

DRAFT

Town of Newington, NH ZONING BOARD OF ADJUSTMENT

Meeting Minutes, Monday, August 29, 2016

- Call to Order:** Chair Matt Morton called the August 29, 2016 meeting at 6:30 p.m.
- Present:** Chair Matt Morton, Vice-Chair Ted Connors, Ralph Estes, John Frink, Jim Weiner; Interim Planner, Gerald Coogan and Jane Kendall, Recorder
- Public Guests:** Jack Kim, Shogun Restaurant General Manager and Mike Marconi, Board of Selectmen; Jay Link; Buck Elliott, Terminal Manager at Sprague

Minutes: *Ted Connors moved to approve the Minutes for the August 1, 2016. Ralph Estes seconded, and all were in favor.*

Public Hearing: A request by Shogun Restaurant regarding the property located at 347 Shattuck Way, Tax Map 13, Lot 1A for a variance from Article XIII, Section 2 of the Zoning Ordinance in order to allow late night entertainment in the Office District.

Interim Planner, Gerald Coogan passed a letter written to Shogun owner, En Yu by Town Building Inspector, John Stowell, dated July 6, 2016, informing him of entrance and parking lot sign violations. Board member, Ralph Estes asked if the letter was material to the Board's consideration of the application. Chair Morton commented that the Zoning Board of Adjustment (ZBA) was not an enforcing body. Mr. Coogan agreed, adding that he had only provided the letter for the Board's information.

Board member, Jim Weiner stated that he spoke with Mr. Stowell when he found out about the code enforcement issues, asking if the Board was supposed to consider the code violation in their decision. He commented that he had looked favorably upon the application, but was concerned to see a trend when he saw the letter. Mr. Coogan replied that the request for a use variance was a separate issue and Mr. Stowell would follow up as he had received no acknowledgement from the owner in the forty-five days since the letter had been sent.

Mr. Estes recalled that the applicant had applied for additional signage relief as a result of the berm created by the Spaulding Turnpike Expansion, but they had not

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followed up with a permit from the building inspector. Chair Morton replied that the variance was for a lit sign, but another lit sign had been added to the street that appeared to shine into the eyes of oncoming traffic. He added that LED lights were not permitted.

Vice-Chair Connors asked Mr. Kim if he had addressed any of the items and Mr. Kim said he thought the sign by the entrance was allowed.

Vice-Chair Connors asked if they ever sought a permit and Mr. Kim said he thought the lighting was the same as the pre-existing sign.

Vice-Chair Connors asked Shogun General Manager, Jack Kim if he ever saw the letter and Mr. Kim said he had not, but that he intended to address each item separately. Vice-Chair Connor replied that he had just said he'd never seen the July 6, 2016 letter, yet he had just said he was going to speak to each item. Mr. Kim replied that he received a different letter and would seek a variance. Vice-Chair Connor replied that he didn't need a variance, he needed an electrician to seek permits that me the Zoning Ordinance.

Mr. Weiner said the Board was not there as enforcement, but he did a site walk and saw multiple signs, many with lights that were not compliant. He said part of granting a variance was based on reputation and trust. Mr. Kim replied that he would provide documentation when he addressed each item.

Chair Morton commented that he had moved the Board meeting up in an attempt to expedite their request, but the building inspector had sent them a letter forty-five days before and yet they he wasn't seeing a prompt to the letter or even turning the direction of the light so it wouldn't shine toward oncoming traffic. Mr. Kim repeated that they intended to address each item one at a time, but to be truthful, the business was struggling.

Mr. Weiner asked if the Board could defer their decision until the issues were resolved. Chair Morton replied that enforcement would be up to Mr. Stowell. Mr. Coogan replied that it was up to the Board to determine if the request met the criteria for granting and they could consider putting conditions on the approval if granted. Chair Morton added that they should add a time frame to the conditions as well.

Chair Morton asked Mr. Kim to speak on each event proposed. Mr. Kim stated that they wanted late night entertainment and hoped to close at midnight, but they would definitely comply with the State's requirement to close by 1 a.m.

Chair Morton noted that there used to be music and dancing at the former Flagstone's and Beals in town. Mr. Frink added that there used to be dancing at the Skyline Ballroom as well.

Chair Morton commented that the restaurant was located at a distance from town residents so no noise would float to the surrounding township and that it was a nice operation with nice clientele.

Jay "Skip" Link of Fox Point Road commented that there had been entertainment at the former Asia Restaurant in the same location for years and there had been no

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issues then so he thought it would be ridiculous to allow a business that couldn't bring more people in.

Buck Elliott, Terminal Manager at Sprague said he had received an abutter's notice and didn't think the business would affect them in any way.

Mr. Frink asked Mr. Elliott if there was significant late night traffic and Mr. Elliott replied that there were some late night truck deliveries from Georgia Pacific.

Mr. Estes noted that there had been a comment that the entertainment requests listed were "at this time". He went on to point out that the term, "...and other related activities" that was listed in Mr. Coogan's memo could leave the door open to undesirable activities. Mr. Coogan replied that was an error that Mr. Kim was not acting on. Chair Morton recalled that had been removed from the original request and Mr. Weiner had asked to limit the request to five specific items as was listed in the applicant's memo.

John Frink moved to approve the request by Shogun Restaurant regarding the property located at 347 Shattuck Way, Tax Map 13, Lot 1A for a variance from Article XIII, Section 2 of the Zoning Ordinance in order to allow late night entertainment in the Office District in the form of live music, karaoke, DJs and dancing, comedians, private events such as banquets and club gatherings. Ralph Estes seconded the motion.

John Frink amended the motion that the applicant meet all the requirements of the Town of Newington Building Inspector and all other requirements of the Zoning Ordinance. Ted Connors seconded the motion. Mr. Frink said may motivate them.

Mr. Frink read through the criteria for granting the variance for the Board, stating that it would not be contrary to the public interest to continue the business as it had run before in an out of the way location.

Mr. Frink stated that the Spirit of the Ordinance would be observed as the grandfathered use that was created for the original business fell out of use when the building was vacant.

Mr. Frink stated that substantial justice would be served once the other aspects of the Zoning Ordinance were observed.

Mr. Frink said he didn't believe he value of the surrounding properties would be diminished either.

Mr. Frink stated that literal enforcement of the Ordinance would create a hardship because the restaurant was in a unique site that was isolated from other similar businesses with an awkward entrance due to physical conditions of property.

Vice-Chair Connors asked if the Board should add a condition on the closing time. Mr. Kim replied that they wanted to target a midnight closing time, but there could be occasional circumstances where a private function ran longer, but they would remain compliant with State regulations for last call at midnight and closing at 1 a.m.

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Chair Morton called for a vote and all were in favor.

Mr. Coogan stated that an expansion of use for an outdoor patio with additional lighting and signage would require going before the Planning Board for site review with a plan done by a design professional.

Chair Morton reminded Mr. Kim to address the building code issues right away.

Adjournment: *Ted Connors moved to adjourn. Ralph Estes seconded the motion and the meeting adjourned at 7:05 p.m.*

Next Meeting: TBD

**Respectfully
Submitted by:** Jane K. Kendall, Recording Secretary