

**Ashland Zoning Board of Adjustment Meeting  
Minutes of Meeting  
Ashland Elementary School Conference Room  
May 22, 2014**

**Members Present:** Ellison Badger, Elaine Allard, Michelle Fistek  
Patricia Tucker (alternate), Susan MacLeod (Planning Board Representative)

**Others Present:** Fran Newton, Norm DeWolfe,  
Donald Scott Bell, Frank McBournie, Attorney Bolt  
Tony Guyotte, Donald Lester  
Casey and Sara Hixon  
Judith Holt  
Mark Herbert, Mr. Poitras, Don Latulippe  
Additional members of the public

The meeting was called to order at 7:00 pm by Chairman Badger. Attendance was taken.

---

**Motion for Rehearing: The Zoning Board of Appeals will hear a motion by Mr. Donald Scott Bell and Mr. Frank McBournie to rehear Point Number Four of the Motion for Rehearing filed on April 18, 2014 in that the ZBA did not act upon a previous Motion for Rehearing.**

- Susan MacLeod, Planning Board Representative to the ZBA, was excused from this portion of the meeting.
- Patricia Tucker, alternate, was appointed a voting member for the duration of the meeting.

On 12/4/13 the ZBA granted a special exception, with a condition that a noise abatement plan be approved by the Planning Board. On 1/15/14 McBournie/Bell filed a request for a rehearing. The ZBA denied an administrative appeal for actions taken by the Planning Board, as the ZBA cannot act on a procedural matter. The ZBA discussed (2/12/14 and 3/20/14 continued) the motion for rehearing but did not rule on the request. The ZBA failed at the time to act on the applicants' request for rehearing of what the ZBA did on 12/4/13. The ZBA now needs to determine whether the appeal for a rehearing of the 12/4/13 decision will be granted or not granted. No further input will be accepted from the applicants or public.

Chair Badger explained that the issue before the ZBA is item 4 on the applicants' motion for rehearing: *"At the hearing on March 20, 2014, this Board did not address the Applicant's request for rehearing of the ZBA decision to allow the enlarged and modified veterinary hospital and kenneling facility as a Special Exception. The applicants are entitled to a ZBA vote on this request. The ZBA must independently determine whether the proposed commercial activities in the Rural Residential zone satisfy the requirements of Ashland Zoning Ordinance Section 6.3. The ZBA may not simply assign this responsibility to the Planning Board."*

It was noted by Mrs. Tucker that the term "kenneling facility" was incorrect.

Mr. Badger noted that McBourne/Bell submitted additional paperwork on 5/22 which some members of the Board are seeing for the first time; that paperwork is not part of the discussion. It was noted that the action (special exception) being appealed occurred on 12/4/13, but the motion for rehearing was not filed until 1/15/14, which is outside the 30-day time limit.

**A motion was made (Patricia Tucker) and seconded (Michelle Fistek) that the ZBA not approve the motion for rehearing because it was not filed in a timely manner. The roll call vote was 3-Yes (Tucker, Fistek, Badger) and 1-No (Allard). The motion for rehearing was denied.**

A notice of decision will be sent to the applicants.

---

**Special Exception Hearing, Case #2014-5: Judith Holt of 717 NH Route 175, Ashland, NH (TML: 008-001-015) is requesting a Special Exception be granted to change the use of her property. Her proposal would include removing the mobile home currently there and build a 40' x 60' garage to house commercial vehicles as part of a business.**

- Susan MacLeod rejoined the ZBA proceedings for the remainder of the meeting.
- Patricia Tucker continued as a voting alternate.
- Casey and Sara Hixon presented as agents for Judith Holt.

The building inspector advised the applicants to come to the ZBA and the Planning Board advised the same course at an informational hearing. The ZBA reviewed the presented plot plan to verify that the appropriate information was included.

