yes. Chair P. Stewart then asked the T. Bouchard if she could make the breezeway shorter to bring down to under the requirements, then there was a discussion regarding the screening of the breezeway. For clarification, C. Roffo stated, to be fair to the applicant, if the breezeway as it exists in screened, not enclosed, the calc drops to 2862. The only existing issue is the basement, because it's in the application and no control over when construction begins.

T. Bouchard has no immediate plans. Chair P. Stewart asked to have an amended plan be submitted showing the unfinished basement and the breezeway with screens to the Code office. He also stated as a side note the IBC says all space under roofs shall be included under the square footage, so the Fire Dept gives a lot of breaks. She appreciates that and noted that they were only working with the information from the builders reference guide. R. Durfee clarified the calc of 3022 doesn't include the basement and C. Roffo agreed. In general codes and jurisdictions like the board ruling on those codes, don't take into consideration the word of people because the ownership and plans can change. The board is asking the applicant to put in writing by revising the building plans. So in the future, if any changes are made at that point the owner will be in violation of the building code.

T. Bouchard asked if they plan to finish the basement they would need to sprinkler vs someone buying a house and in the future exceeding that square footage how does that work. Planning Direct D. Trefethen stated that if during the building process one knows they want to expand over the 3000 sq ft then, in his opinion, it is cheapest way to put it in now vs retro fit. R. Durfee suggested just putting the piping in and the rest later.

Motion to have the applicant adjust the plans to eliminate the finished basement and make it clear on the plans that the breezeway is screened to the Code Enforcement/Building Dept dropping the square footage to 2862 and not need to comply with sprinkler and approach is acceptable to the Fire Dept made by R. Durfee, G. Selesky seconded. All voted in favor.

7. OTHER BUSINESS

Planning Director D. Trefethen stated that he is going to undertake an effort with City Council to amend the ordinance to say "at least three of the members will meet these requirements and the other two members can be general public" just to give flexibility of the board. Over the next four to six weeks the work will be done.

8. ADJOURNMENT

Motion to adjourn the meeting made by R. Durfee, G. Selesky seconded. All voted in favor.

The meeting adjourned at 6:14 pm.

Respectfully,
Kalena Graham

DRAFT