

**GREENLAND ZONING BOARD  
PUBLIC MEETING**

**TUESDAY, November 17, 2009**

**Members Present:** Mr. Chris Halligan, Chair  
Ms. Liz Cummings, Vice Chair  
Mr. Don Arsenault  
Mr. Sean Conner  
Mr. Ron Gross, Alternate

**Members Absent:** Ms. Stephanie Glennon

**Staff:** Ms. Amy Leonard, Secretary

Chairman Halligan opened the public meeting 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 they had a quorum. Mr. Halligan noted the meeting was being recorded and the minutes would be available to the public when completed.

**Public Meeting**

**1. 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 discussed the request for a Motion for Rehearing (attachment 1), in the matter of 445 Portsmouth Ave, LLC, 445 Portsmouth Avenue. The application for an Administrative Appeal and Use Variance was denied during the October 20<sup>th</sup> Zoning Board of Adjustment meeting. Mr. Conner, who was not present at the October 20<sup>th</sup> meeting, indicated he read all the material presented, as well as the minutes from that meeting and stated he felt prepared and comfortable to comment and vote on this Motion for Rehearing request. Mr. Gross suggested that Mr. Connor comment, but not vote, due to past litigations regarding members not being present at various meetings and then voting on issues at the next meeting. The rest of the Board felt it was okay for Mr. Connor to comment and vote. After the discussion, Mr. Connor stated he would be commenting and voting on this matter. With that said, the following motion was made to begin the discussion:

**Motion 1: Lizbeth Cummings moved to deny the Motion for Rehearing in the matter of 445 Portsmouth Ave, LLC, 445 Portsmouth Avenue. There was no second to the motion. MOTION FAILED.**

Based on the fact that Motion 1 failed, the following motion was made:

**Motion 2: Lizbeth Cummings moved to accept the Motion for Rehearing in the matter of 445 Portsmouth Ave, LLC, 445 Portsmouth Avenue. Don Arsenault seconded the motion.**

Ms. Cummings began by discussing the Motion for Rehearing request on the Administrative Appeal denial by stating Section 3.5.1 must be considered when deciding whether an action meets the use requirements. To not focus on the paragraph would not only be inappropriate, but would not follow the wishes of the voters who approved its inclusion in the ordinance. She noted that the cases quoted in the rehearing application are appropriate for the inclusion of language if the ordinance itself were mute; however, the Town ordinance is not mute. Ms. Cummings stated the ordinance does use the words "such as" and "similar in nature" and lists specific items after these words. She felt when looking at "paving company", one must see if the items are similar in nature to those listed in the professional service definition. In the "professional service" definition, there are many occupations listed, occupations that traditionally operate from an office-type location; however, the definition does not stipulate that as a requirement. Ms. Cummings further felt that only a landscaping company comes close to being similar in nature to that of a paving company, but in her opinion, a paving company is not similar to that of a landscaping company. To illustrate this, she looked at two currently operating landscaping companies within Greenland; Lang's Landscaping and/or Green Side Up. In these locations, there are trees, bushes, bark mulch, granite steps and pieces, flowers, greenhouses, storage barns and other items. In both cases, there are some trucks but they are incidental to the operation, not a significant aspect of the operation. She noted during the hearing the Board heard that approximately 6 trucks and trailers would be on site and will be utilized during the hours of operation and felt this number of trucks is not incidental to the operation. She stated there will be no trees, bushes, bark mulch piles, granite steps and pieces, flowers, greenhouses, storage barns and other items. Based on these few items alone, she felt that landscaping and paving were not similar. Ms. Cummings further felt the Board did not arbitrarily, nor capriciously, act during this aspect of the hearing. They considered the applicants opinion that the paving company was a business allowed within the commercial zone. The Board was not persuaded by the applicant's argument and after hearing all information and reading the application, voted to uphold the Building Inspector.

Ms. Cummings then discussed the Motion for Rehearing request for the Use Variance denial and commented on the list of errors the applicant felt the Board made regarding the denial. 1. Consideration of character of the neighborhood: In determining a neighborhood, the applicant would wish the Board to see only the commercial district aspect of the area; however, within sight of this property there are residences, a church, a Town common area, etc. She stated when using the common definition of neighborhood in Dictionary.com, she found the following definition:

Neighborhood

*-noun*

1. the area or region around or near some place or thing; vicinity: *the kids of the neighborhood; located in the neighborhood of Jackson and Vine streets.*
2. a district or locality, often with reference to its character or inhabitants: *a fashionable neighborhood; to move to a nicer neighborhood.*

3. a number of persons living near one another or in a particular locality: *The whole neighborhood was there.*
4. neighborly feeling or conduct.
5. nearness; proximity: *to sense the neighborhood of trouble.*
6. *Mathematics.* an open set that contains a given point.

Ms. Cummings felt when considering the application, one must look at the entire neighborhood, not just the firms within the commercial zone; but given the task before the Board, she stated she only considered the commercial zone. She noted that this does not constitute the entire neighborhood, but for the discussion she would refrain from including the other neighbors. Ms. Cummings stated all but one of the uses cited by the application in its motion for rehearing are permitted uses in the commercial district, whereas operation of the paving company is not. Therefore, the Board did not err when considering the use and the neighborhood aspect of the applicants' request.

