

Encl 3 - Title 16 Amendment - Nonconformance

From: cwilson515@207me.com [mailto:cwilson515@207me.com]
Sent: Tuesday, August 23, 2011 11:06 AM
To: judy.spiller@comcast.net
Subject: Title 16 revisions

Judy,

Thank you for your offer to provide this information to the Council.

Prior to the latest code revision, the BOA derived it's authority to act on appeals to repair, maintain or enlarge nonconforming buildings from 16.28.130.A-D. I'll copy verbatim A here because it's the relevant section to the current problem.

16.28.130 Nonconforming Buildings

A. Repair/Enlargement. A nonconforming building may be repaired or maintained and may be enlarged in conformity with the dimensional requirements, such as setback, height, etc, as contained in this title. If the proposed enlargement of a nonconforming building cannot meet the dimensional requirements of this title the zoning board of appeals shall review all applications and may grant permission for such proposed changes. In reviewing all such applications for enlargement, or changes in use, the zoning board of appeals shall use the criteria established herein.

Section D goes on to detail how such cases are handled in the Shoreland Zone, as per state SZ regs.

When the latest recodification happened, nonconforming structures were addressed for the SL and RP zones, for which the PB now has the power and duties to hear but structures outside of those zones were not mentioned.

On 2 separate occasions I met with the Town Planner and we worked to correct the situation, also using the opportunity to fine tune the entire section on non conformance.

The product of those meetings and additional work by the Planning Dept. is reflected in Enclosure 4 (Title 15 and 16 Revisions-Section 2-ORC-08221) that was in the Council's packet for Aug 22.

I testified as to the BOA's need for such revisions at the PB's public hearing, much as I testified at last eve's TC Public Hearing.

Due to the fact that the PB now hears appeal requests in the SL and RP zones and such requests used to constitute the majority of the BOA's work, it was not discovered until June 11th that we lacked any statutory authority. Since then we have granted appeals based on the fact that it was not the intent of the code revision to repeal our authority and instead of citing a code section, we reference past practice as our basis of power to grant an appeal.

Thankfully all our appeal requests have been fairly routine and noncontroversial. I shudder to think of where we would be if we were trying to rule on a case like the quarry issue happening in York.

I would request that the Council put this issue first in their code work and perhaps pass it as an emergency ordinance.

Respectfully submitted,
Craig Wilson
Secretary, BOA