



ZONING BOARD OF ADJUSTMENT

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MINUTES OF THE BOARD OF ADJUSTMENT PUBLIC HEARING

Tuesday, November 18, 2014 – 7:00 p.m. – Town Hall Conference Room

Members Present: Chair Chris Halligan, Liz Cummings, Ron Gross, Brian Hutchinson, John Samonas

Staff: Myrick Bunker – Building Inspector

Chair Halligan opened the Board of Adjustment meeting at 7:00 p.m. and a roll call was taken. The Chair explained the procedures of the Zoning Board of Adjustment, stating that a quorum was present and the meeting was being recorded.

1. Request for a Variance, Appeal from an Administrative Decision: 125 Ocean Road [Map R21, 51]

Owner/Applicant: Harbour Links Estates, LLC

Greenland Zoning Ordinance: Article VI, Section 6.3, Subsection 6.3.4

The owner/applicant proposed to refit the existing billboard located on the northeasterly corner of the property with an LED sign that will change images approximately every 3 to 5 minutes. The ordinance prohibits this type of sign.

Appeal from an Administrative Decision

David Brown, attorney and representing the owner/applicant, addressed the Board. Steve Binnie and Adam Binnie, Harbour Link Estates, LLC, were also present. The property is located at the corner of Interstate 95 and Ocean Road; the sign is at the rear of the lot facing the interstate. The sign currently advertises the New Hampshire Lottery, and has two large boxes with numbers that change with different jackpots. They would like to switch it to a digital sign, with images changing every several seconds. State DOT has a lengthy statute (RSA 236) that addresses these issues. According to S. Binnie, DOT is fine with the change.

There will be no change to the size, height or location of the sign, just to become fully electronic and changeable. D. Brown distributed an additional handout (copy on file). The handout, in addition to those submitted with the application, was reviewed. The sign, licensed annually by DOT, can only be seen on I-95 North and for a few seconds as you pass. The current lottery sign, with electronic features, has been in place for more than 10 years. The digital effect is minor and has no impact on neighborhoods or property value.

Two short videos were shown: one showed the style of the sign; the other showed the sign while driving by on I-95. The industry standard for changing images is every 8 to 15 seconds. The billboard can be seen for approximately 20 seconds while driving. The State has allowed these types of signs in other locations. The applicant did not have anything in writing from the State authorizing the sign. S. Binnie has met with them, and the sign has been verbally approved; they didn't have a problem with them moving forward. The State has it under permit as an electronic billboard. The sign is tied into the State's lottery, and the numbers change automatically.

R. Gross commented that the denial states the sign will change every three to five minutes; now they were requesting something different than they were denied. L. Cummings stated the frequency of the change doesn't really matter; the sign is changeable. S. Binnie added that the application, which was denied, didn't specify minutes or seconds.

R. Gross stated it was an issue with technicalities. If the application was approved as presented, the sign could only change every three to five minutes. The Board requested to look at the original application. D. Brown stated they wanted the sign to meet DOT standards of changing more often. S. Binnie added that the permit specifically requested a changeable sign; there may have been a conversation that was misinterpreted. He continued that it may have been a sidebar between himself and the Building Inspector, and the denial was written based on that conversation. R. Gross clarified that the Board had to look at what's presented to them; S. Binnie countered that they had to look at what DOT was going to allow as well. Their permit would be based on a specific period of time; R. Gross pointed out there was no paperwork from DOT stating what they would approve or disapprove.

L. Cummings disagreed that the Board would have to approve the application as written on the agenda. There was nothing on the application about three to five minutes. L. Cummings continued that it didn't matter how often it changed. Chair Halligan stated that procedurally, the agenda item explicitly stated every three to five minutes. L. Cummings told the Board that in their motion they could address the frequency of image changes. The announcement advises residents of the section being discussed; the denial is from the Building Inspector. The applicant has requested a Variance or Appeal from an Administrative Decision for the electronic sign that changes. R. Gross pointed out that permit application doesn't state anything about the sign changing; the denial indicates three to five minutes; the appeal states something different. L. Cummings stated there was an alternative: it could be re-advertised and the abutter's would be notified again. There was further discussion regarding the denial being incorrect as well as the advertisement.

L. Cummings felt there was no ambiguity in the applicant's application for a Variance or Appeal of an Administrative Decision. She continued that the applicant is stating what he wants in is his applications. Chair Halligan clarified that chronologically the building permit goes to the Building Inspector and is denied; a denial is written; the applicant submits a Variance and Appeal of an Administrative Decision, which are correct in what the applicant wants. In the interim, the advertisement goes out based on the denial. D. Brown stated the ZBA could vote on a motion that could set contingencies.

