

Zoning Board Meeting

April 8th, 2024, at 7:00pm

Newcomb Community Center

Remote participation via ZOOM: <https://us06web.zoom.us/j/4136159288> Meeting ID: 413 615 9288

MINUTES

1. Call to Order: Chairperson Jesse James Garetson called the meeting to order at 7:00 PM. Zoning Board members Ed Herman, Ed Pinalto and Gayla Gibb were present. Zoning Board member Rodger Lull was present via Zoom.

2. Public Comments: None

3. NEW BUSINESS:

- Discuss and vote to approve minutes of the 2/12/2024 Zoning Board Meeting.

Motion to approve the minutes as corrected made by Zoning Board member Gayla Gibb. Seconded by Zoning Board member Ed Herman. Motion carried 5-0.

- Discuss and vote on 428 State Street Fence Permit Appeal.

A hard copy of the request was handed out by Zoning Board member Ed Pinalto. Zoning Board member Ed Pinalto read the request out loud. Zoning Board chairperson Jesse Garetson clarified that the permit was denied by the Building Inspector because “you cannot put a fence in a public right of way.” He stated that while the Zoning Board does not rule over public property, they do rule over private property. Neither he nor any other members of the Zoning Board are privy to what was discussed in the executive session related to this property. It appears to him that with other situations in town, he doesn’t know how this can be denied just because the Town has been trespassing on the property for decades. Zoning Board member Rodger Lull stated that eminent domain doesn’t apply to town property but it does apply to private property. If they have been driving on this for 17 or 18 years, which they have, it will be hard to close that road. Someone should have protested this a long time ago if they are concerned about the road issue. The Town can continue driving on it until it’s settled. He doesn’t know if the Town wants to pursue eminent domain. He would advise the Town to get the attorney involved. Other issues that influence these decisions would include hardship. Is he [Mr. Varnell] planning to use this section for sewer or leach field or anything that is in hardship? Most of the variances that are given are based on some kind of hardship, usually during the construction process. It’s not a hardship when someone has been driving on your property for 100 years and you decide to start complaining about it.

Chairperson Jesse Garetson stated he doesn’t know if he [Mr. Varnell] is requesting to close Quartz Lane.

Zoning Board member Ed Pianalto stated that he sees that the permit was denied because it was on public property. He stated that he doesn't know if five feet off the pin would be in the street or not. Downstream on Quartz Lane at Suzy Metzler's new house, the fence was put around a septic system five feet off the pin. He believes that fence ends up being out in the town property. He knows there are multiple properties in town like this and he doesn't know how to deal with them.

Chairperson Jesse Garetson stated that he doesn't know where five feet from the pin would put the fence.

Zoning Board member Gayla Gibb asked if anyone looked at the pin to see what he [Mr. Varnell] wants. No members of the Zoning Board reported looking at the pin.

Chairperson Jesse Garetson stated he saw the pin before the snow. Zoning Board member Gayla Gibb visited the site and stated that five feet from the pin is still in the Quartz Lane traffic pattern. She doesn't believe the Zoning Board has the authority to change the public right of way and tell Mr. Varnell he can put a fence in it. She believes the attorney would disagree with that concept.

Zoning Board member Ed Herman asked, "if eminent domain is established, does the Town have the obligation to purchase that property from Mr. Varnell?" He wondered if the attorney should be asked.

Chairperson Jesse Garetson discussed the land swap that was proposed by Mr. Varnell and turned down by the Board of Trustees. Zoning Board member Gayla Gibb stated that she believed this was on the advice of the attorney. Chairperson Jesse Garetson stated that with what he knows, he doesn't see how they could turn this down. He said if the Attorney or Trustees could tell him something different but they have not.

Zoning Board member Ed Herman asked if the Zoning Board had the original survey for Mr. Varnell's property and asked when it was last surveyed.

