

Zoning Board of Adjustment meeting minutes for June 10, 2014

Present: Chair John Smith, Lewis Major, Bruce Bellville, Selectman Jay Ebbighausen, Alt. Dorianne Almann and CDC Kathryn Lynch. Eleven members of the public were present.

7:00 pm Chair John Smith called the meeting to order and read the Public Notice. Chair John Smith reminded all that this is a continuation of an adjourned meeting on May 13, 2014. May 13th there was not a full board and the applicant requested to table the meeting until June 10th. The Board incorporates by reference into the record of this case the earlier meeting minutes on this variance application, the applicant's original submittal, the letters received from the public, and anything else that was previously submitted to the Board from the first variance application through the Board's action on June 10<sup>th</sup>. Selectman Jay Ebbighausen, who was not at the previous meetings, was given all paperwork from the previous meetings and has had time to review all of the material.

Attorney Howard Lane representing Rick Wetherby explained that this is the second variance request, a rehearing. Within the Cease and Desist Order from 2005 it is explained that Mr. Wetherby would need a modification from the Cease and Desist from the Zoning Board of Adjustment. In 2005 Mr. Wetherby had six trucks, ten employees - it was no wonder the neighbors complained. The Cease and Desist explained that Mr. Wetherby can have a phone, fax, and telephone in his home. He is also allowed to have one truck as long as there is no external evidence of a business. Mr. Wetherby initially thought he would need an external sign, he doesn't, and he only needs a sign posted on his door at home. There will be no patrons, Mr. Wetherby gets a call and goes to a site and moves the mobile home from A to B then comes home, generally the job is not in Hinsdale. Mr. Wetherby sub contracts from his father, his father wants to retire in the fall. Mr. Wetherby needs to have the address of 11 Brown Dr. known as his business address to receive his Utility Dealer Plates. Attorney Lane explained there was no evidence that there would be additional traffic or patrons, this business would not diminish the value of property in the area. There are no patrons all business would be conducted within home which is presently permitted. Any physical business activity is conducted off-site. Other businesses of like are in the area, BRI Roofing received a Variance from the ZBA. Rosecran's Towing, Wells' Repair, Mark's Repair, Wall Recycling, Nichols Tree Care and CZ Transportation are also in the area.

Chair John Smith asked for questions or comments from the Board.

Bruce Bellville commented that the Cease and Desist states one truck for personal use not business use, at the last meeting Mr. Wetherby asked for a sign in his home as well as a sign by the road, (Mr. Wetherby thought that he needed a sign by the road by State Requirement but he only needs a sign in the home (displayed in a window or door). There was also a concern of weight limits when the roads are posted in the mud season generally March-May. Mr. Wetherby is over the weight limit as his truck is 15,500 lbs. and the weight limit is 10,000 lbs. The Highway Superintendent wrote on the Dept. Head Form that Mr. Wetherby has no regard for the overweight limits on Plain Road and uses it even though it is posted no thru trucks, (Mr. Wetherby explained that Wall Recycling is over weight limit). It was explained that we were not here to discuss Wall Recycling.

Chair John Smith commented that in the Cease and Desist it is explained that this Order does not prohibit the Defendant (Mr. Wetherby) from having a single business tractor on the premises as long as said tractor is used strictly for personal transportation, and the diesel engine only runs when the tractor is entering or leaving the premises. Any further use shall be considered business use and in violation of this Order. When truck returns it must be empty and parked until work calls him back out. This Cease and Desist is from 2005.

Todd Page commented that the Cease and Desist stated in the event the Defendant (Mr. Wetherby) secures a variance from the Hinsdale Zoning Ordinance to operate his business from his residence, the Court expects the Town to modify or vacate this order.

Lewis Major asked how long the trucks takes to warm up in the morning, (air pressure has to build up in the truck; this generally takes about ten minutes).

Chair John Smith read a letter from Mrs. Cutler which stated that the pavement on Plain Road is 20 feet in width, no sidewalks, the road is used by the neighborhood children and residents to walk and ride bikes, people ride their horses and walk their pets. She is not sure that she will be happy with the noise that the truck makes while idling because in the past her home vibrated when the truck was on and she feels that this business will lower her property value if allowed.

Hearing no further questions or comments Chair John Smith closed the public hearing. The Board worked on the Finding of Facts stating the following:

Bruce Bellville stated why does the applicant need to display a business sign if there won't be additional traffic. He cited the applicant's truck was over the weight limit during posted mud season, this is Mr. Wetherby's fourth try at a variance and he has been denied in the past, in 2005 he was given a Cease and Desist Order, noise and smell from truck, 11 Brown Dr. is in the Rural Agricultural District, there are safety concerns with from roadway traffic, if people want this type of business in the R/A District then they would vote to change the Ordinance, the neighborhood is quiet and this type of business should be down in the Village where it is allowed, you expect to see horses and cows in this area, the requested variance would be giving him a use that is not allowed in his district and would benefit the applicant not the general public, the lot is not lacking in square footage or too close to the property line, it would change the neighborhood from what the ordinance upholds which is low density type of growth, the lot can be used as the Ordinance is written, this is a self-created hardship.

Lewis Major stated that even though the truck is a moot point he wouldn't like a vehicle outside his window idling for ten minutes vibrating his home, it would be upsetting to go outside and garden with a big truck idling with noise and smell, you would expect to see a tractor in this are not a tractor trailer, the neighborhood has about 20 houses around and no hint of a business.

