

## **ZONING BOARD OF ADJUSTMENT**

**JUNE 2, 2020**

## **MEMORIAL BUILDING**

**7:00 P.M.**

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

Due to COVID-19 issues, and pursuant to Executive Orders limiting groups to ten or less, Susan Chiarella attended via ZOOM.

Board members attending in the meeting room: Cody Patten, Bryan O'Day, Justin Hastings and Alternate, Tanner Jacques. Peter Abair was absent. Also in the room, George McCusker, Jill Hastings, and Janet Roberts.

Others present via Zoom: Ryan Peterson, Sue-Ann Kazenas, Wayne Smith, Dick Hendl, Attorney Sheridan Brown, Laurie and Ken Jacques, Marla Binzel, Whit Smith, Attorney Christine Fillmore, Jocelyn Colena, Keith Cutting, Gene Hayes, Wendy and Dell Rice, B. Manning, Dave and Cynthia Twombly, Christine White, Samantha Hutchins, Marlene Chamberlin, and Jason Chizmar. Judi Shank was working at the Town Office in her position as a Supervisor of the Checklist and since she was not able to log-in to ZOOM she came into the meeting room around 8:10 p.m.

Susan called the meeting to order and explained ZOOM is being utilized for this electronic meeting. The Board can communicate during the meeting through this platform and the public has access to listen and, if necessary, participate. Notice was given containing information to access the meeting. All votes that are taken during the meeting will be done by roll call vote. A member of the public who wishes to speak needs to be recognized by the Chair, and state their full name, address, and interest in the case. They also must State whether there is anyone in the room with them. Christine Fillmore, the Town Attorney is joining via Zoom this evening.

Tanner was asked to sit in as a voting member in Peter's absence. Tanner stated he can sit in on all of them with exception of the Twombly as he is owner/abutter for one of the properties.

Since there has not been a meeting since March. The first order of business was to elect a chair and vice chair. Justin Hastings nominated Susan Chiarella as Chair, seconded by Tanner. Voting in favor: Tanner, Cody, Justin, and Bryan. Cody nominated Bryan O'Day as Vice Chair, seconded by Justin. Voting in favor: Tanner, Cody, Justin, Bryan, and Susan.

Minutes of March 3, 2020: Justin moved to accept the minutes. Susan noted a couple of typos; Page 3, Paragraph 3, sentence 2 "As the changed to they" and page 6 paragraph 2, sentence 5 "The change to there is less light" and just making sure that the attachments noted on page 7 are included with the minutes. Justin moved to approve the minutes as corrected, seconded by Cody. Voting in favor: Tanner, Cody, Justin, Bryan, and Susan. Minutes approved.

At 7:14 p.m. Susan began the Public Meeting to discuss a request by Sue-Ann and Audrius Kazenas for a re-hearing, made pursuant to the decision made on February 13, 2020 which denied their appeal from an administrative decision. Susan announced this is not a hearing and there will not be public or appellant testimony during this time. The following items were

brought forth in the motion for rehearing from Sheridan Brown on behalf of his clients. The Board reviewed each item one by one.

- I. **The Board of Selectmen's Decision was arbitrary, as it was supported by no findings of fact:** The Board based their decision on the findings from what they saw from the Selectmen. The findings were based on what was in front of them and was what was taken up in the appeal to begin with so that has been gone through well.
- II. **The ZBA Chairwoman failed to recuse herself from hearing and deciding the appeal:** Susan stated she has given it a lot of thought and she truly believed that she has no interest in the outcome one way or the other in this, and she believed she can be impartial listening to this situation and case, so she did not recuse herself and does not feel she needs to recuse herself. Tanner stated she made the same statements in the appeal. This is a small town and it is hard to not know or have been around someone, and he does not feel this is reasonable. Justin agreed.
- III. **The ZBA violated its rules of procedure:** Susan believed she had asked people to identify themselves, and there was a sign-in sheet whereby the Board knew who was speaking or whether they were a direct abutter. Those who spoke stated who they were and why they were there. Justin agreed. The problem when there are people getting into a heated debate, it is hard to keep order when someone does not want to keep order. Tanner stated when it came time to make a decision, after listening to everything and thinking about that didn't have lot of bearing on what was truly being looked in regards to the ordinance or appeal to the decision of the Board of Selectmen. It is a matter that touches close to lot of people and where they live and is a difficult situation to deal with. Susan stated she did not remember waiving the rules of procedure.
- IV. **The ZBA misapplied the provisions of the 1997 Zoning Ordinance:** Tanner stated the Board spent a lot of time looking at the 1997 ordinance and how it was written around home businesses. Looking at the issues brought up, he did not think any of them were out of line with what they say is the interpretation of that ordinance which is the best they can do based on the situation. He does not think the decision was made from malice in anyway. He looked at what it was with the facts and evidence and understanding the ordinance and how he sees a home business based on that. He does not think the 1997 ordinance was misapplied in that case. Susan stated Bryan also spent a great deal of time looking at the ordinance and trying to make sense of it and see how it worked or not. Bryan stated when it talks about a dwelling or accessor building, a fence is not a structure. Tanner stated reviewing the information presented, he is not sure that is how it was argued or looking back at the minutes was the evidence heard. He finds it difficult to go back on a hearing if they are looking at slightly different facts than what were presented then. Tanner stated when the decision was made, it was based on the best thoughts of what they were looking at and based on the 1997 ordinance and the spirit of that he does not feel the decision does need to be relitigated. Justin stated he feels the board did what was right at the