Zoning Board member Rodger Lull asked if the paperwork submitted showed a survey with a licensed surveyor's stamp on the survey. Chairperson Jesse James stated that this was not included in the paperwork. Zoning Board member Rodger Lull stated that a certified copy of the survey needs to be submitted. It has to be official. The Zoning Board can't rule based on someone's drawn map. This is a lot line dispute that is apparently between the Town and an individual. The attorney's advice is needed to resolve this and move an established street.

Chairperson Jesse Garetson asked Trustee Tom Gibb, who was in attendance, if the information from executive session could be shared. Clerk Sara Gibb stated that it could not. Chairperson Jesse Garetson then asked if the Zoning Board was expected to act without knowledge of executive session or the attorney present. He repeated that with the information he has at hand, he doesn't see any way to turn it [the appeal] down, just like they didn't turn down Suzy Metzler.

There was discussion about the variance granted to the Pitkin Hotel.

Zoning Board member Ed Pianalto recommended that the Zoning Board make a recommendation on the permit and submit it to the Board of Trustees for a final decision. Chairperson Jesse Garetson stated that they are not debating boundaries. They are debating a five foot setback off of a pin.

Zoning Board member Gayla Gibb stated that the pin is close to the tree. She asked if the Zoning Board is discussing making a recommendation to the Board of Trustees that they allow him to put a fence in Quartz Lane.

Zoning Board member Ed Pianalto stated that they would make a recommendation to allow or not allow. Then the Board of Trustees has to decide what to do with Town property and that pin. Zoning Board member Gayla Gibb suggested not making a recommendation.

Zoning Board Ed Pianalto stated that the appeal process should come to the Zoning Board first rather than sending it directly to the Board of Trustees. Zoning Board member Gayla Gibb asked what jurisdiction the Zoning Board has on the public right of way.

Building Inspector Tom Gibb stated not to confuse where the pin is with the issue – for many years, a public right of way has been established. Mr. Varnell has property with a public right of way on it. He suggested consulting the attorney.

Chairperson Jesse Garetson asked, “if we approve an appeal, what is the process if we acted illegally without the information of the attorney?” He knows that the applicant has a right to appeal to the Trustees if the Zoning Board turns it down. He is unsure what will happen if the Zoning Board approves something illegally.

Zoning Board member Gayla Gibb stated that she looked in the Zoning Code and did not find where a denied building permit can be appealed to the Zoning Board.

Chairperson Jesse Garetson stated that the way he understands the letter, the reason for the appeal is because no Zoning Board members reviewed the permit. Zoning Board member Gayla Gibb stated that the Zoning Board members don’t approve or disapprove a permit. Zoning Board members sign the permit to confirm that it doesn’t go against Zoning. Chairperson Jesse Garetson read from the Zoning Code. He believes Mr. Varnell is appealing because of the lack of Zoning Board signatures. He still thinks the proper outcome for Mr. Varnell and the Town would have been to put the square footage of the triangle onto 5th Street.

Zoning Board member Gayla Gibb stated that the applicant should have put more information on the site plan. There are no measurements. Zoning Board member Ed Pianalto stated that he has not seen the drawing [that was submitted with the original permit application].

There was discussion about whether the 5-foot setback is from the pin or the alley right of way.

Zoning Board member Rodger Lull stated that if this was a variance to request to encroach on the alley, perhaps they could grant a variance. But they are being asked to solve a situation that is hypothetical without survey maps. He does not have enough information to make a decision.

Motion to grant this appeal in favor of the applicant with the approval of the City Attorney made by Chairperson Jesse Garetson. No second, motion died.

Zoning Board member Gayla Gibb stated that she thinks this should go to the Trustees.

Chairperson Jesse James stated that the Zoning Code doesn't allow the building inspector to issue a permit without consulting the Zoning Board members. What happens to the permit if the Zoning Board approves it? The Zoning Board has the authority to approve variances, but this is not a variance.

Zoning Board member Ed Pianalto stated that the Zoning Board doesn't have the authority to override the building inspector and grant the permit.

