

MINUTES OF THE ZONING BOARD OF ADJUSTMENT MEETING

February 14, 2013

7:00 PM

Meeting called to order by Chairman Electra Alessio, present: Ray Donald, Vice- Chairman, Jay Alberts, Daryl Branch, Peter Coffin, and Tammy Bakie. Mr. Donald made a motion to approve the October 11, 2012 minutes Mr. Branch seconded Mr. Alberts abstained, all in favor. January meeting minutes date should be changed to the 10th, in reference to the 1st hearing building square footage should be 6 or 7 thousand, within a 22 thousand ft building, in reference to 2nd meeting a vote was taken to continue the second meeting (all in favor) – with these changes Mr. Alberts made a motion to approve, seconded by Mr. Coffin, Ms. Alessio abstained. Ms. Alessio stated the planning board has increased its fees for notification to abutters to \$11.00, Mr. Coffin made a motion to increase the ZBA fees also, Mr. Donald seconded all in favor.

Samantha Mooskian, R-3, Lot 2

Ms. Alessio stated she had received a letter from Ms. Mooskian who has also left several messages requesting a continuance; the Utah based ventilation company is unavailable. Mr. Donald made a motion to grant the request, Mr. Coffin seconded. Ms. Alessio stated there would be no notice to abutters but it would be included in the next legal notice and on web site and a third continuance would not be granted. Mr. Perley Clegg expressed his frustration, stating it was the third bite of the apple for the applicant. Mr. Martin Orio also expressed his concern that the applicant has expressed her ignorance regarding the activity. A discussion followed regarding the applicants previous meetings dates with the ZBA and Planning Board. Mr. Tim Shea stated he was alarmed at the unpreparedness by the applicant and her paid consultant being woefully unprepared to discuss the five criteria that need to be met to grant a special exception. Mr. Orio distributed information. A vote was taken all in favor to continue to March 14th at 7:05.

John & Brenda Galloway Tax Map R-3, Parcel 18

Attorney Frank Quinn stated they were back before the board with revised plans, and provided a brief overview of the presentation. Attorney Quinn stated it was a lawful non conforming use and they would like to add 3 structures to the existing plant, making it more efficient, sustainable, cleaner and greener, reduce truck traffic and have a net benefit to the citizens and town of Kingston. Attorney Quinn stated it was

consistent with the standards that govern the expansion of a non-conforming use. Attorney Quinn stated 2 structures would be for the addition of recycled asphalt (wrap) and a pad for a new fuel source (propane) they are currently using #2 fuel. Mr. William Schneider Operations Manager Benevento Bituminous Products gave the background of the company and explained how wrap was made. Mr. Schneider they had two changes to propose to lessen the environmental impact. Mr. Schneider stated they would like to switch to liquid propane (a domestically produced commodity) and would need to install piers to support the 30,000 gallon tank which had been approved by NH DES and Chief Seaman. Mr. Schneider stated they would install bins and conveyors for the recycled asphalt. Mr. Schneider clarified the question about zoning from the previous meeting, stating a superior court decision from October 1995 placed the property entirely in industrial zone, the access road to it is in the rural residential zone. Mr. Schneider stated the easement on the previous plan was for a water line easement for a subdivision that was denied. Mr. Jason Santos stated he works with the NH DES which is in favor of the upgrade; any recycled petroleum product is good thing from an environmental standpoint. Mr. Frank Postma stated he works to reduce/eliminate potential fines, fees or penalties. Mr. Postma stated he examined the aquifer bylaws of the town to see if there were any polluting substances that could potentially impact the water source. Mr. Postma stated wrap had been studied for many years and the primary problem is dust, which once it is controlled there is no leachable component. Mr. Postma stated they had an inspection last year by EPA and there are no storm water conveyances on the site, the potential to impact the aquifer is essentially zero. A discussion followed regarding the materials stored on site and any potential danger to the community. Mr. Alberts questioned Attorney Quinn's usage of the term "lawful non conforming use". Attorney Quinn stated at one time the use was recognized by the town, and they were improving on what at one time was lawful. Ms. Alessio concurred by stating they were becoming less non-conforming. Mr. Branch asked if the wrap was stored on site. Mr. Schneider stated it was on site now and discussed the process. Plans were reviewed and discussed. Attorney Quinn stated this was not a new business and they were not running two businesses just addition to the asphalt plant that is already there. Mr. Dennis Gagne, Eastern Propane, stated a 30,000 gallon tank would be installed and they had received approval from the State Fire Marshalls Office and Chief Seaman. Mr. Gagne stated the tank would be refilled by transport which is a completely closed system and stored as liquid. Mr. Alberts asked about the history of litigation and exposure to the town. Attorney Quinn stated another applicant was done after use was legislated out as an accepted use. Attorney Quinn referenced Peter Loughlin's Land Use Planning &

