

# **ZBA Minutes of Meeting June 21, 2012**

Submitted by zbasec on Thu, 06/21/2012 - 11:00pm.

Preliminary

## **Town of Stoddard Zoning Board of Adjustment**

Minutes of Meeting held June 21, 2012  
Meeting convened at 7:30 pm

**Members attending: Chair, Angela Nicoletti, Vice Chair, Dennis Pellegrino, Paul Krampfert, Ed Saleski, Peter Athearn**

Members excused: Mario Zamaripas

Alternates attending; Steve McGerty

**Correspondence:  
Received bill from Upton and Hatfield**

Minutes of previous meeting: Corrections: spelling error- “second” to “seconded” under correspondence and under Ken Holland special exception hearing on page 2, correct spelling error on line 8 - Nicolletti. Strike “with no septic system shown” under Holland Special Exception, 8 lines up from end, correct to “with septic system shown”. Motion made to accept the minutes with corrections by Dennis Pellegrino and seconded by Paul Krampfert, minutes were approved.

**Old Business:**

- Agreed to up-grade amendment to ZBA meeting policy and procedures at next meeting to meld the old and new together.

### **New Business:**

- None

### **Application for Hearing:**

- No new applications have been received.
  - Cheryl & Paul Dauphin Variance 3rd Hearing opened at 7:45 pm. The secretary read the application for the variance. Applicant Mr. Dauphin was asked to speak – stated he has nothing to say. Mr. Vitale, an abutter was concerned about run off to lake as the owner is adding more roofline. Mr. Vitale has arranged to have his property surveyed stating the Dauphins have infringed on his property beginning with their garage, cement walk and now an addition w/more roof. Paul Krampfert explained the expansion is actually within the original footprint of the building. What they are doing is putting a new pillar 3' out from the current footprint to cover the walk way. They are removing a deck and replacing it with a mud room. Mr. Vitale states they are continuing to encroach on his property. Angel reminded him we are here to discuss the new construction project, not past work and it appears Mr. Vitale has given us all the information he has on this subject tonight. Dennis said we had asked him, Mr. Vitale to bring any hard documents he had to substantiate his claim of encroachment and he has nothing new. Paul said it is too late now to discuss prior work done on the Dauphin property. Mr. Dauphin given microphone to rebut Mr. Vitale. States they had the property surveyed, has gotten permission to go ahead with construction from the state concerning runoff. He also stated they are working within the rules to have their project done correctly. Mr. Vitale asked to have hearing postponed until he can have his property resurveyed. Angel stated that is something he can work on his own, as he was told he could provide new information at tonight's hearing and as he has none she stated, "the hearing is closed for deliberation". Based on the 5 criteria, Ed Saleski made a motion to approve the variance stating "It appears Mr. Vitale has been upset with his neighbors and could have made moves long ago to prevent their expansion. The current exception asked for is minimal at 3 feet." Paul Krampfert seconded the motion. When asked for discussion, there was none. The board was polled. Peter Athearn abstained, Angel Nicoletti, Dennis Pellegrino, Paul Krampfert and Ed

Saleski voted to grant the variance. Angel stated both will get a letter within 5 days with explanation for our voting.

