

**GREENLAND ZONING BOARD  
PUBLIC HEARING**

**TUESDAY, September 15, 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 7:00 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. Request for an Area Variance, 568 Portsmouth Avenue, Owner: New Generation, Inc./Applicant: Annemarie Cullen, (Map U5, Lot 19).**

Applicant is requesting an area variance from Article IV, Section 4.2, Subsection D of the zoning ordinance: to permit three additional parking spaces to be constructed within the 30 foot front yard setback along Tide Mill Road.

Annemarie Cullen and Kelsi Deter-McCarthy, New Generation, Inc., approached the Board to present the application for an area variance for three additional parking spaces. Ms. Cullen pointed out the area where the parking spaces would be constructed, which was to the left of the thrift shop on Tide Mill Road. She noted the spaces would be off the road, which would help address safety issues so customers would not park on and block the road. Mr. Arsenault stated he looked at the site and found this would be the best area for the extra spaces, due to the location of wetlands and the septic on the property. Ms. Glennon stated in 2005, this Board had granted a variance for four additional parking spaces and asked why they do not use those. Ms. Cullen responded those spaces were to accommodate the day care facility and just too far away from the thrift shop, as customers are carrying items to and from the shop. Ms. Deter-McCarthy noted that Ms. Cullen and herself were only hired within the past year, so she was not certain why those four spaces were never completed (2 were not used and the other 2 are still gravel). She noted there is a big need for these new spaces, as business has increased tremendously due to the economy. She further added this would be the solution to the abutting neighbors concerns/complaints of customers parking on and blocking the road.

Chair Halligan opened the hearing for public comment. Nancy Cannon, 10 Tide Mill Road, asked if the thrift shop's staff park in the existing parking lot (to the right of the shop). She suggested if the staff

started parking in the area below (parking area for the day care, off Portsmouth Avenue) that would free up at least two more spaces for customers. Everyone agreed that would help the situation. Hearing no other comments, the hearing was closed and the following motion was made:

**Motion 1: Don Arsenault moved to grant the Area Variance requested, to install three 10 x 20 parking spaces; with the condition that the spaces are constructed to permit a 10-foot area from the edge of Tide Mill Road. This area is to be reserved for public snow plowing operations. Lizbeth Cummings seconded the motion.**

Ms. Glennon stated her major concern is the hardship factor; she is not seeing any special condition of the property, only for the use. Mr. Arsenault disagreed and stated the hardship is the fact that Tide Mill Road itself is old and not as wide as most roads in town. He feels this would alleviate the problem of customers parking on and blocking the road. Ms. Glennon stated the hardship has to be on the property. Ms. Cummings stated this property has significant and distinct front and back issues and there is no easy access from one to the other. She further stated they can't construct the spaces elsewhere, due to the topography of the land, wetlands and area of the septic system. She agreed the spaces should be in close proximity of the thrift shop. Mr. Conner agreed and added this is a logical proposal to alleviate the neighbor's issues. Mr. Cushman showed the Board a larger plan of the 2005 variance approval for a better visual and stated this property is unique in the fact that they have two frontages. The Board asked Mr. Cushman if the open space requirement is met and Mr. Cushman replied yes. He stated this would be the best area for the spaces and would help relieve the traffic and safety issues. After the discussion, the following vote was taken on the motion:

**There was a vote of 5 in favor, to grant the area variance as requested and 0 against. MOTION CARRIED.**

**2. Appeal from an Administrative Decision, 22 Brackett's Point, Owner/Applicant: Thomas & Allison Brackett, (Map R14, Lot 14).**

Applicant is seeking an appeal from the Building Inspector's decision to deny building permits for improvements to six (6) seasonal cottages, specifically units 1, 1A, 2, 6, 7, 8, based on the Zoning Board of Adjustment's June 16, 2009 decision that these six (6) cottages had been abandoned for habitational use: the applicant states the denials result in a taking of their property without just cause or compensation.

