

TOWN OF CENTER HARBOR
ZONING BOARD OF ADJUSTMENT
Zoom Hearing
Monday, January 11, 2021
7 p.m.

Due to COVID-19, this hearing was conducted via Zoom. Participants, which included the public, could join the meeting through video web or by telephone. Roll call of ZBA Members/Alternate Members performed at the beginning of the meeting; Chair requested all participants keep their microphones muted until they are called on to speak. Chair also announced the meeting was being recorded. Chair provides the zoom protocol. (Copy of protocol is contained in this set of minutes).

Chair asks for all ZBA members to introduce themselves, name and address and if there is anyone in the room with you. Voting members will be determined after the introduction.

Roll Call Attendance: Bernie Volz, Chair. Alone.
George Lamprey, Member. Alone.
Karen Ponton, Member. Alone.
Stephany Marchut Lavallee, Member. Alone.
Susan Patz, Alternate Member. Alone.
Gregory Hime, Alternate Member. 123 Woodridge Road. Alone.
Jean Meloney, Member. Alone. (Jean adds she is recusing herself.)

Chair, voting members today will be myself, George Lamprey, Karen Ponton, Stephany Marchut Lavallee and Gregory Hime.

Chair announces Stephany is now a full-time member. She was moved from an alternate to full member to fill the position Anthony Avrutine who has retired from the ZBA. Chair also announces the regular clerk for the ZBA Aimee Manfredi has recused herself from the hearing and Robin Woodaman will be the clerk pro-tem to handle the preliminaries and Sheila Mohan will provide the transcription of this meeting. Chair thanks both Robin and Sheila for stepping in given Aimee's position.

While the agenda has other items, the Chair decides to move to item II on the agenda which is the Appeal from the Administrative Decision.

I. MINUTES:

Approval of the July 27, 2020 minutes. Chair asks for comments about the minutes. George Lamprey states he was so absorbed in the case that he does not believe he has read those minutes. George asks to delay the approval to the next minutes. Stephany Marchut Lavallee states she also did not have a chance to review the minutes because a lot of time was spent reviewing the documents for the hearing. Chair decides to defer making any motion on the minutes until the next meeting.

II. PUBLIC HEARING – APPEAL FROM AN ADMINISTRATIVE DECISION (REF PB CASE 0505-2020) 15:06 (Transcription of this portion of the hearing provided by Sheila Mohan). Ms. Woodaman announced the particulars of how the Appeal was received and how notice was given. Mr. Kline hand delivered the documents on December 16th. Notification-Letters to abutters were sent out on December 22nd. Postings- on the website, in the town Office and the Post Office on December 23rd, and in the Laconia Daily sun on December 22nd and the Meredith News on December 3st.

Mr. Volz stated that there was a lot of material distributed for this meeting. He confirmed that everyone had received the administrative appeal notification. There was also a Preliminary Objection from Atty. Paul Fitzgerald on behalf of his clients Helen Heiner and Susan Patz and a response to the Preliminary Objection from Atty. Eric Taussig on behalf of Mr. Kline. Gregory Hime, Karen Ponton Stephany Marchut Lavallee, and George Lamprey confirmed that Board members received all the documents. Susan Patz said that she did not but that she was recused.

Mr. Volz stated that before the public hearing was opened, they needed to decide if they had any jurisdiction over this appeal and for this the Board would not be taking any public input on the issue.

Mr. Volz stated that he did some research on this matter and based on the application he discussed this with Laura Spector-Morgan the ZBA attorney for this case. After carefully reviewing all the materials and discussing this with Atty. Spector-Morgan, Mr. Volz said that he does not believe the ZBA has any jurisdiction as he can find no error in any order requirement, decision or determination made by the Planning Board in the enforcement of any zoning ordinance adopted pursuant to RSA 674:16. Mr. Volz said that they should discuss how the others feel; if they agree or if there are certain points that they differ on. Mr. Volz stated that this is only applicable to the five ZBA members. They will be taking no public input on this first part of the discussion.

Gregory Hime said that it was very interesting any very educational. He went through the RSAs that were mentioned and he also looked at the zoning ordinances as several sections were referenced in the Application.

Mr. Hime said that he came to the conclusion that there was nothing related to the zoning ordinances even though there were some references, they didn't really have anything to do with what was being discussed. He stated that he agrees with Bernie. He does not see where anything was constructed, interpreted or applied in terms of zoning ordinances.

Stephany Marchut Lavallee said that she concurs. She said that she spent a lot of time reviewing the ordinances, the zoning and the RSAs and she concurs with fellow members.

Karen Ponton stated that she agrees as well. She said that she spent a lot of time reviewing the material, the RSAs, ordinances and the ZBA By-Laws. She concurs that there is no misapplication of the zoning ordinances.

George Lamprey said that he read the materials more than once, the RSA references and also the ZBA Handbook. Mr. Lamprey said that there were a couple of sentences in the ZBA Handbook relative to Administrative Appeals: "Don't confuse your role as a Zoning Board member with that of the Planning Board. The intent is not to interfere with the Planning Board's authority over subdivision or site plan review, but to allow for a review of zoning matters by the Zoning Board of Adjustment". Mr. Lamprey stated that he found most of if not all of the text on the Appeal being primarily around potential conflicts with the RSAs rather than the zoning ordinance or subdivision regs. Mr. Lamprey said that he feels that the Application for Appeal fell outside of their jurisdiction as well.

Mr. Volz asked if there were any other comments from those on the ZBA. Hearing none, Mr. Volz moved that they deny the Administrative Appeal because the ZBA has no jurisdiction over the Appeal, because it does not raise any issues regarding the Planning Board's construction, interpretation or application of the terms of the Zoning Ordinances. Mr. Hime seconded the motion. There was no discussion on the motion.

