

CITY OF ROCKLAND
ZONING BOARD OF APPEALS
Minutes of Meeting
March 4, 2010

Board Present: Chairman H. Grover, B. Carter, M. Lund, H. Simmons, City Attorney K. Beal, CEO J. Root, and Secretary D. Sealey

Board Absent: None

The Chairman called the meeting to order at 7:00 P.M. A roll call was taken and a quorum declared. Mr. Grover asked if any member had a conflict of interest with the matter before the Board. Mr. Carter said he had twice sold the building in question, including to the appellant. However, he had no personal financial interest in the outcome of the proceeding and felt no conflict of interest.

Communications: None

Minutes of Previous Meeting: 11/12/09

ACTION: Mr. Lund made a motion, seconded by Mr. Carter, to accept the minutes of the 11/12/09 meeting.
Carried 4-0-0

New Business:

Donald & Judith McMahan, Represented by Mike Miller – 13 Cottage Street – Appeal of the Inspection Official's citation requiring them to replace existing stairs following a pre-conveyance inspection.

Chairman Grover asked if any member of the public wished to speak for or against the appeal; none did. He then asked City Attorney Beal to provide an overview of the appeal. Mr. Beal said the McMahan's and their realtor, Mike Miller of Soundvest Realty, had submitted an appeal of the Life Safety Code [LSC]. Mr. Beal said the role of the ZBA was to hear the appeal and sustain, vacate, or vacate in part with conditions the Notice of Violation on the issue of stair risers. The ZBA must determine if the CEO's finding was contrary to ordinance or fact. The City Attorney added that, for these purposes, the Assistant Fire Chief was considered a CEO.

The Chairman invited Mr. Miller to explain his clients' position. Mr. Miller referred to his 2/1/10 submittal of arguments and documentation and said the code had more than one section, including that on risers and treads, that stated, "Safety improvements should be made that are reasonable and feasible at minimal cost." He felt Fire Chief Charles Jordan's and Asst. Fire Chief Adam Miceli's goal to make the city safer was admirable and said the McMahan's had fixed all cited problems except the stairs. The stairways involved could not be fixed for a number of reasons. He said the midcoast area had many stairs built by boat builders who didn't build according to present code and it was not reasonable or feasible to fix them as required. In the McMahan's B Unit the pitch of the stairs would have to be changed, but the owners thought the riser to tread ratio, which varied, was sufficient to get someone down the stairs. The impact of such a change to the integrity of the 1870 house would be the cutting of the joists on the 2nd floor. Mr. Miller said imposing this change would also impact rental rates for other 3-unit properties. In the second unit, renovation of the stairway would cost \$7,000 and take 50% of the square feet of two rooms. At rental rates of \$650, Mr. Miller said the impact would be broad and incredible.

Mr. Miller interpreted the Life Safety Code as a guide, but not written in stone. He quoted the LSC as saying "reasonable safety is the goal." Mr. Miller said it was practically and economically unfeasible to change the McMahan's two stairways at 13 Cottage Street. Contractor Robert Emery had measured the stairways and said the changes could not be made in Unit B without consuming half of both the bedroom and the living room in the unit.

City Attorney Beal suggested that the Board ask Asst. Fire Chief Miceli to discuss his inspection findings. Asst. Chief Miceli said the City had made the LSC its compliance tool for every building in the city. He stated that

apartments were viewed as a business enterprise and the City had the responsibility to insure a minimum amount of safety for tenants, who rented what they could afford. Asst. Chief Miceli said the LSC was specific and the issue here was how the 2nd floor tenants would get out of the building in an emergency. He said every apartment must have two means of egress and, in this case, these were a window and stairs, which were non-compliant. The second unit had two sets of stairs from the 2nd floor, but one riser was 11" and a tread was 10". He said both sets of stairs needed such significant work to meet code that he had not bothered to cite that both risers and treads must be uniform.

Mr. Carter asked if the cited issue of the short wall around the stairs being 35' high rather than the 36' required was still a problem. Asst. Chief Miceli said he believed that had been corrected. In response to a question from Mr. Lund, Asst. Chief Miceli said he had done five pre-conveyance inspections and they all had stairway issues. Mr. Lund asked if there had been buyers in place in the other cases and how the issues had been resolved. CEO Root said an agreement as to when corrections would be made could be made with the buyer or the seller. Asst. Chief Miceli said the owner could also present an alternate plan to the inspectors.

