

**DEVELOPMENTAL REVIEW BOARD
MINUTES**

September 12, 2011

MEMBERS PRESENT:

Phil Carter	Richard Harrison	Linda Petty
John Boehrer	Julie Nicoll	

STAFF PRESENT:

Rose Goings

OTHERS PRESENT:

Margaret Edgar	Charlie Robinson	Duncan Love – LPC TV
L. Raymond Massucco		Lisha Klaiber, Recorder

1. **CALL TO ORDER**

A. Meeting opened at 6:06 p.m. by Phil Carter. All members present

2. **RE-OPEN THE RECESSED PUBLIC HEARING FOR MARGARET EDGAR, TRUSTEE**

- A. Phil Carter advised that this is an Appeal to a Notice of Violation issued by the Zoning Administrator because the appellant has not complied with the Environmental Court/Local enforcement decision. The Environmental Court issued a decision on March 4, 2009, which was an appeal from the Town of Ludlow decision. Property is located at 51 Northshore Drive in the Lakes District. This hearing was recessed from the July 11, 2011 and August 8, 2011 meetings. Phil Carter reminded all who had previously been sworn in that they are still under oath and administered the oath to all new persons wishing to speak at this hearing. He advised that the focus of tonight's meeting is the appeal of the Notice of Violation. Any discussions are to be addressed to the board and not to the audience. He would like to start by having Rose Goings give a chronological outline of the events. The memo that she submitted prior to the last meeting was not evidence.
- B. Raymond Massucco advised that he had sent documents requesting that Richard Harrison recuse himself from this hearing due to conflict of interest.
- C. Phil Carter said the objection had been to Richard Harrison's statement regarding Rose Goings' memo. The testimony was based on items not included as evidence at the August meeting. Phil Carter said that he does not see how this meets the terms of being prejudiced on the issue. He asked Richard Harrison if he could fairly and objectively consider this issue.
- D. Richard Harrison said that he could.
- E. Phil Carter said that he would not ask Richard Harrison to recuse himself.
- F. Raymond Massucco said that he would like to have his objection noted.
- G. Rose Goings advised that this issue started in 2006. Ms. Edgar purchased and started construction on the building. IN January 2007, she was advised that part of the work required a zoning application and a Notice was sent to her. She was told to appeal and apply for a variance. The DRB denied the variance and Matt Birmingham (her attorney at the time) appealed the decision to the Environmental Court. The court agreed that a variance was

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- needed for part of the work. Chris Callahan, Matt Birmingham, the builder and Ms. Edgar went to the property to see what needed to be removed in order for the building to be compliant. Two years passed and the work was not done. A Notice of Violation as sent and Ms. Edgar has not yet complied.
- H. Phil Carter asked if the offending portion of the building was removed.
- I. Raymond Massucco said that he submitted documents and exhibits to be used as evidence, including a list of the exhibits.
- J. Phil Carter said, before we discuss the list, he would like to know if the chronology presented by Rose Goings is correct.
- K. Raymond Massucco said that chronologically it was correct.
- L. Phil Carter asked Rose Goings if she would like the August 8th memo submitted as evidence.
- M. Rose Goings said no.
- N. Phil Carter advised that a letter dated April 11, 2011 was received from Raymond Massucco in which he stated that the property is no longer in violation. He asked Raymond Massucco what has changed to make him say that.
- O. Raymond Massucco said that he would like Rose Goings' memo of August 8th submitted as evidence. He said that in 3 orders of findings from the Environmental Court, they refer to increase in volume that protruded within the setbacks.
- P. Phil Carter noted the protruding piece is on the SE corner into the setback. The map says 12 inches.
- Q. Raymond Massucco said the house was elevated and new foundation put in, but the footprint is the same. More volume was added to the lower level and the 2nd story remained the same. The new work was all in the lower level. The Environmental Court said the added volume in violation is in the lower level. Since then, the lower level was renovated to reduce the volume by more than 12 inches. The actual volume was physically reduces and permanently removed.
- R. Phil Carter asked Raymond Massucco how he defines volume.
- S. Rose Goings asked if the board had copies of the March 4, 2009 Environmental Court Judgment Order and drawing that came with it?
- T. Raymond Massucco referred to Exhibit #2, the March 22, 2011, noting that the court declined to intervene in the motion filed for the town by Attorney ccl for judgment for specific acts and contempt. He said that the court denied the request.
- U. Rose Goings referred to the Judgment order of March 4, 2009 noting that the order states that the existing non-conforming SE corner does not qualify for a variance and described what needed to be done. She said that lowering the inside ceiling does not make the building conform.
- V. Phil Carter noted that the court said that a variance was required. The issue went back to the town. The building did not conform. If it is still there, it is in violation and no variance was obtained. The variance process was not appealed. He asked, is the piece still there?
- W. Raymond Massucco said no. The volume has been reduced.
- X. Phil Carter asked what has happened.
- Y. Raymond Massucco said the house was raised and the second floor is the same. The lower level is a foundation and the concrete added 12 inches. That has now been reduced.
- Z. Phil Carter said that originally this was a con-conforming cabin. The applicant may not add to the non-conformity. Adding or raising up the top into the corner violates the setbacks to the lake, if it is still there, it is still in violation.
- AA. Raymond Massucco said the volume was increased in the lower level. There were changes to the bottom.
- BB. Phil Carter said that they increased the non-conformity by raising the house.

