



BOARD OF ADJUSTMENT

PO Box 120
Windham, New Hampshire 03087
Telephone (603) 432-3806

Minutes **January 26, 2010**

Board Members

Mark Samsel – Chairman
Jim Tierney – Vice-Chairman
Dianna Fallon – Secretary
John Alosso – Member (Excused)
Tom Murray – Member
Bruce Richardson – Alternate
Elizabeth Dunn – Alternate

Staff

Michael McGuire – Building Inspector
Patricia Kovolyan – Administrative Assistant

Seat Alternates

The Chairman appointed Mr. Richardson to sit in for Mr. Alosso for this meeting.

Lot #1-C-700 Case # 4-2010

Applicant – Carl & Mary Heinzl
Owner – Carl & Mary Heinzl
Location – 110 Kendall Pond Rd.
Zone – Rural

A variance is requested from Section(s) 702 Appendix A-1 of the Zoning Ordinance to permit the construction of a side addition which will not meet the required side setback.

A letter was received from Mr. Heinzl requesting that Case 4-2010 be heard no earlier than April 20, 2010. Mr. Tierney motioned and Mr. Richardson seconded the motion to postpone Case #4-2010 to the April 27, 2010 meeting. **Motion passed 5-0.**

Lot #9-A-400 Case #3-2010

Applicant – Steven Clark
Owner – Brian Bauchman
Location – 120 Haverhill Road
Zone – Rural

An Appeal of an Administrative Decision is requested from Section 602.1 of the Zoning Ordinance regarding the December 7, 2009 decision between Laura Scott, Community Development Director and Brian Bauchman.



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Mrs. Fallon read the case into the record and the following letters:

- January 19, 2010 Letter from Patricia Kovolyan to Attorney Cronin advising him of the January 26, 2010 meeting.
- January 12, 2010 Letter from Attorney Cronin to Mark Samsel asking to be advised of any developments and hearing dates.
- January 17, 2010 Memo from Laura Scott to Mark Samsel advising that she would not be available to attend the January 26, 2010 Zoning Board meeting.

Mr. Michael McGuire, Building Inspector, advised the Board that he investigated the site (120 Haverhill Road) on January 26, 2010.

The Chairman asked the Board if they were comfortable to proceed without Ms. Scott's testimony. Mr. Tierney said that Ms. Scott could have appointed someone to speak for her but it is up to the Applicant to decide whether they want to move forward.

Attorney Steven Clark of Boutin & Altieri, representing Mr. Mark Sneider, said the Board can proceed without Ms. Scott's testimony but his client would be willing to continue the meeting for 7 days to a night other than a Tuesday. The Chairman said in discussions he had with Attorney Campbell he indicated a date of February 16, 2010 was set in Superior Court on the stipulation letter. Attorney Clark said that there is a separate code enforcement action pending in Superior Court. The Zoning Board granted relief and it was appealed and the court overturned that decision. During that time frame the code enforcement action was stayed pending the resolution before the Zoning Board. The Code Enforcement Officer then entered into this agreement which was subsequently attached to a stipulation that has been filed with the court. The applicant had to preserve his rights by filing this appeal in order to avoid an action by the Town or Mr. Bauchman at a later date stating that they failed to exhaust their administrative remedies.

Attorney Clark mentioned again that they would be willing to continue the case for 7-10 days in order to allow Ms. Scott to be in attendance. Mr. Richardson said that Ms. Scott did not request a continuance in her letter. Mr. Tierney said he had no issue with going forward with the case. Mrs. Fallon said that she was comfortable with moving forward as long as the applicant knows if the Board comes to a stumbling block the Board could continue. The Board decided to hear the case.

Attorney Clark submitted a re-write of the agreement that was marked as Exhibit A and said Ms. Scott entered into an agreement with Brian Bauchman of Bauchman Towing on December 7, 2009. Mr. Bauchman has put it in writing that he believes the neighbors have been over zealous. Mr. Bauchman was granted permission to store three trucks on his property. An issue came up in early 2000 that some maintenance on town vehicles was being done on the site. The Town brought a second code enforcement action. On appeal the court said Mr. Bauchman was not allowed to have a business at that location he was only allowed to store three vehicles. Sometime



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during the summer of 2009 Attorney Clark sent a letter to the town asking what was going to happen with the code enforcement action that was stayed. Attorney Clark received reports back stating that Mr. Bauchman was looking to relocate and would probably be out by December 2009. After some of the neighbors met with Ms. Scott an agreement was made with Mr. Bauchman. Attorney Clark said that they are not looking to overturn the entire agreement. They feel that the Code Enforcement Officer over stepped her authority regarding the following three items:

- Relocate a portion of business.
- Allow people to work on the site if they live there (son is an employee and lives on site).
- Allow the maintenance of business and personal vehicles for friends and family without any time limit.

Attorney Clark asked the Board to overturn the three points in question.