Zoning book and read three excerpts. Mr. Donald asked if they were currently using wrap. Mr. Schneider stated no, they were not using it in the mix, but wrap is on site being sold by John Galloway. Mr. Eric Stevenson, Project Manager, Brox Industries, stated they owned the abutting parcel on Dorre Road which is served via a right of way which comes close to the existing plant. Mr. Stevenson stated they were concerned about the proposed equipment and future structures impacting the right of way. Mr. Schneider stated as of now the proposed scale assembly the closest point would be 34 feet from right of way. Ms. Alessio asked for clarification on anticipated impact or increased traffic. Mr. Schneider stated obviously everyone would like to increase business but they don't plan on that nor do they plan to impact the right of way. Mr. Donald stated if in fact anything was to be added they would need to come back to boards for approval. Attorney Quinn agreed. Mrs. Ellen Faulconer stated there is two issues the first being the fuel which she didn't believe was a big issue as it could be changed to operate the current plant. Mrs. Faulconer stated the proposed plan would be an expansion of use and the town voted not to allow any further asphalt plants. Mrs. Faulconer stated the expansion may be better for the business but not better for Kingston. Attorney Quinn stated when you have a non – conforming use it does not mean there is no opportunity for increase under New Hampshire law. Attorney Quinn stated the expansion would make it better for Kingston, a more sustainable fuel source, they were not asking for more truck traffic or a higher volume plant. Ms. Alessio summarized; the plant that exist is grandfathered in, they are expanding use to make better plant and more environmentally friendly. Mr. Branch stated they are not increasing production amount but reducing the amount of raw aggregate, because they are re-using previously used asphalt. A discussion followed regarding the foot print, production amounts, and the existing scale/proposed scales. The five criteria were read all five passed, Mr. Donald made a motion to grant the variance, Mr. Coffin seconded all in favor, Ms. Alessio explained 30 day waiting period.

Sarah Roland Tax Map R 31, Lot 8-c

Mrs. Sarah Roland stated she opened All Creatures Mobil Veterinary Service in May of this year and had been working out of a mini van, in December she purchased a RV which had previously been converted to a mobile veterinary hospital. Mrs. Roland stated she tried to register the vehicle, during that process she found out there was an issue keeping the RV at her home. Since that time she has registered the RV in Brentwood but would like to register the RV at her home. Mrs. Roland stated the business is completely mobile; she doesn't do any veterinary work out of her home, and only keeps a home office at the residence. Mrs. Roland

stated all veterinary work is done in client's homes or at shelters or rescues. Mrs. Roland stated she and her husband moved to the neighborhood eight years ago and enjoy the quiet, she stated since she has started her business nothing has changed, no clients come to the home and home address is not on her website or paperwork. Mrs. Roland stated it would be more convenient to keep the RV parked at home and she typically uses it 1-3 days per week and also uses the mini van. Mrs. Alessio stated the reason she was here is because the RV is larger than what is allowed. Mrs. Roland agreed stating it was 27,000 pounds and needs to be registered as a commercial vehicle to be insured. Mr. Donald asked if there was any signage on the RV. Mrs. Roland stated her name, name of the clinic, and phone number was on the RV. Mr. Coppelman discussed issues with the home occupation. A discussion followed regarding Article 207 and whether a variance or special exception should be used. Mrs. Roland stated she wanted to be part of the community and had been in touch with her neighbors who did not have any concerns. Mrs. Alessio read 3 letters from abutters all in support of granting the variance. Mr. Coffin asked about paragraph F vs. H. Mr. Chris Roland used an electrical contractor as an example of how it would not go against. Mr. Branch asked if there were any sleeping quarters. Mrs. Roland replied no it was just for the clinic. Ms. Alessio read the five criteria, all five passed, Mr. Alberts made a motion to grant the variance, Mr. Coffin seconded. Ms. Alessio questioned placing time restrictions or other stipulations on variance. The board stipulated the variance was for only this vehicle, this property and these owners. All in favor, Ms. Alessio explained thirty day waiting period.

