

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

DATE: March 13<sup>th</sup>, 2012  
TIME: 6:30 pm  
LOCATION: Butterick Municipal Building

**Board Members Present:**

Richard Hautaniemi, Joseph Curtin, Jeffrey Donaldson, David Lozier

**Alternate Members Present:**

Matthew Campobasso, Jerry Siver

**Agenda**

- **6:30 pm Discussion Of Minutes**
- **6:35 pm Case # 613** William A & Karen Henderson-*Variance*  
[9 Sandy Ridge Road requests a variance to construct a detached 2-car garage and add to existing home a master bedroom walk 'in closet.]
- **7:05pm Case # 614** Konstadinos Katsiaunis (Sterling Ice Crème Bar)-*Special Permit*  
[167 Clinton Road request for a Special Permit for purposes of Restaurant with Drive Through]
- **7:35pm Case 615** Habitat for Humanity NCM, Inc.-*Special Permit*  
[11 Laurel Ave. Special Permit for purposes of constructing a 2-bedroom home centered on the property but which does not meet required set backs on property]
- **8:05pm ZBA Business**
  - George Thompson/Jane Thompson questions with regards to non-buildable property 23 Chestnut Ave
  - ZBA Fee Structure/Criteria for Waiver?
  - Revisiting ZBA Forms

[Also other issues to be discussed may include: Budget-Bills-Administrative Issues-Memos-Comments From the Public]

**Proceedings:**

- 6:45pm Mr. Joseph Curtin opened the meeting with a roll call attendance.
- Board members discussed submitted Minutes of February 14<sup>th</sup>, 2012.
- 6:46pm *Mr. Matthew Campobasso* moved to accept the minutes of February 14<sup>th</sup> 2012 as corrected. Motion seconded by *Mr. Jerry Siver*. Motion carried. All in favor, Yeas 5: (*Richard Hautaniemi, Joseph Curtin, Jeffrey Donaldson, Matthew Campobasso, and Jerry Siver*) Nays: 0.
- Mr. Curtin opened the hearing for case # 613 William A. & Karen Henderson for a variance by reading the published legal notice. Mr. Curtin opened the floor for the applicants to present their case.
- Mr. David Lozier excused himself from hearing the case since he is a neighbor to Mr. and Mrs. Henderson.
- Mr. Curtis Plante, representing the applicants, introduced the project and said that he is managing the development of Sandy Ridge area. He noted that the building permit included the space for a closet but this was not what they needed a variance for. The variance was mainly for the detached garage which does not conform to the setbacks. Mr. Plante showed the Board members aerial view pictures of the area and explained to them why they are in need of a variance for the side set back. Mr. Plante stated that the primary and reserve septic system would not allow any construction as well as any construction on the westerly side would affect the privacy of adjacent abutting property.