Mr. Miller said the McMahans would be willing to install staircase railings if that would solve the problem. Mr. Simmons asked if the interior stairs could remain if exterior stairs were built to code. Asst. Chief Miceli said such exterior stairs would need to be professionally designed and would be acceptable if code-compliant. City Attorney Beal said the ZBA must decide if Asst. Fire Chief Miceli had been correct in citing that the code had been violated. Mr. Simmons asked if non-compliant stairs had been a cause of loss of life. Fire Chief Jordan responded that the code had been developed with a larger statistical sample than the City. He said the Fire Dept. did not have the resources to help people redesign to meet code, though it could say whether a submitted design would meet code. Mr. Miller stated that the property owners did not have the resources, either.

Mr. Lund was curious whether Mr. Miller's goal was to influence policy or get specific relief for these clients. Mr. Miller said the appeal was specific to 13 Cottage St. Mr. Grover said that people did struggle to meet new codes, but safety was an important goal. Mr. Carter quoted the CEO's letter to the McMahans as saying there was no immediate danger to the occupants of their apartments. CEO Root said this allowed for judgment over strict adherence to the code. Asst. Fire Chief Miceli noted that the LSC rules had also been adopted by the State Fire Marshall. Mr. Miller said the City could not say the stairways were out of compliance before today and was applying a present code to a previously good building. Mr. Lund noted that for decades people had put up with dangerous situations that were not allowed today. He added that the purpose of the code was not for convenience of owners, but to speak for tenants.

Chairman Grover said it was always a tough call when new provisions were adopted and the Code Office and Fire Dept. were required to abide by the law. Asst. Fire Chief Miceli said even the new code had different rules for old and new buildings; for instance, new buildings were allowed to have maximum 7" risers. Mr. Simmons noted that Maine had one of the oldest housing stocks in the country and these rules were made to cover the entire county, where the majority of buildings were not so old. City Attorney Beal said some courts had held that new restrictions on uses of property should not be imposed, but this did not refer to dimensional standards.

ACTION: Mr. Lund made a motion, seconded by Mr. Simmons, for the Board to enter into its own discussion.
Carried 4-0-0

Mr. Lund said it would be tempting to grant relief to the building owners, saying they were doing the best they could. Unfortunately, he said, that would set a precedent. He said it would also worry him for the City to be out of compliance with the State's interpretation of the LSC. Fire Chief Jordan said a three-judge panel of the Code Office, State Fire Marshall and Fire Dept. could meet with the owners and vote on what was sufficient. Mr. Lund said the ZBA could not undermine the City Council, which had adopted the LSC. Mr. Carter said Mr. Beal had stated the Board could remand the decision back. City Attorney Beal qualified that would only be possible if there had been new information presented at this meeting. He added that even if the ZBA sustained the Notice of Violation, the parties could still negotiate a resolution. Mr. Carter said he would like to remand it back because he did think it was a burden; however, there had been no new evidence presented.

Mr. Simmons said apartment rental was a business that competed with other landlords and asked how long it would be before these other landlords had to comply with the new code. Asst. Fire Chief Miceli said landlords who complied were often upset when they found that others did not. However, the City did not have the resources to inspect every apartment building in the City and had adopted the pre-conveyance strategy as a

way of accomplishing some inspections. The Fire Chief reiterated that he was willing to discuss the situation with the owners.

ACTION: Mr. Carter made a motion, seconded by Mr. Lund, to deny the administrative appeal.
Carried 4-0-0

Other: Election of Officers

ACTION: Mr. Carter made a motion, seconded by Mr. Lund, to nominate Horace Grover for Chairman.
Carried 3-0-1 (Mr. Grover abstained)

ACTION: Mr. Lund made a motion, seconded by Mr. Carter, that Mr. Lund be Secretary.
Carried 4-0-0

Adjournment:

ACTION: Mr. Lund made a motion, seconded by Mr. Carter, to adjourn at 8:20 P.M.
Carried 4-0-0

Respectfully submitted,

Deborah E. Sealey
Recording Secretary