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- CC. Richard Harrison said that other people actually moved the houses back from the water. In the beginning, you should have cut the building back in size.
- DD. Phil Carter asked how Raymond Massucco views how this has been corrected.
- EE. Raymond Massucco asked about the evidence he submitted.
- FF. Phil Carter said it is part of the evidence.
- GG. Raymond Massucco said he would like to add Rose Goings' memo.
- HH. Rose Goings said she objects.
- II. Raymond Massucco asked if he could question Rose Goings.
- JJ. Phil Carter said that Raymond Massucco may make points on the memo, but it will not be entered as evidence. He said that Raymond Massucco could ask questions to the board and they would ask them to Rose Goings.
- KK. Raymond Massucco referred to Rose Goings' memo and reference to the date May 4, 2009.
- LL. Phil Carter asked Rose Goings to clarify.
- MM. Rose Goings said the date should have read March 4, 2009 – the Judgment Order. She misstated the date.
- NN. Phil Carter said that the March 4, 2009 Judgment was a ruling on the variance.
- OO. Raymond Massucco said there was no ruling from the court to remove the offending portion.
- PP. Julie Nicoll asked if the court was ever asked about the variance.
- QQ. Rose Goings said there was a letter dated March 22, 2011 that she did not see until Raymond Massucco submitted his packet.
- RR. Raymond Massucco said that it was sent to Attorney Callahan and Mr. Callahan sent Raymond Massucco a copy. The town filed a motion for specific acts and contempt. The sketch was not part of the court order and was not incorporated into the order nor was a plan.
- SS. Rose Goings advised that the court order of March 4, 2009 was faxed along with a sketch.
- TT. Phil Carter said that the April 8, 2009 drawing shows the offending portion and he asked if it is gone.
- UU. Raymond Massucco said the renovation reduced 12 or more inches structurally. Paragraph #3 on page 2 of the March 22, 2011 order states that there was no court order to remove.
- VV. Phil Carter said that it has already been established that there was no appeal to the variance.
- WW. Raymond Massucco said the town went to the Environmental Court and the March 22, 2011 order states that there was no court and the drawing was only a faxed sketch. He added that per a telephone conversation on April 8th, a clear drawing and sketch could be sent to assist the file. The case is closed and what Rose Goings represented is inaccurate.
- XX. Rose Goings said that Chris Callahan and Matt Birmingham all agreed on what needed to be done and it is clearly stated in the March 4, 2009 order.
- YY. Phil Carter noted that Raymond Massucco read from the March 22, 2011. Rose Goings was reading from the March 4, 2009 Judgment Order. Phil Carter read from the March 4, 2009 order states that the top 12 inches from the SE corner to the 11 foot walls described required a variance. Phil Carter read from the March 22, 2011 document and noted that there are 2 points in favor of the town required variance. The 12 inches in height is non-conforming on the corner portion of the structure above. This was in both documents.
- ZZ. Richard Harrison said that they did a 12" drop ceiling.
- AAA. Phil Carter said that in order to conform to the Ludlow Zoning Regulations, the offending portion must be removed.
- BBB. Raymond Massucco said that none of the documents say anything about the roof. The only renovations were done on the lower level and now the interior volume has been permanently reduced by a foot. Nowhere was it stated that the height had to be reduced.