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- Rodney Williams Variance Hearing opened at 8:00 pm. The secretary read the application for the Variance. Rod Williams was invited to explain his request. He states we have all the documentation and things pertinent to his request. He is hoping we would consider Article 6 of a Non-Conforming Lot. Angel referred to the ZBA's attorney Matt Serge, who stated Mr. Williams bought the lot as is and although the lot is non-conforming in size and frontage, it must conform to current laws and setbacks and the Variance is necessary to address the setback. Rod stated he feels his request is valid. States he feels his request fits in with the rest of the neighborhood, that he is being assessed for a building lot at \$140,000 and has all the permits needed from the state and environmental protection to build on his lot. He purchased the lot around the year 2000 and is in a position in which he needs to build on the lot as he is being taxed for a buildable lot. Abutter Sean Irving had nothing to say. There were no other abutters present or willing to speak. William's variance was for a setback with boundaries of 7 – 12 ft. There were no other comments so hearing was closed for deliberation. Angel asked for comments from the board. Paul Krampfert stated there was nothing unique about this property compared to other properties in the area. His property and neighboring lots were identical in size and shape and would also need a variance for building. Angel mentioned it may be a hardship where he bought the lot for building upon and has invested money in obtaining proper permits. Paul mentioned if there was a hardship it would be a self-created hardship as he purchased the property in 2000 and should have asked at that time about the building requirements which were in effect. They spoke about diminished value both to neighboring properties and the larger area by having the natural barriers removed between the properties affecting privacy and subtracting from the essentially country setting. Paul made a motion to deny the variance. Dennis 2<sup>nd</sup> the motion. Discussion: Peter voted against denying the variance. Ed stated if you have land on the water you should be allowed to build something on the land. There are 2 other properties in the area, one a smaller house and one a trailer built in 2007 on 50 foot wide lots. One should be able to build something consistent with the size of the lot, the proposed building he felt, is too large. Angel reminded members that our charge is to vote on the variance before us. Ed Saleski voted to deny the variance, Dennis Pelligrino, Paul Krampfert and Angel Nicoletti voted to deny the variance Peter Athearn voted for the variance. Mr. Williams was advised he would receive a letter within 5 days with the criteria for the denial. Case closed.
- Ken Holland Special Exception Hearing opened at 8:15 pm. The secretary read the special exception application. Applicant Ken Holland and his

attorney, Jason Czekalksi PLLC were invited to table. Attorney Czekalksi spoke stating Dennis Pellegrino must recuse himself from this case as there is active legal action between him and Ken Holland's son, Ben Wilder. Dennis stated he is unaware of any legal action between himself and Ben. He also stated if anything he has been supporting Ben in his endeavors with Hidden Lake Association issues. He and Ben call each other and they communicate frequently. Attorney Czekalksi spoke stating Dennis has bias regarding Ben Wilder, Ken Holland's son. Board took a non-binding vote, Ed Saleski & Paul Krampfert feel Dennis shouldn't recuse himself, Peter Athearn stated Dennis should do what he feels is right. Angel Nicoletti stated she has never heard Dennis say anything that she feels would bias Dennis one way or the other. Dennis stated he is fair minded and will not recuse himself.

Attorney Czekalksi stated the board needs to determine if there is a parking and does it constitute a nuisance. He drew attention to the goggle map, showing larger neighboring businesses to compare parking lot size in proportion to land size. Angel stated from the application it appears there is more than one business proposed on the site. Attorney Czekalksi states this is a singular business with Mr. Holland and perhaps one other person working there. Says it is a small family business with many off shoots. Dennis spoke stating there may be wood shavings in the area and combined with mechanical part of the business may constitute a fire hazard. Attorney Czekalksi states Holland will have to get permits from other agencies not the ZBA. He stated Holland will only process the lumber/timber when it's available, and then for personal, business and family heating use.

Angel spoke, stating when visiting the site she didn't see where the parking would be as there was stuff everywhere. Ken stated his truck & grader are off site working and the compressors should be removed soon. Attorney Czekalksi stated the lower flat area is designated as parking area to address the concern of parking along the road. He stated there is more than enough room to store almost all of his equipment in that area. He stated it would be rare to have all the equipment on the site at any one time. Attorney Czekalksi states the math works and they are working in steps to make it work. The storage trailers and lift will be removed and the garage will contain much of the equipment seen on the site currently. Angel would like better plans on how the parking will look/work as that issue is not yet clear. Czekalksi doesn't want to narrow his options by giving exact locations for current specific equipment, but can give the board a list of Holland's equipment. Dennis brought up subject of Mr. Holland's equipment currently parked in the Hidden Lake Association; he asked "will it be moved to his Juniper Hill Rd location"? Czekalksi stated all his equipment moves according to usage and jobs. He will supply the Board with information showing that all his equipment will fit onto the site.

