

**City of Keene
New Hampshire**

ZONING BOARD OF ADJUSTMENT
MEETING MINUTES

Monday, April 4, 2016

6:30 PM

City Hall, Second Floor Committee Room

Members Present:

Louise Zerba, Chair
Joseph Hoppock, Co-Chair
David Curran
Jeffrey Stevens
Nathaniel Stout

Staff Present:

Gary Schneider, Plans Examiner

Members Absent:

Others Present:

I. Introduction of Board Members.

Chair Zerba called the meeting to order at 6:30 PM and introduced the Board Members.

II. Minutes of the Previous Meeting – March 7, 2016.

Mr. Hoppock made a motion to accept the minutes of February 1, 2016, with the following corrections. Mr. Curran seconded; the motion carried unanimously.

The corrections tendered were as follows:

Page 3, paragraph 3, third sentence: “note” should be stricken and substituted with “not.”

Page 5, paragraph 4, first sentence: “awash” should be stricken and substituted with “a wash.”

Page 6, paragraph 5, first sentence: “Green bruyer” should be stricken and substituted with “Greenbrier.”

Page 6, fourth sentence: The sentence should be stricken, and rewritten as follows: “He noted that for this reason the Zoning Ordinance states that a change in use, if non-conforming, requires compliance with parking or the applicant must apply for a variance.”

Page 8, second paragraph, should be modified as follows: “Motion was made by Mr. Hoppock to approve ZBA 16-04, to grant the appeal and to overturn the administrative decision because the property under consideration is a non-conforming use at present, mainly its dimensions, lot-size, and setbacks are non-conforming, then it is more probable than not it was non-conforming in 1970, the year the Zoning Ordinance was adopted for wholesale/retail use with 17 spaces

available and 16 spaces required and as such the Zoning Administrator's decision is legally in error with Section 102-3 (a), in support. Mr. Stout seconded the motion."

Page 8, paragraph 4, second sentence: replace "stratus" with "status."

Page 9, ZBA 16-10: correct the spelling of toadstool with a capital "T" throughout the document by ensuring the spelling as "Toadstool" and removing the possessive "s."

Page 9, first sentence: delete "was" after "once."

III. Unfinished Business.

None at this time

Continued from February ZBA 16-12/: Petitioner, William C. Clarke Jr. Irrevocable Trust, of 50 Timber Pond Rd., Peterborough, NH, represented by Brickstone Land Use Consultants, LLC, of 185 Winchester St., Keene, requests a Variance for property located at 25 Blossom St., Keene, which is in the Low Density District. The Petitioner requests a building lot of 3.66 acres with 46.14 foot frontage in the Low Density District where a 60 foot frontage is required. The applicant is proposing a two lot subdivision of an existing 6.21 acre lot to create lots of 2.55 acres and 3.66 acres. The 2.55 acre lot would have 135.0 foot frontage with a single family home and two outbuildings. The 3.66 acre building lot would have 46.14 foot frontage.

Chair Zerba read the following letter from the agent for the applicant, Brickstone Land Use Consultants, LLC:

On behalf of the petitioner, William C. Clarke, Jr. Irrevocable Trust, I am hereby requesting that our application for variance, ZBA 16-12, be postponed until the next regular ZBA meeting to be held on May 02, 2016. We are working on an agreement with an adjacent landowner to do a boundary line adjustment which would result in additional frontage for the subject property and eliminate the need for a variance. The postponement will allow us an opportunity to finalize a written agreement for the boundary line adjustment. We would then withdraw the application for variance at the May 02 meeting. In the event a written agreement cannot be reached, we will proceed with the application for variance at the May 02 meeting. Thank you for your consideration of this request.

Mr. Hoppock moved to accept the request for postponement of the application to May 2, 2016. Mr. Stout seconded. The motion carried unanimously. Chair Zerba announced that ZBA 16-12 would be postponed until the next regular meeting of the Zoning Board of Adjustment to occur on May 2, 2016, commencing at 6:30 PM

IV. New Business.

Chair Zerba recognized the City Attorney, Thomas P. Mullins, in connection with an appeal filed at the Cheshire County Superior Court in the matter of *George P. Achille, Jr. v. City of Keene Zoning Board of Adjustment*, Docket No. 213-2015-CV-00219.

The City Attorney reviewed with the Board the circumstances of the Appeal. This was an Appeal from the denial of a Variance by the Zoning Board of Adjustment to allow an electronic changeable copy sign at the location of the business. The City Attorney explained that the legal basis of the Appeal was primarily based upon constitutional issues under the United States Constitution involving equal protection and the First Amendment. The Zoning Board of Adjustment had previously granted six Variances from the Zoning Ordinance in question, Section 102-1292 (6), which prohibits “changeable copy signs that are electrically activated.” The City Attorney also explained that, the recent United States Supreme Court case of *Reed v. Town of Gilbert, Arizona*, prohibits sign code determinations that require an interpretation of the content of the sign.

Further general discussion ensued between the members of the ZBA and the City Attorney.

Mr. Hoppock moved to authorized the City Attorney to execute and to file the Consent Decree with the Cheshire County Superior Court, with the inclusion of the agreed upon conditions that the copy on the sign would not be changed more than once a week, and, with the exception of changing the copy once a week, the sign on the copy shall remain static with no flashing or moving copy. Mr. Stout seconded the motion. On a call for the vote by Chair Zerba, all members voted in favor.

V. Communications and Miscellaneous.

Mr. Schneider informed the Board that the City had received an invitation directed to the Zoning Board of Adjustment from the Office of Energy and Planning for a planning conference to occur on June 4, 2016, in Concord, and that the members of the Board were invited to attend.

VI. Adjournment.

There being no further business, Chair Zerba adjourned the meeting at 7:00 PM

Respectfully submitted,

Thomas P. Mullins
City Attorney