Chair John Smith stated that if the Board grants the variance, the Cease and Desist Order from 2005 would have to be modified or vacated, and read Article I from the Zoning Ordinance:

#### **ARTICLE I PURPOSE AND AUTHORITY**

In pursuance of authority conferred by Chapter 31, Sections 60-89, New Hampshire Revised Statutes Annotated, 1955, (Also Known As RSA 674 Sections 1 thru 52 and RSA 675 Sections 1 thru 9 and RSA 676 Sections 1 thru 19 and RSA 677 Sections 1 thru 18) and for the purpose of promoting the health, safety and general welfare of the inhabitants of the incorporated Town of Hinsdale, to protect the value of property, to prevent the overcrowding of land, to avoid undue congestion in the streets, to avoid undue concentration of population, to provide adequate light and air, to facilitate the adequate provisions for transportation, water, sewage disposal, schools, child day care and other public requirements, the following ordinance is hereby enacted by the voters of the Town of Hinsdale, New Hampshire in official meeting convened on March 8, 1983.

Todd Page stated Mr. Wetherby is asking to use his truck for business use not personal purposes, the Ordinance is clear the lot cannot be used for this purpose, he can still use lot for its intended use.

Selectman Jay Ebbighausen stated that the business could be detrimental to the area and could affect the value of property, today he is allowed to use the truck for personal use and if the business is allowed it will change the neighborhood, when you come to the rural area you would expect to see yards with rural activity not large trucks, values are set on comparable property, upholding the integrity of the neighborhood for all outweighs changing the zoning for one.

Bruce Bellville made a motion to adopt the Finding of Fact, seconded by Jay Ebbighausen. Chair John Smith repeated the

motion and called for individual vote, Todd Page (aye), Lewis Major (aye), Bruce Bellville (aye), and Chair John Smith (aye). Motion passed unanimously.

Board composed the Statement of Reasons:

1. Granting the variance (**would** - ~~would not~~) be contrary to the public **interest** because:
 

Additional traffic, weight limit during mud season, where truck is parked on the lot while idling, chance that customers may visit due to sign on the door. Vibration, noise and smell of vehicle, Cease and Desist Order from 2005 and many denied variance requests. The variance if allowed would change the use of truck from personal use to business use. Detrimental to area could lower value of property.
2. The **spirit** of the ordinance (~~would~~ - **would not**) be observed because:
 

Rural Agricultural District, increase in noise and roadway traffic concerns. Changes the neighborhood if allowed to use truck for business use not personal use. Ordinance is clear, the traffic would be unexpected in this area. The Ordinance could be changed if the voters chose to accept this use. The Business District allows this use. There re larger lots in the R/A District; live stock in fields are expected not large trucks. There would be disruption of outdoor activities in the rural area.
3. Granting the variance (~~would~~ - **would not**) do substantial **justice** because:
 

Not consistent with the current use in the area, if granted it would benefit one not the general public. This use is not allowed in the district.
4. For the following reasons, the **values** of the surrounding properties (**would** - ~~would not~~) be diminished:
 

A tractor is an expected sight not a tractor trailer, it would change people's perception of the area. Possible reduction of property values in the area because banks look for comparable properties when granting loans.
5. **Unnecessary Hardship**
  - A. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because: there is nothing different about this property, it is not lacking in square footage or too close to the property line. This type of business is not allowed in the district.
    1. There (~~is~~ - **is not**) a fair and substantial relationship between the general public purpose of the ordinance provision and the specific application of that provision to the property because:
 

The purpose of promoting the health, safety and general welfare of the inhabitants of the incorporated Town of Hinsdale, to protect the value of property, to prevent the overcrowding of land, to avoid undue congestion in the streets, to avoid undue concentration of population, to provide adequate light and air, to facilitate the adequate provisions for transportation, water, sewage disposal, schools, child day care and other public requirements.
    2. The proposed use (~~is~~ - **is not**) a reasonable one because:
 

Upholding the integrity of the neighborhood for all outweighs changing the zoning for one. Homes in the area are comparable with no hint of business.
  - B. The criteria in subparagraph (A) having not been established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it. The property (**can** - ~~cannot~~) be used in strict conformance with the ordinance because: The Ordinance was written and is clear. The lot can still be used for its intended purpose. This is a self-created hardship.

Selectman Jay Ebbighausen made a motion to approve the Statement of Reasons as developed, seconded by Todd Page. Chair John Smith repeated the motion and called for individual vote, Todd Page (aye), Lewis Major (aye), Bruce Bellville (aye), and Chair John Smith (aye). Motion passed unanimously.

Bruce Bellville made a motion to deny the variance, seconded by Todd Page. Chair John Smith repeated the motion and called for individual vote, Todd Page (aye), Lewis Major (aye), Bruce Bellville (aye), and Chair John Smith (aye). Motion passed unanimously.

It was explained to the applicant that the variance failed all five criteria and only needs to fail one to be denied.

Bruce Bellville made a motion to approve the minutes dated May 13, 2014, seconded by Todd Page, the motion passed.

8:00 pm Selectman Jay Ebbighausen made a motion to adjourn, seconded by Lewis Major, motion to adjourn unanimous.

Respectfully submitted by,

CDC Kathryn Lynch