- CCC. Phil Carter indicated on a drawing how the existing portion had been raised and increased the non-conformity. Now the corner of the house is infringing on the space into the setback. He asked Raymond Massucco how he would account for that.
- DDD. Raymond Massucco said that the only volume created was in the basement and was interior volume. This has now been removed and the building is within the footprint.
- EEE. Julie Nicoll asked how it was removed.
- FFF. Raymond Massucco showed photographs that showed how the ceiling was lowered and windows dropped. He said that structurally removed a minimum of 12 inches and that no one from the town has gone back to the property.
- GGG. Julie Nicoll said that the board did go back last month.
- HHH. Phil Carter said that this board does not accept testimony on site visits and nothing discussed on the site visit is on the record. The only testimony on record is from this room.
- III. Rose Goings said that they still have not removed the 11 feet on the sides and they have to get the bottom area out of there.
- JJJ. Phil Carter said that the original camp footprint is the same. A person may renovate but by raising the building up they added 12" into the sky and that is what is non-conforming – the top 12 inches in the height. When the building was raised, the added to the non-conformity.
- KKK. Julie Nicoll said that while they may have lowered the ceiling, the space is still there and is just covered up.
- LLL. Phil Carter said that applicant never appealed the variance. You see the volume changes by the interior, but they exterior is the same. He asked if there was anything else.
- MMM. Raymond Massucco said that he would like Ms. Edgar to state that the work described has been done.
- NNN. Margaret Edgar said that work was done.
- OOO. Raymond Massucco referred to a letter addressed in September.
- PPP. Phil Carter said it was not part of this hearing.
- QQQ. Charles Robinson, a neighbor said that the DRB is correct in saying that the Environmental Court saw a problem at the top and referred to the February 5, 2009 document. He said that the evidence supports the DRB conclusions and talks about the height above the roof. He said that if the ceiling was dropped, it does not change the volume, the building height remained the same.
- RRR. Phil Carter said this hearing is not about the actual height, but about the degree of non-conformity.
- SSS. Rose Goings said that several certified letters were sent to Ms. Edgar and there was no response. She asked if Ms. Edgar's legal address had changed.
- TTT. Ms. Edgar said the Florida address was correct, but that she had been ill and in New York. Her sister only just told her about the letters and just recently sent them to her.
- UUU. Charles Robinson asked if all of the letters sent from neighbors were part of the evidence.
- VVV. Phil Carter said yes.
- WWW. **MOTION by John Boehrer and seconded by Richard Harrison to close this hearing. Motion passed unanimously.**

3. **APPROVE MINUTES**

- A. Phil Carter advised that the minutes to be reviewed were from the June, July and August meetings.
- B. **MOTION by Julie Nicoll and seconded by John Boehrer to approve the minutes from the June 13, 2011 meeting. Motion passed unanimously.**

- C. **MOTION by John Boehrer and seconded by Julie Nicoll to approve the minutes from the July 11, 2011 meeting. Motion passed unanimously.**
- D. **MOTION by Phil Carter and seconded by Julie Nicoll to approve the minutes from the August 8, 2011 meeting. Motion passed unanimously.**

4. **OTHER BUSINESS**

- A. Phil Carter advised that he would like to go into Deliberative Session.

5. **ADJOURN**

- A. **MOTION by Phil Carter and seconded by Julie Nicoll to adjourn to Deliberative Session. Motion passed unanimously.**
- B. Meeting adjourned at 7:08 p.m.

Respectfully submitted,

Lisha Klaiber

Phil Carter, Chairman

Julie Nicoll

John Boehrer

Linda Petty

Richard Harrison