

**ZONING BOARD OF ADJUSTMENT
PLANNING BOARD
MEMORIAL BUILDING**

JOINT MEETING

AUGUST 4, 2020

7:00 P.M.

The following are to be considered draft minutes until approved by the Board.

This meeting was scheduled as a joint meeting with the Planning Board to gather information presented by the sales associates involved in the proposal for pressure treated wood facility requested by Michael Hansen for an amended site plan and special exception.

Zoning Board members present via ZOOM: Susan Chiarella, Chair; and Alternate, Tanner Jacques. Zoning Board members present in the meeting room: Justin Hastings, Bryan O'Day, and Cody Patten. Absent: Peter Abair

Planning Board members present via ZOOM: Peter Keene. Planning Board members present in the meeting room: Darrin Patten, Bryan O'Day and George McCusker. Absent: Kevin Lee, Ken Jacques, Michael Howard, Tim Bray, and Dan Saulnier.

This meeting took place during tropical storm Isaias. There were some scattered power outages, which resulted in some of the planning board members being unable to attend, a quorum was present.

Others present via ZOOM: Ken Laughlin, Mike Hansen, Bror Moldrup, Claus Staalner, Barbara Cooper, B. Manning, Chris Stearns, Sue-Ann Kazenas, and Dick Hendl.

Susan Chiarella opened the Zoning Meeting while waiting to see if more planning board members signed in. Tanner was appointed to participate in the meeting in Peter Abair's absence.

Minutes of July 7, 2020: The following corrections were made Page 1 last paragraph His concern was it appeared there were other places the house garage could go. Page 2 2nd paragraph Susan stated her issue is in making the lot more non-conforming. Page 2, letter D. Justin stated the specific size is NOT out of the norm, (word NOT added). Page 5 Dell stated the overhand overhang from the roof. Page 6 2nd paragraph because the designer design is all done. Page 9 last paragraph Tanner sat in on case. Tanner was appointed to set in on the case. Justin wanted to clarify that it is not up to Board members to offer professional opinions on plans presented in reference to a statement made by George McCusker. Susan asked if Justin thought what was written was what was said at the meeting. Justin stated the minutes show what was said, but he wants it to be clear that it is not up to the Board to make professional opinions. Susan noted Justin's point, but the minutes could not be changed. Susan requested when Tanner is asked to sit in on a case, it be made clear he is appointed as a Board member. Justin moved to approve the minutes with corrections as noted. Motion seconded by Bryan and voted unanimously as follows: Justin - yes, Cody - yes, Bryan - yes, Tanner - yes, and Susan - yes.

Continuation of Special Exception Hearing – Wendy and Dell Rice. Susan reported Wendy and Dell Rice have asked to delay their hearing to September 1, 2020. They are in the process of gathering the information the Board has requested.

Planning Board – Amended Site Plan Review – Michael Hansen

Peter Keene, Planning Board Vice-Chair agreed to chair the joint hearing. At approximately 7:15 p.m. Peter opened the continued hearing. Susan Chiarella recused herself from this hearing. Peter asked Mike if once the wood comes out of the pressure tanks is it then loaded on trucks or stored at the site and would any of the treatment be dripping off the timbers? Michael stated the wood goes into the tank untreated, and the chemicals get pressurized into the wood. Before it comes out of the tank the tank tilts, so any chemicals left on the wood runs off, drips into the cylinder and is recycled. There would be some residual but not a lot. It is not going to be on your hands if you touch it. Peter stated he has researched the chemical and found it has low toxicity and is listed as 1 on the material safety data sheets.

Ken Laughlin, manufacturer of the wood preservative, added at the end of the cycle there is a strong vacuum pull on the wood that pulls off all the excess chemicals so when it comes out of the cylinder it is completely dry to the touch. This is an EPA registered product, what they call a general use product. This chemical can be bought in Home Depot as an over the counter product.

Peter stated the diagrams and information presented addressed his questions. He asked if there were any other questions from any of the other board members or the public. Peter asked if the intent for the Planning Board was to decide tonight or continue the review to their next meeting. Janet noted the intention was to have the joint meeting for planning and zoning to all be in one place to hear the testimony from the professionals that Mike asked to be present at the Zoning Board's request, and then continue the Site Plan hearing to their August 20 meeting, so the zoning board could continue their hearing.

