

**GREENLAND ZONING BOARD  
PUBLIC HEARING**

**TUESDAY, July 21, 2009**

**Members Present:** Mr. Chris Halligan, Chair  
Ms. Liz Cummings, Vice Chair  
Mr. Don Arsenault  
Mr. Sean Conner  
Ms. Stephanie Glennon

**Staff:** Mr. Robert Cushman, Building Inspector  
Ms. Amy Leonard, Secretary

Chairman Halligan opened the public hearing of the Greenland Zoning Board of Adjustment at 7:03 P.M. and a roll call was taken. He announced the procedures of the Zoning Board of Adjustment and stated that a quorum was present and they would proceed with the meeting. Mr. Halligan noted the meeting was being recorded and the minutes would be available to the public when completed.

**Public Hearing**

**1. Appeal from an Administrative Decision, 6 Drake Drive, Owner/Applicant: Kona Realty Trust, (Map R12, Lot 6).** Applicant is seeking an appeal from the Building Inspector's determination that several variances are required before a driveway permit is granted. The applicant is requesting a continuation of their appeal of the Building Inspector's decision for an additional 30 days.

Larry Morse from New Hampshire Soil Consultants, representing the applicant, Peter Goodman of Kona Realty Trust, approached the Board and asked for another continuance until the August 18, 2009 meeting. Mr. Morse stated the applicant just received a Request for More Information from DES (attachment 1) and is in the process of trying to complete those requests. He stated he needs the DES approval in hand before continuing with this appeal. He also informed the Board that the applicant has hired Attorney Thomas Keane, who was unable to be present at tonight's meeting.

Chair Halligan opened the hearing for public comments. Hearing none, the hearing was closed. Ms. Glennon asked if they had submitted a Planning Board application yet. Mr. Morse responded no, they are still waiting to get D.E.S. approval for a wetlands permit before filing a Planning Board application. Ms. Glennon stated that per RSA 676:7, a public hearing shall be held within 30 days of receipt of the notice of appeal and thought it would benefit the applicant, as well as the abutters, to go forward with the application at tonight's meeting. She noted on item 4 of the DES letter, which stated, "DES respectfully requests that you withdraw your application to avoid denial" and stated because of that statement and the fact that there is no pending Planning Board application filed, she would not be inclined to continue the public hearing one more month. Ms. Cummings stated she felt it would only be fair to the applicant if the Board continued the matter

one more month so his attorney can better present the application. Ms. Cummings suggested the applicant may withdraw the application if DES approves the wetlands permit before the August meeting; if not, the applicant should be prepared to present the application, as submitted, at that meeting. Mr. Conner asked if they would be causing the applicant any undue harm by denying the continuance of the appeal tonight, in terms of complicating the process of moving forward with the Planning Board. The Board did not think it would complicate the Planning Board process. Mr. Morse stated he did not have any problem taking this discussion back to the applicant, informing him that he would need to move forward with the appeal at next month's meeting. After the discussion, the following motion was made:

**Motion 1: Lizbeth Cummings moved to extend this administrative appeal request until their next meeting on August 18, 2009. Don Arsenault seconded the motion. There was a vote of 4 for and 1 against (C. Halligan). MOTION CARRIED.**

**2. Appeal from an Administrative Decision, 22 Brackett's Point Road, Owner/Applicant: Thomas & Allison Brackett, (Map R14, Lot 14).** Applicant is seeking an appeal from an administrative decision regarding the denial from the Board of Selectmen of building permits for improvements to six seasonal cottages, specifically units 1, 1A, 2, 6, 7 & 8.

For the record, Tom Brackett and his attorney, Dave Engel, were both present at the meeting.

Chair Halligan requested a Board discussion, regarding the legalities of this appeal, before opening the public hearing for the administrative appeal application from the Board of Selectmen's decision to deny building permits for specific units at 22 Brackett's Point Road. He stated he is of the opinion that the Board of Selectmen does not have the authority or right to issue/grant building permits. The Town has a Building Inspector and a denial of the six seasonal cottage building permit applications should have come from him, not the Board of Selectmen; therefore, he feels the ZBA has no jurisdiction to hear this appeal request. Mr. Conner noted he interpreted the matter as being: the Selectmen decided on the said building permits at the request of the Building Inspector, but the Building Inspector would have actually issued the permits. Ms. Glennon noted the matter should have come to the ZBA, not the Selectmen, once the Building Inspector denied the permits, as he is the administrative officer. She found it disconcerting that the Board of Selectmen even entertained the discussion, as they were the party last month who appealed the Building Inspector's decision to issue building permits for units 6, 7 and 8. She didn't understand why the applicant went to the Selectmen to have them undo the ZBA denial from last month. She stated the Town's zoning ordinance names the Building Inspector as the administrative officer and agreed the ZBA has no jurisdiction to hear this appeal. She proceeded to back up that statement by reading RSA 676:5 2(a), Appeals to Board of Adjustment. Ms. Glennon stated this matter is exactly what the Board heard last month and if the applicant felt the Board had any ambiguity, he should have asked for a Motion of Rehearing, which he was told he could do at the last meeting. She reviewed the March 10, 2009 letter, from the Building Inspector addressed to Mr. Brackett, stating he was denying the building permits based on his determination that