- Mr. Plante added that the project will not interfere with the privacy of any adjacent neighbor, and that the Henderson's property is very close to the driving range of the Sterling National Country Club which poses a hazard to them from the golf balls. Mr. Plant also said that abutting the Country Club is in support of the project as expressed in their letter submitted with the application. Other letters of support from abutters were also included in the application. Mr. Plante pointed out that this project will help Mr. Henderson clean up his yard, provide adequate storage for his tools and equipment, and will also increase the revenue to Sterling through new assessed value for the garage.
- Mr. Hautaniemi asked about the side set back and how much is being requested for the variance.
- Mr. Plante replied that it would be one foot less from the lot line. The proposed garage is about 22ft wide x30ft deep.
- Mr. Donaldson asked if there was already a garage on the property.
- Mr. Plante replied that there is one on the property.
- Mr. Donaldson asked if this will remain a garage.
- Mr. Plante replied affirmatively.
- Mr. Hautaniemi asked about the hardship in this case.
- Mr. Plante replied that Mr. Henderson is violating the restrictive covenant of Sandy Ridge by storing his equipment such as bike, trailer etc. outside, and he would like to stay in compliance with those covenants.
- Mr. Hautaniemi asked if they have thought of other possible locations for the garage.
- Mr. Plante said that they have looked at other possible locations but they were either financially prohibitive, the neighbors would object to it, or would affect the septic system. Mr. Plante added that this also is the location which he would approve as the Manager of the development.
- Mr. Plante stressed upon the importance of maintaining the aesthetics of the neighborhood and that he needs to be consistent with the quality of the homes in the area.
- Mr. Hautaniemi said that the current garage is already 440sq.ft.
- Mrs. Henderson rebutted that it barely fits two cars as it is.
- Mr. Plante stated that it will not be financially feasible to reduce the size of the proposed project.
- Mr. Henderson asserted that he wants to maintain the current look of the neighborhood.
- Mr. Hautaniemi argued that the applicants could have an unattached garage of 500sq.ft.
- Mr. Curtin added that the bylaws give exemption of 500sqft. unattached garage without having to get a variance with a 10ft set back.
- Mr. Plante said that reducing the size will not solve the problem of protecting the Hendersons' from the golf balls, and that cutting out trees will make this hazard even worse.
- Mr. Curtin noted that the Board is looking into the hardship because the bylaws are restrictive.
- Mr. Plante acknowledged several hardships because they looked at other project proposals before they finally decided on this one.
- Mr. Curtin opened the floor for the public to comment or ask questions.
- Mr. Donaldson commented that he can see some hardship but not a lot-the Board is having an issue of where they could build the garage as a matter of right vs. what is being allowed in town. However, aesthetically, what is being proposed is better, and the driving range does not care about having the garage at that location.
- Mr. Curtin read a letter from the application packet by the Sterling National Country Club, a letter from Golf Bright and from 7 Sandy Ridge Road in support of the project.
- Mr. Hautaniemi agreed with the comments but asked Mr. Plante if he is fixed in his position.
- Mr. Plante said that he found it extremely hard to change the proposed location because it will affect abutters. He urged the ZBA to grant the variance since it will have no impact on the neighborhood.
- Mr. Siver noted that the Sterling bylaws do not define "hardship" so it was up to the ZBA to define it as they see it.
- Mr. Campobasso asked about the shape of the sides.
- Mr. Plante replied that it is sloped on the right side.

