



TOWN OF WAKEFIELD, NEW HAMPSHIRE  
ZONING BOARD OF ADJUSTMENT

2 HIGH STREET  
SANBORNVILLE, NEW HAMPSHIRE 03872  
TELEPHONE (603) 522-6205 FAX (603) 522-6794

**PUBLIC HEARING  
December 21, 2009**

**These minutes were approved by the Zoning Board at the January 19, 2010 meeting.**

**FINAL**

Chairman Doug Stewart called the meeting to order at Town Hall at 7:00 p.m. Attendees included:

MEMBERS		ALTERNATES		OTHERS	
Doug Stewart, Chair	x	Judith Sjostrom	x	Arthur Capello, Code Enforcement Officer	x
Paul Winckler, Vice-Chair	x	Sandy Lebel	x	John Ciardi, Deputy Code Officer	x
Cecille Arnone	x	Sharon Theiling	x	Rick Sager, Town Counsel	
George Frothingham	x	John Napekoski	x	Ken Paul, Selectmen's Representative	x
John Crowell				Lynn Shaffer, Secretary	x

Other Attendees as signed in:

Al Cappi

Erik J. Gonzalez

Robin Frost

Sally Ann Murphy

Steve Brown

**ROLL CALL – DESIGNATION OF ALTERNATES**

Following the Pledge of Allegiance, Chairman Stewart asked members of the Board to introduce themselves. Chairman Stewart reviewed the processes followed in a ZBA meeting. He explained that the Board reviews the checklist, and then invites the applicant to come forward and discuss the application, the Board will ask questions, and the Planner and Code Enforcement Office can also offer information. Once this is completed, the meeting is opened to the public to express opinions for and against the application, and for people to ask questions. Once the public hearing is closed, the voting members of the Board begin deliberations, and no further questions or comments can be taken from the applicants or public. He further explained that the voting members of the Board would be seated at the main table, while the alternates are seated at the side table. Chairman Stewart asked Alternate Member Sharon Theiling to sit in due to the absence of John Crowell, which she did.

Chairman Doug Stewart reviewed the checklist.

MOTION: The application is complete enough to proceed.

Made by: Paul Winckler

Seconded by: Cecille Arnone

Vote: Unanimous

**PUBLIC HEARING**

**Case #2009-8 Wakefield Tax Map 56, Lot 80** – Albert Cappi, property owner, for property located at 111 Flynn Road, Sanbornville NH. The applicant is seeking an Appeal of Administrative Decision from the Code Enforcement Officer. The applicant is appealing the requirement for an “after-the-fact” building permit for two existing sheds on the property.

Chairman Stewart invited Mr. Cappi to address the Board. Mr. Cappi referred to a letter received from Code Enforcement advising him that he has two sheds on his property, which Code Enforcement is advising him that he needs to apply for after the fact building permits. He is appealing this decision based on the following information.

He reminded the Board that they had seen the two sheds during the site walk. One is a wooden one near the water, and the second is a metal one by the house. As for the wooden one, it was put up in 2003. At that time, he was advised by Ken Paul, the Building Inspector at that time, that he did not need a permit since it was not a permanent structure. In regards to the Zoning Board Notice of Decision from March 7, 2005, the condition which stated that the shed needed to be removed meant that it had to be removed from where it was, too close to the property line of his neighbor, which he did. As for the metal

shed, it is on a platform and totally removable, and according to the Zoning Ordinance does not require a permit. He stated that neither shed is permanent, and since it was approved by Ken Paul it should be grand fathered, since it was not required when he initially put it up. However, when he spoke with Code Enforcement, he was advised that the sheds are buildings, buildings are structures and structures are permanent.

Chairman Stewart asked the Board for questions. He opened by referring to the 2005 meeting and Notice of Decision, which referred to the shed being removed, which he interprets as removing it from the property. Mr. Cappi advised that his understanding was that it needed to be removed from Mr. Gonzalez's property, which he did. Discussion followed concerning the definitions of "remove" and "move", and what everyone's understanding is of these words. Member Winckler asked CEO Capello if permits were issued in 2003 for sheds, and was advised that the records show that approximately 20 permits were issued at that time for different sizes of sheds. Chairman Stewart advised that his understanding is that Wakefield has always required permits for structures such as these. Mr. Cappi reaffirmed his belief that a structure has to be permanent, and a shed doesn't qualify as a structure. Member Winckler disagreed, stating that a shed is a permanent structure. Mr. Cappi questioned why this is now an issue, and was advised that it came to Code Enforcement's attention due to a recent application for a boundary line adjustment; they did not go looking for it. John Ciardi advised that this property also falls under Shoreland Protection, and cited the definition there, which describes this shed as a structure, which would require a permit, in order to meet setback requirements. Further discussion followed on "remove" and "move", and what Mr. Cappi has done with the shed. The Board was reminded that the most stringent regulations must apply in determining a case.

