

BOARD OF ADJUSTMENT

November 1, 2006

MEMORIAL BUILDING

7:00 P.M.

The following are to be considered draft minutes only until approved by the Board at their next meeting.

Present: ZBA Members:

Chairman, Bernard Manning

Cynthia Hayes

Mark O'Halloran

Andy D'Amico

John Graham

Gene Hayes, Alternate

Selectmen Representative:

Neal Huntoon, Selectmen Representative

Absent, Bob Anderson

The meeting was called to order at 7:00 P.M.

Minutes: The minutes for the September meeting were corrected noting that a comma **be** placed correctly defining B. Manning as Chairman and not Cynthia Hayes. Cynthia Hayes made a motion to accept the minutes as corrected and John Graham seconded the motion. All were in favor and minutes were unanimously approved.

Literature:

B. discussed a packet of information received for the ZBA and made it available for the Board members to review. B. spoke about the Town of Wilton website that he had referred to at last month's meeting. While researching the Wilton website, he found a linking website to the Town of Jackson that dealt with appeals. The Board discussed that this format and information would be helpful for the Town of Springfield. The Board agreed that as this information may change as changes are made on the State of New Hampshire level, the site must be monitored and updated. B. described the information that he found on the site and **noted** that there was information for granting a variance and equitable waiver, but **that it** does not mention the process for Special Exceptions. B. gave the Board members copies of printouts from the Jackson website. The Board reviewed the pages including a copy of their application, checklist, and instructions. B. said that he thought the format was well done and could assist the applicant with a "who, what, and where" process. The Board agreed that this would be a good source of information for the public reading and would give the applicant better tools to proceed in their process. The Board

discussed the possible changes in the RSA's and that it must be noted on the website the date of the current information and that the site documents should include a waiver or disclaimer as to changes. The Board discussed the content that they would like to see included on the Town of Springfield's website and that it should contain the tools necessary to inform the public and to assist Janet Roberts and Randie in the office. Andy suggested that in the heading for the ZBA portion of the website it should explain to the public the purpose of the following content. Cynthia mentioned that the site should also include information about the Town of Springfield as a Municipality and who within the Town is responsible for various duties. B. agreed that the content should include the information of whom to contact, where, and when as it is the Town's responsibility to inform and guide its townspeople. Cynthia stated that the site should be helpful and consistent. Some of the Board members were not aware that the Town of Springfield has a website and that the ZBA portion was already under construction. It's content to date is limited to scheduled meetings and minutes of the last meeting.

The Board reviewed once again the Jackson website and wondered why the Town did not address Special Exceptions concluding that they possibly did not include this in the Town zoning regulations.

New Business:

The Board concluded their discussion and B. opened the meeting to address the hearing for Mr. Gestay and his application for a Variance of 8 feet so that he can acquire a permit to put an addition on an existing vacation home to create year round living. Property is located at 45 Brook Road, Tax Map 9, Lot 020-371. B. asked Mr. Gestay to take the floor and Mr. Gestay explained briefly

his request for a Variance. B. explained that there were two types of a Variance, one was for use and the second was for area and Mr. Gestay was requesting an area Variance. B. also explained that the Board did not create the guidelines and that the Town had and defined the criteria with a checklist. B. informed Mr. Gestay that the Board would discuss the five points addressed in the criteria and all interested parties would have a chance to speak in favor or in opposition. B. said that the hearing was being recorded on tape and in written format. B. informed Mr. Gestay that the Board may request a visit of the site in question with Mr. Gestay's permission. Mr. Gestay said that he was agreeable to a site visit.

Mr. Gestay said that he built his house in 1986 as plotted by Allen Wilson as a vacation home and Mr. Gestay now lives there permanently and would like to put on a 20-foot addition for the living room and add onto the existing bedroom. B. asked if there were other options for the layout of this addition. Mr. Gestay said that his options were limited by the septic tank behind the house and a drilled well in front. The well is 59 feet from the front and has been sealed to make it legal. Mr. Gestay pointed to the maps showing where the well and septic were located and described how his plan and how parking and storage of a vehicle could be managed. B. asked how clearly the property lines were defined. A direct abutter, Mr. Baker, said that the lines were well defined. Mr. Baker said that he and Mr. Gestay had run a tape and there is one marker

