

City of Thornton
Building Code Advisory Board

Minutes
May 19, 2023

ROLL CALL: Those Present were: Vice Chair John Bales; and Board Members Michael Anderson, Nelson Wolfmeier and Travis Holland. Absent – Chair Kerry Babin.

STAFF MEMBERS PRESENT: Shaun McCullough, Assistant City Attorney II, Jessica Whitney, Senior Assistant City Attorney, Chad Johnson, Chief Building Official, and April O'Connell, Recording Secretary.

The meeting was called to order at **6:00 p.m.**

APPROVAL OF AGENDA:

MOTION WAS MADE BY MR. WOLFMEIER AND SECONDED BY MR. ANDERSON TO APPROVE THE AGENDA. MOTION PASSED UNANIMOUSLY.

APPROVAL OF MINUTES:

MOTION WAS MADE BY MR. WOLFMEIER AND SECONDED BY MR. HOLLAND TO APPROVE THE APRIL 26, 2023, MINUTES AS PRESENTED. MOTION PASSED UNANIMOUSLY.

NEW BUSINESS:

Appeal of Contractor Requirement under City Code Section 10-116(b) pertaining to the Duplex located at 8820-8822 Lipan Street, Thornton, CO 80260-4913

Acting Chair Bales called the appeal hearing to order at 6:03 p.m.

He asked the parties and representatives to state their names for the record. They started with Mr. McCullough, attorney for the Board; Ms. Whitney, the City's attorney, and Mr. Johnson, representing the City; and the appellants Mr. Byron Richard and his wife Mrs. Elma Richard.

Mr. Bales gave his opening statement. He said that the purpose of the hearing is narrow: the Board must decide whether the city properly applied Section 10-116(b)'s contractor requirement as written to the facts. He also said because City Code is silent on the burden of proof, the default rule is that the City, as the proponent of the decision being challenged, has the burden of satisfying the Board by a preponderance of evidence that the City properly applied Section 10-116(b). He advised that to affirm the City's decision required an affirmative vote of a majority of the Board members present and voting.

Ms. Whitney objected to the burden of proof being on the City, and Mr. McCullough advised the Board that the relevant case law indicated the City bore the burden of proof because it was the proponent of the decision being challenged.

MOTION WAS MADE BY MR. NELSON AND SECONDED BY MR. ANDERSON THAT THE BURDEN OF PROOF SHOULD BE LEFT ON THE CITY. MOTION PASSED UNANIMOUSLY.

Ms. Whitney's provided the City's opening statement, and Mr. Richard then gave his opening statement.

After the City's and the Appellants' opening statements, the City presented its case. The Recording Secretary swore in Mr. Johnson. He testified that the appellant asked for the City to waive Section 10-116(b)'s contractor requirement because he wanted to build a deck at his rental property and explained that the contractor requirement applied because it was not his principal residence. Mr. Johnson also testified that the appellant was not granted a required building permit because under City Code, he did not qualify because he was not a contractor and the work he wanted to perform was not at his principal residence, which requires the property owner to live there and the appellant did not live at the rental property.

Mr. Richard cross-examined Mr. Johnson next and asked why he could not pull a permit at his rental property. Mr. Johnson said because that is what the Code provides.

Acting Chair Bales asked if the Board had any questions. Mr. Wolfmeier asked Mr. Johnson whether in pulling permits from the City, contractors are required to provide insurance to do the work to protect the public. Mr. Johnson said that Ms. O'Connell, a permit technician and Recording Secretary, would be able to answer this question. Since Ms. O'Connell was the Board's Recording Secretary, and not a witness for the City, Acting Chair Bales asked the parties and the Board if they objected to Ms. O'Connell giving testimony, and none did.

Mr. Bales swore in Ms. O'Connell. Ms. O'Connell explained that the City in the past required insurance, but recently dropped that requirement, but the City still requires testing.

Mr. Holland asked Mr. Johnson why the City dictates the primary residence versus the homeowner on file. He answered that even if the owner is listed in Adams County, in the applicable code section rental property is not the owner's principal residence.

Acting Chair Bales asked who adopts the City Code, to which Mr. Johnson answered, City Council. Mr. Bales also asked when this code requirement was adopted. Ms. Whitney said it was adopted in 1975.

The City then presented its rebuttal. According to the City, under the applicable code sections, for an owner to pull a permit they must be the actual owner of record and the

structure where the work will be performed must be the owner's primary residence, which is not the case here and so the contractor requirement applied.

The appellant Mr. Richard then presented his case and testified on his own behalf. The Recording Secretary swore him in. He discussed other municipalities' codes, to which Ms. Whitney objected as irrelevant because the issue on appeal is the interpretation of the City's code. Acting Chair Bales sustained the objection. In response to Mr. Richard's question about when this code was adopted, Acting Chair Bales said for the record, it started in 1975, then was amended in 1986, 1992, 1993, 1995, 2010 and 2013. Mr. Richard then stated he would still like the Board to grant him an exception from the code's contractor requirement.

Ms. Whitney then cross-examined Mr. Richard. He testified that he agreed the code was clear, but he wanted a waiver.

The Board then asked Mr. Richard questions. In response to a question from Acting Chair Bales, Mr. Richard testified that in his appeal application he did not claim the code was unclear, nor was he arguing it was now, but disagreed with its impact on him.

Mr. Richard's then provided his rebuttal.

Next, the City gave its closing arguments. Ms. Whitney stated the appellant was simply asking for an exemption from a clear code requirement, which the appellant did not dispute, and so the Board should uphold the City's interpretation.

Mr. Richard gave his closing argument. He said he did not agree with the code's requirement and needed a variance.

Acting Chair Bales then closed the evidentiary part of the hearing and the Board went into deliberation.

After deliberation, Mr. Anderson motioned to affirm the City's decision that pursuant to Section 10-116(b) of the City Code a contractor is required to perform the work the appellant wished to perform at the rental property he owns at 8820 and 8822 Lipan Street based on the evidence and the testimony the Board heard from both parties and the plain language of Section 10-116(b), which provides that only a homeowner performing work on such homeowner's principle residence shall not be considered a contractor, and the City carried its burden of showing that Mr. Richard wished to perform work at the property he owns that is not his primary residence and therefore such work must be performed by a contractor. Mr. Holland seconded the motion.

THE MOTION PASSED UNANIMOUSLY.

Acting Chair Bales explained that the Board's adopted motion constituted the Board's final decision, effective today, and signed copies of the adopted motion would be sent to the parties. He then closed the appeal hearing.

ADJOURNMENT:

**MOTION WAS MADE BY MR. WOLFMEIER AND SECONDED BY MR. ANDERSON
TO ADJOURN THE MEETING. MOTION PAST UNANIMOUSLY.**

The meeting was adjourned at 7:04 p.m.

BUILDING CODE ADVISORY BOARD
CITY OF THORNTON, COLORADO


Chair

ATTEST:


April O'Connell, Recording Secretary