Tru Form Industries James Bezanson-TR Tax Map R-3, Lots 4, 4B, 4C and 13

Mrs. Lynn Merrill stated the proposed business was not permitted or prohibited in the area. Mrs. Merrill stated the applicant would like to relocate the light manufacturing new age machine shop from Rowley Mass. Mrs. Merrill stated there is a line across the property at 1000 feet toward 125 is in the commercial and 1000 feet beyond is rural residential. Mrs. Merrill stated the applicant was asking for a variance for several of the land units because they are not sure where they were going to locate within the property. Ms. Alessio asked why they hadn't picked a parcel. Mrs. Merrill replied they didn't want to spend the money on engineering until they got the okay from the ZBA. Mrs. Merrill stated the business currently has 42 employees who work flex time. Mrs. Merrill stated there would be no increase in traffic no demands on services and the only materials stored was alcohol and acetone. The map was reviewed and explained. Mr. Bezanson stated they are currently in a 13,000 square foot facility and have leased additional space. Mr. Bezanson stated his

business would produce less waste than a service station that is allowed in the zone. Discussion followed regarding zones, special warrant article for condos, review map outlying property in question. Mr. Glenn Coppelman stated he felt the applicant should be asking for a use variance, and was premature because they were still in conditional approval status by the Planning Board. Mr. Bezanson stated he had narrowed the location down to the soccer building. A discussion followed regarding large pieces of property with multi uses and other light manufacturing in CIII. Ms. Alessio read a letter from the State of NH Dept of Resources and Economic Development, Division of Economic Development and from Edward and Julie Jancsy. Ms. Alessio suggested the applicant withdraw the application and request a variance not special exception. Discussion followed how to proceed. Mrs. Merrill requested to formally withdraw application and re-apply next month for a variance.

Michael Garceau, Trustee Tax Map R-5, Lot 21-1

Mr. Michael Garceau stated they had been issued sign permits, his business partner Matt Rothwell was hired to apply for permits and go through the process he had numerous conversations with Mr. Steward. A discussion followed regarding Mr. Coffin voting because of his position on planning board. Ms. Alessio read the cease and desist letter from the selectmen into the record. Mr. Jim Coppins stated he had been in the LED sign business since 2005, has a warehouse in Plaistow, last year they were told Kingston would allow EMC. Mr. Coppins stated he got a copy of the sign code and he reached out to Matt Rothwell who had the same interpretation of the ordinance, that they could have static electronic message centers (EMC). Mr. Rothwell applied for the permits and had a number of conversations with the building inspector. Mr. Coppins stated there was not a place on the application to put EMC but it is in the file name. Mr. Coppins stated the building inspector asked Mr. Rothwell what EMC was and was told it was an electronic Message center and the message could change every 12 hours. Mr. Coppins stated they received the permit and put the signs on the building (at a great expense), the sign was the correct size, correct lighting, they go on at 7am and turn off at 10pm, and have an auto dimmer capability, the messages don't move and there is no animation. Discussion followed regarding the application and employees familiarity with the term EMC. Mr. Donald asked if the sign was a computer animated sign. Mr. Coppins replied no. Ms. Alessio asked if it had been modified. Mr. Coppins stated that function had been disabled and the issue with the sign code is it leads one to believe you can have an EMC that runs static. Mr. Alberts asked for clarification on the sign; did it meet other criteria. Mr. Coppins stated it meets the