that was gone as the tree had fallen down. B. asked if Mr. Gestay would be willing to have the line surveyed. Mr. Gestay said that would be okay, but the surveyor had expressed that he would not be able to address the issue until next spring and Mr. Gestay had hoped to start construction this year. B. expressed the Board's concern that should the Board grant the Variance that issues of the boundary line may arise at a later date when a neighbor discovers a discrepancy. Mr. Gestay expressed that if he changed the numbers to 24 feet he would still be within reason. B. explained that the criteria for a Variance addresses the issue of time constraints as well as costly restraints. An equitable waiver is after the fact and should it be discovered that a map is wrong and that the surveyor made a mistake, then an applicant could request an equitable waiver. Mr. Gestay said that if he attempted to put his addition on the opposite side of the house he would be encroaching on the other side. Mr. Gestay said that he had followed A. Wilson's plan and asked the Board if all of the current Zoning codes were in place in 1987 before the 200 foot road frontage guidelines. B. asked Mr. Gestay how close his house was from his neighbor, Mr. Baker's house. Mr. Gestay said that it was somewhere between 200 and 250 feet and Mr. Baker agreed though he has never paced it.

Mr. Gestay described further his design plan for his addition stating that it was basically a one story house with a basement that would be extended for a basement garage. Mark asked how Mr. Gestay intended to access the garage and was told that there was a below ground drop off or slope area involved. The Board discussed the ability to drive over the well that was located in this area due to the fact that the well had been capped off.

B. asked if there **were** anyone to speak in favor of this Variance and no one responded. B. asked if anyone would speak in opposition to this Variance and Mr. Baker responded. Mr. Baker stated that he was in favor of the project itself. Mr. Rollinson had witnessed the tree that had been the marker and that had fallen down. The tree had been removed because of termites, but the marks still exist on the stump. Mr. Baker did express his concern That **Mr. Gestay** included in his plan the intention **of filling** in a low spot on Mr. Baker's property. Mr. Baker having expressed his support for Mr. Gestay's addition, felt that the plan should not encroach on the physical lay of **his** land.

Mr. Gestay addressed the concern expressed by Mr. Baker stating that his intent was not to alter the property, but just neaten it or dress it up.

Andy asked Bob Baker if he had any objection to the leveling of that particular portion of land if Mr. Gestay took all financial responsibility for materials and labor and met Mr. Baker's approval.

Mr. Baker said that he has been working on his property at his own design and feels that he doesn't want changes made by someone else and that his boundaries should be respected. B. asked where Mr. Baker's well and septic were located in reference to Mr. Gestay's plan.

Mark noted that there was no topography on this plan. Mark also asked about ridge poles and how this design may create run off both in back and front of the house and may flow toward Mr.

Baker's house and potential root rot for trees in that area. Mr. Baker described the natural drainage pond.

Mark also expressed his concern that the garage and parking area appeared to be quite tight. Gene commented that he believed that the rule of thumb for a turning vehicle was 40 feet. The Board discussed their concerns about the parking process and the tightness of the turn around swing.

B. asked the Board if they had any questions. Cynthia said that she was concerned about two issues:

1. The measurements **seemed** arbitrary and **she** would like to see more specifics.
2. The garage may have some problems in the future.

Andy agreed and said that it was **hard** to see the whole picture with the drawings at hand. B. asked if there would be a removal of any trees to accommodate this addition. Mr. Gestay said that there were many dead trees in the area, but no real removal of trees was necessary.

The Board addressed the issue of snow removal. Mr. Gestay said that it would not be possible to plow as planned and he said that it would have to be moved by a snow blower.

The board asked what the chance would be for Mr. Gestay and Mr. Baker to come to an agreement on the property line and if they would feel comfortable putting up stakes and running a string to pull up measurements. Both men were in agreement. Mr. Baker said that the original survey could be off by 6 inches to 1 foot, but it was close. Mr. Gestay said that the marking tree may be gone, but the stump for it is still in place and there were also piles of rocks in a row that helped define the area. Mr. Gestay said that he could change the wording on his Variance application to 24 feet and not 27 feet and he still feels he would be in line. B. said that a document would also have to say how many feet off of the roof line.

Mark asked if it would be possible to offset the addition to the house **to** allow for a more comfortable turn in the driveway. Mr. Gestay said that the offsetting would create difficulties with the wall structure planned for the bedroom.

