

Town of Newington, NH

ZONING BOARD OF ADJUSTMENT

Meeting Minutes – May 28, 2014

- Call to Order:** Chair Matt Morton called the May 28, 2014 meeting at 6:30 PM.
- Present:** Matt Morton, Chair; Ted Connors; Ralph Estes; John Frink; Jim Weiner; Town Planner, Tom Morgan; and Jane Kendall, Recorder
- Absent:** Ted Connors; Planning Board Rep, Justin Richardson;
- Public Guests:** Nancy and Brian Haberstroh; Attorney Jonathan Springer; Attorney John Ratigan; Town Building Inspector, John Stowell; William Verge; Dorene and Rick Stern;

Minutes:

Mr. Frink informed the Board that he had recused himself from the December 30, 2013 meeting and did not vote.

Ralph Estes motioned to accept the Zoning Board Minutes of December 30, 2013. Matt Morton seconded the motion, and all members voted in favor.

1) Public Hearings:

A) **Nancy Haberstroh's** administrative appeal of the Building Inspector's decision to attach stipulations to the issuance of a building permit for property at **108 Little Bay Road**, Tax Map 19, Lot 1A.

Attorney Jon Springer said this was the seconded time he had come before the Board on behalf of Brian and Nancy Haberstroh. He said Mr. and Ms. Haberstroh appeared before the Board the first time because their DES permit had expired and the Town had issued a Cease and Desist order. He said they appealed that decision, lost the appeal, and reapplied for a new DES permit. He said they were now before the Board because the new building permit issued by building inspector Mr. John Stowell was appended by conditions.

Attorney Springer said the last time they were before the Board they said they would agree to certain conditions that were spelled out if the Board approved their appeal. He said it was clear they were trying to get approval, but their offer for conditions was retracted when their appeal was denied yet Mr. Stowell still put the stipulations on the building permit. He said the building inspector could refuse issuing a building permit if he found a reasonable conflict in the law, but he had no authority to attach conditions for an application that was not in conflict with the law. He said it set a terrible precedent for an applicant to make a good faith offer and then be stuck with those conditions after losing the appeal. He said Mr. Haberstroh tried to talk to Mr. Stowell, but didn't get anywhere.

Town of Newington, NH

ZONING BOARD OF ADJUSTMENT

Meeting Minutes – May 28, 2014

Mr. Weiner asked if the Board didn't have the authority to apply additional conditions. Attorney Springer said they could if approved, but not if they hadn't approved. He said it was similar to someone coming in for an application, offering to upgrade a stoplight if approved, and the Board insisting they still upgrade the light after they denied the application.

Chairman Morton said the Board did deny the appeal, but Mr. Haberstroh had said he would put those things into the building and so the building inspector put in writing. Attorney Springer said the offer for conditions were only if the appeal was approved. Chairman Morton asked why Mr. Haberstroh offered the conditions and was now opposed to following through with them. Attorney Springer said Mr. Haberstroh it took six months for DES approval so Mr. Haberstroh lost time and didn't want any time restraints.

Chairman Morton said he thought Town counsel, Attorney Malcolm McNeil had made recommendations to expedite the DES application. Town Planner, Tom Morgan referred to page 3 of the September 2013 meeting confirming the conversation. Chairman Morton asked if Mr. David Price from DES had received any of the photos that the Board had suggested sending. Mr. Morgan said he didn't know if Attorney Malcolm McNeil had made the call or not.

Chairman Morton said the Board had the benefit of legal counsel so the Board could like to pose questions. Attorney Ratigan said they could go into closed session. Chairman Morton said they probably would, but suggested the Board ask questions of Attorney Springer first.

Mr. Ralph Estes asked Attorney Springer if the Haberstroh's.... Attorney Springer said the Haberstroh's had rights, but it was a bitter pill to swallow when they offered conditions during their appeal and were denied, then expected to comply with the conditions. Mr. Estes said he could understand why they might not want to accept everything, but wondered if there was anything they would do. Mr. Haberstroh said they said they wouldn't work on weekends and their neighbor, Mr. Bernie Christopher was there to attest that they didn't, but they didn't want legal conditions that would restrict them should something come up.

Mr. Estes asked if they had commenced working and Mr. Haberstroh said they had since DES granted their permit. Chairman Morton asked when they began working and Mr. Haberstroh said around January.

Mr. Weiner asked Attorney Springer where the conditions that were offered were written. Attorney Springer said the minutes didn't reflect what he'd said, but he believed Attorney Malcolm McNeil understood what he was saying and quoted Attorney McNeil from the second paragraph on page three of the minutes as having said "...it was up to the Board to decide if they wanted to lift the cease and desist, impose conditions, or to say it was err and let it go." Attorney Springer said Attorney McNeil mentioned the conditions because he had offered those conditions on behalf of his clients. Attorney Ratigan said to be fair Attorney McNeil's statement was a repetition of the statute. Attorney Springer said it was stated because there was an offer on the table. Attorney Ratigan said he would have used the same words in the same situation. Attorney Springer said assuming he made the offer for conditions, he had never seen a situation

Town of Newington, NH

ZONING BOARD OF ADJUSTMENT

Meeting Minutes – May 28, 2014

where an applicant was required to comply with the conditions after they had been denied. Attorney Ratigan said Mr. Stowell had made this decision on the conditions, not the Board. Attorney Springer asked what authority Mr. Stowell had and Attorney Ratigan said that was what they were reviewing.

