

**Approved 3/4/15**

**TOWN OF CUSHING  
PLANNING BOARD  
Minutes of Meeting  
February 4, 2015**

**Board Present:** Chair Dan Remian, Andrew Blanchard, Bob Ellis, Evelyn Kalloch, and Frank Muddle

**Board Absent:** None

**Staff Present:** Code Officer Scott Bickford and Recording Secretary Deborah Sealey

**1. Call to Order:** Chair Remian called the meeting to order at 6:05 P.M. and a roll call was taken.

**2. Approve the Minutes of the 1/24/15 PB Meeting:**

**ACTION:** Mr. Blanchard made a motion, seconded by Mr. Muddle, to approve the minutes of the 1/24/15 meeting as written.  
Carried 4-0-1 (Mrs. Kalloch abstained)

**3. Timothy & Chantal Cole - Continuation of Review of Application to Convert a Studio into a Dwelling in Resource Protection – Map 28, Lot 18:** Chair Remian said the board made a site visit on 1/24/15 before that date's meeting. Mrs. Kalloch was absent from both the visit and meeting, but confirmed for the Chair that she was up-to-date on the project. Mr. Muddle and Mr. Ellis said they also did not attend the site visit.

Realtor Nancy Hughes read aloud a letter (**attached**) from applicant Timothy Cole. In this letter Mr. Cole said he wanted to find a solution. His two main concerns were folding the original structure into the permit and to define what could and could not be done with the structure. He explained what he suggested at the last meeting: that he wanted to establish plumbing and permission for his family to sleep in the loft. Mr. Cole asked the PB to disregard the use of the term "residential dwelling unit" in his application, since this would never be used as a permanent residence. He also asked the board to define what he could do in the structure and indicated his willingness to accept deed restrictions.

Chair Remian said he had stated at the 1/24/15 meeting that he would ask an MMA attorney for clarification on some of the problems connected with the property in question. He had subsequently presented MMA with four questions, to which Attorney Amanda Meader had responded in writing (**attached**). Mr. Remian referred to this document several times in the ensuing discussion. He read aloud the four questions he had posed to MMA.

The first question asked if enforcement action could now be taken against violations that had been in place for many years. To this question Ms. Meader had responded that the fact that the studio had been incorrectly permitted within the Resource Protection area could not now be reversed. However, the owner could be cited for the unpermitted porch and deck even at this late date.

Mr. Remian's second question concerned the fact that there was no definition of "studio" in the ordinance; he asked what definition should be utilized. He had explained that the structure had initially been permitted as an accessory structure to be used as a studio; however, "studio" was not defined in the ordinance. Ms. Meader had responded that "An artist's studio generally does not include kitchen, bath and bedroom accommodations." However, she said the PB should identify a similar use in its ordinances.

Chair Remian said an "accessory structure" was subordinate to a "principal use structure" and asked what happened to an accessory structure if the property were subdivided and it remained the only structure on a lot. CEO Bickford responded that ordinance language said an accessory structure must have a principal structure. As soon as the property was subdivided, the studio would be a stand-alone accessory structure.

Mr. Ellis read from the ordinance that an accessory structure had no cooking facilities. Mr. Bickford said that without one of the items listed (kitchen, bathroom, etc.), it was an accessory structure, but with all of those facilities it was a dwelling unit. He further clarified that an accessory structure may have some of these things, but not all. There was further discussion. Ms. Hughes said the applicant would be OK with plumbing and sleeping but no kitchen, if necessary. CEO Bickford said, having no definition of "studio", it would still be an accessory structure with a different use inside. Mr. Muddle said a cooking facility could be as little as a cooler and a hotplate, and Mr. Bickford said it was hard to know what constituted a kitchen.

Mr. Ellis said he was trying to apply definitions from the Land Use Table, but there was nothing there for an applicant to apply for a dwelling permit, but rather just principal or accessory structures. Therefore, he said, this could not apply to this application, so the PB would have to go by principal structure or accessory structure definitions instead. Mr. Bickford said it could be defined as simply an accessory structure, not a studio.

Mr. Ellis said the application could not be reviewed with standing violations, which should be the first issue addressed. Chair Remian said this was a non-conforming structure use in RP; even though it had been allowed by the PB in 2002, it had not been built to the original application. He continued that it had been overbuilt: the footprint was bigger on all four sides, the interior space was expanded, and an unpermitted deck and porch had been added soon after it was built. The Chair said these violations had been under the eyes of the previous CEO, but Attorney Meader said they remained violations and should be addressed as part of this application.

Mr. Remian expressed his opinion that the violations were intentional from the beginning because sliding doors faced a 25' drop. He also noted the amount of erosion on unstable slopes under the deck and said the greywater should be completely removed and the site restored. Mr. Ellis agreed and Mr. Muddle said an approved septic system would take care of the greywater. CEO Bickford said the greywater had been disconnected. Ms. Hughes said the Coles would agree to remove the gravel. Mr. Muddle said the deck was added without a permit and was not within the 75' setback because of the slope.

CEO Bickford stated that the 2002 PB had given a permit contrary to what Shoreland Zoning allowed, thus allowing something non-conforming; thereafter the deck was attached without a permit. However, the SZO said once a deck was attached to a structure it became part of that structure. The CEO agreed with Attorney Meader that going after the deck would bring them into a difficult area because of estoppel. CEO Boothby had been able to see the building from his own property and the town had allowed it to go on for too long. Mr. Bickford thought the town should be embarrassed, but he felt it was ill-advised to try to do anything about the deck because it was part of the structure according to SZO. He felt it was best to take no action.

