

# **Minutes of ZBA Meeting August 2, 2012**

Submitted by zbasec on Thu, 08/02/2012 - 8:14pm.

Preliminary

Town of Stoddard

Zoning Board of Adjustment

Minutes of Meeting held August 2, 2012

Meeting convened at 7:30 p.m.

Members attending: Chair, Angela Nicoletti, Vice Chair, Dennis Pellegrino, Paul Krampfert, Ed Saleski, Mario Zamaripas

Alternates not in attendance: Peter Athearn, Steve McGerty

Minutes of previous meeting:

Corrections to minutes stating Peter Athearn sat in for Mario Zamaripas because Mario had arrived late and had no vote.

Dennis made motion to accept minutes with correction, Paul seconded the motion, and minutes were approved as amended.

Correspondence:

None

Special Exception Decision for Ken Holland:

Kathy read the Special Exception application. Dennis read the zoning ordinance's criteria regarding Special Exceptions from RSA 674:33-34. Angel read the general purpose and intent of our ordinance as stated in our Zoning Ordinance, "To preserve the rural character of the town, promote health, safety & welfare of the town and protect the value of property." Paul read the specific criteria of our Zoning Ordinance stating, "Commercial and industrial uses can be allowed in a Rural District if it is determined there is adequate off street parking and that there will be no nuisance to neighbors by reason of smoke, dust, noise, odor, illumination or other hazard to the public health. It is the applicant's responsibility to prove the above will not occur."

Angel asked members to speak to the adequacy of the parking space and the list of the equipment as mapped out by the applicant. Paul stated the 31 pieces of equipment, when parked, would cover less than 5600 sq. ft. of space according to the list and map. There appears to be about 16,575 sq. ft available on the site for parking, buildings, storage, workspace and movement of vehicles. It is not clear if all that space is available for use given required setbacks. Ed stated there is less than a third of an acre left over for work and he feels it would be very difficult to have that many businesses on the site. It was noticed that the driveway shown on the map is not in the same location as what we viewed on our site visit. Dennis was concerned

the space shown is not adequate for the applicant's larger vehicles to turn around in.

Angel asked about the saw mill operation, asking if it produces noise and dust. Paul stated if it was moved to the back of the site it would generate less of a nuisance, but that there was nothing written stating where that work would occur. Dennis stated that there was no way to know if Mr. Holland would turn people away that come for products once they hear he has a mill operating.

Regarding hazards to public health, Angel asked if trucks entering onto the class 5 road constituted such a hazard. Paul felt it wouldn't be a continuous traffic flow and probably minimal traffic at that. Angel said traffic was the major concern of Mr. Holland's neighbors.

Angel asked members if the proposed use and equipment differ from what is there now. Currently the Town of Stoddard feels it is a junkyard. Mario stated that if equipment is functional it is not junk and the court order for the removal of specific items would have to be met. Dennis stated "The town was also concerned that the soil may contain hazards", and that is a major consideration. Angel stated we could add soil testing as a condition to the decision. Paul read from an article in the New Hampshire Town and City publication dated June 2007 that concerned him. "Pursuant to RSA 236:119 any unlicensed junk yard location is declared a nuisance if it continues." He went on to say that since the property is already declared a nuisance, how do we address that? Angel stated "since the property is already declared a junkyard and resembles a junkyard, how do we know it will become something different?" Dennis read part of statute RSA 322 regarding licensing of junkyards. Angel stated "We need to deal with the request before us; the ZBA doesn't have the authority to give permission for a junkyard."

Angel reviewed the abutters concerns. Mr. Garnets' concern was about the hours of operation. He suggested they be 8am – 5pm Monday- Saturday. Mrs. Hayes was

concerned about drainage of contaminated liquids coming from the back of the Holland property. Paul stated “The back of Holland’s property drops sharply onto hers, which would increase the chance of any leakage to run onto the Hayes property.” The selectmen are concerned about the junkyard status, vehicles parked in the right-of-way, no plan for disposal of saw mill waste, and too many business uses in a small place. The Compliance Officer was concerned there were many unregistered vehicles in the yard and increased egress and ingress on to the intersection he feels is the most dangerous intersection in Stoddard. Angel stated she is concerned about the intersection and agrees it is a dangerous one but that it is not our focus, our focus is “Will it be a danger to public health?” Paul stated “That it is difficult to answer because we don’t know how it is going to be. We don’t know if any of the equipment will put out black smoke into the air or if it would be clean. It currently doesn’t smell and we didn’t see any evidence that there were contaminants on the ground.” Dennis’ position is that there are a lot of unknowns. He mentioned there appears to be a lot of information missing. We don’t know which vehicles are junk or if there is contamination in the ground, which if there were, would be considered a health hazard.

