

MINUTES OF THE ZONING BOARD OF ADJUSTMENT MEETING
September 10, 2010
7:00 PM

Meeting called to order by Vice Chair Ray Donald, at 7:00 PM present: Jay Alberts, Peter Coffin, John Whittier, Daryl Branch and Tammy Bakie.

Mr. Donald stated last month's meeting was chaired by Electra Alessio who was not available this evening therefore he would be acting as chair. Mr. Donald stated he would not be voting because this was a continuance of last month's hearing, which he was not in attendance for. Mr. Alberts made a motion to accept the August minutes Mr. Coffin seconded and asked for the question marks be removed from adjournment time.

John Ouellette 33 Wadleigh Point Road Tax Map U-5, Lot 29

Mr. Donald stated the applicant had violated the building permit and a cease and desist had been issued, and invited Mr. Ouellette to defend where he was. Mr. Coffin suggested the board start from square one without prejudice. Mr. Coffin stated the reason the meeting was continued last month was the confusion whether the original permit was still valid. Mr. Ouellette stated in Ms. Alessio's email the cease and desist was issued because the applicant extended beyond the building permit, the cease and desist negated the building permit. Mr. Coffin stated if the applicant pulled off the decking he could not go back under the original permit because it was no longer valid. Mr. Alberts stated that he had placed a call to Mr. Middlemiss and Mr. Steward regarding the statement that the building permit being nullified, which did not make sense to him. Mr. Alberts stated the cease and desist was a suspension of the building permit. Mr. Alberts stated he had contacted Attorney Peter Loughlin who did not understand why the building permit was totally revoked rather than in a state of suspension until remedied. Mr. Branch asked if the applicant could go before the selectmen and prove he was going to go thru with shed would he still have the permit. Mr. Alberts invited Mr. Middlemiss to speak about why it would be nullified. Mr. Middlemiss stated there was a cease and desist on the permit because the work exceeded the scope. Mr. Middlemiss stated the cease and desist would stay in place until either it is show that everything goes away or until the applicant comes into compliance with original permit. Mr. Middlemiss stated if the applicant comes into compliance with the original permit the cease and desist can be lifted but if the building is modified from original permit the options are

to either void building permit and issue a new one for what is actually being built. Mr. Middlemiss stated if board decided to allow what originally presented the cease and desist would be lifted and the applicant can build exactly what is presented. If he does not build what was originally presented than the permit is void. Mr. Coffin suggested asking the applicant what he wanted to do. Mr. Donald stated the applicant had violated the building permit and is asking for the violation of the permit to be allowed to stand. Mr. Donald stated if the variance was denied it would be up to the applicant to go to the selectmen to get the cease and desist lifted and bring the building back into compliance with the original permit. Mr. Branch stated it was presented not as adding three feet of deck onto a previous building permit but as enlarging a shed with a deck. Mr. Alberts asked why the application was for the entire building when the applicant had permission for most of the building. Mr. Middlemiss advised that it was built as entire unit not as two separate units. Mr. Coffin asked the applicant what his intentions were. Mr. Ouellette stated he would comply with whatever the board recommended. A discussion followed regarding the board could not make recommendations, and what Mr. Ouellette options were. Mr. Alberts stated the board could only vote on what was presented. Mr. Donald asked if the deck was taken off would it still be in violation. Mr. Coffin stated no it would still be 2.5 feet in violation. Mr. Alberts asked Mr. Middlemiss if the applicant removed the deck why it would be in violation of the building permit issued. Mr. Middlemiss stated as long as the structure being built is the one on the original application it would not be in violation. Mr. Whittier asked if there was an elevation or height on the application. Mr. Coffin stated there showed 8 foot walls. Mr. Ouellette stated he didn't think there was. Mr. Ouellette stated when he started he thought he would take original structure and add on and enlarge it, but he discovered that in relation to driveway and the angle it would cut into the driveway and be closer to 20 feet to the road and that's why he made the changes. Mr. Donald asked if the replacement shed would be closer to property line. Mr. Ouellette responded it was actually further away. Members reviewed pictures and discussed. Mr. Whittier asked if Mr. Ouellette would be willing to take the deck off and build a 10 X 12 shed that was specified in the building permit. Mr. Ouellette stated he was willing to do that but if he built exactly as drawn on application it would cut into his driveway, he would have to step it back closer to his house. Mr. Donald asked if he would be encroaching on the property line more. Mr. Ouellette stated it would be less in the new plan. Mr. Coffin stated the existing structure would not be moved. Mr. Ouellette stated he would be willing to blow out the old structure and build something there. A discussion followed regarding the old permit vs. the new permit. Mr. Donald stated the board needed to vote on the application before them tonight and in his opinion it