- Mr. Hautaniemi pondered if this was a self induced hardship.
- Mr. Curtin commented that the proposed location is the only one without infringing on the septic.
- Mr. Donaldson said that he saw a not very strong hardship but the ZBA could look at detrimental effects to the neighborhood, abutter opposition, as well as the hazards from the driving range as being hardships.
- Mr. Hautaniemi argued that the ZBA sometimes asked applicants to take a second look at the proposed projects and they usually were able to come up with alternatives which would satisfy the bylaws.
- Mr. Plante asserted that the applicants struggled with this for a long time and it is not at their best interest to put it on their lawn for example. Changing the location will mean that they will have to get rid of many tall pine trees and that would allow more golf balls on their property. This would be more of a safety hazard.
- 7:22pm *Mr. Jerry Siver* moved to accept the project with stipulation. Motion seconded by *Mr. Jeffrey Donaldson*. Motion carried. All in favor, Yeas 5: (*Richard Hautaniemi, Joseph Curtin, Jeffrey Donaldson, Matthew Campobasso, and Jerry Siver*) Nays: 0.
  1. Stipulation was: Future expansion of the main home and garage in the westerly direction from the current structure on the property is prohibited.
- Mr. Donaldson asked about when the restrictive covenants could be changed.
- Mr. Plante replied that they are 20years restrictive.
- Mr. Donaldson noted that if the covenants would be waived, then the ZBA could put a condition on the variance to not allow any future expansion of the main home and garage on the westerly direction from the current structure on the property.
- Mr. Curtin opened the hearing for case # 614 Konstadinos Katsiaunis (Sterling Ice Cream Bar) by reading the published legal notice.
- Mr. David Lozier joined the Board.
- Mr. Bill Hannigan, representing the applicants, noted to the Board that as part of the application process, he has now an approved site plan from the Planning Board and Conservation Commission. The project is centered around a drive thru which will serve deli sandwiches, coffee, bagels and maintain the restaurant opened year round. The seating inside the building will remain the same, and the entrance and exit to the location will bear visible signs for entry/exit. Employees will have their own parking spots at the back of the building. Mr. Hannigan added that the Planning Board has approved the project but had two conditions only. More details for the plans and project were included in the application packet. Impervious plans also included.
- Mr. Curtin asked about the hours of operation.
- Mr. Katsiaunis replied that they are probably from 5:30am -8pm (season dependent).
- Mr. Hannigan said that they will still make that determination with the town as per the allowable hours, but certainly not a 24hr operation.
- Mr. Hautaniemi asked about the entrance from the Clinton direction and why it was the second left.
- Mr. Hannigan replied that they will not put an entrance sign at the first entrance and put it instead at the second entrance because this is the safe way of locating it. However, there will not be an over signage.
- Mr. Ken Williams, Planning Board, suggested that the ZBA look at the latest approved site plan for a better understanding of how it looks.
- Mr. Campobasso asked if this was the safer plan.
- Mr. Hannigan replied that it was. He explained that parking and configuration is a big improvement and the whole front of the building is going to be accessible to pedestrians. This will keep traffic away from where people will be congregating.
- Mr. Hautaniemi asked if the delivery trucks could back up in the drive thru lane.
- Mr. Hannigan replied that delivery trucks would load at the back at the employee parking area and will not disturb customers.

- Mr. Curtin commented that this is a much better design with smoother traffic.
- Mr. Hautaniemi noted a letter from Mr. Joseph Paolini dated 03/06/12 (171 Clinton Road).
- Ms. Serena Valentine, 12 Lakeshore Drive, asked if the applicant would have to come back to the Board in case they need to add extra parking spaces.
- Mr. Hannigan replied that they would. However, he asserted that they have more than the required parking spaces per Sterling's regulations, and they should be sufficient.
- Mr. Hannigan also explained that they would have to go back to the Planning Board if they needed more parking spaces for a new site plan review-but not for the drive thru.
- Mr. Curtin asked if there were any more questions or comments from the audience or the board. He noted to the record the letter from Mr. Paolini supporting the project but suggested his recommendations for stipulations that the Board could put on the granting of the application. Mr. Paolini made requests for noise reduction emanating from the ordering system of the drive thru as well as fencing to reduce light pollution to his property.
- Mr. Hannigan said that they could do vegetative screening between them and the neighbor but could consult with Mr. Paolini for his preference.
- Mr. Katsiaunis said that he could do a fence screening.
- Mr. Hannigan suggested putting a 6 ft. high fence and commented that this was a very reasonable request. As for the outdoor ordering system, it could be an outdoor speaker system or a buzzer system to control the noise.
- Mr. Katsiaunis said that he has no problem with finding the best option to satisfy that request and will look into it.
- Mr. Campobasso asked if the Planning Board had a special condition for limiting the noise.
- Mr. Hannigan replied that they needed a fence that would be done without further encroachment on conservation land.
- 7:53pm. *Mr. Matthew Campobasso* moved to grant the requested special permit with stipulations. Motion seconded by *Mr. Jeffrey Donaldson*. Motion carried. All in favor, Yeas 6: (*Richard Hautaniemi, Joseph Curtin, Jeffrey Donaldson, David Lozier, Matthew Campobasso, and Jerry Siver*) Nays: 0.
  1. Stipulations were the following: To provide suitable fence screening on the westerly side (after meeting with abutter).
  2. To remove the outdoor speaker system and control noise from the ordering system.
- Mr. Curtin opened the hearing for case #615 Habitat for Humanity NCM, Inc. for a special permit and read the published legal notice.
- Ms. Maggie Monroe-Cassel presented their request for a special permit. She explained that the project is a two-bedroom home which does not meet the required set-backs. She noted that Habitat for Humanity was given a piece of land from Waushacum Homeowners Association and they will be putting a gingerbread house on it with a shingle top roof and will be adding a double window facing the neighbor on the side. The design was submitted on March 7<sup>th</sup>, 2012 with updates. The plan is to make the house as close as possible to the ground so it is handicap accessible as per regulations from Habitat for Humanity International.
- Ms. Serena Valentine asked if they will be putting a front porch to make it handicap accessible.
- Ms. Monroe-Cassel replied that they will only put it on the side and back door.
- Mr. George Thompson, 23 Chestnut Avenue, asked if the applicants were allowed those set back, would that mean that all other similar cases would be allowed the same treatment.
- Mr. Curtin replied that the Board reviews it on a case by case basis, but this area has many non-conforming lots.
- Mr. Vincent Benincasa, Habitat for Humanity, said that most homes in the area are about 5ft from the front set back, and they have already built another house in the area with the same foot print and with that set back. However, with this house, they are looking to have a 10ft front set back.

