

**Ashland Zoning Board of Adjustment  
Draft Meeting Minutes  
Thursday, March 11, 2021**

CALL TO ORDER: David Toth, Chair of the Board, called the meeting to order at 6:30 PM. The meeting was conducted via Zoom video and teleconference.

MEMBERS PRESENT: Mardean Badger, Charlie Bozzello, David Toth, Alan Cilley (alternate)

OTHERS PRESENT: *Paula Hancock*, ZBA Secretary  
*Ryan Clouthier*, (Deputy Director, SNHS, Southern New Hampshire Services) (Common Man Commons).  
*Regina Buteau*, Building Director, (Common Man Commons).  
*Attorney Charles F. Cleary* (counsel for Brandon Hiltz)

RIGHT TO KNOW LAW: Due to the COVID-19/Coronavirus crisis and in accordance with Governor Sununu's Emergency Order #12 pursuant to Executive Order 2020-04, this Board is authorized to meet electronically.

David Toth: I would like to call the meeting of the Ashland Zoning Board of Adjustment to order.

David Toth: Let me begin with a roll call vote: Mardean Badger, here; Charlie Bozzello, here; David Toth, here.

David: The reason we are meeting tonight is that we received a motion for a rehearing on the ZBA Case 2020-01 which is the quarry/gravel pit. I have asked Mardean Badger to review it for us, the procedure pertaining to rehearings.

Mardean Badger: [Let me just get something up. OK. Can everybody see the screen that I'm sharing? Yes, its good. OK.] Just a brief review for our board and for everyone listening and watching.

Mardean Badger: On January 14, 2021, the Ashland Zoning Board of Adjustment denied a Special Exception for an excavation operation on T/M/L 004-002-002 in the Rural Residential Zone. NH RSA 677:2 states that within 30 days after the ZBA has made a decision, any person affected directly by that decision has the right to appeal. So on February 12, 2021, the Ashland Zoning Board of Adjustment received a motion for rehearing submitted by Attorney Charles F. Cleary (counsel for the applicant Brandon Hiltz) and today, we are here, on Thursday, March 11, now to review points of process. When a motion for rehearing is received, the ZBA must hold a public meeting within 30 days to decide whether to grant the rehearing or deny it; and that comes from RSA 677:3, II.

Mardean Badger: A couple of notes to keep in mind -- This is not a public hearing. No formal notice is required to the applicant and abutters.

Mardean Badger: From the NH OSI "Board of Adjustment in NH" manual -- "All the Board is acting on is the motion in front of them (what has been submitted) and should not involve comments by the applicant, petitioner or abutters. If the Board believes there are sufficient grounds to reconsider their original decision the motion should be granted. If not the motion should be denied."

And again a few points -- if the Board does decide to grant the rehearing, a new public hearing is

scheduled with new notice to the applicant and abutters. It is recommended that the new hearing be scheduled within 30 days of the decision to grant the rehearing. If the ZBA denies the motion for rehearing, any aggrieved party may apply, by petition, to the Superior Court within 30 days after the date upon which the Board denied the motion for rehearing. That comes from RSA 677:4. That's just a very brief rundown of what we are doing tonight.

Mardean Badger: We are simply considering whether to grant a motion for rehearing or to deny a motion for rehearing. [OK I'm going to close that.]

David Toth: Thank you Mardean.

Mardean Badger: David, I do have the documents that I can put on the screen.

David Toth: Do you have the motion?

Mardean: Yes, I do. [OK I will get that up.] The motion for rehearing is here. Does anyone need that read? David, what would you prefer?

David Toth: I think it's a good idea that we read it, simply because there are people who are watching who may not have read it.

Mardean Badger: Do you want me to do the reading?

David Toth: If you would.

Mardean Badger:

This is a Motion for Rehearing regarding Brandon Hiltz Excavation Proposal (T/M/L 004-002-002) in Ashland NH.