Angel referred to pictures Pam Ross, a neighbor, presented showing that equipment was parked alongside the road in 2007 and equipment is parked there now in 2012. Even though they stated it was a nuisance to them, there was no effort by the owner to remove it. It was also reported that the school bus refused to go up the road as it was too narrow and there was no safe place for it to turn around. She summarized the concerns of the neighbors as it would destroy the rural setting of the neighborhood and more large vehicles and trucks would be using the road.

Angel asked, “How does his proposed business differ to businesses in the area?” Dennis stated “His saw mill is too small to be compared to the Carlisle business. The Hayes Garage was grandfathered in and both of those businesses have ingress & egress is on a highway, Route 9, so there can be no comparison.” Paul stated “Look at

it as a person trying to make a living. He may head toward any application where he can make money as the opportunity arises, if he has wood, he may use the sawmill and sell lumber or firewood. Not all the purposes would occur at the same time. The burden is on the applicant to prove what is going to work, which is very difficult for him to do.” Angel stated “It comes down to using a residential road, which has been a nuisance to the neighbors. It will not be any different if he gets an exception. That nuisance will not change or go away. Ed asked, if it is true that you can’t have a home on a commercial property? If so, there is a house on the plan that may not be within zoning regulations and he is nervous about approving a plan with it on there.

Angel stated, “We can approve the proposal without conditions, or approve with conditions or deny the proposal. The criterion we must follow is the proposal must be in harmony with the ordinance to protect property values, to preserve rural character of town and protect the health, welfare and safety of the town. Specifically, the applicant must prove there is adequate off street parking and that there is no nuisance to the neighborhood such as dust, noise, smoke, odor, or illumination or hazards to public health.

Members were given time to think before voting. Ed, Paul, Mario, Dennis and Angel all voted against approving the application outright without conditions.

Members stated it would be difficult to approve the Exception with conditions. Paul stated, “This would be a difficult decision. With the known past history the applicant has with the town, do we have confidence that the applicant would adhere to our conditions.” Angel voted against approving with conditions, stating it isn’t in harmony with the ordinance to protect property values, it wouldn’t promote the health and safety of Town do to the ingress and egress onto the residential road and the nuisance factor is considerable. She is not clear on the adequacy of off road parking but feels that a business in that area is a hazard to public health. Ed agrees there would be too many conditions to enforce and they would have to be monitored for years. He voted against conditions. Paul agrees he is unclear as to the parking,

but is clear the property is currently a nuisance and he would not grant the Exception with conditions. Mario stated “There are too many nuisance issues and questions”, he voted against the Exception. Dennis stated it is the purpose of this group to keep things in harmony with the town. He abstains from the vote and makes a recommendation that the concerns of the Board are addressed. He stated “It is important that people have the opportunity to improve their property and know the requirements of the town”.

Ed made a motion that we deny Mr. Holland’s proposal for a business on Juniper Hill Road. Mario seconded the motion. Dennis abstained. Angel stated “We have a quorum to deny the proposal. The proposal as written is denied.” Angel asked members to complete a worksheet documenting their thoughts.

Request for a Rehearing on the Rodney Williams Decision:

§Members each had a copy of Mr. Williams’s request for a rehearing. Angel read our refusal letter with the Boards reasons for denial of the Variance and asked how the Board felt. Paul stated we took a fair amount of time in deliberating the subject at the time of the hearings. Dennis felt Mr. Williams gave us all the information he had and has produced no new information. Angel made a motion that we not the rehear the proposal. Mario seconded the motion. The vote was unanimous to not rehear his request.

New Business:

None

Old Business:

Work began to integrate the meeting standards into the ZBA policies to have a more complete policy. Work on this will continue at the August 16th meeting

A motion was made by Dennis and seconded by Mario to adjourn the meeting. The meeting was adjourned at 9:17 p.m.

The next meeting will be held August 16, 2012 at 7:30 p.m. at the Town Hall.

Respectfully submitted,

Kathleen Ellis

Secretary