

Zoning Board of Adjustment Meeting Minutes of 10-16-2014

Submitted by stoddard on Wed, 10/22/2014 - 12:25pm.

Preliminary

Town of Stoddard

Zoning Board of Adjustment

Minutes of Meeting held October 16, 2014

Meeting brought to order by the Chairperson at 7:30 pm.

Members Present:

Chairperson Peter Athearn, Vice Chairperson Paul Krampfert, Richard Scofield,
Angel Nicoletti, Curt Taylor

Alternate Member Present: Edmond Saleski

Others Present: Town Attorney Homer S. Bradley, Town Compliance Officer Harry
Power, Selectmen Steven McGerty, Applicant Donall Healy, Applicant Laura Phillips,
Abutter Suzanne Bowman

Review Minutes of meeting 9/18/14

- Spelling errors were noted by Angel.
- Statements made by Harry Power and Donall Healy were asked to be included in the minutes. They were read by the Secretary. Both Harry and Donall were in agreement with the amendments. The statements were checked against the tape and accepted. Peter made a motion to accept the minutes as amended. The motion was seconded by Paul and the Board voted to accept them as amended. (List of amendments attached and September Minutes updated)

Correspondence

- Copies of the September ZBA Town budget report were handed out to members.
- Received a copy of a Building Permit for an addition to the Turner residence as a courtesy from the Selectmen.
- The NH 2014 Land use regulation manual is available. We decided to order 1 for the group

Old Business

Healy Decision on the Appeal of Administrative Decision

- The Chairperson asked if any of the board members have had contact with each other, lawyers or applicant regarding the Landfalls/Donall Healy Hearing. They all answered in the negative.
- The Chairperson made a motion to accept and grant Mr Healys' appeal. Richard seconded the motion. The Chairperson asked for discussion.
- Angel stated it is possible the Healy property could be construed as being commercial as money does exchange hands. It has been rented episodically since 1970. She also feel, that it doesn't violate local ordinances based on

Page 2

the Accessory Use Doctrine and Vested/Grandfathered uses. Mr. Healy stated he uses the rentals to offset taxes and maintenance on the property. He has also shown the current use is the same as prior use and that it is not used solely for

profit. His rentals are vested because there has been no substantial change in the use's effect on the neighborhood. Several neighbors have testified in Mr. Healy's favor. He provides no services at all and only episodically rents it for weddings, which was only five times this year. The manner in which Mr. Healy rents LakeFalls for weddings is not a violation of the Stoddard CPO.

- Paul stated he looked at the Commercial Industrial Uses Article 4.1 for his decision. A Special Exception is not needed as the property is neither commercial or industrial. The Accessory Use was in favor of the weddings to be done. Also, from a rental sense, the catering and other services that go along with weddings etc. are not provided. People coming onto the property make those arrangements. The rental is similar to seasonal homes, principally on our lake front. As far as the Commercial aspect, the profit motive point from the rentals has been pointed out to offset the expenses to keep the property. I don't believe this property is commercial. If this were a commercial property we would need to find there is adequate off street parking, that there be no nuisance to the neighborhood by reason of noise, dust, smoke, odor, illumination or other hazard to public health. In none of those circumstances is there an issue with this property. Regarding non conforming lots – the structures are pretty much the same as they have been prior to the CPO coming into effect. While improvements have been made, it was to insure the property was in good condition and has been kept in good condition going forward, otherwise, not let to degrade. They are still off the grid, as it had been. There is still no central heat and they have the same water source off the mountain. This complaint comes from the selectman regarding 3 prior building permits granted to Mr. Healy. The first was not acted on, one for a structure has only the foundation in place, the structure itself has not been built. In the third case, an addition was rebuilt with the same room function as the one it replaced. All this falls within the CPO.
- Curtis stated I don't believe Lake Falls is totally a commercial enterprise. He sometimes charges for use of the properties and sometimes doesn't. He has stated the rental fees offset the spiraling maintenance costs. There were questions raised regarding building permits. Although a slab exists no construction has taken place and no change in status exists. No updates have been made to the cabins except for regular maintenance. In regard to Mr. Power's concern about future changes in ownership or the desire for Mr. Healy to expand the use, he knows he would have to apply to the ZBA for an exception. Since no one has come forward with a complaint, I feel an increased use is not a change in status.

- Richard – To me it was a question of “Was there a substantial change in

Page 3

use?” He saw nothing presented to the ZBA to support a substantial change in use. He saw a brochure from the 1970's, went online to the web site which is nothing more than an e-version of the brochure and saw no difference in use. He saw no substantial change in use and stated “I therefore vote in favor of Mr. Healy's application for Appeal of the Administrative Decision”.

- The Chairperson asked for comments from the audience. He stated there was a motion on the floor to accept and grant Mr Healy's Appeal. He called for a vote which resulted in a unanimous decision by the board to accept the Appeal from the Administrative Decision. Letters will be sent to both parties with a synopsis of board members statements.

Application for a Variance

Ms. Laura Phillips is requesting a variance regarding Article III Section 1 and Article XII of the Community Planning Ordinance. Applicant proposes to construct a screen porch at 444 Whitney Road, Stoddard. The plan shows the porch closer to the property line than the 25 foot required setback and is less than the required 50 foot setback from the lake.

- Curtis asked if this was going to be a three season porch. She stated yes. She also answered in the affirmative when asked if there will be no heat or plumbing and it is on top of fill and sonotube. When asked if there was a flood, would water would flow under it not into it? She answered yes.
- Paul questioned the estimated cost of the roof at \$3,0000. She answered she has not gotten a firm quote on the roof yet.
- Angel asked if the set back is 18' from the lake and 15' from property line.
- Peter mentioned the Shoreland Permit form shows pg 1 and 2 of 3. The third page of the permit was missing. Applicant stated she didn't have it. She thinks it may have been a worksheet for her to fill out and was kept by the state. Peter also mentioned the actual building is not the 8' x 22' applied for

- but 8' x 32' which includes an expanded deck. She agreed.
- Abutter Suzanne Bowman of 436 Whitney Rd., was present, she stated she has no problem with the addition. KSR partnership, the other abutter, was not present.
- Harry asked Ms. Phillips who filled out the Shoreland Permit as he doesn't have a copy of it. Ms. Phillips showed Harry the permit. His concern was the combination of the two set backs. The Wetland one which places it within the 50 foot high water mark and the southern boundary where she really has only 12ft from the boundary not the 15 ft listed.
- Angel would like to set a time for a site visit. Saturday, October 25, 2014 at 10 am, was the agreed upon date and time for the visit.
- A decision on this Variance will be made at the next ZBA meeting on Thursday, Nov 20, 2014, at 7:30pm at the Town Hall.

New Business

- The Chairperson would like to review the Secretarial duties to get organized

Page 4

with timing requirements etc. to help when changing chairpersons next year.

- Discussion was held regarding updating the ZBA Meeting Procedures. Peter would like to add to our acceptable procedures, that we use Roberts Rules as a default when needed. We could put it at the end of our procedures list.

Paul thought the meeting procedures we have are a bit strict for the types of

community meetings we have been having and that maybe they should be

loosened up a bit so we can be consistent. Peter feels they are fine as they

are and can be adjusted to the occasion. Angel feels we don't need to

change them.

- Members will work to update the ZBA Forms for the new web site next month.

A motion to adjourn was made by Peter and seconded by Richard. The meeting

adjourned at 8:52pm.

The next meeting is Thursday, November 20, 2014, at 7:30pm at the Town Hall.

Respectfully Submitted,

Kathleen Ellis