*“Brandon Hiltz, (the “Applicant”) respectfully moves the Zoning Board of Adjustment for a rehearing on, and reconsideration of, its January 14, 2021 decision denying the Applicant's request for a special exception to permit an excavation operation on the above-referenced property located in the Rural Residential Zoning District. The applicant asserts that the ZBA's decision was unlawful and/or unreasonable in that it did not take into account that the applicant intended to address all traffic and noise concerns through the Planning Board process; and, as grounds therefor, the applicant states as follows:*

- 1. The applicant proposes a defined materials excavation operation on a portion of an 85-acre parcel of land identified as T/M/L 004-002-002 (“the property”).*
- 2. The property abuts Interstate 93.*
- 3. Access to the property is over West Street, a public right of way that runs through the Commercial Zone District and dead ends at the property, within close proximity to Interstate 93.*
- 4. Reasonable uses on lands bordering Interstate 93, such as the property, are going to be limited due to the constant flow of traffic and noise associated with a major highway. A well-planned excavation operation is one of a few uses that would not be adversely affected by the nearby highway.*
- 5. The Ashland Zoning Ordinance permits excavation operations in the Rural Residential Zoning District by Special Exception.*
- 6. The applicant addressed the seven Special Exception criteria with information, testimony*

*and plans, including supplemental materials. However, the ZBA remained concerned with: i) the site being an appropriate location for the use; ii) the proposed use being compatible with neighboring land uses; and iii) the lack of a nuisance or serious hazard to vehicles or pedestrians.*

- 7. The property, the site for the excavation operation, is 85 acres of land immediately adjacent to Interstate 93 and accessed through the Commercial Zone District. The 85 acres of land allows for significant buffers between the proposed excavation operation and both the conservation land to the north and the commercial facilities to the south. The site has been used for excavation purposes in the past and the proposed gravel excavation is not inherently incompatible with the area.*
- 8. The proposed use can be compatible with neighboring land uses, which are largely commercial in nature. While there is a senior housing facility on West Street, the site layout of such facility in the commercial district allows it to be largely self-contained. The Senior Housing facility was approved for its present location with knowledge of the existence of Interstate 93 and of the traffic associated with a commercial zone district. Any use of the property or construction of new uses in the commercial zone will result in some additional traffic on West Street. The use as proposed by the applicant is compatible with the commercial zoning district and can be conducted in a way that is compatible with the expectations of the senior housing facility.*
- 9. The proposed use does not by its nature result in a nuisance or serious hazard to vehicles or pedestrians. Operating on a large parcel of isolated land at the end of a commercial street limits any hazards to others. Trucks are no more of a hazard than other types of vehicles when property operated. As was previously pointed out, there is traffic on West Street because it is intended to be a busy commercial district. If properly operated and regulated, the addition of some additional truck traffic creates neither a nuisance nor a hazard to vehicles or pedestrians. The applicant intended to ensure compatibility and reasonable traffic operation through discussions with the Planning Board during Site Plan Review, include a substantially reduced speed limit for the excavation trucks utilizing West Street.*
- 10. The existence of the senior housing facility on West Street should not lead to a conclusion that an excavation operation cannot safely operate on the large parcel of land at the end. Hours of operation, speed and volume of trucks, buffer requirements and signage can address noise and traffic concerns where the underlying operation would otherwise locate well on the 85 acres of land bordering Interstate-93.*
- 11. If the Special Exception is granted the Ashland Planning Board can and will address the operation of the excavation project through its Site Plan Review process.*

*Therefore, the applicant requests a rehearing on the denial of its application for Special Exception for discussion of how the specific concerns can be resolved and for the ZBA to consider whether the proposed site is appropriate for the proposal under safe operating conditions, with the understanding that the Planning Board can and should address any traffic and noise concerns.*

*Respectfully submitted,  
Brandon Hiltz by his attorneys, Wadleigh, Starr & Peters PLLC by Charles F. Cleary, Counsel for applicant, dated February 12, 2021.”*

David Toth: Thank you Mardean.

David Toth: At this point the ZBA needs to discuss whether or not we shall grant a rehearing on this motion. Do I hear a motion to that affect?