units 1, 1A and 2 had been abandoned. Ms. Glennon stated the applicant appealed that decision; the ZBA heard the appeal and made a ruling to uphold the Building Inspector's decision. Mr. Arsenault stated on June 29, 2009, the Selectmen voted to deny the building permits and they agreed with the ZBA that units 1, 1A, 2, 6, 7 and 8 had all been abandoned and questioned what the harm would be to hear it tonight. Ms. Glennon repeated that the ZBA does not have the jurisdiction, or the power to hear it in this posture; plus it would only multiply litigation to Superior Court. Ms. Cummings wanted to clarify a few points: in the Selectmen meeting minutes of June 22, 2009, Mr. Brackett stated, to the Selectmen, that at the June 16<sup>th</sup> ZBA meeting, he was told to go before the Selectmen for seasonal permits for units 1, 1A, 2, 6, 7 and 8; she stated she was at that ZBA meeting and that did not happen, the ZBA did not send him anywhere. The rest of the Board agreed. Ms. Cummings also stated that if, in fact, the Selectmen could issue building permits, why did they not just tell the Building Inspector to revoke the permits for units 6, 7 and 8? The Selectmen had to actually appeal the Building Inspector's decision to the ZBA, which that alone tells you the Selectmen do not have the authority to issue or deny building permits. She further stated that throughout the Selectmen minutes of June 22 and June 29, it is stated over and over again, by the majority of the Select Board, that they did not believe they had the authority to issue the said permits; the applicant should go before the ZBA for a special exception. Ms. Cummings also agreed the ZBA does not have the jurisdiction to hear the appeal. Mr. Conner stated he was confused as to why, in the Selectmen minutes of June 29<sup>th</sup>, Mr. Sanderson would advise the applicant that he would be able to appeal the Selectmen's decision to the ZBA. He felt there was an expectation set with that statement, regarding the applicant's options. Ms. Glennon stated the ZBA cannot control what the Selectmen tell people who are before them; they only have the powers given to them by statute and under the zoning ordinance. She stated she does not see how they have any jurisdiction to hear an administrative appeal from anybody other than the administrative officer under the Town's ordinances. She compared the Selectmen's authority regarding issuing building permits to that of the applicant going before the Library Trustees. They just cannot overstep the Building Inspector and grant permits. Ms. Cummings stated the Building Inspector makes the decision to grant building permits. The Selectmen are able to enforce his decision or action, they don't create the action. Ms. Glennon noted the Selectmen do have the authority to act under an enforcement issue, just not an administrative action. Mr. Halligan agreed with Ms. Cummings and Ms. Glennon.

Mr. Engel repeatedly attempted to address this issue. Chair Halligan denied his attempts, due to the fact that it was a Board discussion about whether the public hearing would even be opened. Ms. Cummings suggested if the public hearing was not opened, that the application fee be refunded to the applicant. After the discussion, the following motion was made:

**Motion 2: Stephanie Glennon moved to not open a public hearing on Item 2, regarding an appeal from an administrative decision regarding the denial from the Board of Selectmen of building permits for improvements to six seasonal cottages, specifically units 1, 1A, 2, 6, 7 & 8, due to the fact, the Zoning Board of Adjustment does not have the jurisdiction**

to hear it. Lizbeth Cummings seconded the motion. There was a vote of 4 for and 1 against (S. Conner). MOTION CARRIED.

**3. Any business that may legally come before the Board but does not call for public hearing, including: review of previous meeting minutes, consideration of their approval, consideration of timely-filed motions for rehearing, and consideration of further motions.**

1) The Board reviewed the minutes of June 16, 2009. Ms. Cummings noted she made a few clarifying additions to the minutes; nothing was changed that would affect the intent of the discussion. After the review, the following motion was made:

**Motion 3: Lizbeth Cummings moved to accept the minutes of June 16, 2009, as amended and Stephanie Glennon seconded the motion. All were in favor, with a vote of 5 for and 0 against. MOTION CARRIED.**

2) Ms. Glennon stated she had been reviewing the Instructions for Appeals to the Greenland Zoning Board of Adjustment and found that over the years, the top paragraph had been merged into item 1, under Appeal from an Administrative Decision. She suggested making the first section under item 1 its own paragraph and place it before the four types of appeals section (attachment 2). After the review, the rest of the Board agreed and the following motion was made:

**Motion 4: Stephanie Glennon moved to replace the paragraph to its original location, which is before the four types of appeals section as outlined on the submittal (attachment 2). Lizbeth Cummings seconded the motion. All were in favor, with a vote of 5 for and 0 against. MOTION CARRIED.**

Being no further business, the meeting was adjourned at 7:45 P.M.

**Motion 5: Lizbeth Cummings moved to adjourn the meeting at 7:45 P.M. and Don Arsenault seconded the motion. All were in favor, with a vote of 5 for and 0 against. MOTION CARRIED.**

Recorded, transcribed and typed by:

Amy Leonard  
Secretary, Zoning Board of Adjustment

Attachments:

1. DES Request for more Info., Re: 6 Drake Drive
2. Changes made to the Instructions for Appeals to the Greenland Zoning Board of Adjustment
3. Agenda, dated 7-21-09

Approved by the Greenland Zoning Board on August 18, 2009.