requirements for size and lumens and the neighboring sign for Crystal Hills may be brighter. Mr. Alberts asked what the difference was between the current sign with roving capabilities turned off and any other sign in town. Mr. Coppins stated nothing except changes once every 12 hours. Ms. Faulconer stated the signs were brought to the planning board attention by the Fire Chief and Road Agent after it was already up. Ms. Faulconer stated they were a computer animated type of sign. Mr. Alberts asked what is different than other signs in the town. Mrs. Faulconer stated the permit did not clarify that it was an EMC, the picture doesn't reflect what is there and the information is not accurate. Mrs. Faulconer stated the Planning Board had gone to the selectmen and requested enforcement. Mr. Coppins stated there was not a place on the application to put EMC. Mr. Garceau stated the library had presented an EMC in August and the term was not foreign. Mr. Garceau stated the building inspector made a mistake, the sign is ambiguous, but they had spent a lot of money, and had received the permits. Mr. Mark Heitz stated the selectmen had received a request for enforcement action from the Planning Board. Mr. Heitz stated he and the applicant went to the Planning Board to discuss. Mr. Heitz stated when the ordinance was being developed the consensus was not to allow any signs that had multi colors, bright lights or moving parts. Mr. Heitz stated that was the intent of the ordinance even if the verbiage used was not the best. Mr. Heitz questioned why a sign company would think it was okay when there was no other computer animated sign in town. Mr. Heitz stated the sign was brought to attention because it was very bright, and the sign was the type the ordinance was written to prohibit (animated capability). Mr. Heitz reiterated the original intent of the ordinance was to prohibit signs similar to ones in Plaistow. Mr. Garceau offered that the reasons there aren't more signs is the expense when you can only change every 12 hours. A discussion followed on how to be in compliance with the town ordinance. Mr. Coffin suggested the applicant do what it takes to make the sign non computer animated. Mr. Coppins stated they had turned off that function, they had a programming issue that had been corrected, the sign only runs and show a static message, similar to sign next door. Mr. Alberts asked if they were approved to change every 12 hours. Mr. Coppins stated yes. Ms. Alessio stated she didn't want to have to go to court and asked if they could reach a happy medium. Mr. Garceau stated they had agreed to comply with the ordinance 100% from day one. Mr. Heitz stated they weren't in compliance since day one. Mr. Coppins stated after the sign had been installed they had left for ten days and there was a programming issue, when they returned the corrections were made and since then have been in compliance. Ms. Alessio asked Mr. Heitz for guidance regarding upholding the cease and desist, and the boards fiduciary responsibility. Mr. Heitz stated the board should not look at potential cost to the town

but look at the intent of the ordinance. Mr. Alberts stated when he sat on the Planning Board when they were working on part of the sign ordinance and the biggest issue was the scrolling. Mr. Heitz stated the selectmen's job was to make sure the ordinance is adhered to. Further discussion on the signs and intent of the ordinance. Mr. Glen Coppelman stated the board does the best they can in trying to craft an ordinance in response to what citizens want. Mr. Coppelman stated he recalled the intent was a computer animated type sign was any sign that has the capacity for animation and is a fully electronic sign. Mr. Coppelman stated when the Planning Board discussed the sign with the applicant recently; the consensus with the board was unanimous that the signs did not comply primarily because of type of sign. Mr. Garceau stated the sign code is ambiguous and left open to interpretation. Mrs. Faulconer stated there are two signs in town that do not comply or fit the spirit and intent of ordinance. Mrs. Faulconer stated sometime town funds have to be spent to support what the community to look like. Mrs. Faulconer stated she would like it if possible attorney fees were not part of the discussion, this is either an ordinance that the Planning Board and Selectmen have interpreted correctly and needs to be upheld or it isn't. Mr. Donald made a motion to deny relief from the administrative decision. Mr. Coffin seconded. Mr. Heitz asked if the board found the selectmen acted appropriately could they still entertain hearing a request for a variance. Discussion followed regarding re-noticing abutters, variances and other alternatives. Mr. Coffin stated if the sign computer animation had been disabled the sign was technically in compliance. A vote was taken and the motion failed. Mr. Alberts made a motion to grant relief contingent the sign is kept in it's current status, stipulation that the sign is not computer animateable, is specific to this applicant (if the applicant sells or sublets building the sign goes with them), the sign adheres with current sign and lighting ordinance. Mr. Coffin seconded. A vote was taken, motion granted.

Ms. Alessio adjourned the meeting @ 11:02.

Respectfully submitted,

Tammy L. Bakie
Secretary
Zoning Board of Adjustment

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