Mr. Frink asked if Mr. Stowell had issued a new permit and Attorney Springer said it was the same permit. Mr. Frink asked why would he do that since the Board only had record from the former building inspector, Charlie Smart's building permit. Mr. Morgan said Mr. Stowell had only issued a new letter with the stipulations on March 17, 2014. Attorney Springer said the point was that it was the same building permit, which didn't have conditions before.

Mr. Weiner said he would like to hear from Mr. Stowell. Mr. Stowell said Mr. Haberstroh first received a building permit eight and a half years ago on December 13, 2005 with no conditions. He said he became building inspector in 2011. He said he soon after determined that the State permits had run out and issued a cease and desist. He said the State permits were reinstated on December 14, 2013. He said according to Chapter 1 of the Building Code book his job was to safeguard the public health, safety and welfare of the public. He said he researched the building code and zoning ordinance and believes he had the authority to suspend or revoke the building permit if warranted. He said there had been a lot of inaccuracies in the permit process and the ZBA didn't know it would be a ten to fifteen year process when they came before the Board in 2005. He said he understood that Mr. Haberstroh would have liked to complete the building project earlier, but it didn't work out that way and it had gone on so long that there were many complaints from abutters and neighbors. He said a project like this never went before the Planning Board so residents relied on the building inspector to pursue this action. He said abutters and neighbors had placed complaints on the noise, the dust, environmental concerns and hours of operation and tax abatements had been given and he owed it to the Town to address the issue.

Mr. Weiner asked if there had been any in written or verbal complaints and Mr. Stowell said there were both.

Mr. Bernie Christopher of 29 Dumpling Cove said the two abutters on either side, Ms. Nancy Perkins and the McGee's that got 5% abatements. Mr. Weiner asked what the reasons were and Mr. Stowell said because of the noise, dust and unsightly construction.

Ms. Nancy Haberstroh said they only heard of two complaints. Chairman Morton said it was not unusual for neighbors not to avoid direct confrontations. Chairman Morton noted that the Haberstrohs had moved out and rented another house in town for a while. Ms. Haberstroh said they rented another house because she had her youngest child and the house on the site was not livable until she made it so.

Chairman Morton said it was the longest home construction project he had ever seen and as a result they now asked all applicants for an anticipated completion date. He asked if there was any way to speed the completion up. Mr. Haberstroh said he couldn't say for certain until he knew what the restrictions were, but they could speed construction up more if they had permission to work during the months of July and

Town of Newington, NH

ZONING BOARD OF ADJUSTMENT

Meeting Minutes – May 28, 2014

August which were prime stone laying months. He said he thought they could probably get the roof on in eighteen to twenty months.

Mr. Frink said he would like to hear from abutters, but he didn't have many people in attendance. Mr. Christopher said the back of his house faced the Haberstroh property. He said he attended the ZBA meeting eight and a half years ago to speak in favor for his neighbors. He said he was not able to attend the September 2013 meeting so he called to request a meeting, but Mr. Haberstroh said he didn't have time. Mr. Christopher said he then wrote a letter stating his concerns because the project was taking so long and they were working on weekends. He said only asked that construction stop on the weekend of his daughter's wedding on Aug 16, 2008 because they didn't want photos with work in background and the worker stayed, but he was quiet. He said they have since stopped working on weekends and. He said he wouldn't object to them working on weekends unless he had an important family gathering like his son's wedding. He said they were great neighbors, the yard was always neat, they had a great set up and all the neighbor kids went over to play.

Mr. Christopher said he was not there to beat the Haberstrohs up, but was there to help because he wanted to see the project finished. He said he had been in the building business for years and built over 1,000 houses requiring permits. Mr. Christopher said if he were in the Haberstroh's position, he might feel the same as they did about the construction, but it was not only about them, but also about neighbors. He said he could only speak for himself, and had no problem with them working through July or August, but he couldn't speak for Ms. Perkins who arrived next month.

Mr. Christopher said he called Mr. Haberstroh to discuss his concerns again before the meeting and they agreed to disagree regarding the Board and the building inspector's authority. He said if the building inspector didn't have authority to oversee construction, then who would.

Chairman Morton said the abutters were notified, but he didn't see any correspondence. Mr. Morgan said none of the abutters replied. Mr. Weiner said one abutter was not in state. Mr. Christopher said she only summered there.

Mr. Weiner asked if the hours of operation were the reason for the noise conflict and Ms. Haberstroh said they didn't make a lot of noise, but they didn't want to be told they were in violation if they were working at 7:59 a.m. Mr. Haberstroh said they had not broken any building code or ordinance. Mr. Weiner said he had a lot of granite cut on his property when he built his house and it made a lot of noise. Ms. Haberstroh said they had changed to wet cutting, which made less noise. Mr. Weiner asked why they changed and Mr. Stowell said Ms. Perkins' granddaughter had respiratory problems so they changed to wet cutting.

