

BOARD OF APPEALS

May 9, 2018

7:00 PM

York Library

15 Long Sands Road, York ME 03909

Chairman Robert Lascelles called the meeting to order at 7:00 PM. Board Members present: David Woods and Michael Swant and Associate Members John Kraus and Britton Garon.

Board members not present Joe Carr, Leon Moulton and Associate Member Victor Manougian.

Videotapes of the meeting are available in the Town Clerk's office for review.

1. **Findings of Fact** -April 25, 2018.

Administrative Appeal of Edward W. Little requesting a Reconsideration in regards to a decision by the Town of York Board of Appeals concerning an Accessory Dwelling Unit. Property in question is located at 5 Meeting House Lane and is owned by Catherine Stehman-Breen. Map 56, Lot 08.

The voting members were Mr. Manougian, Mr. Carr, Mr. Swant, Ms. Garon and Mr. Woods.

Motion by Mr. Swant, seconded by Ms. Garon, to approve the draft Findings as written. Passed 3-0-2 (Ms. Garon, Mr. Swant and Mr. Woods FOR, Mr. Manougian and Mr. Carr abstaining due to absence.)

2. **Matter Under Consideration:** Joseph J. Jason, 115 Elmwood Boulevard, York, PA 17403, Denis O'Connor, 30 Glen Lane, York ME 03909, Michael Kofman, 646 York Street, York ME 03909, Peter Dutton, 22 Eureka Avenue, York ME 03909, and Daniel Raposa, 660 York Street, York ME 03909 request an Administrative Appeal in regards to a decision by the Town of York Code Enforcement Office concerning the lifting of the Notice of Violation retroactive to July 12, 2017. Property in question is located at 632 York Street. Map 46, Lot 17-A.

This matter was scheduled for April 25, 2018 and continued to tonight's meeting. Regular members Mr. Swant, Mr. Carr and Mr. Woods and Associate Members Ms. Garon and Mr. Kraus constitute a quorum and will be voting on this appeal.

Present: Denis O'Connor, appellant

Michael Kofman, appellant

Peter Dutton, appellant

1/3



Daniel Raposa, appellant

Mr. Greeve representing appellant Joseph Jason

There were no conflicts of interest on the Board. The appellants have standing as having proximity to the subject property. Timeliness was discussed. The notice of the relief from the rescission of the Cease and Desist Notice of Violation was issued on March 18, 2018. The appeal was filed on April 6, 2018 which is within 30 days; thus, it is timely.

Mr. Lascelles asked if this appeal is already before the court, since the Board's January 24, 2018 decision is being appealed. Mr. Raposa said the January 24 decision is being appealed in court. The appellants don't dispute the CEO's decision to rescind; they feel that the date she chose, July 12, 2017, is not correct. Mr. Lascelles said that since the appeal is in court, the Board can't back up. The Board is restricted to acting on its authority granted under the zoning ordinance. Mr. Kofman asked how the NOV could be lifted if the Board can't hear this because the matter is in the court. The court could remand it to the Board. Ms. Garon said the Board doesn't have jurisdiction on lifting the NOV since the CEO was acting on a prior Board decision. Enforcement is not a matter for the Board to decide. Mr. Swant agreed with Attorney Mary Costigan's opinion that lifting the NOV is not appealable to the BOA. Mr. Woods and Mr. Kraus felt that the matter should stay with the court. Mr. Lascelles summarized that the Board's first action is to decide if it has jurisdiction to hear the appeal.

Ms. Garon proposed a motion to not hear the appeal due to not having jurisdiction. Mr. Lascelles felt that a denial would be appealable and if the court remanded it, it would have to give the BOA guidance.

Motion by Mr. Swant, seconded by Mr. Woods, to deny hearing the Administrative Appeal of the five parties in that the matter is not within the BOA's jurisdiction and the matter is currently under consideration by Superior Court. The motion was amended by Ms. Garon to include that the BOA does not have jurisdiction because this was not an appealable decision of the CEO.

The motion was withdrawn by Mr. Swant, seconded by Mr. Woods.

Motion by Mr. Swant, seconded by Ms. Garon, to deny hearing the appeal of the 5 parties regarding the lifting of the NOV. The denial is based upon the determination that the BOA lacks jurisdiction to hear the letter lifting the NOV as that is not an appealable decision. Passed 5-0.

3. Code Office Business—None

2/3

4. Board of Appeals Business: This room will not be available for the first July meeting due to a book sale. Choices are to meet at the Police Station or cancel the July 11 meeting. The consensus was to cancel the meeting.

5. The meeting was adjourned at 8 PM.

Robert Lascelles 6/27/2018

Robert Lascelles, Chairman

Board of Appeals