Mr. Bauchman is intending to relocate to Londonderry but Attorney Clark does not think Mr. Bauchman will be able to make the April 1, 2010 deadline. The process in Londonderry takes a minimum of three to six months and as of December a formal application had not been submitted by Mr. Bauchman.

Attorney Clark read into the record and submitted the November 30, 2009 letter written by Brian Bauchman to Laura Scott as a follow up to the meeting they had that day. In the letter Mr. Bauchman states...*for the past three and a half or more years we have not done any retail repair work on this site. By court order we are allowed to do repairs on our own trucks, family vehicles and favors on friend's vehicles by which we abide. Storage of towed vehicles is also no longer done on the property. We have a separate tow lot in Hudson NH which we have been using now for four years... However due to the arrogance of some of our abutters we have moved forward to relocating the majority of our business to a new location in Londonderry, NH...*

Attorney Clark said that he believes that the agreement Ms. Scott entered into with Mr. Bauchman has gone beyond the authority she has under the Zoning Ordinance.

Mr. Richardson questioned the relief the applicant was seeking. Mr. Richardson did not think there was anything in the agreement that allows activity to go on beyond April 1, 2010. It is clear in the agreement that the conditions only apply to the time period between now and April 1, 2010. After April 1, 2010 he is to relocate his business (actual business part not the three trucks). Everything is over by April 1, 2010. According to the stipulation Mr. Bauchman will be in contempt of court if he does not comply by April 1, 2010.

Attorney Clark did not agree with Mr. Richardson's interpretation of the agreement. In the agreement the word *may* is used as in *may* seek penalties, a cease and desist order *may* be issued it does not contain the word *shall*.



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Mr. Richardson said there is an expiration date to this agreement. The agreement has no intent to modify the court order.

Mr. Samsel said that it does state in the agreement that as of April 1, 2010 you must come into full compliance. It is clear that as of April 1, 2010 the agreement will be enforced.

Attorney Clark said that he believes Mr. Bauchman has a different intent than the Town has and he will try to use this agreement as the basis to allow his son to continue to operate from that location and an unenforceable situation of assisting family and friends with the repair of vehicles.

Mrs. Dunn said the applicant is trying to cover the bases. Even if the stipulation is approved the wholes in the agreement could remain as a matter of interpretation or contention by the owner after April 1, 2010. Mrs. Dunn went on to say that an Administrator of the Town, Laura Scott has signed a stipulation which gives more rights than the 1997 court order. Mr. Murray said that is not true. The Chairman said they were getting into deliberations and should move on.

Attorney Clark said that Ms. Scott over stepped what authority she was entitled to under the 1997 order.

Mr. Murray said this is a code enforcement action to bring this matter into compliance. Mr. Murray said Ms. Scott is not trying to change the court order.

Attorney Clark said Mr. Bauchman has not been a model citizen of complying with the 1997 order. He has been so flagrant as to do repairs on town vehicles. There is room for interpretation in the agreement.

Mr. Tierney said that he will agree that the letter is poorly written, and asked if the Board re-writes the letter how do they get Ms. Scott and Mr. Bauchman to agree to what the Board can come up with.

Attorney Clark said that he is asking that the agreement be modified.

The following residents spoke in support of this request.

- Mr. Heath Partington of 17 Galway Road. Mr. Partington asked as of April 1, 2010 what defines compliance.
- Mr. Brian Brandt of 6 Galway Road said the agreement is vague and fuzzy.



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Attorney John Cronin, representing Mr. Bauchman, said he takes exception to some of the comments made about Mr. Bauchman. Keeping three tow vehicles at the site is not conducting business. He has the right to work on his vehicles and friends vehicles. The issue is one of appellate jurisdiction. Ms. Scott is the one who drafted the initial agreement and Town Counsel came up with some additions and a request for a stipulation. As far as the Town is concerned this is a binding and enforceable agreement. This issue is going to be addressed in court where it belongs. Ms. Scott has an independent right to enter into Code Enforcement agreements. Attorney Cronin asked the Board to deny this request and let this matter go before the court.

Attorney Clark said it is within the Zoning Board's jurisdiction to say that someone over stepped their authority.

Mr. Murray motioned and Mrs. Fallon seconded the motion to go into Deliberative Session.
Motion passed 5-0.

Deliberative Session, Case #3-2010

The Chairman spoke about Appeals of Administrative Decisions and the role of the Zoning Board. Mr. Samsel asked the Board if there was an inclination to deny the request and let the court take up the matter. Mr. Murray wanted to hear the other Board Member's comments. Mrs. Fallon said that the business vehicles concern her the most and she would be more comfortable if they were removed from the agreement. Mrs. Fallon also said that issues two and three in the agreement may not go away as of April 1, 2010. Mr. Murray said maintaining the business vehicles is an implied right. You cannot enforce maintaining the business vehicles at Mr. Bauchman's home. Mr. Samsel asked if the Board could stipulate that the repairs be done indoors. Mr. Tierney said overall the agreement is an enforcement letter; vacate the entire agreement or let the agreement go as written. Mr. Tierney did not think Ms. Scott went outside her duty as code enforcement officer. Mr. Murray said that he does not want to re-write the letter or vacate it; let Ms. Scott re-write it.

