

Town of Newington, NH  
ZONING BOARD OF ADJUSTMENT

Meeting Minutes – September 16, 2013

**Call to Order:** Chair Matt Morton called the September 16, 2013 meeting at 6:45 PM.

**Present:** Matt Morton, Chair; Ted Connors; Ralph Estes; John Frink; Planning Board Rep, Justin Richardson; Town Planner, Tom Morgan; Jane Kendall, Recorder; and John Stowell, Building Inspector

**Absent:** Alternate, Justin Flynn

**Public Guests:** Brian and Nancy Haberstroh; Attorney John Springer; Attorney Malcolm McNeil; and Daniel and Gloria Trefethen

***Mike Marconi moved to end executive session at 6:35 p.m. Ted Connors seconded, and all were in favor.***

**Minutes:** ***Tim Connors moved to accept the Minutes of August 13, 2013, and Ralph Estes seconded the motion. Mike Marconi abstained, all other members voted in favor.***

**Public Hearings:** Administrative appeal by Nancy E. Haberstroh in response to the Building Inspector's decision to rescind Building Permit #2312 and his issuance of a cease and desist order regarding building activity at 108 Little Bay Road, Tax Map 15, Lot 4.

Board Chair, Matt Morton said they did a site walk earlier. Town Planner, Tom Morgan asked if everyone had read the letter submitted from abutter Bernie Christopher.

The appellant's counsel, Attorney John Springer also pointed out a letter recommending renewal of the Haberstroh's building permit to prevent further delay in completion. Attorney Springer went on to say there were two building permits, one for the main house, and one for the guesthouse. He said 75% of the guesthouse construction was done. He said much of the stone was on site, and the remaining work being done was all upper story work that had nothing to do with the expired Department of Environmental Services permit.

Attorney Springer said his client was an entrepreneur and business had slowed over the last few years due to a downturn in the economy. He said the delay in construction was not deliberate, and he asked that the cease and desist be lifted so he could continue with the construction.

# Town of Newington, NH

## ZONING BOARD OF ADJUSTMENT

Meeting Minutes – September 16, 2013

Attorney Springer said his client disagreed with the statement in Bernie Christopher's letter that they ignored his requests to stop construction on weekends, saying the only time they requested them to stop was on a weekend when the Christophers were having a party, and they stopped. But he said they understood their concerns and agreed not to do any stone cutting or guest house construction on the weekends, and none before 8 a.m. or past 6 p.m. on weekdays. He also said there would be no stone cutting during the months of July and August when their neighbors, the Perkins were staying at their neighboring summer home.

Attorney Springer said Attorney McNeil and Town Building Inspector, John Stowell had called David Price at DES, but Mr. Haberstroh said Mr. Price didn't return his call, and he thought he told Attorney McNeil that he wasn't taking any action. Attorney McNeil clarified that Mr. Price didn't have a complaint before him, but that didn't mean he was going to waive the requirement. Attorney Springer asked what would happen if they didn't get a permit from DES, and Attorney McNeil said they had to notify the Board and appeal the cease and desist decision. Attorney Springer said they issued one once, and hoped they would again. Board member, John Frink said it sounded as if they were hoping that DES would say they had met all their conditions, and they wouldn't need a permit for the remaining work, and Attorney Springer said that was correct.

Attorney Springer said he hoped the project would be complete in 18-24 months from that commencement of construction. Planning Board representative, Mike Marconi asked why they would limit and delay construction during the weekends, two months in the summer and winter, and Brian Haberstroh said they wanted to be respectful of their neighbors. Mr. Frink asked if they would continue to cut in the winter, and Mr. Haberstroh said all the stone for the main house was on site to be trimmed piece by piece like a puzzle, but they couldn't lay stone in the winter.

Mr. Stowell said he looked through the records showing they applied for a building permit for the guest house in 2008, but their request for a variance is from the Board of Adjustment in 2005, was granted with the condition that they comply with the Shoreline Protection Act at all times. He said they started construction in 2011, but he didn't realize their permit had expired until construction was off and one, and neighbors complained. Mr. Haberstroh said he didn't understand why there was an issue if their construction was from the ground up, and Mr. Stowell said they were still in the Shoreline Protection zone, and work on gas lines, and crushed gravel paving had been brought in with construction vehicles still going in and out, so it appeared they still needed the permit. Mr. Stowell referred to a September 4, 2013 email he received from David Price with DES that said, "These permits are now expired and Mr. Haberstroh should not be conducting the work described in the wetlands and/or shoreland permit from DES. Mr. Haberstroh must file new applications for work within DES jurisdiction."