Angel asked audience if anyone would like to speak. Attorney Sam Bradley announced he is here to oppose the special exception for the town of Stoddard. He stated he counted 6 businesses on the site application and suggested we not grant any of these under the community zoning ordinance as they do not meet the standards. He stated Article 8, page 7, of the exception

must be in harmony with the ordinance – Purpose of the ordinance is to promote health, safety and welfare of the town and preserve the value and rural character of the area. Mr. Bradley states Holland needs to prove there is adequate off street parking and no nuisances such as air and noise hazards. He reiterated the burden of proof is on Holland to fulfill those provisions. All the uses he has listed will create noise and dust, and there is not enough room for parking. He submitted a separate survey of Mr. Holland's property to show there is not enough space on the site to hold the proposed buildings and equipment. He stated parking on the side of the road has been an issue and Holland has been asked many times by the town to refrain from doing so. He stated Holland's plan also shows a house & septic on the site. Current town regulations require a 2 acre site for new homes, so Mr. Holland can either have a home or a small business on the land but there is no room for both. He urged the Board not to approve the application on those grounds. Attorney Bradley stated the proposed uses will devalue properties and cause nuisances of noise and pollution.

Mr. Bradley asked if we were aware Mr. Holland sued the town on June 12, 2012. Sam states Mr. Holland is operating a junkyard and needs to clean it up. Mr. Holland is contesting the court's ruling and is bringing it Superior Court. States if Mr. Holland wins this contest he will be allowed to operate a junk yard on that site. Dennis asked if the District Court said he was running a junk yard. Sam stated "Yes" he is operating a junk yard illegally and has a list of items that need to be removed but has not. Sam is begging ZBA to refuse his application as it has been presented. Not knowing what the ZBA will decide he wants to give a list to the ZBA that the town feels Holland should be subject to should we decide to grant his application.

Angel asked if public has anything to say: Steven Philbrick of 380 Juniper Hill, a neighbor and is opposed to the Special Exception. He submitted a copy of a letter of protest to town dated 1998 and a protest letter from people on the road dated 2007 concerning truck traffic on the road and going onto Rte. 9. States the road is not constructed for that kind of traffic. Submitted a letter from a lawyer for the Stoddard School Board dated 2007, stating the road was in unsafe condition for school bus traffic so they wouldn't pick up his son for school. Steven asked if we could place growth limits on the size of the business. States the increased traffic of large vehicles in and out of the road would put people in his area in harm's way.

Pam Ross, of 454 Juniper Hill Rd, 1 mile further up the road from Mr. Holland. She acquired her property in 1998 thinking it would remain rural. She feels her property value will drop if Ken gets permission to run a business. She has safety concerns regarding the truck traffic on the road and has environmental concerns stating there may be run off into the water that runs along in back of his property and into Rob Reservoir. She sees no relationship of Rte. 9 businesses and the Juniper Hill Road site the lawyer referred to, in regards to traffic and parking as the others all have entrances directly on Route 9. She submitted photos, taken yesterday, of equipment parked along the road and similar photos she took in 2007 to show the

increase in the machinery stored there. Feels the flat bed parked along the road causes a danger in that if she had to move over for a car to pass she could slide into it. She states she is not necessarily against the business but has concerns about it. She states we can keep the photos.

Attorney Czekalski & Ken looking at pictures Pam presented. Rebuttal to Attorney Bradley by Attorney Czekalski – Mr. Bradley mentioned the neighboring businesses; they all have multi-faceted components and are also on 2 acres. There are 2 retail saw businesses up the road from Holland's site that utilize FedEx trucks every day. Addressing Rural character ; Czekalski states Mr. Holland needs to do his business the correct way. Self-employed businesses similar to Holland's request are a part of the rural character in our town and all the neighboring towns. Value is in helping the gentleman do it legally, get it into compliance and help set standards for the town and increase the tax base of the town. Most of the site is going to be fenced in and the equipment will not be seen from the road. They took their litigation to the superior court as Superior Court is the one with jurisdiction for junk yards as our town doesn't have an ordinance regarding junk yards. Holland will address the parking issue. The same 2 people who have been driving the vehicles for years will still be operating them, so there will be no increase in traffic. He stated the last few items on Mr. Bradley's list are not the concern of the ZBA; they are issues for the Zoning Board. In his rebuttal to Mr. Philbrick; the protest letters predate Mr. Holland's ownership of the property. Angel asked what date Mr. Holland purchased his property. He replied he thought it was 2006 or 2007. The date on the subdivision deed is Nov 2005. Attorney Czekalski stated Mr. Philbrick and Ms. Ross should file protest to the town and the State of New Hampshire telling them the road is unsafe, not prevent Holland from doing business. Stated rural character is small businesses and owning a backhoe goes with rural character. States everything the court ordered removed has been removed. The road itself is a nuisance as it is always dusty. Attorney Czekalski and Mr. Holland viewed the prints Mr. Bradley submitted.