2. Application of Relaxed Variance: Section 3.5.3 states "All buildings or structures hereafter erected, reconstructed, altered, enlarged or moved, or all future uses of premises in the Town of Greenland shall be in conformity with the use regulations of this ordinance. Any building, structure or land shall not be used for any manner other than permitted in the district in which it is located." Therefore, the Board is ordinance bound to keep the use intact. But, within the spirit of a variance, they must consider allowing changes (variances) of the ordinance as required by Simplex and Boccia.

The five required standards necessary to meet the Simplex and Boccia are:

1. The proposed use would not diminish surrounding property values.
2. Granting the variance would be contrary to the public interest.
3. Denial of the variance would result in unnecessary hardship to the owner. To include,
  - a. the zoning restriction as applied to the property interferes with the reasonable use of the property, considering the unique setting of the property in its environment.
  - b. that no fair and substantial relationship exists between the general purpose of the zoning ordinance and the specific restriction on the property.
  - c. the variance would not injure the public or private rights of others.
4. Granting the variance would do substantial justice.
5. The use is not contrary to the spirit of the ordinance.

Ms. Cummings stated these requirements were outlined in the applicant's application and the Board clearly considered these items in making its decision. She felt the Board did not error in applying the variance requirements and stated the Board has had experience in the past with both the use and area variance requirements and are aware of the differences. She stated the applicant has the burden of convincing the Board that all the standards for a variance are met and felt just because the Board did not grant the variance, does not mean they erred in the actions.

3. Abrupt Conclusion Without Conditions: Ms. Cummings stated the Zoning Board is not required to hear, consider, or take action on proposed conditions to be added to a variance. Although a Board member did ask the question; at no time did the applicant offer any conditions or recommend any conditions. She felt the applicant has the burden of convincing the Board that the standards for a variance

have been met and she quoted from NH OEP Manual, revised October 2009: "While conditions may be attached to modify objectionable features, all other requirements for a variance or special exception must be present. The appeal cannot be granted simply because, by attaching the condition, "no harm will be done". She felt the Board did not err by not considering conditions to the variance request without any input from the applicant until after the variance was denied. The conduct of the Board was appropriate given the information provided by the applicant. 4. All Criteria Met as set forth in Application: Ms. Cummings stated, at a public hearing with abutter's noticed, the Board heard the applicant's request for a variance. The burden of proof to convince the Board is that of the applicant; however, in this case, the Board voted to deny the request for variance. She felt that by rehearing this application, it would be providing the applicant "a second bite of the apple." She stated the entire reason for a rehearing is to allow the Board to correct any mistakes it may have made and felt, in this case, the Board did not err.

Mr. Arsenault felt the purpose of the Zoning Board is to solve certain issues before they go to court. He stated the applicant just wants to park six trucks on the property; he does not want to make asphalt there. Mr. Arsenault asked how the Town could previously allow one paving company in the commercial zone, but not this one. He noted the proposed area is very congested, with an abutter to one side having twice as many vehicles as this application. He felt the error was in denying the use. Mr. Connor stated when he reviewed the minutes; he did not understand why it was not approved, as this is strictly a parking area for business vehicles, which is an allowed use within the commercial zone. He felt this proposal seems less burdensome than a landscaping business. Mr. Gross felt he did error when considering the hardship factor, regarding his determination that there were safety issues due to the close proximity of a day care facility. He noted he revisited the area and found the day care to be farther away than he originally thought. Ms. Cummings asked what the hardship was regarding the actual land and noted that was never addressed during the original hearing by the applicant. She again stated she does not feel this is similar to a landscaping business. Mr. Connor felt the hardship is the building itself and asked what other type of business could use that type of building. Ms. Cummings gave numerous examples of businesses that could use the building. Mr. Halligan stated the Board reviewed and looked at everything shown and does not feel they made any serious error during their original procedure. After the discussion the following vote was taken:

**There was a vote of 3 to accept the Motion for Rehearing and 2 against (L. Cummings, C. Halligan). MOTION CARRIED.**

The Board noted that the Administrative Appeal and Use Variance would be the items to rehear; the Area Variances that were not originally heard due to the denials, could be considered after the rehearing vote, depending on those votes. The Board advised the applicant that the rehearing would not be heard until the required 30-day appeal period had expired, which would push this matter into January 2010.

2) The Board decided to defer review of the minutes of October 20, 2009, due to suggested revisions/additions from 445 Portsmouth Ave, LLC's attorney (attachment 2).

Being no further business, the meeting was adjourned at 7:40 P.M.

**Motion 7: Chris Halligan moved to adjourn the meeting at 7:40 P.M. and Lizbeth Cummings 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. Motion for Rehearing application, re: 445 Portsmouth Ave., LLC
2. Revisions/addition to 10-20-09 minutes
3. Agenda, dated 11-17-09

Approved by the Greenland Zoning Board on March 3, 2010.