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 and appropriateness of this appeal, before opening the public hearing for the administrative appeal from the Building Inspector's decision to deny building permits for improvements to six (6) seasonal cottages, specifically units 1, 1A, 2, 6, 7, 8, which was based on the Zoning Board of Adjustment's June 16, 2009 decision that these six (6) cottages had been abandoned for habitational use. Ms. Cummings stated her opinion would be to hear the appeal, as she feels it is different because this new denial was for building permits for 6 seasonal units,

which the applicant feels is an unauthorized taking of the property, not the abandonment issue they had originally heard; also the original denial was for full-time, year-round residences. Ms. Glennon disagreed and stated at the ZBA's meeting of June 16<sup>th</sup>, they issued a decision that all these units had been abandoned, which supersedes this request. She referenced the Building Inspector's letter, dated March 10, 2009. She also stated the appeal period for their June 16<sup>th</sup> decision is over and felt the applicant should have applied for a variance or special exception; they should not have gone back to the Building Inspector to ask him to overrule the ZBA's decision. Mr. Arsenault agreed and stated the applicant's only option is a special exception request or Superior Court. He did not feel this was a taking of the applicant's property or even unfair, because in 1987, the Town agreed to give the applicant six years to fix up 22 units, which were located on one lot; the applicant not only did not accomplish this within the six years, but waited an additional 16 years and then decided to come to the Building Inspector requesting permits. Ms. Glennon thought it might be appropriate to have a public hearing, based on Mr. Cushman's latest denial letter, which stated the applicant could appeal his decision to the Zoning Board. She questioned if Mr. Cushman erred when he wrote that statement or in denying the permits at all. Mr. Conner noted that ultimately, the Board will decide if the Building Inspector was in error by denying the permits, because the Board had already decided those units were abandoned. After the discussion, the following motion was made:

**Motion 2: Lizbeth Cummings moved to hear the administrative appeal for 22 Brackett's Point. Sean Conner seconded the motion. There was a vote of 4 for and 1 against the motion (D. Arsenault). MOTION CARRIED.**

Mr. David Engel, representing the applicant, approached the Board and submitted the July 6, 2009 letter of decision from this Board to Mr. Brackett and pointed out, on page 2, where he highlighted their own words that stated, "the grandfathered use of seasonal cottages is still available". He indicated the applicant applied for seasonal use permits, as implied in that letter. Mr. Engel also submitted a memorandum (attachment 1) regarding the reasons and facts for this appeal. He stated the first appeal was for year-round use; the current building permit applications (under appeal) are for seasonal use to repair said units. Mr. Engel pointed out that abandonment depends on the concurrence of two factors: 1. Physical abandonment; and 2. Intent. He stated the applicant is entitled to these permits as a matter of right and does not need any special exceptions. At 7:55 P.M., the Board asked to take a 10-minute break in order to read the submitted memorandum in full and the following motion was made:

**Motion 3: Lizbeth Cummings moved to take a 10-minute break in order to read the submitted memorandum in full. Stephanie Glennon seconded the motion. There was a vote of 5 for and 0 against. MOTION CARRIED.**

The meeting came back to order at 8:05 P.M.

Mr. Engel resumed presenting the appeal application. He pointed out there are 33 buildings on one tract; the non-conformity is the whole tract, not each individual unit and stated the Board would have had to deem the whole tract abandoned, not the six units they did. He stated they need to look at the property as a straight, non-conforming, pre-existing use; otherwise, it's a taking of property. Mr. Arsenault

noted the abandonment ordinance has the word "vacant" in it and those six units were vacant for over one year; so once deemed abandoned, the use reverts to what is allowed in the current zoning ordinances and a special exception is now needed. Mr. Engel disagreed that a special exception is needed, because they would have had to abandon the entire tract, which did not happen; there was no abandonment of the use as a whole tract.

Chair Halligan opened the hearing for public comments. Hearing none, the hearing was closed.