Mardean Badger: I will make the motion to deny the rehearing.

David Toth: Is there a second to that motion?

David Toth: I will second that to promote discussion on it. Mardean, what is your rationale for denying the motion?"

Mardean Badger: I don't believe that these issues rise to a serious enough level to reconsider our decision. Basically, what I feel -- I don't think the reasons are compelling.

David Toth: Charlie, do you have any comments?

Charlie Bozzello: Um, yes. My comments are very different. I have some serious concerns with the way this process was conducted. Let me just characterize it in this way: 1) I was impressed by the significance of the applicant's proposal. This is an operation that has a potential not only for considerable benefit to the applicant but also considerable benefit to the Town of Ashland. In effect they are proposing to harvest a natural resource of the Town of Ashland. That's like finding a gold mine and some people think that it is better that you find a gold mine of rocks because gold mines are very unpredictable. Rocks as an alternative are very dependable. The harvesting of rocks is something that has been done successfully for eons, as long as history has been recorded, since Egypt. So I want to say the proposal is significant.

Given the significance of the proposal, I am a little perplexed on the lack of due diligence in developing the potential problems and issues and more importantly the solutions to the potential problems and issues in some objective way. Some perhaps scientific way. It was very difficult for me in the original hearing to -- even although I voted to support the applicant, I had to do it based on general knowledge, subjective information and it was also my opinion that those who opposed the application did it the same way. It was a remarkable objective information as an example. We talked about the potential of noise and disturbing the residents of the senior community that is nearby. I would have expected that somebody had done some research or an experiment to determine just how much noise was transmitted from the site to where it might have been considered a nuisance. I think I observed in that first meeting that it is not even a hill. I think you could make an argument it is a small mountain that separates the site where they are proposing a quarry to virtually anybody else who would be exposed to it. I don't think you need to be an expert to appreciate that that is a potential for immense mitigation and you didn't see that developed in the process. Nobody said, "Hey, let's make a dust cloud on this side of this small mountain and see how much dust comes up the other end. Those seem to be obvious types of analyses that would have been performed not by the ZBA but would have been performed by the Planning Board to come to us by the work they did.

I would like to point out also one of the lines that caught my attention, this is I am referencing Ashland's own ZBA Notice of Decision on this case. It indicated the three criteria were not successfully granted. Under the first criteria it makes a statement that based on the concern of the majority of the abutting land is under conservation, there was concern regarding impact to the aquifer, wellhead protection areas and storm water management. That would need to be addressed. That is curious wording, because by denying this application we terminated any opportunity to address it in our decision we expressed. That's concerning. That is a theme to this whole process. I think the applicant also expresses that theme in their submission.

In what Mardean just read there are a couple of things that to me stand out. In the article #8 I think the applicant says that the proposal can be conducted in a way that is compatible with the expectations of the senior housing facility. We didn't really get a chance to know what it would be. I think the applicant points out correctly that that is a deficiency in the way this was developed. Also in article #9, the applicant intended to ensure compatibility and reasonable traffic operations through discussions with the Planning Board during the Site Plan Review, include a substantially reduced speed limit for the excavation trucks utilizing West Street. Again, we didn't get to hear from the applicant. I think in my mind there was much in this process that is deficient.

It is my proposal at this point that not only do we agree to a rehearing but before the rehearing that this application gets resubmitted to the Planning Board and they do the work that needs to be done to objectively develop the issues that have been described. In a way that we can objectively deal with them.

Mardean Badger: Charlie, I am going to interrupt here. By law the ZBA must agree to grant a Special Exception before this proposal can go to the Planning Board. That is State law. That is the process. We can't reverse the process. The Special Exception grant has to come before the proposal goes to the Planning Board.

Charlie Bozzello: Then, what you are really saying is that we at the ZBA, which is kind of strange to me, we have the responsibility then to develop these issues in detail, to extract scientific data, conduct experiments and to generally provide an objective basis for the decision we make. We haven't done that so according to law you are saying we are deficient.