Tanner asked if there have been any instances of problems with the pressure treatment vessels that Mike is looking to bring in. Claus reported he has not had any incident in the US or Canada of vessels blowing up. He cannot attest that a pressure treatment plant has not blown up, but the product Mike is purchasing is very well proven with all kinds of safety devices associated with them. There are strict standards that must be adhered to for any vessel over 15 psi. The materials themselves must go through strict testing and inspection along the line, "from cradle to grave". The vessels and installation are all inspected and certified once construction is complete. This is a safe and well-proved technology that has been around for a long time.

Peter asked if there would be any floor drains in the building where the equipment is to be housed? Mike stated there would be no floor drains. The vessels will be set in a concrete containment. Before the vessels are brought in the area will filled with water and monitored for leaks. He is thinking about putting a barrier membrane on the inside of the concrete containment. Peter stated it sounds like this is a pretty thorough and adequate system that is being planned to contain any leaks. Claus shared on the screen a plan that showed the tank inside a contained concrete bunk, sitting inside a containment area that is large enough for the largest vessel offered for services. Nothing escapes to the environment in the event of some sort of failure.

Peter asked how many gallons of the liquid would be stored on site. Claus stated the vessel contained 12,900 gallons.

Tanner asked if what the cause and effect is of the chemical getting into the environment. Ken Laughlin stated because it is a general use pesticide, it can be just cleaned up by ordinary means using a backhoe or bulldozer, to get the chemical out of the dirt. It is a general use pesticide and a spill does not need to be reported to the EPA, it just gets cleaned up, put back in the containment area to separate out the particles you want and then the dirt can be taken to a landfill. Claus stated it is possible the containment area could crack or something like that but expects Mike will be inspecting it often. There is no traffic in that area so there is no reason for that containment to break down. Peter suggested Mike include some kind of plan of the containment enclosure and the impermeable membrane that will be going under that. Mike said it would be just like an industrial foundation waterproofing put on the inside. He is pretty sure his insurance company is going to want to make sure it is leak-proof and be tested. The containment must be designed to hold all the chemicals. Peter asked Mike to include some more detailed information about that for the next planning board meeting.

Peter stated at this point Ken and Claus have addressed any of the questions and concerns that he has. Tanner stated they both addressed his concerns and he is comfortable with what he has heard.

Bryan asked if the chemicals are something that gets changed out or do, they just add to them. Ken stated as the wood is being treated a certain amount of chemical gets absorbed. Routinely a new batch of concentrate is brought in to be put into the system with most treatment plants using 2 or 3 tanker trucks a year depending on how busy they are. 100% of the product is consumed into the wood, the product does not get replaced. Bryan asked what the operating pressures of the machine are. Claus stated the pressure vessel is approved up to 200 psi and the regular operating pressure is in the 180 to 190 psi range.

There were no more questions from the Planning Board. A motion was made by Darrin to continue the amended Hansen Site Plan Hearing to August 20, 2020, seconded by George and unanimously approved.

Board members thanked Michael, Ken, and Claus for taking the time to meet with boards. Claus stated anyone is more than welcome to reach out to him.

Zoning Board Amended Special Exception Hearing – Michael Hansen

Bryan, as Vice Chair of Zoning, (Susan had recused herself) opened the amended Special Exception hearing. Tanner appointed as a voting member. Tanner thanked Mike for getting the experts on the line. He stated they were very helpful in answering the environmental and construction questions he had. Justin noted the only concern he has is the drawing on the containment building but as Mr. Hansen has said his insurance company is probably going to want one and the planning board is as well. Tanner suggested a condition could be to provide an accurate drawing of what the containment would look like within the building. Justin stated it appears before the planning board will grant approval, they are going to require that. Tanner

stated from the scope of what he is looking at, he is not as concerned about the building but whether Mike would be able to operate this at his location. Tanner has no further questions or concerns for Mike. Tanner moved to close the hearing and enter deliberations, seconded by Justin, and approved by Justin, Cody, Bryan, and Tanner.