**A motion was made (Patricia Tucker) and seconded (Elaine Allard) to accept the application as presented. The vote was 5-Yes (Tucker, Fistek, Allard, MacLeod, Badger) and 0-No, approved unanimously.**

#### Public Hearing Opened

Mr. and Mrs. Hixon explained their proposal –

- Plan to purchase the land in question
- Remove existing trailer
- Construct new garage, 40 x 60 or smaller (photo of similar building provided) to store belongings, park 4 vehicles prior to and after working offsite, small workshop
- Business will not be run out of this building, it is run out of their house
- Tie into existing septic, well, and electrical power
- In consultation with Tony Randall, the lot coverage (garage, parking) will be 26.4 %, which is under the allowed 30%
- DOT has issued a driveway permit.

Abutters

- Mark Herbert (abutter) expressed his concern about approval of a commercial venture in rural residential zone, specifically concerned with what will happen in the future by another owner, since the approval goes with the land. Mr. Hixon stated that he felt that the size of the lot would probably restrict the size of future ventures.

- It was noted that previously the land was used for Paul's Mobile Home Service, a pre-existing non-conforming use. Mrs. Holt indicated that they have had no complaints from neighbors for over 30 years. The previous business was prior to town ordinances.
- Mr. Poitras (abutter) asked about the hours of operation. Mr. Hixon said they arrive about 6:30 to load equipment and come back about 3:30/4:00–5:00 to unload equipment. The diesel trucks are relatively new and do not need long idling times; when they park them for the night, they can pull forward in the morning. Just occasionally he may work on the weekend, but only Saturday and primarily just him. Mrs. MacLeod said according to the town nuisance ordinance, the quiet time is between 10pm and 6am.
- Donald Latulippe (abutter) stated that, in his opinion, this is not a commercial business, but rather just a garage/storage building that is allowed in rural residential zone. Mr. Hixon said there is no selling or processing of product at the site.

Mr. Hixon responded to the criteria for a special exception:

1. This specific site is an appropriate location for the intended use or structure. – Enough room to construct building with parking lot and still maintain 26.4% coverage. Still maintain residential look. Building color (earthy tones) will blend in.
2. The use will be compatible with neighboring land uses. – Photos of neighborhood show tarp-covered boats in yards, multiple cars in driveways and behind houses. All will be kept neat and orderly.
3. The property values in the zone and in the surrounding area will not be reduced by such a use. – Photo of existing on-site run-down trailer. Will build garage costing \$50,00-75,000 which will increase value of land and surrounding properties. Showed photos of neighbors' yards
4. There will be no nuisance or serious hazard to vehicles or pedestrians. – Only 4 trucks leaving in the morning for 7-10 hours each day and then parked at end of day. No different than family with multiple cars. Route 175 road noise is more than what his trucks will make. Will be pulling forward out of the site. DOT has issued driveway permit (approved permit reviewed – copy will be provided for the file).
5. Adequate and appropriate facilities will be provided for the proper operation of the proposed use. – Will reuse existing well, septic and power.
6. The proposed use will comply with the minimum lot sizes, frontage and set back requirements. – Plan shows building and parking area only use 26.4% of the lot, while Ashland limits to 30%. Does not encroach on setback.
7. Existing road and highways are capable of carrying the additional traffic. – site on a state road, not a town road. Driveway permit granted and DOT sees no issues or hazards.

Mr. & Mrs. Hixon offered additional comments: This is just a garage (not a residence), and they will not be using town roads or adding to school use. We will use the transfer station. What we are proposing will only raise the value of the property. We are following the procedures properly. We are currently in a cul de sac with 9 houses, and have had no complaints from neighbors where we have our trucks and equipment. We are not in the firewood business. This is where we load equipment before going out to the site to work. We want to be a good neighbor.

Public Hearing Closed

## ZBA Deliberation & Additional Questions

What will be stored there? – vehicles, chainsaws, household wood splitter, chainsaws, ropes, choker chains, chippers, no chemicals, only small containers of fuel, no dumpsters.

This is not a business? – no selling on the site, no customers coming to the site.

Accessory building definition? – accessory building is allowed in rural residential, but only in relation to a residence. This is why they are asking for a special exception.