Mr. Bradley states Mr. Holland has no authority to operate on that site as he is not there legally. His attorney pre-supposes he is there legally. He is here tonight to get approval to be there legally. In order for him to do so he needs to meet the conditions in the ordinance. Angel stated "as we have received new information tonight we will continue the hearing on July 19<sup>th</sup> at the Town Hall at 7:30p.m. Testimony will be accepted then."

Motion made by Dennis Pellegrino to adjourn the meeting at 9:45 p.m. Motion seconded by Paul Krampfert and unanimously approved.

Next meeting will be held July 19, 2012 at 7:30 p.m. at the Town Hall.

Respectfully submitted,

Kathleen Ellis

Secretary

## **Variance Notice of Decision**

Submitted by zbasec on Thu, 06/21/2012 - 8:47pm.

Town of Stoddard

Zoning Board of Adjustment

1450 Route 123 North

Stoddard, NH 03464

### **NOTICE OF DECISION**

Case 2012-1

Dear Mr. Williams,

You are hereby notified that the appeal of Rodney & Dale Williams for a variance

regarding Article 111, Section 1 of the Community Planning Ordinance has been **DENIED**, by the affirmative vote of at least three members of the Zoning Board of Adjustment.

The reasons for denial follow:

1. Granting the variance would be contrary to the public interest and not consistent with the spirit of the Zoning Ordinance because the proposed construction is out of character with the surrounding area and could contribute to runoff into the lake and surrounding area.
2. The applicant failed to provide any evidence that property values would not be diminished if the proposed structure were built because of the reduction of privacy resulting from the reduced tree buffer.
3. Denying the variance does not impose an unnecessary hardship. The property was bought when current setback requirements were already in place and therefore a self-imposed hardship was created. In addition the subject lot is not unique in its environment, as it is similar in size and shape to other lots in the surrounding area.
4. Granting the variance would not do substantial justice.

Angela Nicoletti

Chairman

Zoning Board of Adjustment

June 21, 2012

NOTE: Any person affected by this decision has a right to appeal this decision. If you wish to appeal, you must act within 30 days of the date of this notice. The details concerning the necessary procedures for making an appeal are covered in New Hampshire Statutes, RSA 677. You are required to follow the steps outlined in the Statute.

## **ZBA Notice of Decision**

Submitted by zbasec on Thu, 06/21/2012 - 8:35pm.

Town of Stoddard



Zoning Board of Adjustment

1450 Route 123 North

Stoddard, NH 03464

**NOTICE OF DECISION**

Case: 2012-3

Dear Mr. and Mrs. Paul Dauphin,

You are hereby notified that the appeal of Cheryl and Paul Dauphin for a variance regarding Article 111, Section 1 of the Community Planning Ordinance, has been **GRANTED**, by the affirmative vote of at least three members of the Zoning Board of Adjustment. It is further noted that granting this variance is contingent upon the applicant(s) obtaining all required permits.

This variance is for construction of a mud room as proposed on your application you submitted to the ZBA on March 1, 2012.

Angela Nicoletti

Chairman

Zoning Board of Adjustment

June 21, 2012

NOTE: Any person affected by this decision has a right to appeal this decision. If

you wish to appeal, you must act within 30 days of the date of this notice. The details concerning the necessary procedures for making an appeal are covered in New Hampshire Statutes, RSA 677. You are required to follow the steps outlined in the Statute.