Attorney McNeil said they would not be able to continue cutting if their DES application had expired, so asked why they wouldn't make an agreement with the Town that they would reapply. Attorney Springer said he they had not filed an application because they believed the expired DES application applied to the second project which

# Town of Newington, NH

## ZONING BOARD OF ADJUSTMENT

Meeting Minutes – September 16, 2013

was nearly complete. He also said his calendar was booked, and he didn't know when he could file, and didn't want to make a promise he couldn't keep. Attorney McNeil said a denial by DES is a statement to stop construction and they would need to reapply. In the meantime, the Building Inspector would issue a cease and desist, and they could not continue work until the permit was approved. Attorney Springer said they would file an appeal, and Attorney McNeil reiterated that they could not continue construction even when filing or awaiting a decision on an appeal.

Mr. Haberstroh said he was concerned with delays because his mason had been on standby since the cease and desist. He said he wanted construction to continue before the mason found another job, and he might have to wait for another year to get him back. Chair Morton asked if he had considered closing the area in with wood construction instead, and Mr. Haberstroh said he wouldn't be able to finish the gas tank or roof if he did that. Mr. Connors said he had already postponed coming before the Board, and putting in another DES application while he was on vacation. Attorney Springer asked how long a decision on the permit would take, and Attorney McNeil said they are supposed to issue a decision within 95 days.

Attorney McNeil said it was up to the Board to decide whether they would support the Building Inspector's cease and desist order, whether to alter it by imposing conditions, or whether to say it was an error and let it go. Mr. Frink said he originally thought they were just doing surface work, but was now hearing there were more disturbances without a permit. He wondered if they could continue the Public Hearing until photos were sent to DES as requested. Chair Morton said it all hinges on the DES application, and he felt they had to uphold the Building Inspector's decision.

Attorney McNeil said they could continue the case, and they could also ask Mr. Price with DES to go out to the site. He asked Attorney Springer if they would be interested in having Mr. Price go out to the site. Attorney Springer asked for a five-minute recess to consult with the Haberstroh's. When they returned, Attorney Springer said the Haberstroh's intended to apply to DES, and they would be agreeable to have Mr. Price out to the site, but they still asked the Board to approve lifting the cease and desist. Mr. Haberstroh said he still didn't think he needed a permit from DES because he was working on impervious soils. However, he said he understood Mr. Stowell's position, and abutters' complaints, but didn't think anyone would benefit from a delay.

Mr. Frink said they couldn't go forward because it would be in violation of the law. He added it seemed Mr. Price would respond quicker to a call from Attorney McNeil, and so long as the Town had gone to the expense of retaining Attorney McNeil, they should send photos to Mr. Price, which would help move things along.

Chair Morton and Attorney McNeil said they could continue the hearing to Monday, September 30, 2013. Chair Morton said they would still uphold the cease and desist notice in the meantime, and closed the public hearing, opening further discussion up to the Board.

Board member, Ralph Estes said the Building Inspector was correct to order a cease and desist once he determined the DES permit had expired, but asked how the Board of Adjustment had allowed it to get that far. Chair Morton said the Board did not foresee that the project would still be ongoing five years after approval, and they since

Town of Newington, NH  
ZONING BOARD OF ADJUSTMENT

Meeting Minutes – September 16, 2013

put time limits on approvals. Mr. Frink said they did, however, put conditions on their approvals. Mr. Estes read the April 5, 2005 approval letter and conditions that said:

- 1) The height of the retaining wall adjacent to the gully shall not be such as to impede access to the beach by the abutters (Perkins);
- 3) You shall be in compliance at all times with the Comprehensive Shoreline Protection Act, NH RSA 483-B

Attorney McNeil reviewed various scenarios, and said the applicant could appeal the motion and request a rehearing, but they would need to respond within 30 days. Mr. Morgan said they would need to show that there was a mistake or there was good reason. Mr. Connor asked if the two attorneys might meet with DES before the next meeting. Attorney McNeil said they could assist well-intentioned people, and he could talk with Mr. Price to expedite the process. Chair Morton said it would still be up to the State to decide if they wanted to issue a permit before they could lift the cease and desist. Mr. Marconi agreed that it seemed to be a question of legality, and they needed to uphold the Building Inspector's decision. He addressed the Haberstrohs, saying he was sympathetic to their situation, and would like to make the problem to go away if they could, but he asked that they understand that there was nothing personal in their decision.

***Mike Marconi moved that the ZBA uphold the Building Inspector's issuance of a cease and desist order on Building Permit #2312 for building activity at 108 Little Bay Road, Tax Map 15, Lot 4. Ted Connors seconded. A roll call was taken, and Ted Connors, Ralph Estes, John Frink, and Mike Marconi all voted in favor. The Chair did not vote.***

**Adjournment:**        ***Mike Marconi moved to adjourn, and Ted Connors seconded. All were in favor, and the meeting adjourned at 7:55 p.m.***

**Next Meeting:**        Monday, September 30, 2013

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