



**INCORPORATED
VILLAGE of PORT JEFFERSON**

121 West Broadway
Port Jefferson, NY 11777
Tel. (631) 473-4744 Fax (631) 473-2049
www.portjeff.com

ZONING BOARD of APPEALS

Chair
Lee Rosner

Members
Michael Verruto
Charles Kenny
Jack Giannola
Rob Gitto
Secretary
Cindy Suarez

ZBA MINUTES

August 7, 2009

PRESENT:

Charles Kenny, Acting Chairman
Rob Gitto
Jack Giannola
Cindy Suarez, Secretary

The Zoning Board of Appeals held a general business meeting at 7:30PM in the first floor conference room at Village Hall, 121 West Broadway, Port Jefferson, N.Y. 11777.

Appeal No. 418-09CK Section 16, Block 8, Lot 7,8.1,8.2,9,10,13.1,18,23,24,25
Liberty Meadows c/o Demetrius Tsunis
Liberty Avenue, Port Jefferson

Applicant seeks an interpretation of the Village code section 220-34C and review of rejection of application for a model permit. The property is located in the Village's RB-2 district.

The meeting commenced at 7:34PM

Charles Kenny stood in as acting Chairman as stated the following: (Lee Rosner and Michael Verruto recused themselves.)

The Board concluded their meeting of 7/16/09 without the opportunity to discuss this matter. Other matters were discussed that evening which were a little more expeditious.

CK and JG met with Village Attorney, Barry Warren to discuss some legal issues that were addressed in the memo received on 7/16/09 from the Law Office of Frederick Eisenbud (Attorney for Coalition to save Cedar Hill) raising certain issues. One issue was whether or not the ZBA has jurisdiction to hear this matter. It has been discussed with the Village Attorney, Mr. Warren and the law department of legal staff that a preliminary decision had been made that the Board has jurisdiction when they accepted the application.

Section 7-712 authorizes villages to appoint and inform. Generally limited to section 250 defines not only different code zoning areas, setbacks and area requirements, but code 250-49 "Power and Decision of ZBA" language enforces that local code is superseded by and falls under direction of village law. Section 250-49(A) (1): definition of any meaning of any portion of this chapter.

Mr. Eisenbud referred to section 220-34© which deals with site plans and subdivisions which are planning board issues. The ZBA is not dealing with these issues. The issue here is interpretation of a phrase in section 220-34© building permits for homes. Section 7-712(a) (4) stated the ZBA shall have these powers in reviewing any power or interpretation by any official without going over the power of the ZBA.

CK made a motion that the ZBA has the jurisdiction to act on this matter, JG seconded the motion, all in favor the vote was 3-0.

Interpretation issue:

There are four criteria to abide by case law of the state of New York section 220-34© B&C. The language of stated controls cited paragraph “c” building permits 220-34(b) shall not be issued by the building inspector before the final approval of the planning board and the plat must be filed by the county clerk and final action after all conditions are complied with and final approval is set forth by the planning board. The Planning Board defines when a final approval has been taken.

The resolution on this application has seven pages of conditions. There is a final approval but no final action has taken place. The code when initiated by the Board of Trustees allowing placement of a model home after approval has been granted, words given common meaning and really simple. As referred to in Webster’s seventh edition:

Action: 1) manner or method of “performing”
2) “A thing done”

Approval: 1) to have or express a favorable opinion of
2) To accept as satisfactory or to give formal or official sanction.

The Planning Board gave approval as they made an action but with contrast to action it is not done until said map and all conditions are done.

Mr. Kenny made a motion that the Board concurs with the applicant and construes that although final action has been obtained by the applicant, the final approval had not been achieved contrary to interpretation the building inspector, Mr. Koubek. We hereby direct Mr. Koubek to issue the requested building permit subject to “requirements and conditions as imposed by the Planning Board. Mr. Gitto seconded the motion, all in favor the vote was 3-0.

Mr. Kenny made a motion to conclude that the action for this Board is an interpretation of the coded and does not require SEQRA determination, seconded by Mr. Giannola, all in favor the vote was 3-0. Mr. Giannola made a motion to adjourn the meeting, Mr. Gitto seconded the motion, all in favor the vote was 3-0.

The meeting ended at 8:00PM.

Cindy Suarez, Secretary, Zoning Board of Appeals

August 7, 2009
Date