time with the evidence given to them pertaining to the 1997 Ordinance. Bryan stated he believed the decision was correct based on what was presented and what they read. Cody stated he stands behind what was decided the first time. He does not see that anything has changed from what they decided. A motion was made by Tanner to deny a rehearing in the case of Sue-Ann and Audrius Kazenas. Susan clarified this is a motion to deny a motion requesting a rehearing on the decision made on February 13, 2020. Justin seconded the motion. Roll call vote: Tanner, Cody, Justin, Bryan, Susan all voted "I". Motion to rehear is unanimously denied.

At approximately 7:30 p.m. Request by David and Cynthia Twombly for a Special Exception to build a garage on a non-conforming 1.28-acre lot within the 35' setback on property located at 247 Twin Lake Villa Road, Map 06, Lot 670-220. Tanner Jacques recused himself. All abutters were notified, the notice was posted in the Valley News, the Post Office, and the Town Office. David and Cynthia Twombly were present via Zoom. Motion by Cody to accept the application, seconded by Bryan. Roll call vote: Cody, Justin, Bryan, and Susan in favor. The hearing began. Mr. Twombly stated they have had plans to build a garage for quite some time and would like it attached to the house. They had a driveway put in specific for this purpose. They are looking to spend more time in NH and retire here. Mrs. Twombly stated the house is older and was there prior to 1976. The way the house is plotted on the lot, there are not practical options as to where to put it. It flows with the other three homes on the street and is located exactly as the abutter's garages are. They are looking to be there more and having something attached will make life easier as they age. This is a simple two-car garage. Mr. Twombly stated he has talked to the new neighbor and he does not have a problem with what they are proposing. The Board reviewed the plan submitted. Susan proposed a site visit by the Board. Justin agreed. The Twombly's agreed the Board could go each on their own to look at the site. Abutter Ken Jacques, Twin Lake Villa did not have any question or comment as an abutter but a general statement. He spoke to Whit about this a bit this morning. He wanted to make a comment in general in the way the zoning ordinance is applied. Susan did not feel this was an appropriate comment to hear a general comment about the Board's ability to grant a variance, and perhaps should be taken up by the Board in a non-hearing situation. She prefers to stick to the case and any facts relative to the case since there is so much on the docket for tonight. Ken agreed. The Twombly's were asked to put grade stakes in the ground to show where the garage will be going. There is only one corner of the proposed garage at issue. Susan informed the Twombly's there are only 4 members to make this decision and asked if they were ok with it. The Twombly's were ok with that. Board members will go on their own to look at the proposed area. A motion was made by Justin to continue this hearing to July 7, seconded by Cody. Roll call vote: Cody, Justin, Bryan, and Susan all in favor.

At 7:50 p.m. Request from Wendy and Dell Rice for a Special Exception to build a house and garage on a non-conforming .32-acre lot within the 35' setback on property located at 2680 Main Street, Map 23, Lot 827-493. Mr. and Mrs. Rice were present via ZOOM. All abutters and notices were taken care. Tanner stepped back in. The Board reviewed a copy of the proposed plan. Susan asked if the Board was comfortable with the map and layout as to where things are. There are metes and bounds descriptions that would be difficult to place on the ground. Janet noted the Board has bigger maps at the meeting room. Susan felt the Board is going to need to go look at this site, and in this instance, the Board should all go together. There are a lot of distances and