Mr. Volz did a Roll Call vote: Bernie Volz as the Chair is for the motion
George Lamprey - Yes, for the motion
Karen Ponton – Yes, for the motion
Stephany Marchut Lavallee – Yes, for the motion
Gregory Hime – Yes, for the motion

Mr. Volz stated the motion carries and therefore we are going to deny the Administrative Appeal on those grounds.

III. OTHER:

ZBA BY-LAWS UPDATE:

Chair asks if the Board would like to defer this discussion as well to the next meeting or do members want to discuss. Gregory Hime had some questions if the Board would be discussing this item. Chair, even if we don't vote on them it's probably not a bad idea to have a discussion.

Gregory Hime, my questions are related to the section that will be added which is Section 3, 7G regarding recording. My question what is the protocol for recording meetings by the town? Is this as written similar to other Boards. Chair, this text was borrowed from the PB because the PB had made a change to clarify the official record was the approved written minutes and recordings would be held for a short period of time in preparing those minutes. One might argue we should hold the recordings until the written minutes are approved but unlike the PB who meets on a monthly sometimes bi-weekly basis the ZBA may meet only once a year. In theory it may be nice to keep the recordings in practice it makes it kind of hard. When Aimee and I discussed it we thought keeping the recordings for 30 days was a reasonable amount of time.

Karen Ponton, I go to most if not all Selectmen's meetings and they do not consistently record them digitally typically Robin makes notes. Also, I'm on the Heritage Commission and we do not record our meetings our minutes are taken by hand as well as the Library Trustees do not record their meetings, they also take notes by hand for the minutes.

Clerk, adds that this specific portion did come from the PB and this was added under the advisement of Chris Boldt. The PB records all of their meetings and the ZBA, since I've been here and I believe when Sheila was Clerk, all the ZBA hearings were recorded.

Gregory Hime, in regards to the recordings, does this apply audio and well as video recordings. Chair responds yes, as you may have noticed you can see in the top corner of the screen there is a notification the meeting is being recorded. Chair continues, this is why we just worded it as digital recordings we didn't want to have to specify. Gregory Hime, are the recordings considered the official record? Chair responds, no. That is the whole idea here which is to identify that the written approved minutes are the official record of the Zoning Board. Gregory Hime, ok so if they are unofficial would they still be a point of discovery in any case that may come forward. Chair, so that is the reason. When the recording exists, somebody can request them and so we want a policy to make it clear that we only have to keep the recording for a limited period of time which is either when the written minutes are approved or 30 calendar days whichever comes first. Gregory Hime, are there any required security procedures or processes in place for the storage of these recordings. Chair defers that question to the Clerk. Clerk responds, with zoom we don't have much of a storage limit to keep the meetings so we have the PB from last week and now this meeting so one of the meetings may need to be deleted to free up space or a meeting may need to be recorded to my local system. As of right now everything records to the cloud but with the Zoom account, we have limited space. Chair, are you concerned that someone could come in before 30 days and destroy them or are you more concerned with someone accessing the recordings that shouldn't be able to? Gregory Hime, both. I'm concerned has this been thought out from those various aspects. Chair, again I think the whole meeting is public anyone can participate so I don't see any problem if someone were to inadvertently access the recording. Copy will be provided to someone if requested just at whatever cost the town charges to do so. Gregory Hime, because copies can be provided, they can be edited and distributed beyond the original request is that a concern because that would be, until the minutes are published, the record. Chair, again we will have draft minutes and I would think the only time Aimee might go back to a recording there was some dispute or contention about the draft minutes being inaccurate in some way. Usually, Aimee takes our word for it because most often they are minor corrections. The only time the integrity of the recording might come up is if there is some sort of dispute and the reality is someone could be recording this screen right now without us knowing. Gregory Hime, I'm just looking at it as someone can request a copy of the recording and then they could distribute freely. Chair, that's the whole point the recording is not the official record so even if they edited the recording, we could still say that's not the official record of the meeting that the approved written minutes are the ZBA's Official record.

Chair, one little interesting thing that came out of my conversations with Laura and in reviewing these by-laws again is that we have in the past had a step of whether we accept an application or not. I don't find anything in the by-laws about accepting applications or not and Laura said you don't really have any statutory requirement that you do that. I always thought it was very odd because the only reason we may not accept an application would be if something was technically incomplete. Chair, most of the time I presume Aimee reviews the application and if there is anything else required, she would reach out to the applicant before it goes to the Board. I think it's something we should get away from doing. If people do feel adamant about it, I think we do need to add it to the by-laws but we don't have any statutory requirement to do so. Karen Ponton agreed, it is an awkward part of the process and I think it's been confusing to me not only as a new member but to the applicants. When we say we are accepting the application, they may think we are moving to approve and that's not the case. If it's not in our by-laws and there is no requirement, I think we are fine not doing that. Chair, yes that's how I would do it, forget it moving forward.

Chair, unless anyone feels different, I would defer the vote on the by-laws to the next meeting so everyone has a chance to look at them. Board was in agreement to defer the approval of by-laws and minutes from July 2020 to their next meeting.

IV. ADJOURNMENT:

No other business for the Board to discuss. Jean Meloney motioned to adjourn the meeting at 7:38 p.m. Seconded by Stephany Marchut Lavallee. All were in favor of adjourning the meeting.

Transcription of this meeting: Clerk Aimee Manfredi-Sanschagrín transcribed introduction and items I, III and IV. Item II transcribed by Sheila Mohan.