Clerk Sara Gibb requested clarity on the nature of the appeal request because Mr. Varnell's email is not clear. The question he asks is for the Zoning Board to "take a look at" his permit but does not make a clear appeal request. Chairperson Jesse Garetson stated that he believes the request is that Mr. Varnell is treated the same as the property owner who supposedly had setback approved that was similar to Mr. Varnell's. Chairperson Jesse Garetson stated that the setback for an OWTS is 5 feet, like Mr. Varnell's fence.

Motion to recommend to the Board of Trustees to approve the fence permit in regards to the 5-foot setback from the pins or approve the previously requested land swap made by Zoning Board member Ed Pianalto. Seconded by Chairperson Jesse Garetson. Motion carried 3-1. Zoning Board member Rodger Lull abstained. Zoning Board member Gayla Gibb voted no. Zoning Board Chairperson Jesse Garetson initially abstained, then switched his vote to "yes" after Clerk Sara Gibb stated she was unsure if this would count as a majority due to two abstentions.

Building Inspector Tom Gibb encouraged the Zoning Board to include the Town Attorney. Public comments: Ramon Reed, Jake Schellenberg, Pete Olson

- Discuss Town of Marble vs Town of Pitkin Zoning Codes.

Zoning Board member Ed Pianalto stated that Mayor Eddy Balch had asked him to look at the Marble Zoning Code and compare it to the Zoning Code of the Town of Pitkin.

Building Inspector Tom Gibb stated that he also went through the Town of Marble Zoning Code. The Town of Marble is different from Pitkin in several ways, including buildable lot sizes and allowance of livestock. They also have a very long section on signage and lighting. They have some things in their code that he likes.

Zoning Board member Ed Pianalto does not have a copy of differences/similarities to share with the public. He thinks there are some pieces to the Marble code that are very good, such as the format. It seems to be in sequence and make sense, unlike the Pitkin code.

Chairperson Jesse Garetson asked for the cliff notes.

Zoning Board member Ed Pianalto stated some of the verbiage is really good. He read numerous sections from the Marble Code that differed from the Pitkin Zoning Code.

Chairperson Jesse Garetson suggested a workshop to discuss this in more detail. Zoning Board members Ed Pianalto and Gayla Gibb agreed.

Zoning Board Rodger Lull stated that there is an awful lot to go through. Their purpose in revising the Pitkin Zoning Code was to making it a document that more than just the Zoning Board would read.

They could have made this 100 pages long. It would be nice to be able to enforce but there is no enforcement officer. Everything they want to enforce has to go through the Town Attorney. The Zoning Code wasn't to restrict to the point where we became an HOA. If you want a new Zoning Code just find one you want to adopt and stop mulling over it all the time. He thinks what we have is somewhat enforceable but could use a little bit of tweaking and clarification. He wants to define the difference between the Zoning Board of Adjustments and the Building Inspector. This idea that the Zoning Board is going to interfere with Tom Gibb [Building Inspector] and his job should go away. Chairperson Jesse Garetson seconded that. The purpose was to make it easy for the layperson to read and make it simple.

Building Inspector Tom Gibb stated that he sat through all but one of the Zoning Board working its way through the Zoning Code. It was tailored to Pitkin as much as possible. Zoning Board member Ed Pianalto would like to use Marble's format and adopt some of their verbiage. He likes how it describes non-conforming properties.

Chairperson Jesse James asked the Zoning Board about availability for a work session. He requested that all members of the Zoning Board bring a date to the May meeting for the work session.

Zoning Board member Ed Pianalto suggested taking some of the bullet points and take the Marble Code and see if there is verbiage in it that fits better than what the Town already has.