The Board reviewed the checklist:

- a. *The proposed use would not be detrimental to the character or enjoyment of the neighborhood by reason of undue variation from the character or appearance of the neighborhood:* The neighborhood is such that if something like this is to take place it is appropriate in that neighborhood. Mike has a business there and treating wood there just not in this capacity. This is not changing the use.
- b. *The proposed use will not be injurious, noxious, or offensive, and thus detrimental to the neighborhood because:* The property use is not changing. A containment area is proposed. This is not a chemical that is hazardous or overly toxic. It is a pesticide that does not need to be applied for. There are a lot of safety precautions that go into this and the chemicals involved are not highly caustic or toxic.
- c. *The use will not be contrary to the public health, safety or welfare of the neighborhood.* The neighborhood that this is happening in already has Special Exceptions for industrial/commercial use.
- d. *The location, size of the proposed use, the nature and intensity of the operation involved shall be in harmony with the neighborhood.* The existing site is not making any more noise or detriment to the area. Tanner noted his concern with the amount of traffic, it was in the minutes from last time. He noted perhaps the Board would want to have Mike check in with the Road Agent, Peter. The traffic is not multiplying by some exponential number, but it is an increase in traffic. His concern is if the road is set up for this amount of traffic. There could be a condition to see if the Road Agent feels there needs to be any sort of augmentation or improvement to the road. Justin suggested recommending that the Planning Board address this and this could be granted as a condition of approval. Tanner stated they are not saying that there needs to be improvements, just that there needs to be a conversation which can be discussed at the site plan as to whether the road is capable of handling that. Everything else in the neighborhood is fine.
- e. *The operation in connection with the proposed use will not be more objectionable to nearby property by reason of noise, fumes, odor, or vibration...* The process takes place inside the building and the chemical rates so low on any scale. Based on the proposal noise and odor does not seem to be part of the process. The process is soaking wood under pressurized containment.

Bryan stated since the Board did not individually vote on each of the 5 facts supporting the request, he asked for a motion to approve the 5 facts. Justin said he would accept the 5

conditions supporting the request, as long as these appease the Planning Board and Mike at least has the conversation with the Planning Board about the Road. Justin moved to accept the 5 criteria, seconded by Cody. Justin, Cody, Bryan, and Tanner voted Yes. Motion approved.

Motion by Tanner to approve the following conditions, seconded by Justin and unanimously approved.

1. Applicant to speak with the Road Agent to make sure the road can handle the traffic and if not, meet the standards he requires. (The Zoning Board would like to recommend the Planning Board review this at the Site Plan Hearing
2. Applicant to submit a design for the containment and the membrane that will go with it.

Justin moved to grant the amended Special Exception with the noted conditions, seconded by Tanner. Justin, Cody, Bryan, and Tanner all voted in favor of the motion. Amended Special Exception was granted.

Susan Chiarella rejoined the meeting and asked Tanner to participate as a voting member.

Susan stated the Zoning Board is going to have a meeting right now, and this is not a hearing, she will not entertain comments from outside the board. She stated the Zoning Board may wish to look at the decision made at its last meeting in regard to accepting or not accepting the Kazenas application. The Board was given the Fisher vs Dover doctrine by Town Counsel when the Kazenas' filed their second application. In that doctrine there are four items that need to be met in order to consider rehearing an application. She stated it absolutely fails on the first three and she went over those issues.

1. *Has the Zoning Ordinance been amended since 2016 in a way that changes the criteria required for a special exception?* Susan stated the Board had decided no.
2. *Has the Zoning Ordinance been amended since 2016 in a way that changes the way this type of proposed use is regulated by the Town?* Susan: That was a clear no.
3. *Has the applicant identified any other state law that has been amended since 2016 in a way that affects the standards by which the ZBA is required to evaluate this application for a special exception?* Susan: That was clearly no.
4. *Does the second application propose a use that is factually different from the first application? In other words, is there any specific aspect of the second application that is different from what they proposed to do the first time, such as the size of the operation, the number of employees, vehicles, structures, customer visits, area or configuration of where on the property it will take place, additional precautions against noise or other impacts to the neighborhood etc.?* Susan stated she maintains that the Board made the

correct decision in not accepting the application. The application that was brought a third time does not give us [the Board] any additional precautions against the noise. It monitors the noise, but it does not give precautions. She does feel the right decision was made in not accepting that. This is open for discussion from the Board.

