

**TOWN OF STERLING
ZONING BOARD OF APPEALS
Minutes of Meeting**

DATE: April 12th, 2011
TIME: 6:30 pm
LOCATION: Butterick Municipal Building

Board Members Present:

Jeffrey Donaldson, Richard Hautaniemi, Joseph Curtin

Alternate Members Present:

Matthew Campobasso

Agenda

- **6:30 pm Discussion Of Minutes**
- **6:35 pm Case#610 Harold T Smith & Cynthia E Cannon-Variance**
[5 Chestnut Avenue requests a variance to move the location of the new house back approximately 11.5' more for a total set back of 15' off the road in line with the adjacent houses.]
- **7:00pm Discussion-Kennel License for Mrs. Karen Kase**
[Board to discuss 57 Redstone Place kennel license denial by Building Inspector Mr. Mark Brodeur]
- **7: 15pm Discussion: The Various Parameters for Special Permits and Variances**
- **7:45pm ZBA Business**
 - **Update Discussion: Kennel License-Mrs. Pamela Marshall**
[12 Gates Terrace discussion of Building Inspector determination to decline her requested Kennel License. Board to review research on the issue.]
 - Other Issues to be discussed may include: Budget-Bills-Administrative Issues-Memos

Proceedings:

- 6:30pm Mr. Joseph Curtin opened the meeting with a roll call and a discussion of the presented minutes from March meeting.
- 6:32pm *Mr. Richard Hautaniemi* moved to approve the minutes of March 8th, 2011 as amended. Motion seconded by *Mr. Jeffrey Donaldson*. Motion carried. All in favor, Yeas 4: (*Richard Hautaniemi, Jeffrey Donaldson, Joseph Curtin, and Matthew Campobasso*) Nays: 0.
- 6:35pm Mr. Curtin opened the hearing for case #610 Cynthia Cannon and Harold T Smith for a variance by reading the published legal notice.
- Mr. Curtin informed the applicants that the Board had only four members present at the meeting which meant that they would need a super majority vote to be granted a variance. He asked the applicants if they would like to request a continuation or to proceed.
- Mr. Smith replied that they would like to proceed because it was a simple case. He explained that the lot was small and non-conforming. He needed to set the house back from the road.
- Mr. Hautaniemi commented that it seemed that the foot print got less non-conforming by the set back.
- Mr. Curtin asked to see the plans for the project.

- Mr. Smith showed the Board the application set of plans. He noted that it will be worth the effort to set back the house.
- Mr. Curtin asked if there were any comments from the audience.
- Mr. Ken Williams, Planning Board, said that the Planning Board has no objection to the case.
- Mr. Hautaniemi noted that this project would make the house about 170 sq. ft less non-conforming from the old house.
- Mr. Curtin asked if the zoning was neighborhood residential.
- Mr. Smith replied affirmatively.
- Mr. Hautaniemi added that the set back normally should be 25ft.
- 6:45pm Mr. Curtin closed public testimony on the case.
- Mr. Donaldson thought that this was clearly a special permit case.
- Mr. Hautaniemi said that the applicant is making the lot less non-conforming and the proposed modification will still keep the size of the house as it is.
- Mr. Donaldson read a section from the Sterling Bylaws which showed that it was an easy determination from the perspective of the Building inspector. He thought that the case is clear in the by laws and the Building Inspector could have issued the permit easily.
- Mr. Curtin thought that since the applicants have already applied for a variance and they came before the Board, then the Board might as well grant them their request instead of sending them away. He noted that if the Building Inspector felt comfortable about the case he would have issued it but he preferred to relay the decision to the Board.
- Mr. Hautaniemi commented that the Board might have a problem by granting a variance vs. a special permit. The Building Inspector could have made that determination.
- Mr. Campobasso questioned whether a variance would allow the applicant to execute the proposed project. He added that maybe the Board could issue a letter to the Building Inspector and if there was any disagreement, the applicants could come back for a special permit.
- Mr. Curtin thought that a variance might be sufficient.
- Mr. Donaldson expressed his concern for granting a variance for a case that needs a special permit.
- Mr. Smith asked if a memo from the Board to the Building Inspector would be sufficient.
- Mr. Donaldson said that this was something the Board could do.
- Mr. Curtin agreed and said that the Board could do that but if the Building Inspector still does not agree, then the applicants could come back for a special permit. At that point the Board will not charge them the application fees again.
- Mr. Williams believed that the application has all the requirements for a variance.
- Mr. Hautaniemi thought that Mr. Williams' point was well taken in consideration since there is a hardship.
- Mr. Smith commented that he thought that the Building Inspector would advise them to whether they needed a variance or a special permit.
- Mr. Curtin asserted that the Board was in agreement but the Building inspector was not.
- Mr. Williams suggested to the Board that by granting a variance, this could help the applicant get away with set backs. The Board also could make conditions on the decision.
- Mr. Donaldson said that he has a problem with granting a variance because it does not abide to zoning bylaws and will affect the zoning district.
- Mr. Curtin asked the board what they would like to do procedurally. He noted that Board could grant a withdrawal without prejudice and send their findings to Mr. Brodeur.
- Mr. Campobasso suggested that the Board could let the applicant come back for a special permit if required by the Building Inspector.