Mr. Murray motioned and Mrs. Fallon seconded the motion to grant the Appeal of Administrative Decision as requested from Section 602.1 of the Zoning Ordinance and to allow the code enforcement document to be modified as presented per Exhibit A. **Motion denied 5-0.** The Board denied the motion because the Code Enforcement Officer did not exceed her authority or waive any provisions of the Ordinance or court order. They acknowledged that the agreement is moving forward to the Superior Court with an attached stipulation that supports the enforcement agreement.

The Chairman granted a five-minute recess.

The Chairman called the meeting back to order.



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Lot #21-K-46 Case # 5-2010

Applicant – Wesley Aspinwall

Owner – J & K Realty Trust

Location – 32 Turtle Rock Rd.

Zone – Residential A

A variance is requested from Section(s) 401, 405.5 & 702 Appendix A-1 of the Zoning Ordinance to permit the razing and reconstruction of a pre-existing non-conforming structure on a pre-existing non-conforming lot.

Mrs. Fallon read the case into the record. Mr. Peter Zohdi of Herbert Associates, representing the owner, presented a packet and presented the case. The submitted packet included copies of:

- Public notice
- Application to Zoning Board
- Permit Denial
- Letters of Authorization
- List of Abutters
- Mailing Labels
- Deed
- Zoning Sections pertaining to the application
- Existing Site Photos
- Architectural Plans
- Copy of Plan

Mr. Zohdi read the January 26, 2010 Conservation Commission letter stating that they were pleased to see there has been a reduction of impervious surface and an inclusion of pervious pavement. The Commission would like to see efforts continued by reducing the lot size to 20%.

A letter was submitted by Alan & Michelle Leclair of 34 Turtle Rock Road stating that they spoke with Mr. & Mrs. Alosso about landscape grades, drainage, runoff and the potential need to relocate the Leclair's air conditioning condenser and irrigation pump.

This is an existing year round dwelling. The proposed dwelling will be moved 30-feet back from the shoreline. A septic system was installed in 2005. There is an existing garage (large shed) that will stay on the site. Lot coverage would be 20.22%. Mr. Zohdi said he disagrees with Mr. McGuire's letter of January 20, 2010 stating that the covered porch is part of the building, living area or the 20% lot coverage. Mr. Zohdi explained those areas are not impervious, the water will still get to the ground. Mr. Zohdi read the supporting facts (new rules) into the record. A drainage study will be done and presented to the Planning Board.



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Mrs. Fallon read into the record a letter submitted by Alan & Michelle Leclair of 34 Turtle Rock Road stating that they spoke with Mr. & Mrs. Alosso about landscape grades, drainage, runoff and the potential need to relocate the Leclair's air conditioning condenser and irrigation pump.

Mr. Murray motioned and Mr. Tierney seconded the motion to go into Deliberative Session.
Motion passed 5-0.

Deliberative Session, Case #5-2010

Mr. Tierney motioned and Mrs. Fallon seconded the motion to grant a variance for Case #5-2010 from Sections 401, 405.5 & 702 Appendix A-1 of the Zoning Ordinance per the plan submitted.

Motion passed 5-0.

Approval of January 12, 2010 Minutes

Mrs. Fallon motioned and Mr. Tierney seconded the motion to approve the January 12, 2010 minutes as amended. Motion passed 5-0.

Correspondence

- January 2010 Issue of *New Hampshire Town and City*.
- January 15, 2010 Letter from Attorney Campbell to Mike McGuire regarding 37 Abbott Road.
- January 17, 2010 Memo from Laura Scott to Mark Samsel regarding ZBA Case 3-2010, Appeal of an Administrative Decision. Ms. Scott is unable to attend the January 26, 2010 ZBA meeting.
- January 19, 2010 letter from Patricia Kovolyan to Attorney Cronin regarding ZBA Case 3-2010 advising the date and time of the hearing.
- January 22, 2010 letter from Attorney Campbell to Attorney Steven Whitley regarding Center & Hoell vs. Town of Windham.

Miscellaneous Board Business

Mr. Samsel presented to the Board a revised version of the variance application form for their review.

Mr. Richardson motioned and Mr. Tierney seconded the motion to suspend the required two readings of the variance application document stated in the by-laws. **Motion passed 5-0.**

Mr. Richardson motioned and Mr. Tierney seconded the motion to accept the amended temporary application for a variance document. **Motion passed 5-0.**

Mr. Tierney motioned and Mr. Murray seconded the motion to adjourn. **Motion passed 5-0.**



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The next meeting of the Zoning Board of Adjustment is scheduled for February 9, 2010 at 7:30 PM in the Community Development Department.

These minutes are in draft form and are respectfully submitted for approval by Patricia Kovolyan.