- Ms. Valentine rebutted that her house has a 30feet set back.
- Mr. Curtin commented that each house is really different from the other but they have to see how to make it less non-conforming.
- 8:07pm *Mr. Jeffrey Donaldson* moved to grant the special permit as presented. Motion seconded by *Mr. Richard Hautaniemi*. Motion carried. All in favor, Yeas 6: (*Richard Hautaniemi, Joseph Curtin, Jeffrey Donaldson, David Lozier, Matthew Campobasso, and Jerry Siver*) Nays: 0.

### **ZBA Business**

- Mr. Curtin read an email from Mr. George Thompson for 23 Chestnut Avenue with regards to him not being able to build on the lot. Mr. Curtin explained that the non-conforming lot was granted a special permit before so they could tear down the old house and build a new one. Mr. Thompson said that when he bought the lot, he got a notice from the Wauchacum Homeowners Association to demolish the house as per orders from Sterling Fire Department, Board of Health, and Building Department. However, after demolishing the house, Mr. Thompson could not get a building permit because they told him that this could only be done after the completion of the new sewer project. Nevertheless, he was never notified of that completion nor was he allowed to build.
- Mr. Thompson said that this has been an ongoing problem and Mr. Brodeur deferred the decision to the ZBA.
- Mr. Curtin stated that the ZBA issued a special permit in 2008 to Mr. Steven Morgan and it is already passed the 2 year limit to build on the lot as per the bylaws.
- Mr. Thompson said that he was forced to tear down the house and now his land is Waushacum Park.
- Mr. Curtin reviewed case #569 Mr. Steven Morgan for 23 Chestnut Avenue.
- Mr. Hautaniemi asked if Mr. Thompson got a demolition permit.
- Mr. Thompson replied affirmatively.
- Mr. Curtin noted that the ZBA could issue a finding.
- Mr. Donaldson noted that the issue is that the property was torn down and nothing happened for 2 years.
- Mr. Siver asserted that Mr. Thompson was being prohibited from building because of the sewer project.
- Mr. Curtin added that Mr. Thompson could not get a building permit because of the septic.
- Mr. Hautaniemi said that the building permit started with the demolition/tear down.
- Mr. Donaldson pondered if the ZBA has the authority to do anything about it since he did not build for 2 years and noted that the ZBA does not have enough facts.
- Mr. Ken Williams suggested that Mr. Thompson could come back for a variance.
- Mr. Hautaniemi added that someone at that the Assessor's office changed the field card to "non-buildable" and abandoned.
- Mr. Curtin said that the granted special permit included demolition.
- Mr. Campobasso pointed out that the ZBA is dealing with a non-conforming lot and as per the bylaws, the special permit's 2 year limit could be extended if the Board deems that lapse happened because of good cause. Mr. Campobasso asserted that this is a "good cause" because Mr. Thompson could not build due to the sewer issue.
- Mr. Hautaniemi stated that he already started work within the 24 month period.
- Mr. Campobasso acknowledged that he could not start work due to good cause.
- Mr. Donaldson said that he has no problem with it.
- Mr. Curtin said that the Board could issue a findings that the special permit is still in effect after studying case # 569 and according to section 6.3.6 of the bylaws that there was good cause for the delay in construction. It is the Board's determination that the special permit was still in effect.
- Mr. Matthew Campobasso moved to issue a finding that the special permit for 23 Chestnut Avenue is still in effect. Motion seconded by Mr. Jerry Siver. Motion carried. All in favor, Yeas 6: (*Richard*