matters to discuss. Cody noted there are grade stakes on the lot already. The owner approved a site visit. A motion was made by Justin to accept the application as complete, seconded by Cody. Roll call vote: Tanner, Cody, Justin, and Bryan voted in favor. Susan abstained till she can see the plan. Wendy Rice stated they want to build a 24 x 20 garage first and then a house and start on the garage as soon as possible. It has been staked out but needs to be rotated a little and has marked on the print where she wants to rotate it to. She has put string on the markers for a good idea where the garage is going to be. There is one stake out by the road that is too close to the road. The house will be as per print and is all staked out. The 50' shoreline is marked, and she has State approval. She is asking to relax the setbacks because it is a tight lot, created in the 50's. There was a cottage there that was in bad shape and was a liability. There has been a lot of vandalism on the property so that is why they want to do a garage first so they can materials as they build the house. The septic plan was readjusted this past year, a well was put in two years ago and is all set to prevent driving on the lot with heavy vehicles. All permits are in place with shoreline, and septic. They plan to live here full-time. The proposed house is 28' x 36' at the max and it is all staked out according to the print with deck or just a patio on the side facing the water and the north west side. The house is proposed for two bedrooms per the septic. She would like to have one story with a finished basement. Depending on what is approved for the lot she may have to go with two stories. The garage is 780 sf and the house is 1008 sf. The driveway is existing. She applied for a Zoning Permit for the garage and has a builder ready to go. The garage will be 120' to the high water. The house will be a little greater than 50' (from detached deck) to the high-water mark. Mrs. Rice has the shoreline permit. Bryan noted the town ordinance is 100' to high water mark, the State is 50'. Abutter Jason Chizmar, 35 Hoyt Lane, asked what the separation would be from the lot and the town land/beach? Mrs. Rice stated there are a lot of trees in there now. She could put a fence up if required. The distance from the house to the property line is 24' according to the plan. Susan noted the actual beach is quite a bit further from that but in between that and the lot line is the beach picnic area. Abutter Ms. Chamberlain, 12 Hoyt Lane, asked if there needed to be approval from EPA with this being so close to the water and the public beach area? Susan stated they have already gotten approval from the DES and has a well and septic approval. Ms. Chamberlain if owner's family and guests would be accessing the beach area along with the public. Susan stated this property is not part of the town beach and has its own waterfront. Mrs. Rice stated that was correct and she has a permit for a dock that is put in the water each year. Ms. Chamberlain noted being close to the beach obviously there is going to be noise and asked if Mrs. Rice was going to be objectionable to the noise? Mrs. Rice stated she has no objections or problems with the beach being next door. Selectman, George McCusker stated about a year ago he was at a meeting with Whit and there was some talk whether the garage would be under powerlines. Mrs. Rice stated it is not going to be under the powerlines. Mr. Chizmar asked what the size of the exiting cottage was and if there is still a foundation or was it completely torn out. Mrs. Rice stated there was no foundation it was all block and piers and was falling apart. They had it all torn out. She has pictures of what was there if anyone wants to see them. Ken Jacques stated he was not an abutter, but he does live in town and the town is an abutting property. He believes the property records would show what the size of the original cottage was. He asked if the site visit is open to the public as part of the hearing. Susan stated the site visit is open to the public, but she is recommending when at the site the board stay as a cohesive unit and ask questions through her to facilitate the taking of minutes and have some order to the visit. She has had site visits where there has not been public

comment or questions to be considered the next hearing. The Site visit is primarily for the Board to take a look at what is there and get educated for the decision process. Susan asked to keep in mind gatherings are limited to ten people or less, so with 5 board members, one recording secretary and the applicants, things are already close to capacity. Justin moved to continue the Public Hearing to Tuesday, July 7<sup>th</sup>, seconded by Cody. Roll call vote: Tanner, Cody, Justin, Bryan, and Susan all voted in favor. Susan moved to schedule a site visit on June 9<sup>th</sup> at 5:30 p.m. at which point there will be only a public meeting. This will not be part of the hearing. Justin seconded the motion. Roll call vote: Tanner, Cody, Justin, Bryan, and Susan voted in favor. Susan asked members to be cognizant of other people that are nervous about COVID and bring a facemask.

At 8:25 p.m. Request by Sue-Ann and Audrius Kazenas for a Special Exception at 373 Hogg Hill Road in Springfield for a dog kennel/pet vendor. A motion was made by Susan to conduct a site visit on the property, keeping in mind the governors orders of gatherings to be ten people or less. The time and date of such site visit will be coordinated by the town in consult with the applicant, their counsel, and abutters. Tanner seconded the motion. Roll call vote: Tanner, Cody, Justin, Bryan, and Susan voted in favor. Town Attorney Christine Fillmore, will contact Attorney Brown to discuss organization of the site visit.

At 8:30 p.m. a motion was made by Bryan to adjourn. All voted in favor.

Submitted by,

Janet Roberts,  
Administrative Assistant

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