Mr. Ellis said the ordinance talked about the Selectmen and CEO carrying out a consent agreement to not allow illegal structures to continue unless there was convincing evidence that it resulted from erroneous advice from town officials. He said the owner was not at fault for the original permit issued erroneously, but had gone on to further violate the ordinance.

Mr. Bickford said time had passed, CEO Boothby had passed away, and it would be a difficult to fight; perhaps there could be an agreement to take no action. Chair Remian asked Mrs. Kalloch what use was defined by the applicant in 2002. Mrs. Kalloch replied that it was defined as a studio and there had been no talk of a deck or porches. Mr. Ellis said if it was not a good idea to seek enforcement, then it didn't make sense to let them go ahead with further violations. CEO Bickford said a deed covenant would cover that.

Mr. Muddle said putting in a septic system did not make it more in violation of code and said it would be more protective of the shore. Mr. Ellis countered that it did make an additional violation in the RP zone. Mr. Bickford responded that a site evaluator could not design a septic system on slopes of 20% or more. The CEO said the biggest hurdle was that it was a blunder from day one. Chair Remian noted that MMA felt the violations of the deck and the porch did not fall under estoppel and should be addressed.

Dave Glidden, speaking from the audience, said the drainage field would be outside the RP, though installing it would disturb the ground during construction. Mr. Bickford agreed with Mr. Glidden and said that was allowed for permitted activities. Mr. Remian was concerned about the amount of damage already done, citing lots of erosion under the structure. He wanted the violations addressed, saying though it was no reflection on the applicant, the violations were in the mind of the owner when the studio was built. Mr. Ellis felt the town had the right to cite the owner for the violations. Mr. Blanchard agreed that the owner had known.

Mr. Ellis said he still thought the structure would have to be designated as a residential dwelling unit. Ms. Hughes said Mr. Cole would be happy not to have a kitchen, thus not making it a dwelling unit.

CEO Bickford said if the PB wanted to pursue enforcement they would have to put it in writing for him to take to the Selectmen.

**ACTION:** Mr. Remian made a motion, seconded by Mr. Ellis, to deny without prejudice this application based on pending violations and request the CEO to address the violations of the additional decks, additional porch, and continued erosion under the porch.

MOTION WITHDRAWN

Mr. Muddle said he was concerned because he agreed with CEO Bickford that this got the town into legal soup it should avoid if possible. Since the violations existed and were done by town officials, he thought it was a better idea to limit the use of the facilities to what the applicant was requesting. Mr. Muddle said the key was the approved septic system and the limited use that would have limited impact.

Mr. Blanchard believed there should be corrective steps taken on the violations, but the town should not go into a legal battle. He said the site should have erosion control under the structure.

Chair Remian read from the ordinance that no application should be accepted for a property in violation. He noted that the structure could be moved 40'-60' out of RP and there would be no problem with the application.

Mr. Ellis said beyond the originally permitted structure everything done was intentionally done without a permit. He wanted to see what happened when it went to court.

Mrs. Kalloch said the owner could be cited for violations, since the board agreed the owner had not had permission to build the deck and porch. The board agreed that the problem did not fall upon the applicant.

Mr. Muddle suggested tabling the application. Mr. Ellis reminded him the board had only 35 days to respond, so tabling was not sensible. The CEO suggested asking the applicant what he would like to do. Ms. Hughes relayed a question from Mr. Cole (on the telephone): could the board define in this meeting what the building could be used for now? Mr. Bickford responded that it was an illegal non-conforming accessory structure and he wanted direction from the Selectmen.

**Ms. Hughes relayed the news that Mr. Cole would withdraw the application now.** Mr. Bickford noted that he did not think the applicant could be counted into the violations; however, the problems with the structure remained and he would want the Selectmen's decision on whether to take action on the existing violations.

The CEO said it remained an illegal structure in RP, though it could be moved elsewhere on the property and no longer be in violation. He repeated that he needed in writing exactly what the PB wanted to do. He also restated that the deck and the expansion to the structure became part of the structure when built.

Ms. Hughes asked if going after the violations now would bring estoppel into play. Mr. Bickford said that was the big problem, since the previous CEO knew the violations were there. The ordinance at that time said clearly that you could not build in RP if there was another place to go, which there had been. Ms. Hughes asked if it would not be in the town's best interest to define now, possibly with restrictions, what could be done with the property.

Chair Remian said he had no problem for it to continue as a studio, and didn't think the town could enforce anything other than that, but the deck was a flagrant violation. He said the owner should straighten out the violations before offering it for sale. Mr. Ellis said it was just a pending sale; the owner was in violation and the applicant was stuck in the middle of it.

**ACTION:** Mr. Remian made a motion, seconded by Mr. Ellis, to deny this application without prejudice due to violations on the property that must be addressed.

Carried 5-0-0

CEO Bickford said the Selectmen would have to vote before he would go ahead with a violation notice. If they chose to do nothing, then they would have the scenario of not enforcing their own zoning ordinance. He continued

that if the Selectmen did not want to pursue enforcement, due to estoppel, they might ask that violations not go forward and send a no-action letter. There was a lengthy discussion of possible actions.

**ACTION:** Mr. Remian made a motion, seconded by Mr. Ellis, that we request the CEO address the violations within the Shoreland Zone of the additional decks, expansion, porch, and erosion under the structure.  
Carried 5-0-0

#### **4. Adjournment:**

**ACTION:** Mr. Muddle made a motion to adjourn at 7:36 P.M.  
Carried 5-0-0

Respectfully submitted,

Deborah E. Sealey