Mr. Badger expressed his opinions on the request for a special exception—He feels there is no nuisance or serious hazard to any vehicles or pedestrians; the increased traffic on Rt. 175 is negligible; adequate facilities will be provided; the proposed use complies with minimum lot size; the roads and highways are capable of handling the additional traffic. But, he stated, that his problems were whether the use is compatible with neighboring land uses and whether the specific site is an appropriate location for intended use or structure. He agreed that the Hixons intend to hide the operation as much as possible and want to be good neighbors. If we allow this use, we will be sending this to the Planning Board who will also decide on how the Hixons will do things.

Mrs. Tucker asked if there would be an issue if they bought the property, left the mobile home there, and built a garage. Mr. Badger clarified that the primary use of the land as residential is the key and would allow an accessory building for personal vehicles of the resident.

Mr. Hixon stated that his business is run out of his house and the commercial vehicles would be parked on this proposed site.

This does not fit the home occupation definition.

Mrs. MacLeod stated that this process is to establish what he intends and will do. A previous abutter indicated that his concern was what it might become in the future. The neighborhood as it is today can be totally different 5 years from now. This request is fine if we truly define what he intends to do and hold him to that. If we grant a special exception (for storage and not living there), then we have to define exactly what that is and exactly what it will stay as. Ms. Allard agreed that specific conditions have to be stated in case it comes back to the Board again.

The ZBA is allowed to define conditions and what the special exception is for. The list of conditions has to be created very carefully.

In response to questions from the ZBA, Mr. Hixon clarified some of the specifics of the proposal: 2 oversized bay doors (to handle 14 ft high bucket truck); 40x60 or smaller; parking area not paved because of chains on equipment; septic and well use will allow bathroom for cleanup of workers and equipment; will remove the mobile home by dismantling on site; then will pour concrete pad for the building in about a year; would leave buffer but would still need to cut down some trees for the turn-around.

The ZBA discussed some possible conditions: only 2 bay garage, 40x60 or smaller; only storage and light maintenance of equipment; no business done on the property, including location of an office; mobile home removed before garage is built. It was noted that a special exception needs

to be exercised within 2 years and that the Planning Board will probably have the Hixons address screening from the neighbors.

The ZBA members voted on the individual criteria of a special exception:

- #1 – 4-True (Tucker, Fistek, Allard, MacLeod) and 1-False (Badger)
- #2 – 5-True (Tucker, Fistek, Allard, MacLeod, Badger)
- #3 – 5-True (Tucker, Fistek, Allard, MacLeod, Badger)
- #4 – 5-True (Tucker, Fistek, Allard, MacLeod, Badger)
- #5 – 5-True (Tucker, Fistek, Allard, MacLeod, Badger)
- #6 – 5-True (Tucker, Fistek, Allard, MacLeod, Badger)

**The Special Exception was granted.**

**A motion was made (Fistek) and seconded (Tucker) that the following conditions will be added to the Special Exception:**

- **Only a 2-bay garage, 40 ft. x60 ft. or smaller**
- **Only be used for storage and light maintenance of equipment**
- **No business to be done on the property, including the location of an office**
- **Mobile home will be removed before the garage is built**
- **All will be completed within 2 years**

**The roll-call vote was unanimous in the affirmative: 5-Yes (MacLeod, Badger, Tucker, Fistek, Allard).**

A notice of decision will be sent to the applicant. Three plans were signed by Mr. Badger and Ms. Allard.

Mrs. MacLeod indicated that the information on the current plan is substantially what will be needed by the Planning Board, but reminded the Hixons to review the checklist on the website. She suggested that they start that process as they are closer to doing the work. The Hixons were also reminded that a demolition permit will be required for removing the mobile home.

---

## **Other Business**

It was noted that the Lester/McBournie/Bell case will probably continue. In general terms, when appeals are exhausted, the next step for any applicant is to go to Superior Court. Various site-related issues that may come up with the project are not under the authority of the ZBA, but would be handled as appropriate by the Planning Board, Select Board, and/or Code Enforcement Officer.

Regarding the Rules of Procedure, it is not necessary to post notices of decisions in public places, but just send them to the applicant and insert in the file.

**Upon a motion (Tucker) and a second (Allard), the meeting was adjourned at 8:25pm.**

*Minutes submitted by Mardean Badger*