Public comments: Ramon Reed

- Discuss and vote on Zoning Code proposal revisions for the recommendation to the Board of Trustees (Limit to 60-minute discussion – ongoing process) – **MOVED TO WORK SESSION**
 - Renewal of Building Permits beyond the two-year completion and update Fee Schedule to reflect Building Permit Renewal a (Section 17. H)
 - Demolition Permit for the demolition of a structure and update Fee Schedule to reflect fees for a Demolition Permit (Section 17)
 - Update of Appendix "A" International Residential Code version

- Current Ordinance No. 2, Series 2002 – specifies UBC - 1997
- Section 18: Board of Zoning Adjustment Subsection C – Variances – add verbiage that explains the process of the variance to include first approved/denied by ZBA. Appeal process to the BoT. Also includes variances on Town property.
- Checklists for Building Permit Inspections including Final Inspections and Certificate of Occupancy.
- Section 19: Violations Subsection B. – Clarify responsibility for drafting and mailing of certified letters.
- Section 18: B: Duties and Powers. - Clarify responsibility for drafting and posting of meeting notices.

4. OLD BUSINESS:

- Update from Town Attorney regarding opinion on House Bill 22-1362 Energy Code.

Zoning Board member Ed Pianalto read a letter from Attorney Buchner. Zoning Board member Ed Pianalto stated that Building Inspector Tom Gibb's comparison of the 2012 and 2018 building/energy codes will be discussed at the work session.

- Discuss and vote on follow up letter regarding Open Permit Violations to property owners Ebert & Owens.

Zoning Board member Ed Pianalto passed out hard copies of the letters he drafted. Chairperson Jesse Garetson read the letters aloud.

Zoning Board member Gayla Gibb stated that the wording of the letter implies that the Town of Pitkin Zoning Code requires electrical and plumbing permits. Zoning Board member Ed Pianalto stated that the code does require these permits from the State. He further stated that per Mayor Balch, the Zoning Board was to draft these letters and forward them to the Trustees and Mayor for approval.

Chairperson Jesse Garetson stated that permit expiration should be addressed in the new Zoning Code. Zoning Board member Ed Pianalto stated that the Zoning Board will discuss that at the work session.

Chairperson Jesse Garetson stated that the Zoning Board appreciates Mr. Ebert and Ms. Owen being members of the Town and that the Zoning Board is just trying to take care of Town business. Zoning Board member Rodger Lull stated that he liked Zoning Board member Gayla Gibb's letter. He wants them [Mr. Ebert and Ms. Owen] to know they are not in violation and this needs to be cleared up. Zoning Board member Gayla Gibb stated that the intention of these letters may have been to be neutral but given the history they are not.

Building Inspector Tom Gibb stated that the permits in question were completed as written. Any additional work would require a new permit.

Zoning Board member Gayla Gibb was asked for feedback to re-write the letter. She stated that she felt put on the spot due to not having seen these letters. If she had time she would have re-written some of the letter. She was not at the meeting when her proposed apology letter was read aloud and misrepresented as a letter that was already sent.

Zoning Board member Ed Pianalto stated that at a previous meeting the Zoning Board agreed that the permits were open. The attorney later decided that they were not open.

Zoning Board member Gayla Gibb would like to send a different letter.

Zoning Board member Ed Herman doesn't see where they were belligerent and can't believe they are discussing whether they hurt someone's feelings.

Chairperson Jesse Garetson asked Zoning Board member Gayla Gibb to rewrite the letter for the May meeting.

Public comments: Ramon Reed, Sara Gibb

- Discuss updates to the Building Permit spreadsheet and update OWTS Data and review any new permits or closed permits.

Zoning Board member Ed Pianalto said he hasn't made updates since February. His personal permit is complete. He would like the Building Inspector to come do a final inspection.

He asked if the hotel porch had been permitted. He specified that he would like the Building Inspector to include more detail in his reports to the Trustees. He stated that on Monday he's going to request that the reports include the location, permit number and date. Building Inspector Tom Gibb stated that he would prefer not to do things that way.

- 5. ADJOURN: Motion to adjourn made by Zoning Board member Ed Pianalto. Seconded by Zoning Board member Gayla Gibb. Motion carried 5-0. Meeting adjourned at 9:15pm.**