Mark said that the ZBA would address several concerns one of which would be financial. He said that the Board needs to see a map showing where the septic tank and leach field are located with the exact measurements. The Board needs to **fully see** the hardship that the owner is under and the Board cannot make a decision on guesstimates. Mark said that previous applicants have had to show signed proof of boundary lines and measurements. Mr. Gestay said that he does not have the plan, but the pipe, tank, and mound are visible to the eye.

B. suggested that the Board should do a site review prior to the next ZBA meeting. Mr. Gestay gave permission to the Board to access his property should he not be present for the viewing. The Board discussed their various times of availability and decided on Saturday morning, November 4, 2006 at 7:30 a.m.. The Board requested that the addition be **staked** out and strings run for

boundary lines. John had walked the property years previously when Mr. Gestay first built his house and said that he would not be present for this viewing. The Board discussed a continuance of this Variance hearing until the next scheduled meeting on December 6, 2006.

Cynthia made a motion to do a site visit and continue this hearing at the December meeting. Andy seconded the motion. All were in favor and site review and continuance were approved unanimously.

At 8:10 p.m., B. addressed the Board with Sue-Ann Connary's motion to rehear the Special Exception granted to Allen and Marie MacDonald and Highland Timberframe.

B. said that this was the first time he had ever dealt with a motion to rehear a decision and wanted to be prepared with information that would assist in this process. B. researched and accumulated information that would help the Board address their response. While researching the process, B. discovered that many towns had gotten into trouble when they did not follow the process to the letter. B. gave the Board members each a copy of the RSA's involved which had the exact wording so that the Board could get a sense of the format and that the Board should follow these guidelines for the criteria. B. had prepared typed guidelines and responses to the concerns made by Sue-Ann.

- 1.) RSA 677:2 within 30 days after any order or decision of the Zoning Board of Adjustment, or any decision of the local legislative body or a board of appeals in regard to its zoning, the selectmen, any party to the action or proceedings, or any person directly affected thereby may apply for a rehearing.

Sue-Ann made her motion in a timely fashion.

- 2.) In order to submit a motion for rehearing, a person must have "standing", i.e., the legal right to challenge the board's decision. Abutters have standing along with persons who own property close enough to the land in question to demonstrate that they are affected directly by the board's action, i.e., a person aggrieved. (Handbook for Local Officials 2006)

Sue-Ann fits the "standing" issue.

- 3.) RSA 677:3 a motion for rehearing under RSA 677:2 shall set forth fully every ground upon which it is claimed that the decision or order complained of is unlawful or unreasonable.

Motion for Rehearing (1) Unlawful Procedure: 9-21-2006

B. addressed Sue-Ann's first written concern that the procedure was unlawful. B.'s prepared response was:

- 1.) The first SE hearing was held on August 2, 2006...all abutters were properly notified and all notices were properly posted. The suggested

procedure for the public comment was followed with a great deal of public input. By an unanimous vote of the Board a site visit was scheduled and the hearing was continued until the next scheduled ZBA meeting.

- 2.) The site visit was held on August 9, 2006 with the public invited to **attend**. This visit was intended to only walk the site.
- 3.) The second public hearing, continued from the August 2, 2006 hearing, was held on September 6, 2006. Additional information, questions and answers and public comment **were** included. After an explanation of the process of closing the public portion of the hearing, the Chairman of the ZBA asked twice for additional comments. After hearing none, the public portion of the hearing was closed. After Board discussion it was determined that Town Counsel should review the decision and provide guidance regarding the proper language of the SE and the conditions. By unanimous vote, the Board recommended to have the Chairman and the administrative assistant present the information to Town Counsel for review and continue the hearing until the next scheduled Planning Board meeting.
- 4.) The third hearing was held on September 21, 2006. This was a continuation of the **non-public** portion of the September 6, 2006 hearing. The wording of both the SE and conditions from Town Counsel were reviewed and approved with some minor changes. Three letters from abutters, some of which were mailed directly to Board members, were not read at the meeting. All of the letter writers were present and spoke during some of the meetings.

The ZBA believes that all hearings were properly notified and fairly conducted. Any interested parties were permitted to speak as many times and as often as they wished. Once the public portion of the hearing was closed, no further **input** from anyone was allowed. To reopen a closed public hearing without proper notice may cause an injustice to someone and the Board feels that without some unusual circumstances, this is something that should not be done. For these reasons the Board believes strongly that all of the proceedings concerning this SE and the meeting of September 21, 2006 in particular were in no manner unlawful.

