

ZONING BOARD OF ADJUSTMENT Meeting Minutes of February 20, 2013

CALL TO ORDER:

G. Kriebel called the meeting to order at 6:00pm.

ROLL CALL:

N. Decoteau called the roll and found the following members/alternates present:

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|----------------------|----------------------------|------------------------|
| G. Kriebel, Chairman | J. Demeritt, Vice-Chairman | D. Gravel, Member |
| D. Day, Member | H. George, Member | J. Marshall, Alternate |

Attorney for the Zoning Board, Chris Boldt, Esq. was present.

Members of the Public present: D. Howard

APPROVAL OF MINUTES:

MOTION: "To approve the minutes of January 30, 2013 as presented."

Motion: J. Demeritt

Seconded: D. Day

Discussion: None

Motion Passes 5-0

REQUEST FOR REHEARING:

John G. Cronin, on behalf of CBDA Development, LLC, submitted a Request for Rehearing with respect to the ZBA's decision on January 30, 2013 to deny the following matter:

Appeal of Administrative Decision of the Planning Board to deny the site plan application submitted by CBDA Development on behalf of property owner Carlton C. Ham for a recreational campground at Tax Map 10 Lot 8-8 located on US Route 3.

G. Kriebel stated that the meeting is a public meeting and not a Public Hearing and thus no input will be received from the audience.

G. Kriebel stated that since J. Marshall was not part of the deliberative process of the case that she would not be part of the discussion on the request for rehearing.

G. Kriebel stated the request for rehearing claims the ZBA erred in its decision in three areas:

- A. The Board's Decision Violated RSA 676:3.
- B. The Board Impermissibly Restricted the Scope of Its Review and Imposed a Higher Burden of Proof.
- C. The Board Focused Upon Irrelevant Matters Rather Than the Text of the Zoning Ordinance.

G. Kriebel suggested the ZBA consider each claim individually and after any discussion make a motion as to whether or not to grant a rehearing based on each claim.

G. Kriebel stated that if the ZBA determines to grant a rehearing based on any one of the claims a Public Hearing would be scheduled and properly noticed.

A. The Board's Decision Violated RSA 676:3

G. Kriebel stated Section A. claims that the decision of the ZBA was too brief and did not provide sufficient reason for the decision.

D. Gravel asked if the applicant received a copy of the minutes.

N. Decoteau stated the applicant has received a copy of the ZBA minutes of January 22, 2013 and a draft copy of the ZBA minutes of January 30, 2013 as well as the Notice of Decision.

G. Kriebel stated that the information provided regarding the ZBA decision includes not only the Notice of Decision but also the information provided in the minutes.

G. Kriebel asked if there was any further comment on the lack of specificity in the decision of the ZBA.

C. Boldt stated that if there is a challenge to the specificity in the Notice of Decision the court looks to the minutes of the meetings as well.

MOTION: "The Zoning Board of Adjustment should not grant a rehearing based on Section A. of the request."

Motion: D. Gravel

Seconded: D. Day

Discussion: None

Motion Passes: 5-0

B. The Board Impermissibly Restricted the Scope of Its Review and Imposed a Higher Burden of Proof.

G. Kriebel stated the first part of Section B. deals with the fact that the ZBA only looked at the Zoning Ordinance and not the Campground Regulations.

G. Kriebel stated the second part of Section B. deals with the fact that he misspoke during the deliberations when he said the Planning Board had a reasonable basis for its decision and that there needed to be "overwhelming" evidence to reverse the decision of the Planning Board.

D. Day asked if this was the time to discuss the nature of the park models.

G. Kriebel suggested that discussion would fall under Section C.

G. Kriebel stated the question Section B. raises is whether the ZBA used a higher burden of proof than it should have and whether the ZBA unfairly limited the scope.

G. Kriebel stated his opinion that as far as limiting the scope the ZBA only has jurisdiction over the Zoning Ordinance and that the Campground Regulations are outside of the authority of the ZBA.

G. Kriebel stated that as far as his possible overstating the case of the burden of proof needed to overturn the decision of the Planning Board, the ZBA needs to determine if that influenced any of the members in making their decision.

Board members expressed that their decision was not influenced by the comments of G. Kriebel.

J. Demeritt stated in his opinion the applicant did not present enough detail in making the claim that the Planning Board erred in making the decision it did.