Mardean Badger: No, the responsibility of the ZBA is to judge this application specifically based on the criteria that are stated in our zoning ordinance. First one of which is whether this site is appropriate for the use. Second one of which is whether the proposed use is compatible with neighboring land uses. We do not at this point, we do not send experts out and hire experts at this point for data analysis. That is the responsibility of the applicant to present that information if they feel they want to include that in their application.

Charlie Bozzello: We did not give them clear opportunity to do that. I think they expressed that in their request for a rehearing. So somewhere the discussion failed. I think it is incomplete. I just believe that there is a lot more work to be done here. We can argue who is going to do it. Whoever is going to do it, we need better information to make an objective decision and that's the type of decision based on a lack of information and subjective feelings that I think the first meeting resulted in.

David Toth: Let me make a few comments too; one is that we did actually ask them for that kind of data during our first meeting. Their response was to come back and state that they were going to follow all the rules and regulations that have to do with blasting, and noise and protecting the wellhead protection area and so forth. I did ask them to provide studies about noise which they decided not to do. I feel it is incumbent upon them, was incumbent upon them to present that kind of information on the first go-round which they did not do. So as far as a member of the ZBA, I can only make a decision on the information they gave us. We did allow them the opportunity to provide us with that information which they did not do. This application for rehearing doesn't do that either. I would say that what they are asking for here is, really, is the claim that don't worry about a thing. The Planning Board can take care of all of these questions by imposing requirements on them as the project goes forth rather than giving us enough data to feel comfortable that we should allow them to go forward.

Charlie Bozzello: If I might, I have been doing this for quite a while and I am not used to the ZBA having to conduct this kind of discussion with an applicant. I don't know in this process who should be having this discussion with the applicant, but usually it is the Planning Board that coordinates that type of information in the correspondence with the applicant and the dialogue and the negotiation. It is a complex process particularly when you are dealing with something as significant as this applicant's proposal. All I'm saying is, it is clear that wherever it was supposed to be, it wasn't done and even the applicant knows, it seems they are telling us that they feel they were not given an adequate dialogue in which to develop this prior to the time that it came before the ZBA for a vote. We have a chance to fix that. It is harmless to anyone to continue this dialogue because only better information can come out of it. That better information can be analyzed objectively and we can reach whatever decision that objective information points us to. I think it would be deficient for us to dismiss this when we appreciate the information wasn't well developed and that it wasn't a proper discussion of this applicant's proposal.

David Toth: I would say that we looked at the information we were given. It is not up to us to develop the proposal. It is not even up to us to say whether or not this is a good project or a good proposal. What we have to say is does it really fit within the spirit of our zoning regulations. In my mind, they very simply did not provide nor provide here the information that allows at least me to say this is compatible with all the existing areas, while he makes the point that our zoning allows for the industrial use in a rural residential area. I am not sure that that is true. This is a commercial area, not an industrial area. I have to draw some lines there. Mardean, can tell you more about the way the process in NH is set up and what kinds of information the ZBA can expect. We did ask for the objective data and it was not forthcoming. I would have to agree with Mardean, that I am not going to allow a rehearing based on the information they provided here. Is there any other discussion?

Mardean Badger: Alan, do you have any comments?

Alan Cilley: I don't. I will make a simple statement. I don't see that there is any new information brought forth by the applicant to warrant a rehearing. I believe it is the same information we dealt with the first time and after agreeing to continue the hearing at the second hearing, there was additional information, but not to the degree that I would consider necessary to have changed my mind then or now.

David Toth: Any further discussion?

Mardean Badger: I have nothing more to add.

David Toth: All those in favor of Mardean's motion to deny the request for a rehearing? Roll call vote: Mardean Badger: yes, to deny. Charlie Bozzello: No. David Toth: yes to deny.

So the motion for the rehearing is denied by a 2-1 vote. We will be sure that the applicant is informed of the decision by the Board.

Our next meeting I believe will be Thursday, April 8. Is there any further discussion? If not, I will call this meeting to a close. The meeting adjourned at 7:01 PM.

*Minutes submitted by Paula Hancock*