D. Brown felt that the Administrative Appeal would be the simpler approach. Due to the DOT oversight, the law lets non-conforming uses expand if they are not affecting the neighborhood and the ZBA could grant the appeal. L. Cummings asked if there was anything other than the picture on the sign. S. Binnie responded there is no video, only the static picture that will change almost seamlessly. Going by DOT standards of 8 to 10 seconds, you may see it change when driving by.

Chair Halligan opened the meeting to public comments. There being none, he closed the public hearing and returned to the Board for discussion. R. Gross stated this would be a substantial change of use. It's the whole sign that would change and not just the numbers; it would be a detrimental substantial change. J. Samonas disagreed with the detrimental effect of the sign on the community; part of the community is a six lane interstate highway. He was unsure of the intent of the ordinance when it was written and if it was meant to affect the traffic that dissects the Town. He continued that it can barely be seen from the Ocean Road Bridge and didn't think it would have an effect on residents. L. Cummings stated that there are issues with the sign ordinance. She didn't feel there was a good, firm foundation for what should be done with a non-conforming pre-existing 52-year old sign. There are no strobe lights, flashing lights, or string of lights. It's basically pictures that change intermittently. Every sign

attracts attention; that's the intended purpose. The sign was not the issue, but rather the intervals at which the sign changed regardless of approval from DOT or the ZBA. L. Cummings also didn't feel it was detrimental, but felt it was an expansion because it would change more frequently; there was nothing prohibiting that type of expansion. R. Gross stated the spirit and intent of the sign ordinance was to not have signs that change. L. Cummings responded it was an existing, non-conforming use and that the spirit of the sign ordinance is haunted.

MOTION: *Chair Halligan moved to approve the Appeal from an Administrative Decision to allow the retrofit of the existing billboard located on the northeasterly corner of the property with an LED sign that will change images. Second – J. Samonas*

DISCUSSION: L. Cummings added that the motion could be amended to state the frequency of the changes. She continued that she would vote against the motion. She didn't believe that based on the Building Inspector's interpretation of the ordinance that he made an administrative error in his decision. Granting an Appeal of an Administrative Decision would indicate an error had been made. L. Cummings felt the Request for a Variance would be more appropriate. J. Samonas didn't agree granting the appeal would be an admission of an error on the part of the Building Inspector. L. Cummings stated that the application did not meet the requirements for an appeal. A vote in favor would mean the Board felt the Building Inspector made an error. After further discussion and an agreement from J. Samonas, Chair Halligan withdrew his motion.

MOTION: *L. Cummings moved to deny the Appeal of an Administration Decision outlined in the applicant's request dated October 27, 2014. Second – Chair Halligan*

DISCUSSION: L. Cummings didn't feel that the Building Inspector made an error in his denial based on his interpretation of the Zoning Ordinance.

MOTION: *L. Cummings moved to deny the Appeal of an Administration Decision outlined in the applicant's request dated October 27, 2014. Second – Chair Halligan; all in favor. MOTION CARRIED*

Request for a Variance

D. Brown stated it was his belief the five criteria were met: there is no impact on the neighborhood and property values would not be affected; it's a lawful, pre-existing, grandfathered use regulated by the DOT; there are no neighborhoods that would be affected; there's no benefit being strict in denying the request. Doing the balancing test, the Board should yield to property rights of the applicant; it would hurt their business development and modernization. Under the liberalized hardship test today, the Board should be able to grant the Variance. The sign has been there 62 years; it's a reasonable request; the sign has electronic features now; it would be a slight change that would affect no one.

Chair Halligan opened the meeting to public comments. There being none, he closed the public hearing and returned to the Board for discussion. R. Gross stated again that it was a substantial change. The spirit of the ordinance is that they didn't want to have signs that change. This is what the Town voted and the Board has to do what the Town wanted. L. Cummings stated that the sign existed before the Town voted on that critical element. Is it a substantial increase of a non-conforming use? It's non-conforming that it could advertise businesses that are not in Town; it's a billboard but it was there before the ordinance; it's a non-conforming sign and has been for 62 years. The ordinance wishes for things to be brought closer into conformance. The sign moves and has been moving; the frequency can be mandated in a motion. The existing sign will be upgraded from analog to digital, and the size is not changing; L. Cummings did not see that as significant. The neighborhood is commercial and industrial.

B. Hutchinson also didn't see it as a substantial change, and the frequency of change could be limited in the motion. Chair Halligan stated he was looking at the complete sign and not the numbers that changed. There were no abutters present. R. Gross stated that perhaps they didn't come based on the notice that was sent. L. Cummings stated that if they're not interested, they don't come. There was further discussion on the posting being incorrect.