should be denied and sends the applicant back to the building inspector. Mr. Alberts stated he did not know why the original building permit was issued based on the regulations and ordinances. Mr. Donald suggested it may be grandfathered because it was being built on the same line that the shed was being torn down on and there would be a grandfather consideration. Mr. Ouellette stated he felt he was being turned around to go back thru the process again. Mr. Donald stated that was because the applicant deliberately violated the original building permit. Mr. Ouellette stated that was totally his error and his responsibility, but he thought he was here tonight with a variance on the new permit which include the changes. Mr. Donald stated if the building inspector says the applicant is grandfathered because the shed was there earlier the only thing the applicant would need to do is to remove the decking, but he would have to work with the building inspector and selectmen to remove the cease and desist. A discussion followed reiterating the variance for the second application. Mr. Donald stated again the board did not need a decision from the applicant but needed to vote on the application before the board, tonight, the only one on the agenda. Attorney John Bisson counsel for Robert Wilder #37 Wadleigh Point Road stated his client was the closest abutter to the proposed structure. Attorney Bisson stated the original permit was issued illegally; the date on the original permit was June 2nd. Attorney Bisson stated the structure is being built within the 20 foot setbacks and the building inspector does not have authority to grant the request. Attorney Bisson stated his client did not find out about the existence of the permit until he saw work being done and made a complaint. Attorney Bisson stated the scope of the cease and desist is confusing. Attorney Bisson stated in order to expand the original structure it had to be a grandfathered use, pre-existing non conforming structure and there is no evidence of that. Attorney Bisson stated Kingston has had set back requirements in place since the 60's which means the structure would have to have been in that spot since before ordinance or setback requirement changed. Attorney Bisson stated this structure was added within the past 5-8 years. Attorney Bisson stated again the permit was issued illegally and the cease and desist order was intended to address the illegality of the original permit. Attorney Bisson stated the applicant did not establish the burden with respect to the five criteria. Attorney Bisson stated his client preferred structure not be within the setback and encouraged the board to deny the request. Mr. Alberts agreed it was not a grandfathered structure, did not previously exist so the permit was illegal. Mr. Alberts stated he was surprised the abutter did not bring the illegal permit before the board. Attorney Bisson stated he believed the cease and desist took care of that issue and the variance application if denied would take care of the issue entirely. Mr. Alberts asked if the building permit has been posted. Mr. Ouellette

stated it is back window of car, and he believed he meets the five criteria based on the topography of the land. Mr. Ouellette stated he would use the shed to store bikes, snow blower and tools and others in the neighborhood have outbuildings and this would not be out of character for the neighborhood. Mr. Alberts spoke about a neighbor who testified the shed would block his view. Mr. Ouellette stated he didn't have an issue with the shed being built where it was but if he built a shed without a variance it would block his view. Mr. Alberts asked Mr. Ouellette if there was any indication about height on the original application. Mr. Ouellette stated no. A vote was taken and it was 2/2 split for granting the variance. Mr. Donald stated he would vote when it came to hand raising and asked for a motion. Mr. Donald stated if it was a 2/2 vote it was denied. Mr. Coffin pointed out that if there were not five voting members the applicant had a right to appeal. Mr. Alberts stated if there were three voting members all three had to be unanimous. Mr. Coffin made a motion to deny request. Mr. Alberts seconded all in favor one abstained. Mr. Donald stated the variance was denied and the applicant would receive written notice and had 30 days to appeal with new information.

Mr. Donald adjourned the meeting @ 7:54.

Respectfully submitted,

Tammy L. Bakie
Secretary
Zoning Board of Adjustment

Surveillance