*Hautaniemi, Joseph Curtin, Jeffrey Donaldson, David Lozier, Matthew Campobasso, and Jerry Siver*) Nays: 0.

- Board members discussed the fee structure and waiver criteria for the ZBA.
- Mr. Curtin noted that the issue for Fee Structure and criteria for waiver was raised at the last meeting with 15 School Street. Mr. Curtin said that he had a meeting with Town Administrator and Town Clerk and asked for Town Counsel opinion on the matter. Mr. Curtin presented to the Board Town Counsel's opinion on Service dogs and on fee structure. Mr. Curtin pointed out that it seemed from the Town Counsel communication that the ZBA needed a policy for a fee structure and criteria for waivers.
- Mr. Curtin said that this could be something to research further and discuss at the next scheduled meeting.
- Mr. Campobasso asked Town Clerk Mrs. Dawn Michanowicz if other Boards in Town have a fee structure.
- Mrs. Michanowicz replied that at least for her department, she has clear fee structure for dogs, and she usually waives fees for service dogs.
- Mr. Siver asked if her criteria for waivers is subjective or specific.
- Mrs. Michanowicz replied that it is subjective, and that she does not know exactly what other Boards have.
- Mr. Campobasso asserted that the ZBA fees go for a direct expense.
- Mr. Donaldson said that they cannot discuss the issue until there is a fee structure.
- Mr. Curtin asked Mr. Donaldson if he got the chance to work on the ZBA forms.
- Mr. Donaldson replied that he has not yet but should be able to review them for the next meeting.
- Ms. Katrina Jablonski rebutted that she is not supposed to pay for licenses for her dogs and that she would file a complaint with the ADA for discriminatory treatment.
- Mr. Lozier and Mr. Donaldson explained to Ms. Jablonski that the ZBA is not a licensing Board but its concern is the number of dogs.
- Ms. Jablonski argued that her dogs are like a medical device and should be treated just like any other supportive medical device.
- Mr. Curtin reiterated that the Board would be discussing this issue again at the next scheduled meeting and would be talking with Town Administrator and the Town Clerk to reach a solution.
- 8:46pm Mr. Matthew Campobasso moved to adjourn. Motion seconded by Mr. Jerry Siver. Motion carried. All in favor, Yeas 6: (*Richard Hautaniemi, Joseph Curtin, Jeffrey Donaldson, David Lozier, Matthew Campobasso, and Jerry Siver*) Nays: 0.

Attachments:

1. ZBA forms with suggested changes (Content Form and Instructions Form)
2. Case # 613 William A & Karen Henderson file
3. Case # 614 Konstadinos Katsiaunis (Sterling Ice Cream Bar) file
4. Case # 615 Habitat for Humanity NCM, Inc. file
5. Mark Brodeur emails to the Board with regards to cases 613, 614, 615
6. Letter from Mr. Joseph Paolini dated 03/06/12 with regards to case #614
7. Emails from Mr. George Thompson dated 03/05/12, 03/08/12 & 03/09/12 and replies from Mr. Mark Brodeur dated 03/08/12 and Mr. Joseph Curtin dated 03/07/12.
8. Town Counsel communication dated 03/08/2012.