G. Kriebel asked if there was any further discussion on Section B.

MOTION: "The Zoning Board of Adjustment should not grant a rehearing based on Section B. of the request."

Motion: J. Demeritt

Seconded: H. George

Discussion: None

Motion Passes: 5-0

C. The Board Focused Upon Irrelevant Matters Rather Than the Text of the Zoning Ordinance.

G. Kriebel stated that Section C. claims that the ZBA, like the Planning Board, relied on their own idea of what a traditional campground is rather than relying only on the clear and simple language of the Zoning Ordinance which states that campgrounds are permitted.

D. Day stated that the ZBA discussed the same issues that were part of the Planning Board discussion and that the Campground Regulations were part of what the Planning Board based its decision on.

C. Boldt responded that the ZBA is charged with limited jurisdiction over only the Zoning Ordinance and not the Site Plan Regulations.

C. Boldt clarified that the question brought to the ZBA in the Appeal of Administrative Decision was whether the Planning Board misinterpreted the Zoning Ordinance in its decision.

C. Boldt stated the issue is not in a vacuum but rather in the context of the application that was presented to the Planning Board.

C. Boldt added that the ZBA has analyzed what was presented to the Planning Board and what the Planning Board's decision was within the narrow context of whether it was in violation of the Zoning Ordinance.

C. Boldt stated the question to the ZBA in consideration of the Request for Rehearing is whether the material provided by the applicant, Attorney Cronin, brings something new to the table or illuminates an error that the ZBA previously made which would require a rehearing of the issue.

D. Day stated that part of the Request for Rehearing states that "the only relevant consideration was whether the proposed use was a campground under state law".

D. Day pointed out that RSA 216-I:1 VII-a. states in part that "It shall be designed not for use as a permanent dwelling but as a temporary dwelling for recreational camping and vacation use".

D. Day stated that the proposal used units that in his opinion were permanent dwellings.

G. Kriebel stated that part of his decision was based on the fact that the ownership scheme was definitely of a permanent nature.

G. Kriebel stated that during the appeal process the ZBA talked about the fact that although these units can be moved when you combine the difficulty of moving them and the licensing arrangement together it is clear that they are meant to be owned and used by the same party over an extended period of time.

G. Kriebel stated in his opinion nothing was presented in the Request for Rehearing which would change his mind on that fact.

J. Demeritt stated he has done some research since the last hearing and in his opinion there may be information pertinent to the claim Cronin is trying to make but that it is not presented by Cronin in his Request for Rehearing and therefore cannot be considered.

D. Day raised the issue that park models are specifically designed to meet the state statute for use in a campground and that they are allowed for use in other campgrounds in New Hampshire.

D. Day asked if the Town of Thornton allows campgrounds, and if the park model meets the state statute then why is it not being allowed in this case.

G. Kriebel stated that the ownership scenario indicates that the park models in this application could become permanent, separately owned residences and that the proposed license agreement can be altered to become a more permanent arrangement.

G. Kriebel stated that no new evidence was presented that would change his opinion.

H. George stated that no new evidence was presented that would change his opinion.

MOTION: "The Zoning Board of Adjustment should not grant a rehearing based on Section C. of the request."

Motion: J. Demeritt
Seconded: D. Day
Discussion: None
Motion Passes: 5-0

MOTION: "That the Zoning Board of Adjustment should not grant the Request for Rehearing on the grounds that Sections A., B. and C. of the Request for Rehearing were considered individually and found to be not worthy of granting the request."

Motion: J. Demeritt
Seconded: H. George
Discussion: None
Motion Passes: 5-0

The Board determined to meet on Wednesday, February 27, 2013 at 6:00pm at the town office.

At 6:35 pm the following motion was made:

MOTION: "To adjourn."

Motion: J. Demeritt Seconded: D. Gravel Motion Passes 5-0

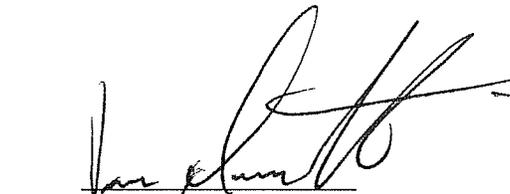
Respectfully Submitted,

Nancy Decoteau, ZBA Assistant



G. Kröbel, Chairman


D. Day, Member



J. Demeritt, Vice Chairman


H. George, Member



D. Gravel, Member

Approved on 2.28.13