

Town of Stoddard
Zoning Board of Adjustment
Minutes of Meeting November 2, 2017

The meeting was called to order by the Chairperson at 7:30 pm.

The Pledge of Allegiance was led by the Chairperson.

Members present: Chairperson Jason Kovarik, Vice Chairperson Curtis Taylor, Angel Nicoletti, Franz Haase, Doug Summerton

Alternate: Richard Scofield

Alternates absent: Ed Saleski

Others present: Compliance Officer Harry Power, Attorney Silas Little, Casey Hayes, Jen Wells, Dan Eaton, Brian Michaud, Robert Hardy, Karen Cushing, Steve Raymond, Jodi Labukas, Richard Sears, Christine Sears, Herb Healey

Hearing

- Continuation of Stuckey Hearing (#2017-10-01) Property on 25 Beaver Lake Road, Tax map 119 Lot 09.

The Chairman reviewed the hearing process for the audience. He then reviewed the information from the site visit and asked for input from the applicant or others. There was none. He stated the Board had asked for more information from the applicant at the site visit and had received that information which answered their questions. He then asked Board members for any questions or statements, there were none. The Chairman closed the hearing for deliberations.

- 1. Granting the variance would not be contrary to the public interest because it would improve property values and is not a detriment the abutters. Becoming a year round residence would increase the value of the property, increase it's tax base and it wouldn't be left vacant for long periods of time do to seasonal renting.
- 2. The spirit of the ordinance would be observed because the inspection shows the current septic system is in good working order and fulfills the Town's obligation to protect the environment. The owner has provided the Board with a NH State approved septic design, which fulfills the State law requirements to update a system.
- 3. Granting the variance would do substantial justice as it will allow the owner of the property to sell it at a higher price and it's status would be changed to a year round residence.
- 4. The values of the surrounding properties would not be diminished by this decision.
- 5. Unnecessary Hardship. The approval for operation permit required by the town, if followed as is written in the Town ordinance (Article III Section 5), would cause an unnecessary hardship to the owner by forcing him to spend extra money to build an unneeded system.
- The Chairperson asked the Board for more discussion. There was none. Richard Scofield moved to the audience. Douglas Summerton made a motion to grant the variance. Franz Haas second the motion. A roll call vote took place with Douglas Summerton, Franz Haas, Angel Nicoletti, Curtis Taylor and Jason Kovarik voting to grant the Variance.
- The Chairperson told the applicant he will receive his Decision Notice in 5 days.
- Continuation of Hayes Hearing (#2017-10-02) Property on 67 Fox Run Road, Tax Map 120 Lot 03.
- Mr. Scofield returned to the table. The Chairman opened the hearing, inviting input from the floor. He mentioned the Board has received nineteen letters from tractor enthusiasts and residents regarding the applicant. By request from the floor and the Board, the Chairman read the names only of residents who sent

letters and stated whether they were in support or not of Mr. Hayes's Administrative Appeal. The total count was ten in favor and five opposed. Jason mentioned to the audience that the letters are taken into consideration on the Board's decision, but is not the end all. The question of why everyone on Fox Run road had not received letters from the ZBA was answered by Attorney Little who stated, Map 120 Lot 2 is the Fox Run Association Road and is a separate entity, but each member of that Association is not an abutter.