Sue-Ann raised her hand in an effort to clarify exactly what her concern was. Andy asked if it would be possible for Sue-Ann to speak. B. said that he may not agree with the directives described for this process, but felt he must stick to the advice given by Town Counsel and that if he did allow her to speak, then this would be a rehearing and it would not be legal as there had not been proper notification to all parties involved. With his apologies, B. continued with his prepared responses to the motion to rehear request.

Cynthia gave the example of a trial and compared it to counsel wanting to continue speaking his case after the jury had retired to make their decision.

*Andy said that even though the public in attendance had been asked twice for any further comments or questions, did they not understand that there would be no further chances to speak out against this Special Exception? Mark said that he felt it was very clear in requesting the **input** from the public. The Board had been very cautious and had asked Town Counsel, conferred with the Local Government Center, and had met with the Planning Board. B. stated that Town Counsel did not feel that it would be appropriate to discuss **the letters** with the public as it would appear that the meeting had been reopened. Mark expressed his apologies that the new letters had not been addressed, but Town Counsel had recommended that the Board adhere to the process as advised.*

Andy spoke to Sue-Ann saying that she has the right to continue the process and appeal to Superior Court. He explained that this could be a costly process for all involved, but if she had reasonable doubt to this decision, at this point she could file with the Court. There could be a slim possibility that a judge could find an element of doubt, that the decision was unlawful and force the Board to rehear and hence, reopen this hearing to the public. It was stated by the Board that this could be a difficult situation to prove.

A motion was made by Cynthia to approve the statement of explanation and **accept it as rationale. John seconded the motion and **it** was unanimously approved by the Board.**

B. read his written response to Sue-Ann's concern that the Timber Frame business in question does not meet the criteria of a home business.

Motion for Rehearing (2)

Business does not meet criteria of a home business:

In any application before the ZBA, the Board will first look to the ordinance for guidance. If the proposal meets the requirements for a home occupation, no action of any Board is required. If the proposal meets the requirements of a home business the applicant will be referred to the Planning Board for a Site Plan Review as required by the ordinance. If the application exceeds the impact of a home business, a Special Exception is required. The Springfield Zoning Ordinance clearly outlines the description and limits of both a home occupation and a home business, but does not define a regular business, this is left to the judgement of the ZBA.

When businesses are presented to a zoning board, many times it can be difficult to determine exactly what is needed. The Board feels it is prudent to compare the proposal to the ordinance and to see if changes could be made to the business to fit into a described use, or move forward with the process of the application for the SE.

The Board agreed that Highland Timber Frame, because it did not meet all the requirements of a home business, would be required to seek a Special

Exception from the Board. Although the wording of many of the conditions attached to this SE come directly from the ordinance as applied to a home business, this is not a home business, but a permitted use by Special Exception.

The Board feels it approached this entire issue in a very logical manner, recognized the application would need a Special Exception and moved forward with that in mind. One of the reasons stated in the motion to rehear is that the business does not meet the criteria of a home business. The action of the Board was not unlawful, but rather the proper procedure as outlined in the ordinance.

Cynthia agreed that at this present time, due to the lack of a house, that this Timber Frame business may not be a home business, but the Board used the criteria as the frame work with permitted use by Special Exception.

A motion was made by Cynthia to approve the statement of explanation and accept it as rationale. John seconded the motion and it was unanimously approved by the Board.

Motion for Rehearing (3)

Unreasonable request that Timber Frame doors must be closed at all times.

B. said that there keeping the doors closed during all working hours had not been part of the conditions or part of the proposal. The proposal stated that the largest portion of the work done would be with the use of hand tools. The doors will only be closed while using power tools. The Board, when considering the noise concerns, felt that closed doors while operating power tools was a reasonable request and the Planning Board supported that decision.

A motion was made by Cynthia to approve the statement of explanation and accept it as rationale. John seconded the motion and it was unanimously approved by the Board.

Motion for Rehearing (4)

Concern that there would be no enforcement of conditions.

The Board stated that the Selectmen will enforce the restrictions. The Board formed a reasonable and responsible decision and the language was clear and decisive. The conditions or restrictions were clearly defined with the assistance and guidance of Town Counsel. The Springfield Police will also handle the situation should there be any illegal activity. The ZBA did their best to be very clear in the language used in this Special Exception and not vague.