Tanner stated he would like to step in here. He raised this the last time and will raise it again. When he looks at the application, seeing that they are bringing in some type of noise monitoring system to him seems like a material change that is substantial and without asking the question as to who is monitoring it, how is it monitored, what does it set off for alarms, and who is notified can't be done without walking down that path. He understands the board might feel they have exhausted this, but to him it seems there is enough of a change to at least have a conversation about it. He realizes it opens a large door, and he understands the contentiousness with it, but if there are extra precautions being presented, he would be in favor in reversing the course and accepting the application. He is not speaking for the Board, but he has been through these hearings since last December and to him this is a drastic change in what is being presented, but he does not have enough information on what it means and how it works, so he would be interested in asking the questions. It comes down to the rest of the board and whether they are interested in hearing that or whether they feel the board has made a mistake. If not, the course can continue.

Justin stated he does not feel a mistake was made. He does believe that there is not enough information on the noise monitoring system and says any additional precautions against noise. He is not sure a monitor is a precaution against noise.

Tanner stated he would agree, he does not know that it is a precaution, but it is certainly different than anything that has been seen in the previous two applications. Susan stated the question is it materially different from what was presented before, and she is hung up on the word precautions against noise. The applicant has not come to the board saying they are going to put up a fence. A monitoring system does not preclude the noise, it just monitors it. She feels if the applicant really took the noise seriously, they would come to the board with a proposal to preclude the noise. Monitoring the noise does not preclude it, it just monitors it.

Bryan stated in the past they were going to put up noise fence. Susan stated they never followed through with that. Tanner noted the application states that is something they would pursue. Susan stated it has been heard before. Tanner said he was not part of the initial hearing in 2006, but he has read the minutes and reviewed the application. He was appointed for the hearing on the second doctrine case back in December. He thought that application was lackluster in comparison to the first. He looks at this one and his concern is whether the board is being ignorant to the idea that they are providing something different and something that would ease the situation. He agrees that monitoring does not mean anything, but he does not understand what the monitoring will do. His question at the last meeting was what does monitoring mean, who does it alert, and what chain of events does it bring after that. He would feel uncomfortable without exploring it, and felt that way when he voted last time, but he understands where the board is coming from. Susan stated if they were serious about the third application and monitoring, they would have come forward and said this is what we are going to do. We are

going to monitor it and if it is above this level, we will do x,y,z, which is not being done in this application. This is the third take on this and at this point in time, the applicant is not providing this board with enough additional information to open this up again.

Justin stated he can see how it can be perceived as more information, but he does not see any information being relevant that it is going to be a precaution against noise or other impacts to the neighborhood. He believes a mistake was not made. There might be more information in the packet, but it does not change how the board looks at it. It does not change the content.

George McCusker asked Susan if it would be appropriate for him to make a comment at this time? Susan stated it is not appropriate.

Susan asked Bryan if he had any thoughts on this. Bryan replied not really, he said the board has gone through this multiple times, he does not know that the board has misjudged. He does see there may have been a tidbit more information in the sense of the monitoring, but at the same point, what does monitoring change? He does not know that it changes a whole lot. Susan stated that is where she is at with it. Noise can be monitored, but unless they come and say what they are going to do about noise.

Susan stated at this point in time the Board needs to decide whether or not the board applied the Fisher vs Dover doctrine correctly to the third application. The language in the doctrine seems to be clear. The applicant would have had to come with additional precautions against the noise or impacts to the neighborhood, which she is not seeing in the third application. Justin stated he is not seeing a substantial change. Susan asked Cody for his thoughts. Cody stated he can see the point on the noise, who is monitoring it and how is it being monitored, but that was not mentioned. Justin stated he is not seeing a substantial change.

Susan stated this is not a hearing. She would like to entertain a motion and put it forward to the board as to whether the correct decision was made at the last meeting on this subject.

Susan stated the board needs to reaffirm the decision of their July 7 meeting whereby they did not accept the third application from the Kazenas. Motion by Justin that the findings of July 7th meeting stands, seconded by Bryan. Justin – yes, Cody – yes, Bryan – yes, Susan – yes, Tanner – nay. Susan stated the application will not be accepted and the board will stand by the decision they made previously.

At approximately 8:15 p.m., Justin moved to adjourn, seconded by Bryan and all in favor.

These minutes were transcribed using a ZOOM recording.

Submitted by,

Janet Roberts,
Administrative Assistant