- Mr. Curtin noted to the applicant that the Board does not have a problem with his plans.
- Mr. Donaldson said that the standard for a special permit is less but the Board cannot grant relief for something that they cannot grant according to the by laws.
- Mr. Campobasso asserted that the Board should not set precedence for the future.
- Mr. Curtin said that procedurally, the Board could write to Mr. Brodeur and explain their findings. In addition, they could grant a withdrawal without prejudice to the applicant.
- Mr. Campobasso explained to Mr. Smith that if Mr. Brodeur agrees with the ZBA findings then he will not have to come back. He asked Mr. Smith about why he filed for a variance.
- Mr. Smith replied that it was because the Building Inspector advised them to do so.
- Mr. Smith requested to withdraw without prejudice.
- 7:10pm *Mr. Jeffrey Donaldson* moved to allow the applicant to withdraw without prejudice. Motion seconded by *Mr. Matthew Campobasso*. Motion carried. All in favor, Yeas 4: (*Richard Hautaniemi, Jeffrey Donaldson, Joseph Curtin, and Matthew Campobasso*) Nays: 0.
- 7:12pm *Mr. Jeffrey Donaldson* moved to communicate with the Building Inspector the findings of the Board that that Section 2.2.4.5 of the protective Bylaws applies to this situation, because the owner is proposing a modification to a pre-existing non-conforming single family residential structure. The Board believes that the modification would not increase the non-conforming nature of the structure, and therefore a Building Permit can be issued in relevance with Section 2.2.4.5. However, if the Building Inspector still does not agree with the Board's decision then the applicants should come back for a special permit. Motion seconded by *Mr. Richard Hautaniemi*. Motion carried. All in favor, Yeas 4: (*Richard Hautaniemi, Jeffrey Donaldson, Joseph Curtin, and Matthew Campobasso*) Nays: 0.
- 7:13pm Mr. Curtin opened discussion for Mrs. Karen Kase kennel license and noted that the Building inspector has denied the license.
- Mr. Curtin said that he did not get the chance to talk to Mr. Brodeur yet but he came across the same thing last week with the Pamela Marshal kennel license.
- Mrs. Kase said that when they first moved to the area, they had 40 acres on Nelson farm and it was neighborhood residential. They have had a license since then, but the parcel was subdivided later on. They have maintained the kennel license ever since but this was the first year they got denied. She thought they had agricultural exemption. She noted that the Board could look at the maps and see the changes throughout the years.
- Mr. Curtin commented that she have had a kennel license ever since but Mr. Brodeur does not see that she has agricultural exemption.
- Mr. Curtin asked for comments from the Board.
- Mr. Williams pointed out that there have been previous talks about cases that could be grandfathered like Mrs. Kase's.
- Mr. Donaldson said that after consultation with the town counsel in the past, it seems that in the past this was an allowable use by the by laws and she continued to do the same activity ever since. She could be one of those rare cases that fall under preexisting conditions and that she was also agricultural (while maintaining a kennel license as well).
- Mr. Curtin agreed and suggested to write up a findings memo to Mr. Mark Brodeur.
- Mr. Hautaniemi reiterated that in justification for Mr. Brodeur's denial, the ZBA is comprised of a five-member Board who deliberate together to come out with any decision, and Mr. Brodeur has a big burden to justify any of his decisions.
- Mr. Hautaniemi suggested wording the Findings Memo to include guidance for Mr. Brodeur for any further action.
- Mr. Campobasso agreed to also include a note about the pre-existing nature of the case.

- Mr. Campobasso worded the Finding to be that for the kennel at 57 Redstone Place, it was an allowed use for that parcel of land when it was commenced, and that the Board felt that it required renewal of its existing kennel license.
- 7:38pm *Mr. Richard Hautaniemi* moved to accept the finding for 57 Redstone Place. Motion seconded by *Mr. Matthew Campobasso*. Motion carried. All in favor, Yeas 4: (*Richard Hautaniemi, Jeffrey Donaldson, Joseph Curtin, and Matthew Campobasso*) Nays: 0.
- Board opened discussion on the parameters for variances and special permits.
- Mr. Hautaniemi noted that the Board needed to check out cases before they come before the Board because sometimes the applicant needn't even be applying.
- Mr. Curtin argued that it is hard when Mr. Brodeur does not attend the ZBA meetings and discuss with the Board the reasons for his decisions. He added that Mr. Brodeur could also determine what the applicants could apply for. In addition, Mr. Curtin asserted that he would like Mr. Brodeur to attend the ZBA meetings because there is a gap between the ZBA and Mr. Brodeur on for example what needs to apply for a variance.
- Mr. Hautaniemi said that the ZBA need a procedure.
- Mr. Curtin distributed to the Board some handouts he received in a workshop on "Vested Rights and Non-conforming Uses and Structures" and a handout on "Vested Rights and Nonconforming Uses and Structures"
- Board discussed the handouts.

ZBA Business

- Mr. Curtin updated the Board on the kennel license for Mrs. Pamela Marshal. He stated that the issue was resolved. The Marshals were granted a zoning change in 1980 but was not reflected in the Town's zoning maps. Mr. Curtin received copies of the support documents from Mr. Marshall and then he researched the Town records to make sure that it was correct. Mr. Curtin found out that the zoning change was approved by the Attorney General so he gave Mr. Brodeur a copy of the maps, and made sure the Assessors office made the correction on the zoning maps as well.
- 8:45pm *Mr. Jeffrey Donaldson* moved to adjourn. Motion seconded by *Mr. Matthew Campobasso*. Motion carried. All in favor, Yeas 4: (*Richard Hautaniemi, Jeffrey Donaldson, Joseph Curtin, and Matthew Campobasso*) Nays: 0.

Attachments:

- Case #610 Harold T Smith and Cynthia E. Cannon-Variance
- Copy of Denied Kennel License for Mrs. Karen Kase
- Power Point handout "Vested Rights and Non-conforming Uses and Structures"
- Handout "Vested Rights and Nonconforming Uses and Structures"