Chairman Morton asked Mr. Haberstroh where the stonemason did his work and Mr. Haberstroh said he changed to cutting down in a hole to reduce the dust. He said they also planted 16' arborvitaes between their property and Ms. Perkins' property, but the deer had demolished them so they were replacing them with 20' green giants that were deer resistant to buffer noise and dust. Chairman Morton asked when they were doing the planting and Ms. Haberstroh said they were planting on June 12. Mr. Haberstroh said they also had a temporary fence in the back to obstruct Ms. Perkins'

Town of Newington, NH

ZONING BOARD OF ADJUSTMENT

Meeting Minutes – May 28, 2014

visibility. He said they would have put a double fence in. but Mr. Christopher already had.

Chairman Morton said the building permit said construction would be complete by 2016. Mr. Haberstroh said he didn't see any problem with that date and his wife would be angrier if it was not done by then, but it was a unique project and little things could be unpredictable to get their final certificate of occupancy so he didn't want restrictions.

Chairman Morton asked the Board if they wanted to close the Public Hearing to confer with counsel and all were in favor.

At 7:45 p.m. members of the public left and the Board conferred with counsel.

At 8 p.m. members of the public returned and the Public Hearing was reopened.

Chairman Morton said they would modify the building inspector's restrictions on goodwill in order to get the project completed.

Attorney Ratigan pointed out that there was a clerical error in the March 17, 2014 conditions and the second Condition 4 should have been Condition 5.

*Mr. Frink moved to modify the Building Inspector's stipulations on the building permit for the Haberstroh property at **108 Little Bay Road**, Tax Map 19, Lot 1A so that the hours of construction in Condition 1 would change from 8 a.m. to 6 p.m. to 7 a.m. to 5 p.m. and the restriction to construction during the months of July and August in Condition 1 be lifted. Conditions 3, 4 and 5 would remain. Mr. Weiner seconded*

Mr. Haberstroh asked if they could change the finish time to 6 p.m. Chairman Morton said they were being asked to cease stone cutting and construction noise, but they were not being told the workers had to leave by 5 p.m. if they needed to clean up and could do so quietly. Mr. Haberstroh said they could get the construction done faster if they could extend the hours from 7 a.m. to 6 p.m. to get an extra hour per day. Mr. Weiner said the intent was that they would stop construction noise for the neighbor's dinner hour, but agreed it would be all right if they continued cleaning up quietly until 6 p.m. Ms. Haberstroh agreed.

Chairman Morton said he hoped most of the cutting would be done in the pit as a means of quieting and to keep dust down. He said he also hoped there would be no cause for cutting on weekends, but if something came up, he wanted the building inspector to be notified right away. He said he hoped they would be good neighbors and work as quickly, quietly and cleanly as possible.

The motion passed unanimously.

B) Request by **William Verge** for variances from Articles VI and XI of the Zoning Ordinance in order to permit the relocation of a 30 square foot sign to a new location

Town of Newington, NH

ZONING BOARD OF ADJUSTMENT

Meeting Minutes – May 28, 2014

some 14 feet from Woodbury Avenue and 3 feet from the lot's southerly property line. The property is situated at **2204 Woodbury Avenue, Tax Map 19, Lot 1A.**

Mr. Bill Verge, owner of Isaac Dow house said the NH DOT was moving heir retaining wall back for reconstruction of Woodbury Avenue had to come down. He said it was already non-conforming and they would like to move its location to the end of the parking lot. He said the proposed location was already approved on the original application. Chairman Morton asked why they hadn't put it there before and Mr. Verge said he wasn't sure. Mr. Morgan said his records said the ZBA approved the current location. Chairman Morton asked if the Planning Board had approved the placement on the plan. Mr. Morgan said the Planning Board had, but the location was changed when they went to the Board of Selectmen for their sign permit.

Mr. Verge said the sign dimensions were 5' x 5' on two 4' posts. Chairman Morton asked if the sign would be lit and Mr. Verge said it would be backlit powered through an underground conduit.

Mr. Morgan asked how far the new sign would be from the pavement and Mr. Verge said there would be 13' from the edge of the pavement to the edge of the sign.

Ralph Estes moved to grant the request by William Verge for variances from Articles VI and XI of the Zoning Ordinance in order to permit the relocation of a 30 square foot sign to a new location some 14 feet from Woodbury Avenue and 3 feet from the property line at 2204 Woodbury Avenue, Tax Map 19, Lot 1A. John Frink seconded.

Mr. Frink noted that the request met the following criteria:

- Would not be contrary to the public interest and was in the spirit of the Ordinance
- Would not alter the essential character of the surrounding community
- Would not threaten the public health, safety or welfare
- The value of surrounding properties would not be adversely affected
- A hardship existed due to special circumstances that distinguished the property from other properties in the area

The motion passed unanimously.

Adjournment: *Ralph Estes motioned to adjourn, Mr. Frink seconded, and all were in favor. The meeting adjourned at 8:04 p.m.*

Next Meeting: June 2, 2014.

Respectfully

Submitted by: Jane K. Kendall, Recording Secretary