- The Chairman asked Mr. Hayes's neighbors if they had any additional comments. They stated the majority of the letter writers were okay with the use of the property as a hobby but five of them don't want to see a business there. They also stated the yard is the cleanest and neatest it's been in the thirteen years they have been neighbors and don't want it to get messy again. They have nothing against him personally but he runs tractors well into the night. A resident asked what definition of a business did the selectmen use to determine Mr. Hayes was creating a business/industrial venture versus hobby. Jason replied that his research showed the Town ordinance does not contain a definition of "business". The Chairman stated common sense identifiers to determine a business would be equipment which is there, but there is no business name, signs, or lights and Casey doesn't have zoning board approval to run a business. The Town was going to say he was running a junk yard but all those identifiers aren't there either.
- The Chairman asked if anyone else has concerns or comments. An abutter who frequently travels past the Hayes residence spoke, saying he had no problem with the state of Hayes's property. Another resident stated he brought tractors to Casey to fix and Casey wouldn't take any money from him for the repairs. It was clear to him that Casey did the repairs as a hobby.
- Richard Scofield went back to the selectmen minutes of 7/10/17 to find where the Selectmen got their information regarding Hayes was running a business. In those minutes, Hayes stated he had sold some tractors and probably has 150 units now. At our site visit he had 35 units and 13 more off site. Richard asked where the other 100 units went. Casey stated he gave them away and re-purposed others. Attorney Little stated cars and equipment are worked on and sold from peoples yards all over NH. A resident asked that the board not to get fixated on occasional pieces of equipment being sold over the years. He himself has sold a car or two from his property.
- Franz Haas stated he researched NH state regulations for a definition of business and found they were very vague. He then looked into the IRS website which defined a business as one who has to be in pursuit of a profit. The occasional selling of equipment does not fit that definition. An abutter stated that it is important that people realize they have an obligation to have respect for their neighbors. Casey stated cleaning up his yard and hobby practices was planned prior to the paper work received from the Selectmen. He stated he doesn't want to irritate his neighbors.
- The Chairperson asked for any other comments. He then closed the hearing to comments and opened deliberations by the Board.
- Jason began by recalling the abutter's statement of "neighbors being neighborly". He see's the real issue as being when one or more neighbors see a nuisance and are unable to resolve it. Then having to go through various levels of bureaucracy, starting with their neighborhood association and to the Town and getting no response to their concerns. Inaction within the different layers in the Town & the association has led to this meeting tonight. Jason read the definition of a junk yard as stated in RSA 236 section 112 pg. 182 of The Planning Guide Regulations which states any area with 500 sq ft of junk in view of others equals a junk yard. One 4 x 6 average lawn tractor equals 24 sq ft of metal per tractor. Twenty tractors would give you 500 sq ft.. If you don't have 500 sq ft., you have a hobby. A hobby may be a nuisance but it is not a commercial enterprise. Mr. Hayes is giving away services so he is not seeking a profit. He stated to the Selectmen he could get rid of all his tractors, but that would deny him his passion for his hobby. We need to find a balance here to keep his neighbors happier and him to keep his hobby.
- Angel stated our first obligation is to determine whether he is operating a business as it concerns his appeal to the Administrative Decision. Doug stated he doesn't think he is running a business. He has seen other tractor collections but they are under cover like in a pole barn. Casey has them under plastic which is a good first step. You have to work with your neighbors and get along, using courtesy and good judgment. Stoddard doesn't currently have a blight ordinance. A full fence around the tractors entirely or putting the collection in a building would take care of these complaints. Curtis asked if there were any restrictions listed for the property with the association. The old Association rules expired in 1999 so there are currently no existing Association rules. The thing we have to decide tonight is whether Mr. Hayes is operating a business. The Chairperson asked Mr. Scofield to leave the table for the vote.
- Doug made a motion that we vote in favor that Mr. Hayes is not running a commercial business. He then rescinded his motion. Franz made a motion that the board approve the Appeal of Mr. Hayes to the Selectman's Administrative Decision.
- Doug second the motion. The Chairperson asked for further discussion, and clarified the reason for the Decision is the Board doesn't feel Mr. Hayes is running a commercial or industrial business because he is

not using his collection for profit.

- The Chairperson asked for the vote by roll call: Douglas Summerton in favor, Franz Haas in favor, Angel Nicoletti in favor, Curtis Taylor in favor and Jason Kovarik in favor.
- Attorney Little formally withdrew his request for a Special Exception.
- The Chairperson closed the Hearing.

New Business

- Jason reminded members about the Spring conference at Grapone Conf. Center in April.
- The 2016 pdf version of the NH Planning and Land Use Regulation was sent to each board member.

Minutes of 2017

- The minutes from 10/19/17 were approved unanimously.
- The minutes from the Stuckey Site visit were approved unanimously.
- The minutes from the Hayes Site visit were approved unanimously.

Correspondence/Reports

- Review of ZBA budget through September.

Old Business

- None

A Motion was made by Franz to adjourn. The Motion was second by Doug. The Motion passed unanimously. The meeting adjourned at 9:20 pm. The next meeting will be January 18, 2018 at 7:30 pm at the Stoddard Town Hall.

Respectfully submitted,

Kathleen Ellis

Secretary to ZBA