Ms. Cummings stated after reading the memorandum, she found Mr. Engel had left out a really important case that negates most of his argument. That case being Kenneth McKenzie v. Town of Eaton Zoning Board of Adjustment that was argued on November 14, 2006 and an opinion was issued on January 31, 2007, regarding a storage shed that was damaged by a windstorm, but not rebuilt within one year. She noted the case clearly stated that a time requirement is very pertinent. It also helps Towns reduce non-conformity uses; in this case, a shed, not the entire plot. This particular shed was not rebuilt in the required one-year time frame and the court did determine that that was allowed. Ms. Cummings also pointed out that Judge Duggan had a concurring opinion regarding the City of Minot, ND Supreme Court. He argued the fact that abandonment after one year might be a possible taking of a person's property in certain cases; for example, if a property owner was deployed to Iraq. Ms. Cummings noted she compared this reasoning/example with the applicant's case and could not find a good reason why these six units had not been repaired for such a long period of time. She did not understand why the applicant had not appealed the June 16, 2009 ZBA decision, which, in her opinion, showed the applicant must have agreed with the abandonment decision. Ms. Cummings also noted the section highlighted by Mr. Engel, in the Board's July 6, 2009 letter of decision, does not mean the applicant has the right to building permits; it simply states a seasonal cottage may be available once current zoning procedures are followed. Ms. Cummings did not feel the Building Inspector erred in denying the building permits. With that said, the following motion was made:

**Motion 4: Lizbeth Cummings moved to deny the administrative appeal as presented. Stephanie Glennon seconded the motion.**

Ms. Glennon agreed with Ms. Cummings and added that the statement in their July 6<sup>th</sup> letter does not negate the fact that the Board unanimously agreed those six units had been abandoned. She stated you don't have to go far in the Table of Uses to find that seasonal/temporary units are allowed with a special exception. She read Section 14.3: Abandonment, once more and stated under 3.5.4, the Building Inspector cannot issue a building permit unless the use complies with this ordinance, and/or has been granted a variance or special exception by the Board of Adjustment. After the discussion, the following vote was taken on the motion:

**There was a vote of 5 in favor of the motion to deny the administrative appeal and 0 against. 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 considered a motion for rehearing, pursuant to RSA 677:2, in the matter of: Appeal of Building Inspector's Determination for Kona Realty Trust/Peter Goodman, Trustee, 6 Drake Drive. Mr. Arsenault asked if the applicant would still have the right to go before the Planning Board for a Conditional Use Permit. The rest of the Board responded yes. After reviewing the motion for rehearing, the following motion was made:

**Motion 5: Lizbeth Cummings moved to deny the Motion for Rehearing in the matter of Kona Realty Trust/Peter Goodman, Trustee, 6 Drake Drive, as requested in the letter dated September 4, 2009. Stephanie Glennon seconded the motion.**

Ms. Cummings stated she found no significant statement within the motion that showed the Zoning Board of Adjustment had erred in any way during their discussion or decision regarding the applicant's Appeal of Building Inspector's Determination at the August 18<sup>th</sup> meeting. She felt in denying this motion, the Board would not be limiting the applicant's right to go before the Planning Board for a Conditional Use Permit. After the discussion, the following vote was taken on the motion:

**There was a vote of 5 in favor of the motion to deny the Motion for Rehearing, in the matter of Kona Realty Trust/Peter Goodman, Trustee and 0 against. MOTION CARRIED.**

2) The Board reviewed the minutes of August 18, 2009. Ms. Glennon made a minor editorial change to the minutes (page 3, paragraph 2, line 14, change the word "grants" to "considers"). After the review the following motion was made:

**Motion 6: Lizbeth Cummings moved to accept the minutes of August 18, 2009 as amended and Don Arsenault seconded the motion. All were in favor, with a vote of 5 for and 0 against. MOTION CARRIED.**

3) Mr. Conner informed the Board that he would not be present at their October meeting.

Being no further business, the meeting was adjourned at 8:32 P.M.

**Motion 7: Lizbeth Cummings moved to adjourn the meeting at 8:32 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. Memorandum for 22 Brackett's Point, re: Appeal from an Admin. Decision
2. Agenda, dated 9-15-09

Approved by the Greenland Zoning Board on October 20, 2009.