He then opened the public hearing and asked for comments for, and then against the applicant. Mr. Gonzalez advised that he remembers when Mr. Cappi was told he had to remove the shed due to being too close to his property, and that he had no objections. Alternate Member Napekoski brought up the fact that the Board is dealing with two sheds, the wooden one and the steel one by the house. Discussion followed about permanent structures and whether these are considered as such. Member Winckler expressed his belief that there may be two different cases for the two different structures. Alternate member Lebel expressed her opinion that the original intent was to remove the shed from the property. Mr. Cappi reaffirmed his belief that the shed was simply to be removed from his neighbor's property. Both CEO Capello and Deputy CEO Ciardi reminded Board that the site plan should show all buildings on the property, and the one from 2005 does not show the shed on the property, where a site plan should show all buildings on the property. CEO Capello was asked what the building permits would cost. He advised that it would be roughly \$250, due to the \$200 after the fact permit fee.

Chairman Stewart closed the public hearing and the Board began deliberations.

MOTION: That consideration of this appeal be separated between the two sheds, so that a decision is made separately regarding the metal shed and the wooden shed.  
Made by: George Frothingham  
Seconded by: Paul Winckler  
Vote: Unanimous

Member Frothingham expressed his opinion that common sense should prevail in this case. His inclination is to accept Mr. Cappi's word that he was advised that he needed to move the building, which he did. He also feels that Mr. Cappi was told that he did not need a building permit, and would meet the requirements by moving it. Discussion followed concerning the wording of the 2005 Notice of Decision, and the fact that the wording was unclear regarding removing/moving the shed. Concern was expressed about the size of the lot and that the applicant might have difficulty in meeting setbacks, whether a variance would or could be granted if the applicant does require a permit, and whether the Board would be setting a precedent by not requiring a permit. Chairman Stewart reminded the Board that the decision tonight is not whether the shed needs to be removed, but whether the applicant requires a permit for this type of building. Member Frothingham expressed concern about whether the shed could be moved to meet setbacks, whether variances could be granted due to this being a non-conforming lot, and concerns that the shed would have to be removed permanently.

Mr. Cappi reaffirmed his belief that requirement about needing a permit for the wooden shed is moot, since it technically never required one under the then existing zoning ordinance, and that the Board would be overriding a decision already made by the Building Inspector at that time.

Deputy Code Enforcement Officer John Ciardi referred to Building Code, which recognizes that Enforcement officers are not infallible and may occasionally make an error in judgment, giving improper interpretation. However, this does not waive the requirements of the law. Even if the applicant was told that he doesn't need a permit, that doesn't legally say that he doesn't need a permit. He continued that Code itself specifically addresses the fact that errors in interpretation by individuals enforcing the code do not authorize a violation of the code. CE Capello added that Code Enforcement Officers do not have the authority to waive the Zoning Ordinance; only the Zoning Board has that authority.

The Board continued deliberations. Chairman Stewart clarified that the Board is still considering the two sheds. Mr. Winckler expressed his opinion that the applicant is only acting on what he was told, and that common sense should prevail.

Chairman Stewart asked for further comments and then asked for a motion.

MOTION: The metal shed DOES require a building permit.  
Made by: George Frothingham  
Seconded by: Cecille Arnone  
Vote: Unanimous

MOTION: The wooden shed DOES NOT require a building permit.  
Made by: Paul Winckler  
Seconded by: George Frothingham  
Vote: Two in favor, three opposed. Chairman Stewart, members Arnone and Theiling were opposed.

Discussion followed concerning further steps for Mr. Cappi. He will need to obtain after the fact building permits for the sheds, and may need to come before the Board again for variances regarding setback issues. Chairman Stewart questioned whether fees could be waived for Mr. Cappi, and was advised that would be up to the Selectmen.

Chairman Stewart advised Mr. Cappi that his application has been denied, and that he will be receiving a Notice of Decision. He expressed his opinion that the Board understands the issues Mr. Cappi is dealing with, and will be aware of and understanding of them if he comes to the Board for a variance.

#### **APPROVAL OF MINUTES**

MOTION: To accept the November 16, 2009 meeting minutes as written.  
Made by: Cecille Arnone  
Seconded by: George Frothingham  
Discussion: None  
Vote: Unanimous

#### **NEW BUSINESS**

Chairman Stewart distributed copies of the Board's meeting schedule for the first half of 2010, noting that the meetings in January and February will be held on Tuesdays due to Monday holidays during those months. Member Winckler extended holiday wishes to everyone.

MOTION: to adjourn the meeting at 8:05PM.  
Made by: Cecille Arnone  
Seconded by: Sharon Theiling  
Discussion: None  
Vote: Unanimous

Respectfully submitted,

Lynn Shaffer, ZBA Secretary