MOTION: *R. Gross moved to deny the Request for a Variance. There was no second.*

DISCUSSION: L. Cummings was strongly against the denial, stating that if the Variance was denied the applicant could not return to the Board. Because of an administrative mistake made in advertising, the Variance should not be denied. J. Samonas suggested the applicant withdraw their application, returning after it was properly advertised. L. Cummings recommended tabling the Request for a Variance until December 16 allowing the re-noticing be done at the Town's expense. The applicant will be delayed 30 days because the Board made a judgment based on no paperwork with a time frame indicated.

MOTION: *L. Cummings moved to table the Request for a Variance for Harbour Links Estates, for a sign at 125 Ocean Road [Map R21, 51] until the meeting on Tuesday, December 16, 2014, to allow the Town to re-advertise with the appropriate information. Second – J. Samonas; four in favor, one abstain (R. Gross). MOTION CARRIED*

When asked by the Board, the Building Inspector stated that the denial was based on the fact that the sign moved, not that he was told it would change every three to five minutes. The next notice will read: *The owner/applicant proposed to refit the existing billboard located on the northeasterly corner of the property with an LED sign that will change images. The ordinance prohibits this type of sign. Abutter's will be notified by certified mail at the Town's expense.*

Addressing the applicant, Chair Halligan stated that the Board was tabling their application for 30 days. It will be re-advertised for the December meeting.

2. Request for a Variance: 10 Lane Avenue [Map U1, 36]
Owners: Wayne & Margaret Brooks
Applicant: Robert Lang
Greenland Zoning Ordinance: Article IV, Section 4.2, Subsection R (a) & (f)
Greenland Zoning Ordinance: Article XIV, Section 14.4, Subsection 14.4.3
The owners and applicant are proposing to construct an addition on the northerly side of the house. The proposed addition is 14', leaving a 17' setback where the Ordinance requires 20' on the side yard. Additionally, the lot is non-conforming.

Robert Lang, contractor and representing the owners, addressed the Board. They are requesting to build a 14' addition. Due to the placement of the septic system and garage, they are limited to where the addition can be built. They are closing off the second floor, because of their age, and moving the bedroom to the addition. They're trying to make their home more livable by making it one level. R. Lang presented the Board with letters from the abutters stating they had no objections to the addition. The addition will have a shed style roof; there is a fence on the Brooks property; there will be a frost wall and crawl space that will be accessible.

Chair Halligan opened the meeting to public comments. There being none, he closed the public hearing and returned to the Board for discussion.

DRAFT: SUBJECT TO CHANGE

MOTION: L. Cummings moved to grant the Request for a Variance that would allow the proposed addition at 10 Lane Avenue [Map U1, 36] to encroach 3' on a required 20' side yard setback. Second – R. Gross

DISCUSSION: L. Cummings stated that the application is clear and concise. This type of application is why the Variance process exists. The lot is not large; the septic system and garage locations leave no other place for an addition. A Variance allows the Board to grant specific changes that meet the spirit of the ordinance. Failure to grant the Variance would cause undue hardship; there is no other location for the addition. She added the applicant has met all the requirements.

MOTION: L. Cummings moved to grant the Request for a Variance that would allow the proposed addition at 10 Lane Avenue [Map U1, 36] to encroach 3' on a required 20' side yard setback. Second – R. Gross; all in favor. **MOTION CARRIED**

3. Approval of Minutes: Tuesday, October 21, 2014

MOTION: Chair Halligan moved to approve the minutes of Tuesday, October 21, 2014. Second – L. Cummings; four in favor, one abstain (J. Samonas). **MOTION CARRIED**

4. Other Business

The letter from the Conservation Commission (copy on file) was discussed. Chip Hussey, Chairman, had written to the ZBA requesting they reconsider their decision made in July 2014 regarding 1533 Greenland Road. The ZBA had denied the truck repair facility that was proposed at that address; the Truck Stop was not before the Board. L. Cummings felt it was an impassioned plea from the Conservation Commission; there was no mandate to reconsider. Chair Halligan felt that the first three items mentioned in the letter were opinions that bear no relevance on the Board's decision. The ZBA is an opinionated Board whose purpose is to offer opinions and make decisions. He continued that item 4 may have some bearing. L. Cummings noted the July meeting was a joint session with the Planning Board. At that meeting, the Planning Board suggested several times that the applicant withdraw their application, and they did not. After further discussion, L. Cummings asked the Chair to send a letter to the Conservation Commission regarding their request to reconsider the case. She continued that the Conservation Commission had no jurisdiction or standing and they can gain nothing. R. Gross didn't believe that there were two members of the Board that had pre-judged the application. He continued that the letter was a personal attack on one Board from another Board.

5. Adjournment

MOTION: R. Gross moved to adjourn at 8:42 p.m. Second – Chair Halligan; all in favor. **MOTION CARRIED**

NEXT MEETING

Tuesday, December 16, 2014 – 7:00 p.m., Town Hall Conference Room

Respectfully Submitted: Charlotte Hussey, Secretary to the Boards

Approved: 