Cynthia made a motion to approve the explanation that due to the clarity of the Board's decision, it would not be unreasonable to ask the Selectmen to enforce the conditions. Mark seconded the motion and was unanimously approved by the Board.

- 4.) The reasons for granting a rehearing should be compelling ones. A person has a right to apply for a rehearing, **but** the board is not required to grant the rehearing and should use its **judgment** in deciding whether justice will be served by doing so. The Board may grant a rehearing if, in its opinion, good reason is stated in the motion. (Town of Jackson, NH)

Sue-Ann was within her rights to request a motion to rehear.

- 5.) Grant a rehearing only if there is new evidence that was previously unavailable or if the ZBA committed an error. Don't be afraid to admit an error, but look upon the presentation of "new evidence previously unavailable" with a healthy degree of skepticism. (Planning and Zoning Conference, April 12, 2003)

The concerns expressed had been addressed at open public hearings.

- 6.) Don't hold a hearing to decide whether to have a rehearing! The decision should be made based solely on the written motion, with no testimony (otherwise you're holding a rehearing!) (Arranging Your Furniture: Waugh 2004)

B. spoke and said that if the Board had voted to open or reopen the meeting after the Boards closed discussion, the abutters would again have to be notified by certified mail and scheduled another meeting.

- 7.) RSA 677:6 in an appeal to the court, the burden of proof shall be upon the party seeking to set aside any order or decision of the Zoning board of Adjustment or any decision of the local legislative body to show that the order or decision is unlawful or unreasonable.

- 8.) In reviewing a case, the court, in general, will consider only errors of law and not matters of judgment. The court is an expert in law, not in zoning or local conditions. Rather than substitute its judgment for that of the Board of Adjustment, the court will assume that the Board has more complete knowledge of the situation. Only if the Board has not satisfied legal requirements, or is shown to have acted arbitrarily or in obvious disregard of the evidence will the court set aside the Board's decision. (Handbook for Local Officials 2006)

Cynthia made a motion to deny the motion for rehearing requested by Sue-Ann Connary in reference to the Special Exception granted to Allen and Marie MacDonald for the Timber Frame Business on Hogg Hill. John seconded the motion and **it was unanimously approved by the Board..**

Mark and Andy both said that this had not been an easy process for the Special Exception request on a property that already had a Special Exception and this motion to request a rehearing. The Board agreed that it is sometimes difficult to meet the interest of all parties involved, but they have rules and regulations to follow clearly stated in the Springfield Zoning Ordinance.

Sue-Ann had the opportunity to speak and address the issue that she had been unable to clarify at the beginning of the Board meeting. She said that she was certain that neither she nor the other abutters understood that when the September 21, 2006 public meeting was closed, that they would not have a chance to express further opposition. She said that she had spoken with the abutters that had written the last letters, that had not been read, and they did not fully understand that the Special Exception had been granted by the ZBA at the September 6, 2006 meeting.

B. explained to Sue-Ann the difference between a hearing and a meeting. A public hearing is an open forum to discuss the particular issue on the agenda. At some point, after public and Board member discourse, the hearing will be closed to the public. At this point, the Board will openly, in the public presence, discuss amongst themselves all information shared and make a decision.

Sue-Ann said that she still felt that the neighbors concerns were ignored. She felt that the Board did not really “hear” what the abutters were telling them. B. said that he understood the concerns that had been expressed and this was a business in a residential neighborhood. The Board said that this property could potentially be purchased by another person for auto repair work that had the capability of creating hazardous material and potential pollutants. The Board expressed their opinion that with the size of the building and the use of hand tools, the Timber Frame business as presented has limited growth.

Sue-Ann still felt that there was a procedural issue that had not been addressed. She thought that the three letters should have been read at the September 21, 2006 meeting. Mark explained that the decision had been made by the Board at the September 6, 2006 and the Board voted on a continuance of the meeting to be held on Sept. 21st to “only” to get the “wording” right. That meeting was attended by both the ZBA and the Planning Board to make sure that all was in order.

Sue-Ann agreed that the proper procedure was followed, but the public in attendance did not understand the procedure. The Board discussed with Sue-Ann her right to appeal to Superior Court and how the Judicial System could deal with this situation, should she wish to pursue that avenue.

B. made a motion to adjourn the meeting and Andy seconded the motion. With no further business, the Board voted to adjourn at 9:00 P.M.

Respectfully Submitted,
Randie Lee Peterson
Assisting Recording Secretary.